

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 3

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www.dec.ny.gov

June 27, 2022

Town of Wawayanda Planning Board
80 Ridgebury Hill Road
Slate Hill, New York 10973
Attn: Richard Onorati II, Chairperson

Re: Dolsontown Corridor DGEIS
DEC ID: 3-3356-00170/00001 (SW); 3-3356-00171/00002 (WQC); 3-3356-00172/00002 (WQC)
Town of Wawayanda, Orange County
SEQR Comments on DGEIS – Dolsontown Corridor

Dear Chairperson Richard Onorati II,

The New York State Department of Environmental Conservation (Department or DEC) has reviewed the Draft Generic Environmental Impact Statement for Dolsontown Corridor, circulated by the Town of Wawayanda Planning Board, serving as Lead Agency for this Type 1 action. I apologize for the delay in response. As outlined in the DGEIS, several proposed projects are included for review, and this comment letter will first outline general comments based on the location and the presence of regulated natural resources, and then will outline the status of those projects with applications before the Department.

DEC Jurisdiction

Article 15 Protection of Waters

- Monhagen Brook, Waters Index Number H-139-13-52, Class C (South of Marangi Solid Waste Facility, and Simon Business Park), this is a non-protected waterbody;
- Monhagen Brook, Waters Index Number H-139-13-52, Class C (East side of Dolsontown Road East), this is a non-protected waterbody;

A Protection of Waters permit is required to physically disturb the bed or banks (up to 50 feet from stream) of any streams identified as “protected.” A permit is not required to disturb the bed or banks of “non-protected” streams.

If a permit is not required, please note, however, you are still responsible for ensuring that work shall not pollute any stream or waterbody. Care shall be taken to stabilize any disturbed areas promptly after construction, and all necessary precautions shall be taken to prevent contamination of the stream or waterbody by silt, sediment, fuels, solvents, lubricants, or any other pollutant associated with the project.

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Article 24 Freshwater Wetlands

The Dolsontown East project site is near NYS regulated Freshwater Wetlands MD-19, (Class II). Additional information can be found below under site specific comments. Be aware that a Freshwater Wetlands permit is required for any physical disturbance within these boundaries or within the 100-foot adjacent area.

There are wetlands in the vicinity of the Dolsontown Corridor, and specifically south and east of the Marangi Solid Waste Facility; south and southwest of Simon Business Park; and southwest of the Dew Point South site that are not currently regulated by New York State DEC, but may be regulated when recently adopted changes to Article 24 become effective in 2025. Since the precise regulatory requirements for implementing these statutory changes are only in the initial stages of development, it is impossible to provide specific details regarding how these regulatory changes could potentially impact this project. If the onsite wetlands become jurisdictional under Article 24 in 2025, please know that the Department's regulations generally require avoidance and minimization of impacts to regulated wetlands and their 100-foot adjacent areas. In situations where impacts are unavoidable and have been minimized, mitigation may be required to compensate for remaining losses of wetland benefits.

Article 11 Incidental Take (Threatened and Endangered Species)

The Dolsontown Corridor is near known locations of Indiana bats, a state-listed Endangered species.

As noted in the DGEIS, all tree removal associated with the projects will occur within the appropriate time of the year work window, October 1 through March 31, to avoid direct impacts to individuals. However, an assessment of cumulative impacts from the whole action should be conducted. It appears that greater than 10 acres of tree removal is proposed in total, and up to 71.79 acres of disturbance and vegetation removal (however, it is not clear if this is all tree cutting). While the DGEIS includes a review for each project, an cumulative evaluation of impacts to Indiana Bat habitat should be conducted. This should include a review of change in % forest cover for the maternity colony (2.5 mile radius) as well as a review of impacts to travel corridors over the area (hedge rows and stream corridors).

SPDES Wastewater

Total anticipated wastewater generation is an average of 13,387 as specified in the DGEIS (actually about 15,000) gpd. According to the DGEIS, wastewater treatment will be provided by the City of Middletown. Sanitary sewer service will be provided by gravity connection to the existing sewer main on Dolsontown Road, owned and operated by the Town of Wawayanda Sewer Department, which connects to the City of Middletown wastewater collection system. Sewer extensions will be required for Dolsontown East, Simon Business Park, and the Marangi Solid Waste Facility.

