

From: [Theresa Kaczor](#)
To: [Magee, Corrie \(APA\)](#)
Cc: [Stodola, Damion \(APA\)](#); [Reynolds, Sarah H \(APA\)](#); [Plante, David \(APA\)](#); [Love, Aaron A \(DEC\)](#); [Magee, Beth A \(DEC\)](#); twest@westfirmlaw.com; [Cindy Monaco](#)
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Ms. Magee,

My apologies, we realized that there was an error on the letterhead of the letter sent to you a few minutes ago. Please disregard that letter and accept the attached letter as attorney Thomas S. West's letter submitted on behalf of Barton Mines Company, LLC in regard to the above referenced project.

Thank you.
Theresa Kaczor



Theresa M. Kaczor

Legal Secretary

Peter Kiernan Plaza

575 Broadway, 2nd Floor

Albany, New York 12207-2931

Office: 518-641-0515

Fax: 518-615-1500

tkaczor@westfirmlaw.com

www.westfirmlaw.com

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Thomas S. West
Direct Dial: (518) 641-0501
E-Mail: twest@westfirmlaw.com

November 7, 2024

VIA ELECTRONIC MAIL

Corrie Magee
Environmental Program Specialist I
Adirondack Park Agency
P.O. Box. 99
Ray Brook, New York 12977
Corrie.Magee@apa.ny.gov

**RE: Barton Mines, LLC: APA Project No. 2021-0245
Permit Modification for Expansion of Ruby Mountain Mine.
Town of Johnsburg, Warren County (the “Project”)**

**Response to Public Comments on APA’s Notice of Complete
Application for the Project (“NOCA”)**

Dear Ms. Magee:

On behalf of our client Barton Mines Company, LLC (“Barton”), we write in response to certain public comments provided to the Adirondack Park Agency (“APA”) during the public comment period following the APA’s NOCA. Specifically, in this submission, we address the following comment letters, as they are the most substantive/detailed submissions representative of public concerns:

- (1) Protect the Adirondacks (“Protect”) comment letter, dated October 10, 2024 (“Protect Comments”), with attached comment letter from Sterling Engineering, P.C., dated October 9, 2024 (“Sterling Stability Comments”);
- (2) Garnet Hill Property Owners’ Association (“GHPOA”) comment letter, dated October 10, 2024, with attached “Review of Additional Ruby Mountain Garnet Mine Noise Studies” by Resource Systems Group (“RSG”), dated October 9, 2024 (“RSG Noise Comments”), and supplemental GHPOA letter, dated October 18, 2024 (collectively, the “GHPOA Comments”);
- (3) Adirondack Council comment letter, dated October 10, 2024 (“Adirondack Council Comments”); and
- (4) Comment letter from John Privitera (on behalf of Friends of Siamese Ponds [“FOSP”]), dated October 10, 2024, with attached comment letter from FOSP, dated October 10, 2024 (collectively, “FOSP Comments”).

Collectively, hereinafter, we refer to Protect, GHPOA, Adirondack Council and FOSP as the “Objectors.”

Attorneys and Counselors at Law
Peter Kiernan Plaza | 575 Broadway, 2nd Floor | Albany, NY 12207-2931
Office: (518) 641-0500 Fax: (518) 615-1500 www.westfirmlaw.com

While the discussion herein is not meant to be exhaustive, Barton feels compelled, as appropriate, to refute certain claims by the Objectors and/or briefly detail how other asserted concerns are more than adequately addressed and resolved in the thousands of pages of submissions supporting the requested permit modification. *See generally, Mine Permit Amendment & Modification, Barton Mines Company, LLC, Ruby Mountain Garnet Mine* (July 2024) (with appendices) (attached to Response to 3rd Notice of Incomplete Permit Application [“NIPA”]); Revised Sound Study (Bowman, August 2024) and Revised Geotechnical Review (Bowman, August 2024) (both attached to Response to 4th NIPA). Indeed, Barton strenuously maintains that, after this three-year-long process, no stone has been left unturned relative to fully evaluating any and all possible impacts from this Project. That is, all potential issues have been comprehensively and exhaustively examined through technical evaluations designed and conducted in accordance with all agency guidance (both of the APA and the New York State Department of Environmental Conservation [“NYSDEC”]), in full compliance with all agency requests for additional information and analyses, and in some case, with analyses that go above and beyond what has been required by the regulators. Dispositively, no member of the public has asserted (let alone supported) any claim that the Project (as proposed) fails to meet a specific applicable statutory/regulatory standard that could result in Project denial. In other words, none of the public comments raises a “substantive and significant issue.” Therefore, contrary to the Objectors’ claims, an adjudicatory hearing is not warranted, and the matter is ripe for the APA’s decision-making.

The most salient issues identified in the public comment letters fall into six substantive categories: (1) critical environmental area (“CEA”) (current permit compliance and alleged impacts); (2) geotechnical – residual minerals facility (“RM Facility”) stability; (3) visual/aesthetic (RM Facility height and dust); (4) noise; (5) Climate Leadership and Community Protection Act (“CLCPA”) compliance; and (6) alternatives. Additional miscellaneous issues include the alleged lack of post-closure plans and the alleged inconsistency with wilderness character. Each of these issues is addressed briefly, in turn, below, with the conclusion being that the administrative record – consisting of *thousands* of pages of technical submissions derived from studies which were designed and implemented with agency involvement and in full compliance with agency guidance and directives – is more than adequate for the APA to make the required findings under Executive Law § 809(9) to approve the Project. For the reasons summarized below, Barton respectfully maintains that an adjudicatory hearing is not warranted, and the requested permit modification should be granted.

I. CEA Issues: Barton Is in Full Compliance with Its Current Permits/Authorizations; Further, the Proposed Activities Are Not Prohibited in the CEA, And All Impacts Have Been Fully Evaluated and Mitigated to the Maximum Extent Practicable

The Objectors make two claims regarding the CEA: that (1) Barton allegedly is in violation of its current permits; and (2) the Project allegedly will damage the CEA’s special character/buffering effect on the State Wilderness Area. Protect is wrong on both counts. *See, e.g., Protect Comments, at pp. 1, 6-8.*

A. Alleged Permit Violations

The Objectors err in claiming that Barton's activities in the CEA violate Barton's current permits. *See, e.g.*, Protect Comments, at pp. 1, 7-8. Under the 2020 NYSDEC permit (renewal) and authorization from the APA (letter of compliance, dated May 22, 2020, referencing January 2020 renewal submissions), all of Barton's activities in the 3.5-acre of the CEA are authorized. A copy of the APA letter of compliance, dated May 22, 2020, is annexed hereto and incorporated herein as **Exhibit A**. The APA letter of compliance resolves the Objectors' claim of Barton's alleged non-compliance conclusively in Barton's favor. Accordingly, this matter is a non-issue.

B. Impacts to the CEA

The Objectors err, both on the law and the facts, in seeking to preclude Barton from operating on Barton-owned property in the CEA (as detailed in the permit amendment/modification documents). *See, e.g.*, Protect Comments, at pp. 1, 8.

- First, the Objectors erroneously attempt to convey the view that the CEA is sacrosanct. As a legal matter, however, they are wrong, as there is no prohibition on development in CEAs, including the proposed activities in the CEA at issue here.¹ The only effect of a CEA designation is that it subjects certain projects to APA review which would otherwise escape such review absent the designation. *See* apa.ny.gov/property_owners/ceas.html; Executive Law § 810. The CEA designation here is due to proximity (1/8th mile) to a State Wilderness Area. This renders some of Barton's property (on the northern border) to be within the CEA designation.
- It also bears mention that unlike the case for wetland CEAs or wild/scenic river system CEAs, to which additional substantive permitting requirements apply (*see, e.g.*, 9 NYCRR §§ 577 & 578), no additional permitting requirements apply here, other than the typical considerations applicable to Class A regional projects. *See* Executive Law §§ 809 & 810. Notably, the Project would qualify as a Class A regional project in any event due to the mineral extraction activities. *See* Executive Law §§ 810(1)(e)(12), (13) and 810(1)(f)(1), (2). Thus, the APA would review the Project as a Class A regional project (including consideration of potential impacts to the State Wilderness Area), regardless of whether a portion of the Project was located within the CEA.

¹ In fact, the APA has authorized activities in CEAs (including in wetlands), evaluating each project on a case-by-case basis and balancing environmental effects against socio-economic and other benefits. *See, e.g.*, 9 NYCRR § 578.10(a). For example, APA Permit 87-39 for the Ruby Mountain Mine approved the 30-acre Finger Valley site for wet disposal, allowing for dredging and filling of a 4+-acre wetland (itself a CEA), a portion of which was in the CEA at issue here. While this disposal site was subject to subsequent APA approval prior to construction and was later eliminated by subsequent permit amendment, APA's approval of such activity (which involved the APA's departure from the substantive wetland standards in 9 NYCRR § 578 given the socio-economic benefits of the mining operation) demonstrates that there is no prohibition on development in CEAs.

