

STATE OF NEW YORK
ONEIDA COUNTY SUPREME COURT

In the Matter of the Application of
THOMAS J. SUNDERLIN, JR. and
RED ROCK QUARRY ASSOCIATES, LLC
Permittees

2.

3. The Red Rock Application proposed a mining operation located on or near Stone Quarry Road, within the Town of Forestport, Oneida County, New York. The proposed quarry

sawing, line drilling, expandable grouts, micro-

White

Lake Granite Quarry Mined Land Use Plan, Ex. G, at 4.

4. The classified the Red Rock Application as a Type II action under the State Environmental Quality Review

generally excuses DEC from completing a full SEQRA environmental review. The

premise behind the SEQRA exemption is that the APA has and will conduct an analogous environmental review process, that, in theory, meets or exceeds SEQRA requirements.

5. The APA characterized this project as a Class A regional project under the Adirondack

any class A regional project

adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic,

N.Y. Exec. Law § 809(9) (McKinney

2021).

6. So, while Type II actions are exempt from full SEQRA environmental review by DEC, the

aesthetic, recreational, and historic resources of the park while considering the

Application. The environmental, aesthetic, recreational, and historic impact of the project

outweigh the potential negatives. *Id.*

7. The APA is granted authority under the Act to either grant a permit application or hold an adjudicatory hearing. N.Y. Exec. Law § 809(3)(d) (McKinney 2021). Accordingly, the APA cannot deny a permit without first holding a hearing.
8. Despite hundreds of public comments raising significant and still unresolved factual issues stemming from inadequate environmental impact assessments and other shortcomings of the Red Rock Application, the APA failed to provide an adjudicatory hearing and granted the permit to Red Rock. The APA authorized APA Permit 2021-January 14, 2022, to Red Rock Quarry Associates, LLC. APA Regulatory Affairs Meeting (Jan. 14, 2022), Ex. J, at 14-15; see generally Permit, Ex. A.
9. This Article 78 proceeding is brought to challenge and set aside the Permit granted by the APA because it arbitrarily, capriciously, and contrary to law failed to hold an adjudicatory hearing to address significant and unresolved questions of fact.
10. proval of this permit constituted an unexplained reversal of prior APA determinations that additional environmental review is required for mining plans of this nature. *See* L.

APA failed to adequately address why the additional noise and environmental scrutiny was not required of this permit applicant.

11. Further, the White Lake residential and tourism-based area will be unduly burdened by the increase in industrial noise, as the closest residential home is only 570 feet away from the project site. Korn, APA Regulatory Affairs Meeting (Jan. 13, 2022), Ex. C, at 6. The APA did not perform adequate noise assessments and failed to sufficiently respond to issues raised during the public comment period, instead simply taking the Applicant at its word on a paper review with faulty assumptions. These issues should have been addressed in an adjudicatory hearing.

12. In addition, the project site is accessed through Stone Quarry Road. Multiple comments raised questions of whether the applicant demonstrated titled access or full site control. The adjacent landowner claims that the road has been abandoned, a 1990 deed shows that the public was granted an easement on the entirety of the road (which traverses the proposed mine site), and there is uncertainty whether the road was ever maintained as a public highway. See Permit Comment, Ex. H, at 2-3; 1990 Deed, Ex. I, at 1.

13. The APA did not adequately address these and other issues, instead it simply choose its own factual resolutions with no adjudication.

14. Thus, this Petition seeks (1) the Permit without holding an adjudicatory hearing was arbitrary, capricious, and contrary to law, and (2) an order vacating the permit in question and remanding the matter to the APA to hold an adjudicatory hearing.

PARTIES 6 PETITIONERS

15. Petitioner, The Adirondack White Lake Association (AWLA)

society that has standing in its own right and through its representation of Louanne Cossa

and Steve Turczyn, who live in the near vicinity of the project site.

continues to use the Park nearly daily for hiking, dog walking, cross-country skiing, canoeing, camping, hunting, and fishing. *Id.* at 3.

