

FINAL ENVIRONMENTAL IMPACT STATEMENT

**By the
New York State
Department of Environmental Conservation**

Concerning

Eagle Harbor Sand & Gravel, Inc. – Eagle Harbor Mine

Article 23, Mined Land Reclamation, DEC #8-3422-00003/00001 (MLR#80171)
Article 15, Water Withdrawal, DEC #8-3422-00003/00003

APPLICANT & PROJECT SPONSOR:

Eagle Harbor Sand & Gravel, Inc.,
10830 Blair Rd
Medina, NY 14103

Contact: Thomas Biamonte
585-798-4501
Shelbystone@gmail.com

LEAD AGENCY AND FINAL ENVIRONMENTAL IMPACT STATEMENT PREPARER:

New York State Department of Environmental Conservation
6274 East Avon-Lima Road
Avon, New York 14414

Contact: Robert B. Call, Deputy Regional Permit Administrator
Region 8, Division of Environmental Permits
585-226-5396
robert.call@dec.ny.gov

dEIS Accepted: January 17, 2024

fEIS Accepted: May 10, 2024

Findings Statements and Decisions After: May 25, 2024

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DEC Application No. 8-3422-00003/00001 (MLR#80171)
Town of Barre, Orleans County

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Section III: SUMMARY

This final Environmental Impact Statement (fEIS) is prepared pursuant to State Environmental Quality Review Act (SEQRA) regulations in 6 NYCRR Part 617. This final EIS consists of the following documents, either by reference or inclusion:

1. The draft Environmental Impact Statement (dEIS) that was accepted by the NYS DEC on January 17, 2024 includes: a description of the background and environmental setting of the project, mitigation measures taken to minimize environmental impacts, adverse environmental impacts that cannot be avoided if the project is implemented, alternatives, irreversible and irretrievable commitments of resources, growth-inducing aspects of the proposal, effects on the use and conservation of energy and references. The dEIS also includes various appendices containing technical documents and analyses related to the proposal, which are also incorporated into this fEIS by reference
2. Transcript of Legislative Hearing held on February 16, 2024, and written comments submitted to the Department. (Included as Section IV, Public Hearing Transcript and Comments)
3. Responsiveness Summary (Included as Section V, Response to Comments)
4. Supplemental Information, including applicant's response to select comments. (Included as Section VI, Supplemental Information)

Correspondence regarding the fEIS should be addressed to the Lead Agency:

NYS Department of Environmental Conservation, Region 8
6274 E. Avon - Lima Road, Avon, New York 14414

ATTN: Robert B. Call - Deputy Regional Permit Administrator
Division of Environmental Permits
(585) 226-5396
robert.call@dec.ny.gov

Purpose and Background of fEIS:

Project Description

Eagle Harbor Sand and Gravel, Inc. applied to the New York State Department of Environmental Conservation (NYS DEC) to modify their mined land use plan/mined land reclamation permit and issue a new Water Withdrawal permit which will allow the

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excavation of consolidated bedrock material from an approximately 100-acre area within the existing approximately 250.6 acre of life-of-mine area. The permitted depth of mine is proposed to be increased approximately 30-35 feet to 80-100 feet, and a portable crushing plant will be added to crush the dolostone prior to feeding it into the existing processing plant. The Water Withdrawal request is associated with dewatering the bedrock mining area, with water discharges to be made under a SPDES Multi-Sector General Permit for Stormwater. Existing sand and gravel operations will continue, and operations will be modified to include drilling blasting and crushing to support the bedrock mining.

Regulatory Review

The fEIS summarizes the environmental review process and significant environmental issues and is comprised of the Mined Land Use Plan Modification dated February 9, 2016; the draft Environmental Impact Statement (dEIS) accepted by the NYS DEC on January 17, 2024 and the transcript of the Legislative Hearing held on February 16, 2024 and materials in this fEIS document, including the response to comments. Three written comments on the dEIS were received from two individuals. The fEIS will be used by agencies with approvals for this project to make Findings pursuant to their authority.

The Department received an application for an Article 23, Mined Land Reclamation Permit, and the State Environmental Quality Review (SEQR) Act Long Environmental Assessment Form, for the proposal on for a quarry proposal at the project site on December 12, 2018. The related water withdrawal application was received on September 28, 2020. After classifying the action as a Type I action under SEQR, the Department coordinated with other involved agencies and was established as the SEQR Lead Agency on November 22, 2019. After review of the application and SEQR Environmental Assessment Form, the Department issued a SEQR Positive Declaration on September 10, 2021 requiring the preparation of a dEIS. On January 6, 2022, the Department made available for public review and comment, a draft Scoping Document for the Draft Environmental Impact Statement and written comments were accepted through February 11, 2022. A final scoping document was accepted on April 22, 2022, and provided to all SEQR involved agencies.

A dEIS was initially submitted to the Department on September 2, 2023. After review of subsequent revisions, the Draft Environmental Impact Statement was accepted for public review on January 17, 2024 and the Department issued a combined Notice of Complete Application, dEIS Acceptance and Notice of Public Hearing. A virtual public hearing was held at 6:00 PM on February 15, 2024 on a WebEx platform. The hearing was part of the public review of the dEIS and application. Daniel P. O'Connell, NYSDEC Administrative Law Judge, served as the Hearing Officer. No verbal comments were received during the virtual hearing. Prior to the close of the formal comments period, three written comments/letters were received from two individuals. The Public Hearing Transcript and written comments received by the Department during the formal comment period are a part of this fEIS (Section IV). The Department's response to comments is included in Section V. The comment period on the dEIS and the mining application closed on March 1, 2024.

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Based on a review of public comments received on the DEIS no substantive and significant issues had been raised during the conduct of this review, and that an adjudicatory hearing (6 NYCRR Part 621.8) was therefore not required.

The DEIS, hearing transcript, and written comments received, and supplemental information provided by the applicant are made part of the FEIS and included in the Appendices. Prior to issuing a decision on the permit application, the Department is also required to issue a SEQR statement of findings pursuant to 6 NYCRR § 617.11.

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Section IV: Public Hearing Transcript and Comments

- February 16, 2024 email from Dave Harris
- February 20, 2024 letter from Bridget O'Toole, Esq. on behalf of Town of Barre
- March 1, 2024 email from Dave Harris
(also provided in a letter dated March 4, 2024)
- March 4, 2024; Hearing Transcript

Call, Robert B (DEC)

From: dec.sm.DEP.R8
Sent: Friday, February 16, 2024 7:28 AM
To: Call, Robert B (DEC)
Subject: FW: Eagle Harbor Mine Comments

From: David Harris <cazhog@gmail.com>
Sent: Thursday, February 15, 2024 3:32 PM
To: dec.sm.DEP.R8 <DEP.R8@dec.ny.gov>
Subject: Eagle Harbor Mine Comments

You don't often get email from cazhog@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.

To Whom It May Concern:

I have reviewed and are providing comments in a logical order based upon the WIXSITE order of documents regarding the Eagle Harbor Sand & Gravel operational permit request to mine consolidated limestone, as part of a Life of Mine modification.

My comments are:

DEC DEIS, Scoping:

- Adding a portable crusher prior to sorting, has been stated by the applicant that it considers the adding of drilling, blasting and crushing consolidated minerals as no changes in their existing processing. I respectfully disagree. Drilling, blasting and crushing is a different process from processing unconsolidated sand and gravel. Fines, lime dust/paste from processing also is a different by-product.
- The 6/6/2019 response to the DEC 1/22/2019 question regarding culvert overtopping in the farm field downstream of the site
 - o The response states it is not flooding. If this condition is not a flooding condition, please explain what it is.
- The mining plan 3.5.2, mining method
 - o The plan is to drill, blast, crush and sort with one portable crusher (typically portable units are diesel powered). Given traditional methods, would additional crushers be necessary to efficiently produce the array of limestone products typically available in a quarry of this proposed production? A definitive production process is needed outlining how the single crusher can provide the array of materials provided for sale in a typical operation proposed. Typically, two or three more crushing units are needed to provide the level of processing necessary.
 - o Moreover, how would this impact the noise generated at the facility and does this necessitate revisions to/require a noise study?
- Longform EAF D2 (k)
 - o The response to the question "Will the proposed action (for commercial or industrial projects only) generate new or additional demand?" is NO.
 - § Given the addition of at least one portable crusher with an anticipated horsepower range of 200 to 300 horsepower there would be an additional demand (a portable unit would typically be diesel powered); also the addition of a 700 GPM pump is somewhere in the 100 Hp range. We believe this would lead to/require responses to (k) i, ii and iii.

