

April 5, 2024

VIA E-MAIL (its-greener-now-comments@dec.ny.gov):

Frances Knickmeyer
NYSDEC Region 8 Headquarters
6274 E Avon-Lima Rd.
Avon, New York 14414

**Re: It's Greener Now – Padua Gravel Pit, Town of Dix, Schuyler County
Draft EIS Public Comment
Application ID: 8-4424-00006/00001**

Dear Ms. Knickmeyer:

This office has been retained by Michael Lausell and Oscar Neff, residents of Schuyler County, in relation to It's Greener Now Inc.'s ("IGN") Mined Land Reclamation Modification Application (Application ID: 8-4424-00006/00001) (the "Application") for the Padua Gravel Pit (the "Mine"). Please accept this letter as Messrs. Lausell and Neff's public comment on the draft Environmental Impact Statement ("dEIS") and a request that the DEC require a Supplemental Environmental Impact Statement ("sEIS") regarding the Application.

On August 18, 2008, The New York State Department of Environmental Conservation ("DEC") issued a Positive Declaration of Significance under the State Environmental Quality Review Act ("SEQRA") for the Application in June 2008 and a Final Scope Outline. The subsequent dEIS was not submitted until May 13, 2019, and was afterwards updated in August 2022. On January 3, 2024, the DEC accepted the dEIS for public comment and published a notice in the Environmental Notice Bulletin on January 10, 2024. The public comment period was initially open for just forty-nine (49) days. Due to significant public response and demand, the DEC extended the public comment period for an additional forty-five (45) days to Saturday, April 13, 2024.

I. A Supplemental EIS should be required based on the significant passage of time.

SEQRA provides for an sEIS when there is "a change in circumstances related to the project" being reviewed.¹ The DEC's guidance provides that when "nearby land uses have changed since the original site assessment was conducted, or the municipality has enacted new

¹ 6 NYCRR § 617.9(a)(7)(i)(c).

land use rules, and these changes are relevant to significant adverse environmental impacts” an sEIS is appropriate.² The passage of time in this case supports requiring an sEIS. As set forth above, IGN delayed providing a dEIS for over a decade. It has been nearly sixteen (16) years since the positive declaration and scoping outline were issued. While SEQRA does not set a deadline for a project sponsor to submit a dEIS, the delay in this case is significant.

Several significant changes have occurred during the delay. Most significantly, and as reflected in other public comments, the region, including both the Town of Dix and the Village of Watkins Glen, has seen a significant growth in tourism. While the Village of Watkins Glen and the Watkins Glen State Park have been tourist attractions for many years, the level and scope of tourism has significantly increased.³ Tourism, centered around the Watkins Glen State Park, Watkins Glen International Racetrack, the Village of Watkins Glen, Seneca Lake, and the Seneca Lake Wine Trail, provides the largest economic resource for the region. The Watkins Glen State Park is the number one attraction in the Town of Dix. Since 2008, when the Final Scope Outline was issued, visitors to Watkins Glen State Park have nearly tripled.⁴

There have also been several significant municipal changes since 2008. The current Town of Dix Zoning Ordinance, adopted in 2016, clearly requires the Mine to obtain a special use permit.⁵ It appears that a special use permit was not required (or if required, was not recognized) at the time of the initial application and the Final Scoping Outline. The EAF provided with the initial application dated December 8, 2006, and received by DEC May 9, 2007, does not identify any town approvals required.⁶ The Final Scope Outline only identifies the Town of Dix as requiring Site Plan Review.⁷ Thus, at the time that the DEC issued the Final Scope Outline, the DEC did not anticipate that the Application would require Special Use Permit approval. The potential impact of the Mine expansion on the community character and consistency with land use plans was not considered in relation to the current land use laws. This is a significant change in the law and local land use that should be subject to a hard look under SEQRA.

In 2009, the Village of Watkins Glen participated in an Area Transportation Study, which raised several goals for addressing traffic, including truck traffic. In 2012, the village updated its Comprehensive Plan and noted “large trucks use the state routes, which leads to noise and traffic

² SEQRA Handbook p. 138.

³ County Sales Taxes have significantly increased in just the last four years. In 2020, county records show sales tax revenue of \$11,524,275. 2023 sales tax revenues were 40% higher at \$16,163,599.

