

**STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
625 BROADWAY
ALBANY, NEW YORK 12233-1550**

In the Matter

- of -

the Application for Modification of the Mined Land Reclamation Permit Issued Pursuant to Title
27 of Environmental Conservation Law (ECL) Article 23 for the Wainscott Sand and Gravel
Mine

- by -

SAND LAND CORPORATION,

Applicant.

DEC Permit Application ID No. 1-4736-00851/00003

**RULING OF THE CHIEF ADMINISTRATIVE LAW JUDGE
ON THRESHOLD PROCEDURAL ISSUE**

January 26, 2018

Appearances:

- Thomas S. Berkman, Deputy Commissioner and General Counsel (David Rubinton, Assistant Regional Attorney, of counsel), for staff of the Department of Environmental Conservation.
- Matthews, Kirst & Cooley, PLLC (Brian E. Matthews of counsel), for applicant Sand Land Corporation.
- New York State Assemblyman Fred W. Thiele, Jr., on his own behalf.
- Devitt Spellman Barrett LLP (David H. Arntsen of counsel), for the Town of Southampton.
- Tooher & Barone, LLP (Maeve M. Tooher and John L. Barone of counsel), for Bridgehampton Road Races, LLC.
- Jeffrey L. Bragman, P.C. (Jeffrey L. Bragman of counsel), for Group for the East End and Citizens Campaign for the Environment.
- Lazer, Aptheke, Rosella & Yedid, P.C. (Zachary Murdock of counsel), for Joseph Phair, Margot Gilman, and Amelia Doggwiler.
- Andrea Spilka, for Southampton Town Civic Coalition.
- Elena M. Loreto, for Noyac Civic Council, Inc.

**RULING OF THE CHIEF ADMINISTRATIVE LAW JUDGE
ON THRESHOLD PROCEDURAL ISSUE**

Environmental Conservation Law (ECL) § 23-2703(3) prohibits the Department of Environmental Conservation (Department) from processing mining permits for mines located in towns such as the Town of Southampton, Suffolk County, where the county, with a population of over one million people, draws its primary drinking water for a majority of its residents from a designated sole source aquifer, and the town has a local law prohibiting mining in the town. In this permit hearing proceeding pursuant to 6 NYCRR part 624 (Part 624), applicant Sand Land Corporation seeks to modify its current ECL article 23 mined land reclamation permit to expand its sand and gravel mine located in the Town of Southampton to mine 4.9 more acres and excavate 40 feet deeper than previously authorized. On the current record, applicant has not established that the proposed mine expansion is authorized under the Town's local zoning laws. Accordingly, this matter is adjourned pending submission of proof adequate to establish that applicant's proposed mine expansion is authorized under the Town's local law.

I. FACTS AND PROCEDURAL BACKGROUND

A. Background

Applicant Sand Land Corporation (Sand Land or applicant) currently mines an approximately 50-acre site it owns at 585 Middle Line Highway, Bridgehampton, Town of Southampton, Suffolk County (site). The facility, known as Wainscott Sand and Gravel, is presently authorized pursuant to a Mined Land Reclamation Law (MLRL) permit issued by the Department to mine sand and gravel from 31.5 acres of the 50-acre site to a depth of 160 feet above mean sea level, which is 60 feet below the surface elevation at 220 feet (see Permit, effective Nov. 5, 2013, NYSDEC OHMS Document No. 201569946-00003.D¹; see also Revised Mined Land Use Plan, received Nov. 1, 2013, OHMS Doc. No. 00029.PP). Applicant's current permit is due to expire November 4, 2018 (see id.).

The mine originally began operation by Sand Land's predecessor in interest, Bridgehampton Sand & Gravel, Inc., in the early 1960s pursuant to approval by the Zoning Board of Appeals (ZBA) of the Town of Southampton (Town) (see Matter of Sand Land Corp. v Zoning Bd. of Appeals of Town of Southampton, 2014 WL 1256070, at *1 [Sup Ct, Suffolk County 2014], revd on other grounds 137 AD3d 1289 [2d Dept], lv denied 28 NY3d 906 [2016]). At the time, the site was zoned G-Industrial, a district within which mining was allowed pursuant to permit (see id.).

In 1972, the Town changed the zoning classification for the subject parcel and the surrounding area from a G-Industrial District to a CR-200 County Residence District (see id. at *2; Town of Southampton Zoning Map). Under the Town's zoning laws, commercial and industrial uses, such as mining, are prohibited in the CR-200 District (see Town of Southampton Code [Town Code] §§ 330-6[A], 330-10[E]).

After the adoption of the State's Mined Land Reclamation Law (ECL article 23, title 27, effective April 1, 1975), applicant's predecessors in interest operated the mine pursuant to MLRL permits issued by the Department. In 1985, applicant's predecessor, Bridgehampton Material and Heavy Equipment Corp. (BMHE), obtained a MLRL permit to increase mining from 20 acres to 31.5 acres of the 50-acre lot (see Permit, effective Jan. 23, 1985, OHMS Doc. No. 00029.D). In 1988, BMHE renewed its MLRL permit (see Permit, effective Jan. 23, 1988, OHMS Doc. No. 00029.E).

In 1991, the MLRL was amended and subdivision 3 of ECL 23-2703 was adopted (see L 1991, ch 166, § 228). That same year, BMHE's MLRL permit was renewed (see Permit, effective Oct. 15, 1991, OHMS Doc. No. 00029.G).

¹¹ Each document is marked "NYSDEC OHMS Document No. 201569946" followed by a hyphen and a five-digit number (see Exhibit List attached). Here after, documents will be referenced as "OHMS Doc. No." followed by the five-digit number. For exhibits that contain more than one document, the five-digit number is followed by a letter that identifies the specific document.

In 1998, the permit to mine 31.5 acres of the 50-acre site was renewed and transferred to applicant (see Permit, effective Oct. 6, 1998, OHMS Doc. No. 00029.L). Applicant's permit was renewed two more times, in 2003 and 2008, respectively (see Permit, effective Oct. 9, 2003, OHMS Doc. No. 00029.N; Permit, effective Nov. 3, 2008, OHMS Doc. No. 00029.P).

In 2011, applicant obtained a certificate of occupancy from the Town's Chief Building Inspector stating that the use of the site for the operation of a sand mine, among other uses, was a pre-existing use (see Certificate of Occupancy, July 19, 2011, OHMS Doc. No. 00003.A).² In his determination accompanying the certificate, the Building Inspector concluded that the entire 50-acre site was subject to the pre-existing use as a sand mine (see Determination, July 18, 2011, OHMS Doc. No. 00019, Exh A).

