

FINAL ENVIRONMENTAL IMPACT STATEMENT

Red Wing Properties, Inc.
White Schoolhouse Road Modification (MLR # 30393)
Town of Rhinebeck, Dutchess County, New York

Lead Agency: **New York State Department of Environmental Conservation**
Region 3
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I. Introduction

a. Contents of the Final Environmental Impact Statement

This Final Environmental Impact Statement (FEIS) has been prepared to support Red Wing Properties, Inc. application to modify its existing New York State Mined Land Reclamation (MLR) Permit (NYSDEC ID #: 3-1350-00052) for the White Schoolhouse Road mine site, in accordance with the State Environmental Quality Review Act (SEQRA) as contained the New York State Environmental Conservation Law (ECL) (ECL § 8-0101 et. seq.) and its implementing regulations (6 NYCRR Part 617).

The FEIS incorporates the Draft Environmental Impact Statement (DEIS) by reference; therefore, this FEIS should be reviewed in conjunction with the prepared DEIS. Updates made to the DEIS are detailed below. The DEIS evaluates the potential environmental impacts associated with the increase in the permitted life of mine boundary from 43 acres to 94 acres within a 241-acre parcel; expansion of below water mining which will cover 65 acres within the 94-acre life of mine area; and the construction of a spillway channel within the adjacent area of regulated freshwater wetland (RC-25, Class 1); along with project design measures and operating practices that will effectively limit potential impacts from the change in mining area. The potential impacts and associated mitigation efforts discussed in the DEIS are focused on potential impacts related to the change in mining area. In general, potential impacts associated with surface mines may include fugitive dust, stormwater, visual, noise, traffic, wetlands, ecology, wildlife and habitat, groundwater resources, and community character. The DEIS summarizes the evaluation of each potential impact and outlines mitigation techniques where necessary.

The DEIS was accepted by the Department on November 1, 2022, and a legislative hearing was held on November 17, 2022. The Notice of Complete Application, along with filed application documents and the DEIS, were published for public review and comment in the Environmental Notice Bulletin on November 2, 2022. A legislative public comment hearing was held by Webex videoconference on November 17, 2022, at 1:00 PM and 6:00 PM. The Department also accepted written public comments during the public comment period, which ended on February 10, 2023.

A substantial number of comments were received during the public comment period and public hearing, and have been summarized under the following categories: neighborhood growth and zoning; traffic; ecology, wildlife and habitat; legal issues; enforcement of special conditions; community character and quality of life; need for sand and gravel; dust and air pollution; noise; property values; recreation and pedestrian/bicyclist safety; aesthetics and visual and historic resources; reclamation; groundwater; size of the mine and scale of operation; wetlands; flooding; geographical resources; surface water, erosion, and sedimentation; blasting; DEIS format, scope, and content; mining operation; fire risk; community safety; alternative site entrances; and Red Wing's compliance record.

The FEIS contains three sections. Section 1 summarizes the environmental review process and application history, contains a description of the proposed action, and

provides a summary of potential adverse environmental impacts, including unavoidable impacts, and proposed mitigation, as presented in the DEIS. Section 2 provides a summary of updates to the DEIS following application submittal, as well as supplemental information pertaining to Community Character and Traffic. A Technical Memorandum prepared by Creighton Manning Engineers responding to public comments related to traffic, dated August 22, 2023, is included as Appendix B in this FEIS. Section 3 contains a summary of written comments received during the public comment period and legislative public comment hearing, and responses to substantive public comments.

b. Application History

Red Wing Properties, Inc. owns and operates an existing mine located on White Schoolhouse Road in the Town of Rhinebeck, Dutchess County, New York. In 2013, the subject site was transferred from Vincent Kinlan to Red Wing Properties, Inc.

In mid-2008, DEC received an application submitted by Vincent Kinlan to expand the life of mine area to access reserves within 141 acres of the 241-acre property (the “Application”). The application was accompanied by a preliminary DEIS, which contained studies of the potential environmental impacts associated with the expansion and a description of plans to mitigate those impacts.

On October 8, 2008 the Department conducted a coordinated review and eventually assumed lead agency for the environmental review of the Application pursuant to the State Environmental Quality Review Act (Article 18 of the Environmental Conservation Law; 6 NYCRR Part 617) (“SEQRA”). In January 2009, DEC issued a Positive Declaration. After conducting a public scoping hearing and accepting public comments, the Department accepted a Final Scope on August 17, 2009. The DEIS was revised per the August 17, 2009, Final Scoping Document in response to several Notices of Incomplete Application.¹ During the environmental review process, Red Wing amended its Application and reduced the proposed expansion from 141 acres to 94 acres and also reduced the number of truck runs proposed on White Schoolhouse Road.

In 2010, the Department determined that portions of the site contained occupied habitat supporting an essential behavior for Blanding’s turtle, a protected species. The determination of occupied habitat of the species was based on previous studies conducted at the site.

While processing of the Application was ongoing, Red Wing submitted other modification applications. In 2011, Red Wing submitted a second MLR permit modification application to the Department seeking approval to mine nine acres below the water table in the

¹ Notices of Incomplete Application or other comments were issued by the Department on August 26, 2010 (Applicant response and revised DEIS submitted on July 20, 2013), December 3, 2013, April 9, 2014 (Applicant responded to these letters on January 23, 2015), June 23, 2015 (Applicant responded on March 31, 2016), June and September 2016 (Applicant responded on March 21, 2017), September 3, 2019 (Applicant responded on January 17, 2020). Additional submissions were made to the Department in July 2021, and March and September 2022.

existing permitted 37.5-acre life of mine area. The Department treated this proposal as an Unlisted Action under SEQR and did not conduct a coordinated review. The Department approved the proposal and issued a modified MLR permit in 2013.

On April 18, 2019, the Department renewed Red Wing's existing MLR permit.

In mid-2019, Red Wing applied for an Incidental Take Permit ("ITP") for Blanding's turtles associated with the construction of a multi-use access road to both the existing mine and the agricultural farm fields being used. Red Wing was no longer able to access the existing mine by using the northern access road as the underlying property owner ceased providing access over the land; a new entrance was needed. As part of the ITP application Net Conservation Benefit requirements, Red Wing submitted a letter of intent to grant a conservation easement to The Wetland Conservancy. On November 6, 2020, the Department issued a Notice of Complete Application, and collected and considered public comments on the ITP application.

In February 2021, the Department issued a modification to the existing MLR permit and a new Incidental Take Permit. The MLR permit modification authorized the inclusion of a new 5-acre entrance road to the life of mine within the now 43-acre total life of mine area. The incidental take permit authorized the incidental take of Blanding's turtle through adverse modification of occupied habitat, associated with the construction of a 0.6 mile long, multi-use access road. To offset impacts to occupied habitat for the protected species, a conservation easement held by a third party was executed on 72.34 acres of the larger 241-acre parcel. The 72.34-acre easement, dated October 12, 2021, was recorded in the Dutchess County Clerk's Office on October 26, 2021. Other mitigation and enhancement measures to avoid and minimize impacts were also required.

On March 14, 2024, DEC received Red Wing's application to renew the MLR permit. The renewal application was submitted timely, so Red Wing is authorized to operate under their existing MLR permit, whose term is extended pursuant to the State Administrative Procedures Act (SAPA) section 401, until DEC makes a decision on the MLR permit renewal application.

During the pendency of the Application received by DEC in 2008, the Town of Rhinebeck revised its Zoning Code to limit the areas within the Town where mining is specially permitted. Relevant here, the revised Zoning Code created the Mining Overlay District which limited mining to property where mining activities had already occurred, namely the 37.5-acre existing life of mine area at the Property. Red Wing and the Town engaged in litigation regarding Red Wing's ability to mine on its entire property, including that acreage outside the Mining Overlay District. In June 2020, the Appellate Division, Second Department held that Red Wing has a vested right to mine 94 acres of its property as a prior nonconforming use. See *Red Wing Properties, Inc. v. Town of Rhinebeck*, 184 A.D.3d 577, 579-580 (2d Dept. 2020), lv denied 35 N.Y.3d 918. The Appellate Division, Second Department remitted the matter to Dutchess County Supreme Court and the Honorable Maria G. Rosa, J.S.C. signed an amended judgment which was filed on July

27, 2020. Copies of the Appellate Division, Second Department decision and Dutchess County Supreme Court amended judgement are attached as **Exhibit A**.

DEC accepted the DEIS on November 1, 2022, and issued a Notice of Complete Application(s), and Notice of Acceptance of Draft Environmental Impact Statement. The accepted DEIS is dated September 2022. The Department held public comment hearings pursuant to Part 617 and Part 621 at 1:00 PM and 6:00 PM on November 17, 2022, and the Department accepted written public comments through February 10, 2023.

c. Summary of the Proposed Project

Applicant proposes to modify its existing Mined Land Reclamation Permit to mine sand and gravel at the White School House Road Mine in the Town of Rhinebeck, Dutchess County. The proposed modification is to increase the permitted life of mine from 43 acres to 94 acres within a 241-acre parcel owned by Applicant. Below water mining will cover 65 acres within the 94-acre life of mine area. Applicant also proposes to construct a spillway channel within the adjacent area of a regulated freshwater wetland (RC-25, Class 1). Limited blasting will be done for a short period of time to construct a controlled outlet for the proposed pond and a keyway between two parts of the proposed pond. The remaining 147 acres of the Property will serve as buffer zones, be encumbered by the conservation easement, and/or constitute protected wetlands.

The Draft Environmental Impact Statement (DEIS) describes the existing environmental setting of the proposed modification, the potential environmental impacts associated with the project, and mitigation measures to prevent impacts or control impacts to the maximum extent practicable. The DEIS also addresses the project's potential cumulative impacts with other adjacent operations, the public need and benefits of the project, as well as potential alternatives, irreversible and irretrievable commitment of resources, and growth inducing aspects.

Specifically, the DEIS addressed the proposed modification's potential to impact surface water resources, groundwater resources, ecological resources, air quality, geological resources, agricultural resources, cultural resources, community sound levels, visual resources, traffic, land-use and zoning, community services, and demography. Supplement to the DEIS, and included within the FEIS, is a New Community Character Section (Section III (b)) and an Updated Traffic Impact and Road Conditions Study as well as Additional Mitigation Offered by Red Wing, in Section III (c).

The project has been designed to limit and potentially eliminate adverse environmental impacts. Identification, a brief description, and potential mitigation of these potential impacts follows:

Water Resources (Surface Water (DEIS Section 4.1.1) & Wetland Resources (DEIS section 4.1.3)

Water and wetland resources located on site include Landsman Kill, a Class C(t) stream; NYS Freshwater Wetland RC-25, a class 1 wetland approximately 52.2 acres in size, east of the mine site, and NYS Freshwater Wetland RC-30, a class 1 wetland approximately 45.1 acres in size, located to the south, southwest and southeast of the proposed mine. The Landsman Kill flows in a westerly direction into wetland RC-25 just south of the former mine entrance.

The proposed modification includes an increase in the permitted life of mine from 43 acres to 94 acres, with 65 acres of below water mining. To control water levels in the proposed pond, the modification includes the construction of an outlet and spillway channel allowing overflow water from the proposed pond to discharge to the Landsman Kill. The outlet construction will affect 0.21 acres of the adjacent area to NYSDEC Wetland RC-25.

Potential impacts to the Landsman Kill and freshwater wetland RC-25 could generally result from erosion and off-site sedimentation due to changes in the location of excavation and heavy equipment operation, the removal of vegetation, and construction of the pond outlet and keyway. In addition, wave action on the proposed pond could cause shoreline erosion, overtopping, or pond slope failure, and lead to flooding on adjacent properties. The potential of these specific proposed project activities to cause erosion and off-site sedimentation is described in the DEIS, section 4.1.1.2.

Potential impacts to freshwater wetlands RC-25 and RC-30 could result from overtopping of the pond as discussed above, erosion and sedimentation, potential spills from fuels, lubricants and other chemicals from the use and maintenance of equipment, or the changes in water surface or water table elevations. The potential of these specific proposed project activities to cause potential spills is described in the DEIS, section 4.1.2.2 and the potential water elevation changes is described in the DEIS, section 4.1.3.2.

Mitigation measures to address potential impacts to surface water resources are identified in the DEIS, section 4.1.1.3, and generally includes appropriate timing of operations based on need and seasonal considerations, providing appropriate setbacks and buffers, stabilizing perimeter berms, installing appropriate erosion and sediment controls and complying with the Multi-Sector General Permit for Industrial Activities and the Stormwater Pollution Prevention Plan (SWPPP), directional mining and limiting blasting, isolating settling ponds, and timing the construction of the pond outlet.

Mitigation measures specific to freshwater wetlands are also identified in the DEIS, sections 4.1.1.3, 4.1.2.3 and 4.1.3.3, as described above and also include implementing appropriate buffers from wetlands.

Groundwater (DEIS Section 4.1.2)

The two significant water-bearing units in the vicinity of the site are bedrock and saturated sand and gravel deposits. A site-specific hydrological investigation confirmed flow direction of groundwater and water level measurements.

The proposed below water mining over 65 acres will be conducted in the wet, where material will be removed by excavator and hauled to the plant by truck or by dredge and pumped in a slurry to a decant basin near the processing plant. Since mine dewatering will not occur, there will be no significant loss of water quantity as a result of below water mining.

Mining below the water table will create the surface water expression, and the water surface in the pond will be flat. The water table in the vicinity of the pond will slowly react as the pond is excavated, and it is anticipated to get slightly higher on the down gradient (north) side of the pond and dropping slightly on the upgradient (south) side of the pond as the pond is excavated. In addition, on the north side of the pond, the groundwater table will slope down, away from the pond, with an outward flux. On the south side of the pond, the groundwater table will slope upward, away from the pond, with an inward flux.

Significant impacts to water quantity are not anticipated. There is no nearby municipal water supply. Nearby residences rely on groundwater from wells as their primary source of water. Adjustments to groundwater levels to the south of the site will be very small and, since these users are more than 1400 feet from the site, are not expected to be detectable. Nearby wells to the north and east are located side gradient or upgradient from the mine. An increase in water level on site is anticipated; however, the presence of a groundwater divide/discharge area to the Landman Kill will alleviate impacts to groundwater well users.

Best management practices will be in place to mitigate against water quality impacts due to potential contaminants. These mitigation measures are discussed in the DEIS section 4.1.2.3, and generally include, but are not limited to, spill response, inspections, fueling considerations, appropriate on-site storage, and maintenance of equipment.

Ecological Resources (DEIS Section 4.1.5)

Upland cover type communities at the property include farmland, the existing mine, deciduous forest upland, scrub-shrub upland, open field, mixed forest upland, and residential/developed land. The majority of the species found at the site are common species. The mining and subsequent reclamation will result in the permanent removal of approximately 56 acres of upland habitat (which will be replaced with pond and reclaimed mine upland areas). Reclaimed upland areas will be stabilized to grasses and legumes.

Impacts to common ecological resources are not deemed significant, and therefore no specific mitigation measures are proposed.

Rare, Threatened, Endangered and Special Concern Species and Associated Habitat (DEIS Section 4.1.6)

Blanding's Turtle (Threatened) were found in Wetlands RC-25 and RC-30. The turtles also use portions of the site as upland nesting habitat. Spotted Turtle (Special Concern) were found on-site within Wetlands RC-25 and RC-30. In addition, a Bald Eagle (Threatened) nest is on-site, and occupies an area within the conservation easement.

Blanding's and Spotted turtles were found in wetland areas. The project area is not impacting the primary wetland and pond habitat that the Blanding's and Spotted turtles typically occupy. The shoreline, banks, and shoaling areas of the proposed pond will provide potential additional habitat for this species. Blanding's turtles move to upland throughout the year but the potential impact to the Spotted and Blanding's turtle is primarily from March to June when female turtles migrate to upland areas to nest and hatchlings move about in wet, grassy areas. Without mitigation, turtles may be killed when crossing the mine haul roads. Turtles may nest in the disturbed soils around the active mine faces and the eggs may be later dug up before hatching.

An Incidental Take Permit (ITP) was previously issued associated with the construction of the 0.6 mile access road to the existing mine and farm fields. This ITP authorized the incidental take of Blanding's turtle through adverse modification of occupied habitat, and to offset impact to occupied habitat, a conservation easement held by a third party was executed on 72.34 acres of the larger 241-acre parcel.

Additional mitigation and enhancement measures to avoid and minimize impacts proposed include the following: avoidance – due to species travel patterns throughout the site, Red Wing reduced the life of mine from 125 acres to 94 acres; habitat enhancement projects have been identified to create nesting habitat, as well as habitat connectivity through the establishment of two turtle underpasses; and turtle fences will be installed, daily inspections are proposed, and signage and training will be implemented. In addition, stripping activities will occur in winter, while turtles are hibernating.

An approximately 1,300-foot section of the haul road is within the 660-foot radius of the eagle nest. Almost all mine activities, except blasting (and drilling for blasting), will occur within the 2,640-foot radius of the nest. Proposed mitigation includes a 15 mph speed limit and use of Jake brakes only in emergency situations. Almost all mine activities, except blasting (and drilling for blasting), will occur within the 2,640-foot radius of the nest. The use of setbacks and buffers are proposed to mitigate noise impacts.

Air Quality (DEIS Section 4.1.7)

Minor fugitive dust producing sources on site include the use of bulldozers to remove overburden from the uppermost face; loadout of sand and gravel from the mine floor; hauling sand and gravel from the faces to the processing plant; crushers, screens, conveyors, piles, and transfer points in the proposed processing plant; loadout and wind erosion from stockpiles and above water mined areas; and haulage of processed materials off-site. Sand and gravel excavated from below water will be wet and will not be a source of dust.

Several methods for controlling fugitive dust are outlined in Appendix M, and DEIS Section 4.1.7.3 describes the effectiveness of the proposed mitigation measures and overall best management practices. Notable measures include seasonal timing of activities to reduce impacts from fugitive dust; strategic placement and vegetation of perimeter berms to reduce wind speed; and setback and buffers, where mining activities will be on 94 acres of the 241-acre property. Almost all activities, including the processing plant and stockpiles, will operate on the mine floor surrounded by mine faces. The mine faces, combined with perimeter berms and surrounding natural topography, can reduce wind speed and dust general potential. The use of a floating pipeline to transport below water sand and gravel to the processing plant will reduce truck haulage, thereby reducing associated dust. The entrance road has been relocated to a wooded area to the southeast part of the property and is screened by wooded buffers. In addition, the first 400 feet of the entrance road will be paved in order to control dust, trackage, and spillage.

The existing Mined Land Reclamation permit contains multiple conditions requiring management of fugitive dust including limiting topsoil stripping to one operational mining season, keeping the entrance road free of spilled and/or tracked material, utilizing water sprays on processing equipment, applying water on haulageways as often as necessary to prevent fugitive dust from the leaving the property, and concurrent reclamation as mining progresses to different areas.

Fugitive dust sources are not anticipated to significantly impact air quality.

Geological Resources (DEIS Section 4.1.8)

Sand and gravel are nonrenewable resources, and when used as construction aggregate they will be irreversibly and irretrievably committed. No mitigation is offered related to the loss of sand and gravel resources, but mitigation measures related to mining operations are discussed throughout the FEIS.

Agricultural Resources (DEIS Section 4.1.9)

The site is located within an agricultural district, and portions of the site, approximately 45 acres, are being farmed now or have been farmed in the recent past. The area currently being farmed contains approximately 12.4 acres of potential prime agricultural

soils, of which 5.7 acres are relatively flat and drained. Approximately 10 acres of farm fields have been removed from the life of mine area and will continue to be farmed. The remaining 35 acres will be gradually removed as mining progresses southward. Reclamation of most of this area to pond will prevent farming of this area in the future.

As outlined in the DEIS, section 4.1.9.3, Description and Effectiveness of Proposed Agricultural Mitigation Measures, it is the applicant's intent to allow farming in the fields until they are needed for mining. However, approximately 35 acres of farmland will ultimately be removed as a result of mining.

Noise (DEIS Section 4.3.1)

Impacts related to noise are discussed in the DEIS, section 4.3.1, and a Noise Impact Assessment in Appendix C. The analysis indicates that there will be no significant noise impact.

Major sound generating activities on site will include use of the portable wash plant, front end loaders, haul trucks, and excavator and a dredge, which will operate daily. The dredge will be either a diesel dredge or an electric dredge powered by a generator. Sound generating activities occurring less frequently and for shorter durations include the use of bulldozers and/or excavators. A portable crusher may be used occasionally and for short durations to crush stockpiled oversized gravels. In addition, limited drilling and blasting will occur on-site for the construction of the pond outlet and keyway.

Mitigation measures and how each measure controls or eliminates the potential for noise impacts of on-site mine equipment are described in DEIS section 4.3.1.3. Measures to reduce potential impacts from noise are proposed through the use of site design and operational considerations, best management practices and the use of noise reducing equipment (i.e. drill shroud and baffles), and changes in the originally proposed project to remove the southeastern-most part of the site, where the life of mine was proposed for 141 or 125 acres, and has now downsized to 94 acres. Initially, the processing plant's location will move in tandem with the active mine's faces, where intervening topography and perimeter soil berms will mitigate offsite noise impacts as mining progresses from North to South. Eventually, the plant will be positioned in the Southeastern portion of the life of mine, where analysis indicated that processing could significantly increase sound levels at the residences on White Schoolhouse Road, near the existing entrance. Mitigation measures proposed to reduce offsite noise impacts at this location include placement of the processing plant on the West side or 'behind' a bedrock ridge adjacent to the life of mine boundary and constructing reclamation soil berms to the East of the processing plant, to act as noise barriers.

Visual (DEIS Section 4.3.2)

Potential visual impacts are discussed in the DEIS, section 4.3.12, and the Visual Study is found in Appendix D. The Visual Study assessed the potential visual impacts

associated with the proposed modification from potential sensitive receptors within an approximate five-mile radius, and specifically, by identifying national, statewide, and local aesthetic resources potentially within the viewshed of the project area; determining the potential worst-case visual impact of mining at identified aesthetic resources and receptor locations in accordance with DEC's Program Policy for Assessing and Mitigating Visual and Aesthetic Impacts²; and proposing mitigation measures as needed to mitigate any potential visual impacts to the maximum extent practicable. The analysis indicates that there will be no significant visual impacts.

Mitigation measures include setbacks and buffers, where 94 of the 241 acre parcel will be mined, and the remaining approximately 147 acres will generally provide wooded buffers; perimeter berms; directional mining; operation on the mine floor; only the area needed for one season's work will be stripped at any one time; working above and below water faces together; location of processing plant and stockpiles, where the processing plant will be periodically moved as the face advances; and pumping below water material to plant, where the use of a floating pipeline to transport below water sand and gravel to the processing plant reduces the amount of truck haulage needed, thereby reducing activity levels on the site. In addition, the entrance road has been relocated from the northeasterly portion of the property, which was visible to surrounding properties and people using White Schoolhouse Road. The new entrance road has been relocated to a wooded area in the southeasterly part of the property where only a small portion of the road will be visible to fewer residences and people using White Schoolhouse Road. The site will be reclaimed, and all mining equipment will be removed from the life of mine area prior to the completion of final site reclamation.

Traffic (DEIS Section 4.3.3 and FEIS Exhibit B)

Traffic is discussed in the Traffic Study in Appendix F of the DEIS and on pages 1, 18, 67 and 150-157 (Section 4.3.3) of the main text of the DEIS. In addition, a Technical Memorandum, dated August 22, 2023 was prepared (Exhibit B), which examines and analyzes the public comments and provides responses as an update to the February 2022 Traffic Impact Study.

Truck traffic was the predominant concern raised in the public comments. The Dutchess County Department of Planning & Development technical comments conveyed to the Town of Rhinebeck Planning Board through a General Municipal Law Referral (Article 12B, § 239-l/m) identified measures to mitigate traffic impacts.

Due to the concerns and potential for increased truck traffic on White Schoolhouse Road, Dutchess County made the following suggestions and mitigation measures:

1. Limiting the size of trucks accessing the mine.
2. Requiring trucks above a certain size to enter the site from the north and exit to the south, so that these larger trucks are traveling southbound on White Schoolhouse Road (and thus not passing each other) and none are turning left at

² https://dec.ny.gov/docs/permits_ej_operations_pdf/visualpolicydep002.pdf

the site entrance or County Route 19 (Slate Quarry Road) intersection. This could be accomplished by prohibiting truck left turns into and out of the site driveway.

3. Coordinating with Rhinebeck Central School District to limit truck/bus interactions on White Schoolhouse Road. Based on the 2016, 2013, and 2008 traffic counts (which were conducted during the school year) most buses on this road appear to travel southbound on the road.
4. Improvements to the County Route 19/White Schoolhouse Road intersection.
5. "While we do not find that to be a County-wide concern, we suggest that the Town consider requiring the applicant establish a bond to cover any excessive wear or damage."

One of the exhibits to the FEIS is a Traffic Response Report prepared by Creighton Manning Engineers, which addressed several of these measures.

With regard to item #1, Red Wing proposes the use of trailer dumps and tri-axle vehicles as part of a pilot program during the first operational season to determine if the Town of Rhinebeck and Red Wing can agree on an appropriate truck size.

With regard to item #2, Red Wing has consented to directing trucks to arrive from one direction (the north) and depart to another (the south).

With regard to item #3, Red Wing will inform truck drivers of the schedule of school bus pickups and drop-offs.

With regard to item #4, improvements to the County Route 19/White Schoolhouse Road intersection are out of the control of Red Wing.

With regard to item #5, Red Wing is willing to post a road bond to be used if the Town and Red Wing agree that Red Wing's operations have damaged White Schoolhouse Road.

Land-Use and Zoning (DEIS Section 4.3.4)

In June 2020, the Appellate Division, Second Department ruled that Red Wing has a vested right to mine 94 acres of the 241-acre property as a legal, non-conforming use. There are two other mines near the proposed site and mining has been ongoing at the site since 1987. The site is in an area the Town specifically identified as a Mining Overlay District. There is no impact to zoning and the proposed action is consistent with the local comprehensive land-use plan and zoning.

Community Character

Some public commenters assert that the DEIS failed to assess impacts to Community Character. While the accepted DEIS did not have a specific section for the assessment of "Community Character", the DEIS evaluated the topics that are associated with

Community Character – noise, visual, dust, traffic, cultural, and consistency with Town zoning and Comprehensive Plans. As discussed in this FEIS under the specific relevant topic headings, potential adverse impacts on community character are avoided and minimized.

II. Revisions/Supplement to the Draft Environmental Impact Statement and Availability for Review Locations

- a. The DEIS for this project is incorporated herein by reference and will be available for review with this FEIS at:
 1. Starr Library Rhinebeck
68 West Market Street,
Rhinebeck, New York 12572
(845) 876-4030
 2. Rhinebeck Town Hall
80 East Market Street
Rhinebeck, New York 12572
(845) 876-3409
 3. NYSDEC, Region 3
21 South Putt Corners Road
New Paltz, NY 12561
 4. The applicant has also posted the FEIS and supporting documents online in electronic format. These electronic documents may be viewed and/or downloaded at the following location [copy and paste web address into your browser]:
<https://www.redwing-rhinebeckdeis.com/>

III. Supplement to the Draft Environmental Impact Statement

a. Summary of Updates to the Draft Environmental Impact Statement Following Application Submittal

The Applicant revised the DEIS several times following its initial submittal in response to Notices of Incomplete Application from the Department and in response to changes in conditions on the Property.

On February 25, 2021, the Department granted Red Wing an Incidental Take Permit authorizing the incidental taking of Blanding's turtles associated with impacts from the construction of an access road to the existing mine. Red Wing also implemented a mitigation plan that included measures to avoid and minimize impacts to Blanding's turtles and habitat. The Applicant completed Blanding's turtle habitat assessments in June 2010 and April 2013, which are included in Appendix E of the DEIS.

In spring 2022, a bald eagles' nest was discovered on Red Wing's Property. At the request of the Department, Red Wing performed a bald eagle assessment which analyzed impacts from mining in the vicinity of the bald eagles' nest. The bald eagle assessment included a noise assessment, which recommended monitoring of noise levels near the bald eagles' nest during active mining operations. Additionally, many of the proposed noise mitigation measures already in the DEIS will further mitigate impacts to the bald eagles' nest. The assessment also recommended timing of mining activities to reduce potential impacts as well as the construction of a screening berm. The bald eagle assessment is included in Appendix E of the DEIS.

b. New Community Character Section

As required by SEQRA, the Department considered community character in its acceptance of the DEIS. Community character was sufficiently addressed in the DEIS. However, in response to public comments on the DEIS, it was determined that a distinct section specifically titled as addressing community character should be added to the DEIS.

To the extent comments have been made identifying potential economic impacts of the Project, such as impacts on property values, these are not environmental considerations that can properly be considered in the SEQRA review. SEQRA requires the lead agency to examine and mitigate adverse impacts to community character (6 NYCRR 617.11[a][4],[5]; 617.2[1]). It is well established that economic impacts of a proposed action that are unrelated to potential adverse environmental impacts cannot be considered in a SEQRA review (*Matter of the Application of Sithe/Independence Power partners, L.P.*, DEC Project No. 7-3556-00040/0007-9, Rulings of the Administrative Judge on Party Status and Issues [Oct. 23, 1992]). Similarly, reduction in property values, considered in isolation, is not an environmental impact that can be considered during a SEQRA review (*Matter of the Application of Red Wing Properties, Inc. to Mine Sand and Gravel in the Town of LaGrange, Dutchess County*, DEC Appl. No. 3-1334-58/1-0, Interim

Decision [Jan. 20, 1989]). DEC's Commissioner has previously stated that, "[w]here environmental impacts are adequately mitigated or avoided, and residual adverse impacts on property values are still likely to occur, it would be contrary to state policy to deny a mining application or further condition the resulting [MLR] permit in a way that would make the mining activity uneconomical" (*id.*).

Here, the Town of Rhinebeck has previously determined, through creation of the Mining Overlay District, that the location of Red Wing's property is suitable for mining. Further, the Appellate Division, Second Department held that Red Wing may mine outside the Mining Overlay District as a prior non-conforming use (*Red Wing Properties, Inc. v Town of Rhinebeck*, 184 AD3d 577 [2d Dept 2020]) (Exhibit A).

The DEIS identifies areas of potential adverse environmental impacts and proposes methods to mitigate such impacts. Any residual impacts to property values solely based on the mine's existence and location cannot properly be considered during this SEQRA review, and a property values analysis should not be included in the DEIS (see SEQRA Handbook, Fourth Edition, 2020, p. 114 ["SEQRA Handbook"] ["a possible reduction of property values in a community, or a potential economic disadvantage caused by competition or speculative economic loss, are not environmental factors"]).

Red Wing has been authorized to engage in mining activities at the Property since the late 1980s. Therefore, the community character of the area, as acknowledged by the Town's creation of the Mining Overlay District, already includes mining. Two other DEC permitted mines are located on White Schoolhouse Road, less than a mile away from the existing Red Wing mine. To preserve the character of the community, Red Wing has proposed several mitigation measures in the DEIS that will reduce impacts from the mine on the surrounding community. Additionally, the proposed size of the life of mine area has been reduced to a total of 94 acres, which allows additional buffer space around the mine. The rural feel of the community is maintained by the presence of large buffers from most adjoining properties, strategic siting of the processing plant to reduce impacts, siting the mining area 1,100 feet or more from White Schoolhouse Road, construction of perimeter berms to supplement noise, visual, stormwater and other controls, and other mitigation measures to minimize impacts to the surrounding residences or affect the rural nature of the area.

The mine is remotely located. The northern portion of the mine is closest to existing residential uses, and that portion of the mine is already permitted by the Department. There are few residences near the proposed modification area. The nearest residences to the northwest are located about 2,300 feet away, to the east about 1,475 feet away, to the west about 2,800 feet away, and to the south about 2,300 feet away. The proposed modification will not negatively impact community character in the area.

Comments submitted by Warren Replansky (the "Replansky Memorandum") and Grant & Lyons LLP (the "Lyons Memorandum") (Comments A53 and A57; Exhibit C) on behalf of the Town of Rhinebeck assert the DEIS failed to consider impacts of the project on community character. The comments do not specify what the DEIS should have

considered regarding community character (Table 1, Comment A53, pp. 14-15; Exhibit C). The Lyons Memorandum states that “adverse impacts to community character are significant and substantive” but fails to enumerate those impacts (*id.*).

The Replansky Memorandum cites to case law regarding community character analysis (Table 1, Comment A50, pp. 4-5; Exhibit C). Mr. Replansky cites to *Matter of Lane Construction Corp. v. Cahill*, and asserts that “the DEC Commissioner ... denied petitioner’s application to operate a hard rock quarry, in relevant part, because of the project’s impacts on the ‘historical and scenic character of the community, including visual and other impacts, which could not be sufficiently mitigated’” (*Id.* at p. 5, *citing* 270 AD2d 609 [3d Dept 2000]). Initially, the historic and scenic character of the Town of Rhinebeck, visual impacts, and other important community character topics are discussed at length in the DEIS (DEIS body and Appendices C, D, G, L, M). Further, in *Lane Construction Corp.*, the permit was denied not because the EIS failed to discuss community character topics, but because those impacts from that particular project could not be sufficiently mitigated. Here, the DEIS both discusses the topics and provides sufficient mitigation measures (*see id.*).

As previously stated, community character is required to be considered as part of SEQRA review (*see* §§ 617.11[a][4],[5]; 617.2[1]). The DEIS discusses community character in its analysis of ecological impacts, noise impacts, visual impacts, traffic impacts, cultural impacts, and dust impacts and associated mitigation measures.

The DEIS is not required to consider impacts to community character from “possibilities of future expansion” of Red Wing’s mine. Commenters suggested that Red Wing will someday try to “mine the remainder of its 241 acres” and the Department must take that into account in this SEQRA review (Table 1, Comment A50, p. 10; Exhibit C). DEC is not aware of any other proposed expansions at the Property, nor are any such permit applications pending with DEC. The Appellate Division, Second Department held that Red Wing has a vested right to mine 94 acres, not the entire 241-acre larger parcel. At this time, the Application accounts for all acreage Red Wing may be legally authorized to mine and DEC is not aware of any future plans to increase the acreage of the mine.

DEC’s SEQRA review is limited to the current application and cannot consider future unplanned and unidentified hypothetical possibilities (*see Long Island Pine Barrens Soc., Inc. v Planning Bd. of Town of Brookhaven*, 204 AD2d 548 [2d Dept 1994] [it was not “feasible or necessary” for the Planning Board to undertake a speculative evaluation of future development as it was uncertain when, if ever, such development would occur]; *see also J. Owens Bldg. Co. v Town of Clarkstown*, 128 Ad3d 293 [2d Dept 2015]; *Vil. of Tarrytown v Planning Bd. of Vil. of Sleepy Hollow*, 292 AD2d 617 [2d Dept 2002]). The SEQRA regulations define segmentation as, “the division of the environmental review of an action so that various activities or stages are addressed as though they were independent, unrelated activities needing individual determinations of significance” (6 NYCRR 617.2[ah]).

Here, there can be no segmentation as there is no other expansion or activity planned by Red Wing. The SEQR Handbook states that, “all known or reasonably anticipated phases of a project should be considered in the determination of significance” (SEQR Handbook, p. 54). There are no additional phases of this project that are not considered in Red Wing’s Application. The MLR permit by nature includes an analysis of the final reclamation plan for the property. Further, the judicial limitation on Red Wing’s ability to mine additional acreage outside the Mining Overlay District eliminates any possibility of future mine development.

Red Wing revised the DEIS to include a discussion of the Comprehensive Plan, as approved by the Town, and how the Project relates to the Town’s goals, as required by the Final Scoping Document. Per SEQRA, Red Wing is only required to analyze the Project in relation to the Town’s plans or goals as officially approved or adopted (6 NYCRR 617.6[c][1][4]). Any unofficial goals or plans need not be addressed.

c. Updated Traffic Impact and Road Condition Study and Additional Mitigation Offered by Red Wing

Creighton Manning Engineering, LLP (“CME”) prepared a Traffic Impact and Road Condition Study originally dated May 24, 2007 (the “Traffic Study”), which was included as Appendix F to the DEIS. Given the passage of time, CME prepared an update to the Traffic Impact and Road Condition Study, dated February 8, 2022.

Attached as **Exhibit B** is a Technical Memorandum prepared by CME in response to public comments, including an analysis of recent data obtained from local police agencies regarding accidents on White Schoolhouse Road and from Dutchess County regarding the intersection of White Schoolhouse Road and County Route 19 (Slate Quarry Road) (the “Traffic Response Report”). The Traffic Response Report, in addition to analyzing recent accident data, includes a response to public comments on traffic, road conditions, and safety.

The Traffic Response Report also contains additional mitigation measures offered by Red Wing. Some of the mitigation measures were proposed by the Dutchess County Department of Planning and Development in its letter of March 18, 2022, which was submitted to the Town of Rhinebeck Planning Board through a General Municipal Law Referral (Article 12B, § 239-l/m). The Dutchess County Department of Planning & Development recommended that the Town of Rhinebeck condition its approval of the project with mitigation measures to avoid or minimize safety concerns associated with increased truck traffic.

IV. Responses to Concerns Raised in Public Comments

A substantial number of comments were received during the public comment period and public hearing held on November 17, 2022 at 1:00 PM and 6:00 PM. Copies of all comments received by DEC during the public comment period are included for reference

in **Exhibit D**. The transcript from the public hearing is attached as **Exhibit E**. The applicant prepared indexes of all the written comments received and comments made during the public hearing, with summaries of the points raised in each comment, which are attached as **Table 1** and **Table 2**, respectively. To the extent comments were too lengthy to be summarized, full text copies of certain comments are included in **Exhibit C**. Each comment is given a letter and number designation. Comments are categorized below into subject areas, and the comment letters raising those particular subjects are identified according to the letter and number designation set forth in Table 1 and Table 2.

a. Comments on Neighborhood Growth and Zoning

Public comments discuss Town Zoning and the Town's Comprehensive Plan, and generally state that the proposed mine is generally not a good fit for the Town of Rhinebeck or the neighborhood.

Comments: A11, A22, A25, A37, A44, A53, A54, A57, A58, B1, B2, B7, B12, B15

- The neighborhood has grown up around the mine.
- The mine is zoned Rural Residential and the proposed mine is not in compliance with the Town Zoning Code or Comprehensive Plan.
- Small scale mining is allowed under the Zoning Code but the proposed mine will impact the community.
- The Town has the authority to place conditions on permits to control impacts.
- The proposed mine does not comply with the Town's Comprehensive Plan.
- The Town Zoning allowing mining was a clerical error.

Response: Mining has been authorized at this location since 1987. Based on general community knowledge and historic aerial photographs, few new homes have been built in the vicinity of the mine during its operation.

The mine has been zoned Rural Residential throughout the life of the mining operation. Historically, mining was an allowable use in this zone with a special use permit. In 2009, the Town of Rhinebeck revised its Zoning Code and created the Mining Overlay District, which stated mining was only permitted at properties that were already being mined. By that time, Red Wing's Application was pending before the Department, and the proposed expansion was widely known to the Town and community.

In June 2020, the Appellate Division, Second Department ruled that Red Wing has a vested right to mine 94 acres of the 241-acre property as a legal, non-conforming use. Thus, comments related to the ability of Red Wing to conduct mining activities on its property have already been adjudicated and will not be a basis for the Department to make a final determination on the Application. Per the Court's decision, Red Wing is legally permitted to mine the 94 acres at issue in this Application.

b. Comments on Traffic and Road Safety

A substantial number of comments related to traffic and road safety were received. Commentors discussed concerns regarding an increase in truck traffic due to mining operations, and how an increase in truck traffic could impact the neighborhood and character, and safety for other automobile drivers, bicyclists, pedestrians, and homeowners along White Schoolhouse Road, including crashes. Some commentors discussed existing road conditions on White Schoolhouse Road and nearby intersections. Questions and comments regarding the traffic study as part of the DEIS were also discussed. Traffic related comments are discussed below:

Comments: A2, A3, A6, A7, A9, A12, A13, A15, A17, A18, A21, A26, A28, A30, A31, A32, A33, A34, A35, A37, A38, A39, A40, A41, A43, A44, A45, A46, A47, A48, A49, A51, A52, A56, A57, A58, B1, B2, B3, B4, B5, B7, B8, B10, B11, B12, B14, B15, B16, B17, B18, B19, B20, B21, B22

- General comments that truck traffic will impact the neighborhood.
- The Applicant did not commission a traffic study.
- White Schoolhouse Road is not suited for heavy traffic and the road will degrade over time.
- White Schoolhouse Road was repaved in 2011 and is ending its useful life span and truck traffic would accelerate the road's deterioration.
- The intersection of White Schoolhouse Road (a Town road) and Slate Quarry Road (a County road) is dangerous.
- The traffic from this mine is not comparable to the traffic from the other or past mines in the area.
- The size and type of trucks proposed to be used by Red Wing are not appropriate for White Schoolhouse Road.
- The Town has a law that prohibits the use of dump trailers and tri-axle trucks.
- There are blind spots on White Schoolhouse Road that are unsafe for truck traffic.
- Truck traffic interaction with school buses and children will be unsafe.
- Red Wing should find an alternative truck route.
- The traffic report in the DEIS downplays the hazards at the intersection of White Schoolhouse Road and Slate Quarry Road.
- White Schoolhouse Road is not wide enough for trucks.
- The threat to home foundations proximal to truck traffic on White Schoolhouse Road.
- The traffic study in the DEIS did not address trucks turning left onto Slate Quarry Road, or the route to Package Pavement.
- Larger trucks are not allowed on White Schoolhouse Road so the traffic study in the DEIS underestimates the number of truck trips.
- The updated traffic study was done at a time when truck traffic is much lower.
- The traffic study was based on old data.

- Comments questioning the conclusions in the traffic study regarding volume of trucks.
- The structure of White Schoolhouse Road is not adequate to support trucks and the videos show the insufficiency of White Schoolhouse Road
- White Schoolhouse Road is not suited to truck traffic due to winding nature and blind spots.
- Truck traffic will cause impacts to New York State Routes 308 and 9G.
- Truck traffic will result in undesirable development along Route 9G.
- The traffic study in the DEIS undercounted existing traffic and planned truck traffic because it used tractor trailers.
- Truck traffic will ruin the community.
- Truck drivers will not obey speed limits or be courteous drivers.
- The Town requires Red Wing to use only County and State roads.
- The impacts of traffic traveling north on White Schoolhouse Road were not addressed.
- The Dutchess County report on Slate Quarry Road was not considered in the DEIS.
- The DEIS should include a traffic study covering the routes between the mine and Package Pavement.
- Some parts of White Schoolhouse Road north of the mine are posted 20 miles per hour.
- The trucks' route to the mine is not specified.

Response: These issues were addressed in the Traffic Study in Appendix F of the DEIS and in Section 4.3.3 of the main text of the DEIS.

The Traffic Study was completed by the Applicant's consultant, CME, a company experienced in the evaluation of potential traffic impacts. The principal author, Kenneth W. Wersted, is a licensed professional engineer in the State of New York and has over 26 years of experience in the areas of transportation modeling, traffic impact study, special event transportation planning, and traffic signal design.

CME prepared a Traffic Impact and Road Condition Study originally dated May 24, 2007, which was included as Appendix F to the DEIS. Given the passage of time, CME prepared an update to the Traffic Impact and Road Condition Study, dated February 8, 2022 (Appendix F to the DEIS). In response to public comments, CME provided a Technical Memorandum, dated August 22, 2023, which examines and analyses the public comments and provides responses as an update to the February 2022 Traffic Impact Study. A copy of the Technical Memorandum and Response to Public Comments related to traffic can be found in this FEIS as **Exhibit B**.

The Traffic Study assessed the use of White Schoolhouse Road by the expected traffic from the proposed project and concluded that traffic generated by use of the mine will not have a significant impact. White

Schoolhouse Road is a local low volume road, with primary land uses such as residential and agricultural, two other mines, and a yard waste recycling operation. The mine is not a new land use to White Schoolhouse Road – it is on one of the only three properties zoned for mining or otherwise allowed in the Town of Rhinebeck, all of which exist on White Schoolhouse Road.

Volume

CME's Technical Memorandum, dated August 22, 2023, describes traffic on White Schoolhouse Road as light, and utilized the American Association of Highway and Transportation Officials ("AASHTO") Guidelines for Geometric Design of Low-Volume Roads (2019) in their evaluation.

The Traffic Study assessed the ability of White Schoolhouse Road to handle traffic associated with the project in accordance with accepted practices and concluded that no significant impacts would occur. The traffic study assumed a worst-case condition in regard to the volume of trips (trucks) entering and exiting during the peaks. In practice, an estimated 20 to 25 truck loads are expected through the day. This equates to about two or three truckloads on average (7 am-5 pm, 10-hour day), or four to six trips per hour. This means there could be one truck on White Schoolhouse Road every ten to 15 minutes. Traffic on White Schoolhouse Road varies during the mine's operating hours from seven to 22 vehicles per hour ("vph"). With a peak of 22 vph plus up to six truck trips, a total hourly volume of 28 trips will equate to one vehicle about every two minutes. Therefore, White Schoolhouse Road will not be negatively affected by the additional traffic from the mine.

The most recent truck counts were done in January 2022, at a time of year when traffic levels are generally lower. However, it is standard practice to adjust truck counts for seasonal variations and that was done in this case. In fact, page 2 of the updated Traffic Study notes that an adjustment was also made to account for COVID-related decreases in traffic. Regardless, traffic counts conducted by NYSDOT in July of 2018 reflect similar volumes. The January data seasonally factored and adjusted for the pandemic yields a daily volume of 278 vehicles per day, whereas NYSDOT's count from before the pandemic was only 301 vehicles per day. In the context of traffic engineering, a 23-vehicle difference over 24 hours is insignificant.

The estimate of daily traffic will vary by season and market demands. It could further vary based on the type of trucks used. The DEIS states that the proposal has reduced the number of trucks from 100 trucks per day (presumed to be truck loads, one-way trips or 200 two-way trips) to 20 to 50 trucks (40 to 100 two-way trips) per day, a 50% reduction. Based on the higher estimate, and factoring in employee trips (10 employee trips, two trips per day) a total of 120 trips per day could be expected. With

approximately 300 existing vehicles per day, that volume could increase to 420 vehicles, subject to the distribution of traffic. For example, if trucks enter from the north and depart to the south, then 360 vehicles per day could be expected, plus a few employees. The percentage increase in traffic may seem significant, but it is still far less than the capacity of the road and intersections.

As it relates to the project, the trucks added to the study area will not be a significant volume. The proposed action will generally result in a characteristically “slow and steady” flow of trucks throughout the workday, driven by professional drivers. In terms of the hours, according to the DEIS, the planned maximum hours of operation are 7 a.m. to 5 p.m. Monday through Friday with limited activities such as reclamation and maintenance activities on Saturdays from 8 a.m. to 3 p.m. There will be no excavation operations on Sundays, New Year’s Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, and Christmas Day. These hours are reasonable and do not create any traffic related impacts.

Speed and Safety

White Schoolhouse Road is a winding and undulatory road that has been used by mine truck traffic for decades. Truck drivers take into account road and weather conditions and adjust their driving habits to the conditions. Most of the trucks entering and exiting the mine will be under Red Wing’s direct control, so Red Wing has the authority to require truck drivers to obey the rules of the road. Further, commercial motor vehicle drivers require additional licensing and training requirements, and have more stringent consequences for violations of vehicle and traffic laws.

Road speed was a concern identified by commentors. The Traffic Study reported the 85th percentile speeds observed on White Schoolhouse Road, not the average speeds. The average speed was observed as 37 mph; the posted speed limit is 35 mph and there is one curve north of the project site with an advisory speed limit of 20 mph. The 85th-percentile speed is based on existing drivers and generally represents the upper speed limit of which most drivers feel comfortable driving. Given the low truck counts at the time of the study, it can be concluded that it was passenger car drivers, either local or cut-through, that may be creating the conditions the commentors find hazardous.

Road Condition

Commentors expressed concern regarding the overall condition of the road, including the existing nature of the road in terms of width, winding nature and blind spots; and concerns regarding degradation over time. All roads deteriorate over time because of exposure to the elements (sunlight, water,

freeze thaw cycles, etc.) and traffic (vehicles, plowing). Increased traffic on a road will accelerate the need to resurface the road. The Traffic Study considered the condition of the road (page 4 of the Traffic Study), noted the road was last resurfaced in 2012, and stated the road was in fair condition considering its age. Red Wing has been contributing to the Town's Road improvement/maintenance budget through its payment of property taxes. In addition, Red Wing has supplied mined materials to the Town of Rhinebeck to conduct road and other repairs and maintenance. Further, Red Wing is willing to provide a bond for damages to the road caused by its operations if the Town so agrees.

The comments state that White Schoolhouse Road, in its current condition, cannot support traffic weights over 10 tons. Notably, a 10-ton weight limit would also prevent most standard school buses from traveling over White Schoolhouse Road.³

No known Town of Rhinebeck laws limit the size of trucks on White Schoolhouse Road. Creighton Manning consulted the Town during preparation of the Traffic Study, and no truck size limitations were divulged. The Town's existing zoning includes a Mining Overlay District on parts of the property and White Schoolhouse Road is the only road with access to the site, so local delivery laws appear to be applicable. The Traffic Study concluded that White Schoolhouse Road can handle the proposed project truck traffic.

As the Traffic Response Report explains, Vehicle and Traffic laws (Vehicle & Traffic Law § 1660[10]) allow the Town to create a system of truck routes for vehicles over 5 tons and exclude those vehicles from roads outside of that system. However, the exclusion shall not prevent the delivery or pick up of merchandise from properties along such excluded routes. Courts have also held that mining trucks picking up and dropping off mining spoils fall under the "delivery or pickup or merchandise" exception at Vehicle & Traffic Law § 1660 (see, e.g., *Harden v Town of Mount Hope*, 240 AD2d 493 [2d Dept 1997]).

Crashes

Commentors raise safety concerns and the potential for accidents. According to NYSDOT records there were 13 crashes on White Schoolhouse Road (excluding the intersections of Route 308 and Slate Quarry Road) over ten years (January 2013 through December 2022). This equates to an average of one crash every 9.2 months. Reviewing the crash descriptions, eight (61%) involved property damage only, five (39%)

³ See 17 NYCRR Part 720 which defines Type B, Type C, and Type D buses as having weight ratings of more than 10,000 pounds. Type A buses can be either over or under 10,000 pounds. School buses can be Type A, Type B, Type C, or Type D buses (see 17 NYCRR § 720.4).

included injuries. Twelve (92%) were collisions with objects (tree's, signs, deer, mailboxes, etc.); only one crash involved another vehicle, none of which were trucks or buses. Contributing factors include animal action, driver inattention, falling asleep, unsafe speed, backing unsafely, and pavement being slippery.

According to NYSDOT records there were 18 crashes at the Slate Quarry Road/White Schoolhouse Road intersection over the past 5 years (January 2018 through December 2022). This equates to an average of one crash every 3.3 months. Reviewing the crash descriptions, twelve (67%) involved property damage only, five (28%) included injuries, and one (<1%) included a fatality. Sixteen (89%) were collisions with objects (tree's, signs, deer, poles, etc.); only one crash involved another vehicle, none of which were trucks or buses. One crash was with a pedestrian. Contributing factors include glare, animal's action, unsafe speed, and slippery pavement. A summary of these details is included in Attachment B to the Traffic Response Report. The fatality is a result of two crashes; first, Driver 1, traveling westbound on Slate Quarry Road lost control due to unsafe speed and slippery pavement (snow). Driver 1 slid off the road and hit a stone retaining wall. Driver 1 began changing their tire in the driveway of house #219 Slate Quarry Road. While working on their car about 20 minutes after the first crash, Driver 2 lost control in the westbound direction due to speed and pavement conditions and hit Driver 1 resulting in the fatality.

Of the crashes reported, only six (33%) occurred during the mining season; most of the crashes occurred during the winter months where inclement weather was a factor. During these months, the mine will be closed or have minimal activity. Given the lack of known history of truck related crashes, the project is expected to have little to no significant effect on crashes at the intersection. The width and geometries of White Schoolhouse Road were fully considered by CME when it prepared the 2007 Traffic Study and the updated February 2022 Traffic Study.

Based on the Technical Memorandum prepared by Creighton Manning Engineers, dated August 22, 2023, the American Association of Highway and Transportation Officials ("AASHTO") Guidelines for Geometric Design of Low-Volume Roads (2019) suggest that White Schoolhouse Road should provide between 18 and 22.5 feet of travel width – the lessor of which if the road is considered a minor access road (primarily accessing properties with minimal through traffic) and the greater of which if considered an industrial or resource recovery road. Industrial and resource recovery roads primarily serve commercial uses and/or for the purposes of logging and mining or similar and have a higher proportion of trucks. White Schoolhouse Road is a mix of these classifications in that it serves as access to local properties but also includes a light mix of trucks for the existing mining operation. However, White Schoolhouse Road is an existing road, and AASHTO

suggests that “existing roads need not be modified except in those cases where there is evidence of a site-specific crash pattern.”

The potential hazards of the intersection of White Schoolhouse Road and Slate Quarry Road are not unusual. Crashes tend to occur on curves, intersections, where there is limited visibility, and where drivers exceed prudent speeds for the prevailing conditions. The 2014 County Safety Assessment of Slate Quarry Road studied such conditions and acknowledged the potential increase in truck traffic related to the White Schoolhouse Road mine. That study found that 32 percent of crashes occurred around the White Schoolhouse Road intersection with Slate Quarry Road and that unsafe speed, slippery pavement, and animal actions were the prevalent collision factors. The safety study resulted in several recommendations and action plans including (but not limited to): reducing the speed limit, enforcement, education, improving shoulders, improving street and regulatory signs, maintaining shoulders to accommodate trucks and buses, reducing the pavement width at the intersection, improving sight distances at the intersection, and repairing/replacing/adding guiderail.

Several of the recommendations from the County safety study acknowledged the need to accommodate truck traffic, and several recommendations appear to have been completed. Given the previous safety study and present conditions, it may be prudent to initiate a follow up study that considers the effectiveness of the implemented safety measures and offers additional recommendations for future improvements.

Traffic Study Routes

Some commentors raised questions related to alternative routes or traffic patterns. Commentors specifically mentioned that the Traffic Study did not address trucks turning left onto Slate Quarry Road, or the route to Package Pavement; and that Red Wing should find an alternative truck route.

The Traffic Study did not analyze trucks turning left (east) out of White Schoolhouse Road because Red Wing indicated the primary regional access road is to the west (Route 9). Trucks are not permitted on the Taconic State Parkway, to the east. The reported route to Package Pavement in Stormville is south on White Schoolhouse Road, west on Slate Hill Road, south on Route 9G, west on CR 40A, south on Route 9, then east through Fishkill on CR 28 and Route 82 or east on I-84. Nevertheless, Red Wing is agreeable to restricting left turns out of White Schoolhouse Road onto Slate Quarry Road if requested by the Town.

Pages 4 through 6 of the Traffic Study addressed the intersection of White Schoolhouse Road and Slate Quarry Road. The Traffic Study

recommended installation of stop signs at the southbound left and right turns from White Schoolhouse Road to Slate Quarry Road. Currently, the southbound left and right turns are operated under yield control. The Traffic Study recommended no capacity related mitigation measures for the intersection. The recommendations of the Traffic Study were made in accordance with accepted practice. Additionally, the Poughkeepsie-Dutchess County Transportation Council issued a Safety Assessment of Slate Quarry Road in 2014, which recommended changes to the White Schoolhouse Road and Slate Quarry Road intersection including replacement of the yield signs with stop signs. To date, Dutchess County has not made any improvements to the intersection. The Applicant is agreeable to restricting left turns out of White Schoolhouse Road onto Slate Quarry Road.

Red Wing spent more than 10 years seeking a direct route to New York State Route 308 or 9G but was not able to obtain the land needed to get such alternative access options. The anticipated primary route for traffic was expected to be to and from the south. The Applicant is willing to distribute traffic by having trucks arrive from the north on Route 308 and depart to the south. This would result in dividing the traffic – inbound trucks arrive from the north, outbound trucks depart to the south. This is consistent with recommendations made by Dutchess County. The results will be similar in that there are no capacity improvements needed at the study area intersections. The northern section of White Schoolhouse Road tends to have thinner pavement sections and may experience faster deterioration than the southern segments.

See CM's Technical Memorandum, dated August 22, 2023, which examines and analyses the public comments related to traffic and safety, which can be found in Exhibit B.

c. Comments on Recreation and Pedestrian/Bicyclist Safety

As outlined above, there were a substantial number of comments pertaining to traffic and road safety. Comments outlined below specifically relate to pedestrian and bicyclist safety on White Schoolhouse Road. This section should be reviewed in conjunction with the section above.

Comments: A2, A8, A9, A13, A15, A17, A20, A21, A23, A24, A25, A27, A29, A32, A38, A40, A43, A44, A46, A49, A52, A56, B2, B10, B16, B17, B20

- General concerns about the safety of trucks interaction with people and animals on White Schoolhouse Road.
- White Schoolhouse Road is widely used by people, including the elderly and small children for walking and biking.
- Truck traffic is a safety concern for people walking and biking on White

Schoolhouse Road.

- White Schoolhouse Road is too narrow for two trucks to pass and this will affect jogger safety.
- Pedestrians already have to walk off the road to allow vehicles to pass on White Schoolhouse Road.
- Trucks drive like they own the road.
- There are many blind driveways on White Schoolhouse Road.
- Trucks interaction with school busses will be an issue.
- The use of trails and horseback riding in the area will end due to the mine.

Response: The Applicant's consultant, CME, prepared a Traffic Impact and Road Condition Study originally dated May 24, 2007, which was included as Appendix F to the DEIS. Given the passage of time, CME prepared an update to the Traffic Impact and Road Condition Study, dated February 8, 2022. In response to public comments, CME completed a new Traffic Impact and Road Condition Study. A copy of the updated Traffic Impact and Road Condition Study is attached to this FEIS as **Exhibit B**. Additionally, traffic is addressed in Section 4.3.3 of the DEIS.

The DEIS recommends 13 mitigation measures related to truck traffic, including directing trucks south on White Schoolhouse Road, posting and enforcing the truck routes, maintenance of trucks in good working order, limiting use of jake brakes, and requiring that truck drivers drive courteously and respect the rules of the road.

Trucks have and will continue to use White Schoolhouse Road. Mining has been ongoing along the road for decades and truck traffic is a necessary accompaniment of mining. The Town of Rhinebeck could improve White Schoolhouse Road by widening it to allow safer separation of traffic and pedestrians. Red Wing is also willing to post a bond to cover any damage to White Schoolhouse Road directly caused by its trucks. However, even with the addition of three extra feet on either side of White Schoolhouse Road, pedestrians and bikers may still feel uncomfortable and step off the road when vehicles pass by.

The mine property has not been used for public recreational purposes, although it has been observed that the public does trespass and use the area for recreational purposes. The reclaimed site will be suitable for recreational purposes (see Sections 2.1.3 and 6.4.2 of the DEIS) and Red Wing has a long history of providing recreational trails at its other mine sites.

d. Comments on Ecology, Wildlife, and Habitat

There were a substantial number of general comments related to ecology, wildlife and habitat, and generally how mining activities and the overall operation will impact the environment. In addition to general statements of disagreement with the proposed project, specific comments were raised about threatened and endangered species records, and studies within the DEIS that were used to evaluate impacts.

Comments: A6, A7, A11, A12, A13, A16, A17, A18, A19, A21, A24, A26, A27, A29, A30, A43, A46, A47, A52, A56, B1, B2, B5, B6, B9, B13, B15, B18, B21, B22

- The proximity to surface waters and extensive wetlands.
- The presence of Blanding's turtles and their habitat.
- Bald eagle nesting and no new buildings or roads within 660 feet of a nest.
- The presence of other wildlife (bobcats, deer, coyotes, birds, bears, beavers, raccoons, woodpeckers, herons, foxes, etc.).
- The monitoring of the conservation easement as part of the ITP.
- The age of the Blanding's turtle studies done for the Project.
- The impacts to migrating turtles must be addressed.
- The impacts to ecologically significant habitats must be addressed.
- The data in the ecology studies is more than 10 years old and did not cover all of the ecosystems in the area.
- The Town requires a habitat assessment.
- The impacts to common species were not assessed.
- The mine is in an environmentally sensitive area.
- Mining below water will remove habitat.
- The impact of mining and blasting on Bald eagles and Bald eagles nesting needs to be assessed.
- Mining will damage or remove habitat and damage wildlife.
- Bald eagle assessment needs to be done by an eagle expert and not a geologist.
- The project will disrupt a large, undisturbed flora/fauna corridor.
- The visual impact to Bald eagles was not addressed.
- Noise monitoring has not been required by the Department.

Response: These issues were primarily addressed in the Ecological Studies in Appendix E of the DEIS, in the Hydrogeologic Impact Assessment in Appendix J of the DEIS, in the Wetlands Permit Application in Appendix N of the DEIS, in the Incidental Take Permit Application in Appendix O of the DEIS, in the Pond Outlet Design in Appendix P and on pages 24, 30, 32-38, 40, 42-46, 77, 82, 86-102, 107-110, 119, 121, 122, 160, 161, 164, 166, 167, 169 and 170 of the DEIS.

Wetlands

The wetlands proximal to the proposed project were surveyed and setbacks of at least 100 feet were incorporated into the project design. Water levels

in the wetland are and continue to be monitored. Based on the extensive studies done at the site, an outlet for the proposed pond to be created by excavating below the water table was designed to mitigate fluctuations in the water table in the pond as well as the nearby wetlands. This design was a key mitigation factor in protecting the wetlands and was considered by Department staff to prevent any significant impacts to the wetlands.

Blanding's Turtle

The presence of Blanding's turtle habitat in the wetlands near the site has been well established for many years and was the subject of the extensive site-specific studies done for this project. Commentor discussed the passage of time related to when the ecological and wildlife studies were performed. Field surveys were performed over years, beginning in April 2002, and extending through June 2012. These studies occurred over more than a decade and included but were not limited to general surveys of the plants and wildlife, and focused surveys for the Blanding's turtle, including trapping and tracking of the Blanding's turtles for a two-year period.

The Department reviewed the studies and requested that additional studies be performed. Based on the information, it is the Department's position that there would be no significant change in species use or habitat since the studies took place, which demonstrated that the habitat is occupied. The Department determined that the project would not jeopardize the continued existence of the species, and that mitigation measures will provide a net conservation benefit to the species.

As part of the Incidental Take permit issued in 2021 for the access road, a conservation easement held by a third party Conservation organization over approximately 72 acres of the larger 241-acre parcel was granted to The Wetland Conservancy. The ITP application proposed a conservation easement to be held by a third-party conservation organization. The easement includes language that allows the third-party conservation organization to monitor the conservation easement.

Wetland areas and 100-foot adjacent areas are being avoided, except for the construction of the pond outlet. The originally proposed project scope changed, the southern field and the east-central part of the property have been removed from the project area to avoid potential impacts to Blanding's turtle. The DEIS outlines mitigation measures for the protection of Blanding's turtle upland habitat and preservation of biodiversity.

The DEIS does discuss how measures are needed to protect Blanding's turtles who may be moving to upland areas to nest, and that turtles may be killed when crossing the mine haul roads, or nest in disturbed soils around the active mine faces. Mitigation measures presented in the DEIS include

a reduction in the life of mine in order to avoid areas where turtles were found to travel and utilize the site; habitat enhancement and connectivity projects to create nesting habitat and facilitate turtle movement between onsite wetlands; the use of barriers, timing of stripping to coincide with hibernation seasons; daily inspections, installation of signage and training for employees and visitors.

Bald Eagle

A bald eagles' nest was discovered late in the application history. The nest is on the property but outside of the planned 94-acre life of mine area, and within the conservation easement area. The nest is well screened from the proposed mine areas.

The Department determined that the bald eagle assessment and noise survey provided in August 2022 are adequate for assessing potential impacts. Mining activities within 330, 660 and 2640 feet were outlined, and ambient conditions, equipment sounds levels, and areas of the mine were assessed for potential noise related impacts. The bald eagle assessment, required by the Department, determined that the results from the assessment showed sound level occurrence at the nest from mining would not have a significant impact. Nevertheless, measures are proposed to mitigate any potential noise impacts on the bald eagle nest.

Miscellaneous Species

Many other wildlife species were evaluated in the various wildlife studies done in Appendix E of the DEIS. No significant impacts to any of these species were found.

Site-specific plant and wildlife studies were prepared by qualified plant, wetland and wildlife experts from TES (now Delta) for a period of 10 years ranging from 2002 to 2012.

e. Comments on Legal Issues

Commentors raised points related to the overall SEQR process, litigation that has occurred between the Town and Red Wing, and other points as outlined below:

Comments: B1, B6, B12, B15, B17, A53, A57

- The Town is an involved agency not bound by the findings of the Department, the Lead Agency
- The Town passed a law limiting mining to three existing, permitted mines.
- Red Wing and the Town have been involved in a great deal of litigation.
- It took the applicant 14 years to wiggle around the legal issues to pursue

the application.

- The project warrants adjudicatory hearings.
- The Full Environmental Assessment Form (“FEAF”) format and date are deficient.
- The SEQRA review was segmented.

Response: Initially, the FEAF was submitted to and approved by the Department as lead agency for the SEQRA review. The Department issued a Positive Declaration for the Project based on the contents of the FEAF. Thus, the contents of the FEAF are essentially moot, as a Positive Declaration was issued requiring the preparation of the DEIS (see 6 NYCRR §§ 617, *et seq*). Additionally, the final scoping document, which was issued by the Department after a public comment period, explicitly outlined the contents of the DEIS.

The Town undertook an update to their Comprehensive Plan that led, ultimately, to changes in the Town Zoning Code. The Red Wing mine has been in operation for decades and has been permitted by the Department since at least 1987. It was one of the three mines identified by the Town in the updated Comprehensive Plan.

Red Wing has conducted a comprehensive environmental review since 2007 to support the Application. An exploratory drilling project was conducted in 1991 and 1992. Wildlife studies were initiated in 2002. In the 1990s, Red Wing contacted nearby landowners seeking land that would allow them to truck material directly to New York State Route 308 or 9G, thereby bypassing White Schoolhouse Road altogether.

Commenters state that Red Wing’s proposed modification is inconsistent with the Town of Rhinebeck Comprehensive Plan and Zoning Law. However, 37.5 acres of Red Wing’s property is located in the Mining Overlay District where there is no dispute that mining is a permissible activity. The Appellate Division, Second Department held in June 2020 that Red Wing has a vested right to mine 94 acres of the property as a nonconforming use. The debate over whether the use conforms to the Town’s Comprehensive Plan is therefore something the Department needs not to make a determination about since the courts have already addressed the issue.

Commenters suggest that the DEIS is inaccurate because it states that the proposed action is consistent with the Comprehensive Plan and Zoning Law. The DEIS accurately explains the history of the Town of Rhinebeck Comprehensive Plan and Local Law No. 4 of 2015 which revised the Zoning Law and Zoning Map (see DEIS, p. 7). The DEIS further acknowledges that a portion of the property is outside the Mining Overlay District and explains the legal justification as to why Red Wing is permitted to mine all 94 acres and that the Project complies with the Zoning Law (*id.*).

Additionally, there were comments about the disagreement between the Town and Red Wing regarding the necessity of local approvals. That topic is not relevant to the SEQRA review, the contents of the DEIS, or the ability of the Department to make SEQRA findings under 6 NYCRR 617.11.

The SEQRA review for the project was not segmented. The SEQRA regulations at 6 NYCRR 617.2(ah) provide, “segmentation means the division of the environmental review of an action such that various activities or stages are addressed under this Part as though they were independent, unrelated activities, needing individual determinations of significance.” As the Appellate Division, Second Department has stated, “[t]he regulations generally prohibiting segmentation are designed to guard against a distortion of the approval process by preventing a project with potentially significant environmental effects from being split into two or more smaller projects, each falling below the threshold requiring full-blown review” (*Long Island Pine Barrens Soc., Inc. v Planning Bd. of Town of Brookhaven*, 204 AD2d 548, 550-51 [2d Dept 1994]; see SEQRA Handbook, p. 59).

The MLR permit modification and incidental take permit issued by DEC in February 2021 authorized activities related to a new entrance road to the life of mine to allow excavation of a 9-acre, 35-foot deep pond within the approved 43-acre total life of mine area. The project was classified by the Department as an Unlisted action. Nevertheless, the Department reviewed the same materials and data regarding the presence of Blanding’s turtles that it would have reviewed if it had classified the action as Type I, resulting in the incidental take permit.

The Access Road Modification is independent of the current modification application. The access road is a separate and standalone project, not a stage or phase of the expansion. Access to the mine is needed to complete reclamation of previously affected areas, as required by the existing MLR permit. Therefore, the access road has independent utility, with or without the expansion. The Department’s review of the Access Road Modification did not constitute a segmented review and in any event the Department’s review of the Access Road Modification was no less protective of the environment (see *Concerned Citizens for the Environment v Zagata*, 243 AD2d 20, 23 [3d Dept 1998]).

An involved agency is one for which an approval is required. If an agency is not an involved agency, it is an interested agency. As noted above, the Appellate Division, Second Department held in June 2020 that Red Wing has a vested right to mine 94 acres of the property as a nonconforming use. The Town participated in the SEQRA review process through the submission of comments at the Public Hearing and through written comments.

f. Comments on the Enforcement of Special Conditions

Commentors expressed concern over enforceable permit conditions. Specifically, the Department's enforcement of mined land and incidental take permit conditions associated with the access road were raised.

Comments: A6, A11, A44, B1

- MLR permit conditions need to be ironclad, meaningful, and enforceable.
- The Department lacks the ability to enforce permit conditions.
- The Department has not enforced the conditions of the ITP.

Response: The Department agrees that permit conditions should be meaningful and enforceable. DEC will take appropriate enforcement action for any violations of the Environmental Conservation Law and permit conditions.

g. Comments on Community Character and Quality of Life

Community character was a primary issue identified by commentors. While the Department considered community character throughout the DEIS, in response to public comments, a separate section addressing community character has been added to the FEIS and is found in Section II.b. The new community character section should be referred to in conjunction with the responses below.

Specific comments related to community character and quality of life are the following:

Comments: A8, A11, A18, A22, A25, A37, A44, A53, A54, A57, A58, B1, B2, B5, B6, B7, B8, B12, B14, B15, B23

- The DEIS did not address community character and that the mine is in the middle of a residential area.
- The project represents a change in the intensity of the mining operation and associated impacts.
- The mine is out of scale and not wanted in the Town.
- The mine will impact and devastate the rural feel of the community.
- Mining will impact the quality of life of the community.
- The property is not suited for large scale mining.
- There are many homes near the mine.
- The mine is not compatible with the community character.
- The Town Comprehensive Plan defines the desired community character.
- It was the Town's intent through the Comprehensive Planning process to not allow industrial style mining and to limit mines to the areas they already exist.
- The DEIS did not address the impacts to historic resources as part of a

- community character assessment.
- The Town revised the zoning laws to conform with the Comprehensive Plan.
- Noise, dust, traffic and other potential impacts affect the community character.
- Local Law #4 of 2015 seeks to ban large scale mines and requires that the Town assess the impacts of projects on safety and welfare of the community.
- The DEIS did not address the compliance of the project with the Town Comprehensive Plan.
- The Appellate Court legal decision shows that mining is a pre-existing non-conforming use and therefore, not consistent with the Town zoning or Comprehensive Plan.
- The Full Environmental Assessment Form, Final Scoping Document, and DEIS fail to address community character.

Response: A lead agency's responsibilities under SEQRA include requiring that it identify and assess impacts to community character when determining whether to prepare an Environmental Impact Statement (EIS). SEQRA defines "Environment" to mean the "physical conditions which will be affected by a proposed action, including...existing community or neighborhood character" (ECL 8-0105[6]; 6 NYCRR 617.2[l]). This statutory provision is implemented in SEQRA regulations through the criteria by which lead agencies determine whether to require an environmental impact statement or EIS (6 NYCRR 617.7[c] [1] [v]). An EIS may be required if a project may result in the impairment of the character or quality of important historical, archeological, architectural, or aesthetic resources, or of existing community or neighborhood character. The impact that a project may have on population patterns or existing community character, with or without a separate impact on the physical environment, is a relevant concern in an environmental analysis since the statute [SEQRA] includes these concerns as elements of the environment, paraphrasing the Court of Appeals in *Chinese Staff & Workers Assn v. City of New York*, 68 N.Y.2d 359, 366 (1986).

Comments raised argue that the DEIS accepted by DEC fails to assess impacts to community character. While the accepted DEIS (or Final Scope) did not have a section or heading titled "community character" specifically, the DEIS did in fact evaluate the component issues of community character: noise, visual, dust, traffic, cultural, and consistency with Town zoning and comprehensive plans.

The DEIS was subject to public scoping, which determined community character did not need to be specifically addressed in the DEIS. An in person public scoping hearing and comment period was held. The DEIS followed the Final Scope. Defining community character, however, is

largely a municipal function through a municipality's zoning and comprehensive plans. Notwithstanding, this FEIS includes a new standalone community character section, which addresses the relevant public comments. The community character section is in Section III, above. Public comments argue that the DEIS does not consider the projects consistency with the Town's Zoning Law and Comprehensive Plan. The DEIS was revised to include discussion of the Comprehensive Plan, as approved by the Town, and how the Project relates to the Town's goals, as required by the Final Scoping Document (DEIS, pp. 6-8, 13, 67-68, 111, 150-151). As outlined in the DEIS, the project maintains the rural character of the Town as it maintains the 241-acre property largely as open space. Mining has been ongoing at the Property for decades and the site has had a mining permit since 1987, and a part of the community for more than 35 years.

The mine has been zoned Rural Residential throughout the life of the mining operation. Historically, mining was an allowable use in this zone with a special use permit. In 2009, the Town of Rhinebeck revised its Zoning Code and created the Mining Overlay District, which stated mining was only permitted at properties that were already being mined. By that time, Red Wing's Application was pending before the Department and the proposed expansion was widely known to the Town and community.

In June 2020, the Appellate Division, Second Department ruled that Red Wing has a vested right to mine 94 acres of the 241-acre property as a legal, non-conforming use.

Mining has been ongoing in this area for decades and the Town specifically set aside the Property for ongoing mining through creation of the Mining Overlay District. This mine was initially permitted by the Department in 1987 and there is evidence that mining was ongoing before that time.

Sand and gravel are non-renewable resources and a necessity of modern life (see DEIS, p. 3). As sand and gravel is mined, new areas of the Property are mined to replace the areas that will have been depleted. This property has been mined for over 30 years and the Application has been contemplated as necessary to replace depleted reserves since at least 1991.

In addition to Red Wing, there are two other permitted mine sites on White Schoolhouse Road (Lobotsky and Von der Lieth). The Von der Lieth mine includes a 21.75-acre Life of Mine area, and has been a permitted mine since 1977. The Lobotsky mine includes a 12.3-acre life of mine area, and has been a permitted mine since 2000. Mining activity has therefore been a part of the community for more than 45 years.

The Red Wing mine is located in a rural area with scattered residences. The rural feel of the community is and will be maintained by the presence of large buffers from most adjoining properties, strategic siting of the processing plant to reduce impacts, siting the mining area 1,100 feet or more from White Schoolhouse Road, construction of perimeter berms to supplement noise, visual, stormwater and other controls, and numerous other mitigation measures to make sure the mine does not impact the surrounding residences or affect the rural nature of the area.

The mine is remotely located. The northern portion of the mine is closest to existing residential uses, and that portion of the mine is already permitted by the Department. There are very few residences near the proposed modification area. The nearest residences to the northwest are located about 2,300 feet away, to the east about 1,475 feet away, to the west about 2,800 feet away and to the south about 2,300 feet away. As evidenced by the DEIS, this mine is well screened and well mitigated.

h. Comments on the Need for Sand and Gravel

Comments were raised regarding the overall need for sand and gravel, in relation to the SEQR review, location of the site, and potential use areas.

Comments: A44, A46, B1, B15, B21

- The need for sand and gravel is not an appropriate consideration for the SEQRA review.
- The proposed Project does not benefit the Town of Rhinebeck.
- Sand and gravel will be trucked over an hour away for use.
- The sand and gravel will not be used locally.

Response: This issue was addressed on page 3 of the DEIS. Environmental projects are subject to the requirements of SEQRA. SEQRA and its regulations (6 NYCRR Part 617) dictate what must be included in a DEIS, and “Purpose of and Need for the Project” is a required component (see SEQR Handbook, at 113). The DEIS should outline, “any public need for or public benefits from the action ... including social and economic considerations” (*id.*). The “need” for a project can be public, private, or a combination of both. The “benefit” of project is “something that promotes well-being” (*id.*).

Mineral resources have been important in the development of Dutchess County and its economy.⁴ There is a growing shortage of construction materials in New York State and, in particular, in New York’s Hudson Valley region. The number of permitted mines continues to decrease and the Dutchess County Department of Planning and Development noted that

⁴ *The Natural Resource Inventory of Dutchess County, NY*, Dutchess County Department of Planning and Development (Nov. 2010), Chapter 3: Geology and Topography of Dutchess County, at 21, available at: <https://www.dutchessny.gov/Departments/Planning/Natural-Resource-Inventory.htm>.

there is a need for sand and gravel.⁵

The Red Wing mine on White Schoolhouse Road produces aggregate, which is primarily used in blacktop and concrete. Specifically, blacktop is approximately 94% aggregate, and concrete is approximately 80% aggregate (DEIS, p. 3). The demand for blacktop and concrete, and thus aggregate, is expected to increase with the recent investment in infrastructure represented by the Infrastructure Investment and Jobs Act enacted by the Federal government.

There is a need for sand and gravel, and having local sources of material reduces unnecessary wear and tear on infrastructure caused by hauling aggregate longer distances. The benefit to the Town and State is addressed in the DEIS starting on page 3.

i. Comments on Dust and Air Pollution

General concerns were raised related to the potential for dust and air pollution.

Comments: A2, A6, A12, A14, A15, A16, A22, A24, A28, A44, B15, B18, B20, B21

- General concerns about dust.
- Truck traffic emissions (diesel fumes) will impact the health of the community.
- There is no discussion of what will be done to prevent trucks from idling for long periods of time.
- Dust from quarrying an opencast mining can pose a significant health risk and impact crops and plants.
- Past mining operations created dust and the proposed mine will create dust.
- Dust from mining operations can increase symptoms of asthma and other respiratory diseases.

Response: This concern was addressed on pages 78, 85 and 110-118 of the DEIS and in the Fugitive Dust Control Plan in Appendix M of the DEIS. It is undisputed that mining operations can generate dust. However, a total of 21 dust-related mitigation measures were proposed in the DEIS. While many of these measures have already been employed at the mine, some are new. These measures have been found to be effective in controlling dust at mines and will continue to effectively control dust in the future.

j. Comments on Noise

⁵ See *id.*, at 27-28.

General concerns about noise were raised, regarding noise producing activities at the mine, truck use on public roads, and how noise will impact the community and bald eagle nesting.

Comments: A6, A12, A15, A16, A18, A21, A22, A24, A26, A28, A29, A32, A41, A43, A48, A49, A52, A56, A57, B1, B2, B11, B12, B15, B20, B21

- General concerns about Project noise.
- The mine hours are lengthy and noise carries well.
- The mine noise is constant and would degrade the quality of life.
- Trucks on public roads would create noise.
- Mine noise will impact the community.
- Mine noise will impact the bald eagle nesting at the site.
- Mine and truck noise and vibration constitute a health hazard.
- Mine and truck traffic will disturb those working from home.
- Project noise will be unbearable.
- There are no plans to monitor noise at the bald eagles' nest.

Response: Noise impacts were addressed at length in the DEIS. A full Noise Study (see Appendix C of the DEIS) was completed in accordance with the Department's Noise Policy and noise was addressed in the DEIS main text on pages 13, 17, 21, 42, 60-63, 94, 98, 99, 102-105, 108-110, 123-136, 153, 154, 157, 158 and 165-167. Noise related to the bald eagles is addressed in Appendix E of the DEIS.

The mine's hours of operations have been approved for decades under previous MLR permits. These limited hours of operation are an effective noise mitigation measure even though the mine is well screened from surrounding properties (see Noise Study results).

The Noise Study addresses the transmission of sound over distance ("noise carries well"). Mine noise will vary in intensity throughout the day and over the calendar year. There will be no mining activities on New Year's Eve, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas and on Sundays. Saturday operations will be limited to reclamation activities from 8 am to 3 pm. Reclamation activities are relatively quiet and occur infrequently.

The Noise Study was done in accordance with the Department's Noise Policy and no sound level increases at nearby receptors exceeded the limits in the Noise Policy that define a significant impact. The Noise Study recommended 19 specific mitigation measures to control sound levels to acceptable levels and mitigate the nature of the sound to minimize and avoid sudden, jarring sounds. The Noise Study addressed all aspects of the mining operation. The mine noise will not significantly impact the quality of life of community members.

Trucks on public roads will create sound but are governed by the rules of the road that limit the sound levels of engines. Trucks on public roads are required to obey the speed limits. Red Wing will also advise drivers to limit use of jake (air assisted) brakes to emergency situations.

Sound level increases resulting from the mine are not significant and will not have a significant impact on the community.

A separate noise study was done to assess potential impacts to the nesting bald eagles. See Appendix E of the DEIS. This assessment showed there would be no significant impacts to the bald eagles.

k. Comments on Property Values

Concerns were raised regarding mining operations and potential impacts to property values, property taxes, the water table, nearby housing infrastructure, and loss of residents due to selling their homes.

Comments: A17, A21, A24, A27, A43, B2, B5, B7, B18, B20, B22

- The mine operation will affect property values.
- The mine will reduce property and home values and landowners will file for property tax reductions.
- Residents have put money into their homes and will lose those investments.
- The mine will cause people to sell their homes.
- There are building foundations close to White Schoolhouse Road that will be damaged by truck traffic that will devalue the property.
- The mine will cause the water table to collapse and result in a 25 percent decrease in property values.
- There should be a formal mitigation process if property values decrease.

Response: Property values were not identified in the Final Scoping Document as a potential environmental impact and were not required to be specifically addressed in the DEIS. Nonetheless, a standalone community character section was prepared for this FEIS, which discusses impacts to property values.

It is well established that economic impacts of a proposed action that are unrelated to potential adverse environmental impacts cannot be considered in a SEQRA review (*Matter of the Application of Sithe/Independence Power partners, L.P.*, DEC Project No. 7-3556-00040/0007-9, Rulings of the Administrative Judge on Party Status and Issues [Oct. 23, 1992]). Similarly, reduction in property values, considered in isolation, is not an environmental impact that can be considered during a SEQRA review (*Matter of the Application of Red Wing Properties, Inc. to Mine Sand and Gravel in the Town of LaGrange, Dutchess County*, DEC Appl. No. 3-1334-5⁸/1-⁰, Interim Decision [Jan. 20, 1989]). The Department Commissioner has previously

stated that, “[w]here environmental impacts are adequately mitigated or avoided, and residual adverse impacts on property values are still likely to occur, it would be contrary to state policy to deny a mining application or further condition the resulting [MLR] permit in a way that would make the mining activity uneconomical” (*id.*). A negative impact on property values is not a sufficient reason to deny a permit; acceptance of such logic would mean that no mines, landfills, or other necessary public or private facilities could ever be sited in New York State (*In the Matter of the Application of Lane Construction Company*, DEC Project No. 4-3830-00046/0001-0, Interim Issues Ruling [Feb. 22, 1996]). The very purpose of SEQRA is to ensure that the benefits of a project outweigh any adverse impacts and provide a clear net benefit to the community, even if property values are diminished in the process (*id.*).

The proposed mine is well designed, well screened and mitigated and, overall, to address numerous potential impacts, offers more than 100 mitigation measures intended to avoid and mitigate all environmental impacts associated with the mining. This SEQRA review cannot properly consider impacts to property values, however, any potential impacts are anticipated to be minor. No formal mitigation process is necessary.

I. Comments on Aesthetics and Visual and Historic Resources

Concerns were raised regarding potential impacts to aesthetics and visual resources, and specifically cultural and historic resources, the Route 308 Sepasco Trail, and the general viewshed.

Comments: A2, A6, A16, A17, A24, A25, A26, A38, A47, A50, A52, A56, B1, B3, B5, B6, B7, B15, B21

- General concern about impacts to cultural and historic resources.
- The area contains historic scenery and abundant natural landscapes.
- The mine will increase two to three times in size.
- Rhinebeck was voted the 14th most beautiful town in Architectural Digest.
- There are many historic buildings in the area.
- The project will result in light pollution.
- The project will result in gross destruction of a pristine landscape.
- Rhinebeck was voted one of the most scenic and beautiful towns in the country and the mine will impact that beauty.
- Trucking will destroy the scenic beauty of many of the Town’s beautiful rural roads.
- The viewshed will be impacted by the mine.
- The natural beauty of the Town will be impacted by the mine.
- The mine will be visually intrusive and damage the landscape.
- There are historic buildings on-site.
- The Route 308 Sepasco Trail dates to 1635.

Response: Potential impacts to aesthetics and visual resources were addressed in Sections 3.3.2 and 4.3.2 and Appendix D of the DEIS. Potential impacts to cultural resources, including historic resources, were addressed in Sections 3.2 and 4.2 and Appendix L of the DEIS. On-site investigations of impacts to potential cultural and historical resources were made in accordance with the requirements of the New York State Office of Parks, Recreation and Historic Preservation (OPRHP) (see Appendix L). The investigations allowed OPRHP to determine there were no significant impacts to cultural or historic resources (see November 14, 2014 letter from OPRHP in Appendix B to the DEIS). These studies included a site-specific literature search and on-site subsurface investigations for potential Native American and post-European resources of significance. The Sepasco Trail is well removed from the Project area and will not be impacted.

A complete Visual Impact Assessment was completed for the Project and is included in Appendix D of the DEIS. This Assessment was prepared in accordance with the Department's Visual Policy and identified all significant historic and significant cultural resources within a five-mile radius of the Property. This analysis included:

- Computer modeling of areas within the five-mile radius that might have views of the site; and
- Examination by an architectural historian of all buildings within areas of potentially visibility for eligibility on the National and State Register of Historic Places; and
- Assessment of viewpoints on a worst-case basis from potential sensitive receptors using Line-of-Sight sectional analysis during leaf off conditions; and
- Field verification of Line-of-Sight analysis during leaf off conditions.

The mine is well screened from surrounding properties by intervening topography and vegetation that will remain over the life of the mine, as was verified by the Visual Impact Assessment. The mine is located in a north-south trending valley and the valley walls further aid in screening the mine from more distant locations.

While the public comments are correct in saying that there are historic resources, beautiful scenery and landscapes, and many historic buildings in the area, no significant visual impacts were identified by the site-specific study. The Visual Impact Assessment was reviewed by the Department and by OPRHP and no significant visual impacts were found.

With regard to potential light pollution, the mine will be well screened and will operate almost exclusively during daylight hours. The limited light sources used on-site include lights on vehicles and around the office and plant. These lights are directed downward to illuminate the immediate area where the equipment is operating or where the buildings are located.

Because the mine is well screened and isolated from surrounding properties, light from the mining operations will not cause significant impacts.

The comment that the mine will result in gross destruction of a pristine landscape is not true. The life of mine area consists of a mix of previously mined land and farmland that is well screened and surrounded by elevated topography. Further, most of the mine area will be excavated below the water table and will become a pond. The above water faces and below water faces will be excavated together and the mined area will be quickly turned into a pond. The land will be transformed but the existing landscape of the Property is not pristine nor will it be grossly destroyed. For additional context on the pond and reclamation activities, see Section III(m), below.

m. Comments on Reclamation

Commentors express general concern over the planned reclamation of the site, and the reclamation bond and proposed future uses and condition.

Comments: A6, A45, B3, B6, B15

- The escrow amount will not be enough to cover the cost of reclamation and Red Wing will default.
- Mining will leave the land scarred.
- The Town does not need or want a water-based park and prefers wild or farmland.
- The mine will result in a loss of land, open pits and waste piles.

Response: Reclamation is discussed in Sections 2.1.2.1, 2.1.2.2, 2.4.1.1, 2.5 and Appendix A of the DEIS.

The Mined Land Reclamation Law (MLRL) requires that land affected by mining after April 1, 1975 be reclaimed to a condition capable of future productive use. The MLRL also requires that as part of a mining permit, the applicants provide financial security to the Department to cover the cost of future reclamation. The financial security amount is determined by the Department based on an assessment of the site-specific conditions and is updated on a regular basis during MLR permit renewals, modifications, and as needed based on site conditions. The Department's financial security amount is raised to reflect increases in the affected acreage as well as to account for increased costs of reclamation. Financial institutions that hold financial security for permitted mines are required to notify DEC in writing 90-days prior to cancellation, non-renewal, or termination of financial security instruments. The permittee is responsible for providing a replacement within a reasonable timeframe and if they do not, DEC will call the proceeds of the surety account. Failure to provide or replace financial security can also result in permit suspension, revocation and liability for penalties. Red Wing's current bond is \$351,637.

The Department considers whether an applicant has previously defaulted on a financial security when considered a MLR permit application. The comments suggesting that Red Wing will default is speculative, and contrary to Red Wing's history of reclaiming mines to regulatory requirements.

The MLRL ensures that all mined land will be reclaimed. In this case, Red Wing proposes to create a pond surrounded by graded, vegetated side slopes and flat-lying areas with perimeter access to the area. All mining equipment will be required to be removed from site once mining is complete. All spoils will be removed from site or incorporated into final reclamation grading. This proposed reclamation plan meets the Department's requirements for reclamation. The land will be left in a stabilized and useful condition suitable for a wide variety of future land-uses, as described in Section 2.5.1 and Appendix A of the DEIS.

Red Wing has historically donated mined and reclaimed land to a number of towns in Dutchess County (see Section 2.1.3 of the DEIS). The reclaimed land in Rhinebeck will be suitable for recreational and residential uses as well as wildlife habitat. The Conservation Easement that was granted to The Wetlands Trust will further protect the wetland and Blanding's turtle habitat areas during and after mining.

n. Comments on Groundwater

Commentors express concern with how mining at Red Wing will impact groundwater and the aquifer. Nearby residents utilize individual groundwater wells for water supply. Commentors express concerns over how mining will impact their wells, causing a reduction in water quantity and quality.

Comments: A2, A3, A6, A7, A11, A12, A13, A15, A17, A22, A25, A26, A44, A46, B1, B7, B14, B15, B20, B21

- Mining will impact the aquifer.
- Mining will impact groundwater quality by removing the filtering ability of the sand and gravel.
- Mining will impact groundwater quality.
- Mining will occur below water and within the recharge area of water users.
- Private water wells will be impacted.
- There will be a total collapse of the water table leading to a depletion of the aquifer and loss of drinking water.
- Impacts to groundwater and wells were not assessed in the DEIS.
- Impacts to water quality were not assessed in the DEIS.
- The aquifer under the mine is the sole source of water for nearby homes.

Response: Groundwater is discussed in Sections 3.1.2 and 4.1.2 and Appendix J of the DEIS.

The site-specific studies done for this Application demonstrate that the proposed mining will not significantly impact water quality or quantity in the vicinity of the Property.

The Hydrogeologic Impact Assessment, conducted as part of the DEIS, is in Appendix J, and clarifying information can be found in a letter to Mr. John Petronella, dated August 17, 2016, and located at <https://www.redwing-rhinebeckdeis.com/>.

The closest wells to the south and southeast are hydrogeologically upgradient from the mine and are situated over 1400 feet away from the life of mine area. Further to the south, the slope of the water table and direction of groundwater flow, is to the south. The nearby wells to the north and east are also located side gradient or upgradient from the mine. The nearest wells to the west are located on the opposite side of a groundwater divide. The nearest wells along White Schoolhouse Road largely draw water from a bedrock aquifer with recharge from the east.

Additionally, active mine dewatering will not occur at the site. There will be no appreciable loss of water quantity as material will either be excavated and hauled to the plant or dredged and pumped to a decant basin.

The volume of groundwater projected to move through the site and the storage capacity of the sand and gravel aquifer will increase, due to the increase in the watershed contributing area and the increase in surface water at full buildout.

The work done for the DEIS showed there are no potential for significant impacts to groundwater quality. There are no municipal water supplies near the Property, the nearest wells to the south and west are across groundwater divides from the mine. This means that water cannot flow from the mine towards the nearest wells. There are very few wells located near the mine and the resulting change in the elevation of the water table will result in insignificant changes in the water levels in area wells. The nearest wells to the north and east of the mine are downgradient from the mine and the mine will not reverse the flow of water. The nearest wells along White Schoolhouse Road to the east of the mine draw recharge from the bedrock uplands to the east and not from the mine area. Lastly, the proposed mining operations will not use a significant amount of water.

The mere act of mining below water does not impact water quality. While it is true that mining sand and gravel reduces the amount of sand and gravel that can filter the water between the mine and an off-site well, this filtering

effect occurs when water flows downward as well as horizontally. More than enough sand and gravel is present between any downgradient wells and the mine to allow sufficient filtering of groundwater.

The nearest residential wells downgradient from the mine are generally located close to White Schoolhouse Road and receive recharge from the uplands to the east of the road. The amount of water that could be intercepted by cones of depression around the wells is *de minimis*.

Additionally, the applicant has proposed 13 mitigation measures to prevent contamination of groundwater. These mitigation measures are commonly used at mining operations at New York State and will be effective in ensuring water quality.

o. Comments on the Size of the Mine and Scale of Operation

Comments related to the proposed mining operations related to size and scale are as follows:

Comments: A7, A12, A13, A22, A25, A26, A44, B1, B3, B6, B7, B15, B17, B20, B22, B22

- Red Wing is the largest sand and gravel mining company in Dutchess County.
- The prior and current mining on White Schoolhouse Road are “Mom and Pop” operations.
- Prior and current mines are modest in scale.
- The current mine is much smaller than the proposed mine.
- Not all sites are viable for mining.
- The size and scale of the mine are not appropriate for this location.

Response: The size of the mine is discussed throughout the DEIS and in Appendix A. The Mining Plan Maps and Reclamation Plan Maps in Appendix A show the topography, wooded areas, planned location of the mine, mitigation measures, direction of mining, and many other details related to the mining and reclamation of the life of mine area.

Mining, unlike most other land uses, is consumptive. Once an area has been mined of its sand and gravel, it cannot be mined again. Sand and gravel mines can only be sited in areas where deposits suitable for mining exist. Mine selection and permitting also takes into account a variety of other factors such as size and access to market, competition, environmental concerns, and the feasibility of mining the deposit.

The potential impacts associated with the project have been identified, assessed, and mitigated, and no significant impacts were found as part of the extensive review. The mine area is increasing in size because that is the nature of mining. However, after each area of the Property is mined

out, it will be reclaimed. The reclamation process is ongoing. Because the above and below water faces are being worked together, some reclamation will occur concurrently with mining and the un-reclaimed areas will be minimized. As previously stated, the mine is and will remain well screened from surrounding properties.

p. Comments on Wetlands

General comments were received regarding the importance of wetlands for habitat and water quality. Please note, comments related to habitat, threatened or endangered species, or the previously issued Incidental Take Permit responses can be found elsewhere in this document.

Comments: A7, A11, A12, A13, A14, A25, A26, A44, B1, B9, B13

- The site contains valuable wetlands and is located near the headwaters of a surface water divide.
- The wetland analysis done by the Applicant and reviewed and approved by the Department was low resolution.
- The wetlands and Landsman Kill are an integral system and will be impacted by the mine.
- Wetlands should be preserved and protected.
- The wetlands need to be delineated again.
- Kettle bush pool wetlands will be destroyed and were not studied.
- The conditions of the ITP need to be followed through on.

Response: Wetlands are discussed in Sections 3.1.3 and 4.1.3 of the DEIS. The wetland delineations and further information on the wetlands are included in Appendices A and E of the DEIS.

Previously mapped wetlands RC-25 and RC-30 are located along the eastern and southern sides of the life of mine area, respectively. Setbacks of at least 100-feet are being maintained from both wetlands, except in the limited area of the planned pond outlet. No mining will occur in the wetlands. The water levels in the wetlands have been impacted by natural and man-made factors. Water in the southern part of Wetland RC-25 is sporadically backed up by a beaver dam. The water level in the northern part of Wetland RC-25 has been affected by the placement of a culvert by the adjacent landowner. The water levels in both wetlands fluctuate naturally depending on weather conditions. Wetland RC-30, in particular, is located along a surface water divide and has been observed to dry up during dry weather. Monitoring of the water levels in these wetlands has been ongoing on a quarterly basis since 2013 and was measured periodically prior to 2013. Wetland level monitoring will continue as part of the Project.

Mining below the water table will cause adjustments in the groundwater levels. Significant changes in water levels can impact the wetlands. The

site-specific testing for this Application demonstrated that Wetland RC-30 to the south of the planned life of mine area is perched. Hand dug test holes in the bottom of the wetland encountered saturated soils underlain by a layer of clay and then dry sand and gravel below the clay. Testing in the life of mine shows that the water level in the life of mine area is appreciably lower than the water level in the wetland so the two are not hydrologically connected and the wetland is perched.

Portions of Wetland RC-25 are groundwater-fed and could potentially be impacted by mining. However, a dredge pond overflow is proposed to control the fluctuation of water in the wetlands. This will keep the water levels in Wetland RC-25 very similar to those that currently exist. No significant impacts to wetlands will occur.

The Department has determined that an updated delineation is not necessary at this time. DEC reviewed the proposed project in accordance with all applicable regulatory requirements for disturbances to freshwater wetlands.

Wetland impacts are evaluated by the Department, and the Department weighs a proposed project against standards for issuance for any applicable permitting type. Either during the SEQRA process, if LA, or through an application process, the Department works with an applicant to design a project that will be the least impactful to regulated resources, while also meeting the applicant's objective.

The original proposal included mining within 30 feet of the adjacent wetlands. Following discussions with the Department, the applicant revised the application to stay at least 100 feet from all NYSDEC wetlands. The exception to this is disturbance related to the pond outlet, proposed within the adjacent area. The outlet construction will affect 0.21 acres of the adjacent area to NYSDEC Wetland RC-25.

As stated in the DEIS, the proposed action includes above water excavation to within 100 feet of the wetlands, and below water excavation to within about 130-160 feet. Excavations below the water table will result in a minor adjustment from a gentle sloping water table to a flat-lying pond surface. It has been determined that this adjustment will have no impact on Wetland RC-30. The radius of influence due to the minor water table adjustment in the dredge pond will not extend to the wetlands and will not reverse directions of flow that are already occurring. Groundwater inflow from the east will remain unchanged and there will be no significant change in the surface water runoff to the wetland.

Avoidance and mitigation measures have been proposed to address wetland impacts and concerns. As there will be no significant impacts to the

amount or elevation of water in the wetlands, no water quantity mitigation measures are proposed.

q. Comments on Flooding

Commentors raised concerns about the proposed pond, and the possibility of flooding.

Comment: A12, A13, A17, B7

- Will the planned pond flow cause flooding?
- There will potentially be flooding from overflow of the “mine sediment pond”.
- The “spillway” will cause flooding in the Landsman Kill.
- Where will the spillway be and where will it drain?

Response: The planned dredge pond overflow is described in many parts of the DEIS, including Sections 2.0, 2.4.1, 3.1.5.4, 4.1.1.2, 4.1.1.3, 4.1.1.4, 4.1.2.2, 4.1.2.4 and 4.1.3.2 and Appendices A and P.

The pond outlet is located on the northeastern portion of the property and will discharge to the floodplain and the stream corridor of the Landsman Kill. The outlet is located at a point where potential discharges would not be directed into the main portion of Wetland RC-25.

The pond outlet has been designed to control water levels in the pond and nearby wetlands and will discharge water at a steady low rate toward the Landsman Kill. The engineered outlet structure will spread out the flow of water and, if anything, will reduce the likelihood of flooding. The elevation of water in the pond is controlled by the elevation of the pond outlet. The outlet was designed to handle the water from a 100-year, 24-hour storm while only increasing the pond elevation by about 13 inches or less. This leaves sufficient freeboard around the entire pond perimeter.

r. Comments on Geological Resources

A general comment inquired about geologic impacts.

Comments: A2

- Geologic resources will be impacted.

Response: The comment did not specify what geological resources will be impacted or how the resources will be impacted. However, geological resources can include groundwater, topography/reclamation, need for sand and gravel, and surface water. These were all addressed in the DEIS and elsewhere in this FEIS.

s. Comments on Surface Water, Erosion, and Sedimentation

General concerns regarding water quality within nearby wetlands and the Landsman Kill due to mining activities were mentioned.

Comments: A11, A17, A25, A47, A57

- There will be erosion from the mine sediment pond.
- Mining will impact the water quality of the Landsman Kill.
- The mine site is located near the headwaters of the Landsman Kill.
- Springs and ponds along White Schoolhouse Road will be destroyed by the mining.

Response: The planned dredge pond overflow is described in many parts of the DEIS, including Sections 2.0, 2.4.1, 3.1.5.4, 4.1.1.2, 4.1.1.3, 4.1.1.4, 4.1.2.2, 4.1.2.4 and 4.1.3.2 and Appendices A and P of the DEIS.

The pond outlet has been designed to control water levels in the pond and nearby wetlands and will discharge water at a steady low rate to the Landsman Kill. The engineered structure will spread out the flow of water and, if anything, will reduce the likelihood of flooding.

The engineered outfall structure includes erosion and sediment control features that will prevent erosion and prevent sedimentation into the Landsman Kill. The conceptual design also includes provisions for thermal stabilization of the overflow water.

The headwaters of the Landsman Kill are located on the bedrock-controlled uplands to the east of White Schoolhouse Road and are not located at the mine property. The Landsman Kill flows in a westerly direction and crosses under White Schoolhouse Road where it enters the RC-25 complex. It then turns and flows northerly to the east of the mine property. While there is a surface water divide to the south of the mine property in Wetland RC-30, the headwaters of the Landsman Kill are not on the property and will not be impacted by the mine (see Location Map in Appendix A of the DEIS).

The springs described in the public comments are located side gradient to the mine and on the opposite side of the Landsman Kill, a surface water divide. These springs are fed by water from the area east of White Schoolhouse Road. Due to the proximity of the springs and ponds to the mining activities, across a surface water divide and where the springs are fed from the east, there is no direct hydrologic connection between the proposed mine pond and the springs or ponds; there should be no impact. Overall, runoff from mined areas are/will be directed internally whenever possible, and externally draining areas are designed to prevent or control erosion. Wooded and other vegetated areas are maintained for as long as possible, which reduces runoff. Erosion control features proposed for the site are discussed in the updated Stormwater Pollution Prevention Plan

(SWPPP) in Appendix H of the DEIS.

t. Comments on Blasting

General comments pertaining to blasting and the impacts to citizens and eagles were raised.

Comments: A6, A7, A17

- Blasting will degrade the citizens' wellbeing.
- Blasting will significantly disturb the bald eagles.
- Red Wing deciding to blast on the day of the blast will have significant impacts.

Response: Blasting is a minor component of the overall Project and will be done to connect two planned ponds in the northern part of the mine and to construct the planned pond outlet. Up to five small construction-scale blasts will be done over a relatively short period of time. Blasting impacts are discussed in Sections 2.0, 2.4.1, 4.1.1.2, 4.1.1.3, 4.1.6.3., 4.1.6.4.2, 4.1.6.5.2, 4.1.7.3, 4.3.1.2, 4.3.1.3, 4.3.1.4.3, 4.3.1.4.4, and 4.3.2.3 of the DEIS and Section 2.6.13 in the Mined-Land-Use Plan in Appendix A of the DEIS.

Blasting is done under controlled conditions and enforced by the Department. The blasts will be conducted by blasters certified by New York State's Department of Labor. The Applicant will be required to conform to the United States Bureau of Mines blasting guidelines that are the blasting vibration and air blast pressure limits conditioned in all NYS mine permits utilizing blasting throughout the state. These guidelines are protective of the community and have been shown nationally to work since being instituted in the 1980's.

Blasting is the most effective way of loosening rock and the impacts will be well-controlled by the recommended mitigation measures. Blasts will be designed and implemented to remain below permitted vibration and air blast limits. The handful of blasts will be monitored by sensitive instruments (seismographs and geophones) capable of measuring the ground and air vibrations/overpressure from the blasting. The limited amount of controlled blasting will not degrade human health or wellbeing.

No blasting will occur within one-half mile of the bald eagles' nest. Further, the Applicant will schedule the limited blasting to parts of the year when the bald eagles are not nesting. The Fish and Wildlife Service guidelines do not require special attention for blasts that are further than one-half mile from a nest. Bald eagles have been observed nesting near other quarries in New York.

The comment that Red Wing will only decide to blast the day of the blast is inaccurate. Red Wing will contact their certified blaster to schedule a blast.

The blaster will review the area to be blasted, take measurements, perform calculations and simulations and then lay out a series of holes to be drilled. The holes will be drilled and logged by a driller. The blaster will review the results of the drilling and modify the blast design to account for any anomalies or concerns found during drilling. The blaster will schedule the blast based on the current weather forecast. Red Wing will contact the neighbors with the expected date of the blast. After this process, the blaster will confirm the date and time of the blast based on a site-specific weather forecast the day of the blast. This is done because weather forecasts a few days in advance are not as accurate as weather forecasts a few hours before a scheduled blast. These measures are a precaution to further protect the community. The Town of Rhinebeck's Code Enforcement Officer, all residents that were offered pre-blast surveys during the application process, and anyone who files a request with Red Wing will receive notification on the morning of the blast.

u. Comments on DEIS Format, Scope, and Content

Editorial-based comments, as well a general discontent with the topic's covered under the DEIS were highlighted. Note, specific comments related to the content of the DEIS can be found in topic specific sections of this response to comments

Comments: A1, A20

- The page numbers in the Table of Contents and the text of the DEIS do not match.
- The DEIS says the speed limit on internal roads will be either 10 or 15 miles per hour.
- General comments regarding information missing from the DEIS.

Response: The page numbers on the Table of Contents were checked and found to match the page numbers in the DEIS. Our assumption is that the commentor thought that the page numbers of the PDF file were supposed to match the page numbers of the Table of Contents and DEIS. This is not the case.

There is an error in the DEIS regarding the speed limits. While 15 miles per hour is the typical speed limit on internal mine roads in New York, in this case Red Wing has agreed to a speed limit of 10 miles per hour.

DEC as lead agency under SEQR completed the Final Scope to be used in preparation of the DEIS. The purpose of a scoping document is to provide the lead agency with a "means of ensuring that significant topics have not been missed and that the level of analysis in the EIS satisfies standards established during the scoping process" (SEQR Handbook, 4th Edition, p. 101). Further, scoping gives the lead agency "greater control over the ultimate EIS product and ensures that the lead and involved agencies'

environmental concerns are adequately addressed” (*id.*). Because the scoping process is meant to be comprehensive, only those issues identified in the final scoping document are to be included in the DEIS. The Final Scope was transmitted to all involved agencies and individuals that submitted comments in writing to the Department. The SEQRA regulations state that any agency or person that raises issues after acceptance of the final scoping document must provide the lead agency and applicant with a written statement identifying: “(1) the nature of the information; (2) the importance and relevance of the information to a potential significant impact; (3) the reason(s) why the information was not identified during scoping and why it should be included at this stage of the review” (§ 617.8[f]). Comments submitted after acceptance of the final scoping document that meet the above requirements must be incorporated into the draft EIS or attach such comments into an appendix of the draft EIS (Part 17.8(g)).

The scoping process here, as required by the SEQRA regulations, involved the public, all involved agencies, and Red Wing. The Final Scoping Document, which was approved by the Department, addressed all standards identified in 6 NYCRR § 617.8(e) and the DEIS meets all requirements of § 617.9(b). All potentially significant adverse environmental impacts identified in the Positive Declaration and during the scoping process have been addressed in the DEIS. Specifically, to the extent community character was included in the Final Scope, it was thoroughly addressed in the DEIS body and Appendices C, D, F, G, L, M. The Final Scoping Document does not include a standalone category on community character as such topics are intertwined in the body of the DEIS (see Final Scoping Document). The DEIS follows exactly the format of the Final Scoping Document and the DEIS is not required to include any topics beyond those identified in the Final Scope (see DEIS). The Town of Rhinebeck participated in the scoping process and the Town of Rhinebeck Supervisor and Planning Board chair were copied on DEC’s issuance of the Final Scoping Document. The Town has not explained why it did not request certain community character topics (or a standalone discussion of community character) be included in the Final Scope or why the scope should be modified at this late stage in the SEQRA review process. Nevertheless, a standalone community character section, based in significant part on the content of the DEIS, is attached is included as part of this FEIS.

Commenters state that because the Final Scoping Document was approved in 2009, the contents of the scope must be invalid. Very little has changed on Red Wing’s property since 2009. Red Wing has been working with the Department since 2009 to perform investigative studies regarding wildlife and to draft and update the DEIS. No mining activities have occurred on the property during this time. Thus, the scope of the DEIS as approved in 2009

remains accurate today. Where new information has been identified, such has been incorporated into the relevant topic headings within the DEIS and, where applicable, included as appendices (including the recently completed Bald Eagle Assessment which is in Appendix E to the DEIS).

v. Comments on the Duration of the Mining Operation

The commentor raised concerns regarding a “generational time span” affecting a community’s quality of life, and questioned how long the mine will be in operation.

Comments: A6

- The life of the mine is not stated.

Response: According to Red Wing, the projected life of the mine will be approximately 15 to 20 years, depending on market demand. See Appendix A of the DEIS.

w. Comments on Fire Risk

One general comment listing “fire danger” was mentioned in a list of other general concerns.

Comments: A17

- The mine will be a fire danger.

Response: Mines do not pose significant fire dangers. There are no open burn sources and fire extinguishers are kept on the site. Most of the mine area will be reclaimed to a pond and there will be very little material that can burn.

x. Comments on Community Safety

Comments regarding safety generally pertained to road safety. However, a general comment stating “community safety” was mentioned in a list of other general concerns.

Comments: A17

- General concerns about impacts to community safety.

Response: Community safety was not addressed as a significant issue during the public Scoping Process (see August 14, 2009 Final Scoping Document in Appendix B of the DEIS). However, the mine is remotely located and access to the mine property is controlled by a locking gate on the entrance road. There are no trespassing postings on the property and there will be a caretaker near the site when the mine is not in operation.

y. Comments on Alternative Site Entrances

Due to traffic and road safety concerns, one commentor stated that Red Wing should have to find an alternative route that does not include White Schoolhouse Road, and rather, mine access should have investigated routes that go directly to County Route 19, or State Route 308 or 9G.

Comments: A44

- The Red Wing DEIS does not consider alternative, safer site entrances.

Response: No alternative site entrances were required to be addressed in the DEIS by the Final Scoping Document (see Appendix B of the DEIS). However, the Applicant spent many years investigating potential alternative routes that would bypass White Schoolhouse Road. These alternatives required the cooperation of the adjoining landowners and were not successful. The alternatives considered before the application was made to the Department included access roads directly to the north-northwest to NYS Route 308 and to the west to NYS Route 9G. These attempts over the course of several years between 1991 and 2004 included offers to buy or lease land. In recent months, Red Wing has approached the owner of the land to the south (Von der Leith) about using a road that he has from his mine to Slate Quarry Road, but this road was not deemed to be practical due to the presence of wetlands and historic buildings near the road and the experience of the landowner with public outcry over using the road.

z. Comments on Red Wing's Compliance Record

Commentors raised concerns regarding compliance and specifically permit inspection report summaries outlining DEC site visit observations, and a Notice of Violation issued in 2021 for non-compliance with Incidental Take permit requirements. Commentors expressed concern regarding the issued Incidental Take permit, and specifically, questioned compliance with the conservation easement and stated that there is no third party monitoring in place.

Comments: A11, A44, B6, B9

- There is no call for third party compliance monitoring.
- The Applicant has a history of non-compliance.
- The Applicant built the access road while under a Stop Work Order from the Town

Response: DEC's Record of Compliance Enforcement Policy (DEE-16) and Uniform Procedures regulations at 6 NYCRR Part 621 describe how DEC may

modify, deny, suspend, condition, or revoke permits to ensure that persons who are unsuitable to carry out responsibilities under DEC permits are not authorized to do so. Suitability includes such factors as past compliance records and criminal and civil violations, which are evaluated on a case-by-case basis. DEC may also consider whether an applicant has re-established a reasonable record of compliance with the relevant laws.

Red Wing Properties Inc. has not been the subject of any enforcement actions by DEC for the White Schoolhouse Road mine. Red Wing entered into two previous Orders on Consent with DEC, in 1999 and 2003, to resolve violations at two other mines. These Orders were executed more than 20 years ago. Regardless, DEC does not view these particular Orders as establishing a pattern of noncompliance such that the permit applications for this project should be denied. DEC has not identified any other concerns warranting permit denial.

DEC issued a Notice of Violation to Red Wing in 2021 for violations of the incidental take permit. With DEC's oversight, Red Wing corrected the violations to DEC's satisfaction.

The issued Incidental Take Permit does not require third party monitoring. It does, however, require that a portion of the subject property be put into a permanent conservation easement, pursuant to Article 71, Title 36 of the New York State Environmental Conservation Law, to be held by a third-party conservation organization. In accordance with the project's Implementation Agreement and Permit, the conservation easement was filed in October 2021 and is held by a third-party not-for-profit conservation organization, The Wetland Conservancy.

As Grantee, The Wetland Conservancy has the ability to enforce the terms of the easement to preserve and protect the Conservation Property. To that end, The Wetland Conservancy has the ability to enter and inspect the Property to inspect for compliance with the terms of the Conservation Easement.

DEC is a beneficiary of the easement and retains its ability to inspect the property to evaluate compliance with the issued permits.

Site plan and zoning approvals are typically matters of local jurisdiction, and are beyond the scope of DEC's review for this project.

Exhibit A

**Appellate Division, Second Department Decision,
dated June 3, 2020**

**Dutchess County Supreme Court Amended Judgment,
dated July 27, 2020**



184 A.D.3d 577, 125 N.Y.S.3d
171, 2020 N.Y. Slip Op. 03119

****1** In the Matter of Red Wing
Properties, Inc., Appellant,

v

Town of Rhinebeck et al., Respondents.

Supreme Court, Appellate Division,
Second Department, New York
194/17, 2017-09563
June 3, 2020

CITE TITLE AS: Matter of Red Wing
Props., Inc. v Town of Rhinebeck

HEADNOTE

Municipal Corporations

Zoning

Nonconforming Use

Bond, Schoeneck & King, PLLC, Syracuse, NY (Kevin M. Bernstein and Ryan P. Keleher of counsel), for appellant.
Warren S. Replansky, P.C., Rhinebeck, NY, for respondents Town of Rhinebeck and another, and Grant & Lyons, LLP, Rhinebeck, NY (John F. Lyons and Kimberly A. Garrison of counsel), for respondents Town of Rhinebeck Zoning Enforcement Officer and another (one brief filed).

In a hybrid proceeding pursuant to CPLR article 78, inter alia, to review a determination of the Town of Rhinebeck Zoning Board of Appeals dated December 21, 2016, confirming a determination of a zoning enforcement officer dated February 25, 2016, denying the petitioner/plaintiff's application for a determination that it has a vested right to mine its entire parcel of property as a prior nonconforming use, and action, inter alia, for a declaratory judgment, the petitioner/plaintiff appeals from an order and judgment (one paper) of the Supreme Court, Dutchess County (Maria G. Rosa, J.), dated July 27, 2017. The order and judgment, insofar as appealed from, denied the petitioner/plaintiff's motion, in effect, for summary judgment declaring that it has a vested right to mine its entire parcel of property as a prior nonconforming use, denied the petition, and dismissed the proceeding.

Ordered that the order and judgment is modified, on the law, (1) by deleting the provision thereof denying the petitioner/plaintiff's motion, in effect, for summary judgment declaring that it has a vested right to mine its entire parcel of property as a prior nonconforming use, and substituting therefor a provision granting the motion to the extent of declaring that the petitioner/plaintiff has a vested right to mine 94 acres of its property, and (2) by deleting the provision thereof denying the petition and dismissing the proceeding, and substituting therefor a provision granting the petition to the extent of annulling so much of the determinations dated December 21, 2016, and February 25, 2016, as found that the petitioner/plaintiff does not have a vested right to mine 94 acres of its property as a prior nonconforming use; as so modified, the order and judgment is affirmed insofar as appealed from, with costs to the petitioner/plaintiff payable by the respondents/defendants ***578** Town of Rhinebeck, Town of Rhinebeck Town Board, and Town of Rhinebeck Zoning Enforcement Officer, and the matter is remitted to the Supreme Court, Dutchess County, for the entry of an amended judgment, inter alia, declaring that the petitioner/plaintiff has a vested right to mine 94 acres of its property as a prior nonconforming use.


The petitioner/plaintiff (hereinafter the petitioner) is the owner of an approximately 241-acre parcel of property in the Town of Rhinebeck. It has operated a sand and gravel mine on the property since 1993. A New York State Department of Environmental Conservation (hereinafter DEC) permit issued in 2005 allowed the petitioner to mine 37.5 acres of the property.



In 2008, an application was submitted to the DEC for a permit allowing the petitioner to expand the life of mine area to 141 acres, along with a draft environmental impact statement. On a number of occasions, the DEC requested that additional information and/or studies be submitted to support the application, and the petitioner complied with those requests. One of the studies requested by the DEC was a study of an endangered turtle species on the property. That study spanned the course of six years and cost the petitioner in excess of \$125,000. In 2010, a revised draft environmental impact statement was submitted to the DEC, which reduced the scope of the proposed expansion to 124 acres. In February 2015, the petitioner submitted another revised draft environmental impact statement to the DEC, which further reduced the scope of the proposed expansion to 94 acres.

In September 2015, while the petitioner's expansion application to the DEC was still pending, the Town enacted a new zoning law that allowed mining on only those lands in the Town upon which there were existing, DEC-permitted mining operations. The petitioner then submitted an application to the Town's Zoning Enforcement Officer (hereinafter ZOE) for a determination that it has a vested right to mine on the entirety of the subject property in spite of the new zoning law based on a prior nonconforming use. In a determination dated February 25, 2016, the ZOE denied the petitioner's application. Upon the petitioner's appeal, the Town's Zoning Board of Appeals (hereinafter ZBA) confirmed the ZOE's determination.

The petitioner subsequently commenced this hybrid proceeding pursuant to CPLR article 78, inter alia, to review the ZBA's determination and action, among other things, for a declaratory judgment, and moved, in effect, for summary judgment declaring that it has a vested right to mine its entire parcel of *579 property as a prior nonconforming use. The Supreme Court denied the motion and the petition, and dismissed the proceeding. The petitioner appeals.


“ ‘[N]onconforming uses or structures, in existence when a zoning ordinance is enacted, are, as a general rule, constitutionally protected and will be permitted to continue, notwithstanding the contrary provisions of the ordinance’ ”


( *Glacial Aggregates LLC v Town of Yorkshire*, 14 NY3d 127, 135 [2010], quoting *People v Miller*, 304 NY 105, 107 [1952]). “ ‘By its very nature, quarrying involves a unique use of land . . . [A]s a matter of practicality as well as economic necessity, a quarry operator will not excavate his entire parcel of land at once, but will leave areas in reserve, virtually untouched until they are actually needed’ ” (*Buffalo Crushed Stone, Inc. v Town of Cheektowaga*, 13 NY3d 88, 98 [2009],

quoting *Matter of*  *Syracuse Aggregate Corp. v Weise*, 51 NY2d 278, 285 [1980]). “[W]here . . . the owner engages in substantial quarrying activities on a distinct parcel of land over a long period of time and these activities clearly manifest an intent to appropriate the entire parcel to the particular business of quarrying, the extent of [the] protection afforded by the nonconforming use will extend to the boundaries of the parcel even though extensive excavation may have been limited to only a portion of the property” (*Matter of*  *Syracuse Aggregate Corp. v Weise*, 51 NY2d at 286).


Here, on its motion, in effect, for summary judgment, the petitioner demonstrated that it engaged in substantial

quarrying activities on a distinct parcel of land over a long period of time. The petitioner also demonstrated that in 2008, it manifested its intention to engage in mining activities throughout its entire parcel by submitting a permit application to the DEC, which permit was necessary in order for any mining activity, or preparatory activity, to proceed. Until the DEC issued a permit, the petitioner could not enlarge its extant mining operation. The petitioner also showed that it was pursuing its application with the DEC as expeditiously as possible. In February, 2015, before the Town enacted the subject ordinance, the petitioner amended its application so as to cover only 94 acres. Consequently, while the petitioner's original DEC application manifested its intention to mine its entire parcel, its 2015, pre-ordinance amendment, in effect, reflected its intention to utilize only 94 acres. Thus, the petitioner demonstrated that it has a vested right to mine those 94 acres as a prior nonconforming use (*see Jones v*

Town of Carroll, 15 NY3d 139, 144-146 [2010];  *Glacial Aggregates LLC v Town of Yorkshire*, 14 NY3d at 138; *580 *Buffalo Crushed Stone, Inc. v Town of Cheektowaga*,

13 NY3d at 103; *Matter of*  *Syracuse Aggregate Corp. v Weise*, 51 NY2d at 286-287). In opposition, the respondents/defendants failed to raise a triable issue of fact. Further, for the same reasons, the petitioner demonstrated that so much of the ZBA's determination as found that the petitioner does not have a vested right to mine those 94 acres was affected by an error of law, arbitrary, and capricious (*see CPLR 7803 [3]*).

Accordingly, the Supreme Court should have granted the petitioner's motion to the extent of declaring that the petitioner has a vested right to mine 94 acres of its property as a prior nonconforming use, and should have annulled the determinations of the ZOE and the ZBA to the extent that they found otherwise.

Since this is, in part, a declaratory judgment action, we remit the matter to the Supreme Court, Dutchess County, for the entry of an amended judgment declaring, inter alia, that the petitioner has a vested right to mine 94 acres of its property as a prior nonconforming use (*see*  *Lanza v Wagner*, 11 NY2d 317, 334 [1962]). Scheinkman, P.J., Balkin, Chambers and Wooten, JJ., concur.

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STATE OF NEW YORK
SUPREME COURT COUNTY OF DUTCHESS

RED WING PROPERTIES, INC.,

Plaintiff-Petitioner,

v.

TOWN OF RHINEBECK, TOWN OF RHINEBECK
TOWN BOARD, TOWN OF RHINEBECK ZONING
ENFORCEMENT OFFICER AND TOWN OF
RHINEBECK ZONING BOARD OF APPEALS,

Defendants-Respondents.

NOTICE OF ENTRY

App. Div. Docket No. 2017-09563

Dutchess County Index No. 194-2017

PLEASE TAKE NOTICE that the within is a true copy of the Amended
Judgment signed by the Hon. Maria G. Rosa, J.S.C. on July 22, 2020 and filed with the
Dutchess County Clerk's Office on July 27, 2020.

Dated: July 28, 2020

BOND, SCHOENECK & KING, PLLC

By: 

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Kevin M. Bernstein, Esq.

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Rhinecliff, New York 12574

5m4

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

Present:

Hon. Maria G. Rosa, Justice

RED WING PROPERTIES,

Petitioner,

AMENDED JUDGMENT

Index No. 194/17

-against-

TOWN OF RHINEBECK, TOWN OF RHINEBECK TOWN
BOARD, TOWN OF RHINEBECK ZONING ENFORCEMENT
OFFICER and TOWN OF RHINEBECK ZONING BOARD
OF APPEALS,

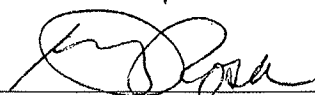
Respondents.

Pursuant to the decision of the Appellate Division, Second Department entered June 3, 2020 Plaintiff-Petitioner has demonstrated a vested right to mine 94 acres of its property as a prior non-conforming use. The determination of the Town of Rhinebeck Zoning Enforcement Officer and Zoning Board of Appeals finding Plaintiff-Petitioner did not have the right to mine portions of the 241 acre parcel as a pre-existing non-confirming use is annulled to the extent that Petitioner has a vested right to mine the 94 acres of its property for which it sought a permit from the Department of Environmental Conservation in February 2015.

The foregoing constitutes the amended judgment of the Court.

Dated: July 22, 2020
Poughkeepsie, New York

ENTER:



MARIA G. ROSA, J.S.C.

Pursuant to CPLR §5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.

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Exhibit B

**Technical Memorandum Prepared by
Creighton Manning Engineers
Responding to Public Comments Related to Traffic,
dated August 22, 2023**

TECHNICAL MEMORANDUM



ENGINEERS
PLANNERS
SURVEYORS

Date: August 22, 2023

To: New York State Department of Environmental Conservation

From: Kenneth Wersted, PE, PTOE

cc: Kevin Bernstein, Esq.; Paul H. Griggs, PG

Project: Red Wing Properties, White Schoolhouse Road- 121-389

Re: **Response to DEIS Public Comments**

As part of the State Environmental Quality Review Act ("SEQRA") process, the New York State Department of Environmental Conservation ("DEC") has received both written and verbal comments during the public hearing process for the subject project. To better address community concerns, Red Wing Properties, Inc. (the "Applicant" or "Red Wing") asked Creighton Manning ("CM") to examine and analyze public comments¹ and provide responses as an update to CM's February 2022 Traffic Impact Study (Appendix F to the Draft Environmental Impact Statement ["DEIS"]). As such, public comments have been compiled below and responses prepared. In many cases, multiple comments of the same nature or context were received and have been condensed and responded to accordingly. Responses were prepared by CM's Kenneth Wersted,² who is a Project Manager and Licensed Professional Engineer with over 26 years of experience in the areas of transportation modeling, traffic impact studies, special event transportation planning, and traffic signal design. Mr. Wersted has been involved with the subject property since 2006 and is extensively familiar with traffic and road conditions near the property.

In summary, traffic on White Schoolhouse Road is light and the traffic generated by the continued use of the mine will not have a significant impact. The volume of trucks was analyzed using a mix of trailer-dump and tri-axle vehicles. Many comments raised concerns about the use of trailer-dumps and even the distribution of vehicles. Use of trailer-dumps results in fewer truck trips through the use of a larger vehicle. The Applicant proposes to use these vehicles as part of a pilot program during the first operational season to determine if the Town of Rhinebeck (the "Town") and the Applicant can agree on an appropriate truck size. The Applicant has consented to directing trucks to arrive from one direction (the north) and depart to another (the south).

There is also a significant public concern about crashes. Through 10 years of crash research on White Schoolhouse Road, of the 13 crashes that occurred, we found no crashes that involved a truck, and in that 10 years, there was only one crash reported that involved two vehicles. Over a 5-year period, there have been 18 crashes reported at the intersection of Slate Quarry Road and White Schoolhouse Road, two of which involved more than one vehicle, but none with a truck.

The condition of White Schoolhouse Road has and will continue to change through the years. Just like the tires on a car, the road will wear and will need to be replaced (resurfaced) over time. Given the road's construction and varying thicknesses, some parts will show signs of wear more quickly. The Town is responsible for maintenance of White Schoolhouse Road, and the Applicant has been contributing to road maintenance through its past and continued payment of property taxes. The Applicant has also contributed to Townwide maintenance through its supply of sand and gravel to the Town's highway department. Further, the Applicant is willing to post a road bond (as it has done in other towns in which it operates) to be used if the Town and the Applicant agree that Red Wing's operations have damaged White Schoolhouse Road.

¹ Written public comments were provided to DEC during the public comment period and oral public comments were made at the November 17, 2022 public hearing. All public comments related to traffic impacts are summarized herein, regardless of format.

² A copy of Mr. Wersted's curriculum vitae is attached hereto as **Attachment C**.

MEMORANDUM

Red Wing DEIS Comment Response

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Overall, as discussed in greater detail below³, the use of the Red Wing mine property – one of only three zoned mines in the Town, all of which are on White Schoolhouse Road – will not substantially change the character of the area or have a significant impact on the present operations of White Schoolhouse Road and its adjoining intersections.

The following summarizes the collective comments and responses:

1. *Comment: White Schoolhouse Road is not suited for heavy traffic; the size and type of trucks proposed to be used by Red Wing are not appropriate for White Schoolhouse Road; White Schoolhouse Road is not wide enough for trucks; the videos submitted allegedly show the insufficiency of White Schoolhouse Road for truck traffic.*

Response: The Traffic Study assessed the use of White Schoolhouse Road by the expected traffic from the proposed project and concluded that the impacts would be insignificant. The American Association of State Highway and Transportation Officials' ("AASHTO") *Guidelines for Geometric Design of Low-Volume Roads* (2019) suggest that new road construction should provide between 18 and 22.5 feet of travel width – the lesser of which if the road is considered a minor access road (primarily accessing properties with minimal through traffic) and the greater of which if considered an industrial or resource recovery road. Industrial and resource recovery roads primarily serve commercial uses and/or for the purposes of logging and mining or similar and have a higher proportion of trucks. White Schoolhouse Road is a mix of these classifications in that it serves as access to local properties but also includes a light mix of trucks for the existing mining operation. However, White Schoolhouse Road is an existing road, and AASHTO suggests that "existing roads need not be modified except in those cases where there is evidence of a site-specific crash pattern."

According to NYSDOT records there were 13 crashes on White Schoolhouse Road (excluding the intersections of Route 308 and Slate Quarry Road) over 10 years⁴ (January 2013 through December 2022). This equates to an average of one crash every 9.2 months. Reviewing the crash descriptions, eight (61%) involved property damage only, five (39%) included injuries. Twelve (92%) were collisions with objects (tree's, signs, deer, mailboxes, etc.); only one crash involved another vehicle, none of which were trucks or buses. Contributing factors include animal's action, driver inattention, drivers fell asleep, unsafe speed, backing unsafely, and slippery pavement. A summary of these details is included in **Attachment A**. Given the low mining traffic volumes and no history of truck related crashes, no significant effect on crashes is expected from the project, nor are any significant geometry change needed.

2. *Comment: The road will degrade over time; White Schoolhouse Road was repaved in 2011 and is ending its useful life span and truck traffic would accelerate the road's deterioration.*

Response: All roads deteriorate in time because of exposure to the elements (sunlight, water, freeze thaw cycles, etc.) and traffic (vehicles, plowing). Increased traffic on the road will accelerate the need to resurface the road. The Traffic Study considered the condition of the road (page 4 of the Traffic Study), noted the road was last resurfaced in 2012 and stated the road was in fair condition considering its age. All roads need to be resurfaced and it is the role of the municipality to use the tax dollars to do so. The Applicant has been paying taxes and the White Schoolhouse Road mine has been supplying sand and gravel to the Town and County since 1987.

³ As appropriate, this memorandum has cited to relevant traffic engineering standards or guidance which were used to evaluate the impact of the anticipated traffic from the Red Wing mine on White Schoolhouse Road.

⁴ Because of the low traffic volumes, 10 years of crash data was obtained for White Schoolhouse Road, instead of the typical 3 or 5 years.

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3. *Comment: The intersection of White Schoolhouse Road and Slate Quarry Road is dangerous. Increased traffic at the intersection cannot be accommodated safely.*

Response: The intersection of Slate Quarry Road and White Schoolhouse Road has historically had some limited sight distance. This was improved through the clearing of vegetation along the inside of the curve (south side of Slate Quarry Road opposite White Schoolhouse Road). Further, the intersection is properly signed with advance warning signs notifying drivers of the upcoming intersection and providing an advisory speed limit. The intersection could be improved further by comprehensive reconstruction of both roads, but the cost is unlikely to outweigh the benefit given the low volumes. The 2014 Dutchess County Safety Assessment of Slate Quarry Road considered the conditions of the White Schoolhouse Road intersection and the effects of the mines to the north. This study recommended and implemented several improvements (these improvements are further discussed in the response to comment 10, below).

According to NYSDOT records there were 18 crashes at the Slate Quarry Road/White Schoolhouse Road intersection over the past 5 years (January 2018 through December 2022). This equates to an average of one crash every 3.3 months. Reviewing the crash descriptions, twelve (67%) involved property damage only, five (28%) included injuries, and one (<1%) included a fatality. Sixteen (89%) were collisions with objects (tree's, signs, deer, poles, etc.); only one crash involved another vehicle, none of which were trucks or buses. One crash was with a pedestrian. Contributing factors include glare, animal's action, unsafe speed, and pavement slippery. A summary of these details is included in **Attachment B**. The fatality is a result of two crashes; first, Driver 1, traveling westbound on Slate Quarry Road lost control due to unsafe speed and slippery pavement (snow). Driver 1 slid off the road and hit a stone retaining wall. Driver 1 began changing their tire in the driveway of house #219 Slate Quarry Road. While working on their car about 20 minutes after the first crash, Driver 2 lost control in the westbound direction due to speed and pavement conditions and hit Driver 1 resulting in the fatality.

Of the crashes reported, only six (33%) occurred during the mining season, most of the crashes occurred during the winter months where inclement weather was a factor. During these months the mine will be closed or have minimal activity. Given the low mining traffic volumes and no history of truck related crashes, the proposed operation is expected to have little to no significant effect on crashes at the intersection.

4. *Comment: The traffic from this mine is not comparable to the traffic from the other or past mines in the area.*

Response: The Applicant has been operating mines around the county since 1969 and can attest to the volume of traffic generated. That being said, traffic from the mine will vary by market demand and seasons. There is little to no demand for sand and gravel in the winter, so operations at the mine will be minimal/non-existent and will increase in the spring and summer before scaling back through the fall.

The traffic studies conducted on behalf of the Applicant are based on the expected traffic to be generated. These studies concluded that the impact of traffic is insignificant.

5. *Comment: Traffic will cause White Schoolhouse Road to be encumbered.*

Response: The Traffic Study assessed the ability of White Schoolhouse Road to handle project traffic in accordance with accepted practice and concluded that no significant impacts would occur. The Traffic Study assumed a worst-case condition relative to the volume of trips (trucks) entering and exiting during the peaks. In practice, an estimated 20 to 25 truck loads are expected through the day. This equates to about 2 or 3

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truckloads on average or 4 to 6 trips per hour (7 am-5 pm, 10-hour day). This means there could be one truck on White Schoolhouse Road every 10 to 15 minutes. The Traffic Study assumed a worst-case condition of 20 trips in the AM peak hour (employees and trucks) and 10 trips in the PM peak hour (employees leaving for the day). Traffic on White Schoolhouse Road varies during the mine's operating hours from 7 to 22 vehicles per hour (vph). With a peak of 22 vph plus up to 6 truck trips, a total hourly volume of 28 trips will equate to one vehicle about every 2 minutes. Therefore, White Schoolhouse Road will not be significantly impacted with the additional traffic from the mine.

6. *Comment: The Town has a law that prohibits the use of dump trailers and tri-axle trucks; Larger trucks are not allowed on White Schoolhouse Road so the traffic study in the DEIS underestimates the number of truck trips.*

Response: No known Town laws limit the size of trucks on White Schoolhouse Road; however, it is our understanding that the other mines on the White Schoolhouse Road have agreed to limit their truck sizes to tri-axle vehicles. The Town's existing zoning includes a mine overlay district on parts of the Red Wing property and White Schoolhouse Road is the only road accessing the site so local delivery laws are applicable. The Traffic Study concluded that White Schoolhouse Road can handle the proposed project truck traffic. Of course, the kind of trucks used and/or permitted under local and state law will impact the number of truck trips from the mine, just as much as market demand will.

7. *Comment: There are blind spots on White Schoolhouse Road that are unsafe for truck traffic.*

Response: White Schoolhouse Road is a winding and undulatory road that has been used by mine truck traffic for decades. Truck drivers are professionals that take into account road and weather conditions and adjust their driving performance to the conditions. Red Wing closely monitors all trucks hauling material to and from the site. Since most of the trucks will be under Red Wing's direct control, truck drivers not obeying the rules of the road or common courtesy will be warned and terminated as needed.

8. *Comment: Truck traffic interaction with school buses and children will be unsafe.*

Response: Red Wing will inform truck drivers of the schedule of school bus pickups and drop-offs. Truck drivers must adhere to the rules of the road, just as the local residents should exercise the same due care for families with children accessing school transportation on White Schoolhouse Road or any other community road.

9. *Comment: Red Wing should find an alternative truck route. The DEIS did not consider alternative truck routes.*

Response: Red Wing spent more than 10 years seeking a direct route to NYS Route 308 or 9G but was not able to obtain the land needed to get such access. With only one road frontage, there are no alternative access

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options. Given other discussions with the Town, the Applicant is willing to route trucks by way of entering from the north on Route 308 and exiting to the south via Slate Quarry Road (image right).

10. *Comment: The traffic report in the DEIS downplays the hazards at the intersection of White Schoolhouse Road and Slate Quarry Road. The Dutchess County report on Slate Quarry Road was not considered in the DEIS.*

Response: The hazards of the intersection of White Schoolhouse Road and Slate Quarry Road are not unusual, as evidenced by the crash records. Crashes tend to occur on curves, intersections, where there is limited visibility, and where drivers exceed prudent speeds for the prevailing conditions. The 2014 Dutchess County Safety Assessment of Slate Quarry Road studied such conditions and acknowledged the potential increase in truck traffic related to Red Wing's mine⁵. That study found that 32% of crashes occurred around the White Schoolhouse Road intersection and that unsafe speed, slippery pavement, and animal actions were the prevalent collision factors. The safety study resulted in several recommendations and action plans including but not limited to reducing the speed limit, enforcement, education, improve shoulders, improve street and regulatory signs, maintain shoulders to accommodate trucks and buses, reduce the pavement width at the intersection, improving sight distances at the intersection, and repair/replace/add guiderail.

Several of the recommendations from the safety study acknowledged the need to accommodate truck traffic and several recommendations appear to have been completed including adding flashing beacons on Slate Quarry Road, clearing vegetation on the south side of the intersection, and adjusting the speed limit of the road. Given the previous safety study and present conditions, it may be prudent for the County to initiate a follow up study that considers the effectiveness of the implemented safety measures and offers additional recommendations for future improvements of the intersection between White Schoolhouse Road and Slate Quarry Road. Presently, drivers in the westbound direction of Slate Quarry Road are warned of the upcoming series of curves with flashing beacons for added emphasis, approximately 1600 feet before the intersection of White Schoolhouse Road. Consideration should be given to relocating the flashing beacons to the 30-mph curve warning sign approximately 700 feet before the intersection. In addition, other safety improvements recommended in the 2014 study – e.g., replacing signs, changing the width of the intersection, striping – could help mitigate the existing crash frequency at the intersection.

As it relates to the project, the trucks added to the study area will not be a significant volume – the traffic analysis estimated an additional 20 trips in the AM peak hour and 10 trips in the PM peak hour, even less if truck trips are distributed from the north and to the south. An Amazon warehouse (for example) is not proposed on the subject property. The proposed action is seasonal in use and will generally result in a characteristically “slow and steady” flow of trucks throughout the workday, driven by professional drivers.



⁵ PDCTC – CR 19 (Slate Quarry Rd) Safety Assessment – October 2014, page 2

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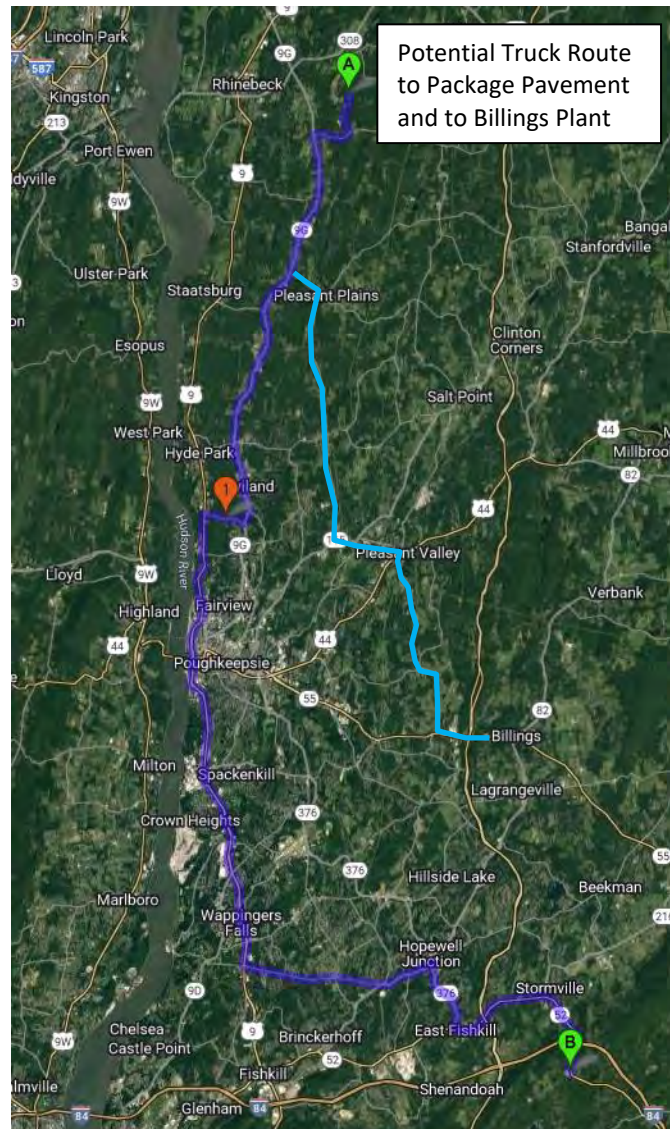
The Traffic Study and its updates assessed the same raw data that formed the basis for the Dutchess County Safety Assessment of Slate Quarry Road.

11. *Comment: The threat to home foundations proximal to truck traffic on White Schoolhouse Road.*

Response: Homes built in close proximity to White Schoolhouse Road will be noted by the truck drivers and the drivers will take extra precautions to not damage the homes.

12. *Comment: The traffic study in the DEIS did not address trucks turning left onto Slate Quarry Road, or the route to Package Pavement.*

Response: The Traffic Study did not analyze trucks turning left out of White Schoolhouse Road because the primary regional access road is to the west (Route 9G). There are several routes to Package Pavement in Stormville. One is south on White Schoolhouse Road, west on Slate Quarry Road, south on Route 9G, west on CR 40A, south on Route 9, then east through Fishkill on CR 28 and Route 82 or east on I-84. (See image, right.) An alternative is south on Route 9G, east on CR 14, south on CR 16, east on CR 71, south on CR 47 and east on NY-55 to the Billings Plant.



13. *Comment: The updated traffic study was done at a time when truck traffic is much lower. The traffic study was based on old data.*

Response: The most recent traffic counts were done in January 2022 at a time when traffic is generally less. However, it is standard practice to adjust counts for seasonal variations as was done in the traffic study. In fact, the 2022 traffic study on page 2 also made an adjustment for COVID-related decreases in traffic. Regardless, traffic counts conducted by NYSDOT in July of 2018 reflect similar volumes. The January data seasonally factored and adjusted for the pandemic yields a daily volume of 278 vehicles per day, whereas NYSDOT's count from before the pandemic was only 301 vehicles per day. In the context of traffic engineering, a 23-vehicle difference over 24 hours is insignificant.

14. *Comment: General comments that traffic will impact the neighborhood. The mine expansion will result in a different land use that contrasts with the existing residential area. Increases in truck traffic will change the immediate character of the White Schoolhouse Road and nearby roads and ruin the community.*

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Red Wing DEIS Comment Response

August 22, 2023

Response: Traffic volumes on White Schoolhouse Road are very low; therefore, even with the Red Wing project, residents will continue to be able to access their properties and surrounding regional roadways. Further, there are three properties along White Schoolhouse Road that are zoned for mining or otherwise considered non-conforming. As such, this is the area intended for such uses. The White Schoolhouse Road mine has been in the community since 1969. Mining by Red Wing, Von der Lieth and Sons, and Lobotsky is not new to the White Schoolhouse Road community. The Applicant has been part of the Dutchess County community through community day sponsorships, fireworks, park and nature trail construction, and seedling giveaways. Its continued use is not expected to change the character of the community.

15. *Comment: The structure of White Schoolhouse Road is not adequate to support trucks. White Schoolhouse Road is not built for large trucks and the road will need to be maintained at taxpayer's expense.*

Response: White Schoolhouse Road has been supporting trucks for decades and is repaved when conditions warrant, using tax dollars contributed, in part, by the Applicant. The 2021 CPL Pavement Evaluation found both thick and thin sections of pavement on White Schoolhouse Road and outlined mitigation measures. The Applicant is willing to help contribute to the roads ongoing maintenance and is willing to post a bond for such improvements to be used if the Town and Applicant agree that the road was damaged by Red Wing's trucks.

16. *Comment: Project truck traffic will cause impacts to trucks on NYS Routes 308 and 9G.*

Response: The project will have no significant impact to trucks already on Routes 308 and Route 9G. Those are state routes designed to "collect and distribute traffic while providing access to abutting properties,"⁶ hence their designation as "Major Collectors" by NYSDOT.

17. *Comment: Project truck traffic will result in undesirable development along NYS Route 9G.*

Response: Most of Route 9G through the Town is zoned as RC5 – Rural Countryside, with two areas with short frontages along Route 9G classified as LC – Land Conservation. The Applicant controls no land, nor proposes any development along Route 9G.

18. *Comment: The project will generate additional truck traffic.*

Response: There are only three properties zoned for mining or otherwise historically used for mining in the Town and they are all located on White Schoolhouse Road. Use of those properties contribute to the amount of truck traffic on the road. The project is not projected to create more truck traffic on a day-to-day basis, but will extend the useful life of the mine in order to continue to supply the materials in demand by local and regional customers like towns, counties, contractors, and homeowners.

19. *Comment: The Traffic Study in the DEIS undercounted existing traffic and planned truck traffic because it used tractor trailers. Only adding an intersection warning sign does not seem adequate or acceptable.*

Response: The traffic study assumed a mix of trailer-dump and triaxle. Trailer-dump (tractor trailers) move about 32 cubic yards, while traditional "dump trucks" (single unit) can carry about 18 cubic yards. Given the mix, an average of 24 cubic yards was assumed in the traffic study. Using a smaller vehicle will increase the number of loads and truck trips driven, which is less efficient when delivering material to say the Package Pavement plant in Stormville, NY. By using larger trucks, the number of truck trips is reduced, less vehicle miles traveled, and fewer trips along White Schoolhouse Road are generated. Conversely, larger trucks will

⁶ NYSDOT Highway Design Manual, Chapter 2, 2012

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deteriorate the road more quickly. The addition of an intersection warning sign is for the purpose of warning approaching drivers of the potential appearance of trucks where they may not be expected. While not necessary to mitigate traffic impacts, if after DEC permit issuance, the Town and the Applicant agree, the Applicant will utilize trailer dumps as part of a pilot program during the first operational season, to determine if the Town and the Applicant can agree on truck size.

20. Comment: Truck drivers will not obey speed limits or be courteous drivers.

Response: The Applicant has control over its drivers and can monitor their actions and respond accordingly. Commercial motor vehicle drivers require additional licensing and training requirements, and more stringent consequences for violations of vehicle and traffic laws. Since a truck driver's livelihood is based on driving, they have more to lose and are arguably more proficient and professional at driving than the general public.

21. Comment: The Town should require Red Wing to use only county and state roads.

Response: The Applicant intends to use county and state roads primarily, but only having access to White Schoolhouse Road, it must be used to get to the county and state roads.

22. Comment: The impact of traffic going north on White Schoolhouse Road was not addressed.

Response: The anticipated primary route for traffic was expected to be to and from the south. The Applicant is willing to distribute traffic by having trucks arrive from the north on Route 308 and depart to the south. This would result in dividing the traffic – inbound trucks arrive from the north, outbound trucks depart to the south. This is consistent with recommendations made by Dutchess County. The results will be similar in that there are no capacity improvements needed at the study area intersections. The northern section of White Schoolhouse Road tends to have thinner pavement sections and may experience faster deterioration than the southern segments. Regardless, the Applicant is willing to post a bond for maintenance and repairs from its truck use.

23. Comment: The Town should place a weight limit on White Schoolhouse Road, limit the hours of operation of the mine traffic and ban any left-hand turns.

Response: Vehicle and traffic regulations (§1660-10) allow the Town to create a system of truck routes for vehicles over 5 tons and exclude those vehicles from roads outside of that system. However, the exclusion shall not prevent the delivery or pick up of merchandise from properties along such excluded routes. The Applicant is agreeable to restricting left turns out of White Schoolhouse Road onto Slate Quarry Road.

In terms of the hours, according to the DEIS, the planned maximum hours of operation are 7 a.m. to 5 p.m. Monday through Friday with limited activities such as reclamation and maintenance activities on Saturdays from 8 a.m. to 3 p.m. There will be no excavation operations on Sundays, New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day and Christmas Day. These hours are reasonable and do not create any traffic related impacts.

24. Comment: The trucks' route to the mine was not specified.

Response: A truck's route is subject to the customer's location, but locally, the Applicant would use White Schoolhouse Road to enter and exit the site to/from either Route 308 or Slate Quarry Road, and primarily to and from Route 9G.

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25. *Comment: The DEIS should include a traffic study covering the routes between the mine and Package Pavement.*

Response: The DEIS covers an adequately appropriate study area. Analysis of intersections miles away from the site is unnecessary as the Red Wing project's traffic will blend in with the existing background traffic volumes.

26. *Comment: The traffic speed used in the DEIS was based on the observed average speed on White Schoolhouse Road. Some parts of White Schoolhouse Road north of the mine entrance are posted 20 mph.*

Response: The traffic study reported the 85th percentile speeds, not the average speeds. The average speed was observed as 37 mph; the posted speed limit is 35 mph and there is one curve north of the project site with an advisory speed limit of 20 mph.

27. *Comment: Reliance on levels of service may not fully reflect the impacts of the project; a qualitative assessment should also be considered.*

Response: A qualitative assessment is very subjective. For example, a project that generates traffic during typical business hours will have little effect on a resident that works in an office 30 minutes away during those same hours but will have more effect on a retired resident that spends most days working in their yard. An airport worker may find living under an airport's arrival and departure approach less impactful than a nurse that works nights and sleeps during the day. A mine will have more of an impact if moved into an area where no mining activity has occurred compared to an area in which mining is already occurring and/or has existed for decades. Given these conditions, the engineering analysis procedures removes that subjectivity of such conditions and focuses on the capacity of intersections and roads.

28. *Comment: Since the 85th -percentile speed on White Schoolhouse is 45 mph, and presumably already unsafe for pedestrians and bicyclists, it will become further unsafe if the mine is approved.*

Response: The 85th-percentile speed is based on existing drivers and generally represents the upper speed limit of which most drivers feel comfortable driving. Given the low existing truck counts, it can be concluded that it is passenger car drivers, either local or cut-through, that are creating the conditions the commentor finds hazardous. The addition of the project related traffic and slower moving trucks could have the effect of slowing some of those faster drivers down.

29. *Comment: The DEIS estimates traffic for the AM and PM peak hours but provides no estimate for the number of daily trips. How much more traffic will be generated on the road each day?*

Response: The estimate of daily traffic will vary by season and market demands. It could further vary based on the type of trucks used. The DEIS states that the proposal has reduced the number of trucks from 100 trucks per day (presumed to be truck loads, one-way trips or 200 two-way trips) to 20 to 50 trucks (40 to 100 two-way trips) per day, a 50% reduction. Based on the higher estimate, and factoring in employee trips (10 employee trips, two trips per day) a total of 120 trips per day could be expected. With approximately 300 existing vehicles per day, that volume could increase to 420 vehicles, subject to the distribution of traffic. For example, if trucks enter from the north and depart to the south, then 360 vehicles per day could be expected, plus a few employees. The percentage increase in traffic may seem significant, but it is still far less than the capacity of the road and intersections.

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Red Wing DEIS Comment Response

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30. *Comment: White Schoolhouse Road is a residential and agricultural access road, not a highway for industrial trucks.*

Response: White Schoolhouse Road is a mixed-use road. It carries residential, farming, and mining related traffic. The mine is not a new land use to White Schoolhouse Road – it is on one of the only three properties zoned for mining or otherwise allowed in the Town, all of which exist on White Schoolhouse Road.

31. *Comment: Given the size of White Schoolhouse Road, trucks passing each is particularly concerning. White Schoolhouse Road cannot safely accommodate public use and the increased number of, and size of the trucks generated by the mine expansion.*

Response: The Applicant has suggested to use a mix of tri-axle and trail-dump trucks to balance the volume of trips generated, but also to have trucks arrive from the north and depart to the south on White Schoolhouse Road to address this concern.

32. *Comment: The left turns off Slate Quarry Road onto White Schoolhouse Road is a concern and we're unsure it can be done safely.*

Response: Sight distance has long been a concern at the Slate Quarry Road/White Schoolhouse Road intersection. Recent vegetation clearing has improved the sight distance for vehicles turning left from Slate Quarry Road. If all traffic was projected to arrive from the south and turn left off Slate Quarry Road, it would equate to one vehicle every 3 to 10 minutes which includes background traffic and project related traffic, i.e. very low volumes. Furthermore, there have been no reported accidents involving a left turning vehicle on this movement based on the NYSDOT crash records (see Attachment B).

33. *Comment: Truck sizes should be limited; larger trucks should enter from the north and exit to the south; restrict truck turning movements at the site; coordinate with Rhinebeck Central Schools to limit truck/bus interactions; consider improvements to White Schoolhouse Road/Slate Quarry Road; consider holding a bond for pavement wear and tear on White Schoolhouse Road.*

Response: The Applicant has proposed to use a mix of tri-axle and trailer-dump trucks to reduce the number of truck trips generated. If hazards with this operation are exposed, the use of trailer-dump trucks would be scaled back or restricted. For example, the use of larger vehicles could be restricted to avoid school bus pick up/drop off times.

34. *Comment: As traffic increases on White Schoolhouse Road, the design criteria will change and require a wider road.*

Response: The design criteria will not change substantially enough to warrant significant changes to the existing geometry of the road. There are sections that could benefit from minor improvements – widening or providing shoulders around curves – but unless a documented site-specific crash pattern is identified, AASHTO *Guidelines for Geometric Design of Low-Volume Roads* suggests that no wholesale changes to the road are necessary. No such crash pattern has been identified given the limited number of crashes on White Schoolhouse Road over the last decade.

35. *Comment: The impact on White Schoolhouse Road pavement of the Red Wing truck traffic in addition to the JD Von Der Leith and Lobotsky mines is significant.*

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August 22, 2023

Response: The Applicant has been contributing to the Town's road improvement/maintenance budget through its timely and required payment of the property taxes. In addition, the Applicant has supplied mined materials to the Town to conduct road and other repairs and maintenance. Further, the Applicant is willing to provide a bond for damages to the road caused by its operations if the Town so agrees.

36. *Comment: If the planning board restricts the size of vehicles used by Red Wing to 12 CY, the truck traffic volume will increase to move the same amount of material.*

Response: To move the same amount of material with smaller trucks, more truck trips will be necessary. Alternatively, longer operating hours or operating days of the week could accomplish the same task.

37. *Comment: Most of White Schoolhouse Road is thin in asphalt and is not sufficient to carry heavy truck traffic. Some sections are already in poor condition. With minor rehabilitation on the poorest sections and a 10-Ton weight limit, a 5–7-year service life can be expected. If a major rehab is done with a 10-ton posting, 15 to 20 years of service life is expected, while a 25-ton posting will have an expected service life of 7-10 years. Without these improvements, a 10-ton limit will be required and will require routine repairs to keep the road passable.*

Response: The Applicant has been contributing to the Town's road improvement and maintenance budget through its timely and required payment of the property taxes and is willing to contribute directly to the White Schoolhouse Road's ongoing maintenance needs if it can be shown that Red Wing trucks are contributing to specific road damage. In addition, the Applicant has supplied mined materials to the Town to conduct road and other repairs and maintenance. Further, the Applicant is willing to provide a bond for damages to the road caused by its operations if the Town so agrees.

38. *Comment: White Schoolhouse Road is not a road intended to be a commercial or industrial street. It cannot be expected to carry a substantial volume of heavy truck traffic as a principal through road for commercial traffic, but farming, mining, and residential traffic has co-existed along this country road with a size limit as recommended by the Town highway superintendent and engineer.*

Response: White Schoolhouse Road is not considered adequate to carry large amounts of through truck traffic nor is it proposed to be. It is proposed to be used to access to local properties, both residential, farming, and mining related. The three properties where mining has historically occurred are all located on White Schoolhouse Road.

39. *Comment: The mitigation proposed at Slate Quarry Road and White Schoolhouse Road is inadequate to preserve the safety of people negotiating this intersection now or after heavy truck traffic is increased.*

Response: The safety of the Slate Quarry Road and White Schoolhouse Road intersection is negatively impacted by the poor performance of drivers. Dutchess County conducted an extensive study of this intersection and improvements were made. Westbound drivers receive three notices of potential hazardous conditions ahead. Additional improvements can be undertaken to improve safety further (i.e. slippery pavement, reduce the size of the intersection, etc.), but it is beyond the scope of the Applicant to reconstruct the intersection or use their property in any less capacity as residents on White Schoolhouse Road do under the given conditions of the intersection. Regardless, the Applicant has proposed to use a mix of trucks and distribute the arrival/departure routes to reduce the potential impact on any single location. Further, the relocation of warning beacons east of White Schoolhouse Road on Slate Quarry Road may prove beneficial at reducing the existing pattern of single car crashes at the intersection.

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Red Wing DEIS Comment Response

August 22, 2023

In summary, the project represents the continued operation of an existing mine, extending the life of the mine on one of the only three historically allowed mines in the Town, all of which have access to White Schoolhouse Road. Traffic volumes on White Schoolhouse Road are low and will continue to remain low with the approval of the project (less than 420 vehicles a day). Historically, crashes on White Schoolhouse Road and at the intersection of Slate Quarry Road have mostly been single vehicle crashes, none involving trucks. White Schoolhouse Road has varying width but is generally considered wide enough to support the proposed traffic flows according to the American Association of State Highway and Transportation Officials (AASHTO). The pavement cross section varies in depth so additional deterioration is expected and not unusual. The Applicant has offered to contribute to its maintenance and bond any damage created by their mining operation. Further, the Applicant is willing to direct its trucks to enter from the north and exit to the south to minimize any potential conflict of vehicles arriving in opposing directions. These findings indicate that the project will have little to no traffic impacts on the surrounding road system.

If you have any questions regarding this analysis, or if we can be of any further assistance, please do not hesitate to contact CM's Albany office.

Respectfully submitted,
Creighton Manning Engineering, LLP

Kenneth W. Wersted, P.E., PTOE
Associate

Attachments

N:\Projects\2021\121-389 Redwing - Kinlan Mine Update\Working\Correspondence\2023-08-22 Red Wing Response to Comments_12-389.docx

Attachment A
Crash Summaries
White School House Road

White School House Road Mine
Town of Rhinebeck, New York

Crash Level Details - White School House Rd - Jan 1, 2013-Dec 31, 2022																				
Record#	Case Number	Crash Severity	Collision Type	Crash Date	Crash Time	Crash Type	Light Conditions	Road Characteristics	Road Surface Conditions	Traffic Control	Weather Conditions	Commercial Vehicle Crash Indicator	# of Fatalities	# of Injuries	# of Vehicles	Non Reportable	Reporting Agency	On Street	Apparent Contributing Factor	Notes Summary
1	34655715	PROPERTY DAMAGE	OTHER	1/28/2013	9:00 PM	COLLISION WITH TREE	UNKNOWN	UNKNOWN	UNKNOWN	UNKNOWN	UNKNOWN	0	0	0	1	0		WHITE SCHOOLHOUSE RD	V1:(NOT ENTERED,NOT ENTERED)	On slushy road with freezing rain, swerved to avoid animal, hit tree
2	35143579	INJURY	OTHER	2/21/2014	9:00 AM	COLLISION WITH TREE	DAYLIGHT	CURVE AND LEVEL	WET	NONE	RAIN	0	0	1	1	0	RHINEBECK SP	WHITE SCHOOLHOUSE RD	V1:(ANIMALS ACTION,NOT APPLICABLE)	swerves to miss deer, hits trees
3	35412476	INJURY	OTHER	9/22/2014	2:57 PM	COLLISION WITH TREE	DAYLIGHT	STRAIGHT AND LEVEL	DRY	NONE	CLEAR	0	0	1	1	0	DUTCHESS CO SHERIFF DEPT	WHITE SCHOOLHOUSE RD	V1:(DRIVER INATTENTION,NOT APPLICABLE)	V1 goes off road and hits tree
4	35413513	INJURY	OTHER	9/15/2014	3:56 AM	COLLISION WITH OTHER	DARK-ROAD UNLIGHTED	STRAIGHT AND LEVEL	DRY	NONE	CLOUDY	0	0	2	1	0	DUTCHESS CO SHERIFF DEPT	WHITE SCHOOLHOUSE RD	V1:(FELL ASLEEP,NOT APPLICABLE)	Driver fell asleep and went off road
5	35753972	PROPERTY DAMAGE	OTHER	6/1/2015	5:00 PM	COLLISION WITH SIGN POST	DAYLIGHT	STRAIGHT/ GRADE	WET	NONE	RAIN	0	0	0	1	0	DUTCHESS CO SHERIFF DEPT	WHITE SCHOOLHOUSE RD	V1:(UNSAFE SPEED,FAILURE TO KEEP RIGHT)	While speeding lost control of vehicle turning onto WSH Rd, hit speed limit sign
6	35905760	PROPERTY DAMAGE	SIDESWIPE	9/28/2015	6:15 PM	COLLISION WITH MOTOR VEHICLE	DAYLIGHT	STRAIGHT AND LEVEL	DRY	NONE	CLEAR	0	0	0	2	0	RHINEBECK SP	WHITE SCHOOLHOUSE RD	V1:(BACKING UNSAFELY,PASSING OR LANE USAGE IMPROPERLY) / V2:(NOT APPLICABLE,NOT	V1 stops and begins to back up not realizing V2 is behind them, V2 attempts to avoid but hits V1
7	36016889	INJURY	OTHER	12/4/2015	9:05 AM	COLLISION WITH TREE	DAYLIGHT	STRAIGHT/ GRADE	DRY	NONE	CLEAR	0	0	1	1	0	RHINEBECK SP	WHITE SCHOOLHOUSE RD	V1:(PASSING OR LANE USAGE IMPROPERLY,ANIMALS ACTION)	swerves to miss deer, hits trees
8	36891339	INJURY	OTHER	9/14/2017	8:11 PM	COLLISION WITH SIGN POST	DARK-ROAD UNLIGHTED	CURVE AND LEVEL	WET	NONE	RAIN	0	0	1	1	0	DUTCHESS CO SHERIFF DEPT	WHITE SCHOOLHOUSE RD	V1:(UNSAFE SPEED,PAVEMENT SLIPPERY)	While speeding, left road, hit sign, guiderail, mailbox
9	37201046	PROPERTY DAMAGE	OTHER	3/7/2018	5:37 PM	COLLISION WITH SIGN POST	DUSK	CURVE AND GRADE	SNOW/ICE	STOP SIGN	SNOW	0	0	0	1	0	DUTCHESS CO SHERIFF DEPT	WHITE SCHOOLHOUSE RD	V1:(PAVEMENT SLIPPERY,UNSAFE SPEED)	Approaching SQR, lost control on slippery pavement, hit sign
10	37229250	PROPERTY DAMAGE	OTHER	4/7/2018	6:31 AM	COLLISION WITH DEER	DAWN	STRAIGHT AND LEVEL	WET	NONE	CLEAR	0	0	0	1	1	DUTCHESS CO SHERIFF DEPT	WHITE SCHOOLHOUSE RD	V1:(ANIMALS ACTION,NOT APPLICABLE)	hit deer
11	37311971	PROPERTY DAMAGE	OTHER	5/19/2018	7:29 PM	COLLISION WITH TREE	DAWN	STRAIGHT AND LEVEL	WET	NO PASSING ZONE	RAIN	0	0	0	1	0	RHINEBECK SP	WHITE SCHOOLHOUSE RD	V1:(UNSAFE SPEED,NOT APPLICABLE)	While making RT off Rt 308, goes wide and hits embankment and trees
12	37619349	PROPERTY DAMAGE	OTHER	12/2/2018	1:14 PM	COLLISION WITH DEER	DAYLIGHT	CURVE AND LEVEL	WET	NONE	RAIN	0	0	0	1	0	RHINEBECK SP	WHITE SCHOOLHOUSE RD	V1:(ANIMALS ACTION,NOT APPLICABLE)	hit deer
13	39556170	PROPERTY DAMAGE	OTHER	10/14/2022	6:37 AM	COLLISION WITH DEER	DARK-ROAD UNLIGHTED	STRAIGHT AND LEVEL	WET	NONE	RAIN	0	0	0	1	0	RHINEBECK SP	WHITE SCHOOLHOUSE	V1:(ANIMALS ACTION,NOT APPLICABLE)	hit deer

2013

1

MV-104 (7/05) PAGE 1 of 2

FOLD → ← HERE

New York State Department of Motor Vehicles
REPORT OF MOTOR VEHICLE ACCIDENT
www.nysdmv.com

Use only for accidents that
happen in New York State

BEFORE COMPLETING THIS FORM, READ THE INSTRUCTIONS IN SECTION A ON PAGE 2

DO NOT FORGET ACCIDENT DATE		Page <u>1</u> of <u>1</u>	<input type="checkbox"/> RUSH - DRIVER OF VEHICLE 1 - LICENSE SUSPENDED FOR FAILURE TO REPORT									
Accident Date Month <u>01</u> Day <u>28</u> Year <u>13</u>	Day of Week <u>mon.</u>	Time <u>9:00</u> <input checked="" type="checkbox"/> AM <input checked="" type="checkbox"/> PM	Number of Vehicles <u>1</u>	Number Injured <u>none</u>	Number Killed <u>none</u>	Did police investigate accident at scene? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If "Yes", Name of Police Agency or Precinct & Accident Number					
DRIVER OF VEHICLE 1			<input type="checkbox"/> VEHICLE 2 <input type="checkbox"/> PEDESTRIAN <input type="checkbox"/> BICYCLIST <input type="checkbox"/> OTHER PEDESTRIAN									
<div>1 DRIVER</div>			Driver License ID Number		State of License							
			Name—exactly as printed on license (Last, First, M.I.)									
			Address (Include Number & Street)		Apt. Number							
			City or Town		State		Zip Code					
			Date of Birth Month Day Year		Sex	Number of People in Vehicle	Public Property Damaged <input type="checkbox"/>					
<div>2 REGISTRANT</div>			Name—exactly as printed on registration		Date of Birth Month Day Year		Sex					
			Address (Include Number & Street)		Apt. Number							
			City or Town		State		Zip Code					
			Plate Number		State of Reg.	Vehicle Year & Make	Vehicle Type	Ins. Code				
			Estimated Cost of Property Damage - Vehicle 1 <input type="checkbox"/> \$1,001-\$1,500 <input type="checkbox"/> \$1,501-\$2,500 <input checked="" type="checkbox"/> Over \$2,500		Estimated Cost of Property Damage - Vehicle 2 <input type="checkbox"/> \$1,001-\$1,500 <input type="checkbox"/> \$1,501-\$2,500 <input type="checkbox"/> Over \$2,500							
Describe damage to vehicle 1 <u>Extensive damage to front end: Bumper, Hood, Fenders & Frame</u>		ACCIDENT DIAGRAM: Circle one of the 9 diagrams (numbered 0-8) if it describes the accident, or draw your own diagram below in space #9. Number the vehicles. Your vehicle is # <u>1</u> <u>Tree ← #1</u>		Describe damage to vehicle 2								
Place Where Accident Occurred in New York State: County <u>Dutchess</u> <input type="checkbox"/> City <input type="checkbox"/> Village <input type="checkbox"/> Town of <u>Rhinebeck</u> Permanent Landmark <u>N/A</u> Road on which accident occurred <u>White Schoolhouse Rd.</u> (Route Number or Street Name) at <input type="checkbox"/> 1) intersecting street or 2) <u>800</u> <u>ft</u> <u>SW</u> of <u>Rt. 308</u> (Milepost, Nearest Intersecting Route Number or Street Name) How did the accident happen? <u>on a very slushy road with freezing rain, I swerved to avoid a large animal. I could not regain control and hit a tree head on.</u>		Names of All Persons Involved		8. Which Veh Occupied	9. Position In/on Vehicle	10. Safety Equip. Used	12. Age	13. Sex	16. Injury A B C	Describe Injuries		If Deceased, Enter Date of Death
Identify Damaged Property Other Than Vehicle(s) <u>N/A</u>		Name of Insurance Company That Issued Policy For Vehicle 1 <u>Geico</u>		Name and Add Policy Holder		VIN <u>4S4BP62C457391274</u>		Policy Number		Policy Period From <u>8/11/12</u> To <u>2/11/13</u>		
Date <u>1/30/13</u>		Print Name of Driver (or Representative) of Vehicle 1		Signature of Driver (or Representative) of Vehicle 1								

* A representative may sign for the driver if the driver is unable to sign because of injury or death. If you are signing as the driver's representative, check the box that describes why the driver cannot sign. ☐ Injury ☐ Death

An accident report is not considered complete and filed unless it is signed, and if not signed may result in the suspension of your driver's license.