⁴ The State reported 438,549 visitors in 2008. See New York State Parks, Recreation and Historic Preservation, Park Attendance, available at https://www.ny.gov/sites/default/files/2023-02/ParksAttendanceSummary_CY_2003-2022.pdf. In 2023, the State saw a record number of visitors at 1,234,805. See The Observer, “State park attendance tops 1.2M” (Feb. 22, 2024), available at <https://www.observer-review.com/article/6284/state-park-attendance-tops-12m#:~:text=Watkins%20Glen%20State%20Park%20saw,an%20increase%20of%20236%20percent.>

⁵ Town of Dix Zoning Ordinance § VI-6.

⁶ EAF Part 1, § B(25), § C(1), p. 8 of 21. In fact, the EAF states there is “No Zoning within Town of Dix.” The town adopted a Zoning Law in December 2006. Town of Dix, Local Law 2 of 2006 (Filed with Secretary of State January 26, 2007). It is not clear whether a special use permit was required under the 2006 Zoning Law.

⁷ Final Scope Outline p. 9.

issues in the village.”⁸ The Comprehensive Plan notes the goals of the 2009 Area Transportation Study.⁹ In 2018, the Village and Southern Tier Regional Economic Development Council produced a Downtown Revitalization Initiative Strategic Investment Plan. The Plan noted truck traffic as a challenge that poses “noise and safety issues.”¹⁰ Truck traffic was noted as one of the “most significant competitive disadvantages” for the village.¹¹ The Downtown Revitalization Initiative boundary area includes where State Route 409 becomes West 4th Street and intersects with State Route 414.¹² This is a likely route for truck traffic from IGN.

Finally, since 2008, forecasts related to climate change have significantly changed. For example, the Fifth National Climate Assessment, issued in 2023 by the U.S. Global Change Research Program, indicates that “[c]limate change is increasing the frequency and severity of many extreme weather and climate events” including extreme precipitation.¹³ It notes that “extreme precipitation events (defined as events with the top 1% of daily precipitation accumulations) have increased by about 60% in the [Northeast] region—the largest increase in the US” since the 1950s.¹⁴ A June 2023 study by the First Street Foundation suggests 100-year storms are likely to occur in Schuylker County every 26 to 50 years.¹⁵ Other commenters have noted their experiences with increasing flooding. The Stormwater Pollution Prevention Plan (“SWPPP”) for the Application notes that overflow from the on-site stormwater catchment basins will flow to the Village of Watkins Glen’s Drainage Easement “only when a storm exceeds the 100-year event.”¹⁶ Unfortunately, this type of storm is likely to occur more frequently in the future than was previously considered and the impacts of using the village’s Drainage Easement to address such storms was not considered in the Final Scope Outline.

The above changes since the Application was first proposed in 2006 and the Final Scope Outline was issued in 2008 deserve consideration in an sEIS. While the SEQRA regulations do not require scoping for an sEIS, DEC guidance notes that scoping remains “optional.”¹⁷ In light of these significant changes and the various environmental impacts they present, the DEC should hold a scoping process for an sEIS. Regardless of whether the DEC holds a scoping session, the sEIS should at least address Impacts to Community Character and Consistency with Community Plans; Dust, Vibration, and Truck traffic impacts; and flooding impacts from use of the Village of Watkins Glen Drainage Easement in the event of 100-year storms.

⁸ Village of Watkins Glen Comprehensive Plan p. 29, *available at* https://www.watkinsglen.us/pdf/document_library/8-comprehensive-plan.pdf.

⁹ *Id.* Appendix A.

¹⁰ Village of Watkins Glen Downtown Revitalization Initiative, p. 1, *available at* https://www.ny.gov/sites/default/files/atoms/files/WatkinsGlen_DR1.pdf.

¹¹ *Id.* p. 34.

¹² *Id.* p. 3.

¹³ USGCRP, 2023: Fifth National Climate Assessment. Crimmins, A.R., C.W. Avery, D.R. Easterling, K.E. Kunkel, B.C. Stewart, and T.K. Maycock, Eds. U.S. Global Change Research Program, Washington, DC, USA. <https://doi.org/10.7930/NCA5.2023>

¹⁴ *Id.*

¹⁵ See CNN, “No Place in the US is safe from the climate crisis, but a new report shows where it’s most severe” *available at* <https://www.cnn.com/2023/11/14/us/national-climate-assessment-extreme-weather-costs/index.html> (graphic on middle of page).

¹⁶ SWPPP p. 6.

¹⁷ See 6 NYCRR § 617.9(a)(7)(iii); and SEQRA Handbook p. 100.