It appears there may be private and public sewer extensions. Please be aware that sewer line extensions require review and approval by our Department's Division of

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Water prior to construction of the sewer extension. For private sewer extension, pursuant to NYCRR 750-1.6(f) if the extension is intended to serve more than one separately owned property, a permit for a sewage disposal system or approval of a sewer extension serving or intended to serve more than one separately owned property shall be issued only to either a governmental agency, municipality, or sewage disposal corporation formed and regulated pursuant to article 10 of the Transportation Corporations Law. The commissioner may, on written application, grant a variance from this provision in a particular case, subject to appropriate conditions, including bonding requirements, where such variance is in harmony with the general purposes and intent of this Chapter.

Article 15 Water Withdrawal

According to the DGEIS, the approximate total combined water demand for all of the projects is anticipated to be 13,387 gpd. The DGEIS states that pursuant to a Stipulation of Settlement between the City of Middletown and the Town of Wawayanda, dated November 30, 2021, the City of Middletown will allocate on a permanent basis to the Town of Wawayanda, 200,000 gallons per day of water and 200,000 gallons of sewer service. Also stated in the DGEIS, the Town currently purchases / consumes approximately 75,000 gpd, resulting in sufficient excess capacity in both the potable water and the sanitary sewer system of approximately 125,000 gpd.

- Please be aware that the Town is operating the system without a valid permit. In May, 2022, the Town submitted a partial response to a Notice of Incomplete Application issued in 2019. A complete response is necessary in order for the Department to continue processing.
- The Department recommends updating the DGEIS related to water use and calculations. Please calculate the average demand for light industrial users according to NYSDEC Design standards, and update the calculation for available capacity considering the maximum day demand for vacant sites.

Environmental Justice

Please be aware that the Dolsontown Corridor is within a Potential Environmental Justice Area. Environmental Justice is the fair and meaningful treatment of all people, regardless of race, income, national origin or color, with respect to the development, implementation, and enforcement of environmental laws, regulations and policies. Information regarding Environmental Justice can be found at the following link:
<https://www.dec.ny.gov/lands/333.html>.

Certain Department jurisdictions are subject to Commissioner Policy 29 (CP-29) <https://www.dec.ny.gov/regulations/36951.html>, Environmental Justice and Permitting, which provides guidance for incorporating environmental justice concerns into the NYSDEC environmental permit review process and the DEC application of the State Environmental Quality Review Act. The policy applies to applications for major projects

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and major modifications for the permits authorized by the following sections of the Environmental Conservation Law:

1. titles 7 and 8 of article 17, state pollutant discharge elimination system (SPDES) (implemented by 6 NYCRR Part 750 et seq.);
2. article 19, air pollution control (implemented by 6 NYCRR Part 201 et seq.);
3. title 7 of article 27, solid waste management (implemented by 6 NYCRR Part 360);
4. title 9 of article 27, industrial hazardous waste management (implemented by 6 NYCRR Part 373); and
5. title 11 of article 27, siting of industrial hazardous waste facilities (implemented by 6 NYCRR Part 361).

The application for the Marangi Solid Waste Facility requires compliance with CP-29, and the applicant has submitted an Enhanced Public Participate Plan (EPPP) for review, along with the latest application materials. The latest resubmission materials are still under review.

Water Quality Certification

If the US Army Corps of Engineers requires a permit pursuant to Section 404 of the Clean Water Act for the discharge to fill in Waters of the U.S., then a Section 401 Water Quality Certification (WQC) will be required. Issuance of these certifications is delegated in New York State to DEC. If the project qualifies for a Nationwide Permit, it may be eligible for coverage under a DEC Blanket WQC. Coverage under a Blanket requires compliance with all conditions for the corresponding Nationwide Permit. For more information and to view the DEC Blanket WQCs, please visit <https://www.dec.ny.gov/permits/6546.html>. A determination on Corps jurisdiction and Nationwide Permit eligibility is likely necessary for a DEC jurisdictional determination.

SITE SPECIFIC COMMENTS

Marangi Solid Waste Facility (A.K.A Dom Kam LLC)

Article 27 Solid Waste

An Article 27, Title 7 Solid Waste Management permit is required for the construction and operation of a transfer station and recycling facility to transfer MSW, C&D and industrial waste. The Department is in receipt of these application materials, application ID 3-3356-00170/00001, which is currently under review. The Town has been copied on all Notice on Incomplete Applications that have been issued by the Department to date: March 12, 2021; September 21, 2021; and Supplement, issued November 1, 2021.

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Article 24 Freshwater Wetlands

As mentioned above, there are wetlands south of the Marangi Solid Waste Facility that are not currently regulated by New York State DEC, but may be regulated when recently adopted changes to Article 24 become effective in 2025.

If the onsite wetlands become jurisdictional under Article 24 in 2025, please know that the Department's regulations generally require avoidance and minimization of impacts to regulated wetlands and their 100-foot adjacent areas. In situations where impacts are unavoidable and have been minimized, mitigation may be required to compensate for remaining losses of wetland benefits.

