

**NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
COMMISSIONER'S DETERMINATION
OF
LEAD AGENCY UNDER ARTICLE 8
OF THE
ENVIRONMENTAL CONSERVATION LAW**

PROJECT: Proposal by the Ramapo Mountain Land Company, Inc. for a rezoning and to mine 500 million tons of stone with on-site processing, over a three hundred year period on approximately 321 acres of a 430-acre site located east of Torne Valley Road in the Town of Ramapo in Rockland County.

DISPUTING AGENCIES: Town of Ramapo Planning Board
Region 3 Office, New York State Department
of Environmental Conservation (DEC)

This decision to designate the Region 3 Office of DEC as lead agency for the conduct of the environmental review under the State Environmental Quality Review (SEQR) process is made pursuant to Article 8 of the Environmental Conservation Law and 6 NYCRR 617. I find that the impacts are primarily statewide and regional in nature and that DEC has the broadest jurisdiction to review this application.

The proposed project is a rezoning and a proposal to mine stone on approximately 321 acres of a 430-acre parcel in the Town of Ramapo in Rockland County.

The Region 3 Office of DEC has jurisdiction to issue or deny: a Mined Land Reclamation Law (MLRL) permit pursuant to 6 NYCRR Parts 420-425 and Article 23 of the ECL; an Article 15, Protection of Waters permit for any disturbance to Torne Brook and its tributaries; an Article 19 Air Pollution Control permit for on-site Processing of minerals; an Article 17, State Pollution Discharge Elimination System (SPDES) permit for on-site mineral materials washing; and an Article 17, SPDES/stormwater permit.

The Town of Ramapo Town Board has the jurisdiction to grant or deny a zoning change request, but is not a disputant here. The Town of Ramapo Planning Board has the jurisdiction to issue or deny a conditional use permit if the zoning law is amended.

(2)

In resolving a lead agency dispute, I am guided by the three criteria listed in order of importance in paragraph 6 NYCRR 617.6(b)(5)(v). These are: (1) whether the anticipated impacts of the action being considered are primarily of statewide, regional, or local significance (i.e., if such impacts are of primarily local significance, all other considerations being equal, the local agency involved will be lead agency); (2) which agency has the broadest governmental powers for investigation of impacts of the proposed action; and (3) which agency has the greatest capability for providing the most thorough environmental assessment of the proposed action.

The DEC Region 3 office has identified a number of potential environmental impacts associated with the proposed project, which are statewide and regional in nature. Some of the identified potential impacts have interstate implications as well.

The proposed mine may have an aesthetic impact on the heavily-traveled New York State Thruway and adjoining Palisades Interstate Park Commission lands. Both of these potential aesthetic impacts are of statewide significance.

DEC Region 3 has also raised the issue of potential impacts to water quality. Tributary streams of the Ramapo River, like Torne Brook which may be impacted by this mine, serve as a significant source of recharge for the Ramapo Valley Aquifer and public water supplies, including downstream water supply users in the State of New Jersey. These potential impacts go beyond the borders of the Town and are of regional and statewide significance.

DEC Region 3 has identified two inactive hazardous waste sites that adjoin the property, the closed Town of Ramapo landfill and the Torne Mountain Sand and Gravel Site. Both sites are listed in New York State's registry of Inactive Hazardous Waste Sites. DEC is actively participating in remediation efforts at the Town of Ramapo landfill. The proximity of these sites to the proposed mine raises statewide concerns.

Region 3 has also identified the presence of known dens of the timber rattlesnake in close proximity to the proposed mine. This species is afforded threatened protection status under New York State law. Potential impacts to this threatened species of wildlife are of statewide concern and favor DEC as lead agency.

In the general area of the site to be mined significant archaeological and historic resources have been documented. The State Historic Preservation Act has recognized archaeological and historic resources to be of statewide concern. The presence or absence of such resources must be determined through consultation with the New York State Office of Parks, Recreation and Historic Preservation.

Traffic impacts have local, regional and statewide significance. DEC contends that increased truck traffic will occur on local, county and State roads, including the New York State Thruway.

(3)

Potential impacts associated with dust, noise and blasting that were raised by DEC Region 3 staff will be local, regional and statewide in nature due to the mine's proximity to State park land.

I find that the potential impacts are primarily regional and statewide and favor DEC to serve as lead agency.

Under the next criterion, the breadth of jurisdiction, DEC is favored as lead agency. The applicant must obtain an amendment to the zoning law and conditional use permit from the Town of Ramapo Town Board and Planning Board, respectively. The Town Planning Board's jurisdiction, or ability to condition the activities on the site, is limited to recommendations on:

- routing of mineral transport vehicles on town roads;
- setbacks for property boundaries and public thoroughfares and rights-of-way;
- man-made or natural barriers, designed to restrict access as needed and in regard to type, length, height and location;
- dust control;
- hours of operation;
- whether mining is prohibited at the site; and
- enforcement of reclamation requirements contained in the MLRL permit issued by the Department.

DEC has exclusive authority under the MLRL to regulate all aspects of the project related to mining and reclamation. The breadth of the DEC's jurisdiction under the MLRL is superior to the Town Planning Board's conditional use permit. In resolving other lead agency disputes for mining projects, it has been recognized that the MLRL supersedes all local laws related to the regulation of mining. In addition, DEC has the authority to issue or deny:

- An Article 15, Protection of Waters permit;
- An Article 19, Air Pollution Control permit;
- An Article 17, State Pollution Discharge Elimination System (SPDES) permit; and
- An Article 17, SPDES/Stormwater permit.

The third criterion focuses on which agency has the greatest capability for providing the most thorough environmental assessment. Both agencies either possess the ability to conduct a thorough environmental assessment or could obtain such ability through consultants.

I conclude, based on the potential regional and statewide impacts, and DEC's broader jurisdictions under the MLRL, Protection of Waters, Air Pollution Control and SPDES, that the Region 3 Office of DEC should be lead agency for the SEQR review of the proposed Ramapo Mountain Company zoning amendment and mine.

(4)

This decision in no way limits the jurisdiction of the Town of Ramapo. The applicant must apply for and obtain all of the necessary Town approvals prior to commencing the action. I encourage the Town of Ramapo Town Board and Planning Board to identify all of its environmental concerns so that the Region 3 Office can consider them in the preparation and review of the environmental impact statement that the DEC Region 3 office indicates is necessary for this project. The Region 3 office should work closely with the Town of Ramapo Boards in the conduct of the environmental review process.

Dated: 11/17/97
Albany, New York

/s/
John P. Cahill
Commissioner

Distribution of Copies
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