Impacts to Community Character and Consistency with Community Plans

As noted, the Watkins Glen region is principally supported by tourism, which has seen significant growth in the last decade. The Town of Dix, the Village of Watkins Glen, and Schuyler County have recognized the significance of promoting tourism. The expansion and prolonged 20-year LOM for the Mine is not consistent with a focus on tourism. The Village of Watkins Glen, which adjoins and partially includes the parcels on which the Mine is proposed and through which the trucks are likely to proceed, prohibits mining under its zoning code.¹⁸ While the Town of Dix, where the affected acreage is proposed, allows mining, it does so through a special use permit to limit the adverse impacts of mining. Notably, the Mine is the last open, permitted mine in the town.¹⁹ Schuyler County Environmental Management Council has expressed its opposition to the permit, noting, in part that the expansion of the mine is not in compliance with the County's Comprehensive Plan.²⁰ Therefore, an sDEIS should address the Application in relation to the current surrounding uses, zoning laws, and compatibility with the region's tourism-focused economy.

Dust & Traffic Impacts

Related to the impact of continued mining on tourism are the impacts presented by fugitive dust and truck traffic impacts. According to IGN, "[d]ust, vibration, and truck traffic impacts are outside the scope of the DEIS."²¹ While the dEIS includes some discussions of dust and truck traffic, the dEIS is clearly insufficient in relation to such impacts.

In relation to truck traffic impacts, the dEIS does not include any studies regarding the anticipated level of truck traffic. As discussed in greater detail below, the dEIS analysis regarding the scale of mining is inconsistent and contradictory. A rational and reasonable interpretation of the scope of the proposed expansion is that the Mine will increase the scale of mining activity, including the number of trucks traveling to and from the Mine. Despite this, the dEIS does not include any discussion of the actual level of truck traffic anticipated, including any anticipated seasonal fluctuations. The dEIS also does not include any discussion of truck traffic routes. The dEIS and Mining Plan's dismissal of truck impacts based on the questionable proposition that "traffic to and from the site will not be increased" is insufficient. The likely increase in truck traffic will predominantly travel east on Route 409 into the Village of Watkins Glen, through Milliken's Corner, to the intersection with Route 14. This is an area of significant traffic concern as reflected in the village's studies and comprehensive plan. It is also worth noting that this road is on a steep hill (with posted trucks "use low gear" signs) and has been the site of truck accidents from IGN, including a rollover in February 2021.²² These impacts should be discussed in an sEIS.

¹⁸ Village of Watkins Glen Zoning Law § 24.2(E) ("All mining and excavation for commercial gain shall be prohibited.")

¹⁹ See DEC Mines Data, available at <https://estapps.dec.ny.gov/cfms/estapps/MinedLand/search/mines/> (search Town of Dix).

²⁰ See June 23, 2007, Letter from The Schuyler County Environmental Management Council; July 5, 2007, Schuyler County Legislature Special Meeting Minutes.

²¹ JMT Letter dated September 1, 2021, to New York State Historic Preservation Office.

²² See <https://waterfromonline.blog/2024/02/19/while-gravel-filled-trucks-use-smart-pass-dampcrans-ctwv-dec-doesnt-require-truck-traffic-analysis-for-gravel-mine/>. It is worth noting that the truck that rolled

Like truck traffic, the dEIS and Mining Plan dismiss dust impacts based upon the pretense that mining activities will not significantly change from current activities. Again, this analysis regarding the scale of mining is inconsistent and contradictory. More significantly, buried within the dEIS and appendices it is clear, as discussed in more detail below, that the footprint of the affected area will nearly double during the next five-year permit term. Despite this, the dEIS does not include any Air Quality Monitoring or modeling or discuss the predominant wind patterns and potential impact areas. It is our understanding that the predominant winds blow towards the Watkins Glen Gorge Walk and the Village of Watkins Glen. Since the footprint of the Mine will significantly increase, an identification of downwind receptors and evaluation of the potential impacts from dust and blown sand on those areas is appropriate.

II. The dEIS is insufficient and requires clarification and correction.

DEC should seek independent analysis of the potential impacts to local gorges.

First and foremost, the DEC needs to retain independent experts to review the unique issues associated with the potential presence of buried gorges and impacts to the Watkins Glen State Park gorge's climate and hydrology. These issues are too significant to get wrong given their importance and significance for the entire region.