Thereafter, applicant's current renewal permit was issued by the Department in 2013 (see Permit, effective Nov. 5, 2013, OHMS Doc. No. 00003.D). As before, the renewal permit only allowed mining on 31.5 acres of the 50-acre site, with no mining below the final grade of 160 feet above mean sea level except for a drainage depression (see id.; Mining Permit Application, Sept. 23, 2013, OHMS Doc. No. 00029.S).

B. Permit Modification Application

In January 2014, applicant filed with the Department an application to modify its current permit to allow for a vertical expansion of its sand and gravel operation (see Mining Permit Application, dated Jan. 15, 2014, OHMS Doc. No. 00003.E). Applicant sought to mine 4.9 more acres than previously approved, and to excavate the floor of the mine from the previously approved depth of 160 feet above mean sea level to 120 feet above mean sea level (see Modification Summary, id.: see also Site Plan, revised Feb. 10, 2014, OHMS Doc. No. 00003.G). According to the application materials, after lowering the mine floor by 40 feet, the depth to groundwater would be 100 feet (see Modification Summary, id.).

Department staff notified applicant that a permit modification to expand a mine beyond its previously-approved life of mine boundaries is considered a new application and classified as a "major" project pursuant to the Uniform Procedures Act regulations at 6 NYCRR part 621 (Part 621), and requested further information from applicant (see Letter from Mark Carrara, Deputy Permit Administrator, to John Tintle, Sand Land Corp., Jan. 27, 2014, OHMS Doc. No. 00029.Z). Included in the information sought by the Department was a statement explaining that mining is not prohibited at the site (see id.). In response, applicant submitted the July 2011 certificate of occupancy and noted that its use of the site as a sand and gravel mine

² Although other uses identified in the 2011 certificate of occupancy were successfully challenged before the ZBA and in court, the determination that sand mining was a legal pre-existing non-conforming use was affirmed by the ZBA and confirmed by the Appellate Division on judicial review (see Matter of Sand Land Corp., 137 AD3d at 1291).

was clearly defined (see Letter from Title to Carrara, Feb. 11, 2014, OHMS Doc. No. 00029.CC). After Department staff informed applicant that a statement explaining that mining is not prohibited at the site was still required (see Letter from Carrara to Tintle, March 13, 2014, OHMS Doc. No. 00029.DD), applicant filed a letter simply stating that “[m]ining is not a prohibited use in the Town of Southampton” (Letter from Tintle to Carrara, March 14, 2014, OHMS Doc. No. 00003.H).

The Department thereafter assumed lead agency status under the State Environmental Quality Review Act (ECL art 8 [SEQRA]). The Department determined that the permit modification application was a Type I action under SEQRA and, after conducting a coordinated review with other involved agencies, issued a negative declaration (see Negative Declaration, April 21, 2014, OHMS Doc. No. 00029.LL).

The Department issued a notice of complete application on July 2, 2014 (see OHMS Doc. No. 00029.MM) and conducted a legislative public comment hearing on the application pursuant to 6 NYCRR 621.8 on November 19, 2014 (see Notice of Public Comment Period and Notice of Public Statement Hearing, Oct. 29, 2014, OHMS Doc. No. 00005.F). The public comment period closed on November 21, 2014 (see id.).

On March 25, 2015, applicant filed with the Commissioner a five-day demand for decision pursuant to ECL 70-0109(3)(b) and 6 NYCRR 621.10(b) (see Letter from David E. Eagan, Esq., to Commissioner, March 25, 2015, OHMS Doc. No. 00005.G). On April 3, 2015, Executive Deputy Commissioner Marc S. Gerstman issued a notice of permit denial (see OHMS Doc. No. 00002).³ The Executive Deputy Commissioner cited multiple grounds under the MLRL and SEQRA for denying the permit. In addition, the Executive Deputy Commissioner noted that the notification to the Town of Southampton required by ECL 23-2703(3) and ECL 23-2711(3) had not been provided, and directed that Department staff immediately transmit the notice to the Town and provide the Town 30 days to respond (see id. unnumbered first and third pages).

Citing 6 NYCRR 621.11(g), applicant requested a hearing on the permit denial (see Letter from Eagan to Roger Evans, Regional Permit Administrator, April 23, 2015, OHMS Doc. No. 00001). The matter was referred to the Department’s Office of Hearings and Mediation Services for permit hearing proceedings pursuant to 6 NYCRR part 624 (Part 624), and the undersigned Chief Administrative Law Judge (ALJ) was assigned to preside (see Letter from Chief ALJ McClymonds to Eagan, May 5, 2015, OHMS Doc. No. 00006).

³ Subsequent to issuing the notice of permit denial, Executive Deputy Commissioner Gerstman became Acting Commissioner. Accordingly, Acting Commissioner Gerstman delegated the Commissioner’s decision making authority in this Part 624 permit hearing proceeding to Assistant Commissioner Jared Snyder by memorandum dated October 16, 2015. The memorandum delegating decision making authority to Assistant Commissioner Snyder was forwarded to the parties to this proceeding under cover of a memorandum dated October 20, 2015, from Assistant Commissioner Louis A. Alexander to the service list.

Meanwhile, Department staff sent a letter to the Town dated April 21, 2015, asking the Town to respond in writing “whether or not mining is prohibited in the expansion area of the proposed sand mine” at the site (Letter from Kyle P. Collins, Town Planning and Development Administrator, to Carrara, May 20, 2015, Department Staff’s Reply Brief, Exh A, OHMS Doc. No. 00039 [quoting Carrara Letter dated April 21, 2015] [Collins Letter]). In response, the Town noted the site’s residential zoning (see id. at unnumbered first page). The Town also noted that the site is located over a federally-designated sole source aquifer, and in the Town’s Aquifer Protection Overlay District, a Critical Environmental Area (CEA) designed by Suffolk County, and a Special Groundwater Protection Area designated by New York State (see id. at first and second pages). The Town stated that “[t]he Southampton Town Code prohibits mining activities within all zoning districts, but acknowledges that certain nonconforming uses, if they are established to pre-existing zoning [sic], are allowed to continue and even expand under certain circumstances pursuant to Town Code §330-167B” (id. at second page). The Town noted that applicant’s July 2011 certificate of occupancy allowed the use of the premises for the operation of a sand mine (see id.). The Town also noted, however, that “the DEC is treating Sand Land’s application not as an ‘expansion,’ but rather as a ‘new’ mine based upon the notice provisions of ECL 23-2711 and 23-2703(3). If that is the case, the Town of Southampton reiterates that new mines are prohibited in all zoning districts, and as the premises is located within the Town’s Aquifer Protection Overlay District pursuant to Article XIII of the Town Code, the Town respectfully requests that a plan be prepared and implemented that will expedite the reclamation and restoration of the premises so that it can be used for a conforming residential purposes” (id. at third page [emphasis in original]).