New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT

MV-104A (6/04)

35143579

Local Codes

SP1K322RFLW1

☐ AMENDED REPORT

DMV COPY

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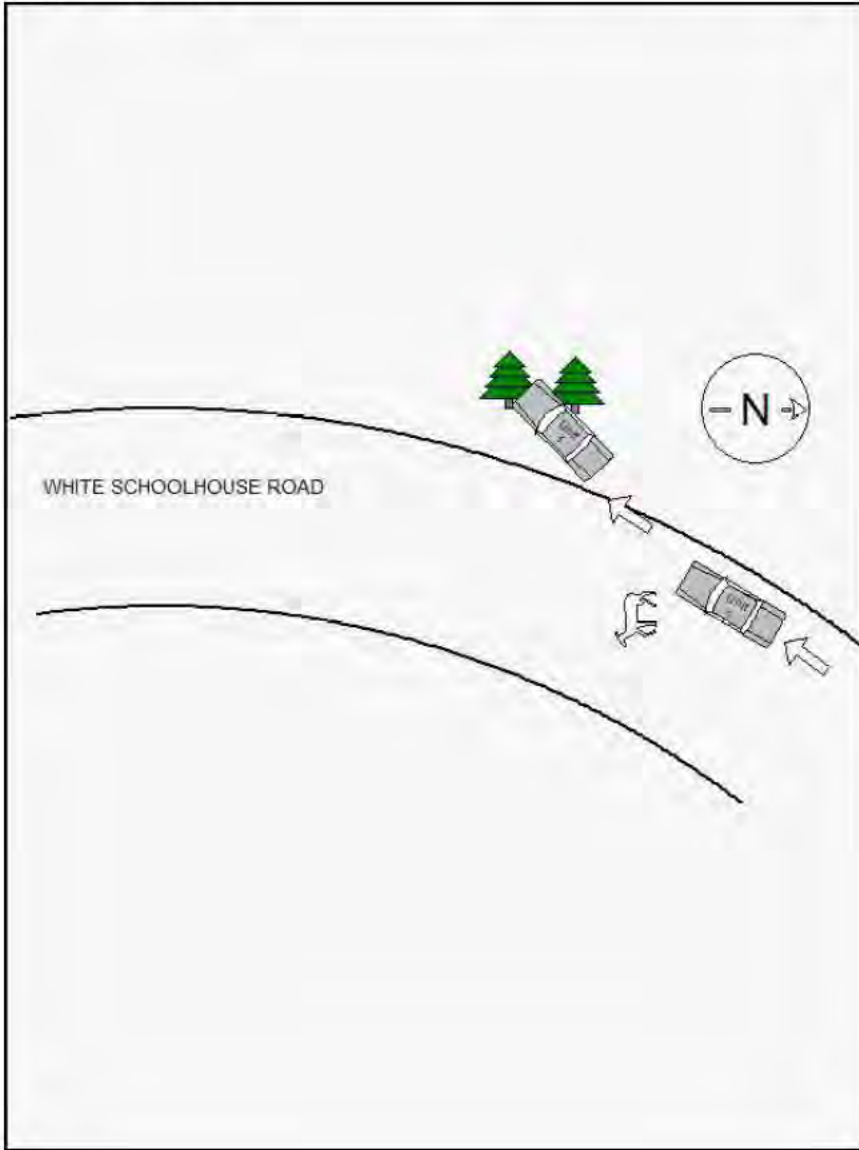
1 Accident Date Month 02 Day 21 Year 2014		Day of Week Fri		Military Time 0900		No. of Vehicles 1		No. Injured 1		No. Killed 0		Not Investigated at Scene <input type="checkbox"/>		Left Scene <input type="checkbox"/>		Police Photos <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
2 VEHICLE 1												<input type="checkbox"/> VEHICLE 2 <input type="checkbox"/> BICYCLIST <input type="checkbox"/> PEDESTRIAN <input type="checkbox"/> OTHER PEDESTRIAN					
3 1												21 VEHICLE 2 - Driver License ID Number					
4 1												22 Driver Name - exactly as printed on license					
5 4												23 Address (Include Number & Street)					
6 2												24 City or Town					
7 3												25 State					
8 1												26 Zip Code					
9 1												27 Date of Birth					
10 1												28 Sex					
11 1												29 Unlicensed <input type="checkbox"/>					
12 1												30 No. of Occupants					
13 1												31 Public Property Damaged <input type="checkbox"/>					
14 1												32 Name-exactly as printed on registration					
15 1												33 Sex					
16 1												34 Date of Birth					
17 1												35 Month					
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25 1												43 Plate Number					
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27 1												45 Vehicle Year & Make					
28 1												46 Vehicle Type					
29 1												47 Ins. Code					
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31 1												49 Violation Section(s)					
32 1												50 Ticket/Arrest Number(s)					
33 1												51 Violation Section(s)					
34 1												52 Check if involved vehicle is:					
35 1												53 Check if involved vehicle is:					
36 1												54 Circle the diagram below that describes the accident, or draw your own diagram in space #9. Number the vehicles.					
37 1												55 Rear End					
38 1												56 Left Turn					
39 1												57 Right Angle					
40 1												58 Right Turn					
41 1												59 Head On					
42 1												60 Sideswipe (same direction)					
43 1												61 Left Turn					
44 1												62 Right Turn					
45 1												63 Sideswipe (opposite direction)					
46 1												64 ACCIDENT DIAGRAM					
47 1												65 DIAGRAM IS PRINTED ON LAST PAGE					
48 1												66 Cost of repairs to any one vehicle will be more than \$1000.					
49 1												67 <input type="checkbox"/> Unknown/Unable to Determine <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No					
50 1												68 Reference Marker					
51 1												69 Coordinates (If available)					
52 1												70 Latitude/Northing:					
53 1												71 594883					
54 1												72 Longitude/Easting:					
55 1												73 4641359					
56 1												74 Place Where Accident Occurred:					
57 1												75 County DUTC <input type="checkbox"/> City <input type="checkbox"/> Village <input checked="" type="checkbox"/> Town of RHINEBECK, TOWN OF					
58 1												76 Road on which accident occurred WHITE SCHOOLHOUSE RD					
59 1												77 (Route Number or Street Name)					
60 1												78 at 1) intersecting street					
61 1												79 (Route Number or Street Name)					
62 1												80 or 2) .1 <input checked="" type="checkbox"/> N <input type="checkbox"/> S <input type="checkbox"/> E <input type="checkbox"/> W of SLATE QUARRY RD					
63 1												81 (Milepost, Nearest intersecting Route Number or Street Name)					
64 1												82 Accident Description/Officer's Notes					
65 1												83 OPERATOR OF VEHICLE 1 WAS SOUTHBOUND ON WHITE SCHOOLHOUSE RD, T/ RHINEBECK. OPERATOR OF VEHICLE 1 SWERVES AND MISSES A DEER THAT WAS IN THE ROADWAY, AND THEN EXITS THE WEST SHOULDER OF ROADWAY STRIKING TWO TREES.					
66 1												84 ALL INVOLVED					
67 1												85 8					
68 1												86 9					
69 1												87 10					
70 1												88 11					
71 1												89 12					
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79 1												97 18					
80 1												98 Names of all involved					
81 1												99 Date of Death Only					
82 1												100 A					
83 1												101 B					
84 1												102 C					
85 1												103 D					
86 1												104 E					
87 1												105 F					
88 1												106 Officer's Rank and Signature					
89 1												107 TPR					
90 1												108 Print Name in Full					
91 1												109 KENNETH KELLENBENZ					
92 1												110 Badge/ID No.					
93 1												111 883					
94 1												112 NCIC No.					
95 1												113 11302					
96 1												114 Precinct/Post Troop/Zone					
97 1												115 K1					
98 1												116 Station/Beat Sector					
99 1												117 21					
100 1												118 Reviewing Officer					
101 1												119 BREEN, MARK					
102 1												120 Date/Time Reviewed					
103 1												121 2014/02/21 13:43					

USE
COVER
SHEET

N

New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
Accident Diagram

ACCIDENT DIAGRAM



Q1Z3033J613G

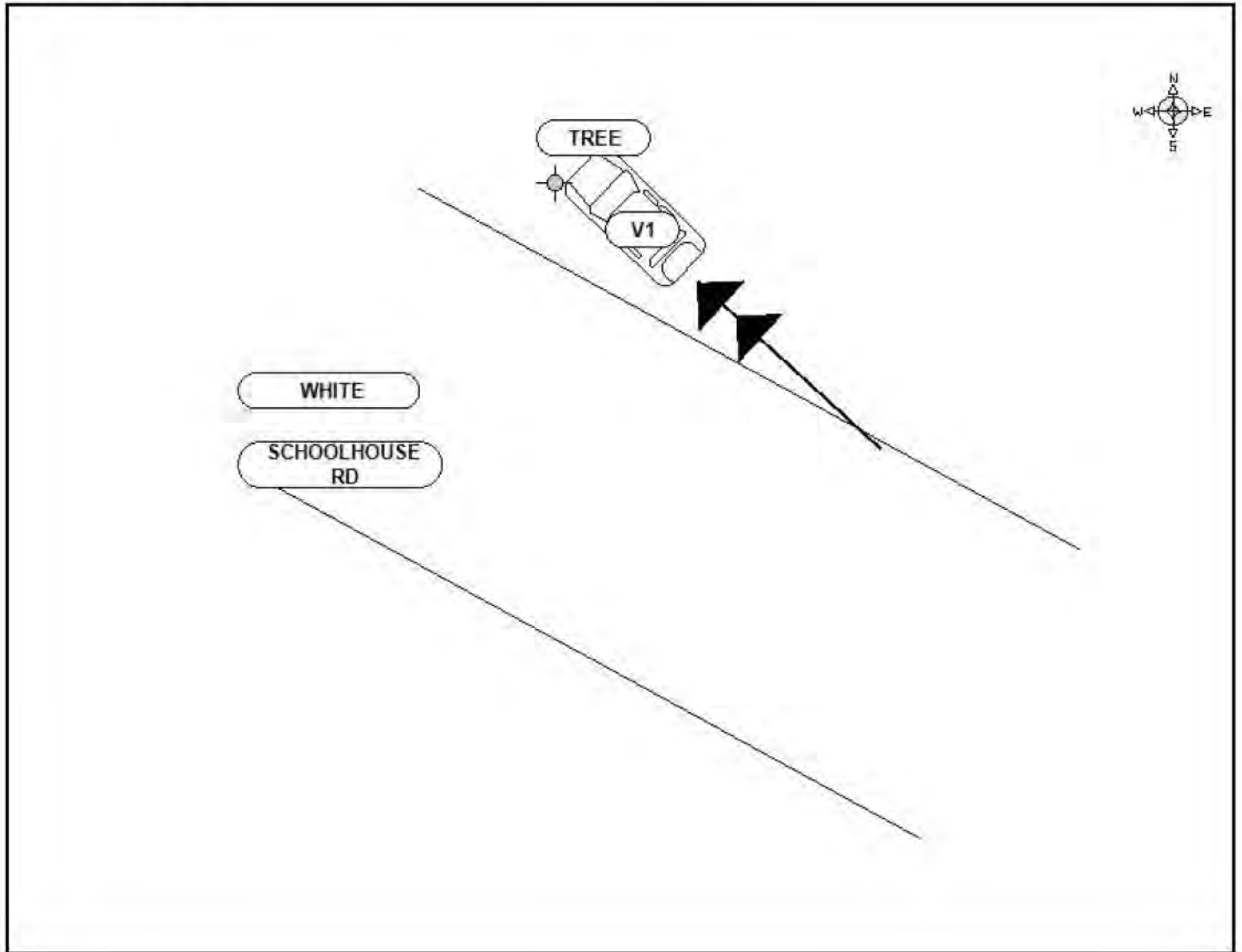
AMENDED REPORT

DMV COPY

ALL INVOLVED

New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
Accident Diagram

ACCIDENT DIAGRAM



New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT

MV-104A (6/04)

35413513

Local Codes

Q1H7183JGLHC

☒ **AMENDED REPORT****DMV COPY**

4

1 Accident Date		Day of Week		Military Time		No. of Vehicles		No. Injured		No. Killed		Not Investigated at Scene <input type="checkbox"/>		Left Scene		Police Photos																																																																																																																	
Month 09 Day 15 Year 2014		Mon		0356		1		2		0		Accident Reconstructed <input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No																																																																																																																	
<div style="display: flex; justify-content: space-between;"> <div> VEHICLE 1 <div style="background-color: black; width: 100%; height: 150px; margin-top: 5px;"></div> </div> <div> <input type="checkbox"/> VEHICLE 2 <input type="checkbox"/> BICYCLIST <input type="checkbox"/> PEDESTRIAN <input type="checkbox"/> OTHER PEDESTRIAN </div> </div>																																																																																																																																	
<div style="display: flex; justify-content: space-between;"> <div> VEHICLE 2 - Driver License ID Number _____ State of Lic. _____ Driver Name - exactly as printed on license _____ Address (Include Number & Street) _____ Apt. No. _____ City or Town _____ State _____ Zip Code _____ </div> <div> Date of Birth _____ Sex _____ Unlicensed <input type="checkbox"/> No. of Occupants _____ Public Property Damaged <input type="checkbox"/> Name - exactly as printed on registration _____ Sex _____ Date of Birth _____ Address (Include Number & Street) _____ Apt. No. _____ Haz. Mat. Code _____ Released <input type="checkbox"/> City or Town _____ State _____ Zip Code _____ </div> </div>																																																																																																																																	
<div style="display: flex; justify-content: space-between;"> <div> Ticket/Arrest Number(s) BD9108820 Violation Section(s) 37535C </div> <div> Ticket/Arrest Number(s) _____ Violation Section(s) _____ </div> </div>																																																																																																																																	
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Accident Description/Officer's Notes VEHICLE ONE WAS TRAVELING SOUTH ON WHITE SCHOOLHOUSE RD., IN THE AREA OF #24, LOCATED IN THE TOWN OF RHINEBECK. DURING THIS TIME OPERATOR OF VEHICLE ONE INDICATED THAT SHE FELL ASLEEP WHILE DRIVING HER MOTOR VEHICLE. THIS CAUSED VEHICLE ONE TO DRIVE OFF OF THE ROADWAY, ONTO THE PROPERTY OF #24, AND IMPACT WITH THE MAILBOXES OF HOUSE #24 AND HOUSE #17. VEHICLE ONE CONTINUED SOUTH ON THE PROPERTY OF #24 AND HAD A SECONDARY IMPACT WITH CENTRAL HUDSON UTILITY POLE #24302. VEHICLE ONE SUSTAINED HEAVY DAMAGE, WHILE THE UTILITY POLE SUSTAINED DAMAGE AS WELL. COUNTY 911 WAS CONTACTED AND ADVISED CENTRAL HUDSON OF THE DAMAGES. THE DRIVER OF VEHICLE ONE AND THE REAR PASSENGER, WHO																																																																																																																																	
<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th>8</th> <th>9</th> <th>10</th> <th>11</th> <th>12</th> <th>13</th> <th>14</th> <th>15</th> <th>16</th> <th>17</th> <th>BY</th> <th>TO</th> <th>18</th> <th>Names of all involved</th> <th>Date of Death Only</th> </tr> </thead> <tbody> <tr> <td>A</td> <td>01</td> <td>1</td> <td>4</td> <td>1</td> <td>42</td> <td>2</td> <td>8</td> <td>12</td> <td>6</td> <td>9993</td> <td>1307</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>B</td> <td>01</td> <td>5</td> <td>1</td> <td>1</td> <td>17</td> <td>1</td> <td>6</td> <td>12</td> <td>6</td> <td>9993</td> <td>1307</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>C</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>D</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>E</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>F</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>																			8	9	10	11	12	13	14	15	16	17	BY	TO	18	Names of all involved	Date of Death Only	A	01	1	4	1	42	2	8	12	6	9993	1307					B	01	5	1	1	17	1	6	12	6	9993	1307					C																D																E																F															
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ALL INVOLVED

USE COVER SHEET

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New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT

MV-104A (6/04)

35413513

Local Codes

Q1H7183JGLHC

☐ AMENDED REPORT

DMV COPY

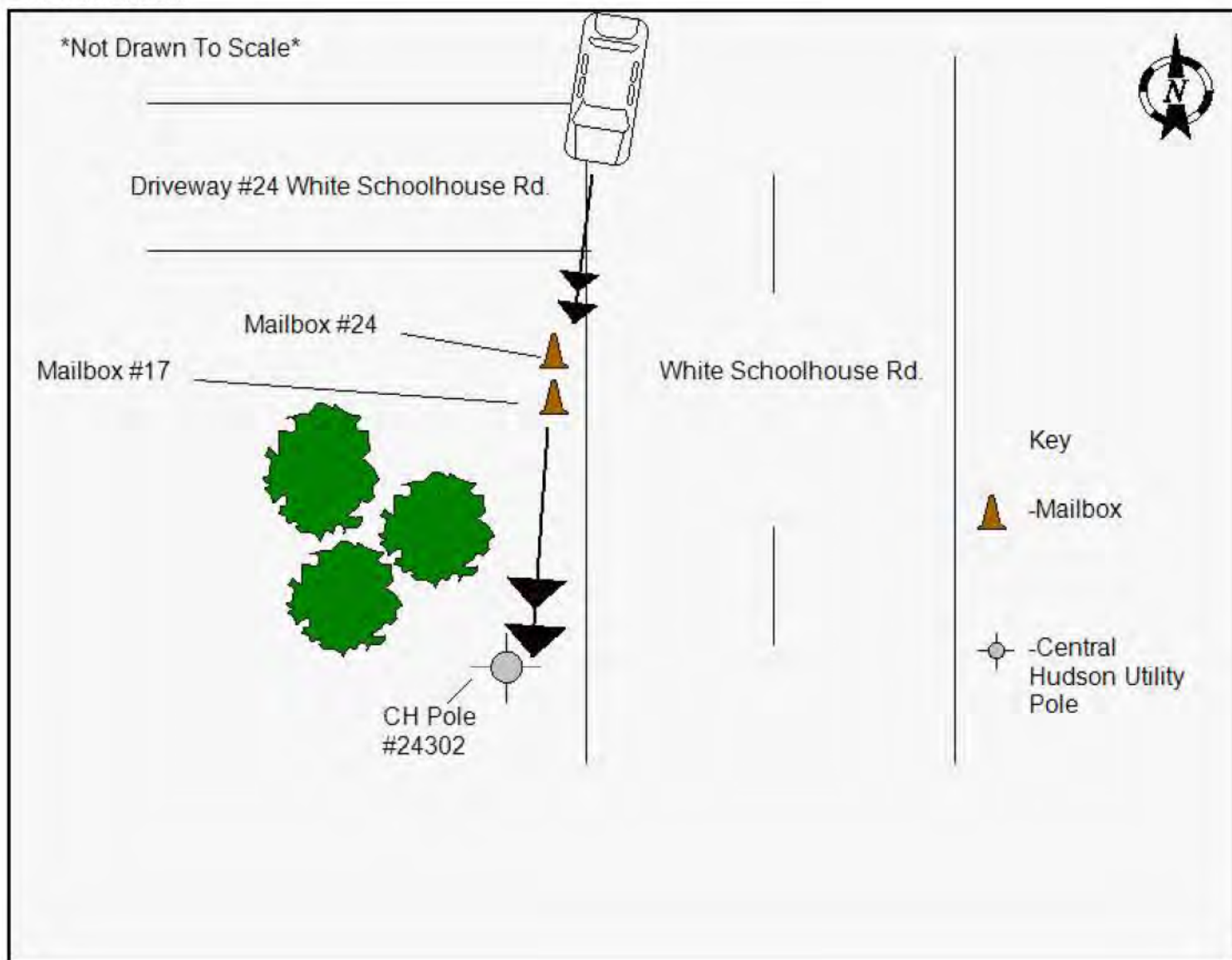
1	Accident Date Month <u>09</u> Day <u>15</u> Year <u>2014</u>	Day of Week <u>Mon</u>	Military Time <u>0356</u>	No. of Vehicles <u>1</u>	No. Injured <u>2</u>	No. Killed <u>0</u>	Not Investigated at Scene <input type="checkbox"/> Accident Reconstructed <input type="checkbox"/>	Left Scene <input type="checkbox"/>	Police Photos <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	20																																																																																																																		
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	Accident Description/Officer's Notes HUDSON REGIONAL HOSPITAL FOR MEDICAL EVALUATION. THE OWNER OF #17 WHITE SCHOOLHOUSE RD. WAS NOTIFIED OF HIS MAILBOX DAMAGE AND INDICATED HE WOULD NOTIFY THE OWNER OF THE MAILBOX OF #24.				Cost of repairs to any one vehicle will be more than \$1000. <input type="checkbox"/> Unknown/Unable to Determine <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				29																																																																																																																			
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New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
Accident Diagram

ACCIDENT DIAGRAM



New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT

MV-104A (6/04)

35753972

5

Local Codes

Q1Z3054F2QBK

☐ AMENDED REPORT

DMV COPY

1	Accident Date Month 06 Day 01 Year 2015		Day of Week Mon	Military Time 1700	No. of Vehicles 1	No. Injured 0	No. Killed 0	Not Investigated at Scene <input type="checkbox"/>	Left Scene <input type="checkbox"/>	Police Photos <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
2	VEHICLE 1				<input type="checkbox"/> VEHICLE 2 <input type="checkbox"/> BICYCLIST <input type="checkbox"/> PEDESTRIAN <input type="checkbox"/> OTHER PEDESTRIAN VEHICLE 2 - Driver License ID Number _____ State of Lic. _____ Driver Name - exactly as printed on license _____ Address (Include Number & Street) _____ Apt. No. _____ City or Town _____ State _____ Zip Code _____ Date of Birth _____ Sex _____ Unlicensed <input type="checkbox"/> No. of Occupants _____ Public Property Damaged <input type="checkbox"/> Name - exactly as printed on registration _____ Sex _____ Date of Birth _____ Address (Include Number & Street) _____ Apt. No. _____ Haz. Mat. Code _____ Released <input type="checkbox"/> City or Town _____ State _____ Zip Code _____ Plate Number _____ State of Reg. _____ Vehicle Year & Make _____ Vehicle Type _____ Ins. Code _____						
3	Ticket/Arrest Number(s) _____				Ticket/Arrest Number(s) _____						
4	Violation Section(s) _____				Violation Section(s) _____						
5	Check if involved vehicle is: <input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.				Check if involved vehicle is: <input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.				Circle the diagram below that describes the accident, or draw your own diagram in space #9. Number the vehicles.		
6	VEHICLE 1 DAMAGE CODES Box 1 - Point of Impact _____ 1 _____ 2 _____ Box 2 - Most Damage _____ Enter up to three more Damage Codes _____ 3 _____ 4 _____ 5 _____ Vehicle Towed: By H&N TOWING To H&N TOWING				VEHICLE 2 DAMAGE CODES Box 1 - Point of Impact _____ 1 _____ 2 _____ Box 2 - Most Damage _____ Enter up to three more Damage Codes _____ 3 _____ 4 _____ 5 _____ Vehicle Towed: By _____ To _____				ACCIDENT DIAGRAM 1. Rear End 2. Left Turn 3. Right Angle 4. Right Turn 5. Head On 6. Sideswipe (same direction) 7. Left Turn 8. Right Turn 9. Sideswipe (opposite direction) 10. _____ 11. _____ 12. _____ 13. _____ 14. _____ 15. _____ 16. _____ 17. _____ 18. _____		
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8	Reference Marker				Coordinates (If available)				Place Where Accident Occurred:		
9					Latitude/Northing: 594260				County DUTC <input type="checkbox"/> City <input type="checkbox"/> Village <input checked="" type="checkbox"/> Town of RHINEBECK, TOWN OF		
10					Longitude/Easting: 4644033				Road on which accident occurred WHITE SCHOOLHOUSE RD (Route Number or Street Name)		
11									at 1) intersecting street _____ (Route Number or Street Name)		
12									or 2) 70 <input type="checkbox"/> N <input checked="" type="checkbox"/> S <input type="checkbox"/> E <input type="checkbox"/> W of SR 308 (Milepost, Nearest intersecting Route Number or Street Name)		
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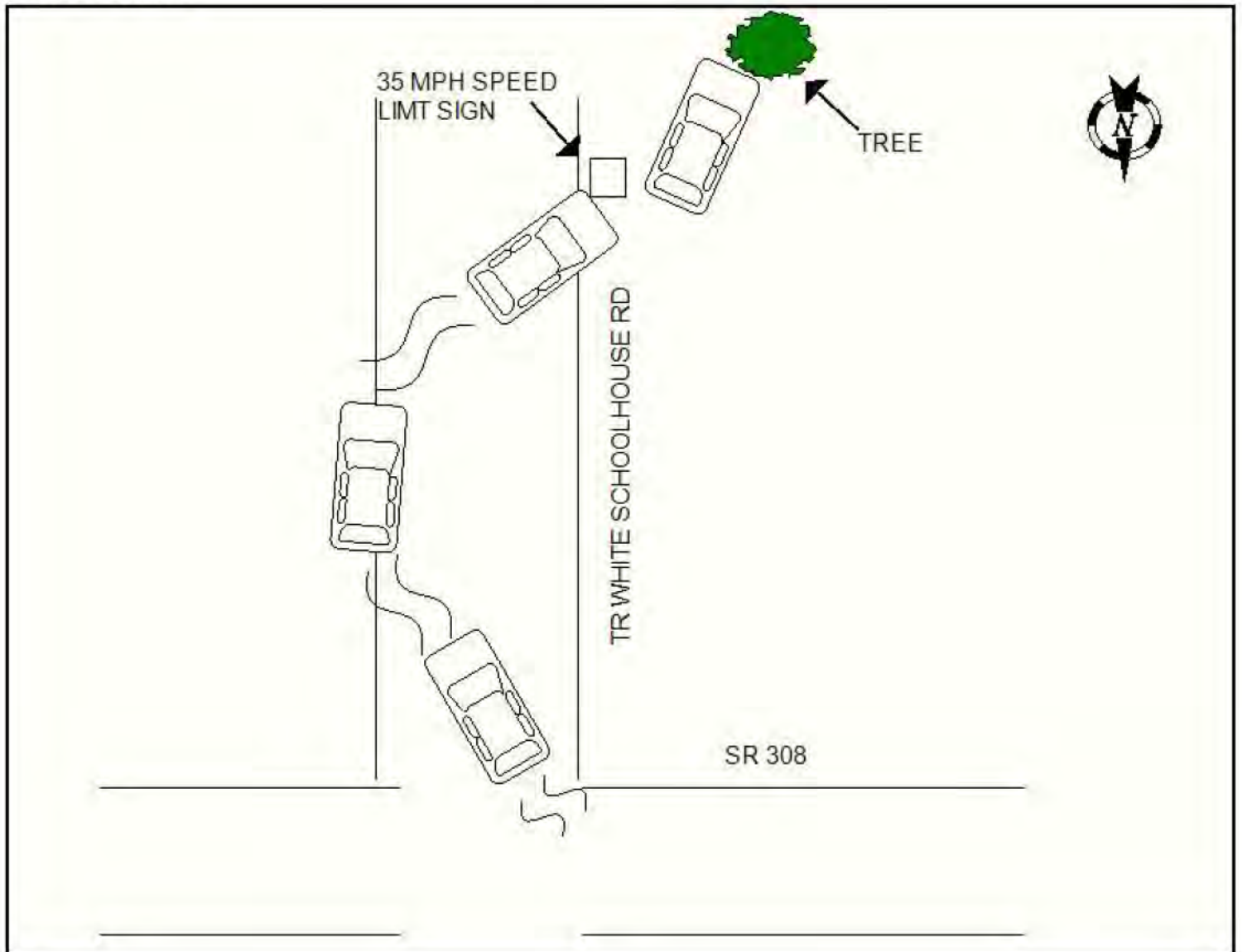
ALL INVOLVED

USE COVER SHEET

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New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
Accident Diagram

ACCIDENT DIAGRAM



New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT

MV-104A (6/04)

35905760

6

Local Codes

SP1K814TRPW4

☐ AMENDED REPORT

DMV COPY

Accident Date

Month
09Day
28Year
2015

Day of Week

Mon

Military Time

1815

No. of
Vehicles
2No. Injured
0No. Killed
0Not Investigated at Scene ☐Left Scene ☐Police Photos
☐ Yes ☒ NoAccident Reconstructed ☐

VEHICLE 1

☒ VEHICLE 2☐ BICYCLIST☐ PEDESTRIAN☐ OTHER PEDESTRIANTicket/Arrest
Number(s)

1K814TRPKW

Ticket/Arrest
Number(s)Violation
Section(s)

1211A

Violation
Section(s)

Check if involved vehicle is:

☐ more than 95 inches wide;

☐ more than 34 feet long;

☐ operated with an overweight permit;

☐ operated with an overdimension permit.

VEHICLE 1 DAMAGE CODES

Box 1 - Point of Impact 7 1 2

Box 2 - Most Damage 7

Enter up to three more Damage Codes 3 4 5

Vehicle By Towed: To

Check if involved vehicle is:

☐ more than 95 inches wide;

☐ more than 34 feet long;

☐ operated with an overweight permit;

☐ operated with an overdimension permit.

VEHICLE 2 DAMAGE CODES

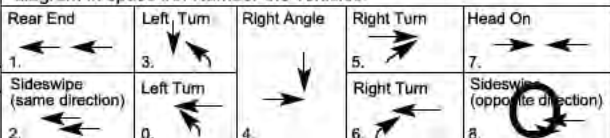
Box 1 - Point of Impact 12 1 1

Box 2 - Most Damage 11

Enter up to three more Damage Codes 3 4 5

Vehicle By Towed: To

Circle the diagram below that describes the accident, or draw your own diagram in space #9. Number the vehicles.



ACCIDENT DIAGRAM

DIAGRAM IS PRINTED ON LAST PAGE

Cost of repairs to any one vehicle will be more than \$1000.

☐ Unknown/Unable to Determine ☒ Yes ☐ No

Reference Marker

Coordinates (if available)

Latitude/Northing:
594456

Longitude/Easting:
4643826

Place Where Accident Occurred:

County DUTC

City Village ☒ Town of RHINEBECK, TOWN OF

Road on which accident occurred WHITE SCHOOLHOUSE ROAD

(Route Number or Street Name)

at 1) intersecting street JARDEM COURT

(Route Number or Street Name)

or 2) ☐ N ☐ S ☐ E ☐ W of

(Milepost, Nearest intersecting Route Number or Street Name)

Accident Description/Officer's Notes

V-1 Northbound on White Schoolhouse Road stops and begins backing up to turn around, not realizing that V-2 was approaching from behind. V-2 traveling same direction attempts evasive action and strikes the right rear of V-1 with drivers side of V-2.

ALL INVOLVED

	8	9	10	11	12	13	14	15	16	17	BY	TO	18	Names of all involved	Date of Death Only
A	01	1	4	1	40	1	-	-	-						
B	01	3	4	1	41	2	-	-	-						
C	02	1	4	1	73	2	-	-	-						
D	02	3	4	1	68	2	-	-	-						
E															
F															

Officer's Rank and Signature

TPR

Print Name in Full

RYAN EDMUNDSON

Badge/ID No.

384

NCIC No.

11302

Precinct/Post Troop/Zone

K1

Station/Beat Sector

21

Reviewing Officer

KYLE, CHRISTOPH

Date/Time Reviewed

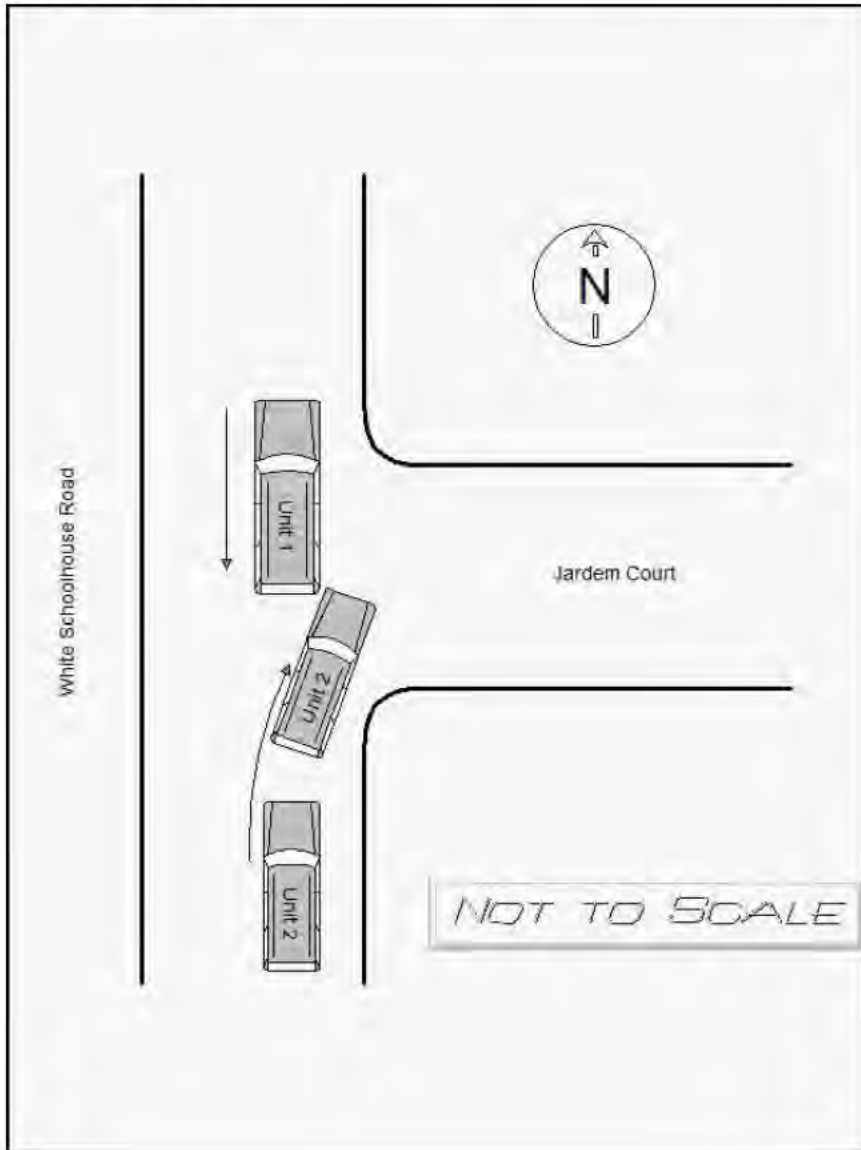
2015/09/29 19:47

USE COVER SHEET

N

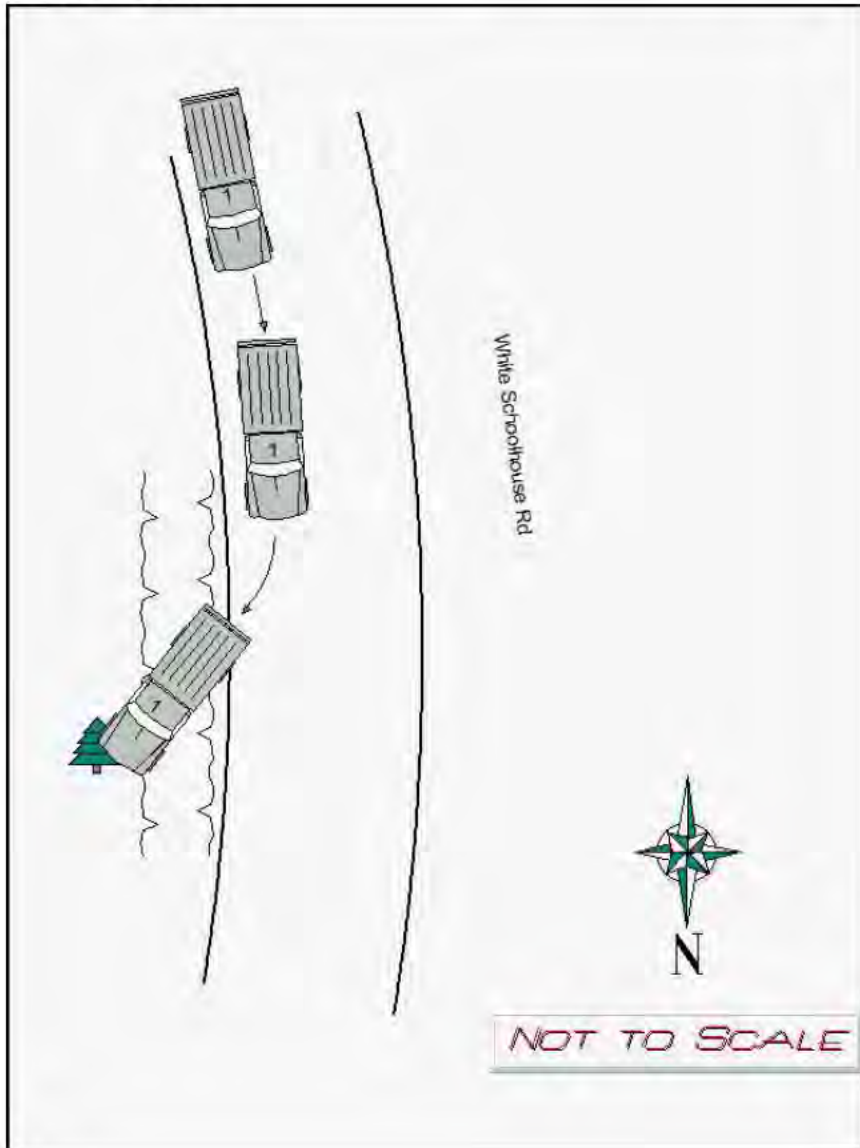
New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
Accident Diagram

ACCIDENT DIAGRAM



New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
Accident Diagram

ACCIDENT DIAGRAM



New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT

MV-104A (6/04)

36891339

8

Local Codes

Q1Z3197D8B3Q

☐ AMENDED REPORT

DMV COPY

1	Accident Date			Day of Week	Military Time	No. of Vehicles	No. Injured	No. Killed	Not Investigated at Scene <input type="checkbox"/>	Left Scene	Police Photos	20 66							
	Month 09	Day 14	Year 2017	THURSD	2011	1	1	0	Accident Reconstructed <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No								
2	VEHICLE 1						<input type="checkbox"/> VEHICLE 2 <input type="checkbox"/> BICYCLIST <input type="checkbox"/> PEDESTRIAN <input type="checkbox"/> OTHER PEDESTRIAN						21						
							VEHICLE 2 - Driver License ID Number _____ State of Lic. _____ Driver Name - exactly as printed on license _____ Address (Include Number & Street) _____ Apt. No. _____ City or Town _____ State _____ Zip Code _____ Date of Birth _____ Sex _____ Unlicensed <input type="checkbox"/> No. of Occupants _____ Public Property Damaged <input type="checkbox"/> Name - exactly as printed on registration _____ Sex _____ Date of Birth _____ Month _____ Day _____ Year _____ Address (Include Number & Street) _____ Apt. No. _____ Haz. Mat. Code _____ Released <input type="checkbox"/> City or Town _____ State _____ Zip Code _____ Plate Number _____ State of Reg. _____ Vehicle Year & Make _____ Vehicle Type _____ Ins. Code _____							22					
3 1																			23 7
4																			25 1
5																			27 2
6 2																			29 25
7 3																			USE COVER SHEET N

VEHICLE 1 DAMAGE CODES

Box 1 - Point of Impact _____ 1 _____ 2 _____

Box 2 - Most Damage _____ 3 _____ 4 _____ 5 _____

Enter up to three more Damage Codes _____

Vehicle Towed: By LJ'S TOWING
To LJ'S TOWING

VEHICLE 2 DAMAGE CODES

Box 1 - Point of Impact _____ 1 _____ 2 _____

Box 2 - Most Damage _____ 3 _____ 4 _____ 5 _____

Enter up to three more Damage Codes _____

Vehicle Towed: By _____
To _____

ACCIDENT DIAGRAM

Circle the diagram below that describes the accident, or draw your own diagram in space #9. Number the vehicles.

Rear End	Left Turn	Right Angle	Right Turn	Head On
1.	3.	4.	5.	7.
2.	6.	8.	9.	

DIAGRAM IS PRINTED ON LAST PAGE

Cost of repairs to any one vehicle will be more than \$1000.
☐ Unknown/Unable to Determine ☒ Yes ☐ No

VEHICLE DAMAGE CODING:

1-13. SEE DIAGRAM ON RIGHT.

14. UNDERCARRIAGE 17. DEMOLISHED
 15. TRAILER 18. NO DAMAGE
 16. OVERTURNED 19. OTHER

Place Where Accident Occurred:

County DUTC ☐ City ☐ Village ☒ Town of RHINEBECK, TOWN OF

Road on which accident occurred WHITE SCHOOLHOUSE RD
 (Route Number or Street Name)

at 1) intersecting street SLATE QUARRY RD
 (Route Number or Street Name)

or 2) _____ ☐ N ☐ S ☐ E ☐ W of _____
 Feet Miles (Milepost, Nearest intersecting Route Number or Street Name)

Accident Description/Officer's Notes

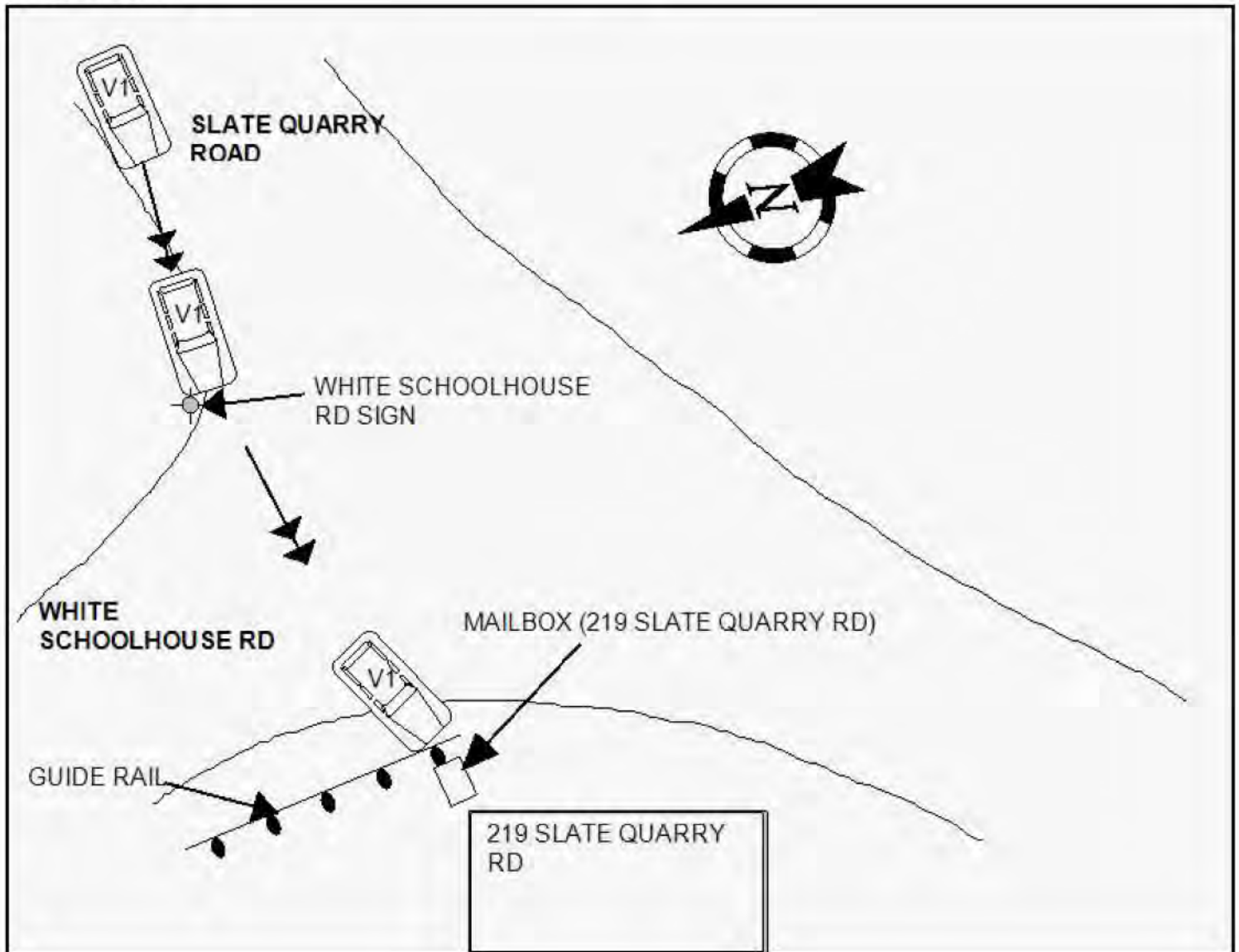
V1 TRAVELING AT A HIGH RATE OF SPEED FOR THE CONDITIONS. V1 LEFT THE ROADWAY VIA THE NORTH SHOULDER, CROSSED OVER WHITE SCHOOLHOUSE ROAD, CAUSING DAMAGE TO A ROAD SIGN, GUIDE RAIL AND A MAILBOX BEFORE COMING TO FINAL REST.

ALL INVOLVED	8	9	10	11	12	13	14	15	16	17	BY	TO	18	Names of all involved	Date of Death Only
A	01	1	A	1	20	2	1	12	6	9993		1305			
B															
C															
D															
E															
F															

Officer's Rank and Signature Deputy Sheriff Print Name in Full <u>J GRIFFIN</u>	Badge/ID No. <u>129</u>	NCIC No. <u>01300</u>	Precinct/Post Troop/Zone <u>1</u>	Station/Beat/ Sector	Reviewing Officer <u>WYMAN, T</u>	Date/Time Reviewed <u>2017/09/16 18:14</u>
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New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
Accident Diagram

ACCIDENT DIAGRAM



New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT

MV-104A (6/04)

37201046

9

Local Codes

Q1Z32080T0F7

☐ AMENDED REPORT

DMV COPY

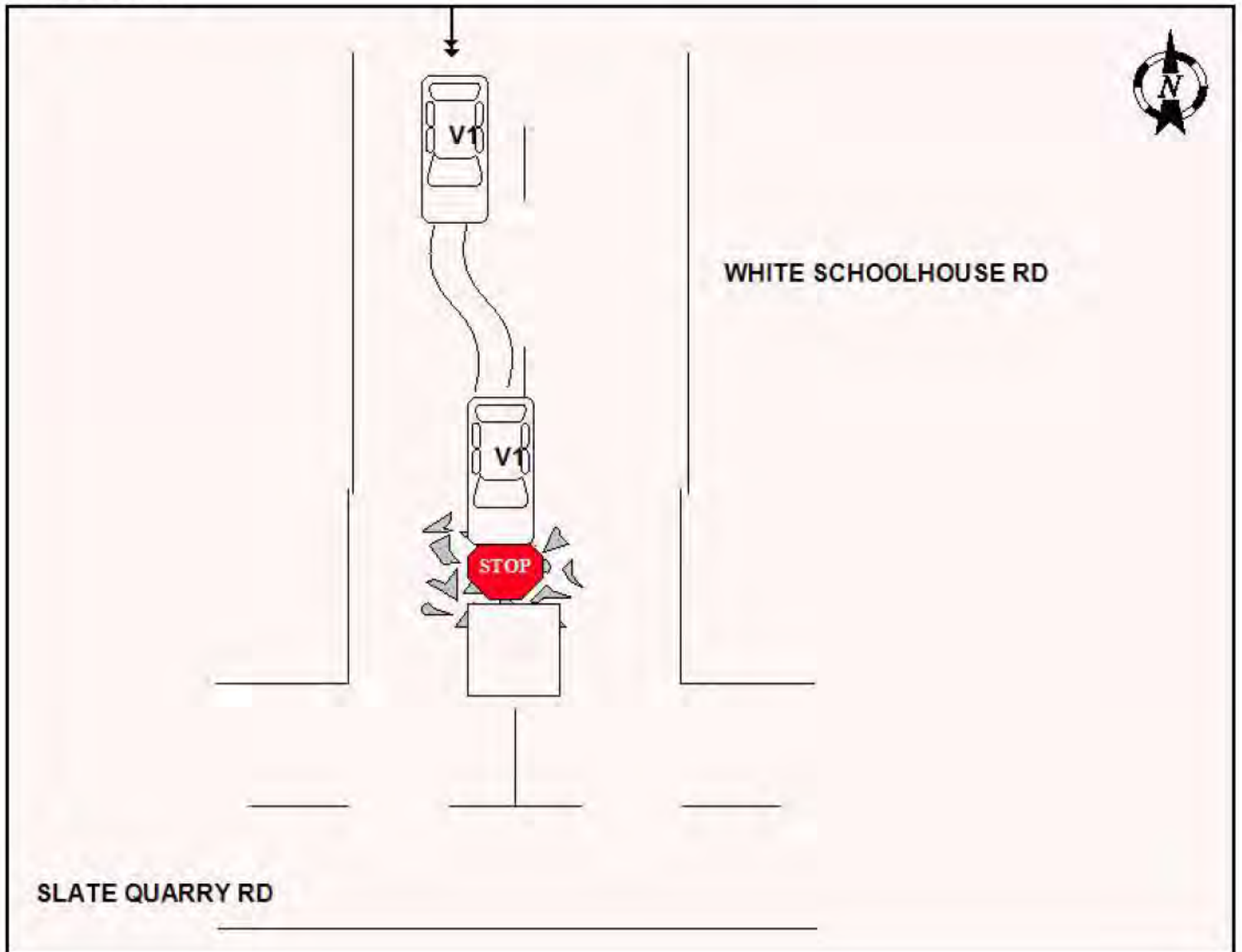
1 - 19 19		Accident Date Month 03 Day 07 Year 2018		Day of Week WEDNES		Military Time 1737		No. of Vehicles 1		No. Injured 0		No. Killed 0		Not Investigated at Scene <input type="checkbox"/>		Left Scene <input type="checkbox"/>		Police Photos <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No																																																																																																						
		VEHICLE 1 <input type="checkbox"/> VEHICLE 2 <input type="checkbox"/> BICYCLIST <input type="checkbox"/> PEDESTRIAN <input type="checkbox"/> OTHER PEDESTRIAN																																																																																																																						
2 -		VEHICLE 2 - Driver License ID Number _____ State of Lic. _____ Driver Name - exactly as printed on license _____ Address (Include Number & Street) _____ Apt. No. _____ City or Town _____ State _____ Zip Code _____												21																																																																																																										
3 3		Date of Birth _____ Sex _____ Unlicensed <input type="checkbox"/> No. of Occupants _____ Public Property Damaged <input type="checkbox"/> Month _____ Day _____ Year _____												22																																																																																																										
4 3		Name-exactly as printed on registration HERTZ VEHICLE, LLC Sex C Date of Birth _____ Month _____ Day _____ Year _____ Address (Include Number & Street) _____ Apt. No. _____ Haz. Mat. Code _____ Released <input type="checkbox"/> 8201 BARTRAM AVE City or Town PHILADELPHIA State PA Zip Code 19153												23 5																																																																																																										
5 5		Plate Number HZK2414 State of Reg. PA Vehicle Year & Make 2017 CHEV Vehicle Type 4DSD Ins. Code _____ Ticket/Arrest Number(s) _____ Violation Section(s) _____												24																																																																																																										
6 4		Check if involved vehicle is: <input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit. VEHICLE 1 DAMAGE CODES Box 1 - Point of Impact _____ 1 _____ 2 _____ Box 2 - Most Damage _____ Enter up to three more Damage Codes _____ 3 _____ 4 _____ 5 _____ Vehicle Towed By JOHN'S TOWING To JOHN'S TOWING												25 1																																																																																																										
7 4		Check if involved vehicle is: <input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit. VEHICLE 2 DAMAGE CODES Box 1 - Point of Impact _____ 1 _____ 2 _____ Box 2 - Most Damage _____ Enter up to three more Damage Codes _____ 3 _____ 4 _____ 5 _____ Vehicle Towed By _____ To _____												26																																																																																																										
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		Reference Marker Coordinates (if available) Latitude/Northing: _____ Longitude/Easting: _____ Place Where Accident Occurred: County DUTC City Village <input checked="" type="checkbox"/> Town of RHINEBECK, TOWN OF Road on which accident occurred WHITE SCHOOLHOUSE RD (Route Number or Street Name) at 1) intersecting street SLATE QUARRY RD (Route Number or Street Name) or 2) _____ of _____ (Milepost, Nearest intersecting Route Number or Street Name) Feet Miles												28 14																																																																																																										
		Accident Description/Officer's Notes AS V1 WAS APPROACHING THE INTERSECTION OF WHITE SCHOOLHOUSE ROAD AND SLATE QUARRY ROAD, V1 LOST CONTROL DUE TO SLIPPERY PAVEMENT AND STRUCK A LEFT CURVE AND STOP SIGN IN THE CENTER OF THE DIVIDE.												29 -																																																																																																										
		ALL INVOLVED <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th>8</th> <th>9</th> <th>10</th> <th>11</th> <th>12</th> <th>13</th> <th>14</th> <th>15</th> <th>16</th> <th>17</th> <th>18</th> <th>BY</th> <th>TO</th> <th>Names of all involved</th> <th>Date of Death Only</th> </tr> <tr> <td>A</td> <td>01</td> <td>1</td> <td>4</td> <td>1</td> <td>29</td> <td>1</td> <td>-</td> <td>-</td> <td>-</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>B</td> <td>01</td> <td>3</td> <td>4</td> <td>1</td> <td>27</td> <td>1</td> <td>-</td> <td>-</td> <td>-</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>C</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>D</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>E</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>F</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </table>												8	9	10	11	12	13	14	15	16	17	18	BY	TO	Names of all involved	Date of Death Only	A	01	1	4	1	29	1	-	-	-						B	01	3	4	1	27	1	-	-	-						C															D															E															F															30	
8	9	10	11	12	13	14	15	16	17	18	BY	TO	Names of all involved	Date of Death Only																																																																																																										
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		Officer's Rank and Signature DEPUTY SHI Print Name in Full J HOGAN Badge/ID No. 160 NCIC No. 01300 Precinct/Post Troop/Zone 1 Station/Beat Sector LAMONICA, F Date/Time Reviewed 2018/03/23 18:21																																																																																																																						

USE
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New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
Accident Diagram

ACCIDENT DIAGRAM



New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT

MV-104A (6/04)

37229250

10

Local Codes

Q1Z350842HNR

☐ AMENDED REPORT

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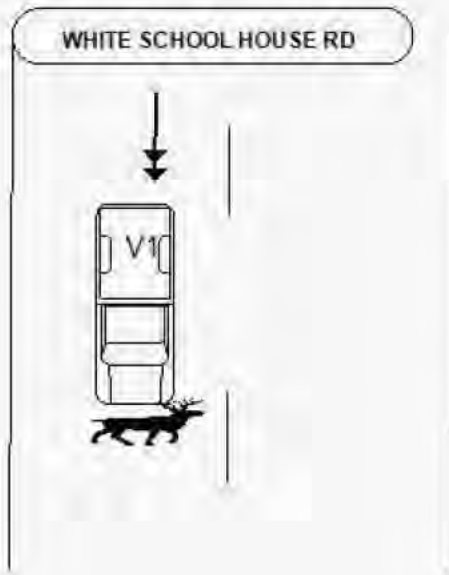
1	Accident Date			20
	Month 04	Day 07	Year 2018	
2	Day of Week Sat		21	
	Military Time 0631			
3	No. of Vehicles 1	No. Injured 0	22	
	No. Killed 0	Not Investigated at Scene <input type="checkbox"/>		
4	Accident Reconstructed <input type="checkbox"/>		23	
	Left Scene <input type="checkbox"/>			
5	Police Photos <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		24	
	State of Lic.			
6	VEHICLE 1		25	
	VEHICLE 2 - Driver License ID Number			
7	Driver Name - exactly as printed on license		26	
	Address (Include Number & Street)			
8	City or Town		27	
	State			
9	Zip Code		28	
	Date of Birth			
10	Sex		29	
	Unlicensed <input type="checkbox"/>			
11	No. of Occupants		30	
	Public Property Damaged <input type="checkbox"/>			
12	Name - exactly as printed on registration		31	
	Sex			
13	Date of Birth		32	
	Month Day Year			
14	Address (Include Number & Street)		33	
	Apt. No.			
15	City or Town		34	
	State			
16	Zip Code		35	
	Plate Number			
17	State of Reg.		36	
	Vehicle Year & Make			
18	Vehicle Type		37	
	Ins. Code			
19	Ticket/Arrest Number(s)		38	
	Violation Section(s)			
20	Check if involved vehicle is:		39	
	<input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.			
21	VEHICLE 1 DAMAGE CODES		40	
	Box 1 - Point of Impact Box 2 - Most Damage			
22	Enter up to three more Damage Codes		41	
	Vehicle By Towed: To			
23	VEHICLE 2 DAMAGE CODES		42	
	Box 1 - Point of Impact Box 2 - Most Damage			
24	Enter up to three more Damage Codes		43	
	Vehicle By Towed: To			
25	Circle the diagram below that describes the accident, or draw your own diagram in space #9. Number the vehicles.		44	
	Rear End Left Turn Right Angle Right Turn Head On Sideswipe (same direction) Left Turn Right Turn Sideswipe (opposite direction)			
26	ACCORDING DIAGRAM		45	
	DIAGRAM IS PRINTED ON LAST PAGE			
27	Cost of repairs to any one vehicle will be more than \$1000.		46	
	<input type="checkbox"/> Unknown/Unable to Determine <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
28	Reference Marker		47	
	Coordinates (If available)			
29	Latitude/Northing:		48	
	Longitude/Easting:			
30	Place Where Accident Occurred:		49	
	County DUTC City Village <input checked="" type="checkbox"/> Town of RHINEBECK, TOWN OF Road on which accident occurred WHITE SCHOOLHOUSE RD (Route Number or Street Name) at 1) intersecting street (Route Number or Street Name) or 2) .3 N S E W of SLATE QUARRY RD Feet Miles (Milepost, Nearest intersecting Route Number or Street Name)			
31	Accident Description/Officer's Notes		50	
	WHILE TRAVELING S BOUND ON WHITE SCHOOLHOUSE RD V1 STRUCK A DEER.			
32	ALL INVOLVED		51	
	8 9 10 11 12 13 14 15 16 17 BY TO 18 Names of all involved Date of Death Only			
33	Officer's Rank and Signature		52	
	DEPUTY SHI Print Name in Full J STEININGER			
34	Badge/ID No.		53	
	149			
35	NCIC No.		54	
	01300			
36	Precinct/Post Troop/Zone		55	
	1			
37	Station/Beat/ Sector		56	
	STUART, N			
38	Reviewing Officer		57	
	2018/04/10 23:05			

USE
COVER
SHEET

N

New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
Accident Diagram

ACCIDENT DIAGRAM



New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT

MV-104A (6/04)

37311971

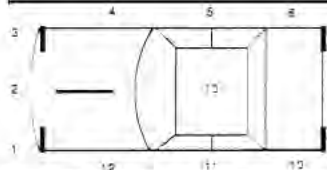
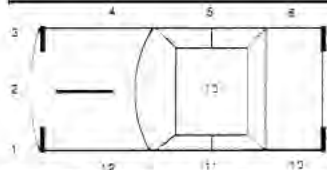
11

Local Codes

SP1K3888LMLK

☐ AMENDED REPORT

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1		Accident Date		Day of Week		Military Time		No. of Vehicles		No. Injured		No. Killed		Not Investigated at Scene <input type="checkbox"/>		Left Scene		Police Photos																																																																																																										
-		Month 05 Day 19 Year 2018		SATURD		1929		1		0		0		Accident Reconstructed <input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No																																																																																																										
<div style="display: flex; justify-content: space-between;"> <div> VEHICLE 1 <div style="background-color: black; width: 100%; height: 150px; margin-top: 5px;"></div> </div> <div> <input type="checkbox"/> VEHICLE 2 <input type="checkbox"/> BICYCLIST <input type="checkbox"/> PEDESTRIAN <input type="checkbox"/> OTHER PEDESTRIAN VEHICLE 2 - Driver License ID Number _____ State of Lic. _____ Driver Name - exactly as printed on license _____ Address (Include Number & Street) _____ Apt. No. _____ City or Town _____ State _____ Zip Code _____ Date of Birth _____ Sex _____ Unlicensed <input type="checkbox"/> No. of Occupants _____ Public Property Damaged <input type="checkbox"/> Name - exactly as printed on registration _____ Sex _____ Date of Birth _____ Month _____ Day _____ Year _____ Address (Include Number & Street) _____ Apt. No. _____ Haz. Mat. Code _____ Released <input type="checkbox"/> City or Town _____ State _____ Zip Code _____ Plate Number _____ State of Reg. _____ Vehicle Year & Make _____ Vehicle Type _____ Ins. Code _____ Ticket/Arrest Number(s) 1K3888LNHS Violation Section(s) 1180A </div> </div>																																																																																																																												
<div style="display: flex; justify-content: space-between;"> <div> VEHICLE 1 DAMAGE CODES <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td>Box 1 - Point of Impact</td> <td>1</td> <td>2</td> </tr> <tr> <td>Box 2 - Most Damage</td> <td>3</td> <td>3</td> </tr> </table> Enter up to three more Damage Codes: 3 4 5 Vehicle Towed: By _____ To _____ </div> <div> VEHICLE 2 DAMAGE CODES <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td>Box 1 - Point of Impact</td> <td>1</td> <td>2</td> </tr> <tr> <td>Box 2 - Most Damage</td> <td>3</td> <td>5</td> </tr> </table> Enter up to three more Damage Codes: 3 4 5 Vehicle Towed: By _____ To _____ </div> <div> <div style="text-align: center;">  </div> </div> </div>																				Box 1 - Point of Impact	1	2	Box 2 - Most Damage	3	3	Box 1 - Point of Impact	1	2	Box 2 - Most Damage	3	5																																																																																													
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<div style="display: flex; justify-content: space-between;"> <div> Reference Marker <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td> </td> <td> </td> <td> </td> </tr> </table> </div> <div> Coordinates (If available) Latitude/Northing: 594245 Longitude/Easting: 4644052 </div> <div> Place Where Accident Occurred: County DUTC <input type="checkbox"/> City <input type="checkbox"/> Village <input checked="" type="checkbox"/> Town of RHINEBECK, TOWN OF Road on which accident occurred WHITE SCHOOLHOUSE ROAD at 1) intersecting street STATE ROUTE 308 or 2) _____ of _____ (Milepost, Nearest intersecting Route Number or Street Name) </div> </div>																																																																																																																												
Accident Description/Officer's Notes V1 was traveling E/B on State Route 308 in the Town of Rhinebeck and attempts to make a right turn onto White Schoolhouse Rd. V1 exits off Eastern shoulder and strikes an earth embankment and trees.																																																																																																																												
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td>8</td> <td>9</td> <td>10</td> <td>11</td> <td>12</td> <td>13</td> <td>14</td> <td>15</td> <td>16</td> <td>17</td> <td>BY</td> <td>TO</td> <td>18</td> <td>Names of all involved</td> <td>Date of Death Only</td> </tr> <tr> <td>A</td> <td>01</td> <td>1</td> <td>4</td> <td>1</td> <td>22</td> <td>2</td> <td>-</td> <td>-</td> <td>-</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>B</td> <td>01</td> <td>3</td> <td>4</td> <td>1</td> <td>20</td> <td>1</td> <td>-</td> <td>-</td> <td>-</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>C</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>D</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>E</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>F</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </table>																				8	9	10	11	12	13	14	15	16	17	BY	TO	18	Names of all involved	Date of Death Only	A	01	1	4	1	22	2	-	-	-						B	01	3	4	1	20	1	-	-	-						C															D															E															F														
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<div style="display: flex; justify-content: space-between;"> <div> Officer's Rank and Signature TPR Print Name in Full JARED MORROW </div> <div> Badge/ID No. 3115 NCIC No. 11302 Precinct/Post Troop/Zone K1 Station/Beat Sector 21 </div> <div> Reviewing Officer CLAYTOR, DAVID Date/Time Reviewed 2018/06/03 14:42 </div> </div>																																																																																																																												

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New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
Accident Diagram

ACCIDENT DIAGRAM

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New York State Department of Motor Vehicles
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MV-104A (6/04)

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Local Codes

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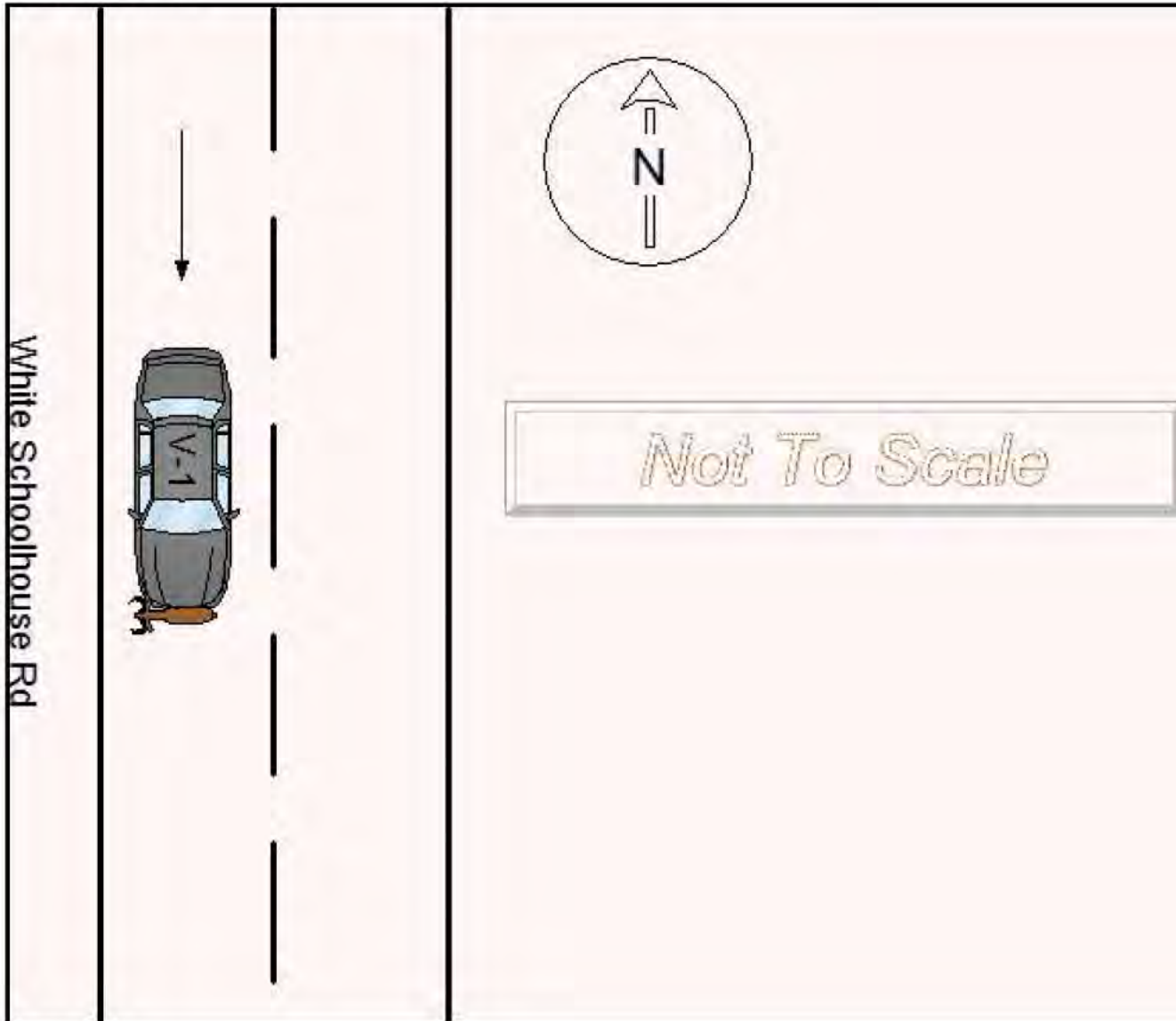
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1	Accident Date			20																																																																																																						
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2	Day of Week FRIDAY		21																																																																																																							
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3	No. of Vehicles 1	No. Injured 0	22																																																																																																							
	No. Killed 0	Not Investigated at Scene <input type="checkbox"/>																																																																																																								
4	Accident Reconstructed <input type="checkbox"/>		23																																																																																																							
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5	Police Photos <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		24																																																																																																							
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6	VEHICLE 1		25																																																																																																							
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7	VEHICLE 2 - Driver License ID Number		26																																																																																																							
	Driver Name - exactly as printed on license																																																																																																									
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11	Unlicensed <input type="checkbox"/>		30																																																																																																							
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17	Plate Number		36																																																																																																							
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18	Vehicle Type		37																																																																																																							
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19	Ticket/Arrest Number(s)		38																																																																																																							
	Violation Section(s)																																																																																																									
20	Check if involved vehicle is:		39																																																																																																							
	<input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.																																																																																																									
21	VEHICLE 1 DAMAGE CODES		40																																																																																																							
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22	Enter up to three more Damage Codes		41																																																																																																							
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23	VEHICLE 2 DAMAGE CODES		42																																																																																																							
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24	Enter up to three more Damage Codes		43																																																																																																							
	Vehicle By Towed To																																																																																																									
25	Circle the diagram below that describes the accident, or draw your own diagram in space #9. Number the vehicles.		44																																																																																																							
	Rear End Left Turn Right Angle Right Turn Head On Sideswipe (same direction) Left Turn Right Turn Sideswipe (opposite direction)																																																																																																									
26	ACCIDENT DIAGRAM		45																																																																																																							
	Diagram is printed on last page.																																																																																																									
27	Cost of repairs to any one vehicle will be more than \$1000.		46																																																																																																							
	<input type="checkbox"/> Unknown/Unable to Determine <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No																																																																																																									
28	Place Where Accident Occurred:		47																																																																																																							
	County DUTC City Village Town of RHINEBECK, TOWN OF																																																																																																									
29	Road on which accident occurred WHITE SCHOOLHOUSE ROAD		48																																																																																																							
	(Route Number or Street Name)																																																																																																									
30	at 1) intersecting street		49																																																																																																							
	(Route Number or Street Name)																																																																																																									
31	or 2) .5 N S E W of .5 miles north of hilltop rd		50																																																																																																							
	Feet Miles (Milepost, Nearest intersecting Route Number or Street Name)																																																																																																									
32	Accident Description/Officer's Notes		51																																																																																																							
	Operator of V-1 is traveling southbound on White School House Road when a deer enters the roadway from the east shoulder. V-1 strikes deer. No injuries reported at scene. Deer dispatched on scene.																																																																																																									
33	Reference Marker		52																																																																																																							
	Coordinates (If available)																																																																																																									
34	Latitude/Northing:		53																																																																																																							
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	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td>8</td><td>9</td><td>10</td><td>11</td><td>12</td><td>13</td><td>14</td><td>15</td><td>16</td><td>17</td><td>BY</td><td>TO</td><td>18</td><td>Names of all involved</td><td>Date of Death Only</td></tr> <tr> <td>A</td><td>01</td><td>1</td><td>4</td><td>1</td><td>42</td><td>1</td><td>-</td><td>-</td><td>-</td><td></td><td></td><td></td><td></td><td></td></tr> <tr> <td>B</td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr> <tr> <td>C</td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr> <tr> <td>D</td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr> <tr> <td>E</td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr> <tr> <td>F</td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr> </table>			8	9	10	11	12	13	14	15	16	17	BY	TO	18	Names of all involved	Date of Death Only	A	01	1	4	1	42	1	-	-	-						B															C															D															E															F												
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37	Officer's Rank and Signature TPR		56																																																																																																							
	Print Name in Full MICHAEL ORCUTT																																																																																																									
38	Badge/ID No. 2029		57																																																																																																							
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39	Precinct/Post Troop/Zone K1		58																																																																																																							
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New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
Accident Diagram

ACCIDENT DIAGRAM



Attachment B
Crash Summaries
Slate Quarry Road/White School House Road

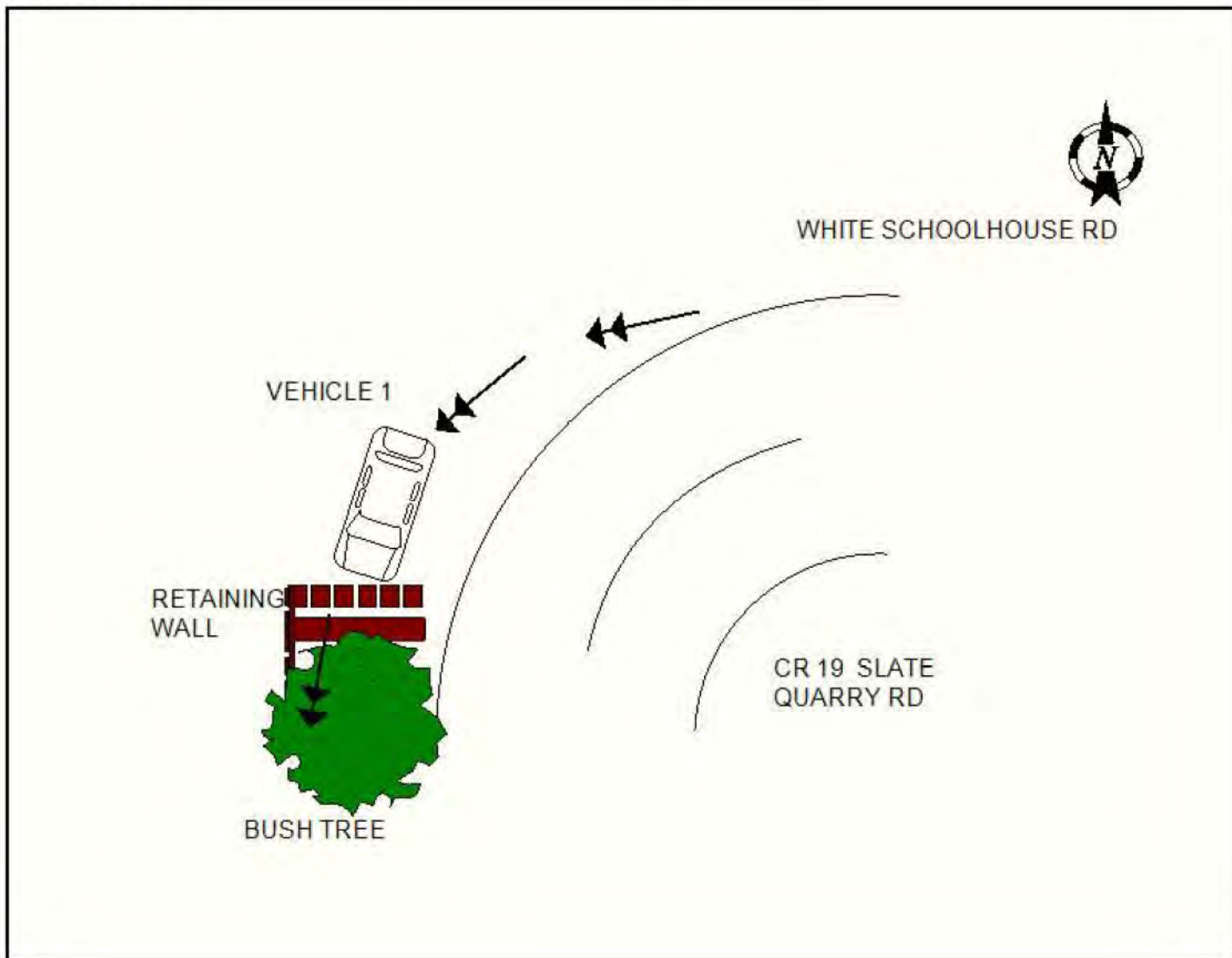
White School House Road Mine
Town of Rhinebeck, New York

Crash Level Details - Slate Quarry Road at White School House Road, Jan 1, 2018 - Dec 31, 2022

Record#	Case Number	Crash Severity	Collision Type	Crash Date	Crash Time	Crash Type	Light Conditions	Road Characteristics	Road Surface Conditions	Traffic Control	Weather Conditions	Commercial Vehicle Crash Indicator	# of Fatalities	# of Injuries	# of Vehicles	Non Reportable	Reporting Agency	On Street	Apparent Contributing Factor	Notes Summary
1	37133922	PROPERTY DAMAGE	OTHER	2/7/2018	10:20 AM	COLLISION WITH BUILDING/WALL	DAYLIGHT	CURVE AND GRADE	SNOW/ICE	NO PASSING ZONE	SNOW	0	0	0	1	0	DUTCHESS CO SHERIFF DEPT	SLATE QUARRY RD	V1:(UNSAFE SPEED,PAVEMENT SLIPPERY)	V1 WB on SQR, going too fast for curve, hits retaining wall and tree
2	37166670	INJURY	OTHER	3/2/2018	11:30 AM	COLLISION WITH OTHER	DAYLIGHT	CURVE AND GRADE	SNOW/ICE	NO PASSING ZONE	SNOW	0	0	1	1	0	RHINEBECK SP	SLATE QUARRY RD	V1:(UNSAFE SPEED,PAVEMENT SLIPPERY)	V1 WB on SQR slides of snow covered road into wooden planter at #219 SQR
3	37201046	PROPERTY DAMAGE	OTHER	3/7/2018	5:37 PM	COLLISION WITH SIGN POST	DUSK	CURVE AND GRADE	SNOW/ICE	STOP SIGN	SNOW	0	0	0	1	0	DUTCHESS CO SHERIFF DEPT	WHITE SCHOOLHOUSE RD	V1:(PAVEMENT SLIPPERY,UNSAFE SPEED)	V1 SB on WSR, lost control on slippery pavement and hits center divide signs
4	37335550	PROPERTY DAMAGE	OTHER	6/17/2018	6:44 AM	COLL. W/LIGHT SUPPORT/UTILITY POLE	DAYLIGHT	STRAIGHT AND LEVEL	DRY	NO PASSING ZONE	CLEAR	0	0	0	1	0	RHINEBECK SP	SLATE QUARRY RD	V1:(TURNING IMPROPER,GLARE)	V1 SB on WSR turns left onto SQR but sun glare causes driver to leave roadway, hit utility pole
5	37528305	INJURY	OTHER	10/13/2018	7:45 AM	COLL. W/EARTH ELE./ROCK CUT/DITCH	DAYLIGHT	CURVE AND GRADE	WET	NO PASSING ZONE	RAIN	0	0	1	1	0	RHINEBECK SP	SLATE QUARRY RD	V1:(UNSAFE SPEED,PAVEMENT SLIPPERY)	V1 WB on SQR, lost control on curve and hit rock embankment
6	37709575	PROPERTY DAMAGE	OTHER	1/20/2019	11:38 AM	COLLISION WITH SIGN POST	DAYLIGHT	CURVE AND GRADE	SNOW/ICE	NO PASSING ZONE	SLEET/HAIL/FREE ZING RAIN	0	0	0	1	0	DUTCHESS CO SHERIFF DEPT	SLATE QUARRY RD	V1:(PAVEMENT SLIPPERY,UNSAFE SPEED)	V1 WB on SQR at unsafe speed for conditions (snow/ice) left road on curve hitting sign and tree
7	37767584	PROPERTY DAMAGE	OTHER	2/27/2019	7:30 PM	COLLISION WITH BUILDING/WALL	DARK-ROAD UNLIGHTED	CURVE AND HILLCREST	SNOW/ICE	NO PASSING ZONE	SNOW	0	0	0	1	0	RHINEBECK SP	SLATE QUARRY RD	V1:(UNSAFE SPEED,PAVEMENT SLIPPERY)	V1 WB on SQR slides of snow covered road into wooden planter at #219 SQR
8	38218661	PROPERTY DAMAGE	OTHER	12/2/2019	9:34 AM	COLLISION WITH SIGN POST	DAYLIGHT	CURVE AND GRADE	SNOW/ICE	NO PASSING ZONE	SNOW	0	0	0	1	0	RHINEBECK SP	SLATE QUARRY RD	V1:(UNSAFE SPEED,PAVEMENT SLIPPERY)	V1 WB on SQR leaves roadway due to unsafe speed and slippery road, hits road sign in intersection
9	38238059	FATAL	OTHER	12/17/2019	1:54 PM	COLLISION WITH PEDESTRIAN	DAYLIGHT	CURVE AND GRADE	SNOW/ICE	NO PASSING ZONE	SLEET/HAIL/FREE ZING RAIN	0	1	3	2	0	DUTCHESS CO SHERIFF DEPT	SLATE QUARRY RD	V1:(PAVEMENT SLIPPERY,UNSAFE SPEED) / V3:(NOT APPLICABLE,NOT APPLICABLE)	V1 WB on SQR leaves roadway due to unsafe speed and snowy road, hits person changing flat in driveway of #219 SQR from previous crash
10	38265436	PROPERTY DAMAGE	OTHER	12/17/2019	1:35 PM	COLL. W/EARTH ELE./ROCK CUT/DITCH	DAYLIGHT	CURVE AND GRADE	SNOW/ICE	NO PASSING ZONE	SNOW	0	0	0	1	0	DUTCHESS CO SHERIFF DEPT	SLATE QUARRY RD	V1:(PAVEMENT SLIPPERY,UNSAFE SPEED)	V1 WB on SQR leaves roadway due to unsafe speed and snowy road, hits stone retaining wall; subsequently killed in separate crash changing tire
11	38703126	PROPERTY DAMAGE	OTHER	11/25/2020	7:07 PM	COLLISION WITH DEER	DARK-ROAD UNLIGHTED	STRAIGHT AND LEVEL	DRY	NO PASSING ZONE	CLEAR	0	0	0	1	1	DUTCHESS CO SHERIFF DEPT	SLATE QUARRY RD	V1:(ANIMALS ACTION,NOT APPLICABLE)	V1 EB on SQR strikes deer in road
12	38722485	PROPERTY DAMAGE	OTHER	2/1/2021	3:45 PM	COLLISION WITH OTHER FIXED OBJECT	DAYLIGHT	CURVE AND GRADE	SNOW/ICE	NO PASSING ZONE	SNOW	0	0	0	1	0	DUTCHESS CO SHERIFF DEPT	SLATE QUARRY RD	V1:(PAVEMENT SLIPPERY,UNSAFE SPEED)	V1 EWB on SQR loses control on slippery pavement and hits planter box and tree
13	38813080	INJURY	OTHER	2/1/2021	4:12 PM	COLLISION WITH MOTOR VEHICLE	DAYLIGHT	CURVE AND GRADE	SNOW/ICE	NO PASSING ZONE	SNOW	0	0	2	3	0	DUTCHESS CO SHERIFF DEPT	SLATE QUARRY RD	V1:(UNSAFE SPEED,PAVEMENT SLIPPERY) / V2:(NOT APPLICABLE,NOT APPLICABLE) / V3:(NOT APPLICABLE,NOT	V1 EB on SQR cross road and hits V2 into ped standing at window and pushes V2 into V3 in driveway #219 SQR
14	38888140	INJURY	OTHER	6/9/2021	7:32 PM	COLL. W/EARTH ELE./ROCK CUT/DITCH	DAYLIGHT	CURVE AND GRADE	WET	NO PASSING ZONE	CLOUDY	0	0	1	1	0	RHINEBECK SP	SLATE QUARRY RD	V1:(UNSAFE SPEED,PAVEMENT SLIPPERY)	V1 WB on SQR sees rabbit in road, swerves, loses control on wet road, hits rock wall and flips onto roof
15	38925568	PROPERTY DAMAGE	OTHER	7/3/2021	6:20 AM	COLLISION WITH SIGN POST	DAWN	CURVE AND GRADE	WET	NO PASSING ZONE	RAIN	0	0	0	1	0	DUTCHESS CO SHERIFF DEPT	SLATE QUARRY RD	V1:(UNSAFE SPEED,NOT APPLICABLE)	V1 WB on SQR at unsafe speed left roadway, hits signs in intersection and guard rail/fence at #219 SQR
16	39252235	PROPERTY DAMAGE	OTHER	2/19/2022	11:30 AM	RAN OFF ROAD ONLY	DAYLIGHT	CURVE AND GRADE	SNOW/ICE	NO PASSING ZONE	SNOW	0	0	0	1	0	RHINEBECK SP	SLATE QUARRY RD	V1:(UNSAFE SPEED,PAVEMENT SLIPPERY)	V1 WB on SQR at unsafe speed for conditions (snow) and attempts to avoid uninvolved vehicle, loses control and hits rock embankment
17	39481366	INJURY	OTHER	8/22/2022	5:08 PM	COLL. W/EARTH ELE./ROCK CUT/DITCH	DAYLIGHT	CURVE AND GRADE	WET	NO PASSING ZONE	RAIN	0	0	1	1	0	RHINEBECK VILLAGE PD	SLATE QUARRY ROAD	V1:(PAVEMENT SLIPPERY,NOT APPLICABLE)	V1 WB on SQR loses control on slippery pavement hiting earth embankment and spinning
18	39545491	PROPERTY DAMAGE	OTHER	10/13/2022	6:00 PM	COLLISION WITH DEER	DAYLIGHT	CURVE AND LEVEL	WET	NO PASSING ZONE	RAIN	0	0	0	1	0	RHINEBECK SP	SLATE QUARRY ROAD	V1:(ANIMALS ACTION,NOT APPLICABLE)	V1 WB on SQR hits deer entering roadway

New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
Accident Diagram

ACCIDENT DIAGRAM



New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT

MV-104A (6/04)

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Local Codes

SP1K35808141

☐ AMENDED REPORT

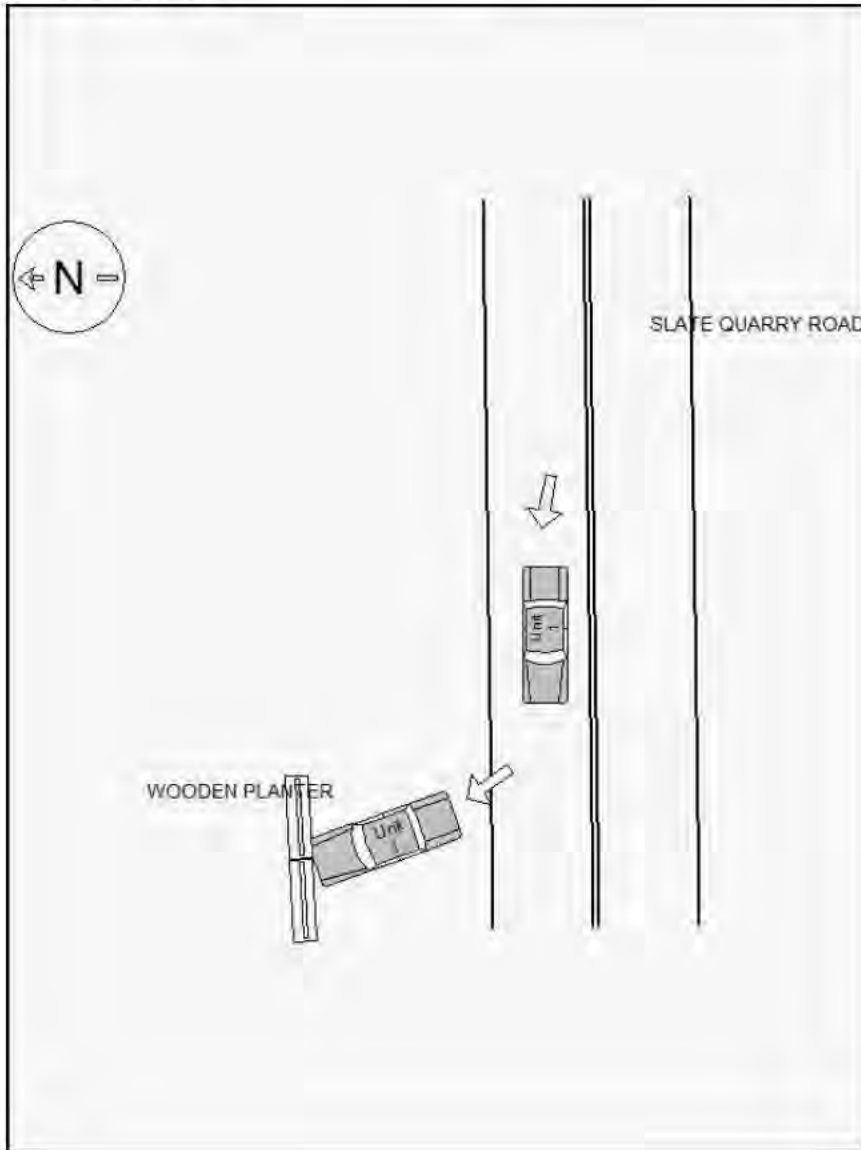
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1	Accident Date			Day of Week	Military Time	No. of Vehicles	No. Injured	No. Killed	Not Investigated at Scene <input type="checkbox"/>	Left Scene	Police Photos	20 66																																																																																																											
	Month 03	Day 02	Year 2018	FRIDAY	1130	1	1	0	Accident Reconstructed <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No																																																																																																												
2	VEHICLE 1						<input type="checkbox"/> VEHICLE 2 <input type="checkbox"/> BICYCLIST <input type="checkbox"/> PEDESTRIAN <input type="checkbox"/> OTHER PEDESTRIAN						21																																																																																																										
							VEHICLE 2 - Driver License ID Number _____ State of Lic. _____ Driver Name - exactly as printed on license _____ Address (Include Number & Street) _____ Apt. No. _____ City or Town _____ State _____ Zip Code _____ Date of Birth _____ Sex _____ Unlicensed <input type="checkbox"/> No. of Occupants _____ Public Property Damaged <input type="checkbox"/> Name - exactly as printed on registration _____ Sex _____ Date of Birth _____ Month _____ Day _____ Year _____ Address (Include Number & Street) _____ Apt. No. _____ Haz. Mat. Code _____ Released <input type="checkbox"/> City or Town _____ State _____ Zip Code _____ Plate Number _____ State of Reg. _____ Vehicle Year & Make _____ Vehicle Type _____ Ins. Code _____							22																																																																																																									
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Accident Description/Officer's Notes OPERATOR OF VEHICLE 1 WAS WESTBOUND ON SLATE QUARRY RD, T/ RHINEBECK. OPERATOR OF VEHICLE 1 SLIDES OFF NORTH SHOULDER OF SNOW COVERED ROAD AND STRIKES A WOODEN PLANTER LOCATED AT 219 SLATE QUARRY RD, T/RHINEBECK.												USE COVER SHEET N																																																																																																											
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Officer's Rank and Signature TPR Print Name in Full KENNETH KELLENBENZ						Badge/ID No. 883		NCIC No. 11302		Precinct/Post Troop/Zone K1		Station/Beat/Sector 21		Reviewing Officer MERGENDAHL, JEF		Date/Time Reviewed 2018/03/02 23:38																																																																																																							

ALL INVOLVED

New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
Accident Diagram

ACCIDENT DIAGRAM



New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT

MV-104A (6/04)

37201046

Local Codes

Q1Z32080T0F7

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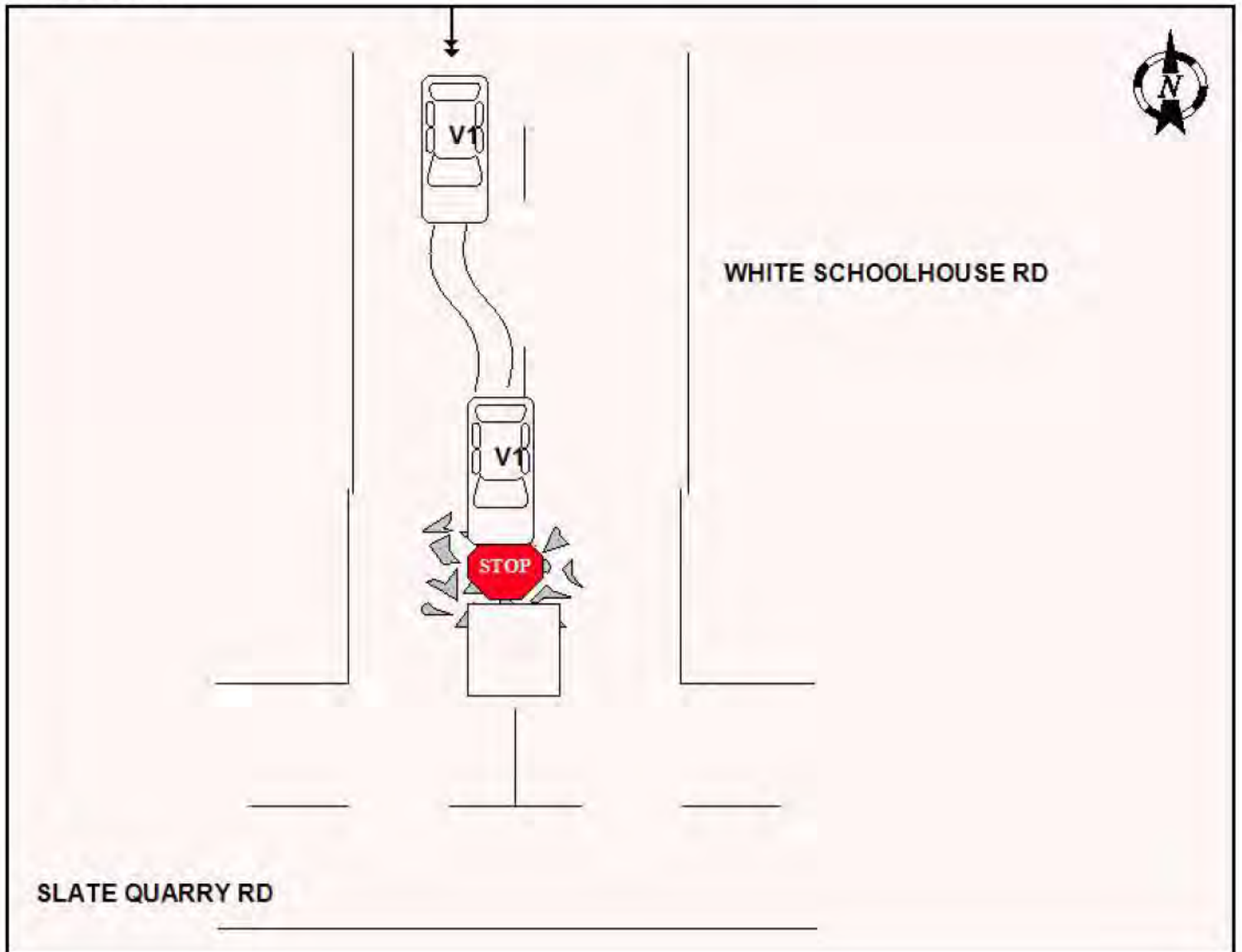
1 - 19 19		Accident Date Month 03 Day 07 Year 2018		Day of Week WEDNES		Military Time 1737		No. of Vehicles 1		No. Injured 0		No. Killed 0		Not Investigated at Scene <input type="checkbox"/>		Left Scene <input type="checkbox"/>		Police Photos <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No																																																																																																														
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3 3 VEHICLE 1 Name-exactly as printed on registration HERTZ VEHICLE, LLC Address (Include Number & Street) 8201 BARTRAM AVE City or Town PHILADELPHIA State PA Zip Code 19153 Plate Number HZK2414 State of Reg. PA Vehicle Year & Make 2017 CHEV Vehicle Type 4DSD Ins. Code 														4 4 VEHICLE 2 Driver License ID Number Driver Name - exactly as printed on license Address (Include Number & Street) Apt. No. City or Town State Zip Code Date of Birth Month Day Year Sex Unlicensed <input type="checkbox"/> No. of Occupants Public Property Damaged <input type="checkbox"/> Name-exactly as printed on registration Sex Date of Birth Month Day Year Address (Include Number & Street) Apt. No. Haz. Mat. Code Released City or Town State Zip Code Plate Number State of Reg. Vehicle Year & Make Vehicle Type Ins. Code 																																																																																																																		
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New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
Accident Diagram

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Accident Diagram

ACCIDENT DIAGRAM

New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT

MV-104A (6/04)

37528305

Local Codes

SP1K308S7G7W

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1 - Accident Date Month 10 Day 13 Year 2018		Day of Week SATURD		Military Time 0745		No. of Vehicles 1		No. Injured 1		No. Killed 0		Not Investigated at Scene <input type="checkbox"/>		Left Scene <input type="checkbox"/>		Police Photos <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		20 66																																																																																																												
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9 Accident Description/Officer's Notes Vehicle operator was traveling W/B on Slate Quarry Rd T/Rhinebeck on a left turn when he lost control of the vehicle and struck a rock embankment. Passenger had a head laceration and received medical attention but denied further care at hospital. Vehicle un driveable and towed away by Rikert's Auto Body Shop.																		28 23																																																																																																												
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11 Officer's Rank and Signature TPR Print Name in Full EVAN BULL Badge/ID No. 227 NCIC No. 11302 Precinct/Post Troop/Zone K1 Station/Beat/Sector 21 Reviewing Officer KYLE, CHRISTOPH Date/Time Reviewed 2018/10/14 08:00																		30																																																																																																												

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New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
Accident Diagram

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New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT

MV-104A (6/04)

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Local Codes

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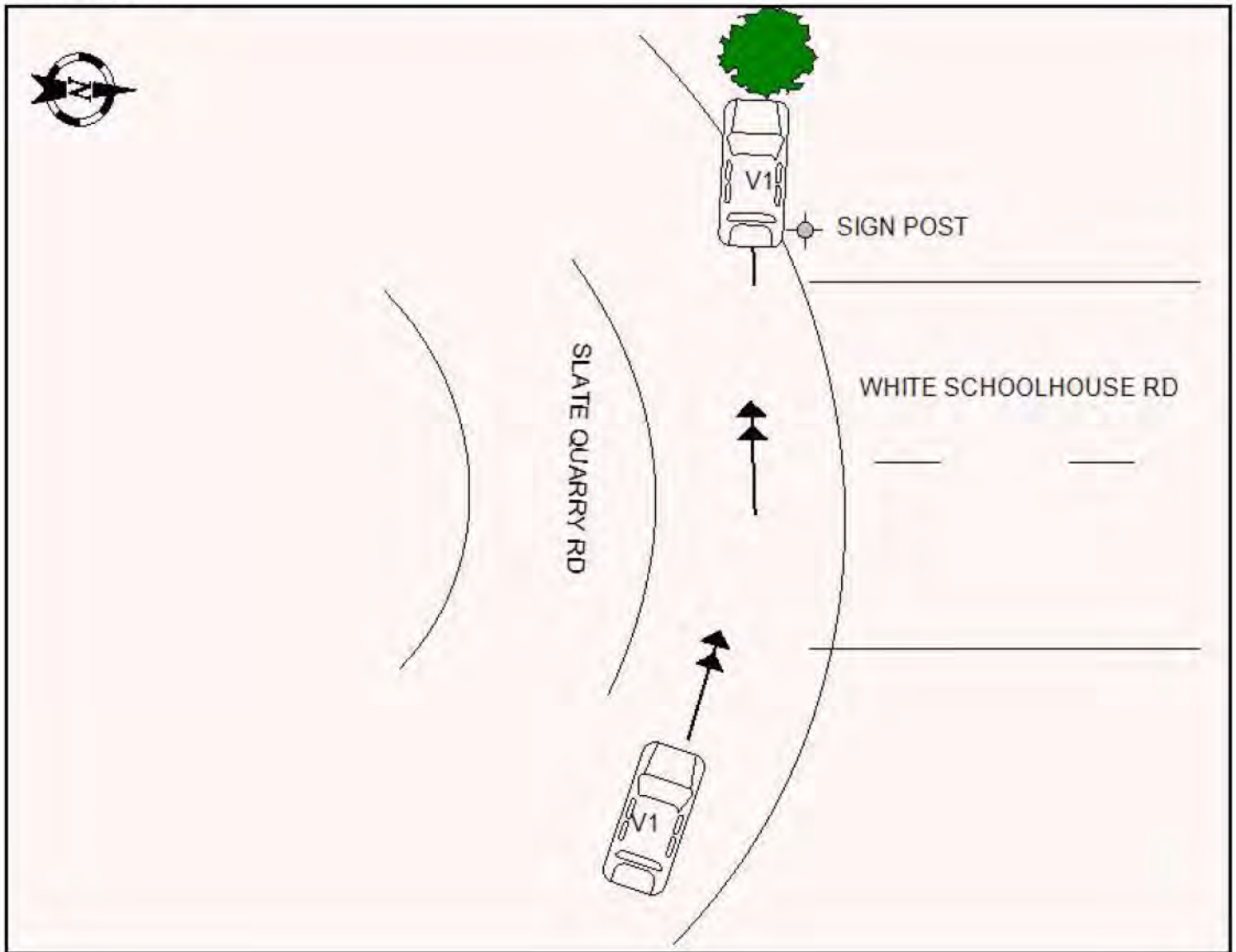
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New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
Accident Diagram

ACCIDENT DIAGRAM



New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT

MV-104A (6/04)

37767584

7

Local Codes

SP1K3098WF57

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1 Accident Date		Day of Week		Military Time		No. of Vehicles		No. Injured		No. Killed		Not Investigated at Scene <input type="checkbox"/>		Left Scene		Police Photos																																																																																																					
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<div style="display: flex; justify-content: space-between;"> <div> VEHICLE 1 <div style="background-color: black; width: 100%; height: 150px; margin-top: 5px;"></div> </div> <div> <input type="checkbox"/> VEHICLE 2 <input type="checkbox"/> BICYCLIST <input type="checkbox"/> PEDESTRIAN <input type="checkbox"/> OTHER PEDESTRIAN VEHICLE 2 - Driver License ID Number _____ State of Lic. _____ Driver Name - exactly as printed on license _____ Address (Include Number & Street) _____ Apt. No. _____ City or Town _____ State _____ Zip Code _____ Date of Birth _____ Sex _____ Unlicensed <input type="checkbox"/> No. of Occupants _____ Public Property Damaged <input type="checkbox"/> Name - exactly as printed on registration _____ Sex _____ Date of Birth _____ Address (Include Number & Street) _____ Apt. No. _____ Haz. Mat. Code _____ Released <input type="checkbox"/> City or Town _____ State _____ Zip Code _____ Plate Number _____ State of Reg. _____ Vehicle Year & Make _____ Vehicle Type _____ Ins. Code _____ </div> </div>																																																																																																																					
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Accident Description/Officer's Notes V-1 traveling west on State Quarry Rd CR-19 at an unsafe speed for snowy conditions travels down a roadway grade subsequently losing control. V-1 traveled off the north bound shoulder side striking a rock wall and then coming to rest on top of a wooden planter bed, in front of the residence of 219 Slate Quarry Rd. No injuries to Operator of V-1. Homeowner was on scene and was notified. Vehicle as towed from the scene.																																																																																																																					
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MV-104A (6/04)

38218661

8

Local Codes

SP1K38B8HP6G

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1	Accident Date			Day of Week	Military Time	No. of Vehicles	No. Injured	No. Killed	Not Investigated at Scene <input type="checkbox"/>	Left Scene	Police Photos	20 66																																																																																																									
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Accident Description/Officer's Notes V1, bearing NY [Redacted] was traveling westbound on Slate Quarry Road in the area of White Schoolhouse Road in the town of Rhinebeck. V1 then exits the northern side of the roadway, subsequently colliding with a road sign at the intersection of White Schoolhouse Road and Slate Quarry road due to unsafe speed and slippery road conditions. V1 operator [Redacted] stated that she was uninjured and declined a medical evaluation. V1 was driven from the scene.																																																																																																																					
ALL INVOLVED	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th>8</th><th>9</th><th>10</th><th>11</th><th>12</th><th>13</th><th>14</th><th>15</th><th>16</th><th>17</th><th>BY</th><th>TO</th><th>18</th><th>Names of all involved</th><th>Date of Death Only</th></tr> <tr> <td>A</td><td>01</td><td>1</td><td>4</td><td>1</td><td>22</td><td>2</td><td>-</td><td>-</td><td>-</td><td></td><td></td><td></td><td>[Redacted]</td><td></td></tr> <tr><td>B</td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr> <tr><td>C</td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr> <tr><td>D</td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr> <tr><td>E</td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr> <tr><td>F</td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr> </table>												8	9	10	11	12	13	14	15	16	17	BY	TO	18	Names of all involved	Date of Death Only	A	01	1	4	1	22	2	-	-	-				[Redacted]		B															C															D															E															F														
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Officer's Rank and Signature <u>TPR</u> Print Name in Full <u>RYAN DISHER</u>						Badge/ID No. <u>2113</u>		NCIC No. <u>11302</u>		Precinct/Post Troop/Zone <u>K1</u>		Station/Beat Sector <u>21</u>		Reviewing Officer <u>HARKLERODE, CH</u>		Date/Time Reviewed <u>2019/12/09 04:10</u>																																																																																																					

USE COVER SHEET

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New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
Accident Diagram

ACCIDENT DIAGRAM

New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT

MV-104A (6/04)

38238059

9

Local Codes

Q1P194BB9B58

☐ AMENDED REPORT

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1	Accident Date	Day of Week	Military Time	No. of Vehicles	No. Injured	No. Killed	Not Investigated at Scene <input type="checkbox"/>	Left Scene	Police Photos																																																																																											
2	Month 12 Day 17 Year 2019	Tues	1354	3	2	1	Accident Reconstructed <input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No																																																																																											
<div style="display: flex; justify-content: space-between;"> <div style="width:48%;"> <p>VEHICLE 1</p> <p>VEHICLE 1 DAMAGE CODES</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td>Box 1 - Point of Impact</td> <td>3</td> <td>1</td> <td>2</td> </tr> <tr> <td>Box 2 - Most Damage</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Enter up to three more Damage Codes</td> <td>3</td> <td>4</td> <td>5</td> </tr> </table> <p>Vehicle By BRANDL'S Towed To DC AUTO CENTER</p> </div> <div style="width:48%;"> <p>VEHICLE 2</p> <p>VEHICLE 2 DAMAGE CODES</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td>Box 1 - Point of Impact</td> <td>1</td> <td>2</td> </tr> <tr> <td>Box 2 - Most Damage</td> <td></td> <td></td> </tr> <tr> <td>Enter up to three more Damage Codes</td> <td>3</td> <td>4</td> </tr> </table> <p>Vehicle By Towed To</p> </div> </div>										Box 1 - Point of Impact	3	1	2	Box 2 - Most Damage				Enter up to three more Damage Codes	3	4	5	Box 1 - Point of Impact	1	2	Box 2 - Most Damage			Enter up to three more Damage Codes	3	4																																																																						
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New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT

MV-104A (6/04)

38238059

Local Codes

Q1P194BB9B58

☐ AMENDED REPORT

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1	Accident Date										20																																																																																																			
2	Month 12	Day 17	Year 2019	Day of Week Tues	Military Time 1354	No. of Vehicles 3	No. Injured 2	No. Killed 1	Not Investigated at Scene <input type="checkbox"/>	Left Scene <input type="checkbox"/>	Police Photos <input type="checkbox"/> Yes <input type="checkbox"/> No																																																																																																			
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14	Driver Name - exactly as printed on license PARKED					Driver Name - exactly as printed on license					21																																																																																																			
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3	Date of Birth		Sex	Unlicensed	No. of Occupants	Public Property Damaged						23																																																																																																		
7	Month	Day	Year	U	<input type="checkbox"/>	2	<input type="checkbox"/>					7																																																																																																		
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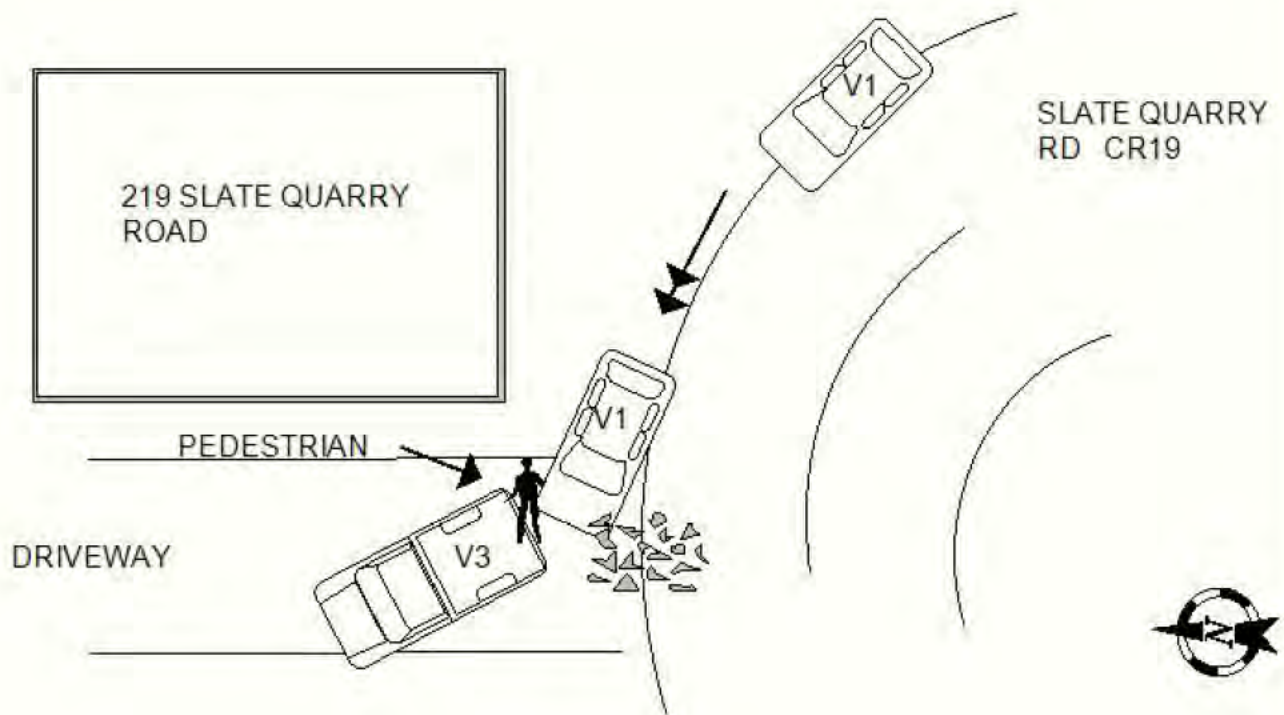
ALL INVOLVED

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New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
Accident Diagram

ACCIDENT DIAGRAM



New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT

MV-104A (6/04)

38265436

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19
66

Local Codes

Q1R301BB6SPS

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1 - Accident Date Month 12 Day 18 Year 2019		Day of Week WEDNES		Military Time 1335		No. of Vehicles 1		No. Injured 0		No. Killed 0		Not Investigated at Scene <input type="checkbox"/>		Left Scene <input type="checkbox"/>		Police Photos <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		20 19																																																																																																												
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Reference Marker		Coordinates (If available)		Place Where Accident Occurred: County DUTC <input type="checkbox"/> City <input type="checkbox"/> Village <input checked="" type="checkbox"/> Town of RHINEBECK, TOWN OF Road on which accident occurred SLATE QUARRY RD at 1) intersecting street WHITE SCHOOLHOUSE RD or 2) _____ of _____ Feet Miles (Milepost, Nearest intersecting Route Number or Street Name)														29																																																																																																												
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<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th>8</th> <th>9</th> <th>10</th> <th>11</th> <th>12</th> <th>13</th> <th>14</th> <th>15</th> <th>16</th> <th>17</th> <th>BY</th> <th>TO</th> <th>18</th> <th>Names of all involved</th> <th>Date of Death Only</th> </tr> </thead> <tbody> <tr> <td>A</td> <td>01</td> <td>1</td> <td>4</td> <td>1</td> <td>56</td> <td>1</td> <td>-</td> <td>-</td> <td>-</td> <td></td> <td></td> <td></td> <td></td> <td rowspan="5" style="background-color: black;"></td> <td></td> </tr> <tr> <td>B</td> <td>01</td> <td>6</td> <td>1</td> <td>1</td> <td>33</td> <td>2</td> <td>-</td> <td>-</td> <td>-</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>C</td> <td>01</td> <td>4</td> <td>1</td> <td>1</td> <td>39</td> <td>2</td> <td>-</td> <td>-</td> <td>-</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>D</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>E</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>F</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>																			8	9	10	11	12	13	14	15	16	17	BY	TO	18	Names of all involved	Date of Death Only	A	01	1	4	1	56	1	-	-	-							B	01	6	1	1	33	2	-	-	-						C	01	4	1	1	39	2	-	-	-						D															E															F																
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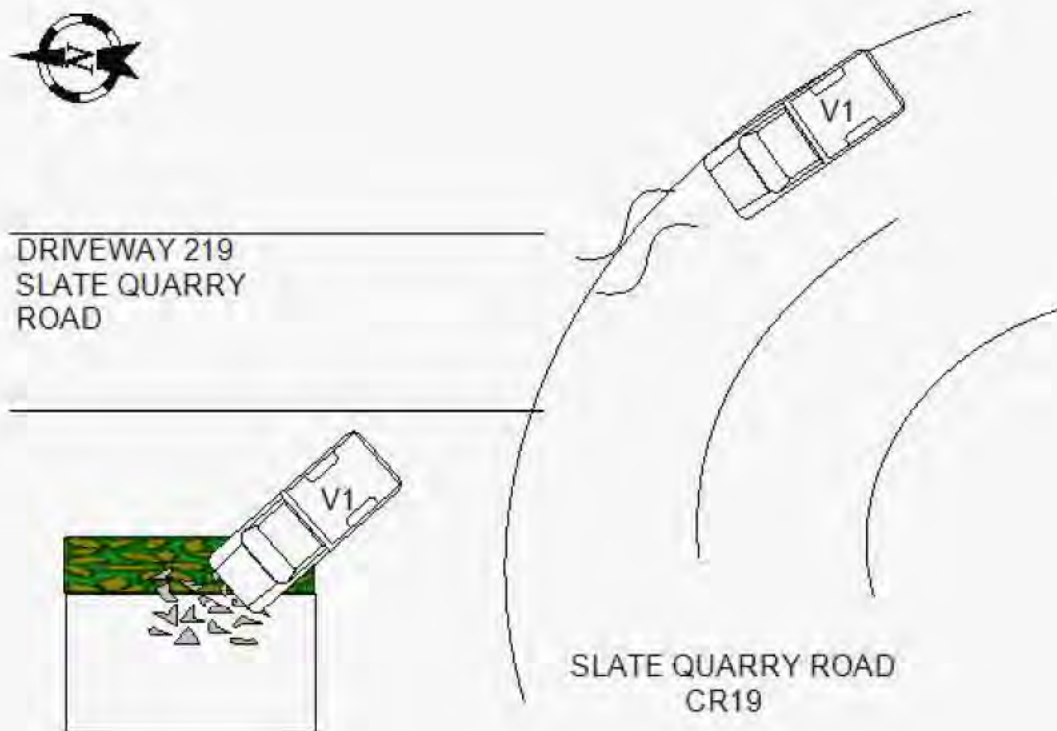
ALL INVOLVED

USE COVER SHEET

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New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
Accident Diagram

ACCIDENT DIAGRAM



New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT

MV-104A (6/04)

38703126

11

19
61

Local Codes

Q1L207CK8JWK

☐ AMENDED REPORT

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1	Accident Date			Day of Week	Military Time	No. of Vehicles	No. Injured	No. Killed	Not Investigated at Scene <input type="checkbox"/>	Left Scene	Police Photos	20			
	Month 11	Day 25	Year 2020	WEDNES	1907	1	0	0	Accident Reconstructed <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
2	VEHICLE 1						<input type="checkbox"/> VEHICLE 2 <input type="checkbox"/> BICYCLIST <input type="checkbox"/> PEDESTRIAN <input type="checkbox"/> OTHER PEDESTRIAN						21		
							VEHICLE 2 - Driver License ID Number _____ State of Lic. _____ Driver Name - exactly as printed on license _____ Address (Include Number & Street) _____ Apt. No. _____ City or Town _____ State _____ Zip Code _____ Date of Birth _____ Sex _____ Unlicensed <input type="checkbox"/> No. of Occupants _____ Public Property Damaged <input type="checkbox"/> Name - exactly as printed on registration _____ Sex _____ Date of Birth _____ Month _____ Day _____ Year _____ Address (Include Number & Street) _____ Apt. No. _____ Haz. Mat. Code _____ Released <input type="checkbox"/> City or Town _____ State _____ Zip Code _____ Plate Number _____ State of Reg. _____ Vehicle Year & Make _____ Vehicle Type _____ Ins. Code _____							22	
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New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
Accident Diagram

ACCIDENT DIAGRAM



SLATE QUARRY RD



New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT

MV-104A (6/04)

38722485

12

Local Codes

Q1P253CS2X7H

☐ AMENDED REPORT

DMV COPY

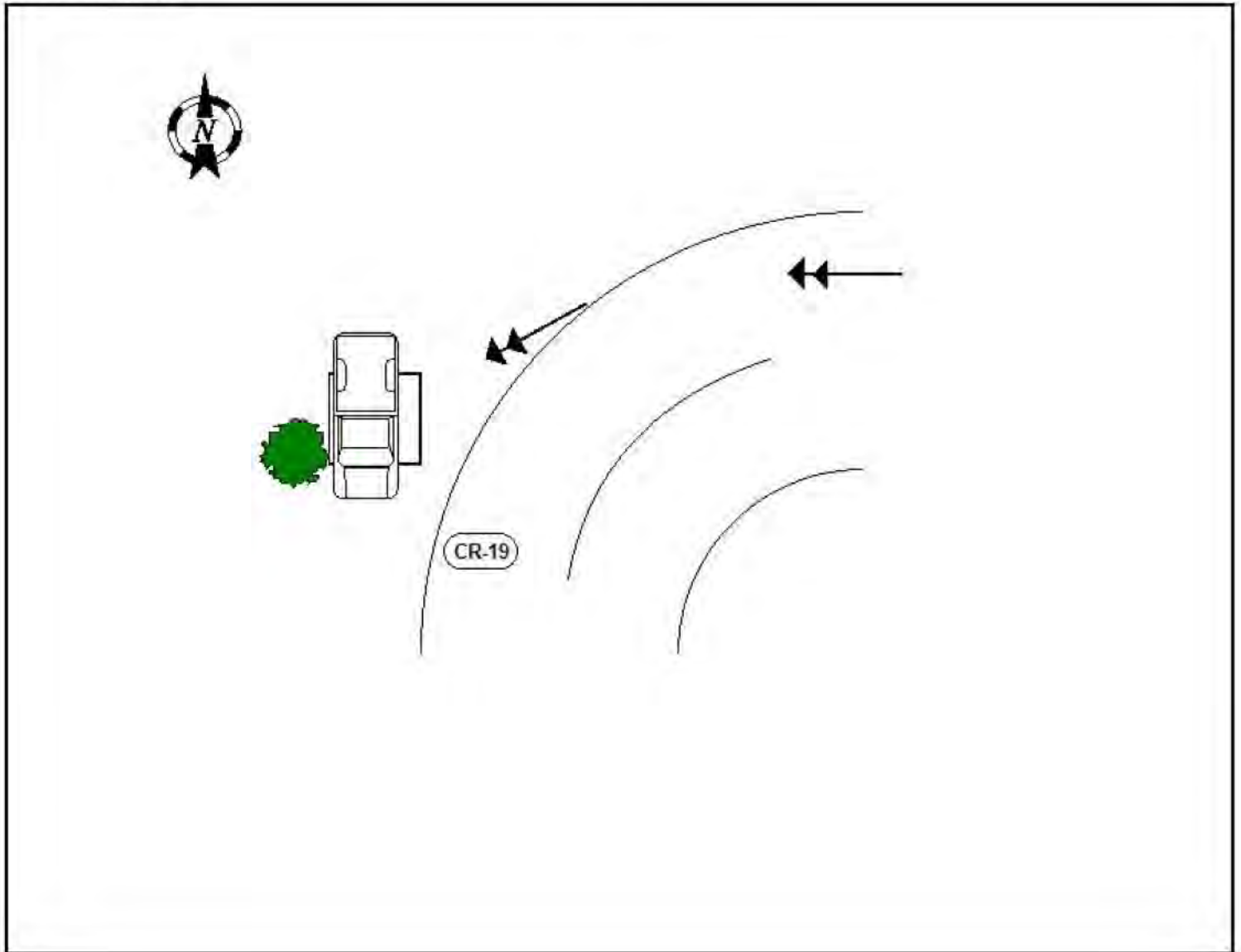
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<div style="display: flex; justify-content: space-between;"> <div> VEHICLE 1 <div style="background-color: black; width: 100%; height: 150px; margin-top: 5px;"></div> </div> <div> <input type="checkbox"/> VEHICLE 2 <input type="checkbox"/> BICYCLIST <input type="checkbox"/> PEDESTRIAN <input type="checkbox"/> OTHER PEDESTRIAN VEHICLE 2 - Driver License ID Number _____ State of Lic. _____ Driver Name - exactly as printed on license _____ Address (Include Number & Street) _____ Apt. No. _____ City or Town _____ State _____ Zip Code _____ Date of Birth _____ Sex _____ Unlicensed <input type="checkbox"/> No. of Occupants _____ Public Property Damaged <input type="checkbox"/> Month Day Year Name - exactly as printed on registration _____ Sex _____ Date of Birth _____ Month Day Year Address (Include Number & Street) _____ Apt. No. _____ Haz. Mat. Code _____ Released <input type="checkbox"/> City or Town _____ State _____ Zip Code _____ Plate Number _____ State of Reg. _____ Vehicle Year & Make _____ Vehicle Type _____ Ins. Code _____ </div> </div>												21																																																																																																									
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Reference Marker _____ Coordinates (If available) _____ Latitude/Northing: 595108 Longitude/Easting: 4640657 Place Where Accident Occurred: County DUTC <input type="checkbox"/> City <input type="checkbox"/> Village <input checked="" type="checkbox"/> Town of RHINEBECK, TOWN OF Road on which accident occurred SLATE QUARRY RD (Route Number or Street Name) at 1) intersecting street _____ (Route Number or Street Name) or 2) 100 _____ <input type="checkbox"/> N <input type="checkbox"/> S <input type="checkbox"/> E <input checked="" type="checkbox"/> W of white school house rd Feet Miles (Milepost, Nearest intersecting Route Number or Street Name)												25																																																																																																									
Accident Description/Officer's Notes V-1 WAS TRAVELING IN A WESTERLY DIRECTION ON CR-19. OPERATOR LOST CONTROL OF VEHICLE ON SLIPPERY PAVEMENT AND SLID OFF THE NORTH SIDE OF THE ROADWAY. V-1 DROVE UP ON A RAISED PLANTER BOX BEFORE STRIKING A TREE AND COMING TO REST.												26																																																																																																									
Cost of repairs to any one vehicle will be more than \$1000. <input type="checkbox"/> Unknown/Unable to Determine <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No												27																																																																																																									
ALL INVOLVED <table border="1" style="width:100%; border-collapse: collapse; font-size: x-small;"> <tr> <th>8</th> <th>9</th> <th>10</th> <th>11</th> <th>12</th> <th>13</th> <th>14</th> <th>15</th> <th>16</th> <th>17</th> <th>BY</th> <th>TO</th> <th>18</th> <th>Names of all involved</th> <th>Date of Death Only</th> </tr> <tr> <td>A</td> <td>01</td> <td>1</td> <td>4</td> <td>1</td> <td>20</td> <td>1</td> <td>-</td> <td>-</td> <td>-</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>B</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>C</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>D</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>E</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>F</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </table>												8	9	10	11	12	13	14	15	16	17	BY	TO	18	Names of all involved	Date of Death Only	A	01	1	4	1	20	1	-	-	-						B															C															D															E															F															28
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Officer's Rank and Signature Deputy Sheriff Print Name in Full J O'BRIEN Badge/ID No. 33 NCIC No. 01300 Precinct/Post Troop/Zone 1 Station/Beat/Sector Reviewing Officer HAIRE, STEVEN Date/Time Reviewed 2021/02/03 10:35												29																																																																																																									

USE
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New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
Accident Diagram

ACCIDENT DIAGRAM



New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT

MV-104A (6/04)

38813080

13

Local Codes

Q1H403CS9C74

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1 2	Accident Date			Day of Week	Military Time	No. of Vehicles	No. Injured	No. Killed	Not Investigated at Scene <input type="checkbox"/>	Left Scene	Police Photos
	Month 02	Day 01	Year 2021	Mon	1612	4	2	0	Accident Reconstructed <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

VEHICLE 1

☒ VEHICLE 2 ☐ BICYCLIST ☐ PEDESTRIAN ☐ OTHER PEDESTRIAN

2 14												21
3 7												22

4 1	Name—exactly as printed on registration dutchess;cnty;shrffs; ofc								Sex C	Date of Birth Month Day Year		23 7
	Address (Include Number & Street) 570 SALT POINT TPKE								Apt. No.	Haz. Mat. Code -	Released <input type="checkbox"/>	
5 5	City or Town POUGHKEEPSIE								State NY	Zip Code 12601		24 1
	Plate Number POLICE		State of Reg. NY		Vehicle Year & Make 2016 FORD		Vehicle Type PICK		Ins. Code			

5 5	Ticket/Arrest Number(s) P220CS33CT					Ticket/Arrest Number(s)					25 1
Violation Section(s) 4023					Violation Section(s)					26 10	

6 4	Check if involved vehicle is: <input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.					Check if involved vehicle is: <input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.					Circle the diagram below that describes the accident, or draw your own diagram in space #9. Number the vehicles.					27 2
	VEHICLE 1 DAMAGE CODES Box 1 - Point of Impact Box 2 - Most Damage Enter up to three more Damage Codes					VEHICLE 2 DAMAGE CODES Box 1 - Point of Impact Box 2 - Most Damage Enter up to three more Damage Codes					ACCIDENT DIAGRAM Rear End Left Turn Right Angle Right Turn Head On Sideswipe (same direction) Left Turn Right Turn Sideswipe (opposite direction)					28 1

Vehicle Damage Coding: 1-13. SEE DIAGRAM ON RIGHT. 14. UNDERCARRIAGE 17. DEMOLISHED 15. TRAILER 18. NO DAMAGE 16. OVERTURNED 19. OTHER										Diagram is printed on last page										29
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Reference Marker		Coordinates (if available)		Place Where Accident Occurred: County <u>DUTC</u> <input type="checkbox"/> City <input type="checkbox"/> Village <input checked="" type="checkbox"/> Town of <u>RHINEBECK, TOWN OF</u> Road on which accident occurred <u>SLATE QUARRY RD (CR-19)</u> (Route Number or Street Name) at 1) intersecting street _____ (Route Number or Street Name) or 2) <u>50</u> <input type="checkbox"/> N <input type="checkbox"/> S <input type="checkbox"/> E <input checked="" type="checkbox"/> W of <u>white school house rd (town road)</u> Feet Miles (Milepost, Nearest intersecting Route Number or Street Name)										30 2
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Accident Description/Officer's Notes Veh #2 parked in private drive at 219 Slate Quarry road (cr-19) Veh #2 is marked DCSO unit DC-33 (county # 6102). Pedestrian is standing at driver's side window of veh #2. Veh #1 traveling on roadway at speed not prudent for slippery pavement (snow). Operator of veh #1 loses control of vehicle. vehicle #1 exits roadway, and strikes veh #2. Veh #2 is subsequently pushed into the pedestrian and into veh #3 which is parked in driveway. Veh #3 is pushed into structure. Veh #1 is towing an unregistered homemade trailer. - WITNESS 1												31 2
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8	9	10	11	12	13	14	15	16	17	BY	TO	18	Names of all involved		Date of Death Only
A	01	1	A	1	19	1	-	-	-						
B	02	1	1	1	52	1	11	12	6						
C															
D															
E															
F															

Officer's Rank and Signature SERGEANT Print Name in Full T WYMAN		Badge/ID No. 77	NCIC No. 01300	Precinct/Post Troop/Zone 1	Station/Beat/Sector POK	Reviewing Officer FEMENELLA, M	Date/Time Reviewed 2021/02/04 22:25
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ALL INVOLVED

USE COVER SHEET

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New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT

MV-104A (6/04)

38813080

Local Codes

Q1H403CS9C74

☐ AMENDED REPORT

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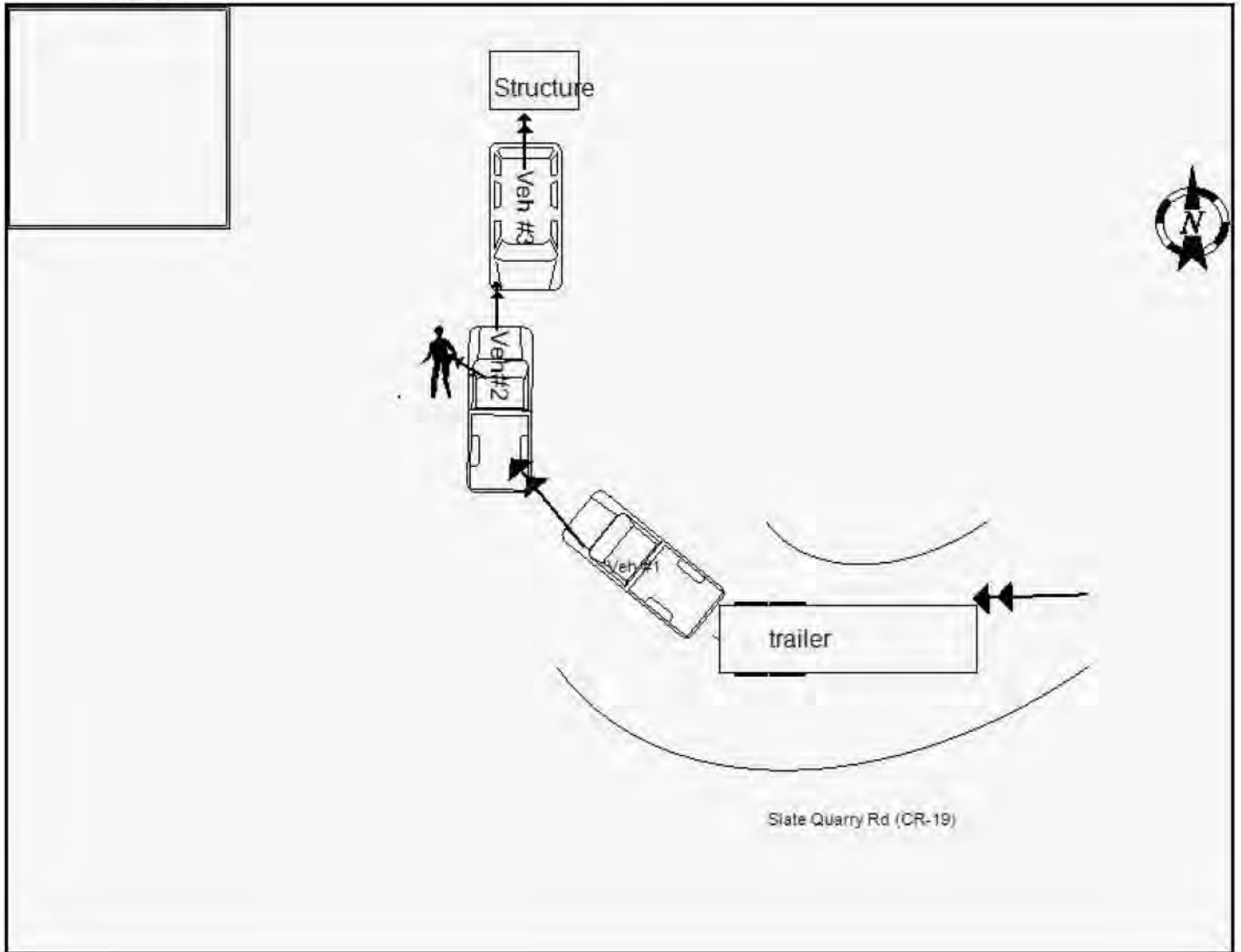
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3	Date of Birth Month Day Year	Sex U	Unlicensed <input type="checkbox"/>	No. of Occupants 0	Public Property Damaged <input type="checkbox"/>							21																																																																																																								
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Place Where Accident Occurred: County <u>DUTC</u> <input type="checkbox"/> City <input type="checkbox"/> Village <input checked="" type="checkbox"/> Town of <u>RHINEBECK, TOWN OF</u> Road on which accident occurred <u>SLATE QUARRY RD (CR-19)</u> (Route Number or Street Name) at 1) intersecting street _____ (Route Number or Street Name) or 2) <u>50</u> <input type="checkbox"/> N <input type="checkbox"/> S <input type="checkbox"/> E <input checked="" type="checkbox"/> W of <u>white school house rd (town road)</u> (Milepost, Nearest intersecting Route Number or Street Name)																																																																																																																				
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<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:5%;">8</td> <td style="width:5%;">9</td> <td style="width:5%;">10</td> <td style="width:5%;">11</td> <td style="width:5%;">12</td> <td style="width:5%;">13</td> <td style="width:5%;">14</td> <td style="width:5%;">15</td> <td style="width:5%;">16</td> <td style="width:5%;">17</td> <td style="width:5%;">BY</td> <td style="width:5%;">TO</td> <td style="width:5%;">18</td> <td style="width:5%;">Names of all involved</td> <td style="width:5%;">Date of Death Only</td> </tr> <tr> <td>A</td> <td>03</td> <td>I</td> <td>-</td> <td>-</td> <td>X</td> <td>U</td> <td>-</td> <td>-</td> <td>-</td> <td></td> <td></td> <td></td> <td>PARKED</td> <td></td> </tr> <tr> <td>B</td> <td>P04</td> <td>-</td> <td>-</td> <td>-</td> <td>20</td> <td>1</td> <td>8</td> <td>12</td> <td>6</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>C</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>D</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>E</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>F</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </table>												8	9	10	11	12	13	14	15	16	17	BY	TO	18	Names of all involved	Date of Death Only	A	03	I	-	-	X	U	-	-	-				PARKED		B	P04	-	-	-	20	1	8	12	6						C															D															E															F														
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Officer's Rank and Signature <u>SERGEANT</u> Print Name in Full <u>T WYMAN</u>												Badge/ID No. 77	NCIC No. 01300	Precinct/Post Troop/Zone 1	Station/Beat/Sector POK	Reviewing Officer FEMENELLA, M	Date/Time Reviewed 2021/02/04 22:25																																																																																																			

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New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
Accident Diagram

ACCIDENT DIAGRAM



New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT

MV-104A (6/04)

38888140

14

Local Codes

SP1K31D7R184

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DMV COPY

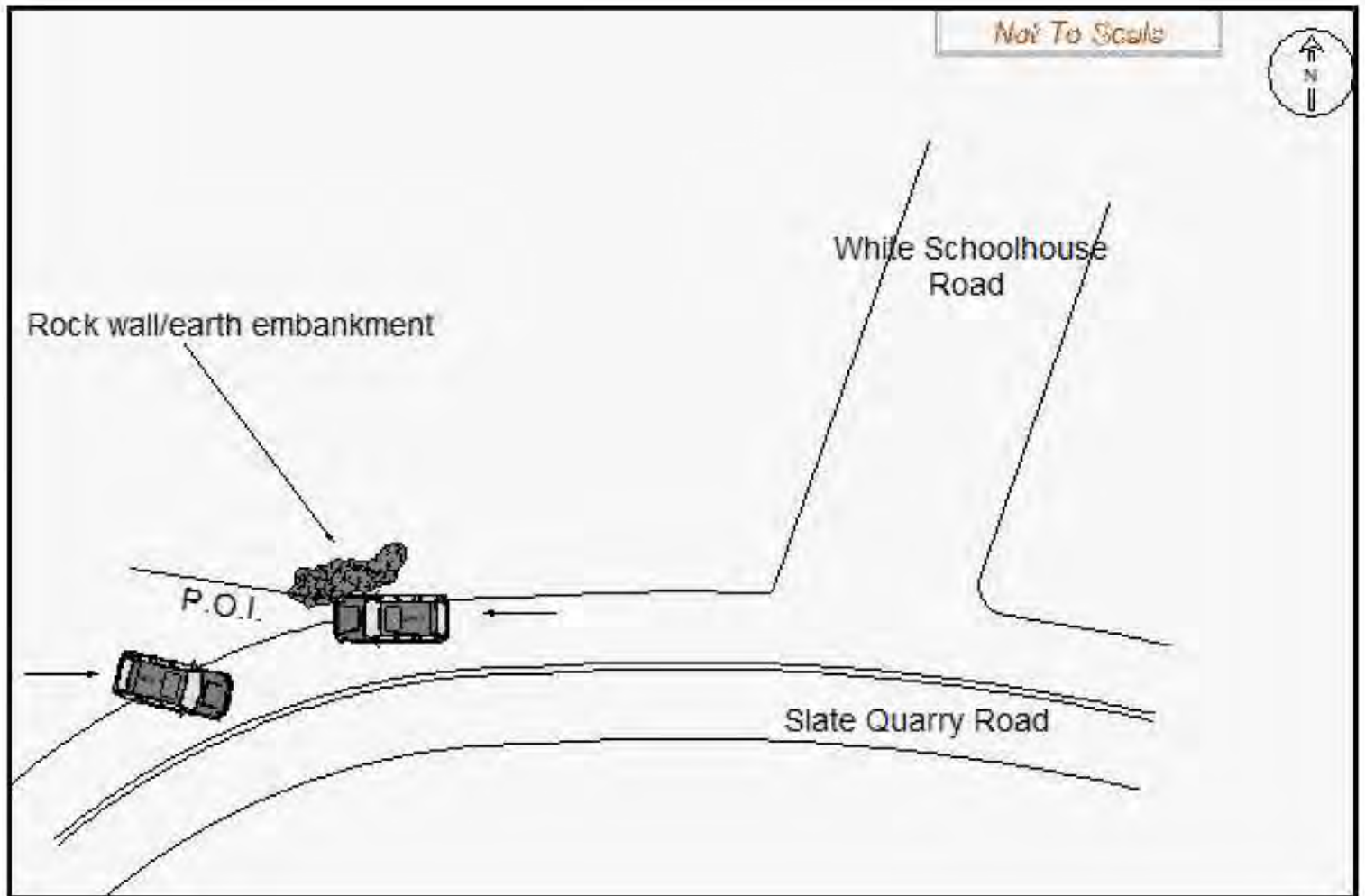
1	Accident Date Month 06 Day 09 Year 2021		Day of Week WEDNES		Military Time 1932		No. of Vehicles 1	No. Injured 1	No. Killed 0	Not Investigated at Scene <input type="checkbox"/>	Left Scene <input type="checkbox"/>	Police Photos <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
2	VEHICLE 1							<input type="checkbox"/> VEHICLE 2 <input type="checkbox"/> BICYCLIST <input type="checkbox"/> PEDESTRIAN <input type="checkbox"/> OTHER PEDESTRIAN State of Lic. _____ Driver Name - exactly as printed on license _____ Address (Include Number & Street) _____ Apt. No. _____ City or Town _____ State _____ Zip Code _____ Date of Birth _____ Sex _____ Unlicensed <input type="checkbox"/> No. of Occupants _____ Public Property Damaged <input type="checkbox"/> Name - exactly as printed on registration _____ Sex _____ Date of Birth _____ Address (Include Number & Street) _____ Apt. No. _____ Haz. Mat. Code _____ Released <input type="checkbox"/> City or Town _____ State _____ Zip Code _____ Plate Number _____ State of Reg. _____ Vehicle Year & Make _____ Vehicle Type _____ Ins. Code _____						
3	Ticket/Arrest Number(s) 1K31D7R1X5							Ticket/Arrest Number(s) _____						
4	Violation Section(s) 1180A							Violation Section(s) _____						
5	Check if involved vehicle is: <input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.							Check if involved vehicle is: <input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.						
6	VEHICLE 1 DAMAGE CODES Box 1 - Point of Impact 3 1 2 Box 2 - Most Damage 17 Enter up to three more Damage Codes 3 4 5 Vehicle By JOHNS Towed To JOHNS							VEHICLE 2 DAMAGE CODES Box 1 - Point of Impact 1 2 Box 2 - Most Damage 17 Enter up to three more Damage Codes 3 4 5 Vehicle By _____ Towed To _____						
7	VEHICLE DAMAGE CODING: 1-13. SEE DIAGRAM ON RIGHT. 14. UNDERCARRIAGE 17. DEMOLISHED 15. TRAILER 18. NO DAMAGE 16. OVERTURNED 19. OTHER							Circle the diagram below that describes the accident, or draw your own diagram in space #9. Number the vehicles. Rear End Left Turn Right Angle Right Turn Head On 1. 3. 5. 7. Sideswipe (same direction) Left Turn Right Turn Sideswipe (opposite direction) 2. 4. 6. 8. ACCIDENT DIAGRAM 9. DIAGRAM IS PRINTED ON LAST PAGE Cost of repairs to any one vehicle will be more than \$1000. <input type="checkbox"/> Unknown/Unable to Determine <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No						
8	Reference Marker							Coordinates (If available)						
9	Latitude/Northing: 595107							Longitude/Easting: 4640681						
10	Place Where Accident Occurred:							County DUTC <input type="checkbox"/> City <input type="checkbox"/> Village <input checked="" type="checkbox"/> Town of RHINEBECK, TOWN OF						
11	Road on which accident occurred SLATE QUARRY ROAD							(Route Number or Street Name)						
12	at 1) intersecting street _____							(Route Number or Street Name)						
13	or 2) 91 <input type="checkbox"/> N <input type="checkbox"/> S <input type="checkbox"/> E <input checked="" type="checkbox"/> W of Slate Quarry Road and White Schoolhouse Road							(Milepost, Nearest intersecting Route Number or Street Name)						
14	Feet Miles													
15	Accident Description/Officer's Notes													
16	Operator of V1 was traveling West on Slate Quarry Road and lost control of her vehicle on wet roads and went off the Northern shoulder of the roadway striking a rock wall / earth embankment with the front passenger side of the vehicle, causing V1 to spin around and rollover onto its roof and continue to slide West on its roof coming to rest facing East, on its roof. Operator of V1 stated that she saw a rabbit in the road which she attempted to slow down and avoid, and as a result lost control of her vehicle.													
17	ALL INVOLVED													
18	8 9 10 11 12 13 14 15 16 17 BY TO 18 A 01 1 4 1 19 2 1 12 6 NDP EMS 1307 B C D E F													
19	Officer's Rank and Signature TPR							Date/Time Reviewed 2021/06/12 14:00						
20	Print Name in Full ERIC ORDWAY							Badge/ID No. 3552 NCIC No. 11302 Precinct/Post Troop/Zone K1 Station/Beat Sector 21 Reviewing Officer SCHAEFER, ERICH						

USE COVER SHEET

N

New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
Accident Diagram

ACCIDENT DIAGRAM



New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT

MV-104A (6/04)

38925568

15

Local Codes

Q1P213DB9PZG

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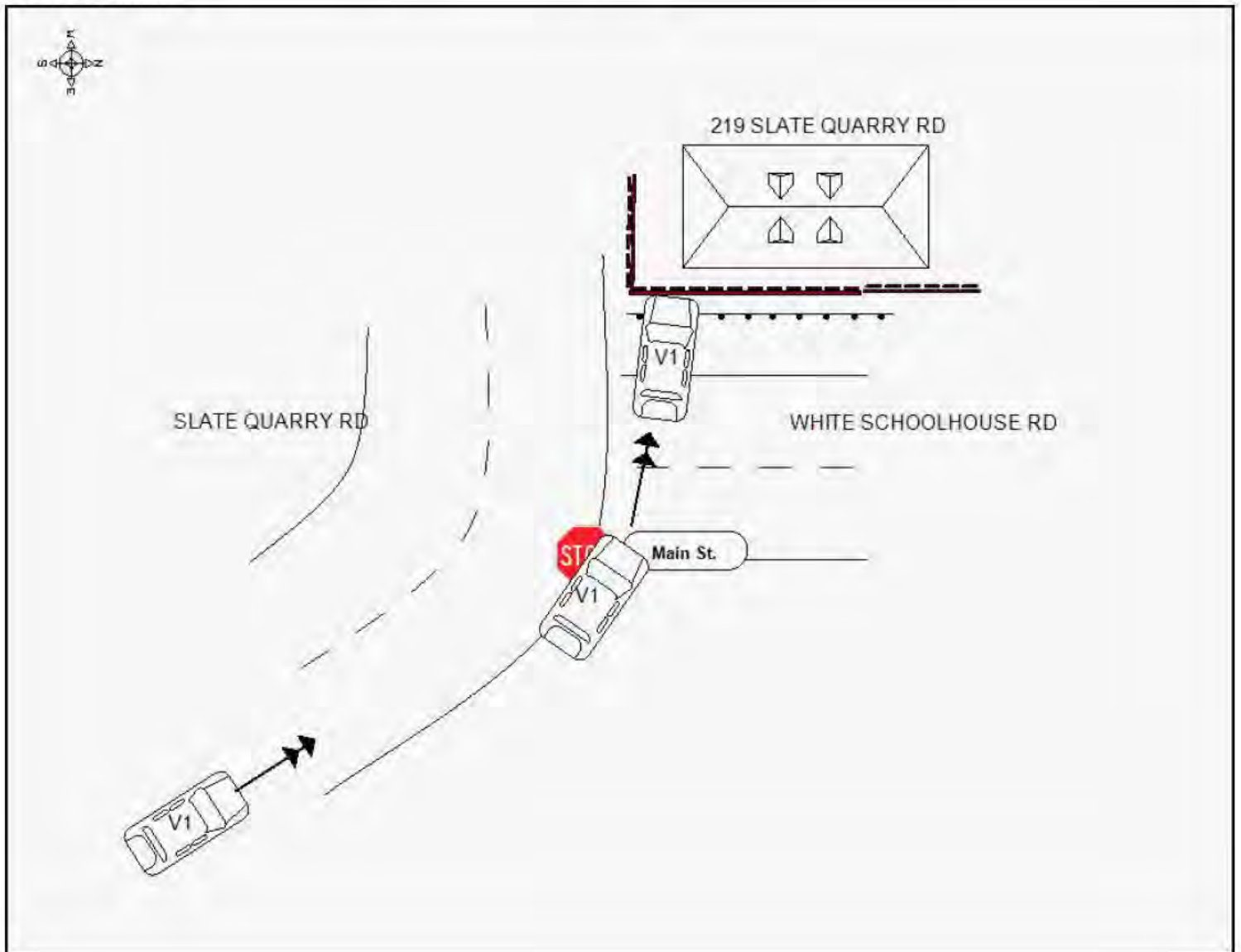
1	Accident Date Month 07 Day 03 Year 2021		Day of Week SATURD		Military Time 0620		No. of Vehicles 1		No. Injured 0		No. Killed 0		Not Investigated at Scene <input type="checkbox"/>		Left Scene <input type="checkbox"/>		Police Photos <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No															
2	VEHICLE 1												<input type="checkbox"/> VEHICLE 2		<input type="checkbox"/> BICYCLIST		<input type="checkbox"/> PEDESTRIAN		<input type="checkbox"/> OTHER PEDESTRIAN													
3	VEHICLE 2 - Driver License ID Number												State of Lic.																			
4	Driver Name - exactly as printed on license																															
5	Address (Include Number & Street)												Apt. No.																			
6	City or Town												State		Zip Code																	
7	Date of Birth Month Day Year												Sex		Unlicensed <input type="checkbox"/>		No. of Occupants		Public Property Damaged <input type="checkbox"/>													
8	Name - exactly as printed on registration												Sex		Date of Birth Month Day Year																	
9	Address (Include Number & Street)												Apt. No.		Haz. Mat. Code		Released <input type="checkbox"/>															
10	City or Town												State		Zip Code																	
11	Plate Number				State of Reg.				Vehicle Year & Make				Vehicle Type				Ins. Code															
12	Ticket/Arrest Number(s)												Ticket/Arrest Number(s)																			
13	Violation Section(s)												Violation Section(s)																			
14	Check if involved vehicle is: <input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.												Check if involved vehicle is: <input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.																			
15	VEHICLE 1 DAMAGE CODES Box 1 - Point of Impact Box 2 - Most Damage Enter up to three more Damage Codes												VEHICLE 2 DAMAGE CODES Box 1 - Point of Impact Box 2 - Most Damage Enter up to three more Damage Codes																			
16	Vehicle Towed: By CLINTON TOWING To MATT'S AUTOBODY												Vehicle Towed: By To																			
17	VEHICLE DAMAGE CODING: 1-13. SEE DIAGRAM ON RIGHT. 14. UNDERCARRIAGE 17. DEMOLISHED 15. TRAILER 18. NO DAMAGE 16. OVERTURNED 19. OTHER												Circle the diagram below that describes the accident, or draw your own diagram in space #9. Number the vehicles. Rear End Left Turn Right Angle Right Turn Head On Sideswipe (same direction) Left Turn Right Turn Sideswipe (opposite direction) ACCIDENT DIAGRAM DIAGRAM IS PRINTED ON LAST PAGE Cost of repairs to any one vehicle will be more than \$1000. <input type="checkbox"/> Unknown/Unable to Determine <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No																			
18	Reference Marker Coordinates (if available) Latitude/Northing: Longitude/Easting:												Place Where Accident Occurred: County DUTC City Village <input checked="" type="checkbox"/> Town of RHINEBECK, TOWN OF Road on which accident occurred SLATE QUARRY RD at 1) intersecting street WHITE SCHOOLHOUSE RD or 2) _____ of _____ Feet Miles (Milepost, Nearest intersecting Route Number or Street Name)																			
19	Accident Description/Officer's Notes V1 WAS TRAVELING IN A WESTERLY DIRECTION ON SLATE QUARRY RD IN THE TOWN OF RHINEBECK WHEN THE OPERATOR OF V1 WAS TRAVELING AT AN UNSAFE SPEED AND FAILED TO NEGOTIATE A SLIGHT LEFT HAND TURN AT THE INTERSECTION OF WHITE SCHOOLHOUSE RD. THE OPERATOR OF V1 STRUCK A FIXED STOP SIGN, FIXED STREET SIGN DISPLAYING "WHITE SCHOOLHOUSE RD" AND CONTINUED THROUGH STRIKING A GUARD RAIL WHICH CAUSED DAMAGE TO A MAILBOX AND VINYL FENCING BELONGING TO THE RESIDENCE OF 219 SLATE QUARRY RD.																															
20	ALL INVOLVED 8 9 10 11 12 13 14 15 16 17 BY TO 18 Names of all involved Date of Death Only A 01 1 4 1 24 1 - - - B C D E F																															
21	Officer's Rank and Signature DEPUTY SHI Print Name in Full C SHORT												Badge/ID No. 792		NCIC No. 01300		Precinct/Post Troop/Zone		Station/Beat/ Sector		Reviewing Officer STUART, N		Date/Time Reviewed 2021/07/09 03:27									

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New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
Accident Diagram

ACCIDENT DIAGRAM



New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT

MV-104A (6/04)

39252235

16

Local Codes

SP1K30F4X1S4

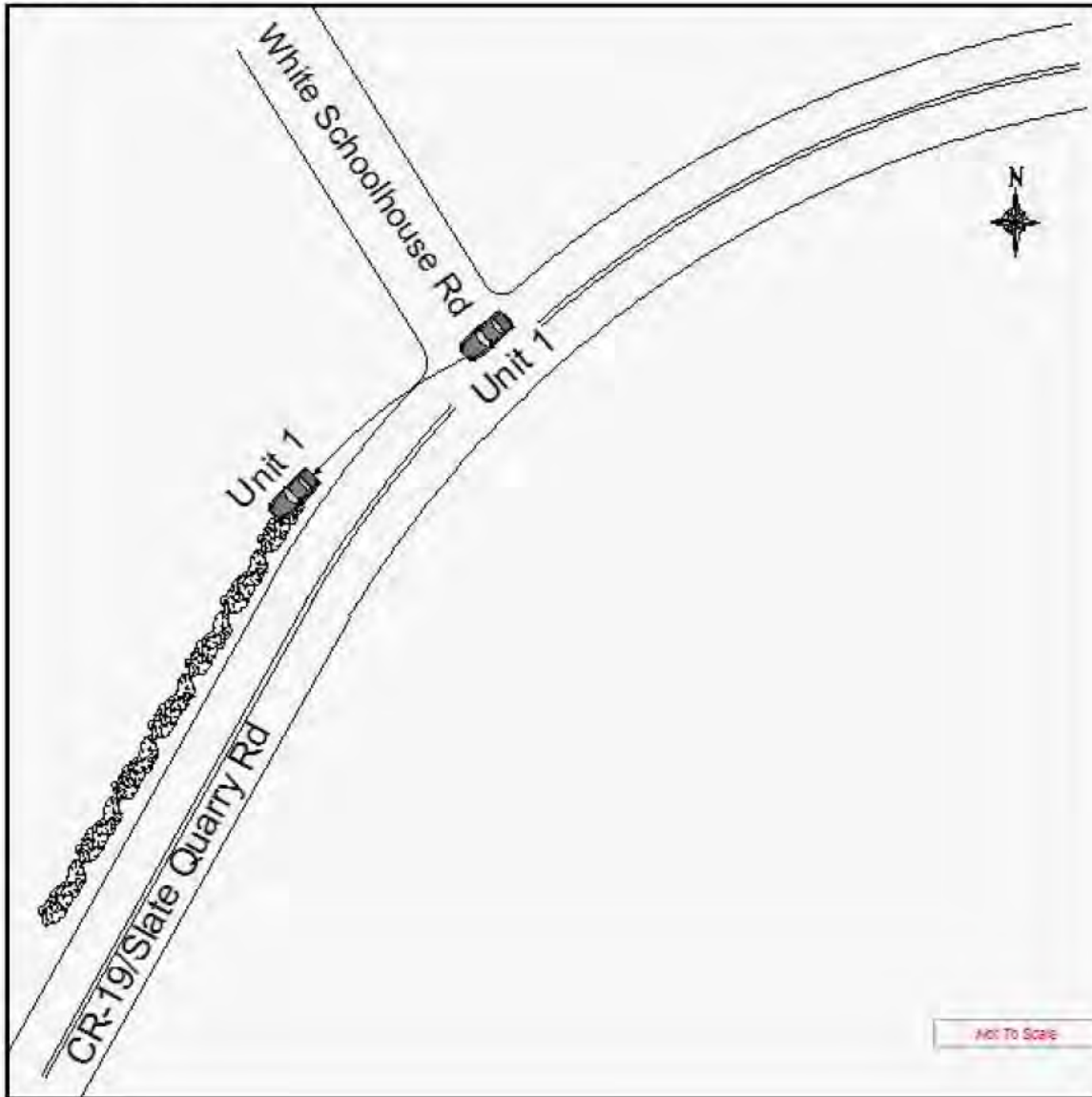
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1	Accident Date Month 02 Day 19 Year 2022		Day of Week SATURD	Military Time 1130	No. of Vehicles 1	No. Injured 0	No. Killed 0	Not Investigated at Scene <input type="checkbox"/>	Left Scene <input type="checkbox"/>	Police Photos <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	20 66					
2	VEHICLE 1					<input type="checkbox"/> VEHICLE 2 <input type="checkbox"/> BICYCLIST <input type="checkbox"/> PEDESTRIAN <input type="checkbox"/> OTHER PEDESTRIAN						21				
3						VEHICLE 2 - Driver License ID Number Driver Name - exactly as printed on license Address (Include Number & Street) City or Town State Zip Code Date of Birth Month Day Year Sex Unlicensed <input type="checkbox"/> No. of Occupants Public Property Damaged <input type="checkbox"/> Name - exactly as printed on registration Sex Date of Birth Month Day Year Address (Include Number & Street) Apt. No. Haz. Mat. Code Released <input type="checkbox"/> City or Town State Zip Code Plate Number State of Reg. Vehicle Year & Make Vehicle Type Ins. Code					22					
4						Ticket/Arrest Number(s)					Ticket/Arrest Number(s)					23 7
5						Violation Section(s)					Violation Section(s)					24
6						Check if involved vehicle is: <input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.					Check if involved vehicle is: <input type="checkbox"/> more than 95 inches wide; <input type="checkbox"/> more than 34 feet long; <input type="checkbox"/> operated with an overweight permit; <input type="checkbox"/> operated with an overdimension permit.					25 1
7						VEHICLE 1 DAMAGE CODES Box 1 - Point of Impact Box 2 - Most Damage Enter up to three more Damage Codes Vehicle By JOHN'S TOWING Towed: To JOHN'S TOWING					VEHICLE 2 DAMAGE CODES Box 1 - Point of Impact Box 2 - Most Damage Enter up to three more Damage Codes Vehicle By Towed: To					26
8	VEHICLE DAMAGE CODING: 1-13. SEE DIAGRAM ON RIGHT. 14. UNDERCARRIAGE 17. DEMOLISHED 15. TRAILER 18. NO DAMAGE 16. OVERTURNED 19. OTHER					ACCORDING TO THE DIAGRAM BELOW THAT DESCRIBES THE ACCIDENT, OR DRAW YOUR OWN diagram in space #9. Number the vehicles. Rear End Left Turn Right Angle Right Turn Head On Sideswipe (same direction) Left Turn Right Turn Sideswipe (opposite direction) 1. 2. 3. 4. 5. 6. 7. 8. ACCIDENT DIAGRAM DIAGRAM IS PRINTED ON LAST PAGE 9. Cost of repairs to any one vehicle will be more than \$1000. <input type="checkbox"/> Unknown/Unable to Determine <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No					27 2					
9	Reference Marker Coordinates (If available) Latitude/Northing: 595138 Longitude/Easting: 4640714					Place Where Accident Occurred: County DUTC City Village Town of RHINEBECK, TOWN OF Road on which accident occurred SLATE QUARRY ROAD (Route Number or Street Name) at 1) intersecting street WHITE SCHOOLHOUSE ROAD (Route Number or Street Name) or 2) of N S E W of (Milepost, Nearest intersecting Route Number or Street Name) Feet Miles					28 34					
10	Accident Description/Officer's Notes V1 was traveling westbound on CR-19/Slate Quarry Road downhill in the area of White Schoolhouse Road. OP1 stated he observed an uninvolved vehicle uncontrolled in front of V1 on the snow covered road. OP1 attempts to avoid colliding with the uninvolved vehicle and OP1 loses control of V1 due to an unsafe speed on the snow covered road. V1 continues onto the northern shoulder and came to rest on a rock embankment. Vehicle Insurer: Foremost Insurance Company											29				
11	ALL INVOLVED											30				
12	8 9 10 11 12 13 14 15 16 17 BY TO 18											USE COVER SHEET				
13	A 01 1 4 1 61 1 - - - - -											N				
14	B 01 3 4 1 53 2 - - - - -															
15	C 01 6 4 1 17 1 - - - - -															
16	D															
17	E															
18	F															
19	Officer's Rank and Signature TPR Print Name in Full CHRISTOPHER GONYO					Badge/ID No. 622	NCIC No. 11302	Precinct/Post Troop/Zone K1	Station/Beat Sector 21	Reviewing Officer BAILEY, BRANDON	Date/Time Reviewed 2022/03/01 16:01					

New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
Accident Diagram

ACCIDENT DIAGRAM



New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT

MV-104A (6/04)

39481366

17

Local Codes

7K123FSKH68

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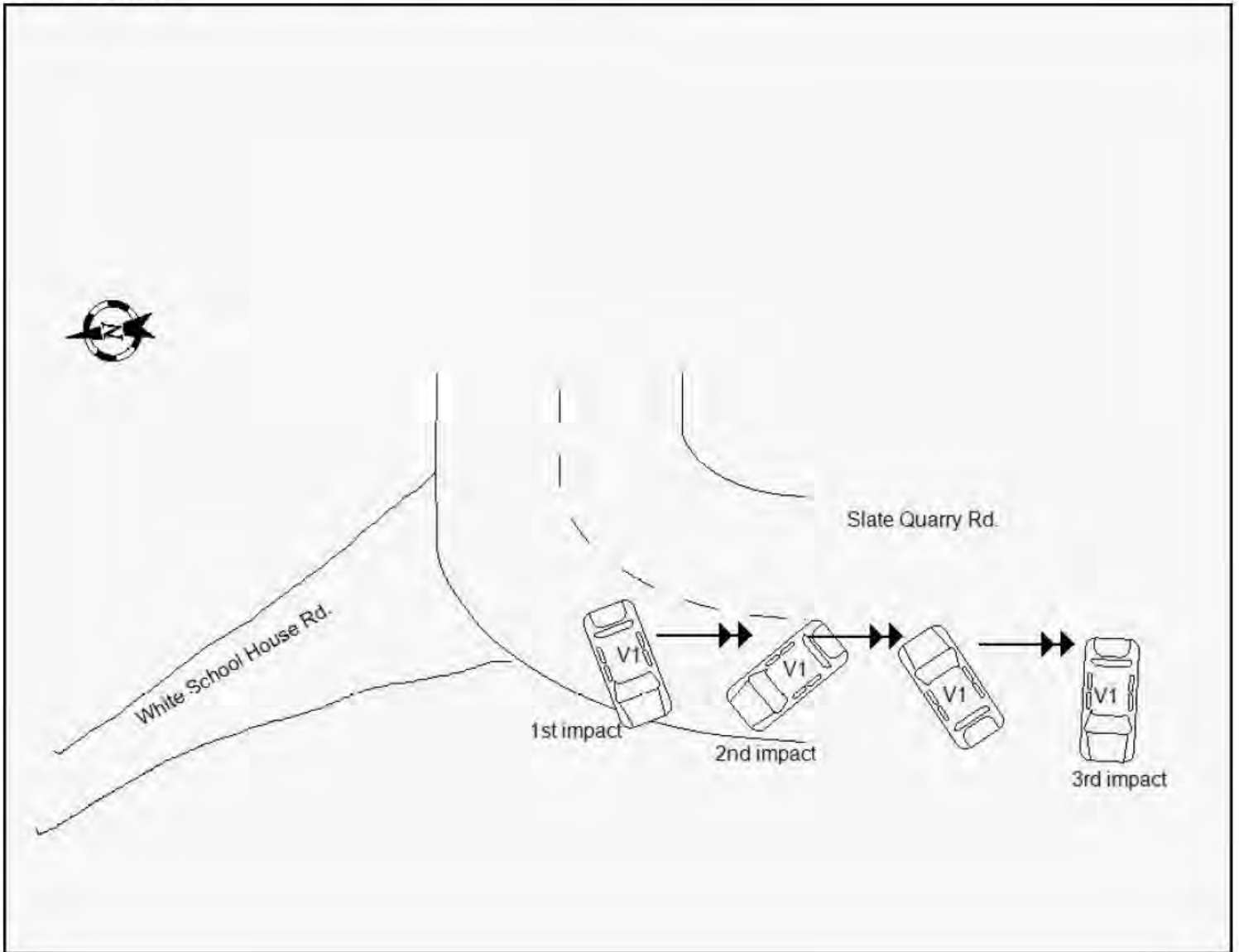
1	Accident Date Month 08 Day 22 Year 2022		Day of Week MONDAY		Military Time 1708		No. of Vehicles 1	No. Injured 1	No. Killed 0	Not Investigated at Scene <input type="checkbox"/>	Left Scene <input type="checkbox"/>	Police Photos <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	20																																																																																																																
2	VEHICLE 1						<input type="checkbox"/> VEHICLE 2 <input type="checkbox"/> BICYCLIST <input type="checkbox"/> PEDESTRIAN <input type="checkbox"/> OTHER PEDESTRIAN State of Lic. _____ Driver Name - exactly as printed on license _____ Address (Include Number & Street) _____ Apt. No. _____ City or Town _____ State _____ Zip Code _____ Date of Birth _____ Sex _____ Unlicensed <input type="checkbox"/> No. of Occupants _____ Public Property Damaged <input type="checkbox"/> Name - exactly as printed on registration _____ Sex _____ Date of Birth _____ Address (Include Number & Street) _____ Apt. No. _____ Haz. Mat. Code _____ Released <input type="checkbox"/> City or Town _____ State _____ Zip Code _____ Plate Number _____ State of Reg. _____ Vehicle Year & Make _____ Vehicle Type _____ Ins. Code _____						21																																																																																																																
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6	VEHICLE 1 DAMAGE CODES Box 1 - Point of Impact _____ 1 _____ 2 _____ Box 2 - Most Damage _____ 3 _____ 4 _____ 5 _____ Enter up to three more Damage Codes _____ Vehicle Towed By: <u>JOHNS TOWING</u> To: <u>JOHNS TOWING</u>						VEHICLE 2 DAMAGE CODES Box 1 - Point of Impact _____ 1 _____ 2 _____ Box 2 - Most Damage _____ 3 _____ 4 _____ 5 _____ Enter up to three more Damage Codes _____ Vehicle Towed By: _____ To: _____						25																																																																																																																
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9	Accident Description/Officer's Notes Vehicle 1 (V1) was traveling West on Slate Quarry Rd. when it lost control on wet slippery surfaces striking an earth embankment causing the vehicle to spin out of control in 180 degrees striking the earth embankment two more times.												28																																																																																																																
10	<table border="1"> <thead> <tr> <th>ALL INVOLVED</th> <th>8</th> <th>9</th> <th>10</th> <th>11</th> <th>12</th> <th>13</th> <th>14</th> <th>15</th> <th>16</th> <th>17</th> <th>BY</th> <th>TO</th> <th>18</th> <th>Names of all involved</th> <th>Date of Death Only</th> </tr> </thead> <tbody> <tr> <td>A</td> <td>01</td> <td>1</td> <td>4</td> <td>1</td> <td>51</td> <td>1</td> <td>8</td> <td>4</td> <td>6</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>B</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>C</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>D</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>E</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>F</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>												ALL INVOLVED	8	9	10	11	12	13	14	15	16	17	BY	TO	18	Names of all involved	Date of Death Only	A	01	1	4	1	51	1	8	4	6							B																C																D																E																F																29
ALL INVOLVED	8	9	10	11	12	13	14	15	16	17	BY	TO	18	Names of all involved	Date of Death Only																																																																																																														
A	01	1	4	1	51	1	8	4	6																																																																																																																				
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11	Officer's Rank and Signature OFFICER Print Name in Full D ALBERG						Badge/ID No. 0012 NCIC No. 01327 Precinct/Post Troop/Zone K1 Station/Beat/Sector RPD Reviewing Officer DUNN, P Date/Time Reviewed 2022/08/25 10:43						30																																																																																																																

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New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
Accident Diagram

ACCIDENT DIAGRAM



New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT

MV-104A (6/04)

39545491

18

Local Codes

SP1K34G0410V

☐ AMENDED REPORT

DMV COPY

1 Accident Date		Day of Week		Military Time		No. of Vehicles		No. Injured		No. Killed		Not Investigated at Scene <input type="checkbox"/>		Left Scene		Police Photos	
Month 10 Day 13 Year 2022		THURSD		1800		1		0		0		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
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VEHICLE 1

State of Lic. _____

Driver Name - exactly as printed on license _____

Address (Include Number & Street) _____ Apt. No. _____

City or Town _____ State _____ Zip Code _____

Date of Birth _____ Sex _____ Unlicensed ☐ No. of Occupants _____ Public Property Damaged ☐

Name - exactly as printed on registration _____ Sex _____ Date of Birth _____

Address (Include Number & Street) _____ Apt. No. _____ Haz. Mat. Code _____ Released ☐

City or Town _____ State _____ Zip Code _____

Plate Number _____ State of Reg. _____ Vehicle Year & Make _____ Vehicle Type _____ Ins. Code _____

Ticket/Arrest Number(s) _____

Violation Section(s) _____

Check if involved vehicle is:

☐ more than 95 inches wide;

☐ more than 34 feet long;

☐ operated with an overweight permit;

☐ operated with an overdimension permit.

VEHICLE 1 DAMAGE CODES

Box 1 - Point of Impact _____ 1 _____ 2 _____

Box 2 - Most Damage _____ 3 _____ 4 _____ 5 _____

Enter up to three more Damage Codes _____

Vehicle Towed By _____ To _____

VEHICLE 2

State of Lic. _____

Driver Name - exactly as printed on license _____

Address (Include Number & Street) _____ Apt. No. _____

City or Town _____ State _____ Zip Code _____

Date of Birth _____ Sex _____ Unlicensed ☐ No. of Occupants _____ Public Property Damaged ☐

Name - exactly as printed on registration _____ Sex _____ Date of Birth _____

Address (Include Number & Street) _____ Apt. No. _____ Haz. Mat. Code _____ Released ☐

City or Town _____ State _____ Zip Code _____

Plate Number _____ State of Reg. _____ Vehicle Year & Make _____ Vehicle Type _____ Ins. Code _____

Ticket/Arrest Number(s) _____

Violation Section(s) _____

Check if involved vehicle is:

☐ more than 95 inches wide;

☐ more than 34 feet long;

☐ operated with an overweight permit;

☐ operated with an overdimension permit.

VEHICLE 2 DAMAGE CODES

Box 1 - Point of Impact _____ 1 _____ 2 _____

Box 2 - Most Damage _____ 3 _____ 4 _____ 5 _____

Enter up to three more Damage Codes _____

Vehicle Towed By _____ To _____

ACCIDENT DIAGRAM

Circle the diagram below that describes the accident, or draw your own diagram in space #9. Number the vehicles.

1. Rear End 2. Left Turn 3. Right Angle 4. Right Turn 5. Head On 6. Sideswipe (same direction) 7. Left Turn 8. Right Turn 9. Sideswipe (opposite direction)

DIAGRAM IS PRINTED ON LAST PAGE

Cost of repairs to any one vehicle will be more than \$1000. ☐ Unknown/Unable to Determine ☒ Yes ☐ No

Place Where Accident Occurred:

County DUTC ☐ City ☐ Village ☒ Town of RHINEBECK, TOWN OF

Road on which accident occurred SLATE QUARRY ROAD (Route Number or Street Name)

at 1) intersecting street WHITE SCHOOLHOUSE RD (Route Number or Street Name)

or 2) _____ ☐ N ☐ S ☐ E ☐ W of _____ (Milepost, Nearest intersecting Route Number or Street Name)

Feet _____ Miles _____

Accident Description/Officer's Notes

Operator of V1 was traveling westbound on Slate Quarry Rd in the Town of Rhinebeck when a deer entered the roadway. The Operator of V1 was unable to avoid the deer, striking the deer which left the scene.

ALL INVOLVED

8	9	10	11	12	13	14	15	16	17	18	Names of all involved	Date of Death Only
A	01	1	4	1	49	2	-	-	-	-		
B	01	4	4	1	11	2	-	-	-	-		
C												
D												
E												
F												

Officer's Rank and Signature TPR

Print Name in Full ALEXANDER DALFONSO

Badge/ID No. 3718

NCIC No. 11302

Precinct/Post Troop/Zone K1

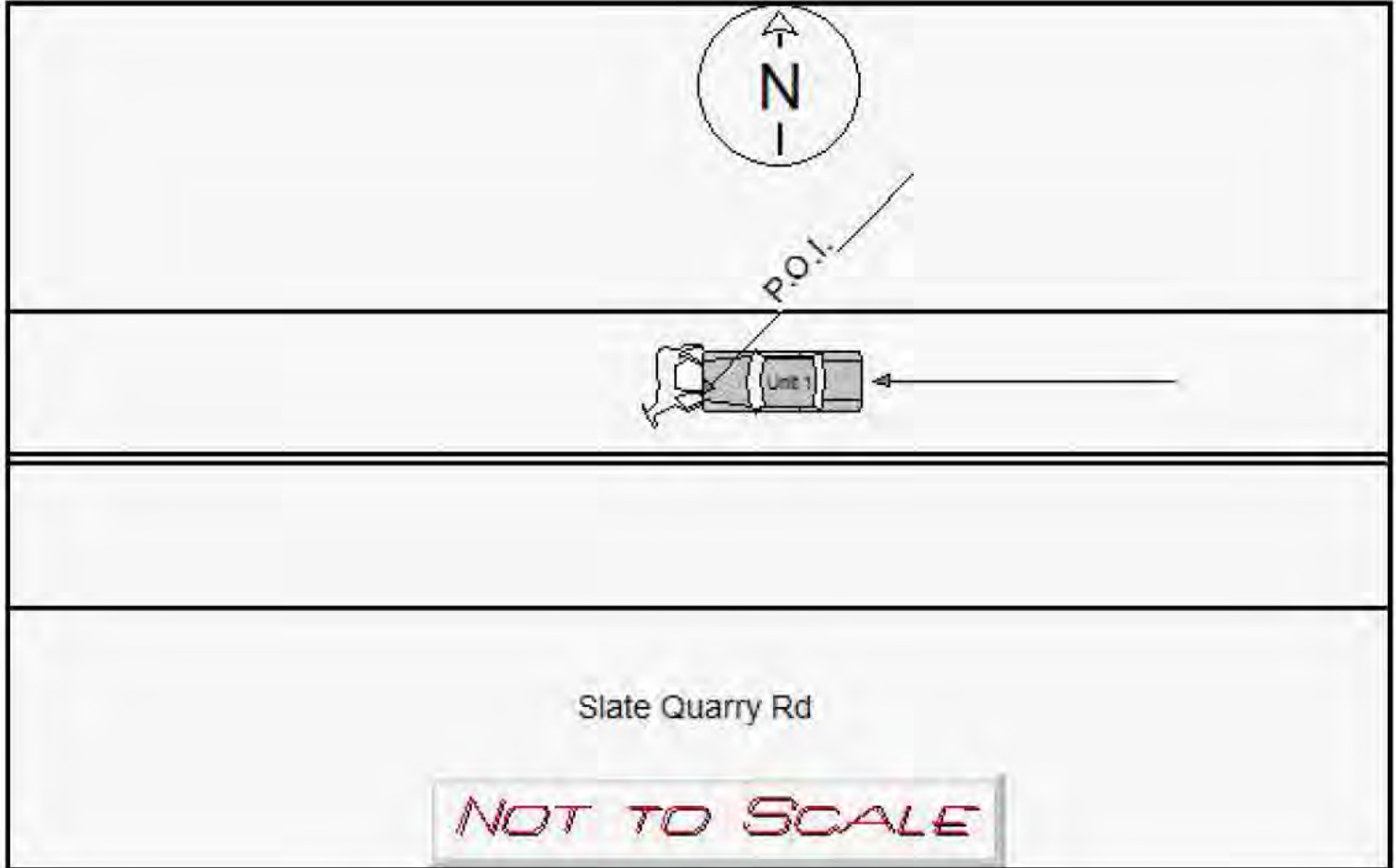
Station/Beat Sector 21

Reviewing Officer SYPEK, MARK

Date/Time Reviewed 2022/10/13 23:33

New York State Department of Motor Vehicles
POLICE ACCIDENT REPORT
Accident Diagram

ACCIDENT DIAGRAM



Attachment C
Kenneth Wersted
Curriculum Vitae

White School House Road Mine
Town of Rhinebeck, New York

Kenneth Wersted, PE, PTOE

Traffic Engineer

PROFESSIONAL EXPERIENCE SUMMARY

Mr. Wersted is a Project Manager for Creighton Manning Engineering, specializing in the area of traffic engineering and transportation planning. Mr. Wersted's particular expertise is in the area of transportation modeling, traffic impact studies, and special event transportation planning. He is a nationally certified Professional Traffic Operations Engineer (PTOE).

RELEVANT PROJECT EXPERIENCE

Orange County Traffic Engineering Consultant Services, Orange County, NY (2022). Senior Traffic Engineer on an Orange County term agreement to provide traffic engineering, traffic signal, roadway and intersection analysis/design services on an as needed basis. Ken was responsible for designing traffic signal improvements at six intersections. The scope included signal inventory, traffic counts, analysis, recommendations for improvements, planning-level cost estimates, and preparing a technical memorandum.

Traffic Impact Study, Stratton Hill Road Mine, Jointa Lime Co., Town of Chazy, Clinton County, NY (2019-2022): Project Manager responsible for the preparation of a traffic study for a 30-acre mine site located about 8 miles north of Plattsburgh, NY. The study included truck and employee trip generation estimates, and an evaluation of three intersections on the intended truck route to the processing plant.

Speed Evaluation, Village of Tivoli, Dutchess County, NY (2023). Senior Engineer responsible for the evaluation of speed data, environmental setting, and evaluation of speed limit recommendations. This project considered the village's road widths, access points, pedestrian and bicycle activity, and parking characteristics and compared them against speed limit setting criteria including guidance from NYSDOT, FHWA, and TRB. The conclusion offered recommendations to the village for future setting of speed limits on village controlled roads.

Route 9A Traffic Safety Study, New York City, NY, PIN X024.47 (2021) Senior Transportation Engineer on a task assignment on a NYSDOT term agreement for Highway/Traffic Planning/Engineering/Safety Services. The work includes conducting a Highway Safety Investigation and crash analysis to identify, evaluate, and select appropriate countermeasures to reduce the crash frequency or severity at 40 intersections.

NYSDOT Region 8 Highway Safety Investigations, PIN SESS.19 (2022-2023) Senior Transportation Engineer on a task assignment on a NYSDOT term agreement for Highway/Traffic Planning/Engineering/Safety Services. Work includes investigation of locations and preparation of accident study reports, draft and final highway safety investigation report

Professional Registration:

- Professional Engineer (NY, VT)
- Certified Professional Traffic Operations Engineer

Total Years of Experience: 26

Years with firm: 26

Education:

- B.S., Civil Engineering, 1999, Rochester Institute of Technology
- A.A.S., Civil Engineering, 1994, Hudson Valley Community College

Professional Affiliations:

- Institute of Transportation Engineers (ITE), Associate Member

packages, and preparation of work requests for low-cost improvement recommendations to improve safety.

NYSDOT Pedestrian Focused Corridor Safety Studies, Erie, Franklin, and Onondaga Counties, NY (2020). Senior Transportation Engineer responsible for the field review of high accident locations in three regions of the state. The NYSDOT-sponsored project focused on three areas susceptible to pedestrian crashes. Mr. Wersted was responsible for identifying potential contributing field conditions and making recommendations for corrective actions. The recommendations included striping, signal and signing, and sight distance improvements.

Countywide Signal Upgrades, Dutchess County, NY (2017-2019). Senior Traffic Engineer for the field review and QA/QC tasks for the evaluation and design of upgrades and replacement of 41 signals and flashing beacons across the county. Field evaluations included an assessment of condition, state of disrepair, and recommended upgrades. As the designs were progressed, Mr. Wersted was responsible for the QA/QC review of the designs to confirm compliance with NYSDOT and County standards.

NYSDOT Region 8 Traffic Signal Improvements – PIN 8812.78 D031348 – Dutchess, Orange, Rockland, and Westchester Counties. Senior Traffic Engineer the QA/QC tasks for the evaluation and design of upgrades and replacement of 38 signals beacons across four counties in NYSDOT Region 8. Mr. Wersted was responsible for the QA/QC review of the designs to confirm compliance with NYSDOT standards.

Albany-Shaker Road Traffic Signal Design, Town of Colonie, Albany County, NY. Project Manager responsible for traffic engineering and design of a new traffic signal on Albany-Shaker Road (CR 151) at Shaker Elementary School. The scope of work for this County-funded project included a signal warrant analysis, design justification study, traffic data collection, level of service analysis, and design of a traffic signal including controller, detectors, pedestrian signals, signs and pavement markings, and WZTC. The design complied with the NYSDOT standards and specifications, and Manual of Uniform Traffic Control Devices.

A. Colarusso and Son Gate to Gate Truck Study – City of Hudson, Town of Greenport, Columbia County, NY. Project Manager responsible for the development of a traffic impact study that will remove approximately 14,000 to 16,000 truck trips annually from the City of Hudson's downtown district. The existing quarry trucks follow the designated truck route, passing through approximately 25 intersections through the city bordered by businesses, residences, and city services. The proposed route will improve an existing former rail bed to accommodate two-way traffic with only four city and town intersections, thereby decreasing the truck impacts to City residents and businesses.

NYSDOT Pedestrian Focused Corridor Safety Studies, Erie, Franklin, and Onondaga Counties, NY D031151-05. Mr. Wersted was responsible for

the field review of high accident locations in three regions of the state. The NYSDOT sponsored project focused on three areas susceptible to pedestrian crashes. Mr. Wersted was responsible for identifying potential contributing field conditions and making recommendations for corrective actions. The recommendations included striping, signal and signing, and sight distance improvements.

Kingston Hospitals Parking Study, City of Kingston, Ulster County, NY (2016): Project Manager responsible for completing a parking study for construction of a new 107,000 SF medical tower to Health Alliances' Mary's Avenue campus. Program changes as their Broadway campus will move patients and employees to the Mary's Avenue hospital which includes a mix of existing hospital services and privately owned medical office tenants. The study documented existing conditions, and projected the future demand, and potential improvements to mitigate parking supply shortfalls.

Traffic Impact Study, Chazy Quarry, US Route 9, Graymont Materials, Inc, Town of Chazy, Clinton County, NY (2013): Project Manager responsible for the preparation of a traffic study for a mine site located about 12 miles north of Plattsburgh, NY. The mine estimated a production rate of about 4,000 tons per day and an analysis of the two primary intersections and site driveway were prepared.

Technical Reviews, Various Municipalities, NY (2002–Present): Project Engineer and Project Manager responsible for various Technical Reviews acting as the City/Town's designated traffic engineering consultant. Responsibilities include review of site plans and applicant's traffic studies for reasonableness, accuracy, and completeness. Projects include residential subdivisions, commercial, and retail properties. Municipalities at varying periods included: Beacon, Crawford, Chester, Cornwall-on-Hudson, Hurley, Marlborough, Montgomery, Monroe, New Paltz, Newburgh, Rosedale, Saratoga, Ulster, and Wawayanda.

Traffic Impact Studies, Various Locations (1997–Present): Project Engineer and Project Manager responsible for the preparation of several hundred Traffic Impact Studies for commercial, industrial, and residential land uses. These studies vary in size and complexity and include data collection, future traffic projections, trip generation, level of service analyses, sight distance evaluations, queue analysis, and signal warrant analysis. Also responsible for recommending improvements to mitigate traffic impacts and for preparing Draft and Final Reports.