- o The Air Facility Application Registration notes one 415Hp and one 134 Hp generator sets (for argument's sake, approximately 28 and 10 GPH of diesel respectively each per hour) that is 38 GPM just for the generator sets, plus the pump(s).
- Longform EAF D2 (p)
 - o It is my opinion, that the likelihood there are current petroleum bulk storage tank(s) greater than 185 gallons are present, this should be a YES response, not to overlook the current power used to operate the crusher(s) and pump(s). I'm presuming the power is diesel generators based upon inference from what I see as disjoint documents provided in the DEIS.
- The water withdrawal permit application owner of the property indicated is different than the owner indicated in the permit application. Given the current operation, is there an existing water withdrawal permit? Based upon the language or the hydrology report there are two different aquifers addressed, and presuming the upper aquifer supplies the current operation, is or should there have been a permit for this water usage?
- The water withdrawal supplement WW-1 states a withdrawal of 1,980,000 GPD, with a pump rated at 700 GPM (1,008,000 GPD). From my perspective the numerous discussions located throughout the application seem to obfuscate the facts.
 - o Also, is the new pump (700 GPM) electric or diesel/diesel generator?
- 7.0 Water Conservation
 - o (WATER AUDITING IV) The referenced discharge hoses 4" and 6" appear to us insufficient in size to accommodate 700 GPM; 12" diameter discharge is more in line.
 - o I also believe that there are disparities in the data offered in the performance of the pump(s) referenced in the application.
 - o Water Withdrawal Reporting Form (3.4); is this request a modification to current water use or a new request? Clarification would be appreciated.
- The water conservation program form has the applicant and contact numbers as the same but appear to be two different contacts. Is this correct?
- III Sources and metering
 - o The question of how often the meter(s) are read versus the response that they are recording constantly doesn't answer the question of what we believe to be the intent of when does a person read and analyze the data for the applicant?
 - o The pumping test was conducted, per the applicant, with the approval of the Department's agreed upon parameters.
- 3.0 Hydraulic Modeling
 - § If 300-GPM ("Water Budget" referenced in the report) was the agreed to depression of the aquifer, how is the 700-GPM rate of build out water usage modeling developed and used in comparison? Seems counterintuitive since 700-GPM is not modeled, as we can see. How accurate is this modeling?
 - o The mixing of CFS and GPM may be confusing to the average public, then later in the report Acre Feet is mixed in in the HydroCAD output graphs.
- Summary of peak inflows and outflows (Table 2) indicates the mine discharge somehow is less than the 700 GPM inflow and the graphing seems to indicate that there is limited buffering capacity (In the two-hour range) to mitigate the mine inflow(s).
- While I clearly understand the no mining option does not allow for the access of the needed minerals, has a model been run for no mining activities, as offered in the application and DEIS as a basis of comparison?
 - o Asking this as is appears the property north of Maple Street will be flooded in a couple hours and any significant event.
 - o The capacity of the existing 15" Diameter culvert pipe crossing Maple Street is approximately 435 GPM and while referenced on the hydrology mapping, it is not indicated in Table 1, that I was able to locate in the table.
 - o The 18", "assumed" culvert from the settling pond appears close to the discharge location under Maple Street. Does the proposed settling pond have safeguards designed to prevent silt from migrating?
 - o Is there a current water withdrawal permit in place for the existing water usage? Is one required?
 - o The HydroCAD output graphs are confusing, given some are in Cubic Feet and some in Acre Feet. Almost seems to try to confuse the layman reader of the report.
- The Air Emissions data could be more integrated into the energy usage narratives as the equipment is detailed (presuming current plus proposed).
 - o The air emissions data on what I am presuming to be Tons Per Annum (TPA) production of rock is inconsistent with the production and round trips referenced in other parts of the body of the application.
- WETLANDS DELINEATION REPORT
 - o Appears limited and were any soil samples and flora evaluations data provided?
- NOISE STUDY
 - o The website tab is labeled Hydrogeologic Analysis.
 - o Introduction references the mine is east of Eagle Harbor Road, believe it is oriented west of Eagle Harbor Road.
 - o Department confirmation of the actual equipment to be used and noise data from the manufacturer(s), if available.
 - o Will an actual field receptor analysis and study be required? Or is the modeling sufficient?
 - o Does the blasting proposal come into play with sound or just PPV for vibration monitoring?
- After this virtual legislative public comment hearing and the DEIS is either accepted or rejected, will DEC have a public question and answer meeting for the public to voice any opinions. Also, once the DEIS process is completed (either acceptance or rejection) are any, additional, local administrative public hearing/meeting requirements to satisfy local concerns

or issues. Would like the company or their representatives to be available in a public forum to respond to questions, to both the DEC and local government entities.

I find the assembly and coordination of this DEIS, and associated applications disjointed and misleading to someone looking objectively at the presentation offered and would request the Department to reject the DEIS for substantial revisions, clarifications, and corrections.

Respectfully submitted:

David Harris
5257 Rathbun Rd.
Cazenovia, NY 13035

Douglas M. Heath, Esq.
DHeath@heathotoole.com

Bridget O'Toole, Esq.
BOToole@heathotoole.com

Bridget A. Cook, Esq
BCook@heathotoole.com



66 Village Square
PO Box 200
Holley, NY 14470

Phone: (585) 638-6331
Fax: (585) 638-7221
heathotoole.com

VIA E-MAIL ONLY (DEP.R8@dec.ny.gov)

February 20, 2024

Robert B. Call
Deputy Regional Permit Administrator
NYSDEC Region 8
6274 East Avon-Lima Road
Avon, New York 14414
Robert.Call@dec.ny.gov

RE: EAGLE HARBOR SAND AND GRAVEL PIT, TOWN OF BARRE, ORLEANS COUNTY
MINE ID: 80171
APPLICATION ID: DEC ID 8-3422-00003/00001

Dear Mr. Call:

The Town of Barre, as an involved agency, is in receipt of the draft environmental impact statement (DEIS) concerning Eagle Harbor Sand and Gravel Pit's application for modification. The Town previously commented on the draft scope for the DEIS, particularly with regard to impact on traffic; impact on open space and recreation; impact on human health; and consistency with community character. Those comments were included in the final scope.

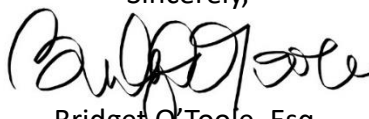
The Town has reviewed the DEIS and believes most of the topics in the final scope have been fully addressed. However, the Town believes that its concerns related to traffic have not. In its 2022 comments, the Town specifically identified an area of concern as impacts to the

integrity of local roads due to the close proximity of the mining operation. Nowhere in the DEIS is that concern addressed other than simply stating in DEIS § 4.6.2 that "[t]he proposed bedrock excavation area is located more than 500 feet away from the closest off-site structure, nearly 400 feet away from Maple Street, more than 750 feet away from Pine Hill Road and more than 1,100 feet away from Eagle Harbor Road." The November 21, 2018 Blasting Impact Assessment is also silent about any impacts to surrounding roadways. The DEIS must be supplemented to describe any impact blasting may have on road integrity.

The DEIS, as it relates to the anticipated road use, is also obtuse when discussing the Applicant's conclusion that "[o]nce implemented, the quarry will ultimately operate with a smaller excavation footprint with no net change in production or sales, resulting in no net change in truck traffic volume or truck routes used." DEIS §3.2.1.3. Only two paragraphs later the Applicant acknowledges that the mine could accommodate a maximum number of 24 trucks per hour but concludes that truck traffic will be closer to 5 trucks per hour, while simultaneously stating that truck traffic is driven by supply and demand. *Id.* The Applicant is well aware that there are several major renewable energy projects planned and permitted in Orleans and Genesee Counties that will likely increase the demand for its products. While the Town does not expect that the Applicant has yet been engaged, the simple laws of supply and demand show that it is likely to contract with one or more of these projects which demand a large volume of sand and gravel. The Applicant should revise the DEIS to include actual data for its anticipated number of trucks, given what it knows about present and future demand. The difference between 5 and 24 trucks per hour is significant. Alternatively, the Lead Agency may choose to limit the number of trucks exiting per hour to 5/hour in issuing the requested modification.

The Town of Barre looks forward to continuing its participation in the SEQRA review of this application.

Sincerely,

A handwritten signature in black ink, appearing to read "Bridget O'Toole", is written over a horizontal line.

Bridget O'Toole, Esq.
Town of Barre
Town Attorney

cc: Supervisor Sean P. Pogue Ed.D. (via e-mail only)
Barre Town Board (via e-mail only)
John Papponetti, Orleans County Commissioner of Public Works
(John.Papponetti@orleanscountyny.gov)

Call, Robert B (DEC)

From: David Harris <cazhog@gmail.com>
Sent: Friday, March 1, 2024 11:02 AM
To: Call, Robert B (DEC)
Cc: dec.sm.DEP.R8
Subject: Eagle Harbor Mine

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Dear Mr. Call,

I submitted these comments prior to the virtual legislative public comment hearing held on Thursday, February 15, 2024, just prior to the hearing.

May I please receive confirmation that my original submission for February 15th was received?

I did not hear these comments offered as part of the record and would like to be assured they are received and considered.

Please accept this resubmission of my comments, that includes one additional comment regarding local approvals, and send me an acknowledgement of receipt.