It appears there could be disturbance planned within 100 feet of the wetland on the south and east side of the project site, and specifically near Wet Ponds 1 & 2 and outlets. The Department recommends that the project sponsor evaluate alternatives for site plan design elements in locations where features are in close proximity to wetlands.

Please be aware that the US Army Corps of Engineers is responsible for determining federally regulated wetlands and may perform a site visit as part of that determination. It is our understanding from the information provided that the US Army Corps of Engineers has provided a Jurisdictional Determination outlining which wetlands are federally regulated.

State Pollution Discharge Elimination System (SPDES) Multi-Sector General Permit (MSGP)

A Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) is required for a facility with industrial discharges. Please see the following link for further information: <https://www.dec.ny.gov/chemical/9009.html>

RDM #3 – Dew Point South

Water Quality Certification

The Department has received and reviewed an application for a Section 401 Water Quality Certification. The submitted materials indicate that this project requires approval from the US Army Corps of Engineers under Section 404 of the Clean Water Act, and the applicant will be seeking coverage under Nationwide Permit (NWP) 39. This application is DEC ID 3-3356-00172/00002, is currently incomplete.

Article 24 Freshwater Wetlands

As mentioned above, there are wetlands southwest of Dew Point South site that are not currently regulated by New York State DEC, but may be regulated when recently adopted changes to Article 24 become effective in 2025.

If the onsite wetlands become jurisdictional under Article 24 in 2025, please know that the Department's regulations generally require avoidance and minimization of impacts to regulated wetlands and their 100-foot adjacent areas. In situations where impacts are

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unavoidable and have been minimized, mitigation may be required to compensate for remaining losses of wetland benefits.

It appears there could be disturbance planned within 100 feet of the wetland on the southwest side of the project site, and specifically near the stormwater areas, access road and retaining wall, and associated grading. The Department recommends that the project sponsor evaluate alternatives for site plan design elements in locations where features are in close proximity to wetlands.

Please be aware that the US Army Corps of Engineers is responsible for determining federally regulated wetlands and may perform a site visit as part of that determination. It is our understanding from the information provided that the US Army Corps of Engineers has provided a Jurisdictional Determination outlining which wetlands are federally regulated.

RDM #4 – Dew Point North

Water Quality Certification

The Department has received and reviewed an application for a Section 401 Water Quality Certification. The submitted materials indicate that this project requires approval from the US Army Corps of Engineers under Section 404 of the Clean Water Act, and the applicant will be seeking coverage under Nationwide Permit (NWP) 39. This application is DEC ID 3-3356-00171/00002, is currently incomplete.

Simons Business Park

Article 24 Freshwater Wetlands

As mentioned above, there are wetlands south and southwest of the Simon Business Park site that are not currently regulated by New York State DEC, but may be regulated when recently adopted changes to Article 24 become effective in 2025.

If the onsite wetlands become jurisdictional under Article 24 in 2025, please know that the Department's regulations generally require avoidance and minimization of impacts to regulated wetlands and their 100-foot adjacent areas. In situations where impacts are unavoidable and have been minimized, mitigation may be required to compensate for remaining losses of wetland benefits.

It appears there may be disturbance planned within 100 feet of the wetland on the south and southwest side of the development envelop. The Department recommends that the project sponsor evaluate alternatives for site plan design elements in locations where features are in close proximity to wetlands.

Please be aware that the US Army Corps of Engineers is responsible for determining federally regulated wetlands and may perform a site visit as part of that determination. It is our understanding from the information provided that the US Army

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Corps of Engineers has provided a Jurisdictional Determination outlining which wetlands are federally regulated.

The Department has not received application materials related to this project.

Dolsontown East

Article 24 Freshwater Wetlands

This project site is near NYS regulated Freshwater Wetlands MD-19, (Class II). The plans submitted with the DGEIS show wetland boundaries. If the project sponsor hasn't already done so, please contact Michael Fraatz, NYSDEC Bureau of Ecosystem Health, in order to have the boundary validated, to ensure your project does not encroach within the 100-foot adjacent area.

The Department has not received application materials related to this project.

Sincerely,

Division of Environmental Permits

Ecc: Wesley Salis, NYSDEC Division of Materials Management
David Pollock, NYSDEC Division of Materials Management
Manju Cherian, NYSDEC Division of Water
Aparna Roy, NYSDEC Division of Water
Mike Fraatz, NYSDEC Bureau of Ecosystem Health
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Real Deal Management Inc.
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