

STATE OF NEW YORK
ONEIDA COUNTY SUPREME COURT

In the Matter of the Application of
THOMAS J. SUNDERLIN, JR. and
RED ROCK QUARRY ASSOCIATES, LLC
Permittees

Adirondack White Lake Association, Protect
the Adirondacks!,
Petitioners,

For a Judgment Pursuant to Article 78
Of the Civil Practice Law and Rules

-against-

ADIRONDACK PARK AGENCY, RED
ROCK QUARRY ASSOCIATES, LLC.

Respondent.

VERIFIED PETITION

Index No _____

Date Filed _____

Assigned to: Hon _____

Petitioners, Adirondack White Lake Association (“AWLA”) and Protect the Adirondacks!, by their attorneys, PACE ENVIRONMENTAL LITIGATION CLINIC, for their verified petition in this N.Y. C.P.L.R. Article 78 proceeding, respectfully allege and state:

INTRODUCTION

1. This matter arises from the Adirondack Park Agency’s (“APA” or “Respondent”) impermissible decision to grant a permit without first holding a legally mandated adjudicatory hearing on a highly contested application to open a granite mine in the Adirondack Park. Indeed, this case is one of hundreds where the APA has failed to hold a mandated hearing. Despite clear statutory and regulatory obligations to hold such hearings where certain factors are met, the APA has not held a *single* hearing on an application in over thirteen years.

2. On April 5, 2021, Respondent Red Rock Quarry Associates, LLC, (“Red Rock” or “Applicant”) applied for a permit to mine granite from the White Lake Granite Quarry (the “Red Rock Application”).
3. The Red Rock Application proposed a mining operation located on or near Stone Quarry Road, within the Town of Forestport, Oneida County, New York. The proposed quarry site yields granite. Excavation of the granite involves a combination of “diamond wire sawing, line drilling, expandable grouts, micro-blasting”, and crushing operations. White Lake Granite Quarry Mined Land Use Plan, Ex. G, at 4.
4. The New York State Department of Environmental Conservation (“DEC”) classified the Red Rock Application as a Type II action under the State Environmental Quality Review Act (“SEQRA”). Many projects overseen by the APA are granted Type II status, which generally excuses DEC from completing a full SEQRA environmental review. The premise behind the SEQRA exemption is that the APA has and will conduct an analogous environmental review process, that, in theory, meets or exceeds SEQRA requirements.
5. The APA characterized this project as a Class A regional project under the Adirondack Park Agency Act (the “Act”). The agency “[cannot] approve any class A regional project proposed...unless it first determines that such a project... would not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the park.” N.Y. Exec. Law § 809(9) (McKinney 2021).
6. So, while Type II actions are exempt from full SEQRA environmental review by DEC, the APA still was required to evaluate the project’s potential impact on the environmental, aesthetic, recreational, and historic resources of the park while considering the

Application. The environmental, aesthetic, recreational, and historic impact of the project is then weighed against “the commercial, industrial, residential, recreational or other benefits that might be derived from the project,” to determine whether the benefits outweigh the potential negatives. *Id.*

7. The APA is granted authority under the Act to either grant a permit application or hold an adjudicatory hearing. N.Y. Exec. Law § 809(3)(d) (McKinney 2021). Accordingly, the APA cannot deny a permit without first holding a hearing.
8. Despite hundreds of public comments raising significant and still unresolved factual issues stemming from inadequate environmental impact assessments and other shortcomings of the Red Rock Application, the APA failed to provide an adjudicatory hearing and granted the permit to Red Rock. The APA authorized APA Permit 2021-0075 (“Permit”) on January 14, 2022, to Red Rock Quarry Associates, LLC. APA Regulatory Affairs Meeting (Jan. 14, 2022), Ex. J, at 14-15; *see generally* Permit, Ex. A.
9. This Article 78 proceeding is brought to challenge and set aside the Permit granted by the APA because it arbitrarily, capriciously, and contrary to law failed to hold an adjudicatory hearing to address significant and unresolved questions of fact.
10. For example, the APA’s approval of this permit constituted an unexplained reversal of prior APA determinations that additional environmental review is required for mining plans of this nature. *See* LA Group Permit Comment, Ex. F, at 44-53 (providing APA Notice of Incomplete Permit Application (Apr. 27, 2000); DEC Positive Declaration 2000, Ex. E, at 1. In 2000, the APA required multiple environmental review assessments for a similar mine use plan in the exact same location. LA Group Permit Comment, Ex. F, at 44-53 (providing APA Notice of Incomplete Permit Application (Apr. 27, 2000). The

APA failed to adequately address why the additional noise and environmental scrutiny was not required of this permit applicant.

11. Further, the White Lake residential and tourism-based area will be unduly burdened by the increase in industrial noise, as the closest residential home is only 570 feet away from the project site. Korn, APA Regulatory Affairs Meeting (Jan. 13, 2022), Ex. C, at 6. The APA did not perform adequate noise assessments and failed to sufficiently respond to issues raised during the public comment period, instead simply taking the Applicant at its word on a paper review with faulty assumptions. These issues should have been addressed in an adjudicatory hearing.
12. In addition, the project site is accessed through Stone Quarry Road. Multiple comments raised questions of whether the applicant demonstrated titled access or full site control. The adjacent landowner claims that the road has been abandoned, a 1990 deed shows that the public was granted an easement on the entirety of the road (which traverses the proposed mine site), and there is uncertainty whether the road was ever maintained as a public highway. *See* Permit Comment, Ex. H, at 2-3; 1990 Deed, Ex. I, at 1.
13. The APA did not adequately address these and other issues, instead it simply choose its own factual resolutions with no adjudication.
14. Thus, this Petition seeks (1) a judgment under Article 78 that the APA's grant of the Permit without holding an adjudicatory hearing was arbitrary, capricious, and contrary to law, and (2) an order vacating the permit in question and remanding the matter to the APA to hold an adjudicatory hearing.

