

**STAFF DRAFT – NOT APPROVED BY AGENCY  
THIS IS A TWO-SIDED DOCUMENT**

 <p><b>Adirondack Park Agency</b></p> <p>P.O. Box 99, 1133 NYS Route 86 Ray Brook, New York 12977 Tel: (518) 891-4050 Fax: (518) 891-3938 www.apa.ny.gov</p>	<p style="text-align: center;"><b>DRAFT</b> APA Project Permit <b>2015-0119</b></p>
<p>In the Matter of the Application of</p> <p><b>K &amp; C LAND HOLDING, LLC</b> <b>Permittee</b></p> <p>for a permit pursuant to § 809 of the Adirondack Park Agency Act</p>	<p>Date Issued: <b>XXXX</b></p>
	<p>To the County Clerk: This permit must be recorded on or before XXXX. Please index this permit in the grantor index under the following names:</p> <ol style="list-style-type: none"><li><b>1. K &amp; C Land Holding, LLC</b></li><li><b>2. K and C Land Holding, LLC</b></li></ol>

**SUMMARY AND AUTHORIZATION**

This permit authorizes a new commercial use excavation and contracting business in an area classified Rural Use on the Adirondack Park Land Use and Development Plan Map in the Town of Fort Ann, Washington County.

This permit shall expire unless recorded in the Washington County Clerk's Office on or before **XXXX**, in the names of all persons listed above and in the names of all owners of record of any portion of the project site on the recordation date.

The project shall not be undertaken or continued unless the project authorized herein is in existence within four years from the date the permit is recorded. The Agency will consider the project in existence when the permit has been recorded.

The project shall be undertaken in compliance with all conditions stated herein. Failure to comply with this permit is a violation and may subject the permittee, successors, and assigns to civil penalties and other legal proceedings.

This permit does not convey any right to trespass upon the lands or interfere with the riparian rights of others in order to undertake the authorized project, nor does it authorize the impairment of any easement, right, title or interest in real or personal property.

Nothing contained in this permit shall be construed to satisfy any legal obligations of the permittee to comply with all applicable laws and regulations or to obtain any governmental approval or permit from any entity other than the Agency, whether federal, State, regional or local.

### **PROJECT SITE**

The project site is a 60.5-acre parcel of land located on Buttermilk Falls Road in the Town of Fort Ann, Washington County, in an area classified Rural Use on the Adirondack Park Land Use and Development Plan Map. The property is currently improved by an existing single-family dwelling and garage/storage building. The site is identified as Tax Map Section 110, Block 1, Parcels 1.1 and 12, and is described in a deed from John Dirga to K & C Land Holding, LLC, dated November 1, 2013, and recorded November 4, 2018 in the Washington County Clerk's Office under Instrument Number 2013-00088335.

### **PROJECT DESCRIPTION**

The project as conditionally approved herein involves a new commercial use excavation contracting business, including the construction of a 6,000 square foot building, on-site storage for construction equipment and materials, and associated site development. It is shown on the following maps, plans, and reports:

- Three sheets of plans entitled, "Proposed Development for the Lands of K&C Land Holding, LLC," prepared by Environmental Design Partnership, and dated April 1, 2015 with a final revision date of October 25, 2018 (Project Plans);
- Specification sheets for new lighting and luminaire schedule received by the Agency July 26, 2015 (Lighting Plan); and
- "Stormwater and Pollution Prevention Plan for Construction Activities," prepared for K&C Land Holding, LLC by The Environmental Design Partnership, LLP, and dated September 2015 (SWPPP).

A reduced-scale copy of the Site Plan for the project, Sheet No. S-2 of the Project Plans, is attached as a part of this permit for easy reference. The original, full-scale maps and plans described in this paragraph are the official plans for the project, with copies available upon request from Adirondack Park Agency headquarters in Ray Brook, New York.

### **AGENCY JURISDICTION**

The project requires an Agency permit pursuant to §§ 809(2)(a) and 810(1)(d)(4), because the project is a new commercial use involving more than twenty-five hundred square feet of floor space on Rural Use lands.

### **CONDITIONS**

#### **THE PROJECT IS APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. The project shall not be undertaken until this permit has been recorded in the Washington County Clerk's Office.