Exhibit C

Full Text of Certain Public Comments

Comment A37 – Theodore Fink, Pells Road

From: J. T. Fink <finkted@gmail.com>
Sent: Sunday, February 5, 2023 12:13 PM
To: dec.sm.DEP.R3
Cc: espinzia@rhinebeckny.gov; Melodye Moore; planning@rhinebeckny.gov
Subject: Red Wing Properties Inc. White Schoolhouse Road Mine Draft Environmental Impact Statement Comments
Attachments: 2023-02-05-Red-Wing-DEIS-Fink-Comments.pdf

You don't often get email from finkted@gmail.com. [Learn why this is important](#)

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Dear Mr. Petronella,

Attached please find my comments on the above noted DEIS for Red Wing's proposed mine on White Schoolhouse Road (DEC ID # 3-1350-00052/00003). Please confirm your receipt of the attached PDF file so I know that it has been properly recorded by your office prior to the final date of submission on February 10, 2023. Thank you.

Ted Fink

Sunday, February 5, 2023

John W Petronella, Regional Permit Administrator
New York State Department of Environmental Conservation
Region 3 Headquarters
21 South Putt Corners Rd.
New Paltz, NY 12561

*Re: White Schoolhouse Road Mine SEQR Review
Red Wing Properties Inc.*

Dear Mr. Petronella:

This letter provides my comments on the above referenced proposed project's Draft Environmental Impact Statement (DEIS) for Red Wing Properties Inc's applications to the Department. My understanding is that the public comment period on the DEIS has been extended until February 10, 2023. The comments below focus on the impacts of the proposed mine's trucking activities on White Schoolhouse Road and other local roads. I am an area resident who lives on Pells Road, which continues White Schoolhouse Road to its end at Oriole Mills/Stone Church Road directly north of State Route 308. In addition to being a nearby "neighbor" to the site of the proposed mine, I was also a principal preparer of the Town of Rhinebeck's Comprehensive Plan and am thoroughly familiar with the seven-year public engagement process carried on by the Town leading up to Plan adoption in 2009.

The Traffic Impact Study (DEIS-Section 7) by Creighton Manning Engineering, LLP dated February 8, 2022 included an assessment of existing conditions and projected future build conditions at the White Schoolhouse Road site, Slate Quarry Road and Route 9G intersections. The study is well-written and clearly provides a standard quantitative assessment of the capacity and impacts to the three studied intersections during the AM and PM Peak Hours. However, in my opinion, the study's reliance on a Capacity/Level of Service Analysis to characterize the adverse impacts of the proposed mining operation is misleading and possibly even irrelevant to the long term adverse impacts the project will cause. The adverse impacts will be unavoidable to residents and visitors near the site, who use the same roads as the sand and gravel trucks that will travel the roads throughout the day.

Reliance almost solely on the AM and PM Peak Hour capacity of nearby intersections doesn't tell the whole story of the adverse transportation impacts the action will cause if the mine is approved. This is because traffic volumes are relatively light in this area of the Town of Rhinebeck and there are more transportation impacts of the proposed project to assess than the peak hour analysis. In my 38 years of living on Pells Road, I have not observed any significant stopped delays at the studied intersections (except for some peak hour left turns from Slate Quarry Road onto Route 9G). So there is no surprise that the peak hour trips identified for the build and no-



302 Pells Road
Rhinebeck, NY 12572
JTFink@hvc.rr.com

build level of service analysis will remain essentially the same.

Quantitative data can inform officials of the need for changes, that may be warranted to an intersection as a result of new trips generated by a proposed project, because they can cause a “stopped delay” that will push an intersection beyond its design limits. However, a more useful assessment of the actual adverse impacts of the new large trucking activities would have been both a quantitative and qualitative assessment of impacts. In a low volume rural context like White Schoolhouse Road, all or most intersections operate relatively well for most of the time. But the increases in large truck trips demands a qualitative assessment of the site’s rural context, so that all road users are properly included in the analysis, whether they were present at the time of the traffic counts or not (see below). Adverse impacts resulting from a new mine like Red Wing’s and its heavy trucking activities on a narrow rural road must also be subjected to an assessment that assumes that pedestrians and bicyclists can be present at any time in the daylight hours, not just the AM and PM Peak Hours.

The traffic counts were conducted in January of 2022. This is a time of year when winter conditions conceal pedestrian/bicyclist activity that occurs at most other times of the year on area roads. Why weren’t the pedestrian and bicycle counts supplemented when users can be expected to be present on White Schoolhouse, like they would be throughout the day in Spring, Summer or Fall? My own experience, and that of my neighbors living on Pells Road or White Schoolhouse Road and traveling by bike or walking these roads, is that one doesn’t venture out in the peak hours because that is when commuters heading home are traveling the fastest and it is well known that these are the times to avoid using Town roads for fear of our safety. This will only get worse if large sand and gravel trucks are added to the mix, especially during the months when a diverse mix of road users are present. The absence of any pedestrians or bicyclists (see Appendix B of TIS) during the peak periods of traffic studied should have been expected in January and especially so in the PM peak hour when it was dark.

The most appropriate way to review the potential for adverse impacts in this case, is through an examination of the overall increase in volumes throughout the day that will result and how those volumes and speeds will impact the safety of pedestrians and bicyclists who also use White Schoolhouse Road. In addition, any evaluation needs to assess the significance of the volume increases on quality of life of neighbors and others who live along White Schoolhouse Road including both truck noise and the potential for airborne rocks. I have observed firsthand sand and gravel trucks causing damage to homes and vehicles when rocks were discharged from the truck bed as the trucks encounter bumps in the road. Pedestrians or bicyclists on the roads when a sand and gravel truck passes could be severely injured in this way.

I also know from my experiences helping Rhinebeck residents express their vision of the Town's community character now and in the future that mining activities are no longer desired in Rhinebeck. The Comprehensive Plan states explicitly:

"Examine and improve regulations in the Zoning Law concerning mining activities and amend the Zoning Law to further restrict such activities to existing, active mine sites. Prohibit the placement of new mine sites within the town."

and

"Examine and improve regulations in the Zoning Law concerning mining activities (extractive operations currently permitted in the R3A District by special use permit), and amend the law to further restrict such activities to existing, active mine sites. Prohibit the placement of new mine sites within the town for following reasons:

- *Potential disruption to the character of residential areas caused by the heavy industrial characteristics of this land use activity, including associated noise, dust, aesthetics, and traffic;*
- *Concern for the public health, safety and welfare when mining is in close proximity to residences and farms;*
- *Restrict the number and location of areas in the town where mining activities may take place, since the town will not be permitted to enforce local regulations 'relating to the extractive mining industry.'"*

(see Policy 58 on page 3.8 and recommendations on page 5.16).

Residents want to maintain rural community character and this is tied in directly with the low volume roads that are integral to a rural community such as Rhinebeck. The Town Comprehensive Plan places great emphasis on maintaining rural character and this issue was not at all addressed by the DEIS. Rural character is the number one reason why residents choose to live in Rhinebeck (see Comprehensive Plan page 2.3 where it is noted that 99% of residents rated rural character the Town's major strength).

The Comprehensive Plan describes the role town roads provide to that rural community character on pages 8.4 through 8.6 and relevant excerpts have been repeated here to reinforce my call for a qualitative assessment of adverse impacts on the community as a result of the introduction of additional large truck use of White Schoolhouse Road from the Red Wing mine application. Since the TIS identified 45 mph as the 85th percentile for vehicle speeds on White Schoolhouse Road, it must be assumed that White Schoolhouse Road is already unsafe for pedestrians and bicyclists and that this will significantly increase if the mine is approved. Here is what the Comprehensive Plan says about the issue and which must be properly assessed for its impacts and mitigation in the FEIS:

“Town roads provide for multiple uses and are one of the most under appreciated areas for social interaction within the community. In fact, the town’s roads are the only public facilities that exist for most of the town’s residents near their dwellings. While the village and hamlet play the most important roles for social activities in the town, roads also double as areas for recreation and alternative transportation, in addition to community interaction and residential access. Residents regularly walk, stroll, hike, bicycle, skateboard, in-line skate, and run on town roads...The rural charm and attractiveness of the town’s roads derives principally from their multiple functions, their scenic attributes, and historic character. Together, these qualities give them a rural appeal lacking in more modern roads, built post- World War II or ‘modernized’ since that time...Maintaining narrower roads in Rhinebeck is consistent with the Guidelines for Rural Town and County Roads: Report to the Governor and the Legislature discussed below in the Regional Plans subsection (# 14.1) as well as the recommendations of the Dutchess County Planning Department, the Dutchess Roadside Council as well as numerous planning and engineering organizations...Planning and engineering studies have consistently found that residential street standards, based upon the older models, are unsafe because such streets are designed to accommodate traffic speeds of at least 15 miles per hour faster than the posted speed limit. Not surprisingly, those same planning and engineering studies have also found there is a direct correlation between the width of a road, the speeds that vehicles travel, and the number of pedestrians severely injured or killed. The chart from the US Centers for Disease Prevention and Control below shows this correlation...Residential Streets has recently been updated. In addition to the ASCE, NAHB, and ULI, the Third Edition of this publication now adds a fourth partner, the Institute of Traffic Engineers (ITE). Residential Streets, Third Edition (2001) is based on the premise that the design of a residential street should include not only its place in the transportation system, but also its role as part of a residential community’s living environment. It recommends that in planning residential streets, communities should consider how the street contributes to a clearly defined sense of place...small residential roads are designed primarily for access. These roads should be considered part of the residential neighborhood of which they are a part, rather than part of the traffic system. Road widths for residential streets should be narrowed to avoid excessive stormwater runoff and heat buildup, create a safe environment for pedestrians and bicyclists, and minimize street construction and maintenance costs. Rather than widening town roads, as has been the prevailing

policy for many years now, efforts should be made to reduce the negative effects of vehicle use and improve conditions for non-motorized road users. This includes such things as planting trees and shrubs closer to the road to slow down traffic rather than removing trees and other vegetation as is currently done. Stonewalls close to the road should be preserved and rebuilt where possible. Roundabouts at appropriate intersections should be installed where feasible. The ITE has declared creation of traffic calming measures as a priority for municipalities. Traffic calming has been in use by at least 350 municipalities around the nation over the past 30 years. The Public Opinion Survey has established that 98% of the respondents believed scenic roads (including unpaved roads) were very important or important, 97% believed trees along roads are very important or important, and 91 % strongly agree or agree with the statement that “Town roads should be designed and maintained so pedestrians and bicyclists can safely use them.” These factors should become an integral policy guiding all decisions on matters related to roads.”

The US Centers for Disease Control and Prevention (CDC) chart noted in the above quote is shown at the right. It is similar to one developed by the Institute of Transportation Engineers (ITE), and which has been attached to this letter along with the ITE discussion of the importance of considering the context of both users and the road under consideration, including speed and safety.



Policy 4 on page 8.7 of the Comprehensive Plan is clear as to the direction Rhinebeck should take regarding new developments like the Red Wing mine on White Schoolhouse Road: *“Require traffic calming techniques (like 25 mph speed limits and planting of trees close to the roads), in new development, to effectively reduce and enforce traffic speeds, and to make roads more pedestrian-friendly.”*

The Red Wing Mine project’s SEQR review process must be subjected to a qualitative assessment of the adverse impacts of the project on the Town’s *“goals, objectives, principles, guidelines, policies, standards, devices and instruments for the immediate and long-range protection, enhancement, growth and development of the town...”* [see New York State Town Law Section 272-a(2)(a)]. In my opinion, the proposed project will be inconsistent with the Town’s adopted land use plan, the Comprehensive Plan, will be inconsistent with the community character of Rhinebeck as articulated in the Comprehensive Plan, and this impact issue will represent an unavoidable adverse impact that could also endanger the lives of Town residents.

Looking at the submitted TIS, there are several inadequacies that prohibit the Department, as lead agency, from making a reasoned evaluation of the adverse impacts of the project's traffic impacts, based on the discussion in the DEIS. First, the DEIS predicted that 20 additional mine trips would occur in the AM Peak Hour as a result of Red Wing with 10 new trips in the PM Peak Hour. Absent from the DEIS is an assessment of the total daily trips that will be generated by the mine. In my opinion, this is an inherent flaw of the traffic study and the DEIS. Every resident of White Schoolhouse Road, Pells Road, and Slate Quarry Road have a right to know how many overall daily trips will be generated by Red Wing on these local roads. I've included Pells Road here even though it was not addressed in the DEIS. This is because I have observed large sand and gravel trucks already using Pells Road and it can be reasonably anticipated that this will increase if the Mine is approved. To omit this information presents a misleading picture of the adverse impacts of the project on the rural community character of the area and the Town's historic roads. The Comprehensive Plan at page 10.5 lists Pells Road and at page 10.6 lists White Schoolhouse Road as a historic road recommended for designation as a Critical Environmental Area (CEA) under SEQR for their rural and scenic qualities.

We know from the New York State Department of Transportation's Traffic Data Viewer, available on the internet, that White Schoolhouse Road has an AADT (Average Annual Daily Traffic) of 269 vehicles of which 13 are trucks. What will be the AADT of Red Wing's truck traffic on White Schoolhouse Road and how much of an increase in trips does this represent over the current AADT including exclusively truck trip increases? The Final EIS must address this overall increase in daily volumes of all vehicles but especially truck trips in order to understand the significance of the proposed project's traffic impacts on the Comprehensive Plan policies, on community character, and on transportation. White Schoolhouse Road is a residential and agricultural access road, not a highway for industrial scale trucks.

The focus solely on peak hours leaves area residents and the Town with no way to judge the enormous potential for large trucks navigating on a "sleepy" rural road and the dangers to pedestrians, bicyclists and other road users this will create. As stated above, the TIS does not provide particularly useful information for a project like Red Wing in a rural context.

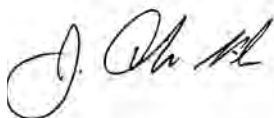
The potential for a significant adverse impact on local rural roads has implications on the health, safety, and welfare of residents who use White Schoolhouse Road and other affected area roads. Pedestrians and bicyclists, like myself, who use Pells, White Schoolhouse and other area roads most days have nowhere else to walk or bike from their homes, meet their neighbors, get exercise, and enjoy the quality of life of our neighborhood. This is an essential social function for a rural neighborhood and is part of the rural community character described in the Comprehensive Plan that needs to be assessed in the DEIS and FEIS. If there isn't a more realistic assessment of adverse impacts from traffic increases, especially large

trucks provided through sound evidence, the neighborhood will suffer from the increase in trucking activity and a significant decrease in safety and well-being with no evaluation nor hard look at all impacts created by the project having been undertaken by the Department, as envisioned by the SEQR statute and regulations.

The proposed project's traffic analysis is a great example of why a traditional Traffic Impact Study is not appropriate to evaluate impacts. This is because peak hour numbers alone don't tell the whole story of how and why impacts will occur. A Transportation Impact Study goes beyond the numbers of vehicles and brings into focus other uses such as bicycling and walking. An assessment of how vehicular traffic, pedestrians, and bicyclists use White Schoolhouse Road can be blended together, so that it is done with context sensitive designs incorporated as mitigation for the adverse impacts, increasing the safety of area residents and the choices that people make in their daily routines. If it is not, then the likelihood is high that area residents will be left with an unmitigated adverse environmental impact if the project is approved. This can and should be studied, quantified and included in the FEIS.

I urge the Department of Environmental Conservation to seriously consider denial of the Mined Land Reclamation Permit application for Red Wing's sand and gravel mine because it will forever change White Schoolhouse, Pells, Slate Quarry, and other local roads from the increase in large trucks and the incompatibility of the project with the character of the community. The threat to the health, safety and welfare of those residents who live in the vicinity of the mine is at risk. I thank you for your careful consideration of my comments as a nearby resident.

Very truly yours,



J. Theodore Fink

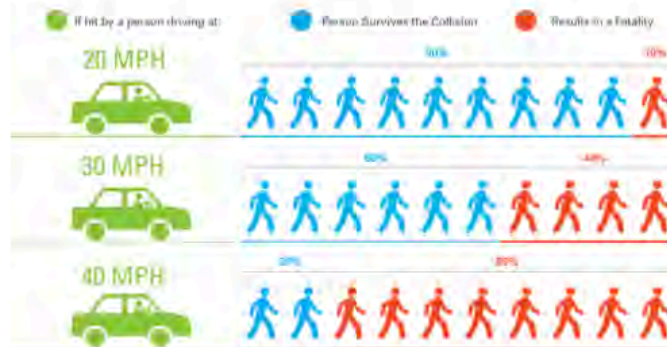
Cc: Elizabeth Spinzia, Town Supervisor
Melodye Moore, Planning Board Chair

Attachment: Screen shot of Institute of Transportation Engineers webpage on vehicle speed and safety



Speeds Relation to Safety

The speed at which a motorist travels on a given section of road is based on many factors. The motorist must take into consideration vehicle capability, roadway features, environmental conditions, surrounding context, presence of other road users, and most importantly, the speed limit. Speed becomes unsafe when a motorist travels too fast for conditions, but those conditions can vary based on road type, users and context. A transportation professional must design roads and set appropriate speed limits in order to create a safe environment for all users.

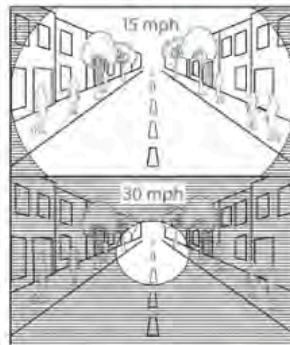


Vehicle Speed comparison to chance of Pedestrian Injury and Fatality

Data source: US Department of Transportation, Literature Reviewed on Vehicle Travel Speeds and Pedestrian Injuries. March 2000.

Image credit: San Francisco MTA Vision Zero Action Plan, February 2015: <https://vlew.joomag.com/vision-zero-san-francisco/0685197001423594455?short>

Speed is used as a measure for two key performance characteristics of roads—mobility and safety. Mobility is a factor of travel time, which may be minimized with higher speeds. Safety is associated with the reduction, if not complete absence, of crashes and fatalities. Safe speeds prioritize safety while balancing and taking into consideration the mobility needs of all road users, not just the movement of vehicles. For freeways and highways, desirable design features, access control, roadway alignment, roadside safety devices, etc., allow for higher speeds at an acceptable level of risk. For urban and retrofitted streets, design complexities, such as right-of-way limits, land use context, presence of other road users, intersections, sight distances, etc., typically requires lower speeds for the safety of all road users. Transportation professionals should aim to implement an appropriate road design and speed limit for a given road context that creates safety without impacting mobility.



Field of vision based on speed of motorist

Original Source: Walkable City Rules, <https://islandpress.org/book/walkable-city-rules>

Creating a safe road system is complex due to many possible crash causations, from driver, vehicle, roadway, and environmental factors. However, one causation is clear—crash severity increases as vehicle speed increases, especially for vulnerable non-motorized users. The AAA Foundation for Traffic Safety *Impact Speed and a Pedestrian's Risk of Severe Injury or Death* study, published in 2011, developed risk estimates of severe injury or death for pedestrians struck by vehicles in the United States. This study has been recognized in various Vision Zero plans, such as San Francisco, CA, USA, to assist in determining the safest speeds for motorist vs. pedestrian scenarios.

Comment A44 – Rural Rhinebeck Neighbors
(Whiteman, Osterman & Hanna LLP)

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February 10, 2023

John W Petronella
NYSDEC Region 3 Headquarters
21 S Putt Corners Road
New Paltz, NY 12561

RE: Comments on Red Wing Properties Inc.’s Application for Article 23 Title 27 Mined Land Reclamation Permit, Article 15 Title 5 Stream Disturbance Permit, and Article 24 Freshwater Wetlands Permit (*Application ID: 3-1350-00052/00003*)

Dear Mr. Petronella:

Rural Rhinebeck Neighbors, an unincorporated association which includes members that are residents along White Schoolhouse Road—the only means of road ingress and egress to the White Schoolhouse Road Mine—respectfully submits these comments regarding Red Wing Properties Inc.’s (“Red Wing” or the “Applicant”) Application for an Article 23 Title 27 Mined Land Reclamation Permit, Article 15 Title 5 Stream Disturbance Permit, and Article 24 Freshwater Wetlands Permit (collectively, the “Permit Application”) related to its proposed expansion of the White Schoolhouse Road Mine (the “Mine”) in the Town of Rhinebeck, Dutchess County, New York.¹

Pursuant to the New York State Department of Environmental Conservation (“NYSDEC”) Uniform Procedures regulations, “[a]fter a permit application for a major project is complete...and notice in accordance with section 621.7 of this Part has been provided, the department must evaluate the application and any comments received to determine whether a public hearing will be held” (6 NYCRR 621.8[a]). NYSDEC shall hold such a hearing “where any comments received from members of the public or other interested parties raise substantive and significant issues relating to the application, and resolution of any such issue may result in denial of the permit application, or the imposition of significant conditions thereon...” (6 NYCRR 621.8[b]). Finally, “[i]n order to raise substantive and significant issues, written comments expressing objection or

¹ Red Wing’s Permit Application has been pending as incomplete since it was originally submitted on November 6, 2013, resulting in much of the information in the Draft Environmental Impact Statement (DEIS) being dated, unsupported, and incomplete.

opposition to an application must explain the basis of that opposition and identify the specific grounds which could lead the department to deny or impose significant conditions on the permit” (6 NYCRR 621.8[d]).

As noted above, members of Rural Rhinebeck Neighbors reside on White Schoolhouse Road and other members reside in the Rhinebeck community; therefore, their primary concerns are (i) the impact of the Mine expansion and the attendant increase in the number and size of the trucks on the public safety of those that use White Schoolhouse Road; (ii) the effect of the increased number and size of the trucks on the physical condition of White Schoolhouse Road; and (iii) the impacts of increased traffic at the intersection of Slate Quarry Road and White Schoolhouse Road on public safety.

White Schoolhouse Road is a narrow, winding country road, and is classified by the New York State Department of Transportation (“NYSDOT”) as a Local Road. It is also considered by the Town of Rhinebeck to be a “historic town road” that should be designated a Critical Environmental Area under the State Environmental Quality Review Act because of its “rural and/or scenic significance.”²

Rural Rhinebeck Neighbors has engaged a licensed Civil/Traffic Engineering consultant, DTS Provident Design Engineering LLP, to review the transportation-related impacts of the proposed Mine expansion and related impacts to White Schoolhouse Road. Based on the results of that review, as well as the findings set forth in a report by a consultant to the Town of Rhinebeck on the expected impacts of the Mine expansion on the physical condition of White Schoolhouse Road,³ and comments provided by the County,⁴ Rural Rhinebeck Neighbors submits that NYSDEC will be constrained to either deny the Permit Application, or significantly condition an issued permit, on the following grounds:

I. White Schoolhouse Road cannot safely accommodate public use, including use by the members of Rural Rhinebeck Neighbors, and the increased number and size of the trucks that will be generated by the proposed Mine expansion.

The Applicant states in one reference that the Mine expansion will permit approximately six million cubic yards of sand and gravel to be mined (there is another reference to 7,000,000 cubic yards to be mined). Even if only the largest trucks (30 cubic yards) proposed by the Applicant were used to transport the mined material, there would be a minimum of 200,000 trucks making round trips on White Schoolhouse Road (assuming each truck is completely filled). If only 12

² See Town of Rhinebeck Comprehensive Plan, December 2009, Pages 10.5 through 10-6.

³ The Town of Rhinebeck hired engineering consultant CPL Architects, Engineers, Landscape Architect and Surveyor, DPC (“CPL”) to examine the effect heavy truck traffic generated from the Mine will have on White Schoolhouse Road. CPL examined the existing condition of the roadway and took pavement cores to inform its prediction of the deterioration that heavy truck traffic will have on the pavement structure. The results of the Town’s study are set forth in a report titled, Pavement Evaluation and Life Cycle Cost Analysis for White School House Road, April 1, 2021 (hereinafter, the “Town’s Report”).

⁴ The Dutchess County Department of Planning and Development reviewed Red Wing’s site plan and special use permit approval pursuant to General Municipal Law Article 12B, §239-l/m and provided comments by letter dated March 18, 2022 to the Town of Rhinebeck Planning Board.

cubic yard trucks are used, there would be a minimum of 500,000 trucks making round trips. Since the Applicant has proposed that a mix of trucks with capacities ranging from 30 cubic yards down to 5 cubic yards would be used, it is impossible to know the number of actual truck trips that would result from the expansion of the Mine and, for that reason, the Applicant's entire traffic and transportation analysis is a mere conjecture.

Tellingly, the Applicant's projection of the number of truck trips per day (up to 20 to 50 trucks per day; although 100 trucks per day were supposedly previously proposed) is devoid of any rationale or analysis to support its projection. At a public adjudicatory hearing Rural Rhinebeck Neighbors will present a "worst case" analysis of the impact of the proposed Mine expansion which will show that the increased size and number of trucks cannot be safely accommodated on White Schoolhouse Road and NYSDEC will be constrained to either deny the Permit Application or significantly condition the permit to regulate truck traffic so that it can safely be accommodated on White Schoolhouse Road.

The narrow, winding, and hilly White Schoolhouse Road cannot safely accommodate the increased size of the truck traffic that will be generated by the Mine expansion. The Applicant's statement that the width of White Schoolhouse Road is 22 feet is simply incorrect. DTS Provident field measurements indicate that in some locations White Schoolhouse Road is considerably narrower, closer to 21 feet with various places much narrower, less than 20 feet. The Town of Rhinebeck's consultant, CPL, also conducted a physical examination of White Schoolhouse Road and reported "White Schoolhouse Road has a paved width that varies from 19' to 22'". There are guiderails, structures (such as an historic barn), and trees/vegetation close to the existing roadway leaving little to no room for pedestrians and bicyclists, or snow removal/stacking.

The proposed trucks to be utilized by the Mine are 8'6" wide and have mirrors that stick out approximately 10" on each side, for a total width of 10'2", which means that two of these trucks cannot safely pass one another at various locations. The same is true for one of these trucks attempting to pass a school bus, a firetruck, or a typical delivery truck. The DEIS states that 400 tons of material would be transported each day in 12 trucks to the Package Pavement Stormville Plant, presumably in 30 cubic yard trucks—meaning 24 of these over-sized truck trips per day or approximately 4-5 of the 30 cubic yard truck trips per hour during the active hours of the Mine expansion. Elsewhere, the Applicant's traffic engineer estimates truck traffic from the expanded Mine every 3-4 minutes during peak hours. Therefore, at the requested public adjudicatory hearing Rural Rhinebeck Neighbors will present evidence establishing that White Schoolhouse Road cannot safely accommodate the truck traffic projected by the Applicant, particularly considering the limited sight distances that are typical of this winding, hilly, local road.⁵

Under these circumstances, public safety, including the safety of pedestrians and bicyclists, cannot be assured and there is a significant risk of serious injury or fatalities. NYSDEC, therefore,

⁵ For the intersection of proposed Site Access Road and White Schoolhouse Road, ***Intersection Sight Distance is not met for various movements***, as determined by the Applicant's Traffic Engineer:

- Passenger vehicles turning right exiting the Site Access Road to White Schoolhouse Road only have 265 feet available when looking left out of a recommended 430 feet.
- Passenger vehicles turning left exiting the Site Access Road to White Schoolhouse Road only have 265 ft out of a recommended 500 ft when looking left and only have 370 ft out of a recommended 500 ft when looking right.

will be constrained to either deny the Permit Application or significantly condition it to limit the size and number of trucks or otherwise ensure the safety of the public. Accordingly, Rural Rhinebeck Neighbors respectfully requests that NYSDEC hold a public adjudicatory hearing for Red Wing's Permit Application pursuant to 6 NYCRR 621.8.

II. White Schoolhouse Road is not structurally capable of safely handling the increased truck traffic projected for the Mine expansion.

As noted above, in 2021 the Town engaged CPL to prepare a report on the physical condition of White Schoolhouse Road and to assess its ability to physically accommodate the projected truck traffic from the Mine expansion. In March of 2021, CPL obtained pavement cores at six locations along White Schoolhouse Road.⁶ The pavement surface condition was characterized as either "poor" or "fair to poor" in five out of the six locations.⁷ One of CPL's conclusions is that:

"Most of the existing roadway has a very thin (less than 3.5") asphalt section that is not sufficient to carry heavy truck traffic. ... Sections of the existing roadway are already in poor condition and can be expected to fail rapidly under heavy truck loading."⁸

As also noted above, the DEIS states that 400 tons of material would be transported each day in 12 trucks to the Package Pavement Stormville Plant. That is an average load of over 33.3 tons (67,000 lbs.), not including the weight of the truck. Tri-axle trucks could weigh 42,000 lbs. and 86,000 lbs. (43 tons) loaded while the trailer dumps weight can vary but their load alone could be 60,000 lbs. (30 tons) without considering the weight of the truck and trailer.

The loaded truck trip estimates provided by the Applicant were based on the amount of material expected to be excavated and transported during a typical workday between the months of April and November by tri-axle and trailer dumps with an average hauling capacity of 24 cubic yards per load.⁹ The Applicant also states that "the exportation of mine products will generally use a mix of tri-axle (18 cubic yards) and trailer-dumps (28 to 30 cy) and possibly a few contractor trucks (3 to 5 cy)."¹⁰ However, we note that the Town of Rhinebeck has consistently limited truck size for mining operations in the Town to 10-wheel, 12-cubic yard capacity dump trucks (*see, e.g.*, Special Use Permit issued March 16, 2009 to Vincent P. Kinlan). We also note that, depending upon the size of each truck, there could be more trucks per day based upon the amount of aggregate being mined and the length of operation.

CPL reported to the Town various actions that the Town could take to improve the condition of White Schoolhouse Road so that it could accommodate the increased truck traffic (and weight of the trucks) projected for the Mine expansion. However, none of those optional actions would be sufficient to mitigate the identified safety hazards that would be exacerbated by the projected truck traffic from the Mine expansion; hazards that cannot be mitigated by addressing

⁶ See Town's Report, Page 3.

⁷ *Id.*

⁸ *Id.* at 15.

⁹ See Road Condition Study Update for Red Wing Properties prepared by Creighton Manning Engineering (February 8, 2022), Page 2.

¹⁰ *Id.* at 1.

the poor condition of the road surface. Indeed, the most aggressive (and expensive) improvement considered by CPL was summarized as follows:

“If a major rehabilitation (\$2,255,731 construction cost) is undertaken on the entire length of White School House Road, **and a 25 Ton posting is applied to the roadway**, a service life of 7 to 10 years can be expected.”¹¹

The “25 Ton posting” posited by CPL to assess the effect of “a major rehabilitation” is considerably less than the 33.3 tons of material (without considering the weight of the truck and trailer) that is projected by the Applicant to be transported in 12 truck trips a day to the Stormville plant.

Without rehabilitation of White Schoolhouse Road, CPL concluded that the road surface would “deteriorate quickly”—even with a 10 Ton posting (less than 25% of the expected weight of trucks serving an expanded Mine):

“If the Town decides to not to take any constructive action, then a 10-ton posting would be required. The 3 worst sections of the roadway will deteriorate quickly and will require maintenance repairs to keep the roadway in a poor but passable condition.”¹²

The Town’s consultant’s conclusions stand in stark contrast to the Applicant’s Report, which states that “[t]raffic generated by the site will be adequately serviced with the existing roadway network” and “[t]he results of the pavement assessment indicated that the existing pavement is in fair condition and show some signs of wear, as expected for its age and use.”¹³

Rural Rhinebeck Neighbor’s traffic and transportation consultant concurs with CPL that the Applicant has miserably failed to demonstrate that White Schoolhouse Road can physically handle the increased number and weight of trucks projected to serve an expanded Mine and is prepared to address that conclusion at the requested adjudicatory hearing. DTS also inspected and noted the presence of five (5) culverts under White Schoolhouse Road and expressed the concern that the physical load capacity of the culverts appears to not have been taken into account by either the Applicant or the Town’s consultant—although the Town’s consultant noted their existence in its report.

In summary, the physical condition and load carrying capacity of White Schoolhouse Road is such that NYSDEC will be constrained to deny the Permit or significantly condition it so that truck shipments to and from the Mine expansion would be limited to 10 tons, unless the Town undertakes a “major rehabilitation,” or 25 tons, if the Town does undertake a “major rehabilitation.”

III. Increased traffic at the intersection of Slate Quarry Road and White Schoolhouse Road cannot be accommodated safely.

¹¹ Town’s Report at 15.

¹² *Id.*

¹³ See Applicant’s Report at 7.

According to the Applicant, all mining-related trucks arriving to the Mine will use NY Route 9G and turn onto Slate Quarry Road, then turn left onto White Schoolhouse Road, and then follow the reverse route when exiting the Mine.¹⁴ In selecting this access route to the mine site, the Applicant has failed to take into account the well documented traffic hazards associated with the intersection of White Schoolhouse Road and Slate Quarry Road. We also note, however, that the Applicant provides no support for this assumption and no explanation as to what would prevent Site-related trucks from accessing the Mine from the north (e.g., trucks arriving use Route 9G and turn onto NY Route 308, then turn right onto White School House Road, and then follow the reverse route when exiting). Presumably, the Applicant selected the southern route for its analysis because the northern route has unacceptable—but undisclosed—adverse impacts.

In 2014, the Poughkeepsie-Dutchess County Transportation Council (“PDCTC”) conducted a Safety Assessment of Slate Quarry Road from NYS Route 9G to White Schoolhouse Road in support of its goal to improve transportation safety in Dutchess County (hereinafter, the “Safety Assessment”). The Safety Assessment identifies issues with sight distance for eastbound vehicles turning left onto White Schoolhouse Road and finds that the intersection suffers from “the largest cluster of crashes within the study area.”¹⁵ In addition, the Safety Assessment identifies two significant safety concerns related to existing signage at the intersection:

“The White Schoolhouse Road approach to Slate Quarry Road has two conflicting regulatory signs: a STOP sign in the middle of the intersection and a YIELD sign located on the right-hand side. In theory, the STOP sign is directed towards drivers turning left onto Slate Quarry Road, while the YIELD sign is directed towards drivers turning right. Though this may be locally understood, the two signs are confusing and not intuitive to drivers unfamiliar with the area.”¹⁶

and

“The White Schoolhouse Road approach to Slate Quarry Road appears excessively wide, measuring approximately 100 feet from edge to edge. In addition, there is a de facto triangular island in the middle of the approach, with a STOP sign and chevrons in the middle. This configuration creates a confusing situation for drivers on White Schoolhouse Road, who may not know on which side of the island to position their vehicle when turning. It may also confuse drivers turning from Slate Quarry Road who may not know where to turn into White Schoolhouse Road.”¹⁷

Rural Rhinebeck Neighbor’s traffic and transportation consultant concurs with PDCTC that the intersection’s signage can be confusing for drivers not familiar with it, such as new truck drivers, and that the number of crashes could be expected to increase with the addition of more traffic. However, of greater concern are DTS Provident field assessments which confirm that under

¹⁴ See Applicant’s Report at 1.

¹⁵ See Safety Assessment, Page 16.

¹⁶ *Id.*

¹⁷ *Id.* at 18.

the present conditions at the intersection of Slate Quarry Road and White Schoolhouse Road, the recommended intersection sight distance and stopping site distance is not met for all movements. Specifically, DTS Provident concluded the following:

- Passenger vehicles turning left from White Schoolhouse Road to Slate Quarry Road only have 525 feet available out of a recommended 555 feet when looking left and 500 feet out of a recommended 555 feet when looking right;
- Single Unit Trucks turning right from White Schoolhouse Road to Slate Quarry Road only have 570 feet out of a recommended 625 feet;
- Single Unit Trucks turning left from White Schoolhouse Road to Slate Quarry Road only have 570 feet out of a recommended 700 feet when looking left and only have 500 feet out of a recommended 700 feet when looking right;
- Combination Trucks turning right from White Schoolhouse Road to Slate Quarry Road only have 570 feet out of a recommended 775 feet;
- Combination Trucks turning left from White Schoolhouse Road to Slate Quarry Road only have 570 feet out of a recommended 850 ft when looking left and 500 feet out of a recommended 850 ft when looking right;
- For Passenger Cars, Single Unit Trucks, and Combination trucks the required stopping sight distance is 500 ft and only 490 ft is available; and
- All other locations did meet the Stopping Sight Distance requirements.

By contrast, the Applicant states that the available intersection sight distances at the intersection of Slate Quarry Road and White Schoolhouse Road “should allow drivers enough view of the intersection to allow vehicles to enter or exit the intersection without excessively slowing approaching vehicles travelling at or near the posted speed on the intersecting roadway.” We note, however, that the Applicant’s site distance evaluation is based on the southbound left and right turns both operating under stop control when, as stated above, in reality the right turn movement is controlled by a yield sign. The Applicant even acknowledges that site distances under present conditions at this intersection are “less than desirable,” which is why it bases its site distance evaluation on conditions that are merely speculative.¹⁸

Rural Rhinebeck Neighbor’s traffic and transportation consultant concurs with both PDCTC and the Applicant that site distance is limited at the intersection of Slate Quarry Road and White Schoolhouse Road, which results in an increased risk of collisions. Under these circumstances, public safety cannot be assured and there is a significant risk of serious injury or fatalities. Furthermore, the Applicant has utterly failed to demonstrate that the intersection can safely accommodate the increased traffic serving an expanded Mine, and therefore NYSDEC will

¹⁸ See Applicant’s Report at 6.

be constrained to either deny the Permit Application or significantly condition it to limit the number of truck trips (or otherwise reconfigure the intersection) to ensure the safety of the public.

IV. Conclusion

Rural Rhinebeck Neighbors has raised substantive and significant issues concerning the transportation and safety related impacts of Red Wing's proposed Mine expansion, including (i) the impact of the Mine expansion and the attendant increase in the number and size of the trucks on the public safety of those that use White Schoolhouse Road; (ii) the effect of the increased number and size of the trucks on the physical condition of White Schoolhouse Road; and (iii) the impact of increased traffic at the Slate Quarry Road and White Schoolhouse Road intersection on public safety. The resolution of any one of these issues "may result in denial of the permit application, or the imposition of significant conditions thereon," and Rural Rhinebeck Neighbors has "explain[ed] the basis of [their] opposition and identif[ied] the specific grounds which could lead the department to deny or impose significant conditions on the permit." Accordingly, NYSDEC must hold a public adjudicatory hearing for this matter pursuant to 6 NYCRR 621.8.

Very truly yours,

/s/ *Philip H. Gitlen*

Philip H. Gitlen

Preserving Our Rural Town Roads and Neighborhoods –White Schoolhouse Road

Rural Rhinebeck Neighbors (RuralRhinebeck@gmail.com)

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White Schoolhouse, a Historic Rhinebeck Road

In the Town of Rhinebeck Comprehensive Plan (page 10.5) several historic town roads are listed as scenic resources which should be designated “as CEAs under SEQRA for their rural and/or scenic significance”. The plan recognizes them as something of value that the town wants to preserve. White Schoolhouse Road in the eastern part of Rhinebeck is one of these listed historic roads.

White Schoolhouse Road is a narrow, twisting, country road. It has thirty-two residences, some with blind driveways, and there are forty-one additional residences on roads that feed into it. School buses pass through four times a day. It is a quintessential paved country road, a beautiful, peaceful road to walk, bicycle, or drive. There are many blind curves and in places wetlands, stone embankments, and buildings that are inches from the edge of the paved surface. The area is rich in wildlife, and you are likely to see a variety of that wildlife on the sides or even in the road. Two cars can barely pass comfortably in places; it is common for trucks to have to stop and back up to allow one or the other to pass. There are no shoulders and for most of the road, no space to add shoulders. The road is not lined and has no curbs.

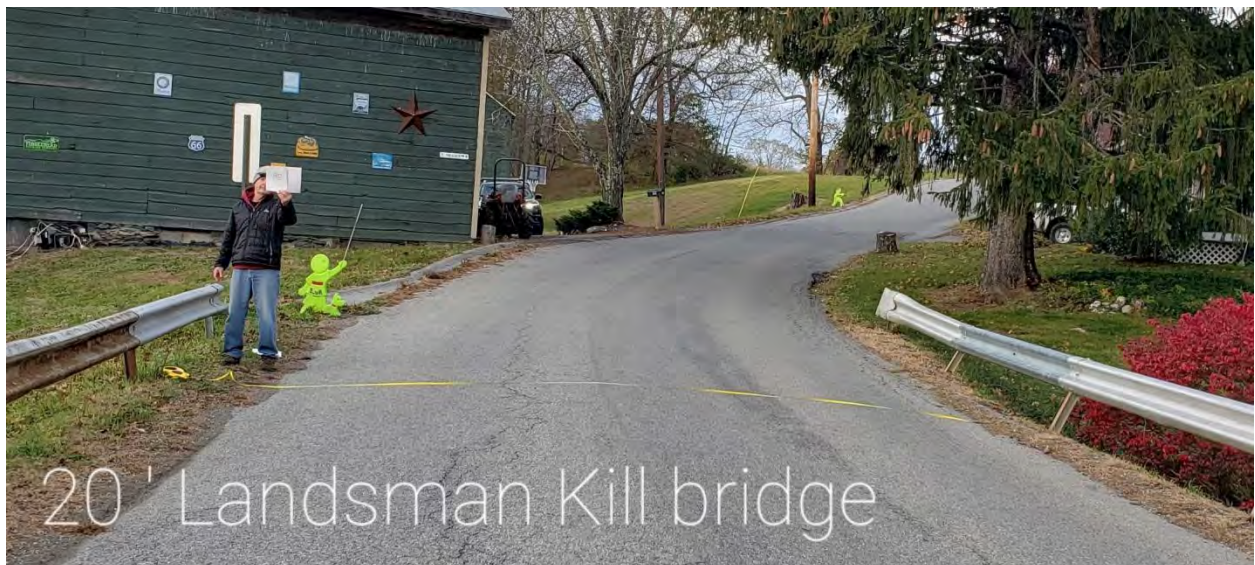
In the May 24, 2007 report for Red Wing done by Creighton Manning Engineering and the February 8, 2022 Update to the report, White Schoolhouse Road is described as “a two-lane road with a 22-foot wide paved travel way.” The road width figure of 22 feet is clearly inaccurate as a description of the overall paved width of White Schoolhouse Road. Some of the neighbors measured eleven spots on White Schoolhouse Road and they were all about 20 feet wide, edge to edge, and none were 22 feet wide. The following measurements were taken starting at the north entry of White Schoolhouse Road and heading south:

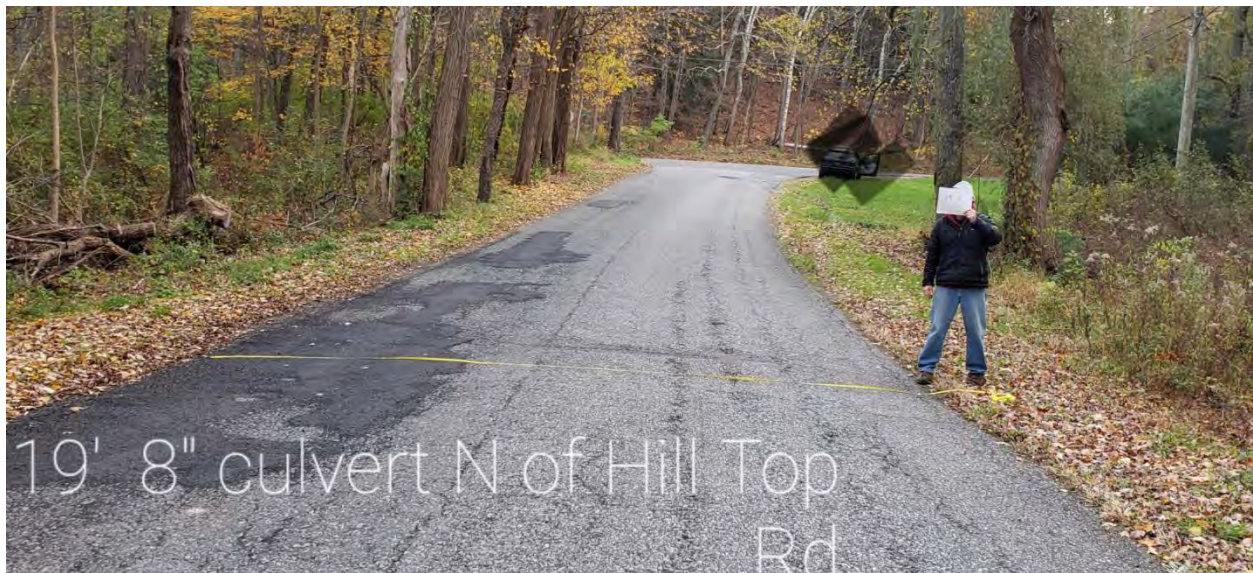
Width	Location
20' 3"	At 7 White Schoolhouse Rd. with rock out crop
20' 6"	First culvert/bridge
21' 2"	At 85 White Schoolhouse Rd., top of hill by hidden drive sign
20' 4"	At 111 White Schoolhouse Rd.
20' 8"	Just south of 141 White Schoolhouse Rd.
19' 6"	At the historic barn, 191 White Schoolhouse Rd.
20'	Landsman Kill Bridge
19' 8"	Top of hill just north of Christmas tree farm entry
19' 8"	Culvert just north of Hill Top Rd.
21'	At 378 White Schoolhouse Rd.
20' 6"	At 425 White Schoolhouse Rd.

Close calls between vehicles traveling in opposite directions having to hit their brakes or back up to negotiate curves and narrow spots are routine. The width of a 10-wheeler dump truck from mirror to mirror is 10 feet, which leaves no clearance for two to pass where the road is 20 feet wide or less. There are no shoulders to pull over onto and obstructions, such as stone embankments, wetlands, and buildings are often inches from the edge of the road. The prospect of adding more heavy traffic to the mix on White Schoolhouse Road is daunting.











As a historic rural town road, White Schoolhouse Road is not, nor has it ever been, a road intended to be a commercial or industrial street. It cannot reasonably be expected to carry such a substantial volume of heavy traffic as a principal through road for commercial traffic. It has never been expected to become a commercial or industrial street.

With the exception of the three mines on White Schoolhouse Road, the entrances to most of the mines in this area (northern Dutchess and southern Columbia counties) have been on county or state roads, which are more able to safely sustain the flow of heavy vehicle traffic. The mines on White Schoolhouse Road have historically provided sand and gravel for local use only, which has kept the amount of heavy vehicle traffic relatively low.

Some farming and mining traffic has co-existed with residences along this country road. The trucks for mining have always been “limited to no more than 10-wheel, 12-cubic yard capacity, as recommended by the Town Highway Superintendent and Town Engineer.” (Special Use Permit, Vincent Kinlan, March 7, 2006). In spite of 3 mines being located on the road, the amount of heavy vehicle traffic has not been large. The Dutchess County Traffic Data website (<https://gis.dutchessny.gov/traffic-data/>) has data from 2008, 2013, 2016, and 2018 which show how little heavy vehicle traffic has used the road.

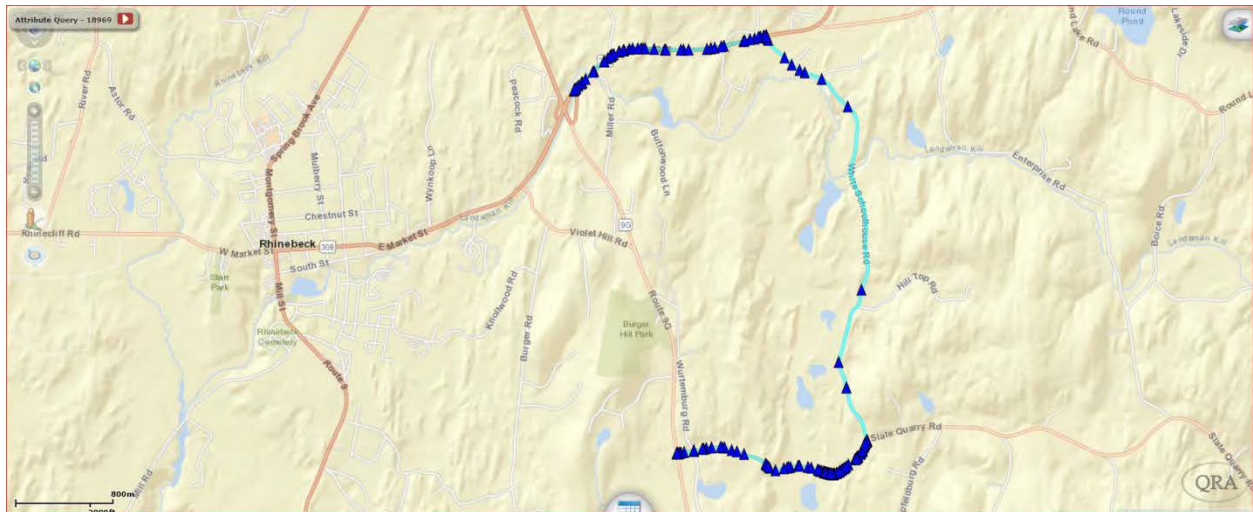
	Light Vehicles and Buses F1-F4	Heavy Vehicles F5-F8	Total	Est. AADT (North)	Est. AADT (South)
2008	298	29	327	156	165
2013	278	15	293	136	145
2016	277	23	300	140	144
2018	278	14	292	135	138

FHWA Axle Classification Scheme

- F1. Motorcycles
- F2. Autos
- F3. 2 axle, 4-tire pickups, vans, motor-homes
- F4. Buses
- F5. 2 axle, 6-tire single unit trucks
- F6. 3 axle single unit trucks
- F7. 4 or more axle single unit trucks
- F8. 4 or less axle vehicles, single trailer
- F9. 5 axle, single trailer
- F10. 6 or more axle, single trailer
- F11. 5 axle multi-trailer trucks
- F12. 6 axle multi-trailer trucks
- F13. 7 or more axle multi-trailer trucks

According to the Dutchess County Traffic Data Reports for the survey periods, of all heavy vehicles that were counted almost all were class F5 (2 axle, 6-tire single unit trucks), with only 16 heavy vehicles in classes F6-F8 in 2008 and only 6 heavy vehicles in classes F6-F8 total in the years 2013, 2016, and 2018 combined.

Reflecting the current quiet nature of the road, Accident Data obtained by FOIL request from NYS DOT’s Accident Location Information System (ALIS) for the period of 2010 to the present show few reported accidents on White Schoolhouse Road, but many on its intersections with Route 308 and Slate Quarry Road.



Reported Crashes (2010-2021) White Schoolhouse Area

Increased truck traffic

Red Wing Sand and Gravel is proposing to use White Schoolhouse Road as the entrance to and exit from its White Schoolhouse Road Mine. In the past, although there were three operating mines until 2013, the volume of heavy truck traffic from mining has been very light. We are very concerned about the safety of the road—and the intersections of this road with the two heavily-trafficked roads on either end of it—in the face of increased heavy vehicle traffic from the reopening and possible expansion of this mine.



Tracks on White Schoolhouse Road at Red Wing's Proposed Entrance

The May 24, 2007 report by Creighton Manning Engineering for Red Wing suggests all that is needed on White Schoolhouse Road to mitigate the concerns is “an intersection warning sign”.

Intersection and stopping sight distance at the proposed site access road meets AASHTO recommendations for both cars and single unit trucks with the proposed mitigation measure to remove vegetation which restricts sight distance. Although sight distances for combination trucks did not meet AASHTO recommendations, it is not critically limited according to NYCRR. However, considering the presence of trucks, an intersection warning sign is recommended.

The February 8, 2022 Update concludes similarly, “Intersection and stopping sight distance at the proposed site access road will meet AASHTO recommendations for both cars and trucks with the proposed mitigation measure of installation of intersection warning signs at the site access roadway.”

We are concerned that the Creighton Manning reports cited substantially underestimate the increase in projected heavy truck traffic. In the light of the increases proposed, merely adding an “intersection warning sign” does not seem to be adequate or acceptable.

Increase in Volume—Over the past few years, in various documents and at various meetings, Red Wing has stated the estimated truck traffic to be as little as 20 trucks in and out (40 uses of road) a day and as much as a hundred trucks in and out (200 uses of road) per day. At the ZBA hearing on 9/15/2021, the president of Red Wing, Frank Doherty, said the estimate had changed over time, down from 80 (160 uses) to 50 (100 uses) to 20 (40 uses), but would be “determined by the market.” At that meeting he also stated that he has had to turn down jobs due to not having enough material. Since reopening the White Schoolhouse Road Mine will make more material available in the market, we would expect more trucks. Red Wing’s 2017 Draft Environmental Impact Statement (DEIS) estimates up to 50 truck trips (50 trips in and 50 trips out; 100 road uses) per day. Based on the data in the Dutchess

County Traffic website and using that as an estimate, that would be a 500% increase in heavy vehicle traffic, and even using Red Wing's lowest estimate of 20 trucks per day, the increase in heavy vehicle traffic is about 200%. However, based on Red Wing's 2017 DEIS, these estimates do not give the full picture.

In Red Wing's 2017 DEIS additional information is given about what Red Wing expects the truck traffic to be

Processed material will be sold in bulk to local communities from the existing mine as well as trucked to the Package Pavement bagging facility in Stormville. It is anticipated that approximately 400 tons (12 truck loads) per day will be trucked to the Package Pavement Stormville plant and the rest (8 to 38 truck loads⁹) will be sold to drive up customers. These figures represent the best estimates at this time and are subject to variations in market demand.

Some simple arithmetic shows that the 400 tons per day they will send to Package Pavement divided by 12 truck loads results in 33 1/3 tons per truck load. However, the town of Rhinebeck has always limited mining trucks to 10 wheels. An on-line search (<https://findanyanswer.com/goto/593136>) shows that ten-wheel dump trucks are rated to reliably hold 13 tons. Taking Red Wing's estimate of 400 tons per day for Package Pavement and dividing it by 13 tons per 10-wheel truck load results in 31 loaded trucks leaving the site per day and a total of 62 trips in and out per day. Adding in the additional estimated drive up customers (note that we do not know what size trucks this additional estimate is based on) yields an estimated range of 39 to 69 trucks for a total of 78 to 138 trips in and out per day.

Increase in Size of Trucks—Red Wing uses tractor trailers to transport their gravel. They are too big for safe travel on White Schoolhouse Road and its intersections.

At the 9/15/2021 ZBA meeting, the president of Red Wing said most of the traffic to the White Schoolhouse Road mine would be pickup trucks hauling small trailers. This is especially interesting in the light of Red Wing featuring Tri-Axle Dump Trucks and Dump Trailers on their web site:

Stormville Trucking complements our excellent service and is available to make deliveries to your home or business. Call us for more details or to schedule a delivery. A fleet of tri-axle and dump trailers are ready to deliver 12 tons or more. We can also help you find an independent driver if you require a smaller load for projects around your home or garden.

Tri-Axle Dump Trucks haul 12-27 tons per load. These trucks are the primary method of delivery to residential and commercial sites, because of their easy maneuverability, and ability to dump in more convenient locations than a larger dump trailer.

Dump Trailers haul 27-42 tons per load. These trucks are used primarily for commercial deliveries. Freight charges are usually slightly less per ton than tri-axle because more material can be hauled per load. (<https://www.redwingsandandgravel.com/services.html>)

Stormville Trucking is available to make deliveries to your home or business. Call us for more details or to schedule a delivery. Our fleet of 14 and 18 wheelers are ready to deliver 12 tons or more. (<https://www.redwingsandandgravel.com/products.html>)

Red Wing's DEIS makes it plain that they expect to use tractor trailers at the White Schoolhouse Road Mine:

Trucks ranging in size from one ton pick ups to tri-axes to trailer dumps between 28 and 30 yards per load will be used to haul material off the site. (Page 18)

Trucks ranging in size from one ton to trailer dumps between 28 and 30 yards per load will be used to haul material off the site. (Page 147)

The May 24, 2007 report by Creighton Manning Engineering for Red Wing also uses Red Wing's assumption that trailer dumps will be used:

The exportation of mine products will be through the use of trailer dumps between 28 and 30 cubic yards per load. (Section A)

Therefore, trip generation estimates were based on the amount of material expected to be excavated during a 7 hour work day between the months of April to November by trailer dumps with an average hauling capacity of 29 cubic yards per load. (Section C)

Their February 8, 2022 Update modifies it a bit:

The exportation of mine products will generally use a mix of tri-axle (18 cubic yards) and trailer-dumps (28 to 30 cy) and possibly a few contractor trucks (3 to 5 cy). (Section A)

Therefore, trip generation estimates were based on the amount of material expected to be excavated during a typical work day between the months of April and November by tri-axle and trailer dumps with an average hauling capacity of 24 cubic yards per load. (Section C)

However, since trailer dumps and 18-cubic-yard tri-axes have never been allowed for the existing mines on White Schoolhouse, the number of trucks estimated by the Creighton Manning Report for Red Wing and Red Wing's DEIS is actually underestimated by 2 to 3 times, given the historic restriction of 12-cubic yards per truck in the Town of Rhinebeck's approved Special Use Permits (SUPs) for the existing mines.

Any use of trailer dumps would have been in violation of Rhinebeck SUPs. All of the Town of Rhinebeck SUPs issued for mining on White Schoolhouse Road over the years have included limits on the size of trucks allowed. Affirming these limits, on May 11, 2006, the Zoning Administrator Jack Maasz, responded to a request by Mr. Paul Doherty to use tractor trailers to haul material from the Kinlan Soil Mine (aka White Schoolhouse Road Mine), saying "The March 7, 2005 resolution of the Town of

Rhinebeck Planning Board strictly limits allowed truck size to be 12-cubic yards and no larger than a 10-wheeler.”

Red Wing has expanded their mine road at its intersection with White Schoolhouse Road from a little used farm track to a thirty-two feet wide road way. This is wider by 10 to 12 feet than White Schoolhouse Road, which has been measured at many spots at twenty feet or less.

Red Wing is well aware of the fact that Rhinebeck has always restricted the size of trucks in its SUPs; however, their estimates of numbers of trucks are based on truck sizes that are larger than those restrictions. Mr. Frank Doherty stated at the September 15, 2021 Town of Rhinebeck ZBA meeting:

39:04 We run tri-axles and dump trailers and I
39:07 know the town as opposed to the dump
39:09 trailers I'd like to at some point get
39:11 into maybe a pilot program put two dump
39:13 trailers on a day making three, four
39:15 loads a day see how it works ...

Based on their DEIS, the study and update done for them by Creighton Manning Engineering, and their website extolling their fleet of tri-axle and dump trailers, Red Wing is planning to use trucks that are larger than those that have been allowed under Town of Rhinebeck SUPs in the past, and their estimates of truck trips per day reflect their intended use of tri-axles and dump trailers. Therefore, their estimates underestimate by several times the projected number of truck trips per day using the road. Town of Rhinebeck officials need to be aware of this discrepancy when evaluating the use of White Schoolhouse Road for the mine.

Concerns for trucks entering and exiting to the North

Heavy vehicle traffic exiting the mine by turning left on White Schoolhouse Road and travelling to the north is problematic. At the Town of Rhinebeck ZBA meeting on July 21, 2021, the president of Red Wing, Frank Doherty, was asked, “So you don’t think you can come out to 308?” He indicated that this route was not practical as it is a lot longer and the hills tend to be a little narrower and windy. The northern route is more than twice as long as the southern route to reach the intersection of Route 9G and Slate Quarry Road. He also indicated a preference of making a right hand turn onto Slate Quarry rather than a left turn onto Route 308.

White Schoolhouse Road is a residential area. There are 20 homes on White Schoolhouse Road to the north of the proposed Red Wing mine entrance. Two other residential roads, Cedar Lane and Jardim Court, feed into this part of White Schoolhouse Road. There are 18 residences on Cedar Lane and 7 on Jardim Court.

White Schoolhouse is just 20 feet wide at the bridge and 19 ½ feet wide at the 200-year-old historic barn just north of the bridge. The barn is just 18 inches off the road. At this point in the road, two cars barely fit through side by side, let alone heavy vehicles. The bridge and culvert is rusted out and in disrepair. There is a second culvert in this section of the road. Neither of the culverts has weight limits posted.



Historic barn inches off the road; multiple skid marks on the bridge



Deteriorating culvert and bridge

Some other areas that typify the concerns about increased heavy vehicle traffic on White Schoolhouse Road are 177 White Schoolhouse, which is just 5 feet off the road, and 85 White Schoolhouse, which has a blind driveway coming over the hill and leading to Cedar Lane.



Skid marks from a near miss involving a truck at 177 White Schoolhouse Road



Blind driveway near Cedar Lane

A neighbor on White Schoolhouse made this comment just days after school restarted for the semester on September 9, 2021, “We already had a close call with the bus heading south in front of our house and a pick up heading north. Both had to hit the brakes. This will happen on every corner and tight spot on the road when we add dump trucks.”

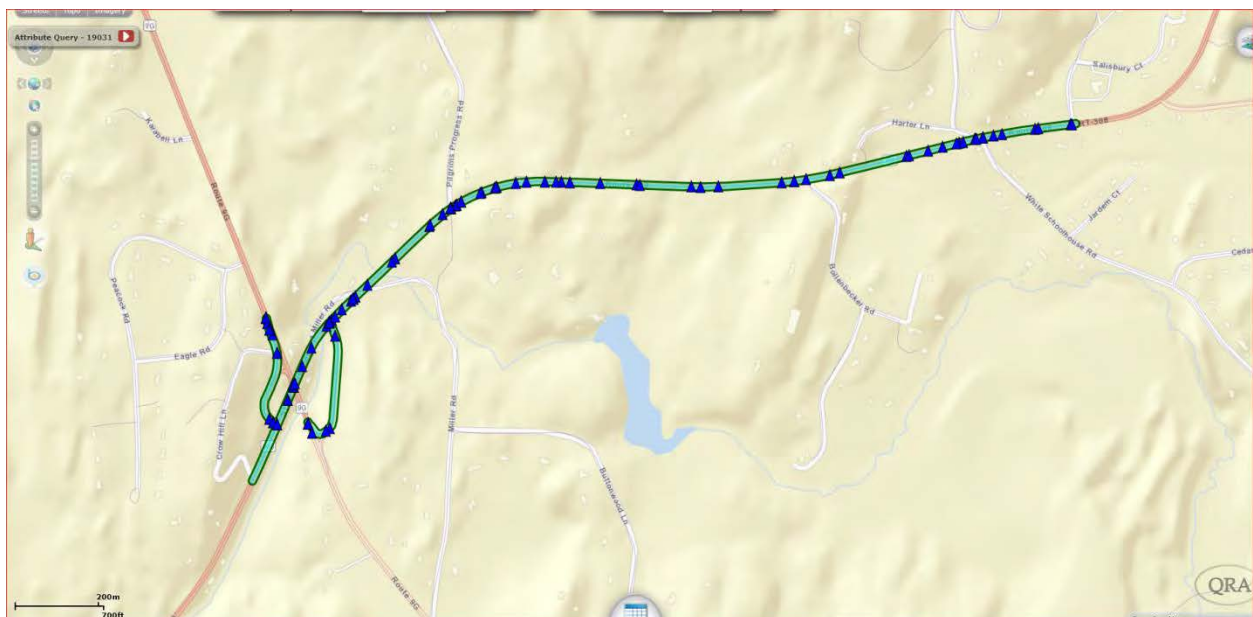


School Bus sign on White Schoolhouse Road

Including Intersection with Route 308

Taking the northern route necessitates a left turn from a stop sign onto Route 308. A recent study suggests that 61% of accidents at intersections are left hand turns--they are inherently more dangerous than right-hand turns. (<https://www.popularmechanics.com/science/a36620755/eliminate-left-turns/#:~:text=It%20might%20be%20time%20to,involvement%20a%20left%20hand%20turn>)

The distribution of accidents on the segment of Route 308 from the area of the White Schoolhouse intersection to the Route 9G entry ramps can be seen from this map from a FOIL request to the NYS DOT for Crash Data from the Accident Location Information System (ALIS) from 2010 – 2021. Note that ALIS only contains reported accidents.



Reported Crashes (2010-2021) Route 308

Route 308 heading west is the eastern gateway into the Village of Rhinebeck. Using this route would require heavy vehicles to make a left turn onto Route 308. There is a stop sign for the traffic from White Schoolhouse Road so the trucks entering Route 308 would need to make the turn from a full stop. Proceeding west on Route 308 is the intersection with Pilgrim's Progress Road. It is already dangerous to pull out there. Imagine adding loaded trucks heading down that hill as you try to pull out onto Route 308.

The latest count for Route 308 in Dutchess County Traffic Data (<https://gis.dutchessny.gov/traffic-data/>), 2018, indicates an AADT (Annual Average Daily Traffic) of about 3800.

Another concern for the route from White Schoolhouse Road via Route 308 to Route 9G is the on-ramp for Route 9G heading south. It is steep and has a sharp angle. It is difficult for vehicles both large and small to keep to their own lane negotiating the ramp.

Concerns for trucks entering from and exiting to the South

According to its 2017 Draft EIS, Red Wing intends to send most of its trucks from White Schoolhouse to Slate Quarry to Route 9G when it starts production:

Trucks exiting the site will turn right at the proposed entrance onto White School House Road and travel south about 1.1 miles (1.2 miles from the alternative entrance road) to Slate Quarry Road, passing about 15 homes. Most trucks will turn right at this intersection and head west about 1.1 miles (passing about 17 homes) to NYS Route 9G where they will proceed north or south to their destinations.

There are 12 residences on White Schoolhouse to the south of the Red Wing entrance. In addition, there are 16 more residences on Hilltop Road, which feeds into White Schoolhouse. There are two culverts in this stretch of White Schoolhouse, neither of which has a weight limit posted.



Heading south on White Schoolhouse toward intersection with Hilltop

The May 24, 2007 report and the February 8, 2022 update by Creighton Manning Engineering describe this part of White Schoolhouse Road: “From the proposed mine entrance to Slate Quarry Road, the road has a curvilinear alignment.” (Section F) A CURVILINEAR ALIGNMENT indicates an alignment in which the majority of the length is composed of circular and spiral curves. While these curves provide an esthetically appealing road way, they also provide severely limited sight distances.

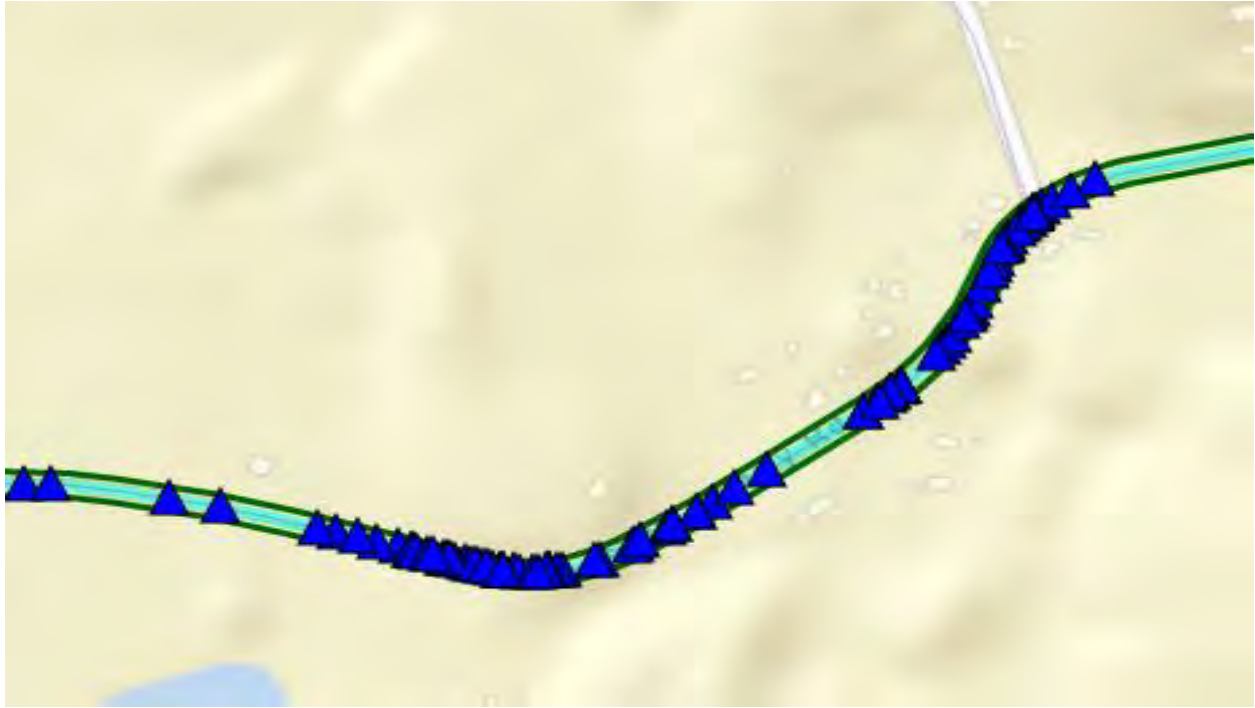
Including intersection with Slate Quarry Road

The route Red Wing proposes to take includes one of the most dangerous and deadly sections of road in Dutchess County: the mile of Slate Quarry Road from Route 9G to White Schoolhouse Road. A FOIL request to the NYS DOT for Crash Data from the Accident Location Information System (ALIS) from 2010 – 2021 returned this mapping showing so many reported accidents around this intersection that the blue markers for reported accidents obscure the green of the road. It is important to note that only the reported accidents are recorded in ALIS; many accidents that occur here are not reported. Neighbors estimate the rate of unreported accidents at about 3 times the reported accidents.



Reported Crashes (2010-2021)

A zoomed-in view gives a better sense of the large number of accidents that have occurred here.



A Zoomed in view: Reported Crashes (2010-2021)

This is a heavily traveled intersection, as Slate Quarry Road is a popular east-west connection between NYS Route 9G and the Taconic State Parkway.

In the CR 19 (Slate Quarry Rd)-Rhinebeck Safety Assessment (2014)

([https://www.dutchessny.gov/ConCalAtt/69/Final%20CR19 Slate%20Quarry%20Rd%20Safety%20Assessment%20Report 122620141049.pdf](https://www.dutchessny.gov/ConCalAtt/69/Final%20CR19%20Slate%20Quarry%20Rd%20Safety%20Assessment%20Report%20122620141049.pdf)) it is recognized how dangerous CR 19, Slate Quarry Road, is from White Schoolhouse Road to Route 9G. The report focuses on the intersection of White Schoolhouse and Slate Quarry Road as a major area of risk. For the five years, 2009 to 2013, documented in this report, there were 59 reported accidents on the one mile segment of road from White Schoolhouse to Route 9G including “one fatality and 26 reported injuries, three of which were classified as serious.” 32% of the accidents occurred within 100 feet of the White Schoolhouse Road intersection. Some drivers are able to hold the curve at the intersection, only to crash at the next curve as the road narrows through tight turns.

According to this report, “approximately 4,200 vehicles pass through this intersection per day, with peak hour volumes of approximately 340 vehicles per hour in the morning (8 to 9 a.m.) and 410 vehicles in the evening (5 to 6 p.m.)” (Page 2) Adding a hundred or more heavy trucks entering or exiting the intersection on a daily basis is a cause for great concern to the neighbors.

Drivers routinely overdrive this road, and local residents are used to hearing screeching of wheels as drivers try to hold the curve. The report also acknowledges even with the lower speed limit adopted in 2014, “operating speeds may continue to be too high for the corridor.”

The May 24, 2007 report for Red Wing done by Creighton Manning Engineering echoes concerns the sight distances need to be improved for trucks:

Intersection and stopping sight distances at the White Schoolhouse Road and Slate Quarry Road intersection did not meet AASHTO recommendations. According to NYCRR, the yield control should be removed and a stop sign installed, and intersection warning signs should be installed on each approach of Slate Quarry Road. In order to improve the stopping sight distance available on Slate Quarry Road vegetation from the inside of the horizontal curve should be trimmed or removed.

Their February 8, 2022 Update recognizes changes that have been made as result of the County's 2014 Safety Assessment, but the underlying problems with this intersection still remain:

Intersection and stopping sight distances at the White Schoolhouse Road and Slate Quarry Road intersection did not meet AASHTO recommendations. According to the guidance, the yield control should be removed and a stop sign installed, and the existing intersection warning signs should be maintained. (Section G)

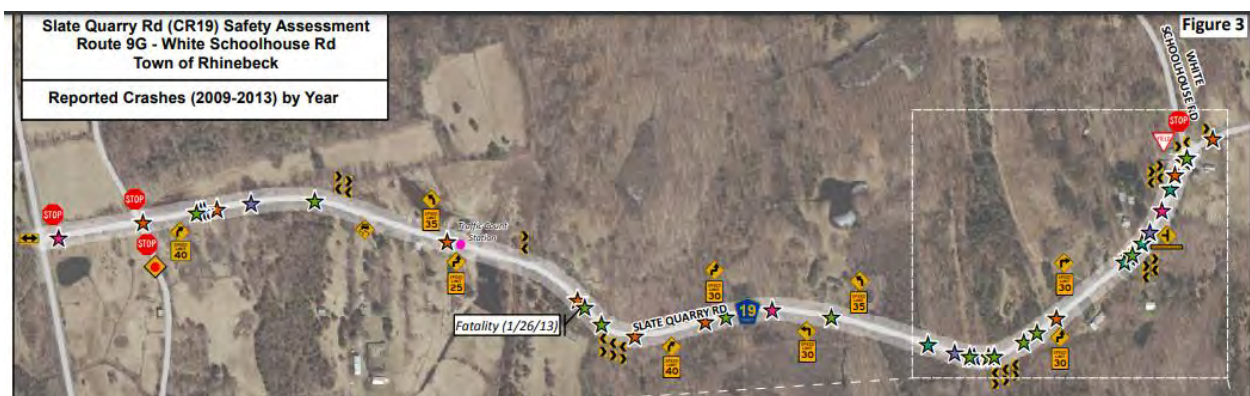
Red Wing's 2017 DEIS sums up the concerns:

For vehicles turning left from White School House Road and from Slate Quarry Road onto White School House Road, the available intersection sight distances were less than the AASHTO guidelines and were considered critically limited. CME recommends that an intersection ahead sign be placed on Slate Quarry Road.

The mitigations they suggest, and in particular the one already implemented to add "an intersection ahead sign", are totally inadequate to preserve the safety of people negotiating this intersection now or after heavy truck traffic is increased.



Result of over-driving the curve



Reported Crashes (2009-2013) Slate Quarry Road

Some of the changes that were made as a result of the safety assessment, particularly changing the type of surface on the road, have been good improvements to the safety of the road; however, the addition

of heavy vehicle traffic from the mine can be expected to overwhelm any gains to safety that have occurred.

The following table is from the NYSDOT QRA ACCIDENT SEVERITY SUMMARY from 2010 to 2021 which was returned as part of a FOIL request to NYSDOT. It shows a clear improvement in 2015 when the pavement was replaced, speed limit reduced, and signage improved; however, the number of fatalities on this stretch of road still remains too high with one each year from 2016 – 2019. Note that these reported totals are an underestimate of the risk, as, for example, in 2014 when accidents were occurring almost daily and multiple times per day when the road surface was wet, the total reported was only 27 accidents.

<u>Case Year</u>	Injury	Fatality	Property Damage	Non-Reportables	Totals
<u>2010</u>	7	0	8	4	19
<u>2011</u>	2	0	7	4	13
<u>2012</u>	2	1	4	4	11
<u>2013</u>	7	1	11	5	24
<u>2014</u>	11	0	10	6	27
<u>2015</u>	2	0	5	8	15
<u>2016</u>	6	1	10	3	20
<u>2017</u>	9	1	6	3	19
<u>2018</u>	3	1	15	2	21
<u>2019</u>	6	1	8	2	17
<u>2020</u>	1	0	7	1	9
<u>2021</u>	3	0	10	0	13
<u>Grand Total:</u>	59	6	101	42	

NYSDOT QRA ACCIDENT SEVERITY SUMMARY

As noted previously in the section about the northern route, left hand turns are more dangerous. Before allowing large increases in heavy vehicle traffic, the town needs to assess the safety of trucks turning left onto White Schoolhouse from Slate Quarry Road with limited sight distance and fast cars coming westbound who cannot see that there may be trucks below. The Safety Assessment report (2014) repeatedly acknowledges visibility issues with the intersection.

Near collisions are common, according to the neighbors who live directly at the intersection of White Schoolhouse and Slate Quarry and routinely observe accidents, “almost accidents,” and plentiful unreported accidents. In the latter, there are many collisions in which a car hits the rock embankments but the accident is not called-in to the police, and thus it is not reported. The number of actual accidents is much higher than reported.



These neighbors have experienced 14 instances of substantial damage to their property from vehicle collisions. They estimate another dozen accidents each year in which a driver “drive offs” after plowing through their yard or through their trees. One accident this spring included a 4-car pileup at the base of their driveway including a truck, car with trailer, a police car, and their own vehicle. An earlier accident hit the electric pole, dislodging the transformer and setting their garage on fire. They note that whenever it rains, they hear screeching tires and avoid the risky left-hand turn into their driveway from Slate Quarry Road. They often “host” accident victims, EMTs, and police in their home. During the winter, the roadway width is reduced as the snow from the triangle-shaped intersection is piled up on either side of Slate Quarry Road.



Cars that miss the curve are on a direct collision course with house at 219 Slate Quarry Rd

The neighbors at the north-east corner of White Schoolhouse and Slate Quarry Road installed a long white fence at their own expense to increase the visibility of the intersection. It has been repaired numerous times due to westbound drivers sliding down the hill, or being unable to hold the turn. They have ceased planting or grooming the landscaping on the west side of their driveway, as the planter box there was hit nine times.

One of the neighbors almost had a head-on collision with a gravel truck at this intersection in early September, and the mine company truck driver said "I HAVE to gun it or I'll never make the turn in between cars coming down the road." Neighbors also know from prior conversations with the county that it is not feasible to add a light here because there is no visibility for westbound travelers that there

may be cars stopped at the bottom of the hill. In addition, during winter months, cars might be unable to make it up the hill. Currently in the winter when there is snow or ice, many cars get stuck half-way up the hill and have to back down into oncoming traffic directly into the intersection where mining trucks would enter. The 2014 Safety Assessment acknowledged the possibility of lowering the “vertical,” but rejected it due to concerns about funding. (Page 20)

The 2014 Safety Assessment identified “Unfamiliar Drivers” as an issue for this part of Slate Quarry Road, suggesting “Drivers may not fully comprehend the nature of Slate Quarry Rd and may not be prepared to negotiate approaching curves or respond to vehicles entering from intersecting driveways and roads.” This may be a concern for Red Wing truck drivers from Stormville as well as the 8 to 38 drive-up customers Red Wing indicates they expect daily in their 2017 DEIS. Even if the Red Wing drivers are fully prepared for driving Slate Quarry Road, it will certainly be an issue for other “Unfamiliar Drivers” approaching the White Schoolhouse intersection from Route 9G or the Taconic Parkway and finding trucks entering or crossing the road.

The town needs an assessment of the viability of this intersection for trucks of various weights and lengths making left turns with limited sight at an already dangerous intersection. By the number of accidents and narrowly-averted accidents, we know there is already a problem at this dangerous and deadly intersection.

The expected increase in traffic to access the White Schoolhouse Mine does not seem like a safe or reasonable addition to the already present problems of this heavily-trafficked intersection, particularly at peak traffic hours in the morning and evening.

Local conditions and safety require action by the town

According to state law, the Town is entitled to “Adopt such additional reasonable ordinances, orders, rules and regulations with respect to traffic as local conditions may require subject to the limitations contained in the various laws of this state.” [Vehicle & Traffic (VAT) CHAPTER 71, TITLE 8, ARTICLE 41, S.1660, Section 25]

The Town of Rhinebeck should enact reasonable ordinances to limit heavy vehicle traffic on White Schoolhouse Road and other town roads.

Add weight limits to more town roads

In the Town of Rhinebeck there is already precedent for establishing limits on town roads. The sign pictured is on Mt Rutsen Road at the intersection coming in by Ferncliff:



Mount Rutsen Road, Rhinebeck

In 1972 and 2005 Rhinebeck enacted local laws in the Town Code Chapter 113, Vehicle and Traffic, in a format similar to the state law to place vehicle weight limits on some town roads. Vehicle weight limits are the subjects of Local Laws No. 4-1972 and No. 7-2005. Local Law No. 4-1972 “113-13 Vehicle weight limits” states

It shall be unlawful for any person to operate any vehicle, including but not limited to trucks, commercial vehicles, tractors or tractor-trailer combinations, having a gross weight in excess of that herein respectively prescribed, upon any of the streets or portions thereof described below. This prohibition or regulation applies only to through traffic and excludes all emergency, school and municipally owned and operated vehicles (including village, town, county, state and federal) and vehicles in the process of making deliveries or picking up merchandise or other property along such streets from which such vehicles are otherwise excluded.

Maximum Gross Weight

Name of Street	(pounds)	Location
Old Post Road	6,000	From the town line to the intersection of Mound Rutsen

		Road
Mount Rutsen Road	6,000	From Old Post Road to River Road

In 2005 Section 13 was amended by Local Law No. 7-2005 to include two more roads:

Name of Street	Gross (pounds) Weight Limit	Location
Upper Hook Road	10,000	From Lower Hook to River Road
Lower Hook Road	10,000	From Middle Road to River Road

A similar weight limit of 3 to 5 tons would be suitable for all Rhinebeck historic town roads, including White Schoolhouse Road. Some may argue that limiting the size of vehicles is not reasonable; however, adopting a limiting ordinance that covers White Schoolhouse Road is both reasonable and necessary for public safety. The limitations will not only preserve the road, but also, and more importantly, help preserve public safety.

Exclude Trucks from the road

Section 17 of the previously referenced state law gives the town government power to exclude trucks from the road:

17. Exclude trucks, commercial vehicles, tractors, tractor-trailer combinations, tractor-semitrailer combinations, or tractor-trailer-semitrailer combinations from highways specified by such town board. Such exclusion shall not be construed to prevent the delivery or pickup of merchandise or other property along the highway from which such vehicles and combinations are otherwise excluded.

Although Rhinebeck does not have a corresponding section in its local law Chapter 135, adding a section excluding truck traffic would be possible if a safe, alternate route for mine traffic to a state or county road can be identified.



No trucks sign in Potsdam, NY

The Town of Potsdam, NY has had a very simple truck exclusion law since 1983: “The little street in Unionville shall be closed to trucks and other traffic over four tons gross weight.” (http://potsdamtn-ny.elaws.us/code/coor_ptii_ch102_artii_sec102-3). The picture shows a road sign for truck restrictions in Potsdam, NY. The Village of Potsdam has established a truck route system and “All trucks, tractors and tractor-trailer combinations having a total gross weight in excess of five tons are hereby excluded from all streets except those streets listed in Schedule X (§ [168-68](#)), except that this exclusion shall not be construed to prevent the delivery or pickup of merchandise or other property along the street from which such vehicles and combinations are excluded.” ([February 25, 2022](http://potsdamvil-</p>
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ny.elaws.us/code/coor_ptii_ch168_artii_sec168-14).

Closer to home, the Town of Amenia restricts vehicles weighing over 5 tons on Sharon Station Road (<https://ecode360.com/27976789>):

[§ 113-3 Restrictions on truck and commercial vehicle traffic.](#)

All trucks, commercial vehicles, tractors, tractor-trailer combinations, tractor- semitrailer combinations, and/or tractor-trailer-semitrailer combinations with a total gross weight of 10,000 pounds or more shall be prohibited from traveling on or over the following streets and/or highways within the Town:

Name of Street	Prohibited Portion of Road or Highway
-----------------------	--

Sharon Station Road	The entire length of Sharon Station Road located within the Town
---------------------	--

Limit vehicle types and hours of operation

Section 28 of the state law gives the town government broad powers to impose limitations on roads:

28. Exclude trucks, commercial vehicles, tractors, tractor-trailer combinations, tractor-semitrailer combinations, or tractor-trailer-semitrailer combinations in excess of any designated weight, designated length, designated height, or eight feet in width, from highways or set limits on hours of operation of such vehicles on particular town highways or segments of such highways. Such exclusion shall not be construed to prevent the delivery or pickup of merchandise or other property along the highways from which such vehicles or combinations are otherwise excluded.

Rhinebeck does not have a corresponding section for this yet in its local law Chapter 113; however, this section of the law would allow the town to codify the limitations the Town of Rhinebeck Planning Board places on the types of vehicles that can be used by the mining operations. It also allows the town to consider limiting hours so traffic is not increased on White Schoolhouse Road and its intersections by mining operations during the morning and evening rush hours or during the hours when school buses are traveling on White Schoolhouse Road.

Left hand turns are more dangerous

In general, left hand turns are more dangerous than right hand turns. By the number of accidents and near accidents that occur at the intersection at White Schoolhouse and Slate Quarry Road, we already know it is dangerous and deadly at the current low rates of heavy vehicle traffic. Adding additional heavy vehicle traffic making left turns from White Schoolhouse Road onto one of the main routes into the Village, Route 308, also poses dangers. The town needs to assess the viability of allowing left turns

at these intersections for trucks of various weights and LENGTHS before allowing increases in heavy vehicle traffic.

Returning to state vehicle and traffic laws, the town can

13. Prohibit or regulate the turning of vehicles or specified types of vehicles at intersections or other designated locations.

The town can and should adopt a reasonable ordinance to protect residents as well as the visitors to our town, from the current risk as well as the effects of increased numbers of heavy vehicles making left turns from Slate Quarry Road onto White Schoolhouse and from White Schoolhouse onto Route 308.



Sign restricting truck turns onto Route 9 at CVS in Red Hook

Violations and Enforcement

Any laws the town adopts should consider violations. The laws must have enough “teeth” to be a deterrent and allow for enforcement of violations. If the town is not committed to enforcing the law, the law has no value.

Enforcement

Any law needs to provide the ability to enforce the law. It should allow the ability of the Highway Superintendent, Zoning Enforcement Officer, or their agent to inspect potential sources of heavy traffic for over-sized vehicles. Law enforcement officials should also be prepared to enforce. The law should allow any person to file a complaint with the Town Highway Superintendent or Zoning Enforcement Officer alleging a violation of this local law, and allow the Town Highway Superintendent or Zoning Enforcement Officer to investigate and, if evidence of a violation exists, to issue a notice of violation and begin the process of enforcement.

Technology can provide the ability to classify and count vehicles. Counters at the entrance to the existing mines on White Schoolhouse Road and other sources of heavy vehicles should make it easy to determine where violations are occurring.

Stop Work Orders

The Highway Superintendent or Zoning Enforcement Officer must be able to issue Stop Work Orders to those operating in violation. The Stop Work Order must actually stop work until the problem is fixed or it is not effective, as we saw with the Stop Work Order for the access road being built by Red Wing without town permits. A Stop Work Order, if enforced, is likely to be a very effective deterrent for the use of over-sized vehicles coming from a particular site.

Penalties

There need to be sufficient penalties to deter violations. For instance, the town of Dansville in Ulster County has a Road Preservation Law (<https://ulstercountyny.gov/sites/default/files/documents/Town-of-Dansville-Road-Preservation-Law.pdf>) that specifies “penalties in a fine of not less than \$1,000.00 and imprisonment up to one year” and “In addition to those penalties prescribed herein, any person who violates any provision of this chapter shall be liable for a civil penalty in an amount not to exceed \$5,000.00 for each day or part thereof during which such violation continues.” Repeat violations should incur higher penalties and possible impoundment of the vehicle. For those operating under a town SUP, repeat violations should also result in the revocation of the SUP.

Summary of Requests

To the Town Board and Highway Superintendent

Weight limits should be posted for the bridge and all the culverts on White Schoolhouse Road.

The town should adopt reasonable ordinances prohibiting vehicles larger than 10 wheels and 12 cubic yards from using White Schoolhouse Road (and other town roads), by codifying those limitations found in the approval resolutions for Special Use Permit 125-68.FF, "Extractive operations and soil mining in the Mining Overlay District", on file at Town Hall. There also should be a ton weight limit for vehicles on town roads and limitations on types of vehicles and hours of operation, as well as limits on dangerous turns involving heavy trucks.

The ordinances should include provisions for enforcement and penalties to help ensure compliance. Technology should be used to help with enforcement.

There should be severe restrictions on adding more heavy vehicles to the dangerous and deadly intersection of White Schoolhouse Road and Slate Quarry Road.

Before allowing increases in heavy vehicle traffic onto and from White Schoolhouse Road, safety assessments should be made for heavy vehicles turning at the intersections, and in particular, turning left across the traffic. The town should adopt a reasonable ordinance prohibiting left hand turns of long and/or heavy vehicles based on the assessments and history of accidents at those intersections.

To the Planning Board

The Planning Board should continue to require the restrictions for trucks no larger than 12-cubic yards and no more than 10 wheels that have been used historically for all the mining operations on White Schoolhouse Road.

The Planning Board should also consider if, in addition, a pound or ton limit is advisable to be consistent with the weight limits on other town roads as specified in Chapter 113-13 of the local code.

Limitations to hours of operation for mining traffic on White Schoolhouse Road should be added with morning and evening rush hours and times of school bus transit in mind.

Rural Rhinebeck Neighbors' Comments on the Red Wing Mine expansion



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1 Substantial deficiencies exist with applicant's Road Study and DEIS

White Schoolhouse Road is woefully inadequate as the route for this type of mining operation. It's a high recreation area for walkers, joggers, bikers, dog walkers. And it's not the same kind of area that it might have been when mining previously occurred. Substantial industrial truck traffic on this road would not be just a nuisance or a disturbance, but an extreme safety hazard, totally out of place on a narrow, beautiful, winding country road with blind curves and limited travel lane width. Many accidents have occurred in the vicinity of its intersections and local homeowners have also voiced concerns about property damage to their homes and yards due to vehicular accidents, most notably the residents on the corner intersection with Slate Quarry Road. White School House Road is not fit for the purpose for which Red Wing is proposing to use it.

The Rural Rhinebeck Neighbors prepared an illustrated document regarding White Schoolhouse Road for the Town of Rhinebeck Planning board in February 2022. We're providing it along with this document: [WhiteSchoolhouseRoad20220225.pdf](#). It details many of the neighbor's concerns and issues with the safety of the road and its intersections. It is being provided here to provide a more detailed view of many of our concerns about the road.

The applicant's Traffic Study and DEIS are substantially deficient and incomplete in their assessment of the safety hazards associated with heavy truck traffic on White Schoolhouse Road and its intersections with Slate Quarry Road (County Rte. 19) and state route 308.

1.1 The applicant overestimates roadway width

The applicant's traffic study uses an inaccurate value for roadway width: 22 ft roadway. White Schoolhouse Road is 20-21 feet or less edge to edge, with no striping, with no shoulders, with drop offs, stone faces, and mature trees at the paved edge. At one point it is 19'8" wide with a 200 year old barn only 18" from the road. Neighbors have reported trucks having to drive onto their yard to keep from having an accident because they met another vehicle on this narrow road.

The town's CPL road study and Poughkeepsie-Dutchess County Transportation Council's CR 19 (Slate Quarry Rd) Safety Assessment NYS Route 9G to White Schoolhouse Rd, Town of Rhinebeck (https://www.dutchessny.gov/ConCalAtt/69/Final%20CR19_Slate%20Quarry%20Rd%20Safety%20Assessment%20Report_122620141049.pdf) both confirm the, "... road width varies and is at times less than 20 feet."

A quote from the Dutchess County Department of Planning and Development ZR22-035 (March 18, 2022) comment form, regarding the Red Wing Mine Driveway, Scale and Scale House application before the Rhinebeck Planning Board, summarizes the concern, "That narrow width on a winding road makes any truck traffic a challenge, but particularly concerning is what happens when two trucks (or a truck and a school bus) must pass each other." We are extremely concerned about what's going to happen during school bus hours.

1.2 The applicant substantially underestimates truck traffic

The Applicant substantially underestimates the increase in projected heavy truck traffic in the Creighton Manning Report and in the DEIS.

The Special Use Permits (SUPs) for mines issued by the Town of Rhinebeck Planning Board have always strictly limited allowed truck size to be no larger than 12-cubic yards and no larger than a 10-wheel truck. The Creighton Manning Report and DEIS state trailer dumps and tri-axes will be used to haul 400 tons of sand and gravel each day to Package Pavement in Stormville; however, since trailer dumps and 18-cubic-yard tri-axes have never been allowed for any mines on White Schoolhouse, the number of trucks estimated by the Creighton Manning Report and Red Wing's DEIS is actually underestimated by 2 to 3 times.

1.3 Red Wing's road use study does not recognize existing safety problems and accident rates

A huge deficiency in the Creighton Manning reports and the DEIS is that they never focus on safety problems or consider the existing accident rates at the intersections of White Schoolhouse Road and its intersections with Slate Quarry Road and Route 308, or with Slate Quarry Road and Route 9G.

The tables of AASHTO standards do not recognize and capture the dangers associated with the physical characteristics of White Schoolhouse Road and its intersections in the same vivid way that the reported accident statistics do. The mile of Slate Quarry Road between White Schoolhouse Road and 9G has long been considered one of the most dangerous and deadly in Dutchess County (hence the Dutchess County Safety study in 2014: CR 19 (*Slate Quarry Rd*)-*Rhinebeck Safety Assessment (2014)* (https://www.dutchessny.gov/ConCalAtt/69/Final%20CR19_Slate%20Quarry%20Rd%20Safety%20Assessment%20Report_122620141049.pdf)). Adding more heavy trucks to White Schoolhouse Road can only make this already dangerous situation worse.

At minimum, crash analysis from the NYS Accident Location Information System (ALIS) database should have been included in the applicant's traffic study for the intersections with White Schoolhouse Road, including Slate Quarry Road and Rte. 308. In addition, a thorough traffic study should be done for the proposed route to and from Package Pavement and White Schoolhouse Road.

In the Dutchess County Department of Planning and Development ZR22-035 (March 18, 2022) comment form, regarding the Red Wing Mine Driveway, Scale and Scale House before the Rhinebeck Planning Board, the County throws doubt on the safety of trucks turning left onto White Schoolhouse Road from Slate Quarry Road, saying "We are uncertain that a substantial increase in left turning trucks from County Route 19 (CR19) onto White Schoolhouse Road can be accommodated safely."

The Creighton Manning report suggested a potential solution to the intersection sightline issue is to replace a yield sign with a stop sign. This solution was previously rejected by mining truck drivers in the area, who noted that if they were required to full stop, they could not get up to speed to clear the intersection before traffic coming down the hill (west bound on Slate Quarry Road) might hit them.

1.4 Dutchess County Planning finds applicant's traffic study inadequate

Early in 2022 the applicant came before the Town of Rhinebeck Planning Board for Site Plan and Special Use Permit Approval for the new access road. At that time the Dutchess County Department of Planning and Development reviewed the subject referral within the framework of General Municipal Law (Article 12B, §239-l/m) and returned "The Dutchess County Department of Planning and Development ZR22-035 (March 18, 2022) comment form, regarding the Red Wing Mine Driveway, Scale and Scale House application before the Rhinebeck Planning Board". This document comments on the new access road and references the applicant's traffic study saying that "... the provided traffic study does not adequately address two primary concerns related to increased truck traffic" and identifies these concerns as "Truck interaction on White Schoolhouse Road" and "Left turns". They suggest that "the applicant complete a truck traffic mitigation plan" and recommend that the Town Planning Board **condition its approval of this project** on mitigation measures that address the safety concerns associated with increased truck traffic on White Schoolhouse Road and CR 19 (Slate Quarry Road). "

1.5 Red Wing's study of road use in winter underestimates traffic

All the studies for the updated Creighton Manning report were done at a time of the year when mining is not occurring.

They were done in January 2022 and given an 8% seasonal adjustment, which does not seem adequate. The traffic rate, and especially the heavy truck traffic rate, is much larger in spring, summer, and fall than in winter. The study should have been done in a season when mining would be occurring.

1.6 The inbound route to the mine is not identified

In the DEIS, page 111 Section 4.3.3.1 Traffic Background "Trucks will enter and exit the site via a new entrance road to be built in the southeast part of the property and travel south on White School House Road." This is the only indication of the flow of truck traffic to the mine. It is not clear from this if the traffic will travel south on White Schoolhouse Road from Route 308 to the mine road entrance or travel north on the south segment of White Schoolhouse Road to the mine road entrance. Further, there is no indication of what route trucks will follow for the approximately 40 mile route from Package Pavement to the mine.

1.7 The route to Package Pavement in Stormville is not identified

While most of the sand and gravel to be mined on White Schoolhouse Road is to be sent to Package Pavement in Stormville, the route is not identified after turning south on Route 9G. That means over 90% of the route is not identified.

The route should be specified so that the state and county, as well as towns that are part of the route, can comment on having a substantial amount of daily heavy vehicle traffic added to their roads.

For instance, using Google driving directions, the suggested route includes North Quaker Lane (Take NY-9G S, N Quaker Ln, Freedom Rd, State Rte 55 E and NY-82 S to Old Sylvan Lake Rd in Lagrangeville). The

Poughkeepsie-Dutchess County Transportation Council (PDCTC) prepared a safety assessment of North Quaker Lane in 2013 to assist Dutchess County (DCDPW) and the Town of Hyde Park with prioritizing opportunities to improve safety within the study area of North Quaker Lane. The PDCTC, in consultation with the Dutchess County Department of Public Works (DCDPW), selected the assessment location based on a county-wide analysis of crash data from 2008-2012. The report, CR 16 (North Quaker Lane) Safety Assessment (2013), can be found at <https://www.dutchessny.gov/Departments/Transportation-Council/Docs/cr16sa.pdf>. Does the applicant plan to use North Quaker Lane as part of its route?

1.8 The Red Wing DEIS does not consider alternative, safer site entrances

In Section 6.1.1.5 of the DEIS, Alternate Site Entrance, the applicant considers only one other entrance onto White Schoolhouse Road. For a mine of this scale, the applicant should have to investigate alternate routes in and out that go directly to the County Route 19 or State Route 308 or 9G rather than White Schoolhouse Road, a narrow, twisting, historic town road. Red Wing should have to find an alternate route that does not include White School House Road.

2 Ecological Resources

2.1 Wildlife surveys in the Red Wing DEIS are outdated

The wildlife surveys in the DEIS are at least 10 years out of date. With no mining having occurred during that period, more wildlife and types of wildlife have moved into the area. These out-of-date surveys, along with the out-of-date wetland delineations, must be updated to accurately delineate the ecological resources and resident plant and animal residents that now inhabit the mine site.

Field surveys were done in 2002-2009 with turtle trapping in 2011 and 2012. No studies have been done in the past 10 years. No mining has occurred since 2012-2013 (with low levels prior to that). It has been 10 years since mining has stopped in the area, which has provided a great opportunity for wildlife to move into the area. Since mining activities on the Decker mine located on the Red Wing property stopped in 2013, there has been a tremendous amount of wildlife coming back to that area. Neighbors have seen black bears, fishers, bobcats, and Bald eagles. It is a great area for birdwatchers. In addition to Bald eagles, at least two other bird Species of Greatest Conservation Need have been documented in the vicinity (Wood thrush, Louisiana waterthrush). Other Species of Greatest Conservation Need that have been found in the area are Blanding's turtles, Spotted turtles, Snapping Turtles, Marbled salamanders, and Wood turtles. This is not intended to be a complete list of the Species of Greatest Conservation Need in the area—an updated wildlife survey and habitat study would be needed for that.

As an example to illustrate how the area is changing, Bald eagles have moved into the area since the Decker mining operation shut down. After having seen Bald eagles soaring over the area for the past couple of years, we were delighted by the confirmation by NYS DEC of a Bald eagle's nest in the area. The presence of the Bald eagles and their nest was entirely missed by the applicant until it was reported

to the DEC by some of the neighbors. Neighbors estimate the Bald eagle nest has been active for at least 4 years.

2.2 The survey of Bald eagles in the Red Wing DEIS is incomplete

The applicant's Bald eagle nest study was done by their geologist, not by a Bald eagle behavior specialist.

2.2.1 Sound Level was used as the sole measure

It is a substantial deficiency and concern that the DEC has made its decision about the potential negative impacts that mining activities could have on the resident Bald eagles and their nest based solely on the applicant's noise study. The applicant conducted the noise study at the site on May 5, 2022. They described the ambient noise level at the site as "very quiet" and even commented on the noise from "fluttering leaves." The report, dated August 1, 2022, only discusses noise levels at the site. It does not evaluate visual impacts on the eagles and their nest.

In the Technical Comments on "Red Wing Properties, Inc. White School House Road Bank (MLF# 30393)—Sound Level Assessment of Proposed Mine at Bald eagle Nest", August 23, 2022, DEC specifies that their comment is based on "the information contained in the sound assessment" (the August 1, 2022 report):

"Wildlife staff have completed the review of the above-referenced document that provides additional information on noise levels associated with future mining activities at the Red Wing property on White School House Road in the Town of Rhinebeck in the context of a bald eagle nest that was first documented on the property in March 2022. Based on the information contained in the sound assessment, it can reasonably be concluded that the proposed uses of the site will not result in noise level increases at the nest that will adversely impact the Bald eagles or interfere with an essential behavior (breeding/reproduction), will not result in a take or taking of the species, and are therefore non-jurisdictional under ECL 11-0535."

The applicant's engineer's report and the DEC Wildlife staff only consider noise levels. However, both National and New York State Guidelines focus as much or more on the impact visual disturbances could have on the Bald eagles' welfare than they do on noise levels.

On page 9 of the National Bald eagle Management Guidelines (2007) by the U.S. Fish and Wildlife Service ([https://www.fws.gov/sites/default/files/documents/national-bald-Bald eagle-management-guidelines_0.pdf](https://www.fws.gov/sites/default/files/documents/national-bald-Bald%20eagle-management-guidelines_0.pdf)) the importance of maintaining buffers to minimize visual and auditory impacts is stressed:

"To avoid disturbing nesting bald eagles, we recommend (1) keeping a distance between the activity and the nest (distance buffers), (2) maintaining preferably forested (or natural) areas between the activity and around nest trees (landscape buffers), and (3) avoiding certain activities during the breeding season. The buffer areas serve to minimize visual and auditory impacts associated with human activities near nest sites. Ideally, buffers

would be large enough to protect existing nest trees and provide for alternative or replacement nest trees.”

On page 10, the guidelines go on to discuss visibility as a factor (emphasis has been added):

“Seasonal restrictions can prevent the potential impacts of many shorter-term, obtrusive activities that do not entail landscape alterations (e.g. fireworks, outdoor concerts). In proximity to the nest, these kinds of activities should be conducted only outside the breeding season. For activities that entail both short-term, obtrusive characteristics and more permanent impacts (e.g., building construction), we recommend a combination of both approaches: retaining a landscape buffer and observing seasonal restrictions.

...

Bald eagles are unlikely to be disturbed by routine use of roads, homes, and other facilities where such use pre-dates the Bald eagles’ successful nesting activity in a given area.

...

In most cases, impacts will vary based on the visibility of the activity from the Bald eagle nest and the degree to which similar activities are already occurring in proximity to the nest site. Visibility is a factor because, in general, Bald eagles are more prone to disturbance when an activity occurs in full view. For this reason, we recommend that people locate activities farther from the nest structure in areas with open vistas, in contrast to areas where the view is shielded by rolling topography, trees, or other screening factors. The recommendations also take into account the existence of similar activities in the area because the continued presence of nesting bald eagles in the vicinity of the existing activities indicates that the Bald eagles in that area can tolerate a greater degree of human activity than we can generally expect from Bald eagles in areas that experience fewer human impacts.”

Since no mining has occurred since 2013, human activity around this Bald eagle nest has been minimal. There is no similar activity already occurring in proximity to the nest site. These Bald eagles have sought out an area that experiences “fewer human impacts.”

2.2.2 “No clear acceptable sound level standard” has been established

On page 11 of the applicant’s report, it is noted that that though consultants were contacted and literature consulted, “no clear acceptable sound level was identified”:

“Conclusion

This report summarizes the activities that would occur at the Rhinebeck Mine and the seasons they would occur and assesses the sound levels of these activities at the Bald eagle nest. The resulting sound levels would be very quiet but would result in sound level increases. A review of the literature identified no clear acceptable sound level so monitoring is recommended.”

Because there is no standard agreed-on value, the applicant’s noise study concludes by recommending monitoring the effects of mining activity on the Bald eagles’ activity. That the DEC does not pursue monitoring recommended in the applicant’s engineering report is a substantial omission.

2.2.3 Recommended monitoring is lacking

On page 11 of the applicant's report, it is indicated that most of the experts contacted by the applicant's engineer recommended monitoring of the Bald eagle's activity.

"Monitoring

Several ecological consultants were contacted and none was aware of what would constitute an acceptable sound level for a nesting Bald eagle. The literature contains some noise studies but no clear acceptable sound level was identified. Most of the experts recommended monitoring of the Bald eagle's activity during mining activity and applicant would be open to discussions about doing so."

Even though it states the applicant would be open to discussion about monitoring, there is no recommendation to do so in the comments from DEC regarding the Bald eagles and no apparent intent to include monitoring the Bald eagle's activity in the project plan.

The NYS DEC Conservation Plan for Bald eagles in New York State page 26

(https://www.dec.ny.gov/docs/wildlife_pdf/nybaldeagleplan.pdf) describes large variations in the reactions of Bald eagles to human activity and disturbances:

"Human Activity/Disturbance

Some Bald eagles are very sensitive to human activity and disturbance year-round, especially at nest sites, and others are much more tolerant. Motor traffic, persons too close on foot, frequent visits or tree removal can result in nest failure, nest abandonment, or abandonment of the nesting territory altogether."

A plan for monitoring the Bald eagle's behavior to determine if mining activity cannot be tolerated is needed. Every nesting Bald eagle situation is different. What each pair will tolerate is different.

2.2.4 DEC Observations show the Bald eagles reacting to observers' presence

There are few documented records of human interactions with these White Schoolhouse Road Bald eagles; however, Bald eagles are mentioned briefly in the summaries of three DEC site visits to determine compliance with the conditions contained in the Blanding's turtle ITP, visits that took place in late April and May of 2022. The negative reactions of the Bald eagles to people on foot led the DEC observer to conclude that there were "concerns about incidental take by work at the mine." The following is from two of the Site Visit Summaries:

"Redwing Mine Site Visit Summary

Compliance visit performed 04/29/22 from 1pm-2pm

Chris Plummer

...

Lisa and I arrived at the site around 1pm and parked at the beginning of the new access road.

...

We continued along the access road fence and observed a few smaller breaks in the fence that should be fixed soon. At this point an adult eagle began circling us and screeching, which we

took to indicate its displeasure with our presence. The eagle continued to circle our position and screech at us, which seems like it could be an issue in the future when the mine becomes active.

...

Key takeaways and action items from the visit:

...

The presence of the active bald eagle nest and seemingly upset eagle by our presence raises concerns about incidental take by work at the mine.”

“Redwing Mine Site Visit Summary

Compliance visit performed 05/12/2022 from 10am-2pm

Chris Plummer

...

On my way out, an adult bald eagle started flying over me while squawking. I did not plan on walking up the logging road to the newly constructed nesting site in the woods but decided to go that way with the hope that the eagle would go to its nest there and I would be able to observe it for yearling birds. Upon arrival to the area, I spotted two adult bald eagles circling nearby. Rather than harass them anymore to hopefully locate their nest, I left them alone.

Key takeaways and action items from the visit:

...

- The bald eagles seemed less upset with my presence this time, but still active in the area”

These brief observations support the theory that these Bald eagles are sensitive to human activity at the mine site. A monitoring plan should be established to ensure that mining activity does not cause a taking of the Bald eagles or their nest.

2.2.5 National Bald Eagle Management Guidelines are not followed

On page 11 of the National Bald eagle Management Guidelines (2007) by the U.S. Fish and Wildlife Service ([https://www.fws.gov/sites/default/files/documents/national-bald-Bald eagle-management-guidelines_0.pdf](https://www.fws.gov/sites/default/files/documents/national-bald-Bald%20eagle-management-guidelines_0.pdf)), it recommends the closest distance that mining and associated activities should be conducted relative to the nest is 660 feet. Unfortunately, the applicant’s DEIS tells us that large portions of the access road, the office and scale house, and almost 4 acres of the life of mine are within that critical distance. In the Technical Comments on “Red Wing Properties, Inc. White School House Road Bank (MLF# 30393)—Sound Level Assessment of Proposed Mine at Bald eagle Nest”, August 23, 2022, DEC states

“The National Bald eagle Management Guidelines suggest that mining and associated activities should take place no closer than 660’ from an eagle nest. Under the current configuration, the mine office and scale are proposed to be placed within the 660’ radius. While there is some room for interpretation on whether the office and scale operations fall under the umbrella of “associated activities,” if the permittee has the discretionary ability to relocate the office and

scale to a location that is greater than 660' from the nest, at least for initial period of operation, that will ensure consistency with the national guidelines."

The DEIS does not indicate that the applicant moved or considered moving the office and scale to a location beyond the 660 foot perimeter to comply with this recommendation of the DEC Wildlife staff. Taking into consideration factors other than just the noise level, the road and the office and scale house should be moved outside of the 660 foot perimeter and the almost 4 acres currently in the life of mine that are within the perimeter should be removed from the life of mine in order to meet the recommendations of the National Bald Eagle Management Guidelines.

3 Water

3.1 The Red Wing mine could contaminate our sole source of clean water

Everyone on the eastern side of Rhinebeck relies on wells or springs for water. It is our sole source of water. The proposed mining area is a major part of the recharge zone for the aquifer that underlies the White Schoolhouse mine site. We are concerned about having industrial scale mining on the recharge path direct to our aquifer.

On page 9.7 of the Town of Rhinebeck Comprehensive Plan (<https://ecode360.com/RH0960/document/183465072.pdf>), aquifers and the importance of protecting them are discussed. The discussion begins with a description of the types of aquifers found in Rhinebeck:

"The aquifers that exist in the town of Rhinebeck were identified by the Dutchess County Water and Wastewater Authority in 1993 and are shown in Figure 9.6 at the end of this Chapter. The aquifers were broken into three different zones of concern as follows:

Zone 1: This zone consists of permeable deposits (like sand and gravel) directly overlaying the aquifer. Contaminants can move directly downward to the underlaying [sic] aquifer with little or no natural filtration by the soil because the water is moving too quickly.

Zone 2: Less permeable deposits located up gradient from the aquifer. These areas contribute to recharge to the aquifer through both overland runoff and through ground water flow. Contaminant pathways are generally longer and slower in Zone 2 than Zone 1.

Zone 3: These areas contribute to a stream, which may subsequently be induced to contribute to the aquifer through filtration."

The Comprehensive Plan continues to say on page 9.7: "While all aquifers are important to protect, Zone 1 areas are the most important, due to their susceptibility to contamination. Since existing residents of the town that are served by groundwater wells have no alternatives if their wells become contaminated, all three zones should be properly protected."

The aquifer along White Schoolhouse Road is a Zone 1 aquifer and must be protected. We are concerned about having industrial scale mining and subaqueous mining in the recharge zone where “Contaminants can move directly downward to the underlaying [sic] aquifer with little or no natural filtration by the soil because the water is moving too quickly”.

3.2 The wetland map used in the Red Wing DEIS is obsolete

3.2.1 DEC Wetlands Delineation

The wetland delineations used in the DEIS are out of date. The delineation map is over 15 years old. An up-to-date delineation needs to be revalidated and confirmation made that mining will not occur within the wetlands and wetland buffers.

The Wetland delineation Map in the applicant’s DEIS is dated 7/19/2007 and contains the statement, “Wetland boundary delineations as validated by the New York State Department of Environmental Conservation remain valid for 10 years unless existing exempt activities, area hydrology, or land use practices change (e.g., agricultural to residential). After 10 years the boundary must be revalidated by DEC staff.” From the map in the DEIS:

<u>NYSDEC FRESHWATER WETLAND BOUNDARY VALIDATION</u>	
The freshwater wetland boundary as represented on these plans accurately depicts the limits of Freshwater Wetlands RC-25 and RC-30 as delineated by TES, Inc. and reviewed by Heather Gierloff of the New York State Department of Environmental Conservation on July 19, 2007.	
DEC Staff: Heather Gierloff <i>Heather Gierloff</i> Date: <u>11/2/2007</u>	Surveyor/Engineer: Griggs-Lang Consulting Geologists, Inc. SEAL
Wetland boundary delineations as validated by the New York State Department of Environmental Conservation remain valid for 10 years unless existing exempt activities, area hydrology, or land use practices change (e.g., agricultural to residential). After 10 years the boundary must be revalidated by DEC staff. Revalidation may include a new delineation and survey of the wetland boundary.	
Any proposed construction, grading, filling, excavating, clearing or other regulated activity in the freshwater wetland or within 100 feet of the wetland boundary as depicted on this plan requires a permit from the NYS Department of Environmental Conservation under Article 24 of the Environmental Conservation Law (Freshwater Wetlands Act) prior to commencement of work.	

3.2.2 Mapping of Federal Wetlands

A map of NWI & Hudsonia Wetlands produced by the Rhinebeck Conservation Advisory Board in 2014 and based on the National Wetland Inventory: USFWS October 2010 shows the wetlands in the south (RC-30) extending up into the southwest portion of the property where no wetlands are shown in the applicant’s 2007 map. This discrepancy is another indication that the wetlands mapping needs to be updated.

4 The Red Wing mine will contribute to air pollution, affecting our health

Part of the danger of the large increase in heavy truck traffic is the dust, noise, and diesel fume pollution it will create. In Section 7.2, a letter to the editor of the Observer is quoted, noting the “the noise, filth and constant dangerous traffic” experienced by someone living near one of the applicant’s mines.

Neighbors of the mine on White Schoolhouse Road know what is like to live with air quality issues from the mine (Decker operated this mine until 2013). Here’s a comment from one of the neighbors made during the oral comment Webinar, describing what it was like when mining occurred previously at this site:

“Growing up, growing up in the '90s while Decker's gravel pit was in operation was a huge air quality issue for our family. Our home had to be pressure washed two to three times a year. Sitting outside having a family barbecue was never an option. The dust particles in the air were constant. Let it be known that Decker's gravel pit operated in the '90s and early 2000s didn't nearly operate at the volume that Red Wing proposes to do so.” (Nov. 17, 2022, 6:00pm Oral Comments)

No one disputes the danger from particulates found in heavy vehicle exhaust. In December 2022, the EPA adopted a rule, “Control of Air Pollution from New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards,” that sets stronger emissions standards to further reduce air pollution, including pollutants that create ozone and particulate matter, from heavy-duty vehicles and engines. The DEC also cautions against the problems caused by exhaust fumes of large vehicles: “Exhaust fumes from large vehicles like buses and trucks contain greenhouse gases, particulate matter and many other pollutants that are harmful to human health and the environment”. (4/28/2022. DEC's Facebook page) The New York State Department of Health spells out the harm in their “Fine Particles (PM 2.5) Questions and Answers” web page (https://www.health.ny.gov/environmental/indoor/air/pmq_a.htm):

“How can PM_{2.5} affect my health?

Particles in the PM_{2.5} size range are able to travel deeply into the respiratory tract, reaching the lungs. Exposure to fine particles can cause short-term health effects such as eye, nose, throat and lung irritation, coughing, sneezing, runny nose and shortness of breath. Exposure to fine particles can also affect lung function and worsen medical conditions such as asthma and heart disease. Scientific studies have linked increases in daily PM_{2.5} exposure with increased respiratory and cardiovascular hospital admissions, emergency department visits and deaths. Studies also suggest that long term exposure to fine particulate matter may be associated with increased rates of chronic bronchitis, reduced lung function and increased mortality from lung

cancer and heart disease. People with breathing and heart problems, children and the elderly may be particularly sensitive to PM_{2.5}.”

New York law recognizes that idling trucks are bad for our health and bad for the environment and specifically prohibits idling trucks in [6 NYCRR Subpart 217-3 Idling Prohibition For Heavy Duty Vehicles](#). DEC is the enforcer of state law related to particulates from diesel exhaust.

The internet is full of studies about the health hazards of the particulates in exhaust, such as from the Lancet, "long term exposure to particulate matter air pollution has been associated with increased cardiorespiratory mortality in the USA" and from the NIH Library of Medicine, "Review found studies that reported the components of road dust particulates to be associated with multiple health effects on the respiratory and cardiovascular system". There are also similar studies regarding the health hazards of truck noise.

Page 115 of the DEIS states, “the potential PM_{2.5} emissions of point sources are less than 15 tons per year, the policy indicates the PM_{2.5} impacts are insignificant and no further assessment shall be required under the policy. ... The proposed operation has the potential to emit approximately 8.2 tons of PM_{2.5} (see table on page 117) per year”. However, it is not clear from the table whether the engine emissions from the dredge, excavator, and other machinery are included in the total. The Emissions Inventory for trucks does not specify how many trucks or what kind are used for these estimates, or whether the trucks and other machinery are relatively new or old. It also does not include values for the trucks’ emissions on the local town and county roads. More information is needed to substantiate the applicant’s estimates, as the following table in the DEIS does not contain that information and is clearly inadequate.

Non-Point Sources	PM _{2.5} (tpy)
Trucks on 400' long paved entrance road	0.3
On-road trucks on unpaved haul road	4.1
Off-road trucks on unpaved haul road	0.4
Wind erosion from above water mined areas	0.1
Truck loading from stockpiles	0.1

Varying the estimate of the number of trucks will cause substantial variations in the estimated PM_{2.5} (tpy) . The applicant’s estimate of the number and types of trucks to be used at the mine site has varied widely throughout their submissions in support of their application to expand the mine on White Schoolhouse Road. This latest submission significantly underestimates both the number and size of the trucks they will need to transport the amount of material they estimate to be mining on a daily basis (see section 1.2 in this document). Further evaluation is needed to confirm that the output of particulates will be less than 15 tons per year and that the impact will be insignificant.

Since the threshold of concern is in Tons Per Year, it should be considered that mining is concentrated in the spring, summer, and fall and the estimates of PM_{2.5} are based on 250 days per year. While the level

could be *de minimis* in the winter, when no mining is being expected to occur, the level could be hazardous in the summer (or spring or fall) when the mine is in full operation.

Idling of these heavy duty vehicles waiting to load is also a concern. The DEIS does not include an adequate plan to enforce New York State law [6 NYCRR Subpart 217-3](#) *Idling Prohibition For Heavy Duty Vehicles*. It is only mentioned twice in the DEIS. On page 122 it says, "Incorporate idling reduction policies equipment operators will be required to not allow their engines to idle more than five minutes." And on page 154 it says, "Gate—A gate will be built at the location shown on the Mining Plan Map. There will be adequate room for trucks to park on the entrance road. Truckers will be directed to not show up early and not idle their engines for more than five minutes. This will limit the potential impacts of early arriving trucks." The DEIS does not contain an adequate plan for enforcing the idling prohibitions needed to ensure our air quality. New York State law [6 NYCRR Subpart 217-3](#) *Idling Prohibition For Heavy Duty Vehicles* needs to be strictly enforced at the mine and any violation of it trigger cancelation of the permit. How will it be adequately enforced on this private property?

5 Mining noise affects quality of life

When this mine was operating in the past, noise was a big issue during the long mining hours from 7:00 am-5:00 pm Monday through Friday. Sound carries quite well out here and the ambient sound level is very quiet. The duration of the noise associated with mining is a problem, as neighbors experienced it as a constant combination of mechanical and excavation related sounds during the hours of active mining activities. A neighbor located about a half mile from the mine describes what was heard when mining previously occurred at this location:

"The noise would begin early in the morning around sunrise and continue all day until sunset. Specifically, the noise refers to the constant humming of machinery working, the running and clanking of sorting conveyors, and the use of heavy equipment. The trucks driving along the White School House Road and pulling out onto the main highway also generated a significant background din.

The mining racket was definitely present, and a persistent annoyance that never seemed to ease up all day long. A simple comparison is hearing weed whackers, chain saws and leaf blowers all going at once throughout the day. It was such a relief to the ears when the mine closed for the day and one could enjoy some peace and quiet."

It is a problem that will resurface when or if mining starts up again.

Limiting hours of operation would help somewhat by controlling the duration of the noise impact. To quote from the applicant's DEIS page 105:

"Limited hours of operation. The planned maximum hours of operation are 7 a.m. to 5 p.m. Monday through Friday with limited activities such as reclamation and maintenance activities on Saturdays from 8 a.m. to 3 p.m. There will be no excavation operations on Sundays, New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day and

Christmas Day. **Limiting the hours of operation is one of the most effective means of controlling potential noise impacts. This measure does not have a quantifiable reduction in sound levels but serves to control the duration of the potential noise impact."**

(Emphasis is added.) That the DEIS does not consider measures to mitigate the all-day duration of noise from the mine is a deficiency. Ways to lessen the potential impact of noise duration are needed in the DEIS.

6 Applicant has a History of Lack of Compliance with Permit Conditions

6.1 DEC permit conditions have been routinely ignored in the past

At the beginning of March in 2013 the deed for the mine property was transferred to the applicant from Vincent Kinlan. The year 2013 is the only time the applicant had a permit to mine at the White Schoolhouse site from both the DEC and the Town of Rhinebeck. The DEC Mine Inspection Records in the table below, shows a lack of compliance with many of the conditions of the DEC permit in that year. Even though mining has not occurred since 2013, subsequent DEC Inspections to the site in the years that followed show continuing failures, some large and some small, to comply with the DEC permit conditions.

6/16/2022	MLR staff (G. Bryant and R. LaDuke) conducted a partial site inspection. No recent mining activity observed and no mining equipment was observed onsite with the exception of a partially overgrown bulldozer. The turtle fence along the entrance road was in place, but several sections were in disrepair.
6/4/2021	Site was open and operational, the permittee, site operator, and David Griggs from KT Wildlife were interviewed. Work towards constructing the entrance road has commenced. Around .5 miles of the road was being constructed. Specifically the southern portion, around the bend, and along the southeast portions of the proposed road. The permittee said work commenced on site one week before this inspection. Turtle barrier fences were not installed. This is a violation of permit condition #4 'Installation of Turtle Fence.' Install the turtle fence immediately. No turtle warning signs were observed around the entrance road. This is a violation of permit condition #6 'Installation of Warning Signs.' The turtle underpasses have also yet to be installed. Be sure to install the turtle underpasses in the correct areas.
1/21/2021	Site was closed and not operational during time of inspection. There is no mining equipment on site and no signs of recent excavation. No permit term markers were observed. If excavation begins again please be sure to maintain/ install permit term markers. The site appears to be stable. No environmental issues were observed. <div> <div>Permit posted</div> <div>No</div> <div>Please post permit in clear sight near entrance.</div> </div>
12/23/2013	Inspection conducted in response to a complaint received regarding potential illegal mining beyond the approved limits of mining; the site was

	<p>not open at the time of the inspection; the following observations were made during the inspection: 1) permittee has installed the required warning signs, indicating that Blanding's turtles may be in the area, along the access/haul road as per Cond #5 of the MLR permit; 2) permittee has not commenced the excavation of the approved 9-acre pond; 3) permittee has not installed the turtle fence. As stated in the 8/1/2013 Inspection Report, please be advised that the turtle fence must be installed between October 16 and April 14 of the operating year and prior to commencing the excavation of the 9-acre pond (see Cond #4 of the MLR permit). 4) excavation is still focused in the northern portion of the 38-acre mine site; 5) no grade markers have been installed as per Cond #17 of the MLR permit, especially in the northern portion of the site where excavation is ongoing; failure to install grade markers was also noted in the 8/1/2013 Inspection Report - violation, non-compliance with Cond #17; 6) permittee has not maintained the required permanent markers that identify and delineate the permit term area (Cond #16 of the MLR permit) - unable to locate the markers that had been previously installed - violation, non-compliance with Cond #16; 7) permittee has logged, stripped and grubbed (clear-cut) approximately 9 acres of land located immediately south and east of the southern limits of mining of the approved 38-acre mine site - violation, deviation from the approved MLUP by conducting mining operations outside of the approved limits of mining; 8) brush, tree limbs and stumps had been stockpiled, presumably in preparation of burning, in the cleared area; 9) evidence of stump and brush burning was also noted; 10) approximately 12-13 acres had also been plowed and disked; the plowed area is located west of the cleared area and runs south along the western wood line; 11) no erosion and sedimentation controls were installed along the perimeter of the affected area. ...</p>
8/1/2013	<p>Site was open but not in operation at the time of the inspection; operations focused in the northern portion of the site - very limited excavation and removal of stockpiles; processing plant is still located in the southern portion of the site; the following observations were made during the inspection: 1) No warning signs along the access road and haul toads indicating that Blanding's turtles may be in the area have been installed. Condition #5 of the MLR permit states that the warning signs will be installed prior to April 1, 2013. To avoid enforcement action, the warning signs must be installed within 10 days of receipt of this Inspection Report. 2) The permittee has not commenced the excavation of the 9-acre pond. 3) The turtle fence has not been installed. Please be advised that the turtle fence must be installed between October 16 and April 14 of the operating year and prior to the commencing the excavation of the 9-acre pond (see Condition #4 of the MLR permit). 4) The permittee has submitted the required Wetland Water Level Monitoring Plan. The plan has been approved by the Department and the permittee has commenced monitoring of the water levels in the wetland. 5) Permit term markers along the perimeter of the northern and eastern portions of the site need to be maintained/replaced - difficult to locate them. 6) No grade markers have</p>

	been installed as required by Condition #17 of the MLR permit. To avoid enforcement action, the permittee shall install the required grade markers within 30 days of the receipt of this Inspection Report. ...
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6.2 DEC issued a Notice of Violation of several permit conditions in July 2021

After a Mine Inspection on June 4, 2021, a Notice of Violation was issued based on failure to comply with conditions of the Incidental Take Permit that was issued just a few months prior on February 25, 2021:

Re: DEC Permit 3-1350-00052/00006 (Article 11, Endangered/Threatened Species)
 White School House Road, Town of Rhinebeck, Dutchess County
 Failure to comply with Condition 3 (Initial Ground Disturbance) of Permit 3-1350-00052/00006 (Article 11, Endangered/Threatened Species (Incidental Take)) and possible non-compliance with Condition 8 (NYS DEC Licensed Monitor), Condition 9 (Conservation Easement Filing), and Condition 10 (Financial Surety)

As you are aware, Red Wing Properties, Inc. has been issued NYS DEC Permit 3-1350-00052/00006 (February 25, 2021) pursuant to ECL Article 11 and 6 NYCRR Part 182 ("Permit"). On June 3, 2021, staff from the Department's Division of Law Enforcement and Division of Mineral Resources visited the site and found that construction activities on the new mine access road were in progress. These activities had apparently commenced no more than 14 days prior to the June 3rd inspection. During the site visit, it was noted that no exclusion fencing or turtle barriers were in place around the area of disturbance.

Please be advised, on the basis of these observations, the Department has determined that Red Wing Properties, Inc. is in violation of Condition 3 of Permit 3-1350-00052/00006 which states "To minimize the probability that turtle nests are present in areas proposed for ground disturbance during a given nesting season, initial ground disturbance in suitable nesting habitat must take place before May 15th or after October 1st, or proposed turtle barriers *must be in place before May 15th* to prevent turtles from entering these areas."

Furthermore, the Department is aware of possible non-compliance with as many as three other permit conditions. Specifically, the Department was apparently not provided with the name of the licensed monitor prior to the start of work as required by Condition 8, was apparently not notified of the filing of the conservation easement within 90 days of permit issuance as required by Condition 9, and was apparently not supplied with the financial surety within 90 days after Permit issuance and prior to commencement of any construction activities as required by Condition 10.

All the conditions in the ITP are important to ensure a net conservation benefit is achieved. The applicant's attorney made a written response to the DEC on July 28 with many reasons why they could not follow those conditions. BUT it bears consideration that they still went forward with the work constructing the haul road in spite of acknowledging their inability to meet required conditions of the Incidental Take Permit that DEC had issued.

From the New York State Incident Report 21-011210, we learn that the status of this violation was "Closed" as "Unknown" on September 8, 2021, after receiving comments, which are redacted in the Incident Report, from the Assistant Regional Attorney the day before.

6.3 No system of third party monitoring to ensure compliance has been established

We are concerned the intended **Net Conservation Benefit (NCB)** for the Blanding's turtles that DEC believes adherence to the conditions contained in the ITP will ensure, will not be met.

In issuing the ITP which took effect on February 25, 2021, DEC included this condition as a part of the ITP: *"to offset impact to occupied habitat, a conservation easement held by a third party will be executed on 72.34 acres of the larger 241 acre parcel."* Under the section of the issued ITP labeled "Natural Resource Permit Conditions", condition #9, "Conservation Easement Filing" states: *"Notification of filing of the Conservation Easement is required within 90 days of permit issuance."* On February 25th, 2021 in a letter responding to comments sent to the DEC about the proposed mine expansion and the issued ITP, Mr. Petronella said the following: "the establishment of a conservation easement that protects those portions of the site known to be used by turtles is a well established legal mechanism to add additional protection from activities that would impact the species and its habitat. The use of an easement also enables the involvement of a legally vested third party NGO which can help insure compliance with the terms of the easement".

Early on in looking apparently for an easement holder Red Wing went into negotiation with the Wetland Trust (TWT) and its partner organization the Wetland Conservancy (TWC). Those negotiations produced a two phased outline for a conservation easement. Phase one would be the transfer of the conservation area, the 72.34 acres referenced above, to the Wetland Trust. They would manage the conservation area and monitor the applicant's adherence to the conditions of approval found in the ITP. The Wetland Trust has trained staff including biologists on staff and has a record of managing wetlands in both Dutchess County as well as other places in the state. Under Phase one, once the 72.34 acres are transferred to the Wetland Trust, the Wetland Conservancy would then hold a conservation easement on the conservation area owned by the Wetland Trust.

The conservation easement that currently exists makes no mention of transferring the 72.34 acres to the Wetland Trust or any mention of the Phase one proposal. Instead, it is a conservation easement between the Wetland Conservancy and Red Wing. It assigns all rights and monitoring responsibilities to Red Wing, permitting the Wetland Conservancy to enter Red Wing's property only after giving fifteen days advance notice, an arrangement that clearly does permit a third party NGO to help ensure compliance with the objectives of the ITP. There is effectively no third party monitoring under the terms of this conservation easement, a clear violation of the conditions found in the ITP.

Red Wing filed the conservation easement with the Wetland Conservancy with the Dutchess County Clerk's office on October 26, 2021, 8 months after the ITP was issued, clearly beyond the 90 days specified as a condition found in the ITP. It was supposed to be done prior to any work on the site, another violation a condition of the ITP. The easement filing also lists the conservation area as

consisting of the entire 231 acres of their White Schoolhouse property. In the filing there is no mention of the Wetland Trust or of any conservation property being transferred. There is no third party monitoring occurring on this site to ensure that the conditions of the ITP are being met.

Under Town of Rhinebeck Zoning law, the land transfer of the conservation area to TWT would require approval of a subdivision application. No subdivision application has been made, so we know TWT is not involved with the property yet. As TWT, *and not* TWC, has the staff and experience to manage and monitor compliance with the conditions of the ITP, *there is currently no third party monitoring of the conservation area as required by the ITP.*

6.4 The applicant built the access road while under a Stop Work Order from the Town

The applicant has no regard for the local planning laws. The Town of Rhinebeck has already endured years of litigation with Red Wing.

In March of 2021 the applicant began to construct its access road after obtaining a DEC permit for it, but without obtaining any of the permits required by Town of Rhinebeck law. On April 27, 2021, a Notice of Violation (“NOV”) was issued by the Town of Rhinebeck Zoning Enforcement Officer (“ZEO”). Also issued was an Order to cease and desist all access road construction until a special use permit is issued by the Planning Board. The NOV cites several violations to the Zoning Law. The violations cited are as follows:

- Zoning Law §125-65(A)
- Zoning Law §125-65(C)
- Zoning Law §125-68(FF)(5)
- Zoning Law §125-68(FF)(6)
- Zoning Law §125-68(NN); and
- Zoning Law §125-135

The Applicant filed a Notice of Appeal with the ZBA on May 20, 2021 and a full application, dated June 14, 2021. After months of hearings and deliberation, the ZBA upheld all of the violations cited by the ZEO, except §125-68(NN), the removal of trees and excavation, on December 15, 2021.

Red Wing chose to continue to build the access road in spite of the Stop Work Order, completing the road except for paving the 400 feet closest to White Schoolhouse Road. The Stop Work Order is still in effect.

7 Local vs. Regional

7.1 The Red Wing mine sand and gravel is not for local use

While Section 2 of Red Wing’s DEIS talks of the need for local supply of sand and gravel, clearly the intent for most of the sand and gravel to be mined at the White Schoolhouse site is not for local use, but

is to be trucked to Package Pavement in Stormville. The DEIS states, “It is anticipated that approximately 400 tons (12 truck loads) per day will be trucked to the Package Pavement Stormville plant” (DEIS, Section 4.1.3, page 11).

Depending on the route driven, Package Pavement is 36-40 miles from the White Schoolhouse Road mine. In Section 8, page 171 of the DEIS, a benefit of a “local” mine versus a mine located at a greater distance from their Stormville plant is discussed:

“This (the greater distance traveled) has led to increased greenhouse gas emissions relative to having a local source of material such as the Red Wing site.

As an example, the delivery of a load of sand and gravel from a local mine that is located an average distance of 20 miles from the market results in approximately 127 pounds of CO₂ (the primary GHG of concern) emissions. Delivery of that same load from a mine located 40 miles away would produce approximately 254 pounds of CO₂ emissions, double that of the local mine.”

So Red Wing’s DEIS considers a local mine as one that is located an average distance of 20 miles compared to a mine located 40 miles away that is not local. So Red Wing rightly does not consider delivery of up to 400 tons of sand and gravel daily to Package Pavement from the White Schoolhouse mine as coming from a local source.

7.2 The applicant is large-scale *regional* supplier

Package Pavement website (<https://www.packagepavement.com/>): “At Package Pavement we are a premier provider of bulk bagged material in the Tri State area of NYC, NJ and CT.”

Red Wing website (<https://www.redwingsandandgravel.com/>): “Welcome to the home page of Red Wing Properties, the leading producer of sands and aggregate materials serving the Hudson Valley region of NY in Dutchess, Columbia, Putnam, Rockland, Orange and Ulster Counties.”

Why is this important? Rather than the typical local demand and low heavy vehicle traffic volume already present from the existing mines on White Schoolhouse Road, this represents a huge departure and escalation in scale and use. The mine will no longer simply serve local needs as mining on White Schoolhouse Road has done in the past, but will now significantly expand the mining operations to meet regional needs as well. We are not NIMBYs; we have lived with mining on a local scale for years; however, we are concerned with this unprecedented shift in scale.

History with this applicant supports these concerns. Here are two quotes from letters to the editor written in 2013 for the Observer (a local newspaper). They are from people who were residents when the Red Wing took over the Roe-Jan plant and note the change when a local mine was taken over by the applicant.

From Bill Jeffway,

"When Red Wing Sand and Gravel bought what had been a local mine in Milan in 2002--the size and scale of trucking became industrial in impact overnight. County and State officials got involved because the risks (like dump trailers on school bus routes) were so great and Red Wing appeared to be deaf to residents' concerns".

From Janice Potter

"I had to sell my home of 15 years because the noise, filth and constant dangerous traffic of tractor trailers made life there untenable. Due to its proximity to the mine, the value of my lovely home dropped precipitously. Red Wing rejected all concerns voiced by the local residents to keep our community safe and livable."

8 The Red Wing DEIS misrepresents the Rhinebeck Comprehensive Plan

In its DEIS, Red Wing cherry-picks from a few sections that don't apply to mining at all to say that the plan supports mining, while ignoring completely the section specifically about Mining on page 5.16:

"Objective: Land Uses with the potential to pollute the air, soils or water should be regulated.

[Under Actions:]

2. Examine and improve regulations in the Zoning Law concerning mining activities (extractive operations currently permitted in the R3A District by special use permit), and amend the law to further restrict such activities to existing, active mine sites. Prohibit the placement of new mine sites within the town for the following reasons:

- Potential disruption to the character to residential areas caused by the heavy industrial characteristics of this land use activity, including associated noise, dust, aesthetics and traffic.

- Concern for the public health, safety and welfare when mining is in close proximity to residences and farms.

- Restrict the number and location of areas in the town where mining activities may take place, since the town will not be permitted to enforce local regulations 'relating to the extractive mining industry.'"

Clearly mining expansion is not supported by the Town of Rhinebeck Comprehensive Plan. The Comprehensive Plan specifically asks for new mining to be prohibited and supports small scale, local mining. The mining operation Red Wing is proposing for the White Schoolhouse mine brings with it the adverse impacts that the Comprehensive Plan has identified as significant threats to public health, safety and welfare, and sought to avoid by directing our zoning law be amended to prohibit any mining expansion in the Town of Rhinebeck.

9 The Red Wing mine will negatively affect property values

Many of the neighbors are concerned their property will lose value or they won't be able to sell their property at its current value due to quality of life disruptions if the mine expansion is permitted. The effect of expanding this mine on property values is never considered in the applicant's DEIS.

The most widely cited information claiming gravel mining operations have a consistent, negative effect on property values is based on a report by George Erickcek of the W.E. Upjohn Institute for Economic Research (2006). The report uses modeling techniques to estimate the impact of opening a gravel mine on housing values. Of course the property values are most affected close to the mine (30% decrease), but even at three miles the modeling suggests about a 5% decrease. The White Schoolhouse Road Mine is located about 3 miles from the village of Rhinebeck. Rhinebeck's economy is based, at least in part, on the fact that this is a place that people want to come to live and visit and consider to be beautiful and environmentally friendly. Just recently Architectural Digest (September 28, 2022) listed Rhinebeck as one of the most beautiful small towns in America (<https://www.architecturaldigest.com/gallery/most-beautiful-small-towns-in-america>). Putting a regional-scale sand and gravel mine in a residential area must raise concern about quality of life issues.

Since this has the potential to affect so many families in Rhinebeck, some formal mitigation should be planned and included in the DEIS to address the impact(s) on property values. Examples exist to help identify effective means to do so, such as:

The Heartland Institute Policy Study, No 140 February 2016, Social Impacts of Industrial Silica Sand (Frac Sand) Mining: Land Use and Value by Mark Krumenacher and Isaac Orr

https://aglaw.psu.edu/wp-content/uploads/2020/05/02-04-16_orr_and_krumenacher_on_frac_sand_mining_and_land.pdf

"Property value agreements are rarely complex. They tend to be based on a simple determination of fair market value prior to mine development, typically by a mutually agreed upon licensed real estate appraiser or similar professional. If the owner sells the property for less than the determined fair market value, the mine operator must pay the owner the difference between the selling price and the fair market value. Commonly, such agreements also provide the mine operator will purchase properties that do not sell within a set period of time, such as six or 12 months."

10 There are inconsistencies in the DEIS

Just two of the many inconsistencies are discussed here.

10.1 Speed limit to control impacts varies in the DEIS

In the DEIS the speed limit for the access road is listed as both 10 miles per hour and 15 miles per hour. In several sections, ten miles per hour is listed as the speed limit:

- For protection of Blanding's turtles, the DEIS states on page 101 trucks will operate at a speed limit of 10 mph on the access road.
- To control potential air quality impacts, the DEIS states on page 112 and 115 trucks will operate at a speed limit of 10 mph on the access road.
- To control potential air quality impacts, the DEIS states on page 128 trucks will operate at a speed limit of 10 mph on the access road.

However, in the latest additions to the DEIS for the Bald eagles and their nest:

For protection of the Bald eagles, the DEIS states on page 98, 102, and 106 trucks will operate at a speed limit of 15 mph on the access road.

The DEIS should be corrected so a consistent value is used for the speed limit.

10.2 Only supportive Dutchess County documents are included with the DEIS

In Pertinent Correspondence Section of the DEIS page 80 of 121, the applicant includes a Zoning Referral from December 19, 2014. At the time, the town was proposing an Amendment to the Mining Overlay district limiting mining to "existing active mine sites" as was proposed in the Comprehensive Plan. The County's referral recommends that the Town of Rhinebeck rely on its own study of facts in the case while seeking to balance the impacts imposed by mining with the need for access to the mining resource.

The applicant does not include another Dutchess County document from 2014, the Poughkeepsie-Dutchess County Transportation Council's CR 19 (Slate Quarry Rd) Safety Assessment NYS Route 9G to White Schoolhouse Rd, Town of Rhinebeck ([https://www.dutchessny.gov/ConCalAtt/69/Final%20CR19 Slate%20Quarry%20Rd%20Safety%20Assessment%20Report 122620141049.pdf](https://www.dutchessny.gov/ConCalAtt/69/Final%20CR19%20Slate%20Quarry%20Rd%20Safety%20Assessment%20Report%20122620141049.pdf)) which illustrates clearly the safety problems and difficulty in addressing them of the segment of Slate Quarry Road from 9G to the White Schoolhouse Road intersection. The intersection of Slate Quarry Road with White Schoolhouse Road is a particular area of concern it addresses.

Another Dutchess County document that is not included with the DEIS is the Dutchess County Department of Planning and Development ZR22-035 (March 18, 2022) comment form, regarding the Red Wing Mine Driveway, Scale and Scale House application before the Rhinebeck Planning Board. This document comments on the new access road and references the applicant's traffic study saying that "... the provided traffic study does not adequately address two primary concerns related to increased truck" and identifies "Truck interaction on White Schoolhouse Road" and "Left turns". They suggest that "the applicant complete a truck traffic mitigation plan" and conclude that the Town Planning "Board

condition its approval of this project on mitigation measures that address the safety concerns associated with increased truck traffic on White Schoolhouse Road and CR 19 (Slate Quarry Road). “

11 Conclusion: White Schoolhouse Road is not an appropriate location for a large scale mine

Not all potential mine sites are viable and just because there was a small mine on a site in the past does not mean an expansion is viable. Some areas are just too environmentally sensitive and too dangerous to human life. This is one of those cases. The scale of Red Wing’s proposed mine on White Schoolhouse Road is a threat to the rural nature of White Schoolhouse Road and the Town of Rhinebeck. Please do not approve the permit for expansion.

Thank you for considering our concerns.

Sincerely,

Darrah Alexander
68 Hoffman Road
Pine Plains, NY

Sarah Bowen
219 Slate Quarry Road
Rhinebeck, NY

Andy Delbanco
58 Livingston Street
Rhinebeck, NY

Tim Allanbrook
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Rhinebeck, NY

Sean Bowen
219 Slate Quarry Road
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Jennifer Mumm
67 Hilltop Road
Rhinebeck, NY

Mark Murphy
15 Bollenbecker Road
Rhinebeck, NY

Julie Nardi
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Rhinebeck, NY

Amy Olson
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Rhinebeck, NY

Bryan Olson
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George D. Reskakis DDS
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Manon Slome
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200 Scout Road
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37 Wynkoop Lane
Rhinebeck, NY

Charles Veach
177 White Schoolhouse Road
Rhinebeck, NY

Maureen Veach
177 White Schoolhouse Road
Rhinebeck, NY

Charles Wessler
Pine Plains, NY

Comment A53 – Warren Replansky
Town of Rhinebeck Attorney

MEMORANDUM

THE TOWN OF RHINEBECK'S COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT SUBMITTED BY RED WING PROPERTIES INC. IN SUPPORT OF THE TOWN'S ARGUMENTS THAT: (i) THE DEIS IS DEFICIENT IN ITS FAILURE TO ADEQUATELY ADDRESS THE IMPACTS OF THIS GRAVEL MINE ON COMMUNITY CHARACTER AND (ii) THE NEED FOR AN ADJUDICATORY HEARING TO FULLY EVALUATE THE COMMUNITY CHARACTER IMPACTS OF THIS PROJECT

The purpose of this Memorandum is to supplement and support the analysis submitted on behalf of the Town of Rhinebeck by Community Planning and Environmental Associates (hereinafter "Community Planning"), which identified the deficiencies in Red Wing's DEIS with regard to the impact on community character of the proposed expansion of the life of the existing gravel mine from 43 acres to 94 acres within a 241 acre parcel owned by Red Wing on White Schoolhouse Road in the Town of Rhinebeck. The conclusion of Community Planning's evaluation was that the DEIS does not adequately address consistency with either the Town's Comprehensive Plan or its Zoning Code and its other land use regulations. In addition, as Community Planning found in its analysis, the DEIS is defective and deficient in its failure to include a stand-alone community character analysis in the DEIS. This conclusion is not only supported by a fair reading of the DEIS but by applicable statutes, DEC rules and regulations, DEC ALJ and Commissioner rulings and applicable decisional law in the State of New York.

DEC and SEQRA's Community Character Analysis Requirements

DEC's SEQRA regulations in 6 N.Y.C.R.R. §617.1(d) provide, in relevant part, that it was the "intention of the legislature that the protection and enhancement of the environment, community and human and community resources should be given appropriate weight with social and economic considerations in determining public policy...". Section 617.2(1), in its definition

of “Environment”, includes “existing community or neighborhood character”. In determining the significance of an action. Additionally, in making its determination of significance, the lead agency is required to consider whether the proposed action is in “material conflict with a community’s current plans or goals as officially approved or adopted” (617.7(c)(1)(4)). The full EAF submitted to DEC in 2012 and modified in 2019 required the applicant to provide information in several areas pertinent to community character such as historic resources, aesthetic architectural resources, parks and community services, as well as zoning and land use plans, existing land uses and important features of the natural landscape. In Part 2 of the EAF, the lead agency must evaluate whether the proposed action is consistent with the community character. As noted by Community Planning’s submission (“Community Character and the Red Wing Mine Application DEIS”), Red Wing failed to comply with these full EAF requirements, starting at the very inception of the SEQRA process, in its deficient completion of the FEAF Part 1.

In its review of Red Wing’s first draft of the DEIS, DEC included the following comments and requests for amendment to §2.1 of the DEIS:

“2.1 Project Purpose and Need

The DEIS goes to great length to describe how the project is zoned ‘RD5’ by the Town of Rhinebeck, is part of the ‘Soil Mining Overlay District, and that mining is a ‘permitted use’ in that zone with a Special Permit. The document further states that since the site is located in an area that the Town has specifically set aside for mining, there can be no impacts to local zoning and the proposed action is consistent with the local comprehensive land-use plan. However, the document fails to discuss how the proposed reclamation objective of creating a 90 acre lake, with very limited access and relatively steep and inaccessible shorelines, meets the goals of the Town’s plan as outlined below:

THE GOALS OF THE RHINEBECK PLAN

In developing The Rhinebeck Plan, a series of ‘visions,’ ‘objectives,’ and ‘actions’ were identified to help achieve the Town’s overall goals for the future.

The purpose of the visions, objectives, and actions are described later in the Plan. In general, each of these intended to help achieve the overall goals of the Town. The Town's goals are as follows:

- Maintain the rural character of the Town by integrating development into existing hamlets and the Village in key locations and enhancing protection of community character through conservation design practices in the rural portions of the Town.
- Provide a range of housing opportunities to meet the housing needs of a broad spectrum of community residents.
- Strive to achieve social, economic, and cultural diversity within the community.
- Preserve the Town's historic, cultural, scenic, and natural resources and the lands that surround those resources.
- Encourage agriculture and open space preservation as a means of maintaining the rural character and preserving operating farms and the economic viability of farming and forestry.
- Encourage economic development and tourism that is in keeping with the rural character of Rhinebeck and the centrality of the Village.

(Taken from: 'The Rhinebeck Plan, Town of Rhinebeck Comprehensive Plan – 12/29/09', Chapter 01, Introduction, pg. 1.14)

The DEIS should contain an appropriate detailed discussion regarding these issues as required by the approved final scope.”

Clearly, Red Wing has failed to comply with DEC's request for this analysis in the DEIS.

In its permitting decisions, DEC has accorded great deference to local land use plans and has stated that “[t]he Department will not intrude in its judgment...in matters which have properly been the subject of definitive local government determinations of patterns of land use through comprehensive planning and resulting in implementation of local development goals”.

See, *In re: Miracle Mile Assoc.* DEC Commissioner Decision, 12/6/79 at 3.

In applications for permitting for gravel mines, DEC has held that “[a]s local entities are most impacted by physical changes in land use, this department must necessarily give great weight to the adopted plans when performing SEQRA’s required balancing test particularly in the absence of identified statewide concerns or interests”. *In re Onondaga Farms*, DEC Commission Decision 6/16/82 at 2. In *Kravetz v. Plenge*, 102 Misc.2d 622, 632 (Sup. Ct. Monroe Cty. 1979), the Court nullified a negative SEQRA declaration for a rezoning proposal because no consideration was given by the lead agency to the fact that the proposed zoning amendment on its face conflicted with community’s existing plans as officially adopted. As noted by Community Planning, Red Wing in its DEIS failed to provide this analysis and gave only superficial, passing reference to those provisions of the zoning code and the Town’s other land use regulations which now prohibit gravel mining in a large portion of Red Wing’s property which is the subject of its current application for a DEC mining permit. (See, discussions *supra*).

The leading court decision regarding the requirement of community character analysis in the environmental review process is *Chinese Staff and Workers Assn. v. City of New York*, 68 NY2d 359 (1986). In this case, the Court of Appeals held that SEQRA review extends beyond the traditional impacts on the physical environment and that “[t]he impacts that a project may have on population patterns or existing community character, with or without a separate impact on the physical environment is a relevant concern in an environmental analysis since the statute includes those concerns as elements of the environment”. Numerous New York State courts have followed the holding in *Chinese Staff and Workers Assn.* and have nullified SEQRA determinations which have not fully and properly evaluated the impact of projects on the community character. See, *Mtr. of Wellville Citizens for Responsible Development Inv. v. Wal-Mart Stores Inc.*, 140 AD3d 1767 (4th Dept. 2016; *Mtr. of Anderson v. Lenz*, 18 Misc.3d 1146(A)

(Sup. Ct. Saratoga Cty. 2005); *Mtr. of Village of Chestnut Ridge v. Town of Ramapo*, 45 Ad3d 74 (2d Dept. 2007); *Mtr. of Greenlawn CES v. Planning Board of the Town of Huntington*, 280 AD2d 601 (2d Dept. 2001); *Mtr. of Silvercup Studios v. Power Authority of the State of New York*, 285 AD2d 598 (2d Dept. 2001); *Mtr. of Agashiwala v. New York State Division of Housing and Community Renewal*, 20 Misc.3d 1113(A) (Sup. Ct. NY Cty 2008).

In *Mtr. of Lane Construction Corp. v. Cahill*, 2790 AD2d 609 (3d Dept. 2000), the Appellate Division upheld a determination of the DEC Commissioner which denied petitioner's application to operate a hard rock quarry, in relevant part, because of the project's impacts on the historical and scenic character of the community, including visual and other impacts, which could not be sufficiently mitigated.

INADEQUACY OF COMMUNITY CHARACTER ANALYSIS IN RED WING'S DEIS

As noted by Community Planning, the community character analysis contained in Red Wing's DEIS is not just woefully deficient, it is nonexistent. There is no stand-alone discussion of the gravel mine's expansion, the current proposal for expansion and possibilities for future expansion on the community character of the White Schoolhouse area and the Town of Rhinebeck.

Although the evaluation (and mitigation) of the impacts on community character is a complex process which requires consideration and evaluation of various factors which are intertwined and overlapped, such as noise, aesthetics, traffic, cultural resources and visual impacts in the environmental review process, DEC has wisely determined that the myriad of environmental considerations cannot each be reviewed in isolation and that a final determination of a project's impacts on community character will necessarily involve a judgment which

integrates all of the relevant facts as part of a stand-alone evaluation of community character impacts in the DEIS.

In this regard, the DEC rulings in the case of *In Re Palumbo Block Company* are instructive. In *Palumbo*, the applicant mining company proposed to mine unconsolidated sand and gravel from 73 acres over a period of 20 years in a location on the east side of Route 22 in the Town of Ancram, Columbia County, New York. Although several environmental issues were determined to be significant for adjudication such as impacts on the adjacent wetland, visual impacts, and noise, the Town of Ancram and a citizen's committee applied for party status and argued that the impacts of the mine on community character was a substantive and significant issue so as to require its own evaluation as part of the adjudicatory hearing. The ALJ then assigned to the application in her ruling on party status, identified the community character impacts of the mine as a stand-alone issue for adjudication. See, *Palumbo Block Company*, Interim Ruling on Issues and Party Standing, dated February 9, 2001 (a copy of which is annexed hereto as Exhibit "A").

Palumbo filed an appeal to the DEC Commissioner objecting to the inclusion of the community character as a stand-alone impact to be evaluated as part of the adjudicatory hearing. The DEC Commissioner ruled that although community character may intertwine and overlap with issues such as noise, aesthetics and cultural resources, the community character impacts of the mine were significant enough to be evaluated as a stand-alone adjudicable issue. See, *Palumbo Block Company Inc.*, Interim Decision of Commissioner dated June 4, 2001 (a copy of which is annexed hereto as Exhibit "B"). It is noteworthy that in spite of the fact that after a lengthy adjudicatory hearing, a new ALJ assigned to the case ruled against the intervenors and in favor of the gravel mine, on appeal to the Commissioner, the ALJ determination was reversed

and the DEC Commissioner determined that upon the overall record on the case, including evidence of the mine's potential impact on community character, he was unable to accept the recommendation that the application of Palumbo for a mining permit be granted. See, *Palumbo Block Company Inc.*, Decision of Commissioner dated August 18, 2003 (annexed hereto as Exhibit "C").

Accordingly, in light of several demonstrated significant environmental impacts of this project, which have been identified by DEC staff, the Town and the neighboring property owners such as traffic, public safety, impact on endangered species, noise and visual impacts, the issue of the Red Wing gravel mine's expansion impacts on community character must be identified as an issue for adjudication.

**IN EVALUATING THE IMPACT OF THIS MINE EXPANSION APPLICATION ON
COMMUNITY CHARACTER, DEC MUST ALSO TAKE INTO CONSIDERATION
THE PROJECT'S INCONSISTENCY WITH THE TOWN'S ZONING LAW AND
COMPREHENSIVE PLAN**

As noted by Community Planning, the inconsistency of this application with the Town's 2009 Comprehensive Plan; its Zoning Code; its Local Waterfront Revitalization Program adopted in 2007; and the Town's FGEIS for its Comprehensive Plan and Freshwater Wetlands adopted in 2009 is clear.

Most significant is the fact that the Town of Rhinebeck Code now prohibits gravel mining in a large portion of the area in which the current Red Wing application is located and in the remainder of Red Wing's 241 acre property. The Town of Rhinebeck, recognizing the boundaries of the Mining Overlay District in the Town's Zoning Code were not consistent with the Town's Comprehensive Plan, amended its zoning districts in 2015 to reduce the boundaries of the Mining Overlay District in which mining was permitted in the Town to those properties which had already received permits from the Town and DEC. Red Wing appealed to the Town's

Zoning Board of Appeals arguing it had the right to mine the 94 acres of its mine as a valid non-conforming use. After extensive hearings, the ZBA ruled against Red Wing. The ZBA decision was challenged in Dutchess County Supreme Court. The Supreme Court (Rosa, J.) upheld the ZBA's decision and determined that Red Wing had not established the requisite facts to support its claim that it had a vested right as a nonconforming use to mine that portion of the property outside the Town's Mining Overlay District. See, Supreme Court Decision dated July 27, 2017 annexed hereto as Exhibit "D".

Judge Rosa's decision was appealed to the Appellate Division by Red Wing. The Appellate Division, Second Department modified Judge Rosa's decision to the extent of ruling that Red Wing had established its intent to extend its gravel mining operation into portions of the 94 acre previously unmined portions of the property and, as a result, was exempt from the prohibition on extractive mining as contained in the Town's amended zoning code as a prior nonconforming use. See, *Red Wing v. Town of Rhinebeck*, 184 AD3d 577 (2d Dept. 2020) (Annexed hereto as Exhibit "E"). However, it is noteworthy that the Appellate Division decision did not nullify the Town's local law reducing the boundaries of the Town's Mining Overlay Zone. The Appellate Court only determined that Red Wing had established a right to make application for a mining permit to the Town as a pre-existing nonconforming use. In this regard, it should be noted that nonconforming uses are generally not favored by municipalities and, as a result, "[t]he policy of zoning embraces the concept of ultimate elimination of nonconforming uses...". See, *Mtr. of Harbison v. City of Buffalo*, 4 NY2d 553, 559-560 (1958); *Mtr. of PMS Assets v. Zoning Board of Appeals of the Village of Pleasantville*, 98 NY2d 683 (2000); *Mtr. of Aboud v. Wallace*, 94 AD2d 874 (3d Dept. 1983). DEC must, in evaluating the environmental

impacts of Red Wing's proposed gravel mine, take into account the fact that the mine proposed by Red Wing is, in large part, currently prohibited by the Town's current Zoning Code.

Most disturbing is the fact that Red Wing, since the Appellate Division decision, has taken the position that it, by virtue of that decision, is relieved of its obligation to make application to the Town of Rhinebeck Planning Board for a special use permit and site plan approval for its gravel mine expansion. Red Wing did not appeal the Appellate Division determination, but, instead, chose to file a motion with Judge Rosa seeking to hold the Town in "contempt" due to its alleged failure to permit Red Wing to mine the 94 acres without the requirement of obtaining a site plan and special use permit from the Planning Board. This motion was denied by Judge Rosa in a strongly worded decision dated August 30, 2022 decision (annexed hereto as Exhibit "F") in which she held that Red Wing was not, by virtue of the Appellate Division decision, relieved of its obligation to obtain site plan and special permit approval from the Planning Board. In her ruling, Judge Rosa cited that portion of the ZBA decision which stated as follows:

"There is nothing in the Appellate Division decision that would suggest otherwise and nothing in that decision that '[Red Wing] can continue extractive mining operations and soil mining *carte blanche* without the need for any local approvals."

In addition, Red Wing filed a motion with the Appellate Division seeking an order of "resettlement" of the Appellate Division decision to "clarify" that it was the intent of the Appellate Division, by holding that Red Wing had established a right to nonconforming use status, to rule that such status also exempted it from making any application to the Town for special permit and site plan for its mine. That motion has not to date been decided by the Appellate Division.

Red Wing's actions are even more egregious considering the fact that it has represented to the Zoning Board of Appeals, the Town's Code Enforcement Officer, the Appellate Division and to DEC in the past that it recognizes that it has a legal duty to make application to the Town of Rhinebeck Planning Board for site plan and special permit approval for its gravel mine expansion. See, Affirmation of Warren S. Replansky, Esq. in opposition to Red Wing's Appellate Division Motion to Resettle annexed hereto as Exhibit "G". Notably, Red Wing has stated in the FEIS and DEIS that permitting is required for its mine expansion from the Rhinebeck Planning Board and has identified such permitting as being required in the DEIS. (See, Executive Summary p.i)

The impact of Red Wing being able to mine its 94 acres, which is the subject of the instant application to DEC without any application whatsoever to the Town for a special use permit and site plan approval for its proposed mine expansion and new access road must be evaluated by DEC in its SEQRA review of this project. DEC must also take into consideration in its environmental analysis the fact that it is likely that Red Wing will claim at a future date that it has the right to mine the remainder of its 241 acres without the need to make any applications to the Town of Rhinebeck Planning Board for a special use permit and site plan approval. Such failure to evaluate the potential cumulative impact of this development of the property would violate DEC rules against segmentation. Moreover, DEC has found that it must quantify or at least estimate anticipated growth and inducement of further development by virtue of a proposed project. See, SEQRA Handbook, Fourth Edition, 2019, p. 153. These impacts must also be evaluated in terms of the impact on properties, tourism, recreation, and cultural activities in a town and the social fabric of the area surrounding the project. See, *Wal-Mart Stores Inc. v. Planning Board of the Town of North Elba*, 238 AD2d 93 (3d Dept. 1998).

CONCLUSION

WHEREFORE, for all of the above reasons, the ALJ must determine: (i) that the DEIS, as submitted, is deficient; (ii) that the DEIS must be amended to include a full and complete evaluation of the impact of this mining application on community character; and (iii) the issue of impact on community character must be determined to be an issue for adjudication.

DATED: Rhinebeck, New York
February 9, 2023

Respectfully submitted,

WARREN S. REPLANSKY, P.C.

A handwritten signature in dark ink, appearing to read "W. S. Replansky", is written over a horizontal line.

WARREN S. REPLANSKY, ESQ.
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(845-876-7979)

EXHIBIT A



Department of Environmental Conservation

Palumbo Block Company, Inc. - Ruling 3, February 9, 2001

Ruling 3, February 9, 2001

STATE OF NEW YORK : DEPARTMENT OF ENVIRONMENTAL CONSERVATION
In the Matter of

the Application of PALUMBO BLOCK COMPANY for a Mined Land Reclamation Permit for
a proposed mine in the Town of Ancram, pursuant to Article 23, Title 27 of
the Environmental Conservation Law

February 9, 2001

RULING ON ISSUES AND PARTY STATUS

DEC Application No. 4-1020-00035/00001

Summary

This ruling identifies the parties and the issues for adjudication in the hearing on Palumbo Block Company's application for a mined land reclamation permit for sand and gravel mining to be conducted in the Town of Ancram, Columbia County. The parties to the hearing are the Applicant, the Department Staff, and a consolidated party consisting of the Town of Ancram and the Taconic Valley Preservation Alliance. The Village of Millerton's petition for party status is denied. The issues identified for adjudication in the hearing are: the Applicant's record of compliance, erosion control and drainage, freshwater wetlands impacts, visual impacts, noise, impacts on the character of the community, and deficiencies in the maps that are part of the application. Proposed issues which will not be adjudicated include impacts on groundwater, spill prevention, air and dust impacts, and traffic. A Supplemental Environmental Impact Statement is not being required.

Background

Palumbo Block Company (the "Applicant") proposes to mine unconsolidated sand and gravel from 73 acres over a period of twenty years, removing approximately 2,000,000 cubic yards of sand and gravel. The mining would occur in seven phases. The mining would take place in the Town of Ancram, Columbia County, on the east side of Route 22 approximately one mile north of White House Road.

The Applicant applied for a mined land reclamation permit pursuant to Environmental Conservation Law ("ECL") Article 23, Title 27, and Parts 420 through 425 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR Parts 420 through 425").

The Department of Environmental Conservation (the "Department") is the lead agency for the review of the project under the State Environmental Quality Review Act ("SEQRA," ECL Article 8 and 6 NYCRR Part 617). The Department determined that the project may have a significant environmental impact and required preparation of an Environmental Impact Statement ("EIS").

The hearing on the project began on July 20, 1999 with a legislative hearing for unsworn comments about the application and the Draft EIS. The issues conference had been scheduled for July 21, 1999 but was postponed by agreement of the parties and potential parties to October 5, 1999. The issues conference continued on October 27 and December 16, 1999. The hearing is being held pursuant to 6 NYCRR Part 624, the Department's permit hearing procedures.

Two petitions for party status were received, one from the Village of Millerton (the "Village") and one from a consolidated party consisting of the Town of Ancram and the Taconic Valley Preservation Alliance (the "Intervenors"). The Town of Ancram had also submitted comments under ECL 23-2711.3 in July 23, 1999 letter from Warren Replansky to Michael Higgins.

The Applicant is represented in this hearing by Laura Zeisel, Esq., New Paltz. The Department's Region 4 Staff is represented by Richard Ostrov, Esq., Assistant Regional Attorney, DEC Region 4, Schenectady. The Intervenors are represented by Warren S. Replansky, Esq., of the firm of Osofsky and Replansky, Pine Plains. The Village of Millerton is represented by Michele W. Haab, Esq., of the firm of Downey, Haab & Murphy, Millerton.

As discussed in a ruling dated October 22, 1999, the issues conference record remained open pending the outcome of an enforcement hearing involving a facility in the Town of Dover, Dutchess County, in which the Applicant was one of the Respondents. On October 5, 2000, the Commissioner of Environmental Conservation issued an Order finding that the Respondents in that matter had violated the Mined Land Reclamation Law and an Order on Consent by mining without a permit.

Also during 2000, there was additional correspondence on a number of subjects including confirmation by the U.S. Army Corps of Engineers of a wetland boundary delineation on the site, a site visit requested by the Intervenors, and a supplemental notice regarding the location of the land which the Applicant has an option to buy for use in the project.

The original notice of hearing had identified the site as being entirely in the Town of Ancram, Columbia County, based on the depiction of the site in the DEIS. In correspondence after the beginning of the hearing, however, the Applicant's consultant identified the land as also including an area in the Town of Northeast, Dutchess County. Although the Applicant proposes to mine only on the area within the Town of Ancram, the Applicant does propose to take the other land into account in determining setback distances from property lines. The Applicant also identified the possibility of growing trees on the land which is located in Northeast, although that is not part of the present proposal. The Town of Northeast was notified of the application and provided an opportunity to comment pursuant to ECL Section 23-2711.3. The Department Staff responded to these comments on November 7, 2000 and made no changes in the draft permit in response to the comments.

The Applicant, the Department Staff and the Intervenors submitted summary statements regarding the proposed issues on December 6, 2000.

The location of the site and of nearby geographic features is illustrated on Appendix A of this ruling. A state-regulated wetland designated as CO-26 is on and adjacent to the site although all mining activities are proposed to take place outside of the wetland and its 100-foot adjacent area. The wetland flows into the Noster Kill.

The depiction of the site in Appendix A shows the boundary that includes land in both the Towns of Ancram and of Northeast, although only the area in Ancram is shaded. The map which is Appendix A is taken from the November 20, 2000 Updated Mined Land Use Plan, but that plan and its appended Erosion and Sediment Control Plan still contain two different depictions of the site. The boundary of the land which the Applicant has an option to buy, and which it wishes to have taken in to account in considering property line locations and setback distances, has not been well defined and will need to be clarified.

Status of Application and Draft Permit

The application has undergone a number of revisions during the issues conference process, including a change in the location of the mine phases. The current application includes an Updated Mined Land Use Plan narrative dated November 20, 2000, a Mining Map dated January 5, 2000, a Reclamation Map dated November 12, 1999 and an Erosion and Sediment Control Plan dated November 19, 1999. Some of the other reports and correspondence submitted by the Applicant during the issues conference process may be considered as supplemental application materials.

The draft permit was also revised. Some of the revisions resulted from discussions among the parties about possible resolution or narrowing of issues. The most recent draft permit consists of the initial four pages of the October 18, 1999 draft permit, the special conditions dated January 14, 2000 (pp. 5 through 8), and the two additional changes identified in Richard Ostrov's letter of December 4, 2000.

Ruling on Party Status

The Applicant and the Department Staff are parties to the hearing pursuant to 6 NYCRR 624.5(a).

The Town of Ancram and the Taconic Valley Preservation Alliance (the "Intervenors") are granted party status as a consolidated party. They filed a petition as required in 6 NYCRR 624.5(b), demonstrated an adequate environmental interest in the project, and (as discussed below) have raised a number of substantive and significant issues for adjudication.

The Village of Millerton also petitioned for party status, but it was unclear whether the Village proposed any testimony. The Village participated in the issues conference only to a limited extent. There was mention that the Village might consolidate its participation in some manner with that of the Intervenors, but this was never confirmed. On November 2, 2000, I wrote to the attorney for the Village, stating that in the absence of a response about the Village's intention to participate, I would conclude that the Village was no longer requesting party status. I have received no response to the November 2, 2000 letter. The Village's petition for party status is denied.

Intervenors' Request for a Supplemental EIS

In both their petition for party status and their December 6, 2000 summary statement, the Intervenors stated that the Draft Environmental Impact Statement is deficient and fails to address or study numerous significant impacts that were identified in the Department Staff's positive declaration and the scoping document. The Intervenors contend that a Supplemental Environmental Impact Statement ("SEIS") should be required.

Some of the missing information was provided during the time between the start of the hearing and the present. The application has been supplemented and revised on a number of occasions. The record on certain other subjects will be developed through the adjudicatory hearing since they are being identified as issues for adjudication (see 6 NYCRR 624.13(c) and 624.4(c)(6)).

A lead agency may require an SEIS only under certain conditions identified in 6 NYCRR 617.9(a)(7), limited to subjects not addressed or inadequately addressed in the EIS that arise from changes proposed for the project, newly discovered information, or a change in circumstances related to the project. In the present case, the criticisms of the EIS are not related to project changes, new information or changed circumstances, so the procedure of supplementing the EIS does not apply here and an SEIS will not be required unless the conditions contemplated in 617.9(a)(7) occur. Instead, issues arising from the EIS may be addressed through adjudication, as discussed below.

Ruling on Issues

Standard of Review

6 NYCRR Section 624.4(c) specifies the standards for adjudicable issues in a DEC permit hearing. When the Department Staff has determined that a permit application, conditioned by a draft permit, will meet all statutory and regulatory requirements, the potential party proposing an issue has the burden of persuasion to demonstrate that the proposed issue is substantive and significant.

An issue is substantive if there is sufficient doubt about the applicant's ability to meet statutory or regulatory criteria such that a reasonable person would inquire further (624.4(c)(2)). An issue is significant if it has the potential to result in the denial of a permit, a major modification to the proposed project or the imposition of significant permit conditions in addition to those proposed in the draft permit (624.4(c)(3)).

In order to establish that adjudicable issues exist, "an intervenor must demonstrate to the satisfaction of the Administrative Law Judge that the Applicant's presentation of facts in support of its application do not meet the requirements of the statute or regulations. The offer of proof can take the form of proposed testimony, usually that of an expert, or the identification of some defect or omission in the application. Where the proposed testimony is competent and runs counter to the Applicant's assertions an issue is raised. Where the intervenor proposes to demonstrate a defect in the application through cross-examination of the Applicant's witnesses, an intervenor must make a credible showing that such a defect is present and likely to affect permit issuance in a substantial way. In all such instances a conclusory statement without a factual foundation is not sufficient to raise issues." (*In the Matter of Halfmoon Water Improvement Area*, Decision of the Commissioner dated April 2, 1982).

Where the Department, as lead agency, has required the preparation of a DEIS, questions of whether to adjudicate issues concerning the sufficiency of the DEIS or the ability of the Department to make findings required by SEQRA are determined under the same standards that apply to identification of issues generally (624.4(c)(6)(i)(b); 624.4(c)(1) through (4)).

SEQRA requires that an agency approving an action must make findings regarding the agency's consideration of environmental effects and alternative actions and the minimization or avoidance of adverse environmental effects (see 617.11).

Record of Compliance

The Intervenors, in their petition for party status, contended that the application should be denied based on the Applicant's compliance history (and that of related companies) at other facilities in the Town of Dover, Dutchess County. The Intervenors cited three orders on consent as well as allegations of violations that have not been the subject of final enforcement actions, and proposed to present testimony of three current or former Town of Dover officials and of a Department employee.⁽¹⁾ The testimony was proposed to include alleged lack of reclamation at the Dover gravel mine site.

The Department Staff did not take a position regarding whether this issue should be adjudicated, pending the outcome of the DEC Region 3 hearing mentioned above (*In the Matter of Palumbo Block Company, Inc., Danny Fortune and Company, Inc., Fortunato Palumbo and Anthony Palumbo*, DEC Case No. R3-1999-0909-52, the "Dover enforcement hearing"). Commissioner John P. Cahill issued an order in this enforcement hearing on October 5, 2000, finding that the Respondents had violated ECL 23-2711, 6 NYCRR 421.1(a), and a December 3, 1998 Order on Consent, by mining without a permit at the site involved in that matter. The October 5, 2000 Order imposed a penalty of \$12,250 upon the Respondents. On December 6, 2000, the Department Staff stated its position regarding the proposed record-of-compliance issue in the present hearing, arguing that the nature of the violations does not rise to the level of conduct that would support denial of the permit.

The Applicant, in letters dated October 13, 1999 and December 6, 2000, argued that as a matter of law the Enforcement Guidance Memorandum regarding record of compliance issues (EGM II. 24, dated March 5, 1993) does not apply to applications under ECL Article 23 (mined land reclamation). The Applicant also argue that even if the policy is applied, the violations for various reasons are not such that the application should be denied, and that the Department has not revoked the mining permit of Palumbo Sand and Gravel, a related company. The Applicant contends that reclamation of the affected areas that were the subject of the enforcement actions was and/or is being accomplished.

On October 22, 1999, I made a ruling that the proposed issue was not excluded as a matter of law, that it remained a potential issue, and that the issues conference record would remain open pending the outcome of the Dover enforcement action.

EGM II. 24 provides guidance on how an applicant's compliance history should be taken into a account in deciding whether to issue, condition or deny a permit under a variety of the Department's permit programs. Factors which should be considered are described on pages 4 and 5 of the policy, and include whether an applicant has been determined to have violated any provision of the ECL or related regulations, permits or

orders, and such violations posed a significant potential threat to the environment or were part of a pattern of non-compliance. These factors also include whether the applicant has made materially inaccurate statements in the permit application, supporting papers, or the conduct of the permitted activity, or has exceeded the scope of the project as described in any permit.

It is worth noting that the policy relates not only to the question of whether or not an applicant's record of compliance supports denial of a permit application but also to the question of whether an applicant should be subject to more stringent permit conditions than might otherwise be imposed (EGM II. 24, page 2). This suggests that even if the Department's Region 3 Staff has not moved to revoke the permit of a company closely related to the Applicant, the record of compliance of the present Applicant (and of related companies and persons) could be considered in weighing the need for additional or more stringent permit conditions.

The review of past compliance applies not only to the immediate entity applying for a permit, but to related business entities and persons, as discussed further on page 5 of the EGM. In the present case, the Order in the Dover enforcement hearing discusses the close relationship among persons and business involved in that matter, in the present permit hearing, and in the enforcement matters and allegations cited by the Intervenor (see particularly paragraphs 23 through 25 of the Commissioner's October 5, 2000 Order).

The EGM contemplates review of events that occurred within ten years of the date of completion of the record of compliance form, a form that may be required in the context of an application. The Department Staff has apparently not required the Applicant to provide a record of compliance form in the present case, so the date for the ten year time period is unclear. It would appear reasonable to use the date of completion of the application for this purpose.

An additional threshold cited by the Respondent, in arguing that the enforcement matters cited by the Intervenor should not be considered, is the \$25,000 penalty amount that appears on page 6 of the EGM. This figure appears, however, in the context of a paragraph about considering "other state or United States matters." In contrast, the factors cited on pages 4 and 5 of the EGM are not limited to situations in which a penalty in excess of \$25,000 was imposed. In evaluating an applicant's compliance history, the Department has also considered alleged violations of the Environmental Conservation Law that had not yet been the subject of a final enforcement action and thus would not have any penalty amount associated with them (see, for example, *In the Matter of Seaboard Contracting and Material, Inc.*, Interim Decision dated June 6, 1990, and *A-1 Recycling and Salvage*, Interim Decision dated March 19, 1992).

The October 5, 2000 Order and the Orders on Consent which have been submitted as part of the offer of proof already document events that should be considered in evaluating the present application. The October 5, 2000 Order found that the Applicant and related entities had violated the ECL, a Department regulation and an Order on Consent by mining without a permit. The June 6, 1994 Order on Consent stated that the Respondents in that matter had substantially deviated from their mined land use plan in several ways including by conducting mining-related activities which affected areas outside the permitted boundaries, by conducting mining activities in non-compliance with their phase plan and without the required financial security, and by maintenance defects involving a settling pond and a berm. The other two orders on consent also involve violations of the Environmental Conservation Law and regulations, and the July 7, 1999 Modified Order on Consent involves violation of the December 3, 1998 Order on Consent. In addition to the matters that have been the subject of final DEC orders, the Intervenor propose testimony regarding lack of reclamation at the Dover mine site.

The offer of proof presented by the Intervenor has raised an issue for adjudication regarding the Applicant's record of compliance.