PARTIES – PETITIONERS

15. Petitioner, The Adirondack White Lake Association (“AWLA”), is a homeowner's society that has standing in its own right and through its representation of Louanne Cossa

and Steve Turczyn, who live in the near vicinity of the project site. AWLA's mission includes conserving, protecting, monitoring, and safely regulating the natural resources of White Lake and the surrounding residential community. *See About AWLA: Our Mission*, Adirondack White Lake Association, <https://www.whitelakeadk.com/what-we-do> (last visited Mar. 5, 2022). Mrs. Cossa and Mr. Turczyn's properties are within the "Moderate Intensity Use" and "Rural Use" zones, and the use and enjoyment of their residential properties will be affected by increased noise from the drilling, blasting, crushing, and transportation of mineral resources from the project, as well as increased traffic on Route 28. *See Cossa Aff.*, Ex. M; *Turczyn Aff.*, Ex. N.

16. Louanne Cossa is the President of AWLA since August of 2021. *Cossa Aff.*, Ex. M, at 2. Mrs. Cossa owns two properties in the immediate vicinity of the Red Rock Quarry Project. *Id.* Her family's property at Petronio Route 28 12941, Woodgate, NY, 13494, is within 900 feet from the Red Rock Quarry Project site at Tax ID: 8.000-1-8, on or near Stone Quarry Road, within the Adirondack Park. *Id.* Her other property is located on 74 Old Ice House Road, Woodgate, NY, 13494, and is within 0.6 miles of the project. *Id.* Mrs. Cossa has lived in the White Lake community for 65 years, using the Adirondack Park seasonally, in May through November, for hiking, biking, walking with friends, berry picking, and bird watching. *Id.* at 3. Mrs. Cossa's ability to continue to use the Adirondack Park for such activities, and her ability to use and enjoy her properties, will be impacted due to the Red Rock Project's potential noise pollution, trucking, increased traffic, amongst other concerns. *Id.*
17. Steve Turczyn is a member of AWLA. *Turczyn Aff.*, Ex. N, at 1. He co-owns a parcel of land adjoining the land located at Tax ID: 8.000-1-8. *Id.* at 2. He additionally co-owns a

camp on Old Ice House Road that is within 0.25 miles from the Quarry project site. *Id.*

Mr. Turczyn uses both of these properties all year long, spending a significant amount of time in the Adirondack Park walking, hiking, fishing, hunting, cross-country skiing, snow shoeing, snowmobiling, and forestry management. *Id.* Stone Quarry Road runs through his Route 28 property and thus Mr. Turczyn will be uniquely affected by noise pollution, trucking traffic, and other negative impacts of the Red Rock Quarry Project. *Id.* at 3.

18. Petitioner, Protect the Adirondacks!, is an environmental “non-profit, grassroots membership organization.” *Mission Statement*, Protect the Adirondacks!, <https://www.protectadks.org/about/mission-and-vision/> (last visited Feb. 7, 2022). Protect the Adirondacks! has standing in its own right and through its representation of Peter Bauer, Regina Balzano, and Devan Cornish, who use and enjoy the Adirondack Park, including the area surrounding the White Lake and White Lake Quarry, for a variety of activities including hiking, bird watching, observing nature, and camping. *See* Bauer Aff., Ex. O; Balzano Aff., Ex. P; Cornish Aff., Ex. Q. The purpose of the organization is to protect “the public and private lands of the Adirondack Park, and to [build] the health and diversity of its natural and human communities for the benefit of current and future generations.” *Mission Statement*, supra. Protect the Adirondacks has an office located at 105 Oven Mountain Road, Johnsburg, NY 12843.
19. Peter Bauer is the Executive Director of Protect the Adirondacks! since 2012. Bauer Aff., Ex. O, at 1. As Executive Director, he manages all program and administrative operations of the organization. *Id.* at 2. He has been involved in environmental activism in the Adirondacks since 1991 and has used the Adirondack Park since childhood. *Id.* He

continues to use the Park nearly daily for hiking, dog walking, cross-country skiing, canoeing, camping, hunting, and fishing. *Id.* at 3.

20. Regina Balzano is a member of Protect the Adirondacks!, and also is a member of AWLA. Balzano Aff., Ex. P, at 1. Mrs. Balzano owns property located at 13021 State Route 28, Forestport, NY, for 35 years. *Id.* at 2. This property is within 900 feet from the Red Rock Quarry Project site at Tax ID: 8.000-1-8. *Id.* She uses the Adirondack Park seasonally, from May to October, to hike, use the walking paths, observe nature, and bird watching. *Id.* Mrs. Balzano's ability to continue to use the Adirondack Park for such activities, and her ability to use and enjoy her properties, will be impacted by the Red Rock Project's potential noise pollution, trucking, increased traffic, amongst other concerns. *Id.* at 3.

21. Devan Cornish is a member of Protect the Adirondacks!. Cornish Aff., Ex. Q, at 1. Mr. Cornish's family owns a camp located at 12958 State Route 28, Forestport, New York, 13338 that adjoins the Red Rock Quarry Project site at Tax ID: 8.000-1-8. *Id.* at 2. This camp is part of the Cornish Irrevocable Trust, which Mr. Cornish is the sole beneficiary of. *Id.* He plans on passing the camp on to his two children. *Id.* Mr. Cornish has spent significant time in the Adirondack Park his entire life. *Id.* He uses the Park for hiking, walking, observing nature, bird watching, and most importantly to spend meaningful time with his family and friends. *Id.* He currently uses the park in the spring, summer, and fall. *Id.* Because his property adjoins the Red Rock Quarry site, Mr. Cornish will be uniquely impacted by the increased noise pollution, trucking, traffic, and other negative impacts of the project. *Id.* at 3.

PARTIES – RESPONDENTS

22. Respondent, The Adirondack Park Agency, is an agency of the State of New York. The APA is the lead agency for the permitting of projects in the Adirondack Park. As the lead agency, the APA is charged with implementing the State’s obligations under the Adirondack Park Agency Act. The APA has an office at 1133 NYS Route 86, Ray Brook, NY 12977, in Essex County. The APA’s jurisdiction is over the Adirondack Park, and the relevant parcel of land being permitted by Respondent is located at Tax ID: 8.000-1-8, on or near Stone Quarry Road, in the Town of Forestport, Oneida County, within the Adirondack Park.
23. Respondent, Red Rock Associates, LLC, is a domestic limited liability company that applied for and was granted the APA Permit in question, through its officer Thomas Sunderlin. Red Rock was incorporated in New York in March of 2012. Red Rock’s office is located at 264 Dover Road, Barneveld, NY, 13304 in Oneida County.