- On the facts, the Objectors allege that the Project will “degrade” or “destroy” a significant portion of the CEA because of tree removal and decreasing the buffering effect of the CEA (relative to the State Wilderness Area). These claims, however, warrant neither a hearing, nor permit denial, as Barton’s detailed comprehensive studies demonstrate the lack of any appreciable impact on the State Wilderness Area.
 - First, the Objectors have failed to identify any statutory or regulatory standard that would be violated by Project activities in the CEA.
 - Second, the Objectors have failed to state with specificity the negative impacts they believe will result to the State Wilderness Area from the Project (all of which activities will occur on Barton-owned property in land use areas zoned for the proposed purposes). Other than a temporary loss of trees in the CEA, the Objectors have not identified how this will impair the functioning of the State Wilderness Area (as an ecosystem or as a recreational area) or stated with specificity what, if any, actual impact would result to the State Wilderness Area. The Objectors also have failed to acknowledge that tree-cutting (in the CEA and elsewhere on the Project site) will be temporal in nature, as all lands will be fully reclaimed, with a net gain of trees. *See, e.g., Mine Permit Amendment & Modification* (July 2024), § 7.10 (approximating removal of 16,678 trees in CEA, with replacement of 17,721 trees).
 - Further, as noted above, all activities in the CEA will occur on Barton-owned property, with mining occurring in an industrial area (as an allowable primary use) and RM storage occurring in a resource management area (as an allowable secondary use).
 - Finally, the Objectors’ generalized allegations and suggestions of harm are belied by Barton’s comprehensive analyses, among them, the Sound Study (which includes a receptor in the State Wilderness Area) and the Visual Study (which evaluates views from the Peaked Mountain Trail, the closest mapped trail to the CEA). *See Mine Permit Amendment & Modification*, (July 2024), § 7.10, Appendix O (Visual Impact Assessment) and Appendix P (Sound Study); *see also* Revised Sound Study (August 2024).

In sum, Barton’s operations (including in the CEA) are lawful, and all potential impacts to the CEA have been fully evaluated and mitigated. There are no significant impacts resulting from the Project (including on the State Wilderness Area), and no hearing is warranted on this issue. *See* Point IX, *infra*.

II. Geotechnical Issues: The RM Facility Is Not a Part 360 Facility; Part 360 Requirements Do Not Apply; Barton’s Geotechnical Analyses and Current Data Confirm Stability of the RM Facility; And Real-Time Monitoring Will Further Preempt Any Potential for Failure

Through the Sterling Stability Comments, the Objectors assert four issues regarding Barton’s slope stability analysis: (1) criticism of an “observational” “design-build” approach (due to lack of specific performance requirements and defined roles of responsibility); (2) lack of consideration of earthquake loading or rapidly rising groundwater; (3) lack of adequate sensitivity analyses/limited field data; and (4) claim that the RM Facility is a landfill, thus requiring seismic evaluation. *See, e.g.*, Protect Comments, at pp. 1-2, 9-11 & Sterling Stability Comments (appended to Protect Comments).

These criticisms, on their face, do not raise an adjudicable issue because they fail to identify any applicable standard that the Project fails to meet. In terms of substance, these criticisms are meritless, as set forth in the evaluation/refutation provided by Bowman (Barton’s geotechnical consultant) in its response dated November 7, 2024, which is annexed hereto and incorporated herein as **Exhibit B**. To summarize:

- At the outset, it needs to be recognized that many of Sterling’s criticisms (e.g., seismic) are premised on Sterling’s erroneous view that the RM Facility is a Part 360 landfill. The RM Facility, however, is not a Part 360 facility, as confirmed by the NYSDEC on three separate occasions. Correspondence from the NYSDEC, dated November 23, 2015 and January 26, 2016, (which appears as pages 690 and 691 of 1291 in the *Mine Permit Amendment and Modification* [July 2024]), and dated January 18, 2024 (to Protect), is annexed hereto and incorporated herein as **Exhibit C**.
- As further explained by Bowman in **Exhibit B**, the RM Facility is a homogeneous mass of highly processed small rock fragments having well-understood, highly predictable properties with virtually no variation relative to strength and drainage. The RM Facility, therefore, is not a landfill, which is a “Dagwood sandwich” type facility involving heterogeneous layers, including different waste types (with varying compaction factors), geomembranes, groundwater suppression systems, and leachate collection systems, all with varying geotechnical properties that warrant close scrutiny and enhanced factors of safety under the exacting Part 360 standards. Accordingly, there is no merit to Sterling’s attempt to equate the RM Facility to a Part 360 landfill.
- In any event, as to Sterling’s criticism regarding the alleged lack of a seismic analysis, Sterling is wrong. As explained by Bowman in **Exhibit B**, a detailed site-specific seismic hazard analysis was performed for this Project by Lettis Consultants International, Inc. under the direction of Knight-Piesold. Knight-Piesold utilized the results of that analysis to assess the site-specific liquefaction potential; and Barton incorporated into RM facility design Knight-Piesold’s recommendations to reduce the potential for any seismic risk during build out of

the RM Facility. Accordingly, even though a seismic analysis is not required under the standards governing this Project, such an analysis was done, thus defeating Sterling's criticism. Notably as well, the seismic study is explicitly referenced on pages 3 and 10 of Appendix A to Bowman's Geotechnical Report (i.e., Appendix T to the *Mine Permit Amendment and Modification*) (§ 3.0 of Appendix A To Appendix T, referencing 2021 study, with full citation in reference section: Knight-Piesold, 2021. *Barton Mine – Tailings Storage Facility – 5-Year Tailings Storage Plan*. DV101-00586/09. 29 Jan. 2021); *see also* Appendix A to Revised Geotechnical Report (August 2024) (appended to response to 4th NIPA). Sterling's criticism, therefore, is meritless.

- Relative to Sterling's concern regarding sensitivity analyses and limited field data, as explained by Bowman in **Exhibit B**, Sterling is misguided. Sensitivity analyses are typically utilized when material strength parameters are variable, which, as already noted, is not the case here given that the RM comes from a single source and is highly processed. Furthermore, Barton's initial analysis was performed using extremely conservative input parameters/worst-case conditions. *See generally, Mine Permit Amendment and Modification* (July 2024), § 7.7 & Appendix T, and Revised Geotechnical Report (August 2024). Use of worst-case parameters/conditions further negates the need for sensitivity analyses. In any event, real-time monitoring has confirmed that the parameters used in the geotechnical evaluation of the RM facility are even more conservative (i.e., will over-predict failure) than originally thought. *See* 4th NIPA Response to Comment 2 (and attached Revised Geotechnical Report); *see also* **Exhibit B** hereto.
- As for Sterling's issue with what it terms to be the "design-build, observational approach" (i.e., alleged lack of specific performance standards/action levels and defined roles), Bowman disagrees with this characterization. *See* **Exhibit B** hereto. In any event, real-time monitoring will allow for continuous oversight of RM Facility stability, precluding the development of dangerous conditions and thus guarding against any potential for failure.
- Finally, Barton responded fully to all APA questions (see Responses to Comments 12 to 23, 3rd NIPA response, and Response to Comment 2, 4th NIPA Response), including as to assessment, monitoring and reporting relative to RM Facility stability. Barton also included a comprehensive monitoring plan (Appendix X), providing for, among other things, daily observations, fly-over comparisons, additional inclinometers and piezometer installation (allowing for real-time monitoring) and periodic reporting to both the APA and NYSDEC.

There is, thus, no bona fide outstanding factual issue regarding RM Facility stability that warrants adjudication. *See* Point IX, *infra*.

III. Visual/Aesthetic Impacts: No New Receptors Will Be Impacted; Revegetation Will Occur with Progressive/Concurrent Reclamation; Dust Will be Managed with Proven Palliatives and As Directed by the Regulators

The Objectors' main criticism of the Visual Impact Assessment is that it relies on successful reclamation/revegetation, which presumption the Objectors claim is not supported by the *Revegetation Testing Program Monitoring Report* (Bowman, Feb. 23, 2024), Appendix N to the *Mine Permit Amendment and Modification* (July 2024). The Objectors also assert that dust can exacerbate visual impacts. Last, the Objectors make conclusory statements about the Project's visibility from "several sensitive publicly accessible receptors" (Thirteenth Lake, Hooper Mine Trail, Gore Mountain, etc.). *See, e.g.*, Protect Comments, at pp. 2, 12-14. None of these criticisms, however, raises an adjudicable issue.

First, notwithstanding Dr. Smardon's comment letters which criticize Barton's Visual Impact Assessment, none of the Objectors performed its own visual assessment. Barton, however, did; and Barton designed the visual study (including receptor locations) in accord with both regulators' guidance and input. Barton's Visual Impact Assessment (Appendix O to the *Mine Permit Amendment and Modification* [July 2024]) evaluates visibility from sensitive public receptors (e.g., Gore Mountain, Thirteenth Lake, Thirteenth Lake Road, and Hooper Mine), in accord with the regulators' requirements, guidance and directives. The results of that evaluation (utilizing 17 receptors) demonstrate that no new receptors will be affected by the Project. For the 6 receptors that currently see the Project site and will continue to see the Project/site, delayed expansion, phased/concurrent reclamation, final reclamation after the life of mine (with removal of the top 20 feet of the RM Facility), and RM Facility design (utilizing adjacent land forms as visual buffer) will mitigate those impacts.