20. Regina Balzano is a member of Protect the Adirondacks!, and also is a member of AWLA. *Balzano Aff., Ex. P*, at 1. Mrs. Balzano owns property located at 13021 State

PARTIES ó RESPONDENTS

22. Respondent, The Adirondack Park Agency, is an agency of the State of New York. The

APA is the lead agency for the permitting of projects in the Adirondack Park. As the lead

Adirondack Park Agency Act. The APA has an office at 1133 NYS Route 86, Ray Brook,

wildlife, historic, recreational or open space resources of the park. In re *Ass'n for the*

FACTUAL BACKGROUND

32. Thomas Sunderlin, on behalf of himself and Red Quarry Associates, LLC, submitted the Mining Permit Application with the DEC and an Application for Major Projects with the APA on April 5, 2021.
33. The APA found the permit application incomplete on April 20, 2021, but after Red Rock submitted additional documentation, it was deemed complete on July 7, 2021.
34. The Red Rock Quarry Project generated a tremendous amount of public opposition, with over three hundred people and organizations commenting on the permit application, the vast majority of which opposed the application. Korn, APA Regulatory Affairs Meeting (Jan. 13, 2022), Ex. C, at 15

project. *Id.* at 15.
35. Petitioner AWLA retained The LA Group, an Architecture and Engineering firm, which submitted a detailed engineering assessment of the application on July 28, 2021. **See generally** LA Group Public Comment, Ex. F. The comment noted insufficient APA consideration of hydrogeology, stormwater and surface drainage, impact on the wetlands, noise considerations, the crushing operations, site access, and transportation concerns. *Id.*
36. Notable critiques included: a lack of documentation of the location of the water table under the proposed mine site, (*id.* at 3), a previous similar mine project that required much more environmental review and testing, (*id.* at 5), a lack of proper noise impact assessment on the record, (*id.* at 7-8), the noise assessment in the application record did not include all industrial noise sources, (*id.* at 8), and a lack of documentation of the Applicants ability to directly access the parcel due to legal access issues on Stone Quarry Road (*id.* at 10-11).

37. The previous similar mine application was submitted in 2000 and, as the LA Group pointed out, consisted of similar mineral extraction activities. *Id.* at 5.

38. In the 2000 project proposal, the DEC and APA requested significant environmental testing. *Id.* at 44-59 (providing APA Notice of Incomplete Permit Application (Apr. 27, 2000); NYSDEC Notice of Incomplete Application (Jul. 31, 2000)). APA staff requested professionally prepared studies of (1) noise related impacts, (2) visual impacts, (3) proposed water usage, storage, treatment, and flow management, (3) hydrological study of the area, (4) dust control, (5) engineering study assessing the adequacy of Stone Quarry Road to perform as required for the increased traffic, (6) studies of blasting and ground vibrations, and (6) alternative proposals for the use of the quarry. *Id.* at 44-53 (providing APA Notice of Incomplete Permit Application (Apr. 27, 2000)). The LA Group questioned the differing standard of environmental review required of the two similar projects, especially since many of the same conditions garnering further environmental impact scrutiny were present in the current application.

39.

See Letter from David A. Shank,
Strategic Mining Solutions, LLC, to APA and NYSDEC Region 6, Re: Project Permit:
2021-0075/DEC Application ID #6-3038-00081/00003 (Nov. 15, 2021)

question, and repeated at the APA Regulatory Affairs Meeting on January 13, 2022, by
APA Project Review Officer, Devan Korn. Korn, APA Regulatory Affairs Meeting (Jan.
13, 2022), Ex. C, at 16 (

from the current proposal, including mining activities below the wat
phase of the 2000 application called for excavation to 1465 ft. elevation; the 2021
application calls for excavation to 1445 ft. elevation, or 20 ft. deeper than the 2000
application, see White Lake Granite Quarry Mined Land Use Plan, Ex. G, at 3; see also
LA Group Permit Comment, Ex. F, at 3-4. The water table has not been established;
Applicant revealed that they based their estimate of the water table on surface elevation

Notice of Incomplete Application. In 2000, further analysis of the water table was
required in the form of a water t

LA

Group Permit Comment, Ex. F, at 5 (citing APA Notice of Incomplete Permit

Application (April 27, 2000)). Further fact-finding of this nature should have

42. The APA heard public comments during their monthly meetings on November 18, 2021 and held a rescheduled second hearing on December 16, 2021. These were not adjudicatory hearings. Many questions were asked of both the APA and Applicant during this time and no answers were provided. Commenters during both meetings called for an adjudicatory hearing to be held.

