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February 13, 2020

Mr. Basil Seggos
Commissioner
NYS DEC
625 Broadway
14th Floor
Albany, NY 12233

Ms. Mary A. Mackinnon
NYSDEC Region 1 Headquarters
SUNY @ Stony Brook
50 Circle Rd.
Stony Brook, New York 11790

Dear Commissioner Seggos and Ms. Mackinnon,

We write to offer comment and to express the Town of Southampton's objections to the DEC's consideration of an application to modify the extant mining permit for the Sand Land site in Southampton (Application # 1-4736-00851/00001). The proposed permit modification, as with prior modifications to the permits held by the mine, is inconsistent with town laws designed to protect our drinking water.

Of particular concern to the Town is the fact, well known to DEC, that the extant permit is presently being challenged in litigation pending in the NYS Supreme Court (*Town of Southampton, et al, v. New York State Department of Environmental Conservation, et al*, Index No. 902239-19 (Albany County)). As such, consideration of a further modification of a permit that itself might be invalidated by the Court is imprudent. The existing permit is being challenged on several grounds, in part upon the fact that the "Life of Mine" acreage therein was improperly and arbitrarily expanded by DEC; indeed, a preliminary injunction has been imposed by the Court concerning that additional acreage. As such, a further modification that contemplates the imprimatur of authorization by DEC of illegal activities within the "Life of Mine" that itself is being challenged and which challenge is *sub judice* before the Supreme Court would be likewise arbitrary and capricious and in error of law.

The proposed modification would allow the site to import finished products within the (illegally expanded) Life of Mine. These products would include "crushed stone, crushed concrete aggregate and finished compost (created offsite from yard trimmings)" to "create salable aggregate products and sand-based soils" as part of a processing, storage and retail operation. Significantly, these activities are unrelated to mining under the Environmental Conservation Law as they are not included in the definition of mining in ECL §23-2705(8). As such, the inclusion of such activities in a mining permit issued under that law is lacking in authority and any permit issued providing such authorization would be issued in clear error of law. These activities are unequivocally subject to Town regulation under Town Law rather than DEC's mine permitting jurisdiction.

The Town's regulatory authority over these proposed activities is of particular significance as all of the proposed activities are illegal under Southampton law (Southampton Town Code §330-10, Residence Districts). As such, the statements by Sand Land's principal in the Short Environmental Assessment Form at Sections 5 (a) and (b) that the proposed action is a permitted use under zoning regulations and consistent with the adopted comprehensive plan are inaccurate. Moreover, the activities would clearly violate the mine's certificate of occupancy. Indeed, these issues have been repeatedly litigated by Sand Land and found to be clearly prohibited under the Southampton Town code. Decisions from the Appellate Division, Second Department, as well as the Appellate Term, Second Department [*Sand Land Corp. v. Zoning Board of Appeals of Town of Southampton*, 137 A.D.3d 1289, 28 N.Y.S.3d 405, 407 (2d Dept. 2016); *leave to appeal denied*, 28 N.Y.3d 306, Oct. 27, 2016; *People v. Wainscott Sand & Gravel Corp.*, 59 Misc.3d. 67 (App. Term 2d Dept. April 5, 2018); *Order Recalled and Vacated*, 62 Misc.3d 16, 89 N.Y.S.3d 819, 820 (App. Term 2d Dept. 2018)] held that these non-mining uses were neither pre-existing, nonconforming, nor preempted by the New York State Mined Land Reclamation Law (ECL Article 23). It would be impossible for DEC not to know of the existence of this unequivocal case law.

The modification sought by Sand Land to amend its permit to include the aforementioned activities, if given the imprimatur of legality by DEC granting the application, would encourage Sand Land to engage in illegal activity that would create needless litigation at a significant cost to be borne by the taxpayers of the Town. Indeed, the Appellate Term, in *People v Wainscott Sand & Gravel Corp.*, held that the receipt and processing of concrete and asphalt road debris “do(es) not implicate the actual operation and process of (Sand Land’s) mining operation under the Environmental Conservation Law” and as such they “are subject to local regulation and to enforcement by the Town of Southampton”. The Town should not, however, be required to engage in costly enforcement measures against any such illegal activities should Sand Land engage in them when both Sand Land and the DEC know now that the activities are illegal.

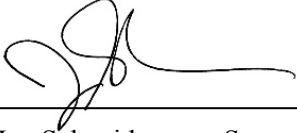
We also note that the DEC officially notified Southampton Town that these activities were not mining and are all fully under the Town's jurisdiction and, as such, that all such operations were required to meet all town laws, ordinances and codes. We have repeatedly notified the DEC that there are ordinances prohibiting these activities in our Town and informed DEC of the aforementioned NYS Appellate Court rulings affirming the Town's position. DEC's grant of the desired permit modification would be wholly contradictory to these interactions between DEC and the Town.

We are concerned with the pace at which this permit modification is progressing, particularly in light of the pending litigation, and we do not understand how the DEC could possibly issue a negative SEQRA declaration for this project. To take just one example, the proposed modification would allow the importation of “finished compost (created offsite from yard trimmings)” without any specific mechanism in place for the testing of such materials from their source of origin. The DEC should not base its expedited SEQRA negative declaration on conclusory assertions by the applicant unsupported by documented proof. Indeed, earlier negative declarations by DEC concerning the prior modification applications are also part of the Court challenge currently pending. The negative declaration herein relies largely upon the specious conclusions that are the subject of the pending challenges.

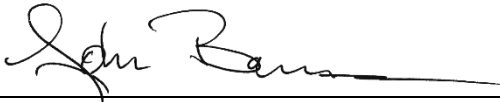
Further, the site in question was the subject of a Suffolk County Health Services groundwater investigation that found serious contamination beneath the site. In addition, a Suffolk County Special Grand Jury investigating solid waste and mining made several recommendations for protecting our precious sole source aquifer, including the prohibition of any other operations or materials being stored or processed within the Life of Mine.

The Town takes seriously the laws we have in place to protect our aquifer. Should the DEC grant this proposed modification, the Town will assert its jurisdiction and take all necessary legal, civil, code enforcement and police action to stop these illegal operations should Sand Land engage in them. The DEC, lacking both permitting and regulatory authority to enforce these non-mining activities at the site should not sanction these activities. The grant of this application would be a threat to both home rule and our drinking water.

Sincerely,



Jay Schneiderman, Supervisor



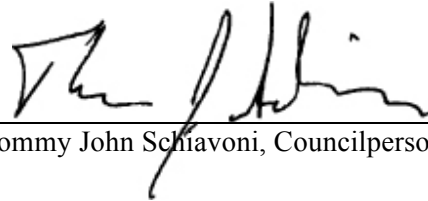
John Bouvier, Councilperson



Julie Lofstad, Councilperson



Rick Martel, Councilperson



Tommy John Schiavoni, Councilperson

cc: Carrie Meek Gallagher, Regional Director, NYS DEC