JURISDICTION AND VENUE

24. This Court has jurisdiction pursuant to N.Y. C.P.L.R. Article 78 Section 7803 to review the decision of the APA to (1) omit to hold an adjudicatory hearing and to (2) grant a permit. Judicial review is detailed under Adirondack Park Agency Act Section 818(1):

Any act, omission, or order of the agency...may be reviewed at the instance of any aggrieved person in accordance with article seventy-eight of the civil practice law and rules, but application for such review must be made not later than sixty days from the effective date of the order or the date when the act or omission occurred.

N.Y. Exec. Law § 818(1) (McKinney 2021).

25. Venue in Oneida County is proper. Per C.P.L.R. Section 506(b), venue is proper where “material events” that had given rise to the action at hand took place. The relevant parcel of land being permitted by the APA is located at Tax ID: 8.000-1-8, on or near Stone

Quarry Road, in the Town of Forestport, Oneida County, within the Adirondack Park.

The surrounding moderate and rural land use zones that will be affected by this project are located in Oneida County. The potential and likely environmental impacts, noise pollution, increased traffic, etc. will occur in Oneida County.

REGULATORY FRAMEWORK

26. SEQRA was created with “the purpose of...maintaining a healthful environment for the people of the State of New York, preventing deterioration in the quality of the environment, and of requiring consideration of possible significant environmental consequences before action is taken.” 1 NYCRR 362.1.
27. While the APA is excluded from complying with SEQR for actions on private land within the Adirondack Park, this exclusion is because the APA is charged with completing its own thorough environmental review. *See* ECL 8-0111(5)(c) (providing that SEQR does not apply to actions subject to Class A or Class B project jurisdiction of the APA). As explained in the SEQR Handbook, the exclusion of the APA from SEQR is “because [it] already had a SEQR-like analysis process.” NYS Department of Environmental Conservation, *The SEQR Handbook* 8 (4th ed. 2020). Nevertheless, the APA is not fully excused from SEQR obligations; the APA still must interpret and administer its “policies, statutes, regulations, and ordinances...in accordance with the policies set forth [in SEQRA].” ECL 8-0103(6).
28. As such, the APA is still subject to the goals of SEQRA and is tasked with upholding the same or better standard of environmental review when considering permit applications. The APA is “charged with the duty to ensure that certain projects within its jurisdiction ‘would not have an undue adverse impact upon the natural, scenic, aesthetic, ecological,

wildlife, historic, recreational or open space resources of the park.” *In re Ass’n for the Prot. of the Adirondacks, Inc. v. Town Bd. Of Tupper Lake*, 64 A.D.3d 825, 826–27 (App. Div. 3d Dept. 2009) (citing N.Y. Exec. Law § 809(9), (10)(e) (McKinney 2021)). This mandate “predated SEQRA and is more protective of the environment.” *Id.* at 827.

29. The APA is required to issue a permit prior to the establishment of any mineral extraction industries on “Moderate Intensity Use” or “Rural Use” lands in the Adirondack Park. N.Y. Exec. Law § 809(2)(a) (McKinney 2021).
30. Under the Adirondack Park Agency Rules and Regulations, the APA’s determination of whether to hold an adjudicatory hearing, prior to permit decision-making, is based on eight factors. 9 NYCRR § 580.2(a). These include “(1) the size and complexity of the project”, “(2) the degree of public interest”, “(3) the presence of significant issues”, “(4) the possibility that the project can only be approved if major modifications are made”, “(5) the possibility that information presented at a public hearing” would help the APA review the permit, “(6) the extent of public involvement achieved by other means”, “(7) whether an environmental impact statement [was] prepared” as required by SEQRA, and (8) whether there was a “statutory finding required by section 814 of the Adirondack Park Agency Act.” *Id.* The APA should hold an adjudicatory hearing if one or more of these criteria are met, as they can represent that important problems may exist with the permit.
31. The APA cannot disapprove a permit without holding a public hearing. N.Y. Exec. Law § 809(3)(d) (McKinney 2021).

FACTUAL BACKGROUND

32. Thomas Sunderlin, on behalf of himself and Red Quarry Associates, LLC, submitted the Mining Permit Application with the DEC and an Application for Major Projects with the APA on April 5, 2021.
33. The APA found the permit application incomplete on April 20, 2021, but after Red Rock submitted additional documentation, it was deemed complete on July 7, 2021.
34. The Red Rock Quarry Project generated a tremendous amount of public opposition, with over three hundred people and organizations commenting on the permit application, the vast majority of which opposed the application. Korn, APA Regulatory Affairs Meeting (Jan. 13, 2022), Ex. C, at 15. The agency also received “1,432 form letters and 1,400 petition signatures identifying additional concerned individuals” who opposed the project. *Id.* at 15.
35. Petitioner AWLA retained The LA Group, an Architecture and Engineering firm, which submitted a detailed engineering assessment of the application on July 28, 2021. *See generally* LA Group Public Comment, Ex. F. The comment noted insufficient APA consideration of hydrogeology, stormwater and surface drainage, impact on the wetlands, noise considerations, the crushing operations, site access, and transportation concerns. *Id.*
36. Notable critiques included: a lack of documentation of the location of the water table under the proposed mine site, (*id.* at 3), a previous similar mine project that required much more environmental review and testing, (*id.* at 5), a lack of proper noise impact assessment on the record, (*id.* at 7-8), the noise assessment in the application record did not include all industrial noise sources, (*id.* at 8), and a lack of documentation of the Applicants ability to directly access the parcel due to legal access issues on Stone Quarry Road (*id.* at 10-11).