Moreover, in the Visual Impact Assessment, Barton went beyond what was required by the regulators, assessing (via digital simulations) 6 additional locations that did not need to be evaluated based on agency guidance/databases. Barton, however, evaluated the additional 6 locations based on public comments received. Of those 6 additional locations, the Project was visible at only 2 locations – Moxham Trail and Hooper Mine Trail. Moxham Trail is outside a 5-mile radius from the Project site, and Hooper Mine Trail is not listed in the agencies' hiking database. Thus, the Objectors' claim that Barton failed to evaluate public receptors sufficiently is belied by Barton's quite comprehensive 157-page Visual Impact Assessment that goes above and beyond what the regulators required. *See generally*, Visual Impact Assessment (Appendix O to the *Mine Permit Amendment and Modification* [July 2024]).

Relative to reclamation, the Objectors criticize Barton because all reclamation efforts in the past were not 100% successful. Learning from past efforts, Barton evaluated the methods/means that proved to be the most successful. Accordingly, Barton has chosen to implement for the Project a reclamation plan using the substrate type (6 inches of top soil/humus/fertilizer) and species that proved to be most successful over the course of time. *See generally*, Appendix N to the *Mine Permit Amendment and Modification* (July 2024); *see also*

Barton's Responses to NYSDEC Comment #6 and APA Comments #3 & #4 (Response to 3rd NIPA).

Additionally, evaluations in 2024 demonstrate that native and emergent species will also establish themselves on the Project site, thus further limiting erosion and mitigating visual impacts. Notably, as established by photographic evidence, the healthy stand of trees in the reclamation test plot area (i.e., where native and emergent species took over the test plot) belies the Objectors' criticisms regarding reclamation. *See Exhibit B* hereto (images showing healthy re-vegetation of test plot). Furthermore, hydroseeding has also been successful in establishing interim vegetative cover on the RM Facility at the locations where it has been applied, further demonstrating the ability for vegetation to thrive on the RM Facility – and this is a positive indicator for future RM facility reclamation. *See Exhibit B* hereto (image showing successful hydroseeding).

As for dust (meaning off-site dust impacts), the Objectors have failed to make any credible showing of an issue in the first instance, let alone provided any basis for adjudication. First, the Barton-owned Project site consists of approximately 849 acres, more than 650 acres of which will remain a buffer between mining operations and any off-site location. Second, it should not escape notice that the Project site is located in an area that is surrounded by unpaved roads, which, by their nature, yield dust. Therefore, the Objectors' subjective claim attributing local dust issues to mining operations is suspect from the outset. In any event, Barton has a dust control plan and has committed to using the palliatives that it has found to be the most effective and environmentally friendly, and that are approved by the regulators. Additionally, Barton's successful hydroseeding efforts have resulted in interim vegetative cover on the RM Facility, thus representing another viable measure for dust control. All of this begs the question – since Barton has committed to using the best reclamation plan possible and committed to using palliatives and other measures proven to be effective (and/or as directed by the regulators), what more can Barton do (short of shutting down its operation)?

Notably, no Objector has demonstrated that dust from the mine has migrated off the Project site or proposed further or different mitigation; nor has any Objector identified any statutory or regulatory standard that the Project fails to meet relative to visual (or any other) impact. There is, thus, no adjudicable issue as to visual/aesthetic impacts. *See Point IX, infra.*

IV. Noise Impacts: Total Sound Levels at All Receptors, Including Public Receptors, Are in the Very Quiet to Quiet Range (Per NYSDEC Noise Policy) and Below the EPA's 55 dB(A) Standard that Is Protective of Public Health/Safety

The Objectors likewise have failed to raise any factual issue regarding noise impacts. The Objectors criticize Barton for failing to have proposed additional mitigation despite complaints from residents. *See, e.g., Protect Comments, at p. 15.* The Objectors also assert that their noise expert, RSG, concluded that projected increases in sound from the Project violate the NYSDEC Noise Policy. *See, e.g., Protect Comments, at p. 15; RSG Noise Comments (appended to GHPOA Comments).* As fully explained by Barton's consultant Bowman (in *Exhibit B* hereto), these claims are unfounded and do not create an adjudicable issue:

- First, the alleged noise complaints by some neighbors are subjective claims with persons attributing perceived sound levels to the mine – when, in actuality, it has been shown that the noise at issue was not from the mine at all. By way of example, the owner of the Garnet Mountain Lodge asserted at the APA October 2024 Board meeting that lodge patrons complain of noise from the mine. Yet, in the extensive customer reviews on the Garnet Mountain Lodge website, there is not a single complaint regarding exterior noise from the mine. See <https://www.garnet-hill.com/reviews/page/3/>. Rather, to the extent there are noise complaints from patrons, those complaints have to do with thin walls at the lodge and fans in the lodge kitchen. At best, this shows how precarious it is to take subjective complaints at face value. At worst, it shows bad faith, disingenuous behavior by Project opponents.
- Further as to subjective observations, it bears mention that APA and NYSDEC Staff visited the Project Site and surrounding environs. Accordingly, they got to experience first-hand the sound levels in the area, with the dominant sounds being natural sounds like rustling leaves, birds/insects and occasional traffic on the unpaved roads that consist of RM from prior garnet mining in the area.
- Beyond that, Barton comprehensively and objectively evaluated projected sound levels from the Project as set forth in its ~300-page Sound Study, Appendix O to the *Mine Permit Amendment and Modification* (July 2024); see also Revised Sound Study (appended to Response to 4th NIPA).
- Barton’s Sound Study utilizes highly conservative input parameters and operational scenarios, thus over-predicting potential sound impacts. At all receptors (including the 3 public receptors used in the study and the 1 receptor in the State Wilderness Area), projected sound levels are in the “very quiet to quiet range” (per the NYSDEC’s Noise Policy) and well below the EPA’s 55 dB(A) standard that is designed to be protective of public health and safety.
- This means there is no impact of significance from noise; and, in fact, no Objector has asserted that the Project fails to meet a specific statutory or regulatory standard.
- That notwithstanding, RSG – which did not perform its own independent sound study – criticizes Barton’s Sound Study.
- In the RSG Noise Comments, RSG first claims that Barton could have taken ambient measurements at different times (when the birds and insects were not making as much noise and when the water was not running as swiftly) and different locations (not as close to the road), which would have yielded lower ambient sound levels. In fact, as fully detailed in the Sound Study, Barton took ambient sound measurements on different days at 7 or 8 different receptors during 2 events, over a total of 4 days. The receptor locations (including 3 residential receptors and 1 in the State Wilderness Area) were agreed to by APA and NYSDEC Staff. See **Exhibit B hereto**.
- Moreover, in the Sound Study, Barton used the lowest ambient levels as between/among the pertinent measurements, and then performed comprehensive modeling using conservative input parameters. This included making the very

conservative assumption that all sound sources were operating simultaneously, which does not happen, thus, resulting in over-predicting sound levels/impacts. While RSG makes a passing comment that equipment power levels stated in the Sound Study appear to be “low,” this suggestion is belied by the facts. As evidenced in the Sound Study and further explained in **Exhibit B** hereto, Barton took direct measurements of sound pressure levels for all equipment over several monitoring events and then used the highest recorded sound pressure level to convert to sound power level. RSG’s claim that the reported values “appear low” is, therefore, pure speculation and does not raise a factual issue. *See* Point IX, *infra*.

- Regarding methodology, RSG states that the Sound Study does not indicate the height of the receivers. This is untrue. The receivers were set at a height of 5 feet, as stated on page 8 of the Sound Study, § 1.4.1. *See also* **Exhibit B** hereto.
- RSG also asserts that back up alarms, the mill exhaust stack and loading of the crusher were not included in the sound propagation model. This is also untrue, as explained in **Exhibit B** hereto.
- Regarding results reporting, RSG suggests that the Barton Sound Study does not report sound differentials (i.e., difference between ambient and total projected sound levels). This is untrue. For example, Tables 2 and 23 in the Executive Summary of the Sound Study plainly report the difference between ambient and total projected sound levels at all receptors in all phases of operation and development.
- RSG also asserts that the differentials are higher than those reported in the Barton Sound Study, but, as fully explained in **Exhibit B** hereto, RSG is wrong.
 - That is, RSG uses the lowest ambient Leq values (in the 3:30 pm to 7 am timeframe) and then adds all other operational noise (i.e., from sources that would never be operating during those nighttime hours). This results in a higher differential (sound level change) than is reported in the Sound Study relative to assessing sound-related impacts. RSG’s values have no basis in reality, however, because the operational noise that RSG is adding to the lowest after-hours ambient sound level would not be occurring during the after-operating-hours timeframe (i.e., since the subject operations do not occur at night). RSG’s evaluation, therefore, makes no sense relative to on-site operations.
 - Barton’s Sound Study was designed to assess potential sound impacts from on-site operations (i.e., total projected sound levels and change over ambient) both during normal operating hours (7 am – 3:30 pm) and during the 1-hour increase in operations (from 3:30 pm to 4:30 pm) proposed in the permit modification application. Relative to the proposed 1-hour increase in operations, the Sound Study properly considers the ambient Leq value in the 3:30 pm to 4:30 pm timeframe and then models total projected sound levels (and the sound level change) at each receptor location. This approach thus validly assesses sound-related impacts for the proposed 1-hour increase in operations from 3:30 pm to 4:30 pm (i.e., during which time, due to the proposed modification, other operational noises could be occurring if the permit modification were granted).

