

New York State
Department of Environmental Conservation
Commissioner's Determination
of
Lead Agency Under Article 8
of the
Environmental Conservation Law

PROJECT: Application by Franklin Land Corp. to construct the Franklin Industrial Park in the Town of Fishkill, Dutchess County

DISPUTING AGENCIES: Town of Fishkill Planning Board and the Region 3 Office of the New York State Department of Environmental Conservation (DEC-Region 3)

This decision to designate the Department of Environmental Conservation, Region 3 Office as lead agency for the conduct of the environmental review under the State Environmental Quality Review Act (SEQRA) is made pursuant to Article 8 of the Environmental Conservation Law (ECL) and 6 NYCRR Part 617. This decision is based on my findings that the proposed mining that must occur before the subsequent development of the site will cause the most substantive impacts and that DEC-Region 3 has the broadest jurisdiction over the mining and reclamation of the site.

The proposed project is the application by Franklin Land Corp. to construct an industrial park consisting of three 10,000 square foot buildings and one 20,000 square foot building with associated parking on a 14+ acre parcel in the Town of Fishkill, Dutchess County. The project will require the removal of 1 million cubic yards of rock from the site prior to the construction of the industrial park.

DEC-Region 3 has jurisdiction under ECL Article 23, Mined Land Reclamation Law, to regulate all aspects of the mining and under Article 17 for proposed wastewater and stormwater discharges. The Town of Fishkill has authority under its Site Development Plan approval process for the construction of four commercial structures in a Planned Industry Zoning District.

In resolving a lead agency dispute, I am guided by the three criteria listed in order of importance in paragraph 6 NYCRR Part 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 the 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 first criterion relates to whether the anticipated impacts are primarily of statewide, regional or local significance. The project, as proposed, is for the construction of an industrial park within a Planned Industry Zoning District. However, the amount of material required to be removed from the site to allow for the construction of the industrial park (1 million cubic yards) means that mining will be the exclusive activity on the site for several years. The impacts of primary concern are related to the mining and reclamation activities which are a precursor to any subsequent development on the site. Potential impacts identified by DEC-Region 3 include: noise from mining, dust and traffic from the transport of material both on-site and off-site, visual impacts due to the close proximity of several educational and recreational facilities, potential for impact to Clove Creek which is a major tributary to Fishkill Creek and a DEC regulated trout spawning stream, and the potential for impact to a New York State listed threatened species, the timber rattlesnake. Many of the impacts which are associated with mining on the site are primarily local in nature as are the impacts from the subsequent industrial park. However, based on the potential for impact to Clove Creek and a timber rattlesnake population, I find that the anticipated impacts also have a regional and statewide component.

The next criterion, the breadth of jurisdiction, substantially favors DEC-Region 3 as lead agency. The Town of Fishkill must issue a site development plan approval for the proposed commercial development. Normally, site plan review is a very broad authority allowing a municipality to control or condition almost all aspects of site development. However, in this case the actual construction of the industrial park can be done only after substantial removal of material that triggers the need for a permit from DEC-Region 3 under the Mined Land Reclamation Law (MLRL). The MLRL preempts local regulation of mining and the Town's ability to condition the activities on the site during this phase of the development is limited to the following:

- ingress and egress to public thoroughfares controlled by the Town of Fishkill;
- routing of mineral transport vehicles on town roads;
- requirement and conditions as specified in the mined land permit concerning setback from property boundaries and public thoroughfare rights-of-way, natural or man-made barriers to restrict access, dust control and hours of operation; and
- enforcement of reclamation requirements contained in the MLRL permit issued by DEC.

DEC has exclusive authority under the MLRL to regulate all aspects of the project related to mining and reclamation. The breadth of DEC's jurisdiction under MLRL is superior to the Town's authority under its site plan review process. In resolving other lead agency disputes for mining projects, it has been recognized that the MLRL superseded all other state and local laws related to the regulation of mining and reclamation.

The third criterion is based on which agency has the greatest capability for providing the most thorough environmental assessment. The analysis of this project shows that there are regional and statewide impacts of concern and that the breadth of jurisdiction under MLRL is superior to the Town of Fishkill Planning Board's site development plan approval. Given that the first and second criteria favor the DEC-Region 3, the third criterion need not be addressed.

I conclude, based on the regional and statewide nature of the impacts and DEC's broader jurisdiction under MLRL, that the DEC-Region 3 Office should be lead agency for the conduct of the SEQR review of the proposed Franklin Industrial Park.

This decision in no way limits the jurisdiction or responsibility of the Town of Fishkill. The applicant must apply for and obtain site development plan approval from the Town Planning Board prior to commencing the action. I encourage the Town of Fishkill to actively participate in the environmental review so that the record developed by DEC-Region 3 will adequately satisfy their needs when site plan development approval is sought.

Dated: 12/17/98
Albany, New York

/s/
John P. Cahill, Commissioner

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Disputing Agencies/Applicant

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