37. The previous similar mine application was submitted in 2000 and, as the LA Group pointed out, consisted of similar mineral extraction activities. *Id.* at 5.
38. In the 2000 project proposal, the DEC and APA requested significant environmental testing. *Id.* at 44-59 (providing APA Notice of Incomplete Permit Application (Apr. 27, 2000); NYSDEC Notice of Incomplete Application (Jul. 31, 2000)). APA staff requested professionally prepared studies of (1) noise related impacts, (2) visual impacts, (3) proposed water usage, storage, treatment, and flow management, (3) hydrological study of the area, (4) dust control, (5) engineering study assessing the adequacy of Stone Quarry Road to perform as required for the increased traffic, (6) studies of blasting and ground vibrations, and (6) alternative proposals for the use of the quarry. *Id.* at 44-53 (providing APA Notice of Incomplete Permit Application (Apr. 27, 2000)). The LA Group questioned the differing standard of environmental review required of the two similar projects, especially since many of the same conditions garnering further environmental impact scrutiny were present in the current application.
39. In response to the LA Group's comment, the Applicant claimed that there were "substantial differences" between the two projects. *See* Letter from David A. Shank, Strategic Mining Solutions, LLC, to APA and NYSDEC Region 6, Re: Project Permit: 2021-0075/DEC Application ID #6-3038-00081/00003 (Nov. 15, 2021), Ex. K, at 2. Applicant relied on the same material provided in the LA Group's attachments for the most part and did not materially provide any new information to answer the technical deficiencies of the permit.
40. Applicant also erroneously stated that the 2000 application proposed mining activities "below the water table." *Id.* at 1. This assertion was accepted by the APA without

question, and repeated at the APA Regulatory Affairs Meeting on January 13, 2022, by APA Project Review Officer, Devan Korn. Korn, APA Regulatory Affairs Meeting (Jan. 13, 2022), Ex. C, at 16 (explaining “many details of the prior proposal were different from the current proposal, including mining activities below the water table.”). The first phase of the 2000 application called for excavation to 1465 ft. elevation; the 2021 application calls for excavation to 1445 ft. elevation, or 20 ft. deeper than the 2000 application, *see* White Lake Granite Quarry Mined Land Use Plan, Ex. G, at 3; *see also* LA Group Permit Comment, Ex. F, at 3-4. The water table has not been established; Applicant revealed that they based their estimate of the water table on surface elevation of the White Lake Outlet and nearby wetlands in their June 14, 2021, response to APA’s Notice of Incomplete Application. In 2000, further analysis of the water table was required in the form of a water table map and an “expanded water table drawdown.” LA Group Permit Comment, Ex. F, at 5 (citing APA Notice of Incomplete Permit Application (April 27, 2000)). Further fact-finding of this nature should have been required of Applicant in this case.

41. The LA Group also commented on the lack of required stormwater pollution prevention plan (“SWPPP”), the nondisclosure that the proposed mine is located above a principal aquifer, and other pertinent hydrogeological questions. LA Group Public Comment, Ex. F, at 3-7. They also noted that there were several development considerations from the Adirondack Park Agency Act section 805(4) that were not adequately addressed in the Permit. *Id.* at 2. These include natural resource considerations of “existing water quality”, drainage and runoff patterns, existing water table and rates of recharge, air quality, noise levels, and aesthetics. *Id.*; *see also* 9 CRR-NY 805(4)(1)(a), (d), (f); 805(4)(3)–(4), (7).

42. The APA heard public comments during their monthly meetings on November 18, 2021 and held a rescheduled second hearing on December 16, 2021. These were not adjudicatory hearings. Many questions were asked of both the APA and Applicant during this time and no answers were provided. Commenters during both meetings called for an adjudicatory hearing to be held.
43. Petitioners submitted additional public comments calling for an adjudicatory hearing on January 12, 2022, as the previous meetings insufficiently addressed public comments and concerns. *See* Petitioner’s Comment on Permit, Ex. D.
44. Petitioners, in their comment, detailed that at least six criteria are present that require an adjudicatory hearing in this case. These include (1) the size and complexity of the project, as demonstrated by the large impact on the municipality and effects on the otherwise pristine White Lake, (2) the large amount of public interest, (3) the significant and unresolved issues of inadequate noise impact assessments and legal access to the road, (4) the lack of a required environmental impact statement by SEQRA, and (5) the copious number of proposed changes to the permit necessary for its approval. *Id.* at 2-3.
- Petitioners also discussed the lack of “Findings of Fact” in the draft permit, which is necessary for the determination of whether the agency had a rational basis for their permit decision, and the 2000 application’s much more stringent environmental review requirements. *Id.* at 4-5.
45. The APA held two Regulatory Affairs Meetings where Board Members discussed the approval of the Permit, on January 13 and 14, 2022. *See* APA Regulatory Affairs Meeting Transcript (Jan. 13, 2022), Ex. C; APA Regulatory Affairs Meeting Transcript (Jan. 14, 2022), Ex. J.

46. The first meeting was primarily conducted by Devan Korn, the APA Project Review Officer. Mr. Korn discussed the proposed Permit in terms of the materials provided and APA decisions. *See generally* Korn, APA Regulatory Affairs Meeting (Jan. 13, 2022), Ex. C. Mr. Korn covered topics such as, the jurisdiction of the APA to permit the project, history of the site, the APA's conclusions of law, the project location, character of the area, existing site conditions, proposed project, review by the APA and others, responses to public comments, and staff recommendations. *Id.*
47. During these meetings, the APA attempted to address the comments raised but failed to consider the actual factual disputes. Instead, Mr. Korn, and the APA overall, elected to make affirmative determinations of fact without a hearing, and in doing so they chose to ignore or disregard evidence contrary to those conclusions.
48. For example, with respect to similarities with the 2000 application, Mr. Korn stated, “many details of the prior proposal were different from the current proposal, including mining activities below the water table, the settling pond, the 5,000 square foot on-site material processing structure, and office trailer with associated on-site wastewater treatment system, and...water reclamation plan.” Korn, APA Regulatory Affairs Meeting (Jan. 13, 2022), Ex. C, at 16. The alleged presence of mining activities below the water table in the 2000 application would not impact noise; the creation of a settling pond does not create additional industrial noise; similarly, the material processing structure, office trailer, and on-site wastewater treatment system would not create noise. Thus, these factors do not account for the differences in required noise studies and the APA has not adequately identified factors between the two projects that would mandate different types of noise assessments.

49. In the Notice of Incomplete Application for the 2000 mine proposal, the APA requested additional information from the potential permittee, including:

A professionally prepared study of noise related impacts to adjoining/nearby landowners and the surrounding environment, wetlands and wildlife, anticipated from trucking, blasting and mobile and stationary equipment to be used on the site. The study should include at a minimum actual decibel readings of background/ambient noise levels from specific locations around the site in comparison to anticipated noise levels, as well as all measures proposed to minimize noise impacts, and if possible decibel readings while equipment/blasting is being tested at the site. The noise study should be prepared in consultation with Agency staff.