While the DEC extended the public comment period to just over 90 days, members of the public cannot reasonably be expected or able to retain experts to review the data and address these issues in the limited period provided. Significantly, IGN has retained two separate engineering firms to assist in the preparation of the dEIS over the last decade. The current engineering firm appears to have been retained more than six (6) years before the dEIS was submitted. The dEIS includes updated groundwater monitoring and core sampling performed approximately five (5) years before the dEIS. The DEC received the current dEIS in August 2022 (with map updates in February 2023) before accepting the dEIS in January of this year. Considering the complexity of these issues, the DEC should obtain independent review by experts with specialized training as appropriate. At the very least, the DEC should not defer to the conclusions reached in the dEIS, but independently review the data to determine the need for additional studies and analysis due to the uniqueness of the neighboring protected gorge.

The timeline and pace of mining should be clarified.

The dEIS description of the Mine's anticipated expansion timeline and pace of mining is inadequate and misleading in several ways. First, the dEIS conflicts with the Final Scope Outline regarding the expansion process. Second, the Mine Application contradicts the dEIS and Final Scope Outline and demonstrates the dEIS diminishes various impacts based upon a misrepresentation of the planned mining process. Third, the dEIS fails to provide any phasing plans. Finally, the analysis of the LOM and level of truck traffic are inherently contradictory. The dEIS should be updated to clarify and correct these items.

was an IGN branded truck and, therefore, theoretically more familiar with the road than an independent operator purchasing material at the mine.

The Final Scope Outline explicitly provides:

While the overall acreage of the mine will increase over the life of the project, the active mining excavation area, previously mined unreclaimed areas, and processing areas will not exceed 15 acres at any one time.²³

The Mined Land Use Plan ("MLUP") and dEIS are not nearly as definitive or clear on the extent of additional affected acreage. While both the MLUP and dEIS reference a "concurrent reclamation plan"²⁴, neither applies a strict limit of 15 acres or, for that matter, any limit on affected acres. The MLUP notes that "[a] concurrent reclamation plan will continue to be employed, to the maximum extent practicable."²⁵ Similarly the dEIS states "[r]eclamation of mined areas will take place, to the greatest extent possible, concurrent with mining, to reduce the amount of land surface exposed at any given time."²⁶ This alleged limitation is too vague to support inclusion in a mine permit. What does "extent practicable" mean? Who determines whether it is "practicable"? How does the DEC enforce such vague terms?

Instead of limiting "the active mining excavation area, previously mined unreclaimed areas, and processing areas" to 15 acres, the dEIS indicates:

The total disturbed area (active mining excavation area, previously mined unreclaimed areas, and processing areas) will be minimized by employing concurrent reclamation practices and by limiting stripping activities in advance of mining.²⁷

This begs the question: "minimized" in comparison to what? Additionally, the dEIS and MLUP provide that areas will be stripped of cover beyond just the "active mining excavation area, previously mined unreclaimed areas, and processing areas." They provide that "only enough area to accommodate approximately one year's mining ahead of the active quarry area will be stripped at any time."²⁸ However, there is no actual statement as to the number of acres represented by one year's mining. This makes clear that some acreage (potentially as much as three (3) acres²⁹) beyond the "the active mining excavation area, previously mined unreclaimed areas, and processing areas" will be disturbed and exposed. These vague and contradictory statements should be clarified and as discussed below, the DEC should hold IGN to the 15-acre limit in the Final Scoping Outline.

²³ Draft Environmental Impact Statement Final Scoping Outline p. 1 (emphasis added).

²⁴ MLUP §§ 2.4.1.2, 3.2; dEIS § 1.1, 1.2.1.1.

²⁵ MLUP § 2.4.1.2 (emphasis added). It should be noted that the DEC's records indicate that the current LOM is 14.33 acres and 0.00 acres have been reclaimed. The only reclamation to date appears to have been in relation to unpermitted mining outside the LOM pursuant to a Consent Order. Thus, it is misleading to suggest that a concurrent reclamation "will continue to be employed" as IGN has not previously employed concurrent reclamation within the LOM.

²⁶ dEIS § 1.2.1.1 (emphasis added).

²⁷ dEIS § 1.1 (emphasis added).

²⁸ dEIS § 1.2.1.1; MLUP § 2.3.1.2.

²⁹ The LOM expansion is for a total of 61 acres. The dEIS projects a 10-year LOM. Thus, a year's worth of mining could exceed three (3) acres.