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Respectfully submitted:

David Harris

5257 Rathbun Rd.

Cazenovia, NY 13035



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION
VIRTUAL PUBLIC HEARING

February 15, 2024
At approximately 6 p.m.
Virtual Public Hearing

RE: Eagle Harbor Sand and Gravel Pit (Mine ID
#80171)
Application ID: DEC ID# 8-3422-00003/00001
Article 23 - Mined Land Reclamation and
Article 24 Water Withdrawal
Town of Barre, Orleans County

HELD BEFORE: JUDGE DANIEL P. O'CONNELL,
Administrative Law Judge

PANELISTS: ANDREA PEDRICK,
NYSDEC - Public Participation
Specialist
MICHELLE MARGESON,
NYSDEC - Public Participation
Specialist
DAN SEK,
NYSDEC - MLR
ROBERT CALL,
Deputy Regional Permit Administrator
THOMAS HALEY,
NYSDEC - Regional Permit Administrator
CLAYTON HALE,
NYSDEC - OGC
TIMOTHY WALSH,
NYSDEC - Regional Director
CRAIG PETTINGER
NYSDEC - Public Participation
Specialist
KEVEN BROWN, ESQ.,
Counsel for Eagle Harbor Sand and
Gravel

REPORTED BY: HOLLY E. CASTLEMAN, Court Reporter,
FORBES COURT REPORTING SERVICES, LLC
21 Woodcrest Drive
Batavia, NY 14020

1 MR. O'CONNELL: Good evening, ladies and
2 gentlemen. My name is Daniel O'Connell. I'm the
3 Administrative Law Judge for the Office of Hearings
4 and Mediation Services at the Department of
5 Environmental Conservation. I have been assigned with
6 members of the Office of Communications Services to
7 conduct today's virtual public hearing.

8 The applicant, Eagle Harbor Sand and Gravel
9 Incorporated, has applied to the Department to modify
10 its current mine land use plan and the related mine
11 land reclamation permit.

12 Applicant has also filed an application for
13 water withdrawal permit.

14 Existing sand and gravel operations will
15 continue and operations will be modified to include
16 drilling, blasting and crushing to support the bedrock
17 mining.

18 Department staff has prepared permits for
19 public review and comment. Department staff as the
20 lead agency pursuant to the State Environmental
21 Quality Review Act identified the proposed
22 modification as a Type I action, issued a positive
23 declaration on September 10th, 2021, and required
24 applicant to prepare a Draft Environmental Impact
25 Statement or DEIS.

1 Department staff has accepted the DEIS and
2 it is available for public review and comment.

3 The purpose of this evening's public comment
4 hearing session is to provide members of the public
5 with the opportunity to comment about applicant's
6 proposed modification, the draft permits and the DEIS.

7 Copies of the notice for today's hearing
8 were published in the Department's environmental
9 notice bulletin on January 24th and again on January
10 31st, 2024.

11 In addition, a copy of the notice was
12 published in the Batavia Daily News on January 25th,
13 2024. The notice directed anyone wishing to comment
14 today to preregister online or by telephone.

15 Please note that written and oral comments
16 are given equal weight. If you would like to submit
17 written comments, please send them to Thomas P. Haley,
18 Regional Permit Administrator, New York State
19 Department of Environmental Conservation, Region 8.
20 The address is 6274 East Avon Lima Road, Avon, New
21 York 14414.

22 You may also submit comments by email to
23 dep.r8@dec.ny.gov. In the subject line please write
24 the words Eagle Harbor Sand and Gravel.

25 Written comments about the proposal must be

1 postmarked or emailed by March 1st, 2024.

2 Speakers are encouraged to submit lengthy
3 statements in writing --

4 Speakers are encouraged to submit lengthy
5 statements in writing and provide only a summary of
6 their comments today.

7 Please note that all parties have been muted
8 upon entry into this public comment hearing. Your
9 line will be unmuted when it is your turn to comment.

10 If you encounter a technical problem during
11 the hearing, please call 518-402-8044, which is the
12 Office of Communications Services, and they will
13 provide assistance.

14 I will call the name of each person who
15 preregistered to speak. And after I call your name,
16 your line will be unmuted so that you may make your
17 statement.

18 If you are a call-in attendee, you will hear
19 two beeps or a prompt to alert you that you have been
20 unmuted.

21 Please remember that if you have your device
22 on mute, you will also need to unmute your device
23 before we can -- before you can speak.

24 Before we begin today, department staff
25 provided me a list of people who had registered to

1 participate. And although everyone who registered did
2 not wish to make a comment, if there is anyone on the
3 line now who would like to do so, would you please
4 raise your hand. We will unmute you.

5 The way to unraise your hand -- the way to
6 raise your hand is if you've logged on, at the bottom
7 of your screen there's an outline of a hand. You
8 press that and you'll raise your hand.

9 If you're a call-in user on the telephone,
10 you should press star 3 to raise your hand.

11 Is there anyone who's logged on who would
12 like to make a comment? Please raise your hand or
13 press star 3 if you're a call-in user.

14 I don't see anyone who's raised his or her
15 hand.

16 What I'd like to do now is we'll go off the
17 record and at about 7 -- I'm sorry. At about 6:15
18 I'll reconvene and we'll go back on the record.

19 Thank you. We'll go off the record, please.
20 (There was a pause in the proceedings.)
21 (The proceeding reconvened at 6:17 p.m.; appearances
22 as before noted.)

23 MR. O'CONNELL: So it's a little bit after
24 6:15. I had mentioned before we went off the record
25 that we would break until this time. There are the

1 same people who have logged on before.

2 I just want to check to see if there is
3 anyone new who's logged on who would like to make a
4 comment. If so, you can raise your hand by pressing
5 the hand icon on the bottom of your screen. If you're
6 a call-in user, press star 3.

7 Is there anyone who would like to make a
8 comment now? Please raise your hand.

9 Just as a reminder that written comments can
10 also be filed. The Department has a slide for that,
11 but I'll provide that mailing address again. It's
12 Thomas P. Haley, Regional Permit Administrator, New
13 York State Department of Environmental Conservation,
14 Region 8. The address is 6274 East Avon Lima Road,
15 Avon, New York 14414.

16 The email address is dep.r8@dec.ny.gov. If
17 you're sending an email message, please write Eagle
18 Harbor Sand and Gravel in the subject line.

19 And again, as a reminder, written comments
20 about the proposal must be postmarked by March 1st,
21 2024, or sent by email by that date.

22 Just another inquiry whether anyone online
23 now would like to make a comment. Please raise your
24 hand by pressing the hand icon at the bottom of the
25 screen. If you're a call-in user, please press

1 star 3.

2 Not seeing anyone wanting to make a comment
3 at this time. What we'll do, again, I'll go off the
4 record until about 6:25.

5 We'll go off the record, please.

6 (There was a pause in the proceedings.)

7 (The proceeding reconvened at 6:19 p.m.; appearances
8 as before noted.)

9 MR. O'CONNELL: We've returned from our
10 break again. Again, this is an opportunity for anyone
11 who has logged on to make a comment about the
12 proposal. We will keep the record open for about
13 another 3 minutes until 6:30.

14 And because there is -- there's no one here
15 who would like to make a comment, we'll close the
16 record at that time.

17 As a reminder, written comments can be filed
18 with members of department staff until March 1st,
19 2024. You may send them to Thomas P. Haley,
20 H-A-L-E-Y, Regional Permit Administrator, New York
21 State Department of Environmental Conservation,
22 Region 8 office, at 6274 East Avon Lima Road, Avon,
23 New York 14414.

24 The email address is dep.r8@dec.ny.gov.
25 Please write Eagle Harbor Sand and Gravel in the

1 subject line.

2 Just one final check, please, before we
3 adjourn for this evening. If there's anyone who has
4 logged on and would like to make a comment, please
5 raise your hand by pressing the hand icon at the
6 bottom of your screen.

7 If you are a call-in user, you can raise
8 your hand by pressing star 3 and we'll unmute you so
9 you can make your comment.

10 Just as a reminder, the Department --
11 there's a slide on the screen now that provides the
12 mailing address for the public comments.

13 Again, for everyone's benefit, public
14 comments are due by March 1st, 2024. You can send
15 them to the Region 8 office at 6274 Avon Lima Road,
16 Avon, New York 14414, and send them to the attention
17 of Thomas P. Haley, the Regional Permit Administrator.

18 You can also send comments by email to the
19 Department at dep.r8@dec.ny.gov.

20 I'd like to thank everyone for attending and
21 your interest in this project. Again, before we
22 adjourn for tonight to note that the comment period is
23 open until March 1st, 2024.

24 Just one final check. Anyone wishing to
25 make a public comment, please raise your hand by

1 pressing the hand icon at the bottom of the screen.

2 Okay. Thank you very much.

3 Could we go off the record, please?

4 (Proceedings concluded at 6:31 p.m.)

5 * * * *

6 REPORTER CERTIFICATE

7
8 I, Holly E. Castleman, do hereby certify
9 that I did report the foregoing proceeding, which was
10 taken down by me in a verbatim manner by means of
11 machine shorthand.