LA Group Public Comment, Ex. F, at 8 (citing to the APA Notice of Incomplete Application (Apr. 27, 2000)) (emphasis added). There was no convincing reason for the current project to not garner the same scrutiny.

50. The assessment completed by Applicant only used Department of Transportation ambient traffic noise data from 2019. *See* White Lake Granite Quarry Mined Land Use Plan, Ex. G, at 7-8. This data is not sufficient to represent the actual conditions present in 2022, nor is it the right data to establish ambient noise conditions in the surrounding residential area. *See* LA Group Public Comment, Ex. F, at 7. The noise assessment did not use current data of ambient noise from the property, nor did it use actual readings of equipment tests. Thus, the noise assessment completed by Applicant was not sufficiently similar to the one required by the APA in 2000. Additionally, Application did not use data for a county road, or a state route, but rather did an estimate based on traffic data between “light auto traffic” and “freeway traffic.” White Lake Granite Quarry Mined Land Use Plan, Ex. G, at 8. Route 28 is not a freeway. Actual traffic noise data is needed to uncover actual ambient noise conditions in the area.

51. Mr. Korn explained at the APA Regulatory Affairs Meeting on January 13, 2022, that the noise assessment completed by Applicant was done so “in accordance with the [DEC] Program Policy for Assessing and Mitigating Noise Impacts,” as an excuse as to why the APA did not require more thorough noise studies. Korn APA Regulatory Affairs Meeting (Jan. 13, 2022), Ex. C, at 10. This was misleading as the noise assessment failed to adequately address seasonal changes, which is a factor the DEC requires projects to consider. Jeffrey Sama, *Assessing and Mitigating Noise Impacts* 10 (NYSDEC 2001).
52. In response to Petitioners’ comment on noise, the Applicant further argued that “The 2000 application proposed up to six explosive events per day. The current application proposes a maximum of two per day that may only occur between the hours of 9 am to 3 pm during seasonal operations (late April to early November).” Letter from David A. Shank, Strategic Mining Solutions, LLC, to APA and NYSDEC Region 6, Re: Project Permit: 2021-0075/DEC Application ID #6-3038-00081/00003 (Nov. 15, 2021), Ex. K, at 3. The difference between six and two blasting events does not mean that the blasting events will be quieter, just that they will be less frequent.
53. Also, the fact that the current proposed project will only occur during April to November should garner additional noise impact scrutiny, as indicated in the NYSDEC Program Policy: Assessing and Mitigating Noise Impacts, that Applicant later references. Jeffrey Sama, *Assessing and Mitigating Noise Impacts* (NYSDEC 2001). The report explains that:

[s]ummer time noises have the greatest potential for causing annoyance because of open windows, outside activities, etc. During the winter people tend to spend more time indoors and have the windows closed. In general, building walls and windows that are closed provide a 15 [decibel] reduction in noise levels. Building walls with the windows open allow for only a 5 [decibel] reduction in [sound pressure level].

Id. at 10. This program policy points to the fact that there is a greater impact of noise pollution during warmer weather and thus sound attenuation needs to be more carefully considered. *Id.* Additional noise studies should have been conducted to take this factor into account.

54. The noise assessment present in the current project's Application was theoretical in nature and did not constitute the same level of assessment called for in the 2000 application, which was a "professionally prepared study of noise related impacts of actual versus anticipated decibels." LA Group Permit Comment, Ex. F, at 8. Therefore, the DEC Program Policy, especially when not faithfully followed, is no replacement for actual noise studies.

55. In Applicant's response to the LA Group's comment, they liken micro-blasting noise emissions to the sounds of a gunshot in order to show that the quarry area has been "historically utilized for target practice, gun siting and hunting...[thus] the frequent sound of gun fire from these activities is not unusual," and therefore the noise from the project would not be abnormal. Letter from David A. Shank, Strategic Mining Solutions, LLC, to APA and NYSDEC Region 6, Re: Project Permit: 2021-0075/DEC Application ID #6-3038-00081/00003 (Nov. 15, 2021), Ex. K, at 5. This is false. Almost all firearms create noise of approximately 140 decibels. Michael Steward, *Recreational Firearm Noise Exposure*, American Speech-Language-Hearing Assoc. (last accessed Feb 11, 2022), <https://www.asha.org/public/hearing/recreational-firearm-noise-exposure/>. While the blasting activities, described in section 3.2.1 of the "Mined Land Use Plan," do not include decibel levels, the plan does explain that the maximum charge weight will be less than 100 pounds of explosives. *See* White Lake Granite Quarry Mined Land Use Plan,

Ex. G, at 4. Only one pound of tri-nitro-toluene (“TNT”) detonating 15 feet away generates 180 decibels of noise. William Hamby, *Ultimate Sound Pressure Level Decibel Table* (Hyperdynamics Co. 2004), http://pds27.egloos.com/pds/201403/06/94/Ultimate_Sound_Pressure_Level_Decibel_Table.pdf. Thus, up to 99 pounds of TNT represents a significant difference from the sound of a gunshot. Therefore, the noise of the project would be dissimilar to noises local residents could have previously experienced. This incorrect, anecdotal fact was repeated at the APA Regulatory Affairs Meeting on January 14, 2022, by Chairman John Ernst. Ernst, APA Regulatory Affairs Meeting (Jan. 14, 2022), Ex. J, at 10. This demonstrates that actual noise studies were necessary since the APA was using incorrect facts to make their decision to grant the Permit.

56. Moreover, Mr. Korn attempted to minimize noise impacts by referencing the topography, stating that a high ridge between the mine and the residences would block the noise. Korn, APA Regulatory Affairs Meeting (Jan. 13, 2022), Ex. C, at 10. This claim, however, is belied by the site plan, which shows that the mining will occur all the way to the top of the ridge, where there will be *no* buffer from topography. White Lake Granite Quarry Mined Land Use Plan, Ex. G, at 3-4.