The Mine Application, however, demonstrates that IGN does not in fact intend to perform meaningful concurrent reclamation and that the disturbed footprint of the Mine will far exceed the 15-acre limit. The Mine Application states that the “new acreage to be affected during coming term” (i.e., the next five (5) years) is 12.49 acres; the currently affected acreage is listed as 14.33 acres; but the “acres to be reclaimed during coming term” are listed as 0 acres. Thus, the total acreage that will be affected and unreclaimed at the end of the permit term will be 26.82 acres. It is not clear that this includes the “one year mining” area stripped beyond the disturbed area. Thus, at the end of the first 5-year period of expansion, the footprint will have potentially doubled in size and no “concurrent reclamation” will have occurred. This is at best inconsistent with the MLUP and dEIS and at worst demonstrates that the dEIS is disingenuous and deceptive, intended to conceal the true impacts of the expansion. Moreover, it directly conflicts and contradicts the DEC’s Final Scope Outline. Doubling the footprint of the disturbed area is hardly “minimizing” the disturbed area, “concurrent reclamation”, or consistent with the existing status of the Mine.³⁰ If, in fact, no reclamation is planned or required in the first permit term, then the dEIS should be clarified and references to concurrent reclamation need to be removed or replaced with greater detail. Moreover, the impacts of a larger footprint must be addressed and not dismissed as being minimized by “current reclamation” that will not actually occur.

Descriptions and illustrations of the Mine Expansions phases should be provided.

The vague descriptions of how IGN will expand and reclaim the Mine, combined with the Mining Application’s admission that no reclamation will occur during the first 5 years demonstrates that the dEIS’s description of the expansion phases is insufficient. The New York State Department of Parks, Recreation, and Historic Preservation noted in its February 12, 2024, comment letter that greater detail on phasing should be required. For instance, IGN should provide maps showing the proposed footprint and areas to be reclaimed during future permit terms. The dEIS should further provide greater specificity in place of the vague and undefined terminology. For example, the MLUP provides that “[h]aul roads will not be reclaimed until excavation has reached the maximum extent and final reclamation of the mine site has commenced” but that “secondary internal haul roads will be reclaimed as soon as practicable” or “mined out.”³¹ However, no maps identify the primary haul roads that will not be reclaimed and which roads will be reclaimed “as soon as practicable.” The dEIS should provide greater specificity regarding the phasing of the expansion and timing of reclamation.³²

The dEIS LOM analysis is internally contradictory and inconsistent with the Mine history. The permitted LOM has been 14.33 acres since May 1978. The dEIS provides that the Application does not include additional processing equipment or an increase in the rate of processing. The Application seeks an expansion from 14.33 acres to 75.28 acres and an estimated increase of 3.5 million cubic yards of sand reserves. The dEIS provides that there will be no increase in the rate

³⁰ Compare dEIS § 4.5.3 (“Impacts to views . . . will not differ significantly from existing views”). A disturbed area twice the size of the existing disturbed area is a significantly different view.

³¹ MLUP §§ 3.3, 2.3.1.4.

³² Recognizing that the pace of mining is dependent on market conditions, precise dates would not be practicable. However, the mine can show how the mine expansion and reclamation will progress and the approximate time periods for such phases, at least by successive 5-year permit terms.

of mining, no increase in truck traffic, and no change in operation hours³³. However, the dEIS also provides that the estimated operational LOM is 20 years. All the above cannot be true. IGN has not mined out its current 14.33-acre LOM in its multiple decade period of ownership. It has not mined 3.5 million cubic yards of sand during the last 20 years. In fact, the Mine has seen significant periods of inactivity.³⁴ The proposed expansion and dEIS, however, demonstrate an intent to pursue more continuous and active mining. The estimated 20-year operational LOM demonstrates that the anticipated rate of mining and corresponding level of truck traffic will substantially and significantly increase with the expansion of the Mine. Thus, the dEIS statements regarding the anticipated level of truck traffic, pace of mining activities, and lifespan for the mine expansion prior to final reclamation are deficient and should be clarified and justification should be provided for its statements.

The aesthetic impacts analysis fails to address the significantly expanded footprint.

While the aesthetic impacts review includes photos of the current visual impact of the existing Mine from some vantage points, no visual representations or depictions were provided of the expanded footprint. As noted, the Mining Application and MLUP provides for an increased footprint (potentially up to 30 acres), but the aesthetic impact analysis dismisses this potential impact by noting that the "current affected area is already visible to some extent."³⁵ Given the fact that the footprint of the Mine will substantially increase, the aesthetic impact review should include representations of that expanded footprint from the various sensitive vantage points.