- Using its reality-defying scenarios, RSG further asserts that the sound differential exceeds 6 dB(A) at 4 locations (in phases 1 and 4) and that this “violates” the NYSDEC Noise Policy and/or creates a significant impact. Even accepting RSG’s calculations at face value, however, RSG is again wrong.
 - First, the NYSDEC Noise Policy is not a regulatory standard. It is policy guidance. Therefore, there is no “violation.”
 - Second, even accepting RSG’s calculations, only one of the receptors with the alleged 6 dB(A) exceedance (M-9) is a public receptor. The other receptors are on Barton property.
 - In any event, beyond that the differentials calculated by RSG would never occur in real life (because the operational sources would not be operating in the 4:30 pm to 7 am timeframe when the lowest ambient value was being experienced), per the values reported by RSG, the total sound levels at *all* receptors (public and on Barton property) allegedly experiencing an exceedance of a 6dB(A) increase are “very quiet to quiet” per NYSDEC Noise Policy and below EPA’s 55 dB(A) standard.
 - That is, at M-9 (per RSG’s Tables 1 and 2, RSG Noise Comments, p. 6), the maximum total sound level is 42.6 dB(A). This qualifies as “very quiet to quiet” per Table E of NYSDEC’s Noise Policy and is well below the EPA’s 55 dB(A) standard. In other words, there is no impact of significance even with RSG’s inflated values.
 - The result is the same for the receptors on Barton property for which RSG calculated an exceedance of 6 dB(A). Even if the on-site values were relevant to off-site noise impacts (which they are not), the highest total value is 47.2 dB(A) (development phase at M-4). *See* RSG Noise Comments, Table 2, at p.6. This value likewise qualifies as “very quiet to quiet” per NYSDEC Noise Policy and is squarely below the EPA’s 55 dB(A) standard.
 - In short, RSG’s calculations, if accepted, actually confirm the lack of any noise-related impact of significance.
- Last, RSG proposes a permit condition requiring Barton to maintain its equipment in top working order. Barton already does this. RSG also proposes a permit condition that prohibits operations on Federal holidays. There is simply no basis to impose this restriction.
- Objectors’ supplemental comments also seek to impose permit conditions that are not warranted, as they are unsupported by any offers of proof, seek to impose unsupportable standards, or are unjustified given the nature of the Project and Barton’s longstanding compliance history. *See* GHPOA Comments (October 18, 2024, comment letter).
- More specifically, the Objectors propose the following:
 - Proposed Condition 1: requiring that Barton institute operational/technological controls as recommended by qualified noise mitigation expert, using best available technology, updating as technology improves and maintaining equipment in top condition; stating that while the mine cannot be expected to

- be silent, noise levels should be reduced below current “nuisance” noise levels, with no operations on Federal holidays;
- Proposed Condition 2: requiring that during mill operations and operations on the RM Facility, that Barton institute controls that will ensure that noise is “inaudible” to the community and adjacent wilderness;
 - Proposed Condition 3: requiring Barton to fund a full-time on-site monitor to ensure compliance with all permit conditions, including as to noise.
- Condition 1 is not warranted:
 - Barton does maintain, will continue to maintain, and has committed to maintaining all equipment in top condition and operating in a manner to decrease noise.
 - There is no nuisance. Contrary to the Objectors’ bald statement, there is zero evidence of any nuisance condition, and the Objectors’ claim is further belied by the comprehensive, detailed, conservative Sound Study. Notably, beyond that no Objector has provided any evidence of undue noise impact, let alone a nuisance condition, their own expert’s calculations (i.e., RSG’s Tables 1 and 2) confirm that, even using reality-defying scenarios, projected sound levels from the Project are in the “very quiet to quiet” range and well below 55 dB(A).
 - And, as noted above, Objectors have provided nothing justifying an operational prohibition on Federal holidays.
 - Condition 2 – seeking to impose an “inaudibility” standard – is nonsensical, unwarranted and in bad faith.
 - In requested Condition 1, the Objectors assert that they do not expect the mine to be silent. Yet, by seeking to impose an “inaudibility” standard in Condition 2, silence is precisely what they are seeking. Objectors, therefore, do not appear to be acting in good faith.
 - In any event, this request has no merit. First, there is no statutory or regulatory standard requiring a mining project to be “inaudible.” Moreover, any such standard, besides defying common sense, would be wholly inconsistent with the industrial and resource management land use designations of the relevant portions of the Project site. The Objectors’ proposed “inaudibility” standard, therefore, must be rejected.
 - Condition 3 – seeking to impose a requirement for a full-time on-site monitor – is also unwarranted.
 - Barton has proposed detailed monitoring plans, as set forth in its permit modification application documents, and will monitor conditions as directed by the regulators.
 - A full-time on-site monitor is a concept applicable to Part 360 facilities, not mining operations such as the Project.
 - Finally, Barton has a longstanding history of operations and regulatory compliance at the Project site. Nothing will change in terms of mining operations or production rate. Objectors, therefore, have failed to substantiate any need for a full-time on-site monitor.

In sum, Barton has comprehensively and conservatively evaluated all possible noise impacts on a going forward basis at the Project site, per the phased mining plan set forth in the permit amendment/modification documents. The modeling therein uses conservative input parameters and operating scenarios that result in over-predicting noise impacts. Even with those conservative assumptions, total projected sound levels at all receptors are in the “very quiet to quiet” range per NYSDEC Noise Policy and below the EPA’s 55 dB(A) standard that is protective of public health and safety. Moreover, the Objectors’ expert’s calculations (even if taken at face value despite the inaccuracies and reality-defying scenarios) confirm the lack of any appreciable impact (including at public receptors). The Objectors, therefore, have failed to raise an adjudicable issue regarding noise. *See* Point IX, *infra*.

V. CLCPA Compliance: The Project is Not a Title V Facility; The Mining Method and Rate of Production Will Not Change; Air Impacts Will Be Negligible, With Tree-Cutting Impacts Offset by Reclamation/Revegetation

CLCPA compliance is addressed in § 9 of the *Mine Permit Amendment and Modification*, (July 2024). As stated therein, Barton is not a Title V regulated facility air emission source. Additionally, the types and number of mobile equipment will not change relative to existing operations; production rate/capacity will not change; and while the number of daily truck trips may increase, the impact will not be appreciable. Barton is committed to evaluating developing technologies such as electric mobile equipment which will decrease the reliance on fossil fuels and therefore decrease greenhouse gas (“GHG”) emissions.

The Objectors maintain that this discussion is insufficient. *See, e.g.*, Protect Comments, at pp. 15-17. Specifically, the Objectors fault Barton for allegedly failing to address the proposed tree cutting on 36 acres. Section 8 of Barton’s permitting documents make clear, however, that reclamation/revegetation will occur concurrently as mining proceeds in phases, with the entire site being reclaimed/revegetated at the end of the life of mine. This is expected to result in a net gain of trees, thus resulting in an environmental benefit. *See Mine Permit Amendment and Modification* (July 2024), §§ 8, 7.10.

The Objectors also maintain that Barton’s failure to quantify GHG emissions violates the CLCPA. Again, however, the Objectors are wrong. Recent correspondence from the NYSDEC to Protect confirms that there is no requirement or need for Barton to quantify GHG emissions from the Project in order for a consistency determination to be made under § 7(2) of the CLCPA. A copy of the NYSDEC’s letter to Protect, dated February 21, 2024, confirming same is annexed hereto and incorporated herein as **Exhibit D**.

VI. Alternatives Analyses: Barton Considered Alternatives, As Discussed in Its Submissions, And Selected The Project As Having the Least Environmental Impacts

The Objectors allege that Barton failed to perform an alternatives analysis. *See, e.g.*, FOSP Comments. At the outset, it bears mention that this criticism attempts to engraft requirements under Environmental Conservation Law, Article 8, the New York State Quality Review Act

(“SEQRA”) (i.e., relative to the alternatives analysis that would be required in an environmental impact statement [“EIS”]) onto the APA permitting process. It is beyond dispute, however, that SEQRA does not apply to the APA process here, meaning that the type of alternatives analysis that would be required in an EIS is simply not germane in this case. Moreover, even in the SEQRA context, assuming that the Type I action results in a positive declaration requiring an EIS (which it need not), for a private sponsor, the range of alternatives required to be considered in an EIS is limited by those options that are consistent with the project sponsor’s objectives, and this includes economic feasibility. *See, e.g., Hart v. Town of Guilderland*, 196 A.D.3d 900, 910-911 (3d Dep’t 2021).

In any event, Barton most certainly performed an alternatives analysis, which is detailed in § 4 of the *Mine Permit Amendment and Modification* (July 2024) (Justification of Need). Section 4.3 addresses specific alternative scenarios to the proposed Project. Notably, in deciding on pursuing the Project, Barton selected the most environmentally benign alternative, notwithstanding that this alternative sacrifices significant ore reserves at depth. Accordingly, an alternatives analysis has been performed, and the Objectors have asserted nothing that would warrant adjudication. *See* Point IX, *infra*.

VII. Post-Closure Plans: The Project Site Will Undergo Full Reclamation

The Objectors also assert a concern regarding the lack of a post-closure plan or assessment of post-closure costs. *See, e.g.,* FOSP Comments. Post-closure plans (and related financial assurance) are Part 360 (landfill) concepts/requirements and, thus, not relevant to the Project. The Project site will be reclaimed (as described) concurrently with phased mining and then fully reclaimed at the end of the life of mine to blend with the surrounding aesthetic. Accordingly, this is another non-issue.