57. The APA also misrepresented the increased truck traffic on Route 28 as negligible. Mr. Korn stated that “the proposed maximum of 20 daily truck trips represents the less than 1% increase over the existing levels of trucking in New York State Route 28.” Korn, APA Regulatory Affairs Meeting (Jan. 13, 2022), Ex. C, at 10 (emphasis added). This claim was made several times through his presentation to the APA Board and is misleading. Mr. Korn previously explained that DOT traffic analysis showed a

“combined total of 2,510 vehicles...with a truck traffic percentage of 11%,” which equates to 276 trucks per day. *Id.* Adding 40 trucks per day (20 in and 20 out), would be approximately a 15% increase in overall trucks. Trucks generate a significant amount of noise; a standard truck can produce 96 decibels of noise at highway speeds, and an increase in truck traffic would have an impact on ambient noise in the area. W. H. Close & J. E. Wesler, *Vehicle Noise Sources and Noise-Suppression Potential* 12 Transp. Research Bd. 14 (1975).

58. In 2000, the proposed mining operation only consisted of 25 truckloads per week, yet the APA requested “professionally prepared study of noise related impacts...anticipated from trucking...include[ing] at a minimum actual decibel readings.” LA Group Public Comment, Ex. F, at 8 (citing to APA Notice of Incomplete Permit Application (Apr. 27, 2000)). The APA also requested “an engineering report and supporting plans, details and specifications prepared by an engineer...assessing the adequacy, in terms of both structural adequacy and traffic safety for Stone Quarry Road.” *Id.* at 13 8 (citing to APA Notice of Incomplete Permit Application (Apr. 27, 2000)). The Red Rock Quarry Project will generate more truck traffic in a single day than the 2000 application would in a week, yet Applicant was not required to complete the same stringent review. There is no rational basis for this discrepancy.

59. Similarly, with respect to access to the site, commentors pointed out that it was entirely unclear if the road accessing the site was owned by the town or even usable by Applicant. *See* Permit Comments, Ex. H, at 3; LA Group Public Comment, Ex. F, at 10. Commenters presented evidence to the APA demonstrating that Applicant did not adequately demonstrate full titled access to the project site. The adjoining property

owner, R.O. Turczyn, claims that Stone Quarry Road had been abandoned per his deed.

Permit Comment, Ex. H, at 3.

60. Stone Quarry Road is notably absent from some maps, namely the Oneida County Tax Map prepared in 2018, which casts doubts on whether it was ever a public highway and indicates that it is likely to be a private drive. *Id.*
61. Conversely, a deed from 1990 demonstrates that the public was granted an easement to the entirety of Stone Quarry Road. 1990 Deed, Ex. I, at 1. If this easement is still in place, it would traverse the entire site and appear to prevent mining on much of the plan without violating the easement.
62. Another issue presented by commenters that the APA did not fully consider is that Stone Quarry Road is only 12-15 feet wide, and the proposed project requires 49.5 feet width to accommodate all trucking and other proposed activities. *See LA Group Public Comment, Ex. F, at 13.* The APA should have worked with DOT or another qualified third party to create an engineering study assessing the adequacy of Stone Quarry Road to perform as required for the increased traffic the project will generate. Reference to the Institute of Transportation Engineers (ITE) trip generation manual or DEC Impact on Transportation Analysis should have been required by APA after commenters raised questions of whether Stone Quarry Road could actually handle the increased traffic. *See Inst. Of Transp. Eng'rs, Trip Generation Manual* (10th ed. 2017), <https://itetripgen.org/Content/SupportDocuments/Trip%20Generation%20Manual%2010th%20Edition%20Desk%20Reference.pdf>; NYSDEC, *Env't Assessment Form (EAF) Workbook: Impact on Transportation*, <https://www.dec.ny.gov/permits/91776.html> (last visited Mar. 5. 2022).

63. The deeds provided by Applicant do nothing to counter the easement contained in the 1990 deed that grants public access to the road, as the deed is still “subject to...easements of record, utility easements, whether or not of record.” *See* Ex. L, at 1. Mr. Korn stated at the APA Regulatory Meeting on January 13, 2022, that “staff analysis is that [Stone Quarry Road is] a town road and there is no information presented that would suggest otherwise.” Korn, APA Regulatory Affairs Meeting (Jan. 13, 2022), Ex. C, at 27. This is clearly false, as several comments contained specific evidence to the contrary and represents the shallow depth at which the APA considered comments received.
64. When asked again at the January 14, 2022 meeting, whether the town actually had control of the road, Mr. Korn simply stated that the Town of Forestport told him they owned it, despite documentary evidence calling this assertion into question. *See* Korn, APA Regulatory Affairs Meeting (Jan. 14, 2022), Ex. J, at 9. Clearly, the APA did not fully consider the evidence presented by commenters as the APA refused to investigate the matter further than simply asking the town.
65. During the Regulatory Meetings, Mr. Korn also misrepresented the criteria triggering an adjudicatory hearing to the Board. Mr. Korn stated that “hearings must be held when unclear facts for determining whether project is approvable.” Korn, APA Regulatory Affairs Meeting (Jan. 13, 2022), Ex. C, at 18. Mr. Korn neglected to mention that there are eight criteria listed within the Adirondack Park Agency Act and that the presence of any one of the criteria can trigger an adjudicatory hearing. *See* 9 NYCRR § 580.2(a).
66. In the Regulatory Affairs Meeting on January 14, 2022, there was further discussion of adjudicatory hearings. *See generally* APA Regulatory Affairs Meeting (Jan. 14, 2022), Ex. J. Chris Cooper, APA Counsel, had to explain to APA Board Members the

regulatory criteria for an adjudicatory hearing. *Id.* at 3. He explains to the Board that “[adjudicatory hearings] only have to be held in...two scenarios: before denial or if the facts are lacking.” *Id.* Again, the eight criteria enumerated within the APA Rules and Regulations part 580.2 were not mentioned. The Board Members present seemed confused about the actions they could take, as evidenced by Chairman Ernst asking whether the purpose of an adjudicatory hearing is to “go before a judge and develop material that was not available or could not be developed by staff or by other consultants?” and then later “there’s nothing about the hearing itself that develops the facts?” *Id.* at 2-3. Similar questions on the nature of what an adjudicatory hearing is and is used for were also asked by Board Members Art Lussi and Mark Hall. *Id.*

67. There is no question that the confusion the Board Members expressed stemmed from the APA’s habit of refusing to hold a single adjudicatory public hearing in over a decade. In the first 40 years of the APA’s creation, the agency sent over 150 projects to formal adjudicatory hearings, averaging about four per year, now there have been none held in the last 14 years. Peter Bauer, *How Team Cuomo Subverted Basic Norms at the Adirondack Park Agency*, Adirondack Almanack (Nov. 11, 2021) <https://www.adirondackalmanack.com/2021/11/how-team-cuomo-subverted-basic-norms-at-the-adirondack-park-agency.html>. The last adjudicatory hearing the APA held was in 2008. *Adirondack Park Agency Hearing Decisions Index*, N.Y.S. DEC, <https://www.dec.ny.gov/hearings/2462.html> (last visited Feb. 18, 2022). This is a particularly disturbing practice given the APA’s unique environmental review process; it is exempt from SEQR review processes.