With regard to reclamation violations alleged by the Intervenor, which have not been the subject of an Order on Consent or a hearing, the Intervenor will need to provide a more detailed statement of their allegations prior to the hearing and will need to present evidence on this subject if they wish to pursue it. The Applicant will have the opportunity to present evidence on this subject as part of its direct case or as rebuttal.

Erosion Control and Drainage

The Intervenor's petition for party status presented a number of criticisms of the application with regard to this issue. These included that the DEIS (as of the date of the petition) did not provide a storm water control plan, that the project as proposed did not provide adequate measures to minimize siltation into the wetland and that the project would alter the existing drainage patterns. The Intervenor took the position that the drainage and erosion control measures for this project are particularly important since the site and areas uphill from it currently drain towards a large, ecologically significant wetland and a stream that supports trout spawning. The Intervenor asserted that the project would adversely affect the wetland and the stream and that a State Pollutant Discharge Elimination System ("SPDES") permit for storm water discharge should be required.

The Department Staff took the position that no SPDES storm water permit was required since there would be no discharge of turbid water from the site pursuant to special condition 15 of the draft permit. Both the Applicant and the Department Staff opposed adjudication of this issue at the start of the issues conference and they continue to do so. During and following the issues conference, the Applicant submitted an Erosion and Sediment Control Plan dated November 19, 1999 and revised the mining map to show berms and earthen dikes at locations where the Intervenor argued that runoff would leave the mined area toward the wetland.

Several regulatory provisions relate to this proposed issue, including the mined land reclamation requirements, SEQRA, and potentially the State Pollutant Discharge Elimination System (ECL Article 17, Title 8). The mined land reclamation regulations require that information on drainage control and erosion control be included in both the mining map and the mining plan narrative, and these regulations also contain substantive requirements about the objectives to be met in this regard (6 NYCRR 422.2). The reclamation plan is also required to have information related to these subjects, and to meet certain requirements regarding drainage and water impoundments (6 NYCRR 422.3).

Regarding the mining plan, "[a] description of the applicant's proposed method for preventing pollution, reducing soil erosion, and minimizing the effect of mining on the people of the State shall be required when and to the extent necessary to achieve compliance with the regulations of the department relative to: land use; air and water quality; solid waste management; the use and protection of waters; the protection of the natural resources of the State including soil, forests, water, fish, wildlife, and all aquatic or terrestrial related environment, and to any other applicable standards." (6 NYCRR 422.2(c)(4)).

In the context of the State Environmental Quality Review Act, ECL 8-0109.8 requires that, "When an agency decides to carry out or approve an action which has been the subject of an environmental impact statement, it shall make an explicit finding that the requirements of this section [preparation of environmental impact statement] have been met and that consistent with social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process will be minimized or avoided." 6 NYCRR 617.11 contains a similar requirement.

ECL 8-0105.6 defines "environment" in the context of SEQRA as meaning "the physical conditions which will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance, existing patterns of population concentration, distribution or growth, and existing community or neighborhood character."

The third regulatory consideration, which may or may not be applicable to this project based on the outcome of this issue, is the State Pollutant Discharge Elimination System. There is a substantive disagreement regarding whether storm water will be discharged from the site. The Department administers two general permits regarding storm water (for construction activities and industrial activities, GP-93-06 and GP-98-03 respectively) but the Department Staff has taken the position that these are not applicable here since there would be no discharge to the waters of the United States.

Although the draft permit contains a condition prohibiting discharge surface water from any unreclaimed mining area and prohibiting discharge of turbid or sediment filled waters (Special Condition 15), the discussion at the

issues conference indicated that, during at least portions of the mining, runoff from the mining area would be discharged if the mining was conducted as shown on the maps. The maps were amended after this discussion, by the addition of berms and earthen dikes, but there is still a dispute about the effectiveness of these measures and about ponding of water on the mine if the barriers are effective. No retention ponds are shown on the current maps. If the evidence demonstrates that a discharge requiring a SPDES permit will occur, or if the project is modified in such a way as to include such a discharge, a SPDES permit would be required. No SPDES permit application (or general permit procedure) is part of the application at present, however.

Even after the revision of the mining map and the inclusion of the Erosion and Sediment Control Plan, there remain unresolved, substantive disputes that, if proven true, would lead to significant modification or denial of the application, based on the requirements of the mined land regulations and/or SEQRA. The Intervenor has identified qualified witnesses to testify regarding both the drainage issue and the related issue of impacts on the wetland and stream. Among the remaining factual disputes are whether the berms and dikes will be effective, the actual size of berms and dikes that would be required in contrast to how these are depicted on the map (and how this would affect the boundaries of the area to be mined), the effectiveness of silt fences and hay bales in protecting the wetland from runoff in the area of the berms (even if the berms are effective at containing runoff from the mine itself), whether retention ponds need to be provided for, and how water entering the site through culverts under Route 22 is to be managed.

There are inconsistencies between how the berms and dikes are depicted in the Erosion and Sediment Control Plan and how they are depicted on the mining map, to the extent that it would make it difficult in the future to interpret what is required by the mined land use plan which would be incorporated by reference into the permit (Additional General Conditions 6 and 11). This is discussed further in the section below on "Alleged Deficiencies in Mapping."

Impacts on Wetland CO-26 and Waters Downstream

A freshwater wetland designated as CO-26 on the Department's freshwater wetlands maps is located adjacent to and partly on the site. The project as proposed would be located outside of both this wetland and the 100 foot adjacent area around the wetland. Consequently, no freshwater wetlands permit under ECL Article 24 would be necessary.

The Intervenor has questioned whether a federally-regulated wetland was within the project area. The boundary of the wetland, in terms of the jurisdiction of the U.S. Army Corps of Engineers, was reviewed by a consultant for the Applicant and by the Corps of Engineers. The conclusion of this review was that the project would also be located outside of the federally-regulated wetland. The proposed issue of federal wetlands jurisdiction was withdrawn by the Intervenor in a November 20, 2000 letter from Warren Replansky to me.

As discussed above, no SPDES permit application or general permit process has been required for this project by the Department Staff. Thus, at present the question of the project's impacts on wetland CO-26 and the Noster Kill would only be an issue for adjudication if there was a substantive dispute about whether the findings required under SEQRA could be made (ECL 8-0109.8, quoted above).

The sufficiency of an environmental impact statement, and its scope or lack of coverage of specific environmental concerns, is evaluated by the "hard look" standard which also applies to the determination of whether or not to require an EIS. This involves identifying the relevant areas of environmental concern, taking a "hard look" at them, and making a "reasoned elaboration" of the basis for the agency's determination (*Aldrich v. Pattison*, 107 A.D.2d 258, 486 N.Y.S.2d 23 (2nd Dept., 1985)).

There is a substantive and significant dispute about whether the required "hard look" has been taken regarding impacts on wetland CO-26 and the Noster Kill, as well as whether the project as proposed will avoid, and mitigate to the maximum extent practicable, impacts on the wetland.

The Intervenor has proposed testimony by an expert witness and have presented extensive information on this proposed issue. The information includes documents regarding the significance of the wetland and the stream as

habitat which were prepared by the proposed witness, by a consultant for the intervenors in the Harlem Valley Materials hearing regarding the same site, and by the Dutchess County Environmental Management Council. This information asserts that rare or regionally-rare plant and animal species occur in the wetland, that the wetland includes a rare habitat type (rich shrub fen), and that the maintenance of the existing plant communities and rare species is dependent upon maintenance of the quality and quantity of groundwater and surface water inputs to the system. The Intervenor also argued that the wetland has features which indicate that bog turtles (an endangered species) may occur on the site and that an appropriate survey regarding bog turtle presence has not been conducted. Bog turtles are listed as endangered in New York State (6 NYCRR 182.6(a)(5)(ii)) and the Intervenor asserts that they are a federally-listed endangered species. The Intervenor argued that the DEIS relies on a 1988 letter from the Department's Significant Habitat Unit although the letter itself states that the Habitat Unit's files should not be substituted for on-site surveys that may be required for environmental assessment, and the letter recommends that an updated response be requested if the project is still active a year from the date of the letter (DEIS sections 3.4 and 11.4).

The wetland flows into the Noster Kill. The DEIS, at page 21, initially identified the Noster Kill as being class D, but following discussions at the issues conference the DEIS was amended to state that the Noster Kill has the classification and standards of C(ts) (see 6 NYCRR 701 and 703 regarding stream classifications and standards, and 6 NYCRR Part 863 particularly section 863.6 item 58.1).

The January 20, 1998 positive declaration which the Department Staff issued regarding the project, requiring preparation of the DEIS, identified as two of the possible significant environmental impacts "adverse impacts on the adjacent wetlands (FWW CO-26)" and "adverse impacts on the Noster Kill, a protected trout spawning stream."

Although the DEIS acknowledges the presence of the rich shrub fen and that it contains plants that are rare in the state, the information in the DEIS cannot be considered to be a "hard look" at the biological resources that may be adversely affected by the project, nor at the measures necessary to avoid or mitigate such impacts. The DEIS relies on out-of-date documentary information and there is no indication that the Applicant has had on-site biological work conducted. This is particularly of concern in this case, where impacts on the wetland and stream were identified as being potentially significant in the positive declaration, where the information available about the ecosystem indicated the presence of a rare and vulnerable natural community next to the proposed mine, and where the question of potential habitat for bog turtles was raised in the 1989 hearing. (The differences between the former application and the present application do not eliminate this last item, since the present project may still cause adverse impacts on the wetland.)

The Department Staff's assertion that no bog turtles have been sighted does not resolve this last question, since there is no indication that either the Applicant or the Department Staff has looked. The Intervenor has asserted that conducting a survey for bog turtles requires specialized skills, but that such a survey has not been done. Neither the Applicant nor the Department Staff assert that an appropriate survey has been done but failed to reveal bog turtles, but instead seek to dismiss this question as speculative or theoretical, without effectively contradicting the information which indicates that the wetland is potential bog turtle habitat.

Similarly, the Applicant argued that the Intervenor presented no peer-reviewed literature on the impacts of mining on wetlands and that the absence of such literature supports an argument that the issue is speculative. The Intervenor argued that no studies that would have produced the data for such literature have been required by the Department. The Intervenor's position is actually underlined by the Department Staff's January 14, 2000 revision of the draft permit, which eliminated Special Condition No. 26; this condition would have required the Applicant to submit annual reports regarding the quality and quantity of groundwater inputs to the wetland and the water budget of the fen portions of the wetland. The Intervenor, apparently considering Special Condition 26 as being still part of the draft permit, argued that this information should also be required prior to the mining in order to establish a baseline to which the later reports could be compared.

As discussed in the prior section of this ruling, there is an issue regarding the adequacy of the drainage and erosion control measures proposed by the Applicant. (In addition to surface water inputs to the wetland, the Intervenor asserts that changes in the groundwater inputs to the wetland could adversely affect the habitat.) The mine's effects on the quantity and quality of water entering the wetland, when evaluated in the context of the environmental conditions in the wetland, have the potential for resulting in denial or major modification of the project or imposition of significant permit conditions in order for the Department to make the findings required under SEQRA. In addition, the record as it currently stands does not indicate that the required "hard look" has been taken at the relevant ecological resources and the project's impacts on them.

Two sub-issues were discussed at the issues conference, which led to a site visit and sampling that occurred on October 3, 2000. These sub-issues were whether liquid manure was being applied to the site (which the Intervenor argued would increase the nutrients in runoff from the site) and questions about an old farm dump located within phase 6 of the mine. (An additional farm dump is located outside of the mining area, in the adjacent area of the wetland.) The Intervenor had argued that farm dumps may contain discarded pesticides and that these substances, if moved to areas near the wetland, could adversely affect the wetland.

The report regarding the site visit does not raise any additional issues, although the data from the report may be used in the hearing to the extent that it is relevant to the identified issues. While the report gives figures for various nutrients in the soil at the site, it does not compare these concentrations to any information which would show that they are unusual or that they pose problems other than those associated with silt runoff at any site.

Two of the samples were also tested for various herbicides and pesticides, but all of the results were below the detectable concentrations. The report also does not show how close to the farm dumps the samples were taken. The Intervenor had the opportunity to test samples from near the dumps for pesticides and herbicides, but the report does not indicate that this was done, nor that the waste in the dumps included containers from these substances.

6 NYCRR Part 360 contains an exemption for disposal areas located within the property boundaries of a single family residence or farm for solid waste generated from that residence or farm (360-1.7(b)(1)) and, with certain conditions, disposal areas for waste pesticides by the farmer who used them (360-1.7(b)(2)). Similar exemptions existed in earlier versions of Part 360.

Requirements regarding waste disposal would only arise here if the waste was moved. The mining will, however, involve excavating one of the two dumps if it is carried out as proposed on the mining and reclamation maps. The contents of the dump in phase 6, as described in the report of the October 3, 2000 site visit, are solid waste. At the issues conference, the Department Staff suggested the possibility of not mining in the dump area, but that appears unlikely since that would leave an unmined hill about 20 to 45 feet high in the phase 6 area. This dump should be dealt with by including a permit condition that the waste material be removed and be disposed of according to applicable requirements prior to the mining of phase 6. I am directing that the Department Staff formulate such a permit condition prior to the hearing.⁽²⁾

Groundwater

A proposed issue regarding protection of groundwater was discussed in the Intervenor's petition for party status, involving both the mine's effects on groundwater inputs to the wetland and the question of whether the mining would extend to below the water table. Evidence regarding groundwater inputs to the wetland may be relevant to the wetland issue identified above. The second question, however, appears to have been resolved by revision of certain permit conditions that relate to determining the groundwater elevation and the elevation of the mine floor more precisely, and to maintaining a minimum separation of five feet of sand and gravel between the mine floor and the seasonal high groundwater table. No separate issue has been raised regarding groundwater.

Spill prevention

The Intervenor's petition for party status contended that although the DEIS states that fuel will be stored in a tank in a barn on a concrete foundation, the barn no longer appears to exist and the gravel at the barn's location

would be mined during one of the mining phases. Following discussion of this at the issues conference, it appears that one of the barns does still exist on the site. The Applicant revised the spill control plan to state that the tank would be in the barn during phases 1 through 4 and that refueling in later phases would be from an external above-ground fuel tank or fuel would be delivered to the equipment as needed. The revision of the spill plan also included additional information about the kind of tank that would be used. No issue remains for adjudication regarding the spill control plan.

Visual impacts

The DEIS acknowledges that the mining activities will be visible from the Taconic State Park (DEIS, section 5.3), portions of the Harlem Valley Rail Trail (4.7), and some of the residences near the mine (3.6.6). The DEIS proposes screening the view of the mine from Route 22 by use of topsoil berms and by planting pine trees two to five feet tall in the buffer zone along Route 22 (1.4.3, 4.7). The DEIS states that there is no effective way to screen the site from view of potential receptors in the Taconic State Park and lists this as an unavoidable adverse impact during the life of the mine (5.3).

During the fall of 1999, the Applicant changed the proposed phasing of the mine. Mining would now occur in seven phases which are in order from the north to the south end of the site, as opposed to the original proposal of phases 1 through 4 being located from north to south along the east side of the site and phases 5 through 7 being located from south to north along the west side of the site. At the December 16, 1999 session of the issues conference, the Applicant's consultant stated that mining in each of the new phases would progress from north to south in order to minimize visual impacts at viewpoints to the east and west of the site. The Intervenor's questioned the effectiveness of this measure for viewpoints located other than straight east or west of the location of the active face, and the Department Staff's mined land reclamation specialist stated that mining in each phase from east to west would be preferable. The north to south mining progression is not reflected in the November 20, 2000 revised mining plan, which states that mining within each phase will be done in an east to west direction (section 3.3).

The January 14, 2000 draft permit requires planting of two staggered rows of four foot tall white pine trees in the buffer area along Route 22, with the plantings being done in three segments, going north to south, as the mine phases are developed. The draft permit also requires that vegetative cover be maintained on the berms until they are used for reclamation and that no vegetation be disturbed on the permittee's contiguous property outside of the life-of-mine area. The draft permit also requires that no more than 10.5 acres be in a disturbed condition at any time.

The Intervenor's petition for party status argued that the visual impact analysis in the DEIS did not provide the required "hard look" at the impacts and did not use standard methodologies for evaluating such impacts, and that the mining operation would have substantial, unmitigatable visual impacts on important receptors. At the issues conference, the Intervenor's presented a draft visibility analysis which was discussed by one of their proposed witnesses on this subject, Nicholas Schwartz of Clough, Harbor and Associates. The analysis focused on identifying the view shed from which the mine would be visible and portraying the proposed mine's location in the existing view through photo-simulations. Mr. Schwartz noted the distinction between visual impacts of an object (a change in a view) and aesthetic impacts (an effect on the perceived beauty of something). Mr. Schwartz also noted that his draft visibility map was prepared with a model that does not extend to the eastern-most part of New York State. This area which is beyond the mapping includes Brace Mountain and portions of the Taconic State Park. Mr. Schwartz stated that the photo-simulations did not include a view from the rail trail since he could not get there due to private property concerns. The view shed analysis shows that the site would be visible from the majority of the section of the rail trail that parallels the site, about 600 to 800 feet from the mine.

The Department Staff and the Applicant criticized the draft visibility analysis for numerous reasons, including that the photo-simulations show the entire area of the mine rather than just 10.5 acres⁽³⁾, that the Department has not specified a particular method to be used in evaluating visual impacts, that the Department document regarding visual impacts which was cited by Mr. Schwartz is a draft that was never adopted, that the appearance of the

mining operations will not be significantly different from that of the existing agricultural operations, and that the special conditions in the draft permit adequately mitigate any impacts.

On July 31, 2000, the Department issued a Program Policy regarding "Assessing and Mitigating Visual Impacts" (Policy DEP-00-2). This policy provides guidance to the Department in evaluating visual and aesthetic impacts. It does not prescribe a method or methods for analyzing visual impacts, but it discusses use of line-of-sight-profiles and digital viewsheds, with decisions about the adequacy of methods to be made taking into account the scope and potential significance of the activity (policy, p. 5). The policy also emphasizes state- and federally-designated aesthetic resources in the DEC's evaluation of impacts, while stating that the Department Staff should defer to local decision-makers with regard to impacts on local aesthetic resources (p. 2). The policy contains a list of categories of aesthetic resources of statewide significance, including state parks and state or federally designated trails. The Taconic State Park and the Harlem Valley Rail Trail would be considered aesthetic resources of statewide significance.

The New York State Office of Parks, Recreation and Historic Preservation ("OPRHP") did not petition for party status in the hearing but did submit comments on the application and the DEIS. These comments highlighted OPRHP's concerns about impacts on the rail trail, including visual and noise impacts, stated that additional information should be included in the DEIS with regard to mitigation of these impacts, and recommended consideration of a buffer zone with plantings along the eastern side of the mine. The comments also stated that reclamation is key to preservation of the aesthetic resources and that DEC should take into consideration the Applicant's past record in reclamation activities.

The Columbia County Board of Supervisors and the Columbia County Tourism Department also submitted written comments stating concerns about noise and visual impacts on the rail trail. The Board of Supervisors requested denial of the permit for reasons including visual impacts on the Taconic mountains.

The record of the hearing, as developed thus far, demonstrates that a substantive and significant issue exists regarding visual impacts of the mine. There are places of statewide aesthetic significance from which the project will be visible, and the DEIS does not contain a meaningful evaluation of the visibility from these locations (other than providing a visual cross-section which includes Brace Mountain, DEIS Figure 3-11b). The aesthetic impacts of the views of the mine are substantively in dispute, as is the adequacy of screening. It is not in dispute that the site cannot be screened from the view of potential receptors in the Taconic State Park. The Department Staff's effort to equate the appearance of the mine with that of a cornfield does not lead to a conclusion that the impacts of the mine's visibility will be insignificant. This is particularly so given the opposing opinions of the state and local entities mentioned above, given the absence of an opinion by a qualified Department Staff witness to this effect (as opposed to argument), and given the requirement in the mining regulations that mining plans include measures for screening mines for purposes which include minimizing the visual impacts (6 NYCRR 422.2(c)(4)(iii)). If mines could be assumed to look like plowed or vegetated agricultural fields, it is doubtful that there would be such a requirement in the mining regulations. With regard to this particular application, there is an additional factor (cited by both the Intervenor and OPRHP) regarding the track record of the Applicant or related companies in carrying out reclamation.

Noise

The Department's mining regulations contain narrative requirements regarding noise control. These include 6 NYCRR 422.2(c)(4)(i), regarding use of adequately muffled equipment and screening, as well as more general provisions regarding preventing pollution and providing information in the mining plan which would be of use in evaluating noise impacts. Noise is also an aspect of the environment under SEQRA (see 6 NYCRR 617.2(l)) and a substantial adverse change in existing noise levels is among the indicators of significant adverse impacts on the environment (617.7(c)(1)(i)).

The Intervenor critiqued the adequacy of both the evaluation of noise impacts in the DEIS and the mitigation measures proposed in the DEIS. The Intervenor asserted that the project would cause unacceptable increases in noise at nearby residences and at the rail trail. The Intervenor proposed testimony by an engineer regarding

these subjects. The Intervenor also argued that the numerical noise standards in 6 NYCRR Part 360, applicable to solid waste facilities, have been used by the Department in the past as guidance in evaluating noise in mining projects and should be taken into consideration here.

The Department Staff stated that some prior decisions of the Department have referred to Part 360 as guidance but that the noise standards in Part 360 do not control mining projects. The Applicant acknowledged these decisions also, but argued that the mining regulations currently contain no noise performance standards and that if the Department wants to start applying uniform noise performance requirements to mines this should be done by promulgating such standards as regulations. The Applicant presented a copy of the Town of Ancram noise ordinance and stated that this does not contain any specific decibel limits nor does it specifically refer to noise from mines. The Applicant argued that it is legally impossible for a noise issue to be "substantive" since there are no statutory or regulatory criteria for noise.

Interim Decisions in prior DEC hearings about mines have stated that consideration can be given to the noise standards in Part 360 and other standards applicable to noise from comparable operations, and that such standards may be used as guidance to help accomplish the SEQRA objective in mining cases (*In the Matter of Sour Mountain Realty, Inc.*, Interim Decision dated July 18, 1996; *In the Matter of William E. Dailey, Inc.*, Interim Decision dated June 20, 1995).

SEQRA provides authority (and responsibility) to the Department to review environmental impacts of mining projects in addition to the review process in the mined land reclamation regulations. In a case involving visual impacts of a hard rock mine, the Appellate Division stated that, "...while part of the goal of ECL Article 23 was to promote mining by providing guidelines through the adoption and creation of uniform restrictions and regulations [citation omitted], the statute does not mandate that DEC pass detailed regulations describing the exact visual or sound impacts that would preclude the issuance of a mining permit." (*Lane Construction Corporation v. Cahill*, 270 A.D.2d 609, 704 N.Y.S.2d 687 (3d Dept., 2000), motion for leave to appeal denied 95 N.Y.2d 765).

In addition, there are statutory and regulatory criteria that apply to noise. These include the criteria for making the required findings under the State Environmental Quality Review Act, regarding the review of the project and the choices of alternatives and mitigation measures.

Additional program guidance on the Department's evaluation of noise impacts became available following the last day of the issues conference, in the form of the DEC Program Policy on "Assessing and Mitigating Noise Impacts," DEP-00-3, issued on October 6, 2000. Official notice is taken of this policy. This policy does not adopt nor reject the Part 360 numerical standards in considering projects other than solid waste facilities. The Program Policy describes a general framework and factors for evaluating and mitigating noise impacts. This involves evaluation of sound characteristics, identification of receptors and their distance to a project's operations at the time when these will be closest to the receptors, and prediction of project-related changes from the existing noise level at the receptors. The policy identifies the need for considering all aspects of a project that will produce noise, plus site-specific factors affecting noise. The policy also contains examples of mitigation measures, which include limitations on hours of operation of a facility or of the noisier operations at a facility.

The Intervenor's critique of the noise information in the DEIS and in the August 6, 1999 report prepared for the Applicant identified omissions from the evaluation of noise levels, disputes about the adequacy of mitigation measures, and information which would show that the project as proposed and conditioned by the draft permit would produce substantial adverse increases in noise. Noise has been shown to be a substantive and significant issue for adjudication in the hearing.

Among other matters, the Intervenor argued that the project will produce increases in noise at nearby residences that are "unacceptable according to any noise criteria," and even greater increases in noise levels along the rail trail. The Intervenor also argued that the vegetation to be planted along the west side of the site will not provide any useful mitigation of noise impacts since it would take a much larger and denser stand of vegetation to attenuate noise. There are other points regarding distances between noise receptors and noise sources which will not be summarized here but which relate to omissions in the Applicant's noise analysis and/or

to disputes between the Applicant's position and that of the Intervenor regarding the changes in noise levels due to the project. The Intervenor also stated that the Towns of Ancram and Northeast had both requested more limited hours of operation than are proposed. The Intervenor (which include the Town of Ancram) argued that shorter hours are feasible in view of the proposed use of the mine as a materials source for a specific block plant rather than for commercial sales.

The Intervenor stated that the Applicant's noise evaluation does not include noise from a portable screen although the draft permit would allow for such equipment. The DEIS (at section 4.6.8) discussed the noise sources from the project as being a bulldozer, a rubber-tired loader and 25- to 50-ton capacity haul trucks but did not discuss any noise from a portable screen. The table regarding calculated noise levels (DEIS, table 4-1) lists only the loader and trucks as noise sources, but not the bulldozer. As discussed below, under "Air," the Applicant has not identified the screen equipment other than that it will be a portable screen with a maximum rated processing capacity less than 150 tons of minerals per hour. In the absence of a more specific identification, the evidence regarding noise impacts of the screen may include information about the range of noise levels that could be produced by equipment fitting this description, including the most impact-intensive equipment.

On the second day of the issues conference, the Applicant sought to exclude the rail trail as irrelevant to the noise issue, based on a rail trail pamphlet that stated that the section of the trail next to the project is not open to the public. In response, the Intervenor provided information about the phases in which the rail trail was being developed, including a letter from Roger F. Akeley, Commissioner of the Dutchess County Department of Planning and Economic Development, which stated that his Department hoped to secure funding for the segment north of Whitehouse Crossing (i.e., the segment next to the project) within 18 months from late 1999. It can reasonably be expected that this segment of the rail trail will be developed soon. As with the visual impacts issue, local governmental agencies and the NYS OPRHP have commented on the significance of the rail trail and their concerns about the project's noise impacts affecting use of the rail trail.

As stated above, noise has been shown to be a substantive and significant issue for adjudication in the hearing.

Air

The Intervenor contended that an air permit application should be required for the portable screen which the Applicant proposes to use at the site to sort sand and gravel by size. The Department Staff included a special condition (No. 24) in the draft permit which would prohibit the operation of a mobile or portable screen with a maximum rated processing capacity greater than 150 tons of minerals per hour. Pursuant to the exemption in 6 NYCRR 201-3.2(c)(29)(ii), a screen which complied with this draft permit condition would be exempt from the requirement for an air permit under 6 NYCRR Part 201.

The application does not specifically identify the type of portable screen which the Applicant proposes to use. When asked about this at the issues conference, the Applicant provided a letter from the manufacturer of a screen that the Palumbos currently have at another facility, identifying the capacity as up to 135 tons per hour of bank run. The Applicant has not decided what type of screen it would actually use at the Ancram facility although it might move its screen from the other facility to Ancram.

The draft permit condition, with a minor modification, eliminates the need for requiring an air permit application or adjudicating issues about air permit standards. The minor modification which should be made to the draft permit condition is to require the Applicant to provide documentation to the Department Staff regarding the maximum rated processing capacity of the screen it decides to use, prior to starting to operate the screen at the project. This would address the question of how the Department Staff would know whether the equipment which the Applicant eventually decides to use is in compliance with the permit condition.

The Intervenor's proposed issue regarding air quality focused mainly on permit requirements and the adequacy of the DEIS's review of air impacts. The role of the Intervenor's consultant with regard to this issue was primarily to raise questions regarding these subjects. The Intervenor proposed testimony from local residents regarding

high winds in the valley and dust generation from the two mines which are north and south of the site of the present proposal.

As stated above, no permit under Part 201 is required for the screen, if the project is conducted as conditioned in the draft permit. The Intervenor has also not made an offer of proof to show that the other permits and air analyses mentioned in their May 14, 1999 comments on the DEIS would be necessary in this case. A review of the DEIS indicates that the subjects identified in the scoping document have generally been discussed, and it does not appear that omissions or lack of detail in the DEIS are substantive and significant enough to require adjudication. In addition to the dust control measures identified in the DEIS, the draft permit contains special conditions requiring that the access roads be paved for at least 150 feet from their intersection with Route 22 and requiring that there be no visible emissions of dust beyond the life-of-mine boundary. Unlike the controversy over the condition prohibiting runoff of turbid water, the Intervenor has not called into question the feasibility of the permit condition or the ability of the project (as proposed in the mined land use plan) to comply with it.

Although the Intervenor offered testimony by local residents concerning dust from the neighboring mines, the dust control requirements for those mines and their compliance with the requirements are not identified. This may be a matter for enforcement investigation by the Department Staff, rather than for consideration in the permit hearing on the present application.

There is no issue requiring adjudication regarding air quality issues in this hearing.

Traffic

This issue was proposed by the Intervenor in their petition for party status but was not discussed to a great extent in the issues conference and related correspondence. It relates primarily to the adequacy of the SEQRA review process. Mine-related traffic would enter Route 22 and travel on Route 22, which is a state highway. Although a member of the Department Staff mentioned that he thought there was a letter from the New York State Department of Transportation ("DOT") regarding the project's traffic impacts, no such letter has been provided for the record. The DEIS, at page 11, states that a Commercial Highway Access Permit from DOT is required, and that review of this is pending.

The DEIS estimates the truck traffic from the mine to be 10 to 12 round trips per day, and suggests that this will be a minor increase in truck traffic. The Intervenor has asserted that there are traffic hazards on Route 22 which are generated in significant part by gravel mine trucks. This is truck traffic which already occurs from other existing mines. The Intervenor has not made an offer of proof that the Applicant's traffic will cause a significant increase in this problem, nor about what should be done to mitigate or avoid any additional impacts. Although the Intervenor questioned the need for three entrances onto Route 22 from the mine, it appears likely that only one of these entrances would be in use while any particular mine phase was operating.

The record of this proceeding does not demonstrate that a substantive factual dispute exists regarding the impact of the additional traffic that the Applicant's mine would produce. The review of this application is, however, deficient with regard to review by DOT, the state agency which is responsible for Route 22. In the present case, traffic was cited by the Department Staff as one of the reasons why the project may have a significant adverse impact, necessitating the preparation of a DEIS. Review by DOT of the traffic impacts of the present application is appropriate and will need to occur if it has not been done already (see, Interim Decision dated June 20, 1995 *In the Matter of William E. Dailey, Inc.*, regarding input from agencies responsible for affected roads). The Department Staff will need to provide for the record the letter from DOT which was mentioned at the issues conference, or request from DOT its evaluation of the traffic impacts of the project and provide DOT's response for the record.

Community character

The definition of "environment" for purposes of the State Environmental Quality Review Act includes "...resources of agricultural, archaeological, historic or aesthetic significance, existing patterns of population concentration, distribution or growth, existing community or neighborhood character..." (6 NYCRR 617.1(l)). The need to

consider impacts on the character of the community in the environmental review process has been recognized by the Courts (*Jackson v. Urban Development Corporation*, 67 N.Y. 2d 400, 503 N.Y.S.2d 298, 494 N.E.2d 429 [1986]; *Chinese Staff and Workers Association v. City of New York*, 68 N.Y. 2d 359, 509 N.Y.S.2d 499, 502 N.E.2d 176 [1986]; *Meschi v. Department of Environmental Conservation*, 114 Misc. 2d 877, 452 N.Y.S.2d 553) and the agency needs to consider these in the context of the particular location involved (*Harlem Valley United Coalition, Inc. v. Hall*, 54 N.Y.2d 977, 446 N.Y.S.2d 33, 430 N.E.2d 909 [1981]).

The Intervenor has proposed adverse impacts on the character of the surrounding community as an issue for adjudication. Their reasons for alleging such impacts relate largely to the issues of noise and visual impacts, and to the importance of tourism, recreational and agricultural activities in the economy and social fabric of the area surrounding the proposed mine. This is not solely an economic issue (*Wal-Mart Stores, Inc. v. Planning Board of the Town of North Elba*, 238 A.D.2d 93, 668 N.Y.S.2d 774 (3d Dept., 1998)).

Noise and visual impacts of the project have been found in these rulings to be substantive and significant issues for adjudication, as discussed in preceding sections. The role of the rail trail and the Taconic State Park in the significance of these issues has also been mentioned. Some of the proposed testimony regarding impacts on the character of the community will be relevant to the noise and visual impact issues as well.

The Intervenor proposed to call officials of the Towns of Ancram and Northeast, Columbia County, and the Harlem Valley Rail Trail Association as witnesses regarding community character and related impact issues. The Intervenor also submitted, as part of their petition for party status, the Town of Ancram's Development Plan adopted in 1972. The plan emphasizes, among other goals, providing a predominantly open and rural character to the Town, preserving the natural environment, and encouraging recreational activity. Impacts on the existing character of the community will be an issue for adjudication.

Need for the Project and Economic Impacts

The DEIS asserts that minerals from the proposed mine will be used to supply materials to the Applicant's block plant in Dover, Dutchess County (DEIS p. 12). The Intervenor has questioned whether this additional mineral source is needed, in view of the statement by one of the companies related to the Applicant that the Palumbo Sand and Gravel Company's mine in Dover Plains had an estimated life of 20 years as of 1992, and in view of other mines already in existence in the area of the present project and the block plant. The Intervenor also asserted that the project would have severe impacts on the property values of nearby residences, but conceded that this would only be considered if it is determined that the project will have unavoidable environmental impacts which require that the impacts be balanced against the need for the project. The Intervenor requested leave to make an offer of proof regarding impacts on property values in the event that such unavoidable impacts are found.

The Interim Issues Ruling in the matter of *Lane Construction Company* (ruling dated February 22, 1996) contains a discussion of the extent to which property values and economic impacts are to be considered in the DEC hearings on mining applications. Adverse economic impacts only come into the record to refute an applicant's allegations of economic or social benefits which offset unmitigatable environmental harm. If a project is shown to have no adverse environmental impacts which are not mitigated or avoided through permit conditions, the economic need for or benefits from the project would not have to be evaluated.

If the Applicant in the present hearing chooses to present evidence regarding the need for the project, or to argue that the DEIS demonstrates sufficient need for the project to outweigh adverse environmental impacts that remain when the permit conditions are taken into account, the Intervenor will be allowed to make an offer of proof regarding adverse economic impacts on the community. At present, both the Applicant and the Department Staff argue that there are no issues that require adjudication regarding adverse environmental effects of the project, and that the project can be approved as conditioned in the draft permit.

Alleged deficiencies in mapping

6 NYCRR 422.2(b) and 422.3(c) specify the information that needs to be included on a mining map and on a reclamation map, respectively. (6 NYCRR 422.1(c) contains additional requirements concerning maps in mined land use plans.) The map requirements were discussed at the issues conference and the maps were amended by the Applicant. The Intervenor now argue that even after the amendments, the maps still fail to show certain things which are required to be shown and which the Mined Land Reclamation Specialist who reviewed the application confirmed should be shown when the earlier maps were discussed. Where the Department requests information which is reasonably necessary to make any findings or determinations required by law and that information is not provided, it is a basis for denying an application (6 NYCRR 621.15(b)).

In addition, there are inconsistencies within the maps that were identified by one of the Intervenor's proposed witnesses on the second day of the issues conference, and there remains an unresolved question regarding whether these were corrected by the revision of the reclamation map and the two revisions of the mining map. Among these alleged inconsistencies are ones which would show sections of the reclaimed slopes as being steeper than those allowed by the mining regulations (presumably 6 NYCRR 422.3(d)(2)(v)), and ones which would illustrate conditions that would be impossible to construct in the course of mining or reclamation. The Intervenor also allege that the topography shown on the reclamation map would interfere with use of tractors, on a site whose intended use after reclamation would be agriculture. The conflict between the width of the berms (and the edge of the mining area) as depicted on the maps versus the width of the berms as discussed in the erosion control plan does not appear to have been resolved, and there are perimeter berms and ten foot high dikes that are shown on the maps in the current erosion control plan but not on the mining map.

Since the mining map and the reclamation map would become part of the permit, approving the maps with such inconsistencies uncorrected would create a situation in which it would be difficult or impossible for the Department Staff to determine whether the project was being carried out in compliance with the permit and/or the mined land regulations. A problem of interpreting erroneous site plans arose in the Dover enforcement case, involving drawings prepared by the same person who prepared the mining map and reclamation map in the present case (see particularly paragraphs 47 and 48 of the Hearing Report regarding the Dover enforcement action). The Department should not grant a permit that is ambiguous.

Although the Department Staff cited 6 NYCRR 422.1(c) as not requiring a survey map or mapping at a level beyond that provided by the Applicant, the regulation cited is a minimum requirement for applications generally, not a prohibition against requiring more detailed or reliable information. Particularly where the information submitted by an applicant appears to be internally inconsistent or inconsistent with regulatory requirements, a closer look is necessary. This is also the case where additional, clear information about a project is necessary in order to evaluate and mitigate significant adverse environmental impacts.

Alleged need for additional permit applications

The Intervenor argued that certain additional permit applications are required for the project, pursuant to 6 NYCRR 621.3(a)(3), which requires that if a project requires more than one permit from the Department, the applicant must submit all the necessary applications or demonstrate that there is good cause not to do so. As discussed in several of the sections above, no air permit is required for the portable screen if the project operates as conditioned in the draft permit, and no water quality certification is required (since no wetlands approval from the Corps of Engineers is required). The question of whether a SPDES permit for storm water is required remains unresolved and will depend on the outcome of the drainage and erosion control issue. The Intervenor have not identified how sending the minerals from the Ancram mine to facilities operated by the Applicant or its related companies in Dover would necessitate any changes in the permit for the Dover sand and gravel mine.

Appeals

Pursuant to 6 NYCRR Subdivisions 624.6(e) and (g), and 624.8(d), these rulings on party status and issues may be appealed in writing to the Commissioner.

Any appeals must be received at the office of the Commissioner no later than March 1, 2001, at the following address: Commissioner John P. Cahill, NYS Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233-1010. Any responses to such appeals would need to be received by March 15, 2001, at the same address. The parties are to transmit copies of any appeals and replies to all persons on the service list at the same time and in the same manner as they are sent to the Commissioner.

Any request for an adjustment to the appeal schedule must be made to the Chief ALJ, at the Office of Hearings and Mediation Services address.

Exhibit List and other Matters

Enclosed please find a revised exhibit list. This lists the documents which the parties requested be marked as exhibits, plus a ruling and several additional documents that were provided at the issues conference or after the date of the lists of proposed exhibits.

The exhibits are marked for identification only at this point, and have not been moved in evidence or received in evidence. They can be proposed as exhibits in evidence in the adjudicatory hearing, to the extent that they are relevant to the issues for adjudication. At present, they are part of the record as offers of proof, changes or supplements to the application, notices, rulings and other types of documents in the hearing record.

Please also note that there has been correspondence to or from me that is in the correspondence file of the hearing record but that was not marked as exhibits.

Also enclosed is a revised service list.

_____/s/_____
Susan J. DuBois
Administrative Law Judge

Dated: Albany, New York
February 9, 2001

Encls.

TO: Persons on Revised Service List

cc: Michele Haab, Esq.

¹ The 1986 civil settlement of a 1985 ticket against Palumbo Sand and Gravel in Dover Town Court will not be considered, due to the date of this matter and the ten year time period for considering an applicant's record under the Enforcement Guidance Memorandum.

² It is unclear whether the Applicant would want to accept the permit condition, to modify the project to mine around the waste, or to adjudicate the addition of this permit condition.

³ The four line-of-site-profiles in the DEIS also depict the entire site rather than taking the phases into consideration.

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EXHIBIT B



Department of Environmental Conservation

Palumbo Block Company, Inc. - Interim Decision, June 4, 2001

Interim Decision, June 4, 2001

STATE OF NEW YORK : DEPARTMENT OF ENVIRONMENTAL CONSERVATION

50 Wolf Road

Albany, New York 12233-1010

In the Matter

- of -

Application of **PALUMBO BLOCK COMPANY**

for a Mined Land Reclamation Permit for a proposed Mine in the Town of Ancram,
pursuant to Article 23, Title 27 of the Environmental Conservation Law

DEC Application No. 4-1020-00035/00001

INTERIM DECISION

June 4, 2001

Interim Decision

Introduction and Background

This interim decision addresses the appeals filed pursuant to 6 NYCRR 624.8(d)(2) from the February 9, 2001 ruling on issues and party status (the "Ruling") by Administrative Law Judge ("ALJ") Susan DuBois. Appeals were filed by the Palumbo Block Company (the "Applicant"). A response to the Applicant's appeal was filed by the Town of Ancram and the Taconic Valley Preservation Alliance (the "Intervenors"). Department Staff did not file an appeal or a response.

The Applicant proposes to mine approximately two million cubic yards of sand and gravel from 73 acres in seven phases over twenty years. The mine is located in the Town of Ancram, Columbia County, on the east side of Route 22 approximately one mile north of White House Road.

The ALJ found the following issues should be adjudicated: 1) the Applicant's record of compliance, 2) erosion control and drainage, 3) freshwater wetlands impacts, 4) visual impacts, 5) noise, 6) impacts on the character of the community, and 7) deficiencies in the maps submitted as part of the mining permit application. Issues determined not to be adjudicated include impacts on groundwater, spill prevention, air and dust impacts, and traffic.

Issue on Appeal

The Applicant objects to the inclusion of impacts to "community character" in the hearing. The Intervenors support the inclusion of "community character" impacts as part of the adjudicatory hearing.

Standards for Adjudication

✓ An issue is adjudicable if "it is raised by a potential party and is both substantive and significant." 6 NYCRR 624.4 (c)(iii). An issue is substantive if there is sufficient doubt about the applicant's ability to meet statutory or regulatory criteria applicable to the project, such that a reasonable person would require further inquiry. In determining whether such a demonstration has been made, the ALJ must consider the proposed issue in light of the application and related documents, the draft permit, the content of any petitions filed for party status, the record of the issues conference and any subsequent written arguments authorized by the ALJ. 6 NYCRR 624.4 (c)(2). An issue is significant if it has the potential to result in the denial of a permit, a major modification to the proposed project or the imposition of significant permit conditions in addition to those proposed in the draft permit. 6 NYCRR 624.4(c)(3).

In situations where the department staff has reviewed an application and finds that a component of the applicant's project, as proposed or as conditioned by the draft permit, conforms to all applicable requirements of statute and regulation, the burden of persuasion is on the potential party proposing the issue related to such component to demonstrate that the issue is both substantive and significant. 6 NYCRR 624.4(c)(4).

Discussion

In this proceeding, the ALJ held that the impacts on the "existing character of the community" will be an issue for adjudication." Ruling at 22. In her findings, the ALJ noted that the Intervenor's reasons for alleging such impacts "relate largely to the issues of noise and visual impacts, and to the importance of tourism, recreational and agricultural activities in the economy and social fabric of the area surrounding the proposed mine." Ruling at 21. The ALJ then concluded that in view of the visual and noise impact issues, and the Town's development plan emphasizing open and rural character goals, that the potential impacts of the project on character of the community be adjudicated. Ruling at 22.

The Applicant asserts that the proposed issue of "community character" is neither substantive nor significant because the ALJ has already determined that community character will be taken into account within the context of potential visual impacts, potential noise impacts, and mitigation of those potential impacts. See Appeal at 2. Both potential visual and noise impact issues were not appealed and are thus joined for adjudication. According to the Applicant, the issue of community character should not be separately addressed.

I find that parsing out community character by addressing only potential visual and noise impacts unduly excludes a thorough review of the proposed mine impacts on the community setting. Intervenor's propose to call local officials and others as witnesses regarding community character. Ruling at 22; Intervenor's Reply at 10. In addition, the Town's development plan contains information to help properly evaluate "community character." See *generally* Intervenor's Reply at 12-14. Such adopted local plans can serve as "evidence of a community's desires for the area and should be consulted when evaluating the issue of community character as impacted by a project." *Matter of William E. Dailey, Inc.*, Interim Decision of the Commissioner, June 20, 1995; *Matter of American Marine Rail*, ALJ Ruling, August 25, 2000 (adopted local plans should be afforded deference in assessing impacts of a project).

Moreover, the term "environment" is broadly defined under SEQRA. *Matter of Chinese Staff and Workers Association v. City of New York*, 68 N.Y.2d 359 (1986); *Matter of Jackson v. New York State Urban Dev. Corp.*, 67 N.Y.2d 400 (1986); ECL § 8-0105(6); 6 NYCRR 617.2(l). Indeed, the term "environment" expressly includes "existing community or neighborhood character" (see ECL § 8-0105(6); 6 NYCRR 617.2(l); see also ECL § 8-0101 [purpose of SEQRA includes enhancing "human and community resources"]) and New York courts recognize that the concept maintains its own meaning and identity in terms of environmental review. Impacts to community character can include neighborhood gentrification (*Matter of Chinese Staff, supra*, at 367), a proposed development that would quadruple a town's present population (*Matter of Tuxedo Conservation and Taxpayers Assoc. v. Town Bd. of Tuxedo*, 69 A.D.2d 320 [2d Dept. 1979]), traffic and parking problems for a neighborhood arising from a proposed sports stadium (*Matter of H.O.M.E.S. v. New York State Urban Dev. Corp.*, 69 A.D.2d 222 [4th Dept. 1979]), and lower property values and less future commercial development

emanating from a proposed transfer station (*Matter of Meschi v. New York State Dep't of Environmental Conservation*, 114 Misc. 2d 877 [Sup. Ct., Albany Co. 1982]).

At times, the issue of community character may intertwine and overlap with issues such as noise, aesthetics, traffic and cultural resources, and a commissioner's final determination may "necessarily involve a judgment that integrates all of the relevant facts with respect to all of those issues." See *Matter of Whibco Inc.*, Interim Decision of the Commissioner, June 15, 1998; see also *Matter of Lane Construction Company*, Decision of the Commissioner, June 26, 1998 at 3 & 4 (impacts of proposed rock quarry on the historical and scenic character of the community included visual, noise and other associated impacts on the local community); *Matter of William E. Dailey, Inc.*, *supra* at 9 ("[m]atters of noise, blasting, and water resources, which can be considered as part of the character of the community" may be addressed as separate issues). Accordingly, the issue of "community character" cannot necessarily be viewed in isolation and may include a myriad of diverse components.

Conclusion

For the foregoing reasons, the ALJ's ruling to include community character as an adjudicable issue is affirmed in all respects.

/s/

Erin M. Crotty, Commissioner

Dated: Albany, New York
June 4, 2001

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EXHIBIT C



**Department of
Environmental
Conservation**

Palumbo Block Company, Inc. - Decision, August 18, 2003

Decision, August 18, 2003

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
625 Broadway
Albany, New York 12233-1010

In the Matter

- of the -

Application for a Mined Land Reclamation Permit, pursuant to Article 23, Title 27, of the Environmental Conservation Law of the State of New York, for a proposed sand and gravel mine in the Town of Ancram, County of Columbia, New York

by

PALUMBO BLOCK COMPANY, INC.

DEC 4-1020-00035/00001
MLF 402-3-30-0355

DECISION OF THE COMMISSIONER

August 18, 2003

Introduction

This Decision addresses the application of Palumbo Block Company, Inc. ("Applicant") to mine unconsolidated sand and gravel from a 73 acre parcel located in the Town of Ancram, Columbia County, over a period of twenty years, involving the removal of approximately 2,000,000 cubic yards of sand and gravel. As stated in the attached Hearing Report of Administrative Law Judge ("ALJ") Richard R. Wissler, the mining would occur in seven phases and would take place on the east side of New York State Route 22, approximately one mile north of White House Road.

My review of the record of this proceeding, and giving due consideration to the evidence presented, constrains me to disagree with the ALJ's recommendation that the permit for this project, as drafted, be issued to the Applicant. My reading of the record and my interpretation of the requirements of the State Environmental Quality Review Act ("SEQRA"), as set forth in the discussion that follows, lead me to conclude that the record contains insufficient information upon which to make the required SEQRA determinations and the necessary findings. Therefore, I must deny the application.

Background

The Applicant applied for a mined land reclamation permit. The Department of Environmental Conservation ("Department") is the lead agency for the review of the project under SEQRA (Environmental Conservation Law Article 8 and 6 NYCRR Part 617). The Department determined that the project may have a significant environmental impact and required preparation of an Environmental Impact Statement ("EIS").

A legislative hearing on the project was conducted on July 20, 1999, at which unsworn comments were received on the application and the draft environmental impact statement for the project. ALJ Susan DuBois presided over an issues conference later that year.

ALJ DuBois' ruling identified several issues for adjudication, including: 1) Applicant's record of compliance; 2) erosion control and drainage; 3) freshwater wetlands impacts; 4) visual impacts; 5) noise; 6) impacts on the character of the community; and 7) deficiencies in the maps submitted as part of the mining permit application. Ruling on Issues and Party Status of ALJ Susan DuBois, February 9, 2001.

Applicant appealed, challenging only the ruling that impacts on the character of the community be adjudicated. By Interim Decision dated June 4, 2001, I affirmed ALJ DuBois's ruling to include community character as an issue for adjudication.

Due to scheduling conflicts in another matter assigned to ALJ DuBois, ALJ Richard R. Wissler was assigned to preside over the adjudicatory hearing. Some of the issues certified for adjudication were resolved by agreement among the parties, including deficiencies in the maps that were part of the mining permit application, noise, and erosion control and drainage (except as to whether SPDES stormwater general permits would be required).

The remaining issues adjudicated were: impacts on Wetland CO-26 located east of the project site, including impacts to the habitat of bog turtles; visual impacts; community character; record of compliance; and whether SPDES stormwater general permits would be required for the proposed project.

The Commissioner's responsibility under the Mined Land Reclamation Law ("MLRL") and SEQRA was previously addressed in the Decision of the Deputy Commissioner in the Matter of the Application of Lane Construction Company, June 26, 1998. As discussed in that decision, the MLRL and SEQRA require the evaluation of "whether a mining application meets the criteria for permit issuance, and whether adverse environmental impacts can be avoided, mitigated, or minimized adequately in light of other economic and social considerations." *Id.* at 3.

In making this evaluation, I must consider environmental protection as well as the management and planning for the use of non-renewable natural resources. The Department, as lead agency under SEQRA, "must identify 'the relevant areas of environmental concern' and take a 'hard look' at them. . . ." *Merson v. McNally*, 90 N.Y.2d 742, 751-52, 665 N.Y.S.2d 605, 609-610 (1997); see also *Jackson v. New York State Urban Development Corp.*, 67 N.Y.2d 400, 417, 503 N.Y.S.2d 298, 305 (1986).

Discussion

Based upon my review of the overall record in this case, I am unable to accept the recommendation that the application be granted. A review of the adjudicated issues in this proceeding follows.

Impacts on Wetland CO-26

A freshwater wetland designated as CO-26 on the Department's freshwater wetlands maps is located adjacent to and partly on the site. Although the project as proposed would be located outside of both the wetland and the 100 foot adjacent area around the wetland, the Issues Ruling determined that a substantive and significant issue existed about whether the required "hard look," for purposes of SEQRA, had been taken with respect to potential impacts on Wetland CO-26 and the Noster Kill. Issues Ruling, at 11. The mining operation's effect on the quantity and quality of water entering the wetland, in light of the environmental conditions in the wetland, was also to be examined.

As set forth in the Hearing Report, of the seven plant communities identified in the wetland, three are fen communities. Hearing Report, at 19. Fen communities are considered to be rare or significant habitats by the New York State Natural Heritage Program and are ranked S1/S2 "meaning that they are imperiled, perhaps critically so, in New York State due to rarity or are vulnerable to extirpation from New York State due to biological factors." *Id.* at 19.

It is undisputed in the record that the three fen communities are successful and that their success is dependent on a reliable, calcium-rich recharge. It is also undisputed that the fen communities contain, at least in part, desirable habitat for the bog turtle, an endangered species in New York. See 6 NYCRR 182.6(a)(5)(ii).

However, the parties are sharply divided as to the source of the calcium recharge. Intervenors contend that the source may consist, in whole or in part, of the surficial aquifers running through the sand and gravel deposits proposed to be mined by Applicant. Applicant maintains that the source is more likely the deeper, bedrock aquifer underlying the site, which would not be disturbed by mining. While the record discloses the presence of clay or lower permeability lenses underlying the site, critical information necessary for a complete understanding of the role of these lenses in the movement of groundwater to Wetland CO-26 was not fully developed. It remains unknown whether such lenses are continuous and form an effective barrier preventing recharge to the wetland from the bedrock aquifer. While Applicant developed some information on this subject, principally from resource evaluation test borings, this information is far from complete and affords no basis for evaluating the parties' contentions.

Intervenors argued that much of Applicant's information was not based on adequate site-specific data. For example, Intervenors' expert testified that the borings, which had been performed to evaluate the site as a resource for mining, were not adequate to provide an understanding of the geology of the site.

In order to properly evaluate impacts for purposes of SEQRA on such a sensitive environmental resource as Wetland CO-26, more site-specific information is essential. This would include a more accurate determination of the depth to bedrock at the site, and the extent to which the lower permeability lenses identified at the site are continuous. Development of a water budget and more detailed water chemistry analysis would also be appropriate for any review of potentially significantly adverse environmental impacts.

I also note that the impacts of later phases of mining, in particular Phases 6 and 7, cannot be determined on this record. Special permit condition 25 is meant to provide information based on the initial mining phases as to whether Phases 6 and 7 can proceed. Absent such data at this time, no SEQRA determinations can be made as to the impacts of those later phases on Wetland CO-26, and whether those phases can be permitted.

Visual Impacts

The Hearing Report notes that some of the views of the proposed mine from the South Taconic Trail cannot be mitigated. Similarly, the mine would be visible from portions of the proposed Harlem Valley Rail Trail. The record also indicates that the mining operation would be visible, in part, to several single-family homes located on the west side of New York State Route 22, as well as to passing motorists.

The New York State Office of Parks, Recreation and Historic Preservation ("OPRHP"), as well as the Columbia County Board of Supervisors and the Columbia County Tourism Department, previously expressed concerns about visual impacts on the rail trail. Issues Ruling, at 16.

The Taconic State Park and the proposed Harlem Valley Rail Trail would be considered aesthetic resources of statewide significance. Issues Ruling, at 15-16. Although the Hearing Report sets forth mitigative elements found in the topography and the vegetative cover, and Special Permit Condition #3 requires the planting of white pines on the site, it is not clear from the record that an adequate number of viewpoints were investigated in the visual analysis that was conducted, or if all the data used for the analysis was sufficiently current. Furthermore, additional mitigation measures that were proposed during the hearing should be considered, including additional tree planting and further development of a planting program. My review of the record does not allow me to determine whether or not the impacts of the mine's visibility are significantly adverse or additional mitigation should be required.

Community Character

My Interim Decision of June 4, 2001 affirmed that community character would be an issue for adjudication. The contentions of the parties are inconsistent regarding community character, particularly in light of the proposed

Scenic Corridor Overlay Zone and other aspects of local zoning. The record needs further elaboration to enable me to make the requisite SEQRA findings.

Record of Compliance

I have reviewed and accept the findings and recommendations in the Hearing Report with respect to the Record of Compliance.

SPDES General Permits

Also at issue was whether Applicant would need a SPDES general permit for stormwater discharges associated with industrial activity (GP-98-03) and/or a SPDES general permit for stormwater discharges from construction activity (GP-02-01). I conclude, based upon a review of the record of this hearing, that Applicant is required to obtain a SPDES general permit for stormwater discharges from construction activity.

The regulations implementing the stormwater permit program were promulgated by the U.S. Environmental Protection Agency in 1990. The authority for the Department's issuance of the general permits became effective on October 15, 1992.

In evaluating whether a stormwater general permit is required, two of the prerequisites are whether a point source discharge will occur and whether such a discharge may reach the waters of the United States. The Hearing Report discusses the term "point source" and its definition at ECL 17-0105(16), but interprets that term too narrowly for purposes of stormwater general permits for construction activity. For example, bulldozers and various excavating and earthmoving equipment have been considered to be point sources. *Avoyelles Sportsmen's League, Inc. v. Marsh*, 715 F.2d 897, 922 (5th Cir. 1983); see also *Borden Ranch Partner. v. U.S. Army Corps of Engineers*, 261 F.3d 810, 815 (9th Cir. 2001); *U.S. v. Lambert*, 915 F. Supp. 797, 802 fn. 8 (S.D.W.Va. 1996).

Even prior to the stormwater general permit program, the Department determined that surface runoff from construction requires a SPDES permit as a point source. DEC Declaratory Ruling 17-02 (*Kinderhook Lake Corporation*)(1980). DEC correspondence in this proceeding (Exhibit 61) indicates that the removal of topsoil "would be an activity that would invoke the [construction activity] permit requirement."

As noted in Applicant's Erosion and Sediment Control Plan, the mining area will be developed in a series of seven phases of approximately ten acres each. Prior to March 10, 2003, construction activities disturbing five acres or more were regulated under the stormwater general permit program. On March 10, 2003, new federal regulations became effective that extended coverage to construction activities that disturb one to five acres in size and, in certain circumstances, to disturbance activities of less than one acre. Testimony was received that the construction of the onsite berms would entail the disturbance of more than one acre.

Consultants for Applicant and intervenors each testified on whether any discharge would reach the "waters of the United States." As defined, "waters of the United States" include DEC Freshwater Wetland CO-26. See SPDES General Permit for Stormwater Discharges for Construction Activity (GP-02-01). Intervenors' consultant, who specializes in stormwater management and related issues, described the potential for such discharges to the wetland and the flow paths during heavier rain events.

Applicant's Erosion and Sediment Control Plan is meant to curtail off-site runoff. However, the record indicates that there will be periods during which the topsoil and/or subsoil berms are being constructed when the grass-seed mixture planted on the berms will not have taken hold. Specifically, draft permit condition #5 indicates that the berms and dikes need not be seeded immediately, but only within seven working days after construction. This delay increases the potential for sediment runoff in a storm event during that period. The record also raises concerns regarding the potential for discharges of sediment-laden runoff from the areas of the silt fencing.

Based on my review of the record, I conclude that Applicant would be required to obtain coverage under the SPDES general permit for stormwater discharges from construction activity. However, I concur with the ALJ's

determination that Applicant is not required to obtain coverage under the SPDES general permit for stormwater discharges associated with industrial activity for this application.

Conclusion

In light of the foregoing, I am unable to make the necessary findings under SEQRA, and must deny the application. This Decision does not preclude Applicant from reapplying for a Mined Land Reclamation permit for this project consistent with this Decision.

For the New York State Department of Environmental Conservation

_____/s/_____
Erin M. Crotty, Commissioner

Albany, New York
August 18, 2003

STATE OF NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION
625 Broadway
Albany, New York 12233-1550

In the Matter

- of the -

Application for a Mined Land Reclamation Permit, pursuant to Article 23, Title 27, of the Environmental Conservation Law of the State of New York, for a proposed sand and gravel mine in the Town of Ancram, County of Columbia, New York

by

PALUMBO BLOCK COMPANY, INC.

DEC 4-1020-00035/00001
MLF 402-3-30-0355

HEARING REPORT

- by -

/s/
Richard R. Wissler
Administrative Law Judge

PROCEEDINGS

BACKGROUND

Palumbo Block Company, Inc., Dover Furnace Road, Dover Plains, New York 12522, (the Applicant) proposes to mine unconsolidated sand and gravel from a 73 acre parcel located in the Town of Ancram, Columbia County, over a period of twenty years, removing approximately 2,000,000 cubic yards of sand and gravel. The mining would occur in seven phases. The mining would take place on the east side of NYS Route 22 approximately one mile north of White House Road.

The Applicant applied for a mined land reclamation permit pursuant to Environmental Conservation Law (ECL) Article 23, Title 27, and Parts 420 through 425 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR Parts 420 through 425).

The Department of Environmental Conservation (the Department) is the lead agency for the review of the project under the State Environmental Quality Review Act (SEQRA, ECL Article 8 and 6 NYCRR Part 617). The Department determined that the project may have a significant environmental impact and required preparation of an Environmental Impact Statement (EIS).

The hearing on the project began on July 20, 1999 with a legislative hearing to receive unsworn comments about the application and the Draft EIS. The issues conference had been scheduled for July 21, 1999 but was postponed by agreement of the parties and potential parties to October 5, 1999. The issues conference continued on October 27 and December 16, 1999. The hearing was held pursuant to 6 NYCRR Part 624, the Department's permit hearing procedures.

Two petitions for party status were received, one from the Village of Millerton (the Village) and one from a consolidated party consisting of the Town of Ancram and the Taconic Valley Preservation Alliance (the Intervenor). The Town of Ancram had also submitted comments under ECL 23-2711.3 in a July 23, 1999 letter from Warren Replansky to Michael Higgins.

The Applicant is represented by Laura Zeisel, Esq., of the firm of Drake, Sommers, Loeb, Tarshis & Catania, PLLC, Newburgh, New York. The Department's Region 4 Staff is represented by Richard Ostrov, Esq., Assistant Regional Attorney, DEC Region 4, Schenectady, New York. The Intervenor is represented by Warren S. Replansky, Esq., of the firm of Osofsky and Replansky, Pine Plains, New York. The Village of Millerton was represented by Michele W. Haab, Esq., of the firm of Downey, Haab & Murphy, Millerton, New York.

As discussed in a ruling dated October 22, 1999, the issues conference record remained open pending the outcome of an enforcement hearing involving a facility in the Town of Dover, Dutchess County, in which the Applicant was one of the Respondents. On October 5, 2000, the Commissioner of Environmental Conservation issued an Order finding that the Respondents in that matter had violated the Mined Land Reclamation Law and an Order on Consent by mining without a permit.

Also during 2000, there was additional correspondence on a number of subjects including confirmation by the U.S. Army Corps of Engineers of a wetland boundary delineation on the site, a site visit requested by the Intervenor, and a supplemental notice regarding the location of the land which the Applicant has an option to buy for use in the project.

The original notice of hearing had identified the site as being entirely in the Town of Ancram, Columbia County, based on the depiction of the site in the DEIS. In correspondence after the beginning of the hearing, however, the Applicant's consultant identified the land as also including an area in the Town of Northeast, Dutchess County. Although the Applicant proposes to mine only on the area within the Town of Ancram, the Applicant does propose to take the other land into account in determining setback distances from property lines. The Applicant also identified the possibility of growing trees on the land which is located in Northeast, although that is not part of the present proposal. The Town of Northeast was notified of the application and was provided an opportunity to comment pursuant to ECL Section 23-2711.3. The Department Staff responded to these comments on November 7, 2000 and made no changes in the draft permit in response to the comments.

The Applicant, the Department Staff and the Intervenor submitted summary statements regarding the proposed issues on December 6, 2000.

STATUS OF APPLICATION AND DRAFT PERMIT

The application underwent a number of revisions during the issues conference process, including a change in the location of the mine phases. Prior to the adjudicatory hearing, the application included an Updated Mined Land Use Plan narrative dated November 20, 2000, a Mining Map dated January 5, 2000, a Reclamation Map dated November 12, 1999, and an Erosion and Sediment Control Plan dated November 19, 1999. Administrative Law Judge (ALJ) DuBois ruled that some of the other reports and correspondence submitted by the Applicant during the issues conference process would be considered as supplemental application materials.

The draft permit was also revised prior to the adjudicatory hearing. Some of the revisions resulted from discussions among the parties about possible resolution or narrowing of issues. As of the date of ALJ DuBois' Issues Ruling, the draft permit consisted of the initial four pages of the October 18, 1999 draft permit, the special conditions dated January 14, 2000 (pp. 5 through 8), and the two additional changes identified in Richard Ostrov's letter of December 4, 2000.

RULING ON PARTY STATUS

In her issues ruling of February 9, 2001, ALJ DuBois determined that the Applicant and the Department Staff are parties to the hearing pursuant to 6 NYCRR 624.5(a). Moreover, the Town of Ancram and the Taconic Valley Preservation Alliance (the "Intervenors") were granted party status as a consolidated party, inasmuch as they had filed a petition as required in 6 NYCRR 624.5(b), demonstrated an adequate environmental interest in the project, and had raised a number of substantive and significant issues for adjudication.

The Village of Millerton's petition for party status was denied by ALJ DuBois. In so ruling, ALJ DuBois noted that it was unclear whether the Village had proposed any testimony. The Village had participated in the issues conference only to a limited extent. While there was some indication that the Village might consolidate its participation in some manner with that of the Intervenors, this was never confirmed. On November 2, 2000, ALJ DuBois wrote to the attorney for the Village, stating that in the absence of a response about the Village's intention to participate, she would conclude that the Village was no longer requesting party status. ALJ DuBois received no response to her November 2, 2000 letter.

INTERVENORS' REQUEST FOR A SUPPLEMENTAL EIS

In both their petition for party status and their December 6, 2000 summary statement, the Intervenors stated that the Draft Environmental Impact Statement was deficient and failed to address or study numerous significant impacts that were identified in the Department Staff's positive declaration and the scoping document. The Intervenors contended that a Supplemental Environmental Impact Statement (SEIS) should be required.

Some of the missing information was provided during the time between the start of the Issues Conference and the date of ALJ DuBois' Issues Ruling on February 9, 2001. The application had been supplemented and revised on a number of occasions. The record on certain other subjects would be developed through the adjudicatory hearing since they were being identified as issues for adjudication (see 6 NYCRR 624.13(c) and 624.4(c)(6)).

ALJ DuBois pointed out that a lead agency may require an SEIS only under certain conditions identified in 6 NYCRR 617.9(a)(7), limited to subjects not addressed or inadequately addressed in the EIS that arise from changes proposed for the project, newly discovered information, or a change in circumstances related to the project. In the present case, ALJ DuBois ruled, the criticisms of the EIS were not related to project changes, new information or changed circumstances, so the procedure of supplementing the EIS did not apply here and an SEIS would not be required unless the conditions contemplated in 617.9(a)(7) occur. Instead, issues arising from the EIS may be addressed through the examination of the issues identified by ALJ DuBois for adjudication.

ISSUES FOR ADJUDICATION AS DETERMINED BY ALJ DuBois

ALJ DuBois found that the following issues should be adjudicated: 1) the Applicant's record of compliance; 2) erosion control and drainage; 3) freshwater wetlands impacts; 4) visual impacts; 5) noise; 6) impacts on the character of the community; and 7) deficiencies in the maps submitted as part of the mining permit application. Issues determined by ALJ DuBois not to be adjudicated included impacts on groundwater, spill prevention, air and dust impacts, and traffic.

APPEAL OF ALJ's RULING AND COMMISSIONER'S INTERIM DECISION

An appeal was filed by the Applicant challenging only ALJ DuBois' ruling finding impacts on the character of the community an issue for adjudication. While choosing not to appeal ALJ DuBois' ruling, the Intervenors filed a response to the Applicant's appeal. Department Staff did not file an appeal to the issues ruling nor a response to

the Applicant's appeal. By Interim Decision, dated June 4, 2001, the Commissioner affirmed ALJ DuBois' ruling to include community character as an issue for adjudication, in all respects.

ASSIGNMENT OF MATTER TO ALJ WISSLER

Inasmuch as ALJ DuBois was involved in another matter which would cause a conflict in the scheduling of the adjudicatory hearing in this case, ALJ Richard R. Wissler was assigned by the Assistant Commissioner for Hearings and Mediation Services to preside over the instant adjudicatory hearing.

ADJUDICATORY HEARING

Following a visit to the site, the adjudicatory hearing in this matter was convened on January 28, 2003, at American Legion Post 184, 7 Fairview Avenue, Hudson, New York. The hearing was continued on January 29 and 30, and February 4, 5, 6, 12 and 13, 2003, at the same location.

As had been the case previously at the Issues Conference, the Applicant was represented by Laura Zeisel, Esq., of the firm of Drake, Sommers, Loeb, Tarshis & Catania, PLLC, Newburgh, New York. The Department's Region 4 Staff was represented by Richard Ostrov, Esq., Assistant Regional Attorney, DEC Region 4, Schenectady, New York. The Intervenors were represented by Warren S. Replansky, Esq., of the firm of Osofsky and Replansky, Pine Plains, New York.

The witnesses who testified on behalf of the Applicant were Roy T. Budnik, Ph.D.; Joseph T. Bridges, Ph.D.; Karen Arent, R.L.A.; and Richard Martin, Mined Land Reclamation Specialist, NYSDEC Region 3.

Testifying on behalf of the Intervenors was Michael Miller, P.E.; Christopher Burns, Ph.D.; Andrew Michalski, Ph.D.; Nicholas J. Schwartz, R.L.A.; Richard Hawthorne; Roger Akeley; Renee Bouplon; Timothy Abbott; Erik Kiviat, Ph.D.; Robert Wilcox; Richard Hermans; Donald MacLean; and Michael Klemens, Ph.D.

While reserving its right to do so as might be required, Department Staff elected not to call any witnesses at the adjudicatory hearing.

The parties submitted closing briefs on or about March 28, 2003. To provide the Applicant the opportunity to comment on proposed draft permit Special Condition 25, as well as the opportunity for the parties to respond to a newspaper article annexed to the Applicant's closing brief, reply briefs were permitted with a filing date of May 6, 2003, with surreplies by May 13, 2003. The hearing record closed on May 14, 2003, upon receipt of the surreply briefs by the ALJ.

APPLICABLE REGULATORY PROVISIONS

Environmental Conservation Law (ECL)

In delineating the general functions, powers and duties of the Department and the Commissioner, ECL 3-0301(1) (i) provides that the Commissioner "shall have power to provide for prevention and abatement of all water, land and air pollution"

In the written description of the mined land-use plan required by ECL 23-2713, a applicant is directed to articulate what measures are "to be taken to minimize adverse environmental impacts resulting from the mining operation."

Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR)

Section 422.2(a) of 6 NYCRR directs that the mining plan shall indicate "the applicant's proposed method of mining including proposals for minimizing the effect of mining on the environment and on the property, health, safety and general welfare of the people of the State."

Section 422.2(c)(4)(iii) of 6 NYCRR directs that the applicant provide a description of its proposed method for minimizing the effect of its mining operation on the people of the State to the extent necessary to achieve compliance with applicable regulations, and that to achieve this objective it may employ various or similar

methods including the use of screening which "may consist of either artificial or natural barriers such as berms, fences, shrubs, trees or any combination of these which have the ... effect of ... reducing noise levels, and which minimize the visual impact of the mine on the people of the State."

The word "environment" is defined at Section 617.2(l) of 6 NYCRR and "means the physical conditions that will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, resources of agricultural, archaeological, historic or aesthetic significance, existing patterns of population concentration, distribution or growth, existing community or neighborhood character, and human health."

In making its findings pursuant to the mandates of SEQRA, a lead agency, in accordance with 6 NYCRR 617.11(d)(5), must "certify that consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable."

APPLICABLE DEPARTMENT PROGRAM POLICIES

On July 31, 2000, and pursuant to the authority of ECL Articles 8 and 49, the Department's Division of Environmental Permits issued Program Policy Memorandum, DEP-00-2, entitled Assessing and Mitigating Visual Impacts. As indicated in its cover page, "this policy and guidance defines what visual and aesthetic impacts are, describes when a visual assessment is necessary and how to review a visual impact assessment, differentiates State and local concerns, and defines avoidance, mitigation and offset measures that eliminate, reduce, or compensate for negative visual effects." While it does not operate as a rule of law, nor create any enforceable right, as a Program Policy Memorandum of the Department, it provides guidance to Department Staff as well as the regulated community to assist in the interpretation of the regulatory scheme as well as to ensure the consistent and uniform application of those regulations. In this context, it is applicable to the instant matter.

On August 8, 1991, and revised in February of 1993, the Department promulgated Enforcement Directive II.24 entitled, Record of Compliance Enforcement Guidance Memorandum. This memorandum establishes the policies and procedures pursuant to which the Department determines whether an Applicant is unsuitable to receive a requested permit based upon its prior record of compliance. The memorandum does not establish a strict code of procedures or standards, but is to be applied on a case by case basis.

Issues relating to the need to obtain coverage under the SPDES general permit for stormwater discharges for either construction or industrial activity are contained in Department documents entitled SPDES General Permit For Stormwater Discharges From Construction Activities, Permit No. GP-02-01, and SPDES General Permit For Storm Water Discharges Associated With Industrial Activity Except Construction Activity, Permit No. GP-98-03, respectively. These documents delineate the jurisdictional requirements for these permits and provide essential definitions.

ADJUDICABLE ISSUES RESOLVED BY AGREEMENT OF THE PARTIES

Certain issues identified by AJL DuBois for adjudication were resolved by agreement among the parties. These issues concerned: (1) deficiencies in the maps that were part of the application; (2) erosion control and drainage; and (3) noise impacts.

With respect to deficiencies in the maps that were part of the application, the Applicant agreed to make certain additional notations to the proposed mining and reclamation maps including spot elevations on the mine floor, contour lines on the mine floor, flow arrows to indicate general drainage patterns, and that the maximum permissible slope would be two-on-one.

With respect to erosion control and drainage, the Applicant agreed to supplement the existing Erosion and Sediment Control Plan by adding a designation of the critical areas that might be susceptible to erosion as well as a specific plan for a diversion ditch to be constructed at the southern end of Phase 6 of the mine to address a

potential worst-case scenario wherein the 36-inch culvert under NYS Route 22, under the exclusive control of New York State Department of Transportation (NYSDOT), would be functioning at full capacity.

The foregoing revisions to the mining and reclamation maps were made by Roy T. Budnik, Ph.D., provided to the parties on or about March 20, 2003, and are made a part of the record in this matter.

With respect to noise impacts, the Applicant agreed to a modification of Special Condition 17 of the draft permit which would require that front end loaders and bulldozers used at the site be equipped with manufacturer-approved critical grade silencer equipment. In addition, the Applicant agreed to a modification of Special Condition 10 of the draft permit reducing the hours of the mine's operation from 7:00 A.M. to 6:00 P.M., Monday through Saturday, to 7:00 A.M. to 5:00 P.M., Monday through Friday, with the only activity permitted on Saturdays, except for emergencies, being equipment maintenance.

FINDINGS OF FACT

1. Palumbo Block Company, Inc., Dover Furnace Road, Dover Plains, New York 12522, (the Applicant) proposes to mine unconsolidated sand and gravel from a 73 acre site in the Town of Ancram, Columbia County, over a period of twenty years, removing approximately 2,000,000 cubic yards of sand and gravel.
2. The proposed site is located on the east side of NYS Route 22 approximately one mile north of White House Road and is part of the property commonly known as the Neer farm. While the Neer farm extends eastward into Dutchess County, the easternmost border of the proposed mine is contiguous with the Columbia/Dutchess County border. The portion of the Neer property between NYS Route 22 and the Columbia/Dutchess County border is approximately 118 acres, 73 acres of which are proposed for mining, as noted above. From north to south, the Neer property runs somewhat more than 5100 feet along NYS Route 22. A 200 foot buffer will, at all times, be maintained between NYS Route 22 and the westernmost border of the mine.
3. To the north, the Neer property is bordered by a sand and gravel mine operated by O&G Industries, Inc. This mine was permitted by the Department under DEC Permit No. 4-1020-00011/00001. While the plan for the O&G mine provides for a total area of 22.61 acres to be mined in three phases, the current permit authorizes the mining and reclamation of 11.09 acres of this total area.
4. To the south, the Neer property is bordered by lands belonging to John H. Brusie. The Brusie property is the site of a sand and gravel mine 4 acres in size which was authorized by the Department pursuant to DEC Permit No. 4-1020-00010/00001.
5. The proposed mining would occur in seven phases, each approximately 10 acres in size, beginning with Phase 1 comprising the northernmost portion of the 73 acre mine area. The operation would then proceed south, numerically through the remaining phases, ending with Phase 7, at the southernmost portion of the mine.
6. The preparation of each phase for mining would be similar. Double and parallel continuous berms will be constructed around the work area of the phase being mined. These berms will each be 3 feet high and 12 feet across at the base, providing a slope of two-on-one, horizontal to vertical. The berms will be constructed of topsoil and subsoils removed from the section of the phase to be mined, with topsoil forming the outer berm and subsoil forming the inner berm. The remainder of the topsoil and subsoil not used in construction of the berms will be stored in separate stockpiles located on that portion of the particular mine phase not being excavated. Within 7 days of their construction, the berms will be seeded with an appropriate conservation seeding mixture. Full vegetative cover will be maintained on the berms until they are utilized in the reclamation of the phase. Where inspection by the mine operator reveals that flow channels may develop or have developed along the base of the berms in those areas where adjacent topography slopes toward the berms, appropriate action will be taken by the operator including repair and reseeding of the berm, as well as the installation of check dams. Silt fencing will be installed on the down-slope side of the work area prior to removal of the topsoil and subsoil and remain in place until the adjacent perimeter berms are reclaimed. Where necessary to avoid excess lateral pressure which could lead to failure, the silt fence will be reinforced with woven wire or supplemented with check dams. Beginning in the northeast corner of Phase 1 and

- running approximately 200 feet along its eastern border, beginning at a point about 150 feet from the northern border of Phase 2 and running along its eastern border approximately 200 feet, and beginning in the southeastern corner of Phase 5 and continuing along the entire eastern borders of Phases 6 and 7, an inner earthen dike, in lieu of a 3 foot inner berm, will be constructed having a minimum height of 10 feet and a base of 40 feet, with sides maintaining a two-on-one slope, horizontal to vertical. Parallel and contiguous to this earthen dike will be a 3 foot outer topsoil berm of the same specifications and slope as in the other Phases of the mine. All of these measures, implemented in accordance with the proposed Erosion and Sediment Control Plan, will reasonably ensure that there will be no discharge of turbid water or sediment-filled water and no discharge of any surface waters from any reclaimed mining areas, to any area outside the life of mine boundary, including Wetland CO-26. Moreover, a 100 foot buffer will at all times be maintained between the easternmost border of the mine and the Department delineated boundary of Wetland CO-26.
7. As the mining of each phase proceeds, the berms will be continuously constructed as required by the southward progress of the mining operation and utilized in the reclamation of the particular phase as required. Similarly, the placement of the silt fencing will change as the mining operation proceeds southward, being ultimately removed as each phase or portion thereof is reclaimed.
 8. Upon reclamation, the floor of the site will be returned to agricultural use. Perimeter slopes of the reclaimed site will no be steeper than two-on-one, horizontal to vertical, and will be revegetated.
 9. The Neer property is characterized by a gently rolling relief of hills and swales ranging in elevation from approximately 745 feet above sea level (ft asl) to 810 ft asl. The site is located on the northern end of a major physiographic lowland known as the Harlem Valley, in the Hudson-Mohawk Lowlands Landform Region. Locally, the Neer property is part of the Noster Kill Valley, so named after the stream which flows through it. The Noster Kill Valley is bounded on the west by Fox Hill, with an elevation of 1,346 ft asl, and on the east by Brace Mountain, with an elevation of 2,311 ft asl.
 10. That portion of the Neer property proposed for mining has been used for farming for many years, primarily alternative crops of corn and hay, and is, therefore, fields and devoid of forest stands or other significant vegetation. Hedgerow and other old field vegetation are, however, encountered at the margins of the fields.
 11. Department designated Freshwater Wetland CO-26 encompasses approximately 53 acres of the property, of which 2 acres are in Columbia County and 51 acres are located in Dutchess County. The 53 acres are comprised of 29 acres of wetland plant communities and 24 acres of ponds. The Department lists the wetland as a strongly minerotrophic, rich shrub fen. It is ranked S1/S2 by the Natural Heritage Program.
 12. Soils within the area to be affected by the proposed mine are of the Blasdell series, a deep, nearly level to rolling, well to somewhat excessively drained, low lime, gravelly soil formed in outwash and recent alluvium. Generally, the soil's pH is 4.5 to 6.0 in the surface layer and 5.1 to 6.5 in the substratum.
 13. A review of the literature and available studies suggests that the bedrock comprising the hills and mountains immediately to the east and west of the proposed site is composed of harder metamorphic strata, predominately Walloomsac slate, but with Normanskill shale also present. The bedrock of the Harlem Valley itself, and presumably the proposed site, generally coincides with a belt of weaker marbles of the Stockbridge Group, a carbonate rock, commonly referred to as Stockbridge limestone. Limestone consists mainly of calcium carbonate, CaCO_3 . The actual depth and configuration of the bedrock surface beneath the proposed site is not known. Although a boring made north of the site, but not on the Neer property, encountered bedrock at a depth of 178 feet, test borings made on the proposed site in the late 1980's, to depths not exceeding 60 feet, failed to encounter bedrock.
 14. The bedrock in the region, including the proposed site, is overlain by glacial deposits consisting of sand and gravel with local intervals of fine-grained pond deposits. The test drilling conducted on the property in the late 1980's indicated that the sand and gravel to be mined was interspersed with very fine-grained facies comprised of clayey silts to silty clays. These fine-grained sediments are locally exposed in swales along the eastern margin and central portion of the property and were encountered in several of the boreholes sunk during the test drilling. Though commonly found interspersed with coarser deposits, these fine sediments indicate the presence of discontinuous lenses of the clayey material across the property.

15. Petrographic analyses of samples taken from the sand and gravel deposits at the site indicate that the lithology of the deposits is 81% non-carbonate rock and 19% carbonate rock.
16. Stormwater movement in the area of the proposed site is generally from west to east. As the topsoil on Fox Hill is relatively thin over its metamorphic bedrock, most of the precipitation occurring there and not lost to evapotranspiration flows overland as runoff to the valley floor. Due to the highly permeable nature of the sand and gravel deposits on the valley floor, this runoff is rapidly infiltrated along with any precipitation falling directly on the valley floor, as well as runoff from any other adjacent uplands. Culverts carry runoff from Fox Hill beneath NYS Route 22 onto the Neer property where it rapidly infiltrates the sand and gravel. Such rapid infiltration is indicated by the lack of permanent or intermittent streams, or standing bodies of water within that portion of the property located within Columbia County.
17. The site is underlain by both bedrock and surficial aquifers. The bedrock aquifer is composed of carbonate rock and the surficial aquifer is composed of sand and gravel. Recharge to these aquifers comes from adjacent upland runoff and direct precipitation on the valley floor. Discharge occurs at the streams, ponds and wetlands on the valley floor. Consistent with the topographic gradient, groundwater flows in the area of the site are generally west to east.
18. Site springs, seeps and subsurface groundwater flows are the principal source of water for the western half of Wetland CO-26, being that half of the wetland closest to the proposed mine.
19. This section of Wetland CO-26 contains three fen communities which are considered to be rare or significant habitats by the New York State Natural Heritage Program and are ranked S1/S2 by that agency. To the north and south of the wetland, these fens have been designated the North Graminoid Fen and the South Graminoid Fen. Between them lies the Rich Shrub Fen. These fens all possess the requisite groundwater hydrology and substrate features to be suitable habitat for the bog turtle, *Clemmys muhlenbergii*. Indeed, the harsh fen portion of the North Graminoid Fen, characterized by low growing vegetation, constitutes highly desirable bog turtle habitat.
20. Although no sighting of a bog turtle has been documented in that portion of Wetland CO-26 contiguous to the site of the proposed mine, it is well established that this section of the Harlem Valley encompassing Wetlands CO-26 and CO-27 is highly suitable as bog turtle habitat. Bog turtles have been sighted within two miles of the site.
21. The bog turtle, *Clemmys muhlenbergii*, is listed by the Department as an endangered species and efforts are underway at both the State and Federal level seeking to ensure its survival.
22. Critical to the survival of the fen communities, and thus to the survival of the bog turtle, is the constant availability of sufficient water, high in calcium and just rich enough in nutrients to ensure the fen's survival while at the same time discouraging other invasive plant species.
23. Water samples taken at three separate locations within Wetland CO-26, two of which were in the harsh fen portion of the North Graminoid Fen, indicated an average pH of 7.7 mg/l, an average calcium level of 58 mg/l, an average magnesium level of 29 mg/l, and an average total dissolved solids (TDS) level of 369 mg/l. A soil sample taken in the harsh fen portion of the North Graminoid Fen revealed a pH of 7.0, a calcium level of 2,400 mg/l, and a magnesium level of 2,600 mg/l. The pH for the three water samples ranged from 7.2 to 7.9 while the calcium level ranged from 42 mg/l to 68 mg/l.
24. While it is clear, as indicted in Finding of Fact 18, above, that site springs, seeps and subsurface groundwater flows are the principal source of hydrology for the western half of Wetland CO-26, it is unclear whether that water is discharged from the carbonate bedrock aquifer as opposed to the surficial sand and gravel aquifer, or whether the total discharge is comprised of some combination of both. Moreover, it is unknown what percentage, if any, of the pH or calcium levels observed in the water samples taken in the wetland is attributable to the carbonate aquifer or the surficial sand and gravel aquifer, and how, if at all, these values will be affected by the removal of some portion of the sand and gravel overburden occasioned by the proposed mining operation.
25. The proposed mining operation will remove sand and gravel from the site to vertical depths of 0 to 50 feet below present site topography. However, a minimum of 5 feet of unmined material will be maintained above

the water table at all times. Accordingly, no mining below the water table will occur and no dewatering of the site will be required.

26. Of the seven phases through which the proposed mining operation would proceed, only Phase 6 and 7 would be contiguous to those sections of Wetland CO-26 where the critical fen areas are located.
27. Department Staff has proposed, and the Applicant has agreed to, Special Condition 25 in the proposed permit. This condition requires that prior to the commencement of any mining, the Applicant will install a minimum of five groundwater monitoring wells, in accordance with a Groundwater Monitoring Plan (GMP) to be submitted by the Applicant's consultant and approved by the Department. Three of the wells will be placed down-gradient to monitor the shallow surficial sand and gravel aquifer, one well will be placed down gradient to monitor the carbonate bedrock aquifer, and one well will be placed up-gradient to monitor the shallow surficial sand and gravel aquifer. The wells will be monitored on a quarterly basis, with water level, pH, temperature and conductivity observed and recorded at the time of each sampling event. The samples thus obtained will be analyzed at an accredited laboratory for standard major inorganic ions and for nutrients, as per USEPA standard methods. In accordance with the GMP, a Fen Water Budget will be prepared and submitted to the Department not less than one year prior to mining Phase 3. This Fen Water Budget will calculate the recharge rates to each aquifer, compare the chemistry of the water in the aquifers with the water discharged at the fens, and assess the primary source of groundwater to the fens. Following this evaluation and review by the Department, the special condition provides:
"Mining in Phases 6 and 7 shall be permitted unless the Department concludes:
 - 1) that a shallow (10 feet or less below the water table) lower permeable barrier exists beneath Phases 6 and 7 (which shallow barrier results in nearly all of the discharge at the fen seeps originating as recharge through Phases 6 and 7 of the mine), or
 - 2) the chemistry of the water discharged at the fen seeps is otherwise shown to be predominantly related to the chemistry of the unsaturated portion of the surficial sand and gravel deposit."
28. To the east of the proposed site is the New York State Taconic State Park. Within the Park and within two miles of the proposed site lies Brace Mountain, a part of a ridge of mountains running through this entire section of the Noster Kill Valley, from north to south, forming its easternmost border. Elevations of the ridge in the area exceed 2000 feet asl, with the summit of Brace Mountain being 2311 feet asl. Views eastward from the site are limited by this mountain ridge. A hiking trail, the South Taconic Trail, follows the mountain ridge, taking in the summit of Brace Mountain, and affording hikers numerous views of the Noster Kill Valley, including the proposed mining site, the O & G and Brusie mines, as well as the other residential and agricultural uses present in the valley below.
29. Running to the north and south approximately 600 feet east of the proposed site and between the site and the mountains to the east, lies the proposed Harlem Valley Rail Trail, a hiking and recreational trail to be developed along the bed and right-of-way of an abandoned railroad. While portions of the trail have actually been completed in Dutchess County to the south, the section of the trail lying immediately to the east of the site has not yet been developed. The Rail Trail will afford views of the proposed site and surrounding lands.
30. Lying somewhat south and east of the site and approximately 1 mile away is a subdivision of homes on Quarry Hill Road. Built on the slopes of the mountain ridge of which Brace Mountain is a part, this subdivision lies at an elevation approximately 300 feet above the valley floor. Homes in this development have a view of the proposed site and the neighboring mines, as well as the other residential and agricultural uses existing in the area.
31. Several single family homes are located on the west side of NYS Route 22 directly across from the proposed mining operation.
32. Views to the west from the proposed site, the Rail Trail, the homes on Quarry Hill Road and along NYS Route 22, and the lower slopes of Brace Mountain are limited by Fox Hill which runs north to south, the entire length of the area, and rises to 1346 feet asl.

33. Special Condition 3 of the draft permit requires that white pine trees, a minimum of 4 feet high, be planted 15 feet on center in two staggered rows, in three plantings in the 200 foot buffer area along the eastern side of NYS Route 22. The first planting shall be prior to the commencement of Phase 1 and be in the 200 foot buffer area along Phases 1, 2 and 3. The second planting shall be prior to the commencement of Phase 3 and be in the 200 foot buffer area along Phases 4, 5 and 6. The third planting shall be prior to the commencement of Phase 5, and be in the 200 foot buffer area along Phase 7.
34. Permit Special Condition 12, mandates that no more than 10.5 acres shall be disturbed by mining at any one time.
35. Existing hedgerows, trees, brush and other existing vegetation provide screening of the site from various vantage points, particularly along the proposed Rail Trail and the South Taconic Trail.
36. Existing land uses, particularly when viewed from the slopes of Brace Mountain, provide a mosaic of fields, forests, residential neighborhoods and other gravel mines.
37. Enacted pursuant to the Town Law of the State of New York, and in effect since 1972, the Town of Ancram has a local zoning regulation entitled, The Zoning Ordinance of the Town of Ancram, New York, and also referred to as the Development Plan and Zoning Ordinance.
38. As indicated in the Town of Ancram's Zoning Ordinance, the proposed site is located entirely within a area of the Town zoned as Rural Residential. Moreover, Section III(A) of the Ordinance, entitled, Permitted Uses; Conditional Uses, at page ZO-9, lists certain industrial uses and provides that "extractive operations and soil mining" are a conditional use permitted in areas zoned Rural Residential upon securing a Special Use Permit from the Zoning Board of Appeals.
39. In January 2003, a consultant to the Town of Ancram prepared the final draft of a document entitled the Scenic Resource Protection Plan For Town of Ancram, New York. The plan seeks to protect the Town's rural and agricultural character through the protection of its scenic resources. The plan does not expressly prohibit mining in the Town. However, in order to implement the plan, a "Scenic Corridor Overlay Zone" is proposed and is annexed to the plan as Appendix A. The overlay zone would cover the area of the Town along NYS Route 22, which would include the area of the proposed mine. This overlay zone would prohibit "extractive operations and soil mining or excavation of minerals of a threshold that would require New York State Department of Environmental Conservation permit in accordance with the New York State Mined Land Reclamation Law, Title 27, Section 23 of the New York State Consolidated Laws."
40. While the Scenic Resource Protection Plan has been adopted by the Town Board of the Town of Ancram, Appendix A, comprising the Overlay Zone, and the zoning changes proposed therein have not been adopted nor enacted. Moreover, the Town has not imposed a moratorium on new mining operations pending the adoption of the Overlay Zone, nor enacted any zoning changes recommended therein.
41. In addition to the O&G and Brusie mines, the Department has granted permits to three other mining operations in the Town of Ancram.
42. Historically, the Town of Ancram has embraced an open and rural character with farming as a primary industry. Sand and gravel mining, often in the form of small operations located on individual farms, has been part of the working landscape of the area for many years. Recent years have seen an increase in residential uses, as new residents move into the Town.
43. Palumbo Sand and Gravel Co., Inc., Carmine Palumbo, Danny Fortune and Co., Inc., and Anthony Palumbo (not the Applicant's principal herein), entered into an Order on Consent dated June 6, 1994, regarding violations at a sand and gravel mine located east of Sherman Hill Road near the intersection of Sherman Hill Road and NYS. Route 22, Dover, Dutchess County, New York, which involved commencing construction of a solid waste management facility at the Palumbo Sand and Gravel Co., Inc., mine site in Dover, New York, without the required Departmental permits. The Order imposed a civil penalty in the amount of \$10,000.00, and required the implementation of certain corrective measures.
44. On November 23, 1998, Danny Fortune and Co., Inc., entered into a short form Order on Consent, fully executed by the Department on December 3, 1998, regarding excavation of portions of the Dover Industrial

- Park in the Town of Dover, Dutchess County involving mining without an ECL Article 23 MLRL permit and was assessed a civil penalty in the amount of \$3,500.00.
45. On July 28, 1999, Danny Fortune and Co., Inc., entered into a short form Modified Order on Consent, fully executed by the Department on August 3, 1999, for failure to grade and revegetate areas addressed in the Order on Consent of December 3, 1998, and was assessed a civil penalty in the amount of \$5,000.00.
46. By Complaint dated September 13, 1999, and amended October 25, 1999, the Applicant was named as a Respondent, along with three others, in an administrative enforcement proceeding brought by the Department alleging mining without a permit in the course of the construction of an industrial park in the Town of Dover, Dutchess County. The other three Respondents were Danny Fortune & Co., Inc.; Fortunato Palumbo; and Anthony Palumbo, a cousin of Anthony P. Palumbo, the Applicant's principal herein. Upon finding the violation alleged confirmed by the proof adduced at the enforcement hearing, the Commissioner, by Order dated October 5, 2000, directed the Respondents to pay a civil penalty in the amount of \$12,250, and to reclaim the 4.2 acres at the industrial park where the unpermitted mining had taken place. The Respondents paid the civil penalty and reclaimed the site as directed. Subsequent inspections by the Department indicate that the site remains in compliance with applicable Departmental regulations.
47. On May 30, 2002, the Department issued DEC Permit No. 3-1326-00210/0001, MLR No. 3013-30-0617, to Danny Fortune & Co., Inc., to mine 50,000 yards of sand and gravel and complete reclamation from a 4.7 acre site. The permit has an expiration date of June 15, 2005. Fortunato Palumbo is the President of Danny Fortune & Co., Inc., and the site is located in the Town of Dover, Dutchess County. On October 23, 2002, and after a public hearing held on October 15, 2002, the Town Board of the Town of Dover granted Danny Fortune & Co., Inc., a special permit to conduct the aforementioned mining operation.
48. On November 5, 2002, the Department issued DEC Permit No. 3-1326-00031/0002, MLR No. 3013-30-0100, to Palumbo Sand & Gravel Company, Inc., to continue to mine sand, gravel and clay from 77 acres of a 155 acre parcel located in the Town of Dover, Dutchess County. The permit has an expiration date of November 5, 2007. Anthony Palumbo is the Vice President of the applicant company. An inspection report completed during an inspection of the site on February 27, 2002, indicates that there are "no environmental problems at the mine" and that "bonding is adequate."
49. The permits indicated in Findings of Fact 47 and 48, above, were issued with the Department's full knowledge of the facts and history resulting in the enforcement actions delineated in Findings of Fact 43, 44, 45 and 46, above. No more stringent conditions are included in those permits, nor any increased amount in the performance bond required. In the view of the Department's Region 3 Staff, the Palumbos are competent mine operators. The record does not indicate any action ever taken by the Department to revoke or modify a permit issued to one of the Palumbo affiliated companies.

DISCUSSION

Requirement of a SPDES Stormwater Permit

In her Issues Ruling of February 9, 2001, ALJ DuBois noted that "the question of whether a SPDES permit for stormwater is required remains unresolved and will depend on the outcome of the drainage and erosion control issue." Issues Ruling, p. 24. While the parties, by agreement, resolved the drainage and erosion control issues obviating the need for any adjudication of the issues therein raised, the Intervenors maintained that a SPDES permit would still be required for stormwater discharges. (Transcript of Adjudicatory Hearing, pp. 151-165, hereinafter abbreviated T. and page number.) The chief concern of the Intervenors, articulated by Michael Miller, P.E., is that during construction of the berms, but prior to the establishment of any vegetative cover on them, a heavy rainfall of high intensity could result in sediment laden stormwater runoff being conveyed to wetland CO-26. (T., pp. 219-220.) Pointing to areas of the proposed berms on the eastern borders of Phases 2, 4 and 7, Miller argued that stormwater could collect along siltation fencing, or swales adjacent to the berms, or flow around the ends of the berms as then constructed and discharge to the wetland. Such flows would constitute discrete point sources, in Miller's opinion, requiring the issuance of a SPDES stormwater permit. (T., pp. 222-223.) On cross examination, Miller admitted that he had visited the site only once and that it was snow covered

at the time, and that he had made no site-specific observations which would support his opinion with respect to potential stormwater runoff discharges. (T., pp. 228-229 and 238-239.)

Testifying on behalf of the Applicant, Dr. Roy T. Budnik spoke of his visits to the site and noted that evidence of surface erosion in the soils from the development of rills and concentrated flows, often typical in farm fields, was not seen at this site, owing to the high permeability of the soils. (T., pp.173-174.) Moreover, while contour lines on the site map might suggest points of discharge along swales, this has not been confirmed by his field observations which never revealed the presence of gullies or other evidence of stormwater discharge. (T., p. 201.) In view of the high permeability of the soil at the site, the seeding and mulching of the berms when constructed by utilization of a hydroseeder to ensure adhesion to the berms, the use of silt fencing, and the installation of check dams where appropriate to prevent discharge of water around the toes of the berms, Dr. Budnik asserted that in accordance with the proposed permit, there would be no discharge of surface waters off the proposed site during either construction or operation of the mine. (T., pp. 105-108, 112, and 115.)

For a SPDES general permit for stormwater discharges, either for construction activity under Permit No. GP-02-01 or industrial activity under Permit No. GP-98-03, an essential requisite is that there be a point source discharge. The term "point source" is defined at ECL 17-0105(16) and "means any discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft, or landfill leachate collection system from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture." Moreover, the term "discharge" is defined at 6 NYCRR 750.2(a)(9) and "means any addition of any pollutant to State waters, waters of the contiguous zone, or the ocean through an outlet or point source." While these definitions should be given broad interpretation, it is clear that any point source must be unequivocally a "discernable, confined and discrete conveyance." The record in this case does not reasonably support the existence or potential existence of any such points of off-site discharge. Indeed, in light of the high permeability of the soils, the manner in which the mine will be constructed, and the safeguards which will be put in place during and after construction including berms, earthen dikes, silt fencing, seeding and mulching, the installation of check dams, and the maintenance of a 100 foot buffer at all times between the limits of the mine and the Department delineated border of Wetland CO-26, compliance by the Applicant with the mandate in the proposed permit that no surface waters will be discharged off the site either during or after construction of the mine can be reasonably presumed. Accordingly, the Applicant is not required to obtain coverage under either SPDES stormwater general Permit No. GP-02-01 or Permit No. GP-98-03.

Impacts on Wetland CO-26

In her Issues Ruling of February 9, 2001, ALJ DuBois determined that for the purposes of SEQR the requisite "hard look" had not been taken with respect to potential impacts on Wetland CO-26 from the proposed project, as well as whether mitigation measures proposed would avoid, and mitigate to the maximum extent practicable, impacts on the wetland. Moreover, Issues Ruling concluded that the mining operation's effect on the quantity and quality of water entering the wetland, in light of the environmental conditions in the wetland, should be examined.

In response to ALJ DuBois' ruling, the Applicant conducted an extensive on-site study of that portion of Wetland CO-26 adjacent to the Neer property. The findings of that study were summarized in a report authored by Joseph T. Bridges, Ph.D., a Senior Biologist for Matthew D. Rudikoff Associates, Inc., and submitted in evidence during the adjudicatory hearing as Exhibit 88. The report is entitled, Assessment Report: Identification, Characterization and Assessment of Site Springs, Surface Water Seeps and Plant Communities Within the Onsite Portion of NYSDEC Wetland CO-26. The report indicates that this portion of the wetland is comprised of 7 plant community types, encompassing approximately 225 separate plant species. None of the individual plant species observed is listed by the Department as threatened or endangered. Of the 7 plant communities identified, however, 3 are fen communities which are considered to be rare or significant habitats by the New York State Natural Heritage Program (NHP) and are ranked S1/S2, meaning that they are imperiled, perhaps critically so, in New York State due to rarity or are vulnerable to extirpation from New York State due to biological factors. (Exhibit 88, pp. 2-3.) These fen communities are identified as the North Graminoid Fen, the South Graminoid Fen and the Rich Shrub

Fen. All three of these fens are located on the western border of Wetland CO-26, adjacent to Phases 6 and 7 of the proposed mine. While the fens possess the requisite groundwater hydrology and substrate features associated with bog turtle habitat, Dr. Bridges concluded that most of the fens, with the exception of certain harsh fen areas, were too highly shaded to meet the critical spring basking and nesting requirements of the bog turtle. (Exhibit 88, p. 3.) Both Dr. Erik Kiviat and Dr. Michael Klemens, testifying on behalf of the Intervenor, disagreed with this conclusion and maintained that the fens, in their entirety, constituted highly desirable bog turtle habitat. (T., pp. 1758-1759, and 2283.) Moreover, Dr. Klemens pointed out that these fens in Wetland CO-26 are actually part of a greater corridor habitat of interconnected wetlands and fens through which the bog turtle moves. (T., pp. 2282-2283.) This being the case, the fact that bog turtles have not actually been observed in this section of Wetland CO-26, does not diminish the need to protect this habitat for use by bog turtles in the future. (T., pp. 2287-2288.) To protect the wetland bog turtle habitat, Dr. Bridges suggested that a berm be placed along the entire eastern boundary of the mine site, as well as silt fencing. (Exhibit 88, pp. 3-4.) Dr. Klemens noted, however, that the migration of the bog turtle upland onto the mine site is extremely improbable, except under the most catastrophic circumstances. (T., p. 2294.)

With regard to hydrology, Dr. Bridges concluded that site springs, seeps and subsurface groundwater flows were the principal source of water flowing to this portion of Wetland CO-26. (Exhibit 88, p. 1). All the experts who testified concurred in this opinion. Dr. Budnik collected water samples from three sites within the fens and, upon analysis of those samples, concluded that they showed an average pH of 7.7 and a calcium concentration of 58 mg/l. (Exhibit 89, p. 7.) All of the experts agreed that survival of the fens was dependent upon the constant availability of sufficient water with high alkalinity, high calcium levels and low nutrient levels. The experts differed with respect to the source of this calcium rich water, however. Dr. Budnick asserted that such high calcium levels suggest that the source of this water at the fens lies in the calcareous bedrock, the limestone underlying the site. (T., p. 500.) Only in the limestone bedrock, being mainly calcium carbonate, would the residence time of the groundwater be long enough to impart the concentration of calcium observed in the samples. (T., p. 501.) Both Dr. Burns and Dr. Michalski suggested that groundwater discharge to the wetland could be through the surficial sand and gravel aquifer and that calcium levels and residence time in this surficial material was sufficient to impart the calcium concentrations to the groundwater observed in the wetland by Dr. Budnick. (T., pp. 679, 717 and 861-866.) Indeed, Dr. Budnik had reported that lithologies of the sand and gravel deposits on the site revealed a carbonate level of 19%. (Exhibit 89, p. 4.) Removal of the sand and gravel overburden through mining could result in the removal of the very calcium source essential to the proper chemistry of the groundwater discharging to the wetland, asserted Drs. Burns and Michalski.

Experts also differed over potential impacts from possible changes in nutrient levels and temperature of the water reaching the wetland as a result of the mining operation. Dr. Budnik concluded that nutrient loading would not be affected by the mining operation and that fens are relatively insensitive to external nutrient inputs. (Exhibit 89, p. 16.) Dr. Kiviat, however, argued that increases in nutrient levels could encourage invasive plants and lead to a degradation of the fens. (T., p. 1785.) Moreover, as to temperature, Dr. Michalski testified that removal of the sand and gravel could raise groundwater temperatures, slowing the dissolution of calcium in the groundwater and thus lowering the calcium concentration at the fens. (T., p. 889-891.)

From the foregoing, in order to maintain the fens contiguous to this site and, thus, the bog turtle habitat they provide, certain parameters in the groundwater must be maintained, including the quantity, chemistry, nutrient level and temperature. The assurance that these parameters are maintained is critical to any determination in this matter for, as Dr. Klemens opined, if these parameters are maintained, and the mine is developed in the manner proposed with berms, earthen dikes and silt fencing to curtail runoff, as well as the 100 foot buffer from the wetland, then the proposed "mine can be run in an environmentally sound fashion." (T., pp. 2365-2367.) To provide these assurances, Department Staff and the Applicant have proposed the inclusion of Special Condition 25 in the proposed permit. As Finding of Fact 27, above, indicates, this condition requires that prior to the commencement of any mining, the Applicant will install a minimum of five groundwater monitoring wells, in accordance with a Groundwater Monitoring Plan (GMP) to be submitted by the Applicant's consultant and approved by the Department. Three of the wells will be placed down-gradient to monitor the shallow surficial

sand and gravel aquifer, one well will be placed down gradient to monitor the carbonate bedrock aquifer, and one well will be placed up-gradient to monitor the shallow surficial sand and gravel aquifer. The wells will be monitored on a quarterly basis, with water level, pH, temperature and conductivity observed and recorded at the time of each sampling event. The samples thus obtained will be analyzed at an accredited laboratory for standard major inorganic ions and for nutrients, as per USEPA standard methods. In accordance with the GMP, a Fen Water Budget will be prepared and submitted to the Department not less than one year prior to mining Phase 3. This Fen Water Budget will calculate the recharge rates to each aquifer, compare the chemistry of the water in the aquifers with the water discharged at the fens, and assess the primary source of groundwater to the fens. Following this evaluation and review by the Department, the special condition provides:

"Mining in Phases 6 and 7 shall be permitted unless the Department concludes:

- 1) that a shallow (10 feet or less below the water table) lower permeable barrier exists beneath Phases 6 and 7 (which shallow barrier results in nearly all of the discharge at the fen seeps originating as recharge through Phases 6 and 7 of the mine), or
- 2) the chemistry of the water discharged at the fen seeps is otherwise shown to be predominantly related to the chemistry of the unsaturated portion of the surficial sand and gravel deposit."

In light of the studies submitted into the record, the expert testimony provided by the parties, and the proposed inclusion of Special Condition 25 in the proposed permit, for the purposes of SEQR the requisite "hard look" has been taken with respect to potential impacts to Wetland CO-26 and its bog turtle habitat from the proposed project. Moreover, the mitigation measures proposed will avoid, and mitigate to the maximum extent practicable, impacts on the wetland and its bog turtle habitat.

Visual Impacts

ALJ DuBois found that a substantive and significant issue exists regarding visual impacts of the mine. In particular she noted that while there are two places of statewide aesthetic significance from which the project will be visible, the Taconic State Park and proposed Harlem Valley Rail Trail, the DEIS did not contain a meaningful evaluation of the visibility from these locations. Moreover, the aesthetic impacts of the views of the mine are substantively in dispute, she found, as is the adequacy of screening, although it is not in dispute that the site cannot be screened from the view of potential receptors in the Taconic State Park.

Section 422.2(c)(4)(iii) of 6 NYCRR directs that the applicant provide a description of its proposed method for minimizing the effect of its mining operation on the people of the State to the extent necessary to achieve compliance with applicable regulations, and that to achieve this objective it may employ various or similar methods including the use of screening which "may consist of either artificial or natural barriers such as berms, fences, shrubs, trees or any combination of these which ... minimize the visual impact of the mine on the people of the State." However, whether any proposed mitigation is sufficient and appropriate to the circumstances for Departmental review purposes, must begin with an analysis made pursuant to the Department program guidance applicable in this matter, Assessing and Mitigating Visual Impacts, DEP-00-2. As previously noted, and as indicated in its cover page, "this policy and guidance defines what visual and aesthetic impacts are, describes when a visual assessment is necessary and how to review a visual impact assessment, differentiates State and local concerns, and defines avoidance, mitigation and offset measures that eliminate, reduce, or compensate for negative visual effects." Moreover, with regard to visual or aesthetic impacts of a purely local, as opposed to statewide, concern, the guidance differentiates these concerns, and thus the Department's focus in any visual impact analysis, asserting that the "guidance defines State regulatory concerns and separates them from local concerns. There is nothing in this program policy that eliminates or reduces the responsibility of an applicant to local agencies to address local visual or aesthetic concerns."

The guidance memorandum contemplates a four step process to be undertaken by a permit applicant and verified or confirmed by the Department. The first three steps require the Department's verification of (1) the applicant's inventory of aesthetic resources of statewide significance, (2) its visual assessment made using either graphic viewshed and line-of-sight analysis, or other visual simulation and digital viewshed analysis, and (3) the

applicant's assessment of the potential significance of any defined visual impact. The fourth step requires a review the reasonableness and efficacy of the applicant's proposed mitigation strategies, or a direction by the Department that such mitigation strategies be submitted, and, when appropriate, the imposition of permit conditions consistent with those strategies. A visual impact analysis consistent with these guidance requirements was prepared by Karen Arent, a landscape architect, and submitted by the Applicant, Exhibit 86.

The Arent report, entitled Visual Impact Assessment Report for Palumbo Gravel Mine, and dated May 10, 2002, provides the required inventory of significant State scenic and aesthetic resources, identifying as such the Taconic State Park and the proposed Harlem Valley Rail Trail. That these two entities are State significant aesthetic resources is clear from an examination of the suggested categories of such resources enumerated in the Department's Guidance. These categories, delineated at Section V(A) of the Guidance, include "State Parks" as well as a "State or federally designated trail, or one proposed for designation."

Using line-of-sight analysis and computer modeling, the Arent report provides a visual influence analysis to provide an overall assessment of the degree of visibility of the proposed mine relative to the surrounding topography, and photo simulations depicting the visibility of the mine from various vantage points. From this analysis, it is clear that while each of the various phases of the mine will not be completely hidden from sight, their visual impact will not be so significant as to preclude effective mitigation from existing topography and vegetation or from the additional mitigation measures proposed.

In the first instance, the proposed mine is to be situated between two other existing mines located immediately to the north and south of the site, the O&G mine and the Brusie mine, respectively. The O&G mine is 11.09 acres in size while the Brusie mine is 4 acres in size. No phase of the proposed mine will impact more than 10.5 acres at any one time, and given the need to move stockpiles of topsoil and subsoil from one half of a phase to the other half before mining that half of the phase, it is unlikely that in actual operation this 10.5 acre limit will be exceeded. Accordingly, since the working part of any particular phase of the proposed mine at any one time will be comparable in size to the mines nearby, it will not occasion any visual impact greater than the impacts associated with the existing mines. In addition, existing vegetation along both the South Taconic Trail and the proposed Harlem Valley Rail Trail will screen the proposed mining operation from view at many vantage points. While all views of the proposed mine from the South Taconic Trail cannot be mitigated, the distances from and elevation above the site, as well as surrounding uses, indicate the visual impact of the proposed mine will not be significant to hikers and others utilizing the Trail. Similarly, the distance and existing vegetative screening indicates that the mining operation will not result in any significant visual impact to those using the Rail Trail. Finally, while no residents from the Quarry Hill subdivision testified at the hearing, it is clear that the view of the proposed mining operation from this area, perhaps a mile away, will not be inconsistent with or significantly impact the view of the valley already experienced by these homeowners.

In addition to the existing mitigative elements found in the topography and vegetative cover, the proposed permit directs the Applicant to implement certain mitigation measures. In particular, Special Condition 3 of the draft permit requires that white pine trees, a minimum of 4 feet high, be planted 15 feet on center in two staggered rows, in three plantings in the 200 foot buffer area along eastern side of NYS Route 22. The first planting shall be prior to the commencement of Phase 1 and be in the 200 foot buffer area along Phases 1, 2 and 3. The second planting shall be prior to the commencement of Phase 3 and be in the 200 foot buffer area along Phases 4, 5 and 6. The third planting shall be prior to the commencement of Phase 5, and be in the 200 foot buffer area along Phase 7. These measures will, to the reasonable extent practicable, mitigate the visual impact of the proposed mining operation on occupants of the several single family homes located on the west side of NYS Route 22 directly across from the proposed mining operation, as well as to passing motorists.

The Intervenors had previously submitted their own visual impact study, entitled Draft Visual Impact Assessment Report, Exhibit 78, which was explained by Nicholas Schwartz, a landscape architect. The Intervenors candidly pointed out that this report was not a complete analysis comporting with the Department's guidance, but was intended to point out deficiencies in the DEIS. (T., p. 1225.) Generally, Mr. Schwartz agreed with the methodologies employed by Ms. Arent. (E.g., T., pp. 1230 and 1456.) In its visual analysis, the Intervenor's

report, Exhibit 78, assumes that the entire 73 acres of the mine will be unreclaimed and is, therefore, of little value in resolving the instant issue.

Upon the record in this matter, it is clear that visual impacts, to the extent that they are significant, can be mitigated to the reasonable extent practicable in accordance with 6 NYCRR 617.11(d)(5).

Community Character

ALJ DuBois held that existing character of the community would be an issue for adjudication in view of the visual and noise impact issues raised, as well as the Town of Ancram's development plan emphasizing the open and rural character of the area. On appeal, this finding was affirmed by the Commissioner.

Dr. Budnik testified on behalf of the Applicant and noted that the community was predominantly rural but was changing as more people were acquiring second homes in the area. (T., pp. 1526-1527.) The sand and gravel of this area is of high quality and because of its soundness and hardness is accepted by the NYS Department of Transportation. It is used to build houses and other buildings, foundations, septic systems, concrete block and for ice control. (T., pp. 1529-1530 and 1536.) Mining has been part of the working landscape of the Harlem Valley for many years, going back to the time of the American Revolution when iron was mined and smelted in the area. (T., pp. 1533-1534.) Beginning perhaps 75 years ago, sand and gravel pits began to appear on farms in the area. The gravel so mined was used in the construction of the first paved roads constructed to facilitate the movement of farm products to market. The Applicant also introduced into evidence a copy of the Town of Ancram zoning ordinance, Exhibit 122, and five permits issued by the Department for other sand and gravel mines in the Town of Ancram, Exhibit 123.

At the adjudicatory hearing various witnesses testified on behalf of the Intervenors with respect to the issue of community character. Renee Boulpon testified to efforts by the Columbia Land Conservancy to assist and sustain farm operations in the Town. (T., p. 1582-1588.) Timothy Abbott, Director of the Nature Conservancy Berkshire Taconic Landscape Program, and a hiker familiar with the area, spoke of the changing demographics of the area and the "creeping sprawl" occurring as new residents move into the area from Albany and New York City. (T., p. 2067.) He acknowledged that, historically, mines had been part of the working landscape but that they were, in his estimation, less than 5 acres in size. (T., pp. 2063-2064.) When hiking in the area, Abbott suggested that the presence of the proposed mine would aesthetically diminish his hiking experience. (T., p. 2078.) Robert Wilcox, a local resident and hiker, stated that the proposed mine would be visible from Brace Mountain, an area popular with hikers. (T., pp. 2135-2137.) Wilcox also acknowledged that mines were a part of the landscape, although a small part, in his view. (T., p. 2144.) Roger Akeley, Commissioner of Planning and Development for Dutchess County, in testifying to the development of the Rail Trail in Dutchess County, acknowledged that the Rail Trail passes through industrial areas in his county and, moreover, that sand and gravel mines are part of the working landscape. (T., pp. 1560-1563.)

Richard Hermans, Treasurer and former Chairman of the Harlem Valley Rail Trail Association, a group advocating completion of the Rail Trail, testified that the completed section of the Rail Trail through Millerton, to the south of the site, had resulted in an increase in tourism there. (T., p. 2171.) The section of the as yet uncompleted Rail Trail between Millerton and Under Mountain Road, which passes by the proposed site, was the "jewel" of the trail, he asserted. The view from the trail is important and the presence of the mine could cause "a potential visual degradation of the view from the trail." (T., p. 2172.)

Donald MacLean, Chairman of the Town's Planning Board, testified to the Town's recent adoption of a plan entitled, Scenic Resource Protection Plan, Exhibit 135, which has as a primary goal "the preservation of the Town's rural and agricultural character through the protection of its scenic resources." (Exhibit 135, p. 1.) Annexed to the Plan as Appendix A is a proposed "Scenic Corridor Overlay Zone." A provision of the Overlay Zone would prohibit mining operations that are large enough to require a permit from the Department. (Exhibit 135, Appendix A, p. 1.) Unlike the Scenic Resource Protection Plan, the Scenic Corridor Overlay Zone has not been adopted by the Ancram Town Board, nor have any of the changes to existing zoning proposed therein.

Moreover, the Town Board has not imposed a moratorium on future mining operations pending possible adoption of any change in local zoning laws. (T., p. 2206.)

Enacted pursuant to the Town Law of the State of New York, and in effect since 1972, the Town of Ancram has a local zoning regulation entitled, The Zoning Ordinance of the Town of Ancram, New York, and also referred to as the Development Plan and Zoning Ordinance. As indicated in this zoning ordinance, the proposed site is located entirely within an area of the Town zoned as Rural Residential. Section III(A) of the Ordinance, entitled Permitted Uses; Conditional Uses, at page ZO-9, lists certain industrial uses and provides that "extractive operations and soil mining" are a conditional use permitted in areas zoned Rural Residential upon securing a Special Use Permit from the Zoning Board of Appeals. In addressing the issue of community character it is essential to understand that this zoning ordinance is the law of the Town of Ancram at this point in time. While the Town has adopted the Scenic Resource Protection Plan For Town of Ancram, New York, which essentially embraces the Town's vision of the character of the community, in general terms, the enactment of the "Scenic Corridor Overlay Zone" and related amendments to the Town's zoning law have not occurred, nor has the Town imposed a moratorium on future mining operations pending such legislative action. In her Interim Decision in this matter, and in reference to the Scenic Resource Protection Plan, the Commissioner observed that "such adopted local plans can serve as 'evidence of a community's desires for the area and should be consulted when evaluating the issue of community character as impacted by a project.' Matter of William E. Dailey, Inc., Interim Decision of the Commissioner, June 20, 1995; Matter of American Marine Rail, ALJ Ruling, August 25, 2000 (adopted local plans should be afforded deference in assessing impacts of a project)."

In this case, however, while a vision of the community has been articulated and adopted by the Town Board, the local laws essential to implementing that vision have not been adopted, and it is not certain at this time that they will be so adopted as expressly stated in the proposed "Scenic Corridor Overlay Zone." Perhaps the Overlay Zone will be adopted in the future and mines meeting the Department's permit threshold will be excluded. But this is not the current state of the law in the Town of Ancram as expressed by its governing legislative body, and may never be. While these concerns could be discussed in any special permit proceeding before the Town's Zoning Board of Appeals, the consideration of community character for the purpose of SEQR should center on the facts and law as they currently exist. The facts and law, as demonstrated by this record, show that while historically, the Town of Ancram has embraced an open and rural character with farming as a primary industry, sand and gravel mining, often in the form of small operations located on individual farms, has been part of the working landscape of the area for many years. Indeed, the Department has permitted five other sand and gravel mining operations in the Town.

The mining operation proposed will be conducted in phases of no more than 10.5 acres each, comparable to other operating and permitted mines which have been part of the working landscape of the community for many years. While the mine will be visible at points from the Taconic State Park, the proposed Harlem Valley Rail Trail, and to some residences in the area, physical topography and vegetation as well as additional mitigation by the Applicant will mitigate any such impacts. Moreover, any issues as to noise impacts have been resolved by agreement between the parties. Accordingly, impacts to the character of the community have been mitigated to the maximum extent practicable and do not provide a basis to deny this application, or to impose permit conditions more stringent than those currently proposed.

Record of Compliance

As noted previously, the Department's Enforcement Directive II.24 entitled, Record of Compliance Enforcement Guidance Memorandum, establishes the policies and procedures pursuant to which the Department determines whether an Applicant is unsuitable to receive a requested permit based upon the Applicant's prior record of compliance. As the document expressly states on its first page, however, it "does not establish a strict code of procedures or standards. Rather, the procedures and guidelines for review must be applied on a case by case basis" Pages 4 and 5 of this Guidance Memorandum list certain events which, if occurring within the preceding ten years, and involving the applicant, should be considered in evaluating a permit application including (a) conviction of a crime related to the proposed permit activity; (b) prior administrative, civil or criminal

finding of an ECL violation or violation of an order issued after such a finding; (c) denial of a permit for similar activity by New York or any other state or federal authority; (d) fraud or deceit in the preparation and submission of the permit application; (e) exceeding the scope of a permitted project; and (f) a prior criminal conviction for either filing or making a false statement. Of these enumerated areas of concern, only (b) has applicability in this case as a result of the Commissioner's Order of October 5, 2000, set forth in Finding of Fact 46, above. This matter, however, was resolved to the Department's satisfaction, the penalties assessed were paid and the appropriate corrective actions taken by those responsible. Moreover, subsequent inspections by the Department indicate that the site remains in compliance with applicable Departmental regulations.

The Enforcement Guidance Memorandum states, on page 1, "The Department also recognizes that a prior violator can demonstrate that rehabilitation has occurred such that, with or without more stringent oversight, as the specific circumstances warrant, the entity can carry out activities in a responsible manner." The enforcement action resulting in the Commissioner's Order of October 5, 2000, arose in Region 3 of the Department. The Region 3 Department mining specialist familiar with the case and who made the site inspections indicating current regulatory compliance, testified at the hearing that in his view the Palumbos are competent mine operators. Moreover, the record does not indicate any action ever taken by the Department to revoke or modify a permit issued to one of the Palumbo affiliated companies. In addition, two other permits have since been issued since the October 5, 2000, Commissioner's Order. As indicated in Findings of Fact 47 and 48, above, they were issued to Danny Fortune & Co., Inc., and Palumbo Sand & Gravel Company, Inc. These permits were issued with the Department's full knowledge of the facts and history resulting in the enforcement actions delineated in Findings of Fact 43, 44, 45 and 46, above. No more stringent conditions are included in those permits, nor any increased amount in the performance bond required.

Finally, the permit conditions proposed in this matter, and drafted by Region 4 Department Staff, are clear and comprehensive and do not need to be added to or made more stringent by virtue of the Applicant's prior involvement in Departmental enforcement proceedings. Accordingly, on this record, it is apparent that Region 4 Department Staff properly applied the standards and criteria contained in the Department's Record of Compliance Enforcement Guidance Memorandum in this matter, and in no way abused its discretion in recommending issuance of the instant permit.

CONCLUSION

The project, when operated in accordance with the Department's proposed draft permit, including revised Special Condition 25, as well as the proposed mining plan, comports with the requirements of Section 422.2(a) of 6 NYCRR inasmuch as the Applicant has proposed a method of mining which includes measures to be implemented to minimize the effect of the mining operation on the environment and on the property, health, safety and general welfare of the people of the State.

In addition, the project, when operated in accordance with the Department's proposed draft permit, including revised Special Condition 25, in accordance with 6 NYCRR 617.11(d)(5), will avoid or minimize adverse environmental impacts to the maximum extent practicable.

RECOMMENDATION

With the inclusion of Special Condition 25, I recommend that the permit for this project, as drafted by Department Staff, be issued to the Applicant.

FINAL ENVIRONMENTAL IMPACT STATEMENT

The Final Environmental Impact Statement ("FEIS") for this Project shall consist of the following:

1. Draft Environmental Impact Statement, accepted April 7, 1999.
2. Written comments provided to the Department from April 19, 1999, to July 28, 1999, in response to the Department's Notice of Complete Application and Availability of the DEIS issued on April 7, 1999.
3. Transcript of Legislative Hearing of July 20, 1999.

4. Transcript of Issues Conference of October 5 and 27, and December 16, 1999.
 5. Exhibits 1 through 83 received during and subsequent to the Issues Conference but prior to the Adjudicatory Hearing.
 6. Ruling on Issues and Party Status by ALJ DuBois, dated February 9, 2001.
 7. Interim Decision of the Commissioner, dated June 4, 2001.
 8. Transcript of the Adjudicatory Hearing held January 28, 29 and 30, and February 4, 5, 6, 12 and 13, 2003, and Exhibits 84 through 139.
 9. Revisions to the mining and reclamation maps made by Roy T. Budnik, Ph.D., on or about March 20, 2003.
 10. Special Permit Condition 25, as provided by Department Staff on March 28, 2003.
-

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Polski

Français

اردو

EXHIBIT D

SUPREME COURT - STATE OF NEW YORK
DUTCHESS COUNTY

Present:

Hon. MARIA G. ROSA

Justice.

RED WING PROPERTIES, INC.,

Petitioner,

-against-

DECISION, ORDER &
JUDGMENT.

Index No: 194/2017

TOWN OF RHINEBECK, TOWN OF RHINEBECK
TOWN BOARD, TOWN OF RHINEBECK ZONING
ENFORCEMENT OFFICER AND TOWN OF
RHINEBECK ZONING BOARD OF APPEALS,

Respondents.

The following papers were read and considered on this hybrid proceeding:

SUMMONS
NOTICE OF VERIFIED PETITION AND VERIFIED COMPLAINT
VERIFIED PETITION AND COMPLAINT
NOTICE OF MOTION
AFFIRMATION OF CHRISTOPHER C. STEVENS
EXHIBITS A-Z
AFFIDAVIT OF PAUL H. GRIGGS
EXHIBITS A-K
AFFIDAVIT OF FRANCIS DOHERTY
EXHIBITS A-K
MEMORANDUM OF LAW

VERIFIED ANSWER
CERTIFIED RECORD VOLUMES 1-7

NOTICE OF MOTION
AFFIRMATION OF SCOTT BERGIN
AFFIRMATION OF JOHN LYONS

EXHIBITS A-D
MEMORANDUM OF LAW
REPLY AFFIRMATION
REPLY AFFIDAVIT
EXHIBITS A&B
REPLY MEMORANDUM OF LAW

REPLY AFFIRMATION

This is a hybrid Article 78/Declaratory Judgment action challenging the constitutionality of Town of Rhinebeck Local Law No. 4 of 2015 and determinations of the Town of Rhinebeck Zoning Enforcement Officer ("ZEO") and Zoning Board of Appeals ("ZBA") finding plaintiff-petitioner did not have the right to mine portions of a 241 acre parcel as a pre-existing nonconforming use. Plaintiff challenges the ZEO and ZBA determinations pursuant to CPLR Article 78, seeks a declaratory judgment that Local Law No. 4 is unconstitutional and that its use of the property was a pre-existing nonconforming use. It further seeks damages based on a claim that the local law and ZBA's decision resulted in an inverse condemnation. Defendants move pursuant to CPLR §3212(a)(7) or, in the alternative pursuant to CPLR §3212, for an order dismissing plaintiff's claims challenging the constitutionality of Local Law No. 4 of 2015 and for damages based on a claimed inverse condemnation and partial taking.

Red Wing Properties, Inc. ("Red Wing") is a sand and gravel mining business that owns a 241 acre property in the Town of Rhinebeck. It acquired the property in 2013. At that time, 37.5 acres of the property were actively being mined but there was a pending permit application before the New York State Department of Environmental Conservation ("DEC") for permission to mine an additional 124 acres. On September 28, 2015, the Town of Rhinebeck ("the Town") enacted Local Law No. 4 of 2015. The stated purpose of the local law was to prohibit the establishment of large scale mining activities in the Town's mining overlay zoning district. The Town created the mining overlay zoning district in 2009 in conjunction with its adoption of a new comprehensive plan. When the Town created the district, virtually the entire 241 acre parcel was within the mining overlay zoning district. Local Law No. 4 included amendments to the Town's zoning district map which changed the boundaries of the mining overlay district to coincide with existing mining operations. Consequently, the local law had the effect of restricting Red Wing's ability to mine areas on its 241 acre parcel other than the existing mining activity occurring on 37.5 acres. The Local Law included a procedure under which property owners claiming a valid nonconforming vested right to expand existing mining operations could apply to the Town ZEO and, if necessary, to the Town ZBA for a determination on a claimed right to mine as a valid nonconforming use. In February 2016, Red Wing submitted such an application to the ZEO which was denied. Red Wing then appealed to the ZBA, which heard testimony and comments on the application at six public hearings that occurred between May and October 2016. Three members of the ZBA also visited the property. On December 21, 2016, the ZBA issued a seven page resolution that incorporated a 55 page decision denying the application, finding that Red Wing had failed to demonstrate its entitlement to nonconforming use status that would enable it to mine its property outside of the 37.5 acres located

in the mining overlay district. This proceeding followed.

"Although the overriding policy of zoning is aimed at the ultimate elimination of nonconforming uses, nevertheless, a zoning ordinance cannot prohibit an existing use to which the property has been devoted at the time of the enactment of the ordinance." Syracuse Aggregate Corp. v Weise, 51 NY2d 278 (1980). In general, to establish a right to a nonconforming use, the person claiming the right must demonstrate that the property was used for the nonconforming purpose at the time a zoning ordinance became effective, as distinguished from a mere contemplated use. Matter of Harbison v City of Buffalo, 4 NY2d 553 (1958). Courts, however, have recognized that quarrying involves a unique use of land as it contemplates the excavation of the corpus of the land itself as a resource. Syracuse Aggregate Corp., 51 NY2d at 285. Thus, quarrying, as a nonconforming use "cannot be limited to the land actually excavated at the time a restrictive ordinance is enacted because to do so would effectively deprive the land owner of his use of the property as a quarry." Id. at 286. A party advancing a prior nonconforming mining use exception to a zoning ordinance must establish specific actions constituting an overt manifestation of its intent to mine the property at the time the zoning ordinance became effective. Buffalo Crushed Stone, Inc. v Town of Cheektowaga, 13 NY3d 88 (2009). This requires a party to "demonstrate substantial quarrying activities on a distinct parcel of land over long period of time and that such activities clearly manifest an intent to appropriate the entire parcel to the particular business of quarrying." Syracuse Aggregate Corp., supra. The extent of protection afforded by the nonconforming use will extend to the boundaries of the parcel even though extensive excavation was limited to only a portion of the property. Id. "This is not to say that a landowner, merely by preparing to engage in a mining operation and undertaking a few self-serving acts of a very limited nature will have thrown a protective mantle of nonconforming use over his entire parcel of land as against a later prohibitory zoning ordinance." Id.

Applying the above standard, the ZBA found that Red Wing failed to demonstrate conduct demonstrating an overt manifestation of its intent to utilize its entire property for mining at the time the Town passed the 2015 amendment modifying the boundaries of its mining overlay zoning district. In reaching this determination, the ZBA found that in the approximately 30 year period since Red Wing's predecessor acquired the subject property, Red Wing had engaged in two overt actions in support of its claim that it intended to mine the entire 241 acre area of its property. The first action was Red Wing's digging of test pits and taking soil borings for the purpose of assessing aggregate reserves. The second action was an application submitted in 2008 to the DEC for a mining permit to mine a 141 acre area that now exists outside the boundaries of the Town's overlay district. The ZBA also recognized that Red Wing incurred significant costs in connection with the permitting process. Acknowledging these actions and the fact that there had been mining activities on up to 37.5 acres of the property since 1993, the ZBA determined that such activities did not sufficiently demonstrate an intent to mine the entire property. The ZBA found that Red Wing had failed to demonstrate any significant physical improvements evidencing an intent to mine the 141 acre portion of its property, noting a lack of haul roads, processing plant or facility and a failure to resolve a dispute with a neighbor over access. The ZBA further emphasized that over the 30 years Red Wing and its predecessor owned the property, the 141 acres of the property had been used for purposes

other than mining. The ZBA found that in 1998 an application was submitted to the Town planning board for approval of a nine lot residential subdivision to be built on the property. The ZBA further considered that Red Wing had entered into leases under which portions of the property were farmed from at least 2004, had obtained an agricultural exemption for 57 acres of land used to produce for sale crops, livestock or livestock products and 173.8 acres of land used in support of farm operations. In light of these findings and emphasizing that the 2008 DEC permit application to mine the 141 acres had yet to be accepted by NYS DEC as complete and that the preliminary environmental review process had not yet begun, the ZBA ultimately determined that Red Wing had established a mere contemplation to use the 141 acres for future mining purposes but had not engaged in activities sufficient to demonstrate an intent to mine such land in the future.

Judicial review of a ZBA determination is not a *de novo* review nor an opportunity for the issues to be heard and determined by this court. Instead, it is generally limited to ascertaining that the action was illegal, arbitrary and capricious or an abuse of discretion. See Brancato v Zoning Bd. Of Appeals of City of Yonkers, 30AD3d 515 (2nd Dep't 2006). Thus, the ZBA's determination that Red Wing's use of the property was insufficient to demonstrate a pre-existing nonconforming use must be sustained if rational and supported by substantial evidence even if this court would have reached a different result. Sand Land Corp. v Zoning Bd. of Appeals of Town of South Hampton, 137 AD3d 1289 (2nd Dep't 2016).

This court finds substantial evidence supporting the rationality of the ZBA's determination. A review of the record reveals that the ZBA reviewed Red Wing's submissions, the submissions of neighbors and comments from the Town Board and members of the public before reaching its decision. Its lengthy decision clearly weighed the evidence before it and carefully analyzed all proffered actions Red Wing took in support of its claim that it intended to utilize additional portions of the property for mining as of 2015. The ZBA conducted a careful examination of relevant case law and rationally determined that whether Red Wing met its burden of proof required an analysis of whether it exclusively intended to mine the unmined portions of the land, the development of road and other infrastructure in support of its stated intent to mine, communications and correspondence with local municipalities demonstrating an intent to mine and any reliance upon the Town's permission to mine in the future. The ZBA's consideration of these factors was proper and in accordance with the case law governing applications to mine as a pre-existing nonconforming use. Upon review of the relevant facts and factors, it was rational for the ZBA to determine that mining the entire property was but one of several of Red Wing's contemplated future uses of the property and that the digging of test pits and taking soil borings from the property was an exploratory step that did not manifestly demonstrate an intent to mine the entire property. The ZBA further determined that the record was unclear as to whether the prior owner of the property purchased such property and obtained permits as an agent of Red Wing. The DEC permit to mine the 37.5 acres was issued to the prior owner and makes no mention of Red Wing. Despite this, it is clear from the ZBA's decision that it credited Red Wing for the years that the northern portion of the subject property was mined while owned by the prior owner. The ZBA determined that Red Wing had established that mining had taken place for many years on that portion of the property. However, it rationally found that Red Wing never communicated its intent to mine the entire property to the Town. With respect

to Red Wing having hired a consultant to perform a geological investigation, the contents of that investigation support the ZBA's finding that such step was done to determine the quality of mining that may be available and was merely a contemplative step, not evidence of a commitment to future mining. Similarly, the 2001 letter from Earth Tech, a consultant Red Wing hired to develop a proposed strategy for expanding the prior owner's mining operation, can also rationally be viewed as an initial consultation and a proposal to move forward with a permitting plan and does not necessarily imply a specific intent to move forward with such plans. The fact that the consult was performed in 2001 and that no application was made to the DEC to expand mining to an additional 141 acres until 2008 further supports this conclusion. Further, the ZBA acknowledged that Red Wing's filing for a permit with the DEC does demonstrate a strong intention to mine. See Glacial Aggregates, LLC v Town of Yorkshire, 14 NY3d 127 (2010). However, in light of the other relevant factors considered, the ZBA determined that such application was insufficient evidence of an intent to mine the entire 141 acres. As it is not the function of this court to substitute its judgment for that of the ZBA responsible for making the determination as to whether Red Wing established a pre-existing nonconforming use and there is a rational basis in the record supporting the ZBA's determination, it is

ORDERED that the petition for a judgment declaring that the December 21, 2016 ZBA resolution denying Red Wing's appeal of the ZEO determination is unconstitutional, illegal and/or arbitrary and capricious is denied. The court rejects Red Wing's claim that the ZBA lacked jurisdiction to determine the validity of the Town zoning ordinance and/or Local Law No. 4 of 2015. The record is clear that the ZBA never considered or rendered a determination as to the legality of the zoning ordinance or local law but merely presumed their validity in rendering the challenged determination. The court also finds no merit to Red Wing's claims that the ZBA's determination was arbitrary based on a failure to recognize the prohibition against substantial construction until the approval a DEC mining permit. On page 39 of its decision the ZBA acknowledged legal limitations on building infrastructure without a permit and discussed the lack of infrastructure within the context of addressing Red Wings' failure to build service roads or even obtain lawful access to the proposed future mining site. To the extent that the decision includes a statement that there was no evidence that Vincent Kinlan or Red Wing as purchaser/owner attempted to pursue DEC permits, this statement is clearly contradicted by numerous references and discussion in the decision to the pending DEC permit application and the weight that such application should be given in determining intent. Hence, the isolated statement does not demonstrate that the ZBA's determination was without sound basis in reason or made without regard to the facts. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 231 (1974). It is further

ORDERED that the petition to annul the determination of the February 25, 2016 of the Town's ZEO is denied as moot. The ZBA properly exercised its lawful authority to review the ZEO's determination *de novo*. Under such circumstances, there would be no legal effect of this court rendering a determination on whether the ZEO's determination was arbitrary and capricious. It is further

ORDERED that Red Wing's motion for a declaratory judgment seeking an order from this

court declaring that its mining activities on the entire 141 acres constituted a pre-existing nonconforming use is denied. This court is without authority to issue a *de novo* review of the ZBA's determination of this issue. As set forth above, this court's function is merely to determine whether the ZBA's determination was arbitrary or capricious or had a rational basis.

Defendants have moved to dismiss those portions of the petition/complaint seeking a judgment declaring Local Law No. 4 unconstitutional and seeking an award of damages based upon a claimed partial taking. Red Wing has further moved for a summary determination as to the constitutionality of Local Law No. 4. Based on the foregoing and there being no disputed factual issues relevant to the constitutional claim, the court deems it appropriate to render a determination on the summary judgment motion despite the fact that issue has not been joined. In exercising the police power to provide for the general welfare of the people, a municipality may reasonably regulate the use of private property notwithstanding the curtailment of private property rights. Modjeska Sign Studios, Inc. v Berle, 43 NY2d 468 (1977). Because zoning ordinances are legislative acts they enjoy a strong presumption of constitutionality. Town of Islip v Caviglia, 73 NY2d 544 (1989). If there is a reasonable relation between the end sought to be achieved and the means adopted to achieve it, the regulation will be upheld. *Id.* Thus, a party challenging the validity of a zoning ordinance as arbitrary and thus unconstitutional must establish beyond a reasonable doubt that the ordinance has no substantial relationship to public health, safety, morals or general welfare. N. Westchester Prof'l Park Assocs. v Town of Bedford, 92 AD2d 267 (2nd Dep't 1983). Applying this standard, the court finds no merit to Red Wing's conclusory assertion that Local Law No. 4 of 2015 is unconstitutional because it restricted mining activities to then currently existing DEC approved mining operations. The record reflects that the Town's amendment to its zoning code to curtail the expansion of mining operations was a valid exercise of its police power. The Town clearly had the authority to amend its zoning ordinance to comply with its comprehensive plan to promote the health and welfare of its citizens and the environmental character of the Town.

To prove that an unconstitutional taking has occurred, a landowner must prove that the subject property cannot yield an economically reasonable return as zoned. Loujean Properties, Inc. v Town Bd. of Town of Oyster Bay, 160 AD2d 797 (2nd Dep't 2009). A property owner challenging a land use regulation as a taking has a heavy burden of proof to demonstrate with the submission of dollars and cents evidence that under no permissible use will the parcel as a whole be capable of producing a reasonable return. Briarcliff Assocs., Inc. v Town of Cortlandt, 272 AD2d 488, 491 (2nd Dep't 2000). A property owner may not establish a taking simply by showing that it was denied the ability to exploit a property interest previously believed to be available for development. Penn Central Transportation Co. v City of New York, 438 US 104, 130 (1978). Red Wing's claim that mining is the highest and best use of its property is woefully inadequate to meet its burden showing that the re-zoning at issue deprived the property of all economic value.

Based on the foregoing, it is

ORDERED that defendants' motion to dismiss Red Wing's claims challenging the constitutionality of Local Law No. 4 of 2015 and for damages based upon an unconstitutional taking

is granted and those claims are dismissed.

The foregoing constitutes the decision, order and judgment of the court.

Dated: July 27, 2017
Poughkeepsie, New York

ENTER:


MARIA G. ROSA, J.S.C.

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Rhinebeck, NY 12572

Pursuant to CPLR §5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.

EXHIBIT E



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Matter of Red Wing Props., Inc. v Town of Rhinebeck
Supreme Court, Appellate Division, Second Department, New York | June 3, 2020 184 A.D.3d 577 125 N.Y.S.3d 171 2020 N.Y. Slip Op. 03119 (Approx. 3 pages)

****1 In the Matter of Red Wing Properties, Inc., Appellant,**

v

Town of Rhinebeck et al., Respondents.

Supreme Court, Appellate Division, Second Department, New York

194/17, 2017-09563

June 3, 2020

**CITE TITLE AS: Matter of Red Wing Props., Inc. v Town of
Rhinebeck**

HEADNOTE

Municipal Corporations

Zoning

Nonconforming Use

Bond, Schoeneck & King, PLLC, Syracuse, NY (Kevin M. Bernstein and Ryan P. Keleher of counsel), for appellant.

Warren S. Replansky, P.C., Rhinebeck, NY, for respondents Town of Rhinebeck and another, and Grant & Lyons, LLP, Rhinebeck, NY (John F. Lyons and Kimberly A. Garrison of counsel), for respondents Town of Rhinebeck Zoning Enforcement Officer and another (one brief filed).

In a hybrid proceeding pursuant to CPLR article 78, inter alia, to review a determination of the Town of Rhinebeck Zoning Board of Appeals dated December 21, 2016, confirming a determination of a zoning enforcement officer dated February 25, 2016, denying the petitioner/plaintiff's application for a determination that it has a vested right to mine its entire parcel of property as a prior nonconforming use, and action, inter alia, for a declaratory judgment, the petitioner/plaintiff appeals from an order and judgment (one paper) of the Supreme Court, Dutchess County (Maria G. Rosa, J.), dated July 27, 2017. The order and judgment, insofar as appealed from, denied the petitioner/plaintiff's motion, in effect, for summary judgment declaring that it has a vested right to mine its entire parcel of property as a prior nonconforming use, denied the petition, and dismissed the proceeding.

Ordered that the order and judgment is modified, on the law, (1) by deleting the provision thereof denying the petitioner/plaintiff's motion, in effect, for

summary judgment declaring that it has a vested right to mine its entire parcel of property as a prior nonconforming use, and substituting therefor a provision granting the motion to the extent of declaring that the petitioner/plaintiff has a vested right to mine 94 acres of its property, and (2) by deleting the provision thereof denying the petition and dismissing the proceeding, and substituting therefor a provision granting the petition to the extent of annulling so much of the determinations dated December 21, 2016, and February 25, 2016, as found that the petitioner/plaintiff does not have a vested right to mine 94 acres of its property as a prior nonconforming use; as so modified, the order and judgment is affirmed insofar as appealed from, with costs to the petitioner/plaintiff payable by the respondents/defendants *578 Town of Rhinebeck, Town of Rhinebeck Town Board, and Town of Rhinebeck Zoning Enforcement Officer, and the matter is remitted to the Supreme Court, Dutchess County, for the entry of an amended judgment, inter alia, declaring that the petitioner/plaintiff has a vested right to mine 94 acres of its property as a prior nonconforming use.

The petitioner/plaintiff (hereinafter the petitioner) is the owner of an approximately 241-acre parcel of property in the Town of Rhinebeck. It has operated a sand and gravel mine on the property since 1993. A New York State Department of Environmental Conservation (hereinafter DEC) permit issued in 2005 allowed the petitioner to mine 37.5 acres of the property.

In 2008, an application was submitted to the DEC for a permit allowing the petitioner to expand the life of mine area to 141 acres, along with a draft environmental impact statement. On a number of occasions, the DEC requested that additional information and/or studies be submitted to support the application, and the petitioner complied with those requests. One of the studies requested by the DEC was a study of an endangered turtle species on the property. That study spanned the course of six years and cost the petitioner in excess of \$125,000. In 2010, a revised draft environmental impact statement was submitted to the DEC, which reduced the scope of the proposed expansion to 124 acres. In February 2015, the petitioner submitted another revised draft environmental impact statement to the DEC, which further reduced the scope of the proposed expansion to 94 acres.

In September 2015, while the petitioner's expansion application to the DEC was still pending, the Town enacted a new zoning law that allowed mining on only those lands in the Town upon which there were existing, DEC-permitted mining operations. The petitioner then submitted an application to the Town's Zoning Enforcement Officer (hereinafter ZOE) for a determination that it has a vested right to mine on the entirety of the subject property in spite of the new zoning law based on a prior nonconforming use. In a determination dated February 25, 2016, the ZOE denied the petitioner's application. Upon the petitioner's appeal, the Town's Zoning Board of Appeals (hereinafter ZBA) confirmed the ZOE's determination.

The petitioner subsequently commenced this hybrid proceeding pursuant to CPLR article 78, inter alia, to review the ZBA's determination and action, among other things, for a declaratory judgment, and moved, in effect, for summary judgment declaring that it has a vested right to mine its entire parcel of *579 property as a prior nonconforming use. The Supreme Court

denied the motion and the petition, and dismissed the proceeding. The petitioner appeals.

" '[N]onconforming uses or structures, in existence when a zoning ordinance is enacted, are, as a general rule, constitutionally protected and will be permitted to continue, notwithstanding the contrary provisions of the ordinance' " (*Glacial Aggregates LLC v Town of Yorkshire*, 14 NY3d 127, 135 [2010], quoting *People v Miller*, 304 NY 105, 107 [1952]). " 'By its very nature, quarrying involves a unique use of land [A]s a matter of practicality as well as economic necessity, a quarry operator will not excavate his entire parcel of land at once, but will leave areas in reserve, virtually untouched until they are actually needed' " (*Buffalo Crushed Stone, Inc. v Town of Cheektowaga*, 13 NY3d 88, 98 [2009], quoting *Matter of Syracuse Aggregate Corp. v Weise*, 51 NY2d 278, 285 [1980]). "[W]here . . . the owner engages in substantial quarrying activities on a distinct parcel of land over a long period of time and these activities clearly manifest an intent to appropriate the entire parcel to the particular business of quarrying, the extent of [the] protection afforded by the nonconforming use will extend to the boundaries of the parcel even though extensive excavation may have been limited to only a portion of the property" (*Matter of Syracuse Aggregate Corp. v Weise*, 51 NY2d at 286).

Here, on its motion, in effect, for summary judgment, the petitioner demonstrated that it engaged in substantial quarrying activities on a distinct parcel of land over a long period of time. The petitioner also demonstrated that in 2008, it manifested its intention to engage in mining activities throughout its entire parcel by submitting a permit application to the DEC, which permit was necessary in order for any mining activity, or preparatory activity, to proceed. Until the DEC issued a permit, the petitioner could not enlarge its extant mining operation. The petitioner also showed that it was pursuing its application with the DEC as expeditiously as possible. In February, 2015, before the Town enacted the subject ordinance, the petitioner amended its application so as to cover only 94 acres. Consequently, while the petitioner's original DEC application manifested its intention to mine its entire parcel, its 2015, pre-ordinance amendment, in effect, reflected its intention to utilize only 94 acres. Thus, the petitioner demonstrated that it has a vested right to mine those 94 acres as a prior nonconforming use (see *Jones v Town of Carroll*, 15 NY3d 139, 144-146 [2010]; *Glacial Aggregates LLC v Town of Yorkshire*, 14 NY3d at 138; ***580** *Buffalo Crushed Stone, Inc. v Town of Cheektowaga*, 13 NY3d at 103; *Matter of Syracuse Aggregate Corp. v Weise*, 51 NY2d at 286-287). In opposition, the respondents/defendants failed to raise a triable issue of fact. Further, for the same reasons, the petitioner demonstrated that so much of the ZBA's determination as found that the petitioner does not have a vested right to mine those 94 acres was affected by an error of law, arbitrary, and capricious (see CPLR 7803 [3]).

Accordingly, the Supreme Court should have granted the petitioner's motion to the extent of declaring that the petitioner has a vested right to mine 94 acres of its property as a prior nonconforming use, and should have annulled the determinations of the ZOE and the ZBA to the extent that they found otherwise.

Since this is, in part, a declaratory judgment action, we remit the matter to the Supreme Court, Dutchess County, for the entry of an amended judgment declaring, inter alia, that the petitioner has a vested right to mine 94 acres of its property as a prior nonconforming use (see *Lanza v Wagner*, 11 NY2d 317, 334 [1962]). Scheinkman, P.J., Balkin, Chambers and Wooten, JJ., concur.

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EXHIBIT F

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

Present:

Hon. Maria G. Rosa, Justice

RED WING PROPERTIES, INC.,

Plaintiff-Petitioner,

DECISION AND ORDER

-against-

Index No.: 2017-194

TOWN OF RHINEBECK, TOWN OF RHINEBECK
TOWN BOARD, TOWN OF RHINEBECK ZONING
ENFORCEMENT OFFICER AND TOWN OF
RHINEBECK ZONING BOARD OF APPEALS,

Defendants-Respondents.

The following papers were read on Plaintiff-Petitioner's ("Red Wing") order to show cause (1) to hold the Town of Rhinebeck Zoning Enforcement Officer ("ZEO") and the Town of Rhinebeck Zoning Board of Appeals ("ZBA") in contempt for failing to comply with the Decision and Order of the Appellate Division, Second Department dated June 3, 2020 and this Court's Amended Judgment dated July 22, 2022; (2) to declare the ZEO's Notice of Violation – Order to Remedy dated April 27, 2021 null and void; (3) to declare the ZBA Resolution on ZBA Case No. 1017 null and void; and (4) to grant a preliminary and permanent injunction restraining the Defendants-Respondents from requiring special use permits, site plan approval and/or any other permits or approvals for mining activities on Red Wing's 94-acre area of its property at issue:

ORDER TO SHOW CAUSE

BERNSTEIN AFFIRMATION IN SUPPORT WITH EXHIBITS A – J

DOHERTY AFFIDAVIT IN SUPPORT WITH EXHIBITS A – E

MEMORANDUM OF LAW IN SUPPORT

LYONS AFFIRMATION IN OPPOSITION WITH EXHIBITS A – G

REPLANSKY AFFIRMATION IN OPPOSITION WITH EXHIBITS A – E

BERGEN AFFIRMATION IN OPPOSITION

MEMORANDUM OF LAW IN OPPOSITION

BERNSTEIN REPLY AFFIRMATION

DOHERTY REPLY AFFIDAVIT

In this hybrid Article 78/Declaratory Judgment action to, *inter alia*, review a determination of the ZBA dated December 21, 2016, confirming a determination of the ZEO dated February 25, 2016, denying Red Wing's application for a determination that it has a vested right to mine its entire 241-acre parcel as a prior nonconforming use, this Court issued a Decision, Order and Judgment dated July 27, 2017 declaring that Red Wing did not have a vested right to mine its entire 241-acre parcel as a prior nonconforming use, denied the petition and dismissed the action. Thereafter, Red Wing appealed. By Decision and Order dated June 3, 2020, the Appellate Division, Second Department modified this Court's order, holding that Red Wing has a vested right to mine 94 acres of its property as a prior nonconforming use and remitted the matter to this Court for the entry of an amended judgment. Subsequently, this Court issued an Amended Judgment dated July 22, 2020 and an Order and Judgment dated September 15, 2020 in accordance with the Second Department's decision.

By way of background, Red Wing is a sand and gravel mining business that owns a 241-acre property in the Town of Rhinebeck ("the Town" or "Rhinebeck"). The property is in two zoning districts, to wit: the Mining Overly ("Mi-O") District and the RC-5 Zoning District. Under the Town's current Zoning Law, "extractive operations and soil mining" is a permitted use within the Mi-O District upon receipt of a special use permit and site plan approval from the Town Planning Board. "Extractive operations and soil mining" is not a permitted use in the RC-5 Zoning District. 37.5 acres of Red Wing's property is in the Mi-O District and is the subject of a Mined Land Reclamation Law permit issued by the New York State Department of Environmental Conservation ("DEC"). This area is referred to as the "existing life-of-mine area." The remainder of the property is in the RC-5 Zoning District. Pursuant to the Second Department's June 3, 2020 Decision and Order, Red Wing has a vested right to mine 94 acres of its property as a nonconforming use. Red Wing contends that this 94-acre area is comprised of the 37.5-acre existing life-of-mine area within the Mi-O District and 56.5 acres outside the Mi-O District (this area is referred to as the "Expansion Area").

Following the above referenced proceedings, in 2021, Red Wing applied for and received a modification of its mining permit from the DEC. The modified permit authorized continued mining and processing of sand and gravel from a maximum of 32 acres of a 43-acre total life of mine ("LOM") boundary, as well as the inclusion of a new 5-acre mine access road to the LOM to allow excavation of a 9-acre, 35-foot-deep pond within the approved 43-acre total LOM area. Red Wing contends that the 32 acres and the mine access road are within the 94-acre area of its property of which they have a vested right to mine as a prior nonconforming use.

On or about March 22, 2021, Red Wing contacted the Rhinebeck Highway Superintendent to advise him of the upcoming construction of the mine access road. Red Wing contends that this was done as a courtesy and that it did not need permission from the Highway Superintendent to construct the road. The following day, the Highway Superintendent inspected Red Wing's property and he observed road widening and improvement activities on the property.

Thereafter, on April 27, 2021, the ZEO issued a Notice of Violation ("NOV") ordering Red Wing "to terminate and cease and desist all access road construction and other extractive mining activities at the mine location until such time as special use permits are applied for and granted by the Town of Rhinebeck Planning Board." The ZEO determined that Red Wing had: (a) constructed

a mine access road; (b) continued mining activities on the property; (c) conducted extractive operations and soil mining, including ingress and egress to and from the mine; and (d) extracted approximately 217,800.2 square feet of materials. The ZEO further determined that these actions were taken without the issuance of a special use permit or site plan approvals by the Town Planning Board, and thus, Red Wing was in violation of various sections of the Town's Zoning Law.

Red Wing appealed the ZEO's determination to the ZBA arguing that special use permits and site plan approval were not required because the mine access road is outside the Mi-O District, and therefore not subject to Zoning Law §125-68(FF), which governs the issuance of a special permit for extractive operations and soil mining in the Mi-O District. Red Wing further argued that in accordance with the Second Department's June 3, 2020 Decision and Order, Red Wing has a vested right to mine the Expansion Area and the existing life-of-mine area and they do not need special use permits or site plan approval under Rhinebeck's Zoning Law. After holding three public hearings and conducting a site visit, the ZBA conducted a *de novo* review and issued a determination on December 15, 2021 affirming the majority of the ZEO's determination. The ZBA acknowledged the Second Department's decision that Red Wing had a vested right to mine 94 acres of its property as a nonconforming use. The ZBA found that the existing life-of-mine area is a conforming use within the Mi-O District, and that if a use is subject to a special use permit, it is not a nonconforming use. The ZBA determined that

There is nothing in the Appellate Division Decision that would suggest otherwise, and nothing in that decision that states [Red Wing] can continue its extractive operations and soil mining *carte blanche* without the need for any local approvals. The Appellate Division Decision only states that [Red Wing] had established a nonconforming use over a portion of its Property.

The ZBA further noted that the DEC permit did not exempt Red Wing from receiving any necessary local approvals from the Town, but instead made it Red Wing's responsibility to obtain any approvals required to carry out the activities authorized by the DEC permit. Thus, the ZBA determined that a special use permit and site plan approval was required for that portion of Red Wing's property which was within the Mi-O district.

With respect to the mine access road, the ZBA concluded that the road is a use appurtenant to the "extractive operation and soil mining" use and thus considered part of that use. The ZBA further concluded generally that use of the mine access road through the RC-5 District to access the "extractive operation and soil mining" use in the Mi-O District would not be permitted. However, because the Second Department held that Red Wing has a vested nonconforming use over a portion of its property in the RC-5 District over which the access road is constructed, the ZBA determined that the mine access road was a nonconforming use within the RC-5 District. The expansion and enlargement of nonconforming uses is governed by Rhinebeck Zoning Law §125-101, which mandates that if a nonconforming use is the type of use which would require a special use permit or site plan approval, and that nonconforming use is expanded, enlarged or has site improvements on it, then the expansion, enlargement or site improvement requires a special use permit and site plan approvals issued by the Town Planning Board. Thus, the ZBA concluded that Red Wing was required to obtain a special use permit and site plan approval for the mine access road as an enlargement or expansion of a nonconforming use under Rhinebeck Zoning Law

§125-101. The ZBA further concluded that based upon photographs taken of the mine access road area in 2016 compared to the ZBA's site visit in October 2021, it was evident that Red Wing had performed considerable improvements to the road, transforming it from a "rough farm path" to a "two-lane road." Finally, the ZBA concluded that the mine access road fell within the definition of a driveway as defined the Rhinebeck Zoning Law, and therefore, a driveway permit was required for the construction of same.

Based on these findings, the ZBA upheld that portion of the NOV which determined that construction of the mine access road and continuation of mining activities without acquiring a special use permit and site plan approval violated Rhinebeck's Zoning Law §§125-65(A); 125-65(C), 125-68(FF)(5) and 125-68(FF)(6). The ZBA overturned the NOV to the extent that the ZEO issued a violation for removal of trees and excavation under Rhinebeck Zoning Law §125-66(NN).

Red Wing now moves by order to show cause (1) to hold the Town of Rhinebeck Zoning Enforcement Officer ("ZEO") and the Town of Rhinebeck Zoning Board of Appeals ("ZBA") in contempt for failing to comply with the Decision and Order of the Appellate Division, Second Department dated June 3, 2020 and this Court's Amended Judgment dated July 22, 2022; (2) to declare the ZEO's Notice of Violation – Order to Remedy dated April 27, 2021 null and void; (3) to declare the ZBA Resolution on ZBA Case No. 1017 null and void; and (4) to grant a preliminary and permanent injunction restraining the Defendants-Respondents from requiring special use permits, site plan approval and/or any other permits or approvals for mining activities on Red Wing's 94-acre area of its property at issue.

Red Wing argues that because it has a vested right to mine the 94-acre parcel as a nonconforming use, it is not required to obtain any permit or approval from the Town prior to engaging in mining activities, including the construction of the mine access road, and construction of a scale house and a breakroom. In opposition, the Town Defendants contend that neither the Second Department Decision and Order, nor this Court's Amended Judgment and Decision and Order can be interpreted to mean that Red Wing is exempt from Rhinebeck's Zoning Law.

In order to prevail on a motion for contempt, the moving party must prove by clear and convincing evidence: (1) the existence of a clear and lawful mandate of the court; (2) that the party alleged to have disobeyed the order was aware of its terms and (3) that the moving party's rights were prejudiced (*see El-Dehdan v El-Dehdan*, 26 NY3d 19, 29 [2015]). "It is not necessary that the disobedience be deliberate or willful; rather, the mere act of disobedience, regardless of its motive, is sufficient if such disobedience defeats, impairs, impedes, or prejudices the rights or remedies of a party" (*Gomes v Gomes*, 106 AD3d 868, 869 [2d Dept 2013]). Nor is it necessary for the movant to show that alternative remedies to contempt have been pursued unsuccessfully or that resort to such remedies would be ineffectual (*see Cassarino v Cassarino*, 149 AD3d 689 [2d Dept 2017]).

In the absence of a clear and lawful mandate from the Court, a party cannot be held in contempt. Here, contrary to Red Wing's argument, there is no unequivocal mandate in the Second Department's decision which indicates that Red Wing's nonconforming use status relieves it from complying with the regulatory process for obtaining necessary permits and site plan approval in

accordance with Rhinebeck's Zoning Law, and therefore no mandate exists which would support a contempt finding (*see Sterngass v Town Bd. of Clarkstown*, 27 AD3d 550, 550-551 [2d Dept 2006, *lv denied* 7 NY3d 715 [2006]]).

The Court further finds that Red Wing is not entitled to either a preliminary or permanent injunction restraining the Defendants-Respondents from requiring special use permits, site plan approval and/or any other permits or approvals for mining activities on Red Wing's 94-acre area of its property. "The decision to grant a preliminary injunction is a matter ordinarily committed to the sound discretion of the court hearing the motion" (*159 Smith, LLC v Boreum Hill Prop. Holdings, LLC*, 191 AD3d 741, 742 [2d Dept 2021]). "The party seeking a preliminary injunction must demonstrate (1) a likelihood of success on the merits, (2) danger of irreparable harm in the absence of an injunction, and (3) a balance of the equities in favor of the injunction" (*Merling v Ash Dev., LLC*, 198 AD3d 743, 745 [2d Dept 2021]). "To sufficiently plead a cause of action for a permanent injunction, a plaintiff must allege that there was a violation of a right presently occurring, or threatened and imminent, that he or she has no adequate remedy at law, that serious and irreparable harm will result absent the injunction, and that the equities are balanced in his or her favor" (*Hogue v Vil. of Dering Harbor*, 199 AD3d 900 [2d Dept 2021] [internal quotations and citations omitted]). However, "injunctive relief is simply not available when the plaintiff does not have any ... substantive cause of action against [the] defendants" (*id.*).

As outlined above, Red Wing has not demonstrated a likelihood of success on the merits, as there is no unequivocal mandate in the Second Department decision permitting it to continue to use its property for extractive and soil mining purposes without first obtaining the necessary permits and approvals from the Town Planning Board. To the contrary, the ZBA expressly acknowledged that Red Wing has a right to use a portion of its property for extractive and soil mining use outside of the Mi-O district as a nonconforming use. Moreover, Red Wing has not demonstrated irreparable harm, as it is not prohibited from mining on its property, but instead is required to obtain the requisite permits and site plan approvals. There is no refusal by Defendants-Respondents to comply with the directives of this court or the Appellate Court. They simply require the appropriate permits. For these same reasons, Red Wing is not entitled to a permanent injunction.

To the extent Red Wing seeks to nullify and void the NOV and ZBA determination based upon contempt, that application is denied. Red Wing's remaining challenges to the NOV and ZBA are not properly brought before this Court on an order to show cause for contempt. The proper remedy is to bring an Article 78 proceeding challenging those determinations. Moreover, the various issues raised by Red Wing with respect to its application before the Planning Board are similarly not properly before this Court. The Planning Board is not a party to this action. Should Red Wing choose to challenge any determination made by the Planning Board, it may do so in an appropriate Article 78 proceeding.

Based upon the foregoing, it is hereby

ORDERED that Red Wing's order to show cause is denied in its entirety.

The foregoing constitutes the decision and order of the Court.

Dated: August 30, 2022
Poughkeepsie, New York

ENTER:



MARIA G. ROSA, J.S.C.

Scanned to the E-File System only

Pursuant to CPLR §5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.

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Rhinebeck, NY 12572

EXHIBIT G

STATE OF NEW YORK : SUPREME COURT
APPELLATE DIVISION
SECOND JUDICIAL DEPARTMENT

-----X

In the Matter of the Application for a Declaratory
Judgment, Money Judgment, and for Review under
Article 78 of the Civil Practice Law and Rules, by

RED WING PROPETIES, INC.,

Plaintiff-Petitioner-Appellant,

-against-

TOWN OF RHINEBECK, TOWN OF RHINEBECK
TOWN BOARD, TOWN OF RHINEBECK ZONING
ENFORCEMENT OFFICE AND TOWN OF
RHINEBECK ZONING BOARD OF APPEALS,

Defendants-Respondents-Respondents.

-----X

STATE OF NEW YORK)
 :
COUNTY OF DUTCHESS)

AFFIRMATION IN
OPPOSITION TO
PLAINTIFF-
PETITIONER-
APPELLANT'S
MOTION
FOR AN ORDER
PURSUANT TO CPLR
§2221 RESETTLING
AND CLARIFYING
THE COURT'S JUNE 3,
2020 DECISION AND
ORDER

Appeal No.: 2017-09563
Index No.: 194/17

WARREN S. REPLANSKY, affirms under penalties of perjury as follows:

1. That I am the attorney to the Town of Rhinebeck and have been the
attorney to the Town during all legal and administrative proceedings which
preceded the instant motion. As such, I am fully familiar with the facts set forth.

2. I submit this Affirmation in opposition to the Plaintiff-Petitioner-Appellant Red Wing Properties, Inc.'s (hereinafter "Red Wing") motion pursuant to CPLR §2221 "resettling and clarifying" this Court's June 3, 2020 Decision and Order as to whether local approvals are required for Red Wing to mine its 94 acre parcel of land in the Town of Rhinebeck, Dutchess County, New York.

3. I am submitting this affirmation in addition to the affirmation and submission of Grant & Lyons (attorneys for the Town of Rhinebeck Zoning Board of Appeals) also submitted in opposition to this motion and fully support the factual and legal arguments made in those opposition papers.

4. For purposes of judicial economy, I am including in this affirmation both factual and legal arguments in opposition to Red Wing's motion.

PRELIMINARY STATEMENT

5. Litigation and administrative proceedings relating to Red Wing's mine in Rhinebeck have a long and tortuous administrative history. Prior to the Appellate Division decision, Red Wing had applied for a mining permit from DEC to mine 94 acres of a 241 acre property, including the creation of a mining access road from the adjacent Town road to the mining site. Prior to the issuance of permits from the Town and DEC, the Town of Rhinebeck amended its Zoning Code to be consistent with its 2009 Comprehensive Plan by redrawing the Mining Overlay District to limit extractive mining to those areas of the Town which had

already received DEC permits for mining prior to 2009. Red Wing requested a determination from the Town of Rhinebeck Zoning Enforcement Officer (ZEO) that it had a vested right to conduct mining on its property outside of the Mining Overlay District, as a non-conforming use. The ZEO denied Red Wing's claim that it had a nonconforming use, and Red Wing appealed that determination to the Town of Rhinebeck Zoning Board of Appeals. After the conduct of extensive hearings, the ZBA ruled against Red Wing and determined that Red Wing did not have a valid non-conforming right to mine the subject property and was thus could not conduct mining activities in areas of Red Wing's property which were now outside the boundaries of the Town's Mining Overlay District.

6. The ZBA decision was challenged in an Article 78 Petition and the Supreme Court, Dutchess County in a well-reasoned Decision and Order dated July 27, 2017 (Rosa, J.) upheld the ZBA determination and determined, in relevant part, that Red Wing had not established the requisite facts to support a determination that it had a vested right as a non-conforming use to mine that portion of the property outside of the Mining Overlay District. (See, Exhibit "L" annexed to Red Wing's motion papers.)

7. This Court on appeal, modified the Decision of the Supreme Court holding, in relevant part, that Red Wing had, in fact, established its intent to extend its gravel mining operation into portions of its other previously unmined and

unpermitted areas of its property and that Red Wing was, as a result, exempt from the prohibition on extractive mining contained in the Town's amended zoning code. See, *Red Wing v. Town of Rhinebeck*, 184 AD3d 577 (2d Dept. 2020).

8. Red Wing did not in its appeal to the Appellate Division argue it was exempt from special permit and site plan approval requirements of the Town Code with regard to extractive mining, but only that it had established sufficient facts to demonstrate that it had exhibited the requisite intent to mine the additional portions of the property so as to qualify as a nonconforming use, thereby permitting Red Wing to make application both to DEC and to the Town of Rhinebeck for its mining permits.

9. Indeed, this Court did not address, on appeal, the arguments now made by Red Wing in its motion to resettle that the Appellate Division decision not only established Red Wing's nonconforming use status but also, by virtue of that status, exempted Red Wing from making application to the Town of Rhinebeck Planning Board for special use and site plan approval.

10. Subsequent to this Court's decision, Red Wing filed a motion in Supreme Court, Dutchess County, seeking to hold the Town of Rhinebeck and its Boards in contempt for failure to comply with the Second Department Decision dated June 3, 2020 and to grant Red Wing a preliminary and permanent injunction from requiring special use permit and site plan approval for its gravel mine

expansion. In a well-reasoned decision, the Supreme Court, Dutchess County (Rosa, J.), the Court dismissed Red Wing's contempt motion, holding that:

“There is nothing in the Appellate Division decision that would suggest otherwise and nothing in that decision [Red Wing] can continue extractive mining operations and soil mining *carte blanche* without the need for any local approvals.”

A copy of Judge Rosa's Decision and Order dated August 30, 2022 is annexed hereto as Exhibit “A”.

11. Red Wing has filed a Notice of Appeal from Judge Rosa's August 30, 2022 decision but that appeal has not, to date, been perfected.

12. Red Wing now seeks to circumvent of the requirement of appealing Judge Rosa's decision by filing this motion pursuant to CPLR §2221 seeking an Order resettling and clarifying the Appellate Division June 3, 2020 decision, by holding, in relevant part, that its decision explicitly exempted Red Wing from even applying for any municipal approvals for its mine expansion.

POINT I

CPLR §2221 IS AN IMPROPER REMEDY FOR THE RELIEF SOUGHT BY RED WING

13. Red Wing's motion to resettle filed over two years and four months after the Appellate Division decision is not only untimely, but the relief sought is not available to Red Wing pursuant to CPLR §2221.

14. The remedy of a motion to resettle has been well described by one

well-respected civil practice commentator as follows:

“A motion to resettle is sometimes confused with one to reargue or renew. It should not be. A motion to resettle an order is a procedure designed to correct errors or omissions as to the form of an order, or for clarification of the decision. *Foley v. Roche*, 68 A.D.2d 558, 566, 418 N.Y.S.2d 588, 593 (1st Dept. 1979); *see* Siegel & Connors, New York Practice §250 (6th ed. 2018). A motion for resettlement ‘may not be used to effect a substantive change in a prior decision.’ *Able v. Able*, 209 A.D.2d 972, 972, 619 N.Y.S.2d 461, 462 (4th Dept. 1994). Rather, a motion to resettle contemplates an endeavor to reflect the disposition more accurately. Consistent with this principle, CPLR 5517(a)(2), the only provision in the CPLR to expressly recognize the procedure, provides that the granting of a motion for resettlement of an order does not affect an appeal from the original order. *See* Siegel & Connors, New York Practice §532 (6th ed. 2018). Furthermore, an order on a motion to resettle is not appealable. *See also Zari v. Zari*, 155 A.D.2d 452, 547 N.Y.S.2d 112 (2d Dept. 1989) (‘[N]o appeal lies from an order denying resettlement of the decretal paragraphs of a prior order.’); *Banat v. Banat*, 41 A.D.2d 960, 344 N.Y.S.2d 12 (2d Dept. 1973) (holding that an order denying a motion to resettle a judgment is unappealable).” CPLR Supplementary Commentaries (Professors Connors 2022, Section C2221:9D Motion to Resettle Distinguished)

15. Given that the issue of whether, or not, Red Wing’s status as a nonconforming use is exempted from the requirement of an application to the Planning Board for special permit and site plan approval was not even raised by either party on appeal, nor addressed or mentioned by this Court in its decision, CPLR §2221 may not be invoked by Red Wing to obtain the relief it seeks.

Moreover, as shall be argued, *infra*, a contrary ruling by this Court would, upon information and belief, constitute a landmark decision not previously addressed either by any of the Appellate Divisions or the Court of Appeals. It would patently be absurd for such an important decision to be made by this Court on a motion to resettle.

16. For these reasons, including the two year four month delay in making such a motion, should militate against any granting of Red Wing's motion by this Court.

17. As noted, *supra*, in order to succeed in this motion, Red Wing would have had to demonstrate that this Court made a clerical error in the form of its order or, at the very least, there was some ambiguity in the Court's decision, which required clarification. Red Wing has not provided any such proof in its moving papers.

POINT II

THE APPELLATE DIVISION DECISION DID NOT ADDRESS OR CONTAIN AN EXPLICIT OR IMPLICIT MANDATE EXEMPTING RED WING FROM THE REQUIREMENTS OF THE TOWN OF RHINEBECK CODE FOR SPECIAL PERMIT AND SITE PLAN APPROVAL FOR ITS GRAVEL MINING ACTIVITIES

18. Other than modifying the decision of the court below by holding that Red Wing had established the requisite intent to mine portions of its previously unmined 94 acre portion of its property outside the Mi-O District, there is no

mention whatsoever in the Appellate Division order of any exemption of Red Wing from the permitting requirements of the Town of Rhinebeck or DEC, nor is there any direction whatsoever contained in the order to the Town to issue mining permits to Red Wing without the requisite application and approval, as required by the Town Code. Clearly, for this reason standing alone, Red Wing's motion must be denied in its entirety.

19. Traditionally, nonconforming uses are those uses of a property lawfully established at the time of the enactment of a zoning code prohibiting such use. If the property owner can demonstrate that its property had "legally" established a use or building on the property prior to the enactment of the zoning code prohibiting such use or building, it is well established law that the use must be permitted to continue notwithstanding the passage of the zoning amendment prohibiting the same. In such traditional zoning cases to establish nonconforming use status, the property owner is required to establish that prior to the enactment of the code, the use of the property or construction and use of the building or structure on the same had been lawfully established. In such cases in order to sustain its burden of proof that a protected nonconforming use existed, the property owner is required to establish not only that the use of the property preceded the enactment of the regulatory provisions of the Code, but that required permits or approvals were granted for such use.

20. Because of the unique nature of the business of extractive mining, our courts have carved out a limited exception to the usual burden imposed upon property owners in establishing the existence of a nonconforming use. As a result, in cases involving mining, the courts have afforded protection to those properties by holding that a nonconforming use status will extend to the boundaries of the property even though the excavation activities may have been limited to only a portion of the property. See, cases cited *supra*.

21. Prior to the issuance of the Appellate Division decision, Red Wing appealed the ZEO's determination that Red Wing did not have a nonconforming use to the Zoning Board of Appeals, which, after the conduct of extensive hearings and the taking of evidence, determined that Red Wing had not established its entitlement to protection as a nonconforming use because it had not manifested the requisite intent to mine the entirety of its property holdings. The ZBA's decision was appealed to the Supreme Court, Dutchess County through a Hybrid Article 78 proceeding. The Supreme Court found that the evidence of prior existing use of the property as established in the record of proceedings before the ZBA did not demonstrate that Red Wing had the requisite manifestation of intent to utilize its entire property for the purposes of gravel mining and, as a result, the ZBA determination was upheld by the Supreme Court. The Supreme Court dismissed the Hybrid Article 78 Petition and refused to declare the Town's amendment to its

Code with regard to the Mining Overlay District unconstitutional.

22. On appeal to the Appellate Division, the Supreme Court's decision was modified. The Appellate Division determined that the Supreme Court should have granted the Petitioner's motion to the extent that Red Wing had established a vested right to mine 94 acres of its property as a prior nonconforming use. The Appellate Division, however, did not declare the Town's amendment to its Mining Overlay District unconstitutional and the legislation remained intact. The Appellate Division also determined that the actions of the Town did not result in the taking of Red Wing's property and, thus, the dismissal of that portion of Red Wing's action remained intact.

23. Red Wing now argues, as it did in its motion in Supreme Court to hold the Town in contempt, that the determination of the Appellate Division relieved Red Wing of the requirement to apply for, and obtain, a special use permit and site plan approval for its gravel mining operation pursuant to either §125-68(FF) or §125-101 of the Code and that Red Wing is not required to obtain a driveway opening permit in accordance with code and rules and regulations of the Town of Rhinebeck. Nothing could be further from the truth.

24. There is nothing in the Appellate Division decision which either expressly, or impliedly, suggests that Red Wing's nonconforming use status relieves it from complying with the regulatory process for extractive mining and

major excavation activities as set forth in the Rhinebeck Code. If Red Wing's argument were to be sustained by this Court, this Court would have to determine that a nonconforming use is entitled to greater protection from the regulatory process of a Town's Zoning Code than is afforded to a conforming use. While nonconforming uses of property are tolerated, the overriding policy of zoning is aimed at their eventual elimination.