43. Petitioners submitted additional public comments calling for an adjudicatory hearing on January 12, 2022, as the previous meetings insufficiently addressed public comments and concerns. See Ex. D.

44. Petitioners, in their comment, detailed that at least six criteria are present that require an adjudicatory hearing in this case. These include (1) the size and complexity of the project, as demonstrated by the large impact on the municipality and effects on the otherwise pristine White Lake, (2) the large amount of public interest, (3) the significant and unresolved issues of inadequate noise impact assessments and legal access to the road, (4) the lack of a required environmental impact statement by SEQRA, and (5) the copious number of proposed changes to the permit necessary for its approval. *Id.* at 2-3.

necessary for the determination of whether the agency had a rational basis for their permit decision, and the 2000 appl requirements. *Id.* at 4-5.

45. The APA held two Regulatory Affair Meetings where Board Members discussed the approval of the Permit, on January 13 and 14, 2022.37 Tm0 g0 G[(number)5(of pr)6(opose)3(d)-9(c)4

49. In the Notice of Incomplete Application for the 2000 mine proposal, the APA requested additional information from the potential permittee, including:

A professionally prepared study of noise related impacts to adjoining/nearby landowners and the surrounding environment, wetlands and wildlife, anticipated from trucking, blasting and mobile and stationary equipment to be used on the site. The study should include at a minimum actual decibel readings of background/ambient noise levels from specific locations around the site in comparison to anticipated noise levels, as well as all measures proposed to minimize noise impacts, and if possible decibel readings while equipment/blasting is being tested at the site. The noise study should be prepared in consultation with Agency staff.

LA Group Public Comment, Ex. F, at 8 (citing to the APA Notice of Incomplete Application (Apr. 27, 2000)) (emphasis added). There was no convincing reason for the current project to not garner the same scrutiny.

50. The assessment completed by Applicant only used Department of Transportation ambient traffic noise data from 2019. See White Lake Granite Quarry Mined Land Use Plan, Ex. G, at 7-8. This data is not sufficient to represent the actual conditions present in 2022, nor is it the right data to establish ambient noise conditions in the surrounding residential area. See LA Group Public Comment, Ex. F, at 7. The noise assessment did not use current data of ambient noise from the property, nor did it use actual readings of equipment tests. Thus, the noise assessment completed by Applicant was not sufficiently similar to the one required by the APA in 2000. Additionally, Application did not use data for a county road, or a state route, but rather did an estimate based on traffic data

51. Mr. Korn explained at the APA Regulatory Affairs Meeting on January 13, 2022, that the
e [DEC]

APA did not require more thorough noise studies. Korn APA Regulatory Affairs Meeting
(Jan. 13, 2022), Ex. C, at 10. This was misleading as the noise assessment failed to
adequately address seasonal changes, which is a factor the DEC requires projects to
consider. Jeffrey Sama, *Assessing and Mitigating Noise Impacts* (NYSDEC 2001).

52. The
2000 application proposed up to six explosive events per day. The current application
proposes a maximum of two per day that may only occur between the hours of 9 am to 3

Letter from David A.

Shank, Strategic Mining Solutions, LLC, to APA and NYSDEC Region 6, Re: Project
Permit: 2021-0075/DEC Application ID #6-3038-00081/00003 (Nov. 15, 2021), Ex. K, at
3. The difference between six and two blasting events does not mean that the blasting
events will be quieter, just that they will be less frequent.