2. This permit is binding on the permittee, all present and future owners or lessees of the project site, and all persons undertaking all or a portion of the project, for as long as the commercial use continues on the site. Copies of this permit and all maps, plans and reports referenced herein shall be furnished by the permittee to all subsequent owners or lessees of the project site prior to sale or lease, and by the permittee and/or any subsequent owner or lessee to all persons undertaking any development activities authorized herein.
3. In addition to complying with all terms and conditions of this permit, all future activities on the project site shall be undertaken in compliance with the requirements of New York State's Adirondack Park Agency Act, Freshwater Wetlands Act, and the Adirondack Park Agency's implementing regulations [9 NYCRR §§ 570-588].
4. All deeds conveying all or a portion of the lands subject to this permit shall contain references to this permit as follows: "The lands conveyed are subject to Adirondack Park Agency Permit 2015-0119, issued **XXXX**, the conditions of which are binding upon the heirs, successors and assigns of the grantors and all subsequent grantees."

#### **Development**

##### **Construction Location and Size**

5. This permit authorizes the construction a new commercial use building and associated equipment and vehicle parking areas, material stockpiling area and stormwater management areas in the locations shown and as depicted on the Project Plans. Any change to the location, dimensions, or other aspect of the commercial use building or parking area shall require prior written Agency authorization.

##### **Building Color**

6. All exterior building materials, including roof, siding and trim, of the new commercial use building shall be a dark shade of green, grey, or brown.

##### **Outdoor Lighting**

7. All exterior lighting associated with the commercial use on the project site shall comply with the Lighting Plan and Project Plans. Any change to this lighting shall require prior written Agency authorization.
8. Outside of the hours of operation authorized herein, all overhead parking area lighting shall be turned off and all building mounted lighting shall be reduced to the minimum necessary for safety and security purposes.

### **Signage**

9. Any sign associated with the commercial use displayed on the project site shall require prior written Agency authorization.

### **Vegetation Removal**

10. Outside of the limits of clearing shown on the Project Plans, between the authorized development, Buttermilk Falls Road and adjoining residential properties, no trees, shrubs, or other woody stemmed vegetation may be cut or otherwise removed or disturbed on the project site without prior written Agency authorization, except for the removal of dead or diseased vegetation, rotten or damaged trees, or any other vegetation that presents a safety or health hazard.
11. Between April 1 and October 31, no trees shall be removed or disturbed on the project site without prior written Agency authorization, except for the removal of trees that present a safety or health hazard.

### **Earth Berms and Plantings**

12. All earth berms depicted on the Project Plans shall be constructed as shown and planted no later than the first spring or fall planting season after final grading related to the authorized development on the project site. Trees and shrubs that do not survive shall be replaced annually until established in a healthy growing condition.

### **Density**

13. There shall be no more than seven principal buildings located on the project site at any time. The existing dwelling and the commercial use building authorized herein each constitute one principal building. The Agency makes no assurances that the maximum development mathematically allowed can be approved.

### **Project Operations**

#### **Hours of Operation**

14. The commercial use shall only operate on-site between 7am and 7pm, Monday through Friday and between 7am and 4pm on Saturdays. Any operation of the commercial use on Sundays or outside of the hours of operation stated herein shall require prior written Agency authorization. All authorized on-site land clearing, grading, development and construction activities shown on the Project Plans and described in the SWPPP shall occur only during the authorized hours of operation.

15. All delivery and storage activities occurring on the project site and any necessary on-site construction equipment maintenance, stockpiling and screening of on-site materials, shall only occur between 8 a.m. and 5 p.m. Monday through Friday. Any on-site activities outside these hours shall require prior written Agency authorization.

#### **Trucking**

16. There shall be no more than 12 loaded truck trips per day during the hours of operation described herein without prior written Agency approval.

#### **Access Road and Dust**

17. The partially paved existing access driveway from Buttermilk Falls Road and the parking areas authorized herein shall be maintained to minimize dust by repairing asphalt and gravel surfaces as needed. Any dust generated by the commercial use shall be addressed with an appropriate moisture additive or sweeping.

#### **Material Storage**

18. There shall be no more than 10,000 cubic yards of construction materials stored on the project site at any time. Any storage of construction materials outside of the material stockpile area shown on the Project Plans shall require prior written Agency authorization.