12 Further, that the foregoing transcript is a
13 true and accurate transcription of my said
14 stenographic notes taken at the time and place
15 hereinbefore set forth.

16
17 Dated this 15th day of February, 2024
18 at Rochester, New York.

19
20
21
22 

23
24 _____
25 Holly E. Castleman ACR,
Official Court Reporter

EAGLE HARBOR MINE

RECEIVED

MAR 04 2024

DEP REGION 8

We have reviewed and are providing comments in a logical order based upon the WIXSITE order of documents regarding the Eagle Harbor Sand & Gravel operational permit request to mine consolidated limestone, as part of a Life of Mine modification.

Our comments are:

DEC DEIS, Scoping:

- Adding a portable crusher prior to sorting, has been stated by the applicant that it considers the adding of drilling, blasting and crushing consolidated minerals as no changes in their existing processing. We respectfully disagree. Drilling, blasting and crushing is a different process from processing unconsolidated sand and gravel. Fines, lime dust/paste from processing also is a different by-product.
- The 6/6/2019 response to the DEC 1/22/2019 question regarding culvert overtopping in the farm field downstream of the site
 - The response states it is not flooding. If this condition is not a flooding condition, please explain what it is.
- The mining plan 3.5.2, mining method
 - The plan is to drill, blast, crush and sort with one portable crusher (typically portable units are diesel powered). Given traditional methods, would additional crushers be necessary to efficiently produce the array of limestone products typically available in a quarry of this proposed production? A definitive production process is needed outlining how the single crusher can provide the array of materials provided for sale in a typical operation proposed. Typically, two or three more crushing units are needed to provide the level of processing necessary.
 - Moreover, how would this impact the noise generated at the facility and does this necessitate revisions to/require a noise study?
- Longform EAF D2 (k)
 - The response to the question "Will the proposed action (for commercial or industrial projects only) generate new or additional demand?" is NO.
 - Given the addition of at least one portable crusher with an anticipated horsepower range of 200 to 300 horsepower there would be an additional demand (a portable unit would typically be diesel powered); also the addition of a 700 GPM pump is somewhere in the 100 Hp range. We believe this would lead to/require responses to (k) i, ii and iii.
 - The Air Facility Application Registration notes one 415Hp and one 134 Hp generator sets (for argument's sake, approximately 28 and 10 GPH of diesel respectively each per hour) that is 38 GPM just for the generator sets, plus the pump(s).
- Longform EAF D2 (p)
 - It is our opinion, that the likelihood there are current petroleum bulk storage tank(s) greater than 185 gallons are present, this should be a YES response, not to overlook the current power used to operate the crusher(s) and pump(s). We are presuming the power is diesel generators based upon inference from what we see as disjoint documents provided in the DEIS.
- The water withdrawal permit application owner of the property indicated is different than the owner indicated in the permit application. Given the current operation, is there an existing water withdrawal permit? Based upon the language or the hydrology report there are two different aquifers addressed, and presuming the upper aquifer supplies the current operation, is or should there have been a permit for this water usage?
- The water withdrawal supplement WW-1 states a withdrawal of 1,980,000 GPD, with a pump rated at 700 GPM (1,008,000 GPD). From our perspective the numerous discussions located throughout the application seem to obfuscate the facts.
 - Also, is the new pump (700 GPM) electric or diesel/diesel generator?

- 7.0 Water Conservation
 - (WATER AUDITING IV) The referenced discharge hoses 4" and 6" appear to us insufficient in size to accommodate 700 GPM; 12" diameter discharge is more in line.
 - We also believe that there are disparities in the data offered in the performance of the pump(s) referenced in the application.
 - Water Withdrawal Reporting Form (3.4); is this request a modification to current water use or a new request? Clarification would be appreciated.
- The water conservation program form has the applicant and contact numbers as the same but appear to be two different contacts. Is this correct?
- III Sources and metering
 - The question of how often the meter(s) are read versus the response that they are recording constantly doesn't answer the question of what we believe to be the intent of when does a person read and analyze the data for the applicant?
 - The pumping test was conducted, per the applicant, with the approval of the Department's agreed upon parameters.
- 3.0 Hydraulic Modeling
 - If 300-GPM ("Water Budget" referenced in the report) was the agreed to depression of the aquifer, how is the 700-GPM rate of build out water usage modeling developed and used in comparison? Seems counterintuitive since 700-GPM is not modeled, as we can see. How accurate is this modeling?
 - The mixing of CFS and GPM may be confusing to the average public, then later in the report Acre Feet is mixed in in the HydroCAD output graphs.
- Summary of peak inflows and outflows (Table 2) indicates the mine discharge somehow is less than the 700 GPM inflow and the graphing seems to indicate that there is limited buffering capacity (In the two-hour range) to mitigate the mine inflow(s).
- While we clearly understand the no mining option does not allow for the access of the needed minerals, has a model been run for no mining activities, as offered in the application and DEIS as a basis of comparison?
 - Asking this as is appears the property north of Maple Street will be flooded in a couple hours and any significant event.
 - The capacity of the existing 15" Diameter culvert pipe crossing Maple Street is approximately 435 GPM and while referenced on the hydrology mapping, it is not indicated in Table 1, that we were able to locate in the table.
 - The 18", "assumed" culvert from the settling pond appears close to the discharge location under Maple Street. Does the proposed settling pond have safeguards designed to prevent silt from migrating?
 - Is there a current water withdrawal permit in place for the existing water usage? Is one required?
 - The HydroCAD output graphs are confusing, given some are in Cubic Feet and some in Acre Feet. Almost seems to try to confuse the layman reader of the report.
- The Air Emissions data could be more integrated into the energy usage narratives as the equipment is detailed (presuming current plus proposed).
 - The air emissions data on what we are presuming to be Tons Per Annum (TPA) production of rock is inconsistent with the production and round trips referenced in other parts of the body of the application.
- WETLANDS DELINEATION REPORT
 - Appears limited and were any soil samples and flora evaluations data provided?

- **NOISE STUDY**
 - The website tab is labeled Hydrogeologic Analysis.
 - Introduction references the mine is east of Eagle Harbor Road, believe it is oriented west of Eagle Harbor Road.
 - Department confirmation of the actual equipment to be used and noise data from the manufacturer(s), if available.
 - Will an actual field receptor analysis and study be required? Or is the modeling sufficient?
 - Does the blasting proposal come into play with sound or just PPV for vibration monitoring?
- **Local Approvals**
 - Presuming the facility has the required local special use permit, has blasting been added to this permit and does that have any impact on the DEC review.
- After this virtual legislative public comment hearing and the DEIS is either accepted or rejected, will DEC have a public question and answer meeting for the public to voice any opinions. Also, once the DEIS process is completed (either acceptance or rejection) are any, additional, local administrative public hearing/meeting requirements to satisfy local concerns or issues. Would like the company or their representatives to be available in a public forum to respond to questions, to both the DEC and local government entities.

We find the assembly and coordination of this DEIS, and associated applications disjointed and misleading to someone looking objectively at the presentation offered and would request the Department to reject the DEIS for substantial revisions, clarifications, and corrections.

Respectfully submitted:

David Harris
 5257 Rathbun Rd.
 Cazenovia, NY

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Town of Barre, Orleans County

Section V: RESPONSE TO COMMENTS

Public comment on this application consisted of written comments received during the public comment period on the dEIS and application. As noted above, the written comment period on the dEIS ended on March 1, 2024. There were no public comments received during the virtual hearing. Three comment letters were received during the dEIS written public comment period from two individuals. The received comments are listed and addressed below. Copies of the letters/email are attached in Section IV.

Comment from David Harris: DEC dEIS, Scoping: Adding a portable crusher prior to sorting, has been stated by the applicant that it considers the adding of drilling, blasting and crushing consolidated minerals as no changes in their existing processing. I respectfully disagree. Drilling, blasting and crushing is a different process from processing unconsolidated sand and gravel. Fines, lime dust/paste from processing also is a different by-product.

Response: Page 1 of the Scoping Outline includes drilling, blasting and crushing as part of the consolidated bedrock excavation proposal.

Comment from David Harris: The 6/6/2019 response to the DEC 1/22/2019 question regarding culvert overtopping in the farm field downstream of the site. The response states it is not flooding. If this condition is not a flooding condition, please explain what it is.

Response: The issue raised was addressed in subsequent correspondence with the Department and it is understood that culverts in question have already been upgraded as a mitigation measure (please see the attached memo from Eagle Harbor signed 5/8/2024).

Comment from David Harris: The mining plan 3.5.2, mining method: The plan is to drill, blast, crush and sort with one portable crusher (typically portable units are diesel powered). Given traditional methods, would additional crushers be necessary to efficiently produce the array of limestone products typically available in a quarry of this proposed production? A definitive production process is needed outlining how the single crusher can provide the array of materials provided for sale in a typical operation proposed. Typically, two or three more crushing units are needed to provide the level of processing necessary. Moreover, how would this impact the noise generated at the facility and does this necessitate revisions to/require a noise study?