C. Part 624 Permit Hearing Proceedings

A notice of deadline for petitions for party status, public legislative hearing, and issues conference was issued July 31, 2015 (see OHMS Doc. No. 00007). The notice was published in the Department’s electronic Environmental Notice Bulletin on August 5, 2015 (see OHMS Doc. No. 00009), and in the Suffolk County edition of Newsday on August 10, 2015 (see OHMS Doc. No. 00010). The notice established September 2, 2015 as the deadline for the filing of petitions for party status, and authorized applicant and Department staff to submit written responses to any petitions by September 30, 2015. The notice also scheduled the legislative hearing for October 20, 2015, and the issues conference to commence on October 21, 2015. Written comments were due by October 23, 2015. Upon the consent of the parties, the deadlines for filing petitions and responses were extended to September 9, 2015, and October 7, 2015, respectively.

Timely petitions for full party status were filed by New York State Assemblyman Fred W. Thiele, Jr. (OHMS Doc. No. 00011); the Town of Southampton (OHMS Doc. No. 00012); Bridgehampton Road Races, LLC (BHRR) (OHMS Doc. No. 00013); Group for the East End (GEE) and Citizens Campaign for the Environment (CCE), jointly (OHMS Doc. No. 00014); and Joseph Phair, Margot Gilman, and Amelia Doggwiler, jointly (the Neighbors) (OHMS Doc. No. 00015). Timely petitions for amicus party status were filed by the Noyac

Civic Council, Inc. (NCC) (OHMS Doc. No. 00016), and the Southampton Town Civic Coalition (STCC) (OHMS Doc. No. 00017).

Timely written responses to the petitions were filed by Department staff (OHMS Doc. No. 00018) and applicant (OHMS Doc. Nos. 00019 [Opposition to Petitions of BHRR, et al.]; 00020 [Opposition to Petition of Town of Southampton]; 00021 [Opposition to Petition of Assemblyman Thiele]; 00022 [Opposition to Petition of STCC]; and 00023 [Opposition to Petition of NCC]).

The public legislative hearing was convened as notice at 5:00 PM on October 20, 2015, at the Bridgehampton Community House, 2357 Montauk Highway, Bridgehampton, New York. Twenty-one speakers spoke at the hearing, including six elected officials. The hearing adjourned at 6:14 PM. Written comments were received at the legislative hearing and additional written comments were filed with the ALJ through the October 23, 2015 deadline.

The issues conference convened at the Bridgehampton Community House at 10:00 AM on October 21, 2015 and continued on October 22, 2015, concluding at 11:46 AM. Department staff, applicant, and all petitioners appeared or were represented at the issues conference.

After the issues conference, the administrative record on applicant's permit application, including the record before the Executive Deputy Commissioner and the administrative record on the Wainscott mine, was compiled and made available to the parties (see Memorandum from Chief ALJ McClymonds to Service List, Feb. 1, 2016; see also Issues Conference Exhibit List, attached). Closing briefs and replies were authorized. After several extension requests by the parties, the deadline for closing briefs was set for April 11, 2016. Timely closing briefs or memoranda were filed by applicant (OHMS Doc. No. 00030); Assemblyman Thiele (OHMS Doc. No. 00031); the Town of Southampton (OHMS Doc. No. 00032); BHRR (OHMS Doc. Nos. 00033 and 00034); GEE/CCE (OHMS Doc. No. 00035); the Neighbors (OHMS Doc. No. 00036); NCC (OHMS Doc. No. 00037); and STCC (OHMS Doc. No. 00038).

After several extension requests by the parties, the deadline for reply briefs was set for August 22, 2016. Timely reply briefs were filed by Department staff (OHMS Doc. No. 00039); applicant (OHMS Doc. Nos. 00040 [Reply to BHRR, et al.]; 00041 [Reply to Assemblyman Thiele]; and 00042 [Reply to Amicus Parties]); Town of Southampton (OHMS Doc. No. 00043); BHRR (OHMS Doc. No. 00044); NCC (OHMS Doc. No. 00045); STCC (OHMS Doc. No. 00046); and the Neighbors (OHMS Doc. No. 00047). I authorized the filing of sur-reply briefs by Department staff, the Town, BHRR, and the Neighbors. Each party except Department staff filed sur-reply briefs by the October 7, 2016 deadline (see OHMS Doc. Nos. 00048 [Town of Southampton]; 00049 [BHRR]; and 00050 [Neighbors]). Department staff opted not to file a sur-reply.

On October 28, 2016, BHRR filed a motion for discovery pursuant to 6 NYCRR 624.7(c)(4). On November 9, 2016, the Town of Southampton joined the motion and applicant opposed. I denied BHRR's request to file a reply in support of its motion on November 18, 2016.

II. DISCUSSION

In their petition for full party status, the Neighbors raise a threshold issue concerning the applicability of ECL 23-2703(3) to this proceeding. In post-issues conference briefing, the Town of Southampton joins the Neighbors' arguments.

A. Standards of Review

Among the purposes of a Part 624 issues conference is to determine whether disputed issues of fact raised by an applicant and proposed intervenors require adjudication (see 6 NYCRR 624.4[b][2][iii], [5][ii]). The issues conference is also used to determine legal issues whose resolution is not dependent on facts that are in substantial dispute (see 6 NYCRR 624.4[b][2][iv], [5][iii]), and to decide pending motions (see 6 NYCRR 624.4[b][2][v], [5][iv]). In Part 624 proceedings, applicant bears the ultimate burden of proving that its application meets all applicable laws and regulations administered by the Department (see 6 NYCRR 624.9[b][1]).

B. Statutory and Regulatory Background

The MLRL is a comprehensive legislative scheme that broadly authorizes the Department to regulate the mining industry in New York (see Matter of Gernatt Asphalt Prods. v Town of Sardinia, 87 NY2d 668, 680 [1996]). Among its legislative goals was the replacement of an existing patchwork of local regulatory ordinances with State-wide standards and uniform regulations (see id. at 680-681).

