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VIA ELECTRONIC MAIL
May 16, 2019

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Re: Comments on the Application by 850 Route 28 LLC for Article 24
Freshwater Wetlands and Article 15 Title 5 Stream Disturbance Permits
DEC ID: 3-5130-00030/00015

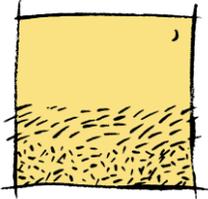
Dear Mr. Grosso:

We write concerning the above-noted application and the requested permits. Your recent public notice printed in the Kingston Freeman was the first time we were made aware of this applicant's project. This property is directly adjacent to property recently acquired by the Open Space Institute (OSI) from the Aldulaimi family, and is also directly adjacent to NYS Department of Environmental Conservation's (NYS DEC) Bluestone Wild Forest and its Onteora Lake Day Use Area and trail network.

We are currently collaborating with OSI and local stakeholders to create a public multi-use recreational trail system on the former Aldulaimi lands. The resulting expanded multi-use recreational trail network is ten minutes from the NY State Thruway and will not only be widely used by locals, but also will be a destination area for the public coinciding with the burgeoning popularity of the Catskills from the NY Metro area, nationally and worldwide.

Since 2005 WLC has been a key partner in the multi-year Bluestone Wild Forest Protection Initiative, in order "to permanently protect property in and adjacent to the Bluestone Wild Forest (BWF)". This strategic land protection partnership with NYS DEC, the Open Space Institute and Fats in the Cats and other local conservation and user groups, resulted in the previous acquisition, protection and incorporation into BWF of: in 2008 of the (Frazer) property with the specific goal of a feasible expansion of the multi-use trail system including for mountain biking; and in 2013, WLC accepted donation of a fee-owned parcel (formerly Von Stutterheim) off Morey Hill Rd at the request of NYSDEC. It was gifted to NYSDEC at the end of 2014 and incorporated into BWF, including for its potential for additional multi-use recreational trails.





The following comments are made regarding two permits being sought by Applicant. Pursuant to the Environmental Conservation Law, an Article 24 Freshwater Wetlands Permit (“Wetlands Permit”) is required for any physical disturbance within 100 feet of a state-designated Freshwater Wetland. Construction of an access road to the Project site from Route 28 will disturb almost 500 square feet adjacent to Freshwater Wetland KW-3, Class 2; a Wetlands permit is therefore required. Completion of the Project will also necessitate an Article 15 Title 5 Stream Disturbance permit (“Stream Disturbance Permit”) for impacts to, by Applicant’s estimate, 1,000 square feet of the banks of Tributary #6 of Praymaher Brook.

As detailed below, Woodstock Land Conservancy believes the Negative Declaration, adopted by the Town of Kingston’s Planning Board (the “Town”) under the New York State Environmental Quality Review Act (“SEQR”), fails to account for numerous adverse impacts to protected resources; this insufficient analysis prevents WLC from commenting with appropriate depth and accuracy on potential adverse air and water quality, noise, community character, impact on open space and recreation, and other impacts that the Project may cause. WLC therefore requests that DEC call for more stringent environmental review of the Project under SEQR, and extend the comment period to provide subsequent opportunities for public participation in the DEC permitting process.

Relationship of Project to the OSI Addition Property and the Bluestone Wild Forest

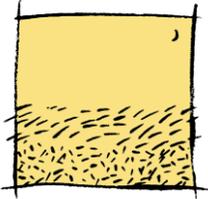
On February 11, 2019, OSI purchased a 208-acre property (the “Addition” property) immediately adjacent to the Project, consisting of forested slopes and wetlands and the northern portion of a high-quality body of water known as Pickerel Pond. The Addition property is identified on the Town of Kingston tax maps as parcels 38.4-2-2, 38.4-2-3, 38.4-1-30, 38.4-2-1.100, 38.4-2-10, 38.4-2-11, and 38.4-3-27. This acquisition joins the two major sections of the Bluestone Wild Forest and will be integrated into the Catskill Park upon conveyance to New York State.

The New York State Open Space Plan (2015) identifies the Bluestone Wild Forest as a Priority Conservation Project Area (Catskill River & Road Corridors {39}):

A.