25. It is well accepted law in the State of New York that zoning codes are not to be interpreted in a manner which achieves absurd or unintended consequences. See, *People v. Santi*, 3 NY3d 234, 242 (2004); *Hispanic Counseling Center Inc. v. Incorporated Village Hempstead*, 237 F.Supp.2d 284, 295 (E.D.N.Y. 2002). One would be hard-pressed to find a more absurd result than if this Court was to determine that Red Wing could expand mining within its 94 acres beyond the 37.5 acres previously permitted by the Town and DEC as a nonconforming use, but that somehow that such nonconforming use status also exempted Red Wing from compliance with the special permitting, site plan and other regulatory requirements for the establishment, and conduct, of extractive mining major excavation activity within the Town. There would simply be no rational basis for a nonconforming use to be exempted from the regulatory permitting requirements that are imposed upon identical conforming uses.

26. Indeed, a fair reading of the Appellate Division decision reveals that

there is nothing in that decision which either expressly, or impliedly, grants Red Wing the right to simply commence gravel mining operations on the 94 acres without having first obtained a special use permit and site plan approval from the Town in accordance with its code. The Appellate Division decision determined only that Red Wing had established a yet unpermitted right to utilize its property for gravel mining in spite of the amendment made to the Town of Rhinebeck Code which prohibited such use. There is nothing in that decision to suggest that such unique nonconforming status worked to exempt Red Wing from complying with the Town's permitting requirements for gravel mining operations within the Mining Overlay District. Such a determination, as noted, would lead to an absurd result where a property owner could evade the permitting requirements of a town code by manifesting an intent to mine its property without making the requisite application for mining permits thus exempting itself from permitting requirements.

27. As the Courts have correctly noted “(t)he overriding policy of zoning is aimed at the ultimate elimination of nonconforming uses”. Nonconforming uses are generally not favored by municipalities and, as a result, “(t)he policy of zoning embraces the concept of the ultimate elimination of nonconforming uses...” *Mtr. of Harbison v. City of Buffalo*, 4 NY2d 553, 559-560 (1958). See, *Mtr. of PMS Assets v. Zoning Board of Appeals of the Village of Pleasantville*, 98 NY2d 683 (2002); *Mtr. of Aboud v. Wallace*, 94 AD2d 874 (3d Dept. 1983) .Accordingly, our

courts have consistently held that municipalities have the power and authority under its police powers to impose conditions and regulations for the conduct of nonconforming uses provided those conditions are not arbitrary and capricious. See, *Taylor Tree Inc. v. Planning Board of the Town of Montgomery*, 272 AD2d 336 (2d Dept. 2000). The municipal power to regulate nonconforming uses includes even the power to totally eliminate the same through amortization. See, *Mtr. of Harbison v. City of Buffalo*, *supra*.

28. The Town of Rhinebeck's power and authority to regulate through the permitting process even nonconforming uses is reinforced by §125-101 of the Code which provides as follows:

"Any use, structure or building lawfully established prior to the enactment of the Zoning Law or its predecessor, which is not prohibited by the provisions of this chapter, but which requires the issuance of a special use permit or site plan approval, shall be deemed to be a lawful nonconforming use pursuant to this chapter. In the event any such nonconforming use, building or structure is proposed to be enlarged or expanded, or any site improvements are added to the site on which the nonconforming use, building or structure is operated or maintained, special use permit approval in accordance with the special permit requirements of that use and/or site plan approval shall be required only for such expansions, enlargement and/or addition. During the course of such special permit and/or site plan approval process, the Planning Board shall have the power to require such changes, modifications and/or alterations in the nonconforming use, building and/or structure which it determines are necessary to mitigate significant environmental impacts of the use, building and/or

structure identified during the SEQRAA review of the application, or to mitigate any adverse impacts upon neighboring properties and the community to the fullest extent practicable.”

29. That the Town of Rhinebeck retained the power and authority to require Red Wing to apply for, and obtain, the necessary extractive mining, excavating and driveway permits from the Town notwithstanding its nonconforming status, was recognized even by Red Wing in its application to the ZEO and its submission to the courts in conjunction with its appeal from the ZBA’s prior determination. For example, Red Wing, in its February 2, 2016 submission to the Zoning Enforcement Officer, stated as follows:

“Finally, it bears emphasis that a determination that Red Wing has a vested right to mine additional portions of its property does not mean that Red Wing is immune from reasonable regulations by the Town, subject of course of the limits imposed by the Mined Land Reclamation Law. **Indeed, prior to actually mining additional portions of the Property, Red Wing will still need to apply for and obtain a special use permit from the Planning Board.** Such a permit could include reasonable conditions to the extent such conditions were consistent with the Mined Land Reclamation Law.” (Emphasis added)

A copy of said letter is annexed hereto as Exhibit “B”.

30. Additionally, Red Wing, through the affidavit of Paul H. Griggs, President and Principal Geologist of Griggs Land Consulting Geologists Inc., made a similar acknowledgement in its affidavit to the court below wherein it was stated as follows:

“61. The ZBA Decision cites the testimony of Warren Replansky, the Town Board’s attorney, that ‘[n]o excavation has been conducted on the property outside the 37.5 acre life of mine approved by DEC nor has any infrastructure, haul roads, clearing of trees...’ and states that the ZBA has ‘confirmed this is true during a site visit...’

62. Of course this is true – **Red Wing cannot legally engage in any mining activities in areas other than the existing life-of-mine area until it receives a permit to do so.**” (Emphasis added)

A copy of said affidavit is annexed hereto as Exhibit “C”.

31. In a letter to Francis Doherty, Vice President of Red Wing Properties, dated December 7, 2001, Red Wing’s consultant Earth Tech recognized the Town’s regulatory oversight over any expansion of the mine when it stated as follows:

“1. Town Involvement Based upon our experience with similar projects, we believe that the Town of Rhinebeck should be involved in the project from the beginning. **The Town will have both direct regulatory jurisdiction for the expansion, under the special use permit requirements, as well as a critical role in the more ‘subjective’ support/opposition to the expansion that will play a significant role in the SEQR proceedings.** The Town’s perspective on the project could range from (optimistically) support of a large-scale expansion and production increase to (pessimistically) opposition to any aspect of the project, or perhaps some middle-ground (support an expansion but not a big production increase, etc.). The Town’s perspective is paramount to a final permitting strategy; final strategy could range from advancing only those components of the project amenable to the Town to advancing a project over Town opposition.” (Emphasis added)

A copy of Earth Tech's letter is annexed hereto as Exhibit "D".

32. Both Red Wing and DEC have also acknowledged, in the course of Red Wing's application to DEC for a mine land reclamation permit that the Town of Rhinebeck retains jurisdiction over this mine pursuant to its special permit and site plan approval and Town access permits. See, for example, the §2.6 "Approvals" section of the Draft Environmental Impact Statement submitted by Red Wing to DEC, a copy of which is annexed hereto as Exhibit "E". Moreover, the Town of Rhinebeck has been recognized by both Red Wing and DEC in the permitting process before DEC that the Town maintains jurisdiction over the project pursuant to its permitting processes and is, therefore, an involved agency in the SEQRA review of the project before DEC.

33. Finally, it should be noted that even if Red Wing's argument that since its property is not included in the Mining Overlay District, it is exempt from the permitting process were to be accepted as having some validity, it is unquestionable that the 37.5 acre property is still well within the Mining Overlay District, as amended by the Town Board, and, as such, Red Wing is required to make the necessary application to the Town for a mining or expansion of mining within that area. Moreover, since the access road and the mining of the remainder of the 94 acre parcel are uses appurtenant to the original gravel mine operations, they are clearly subject to the Town's Code provisions for regulation of the mining

and excavating and driveway permitting process. See, *Mtr. of Partition Street Corp. v. Zoning Board of Appeals of the City of Rensselaer*, 302 AD2d 65 (3d Dept. 2002).

CONCLUSION

WHEREFORE, for all of the above reasons, Red Wing's motion should be denied in its entirety.

Affirmed under penalties of perjury this 02 day of December, 2022.

WARREN S. REPLANSKY

Comment A54 – Nan Stotzenberg
(Community Planning and Environmental Associates)



Community Planning and Environmental Associates

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To: Town of Rhinebeck
From: Nan Stolzenburg FAICP CEP
Date: February 9, 2023
Re: Review of Red Wing DEIS

Introduction

Community Planning & Environmental Associates has been engaged by the Town of Rhinebeck and tasked with reviewing the September 2008 (Updated September 2022) Draft Environmental Impact Statement (DEIS) submitted to the New York State Department of Environmental Conservation (NYSDEC) by Red Wing Properties, Inc, in connection with its application for a mining permit pursuant to the New York State (NYS) Mined Land Reclamation Law (MLRL) to expand a mine on White School House Road in the Town of Rhinebeck, Dutchess County, NY. I was specifically asked to analyze how the documents address the topic of potential adverse impacts to community character. In order to accomplish that, my work also included review of the Town's Comprehensive Plan and Zoning Law to understand Rhinebeck's definition and characterization of its community character so as to evaluate consistency between their stated community values and the Red Wing mining permit application.

Other documents reviewed for this task include all parts of the DEIS and its appendices, correspondence, and application materials. Other local documents were also reviewed including the Local Waterfront Revitalization Plan, Adopted Greenway Compact, Final Generic Environmental Impact Statement (FGEIS) for the Town's Comprehensive Plan, and Local Law No. 4 of 2015, which was adopted to amend the Town's Zoning Map and the boundaries of the Mining Overlay (Mi-O) Zoning District.

I have a bachelor's degree and master's degree in Wildlife Biology, and a Master's in Regional Planning, and have been inducted as a Fellow of the American Institute of Certified Planners (FAICP). I am one of nine inducted FAICP Fellows in New York State. I also hold specialty certifications from the American Institute of Certified Planners as a Certified Environmental Planner (CEP). My resume and client list are attached to introduce myself more fully.

I am the founder and Principal Planner at Community Planning & Environmental Associates in Berne, NY and specialize in the unique planning needs of small and rural communities throughout New York State. I have almost 30 years of planning experience and have consulted in over 70 communities in upstate NY, including throughout the Hudson Valley. My experience centers around community planning, strategic planning (such as downtown revitalization, open space plans, and local waterfront revitalization projects), environmental planning, and land use regulations. I am also often retained by Planning Boards to assist them in site plan, subdivision, or special use permit reviews. I have decades of experience in

working with SEQRA including review of SEAF/FEAF/EIS's that are part of Planning Board and ZBA project reviews; preparing GEIS's for various actions at the municipal level; and providing SEQR process training to Planning Boards and ZBA's. I was also the principal consultant and writer for NYS DEC in the development of the NYS DEC SEAF and FEAF SEQR workbooks (available at <https://www.dec.ny.gov/permits/90125.html>).

Why Evaluate Community Character?

Evaluation of community character is relevant because this is a topic to be reviewed by the State Environmental Quality Review Act (SEQR). The SEQR Full Environmental Assessment Form (FEAF) Part II, Question 17, requires the Lead Agency to determine if there are any potential environmental impacts related to consistency with community plans. Further, FEAF Part II Question 18 requires the Lead Agency to determine consistency with Community Character. Beyond SEQR, community character is one of those topics that is usually the most important element of a community. Scores of rural and small town comprehensive plans, and their implementing land use regulations thus are oriented to preserving community character. As the principal consultant on dozens of comprehensive plans, I can attest to the high value most small and rural communities place on their community character.

In the subsequent sections of this Memo, I outline how community character, which is of utmost importance to the Town of Rhinebeck, has not been given adequate attention in the SEQR process. I discuss that dating back even to the 2009 DEIS Scoping Document, community character failed to be mentioned, defined, or evaluated in relation to the NYS DEC Mining Permit application. Failure to understand community character and the important role Rhinebeck has placed on this element of its environment, and to fully evaluate potential impacts to it in the DEIS is a significant flaw.

What is Community Character?

The term 'community character' encompasses all the natural and man-made features that makes a place unique. It generally incorporates the concept of 'sense of place'. A community's sense of place is defined through local conditions and values. It is important to note that 'character' does not address solely the visual or aesthetic character of a community. In fact, land uses can have significant effects on a community's character even if that use can't be visually seen. That is because character is the unique combination of all the built and un-built environments, along with the community's economy, demographics, activities, and values. While many places in New York State have similar landscapes and environmental features, each community has their own unique character that is derived from the totality of all its resources, land use patterns, infrastructure, economy, public activities, and community values. Thus, it is critical to define and understand each community's character.

In Rhinebeck, the Town has indeed defined its existing and desired character. This is articulated in the Town's Comprehensive Plan, in its' policies established in the zoning purpose statements, in its other planning documents including the LWRP and the adopted Greenway Compact, and others.

The Town explicitly discusses and defines community character in the FGEIS prepared for the Adoption of the Comprehensive Plan and Zoning Code in 2009 as follows:

The Town's community character is a composite of a number of factors, principally the elements of the natural and physical environment, but also including the substantial number

of historic resources within the community. Community character is also defined by the residential and commercial activity within the Town and the Village of Rhinebeck as well as the periodic events at the Dutchess County Fair Grounds that attract visitors to both the Town and Village.

The Role Community Character has in Rhinebeck.

The Town of Rhinebeck has clearly stated the role of community character throughout its decades of planning, policy-making, and regulatory work. Community character is discussed, articulated, envisioned, and planned for throughout Rhinebeck's many planning and regulatory documents. That role could not be clearer. This is evidenced in the following examples:

- A. Comprehensive Plan (2009) (including numerous studies conducted during development of that plan).
 1. The Plan (page 1.5) establishes a vision statement specifically for community character: "Our guiding principle is that Rhinebeck is an exceptional place because of its desirable rural attributes, outstanding scenic, natural and historic resources, and thriving village and hamlet centers.
 2. Public input for the Plan (page 2.3) indicated that 99% of respondents rated "Rhinebeck's rural/small town atmosphere as a major strength", and that "maintaining rural character" requires serious consideration by all town officials.
 3. Results of Visioning (Page 12) emphasize the role of community character. I note that nowhere in that extensive list or the Plan's visioning statements is heavy industrial activity such as a large-scale mine included. I note too that the Plans' vision statements (pages 2.6 and 2.7) thoroughly discuss a wide variety of desired community aspects related to land use, housing, traffic and transportation, natural resources, agriculture and open space, scenic resources, historic and cultural resources, community facilities, infrastructure and economic development. When taken together, these are all components of Rhinebeck's community character.
 4. At Comprehensive Plan, Chapter 5 "Land Use", page 5.16, there is specific discussion about the need to amend the Zoning Law to restrict mining to existing, active mine sites. Three mines in the area existed at the time the 2009 Comp Plan was adopted, and the Comprehensive Plan is explicit in its policy statement that Rhinebeck could continue allowance for the three existing, active mines, but with no expansion and no new mines. There is no policy direction established in the Plan to promote heavy industry such as large-scale mines. In actuality, the Plan establishes consistent economic policies to promote small-scale, low impact commercial land uses which are described as those businesses that are built to human scale, are locally owned, and tourist-oriented business that respect historic and rural character. A large-scale mine such as proposed by Red Wing is not consistent at all with those stated policies, and there is no discussion in the DEIS related to these points or explanations how the mine expansion could be consistent with that character.
 5. Appendix E (Public Opinion Charts) shows results that 56% of public participants 'strongly agree' and an additional 37% 'agree' that new development should maintain rural character. In many small communities, economic development is presented as a tax benefit to the municipality. That too was examined in Rhinebeck's Comprehensive Plan, which stated that tax benefits were not the main goal for new development (only 20% 'strongly agreed' and

- 36% 'agreed' that new development should aim to expand the tax base). The comprehensive plan points to community goals to have new development that preserves open space, agriculture, and that makes the town more attractive, pedestrian friendly and that changes to the many elements that make up Rhinebeck's character are not desired.
6. The area proposed for the Red Wing mine expansion was specifically considered for things other than mining. For instance, the Comprehensive Plan Figure 9.11 shows the entire area included in the mine expansion area proposed to be within a priority conservation area (Slate Quarry Area). And, Comprehensive Plan Figure 9.13 shows the entire area proposed as part of the Red Wing mine expansion to be within a proposed water resources overlay. Further, at Comprehensive Plan Chapter 5 "Land Use", page 5.16, it is stated that mining should be sunsetted in Rhinebeck.
- B. The New York State Open Space Plan is another example that offers information as to important elements of Rhinebeck's community character. That Plan identifies the importance of the Hudson River National Historic Landmark District (the Rhinebeck/Redhook area) as lands that can be a 'Buffer, Access, or Addition to Historic Sites, Conservation Areas and Parklands'. It includes properties which protect the integrity of existing conservation lands or historic sites. While the specific site proposed for the expansion of the Red Wing mine is not within the Hudson River National Historic Landmark District itself, it is another example of an important component of the full breadth of the Town's character. Certainly, the DEIS should have, but did not, examine any potential adverse impacts to that aspect of Rhinebeck's character.
 - C. Local Waterfront Revitalization Program (2007). Although White Schoolhouse Road is not located within the Local Waterfront Revitalization Area established in this Plan and is therefore, not considered part of the Coastal Zone, the LWRP is a significant planning document that specifically addresses, discusses, and establishes policies related to community character in Rhinebeck. 'Character' is repeatedly addressed in the LWRP related to Rhinebeck's unique landscape, and historic, scenic, residential, and hamlet/village resources throughout. In particular, the following sections are noted:
 1. Page II-23 discusses the rural character of Rhinebeck;
 2. Page II-27 discusses the uniquely attractive visual character of the Town that results from the combined impact of natural and manmade settings; and
 3. Page II-30 Discusses the landscape distinctions that contribute to the scenic character of the town including 1) estate landscape and grounds, 2) pastoral countryside, 3) parkland, and 4) landscape appurtenances (stone walls and tree-lined roads)
 - D. FGEIS for the Comprehensive Plan, Zoning Law, and Freshwater Wetlands Law (2009). This document further defines and discusses community character.
 - E. Local Law No. 4 of 2015 Amending the Town of Rhinebeck Zoning District Maps, Article II, Section 125-16 and Amending the Boundaries of the Mining Overlay Zoning District. This is a significant local law that is very germane to the discussion of community character and the proposed Red Wing expansion. This law recognized the policy towards mining established in the Town's Comprehensive Plan and the need to amend the Mining Overlay Zoning District to

conform to the Plan's objectives and goals more closely. The Comprehensive Plan explicitly established recommendations to accomplish community goals and objectives by regulating potentially polluting land uses. It established an action item that directed the Town to amend the zoning law to "further restrict such activities to existing, active mines" and to "Prohibit the placement of new mines sites within the town." The reasons given for this recommendation directly relate to community character:

- i. Potential disruption of the character of residential areas caused by the heavy industrial characteristics of this land use activity, including associated noise, dust, aesthetics, and traffic.
- ii. Concern for public hearing, safety and welfare when mining is in close proximity to residences and farms.

Local Law No 4 of 2015 recognized, in its SEQRA review, additional information concerning the environmental sensitivity and existence of threatened and species of special concern within the current Mining Overlay District provided by the Town's Conservation Advisory Board. It also concluded that "if new, large scale gravel mines were permitted to be established in, or if existing gravel mines were permitted to be substantially expanded to, those areas of the Mining Overlay District contained in the current Zoning Law, such new mines and/or expansion could have a serious negative impact on the health, safety and welfare of the Town of Rhinebeck and the community character of the area in which the Mining Overlay District currently exists (emphasis added).

Local Law No. 4 of 2015 also notes that the NYS DEC issued a Positive SEQRA determination for the expansion of the mine and their reasoning was also community character related. These reasons included (paraphrased from Local Law No. 4 of 2015):

- i. A substantially different land resource (open water versus upland)
- ii. Adverse visual impacts
- iii. The site is in close proximity to several national/state registered historic resources and has the potential to adversely impact these resources
- iv. Adverse impacts on groundwater
- v. Potential for air quality impacts
- vi. Potential for impacts from truck traffic
- vii. Potential adverse noise impacts
- viii. Potential adverse impact on the Landsman Kill
- ix. Potential adverse impact on Blandings turtle habitat

Purposes of adopting Local Law No. 4 of 2015 were to achieve the goals of the Comprehensive Plan regarding the "regarding the protection, preservation and enhancement of the Town's important natural resources and its physical and visual environment, especially those many important natural resources clustered within the boundaries established for the Mining Overlay District", to preserve and protect important wildlife, wetland, and habitat resources, to preserve and protect aquifer resources, agricultural resources, promote the public safety, health and well-being of Town residents, to help protect town roads and bridges, to further the objectives of the Dutchess County's Greenway Compact Program

- F. Chapter 125 (Zoning), especially Article I (Scope and Purposes), Section 125-3 Purposes.
The purposes of the zoning are clearly detailed to guide development of the Town in accordance with the Comprehensive Plan. Community character plays a large role in those purposes as evidenced throughout Section 125-3. The Zoning's purpose section in total is about community character because it recognizes both natural and manmade elements in Rhinebeck. Character is specifically mentioned in these purpose statements as something to protect, preserve and ensure that new development and infrastructure are built and maintained 'to be consistent with community ideals and values, as expressed in the Town Comprehensive Plan.'
- G. The Greenway Compact is in essence a community character program designed by New York State and Dutchess County to preserve, enhance and develop the "world-renown scenic, natural, historic, cultural and recreational resources of the Hudson River Valley" while maintaining the rural characteristics of towns, villages and hamlets within Dutchess County and to promote the preservation of the County's rural character, natural features and important farmlands.

These are but a few examples of how community character is a critical component and value in the Town of Rhinebeck. While the DEIS evaluates specific environmental resources such as water, air, and wildlife, it does not discuss the totality of potential changes to the character of the community that would result from the largest and most intense mining activity in Town. This is a significant deficiency.

Community Character and the Red Wing Mine Application DEIS

The FEAF Part I, included in the Application materials and signed 12/19/14, neglected to provide full or accurate information about consistency with Rhinebeck's adopted plan (FEAF Part I (C) 6, 7, 8). A careful review of the Comprehensive Plan establishes and defines what Rhinebeck's community character is, and that does not include industrial scale mining. So, answering 'yes' in Part I to the question about consistency with the Plan is erroneous. Further, the answer to Question 17 of the FEAF Part II (Consistency with the Community Plans) should have been that the proposed action is not consistent with adopted land use plans.

There is no dedicated discussion of impacts to community character. This diminishment of the community character discussion is carried forward in the DEIS Final Scoping Document (August 17, 2009) where in fact, community character was not included in the discussion of the environmental setting (Section 3), nor was it included in any discussion of cultural or human resources.

Contrary to the applicant's conclusion that 'since the site is located in an area that the Town has specifically set aside for mining, there can be no impacts to local zoning and the proposed action is consistent with the local comprehensive land-use plan' an August 26, 2010 letter to Vincent Kinlan from John Petronella (NYS DEC Environmental Analyst noted that the DEIS fails to discuss how the proposed action meets the goals of the Town's plan and reiterates the Goals of the Rhinebeck Plan.

The updated DEIS includes a summary of Comprehensive Plan goals but neglects to further discuss how the proposed action is consistent with those goals or how the Plan addresses mining uses. Nor does it in any way discuss or evaluate community character – which is essentially what the Town's Comprehensive Plan is all about. The DEIS fails to have any meaningful discussion or evaluation about whether the proposed action is consistent with Rhinebeck's Plan or with its community character.

Another issue is that the DEIS combines its discussion of consistency with the comprehensive plan and with zoning into one discussion, when in fact they are not. For example, Section 2.2.2 (Zoning) of the DEIS states “The site was zoned RC5, is part of the soil mining overlay district and the proposed modification is consistent with the comprehensive plan and local zoning (emphasis added).” I contend that there is no evaluation, data, studies, or analysis given to support that conclusion. The DEIS must evaluate consistency with the Plan separately from consistency with the zoning as they are two different entities with different purposes.

The comprehensive plan establishes vision, goals, direction and policy for the Town. Given that the Comprehensive Plan does not envision or set any policy to promote industrial scale mining activities, it is my opinion that the DEIS is inaccurate in its depiction of being consistent with that Plan. The DEIS contends that the existing mine conforms with the Zoning Law and the Mining Overlay (Mi-O) Zoning District because it is located within that Zoning District. But the area into which Red Wing wants to expand is outside the Mining Overlay District and is instead located in a residential district (RC-5).

And in fact, the 2009 Comprehensive Plan specifically states that that mining activities should be restricted and not permitted to expand. Comprehensive Plan, Chapter 5 “Land Use”, P. 5.16. Local Law No. 4 of 2015 was designed specifically to accomplish that goal of the Comprehensive Plan. Moreover, the large-scale type mining proposed by Red Wing is even inconsistent with Rhinebeck’s vision for the Mining Overlay District, the purpose of which was to allow small, family-run mines to continue to depletion, after which point, they would have effectively been sunsetted.

In light of the critical importance given to this environmental element, putting the proposed large-scale mine in this location directly contradicts the Town’s stated desire established in their Comprehensive Plan to sunset mining as a land use and to restrict mining activity to existing, active mines.

The court decision under which Red Wing is allowed to conduct mining in the RC-5 district, even though it’s not an allowed use, specifically characterized Red Wing’s mining use in that area as a “nonconforming use.” Thus, by definition, that use does is not consistent with Rhinebeck’s Zoning Law.

There is a serious lack of recognition of the importance of community character in Red Wing’s FEAF, application materials, and DEIS. The lack of full discussion of consistency with the Comprehensive Plan in the DEIS, with Local Law No. 4 of 2105, and a host of other Rhinebeck planning documentation, and studies means that one of the most important environmental topics to Rhinebeck has been disregarded.

It is my strong opinion that the DEIS (and the Scoping Document upon which the DEIS is based on) fails to recognize community character as one of the most important environmental features in the town and that it does not define, evaluate, address or mitigate impacts of this proposal on Rhinebeck’s community character.

Any detailed discussion of community character in an environmental evaluation must include the following questions:

- How does the DEIS address community character?
- What components of Rhinebeck’s community character did the DEIS look at?
- Were all the individual impacts pulled together to look at it as a whole?
- What is the character in Rhinebeck or on White Schoolhouse Road?

- What are the specific vision/goals and policies established in the community's comprehensive plan?
- How does the DEIS address the purposes of the Zoning Law that specifies the important role community character has?

While the DEIS does address site specific or nearby impacts, it does not address how a large scale mine and its reclamation when operations cease such as the one proposed contrasts with the existing rural neighborhood, residential district and the entire community. It did not discuss how it is consistent with a rural, scenic, historic, low-density residential and tourist-oriented community whose quality of life and economy are reliant upon that very character.

Community Character Further Articulated in the Town of Rhinebeck's Zoning Law

To further illustrate the importance Rhinebeck places on community character, I point out that the special use permit criteria of Rhinebeck Zoning Law § 125-67 decisively addresses this topic. I believe it is illustrative to show the great importance the Town places on its community character, and in turn, how in stark contrast, the DEIS does not address any of these values.

The Special Use Permit criteria are established to ensure that proposed uses SHALL BE in harmony with the character and appearance of the neighborhood (emphasis added.) In essence, the Town's General Standards for special use permits ARE totally related to ensuring that community character is addressed. In particular, the general standards emphasized below from Zoning Law § 125-67 are especially relevant and related to community character¹:

- The location and size of the use, the nature and intensity of the operations involved, the size of the site in relation to the use, and the location of the site with respect to existing and future streets and roads providing access shall be in harmony with the orderly development of the district.
- The location, nature and height of the buildings, walls and fences and the nature and intensity of the intended operations will not discourage the appropriate development and use of adjacent land and buildings nor impair the value thereof.
- The character and appearance of the proposed use, buildings, structures, lighting, and/or outdoor signs shall be in general harmony with the character and appearance of the surrounding neighborhood. These shall not be more objectionable to nearby properties by reason of noise, fumes, vibration or light than would the operations of any permitted principal use. In addition, they shall not adversely affect the general welfare of the inhabitants of the Town of Rhinebeck, such determination to be made by the Town Planning Board.
- The use shall be designed and shall be carried out in a manner that protects historic and natural environmental features on the site under review and in adjacent areas, such

¹ There are 14 special use permit criteria in Zoning Law § 125-67, of which six related directly to community character. Only those six are detailed here.

environmental recommendations to be made by the Town's Conservation Advisory Board and such historic recommendations to be made by the Town Historian.

- The use shall be consistent with the Town's Comprehensive Plan, Design Standards, Local Waterfront Revitalization Plan and other applicable planning documents adopted by the Town.
- In its review of special permit uses, the Planning Board shall take into consideration the statement of policies and principles as well as the illustrated guidelines of the Hudson River Valley Greenway, as described in Greenway Connections, a copy of which is available in the Town Clerk's Office and on the Internet at <http://www.co.dutchess.ny.us/CountyGov/Departments/Planning/17334.htm>.

Conclusions

The DEIS does not adequately address consistency with either the comprehensive plan or community character. It currently evaluates individual natural resources or environmental elements but fails to evaluate the impact on all built and unbuilt features of the community. It fails to recognize or understand what community character is and how important it is to Rhinebeck. It is my opinion that this is a significant and substantive failure of the DEIS specifically for the following reasons:

- a. The mine will create a more intensive land use that is in direct contrast to the existing and future desired land uses. It will alter the character of the surrounding neighborhood by replacing a large area of undeveloped woodland and its associated wildlife habitats and ecosystem functions with intensive industrial operations that will still create, even if mitigated, dust, noise, vibration, heavy truck traffic, loss of habitats, and an environment in sharp contrast to the character and appearance of the existing neighborhood.
- b. The nature, location and intensity of the mine operation will alter the real and perceived nature of the district as a rural, residential, quiet, peaceful and undisturbed location. Residents do not live, work and play in Rhinebeck because it offers close proximity to many services, commercial amenities, or easy access to crushed rock sources. Rather, they live, work and play in Rhinebeck because of its rural character, healthy environment, and quality of life.
- c. Consideration of the synergistic effects of individual environmental elements is important because that is how we define community character: all natural and manmade elements. The DEIS must consider, evaluate and detail the combination of impacts and discuss levels of mitigation that can counter this synergistic effect. Taken together, I believe all the impacts would create a land use that cannot be in harmony with the existing or desired future character of Rhinebeck.
- d. It is reasonably foreseeable that the proposed mine expansion will result in a starkly different land use that is in contrast to the existing low density residential area. The character of the neighborhood will be affected in some way by increases in numbers of heavy truck traffic traveling on a currently sparsely traveled route, even if such traffic is not deemed significant by a traffic analysis study – it is a change from current conditions. Increases of heavy truck traffic will change the immediate character of White School House Road and nearby roads with

increased noise, increased air emissions and slowing of traffic which are currently not characteristic of the low-volume conditions of those roads.

- e. Since the character of the neighborhood is partly defined by other nearby land uses, property values may be adversely impacted. If so, then the number, type, and value of new residential land uses can change. This is a change in community character. The DEIS fails to discuss these aspects.
- f. I reject the DEIS statement that the Town's character will not be affected simply because many acres of land will remain in its natural state and because reclamation will be completed at some point in the future that may create new wildlife habitats. No reclamation can undo decades worth of noise, dust, vibration, traffic, visual impacts, possible loss of property value, introduction of a land use that changes or prevents the orderly development of the district, loss of ecosystem functioning, loss of wildlife habitat, and impacts to an economy based on tourism.

In analyzing community character, an understanding of what community character is must be the foundation for any analysis. The individual aspects of the environment such as, but not limited to a community's land base, water resources, air resources, historic resources, plant and animal resources traffic patterns, agricultural operations, the local economy, etc. all contribute to the character of an area. SEQR requires that the lead agency evaluate impacts on community character. It is the responsibility of the Lead Agency to integrate all these individual topics and impacts together to understand how they interact and combine to affect character of the neighborhood, district and community. When that integration takes place, it is apparent that the very nature, scale and intensity of the proposed mine expansion is in stark contrast to the current built and natural environment along White Schoolhouse Road in particular and in the larger Rhinebeck community. The DEIS has failed to consider these aspects and to offer detailed evaluation and mitigation as required by SEQR.



Nan C. Stolzenburg Principal Planner

SUMMARY OF QUALIFICATIONS

Ms. Stolzenburg is Principal Planner and founder of the consulting firm *Community Planning & Environmental Associates* in Berne, NY. Nan Stolzenburg has been inducted into the AICP College of Fellows and is a Certified Environmental Planner (American Institute of Certified Planners) with a Master's degree in Regional Planning. She also has degrees in Wildlife Biology (MS and BS). Ms. Stolzenburg has over 27 years of professional and technical experience in many areas of land use and the environment, with special interests in small town and rural planning, community revitalization, comprehensive planning, and public participation. Her specialty areas include land use planning techniques for rural and small communities, open space, environmental and agriculture land use planning, comprehensive plan development, community involvement strategies, and development of zoning and land use regulations. She has developed many comprehensive and strategic plans for over 70 upstate New York communities, some of which have won national and state-level planning awards, and has been involved in zoning and SEQR projects throughout New York State. Ms. Stolzenburg is among one of 33 people nationwide to have received the Certified Environmental Planner advanced certification in 2011, and one of 53 nationwide inducted into the AICP College of Fellows in 2022.

Ms. Stolzenburg also has been an adjunct professor in rural planning and environmental impact assessment and is a frequent instructor or panelist for community trainings across New York State.

In addition to dozens of comprehensive, strategic, and economic development plans, the following examples illustrate the breadth of planning expertise offered by Ms. Stolzenburg and CP&EA:

- Successful CFA grant application for the rehabilitation of the historic Hilton Barn in the Town of New Scotland.
- Primary author of the NYS DEC FEAF and SEAF SEQR workbooks.
- Town of New Paltz Natural Resource Inventory.
- Town of Nassau consultant on Special Use Permit for the Troy Sand and Gravel Mine.
- Town of Ancram consultant on zoning, subdivision, site plan, and for development of Town's Comprehensive Plan and local agricultural and farmland protection plan.

Education:

BS, Wildlife Biology and Environmental Studies, SUNY College of Environmental Science and Forestry, Syracuse, NY (1980)

MS, Wildlife and Fisheries, University of Massachusetts, Amherst, MA (1983)

MRP, Regional Planning, SUNY University at Albany. Albany, NY (1995)

Certified Planner and Certified Environmental Planner, American Institute of Certified Planners (AICP). AICP Fellow.

Years of Planning Experience:

27 years

Areas of Experience:

Comprehensive and Strategic Planning

Community Revitalization

Main Street Planning and Small Community Economic Development

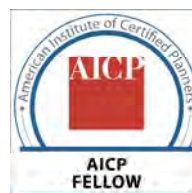
Development of Land Use Regulations

Environmental Planning, including environmental assessment

Agriculture and Farmland Protection Planning

SEQRA

Community Input Strategies: focus groups, workshops, surveys, online technologies



Member Spotlight: Nan Stolzenburg, FAICP; Community Planning & Environmental Associates

Name: Nan Stolzenburg,
FAICP

Professional Position:
Consulting Planner/Owner,
Community Planning & Environmental Associates.

Education: BS SUNY College
of Environmental Science &
Forestry; MS (Wildlife Biology),
University of Massachusetts;
MRP (Regional Planning), Uni-
versity at Albany

APA Involvement: Upstate
New York Chapter and STaR
member.

**How did you become inter-
ested in planning?**

My first career was in natural resources. Much later, I took a course in environmental planning and found a second career that where I had a niche and where I could combine my environmental interests with my love of rural landscapes and communities.

**What's the most interesting
project you're working on?**

Helping a black women's advocacy group navigate the planning process in a very rural community to create an environmentally-oriented retreat center.

**What is one of your biggest
successes?**

Writing a workbook guide to help local communities understand the environmental review process required for projects in New York State (SEQR).

**Have you had any projects
that didn't work out?**

Yes! I was hired to help develop a comprehensive plan that they ultimately did not adopt.

**What did you learn from that
experience?**

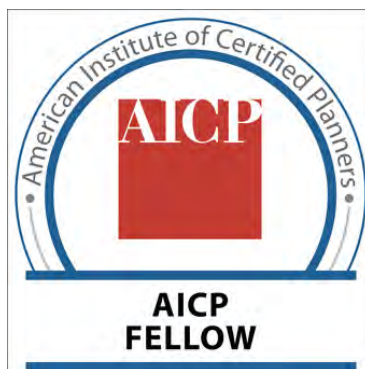
That there are many people who have profoundly different attitudes about community, land use, and the environment than I, and that sometimes you can't change that. The experience helped me learn to better accept those differences.

**Are you noticing any trends
among small towns in your
practice?**

Yes, more interest in planning among rural communities which goes along with an up-tick in development pressures (solar farms, short term rentals, second homes, loss of farms). I unfortunately, also see a lot of divisiveness that makes public engagement very stressful and challenging.

**What's the best part of work-
ing in small towns & rural
areas?**

The people! It is very rewarding working with people who are passionate about their community. And, feeling like the planning we do contributes to helping people understand their rural assets which in turn leads to a better chance of protecting their natural resources.



Four STaR Members were selected to join the College of Fellows of the American Institute of Certified Planners in 2022, and will be honored on May 1st at the National Planning Conference in San Diego:

- Stan Clausen
- Timothy Smith
- Michael Southard
- Nan Stolzenburg

Nan Stolzenburg, AICP CEP Client List, Volunteer Experience and Awards

► Comprehensive PLANS, UPDATES TO PLANS, STRATEGIC PLANS, PLAN IMPLEMENTATION

Albany County

Town of Rensselaerville (Comprehensive Plan)

Village of Altamont (Comprehensive Plan, Land Use Regulations, Project Review)

Village of Voorheesville (Comprehensive Plan, Land Use Regulations, Design Guidelines)

Town of Berne (Comprehensive Plan, Ag and Farmland Plan, Land Use Regulations, Project Review)

Clinton County

Town of Peru (Comprehensive Plan, Open Space Plan, Land Use Regulations)

Town of AuSable (Comprehensive Plan, Land Use Regulations, Training)

Columbia County

Town of Gallatin (Comprehensive Plan)

Town of Kinderhook (Comprehensive Plan, Land Use Regulations)

Village of Kinderhook (Comprehensive Plan, Plan Updates, Land Use Regulations, Project Review)

Town of Chatham (Comprehensive Plan, Ag and Farmland Plan, Land Use Regulations, Project Review)

Town of Stockport (Comprehensive Plan, Land Use Regulations)

Town of Copake (Ag and Farmland Protection Plan, Land Use Regulations)

Town of Claverack (Comprehensive Plan, Land Use Regulations)

Town of New Lebanon (Comprehensive Plan, Land Use Regulations, Update to Plan)

Town of Ancram (Comprehensive Plan, Update to Plan, CDBG Hamlet Strategy, Ag and Farmland Protection Plan, Land Use Regulations, Project Review, Training)

Town of Ghent (Comprehensive Plan, Land Use Regulations)

Town of Hillsdale (Natural Resource Inventory)

Delaware County

Town of Meredith (Ag and Farmland Protection Plan, Site Plan Law)

Town of Stamford (Comprehensive Plan)

Town of Tompkins (Comprehensive Plan)

Town of Harpersfield (Comprehensive Plan, Land Use Regulations)

Town of Colchester (Comprehensive Plan)

Village of Stamford (Comprehensive Plan, Land Use Regulations)

Town of Middletown (Comprehensive Plan, Land Use Regulations)

Town of Roxbury (Comprehensive Plan)



Dutchess County

Town of North East (Comprehensive Plan)

Town of Pine Plains (Comprehensive Plan, Trail Plan, Land Use Regulations, Project Review)

Essex County

Town of Elizabethtown (Comprehensive Plan, Land Use Regulations)

Village of Port Henry (Comprehensive Plan, Consolidation of Town/Village Land Use Regulations)

Town of Moriah (Consolidation of Town/Village Land Use Regulations)

Fulton County

Town of Broadalbin (Comprehensive Plan)

Greene County

Town of Halcott (Comprehensive Plan, Ag and Farmland Protection Plan, Land Use Regulations, Project Review, Training)

Town of Cairo (Comprehensive Plan, Land Use Regulations)

Town of Hunter (Comprehensive Plan)

Town of Jewett (Comprehensive Plan, Land Use Regulations, GEIS)

Town of Durham (Comprehensive Plan)

Town of Lexington (Long Term Recovery Plan)

Town and Village of Athens (Comprehensive Plan, Land Use Regulations, Update to Plan)

Madison County

Town of Hamilton (Comprehensive Plan)

Montgomery County

Town of Minden (Comprehensive Plan, Land Use Regulations)

Oneida County

Village of Whitesboro (Comprehensive Plan, Land Use Regulations)

Town of Webb (Comprehensive Plan, Land Use Regulations)

Otsego County

Town of Springfield (Comprehensive Plan, Land Use Regulations)

Town of Butternuts (Comprehensive Plan)

Town of Cherry Valley (Comprehensive Plan)

Rensselaer County

Town of Pittstown (Comprehensive Plan)

Town of Schaghticoke (Comprehensive Plan, Land Use Regulations)

Village of Nassau (Land Use Regulations)

Saratoga County

Town of Providence (Comprehensive Plan)

Town of Galway (Comprehensive Plan, Land Use Regulations)

Town of Ballston (Land Use Regulations, Transfer of Development Rights Program)

Schenectady County

Town of Princetown (Comprehensive Plan)

Schoharie County

Town of Schoharie (Comprehensive Plan)

Village of Schoharie (Comprehensive Plan, Update to Plan, Long Range Recovery Strategy, NY Rising Plan, Land Use Regulations, Local Waterfront Revitalization Strategy, Project Review, Grant Writing, Grant Administration)

Village of Sharon Springs (SHARE IT Economic Development Plan, Comprehensive Plan, Land Use Regulations)

Village of Cobleskill (Comprehensive Plan)

Town and Village of Middleburgh (Joint Comprehensive Plan)

Seneca County

Town and Village of Seneca Falls (Joint Comprehensive Plan)

Ulster County

Town of New Paltz (Natural Resource Inventory)

Washington County

Town of White Creek (Comprehensive Plan, Ag and Farmland Protection Plan, Land Use Regulations)

► Regional Level or Topic-Oriented PLANS COMPLETED

Lewis County (Comprehensive Plan)

Esopus Delaware Local Waterfront Revitalization Plan (Five Towns)

Village of Schoharie Local Waterfront Revitalization Strategy

Cazenovia Partnership (Critical Land Identification)

Schoharie Land Trust (Site Plan Development for Farm Assessment Project)

Development Authority of the North Country (Model Land Use Laws for JLUS)

Tug Hill Tomorrow Land Trust Agricultural Prioritization and Farmland Protection Plan

Black Women's Blueprint, Site Analysis and Concept Site Design for Restore Forward Retreat Center

Town of Red Hook Local Waterfront Revitalization Plan (GEIS Mapping)

Town of New Paltz (Mill Brook Preserve Plan)

SHARE IT—Saving Historic Resources and Revitalizing the Economy, Village of Sharon Springs

Intermunicipal Generic Environmental Impact Statement on the Cooperstown Region, Otsego

Generic Environmental Impact Statement on the Manor Kill Watershed

Generic Environmental Impact Statement on the East Kill and Schoharie Watersheds, Jewett

East Berne Strategic Plan/Linkage Study, Albany County

Town of New Lebanon Housing Study

► Town Planner on Retainer

Town of East Greenbush—Consultant to Planning Board for Project Reviews

Town of Waterford—Consultant to Planning Board, Principal Consultant on Saratoga Ave. Streetscape Improvement Project

Town of New Scotland—Consultant to Planning Board, Grant Writing

Village of Schoharie—Consultant to Planning Board

► County-Level Agriculture and Farmland Protection Plans

Herkimer County

Putnam County

Sullivan County

Jefferson County

Schoharie County

Seneca County (In-progress)

Otsego County

Dutchess County

Orange County

Washington County

Lewis County

► Town-Level Agriculture and Farmland Protection Plans

Town of Chatham, Columbia County

Town of Bethel, Sullivan County

Town of Delaware, Sullivan County

Town of Berne, Albany County

Town of Ancram, Columbia County

Town of Copake, Columbia County

Town of Halcott, Greene County

Town of Liberty, Sullivan County

Town of Callicoon, Sullivan County

Town of Granville, Washington County

Town of White Creek, Washington County

► Development of Regulations, Design Standards, Adoption of Regulations/SEQR

Town of Pine Plains, Dutchess County

Town of New Lebanon, Columbia County

Town of Stockport, Columbia County

Town of Halcott, Greene County

Town of Cairo, Greene County

Town of Middlefield, Otsego County

Town of Berne, Albany County

Village of Kinderhook, Columbia County

Town of Kinderhook, Columbia County

Town of Ancram, Columbia County

Town of Springfield, Otsego County

Town of Cherry Valley, Otsego County

Town of Sharon, Schoharie County

Town of Peru, Clinton County

Town of Elizabethtown, Essex County

Town of AuSable, Clinton County

Town of Minden, Montgomery County

Village of Sharon Springs, Schoharie County

Town of Otsego, Otsego County

Town of Meredith, Delaware County

Town of Ballston, Saratoga County

Town of Harpersfield, Delaware County

Town of Ballston, Saratoga County

Town of Waterford, Saratoga County

Village of Athens, Greene County

Town of Ghent, Columbia County

Village of Cobleskill, Schoharie County

Town of White Creek, Washington County

► Development of Regulations, Design Standards, Adoption of Regulations/SEQR, Cont.

Village of Schoharie, Schoharie County

Town of Ghent, Columbia County

Village of Altamont, Albany County

Village of Stamford, Delaware County

Town of Athens, Greene County

Town of Chatham, Columbia County

Village of Athens, Greene County

Town of Hamilton, Madison County

Village of Voorheesville, Albany County

Village of Nassau, Rensselaer County

Town of Granville, Washington County

Town of White Creek, Washington County

Town of Callicoon, Sullivan County

Nan Stolzenburg was the principal author for New York State Department of Environmental Conservation's SEQR Workbooks – two companion guides to the SEAF and FEAF forms (see <http://www.dec.ny.gov/permits/6191.html>). These workbooks received the 2014 Planning Excellence Award for Best Practice from the American Planning Association, Upstate New York Chapter.

► Planning Board and Other Agency/Organization Training

Nan has also been a frequent panelist, speaker, and trainer on various planning, SEQR, and environmental topics for:

New York Planning Federation

Upstate New York Chapter of American Planning Association

American Farmland Trust

Albany Law School

Capital District Regional Planning Commission

Columbia Land Conservancy

Tug Hill Commission

Resource Conservation Districts (RC&D)

Catskill Community Resource Day

Dutchess County Planning Federation

Schoharie County

Madison County

Otsego County

Broome County

Multiple towns and villages that hire Nan to conduct their mandatory 4-hour trainings for Planning Board and ZBA members.

► Volunteer and Community Involvement Experience

Catskill Center for Conservation and Development—Board Member
 Schoharie Community Development Corporation—Board Member
 Schoharie Economic Enterprise Corporation—Advisory Committee Member
 Schoharie Land Trust—Former Board Member
 Bender Farm Advisory Committee—Member
 The Wildlife Society, New York Chapter, Former Board Member
 Town of Wright Conservation Advisory Council—Past Chair

► Awards

New England Outdoor Writers Association Award and the Arthur Sullivan Memorial Writers Award (1982)
 Outstanding Student Project (North Central Troy: GIS Mapping and Planning Alternatives) from the American Planning Association, New York Upstate Chapter, 1996
 Excellence in Tutoring Award from Empire State College, September 1996
 Outstanding Planning Project: Comprehensive Planning for a Regional Plan (Otsego County Agricultural and Farmland Protection Plan) from the American Planning Association, New York Upstate Chapter, October 1999
 Award of Excellence in Comprehensive Planning (The Village of Kinderhook Comprehensive Plan) from the American Planning Association, Upstate New York Chapter, July 2000
 Outstanding Small Town Planning Project (The Village of Kinderhook Comprehensive Plan) from the American Planning Association, Small Town and Rural Planning Division, May 2000
 Outstanding Planning Project in the Current Topic: Smart Growth (Town of Warwick Zoning and Build-out Analysis) from the American Planning Association, Upstate New York Chapter, September 2002
 Planning Excellence Award for Best Practice, SEQR EAF Workbooks and EAF Mapper, October 2014

Contact Information

Nan Stolzenburg, AICP
 Owner and Principal Planner
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 Berne, NY 12023
 518-872-9753
 518-872-0679 (Fax)
nan@planningbetterplaces.com

Comment A57 – Grant & Lyons LLP

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Application of Red Wing Properties,
Inc.,

-for-

The following three permits (1) Article 23, Title 27, Mined
Land Reclamation, (2) Article 15, Title 5, Stream
Disturbance, and (3) Article 24, Freshwater wetlands for
the White Schoolhouse Road mine facility in the Town of
Rhinebeck, Dutchess County, New York.

NYSDEC Application ID No.
3-1350-00052/00007



Memorandum of Comment upon Red Wing Properties
Draft Environmental Impact Statement
for Legislative Public Comment

Submitted on behalf of the Town of Rhinebeck

Dated: Friday, 10 February 2023

Submitted by:



Environmental, Land Use & Zoning Law
Office: 224 Morton Road,
Rhinebeck NY 12572
Mail: PO Box 370,
Rhinecliff NY 12574
Web: www.grantlyons.com

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Exhibits

Exhibit A.	Town of Rhinebeck Local Law No. 4 of 2015.
Exhibit B.	Mining Overlay District Boundary Comparison Map. (attachment to Local Law No. 4 of 2015)
Exhibit C.	New York State Supreme Court Decision dated July 27, 2017, <i>Matter of Red Wing Properties, Inc. v. Town of Rhinebeck, et al.</i>
Exhibit D.	Dutchess County Planning & Development Department Letter to the Rhinebeck Planning Board dated March 18, 2022.
Exhibit E.	Letter of Robert Wyant, Town of Rhinebeck Highway Superintendent, to the Rhinebeck Planning Board dated October 19, 2021.

Memorandum

Date: Friday, 10 February 2023

To: John W. Petronella (via email to: john.petronella@dec.ny.gov)
Regional Permit Administrator, Division of Environmental Permits

Firm: New York State Department of Environmental Conservation [NYSDEC],

From: John F. Lyons and Kimberly A. Garrison, of Grant & Lyons, LLP, and
Warren S. Replansky, Esq., on behalf of the Town of Rhinebeck, NY

Re: NYSDEC Legislative Public Comment
Applicant: Red Wing Properties, Inc.
NYSDEC Application ID No. 3-1350-00052/00003
Facility: White Schoolhouse Road Mine
Permits applied for: Article 23, Title 27, Mined Land Reclamation
Article 15, Title 5, Stream Disturbance
Article 24, Freshwater wetlands

Location: White Schoolhouse Road, Town of Rhinebeck, Dutchess County, NY
Tax Map Parcel No. 135089-6270-00-855330-0000
Tax Map Parcel No. 135089-6370-00-030228-0000

Subject: Memorandum of Comment on Red Wing Draft Environmental Impact
Statement [DEIS] on behalf of the Town of Rhinebeck

Dear Mr. Petronella:

Part 1
Introduction

This Memorandum of Comment presents the comments of the Town of Rhinebeck [Town] upon the Draft Environmental Impact Statement [DEIS], initially prepared September 2008 and revised September 2022, submitted to the New York State Department of Environmental Conservation [NYSDEC] by Red Wing Properties, Inc. in connection with its application to the Department for the following three permits: (1) Article 23, Title 27, Mined Land Reclamation; (2) Article 15, Title 5, Stream Disturbance; and (3) Article 24, Freshwater wetlands. According to the NYSDEC Notice of Complete Application dated 31 October 2022, Red Wing's proposed project is described as follows:

Applicant proposes to modify its existing Mined Land Reclamation Permit to mine sand and gravel at the White School House Road Mine in the Town of Rhinebeck, Dutchess County. Applicant proposes to increase the permitted life of mine from 43 acres to 94 acres within a 241-acre parcel owned by Applicant. Below water mining will cover 65 acres within the 94-acre life of mine area. Applicant also proposes to construct a spillway channel within the adjacent area for a regulated freshwater wetland (RC-25, Class 2).

The foregoing shall be referred to hereafter as the “Project.”

This Memorandum of Comment is submitted on behalf of the Town of Rhinebeck and is part of a package of comments which are being submitted together and which, as a group, comprise the submission of the Town of Rhinebeck. In addition to this Memorandum of Comment, the Town of Rhinebeck comment package also includes:

- ☐ Memorandum of Comment from the firm of Warren S. Replansky, PC.;
- ☐ Report of Nan Stolzenburg, FAICP, of Community Planning & Environmental Associates;
- ☐ Report of James Levy, AICP, of Planning 4 Places; and
- ☐ Report of Dr. Erik Kiviat of Hudsonia, a nonprofit institute.

This Memorandum of Comment will tie together all of the pieces of Rhinebeck’s comments.

Part 2 Summary

Rhinebeck’s comment package demonstrates that Rhinebeck has raised multiple significant and substantial issues that warrant a denial of the mining permit sought by Red Wing, or if the permit were to be granted, will result in the imposition of conditions that will significantly modify the proposed Project.

Significant and substantial issues arising from the Red Wing DEIS have been identified in connection with: (a) the DEIS’s inconsistency with Rhinebeck’s Comprehensive Plan and Zoning Law; (b) the DEIS’s failure to adequately, completely or accurately address the potential adverse impacts to traffic, transportation and public safety; (c) the DEIS’s failure to provide accurate information and analysis on the physical characteristics and condition of White Schoolhouse Road; (d) the DEIS’s failure to address at all the adverse impacts to community character in the area around the Project, and in the wider community; and (e) the DEIS’s failure to adequately and competently study, address and mitigate impacts to biological resources and wildlife on a Project site that is packed with important and protected wildlife.

Rhinebeck’s comment package identifies these issues through accurate, detailed, expert testimony based upon objective evidence.

Consequently, for these reasons, the Department must hold a public adjudicatory hearing for this matter pursuant to the SEQRA regulations [6 NYCRR 621.8]

Part 3 Deficiencies of the Ancient Final Scope for the DEIS

Before addressing the DEIS, the Final Scoping Document for this project must be addressed. That Final Scope was issued on 14 August 2009: almost 14 years ago. In 2009, Barack Obama was president and Sully Sullenberger landed a US Airways in the Hudson River off Manhattan. Much has changed in the world since then. And much has changed on this Project site and in the Town of Rhinebeck and the neighborhood around the proposed mine. The 2009 Final Scope for this Project fails to account for these changes. The DEIS is deficient as a result. The

Final Scope should have been redone before the DEIS was determined to be complete.

There are basic inaccuracies in the Final Scope due to its age. For example, the Final Scope lists Vincent Kinlan as the permit applicant. He is no longer the applicant. The Scope refers to a “141 acre life of mine area,” when the life-of-mine-area proposed in the 2022 DEIS is 94-acres.

Moreover, the values that are reflected in the Final Scope are the values from 2009. They fail to take into account changes in the environment on this site and around this site. It is very likely that wetlands on the site have changed, traffic volumes on the roadways around the Project site have increased and the density of development has likely changed as well. Additionally, the Town has also amended its Comprehensive Plan and Zoning Law significantly since the Final Scope was issued.

One of the most glaring deficiencies in the Scope is its failure to require the Applicant to address impacts to community character. This mine is proposed in the middle of a rural, residential area. Mining activities and the volume of truck traffic that will be generated has the potential to have serious adverse environmental impacts on the residential neighborhood.

The Department’s *SEQR Handbook* says:

The 2018 amendments to the SEQR regulations require that a project sponsor incorporate late-filed comments into the draft EIS or attach them as an appendix to the draft EIS, provided they are submitted consistent with 617.8(f). Any late issues may still be relevant concerns for the lead agency when it evaluates the adequacy of the draft EIS. NYSDEC, *SEQR Handbook*, 4th Edition, Chap. 5 “Environmental Impact Statements,” at p. 106.

Section 617.8(f) of the SEQRA regulations says:

(f) All relevant issues should be raised before the issuance of a final written scope. Any agency or person raising issues after that time must provide to the lead agency and project sponsor a written statement that identifies:

- (1) the nature of the information;
- (2) the importance and relevance of the information to a potential significant impact;
- (3) the reason(s) why the information was not identified during scoping and why it should be included at this stage of the review.

In this case, this Memorandum represents a written statement setting forth the information required by 6 NYCRR 617.8(f).

The nature of the information that is missing from the Scope is an examination of the potential adverse impacts of this Project to community character.

The importance and relevance of this information is discussed in detail in the report by Nan Stolzenburg, FAICP, of Community Planning & Environmental Associates. The importance of

the issues raised in Ms. Stolzenburg's report are amplified by the memorandum of Warren Replansky, Esq., which is included as part of the Town's Comment and which accompanies Ms. Stolzenburg's memorandum. Using Rhinebeck's Comprehensive Plan, Zoning Law and a variety of other local plans and requirements, Ms. Stolzenburg goes to great length to demonstrate the importance to the Rhinebeck community of preserving its rural and historic character. These are relevant and vital issues that need to be addressed in the DEIS. As stated previously, a lot has changed in the Town's community character and goals for itself in the 14 years since the Final Scope was first issued.

When the Final Scope was issued, the situation varied drastically from the current proposal. At the time of the Final Scope, the existing mining activity was conducted by Mr. Vincent Kinlan in the northern portion of the property. The mining at that time was conducted at a small scale, and at a level which was commensurate with the scale of mining at two nearby small, family-run mines, the Von der Leith family mine and the Lobotsky family mine. It wasn't until 2013, five years after the Scope had been finalized, that Red Wing Properties had acquired title to the property. The scale of mining that Red Wing proposes for this mine is far greater than the scale of mining activity that historically took place at the Kinlan, Von der Leith, and Lobotsky mines. The difference in scale can be demonstrated from the truck volume alone. The attached report of James Levy, AICP, of Planning 4 Places, compares the truck volume between that proposed by Red Wing and the volumes at the Von der Leith and Lobotsky mines, and even the proposed mine site when under the ownership of Mr. Kinlan. Historically, the small scale of the mining in that area allowed mining to coexist peacefully and respectfully with the surrounding neighborhood. The scale of mining activity now proposed by Red Wing represent an abrupt departure from that norm and raises the potential for serious significant adverse impacts to the character of the community.

These impacts should be included at this stage of the review because there is no better or more sensible time to consider the impacts to community character. In *Matter of Town of Henrietta v. Department of Environmental Conservation*, an appellate court said:

By enacting SEQRA, the Legislature created a procedural framework which was specifically designed to protect the environment by requiring parties to identify possible environmental changes "before they have reached ecological points of no return" *Matter of Town of Henrietta v. Department of Environmental Conservation*, 76 A.D.2d 215, 220 (4th Dept. 1980).

Similarly, the Department's SEQR Handbook says:

SEQR establishes a process to systematically consider environmental factors early in the planning stages of actions that are directly undertaken, funded, or approved by local, regional, and state agencies. By incorporating environmental review early in the planning stages, projects can be modified as needed to avoid adverse impacts on the environment. NYSDEC, *SEQR Handbook*, 4th Edition, "Introduction," at p. 3.

It makes sense, and it is completely in synch with the purpose of SEQRA, that adverse impacts to community character should be considered now, early in the permit process, so that the permit can be denied or conditioned as necessary to avoid these impacts.

Part 4

Rhinebeck Raises Significant and Substantive Issues Warranting Adjudicatory Determination

The DEIS raises substantive and significant issues that could result in either the permit being denied or requiring significant modifications to the proposed action, and thus warrants a public hearing.

Pursuant to the State Administrative Procedures Act, during the “legislative public comment” stage, the NYSDEC and the ALJ will accept public comment. The comments received will be used to determine whether there are issues sufficient for fact-finding and adjudication to warrant holding a “public hearing.”

The standard for determining whether an issue is substantive and significant has been elaborated in numerous decisions of the Commissioner. In one of the leading decisions, a former Commissioner stated:

The issues or pre-hearing conference is the point at which the subject matter for the adjudicatory hearing is defined. In situations where the Department staff have reviewed an application and offer no objection to the issuance of a permit, the burden of persuasion that substantive and significant issues exist is on the intervening parties. In order to meet this burden an intervenor must demonstrate to the satisfaction of the Administrative Law Judge that the Applicant's presentation of facts in support of its application do not meet the requirements of the statute or regulations. The offer of proof can take the form of proposed testimony, usually that of an expert, or the identification of some defect or omission in the application. Where the proposed testimony is competent and runs counter to the Applicant's assertions, an issue is raised. Where the intervenor proposes to demonstrate a defect in the application through cross-examination of the Applicant's witnesses, an intervenor must make a credible showing that such a defect is present and likely to affect permit issuance in a substantial way. In all such instances a conclusory statement without a factual foundation is not sufficient to raise issues. Moreover, the issues conference is not the point at which an intervenor should be deciding that it will have to locate an expert to substantiate the allegations made at the conference. The assertions should arise from the opinions of the expert or other qualified witnesses. *In re Halfmoon Water Improvement Area No. 1*, (DEC Commissioner Decision, April 2, 1982). See also, *In re Metro Recycling & Crushing, Inc.* (Decision of the Acting Commissioner, April 21, 2005) (N.Y. Dept. Env. Conserv.).

The issues that have been identified and raised by Rhinebeck through the testimony of its expert consultants and attorneys about the DEIS are issues that are substantive and significant and are of a nature that they could result in either permit denial or significant modifications to the proposed action. See, e.g., *In re Jay Giardina*, (DEC Commissioner Interim Decision, September 21, 1990). See also ECL § 70-0119(1). Each of those issues is discussed in more detail in the sections of this Memorandum that follow.

The issues that have been raised by Rhinebeck are not conclusory. Rather, they are specific issues which are accompanied and supported by the detailed testimony of experts whose

written reports form the totality of this Memorandum.

In this case, as is demonstrated below in this Memorandum, and by the testimony of Rhinebeck's experts and attorneys, the Town of Rhinebeck has established that Red Wing's presentation of facts in support of its application, and in particular in the DEIS, are inaccurate, insufficient or a result of flawed methodologies. And in the case of impacts to community character, the presentation is totally absent.

Rhinebeck's offers of proof are in the form of expert testimony. Because that offer of proof is competent and runs counter to Red Wing's assertions in the DEIS, issues that Rhinebeck has raised warrant determination by an adjudicatory hearing.

Part 5

Rhinebeck's Comments Must be Considered as Part of the SEQRA Review

Whenever a DEIS accompanies the application and the Department is the lead agency, statements made at the legislative hearing will constitute comments on the DEIS and all substantive comments must be addressed pursuant to the procedures set forth in § 617.14 of the SEQRA Regs [§ 624.4(a)(3)].

The Town of Rhinebeck further requests that each and every comment submitted as part of this memorandum and the attached documents be considered to be a comment on the Red Wing DEIS pursuant to SEQRA such that the Final EIS will be required to address all said comments.

Part 6

This Project's Total Inconsistency with Rhinebeck's Comprehensive Plan and Zoning Law

Red Wing's DEIS is insufficient because it lacks any meaningful discussion of the issue of this project's inconsistency with both the Town of Rhinebeck Comprehensive Plan ("Comprehensive Plan") and the Town of Rhinebeck Zoning Law ("Zoning Law"). The discussion in the DEIS by Red Wing is an argument that this mine furthers the open space goals of the town, preserves historic, cultural, scenic and natural resources and the lands that surround those resources.

The DEIS falsely claims:

"The Comprehensive Plan does not identify the area of the site as a "key location" for such development [outside the existing hamlets and the Village], and, in fact, identifies the site as an area suitable for sand and gravel mining."
[DEIS, p. 7]

The area has not been so identified by the Town. Red Wing grossly mischaracterizes that its proposed modification to its proposed modification to its Mined Land Reclamation permit is consistent with the Comprehensive Plan and the Zoning Law.

Red Wing fails to meaningfully discuss the Comprehensive Plan and the Zoning Law. Rather, it brushes off Rhinebeck's local plans with a simple sentence saying that it's "modification is consistent with the comprehensive plan and local zoning," and provides a vague and brief explanation that it has a vested right to mine the 94 acres of the proposed life-of-mine area,

without conducting a proper evaluation of its consistency, or lack there of, with Rhinebeck's local plans. See *Red Wing's DEIS*, at page 7.

Red Wing's dismissive and inaccurate treatment of Rhinebeck's plans creates a substantive and significant issue. Despite Red Wing's brazen characterization of Rhinebeck's Comprehensive Plan and Zoning Law, Red Wing's proposed modification to its mining permit and the proposed expansion of its existing mine is not consistent with either Rhinebeck's Comprehensive Plan or its Zoning Law.

To begin with, Red Wing inaccurately states in its DEIS that the RC5 Zoning District is part of the soil mining overlay district. Red Wing also fails to properly recognize that its Property is located in two distinct zoning districts. Contrary to map shown on Page 12 of the DEIS, the Mining Overlay District (Mi-O) does not encompass all of Red Wing's property. This map is deceptive, with only a small asterisk to "suggest" that the Mi-O District extends far beyond the actual boundaries designated and enacted by the Town.

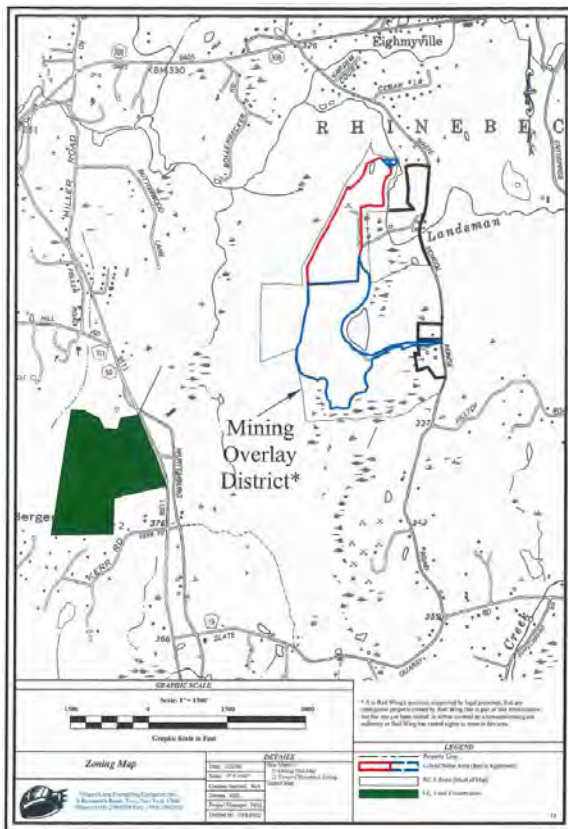


Figure 1. Map shown on Page 12 of DEIS

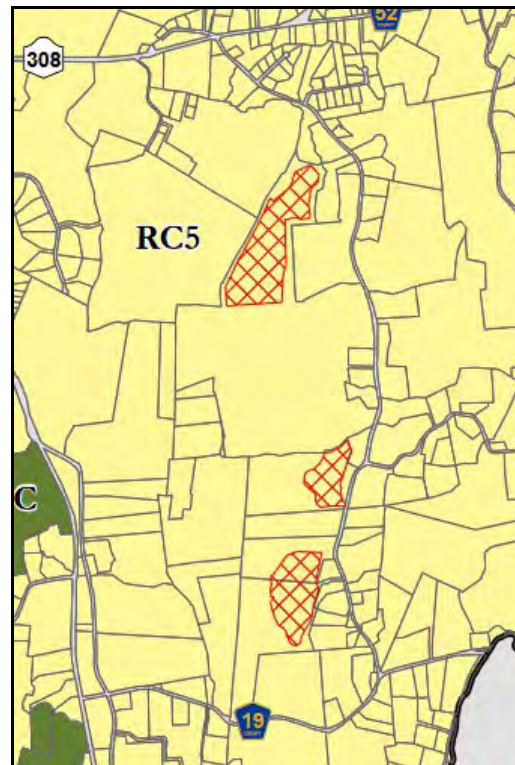


Figure 2. Town of Rhinebeck Zoning Map. The yellow depicts the RC5 Zoning District. The red hatched area depicts the Mi-O District.

Under the Zoning Law, Red Wing's property is located in two different zoning districts. The northern portion of Red Wing's property lies in the Mining Overlay ("Mi-O") Zoning District. Of the approximate 241 acres of Red Wing's Property, the northernmost 37.5 acres are located in the Mi-O District. Red Wing's remaining acreage is located in the Rural Country 5 (RC5) Zoning

District.

“Extractive operations and soil mining” is a use of land defined in the Zoning Law. It is a permitted use in the Mi-O District, subject to the issuance of a special use permit and site plan approval from the Town of Rhinebeck Planning Board. To date, Red Wing does not have an existing special use permit or site plan approval from the Town of Rhinebeck Planning Board to conduct its mining activities within the Mi-O, and thus has not been in operation on its site since 2013. “Extractive operations and soil mining” are not allowed uses in the RC5 District.

Red Wing’s proposed modification expands primarily into the RC5 Zoning District. Red Wing explains in its DEIS that it has a vested right to mine its proposed 94 acres of the property, which is based on an Appellate Division, Second Department, Decision, dated June 3, 2020. While it is true that the Appellate Division Decision did rule that Red Wing has a vested right to mine this area of the Property, a decision that the Town of Rhinebeck has acknowledged, Red Wing incorrectly concludes that, by this holding, its “proposed modification is consistent with the comprehensive plan and local zoning.”

Mining within the RC5 Zoning District, as a nonconforming use, is not consistent with the Comprehensive Plan or the Zoning Law. By glossing over this characterization, Red Wing fails to consider or acknowledge the Comprehensive Plan and Zoning Law.

By its very name and definition, a nonconforming use is not consistent with the local zoning law. A nonconforming use goes against the general scheme of a zoning law and is contrary to a community’s stated ideals for how the community land should be used and the community’s vision for the future. (*Toys “R” Us v. Silva*, 89 N.Y.2d 411, 417-418 (1996).).

Rhinebeck made sweeping changes to both its Comprehensive Plan and its Zoning Law that Red Wing fails to acknowledge or discuss in its DEIS. Rhinebeck’s Comprehensive Plan and Zoning Law directly contradict the mining activity that Red Wing proposes as part of its mining permit modification application.

In 2009, Rhinebeck updated its Town Comprehensive Plan. As a general matter, “[a] comprehensive plan has as its underlying purpose the control of land uses for the benefit of the whole community based upon consideration of its problems and applying the enactment or a general policy to obtain a uniform result not enacted in a haphazard or piecemeal fashion.” (*Kravetz v. Plenge*, 84 A.D.2d 422, 429 (4th Dept, 1992))

By definition, it is comprised of written or graphic materials that “identify the goals, objectives, principles, guidelines, policies, standards, devices and instruments for the immediate and long-range protection, enhancement, growth and development of the town located outside the limits of any incorporated village or city.” [New York State Town Law § 272-a(2).]

In order to remain relevant to both the changing time and demographics of a given town, comprehensive plans should be, and often are, updated and changed accordingly.

The Town’s preceding Comprehensive Plan was adopted in 1989; consequently, much of its background information, especially the socio-economic data, was over 20 years old and outdated.

The 2009 Comprehensive Plan was adopted to be a guide for the town's immediate and long-range protection, enhancement, and development and was designed to reinforce Rhinebeck as a rural community.

To achieve the Town's vision for itself, the Comprehensive Plan contains a detailed set of recommendations and tasks designed to accomplish the Plan's goals and objectives. The issue of the future of mining activity in the Town received specific consideration in the Comprehensive Plan. This was brought up during the public scoping sessions and workshops by Rhinebeck residents, expressing a desire to limit mines to those existing at the time of the enactment. Indeed, the Plan contains very specific recommendations, saying:

Objective: Land uses with the potential to pollute the air, soils, or water should be regulated.

Actions: ...

2. Examine and improve regulation of the Zoning Law concerning mining activities (extractive operations currently permitted in the R3A District by special use permit), and amend the law to further restrict such activities to existing, active mine sites (emphasis added). Prohibit the placement of new mine sites within the town for the following reasons:

Potential disruption of the character of residential areas caused by the heavy industrial characteristics of this land use activity, including associated noise, dust, aesthetics, and traffic;

Concern for public health, safety and welfare when mining is in close proximity to residences and farms;

Restrict the number and location of areas in the town where mining activities may take place, since the town will not be permitted to enforce local regulations "relating to the extractive mining industry (emphasis added). (Comprehensive Plan, Chapter 5 "Land Use", P. 5.16.)

In addition, Chapter 3 of the Plan, entitled "*Rhinebeck Tomorrow*", establishes a series of tasks to be undertaken by the Town to implement the Plan. Task 58 addresses mining, and says:

Task No. 58. Examine and improve regulations in the Zoning Law concerning mining activities and amend the Zoning law to further restrict such activities to existing, active mine sites. Prohibit the placement of new mine sites within the town (emphasis added). (Comprehensive Plan, Chapter3 "*Rhinebeck Tomorrow*", P. 3.8.)

Rhinebeck accomplished this by creating the Mi-O Zoning District.

The 2009 Zoning Law, adopted simultaneously with the Comprehensive Plan, established the Town's Mining Overlay (Mi-O) Zoning District for the first time. Prior to December 29, 2009, the Zoning Law allowed mining operations in the R3A District. The R3A District, which encompassed most of the eastern half of the Town's land area, included the Property now

owned by Red Wing and subject to this permit modification. Under the 2009 Zoning Law, the former R3A residential district was changed to the Rural Countryside (RC5) Zoning District, where part of Red Wing's property is located today.

The RC5 district increased the minimum lot size for residential use so as to lessen the density of allowed residential use. At the same time, mining was removed as a permitted use in the RC5 district. Instead, the Town created the Mining Overlay (Mi-O) Zoning District. As a result, instead of being allowed throughout the area formerly covered by the R3A District, and now covered by the RC5 District, the area where mining was allowed was reduced to a small portion of the RC5 District where there were three existing mines that were permitted by the NYSDEC: (1) White Schoolhouse Road Mine (which was then operated by Vincent Kinlan, who later conveyed the property to Red Wing in 2013); (2) Von Der Lieth, and (3) Lobotsky mines, all of which were considered local operations, modest in their size and their scale of mining activity.

At the time, the establishment of this Mi-O district in 2009 significantly contracted the land area in the Town in which mining activities were allowed. Nevertheless, the new Mining Overlay District included just about all of Red Wing's property, and thus, mining on that Property was an allowed use at that time.

In 2015, the Town of Rhinebeck adopted Local Law No. 4 of 2015 which amended the Town's Zoning Map. A copy of Local Law No. 4 of 2015 is attached as Exhibit A. This, in turn, amended the boundaries of the Mining Overlay District. This amendment made the land area covered by the Mining Overlay District smaller. Specifically, the District was reconfigured to include only those lands in the Town in upon which there were existing, NYSDEC-permitted mining operations. As explained in detail in Ms. Stolzenburg's report, this amendment was not only consistent with the goals and policy set forth in the Comprehensive Plan, but also germane to the discussion of community character.

The amendment contains a statement of the purpose and intent, which states:

The purpose and intent of this local law is to prohibit the establishment of large scale mining activities within the Mining Overlay District. (Emphasis added).

The amendment states further that its purpose and intent is also to:

(i) scale back the present Mining Overlay District boundaries as set forth in the Zoning Law to boundaries which are equivalent to the boundaries of the approved Mining Permits and Mined Land Reclamation Law Plans to properties within the Overlay District by DEC at the time of the enactment of this local law;

and to,

(iii) ensure that those mines which have received DEC Mining Permits and Special Use Permits pursuant to the provisions of the Town's Zoning Law by the time of the enactment of this local law are considered to be conforming uses, but only to the extent of the currently approved boundaries of those mines.

At the time of this amendment, Red Wing's current permitted life-of-mine area was concentrated in the northern section of the property, that encompassed the 37.5 acres that

currently exist in the Mi-O District.

As is noted in the Findings set forth in Local Law No. 4 of 2015, Rhinebeck's reasons for amending the Mi-O District boundaries to their current configuration were based in part upon the conclusions reached by the NYSDEC in the SEQRA Positive Declaration it issued in connection with Red Wing's mining permit modification application. As set forth in Local Law No. 4 of 2015 the NYSDEC identified the following potential adverse environmental impacts presented by Red Wing's mining plan:

- a. The reclamation plan results in a substantially different land area resource (open water versus upland) within an Agricultural District/Residential zone area affecting future productive uses of the property and substantially impacting existing wildlife habitat and use.
- b. The project has the potential to have an adverse impact on two NYSDEC regulated freshwater wetlands (RC-25, Class 2 and RC-30, Class 3).
- c. The project has the potential to have adverse visual impacts.
- d. The site is located in close proximity to several National/State registered Historic resources and has the potential to adversely impact these resources.
- e. The project has the potential to adversely affect groundwater.
- f. The project has the potential to result in fugitive dust or to have other air quality impacts.
- g. The project has the potential to have impacts from truck traffic.
- h. The project has the potential to produce adverse noise impacts.
- i. The project has the potential to adversely affect the Landsman Kill, a NYS protected trout stream.
- j. The adjacent wetlands may contain habitat suitable for the NYS threatened species Blandings Turtle (*Emydoidea blandingii*). (Town of Rhinebeck Local Law No. 4 of 2015, Legislative Findings, P. 3, citing to NYSDEC, Positive Declaration, dated January 12, 2009, NYSDEC Project No. 3-1350-00052/00003))

The Local Law acknowledged NYSDEC's concerns and indicated that the Town of Rhinebeck shared those concerns, and that besides the directives in the Town's Comprehensive Plan, those concerns further supported the need to amend the Mining Overlay District boundaries. Against that backdrop, the Local Law amendment states further that it is also the purpose and intent of the amendment to:

- (i) achieve the goals of the Comprehensive Plan regarding the protection, preservation and enhancement of the Town's important natural resources

and its physical and visual environment, especially those many important natural resources clustered within the boundaries established for the Mining Overlay District by the 2009 Zoning Law;

- (ii) preserve and protect the important wildlife, wetlands and habitat resources of the Town clustered in and around the present Mining Overlay District boundaries;
- (iii) preserve and protect the aquifer resources of the Town clustered in and around the present Mining Overlay District boundaries;
- (iv) preserve and protect the important agricultural resources of the Town located in and around the present Mining Overlay District boundaries;
- (v) promote the public safety, health and well-being of the Town residents;
- (vi) help, protect and insure the integrity of the existing Town roads and bridges adjacent to the 2009 Mining Overlay District by limiting the amount of truck traffic which might be generated by large scale mining activities in this area of the Town; and
- (vii) further the objectives of the Dutchess County's Greenway Compact Program (of which the Town is a member) which are designed to facilitate New York State's commitment to the preservation, enhancement and development of the "world-renown scenic, natural, historic, cultural and recreational resources of the Hudson River Valley" while improving economic development and maintaining municipal home rule and which seek to maintain the rural characteristics of towns, villages and hamlets within Dutchess County and promote the preservation of the County's rural character, natural features and important farmlands. (Exhibit A - Town of Rhinebeck Local Law No. 4 of 2015, Purpose and Intent, P. 4-5.)

The Legislative Findings and the statements of purpose of intent that are set forth in Local Law No. 4 of 2015 serve to explain in detail the basis for the Town's action in adopting the amendment and changing the Mining Overlay District boundaries. Those Findings in the Law also provide an important insight into the community character that the Town seeks to protect with the amendment.

According to the legislative findings in Local Law No. 4 of 2015:

Extensive examination of the DEC Mining Permits issued to these properties [mines owned by Red Wing, Lobotsky, and Von Der Leith] and of the Mined Land Reclamation Maps approved by DEC pursuant to those permits by the Town and its consultants have revealed to the Town Board that, in some cases, the enacted Soil Mining Overlay boundaries do not encompass the entirety of the DEC permitted gravel mines and also include substantial portions of the properties which had not been issued Mining Permits by DEC and/or the Town of Rhinebeck by the time of the enactment of the Town's amended Zoning Law. At the time of the enactment of the 2009 Comprehensive Plan and Zoning Law,

there were three permitted and active gravel mines within the Mining Overlay Zone which had been in existence for several years, and which were of relatively modest size. (Town of Rhinebeck Local Law No. 4 of 2015, Legislative Findings, P. 2.)

In essence, the amendment reduced the Mining Overlay District boundaries to only include the life-of-mine land area of mines in the Town which at that time were existing and permitted, thus bringing the Town's Zoning District Map into compliance with the stated objectives of the Town's Comprehensive Plan. As discussed by Ms. Stolzenburg in her report attached as part of this comment package, the Comprehensive Plan contains specific discussion about the need to amend the Zoning Law to restrict mining to existing, active mine sites. Local Law 4 of 2015, and the existing Mi-O Zoning District is in compliance with the Comprehensive Plan. Contrary to Red Wing's assertions, there is no policy direction established in the Plan to promote heavy industry such as large-scale mines. A large-scale mine such as proposed by Red Wing is not consistent at all with Rhinebeck's Comprehensive Plan and Zoning Law.

The boundary reconfiguration accomplished by this amendment is shown on a map which was prepared by the Dutchess County Planning Department. A copy of this map is attached as Exhibit B. The red outline shows the Mi-O District as it was in 2009. The crosshatched area on the map shows the contracted Mi-O District boundaries as they were established under Local Law 4 of 2015, and which represent the current Mi-O District.

Under Local Law 4 of 2015, the boundaries of the Mi-O District are restricted to the existing, permitted, active life-of-mine areas. Red Wing's current permitted life-of-mine area is concentrated in the northern section of the Mi-O District and on a portion of the Red Wing's property that encompasses 37.5 acres; however, the Red Wing's entire property consists of a total of 241 acres.

Red Wing challenged the validity of Local Law No. 4 of 2015 in the New York State Supreme Court. That challenge was rejected by the Court in a decision dated July 27, 2017 which upheld the validity of that amendment. A copy of the Court's decision is attached as Exhibit C. Red Wing did not appeal the Supreme Court's decision on that issue. Thus, the Court's ruling upholding the validity and constitutionality of Local Law No. 4 of 2015 remains final word on the validity of that amendment.

In drafting Local Law 4 of 2015, the Town Board also understood the impact this amendment may have on the mining operations. Local Law 4 of 2015 did not eliminate mining operations. Rather, it sought to restrict the permitted boundaries to areas that were already operating pursuant to NYSDEC-approved State mining permits, and to allow those mines to continue as conforming (permitted) uses. Anything beyond the existing life-of-mine boundaries approved by the NYSDEC was prohibited. However, this is what Red Wing is attempting to do with its modified permit application - expand its mining operation beyond the Mi-O District. Thus, Red Wing's DEIS is inaccurate when it states that it is consistent with the Comprehensive Plan and Zoning Law.

The Town of Rhinebeck Comprehensive Plan and the Town of Rhinebeck Zoning Law establish conclusively that the mine expansion proposed by Red Wing is NOT consistent with Rhinebeck's local land use laws and plans. The foregoing history establishes that Red Wing's proposed expansion and plan to mine as a nonconforming use in Rhinebeck RC5 Zoning

District flatly contradicts Rhinebeck's vision and goals for mining in the Town.

The issue raised about the blatant conflict between this Proposed project and the Town of Rhinebeck Comprehensive Plan and Zoning Law is another issue that is significant, substantive. This issue is incapable of effective mitigation, and as such, could very well result in permit denial. The Town of Rhinebeck does not want mining to expand on site proposed by Red Wing, as it expands beyond the Mi-O Zoning District, where such activity is permitted to take place. The Town amended its zoning law and the Mi-O District to be in conformity with the Comprehensive Plan, which would not allow further expansion or large-scale mining to occur in the Town. Here, Red Wing's proposed modification seeks to do just that, in direct contravention of the Town's plans. It is eminently clear from Rhinebeck's Comprehensive Plan, and from its Zoning Law which does not allow mining in the location proposed by Red Wing, that Red Wing's proposed modification is not consistent with the Town's Comprehensive Plan or Zoning Law. There is nothing that Red Wing can do to mitigate the impacts which flow from that conflict.

Part 7

Red Wing DEIS Fails to Even Consider Impacts to Community Character

Adverse impacts to community character is an issue that is completely neglected by the DEIS.

Submitted with this Memorandum is the report of Nan Stolzenburg, FAICP, of the firm of Community Planning & Environmental Associates. Ms. Stolzenburg is a professional planner with eminent credentials and 30 years of planning experience, and who specializes in working on the unique planning needs of small and rural communities throughout the state.

Rhinebeck is a well-known community with a vibrant Village center surrounded by rural, scenic landscapes. The Town draws tourists and visitors throughout the year to its Village Center, the County Fairgrounds, and to its historic estates district. Community character forms an outsized portion of Rhinebeck's DNA.

In a case called *Village of Chestnut Ridge v. Town of Ramapo*¹, relevant to community character and SEQRA, the court observed as follows

[t]he power to define the community character is a unique prerogative of a municipality acting in its governmental capacity," and that, generally, through the exercise of their zoning and planning powers, municipalities are given the job of defining their own character.

Rhinebeck has taken great pains to define its own community character. Ms. Stolzenburg conducted an in-depth review of Rhinebeck's local land use plans. In her report, through citations to these plans, she demonstrates the high degree of Rhinebeck's regard for its community character, and in particular, its stated goal throughout its land use planning laws, regulations and policies of preserving and protecting its rural, scenic character. Ms. Stolzenburg also explains the important relationship between community character and a town's Comprehensive Plan, and further explains how they are intertwined. Hence, in a town like

¹ 45 A.D.3d 74 (2d Dept 2007) .

Rhinebeck, which has defined its community character in its Comprehensive Plan and has baked into that Plan goals for the protection and preservation of that character, a project like this one that contradicts the Comprehensive Plan and Zoning Law is simultaneously assaulting the community character that the Plan and the Law are specifically designed to protect.

Ms. Stolzenburg also demonstrates the importance that impacts to community character hold within the context of SEQRA. Her testimony establishes that the DEIS fails to recognize or understand what community character is, and how it is important to Rhinebeck. Ignoring impacts to community character are, in her opinion, a “significant and substantive failure of the DEIS.” In her report, she spells out exactly how this flaw will result in damages to Rhinebeck’s community character, an aspect of the Town treasured by its residents.

Warren Replansky, Esq., an attorney who also represents the Town of Rhinebeck, has submitted a memorandum as part of Rhinebeck’s comment package that functions as a companion-piece to Ms. Stolzenburg’s report. Mr. Replansky demonstrates how this Department expressed concerns about the impacts of this Project upon community character early on in the process of reviewing this application. His testimony establishes the deference that the NYSDEC has traditionally afforded to local land use plans in making permitting decisions, and like Ms. Stolzenburg, he demonstrates that impacts to community character are integral to a proper SEQRA review where a proposed project presents those impacts. Like Ms. Stolzenburg, Mr. Replansky highlights the deep connection between the Town Comprehensive Plan and community character, and how contradicting the Comprehensive Plan also adversely impacts community character.

The issues raised about adverse impacts to community character are significant and substantive. Their resolution could very easily result in the denial of the permit sought by Red Wing, or at the least result in conditions being placed on the Project that would in significant modifications to the Project. The DEIS is deficient in its failure to adequately address the impacts of this gravel mine on community character. This prompts the need for an adjudicatory hearing to fully evaluate the community character impacts of this Project

Part 8

DEIS Failures Regarding Traffic Volume, Traffic Safety, and the Inadequate Condition of White Schoolhouse Road

Submitted with this Memorandum is the report of James Levy, AICP, a certified professional planner at the firm of Planning 4 Places. Mr. Levy is the planning consultant to the Town of Rhinebeck Planning Board. He is familiar with the Red Wing proposal, and he has also assisted the Planning Board in its reviews of special permit applications by the Von der Leith and Lobotsky, two small, family-owned mines located nearby the Red Wing site along White Schoolhouse Road. Through that experience, he has gathered information about traffic impacts to White Schoolhouse Road and regarding the traffic safety issues that already exist on White Schoolhouse Road and its dangerous and, at times, deadly junction with Slate Quarry Road. He is also familiar with the physical condition of White Schoolhouse Road and the Town’s investigation of that condition and the implications of that condition as it relates to the volume of large truck traffic that Red Wing proposes to run on White Schoolhouse Road. Being the Planning Board’s consultant, Mr. Levy brings a unique perspective and knowledge base to his testimony, which reflects the real-world experiences of examining the issues of large truck traffic on rural, winding, White Schoolhouse road.

In his report, Mr. Levy raises issues about adverse impacts to transportation involving public safety, road accident rates, and the suitability of White Schoolhouse Road for heavy truck traffic. His testimony establishes that the width, configuration, construction and condition of White Schoolhouse Road is not suitable for the volume of truck traffic that is proposed by Red Wing in the DEIS. Mr. Levy also raises doubt as to the accuracy of the truck traffic stated in the DEIS. Moreover, due to the existing conditions on the road, these adverse impacts are not capable of being mitigated sufficiently to allow a mining permit to be issued. His testimony also establishes the existing dangerous traffic safety conditions on White Schoolhouse Road.

Attached as Exhibit D to this Memorandum, is a copy of a letter to the Rhinebeck Planning Board dated 18 March 2022 from the Dutchess County Department of Planning & Development. This letter was sent to the Planning Board in response to a referral from the Planning Board regarding the special use permit and site plan application of Red Wing in connection with the construction of its mine access road. The County Planning Department states that Red Wing's traffic study did not adequately address concerns regarding increased volume of truck traffic. This letter goes on to detail the concerns of the Planning Department and to outline modifications to the project that should be considered by the Planning Board. This letter corroborates and supports the issues that have been identified by Mr. Levy in his report.

Further corroboration is offered by the letter dated 19 October 2021 by Robert Wyant, Town of Rhinebeck Highway Superintendent, to the Rhinebeck Planning Board. A copy of that letter is attached to this Memorandum as Exhibit E. Mr. Wyant's letter discusses the details of Red Wing's proposed use of White Schoolhouse Road, and specifically discusses truck weights and loads and the possible impacts to White Schoolhouse Road. Mr. Wyant also discusses the condition of White Schoolhouse Road and how the road is at the end of its life cycle, and concludes that "[t]his road will not hold up well to heavy truck traffic..."

These issues are significant and substantive. They are significant because of the potential threat to human safety, and they are substantive because these issues could very well result in the denial of the mining permit sought by Red Wing. The reason that they may result in denial is that these impacts are not capable of being effectively mitigated by Red Wing. White Schoolhouse Road is in place and outside the control of Red Wing. Thus, the condition of road, its width and its configuration and sight lines, are elements that cannot be modified by Red Wing.

Part 9

The Gross Insufficiencies of the DEIS Consideration of Biological Resources and Biodiversity

The Town of Rhinebeck engaged Dr. Erik Kiviat of Hudsonia, a nonprofit institute, to review the portions of Red Wing's DEIS that address biological resources and biodiversity, and in particular, concerns about wildlife conservation, wildlife habitat and the potential adverse impacts that may affect these resources from the proposed mining operations.

Dr. Kiviat is preeminent in his field and the Department is familiar with his qualifications and experience. He is a leading researcher in the study of the Blanding's turtle. And he is very familiar with this site, having previously commented on Rhinebeck's behalf during the Department's processing of Red Wing's application for an Incidental Take Permit to facilitate

the construction of an access road across this site.

Dr. Kiviat's report on his review of Red Wing's DEIS is submitted with this Memorandum. As is demonstrated by that report, the Project site is literally filled with sensitive natural and ecological resources. The Hudsonia report verifies that site is used by the State-Threatened Blanding's turtle and State-Special Concern spotted turtle, and the State-Threatened bald eagle. The Landsman Kill, which drains the site, is a trout stream and Hudson River Tributary. There are potentially other rare or vulnerable species at the site such as the State-Special Concern wood turtle and State-Special Concern New England cottontail (also a candidate for federal listing). Threats to biodiversity include nutrient enrichment and siltation of waterways and wetlands including the Landsman Kill, spill and leaks of fuel, noise and visual disturbance to wildlife, and loss of habitats that have developed during the recent hiatus in mining activity on the site.

Dr. Kiviat testifies in his report that the DEIS inadequately addresses these issues. He says that Red Wing's studies consistently underestimate and undervalue the ecological and biodiversity value of the site. He cites a plethora of instances where outdated or insufficient data has been relied upon to draw conclusions that appear in the DEIS. He also cites many instances where information critical to judging the veracity and quality of the scientific work is missing, undermining the conclusions reached. He notes that the DEIS evinces a lack of knowledge and review of the literature concerning the potential impacts of noise, dust, visual disturbance, and habitat alteration on the bald eagle, Blanding's turtle, and other wildlife and plants of conservation concern. He found the study of Blanding's turtle trapping and tracking to be insufficient to establish the movement patterns or habitat use or population viability. He also recommends that additional studies of biodiversity be conducted prior to mining activities.

Properly addressing these issues may require denial of the mining permit if it turns out that accurate studies of the site show a significantly greater population of wildlife or importance of the habitat on the site. Even if not warranting permit denial, it is possible that a proper study of these resources may result in sweeping modifications to Red Wing's proposed plan and the way in which it can use this property. Accordingly, the issues raised in the Hudsonia report about the myriad deficiencies in the DEIS are also significant, substantive and may result in significant modifications to the proposed action.

Part 10

Impacts from Noise and Dust

Issues relating to the impacts of noise and dust are addressed as part of the Hudsonia report by Dr. Kiviat. The report contains an extensive discussion on the impacts of noise on the bald eagle, and upon other animal populations as well. As was noted above, the Hudsonia report notes that the DEIS evinces a lack of knowledge and review of the literature concerning the potential impacts of noise, dust, visual disturbance, and habitat alteration on the bald eagle, Blanding's turtle, and other wildlife and plants of conservation concern.

Here, Dr. Kiviat's expert testimony identifies significant defects and omissions in the DEIS, thus raising an issue for adjudication.

Part 11

Impacts to Wetlands and Surface Waters

Issues relating to the sufficiency of the treatment of potential adverse impacts to on-site wetlands and surface waters is discussed in the Hudsonia report.

For example, the Hudsonia report notes that the DEIS asserts that Wetland RC-25 will remove silt from stormwater before that water moves to the Landsman Kill. Dr. Kiviat says that if that happens, fine mineral sediment from mining that settles out of stormwater entering the wetland will eventually fill the wetland and reduce or eliminate its ability to filter the suspended sediment, and dredging the wetland to rejuvenate its filtering capacity would be destructive to the wetland.

Regarding surface waters, by way of another example, the Hudsonia report notes that the Landsman Kill, a trout stream, and a tributary border the Red Wing site on the north and west. Hudsonia urges an assessment of watershed land use impacts upon the Landsman Kill, after having found that the "DEIS is dismissive of potential impacts on the Landsman Kill."

Again, these examples demonstrate that, through Dr. Kiviat's expert testimony, Rhinebeck has identified significant defects and omissions in the DEIS, thus raising an issue for adjudication.

Part 12

Conclusion

For all of the reasons set forth above, and based on the evidence and testimony presented in the attached documents, the Town of Rhinebeck respectfully requests that an adjudicatory hearing be held regarding the Red Wing DEIS.

In addition, the Town of Rhinebeck further requests that each and every comment submitted as part of this memorandum and the attached documents be considered to be a comment on the Red Wing DEIS pursuant to SEQRA such that the Final EIS will be required to address all said comments.

We thank you for your time, attention and consideration.

Respectfully submitted,



John F. Lyons



Kimberly A. Garrison

Grant & Lyons, LLP
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Rhinebeck NY 12572
Mail: PO Box 370,
Rhinecliff NY 12574
T: 845 876 2800
E: jlyons@grantlyons.com
E: kgarrison@grantlyons.com

Exhibit A

to

Grant & Lyons Memorandum of Comment on behalf of the Town of Rhinebeck,
dated 10 February 2023

Re: DEIS of Red Wing Properties, Inc.
NYSDEC Legislative Public Hearing

Exhibit:

Town of Rhinebeck Local Law No. 4 of 2015.

Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

☐ County ☐ City ☒ Town ☐ Village
(Select one:)

of Rhinebeck

FILED
STATE RECORDS

OCT 08 2015

DEPARTMENT OF STATE

Local Law No. 4 of the year 2015

A local law A Local Law Amending the Town of Rhinebeck Zoning District Maps Established
(Insert Title)
Pursuant to Town Code Chapter 125 ("Zoning"), Article II ("Establishment of Districts"),
Section 125-16 ("Zoning District Maps") and Amending the Boundaries of the
Mining Overlay Zoning District (Mi-O)

Be it enacted by the Town Board of the
(Name of Legislative Body)

☐ County ☐ City ☒ Town ☐ Village
(Select one:)

of Rhinebeck

as follows:

I. Title

This Local Law shall be known as the "A Local Law Amending the Town of Rhinebeck Zoning District Maps Established Pursuant to Town Code Chapter 125 ("Zoning"), Article II ("Establishment of Districts"), Section 125-16 ("Zoning District Maps") and Amending the Boundaries of the Mining Overlay Zoning District (Mi-O)".

II. Enactment

This Local Law is adopted and enacted pursuant to the authority and power granted by §10 of the Municipal Home Rule Law of the State of New York, Articles 2 and 3, and pursuant to Article 2 of the New York State Statute of Local Governments.

[Six additional pages of text attached, plus one map attachment]

(If additional space is needed, attach pages the same size as this sheet, and number each.)

III. Legislative Findings

On December 29, 2009, the Town Board, pursuant to provisions of §272-a of the Town Law adopted a Comprehensive Plan consisting of materials, written and/or graphic, including, but not limited to, maps, charts, studies, resolutions, reports, elements, appendices and other descriptive material.

The Town Board on December 29, 2009, by Local Law No. 6 of 2009, adopted a Zoning Law as an amendment to Chapter 125 of the Town Code.

Section 125-15 of the Town Code established, and divided the Town into, zoning districts which are illustrated on the Town of Rhinebeck Zoning District Map as set forth in §125-16 of the Town Code. Section 125-15(CC) of the Town Code established a Mining Overlay District ("Mi-O") which delineated the areas within the Town of Rhinebeck where extractive operations and soil mining are allowed through special use permits provided all requisite permits are obtained from the New York State Department of Environmental Conservation ("DEC") and the Town of Rhinebeck to conduct such activities. Said Mi-O is depicted on the Zoning District Map. The Comprehensive Plan contained a detailed set of recommendations and tasks designed to accomplish the Plan's goals and objectives, including a specific recommendation about extractive mining operations which stated as follows:

"Objective: Land uses with the potential to pollute the air, soils, or water should be regulated.

Actions: ...

2. Examine and improve regulation of the Zoning Law concerning mining activities (extractive operations currently permitted in the R3A District by special use permit), and amend the law to further restrict such activities to existing, active mine sites (emphasis added). Prohibit the placement of new mine sites within the town for the following reasons (emphasis added):

Potential disruption of the character of residential areas caused by the heavy industrial characteristics of this land use activity, including associated noise, dust, aesthetics, and traffic;

Concern for public health, safety and welfare when mining is in close proximity to residences and farms;

Restrict the number and location of areas in the town where mining activities may take place, since the town will not be permitted to enforce local regulations relating to the extractive mining industry" (Comprehensive Plan, Chapter 5 "Land Use", P. 5.16.)".

The recommended Zoning Law Map for the Town of Rhinebeck as set forth in Chapter 5: Land Use, Figure 5.3 of the Comprehensive Plan illustrates the boundaries of the suggested Mining Overlay District for the Town's amended Zoning Law. This map depicts the Soil Mining Overlay Boundaries as encompassing the boundaries of properties in the RC-5 District on which active soil mining was being conducted at the time of the enactment of the Zoning Law pursuant to DEC Mined Land Reclamation Permits ("DEC Mining Permits") issued to three properties within the proposed Mining Overlay District. A note on the Figure 5.3, Existing Zoning, states that "the Soil Mining Overlay is applicable two hundred fifty (250) feet from the parcel boundary."

Extensive examination of the DEC Mining Permits issued to these properties and of the Mined Land Reclamation Maps approved by DEC pursuant to those permits by the Town and its consultants have revealed to the Town Board that, in some cases, the enacted Soil Mining Overlay boundaries do not encompass the entirety of the DEC permitted gravel mines and also include substantial portions of the properties which had not been issued Mining Permits by DEC and/or the Town of Rhinebeck by the time of the enactment of the Town's amended Zoning Law. At the time of the enactment of the 2009 Comprehensive Plan and Zoning Law, there were three permitted and active gravel mines within the Mining Overlay Zone which had been in existence for several years, and which were of relatively modest size.

For more than a year, the Town Board has been considering a local law to further restrict mining to existing active mine sites. The Town Board, in its issuance of a Negative SEQRA Declaration and Part 2 and 3 SEQRA analysis for this local law, has determined that the provisions of this local law did not have the potential to result in any significant negative environmental impacts and that a Draft Environmental Impact Statement ("DEIS") need not be prepared. In its SEQRA Review, the Town Board noted that the Town's Conservation Advisory Board issued a report which incorporated by reference a draft report which had been prepared by the Planning Board's Consultant Planner, Arthur Brod of Planners East, which identified with more specificity reports and studies conducted subsequent to the enactment of the Town's 2009 Comprehensive Plan and Zoning Law, and additional information concerning the environmental sensitivity and existence of threatened and species of special concern within the current Mining Overlay District. The Environmental Assessment Form analysis included additional maps and information concerning these environmental factors. All of these documents and reports are hereby incorporated by reference into these legislative findings.

The Town Board finds that all of this documentation and information, as well as public hearings, supports the need for a revision to the Mining Overlay District boundaries, as provided for in this local law.

The Town Board finds that in light of existing and new information and documentation reviewed by the Town Board and its consultants during the SEQRA Review of this local law concerning the potential environmental impacts and impacts on community character that would occur if new, large scale gravel mines were permitted to be established in, or if existing gravel mines were permitted to be substantially expanded to, those areas of the Mining Overlay District contained in the current Zoning Law, such new mines and/or expansion could have a serious negative impact on the health, safety and welfare of the Town of Rhinebeck and the community character of the area in which the Mining Overlay District currently exists.

The Town Board notes that an application for a DEC Mining Permit has been applied for and granted for a nine acre subaqueous mine within the proposed 38 acre northern Mi-O District

provided for in this local law but, at present, no application for a Special Use Permit for this nine acre subaqueous mine has been issued by, or is pending before, the Town's Planning Board. This local law would not, however, prohibit the issuance of a Special Use Permit for this subaqueous mine by the Planning Board.

The Town Board also notes that DEC, in its review of a pending application by a property owner within the current Mining Overlay District for a substantial expansion of an existing, permitted gravel mine, has issued a Positive SEQRA determination requiring the preparation of a Draft Environmental Impact Statement, and has identified the following as reasons for its determination:

- a. The reclamation plan results in a substantially different land resource (open water versus upland) within an Agricultural District/Residential zone area affecting future productive uses of the property and substantially impacting existing wildlife habitat and use.
- b. The project has the potential to have an adverse impact on two NYS regulated freshwater wetlands (RC-25, Class 2 and RC-30, Class 3).
- c. The project has the potential to have adverse visual impacts.
- d. The site is located in close proximity to several National/State registered Historic resources and has the potential to adversely impact these resources.
- e. The project has the potential to adversely affect groundwater.
- f. The project has the potential to result in fugitive dust or have other air quality impacts.
- g. The project has the potential to have impacts from truck traffic.
- h. The project has the potential to produce adverse noise impacts.
- i. The project has the potential to adversely affect the Landsman Kill, a NYS protected trout stream.
- j. The adjacent wetlands may contain habitat suitable for the NYS threatened species Blandings turtle (*Emydoidea blandingii*). (See Positive Declaration, dated 01/12/09, DEC Project No. 3-1350-00052/00003).

The Town Board shares the concerns of DEC regarding the potential environmental impact of a large scale expansion of mining within the Mining Overlay District.

IV. Purpose and Intent

The purpose and intent of this local law is to prohibit the establishment of large scale mining activities within the current Mining Overlay District.

The purpose and intent of this local law is also to:

(i) scale back the present Mining Overlay District boundaries as set forth in the Zoning Law to boundaries which are equivalent to the boundaries of the approved Mining Permits and Mined Land Reclamation Plans issued to properties within the Overlay District by DEC at the time of the enactment of this local law;

(ii) adjust the boundaries of the Mining Overlay District to ensure that the boundaries of those mines which have received mining permits from DEC are consistent with the boundaries of the Mining Permits and Mined Land Reclamation Plans and boundaries issued and approved by DEC;

(iii) ensure that those mines which have received DEC Mining Permits and Special Use Permits pursuant to the provisions of the Town's Zoning Law by the time of the enactment of this local law are considered to be conforming uses, but only to the extent of the currently approved boundaries of those mines.

It is not the intent of this local law to eliminate or otherwise improperly interfere with the rights of those property owners in the Town of Rhinebeck who have obtained, and are operating, gravel mines pursuant to valid DEC Mining Permits and Special Use Permits issued by the Town to continue to operate those mines in accordance with the terms and conditions of those permits.

It is not the intent of this local law to prohibit or interfere with the rights of those property owners who have already received DEC Mining Permits and Special Use Permits from the Town for the operation of gravel mines on their properties from asserting that they have valid, non-conforming vested rights that entitle them to expand their existing gravel mines to areas of their properties which had not, at the time of the enactment of this local law, received DEC and Special Use Permits for such activities. However, it is the intent of this local law that property owners asserting such rights shall make the necessary applications to the Town of Rhinebeck Zoning Enforcement Officer and, if necessary, to the Town's Zoning Board of Appeals, and provide the proof as required by law to support their claim of a valid non-conforming use as an exhaustion of their administrative remedies before otherwise asserting such rights.

It is not the intent of this local law to prohibit or interfere with the rights of property owners to petition the Town Board to amend the Zoning Law pursuant to the provisions of Article XII of the Town Code to permit the conduct of gravel mining on portions of their property not within the Mi-O District as provided for in this local law, recognizing that consideration of such a petition for amendment shall be deemed a legislative act pursuant to the provisions §125-131 of the Town Code.

It is also the purpose and intent of this local law to (i) to achieve the goals of the Comprehensive Plan regarding the protection, preservation and enhancement of the Town's important natural resources and its physical and visual environment, especially those many important natural resources clustered within the boundaries established for the Mining Overlay District by the 2009 Zoning Law; (ii) preserve and protect the important wildlife, wetlands and habitat resources of the Town clustered in and around the present Mining Overlay District boundaries; (iii) preserve and protect the aquifer resources of the Town clustered in and around the present Mining Overlay District boundaries; (iv) preserve and protect the important agricultural resources of the Town located in and around the present Mining Overland District boundaries; (v) promote the public safety, health and well-being of the Town residents; and (vi) help, protect

and insure the integrity of the existing Town roads and bridges adjacent to the 2009 Mining Overlay District by limiting the amount of truck traffic which might be generated by large scale mining activities in this area of the Town; and (vii) further the objectives of the Dutchess County's Greenway Compact Program (of which the Town is a member) which are designed to facilitate New York State's commitment to the preservation, enhancement and development of the "world-renown scenic, natural, historic, cultural and recreational resources of the Hudson River Valley" while improving economic development and maintaining municipal home rule and which seek to maintain the rural characteristics of towns, villages and hamlets within Dutchess County and promote the preservation of the County's rural character, natural features and important farmlands.

It is also the purpose and intent of this local law to amend and re-draw the Mining Overlay District boundaries as are now depicted on the Town of Rhinebeck, NY Zoning District Maps, established pursuant to §125-16 of the Town Code to coincide with the "Life of Mine" boundaries as shown on the DEC approved Mined Land Reclamation Plans of any current, existing mines having valid mining permits in place from the New York State Department of Environmental Conservation (DEC) as of the effective date of this local law as depicted on the map which is annexed to this local law as Exhibit "A."

V. Amendment of Mining Overlay District Boundaries.

The Town Code Chapter 125, Zoning, as adopted on December 29, 2009, and from time-to-time amended, is hereby further amended as follows:

1. The Town Zoning District Map established pursuant to Town Code Chapter 125 ("Zoning"), Article II ("Establishment of Zoning Districts"), Section 125-16 ("Zoning District Maps") is hereby amended to change the boundaries of the Mining Overlay District (Mi-O) as described below and depicted on the map which is attached to this Local Law as Exhibit A.
2. The Notation on the Town of Rhinebeck Zoning District Map "*Soil Mining Overlays applicable 250 feet from the parcel boundary" is hereby omitted from the Zoning District Map.
3. The Town Zoning Districts Map, as authorized by Article II, Section 125-16 of the Town Code entitled "Zoning Districts Maps," is hereby amended to depict the new boundaries of the Mining Overlay Zoning District as those amended boundaries are established and described in this Local Law.

VI. Severability

The invalidity of any part or provision (e.g., word, section, clause, paragraph, sentence) of this Law shall not affect the validity of any other part of this Law which can be given effect in the absence of the invalid part or provision.




VII. Supersession

This Local Law is intended to supersede any provisions of the Town Law, the Town of Rhinebeck Code and the General Municipal Law which are inconsistent with the provisions of this Local Law.

VIII. Effective Date

This Local Law shall take effect immediately upon the filing with the Office of the Secretary of State of the State of New York, in accordance with the applicable provisions of law, and specifically Article 3, Section 27 of the New York State Municipal Home Rule Law.

TOWN OF RHINEBECK PROPOSED SOIL MINING OVERLAY DISTRICT

Tax Parcels Current through 7/2015 
 MI-O District 
 Rhinebeck Zoning District RC5 
 Map Prepared By
 Dutchess County Department of
 Planning and Development
 August 2015

Zoning district boundaries are enacted by Municipality.
 These maps are produced by Dutchess County Planning &
 Development per agreement with the Municipality, and are
 updated at the pleasure of the Municipality. These Zoning Maps
 are posted for information only, and may not reflect the current
 configuration of district lines. Check with local Zoning
 Enforcement Officer for current boundary delineation.



1 inch = 1,000 feet

RC 5

Red
Wing
Mine

Lobotsky
Mine

Von Der
Lierh
Mine

WHITE SCHOOLHOUSE RD

HILLTOP RD

ZIPFELBURG RD

19

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 4 of 2015 of the ~~(County)(City)(Town)(Village)~~ of Rhinebeck was duly passed by the Rhinebeck Town Board on September 28 2015, in accordance with the applicable provisions of law.
(Name of Legislative Body)

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) (Name of Legislative Body) (repassed after disapproval) by the _____ and was deemed duly adopted (Elective Chief Executive Officer*) on _____ 20____, in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) (Name of Legislative Body) (repassed after disapproval) by the _____ on _____ 20____ (Elective Chief Executive Officer*)

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 20____, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved) (Name of Legislative Body) (repassed after disapproval) by the _____ on _____ 20____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20____, in accordance with the applicable provisions of law. (Elective Chief Executive Officer*)

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 20____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph, 1 above.



Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

(Seal)

Date: September 30, 2015

Exhibit B

to

Grant & Lyons Memorandum of Comment on behalf of the Town of Rhinebeck,
dated 10 February 2023




Re: DEIS of Red Wing Properties, Inc.
NYSDEC Legislative Public Hearing

Exhibit:

Mining Overlay District Boundary Comparison Map
(attachment to Local Law No. 4 of 2015)

TOWN OF RHINEBECK PROPOSED SOIL MINING OVERLAY DISTRICT

Legend

- Present MI-O District 
- Proposed MI-O District 
- Rhinebeck Zoning District RC5 

Map Prepared By
Dutchess County Department of
Planning and Development
November 24, 2014

Zoning district boundaries are enacted by Municipality.
These maps are produced by Dutchess County Planning &
Development per agreement with the Municipality, and are
updated at the pleasure of the Municipality. These Zoning Maps
are posted for information only, and may not reflect the current
configuration of district lines. Check with local Zoning
Enforcement Officer for current boundary delineation.



1 inch = 1,000 feet

RC5

Red
Wing
Mine

WHITE SCHOOLHOUSE RD

HILLTOP RD

Lobotsky
Mine

Von
Der Lieth
Mine

19

ZIPFELDBURG RD

Exhibit C

to

Grant & Lyons Memorandum of Comment on behalf of the Town of Rhinebeck,
dated 10 February 2023

Re: DEIS of Red Wing Properties, Inc.
NYSDEC Legislative Public Hearing

Exhibit:

New York State Supreme Court Decision dated July 27, 2017,
Matter of Red Wing Properties, Inc. v. Town of Rhinebeck, et al.

SUPREME COURT - STATE OF NEW YORK
DUTCHESS COUNTY

Present:

Hon. MARIA G. ROSA

Justice.

RED WING PROPERTIES, INC.,

Petitioner,

-against-

DECISION, ORDER &
JUDGMENT

Index No: 194/2017

TOWN OF RHINEBECK, TOWN OF RHINEBECK
TOWN BOARD, TOWN OF RHINEBECK ZONING
ENFORCEMENT OFFICER AND TOWN OF
RHINEBECK ZONING BOARD OF APPEALS,

Respondents.

x

The following papers were read and considered on this hybrid proceeding:

SUMMONS
NOTICE OF VERIFIED PETITION AND VERIFIED COMPLAINT
VERIFIED PETITION AND COMPLAINT
NOTICE OF MOTION
AFFIRMATION OF CHRISTOPHER C. STEVENS
EXHIBITS A-Z
AFFIDAVIT OF PAUL H. GRIGGS
EXHIBITS A-K
AFFIDAVIT OF FRANCIS DOHERTY
EXHIBITS A-K
MEMORANDUM OF LAW

VERIFIED ANSWER
CERTIFIED RECORD VOLUMES 1-7

NOTICE OF MOTION
AFFIRMATION OF SCOTT BERGIN
AFFIRMATION OF JOHN LYONS

EXHIBITS A-D
MEMORANDUM OF LAW
REPLY AFFIRMATION
REPLY AFFIDAVIT
EXHIBITS A&B
REPLY MEMORANDUM OF LAW

REPLY AFFIRMATION

This is a hybrid Article 78/Declaratory Judgment action challenging the constitutionality of Town of Rhinebeck Local Law No. 4 of 2015 and determinations of the Town of Rhinebeck Zoning Enforcement Officer ("ZEO") and Zoning Board of Appeals ("ZBA") finding plaintiff-petitioner did not have the right to mine portions of a 241 acre parcel as a pre-existing nonconforming use. Plaintiff challenges the ZEO and ZBA determinations pursuant to CPLR Article 78, seeks a declaratory judgment that Local Law No. 4 is unconstitutional and that its use of the property was a pre-existing nonconforming use. It further seeks damages based on a claim that the local law and ZBA's decision resulted in an inverse condemnation. Defendants move pursuant to CPLR §3212(a)(7) or, in the alternative pursuant to CPLR §3212, for an order dismissing plaintiff's claims challenging the constitutionality of Local Law No. 4 of 2015 and for damages based on a claimed inverse condemnation and partial taking.

Red Wing Properties, Inc. ("Red Wing") is a sand and gravel mining business that owns a 241 acre property in the Town of Rhinebeck. It acquired the property in 2013. At that time, 37.5 acres of the property were actively being mined but there was a pending permit application before the New York State Department of Environmental Conservation ("DEC") for permission to mine an additional 124 acres. On September 28, 2015, the Town of Rhinebeck ("the Town") enacted Local Law No. 4 of 2015. The stated purpose of the local law was to prohibit the establishment of large scale mining activities in the Town's mining overlay zoning district. The Town created the mining overlay zoning district in 2009 in conjunction with its adoption of a new comprehensive plan. When the Town created the district, virtually the entire 241 acre parcel was within the mining overlay zoning district. Local Law No. 4 included amendments to the Town's zoning district map which changed the boundaries of the mining overlay district to coincide with existing mining operations. Consequently, the local law had the effect of restricting Red Wing's ability to mine areas on its 241 acre parcel other than the existing mining activity occurring on 37.5 acres. The Local Law included a procedure under which property owners claiming a valid nonconforming vested right to expand existing mining operations could apply to the Town ZEO and, if necessary, to the Town ZBA for a determination on a claimed right to mine as a valid nonconforming use. In February 2016, Red Wing submitted such an application to the ZEO which was denied. Red Wing then appealed to the ZBA, which heard testimony and comments on the application at six public hearings that occurred between May and October 2016. Three members of the ZBA also visited the property. On December 21, 2016, the ZBA issued a seven page resolution that incorporated a 55 page decision denying the application, finding that Red Wing had failed to demonstrate its entitlement to nonconforming use status that would enable it to mine its property outside of the 37.5 acres located

in the mining overlay district. This proceeding followed.

“Although the overriding policy of zoning is aimed at the ultimate elimination of nonconforming uses, nevertheless, a zoning ordinance cannot prohibit an existing use to which the property has been devoted at the time of the enactment of the ordinance.” Syracuse Aggregate Corp. v Weise, 51 NY2d 278 (1980). In general, to establish a right to a nonconforming use, the person claiming the right must demonstrate that the property was used for the nonconforming purpose at the time a zoning ordinance became effective, as distinguished from a mere contemplated use. Matter of Harbison v City of Buffalo, 4 NY2d 553 (1958). Courts, however, have recognized that quarrying involves a unique use of land as it contemplates the excavation of the corpus of the land itself as a resource. Syracuse Aggregate Corp., 51 NY2d at 285. Thus, quarrying, as a nonconforming use “cannot be limited to the land actually excavated at the time a restrictive ordinance is enacted because to do so would effectively deprive the land owner of his use of the property as a quarry.” Id. at 286. A party advancing a prior nonconforming mining use exception to a zoning ordinance must establish specific actions constituting an overt manifestation of its intent to mine the property at the time the zoning ordinance became effective. Buffalo Crushed Stone, Inc. v Town of Cheektowaga, 13 NY3d 88 (2009). This requires a party to “demonstrate substantial quarrying activities on a distinct parcel of land over long period of time and that such activities clearly manifest an intent to appropriate the entire parcel to the particular business of quarrying.” Syracuse Aggregate Corp., *supra*. The extent of protection afforded by the nonconforming use will extend to the boundaries of the parcel even though extensive excavation was limited to only a portion of the property. Id. “This is not to say that a landowner, merely by preparing to engage in a mining operation and undertaking a few self-serving acts of a very limited nature will have thrown a protective mantle of nonconforming use over his entire parcel of land as against a later prohibitory zoning ordinance.” Id.

Applying the above standard, the ZBA found that Red Wing failed to demonstrate conduct demonstrating an overt manifestation of its intent to utilize its entire property for mining at the time the Town passed the 2015 amendment modifying the boundaries of its mining overlay zoning district. In reaching this determination, the ZBA found that in the approximately 30 year period since Red Wing’s predecessor acquired the subject property, Red Wing had engaged in two overt actions in support of its claim that it intended to mine the entire 241 acre area of its property. The first action was Red Wing’s digging of test pits and taking soil borings for the purpose of assessing aggregate reserves. The second action was an application submitted in 2008 to the DEC for a mining permit to mine a 141 acre area that now exists outside the boundaries of the Town’s overlay district. The ZBA also recognized that Red Wing incurred significant costs in connection with the permitting process. Acknowledging these actions and the fact that there had been mining activities on up to 37.5 acres of the property since 1993, the ZBA determined that such activities did not sufficiently demonstrate an intent to mine the entire property. The ZBA found that Red Wing had failed to demonstrate any significant physical improvements evidencing an intent to mine the 141 acre portion of its property, noting a lack of haul roads, processing plant or facility and a failure to resolve a dispute with a neighbor over access. The ZBA further emphasized that over the 30 years Red Wing and its predecessor owned the property, the 141 acres of the property had been used for purposes

other than mining. The ZBA found that in 1998 an application was submitted to the Town planning board for approval of a nine lot residential subdivision to be built on the property. The ZBA further considered that Red Wing had entered into leases under which portions of the property were farmed from at least 2004, had obtained an agricultural exemption for 57 acres of land used to produce for sale crops, livestock or livestock products and 173.8 acres of land used in support of farm operations. In light of these findings and emphasizing that the 2008 DEC permit application to mine the 141 acres had yet to be accepted by NYS DEC as complete and that the preliminary environmental review process had not yet begun, the ZBA ultimately determined that Red Wing had established a mere contemplation to use the 141 acres for future mining purposes but had not engaged in activities sufficient to demonstrate an intent to mine such land in the future.

Judicial review of a ZBA determination is not a *de novo* review nor an opportunity for the issues to be heard and determined by this court. Instead, it is generally limited to ascertaining that the action was illegal, arbitrary and capricious or an abuse of discretion. See Brancato v Zoning Bd. Of Appeals of City of Yonkers, 30AD3d 515 (2nd Dep't 2006). Thus, the ZBA's determination that Red Wing's use of the property was insufficient to demonstrate a pre-existing nonconforming use must be sustained if rational and supported by substantial evidence even if this court would have reached a different result. Sand Land Corp. v Zoning Bd. of Appeals of Town of South Hampton, 137 AD3d 1289 (2nd Dep't 2016).

This court finds substantial evidence supporting the rationality of the ZBA's determination. A review of the record reveals that the ZBA reviewed Red Wing's submissions, the submissions of neighbors and comments from the Town Board and members of the public before reaching its decision. Its lengthy decision clearly weighed the evidence before it and carefully analyzed all proffered actions Red Wing took in support of its claim that it intended to utilize additional portions of the property for mining as of 2015. The ZBA conducted a careful examination of relevant case law and rationally determined that whether Red Wing met its burden of proof required an analysis of whether it exclusively intended to mine the unmined portions of the land, the development of road and other infrastructure in support of its stated intent to mine, communications and correspondence with local municipalities demonstrating an intent to mine and any reliance upon the Town's permission to mine in the future. The ZBA's consideration of these factors was proper and in accordance with the case law governing applications to mine as a pre-existing nonconforming use. Upon review of the relevant facts and factors, it was rational for the ZBA to determine that mining the entire property was but one of several of Red Wing's contemplated future uses of the property and that the digging of test pits and taking soil borings from the property was an exploratory step that did not manifestly demonstrate an intent to mine the entire property. The ZBA further determined that the record was unclear as to whether the prior owner of the property purchased such property and obtained permits as an agent of Red Wing. The DEC permit to mine the 37.5 acres was issued to the prior owner and makes no mention of Red Wing. Despite this, it is clear from the ZBA's decision that it credited Red Wing for the years that the northern portion of the subject property was mined while owned by the prior owner. The ZBA determined that Red Wing had established that mining had taken place for many years on that portion of the property. However, it rationally found that Red Wing never communicated its intent to mine the entire property to the Town. With respect

to Red Wing having hired a consultant to perform a geological investigation, the contents of that investigation support the ZBA's finding that such step was done to determine the quality of mining that may be available and was merely a contemplative step, not evidence of a commitment to future mining. Similarly, the 2001 letter from Earth Tech, a consultant Red Wing hired to develop a proposed strategy for expanding the prior owner's mining operation, can also rationally be viewed as an initial consultation and a proposal to move forward with a permitting plan and does not necessarily imply a specific intent to move forward with such plans. The fact that the consult was performed in 2001 and that no application was made to the DEC to expand mining to an additional 141 acres until 2008 further supports this conclusion. Further, the ZBA acknowledged that Red Wing's filing for a permit with the DEC does demonstrate a strong intention to mine. See Glacial Aggregates, LLC v Town of Yorkshire, 14 NY3d 127 (2010). However, in light of the other relevant factors considered, the ZBA determined that such application was insufficient evidence of an intent to mine the entire 141 acres. As it is not the function of this court to substitute its judgment for that of the ZBA responsible for making the determination as to whether Red Wing established a pre-existing nonconforming use and there is a rational basis in the record supporting the ZBA's determination, it is

ORDERED that the petition for a judgment declaring that the December 21, 2016 ZBA resolution denying Red Wing's appeal of the ZEO determination is unconstitutional, illegal and/or arbitrary and capricious is denied. The court rejects Red Wing's claim that the ZBA lacked jurisdiction to determine the validity of the Town zoning ordinance and/or Local Law No. 4 of 2015. The record is clear that the ZBA never considered or rendered a determination as to the legality of the zoning ordinance or local law but merely presumed their validity in rendering the challenged determination. The court also finds no merit to Red Wing's claims that the ZBA's determination was arbitrary based on a failure to recognize the prohibition against substantial construction until the approval a DEC mining permit. On page 39 of its decision the ZBA acknowledged legal limitations on building infrastructure without a permit and discussed the lack of infrastructure within the context of addressing Red Wings' failure to build service roads or even obtain lawful access to the proposed future mining site. To the extent that the decision includes a statement that there was no evidence that Vincent Kinlan or Red Wing as purchaser/owner attempted to pursue DEC permits, this statement is clearly contradicted by numerous references and discussion in the decision to the pending DEC permit application and the weight that such application should be given in determining intent. Hence, the isolated statement does not demonstrate that the ZBA's determination was without sound basis in reason or made without regard to the facts. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 231 (1974). It is further

ORDERED that the petition to annul the determination of the February 25, 2016 of the Town's ZEO is denied as moot. The ZBA properly exercised its lawful authority to review the ZEO's determination *de novo*. Under such circumstances, there would be no legal effect of this court rendering a determination on whether the ZEO's determination was arbitrary and capricious. It is further

ORDERED that Red Wing's motion for a declaratory judgment seeking an order from this

court declaring that its mining activities on the entire 141 acres constituted a pre-existing nonconforming use is denied. This court is without authority to issue a *de novo* review of the ZBA's determination of this issue. As set forth above, this court's function is merely to determine whether the ZBA's determination was arbitrary or capricious or had a rational basis.

Defendants have moved to dismiss those portions of the petition/complaint seeking a judgment declaring Local Law No. 4 unconstitutional and seeking an award of damages based upon a claimed partial taking. Red Wing has further moved for a summary determination as to the constitutionality of Local Law No. 4. Based on the foregoing and there being no disputed factual issues relevant to the constitutional claim, the court deems it appropriate to render a determination on the summary judgment motion despite the fact that issue has not been joined. In exercising the police power to provide for the general welfare of the people, a municipality may reasonably regulate the use of private property notwithstanding the curtailment of private property rights. Modjeska Sign Studios, Inc. v Berle, 43 NY2d 468 (1977). Because zoning ordinances are legislative acts they enjoy a strong presumption of constitutionality. Town of Islip v Caviglia, 73 NY2d 544 (1989). If there is a reasonable relation between the end sought to be achieved and the means adopted to achieve it, the regulation will be upheld. *Id.* Thus, a party challenging the validity of a zoning ordinance as arbitrary and thus unconstitutional must establish beyond a reasonable doubt that the ordinance has no substantial relationship to public health, safety, morals or general welfare. N. Westchester Prof'l Park Assocs. v Town of Bedford, 92 AD2d 267 (2nd Dep't 1983). Applying this standard, the court finds no merit to Red Wing's conclusory assertion that Local Law No. 4 of 2015 is unconstitutional because it restricted mining activities to then currently existing DEC approved mining operations. The record reflects that the Town's amendment to its zoning code to curtail the expansion of mining operations was a valid exercise of its police power. The Town clearly had the authority to amend its zoning ordinance to comply with its comprehensive plan to promote the health and welfare of its citizens and the environmental character of the Town.

To prove that an unconstitutional taking has occurred, a landowner must prove that the subject property cannot yield an economically reasonable return as zoned. Loujean Properties, Inc. v Town Bd. of Town of Oyster Bay, 160 AD2d 797 (2nd Dep't 2009). A property owner challenging a land use regulation as a taking has a heavy burden of proof to demonstrate with the submission of dollars and cents evidence that under no permissible use will the parcel as a whole be capable of producing a reasonable return. Briarcliff Assocs., Inc. v Town of Cortlandt, 272 AD2d 488, 491 (2nd Dep't 2000). A property owner may not establish a taking simply by showing that it was denied the ability to exploit a property interest previously believed to be available for development. Penn Central Transportation Co. v City of New York, 438 US 104, 130 (1978). Red Wing's claim that mining is the highest and best use of its property is woefully inadequate to meet its burden showing that the re-zoning at issue deprived the property of all economic value.

Based on the foregoing, it is

ORDERED that defendants' motion to dismiss Red Wing's claims challenging the constitutionality of Local Law No. 4 of 2015 and for damages based upon an unconstitutional taking

is granted and those claims are dismissed.

The foregoing constitutes the decision, order and judgment of the court.

Dated: July 27, 2017
Poughkeepsie, New York

ENTER:



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Pursuant to CPLR §5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.

Exhibit D

to

Grant & Lyons Memorandum of Comment on behalf of the Town of Rhinebeck,
dated 10 February 2023

Re: DEIS of Red Wing Properties, Inc.
NYSDEC Legislative Public Hearing

Exhibit:

Dutchess County Planning & Development Department Letter
to the Rhinebeck Planning Board dated March 18, 2022.

Dutchess County Department of Planning and Development		Fax Info Only	To	Date	#pgs
			Co./Dept.	From	
			Fax #	Phone #	

239 Planning/Zoning Referral - Exemption Communities

Municipality: **Town of Rhinebeck**

Referring Agency: **Planning Board**

Tax Parcel Numbers(s): **8553300000, 0302280000**

Project Name: **Mining, scale, scale house and driveway access**

Applicant: **Red Wing**

Address of Property: **White Schoolhouse Rd, Rhinebeck, NY 125720000**

Exempt Actions:*
239 Review is NOT Required

- Administrative Amendments (fees, procedures, penalties, etc.)
- Special Permits for residential uses (accessory apts, home occupations, etc.)
- Use Variances for residential uses
- Area Variances for residential uses
- Renewals/Extension of Site Plans or Special Permits that have no changes from previous approvals

No Authority to review these Actions

- Subdivisions / Lot Line Adjustments
- Interpretations

☐ Exempt Action submitted for informal review

Actions Requiring 239 Review

- ☐ Comprehensive/Master Plans
- ☐ Zoning Amendments (standards, uses, definitions, district regulations, etc.)
- ☐ Other Local Laws associated with zoning (wetlands, historic preservation, affordable housing, architectural review, etc.)
- ☐ Rezoning involving all map changes
- ☐ Architectural Review
- ☒ Site Plans (all)
- ☒ Special Permits for all non-residential uses
- ☐ Use Variances for all non-residential uses
- ☐ Area Variances for all non-residential uses
- ☐ Other (Describe):

Parcels within 500 feet of:

- ☐ State Road:
- ☐ County Road:
- ☐ State Property (with recreation area or public building)
- ☐ County Property (with recreation area or public building)
- ☐ Municipal Boundary
- ☒ Farm operation in an Agricultural District

Date Response Requested: **3/4/2022**

Entered By: **Smith, Gretchen**

These actions are only exempt in municipalities that signed an intermunicipal agreement with Dutchess County to that effect.

For County Office Use Only			
Response From Dutchess County Department of Planning and Development			
<p>No Comments:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Matter of Local Concern <input type="checkbox"/> No Jurisdiction <input type="checkbox"/> No Authority <input type="checkbox"/> Withdrawn <input type="checkbox"/> Incomplete - municipality must resubmit to County <input type="checkbox"/> Exempt from 239 Review <input type="checkbox"/> None 		<p>Comments Attached:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Local Concern with Comments <input checked="" type="checkbox"/> Conditional <input type="checkbox"/> Denial <input type="checkbox"/> Incomplete with Comments- municipality must resubmit to County <input type="checkbox"/> Informal Comments Only (Action Exempt from 239 Review) 	
Date Submitted:	Notes: Initial submission on 2/14; additional materials received on 3/2, restarting 30-day clock.	<input type="checkbox"/> Major Project Referral #: ZR22-035	
Date Received: 3/2/2022	<input type="checkbox"/> Also mailed hard copy	Reviewer:	
Date Requested: 3/4/2022			
Date Required: 4/1/2022			
Date Transmitted: 3/21/2022			



COUNTY OF DUTCHESS

DEPARTMENT OF PLANNING AND DEVELOPMENT

March 18, 2022

To: Planning Board, Town of Rhinebeck

Re: **ZR22-035, Red Wing Mine Driveway, Scale and Scale House**

The Dutchess County Department of Planning and Development has reviewed the subject referral within the framework of General Municipal Law (Article 12B, §239-l/m). Please note that this project was initially submitted on February 14, but additional materials were received on March 1, which reset our 30-day review deadline.

ACTION

The applicant is seeking site plan and special permit approval for a new access road to their mining operation, along with a scale and scale house.

COMMENTS

We find that the provided traffic study does not adequately address two primary concerns related to increased truck traffic:

1. **Truck interaction on White Schoolhouse Road** - White Schoolhouse Road is an unmarked local road with significant horizontal and vertical curvature. The traffic study describes it as 22 feet wide, but the April 2019 Pavement Evaluation completed for the Town found that the road width varies and is at times less than 20 feet. That narrow width on a winding road makes any truck traffic a challenge, but particularly concerning is what happens when two trucks (or a truck and a school bus) must pass each other.
2. **Left Turns** - We are uncertain that a substantial increase in left turning trucks from County Route 19 (CR19) onto White Schoolhouse Road can be accommodated safely. During the 2014 Safety Assessment of the Rhinebeck section of Slate Quarry Road conducted by the Dutchess County Transportation Council, staff observed issues with sight distance for eastbound vehicles turning left onto White Schoolhouse Road and noted that the intersection had "the largest cluster of crashes in the study area" (p. 16). The applicant's traffic study addresses left turns from CR19 using an operating speed of 50 MPH, which it states is the 85th percentile speed for the road. If this speed comes from the traffic counter described as being placed 1/3 of a mile west of the intersection, it likely differs from speeds at the intersection. For westbound traffic, CR19's intersection with White Schoolhouse lies at the bottom of a hill and it is possible, though not verified by the Transportation Council, that operating speeds may be higher here. A traffic count station located about a half mile east of the intersection shows a westbound 85th percentile speed of 58 MPH. The unusual configuration of the intersection also contributes to difficulty with left turns; staff has reported confusion from drivers about which side of the intersection median they should turn into and turning by large vehicles may be particularly difficult if another driver is attempting to turn left from White Schoolhouse onto CR19.

To address these concerns, we suggest that the applicant complete a truck traffic mitigation plan, which would propose ways to reduce the safety risk of additional trucks on these roads. The plan could consider, among other measures:

- Limiting the size of trucks accessing the mine.
- Requiring trucks above a certain size to enter the site from the north and exit to the south, so that these larger trucks are traveling southbound on White Schoolhouse Road (and thus not passing each other) and none are turning left at the site entrance or CR 19 intersection. This could be accomplished by prohibiting truck left turns into and out of the site driveway.
- Coordinating with Rhinebeck Central School District to limit truck/bus interactions on White Schoolhouse Road. Based on the 2016, 2013 and 2008 traffic counts (which were conducted during the school year) most buses on this road appear to travel southbound on the road.
- Improvements to the CR 19/White Schoolhouse Road intersection.

In addition to these safety concerns, a substantial increase in truck traffic could have a negative impact on the pavement condition of White Schoolhouse Road. While we do not find that to be a County-wide concern, we suggest that the Town consider requiring the applicant establish a bond to cover any excessive wear or damage.

RECOMMENDATION

The Department recommends that the Board **condition its approval of this project** on mitigation measures that address the safety concerns associated with increased truck traffic on White Schoolhouse Road and CR 19 (Slate Quarry Road).

Voting and Reporting Requirements: If the Board acts contrary to our recommendation, the law requires that it do so by a majority plus one of the full membership of the Board and that it notify us of the reasons for its decision.

Eoin Wrafter, AICP, Commissioner
By



Dylan Tuttle, Planner

Exhibit E

to

Grant & Lyons Memorandum of Comment on behalf of the Town of Rhinebeck,
dated 10 February 2023

Re: DEIS of Red Wing Properties, Inc.
NYSDEC Legislative Public Hearing

Exhibit:

Letter of Robert Wyant, Town of Rhinebeck Highway Superintendent, to the Rhinebeck
Planning Board dated October 19, 2021.

Dear Mike Trimble and Planning Board
October 19 th 2021

Red Wing has said that they are going to remove 7 Million Yards of gravel from the mine on White School house Road, over a twenty year period. They are going to dredge a 94 Acre Lake to 50 feet in depth.

What about the Aquifer pulling water from all around this lake, just a thought would Resident Wells in the area be affected?

Now about the 7 Million yards of gravel being removed. There are 261 working days in a year Monday - Friday 8 hour working days.

This means that if we divide 7 Million by 20 Years the number they quoted, this would equal 350,000 yards of gravel removed per year. If we divide this by the number of working days in a year which is 261, this would equal 1341 yards of gravel per day. If we use 18 as a number of yards per truck and divide this into 1341 we get 74.50 loads a day that is a load every 9.32 minutes of trucks on the road with a load not counting the ones coming in empty to get loaded.

If they are kept to the 12 yard limit imposed in 1987 this would increase the truck traffic by 13.875 trucks an. hour or a truck every 4.2 minutes traveling the roadways.

Weights on the Roads

Gravel weighs about 2500 lbs. per yard, if its dredged would be slightly more from being wet.

So if we use 2500 lbs. as a bench mark a loaded tri axle truck (tri axle means it has a drop axle on the rear of the truck so it can hold more weight.

18 Yds. of gravel would weigh in at 45,000 lbs. And if we divide it by 2000 lbs. to equal a ton it would equal 22.5 tons of gravel.

Now take the weight of the truck empty which would avg. 29,000 lbs. bringing a total of 74,000 lbs. or 37 ton with the weight of the gravel and truck together.

Continued

If we divide the weight by the number of tires on a tri axle truck which is 12 this would equal 6167 pounds per tire.

Tires of these trucks have an avg. Imprint of 11 inches by 8 inches which equals 88 sq. Inches.

Asphalt has a typical weight limit of 110 lbs. per sq. inch. This would be on a good road in great condition. The South End of White School House from Hilltop to Slate Quarry was paved in 2011 or 10 years ago.

The North End of White School House from Hill Top to NY route 308 was paved in 2005.

The Roadway is at the end of its life cycle 10 to 15 years in our area is the Life Span of our Roads according to Cornell University, which does road studies.

The whole road is due for new pavement very soon, the road is 2.40 miles long. This road will not hold up well to heavy truck traffic as mentioned in aforementioned.

The cost to repave this entire road would be between low ends of \$228,690.00 to a high end of \$275,000.00 at today's prices.

In closing I would like to say as Highway Superintendent in this town I thought you may like to hear my perspective on this , I ve have seen firsthand how some Gravel Companies come in and clean a gravel pit out in one year, with truck after truck day after day.

My personal feelings are that if they are going to wear out one of our roads the town should be compensated for it somehow, no other businesses do this to our roads, and it should not fall on the Tax Payers of this Town to pay for accelerated road decay due to truck traffic from their mining operations. Thank You

Town of Rhinebeck highway Superintendent, Robert Wyant

Comment A58 – Planning 4 Places

To: John Lyons

From: James Levy, AICP

Re: Red Wing - Transportation

Applicant: Red Wing Properties, Inc.

Facility: Red Wing White Schoolhouse Road Mine

Subject: Comments on DEIS Traffic and Transportation Impacts

Author & Firm Overview

Planning4Places, LLC is a woman-owned business located in the Capital Region of New York. Established in 2009, the firm is a certified Disadvantaged Business Enterprise (DBE) in NY, CT, MA, NH, PA, and VT and is also a NYS-Certified Woman Business Enterprise (WBE). Planning4Places is also qualified with NYS Empire State Development (ESD) for on-call planning services in several practice areas. As community planning specialists, we offer a range of planning services from transportation to land use and public engagement to resiliency. Our firm has significant experience working with municipalities, MPOs, and state and federal agencies and we only work for the public sector.

The following was drafted by James Levy, AICP, Principal at Planning4Places, LLC. Jim is an accomplished professional planner and project manager with 25 years of land use and transportation planning experience. He has been the planning consultant for the Town of Rhinebeck since the fall of 2018.

Mining – A Transportation Perspective

Transportation impacts from a mine, such as the one proposed by Red Wing on White Schoolhouse Road, are somewhat unique land uses in regards to transportation because they require vehicular movement of material via some of the heaviest trucks on the road. Making this particular use even more unique is the fact that the access to this mine is located in the middle of White Schoolhouse Road, a relatively narrow and winding local rural road, even by the standards of a rural community like Rhinebeck, with structures and trees in close proximity to the road and a geometry and roadbed not designed and constructed for constant use by heavy vehicles.

There is concern that the combined truck volume for all these uses will exceed the carrying capacity of White Schoolhouse Road for trucks, if it is not already, and increase the potential for safety issues due to the increase in the number of large vehicles traversing White Schoolhouse Road and utilizing an intersection with a known safety problem. The DEIS transportation information provides some interesting data points and elements for comparison, as well as some inconsistencies that make assessing the actual potential/likely/proposed impact difficult, if not impossible, without more detailed, and consistent, information. Some of these elements discussed below include:

- The Red Wing Full Environmental Assessment Form (FEAF) appears to either be done using an old format, is incomplete, or just the wrong form altogether. The file name date appears to indicate the form is either from 2003 or 2012 and is unsigned and not dated. The form

submitted for review by the Town Planning Board is not the form provided for use today by the NYSDEC.

- The old format/incomplete/wrong form does list a single transportation impacts line with the question “Will the proposed action result in the generation of traffic significantly above present levels?” This is checked “no”. The proposed action, as noted below, will potentially double truck traffic on White Schoolhouse Road. The potential impact of the trucks on the road varies depending on what size truck is being considered as the hauling vehicle. Red Wing is proposing a truck size that has not been permitted in the Town of Rhinebeck for mining on White Schoolhouse Road and a study commenced by the Town to assess potential pavement issues notes that the size of the truck has a direct and very significant relationship to the impact on White Schoolhouse Road (Exhibit A).
- The Red Wing DEIS states that their driveway is two 16’ travel lanes or 32’ wide. The driveway is several feet wider than the Town Road proposed to be used to access the site.
- The Red Wing DEIS is proposing a maximum of 50 trucks per day but noted that the operation had up to 60 trucks per day maximum when it was previously mined. The Red Wing mine DEIS is proposing larger trucks for hauling than have been permitted for mining operations in the Town of Rhinebeck, including trailer dumps with 28 to 30 cubic yard capacity. This is much higher than the 12 cubic yard trucks being used by mining operations in today and that the Town Planning Board has consistently required be used for mining operations along White Schoolhouse Road for decades, including for mine renewal permits granted to two existing mines in 2022. This requirement is listed in multiple Town of Rhinebeck Planning Board approval resolutions for mining renewal permits along White Schoolhouse Road. (Exhibit B). If we consider the fact that the current traffic study accounts for trips utilizing 28 to 30 cubic yard trucks, which are more than twice as large as what is currently permitted (and more than twice what is likely to be permitted by the Planning Board), it is fair to state that to move the same amount of material with 12 cubic yard trucks, all other factors being equal, the Red Wing operation will actually create more than twice as many trips as they are currently projecting.

These elements and concerns are discussed in more detail below.

The Traffic Element of the proposal is “Significant” by SEQR EAF Standards

To assess traffic impact, the State Environmental Quality Review Act (SEQR), Full Environmental Assessment Form, Part 1-Project & Setting, Question D.2.j was consulted. This question investigates whether or not “substantial traffic will be generated” by looking at the potential for substantial increases in traffic or substantial new demand for transportation facilities or services. For reference, Red Wing submitted a copy of what is labeled a Full Environmental Assessment Form to the Town of Rhinebeck Planning Board, but it is either an outdated form (not the current NYSDEC form) or information was left off the form as it was recreated – the form submitted to the Town of Rhinebeck is not a standard form. Regardless, the form submitted (Item C.12 in the submitted EAF form) checked “no” to the question “Will the proposed action result in the generation of traffic significantly above present levels?” The analysis utilizing the SEQR Full EAF Part 1, Question D.2.j indicates otherwise.

The NYSDEC Full Environmental Assessment Workbook Question D.2.j – Project Operations – Full EAF (Part 1) assists in answering this question and determining whether or not a project should be considered to result in a substantial increase in traffic. The first step is to review the table defining thresholds for significant traffic increases. The table assumes that a project generating fewer than 100 peak hour vehicle trips per hour will not result in any significant increases in traffic, as defined in 6 NYCRR Part 617.7 – Determining Significance. The mining action itself is significant, and thus, why the Red Wing DEIS was required to be drafted. The indicators of significant adverse impacts on the environment, as detailed in 6 NYCRR Part 617.7 as they relate to transportation are detailed below.

Circling back to Question D.2.j in the NYSDEC Full Environmental Assessment Workbook Question D.2.j – Project Operations – Full EAF (Part 1) next requires looking at the table in Part 1 D.2.j, where the requirement is to “...match your project as closely as possible to the LAND USES identified in the table.” In this case, the proposed mine use appears to match Light Industrial/Warehousing of 180,000 square feet (gross floor area) or Manufacturing Plant of 149,000 square feet (gross floor area). The gross floor area totals equal no more than 4.13 acres of land. The proposed mine area is 94 acres (of a 241-acre site), and thus, substantially larger than the acreage in the SEQR table for the closest comparable uses. The number of truck trips detailed in the DEIS does not directly indicate more than 100 peak hour vehicle trips per hour, but there are nuances to be considered when determining transportation impacts. This section of the NYSDEC Full Environmental Assessment Workbook Question D.2.j – Project Operations – Full EAF (Part 1) notes that even if a development “...does not generate the threshold level of trips presented in this workbook, a traffic analysis may still be necessary...” under certain conditions. Red Wing did commission a traffic study. Given the above, the answer to Question D.2.j is “Yes.”

The significant impact identified above comes about in many different forms from the proposed project. The DEIS Section 2.4.1.4 (Transport) discusses hauling of material to and from the proposed new mine access road. This section discusses the exiting of the site (trucks taking a right turn at the proposed entrance onto White Schoolhouse Road) and traveling south to Slate Quarry Road where “Most trucks will turn right at this intersection and head west to NYS Route 9G.” *This section does not discuss how the incoming trucks will access the site and this is vital information to know exactly how many trucks are proposed to utilize which particular portions of White Schoolhouse Road and what the impact may be (a truck passing a point once is a single impact, passing the same point twice – a double impact).*

If we assume a truck into the mine is also a truck out on the same day that could, by the DEIS numbers, equate to a maximum of 50 trucks in and 50 trucks out. This would total 100 trips a day and therefore trigger a potential for a significant increase in traffic as defined by SEQR (see above). Of course, actual circumstances may create significant impacts even below guidance levels, which can be seen from a road condition and life cycle cost as described in the CPL Architecture, Engineering and Planning Pavement Evaluation and Life Cycle Cost Analysis for White Schoolhouse Road (Exhibit A).

The DEIS Section 2.4.1.4 (Transport), referenced above, states “The number of trucks generated by this mine will vary based on the intermittent demand for the material. The anticipated maximum loaded truck trips (loaded trucks leaving the site) that will occur in a single day will be approximately 20 to 50.” The DEIS document also states that trips will include vehicles “...from one-ton pickups to tri-axes to trailer dump trucks between 28 and 30 yards per load”, the total maximum vehicle trips would total 100 in this case, assuming a truck in is also a truck out the same day. However, in Section 4.3.3.1, the DEIS states that “Before the former northern access to the mine was removed, the traffic generated by the

mine was driven by market demand but averaged 25 to 50 trucks per day and was up to 60 trucks per day.” A total of 60 trucks per day is a 20% increase over the maximum average stated in the prior section of the DEIS. A 20% increase in traffic is not, in our opinion, considered to be consistent with the term “approximately” as used to discuss potential traffic. The information provided in these two sections displays, in our opinion, a lack of consistency in data and specificity in detailing exactly how many truck trips will be made to and from the site.

The Traffic Impact Analysis is inadequate as it does not specifically call out the number of semi-trailer truck trips per day (trailer dump trucks are comparable) which is a specific element to be called out based on the traffic impact criteria of SEQR.

Roadway Width, Truck Size & Volume Concerns and Considerations

There are two other active mine operations along White Schoolhouse Road – JD Von Der Leith and Lobotsky. These mines have been in continual operation for decades and their associated transportation elements have been ongoing operations that have been consistent with requirements detailed in Special Use Permit approval resolutions by the Town Planning Board going back decades. (Exhibit B). The mine site proposed to be reactivated by Red Wing ceased being actively mined in approximately 2013 and has been inactive in the ten years since then. With the site now proposed to be reopened, such an operation will create additional vehicle trips, for vehicles of all sizes from staff vehicles to large hauling trucks. These trucks are also proposed to exceed the limits of permitted mining truck sizes that have been consistently regulated for decades by the Town Planning Board for use on White Schoolhouse Road.

In 2022, the existing Von Der Leith and Lobotsky mines were reapproved for their Special Use Permit, in coordination with the 5-year NYSDEC mining and reclamation permit renewal, by the Town of Rhinebeck Planning Board to continue said uses. According to presentations by the Von Der Leith and Lobotsky engineer representing both owners before the Planning Board in 2022 for their Special Use Permit renewal public hearings, both mines are anticipated to be mined-out within approximately 5 years. During the Planning Board discussions of the Von Der Leith and Lobotsky mine renewal applications, at Planning Board public hearings, the Planning Board discussed concerns related to truck traffic on White Schoolhouse Road. Von Der Leith and Lobotsky both noted that this traffic has been ongoing and provided truck trip estimates for their operations. For the JD Von Der Leith & Sons mining operation, there are a maximum of 12 truck trips per day hauling a maximum of 12 cubic yards per truck trip. For the Lobotsky mining operation, the Lobotsky engineer/representative before the Town Planning Board stated that there are a maximum of 12 truck trips per day hauling a maximum of 12 cubic yards per truck trip. JD Von Der Leith & Sons is mining the Lobotsky mine site. Both project (permit) approval resolutions included a condition that both Von Der Leith and Lobotsky mine owners had to be willing to come to the table to discuss the truck traffic issue, if called upon to do so by the Town of Rhinebeck. That condition was stated as follows: *Applicant shall continue to work with the Town (Planning Board) regarding discussions, concerns and assessments of the combined truck traffic impact on White Schoolhouse Road and acknowledges that should additional traffic discussions be required at any time to address Section 125-68.FF.5 & 6, applicant shall participate in said discussions, and work to address and modify operations as needed, to resolve or address any concerns, issues or needs.*

With the proposed Red Wing application, it is important to note the difference in operation size from what exists today. The two existing mines along White Schoolhouse Road – the JD Von Der Leith & Sons mine and the Lobotsky mine, each utilize 12 truck trips maximum from their respective mining

operations per day (note that JD Von Der Leith & Sons mines the Lobotsky site). The maximum number of truck trips on any given day from both mine sites is 48 trips total in & out of both sites (though some of the Lobotsky mine trips are also trips counted in the JD Von Der Leith & Sons property count – they transport material from Lobotsky to their property, so they may actually be double-counted in this number and therefore the number of truck trips are over calculated). The material is transported by JD Von Der Leith in 12 cubic yard trucks. The comparison to make is that the Red Wing mine operation DEIS is proposing a maximum of 50 trucks per day (though as noted above, the DEIS stated that the operation had up to 60 trucks per day maximum when it was previously mined) utilizing different size trucks, including trailer dumps with 28 to 30 cubic yard capacity. The Red Wing operation will clearly be larger than the two existing mining operations combined, both in terms of truck trips and proposed capacity transported along the roads in the largest trailers, though truck size for mining has been consistently regulated to certain load capacities and number of axles for decades and any operation on the Red Wing site would be expected to have the same capacity maximum requirements required by the Town Planning Board (see below discussion on truck sizes).

Section 4.3.3.1 summarizes the potential traffic impacts as detailed in the Creighton Manning Engineering Traffic Study. The DEIS states that White Schoolhouse Road is 22' wide. The April 2021 *Pavement Evaluation and Life Cycle Cost Analysis for White Schoolhouse Road* (Pavement Evaluation) states that the road width varies from 19' to 22' with unpaved shoulders of 1' – 3'. The Pavement Evaluation report also states that the average weekday traffic on White Schoolhouse Road in 2017 was 340 vehicles. The current White Schoolhouse Road speed limit (*not design speed, which is used to determine various geometric features of the roadway and is used in the NYSDOT Highway Design Manual referenced herein*) is 35mph. According to the NYSDOT Highway Design Manual, a Non-NHS Local Rural Road with a design speed of 35 mph and an AADT of under 400 vehicles would require a lane width minimum of 9' with a 2' shoulder, or 11' lanes for a total of 22' in width, generally what exists along White Schoolhouse Road today. It is important to note that we are using the existing White Schoolhouse Road speed limit as if it were the design speed and the road design/characteristics as they exist today as the "design" since there are no plans for major improvements/design changes or changes to the speed limit, but there are clear identified concerns about additional volumes of large trucks on White Schoolhouse Road given the existing design/geometry and road widths.

Again, looking at the NYSDOT Highway Design Manual, if the trips increase to 400 or more, which they potentially would with the proposed Red Wing operation (which was not in operation in 2017 when the Pavement Evaluation traffic count was taken) and the likely increase in traffic since 2017 on White Schoolhouse Road to today, the roadway width design minimums would change. This is due to most roads in the Town are seeing increased volumes (particularly those that connect two major thoroughfares as White Schoolhouse Road does - Slate Quarry Road and State Route 308). In this scenario with over 400 potential trips, a 35-mph road with between 400 and 2,000 Average Annual Daily Traffic (AADT) would see the design criteria minimum lane width increase to 10' with a 4' shoulder. For reference, AADT measures the typical daily traffic on a road segment for all the days in a week over a one-year period. Therefore, a 14' lane or 28' road width total should be provided on White Schoolhouse Road under the AADT scenario detailed above. Utilizing the most generous calculation based on the CPL Architecture, Engineering and Planning Pavement Evaluation and Life Cycle Cost Analysis for White Schoolhouse Road (Exhibit A and details below), White Schoolhouse Road would only at some points be up to 25' wide, 3' less than the NYSDOT design criteria for a road with this potential number of trips.

This is a core concern that has been discussed by the Planning Board over the last few years regarding combined truck traffic (and thus impact) on White Schoolhouse Road. With the proposed Red Wing operation, the trip generation, and the vehicle types proposed, this will take a currently an acceptable/possibly already excessive, maximum truck trip impact to White Schoolhouse Road to a scenario that exceeds design conditions given existing road characteristics.

For perspective, the Red Wing DEIS states that their driveway onto the property utilizes two 16' travel lanes for a total driveway width of 32'. The driveway is thus several feet wider than the Town Road proposed to be used to access the site.

Pavement Condition Assessment

Another concern is the current condition of the road, potential future improvement and upgrade needs, associated costs to repave the road due to the current generally poor condition, and the impact of additional heavy trucks – mining trucks which are proposed to be heavier than the mining trucks that have utilized White Schoolhouse Road for decades.

In April 2021, the Town of Rhinebeck contracted CPL Architecture, Engineering and Planning to conduct a Pavement Evaluation and Life Cycle Cost Analysis for White Schoolhouse Road (Exhibit A). The 15 page report was conducted to “...examine the effect heavy truck traffic generated from a gravel quarry will have on White School House Road.” The document stated the following regarding the Red Wing mine site when it was last in operation *“The trucks serving the mine facility ranged in size from 1-ton pickups to trailer dumps with a 30 cubic yard capacity. A 30 CY trailer dump weighs approximately 40 tons or 80,000 lbs, 13 times the weight of a standard size pickup truck. One method that can be used in pavement design is to predict the number of standard or equivalent single axel loads (ESALs) that a pavement will be subjected to over its entire service life. The higher the number of ESALs, the more distress the pavement section will experience and the shorter its expected service life becomes. The American Association of State Highway Transportation Officials has published guidance on how to calculate ESALs, and that guidance was employed using the traffic volumes and truck compositions that can be expected on White School House Road.”* The Pavement Evaluation provides detail and calculations related to the ESAL.

The potential impact difference between what is proposed singularly for Red Wing in the DEIS and combined potential impact from what is occurring now as a result of the JD Von Der Leith truck volume and possible additional Red Wing truck traffic is significant. Both the Von Der Leith and Lobotsky operations are hauling a maximum of 12 cubic yards per truck trip, consistent with the Town Planning Board approval resolution(s). Those 2022 approval resolutions, and renewals approved over the last several decades, included the following condition: *Limits trucks employed in the haulage of sand and gravel to not more than 10-wheel, 12-cubic yard capacity.* Copies of mining operation Planning Board Special Use Permit resolutions are attached as Exhibit B.

The DEIS document also states that trips will include vehicles “...from one ton pickups to tri-axes to trailer dumps between 28 and 30 yards per load.” At 28 to 30 yards per load (we believe this is cubic yards), the proposed largest trucks would be more than twice as heavy as what is being used today with 12 cubic yard trucks maximum (*The weight of a cubic yard of gravel is ~2,500 lbs on average – it could be more or less depending on a number of factors*). A truck with 2 or more times the weight of what is currently used is many tons more per vehicle traveling along White Schoolhouse Road.

The Pavement Evaluation analyzed weights of several different vehicle types of weight. Table #3 “ESALs due to each vehicle type” shows the potential impact by vehicle type. The Pavement Evaluation states “This shows that if there are 16- 30-ton dump trailers using the roadway in any given day, those 16 trucks make up less than 5% of the average daily traffic but produce 320 ESAL, while the 196 passenger cars *[accounting for ~58% of the average daily traffic]* produce only 23 ESAL.” It is clear that the higher the truck weight, the more significant the potential impact on the road from each vehicle trip.

Though the DEIS states that trucks would be 28 to 30 yards (we believe this is cubic yards) per load, this size vehicle is unlikely to occur as the Town Planning Board, in discussions with Red Wing representatives during public Planning Board meetings, noted that upon consideration of an approval resolution for the proposed use, the same conditions would certainly be required of Red Wing as have been imposed on the other mining uses in the Town along White Schoolhouse Road. Assuming that Red Wing receives approval from the Planning Board, and that the maximum truck size was required to be 12 cubic yard capacity (reduced to the smaller size maximum from what is proposed in the DEIS), the number of trips from Red Wing will still significantly eclipse the number of trucks currently traveling on White Schoolhouse Road for the two existing operational mines, combined. If we consider the fact that the current traffic study accounts for trips utilizing 28 to 30 cubic yard trucks which are more than twice as large as what is currently permitted (and likely to be permitted by the Planning Board), it is fair to state that to move the same amount of material, all other factors being equal, the Red Wing operation will actually create more than twice as many trips as they are currently projecting. This would increase the number of heavy truck trips from this operation from their maximum of 50 (60 if we consider the previous maximum) to 100 (120 if we consider the previous maximum number of trips during their previous operating period), thus significantly increasing the trip count on White Schoolhouse Road and requiring a recalculation of potential or likely traffic impact through the traffic study and revised discussion of traffic impact in the DEIS.

The Pavement Evaluation provided a summary of the “...effect of heavy truck traffic on White School House Road” and came to the following conclusions:

- Most of the existing roadway has a very thin (less than 3.5”) asphalt section that is not sufficient to carry heavy truck traffic.
- Sections of the existing roadway are already in poor condition and can be expected to fail rapidly under heavy truck loading.
- An Equivalent Single Axle Load for the roadway was calculated at 5843 ESAL per year. The heavy truck traffic that is expected constitutes less than 5% of the daily traffic but causes more than 65% of the ESALs.
- If minor rehabilitation (\$800,000 construction cost) is undertaken on the sections of the roadway in the poorest condition, and a 10 Ton posting is placed on the roadway, it is estimated that a 5–7-year service life can be achieved.
- If a major rehabilitation (\$2,255,731 construction cost) is undertaken on the entire length of White School House Road, and a 10 Ton posting is applied to the roadway, a 15-to-20-year service life can be expected.
- If a major rehabilitation (\$2,255,731 construction cost) is undertaken on the entire length of White School House Road, and a 25 Ton posting is applied to the roadway, a service life of 7 to 10 years can be expected.

- If the Town decides to not to take any constructive action, then a 10-ton posting would be required. The 3 worst sections of the roadway will deteriorate quickly and require will maintenance repairs to keep the roadway in a poor but passable condition.

The Town of Rhinebeck Highway Department has an annual paving budget of approximately \$400,000. As noted above, the costs to rehabilitate the existing road are twice the existing paving budget and by only rehabilitating the road, a 10-ton posting is recommended. Currently, 12 cubic yard trucks are permitted by the Town Planning Board and carrying an average load weighing 2,500 lbs per cubic yard, the existing truck traffic is three times the recommended weight limit for a rehabilitated road.

If a major rehabilitation is undertaken, at a cost of \$2.25M, the effort would be over 5 ½ times the annual paving budget for the Town of Rhinebeck. Even with a major rehabilitation, a 25-ton posting is recommended for the roadway, which would effectively require the existing 12 cubic yard trucks to only haul 10 cubic yards, a further reduction in trip load capacity and thus another potential increase in the number of truck trips that would be required to move the same amount of material as is currently done/proposed.

Safety Concerns

Safety of White Schoolhouse Road and Slate Quarry Road are already an identified concern to the Town, nearby residents, and Dutchess County. While data on crashes on White School House Road are not tracked in the state crash database, crashes on Slate Quarry Road and Route 308 are tracked. The attached map (Exhibit C) provided by the Dutchess County Planning Department shows a cluster of crashes at the intersection of Slate Quarry Road and White Schoolhouse Road. This intersection is a major concern and was the subject of a Safety Assessment by the Dutchess County Transportation Council in 2014 (Exhibit D). The report noted several recommendations including reconfiguration of the intersection of Slate Quarry Road and White Schoolhouse Road. The next steps in the study noted “The PDCTC, through the work of the S[afety] A[ssessment] Team, has prepared this report to assist Dutchess County Department of Public Works and the Town of Rhinebeck with prioritizing opportunities to improve safety within the study area.” Some improvements were made because of this study, but as is indicated from the crash map, there is still a significant crash issue on either end of White Schoolhouse Road.

Transportation Impact Analysis Using NYS SEQR Guidance: FEAF Workbook Question 13

Question 13 of the FEAF focuses on the impact on transportation and whether the proposed action may result in a change to existing transportation systems. Based on the information detailed above and data provided within the DEIS and traffic study, it is clear that this proposed use will create a significant change to the existing transportation system. The degree to which it will occur is not clear because the impact is directly tied to the number of truck trips and truck size/weight, which is not a known quantity based on the information provided (due to inconsistent or incomplete information). Additionally, as previously noted, based on past actions by the Town Planning Board, as part of an approval resolution changes in the proposed truck size (a reduction in the proposed hauling capacity/weight per truck) are likely to be required which would make the Red Wing truck hauling criteria consistent with other existing mining operations along White School House Road which currently are, and have been for decades, a consistent requirement. This requirement will, however, create an even greater number of truck trips than what is detailed in the DEIS if the same quantity of material is to be removed from the

mine as each truck will be required to carry less than half of the quantity/weight proposed in the DEIS. Additionally, based on the Pavement Evaluation guidance, if the road is weight restricted, it will reduce the truck hauling capacity/weight even further from what is proposed by Red Wing and will also require the other two mining operations to reduce their weight capacities, increasing the number of trips for those operations as well. All of this is due to the existing conditions of White School House Road and the proposed use.

The Part 2 “Identifying potential impacts” guidance assists in helping to evaluate whether there will be an impact. If a proposed project exceeds a numeric threshold in a question, it is presumed to be a moderate to large impact. If it does not exceed a numeric threshold in a question, the reviewing agency should consider the scale and context of the project in determining if an impact may be small or moderate to large. Question 13 states that a Moderate to Large Impact could occur under Question D.2.j from one or more of these circumstances:

- The project adds substantial traffic to the area.
- The project adds some level of, but not substantial traffic (as defined in Part 1, Question D2. J.) to the area, but due to current road, traffic, and intersection conditions, the road does not have the capacity to handle it.

The information provided above provides details indicating that White School House Road does not have the capacity to handle additional heavy truck traffic.

State Environmental Quality Review Act (SEQR), Full Environmental Assessment Form, Part 1-Project & Setting Question D.2.j also details that a moderate to large impact could occur if new or altered roads, intersections, transit facilities, access control, or signal systems are required to handle the additional demand related to the proposed project. It is clear from the Pavement Evaluation that the road needs to be rehabilitated due to its current condition but that rehabilitation need, the timeline for such work and the useful life of any rehabilitation action taken in the future, is directly tied to the amount of use of the road, particularly heavy truck traffic which accounts for small percentages of total trips but the majority of the negative impact that reduces the useful life of said rehabilitation actions.

The details provided herein clearly show that the proposed mine use will create a moderate to large impact, one that may exceed criteria established (again, because of the degree to which the DEIS provides inconsistent information and if the maximums are considered as possibilities for trucks that the Town is likely to permit to haul material, the SEQR thresholds are met) and because the DEIS details proposed transportation (truck hauling) actions that clearly exceed the decades-long established local thresholds for truck size/type/weight.

Transportation Planning Analysis Summary

The DEIS appears to have some issues that need to be resolved before an accurate analysis and accounting of the potential traffic and transportation impact can be reasonably determined. Proposals related to the type of truck to be utilized, as proposed in the Red Wing DEIS, run counter to the requirements that have been part of Town of Rhinebeck Special Use Permit process for mining along White Schoolhouse Road for decades.

Truck size proposals presented in the DEIS by Red Wing are counter to the long precedent set by the Town of Rhinebeck over decades of reviewing mining applications along White Schoolhouse Road.

Comments about these longstanding truck size requirements were made directly to Red Wing during Planning Board Public Hearings, such requirements are documented in Planning4Places Planning Board memos related to the Red Wing Special Use Permit application to the Planning Board, and the two adjacent mines on White Schoolhouse Road went through Town Planning Board Special Use Permit renewal review processes and once again had the exact same longstanding requirements placed upon the current operations. Despite this, the DEIS appears to fail to account for the likely actual outcome of a Special Use Permit review process that is known in advance to be a requirement. Tonnage of material moved, and how it is moved, is one of several specifically defined roles for review by the Town Planning Board and material transport is a key factor in a mining transportation/traffic analysis. The details included in the DEIS do not appear to faithfully reflect the known scenario that will be required of a mine operator on White Schoolhouse Road.

Finally, there does not appear to be much, if any, discussion of mitigation of potential or likely impacts from truck traffic as requested. As described previously, Red Wing states that there will be no impact from the Red Wing mining operation on White Schoolhouse Road. Based on data provided within the DEIS and traffic study, analysis through the SEQR EAF Workbook, and other information sources referenced herein, it is clear that this proposed use will create a significant impact on White Schoolhouse Road.

The regulations for truck trips related to truck size, trips, and traffic is known and clear based on past actions. These details have been provided to Red Wing but they are not accurately reflected in the DEIS and the DEIS is not consistent in stating the maximum potential impact from the operation. It is fair to say that the degree to which there will be a potential impact is not entirely clear because it is directly tied to the number of truck trips and truck size/weight. The question is not will there be an impact but rather how significant will the impact be. The Red Wing DEIS should provide specific, clear guidance and details that make this analysis possible so that the Town Planning Board, residents, and others can clearly understand the proposed operational details.

Exhibits

Exhibit A – CPL Pavement Evaluation and Life Cycle Cost Analysis for White Schoolhouse Road

Exhibit B - Copies of mining operation Planning Board Special Use Permit approval resolutions from 2022 and earlier

Exhibit C - Crash Data from Dutchess County Planning Department: Reported Crashes 2019-2021

Exhibit D - CR 19 (Slate Quarry Rd) Safety Assessment NYS Route 9G to White Schoolhouse Rd, Town of Rhinebeck

Education:

Master of Regional Planning (MRP) – SUNY Albany – 2001

BA – Political Science
BA– Geography, SUNY Geneseo - 1998

Professional Associations:

American Institute of Certified Planners (AICP)

American Planning Association (APA)

New York Upstate Chapter APA

Professional Involvement:

New York Upstate Chapter APA:
Member at Large '19- '20
Past Board President '18
Past Board Vice President '16-'17
Past Board Secretary '14- '17
Town of Niskayuna Complete Streets Committee Member
Schenectady County Environmental Council (SCEAC):
Chair, Vice Chair, Executive Cmte.,
Past. Transportation Cmte. Chair

Awards:

DRI New Rochelle
NY Metro APA: Meritorious Achievement '20

Historic Stockade District Comprehensive Streetscape Plan:
NY Upstate APA: Best Practice '19

Rensselaer Land Trust: Hudson River Access Study
NY Upstate APA: Best Practice '18
CDRPC: Intermuni. Coop. '18

Town and Village of Stillwater Route 4 Form-Based Code:
NYPF: Zoning Excellence '18
CDRPC: Intermuni. Coop. '17

Hatfield Township & Hatfield Borough Multi-Municipal Open Space Plan
Mont. Co. PA Lands Trust '06



Jim is a Principal at Planning4Places, LLC. An accomplished professional planner and project manager with 25 years of experience, Jim has worked with government agencies at all levels in communities across the U.S. in an effort to improve and enhance quality of life through land use, transportation, and resiliency planning. He has extensive experience working in New York State including leading the Award winning Rensselaer County Land Trust Hudson River Access Plan, several CDTC MPO Complete Streets Workshops, the Town of Glenville Complete Streets Concept Plan and Town of Rhinebeck planning efforts as their Town Planner.

Transportation Planning

- **Dutchess County Transportation Council Long-Range MTP: Virtual Public Engagement Services²**
CDTC MPO
- **NYSAMPO Staff Support (2017-Current): Transit & Bicycle/ Pedestrian Working Groups, Website Management, Directors Admin. & Association Management¹**
All 14 NYS MPOs
- **DRI – Complete Streets & Public Outreach/Engagement²**
City of New Rochelle | NYS DOS
- **Oneida County Main Streets Program¹**
11 Municipalities in Oneida County, NY
- **Complete Streets Plans¹**
Town of New Hartford, NY | City of Rome, NY | HOCTC MPO
- **Transportation Listening Sessions for the NYSDEC & CDRPC¹**
NYSDEC | CDRPC | Amsterdam, NY communities
- **Region 1 LDSA Prelim & Final Design Services – Public Outreach¹**
Stephentown, NY | Nassau, NY | NYSDOT
- **Historic Stockade District Comprehensive Streetscape Plan¹**
Stockade Association of Schenectady
- **Freemans Bridge Road Complete Streets Concept Plan¹**
Town of Glenville, NY | CDTC MPO
- **Rensselaer County Hudson River Access Plan¹**
Rensselaer Land Trust
- **Village of Ballston Spa Pedestrian and Bicycle Master Plan²**
Village of Ballston Spa, NY | CDTC MPO
- **Complete Streets Workshops Series - 2020¹**
Village of Ballston Spa, NY | Schenectady County | CDTC webinar series
- **Complete Streets Workshops Series & County-wide Symposium – 2018¹**
Niskayuna, NY | Watervliet, NY | Scotia, NY | East Greenbush, NY | CDTC MPO Albany County Department of Health
- **Complete Streets Workshops Series – 2016¹**
Niskayuna, NY | Troy, NY | Malta, NY | Albany County Health Dept. | CDTC MPO
- **Exit 26 & I-890 (Mohawk River) Land Use and Transportation Study^{1*}**
Town of Rotterdam, NY | CDTC MPO
- **US 9W Multimodal Transportation Corridor Study^{1*}**
Town of Bethlehem, NY | CDTC MPO

¹ Project Manager/Co-Proj. Mgr.

² Senior Staff/Management Team

* Done during previous employment

Speaking & Pro-Bono Work:

NY Bicycling Coalition Inaugural Bike Summit Presenter – Advancing Ecotourism & Green Transportation in NYS Session - '17

Saratoga County Annual Planning & Zoning Conference
Complete Streets Session '17

APA Region 1 (Northeast Region) Planning Conference:
Host Committee Volunteer '15

Upstate Chapter of APA Conference:
Host Committee Volunteer '09, '13, '17

Land Use Planning

- **Town Planning Consultant (includes LWRP implementation and project reviews within State & Federal Historic Districts)¹**
Town of Rhinebeck, NY
- **Village of Stillwater, NY Comprehensive Plan Update¹**
Village of Stillwater, NY
- **Town of Minerva, NY LWRP²**
Town of Minerva, NY
- **Town of Willsboro, NY LWRP²**
Town of Willsboro, NY
- **Town & Village of Stillwater, NY LWRP¹**
Town of Stillwater, NY | Village of Stillwater, NY
- **Comprehensive Plan Updates^{1*}**
Clayton, Deferiet, NY
- **Multi-municipal Comprehensive Plan^{1*}**
Nether Providence Township, Rose Valley, Rutledge, and Swarthmore, PA
- **Pottstown Metropolitan Regional Comprehensive Plan^{1*}**
Pottstown, Lower Pottsgrove, Upper Pottsgrove, Douglass, Upper Hanover, Lower Hanover, PA
- **County Comprehensive Plan^{1*}**
Montgomery County, PA
- **Borough Redevelopment Area Plan^{2*}**
Lansdowne, PA
- **Allegheny Neighborhood Housing Infill and Transportation Plan^{2*}**
City of Philadelphia, PA

Resiliency/Disaster Preparedness & Economic Development Planning

- **Resilient NY – Land Use, Transportation & Flood-prone parcel analysis²**
Delaware, Rockland, Clinton, Westchester, Greene Counties, NY | NYS DEC/OGS
- **Village of Margaretville Gateway Study – Transportation Analysis²**
Village of Margaretville | NYS GOSR
- **NY Rising Community Reconstruction Program Plan: Round 2²**
Town of Fulton & Town of Blenheim, NY | NYS GOSR | NYSDOS
- **NY Rising Community Reconstruction Program Plans: Round 1¹**
Southern Brooklyn Peninsula | Long Beach | Atlantic Beach | Lido Beach | Barnum Island/Oceanside | Gerritsen Beach/Sheepshead Bay | NYS GOSR

Zoning & Subdivision

- **Town Planning Consultant – Regular Zoning Updates¹**
Town of Rhinebeck, NY
- **Form-Based Code – Route 4 Corridor Zoning and Design Guidelines¹**
Town of Stillwater, NY | Village of Stillwater, NY | CDTC
- **On-Call Zoning & Subdivision Ordinance Revisions – Technical Assistance¹**
Town of Glenville, NY

¹ Project Manager/Co-Proj. Mgr.

² Senior Staff/Management Team

* Done during previous employment

Exhibit A

to

Planning 4 Places report on behalf of the Town of Rhinebeck,
dated 10 February 2023

Re: DEIS of Red Wing Properties, Inc.
NYSDEC Legislative Public Hearing

Exhibit:

CPL Pavement Evaluation and Life Cycle Cost Analysis for White Schoolhouse Road



PAVEMENT EVALUATION AND LIFE CYCLE COST ANALYSIS

For White School House Road

April 2021

Town of Rhinebeck, Dutchess County New York

Prepared by: C.S. Mozrall P.E.

CPL Architects, Engineers, Landscape Architect and Surveyor, D.P.C.

Introduction: The Town of Rhinebeck has asked CPL to examine the effect heavy truck traffic generated from a gravel quarry will have on White School House Road. The existing condition of the roadway was examined, and pavement cores were taken at 6 locations along the roadway to determine the makeup of the pavement section. The evaluation will include a prediction of the deterioration that heavy truck traffic will have on the pavement structure, and will identify pavement rehabilitation options, the cost of those options and the service life that those options would be expected to provide.

Existing Pavement Conditions: White School House Road is a two-lane asphalt paved road located in the Town of Rhinebeck and is approximately 2.4 miles long. It is bounded by Dutchess County Route 19, Slate Quarry Rd to the South and by New York State Route 308 to the north. There are numerous residences along the road which is mainly rural in character. The terrain of the road can be characterized as gently rolling with several horizontal curves. White School House Road has a paved width that varies from 19' to 22' and unpaved shoulders 1'-3' wide. Cross-culverts carry small streams under the road at 5 locations. Some photos showing the typical condition of the roadway surface are below.