68. The theory behind this exemption is that the APA has (and will actually complete) a “SEQR-like [environmental review] analysis process,” that, in theory, is equal to or more stringent than, SEQRA. NYS Department of Environmental Conservation, *The SEQR Handbook* 8 (4th ed. 2020); *see also* N.Y. Exec. Law § 805(4) (McKinney 2021). Adjudicatory hearings are a vital tool for the APA to conduct full environmental review of potentially permitted projects, as the hearings are used to address questions of unanswered fact and uncertain environmental or other impacts of the project.
69. This more than thirteen-year-long practice of not holding adjudicatory hearings is especially problematic when looking at the structure of the Adirondack Park Agency Act; The APA is required to hold an adjudicatory hearing when denying a permit. This practice means that basically every completed permit application has been granted by the APA since 2008. Because the APA refuses to hold adjudicatory hearings, potential permittees are almost guaranteed to receive a permit and the voices of concerned community members are unheard or ignored.
70. In this case, an adjudicatory hearing was required as there were multiple unresolved questions of fact that had particular bearing on the ability of the APA to grant this Permit.
71. In sum, as described above, issues bearing on significant environmental impact, great public concern, and issues that may have required denial or modification of the permit, include, at a minimum:
- **Whether the Red Rock Quarry Project will cause material noise pollution that will negatively impact the local homeowner’s ability to use and enjoy their properties.**
 - **Whether, as in 2000, further analysis should have been required of Applicant, in terms of environmental impact studies, noise pollution studies, and engineering studies.**

- **Whether Respondent Red Rock has full legal, titled access of the relevant parcel of land.**

72. All of these unanswered questions of fact should have been fleshed out during an adjudicatory hearing so that they could have been incorporated into a modified permit or result in a permit denial. The APA should not have failed to hold an adjudicatory hearing in this case.

73. The Permit was granted by the APA on January 14, 2022, with no adjudicatory hearing.

FOR PETITIONER'S FIRST CLAIM – RESPONDENT'S REFUSAL TO HOLD AN ADJUDICATORY HEARING WAS ARBITRARY AND CAPRICIOUS AND CONTRARY TO LAW, AS THERE WERE SIGNIFICANT UNRESOLVED FACTUAL ISSUES THAT REQUIRED RESPONDENT TO HOLD AN ADJUDICATORY HEARING PRIOR TO DECISIONMAKING.

74. An adjudicatory hearing is required here under the APA's own Rules and Regulations.

There are eight criteria detailed in APA Rules and Regulations part 580.2. 9 CRR-NY

580.2. These include:

(1) the size and/or complexity of the project, whether measured by cost, area, effect upon municipalities, or uniqueness of resources likely to be affected; (2) the degree of public interest in the project, as evidenced by communication from the general public, governmental officials or private organizations; (3) the presence of significant issues relating to the criteria for approval of the project; (4) the possibility that the project can only be approved if major modifications are made or substantial conditions are imposed; (5) the possibility that information presented at a public hearing would be of assistance to the agency in its review; (6) the extent of public involvement achieved by other means; (7) whether an environmental impact statement will be prepared pursuant to the State Environmental Quality Review Act; and (8) the statutory finding required by section 814(2) of the Adirondack Park Agency Act in the case of State agency projects reviewed thereunder.

9 CRR-NY 580.2(a).

The decision to hold an adjudicatory hearing can be triggered if only one of these criteria are met. In this case, at least six separate factors are met.

A. The Size and Complexity of the Project Warranted an Adjudicatory Hearing.

75. The first factor that this permit met is that “the size and/or complexity of the project, whether measured by cost, area, effect upon municipalities, or uniqueness of resources likely to be affected” is large. 9 CRR-NY 580.2(a)(1).
76. Here, the Permit grants Red Rock the ability to extract, drill, blast, crush, and transport mineral resources right next to a well-established residential and tourist-based area. While the 56.5-acre parcel of land is technically in both “Moderate Intensity Use” and “Rural Use” land zones, the great majority of the site is located in the former category. *See* Permit Ex. A, at 1; Map, Ex. B.
77. The permit allows for a significant increase in industrial activity in a residential area that has not seen such activity since the mine was operated by the Oneida Pink Granite company in the 1920s. The project will have a direct effect on the local municipality, particularly in terms of noise. The proposed operations of the mine—“diamond wire sawing, line drilling, expandable grouts, micro-blasting”, and crushing operations—generates significant industrial noise. White Lake Granite Quarry Mined Land Use Plan, Ex. G, at 3.
78. Accordingly, the size and complexity warranted an adjudicatory hearing.

B. The Degree of Public Interest in the Project Warranted an Adjudicatory Hearing.

79. The second criteria present here is, “the degree of public interest in the project, as evidenced by communication from the general public, governmental officials or private organizations.” 9 CRR-NY 580.2(a)(2).
80. Local residents have been extremely active in expressing their opposition to this project. Since the draft permit was issued, more than 300 public comments have been submitted to the APA, many of which called for an adjudicatory hearing. Additionally, the APA

received a petition with approximately 1,400 signatures and 1,432 form letters opposing the permit. Korn, APA Regulatory Affairs Meeting (Jan. 13, 2022), Ex. C, at 15. Very few land development projects have garnered such public participation.

81. This factor also suggests that an adjudicatory hearing was necessary.

C. There Existed Significant Issues Relating to the Criteria for Approval of the Project that Warranted an Adjudicatory Hearing.

82. The third criteria present is that there is a “presence of significant issues relating to the criteria for approval of the project.” 9 CRR-NY 580.2(a)(3).