The DEC should also disregard the dEIS's reliance on purported distance from certain vantage points. The region's tourism industry is based significantly on the natural environment, such as Watkins Glen State Park, Seneca Lake, and the Seneca Lake Wine Trail, and includes the natural state of the ridgeline surrounding Watkins Glen and the lake. While the views from various areas around the lake may be at a significant distance from the Mine, the extent of the disturbed area at the top of the ridgeline plays a significant role in whether the viewshed is picturesque and furthers the areas' aesthetic that helps drive tourism or is a blight on that viewshed. The placement of the mine at the top of the ridge clearly makes its aesthetic impact more significant if the expansion areas will be visible from miles around as opposed to a mine located in areas not visible from the tourist areas and surrounding roads.

³³ The stated hours of operation in the various documents are inconsistent. Compare Final Scoping and SWPPP (5a - 7p, M-F; 8a-5p Sat-Sun (truck loading only)), with dEIS, MLUP, EAF (6a-8p, M-S). It is respectfully submitted that the hours should limit the activity on Saturdays to retail truck loading and provide a quiet day on Sunday.

³⁴ The Mine was inactive at a number of DEC inspections since June 2008. In fact, the DEC shut down the Mine for two (2) years when a renewal permit was not timely applied for and obtained. The number of times the DEC noted that the mine was inactive demonstrates that IGN has not mined the existing Mine continuously and consistently.

³⁵ dEIS § 4.5.3.

The dEIS analysis of the "No Action Alternative" fails to consider positive impacts and is speculative.

The dEIS does not adequately or properly consider the "No Action Alternative." The summary of the "No Action Alternative" provides,

The site is an existing sand and gravel mine, and environmental impacts from the existing site would remain under the 'No Action' alternative. Although the 'No Action' alternative would not increase environmental impacts, including those to natural resources, visual and aesthetic resources, noise, and traffic, it would incur several disadvantages.³⁶

This analysis fails to recognize that in the "No Action" scenario, the Mine would reach the extent of its sand reserves much sooner than the proposed 20-year LOM, resulting in reclamation of the Mine, pursuant to the requirements of the Mined Land Reclamation Law.³⁷ Thus, the "No Action" scenario would not just "not increase environmental impacts" but would result in the prompt reduction and elimination of existing impacts.

The fuller discussion of the "No Action Alternative" in the section on "Alternatives to the Proposed Action" focuses on hypothetical environmental impacts in other unspecified locations.³⁸ The potential that the "No Action Alternative" will result in either the expansion of other existing sites or opening of new mines, cannot be properly evaluated in the SEQRA review of this Application and would be subject to their own SEQRA review. The potential impacts from expanding alternative sites or opening new mines would be significantly less in more appropriately sited locations. The "No Action Alternative" cannot be dismissed on this basis.

The Alternative Development Schedule should be expanded to address alternative phasing.

The dEIS also fails to adequately analyze the "Alternative Development Schedule." The dEIS concludes:

The rate of extraction of sand and gravel from the mine site is governed by market demand and does not significantly impact the total magnitude of potential environmental impacts over the life of the mine. Alternative development schedules are not an effective or practical method of mitigating potential impacts.³⁹

However, an Alternative Development Schedule would also include alternative phasing and alternative maximum footprint size for the Mine. Altering the phasing schedule and/or footprint size of the Mine would likely reduce several environmental impacts including aesthetic impacts,

³⁶ dEIS § 1.2.2.

³⁷ The "No Action Alternative" would not, necessarily, prohibit a future expansion application that more appropriately balances the environmental impacts and minimizes adverse environmental impacts to the maximum extent practicable.

³⁸ dEIS § 5.1.

³⁹ dEIS § 1.2.2.

dust, and traffic. The dEIS asserts that “[i]ncreasing or decreasing the rate of extraction may have the potential to alter the duration of the mining operation, and therefore the duration of environmental impact, but would not result in an overall change to the magnitude of potential environmental impact.”⁴⁰ Respectfully, while this conclusion may apply to some impacts, it does not apply to all potential impacts. Specifically, a decrease in the rate of extraction would likely impact the level of truck traffic and decrease the impacts posed by such traffic. This impact should be explored in an updated dEIS.

III. The DEC should impose conditions as part of its Findings and any modified permit to minimize environmental impacts.

The foregoing discussion demonstrates that the dEIS should be updated and supplemented prior to the DEC moving forward on issuing any Findings or approving a permit. However, if the DEC moves forward with SEQRA and Permit consideration, it should impose conditions on the Mine to minimize the potential impacts of the expansion, including, but not limited to, future expansion on IGN’s adjacent property should be prohibited; clear, unambiguous, and enforceable requirements for concurrent reclamation and the permitted affected acreage at any one time should be included in the permit; the SWPPP should be updated to prevent inadvertent petroleum spills within the Mine; and the operational LOM until final reclamation should be limited to a maximum of twenty-five (25) years.