Response: It is understood that portable processing plant is adequate for Eagle Harbor's needs and Section 3.5.2 is an accurate representation of the planned mining method.

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Comment from David Harris: Longform EAF D2 (k) The response to the question “Will the proposed action (for commercial or industrial projects only) generate new or additional demand?” is NO.

§ Given the addition of at least one portable crusher with an anticipated horsepower range of 200 to 300 horsepower there would be an additional demand (a portable unit would typically be diesel powered); also the addition of a 700 GPM pump is somewhere in the 100 Hp range. We believe this would lead to/require responses to (k) i, ii and iii.

The Air Facility Application Registration notes one 415Hp and one 134 Hp generator sets (for argument’s sake, approximately 28 and 10 GPH of diesel respectively each per hour) that is 38 GPM just for the generator sets, plus the pump(s).

Response: The response to EAF D.2.k was made in reference to additional demand to the local grid which would be zero. The portable processing plant gensets are rated at 134 hp and 415 hp; the 700 GPM pump is 30 hp per the manufacturer. Using those ratings, the annual electricity demand during operation of the proposed action (EAF D.2.k.i.) would be approximately 270,000 kwh. The anticipated sources/suppliers of electricity for the project (EAF D.2.k.ii.) is: on-site combustion (generators). The proposed action will not require a new, or an upgrade to, an existing substation (EAF D.2.k.iii).

Comment from David Harris: Longform EAF D2 (p) It is my opinion, that the likelihood there are current petroleum bulk storage tank(s) greater than 185 gallons are present, this should be a YES response, not to overlook the current power used to operate the crusher(s) and pump(s). I’m presuming the power is diesel generators based upon inference from what I see as disjoint documents provided in the DEIS.

Response: Your opinion is noted.

Comment from David Harris: The water withdrawal permit application owner of the property indicated is different than the owner indicated in the permit application. Given the current operation, is there an existing water withdrawal permit? Based upon the language or the hydrology report there are two different aquifers addressed, and presuming the upper aquifer supplies the current operation, is or should there have been a permit for this water usage?

Response: Eagle Harbor Sand & Gravel has provided a corrected Water Withdrawal Permit application with the landowner’s signature. This is an initial Water Withdrawal Permit application and includes mine dewatering and washing activities.

Comment from David Harris: The water withdrawal supplement WW-1 states a withdrawal of 1,980,000 GPD, with a pump rated at 700 GPM (1,008,000 GPD). From my perspective the numerous discussions located throughout the application seem to obfuscate the facts.

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Response: WW-1, item 9 lists the water withdrawal amount as up to 1,980,000 GPD with the sources identified as ground water and surface water. On the Water Conservation Form, which is the next page of paperwork after WW-1, the wash pond and quarry dewatering pump are both clearly identified as the sources of water withdrawal under Section II Sources of Water Withdrawal.

Comment from David Harris: Also, is the new pump (700 GPM) electric or diesel/diesel generator?

Response: The applicant has confirmed that this will be a diesel generator.

Comment from David Harris: 7.0 Water Conservation (WATER AUDITING IV) The referenced discharge hoses 4" and 6" appear to us insufficient in size to accommodate 700 GPM; 12" diameter discharge is more in line.

Response: The discharge hose sizes listed in the application paperwork are based on the manufactures specifications and are correct.

Comment from David Harris: I also believe that there are disparities in the data offered in the performance of the pump(s) referenced in the application.

Response: The pump data provided in the paperwork is from the manufacturer and is accurate.

Comment from David Harris: Water Withdrawal Reporting Form (3.4); is this request a modification to current water use or a new request? Clarification would be appreciated.

Response: This is an initial Water Withdrawal Permit application and includes mine dewatering and washing activities.

Comment from David Harris: The water conservation program form has the applicant and contact numbers as the same but appear to be two different contacts. Is this correct?

Response: Yes.

Comment from David Harris: III Sources and metering - The question of how often the meter(s) are read versus the response that they are recording constantly doesn't answer the question of what we believe to be the intent of when does a person read and analyze the data for the applicant?

Response: The flow meters will be read and analyzed at least once a month, in accordance with NYSDEC reporting requirements.

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Comment from David Harris: The pumping test was conducted, per the applicant, with the approval of the Department's agreed upon parameters.

Response: Yes.

Comment from David Harris: 3.0 Hydraulic Modeling § If 300-GPM ("Water Budget" referenced in the report) was the agreed to depression of the aquifer, how is the 700-GPM rate of build out water usage modeling developed and used in comparison? Seems counterintuitive since 700-GPM is not modeled, as we can see. How accurate is this modeling?

Response: The Water Withdrawal Engineering Report (DEIS Appendix 4, page 5, Section 3.2.1) and the Hydrogeologic Assessment (DEIS Appendix 5, page 1 and again on page 3) explain why a 700 GPM pump is proposed.

Comment from David Harris: The mixing of CFS and GPM may be confusing to the average public, then later in the report Acre Feet is mixed in in the HydroCAD output graphs.

Response: Comment noted, however they are summarized in the DEIS for understanding.

Comment from David Harris: Summary of peak inflows and outflows (Table 2) indicates the mine discharge somehow is less than the 700 GPM inflow and the graphing seems to indicate that there is limited buffering capacity (In the two-hour range) to mitigate the mine inflow(s).

Response: The Water Withdrawal Engineering Report (DEIS Appendix 4, page 5, Section 3.2.1) and the Hydrogeologic Assessment (DEIS Appendix 5, page 1 and again on page 3) explain why a 700 GPM pump is proposed when the water budget identified 300 GPM of average inflow, not 700 GPM of inflow as suggested.

Comment from David Harris: While I clearly understand the no mining option does not allow for the access of the needed minerals, has a model been run for no mining activities, as offered in the application and DEIS as a basis of comparison?

Response: Current drainage conditions were modeled and are discussed in Section 4.2.1.1.1 of the dEIS and in the Composite Hydrologic Assessment, included as Appendix 5 of the dEIS.

Comment from David Harris: Asking this as it appears the property north of Maple Street will be flooded in a couple hours and any significant event. The capacity of the existing 15" Diameter culvert pipe crossing Maple Street is approximately 435 GPM and while referenced on the hydrology mapping, it is not indicated in Table 1, that I was able to locate in the table.

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Response: That statement is incorrect. Page 3 of the Revised Well Testing Plan, included as Appendix A of the Water Withdrawal Permit application, states “The Maple Street culvert is a 1.25-ft inner diameter HDPE culvert that can handle flow well over 3000 gpm”, not 435 gpm and will not be flooded.

Comment from David Harris: The 18”, “assumed” culvert from the settling pond appears close to the discharge location under Maple Street. Does the proposed settling pond have safeguards designed to prevent silt from migrating?

Response: Prevention of off-site siltation is covered in the State Pollutant Discharge Elimination System Multi-Sector General Permit for Stormwater Discharges, included in Appendix 6 of the dEIS.

Comment from David Harris: Is there a current water withdrawal permit in place for the existing water usage? Is one required?

Response: The Water Withdrawal Permit application included with this modification request is an initial application that includes both mine dewatering and washing activities. The current need for a permit for the washing operations is a matter of compliance, and the intent of issuing the water withdrawal permit will assure that the facility is following Water Resources Law (ECL Article 15, Title 15).

Comment from David Harris: The HydroCAD output graphs are confusing, given some are in Cubic Feet and some in Acre Feet. Almost seems to try to confuse the layman reader of the report.

Response: The technical reports that were conducted as part of the application are summarized in the dEIS in a way to make them easier to understand and less confusing for the general public.

Comment from David Harris: The Air Emissions data could be more integrated into the energy usage narratives as the equipment is detailed (presuming current plus proposed). The air emissions data on what I am presuming to be Tons Per Annum (TPA) production of rock is inconsistent with the production and round trips referenced in other parts of the body of the application.

Response: Comment noted. The Annual Proposed Capping Limits (PCL) and Potential to Emit (PTE) Emissions listed in the Air Facility Registration are not the actual projected production and sales. The PCL are the calculated thresholds for each of the criteria pollutants at which an Air State Facility would be required. The PTE is calculated assuming continuous operation (24 hours/day) for an entire year.

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Comment from David Harris: WETLANDS DELINEATION REPORT - Appears limited and were any soil samples and flora evaluations data provided?

Response: Soil samples were collected and analyzed as part of the Hydrogeologic Assessment. Wetland biologists from the Department's Bureau of Ecosystem Health office reviewed the information provided and visited the site in 2019, to confirm that additional information was not needed to confirm that impacts to state wetland were unlikely.

Comment from David Harris: NOISE STUDY: The website tab is labeled Hydrogeologic Analysis.

Response: While the website tab is mislabeled the website hyperlink and the document itself are labeled correctly.