53. Also, the fact that the current proposed project will only occur during April to November
should garner additional noise impact scrutiny, as indicated in the NYSDEC Program
Policy: *Assessing and Mitigating Noise Impacts*, that Applicant later references. Jeffrey
Sama, *Assessing and Mitigating Noise Impacts* (NYSDEC 2001). The report explains
that:

[s]ummer time noises have the greatest potential for causing annoyance
because of open windows, outside activities, etc. During the winter people
tend to spend more time indoors and have the windows closed. In general,
building walls and windows that are closed provide a 15 [decibel] reduction
in noise levels. Building walls with the windows open allow for only a 5
[decibel] reduction in [sound pressure level].

Id. at 10. This program policy points to the fact that there is a greater impact of noise pollution during warmer weather and thus sound attenuation needs to be more carefully considered. Id. Additional noise studies should have been conducted to take this factor into account.

54.

nature and did not constitute the same level of assessment called for in the 2000

se related impacts of actual

LA Group Permit Comment, Ex. F, at 8. Therefore, the DEC

Program Policy, especially when not faithfully followed, is no replacement for actual noise studies.

55.

-blasting noise

emissions to the sounds of a gunshot in order to show that the quarry area has been

project would not be abnormal. Letter from David A. Shank, Strategic Mining Solutions, LLC, to APA and NYSDEC Region 6, Re: Project Permit: 2021-0075/DEC Application ID #6-3038-00081/00003 (Nov. 15, 2021), Ex. K, at 5. This is false. Almost all firearms create noise of approximately 140 decibels. Michael Steward, Recreational Firearm Noise Exposure, American Speech-Language-Hearing Assoc. (last accessed Feb 11, 2022), <https://www.asha.org/public/hearing/recreational-firearm-noise-exposure/>. While

d Land Use Plan, do not

include decibel levels, the plan does explain that the maximum charge weight will be less than 100 pounds of explosives. See White Lake Granite Quarry Mined Land Use Plan,

Ex. G, at 4. Only one pound of tri-nitro-
onating 15 feet away
generates 180 decibels of noise. William Hamby, Ultimate Sound Pressure Level Decibel
Table(Hyperdynamics Co. 2004),
[http://pds27.egloos.com/pds/201403/06/94/Ultimate_Sound_Pressure_Level_Decibel_Ta](http://pds27.egloos.com/pds/201403/06/94/Ultimate_Sound_Pressure_Level_Decibel_Table.pdf)
ble.pdf. Thus, up to 99

owner, R.O. Turczyn, claims that Stone Quarry Road had been abandoned per his deed. Permit Comment, Ex. H, at 3.

60. Stone Quarry Road is notably absent from some maps, namely the Oneida County Tax Map prepared in 2018, which casts doubts on whether it was ever a public highway and indicates that it is likely to be a private drive. *Id.*

61. Conversely, a deed from 1990 demonstrates that the public was granted an easement to the entirety of Stone Quarry Road. 1990 Deed, Ex. I, at 1. If this easement is still in place, it would traverse the entire site and appear to prevent mining on much of the plan without violating the easement.

regulatory criteria for an adjudicatory hearing. *Id.* at 3. He explains to the Board that

Id. Again, the eight criteria enumerated within the APA Rules and Regulations part 580.2 were not mentioned. The Board Members present seemed confused about the actions they could take, as evidenced by Chairman Ernst asking
d develop
material that was not available or could not be developed by staff or by other

Id. at 2-3. Similar questions on the nature of what an adjudicatory hearing is and is used for were also asked by Board Members Art Lussi and Mark Hall. *Id.*

67. There is no question that the confusion the Board Members expressed stemmed from the

e. In

adjudicatory hearings, averaging about four per year, now there have been none held in the last 14 years. Peter Bauer, *How Team Cuomo Subverted Basic Norms at the Adirondack Park Agency* Adirondack Almanack (Nov. 11, 2021)

<https://www.adirondackalmanack.com/2021/11/how-team-cuomo-subverted-basic-norms-at-the-adirondack-park-agency.html>. The last adjudicatory hearing the APA held was in 2008. *Adirondack Park Agency Hearing Decisions Index*.S. DEC,

<https://www.dec.ny.gov/hearings/2462.html> (last visited Feb. 18, 2022). This is a

environmental review process; it

is exempt from SEQR review processes.