In furtherance of these goals, the 1991 amendments to the MLRL amended the supersession clause of the law (see L 1991, ch 166, § 228, amending ECL 23-2703[2]). The MLRL supersession clause, as amended in 1991, provides:

“For the purposes stated herein, this title shall supersede all other state and local laws relating to the extractive mining industry; provided, however, that nothing in this title shall be construed to prevent any local government from . . . enacting or enforcing local zoning ordinances or laws which determine permissible uses in zoning districts”

(ECL 23-2703[2][b]). Thus, the MLRL supersession clause prevents municipalities from enacting local laws imposing mining and reclamation standards that are stricter than the State-wide standards under the MLRL (see Matter of Garnett Asphalt, 87 NY2d at 682).

Although the MLRL supersession clause prevents a municipality from regulating mining within its borders, it expressly preserves a municipality's authority to regulate permissible uses of land within the municipality (see id. at 682-683). Thus, the MLRL does not preempt a town's authority to determine that mining should not be a permitted use of land within the town, or to enact amendments to the local zoning ordinance in accordance with that determination (see id. at 683). A town's authority includes not only the power to prohibit the development of new mines (see id. at 684), but to impose reasonable restrictions limiting the expansion of and eventually extinguishing prior nonconforming mining uses within the town (see Matter of Sand Land Corp., 137 AD3d at 1291-1292; Matter of Syracuse Aggregate Corp. v Weise, 51 NY2d 278, 287 [1980]; Matter of 550 Halstead Corp. v Zoning Bd. of Appeals of Town/Vil. of Harrison, 1 NY3d 561, 562 [2003] [Because nonconforming uses are viewed as detrimental to zoning schemes, public policy favors their reasonable restriction and eventual elimination.]).

The 1991 amendments also modified the subdivision at issue in this matter. Subdivision 3 of ECL 23-2703, as amended in 1991, provides:

“No agency of this state shall consider an application for a permit to mine as complete or process such application for a permit to mine pursuant to this title, within counties with a population of one million or more which draws its primary source of drinking water for a majority of county residents from a designated sole source aquifer,⁴ if local zoning laws or ordinances prohibit mining uses within the area proposed to be mined.”

The 1991 amendments also enacted the procedures for notifying the chief administrative officer (CAO) of the affected municipality of new applications for mining permits, and inquiring whether local laws or ordinances prohibit mining within the area proposed to be mined (see ECL 23-2711[3]). The CAO's determination that a proposed mine is prohibited under local law is to be conveyed to the Department accompanied by supporting documentation justifying the determination on an individual basis (see ECL 23-2711[3][a]).

For mining permit applications for mines located outside Long Island, the Department's policy is to continue processing the application notwithstanding a CAO's determination that mining is prohibited (see Technical Guidance Memorandum MLR92-2, Implementation of the New Mined Land Amendments in Regard to Permit Processing, May 4, 1992 [MLR92-2], ¶ 5[2][1], available at <http://www.dec.ny.gov/lands/5922.html>). If a permit is issued, it will contain a statement that issuance of a DEC permit does not relieve the applicant of the need to obtain any required local permits or approvals, and a notation that the local

⁴ A “sole source aquifer” is an aquifer system that the United States Environmental Protection Agency (USEPA), pursuant to the federal Safe Drinking Water Act of 1974 (Public Law 93-523), has designated as the sole or principal drinking water source for an area and which, if contaminated, would create a significant hazard to public health (see ECL 1-0303[24]).

government has declared that mining is prohibited at this location (see id.). This policy avoids involving the Department in matters of dispute between local government and the applicant.

For permit applications for mines located on Long Island,⁵ however, subdivision 3 statutorily modifies the Department's policy. As a result of subdivision 3, if the Department receives a determination of local prohibition from the local government CAO, the Department suspends the permit review process, declares the application incomplete, and notifies the applicant that processing cannot go forward unless the local prohibition is removed (see id., ¶ 4). The Department will suspend application review at any time during the permit review process, including during permit hearing proceedings under Part 624, until the applicant demonstrates that no valid local zoning law or ordinance that prohibits mining at the project site exists (see Matter of Seaboard Contracting & Materials, Inc., Supplemental Decision of the Commissioner, July 22, 1992, at 2-3).

Finally, the 1991 amendments to the MLRL provide that a proposed mine of five acres or greater in total acreage, regardless of the length of the mining period, is a "major" project under the Uniform Procedures Act (ECL art 70 [UPA]) (see ECL 23-2711[3][c]). Major projects include applications to expand an existing mine beyond its previously approved boundaries where the previously approved mine is already over five acres (see Major and Minor Projects, Mined Land Reclamation Permits, available at <http://www.dec.ny.gov/lands/24995.html>). Moreover, the 1991 amendments expressly provide that the rules and regulations adopted by the Department to implement the UPA govern permit applications, renewals, modifications, suspensions, and revocations under the MLRL (see ECL 23-2711[13]). Where, as here, a renewal application proposes mining beyond the previously approved mining boundary and deeper than previously approved and, therefore, involves a material change in permitted activities, the application is treated as one for a new permit under the UPA (see ECL 70-0115[2][b]; 6 NYCRR 621.11[h][1]). As noted in the Notice of Permit Denial, treating a mining permit renewal as a new application triggers the notification procedures under ECL 23-2711, among other reviews.

C. Analysis

The Neighbors and the Town of Southampton argue that because mining is prohibited in the CR-200 District in which the subject mine is located, ECL 23-2703(3) applies and any further processing of applicant's application is barred by the statute. The Neighbors further assert that the applicability of subdivision 3 of ECL 23-2703 is an adjudicable issue.

In response, applicant argues that subdivision 3 applies only to new mines. Applicant contends that its application only seeks renewal of a permit for a lawful pre-existing nonconforming use, which are continued under the Town's local zoning (citing Southampton Town Code § 330-115[A]). Accordingly, applicant argues that subdivision 3 does not apply to its application.

⁵ As discussed further below, ECL 23-2703(3) applies to towns located in Nassau and Suffolk Counties.

Contrary to applicant's argument, subdivision 3 of ECL 23-2703 and ECL 23-2711 apply to applicant's present MLRL permit modification application, at least insofar as those statutory provisions require an inquiry into the status of applicant's proposal under local law and a bar on permit processing until that inquiry is completed in applicant's favor. It is undisputed that the aquifer system underlying Nassau and Suffolk Counties is a sole source aquifer designated by the USEPA (see USEPA, Aquifers Underlying Nassau and Suffolk Counties, Determination, June 12, 1978, 43 Fed Reg 26611 [1978]). It is also undisputed that Suffolk County has a population of more than one million residents, and that more than 50 percent of the drinking water for Suffolk County is supplied by the aquifer system (see e.g. *id.*; USEPA, Nassau-Suffolk Aquifer System, Support Document, May 1975, at 6, available at <http://www.epa.gov/region2/water/aquifer/nasssuff/nassau.htm>; see also MLR92-2, ¶ 4).