Comment from David Harris: Introduction references the mine is east of Eagle Harbor Road, believe it is oriented west of Eagle Harbor Road.

Response: The introduction should reference that the mine is west of Eagle Harbor Road, not east. However, the referenced Location Map on the following page is correct.

Comment from David Harris: Department confirmation of the actual equipment to be used and noise data from the manufacturer(s), if available.

Response: As discussed in the Noise Impact Assessment, operating mining equipment sound levels were collected at Eagle Harbor and other operating mine sites.

Comment from David Harris: Will an actual field receptor analysis and study be required? Or is the modeling sufficient?

Response: The Noise Impact Assessment was conducted in accordance with the NYSDEC Program Policy: Assessing and Mitigating Noise Impacts and included background sound level readings at nearby receptors.

Comment from David Harris: Does the blasting proposal come into play with sound or just PPV for vibration monitoring?

Response: Airblast and ground vibration were both assessed as part of the Blasting Impact Assessment, included as Appendix 10 of the DEIS. Standard blasting and monitoring conditions will be added to the issued permit.

Comment from David Harris: Presuming the facility has the local special use permit, has blasting been added to this permit and does that have any impact on the DEC review.

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Response: Blasting has been considered as part of the permit application, and standard blasting and monitoring conditions will be added to the issued permit. As part of the SEQR process, the Department considers town comments within reviews.

Comment from David Harris: After this virtual legislative public comment hearing and the DEIS is either accepted or rejected, will DEC have a public question and answer meeting for the public to voice any opinions. Also, once the DEIS process is completed (either acceptance or rejection) are any, additional, local administrative public hearing/meeting requirements to satisfy local concerns or issues. Would like the company or their representatives to be available in a public forum to respond to questions, to both the DEC and local government entities.

Response: No additional public comment hearings or comment periods are planned. The local municipality may elect to hold a meeting related to local issues as part of their review and decision making process.

Comment from David Harris: I find the assembly and coordination of this DEIS, and associated applications disjointed and misleading to someone looking objectively at the presentation offered and would request the Department to reject the DEIS for substantial revisions, clarifications, and corrections.

Response: Comment noted, however as no substantive and significant issues have been made the dEIS is sufficient.

Comment from Bridget O'Toole, Esq.:

The Town has reviewed the DEIS and believes most of the topics in the final scope have been fully addressed. However, the Town believes that its concerns related to traffic have not. In its 2022 comments, the Town specifically identified an area of concern as impacts to the integrity of local roads due to the close proximity of the mining operation. Nowhere in the DEIS is that concern addressed other than simply stating in DEIS § 4.6.2 that "[t]he proposed bedrock excavation area is located more than 500 feet away from the closest off-site structure, nearly 400 feet away from Maple Street, more than 750 feet away from Pine Hill Road and more than 1,100 feet away from Eagle Harbor Road." The November 21, 2018 Blasting Impact Assessment is also silent about any impacts to surrounding roadways. The DEIS must be supplemented to describe any impact blasting may have on road integrity.

The DEIS, as it relates to the anticipated road use, is also obtuse when discussing the Applicant's conclusion that "[o]nce implemented, the quarry will ultimately operate with a smaller excavation footprint with no net change in production or sales, resulting in no net change in truck traffic volume or truck routes used." DEIS §3.2.1.3. Only two paragraphs later the Applicant acknowledges that the mine could accommodate a maximum number of 24 trucks per hour but concludes that truck traffic will be closer to 5 trucks per hour, while simultaneously stating that truck traffic is driven by supply and demand. Id. The Applicant is well aware that there are several major renewable energy projects planned and permitted in Orleans and Genesee Counties that will likely increase the demand for

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its products. While the Town does not expect that the Applicant has yet been engaged, the simple laws of supply and demand show that it is likely to contract with one or more of these projects which demand a large volume of sand and gravel. The Applicant should revise the DEIS to include actual data for its anticipated number of trucks, given what it knows about present and future demand. The difference between 5 and 24 trucks per hour is significant. Alternatively, the Lead Agency may choose to limit the number of trucks exiting per hour to 5/hour in issuing the requested modification.

Response: Please refer to the applicant's comments provided in the letter dated March 2024 (included in as supplemental information). With regard to potential impacts to roadways from blasting operations, section dEIS §5.1 covers "procedures.... for each off-site structure not owned by the Applicant or the Eagle Harbor Mine property owner located within 1000 feet of the planned limits of blasting". Town owned roads would be considered as off-site structures as they are not owned by the applicant, and the town may request a pre-blast survey. Based on numerous studies from The US Bureau of Mines, the rock fracturing caused by quarry blasting will occur less than 30 feet from the blast hole. Eagle Harbor is proposing to remain at least 360' from Maple Ave, 800' from Pine Hill Rd and 1120' from Eagle Harbor Road, these distances are further than the fracturing of rock, therefor the public roads will not be negatively impacted by blasting at the Eagle Harbor Quarry. Based on the separation distance and the application of best management practices (which are outlined in the dEIS), direct impacts to roadways are not anticipated from blasting. Additionally, standard blasting conditions will be included an issued permit.

With regard to the anticipated road use, the applicant noted that there is "limited permitted sand and gravel reserves left on-site and Eagle Harbor Sand & Gravel anticipates that the modification area sand and crushed stone sales will replace the existing sand and gravel sales. They anticipate continued sales of approximately 120,000 to 140,000 tons of construction aggregate per year. That works to approximately 128 21-ton standard dump truck loads/week on average which will not impact the level of service on County Route 5/Eagle Harbor Road. The theoretical maximum number of trucks that could exit the mine site is 24 trucks/hour based on physical limitations with loadout and the scalehouse. Actual truck traffic will be closer to 5 trucks/hour based on past construction season sales." The applicant is not proposing any changes to the aggregate processing plant, loadout area and scale house. Further, the submitted FEAF provided by the mine indicated that the proposed action would not result in a substantial increase in traffic above present levels or generate substantial new demand for transportation facilities or services.

The town's concern with regard to traffic is noted, however the demands of an operating mine does lead to variability regarding the trucking traffic. Typically, more trucks depart at the start of work day than later in the day, skewing the average counts. Based on the town's concerns and the facilities present at the site (which gives a "theoretical maximum number of trucks"), the Department intends to add a permit condition which limits the number of trucks exiting to 24 trucks per hour. Such a level would hold the mine to traffic impacts consistent with the past operation of the facility, yet giving operational flexibility to meet public needs.

FINAL ENVIRONMENTAL IMPACT STATEMENT

Eagle Harbor Sand & Gravel, Inc. – Eagle Harbor Mine
DEC Application No. 8-3422-00003/00001 (MLR#80171)
Town of Barre, Orleans County

Section VI: Supplemental Information

- At the applicant's request, included is a March 11, 2024 letter from the Kevin J. Brown, Esq. (counsel for Eagle Harbor Sand & Gravel, Inc.) which is a response to the comments made Bridgette O'Toole (Town of Barre, Town Attorney).
- Revised Joint Application Form for Water Withdrawal dated 5/3/2024.
- Memo dated May 8, 2024 from Eagle Harbor Sand & Gravel regarding a culvert installation.

FOGEL & BROWN, P.C.

ATTORNEYS AND COUNSELORS AT LAW

www.fogelbrown.com

Kevin J. Brown, Esq.
Michael A. Fogel, Esq.
Gregory M. Brown, Esq.**

621 WEST GENESEE STREET
SYRACUSE, NEW YORK 13204
Tel: 315-399-4343
Fax: 315-472-6215

**Also admitted to CT and DC Bars

March 11, 2024

VIA E-MAIL (Robert.Call@dec.ny.gov) **and U.S. Mail**

Mr. Robert B. Call
Deputy Regional Permit Administrator
NYSDEC Region 8
6274 East Avon-Lima Road
Avon, NY 14414

Re: Eagle Harbor Sand & Gravel, Inc. Mine ID# 80171 DEP Permit Application # 8-3422-00003/00001

Dear Mr. Call:

Our office is special environmental counsel to Eagle Harbor Sand & Gravel, Inc. ("Eagle Harbor") regarding the above referenced New York State Mined Land Reclamation Law ("MLRL") permit modification application.

I am writing in response to the February 20, 2024, comment letter submitted by the Town of Barre through the office of Town Attorney, Bridgette O'Toole, Heath & O'Toole, in response to the Department's Combined Notice of Complete Application and Acceptance of a Draft Environmental Impact Statement for the project.

The comment letter asserts that "[t]he DEIS, as it relates to the anticipated road use, is obtuse when discussing the Applicant's conclusion that "[o]nce implemented, the quarry will ultimately operate with a smaller excavation footprint with no net change in production or sales, resulting in no net change in truck traffic volume or truck routes used." DEIS §3.2.1.3. Only two paragraphs later the Applicant acknowledges that the mine could accommodate a maximum number of 24 trucks per hour but concludes that truck traffic will be closer to 5 trucks per hour, while simultaneously stating that truck traffic is driven by supply and demand. *Id.*"

Contrary to the characterization there is nothing obtuse in providing the average "estimated" truck traffic based upon past sales volumes from the mine. Particularly where, as in the case of Eagle Harbor, the producer is merely substituting crushed stone for course gravel reserves to provide the same fine, medium and coarse gradations of aggregate construction materials products. See, DEIS 4.5.2.