VIII. Wilderness Character: The Mine Has Co-existed with the Wilderness for Many Decades, Is Fully Consistent with the Industrial and Resource Management Land Use Designations that Comprise the Project Site, and There are No Unmitigated Impacts of Significance

The Objectors’ assertion that the Project is inconsistent with the character of the area ignores the mine’s longstanding history of operations, as well as the land use classifications of the Project site. *See, e.g.,* FOSP Comments. The Ruby Mountain Mine has been in continuous operation since 1982 and has peacefully co-existed with the wilderness character of the surrounding area for decades. Notably, the Project does not present any change in longstanding operations (i.e., mining methods and/or production rate) that have been occurring for more than 40 years.

Additionally, operations at the Ruby Mountain Mine are fully compatible with local land use designations and, hence, community character. The relevant portions of the Project site are designated for industrial land use (where mining is/will occur) and resource management use (where the RM Facility is located and will be expanded). Both of these land use classifications

list mineral extraction and mineral extraction structures as allowable primary and secondary uses, respectively. *See* Executive Law § 805(3)(g)(4)(10), (11); Executive Law 805(3)(h)(3)(1), (2), (3). As a general matter, this means that these uses are presumptively in harmony with the surrounding community character. *See, e.g., North Shore Steak House, Inc. v. Bd. of Appeals of Incorporated Village of Thomaston*, 30 N.Y.2d 238, 243 (1972) (“The inclusion of a permitted use in the ordinance is tantamount to a legislative finding that the permitted use is in harmony with the general zoning plan and will not adversely affect the neighborhood). Furthermore, the thousands of pages of documents/studies submitted in support of the Project, which comprehensively address all potential environmental issues, demonstrate that there will be no significant impacts to the surrounding area. Accordingly, the Project is fully compatible with its environs. Consequently, the Objectors’ claim of alleged inconsistency with the wilderness character of the area is untrue and is a non-issue.

IX. Adjudicatory Hearing: The Objectors Have Failed to Carry Their Burden of Raising a Substantive and Significant Issue; Thus, an Adjudicatory Hearing is Not Warranted

The Objectors urge that a hearing is warranted; however, given their deficient offers of proof, they are wrong. No adjudicatory hearing is required, and, after three years of exhaustive review, this matter is ripe for decision-making before the APA.

A. The Legal Standard for an Adjudicatory Hearing

Under both the Executive Law and the APA’s implementing regulations, where a third party seeks an adjudicatory hearing, it is incumbent upon that party to raise an issue that is both “substantive” and “significant.” *See* Executive Law § 809(3)(d) (“...The determination of whether or not to hold a public hearing on an application shall be based on whether the agency's evaluation or comments of the review board, local officials or the public on a project raise *substantive and significant issues* relating to any findings or determinations the agency is required to make pursuant to this section, including the reasonable likelihood that the project will be disapproved or can be approved only with major modifications *because the project as proposed may not meet statutory or regulatory criteria or standards* [emphasis added]); *see also* 9 NYCRR § 580.2(a)(3), (4). This is the same standard used in NYSDEC practice pursuant to 6 NYCRR § 624.4(c). *See Citizens for Clean Air v. NYSDEC*, 135 A.D.2d 256, 260-261 (3d Dep’t 1988) (upholding burden imposed on potential intervenors and upholding agency determination to exclude certain issues from adjudication).

“An issue is substantive if there is sufficient doubt about the applicant's ability to meet statutory or regulatory criteria applicable to the project, such that a reasonable person would require further inquiry.” 6 NYCRR § 624.4(c)(2). “An issue is significant if it has the potential to result in the denial of a permit, a major modification to the proposed project or the imposition of significant permit conditions in addition to those proposed in the draft permit.” 6 NYCRR § 624.4(c)(3). Furthermore, “[i]n situations where the department staff has reviewed an application and finds that a component of the applicant's project, as proposed or as conditioned by the draft permit, conforms to all applicable requirements of statute and regulation, the burden of persuasion

is on the potential party proposing any issue related to that component to demonstrate that it is both substantive and significant.” 6 NYCRR § 624.4(c)(4).

Importantly, where offers of proof at best raise potential uncertainty, speculation, expressions of concern or general criticisms, or would dissolve into an academic debate, adjudication is not warranted. *See Finger Lakes LPG Storage*, 2017 WL 103841, at *8 (ALJ Ruling on Issues and Party Status, Sept. 8, 2017). An adjudicable issue exists only where there is sufficient doubt about the applicant’s ability to meet all statutory and regulatory criteria such that reasonable minds would inquire further. Adjudication is meant to assist the decisionmaker “in deciding disputed factual issues which bear upon a permit applicant’s ability to meet established environmental criteria (substantive issues) and which are relevant and germane to the final outcome of whether a permit should be issued, and, if so, upon what conditions.” *Akzo Nobel Salt, Inc.*, 1996 WL 172632, at *2 (Interim Decision of Commissioner, Jan. 31, 1996); *see also Superintendent of Fish Culture, Bureau of Fisheries, NYSDEC*, 1999 WL 1008317, at *2-*3 (Interim Decision of Commissioner, Aug. 19, 1999).

Finally, adjudication is not warranted simply because there is a lack of scientific unanimity or because a third party claims that more information is needed. *See, e.g., Jay Giardina*, 1990 WL 181271, at *2 (Interim Decision of Commissioner, Sept. 21, 1990) (“Offers of expert testimony contrary to the application are not ... necessarily adequate in and of themselves to raise an issue for adjudication”; the proponent of an issue must identify the additional mitigation it seeks or the legal standard it contends is not met); *see also Akzo Nobel Salt, Inc, supra*, at *2.

B. The Objectors Have Failed to Meet the Standard for Adjudication

Applying these standards, the Objectors have failed to satisfy their burden to raise a substantive and significant issue. In short, the Objectors have failed to identify a single applicable statutory or regulatory standard that the Project fails to meet related to the factual findings required for the APA’s decision-making under Executive Law § 809(9). For example:

- (1) **CEA:** There is no statutory or regulatory prohibition on the proposed activities on Barton’s property in the CEA, and all impacts have been assessed and mitigated to the fullest extent practicable. Moreover, there is no statutory or regulatory standard applicable to the CEA that the Project fails to meet. There is, therefore, no adjudicable issue.
- (2) **Geotechnical (RM Facility Stability):** The Objectors’ claims and criticisms rely, in part, on Part 360 standards (landfills), which are inapt, as NYSDEC has determined that the RM Facility is not a landfill. Other issues asserted by the Objectors are resolved by Barton’s monitoring plan (Appendix X) and the detailed, conservative stability analyses that have been performed (including as to seismic concerns). There is, thus, nothing to adjudicate.
- (3) **Visual:** Barton’s Visual Impact Assessment demonstrates that no additional visual receptors will be affected by the Project (as compared with receptors already affected), and any enhancement of visual impacts to receptors that already have a

view of the Project site will be minimized and ultimately resolved by concurrent and final reclamation. As to reclamation, Barton has committed to implement the measures (substrate and species) that have demonstrated the greatest success rate over time, with test plots also demonstrating successful revegetation by native and emergent species, thus mitigating visual impacts. As for dust, beyond the 650 acres of Barton property that will buffer the ~250-acre mining operation, dust will be controlled per Barton's dust control plan, hydroseeding, and the use of palliatives as stated by Barton in its application documents and as required by the regulators. There is, therefore, no factual issue to adjudicate.

- (4) **Noise:** The Objectors do not identify any noise standard that the Project fails to meet. While the Objectors assert that the Sound Study could have been done differently (e.g., by taking ambient measurements on different days when there were fewer birds singing, insects chirping or water-related sounds occurring), this does not create an adjudicable issue. This is particularly so given that Barton (1) took ambient measurements in multiple years on multiple days at receptor locations agreed to by the regulators, and (2) then used the lowest pertinent ambient sound levels recorded. To the extent the Objectors erroneously claim that the decibel differential is larger than reported in the Barton Sound Study (i.e., achieved by using the lowest nighttime ambient measurements and then adding sound levels resulting from equipment operations that most certainly will never be occurring during those nighttime hours), even accepting these calculations (i.e., using reality-defying scenarios), a 6dB(A) exceedance occurs at only one public receptor, with the total sound level being "very quiet to quiet" under the NYSDEC Noise Policy and well below the EPA's 55 dB(A) standard that is protective of public health and safety. The same is true for the alleged exceedances on Barton property – total sound levels are "very quiet to quiet" and squarely below 55 dB(A). Again, there is no issue for adjudication, and, concomitantly, there is no basis to impose holiday operating prohibitions or the requirement of a full-time on-site monitor, as requested by the Objectors.
- (5) **CLCPA:** Tree removal on 36 acres will be temporal and then offset by concurrent and final reclamation, resulting in a net gain of trees. Additionally, the NYSDEC has determined that it is not necessary for Barton to quantify GHG emissions prior to the agencies' making a compliance determination under the CLCPA. There is, therefore, nothing to adjudicate.
- (6) **Miscellaneous Issues:** To the extent the Objectors rely on Part 360 standards (e.g., post-closure plan and financial assurance requirements) or SEQRA requirements (e.g., EIS alternatives analysis requirements), those standards and requirements do not apply to this Project. In any event, Barton did, indeed, perform an alternatives analysis which is fully documented in its permit modification application submissions.²