With respect to the permit applications to which subdivision 3 applies, the express terms of subdivision 3 refer to an application for a "permit to mine." Neither the MLRL specifically, nor ECL article 23 generally provides a definition of "permit to mine." However, MLRL permits are permits under the UPA (see ECL 23-2711[13]; ECL 70-0107[3][i]). The UPA defines "permits" as "any permit, certificate, license or other form of department approval, modification, suspension, revocation, renewal or recertification issued in connection with any regulatory program" governed by the UPA (ECL 70-0105[4]). Thus, applying the UPA definition of permit, subdivision 3 applies not only to new applications for a mining permit, but to any application to renew or modify a permit to mine. Nothing in subdivision 3 limits its application to only new permits to mine.

Moreover, as noted above, an application for renewal or modification of an existing permit that may involve a material change in the permitted activity is a new application under the UPA (see ECL 70-0115[2][b]). Thus, even accepting applicant's argument that subdivision 3 only applies to new applications (which I do not), renewal or modification applications involving a material change in the permitted activities are new applications under the UPA and, therefore, subject to subdivision 3.

ECL 23-2711 provides the procedures for processing a new mining permit, including the procedures for obtaining a determination from the local CAO concerning the legality of mining under local law. Again, as noted above, under the UPA, an application for renewal or modification of an existing permit that may involve a material change in the permitted activity is a new application (see ECL 70-0115[2][b]). Thus, applying the plain terms of the MLRL and the UPA, ECL 23-2711 applies not only to new applications, but to applications to renew or modify an existing permit when the renewal or modification may involve a material change in permitted activity.

The conclusion that subdivision 3 and ECL 23-2711 apply to applications to renew or modify an existing permit when the renewal or modification involves material changes in the previously permitted activity is consistent with and implements the legislative purposes underlying the MLRL supersession clause and ECL 23-2703(3). The manifest purpose of the

limitation to the MLRL supersession clause is to preserve the power of municipalities to prohibit mining as a land use within their boundaries (see Matter of Garnett Asphalt, 87 NY2d at 682-683). A municipality's authority to prohibit mining includes not only the power to prohibit the development of new mines (see id. at 684), but the power to impose reasonable restrictions to limit the expansion of and eventually extinguish prior nonconforming mining uses within the municipality (see Matter of Sand Land Corp., 137 AD3d at 1291-1292; Matter of Syracuse Aggregate Corp., 51 NY2d at 287; Matter of 550 Halstead Corp., 1 NY3d at 562). The manifest purpose of subdivision 3 is to prohibit the Department from processing mining permit applications in the counties in which subdivision 3 applies until a definitive determination about the legality of the mining proposal is provided by the affected municipality. A proposal to materially expand a pre-existing mine may implicate a municipality's local laws limiting the expansion of or eliminating nonconforming mining uses. Accordingly, interpreting ECL 23-2711 and subdivision 3 as applying to mining permit renewal or modification applications is consistent with and implements the legislative goals of protecting a municipality's authority to limit and possibly eliminate nonconforming land uses within its boundaries, and requiring a definitive determination regarding the legality of the proposal to expand a mine before the Department processes the mining application.

Here, applicant's application seeks a material change in the previously permitted activities at its mine. Applicant's proposal to excavate 4.9 more acres and 40 feet deeper than its previously-approved life of mine limits would have the effect of increasing the volume of its mine by more than two-thirds. Thus, Department staff correctly treated applicant's expansion proposal as a new application under the UPA. The Executive Deputy Commissioner also correctly noted that applicant's expansion proposal triggered the inquiry required under ECL 23-2711.⁶

Although ECL 23-2703(3) and ECL 23-2711 are applicable to applicant's permit modification application, whether applicant's proposed mine expansion is legal under the Town's zoning laws cannot be determined on the current record. The Town's response to the ECL 23-2711 inquiry does not provide a definitive determination regarding the legality of applicant's mine expansion proposal (see Collins Letter, Department Staff's Reply Brief, Exh A, OHMS Doc. No. 00039). The Town's response notes generally that legal nonconforming uses are continued under local zoning (see Town Code § 330-115). The Town also notes that non-conforming uses may be expanded under certain circumstances pursuant to Town Code § 330-167B. Review of the Town Code reveals that the enlargement or extension of non-conforming uses are prohibited except as provided in Town Code § 330-167B (see Town Code § 330-116). Town Code § 330-167B, in turn, requires a variance from the ZBA for extensions of non-conforming uses.

⁶ Applicant argues that the applicability of ECL 23-2703(3) was not raised in the denial letter. However, in the notice of denial, the Executive Deputy Commissioner concluded that the notice to the Town required by ECL 23-2703(3) and ECL 23-2711 had not been provided, and directed that the required notice be given to the Town. Accordingly, by necessary implication, the Executive Deputy Commissioner concluded correctly that ECL 23-2703(3) applied to this modification application.

Aside from describing the general parameters of the Town Code regarding the expansion of non-conforming uses, however, the Town's response does not provide a particular determination, supported by documentation, on an individual basis regarding applicant's expansion proposal (see ECL 23-2711[3][a]). The Town's response does not clearly determine whether applicant's proposal to increase the volume of its mine by over two-thirds is a continuation of a nonconforming use under Town Code § 330-115, or an expansion requiring a variance under Town Code §§ 330-116 and 330-167B. Further, if applicant's expansion is an expansion under Town Code §§ 330-116 and 330-167B, the Town's response does not indicate whether the ZBA has issued a variance authorizing the proposed expansion. Thus, the Town's response does not provide a definitive determination that mining within the proposed mine expansion area is legal under local law. The Town's response does, however, raise reasonable doubt concerning whether applicant's proposed mine expansion is legal under the Town Code.

In support of its assertion that the proposed mine expansion is authorized, applicant relies on the 2011 certificate of occupancy declaring that the operation of a sand mine at the 50-acre site was a pre-existing use. However, at the time the 2011 certificate of occupancy was issued and affirmed in relevant part by the ZBA, applicant only had approval to mine 31.5 acres of the 50-acre site to a depth of 60 feet below grade. Both the renewal permit issued in 2008 before the 2011 certificate, and the renewal permit issued in 2013 after the 2011 certificate, authorized mining on only 31.5 acres of the 50-acre site. Nothing in the record indicates that applicant's current proposal to mine an additional 4.9 acres and to excavate 40 feet deeper than previously approved was before either the Town Building Inspector or the ZBA when the 2011 certificate was issued and affirmed in relevant part. Accordingly, it cannot be concluded on the current record that the 2011 certificate of occupancy provides a definitive determination that applicant's proposed mining expansion is authorized under the Town Code.