Truck traffic is driven by supply and demand for aggregate construction materials. Truck traffic from the mine is a function of sales driven by demand for aggregate construction material products within the market area. The best information to guide an estimate of future demand is historic demand for construction materials to meet infrastructure needs in the market area.

The DEIS also provides the maximum truck load out capacity based on the capacity of the existing aggregate processing plant, loadout area and scale house. The load out capacity from the processing plant which sizes aggregate materials to meet NYSDOT and customer specifications for sale controls the maximum number of trucks carrying Eagle Harbor products to points of delivery. Daily and weekly truck traffic fluctuates based on customer demands but the maximum loadout remains the same.

The maximum load out capacity for the Eagle Harbor Mine is not changing as a result of the requested permit modification. The maximum loadout capacity will remain the same as for the past two decades of operations. The pending permit modification application does not involve any changes to processing plant capacity, the loadout area or scale house.

The Town comment opines that “[t]he Applicant is well aware that there are several major renewable energy projects planned and permitted in Orleans and Genesee Counties that will likely increase the demand for its products” and that “the Town does not expect that the Applicant has yet been engaged, the simple laws of supply and demand show that it is likely to contract with one or more of these projects which demand a large volume of sand and gravel.”

The Town then requests that “[t]he Applicant should revise the DEIS to include actual data for its anticipated number of trucks, given what it knows about present and future demand. The difference between 5 and 24 trucks per hour is significant. Alternatively, the Lead Agency may choose to limit the number of trucks exiting per hour to 5/hour in issuing the requested modification.”

Eagle Harbor is aware of two major utility scale renewable energy projects proposed for Orleans and Genesee Counties and that the projects will require substantial amounts of aggregate construction materials products.

Eagle Harbor understands both projects, as with all major renewable energy projects, are subject to New York State Office of Renewable Energy Siting (“ORES”) proceedings as implemented under the New York Climate Leadership and Community Protection Act (“CLCPA”) enabling legislation New York Executive Law 94-c and ORES regulations 19 NYCRR Part 900.

The ORES proceedings comprehensively address all potential environmental impacts, including impacts to transportation infrastructure and traffic associated with major renewable energy projects needed to meet New York State clean energy goals as set forth in the CLCPA.

Local municipal governments fully participate in the ORES major renewable energy project proceedings. The Town of Barre is participating in the ORES reviews for the major renewable energy projects in Orleans and Genesee Counties to wit, the Hemlock Ridge Solar LLC solar project and the Heritage Wind, LLC wind turbine project.

Both the Hemlock Ridge Solar project and the Heritage Wind project sponsors have caused studies styled “Traffic and Transportation Route Evaluation Studies” to be prepared as part of the ORES proceedings.

The Route Evaluation Studies provide Project Overviews; Existing Road Conditions; Project Trip Generation Characteristics, to include analysis of anticipated construction aggregate materials deliveries to the projects; Traffic and Transportation Impacts; Project Impact on Mass Transit; Traffic and Accident Data; and School Bus Routes and Emergency Service Providers.

The Route Evaluation Studies include comprehensive evaluations of transportation infrastructure and traffic conditions that may be impacted by the construction and operation phases of the projects.

The Route Evaluation Studies are too voluminous to attach to this response to comment but are incorporated by reference and are readily available to Department Staff and the Town as parties to the proceedings and to the public on the ORES website.

I have enclosed the following documents from the ORES proceedings records:

Hemlock Ridge Solar Project, Matter No.21-00748, 900-2.17 Exhibit 16 -Rev.1 "Effect on Transportation" summarizing findings of the Route Evaluation Study for Hemlock Ridge Solar project.

Heritage Wind Turbine Project, Case No. 16-F-0546, 1001.25 Exhibit 25 "Effect on Transportation" summarizing findings of the Route Evaluation Study for the Heritage Wind Turbine Project.

The documents fully evaluate potential transportation infrastructure and traffic impacts associated with the construction phases of the projects to include delivery of aggregate construction material and identify mitigation for impacts to transportation infrastructure and traffic.

Proposed mitigation measures include coordination with Town and County Highway Superintendents and Road Use and Repair Agreements to be entered into by the project sponsors with municipal governments. Upon information and belief, the Town of Barre is presently negotiating or has entered into such an agreement with each project sponsor. A draft of an "Agreement For Road Use, Repair, and Improvements" between Heritage Wind, LLC and the Town of Barre, is also available from the ORES proceedings. A copy of the Draft Road Use Agreement is attached.

Ms. O'Toole is correct in stating that, at this time, Eagle Harbor has not been engaged to provide aggregate construction materials for either project. Moreover, it is far from certain whether Eagle Harbor will be awarded a contract to supply either project. The project sponsors may offer sole source bids to larger producers given the volumes of construction materials needed and temporary duration of the projects.

Given that it is not certain Eagle Harbor will participate in either project it is unreasonable to require Eagle Harbor to attempt to independently ascertain the construction schedules and demands for aggregate materials for the projects and then to redundantly evaluate truck traffic routes, transportation infrastructure and traffic impacts from these major utility scale renewable energy projects or, "in the alternative", be excluded, by imposition of truck limits, from bidding to supply aggregate construction materials products to projects located within Eagle Harbors' market area. Such a requirement would not only constitute an anticompetitive restraint of trade but would also work against the goals and objectives of CLCPA by requiring alternate sourcing of aggregate construction materials products from more distant sources with associated increases in diesel truck emissions.

As stated in section 3.3.4 of the DEIS "Benefits of the Proposed Action":

The approval of the EHS&G proposal will provide an additional source of NYSDOT quality crushed stone thereby reducing the overall county-wide haul distances needed to supply the current market demand. Having a local source of construction materials will help keep construction prices low. These savings will be realized every time a contractor buys crushed stone for a driveway or when a municipality purchases material to repair a local road.

In addition to the direct cost savings that nearby contractors and towns will experience from reduced haul distances, the following benefits will also be realized:

1. Reduced fuel consumption, greenhouse gas emissions and air pollution.
An additional local source of construction aggregate mitigates the overall fuel usage and subsequently reduces the overall air pollution and carbon footprint of the aggregate supply chain due to a more efficient use of energy (diesel fuel) compared to trucking in materials from further away.
2. Reduced traffic congestion and wear and tear on roadway infrastructure.
An additional local source of construction aggregate provides an alternative local source for contractors and towns to haul from. All other things being equal, with the high cost of fuel and trucking in general, contractors will purchase and haul aggregate from the closest source to the end use, which will reduce the overall truck highway miles and associated truck traffic needed to meet the current market demand.

Eagle Harbor provides this response to Town comments under a full reservation of rights and requests that this response be entered in the record of proceedings for SEQR review of Eagle Harbor's MLRL permit modification application.

Respectfully,

Fogel & Brown PC



By Kevin J Brown

cc: Mr. Thomas Biamonte, Vice President, Eagle Harbor Sand & Gravel, Inc.
Bridgette O'Toole Esq, Heath & O'Toole, Attorney for Town of Barre
Mr. Brian Milliman, Principal Geologist, Strategic Mining Solutions, LLC

Attachments:

Hemlock Ridge Solar Project, Matter No.21-00748, 900-2.17 Exhibit 16 -Rev.1 "Effect on Transportation"

Heritage Wind Turbine Project, Case No. 16-F-0546, 1001.25 Exhibit 25 "Effect on Transportation"

"Agreement For Road Use, Repair, and Improvements" between Heritage Wind, LLC and the Town of Barre,



JOINT APPLICATION FORM

For Permits for activities affecting streams, waterways, waterbodies, wetlands, coastal areas, sources of water, and endangered and threatened species.

You must separately apply for and obtain Permits from each involved agency before starting work. Please read all instructions.

1. Applications To:

>NYS Department of Environmental Conservation



Check here to confirm you sent this form to NYSDEC.

Check all permits that apply:

☐ Stream Disturbance

☐ Dams and Impoundment Structures

☐ Tidal Wetlands

☒ Water Withdrawal

☐ Excavation and Fill in Navigable Waters

☐ 401 Water Quality Certification*

☐ Wild, Scenic and Recreational Rivers

☐ Long Island Well

☐ Docks, Moorings or Platforms

☐ Freshwater Wetlands

☐ Coastal Erosion Management

☐ Incidental Take of Endangered / Threatened Species

* See Instructions (page 3)

>US Army Corps of Engineers



Check here to confirm you sent this form to USACE.

Check all permits that apply:

☐ Section 404 Clean Water Act

☐ Section 10 Rivers and Harbors Act

Is the project Federally funded? ☐ Yes ☐ No

If yes, name of Federal Agency:

General Permit Type(s), if known:

Preconstruction Notification:

☐ Yes ☐ No

>NYS Office of General Services



Check here to confirm you sent this form to NYSOGS.