68. The theory behind this exemption is that the APA has (and will actually complete) a

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stringent than, SEQRA. NYS Department of Environmental Conservation, *The SEQRA Handbook* (4th ed. 2020); see also N.Y. Exec. Law § 805(4) (McKinney 2021).

Adjudicatory hearings are a vital tool for the APA to conduct full environmental review of potentially permitted projects, as the hearings are used to address questions of unanswered fact and uncertain environmental or other impacts of the project.

Whether Respondent Red Rock has full legal, titled access of the relevant parcel of land.

72. All of these unanswered questions of fact should have been fleshed out during an adjudicatory hearing so that they could have been incorporated into a modified permit or result in a permit denial. The APA should not have failed to hold an adjudicatory hearing in this case.

73.

A. The Size and Complexity of the Project Warranted an Adjudicatory Hearing.

75.

he size and/or complexity of the project,

received a petition with approximately 1,400 signatures and 1,432 form letters opposing the permit. Korn, APA Regulatory Affairs Meeting (Jan. 13, 2022), Ex. C, at 15. Very few land development projects have garnered such public participation.

81. This factor also suggests that an adjudicatory hearing was necessary.

C. There Existed Significant Issues Relating to the Criteria for Approval of the Project that Warranted an Adjudicatory Hearing.

82. [redacted] cant issues relating to the [redacted]
[redacted] -NY 580.2(a)(3).

83. The APA did not conduct a noise study, as admitted at the APA Regulatory Affairs Meeting on January 14, 2022, by APA Project Review Officer Devan Korn. APA Regulatory Affairs Meeting (Jan. 14, 2022), Ex. J, at 10. The assessment only used area estimates of ambient noise and projected sound levels to approximate the potential increase in sound. White Lake Granite Quarry Mined Land Use Plan, Ex. G, at 7-8. The assessment did not faithfully follow the DEC Program Policy for Assessing and Mitigating Noise Impacts, as explained above.

84. The APA required actual noise studies to be conducted for a past, similar mine plan in at minimum

gs while

LA Group Public Comment Ex. F, at 8

(citing to the APA Notice of Incomplete Application (Apr. 27, 2000)).

85. If the APA would have required an adequate noise study, the significant noise pollution and resulting impact on the surrounding community could have been satisfactorily examined. The lack of a noise study represents one example of the unsettled questions of fact that should have garnered an adjudicatory hearing.

86. In addition to insufficient noise studies, legal access to the project site is also in question.

As discussed above, multiple commentors brought up that (1) there is uncertainty surrounding whether the Applicant has legal access to Stone Quarry Road, (2) there are clear claims that Stone Quarry Road has been abandoned, (3) there are questions of whether the road was ever a public highway to begin with, and (4) there is evidence that the public was granted an easement on the entirety of the road. See generally Petition Comments, Ex. H; Ex. I; Ex. R. Commenters the LA Group and C.J. Randall, amongst others, raised these issues and the APA failed to adequately address them.

87. Questions of the actual impacts of the project and whether there is legal access to the project site are the types of question of fact would be best addressed at an adjudicatory hearing.

D. Inadequate Environmental Impact Review was Completed by Respondent and Therefore an Adjudicatory Hearing was Required.

88. [w]hether an enviro


have garnered the same scrutiny. As discussed above, these required studies from 2000

PRAYER FOR RELIEF

Wherefore, the Petitioners respectfully demand appropriate judgment from this Court against Respondents as follows:

- a. -0075 to
Red Rock Quarry Associates, LLC, without holding an adjudicatory hearing was arbitrary, capricious, or contrary to law,
- b. An order vacating the permit in question and remanding the matter the APA to hold an adjudicatory hearing, and
- c. Any further relief that the Court may deem just and proper.

Dated: March 15, 2022
White Plains, NY

Respectfully submitted,
by:  _____
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Adirondack White Lake Association and
Protect the Adirondacks

STATE

COUNTY

PETER

1.

2.

Sworn
15th day


Notary

JEAN
NOTARY PUBLIC
No
Qualified
My Commission

J. COMSTOCK
STATE OF NEW YORK
CO6001221
in Warren County
in Expires 01-05-20₂₆