Blue Stone Wild Forest: Just west of Kingston in Ulster County, covering and connecting four towns, this area is actively used by mountain bikers, hikers and birders but holds great potential for expansion and further development of its trail system as a mountain biking destination. The topography, terrain and precipitation pattern in this part of the Catskills are conducive to more intensive recreational uses with minimal damage to natural resources. Within the boundaries of Bluestone Wild Forest are areas of significant historical and cultural significance, including the bluestone quarry industry. Significant portions of several historic roads and trails connecting area towns—Jockey Hill Rd., Evergreen Road and the Waughkonk Trail—lie within Blue Stone Wild Forest. State lands within the core area between Route 28 and Sawkill Road should be consolidated, and those parcels along Route 28 should be acquired to provide trailhead access points, protect historic trails and roads where possible, and preserve this impressive scenic viewshed. It is recommended that the Blue Stone Wild Forest boundaries be extended to incorporate numerous, now isolated DEC tracts increasingly used for recreation. Two lie south of Route 28 in the Towns of West

B



Hurley and Ulster, seven lie north of Sawkill Rd. in the Towns of Woodstock and Kingston. Protecting, connecting and potentially expanding some of these tracts as part of the overall protection plan for Blue Stone Wild Forest will facilitate their consolidation into larger, coherent open space resources within and between communities facing ever increasing development pressures.

SEP

Moreover, the Bluestone Wild Forest Land Protection Initiative rates the new Addition property as the single most important infill holding in this area of the Catskill Park, specifically relating to the requirement for Consistency with Community Plans, #17 on the Full Environmental Assessment Form, Part II – Identification of Potential Project Impacts. This project would seem (#17.d.) *inconsistent with these plans*, and additionally is (#17.a.) *in sharp contrast to the surrounding land use*. The “Yes” boxes were not checked for either of these characteristics on this form.

The Addition property lies between the Jockey Hill and Onteora Lake sections of the Wild Forest. This area provides important recreational opportunities: The Jockey Hill section to the east contains loop trails popular with hikers and mountain bikers, and the Onteora Lake section to the west contains multi-use trails, as well as a 16-acre lake used as a year-round fishery and a summer swimming hole. Seven designated campsites are located along the west side of Onteora Lake and hunting for deer and turkey is permitted within the Wild Forest. OSI and Woodstock Land Conservancy (“WLC”) have identified the existing woods roads and trails on The Addition property as an opportunity to create a new recreational trail system that would connect with the official trails within the Bluestone Wild Forest, and have commissioned Tahawus Trails to develop a recreational trail plan for The Addition property. This trail plan was presented by representatives from OSI, WLC, and DEC at a public information meeting on May 7, 2019 in the City of Kingston to over 75 members of the public, to an enthusiastic response.

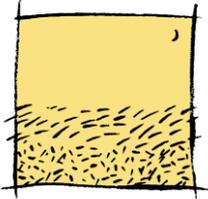
WLC is sensitive to the importance of economic development in this region. Nevertheless, DEC has a responsibility to ensure new facilities are not permitted to adversely impact the Catskills Park, itself a major economic driver for tourism and outdoor recreation and a natural treasure for all New Yorkers.

Insufficient SEQR Analysis

As noted in a letter from DEC to Applicant dated August 28, 2018, DEC designated the Town of Kingston Planning Board as Lead Agency for the SEQR process. The Project is a Type 1 Action under SEQR, as it will physically alter an area in excess of ten acres.¹ Despite the scale of the Project, which impacts over 35 acres, and the presumption towards significance under SEQR, the Town issued a Negative Declaration on March 18, 2019.

Based on a review of the Negative Declaration and the materials submitted by Applicant, WLC does not have confidence that the applicant fully identified, and the Town appropriately considered, the potential adverse impacts to existing constitutionally protected land, which offers park and recreation in the Wild Forest. Such impacts will be even more acute when the Addition property is

¹ “[T]he fact that an action or project has been listed as a Type I action carries with it the presumption that it is likely to have a significant adverse impact on the environment and may require an EIS.” (6 CRR-NY 617.4)



acquired by New York State for inclusion in the Wild Forest. Given that DEC must rely upon the Negative Declaration to determine the scope of review and whether permits should be issued for the Project, and given that the Negative Declaration contains serious deficiencies, WLC requests that DEC not issue permits until WLC and OSI have had sufficient time to study and raise its concerns regarding the Negative Declaration with the Town.