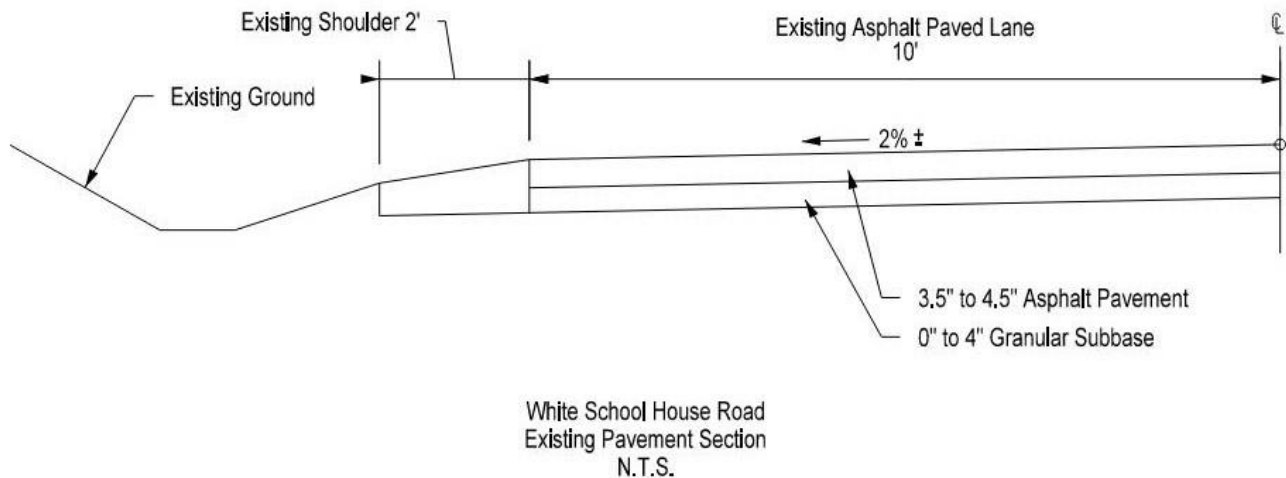
In March of 2021, pavement cores were obtained at 6 locations along White School House Rd. **Table 1** shows the thickness of the pavement sections and describes the condition of the pavement surface.

Table 1

White Schoolhouse Road Condition

Mar-21

	Begin Station	End Station	Length (FT)	Pavement Depth	Pavement Surface Condition	Distress description
NYS RT 308	0+00	0+500	500	3.000"	Fair to poor	Alligator cracking along both shoulders covers 15-30% of the surface
48"CMP	0+500	0+505	5			Culvert is in good condition
	0+505	2+500	1995	3.000"	Poor	Alligator cracking along both shoulders covers 20-40% of the surface, areas with significant deterioration along the edge of the travel lane
	2+500	4+750	2250	3.125"	Fair to poor	Alligator cracking along both shoulders covers 20-40% of the surface, areas with pavement edge repairs present
2-60"CMAC	4+750	4+760	10			Twin pipe arches are in fair condition with corrosion seen at the waterline.
	4+760	5+800	1040	3.125"	Poor	Alligator cracking along both shoulders covers 25-50% of the surface, areas with significant deterioration along the edge of the travel lane
	5+800	7+920	2120	3.750"	Fair to poor	Alligator cracking in wheel paths covers 15-30% of the surface, deterioration along the Centerline joint.
24" HDPE	7+920	7+925	5			Culvert is in good condition
	7+925	8+975	1050	3.250"	Poor	Alligator cracking in wheel paths covers 25-50% of the surface, deterioration along the Centerline joint.
	8+975	10+300	1325	8.5"	Fair to poor	Alligator cracking in wheel paths covers 15-30% of the surface, deterioration along the Centerline joint.
15" HDPE	10+300	10+305	5			Culvert is in good condition
	10+305	12+145	1840	6.750"	Good to fair	Transverse cracking covers 10-20% of the surface
15"HDPE	12+145	12+150	5			Culvert is in good condition
CR 19	12+150	12+600	450	6.750"	Fair to poor	Transverse cracking covers 15-25% of the surface
Total length			12600	FT		



The pavement cores showed 3.0" to 8.5" of asphalt concrete pavement, with most of the roadway the northern portion of the roadway (8975') having less than 375" of asphalt concrete pavement.

The southern portion (3625') of the roadway has a pavement section that varies between 8.5" deep and 6.75" deep. The deeper pavement section and generally better roadway surface condition at the southern end of White School House indicates that this section has received an overlay treatment at some point in the past 20 years.



Photo above- Pavement edge and shoulder are breaking, typical condition in several areas.

Traffic. The average weekday traffic White School House Road in 2017 was 340 vehicles per day. When the gravel mining operation was in operation, 46 trucks per day on average were entering and exiting the mining facility located on the west side of the roadway approximately 1,300' north of intersection with Slate Quarry Rd. The trucks serving the mine facility ranged in size from 1-ton pickups to trailer dumps with a 30 cubic yard capacity. A 30 CY trailer dump weighs approximately 40 tons or 80,000 lbs, 13 times the weight of a standard size pickup truck. One method that can be used in pavement design is to predict the number of standard or equivalent single axel loads (ESALs) that a pavement will be subjected to over its entire service life. The higher the number of ESALs, the more distress the pavement section will experience and the shorter its expected service life becomes. The American Association of State Highway Transportation Officials has published guidance on how to calculate ESALs, and that guidance was employed using the traffic volumes and truck compositions that can be expected on White School House Road.

Table #2

White School House Rd ESAL Factor Calculations

Vehicle type	Total weight LBS	Steering Axel Load	Driving Axel Load- Single	Driving Axel Load- Tandem	Trailer Axel Load- Tandem
Passenger Car	4000	2000	2000		
Pickup Truck	6000	2000	4000		
Single Axel Dump- 9 Ton	18000	4000	14000		
Dual Axel Dump- 12 Ton	24000	4000		20000	
Trailer Dump- 30 Ton	60000	4000		28000	28000

Using the load equivalency factors from AASHTO 1993

Axel Type	Axel Load (LBS)	Equivalency Factor
Single Axel load	2000	0.0003
	4000	0.0048
	14000	0.399
Tandem Axel Load	20000	0.162
	28000	0.622

Using the ESAL factors and the expected composition of traffic on White School House Rd, **Table #3** shows the impact that each vehicle type can be expected to have on the pavement structure.

Table #3 ESALs due to each vehicle type

Vehicle Type	Daily Traffic	Steering Axel load	Driving Axel Load	Trailer Axel Load	Vehicle ESAL Total
Passenger Car	196	0.0588	0.0588		0.1176
Pickup Truck	98	0.0294	0.4704		0.4998
Single Axel Dump- 9 Ton	15	0.072	5.985		6.057
Dual Axel Dump- 12 Ton	15	0.072	2.43		2.502
Trailer Dump- 30 Ton	16	0.0768	9.952	9.952	19.9808
Daily Traffic Total	340				

This shows that if there are 16- 30 ton dump trailers using the roadway in any given day, those 16 trucks make up less than 5% of the average daily traffic, but produce 320. ESAL, while the 196 passenger cars produce only 23 ESAL. If this loading is projected over 1 years' time, **Table #4** shows the expected annual loading on the pavement structure.

Table #4 Annual ESAL loading

Vehicle Type	Daily Traffic	Daily ESAL Total	Days per week	Weeks per Year	Annual ESALs
Passenger Car	196	0.1176	7	52	42.81
Pickup Truck	98	0.4998	7	52	181.93
Single Axel Dump- 9 Ton	15	6.057	5	40	1211.40
Dual Axel Dump- 12 Ton	15	2.502	5	36	450.36
Trailer Dump- 30 Ton	16	19.9808	5	36	3596.54
Total Annual ESALs					5483.04

If a Design life of 15 Years is selected for the pavement, then the number of ESALs expected would be $15 \times 5483 = 82,245$ ESAL. The July 2002 NYSDOT Pavement Design Manual, in **Table #4-5** "HMA Thickness for new pavements" suggests that for an ESAL loading under 2,000,000 with no select granular subbase present, the total asphalt concrete pavement section should be 165mm which is equivalent to 6.5" of pavement. Only the southernmost 3,625' of White School House Road meets this criteria. The poor to fair condition of the northern 8,875' section of the roadway reflects the fact that the existing thin pavement section is not structurally capable of carrying heavy truck traffic. It should also be noted that even a low percentage of heavy truck traffic (5%) causes more than 65

% of the loading and therefore most of the damage on this pavement section.

Comparison of Pavement Rehabilitation Options:

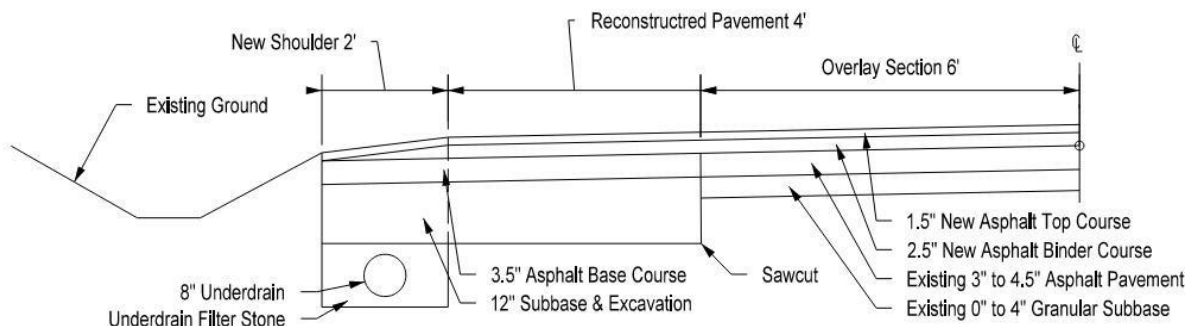
Several pavement rehabilitation options have been considered. Different options would be proposed based on the existing condition and makeup of the pavement section, on the posted loading proposed, and on the service life desired.

The first rehabilitation option considered is Reconstruction of the shoulder and the outer most 4 feet of pavement, along with a 3.5" 2 course over-lay of the center section of the pavement, install underdrain and cleaning and reshaping of ditches. This treatment would be appropriate in the sections of the roadway with the thinnest pavement section and the poorest surface conditions. This treatment would be estimated to cost \$27,867.00 for every 100' of roadway rehabilitated.

White School House Road Rehabilitation Section A

Reconstruction of shoulder and lane edge, underdrain, overlay existing pavement

Item description	Item #	Length	Width	Depth	Quantity	units	Unit cost	Total item cost
Unclassified Excavation	203.02	100	12.000	1.300	57.72	CY	\$30.00	\$1,731.60
Trench & Culvert	206.0201	100	3.334	1.500	18.50	CY	\$60.00	\$1,110.22
8" SIPCUP	605.9810xx18	100	2.000	1.000	200.00	LF	\$30.00	\$6,000.00
Underdrain filter stone	605.0901	100	3.334	1.500	18.50		\$47.00	\$869.67
subbase	304.12	100	12.000	1.000	44.40	CY	\$60.00	\$2,664.00
3.0" Base course HMA	402.377903	100	12.000	0.250	19.20	TN	\$125.00	\$2,400.00
2.5" Binder course HMA	402.197903	100	24.000	0.210	34.02	TN	\$115.00	\$3,912.30
1.0" Top Course HMA	402.097203	100	23.000	0.083	13.41	TN	\$105.00	\$1,408.19
Straight tack coat	407.0103	100	12.000	0.007	7.92	Gallons	\$6.00	\$47.52
Grading cleaning and reshaping ditches	621.51	100	2.000	1.000	200.00	LF	\$10.00	\$2,000.00
Pavement Stripes	685.12	100	2.000	1.000	200.00	LF	\$0.75	\$150.00
subtotal								\$22,293.50
25% for contingencies								\$5,573.38
Total cost for 100' treatment								\$27,866.88



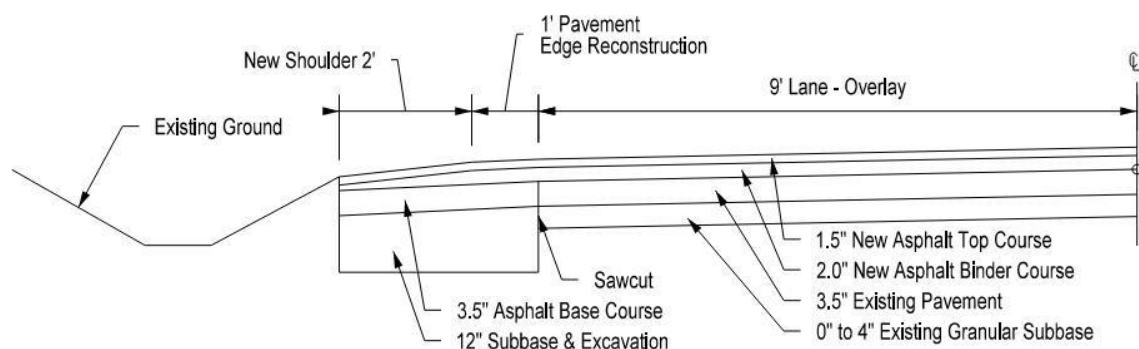
The next rehabilitation option considered would reconstruct the shoulder and the outermost 4' of the pavement edges, overlay the center of the pavement with a 3.5" 2 course over-lay, and clean and reshape ditches. This treatment option would be appropriate for areas with a thin pavement section that are still in fair to poor condition. This option is estimated to cost \$15,426.00 for every 100' of roadway treated.

White Schoolhouse Road

Rehabilitation Section B

Reconstruct shoulder and pavement edges, Overlay existing pavement

Item description	Item #	Length	Width	Depth	quantity	units	Unit cost	Total item cost
Unclassified Excavation	203.02	100	6	1.3	28.86	CY	\$30.00	\$865.80
subbase	304.12	100	6	1	22.20	CY	\$60.00	\$1,332.00
3.0" Base course HMA	402.3779	100	6	0.25	9.60	TN	\$125.00	\$1,200.00
2.5" Binder course HMA	402.1979	100	24	0.21	34.02	TN	\$115.00	\$3,912.30
1.0" Top Course HMA	402.0972	100	23	0.0833	13.41	TN	\$105.00	\$1,408.19
Straight tack coat	407.0103	100	12	0.0066	7.92	Gallons	\$6.00	\$47.52
Grading cleaning and reshaping ditches	621.51	100	2	1	200.00	LF	\$10.00	\$2,000.00
Pavement Stripes	685.12	100	21	1	2100.00	LF	\$0.75	\$1,575.00
subtotal								\$12,340.81
25% for contingencies								\$3,085.20
Total cost for 100' treatment								\$15,426.01



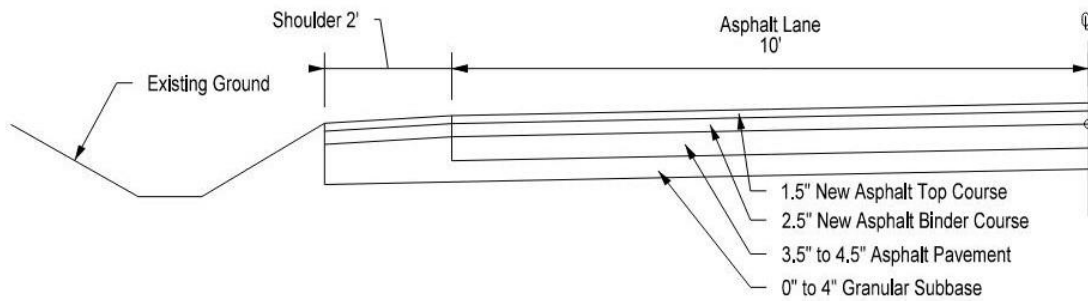
White School House Road
Section B - Reconstruct Shoulder, Overlay Existing Pavement
N.T.S.

The next option considered is a 3.5" 2 course over-lay of the entire pavement surface. This treatment would be appropriate in the areas with a thin pavement section that are in a fair to moderate condition. The cost for 100' of this treatment is \$9,792.00 per 100' of pavement treated.

**White Scholl House
Road
Rehabilitation
Section C**

2 course overlay

Item description	Item #	Length	Width	Depth	Quantity	units	Unit Cost	Total Cost
2.5" Binder course HMA	402.197903	100	24	0.210	34.02	TN	\$115.00	\$3,912.30
1.0" Top course HMA	402.097203	100	23	0.083	13.41	TN	\$125.00	\$1,676.41
Straight Tack Coat	407.0103	100	24	0.007	15.84	Gal	\$6.00	\$95.04
Grading, cleaning and reshaping ditches	621.51	100	2	1.000	200.00	LF	\$10.00	\$2,000.00
Pavement stripes	685.12	100	2	1.000	200.00	LF	\$0.75	\$150.00
subtotal								\$7,833.75
Contingencies at 25%								\$1,958.44
Total Cost for 100' of treatment								\$9,792.19

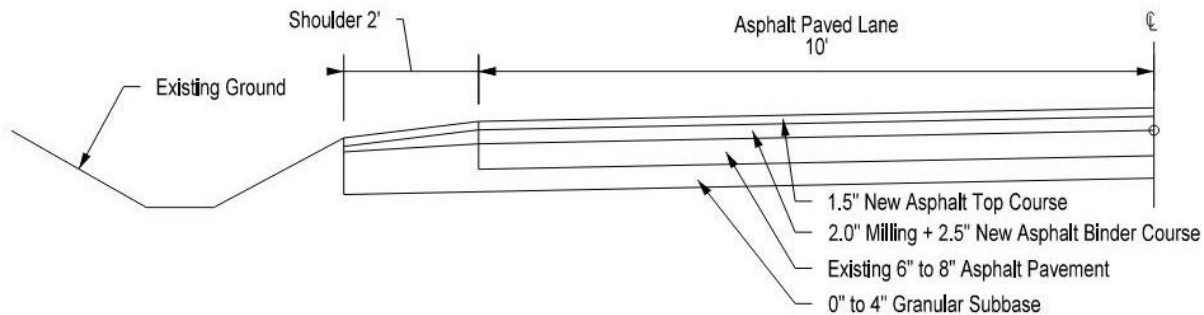


The final pavement rehabilitation considered is milling and application of a 3.5" 2-course asphalt over-lay. This treatment would be appropriate in areas with an existing pavement section greater that 6.5" with a surface condition that is fair to moderate. The cost for this treatment is estimated at \$10,708.00 for every 100' of roadway treated.

**White Schoolhouse
Road
Rehabilitation
Section D**

Mill and 2 course overlay

Item Description	Item #	Length	Width	Depth	Quantity	units	Unit Price	Total cost
Production cold milling	490.1	100	24	1.000	266.40	SY	\$2.75	\$732.60
2.5" Binder Course HMA	402.197903	100	24	0.210	34.02	TN	\$115.00	\$3,912.30
1.0" Top Course HMA	402.097203	100	23	0.083	13.41	TN	\$125.00	\$1,676.41
Straight Tack Coat	407.0103	100	24	1.000	15.84	GAL	\$6.00	\$95.04
Grading, cleaning and reshaping ditches	621.51	100	2	1.000	200.00	LF	\$10.00	\$2,000.00
pavement stripes	685.12	100	2	1.000	200.00	LF	\$0.75	\$150.00
Subtotal								\$8,566.35
Continencies at 25%								\$2,141.59
Total Cost for 100' of Treatment								\$10,707.94



White School House Road
Section D - Milling & 2 Course Asphalt Overlay
N.T.S.

Expected service life and costs for various posting and rehabilitation alternatives.

The first alternatives considered would be the null alternatives, that is no rehabilitation work would be proposed for White School House Road, only periodic maintenance as required. Consideration is given to posting the roadway at either 10 or 25 tons.

White School House Rd- Null Alternatives

Begin Station	End Station	Length (FT)	Pavement Depth	Pavement Surface Condition	No Work- 10 ton posting Current Service life to poor condition(years)	No work- 25 ton posting Current Service life to poor condition(years)
0+00	0+500	500	3.000"	Fair to poor	5 to 7	2 to 4
0+505	2+500	1995	3.000"	Poor	0	0
2+500	4+750	2250	3.125"	Fair to poor	5 to 7	2 to 4
4+760	5+800	1040	3.125"	Poor	0	0
5+800	7+920	2120	3.750"	Fair to poor	5 to 7	2 to 4
7+925	8+975	1050	3.250"	Poor	0	0
8+975	10+300	1325	8.5"	Fair to poor	5 to 7	2 to 4
10+305	12+145	1840	6.750"	Good to fair	7 to 10	5 to 7
12+150	12+600	450	6.750"	Fair to poor	5 to 7	2 to 4
Total length		12600	FT	Remaining Service life		
				0 years		0 years

In this scenario, with a 10 ton posting, several sections of the roadway with pavement sections 3.75" thick or less are already in poor condition and those sections are expected to deteriorate rapidly under heavy truck loads. Maintenance work will be required to keep the roadway in a passable and safe condition on a regular basis. If a 25 ton posting is selected, even the sections of the roadway with thicker pavement are expected to rapidly deteriorate.



Example of Pavement not expected to last 5 years before major rehabilitation work is required.

The next alternative considered places a 10 Ton weight limit on the roadway and provides a 3.5" 2 course asphalt overlay for the 3 sections on the roadway with the thinnest pavement section and the poorest pavement condition.

Begin Station	End Station	Length (FT)	Pavement Depth	Pavement Surface Condition	Treatment proposed	10 ton posting and rehab. New service life to poor condition (years)	Cost for section
0+00	0+500	500	3.000"	Fair to poor	none	5 to 7	\$0
0+505	2+500	1995	3.000"	Poor	C	5 to 7	\$390,701
2+500	4+750	2250	3.125"	Fair to poor	none	5 to 7	\$0
4+760	5+800	1040	3.125"	Poor	C	5 to 7	\$203,674
5+800	7+920	2120	3.750"	Fair to poor	none	5 to 7	\$0
7+925	8+975	1050	3.250"	Poor	C	5 to 7	\$205,632
8+975	10+300	1325	8.5"	Fair to poor	none	5 to 7	\$0
10+305	12+145	1840	6.750"	Good to fair	none	7 to 10	\$0
12+150	12+600	450	6.750"	Fair to poor	none	5 to 7	\$0
Total length		12600	FT				
				Remaining Service life	6 years	Constr. Cost	\$800,006
						6-year annualized cost	\$147,681

This alternative has an estimated construction cost of \$800,000. and would be expected to provide a service life of 5 to 7 years if heavy trucks are restricted to 10 tons. Based on a service life of 6 years, the annualized cost for this alternative is estimated at \$147, 681.00



The next alternative considered is a major rehabilitation that would include reconstruction of the outside pavement edges and shoulders in the areas with the thinnest pavement section and would provide a 3.5" 2 course overlay for the entire roadway. Areas with more than 6.5" of existing pavement would be milled to provide a more uniform pavement section. A 10 Ton posting would be placed on the rehabilitated roadway.

White Schoolhouse Road Condition Matrix

White School House Road- Major rehabilitation and a 10 Ton posting

Begin Station	End Station	Length (FT)	Pavement Depth	Pavement Surface Condition	Treatment proposed	10 ton posting and rehab. New service life to poor condition (years)	Cost for section
0+00	0+500	500	3.000"	Fair to poor	B	15-20	\$77,130.00
0+505	2+500	1995	3.000"	Poor	A	15-20	\$555,946.65
2+500	4+750	2250	3.125"	Fair to poor	B	15-20	\$347,085.00
4+760	5+800	1040	3.125"	Poor	A	15-20	\$289,816.80
5+800	7+920	2120	3.750"	Fair to poor	B	15-20	\$327,031.20
7+925	8+975	1050	3.250"	Poor	A	15-20	\$292,603.50
8+975	10+30	1325	8.5"	Fair to poor	D	15-20	\$141,881.00
10+305	12+14	1840	6.750"	Good to fair	C	15-20	\$180,172.80
12+150	12+60	450	6.750"	Fair to poor	C	15-20	\$44,064.00
Total length		12600	F T				
						Constr. Cost	\$2,255,730.95
Remaining Service life				8 years	17-year annualized cost		\$171,323

This alternative with a 10 Ton posting would be expected to provide a service life of 15 to 20 years. The construction cost for this alternative is estimated at \$2,255,731.00 and if a full-service life of 17 years is achieved, the annualized cost is calculated at \$171,323.00.

The final alternative examined is a major rehabilitation that would include reconstruction of the outside pavement edges and shoulders in the areas with the thinnest pavement section and would provide a 3.5" 2 course overlay for the entire roadway. Areas with more than 6.5" of existing pavement would be milled to provide a more uniform pavement section. A 25 Ton posting would be placed on the rehabilitated roadway.

White School House Road- Major rehabilitation and a 25 Ton posting

Begin Station	End Station	Length (FT)	Pavement Depth	Pavement Surface Condition	Treatment proposed	25 ton posting and rehab. New service life to poor condition (years)	Cost for section
0+00	0+500	500	3.000"	Fair to poor	B	7 to 10	\$77,130.00
0+505	2+500	1995	3.000"	Poor	A	7 to 10	\$555,946.65
2+500	4+750	2250	3.125"	Fair to poor	B	7 to 10	\$347,085.00
4+760	5+800	1040	3.125"	Poor	A	7 to 10	\$289,816.80
5+800	7+920	2120	3.750"	Fair to poor	B	7 to 10	\$327,031.20
7+925	8+975	1050	3.250"	Poor	A	7 to 10	\$292,603.50
8+975	10+300	1325	8.5"	Fair to poor	D	7 to 10	\$141,881.00
10+305	12+145	1840	6.750"	Good to fair	C	10 to 12	\$180,172.80
12+150	12+600	450	6.750"	Fair to poor	C	7 to 10	\$44,064.00
Total length		12600	FT	Constr. Cost			\$2,255,730.95

Remaining Service life 8 years **8-year annualized cost** \$321,351

Like the previous alternative, the construction cost of this alternative is estimated at \$2,255,731.00. however, the 25 Ton posting would reduce the expected service life from 15 to 20 years to 7 to 10 years. If an 8-year service is achieved, then the annualized cost would be calculated as \$321,351.00.



Summary: The analysis of the effect of heavy truck traffic on White School House Road leads to several conclusions:

- Most of the existing roadway has a very thin (less than 3.5”) asphalt section that is not sufficient to carry heavy truck traffic.
- Sections of the existing roadway are already in poor condition and can be expected to fail rapidly under heavy truck loading.
- An Equivalent Single Axel Load for the roadway was calculated at 5843 ESAL per year. The heavy truck traffic that is expected constitutes less than 5% of the daily traffic but causes more than 65% of the ESALs.
- If minor rehabilitation (\$800,000 construction cost) is undertaken on the sections of the roadway in the poorest condition, and a 10 Ton posting is placed on the roadway, it is estimated that a 5–7-year service life can be achieved.
- If a major rehabilitation (\$2,255,731 construction cost) is undertaken on the entire length of White School House Road, and a 10 Ton posting is applied to the roadway, a 15-to-20-year service life can be expected.
- If a major rehabilitation (\$2,255,731 construction cost) is undertaken on the entire length of White School House Road, and a 25 Ton posting is applied to the roadway, a service life of 7 to 10 years can be expected.
- If the Town decides to not to take any constructive action, then a 10-ton posting would be required. The 3 worst sections of the roadway will deteriorate quickly and require will maintenance repairs to keep the roadway in a poor but passable condition.

Exhibit B

to

Planning 4 Places Report on behalf of the Town of Rhinebeck,
dated 10 February 2023

Re: DEIS of Red Wing Properties, Inc.
NYSDEC Legislative Public Hearing

Exhibit:

Copies of mining operation Planning Board Special Use Permit
approval resolutions from 2022 and earlier

80 E. Market Street Rhinebeck, N. Y. 12572
914-876-6296

Name: John Lobotsky Re: Special Use Permit
Soil Mining Operation & Site Plan Approval

WHEREAS, the Rhinebeck Town Planning Board is in receipt of an application dated March 5, 1990, by John Lobotsky for a special permit and site plan approval for continuation of a soil mining operation;

WHEREAS, a special permit for expansion of the soil mining operation to 7 acres, inclusive of the previously-approved 2.1 acre site, was granted by the Planning Board on March 10, 1987;

WHEREAS, the Town Planning Board conducted a public hearing on the subject application for renewal on April 23 and May 7, 1990, and previously declared itself lead agency for review of this matter April 9, 1990, as requested by the other involved agency, New York State DEC;

NOW, THEREFORE, be it resolved that the Rhinebeck Town Planning Board hereby grants a special permit and site plan approval to John Lobotsky for continuation of an existing soil mining operation on White Schoolhouse Road in accordance with the conditions stated below;

1. That in order to ensure progressive rehabilitation of the mining site, the non-rehabilitated work area of the mining site shall be restricted to a maximum of three (3) acres;

2. That the approval be restricted to a total of 7 acres as shown on the mining plan prepared by Richard T. Mead, and to a period of 3 years;
3. That no washing procedure or sediment ponds be permitted on the site;
4. That all mining activity occur in strict accordance with the Mined Land Use and Reclamation Plan prepared by Mr. Mead;
5. That a Mined Land Reclamation Permit be maintained and a reclamation bond be posted and maintained in accordance with the requirements of the NYSDEC, with it further provided that the applicant shall not request release of said bond, or other performance guarantee, without a prior sign-off by the Town Planning Board;
6. That a copy of said reclamation bond be filed with the Town Planning Board;
7. That the following conditions of the previously-issued special permit be continued: (a) that trucks shall be limited, as suggested by the Town Highway Superintendent, to maximum of ten wheels with a maximum capacity of twelve cubic yards; and (b) reasonable consideration be given to the residential neighborhood in monitoring the number of vehicle trips per day, with it specifically provided that the Planning Board reserves the right to review this matter further and impose specific restrictions in this regard if deemed necessary by the Zoning Enforcement Officer;
8. That the following interim measures to further reduce potential concerns to off-site receptors be practiced by the applicant:
 - a. From time to time, implement dust control along the entrance roadway via watering during extremely dry times;
 - b. At the access road's point of connection with White Schoolhouse Road, construct a tracking pad for trucks, out of either crushed or washed stone, to reduce the amount of material tracked out to White Schoolhouse Road; and
 - c. When sufficient material is moved from the bank and ample working area exists, move the screen to the mine floor to further mitigate noise impacts;
9. That the geographic limit of mining operations i.e. the "limit of life of the mine" shown on the "mining map"

SPECIAL USE PERMIT & SITE PLAN APPROVAL - JOHN LOBOTSKY
May 7, 1990

prepared by Richard T. Mead, L.S., and dated April 1990, be modified to comply with Section VI(B)(32) of the Town's Zoning Law, i.e. that no excavation shall occur nearer than 100 feet from any property line nor 300 feet from any existing residence;

10. That this special permit shall expire on May 6, 1993, or at such earlier date that the Zoning Enforcement Officer and the Planning Board shall find, after public hearing, that any of the conditions stated herein have been substantially violated; and
11. That the mining operation be in compliance with Section VI(B)(32) except as otherwise approved by the Planning Board.
12. That in consideration of the EAF and accompanying documents, the Planning Board has, and hereby does, authorize the Chairman to file a negative declaration with the involved agencies.

Motion offered by Alfio Cornacchini

Motion Seconded by John Griffin

Vote:	<u>Alfio Cornacchini</u>	<u>yes</u>
	<u>John Griffin</u>	<u>yes</u>
	<u>Paul Lagno</u>	<u>yes</u>
	<u>John Varricchio</u>	<u>yes</u>
	<u>Saveria Mazzarella</u>	<u>yes</u>

Certified to by Edith A. Ramirez
Clerk

May 7, 1990
Date

Filed with the Town Clerk, Fanny MacPhail,
and mailed to applicant:

May 11, 1990
Date

**TOWN OF RHINEBECK
PLANNING BOARD
80 E. Market Street
Rhinebeck, NY 12572
(845) 876-3409**

APPROVAL RESOLUTION – March 6, 2012

**John Lobotsky – White Schoolhouse Road – Special Use Permit and
Wetland Permit Waiver -**

"The Town of Rhinebeck Planning Board hereby acts as follows on the October 31, 2011, Applications by John G. Lobotsky (Mark R. Graminski, P.E. & L.S., Agent) under Town Code Chapter 125, Zoning, for Renewal of Special Use Permit ('Soil Mining') and for complementary Special Use Permit authorization of 'Development Within 100 Feet of Stream, Wetland or Other Water Body' within a 12.3-acre 'life of mine' boundary on 54-3-acre TMP 16-6270-00-933060 in the Rural Countryside (RC5) District and Certified Agricultural District No. 20, and a related December 19, 2011, Request for Waiver from Town Code Chapter 120, Wetlands Law pursuant to Section 120-8(A) therein, all as described and depicted within a plan entitled 'Plan – Mining and Reclamation Progress – 2011-2016 Permit Term', dated May 5, 2011, and prepared by Mark R. Graminski, P.E. & L.S., a Short EAF and Agricultural Data prepared by Mr. Graminski, and Mined Land Reclamation Permit, ID 3-1350-00047/00003, as issued by NYSDEC effective August 16, 2011, with expiration date of August 16, 2016:

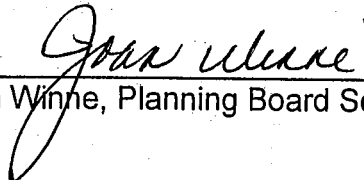
1. Acknowledges NYSDEC's role as Lead Agency under SEQRA in this matter and NYSDEC's classification of the Proposed Action as a Type II Action for which further environmental review is precluded.
2. Acknowledges affirmative reviews of this matter by the Town Conservation Advisory Council, the Town Planning Consultant and the Planning Board Engineer.
3. Requests remaining technical issues referenced in the Planning Board Engineer's letter of March 5, 2012, be resolved to his satisfaction.
4. Waives in accordance with Mr. Graminski's letter request of December 19, 2011, for the reasons stated therein, the applicability of the Wetland Permit requirement set forth within Town Code Chapter 120, Wetlands Law, to this matter.
5. Waives any other time limitation set forth within Town Code Chapter 125, Zoning, with respect to a special use permit so as to provide that the

termination date of the Town's Special Use Permit (Soil Mining), as considered below, is coincident with the termination date of August 15, 2016, set forth within above-cited NYSDEC Mined Land Reclamation Permit 3-1350-00047/00003.

6. Issues the requested Special Use Permit with a termination date of August 15, 2016, subject to (a) the requirement the Applicant address within the next thirty (30) calendar days and to the satisfaction of the Planning Board Engineer the technical comments set forth within the annexed Morris Associates' review letter of March 6, 2012, and (b) continual satisfaction throughout the permit period of each of the below conditions:
 - i. Limitation on trucks employed in the haulage of sand and gravel to not more than 10-wheel, 12-cubic yard capacity.
 - ii. Limitation on mining and loading activities to the hours of 7 a.m. to 5 p.m. Monday through Friday, except that Saturday operations may occur not more than four (4) times annually between the hours of 8 a.m. and 1 p.m. with all mining proscribed on Sundays or major legal holidays, these being New Year's Day, Memorial Day, Independence Day (July 4th), Labor Day, Thanksgiving and Christmas.
 - iii. Requirement for annual inspection of the mine by the Town's Zoning Enforcement Officer and the Planning Board Engineer, with such inspection to occur on or about September 15th with written report thereof filed with the Planning Board.
 - iv. Maintenance of a performance guarantee with the Town of Rhinebeck in an amount recommended by the Planning Board Engineer, which performance guarantee may be coincident with the reclamation bond held by NYSDEC provided the amount of the performance guarantee held by NYSDEC is deemed sufficient by the Planning Board Engineer to protect the Town's interest.
 - v. Maintenance of the operation in good standing under the terms of the NYSDEC Permit, the suspension or termination of which will be construed to likewise be suspension or termination of the Town-issued Special Use Permit."

A motion was made by Melodye Moore and seconded by F. Woody Dierze' to adopt the above stated resolution. The motion carried by a unanimous vote of the Planning Board resolution.

Certified to by:


Joan Winne, Planning Board Secretary

3-6-12
Date



TOWN of RHINEBECK

Planning Board

**80 East Market Street, Rhinebeck, NY 12572
Phone: (845) 876-6296 Fax: (845) 876-5885**

John Lobotsky – 344 White Schoolhouse Road – Special Use Permit and Associated Request for Waiver – Parcel # 135089-6270-00-933060

SEQRA Resolution

"The Town of Rhinebeck Planning Board hereby acts as follows on a Proposed Action involving an Application by John Lobotsky to the Planning Board for Renewal of Special Use Permit (Soil Mining) under Town Code Chapter 125, Zoning, and in accordance with the terms of NYSDEC Mined Land Reclamation Permit (MLRP) No. 3-1350-00047/00003, to authorize continuation of mining operations within a 12.3-acre 'life of mine area' within 54.3-acre TMP 135089-6270-00-933060 within the both Rural Countryside (RC5) and Mining Overlay (Mi-O) Districts and Agricultural District 20, and a related Request for Waiver under Town Code Chapter 120, Wetlands, pursuant to Section 120-8(a) therein, all as depicted on a Survey Map / Site Plan entitled 'Plan – Mining and Reclamation Progress – 2011-2016 Permit Term' prepared by Mark R. Graminski, P.E. and L.S., and dated June 30, 2016, and otherwise described in supporting information including a Short EAF Part 1, an Agricultural Data Statement, and copy of an Application for Renewal of Mined Land Reclamation Law Permit submitted to NYSDEC on July 14, 2016:

1. Pursuant to the Planning Board's classification of the Proposed Action as an Unlisted Action under SEQRA determines upon its review of the Short EAF Part 1 and its own completion of the annexed Short EAF Part 2 in consideration of both the 'criteria for determining significance' set forth at Title 6 Part 617.7.c NYCRR and field observation of the existing mining operation and associated site rehabilitation by both the Planning Board and the Conservation Advisory Board that the Proposed Action, as described above, will cause no potential significant adverse impact on the environment and, thus, issues a Negative Declaration (Determination of Non-Significance) under SEQRA deeming an environmental impact statement to not be required and stating such will not be prepared.
2. Authorizes the Chair to so execute the Short EAF and directs the Planning Board Clerk to distribute and file the executed Determination of Significance in the

manner set forth within the SEQRA Implementing Regulations, Title 6 Part 617.12 NYCRR.”

Approvals Resolution under Town Code Chapter 125, Zoning, with Related Waiver under Town Code 120, Wetlands

“The Town of Rhinebeck Planning Board upon review, determination and authorization by the Zoning Enforcement Officer and satisfaction by the Board of all procedural requirements hereby acts as follows on the June 30, 2016, Application by John Lobotsky for Renewal of Special Use Permit ('Soil Mining') and for complementary Special Use Permit authorization of 'Development Within 100 Feet of Stream, Wetland or Other Water Body' under Town Code Chapter 125, Zoning, and in accordance with the terms of NYSDEC Mined Land Reclamation Permit (MLRP) No. 3-1350-00047/00003, to authorize continuation of mining operations within a 12.3-acre 'life of mine area' within 54.3-acre TMP 135089-6270-00-933060 within the both Rural Countryside (RC5) and Mining Overlay (Mi-O) Districts and Agricultural District 20, and related Request for Waiver under Town Code Chapter 120, Wetlands, pursuant to Section 120-8(a) therein, all as depicted on a Survey Map / Site Plan entitled 'Plan – Mining and Reclamation Progress – 2011-2016 Permit Term' prepared by Mark R. Graminski, P.E. and L.S., and dated June 30, 2016, otherwise described in supporting information including a Short EAF Part 1 and an Agricultural Data Statement, and further being the subject of both an Application for Renewal of the above-cited Mined Land Reclamation Law (MLRL) Permit submitted to NYSDEC on July 14, 2016, and a Negative Declaration (Determination of Non-Significance) under SEQRA heretofore issued by the Planning Board:

1. In the matter of the requested Waiver under Town Code Chapter 120, Wetlands:

Continues to waive, as the Planning Board did in its prior Approval Resolution of March 6, 2012, for reasons stated in Mr. Graminski's letter request of December 19, 2011, the applicability of the Wetland Permit requirement set forth within Town Code Chapter 120, Wetlands Law, to this matter.

2. In the matter of the Application for Renewal of Special Use Permit:

- a. Waives any other time limitation set forth within Town Code Chapter 125, Zoning, with respect to a special use permit so as to provide that the termination date of the Town's Special Use Permit (Soil Mining), as considered below, is coincident with the termination date, projected to be August 15, 2021, though perhaps otherwise established, set forth by NYSDEC upon its consideration of the above-cited July 14, 2016, Application for Renewal NYSDEC Mined Land Reclamation Permit 3-1350-00047/00003.
- b. Approves the requested Renewal of Special Use Permit with a termination date of August 15, 2021, or as otherwise established through the above-cited action

by NYSDEC, subject to continual satisfaction throughout the permit period of each of the below continuing conditions:

- (1) Limitation on trucks employed in the haulage of sand and gravel to not more than 10-wheel, 12-cubic yard capacity.
- (2) Limitation on mining and loading activities to the hours of 7 a.m. to 5 p.m. Monday through Friday, except that Saturday operations may occur not more than four (4) times annually between the hours of 8 a.m. and 1 p.m. with all mining proscribed on Sundays or major legal holidays, these being New Year's Day, Memorial Day, Independence Day (July 4th), Labor Day, Thanksgiving and Christmas.
- (3) Requirement for annual inspection of the mine by the Town's Zoning Enforcement Officer and the Planning Board Engineer, with such inspection to occur on or about September 15th with written report thereof filed with the Planning Board.
- (4) In lieu of maintenance of a performance guarantee with the Town of Rhinebeck, requirement that the applicant inform the Town Zoning Enforcement Officer and Planning Board when final site reclamation is in progress and that it is the applicant's intention to ask NYSDEC to inspect the reclamation work and release the site reclamation bond held by NYSDEC. When so informing the Town the applicant shall invite an inspection of the site reclamation by the Town and request a letter be sent to NYSDEC either signing off or requesting NYSDEC consider at its discretion other work that should in the opinion of the Town be undertaken before the site reclamation bond is released by NYSDEC.
- (5) Maintenance of the operation in good standing under the terms of the NYSDEC Permit, the suspension or termination of which will be construed to likewise be suspension or termination of the Town-issued Special Use Permit."

Certified by:


Gretchen Smith, Planning Board Clerk

Date: September 21, 2016

TOWN OF RHINEBECK
PLANNING BOARD

80 E. Market Street Rhinebeck, N. Y. 12572
914-876-6296

March 9, 1987

SPECIAL PERMIT & SITE PLAN APPROVAL - VONDERLEITH SOIL MINING OPERATION

WHEREAS, the Rhinebeck Town Planning Board is in receipt of an application dated February 13, 1987, by John VonderLeith for legal continuation of a soil mining operation under the Zoning Ordinance of the Town of Rhinebeck;

WHEREAS, said application seeks local approval of a 7-acre soil mining operation which is presently governed by a New York State Department of Environmental Conservation mined land permit issued on July 2, 1985, and scheduled to expire on January 5, 1988;

WHEREAS, the Town Planning Board conducted a public hearing on the subject application on March 2, 1987, and previously declared itself lead agency for review of this matter on February 19, 1987;

WHEREAS, upon investigation, the Planning Board has inspected the proposed soil mining site and has reviewed the conditions associated with the previously-issued DEC permit;

WHEREAS, the Planning Board has additionally reviewed a long-form EAF and a Mined Land Use and Reclamation Plan prepared by Richard T. Mead and dated March - 1985;

NOW, THEREFORE, be it resolved that the Rhinebeck Town Planning Board hereby grants a special permit and site plan approval to John VonderLeith for legal continuation of an existing soil mining operation on White Schoolhouse Road in accordance with the conditions stated below:

1. That in order to ensure the progressive rehabilitation of the mining site, the total non-rehabilitated work area of the mining site shall be restricted to a maximum of five (5) acres;
2. That the approval be restricted to a total land area of 7-acres as shown on the mining plan prepared by Richard T. Mead;
3. That no washing procedure or sediment ponds be permitted on the site;
4. That all mining activity occur in strict accordance with the Mined Land Use and Reclamation Plan prepared by Richard T. Mead;
5. That a Mined Land Reclamation Permit be maintained and a reclamation bond be posted and maintained in accordance with the requirements of the N.Y.S. Department of Environmental Conservation, with it further provided that the applicant shall not request release of said bond, or other performance guarantee, without a prior sign-off by the Town Planning Board;

6. That the following conditions of the previously-issued special permit be continued: (a) that trucks shall be limited, as suggested by the Town Highway Superintendent, to a maximum of ten wheels with a maximum capacity of twelve cubic yards; and (b) reasonable consideration be given to the residential neighborhood in monitoring the number of vehicle trips per day, with is specifically provided that the Planning Board reserves the right to review this matter further and impose specific restrictions in this regard if deemed necessary by the Zoning Enforcement Officer;
7. That this special permit shall expire on January 5, 1988, so as to coincide with the previously-cited N.Y.S.D.E.C. permit, or at such earlier date that the Zoning Enforcement Officer and the Planning Board shall find, after public hearing, that any of the conditions stated herein have been substantially violated;
8. That in consideration of the EAF and accompanying documents, the Planning Board has, and hereby does, authorize the Chairman to file a negative declaration with the involved agencies; and
9. That the Planning Board, in anticipation of a request for renewal and/or expansion of this permit and its associated land area, requires a simultaneous submission of all future requests regarding this soil mining operation to both the Town Planning Board and N.Y.S. Department of Environmental Conservation to permit improved coordination of the respective approval roles.

MOTION MADE BY John Vanwormer

MOTION SECONDED BY Donald McTernan

VOTE

Alfio Cornacchini	<u>Yes</u>
John Desautels	<u>Yes</u>
John Griffin	<u>Absent</u>
Donald McTernan	<u>Yes</u>
John Vanwormer	<u>Yes</u>
John Varricchio	<u>Absent</u>
Saveria L. Mazzarella	<u>Yes</u>

FILED WITH TOWN CLERK Fannie MacPhail
DATE: March 9, 1987

PLANNING BOARD CLERK Joan B. Zitz
DATE: March 9, 1987

TOWN OF RHINEBECK
PLANNING BOARD

80 E. Market Street Rhinebeck, N. Y. 12572

914-876-6296

RESOLUTION

NAME: J.D. von der Leith & Sons, Inc.

DATE: November 4, 1996

CASE: 9608

RE: Special Use Permit

"The Town of Rhinebeck hereby acts as follows on the application of J.D. von der Leith for issuance of a Special Use Permit so as to authorize pursuant to the Zoning Law of the Town of Rhinebeck continuation of a soil mining operation on White Schoolhouse Road, said operation the subject of a special permit and site plan approval granted by this Board on March 7, 1987, which approval terminated on January 5, 1988, and more recently NYSDEC Mined Land Reclamation Permit #3-1350-00012/00002-0 granted by NYSDEC on March 8, 1994, and scheduled to terminated on March 8, 1999:

- [1] Determines that the intended action, an Unlisted Action under SEQRA, will not cause any significant adverse effects on the environment in consideration of the criteria set forth at Title 6 Part 617.7(c) NYCRR.
- [2] Finds that the intended use, the removal of sand and gravel from a 9-acre mine site shown on a Mining and Reclamation Progress Map prepared by Richard T. Mead, L.S., dated December 1987 and last revised in December 1990, is in compliance with each of the following:
 - (a) The 'General Standards' for all special permit uses set forth in Zoning Code Section VI(A), provided that the following measures established by the Planning Board in March 1987 are reiterated at this time:
 - (1) No washing procedure or sediment ponds are permitted on the mining site.
 - (2) Trucks hauling oven Town roadways from the mining site be limited to a maximum of ten wheels and maximum capacity of twelve cubic

yards.

- (b) The 'Additional Specific Requirements' for 'Soil Mining in the R3A District' set forth in Zoning Code Section VI(B)(32), provided that the following circumstances occur:

- (1) A NYSDEC Mined Land Reclamation Permit is continuously in effect and all conditions thereunder strictly met.
- (2) The total mining area governed by this application is restricted to the 9-acre mine site shown on the above-cited Mead survey drawing, not more than 5 acres of which are to be disturbed at any point in time.
- (3) Data regarding performance guarantees currently posted with NYSDEC is presented to the Planning Board immediately and the need, if any, for a supplemental Town performance guarantee, if any, assessed prior to the next Planning Board meeting consultation with the Town Engineer.

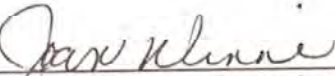
- [3] Issues the requested Special Use Permit to authorize the continuing use of certain lands on White Schoolhouse Road and within the R3A District as the intended J.D. von der Leith Soil Mine for the term and in accordance with the conditions set forth below:

- (a) Without prejudice to possible extension by the Planning Board upon written request of the applicant and subsequent processing pursuant to Zoning Code procedures, the Special Use Permit shall terminate on March 8, 1999, or upon such earlier date that Mined Land Reclamation Permit #3-1350-00012/00002-0 shall be terminated by its issuer, the New York State Department of Environmental Conservation.
- (b) The Special Use Permit shall be conditional upon strict compliance with both the 'General Standards' and 'Additional Specific Requirements' cited by reference and/or extended above.
- (c) The Special Permit shall be conditional upon immediate transmittal to the Planning Board of a complete copy of all future submissions, application and/or other requests, if any, made to NYSDEC regarding this soil mine.

- [4] Grants Site Plan Approval to permit reclamation of the soil mining site in accordance with the above-cited Mined Land Reclamation Plan (Progress Map) prepared by Mr. Mead and incorporated by NYSDEC within its Mined Land Reclamation Permit, with it required that the applicant provide a Town supplemental performance guarantee, if deemed necessary by the Planning Board after consultation with the Town Engineer, to protect its interest in site rehabilitation in the event of either NYSDEC's failure to require an adequate performance guarantee or, in the view of the Town, premature release of the performance guarantee by NYSDEC.
- [5] Requests that the Town's Zoning Enforcement Officer monitor this soil mine (and other soil mines within the Town) semi-annually in May and October and both report any problems observed to the Planning Board and NYSDEC and take whatever other actions may be necessary in the opinion of the ZEO to ensure early correction by the applicant."

A motion was made by John Griffin and seconded by John Varricchio to accept the above stated resolution. The motion carried by a unanimous vote of the Board members present.

Certified to by:


Joan Winne, Secretary

11-12-96
Date

Filed with Town Clerk, Sally Hulle:

11-12-96

Mailed to applicant:

11-12-96

NAME: Vincent Kinlan

RE: Soil Mining Permit

DATE: July 1, 2002

"The Town of Rhinebeck Planning Board hereby acts as follows on the November 2, 1998, Application of Vincent Kinlan for Special Use Permit for conduct of 'Soil Mining' on a portion of Mr. Kinlan's property on the west side of White Schoolhouse Road in the R3A District.

1. Acknowledges NYSDEC's issuance on December 9, 1998, of a Mined Land Reclamation Permit to Vincent Kinlan to 'continue to mine sand and gravel, with on-site screening, in accordance with previously approved plans as modified by "Life of Mine, Mine Reclamation Plan" dated August 1986, last revised April 1991, as prepared by Richard T. Mead and "Mining Plan Map" dated August 25, 1998, and last revised November 2, 1998, prepared by George L. Marshall Engineering Geologists.
2. Determines the intended action, an 'Unlisted Action' under SEQRA.
3. Issues the requested Special Use Permit subject to compliance with all 'General Conditions' and 'Special Conditions' set forth by the aforementioned NYSDEC Mined Land Reclamation Permit and those further conditions set forth below, the stricter of which shall prevail:
 - Trucks employed in the haulage of sand and gravel from the Kinlan Soil Mine shall be limited to not more than 10-wheel, 12-cubic yard capacity, as recommended by the Town Highway Superintendent and Town Engineer.
 - Mining and processing shall be limited to the hours 7 a.m. to 5 p.m. Monday through Friday except that Saturday operations may occur not

provided prior to NYSDEC's issuance of its "renewal" Mr. Sachs has conferred in writing with NYSDEC regarding this matter and received a response from Mr. Ciesluk. As you will read in the Attachment, there was no notification or request for comment issued to the Town. I did speak briefly with Joel Sachs earlier today and he advised that it was not imperative that the Planning Board act this evening if the Board felt additional research was necessary. The Board must, however, act by its August 2nd meeting due to the "62-day rule" under Town Law.

In consideration of the above, the Planning Board may wish to defer action on this matter. Should such not be the case, I offer both below my version of a "rough draft" resolution for your consideration and by attachment a second version prepared by Mr. Kinlan's Attorney, Rosemary Stack.

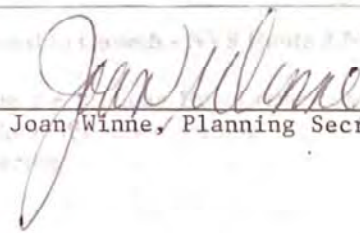
"The Town of Rhinebeck Planning Board hereby acts as follows on the November 2, 1998, Application of Vincent Kinlan for Special Use Permit for conduct of 'Soil Mining' on a portion of Mr. Kinlan's property on the west side of White Schoolhouse Road in the R3A District:

1. Acknowledges NYSDEC's issuance on December 9, 1998, of a Mined Land Reclamation Permit to Vincent Kinlan to 'continue to mine sand and gravel, with on-site screening, in accordance with previously approved plans as modified by "Life of Mine, Mine Reclamation Plan" dated August 1986, last revised April 1991, as prepared by Richard T. Mead and "Mining Plan Map" dated August 25, 1998, and last revised November 2, 1998, prepared by George L. Marshall Engineering Geologists.
2. Determines the intended action, an 'Unlisted Action' under SEQRA.
3. Issues the requested Special Use Permit subject to compliance with all 'General Conditions' and 'Special Conditions' set forth by the aforementioned NYSDEC Mined Land Reclamation Permit and those further conditions set forth below, the stricter of which shall prevail:
 - Trucks employed in the haulage of sand and gravel from the Kinlan Soil Mine shall be limited to not more than 10-wheel, 12-cubic yard capacity, as recommended by the Town Highway Superintendent and Town Engineer.
 - Mining and processing shall be limited to the hours 7 a.m. to 5 p.m. Monday through Friday except that Saturday operations may occur not

more than four (4) times annually between the hours of 8 a.m. and 1 p.m.
No mining shall occur on Sundays or legal holidays

- The term of this Special Use Permit shall be a period of three (3) years covering the period from the time of expiration of the prior Special Use Permit on October 5, 1998, to October 4, 2001. An extension of this Special Use Permit to the termination date of November 30, 2003, as set forth in the NYSDEC Mined Land Reclamation Permit will be considered by the Planning and will not unduly withheld provided that:
 1. An Application for such extension is filed not later than July 1, 2001.
 2. The Applicant diligently complies with the conditions of this Special Use Permit during the intervening period.
 3. The Applicant demonstrates substantial progress in site reclamation efforts during the intervening period to comply far more fully than the present operation with the requirement set forth at Town Zoning Code Section VI(B)(32)(j), specifically that "any Special Use Permit issued under this Local Law shall be limited to a mining area of seven (7) acres not more than five (5) acres of which shall be disturbed, i.e. the active mining site or area awaiting rehabilitation, at any one time. Such demonstration shall be confirmed through on-site inspection by the Planning Board, Zoning Enforcement Officer and Town Engineer.
 4. The Applicant authorizes in writing inspection of the 'Soil Mine' by the Town's Zoning Enforcement Officer and Town Engineer not less than twice annually (Spring and Fall) with the cost of said inspections and written report thereon by the Town Engineer to be reimbursed to the Town by the Applicant upon receipt of a copy of the Town Engineer's written report.
 5. The Applicant carries out no 'Soil Mining' activity beyond the expiration date of this Special Use Permit "

CERTIFIED TO BY:


Joan Winne, Planning Secretary


Date



TOWN of RHINEBECK

80 East Market Street
Rhinebeck, New York 12572
(845) 876-3409
(845) 876-5885/Fax

NAME: Vincent P. Kinlan

RE: Special Use Permit

DATE: March 7, 2005

"The Town of Rhinebeck Planning Board hereby acts as follows on the Application of Vincent P. Kinlan for Special Use Permit for Soil Mining within a 37.5-acre 'life of mine' site within a 241-acre tract owned by Mr. Kinlan and located on the west side of White Schoolhouse Road in the R3A District, all as described through narrative and depicted in graphics presented within a geologist's report entitled 'Vincent P. Kinlan White Schoolhouse Road Bank, MLF #703-3-30-0013, Town of Rhinebeck, Dutchess County, New York / Mined Land-Use Plan Amendment for New York State Department of Environmental Conservation' prepared by Griggs-Lang Consulting Geologists, Inc. and dated December 2004, and in related reports entitled 'Noise Impact Assessment' and 'Visual Impact Assessment', each also prepared by Griggs-Lang and each dated September 20, 2004:

1. Determines the Proposed Action, an 'Unlisted Action' under SEQRA for which coordinated review is neither required nor has such been initiated by either the Town of Rhinebeck or NYSDEC, will not cause any potential significant adverse effects on the environment, most particularly with regard to the effects on the land and neighboring residential land uses, in consideration of the conditions set forth in the draft Special Use Permit that restrict the size of trucks employed in the haulage of sand and gravel from the 'soil mine'; the hours of operation for the mining activity, including all mining, processing and related on-site activities; and requirement for continuation of diligent efforts in undertaking site reclamation work.
2. Finds the intended use as heretofore conducted and as described in the cited reports prepared by Griggs-Lane Consulting Geologists to be consistent with both the 'General Standards' for all special permit uses set forth at Section VI(A) of

the Town's Zoning Code and the 'Additional Specific Requirements' for 'Extractive Operations and Soil Mining in the R3A District' set forth at Zoning Code Section VI(B)(32), contingent upon waiver of a local site rehabilitation performance guarantee in deference to a like guarantee posted with NYSDEC.

3. Waives pursuant to the Planning Board's authority under Section VI(E)(5) requirement for a local site rehabilitation performance guarantee conditional upon initial and continuing demonstration of like guarantee being posted with NYSDEC.
4. Issues the requested Special Use Permit subject to payment of any outstanding fee amounts and/or reimbursable costs due the Town of Rhinebeck and compliance with all 'General Conditions' and 'Special Conditions' heretofore set forth, or as may in the future be set forth, in a NYSDEC Mined Land Reclamation Permit and those further conditions set forth below, the stricter of which shall prevail:
 - a. All trucks employed in the haulage of sand and gravel from the Kinlan Soil Mine shall be limited to no more than 10-wheel, 12-cubic yard capacity, as recommended by the Town Highway Superintendent and Town Engineer.
 - b. Mining and processing, including all related on-site activities, shall be limited to the hours 7:00 a.m. to 5:00 p.m. Monday through Friday. No mining or other activities shall occur on Saturdays or Sundays.
 - c. The term of this Special Use Permit shall be a period of three (3) years, the maximum term authorized at Town Zoning Code Section VI(B)(32)(j) and shall be considered to cover the period April 1, 2005, through March 31, 2008.

An extension of this Special Use Permit to any subsequent later termination date specified in a Mined Land Reclamation Permit issued by NYSDEC will be considered by the Planning Board and will not be unduly withheld provided that each of the following occurs:

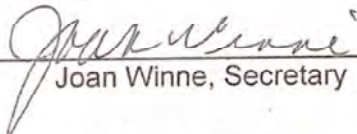
- o An Application for extension is filed not later than December 31, 2007, to provide sufficient time for processing thereof prior to the expiration date of this Special Use Permit.
- o The Applicant diligently complies with the conditions of this Special Use Permit during the intervening period.

- o The Applicant continues to demonstrate substantial progress in site reclamation efforts during the intervening period to comply to the extent practicable while maintaining access to the mined material to the requirement, also set forth at Town Zoning Code Section VI(B)(32)(j), that "... any Special Use Permit issued under this Local Law shall be limited to ... a mining area of seven (7) acres not more than five (5) acres of which shall be disturbed, i.e. the active mining site or area awaiting rehabilitation, at any one time", such demonstration to be confirmed through semi-annual on-site inspections, scheduled to occur on the first Monday of April and the first Monday of October, by a member of the Town Planning Board and the Zoning Enforcement Officer.

In establishing the above condition, the Planning Board acknowledges exercise of its authority pursuant to Zoning Code Section VI(E)(5) to waive the specific land area limitations set forth above upon its finding that compliance with the terms set forth therein will suitable protect the public health, safety and welfare and be appropriate to the specific use, operation and location subject of this resolution."

A motion was made by Michael Trimble and seconded by Melodye Moore to adopt the above stated resolution. The motion carried by a unanimous vote of the Board members present.

Certified to by:


Joan Winne, Secretary

3-8-05
Date



80 East Market Street
Rhinebeck, New York 12572
(845) 876-3409
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TOWN of RHINEBECK

RESOLUTION

March 16, 2009

Vincent P. Kinlan – White School House Road – Special Use Permit

"The Town of Rhinebeck Planning Board hereby acts as follows on the December 11, 2008, Application by Vincent P. Kinlan, Griggs-Lang Consulting Geologists, Inc., Agent, for Special Use Permit pursuant to Town Zoning Law Sections III(A) and VI(B)(32) to authorize operation of a 'Soil Mine' within a maximum of 33.7 acres of a 37.5-acre total 'life of mine area' within a 241-acre tract on the west side of White Schoolhouse Road approximately 3,000 feet south of NYS Route 308 in the RA3 District, said Soil Mine to operate in accordance with the same conditions as set forth within a Special Use Permit issued on March 7, 2005 and which expired on March 31, 2008, and be modified with respect to its reclamation in accordance with an updated Reclamation Plan Map dated December 3, 2008, so as to provide for the *in situ* maintenance of bedrock material unexpectedly encountered during recent mining operations, all as depicted or otherwise described with the Application and supporting documents submitted by the Applicant and Griggs-Lang Consulting Geologists, Inc. including but not limited to the following:

- Geologist's report entitled 'Vincent P. Kinlan White Schoolhouse Road Bank, MLF #703-3-30-0013, Town of Rhinebeck, Dutchess County, New York / Mined Land-Use Plan Amendment for New York State Department of Environmental Conservation' prepared by Griggs-Lang Consulting Geologists, Inc. and dated December 2004, and in related reports entitled 'Noise Impact Assessment' and 'Visual Impact Assessment', each also prepared by Griggs-Lang and each dated September 20, 2004, these documents having been submitted to the Planning Board with the prior Application for Special Use Permit,
- Copy of Mining Permit Renewal Application as submitted to NYSDEC by Griggs-Lang Consulting Geologists, Inc. on May 13, 2008, including 'Survey Map' revised to August 8, 2005, and 'Mining Plan Map' updated to April 25, 2008,
- Full Environmental Assessment Form, Part 1, certified by the Applicant on December 10, 2008,
- Letter of January 8, 2009, from Griggs-Lang Consulting Engineers, Inc., summarizing '... the status of the DEC Mined Land Reclamation Permit for the Kinlan White Schoolhouse Road Mine' with attachment of additional

requested information provided NYSDEC on December 22, 2008, including modified 'Reclamation Plan Map' dated December 3, 2008, and

- Copy of Permit ID 3-1350-00052/00003 issued by NYSDEC on January 12, 2009, with an expiration date of December 31, 2013.
1. Reiterates the below statements from its resolution of February 2, 2009, as to the applicability of SEQRA to the subject Application:
 - a. Acknowledges NYSDEC, as duly-designated SEQRA Lead Agency, has due to a staff determination the application for renewal presented '... no material change in permit conditions or the scope of permitted activities ...' classified the Proposed Action as a 'Type II Action' under SEQRA for which further consideration under SEQRA is precluded.
 - b. Further, were the Planning Board to take the position matter before the Board is not one of renewal as in the matter before NYSDEC but in fact issuance of a new Special Use Permit and therefore not a 'Type II Action' for which further consideration under SEQRA is precluded, the Planning Board would nonetheless concur with NYSDEC's staff determination that the current Application presents '... no material change in permit conditions or the scope of permitted activities ...' from the operation authorized under Special Use Permit for the period March 7, 2005, through March 31, 2008, and thus both concurs with and finds applicable to the current Application the Negative Declaration issued by NYSDEC in 2005.
 2. Waives pursuant to Town Zoning Law Section VI(E)(5) the requirement set forth at Section VI(B)(32) therein which limits a Special Use Permit for 'Soil Mining' to a maximum time period of three (3) calendar years finding its appropriate to extend the term of the Town's Special Use Permit, if issued, so as to terminate on December 31, 2013, the same date as the above-cited NYSDEC Mined Land Reclamation Permit.
 3. Finds the intended use as heretofore conducted and as described in the cited reports prepared by Griggs-Lane Consulting Geologists to be consistent with both the 'General Standards' for all special permit uses set forth at Section VI(A) of the Town Zoning Law and the 'Additional Specific Requirements' for 'Extractive Operations and Soil Mining in the R3A District' set forth at Zoning Law Section VI(B)(32), in consideration of the above waiver of time limit and contingent upon further waivers addressed below of a local Town-administered site rehabilitation performance guarantee in deference to a like guarantee posted with NYSDEC and limitation of the un-rehabilitated disturbed area to the maximum extent practicable though not necessarily in strict compliance with the acreage limitation set forth at Zoning Law Section VI(B)(32)(j).
 4. Waives pursuant to the Planning Board's authority under Town Zoning Law Section VI(E)(5) requirement for a local Town-administered site rehabilitation performance guarantee conditional upon initial and continuing demonstration of like guarantee being posted with NYSDEC.

5. Waives pursuant to the Planning Board's authority under Town Zoning Law Section VI(E)(5) the strict application of Town Zoning Law Section VI(B)(32)(j) reading '... any Special Use Permit issued under this Local Law shall be limited to ... a mining area of seven (7) acres not more than five (5) acres of which shall be disturbed, i.e. the active mining site or area awaiting rehabilitation, at any one time' provided the Applicant continues to demonstrate substantial progress in site reclamation efforts to comply to the extent practicable with this requirement while maintaining access to the mined material.
6. In consideration of all of the above grants the requested Special Use Permit for a period extending through December 31, 2013, and subject to strict compliance throughout the period with each of the below conditions:
 - a. Conduct of the soil mining operation occurs in good standing under the terms of NYSDEC Permit ID 3-1350-0005/00003.
 - b. Conduct of the soil mining operation occurs in strict accordance with all 'General Conditions' and 'Special Conditions' heretofore referenced and those further locally-established conditions set forth below, the stricter of which shall in each instance prevail:
 - (1) The Applicant and all other persons involved in the mining operation shall ensure all trucks employed in the haulage of sand and gravel from the Kinlan Soil Mine shall be limited to no more than 10-wheel, 12-cubic yard capacity, as heretofore recommended to the Planning Board by the Town Highway Superintendent and the Town Engineer.
 - (2) The Applicant and all other persons involved in the mining operation shall ensure all mining and processing, including all related on-site activities, shall be limited to the hours 7:00 a.m. to 5:00 p.m. Monday through Friday except that Saturday operations may occur not more than four (4) times annually between the hours of 8:00 a.m. and 1:00 p.m. No mining shall occur on Sundays.
 - (3) The Applicant and all other persons involved in the mining operation shall continue progressive site reclamation efforts throughout the mining period to carry out site rehabilitation as depicted on the modified 'Reclamation Plan Map' dated December 3, 2008, and to comply to the extent practicable with the above-cited limitation set forth within Town Zoning Law Section VI(B)(32)(j), demonstration of which shall be reviewed and assessed by the Town through not less than semi-annual on-site inspections, scheduled to occur on the first Monday of April and the first Monday of October, by a designated member of the Town Planning Board and the Zoning Enforcement Officer.
7. An extension of this Special Use Permit to any subsequent later termination date will be considered by the Planning Board and will not be unduly withheld provided that each of the following occurs:



TOWN of RHINEBECK

Planning Board

**80 East Market Street, Rhinebeck, NY 12572
Phone: (845) 876-6296 Fax: (845) 876-5885**

J D Von Der Leith & Sons – White Schoolhouse Road – Special Use Permit and Site Plan – TMP # 135089-6269-00-887822 and 135089-6269-00-907921– February 6, 2017

Resolution under SEQRA

"The Town of Rhinebeck Planning Board hereby acts as follows on a Proposed Action involving an Application by J D Von Der Leith & Sons to the Planning Board for Renewal of Special Use Permit (Soil Mining) under Town Code Chapter 125, Zoning, and in accordance with the terms of NYSDEC Mined Land Reclamation Permit (MLRP) No. 3-1350-00012/00002, to authorize continuation of surface and subaqueous mining operations of 4.58 acres of a 20.91-acre life of mine area within combined 72.31-acre TMPs 135089-6269-00-887822 and 135089-6269-00-907921 in both the Rural Countryside (RC5) and Mining Overlay (Mi-O) Districts and Agricultural District 20, and a related Request for Waiver under Town Code Chapter 120, Wetlands, pursuant to Section 120-8(a) therein, all as depicted on a Survey Map / Site Plan entitled 'Mining and Reclamation Plan – 2016-2021 Permit Term prepared for J D Von Der Leith and Sons Inc.' prepared by Mark R. Graminski, P.E. and L.S., and dated November 11, 2016, and otherwise described in supporting information including a Short EAF Part 1, an Agricultural Data Statement, and copy of an Application for Renewal of Mined Land Reclamation Law Permit submitted to NYSDEC on November 11, 2016:

1. Pursuant to the Planning Board's classification of the Proposed Action as an Unlisted Action under SEQRA determines upon its review of the Short EAF Part 1 and its own completion of the annexed Short EAF Part 2 in consideration of both the 'criteria for determining significance' set forth at Title 6 Part 617.7.c NYCRR and field observation of the existing mining operation and associated site rehabilitation by both the Planning Board and the Conservation Advisory Board that the Proposed Action, as described above, will cause no potential significant adverse impact on the environment and, thus, issues a Negative Declaration (Determination of Non-Significance) under SEQRA deeming an environmental impact statement to not be required and stating such will not be prepared.
2. Authorizes the Chair to so execute the Short EAF and directs the Planning Board Clerk to distribute and file the executed Determination of Significance in the manner set forth within the SEQRA Implementing Regulations, Title 6 Part 617.12 NYCRR."

Approvals Resolution under Town Code Chapter 125, Zoning, with Related Waiver under Town Code 120, Wetlands

"The Town of Rhinebeck Planning Board upon review, determination and authorization by the Zoning Enforcement Officer and satisfaction by the Board of all procedural requirements hereby acts as follows on the December 15, 2016,

Application by J D Von Der Leith & Sons to the Planning Board for Renewal of Special Use Permit (Soil Mining) under Town Code Chapter 125, Zoning, and in accordance with the terms of NYSDEC Mined Land Reclamation Permit (MLRP) No. 3-1350-00012/00002, to authorize continuation of surface and subaqueous mining operations involving 4.58 acres of a 20.91-acre 'life of mine area' within combined 72.31-acre TMPs 135089-6269-00-887822 and 135089-6269-00-907921 in both the Rural Countryside (RC5) and Mining Overlay (Mi-O) Districts and Agricultural District 20, and a related Request for Waiver under Town Code Chapter 120, Wetlands, pursuant to Section 120-8(a) therein, all as depicted on a Survey Map / Site Plan entitled 'Mining and Reclamation Plan – 2016-2021 Permit Term prepared for J D Von Der Leith and Sons Inc.' prepared by Mark R. Graminski, P.E. and L.S., and dated November 11, 2016, and otherwise described in supporting information including a Short EAF Part 1, an Agricultural Data Statement, and further being the subject of both an Application for Renewal of the above-cited Mined Land Reclamation Law (MLRL) Permit submitted to NYSDEC on November 11, 2016, and a Negative Declaration (Determination of Non-Significance) under SEQRA heretofore issued by the Planning Board:

1. In the matter of the requested Waiver under Town Code Chapter 120, Wetlands:

Waives, for reasons stated in Mr. Graminski's letter request of December 15, 2016, the applicability of the Wetland Permit requirement set forth within Town Code Chapter 120, Wetlands Law, to this matter.

2. In the matter of the Application for Renewal of Special Use Permit:

Waives any other time limitation set forth within Town Code Chapter 125, Zoning, with respect to a special use permit so as to provide that the termination date of the Town's Special Use Permit (Soil Mining), as considered below, is coincident with the termination date, projected to be December 13, 2021, though perhaps otherwise established, set forth by NYSDEC upon its consideration of the above-cited November 11, 2016, Application for Renewal NYSDEC Mined Land Reclamation Permit 3-1350-00012/00002.

a. Approves the requested Renewal of Special Use Permit with a termination date of December 13, 2021, or as otherwise established through the above-cited action by NYSDEC, subject to continual satisfaction throughout the permit period of each of the below continuing conditions:

- (1) Limitation on trucks employed in the haulage of sand and gravel to not more than 10-wheel, 12-cubic yard capacity.
- (2) Limitation on mining and loading activities to the hours of 7 a.m. to 5 p.m. Monday through Friday, except that Saturday operations may occur not more than four (4) times annually between the hours of 8 a.m. and 1 p.m. with all mining proscribed on Sundays or major legal holidays, these being New Year's Day, Memorial Day, Independence Day (July 4th), Labor Day, Thanksgiving and Christmas.
- (3) Requirement for annual inspection of the mine by the Town's Zoning Enforcement Officer and the Planning Board Engineer, with such inspection to occur on or about September 15th with written report thereof filed with the Planning Board.

- (4) In lieu of maintenance of a performance guarantee with the Town of Rhinebeck, requirement that the applicant inform the Town Zoning Enforcement Officer and Planning Board when final site reclamation is in progress and that it is the applicant's intention to ask NYSDEC to inspect the reclamation work and release the site reclamation bond held by NYSDEC. When so informing the Town the applicant shall invite an inspection of the site reclamation by the Town and request a letter be sent to NYSDEC either signing off or requesting NYSDEC consider at its discretion other work that should in the opinion of the Town be undertaken before the site reclamation bond is released by NYSDEC.
- (5) Maintenance of the operation in good standing under the terms of the NYSDEC Permit, the suspension or termination of which will be construed to likewise be suspension or termination of the Town-issued Special Use Permit.

In taking these actions, the Planning Board authorizes the Chair to stamp and sign the above-cited Survey Map / Site Plan as submitted to the Planning Board or as may be modified in response to requirements imposed by NYSDEC in its review of the Application for Renewal of Mining Permit upon the Applicant's compliance with each of the below conditions and/or requirements within the next one hundred eighty (180) calendar days:

- a. Submission of a copy of the NYSDEC Mined Land Reclamation Law Permit as renewed by NYSDEC.
- b. Submission of the Site Plan drawings as cited above for stamping and signature in the form and number specified under Town Code Chapter 125, Section 125-78, subsection B, except as may be modified as to number by the Chair.
- b. Payment of any outstanding fees or reimbursable amounts due the Town of Rhinebeck with respect to the submission, review and processing of this Application under the Town Code Chapter 125, the Town's fee schedule and executed escrow agreement."

Motioned by:

Melodye Moore

Seconded by:

Sharon Sherrod

Vote on motion:

Michael Trimble - aye
Melodye Moore - aye
Sharon Sherrod - aye
Woody Dierze - aye
Richard Murray - aye
Erich Blohm - aye
Edna Lachmund - aye

Resolution declared:

Certified by:


Gretchen Smith, Planning Board Clerk

Date: February 6, 2017

KEANE & BEANE, P.C.

ONE NORTH BROADWAY
WHITE PLAINS, NEW YORK 10601
(914) 946-4777
TELEFAX (914) 946-6868

MEMORANDUM

TO: Town of Rhinebeck Planning Board
FROM: Joel H. Sachs, Esq.- Special Counsel to the Planning Board
RE: Vincent Kinlan - Soil Mining - Special Use Permit
DATE: May 19, 1999

We understand that Vincent Kinlan has applied to the Planning Board of the Town of Rhinebeck for renewal of his special use permit in regard to conducting a soil mining operation off White Schoolhouse Road in the Town of Rhinebeck. The application was made pursuant to § VI (B)(32) of the Zoning Ordinance of the Town of Rhinebeck.

In conjunction with such application, we understand that Mr. Kinlan's engineering geologist, George L. Marshall, and his attorney, Rosemary Stack, Esq., have indicated to the Planning Board that certain of the issues which the Planning Board would normally address in a soil mining special use permit have been pre-empted by the requirements of the New York State Mine Land Reclamation Law, namely requirements relating to: (1) the amount of acreage which can be mined at one time. See § VI(B)(32)(j); (2) the setback requirements for the mining operation. See § VI(B)(32)(f) (1); and (3) restrictions on truck number and size, See § IV(B)(32)(f). In this regard, we have been requested to review the applicable law, regulations and court cases in order to advise the Planning Board as to whether we agree with the position of the applicant as set forth above.

In reaching our opinion, we have reviewed the requirements of the New York State Mined Land Reclamation Law of the State of New York, Article 23 of the Environmental Conservation Law, applicable case law, the Mining Permit issued to Mr. Kinlan by NYSDEC on December 9, 1998, the approved Mining Plan, the approved Reclamation Plan, the letter from George L. Marshall, environmental geologist, dated January 26, 1999 and the letter from

Rosemary Stack, Esq., dated April 23, 1999. Based upon all the foregoing, our opinion is as follows:

The enactment of the New York State Mined Land Reclamation Law has pre-empted municipalities from enacting local laws regulating the extractive mining industry. In other words, a municipality is not permitted to regulate mining which the State Legislature has decreed is within the exclusive jurisdiction of the State of New York. See Environmental Conservation Law § 23-2703 which indicates that local laws "shall not regulate mining and/or reclamation activities regulated by state statute regulation or permit". The state statute does indicate that a local zoning ordinance can indicate whether mining is a permissible use within the municipality and if so, within which zoning districts, Village of Savona v. Knight Settlement Sand & Gravel, Inc., 88 N.Y.2d 897, 646 N.Y.S.2d 655 (1996). Moreover, the state statute in subd. 2b indicates that "Where mining is designated a permissible use in a zoning district and allowed by special use permit", there are certain subject matters which a municipality may address in a special permit. Those subjects are as follows:

- (i) ingress and egress to public thoroughfares controlled by the municipality;
- (ii) routing of mineral transport vehicles on roads controlled by the municipality;
- (iii) any requirements and conditions as specified in the mining permit issued by the NYSDEC concerning setbacks from property boundaries and public thoroughfare rights-of-way, natural or man-made barriers to restrict access, if required, dust control and hours of operation; and
- (iv) enforcement of reclamation requirements contained in mined land reclamation permits issued by the NYSDEC.

Accordingly, there are areas in which a municipality may establish reasonable land use controls as long as it does not attempt to regulate mining itself, Town of Parishville v. Contore Co., Inc., 237 A.D.2d 67, 667 N.Y.S.2d 453 (3 Dept. 1998); Town of Throop v. Leema Gravel Beds, Inc., ___ A.D.2d ___, 672 N.Y.S.2d 212 (4 Dept. 1998); Philipstown Industrial Park, Inc. v. Town Bd. Of Town of Philipstown; 247 A.D.2d 525, 669 N.Y.S.2d 340 (2 Dept. 1998).

Based upon our research, our opinion on the above three issues raised by the applicant is as follows:

Work Area Limits – This directly relates to the actual mining operation. Section IV(B)(32)(j) of the Zoning Ordinance indicates that a special use permit is limited to a 5 acre area of disturbance, i.e. the actively mined area. We agree with the statement set forth on page 4 of Mr. Marshall's letter of January 26, 1999 that the 5 acre limitation in the Zoning Ordinance applies only to the active mining area. According to the applicant, he will not be actively mining an area greater than 5 acres. Hence, the 5 acre limitation as set forth in the Zoning Ordinance can be made a requirement of Mr. Kinlan's special use permit.

Setbacks - The Zoning Ordinance in § IV(B)(32)(f)(1) requires setbacks of 100' from any property line or street and 300' from any residence. The state statute, and specifically § 23-2703(b)(iii) indicates that in any special use permit issued by a municipality, the municipality would be bound by the setbacks from property boundaries that are set forth in the mining permit issued by NYSDEC. A review of the permit issued to Mr. Kinlan by NYSDEC fails to disclose any specific property setbacks. In the absence of such setback requirement in the existing NYSDEC permit, we believe it is reasonable for the Town to apply the setback requirements in its Zoning Ordinance as a condition for the special use permit so long as such setback requirements do not attempt to regulate mining. On the other hand, had NYSDEC set forth setback requirements in its permit, the Town clearly would have been pre-empted.

Truck Size - Under § VI(B)(32)(f) of the Zoning Ordinance, the Town as a condition of a special use permit can approve the number and types of trucks to be utilized in conjunction with the mining operation. In reviewing the state statute, namely § 23-2703(B)(i)(ii), it is indicated that a municipal special use permit for a mining operation may address such issues as ingress and egress to public thoroughfares controlled by the municipality and the routing of mineral transport vehicles on roads controlled by the municipality. From this language, it is clear that the State Legislatures intent was that a municipality did have a right to regulate the number and types of trucks utilized in the mining operation. The number and types of trucks relates to public safety on public roads and to the wear and tear caused by mining trucks utilizing public roads in close proximity to the mining site. Therefore, we believe that this is an appropriate area of municipal regulation.

We should also note that there are a number of other requirements set forth in § VI(B)(32) of the Zoning Ordinance of the Town related to soil mining operations. However, the applicant is apparently not challenging the applicability of these requirements to its mining operation presumably since it complies with such requirements.

If you desire any further information from our office in regard to this matter, please do not hesitate to contact me.

cc: Art Brod, Jr.
26 Brod Acres
Poestenkill, New York 12140

**Town of Rhinebeck Planning Board
Resolution in the matter of the Application of Vincent J. Kinlan for
Special Use Permit for Soil Mining on White Schoolhouse Road in the
R3A District**

- Motion by Planning Board Member Ricardo Recchia
- Seconded by Planning Board Member John Varrichio

The Town of Rhinebeck Planning Board hereby acts as follows on the November 2, 1998, Application of Vincent Kinlan for Special Use Permit for conduct of 'Soil Mining' on a portion of Mr. Kinlan's property on the west side of White Schoolhouse Road in the R3A District:

1. Acknowledges NYSDEC's issuance on December 9, 1998, of a Mined Land Reclamation Permit to Vincent Kinlan to "continue to mine sand and gravel, with on-site screening, in accordance with previously approved plans as modified by 'Life of Mine, Mine Reclamation Plan' dated August 1986, last revised April 1991, as prepared by Richard T. Mead and 'Mining Plan Map' dated August 25, 1998, and last revised November 2, 1998, prepared by George L. Marshall Engineering Geologists".
2. Determines the intended action, an "Unlisted Action" under SEQRA, will not cause any significant adverse effects on the environment, most particularly with regard to the effects on the land and neighboring residential land uses, provided that conditions are imposed within any Special Use Permit that may be issued to restrict the size of trucks employed in the haulage of sand and gravel from the "Soil Mine", hours of operation for mining, processing and all related on-site activities are reasonably limited, and diligent efforts to accelerate site reclamation work occur.
3. Directs the annexed Conditional Negative Declaration, which Conditional Negative Declaration more specifically sets forth the aforementioned conditions for imposition within any Special Use Permit that may be issued, be issued by the Chairman and circulated by the Clerk in the manner provided under SEQRA.
4. Issues the requested Special Use Permit subject to compliance with all 'General Conditions' and 'Special Conditions' set forth by the aforementioned NYSDEC Mined Land Reclamation Permit and those further conditions set forth below, the stricter of which shall prevail:

- a. All trucks employed in the haulage of sand and gravel from the Kinlan Soil Mine shall be limited to not more than 10-wheel, 12-cubic yard capacity, as recommended by the Town Highway Superintendent and Town Engineer.
- b. Mining and processing, including all related on-site activities, shall be limited to the hours 7 a.m. to 5 p.m. Monday through Friday except that Saturday operations may occur not more than four (4) times annually between the hours of 8 a.m. and 1 p.m. No mining shall occur on Sundays or legal holidays.
- c. The term of this Special Use Permit shall be a period of three (3) years, the maximum term authorized at Zoning Code Section VI(B)(32)(j) and shall be considered to cover the period from the time of expiration of the prior Planning Board-issued Special Use Permit on October 3, 1998, to October 2, 2001. An extension of this Special Use Permit to the termination date of November 30, 2003, as set forth in the NYSDEC Mined Land Reclamation Permit will be considered by the Planning Board and will not be unduly withheld provided that each of the following occurs:
 - An Application for such extension is filed not later than July 1, 2001, to provide sufficient time for the processing thereof prior to the expiration date of this Special Use Permit.
 - The Applicant diligently complies with the conditions of this Special Use Permit during the intervening period.
 - The Applicant demonstrates substantial progress in site reclamation efforts during the intervening period to comply far more fully than the present operation with the requirement set forth at Town Zoning Code Section VI(B)(32)(j), specifically that "...any Special Use Permit issued under this Local Law shall be limited to ... a mining area of seven (7) acres not more than five (5) acres of which shall be disturbed, i.e. the active mining site or area awaiting rehabilitation, at any one time". Such demonstration shall be confirmed through on-site inspection by the Planning Board, Zoning Enforcement Officer and Town Engineer.
 - The Applicant authorizes in writing inspection of the "Soil Mine" by the Town's Zoning Enforcement Officer and Town Engineer not less than twice annually (Spring and Fall) with the cost of said inspections and written report thereon by the Town Engineer to be reimbursed to the Town by the Applicant upon receipt of a copy of the Town Engineer's written report.

- ♦ The Applicant carries out no "Soil Mining" activity beyond the October 2, 2001, expiration date of this Special Use Permit unless the Special Use Permit has been extended by the Planning Board.
- Annexed Document: Conditional Negative Declaration under SEQRA
- Vote on Motion:

Member John Griffin	Aye
Member Nicholas McCauslund	Aye
Member Frank Pedatella	Aye
Member Ricardo Recchia	Aye
Member Warren Temple Smith	Aye
Member John Varricchio	Aye
Chairman Paul Lagno	Aye
- Resolution Declared:

Adopted	_____
Defeated	_____
- Resolution Certified by:

Joan Winne, Planning Board Clerk

Date



THE TOWN OF
RHINEBECK · NEW YORK
FOUNDED 1686

Planning Board

Von Der Leith Soil Mine – 410 White School House Rd.

Site Plan & Special Use Permit (Renewal of Special Use Permit for Soil Mining)

TMP 135089-6269-00-907921, -862919, -887822 – August 1, 2022

Approval Resolution

The Town of Rhinebeck Planning Board hereby acts as follows on the application by Von Der Leith Soil Mine for Site Plan and Special Use Permit under Town Code Chapter 125, Section 125-65 and Section 125-72, respectively, for a mining permit renewal at 410 White Schoolhouse Road (TMP 135089-6269-00-907921, -862919, -887822) within the RC5 (Rural Countryside) Zoning District and MI-O Mining Overlay and in accordance with the terms and requirements of the 5-year NYSDEC mining and reclamation permit renewal – Mined Lane Reclamation Permit # 3-1350-00012/00002 and continued mining operations within a 20.91 acre parcel life of mine area.

1. Reaffirms the proposed action as Unlisted under SEQRA and the finding of a Negative Declaration (Determination of Non-Significance) deeming an environmental impact statement is not required and stating such will not be prepared.
2. Based upon review of submitted information, including reports from Planning Board members and CAB member(s), finds that the proposed work is consistent with the objectives and regulations of Chapter 125.
3. With respect to the waiver requested for development near wetlands per Section 120-8.A from Article V, Supplementary Regulations:
 - a. Waives said requirement for reasons stated in the application letter dated February 7, 2022, the applicability of a Wetlands Permit as required by Section 120, as has been done in the past for said operation.
4. With respect to the application for Special Use Permit to authorize work:
 - a. Finds the proposed work and intended use to be consistent with the “General Standards” for special use permits set forth in the Town Code Chapter 125, Section 125-67.
 - b. Waives any other time limitation set forth within Town Code Chapter 125, Zoning, with respect to a special use permit so as to provide that the termination date of the Town’s Special Use Permit (Soil Mining), as considered below, is coincident with the termination date set forth by NYSDEC upon its consideration of the above-cited Application for Renewal, NYDEC Mined Land Reclamation Permit 3-1350-00012/00002.
 - c. Grants the requested Special Use Permit conditional upon receipt of Site Plan approval by the Planning Board and the following conditions:

- i. Applicant shall continue to work with the Town (Planning Board) regarding discussions, concerns and assessments of the combined truck traffic impact on White Schoolhouse Road and acknowledges that should additional traffic discussions be required at any time to address Section 125-68.FF.5 & 6, applicant shall participate in said discussions, and work to address and modify operations as needed, to resolve or address any concerns, issues or needs.
- ii. Per Town Code Chapter 125, Section 125-68.FF.f, this permit shall be limited to a permit of 5 years (from a date consistent with item 4.b above) and to a mining area of seven acres, not more than five acres of which shall be disturbed at any one time.
- iii. Limits trucks employed in the haulage of sand and gravel to not more than 10-wheel, 12-cubic yard capacity.
- iv. Limits mining and loading activities to the hours of 7 a.m to 5 p.m. Monday through Friday, except that Saturday operations may occur not more than 4 times annually between the hours of 8 a.m. and 1 p.m. with all mining prohibited on Sundays or major legal holidays as determined by the Town of Rhinebeck calendar.
- v. Requires an annual inspection of the mine by the Town's Zoning Enforcement Officer and the Planning Board Engineer, with such inspection to occur on or about September 15th with written report thereof filed with the Planning Board.
- vi. In lieu of maintenance of a performance guarantee with the Town of Rhinebeck, requirement that the applicant inform the Town Zoning Enforcement officer and Planning Board when final site reclamation is in progress and that it is the applicant's intention to ask NYSDEC to inspect the reclamation work and release the site reclamation bond held by NYSDEC. When so informing the Town, the applicant shall invite an inspection of the site reclamation by the Town and request a letter be sent to NYSDEC either signing off or requesting NYSDEC consider at its discretion other work that should, in the opinion of the Town, be undertaken before the site reclamation bond is released by NYSDEC.
- vii. Maintenance and operation in good standing under the terms of the NYSDEC Permit, the suspension or termination of which will be construed to likewise be suspension or termination of the Town-issued Special Use Permit.

5. With respect to the application for Site Plan approval:

- a. Finds the proposed work and intended use to be consistent with Town Code Chapter 125, Section 125-75, and approves the application inclusive of the application materials and plans by Mark R. Graminski dated February 7, 2022.
- b. Authorizes the Planning Board Chair to stamp and sign the above cited Site Plan upon the Applicant's satisfaction of the below conditions and/or requirements within six (6) calendar months of the adoption of this resolution:
 - i. Submission of a copy of the NYSDEC Mined Land Reclamation Law Permit as renewed by NYSDEC, and any and all future submissions, applications or requests, if any, made to the NYSDEC regarding this soil mine.
 - ii. Submission of the above cited Site Plan in the form and number specified within Town Code Chapter 125, Section 125-78.B, except as may be modified as to lesser number by the Chair in consideration of filing and distribution requirements, and including thereon all required stamps, seals and certifications.

- iii. Payment of any outstanding fees and/or reimbursable amounts due the Town of Rhinebeck related to the review and processing of Applications subject to this Resolution.
- iv. Receipt of all approvals, authorizations, or certifications required herein or from any other Town, County, State or other agency as required to undertake the proposed action(s).

In taking these actions, the Planning Board further authorizes the Town Zoning Enforcement Officer/Zoning Administrator and/or Building Inspector, to issue any required permits for the proposed use upon their determination that both the terms of this Resolution and all other applicable codes, laws, rules or regulations, including but not limited to the provisions of the New York State Uniform Fire Prevention and Building Code, within the purview of the ZEO/ZA and/or Building Inspector have been satisfied.

No later than two weeks prior to six months beyond the date of adoption of this resolution, and upon specific written request by the applicant, a time extension may be made per Section 125-78 D-2.

Motioned by: Craig Oleszewski

Seconded by: Sean Jones

Vote on motion: Michael Trimble – Absent
Sean Jones – Aye
Edna Lachmund - Aye
Joe Labbadia - Absent

Melodye Moore - Aye
Craig Oleszewski – Aye
Delyse Berry – Aye

Resolution declared: Approval

Certified by: *Gretchen Smith* Date: August 7, 2022
Gretchen Smith, Planning Board Clerk



THE TOWN OF
RHINEBECK · NEW YORK
FOUNDED 1686

Planning Board

Lobotsky Soil Mine – 344 White Schoolhouse Rd. - Site Plan & Special Use Permit TMP 135089-6270-00-933060 - November 21, 2022

Approval Resolution

The Town of Rhinebeck Planning Board hereby acts as follows on the Lobotsky Soil Mine application to the Planning Board for renewal of a Special Use Permit (Soil Mining) & Site Plan & under Town Code Chapter 125, Zoning, Section 125-65 & Section 125-68.FF, and Section 125-72 at 344 White Schoolhouse Road (TMP 135089-6270-00-933060) within the RC5 (Rural Countryside) Zoning District and MI-O Mining Overlay, Agricultural District 20, and in accordance with the terms and requirements of the 5-year NYSDEC mining and reclamation permit renewal – Mined Lane Reclamation Permit # 3-1350-00047 to authorize continuation of above and below water unconsolidated mining operations for the purpose of extracting sand and gravel within an approximately 0.3 acre area around the perimeter of the existing pond within the 12.3 acre parcel life of mine area, with no on-site processing activity, on the existing 54.3 acre parcel(s); and a waiver request under Town Code Chapter 120, Wetlands, pursuant to Section 120-8(a), as submitted in an application letter dated September 26, 2022 and as depicted on a Site Plan prepared by Mark R. Graminski, P.E. and L.S. dated September 26, 2022.

1. Reaffirms the proposed action as Unlisted under SEQRA and the finding of a Negative Declaration (Determination of Non-Significance) deeming an environmental impact statement is not required and stating such will not be prepared.
2. Based upon review of submitted information, including reports from Planning Board members and CAB member(s), finds that the proposed work is consistent with the objectives and regulations of Chapter 125.
3. With respect to the waiver requested for development near wetlands per Section 120-8.A from Article V, Supplementary Regulations:
 - a. Waives said requirement for reasons stated in the application letter dated September 26, 2022, the applicability of a Wetlands Permit as required by Section 120, as has been done in the past for said operation.
4. With respect to the application for Special Use Permit to authorize work:
 - a. Finds the proposed work and intended use to be consistent with the “General Standards” for special use permits set forth in the Town Code Chapter 125, Section 125-67.

- b. Waives any other time limitation set forth within Town Code Chapter 125, Zoning, with respect to a special use permit so as to provide that the termination date of the Town's Special Use Permit (Soil Mining), as considered below, is coincident with the termination date set forth by NYSDEC upon its consideration of the above-cited Application for Renewal, NYDEC Mined Land Reclamation Permit # 3-1350-00047.
- c. Grants the requested Special Use Permit conditional upon receipt of Site Plan approval by the Planning Board and the following conditions:
 - i. Applicant shall continue to work with the Town (Planning Board) regarding discussions, concerns and assessments of the combined truck traffic impact on White Schoolhouse Road and acknowledges that should additional traffic discussions be required at any time to address Section 125-68.FF.5 & 6, applicant shall participate in said discussions, and work to address and modify operations as needed, to resolve or address any concerns, issues or needs.
 - ii. Per Town Code Chapter 125, Section 125-68.FF.10.f, this permit shall be limited to a term of 5 years (from a date consistent with item 4.b above) and to a mining area of seven acres, not more than five acres of which shall be disturbed at any one time.
 - iii. Limits trucks employed in the haulage of sand and gravel to not more than 10-wheel, 12-cubic yard capacity.
 - iv. Limits mining and loading activities to the hours of 7 a.m. to 5 p.m. Monday through Friday, except that Saturday operations may occur not more than 4 times annually between the hours of 8 a.m. and 1 p.m. with all mining prohibited on Sundays or major legal holidays as determined by the Town of Rhinebeck calendar.
 - v. Requires an annual inspection of the mine by the Town's Zoning Enforcement Officer and the Planning Board Engineer, with such inspection to occur on or about September 15th with written report thereof filed with the Planning Board.
 - vi. In lieu of maintenance of a performance guarantee with the Town of Rhinebeck, requirement that the applicant inform the Town Zoning Enforcement officer and Planning Board when final site reclamation is in progress and that it is the applicant's intention to ask NYSDEC to inspect the reclamation work and release the site reclamation bond held by NYSDEC. When so informing the Town, the applicant shall invite an inspection of the site reclamation by the Town and request a letter be sent to NYSDEC either signing off or requesting NYSDEC consider at its discretion other work that should, in the opinion of the Town, be undertaken before the site reclamation bond is released by NYSDEC.
 - vii. Maintenance and operation in good standing under the terms of the NYSDEC Permit, the suspension or termination of which will be construed to likewise be suspension or termination of the Town-issued Special Use Permit.

5. With respect to the application for Site Plan approval:

- a. Finds the proposed work and intended use to be consistent with Town Code Chapter 125, Section 125-75, and approves the application inclusive of the application materials and plans by Mark R. Graminski dated September 26, 2022.
- b. Authorizes the Planning Board Chair to stamp and sign the above cited Site Plan upon the Applicant's satisfaction of the below conditions and/or requirements within six (6) calendar months of the adoption of this resolution:

- i. Written receipt of a NYSDEC mining and reclamation permit renewal approval.
- ii. Submission of a copy of the NYSDEC Mined Land Reclamation Law Permit as renewed by NYSDEC, and any and all future submissions, applications or requests, if any, made to the NYSDEC regarding this soil mine.
- iii. Submission of the above cited Site Plan in the form and number specified within Town Code Chapter 125, Section 125-78.B, except as may be modified as to lesser number by the Chair in consideration of filing and distribution requirements, and including thereon all required stamps, seals and certifications.
- iv. Payment of any outstanding fees and/or reimbursable amounts due the Town of Rhinebeck related to the review and processing of Applications subject to this Resolution.
- v. Receipt of all approvals, authorizations, or certifications required herein or from any other Town, County, State or other agency as required to undertake the proposed action(s).

In taking these actions, the Planning Board further authorizes the Town Zoning Enforcement Officer/Zoning Administrator and/or Building Inspector, to issue any required permits for the proposed use upon their determination that both the terms of this Resolution and all other applicable codes, laws, rules or regulations, including but not limited to the provisions of the New York State Uniform Fire Prevention and Building Code, within the purview of the ZEO/ZA and/or Building Inspector have been satisfied.

No later than two weeks prior to six months beyond the date of adoption of this resolution, and upon specific written request by the applicant, a time extension may be made per Section 125-78 D-2.

Motioned by: Michael Trimble

Seconded by: Sean Jones

Vote on motion: Michael Trimble – Aye
Sean Jones – Aye
Edna Lachmund - Aye
Joe Labbadia - Aye

Melodye Moore - Aye
Craig Oleszewski – Aye
Delyse Berry – Absent

Resolution declared: Approval

Certified by: *Gretchen Smith* Date: November 23, 2022
Gretchen Smith, Planning Board Clerk

Exhibit C

to

Planning 4 Places Report on behalf of the Town of Rhinebeck,
dated 10 February 2023

Re: DEIS of Red Wing Properties, Inc.
NYSDEC Legislative Public Hearing

Exhibit:

Crash Data from Dutchess County Planning Department: Reported Crashes 2019-2021

(T) Rhinebeck



Crash Data from Dutchess County Planning Department
Reported Crashes 2019-2021

Exhibit D

to

Planning 4 Places on behalf of the Town of Rhinebeck,
dated 10 February 2023

Re: DEIS of Red Wing Properties, Inc.
NYSDEC Legislative Public Hearing

Exhibit:

CR 19 (Slate Quarry Rd) Safety Assessment NYS Route 9G
to White Schoolhouse Rd, Town of Rhinebeck

CR 19 (Slate Quarry Rd) Safety Assessment

NYS Route 9G to White Schoolhouse Rd, Town of Rhinebeck



PDCTC

Poughkeepsie-Dutchess County Transportation Council

27 High Street, 2nd Floor

Poughkeepsie, NY 12601

Phone: 845.486.3600

Fax: 845.486.3610

Email: pdctc@dutchessny.gov

Internet: <http://www.dutchessny.gov/pdctc.htm>

Acknowledgment

The preparation of this document has been financed in part through grant[s] from the Federal Highway Administration and Federal Transit Administration, U.S. Department of Transportation, under the State Planning and Research Program, Section 505 [or Metropolitan Planning Program, Section 104(f)] of Title 23, U.S. Code. The contents of this document do not necessarily reflect the official views or policy of the U.S. Department of Transportation.

1. Background

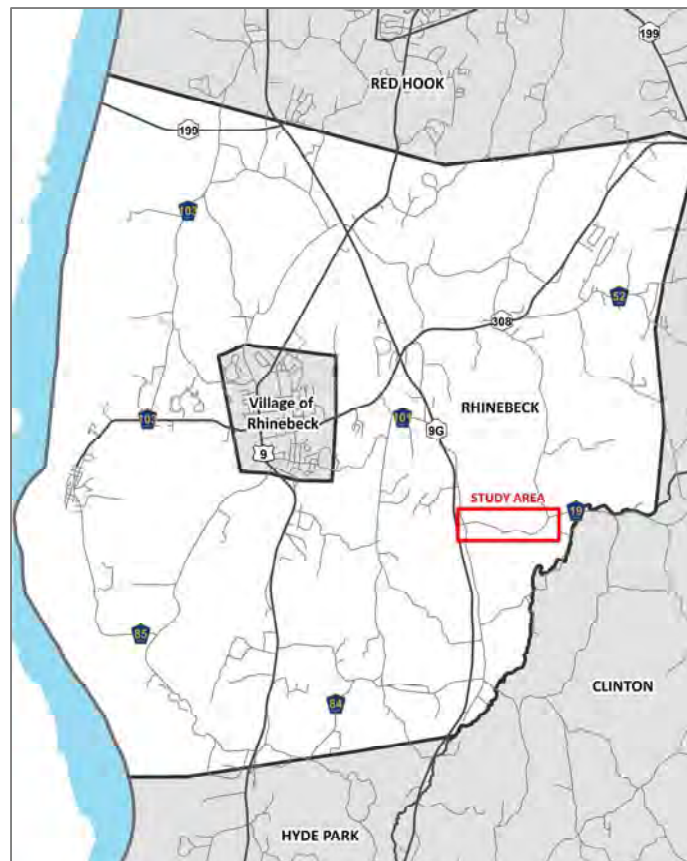
The Poughkeepsie-Dutchess County Transportation Council (PDCTC) conducted a Safety Assessment (SA) of CR19 (Slate Quarry Rd) from NYS Route 9G to White Schoolhouse Rd in support of its goal to improve transportation safety in Dutchess County. The SA is intended to provide the facility owner, Dutchess County, with a list of opportunities for low-cost, short-range safety improvements, and if warranted, more expensive and/or longer-range improvements. The PDCTC, in consultation with the Dutchess County Department of Public Works (DCDPW) and the Town of Rhinebeck, selected the assessment location based on a county-wide analysis of crash data from 2009-2013.

2. Road Characteristics

CR19 (Slate Quarry Rd) runs in an east-west direction between NYS Route 9G in Rhinebeck east to the Taconic State Parkway in the Town of Clinton, and eventually to NYS Route 82 in the Town of Stanford. During its course, the 11.3 mile road changes its name to Bulls Head Rd at the intersection of CR18 (Centre Rd) in Clinton. The road is maintained by the Dutchess County Department of Public Works (DCDPW). This SA focused on a one-mile portion of CR19 that is in the Town of Rhinebeck and locally referred to as Slate Quarry Rd. See Figure 1.

Within the one mile study area, Slate Quarry Rd is a two-way, two-lane rural collector with asphalt shoulders and an un-posted 55 mile per hour (mph) speed limit – though this will soon change upon implementation of a newly-approved 45 mph speed limit between Route 9G and Centre Rd (CR18) (Note: DCDPW intends to have new speed limit signs installed by mid-December). While CR19 east of Centre Road is relatively wide and straight, the segment west of Centre Rd is narrower and has substantial horizontal and vertical curves at several locations. The pavement is in excellent condition, having just been repaved (between Wurtemburg and Zipfeldburg Rd) in October 2014 due to concerns about insufficient pavement friction during wet weather. Based on measurements at the site, the width of the road varies between 26-28 feet.

Figure 1. Study Area



NYS Route 9G-White Schoolhouse Rd, Town of Rhinebeck

At the time of the SA, lane markings had not yet been added, though DCDPW has subsequently striped the road. The travel lanes are 11 feet wide, which allow for 2-3 foot paved shoulders depending on shoulder conditions. DCDPW indicated that additional shoulder work was planned to reduce the drop-off at the paved edges, which will increase useable shoulder width. The approaching Town roads of Wurtemberg Rd and White Schoolhouse Rd are in fair to good condition with some longitudinal cracking.

Slate Quarry Rd serves as a popular east-west connection between NYS Route 9G and the Taconic State Parkway. Heavy vehicles use the road based on its proximity to a local quarry, while school buses use the road to transport students to/from nearby schools. In addition, a new mine has been proposed on White Schoolhouse Rd, which could add about 80 trucks per day to Slate Quarry Rd east of White Schoolhouse Rd. The limited shoulder width, road curvature, and high speeds likely discourage walking and bicycling, though one pedestrian was observed during an October 27th site visit.

Traffic volumes collected in 2014 indicate an annual average daily traffic (AADT) volume of approximately 4,200 vehicles per day, with peak hour volumes of approximately 340 vehicles per hour in the morning (8 to 9 a.m.) and 410 vehicles in the evening (5 to 6 p.m.). Based on 2014 vehicle classification counts, 5.4 percent of vehicles were classified as heavy-duty trucks or buses. The same 2014 data indicated an 85th percentile speed of close to 53 mph eastbound and 50 mph westbound, meaning 85 percent of measured speeds were at or below these speeds; average speeds were 46.4 mph eastbound and 43.8 mph southbound. Table 1 shows recent and historic traffic data for the study area.

Table 1. CR19 (Slate Quarry Rd) Traffic Volumes & Speeds: NYS Route 9G to White Schoolhouse Rd

Year	AADT	Peak Hour Volumes		85% speed		% heavy vehicles
		8-9 AM	5-6 PM	EB	WB	
2007	3,720	300	355	n/a	n/a	n/a
2010	3,991	310	384	53.4	52.5	8.5%
2014	4,181	340	409	52.7	49.7	5.4%

AADT: Annual Average Daily Traffic

The Wurtemberg Rd approach to Slate Quarry Rd is STOP sign controlled, while White Schoolhouse Rd is STOP and YIELD sign controlled (for left and right turns, respectively). Stop bar markings, albeit worn, are present at Wurtemberg Rd, though not at White Schoolhouse Rd. DCDPW intends to mark Slate Quarry Rd with a double yellow center line and white edge lines. The approaching Town roads are not striped. Throughout the corridor, a variety of warning signs are used, including curve warning signs with speed advisory plaques, chevrons, and slippery when wet warning signs. Guiderails are also present along some sections of Slate Quarry Rd.

3. Safety Assessment Process

This project represents the third application of the SA process in Dutchess County, building upon previous SAs in 2013 for CR9 (Beekman Road) in the Town of Beekman and in 2014 for CR16 (North Quaker Ln) in the Town of Hyde Park. As before, the PDCTC conducted this SA consistent with Road Safety Audit (RSA) guidance from the Federal Highway Administration (FHWA) and Safety Assessment Guidelines from the New York State Association of Metropolitan Planning Associations (NYSAMPO). This SA relied on the participation of an interdisciplinary team of staff from partner agencies, which included the following individuals:

- Robert Balkind – Deputy Commissioner, Dutchess County DPW
- Stephen Gill – Traffic Engineer, Dutchess County DPW
- Rob Zahorsky – Dutchess County DPW-Highway Maintenance
- Brian Engel – Trooper, New York State Police
- Lt. Mike Dampf – Dutchess County Sheriff's Office
- Sgt. Jon Begor – Dutchess County Sheriff's Office
- Sgt. Peter Dunn – Officer in Charge, Rhinebeck Police Department
- Elizabeth Spinzia – Supervisor, Town of Rhinebeck
- Kathy Kinsella – Highway Superintendent, Town of Rhinebeck
- Henry Campbell – Emergency Services Coordinator, Town of Rhinebeck
- Mark Debald – Transportation Program Administrator, PDCTC
- Emily Dozier – Senior Planner, PDCTC



Figure 2. The CR19 (Slate Quarry Rd) Safety Assessment relied on a multi-disciplinary team to review existing conditions and identify potential solutions to improve safety.

The SA took place on October 29-30, 2014, starting with a pre-assessment meeting on October 29th, followed by site visits that afternoon (both during daylight and dusk) and on the morning of October 30th. A post assessment meeting was held at Town Hall on October 30th to discuss the team's observations and explore possible safety improvements using the prompt list included with the FHWA RSA software program. The SA team used a variety of information to complete the SA, including crash and traffic data, aerial photography, and field work. The key

NYS Route 9G-White Schoolhouse Rd, Town of Rhinebeck

issues identified included high vehicle speeds, narrow shoulders, horizontal and vertical curves, limited sight distances, and wet-weather crashes. The SA team strove to identify low-cost, high-impact improvements to address these issues.

4. Crash Analysis

The PDCTC collected crash data from 2009-2013 (the latest calendar year available) from the NYS Accident Location Information System (ALIS) database, which is a multi-agency reporting system operated by the NYS Office of Cyber Security & Critical Infrastructure Coordination (CSCIC), the NYS Department of Motor Vehicles (DMV) and the NYS Department of Transportation (NYSDOT). ALIS data originates from the Traffic and Criminal Software (TraCS) system used by police agencies and submitted via DMV accident report forms (Form MV-104).

The one mile segment of Slate Quarry Rd experienced 59 crashes from 2009-2013, which resulted in one fatality and 26 reported injuries, three of which were classified as serious. Note: in June 2012, a fatality occurred near Slate Quarry Rd at the Route 9G intersection; since this was located outside the study area it was not included in the crash analysis. The crash analysis indicated that the majority of crashes (76 percent) occurred during daylight, and wet or snowy road surface conditions were present at approximately half of the crashes. Of the 59 crashes, 19 (or 32 percent) occurred within 100 feet of the White Schoolhouse Rd intersection. The number of crashes spiked in 2013, when 20 crashes occurred, which accounted for 34 percent of all the crashes during the five year period. The most frequent crash type was collisions with earth, rock cuts, or ditches (16 crashes), followed by collisions with deer (13 crashes). The most prevalent collision factor was unsafe speed, followed by slippery pavement and animal's action. Over 80 percent of crashes occurred on a curve. Table 2 summarizes crash data for the study area.

Table 2. CR19 (Slate Quarry Rd) Crash Summary: Wurtemburg Rd to White Schoolhouse Rd

Year	Number of Crashes	Number of Fatalities	Number of Injuries	Light Conditions		Road Surface Condition		
				Daylight	Dark	Dry	Wet	Snow
2009	11	0	3	9	2	8	3	0
2010	15	0	6	12	3	10	4	1
2011	7	0	3	3	4	3	2	2
2012	6	0	2	6	0	4	2	0
2013	20	1	12	15	5	5	13	2
Total	59	1	26	45	14	30	24	5

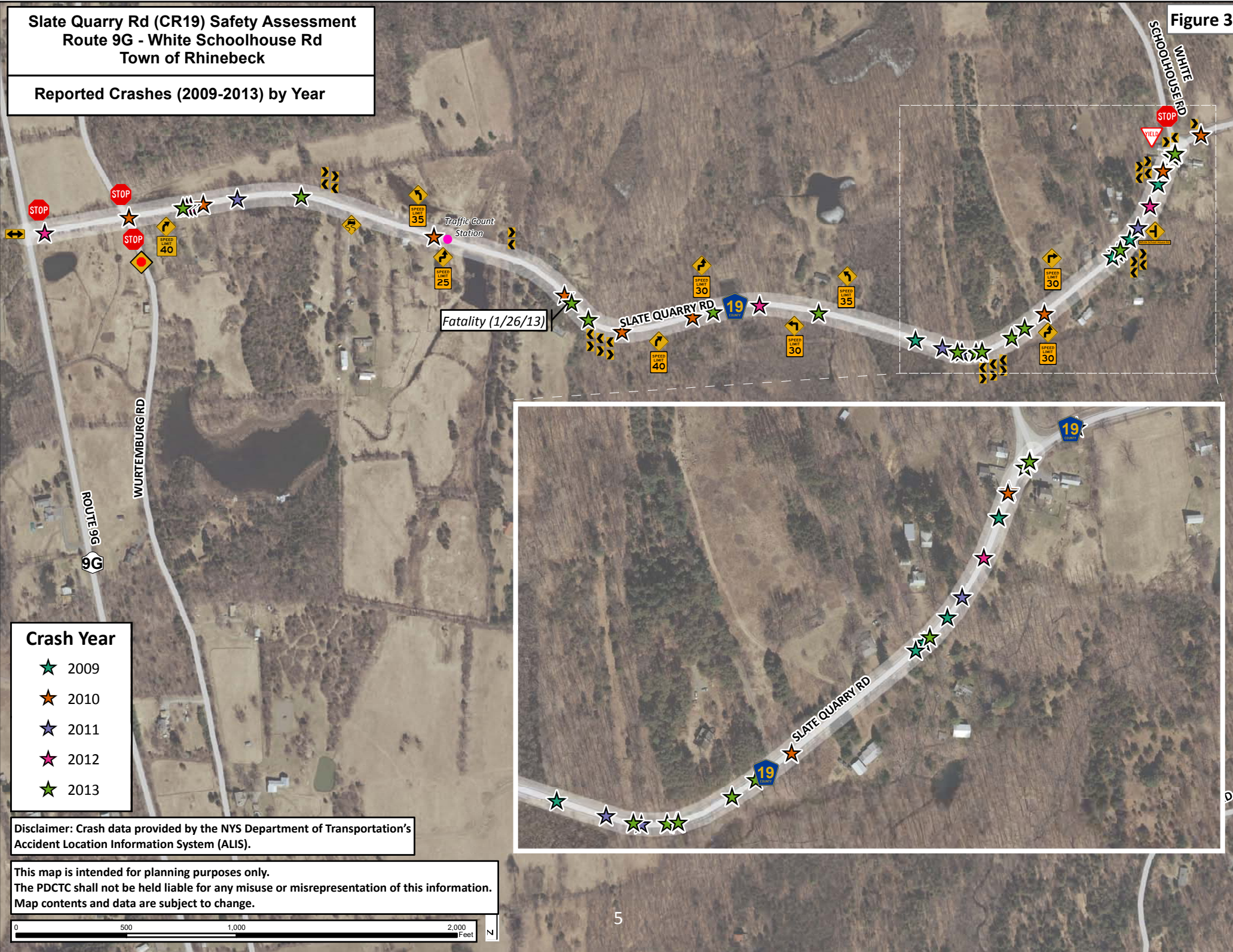
Note: Out of the 59 total crashes, 13 involved deer.

Figure 3 shows the general locations and years of crashes in the study area as well as warning sign locations, while Figure 4 shows the nature of the crashes.

**Slate Quarry Rd (CR19) Safety Assessment
Route 9G - White Schoolhouse Rd
Town of Rhinebeck**

Reported Crashes (2009-2013) by Year

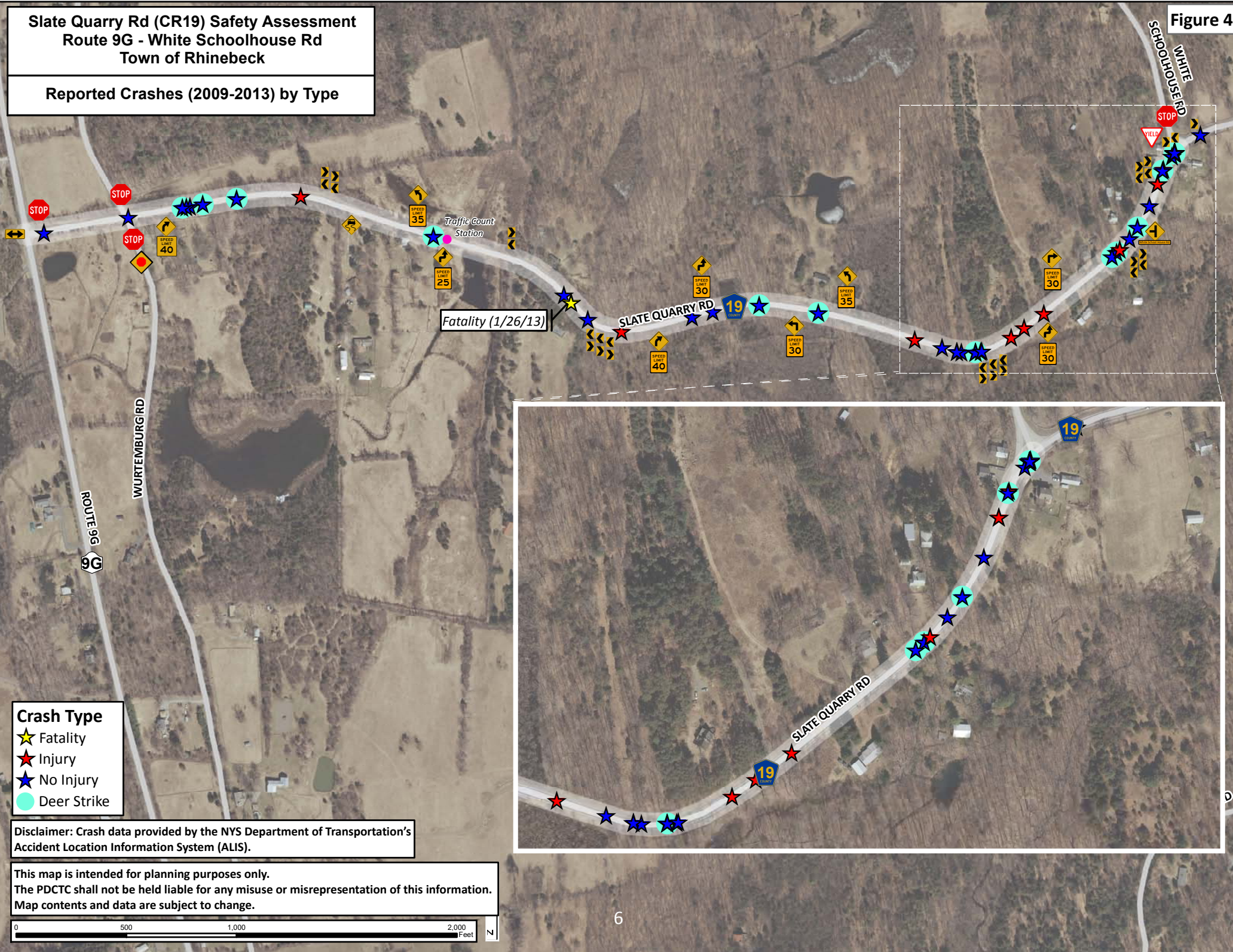
Figure 3



**Slate Quarry Rd (CR19) Safety Assessment
Route 9G - White Schoolhouse Rd
Town of Rhinebeck**

Reported Crashes (2009-2013) by Type

Figure 4



5. Findings

This assessment outlines the issues identified by the SA team as opportunities to improve overall safety along the corridor and on approaching roadways. For each safety issue, an assessment of the safety risk and suggestions for improvements are included. These suggestions should not be viewed as design-level recommendations. They are intended to be illustrative of potential solutions to identified safety issues and are presented for consideration by the facility owner. The findings are organized by first addressing safety issues for the corridor as a whole and then specific issues related to three sections of the study area (see Figures 5-10):

- Overall Safety Issues
- CR19 (Slate Quarry Rd)/White Schoolhouse Rd intersection
- CR19 (Slate Quarry Rd) from Wurtemburg Rd to White Schoolhouse Rd
- CR19 (Slate Quarry Rd)/Wurtemburg Rd intersection

Many of the suggested improvements relate to the use of warning signs; therefore, where possible, the sign number from the 2009 Manual on Uniform Traffic Control Devices (MUTCD) is included with the sign name. In making its recommendations, the SA team attempted to balance the need to inform drivers about conditions without over-saturating the corridor with signs. As per the MUTCD, regulatory and warning signs should be used conservatively because they lose their effectiveness if used to excess. Unless noted otherwise, suggested improvements would be the responsibility of the facility owner: DCDPW. See also Table 3.

Overall Safety Issues

Issue #1: New Speed Limit

Safety Concern: Motorists may not be aware of the pending speed reduction and continue to operate at speeds too high for the facility.

Observations: The regulatory speed limit was recently reduced from 55 mph to 45 mph, though as of the site visit, new signs had not yet been installed. Operating speeds may continue to be too high for the corridor, especially for the two major curves in the eastern half of the study area. Unsafe speed was cited as a contributing factor in 27 of the 59 crashes from 2009-2013. Observed speeds, even when lower than the to-be-posted 45 mph limit, may pose a safety issue for vehicles entering the curves. This is evidenced by the various advisory speeds along Slate Quarry Rd. Educating motorists about the new speed limit will help reduce speeds.

Risk Analysis: Elevated operating speeds increase the probability of severe collisions. The existing horizontal and vertical geometries at the various curves do not support safe motor vehicle operations at 45 mph. This substantially increases the risk of a collision.

CR19 (Slate Quarry Rd) Safety Assessment

NYS Route 9G to White Schoolhouse Rd, Town of Rhinebeck



Figure 5. The intersection of Slate Quarry/White Schoolhouse Rd, looking west. The width of the intersection, coupled with the STOP and YIELD signs, creates a confusing situation for drivers.



Figure 6. The width of the White Schoolhouse Rd approach to Slate Quarry Rd necessitates the placement of sign posts in the middle of the intersection.



Figure 7. Slate Quarry Rd, recently repaved, looking east. At the time of the Safety Assessment, lane markings had not yet been added.



Figure 8. Another view of Slate Quarry Rd, looking east towards one of two major curves along the study corridor.



Figure 9. View of the Slate Quarry/Wurtemberg Rd intersection looking west towards NYS Route 9G.



Figure 10. A second view of the Slate Quarry Rd/Wurtemberg Rd intersection looking north. Notice the faded stop line on Wurtemberg Rd (highlighted).

NYS Route 9G-White Schoolhouse Rd, Town of Rhinebeck**Suggestions:**

1. Install 45 mph speed limit signs (R2-1) along the corridor. This is especially needed east of the NYS Route 9G intersection to inform motorists entering Slate Quarry Rd from Route 9G. These signs should be supplemented by a NEW plaque (W16-15P) to warn drivers of the new speed limit. In accordance with the MUTCD, the NEW plaque should be removed after six months.
2. Install a 45 mph REDUCED SPEED LIMIT AHEAD warning sign (W3-5) east of Centre Rd to inform drivers of the reduced speed.
3. Increase enforcement of speed limits to educate drivers, especially in conjunction with the unveiling of the new speed limit. Consider opportunities for pull-off areas, such as east of White Schoolhouse Rd (County Sheriff).
4. The County Sheriff could employ its radar speed feedback signs to alert drivers of their operating speeds (County Sheriff).
5. Contact local media outlets to raise awareness of the new speed limit (Town and DCDPW).
6. Consider narrowing travel lanes from 11 feet to 10 feet (with wider shoulders) in order to calm traffic. Since this may increase the potential for sideswipe crashes involving heavy vehicles, the SA team eliminated this suggestion from further consideration.

**Priority for Consideration:**

Suggestions 1-5: High

Suggestion 6: Dismissed

Issue #2: Lane & Shoulder Markings

Safety Concern: Due to recent repaving, travel and shoulder lane markings have not been added yet.

Observations: During the field visit, SA team members noted that the newly paved roadway did not have lane markings, nor were there any warnings to drivers that lane markings were not present. The SA Team discussed the possibility of using a 6 inch edge lines (versus the standard 4 inch edge); however, since these can become slippery when wet, the Team determined that a 4 inch width was best. [Note: DCDPW subsequently added lane markings on Slate Quarry Rd.]

Risk Analysis: The temporary lack of lane markings may lead to driver confusion and increase the risk of crashes, especially during dark conditions.

Suggestions:

1. Install temporary NO CENTER LINE plaques (W8-12) at both ends of the newly paved section of Slate Quarry Rd, until the lane markings



NYS Route 9G-White Schoolhouse Rd, Town of Rhinebeck

- are added.
2. Stripe edge lines with epoxy paint and high-visibility beads. Include a solid edge line along Slate Quarry Rd at the White Schoolhouse Rd intersection.
 3. Review the retro-reflectivity of centerline and shoulder striping upon installation.
 4. Develop a county-wide sign reflectivity monitoring program to enforce retro-reflectivity standards.

Priority for Consideration:

Suggestion 1: Moderate

Suggestion 2: High

Suggestions 3-4: Low

Issue #3: Shoulder (Pavement Edge) Drop-offs

Safety Concern: The newly paved road contains significant shoulder (pavement edge) drop-offs throughout the study area.

Observations: Given that travel lanes will be 11 feet wide, the resulting paved shoulders will vary from 2 to 3 feet in width, with an additional 2 to 4 feet of unpaved shoulder. In many cases, these paved shoulders drop off substantially at the edge and thus represent a hazard to all users, including those walking and biking along the road. DCDPW indicated that these shoulder drop-offs would be backfilled, and that pavement at entrances to the residential driveways would be blended with the new pavement height to remove any abrupt dips. See Figures 11-12.

Risk Analysis: Steep edge drop-offs can cause loss of control when a vehicle drifts towards the shoulder. If a driver attempts a sudden correction to regain control, the vehicle can become destabilized, resulting in a crash. The lack of adequate clear areas and relatively high operating speeds along the road increase the chances of a severe crash.

Suggestions:

1. Reduce shoulder drop-offs by installing shoulder backup material. The material should be compacted and designed to limit future erosion. Compacted sub-base material treated with *alignosulfonate* (natural wood polymer acting as a binder) is one possibility.
2. Consider adding a safety wedge, which allows drivers who drift off the road to return to the road safely. Instead of a vertical drop-off, the Safety Edge shapes the edge of the pavement to 30 degrees. FHWA-supported research has shown that this is the optimal angle to allow drivers to re-enter the roadway safely.

Priority for Consideration:

Suggestion 1: High

Suggestion 2: Low

CR19 (Slate Quarry Rd) Safety Assessment

NYS Route 9G to White Schoolhouse Rd, Town of Rhinebeck



Figure 11. Due to the recent repaving, the shoulders along Slate Quarry Rd have steep drop-offs, which can destabilize errant vehicles.



Figure 12. The steep pavement edges make it difficult to walk or bike along Slate Quarry Rd.

Issue #4: Unfamiliar Drivers

Safety Concern: The horizontal and vertical alignments along Slate Quarry Rd may prove challenging to motorists who are unfamiliar with the area.

Observation: The area around Slate Quarry Rd attracts visitors who may not be familiar with local road conditions. Even with the existing warning signs and advisory speeds, motorists may not fully understand the driving demands of the road until it's too late. This risk may be amplified for eastbound motorists who previously travelled on NYS Route 9G – a much straighter and faster road than Slate Quarry.

Risk Analysis: Drivers may not fully comprehend the nature of Slate Quarry Rd and may not be prepared to negotiate approaching curves or respond to vehicles entering from intersecting driveways and roads.

Suggestion: Install one or more flashing beacons to supplement warning signs along the corridor. One possible location could be on the curve warning sign located on the south side of Slate Quarry Rd, just east of the Wurtemberg Rd intersection. Flashing beacons would alert drivers coming from NYS Route 9G of upcoming conditions on the road. Beacons could also be placed on signs on the north side of Slate Quarry Rd at the east end of the study area to highlight the curve sections.

Priority for Consideration: Low

Issue #5: Deer Strikes

Safety Concern: Of the 59 total crashes reported within the study from 2009-2013, 13 involved deer strikes.

Observation: Given the rural nature of the study area, deer may be a common sight along Slate Quarry Rd. The crash data showed a small cluster of deer strikes east of Wurtemberg Rd. The SA Team discovered the remains of one deer along Slate Quarry Rd, apparently hit earlier by a vehicle. However, DCDPW staff noted that they do not see a lot of deer along the road.

Risk Analysis: Deer strikes can cause serious property damage and injury. The presence of deer in the study area adds another level of risk on a road that already demands full driver attention.

Suggestion: Determine if the number of deer strikes warrants the need for one or more DEER warning signs (W11-3) along Slate Quarry Rd.

Priority for Consideration: Low



Issue #6: Street Name Signs

Safety Concern: Street name signs may be difficult for older drivers to read.

Observations: The street name signs for Wurtemberg Rd and White Schoolhouse Rd use an older style with all capital lettering, which has been superseded by a preferred style with upper and lower case letters. The FHWA has determined that the new style is better suited for older drivers. Although there is no deadline for adherence, the new standard should be used when replacing street signs in the future.

Risk Analysis: Lack of clear navigational information increases the risk of last minute decision making and maneuvers, which may in turn increase the risk of a collision. This condition would affect unfamiliar motorists to a greater extent than locals.

Suggestion: Upgrade street name signs to meet the larger, mixed-case sign standard as per the 2009 MUTCD.

Priority for Consideration: Moderate



Figure 13. The street name signs in the study area (left) use the old lettering style that has now been superseded by a mixed-case style (above). Source: 2009 MUTCD.

Issue #7: Heavy Duty Vehicles & School Buses

Safety Concern: Heavy-duty vehicles and school buses use Slate Quarry Rd as an important east-west connection through Rhinebeck and Clinton.

Observations: Based on field observations, numerous large, multi-axle trucks and buses travel through the corridor. School bus activity is especially high in the morning, while a variety of semi-trailers and dump trucks were observed in the morning and afternoon.

Risk Analysis: Heavy vehicles may cross over the centerline of Slate Quarry Rd in order to negotiate the curves, which could pose a safety hazard, especially under wet road conditions.

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Suggestion: Ensure that road shoulders are maintained so that they can effectively accommodate large vehicles, especially if the quarry on White Schoolhouse Rd becomes fully operational or is expanded.

Priority for Consideration: Low



Figure 14. Heavy-duty vehicles use Slate Quarry Rd as an east-west connector through Rhinebeck to NYS Route 9G.

CR19 (Slate Quarry Rd)/White Schoolhouse Rd Intersection

The intersection of Slate Quarry Rd and White Schoolhouse Rd has the largest cluster of crashes within the study area. The challenges of wet weather driving, magnified by the road's geometry, have resulted in numerous road departure crashes. Beyond short term improvements such as improved signage and pavement markings, DCDPW should consider realigning the intersection to improve safety.

Issue #1: Contradictory Regulatory Signs

Safety Concern: The White Schoolhouse Rd approach to Slate Quarry Rd has two conflicting regulatory signs: a STOP sign in the middle of the intersection and a YIELD sign located on the right-hand side. In theory, the STOP sign is directed towards drivers turning left onto Slate Quarry Rd, while the YIELD sign is directed towards drivers turning right. Though this may be locally understood, the two signs are confusing and not intuitive to drivers unfamiliar with the area.

Observations: During the site visit, almost all southbound vehicles on White Schoolhouse Rd stopped at the intersection prior to entering Slate Quarry Rd. Since drivers are already stopping at this location, removing the YIELD sign will not significantly impact operations. Stop control for both left and right turns would also increase safety. See Figure 15.

Risk Analysis: Competing regulatory signs lead to driver confusion and may entice some to follow the less restrictive movement, increasing the possibility of a collision.



Figure 15. The Slate Quarry/White Schoolhouse Rd intersection looking west. Note the width of the intersection and contradictory STOP and YIELD signs.



Figure 16. The Slate Quarry Rd/White Schoolhouse Rd intersection looking east, up the hill.

NYS Route 9G-White Schoolhouse Rd, Town of Rhinebeck**Suggestions:**

1. Remove the YIELD sign located on the northwest corner of the intersection and replace it with a STOP sign (R1-1).
2. Install a STOP sign (R1-1) sign on the northeast corner of the intersection.
3. Increase the size of both STOP signs from 30x30 inches to 36x36 inches.
4. Consider installing a STOP AHEAD warning sign (W3-1) on White Schoolhouse Rd for the southbound approach to Slate Quarry Rd.
5. Consider adding a stop line on White Schoolhouse Rd to position drivers at the optimal position to observe approaching vehicles on Slate Quarry Rd. This should be done in conjunction with the suggested intersection narrowing and added lane markings.

**Priority for Consideration:**

Suggestions 1-3: High

Suggestions 4-5: Moderate

Issue #2: Intersection Configuration

Safety Concern: The White Schoolhouse Rd approach to Slate Quarry Rd appears excessively wide, measuring approximately 100 feet from edge to edge. In addition, there is a de facto triangular island in the middle of the approach, with a STOP sign and chevrons in the middle. This configuration creates a confusing situation for drivers on White Schoolhouse Rd, who may not know on which side of the island to position their vehicle when turning. It may also confuse drivers turning from Slate Quarry Rd who may not know where to turn into White Schoolhouse Rd. The intersection's width practically necessitates placing the STOP sign in the middle of White Schoolhouse Rd. In addition, the three sign posts (fixed objects) represent a safety hazard for drivers travelling on both roads. A 'T' configuration would provide better visibility and safety than the existing 'Y' configuration.

Observations: The wide approach on White Schoolhouse Rd allows left and right turning vehicles to pull up side by side at the STOP/YIELD sign. This can result in poor sight lines for one of the turning vehicles, especially when one is a large SUV or heavy duty vehicle and the other is a passenger car. The SA Team recognized that the intersection should accommodate heavy duty vehicles, though this may not warrant the existing intersection width. The Team also observed some confusion among drivers on Slate Quarry Rd as where to enter White Schoolhouse Rd (i.e. to the left or right of the sign posts), though this may have been due to the number of SA Team vehicles in the area.

Risk Analysis: The configuration of the intersection, coupled with the three sign posts in the middle of the intersection and the lack of lane markings, creates a confusing environment for drivers, increasing the possibility of a crash. This risk is compounded by

the routine presence of heavy-duty vehicles using the intersection.

Suggestions:

1. Narrow the White Schoolhouse approach with pavement markings. Narrowing the pavement width would discourage side by side stops and direct drivers to a safe stopping position. This could be implemented by visually narrowing the travel lanes on the east and west sides with hatching, and adjusting the configuration to be more of a 'T'. This would offer an opportunity to review a possible new stop line location, balancing truck turning needs and sight distance considerations for vehicles turning onto Slate Quarry Rd. The SA Team recognized that painted features require additional maintenance and there would be no physical feature to prevent incursions into the intersection shoulder areas and side-by-side vehicle queuing.
2. Physically narrow the existing pavement. This would involve removing excess pavement and narrowing the White Schoolhouse Rd approach (SA Team members pointed to Mulberry St in the Village of Rhinebeck as a useful model). The west leg of the Y could be eliminated, so that all drivers would use what is currently the east leg, making the intersection more of a 'T'. Design vehicle turning templates would need to be reviewed prior to making any physical changes. Narrowing the pavement could also offer an opportunity to address the regulatory sign issues identified above.

Priority for Consideration:

Suggestion 1: High

Suggestion 2: Moderate

Issue #3: Sight Distance

Safety Concern: Sight distance on Slate Quarry Rd is limited both eastbound and westbound near White Schoolhouse Rd. In particular, there is limited sight distance for eastbound traffic on Slate Quarry Rd turning left onto White Schoolhouse Rd, and limited stop line sight distance for traffic on White Schoolhouse Rd turning left onto Slate Quarry Rd.

Observations: Drivers on Slate Quarry Rd have difficulty seeing vehicles approaching from the opposite direction as they reach White Schoolhouse Rd. Though the intersection itself is visible from Slate Quarry Rd, approaching vehicles in the opposite lane are masked by an outcrop of trees and bushes on the south side of Slate Quarry Rd, directly opposite White Schoolhouse Rd. These trees may prevent drivers from recognizing vehicles that intend to turn onto White Schoolhouse Rd, and in turn, make them lose valuable reaction time. In particular, the SA Team noted that the sight line for Slate Quarry Rd could be improved by removing the large tree located on the inside of the curve. DCDPW previously discussed removal of this tree with the landowner (220 Slate Quarry Rd), but no changes have been made. The SA Team reported that residents at 209 Slate Quarry Rd had also complained of poor visibility from their driveway, particularly looking east. Sight lines from White

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Schoolhouse Rd looking east up the hill are also restricted by the general horizontal and vertical geometry of Slate Quarry Rd. See Figures 16-18.

Risk Analysis: The lack of adequate sight distance decreases driver reaction time, increasing the risk of a collision. Operating speeds on Slate Quarry Rd increase the probability of a severe collision, especially as westbound vehicles descend the hill on Slate Quarry Rd towards White Schoolhouse Rd.

Suggestions:

1. Trim and/or Remove Existing Vegetation. Pursue trimming or removal of the bushes and trees on the south side of Slate Quarry Rd across from and east of White Schoolhouse Rd.
2. Lower Vertical and Straighten Horizontal Curves on Slate Quarry Rd. This would improve sight distance for both eastbound Slate Quarry Rd drivers and those stopped at the intersection. The SA Team realized that this would require significant funding, so identified this as a low priority.
3. Trim the trees at the northeast corner of the Slate Quarry Rd/White Schoolhouse Rd intersection (on the north side of Slate Quarry Rd).
4. Remove rock and brush on both sides of the driveway to 209 Slate Quarry Rd, and consider installing a DRIVEWAY warning sign.

Priority for Consideration:

Suggestion 1: Moderate

Suggestions 3-4: Low

Suggestion 4: Moderate

Issue #4: SCHOOL BUS STOP AHEAD Sign

Safety Concern: Warning signs that rely on text rather than images require more driver attention and may become a distraction.

Observations: The SCHOOL BUS STOP AHEAD warning sign on the north side of Slate Quarry Rd, east of the White Schoolhouse Rd intersection uses the older, text-based style.

Risk Analysis: Approaching drivers might become distracted by the text-based warning sign and lose reaction time as they approach the White Schoolhouse Rd intersection.



Suggestion: Install the current graphic-based SCHOOL BUS STOP AHEAD SIGN (S3-1) in advance of White Schoolhouse Rd.

Priority for Consideration: Low

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Figure 17. Looking towards White Schoolhouse Rd from eastbound Slate Quarry Rd. Note the change in horizontal geometry towards the curve.



Figure 18. Looking towards White Schoolhouse Rd from westbound Slate Quarry Rd. The trees located to the left, inside the curve, obscure approaching vehicles.

CR19 (Slate Quarry Rd) from White Schoolhouse Rd to Wurtemberg Rd

Issue #1: Sight Distances

Safety Concern: Limited visibility at two major curves on Slate Quarry Rd and from approaching driveways may lead to crashes. The horizontal and vertical changes on Slate Quarry Rd restrict sight distances from driveways, the White Schoolhouse Rd intersection, and on Slate Quarry Rd itself.

Observations: The horizontal and vertical geometry of Slate Quarry Rd changes throughout the eastern half of the study area. This challenging geometry is complicated by the presence of earthen embankments and vegetation that restrict visibility and reduce driver reaction time. This is especially noticeable at the curve on Slate Quarry Rd in the middle of the study area (91 Slate Quarry Rd), where the inside curve is framed by a rock embankment that includes trees and bushes. These obstructions prevent drivers from seeing down the road and recognizing potential hazards. The crash data does not indicate a safety issue related to poor visibility from driveways, but the road's geometry creates limited sight distances of east and westbound vehicles from driveways. See Figures 19-20.

Risk Analysis: Inadequate sight distance increases the risk of a crash by reducing the driver's ability to accurately judge upcoming roadway features and approaching vehicles. For vehicles turning from driveways, a lack of adequate sight distance increases the risk of a collision by affecting the driver's ability to accurately judge and accept gaps in approaching traffic. Operating speeds on Slate Quarry Rd increase the probability of a severe collision.

Suggestions:

1. As part of normal tree maintenance, DCDPW should ensure that the County right-of-way is free and clear of obstructions and that the clear zone is sufficient for this type of facility. If vegetation is located on private property and is determined to compromise safety, DCDPW should notify the applicable property owner of the situation and suggest that they remove the obstruction(s).
2. Remove the rock embankment and trees located on the inside of the major curve located near 91 Slate Quarry Rd. DCDPW should investigate the ownership of this particular feature, since Dutchess County Parcel Access indicates that the rock embankment sits within the County's right-of-way and may not require taking property from local owners. It should be noted that the embankment is also bordered by a parcel that belongs to the mining operation at 410 White Schoolhouse Rd.
3. Reduce the horizontal and vertical curves at the two major curve sections on Slate Quarry Rd. This would improve sight distance for drivers exiting driveways along the road, while allowing drivers on Slate Quarry Rd to recognize oncoming vehicles earlier, increasing reaction times. Due to the cost and time needed for such improvements, the SA team identified this as a long-range suggestion.

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Figure 19. Looking west on Slate Quarry Rd, towards one of two major curves. The outcrop of trees and rocks to the right obscures oncoming vehicles.



Figure 20. Looking east on Slate Quarry Rd towards the rock embankment located on the inside of the curve shown above.

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Priority for Consideration:

Suggestion 1: Moderate

Suggestion 2: Low

Suggestion 3: Low

Issue #2: Advisory Speeds

Safety Concern: The range of posted advisory speeds along Slate Quarry Rd may lead to driver confusion and non-compliance.

Observation: The SA Team noted that there are four different advisory speeds along Slate Quarry Rd, ranging from a high of 40 mph at gradual curves, 35 mph at moderate curves, and 30 and 25 mph at sharper curves. In light of the speed limit reduction to 45 mph, the 40 mph advisory speed seems possibly too high; the same holds true for the 30 mph advisory speed when compared to subsequent 25 mph advisory speeds along the road.

Risk Analysis: Drivers may become confused by the inconsistent advisory speeds and ignore them, increasing the likelihood of a collision or road departure.

Suggestion: Re-evaluate the posted advisory speeds and consider using only two advisory speeds (e.g. 25 and 35 mph) on Slate Quarry Rd.

Priority for Consideration: High



Figure 21. A variety of advisory speeds are used along Slate Quarry Rd.

Issue #3: Guiderails (Existing & New)

Safety Concern: Portions of existing guiderails are in poor condition and use the older “W-beam” style of rail, while some roadside areas with steep drop-offs and water features may warrant the installation of additional guiderails.

Observations: Recurring vehicle impacts and general wear and tear have damaged sections of guiderail, some of which are missing structural members and many of which are missing delineators. The guiderails use the older “W-beam” design that includes gradually tapered end features. These guiderail ends can sometimes act as a ramp for vehicles that depart the roadway, vaulting them over the guiderail if hit at high speeds. Instead, it is recommended that the box-beam design be used for existing and new guiderails. The SA

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team also noted that new guiderails might be needed on both sides of Slate Quarry Rd between the major curves on the eastern half of the study area: several locations have steep drop-offs and/or standing water, which could magnify the impact of road departures. However, some SA Team members noted that additional guiderails could potentially redirect errant vehicles back into the roadway and the path of oncoming vehicles. See Figures 22-27.

Risk Analysis: Lack of adequate guiderails can result in an errant vehicle traversing down a steep, non-recoverable slope. This is of special concern if the area at the toe of the slope contains fixed objects or other hazards such as deep water. Askew guiderail systems and turned down end sections can also increase the risk of vehicle launching.

Suggestions:

1. Repair exiting guiderails.
2. Install metal reflectors and/or add a reflective strip along the side of the guiderails to increase visibility at night.
3. Replace existing guiderails with a box-beam design. The SA Team noted that the County standard for new installations is box beam guiderail and that DCDPW has a program to identify and replace deficient systems.
4. Evaluate the need for installation of one more new guiderails along Slate Quarry Rd, especially in the section between the two major curves in the eastern half of the study area. DCDPW should weigh the benefit of a new guiderail with the potential of increasing possible head-on crashes if errant vehicles bounce back into traffic. As an alternative and where appropriate, DCDPW could consider raising shoulder and clear zone elevations to reduce drop-off distances.
5. As an interim measure, consider object markers at significant drop-off areas until guiderail can be installed.

Priority for Consideration:

Suggestions 1-2: High

Suggestions 3-5: Moderate

Issue #4: Passing Zones

Safety Concern: The horizontal and vertical geometry of Slate Quarry Rd, along with the reduced speed limit, do not support the need for passing zones.

Observations: Prior to its repaving, Slate Quarry Rd contained a short westbound passing zone near Wurtemberg Rd. However, its location near the stop-controlled Route 9G intersection makes the passing zone unnecessary.

Risk Analysis: A passing zone may encourage aggressive driving on Slate Quarry Rd and increase the risk of a collision.



Figure 22. Some of the guiderails along Slate Quarry Rd are in need of repair (left), while delineators should be checked for retro-reflectivity (right).



Figure 23. The guiderails along Slate Quarry Rd use the older “W-beam” design, which should be replaced with a “box-beam” design (as shown above on CR16). A significant issue with the “W-beam” design involves the end treatment, which can act as a ramp for vehicles that depart the road.



Figure 24. Sections of Slate Quarry Rd may warrant guiderails to prevent vehicles from travelling down steep embankments such as the one shown above.



Figure 25. Some of the major culverts on Slate Quarry Rd remain unprotected by barriers, which could prevent vehicles from entering areas of standing water.

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Figure 26. This area of Slate Quarry Rd may warrant guiderails to prevent vehicles from travelling into the adjacent swamp/marsh, as evidenced by the tire tracks in the shoulder.



Figure 27. A close-up of the above photo, showing the tire tracks entering the swamp/marsh.

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Suggestion: Install a double-yellow centerline (no passing zone) for the length of Slate Quarry Rd within the study area. [Note: DCDPW subsequently removed the passing zone when it added new lane markings to Slate Quarry Rd].

Priority for Consideration: High

Issue #5: Clear Zones

Safety Concern: Slate Quarry Rd does not contain a consistent clear zone – defined as an unobstructed, relatively flat area beyond the edge of the travel lane that allows a driver to stop safely or regain control of a vehicle that departs the road.

Observations: Insufficient clear zones are present along Slate Quarry Rd.

Risk Analysis: The lack of a clear zone may increase the severity of a crash by limiting the ability of a driver to recover from a road departure.

Suggestion: Ensure that road shoulders and adjacent areas are maintained so that they can effectively accommodate potential road departures or breakdowns.

Priority for Consideration: Moderate

Issue #6: Culverts

Safety Concern: Some culverts on Slate Quarry Rd do not have protective barriers, which prevent errant vehicles from entering water features.

Observations: A number of culverts along Slate Quarry Rd do not have barriers to prevent vehicles from entering nearby water and possibly becoming submerged. See Figure 25.

Risk Analysis: A vehicle that departs the road at or near a culvert could become submerged in standing water, thus increasing the risk of injury or death.

Suggestion: Conduct an engineering evaluation of existing culverts to determine if they warrant barriers.

Priority for Consideration: Moderate

Issue #7: Superelevation

Safety Concern: Given the recently approved change in speed limit, the superelevation along Slate Quarry Road may need to be re-evaluated.

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Observations: The SA Team noted that the road's current superelevations may not be consistent with the design standards associated with a 45 mph facility.

Risk Analysis: Improper superelevations may reduce driver safety, since they may not be appropriate for posted speed limits.

Suggestion: Evaluate the superelevation along Slate Quarry Rd to determine if it needs to be changed.

Priority for Consideration: Moderate

CR19 (Slate Quarry Rd)/Wurtemberg Rd intersection

Issue #1: Visibility of Wurtemberg Rd STOP Sign

Safety Concern: The STOP sign on northbound Wurtemberg Rd is partially obstructed by a large tree.

Observations: A large tree partially obscures the STOP sign on northbound Wurtemberg Rd as it approaches Slate Quarry Rd. The SA Team also noted that the stop lines on both approaches to Slate Quarry Rd were faded. Stop lines help motorists recognize the need to stop and designate proper positioning for optimal sight distance prior to entering the intersection. See Figure 28.

Risk Analysis: Inadequate STOP sign visibility can result in a high-speed, severe right-angle crash.

Suggestions:

1. Move the STOP (R1-1) sign post away from the large tree at the southeast corner of the intersection.
2. Consider the use of a vertical retro-reflective strip on the STOP (R1-1) sign support to enhance visibility.
3. Install a new pictorial STOP AHEAD warning sign (W3-1) on Wurtemberg Rd to warn drivers of the upcoming STOP sign.
[Note: this was subsequently installed].
4. Consider restriping the stop lines on both Wurtemberg Rd approaches to Slate Quarry Rd, using the NYSDOT recommended standard width of 18 inches or the wider 24 inches, which would provide an additional cue to drivers.



Priority for Consideration:

Suggestions 1-2: High

Suggestions 3-4: Moderate



Figure 28. A large tree obscures the STOP sign on the southern approach of Wurtemberg Rd, as it intersects Slate Quarry Rd.

6. Next Steps

The PDCTC, through the work of the SA Team, has prepared this report to assist DCDPW and the Town of Rhinebeck with prioritizing opportunities to improve safety within the study area. A draft was circulated to the SA Team for review in November, and comments were incorporated into the final draft. The suggestions are for consideration only and are in no way intended to serve as design or operational recommendations. DPW documented its responses to the issues and suggestions in a formal response, which is attached to the final report. The SA Team believes it has been thorough and diligent in its work, given the information available and its field reviews. This report does not preclude the identification of additional issues pertaining to safety by the owners or the emergence of new issues over time. It is recommended that DCDPW track progress towards the implementation of safety improvements prompted by this assessment.

Table 3. Suggested Actions and Priority by Location

Issue	Suggested Action	Priority
Overall Safety		
1-1	Install new 45 mph (R2-1) signs with NEW (W16-10P) placards.	High
1-2	Install 45 mph REDUCED SPEED LIMIT AHEAD sign (W3-5).	High
1-3	Increase speed enforcement/employ DC Sheriff's VMS trailer.	High
1-4	Employ VMS/radar feedback trailer to alert drivers of their speed.	High
1-5	Contact local media to publicize new speed limit.	High
1-6	Consider narrowing travel lanes from 11 to 10 feet.	Dismissed
2-1	Install temporary NO CENTER LINE (W8-12) plaques.	Moderate
2-2	Stripe edge lines with epoxy paint and high-visibility beads.	High
2-3	Review retro-reflectivity of new pavement markings.	Low
2-4	Develop a County-wide sign reflectivity monitoring program.	Low
3-1	Reduce shoulder drop-offs by installing back-up material.	High
3-2	Consider adding safety wedges as per FHWA best practice.	Low
4-1	Install one or more flashing beacons on Slate Quarry Rd.	Low
5-1	Determine if number of deer strikes warrant DEER signs (W11-3).	Low
6-1	Upgrade street name signs to meet 2009 MUTCD standards.	Moderate
7-1	Ensure road shoulders can accommodate heavy duty vehicles.	Low
CR19 (Slate Quarry Rd)/White Schoolhouse Rd Intersection		
1-1	Remove YIELD sign on northwest corner.	High
1-2	Install STOP (R1-1) sign on northwest corner of White Schoolhouse Rd.	High
1-3	Increase size of STOP signs to 36x36 inches.	High
1-4	Consider a STOP AHEAD (W3-1) sign on White Schoolhouse Rd.	Moderate
1-5	Consider a stop line for southbound White Schoolhouse Rd.	Moderate
2-1	Narrow the White Schoolhouse Rd approach with pavement markings.	High
2-2	Physically narrow the White Schoolhouse Rd intersection.	Moderate
3-1	Trim or remove trees across from intersection.	Moderate
3-2	Lower vertical/straighten horizontal curves on Slate Quarry Rd.	Low
3-3	Trim trees at the northwest corner of intersection.	Low
3-4	Remove rock and brush near driveway at 209 Slate Quarry Rd.	Moderate
4-1	Install recommended SCHOOL BUS STOP AHEAD (S3-1) sign.	Low

CR19 (Slate Quarry Rd) from White Schoolhouse Rd to Wurtemberg Rd

1-1	Remove vegetation/obstructions within right of way.	Moderate
1-2	Remove rock embankment near 91 Slate Quarry Rd.	Low
1-3	Reduce variation in horizontal and vertical geometry at major curves.	Low
2-1	Re-evaluate advisory speeds on Slate Quarry Rd.	High
3-1	Repair existing guiderails.	High
3-2	Consider upgrading reflective delineators on existing guiderails.	High
3-3	Replace "W-beam" guiderails with box-beam design.	Moderate
3-4	Consider installation of one or more new guiderails.	Moderate
3-5	Consider object markers for steep drop-off areas.	Moderate
4-1	Install double-yellow centerline (no passing zone) on Slate Quarry Rd.	High
5-1	Maintain road shoulders to accommodate vehicle road departures.	Moderate
6-1	Evaluate barrier warrants for culverts on Slate Quarry Rd.	Moderate
7-1	Evaluate the superelevation of Slate Quarry Rd.	Moderate

CR19 (Slate Quarry Rd/Wurtemberg Rd intersection)

1-1	Move STOP (R1-1) sign away from large tree on southeast corner.	High
1-2	Restripe worn stop lines on both approaches of Wurtemberg Rd.	High
1-3	Install new pictorial STOP AHEAD (W3-1) sign on Wurtemberg Rd.	Moderate
1-4	Consider the use of a vertical reflective strip on the STOP sign post.	Moderate

Comment A59 – Hudsonia



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**Comments on the Revised DEIS for the Red Wing Mine, White
Schoolhouse Road, Town of Rhinebeck,
Dutchess County, New York**

By Erik Kiviat PhD PWS

Hudsonia

Report to the Town of Rhinebeck Town Board

80 East Market Street, Rhinebeck, New York 12572.

**3 January 2023
Minor corrections 9 February 2023**

Preamble

Hudsonia was asked to review the 2022 revised DEIS that Red Wing Properties submitted to the Town of Rhinebeck for reopening and expanding the Red Wing mine site on White Schoolhouse Road (Town of Rhinebeck, Dutchess County, New York; Griggs-Lang 2022; hereinafter “DEIS”). In this report I comment on the aspects of the DEIS most relevant to biological resources and biodiversity. My review focuses on wildlife of conservation concern, its habitats, and potential impacts of the proposed mining operations.

Hudsonia, founded 1981, is a nonprofit institute conducting ecological research and providing information to environmental professionals in the public and private sectors for decision making in land use and conservation. We do not advocate for or against land use projects; rather we collect data, make observations, synthesize scientific information from the literature, analyze environmental documents, and in some cases prepare recommendations concerning the study of biological diversity (biodiversity) and its conservation. My background is in natural history, conservation science, and wetland ecology. I have analyzed industrial, commercial, and residential development sites for municipalities, developers, landowners, and nonprofit organizations since the 1970s. I have also conducted research on the Blanding’s turtle in Dutchess County, and other rare wildlife, plants, and their habitats during the same time frame. My résumé is being submitted with this report.

The Red Wing site is actively used by the State-Threatened Blanding’s turtle and State-Special Concern spotted turtle, and the State-Threatened bald eagle nests at the site. The Landsman Kill, which drains the site, is a trout stream and Hudson River tributary. There potentially are other rare or vulnerable species at the site, such as wood turtle and New England cottontail (both Special Concern; the latter is a Candidate for federal listing). Threats to biodiversity include nutrient enrichment and siltation of waterways and wetlands including the Landsman Kill, spills and leaks of fuels, noise and visual disturbance to wildlife, and loss of habitats that have developed during the 12 year hiatus in mining. The Blanding’s turtle studies conducted onsite are methodologically flawed and the analysis of potential noise impacts to bald eagle does not consider recent science on noise disturbance to wildlife nor details of eagle behavior. Biological surveys, other than that of turtles, a rather cursory and out-of-date “inventory” of wildlife (TES 2002), and an incomplete flora survey (TES 2010, see below), have not been conducted at the site thus risks to other rare or vulnerable species are unknown. Truck and heavy equipment traffic almost certainly will lead to increased morbidity and mortality of all kinds of turtles and many other kinds of small animals.

The New York State Department of Environmental Conservation (DEC) issued an Incidental Take Permit (Blanding’s turtle) that allows Red Wing to construct a new access road where an existing farm road enters the site from White Schoolhouse Road. The DEC and Red Wing have not addressed most of the biological conservation questions I raised two years ago (Kiviat 2020). In my opinion this constitutes dereliction of due diligence and avoiding a *hard look* at the Blanding’s turtle, bald eagle, and other significant habitats and biota. Red Wing still needs a wetland permit, stormwater management permit, and mining permit from the DEC, thus there is ample opportunity to address the concerns I raise below.

Note regarding biodiversity and rarity listing categories

New York State legally lists many statewide-rare wildlife species as Endangered, Threatened, or Special Concern. Additional species of conservation concern are flagged via the New York Natural Heritage Program or the State Wildlife Action Plan.

Biological diversity, or biodiversity, is the variety of life in nature, ranging from genes through species and up to landscapes and regions. Most ecosystem services (the work of nature that supports human life and the quality of life) depend on biodiversity, and in turn, biodiversity support is itself an ecosystem service. This report focuses on a few of the most salient and important biological species and habitat issues.

I refer to New York State Department of Environmental Conservation (DEC) legal rarity ranks for statewide-rare animals and plants, and New York Natural Heritage Program (NHP) ranks for rare plants. DEC ranks are, in order of decreasing rarity, for animals Endangered (E), Threatened (T), Special Concern (SC), and for plants Endangered, Threatened, Rare. The DEC also maintains a list of animal Species of Greatest Conservation Need (SGCN), developed for the New York State Wildlife Action Plan. SGCN need conservation attention to prevent their becoming threatened, endangered, or extirpated from the state. SGCN are either High Priority, regular SGCN, or Species of Potential Conservation Need which there are insufficient data to list. NHP ranks for plants are, in order of decreasing rarity: S1 (Critically Imperiled), S2 (Imperiled), S3 (Vulnerable), S4 (apparently secure). Additional species that are not considered at risk statewide may be rare in the Hudson Valley region, i.e., regionally-rare, in the 40-year-plus experience of Hudsonia biologists.

The Site

The Red Wing site covers 241 acres on the west side of White Schoolhouse Road approximately 1 km (0.62 mile) straight-line distance south of Route 308. The site is about 1 km long from south to north. A previous owner mined the northernmost circa 35 acres of the site; the mine has been inactive for a dozen years. The southern, majority portion of the site is farmed and was planted to field corn in 2020 and probably other recent years. The site is at elevation approximately 300-350 feet asl. The upland portions of the site are underlain principally by Hoosic gravelly loam, a soil formed in gravelly glacial outwash. The site borders or is close to the western edge of the Gallatin Thrust Slice (Fisher and Warthin 1976), a long tongue of bedrock that extends southward from Columbia County as far as Pleasant Plains. The Thrust Slice is composed of bedrock of the Elizaville Formation, namely interbedded argillite and quartzite. The Thrust Slice, moving horizontally across the landscape, dragged with it blocks of limestone along the western edge of the Slice where there appears to be some carbonate (limestone or dolostone) bedrock. The Red Wing site lies between Sepasco Lake (north 2.5 km) and Zipfclberg Bog (south about 3 km), both of which also have areas of limestone bedrock or uprooted limestone. As explained below, the gravelly glacial outwash with associated wetlands allowed the formation of a Blanding's turtle habitat complex at and near the Red Wing site, and

the limestone, is present as ledge-and-talus in small knolls and ridges overlapping the southern edge of the site contributing to potential habitats for other rare species.

Northwestern Dutchess County has been used and altered historically by logging, farming, mining, roadbuilding, wetland fill and drainage, planting, and many other human activities with unintentional and intentional ecological effects on the landscape. Nonetheless, many such altered areas provide biodiversity support services, and should be examined for their present and potential future roles in the conservation of uncommon and rare biota (see Kiviat and MacDonald 2022). This is an imperative of nature management, and not a rationale for additional alteration of the landscape. Abandoned soil mines can have many habitat functions (e.g., Svedarsky and Crawford 1982, cited only as an example, not for specific application to the Red Wing site). Because some soil mines support large populations of uncommon or rare species, such as nesting bank swallows, and soil mines also have impacts to surface waters and groundwaters, vegetation, and soils of those habitats, both onsite and offsite, the involved parties, including mining companies, regulatory agencies, nonprofit organizations, and citizens, have a responsibility to work together to optimize understanding, conservation, and management of habitats and species at current and former mining sites.

The soil map and soil descriptions in the DEIS are apparently borrowed verbatim from the Dutchess County soil survey. There is no evidence of original onsite soil mapping. Given the US Department of Agriculture disclaimer about scale and accuracy of soil mapping, one can only think that there may be errors or ambiguities in the soils of the site that were not picked up by the USDA mapping methodology. For example, many mapped soils have inclusions of other soils that may be significant for certain habitat and species occurrences.

The Blanding's Turtle

In the western two-thirds of Dutchess County, sand and gravel mines typically are established in deep glacial outwash deposits that also hold rich groundwater aquifers and often support the habitat complexes of the Blanding's turtle, a New York Threatened species (Kiviat 1997, Kiviat and Stevens 2001). This has resulted in conflicts of natural resource management. At the Red Wing site, the Blanding's turtle is the emergent issue in regulation; however, analysis and balancing of concerns should not stop with this one species. Biodiversity is more than Endangered and Threatened species, despite that the rest of nature is often dismissed during environmental reviews. The Blanding's turtle requires a habitat complex that includes core wetland habitat(s) in which the turtles spend much of their time; associated wetlands that hold water 10 inches or deeper seasonally or all year and that may serve for foraging, thermoregulation, rehydration during nesting migrations; nesting habitat(s) with sunny, sparsely vegetated, friable, coarse textured mineral soil at least 8 inches deep; springfed ponds or deep wetland pools used for refuge during dry summers and droughts; and narrow or broad "corridors" that allow safe movement among all those habitats. The habitat complex may cover one to several square kilometers of the landscape, and the adult turtles are highly mobile often moving half a mile or more, in days or weeks, between core wetland and nesting area, or between wetlands (Kiviat 1997).

The Red Wing site is part of a habitat complex of excellent quality for Blanding's turtle. Among its components are a large (circa. 10 acres) kettle shrub pool – intermittent woodland pool - this portion of New York State Freshwater Wetland RC-30 is essentially deep flooding swamp dominated by tall shrubs (mostly buttonbush, *Cephalanthus occidentalis*), with red maple and highbush blueberry on woody hummocks (raised root crowns). There are also two smaller kettle shrub pools of circa 2 acres (wetland D, south) and 1.25 acres (wetland B, north) on both sides of the former mine entrance road just east of the mined area and narrowly connected to the main part of wetland RC-25. A variety of associated wetlands and ponds is also present onsite and offsite, including small and large mine pit excavations with permanent or intermittent water, tree swamp, vernal pools, and a large beaver flowage. There is extensive potential nesting habitat such as around the margins of the crop fields and in the abandoned mine area and its margins.

It is now well established that a population of the Blanding's turtle inhabits wetlands on the Red Wing site and that individual turtles move among wetlands (TES 2013), as they do at other Dutchess County sites that have been studied. There is, however, controversy over the importance of this population and the risks to it posed by the proposed mining operations.

I have performed many trapping surveys for Blanding's turtle in Dutchess County 1985-present, and my colleagues and I radio-tracked Blanding's turtles for a dozen years at Arlington High School – James Baird State Park. This experience led to standardization of techniques to make surveys as comparable to each other as possible. The Blanding's turtle work performed at the Red Wing site is not comparable, and is deficient in several ways.

The authors of the consulting reports prepared for the applicant (TES, various years) are not named nor is their experience stated. As in most field biology work, more experienced field workers find more rare organisms including more Blanding's turtles. Thus, readers of the reports deserve to know who wrote and edited them.

Blanding's turtle trapping was apparently not accompanied by scanning the wetlands with binoculars although scanning was used in the first, unsuccessful, turtle survey (TES 2002). In some wetlands, the turtles can be seen even when they do not enter traps, and scanning is an important adjunct to trapping for a methodologically sound survey. In any animal population, some individuals are not amenable to capture.

The reason for two separated trapping periods in 2011 is not stated. In each period, traps were set for four 24-hour periods rather than the five 24-hour periods we have used as standard (10 24-hour periods total). An analysis of a dozen years of trapping for about three weeks beginning 1 May each year indicated that a single trapping period of ten 24-hour periods (10 days, not 8 days) detected at least one Blanding's turtle every year in the occupied habitat complex. Often, the turtles were caught in different wetlands in different years and months.

In 2011, traps at the Red Wing site were set at the beginning and in the middle of the nesting season. Many females would have been outside the wetlands then and not trappable. For that reason, trapping in early May is potentially more productive than in the late May – June nesting season

Twenty traps are not enough for an area as large as the Red Wing site with the evident extent of potential habitat for this species. I would have recommended 25-30 traps. Not enough traps were set in Wetland A (RC-30), one of the most important potential core wetland habitats. More traps should have been set in Wetlands B and D, apparently two kettle shrub pools (only 2 traps were set there, one in each wetland). No traps were set in the two isolated pools in the mine area west of RC-25. No trap was set in the isolated pool southwest of RC-25. In other words, traps were not distributed throughout all the important potential wetland habitats. Trapping in the main portions of RC-25 may have been in relatively cool microhabitats less attractive to turtles in late spring; water surface temperatures were not reported.

Traps were set in the edges of portions of wetland A (TES 2013). However, this wetland, partly offsite, is extensively potential habitat for Blanding's turtle (Kiviat 2020). Blanding's turtle use of wetlands can be very localized and unpredictable (Hudsonia, unpublished telemetry data from Arlington High School and other sites), and there could have been non-trapped portions of wetland A where turtles were concentrated during the trapping periods. Or, turtles could have been in other offsite habitats that were not trapped at all. Weather and water levels during the turtle trapping periods are not described in TES (2013); Blanding's turtles are responsive to these variables (water level, rain, temperatures) and it is not possible to fully assess the TES survey results without knowing those conditions.

In TES (2013), wetlands B and D are characterized as "deciduous forest wetlands," and wetland C as "scrub shrub wetland." Based on satellite imagery (Google Earth Pro 4/16/2016), the vegetation of B and D appears to be shrubby and of C much more open with floating vegetation and small areas of emergent herbaceous or woody plants. B and D are even described in TES (2010) as dominated by buttonbush and water-willow (*Decodon verticillatus*) in B and buttonbush and highbush blueberry in D. Small pools and open moats are evident around portions of both wetlands B and D. Wetland C appears to have areas of herbaceous emergent marsh and shrubby wetland, largely surrounded by open water or floating and floating-leaved vegetation. Possibly the "deciduous forest wetland" characterization of B and D refer only to the onsite western edges of those two wetland pools; however, the consideration of turtle habitat must include the entirety of each pool as well as the entire landscape used by the turtles.

There was no trapping in offsite wetlands. Blanding's turtles are very mobile and demonstrate extensive use of space with much seasonal and interannual variation in habitat use (e.g., see notes about movements of radio-tracked Blanding's turtles in TES [2013], and also see Kiviat [1997]). It is possible that more individual turtles were in offsite areas, or onsite areas, that were not trapped.

The weather conditions (precipitation, air and water surface temperatures) during trapping weeks were not reported. Temperatures are critical to trapping success, and turtles may not enter traps during a few cool days or a week. The spring-summer precipitation regime in 2011 also could have affected turtle movements, which are responsive to rising or falling water levels.

The report does not state trap dimensions. Commercial hoop nets come in two diameters and multiple mesh sizes; these affect the microhabitats where traps can be set, and whether small juvenile turtles can be captured.

The report (TES 2011) mentions sardines in oil used for bait. Was this soy oil or sardine oil (the former is believed to be more effective)? How much bait was used? Bait replenishment was not described – was the same bait just left in the traps for the entirety of each trapping period or was bait replenished or changed during the period?

What microhabitats were traps set in? This affects catch. For example, the “moat” around the edges of some kettle shrub pools remains cool due to groundwater discharge and is not a good microhabitat for trapping. Traps set next to potential basking perches are often successful. What water depths were traps set in?

An adult Blanding’s turtle coded as BL-1 was tracked from June until 30 August 2011 after which the signal was lost (TES 2011). The report does not state how, and how far, the field worker looked for the turtle, or from how far the signal could be detected prior to its loss. Blanding’s turtles sometimes move away from a habitat complex and then return later. Could this turtle have been elsewhere on or near the site after the signal was lost? According to the TES reports, some of the turtle locations were estimated by triangulation; the potential error in these locations is not assessed.

Nesting of the local Blanding’s turtles was not documented. No attempt to discover locations of Blanding’s turtle nesting is described in the TES reports, despite the obvious importance of nesting locations relative to the proposed mining activities and the proposed features for mitigating impacts to the Blanding’s turtles such as a constructed nesting habitat. Turtles living in the wetlands on or adjoining the site, as well as Blanding’s turtles from half a mile or more away, could be nesting in the areas formerly mined or proposed to be mined. Dutchess County Blanding’s turtles frequently move long distances from core (residence) wetlands to nesting areas (Kiviat 1997) and often select nest sites in disturbed soils such as at former soil mines, ornamental plant beds, power line rights-of-way, and graded areas (e.g., Bock [2004]).

Without the above procedures and documentation it is impossible to judge the efficacy and appropriateness of the trapping surveys. It cannot legitimately be asserted, based on the survey work done, that the population is small. Moreover, no field work was conducted that would have underpinned the claim that the population is not viable – this is a long-term demographic question, not one that can be answered from trapping and tracking three individual Blanding’s turtles for a couple of seasons.

The Blanding’s turtle survey was conducted in 2009, 2011 and 2012 (according to the DEIS main text). This is out of date and should be repeated with increased effort as discussed above. Because of mining and its cessation, beaver activity, farming, and other land use activity Blanding’s turtles likely have shifted their habitat use during the past decade. Behavioral adaptations to changing water levels and vegetation inside and outside wetlands is typical of this species in Dutchess County.

Other Concerns about Blanding's Turtle

Among the hazards that Blanding's turtles (and other turtles, snakes, frogs, and salamanders) will face during entrance road construction and mine operation are morbidity and mortality of adults and juveniles from vehicles and heavy equipment; crushing of nests; dust, runoff, and infiltration polluting wetland habitats; and pesticides used on agricultural crops. Turtles can not, in practicality, be kept out of harm's way in an active mine. (Added vehicle traffic will also cause additional mortality of certain butterflies, dragonflies, birds, and mammals.)

The access road design intends to keep turtles off the road by means of underpasses and one-way barrier fences (Delta 2020). Hudsonia designed and implemented the first one-way turtle fence in the U.S. (Kiviat et al. 2000, 2004). The design of the "gates" (one-way passages) in the fence is critical to assure turtles will pass one way and not the other, and to minimize maintenance and eliminate voids into which small juvenile turtles might fall and be trapped. Few details are presented in Delta (2020). The fence Hudsonia designed is about 0.8 mile long, yet some individual Blanding's turtles regularly walk around the ends of the fence. If turtles circumambulate the fences at Red Wing, won't the turtles end up in the mining area or on White Schoolhouse Road where there are great hazards? It's hard to understand the details of fence, culvert (underpass) and gate design for turtle protection. The design needs to have a vehicle gate at the entrance(s) that allows vehicles to pass but not turtles. The Red Wing fence is proposed to be constructed of "hardware fabric." In the absence of details, I assume this means galvanized hardware cloth, which can leach toxic zinc and possibly cadmium from the plating. Notwithstanding, plastic mesh materials would constitute a hazard to snakes that can become entangled in the mesh, and all plastic materials would generate polluting microplastic particles that can even move through groundwater, therefore plastic fencing is not an appropriate alternative.

The DEIS calls for creation of a nesting habitat for Blanding's turtle. Six nesting berms were created for this species in the mitigation project at Arlington High School (Kiviat et al. 2000, 2004). The turtles used the berms but little, likely because the gravelly and sandy materials that are commonly used by Blanding's turtles for nesting and from which the berms were built were excessively well drained when mounded and too dry for nest sites.

Delta (2020) states that grain or hay crops may be grown in the southern portion of the site. Farming operations (e.g., mowing hay) would be a serious hazard to Blanding's turtles because they are likely to move among wetlands (e.g., between RC-25 and RC-30) at almost any time. As a more general concern, the dates of the Blanding's turtle activity season, and the dates of the hatchling emergence season, are conservative. At Arlington High School, the earliest hatchling emergence was 12 August (Bock 2007), whereas the "hatchling period" is pegged at 1-30 September in Delta (2020). The activity season is pegged at 15 April – 15 October in Delta (2020); however, in the Town of La Grange (Dutchess County) my colleagues and I have found adults active in the last week of March and in one winter even in February during a warm spell. Turtles will be at risk of injury or death if inaccurate season dates are used. Even the DEIS (p. 97) considers the active season to begin in March, although no source is cited for this statement.

The TES Blanding's turtle reports cite several papers about the species. The one that seems to have been depended on for habitat descriptions is a nontechnical article from *News from Hudsonia* (Kiviat 1993). There is voluminous relevant information about this species in Dutchess County, where an isolated population is genetically and to some extent ecologically different from Blanding's turtle populations in other regions. It would behoove the applicant's consultants to study and make use of that most relevant and readily available literature.

The TES reports also do not specifically list the field workers and describe their qualifications, although some names can be seen on the Blanding's turtle permits and the field data sheets appended to the reports (one field sheet shows the initials of two field workers who apparently were not permit holders – were they formally designated as agents under the permits issued to Shute and Coogan, or were there other permits not appended?). The experience and skills of field biologists greatly affect their findings, and it is appropriate to include those in reports of any kind.

The mining activities and ancillary activities proposed for the site (e.g., construction of a pond) will put the Blanding's turtles, spotted turtles, black racers, and other small terrestrial animals at risk of morbidity or mortality from heavy equipment and vehicle movements (see Main Text p. 77+-). The risk is not limited to the access road with its turtle mitigation features. The DEIS does not explain how the herpetofauna and other wildlife will be protected from this risk – in my view, even with appropriate and frequent training of drivers and equipment operators, it will be impossible to avoid most of the damage. For example, Blanding's turtles, especially females during nesting migration, not infrequently rest late at night and during daytime beneath vehicles or equipment following unsuccessful bouts of nest site searching (Hudsonia, unpublished data). Vehicle drivers and equipment operators must be trained to check beneath their vehicles or equipment prior to starting engines, and at the Red Wing site this would have to be done throughout the entire life of mine. I repeat that the TES (2013) assertion that the Blanding's turtle population is small and inviable is not supported by scientific data due to the inadequate nature of the habitat assessments and turtle surveys (above and Kiviat 2020), the scarcity of references to the scientific literature in the DEIS, and the absence of a logical scientific argument.

Bald Eagle

The DEIS reports a bald eagle nest on or near the mining site. The main text locates the nest 515 feet north-northeast of the planned mining project office and scale (DEIS main text p. 1, 34). The office and scale are proposed to be located on the south side of the new haul road where it bows out to the south at the southern end of the main part of wetland RC-25. This apparently places the nest in an open grove of relatively large conifers, presumably white pines, which is the type of tree commonly used for nest placement and a typical nesting location (Nye 2008). The nest tree may be on a hillock shown on the USGS topographic map (USGS 1963) at this location. If this is correct, the nest is less than 500 feet north of the nearest portion of the haul road where the nest and eagles would be within clear hearing and probably sight distance of a large amount of truck noise and visual disturbance. Yet the DEIS asserts that the mining activities, especially the

noise produced, would not affect the behavior of nesting eagles. Pedestrian activity, as well as vehicle activity, can be highly disturbing to nesting eagles (e.g., Grubb and King 1991).

Eagle pairs vary in sensitivity. One pair nests in a residential subdivision in the Town of Wappinger and tolerates human activity very nearby. Some pairs are much more sensitive to visual disturbance and noise. For example, the DEC has prohibited the public from walking on the lower Cruger Island Road more than 0.4 mile from a nest (Kiviat, personal observation). Nye (2008) stated that “...direct human disturbance and, most importantly, habitat alteration and loss remain the most significant issues for this sensitive species” and “The status of the Bald Eagle in New York in 2020 will be predicated on how well the habitats the species is currently using are protected.”