83. The APA did not conduct a noise study, as admitted at the APA Regulatory Affairs Meeting on January 14, 2022, by APA Project Review Officer Devan Korn. APA Regulatory Affairs Meeting (Jan. 14, 2022), Ex. J, at 10. The assessment only used area estimates of ambient noise and projected sound levels to approximate the potential increase in sound. White Lake Granite Quarry Mined Land Use Plan, Ex. G, at 7-8. The assessment did not faithfully follow the DEC Program Policy for Assessing and Mitigating Noise Impacts, as explained above.

84. The APA required actual noise studies to be conducted for a past, similar mine plan in 2000. The APA called for “at minimum actual decibel readings” of noise on the site to compare to “anticipated noise levels,” and “if possible, decibel readings while equipment/blasting is being tested at the site.” LA Group Public Comment Ex. F, at 8 (citing to the APA Notice of Incomplete Application (Apr. 27, 2000)).

85. If the APA would have required an adequate noise study, the significant noise pollution and resulting impact on the surrounding community could have been satisfactorily examined. The lack of a noise study represents one example of the unsettled questions of fact that should have garnered an adjudicatory hearing.

86. In addition to insufficient noise studies, legal access to the project site is also in question.

As discussed above, multiple commentors brought up that (1) there is uncertainty surrounding whether the Applicant has legal access to Stone Quarry Road, (2) there are clear claims that Stone Quarry Road has been abandoned, (3) there are questions of whether the road was ever a public highway to begin with, and (4) there is evidence that the public was granted an easement on the entirety of the road. *See generally* Petition Comments, Ex. H; Ex. I; Ex. R. Commenters the LA Group and C.J. Randall, amongst others, raised these issues and the APA failed to adequately address them.

87. Questions of the actual impacts of the project and whether there is legal access to the project site are the types of question of fact would be best addressed at an adjudicatory hearing.

D. Inadequate Environmental Impact Review was Completed by Respondent and Therefore an Adjudicatory Hearing was Required.

88. The fourth criteria present here is “[w]hether an environmental impact statement [“EIS”] will be prepared pursuant to the State Environmental Quality Review Act.” 9 CRR-NY 580.2(a)(7). The DEC, due to its determination that the project is a Type II SEQRA action, did not require the preparation of an EIS.

89. Without the adjudicatory hearing, the APA did not conduct any significant environmental review.

90. Notably, the DEC Type I determination for the 2000 project, and the resulting mandated environmental impact studies from both the APA and DEC, were determined in response to the presence of blasting operations, noise concerns, increased traffic, and visual harms to the environment. DEC Positive Declaration, 2000 Plan, Ex. E, at 1-2. All of those factors are present in the current permit, were raised in public comments, and thus should

have garnered the same scrutiny. As discussed above, these required studies from 2000 were significantly different compared to what was required of the current applicant, despite the similarity of concerns present in both projects.

E. There was a Possibility that the Project Could Only be Approved if Major Modifications Were Made, and Thus an Adjudicatory Hearing was Necessary.

91. The fifth criterion is that there is a “possibility that the project can only be approved if major modifications are made, or substantial conditions are imposed.” 9 CRR-NY 580.2(a)(4).
92. The questions of whether Applicant has legal access to the project site, whether the noise of the mining operations will have a significant impact on local residents, and the deviations from the 2000 review are significant and each may have resulted in modifications to or denial of the permit.
93. If the applicant cannot use Stone Quarry Road, the permit would have to be significantly amended to guarantee that mined materials is able to be transported through trucking, or that employees can access the site.
94. Similarly, if the noise impact of the proposed project is actually tested adequately and it reveals a significant departure from the normal ambient noises of the area, the permit would have to be significantly amended to counteract the noise pollution.
95. Finally, if further environmental review was mandated, as it was in 2000, the permit would have to be denied or at least the notice of complete application rescinded until it was completed.
96. All of these questions, that have been present and commented on since the permit was first applied for, represent the possibility that the permit should not have been granted without significant modification.

97. The APA's decision to forego an adjudicatory hearing was arbitrary, capricious, and contrary to law as there were significant, looming questions which, if resolved, could have required significant permit modification.

F. The Information Presented at an Adjudicatory Hearing Would Have Helped the APA Make the Permit Decision.

98. The sixth factor present here is that there is a strong "possibility that information presented at a public hearing would be of assistance to the agency in its review." 9 CRR-NY 580.2(5).

99. Because these unanswered questions of fact materially impact the ability of the APA to grant the permit without substantial modification, additional fact-finding was necessary. The holding of an adjudicatory hearing to determine whether this project would generate substantial and unacceptable levels of noise pollution and whether Applicant had full, titled access to the project site would have been of assistance to the APA in making their determination.

100. The APA's decision to forego an adjudicatory hearing was arbitrary, capricious, and contrary to law, as an adjudicatory hearing would have clarified material unanswered questions that had significant bearing on the permit's ability to be granted.

For all the foregoing reasons, the approval of the permit and the failure to hold an adjudicatory hearing was arbitrary, capricious, and contrary to law.

PRAYER FOR RELIEF

Wherefore, the Petitioners respectfully demand appropriate judgment from this Court against

Respondents as follows:

- a. A declaration under Article 78 that the APA’s grant of APA Permit 2021-0075 to Red Rock Quarry Associates, LLC, without holding an adjudicatory hearing was arbitrary, capricious, or contrary to law,
- b. An order vacating the permit in question and remanding the matter the APA to hold an adjudicatory hearing, and
- c. Any further relief that the Court may deem just and proper.

Dated: March 15, 2022
White Plains, NY

Respectfully submitted,

by: _____  _____

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Adirondack White Lake Association and
Protect the Adirondacks*

VERIFICATION

STATE OF NEW YORK)
COUNTY OF ONEIDA *Warren*) ss.:

PETER BAUER, being duly sworn, deposes and says:

- 1. I am PETITIONER, Protect the Adirondacks!, Executive Director.
- 2. I have read the foregoing petition and its factual contents are true to my personal knowledge, except as to those matters alleged therein to be upon information and belief, and as to those matters, I believe them to be true.


PETER BAUER

Sworn to before me this
~~15th~~ day of March, 2022


Notary Public

JEAN M. COMSTOCK
NOTARY PUBLIC-STATE OF NEW YORK
No. 01CO6001221
Qualified in Warren County
My Commission Expires 01-05-20~~26~~