We recognize that comments raised regarding SEQRA would ideally have been voiced at an earlier stage in the permitting process. Unfortunately, earlier comment on the Negative Declaration was precluded by the lack of legally required notice being provided to OSI. As a landowner adjoining the Project, OSI was entitled to receive notice of public hearings held in March by the Town Planning Board regarding the special use permit requested by Applicant, *prior* to the determination per SEQRA of a Negative Declaration by the Town of Kingston Planning Board. No notice from the Applicant for the Project has yet been received.

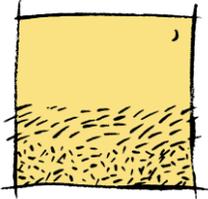
WLC additionally requests an extension of the public comment period, in order for OSI, WLC and other stakeholders to be afforded the opportunity to see comments submitted by DEC Region 3 Division of Natural Resources as managers of the NYSDEC Bluestone Wild Forest and the Onteora Lake Day Use Area and the recreational multi-use trail network.

WLC's specific concerns regarding the Negative Declaration and accompanying Application materials are as follows:

Traffic Impacts

According to the analysis submitted by Applicant's consultant, Creighton Manning Engineering, the proposed plant will receive an estimated 22 truckloads in steel and concrete deliveries per day (though it should be noted that Table 1 in their report reflected 28 truckloads). Outbound loads finished product will generate another 20 truck trips per day. When employee transportation is accounted for, approximately 121 new vehicles will enter and exit the property on an already busy stretch of Route 28 during peak traffic hours in the morning and evening. During construction, 12,500 truckloads are estimated to remove 162,000 cubic yards of material over seven to eight months, involving up to 80 loads of material per day and ten trucks per hour, totaling an estimated 70-80 trucks/day. We have great concern about this volume of truck traffic entering and exiting on to the busy route 28, and imagine that this proposed project will create frequent slowdowns to accommodate the trucks which may not have been adequately studied. We question whether the analysis is applicable to these large tractor trailers. We did not see an analysis by State DOT reflecting their opinion on this issue.

These are significant impacts meriting further review and mitigation. Applicant's consultant also limits its traffic analysis to the effects on Route 28—Applicant has not yet produced information



regarding the potential impacts of traffic pollution and noise on the adjacent OSI property and Wild Forest.

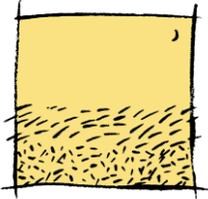
Aesthetic Impacts

The Negative Declaration analyzed the aesthetic impacts of the Project primarily from the nearby residential subdivision; as a result, no visual mitigation other than maintenance of the existing trees along the property line has been proposed. Is the Town assured that the proposed tree clearing maintains this buffer? Proper analysis under SEQRA would require analysis of the visual impacts of a 240,000 square foot warehouse complex and supporting infrastructure on neighboring land used extensively for public recreation, in this case, which is the Addition property and the Wild Forest. We note that on a recent site visit to the new OSI Addition property and contiguous NYSDEC lands, our group (which included a Forester from DEC Region 3), noted what appeared to be multiple, apparently very recently cut-down trees, apparently within a few yards of the boundary line between the applicants' property and existing NYDEC Wild Forest lands. Further analysis should include, at minimum, proposed mitigation for aesthetic impacts to future recreational trails. On the Full Environmental Assessment Form, Part II – Identification of Potential Project Impacts, item #9 Impact on Aesthetic Resources, relates to this, and #9.e. specifically addresses whether there will be a *diminishment of public enjoyment and appreciation of the designated aesthetic resource*. Based on our on-the-ground knowledge of the area, WLC believes there are potentially significant aesthetic impacts in the areas and trails, both existing and proposed, in the areas near Onteora Lake and Pickerel Pond. Again the "Yes" box was not checked here.