² Objector FOSP attempts to obtain a hearing by improperly imposing SEQRA requirements on the APA permitting process. See FOSP Comments. FOSP asserts that under SEQRA, the Project would be a Type 1 action and that

Accordingly, there is no substantive and significant factual issue warranting adjudication, and, contrary to the Objectors' intimations, the public interest in this Project also does not weigh in favor of adjudication. *See* Executive Law § 809(3)(d); 9 NYCRR § 580.2(a)(2). First, it needs to be recognized that there is significant, broad-based public support for this Project, including from elected officials, local municipalities and local residents. By way of example, Barton has received town/city/county resolutions of support from Warren, Hamilton, Indian Lake, Essex, and Glens Falls, as well as support from the Adirondack Park Local Government Review Board. While some members of the public, such as the Objectors, have raised concerns with the Project, those concerns already have been thoroughly addressed by the questions posed in both the APA's and NYSDEC's NIPAs and resolved by Barton's detailed responses. Therefore, a hearing is not warranted. *See, e.g., Adirondack White Lake Ass'n v. APA*, 225 A.D.3d 1247, 1248 (4th Dep't 2024) (affirming denial of request for hearing despite 3,000 submissions in opposition to project).³

More specifically as to the Objectors, they have had ample opportunities to comment, and have availed themselves of those opportunities, over the past three years. Indeed, Barton has revised studies and performed evaluations based on comments received, and the agencies have taken public comments to heart, requesting additional information and analyses through the completeness review/determination process. Barton has also engaged in extensive public outreach, as is detailed in Appendix W to the *Mine Permit Amendment and Modification* (July 2024). Such outreach has included 3 public presentations, including a project informational meeting attended by more than 70 community members; 20 project briefings to neighbors, community organizations, individual community leaders, and news media organizations; and 2 community mailings to over 4,000 local property owners. Barton, thus, has been extremely sensitive to public concerns and has acted (and will continue to act) as a good neighbor and responsible member of the community.

Toward that end, Barton has also incorporated extensive mitigation into the Project, including but not limited to minimizing visual impacts through progressive concurrent reclamation/revegetation; reducing water withdrawals from Thirteenth Brook; minimizing sound impacts through operational, engineering and administrative controls; ensuring dust control through the use of proven palliatives and hydroseeding; ensuring RM Facility stability through real-time, continuous monitoring and oversight by a New York licensed professional engineer; minimizing RM Facility height by backfilling and removing the top 20 feet at the end of the life

because the administrative record here allegedly is not even remotely comparable to an EIS, a hearing should be held to further develop the record. FOSP is misguided on several counts. First, it is well-settled that a Type I action under SEQRA does not necessarily result in a positive declaration requiring an EIS. Second, the administrative record in this case consists of *thousands* of pages, including detailed responses to the regulators' questions/concerns, revised analyses to address those concerns, and multiple detailed environmental impact studies and mitigation and monitoring plans. *See Mine Permit Amendment and Modification* (July 2024) & Appendices N, O, P, Q, T, U, X; and Revised Sound Study (August 2024) and Revised Geotechnical Report (August 2024) (both appended to 4th NIPA Response). FOSP, therefore, is wrong on both the law and the facts.

³ Even if the public overwhelmingly opposed the Project (which it does not), a hearing would not be warranted in any event due to the Objectors' failure to have raised a substantive and significant issue. *See* Point IX.A, *supra*.

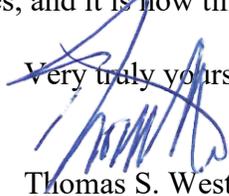
Corrie Magee
Environmental Program Specialist I
November 7, 2024
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of mine; and reducing trucking hours. *See, e.g., Mine Permit Amendment and Modification* (July 2024), § 10.0 (Conclusion).

In the final analysis, the requested permit modification should be issued without any further delay. There is nothing unique or complex about this Project. The very same mining operations (i.e., mining methods and production rate) that have been occurring for more than 40 years will simply continue under the requested permit modification. Barton has been an economic engine for this area of the Adirondack Park for more than a century and has operated the Ruby Mountain Mine for more than four decades at this location; during which time, Barton has acted as a good neighbor and responsible steward of the environment. The strong local support from elected officials and community members stands as a testament to the extent to which Barton has gone to operate its facility in harmony with its surroundings. The permit modification application before the agency stands as a model for how to perpetuate an industrial activity in an area zoned for that use with appropriate sensitivity to the surrounding areas. In the permit modification, Barton seeks only to perpetuate what has been ongoing at this location for more than four decades without any increased level of activity or use.

Accordingly, there are no outstanding issues, and it is now time for decision.

Very truly yours,



Thomas S. West

TSW/cmm
Enclosures

cc: Damion Stodola - Damion.Stodola@apa.ny.gov

Sarah Reynolds - Sarah.Reynolds@apa.ny.gov

David Plante - David.plante@apa.ny.gov

Aaron Love - Aaron.Love@dec.ny.gov

Beth Magee - beth.magee@dec.ny.gov

Barton Mines Company, LLC

EXHIBIT A



Adirondack Park Agency

May 22, 2020

Michael Polacco, Project Geologist, H2H Geoscience Engineering
179 River Street,
Troy, NY 12180

**RE: Compliance with Agency Permits P79-140, P79-356, P87-39, P87-39A, P87-39B,
P88-393, P88-393A
Town Indian Lake, Hamilton County
Town of Johnsbury, Warren County
Land Use Area: Rural Use, Resource Management, Industrial Use**

Dear Mr. Polacco:

Thank you for the set of plans and reports titled, "Mine Permit Renewal and Modification, Barton Mine Company, LLC-Ruby Mountain Garnet Mine", prepared by H2H Geoscience Engineering, dated January 2020, and the plan titled, "Barton Mines Corporation, Ruby Mountain Site Operating Hours," prepared by Barton Mines, dated April 10, 2020, and received by the Agency electronically on April 10, 2020.

Agency staff review confirms that operation of the mine as depicted and described in these plans and reports complies with the requirements of the Agency Permits listed above.

If you have any questions, please contact Environmental Program Specialist 1 (EPS1) Sarah A. Staab.

Sincerely,

/s/John M. Burth

John M. Burth
Environmental Program Specialist 3

cc: Beth A. Magee, NYSDEC
Katherine Smith, NYSDEC, Mine Land Reclamation Specialist
Chuck Barton, Barton Mines Company, LLC
Richard A. Hisert, Ph.D., P.G., H2H
Mario Cangemi, Barton Mines Company, LLC, Director of Health, Safety, and Environmental

EXHIBIT B

November 7, 2024

Mario Cangemi
Director of Health, Safety and Environmental
Barton International

RE: Mine Permit Expansion Public Comment and Response

Dear: Mario

Bowman has reviewed the comment letters provided by Adirondack Park Agency (APA) staff. The documents provided by APA consist of comment letters from community members and interest groups and span multiple topics related to the permit application submission. Bowman has identified representative comments and developed technical responses in the text below.

Visual Impact

Comment: As discussed in Dr. Smardon's reports, Barton's claims that the visual impacts of the waste pile will be partially mitigated by vegetation planted on the Project site is unsupported by any detailed simulations of vegetative cover that will exist over time. Moreover, as pointed out by Dr. Smardon, Barton's conclusory claims that the RM pile and quarry face will be totally or nearly totally screened by vegetation from these important viewpoints are not supported by Barton's monitoring report on its revegetation testing program, submitted as Exhibit N to the application. In fact, the report documents poor success rates for revegetation, undermining the assumption that the visual impacts of the expanded mining operation will be mitigated by vegetative screening. Furthermore, as demonstrated by the current visibility of the tailings pile from multiple publicly accessible viewpoints, the revegetation that APA previously required, which was to commence nearly 30 years ago (in 1996), has not been successfully accomplished. Thus, there is no rational basis for assuming that vegetation will be able to grow on the tailings pile in a way that will mitigate its adverse visual impacts.

Response: *Protect the Adirondacks'* (Protect's) claim that there is "no rational basis for assuming that vegetation will be able to grow on the tailings pile in a way that will mitigate adverse visual impacts" is inaccurate, as evidenced by imagery collected by Barton, as well as imagery provided in Protect's comment letter. The areas circled in yellow in the images below represent one of the vegetative test plots, established in the 1990's, and used to evaluate different soil substrate and planting strategies and their effectiveness in achieving long-term reclamation goals. The test plot was reevaluated in 2024 as part of the permit expansion project. It was determined that the species originally planted were not present in sufficient quantities to be successful, however native and emergent species from the surrounding forest have established and dominated over the originally planted species. This is likely due to the similarity of the soil type and climate present on-site. This results in the desired effect of reclamation of re-establishing vegetation to limit sediment erosion and mitigate visual impact of site development.



Image 1: Current aerial photograph of RM facility provided by Barton



Image 2: Current aerial photograph of RM facility provided in Protect the Adirondacks October 10, 2024, comment document

Given the results of the 2024 test plot evaluation, the proposed reclamation planting specifications have been updated to include the combination of vegetative species and soil preparation to achieve the results shown in the images above for all reclamation areas.

Interim vegetative cover (i.e. hydroseeding – red rectangle in Image 2) has been successfully established on the RM facility at the locations where it has been applied and demonstrates the ability for vegetation to thrive on the RM facility (a positive indicator for future RM facility reclamation). Additionally, the interim vegetative cover represents a dust control measure as referenced in the permit application documents.