It is unclear, perhaps due to redaction of portions of the bald eagle report (Griggs 2022), whether the nest is in a currently quiet area, what the nature of its surroundings are (e.g., vegetation, buildings, trails, roads), the sight lines from the nest and eagle perch trees to the haul road and mining area, and whether the nest has been studied or is being monitored as are many Hudson Valley nests. Is there any information on this specific eagle pair and its reactions to human activity? What are the behavioral traits of the pair? Where are the eagles foraging, roosting, perching? As is typical of the DEIS sections addressing biology, the scientific literature about the bald eagle and the effects of noise on wildlife are not referenced and have evidently not been reviewed, nor is there evidence that a bald eagle specialist or any biologist was involved in the assessment of potential noise impacts. An accurate and fully referenced analysis is the responsibility of the applicant not the Lead Agency or the public.

The mining map in the DEIS indicates blasting at the northern end of the site. Nesting bald eagles are variably sensitive to sudden loud noises. “Avoid blasting and other activities that produce extremely loud noises within 1/2 mile of active nests, unless greater tolerance to the activity (or similar activity) has been demonstrated by the eagles in the nesting area.” (Virginia 2012). In Virginia, Watts (2006) recommended a 1320 foot buffer around an active bald eagle nest in which there should be no loud noises such as blasting. The DEIS asserts no blasting will occur during eagle nesting season. But will blasting disturb eagle foraging, roosting, or other activities outside breeding season? There apparently is no information about these non-nesting activities on or near the mine site. In winter, for example, it is well known that bald eagles in this climate are subject to a delicate balance between energy intake from their food and energy expenditure thermoregulating and flying, therefore eagles are sensitive to human activities that cause them to flush and fly more. Moreover, bald eagles are known, from studies in other northern states, to perch near the nest and bring in new nesting material throughout the year (Buehler 2022), potentially making them vulnerable to disturbance all year and not just during the late winter – spring –early summer nesting season. Stripping, for example, is proposed to occur 15 October to 31 December (Griggs 2022); this is a noisy activity that would be heard and potentially seen by eagles from the nest site.

Northern Cricket Frog

TES 2010 conducted a four-evening cricket frog calling survey with negative results. The site is less than three miles from the single known and well-documented cricket frog population on the east side of Hudson River. The southern wetland at the mine site was not surveyed. The survey was performed 12 years ago and should be repeated. Northern cricket frogs in New York typically use core wetland habitats with abundant floating-leaved vegetation or floating peat masses. As far as I can tell from satellite imagery (Google Earth), the main portion of wetland RC-25 contains extensive suitable habitat.

If the northern cricket frog is using the site, it may be subject to mining-caused mortality in migration or in an upland hibernaculum. Moreover, frog acoustic communication, crucial to reproduction, may be perturbed by noise from the mining operation. Any cricket frog use of the wetlands on, adjoining, or up to several hundred yards offsite could be affected. In one New York population, the frogs overwinter upland hundreds of yards away from the summer wetland habitat (NHP 2023). Climate change, including increased temperatures and rainfall, may be favorable to the northern cricket frog in New York and it is possible this species is expanding its range and colonizing additional habitats east of the Hudson.

Noise

Anthropogenic noise affects a wide range of wildlife (references in Kiviat 2020). A worldwide review of the impacts of anthropogenic noise on wildlife found that twenty per cent of impacts occurred at noise levels between 40 and 50 decibels, which are very modest noise levels (Shannon et al. 2016). Adverse effects on wild animals (and presumably livestock) are not limited to sudden loud noises that cause animals to flush or flee; noise can interfere with acoustic communication in birds, frogs, insects, and other animals. Chronic noise can also cause physiological harm to, e.g., the circulatory system of animals.

Additional Species of Concern

Bog turtles use fens, calcareous wet meadows, and associated wetland and ditch habitats underlain by carbonate bedrock (limestone, marble, etc.) or calcareous glacial drift from similar types of bedrock (Kiviat and Stevens 2001). Although there is very limited evidence of this endangered species in northwestern Dutchess County, given the carbonate bedrock underlying and nearby the site, potential habitats may be present. The Phase 1 bog turtle habitat assessments performed in 2002 (TES 2002) are seriously out of date and should be repeated using the more recently developed guidelines and data forms of the U.S. Fish and Wildlife Service New York Field Office. The USGS (1963) topographic map indicates changes in the character of some of the wetlands, including transitions between 1963 and now, between wet meadow habitat and other wetland habitat types; it is possible that potential bog turtle habitat has developed since 2002.

Habitat assessment of the site and its margins indicate potential habitat for additional species of conservation concern (Table 1), most of which wildlife species are classified in New York as Threatened, Special Concern, or other Species of Greatest Conservation Need (SGCN). Most of these species are not addressed at all, or are discussed very briefly, in the DEIS. The applicant should assess potential habitat extent and quality for these species, and survey for the ones that are most likely to be affected by the proposed access road and expanded mine. Knowledge of these species may require modification of the mitigation (“net conservation benefit”) proposal.

Table 1. Species of conservation concern known to occur or that potentially occur on the Red Wing site, based on a Hudsonia habitat assessment and the 2022 revised DEIS. SC = NY Special Concern; SGCN = NY Species of Greatest Conservation Need. TES 2002 or 2010 indicates report(s) of the species on the site.

Taxon	Habitat affinities	Notes
Bats (2 species are Endangered and all the rest but 1 are SGCN)	Active season roost & nursery in live and dead shagbark hickory, black locust, other trees in woods edges, open areas, or forest interiors	Production of species-specific prey insects and open land or forest edge foraging habitats also important
New England cottontail (SC; high-priority SGCN)	Scrub & sapling wood, dry or wet	TES (2010) notes 14 acres of upland shrubland plus 7.7 acres of shrub wetland that could support this animal
American black duck (High-priority SGCN)	Kettle shrub pool, other flooded wetlands & ponds, rock niches for nesting	Also wood duck, mallard (with different nesting microhabitats)
American woodcock (SGCN)	Display ground in inactive mine or infertile fields	Possible use of shrubland, swamp, wet meadows on mine floor, etc.
Bald eagle (Threatened, SGCN) (See text)	Open water for foraging, large trees for perching, roosting, nesting	RC-25 is large enough for foraging, despite statement to contrary
Cooper’s hawk (Special Concern)	Various types of woodland	May nest and forage in young woods, conifer plantations, & other forests, even near human activity
Red-shouldered hawk (Special Concern)	Extensive mature forest & swamp	TES 2010
American kestrel (SGCN)	Fields, fencerows, large trees in open	TES 2010

Common nighthawk (High-priority SGCN)	Extensive open dry area for nesting	
Brown thrasher (SGCN)	Shrublands, oldfields, woodlands, woodland edges	TES 2010
Blue-winged warbler (SGCN)	Shrubland, young woods, swamp	TES 2010
Prairie warbler (SGCN)	Shrubland	TES 2010
Scarlet tanager (SGCN)	Extensive mature forest	TES 2010
Henslow's sparrow, grasshopper sparrow (both High-priority SGCN)	Known to nest in surface mines	
Pied-billed grebe (Threatened)	Potential habitat in wetland RC-25	
Ruffed grouse (SGCN)	Where sapling stands border mature forest including conifer forest	TES 2010
Black racer (SGCN)	Diverse habitats including open areas for basking & nesting	TES 2010
Eastern (woodland) box turtle (High-priority SGCN)	Woods edges, wetlands, open areas for nesting & foraging	
Eastern ribbon snake (SGCN)	Calcareous wetland edges, etc.	
Eastern hog-nosed snake (High-priority SGCN)	Sandy or gravelly soil with toad breeding pools	Small kettleholes at two locations, & other small pools, may support toad populations
Spotted turtle (High-priority SGCN)	Wide variety of wetlands, ponds, uplands in combination	Nine caught during TES surveys
Wood turtle (High-priority SGCN)	Probably in Landsman Kill close to site; often nests in soil mines	
Eastern musk turtle (High-priority SGCN)	Possibly in RC-25, Landsman Kill, other permanent waters; nesting in mined area or field edge	
Four-toed salamander (High-priority SGCN)	Mossy hummocks in wetlands, also nearby uplands	Some migrate seasonally
Fowler's toad (SGCN)	Mined area & ponds or marsh pools	
Northern leopard frog (regionally-	Marshes, ponds, with	TES 2010

rare in Dutchess County)	surrounding uplands	
Marbled salamander (SGCN)	Intermittent woodland pools, kettle shrub pools, uplands	Adults may forage distant from breeding pools
Butterflies, several species, including regionally-rare species	Little bluestem host plant for several common & uncommon butterflies; also warm microclimate for insect basking in mined area	Plant is locally abundant at mined area
Lilypad forktail (S3) (a damselfly)	RC-25 with water-lilies	Known from Silver Lake not far away
Mattox's clam shrimp (Data-deficient Species of Potential Conservation Need)	Temporary pools in open areas especially dirt roads and ATV trails	Habitat under a high level of threat everywhere
Other clam shrimp species	As above	Regionally-rare or state-rare but not reviewed by NHP
Field dodder (<i>Cuscuta pentagona</i>) (S3-Rare)	Mugwort & other weedy composites in mined area (e.g., on soil piles) are potential hosts	A small parasitic vine
Uncommon & rare plants (e.g., <i>Corydalis flavula</i> [S3-Rare])	Mossy limestone ledge-&-talus at S edge of site	Potential dust impacts on plants, also habitat destruction

Plants

The list of the flora of the site (TES 2010: Table 2) contains only about 5 true sedges (*Carex*) and about 9 grasses (Poaceae). Undoubtedly there are many more grass and sedge species on this 241 acre site with its varied wet and dry habitats. Even in highly altered, urban-industrial areas (e.g., Kiviat and MacDonald 2022) there are often many species of grasses and sedges. Although the plant list for the site is long, it is clearly very incomplete. Rare species of sedges and grasses (state-rare) may have been missed. Moreover, the plant list was compiled in 2010 and the flora likely underwent substantial changes during the subsequent 12 years of habitat recovery following cessation of active mining. The 2010 flora list is out-of-date and largely omits important groups of species – a new and comprehensive survey is needed.

Other Concerns about the Site

There is little or no evidence of reclamation at the extant mined area in the northern portion of the site, although reclamation concurrent with mining is normally a condition of a DEC mining permit. There are several soil piles, and extensive exposed gravelly or sandy soil, indicating that the mine was abandoned without significant reclamation. There is also a tire dump, some

demolition debris, and other refuse and equipment abandoned on the mining site – no matter the future of the mine, the landowner should remove and recycle all the refuse, equipment, materials, erosion control fabrics, demolition debris, and other things that do not belong there. What kind of reclamation or restoration would be appropriate were this area to not be mined again? Logically, wetland habitat and nesting habitat could be created and managed for Blanding's turtles and other turtles, although this takes a lot of effort and perpetual maintenance (see Kiviat et al. 2000, 2004, Dowling et al. 2010). It should be noted that such habitat creation is expensive and demanding of considerable accurate local information, and that habitats must be managed indefinitely in order to remain of good quality.

The Red Wing wetland map (Griggs-Laing 2007) is difficult to read because of the tiny print. Apparently this map only depicts state-regulated wetlands. There appear to be unmapped, town-jurisdictional wetlands at several locations, including a small intermittent pond in a depression between RC-25 and RC-30 and potentially the fallow field between that pool and RC-30; two small depression ponds between the mined area and the farm fields, one of which appears to be bordered by *Phragmites* reeds; a large area of potential wet meadow west of RC-25 with low herbaceous vegetation, and willows and cottonwoods of seedling and sapling size, in the southern portion of the mined area; and three small wet areas including an apparent vernal pool 10 m or more in diameter in the northern end of the site. Additionally, there is wooded swamp straddling the property line at the western edge and northern end of the site. Blanding's turtles use all kinds of wetlands, ponds, and pools when standing water is 10 inches deep or deeper, and are very likely to use the small ponds and pools onsite. The small ponds and shrubby pools bordering the mined area could be important for females to rehydrate between bouts of seeking nest sites, as well as for turtle foraging and thermoregulation.

Spotted turtles are even more eurytopic (use varied habitats) than Blanding's turtles, and use wet meadows as well as standing water habitats. Both species travel overland and may estivate (rest during hot dry periods) in upland habitats of various kinds. DEIS states (p. 99) that nine spotted turtles were captured during biological surveys of the site. Because spotted turtles are cryptic and often do not enter standard hoop nets, this number suggests a substantial population. The spotted turtle is a New York Special Concern species and is subject to many of the same threats as the Blanding's turtle.

Recently, there has been considerable interest in the populations, habitats, migrations, and mortality of amphibians (salamanders and frogs) that breed in "vernal pools" and other wetland waters. At the Red Wing site, for example, mining activities are proposed as close as 100 feet (the width of the state regulatory wetland adjacent area) to wetland B. Although I have found no information in the DEIS, this wetland, based on the habitat (see elsewhere in this report), is almost certainly used for mating, egg-laying, and larval development by several species of amphibians that potentially include SGCN such as four-toed salamander and marbled salamander (Table 1). Wetland pool-breeding amphibians, outside the breeding seasons, use large areas of woodland and other habitats that are often 500-750 feet from the breeding pools, and these animals are vulnerable to habitat loss and other threats outside arbitrary regulatory buffer zones (Klemens et al. 2021). Marbled salamanders are more tolerant of non-wooded habitats than some of the other pool-breeding amphibians (Kiviat, personal observation), and if they are present they can potentially enter or cross the formerly mined areas.

Pool-breeding amphibians, Blanding's turtle, and spotted turtle often move long distances between wetlands as well as between wetland and upland habitat. Such movements do not observe land ownership boundaries; thus, wildlife in core habitats hundreds of yards offsite may migrate onsite seasonally, or in response to changing water levels, or other factors. Just assessing habitats for turtles, and trapping turtles onsite, do not allow evaluation of activity that may put wildlife of conservation concern at risk in the active mining area, entrance road, etc.

The DEIS main text seems to assert that wetland RC-25 will remove silt from stormwater before water moves to the Landsman Kill. Clearly (no pun intended), however, fine mineral sediment (silt and clay) from mining that settles out of stormwater entering the wetland will eventually fill the wetland and reduce or eliminate its ability to filter this suspended sediment, and dredging the wetland to rejuvenate its filtering capacity would be very destructive. Moreover, this wetland presumably has organic surface sediments and covering the organic material with mineral material would compromise the ecological functions of the wetland including its capacity to support Blanding's turtle and spotted turtle. The DEIS also states that wetland RC-25 "biologically" filters stormwater; without an explanation supported by literature references this statement is meaningless.

There are other, operating soil mines near the Red Wing site, and soil mines, as well as residential and commercial buildings, cemeteries, farms, and roads have caused extensive loss and degradation of the outwash plains and their wetland habitats (e.g., Kiviat and Stevens 2003). Given the general congruence of glacial outwash, groundwater aquifers, Blanding's turtle, and other biota of conservation concern, Red Wing should perform a cumulative impact assessment of all mining past and present on all Blanding's turtle habitat complexes throughout the species range in the county. Red Wing should also assess offsite impacts of the proposed mining operation. The other crucial cumulative impact assessment I urge Red Wing and the DEC to conduct is an assessment of watershed land use impacts upon the Landsman Kill, which is a trout stream. The Landsman Kill and a tributary border the Red Wing site on the north and west. Without such cumulative assessments, the full character and degree of mining impacts will not be known.

Most of the Red Wing documents cite no information sources, therefore it is impossible to judge the accuracy of some of the information used in the analyses and planning. The DEIS cites references sparingly, and omits most of the published literature, theses, and available unpublished reports concerning the Blanding's turtle and its habitats in Dutchess County. Considerable information on this subject, and other ecological subjects important to analysis of the Red Wing proposal, has been developed and its review should be at the core of discussions in the DEIS. Without an incisive and inclusive review of the scientific and natural history literature, the analyses and discussions in the DEIS are not scientifically based and it is not fully possible to judge their accuracy and merit.

The western edge of the mined area supports some invasive woody plants, including tree-of-heaven, autumn-olive, and multiflora rose, all species that readily colonize disturbed mineral soil. A plan for non-chemical management of these plants should accompany plans for use of the site (see Travis and Kiviat 2016).

The DEIS is dismissive of potential impacts on the Landsman Kill. Soil disturbance from mining and associated activities would mobilize nitrogen and possibly other pollutants, and the nitrogen would move through surface water or groundwater towards the Kill. The coarse-textured Hoosic soil material is relatively porous to water and pollutants; the county soil survey characterizes Hoosic soil as having rapid permeability. The DEIS main text states: “The outlet would be to the northeast and would be achieved by deepening an existing runoff drainage to the Landsman Kill (see Mining Plan Map and Reclamation Plan Map in Appendix A).” Apart from any habitat effects this dredging might have, it will speed the movement of surface waters and their contained pollutants (fine soil material, microplastic particles [see next paragraph], plant nutrients) to the Kill. It is impossible to assess the potential impacts of dredging the channel upon rare plants, burrowing amphibians, and other ground or soil-dwelling organisms because I can find no biological data specific to this feature in the DEIS. Some salamanders, for example, concentrate their activities in or near ephemeral, intermittent, or perennial streams.

The memo concerning soil stabilization (Griggs 2021) is very difficult to read but appears to show a “TRM” (turf reinforcement mat) product called *Landlok*. There is a variety of Landlok TRM products, and I am unable to discern which one, if any, is specified for the Red Wing site. Some Landlok TRM products comprise natural fibers held together with polypropylene monofilament mesh, whereas others seem to be all-plastic composition. Plastic mesh should *never* be used in open applications in contact with the ground, because snakes (and possibly other animals) commonly become entangled in the mesh and die (Klemens et al. 2021). Moreover, all plastic geotextile products degrade after application, and eventually yield microplastic particles that are now ubiquitous pollutants (e.g., Scholz et al. 2021). Plastic geotextiles also leach a wide range of toxic chemicals (Wiewel and Lamoree 2016). Erosion control matting composed entirely of natural fibers such as *coir* (coconut husk fiber) are a safer substitute, although it is still possible that small animals such as turtles could become trapped between matting and soil.

The conventional engineering response to concerns about silt and nutrient pollution of surface waters from construction activities is the use of siltation barriers. Although siltation barriers are standard engineering features on construction sites, they are only partially effective. Fine particles (silt and clay) to a significant extent can pass through filter fabric barriers and other common siltation barriers (Paterson 1994; Barrett et al. 1995, 1998). Moreover, siltation control features need to be maintained (e.g., sediment deposits removed safely at intervals), and the siltation barriers need to be monitored frequently and decommissioned properly when soils have been stabilized with vegetation and barriers are no longer needed. Sediment-laden stormwater flow through, under, around, and over siltation barriers often occurs in connection with large storms, which are becoming more frequent. Proper maintenance and decommissioning of barriers often do not occur, and most siltation barriers are not inspected frequently enough. Development sites thus contribute to cumulative, nonpoint source pollution of waterways. Design of large projects, such as this Red Wing project, need to address siltation more creatively and efficiently. This is crucial for the protection of the Landsman Kill and the wetlands on and off the site.

It should be noted that soil mining also generates airborne dust which settles on plants and can reduce photosynthesis of both wild plants and agricultural crops. This could affect any farm crops at Wonderland Farm which borders the mine site on the east. Airborne dust leaving the mining site could also contribute to siltation and nutrient enrichment of the Landsman Kill just to the north.

Other Impacts

Blasting of bedrock is proposed for the northern end of the site perhaps 2500 feet from the active bald eagle nest. The DEIS implies that blasting will be conducted outside the bald eagle nesting season thus need not be limited to areas beyond the half-mile buffer zone that is apparently recommended by the DEC. The DEIS does not address potential impacts of blasting to the Blanding's turtle or other wildlife that could be affected by the noise and potential alterations of the bedrock and regolith away from the actual targeted area. Many invertebrates, amphibians, reptiles, and mammals burrow in the soil or subsoil or use existing voids in bedrock for shelter at various seasons. In addition to the potential effects of blasting noise on bald eagles outside nesting season, noise from blasting and from mine-associated heavy trucks and heavy equipment in the mine and on local roads almost certainly will affect wildlife that communicates acoustically including birds, frogs, and many insects. Besides interfering with acoustic communication, noise can harm hearing, circulatory system, immune system, and other physiological functions of animals (Zhang et al 2021).

Dust from the mining operations will settle on plants surrounding the actively mined areas. Dust from stone crushing and roads reduces the photosynthetic output of plants (e.g., Meravi et al. 2021). Thus dust from the proposed mining operations could harm rare plants, affect plant foods of herbivorous wildlife, and have other impacts.

Caverns

Small caverns occur in the carbonate bedrock in the general area of the site (Eighmyville area [see <https://www.youtube.com/watch?v=-ZTv-mrkhxY>] and probably beyond). Are there any caverns on or near the site, such as in the carbonate ledges at the southwestern corner, in which bats might overwinter or roost, or that might have rare groundwater invertebrates? Bat hibernacula, especially smaller ones (hosting smaller numbers of bats), have not been fully studied in the Hudson Valley.

Sources of Information

The applicant has consulted certain potential sources of biodiversity and habitat information including such as the New York Natural Heritage Program and the New York Herpetological Atlas. The following potential sources do not seem to have been consulted: Ralph T. Waterman Bird club, eBird, iNaturalist, Hudson River Almanac, State Dragonfly and Damselfly Survey, Hudsonia townwide habitat map and analysis, DEC fish survey files, and possible sources of

water quality data for the Landsman Kill. Apparently the *Biodiversity Assessment Manual for the Hudson River Estuary Corridor* (Kiviat and Stevens 2001) has not been used to analyze habitats of the site and predict which species of conservation concern may be present and should be considered in planning.

A 2008 letter from the New York Natural Heritage Program responding to an inquiry from the applicant for file data was appended to TES (2010). NHP states that such an inquiry should be updated yearly if construction has not begun on a project.

Conclusion

The DEIS evinces a lack of knowledge and review of the literature concerning the potential impacts of noise, dust, visual disturbance, and habitat alteration on the bald eagle, Blanding's turtle, and other wildlife and plants of conservation concern that are or may be at the site.

The very limited study of Blanding's turtle trapping and tracking performed by TES is insufficient to establish movement patterns or habitat use, not to mention population viability. Moreover, the trapping technique was inadequate for a site with extensive, potential, core wetland habitat.

It is difficult to understand how the proposed actions will constitute a "net conservation benefit" given that Red Wing proposes a more extensive mining operation where no mining has occurred at all for 12 years. A constructed turtle nesting area and underpasses with drift fencing along the entrance (haul) road are unlikely to protect the turtles and stabilize their population. Moreover, it would take intensive study and 20 years or more (the time to reproductive maturity of Blanding's turtle hatchlings during the first few years of mining) to determine if the population is maintaining itself.

Blanding's turtle is not the only organism that needs consideration at the Red Wing site. Everyone needs to cooperate in order that other species, such as those listed as wildlife SGCN, or S1, S2, and S3 rare plants, do not become Threatened or Endangered. That is the purpose of the SGCN lists and the New York Natural Heritage Program rare species rankings, although developers and the DEC often avoid this issue.

The information and analysis I have provided will help inform permit decisions by the DEC and the Town.

It is difficult to understand why the DEC has not (apparently) examined the site and its biodiversity resources in more detail, inasmuch as the Blanding's turtle, bald eagle, and potentially other Endangered, Threatened, and non-E,T SGCN are present and the mining proposal is massive for this landscape. I strongly recommend that additional studies of biodiversity be conducted at the mining site in 2023 and 2024 prior to implementation of new mining and associated activities. These studies should include a comprehensive survey of the vascular flora on the entire Red Wing property and adjoining areas that would be subjected to dustfall and other mining impacts. A survey of bryophytes should be conducted in the formerly

mined areas and their edges, inasmuch as rare mosses are known to colonize similarly disturbed habitats. Surveys of the Blanding's turtle, spotted turtle, and northern cricket frog should be performed by experts on these species and with greater intensity and coverage of offsite habitats within the known migration distances of these species (e.g., about 3300 feet for Blanding's turtle, see Kiviat 1997, Kiviat and Stevens 2001). Surveys of other herpetofauna and bird SGCN should be conducted on and adjoining the property. The nesting pair of bald eagles, and any other nearby eagle activity, needs detailed observation to objectively determine their behavior and sensitivity to noise and visual disturbance. A bat detector survey should be performed during spring-summer tree-roosting and nursery season as well as late summer swarming season. All surveys should use established, scientifically defensible procedures, be carefully documented, conducted by experts with appropriate experience, and performed under contract to the Town rather than directly to Red Wing.

References

- Barrett, M.E., J.E. Kearney, T.G. McCoy and J.F. Malina. 1995. An evaluation of the use and effectiveness of temporary sediment controls. Center for Research in Water Resources, University of Texas at Austin, Online Report 95-6.
https://repositories.lib.utexas.edu/bitstream/handle/2152/6738/crwr_onlinereport95-6.pdf;sequence=2 .
- Barrett, M.E., J.F. Malina and R.J. Charbeneau. 1998. An evaluation of geotextiles for temporary sediment control. *Water Environment Research* 70(3):283-290.
- Bock, H. 2007. Blanding's turtle (*Emydoidea blandingii*) nesting habitat at a wetland mitigation site in Dutchess County, New York. Master's thesis, Antioch University New England. 35 p.
- Buehler, D.A. 2022. Bald eagle *Haliaeetus leucocephalus*. Version 2.0. Birds of the World. Cornell University Laboratory of Ornithology.
<https://birdsoftheworld.org/bow/species/baleag/cur/introduction>
- Delta. 2020. Details for the Red Wing Mine multiuse access road incidental take permit application (6 NYSRR Part 182) Town of Rhinebeck Dutchess County, New York. Report to Red Wing Properties, Inc., Stormville, NY. Delta Engineers, Architects, Land Surveyors, & Landscape Architects, DPC, Syracuse, NY. 111 p.
- Dowling, Z., T. Hartwig, E. Kiviat and F. Keesing. 2010. Experimental management of nesting habitat for the Blanding's turtle (*Emys blandingii*). *Ecological Restoration*. 28(2):154-159.

- Griggs, P.H. 2021. [Letter to J. Petronella describing soil stabilization techniques.] (Included in DEIS.)
- Griggs, P.H. 2022. [Letter to J. Petronella concerning the bald eagle nest.] (Included in DEIS.)
- Griggs-Lang (Griggs-Lang Consulting Geologists, Inc.) et al. 2008. Draft Environmental Impact Statement for the Red Wing Properties, Inc. White School House Road bank modification (MLF# 30393) Town of Rhinebeck, Dutchess County, New York. Griggs-Lang, Troy, NY. 171 p.
- Griggs-Lang et al. 2022. DRAFT ENVIRONMENTAL IMPACT STATEMENT For the RED WING PROPERTIES, INC. WHITE SCHOOL HOUSE ROAD BANK MODIFICATION (MLF# 30393) Town of Rhinebeck, Dutchess County, New York. Griggs-Lang, Troy, NY. Not continuously paginated. (Revision of Griggs-Lang et al. 2008.)
- Grubb, T.G. and R.M. King. 1991. Assessing human disturbance of breeding bald eagles with classification tree models. *Journal of Wildlife Management* 55(3):500-511.
- Kiviat, E. 1997. Blanding's turtle habitat requirements and implications for conservation in Dutchess County, New York. P. 377-382 in J. Van Abbema, ed. *Proceedings: Conservation, Restoration, and Management of Tortoises and Turtles: an International Conference*. New York Turtle and Tortoise Society and Wildlife Conservation Society Turtle Recovery Program.
- Kiviat, E. 2020. Potential impacts on wildlife of noise from the proposed factory at 850 Route 28, Town of Kingston, Ulster County, New York. Report to Woodstock Land Conservancy and Catskill Mountainkeeper. Hudsonia, Annandale, NY.
- Kiviat, E. and G. Stevens. 2001. Biodiversity assessment manual for the Hudson River estuary corridor. New York State Department of Environmental Conservation, New Paltz, New York. 508 p.
- Kiviat, E. and G. Stevens. 2003. Environmental deterioration of the outwash plains: Necropsy of a landscape. *News from Hudsonia* 18(1):1, 4-5.
- Kiviat, E., G. Stevens, R. Brauman, S. Hoeger, P.J. Petokas and G.G. Hollands. 2000. Restoration of wetland and upland habitat for Blanding's turtle. *Chelonian Conservation and Biology* 3(4):650-657.
- Kiviat, E., G. Stevens, K.L. Munger, L.T. Heady, S. Hoeger, P.J. Petokas and R. Brauman. 2004. Blanding's turtle response to wetland and upland habitat construction. P. 93-99 in C. Swarth, W. Roosenberg & E. Kiviat, eds. *Conservation and Ecology of Turtles of the Mid-Atlantic Region; A Symposium*. Bibliomania, Salt Lake City, Utah.

- Klemens, M.W., H.J. Gruner, D.P. Quinn and E.R. Davison. 2021. Conservation of amphibians and reptiles in Connecticut. Connecticut Department of Energy and Environmental Protection, Hartford, CT.
- Meravi, N., P.K.Singh and S.K. Prajapati. 2021. Seasonal variation of dust deposition on plant leaves and its impact on various photochemical yields of plants. *Environmental Challenges*, 4:e100166.
- NHP (New York Natural Heritage Program). 2022. Online Conservation Guide for *Acris crepitans*. <https://guides.nynhp.org/northern-cricket-frog/>
- Nye, P.E. 2008. Bald eagle *Haliaeetus leucocephalus*. P. 188-189 in K.J. McGowan and K. Corwin, eds. The second atlas of breeding birds in New York State. Cornell University Press, Ithaca, NY.
- Paterson, R.G. 1994. Construction practices: The good, the bad, and the ugly. *Watershed Protection Techniques* 1(3):95-99.
<https://www.proquest.com/openview/126e653ee478f98a26138bb5abe6549c/1?pq-origsite=gscholar&cbl=54930>
- Scholz, P., I. Putna-Nimane, I. Barda, et al. 2021. Environmental impact of geosynthetics in coastal protection. *Materials* 14(3):e634 (13 p.).
- Shannon G., M.F. McKenna, L.M. Angeloni, K.R. Crooks, K.M. Frstrup, E. Brown, K.A. Warner, M.D. Nelson, C. White, J. Briggs and S. McFarland. 2016. A synthesis of two decades of research documenting the effects of noise on wildlife. *Biological Reviews* 91(4):982-1005.
- Svedarsky, W.D. and R.D. Crawford. 1982. Wildlife values of gravel pits. Symposium Proceedings, June 24-26, University of Minnesota, Crookston, MN. University of Minnesota Agricultural Experiment Station Miscellaneous Publication 17, 249 p.
- TES (Terrestrial Environmental Specialists). 2002. A wildlife inventory and search for bog turtles and Blanding's turtles on the Rhinebeck site, Dutchess County, New York. Prepared for Vincent P. Kinlan, Suffern, NY. TES, Phoenix, NY. 5 p. + appendices. (Included in DEIS.)
- TES. 2010. Vegetation and wildlife resources of the Kinland site Town of Rhinebeck Dutchess County, New York. Prepared for Vincent P. Kinlan, Suffern, NY. TES, Phoenix, NY. 11 p. + appendices. (Included in DEIS.)
- TES. 2011. Blanding's turtle trapping and tracking studies at the Kinlan site Town of Rhinebeck Dutchess County, New York. Report to Vincent Kinlan P.E., Suffern, NY. TES, Phoenix, NY. 16 p.

- TES. 2013. Blanding's turtle studies at the White Schoolhouse Road site Town of Rhinebeck Dutchess County, New York. Prepared for Griffgs-Lang Consulting Geologists, Inc., Troy, NY. TES, Phoenix, NY. 6 p. + appendices. (Included in DEIS.)
- Travis, K.B. and E. Kiviat. 2016. Best management practices for priority invasive plants in the lower Hudson Valley. Report to Lower Hudson Partnership in Invasive Species Management, Mahwah, NJ. Hudsonia, Annandale, NY. 73 p.
- USGS (U.S. Geological Survey). 1963. Rock City, N.Y. 7.5 minute topographic map sheet. Scale 1:24,000, contour interval 10 feet. Washington, DC.
- Virginia (Virginia Department of Game and Inland Fisheries, and the Center for Conservation Biology at the College of William and Mary and Virginia Commonwealth University). 2012. Management of bald eagle nests, concentration areas, and communal roosts in Virginia: A guide for landowners. Richmond, VA. 40 p. <https://dwr.virginia.gov/wp-content/uploads/virginia-bald-eagle-guidelines-for-landowners.pdf>
- Watts, B.D. 2006. Biological assessment for bald eagle Route 624 bridge replacement, Cat Point Creek. CCBTR-06-04. Center for Conservation Biology Technical Report Series. College of William and Mary and The Virginia Commonwealth University, Williamsburg, VA. 37 p. https://scholarworks.wm.edu/cgi/viewcontent.cgi?article=1387&context=ccb_reports
- Wiewel, B.V. and M. Lamoree. 2016. Geotextile composition, application and ecotoxicology—A review. *Journal of Hazardous Materials* 317:640-655.
- Zhang, A., T. Zou, D. Guo et al. 2021. The immune system can hear noise. *Frontiers in Immunology* 11:e619189.

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4 December 2022

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Recent Professional Experience

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

Bard College: *Associate Professor* then *Professor of Environmental Studies*; Graduate School of Environmental Studies, 1987-2005; Research Associate, Division of Natural Sciences and Mathematics, 2002-. Taught courses on regional natural history, habitat ecology, field botany.

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

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

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

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

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

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

Education

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

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

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

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

Research Interests

Nonnative weed ecology and management; Wetland ecology and management including human interactions; Herpetofaunal ecology and conservation; Habitat ecology, assessment, monitoring, creation, restoration; Urban and rural biodiversity, rare or little-known organisms; Cryptogam conservation; Energy development impacts on biodiversity; Ethnobotany and economic botany.

Current research projects (with Hudsonia and Bard College staff, interns, and collaborators): Biodiversity impacts of community and utility-scale solar photovoltaic generating projects; Urban biodiversity case study in the New Jersey Meadowlands region (includes field surveys of mammals, birds, herpetofauna, butterflies, dragonflies, clam shrimps, land snails, vascular plants, bryophytes, lichens, macrofungi); Long-term response of the threatened Blanding's turtle to created wetland and upland habitats; An old-growth hemlock-hardwoods forest in the Hudson Valley over 45 years; Two prickly-pear species near their range limits in rocky habitats of the Hudson Valley; Habitat functions of *Phragmites*, purple loosestrife, and knotweed for organisms from cryptogams to mammals; Invertebrates and chemistry in temporary pools.

Additional Field Work (much of it focused on weeds as well as other biota)

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

Languages: French and Spanish (reading knowledge).

Professional Certification: Professional Wetland Scientist, 1995-. Formerly Certified Professional Ecologist, Certified Wildlife Biologist.

Honors

Awarded to Erik Kiviat or to Hudsonia for projects or programs he directed: Franklin and Eleanor Roosevelt Hudson Valley Vision Award 2018; John and Samuel Bard Award in Medicine and Science 2016;

Environmental Consortium Great Work Award 2014; Coastal America Spirit Award, New Jersey Marine Sciences Consortium Habitat Initiative, 2006; Nominations for National Wetlands Award 2002, 2009-2011; Certificate of Appreciation, New York State Department of Environmental Conservation, 2000; Good Land Award, Winnakee Land Trust, 1999, 2008; Project Facilitation Award, Society for Ecological Restoration, 1997; Marion Thompson Fuller Brown Conservation Award, Garden Clubs of America, 1996; Environmental Award, Museum of the Hudson Highlands, 1996; Award for Environmental Sensitivity, Mohonk Consultations on the Earth's Environment, 1995; Researcher of the Year Award, Hudson River Environmental Society, 1994; Service Award, Dutchess County Environmental Management Council, 1982.

Professional Societies

American Bryological and Lichenological Society; Association of Field Ornithologists; National Association of Wetland Managers; Hudson River Environmental Society; New York Flora Association; Society for the Study of Amphibians and Reptiles; Southern Appalachian Botanical Society; Torrey Botanical Society; Wilson Ornithological Society.

Public Service

Winnakee Land Trust Advisory Committee; Hudson Highlands Fjord Trail Shoreline Design Committee, Scenic Hudson, 2020-2021; Citizens' Advisory Group, Rebuild by Design Meadowlands Flood Protection Project, 2016-2018; Editorial Board, *Urban Naturalist* 2014-2021; Lower Hudson Partnership in Invasive Species Management, 2012- (Steering Committee 2013-2015); Invited participant, recovery workshops for bog turtle, U.S. Fish and Wildlife Service (FWS) and New York State Department of Environmental Conservation (DEC), 2011-2015; Steering Committee, Northeast Natural History Conference, 2010; Invited participant, recovery workshops for Blanding's turtle, timber rattlesnake, northern cricket frog, New England cottontail, DEC, 2009-?; Scientific Advisory Committee, Hudson River Almanac; Advisory Committee for Quadricentennial Exhibit, Albany Institute for History and Art, 2008; co-sponsor, Japanese Knotweed Managers' Workshop, 2005; co-convenor, Hackensack Meadowlands Symposium, 2003; Greene County (NY) Habitat Management Advisory Committee, 2003-2006; Advisory Committee for Hudson River Estuary Exhibit, Liberty Science Center, 2002-2007; Scientific Advisory Committee, New York - New Jersey Trail Conference, 2002-2008; Co-sponsor, *Phragmites* Forum, 2002; Convenor of workshop *Purple Loosestrife and Wildlife in North America*, Northeast Fish and Wildlife Conference, 2001; Conservation and Recovery of the Bog Turtle (invited participant), FWS, 1998; Jug Bay Wetlands Sanctuary (MD) Advisory Committee, 1998-2013; Scientific Advisory Committee, Friends of the Great Swamp, 1998-; New York State Department of Environmental Conservation Hudson River Biodiversity Committee, DEC, 1997-; Scientific Advisory Committee, Hudson River Habitat Restoration Program, U.S. Army Corps of Engineers, 1994-95; Editorial Board, *Water Ways: New York's Waterfront News*, 1990-92; Hudson River National Estuarine Research Reserve Advisory Committee, 1983-84, Hudson River Fisheries Advisory Committee, 1979-83, Hudson River Valley Study Advisory Committee, 1978, DEC; Wildlife Society New York Chapter, Committee on Exotic Plants, 1981-87; Advisory Board of the Trevor Zoo, 1981-94; Dutchess County Environmental Management Council Significant Areas Committee, 1980-82; Storm King School Environmental Institute Advisory Board, 1983-85; Convenor of Hudson River Marsh Workshop, Hudson River Environmental Society, 1976; Hudson River Sloop Clearwater Board of Directors 1975-76.

Presentations at Scientific Conferences More than 85 beginning in 1974.

Technical Publications

(Papers in preparation with various collaborators on Blanding's turtle habitat restoration; Atlantic Coast leopard frog response to Hurricane Sandy; first records of the potentially invasive plant *Cyperus difform-*

is in New York; bryophytes on loosestrifes; organisms associated with knotweed; *Phragmites* ecosystem services; vegetation change in an old hemlock-hardwoods forest.)

- Kiviat, E. & K. MacDonald. (Under contract). Urban biodiversity: The ecology of the New Jersey Meadowlands. Lexington Books, Lanham, Maryland.
- Shepard, L.W., G. Cott, F. Romero, J. Weis, E. Kiviat & T. Mozdzer. Submitted. Positive effects of invasive *Phragmites australis* invasion on ecosystem services: Lessons learned from a meta-analysis. *Global Change Biology*.
- Kiviat, E. & K. MacDonald. 2022. Urban biodiversity: The natural history of the New Jersey Meadowlands. Lexington Books, Lanham, Maryland. 492 p.
- Kiviat, E. 2021. Wetland imagery in American novels. *Social Sciences and Humanities Open* 4(1):e100158, 9 p.
- Kiviat, E., P.G. Davison, R.C. Harris & S. Dickman. 2021. Novel hepatic and lichen assemblage on *Phragmites* stubble in a Florida freshwater swamp. *Evansia* 38(1):9-14.
- Palmeri, J. & E. Kiviat. 2021. Toxic effects of knotweed (*Polygonum cuspidatum* s.l.) rhizome on the mosses *Atrichum angustatum* and *Thuidium delicatulum*. *Lindbergia* 44:linbg.01131, 7 p.
- Bannor, B.K. & E. Kiviat. 2020. Common gallinule *Gallinula galeata*. *Birds of the World*, Version 1.0. Cornell Laboratory of Ornithology, Ithaca, NY. (Currently in revision.)
- Caponera, V. & E. Kiviat. 2020. Painted turtle ecology in a freshwater tidal marsh: Concluding survey. P. VII-1 to VII-32 in S.H. Fernald, D.J. Yozzo and H. Andreyko, eds. Final Reports of the Polgar Fellowship Program, Hudson River Foundation, New York, NY.
- Kiviat, E. 2020. Uses of wetlands in the urban coastal Meadowlands of New Jersey, USA. *Urban Naturalist* 36:1-16.
- Kiviat, E., L. Stickle & E. Heffernan. 2019. Re-survey of flora and vegetation after four decades in a bog lake, New York. *Castanea* 84(2):290–310.
- Kiviat, E. 2019. Organisms using *Phragmites australis* are diverse and similar on three continents. *Journal of Natural History* 53(31-32):1975-2010.
- Kiviat, E., L.A. Meyerson, T.J. Mozdzer, W.J. Allen, G. Bhattarai, H. Brix, J.S. Caplan, K.M. Kettenring, C. Lambertini, J. Weis, D.F. Whigham & J.T. Cronin. 2019. Evidence does not support the targeting of cryptic invaders at the subspecies level using classical biological control: The example of *Phragmites*. *Biological Invasions* 21(8):2529-2541.
- Schmidt, R.E., E. Kiviat, N. Trigoboff & J. Vanek. 2018. New records of clam shrimp (Laevicaudata, Spinicaudata) from New York. *Northeastern Naturalist* 25(2):N7-N10.
- Bacon, R.J. & E. Kiviat. 2018. Ecology of painted turtles in a freshwater tidal marsh, Tivoli North Bay, New York. Pages II-1 to II-29 in S.H. Fernald, D.J. Yozzo and H. Andreyko (eds.), Final Reports of the Tibor T. Polgar Fellowship Program, 2015. Hudson River Foundation.
- Schlesinger, M., J.A. Feinberg, N.H. Nazdrowicz, J.D. Kleopfer, J.C. Beane, J.F. Bunnell, J. Burger, E. Corey, K. Gipe, J.W. Jaycox, E. Kiviat, J. Kubel, D.P. Quinn, C. Raithel, P.A. Scott, S.M. Wenner, E.L. White, B. Zarate, H.B. Shaffer. 2018. Follow-up ecological studies for cryptic species discoveries: Decrypting the leopard frogs of the eastern U.S. *PLOS ONE* 13(11):e0205805. <https://doi.org/10.1371/journal.pone.0205805>
- Travis, K.B., I. Haeckel, G. Stevens, J. Tesauero & E. Kiviat. 2018. Bog turtle dispersal corridors and conservation in New York, U.S.A. *Herpetological Conservation and Biology* 13(1):257–272.
- Travis, K.B., E. Kiviat, J. Tesauero, L. Stickle, M. Fadden, V. Steckler & L. Lukas. 2018. Grazing for bog turtle (*Glyptemys muhlenbergii*) habitat management: Case study of a New York fen. *Herpetological Conservation and Biology* 13(3):726–742.
- Les, J.C. & E. Kiviat. 2016. The conservation status of goldenclub (*Orontium aquaticum*) in the freshwater tidal wetlands of the Hudson River. 41 p. in S.H. Fernald, D.J. Yozzo and H. Andreyko (eds.), Final Reports of the Tibor T. Polgar Fellowship Program, 2014. Hudson River Foundation.

- Strayer, D.L., E. Kiviat, S.E.G. Findlay & N. Slowik. 2016. Vegetation of riprapped revetments along the freshwater tidal Hudson River, New York. *Aquatic Sciences* 78:605-614.
- Bhattarai, G.P., W.J. Allen, J.T. Cronin, E. Kiviat & L.A. Meyerson. 2016. Response to Blossey and Casagrande: Ecological and evolutionary processes make host specificity at the subspecies level exceedingly unlikely. *Biological Invasions* 18(9): 2757-2758.
- Cronin, J.T., E. Kiviat, L.A. Meyerson, G.P. Bhattarai & W.J. Allen. 2016. Biological control of invasive *Phragmites australis* will be detrimental to native *P. australis*. *Biological Invasions* 18(9):2749–2752.
- Kiviat, E. 2014. Adaptation of human cultures to wetland environments. P. 404-415 in P. Gâştescu, W. Marszelewski & P. Bretcan. 2nd International Conference "Water Resources and Wetlands" Conference Proceedings 11-13 September, 2014 Tulcea (Romania). Romanian Limnogeographical Association.
- Vaičekonytė, R., E. Kiviat, F. Nsenga & A. Ostfeld. 2014. An exploration of common reed (*Phragmites australis*) bioenergy potential in North America. *Mires & Peat* 13(Article 12), 9 p.
<http://www.mires-and-peat.net/>
- Kiviat, E. 2013. Risks to biodiversity from hydraulic fracturing for natural gas in the Marcellus and Utica shales. *The Year in Ecology and Conservation Biology 2012*, *Annals of the New York Academy of Sciences* 1286:1-14. (Invited paper.)
- Kiviat, E. 2013. Ecosystem services of *Phragmites* in North America with emphasis on habitat functions. *AoB Plants* 2013, doi: 10.1093/aobpla/plt008. 29 p. (Invited paper.)
- Kiviat, E. & E. Johnson. 2013. Biodiversity assessment handbook for New York City. American Museum of Natural History Center for Biodiversity and Conservation, and Hudsonia. 273 p.
<https://www.amnh.org/content/download/59221/959699/file/BiodiversityAssessmentHandbk.pdf>
- Gillen, J. & E. Kiviat. 2012. Hydraulic fracturing threats to species with restricted ranges in the eastern United States. *Environmental Practice* 14(4):320-331.
- Kiviat, E. 2011. Frog call surveys in an urban wetland complex, the Hackensack Meadowlands, New Jersey, 2006. *Urban Habitats* 6 (unpaginated). urbanhabitats.org
- Dowling, Z., T. Hartwig, E. Kiviat & F. Keesing. 2010. Experimental management of nesting habitat for the Blanding's turtle (*Emydoidea blandingii*). *Ecological Restoration* 28(2):154-159.
- Kiviat, E. 2010. *Phragmites* management sourcebook for the tidal Hudson River and the northeastern states. Hudsonia Ltd., Annandale NY 12504 USA. 74 p. www.hudsonia.org
- Kiviat, E., G. Mihocko, G. Stevens, P.M. Groffman & D. Van Hoewyk. 2010. Vegetation, soils, and land use in fens of eastern New York and adjacent Connecticut. *Rhodora* 112(952):335-354.
- Kiviat, E. 2009. Human uses of tidal freshwater wetlands on the USA East Coast. P. 21-30 in A. Barendregt, D. Whigham & A. Baldwin, eds. *Tidal Freshwater Wetlands*. Backhuys Publishers, Leiden, The Netherlands. (Invited chapter.)
- Kiviat, E. 2009. Invasive plants in tidal freshwater wetlands - North American East Coast. P. 106-114 in A. Barendregt, D. Whigham & A. Baldwin, eds. *Tidal Freshwater Wetlands*. Backhuys Publishers, Leiden, The Netherlands. (Invited chapter.)
- Swarth, C. & E. Kiviat. 2009. Animal communities in North American tidal freshwater wetlands. P. 71-88 in A. Barendregt, D. Whigham & A. Baldwin, eds. *Tidal Freshwater Wetlands*. Backhuys Publishers, Leiden, The Netherlands. (Invited chapter.)
- Schmidt, R.E. & E. Kiviat. 2007 (2008). State records and habitat of clam shrimp, *Caenestheriella gyne-cia* (Crustacea: Conchostraca), in New York and New Jersey. *Canadian Field-Naturalist* 121:128-132.
- Hartwig, T. & E. Kiviat. 2007. Microhabitat use by Blanding's turtle in constructed and reference wetlands. *Journal of Wildlife Management* 71(2):576-582.

- Kiviat, E., S.E.G. Findlay & W.C. Nieder. 2006. Tidal wetlands. P. 279-295 in J.S. Levinton & J.R. Waldman, eds. The Hudson River Estuary. Cambridge University Press, New York, NY. (Invited chapter.)
- Kiviat, E., guest editor. 2004. The Hackensack Meadowlands: History, ecology, and restoration of a degraded urban wetland. Urban Habitats 2(1):unpaginated. www.urbanhabitats.org
- Kiviat, E. & K. MacDonald. 2004. Biodiversity patterns and conservation in the Hackensack Meadowlands, New Jersey. Urban Habitats 2(1):28-61 (www.urbanhabitats.org).
- Hummel, M. & E. Kiviat. 2004. Review of world literature on water-chestnut (*Trapa natans*) with implications for management in North America. Journal of Aquatic Plant Management 42(1):17-28.
- Kiviat, E. 2004. Occurrence of *Ailanthus altissima* on a Maryland freshwater tidal estuary. Castanea 69(2):139-142.
- Kiviat, E. 2004. Concluding remarks. P. 101-103 in C. Swarth, W. Roosenberg & E. Kiviat, eds. Conservation and Ecology of Turtles of the Mid-Atlantic Region; A Symposium. Bibliomania!, Salt Lake City, Utah.
- Kiviat, E., G. Stevens, K.L. Munger, L.T. Heady, S. Hoeger, P.J. Petokas & R. Brauman. 2004. Blanding's turtle response to wetland and upland habitat construction. P. 93-99 in C. Swarth, W. Roosenberg & E. Kiviat, eds. Conservation and Ecology of Turtles of the Mid-Atlantic Region; A Symposium. Bibliomania, Salt Lake City, Utah.
- Schmidt, R.E., T.W. Hunsinger, T. Coote, E. Griffin-Noyes & E. Kiviat. 2004. Mudpuppy (*Necturus maculosus*) in the tidal Hudson River with comments on its status as native. Northeastern Naturalist 11(2):179-188.
- Swarth, C., W. Roosenberg & E. Kiviat, eds. 2004. Conservation and ecology of turtles of the Mid-Atlantic region; A Symposium. Bibliomania, Salt Lake City, Utah. 121 p.
- Talmage, E. & E. Kiviat. 2004. Japanese knotweed and water quality on the Batavia Kill in Greene County, New York: Background information and literature review. Greene County Soil and Water Conservation District and New York City Department of Environmental Protection. 27 p. www.gcswcd.com/stream/knotweed/reports/litreview/JKandwaterquality.pdf
- Bannor, B. & E. Kiviat. 2002. Common moorhen (*Gallinula chloropus*). Birds of North America 685, 27 p.
- Findlay, S.E.G., E. Kiviat, W.C. Nieder & E.A. Blair. 2002. Functional assessment of a reference wetland set as a tool for science, management and restoration. Aquatic Sciences 64:107-117.
- Kiviat, E. & K. MacDonald. 2002. Hackensack Meadowlands, New Jersey, biodiversity: A review and synthesis. Hackensack Meadowlands Partnership. 97 p. <https://hudsonia.org/wp-content/files/Publications/NJ%20Meadowlands/r-hm3.pdf>
- Kiviat, E. & E. Hamilton. 2001. *Phragmites* use by Native North Americans. Aquatic Botany 69(2-4):341-357.
- Kiviat, E. & G. Stevens. 2001. Biodiversity assessment manual for the Hudson River estuary corridor. New York State Department of Environmental Conservation, New Paltz, New York. 508 p.
- Connors, L.M., E. Kiviat, P.M. Groffman & R.S. Ostfeld. 2000. Muskrat (*Ondatra zibethicus*) disturbance to vegetation and potential net nitrogen mineralization and nitrification rates in a fresh-tidal marsh. American Midland Naturalist 143:53-63.
- Kiviat, E., G. Stevens, R. Brauman, S. Hoeger, P.J. Petokas & G.G. Hollands. 2000. Restoration of wetland and upland habitat for Blanding's turtle. Chelonian Conservation and Biology 3(4):650-657.
- Meyerson, L.A., K. Saltonstall, L. Windham, E. Kiviat & S. Findlay. 2000. A comparison of *Phragmites australis* in freshwater and brackish marsh environments in North America. Wetlands Ecology and Management 8(2-3):89-103.
- van Hoewyk, D., P.M. Groffman, E. Kiviat, G. Mihocko and G. Stevens. 2000. Soil nitrogen dynamics in organic and mineral soil calcareous wetlands in eastern New York. Soil Science Society of America Journal 64(6):2168-2173.

- Barbour, J.G. & E. Kiviat. 1997. Introduced purple loosestrife as host of native Saturniidae (Lepidoptera). *Great Lakes Entomologist* 30(3):115-122.
- Kiviat, E. 1997. The book of swamp and bog; Trees, shrubs, and wildflowers of eastern freshwater wetlands. J. Eastman. *Canadian Field-Naturalist* 111(4):699. (Book review.)
- Kiviat, E. 1997. Blanding's turtle habitat requirements and implications for conservation in Dutchess County, New York. P. 377-382 in J. Van Abbema, ed. *Proceedings: Conservation, Restoration, and Management of Tortoises and Turtles - an International Conference*. New York Turtle and Tortoise Society and Wildlife Conservation Society Turtle Recovery Program.
- Krause, L.H., C. Rietsma & E. Kiviat. 1997. Terrestrial insects associated with *Phragmites australis*, *Typha angustifolia*, and *Lythrum salicaria* in a Hudson River tidal marsh. P. V-1 to V-35 in W.C. Nieder & J.R. Waldman, eds. *Final Reports of the Tibor T. Polgar Fellowship Program 1996*. Hudson River Foundation and New York State Department of Environmental Conservation - Hudson River National Estuarine Research Reserve.
- Winogron, H.G. & E. Kiviat. 1997. Invasion of *Phragmites australis* in the tidal marshes of the Hudson River. P. VI-1 to VI-29 in W.C. Nieder & J.R. Waldman, eds. *Final Reports of the Tibor T. Polgar Fellowship Program 1996*. Hudson River Foundation and New York State Department of Environmental Conservation - Hudson River National Estuarine Research Reserve.
- Kiviat, E. 1996. The Everglades handbook; Understanding the ecosystem. T.E. Lodge. *Canadian Field-Naturalist* 110(3):567-568. (Book review.)
- Rozycki, C. & E. Kiviat. 1996. A low density, tidal marsh, painted turtle population. P. V-1 to V-35 in E.A. Blair & J.R. Waldman, eds. *Final Reports of the Tibor T. Polgar Fellowship Program 1995*. Hudson River Foundation and New York State Department of Environmental Conservation - Hudson River National Estuarine Research Reserve.
- Kiviat, E. 1996. American goldfinch nests in purple loosestrife. *Wilson Bulletin* 108(1):182-186.
- Kiviat, E. & J.G. Barbour. 1996. Wood turtles in fresh-tidal habitats of the Hudson River. *Canadian Field-Naturalist* 110(2):341-343.
- Groffman, P.M., Hanson, G.C., E. Kiviat & G. Stevens. 1996. Variation in microbial biomass and activity in four different wetland types. *Soil Science Society of America Journal* 60:622-629.
- Sharma, V. & E. Kiviat. 1994. Habitats of the monkeyflowers *Mimulus alatus* and *Mimulus ringens* on the Hudson River. P. V-1 to V-36 in E.A. Blair & J.R. Waldman, eds. *Final Reports of the Tibor T. Polgar Fellowship Program 1992*. Hudson River Foundation and New York State Department of Environmental Conservation - Hudson River National Estuarine Research Reserve.
- Leonardi, L. & E. Kiviat. 1990. Bryophytes of the Tivoli Bays tidal swamps. P. III-1 to III-23 in J.R. Waldman & E.A. Blair, eds. *Final Reports of the Tibor T. Polgar Fellowship Program 1989*. Hudson River Foundation and New York State Department of Environmental Conservation - Hudson River National Estuarine Research Reserve.
- Kiviat, E. 1989. The role of wildlife in estuarine ecosystems. P. 437-475 in J.W. Day, et al. *Estuarine Ecology*. John Wiley & Sons, New York.
- Kiviat, E. 1988. The northern Shawangunk Mountains; An ecological survey. Mohonk Preserve, New Paltz NY. 107 p.
- Kiviat, E. 1987. Common reed (*Phragmites australis*). P. 22-30 in D. Decker & J. Enck, eds. *Exotic Plants with Identified Detrimental Impacts on Wildlife Habitats in New York State*. New York Chapter, Wildlife Society.
- Kiviat, E. 1987. Water chestnut (*Trapa natans*). P. 31-38 in D. Decker & J. Enck, eds. *Exotic Plants with Identified Detrimental Impacts on Wildlife Habitats in New York State*. New York Chapter, Wildlife Society.
- Klemens, M.W., E. Kiviat & R.E. Schmidt. 1987. Distribution of the northern leopard frog, *Rana pipiens*, in the lower Hudson and Housatonic river valleys. *Northeastern Environmental Science* 6(2):99-101.

- Barbour, S. & E. Kiviat. 1986. A survey of Lepidoptera in Tivoli North Bay (Hudson River Estuary). P. IV-1 to IV-26 in J.C. Cooper, ed. Polgar Fellowship Reports of the Hudson River National Estuarine Sanctuary Program, 1985. New York State Department of Environmental Conservation, Hudson River Foundation, and U.S. Department of Commerce.
- Westad, K.E. & E. Kiviat. 1986. Flora of freshwater tidal swamps at Tivoli Bays Hudson River National Estuarine Sanctuary. P. III-1 to III-20 in J.C. Cooper, ed. Polgar Fellowship Reports of the Hudson River National Estuarine Sanctuary Program, 1985. New York State Department of Environmental Conservation, Hudson River Foundation, and U.S. Department of Commerce. (Also see Westad, K.E. 1987. Addendum to flora of freshwater tidal swamps at Tivoli Bays. P. X-1 in E.A. Blair & J.C. Cooper. Polgar Fellowship Report of the Hudson River National Estuarine Research Reserve Program, 1986. NYSDEC, HRF, USDC.)
- Kiviat, E., R.E. Schmidt & N. Zeising. 1985. Bank swallow and belted kingfisher nest in dredge spoil on the tidal Hudson River. *Kingbird* 35(1):3-6.
- Kiviat, E. & J. Stapleton. 1983. *Bufo americanus* (American Toad): Estuarine habitat. *Herpetological Review* 14(2):46.
- Kiviat, E. 1982. Turtles: perspectives and research. M. Harless & H. Morlock, eds. *Herpetological Review* 13(3):100. (Book review.)
- Kiviat, E. 1982. Eastern bluebird remote natural nest sites. *Kingbird* 32(1):6-8.
- Kiviat, E. 1982. Black-capped chickadees eating giant ragweed seeds. *Kingbird* 32(1):25-26.
- Kiviat, E. 1982. Geographic distribution [Five locality records from Jekyll Island, Georgia]: *Rana grylio* (pig frog), *Scaphiopus holbrooki holbrooki* (eastern spadefoot), *Cnemidophorus sexlineatus sexlineatus* (six-lined racerunner), *Eumeces inexpectatus* (southeastern five-lined skink), *Opheodrys aestivus* (rough green snake). *Herpetological Review* 13(2):51-53.
- Kiviat, E. 1981. Hudson River estuary shore zone annotated natural history bibliography with index. Scenic Hudson, Poughkeepsie, NY. 76 p.
- Kiviat, E. 1981. A Hudson River fresh-tidal marsh: management planning. *Restoration and Management Notes* 1(1):14-15.
- Kiviat, E. 1980. A Hudson River tidemars snapping turtle population. *Transactions of the Northeast Section, the Wildlife Society* 37:158-168.
- Stone, W.B., E. Kiviat & S.A. Butkas. 1980. Toxicants in snapping turtles. *New York Fish and Game Journal* 27(1):39-50.
- Stapleton, J. & E. Kiviat. 1979. Rights of birds and rights of way: Vegetation management on a railroad causeway and its effect on breeding birds. *American Birds* 33(1):7-10.
- Kiviat, E. 1978. Bog turtle habitat ecology. *Bulletin of the Chicago Herpetological Society* 13(2):29-42.
- Kiviat, E. 1978. Hudson River east bank natural areas, Clermont to Norrie. *Nature Conservancy, Arlington, Va.* 115 p.
- Kiviat, E. 1978. Vertebrate use of muskrat lodges and burrows. *Estuaries* 1:196-200.
- Kiviat, E. & D.C. Buso. 1977. Geographic distribution: *Graptemys geographica* (map turtle). *Herpetological Review* 8 (3):84.
- Kiviat, E. 1976. Goldenclub, a threatened plant in the tidal Hudson River. Paper 21, 13 p. in *Fourth Symposium on Hudson River Ecology*. Hudson River Environmental Society, Bronx, NY.
- Kiviat, E. 1976. A symbol for individuals not adult males. *American Birds* 29(4):818.
- Kiviat, E. 1976. Birds and mammals of the Thompson Pond Preserve. Paper 5, 13 p. in P.S. Busch, ed. *The Ecology of Thompson Pond in Dutchess County, New York*. Nature Conservancy, Boston, MA.
- Kiviat, E. & N. Zeising. 1976. The wetland flora of Thompson Pond, New York. Paper 4, 28 p. in P.S. Busch, ed. *The Ecology of Thompson Pond in Dutchess County, New York*. Nature Conservancy, Boston, MA.
- Kiviat, E. 1974. A fresh-water tidal marsh on the Hudson, Tivoli North Bay. Paper 14, 33 p. in *Third Symposium on Hudson River Ecology*. Hudson River Environmental Society, Bronx, NY.

Popular Publications (selected)

- Kiviat, E. & G. Stevens. 2022. Reducing the environmental impacts of infrastructure improvement. Parts 1-2. *News from Hudsonia* 36(1):1-5, 9-10; 36(2).
- Kiviat, E. 2018-2019. Logging and the environment, Parts 1-2. *News from Hudsonia* 32(2), 33(1).
- Travis, K.B. & E. Kiviat. 2018. Mute swans in the Northeast: A case for evidence-based management. *News from Hudsonia* 32(1):1-5, 7.
- Kiviat, E. 2018. Some notes on responsible investing. *News from Hudsonia* 32(1):6-7.
- Kiviat, E. 2017. Ecological restoration revisited: Some problems and improvements. *News from Hudsonia* 31(2):1-5, 8-9.
- Kiviat, E. 2017. Are rare biota, habitats, and flood protection compatible? Creation science for the 21st Century. *News from Hudsonia* 31(1):4-5.
- Kiviat, E. 2016. Shrubland for northeastern biodiversity: A critique of the young forest initiative. *News from Hudsonia* 30(2):1-3, 6.
- Kiviat, E. 2016. Long distance impacts of cheap gas. *News from Hudsonia* 30(1):1-1-3, 10.
- Kiviat, E. 2016. Two urban gems under threat. *News from Hudsonia* 30(1):4-5, 9.
- Kiviat, E. No date. Conservation of urban biodiversity. *Hudsonia*. Large format tri-fold color brochure.
- Kiviat, E. No date. Amphibians and reptiles of the Hudson River estuary. *Hudsonia*. Large format tri-fold color brochure.
- Kiviat, E. 2015. In the pipeline: Biodiversity and gas transmission. *News from Hudsonia* 29(1):1-3, 8-10.
- Kiviat, E. No date. Beautiful wildflowers of the Hudson River estuary. *Hudsonia*. Large format tri-fold color brochure.
- Kiviat, E. 2014. Field stations, research, and the magic well of nature. *News from Hudsonia* 28(2):1-3, 8-9.
- Kiviat, E. 2014. Three years, two cows, and twenty-five bog turtles. *News from Hudsonia* 27(2):4-5.
- Kiviat, E. 2014. Alice in Meadowlands. *News from Hudsonia* 27(2):6-8.
- Kiviat, E., G. Stevens & P. Harwood. 2014. Irreplaceable archives: The scientific legacy of herbaria. *News from Hudsonia* 27(2):4-5.
- Kiviat, E. 2012. Urban biodiversity is not an oxymoron. *News from Hudsonia* 26(1):4-5.
- Kiviat, E. & K. Schneller-McDonald. 2011. Fracking and biodiversity: Unaddressed issues in the New York debate. *News from Hudsonia* 25(1-2):1-3, 8-10.
- Johnson, L. & E. Kiviat. 2010. Kestrels and centipedes: A biodiversity handbook for New York City. *News from Hudsonia* 24(2):4-6.
- Kiviat, E. 2009. Non-target impacts of herbicides. *News from Hudsonia* 23(1):1-3.
- Kiviat, E. 2008. Spreading (water-)chestnut revisited. *News from Hudsonia* 22(2):4-5.
- Hartwig, T., G. Stevens, E. Kiviat & K. Munger. 2006. The Blanding's turtle. New York State Office of Parks, Recreation and Historic Preservation, New York State Department of Environmental Conservation, and *Hudsonia* Ltd. Tri-fold color brochure.
- Kiviat, E. 2005, 2007. What does reed (*Phragmites*) ecology tell us about reed management? Parts 1-2. *News from Hudsonia* 20(1), 21(1).
- Kiviat, E. & K. MacDonald. 2006. The Hackensack Meadowlands, a metropolitan wildlife refuge. Meadowlands Conservation Trust, Lyndhurst, New Jersey. 41 p.
- Kiviat, E. 2004. Who lives with you? P. 44, 47 in J. Purinton, ed. *Voices of the Land*. Chelsea Green Publishing Co., White River Junction, VT.
- Hartwig, T. & E. Kiviat. 2003. A second look at invasives. *Volunteer Monitor* 15(2):13-15.
- Kiviat, E. 2003. Have you hugged a taxonomist today? *News from Hudsonia* 18(2):4, 6.
- Kiviat, E. & G. Stevens. 2003. Environmental deterioration of the outwash plains: Necropsy of a landscape. *News from Hudsonia* 18(1):1, 4-5.
- Kiviat, E. & R.E. Schmidt. 2002. A biodiversity anecdote [clam-shrimp]. *News from Hudsonia* 17(2):6.
- Kiviat, E. 2002. A different kind of invasive plant project. *News from Hudsonia* 17(1):4-5.

- Kiviat, E. 2001. "Far from the madding crowd's ignoble strife" [purple loosestrife]. *News from Hudsonia* 16(2):5-6.
- Kiviat, E. 2001. Estuarine reptiles and amphibians revisited. *News from Hudsonia* 16(1):4-5.
- Kiviat, E. 2001. Mountain ecology. P. 27-32 in D.D. Chazin, ed. *New York Walk Book*. 7th edition. New York - New Jersey Trail Conference, Mahwah, NJ.
- Munger, K. & E. Kiviat. 2001. The Blanding's turtle. New York State Office of Parks, Recreation and Historic Preservation, Albany. 8 p.
- Kiviat, E. 2000. Why natural history is serious science. *News from Hudsonia* 15(2-3):1-3.
- Kiviat, E. 2000. "Humans alter where the wild live." P. 121 in *The Hudson Valley; Our Heritage, Our Future*. Poughkeepsie Journal, Poughkeepsie, New York.
- Heady, L. & E. Kiviat. 2000. Grass carp and aquatic weeds: Treating the symptom instead of the cause. *News from Hudsonia* 15(1):1-3.
- Kiviat, E. 1999. Loosestrife: Purple peril or purple prose? *News from Hudsonia* 14(2):1-3.
- Kiviat, E. 1998. Mountain ecology. P. 29-34 in J. Daniels, ed. *New York Walk Book*. 6th edition. New York - New Jersey Trail Conference, New York, NY.
- Kiviat, E. 1997. Errington, Paul L(ester). P. 254-256 in K. Sterling, et al., eds. *Biographical Dictionary of American and Canadian Naturalists and Environmentalists*. Greenwood Press, Westport, CT.
- Kiviat, E. 1997-98. Where are the reptiles and amphibians of the Hudson River? Parts 1-2. *News from Hudsonia* 12(2-3):1, 3-5; 13(3):1-7.
- Kiviat, E. 1997. Carbon cycling in the Hudson River. *News from Hudsonia* 12(2-3):1, 6-7.
- Kiviat, E. 1995. Tangled locks: The purple loosestrife invasion and biological diversity. *Annandale (Bard College)* 134(5):34-39.
- Kiviat, E. 1995. Nearshore environments of the Hudson River: The state of our knowledge of the shallows, wetlands, and shorelines. *News from Hudsonia* 11(2):1-6.
- Kiviat, E. 1995. Marine mammals in the Hudson River estuary. *Tidal Exchange* 5(1):5, 10.
- Kiviat, E. 1994. Muskrat: Manager of the marsh. *News from Hudsonia* 10(3):1-3.
- Kiviat, E. 1994. Reed, sometimes a weed. *News from Hudsonia* 10(3):4-6.
- Kiviat, E. & T. Hartwig. 1994. Marine mammals in the Hudson River. *News from Hudsonia* 10(2):1-5.
- Kiviat, E. 1994. Mosquito ecology, and management of mosquitoes and people. *News from Hudsonia* 10(1):1-6.
- Kiviat, E. 1993. A tale of two turtles; Conservation of the Blanding's turtle and bog turtle. *News from Hudsonia* 9(3):1-6.
- Kiviat, E., G. Stevens & S. Barbour. 1993. Blossoms and clay: Landfill siting, wetlands, and biodiversity. *News from Hudsonia* 9(2):1-7.
- Kiviat, E. 1993. Under the spreading water-chestnut. *News from Hudsonia* 9(1):1-6.
- Stevens, G. & E. Kiviat. 1992. Ecological impacts of mining. *News from Hudsonia* (March):1-6 and *UpRiver/DownRiver* (spring):23-28.
- Kiviat, E. & G. Stevens. 1991. Regulation and loss of Hudson Valley wetlands. *News from Hudsonia* (November):1-6 and *UpRiver/DownRiver* (Nov.-Dec.):54-59.
- Kiviat, E. 1991. Ecology of Bard lands. Revised ed. Bard College, Annandale, NY. 40 p.
- Kiviat, E. 1991. How biologists assess special resources: All about Eve's Point. *News from Hudsonia* (July):1-6 and *UpRiver/DownRiver* (July-Aug.):48-53.
- Kiviat, E. 1991. The Shawangunk Kill, a Hudson Valley natural area. *News from Hudsonia* (March):1-6 and *UpRiver/DownRiver* (March-Apr.):46-51.
- Kiviat, E. 1990. Golden opportunity: Biological diversity in the Hudson. *News from Hudsonia* (October):1-6 and *UpRiver/DownRiver* (Nov.-Dec.):31-36.
- Kiviat, E. 1990. Reflections on Hudson River shorefront development. *News from Hudsonia* (April):1-6.
- Kiviat, E., R.E. Schmidt & J.S. Tashiro. 1988. Epibenthic life in the Hudson River. *News from Hudsonia* (March):1-2, 5-6.

- Kiviat, E. 1987. Mills and minnows; A walk down the Saw Kill. Bard College, Annandale, NY. 22 p. (Nature trail.)
- Kiviat, E. 1987. Iona Island Marsh; A Hudson River National Estuarine Sanctuary & Research Reserve. Hudson River Sloop Clearwater and Hudson River National Estuarine Research Reserve. (Brochure.)
- Kiviat, E. 1985. Vegetation. P. 101-122, 187 in H. Thomas, ed. Dutchess County, New York Natural Resources. Dutchess County Department of Planning, Poughkeepsie, NY.
- Kiviat, E. 1985. Wildlife. P. 123-144 in H. Thomas, ed. Dutchess County, New York Natural Resources. Dutchess County Department of Planning, Poughkeepsie, NY.
- Kiviat, E. 1984. Vegetation of Dutchess County, New York. Hudson Valley Regional Review 1(2):144-173.
- Kiviat, E. 1984. Landmarks and landscape: the ecology of site works. P. 61-66 in L. Weintraub, ed. Land Marks; New Site Proposals by Twenty-two Original Pioneers of Environmental Art. Bard College Center, Annandale-on-Hudson, NY. (Exhibition catalog.)
- Roberts, R., J. Stapleton, J. Morreale, E. Kiviat & M. Rosenthal. 1984. Feasibility of utilizing apple processing wastes. International Bio-Energy Directory and Handbook - 1984:315.
- Stapleton, J., J. Morreale & E. Kiviat. 1984. No landfill space for apple waste; When a New York town refused to accept pomace at its landfill, a feasibility study explored alternative, economical options. BioCycle 25(3):46-47.
- Kiviat, E. 1983. The river's land; Seeking sanctuary in tidal marshes. Hudson Valley Living 1(1):13-14.
- Kiviat, E. & D. Outlaw. 1983. Dutchess County's bobcats. Hudson Valley Studies (June):28-30.
- Kiviat, E. 1982. Apple pomace characteristics and uses. Hudsonia, Annandale, NY. 28 p.
- Kiviat, E. 1982. Environmental conditions of site. In Nuclear Lake Management Committee. Nuclear Lake, a Resource in Question. Dutchess County Cooperative Extension, Millbrook NY.
- Kiviat, E. & F. Dunwell. 1981. The marshes stand watch. Hudson Valley 10(5):33-37.
- Kiviat, E. 1980-81. Profile of the Hudson. Hudson Valley 9(8):39, 9(9):24-28, 9(11):28-31, 9(12):39-41.
- Kiviat, E. 1980. Low tides and turtle trails. Hudson Valley 9(5):27-29.
- Kiviat, E. 1979. Cattail marshes, birds, good water and people. Dutchess Life 3(8):13.
- Kiviat, E. 1978. ...and the wildlands. Conservationist 32(6):26. (Photo essay.)
- Kiviat, E. 1977. Reptiles and amphibians of the Hudson estuary. North River Navigator (Hudson River Sloop Clearwater) 8(9):4-5.
- Kiviat, E. 1976. Directory of Hudson estuary marsh people and literature. Currents (Hudson River Environmental Society), (Oct.):1-8.
- Kiviat, E. 1976. Listening to the cry of the wilderness. Hudson Valley 4(9):8-11.
- Kiviat, E. 1973. Down along the cove. Bard Review (spring):21-23.

Exhibit D

Full Text of All Public Comments

From: Petronella, John W (DEC) <john.petronella@dec.ny.gov>
Sent: Monday, November 7, 2022 8:46 AM
To: George Reskakis
Subject: RE: Red Wing

Good morning George,

Yes. All comments received during the DEIS/Application public comment period will be reviewed and addressed.

Regards,

John

John W. Petronella
Regional Permit Administrator, Division of Environmental Permits
New York State Department of Environmental Conservation
21 South Putt Corners Rd, New Paltz, NY 12561
P: (845) 256-3041 | F: (845) 256-4659 | john.petronella@dec.ny.gov

From: George Reskakis <gdr124@aol.com>
Sent: Sunday, November 6, 2022 8:28 AM
To: Petronella, John W (DEC) <john.petronella@dec.ny.gov>
Subject: Re: Red Wing

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I see. Thank you.

The table of contents for the text does not coincide with the actual pages and text. Will that be addressed?

George D. Reskakis DDS

On Nov 4, 2022, at 1:29 PM, Petronella, John W (DEC) <john.petronella@dec.ny.gov> wrote:

You're welcome.
The applications were originally received in May 2008.

John

John W. Petronella

Regional Permit Administrator, Division of Environmental Permits
New York State Department of Environmental Conservation
21 South Putt Corners Rd, New Paltz, NY 12561
P: (845) 256-3041 | F: (845) 256-4659 | john.petronella@dec.ny.gov

From: George Reskakis <gdr124@aol.com>
Sent: Friday, November 4, 2022 1:25 PM
To: Petronella, John W (DEC) <john.petronella@dec.ny.gov>
Subject: Re: Red Wing

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Ok thank you.

May I ask, how many years was this application in the works? Some of the data is very, very old.

George D. Reskakis DDS

On Nov 4, 2022, at 11:16 AM, Petronella, John W (DEC) <john.petronella@dec.ny.gov> wrote:

Good morning George,

Yes, the applications have been deemed complete and the DEIS accepted for public review.

The DEIS (which contains the DEC applications) can be found at the following link:
<https://www.redwing-rhinebeckdeis.com/>

Regards,

John

John W. Petronella
Regional Permit Administrator, Division of Environmental Permits
New York State Department of Environmental Conservation
21 South Putt Corners Rd, New Paltz, NY 12561
P: (845) 256-3041 | F: (845) 256-4659 | john.petronella@dec.ny.gov

From: George Reskakis <gdr124@aol.com>
Sent: Friday, November 4, 2022 11:15 AM
To: Petronella, John W (DEC) <john.petronella@dec.ny.gov>
Subject: Red Wing

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Good morning Mr Petronella-

I understand that the application by Red Wing has been deemed complete- I saw a DEIS dated Feb 2022 but now believe there is a more current one. Please send me a link to it.

George D. Reskakis DDS
103 White Schoolhouse Road
Rhinebeck

Dear Mr. Petronella,

I just wanted to contribute some information to you regarding my stance on the Red Wing Mining on White Schoolhouse Road in Rhinebeck. Having lived on that road for 28 years it has been to my great enjoyment that I was able to walk the road with my dog and enjoy the serenity of a truly beautiful area of Rhinebeck. The concept of large trucks on this road back and forth on multi day runs is totally anathema to me. The proposed exit on to Slate Quarry Road by these large trucks is a nightmare unto itself. The point at which such huge trucks would be exiting is unthinkable. There are many accidents at that juncture from White Schoolhouse on to Slate Quarry right now. I can only imagine how many more there will be when these trucks attempt to make a turn onto Slate Quarry.

This is a peaceful road presently. It would not be that way for long with Red Wing's trucks flying up and down White Schoolhouse. The rural character on this road as well as Rhinebeck itself would be changed forever. Rhinebeck has been selected as one of the 55 most beautiful small towns in America. This would no longer be the case. Property and home values on this road would change dramatically and not for the better.

Natural resources on and near the Red Wing mine have been identified as insignificant which perplexes me. The water resources, ecological resources, air quality, geological resources, cultural resources, sound levels, visual traffic and dust are all aspects of this proposed mining.

None of this is good. There are also major concerns about the road itself which can not stand up to the proposed heavy traffic on a road with various culverts. In essence this whole proposal is not a good fit for White Schoolhouse road nor Rhinebeck in general and would change the character of Rhinebeck forever.

Sincerely,

Town of Rhinebeck Councilperson,

Ed Roberts

From: Brennan Kearney <kearneybrennan@me.com>
Sent: Thursday, November 17, 2022 2:28 PM
To: Petronella, John W (DEC)
Subject: Public Comment Red Wing White Schoolhouse Road Mine White Schoolhouse Road, Rhinebeck, New York 12572

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Red Wing White Schoolhouse Road Mine
White Schoolhouse Road, Rhinebeck, New York 12572

Public Comment

I am writing as the County Legislator for District 11 in Dutchess County, representing the Towns of Clinton and Rhinebeck, NY. I am submitting my comments in writing as I have had trouble accessing the Public Comment period on WebEx.

I want to strongly remind the commission that there are several reasons I **completely oppose** the expansion of the Red Wing Mine on behalf of my constituents in the Towns of Clinton and Rhinebeck, as well as other residents of Dutchess County. It is beyond the comprehension of THIS elected official, that the DEC is supportive of increased disruption of an environmentally sensitive natural area – located in an aquafer zone.

Additionally, in the years I have had the honor of serving the two communities poised to be most affected by the expansion of the mine, the NUMBER ONE concern constituents have brought to me is the dangerous nature of the very roads that will be impacted by a mine expansion.

As you are aware a study by the Dutchess County Department of Public Works, found that the traffic study presented by the mine does not adequately address two primary concerns related to increased truck traffic.

Most significantly, the CR 19 (Slate Quarry Rd)-Rhinebeck Safety Assessment (2014) recognized how dangerous CR 19 - Slate Quarry Road is from White Schoolhouse Road to Route 9G. Some of changes that were made as a result of this assessment have been good improvements to safety of the road; however, I foresee that heavy vehicle traffic from the mine will overwhelm any gains to safety that have been made. The latest estimate I have seen from a Draft 2017 Environmental Impact Statement (EIS) estimates up to 50 truck trips (50 trips in and 50 trips out) per day. This does not seem like a safe or reasonable addition to the expected road traffic, particularly at peak traffic hours in the morning and evening.

According to their 2017 Draft EIS, Red Wing intends to send most of its trucks from White Schoolhouse to Slate Quarry to Route 9G when it starts production:
Trucks exiting the site will turn right at the proposed entrance onto White School House Road and travel south about 1.1 miles (1.2 miles from the alternative entrance road) to Slate Quarry Road, passing about 15 homes. Most trucks will turn right at this intersection and head west about 1.1 miles (passing about 17 homes) to NYS Route 9G where they will proceed north or south to their destinations. That route covers the whole area that the safety

assessment addressed, and in particular, the dangerous and difficult intersections at 1)White Schoolhouse and Slate Quarry and 2)Slate Quarry and 9G.

Additionally, the Truck interaction on White Schoolhouse Road - White Schoolhouse Road is an unmarked local road with significant horizontal and vertical curvature. The traffic study describes it as 22 feet wide, but the April 2019 Pavement Evaluation completed for the Town found that the road width varies and is at times less than 20 feet.

That narrow width on a winding road makes any truck traffic a challenge, but particularly concerning is what happens when two trucks (or a truck and a school bus) must pass each other.

I implore you to please not allow the project to move forward, as I fear for the safety of our residents and the preservation of our precious natural environment. Thank you.

Brennan Kearney

Dutchess County legislator, District 11
Clinton and Rhinebeck NY

646-773-1905

From: Petronella, John W (DEC) <john.petronella@dec.ny.gov>
Sent: Friday, November 18, 2022 11:04 AM
To: espinzia@rhinebeckny.gov
Cc: townclerk@rhinebeckny.gov
Subject: RE: Red wing public hearing

Hello Elizabeth,

As soon as I receive transcripts from both sessions I will forward on to you.

Have a great weekend.

John

From: Elizabeth Spinzia <ESpinzia@rhinebeckny.gov>
Sent: Friday, November 18, 2022 11:03 AM
To: Petronella, John W (DEC) <john.petronella@dec.ny.gov>
Cc: townclerk@rhinebeckny.gov
Subject: Red wing public hearing

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Hi John,
If there is a transcript of last nights meeting could you please forward it to me?
Thank you,
Elizabeth

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From: Paula Wolf Trimble <pwtrimble@frontiernet.net>
Sent: Friday, November 18, 2022 11:00 PM
To: Petronella, John W (DEC)
Subject: Re: RW mine expansion public hearing

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Thank you, this is much appreciated.
Paula

On 11/18/2022 5:11 PM, Petronella, John W (DEC) wrote:

> Hello Paula,
> I do not yet have the transcript from the 2 hearing sessions. As soon as I receive, I will provide you with a copy.
> Have a great weekend.
>
> John
>
> -----Original Message-----
> From: Paula Wolf Trimble <pwtrimble@frontiernet.net>
> Sent: Friday, November 18, 2022 5:09 PM
> To: Petronella, John W (DEC) <john.petronella@dec.ny.gov>
> Subject: RW mine expansion public hearing
>
> ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.
>
>
> Hi John,
>
> Is the recording of the Webex Webinar for the Red Wing mine expansion available for viewing?
> Several people who missed one or more of the sessions are asking about this.
>
> Thank you,
> Paula Trimble
> --

From: JoAnne Lobotsky <jlobotsky@gmail.com>
Sent: Monday, November 28, 2022 9:48 AM
To: Petronella, John W (DEC)
Cc: Stephen Brady
Subject: Red Wing quarry expansion proposal - Comments
Attachments: Hudsonia Report to Town of Rhinebeck 2007.pdf

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The proposed Red Wing quarry expansion on White Schoolhouse Road is simply too close to a settled area. The nearby population will have to endure the increased dangerous traffic, dust, noise and up to a permanent 30% loss in property values (which is already being felt), in addition, of course, to the significant environmental damage. White Schoolhouse Road is a small narrow rural road that cannot support 50 quarry trucks a day in addition to the regular traffic. And there is no way to verify, regulate or trust their stated plans of removal - there could be many more than 50. It's simply too much even as proposed! It would be very dangerous to other drivers and walkers. Could a car going the opposite direction even stay on the road, or would they have to pull over when a large trailer dump truck goes by? This road and Slate Quarry Road have blind hills and curves that make having these vehicles on that road very dangerous. There will no doubt be an increase in accidents and potentially serious injuries and deaths. One curved hill on Slate Quarry Road on the way to Rte 9G has already proved to be particularly deadly due to traffic accidents with just normal sized vehicles. Also, in the Red Wing Properties proposal, the traffic information is adapted from a letter report that is fifteen years old - the May 24, 2007 letter report by Creighton Manning Engineering. How does 2007 traffic compare with the amount of traffic today? We believe the traffic has, without question, increased, as all traffic in Rhinebeck has increased - particularly on Slate Quarry Road which leads to the Taconic Parkway.

Aside from the dangerous traffic, three key major hazards due to mining for neighbors are dust, vibration and noise. Dust is present in all quarrying and opencast mining operations. While it is often considered to be more of an environmental issue, dust is a potential health risk and it is the nature of the dust that determines the associated risk. People who live in close proximity to quarry sites report exposure to dust at home, land destruction, plant leaves covered with dust, and an inability to grow crops. Significantly

higher eye and nasal allergy, eye soreness, and dryness, chest tightness, and chronic cough are reported. And blasting? That will have some pretty negative effects on the neighbors' quality of life. Especially since Redwing will only decide to blast on the day of the blasting. A settled area is not an area to have a quarry. And **how long is this quarry going to be in operation** - 20 years? 30 years? We may have missed this detail in their proposal, but this is a "life sentence" to impose on the neighborhood and environment - a generational time span affecting quality of life (noise, dust, etc), dangerous and frequent large vehicles, the environment, and potentially health.

Mining and quarrying can be very destructive to the environment. Some typical hazards of quarrying: visual intrusion, damage to landscapes, traffic, smoke, noise, dust, loss of land, and a deterioration in water quality. They have a direct impact on the countryside by leaving pits and heaps of waste material. The extraction processes can also contaminate air and water with sulfur dioxide and other pollutants, putting wildlife and local populations at risk. Excessive use of aggregates depletes natural resources, and inconsiderate quarrying and mining activities to extract these materials could lead to environmental issues such as damage to landscapes, disruption of the ecosystem, and contamination of water, soil, and air.

Most importantly: mining, especially large scale industrial mining like this, is never a good thing for the environment. The Town of Rhinebeck has an unusually high diversity of ecologically significant habitats, including many known to support rare or vulnerable species in the town or in the region (see the Hudsonia Report to the Town of Rhinebeck and the Dyson Foundation of 2007 attached). Quoting from the Daily Freeman article about Red Wing's proposed plan "Rhinebeck seeks review of mining property impact on turtle habitat" dated December 15, 2020 at 10:52 a.m. and Updated: July 21, 2021 at 4:59 a.m: "The Blanding's turtle is a New York state threatened species with only a few isolated populations found in this area of Dutchess County," state officials wrote. **"These turtles and their habitat are located within the Mining overlay District and on the lands upon which new mining activities are proposed."** The state report issued on April 9, 2014, added that "it is clear that the Blanding's turtles are using the areas between two (state designated) wetland complexes for seasonal migration and most likely nesting." Why would this proposal be approved?

The Town has the opportunity to protect the integrity of its remaining biological resources for the long term. Protection of these Ecologically Significant Habitats is vital and sets Rhinebeck apart from the industrial growth of the region. **Protection of our unique environment should be an all-out effort extending all the way to the Federal level and through all courts if necessary.**

I hope you will do everything in your power to deny this unacceptable expansion threat.

Sincerely,

Joanne Lobotsky and Stephen Brady, landowners and investors directly impacted by even the possibility of the quarry expansion.

From: George Reskakis <gdr124@aol.com>
Sent: Monday, December 19, 2022 12:41 PM
To: Petronella, John W (DEC)
Subject: Response to DEIS

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Hi Mr Petronella- I hope this finds you well. In addition to my letter I have begun a petition for individuals who are similarly opposed to the expansion of gravel mining in Rhinebeck. This is the URL as you can see- I have 95 signatures and counting- I hope this can add additional influence in your decision.

<https://sign.moveon.org/petitions/no-expanded-gravel-mining-in-rhinebeck>

George D Reskakis DDS

From: Sara-Jane Hardman <sarajanehardman@icloud.com>
Sent: Friday, December 2, 2022 9:10 AM
To: Petronella, John W (DEC)
Subject: Red Wing mine expansion

[You don't often get email from sarajanehardman@icloud.com. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

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Dear Mr. Petronella,

One decision can make consequential changes that can never be altered.

An expansion of a small mine on White Schoolhouse Rd. will alter Rhinebeck, this jewel in the Hudson Valley, and its essence will forever be lost. I will leave it to others to describe in detail the loss to the residents, the small business owners, the eagles, the turtles, the tourists, the tax payers and the infrastructure. Are their needs and concerns of less importance than those of large industry? We certainly hope not. Thank you!

Sara-Jane Hardman

Peter Hardman

235 White Schoolhouse Rd.

Rhinebeck, NY 12572

From: hope11510@aol.com
Sent: Friday, December 2, 2022 9:11 AM
To: Petronella, John W (DEC)
Subject: Fwd: Proposed expansion of mine in Rhinebeck

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John - Thank you for your swift response and your consideration! Please let me know if you need any additional information. (I also drive to work at 10 AM Mon - Thursday and am knowledgeable about the impact of huge trucks on Slate Quarry Road and 9G and how they drive aggressively and intimate smaller vehicles.) -Hope

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

From: Petronella, John W (DEC) <john.petronella@dec.ny.gov>
To: hope11510@aol.com <hope11510@aol.com>
Sent: Fri, Dec 2, 2022 9:05 am
Subject: RE: Proposed expansion of mine in Rhinebeck

Good morning Hope,
Comment received, Thank you.

John

John W. Petronella
Regional Permit Administrator, Division of Environmental Permits
New York State Department of Environmental Conservation
21 South Putt Corners Rd, New Paltz, NY 12561
P: (845) 256-3041 | F: (845) 256-4659 | john.petronella@dec.ny.gov

From: Hope Laplante <hope11510@aol.com>
Sent: Friday, December 2, 2022 9:01 AM
To: Petronella, John W (DEC) <john.petronella@dec.ny.gov>
Subject: Proposed expansion of mine in Rhinebeck

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December 2, 2022

Mr. Petronella,

The mine expansion that is being proposed is a dangerous proposition. I live close to the mine and walk almost every morning down White School House Road, a narrow, winding country road. The road is already in disrepair with potholes

and cracks and huge trucks going back and forth would damage the roads even more. Furthermore, it is already dangerous to walk as cars and trucks are prone to speed and the curves make it difficult to see around the bend where joggers, bikers and dog walkers are.

In the spring, turtles cross the road and of course would be no match against a huge truck. I have been informed that eagles and hawks nest in close proximity to the mine as well.

I urge you to acknowledge the danger to pedestrians and wildlife alike that this mine poses and will stop their planned expansion from proceeding.

Thank you for your attention.

Sincerely,

Hope LaPlante, LCSWR, CASAC
44 Cedar Lane, Rhinebeck, NY

From: Michael Trimble <pmtrimb@frontiernet.net>
Sent: Wednesday, December 7, 2022 3:15 PM
To: Petronella, John W (DEC)
Subject: Comments on Red Wing DEIS for mine expansion
Attachments: SUP125-68FFITP.odt; Red Wing TWT-TWC Resolution.pdf

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Hi John,

Attached are my written comments on Red Wing's DEIS that was the subject of the Legislative Hearing last month. I am also attaching the resolution the Boards of both the Wetland Trust and the Wetland Conservancy adopted as their conditions for entering into an easement to protect the 72.34 acre conservation area that I believe DEC has required Red Wing to establish. If you have any questions for me, please get in touch. Thanks.

Michael Trimble

December 7, 2022

To: John Petronella

NYSDEC Division of Environmental Permits

21 South Putt Corners Road

New Paltz, New York 12561

Re: Comments on Red Wing's DEIS in support of their mine expansion application before DEC.

Request to suspend consideration of Red Wing's DEIS until all conditions for the ITP are met.

Our Town of Rhinebeck's Comp. Plan, zoning law, wetland law, subdivision regulations and LWRP all prioritize the importance of and the Town's commitment to the preservation of the Town's irreplaceable natural resources. We require habitat assessments when a project that comes before the Planning Board could have negative impacts on the survival of the variety of native species of plants and animals that are found throughout our Town. The Planning Board has the authority to place conditions on applications that will mitigate those impacts to the greatest extent practicable, conditions that must be met before an application can be approved.

The Planning Board was reviewing applications from Red Wing seeking approval for Special Use Permit (SUP) 125-68.FF, *Extractive operations and soil mining*, along with an application for site plan approval to mine their existing, permitted mine, on White Schoolhouse Road. The review process has been put on hold by the applicant. I am submitting these comments in response to Red Wing's application to DEC to expand their current mine to 94 acres. It should be noted that DEC's decision to approve an **Incidental Take Permit (ITP)** and a five acre expansion of the current mine to permit access to the mine from White Schoolhouse Road were done as unlisted actions under SEQRA, while the expansion application now before DEC was classified by DEC as a Type 1 action under SEQRA. The approval of both the ITP and the five acre mine expansion are viewed by many of us as an instance of SEQRA segmentation given the Type 1 classification given to the 94 acre mine expansion now under DEC's review. Both the ITP and the five acre expansion are necessary components of the 94 acre expansion as without them, Red Wing would have no access to their mine.

Our Planning Board recognizes the potential negative impacts approval of the applications for SUP 125-68.FF and site plan could have upon this multi-faceted wetland habitat and its resident community of Blanding's turtles that the DEC has designated as being a threatened species. Its sits atop an expansive aquifer and headwaters for one of our Town's major streams, the Landsman Kill. Effective measures to mitigate the potential negative impacts of placing a mining haul road through the heart of the turtle's home range must be identified and included as conditions of approval for Red Wing's applications before both the Town's Planning Board and DEC. After approving both the ITP and five acre mine expansion, I believe DEC has failed to enforce the conditions for approval specified in the ITP, and as a result the intended **Net Conservation Benefit (NCB)** for the Blanding's turtles will not be met.

In their recognition of the potential negative impacts this haul road could have upon the turtle's survival, DEC required Red Wing to apply for an **Incidental Take Permit (ITP)**. An ITP acknowledges that some of the turtles are likely to be killed as a result of the proposed mining project going forward. An ITP is only supposed to be approved by DEC if mitigation measures are identified and implemented that in DEC's opinion will minimize the loss of adult and juvenile turtles to a level that DEC believes will establish a **Net Conservation Benefit (NCB)** for the turtles' long term survival on the mining site. In other words, with regard to Red Wing's application to mine, in approving the ITP, DEC believes that *if* the conditions for approval of the ITP, conditions detailed in the **Blanding's Turtle Mitigation Plan for the Planned Access Road** found in Red Wing's submissions to both the Planning Board and DEC, and referenced in the ITP, are diligently carried out, the result will mitigate the potential negative impacts of the mining haul road and will actually create a **Net Conservation Benefit** for the turtles. While this conclusion has been disputed by others, it is DEC's position and the ITP has been issued.

A key component of the ITP successfully securing a NCB for the Blanding's turtles is the requirement, as a condition for DEC's approval of the ITP, that Red Wing grant a conservation easement (CE) on portions of their property on White Schoolhouse Road that are most critical to the turtle's survival. In a letter from John Petronella, the Regional Permit Administrator for DEC's Region 3, dated February 25, 2021, issued in response to comments from both the Town government and Rhinebeck citizens critical of the ITP's approval, he states: "The establishment of a conservation easement that protects those portions of a site known to be used by turtles is a well-established legal mechanism to add additional protection from activities that would impact the species and its habitats. *The use of an easement also enables the involvement of a legally-vested third party NGO which can help ensure compliance with the terms of the easement.*"

In issuing the ITP which took effect on February 25, 2021, DEC included this condition as a part of the ITP: *"to offset impact to occupied habitat, a conservation easement held by a third party will be executed on 72.34 acres of the larger 241 acre parcel."* Under the section of the issued ITP labeled "Natural Resource Permit Conditions", condition #9, "Conservation Easement Filing" states: *"Notification of filing of the Conservation Easement is required within 90 days of permit issuance."* According to the date on the conservation easement Red Wing filed with the Dutchess County Clerk's office, the date of filing is October 26, 2021, more than 90 days after the ITP was issued. Their filing also lists the conservation area as consisting of the entire 231 acres of their White Schoolhouse property.

The Conservation Easement signed on October 26, 2021, is between Red Wing and the **Wetland Conservancy (TWC)**. The Wetland Conservancy is a NGO that normally holds conservation easements only for lands owned by its affiliated organization, **the Wetland Trust (TWT)**. I have included with my comments a resolution adopted by the Boards of both the Wetland Trust and the Wetland Conservancy. This resolution lays out the conditions under which TWC will hold a conservation easement (CE) on the 72.34 acre portion of Red Wing's property to be set aside as a condition of the ITP, *one condition being that the 72.34 acre portion of Red Wing's property (the Conservation Property) is transferred to TWT.*

The resolution adopted by the Boards of TWT and TWC contains two phases negotiated with Red Wing. Phase One states: *"Red Wing will survey out and transfer, fee-simple, the area outlined in green.*

(This area is outlined in the map attached to the TWT/TWC resolution.) There are two parcels, one above and one below the access road shown in pink.” The resolution goes on to state: “The Wetland Conservancy, Inc. will hold a conservation easement that covers the portion of the property as directed by NYSDEC. The CE runs for 10 years. The concept will be for TWT and TWC to work together to ensure the CE is adequately enforced. The entirety of the CE is within the area outlined for transfer to TWT in the first phase.” *It is important to realize that the CE referred to in the resolution would be between TWC and TWT, not Red Wing.* At this time, I do not know why Mr. Curatolo signed a conservation easement that had not been approved by his Boards of Directors.

The intent to transfer the Conservation Property from Red Wing to the Wetland Trust was discussed in emails dated October 6, 2021 and January 28, 2022, between Kevin Bernstein representing Red Wing and Jim Curatolo, representing the Wetland Conservancy. On October 6, 2021, Mr. Bernstein states that after execution (of the CE), a surveyor will be hired to survey the conservation easement (the Conservation Property) “...so we can move to Project 2, which is the conveyance of the conservation easement lands to the wetland trust.” On January 28, 2022, Mr. Bernstein states that: “this is to confirm that the permanent conservation easement that has been filed is now being surveyed for the purpose of conveying that to you.” While these discussions were taking place, the CE between TWC and Red Wing makes no reference to a property transfer to TWT and instead retains all rights of ownership to Red Wing. It also violates the Boards' adopted resolution stating that the conservation area would be transferred to TWT and TWC would *then* hold a conservation easement on the conservation area. There is no mention in the resolution approved by the TWT and TWC Boards of entering into any conservation easement with Red Wing.

In conversation and emails with both TWT and TWC Board members, I have learned that title to the Conservation Property (the conservation lands) referred to above, has not yet been transferred to the Wetland Trust, which comes as no surprise as the area designated as the Conservation Property has not been subdivided out from Red Wing's 241 acre parcel. To date, no title exists for that portion of the Red Wing property, and there has been no application submitted to the Town Planning Board to carry out the necessary subdivision. However, an email between Mr. Bernstein and TWT, received on February 22, 2022, confirms that Red Wing will transfer the Conservation Property to TWT once the survey of the Conservation Area is complete. Mr. Bernstein also acknowledges that the Conservation Property will have to be subdivided out of Red Wing's 241 acre parcel. On November 15 of this year, I received an email from a Board member for TWT stating: “Things seem to be in a holding pattern, and until things are finalized, TWT will not be onsite.” As TWT *and not* TWC will be responsible for the monitoring of the conservation area to ensure that the conditions of the ITP are being met, *there is currently no third party monitoring of the conservation area as required by the ITP.*

The existing CE between Red Wing and TWC, which would become moot if the Conservation Property is transferred to TWT, offers no opportunity for either TWC or TWT to effectively monitor and ensure that the goals of the **Blanding's Turtle Mitigation Plan for the Planned Access Road** are being met. On page 3 of the CE, under *Reserved Rights of Grantor* (Red Wing), it states: “*With respect to the Conservation Property, Grantor reserves for itself and its heirs, successors, in interest, assigns, devisees, and all others who claim under the Grantor all rights with respect to the Conservation Property, including*

without limitation, the right of exclusive use, possession, and enjoyment of the Conservation Property, and the right to sell, transfer, lease, mortgage or otherwise encumber the Conservation Property, and all other rights granted by law, as owner..."

On page 8, under section 5.3 of the CE, **Inspection**, it states: *"The Grantee (TWC) and its duly authorized representatives shall have the right to enter the Conservation Property at reasonable times, in a reasonable manner, and where practicable, after giving at least fifteen (15) days advance notice to Grantor (Red Wing), to inspect for compliance with the CE."* This limitation placed on the Grantee to freely enter the Conservation Property to inspect to ensure compliance with the objectives of the **Blanding Turtle Mitigation Plan**, along with the wording of the CE which reserves all rights and supervision of the **Blanding's Turtle Mitigation Plan** to Red Wing undercuts any realistic expectation that Mr. Petronella's belief that this CE will enable a third party NGO to help ensure realization of a Net Conservation Benefit for the Blanding's turtles found on the Red Wing property. The Net Conservation Benefit that is the objective of the **Blanding's Turtle Mitigation Plan** which the CE was theoretically intended to ensure cannot be met if the ability to monitor the Conservation Property by a third party NGO is so severely restricted.

The importance of the Conservation Property being transferred to TWT cannot be overstated if a NCB is going to be achieved on the Red Wing mine site. TWT has the experience and expertise needed to both manage and enhance the habitat within the 72.34 acres of the Conservation Property for the benefit of the turtle population found there. This same care will also benefit the many other animal species that inhabit this wetland environment. As owners of the Conservation Property, TWT will be able to enter at will, and conduct the necessary tasks to manage the site without interruption, two things they cannot do under the current Conservation Easement that will expire should the transfer of the Conservation Property to TWT occur.

Therefore, I am asking the DEC to table Red Wing's application to expand their mine to 94 acres until the Conservation Property has been transferred to TWT, as outlined in the terms found in the TWT and TWC adopted resolution of April 30/May 1, 2021. There can be no **Net Conservation Benefit** to the Blanding's turtles at the Red Wing mine site until The Wetland Trust takes possession of the Conservation Property and has the right of ownership to manage that property for the benefit of the resident inhabitants as intended in the issued **ITP**.

Michael Trimble

198 Slate Quarry Road, PO Box 374

Rhinebeck, NY 12572

pmtrimb@frontiernet.net

A Resolution of The Wetland Trust, Inc. and The Wetland Conservancy, Inc.
concerning a 230-acre parcel of land owned by
Red Wing Properties, Inc.
Rhinebeck, NY

Background

In 2018 Jim Curatolo discussed the possibility of land trust ownership of all or part of the Red Wing Mine in Rhinebeck, NY due to Blanding's Turtle presence on the site. Red Wing has since developed a plan to expand the mine and is in the final stages of having a build-out of its property approved by NYSDEC.

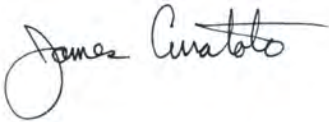
On 29 April 2021 Jim Curatolo spoke with the Red Wing attorney, who, with the concurrence from the owner has developed the following scenario:

1. **Phase One:** Red wing will survey out and transfer, fee-simple, the area outlined in green. There are two parcels, one above and one below the access road shown in pink.
2. **Phase Two:** The remainder of the parcel, which is the mine proper, will be after the end of life of the mine and when the DEC required mine restoration is completed, also transferred fee-simple to The Wetland Trust, Inc.
3. Exceptions in the parcel that will be retained by the owner are the two parcels in orange and most likely the parcel in blue. TWT will suggest that the parcel in blue also be transferred as it a field and could be important nesting habitat and later development into what most likely would be a residence in the middle of the preserve would not be ideal. Regardless, this will not be a "deal breaker" no matter how it transpires.
4. The Wetland Conservancy, Inc. will hold a conservation easement that covers the portion of the property as directed by NYSDEC. The CE ruins for 10 years. The concept will be for TWT and TWC to work together to ensure the CE is adequately enforced. The entirety of the CE is within the area outlined for transfer to TWT in the first phase.
5. The request to Red Wing will be for the aforementioned land transfers described in item 1 and 2 and to include two separate payments:
 - a. A payment to TWC for enforcing the CE, which should be straight forwards considering the owner is TWT. Total cost for the CE and for reporting as required = \$20,000
 - b. A payment to TWT for long-term stewardship that will be invested in TWT's General Stewardship Account to support general stewardship activities = \$25,000

Resolution

The Boards of The Wetland Trust, Inc. and The Wetland Conservancy, Inc. resolve to direct the TWT Executive Director, being a member of both Boards, to enter into negotiations to bring the above approach to a successful conclusion, representing both TWT and TWC for their respective roles for which they will be responsible, and to sign any and all documents necessary for a successful conclusion.

The Wetland Trust, Inc., approved by electronic vote, 30 April 2021, 8-0



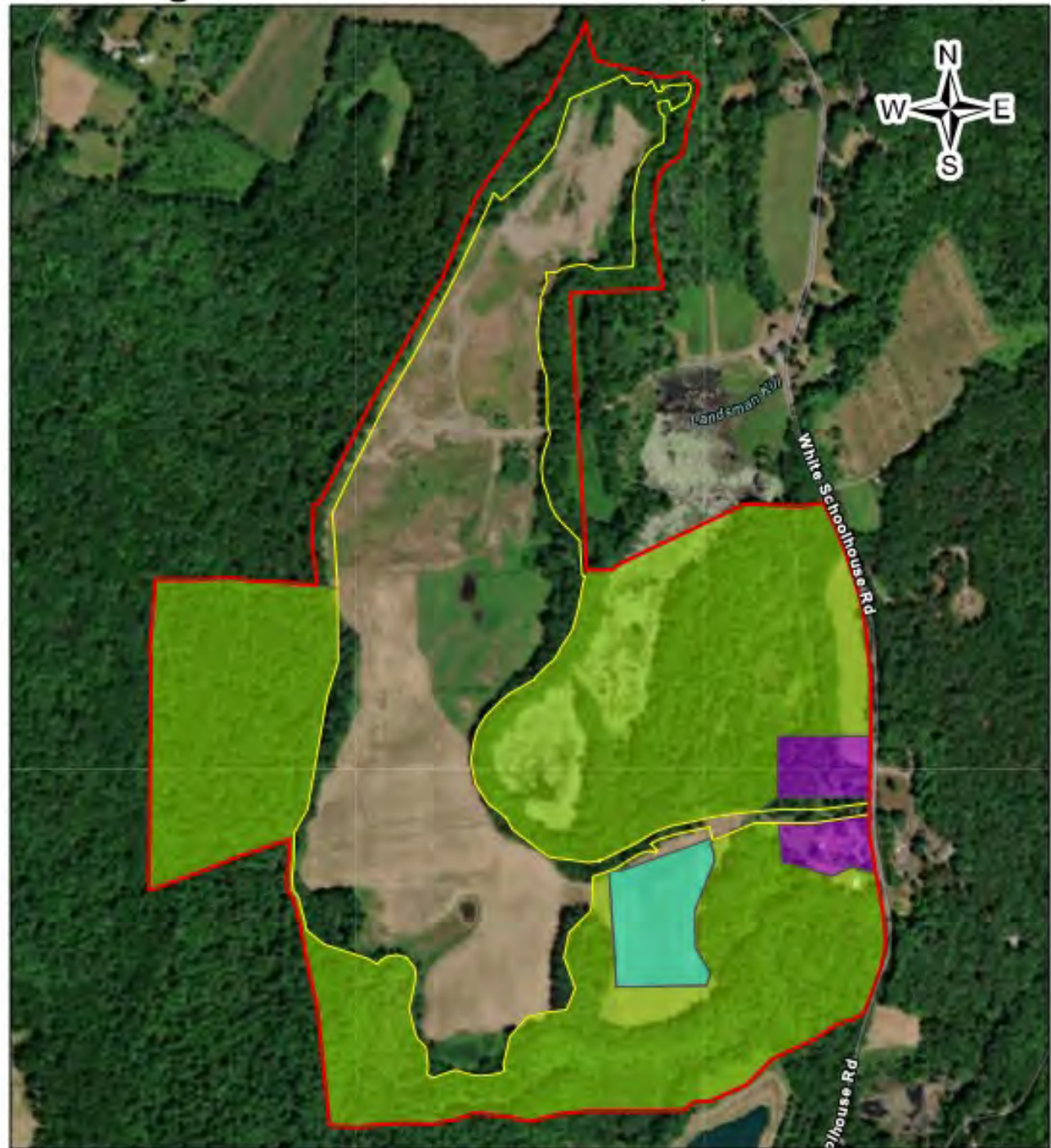
James Curatolo, Executive Director

The Wetland Conservancy, Inc., approved by electronic vote, 1 May, 2021, 6-0



Aaron Ristow, Chair

Red Wing Mine Land Transfer to TWT, Rhinebeck NY



0 250 500 1,000 1,500 2,000 2,500
US Feet

Tax Parcel Boundary

Transfer to TWT After Mine Closed and Reclaimed

2021 Land Transfer to TWT, Includes Entire CE

In CE, Potential to Set Aside for Red Wing

Set Aside for Red Wing



Cartographer: Sasha Raffler
Date: May 2021
Projection: NAD 1983 State Plane New York East

From: l4obo@frontiernet.net
Sent: Wednesday, December 7, 2022 6:21 AM
To: Petronella, John W (DEC)
Subject: Red Wing expansion

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Hello,

My name is Steve Lobotsky, I live at 191 White Schoolhouse Rd . I am writing in opposition to the proposed Red Wing mine expansion. Looking at Red Wings DEIS there seems to be a theme that there will be no significant impacts to the area. We all know that this is far from the truth. There are major concerns with road and traffic safety, the aquifer and water supply, historical buildings and the environment. The DEC's acceptance of RW's DEIS shows a lack of due diligence on the part of the DEC, who is supposed to protect the environment, first and foremost.

We have many questions.

The absolute biggest issue is the Road.

White Schoolhouse Rd.(WSHrd) is a narrow twisty and hilly road with many blind corners and driveways. RW's traffic study states that WSH is 22' wide. Yes, there are spots that are, but this ignores all the spots that are not. We have found numerous spots that are 21', 20' and one spot that is only 19'8". Hardly wide enough for 2 vehicles to pass. We have a picture of a dump truck passing through the narrow spot and there is no room on either side of the truck. We also have a video of a truck that had to back up the HILL in front of our house because a piece of farm equipment was traveling the other way and there was no room for them to pass by each other. Oh, and yes there was a pedestrian car behind the truck backing up. Let us know if you would like to see the video. We have had trucks drive onto our lawn because they met another vehicle on our narrow road. We have witnessed a truck owned by Rich Vonderlieth going north and a Central Hudson truck heading south, they met on the bridge over the Landsman Kill and had to come to a complete stop and inch their way past each other. The bridge is 20' from edge to edge. The north end of WSH Rd. is residential and narrow. The south end has a very dangerous intersection at Slate Quarry Rd. This is not a road that can or should handle the volume of trucks typical of a RW mine. In Red Wings own words at previous Town meetings they have stated, "This will be a regional mine" and " We are the largest sand and gravel supplier in Dutchess County". Their DEIS states a truck every 3 mins. In the course of the day (7-5) that's 200 trucks per day.

There was one summer in the history of mining on WSH Rd. where the levels approached an industrial scale. This was when Rt 308 was being rebuilt, it was unbearable. The dust covered everything we owned. The trucks were relentless and drove like no one else was on the road. Everything we tried to do to mitigate this fell on deaf ears. This will be the daily reality for everyone on WSH Rd. for the next 20 years and beyond. Please tell me again how this will not significantly impact us?

The Town of Rhinebeck has a law on the books that prohibits Dump trailers and triaxles from being used. The Towns Comprehensive Plan also only allows small scale mining, this project is far from that. For the DEC to issue a permit, Red Wing should have to find an alternate route in and out that does not include WSH Rd. Has the DEC asked RW to look into Alternate routes to 9G or 308 ?

Along with outright deadly danger of that much truck traffic we also have the dust, noise and diesel fume pollution. We have a quote that states the following "Exhaust fumes from large vehicles like buses and trucks contain greenhouse gases, particulate matter and many other pollutants that are harmful to human health and the environment". That quote is from 4/28/2022. It will be easy for you to verify this statement seeing as how it is from the DEC's Facebook page. So, you are well aware of the health dangers associated with this mine. We have found numerous studies that support this.

From the Lancet, "long term exposure to particulate matter air pollution has been associated with increased cardiorespiratory mortality in the USA"

From the NIH Library of Medicine, "Review found studies that reported the components of road dust particulates to be associated with multiple health effects on the respiratory and cardiovascular system".

We have found similar studies regarding the health hazards of truck noise.

As someone who is on 4 different medications to control asthma, this will not be good for my health. I am just one family out of 75 on WSH Rd and the adjacent roads. I'm sure I am not the only one with this problem. In fact my 99 year old aunt who lives at the 2nd house in on Hill Top also suffers from asthma.

The aquifer and water supply needs to be addressed. There are numerous springs that surround the area and supply volume to the Landsman Kill. Does anyone in the DEC know where they are? If not, why not? One of these springs is also our water supply. What will happen to that?

Another is just 120' behind their proposed 9-acre lake. It flows west for a half mile before entering the Landsman Kill. For most of its journey it is full of native trout hatchlings. The elevation of the origin of this spring is higher than the mine floor. Once RW opens up the aquifer starting with 9 acres and possibly increasing to over 60+ acres why would that spring continue to flow?

It seems to us that the DEC would be ignoring their own laws for environmental protection.

There is a proposed "spillway" that will enter the large wetland that continues into our property. Will this spillway flood and destroy our property? Is this something that the DEC allows? What will be our recourse?

RW has said that no historical buildings exist or will be affected.

Our farm to the north and east bordering the RW property was first deeded in the mid 1700's. Our house and barn dates to 1790. Previously I mentioned a spot in the road that is just 19'8" wide. At this spot we have a 200-year-old barn that sits just 18" off the road. This barn will be in grave danger. Our farm property encompasses both sides of the road. I cross that road at least 20 times a day either walking, in a truck or a slow-moving tractor. Our grandchildren will be in deadly danger every time they are outside. There is a blind spot where I pull in and out of one of the fields and the farmyard itself is in a tight valley, with hills on both sides with 1/4-mile straight aways leading in. All vehicles pick up speed on these straight aways and then you get to where the road is only 19' 8" and 20' wide. We will be in danger every day all day. Our family has owned our farm for 102 years making it a Centennial Farm. I'm pretty certain that anyone would consider that historical. The dust and noise that that will ensue could very well force us off our historic farm.

Included in the DEIS was an "eagle study". Why was it so heavily redacted? What is being hidden? We have been seeing eagles on the wetland for at least 7 or 8 years. The nest is well established. By law there can be NO activity within 660'. RW's road (built without permission from the town) is well within that barrier. Have they been fined? Have they been told they cannot use that road where it now stands?

I could go on for days, but I will close with 2 quotes from letters written in 2013 for the Observer concerning the RW expansion.

They were residents of Elizaville when RW took over the RoeJan plant.

From Bill Jeffway,

"When RW Sand and Gravel bought what had been a local mine in Milan in 2002, the size and scale of trucking became industrial overnight. County and State officials got involved because the risks (like dump trailers on school bus routes) were so great and RW appeared to be deaf to residents' concerns". (YES WSH Rd is a school bus route)

From Janice Potter

"I had to sell my home of 15 years because the noise, filth and constant dangerous traffic of tractor trailers made life there untenable. Due to its proximity to the mine, the value of my lovely home dropped precipitously. RW rejected all concerns voiced by the local residents to keep our community safe and livable"

By the DEC issuing an expansion permit, you will be doing the same thing to the residents of WSH Rd.

Remember also, and we can't stress this enough, these prior mine problems all happened on County roads, not much smaller town roads. An industrial size mine on a town road is unprecedented that we know of. There are at least 5-6 mines in southern Columbia County all with ingress and egress directly to a State or County highway. A look back at

former large mines in northern Dutchess; Denter, Rock City, Alexander & the Winne mines were the same. To compare the limited mining that happened in Rhinebeck to Red Wing is disingenuous

It is absolute insanity to even consider a RW expansion, let alone the already permitted 9-acre pond site.

The NYSDEC should not be in the business of destroying neighborhoods and the health and safety of those living there.

Thank you

Steven Lobotsky
Patricia Lobotsky

From: l4obo@frontiernet.net
Sent: Wednesday, December 7, 2022 12:16 PM
To: Petronella, John W (DEC)
Subject: Red Wing expansion

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Mr John Petronella,

I am Patricia Lobotsky. I live at 191 White Schoolhouse Rd. Rhinebeck. I have lived here since 1980 with my husband Steven. The Lobotsky family has been at this address for 101 years. We know full well the impact truck traffic will have on our health and safety. So yes, I too strongly oppose the Red Wing expansion.

RW's road study said the road was 22' wide. It seems they forgot to mention how their trucks will get past the areas that are 19, 20 & 21' wide. In front of our house it is 19.8' wide with a 200 year old barn only 18" from the road. We have had many trucks go onto our front yard to keep from having an accident. It seems a more thorough road study needs to be done if RW states the road is 22" wide.

The DEIS mentions a spillway. Where will it be and where will it drain. If it enters the wetland that we share to the north, will this then flood and ruin our property? What will be our recourse? Since the Decker mine stopped in 2013 there has been a tremendous amount of wildlife coming back to the area. A current wildlife and habitat study needs to be done. Other than the Blanding's turtle, that I doubt will know enough to use only the tunnels that were made for them while moving around we now have black bears, fishers, bobcats and bald eagles. The eagle nest has been active for at least 4 years. The DEC was unaware of them until this year. RW's eagle nest study was done by their geologist, not an eagle habitat specialist. In reading the DEC species specific guidance for Endangered and threatened animals it reads "no new building, roadway or utility construction within 660' and yet RW built a road much closer than 660' and plan to do much more. I would hope the DEC would uphold their law.

Not all potential mine sites are viable. Some areas are just too environmentally sensitive and too dangerous to human life. This is one of those cases. The scale of RW's proposed mining is a threat to the rural nature of WSH Rd and the Town of Rhinebeck.

Please let's not use the excuse that there is mining already on WSH Rd. We all know it's apples to oranges. The truck traffic associated with RW will be unbearable. RW themselves have said they will be a regional mine. They have stated and are very proud of the fact that they are the largest sand and gravel supplier in Dutchess County. Their DEIS states a truck every 3 minutes. Yes it will be unbearable and extremely dangerous for the all drivers, bikers, walkers and animals, including the Blanding's turtles that do not stay in their tunnels, on WSH Rd

Also let's not be so naive to think that all of the trucks will head south to Slate Quarry and 9G. Trucks will hammer the entire road.

Knowing all the potential issues and all the red flags associated with this project the DEC should condemn it NOT condone it!

Thank you for your time.

Patricia Lobotsky

From: Andrea Shelton <achoinisky@gmail.com>
Sent: Friday, December 9, 2022 4:01 PM
To: Petronella, John W (DEC)
Subject: Red Wing mining expansion in Rhinebeck NY

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Mr. Petronella,

I was born in Rhinebeck in 1973, and I have maintained a residence there every year since then. I grew up in the village of Rhinebeck near the hospital and 4 years ago moved a mile outside of the village to Route 9G. I need to express my major concerns about the Red Wing mining expansion along White Schoolhouse Road in Rhinebeck, as it affects ALL of Rhinebeck, not just White Schoolhouse Road!

Along with the excessive traffic of large trucks throughout our small town, and the damage the extra trucks carrying tons of weight will do to our roads, this will bring with it air and noise pollution along many back roads surrounding our quaint village.

And it is not just about traffic and damage to our roads, this is a major concern for our local environment. I have many family members and friends who live on White Schoolhouse Road and Hilltop Road (a stones throw from the Red Wing mine) and the habitat of the area is extremely precious. There are wetlands which are a part of the Landsman Kill, which meanders throughout the beautiful village of Rhinebeck, and is comprised of many species which will be harmed and threatened if this expansion is approved. Conservation of our wetlands and local wildlife is something that should be deeply taken into consideration here.

This mining expansion will affect the local homeowners as well, their property values and their taxes will be an issue that sadly already is a struggle for some to maintain, and honestly I worry about my town in the long run, for future generations trying to live here. There is also the fear of driving on White Schoolhouse Road, and Slate Quarry Road too I will add (two roads I travel on almost daily) as they are winding roads with many blindspots and become treacherous in cold and rainy weather...having added trucks on these roads is a hazard, especially where parts of these roads are quite narrow and without shoulders.

I could go on, but I will wrap this up by adding that there are some businesses and farms as well on White Schoolhouse Road, and this expansion will negatively affect them too. As a small town, we absolutely need to protect our local farms.

Thank you for your time, and I sincerely hope that you will consider my points made in regards to my concerns about the mining expansion.

Best,
Andrea Shelton

From: Kathy Marryat <kathymarryat@gmail.com>
Sent: Sunday, December 11, 2022 9:29 AM
To: Petronella, John W (DEC)
Subject: Concerns about Red Wing Mine

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Dear Mr. Petronella,

I am writing with concerns about the Red Wing Mine, and encourage you to **reject** the permits being requested to expand the mining operation on White Schoolhouse Road.

I purchased my "forever home" in Rhinebeck in 2019, and selected this location due to the private, quiet nature of the property. I am extremely concerned about the increased noise and dust pollution, which could cause me to move. If that happens, I am equally concerned that I won't be able to sell my property at its current value due to the quality of life disruptions from the mine.

Other concerns include impact on the ground water, as well as increased traffic of large, heavy vehicles on our small local roads. There are children in our neighborhood, as well as school buses, and it is concerning that the increase in heavy-truck traffic also increases the risk of terrible accidents.

I urge you to **reject** Red Wing Mine's request for permits for expansion.

Thank you for your time and attention.

Best,
Kathy Marryat
26 Bollenbecker Road, Rhinebeck

From: Yvonne Delbanco <yvonne.delbanco@gmail.com>
Sent: Sunday, December 11, 2022 9:00 AM
To: Petronella, John W (DEC)
Cc: Emilia Hermann
Subject: Our concerns about Red Wing mine expansion

You don't often get email from yvonne.delbanco@gmail.com. [Learn why this is important](#)

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Dear Mr. Petronella,

We appreciate this opportunity to register our views on the pending application to the DEC from Red Wing Sand & Gravel for expanding mining at its site on White Schoolhouse Rd.

A little over two years ago, unaware of Red Wing's plans, we purchased our home at 63 White Schoolhouse Rd (WSR)--a lovingly renovated Civil-War era barn surrounded by woods and wetlands. Soon thereafter we became aware of the nightmare prospect of expanded mining--a scenario we had never imagined could come to pass in our bucolic town. We have a 3 1/2 year old daughter and a 15-month old son who are already in love with the quiet and tranquility of our surroundings. Our home looks out on WSR, a beautifully serene road on which only the occasional local delivery truck and school bus pass by, and which is used by many of our neighbors for walking, jogging, and biking.

We are simply horrified that noise and dust from the mine itself would mean the inevitable depletion of local wildlife. We are frightened for the safety of our children and our neighbors. We are appalled by the idea that WSR could become an industrial access road.

Please accept this letter as a plea to stop this outrage before it degrades not just the value of our property but the quality of our lives and that of many other unsuspecting residents in our wonderful town.

Sincerely,

Yvonne Delbanco and Emilia Hermann, M.D.
63 White Schoolhouse Rd.

A17

From: Daniel Staley <dstaley197091@gmail.com>
Sent: Wednesday, December 14, 2022 4:12 PM
To: Petronella, John W (DEC)
Subject: Red Wing Mine Expansion Town of Rhinebeck
Attachments: Red Wing letter.docx

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Good afternoon,

Find attached a letter I put together in opposition of the Red Wing Mine Expansion off White SchoolHouse Rd in the Town of Rhinebeck.

Sincerely

Daniel L Staley

Principal Broker, AHWD, C2EX

Staley Real Estate LLC est1949

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RHINEBECK, NY 12572
Phone: 845.876.3196 • Fax: 845.876.4229
www.staleyrealestate.com
www.rhinebeckrental.com

To Whom it May Concern,

I am writing today to express my concerns on the Red Wing Gravel Mine located off White School House rd. in the Town of Rhinebeck, NY. As a local licensed NYS Real Estate Broker, I have major concerns of the negative impacts on local property values the mining operation will bring. It is clear and irrefutable that the reduction in value of properties is significant, as high as 25% or more, and is irrespective of whether a local resident sells his or her property. In extreme cases, properties dependent on wells for water can be rendered virtually worthless in the event of a total collapse of the water table. It is also important to note that these impacts are permanent. A few reasons why home values will decline include, drinking water contamination, Aquifer depletion with subsequent loss of residential wells, Intolerable noise pollution damaging mental, physical and emotional health, Air quality degradation destroying citizen's health, Light pollution annihilating country atmosphere, Vibrations of heavy equipment, dump truck transportation, and blasting degrading citizen's well-being, Erosion and potential flooding from mine sediment pond, Fire danger, and Community safety just to name a few.

As a local resident and past Town of Rhinebeck Elected Official, I also have major concerns about the safety of all who will be traveling on White School House rd. during the mine's hours of operation. White School House rd. is a substandard road that was built back in the 1800's during horse and buggy times and is not wide enough or have the base to handle the large trucks that will be coming and going several times a day and will put all who travel it in harm's way. I think you will agree that one life lost is one too many and the best way to avoid this safety hazard is to NOT approve this mining application.

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Lastly, I would like to address the effects the mine will have on the surrounding wildlife. As a director of a local forest preserve, Ferncliff Forest Inc and the grandson of its founder, Homer K Staley Sr I am concerned about the effects the mine will have on the surrounding environment and its habitat. The location of the mine borders not only local but federal wetland where **Beavers, muskrat, raccoons, river otters, foxes, rabbits and Bald Eagle's** live and find their food. Many reptiles, amphibian species and endangered plants also live in these wetlands and will be threatened by the mine's existence.

In closing I encourage you to seriously consider denying Red Wings Mining application in the best interest of SAFETY, THE ENVIROMENT, THE RESIDENTS and THE WILDLIFE that call this area home.

Sincerely

Daniel L Staley

Principal Broker

Staley Real Estate LLC

Cell Phone (845)594-5066

Email: dstaley197091@gmail.com

December 16, 2022

John Petronella
Regional Permit Administrator at NYSDEC
21 South Putt Corners Road
New Paltz, NY 12561

DEC 19 2022

Dear Mr. Petronella:

My name is Amie Parker and I am a resident of Red Hook, NY but have several very close friends that live on White Schoolhouse Road in Rhinebeck, NY.

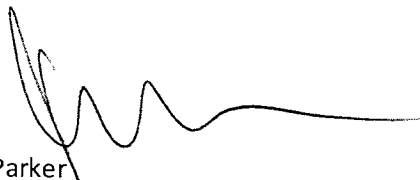
I am writing to express my views on Red Wing's request to expand mining on White Schoolhouse Road in Rhinebeck, NY. I strongly urge the DEC to consider all the reasons why mine expansion would be problematic and to reject the request for an expansion of the area to be mined.

I feel the mine expansion would be a hazard to residents on White Schoolhouse Road due to the fact that the road is very narrow in places, there are several blind hills and turns, there is already heavy truck traffic on the road, cars do not obey the speed limit, there are children, seniors, and animals that would be put in further danger, walkers and bikers are in danger at present and would be in more danger with large truck traffic, school buses are currently compromised, air quality and noise quality would be another hazard to residents, it would change the character of the beautiful neighborhood and town that makes Rhinebeck so special, home and property values would decline, the current eagle population and nests would be in danger, and water/well/aquifer quality would be affected.

Please consider the effects of the mine expansion on those who call White Schoolhouse home and to the community of people that visit and travel that corridor.

Best,

Amie Parker

A handwritten signature in black ink, appearing to read 'Amie Parker', with a long, wavy horizontal line extending to the right.

From: Jen Mumm iphone 13 <jenmumm@icloud.com>
Sent: Sunday, December 18, 2022 5:41 PM
To: Petronella, John W (DEC)
Subject: Opposition to Red Wing Mining Expansion on White Schoolhouse Road in Rhinebeck, NY

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Dear John,

My name is Jennifer Mumm and I live on Hilltop Road in Rhinebeck, which is just off White Schoolhouse Road (WSR).

I was able to voice my opposition to the expansion of the existing Red Wing mine on WSR at the hearing last month, I thank you for that as well as your consideration for this letter.

These past few winter mornings, as I drive into town, I've allowed myself extra time as I often like to stop and watch the bald eagles that are residing at the mine. I've seen two of them at one time (actually on Thanksgiving morning, it was a true holiday gift to be grateful for). I'm not sure if there are more than the two eagles. There is something utterly peaceful and awesome at the same time, a great way to start any day. On Friday, December 16, I noticed a blue DEC Jeep there on the site, but the occupant was not in the vehicle when I was there. I wanted to share my excitement about the eagle siting; I hope he or she was out observing the same majestic and inspiring scene.

You are already aware of these eagles, as well as many of the other valid reasons so many Rhinebeck residents oppose this expansion of mining activity. I just wanted to share my personal story and ask you again, to please consider the nature as well as the safety concerns in your assessment. White Schoolhouse Road is not fit for the purpose for which Red Wing is proposing to use it.

Expansion to industrial scale mining at this site would be an abject failure by the DEC of their responsibility to uphold environmental mandates and to protect the people and nature of the state of NY.

Thank you again for your consideration.

Sincerely,

Jennifer Mumm

67 Hilltop Road
Rhinebeck, NY 12572

George D Reskakis DDS
103 White Schoolhouse Road
Rhinebeck NY 12572
(201) 838-6218

DEC 12 2022

John W. Petronella
NYSDEC
21 S Putt Corners Road
New Paltz, NY 12561

December 1, 2022

Dear Mr. Petronella,

I recently received the notification that Red Wing Mining is proposing the expansion of its mining operations in Rhinebeck, New York. I strongly oppose the issuing of a permit to do this. One does not need an expert to determine that a 300-foot hole in the earth that's 40 acres around will irrevocably alter the habitat of the surrounding area. The quality of life for my family and I will be affected by the increase in truck and car traffic associated with this project. It will become a more dangerous and less desirable place to live; and in my case retire. The Draft Environmental Impact Statement referenced contains multiple statements that are self-serving for the Mining Company, ignoring the people who live close by. The benefits to the citizens of New York of this expansion are so small when compared to the long-term effects on the people, animals, birds and environment.

I am having a difficult time understanding why the applicant has been allowed 14 years to state their case and negotiate around obstacles when the public gets barely 3 months? However, it seems that this is something that cannot be altered except through the legislature. This then binds you, the permitting authority to a set of rules. I hope that common sense is one of those rules, and that the weighing of risks and rewards is equally as important. I also hope that the significant and substantive deficiencies in this document will compel you to reject the permit for expansion.

New York State voters have overwhelmingly approved a broad environmental initiative that demonstrates their will to sacrifice cost and convenience for the environment. Once again, the risks of this expansion absolutely do not outweigh the benefits. What is even more frightening is that the New York State DEC lacks the ability to thoroughly enforce these alleged mitigation efforts. This is obvious as an eagle's nest was on the property for years, while the DEC was on site, and never noticed. The budgetary weaknesses and lack of a law enforcement officers leave the applicant in charge of the land, something they have no reason to do diligently. The word mitigation, means, "to make less severe, serious, or painful". This clearly and logically demonstrates that the work being done by Red Wing is SEVERE, SERIOUS, and PAINFUL! It is so bad it took 14 years for their attorneys to wriggle around the laws designed to protect the environment. Therefore, does the extraction of 40 plus more acres of gravel from the earth make it worthwhile? I think not.

Experts, that are not independently engaged by the permitting authority will always be biased. Additionally, expert evaluation even when of the highest resolution is often quite wrong. In this matter, the expert information provided by Red Wing is outdated, of low resolution, and does not adequately examine the entire ecosystem. Environmental experts agree that a parcel of land should be examined as part of a larger group of parcels, and this is particularly true when examining migration patterns of birds, turtles and hydrology. Experts in wildlife cannot explain why there has been a significant decline in bird species. They cannot explain why attempts to protect cities from flooding is failing. This demonstrates that even on the grandest scales their advice is flawed and should be subjected to significant scrutiny.

Additionally, the presence of an active eagle's nest in close proximity to the proposal requires that the United State Fish and Wildlife decide if this should be allowed. Permitting with respect to this is outside the NYS DEC purview. A 660 foot radius of no disturbance must be observed so as to be in compliance with federal guidelines. Blasting and excavation are significant disturbers of wildlife, particularly nesting eagles.

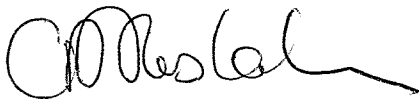
The risk of alterations to the water flow in the area are not adequately addressed and contain no guarantees that during high rain events or droughts that my well water supply will not be affected. Who will be responsible if due to the mining, I need a new well or that the quality of my water becomes undrinkable? What if my property values drop precipitously as a result? Will NYS DEC take financial responsibility for errors associated with this document? I doubt that. The document itself does not even have an accurate table of contents, therefore one can ascertain that it contains multiple sloppy statements. There are very many poor conclusions gathered from information that is NOT contemporaneous or of high resolution.

The initial traffic study, for example, which was commissioned for Vincent Kinlan, is over 15 years old and he is NOT the owner of Red Wing Mining. In my opinion, (no expert needed) many things have changed in fifteen years. It is fallacious to even present this as part of the DEIS. The follow up is even more questionable, as a single day's traffic in January does not accurately reflect traffic patterns in the area. White Schoolhouse Road is a road frequently used by cyclists and pedestrians and this was not evaluated. They will all be at risk, and a single additional injury could certainly be attributable to a failure to demand a comprehensive evaluation. Additionally, interactions with school buses, and guidelines by the National Association of Pupil Transportation were not mentioned. There are many areas where both lines of sight and the narrowness of the road will make it very challenging for vehicles to pass each other safely. Additionally, agricultural vehicles use the road, and with their wide beds the likelihood of collisions will increase. The idea that, a "truck entering the roadway" sign will create a safe situation is a remarkable stretch of the imagination. It begs the question if these so-called experts did any driving on the Road. Finally, the additional traffic will accelerate the wear of the roadbed which will create a burden to the taxpayers of the community. The small contribution by the Mining Company to the tax base will not outweigh the costs.

. As previously stated, the low resolution of the analysis and attempts to simplify a complex wetlands, hydrologic ecosystem, traffic and safety, and the environment make a good portion of this document inaccurate and as a result under no circumstances should this permit be granted. I am a citizen, not an expert, doesn't my quality-of-life matter more than the profitability of Red Wing Mines and their ability to manipulate the law? There are no guarantees, and no experts will put their name on any, this speaks volumes to the questionability of this. Mr. Petronella, you have the power to reject this permit, I respectfully request that you use your power to do so. The Mission is clear" Conserve, improve and protect".

The DEIS is a work of fiction elaborated by Red Wing to sidestep the wishes of the local municipality, the environmental community, and the voters of the State. Their only goal is their financial gain. There is literally no upside to the people living in the area, their property values will drop, and taxes will need to go up. They will face a more dangerous road with additional noise and damage to the surrounding ecosystem. The few jobs and effect on the price of gravel is a specious and unsustainable argument. There is an old Danish expression that states "peeing in your pants will only keep you warm for so long". Stop this now! I strongly and vehemently oppose this project and believe that your office should not grant a permit based on the poor data, biased experts, and danger to the community. This is where statutes get thrown out the window and common sense needs to prevail. There are both substantive and significant issues with this application.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Reskakis", with a long horizontal flourish extending to the right.

George D. Reskakis DDS

From: tallanbrook@me.com
Sent: Saturday, December 31, 2022 5:53 PM
To: Petronella, John W (DEC)
Cc: barnettelisabeth1@gmail.com
Subject: Letter on Red Wing mine expansion
Attachments: Allanbrook letter DEC 12-22.docx

[You don't often get email from tallanbrook@me.com. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

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Dear Mr. Petronella — attached please find a letter regarding the Redwing mining expansion.

Best;
Tim Allanbrook

December 31, 2022

John Petronella
Regional Permit Administrator at NYSDEC
21 South Putt Corners Road
New Paltz, NY 12561
Email: john.petronella@dec.ny.gov

Dear John,

My name is Timothy Allanbrook and my wife and I live at 108 White Schoolhouse Road in Rhinebeck. I am writing to express my views on Red Wing's request to expand mining in our neighborhood. While we have long had small scale mining along our road, the expansion that Red Wing is proposing is completely out of keeping with the peaceful, rural nature of our road and our town overall.

I strongly urge the DEC to consider all the reasons why mine expansion would be problematic and to reject the request for an expansion of the area to be mined. Here are my reasons:

- White Schoolhouse Road is currently peaceful and pleasant. Many people walk and bicycle along it. While some trucks pass by, the number and size are not especially worrisome. We are concerned that this could change with the Red Wing operation, where they estimate 50 or more round trips (100 trips past individual residences) per day. The narrowness of the road is such that walkers and bicyclers will be endangered and there are even places where two trucks (or a truck and a school bus) would be unable to pass each other safely.
- We love Rhinebeck's environmental beauty and diversity. The Red Wing property is home to a lot of wildlife including endangered turtle species and eagles. We hope you share our belief that the local environment should be protected.
- Our Town Board and our local community are opposed to this mine. Our town's comprehensive plan comes out in opposition to mine expansion (see page 5.16). However, Red Wing's DEIS says, inaccurately, that the mine expansion *supports* the goals of the comprehensive plan.
- Our area earns a substantial amount of income from tourism. Tourists are attracted by the beauty of the area. Mining operations will make it less likely that people will enjoy visiting our area.
- Is our water safe? We do not feel confident that adequate research has been done on whether the Red Wing mine could affect our aquifer—our only source of clean water.
- At the moment, our air is clean. Mining can be dusty, as can truck traffic. How can we be assured that the air we breathe remains healthy.
- Mines also can be noisy. We do not want to listen to mining operations every day.
- Finally, we think it likely that the value of our home and those of our neighbors will be affected negatively.

Thank you for your consideration of this issue.

Best,

Timothy Allanbrook
108 White Schoolhouse Road
Rhinebeck, NY 12572
Email: tallanbrook@me.com

From: Elisabeth Barnett <barnettelisabeth1@gmail.com>
Sent: Saturday, December 31, 2022 5:42 PM
To: Petronella, John W (DEC)
Cc: Timothy Allanbrook
Subject: letter re. Red Wing mine expansion
Attachments: Barnett letter DEC 12-22.docx

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Hello John--

Happy New Year! Attached please find my letter expressing opposition to the Red Wing mine expansion.

Take care,

Elisabeth

December 31, 2022

John Petronella
Regional Permit Administrator at NYSDEC
21 South Putt Corners Road
New Paltz, NY 12561
Email: john.petronella@dec.ny.gov

Dear John,

My husband and I live at 108 White Schoolhouse Road in Rhinebeck, directly adjacent to the current Red Wing mine. We are eager to see appropriate limits maintained on the size and scale of mining on our road and throughout Rhinebeck in general. We love Rhinebeck's rural, peaceful quality and believe it should be maintained. Large-scale mining is not a good fit for Rhinebeck or for our neighborhood and will also contribute to the deterioration of the beautiful countryside that surrounds us.

The citizens who worked on Rhinebeck's Comprehensive Plan, adopted in 2009 approved limited small-scale mining by local owners or businesses, but not large scale mining. There was a very inclusive and widespread process that led to the development of the town plan and its goals are commendable. I don't believe that Red Wing's proposal is consistent with our plan.

In addition to impacts on plant and animal life, I am concerned about other ways that the mine could affect our area. We have heard estimates from Redwing's president of 50 or more truck round trips per day expected on White Schoolhouse Road. This translates to 100 or more times the truck would pass our residences—some estimate a truck rumbling by every three or four minutes on average! This would dramatically change the peaceful nature of this rural road. Noise and dust from the mine itself are likely to affect us directly, making life unpleasant and affecting the value of our cherished home. In addition, I am concerned that the quality of the aquifer could be affected—our water supply!

We are counting on DEC to fulfill its mission and protect our rural lands and homes. I strongly urge the DEC to consider all the reasons why mine expansion would be problematic and to reject the request for an expansion of the area to be mined.

Thank you for your careful attention to this matter.

Best,

Elisabeth Barnett
108 White Schoolhouse Road
Rhinebeck, NY 12572
Email: barnettelisabeth1@gmail.com

From: Cathy Holen <cholen@hvc.rr.com>
Sent: Tuesday, January 3, 2023 12:18 PM
To: Petronella, John W (DEC)
Subject: Red Wing Mine Expansion

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1/3/2023

John Petronella
Regional Permit Administrator at NYSDEC
21 South Putt Corners Road
New Paltz, NY 12561

Dear John,

My name is Cathy Holen and I have lived at 130 White Schoolhouse Road since 2000. (Actually, I grew up in the same house and also lived there from 1969-1993.) I am writing this letter to let you know that I am emphatically AGAINST Red Wing's request to expand mining on White Schoolhouse Road in Rhinebeck, NY. I have walked my dog on White Schoolhouse Road nearly every day for more than 11 years. I know every inch of this road-every blind corner, all the narrow passages, sharp turns and curves, uneven road surfaces, poorly maintained road edges and lack of any road shoulder. I walk with my dog facing traffic and with no headphones/earbuds so that I can see and hear vehicles, yet I still sometimes feel unsafe. I often have to step to the side of the road onto the uneven dirt or brush to maintain a safe distance from vehicles-many of whom are passing too close to me or are speeding. If 2 vehicles are going to meet at the point where I am walking, one ALWAYS stops and lets the other pass before proceeding past me. Clearly, there is barely enough space for 2 average size vehicles to pass each other even without me (a pedestrian) being there! White Schoolhouse Road can barely handle the current rural traffic that travels on it-it would definitely NOT be suitable or safe for the proposed large Red Wing mining trucks. Therefore, I vehemently urge the DEC to reject the request for an expansion of the area to be mined.

Best,

Cathy Holen

From: Andrew Delbanco <andrew.delbanco@gmail.com>
Sent: Wednesday, January 4, 2023 10:39 AM
To: Petronella, John W (DEC)
Subject: Red Wing Sand and Gravel

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Dear Mr. Petronella,

I appreciate this opportunity to register my concerns about the prospect of mine expansion on White Schoolhouse Road.

I live in the Village of Rhinebeck, but I travel that road frequently to visit my daughter and her family, who have a home there. When I first heard about the possibility of expanded mine activity, I was extremely concerned, and the more I learn about the context, the more shocking it becomes. Noise, dust, degradation of property values, impact on wildlife, and on the tranquil rural character of the whole area, are some of the many reasons for shock and dismay.

In this note, however, I'd like to call your attention particularly to the dangers posed by traffic associated with the mine, which would transform White Schoolhouse Rd. from a beautiful, scenic country road into a transit route for truck traffic. The road is simply too narrow and winding to allow multiple trucks to pass safely. Even when two cars pass each other on WSR, there is precious little room for error. As I said in my comment at the DEC public hearing back in November, I have never visited my daughter without encountering neighbors strolling, jogging, bicycling, or walking with dogs or children on this beautiful road. This is a disaster in the making.

As for entering or exiting from White Schoolhouse from or onto rte 308 or Slate Quarry Rd, these are hazardous turns under the best of circumstances. Traveling east on 308, one has to make a very tight right turn onto WSR to avoid drifting across the midpoint of the road. I have had several near-miss experiences when a car or van is traveling north on WSR and is even slightly out of its (unmarked) lane. Turning onto WSR traveling west on 308, or, at the other end of the road, from Slate Quarry Road, can be equally hazardous. As for exiting from WSR—all turns onto 308 or Slate Quarry must be carefully timed to avoid oncoming traffic that comes into view without much time to spare, given the curves, blind spots, and speed prevalent on those roads.

In short, the idea of heavy truck traffic traveling through this configuration of roadways is truly beyond prudence or reason. Allowing this to happen would pose a major danger to immediate neighbors, and would go a long way toward destroying the rural character of Rhinebeck at large.

Please help us preserve safety and beauty in our community!

Many thanks,

Andrew Delbanco
58 Livingston Street
Rhinebeck, NY 12572

From: l4obo@frontiernet.net
Sent: Wednesday, January 4, 2023 1:14 PM
To: Petronella, John W (DEC)
Subject: Red Wing
Attachments: 1a.jpg.jpg; 2a.jpg.jpg; 2b.jpg.jpg; 2c.jpg.jpg; 3a.jpg; 3b.jpeg

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Hello,

We would like to add some more details to our previous letters about White Schoolhouse Rd and the safety of all those who travel White Schoolhouse Rd. We also have added pictures which we will explain.

Red Wing's Road study states that the average speed on White Schoolhouse Rd. is 45 mph (10 mph over the posted speed limit)

The "average" being 50% means that 25% were even faster, so 75% are driving at excessive speeds.

Our property, which is between two hills, is posted with 20 mph signs. Making it even more hazardous to our family.

Also, most vehicles we see daily do not stay on the right side of the road, most are in the middle of the road. This is especially true of any large truck, due to the narrowness of the road, they are avoiding rock outcroppings, tree branches and buildings.

Pictures 1a shows a dump truck, 2a, 2b & 2c shows a tractor trailer. As you can see there is no room for another vehicle.

We would also like to show pictures of the Springs and Kettle bush pools that will be destroyed by subaqueous mining. Picture 3a shows three springs, their origins(circles)the direction of flow (arrows)to where they merge with the Landsman Kill. Picture 3b is for reference.

Picture 3a also shows (2 ovals) the location of the Kettle bush pools. As you know these are extremely rare and are the perfect spot for Blanding's Turtle habitat. They are land locked, so they rely totally on the water table.

All these spots are in very close proximity to Red Wings proposed 9-acre subaqueous dig. That alone, with evaporation, is enough to destroy all of these environmentally sensitive sites. Add to that Red Wings proposed expansion and its game over!

How many Red Flags need to go up before this project is denied? It is quite obvious that this property is not conducive for what Red Wing intends to do.

This whole project exists because of a clerical error. The Town of Rhinebeck comp plan did not allow for mining expansion, but the map was incorrectly done.

We would like to close with a serious question. I don't know who is involved in the decision on this issue, but would they buy a house on White Schoolhouse Road? Would they subject their loved ones, their children or grandchildren to the dangers that will ensue? Why would they subject our children and grandchildren to this? Please spend some time on our porch and see for yourselves just what is at stake!

Thank you
Steve & Patty Lobotsky



00:16 / 00:25





00:09 / 00:16





61495
1.3A(c)

Landsman Kill

Springs

2 Endangered
Kettlebush pool





00:15 / 00:25



61495
1.3A(c)

CHINESE

From: Paula Wolf Trimble <pwtrimble@frontiernet.net>
Sent: Thursday, January 5, 2023 11:21 AM
To: Petronella, John W (DEC)
Subject: Comments regarding RW Mine expansion in Rhinebeck
Attachments: pwtStatement.pdf

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Re: DEC ID # 3-1350-00052/00003
WHITE SCHOOL HOUSE ROAD MINE

Good Morning John,

Please accept the attached letter as my comments on the application and DEIS for Red Wing Mine expansion on White Schoolhouse Road in Rhinebeck.

Thank you,
Paula Wolf Trimble
pwtrimble@frontiernet.net
--

December 31, 2022

John Petronella
Regional Permit Administrator at NYSDEC
21 South Putt Corners Road
New Paltz, NY 12561

Dear Mr. Petronella,

Thank you for the opportunity to comment on Red Wing's expansion of the White Schoolhouse Road Mine. The following comments augment the 3-minute oral statement I gave on Nov. 17 at the 6:00pm session:

Regarding Local vs. Regional Supply – While Section 2 of the DEIS talks of the need for local supply, clearly the intent for most of the sand and gravel is not local use, but rather to be trucked to Package Pavement in Stormville. The DEIS states, "It is anticipated that approximately 400 tons (12 truck loads) per day will be trucked to the Package Pavement Stormville plan" (Section 4.1.3, page 11).

Depending on the route driven, Package Pavement is 36-40 miles from the White Schoolhouse Road mine. In Section 8, page 171, of the DEIS Red Wing gives an example comparing how the delivery of a load of sand and gravel from a local mine that is located an average distance of 20 miles from the market compared to delivery of that same load from a mine located 40 miles away would produce approximately 254 pounds of CO₂ emissions, double that of travel from the local mine. So Red Wing rightfully does not consider delivery to Package Pavement as local.

Why is this important? Rather than the typical local demand and low heavy vehicle traffic volume already present from the existing mines, this represents a huge departure in scale and use. The mine will no longer serve only local needs, but regional needs as well.

Regarding the Rhinebeck Comprehensive Plan – In its DEIS, Red Wing cherry-picks from a few sections of the Comprehensive Plan that don't apply to mining at all to say that the Plan supports mining, while ignoring completely the section specifically about Mining on page 5.16:

Objective: Land Uses with the potential to pollute the air, soils or water should be regulated.

[Under Actions:]

2. Examine and improve regulations in the Zoning Law concerning mining activities (extractive operations currently permitted in the R3A District by special use permit), and amend the law to further restrict such activities to existing, active mine sites. Prohibit the placement of new mine sites within the town for the following reasons:

- Potential disruption to the character to residential areas caused by the heavy industrial characteristics of this land use activity, including associated noise, dust, aesthetics and traffic.

- Concern for the public health, safety and welfare when mining is in close proximity to residences and farms.

- Restrict the number and location of areas in the town where mining activities may take place, since the town will not be permitted to enforce local regulations “relating to the extractive mining industry.”

Clearly mining expansion is not supported by the Town’s Comprehensive Plan. The Comprehensive Plan specifically asks for new mining to be prohibited.

Regarding Groundwater – Everyone on the eastern side of Rhinebeck relies on wells or springs for water. It is our sole source of water. The proposed mining area is a major part of the recharge zone for the aquifer. We are concerned about having industrial scale mining on the recharge path direct to our aquifer.

On page 9.7 of the Comprehensive Plan, aquifers and the importance of protecting them are discussed. It begins with a description of the types of aquifers found in Rhinebeck:

The aquifers that exist in the town of Rhinebeck were identified by the Dutchess County Water and Wastewater Authority in 1993 and are shown in Figure 9.6 at the end of this Chapter. The aquifers were broken into three different zones of concern as follows:

Zone 1: This zone consists of permeable deposits (like sand and gravel) directly overlaying the aquifer. Contaminants can move directly downward to the underlying aquifer with little or no natural filtration by the soil because the water is moving too quickly.

Zone 2: Less permeable deposits located up gradient from the aquifer. These areas contribute to recharge to the aquifer through both overland runoff and through ground water flow. Contaminant pathways are generally longer and slower in Zone 2 than Zone 1.

Zone 3: These areas contribute to a stream, which may subsequently be induced to contribute to the aquifer through filtration.

The Comprehensive Plan continues to say on page 9.7: “While all aquifers are important to protect, Zone 1 areas are the most important, due to their susceptibility to contamination. Since existing residents of the town that are served by groundwater wells have no alternatives if their wells become contaminated, all three zones should be properly protected.”

The aquifer along White Schoolhouse Road is a Zone 1 aquifer and must be protected. We are concerned about having industrial scale mining and subaqueous mining in the recharge zone where “Contaminants can move directly downward to the underlying aquifer with little or no natural filtration by the soil because the water is moving too quickly”.

Regarding Wetlands—The wetland delineations on the Red Wing site are out of date. The delineation map is over 15 years old. At minimum the delineation needs to be redone, revalidated, and confirmation made that mining will not occur within the wetlands or wetland buffers.

The Wetland delineation Map in the applicant's DEIS is dated 7/19/2007 and contains the statement, "Wetland boundary delineations as validated by the New York State Department of Environmental Conservation remain valid for 10 years unless existing exempt activities, area hydrology, or land use practices change (e.g., agricultural to residential). After 10 years the boundary must be revalidated by DEC staff." From the map in the DEIS:

<u>NYSDEC FRESHWATER WETLAND BOUNDARY VALIDATION</u>	
The freshwater wetland boundary as represented on these plans accurately depicts the limits of Freshwater Wetlands RC-25 and RC-30 as delineated by TES, Inc. and reviewed by Heather Gierloff of the New York State Department of Environmental Conservation on July 19, 2007.	
DEC Staff: Heather Gierloff <i>Heather Gierloff</i> Date: <u>11/2/2007</u>	Surveyor/Engineer: Griggs-Lang Consulting Geologists, Inc. SEAL
Wetland boundary delineations as validated by the New York State Department of Environmental Conservation remain valid for 10 years unless existing exempt activities, area hydrology, or land use practices change (e.g., agricultural to residential). After 10 years the boundary must be revalidated by DEC staff. Revalidation may include a new delineation and survey of the wetland boundary.	
Any proposed construction, grading, filling, excavating, clearing or other regulated activity in the freshwater wetland or within 100 feet of the wetland boundary as depicted on this plan requires a permit from the NYS Department of Environmental Conservation under Article 24 of the Environmental Conservation Law (Freshwater Wetlands Act) prior to commencement of work.	

Mapping of Federal Wetlands—a map of NWI & Hudsonia Wetlands produced by the Rhinebeck Conservation Advisory Board in 2014 and based on the National Wetland Inventory: USFWS October 2010 shows the wetlands in the south (RC-30) extending up into the southwest portion of the property where no wetlands are shown in the applicant's 2007 map. This discrepancy is another indication that the wetlands mapping needs to be updated.

Regarding Wildlife – The wildlife surveys in the DEIS are at least 10 years out of date. With no mining having occurred during that period, more wildlife and types of wildlife have moved into the area. The out-of-date surveys are not adequate.

Field surveys were done in 2002-2009 with turtle trapping in 2011 and 2012. No studies have been done in the past 10 years. No mining has occurred since 2012-2013 (with low levels prior to that). It has been 10 years since mining has stopped in the area, which has provided a great opportunity for wildlife to move into the area. As an example, eagles have moved into the area. I was delighted by the confirmation of an eagle's nest in the area after having seen eagles soaring over the area for the past

couple of years. The presence of the eagles and their nest was entirely missed by the applicant and it was reported to the DEC by some of the neighbors.

Regarding Eagles -- It is of concern that the DEC has made its decision addressing potential negative impacts on the eagles and their nest based solely on the applicant's noise study, a study that is difficult to comment on since the report made available with the DEIS is highly redacted.

Deficiencies with Red Wing's Road Study (Creighton Manning Report) and DEIS

First, the applicant's report uses an inaccurate value for roadway width: 22 ft roadway. It is 20-21 feet or less edge to edge, with no striping, with no shoulders, with drop offs, stone faces, and mature trees at the paved edge.

The town's CPL road study and Poughkeepsie-Dutchess County Transportation Council's CR 19 (Slate Quarry Rd) Safety Assessment NYS Route 9G to White Schoolhouse Rd, Town of Rhinebeck (https://www.dutchessny.gov/ConCalAtt/69/Final%20CR19_Slate%20Quarry%20Rd%20Safety%20Assessment%20Report_122620141049.pdf) both confirm the, "... road width varies and is at times less than 20 feet."

A quote from the Dutchess County Department of Planning and Development ZR22-035 (March 18, 2022) comment form, regarding the Red Wing Mine Driveway, Scale and Scale House before the Rhinebeck Planning Board, summarizes the concern, "That narrow width on a winding road makes any truck traffic a challenge, but particularly concerning is what happens when two trucks (or a truck and a school bus) must pass each other."

Second, the Creighton Manning report substantially underestimates the increase in projected heavy truck traffic.

The SUPs issued by the Town of Rhinebeck Planning Board have always strictly limited allowed truck size to be no larger than 12-cubic yards and no larger than a 10-wheeler. The Creighton Manning Report and DEIS state trailer dumps and tri-axles will be used to haul 400 tons each day to Package Pavement in Stormville; however, since trailer dumps and 18-cubic-yard tri-axles have never been allowed for any mines on White Schoolhouse Road, the number of trucks estimated by the Creighton Manning Report and Red Wing's DEIS is actually underestimated by 2 to 3 times.

Third, all the studies for the updated Creighton Manning report were done at a time of the year when mining is not occurring.

They were done in January 2022 and given an 8% seasonal adjustment. The traffic rate, and especially the heavy traffic rate, is much larger in spring, summer, and fall than in winter. The study should have been done in a season when mining would be occurring.

Fourth, a huge deficiency in the Creighton Manning reports and the DEIS is they never focus on safety problems, consider the existing accident rates, or do any crash analysis for White Schoolhouse Road or at the intersections of White Schoolhouse Road and its intersections with Slate Quarry Road and state Route 308, or with Slate Quarry Road and 9G.

The tables of AASHTO standards do not capture the danger of these roads and their intersections. The mile of Slate Quarry Road between White Schoolhouse Road and 9G has long been considered one of the mostly dangerous and deadly in Dutchess (hence the Dutchess County Safety study in 2014). Adding more heavy trucks can only make this dangerous situation worse.

As part of the DEIS, crash analysis using data from the NYS Accident Location Information System (ALIS) database should have been done for White Schoolhouse Road, its intersections, and the applicant's proposed route for accessing the mine. Public safety should not be sacrificed to the mine.

In the Dutchess County Department of Planning and Development ZR22-035 (March 18, 2022) comment form regarding the Red Wing Mine Driveway, Scale and Scale House application before the Rhinebeck Planning Board, the County throws doubt on the safety of trucks turning left onto White Schoolhouse Road from Slate Quarry Road, saying "We are uncertain that a substantial increase in left turning trucks from County Route 19 (CR19) onto White Schoolhouse Road can be accommodated safely."

DEC should not approve the permit for the expansion.

Sincerely,

Paula W Trimble

Paula Wolf Trimble
pwtrimble@frontiernet.net
190-198 Slate Quarry Road
Rhinebeck, NY 12572

From: KarltheFirst <karlthe2nd@gmail.com>
Sent: Thursday, January 5, 2023 10:30 AM
To: Petronella, John W (DEC)
Subject: Red Wing Mining Permit Application
Attachments: Dunkenberg Letter DEC re Red Wing application.pdf

[You don't often get email from karlthe2nd@gmail.com. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

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Hi Mr Petronella, please see attached letter. Thanks for your time and consideration.

January 5th, 2023

Mr. John W. Petronella
NYSDEC Division of Environmental Permits
21 South Putt Corners Road
New Paltz, New York 12561
Delivered via email, John.Petronella@dec.ny.gov

Dear Mr. Petronella,

My family purchased their 141-acre parcel of land on Bollenbecker Road in 1981 for a little over \$100,000. In the intervening 40 years, they poured many many times that amount—most of their life savings and a great deal of their time—into paying taxes and preserving the beauty of this property that is one of a couple of major neighbors on the west side of the Red Wing property. When we moved in, there was no mining whatsoever on this seemingly benign 200-plus-acre parcel on White Schoolhouse Road—just wilderness like ours and perhaps an agricultural zoning designation to which, in hindsight, we should have paid more attention.

Not only is there a catastrophic financial certainty to the effect an expanded mine on White Schoolhouse Road would have on the values of properties bordering Red Wing's, most of which are the primary assets of the long-term residents there, but the expansion would disrupt one of the largest unbroken corridors for flora and fauna in the Town of Rhinebeck.

The residents of our area see black bears and bobcats weekly and provide homes for many species of birds and water fowl that make use of the ponds and streams. We have maintained our trail networks for neighborhood hikers and the horseback riders from the Landsman Kill Trail Association for 40 years. These activities survived in spite of small-scale mining by local contractors years ago and have proliferated in the years the Red Wing mine has lay dormant. But it is hard to believe that any humans will continue to choose this area for recreation and retreat nor that animals will continue to choose it for their homes when they must do so to the soundtrack of industrial-scale blasting, drilling, and trucking on the other side of our hill.

While there is a sad merit in some cases to Mr. Doherty's assertion to our neighbors in Town Board meetings that if they didn't like mining, they shouldn't have bought property near a mine, I hope that you and the DEC will consider that none of us could have been expected, as homeowners and caretakers of this rural community, to imagine what might become of the once-beautiful, unassuming property next door. I'm certain all of the flora and fauna that have moved in during Mr. Doherty's absence did not.

I know you have had a lot of letters and data to sift through in recent weeks both from our neighbors and our professional representatives as well as those of the Town and I truly appreciate your taking the time to consider our concerns in earnest.

Best regards,

A handwritten signature in black ink, appearing to read 'Karl Dunkenberg', with a stylized, looping initial 'K' and a vertical line extending downwards from the end of the signature.

Karl Dunkenberg

From: Russ Austin <rnraustin@gmail.com>
Sent: Saturday, January 7, 2023 2:04 PM
To: Petronella, John W (DEC)
Cc: Andrew & Dawn Delbanco
Subject: Red Wing

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Dear John,

My name is Russell Austin and I live at 57 Livingston St. Rhinebeck, NY.

I am writing to express my views on Red Wing's request to expand mining on White Schoolhouse Rd. in Rhinebeck, NY. I strongly urge the DEC to consider all the reasons why mine expansion would be problematic and to reject the request for an expansion of the area to be mined.

Here are my reasons:

The quality of life to residents in the area would be severely negatively impacted.

The extra dust, noise and traffic will negatively affect the Performing Arts Center on Rt. 308 and many residents of our peaceful community.

Thank you for your kind consideration of this issue.

Sincerely,

Russell Austin

Sent from my iPhone

From: Ted & Melissa Braggins <pondsidepress@gmail.com>
Sent: Tuesday, January 10, 2023 4:25 PM
To: Petronella, John W (DEC)
Subject: Red Wing Mine Expansion Rhinebeck

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January 10, 2023

John Petronella

Regional Permit Administrator at NYSDEC

21 South Putt Corners Road

New Paltz, NY 12561

Dear John,

Our names are Ted Braggins and Melissa Braggins and we live at 8 Bollenbecker Road, Rhinebeck, NY. We are writing to express our views on Red Wing's request to expand mining on White Schoolhouse Road in Rhinebeck, NY. We strongly urge the DEC to consider all the reasons why mine expansion would be problematic and to reject the request for an expansion of the area to be mined.

Here are our reasons:

During the time when the mine was previously in operation the noise on a daily basis was constant. Although we live in an adjacent neighborhood to White School House Road, we are just about half a mile away from the proposed site.

The noise would begin early in the morning around sunrise and continue all day until sunset. Specifically, the noise was the constant humming of machinery working, the running and clanking of sorting conveyors, and the use of heavy equipment. The trucks driving along the White School House Road and pulling out onto the main highway also generated significant background noise as they shifted gears and gained speed under heavy loads.

The clamor of mining was definitely present, and a persistent annoyance that never seemed to ease up all day long. It was such a relief to the ears when the mine closed for the day and one could enjoy some peace and quiet. In summer it was often after 8 PM.

We first discovered that there was an operating mining venture nearby shortly after moving here in 1985. By then it was too late as we were committed to our new location and home. When the mine ceased operations it was a blessed relief. We could sit out of doors listening to the birds and enjoying the pleasant surroundings without the noise distraction.

As avid bird watchers we take pleasure in observing the numerous species in our area. A few examples are the many migrating birds, and also ducks, great blue heron, little blue heron, green heron, kingfisher, Baltimore orioles, cardinals, hawks, and owls. We have also spotted American Bald eagles as they make their way back to their nest on the site of the proposed mine.

Bicycling and walking on White School House Road for recreation and physical exercise are things we both enjoy. The presence of daily trucking in the high numbers that Red Wing is considering would make this activity very difficult and also extremely dangerous.

We believe that the existence of high trucking volumes, noise nuisance, and the eagle nesting site are very strong reasons to reject Red Wing's mining expansion request.

Thank you for your consideration of this issue.

Sincerely yours,

Theodore Braggins & Melissa Braggins

January 11, 2023

John Petronella
Regional Permit Administrator at NYSDEC
21 South Putt Corners Road
New Paltz, NY 12561

Dear Mr. Petronella,

I am writing to express my concern about Red Wing's request to expand mining on White Schoolhouse Road in Rhinebeck, NY. While my husband and I share concerns with our neighbors about injury to wildlife, water quality, air quality, and other issues which may cause harm to this important habitat, I am going to focus my comments on the topic I am an expert on.

My husband Sean and I live directly at the intersection of Slate Quarry Road and NYS Route 9G. I have regretted moving to this location since the first car came flying through our yard 15 years ago causing property damage only months after I moved in. It is scary to live here, especially amid the abundance of screeching tires when the road is wet and drivers try to hold the curve.

We have spent over a decade and a half working with the county and town highway departments to try to improve the safety of this intersection. Even with the improvements, this intersection remains dangerous and deadly. Regularly—and I could say at least monthly—we have accidents which cause primarily West-driving cars to crash into our yard, driveway, fence, and our own cars.



Photo from our living room: A recent accident involving multiple cars. See detail on next page

One accident took down a utility pole and started a fire which burned much of the side of our garage. A few months ago, there was a 4-car pile-up in our driveway, including a State Police car who was attending to a truck who smashed into our property, which was then hit by another car, which hit the police car and then hit the parked car in our driveway. A few weeks ago, the photos you see in this letter. We have had at least a dozen claims on our home insurance for property damage. Not all of the accidents at this intersection are recorded by police, though, since there are also hit and runs. (Just two days ago, a car took out part of the fence on the east end of our property, but the driver didn't stop.)

Our living room is often a triage space for EMTs, State Police, and accident victims. And, as already noted, there have been deaths related to accidents here.

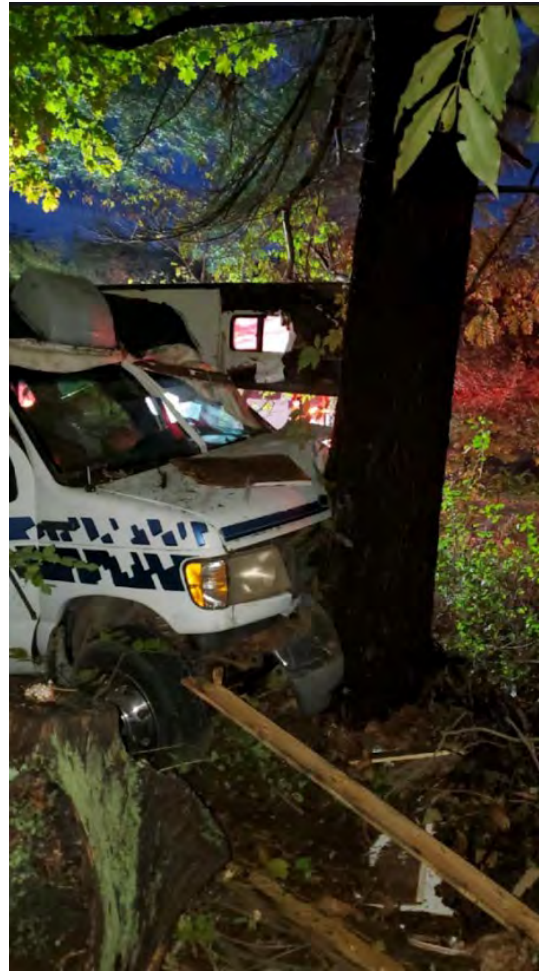
The DEIS statement "Trucks exiting the site will turn right at the proposed entrance onto White School House Road and travel south to Slate Quarry Road. Most trucks will turn right at this intersection and head west to NYS Route 9G. " causes me incredible concern.

I am VERY concerned about the size of Red Wing trucks that might be turning left here. Due to the limited sight distance and speed of road, we often have problems turning into our driveway immediately at that intersection in a JEEP SUV. That is compounded for longer trucks, especially for drivers who might be new to the area.

I'd like to raise the point that every day thousands of cars pass down SQR, passing the intersection where increased Red Wing traffic would supposedly flow. This is a bigger issue than those of us living here. It is a safety issue for village residents coming in and out of Rhinebeck along this route, those commuting, those headed to Omega, and people coming off the Taconic Parkway to visit us.

What we are talking about when we talk about the mine expansion is not just about the 94 acres that are under consideration, but the impact to the environment entangled with those acres.

The Traffic Study submitted by Red Wing is not fully accurate. Its potential solution to the sightline issue is to replace a yield sign with a stop sign. This solution was previously rejected by mining truck drivers in the area. Further, the study does NOT address an even bigger issue... trucks are turning left (or North) onto White School House to get to the mine. This is across a high-speed intersection with extremely limited sight distance, that has a known history of problems for safety. Red Wind's traffic study does not provide a solution for this safety issue.



In closing, more trucks equals more potential for more dangerous and deadly accidents on this road. Please consider the safety of everyone involved in the **environment** that we call our home. We strongly urge the DEC to consider all the reasons why mine expansion would be problematic and to reject the request for an expansion of the area to be mined.

Thank you for your consideration of this issue.

Best regards,

Sarah & Sean Bowen,
219 Slate Quarry Road, Rhinebeck, NY 12572

From: dtuttle@dutchessny.gov
Sent: Monday, January 23, 2023 12:51 PM
To: Petronella, John W (DEC)
Cc: rbalkind@dutchessny.gov; Wrafter, Eoin; jcocozza@dutchessny.gov; mdebald@dutchessny.gov
Subject: Comment on Red Wing Properties - White Schoolhouse Road Mine
Attachments: ZR22-035.pdf

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Mr. Petronella,

This comment letter is in reference to the Red Wing White Schoolhouse Road Mine application in the Town of Rhinebeck, Dutchess County. Attached, please find a letter sent by our office as part of the GML 239 review process that describes our concerns with truck traffic safety on White Schoolhouse Road and County Route 19 (Slate Quarry Road) and recommends the preparation of a truck traffic mitigation plan. The letter references a 2014 Safety Assessment conducted by the Dutchess County Transportation Council, which can be found here: [CR 19 \(Slate Quarry Rd\) Safety Assessment, NYS Route 9G to White Schoolhouse Rd, Town of Rhinebeck](#).

If you have any questions, please let me know. Thank you,

Dylan F. Tuttle
Planner
Dutchess County Department of Planning and Development
He/Him/His
85 Civic Center Plaza, Suite 107
Poughkeepsie, NY 12601
Phone: (845) 486-3631 Fax: (845) 486-3610
Email: dtuttle@dutchessny.gov

www.dutchessny.gov

Dutchess County Department of Planning and Development		Fax Info Only	To	Date	#pgs
			Co./Dept.	From	
			Fax #	Phone #	

239 Planning/Zoning Referral - Exemption Communities

Municipality: **Town of Rhinebeck**

Referring Agency: **Planning Board**

Tax Parcel Numbers(s): **8553300000, 0302280000**

Project Name: **Mining, scale, scale house and driveway access**

Applicant: **Red Wing**

Address of Property: **White Schoolhouse Rd, Rhinebeck, NY 125720000**

Exempt Actions:*
239 Review is NOT Required

- Administrative Amendments (fees, procedures, penalties, etc.)
- Special Permits for residential uses (accessory apts, home occupations, etc.)
- Use Variances for residential uses
- Area Variances for residential uses
- Renewals/Extension of Site Plans or Special Permits that have no changes from previous approvals

No Authority to review these Actions

- Subdivisions / Lot Line Adjustments
- Interpretations

☐ Exempt Action submitted for informal review

Actions Requiring 239 Review

- ☐ Comprehensive/Master Plans
- ☐ Zoning Amendments (standards, uses, definitions, district regulations, etc.)
- ☐ Other Local Laws associated with zoning (wetlands, historic preservation, affordable housing, architectural review, etc.)
- ☐ Rezoning involving all map changes
- ☐ Architectural Review
- ☒ Site Plans (all)
- ☒ Special Permits for all non-residential uses
- ☐ Use Variances for all non-residential uses
- ☐ Area Variances for all non-residential uses
- ☐ Other (Describe):

Parcels within 500 feet of:

- ☐ State Road:
- ☐ County Road:
- ☐ State Property (with recreation area or public building)
- ☐ County Property (with recreation area or public building)
- ☐ Municipal Boundary
- ☒ Farm operation in an Agricultural District

Date Response Requested: **3/4/2022**

Entered By: **Smith, Gretchen**

These actions are only exempt in municipalities that signed an intermunicipal agreement with Dutchess County to that effect.

For County Office Use Only			
Response From Dutchess County Department of Planning and Development			
<p>No Comments:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Matter of Local Concern <input type="checkbox"/> No Jurisdiction <input type="checkbox"/> No Authority <input type="checkbox"/> Withdrawn <input type="checkbox"/> Incomplete - municipality must resubmit to County <input type="checkbox"/> Exempt from 239 Review <input type="checkbox"/> None 		<p>Comments Attached:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Local Concern with Comments <input checked="" type="checkbox"/> Conditional <input type="checkbox"/> Denial <input type="checkbox"/> Incomplete with Comments- municipality must resubmit to County <input type="checkbox"/> Informal Comments Only (Action Exempt from 239 Review) 	
Date Submitted:	Notes: Initial submission on 2/14; additional materials received on 3/2, restarting 30-day clock.	<input type="checkbox"/> Major Project Referral #: ZR22-035	
Date Received: 3/2/2022	<div style="display: flex; align-items: center;"> <input type="checkbox"/> Also mailed hard copy </div> <div style="margin-top: 20px;"> Reviewer: </div>		
Date Requested: 3/4/2022			
Date Required: 4/1/2022			
Date Transmitted: 3/21/2022			



COUNTY OF DUTCHESS

DEPARTMENT OF PLANNING AND DEVELOPMENT

March 18, 2022

To: Planning Board, Town of Rhinebeck

Re: **ZR22-035, Red Wing Mine Driveway, Scale and Scale House**

The Dutchess County Department of Planning and Development has reviewed the subject referral within the framework of General Municipal Law (Article 12B, §239-l/m). Please note that this project was initially submitted on February 14, but additional materials were received on March 1, which reset our 30-day review deadline.

ACTION

The applicant is seeking site plan and special permit approval for a new access road to their mining operation, along with a scale and scale house.

COMMENTS

We find that the provided traffic study does not adequately address two primary concerns related to increased truck traffic:

1. **Truck interaction on White Schoolhouse Road** - White Schoolhouse Road is an unmarked local road with significant horizontal and vertical curvature. The traffic study describes it as 22 feet wide, but the April 2019 Pavement Evaluation completed for the Town found that the road width varies and is at times less than 20 feet. That narrow width on a winding road makes any truck traffic a challenge, but particularly concerning is what happens when two trucks (or a truck and a school bus) must pass each other.
2. **Left Turns** - We are uncertain that a substantial increase in left turning trucks from County Route 19 (CR19) onto White Schoolhouse Road can be accommodated safely. During the 2014 Safety Assessment of the Rhinebeck section of Slate Quarry Road conducted by the Dutchess County Transportation Council, staff observed issues with sight distance for eastbound vehicles turning left onto White Schoolhouse Road and noted that the intersection had "the largest cluster of crashes in the study area" (p. 16). The applicant's traffic study addresses left turns from CR19 using an operating speed of 50 MPH, which it states is the 85th percentile speed for the road. If this speed comes from the traffic counter described as being placed 1/3 of a mile west of the intersection, it likely differs from speeds at the intersection. For westbound traffic, CR19's intersection with White Schoolhouse lies at the bottom of a hill and it is possible, though not verified by the Transportation Council, that operating speeds may be higher here. A traffic count station located about a half mile east of the intersection shows a westbound 85th percentile speed of 58 MPH. The unusual configuration of the intersection also contributes to difficulty with left turns; staff has reported confusion from drivers about which side of the intersection median they should turn into and turning by large vehicles may be particularly difficult if another driver is attempting to turn left from White Schoolhouse onto CR19.