Water Quality Impacts

The northern portion of Pickerel Pond is located on the Addition property, the middle portion is located within the Bluestone Wild Forest, and the southern portion is located on Applicant's property, adjacent to the proposed Project. WLC is concerned that the stormwater pollution prevention plan ("SWPPP") provided by Applicant fails to fully address potential stormwater and other water quality impacts to the Wild Forest and the Addition property, which ultimately may degrade a pristine water body, Pickerel Pond, and impact the surface and groundwater.

Medenbach & Eggers, engineering consultant for Applicant, stated in a February 5, 2019 letter to DEC that the Applicant plans to treat all stormwater in what seem to be disused quarry ponds, "prior to discharging to the existing ponds on site." The consultant does not state whether the size of the quarry ponds on the Project site are adequate for the amount of likely sediment-filled stormwater generated from the 35-acre area being disturbed by the Project, but did note that in heavy rains the ponds overflow. WLC is concerned that stormwater containing pollutants and sediment could overflow these ponds during heavy rain events and enter adjoining water bodies.



This could contaminate Pickerel Pond, an otherwise pristine fishing pond open to public access. NYS (2008) and the National Climate Assessment (j2014) long-range weather modeling for our region lists the following regarding predicted future precipitation patterns in NYS:

- Modelling shows that New York is also likely to experience more precipitation and more variability in precipitation. Compared to the 1971-2000 period, average precipitation in New York will increase
 - **up to 8% by the 2020s.**
 - **up to 12% by the 2050s.**

Source: <https://www.dec.ny.gov/energy/94702.html>

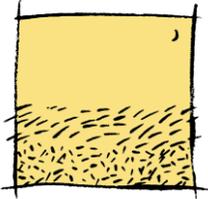
It also appears that Project requires the installation of a three-foot diameter culvert underneath a gravel road, thereby linking two previously separate ponds—one of which directly abuts Pickerel Pond—which could exacerbate the potential for overflow or leaching of pollutants from the Project into Pickerel Pond, thus impairing both habitat and public recreational opportunities as well.

Finally, WLC also requests that Applicant be required to examine the potential for direct drainage from the Project site into Pickerel Pond and/or Onteora Lake. The Negative Declaration states that stormwater will be discharged into existing ponds on site or over the property line of “neighboring properties.” It is imperative that stormwater generated as a result of the project be treated and mitigated *on-site*. Any discharges onto any of the neighboring properties including residences on Waughonk Road, NYSDEC Bluestone Wild Forest lands, and the OSI’s Addition should only be permitted within the scope of an executed easement agreement.

Furthermore, WLC recommends the use of green infrastructure techniques, where feasible, as an alternative to what is proposed, as natural mimicry has been shown an effective absorption method.

Noise Impacts

Construction of the Project will be phased over several years and will potentially include significant amounts of blasting, rock crushing, and other noisy activities. Applicant commissioned H2H Associates to conduct a noise study to identify and evaluate potential impacts from the Project. The consultant surveyed the area surrounding the Project and identified “single family residences to the south of the Site” as the only potentially sensitive noise receptors. In its analysis of receptors to the east—the direction of the Wild Forest and the Addition property—H2H only examined residential receptors approximately 2,000 feet from the sound source, stating that “[a]t a distance



of 2,000 feet, using natural sound attenuation and the noise levels produced by the on-site equipment, increases in sound levels are considered to be negligible.”

The noise study did not place receptors on the Addition property, where recreational trails are planned to be constructed just east of the Project boundary, nor on the existing Bluestone Wild Forest lands, which are actively used now near Onteora Lake and Pickerel Pond. This study fails to note the sound impacts that visitors to these trails will experience nor the effect on habitat. Many species are highly sensitive to both persistent loud noise, noise frequencies and vibration. According to the study, a rock crusher causes sounds of up to 96 decibels at a distance of 100 feet, a distance well within range of the proposed recreational trails on the Addition property. Ninety-six decibels far exceeds the existing ambient conditions noted by H2H, which range from 37.2 decibels to 39.7 decibels, and as H2H states in Section 1.4 of its noise study:

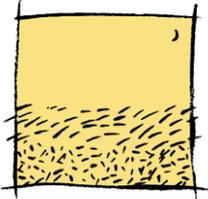
[A]n increase in ambient noise of 10 dB (decibels) is perceived by the majority of people to be a doubling of the loudness of sound [...] noise source in a non-industrial setting[] should not raise the total future ambient noise level above a maximum of 65dB. This maximum would be considered the upper-end limit because 65 dB is the limit for undisturbed speech at a distance of approximately three feet.