RM Pile Geotechnical

Comment: The Geotechnical Report relies heavily on the October 30, 2023 report included in Appendix A prepared by Knight Piesold Consulting. The October 2023 report is a feasibility assessment that describes an “observational approach” for future construction that requires the continuous involvement by a qualified geotechnical engineer to confirm assumptions, provide guidance on construction methods and investigation programs, and to initiate re-designs if warranted based on observations. There are two problems with this approach for the mine expansion. First, an observational approach is not appropriate for the long-term construction of the RM Facility where one of the observations could be a large slope failure. Second, while many construction projects operate under a “design-build” approach, such an approach includes specific performance requirements, and the roles and responsibilities of involved personnel are clearly defined. In contrast, the observational approach described in the October 2023 report and carried forward in the proposed monitoring plan in the August 2024 report is ambiguous, lacks specific performance requirements, fails to describe the roles and responsibilities of involved personnel, and is therefore insufficient to ensure that long-term stability of the expanded RM Facility will be achieved.

It is standard engineering practice when adopting a design-build approach to include long-term design and construction details in a comprehensive document, such as a Basis of Design Report, Operations and Maintenance Manual, or a Construction Quality Assurance Plan. No such report is included in the application. This omission leaves unanswered the important questions regarding how the ongoing engineering and construction oversight necessary for a project of this magnitude will be implemented. Although the October 2023 report identifies “geotechnical risks” and recommends construction practices to improve geotechnical performance of the expansion, these technical elements are not fully assessed and the procedures to execute and monitor the construction recommendations are not identified.

Response: *We disagree with the classification of this project as “design build.” Detailed subsurface investigations have been conducted under multiple drilling and cone penetrometer testing (CPT) campaigns that have conclusively determined material properties and existing RM facility composition. Multiple piezometers have been installed and are continuously monitored, and a long-term buildout plan for the RM facility has been developed.*

The operation of the facility over the life of mine has been developed and presented within the application documents. Fine-grained material is temporarily stored in the upper pond and then transferred into permanent storage areas within the backfilled regions of the quarry. Coarse-grained material is placed via hydraulic conveyance and separation at the deposition location. The coarse-grained material is entirely homogeneous with almost no variation in material properties relative to strength and drainage. Homogeneity of stored RM under future buildout is highly predictable

given that materials will originate from the same bedrock source that has been thoroughly investigated, and given the highly processed nature of the RM through the ore recovery process.

The information collected on material properties, existing RM composition, planned facility operation, and proposed RM facility geometry allows for an accurate and thorough stability analysis for existing and future conditions of the RM facility. The most conservative material properties and phreatic surface conditions were utilized in the stability analysis negating the need to perform a sensitivity investigation, as the worst-case conditions were assessed and the industry standard factor of safety was achieved for all phases of RM facility development. The performance of the RM facility to date has been excellent, and there have been no stability issues since the RM facility began development in the 1980's.

The real-time and the long-term monitoring recommendations presented in the permit application documents do not constitute a "design-build" approach to RM facility development. The recommendations represent good engineering practice and assurance that the RM facility is performing as designed.

Comment: The October 2023 report describes specific stability scenarios that were not assessed, such as earthquake loading and rapidly rising groundwater conditions. These scenarios must be evaluated to fully understand the long-term stability of the RM Facility. However, the 2024 Geotechnical Report makes no mention of these previously identified risk scenarios and does not state whether they were evaluated or if they will be assessed at any time during the future observational approach. A comprehensive design-build document would normally describe when specific scenarios will be assessed and describe all required field observations, sampling programs, data collection, action levels, and notifications.

Response: A detailed site-specific seismic hazard analysis was performed by Lettis Consultants International (LCI), Inc. under the direction of Knight-Piesold for this project ([Knight-Piesold 5-Year-Plan Rev2020 red.pdf](#)). Knight-Piesold utilized the results of the seismic analysis to assess the site-specific liquefaction potential and offered the following conclusion.

"This indicates that liquefaction triggering is unlikely in the saturated tailings sands along the bottom of the Barton TSF (aka the RM Facility) embankments upon the occurrence of earthquakes with return periods up to approximately 5,000 years in most locations. One exception is that liquefaction triggering is predicted upon the occurrence of the 5,000-year earthquake in the vicinity of CPT19-03, which is located near the downstream toe of the Middle Pond embankment just above the Lower (or Raft) Pond. Shorter return period events (below 5,000 years) are not predicted to trigger liquefaction in this area. Although the probability of liquefaction triggering due to an earthquake is low in the short-term, it is important also to consider other potential triggers of liquefaction triggering when assessing the overall liquefaction risk of the structure. Additionally, the results indicate that there is some longer-term seismic risk, particularly just above the Lower (or Raft) Pond that should be mitigated with buttressing in the long term."

Barton has incorporated the recommendation to buttress the area associated with the raft and middle ponds in the long-term buildout of the RM facility, therefore mitigating the liquefaction potential as identified by Knight-Piesold based on LCI's site specific hazard analysis.

Comment: The Geotechnical Report concludes that the RM Facility is expected to be stable over the life of the expansion because the assessed FOS meets or exceeds the industry standard FOS of 1.5 for drained conditions and 1.3 for undrained conditions. However, this statement lacks context because it does not

include an assessment of the variability of design factors or an analysis of the consequence of a slope failure. The Geotechnical Report includes large deep seated failure scenarios that barely achieve the minimum FOS of 1.3. The failure surfaces cross through several material layers that are assigned specific material properties that are based on a limited field investigation and testing program. Good engineering practice is to perform a sensitivity analysis on the model input parameters, such as material properties or groundwater elevation, to assess the impact of a change in those parameters on the FOS. This is particularly important given the size of the failure surfaces at the RM Facility and the closeness of the scenarios to the minimum FOS. Slope stability cross sections C and F have failure surfaces spanning approximately 800 to 1,000 feet and crossing through the lower process water ponds at SPDES Outfall 002. If a failure of this magnitude occurred, mine tailing and process water would be released into the unnamed tributary that flows into Thirteenth Brook.

Response: *The coarse-grained material is entirely homogeneous with almost no variation in material properties relative to strength and drainage. Homogeneity of stored RM under future buildout is highly predictable given that materials will originate from the same bedrock source that has been thoroughly investigated, and given the highly processed nature of the RM through the ore recovery process.*

Sensitivity analyses are typically utilized when strength properties are variable throughout the formation and a probability of failure analysis is required. That is not the case here given the highly processed, homogeneous nature of the RM. The information collected on material properties, existing RM composition, planned facility operation, and proposed RM facility geometry allows for an accurate and thorough stability analysis for existing and future conditions of the RM facility. The most conservative material properties and phreatic surface conditions were utilized in the stability analysis negating the need to perform a sensitivity investigation, as the worst-case conditions were assessed, and the industry standard factor of safety was achieved for all phases of RM facility development. The performance of the RM facility to date has been excellent, and there have been no stability issues since the RM facility began development in the 1980's.

Comment: For all practical purposes, the RM Facility is a landfill. In New York, the NYSDEC has specific stability analysis requirements for landfills, including a requirement to perform a seismic stability analysis for any facility located in a seismic impact zone. The RM Facility is located in a seismic impact zone as indicated on the United States Geological Survey (USGS) Seismic Hazard Map of New York (2014). A seismic analysis is critical to the assessment of potential adverse impacts based on the size and complexity of the RM Facility and the consequences of a failure.

Response: *The RM facility never was, is not and will not ever be a landfill, The RM facility, therefore, is not subject to the design requirements associated with a Part 360 application, as confirmed on multiple occasions by DEC personnel. The RM facility is not comprised of layered synthetic and waste materials that add complexity to stability analysis and design. As previously discussed, the composition of the stored RM is highly homogenous originating from a single source and subject to multiple separation and segregation processes that produce a consistent, well drained sandy material that has performed exceptionally well over the life of the operation. The issue of seismicity and liquefaction potential have been addressed and discussed in response to previous comments.*

Sound Impacts

Comment: Ambient sound level grouping (7:00 a.m. to 3:30 p.m. / 3:30 p.m. to 7:00 a.m.) does not represent overnight ambient conditions.

Response: The objective of the ambient sound study was not to determine overnight ambient sound levels, but to determine ambient sound levels during normal operating hours (7:00 a.m. to 3:30 p.m.) and after operating hours (3:30 p.m. to 7:00 a.m.). No overnight operations are proposed as part of this modification. The purpose of the sound study was to model worst case total projected sound levels (and the associated changes over ambient sound levels) at the various receptors: (1) during normal operating hours (7:00 am to 3:30 pm) (for normal operations and development conditions for all 4 phases); and (2) during the proposed one-hour increase in operating time (from 3:30 pm to 4:30 pm) (for normal operations and development conditions). To that end, the Sound Study uses the lowest ambient Leq sound levels in the relevant timeframes and conservatively models total projected sound levels (and changes over ambient) at the receptor locations, as set forth in Tables 2 and 23.

Comment: Sound level monitors were located immediately adjacent to roads.

Response: Sound level monitoring locations were determined in collaboration with APA & NYSDEC staff during initial project scoping.

Comment: The receiver height is not indicated for the sound propagation.