In support of its argument that subdivision 3 only applies to "new" mines, applicant argues that nine mining sites in the Town of Southampton, including applicant's, hold MLRL permits from the Department "all of which have been renewed and/or modified since 1991" (Sand Land Corp., Reply Brief in Further Opposition to Petitions Seeking Full Party Status of BHRR, et al., OHMS Doc. No. 00040, at 41). In support of its argument, applicant provides information downloaded from the Department's online mining database (see id., Exh A). To the extent applicant relies on the renewal permits issued to it and its predecessor in interest since 1991, each renewal authorized the mining of 31.5 acres of the 50-acre site to a depth of 60 feet below grade. None of the renewals for applicant's mine issued since 1991, however, involved a proposal to materially and significantly expand operations, such as is presently proposed, so as to trigger the inquiry under ECL 23-2711. With respect to the remaining mines listed on Exhibit A, nothing indicates that the referenced renewals involved applications to significantly modify mining operations at those sites (the column designated "Last Modified Date" signifies the last time the record was modified, not the last time the mine was modified). Even assuming without deciding that the Department issued modification permits for any mine without an ECL 23-2711 inquiry, the Department is not estopped from correctly applying ECL 23-2703(3) and ECL 23-2711 in this case.

Finally, to the extent the Neighbors argue that the legality of applicant's proposed mine expansion under the Town Code is adjudicable in this Part 624 permit hearing proceeding, the argument is mistaken. The Department lacks the jurisdiction to determine issues arising under local law (see Matter of Department of Sanitation of City of New York [Spring Creek Park], Interim Decision of the Executive Deputy Commissioner, June 14, 2006, at 8 [and cases cited therein]). Instead, issues concerning whether applicant's proposed mine expansion is authorized under the Town Code will have to be resolved by the appropriate local authorities, and subject to judicial review, if necessary (see id.).

III. CONCLUSION AND RULING

Petitioners Town of Southampton and the Neighbors have raised a threshold issue of law that may be resolved without adjudication of facts in substantial dispute (see 6 NYCRR 624.4[b][2][iv], [5][iii]). In this proceeding, applicant's proposal to expand its mining operation to mine 4.9 more acres and to excavate 40 feet deeper than previously approved constitutes a material change in permitted activities and, therefore, is a new application under the UPA. Accordingly, pursuant to ECL 23-2711, applicant's application to modify its permit triggers an inquiry into the legality of its proposed mine expansion under the Town Code. Based on the current record, however, the legality of applicant's proposed mine expansion under local law has not been sufficiently established.

Moreover, because applicant's mine is located in a county with a population of one million or more which draws its primary source of drinking water for a majority of county residents from a designated sole source aquifer, ECL 23-2703(3) prohibits the Department from further processing applicant's mining permit application until the legality of applicant's proposed mine expansion under Town law is definitively established by the appropriate local authorities.

Accordingly, this permit hearing proceeding is suspended and adjourned without date pending submission of a definitive determination of the Town's CAO, with supporting documentation from the appropriate Town authorities, that applicant's proposed mine expansion is legal under the Town Code.

I reserve decision on the remaining issues for adjudication and petitions for party status, as well as BHRR's motion for discovery, until sufficient proof of the legality of applicant's proposed mine expansion under local law is provided for the record.

IV. APPEALS

Pursuant to 6 NYCRR 624.8(d)(2), a ruling on the merits of any legal issue made as part of an issues ruling is appealable to the Commissioner as of right. Although the regulations provide that appeals must be filed in writing within five days of the disputed ruling (see 6 NYCRR 624.6[e][1]), the period for filing appeals is hereby extended. Any appeals are

due by 4:00 PM on Friday, February 23, 2018. Replies are authorized and are due by 4:00 PM on Friday, March 9, 2018.

The original and two copies of each appeal and reply thereto must be filed with Assistant Commissioner Jared Snyder (Attention: Louis A. Alexander, Assistant Commissioner for Hearings and Mediation Services), at the New York State Department of Environmental Conservation, 625 Broadway (14th Floor), Albany, New York 12233-1010. In addition, one copy of each submittal must be sent to the undersigned, Department staff and applicant at the same time and in the same manner as the submittals are sent to the Assistant Commissioner. Service of papers on the Assistant Commissioner, Department staff, applicant and the undersigned by electronic mail is permitted provided conforming hard copies are sent by regular mail and post marked by the due date. Service of papers by facsimile transmission (FAX) is not permitted, and any such service will not be accepted.

All papers shall be served upon the remaining parties on the service list by methods agreed to by the parties.

_____/s/_____
James T. McClymonds
Chief Administrative Law Judge

Dated: January 26, 2018
Albany, New York

Attachment: Issues Conference Exhibit List

Cc: Louis A. Alexander, Assistant Commissioner for Hearings and Mediation Services

To: Attached Service List

**STATE OF NEW YORK
DEPARTMENT OF ENVIROMENTAL CONSERVATION**

MATTER OF SAND LAND CORP.

DEC Permit Application ID No. 1-4736-00851/00003

ISSUES CONFERENCE EXHIBIT LIST

Updated Jan. 26, 2016

OHMS Document No. 201569946-	Description	ID	Rec'd	Offered By	Notes
00001	Permit Hearing Request (April 23, 2015)	✓	✓		
00002	Notice of Permit Denial (April 3, 2015)	✓	✓		Included in Exec. Dep. Comm. file
00003	<p style="text-align: center;"><u>Application Documents</u></p> <p>Includes: A. 2011-07-19, Certificate of Occupancy; B. 2012-04-13, SoundSense, LLC, Acoustic Report; C. 2013-08-19, County of Suffolk, Water Sampling Report; D. 2013-11-05, Mined Land Reclamation Renewal Permit; E. 2014-01-15, Mining Permit Application, with Organizational Reports and Mined Land Use Plan; F. 2014-02-03, Full Environmental Assessment Form (submitted by Sand Land Corp. [SLC]); G. 2014-02-10, Site Plan; and</p>	✓	✓		