The analysis above makes it clear that the Town did not appropriately and sufficiently consider the noise impacts the Project will have on the Addition property or the Wild Forest when issuing the Negative Declaration being relied upon by DEC. WLC requests that further noise studies be required that specifically focus on the above identified impact zones and areas.

Open Space and Recreation Impacts

The analysis of potential impacts to open space and recreation provided in the Negative Declaration reads entirely as follows: “The proposed plan creates no new residential uses and therefore no new demands for recreation and no harmful impacts on the same. No further consideration is needed.”

It is evident this analysis falls short of the hard look at potential adverse impacts required by SEQR, keeping in mind the extensive existing and proposed recreational activities in the Wild Forest that will surround the Project on all sides after the sale of the Addition property to New York State. This includes the fact of year over year increasing visitorship at the Onteora Lake Day Use Area and multi-use trail network. It is our understanding that NYSDEC has invested considerable funds in this fully accessible public access area and trail network, and anticipates making further investments in the near future. Requirement #11 on the Full Environmental Assessment Form, Part II – Identification of Potential Project Impacts, Open Space & Recreation references a *site’s proximity to State Wild Forest*. The “Yes” box here went unchecked.



Community Character

The analysis of #18 on the Full Environmental Assessment Form, Part II – Identification of Potential Project Impacts, Consistency with Community Character warrants further review, with #18.d. positing whether the Project *would interfere with use or enjoyment of officially recognized or designated public resource*; and #18. f. *whether the Project is inconsistent with the character of the existing natural landscape*. Neither of the “Yes” boxes were marked for this.

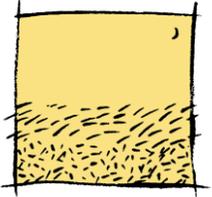
Impermissible Segmentation

In the materials submitted by Applicant, the hours of operation for the Project during construction are proposed to be from 6AM to 7PM. WLC has also been informed that the Applicant is seeking changes to Town code so that it may operate the proposed facility 24 hours a day, seven days a week, once constructed. Impacts related to round-the-clock work were not considered by the Town in the Negative Declaration. Segmenting the proposed changes to Town law from analysis of the overall Project would be impermissible under SEQR. In WLC’s view, studies of impacts conducted and predicated on the application statement of “6am to 6pm” hours of operation, are deficient in light of the now proposed “24/7” operation.

Conclusion

We will be pursuing with the Town these same considerations. But we request that DEC defer any decision on the permits applied for. We believe irreparable harm to public resources could occur if DEC issues permits in reliance on the inadequate and incomplete identification of potential impacts and the analysis in Negative Declaration. WLC requests that the Negative Declaration be rescinded and further environmental review under SEQR conducted prior to the issuance of any DEC permit. WLC also urges DEC to provide additional opportunity for public comment. Members of the public and the many stakeholder groups involved may request a careful re-examination of the noise, air and water quality, public recreation, community character, traffic and other impacts to the Addition and to the Wild Forest that were not properly assessed prior to the Town’s adoption of the Negative Declaration.

In closing we appreciate DEC’s thoughtful review of the requested permits. We remain greatly concerned about the potential for changed hydrological patterns caused by the proposed disturbance to the stream and its potential threat to the quality of the Praymaher Brook, as well as the Southeastern corner of the pristine Pickerel Pond and/or Onteora Lake. We are concerned as well about the potential impairment and diminishment of important wetlands that clearly serve important flood remediation, water quality and habitat functions – particularly with the intense



increase in recent years in volume during rainfall events resultant from climate change – we feel that the denial of these requested permits is warranted. Additionally, OSI was never properly notified about the proposed Project. Finally, we specifically direct DEC’s attention to the Preliminary Biodiversity Assessment of the Proposed 850 Route 28 Industrial Facility, attached to OSI’s letter, by Hudsonia (Dr. Erik Kiviat).

Sincerely,

Maxanne Resnick
Executive Director