Response: The receivers in the sound propagation model are the same locations as sound level monitoring locations; the receivers were set at a height of 5 feet as indicated on page 8 of the Sound Study, § 1.4.1.

Comment: Sound power levels of mining equipment appear to be low relative to what RSG has measured on other sites.

Response: Sound pressure levels of each piece of mobile and static equipment proposed to operate onsite (Sound Study, § 3.6) were measured at 50-feet over several monitoring periods. The highest recorded sound pressure level (Leq) was used to calculate sound power levels as indicated on page 48 of the Sound Study, § 3.63.

Comment: backup alarms, the mill exhaust stack, and the loading of the crusher were not included in the sound propagation model.

Response: Backup alarms, the mill rooftop exhaust fan and loading of the crusher were included in the sound propagation model.

- All mobile equipment had backup alarms operating when sound pressure levels were collected.
- The mill does not have a traditional exhaust stack. However, the mill does have a rooftop exhaust fan and several wall exhaust fans for ventilation purposes. All fans were in operation when mill sound pressure levels were recorded.
- The primary crusher being loaded is included in the sound propagation model as "Primary Crusher (open North Side of Building)" page 47 of the Sound Study, § 3.6. The primary crusher is located below ground on the open feed side, and is completely enclosed to the east, south, and west reducing sound pressure levels.

Comment: Modeled operating sound levels were not compared to overnight ambient sound levels.

Response: Comparing total modeled operating sound levels (i.e., accounting for additive effect of ambient) to 3:30 p.m.-7:00 a.m. ambient sound levels represents a scenario that would never occur on-site. No overnight operations are proposed as part of this modification. To provide a conservative real-world comparison, total modeled sound levels are compared to the lowest recorded 7:00 a.m. to 3:30 p.m. ambient sound levels from the 2022 and 2023 sound studies (Sound Study Table 2 / Sound Study Section 3.7.5).

Respectfully,

A handwritten signature in blue ink, appearing to read 'T. Thomas', is positioned above the typed name.

Trevor Thomas, PE
Principal, Bowman Consulting

- c. Michael Polacco, Bowman
Thomas West, The West Firm

EXHIBIT C

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of Environmental Quality, Region 5
232 Golf Course Road, Warrensburg, NY 12885
P: (518) 623-1212 | F: (518) 623-1311
www.dec.ny.gov

Sent via email only - no hard copy to follow

November 23, 2015

Mr. Mario J. Cangemi
EHS Manager
Barton International
Six Warren Street
Glens Falls, NY 12801

Re: Beneficial Use of Barton Mine's Tailings

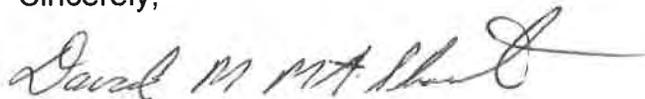
Dear Mr. Cangemi:

I have reviewed your November 3, 2015 letter regarding Barton Mines tailings. Specifically, you wrote to request confirmation that the tailings generated from Barton's process to separate garnet from feldspar and hornblende are uncontaminated rock and therefore, "...are not considered a solid waste and qualify under a predetermined beneficial use (BUD) pursuant (to) 6 CRR-NY (sic) 360-1.15(11) when used as a substitute for conventional aggregate."

Based on your description of the process used to liberate the garnet from feldspar and hornblende, along with the TCLP analytical testing performed on the tailings, I concur with your letter. That is, the mine tailings at Barton Mines meet the predetermined BUD criteria of 6NYCRR Part 360-1.15(b)(11). Accordingly, the tailings are not considered a solid waste at the time when they are placed into commerce, which in this case, is the point they are placed in piles for re-use purposes.

If you have any questions on this, please call me at (518) 623-1230.

Sincerely,



David M. Mt. Pleasant, P.E.
Regional Materials
Management Engineer

DMM:jz

ec: K. Prather, DEC



Department of
Environmental
Conservation

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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Sent via email only - no hard copy to follow

January 26, 2016

Mr. Mario J. Cangemi
EHS Manager
Barton International
Six Warren Street
Glens Falls, NY 12801

Re: Barton Mines, LLC Petition for Part 360 Exemption

Dear Mr. Cangemi: *MARIO*

Department staff have reviewed your December 17, 2015 letter and the attachment that describes Barton Mines' garnet recycling program. Barton's program would take used garnet and reprocess it, and then place it back into the market. Your letter sought the Department's concurrence that this process is considered exempt under 6NYCRR Part 360-12.1(b)(2).

Department staff concur with your letter. The garnet recycling program conducted by Barton Mines, LLC meets the criteria for exemption under Part 360-12.1(b)(2). Accordingly, this recycling program is not subject to jurisdiction under the Part 360 regulations.

If you have any questions on this, please call me at (518) 623-1230.

Sincerely,



David M. Mt. Pleasant, P.E.
Regional Materials Management Engineer

DMM:tl

ec: K. Prather, DEC



Department of
Environmental
Conservation

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 5

1115 State Route 86, PO Box 296, Ray Brook, NY 12977-0296

P: (518) 897-1227 | F: (518) 897-1394

www.dec.ny.gov

By Email Only

January 18, 2024

Christopher Amato, Esq.
Conservation Director and Counsel
Protect the Adirondacks! Inc.
PO Box 48
North Creek, NY 12853
info@protectadks.org
chrisamato112@gmail.com

Dear Christopher Amato:

This responds to your January 4, 2024 letter reporting alleged violations by the Barton Mines Corporation at the Ruby Mountain Garnet Mine in the Town of Johnsbury, Warren County, Mined Land ID # 50483.

Your letter incorrectly asserts that the mine is operating without a solid waste management facility permit in violation of the Environmental Conservation Law. DEC's regulations do not require a solid waste permit for the on-site disposal of tailings at a regulated mine site. Specifically, 6 NYCRR Part 363-2.1 states that:

The following activities or facilities are exempt from this Part:

* * *

(e) The disposal of drill cuttings generated by air- or water-based drilling methods, overburden, tailings, and other similar mining and drilling waste when generation and disposal occur at the same mine or well location subject to regulation under Parts 420-425 and 550-559 of this Title.

The Ruby Mountain mine operates under DEC mined land reclamation permit # 5-5230-00002/00002 issued pursuant to 6 NYCRR Parts 420-425. The tailings described in your letter were generated at the mine and are managed on-site and therefore do not require a solid waste management facility permit.

For these reasons, DEC has not commenced an enforcement action against Barton for operating without a solid waste management facility permit, nor does your letter provide

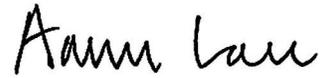


Christopher Amato, Esq.
January 18, 2024
Page 2

any legal basis to do so. DEC will not suspend permit processing under Part 621.3(e) as your letter urges.

Please call me at (518) 897-1227 with any questions about this letter.

Sincerely,

A handwritten signature in black ink that reads "Aaron Love". The signature is written in a cursive, slightly slanted style.

Aaron A. Love
Regional Attorney

ec: B. Magee (DEC)
K. Smith (DEC)
K. Wood, P.E. (DEC)
J. Burth (APA)

EXHIBIT D

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 5

1115 State Route 86, PO Box 296, Ray Brook, NY 12977-0296

P: (518) 897-1227 | F: (518) 897-1394

www.dec.ny.gov

By Email Only

February 21, 2024

Christopher Amato, Esq.
Conservation Director and Counsel
Protect the Adirondacks! Inc.
PO Box 48
North Creek, NY 12853
info@protectadks.org
chrisamato112@gmail.com

Dear Christopher Amato:

This responds to your letter of February 14, 2024, asking the Adirondack Park Agency to require Barton Mines to quantify its greenhouse gas (GHG) emissions as part of APA's review of a pending application by the company. Your letter cites a Notice of Incomplete Application sent by DEC staff to Barton Mines on January 26, 2024, requesting a GHG emissions analysis. As reflected in the enclosed correspondence, the January 26th letter was rescinded by DEC on January 29, 2024, because language you cite was included in error.

Section 7(2) of the Climate Leadership and Community Protection Act requires State agencies to determine whether the issuance of permits would be "inconsistent with or will interfere with the attainment of" statewide GHG limits established under Article 75 of the Environmental Conservation Law. DEC guidance—including Commissioner Policy 49: Climate Change and DEC Action—does not currently require every permit applicant to quantify their GHG emissions before DEC makes a consistency determination under Section 7(2).

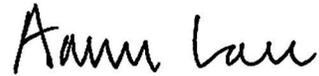
Here, DEC staff determined that it is not necessary at this time to require Barton Mines to quantify its GHG emissions as part of DEC's review of Barton's pending permit application. So, although language concerning GHG emission quantification was included in a draft of the Notice of Incomplete Application that was inadvertently sent to the applicant on January 26th, DEC intended to remove this language from the final version.

Christopher Amato, Esq.
February 21, 2024
Page 2

I enclose the corrected January 29th Notice of Incomplete Permit Application for your file and ask that you replace the rescinded January 26th notice posted on your website at <https://www.protectadks.org/wp-content/uploads/2024/01/DEC-NIPA3-January-2024-1.pdf>.

Please call me at (518) 897-1227 with any questions about this letter.

Sincerely,



Aaron A. Love
Regional Attorney

Encl.

cc: B. Magee (DEC)
K. Smith (DEC)
J. Burth (APA)