OHMS Document No. 201569946-	Description	ID	Rec'd	Offered By	Notes
	H. 2014-03-14, SLC to DEC, Mining Prohibition Statement				
00004	<p style="text-align: center;"><u>Executive Deputy Commissioner File</u></p> <p>Includes:</p> <p>A. 1995-12-15, Bridgehampton Material and Heavy Equipment Co. (BMHE) Record of Compliance;</p> <p>B. 1996-01-04, SWMF Registration, BMHE;</p> <p>C. 2006 and 2013, various summons and appearance tickets;</p> <p>D. 2010-03-12, Wainscott Sand and Gravel Record of Compliance;</p> <p>E. 2010-2014, SLC Annual Reports;</p> <p>F. 2013, DEC, NYS Dept. of Health, and Suffolk County Dept. of Health Servs. (SCDHS), Horseblock Road Investigation, Yaphank, NY;</p> <p>G. 2013-05-20, Letter, Leggette, Brashears & Graham, Inc. (LBG) to Bridgehampton Road Races LLC (BHRR) (attached to 2014-08-12 LBG Letter to Martens);</p> <p>H. 2013-08-19, Suffolk County Water Sample Report;</p> <p>I. 2013-10-03, Harry Goldman Water Testing Lab Results;</p> <p>J. 2013-10-23, Letter, SCDHS to Town of Southampton (Group for the East End Comments Exh F);</p> <p>K. 2013-11-05, SLC Mined Land Reclamation Permit;</p> <p>L. 2014, various public comments;</p>	✓	✓		

OHMS Document No. 201569946-	Description	ID	Rec'd	Offered By	Notes
	<p>M. 2014, BMHE Inspection Reports; N. 2014, SCDHS Summary of Detected Analytes; O. 2014-01-14, SLC Mining Permit Application; P. 2014-02-03, Full EAF as supplemented by DEC staff; Q. 2014-03-13, DEC to Town of Southampton, Lead Agency Coordination Request; R. 2014-04-04, Town of Southampton Zoning Board of Appeals to DEC, SEQRA Lead Agency; S. 2014-04-11, Town of Southampton Supervisor to DEC, SEQRA Coordination; T. 2014-04-21, Negative Declaration U. 2014-05-19, Mine Safety and Health Administration (MSHA) Report of Investigation; V. 2014-07-02, DEC Notice of Complete Application; W. 2014-08-08, Letter Group for the East End (Deluca) to Carrara, Public Comments; X. 2014-08-12, Letter LBG to Commissioner Martens, Evaluation of Permit Non-Conformance; Y. 2014-08-12, Report Env'tl. & Turf Servs., Env'tl and Reg Compliance Issues; Z. 2014-08-14, Letter Christiansen to Scully, Public Comments; AA. 2014-11-19, Public Comment Hearing Transcript; BB. 2015, Binder Sexton to Gerstman; CC. 2015 SLC Application Chronology;</p>				

OHMS Document No. 201569946-	Description	ID	Rec'd	Offered By	Notes
	DD. 2015-02-25, Email Chain, Gerstman to Sexton, Sand Land Issues; EE. 2015-03-02, Email Loreto to Tierney, Sand Land envtl risks; FF. 2015-03-05, Email Sexton to Gerstman, 2014 site plan; GG. 2015-03-05, Email Sexton to Gerstman, LBG models; HH. 2015-03-06, Email Sexton to Gerstman, Stop the SL expansion; II. 2015-03-06, Email Sexton to Gerstman, Summary of Non-conformance; JJ. 2015-03-06, Email Sexton to Gerstman, Summary of permit evaluation; KK. 2015-04-02, Mine Data Retrieval System (MDRS) Mine Violations Report (East Coast Mines Jan. 1980 to Dec. 2014); LL. 2015-04-02, MDRS Mine Violations Report (Wainscott Sand Oct. 1987 to Dec. 2014); MM. 2015-04-03, MDRS Mine Violations Report (Wainscott Sand July 2013 to Dec. 2014); and NN. 2015-04-03, Notice of Permit Denial (OHMS Doc. No. 00002).				
00005	<u>Permit Review and SEQRA Documents</u> Includes: A. 1991-02-19, EPA Superfund New Site Assignment Form	✓	✓		

OHMS Document No. 201569946-	Description	ID	Rec'd	Offered By	Notes
	B. Mine Inspection Records (various May 2013-April 2015); C. 2014-03-27, Town of Southampton Planning Board to DEC, SEQRA Coordination Response; D. 2014-04-20, Full Environmental Assessment Form (updated by DEC staff); E. 2014-10-24, Notice of Public Comment Period; F. 2014-10-29, Notice of Public Comment Period (ENB version); G. 2015-03-25, Letter, SL to DEC, Five-day demand; and H. 2015-04-23, SLC Hearing Request (OHMS Doc. No. 00001)				
00006	Letter, Chief ALJ to Eagen & Matthews, PLLC, ALJ Assignment (May 5, 2015)	✓	✓		
00007	Notice of Deadline for Petitions for Party Status, Public Legislative Hearing, and Issues Conference (July 31, 2015)	✓	✓		
00008	Notice Distribution List (Aug. 5, 2015)	✓	✓		
00009	Notice of Deadline for Petitions for Party Status, Public Legislative Hearing, and Issues Conference - ENB Version (Aug. 5, 2015)	✓	✓		
00010	Affidavit of Publication in the Suffolk County edition of <u>Newsday</u> (Aug. 10, 2015)	✓	✓		

OHMS Document No. 201569946-	Description	ID	Rec'd	Offered By	Notes
00011	NYS Assemblyman Fred W. Thiele, Jr., Petition for Full Party Status	✓	✓		
00012	Town of Southampton, Petition for Full Party Status	✓	✓		
00013	Bridgehampton Road Races, LLC (BHRR), Petition for Full Party Status	✓	✓		
00014	Group for the East End (GEE) and Citizens Campaign for the Environment (CCE), Joint Petition for Full Party Status	✓	✓		
00015	Joseph Phair, Margot Gilman, and Amelia Doggwiler (Neighbors), Petition for Full Party Status	✓	✓		
00016	Noyac Civic Council, Inc. (NCC), Petition for Amicus Party Status	✓	✓		
00017	Southampton Town Civic Coalition (STCC), Petition for Amicus Party Status	✓	✓		
00018	Department Staff, Response to Party and Amicus Status Petitions	✓	✓		
00019	Sand Land Corp., Opposition to Full Party Status Petitions of BHRR, et al.	✓	✓		
00020	Sand Land Corp., Opposition to Full Party Status Petition of Town of Southampton	✓	✓		

