



Town of Washington  
Conservation Advisory Commission

March 8, 2022

Town of Washington Town Board  
Town of Washington Planning Board  
Town of Washington Zoning Board of Appeals  
Mr. Christopher Lang, New York State Department of Environmental Conservation  
Mr. Steve Marino, Tim Miller Associates, Inc.

Re: Chatillon Realty Corporation – Mailman Conservation Area Project (the Mine Proposal)

The Town of Washington (TOW) Conservation Advisory Commission (CAC) is charged with providing advice to the Town Board and others in the Town regarding conservation matters, including historic preservation matters. In fulfillment of this role, we document and build upon oral remarks made in 2021 by CAC members at CAC meetings and other public TOW board meetings regarding the Chatillon Realty Corporation – Mailman Conservation Area Project (the Mine Proposal).

**Summary.** The CAC remains very alarmed over the potential for significant adverse environmental impact of the Mine Proposal, notwithstanding the SEQRA Negative Declaration issued by the Planning Board. Unless new information is presented, we also object to any use variance that might be granted by the TOW Zoning Board of Appeals. We recommend that the New York State DEC and the Town of Washington take steps to stop the Mine Proposal in its current form, as the large-scale project would appear to risk widespread environmental harm without any benefits to the Town.

**The short-term impact of the Mine Proposal does not appear to be conservation.** The first step in this very large project is the removal of an estimated **1.2 million to two million tons** of earth containing very valuable gravel<sup>1</sup> from a mining site over an approximately eight- to ten-year period along with the **destruction of about 21 acres of trees** and potential or even likely **damage to a local aquifer**. The conservation activity – the creation of a recreational aquatic preserve – would apparently be completed during or after the multi-year period of profitable mining activity ends, as a remediation step. Mining is an inherently unpredictable activity that

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<sup>1</sup> Google searches indicate that the wholesale gravel price is currently \$10-\$50 per ton, suggesting that the gravel on the site could be worth tens of millions of dollars.

can result in irreversible environmental harm, despite best intentions. Furthermore, we understand that a recreational preserve that would attract migratory waterfowl could be created through one or more shallow (about two feet) two-acre ponds – there is no need to create a 20-acre lake that is up to 75 feet deep through tree removal and gravel mining to achieve a conservation or recreational sporting objective. If the current owner of the Mine Proposal site decides to sell the property during or after the mining activity, it remains unclear whether the conservation activity would in fact ever be completed. It is also unclear whether the property owner would be **required to** engage in environmental remediation or whether the owner could later change his mind regarding creation of the lake following approval of the mining application.

**Specific environmental risks.** The CAC believes that significant environmental risks described in the application materials are not addressed by the Mine Proposal. All the boards and agencies involved should stop the approval process unless more assurance can be provided that the Mine Proposal, at its proposed very large scale, will not harm the environment. It may be appropriate to consider whether a materially smaller project could achieve a conservation objective, still provide profit to the landowner, and avoid environmental harm. The CAC notes the following:

- 1. An expert retained by the applicant appears to state that a principal aquifer will be permanently changed and potentially damaged as part of the Mine Project.** As shown in Section 4.4.3 of the Sterling Environmental Hydrological Narrative supplied in the July 21, 2021, submission to the Planning Board (Exhibit 1 to this letter), the mining will extend below the water table and a principal aquifer is expected to flow into the area created by the removal of earth. The Sterling narrative forecasts that surface water will be available to recharge the water table, but that forecast is dependent on assumptions that there will be no other competing use of the surface water, as well as assumptions as to long-term average precipitation and evaporation that may or may not match what happens over the next decade. It is a forecast, not a guarantee, and we see no reason that the Town should be compelled to jeopardize a principal aquifer in reliance on estimated forecasts. The Sterling narrative also does not clearly describe how the lake itself, once created, will affect the aquifer. **The Sterling narrative highlights the compelling need for the TOW to commission an independent hydrological or similar expert report analyzing all the complex environmental issues in language understandable to a non-scientist.**
2. The Wetland Scientist letter from Mr. Steve Marino to the Planning Board dated August 3, 2021 (Exhibit 2 to this letter) discloses significant environmental risks that do not appear to have been addressed in the application process to date. According to this letter, the application involves wetlands **within 100 feet** of the proposed disturbance area, including a stream corridor that flows along the entire eastern edge of the excavation area. The erosion control plan is not specific enough to determine if the steep slopes created by the mining activity will result in problematic erosion. The CAC

requests that all the environmental risks noted in this letter be satisfactorily remediated in the application.