Future expansion to the north of State Route 409 should be prohibited.

The dEIS and Mining Application list the total acreage owned by IGN as 281 acres. While Padua Ridge, LLC⁴¹ owns 281 acres of property, it does so through multiple parcels that are divided by State Route 409 and municipal boundaries. The proposed 75.28-acre LOM is really proposed on 115.31 acres on the south side of State Route 409 in the Town of Dix. Of the 281 acres, 20 acres are in the Village of Watkins Glen, which prohibits mining.⁴² Approximately 145.65 acres of the stated 281 acres are located on the north side of State Route 409. While the original application proposed a total LOM of 106.7 acres including mining on the north side of State Route 409, as part of the development of the dEIS, the lateral expansion across State Route 409 was removed from the current Application. Future expansion onto the 145.65 acres located on the north side of State Route 409 should, therefore, be prohibited.

⁴⁰ dEIS § 5.6.

⁴¹ The Mine Application identifies “It’s Greener Now, Inc.” as the surface and mineral owner of the Mine. It also provides the Mine address for “It’s Greener Now, Inc.” However, Schuylers County online tax records indicate the various parcels that make up the Mine (Tax IDs 64.00-1-42, 64.00-3-8.111, 64.00-3-8.113, 64.00-3-8.116) are owned by Padua Ridge LLC. See Schuylers County Image Mate, <https://schuylers.dynys.com/search.aspx>. Padua Ridge, LLC is listed on the Department of State, Division of Corporations website as a Domestic Limited Liability Company while IGN is listed as a Foreign Business Corporation with a principal address of 172 Davis Station Rd, Cream Ridge, New Jersey. Upon information and belief, Martin Wojcik is a principal of both “It’s Greener Now, Inc.” and “Padua Ridge, LLC.”

⁴² It is significant that these 20 acres are part of a parcel that spans the Town of Dix and Village of Watkins Glen boundary and the proposed LOM is located partially on the portions of the parcel in the Town of Dix.

The dEIS makes it clear that the reduction in the LOM and removal of mining from the north side of State Route 409 was intended to mitigate the potential impacts of the Application. The dEIS states:

The current version of the proposal . . . reduces the lateral area and depth of mining from the original proposal. These revisions result in a reduction or elimination of some potential environmental impacts and permitting requirements in comparison to the original version of the proposal.⁴³

Revisions to the proposed mining and final reclamation plans have been made to incorporate an expanded understanding of site geologic and hydrogeologic conditions, and to minimize potential environmental impacts. . . . The current proposal represents an alternative project scale and configuration to what was originally proposed.⁴⁴

The revised proposal also reflects a reduced size from the original application. . . . The current proposal further reduces size from the original application by increasing setbacks. The . . . increase in setbacks reduce and mitigate potential impacts to noise, visual and aesthetic, and cultural resources by eliminating additional disturbances and maximizing screening buffers.⁴⁵

Permitting future expansion onto the north side of State Route 409 would constitute impermissible segmentation.⁴⁶ Since the Applicant initially proposed an expansion including property on the north side of State Route 409, an expansion to these portions of the property owned by Padua Ridge, LLC cannot be considered speculative or functionally independent to make such segmentation permissible. Furthermore, since the removal of the expansion onto the north side of State Route 409 was done in part to mitigate potential impacts of the expansion, it would be improper to permit mining on such property in the future and negate any purported mitigation provided by their removal. Therefore, the DEC should impose a Finding and a condition on any permit issued that future mining on the 145.65 acres owned by Padua Ridge, LLC on the north side of State Route 409 is prohibited.

The DEC should impose clear requirements for reclamation and limit the affected acreage.

As discussed above, the dEIS and MLUP fail to provide a clear schedule for reclamation or limit to the maximum affected acreage. It is misleading to assert that "concurrent reclamation" will minimize the impacts of the expansion without establishing clear, enforceable requirements for such reclamation. Vague terms like "maximum extent practicable" or "one year's worth of

⁴³ dEIS § 1.1.

⁴⁴ dEIS § 1.2.2.

⁴⁵ dEIS § 5.3.