OHMS Document No. 201569946-	Description	ID	Rec'd	Offered By	Notes
00021	Sand Land Corp., Opposition to Full Party Status Petition of NYS Assemblyman Fred W. Thiele, Jr.	✓	✓		
00022	Sand Land Corp., Opposition to Amicus Petition of Southampton Town Civic Coalition	✓	✓		
00023	Sand Land Corp., Opposition to Amicus Petition of Noyac Civic Council	✓	✓		
00024	DEC, Additions/Changes to Registry of Inactive Hazardous Waste Disposal Sites, Bridgehampton Materials and Heavy Equipment Corp. (DEC ID No. 152090) (prepared March 29, 1990)	✓	✓	Sand Land Corp.	
00025	Alpha Geoscience Report (Oct. 19, 2015)	✓	✓	Sand Land Corp.	
00026	Photos	✓	✓	Noyac Civic Council	
00029	<p style="text-align: center;"><u>Sand Land Corp. Administrative File</u></p> <p>Includes:</p> <ul style="list-style-type: none"> A. 1980 Bridgehampton Material and Heavy Equipment (BMHE) permit application; B. 1980-10-03, Notice of Complete Application; C. 1981-03-31, BMHE permit; D. 1985-01-23, BMHE permit; E. 1988-01-23, BMHE permit; F. 1991-09-24, BMHE permit application; G. 1991-12-03, BMHE permit; H. 1994-07-15, BMHE permit application; I. 1996-01-24, BMHE SWMF registration; 	✓	✓	DEC staff	Contains 42 documents provided by DEC staff via file transfer protocol (FTP) on Nov. 20, 2015

OHMS Document No. 201569946-	Description	ID	Rec'd	Offered By	Notes
	<p>J. 1996-01-24, SWMF registration; K. 1997-11-14, SLC permit transfer application; L. 1998-10-06, SLC permit; M. 2002-03-21, SLC permit letter; N. 2003-10-09, SLC permit; O. 2008-09-18, SLC permit application; P. 2008-11-03, SLC permit; Q. 2009-02-08, SLC permit application; R. 2010-03-12, Wainscott Sand SWMF registration; S. 2013-09-23, SLC permit application with mined land use plan; T. 2013-09-23, SLC permit application; U. 2013-10-11, Letter re incomplete renewal application; V. 2013-11-05, SLC permit; W. 2014-01-13, Letter to Group for the East End re SEQRA; X. 2014-01-15, SLC permit application with mined land use plan; Y. 2014-01-15, SLC permit application; Z. 2014-01-27, Letter to SLC re permit modification; AA. 2014-02-03, Expansion EAF by SLC; BB. 2014-02-03, FEAF page 1; CC. 2014-02-11, SLC letter re additional information; DD. 2014-03-13, Letter re permit modification request;</p>				

OHMS Document No. 201569946-	Description	ID	Rec'd	Offered By	Notes
	EE. 2014-03-13, Letter re SEQRA lead agency with EAF; FF. 2014-03-13, Letter re SEQRA lead agency; GG. 2014-03-27, Letter from ToS Planning Bd re SEQRA lead agency; HH. 2014-04-11, Letter from ToS Super re SEQRA lead agency; II. 2014-04-14, Letter from ToS ZBA re SEQRA lead agency; JJ. 2014-04-21, Expansion EAF completed by DEC staff; KK. 2014-04-21, Full EAF; LL. 2014-04-21, Negative Declaration; MM. 2014-07-02, Notice of Complete Application; NN. Mined land use plan - 2; OO. Mined land use plan - 3; PP. Mined land use plan revised 2013-11-01; and QQ. Mined land use plan				
00030	Sand Land Corp., Memorandum of Law in Opposition to Notice of Permit Denial received April 12, 2016, with Exhibits A-K	✓	✓		
00031	Assemblyman Thiele, Brief in Support of Petition for Party Status dated April 11, 2016	✓	✓		
00032	Town of Southampton, Brief on Behalf of Petition for Party Status dated April 11, 2016	✓	✓		

OHMS Document No. 201569946-	Description	ID	Rec'd	Offered By	Notes
00033	BHRR, Post Issues Conference Brief dated April 11, 2016 with Exhibits A-C and Appendix	✓	✓		
00034	BHRR, Letter to Chief ALJ dated April 11, 2016 RE: Sand Land Corp. (Ungrandfathering Petition)	✓	✓		
00035	GEE and CCE, Brief in Support of Joint Petition for Party Status dated April 8, 2016	✓	✓		
00036	Neighbors, Closing Brief in Support of Petition for Party Status dated April 11, 2016 with Exhibits 1-5	✓	✓		
00037	NCC, Post Issues Conference Brief Submitted in Support of Petition for Amicus Party Status dated April 6, 2016	✓	✓		
00038	STCC, Post Issues Conference Brief Submitted in Support of Petition for Amicus Status dated April 6, 2016	✓	✓		
00039	Department Staff, Reply Brief dated August 22, 2016, with Exhibit A	✓	✓		
00040	Sand Land Corp., Reply Brief in Further Opposition to Petitions Seeking Full Party Status of BHRR, et al. received August 23, 2016, with Exhibit A	✓	✓		
00041	Sand Land Corp., Reply Brief in Further Opposition to Petition of Assemblyman Thiele Seeking Full Party Status received August 23, 2016	✓	✓		
00042	Sand Land Corp., Reply Brief in Further Opposition to Petitions Seeking Amicus Party Status received August 23, 2016	✓	✓		

OHMS Document No. 201569946-	Description	ID	Rec'd	Offered By	Notes
00043	Town of Southampton, Reply Brief on Behalf of Petition for Party Status dated August 22, 2016, with Exhibit A	✓	✓		
00044	BHRR, Brief in Reply to Sand Land Corp. Post Issues Conference Brief dated August 22, 2016, with Exhibits A-D	✓	✓		
00045	NCC, Post Issues Conference Reply Brief dated August 22, 2016	✓	✓		
00046	STCC, Post Issues Conference Reply Brief dated August 22, 2016	✓	✓		
00047	Neighbors, Email to Chief ALJ dated August 22, 2016, adopting arguments represented in the reply briefs of the various other petitioners for party status	✓	✓		
00048	Town of Southampton, Sur Reply Brief dated October 7, 2016, with Exhibit A	✓	✓		
00049	BHRR, Brief in Sur-Reply dated October 7, 2016, with Exhibits 1-9	✓	✓		
00050	Neighbors, Sur-Reply Brief dated October 7, 2016, with attachment	✓	✓		