Check all permits that apply:

☐ State Owned Lands Under Water

☐ Utility Easement (pipelines, conduits, cables, etc.)

☐ Docks, Moorings or Platforms

>NYS Department of State



Check here to confirm you sent this form to NYSDOS.

Check if this applies:

☐ Coastal Consistency Concurrence

2. Name of Applicant

Taxpayer ID (if applicant is NOT an individual)

Eagle Harbor Sand and Gravel, Inc

Mailing Address

4780 Eagle Harbor Road

Post Office / City

Albion

State Zip

NY

14411

Telephone (585) 798-4501

Email shelbystone585@gmail.com

Applicant Must be (check all that apply):

☐ Owner

☒ Operator

☒ Lessee

3. Name of Property Owner (if different than Applicant)

Richard Bennett

Mailing Address

4803 Pine Hill Road

Post Office / City

Albion

State Zip

NY

14411

Telephone

Email

For Agency Use Only

Agency Application Number:

4. Name of Contact / Agent

Thomas Biamonte

Mailing Address

10830 Blair Road

Post Office / City

Medina

State

NY

Zip

14103

Telephone 585-798-4501

Email shellystone585@gmail.com

5. Project / Facility Name

Eagle Harbor Sand and Gravel

Property Tax Map Section / Block / Lot Number:

Project Street Address, if applicable

4780 Eagle Harbor Road

Post Office / City

Albion

State

NY

Zip

14411

Provide directions and distances to roads, intersections, bridges and bodies of water

☒ Town ☐ Village ☐ City

County

Orleans

Stream/Waterbody Name

Barre

Project Location Coordinates: Enter Latitude and Longitude in degrees, minutes, seconds:

Latitude: 43 ° 11 ' 4.236 " Longitude: -78 ° 15 ' 42.375 "

6. Project Description: Provide the following information about your project. Continue each response and provide any additional information on other pages. Attach plans on separate pages.

a. Purpose of the proposed project:

Eagle Harbor has applied to NYSDEC for a modification to its existing mining permit, which is for an above water table sand and gravel mine (ID#8-3422-00003/00001). The proposed modification is for excavation vertically into the underlying limestone bedrock. The purpose of the water withdrawal is to maintain a dry working floor for the proposed limestone bedrock quarry. The Mining Plan Map is included in the Engineer's Report as Attachment 2.

b. Description of current site conditions:

The site is currently a NYSDEC-permitted sand and gravel mine. 149.4 acres of disturbed area have been reclaimed. 85.5 acres are permitted to be mined during the current permit term in accordance with the NYSDEC Mined Land Reclamation Permit. Material is processed at the fixed processing plant (stacker) located on the eastern portion of the property along with the wash pond system, scale, scalehouse and shop building.

c. Proposed site changes:

Sand and gravel will continue to be mined down to the top of bedrock across the proposed footprint of the limestone quarry. A portion of the reclaimed land will also be removed to access the underlying bedrock. A portable processing plant will be used to primary crush the limestone prior to being fed into the existing fixed plant.

d. Type of structures and fill materials to be installed, and quantity of materials to be used (e.g., square feet of coverage, cubic yards of fill material, structures below ordinary/mean high water, etc.):

No new fixed structures or fill materials will be installed.

e. Area of excavation or dredging, volume of material to be removed, location of dredged material placement:

99.7 acre bedrock excavation area within a currently approved 250.6 acre sand and gravel mine area. Approximately 9.5 million cubic yards of limestone will be excavated, processed and sold as construction aggregate.

f. Is tree cutting or clearing proposed? ☐ Yes If Yes, explain below. ☒ No

Timing of the proposed cutting or clearing (month/year):

Number of trees to be cut: Acreage of trees to be cleared:

g. Work methods and type of equipment to be used:

The site will be operated as a traditional sand and gravel mine and crushed stone quarry. Soil stripping in advance of mining will be conducted with bulldozer or equivalent, sand and gravel and shot rock will be mined using excavators, loaders or equivalent, loaded into haul trucks and transported to the processing plant(s). Blasting will be conducted by established industry methods using expert licensed blasters.

h. Describe the planned sequence of activities:

Soil will be stripped back from the advancing faces and the sand overlying the rock will be mined prior to consolidated excavation. Standard drilling and blasting techniques will be used to excavate the rock. Once the rock surface is cleared, blast holes will be drilled in regular patterns in the rock, loaded with explosives in accordance with standards practices in the blasting industry and the explosives detonated. The shot rock will then be loaded by front-end loader, or equivalent, into trucks on the mine floor and hauled to the portable processing plant for crushing. The crushed stone will be then transported to the existing processing plant for sizing. After processing, sized material will be loaded by front-end loader or equivalent into trucks for sale and transportation off-site.

i. Pollution control methods and other actions proposed to mitigate environmental impacts:

Drainage within the quarry area will remain internal as a result of the modification proposal. Grading and perimeter berms will direct all on-site stormwater internally and there will be no off-site discharge of silt laden stormwater. No petroleum-based products will be stored within the quarry area.

j. Erosion and silt control methods that will be used to prevent water quality impacts:

Erosion, siltation and stormwater discharge will be prevented by the use of industry standard erosion and sedimentation controls such as staked hale bales, silt socks or silt fences wherever necessary. Stormwater features will be regularly checked after rain events and maintained to prevent any stormwater from leaving the mine. A sediment basin with a weir will be constructed downline in the ditch that recieves the quarry pumpage.

k. Alternatives considered to avoid regulated areas. If no feasible alternatives exist, explain how the project will minimize impacts:

Water withdrawal is necessary to dewater the bedrock excavation area prior to mining and no feasible alternatives exist. Impacts from water withdrawal will be minimized using increased setbacks from adjacent properties and drawdown impacts will be monitored with monitoring wells.

l. Proposed use: ☒ Private ☐ Public ☐ Commercial

m. Proposed Start Date: ASAP Estimated Completion Date: 50 years

n. Has work begun on project? ☐ Yes If Yes, explain below. ☒ No

o. Will project occupy Federal, State, or Municipal Land? ☐ Yes If Yes, explain below. ☒ No

p. List any previous DEC, USACE, OGS or DOS Permit / Application numbers for activities at this location:

DEC Mine Permit ID#8-3422-00003/00001

q. Will this project require additional Federal, State, or Local authorizations, including zoning changes?

☒ Yes If Yes, list below. ☐ No

Modification to NYSDEC Mining Permit

7. Signatures.

Applicant and Owner (If different) must sign the application. If the applicant is the landowner, the **landowner attestation form** can be used as an electronic signature as an alternative to the signature below, if necessary. Append additional pages of this Signature section if there are multiple Applicants, Owners or Contact/Agents.

I hereby affirm that information provided on this form and all attachments submitted herewith is true to the best of my knowledge and belief.

Permission to Inspect - I hereby consent to Agency inspection of the project site and adjacent property areas. Agency staff may enter the property without notice between 7:00 am and 7:00 pm, Monday - Friday. Inspection may occur without the owner, applicant or agent present. If the property is posted with "keep out" signs or fenced with an unlocked gate, Agency staff may still enter the property. Agency staff may take measurements, analyze site physical characteristics, take soil and vegetation samples, sketch and photograph the site. I understand that failure to give this consent may result in denial of the permit(s) sought by this application.

False statements made herein are punishable as a Class A misdemeanor pursuant to Section 210.45 of the NYS Penal Law. Further, the applicant accepts full responsibility for all damage, direct or indirect, of whatever nature, and by whomever suffered, arising out of the project described herein and agrees to indemnify and save harmless the State from suits, actions, damages and costs of every name and description resulting from said project. In addition, Federal Law, 18 U.S.C., Section 1001 provides for a fine of not more than \$10,000 or imprisonment for not more than 5 years, or both where an applicant knowingly and willingly falsifies, conceals, or covers up a material fact; or knowingly makes or uses a false, fictitious or fraudulent statement.

Signature of Applicant

Date



5/3/24

Applicant Must be (check all that apply): ☐ Owner ☒ Operator ☒ Lessee

Printed Name


Title

Thomas S. Biamonte

Vice President

Signature of Owner (if different than Applicant)

Date



5/3/24

Printed Name

Title

Richard V. Bennett

Property Owner

Signature of Contact / Agent

Date



5/3/24

Printed Name

Title

THOMAS S. BIAMONTE

VICE PRESIDENT

For Agency Use Only

DETERMINATION OF NO PERMIT REQUIRED

Agency Application Number

(Agency Name) has determined that No Permit is required from this Agency for the project described in this application.

Agency Representative:

Printed Name

Title


Signature

Date

I, Thomas Biamonte, confirm that Eagle Harbor Sand & Gravel replaced the existing culvert at Thomas Decker's Kams Road Property in the Town of Barre with two (2) 18" culverts in July 2023. Pictures of the new culverts are provided below.



Signature



Date