⁴⁶ See 6 NYCRR § 617.2(ah) ("Segmentation means the division of the environmental review of an action such that various activities or stages are addressed under this Part as though they were independent, unrelated activities, needing individual determinations of significance."). See also 6 NYCRR § 617.3(g) ("Considering only a part or segment of an action is contrary to the intent of SEQRA).

mining” should not be included in the Findings or Mine Permit. Such ambiguous terms and standards undermine the likelihood of actual concurrent reclamation. Notably, the Mine Application does not propose any actual reclamation during the first 5-year permit term. Such terms instead demonstrate IGN’s intent to downplay and minimize impacts of the Application without the intent to take definitive steps to minimize impacts once the permit is issued. Furthermore, such ambiguous terms would hinder the ability of the DEC to enforce concurrent reclamation.

Instead, consistent with the Final Scope Outline, the DEC should impose a maximum affected acreage of 15 acres, require a one-to-one reclamation schedule (i.e., one affected acre must be reclaimed prior to stripping a new acre in preparation for mining), and/or require a minimum number of acres (e.g., 11.5 acres) be reclaimed during the coming term. Such requirements more accurately embody the goal of minimizing and mitigating adverse impacts from the expansion of the Mine and are objective criteria subject to DEC enforcement.

Additional screening should be required.

If the mine permit is granted, the DEC should impose additional screening to minimize the impact of the expansion on the viewsheds along heavily traveled areas. Specifically, natural barriers, principally pine trees, should be required along the footprint of the expansion area to screen the affected area from view.

The SWPPP should bar refueling within the excavation.

The SWPPP provides appropriate measures for preventing equipment cleaning operations from infiltrating stormwater runoff. Specifically, it requires:

- Perform all cleaning operations indoors, under cover, or in bermed areas that prevent runoff and run-on;
- Ensure that all wash water drains to a proper collection system (i.e., not the stormwater drainage system).⁴⁷

The SWPPP should include similar limits on the refueling of equipment within the Mine, specifically the excavation. For example, refueling should be permitted only on impervious surfaces with catchment that prevents potential overflow or spills from reaching either the stormwater system or groundwater. This is consistent with the SWPPP’s proposal to “[w]hen possible use barriers between material storage and traffic areas, secondary containment provisions, and procedures for material storage and handling.”⁴⁸ Most importantly, refueling should be prohibited within any excavation or reclaimed area. The MLUP proposes mining to approximately five (5) feet of groundwater. As the EAF and dEIS note, sand is a high draining soil. Overfills and spills in areas located in such proximity to groundwater undermines the ability to utilize spill response procedures and equipment to prevent overfills and spills from contaminating groundwater supplies.

⁴⁷ SWPPP § 6.1.

⁴⁸ SWPPP § 6.2.

Any permit issued should bring mining to a close by a date certain.

The DEC should limit the operation duration of the LOM. The DEC has recognized that the duration of impacts is relevant to the significance of such impacts.⁴⁹ The imposition of aesthetic, traffic, dust, and other impacts from a use inconsistent with the tourism-focused goals of the community for decades is clearly a significant and substantial impact. If the DEC approves the expansion, it should provide a firm end to such impacts.

The DEC requires that scoping outlines and environmental impact statements include a discussion of the duration of anticipated impacts.⁵⁰ Consistent with this requirement both the Final Scope Outline and dEIS set out a 20-year LOM. Therefore, any permit should set a maximum limit on either the number of renewals or permit terms or impose a deadline for final reclamation. Based upon the Final Scope Outline and dEIS, the permit should require final reclamation within twenty-five (25) years⁵¹ and limit the permit to a maximum of 5 permit terms, 4 permit renewals.

Conclusion

On behalf of Michael Lausell and Oscar Neff, I want to thank the New York State Department of Environmental Conservation for its consideration of these comments. For the reasons set forth above, we encourage the DEC to require IGN to complete a sEIS and correct the dEIS as part of the SEQRA review. Should the DEC issue a Findings Statement and approve the permit application, it should impose conditions regarding future expansion, concurrent reclamation and maximum affected acreage; prohibition of refueling in the excavated and reclaimed areas; and setting a maximum operational duration for the Mine.

If you have any questions regarding these comments, please feel free to contact me.

Yours truly,

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⁴⁹ SEQR Handbook p. 76, 79.

⁵⁰ SEQR Handbook p. 103, 116.

⁵¹ A twenty-five-year limit recognizes that the 20-year LOM is an estimate, which is impacted by market demand, and that time for reclamation is required after active mining ceases.