To address these concerns, we suggest that the applicant complete a truck traffic mitigation plan, which would propose ways to reduce the safety risk of additional trucks on these roads. The plan could consider, among other measures:

- Limiting the size of trucks accessing the mine.
- Requiring trucks above a certain size to enter the site from the north and exit to the south, so that these larger trucks are traveling southbound on White Schoolhouse Road (and thus not passing each other) and none are turning left at the site entrance or CR 19 intersection. This could be accomplished by prohibiting truck left turns into and out of the site driveway.
- Coordinating with Rhinebeck Central School District to limit truck/bus interactions on White Schoolhouse Road. Based on the 2016, 2013 and 2008 traffic counts (which were conducted during the school year) most buses on this road appear to travel southbound on the road.
- Improvements to the CR 19/White Schoolhouse Road intersection.

In addition to these safety concerns, a substantial increase in truck traffic could have a negative impact on the pavement condition of White Schoolhouse Road. While we do not find that to be a County-wide concern, we suggest that the Town consider requiring the applicant establish a bond to cover any excessive wear or damage.

RECOMMENDATION

The Department recommends that the Board **condition its approval of this project** on mitigation measures that address the safety concerns associated with increased truck traffic on White Schoolhouse Road and CR 19 (Slate Quarry Road).

Voting and Reporting Requirements: If the Board acts contrary to our recommendation, the law requires that it do so by a majority plus one of the full membership of the Board and that it notify us of the reasons for its decision.

Eoin Wrafter, AICP, Commissioner
By



Dylan Tuttle, Planner

From: Kate Kopp <camprbk@gmail.com>
Sent: Sunday, January 29, 2023 2:38 PM
To: Petronella, John W (DEC)
Subject: Stopping the Expansion of the Mine

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Dear John Petronella,

We have lived at 152 Slate Quarry Rd. for over 43 years and are strongly against the 'expansion' of the gravel and sand mining in this rural, settled neighborhood.

There have been 3 or more deaths on this curve, into our swamp over the years plus numerous accidents because this section is like a small speedway and used as such by most drivers.

In particular because of the danger to all from the particular roads that intersect at WSR and SQ where, as you know, the traffic coming west must slow down dramatically as they quickly curve down and take care not to slam into the little house, be aware of the traffic coming on the rt from WSR and then just seeing who's coming east.

Then the drivers are immediately on a snaking road that has a steep curve sign, which everyone barrels around as it dips down, at which point the vehicles step on the gas and roar across the straight way between our property and Von der Liefs., then having to slam on their brakes and gun it up the steep hill curving to the right, where they have no way of seeing the on coming traffic from 9G, while expelling noxious fumes both ways. The environmental impact of these truck emissions just in this 1/2 mile of roadway will be detrimental to everyone's health, along with the added noise of machinery.

What exists of the mining company is enough, and enough is enough.

Sincerely,

Kate and Joel Kopp
152 Slate Quarry Rd.
Rhinebeck, NY. 12572

From: schwartzho <schwartzho@aol.com>
Sent: Monday, January 30, 2023 1:41 PM
To: Petronella, John W (DEC)
Subject: White schoolhouse rd mining application

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Dear Mr Petronella:

I am a resident of rhinebeck and live on pells rd near the proposed mine expansion.

As a member of the town's CAC on updating the town's comprehensive plan as well as the subcommittee on rural roads , we just submitted our proposals to the town council.

The current mine expansion does not fit in with the comprehensive plans vision of preserving our rural character or keeping our roads safe for outdoor pursuits such as cycling and walking. The estimated number of daily trips by large dump trucks will degrade the road both from a scenic as well as safety perspective. I urge you to deny the permit to allow the mine to operate.

Sincerely
Steve Schwartz
Pells rd
Rhinebeck

Sent from my Verizon, Samsung Galaxy smartphone

From: luke6244@frontiernet.net
Sent: Monday, January 30, 2023 6:40 PM
To: Petronella, John W (DEC); Wilbeck; pwtrimble@frontiernet.net
Subject: Red Wing mining in Rhinebeck

You don't often get email from luke6244@frontiernet.net. [Learn why this is important](#)

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Mr. Petronella,

My wife and I live at 185 Slate Quarry Rd. in Rhinebeck. Our property is within the notoriously dangerous one-mile stretch between Rt 9G and White Schoolhouse Road. Our neighbors know how bad it is as does the Dutchess County Highway Department, the NY State Police, the local fire departments, EMT ambulance services, and tow truck operators. It is so hazardous that there are blinking warning lights to alert drivers entering this part of the road from either the East or the West. My wife and I have called in to 911 for many accidents along that particular curve that defines the southern borders of our property. It used to be when we heard what might have been an accident. I would run down to the road to confirm it. We have grown so accustomed to the sounds of vehicles colliding and guardrails being impacted that we just make the call without going out to see first. To make matters worse for those involved in accidents near our location, they find that there is no cell service for them to call for assistance.

I am well aware of the "not in my backyard" mentality but approval of this proposal would significantly add to the already dangerous conditions that exist today. It would be incomprehensibly irresponsible to approve this proposal.

Edward G. Wilbeck, Jr.

From: Charles Brill <charles@rbw.com>
Sent: Tuesday, January 31, 2023 6:17 PM
To: Petronella, John W (DEC)
Subject: No to Red Wing Expansion - Yes to road safety

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John Petronella
Regional Permit Administrator at NYSDEC
21 South Putt Corners Road
New Paltz, NY 12561

Dear John,

My name is Charles Brill and I live at 199 Wurtemberg rd. I am writing to express my views on Red Wing's request to expand mining on White Schoolhouse Road in Rhinebeck, NY. I strongly urge the DEC to consider all the reasons why mine expansion would be **problematic** and to reject the request for an expansion of the area to be mined.

Here are my reasons:

(traffic accidents) (From the DEIS "Trucks exiting the site will turn right at the proposed entrance onto White School House Road and travel south to Slate Quarry Road. Most trucks will turn right at this intersection and head west to NYS Route 9G especially for large trucks

Thank you for your consideration of this issue.

--

Warm regards

Charles Brill

Managing Partner
Direct +1 347 842 4737
Main +1 212 388 1621
Support +1 212 388 0399

RBW Studio & Production
575 Boices Lane
Kingston, NY 12401

From: Paula Wolf Trimble <pwtrimble@frontiernet.net>
Sent: Monday, February 6, 2023 11:23 AM
To: Petronella, John W (DEC)
Cc: Steve & Patty Lobotsky
Subject: Fwd: Re: Road videos

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Re: DEC ID # 3-1350-00052/00003
WHITE SCHOOL HOUSE ROAD MINE

Hello John,

Please accept the 4 .mp4 files in the DropBox directory

<https://www.dropbox.com/sh/wdjp8ljj8gihgw3/AADTCXX5nWSq2xA0cTLv8C-Ha?dl=0>

on behalf of the Rural Rhinebeck Neighbors as further comments on the application and DEIS for Red Wing Mine expansion on White Schoolhouse Road in Rhinebeck. The videos were taken driving on White Schoolhouse Road to and from the mine on the northern and southern halves of White Schoolhouse and show how unsuitable the road is for industrial mining and a large increase in heavy vehicle traffic. The videos were filmed on Sunday, January 15, 2023, by Steve and Patty Lobotsky. There is very little traffic, and no trucks, seen on the road in the videos because it is a Sunday in winter.

Northern half (WSR_North):

- Rte308_to_Mine_20230115_124425.mp4
- Mine_to_Rte308_20230115_124716.mp4

Southern half (WSR_South):

- Mine_to_SQR_20230115_125223.mp4
- SQR_to_Mine_20230115_125607.mp4

Thank you again for the extended opportunity to comment on the expansion application. These videos give a feel for the nature of the road in a different way than our descriptions do.

Thank you,
Paula Trimble

Rural Rhinebeck Neighbors

COMMENT A37 INCLUDED IN EXHIBIT C

From: Jill horn <jillhornhvs@gmail.com>
Sent: Sunday, February 5, 2023 4:25 PM
To: Petronella, John W (DEC)
Subject: White Schoolhouse Rd. mining application

You don't often get email from jillhornhvs@gmail.com. [Learn why this is important](#)

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Dear Mr Petronella:

I am a resident of Rhinebeck and live on Pells Rd near the proposed mine expansion.

As a neighbor who regularly bikes and walks my dog on this road, I am worried that the increased truck traffic would put me and my family in significant danger, as well as destroy the rural beauty of this road.

I urge you to deny the permit to allow the mine to operate.

Sincerely
Jill Horn
Pells rd
Rhinebeck

From: Eileen Rowley <eileenrowley37@gmail.com>
Sent: Monday, February 6, 2023 2:41 PM
To: Petronella, John W (DEC)
Subject: RW Mine Expansion Application

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Dear Mr. Petronella -

I write to you to share my consternation and concern concerning the R.W. mine expansion application.

If you have time, I hope you might take a drive out here to see this situation for yourself. I will be happy to take you to lunch for your trouble. Over the course of the past 21 years of my residency at 216 Zipfheldburg Road, Rhinebeck, NY, I have seen many accidents and, yes, deaths, on Slate Quarry Road which intersects with the start of White Schoolhouse Road. Those first few miles of County Route #19 (Slate Quarry Road) have been labeled and are considered by Dutchess County Dept. of Transportation as the most dangerous few miles in Dutchess County. Within the last 60 days a woman lost her life on that road.

The amount of large vehicle traffic that would result in you approving this application for our community would only increase the risks to life in this part of the world. The road/s are not build for the industrial type traffic, and the increase in traffic, that this expansion clearly promises.

The corners and curves of the intersections of Route #9G, County Route #19 (Slate Quarry Road), White Schoolhouse Road, and Zipfheldburg Road (also called Frost Road) are narrow, tight and dangerous as they are right now. Our little part of the world would be at great risk if this expansion were to move forward.

That is exactly why the residents of this community rely on individuals such as yourself to exercise proper consideration of all the elements in which this expansion would result.

My husband I would be happy to speak with you if you would like clarification or further detail on this situation.

Kind regards,
Eileen M. Rowley


AtlantisMediation
Eileen M. Rowley
216 Zipfheldburg Road

Rhinebeck, NY 12572
Telephone & Fax: 845/876-6100
E-mail: eileenrowley37@gmail.com

www.atlantismediation.com

YouTube Video:

<http://www.youtube.com/watch?v=WPzb3woQOL0>

So let us begin anew -- remembering on both sides that civility is not a sign of weakness, and sincerity is always subject to proof. Let us never negotiate out of fear. But let us never fear to negotiate. ~John F. Kennedy

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From: rdmanapple <rdmanapple@gmail.com>
Sent: Tuesday, February 7, 2023 5:44 PM
To: Petronella, John W (DEC)
Subject: Mine Expansion on White Schoolhouse Rd. Rhinebeck, NY

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Dear Mr. Petronella,

I am writing to express my serious concern for the proposed mine expansion on White Schoolhouse Rd. in Rhinebeck, NY.

We are long term residents of the area and can't help but emphasize the ongoing dangers regarding traffic safety in this immediate area. The Slate Quarry Road intersection to White School house Road (and adjacent roadways) is a constant source of automobile accidents, many of them serious enough to cause critical injury and deaths.

Expanding the mine will increase heavy truckloads and machinery on these thoroughfares which are already overburdened with a ramping up of traffic from Rt. 9G and the Taconic Parkway.

Please add our names to the residents in the area that do not want to see more development and the concomitant serious problems which will, no doubt, result.

Respectfully,
Richard Appleman & Susan Williams
116 Frost Road
Rhinebeck, NY 12572

From: Amanda Miller <amiller@amandamiller.com>
Sent: Tuesday, February 7, 2023 12:47 PM
To: Petronella, John W (DEC)
Subject: RE: Mining Expansion on White Schoolhouse Road

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Sorry there was a small typo. See below.

Dear Mr. Petronella,

I am writing to you as a resident of Rhinebeck. I live at 329 Wurtemberg Road which is very close to Slate Quarry Road (I hear the hum of traffic at my house) and White Schoolhouse Road.

I oppose the expansion of the mine at White Schoolhouse Road. The expansion will result in a conservative estimate of 50 trucks in and 50 trucks out of the mine per day via Slate Quarry Road during peak morning hours. Moreover, these trucks will proceed west on Slate Quarry Road, past Wurtemberg Road, to Route 9G. Slate Quarry is a harrowing road with hairpin turns in the best of conditions let alone during inclement weather. Slate Quarry is not equipped based on the road and the neighborhood it is set within, to handle this type of commercial traffic and congestion. Route 9G is a two lane road that is used by school buses and commuters to get to work on time. The only way to pass a slow dump truck is to cross over the double line and pass. An influx of trucks of this magnitude down Slate Quarry and spilling onto Route 9G is unfathomable. Finally, unfortunately the area West of 9G has within the last several decades been seen as undesirable and not as wealthy as those areas closer to **Route 9**. This has caused a lot of undesirable development along 9G that would never be allowed on Route 9. The DEC should **not** be an accomplice in flooding the less wealthy neighborhoods in Rhinebeck with pollution, noise, and industrial development.

Regards,



Amanda N. Miller
Amanda N. Miller, PLLC

Mobile: 516.860.5671

Fax: 845.215.0704

Web: <https://amandamiller.com/>

Email: amiller@amandamiller.com

6370 Mill Street, Suite 2, Rhinebeck, NY 12572



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From: Petronella, John W (DEC) <john.petronella@dec.ny.gov>
Sent: Tuesday, February 7, 2023 12:42 PM
To: Amanda Miller <amiller@amandamiller.com>
Subject: RE: Mining Expansion on White Schoolhouse Road

Thank you Amanda,
Comment received.

Regards,

John

John W. Petronella
Regional Permit Administrator, Division of Environmental Permits
New York State Department of Environmental Conservation
21 South Putt Corners Rd, New Paltz, NY 12561
P: (845) 256-3041 | F: (845) 256-4659 | john.petronella@dec.ny.gov

From: Amanda Miller <amiller@amandamiller.com>
Sent: Tuesday, February 7, 2023 12:39 PM
To: Petronella, John W (DEC) <john.petronella@dec.ny.gov>
Subject: Mining Expansion on White Schoolhouse Road

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Dear Mr. Petronella,

I am writing to you as a resident of Rhinebeck. I live at 329 Wurtemburg Road which is very close to Slate Quarry Road (I hear the hum of traffic at my house) and White Schoolhouse Road.

I oppose the expansion of the mine at White Schoolhouse Road. The expansion will result in a conservative estimate of 50 trucks in and 50 trucks out of the mine per day via Slate Quarry Road during peak morning hours. Moreover, these trucks will proceed west on Slate Quarry Road, past Wurtemburg Road, to Route 9G. Slate Quarry is a harrowing road with hairpin turns in the best of conditions let alone during inclement weather. Slate Quarry is not equipped based on the road and the neighborhood it is set within, to handle this type of commercial traffic and congestion. Route 9G is a two lane road that is used by school buses and commuters to get to work on time. The only way to pass a slow dump truck is to cross over the double line and pass. An influx of trucks of this magnitude down Slate Quarry and spilling onto Route 9G is unfathomable. Finally, unfortunately the area West of 9G has within the last several decades been seen as undesirable and not as wealthy as those areas closer to 9G. This has caused a lot of undesirable development along 9G that would never be allowed on Route 9. The DEC should be an accomplice in flooding the less wealthy neighborhoods in Rhinebeck with pollution, noise, and industrial development.

Regards,



Amanda N. Miller

Amanda N. Miller, PLLC

Mobile: 516.860.5671

Fax: 845.215.0704

Web: <https://amandamiller.com/>

Email: amiller@amandamiller.com

6370 Mill Street, Suite 2, Rhinebeck, NY 12572



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From: Tom Polucci <tpolucci@sbcglobal.net>
Sent: Wednesday, February 8, 2023 7:54 AM
To: Petronella, John W (DEC)
Cc: Eileen Rowley
Subject: Re: Feb. 10 Deadline to respond

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Mr. Petronella,

I wanted to echo Ms. Rowley's concerns as outlined in her email, forwarded to myself and other neighbors. Also I'd like to add the environmental impacts an expanded mine will bring to our area, including noise. As quiet as our slice of Dutchess County can be the potential noise pollution will be noticed impacting the bucolic quality of Rhinebeck.

Thanks for the consideration.

Tom Polucci

Sent from my iPhone

On Feb 6, 2023, at 3:16 PM, Eileen Rowley <eileenrowley37@gmail.com> wrote:

Hi guys -

Apparently John Petronella, NYS DEC, is accepting comments concerning the mine expansion on White Schoolhouse Road.

If you have concerns, now is the time to let him know. The comment period closes February 10.

On Feb 6, 2023, at 2:47 PM, Petronella, John W (DEC) <john.petronella@dec.ny.gov> wrote:

Thank you Eileen,

Comment received. Thank you for providing.

Regards,

John

John W. Petronella
Regional Permit Administrator, Division of Environmental Permits

New York State Department of Environmental Conservation
21 South Putt Corners Rd, New Paltz, NY 12561
P: (845) 256-3041 | F: (845) 256-4659 | john.petronella@dec.ny.gov

From: Eileen Rowley <eileenrowley37@gmail.com>
Sent: Monday, February 6, 2023 2:41 PM
To: Petronella, John W (DEC) <john.petronella@dec.ny.gov>
Subject: RW Mine Expansion Application

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Dear Mr. Petronella -

I write to you to share my consternation and concern concerning the R.W. mine expansion application.

If you have time, I hope you might take a drive out here to see this situation for yourself. I will be happy to take you to lunch for your trouble. Over the course of the past 21 years of my residency at 216 Zipfelburg Road, Rhinebeck, NY, I have seen many accidents and, yes, deaths, on Slate Quarry Road which intersects with the start of White Schoolhouse Road. Those first few miles of County Route #19 (Slate Quarry Road) have been labeled and are considered by Dutchess County Dept. of Transportation as the most dangerous few miles in Dutchess County. Within the last 60 days a woman lost her life on that road.

The amount of large vehicle traffic that would result in you approving this application for our community would only increase the risks to life in this part of the world. The road/s are not build for the industrial type traffic, and the increase in traffic, that this expansion clearly promises.

The corners and curves of the intersections of Route #9G, County Route #19 (Slate Quarry Road), White Schoolhouse Road, and Zipfelburg Road (also called Frost Road) are narrow, tight and dangerous as they are right now. Our little part of the world would be at great risk if this expansion were to move forward.

That is exactly why the residents of this community rely on individuals such as yourself to exercise proper consideration of all the elements in which this expansion would result.

My husband I would be happy to speak with you if you would like clarification or further detail on this situation.

Kind regards,
Eileen M. Rowley

From: Lynn Lobotsky <lynnlobotsky@yahoo.com>
Sent: Wednesday, February 8, 2023 7:17 PM
To: Petronella, John W (DEC)
Subject: Red Wing

[You don't often get email from lynnlobotsky@yahoo.com. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

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Why? Why should I have to write to you to try to convince you and whom ever not to allow Red Wing , a large scale mining company , to operate their business on White School House Rd . ~ Shame on Rhinebeck ~ Shame on Red Wing ~ Shame on all in favor ~ My grandfather bought land and the farm house on WSH Rd over 100 years ago ~ I grew up and still live off WSH Rd . A lot has changed ~ The road has been widened in spots but it still has many blind turns , no lines and very little wiggle room (no shoulder) for large mining trucks to maneuver in and out of this road . Both entrances are an accident waiting to happen ~ many have , especially on the Slate Quarry side . There are many people who walk , walk their dogs , ride bikes and on occasion ride their horses on WSH Rd .. I'm sure most of the people who bought their houses did so because of the rural , tranquil setting . Close to Rhinebeck but off the beaten track . I love it here , as do , i can imagine all the other people who live here . A couple years ago I came home to relax on my deck . It must have been the day when Red Wing was putting in the access rd off WSH Rd . The noise was unbearable!!! I can just imagine what the noise would be like in a daily basis . Would you want this in your back yard ??? I wonder what will happen if someone wants to sell ? Will our property value plummet? Will Red Wing compensate the land owners who can't get what their property should sell for ???

The wild life is another matter ~ the reintroduction of bald eagles to the area is awesome. They must be very comfortable to have chosen WSH Rd to live, mate and raise their young ones ! Not just the eagles but all the wild life who call this area home ~ the destruction of this ecosystem will be monumental! Shame on Rhinebeck! Shame on Red Wing !!! I could go on and on about why not to allow Red Wing access ~ Hopefully you and others will find it in your heart and conscience to do the right thing ! Thank you for your time ~ Sincerely, Lynn Lobotsky Sent from my iPhone

COMMENT A44 INCLUDED IN EXHIBIT C

From: yoramgelman <ygelman@att.net>
Sent: Friday, February 10, 2023 3:14 PM
To: Petronella, John W (DEC)
Subject: Fw: Redwing Mining Expansion: White Schoolhouse Road

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Hello, Mr. Petronella,

I was asked to send the letter, seen below, to you directly, in addition to sending it to DEC. I hope you can follow my suggestion to visit White Schoolhouse Road and think of the situation in which the parade of Redwing trucks moves along White Schoolhouse and Route 308.

Thank you,
-yoram gelman

----- Forwarded Message -----

From: yoramgelman <ygelman@att.net>
To: New York State Department of Environmental Conservation <nysdec@public.govdelivery.com>
Sent: Thursday, February 9, 2023, 10:46:23 PM EST
Subject: Redwing Mining Expansion: White Schoolhouse Road

To: New York State Department of Environmental Conservation

Before making any public statements regarding the mining expansion by Redwing's access to White Schoolhouse Road, the members of the New York State Department of Environmental Conservation must travel the route that will be taken by the trucks between Route 308 and the mining access road.

According to Redwing's statements, up to fifty (!) trucks per day may carry four hundred tons (!) of gravel along what is now a quiet residential/country road. Realize also that these trucks will not be cute family-sized pickup trucks. They are huge, noisy, and dirty; thinking about a parade of such trucks is just inconceivable.

Apart from relevant environmental matters, allowing the expansion will be an insult to the Town and Village of Rhinebeck. Just when the Village is becoming known as a beautiful destination in the Mid Hudson Valley, the presence of these trucks on a major access road to Rhinebeck will be a foul blow -- akin in boxing to be hitting below the belt. A sucker punch implying that New York State is willing to destroy the properties of its citizens in favor of smoke and destruction. Any plans for "reclamation" of the environment must be viewed in the context of "reclamation" efforts in Redwing's existing mining operations.

Again, visit White Schoolhouse Road before considering the expansion.

-yoram gelman
914-262-8037

Former resident on white Schoolhouse Road, now living in Milan/Red
Hook

From: sarane oconnor <soconnor466@gmail.com>
Sent: Thursday, February 9, 2023 8:16 AM
To: dec.sm.DEP.R3; Petronella, John W (DEC)
Subject: Red Wing Mine - Rhinebeck, NY

Some people who received this message don't often get email from soconnor466@gmail.com. [Learn why this is important](#)

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To Whom It May Concern,

My name is Sarane Ross O'Connor, and I live at 11 Bollenbecker Road, Rhinebeck, NY. . I am writing to express my views on Red Wing's request to expand mining on White Schoolhouse Road in Rhinebeck, NY. I strongly urge the DEC to consider all the reasons why mine expansion would be problematic and to reject the request for an expansion of the area to be mined. The expansion of Red Wing Mining operations is detrimental to :

- 1) the environment - what is the impact on aquifers?
- 2) wildlife - what is the impact of destruction of habitat for the local flora and fauna?
- 3) safety of local tax-paying residents - what is the impact of 20-40 trucks per day on a small winding rural road with no shoulder, used by residents for walking, jogging, biking, dog walking, horseback riding, etc. ?

There is no positive community impact, only profits for the mine owners. Doesn't make sense fiscally or environmentally.

Sincerely,
Sarane Ross O'Connor
Local resident, taxpayer and voter

Sent from my iPhone

From: Deborah Barrow <deborah@deborahbarrow.com>
Sent: Thursday, February 9, 2023 8:08 AM
To: dec.sm.DEP.R3; Petronella, John W (DEC)
Cc: espinzia@rhinebeckny.gov; nan@planningbetterplaces.com
Subject: Mining expansion on White Schoolhouse Road Concern

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Dear Mr. Petronella, et.al:

I am writing to express my disapproval of expanded mining on White Schoolhouse Road in the Town of Rhinebeck.

In addition to the widely stated general concerns about wildlife in the area, and water quality in the streams that are fed by the mining operation's location, I would like to bring your attention to the possible resulting increase in heavy truck traffic on NY Route 308, which is a residential thoroughfare with homes, some dating to the 1800s, on either side of it from the eastern border of the Town of Rhinebeck and terminating at the light at Route 9 in the heart of Rhinebeck Village.

The NY-308 community of homeowners and residents would be severely negatively impacted by any portion of the planned addition of 20 to 50 heavy industrial trucks a day, which of course means 40-100 trips back and forth.

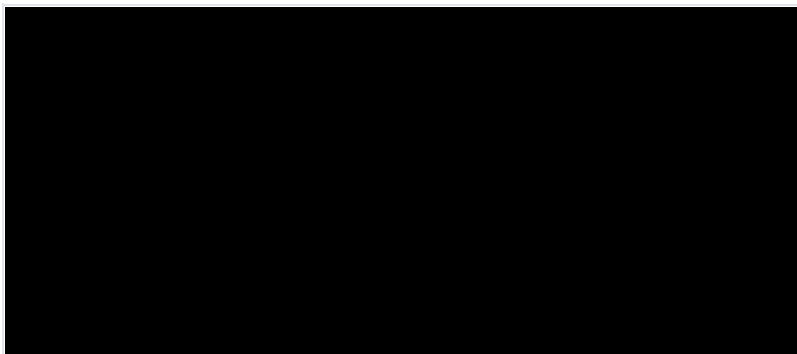
The industrial nature of this traffic will change forever the character of this historic road, which in its past was often referred to as the Sepasco Trail.

"Artifacts found near Lake Sepasco, near NY 308's eastern terminus at Rock City, date to about 1685, when the Sepasco Native Americans built the Sepasco Trail from the Hudson River, eastward through modern-day Rhinebeck (then Sepasco or Sepascoot) to the lake, following roughly NY 308 and its side roads."*

This would be a profound quality of life and quality of viewshed issue for the residents of and visitors to both beautiful White Schoolhouse Road as well as NY-308, a country thoroughfare which serves as the rural Eastern approach to one of the Hudson Valley's most historically intact and celebrated towns and villages, Rhinebeck, a critically important engine of the Dutchess County hospitality industry.

I am grateful for the opportunity to make comment here,
Deborah Barrow
Rhinebeck

*Source: [New York State Route 308 - Wikipedia](#)



New York State Route 308 - Wikipedia

From: Anne Brueckner <annebrueckner43@gmail.com>
Sent: Thursday, February 9, 2023 2:05 PM
To: Petronella, John W (DEC)
Subject: Red Wing mining project in Rhinebeck

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John Petronella
Regional Permit Administrator at NYSDEC
21 South Putt Corners Road
New Paltz, NY

Dear Mr. Petronella,
As a resident of Rhinebeck (NY), I am disturbed by and concerned about Red Wing's request to expand mining operations on White Schoolhouse Road. I strongly urge the DEC to understand why the request should be turned down.

While my home is in the Village (not near the proposed site expansion), I place high value on the natural surroundings of our community. I am especially concerned that the impact on the natural resources on and near the property will be significant and damaging. Further, the additional heavy truck traffic and the noise impacts are a major threat to the existing neighborhood and nearby community.

Please help us maintain the status of Rhinebeck as an environmental "good citizen".

Thank you--

Anne Brueckner
31 Pond Drive east
Rhinebeck, NY. 12572

From: eric.salzman@yahoo.com
Sent: Thursday, February 9, 2023 3:40 PM
To: dec.sm.DEP.R3
Subject: Rhinebeck Red Wing Permit on White Schoolhouse Road

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I read today that you are looking for public comments on the permit for Red Wing to operate a mine on White Schoolhouse Road in Rhinebeck. I live at 381 White Schoolhouse Road and vehemently oppose adding 20-50 trucks per day on this residential street. I use the street daily for dog walking and bike riding and am terrified about the safety issues of the added traffic. I also work from home and would be disturbed by the added noise of this commercial operation. If there is anything I can do besides writing here to log my protest, please let me know.

Thank you,

Eric Salzman

eric.salzman@yahoo.com

917.741.3814

From: Susan Marsa <smarsa55@gmail.com>
Sent: Thursday, February 9, 2023 6:21 PM
To: dec.sm.DEP.R3
Subject: Red wing expansion

[You don't often get email from smarsa55@gmail.com. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Please do not approve this request for expansion.

Sent from my iPhone

From: Charles Wessler <cbwessler@me.com>
Sent: Thursday, February 9, 2023 6:30 PM
To: dec.sm.DEP.R3
Subject: Red Wing in Rhinebeck

[You don't often get email from cbwessler@me.com. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

You have read a LOT of comments. I only have one.

Allowing 30 or 50 massive trucks on White School House Road is giving permission to Red Wing to murder Rhinebeck Citizens. Insane. Just Insane.

If you have not driven WSHR then you better run over there and see this nightmare for yourselves.

And lastly please please please consider the name of the branch of government you WORK for.

C

From: Eve D'Ambra <evdambra@vassar.edu>
Sent: Thursday, February 9, 2023 8:30 PM
To: dec.sm.DEP.R3
Subject: Red Wing Sand and Gravel, Rhinebeck

You don't often get email from evdambra@vassar.edu. [Learn why this is important](#)

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

I am a resident of the town of Rhinebeck who opposes the proposal to expand mining at Red Wing Sand and Gravel. The area is rural and residential. The proposed use with extensive truck traffic on a narrow country road, noise and dirt, and environmental degradation (the depletion of a local lake) is unacceptable to residents and unsuitable for the community. This plan would destroy the natural habitat of wildlife, along with the natural beauty of the woodlands. It also creates unsafe conditions for residents on the road, as well as an industrial impact out of place in Rhinebeck.

sincerely,
Eve D'Ambra

COMMENT A53 INCLUDED IN EXHIBIT C

COMMENT A54 INCLUDED IN EXHIBIT C

From: Zito, Julie <jzito@rx.umaryland.edu>
Sent: Friday, February 10, 2023 7:58 AM
To: dec.sm.DEP.R3
Subject: Oppose mine expansion

You don't often get email from jzito@rx.umaryland.edu. [Learn why this is important](#)

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

We oppose expansion of red wing mine expansion in Rhinebeck.

Julie and Sandy Zito
190 stone church rd
Rhinebeck NY 12572

Get [Outlook for iOS](#)

From: Franc Palaia <francpalaia1@gmail.com>
Sent: Friday, February 10, 2023 10:11 AM
To: Petronella, John W (DEC)
Subject: Fwd: Red Wing Sand and Gravel, Rhinebeck

You don't often get email from francpalaia1@gmail.com. [Learn why this is important](#)

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Hello John,

I am a resident of the town of Rhinebeck who opposes the proposal to expand mining at Red Wing Sand and Gravel. The area is rural and residential. The proposed use with extensive truck traffic on a narrow country road, noise and dirt, and environmental degradation (the depletion of a local lake) is unacceptable to residents and unsuitable for the community. This plan would destroy the natural habitat of wildlife, along with the natural beauty of the woodlands. It also creates unsafe conditions for residents on the road, as well as an industrial impact out of place in Rhinebeck.

sincerely,

Franc Palaia

ps. I am Eve D'Ambra's husband and am using Eve's statement because it goes for me too.

845-516-4758

cell-845-505-3123

www.francpalaia.com

COMMENT A57 INCLUDED IN EXHIBIT C

COMMENT A78 INCLUDED IN EXHIBIT C

COMMENT A79 INCLUDED IN EXHIBIT C

Exhibit E

Transcript of Public Hearing

**Held November 17, 2022
1PM and 6PM**

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NEW YORK STATE DEPARTMENT
OF ENVIRONMENTAL CONSERVATION
RED WING MINING PROJECT
VIRTUAL PUBLIC HEARING

DATE: 11/17/22
STATE TIME: 1:00 p.m.
END TIME: 2:28 p.m.
REMOTE LOCATION: Webex videoconference
REPORTER: Delores Hauber
JOB NO: 13291

1 APPEARANCES:

2 NYSDEC OFFICE OF HEARINGS AND MEDIATION SERVICES
625 Broadway, First Floor
3 Albany, New York 12233-1550
BY: TIMOTHY MACPHERSON, Administrative Law Judge
4 timothy.macpherson@dec.ny.gov

5
NYSDEC DIVISION OF ENVIRONMENTAL PERMITS
6 21 South Putt Corners Road
New Paltz, New York 12561
7 BY: JOHN PETRONELLA, Regional Permit Administrator
john.petronella@dec.ny.gov

8
9 BOND SCHOENECK & KING, PLLC
ATTORNEYS AT LAW
10 One Lincoln Center
110 West Fayette Street
11 Syracuse, New York 13202
BY: KEVIN BERNSTEIN, ESQ.
12 kbernstein@bsk.com

13

14 Present as Panelists:

15 Frank Doherty, Red Wing Properties

16 Maria Katchmar, NYSDEC

17 Emma Antolos, NYSDEC

18 Justin Stenerson, DEC

19 Ryan Laduke

20 Andrea Linton, DEC

21 Elisa Chae

22

23

24

25

1 ALJ MACPHERSON: Good afternoon. We are on
2 the record. I'd like to note that the time is
3 1:00 on November 17th, 2022. My name is Timothy
4 MacPherson. I'm an administrative law judge with
5 the Office of Hearings and Mediation Services of
6 the New York State Department of Environmental
7 Conservation. I've been assigned along with
8 members of the Office of Communication Services
9 to conduct today's virtual public comment
10 hearing. For the record this hearing is being
11 held on November 17th, '22 I reiterate through
12 the Webex platform. Please note that if you
13 encounter technical difficulties you may call
14 518-402-8044. Again the number is 518-402-8044
15 and members of the Office of Communication
16 Services will assist you.

17 The purpose of today's hearing is to
18 solicit public comment on the proposed
19 modifications by Red Wing Properties,
20 Incorporated to an existing mined land
21 reclamation permit to mine sand and gravel at the
22 White House School Road Mine in the Town of
23 Rhinebeck, Dutchess County. The New York State
24 Department of Environmental Conservation as the
25 lead agency determine that the proposal is a Type

1 1 action as determined by 6 NYCRR 617.4, sub B,
2 sub 6, sub I and issued a positive declaration.
3 The applicant prepared a Draft Environmental
4 Impact Statement which is available for the
5 public to review and comment.

6 In a moment department staff John
7 Petronella will provide a brief overview of the
8 proposed amendments. A short presentation by the
9 applicant's representative Kevin Bernstein will
10 follow. Notices for today's hearing were
11 published in the Department's Environmental
12 Notice Bulletin on October 31st, 2022 and in the
13 Daily Freeman, a daily newspaper published in the
14 City of Kingston, County of Ulster and the State
15 of New York which was published on November 2nd,
16 2022. The notices directed anyone wishing to
17 make a comment today to preregister online or by
18 telephone.

19 The purpose of today's hearing is to take
20 oral statements from the public. These comments
21 will be incorporated into the official record of
22 this proceeding. Please be aware this is not a
23 question and answer session, rather it's an
24 opportunity to hear your public comments. If you
25 would like to submit written comments on this

1 project they must be postmarked by January 11th,
2 2023. Once again that's January 11th, 2023. And
3 they must be mailed to John Petronella, Regional
4 Permit Administrator at the New York State
5 Department of Environmental Conservation, 21
6 South Putt, that's P-U-T-T, Corners Road, New
7 Paltz, New York 14209 (sic). Alternatively
8 written comments may be e-mailed to John
9 Petronella at John.Petronella, that's
10 J-O-H-N.P-E-T-R-O-N-E-L-L-A @dec.ny.gov by 5 p.m.
11 also on January 11th, 2023. The addresses for
12 commenting are also available on our website
13 www.dec.ny.gov and on the slide on your screen.
14 On the DEC website click on the events calendar
15 at the bottom of the page, then click on the link
16 for today's hearing. I repeat written comments
17 must be submitted no later than 5 p.m. on January
18 11th, 2023. You can also access the link to the
19 ENB notice from there.

20 I'd like to emphasis that written and oral
21 comments are given equal weight by the
22 department. Speakers are encouraged to submit
23 lengthy statements in writing while providing
24 only a summary of their comments here today.
25 Note that all participants have been muted upon

1 entry and your line will be unmuted when it's
2 your turn to comment. To avoid feedback please
3 insure that you're using only one audio input.
4 Again if you encounter a technical problem during
5 the hearing please call 518-402-8044 and someone
6 from the Office of Communication Services will
7 assist you.

8 The notice for this hearing provided
9 preregistration for those individuals wishing to
10 make a comment. For the courtesy of all speakers
11 comment time will be limited to three minutes.
12 Once again speakers are encouraged to submit
13 lengthy statements in writing and provide only a
14 summary of their comments here this evening. We
15 are going to have any elected officials speak
16 first, followed by members of the community who
17 are not elected officials.

18 Before I call for the first commentator Mr.
19 Petronella, from the Division of Environmental
20 Permits, will provide an overview of the proposed
21 amendments. Mr. Petronella, you may go.

22 MR. PETRONELLA: Thank you, Judge. Good
23 afternoon. My name is John Petronella,
24 P-E-T-R-O-N-E-L-L-A, and I am the regional permit
25 administrator with the New York State Department

1 of Environmental Conservation Region 3 office. I
2 am also the project manager coordinating the
3 department's review of this proposed project.

4 Thank you all for participating in the
5 public hearing this afternoon. Thank you
6 Supervisor Spinzia and other Town of Rhinebeck
7 officials. I would also like to thank
8 Administrative Law Judge Timothy MacPherson for
9 presiding over this hearing. Excuse me.

10 First I would like to provide you with a
11 brief description of the proposed action as well
12 as the department's permit jurisdictions, then I
13 will outline the purpose of the hearing and
14 review where documents can be reviewed and public
15 comment deadlines. After I speak a
16 representative from Red Wing will provide a more
17 detailed overview of the proposed project.

18 Red Wing Properties proposes to expand the
19 existing permitted sand and gravel mine located
20 on White School House Road in the Town of
21 Rhinebeck from 43 acres to 94 acres on a 241 acre
22 parcel owned by the applicant. My apologies.
23 The modification will include mining sand and
24 gravel above and below water over a 94 acre life
25 of mine area. The mine will be reclaimed as a

1 mix of grassland and a 65 acre pond with a small
2 area of bedrock outcrops.

3 Permits required by the department at this
4 time include modification to the mine land
5 reclamation permit and Article 24 fresh water
6 wetlands permit for work within the 100 foot
7 adjacent area of a New York State regulated fresh
8 water wetland and Article 15 protection of water
9 stream disturbance permit for proposed
10 disturbances to the Landsman Kill, a New York
11 State protected stream. Coverage under the State
12 Pollution Discharge Elimination System, or SPDES,
13 multi-sector general permit and New York State
14 facility registration for the operation of the
15 processing equipment.

16 The purpose of this public hearing is for
17 the department to accept public comments
18 regarding the proposed project. All substantial
19 comments received at this public hearing and
20 submitted in writing will become part of the
21 official record. Oral and written comments must
22 be responded to by the lead agency in the Final
23 Environmental Impact Statement. The Draft
24 Environment Impact Statement, or DEIS, is
25 available for review in hardcopy at the Rhinebeck

1 Town Hall, Star Library and the DEC Regional
2 Office in New Paltz. Documents are also
3 available online at the link provided in the
4 hearing notice. Again comments will be accepted
5 by the department on the DEIS and the application
6 materials until January 11th, 2023. Thank you.

7 ALJ MACPHERSON: Thank you, Mr. Petronella.
8 Now we have Mr. Bernstein from -- I'm sorry,
9 Bernstein from the applicant.

10 MR. BERNSTEIN: Thanks, Judge. I
11 appreciate it. And I appreciate the opportunity
12 to speak on behalf of Red Wing. One of the
13 panelists by the way joining us today is Frank
14 Doherty so he is here as well. But go to the
15 next slide please.

16 So I'm going to talk a little bit about the
17 background of the applicant, the need for the
18 project and about the project itself. I'll be
19 fairly quick of course because the primary
20 purpose of this hearing is to allow the public to
21 provide comment.

22 The Red Wing Properties, Red Wing Sand and
23 Gravel were founded by the Doherty family in 1969
24 to fill the growing need for construction
25 aggregates. Red Wing has permitted mines and

1 reclaimed many mines since then. Most of these
2 reclaimed mines have actually been donated to
3 local towns for recreational uses.

4 Red Wing Properties as Red Wing Sand and
5 Gravel operate the Roe-Jan and Billings Mines and
6 its sister company, Package Pavement, operates a
7 bagging plant and blacktop plant at their
8 facility in Stormville that are supplied by these
9 mines. Package Pavement packages and sells
10 dozens of sand and gravel based products that are
11 sold locally and regionally at home improvement
12 stores and you've probably seen them at your
13 local Home Depot, etcetera. Red Wing and their
14 sister companies employ over 150 people at their
15 various facilities.

16 Now sand and gravel, which is what we're
17 talking about here at this location, is a
18 nonrenewable resource and as reserves are
19 depleted they must be replaced and that's what
20 we're doing with this application. The reserves
21 at the Roe-Jan and Billings mines are nearing
22 depletion and Red Wing is permitting the White
23 House School, White School House Road mine for
24 the purpose of replacing those nearly depleted
25 resources. Next slide please. Thank you.

1 And I don't know if you can move the slide
2 up on the screen for people a little bit. I'm
3 not sure if you're able to do that because the
4 whole slide actually is not showing. Well, I'll
5 continue while you work on that, Maria.

6 So onsite studies and tests indicate that
7 the sand and gravel deposits at this site are of
8 sufficient quantity and quality to warrant
9 persuing the mining permit. And the existing
10 mining and proposed modification area is located
11 proximal to a well established and readily
12 accessible road system. The Red Wing mine and
13 the resources from that mine will provide local
14 municipalities, contractors and residents with a
15 nearby source of high quality construction
16 aggregate. Less trucking will result in an
17 overall reduction in emissions and less wear and
18 tear on the regional infrastructure.

19 The number of operating mines actually in
20 New York State have been dropping and in Region 3
21 have been dropping significantly over the years.
22 Since 2002 the number of mines, permitted mines
23 in New York has dropped from over 2,300 to over
24 1,700, a decrease of approximately 24 percent,
25 but yet of course building continues to occur.

1 In Region 3 since 2002 the number of mines has
2 dropped 41 percent so exceeding the state wide
3 drop. Existing mines are being depleted faster
4 than new mines are being permitted. Permitting
5 this mine will allow Red Wing to stay in business
6 and employ their 150 employees. And the need for
7 continued aggregate mining to supply ongoing
8 demand is recognized by the Dutchess County
9 Department of Planning. Next slide please.

10 So real briefly the location of the mine,
11 it's located on the west side of White School
12 House Road. And the planned mine area is located
13 on the western side of a 241 acre property owned
14 by Red Wing and is well screened. Approximately
15 44 acres are currently permitted including 38
16 acres above water, 9 acres below water and 5
17 acres of access road. And this application would
18 increase the mine to 94 acres and allow above and
19 below water mining. Next slide.

20 Just a little bit of the project overview
21 and how exactly it's going to occur. The site is
22 located in a relatively narrow valley bounded on
23 both sides by steep sided wooden valley walls.
24 And the excavation basically will continue to be
25 in the center of the valley and there are very

1 few homes or potential receptors in the vicinity.
2 All mining activity occurs on the mine floor,
3 thereby maximizing screening by the side walls of
4 the mine.

5 The western part of the Red Wing property
6 contains the economically viable sand and gravel
7 resources and those are the resources that will
8 be mined. And the remaining property surrounds
9 the life of the mine area providing principally
10 forested buffers and a property subject to a
11 conservation easement. There are approximately
12 11 homes within 1,200 feet of the proposed
13 excavation area. There are two homes near the
14 proposed entrance in addition to two owned by Red
15 Wing. And the remaining nearest homes are
16 closest to the portion of the mine that is
17 already permitted including two homes owned by
18 the Lobotskys who have a permitted mine on White
19 School House Road.

20 And the mine will just continue to be
21 worked using standard sand and gravel excavation
22 methods. I won't go through those in detail, but
23 basically it's mining the resource, excavating
24 it, hauling it out and then processing and
25 loading it onto trucks for offsite delivery.

1 Next slide please.

2 So except for the pond outlet, all mining
3 will stay a minimum of 100 feet from all
4 wetlands. Mining will continue in the northern
5 part of the mine and proceed southwards. I will
6 show you in 30 seconds a couple of slides showing
7 you the drawings that are included in the
8 application. The above and below water phases
9 will be worked together to best utilize the
10 deposit. This also keeps the amount of affected
11 area to a minimum. And then trucks entering and
12 leaving the site will be weighed at an office and
13 scale house in the southern part of the site.
14 Next slide.

15 So this slide and the next slide shows in
16 map form the northern part of the mine and then
17 the southern part of the mine. And these
18 drawings are from the Mined Land Use Plan and so
19 can be reviewed in detail by looking at the Mined
20 Land Use Plan. But if you go to the next slide
21 in particular it shows the road coming in and
22 coming up and accessing the, kind of the central,
23 north central part of the site. Next slide
24 please.

25 So over the years there were several

1 studies, detailed studies performed in support of
2 this application including a Mined Land Use Plan
3 which basically shows how mining is to be
4 performed, talks about the environmental impacts,
5 weighted or mitigated and the mine reclaimed. Of
6 course that is in addition to the Draft
7 Environmental Impact Statement.

8 Now the engineering assessment of the pond
9 shoreline and you will see when I get to a couple
10 slides in a moment what I mean by the pond.
11 Basically it's the pond that is created as a
12 result of the mining activity, but this
13 engineering assessment assessed whether the pond
14 has potential to overtop and whether wave action
15 will significantly erode the shoreline. There
16 was also blasting plans prepared, wetland
17 monitoring and staff gauge monitoring in the
18 wetlands to the east of the mine, wetland
19 delineation showing the map extent of regulated
20 wetlands, a noise impact assessment showing
21 detailed existing conditions, increases that are
22 expected as a result of the mining activity and
23 then the mitigation measures to control any
24 impacts to local receptors. A visual impact
25 assessment was performed as well looking at the

1 potential aesthetic impacts. Ecological studies
2 have been performed multiple times over the years
3 with regard to plants and wildlife at the
4 property. Of course a travel study has been
5 performed and updated most recently. And then of
6 course the storm water pollution prevention plan.
7 Next slide.

8 In addition to that particularly since this
9 is part, in part a below water table operation a
10 subsurface investigation was performed as well as
11 a hydrogeologic investigation. And the
12 hydrogeologic investigation looks at how mining
13 will cause minor changes to the hydrologic
14 conditions and then any mitigation measures that
15 are needed.

16 Cultural resources of course have to be
17 evaluated for any application. This application
18 is no exception and that was done here and the
19 New York State Office of Parks and Recreation and
20 Historic Preservation determined that there would
21 no significant impacts.

22 There is also a fugitive dust control plan
23 that will be in place. And as Mr. Petronella
24 mentioned before a wetland application is
25 required for impacts to the 100 foot buffer area

1 and the reason for that is to install the pond
2 outlet to control water levels in wetlands near
3 the project. And finally an incidental take
4 permit has already been issued by the department.
5 Next slide.

6 So every mining application requires a
7 reclamation plan and so the mined land
8 reclamation plan incorporates mining that's
9 creating a 65 acre pond surrounded by a perimeter
10 access road, grassy areas and grassy side slopes
11 and that reclamation of course will occur
12 concurrently with mining. And then as I
13 mentioned there will be a designed pond outlet
14 that's all towards the end of mining to control
15 the level of the pond and mitigate potential
16 impact to nearby wetland.

17 And the next slide and the slide after
18 starting with the next slide kind of shows if you
19 remember earlier we showed the mining plan map.
20 This is the reclamation plan map which shows you
21 what the site will look like after mining is
22 concluded. So this is the northern part of slide
23 showing the pond and then the next side shows the
24 southern part of the site showing the pond. And
25 that is really a description of the application

1 and the need for the resource and a little bit
2 about the applicant. And with that I'll hand it
3 back over to you, Judge MacPherson.

4 ALJ MACPHERSON: Thank you, Mr. Bernstein.
5 I will now call the name of each person who
6 preregistered starting with elected officials of
7 which I believe we have two. My list says there
8 are 11 registered speakers for the 1 p.m.
9 session. If we have more, we will be happy to
10 let them speak as well. After I call your name,
11 your line will become unmuted so that you may
12 make your statement. If you are a call-in
13 attendee on a phone, please press star three on
14 your phone so we know which line to unmute and
15 then you should hear a prompt to alert you that
16 you've been unmuted. Please remember if you have
17 your device on mute, you will need to unmute it
18 before you begin speaking. Please speak slowly
19 and clearly so that we are able to properly
20 record your statement. Once all the
21 preregistered speakers have had a chance to
22 comment, I will open the forum to any
23 nonregistered attendees who wish to comment. And
24 I reiterate once again this is not a Q and A,
25 this is not a question and answer session, but an

1 opportunity for the public to make a comment.

2 First up I call John Lyons. Mr. Lyons,
3 your line has been or will shortly be unmuted.
4 Please state your name and spell your full name
5 and the company or organization you may or may
6 not be representing. So I should say before we
7 begin, maybe we're having trouble getting Mr.
8 Lyons. Folks on their computers will see there
9 is an hourglass with a time limit there. We'd
10 like to keep these under three minutes so just
11 follow along with that. So again I'm going to
12 call John Lyons.

13 MS. KATCHMAR: Mr. Lyons has been unmuted.

14 ALJ MACPHERSON: Okay. Mr. Lyons, we'll
15 give you a little time to figure that out. If
16 not, I can move to the next elected official and
17 we'll get back to you afterwards. I'll give you
18 a couple seconds though to try to see if we can't
19 remedy this. From my notes Mr. Lyons is with the
20 Law Firm Grant & Lyons, LLP and he is going to
21 speak on behalf of Rhinebeck and their town
22 board.

23 MS. KATCHMAR: Mr. Lyons, if you are using
24 your computer audio, you may need to just raise
25 the volume of your audio down in the corner. If

1 you're having additional issues, you can contact
2 518-402-8044 and someone will help you through
3 it.

4 ALJ MACPHERSON: All right. So, Mr. Lyons,
5 assuming you can hear me, I am going to move to
6 the next person. We will come back to you
7 periodically, certainly after the next person
8 speaks and then periodically thereafter. The
9 next elected official set to speak is Brennan
10 Kearney, County Legislator, Clinton and Rhinebeck
11 District 11. Please state and spell your full
12 name and the organization you may be
13 representing.

14 MS. KATCHMAR: I am not seeing that
15 speaker.

16 ALJ MACPHERSON: I am not either. All
17 right. So, Mr. Kearney, is not showing up on my
18 screen either. Mr. Lyons, have you had an
19 opportunity to fix your technical difficulties
20 whatever they may be? If not I will move on to.

21 MR. LYONS: Can you hear me now?

22 ALJ MACPHERSON: I can. Is this Mr. Lyons?

23 MR. LYONS: Yes, it is.

24 ALJ MACPHERSON: Okay, wonderful. Please
25 just state and spell your name and the

1 organization you're representing.

2 MR. LYONS: My name is John Lyons.

3 J-O-H-N, L-Y-O-N-S. I am an environmental and
4 land use lawyer. My firm is Grant & Lyons
5 located in Rhinebeck, New York. Our firm
6 represents in connection with this matter the
7 Town of Rhinebeck and the Town of Rhinebeck
8 Planning Board.

9 ALJ MACPHERSON: Thank you, Mr. Lyons. You
10 may begin.

11 MR. LYONS: Your Honor, I would like to ask
12 that I be allowed to exceed the three minute
13 limit. I'm speaking today on behalf of five
14 members of the Town of Rhinebeck Town Board. I'm
15 also speaking on behalf of another lawyer for the
16 Town, Warren Replansky. I prepared some remarks
17 for today. There was no notice in advance of the
18 meeting indicating that there was going to be a
19 three minute limit. I promise you that the
20 remarks that I'm making today are in fact a
21 summary. The town will be submitting detailed
22 comments before the end of the written comment
23 period, but as you know the DEIS in this case is
24 ten inches thick and there is a lot of ground to
25 cover. I will try to move expeditiously through

1 my remarks.

2 ALJ MACPHERSON: Mr. Lyons, how long would
3 you estimate your comments would take as
4 prepared?

5 MR. LYONS: Probably about ten minutes.

6 ALJ MACPHERSON: You know, it's tough
7 because if everyone asks for ten minutes, then
8 we're certainly in trouble. But being as though
9 that you represent the town board in this matter,
10 I'm going to grant that in this instance. And if
11 anyone has a compelling reason that they need a
12 little extra time, I'm willing to hear their
13 request as well. In this instance I'll grant it,
14 but I would ask that once again we're taking
15 written comments and they are equally considered.
16 So I would advise folks to try to summarize
17 everything with their oral presentation and then
18 just submit a written report later on. So, Mr.
19 Lyons, you may begin. And I'll note the time is
20 12:26. I'll give you up to 10 minutes, Mr.
21 Lyons.

22 MR. LYONS: Okay. Thank you very much. As
23 I said this really is a summary. I just want to
24 begin by thanking the department for the
25 opportunity to speak. It's very important for

1 the Town of Rhinebeck to be able to have the
2 opportunity to participate. I'm speaking on
3 behalf of the town board, but of course I'm also
4 speaking on behalf of the citizens of Rhinebeck.

5 I would ask the department to please
6 remember, I know the department does a lot of
7 SEQR reviews. Sometimes there is a benefit to
8 stepping back and sort of getting out of the
9 routine and I ask the department to remember that
10 the purpose of SEQR was to establish lead
11 agencies as the stewards of our land, air and
12 water. And the Town of Rhinebeck and the
13 citizens of Rhinebeck are counting on the
14 department to fulfill those responsibilities as
15 lead agency fully and faithfully and to protect
16 the environment and the interests of the citizens
17 of Rhinebeck and in particular the folks that
18 live in the area around this mine.

19 This is a very difficult site. Over the
20 years the neighborhood has grown up around this
21 site. It's now in the middle of a rural
22 residential area. It's also bounded by White
23 School House Road which is a rural road that is
24 not suited to heavy traffic. It also happens to
25 be nearby one of the most dangerous intersections

1 in Dutchess County, the intersection of White
2 School House Road and Slate Quarry Road.

3 The site itself are ecologically sensitive.
4 There are extensive wetlands, surface waters,
5 Blanding's turtles, Blanding's turtle habitat,
6 bald eagle nesting and a host of other
7 ecologically sensitive natural resources. This
8 application needs a careful, diligent review.
9 One that is attentive to detail and takes care to
10 mitigate all the potential significant adverse
11 impacts to the maximum extent practicable as is
12 required by SEQR.

13 We are hoping that this review will be a
14 departure from the review which was conducted for
15 the access road and the incidental take permit.
16 Those permits allowed the construction of an
17 access road through Blanding's turtle habitat.
18 The town devoted significant time, effort and
19 resources including the hiring of Hudsonia as a
20 consultant to submit extensive, detailed comments
21 in connection with that review all of which were
22 apparently fruitless as the permits were issued
23 without a single change in the draft permit
24 language. That was a monumental disappointment
25 to the Town of Rhinebeck.

1 I point out also that the Town of Rhinebeck
2 is also an involved agency in this review. We
3 remind you that involved agencies are not bound
4 by the findings of the lead agency. The town is
5 committed to be cooperative with the lead agency,
6 but if the town believes that the review is not
7 sufficient, the town will be bold and will issue
8 its own findings. We hope that it doesn't come
9 to that. The review of this DEIS is of the
10 utmost importance to the citizens of Rhinebeck
11 and it will be watched very carefully.

12 I would also mention that the amount of
13 time that has been allotted overall for the
14 comment on this application is insufficient. Red
15 Wing first applied in 2008. They have had 14
16 years to get their application to the point of
17 completeness. The DEIS as I mentioned is ten
18 inches thick and the department has chosen to
19 hold the public hearing just 17 days from the
20 notice of complete application and the total
21 comment period is less than three months. In the
22 middle of which are the Thanksgiving, Christmas,
23 Hanukkah and New Years holidays. This time
24 period is inadequate and will have the effect of
25 denying the public the opportunity to effectively

1 comment on the DEIS. We are in the midst of
2 trying to get professional assistance to help us
3 comment and it's very difficult to be getting
4 professionals to turn around in the time that's
5 been provided. I've been involved with many
6 environmental reviews over the last 37 years and
7 this time period is short compared to other time
8 periods for projects that have been, that are
9 much smaller in scale and far less complex.

10 I want to speak briefly about the areas of
11 study. I want to point out to the department
12 that this project is not in compliance with
13 Rhinebeck's comprehensive plan or zoning law.
14 The project, the existing life of mine area is a
15 conforming use in the town's MI zoning district.
16 The rest of the proposed life of mine under this
17 application is a nonconforming use. The impacts
18 of this use and its impacts to Rhinebeck in
19 contravention of its comprehensive plan and
20 zoning law must be mitigated to the maximum
21 extent practical. I would also remind you that
22 even as a nonconforming use this mine is
23 regulated by Rhinebeck and local approvals are
24 required. Red Wing claims that the nonconforming
25 use status means that it's immune from

1 Rhinebeck's zoning law and local approvals are
2 not required. That argument has been rejected
3 after a full hearing by the Rhinebeck ZBA and
4 also by the New York State Supreme Court.

5 You will hear further discussion today on
6 the issue of traffic. It's an extremely
7 important issue here because White School House
8 Road is not suited to heavy commercial traffic.
9 Having truck traffic on that road will impact
10 public safety. It will also impact the community
11 character of the area and will degrade the
12 condition of the road over time. You will hear
13 further comments from members of the public on
14 this and also in our written comments.

15 A major omission in the Environmental
16 Impact Statement is the lack of a study to the
17 impacts on community character. This is, as I
18 said the project is in the middle of a
19 residential area. The impacts to community
20 character must be addressed as part of this
21 review. Traffic impacts alone will significantly
22 degrade the existing rural feeling of peace and
23 tranquility on White School House Road and its
24 environs. The existing mines that are in this
25 area have coexisted peacefully because of their

1 small scale. Red Wing's proposal and the scale
2 of that proposal represents a totally new level
3 of local impact. The town will also be preparing
4 comments to address other issues regarding
5 impacts to natural resources including ecology,
6 noise, aesthetics and impact to groundwater and
7 surface waters.

8 Finally, the need for, I would point out
9 again that the need for a review is extremely
10 important here, one that is careful and protects
11 the environment and protects the neighborhood.
12 It's important that any conditions that are
13 attached to this, an approval which springs from
14 this review that those conditions be ironclad,
15 meaningful, measurable and enforceable.
16 Rhinebeck (sic) has not been cooperative with the
17 town in the past. There has been frequent
18 litigation between the Town of Rhinebeck and Red
19 Wing all of which has been initiated by Red Wing
20 and those legal issues are continuing. It's
21 important that conditions be such that after the
22 permits are issued that those conditions can be
23 evaluated and enforced in the future. So it's
24 against this backdrop that the town asks the
25 department to conduct a careful, good faith

1 community aware review and to place hard and fast
2 definitive and forceful conditions on the permit.

3 And lastly, I would just note that the need
4 for this mine and the need for sand and gravel is
5 not an appropriate element in the environmental
6 review. Your Honor, thank you very much for your
7 leniency with me for the time. I appreciate it
8 greatly.

9 ALJ MACPHERSON: Thank you, Mr. Lyons. You
10 were eight minutes and 26 seconds from my count.
11 All right. Our next speaker is Brennan Kearney.
12 I call Brennan Kearney. I know Brennan Kearney
13 was not visible on our list here earlier. Maria,
14 are you seeing Mr. Kearney somewhere?

15 MS. KATCHMAR: No, I am not, Judge. I also
16 do see a call-in user. So if a call-in user is
17 one of the attendees that's being called, please
18 press star three on your phone to raise your hand
19 and then we will call on you.

20 ALJ MACPHERSON: So on the chance that Mr.
21 Kearney is a call-in user I'm going to give you a
22 couple of seconds to press star three and then I
23 will move on. I will come back to you. Mr.
24 Kearney, if you can hear me and you are not
25 there, I will come back. All right. Let's move

1 on. Our next speaker is Theodore Braggins.
2 Please state and spell your name or any
3 organization you might be representing.

4 MR. BRAGGINS: My name is Theodore
5 Braggins. T-H-E-O-D-O-R-E, B-R-A double G-I-N-S.

6 ALJ MACPHERSON: Thank you, Mr. Braggins.
7 You may begin your comments.

8 MR. BRAGGINS: Okay. Thank you very much,
9 Your Honor. I've been a resident since the
10 early, mid 1980s on Bollenbecker Road which is
11 pretty adjacent to the proposed property. And
12 then thinking historically I remembered when the
13 mines, the mine was operational before. Noise
14 and traffic is a very strong, big issue in our
15 area here specifically since the mine hours are
16 lengthy and the sound and the, carries quite well
17 actually out here. And it's just a constant,
18 always background noise and that would degrade
19 the quality of life significantly in this area if
20 it had to, you know, restart up and continue. I
21 know some of the projected time is for like
22 possibly the next 15 to 20 years life of the
23 operation and I just think the property values
24 and many other things would take a big hit there.
25 The traffic on White School House Road as

1 Mr. Lyons mentioned is going to be like
2 completely encumbered. It's a high recreation
3 area for people walking, biking. And it's not
4 the same kind of area that it might have been
5 when they were mining before. And so that's
6 important. I don't believe the road, especially
7 the dangerous intersection on Slate Quarry and
8 also onto 308.

9 I would also mention on Monday as I was
10 enjoying the peace and quiet of some of these
11 nice fall days I was walking to my house from the
12 mailbox and lo and behold flying overhead I
13 watched a bald eagle that was directly above me a
14 few hundred feet and it was flying from north to
15 south in the exact direction of the mine. And
16 it's absolutely a thing of beauty and joy to see
17 this symbol of America. And going to a spot that
18 the eagle has surely understood in their own
19 habitat that that's where they should live and so
20 I would hate to see that become something that
21 would, that was disturbed.

22 So there are many, many concerns to take
23 into consideration here and I just want to thank
24 you for your time and I appreciate the
25 opportunity to speak with you. Thank you.

1 ALJ MACPHERSON: Thank you for your
2 comments, Mr. Braggins. Our next speaker is Dean
3 Vallas. Dean Vallas, please state and spell your
4 name along with organization you represent.

5 MR. VALLAS: I have a hoarse voice. I hope
6 you can hear me.

7 ALJ MACPHERSON: I can hear you just fine,
8 Mr. Vallas.

9 MR. VALLAS: Thank you, Judge. My name is
10 Dean Vallas. D-E-A-N, last name is V, as in
11 Victor, A-L-L-A-S. I am a resident of the Town
12 of Rhinebeck and I would like to thank John Lyons
13 for his very informed introductions. I served
14 with him on the comprehensive planning committee
15 as a representative of the Rhinebeck Central
16 School Board. And we were very concerned with
17 the historical, engaging scenery and abundant
18 landscape that Rhinebeck enjoys. The Red Hook
19 (sic) DEIS proposal will at least double if not
20 triple the size of the existing mine and
21 therefore make it more difficult for the
22 inhabitants of this road to enjoy all of the
23 attriments -- attributes that the comprehensive
24 plan seeks to secure.

25 If we look at the Red Hook -- or the Red

1 Wing website we see the type of trucks that they
2 propose to use to facilitate the transportation
3 of their material and these trucks are just not
4 appropriate for the size of White School House
5 Road. That road is at different angles, at
6 different variants and it is a very difficult
7 road to conduct vehicular traffic of a regular
8 size notwithstanding truck traffic of the size
9 that Red Wing is proposing.

10 I further believe that the increase of the
11 mining area is going to have an extremely
12 detrimental effect on the value of the property
13 that the current landowners and property owners
14 have at the moment and I think that this should
15 be given at least a significant evaluation. The
16 company in its reclamation statement does not
17 indicate any escrow amount that is put aside to
18 actually complete the reclamation process and I
19 would ask that this, this thought be given to the
20 idea that once the mine is completed and has gone
21 through its lifecycle, that there may not be any
22 more money to reclaim the area that has been
23 destroyed. I want to thank -- I see my time is
24 running out and I want to thank you for allowing
25 me to make my comments against the proposed

1 enlargement of the Red Wing mine on White School
2 House Road.

3 ALJ MACPHERSON: Thank you for your
4 comments, Mr. Vallas. Before I move on to our
5 next speaker I would like to just see if we have
6 Mr. Brennan Kearney, as he shown up in any
7 aspect? Going once. I'll come back to you, Mr.
8 Kearney, if you can hear me. If not, we're going
9 to move on now to our next speaker, Garrett Dyal.
10 I hope I pronounced that correctly, Dyal.
11 Garrett Dyal. Please state your name and spell
12 it for us as well as any organization you may be
13 representing. Again that's Garrett --

14 MS. KATCHMAR: Okay. We've unmuted the
15 call-in user.

16 ALJ MACPHERSON: Oh, it's a call in. Okay.
17 Is this Brennan or Garrett Dyal?

18 MR. DYAL: Yes, Garrett Dyal.

19 ALJ MACPHERSON: Dyal, okay. Sorry about
20 that. Please spell your name for us and any
21 organization you may be representing.

22 MR. DYAL: G-A-R-R-E-T-T, D as in David,
23 Y-A-L. Just representing myself. I've grown
24 up --

25 ALJ MACPHERSON: Okay. You may begin.

1 Sorry about that.

2 MR. DYAL: Okay. I've grown up and lived
3 in Rhinebeck my entire life and I'm not going to
4 get into the environmental concerns that have
5 been deeply detailed by the town and other
6 residents in the area. My particular gripe at
7 this time is for the amount of traffic that's
8 going to be taking place on White School House
9 Road. I have two young children that are in the
10 Rhinebeck school system whose bus route goes down
11 that road and knowing that road, the blind turns,
12 how narrow it is in some parts. It only gets as
13 wide as 19 feet in a couple parts and having
14 multiple, dozens and dozens of loaded tri-axle
15 dump trucks coming in and out all day every day,
16 you know, obviously makes a parent extremely
17 concerned about what's going to happen during
18 school bus hours regardless of regular traffic
19 during the day. I've had multiple times even
20 just with the smaller, local mining operation
21 that's also on the road where dump trucks coming
22 down the road you have to pull off multiple feet
23 off the side of the road so the truck can get by.

24 You know, anybody who hasn't been familiar
25 with the area where we are talking about the

1 intersection on Slate Quarry Road should take a
2 trip there, especially during bad weather, to
3 understand that downhill, reverse slope turn on
4 Slate Quarry going toward White School House.
5 There is not a lot of time to react and for a
6 heavy use commercial vehicle on that road it
7 draws a lot of justifiable concern and I think
8 the DEC needs to put that into their scope a
9 little bit more and the town should not lay off
10 the brakes so to speak on reenforcing those
11 traffic studies. So that's pretty much all I
12 will have to say about this subject because I
13 know everything else has gone through in detail.
14 Thank you.

15 ALJ MACPHERSON: Thank you for your
16 comments, Mr. Dyal. I hope I got that right.
17 Our next speaker is Amy Olson. Amy Olson, your
18 line has been unmuted. Please state your name
19 and any organization you may be representing.

20 MS. OLSON: Sure. My name is Amy Lemon
21 Olson, O-L-S-O-N, A-M-Y, Lemon like the fruit.
22 I'm representing myself. I'm also a member of
23 Rhinebeck Rural Neighbors that we have come
24 together to address this issue. I live within a
25 mile of this mine and just, I'm just incredulous

1 to think that this has gone this far because when
2 you live in this area and you know White School
3 House and just as Mr. Dyal addressed the idea of
4 giant trucks coming out of White School House
5 Road onto Slate Quarry and the accidents I've
6 seen there and the fatal accidents that have been
7 there it's mind bending that that would ever be
8 considered much less the environmental impact. I
9 walk back there on the Dunkenberg's property
10 often and I've seen a bear. I've seen the
11 eagles. The eagles come and land on my property
12 here at 22 Bollenbecker Road. And there's
13 bobcats that I see regularly, deer, coyotes.
14 This place is just absolutely rich in wildlife.
15 Birds, you know, it's unbelievable to think that
16 this is even considered in the rural town of
17 Rhinebeck that it just by the way got listed as
18 the 14th most beautiful small town in America by
19 Architectural Digest. That just came out.

20 So if you really want to deeply impact
21 negatively the character of this town, the safety
22 of the residents driving on Slate Quarry and
23 White School House and the, it's, you can keep
24 this mine and go forward with it, but it will, it
25 will completely devastate the rural feel of this

1 area which many people come to. You think coming
2 down 308 that's how people come into Rhinebeck
3 from the Taconic as well as Bulls Head and Slate
4 Quarry and it will be, and up Route 9G where
5 these trucks will go down. Just actually
6 impossible to think that this is actually going
7 to happen because it will be devastating. And
8 not just to me and my property values which then
9 I will petition the town to reduce my taxes
10 because they are high right now. And I imagine
11 everybody else, my neighbor Griffin Dunn, the
12 Dunkenbergs. Everyone who lives on, in this
13 area. It's not just 11 houses that are on White
14 School House Road. There are many, many people
15 in this area that will be negatively impacted.
16 And, you know, I beg the town to keep up their
17 fight against this. And for the DEC to please
18 have a look at all the wildlife that is here that
19 will go away if there's constant noise, you know,
20 day in and day out and the safety of the citizens
21 of Rhinebeck and those who visit. We are a very
22 visited town and that keeps all the shops and
23 restaurants going. And I see my time is out, but
24 this impact will be really atrocious. So I'm
25 begging you as a citizen to really take a deep

1 look at the impact of this on our lives. Thank
2 you.

3 ALJ MACPHERSON: Thank you, Miss Olson.
4 Our next speaker is Luke Sullivan. Please state
5 your name and spell your name as well as any
6 organization you may be representing. Again Luke
7 Sullivan.

8 MR. SULLIVAN: Good afternoon. Can you
9 hear me?

10 ALJ MACPHERSON: I can.

11 MR. SULLIVAN: Oh, good. Thank you very
12 much, Judge MacPherson. My name is Luke
13 Sullivan. L-U-K-E. Last name Sullivan,
14 S-U-L-L-I-V-A-N. We're at 67 Hilltop Road. We,
15 we are a road that adjoins White School House
16 Road. We use White School House Road, you know,
17 every day, multiple times per day. I would have
18 a number of comments.

19 The first comment that I would have is
20 that, you know, Red Wing's modus operandi is that
21 they purchase marginal rural and semi-rural
22 properties. Marginal from a business
23 perspective. And then demonstrate a preparedness
24 to litigate heavily against local residents and
25 towns in the belief that their preparedness to

1 litigate against towns and residents will
2 prevail. The reason of course that they are
3 forced into this history of litigation and it's a
4 history. It's a local history of litigation.
5 Everywhere they go they have a host of residents
6 that are up in arms against it as well as the
7 towns. The reason for this is that the
8 properties are first and foremost not fit for
9 purpose in terms of the large scale mining that
10 they are looking to pursue. And so this example
11 with White School House Road and the expansion of
12 the mine for Red Wing it a perfect example of
13 this.

14 I would say in addition as you look at Red
15 Wing's activities and the, and again it's
16 exemplified in previous mines or in current mines
17 that they operate and certainly in the building
18 of their access road here and their preparedness
19 to go up against the town is that they have
20 demonstrated a lack of concern for the overriding
21 town rules and existing laws within the town.

22 Taking all of this into account I would say
23 that we can have and the DEC can have a very
24 marginal, limited level of confidence that Red
25 Wing will operate in a fashion where they will

1 protect all of the wildlife in the local area.
2 And this is considerable. We have, and it's been
3 mentioned we have deer in the local area. We see
4 them. Bears in the local area. We have a family
5 of bears behind us. We have bald eagles. We've
6 got deer, beaver, raccoons. We've got a colony
7 of Pileated woodpeckers. And we have
8 birdwatchers that come through regularly to view
9 all of this wildlife. So this is considerable
10 and should be taken into account.

11 Red Wing has a history of being a highly
12 litigious and disliked corporate citizen
13 generally. And we think that the, that their
14 participation in this local community is
15 unwelcomed, unwarranted and should not be
16 allowed. Thank you.

17 ALJ MACPHERSON: Thank you for your
18 comments, Mr. Sullivan. Our next speaker is
19 Steven Lobotsky. Please state and spell your
20 name as well as any organization you may be
21 representing. Mr. Lobotsky, you've been unmuted
22 I believe.

23 MR. LOBOTSKY: Are you there?

24 ALJ MACPHERSON: I can hear you, Mr.
25 Lobotsky.

1 MR. LOBOTSKY: Can you hear me?

2 ALJ MACPHERSON: Yes.

3 THE REPORTER: There's a terrible echo, I'm
4 sorry.

5 ALJ MACPHERSON: Mr. Lobotsky, you may have
6 two devices going at once.

7 MS. KATCHMAR: I'm going to try to unmute
8 the other device right now. Hold on one moment.

9 MR. LOBOTSKY: The host has unmuted you.
10 Are we good?

11 MS. KATCHMAR: Yep. We can hear you now.

12 MR. LOBOTSKY: Okay. Steve Lobotsky,
13 S-T-E-V-E, L-O-B-O-T-S-K-Y. I live at 191 White
14 School House Road and I'm speaking in opposition
15 to the proposed Red Wing mine expansion. Looking
16 at Red Wing's DEIS there seems to be a theme that
17 there will be no significant impacts in the area.
18 We all know that's far from the truth. There's
19 major concerns with road traffic safety, aquifer,
20 and water supply, historical buildings and the
21 environment.

22 The absolute biggest issue is the road.
23 White School House Road is a narrow, twisty,
24 hilly road. Many blind corners and driveways.
25 Red Wing's traffic study says it's 21 feet wide.

1 While there are spots that are, it ignores all
2 the spots that are not. Right in front of our
3 house it's 19 feet, eight inches wide. Two
4 vehicles can't pass there. We have a picture of
5 a dump truck passing through that narrow spot and
6 there is zero room on either side. The north end
7 of White School House is residential and narrow.
8 The south end has the dangerous intersection with
9 Slate Quarry. This road cannot handle the volume
10 of trucks of a typical Red Wing mine. Red Wing's
11 own words at town meetings, quote, "they are
12 going to be a regional mine. We're the largest
13 sand and gravel supplier in Dutchess County,"
14 unquote. Their DEIS states a truck every three
15 minutes in the course of a day seven to five,
16 that's 200 trucks. The Town of Rhinebeck has a
17 law on the books that prohibits dump trailers and
18 tri-axles from being used. The comprehensive
19 plan also allows only for small scale mining.
20 This project is far from that.

21 I'm going to run out of time here. For the
22 DEC to issue a permit Red Wing should have to
23 find an alternate route that does not include
24 White School House Road. Has the DEC or Red Wing
25 looked into 9G or 308, a direct access to that?

1 We have a quote from you guys, DEC, it says
2 exhaust fumes from large vehicles and buses, like
3 buses and trucks contain greenhouse gases,
4 particulate matter and many other pollutants that
5 are harmful to human health and the environment,
6 unquote. So you guys already know how dangerous
7 this will be for us. I guess I'll send the rest
8 of this in, but here's a quote from Bill Jackway
9 a couple years ago, quote, "when Red Wing sand
10 and gravel bought what was a local mine in Milan
11 in 2002 the size and scale of trucking became
12 industrial over night. County and state
13 officials got involved because the risks of dump
14 trailers on school bus routes and such were so
15 great and Red Wing appeared to be deaf to the
16 residents' concerns." From Janice Potter, quote,
17 "I had to sell my home of 15 years because of the
18 noise, filth and constant dangerous truck traffic
19 that made my life there untenable." The DEC
20 should not be in the business of destroying
21 neighborhoods and the health and safety of those
22 living there.

23 ALJ MACPHERSON: Thank you for your
24 comments, Mr. Lobotsky.

25 MR. LOBOTSKY: Thank you.

1 ALJ MACPHERSON: Our next speaker is Sean
2 Bowen. Sean Bowen, you have been or will be
3 unmuted shortly. Please state your name and
4 spell it as well as any organization you may be
5 representing.

6 MR. BOWEN: Hello. Can you hear me?

7 ALJ MACPHERSON: I can hear you, Mr. Bowen.

8 MR. BOWEN: My name is Sean Bowen, S-E-A-N,
9 B-O-W-E-N. I live on 219 Slate Quarry Road. We
10 are in fact the White School House and I've
11 written something down. I'm very nervous. I've
12 written something down, but it's been stated this
13 is a dangerous area. I've had people killed in
14 my driveway due to accidents. And I'll just
15 read.

16 Thank you for the opportunity to address
17 the group. I would like to speak about some
18 concerns I have of Red Wing's submitted traffic
19 study from Creighton Manning which downplays very
20 serious issues about the intersection of White
21 School House and Slate Quarry Road. The
22 submitted report is inaccurate. I know because
23 for 17 years I have lived in the house ten feet
24 off the pavement of this intersection. Creighton
25 Manning on the other hand visited temporarily

1 from Albany to make an assessment. Their report
2 acknowledges a problem with the intersection
3 stating "intersecting and stopping sight
4 distances at White School House Road and Slate
5 Quarry Road intersection did not meet AASHTO
6 recommendations. The report suggests that to
7 solve this problem the yield sign should be
8 removed and a stop sign installed." It's
9 important to note that the numerous meetings with
10 Rhinebeck Highway Department, Dutchess County
11 Highway Department and local existing truck
12 drivers over the past 15 years have already ruled
13 out this mitigation as unuseful, not useful.
14 Specifically truck drivers noted if they came to
15 a full stop at this intersection, they would need
16 to be able to get back up to speed -- they would
17 not be able to get back up to speed onto Slate
18 Quarry Road in time to fully arrive on the road
19 before cars coming down the very steep, curving
20 hill would arrive in the intersection. Also
21 unless the trucks are required to enter from the
22 north end of White School House, you're talking
23 about an increase in large trucks turning left
24 across a high speed intersection with extremely
25 limited sight distance. Simply put this

1 intersection has been identified as a seriously
2 dangerous one with multiple injuries and deaths
3 due to traffic accidents especially when rain,
4 snow or ice are present. I've personally seen
5 over 50 accidents here including a dozen which
6 have caused property damage at my home. A few
7 weeks ago an RV lost traction during the rain and
8 was totaled by hitting a tree in our driveway.
9 Red Wing submitted a report that is not accurate
10 with this intersection. I urge you to please
11 seek information about the accident records of
12 this intersection from New York State Police, the
13 EMTs before you consider adding any more traffic
14 to an already deadly situation and dangerous
15 situation.

16 I'd also like to just add off the top, I
17 don't turn into my driveway coming down from 9G.
18 I take White School House Road simply because the
19 cars coming down this road come, overdrive the
20 road. So now we have to negotiate White School
21 House Road with these trucks which is going to,
22 just another added danger. I thank you for your
23 time. I, I, there is a quality of life and
24 simple people need to be protected by their
25 governments. Thank you.

1 ALJ MACPHERSON: Thank you, Mr. Bowen. Our
2 next speaker is Michael Trimble. That's Michael
3 Trimble. You are unmuted or should be shortly.
4 Please state your name and spell it as well as
5 any organization you may be representing.

6 MR. TRIMBLE: Can you hear me?

7 ALJ MACPHERSON: I can.

8 MR. TRIMBLE: Okay. Michael Trimble.
9 M-I-C-H-A-E-L, T-R-I-M-B-L-E. For the record I'm
10 a volunteer member of the Town of Rhinebeck
11 Planning Board. I'm a volunteer interim zoning
12 enforcement officer for the Town of Rhinebeck
13 while they got to hire someone. I'm here
14 speaking as a private citizen. I live one door
15 down on Slate Quarry Road from Mr. Bowen. The
16 cars that usually don't crash in front of his
17 house end up in front of mine. There have been
18 hundreds of traffic accidents in front of our
19 property since we moved here in July of 1975.

20 But what I want to talk to you about is
21 what I consider to be an oversight in trying to
22 protect the wildlife in this area. As DEC knows
23 it's a very, very valuable wetland organized
24 area. A number of DEC wetlands and headwaters
25 for the Landsman Kill are all there. Now on

1 February 25th, 2021 DEC issued an incidental take
2 permit to Red Wing realizing their access road
3 would go there the Blanding's turtle habitat and
4 would kill turtles. The ITP contains the
5 following condition among other conditions,
6 quote, "to offset the impact to occupied habitat
7 the conservation easement held by a third party
8 will be executed on 72.34 acres of the larger 241
9 acre site." On February 25th, 2021 in a letter
10 referring to comments sent to the DEC about the
11 expansion and the ITP Mr. Petronella said the
12 following, quote, "the establishment of a
13 conservation easement that protects those
14 portions of the site known to be used by turtles
15 is a well established legal mechanism to add
16 additional protection from activities that would
17 impact the species and its habitat. The use of
18 an easement also enables the involvement of a
19 legally vested third party NGO which can help
20 insure compliance with the terms of the
21 easement," unquote, and I fully agree with Mr.
22 Petronella's statement.

23 Early on in looking apparently for an
24 easement holder Red Wing went into negotiation
25 with the Wetland Trust and its partner

1 organization the Wetland Conservancy.
2 Discussions went along the lines of phase one
3 would be the transfer of the property, the
4 conservation area to the Wetland Trust. They
5 would manage it and they would oversee it.
6 That's what they do. They have biologists and
7 they have a record of doing this in Dutchess
8 County as well as other places in the state. The
9 Wetland Conservancy would then hold the
10 conservation easement on the wetland trust. It's
11 not unusual when our local land trust take
12 possession of property such as Berger Hill, Bly
13 Swamp, things of that sort. Another land trust
14 actually holds a conservation easement on that
15 property.

16 On April 30th of 2021 the two boards of the
17 Wetland Trust and the Wetland Conservancy
18 directed their executive director to enter into
19 negotiations with Red Wing to, quote, "bring the
20 above approach to a successful conclusion." In
21 other words get the transfer of the acreage to
22 the Wetland Trust which they would then manage
23 and oversee.

24 Phase two of this, which was in negotiation
25 with Red Wing, was when the mining was concluded

1 on the entire property that would be transferred
2 to the Wetland Trust as well. I believe that one
3 of the problems that we have here is that the
4 conservation easement that was signed with the
5 Wetland Conservancy apparently avoided all of the
6 conditions that had been set. And at this point
7 there is no mention of the Wetland Trust or of
8 any conservation property being transferred.

9 My main concern here is that there is no
10 monitoring going on on this site to protect and
11 to insure that the conditions of the ITP are
12 being met. And I feel it's extremely important
13 that DEC make no decision on this expansion until
14 they have actually established a proper
15 conservation easement on this property where the
16 monitoring will take place. And I thank you very
17 much for the opportunity to speak here today.

18 ALJ MACPHERSON: Thank you for your
19 comments, Mr. Trimble. Our last speaker today at
20 this hour is John Dyal. I just want to let
21 everyone know I know that we are missing I now
22 know is Miss Kearney. I will call her again as
23 well as others that weren't preregistered. There
24 is another session at 6:00 tonight where you'll
25 have an opportunity to speak. If someone you

1 know couldn't make this one, you know, let them
2 know. But for now I'll call John Dyal. Please
3 state your name, spell it and any organization
4 you may be representing.

5 MR. DYAL: My name is John Dyal, J-O-H-N,
6 D-Y-A-L. I go by Gary. I'm a resident of
7 Rhinebeck.

8 ALJ MACPHERSON: Thank you, Mr. Dyal. I
9 can hear you loud and clear. You may begin.

10 MR. DYAL: Great. I travel White School
11 House Road three to five days a week by car and
12 often come across pinch points with large trucks
13 on turns and at the bridge. I also jog along the
14 road and find it difficult to find room when
15 encountered by two cars. I can't imagine the
16 experience of two tractor trailers passing at the
17 same time I was jogging. Simple math, tractor
18 trailer's eight feet wide, mirrors are another
19 six inches. Two tractor trailers passing on the
20 bridge is 17 feet. Add a foot for clearance.
21 Between the two passing trucks is a matter of six
22 inches from the side of the trucks to the
23 guardrail on the bridge. You're up at 19 feet.
24 Me jogging, I'm a pretty big guy, 30 inches wide,
25 this means I'm in the creek. There is no room,

1 there is no room for two trucks passing and me
2 walking, running to get along there. I think
3 it's a safety issue. I know all the other
4 environmental impacts going on, but I think it's
5 just dangerous for that kind of truck traffic
6 especially at the bottom of the hill by
7 Lobotsky's. It's a blind drop. And even at 30
8 miles an hour a tractor trailer moving down that
9 slope would find it difficult to slow down and
10 stop if a jogger was in the road. So that's all
11 I have to say. Thank you very much.

12 ALJ MACPHERSON: Thank you, Mr. Dyal. I'm
13 going to give one last chance for Brennan Kearney
14 who preregistered to speak today. Once again if
15 anyone knows Miss Kearney, you can let her know
16 that she has another opportunity tonight at 6
17 p.m. Assuming we don't hear from her. I heard
18 something, but I don't think it was that. All
19 right. So I'm just going to ask everyone who is
20 available right now, is there anyone who did not
21 preregister that would like to comment today?
22 Online users who would like to speak must click
23 the hand symbol. Phone in users must press star
24 three. And if you're having technical
25 difficulties again the number is 518-402-8044.

1 MS. KATCHMAR: Okay.

2 ALJ MACPHERSON: I'm sorry.

3 MS. KATCHMAR: We have a hand raised.

4 Robert Wyant, I'm going to unmute your line.

5 You've been unmuted.

6 ALJ MACPHERSON: Mr. Wyant, assuming you

7 can hear us please spell your name and any

8 organization you may be representing.

9 MR. WYANT: Hi. I'm Robert Wyant,

10 W-Y-A-N-T. I'm the Town of Rhinebeck Highway

11 Superintendent. I would just like to give you my

12 thoughts on this. White School House Road is a

13 rural roadway which is a winding 2.4 miles long

14 and connects New York State 308 on the north end

15 and Dutchess County Route 19 on the south end.

16 The south end of this road from Hilltop to

17 Dutchess County Route 19, which is to be used for

18 the truck traffic, was paved in 2011 and is

19 nearing the end of its useful life span. This

20 road will not hold up well and was not designed

21 for heavy truck traffic daily. This kind of

22 traffic would accelerate and decline the

23 pavement. There are many winding turns also to

24 contend with that would jeopardize a safe passage

25 of the traveling public which use the road daily

1 along with noise pollution the residents along
2 the road would have to deal with daily with the
3 heavy truck traffic. Dump trailers would also
4 create more of a problem as far as safety is
5 concerned and should not be allowed. These are
6 just some of my concerns for which I have plenty
7 and will follow up with written comments. Thank
8 you for listening.

9 ALJ MACPHERSON: Thank you, Mr. Wyant. I
10 believe we have at least one other nonregistered.
11 I'm hearing that's Warren Replansky, is this
12 accurate? Mr. Replansky, you've been unmuted.

13 MR. REPLANSKY: Can you hear me?

14 ALJ MACPHERSON: I can. Please spell your
15 name and any organization you might represent.

16 MR. REPLANSKY: W-A-R-R-E-N.
17 R-E-P-L-A-N-S-K-Y. I'm the attorney for the Town
18 of Rhinebeck. I'm also a resident of the Town of
19 Rhinebeck. I'm very familiar with White School
20 House Road. I used to live in close proximity to
21 that road before we moved to Rhinebeck and my
22 in-laws lived off that road. The road is
23 woefully inadequate for this type of mining
24 operation. And I did correlate my, Mr. Lyons'
25 comments and he certainly represents the comments

1 that I would have made and will be making in the
2 written submissions.

3 I would just like to say that our main
4 concerns of course are traffic, the impact of
5 this mine on community character, noise, public
6 safety, but most especially the material conflict
7 of this mining application with the town's
8 adopted comprehensive plan and zoning law. As
9 you probably know, you certainly will know when
10 we submit our papers, the town had, the town's
11 comprehensive plan and zoning law prohibited
12 mining, additional mining in this area. This was
13 challenged by Red Wing in court and it was
14 actually challenged before the ZBA and the ZBA
15 ruled against them and it was taken to court.
16 And the Supreme Court of Dutchess County ruled
17 against Red Wing. Red Wing appealed it to the
18 Appellate Division and managed to extract a
19 decision from the Appellate Division which stated
20 that Red Wing was a nonconforming use and
21 therefore were permitted to apply for the special
22 use permit and site plan approval for the mine
23 from the planning board. And Red Wing
24 represented to the ZBA and to the Appellate
25 Division that they had full intention of making

1 those applications. And I want to advise the
2 DEC, and we certainly will advise in our written
3 submissions, that they have reneged on that and
4 they have subjected the town to relentless
5 additional litigation trying to argue that not
6 only are they a nonconforming use which allows
7 them to apply for a special use permit and site
8 plan approval from the planning board for this
9 mine, but they are exempt from applying to the
10 planning board and can simply move forward only
11 with DEC's permission. I know that DEC takes
12 into consideration the local mine, the local
13 regulations in determining the significance of a
14 project and certainly I think this would mitigate
15 in favor of a denial of this permit. So we will
16 be arguing that in our submissions.

17 We also, I also reenforce Mr. Lyons'
18 statement that given the volume of the DEIS and
19 the time period that this has been pending before
20 you a time period of January 11th is woefully
21 inadequate for purposes of the town's submission
22 and we will be asking DEC to extend that time
23 period. And I thank you for your kind
24 consideration and for having this public hearing
25 today and allowing me to speak.

1 ALJ MACPHERSON: Thank you for your
2 comments, Mr. Replansky. I believe I at least
3 see one other. Dawn Hollis. Miss Hollis, if you
4 are in fact registered, not registered but wish
5 to speak please state your name, spell it and
6 also any organization you represent.

7 MS. HOLLIS: My name is Dawn Hollis. I'm
8 not representing them, but I do work for Red
9 Wing. My comments to this is that we're heavily
10 guarded by DEC. They come here. They watch what
11 we do. We don't harm animals. We are all very
12 much animal lovers here. We watch for animals.
13 Nothing has ever been hurt. We've done a lot of
14 work over there to make sure that all the turtles
15 are not affected. We have put in tunnels for
16 them to go across. We've put in turtle fencing.
17 We've done a lot of work to make sure that that
18 does not happen. I just wanted to make sure that
19 everybody understands that we will be looking out
20 for them and DEC will be over there. We don't
21 hurt wetlands. We never have. We have many
22 properties that you can go to and you can see the
23 animal life that is there and that has probably
24 created another ecosystem for them. And that's
25 what I could like to say. Thank you.

1 ALJ MACPHERSON: Thank you for your
2 comments, Miss Hollis. Is there anyone else who
3 did not preregister that would like to comment
4 today? Online users who would like to speak you
5 must click the hand symbol. And phone in users
6 must press star D (sic). Once again online users
7 who would like to speak, you must click the raise
8 hand symbol and phone in users must press star
9 three. I see Mr. Braggins. Mr. Braggins, I know
10 you already had an opportunity to speak. You
11 know, I don't want this to devolve, but I do, you
12 know, I will give you an opportunity to make a
13 further comment. Just please make it belief.
14 Again we will accept your written submission as
15 well.

16 MR. BRAGGINS: I'm actually just trying to
17 connect Brennan Kearney to you because --

18 ALJ MACPHERSON: Oh, wonderful.

19 MR. BRAGGINS: -- she's having difficulty
20 logging in.

21 ALJ MACPHERSON: Not a problem.

22 MR. BRAGGINS: If you give us half a tick
23 maybe we can get it.

24 ALJ MACPHERSON: Absolutely. Just, why
25 don't you let us know when you're all set on that

1 end and until then we will just wait unless
2 someone else is available to speak that wants to.

3 MR. BRAGGINS: Do you want to read them?

4 MS. BRAGGINS: I can try.

5 MR. BRAGGINS: Hello?

6 MS. BRAGGINS: Hello?

7 MR. BRAGGINS: You can't read them for him.

8 MS. KATCHMAR: Hold on one moment.

9 ALJ MACPHERSON: Mr. Braggins, I'm sorry.
10 I heard you and then I didn't. I know you're
11 trying to reach Brennan Kearney.

12 MR. BRAGGINS: Right. We've been able to
13 contact her. She would speak tonight at six, but
14 I know she has another meeting. But she has sent
15 us --

16 MS. BRAGGINS: She sent us her comments.

17 MR. BRAGGINS: Comments if my wife,
18 Melissa, could read them.

19 MS. BRAGGINS: Could I read them for her?

20 ALJ MACPHERSON: I don't object to that,
21 no. The more comments the merrier.

22 MS. BRAGGINS: Okay. So this is the first
23 time I've seen them, too. So it's Brennan,
24 B-R-E-N-N-A-N.

25 ALJ MACPHERSON: Is this, I'm sorry, is

1 this Mr. Braggins' wife who is speaking?

2 MS. BRAGGINS: Yes. My name is Melissa
3 Braggins, M-E-L-I-S-S-A, B-R-A-G-G-I-N-S. And
4 I'm speaking for Brennan.

5 ALJ MACPHERSON: And I would just ask, Miss
6 Braggins, does it look like something that can be
7 read in three minutes?

8 MS. BRAGGINS: I'll try, yes, it does.

9 MR. BRAGGINS: Maybe we will take John
10 Lyons' example.

11 MS. BRAGGINS: No, I think I can do it.
12 Okay.

13 ALJ MACPHERSON: There you go. Go forward.
14 You can speak.

15 MS. BRAGGINS: Okay. So this is Brennan.
16 Thank you. Oh, wait. I'm sorry. Good
17 afternoon. I would like to introduce myself as
18 the county legislator for District 11 in Dutchess
19 County representing the Towns of Clinton and
20 Rhinebeck. I'm here to strongly remind the
21 Commission that there are several reasons I
22 completely oppose the expansion of the Red Wing
23 mine on behalf of my constituents in the Town of
24 Clinton and Rhinebeck as well as other residents
25 of Dutchess County. It is beyond the

1 comprehension of this elected official that the
2 DEC is supportive of increased disruption of an
3 environmentally sensitive natural area located in
4 an aquifer zone. Aquifer zone, sorry.

5 Additionally in the years I've had the
6 honor of serving the two communities poised to be
7 most affected by the expansion of the mine, the
8 number one concern constituents have brought to
9 me is the dangerous nature of the very roads that
10 will be impacted by a mine expansion. As you are
11 aware a study by the Dutchess County Department
12 of Public Works found that the traffic study
13 presented by the mine does not adequately address
14 two primary concerns related to increased truck
15 traffic. Most significantly the CR 19, Slate
16 Quarry Road, Rhinebeck's safety assessment 2014
17 recognized how dangerous CR 19 Slate Quarry Road
18 is from White School House Road to Route 9G.
19 Some of the changes that were made as a result of
20 this assessment have been good improvements to
21 safety of the road, however I foresee that heavy
22 vehicle traffic from the mine will overwhelm any
23 gains to safety that have been made. The latest
24 estimate I have seen from a draft 2017
25 Environmental Impact Statement, EIS, estimates up

1 to 50 truck trips, 50 truck trips in, 50 trips
2 out per day. This does not seem like a safe or
3 reasonable addition to the expected road traffic
4 particularly at the peak traffic hour in the
5 mornings and evenings. According to their 2017
6 Draft EIS Red Wing intends to send most of its
7 trucks from White School House Road to Slate
8 Quarry to Route 9G when it starts production.
9 Trucks exiting the site will turn right at the
10 proposed entrance onto White School House Road
11 and travel south about 1.1 miles, 1.2 miles from
12 an alternative entrance road to Slate Quarry Road
13 passing about 15 homes. Most trucks will turn
14 right at this intersection and head west about
15 1.1 miles passing about 17 homes to New York
16 State Route 9G where they will proceed north or
17 south to their destination. That route covers
18 the whole area that the safety assessment
19 addressed and in particular the dangerous and
20 difficult intersections at 1 White School House
21 Road and Slate Quarry and Slate Quarry and 9G.

22 I have a couple more paragraphs if I can
23 continue. Additionally, the truck intersection
24 on White School House Road, White School House
25 Road is an unmarked local road with significant

1 horizontal and vertical curvature. The traffic
2 study described it as a 22 feet wide, but the
3 April 2019 pavement evaluation completed for the
4 town found that the road width varies and is at
5 times less than 20 feet. That narrow width on
6 the winding road makes any truck traffic a
7 challenge, but particularly concerning is what
8 happens when two trucks, fire truck and a school
9 bus must pass each other.

10 Please do not allow the project to move
11 forward as I fear for the safety of our residents
12 and the preservation of our precious natural
13 environment. Thank you.

14 ALJ MACPHERSON: Thank you, Ms. Braggins.
15 I'm just going to note for the record that you
16 are stating what you just stated on behalf of
17 Brennan Kearney. What I would ask however is
18 that Miss Kearney please send in those comments
19 in a written form. In order for them to be
20 considered on the record we will have to receive
21 them from her in a written form, but I wanted to
22 give you an opportunity to speak nonetheless.
23 Again she can certainly come and make those
24 comments tonight at 6:00. Is there anyone else
25 who wishes to make a comment? Again online users

1 must click the hand symbol. Phone in users must
2 press star D (sic). Seeing no requests, I'll
3 note again that the deadline for written comments
4 on this project is January 11th, 2023 and they
5 must be mailed to John Petronella, regional
6 permit administrator at the New York State
7 Department of Environmental Conservation, 21
8 South Putt, that's P-U-T-T, Corners Road, Putt
9 Corners Road, New Paltz, New York 14209.
10 Alternatively your written comments can be
11 e-mailed to John Petronella at john.petronella,
12 that's J-O-H-N.P-E-T-R-O-N-E-L-L-A @dec.ny.gov by
13 5 p.m. on January 11th, 2023.

14 It looks like I have the wrong zip. Thank
15 you, Mr. Petronella. So the zip code is 12561.
16 So that's 21 South Putt Corners Road, New Paltz,
17 New York 12561 is the zip code. Must have a typo
18 there. I'll note that the time is 2:28 p.m. and
19 I'm going to close this hearing. You may end the
20 record.

21
22
23
24
25

CERTIFICATE OF REPORTER

I, Delores Hauber, hereby certify:

That the foregoing proceedings were taken before me
at the time and place therein set forth;

That the proceedings were taken down stenographically
by me and thereafter formatted into a full, true, and
correct transcript of same;

I further certify that I am neither counsel for nor
related to any parties to said action, nor in any way
interested in the outcome thereof,

DATED this 17th day of November, 2022,

A handwritten signature in cursive script that reads "Delores Hauber". The signature is written in dark ink and is positioned above a horizontal line.

DELORES HAUBER

Shorthand Reporter

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NEW YORK STATE DEPARTMENT
OF ENVIRONMENTAL CONSERVATION
RED WING MINING PROJECT
VIRTUAL PUBLIC HEARING

DATE: 11/17/22

STATE TIME: 6:00 p.m.
END TIME: 6:59 p.m.

REMOTE LOCATION: Webex videoconference

REPORTER: Delores Hauber
JOB NO: 13291

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5
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13

14 Present as Panelists:

15 Frank Doherty, Red Wing Properties

16 Maria Katchmar, NYSDEC

17 Emma Antolos, NYSDEC

18 Ryan Laduke

19 Elisa Chae

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1 ALJ MACPHERSON: Good evening. We are now
2 on the record. I'd like to note that the time is
3 6:00 on November 17th and this hearing is being
4 conducted on the Webex platform. My name is
5 Timothy MacPherson. I'm an administrative law
6 judge with the Office of Hearings and Mediation
7 Services of the New York State Department of
8 Environmental Conservation. I've been assigned
9 along with members of the Office of Communication
10 Services to conduct today's virtual public
11 comment hearing. Please note that if you
12 encounter any technical difficulties, you may
13 call 518-402-8044. Again that number is
14 518-402-8044 and members of the Office of
15 Communication Services will help you.

16 The purpose of today's hearing is to
17 solicit public comment on the proposed
18 modifications by Red Wing Properties,
19 Incorporated to an existing mined land
20 reclamation permit to mine sand and gravel at the
21 White School House Road Mine in the Town of
22 Rhinebeck, Dutchess County. The New York State
23 Department of Environmental Conservation as the
24 lead agency determine that the proposal is a Type
25 1 action as determined by 6 NYCRR 617.4, sub B,

1 sub 6, sub I and issued a positive declaration.
2 The applicant prepared a Draft Environmental
3 Impact Statement which is available for public
4 review and comment.

5 In a moment department staff John
6 Petronella will provide a brief overview of the
7 proposed amendments. A short presentation by the
8 applicant's representative, Kevin Bernstein, will
9 follow. Notices for today's hearing were
10 published in the Department's Environmental
11 Notice Bulletin on October 31st, 2022 and in the
12 Daily Freeman, a daily newspaper published in the
13 City of Kingston, County of Ulster, State of New
14 York and that was published on November 2nd,
15 2022. The notices directed anyone wishing to
16 make a comment today to preregister online or by
17 telephone.

18 The purpose of today's hearing is to take
19 oral statements from the public. These comments
20 will be incorporated into the official record of
21 this proceeding. Please be aware that this
22 hearing is not a question and answer session, but
23 rather it's an opportunity to hear your public
24 comments. If you would like to submit written
25 comments on this project they must be postmarked

1 by January 11th, 2023 and mailed to John
2 Petronella, Regional Permit Administrator, at the
3 New York State Department of Environmental
4 Conservation, 21 South Putt Corners Road. That's
5 P-U-T-T, South Putt Corners Road, New Paltz, New
6 York 12561. Alternatively written comments may
7 be e-mailed to John Petronella at
8 John.Petronella, that's
9 J-O-H-N.P-E-T-R-O-N-E-L-L-A @dec.ny.gov by 5 p.m.
10 on January 11th, 2023. The addresses for
11 commenting are also available on our website
12 www.dec.ny.gov and on the slide on your screen.
13 On the DEC website click on the events calendar
14 at the bottom of the page, then click on the link
15 for today's hearing. I repeat written comments
16 must be submitted no later than 5 p.m. on January
17 11th, 2023. You can also access the link to the
18 ENB notice from there.

19 I'd like to emphasis that written and oral
20 comments are given equal weight by the
21 department. Speakers are encouraged to submit
22 lengthy statements in writing while providing
23 only a summary of their comments here today.
24 Note that all participants have been muted upon
25 entry and your line will be unmuted when it is

1 your turn to comment. To avoid feedback please
2 insure that you're only using one audio input.
3 Again if you encounter a technical problem during
4 the hearing, please call 518-402-8044 and someone
5 from the Office of Communication Services will
6 assist you.

7 The notice for this hearing provided
8 preregistration for those individuals wishing to
9 make a comment. There are 11 individuals who
10 preregistered to speak tonight. For the courtesy
11 of all speakers comment time will be limited to
12 three minutes. Once again speakers are
13 encouraged to submit lengthy statements in
14 writing and provide only a summary of their
15 comments here this evening. Before I call the
16 first commenter, Mr. Petronella from the Division
17 of Environmental Permits will provide an overview
18 of the proposed amendments. Mr. Petronella, you
19 may take it away.

20 MR. PETRONELLA: Thank you, Judge
21 MacPherson. Good evening. My name is John
22 Petronella and I am the regional permit
23 administrator with the New York State Department
24 of Environmental Conservation in the Region 3
25 office. I'm also the project manager

1 coordinating the department's review of this
2 proposed project.

3 Thank you for participating in the public
4 hearing this evening. Thank you to Supervisor
5 Spinzia and the Town of Rhinebeck officials also
6 participating. I'd also like to thank
7 Administrative Law Judge Timothy MacPherson for
8 presiding over this hearing.

9 First, I would like to provide you with a
10 brief description of the proposed project as well
11 as the department's permit jurisdictions, then I
12 will outline the purpose of the hearing and
13 review where documents can be reviewed and public
14 comment deadlines again. After I speak a
15 representative from Red Wing will provide a more
16 detailed overview of the proposed project.

17 Red Wing Properties proposes to expand the
18 existing permitted sand and gravel mine located
19 on White School House Road in the Town of
20 Rhinebeck from 43 acres to 94 acres on a 241 acre
21 parcel owned by the applicant. The modification
22 will include mining sand and gravel above and
23 below water over a 94 acre life of mine area.
24 Limited blasting will be done for a short period
25 of time to construct a controlled outlet for the

1 proposed pond. The mine will be reclaimed as a
2 mix of grassland and a 65 acre pond with a small
3 area of bedrock outcrops.

4 Permits required by the department at this
5 time include modification to the existing mined
6 land reclamation permit and Article 24 fresh
7 water wetlands permit for work within the 100
8 foot adjacent area of a state regulated fresh
9 water wetland and Article 15 protection of water
10 stream disturbance permit for proposed
11 disturbances to the Landsman Kill, a New York
12 State protected stream. Coverage under the State
13 Pollutant Discharge Elimination System, or SPDES,
14 multi-sector general permit and a New York State
15 facility registration for the operation of
16 processing equipment.

17 The purpose of this public hearing is for
18 the department to accept public comments
19 regarding the proposed project. All substantial
20 comments received at this public hearing and
21 submitted in writing will become part of the
22 official record. Oral and written comments must
23 be responded to by the lead agency in the final
24 Environmental Impact Statement. The Draft
25 Environment Impact Statement is available for

1 review in hardcopy at the Rhinebeck Town Hall,
2 the Star Library and at the DEC Regional Office
3 in New Paltz. Documents are also available
4 online at the link provided in the hearing
5 notice. Comments will be accepted by the
6 department on the Draft Environmental Impact
7 Statement and the applications until January
8 11th, 2023. Thank you.

9 ALJ MACPHERSON: Thank you, Mr. Petronella.
10 Now we have some brief comments from the
11 applicant's representative, Kenneth Bernstein.

12 MR. BERNSTEIN: Thank you, Judge
13 MacPherson, and thank you for hosting this public
14 hearing this evening. Again my name is Kevin
15 Bernstein. I'm speaking on behalf of the Red
16 Wing Properties, Red Wing Sand and Gravel. One
17 of the principals, Frank Doherty, is also present
18 as one of the panelists, but I will be presenting
19 here today.

20 Red Wing Properties, Red Wing Sand and
21 Gravel -- you can go to the next slide, Maria.
22 Thank you -- was started by the Doherty family.
23 It's a family business founded in 1969 to fill
24 the growing need for construction aggregates.
25 They have permitted mines and reclaimed many

1 mines since then and most have been reclaimed and
2 they have been donated to local towns for
3 recreational use.

4 Red Wing operates the Roe-Jan and Billings
5 mines and its sister company, Package Pavement,
6 operates a bagging plant and blacktop plant at
7 their facility in Stormville that is supplied
8 from these mines. And that company, Package
9 Pavement, packages and sells dozens of sand and
10 gravel based products that are sold locally and
11 regionally at home improvement stores for example
12 like Home Depot to do some patching of roads and
13 driveways, etcetera, etcetera. Red Wing and its
14 sister company Package Pavement employees over
15 150 people at their various facilities.

16 Sand and gravel is a nonrenewable source
17 and as reserves are depleted they must be
18 replaced. Sand and gravel in an operation like a
19 sand and gravel mine is not like another
20 facility. You have to go where the resources
21 are. The reserves at Roe-Jan and Billings mines
22 are nearing depletion and Red Wing is permitting
23 the White School House Road mine for the purpose
24 of replacing those nearly depleted resources.
25 Next slide.

1 In the DEIS we talked about the need for
2 the project. First of all there is a significant
3 sand and gravel deposit of sufficient quantity
4 and quality to warrant pursuing the mining
5 permit, the existing mine and proposed
6 modification areas located proximal to a well
7 established and readily accessed road system.
8 The mine will provide local municipalities,
9 contractors and residents with a nearby source of
10 high quality construction aggregate. Less
11 trucking will result in an overall reduction in
12 emissions and less wear and tear on the regional
13 infrastructure.

14 Overall in New York the number of mines has
15 been dropping significantly. Since 2002 the
16 number of permitted mines in New York has dropped
17 from 2,300 to 1,763. And Region 3, which is the
18 region that is reviewing this application, since
19 2002 the number of mines has dropped
20 approximately 41 percent which is actually
21 greater than the number state wide. Existing
22 mines are being depleted state wide faster than
23 new mines are being permitted. Permitting this
24 mine will allow Red Wing to stay in business and
25 continue to employ their 150 employees and the

1 need for such supply has been recognized by the
2 Dutchess County Department of Planning. Next
3 slide please.

4 So the project location as previously
5 referenced is off of White School House Road.
6 This is kind of an overview drawing. These
7 drawings and the ones that will follow are all
8 provided in the DEIS and the application
9 materials that are available to the public. The
10 planned mine area is located on the western side
11 of the 241 acre property that's owned by Red Wing
12 and is well screened. Approximately 44 acres are
13 currently permanently which included 38 acres
14 above water and nine acres below water and five
15 acres of access road. And this application would
16 increase the mine to 94 acres from that 44 acres
17 above and below water table for the mining. Next
18 slide.

19 So project overview is the site and gravel
20 deposit here is in a relatively narrow valley
21 bounded on both sides by steep sided wooded
22 valley walls. The excavation areas will continue
23 to be in the center of the valley and there are
24 very few homes and potential receptors in the
25 vicinity of the mine. Almost all mining activity

1 occurs on the mine floor thereby maximizing the
2 screening effect of the mine phases.

3 The western part of Red Wing's property
4 which contains the economically viable sand and
5 gravel reserves, will be mined. Remaining
6 property surrounding the mine will consist of
7 principally forested buffers and also a
8 conservation easement. There are approximately
9 11 homes within 1,200 feet of the proposed
10 excavation area. There are two homes near the
11 proposed entrance in addition to the two owned by
12 Red Wing. The remaining nearest homes are
13 closest to the portion of the mine that are
14 already permitted including two homes owned by
15 the Lobotskys, who has a permitted mine on White
16 School House Road.

17 The mine will continue to be worked using
18 standard sand and gravel extraction methods,
19 excavation methods by removing trees, stripping
20 during the winter, perimeter berm construction,
21 excavating from the bottom of the above and below
22 water table mine phases, hauling the gravel off
23 to the processor, loading it and taking it off
24 site. Next slide.

25 Except for the pond outlet, which I think

1 Mr. Petronella referenced earlier, all mining
2 will stay a minimum of 100 feet from all
3 wetlands. Mining will continue in the northern
4 part of the mine and proceed southward. That
5 will be illustrated you'll see in a couple slides
6 showing the draw, showing the maps. The above
7 and water, and below water phases will be worked
8 together to best utilize the deposit. This also
9 keeps the amount of affected area to a minimum.
10 And then trucks entering and leaving the site
11 will be weighed at an office and scale house in
12 the southern part of the site.

13 Now the next slides are the drawings.
14 These are in the Mined Land Use Plan. The first
15 drawing here shows the northern part. I couldn't
16 fit the whole sheet on one slide so this is the
17 northern part of the mining area. And the
18 different colors represent different stages of
19 the mining and so on. And then it shows on the
20 southern part, the next slide, the southern part
21 including the access road that comes off of White
22 School House Road and winds around the
23 conservation area, easement area and to the
24 northern section of the property.

25 Over the years there have been numerous

1 studies that have been performed in support of
2 this application. The Mined Land Use Plan that I
3 mentioned earlier, which included the drawings
4 that you saw, describes how the mine will be
5 mined. The progression of mining for example.
6 It talks about environmental impacts and that's
7 in addition to what's contained in the DEIS. And
8 it talks about how those impacts will be avoided
9 and mitigated and then the mine reclaimed and we
10 will talk about that in a moment.

11 Also one of the studies included an
12 engineering assessment of the pond shoreline.
13 And that was an assessment of whether the pond
14 has the potential to overtop and whether wave
15 action will significantly erode the shoreline of
16 the pond. Mr. Petronella mentioned the small
17 out, bedrock outcropping. So a minor amount of
18 blasting for that. A blasting plan has been
19 prepared. Talks about how that will be
20 performed. Overview of blasting research and
21 what's done to prevent impacts from occurring as
22 a result of blasting.

23 There was also a lot of wetland research
24 done and evaluation done on the property. Number
25 one, on a regular basis there are staff gauge

1 monitoring, gauge monitoring, staffs that are
2 monitored on a regular basis east of the mine and
3 then there was a very comprehensive wetland
4 delineation that shows the extent of mapped
5 wetlands. In addition there was a noise impact
6 assessment that talks about the existing noise
7 conditions, the increases that could be expected
8 from the equipment utilized and during the
9 operation of the mine and any mitigation measures
10 that may be necessary to control the potential
11 impact so that they are insignificant and in
12 compliance with the DEC noise guidance. As well
13 there was a visual impact assessment and again
14 there is a DEC noise guidance on that and that
15 assessment followed that guidance and again
16 looked at existing aesthetic resources or visual
17 resources and assessed the potential impact of
18 the mining operation on those sensitive receptors
19 within a five mile radius. There were numerous
20 ecological studies done over the years of plants
21 and wildlife at the property. There was a
22 traffic study done originally with the
23 application. It was recently updated and that
24 was included in the DEIS. And of course as Mr.
25 Petronella mentioned in connection with the SPDES

1 general permit a storm water pollution prevention
2 plan was prepared to assess storm water
3 conditions before and after mining and mitigation
4 measures to control erosion sedimentation. Next
5 slide.

6 There was significant subsurface and
7 hydrogeologic evaluation conducted in support of
8 this application. There was on site test beds of
9 borings. Those were used as a basis for
10 assessing the impacts and developing the Mined
11 Land Use Plan. That was part of the subsurface
12 investigation. The results of an assessment of
13 existing hydrogeologic conditions and mining will
14 cause minor changes and mitigation measures to
15 insure that significant impacts do not occur.

16 As with any application there has to be an
17 assessment of cultural resources and so an
18 assessment was done here and the New York State
19 Office of Parks and Recreation and Historic
20 Preservation determined there would be no
21 significant impacts.

22 Since trucks will be coming on the site
23 there was a fugitive dust control plan focusing
24 on mitigation measures to prevent significant
25 dust impacts. In connection with the wetland

1 work that was done and the hydrogeologic
2 investigation that was done and also the
3 engineering assessment of the pond shoreline, in
4 order to install the pond outlet to control water
5 levels a wetland application was prepared to
6 assess and mitigate potential impacts because
7 that pond outlet does encroach within the 100
8 foot buffer, but not the wetland proper.

9 And moreover an incidental take permit has
10 already been obtained and that has to do with the
11 mitigating impacts and insuring that there is no
12 take of the Blanding's turtle which is a
13 threatened species. Next slide, next three
14 slides.

15 So as I mentioned before once mining is
16 complete or really concurrently with mining
17 reclamation occurs at a site. And so that, the
18 reclamation for this site is a creation of a 65
19 acre pond surrounded by a perimeter access road,
20 grassy areas, grassy side slopes. And that will
21 occur as mining progresses so. And that's not
22 unusual with mine operations. As I mentioned
23 before a designed pond outlet will be installed
24 towards the end of mining to control the level of
25 the pond and to mitigate potential impacts to

1 nearby wetlands. This outlet will discharge
2 water at a slow rate to Landsman Kill when the
3 pond water levels are high.

4 So the next two slides, and we'll do one at
5 a time, represent the reclamation plan map. And
6 this shows the northern part of the site and
7 basically the reclamation plan showing a pond
8 obviously in blue and then the southern part of
9 the site shows the same thing. And the next
10 slide. And that's a continuation of the pond as
11 well that's created as a result of mining.

12 So that's the project and the need for the
13 project and how mining will occur and what the
14 reclamation will look like after mining is all
15 done. So with that I turn it back to you, Judge
16 MacPherson, and thank you for your time.

17 ALJ MACPHERSON: Thank you, Mr. Bernstein.
18 I'll now call the name of each person who
19 preregistered to speak. After I call your name,
20 your line will be unmuted so that you may make
21 your statement. If you're a call-in attendee,
22 please press star three on your phone so we know
23 which line to unmute and then you should hear a
24 prompt to alert you that you've been unmuted.
25 Please remember that if you have your device on

1 mute, you will have to unmute it before you begin
2 speaking. Please speak slowly and clearly so
3 that we're able to properly record your
4 statement. Once all the preregistered speakers
5 have had a chance to comment, I will open the
6 forum to any nonregistered attendees who wish to
7 speak. We will begin with our sole elected
8 official for tonight's preregistration, that
9 being Supervisor Elizabeth Spinzia. Miss
10 Spinzia, your line has or will shortly be
11 unmuted.

12 MS. SPINZIA: Hello, can you hear me?

13 ALJ MACPHERSON: We can. Just please state
14 and spell your name for the record.

15 MS. SPINZIA: Yes, Judge MacPherson and Mr.
16 Petronella. Elizabeth Spinzia, S-P-I-N-Z-I-A. I
17 have been the supervisor of Rhinebeck for going
18 on, geez, I think nine, ten years. I'm the chair
19 of the town board and we represent over 8,500
20 residents in the town.

21 The town board is unanimous in our
22 opposition to this project and our support to do
23 whatever it is that we can to stop it. We have
24 three attorneys working for us on this and they
25 will submit written comments on the technical

1 issue like the take permit and the access road
2 and all that other stuff, but I'm here tonight to
3 talk about the human toll and the threat to our
4 community that this large scale industrial mining
5 project brings.

6 Several years ago we passed a local law
7 limiting mining in the Town of Rhinebeck only to
8 those mines which had, already had DEC permits.
9 We've had three mines operating in Rhinebeck and
10 it's been a good fit. They were small scale, mom
11 and pop mines that were mined as gravel and sand
12 when needed. What Mr. Doherty is proposing here
13 is about 180 degrees from that. Mr. Doherty is
14 proposing taking a beautiful 240 acre parcel and
15 expanding a 43 acre mine to almost 100 acres and
16 mining not only what's on top, but what goes into
17 our water. His mine or his property is in one of
18 our town's two very sensitive aquifer uptake
19 areas. So once he has mined and created ponds
20 that will come off the tax levy, we will, we will
21 have compromised water aquifers.

22 I should say I'm talking about the human,
23 the human element here. People are scared,
24 people are angry and people are worried. Since
25 we lost the appeal for our local law and what we

1 think was a very bad decision, I've had people
2 coming to Town Hall. I've had people calling.
3 I've had people writing. It is the number one
4 topic that I discuss at the grocery store or when
5 I'm downtown at the farmer's market or walking.
6 People do not want a large scale industrial mine
7 in our beautiful town. People who live next to
8 this are certainly going to be affected more, but
9 the whole town feels this way.

10 Mr. Doherty does not live in Rhinebeck.
11 Mr. Doherty is here to take whatever he can out
12 of this beautiful piece of property to make money
13 and he will leave us with a scarred and destroyed
14 environment. This land is a habitat to
15 endangered and beautiful species. I know that
16 you mentioned the Blanding's turtle. It's an
17 endangered turtle that this environment is
18 perfect for. There are also bald eagles. There
19 are heron. There are fox. There's a plethora of
20 both endangered and nonendangered species that
21 will be affected by this large scale industrial
22 mine.

23 I know that earlier today our Highway
24 Superintendent Bob Wyant spoke about the strain
25 that this mine will give to our local road, White

1 School House Road. It is a narrow, rural road.
2 It cannot handle the traffic. Product is
3 inadequately served by this road. Mr. Doherty is
4 not only destroying our environment, but he's
5 asking the town to pick up the tab for the roads
6 to do that.

7 Aside from the economic disaster, there
8 will be noise pollution from the activity. There
9 could be light pollution. There will certainly
10 be dust to the extent that it can be mitigated
11 and there will be air pollution from the
12 emissions of the large machinery that will be
13 continually working the 100 acres. We see this
14 as a gross destruction of a pristine landscape
15 out of scale and without, what we do not want in
16 our town. We've spent a lot of resources writing
17 our comprehensive plan and attendant zoning code
18 and Rhinebeck is a leader in the state. And this
19 mine is a slap in the face to us and our vision
20 of our town.

21 I've talked about the aquifer uptake areas.
22 I've talked about the destruction to the pristine
23 landscape. I've talked about the cost of this as
24 a money making operation that really has nothing
25 in it for the residents of Rhinebeck. This

1 project is not meant for our town. It's not
2 wanted. Mr. Doherty is not a local. The
3 reclamations that he's done in the past are an
4 abomination and we do not need or want a park on
5 White School House Road. We prefer farmland and
6 pristine environment and potential building sites
7 for more people who want to live in Rhinebeck not
8 a scarred reclamation that will come off the tax
9 map.

10 Lastly, I'd like to say in underscoring
11 people's fears and concerns is that they do feel
12 that they have been let down by the Department of
13 Environmental Conservation, an arm of our
14 government that's meant to protect the
15 environment and people from the degradation of
16 the environment. I hope that you expand these
17 public hearings. You have essentially two hours
18 of public hearings. I have more public hearings
19 on local laws having to do with much more mundane
20 things and I think that you need to hear from
21 whoever wants to speak about this. I will
22 certainly be sending written comments from myself
23 on behalf of the town board, but we are
24 unanimously against this for the environmental
25 and human toll that this disastrous project will

1 take.

2 ALJ MACPHERSON: Thank you, Madam
3 Supervisor. Thank you for your comments. The
4 next person scheduled to comment is Andrew
5 Delbanco. Mr. Delbanco, please state your name
6 and spell it as well as any organization you may
7 be representing tonight.

8 MR. DELBANCO: Yes. Thank you, Judge
9 MacPherson and Mr. Petronella. The name is
10 Andrew Delbanco, D-E-L-B-A-N-C-O. I'm not
11 representing any organization. I'm a resident of
12 the Village of Rhinebeck and my daughter has a
13 home on White School House Road. I will try to
14 be very brief and take up less than my allotted
15 three minutes.

16 I want to address a narrow part of the very
17 wide range of extremely negative impacts that
18 this project would have that Miss Spinzia I think
19 covered very well just now. And the point I want
20 to focus on is one that was not mentioned by Mr.
21 Bernstein as far as I can remember. It was only
22 briefly alluded to by Miss Spinzia and that is
23 the traffic impact on White School House Road.

24 I can say that I've never been on White
25 School House Road for more than ten minutes

1 without encountering walkers, joggers, cyclists,
2 dog walkers, parents or grandparents with small
3 children. I fall into that last category. It's
4 very clear to any rational person that
5 substantial industrial truck traffic on this road
6 would not be just a nuisance or a disturbance,
7 but an extreme safety hazard, totally out of
8 place on a narrow, beautiful, winding country
9 road with semi blind curves and limited
10 clearance. And I'm not even mentioning the
11 safety hazard that already exists, but that would
12 be greatly amplified at the intersections between
13 White School House Road and Route 308 and Slate
14 Quarry Road.

15 It's very, I don't believe that the mine
16 expansion should be allowed to go forward for all
17 the reasons that Miss Spinzia just alluded to and
18 many others, but if for some wild reason expanded
19 mining activity were to be permitted there, it's
20 absolutely clear to me that some alternative
21 route to County Route 9G or whatever would need
22 to be established. Truck traffic on White School
23 House Road will be a disaster and will represent
24 the proverbial accident waiting to happen and I
25 would put accident in the plural. Thank you

1 very much.

2 ALJ MACPHERSON: Thank you for your
3 comments, Mr. Delbanco. Our next speaker is
4 Jennifer Mumm. Miss Mumm, you've been unmuted.
5 Please state your full name and spell it as well
6 as any organization you may be representing.

7 MS. MUMM: Thank you, Judge MacPherson. My
8 name is Jennifer Mumm. It's J-E double
9 N-I-F-E-R, M-U double M. And I live on, off
10 White School House Road on Hilltop Road which is
11 an offshoot. Thank you for allowing me this time
12 to voice my opposition to the expanding mining of
13 this parcel on White School House Road.

14 I've reviewed Red Wing's Environmental
15 Impact Statement and it appears to me that the
16 expansion would result in industrial scale mining
17 in a rural area which is totally incongruous with
18 that bucolic landscape that is rural Rhinebeck
19 and specifically this location on White School
20 House Road. I walk and I drive these roads every
21 day. And though it's beautiful, it's a dangerous
22 road to traverse at the very best of times. When
23 driving and I see a car approaching, it's
24 customary for both vehicles to accommodate the
25 other by moving such that two wheels are almost

1 off the road. When walking I'll stand off the
2 road for traffic of any size to pass. This is
3 part of the charm of living here and we all get
4 along by making such accommodations. As has been
5 mentioned repeatedly by all the other parties
6 these roads were in no way meant to accommodate
7 the size or estimated number of vehicles Red Wing
8 suggests they would use to haul materials out of
9 the mine.

10 In reviewing Red Wing's court records they
11 have had so much litigation with towns in
12 Dutchess County. It's nearly impossible for one
13 person to read through it all. This constant
14 litigation has earned them a dreadful reputation
15 and it does not inspire me to want this business
16 as my neighbor. Red Wing appears to be a company
17 that has little to no regard for the local
18 community and absolutely no regard for local
19 planning laws. The Town of Rhinebeck has already
20 endured more than 14 years of litigation with Red
21 Wing.

22 The DEC should be under the most specific
23 advisement that the road safety issue is one of
24 life and death. White School House Road is not
25 fit for the purpose for which Red Wing is

1 proposing to use it. Should the DEC approve this
2 expansion, then it is guaranteed that there will
3 be fatalities as a result. I have no confidence
4 that they will act as good cooperate citizens and
5 adhere to guidelines and local town laws. They
6 have already evidenced this by ignoring a stop
7 work order from the Town of Rhinebeck on the mine
8 access road. Why should we trust them with the
9 larger issues of the safety and well-being of our
10 citizens, with the animals that use this rural
11 landscape as a refuge and to operate their heavy
12 duty vehicles safely on a road not intended for
13 this use. Expansion to accept industrial scale
14 mining at this site would be an abject failure by
15 the DEC of their responsibility to uphold
16 environmental mandates and protect the people of
17 the State of New York. Thank you for your time.

18 ALJ MACPHERSON: Thank you. I'm sorry.
19 Thank you, Miss Mumm for your comments. I
20 apologize for that. Our next speaker is Charles
21 Veach. Mr. Veach, I don't see you on our list.
22 I suspect you might be our call in. If you are,
23 please press star three. Again our next speaker
24 is Charles Veach.

25 MR. VEACH: Hello, can you hear me?

1 ALJ MACPHERSON: I can. Thank you, Mr.
2 Veach. Please state and spell your name as well
3 as any organization you may be representing
4 tonight.

5 MR. VEACH: Hello, yes. Charles Veach, V
6 as in Victor, E-A-C-H. Not affiliated with any
7 organization. I reside on White School House
8 Road.

9 ALJ MACPHERSON: Thank you, Mr. Veach. You
10 may start your comments.

11 MR. VEACH: Yes, once again. Charles Veach
12 residing at 177 White School House Road in
13 Rhinebeck. Growing up, growing up in the '90s
14 while Decker's gravel pit was in operation was a
15 huge air quality issue for our family. Our home
16 had to be pressure washed two to three times a
17 year. Sitting outside having a family barbecue
18 was never an option. The dust particles in the
19 air were constant. Let it be known that Decker's
20 gravel pit operated in the '90s and early 2000s
21 didn't nearly operate at the volume that Red Wing
22 proposes to do so.

23 My family returned to this home in 2017 and
24 purchased the residence at 177 White School House
25 Road for \$205,000. After many hours of labor and

1 extensive renovations we can finally call our
2 beautiful home, we can finally call our home our
3 residence. Now valued at over \$500,000 we fear
4 that Red Wing operations operating a large scale
5 mine would depreciate our property significantly.
6 Not fair to my family. It's come to light that
7 Red Wing is concerned with money and profit over
8 Rhinebeck's local concerns.

9 Our home built on a stone foundation in
10 1936 is less than six feet from the shoulder of
11 the road. Hauling gravel at the rate of a
12 truckload every three minutes past our home will
13 surely compromise my stone foundation. Who will
14 pay for the repairs once it begins to crumble and
15 fall apart?

16 Where my house is located less than six
17 feet from the shoulder of White School House Road
18 the width of the road is less than 20 feet.
19 Having large trucks drive by my house side by
20 side could deeply put my family in danger. This
21 is our biggest concern. This road is simply not
22 designed for the type of commercial traffic that
23 Red Wing has the purpose of doing.

24 What about wildlife? The property that Red
25 Wing proposes to mine is the home of bald eagles,

1 herons and Blanding's turtles. How can the DEC
2 be sure that these animal surroundings won't be
3 compromised? Throughout the spring my family
4 enjoys watching bald eagles rest atop the tree
5 line. They will be forced to relocate with the
6 approval of this mine. Local residents on White
7 School House are very concerned with these
8 issues. We ask ourselves how can the DEC turn a
9 blind eye to all these environmental concerns?
10 We thought they were there to protect wildlife.
11 Once again thank you for your time. Charles
12 Veach.

13 ALJ MACPHERSON: Thank you for your
14 comments, Mr. Veach. Our next speaker, and I
15 hope I get this right, is Adadorian Adeco
16 (phonetic). Again it's Adadorian Adeco provided
17 I got that right. I don't see you on the list
18 here. I only have one call-in user. Maria, does
19 that check out with you as well? That's fine.
20 We'll certainly call that name again down the
21 line. Our next speaker then will be Hugo Hansen.
22 Hugo Hansen, please state your name and spell it
23 for the record as well as the organization you
24 are representing if any. I don't know that I see
25 you on the list either. So we have Adadorian

1 Adeco and Hugo Hansen. Hugo Hansen. All right.
2 Not seeing Hugo Hansen, so we will move on as
3 well. We are going to call those names again,
4 don't worry, but the next up would be Sarah
5 Bowen. Miss Bowen, if you could state your name,
6 spell it and any organization you might be
7 representing.

8 MS. BOWEN: Can you hear me?

9 ALJ MACPHERSON: I think we can. Just say
10 it again.

11 MS. BOWEN: My name is Sarah Bowen,
12 B-O-W-E-N. Thank you so much for allowing me
13 time to speak. I've lived at the intersection of
14 White School House and Slate Quarry Road for over
15 a decade at an intersection that we've already
16 heard was clearly not designed for heavy truck
17 traffic. What we're talking about tonight is not
18 just 94 acres that are under consideration, but
19 the impact to the environment entangled with
20 those acres. You've already heard about the
21 issues of the narrow White School House Road.
22 I'd like to talk about the intersection to Slate
23 Quarry Road where thousands of people come down
24 this steep, curving hill every day. Every day I
25 hear near misses, screeches, horns and braking.

1 And I witness significant collisions requiring
2 emergency vehicles and personnel on this road at
3 least once a month. Many of these collisions
4 require the cars to be taken out on tow trucks.
5 They are undrivable. These are not little fender
6 benders we are talking about here. There are
7 people being injured and people dying on this
8 road. Most accidents are primarily west driving
9 cars which lose control on the curve due to its
10 steepness and curviness. Right at the bottom of
11 that steepness and curviness is where we are
12 talking about these trucks entering and leaving
13 the roadway. Cars crash into our yard, our
14 driveway, our fence, our trees and even our own
15 parked cars. Soon after we moved here one
16 accident took down a utility pole, started a fire
17 which burned most of the side of our garage.
18 Earlier this year there was a four car pileup in
19 our driveway which included a state police car
20 who was attending to a truck who had just smashed
21 into the property. The truck was then hit by
22 another car coming down the hill because they
23 couldn't stop, didn't know there was an accident
24 at the bottom because you can't see accidents
25 from the top of this hill due to the terrible

1 invisibility of this intersection. That car hit
2 the police car. The police car then hit our
3 parked car in our driveway. In between those two
4 accidents, the first one and this one I've just
5 described, we've had at least a dozen claims on
6 your home insurance for property damage.
7 Numerous accidents where people hit and run that
8 aren't recorded. Our living room is a triage
9 space for EMTs, state police and accident victims
10 often children. And as already noted there have
11 been deaths here.

12 The traffic study submitted by Red Wing is
13 not fully accurate. It's potential solution to
14 the sight line is to replace a yield sign with a
15 stop sign. That solution has previously been
16 rejected by other mining truck drivers in the
17 area. Further the study does not address an even
18 bigger issue, trucks turning left or north onto
19 White School House Road to get to the mine. This
20 is turning left across a high speed intersection
21 with extremely, extremely limited sight distance.
22 This intersection is known for its problems of
23 safety. Red Wing's traffic study does not
24 provide a solution for that.

25 In closing more trucks equals more

1 potential for danger and deadly accidents on this
2 road. Please consider the safety of everyone
3 involved in the environment that we call our
4 home. Thank you so much for your time.

5 ALJ MACPHERSON: Thank you for your
6 comments, Miss Bowen. Our next speaker is Lynn
7 Gentile. This is another name I'm not seeing on
8 the list currently, but I'll give Lynn Gentile an
9 opportunity. Please press star three on your
10 phone if you're a call-in user. Once again I
11 reiterate, sorry, we will come back to all these
12 folks who are signed up that don't appear to be
13 present. Lynn Gentile. Okay. We'll move on to
14 the next which is Elisabeth Barnett. Miss
15 Barnett, you've been unmuted. Please spell your
16 name out and any organization you may be
17 representing tonight.

18 MS. BARNETT: Yeah, Elisabeth Barnett.
19 E-L-I-S-A-B-E-T-H. Barnett, B-A-R-N-E-T-T. My
20 husband and I live on White School House Road,
21 108 White School House Road. We've been here for
22 16 years. We are right between the road and the
23 mine. And when we moved in, you know, there was
24 mining going on and we were aware of it and the
25 scale of it was quite modest. So we would hear

1 some machinery sometimes and, you know, some
2 trucks would go by the house, but it was, you
3 know, not anything that seemed out of proportion
4 to, you know, what you might expect in a rural
5 neighborhood. The proposal at hand though, you
6 know, really has us very worried. The scale
7 being considered here is much, much bigger and is
8 likely to affect our lives, the lives of our
9 neighbors and, you know, really the lives of the
10 entire community.

11 So the things that we're most concerned
12 about is, you know, have to do with some of the
13 things that have been mentioned. Certainly the
14 traffic. We were in a meeting where Mr. Doherty
15 talked about 50 truck loads a day going on our
16 road. That's a hundred trips, you know, that's a
17 lot of trucks going by and, you know, with the
18 attendant noise and dust. And, you know, at the
19 same time there will be noise and dust coming
20 from the mine side so, you know, we're worried
21 that we're going to be surrounded.

22 You know, we're certainly concerned about
23 the safety issues that have been brought up and,
24 you know, we like to bike. We like to use the
25 road. You know, we don't want to be dodging

1 trucks. And, you know, one of the reasons we
2 moved here was because of the environment and,
3 you know, how beautiful and peaceful it is. We
4 certainly don't want to see that lost.

5 And, you know, water quality, as Elizabeth
6 Spinzia brought up is of great concern to us.
7 You know, we have a well. We use the aquifer.
8 You know, any problems with our water would be of
9 great concern to us and I guess I hadn't realized
10 it could possibly affect the whole community.

11 And finally, you know, we don't plan to
12 move out of our home any time soon, but it is of
13 concern that our home value would be diminished.
14 And in addition to that, you know, there would be
15 issues for the larger community. So, you know,
16 we, you know, we highly value, many people highly
17 value Rhinebeck's peaceful, beautiful nature.
18 Lots of people come and visit here. The economy
19 is based at least in part in the fact that, you
20 know, we've got a place that people want to come
21 to and, you know, considered to be beautiful and
22 environmentally friendly.

23 And while we're talking about cost, there's
24 also the cost, you know, we pay as taxpayers to
25 maintain roads, to maintain, you know,

1 infrastructure in the area. I don't know who is
2 going to pick up the costs that, you know, are
3 associated with heavy use of a roadway much less
4 if there has to be an expansion of the road. So
5 we're firmly opposed to this expansion, you know,
6 and thank you for listening.

7 ALJ MACPHERSON: Thank you for your
8 comments, Miss Barnett. Out next speaker is
9 Paula Trimble. Miss Trimble, you have been
10 unmuted soon and when you are, please state and
11 spell your name as well as any organization you
12 may be representing tonight.

13 MS. TRIMBLE. Paula Trimble. My last name
14 is spelled T-R-I-M-B-L-E. I thank you for this
15 opportunity for me to say that DEC should not
16 give a permit to allow for the expansion of the
17 White School House Road mine. While section two
18 of the DEIS talks of local use, clearly the
19 intent for most of the sand and gravel is not
20 local use, but to be trucked to Package Pavement
21 about an hour's truck drive away. In its DEIS
22 Red Wing cherry picks from a few sections of the
23 comp plan that don't apply to mining, but ignores
24 completely the section about mining which
25 cautions against potential disruption to the

1 character of residential areas caused by the
2 heavy industrial characteristics of mining
3 including associated noise, dust, aesthetics and
4 traffic and calls out concern for the public
5 health, safety and welfare when mining is in
6 close proximity to residences and farms.

7 Regarding wildlife, the field surveys were
8 done in 2002 to 2009 with the turtle trapping in
9 2011 and 2012. No studies have been done in the
10 past ten years. No mining has occurred since
11 2012 or 2013 with low levels prior to that. So
12 it's been ten years since mining has stopped in
13 the area, a great opportunity for the wildlife to
14 move in. As an example I was delighted by the
15 confirmation of the eagle's nest in the area.
16 It's difficult to comment on Red Wing's eagle
17 study though since that report is highly
18 redacted.

19 Regarding groundwater, everyone on the
20 eastern side of Rhinebeck relies on wells or
21 springs for water. It is our sole source of
22 water. The proposed mining area is a major part
23 of the recharge zone for the aquifer. We are
24 concerned about having industrial scale mining
25 and subaqueous mining in the recharge zone.

1 Finally, I'd like to point out four of the
2 deficiencies in the Creighton Manning traffic
3 study in the DEIS. First, the study uses an
4 inaccurate value for the roadway width, 22 feet.
5 It's 20 to 21 feet or less edge to edge, no
6 striping, no shoulders and with drop offs, rock
7 faces and trees at the paved edge. Second, the
8 study substantially underestimates the increase
9 in projected heavy truck traffic. The SUPs
10 issued by the Town of Rhinebeck planning board
11 have always strictly limited allowed truck sizes
12 to be no larger than 12 cubic yards and no larger
13 than a ten wheeler. The Creighton Manning report
14 in the DEIS state trailer dumps and tri-axles
15 will be used to haul 400 tons each day to Package
16 Pavement. However, since these trucks have never
17 been allowed for any mines on White School House
18 Road, the number of trucks estimated by the
19 report is actually underestimated by two to three
20 times. The third thing is all the studies of the
21 updated traffic report were done this January and
22 given an eight percent adjustment. This has
23 heavy, the heavy traffic rate is much larger in
24 spring, summer and fall than in winter. The
25 study should have been done in a season where

1 mining would occur. Fourth, a huge deficiency in
2 the report is that they never evaluate the safety
3 problems or consider the existing accident rates
4 of the roads in question. The charts and tables
5 of distances do not capture the danger of the
6 road. Please deny the permit for the expansion.
7 Thank you.

8 ALJ MACPHERSON: Thank you, Miss Trimble.
9 Our last registered speaker tonight is Patricia
10 Lobotsky. Miss Lobotsky, you are to be unmuted
11 shortly. Once again please state and spell your
12 name along with any organization you may be
13 representing.

14 MS. LOBOTSKY: Hello. I am Patricia
15 Lobotsky, L-O-B-O-T-S-K-Y. I live at 191 White
16 School House Road. I have lived here since 1980
17 with my husband, Steven. The Lobotsky family has
18 been at this address for 101 years. For the
19 record, no, my husband and I do not own a mine.
20 We know full well the impact truck traffic will
21 have on our health and safety. I also strongly
22 oppose the Red Wing expansion.

23 Red Wing's road study said the road was 22
24 feet wide. It seems they forgot to mention how
25 their trucks will get past the areas that are 19,

1 20 and 21 feet wide. In front of my house is
2 19.8 feet wide with a 200 year old barn only 18
3 feet -- 18 inches from the road. We have had
4 many trucks go on to our front yard to keep from
5 having accidents.

6 Since the Decker mine stopped in 2013 there
7 has been a tremendous amount of wildlife coming
8 back to the area. A current wildlife and habitat
9 study needs to be done. Other than the
10 Blanding's turtles we now have black bears,
11 fishers, bobcats, coyotes, bald eagles just to
12 name a few. The eagle's nest has been active at
13 least four years. We were told the DEC was
14 unaware of them until this year. In reading the
15 DEC species specific guidance for endangered and
16 threatened animals it reads "no new buildings,
17 roadways or utility construction within 660 feet.
18 I would hope the DEC would uphold this law. Not
19 all potential mine sites are viable. Some areas
20 are just too environmentally sensitive, too
21 dangerous to human life. This is one of those
22 cases.

23 The scale of Red Wing's proposed mining is
24 a threat to the rural nature of White School
25 House Road and the Town of Rhinebeck. Please

1 let's not use the excuse that there is mining
2 already on White School House Road. We all know
3 it's apples to oranges. The truck traffic
4 associated with Red Wing will be unbearable. Red
5 Wing themselves have said they will be a regional
6 mine. They have stated and are very proud of the
7 fact that they are the largest sand and gravel
8 supplier in Dutchess County. Their DEIS states a
9 truck every three minutes. Yes, it will be
10 unbearable and extremely dangerous for the
11 drivers, bikers, walkers and animals on White
12 School House Road. Also let's not be so naive to
13 think that all the trucks will head south to
14 Slate Quarry and 9G. Trucks will hammer the
15 entire road. Knowing all the potential issues
16 and all the red flags associated with this
17 project we would hope the DEC would condemn it,
18 not condone it. Thank you for your time.

19 ALJ MACPHERSON: Thank you, Miss Lobotsky.
20 We had three registered callers who weren't here
21 today and I don't see that that has changed, but
22 I will once again call Adadorian Adeco, Hugo
23 Hansen and Lynn Gentile. If any of you have
24 shown up, if you are a call-in registrant you can
25 press star three. Otherwise there is a raised

1 hand button a couple icons to the left of the red
2 X at the bottom of your computer screen. And I
3 don't think those folks are here tonight,
4 although I encourage them or you to tell them
5 about their opportunity to write in. Is there
6 anyone who did not register tonight who would
7 like to comment today? Once again online users
8 who would like to speak must click on the hand
9 symbol. Phone in users must press star C, I'm
10 sorry, star three. And again that hand raise
11 symbol is one, two, three icons to the left of
12 the red X at the bottom of your screen.

13 MS. KATCHMAR: We do have a hand raised.

14 ALJ MACPHERSON: Very good. Yes, please
15 state your name and spell it as well as any
16 organization you may be representing.

17 MR. LOBOTSKY: Steve Lobotsky,
18 L-O-B-O-T-S-K-Y. No organization. I just wanted
19 to make some comments on Mr. Bernstein's
20 comments. First he says Roe-Jan and Billings
21 will close, so that means we will be taking the
22 brunt of the entirety of that. No thank you.
23 Number two, he says very few homes. He says 11
24 houses near the mine. Well, if you take White
25 School House Road and the three dead end roads,

1 Hilltop, Jardim Court and Cedar Lane, there's 75
2 homes. So, you know, that's that. That's a
3 little different. He also mentioned two homes
4 next to the mine owned by the Lobotskys and added
5 in who also own a mine. My wife and I do not own
6 a mine and have nothing to do with the Lobotsky
7 mine. And lastly the spillway, if that is going
8 into the wetland that we share with the Red Wing
9 property, what's going to happen to our property?
10 Is it going to flood all the time and destroy it?
11 I think you really need to look into that. Thank
12 you.

13 ALJ MACPHERSON: Thank you, Mr. Lobotsky.
14 I'm going to ask again if there is anyone else
15 who would like to comment that did not
16 preregister tonight. Once again star three if
17 you're on your phone and the raised hand button
18 if you're online. Seeing no requests, I'll note
19 again that the deadline for written comments on
20 this project is January 11th, 2023 and they must
21 be mailed to John Petronella, Regional Permit
22 Administrator at the New York State Department of
23 Environmental Conservation. That is at 21 South
24 Putt Corners Road. Putt spelled P-U-T-T. And
25 that's in New Paltz, New York, zip code 12561.

1 Alternatively you may e-mail to John Petronella
2 at john.petronella,
3 that's J-O-H-N.P-E-T-R-O-N-E-L-L-A @dec.ny.gov by
4 5 p.m. on January 11th, 2023. I'd like to thank
5 everyone for coming here tonight and commenting.
6 The time is now 6:59 and I will close this
7 record.

CERTIFICATE OF REPORTER

I, Delores Hauber, hereby certify:

That the foregoing proceedings were taken before me
at the time and place therein set forth;

That the proceedings were taken down stenographically
by me and thereafter formatted into a full, true, and
correct transcript of same;

I further certify that I am neither counsel for nor
related to any parties to said action, nor in any way
interested in the outcome thereof,

DATED this 17th day of November, 2022,

A handwritten signature in cursive script that reads "Delores Hauber". The signature is written in dark ink and is positioned above a horizontal line.

DELORES HAUBER

Shorthand Reporter

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TABLE 1

Written Comments Received During the Public Comment Period

DEC Letter Designation	Date	Name	Address	Summary of Comments/Concerns
A1	11/6/22	George Reskakis	White Schoolhouse Road	The Table of Contents in the DEIS does not line up with the text.
A2	11/17/22	Ed Roberts	Not provided	Town of Rhinebeck Town Council Person. Concerns about truck traffic and impacts to natural resources.
A3	11/17/22	Brennan Kearney (County Legislator)	N/A	Dutchess County Legislator. Concerns about traffic. References a study by the Dutchess County Department of Public Works.
A4	11/18/22	Elizabeth Spinzia	Not provided	Would like a copy of the Public Hearing transcript.
A5	11/18/22	Paula Trimble	190 Slate Quarry Road	Would like a copy of the Public Hearing transcript.
A6	11/28/22	Joanne Lobotsky		Concerns about impacts to habitats, traffic safety, dust and health impacts, vibrations and noise from blasting, other hazards including visual impacts and deterioration of water quality. Also worried the truck count will not be enforced. Attached the 2007 Hudsonia Report to the Town of Rhinebeck regarding significant habitats.
A7	12/1/22	George Reskakis	White Schoolhouse Road	Concerns impact impacts to habitat, including the lack of Department oversight on the bald eagles. Traffic concerns, including wear on the road from additional traffic. The traffic study is old and flawed. Alternations to the water flow were not adequately addressed. Concerns about impacts to water supply and quality of life. The risks do not outweigh the benefits.

A8	12/2/22	Sara-Jane Hardman	Not provided	Concerns about impacts to community character.
A9	12/2/22	Hope Laplante	Not provided	Concerns about traffic and Blanding's turtles.
A10	12/2/22	Warren Replansky (Town Attorney)	Not provided	See comment A53, below.
A11	12/7/22	Michael Trimble	190 Slate Quarry Road	The approval of the ITP and five-acre mine expansion for the access road were improper segmentation under SEQRA. The Department is not enforcing the ITP for the road through the Blanding's turtle habitat. The conservation easement property should be subdivided. Attached resolution of Wetland Trust and Wetland Conservancy.
A12	12/7/22	Steven Lobotsky	191 White Schoolhouse Road	Concerns about road and traffic safety, increased dust, noise, and diesel fumes and the effects on his asthma. The aquifer and water supply should be addressed. Worried about the impact of the "spillway" on his property. Why was the bald eagle study redacted?
A13	12/7/22	Patricia Lobotsky	191 White Schoolhouse Road	Concerns about traffic impacts, impacts to wildlife on the property, the bald eagle study was improperly done by a geologist. Also worried about the "spillway" drainage.
A14	12/9/22	Andrea Shelton	Route 9G	Concerns about excessive traffic of large trucks, damage to the roads from the large trucks carrying tons of weight, noise and air pollution, impacts to property values, and road safety concerns. Further concerns about impacts to habitat and wetlands and impacts to business and farms.
A15	12/11/22	Kathy Marryat	Not provided	Concerns about impacts on groundwater, traffic safety, and increased noise and pollution.
A16	12/11/22	Yvonne Delbanco	63 White Schoolhouse Road	Concerns about noise, dust, safety, and impacts to local wildlife.

A17	12/14/22	Staley Real Estate/Daniel Staley	Rhinebeck	Concerns about impacts to local property values, traffic safety, and wildlife.
A18	12/16/22	Aime Parker	Red Hook resident	Not a Rhinebeck resident but has close friends who live on White Schoolhouse Road. Concerns about traffic safety, air quality, noise, impacts to community character, and impacts to the bald eagles.
A19	12/18/22	Jennifer Mumm	Not provided	Concerns about impacts to the bald eagles.
A20	12/19/22	George Reskakis	White Schoolhouse Road	Began a petition of those opposed to the mine. As of the date of this comment, there were 95 signatures on the petition.
A21	12/31/22	Timothy Allanbrook	White Schoolhouse Road	Concerns about impacts to the rural, peaceful nature of the community, pedestrian safety, truck traffic, noise levels, impacts to wildlife (turtles and bald eagles), impacts to water safety, air quality, effect on property values, inconsistency with the Comprehensive Plan, and effects on tourism.
A22	12/31/22	Elisabeth Barnett	White Schoolhouse Road	Concerns about impacts to the rural, peaceful nature of the community. Concerns about deterioration of the countryside, impacts to plants and animals, the number of truck trips per day, dust, noise, and impacts to the water supply.
A23	1/3/23	Cathy Holen	White Schoolhouse Road	Concerns about road safety and the narrowness of White Schoolhouse Road. The road is not suitable for large mining trucks.
A24	1/4/23	Andrew Delbanco	Not provided	Concerns about noise, dust, impacts on wildlife, property values, and the rural character of the area. White Schoolhouse Road is too narrow and the intersections from White Schoolhouse Road to Slate Quarry Road or Route 308 are dangerous.
A25	1/4/23	Steve and Patricia Lobotsky	191 White Schoolhouse Road	Adding additional details to previously submittal. Concerns about vehicle speed on White Schoolhouse Road and truck traffic. Included photographs of the Springs and Kettle Bush pools to show Blanding's

				turtle habitat. Concerns about mining below the water table and effects on environmentally sensitive areas.
A26	1/5/23	Paula Trimble	190 Slate Quarry Road	Supplemental comments to those given verbally at the 11/17/22 Public Hearing. The mine will serve regional, not local needs. The mining expansion is not supported by the Comprehensive Plan. The eastern side of Rhinebeck relies on well water and the mine area is part of the aquifer recharge zone (Zone 1). The wetland delineation and wildlife survey in the DEIS are out of date. The Department made a decision on the eagles solely based on the Applicant's noise study. There are deficiencies with Red Wing's road study and DEIS. The documents reference an inaccurate width for the roadway, they underestimate heavy truck traffic, the road study was conducted at a time of year when mining was not occurring, there was no safety analysis or accident analysis.
A27	1/5/23	Karl Dunkenberg	Owner of 141-acre parcel on Bollenbeck Road	Concerns about impacts to property values and disruption to the unbroken flora and fauna corridor.
A28	1/7/23	Russ Austin	Not provided	Concerns about quality of life, dust, noise, traffic, and impacts to the performing arts center on Route 308.
A29	1/10/23	Ted & Melissa Braggins	Not provided	Concerns about noise, hours of operation, impacts to birds (bald eagles), pedestrian safety, and truck volumes.
A30	1/11/23	Sarah & Sean Bowen	Near intersection of Slate Quarry Road and NYS Route 9G	Concerns about impacts to wildlife, water quality, and air quality. Concerns about truck traffic and truck size and concerns about the intersection of Slate Quarry Road and New York State Route 9G. The intersection is unsafe, there have been accidents that cause property damage to the commenters' home.

A31	1/23/23	Dutchess County Planning	N/A	Letter issued as part of General Municipal Law § 239 review. The letter references the 2014 Safety Assessment by Dutchess County Transportation Council and raises concerns about truck traffic, left turns from County Route 19 (Slate Quarry Road) onto White Schoolhouse Road. The letter recommends conditional approval of the Project with mitigation measures to address safety concerns with increased truck traffic on White Schoolhouse Road and Slate Quarry Road.
A32	1/29/23	Kate & Joel Kopp	152 Slate Quarry Road	Concerns about traffic safety and accidents, and the environmental impact of trucks, including emissions and noise.
A33	1/30/23	Steven Schwartz	Not provided	Member of the Town of Rhinebeck's Conservation Advisory Board. The proposed mine is inconsistent with the Town's Comprehensive Plan and vision of rural character. Concerns about traffic safety.
A34	1/30/23	Edward Willbeck	185 Slate Quarry Road	Concerns about traffic safety and accidents.
A35	1/31/23	Charles Brill	Not provided	Concerns about truck traffic and accidents.
A36	2/1/23	Paula Trimble	190 Slate Quarry Road	Provided four videos on behalf of Rural Rhinebeck Neighbors. The videos were taken on 1/15/23 by Steve and Patty Lobotsky.
A37	2/5/23	Theodore Fink	Pells Road	Due to the length of this comment submission, it is not summarized in this table. The full text of the comment is included in Exhibit C.
A38	2/5/23	Jill Horn	Not provided	Concerns about truck traffic and safety.
A39	2/6/23	Eileen Rowley	Not provided	Concerns about traffic accidents and fatalities.
A40	2/7/23	Richard Appleman & Susan Williams	Not provided	Concerns about the traffic study and accidents.

A41	2/7/23	Amanda Miller	Not provided	Concerns about traffic. Worried the mine will flood the less wealthy neighborhoods in Rhinebeck with pollution, noise, and industrial development.
A42	2/8/23	Tom Polucci	Not provided	Agrees with concerns raised by Eileen Rowley in her comment dated 2/6/23.
A43	2/8/23	Lynn Lobotsky	Slate Quarry Road	Concerns about the narrowness of White Schoolhouse Road, truck traffic, noise, property values, and impacts to wildlife.
A44	2/10/23	Rural Rhinebeck Neighbors via Whiteman, Osterman & Hanna LLP	N/A	Due to the length of this comment submission, it is not summarized in this table. The full text of the comment is included in Exhibit C.
A45	2/9/23	Yoram Gelman	Resident of Milan/Red Hook	Concerns about truck traffic and impacts to the Village and Town of Rhinebeck. Concerns about reclamation.
A46	2/9/23	Sarane Ross O'Connor	11 Bollenbecker Road	Concerns about safety and truck traffic, environmental impacts, and impacts to the aquifer and wildlife. Need for sand and gravel.
A47	2/9/23	Deborah Barrow	Not provided	Concerns about wildlife and streams, heavy truck traffic on Route 308, impacts to quality of life, the viewshed, and the hospitality industry.
A48	2/9/23	Anne Brueckner	31 Pond Drive East	Concerns about heavy truck traffic and noise. Believes there is value in natural surroundings.
A49	2/9/23	Eric Salzman	381 White Schoolhouse Road	Concerns about pedestrian safety, truck traffic, and noise.
A50	2/9/23	Susan Marsa	Not provided	General opposition to the mine.
A51	2/9/23	Charles Wessler	Not provided	Truck traffic from the mine will murder Rhinebeck citizens.
A52	2/9/23	Eve D'Ambra	Rhinebeck	Concerns about truck traffic, noise, dirt, environmental degradation, impacts to wildlife, and safety.

A53	2/9/23	Warren Replansky (Town Attorney)	Not provided	Due to the length of this comment submission, it is not summarized in this table. The full text of the comment is included in Exhibit C.
A54	2/9/23	Nan Stolzenberg (Community Planning and Environmental Associates)	N/A	Due to the length of this comment submission, it is not summarized in this table. The full text of the comment is included in Exhibit C.
A55	2/10/23	Julie & Sandy Zito	190 Stone Church Road	General opposition to the mine.
A56	2/10/23	Franc Palaia	Rhinebeck	Husband of Eve D'Ambra. Concerns about truck traffic, noise, dirt, environmental degradation, impacts to wildlife, and safety. Mine will be out of place.
A57	2/20/23	Grant & Lyons LLP	N/A	Due to the length of this comment submission, it is not summarized in this table. The full text of the comment is included in Exhibit C. Request for adjudicatory hearing.
A58	2/20/23	Planning 4 Places	N/A	Due to the length of this comment submission, it is not summarized in this table. The full text of the comment is included in Exhibit C.
A59	2/20/23	Hudsonia	N/A	Due to the length of this comment submission, it is not summarized in this table. The full text of the comment is included in Exhibit C.

TABLE 2

Comments Made During the Public Hearing on November 17, 2022

DEC Letter Designation	Transcript Page(s)	Hearing Date/ Time	Name	Address	Summary of Comments/Concerns
B1	20-29	1pm	John Lyons (Attorney for the Town of Rhinebeck)	N/A	<p>The Property is a difficult site because over the years the neighborhood has grown up around it. It is located in the middle of rural residential area. White Schoolhouse Road is a rural road, not suited to heavy traffic. The mine is located near a dangerous intersection between White Schoolhouse and Slate Quarry Road. The area is ecologically sensitive with wetlands, bald eagles, and Blanding's turtles.</p> <p>The Application needs a careful diligent review with attention to detail to mitigate adverse impacts to maximum extent practicable. The review must be a departure from the access road/incidental take permit reviews. There, the Town devoted significant resources to submit comments, and all the Town's comments were fruitless as permits were issued without a single change to the draft permit language. The Town of Rhinebeck is an involved agency – involved agencies not bound by findings of lead agency. If the Town believes the review is not sufficient, it will issue its own findings. The review of DEIS will be watched carefully.</p> <p>Red Wing first applied in 2008 and had 14 years to get application to completeness. Why is the</p>

					<p>Department holding the public hearing 17 days from the Notice of Complete Application with a total comment period less than 3 months? That denies the public effective opportunity to comment and the Town cannot get professionals to turnaround in the time that's been provided.</p> <p>This project is not in compliance with Rhinebeck's Comprehensive Plan or Zoning Law. The existing LOM is a conforming use, the rest of the LOM is a nonconforming use. The impact of this use must be mitigated. Even as a nonconforming use, this mine is regulated by Rhinebeck and local approvals are required. Red Wing claims local approvals are not required, but the Rhinebeck ZBA and Supreme Court have rejected that argument.</p> <p>White Schoolhouse Road is not suited to commercial traffic. There are public safety and community character impacts and it will degrade road over time.</p> <p>The DEIS omits discussion of the impacts to community character. The mine is in the middle of residential area and community character must be addressed. Traffic impacts alone will change area. Existing mines in this area have coexisted peacefully due to small scale. Red Wing's proposal represents new scale of impacts – ecology, noise, aesthetics, groundwater and surface water impacts – to be addressed in written comments.</p>
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					<p>To protect the environment and the neighborhood, permit conditions must be ironclad, meaningful, measurable, and enforceable.</p> <p>There has been frequent litigation between the Town and Red Wing – all initiated by Red Wing. Permit conditions must be such that after permits are issued they can be evaluated and enforced. The Town asks the Department to conduct a careful, good faith, community aware review, and place hard, enforceable conditions on the permit.</p> <p>The need for sand and gravel is not an appropriate element in environmental review.</p>
B2	30-31	1pm	Theodore Braggins	Becker Road	<p>Resides adjacent to the Property. Recalls when the mine was previously operational. Noise and traffic are a big issue in the area. Mining hours are lengthy, mining noise carries, and mining creates constant background noise. Mining operations will degrade the quality of life over the Project's lifespan, the next 15 to 20 years. Property values will take a big hit. Traffic on White Schoolhouse Road will be completely encumbered. This is a high recreation area for people walking and biking. This is not the same area as when Red Wing was previously mining. There are dangerous intersections at Slate Quarry Road and Route 308. On Monday saw a bald eagle while walking to the mailbox. Bald eagles are beautiful and a joy to see and a symbol of America. The eagles' habitat will be disturbed. There are many concerns to take into consideration.</p>

B3	32-34	1pm	Dean Vallas	Rhinebeck	Concerned with historical scenery and abundant landscape that Rhinebeck enjoys. Red Wing's DEIS proposal will at least double if not triple size of existing mine. The proposal will make it more difficult for inhabitants of this road to enjoy attributes of the Comprehensive Plan. Red Wing's website shows type of trucks they propose to use. The trucks not appropriate for White Schoolhouse Road which turns and twists. The landowners should be heard. Red Wing does not indicate an escrow amount put aside to complete reclamation process. The Department should think about how Red Wing might not have money for reclamation following life cycle of mine.
B4	34-36	1pm	Garrett Dyal	Rhinebeck	Grew up and lived in Rhinebeck. Worried about traffic with two young kids in the Rhinebeck school system whose bus goes down White Schoolhouse Road. The road is 19-feet wide and twisting. Worried about traffic during school bus hours. There is a smaller local mining operation on the local road, we already need to pull off the road to let them by. Take a trip to the Slate Quarry Road intersection during bad weather. There is not a lot of time to react to the down hill reverse slow turn. This is heavy use by commercial vehicles. The Department should put that in their scope. The Town should not lay off the brakes on enforcing traffic studies.
B5	36-39	1pm	Amy Lemon Olson on behalf of herself and Rural	22 Bollenbecker Road	Incredulous that this has gone this far. The idea of giant trucks coming out of White Schoolhouse Road onto Slate Quarry is mind bending, much less the environmental impacts. Wildlife is extensive, sees bears when walking. Rhinebeck

			Rhinebeck Neighbors		<p>was named 14th most beautiful small town in North American by Architectural Digest. This will devastate rural feeling of area. The end of Route 9G, truck traffic on the way most people enter Rhinebeck. Devastating to property values. Residents will petition the Town to lower taxes, because they are high. Impacts to more than just the 11 houses on White Schoolhouse Road, many other residents will be impacted. There will be traffic day in and day out. There will be impacts to visitors, shops, restaurants, etc. The impact will be really atrocious.</p>
B6	39-41	1pm	Luke Sullivan	67 Hilltop Road	<p>Lives on a road that adjoins White Schoolhouse Road. Uses White Schoolhouse Road every day, multiple times per day. Red Wing's modus operandi is that it purchases marginal rural and semi-rural properties. It demonstrates preparedness to litigate heavily against local residents and towns, in hopes their willingness to litigate will prevail. Everywhere Red Wing goes, residents and towns are against it. Its properties are not fit for large scale mining they are looking to pursue. Expansion of the mine for Red Wing here is perfect example. The Department can have marginal, limited level of confidence that Red Wing will operate to protect local wildlife in area – deer, bears, bald eagles, racoons, and woodpeckers. Bird watchers come through regularly. Red Wing has a history of being highly litigious and a disliked corporate citizen. Its participation in this local community is unwelcome, unwarranted, and should not be allowed.</p>

B7	42-44	1pm	Steven Lobotsky	191 White Schoolhouse Road	Looking at DEIS, the theme is that there are no significant impacts. This is far from the truth. There will be impacts to road traffic safety, the aquifer, historical buildings, the environment. The biggest issue is White Schoolhouse Road with blind corners and driveways. The traffic study says it is 21-feet wide, but in front of our house it is 19 feet 8in wide. With a dump truck passing through there is only room for one vehicle. It cannot handle volume of trucks. This is a regional mine, the largest sand and gravel mine in Dutchess County. There will be a truck every 3 minutes. The Town Code limits this. The Project is far from small scale mining. Red Wing should have to find alternate route that does not include White Schoolhouse Road. Example in Town of Milan – the size and scale increased overnight, Red Wing did not listen to residents' concerns in Milan. People had to sell homes, etc. The Department should not be in the business of destroying neighborhoods and health and safety of people living there.
B8	44-47	1pm	Sean Bowen	219 Slate Quarry Road	This is a dangerous area. People killed in my area due to accidents. The traffic study downplays concerns at intersection White Schoolhouse Road and Slate Quarry Road. Have lived at this intersection for years. The intersection sight distances do not meet sight distances. The traffic study recommends yield sign removed and stop sign installed. This has already been ruled out as this mitigation is not useful. If trucks came to full stop, they could not get back up to speed in time. Unless trucks are required to enter from north end, trucks will be turning left at the dangerous

					<p>intersection. There have been multiple injuries and deaths. Have seen over 50 accidents here, including over a dozen with property damage commenter's home. Red Wing's report is not accurate – look at NYS Police and EMT records about the intersection. Commenter does not turn into his driveway coming from Route 9G. Cars overdrive the road and truck traffic is another added danger. Quality life – simple people need to be protected.</p>
B9	48-51	1pm	Michael Trimble (Town of Rhinebeck Planning Board member, Code Enforcement Officer)	190 Slate Quarry Road	<p>Lives next door to Mr. Bowen. There have been hundreds of accidents since 1975. There is wildlife in the area and valuable wetlands with headwaters here. On 2/25/21, the Department issued an ITP for Blanding's turtles. There is a conservation easement held by 3rd party to be executed. Mr. Petronella, establishment of conservation easement is well established conservation mechanism to protect turtles with a legally invested third party NGO to enforce terms. When looking for an easement holder, Red Wing negotiated with Wetland Trust/Wetland Conservancy. Phase I – transfer of conservation area to Wetland Trust. Wetland Conservancy would then hold easement on Wetland Trust. It is not unusual for another land trust to actually hold the easement. Phase 2 – mining concluded on property with the rest transferred to Wetland Trust. The easement avoided all conditions that had been set, there was no mention of the conservation easement No monitoring of the site to know conditions of ITP being met. The Department must establish</p>

					conservation easement before issuing a permit to ensure monitoring will take place.
B10	52-53	1pm	John Dyal	Rhinebeck	Concerned about the width of road and bridge and clearance of trucks on the bridge. Big guy and if jogging will be pushed off road. This is a safety issue for pedestrians. Dangerous for that kind of traffic, especially at the bottom of the hill by the Lobotsky's. Trucks will not be able to slow down and stop.
B11	54-55	1pm	Robert Wyant (Town of Rhinebeck Highway Superintendent)	Rhinebeck	White Schoolhouse Road is a winding, rural roadway. It connects Dutchess County Route 308 and Route 19. It was last paved in 2011 and is nearing end of its useful lifespan. The road will not hold up well and is not designed for this heavy traffic. Winding concerns to contend with along with the safety of the public using the road. There will be noise pollution from trucks. Dump trailers would create more of a safety problem and should not be allowed.

B12	55-57	1pm	Warren Replansky (Town Attorney)	Rhinebeck	<p>White Schoolhouse Road is woefully inadequate for this type of mining operation. Mr. Lyons represents the comments I would have made and will make in writing. Main concerns are traffic, impacts on community character, noise, public safety. There is a material conflict of this mining application with the Town's adopted Comprehensive Plan and Zoning Law. The Town's Comprehensive Plan and Zoning Law prohibited additional mining in this area, Red Wing challenged that in court and before the ZBA, who ruled against them. The Supreme Court Dutchess County ruled against Red Wing. The Appellate Division stated Red Wing was a nonconforming use permitted to apply for special use permit and site plan approval. Red Wing stated it intended to make those applications. Have since reneged on that and subjected the Town to relentless litigation. Red Wing argues not only is it a nonconforming use, but it is also exempt from Planning Board applications and can move forward with only the Department's permission. The Department takes into account local opinions, we will be arguing for denial in our submission. Given the volume of the DEIS and time period it has been pending the January 11, 2023 public comment deadline is inadequate for Town's submission. The Town will be asking for an extension to the comment period.</p>
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B13	58	1pm	Dawn Hollis	Not provided	The mine is heavily guarded by the Department. They come to the mine and watch us. We are animal lovers, we watch for and take care of animals. Turtle tunnels and turtle fencing were installed and a lot of work was done to make sure harm to turtles does not occur. The Department will be over there. We do not hurt the wetlands, we never have. We have many properties where you can go and see the wildlife and the ecosystems created by Red Wing.
B14	60-64	1pm	Melissa Braggins (reading comments on behalf of Brennan Kearney, County Legislator)	N/A	County Legislature for District 11 and Dutchess County (Clinton and Rhinebeck). Completely oppose expansion of Red Wing mine on behalf of constituents. It is beyond the comprehension of this elected official that the Department is supportive of increased disruption of environmentally sensitive area located in aquifer zone. The number one concern of constituents is the dangerous nature of local roads. The study by Dutchess County Department Works found the traffic study presented by Red Wing does not cover concerns related to truck traffic. County Route 19/Slate Quarry Road is dangerous from White Schoolhouse Road to 9G. Some changes made as a result of the County's assessment have been good improvements. But increased truck traffic will overwhelm improvements made. Red Wing estimates 50 truck trips per day which is not a safe, reasonable addition to road traffic. Peak traffic hours in mornings and evenings. Red Wing intends to send most trucks to 9G, so they will turn right onto White Schoolhouse Road, passing 15 homes on way to Slate Quarry Road, turn right and

					pass another 17 homes to NYS Route 9G. White Schoolhouse Road is a significant local road with significant vertical and horizontal curvature. The Town study found the road width varied and is less than 20 feet at times. Concerning if two trucks or a truck and school bus pass each other. Fear for safety of residents and precious natural environment.
B15	20-25	6pm	Elizabeth Spinzia (Chair of the Town Board and Town Supervisor)	Rhinebeck	Unanimous in opposition to the Project. Three attorneys working for the Town will submit written opposition. Human toll and threat to the community. There is a local law limiting mining in the Town to those already with Department permits. Small scale mines exist in the Town, "mom and pop mines." This will be expanding a 43 acre mine to almost 100 acres, mining the top and what goes into the water. The Property is in one of two aquifer uptake areas and can compromise the water aquifers. People are scared, angry, and worried. This will leave land scarred. The Blanding's Turtle on the Property is endangered. There are a plethora of endangered species that will be affected by this large scale mine. The narrow rural road cannot handle the traffic. This is destroying environment and asking the Town to pick up the tab to do that. There will be noise pollution, light pollution, dust, air pollution. A gross destruction of pristine landscape. This is out of scale and not wanted in Town. Not in line with the Comprehensive Plan and Zoning Code. The mine is a slap in the fact to us and our vision of the Town. There is nothing in this project for the Town. We do not need or want a park on White

					Schoolhouse Road. We would prefer farmland, pristine landscape, or residential building sites. People feel let down by the Department.
B16	25-27	6pm	Andrew DelBlanco	Village of Rhinebeck	Daughter has a home on White Schoolhouse Road. There are a wide range of negative impacts. Traffic impacts on White Schoolhouse Road, impacts to walkers, joggers, cyclists, and parents/grandparents with small children. A rational person knows substantial industrial traffic would be an extreme safety hazard. This is out of place on narrow country road. The intersections are dangerous. Truck traffic on White Schoolhouse Road is a disaster, an accident waiting to happen.
B17	27-29	6pm	Jennifer Mumm	Hill Top Road	This expansion would result in industrial scale mining in rural, bucolic area. Vehicles accommodate each other by moving off the road. When walking, move off road to allow any vehicles to pass. It is nearly impossible to read through all the constant litigation. We do not want them as neighbor. Little to no regard for local community and planning laws. Endured more than 14 years of litigation with Red Wing. There are guaranteed to be fatalities as a result of this. Abject failure of the Department if approved.
B18	29-32	6pm	Charles Veach	White Schoolhouse Road	Grew up in 1990s near the gravel pit. There was a huge dust problem – had to power wash house, no outdoor BBQs. Returned to Rhinebeck in 2017 purchased home for \$217,000. Renovated the home and it is now valued over \$500,000. Worried Red Wing's operations would depreciate the value significantly. Red Wing is concerned with money and profit over community. The home was built in 1936 on a stone foundation and is located less

					than 6 feet from White Schoolhouse Road. There will be foundation issues. The width of road outside house is less than 20 feet. Safety concerns because the road is not designed for this commercial traffic. The Property is home to turtles, herons, and bald eagles. How can the Department be sure the animals won't be compromised. Will be forced to relocate with approval of mine.
B19	33-36	6pm	Sarah Bowen	White Schoolhouse Road and Slate Quarry Road Intersection	Have lived at the intersection of White Schoolhouse Road and Slate Quarry Road for over a decade. Impacts to the environment entangled with those acres. Intersection dangers. Witness significant collisions at least once a month. West driving cars lose control on curve. Trucks will enter and leave the roadway right where cars lose control. Cars crash into our property, our cars, utility poles. We had a four car pileup in our driveway. The stop sign solution has already been rejected. Red Wing does not address trucks turning left on high-speed intersection. The traffic study does not provide solution. More trucks equal more danger.
B20	36-39	6pm	Elisabeth Barnett	108 White Schoolhouse Road	Live between the road and mine. When we moved in we were aware of modest mining operation. We would hear machinery sometimes, trucks would go by the house, it did not seem out of proportion for rural neighborhood. But lots of trucks going by means noise and dust, more noise and dust from mine side. Concerned about safety issues, we like to bike and use the road. Moved here because of beauty of environment. Concerns about water quality, we use a well in the aquifer. We did not realize the mining could affect that, Property

					values are a concern. Who will maintain infrastructure costs from heavy use and/or expansion?
B21	39-42	6pm	Paula Trimble		DEIS cherry picks from Comprehensive Plan. Most sand and gravel will be trucked to Package Pavement, about an hour away. Concerns about noise, dust, aesthetics, and traffic. Concern for public safety and welfare when in proximity to wildlife and farms. Red Wing submitted dated studies; they are all over ten years old. No mining has occurred since 2012, low volumes since then. There has been time for wildlife to move in. The bald eagle study was highly redacted. People rely on wells or springs for water. The proposed mining area is part of recharge area. Concerns about having mining below water table. Four deficiencies in traffic study: Inaccurate value for road width, 22 is wrong 20 or less is correct; it substantially underestimates the increase in heavy truck traffic; the special use permits issued by Town limited truck size; the traffic study discusses trailer dumps and tri-axels. Trucks and mines have never been allowed on White Schoolhouse Road, so it underestimates traffic by two to three times. All traffic studies were done in January and the heavy traffic rate is higher in spring, summer, or fall. The study should have been done when mining will occur. The study does not evaluate safety problems or accident rates or capture the danger of road.
B22	42-44	6pm	Patricia Lobotsky	191 White Schoolhouse Road	Family has been at this address for 101 years. The road study overestimates the road width. There is a 200-year-old barn 18 inches from the road. Many

					<p>trucks go onto our front yard to avoid accidents. Since mining stopped in 2013, wildlife came back to the area. A current wildlife study needs to be done. There are bobcats, black bears, and bald eagles (active nest for 4 years). The Department's species-specific guidance for endangered/threatened animals says there should be no work within 600 feet. Hope the Department upholds this. This area too sensitive and this is too dangerous for human health. Apples to oranges looking at current mining. Red Wing will be a regional mine and is the largest sand and gravel supplier in Dutchess County. There will be a truck every 3 minutes. That is unbearable and dangerous. Hope the Department will condemn not condone.</p>
B23	45-46	6pm	Steven Lobotsky	191 White Schoolhouse Road	<p>Comments on Mr. Bernstein's comments. Roe Jan and Billings will close, we will take the brunt of that. There are 11 homes near mine, but if you take near mine and three dead end roads, there are 75 homes. Two homes next to the mine are owned by the Lobotskys. We do not own a mine and have nothing to do with the Lobotsky mine. Worried about the spillway into the wetland shared with Red Wing property. Will our property flood and be destroyed? The Department needs to look into that.</p>