#### **Extraction**

19. There shall be no excavation or extraction on the project site for the purposes of stockpiling material to be used off-site. Any new material extraction or re-activation of materials extraction on the project site shall require prior written Agency authorization.

#### **Invasive Species Control/Sanitizing Equipment**

20. When returning from off-site and prior to use on the next job, all equipment, including but not limited to trucks, excavators, tractors, etc., and hand excavation tools such as shovels, rakes, and picks, to be stored on the project site shall be clean and free of soil, mud, or other similar material prior to use on another site. Equipment shall be washed in one location to prevent the distribution of propagules among different wash sites. All construction equipment and vehicles operating on jobs that may contain existing invasive species shall be thoroughly cleaned prior to moving to other jobs.

**Infrastructure**

**Wastewater**

21. If installed within five years of the date of issuance of this permit, the on-site wastewater treatment system shall be constructed in conformance with the location and design shown on the Project Plans. Construction of the system shall be supervised by a design professional (licensed engineer or registered architect). Within 30 days of complete system installation and prior to its utilization, the design professional shall provide written certification to the Agency that the system was built in compliance with the approved plans. No on-site wastewater treatment system shall be installed on the project site more than five years after the date of issuance of this permit except pursuant to written authorization from the Agency.

**Stormwater Management/Erosion Control**

22. The project shall be undertaken in compliance with the Stormwater Pollution Prevention Plan (SWPPP).

**FINDINGS OF FACT**

**Project Site**

**Wetlands**

1. The project site contains a 0.15-acre isolated wetland as shown on the Project Plans. Additional wetlands not described herein or depicted on the Project Plans may be located on or adjacent to the project site.

**Wildlife/Habitat**

2. The 0.15-acre isolated wetland shown on the Project Plans adjacent to the proposed development is a vernal pool providing valuable wildlife habitat on the project site.
3. The project site is located within five miles of a Northern Long-Eared Bat hibernaculum. The Northern Long-Eared Bat is listed as a threatened species by New York State and the United States Department of the Interior. The removal of trees on the project site must comply with all federal and New York State Department of Environmental Conservation requirements for protection of this species.

**Vegetation**

4. The project site is entirely forested with mature coniferous and deciduous vegetation except for the areas of the existing residential development, access road and storage building.

### **Soils**

5. Soils on the project site in the location to be developed are well drained and generally consist of coarse sand, gravel and cobbles. There is an abandoned sand and gravel extraction located on the project site near Buttermilk Falls Road that has begun to revegetate naturally. No re-activation of this extraction is proposed or authorized herein.

### **Slopes**

6. The development authorized herein is in a relatively flat location. The existing access road has a slight grade of approximately three to eight percent. All proposed land disturbance will be performed on slopes of less than eight percent.

### **Historic Sites or Structures**

7. By letter dated November 17, 2015, the New York State Office of Parks, Recreation and Historic Preservation determined that the project will have no impact upon the cultural resources in or eligible for inclusion in the State and National Registers of Historic Places.

### **Nearby Land Uses**

8. The project site is located on the west side of Buttermilk Falls Road within a Rural Use land use area and is consistently developed by residential uses with larger lots. The east side of Buttermilk Falls Road is within a Moderate Intensity Use area a characterized by slightly denser development as permitted by that land use area. The character along this road in the vicinity of the project site is consistent with a mix of developed and vacant private lands. There are several nearby properties that include businesses accessory to residential use, including two excavation contracting businesses.

### **Access**

9. The project site is currently improved with a driveway to the existing single-family driveway and a 900-foot improved access driveway that extends to the location of an existing 1,500 square foot garage/storage building. This existing driveway is paved for the first 400 feet and the remainder is a hardened surface of crushed stone.
10. Existing access to the project site is from Buttermilk Falls Road, which is owned and maintained by the Town of Fort Ann and has a posted speed limit of 40 mph in this location. The project site is located approximately one-half mile from NYS Route 149, for which NYSDOT traffic data viewer reports an average daily traffic flow of 8,128 vehicles. The commercial use authorized herein will generate increased truck traffic on Buttermilk Falls Road to the intersection with NYS Route 149.