3. The detailed comments from the NYS DEC in their June 21, 2021, letter to the Planning Board (Exhibit 3 to this letter) raising environmental risks do not appear to have been addressed in the proceedings so far. The DEC raises potential for water pollution and the potential need for Army Corps of Engineers permits, among other issues. The DEC notes that further information may be required to fully assess impacts on biological resources. The CAC requests that all the environmental risks noted in this letter be satisfactorily remediated in the application. In particular, the CAC requests that the Town commission a biological assessment by qualified experts given the planned tree removal and proximity of the Mine Proposal to water sources. A Preliminary Biodiversity Assessment of the area dated January 11, 2021, was prepared by Hudsonia and we urge the TOW to build upon that work.
4. The CAC believes that the Mine Project will involve significant noise and air pollution over a multi-year period emanating from the trucks removing gravel from the site while the mine is in operation. The traffic report filed by the applicant with the Planning Board on July 21, 2021, indicates that **60 truck trips per day, six days a week, for about nine years** can be anticipated on Route 82. The expert reports characterize that traffic as not significant, but a reasonable neighbor or TOW resident could easily conclude that the truck traffic increase will disrupt the character of the neighborhood, cause air and noise pollution, and could cause safety issues.
5. The project involves removing over 20 acres of trees from the property as part of the mining effort. The Town should obtain an independent expert as to the potential impact on groundwater and other environmental impacts of this level of tree removal.

**The TOW should be mindful of its limited enforcement resources.** In several places, the experts retained by the applicant indicate that monitoring and enforcement of good environmental practices might be warranted, especially during the active mining phase of the Mine Project, to ensure that nearby wetlands and streams are not polluted and that the conservation objectives are achieved. The CAC thinks that the ZBA and the Planning Board should be very cautious about granting variances to existing laws, which are designed to safeguard the public, by approving activities that could result in significant environmental harm if not performed correctly.

**The ZBA does not appear to have a legal basis on which to grant a variance.** Based on the information available today, we strongly urge the ZBA not to grant a use variance to the Mine Proposal. Mining is permitted in RS-5 with a special use permit under Section 332 of the TOW Zoning Code, but is prohibited in other areas of the Town, such as the RL-5 area in which the Mine Proposal sits. This leads the CAC to believe that mining was not intended to be allowed outside the RS-5 and RS-10 zones.

In particular, the CAC believes that a use variance will alter the essential character of the neighborhood, and therefore the legal standard for granting a use variance cannot be met. The area is rural, picturesque, and has historical significance. The Mine Proposal will result in new mining activity, changes to a principal aquifer, and logging or destroying over 20 acres of trees, all of which will alter the essential character of the neighborhood. A smaller, shallower aquatic preserve, which could be consistent with the character of the neighborhood and enhance land values, can be created. The Mine Proposal site is near the Bloomvale Historic District, which is on the National Register of Historic Places, and the increased truck traffic running right through the district would alter the essential character of the neighborhood. For more information on the Bloomvale Historic District, see the Wikipedia article attached as Exhibit 4 to this letter. Because the Mine Proposal would impair the environment and therefore alter the essential character of the neighborhood, the ZBA cannot grant the use variance under applicable law.

We would also ask the ZBA to consider whether the logging contemplated by the Mine Proposal would be permitted under existing zoning laws and whether approval would create a precedent that would allow other mines or other similarly environmentally risky businesses in zoning areas that would otherwise prohibit them.

The CAC also notes that a letter from the Dutchess County Department of Planning and Development dated May 14, 2021, which is already part of the ZBA public file on this matter, indicates that the Mine Proposal does not meet the legal standard for a use variance. In that regard, we wanted to bring to the ZBA's attention a section of a publicly available technical manual issued by New York State, which says that "a use variance cannot be granted where the unnecessary hardship complained of has been created by the applicant, or where she/he acquired the property knowing of the existence of the condition she/he now complains of." (See Exhibit 5 to this letter). We would urge the ZBA to review the timing of and publicity surrounding the closure of the prior mine on the site.

The CAC would welcome the opportunity to provide the ZBA with additional timely formal input and to review any additional materials submitted to the ZBA. The CAC requests that the ZBA give the CAC adequate time for such a formal response.

**The Mine Proposal is not consistent with the 2015 Comprehensive Plan.** Nothing in the 2015 Comprehensive Plan supports new mining activity in land that is zoned for rural residential uses. The Plan's *Goal II, Protect Land, Water, and the Natural Environment* explicitly discourages activity like the Mine Proposal, as future development should "continue to minimize disturbance in and around wetlands, water bodies, and water courses"; and "prevent incompatible land uses over aquifers and recharge areas..."

**The Mine Proposal does not serve an immediate public purpose.** Finally, we do not understand what benefit this project would provide to the Town of Washington over the next eight to ten years, while the mining is ongoing. Under Section 332 of the Town of Washington Zoning Code, special use mining permits appear to be contemplated in RS-5, especially where the gravel is necessary for use in and for the benefit of the Town of Washington. In contrast,

the Mine Proposal in RL-5 does not give any indication that the gravel mined would be used to benefit the Town or its scenic roads or be used in Town construction projects. There is no reference in any materials reviewed to TOW tax benefits or jobs, even though the gravel would appear to be worth tens of millions of dollars, based on publicly available pricing information.

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We think that the average Town of Washington resident would be very surprised or even shocked to learn that the Town is considering permitting a new large mine in a rural residential part of the Town. A mine on the same site was closed in the 1990s due to environmental and community objections. Nothing in the community or environment has changed since then that would justify re-opening the mine. Already, the Mine Proposal has generated significant community opposition that will certainly persist if the DEC and/or Town Boards allow further progress of the Mine Proposal.

We appreciate the opportunity to share our concerns about this proposal and stand ready to contribute to your further deliberations on the Mine Proposal.

Sincerely,

Conservation Advisory Commission