**Infrastructure**

**Wastewater**

11. An on-site wastewater treatment system constructed as located and depicted on the Project Plans will comply with all applicable New York State Department of Health and Agency standards.

**Stormwater Management**

12. The proposed development will include greater than one acre of land disturbance, therefore a stormwater management plan is required.

**Economic/Fiscal Factors**

13. The project involves the relocation of an existing business to facilitate the transition of the business to a new owner and the potential to retain 10 construction industry jobs in the Adirondack Park and Washington County. The median annual wage for a construction worker in Washington County is \$41,121.

**Public Notice and Comment**

14. The Agency notified all adjoining landowners and other parties and published a Notice of Complete Permit Application in the Environmental Notice Bulletin, as required by the Adirondack Park Agency Act. Four comment letters have been received from two nearby property owners expressing concerns for quality-of-life and area character issues (noise and visual impacts, safety issues that could be created by development and increased activity at the project site and from increased truck traffic on Buttermilk Falls Road).

**DEC Permitting**

15. The proposal requires a State Pollution Discharge Elimination System (SPDES) general permit for stormwater discharges from construction activities from the NYSDEC because it includes 2.9-acres of land disturbance.
16. The proposal requires a Petroleum Bulk Storage permit from the NYSDEC because the commercial use includes an on-site storage of greater than 1,100 gallons of diesel fuel, motor oil and equipment lubricants.

## **PROJECT IMPACTS**

### **Visual**

17. Locating the development associated with the authorized commercial use as shown on the Project Plans and restricting building color, lighting and signage will all help to minimize off-site adverse impacts.
18. Restrictions on vegetation removal and requiring that earthen berms be constructed and planted as shown on the Project Plans will further mitigate visual impacts related to the authorized use and development on the project site.

### **Habitat/Wetlands**

19. Requiring that all land disturbance be performed in the locations and as shown on the Project Plans and SWPPP the vernal pool will be preserved and continue to provide valuable wildlife habitat on the project site.
20. Limiting vegetation removal and clearing on the project site to the winter months will allow for potential undisturbed summer roosting opportunities for the Northern Long Eared Bat.

### **Soils/Surface Waters/Groundwater**

21. Installation and construction of the authorized on-site wastewater treatment system and stormwater management areas will protect against erosion, sedimentation, water quality degradation, and other adverse impacts.

### **Invasive Species**

22. Requiring inspection and cleaning of construction vehicles and tools after returning to the project site and prior to use on other off-site locations will reduce the likelihood of spreading invasive plants on the project site and other properties where construction equipment is being used.

### **Historic Sites or Structures**

23. The project will not cause any change in the quality of "registered," "eligible," or "inventoried" property as those terms are defined in 9 NYCRR § 426.2 for the purposes of implementing § 14.09 of the New York State Historic Preservation Act of 1980.

**Nearby Land Uses**

24. The Project Operations conditions will minimize impacts to nearby land uses by limiting truck traffic and noise generation through hours of operation for on-site activities. Use of the existing improved driveway on the project site will minimize impacts to existing traffic patterns on Buttermilk Falls Road.

**Economic/Fiscal Factors**

25. The relocation of an established business currently operating in the region may retain jobs and increase tax revenues. Increased noise and activity at the project site may impact nearby residential property values.

**CONCLUSIONS OF LAW**

The Agency has considered all statutory and regulatory criteria for project approval set forth in the Adirondack Park Agency Act and 9 NYCRR Part 574. The Agency hereby finds that the project authorized as conditioned herein:

- a. will be consistent with the land use and development plan;
- b. will be compatible with the character description and purposes, policies, and objectives of the Rural Use land use area;
- c. will be consistent with the overall intensity guidelines for the Rural Use land use area;
- d. will comply with the shoreline restrictions of § 806 of the Adirondack Park Agency Act; and
- e. will not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the Park or upon the ability of the public to provide supporting facilities and services made necessary by the project.

PERMIT issued this        day  
of                               , 2018.

ADIRONDACK PARK AGENCY

BY: \_\_\_\_\_  
Richard E. Weber III  
Deputy Director (Regulatory Programs)

STATE OF NEW YORK  
COUNTY OF ESSEX

On the        day of                                in the year 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared Richard E. Weber III, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their capacity, and that by their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

REW:DFK:slp

