STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter

-of-

the Application for an Underground Storage of Gas Permit
Pursuant to Environmental Conservation Law (ECL) Article 23, Title 13,

- by -

FINGER LAKES LPG STORAGE, LLC,

Applicant.

DEC Permit Application ID No. 8-4432-00085

OHMS Case No. 201166576

DECISION OF THE COMMISSIONER, FINAL SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT, AND SEQRA FINDINGS STATEMENT

July 12, 2018

DECISION OF THE COMMISSIONER, FINAL SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT, AND SEQRA FINDINGS STATEMENT

Applicant Finger Lakes LPG Storage, LLC (applicant or Finger Lakes LPG), a subsidiary of Crestwood Midstream Partners, L.P. (Crestwood), proposes to construct and operate a new underground liquefied petroleum gas (LPG) storage facility for the storage and distribution of propane (facility or project) on a portion of a 576-acre site (site) located on NYS Routes 14 and 14A west of Seneca Lake in the Town of Reading, Schuyler County. The site is approximately 2 to 2.5 miles north of the Village of Watkins Glen.

Applicant applied to the New York State Department of Environmental Conservation (Department or DEC) for an Underground Storage of Gas Permit pursuant to Environmental Conservation Law (ECL) article 23, title 13. Applicant also obtained coverage under the State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activities (SPDES General Permit GP-0-08-001), and has submitted updates to its Stormwater Pollution Prevention Plan. On May 10, 2010, applicant submitted an application for an Air Facility Registration (6 NYCRR 201-4) for a proposed propane dryer at the facility.

I have reviewed the comprehensive record in this proceeding. Petitioners Seneca Lake Communities, Gas Free Seneca, and the Seneca Lake Pure Waters Association have each raised compelling arguments in their petitions and on appeal that would warrant identifying cavern integrity, the proposed brine pond, public safety preparedness, and alternative sites as issues for adjudication. The need for additional record development on the cavern integrity issue is further underscored by applicant's recent letter dated May 17, 2018 (Applicant's May 2018 letter) that states that additional pressure testing of Gallery 10 (which consists of wells 18, 52 and 57) will be undertaken "to ensure there is no connection with Finger Lakes Gallery 1, as well as to identify whether other adjacent wells are in communication with Gallery 10" (id. at 1). In addition, the proposed volume of the storage capacity at this site is also an issue that merits adjudication.

Notwithstanding that certain issues can be identified as adjudicable, the record is more than sufficient at this stage for me to make a final determination based on the requirements of the State Environmental Quality Review Act (SEQRA). The record demonstrates that the impacts of this project on the character of the local and regional community, including but not limited to the environmental setting and sensitivity of the Finger Lakes area and the local and regional economic engines (e.g., wine, agricultural and tourism industries), are significant and adverse and the project does not avoid or minimize those impacts to the maximum extent practicable. Furthermore, the significant adverse impacts on community character are not outweighed or balanced by social, economic or other considerations, and cannot be avoided or minimized to the maximum extent practicable by the proposed mitigation measures.

My decision, together with the draft supplemental environmental impact statement (DSEIS) and the comprehensive record, hereby serves to finalize the DSEIS for this action. Based upon my review, I am not able to issue a findings statement in support of this project and, accordingly, the permit applications for this proposed project are to be denied.

BACKGROUND

Two legislative hearings on the DSEIS for the project were held before an Administrative Law Judge of the DEC's Office of Hearings and Mediation Services (OHMS) in September and November 2011. In 2014, the matter was re-referred to OHMS and assigned to Chief Administrative Law Judge (CALJ) James T. McClymonds for the conduct of an issues conference, which was subsequently held.

Petitions for full party status in this proceeding were submitted by the following entities: Gas Free Seneca;[1] Seneca Lake Pure Waters Association; and Seneca Lake Communities.[2] Petitions for amicus party status were submitted by: Finger Lakes Wine Business Coalition; Schuyler County Legislators Van A. Harp and Michael L. Lausell; National Propane Gas Association; New York L.P. Gas Association, Inc.; Propane Gas Association of New England; and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union.

Under applicant's original proposal, the facility would use, for the storage of propane and butane, existing solution-mined underground caverns in the Syracuse salt formation created by U.S. Salt, LLC (an affiliate of Finger Lakes LPG) and its predecessors' salt production operations. As originally proposed, a maximum of 2.10 million barrels (88.20 million gallons) of LPG in the form of liquid propane and butane was to be stored in the caverns seasonally, displacing some of the brine currently filling them (see Ruling of the CALJ on Issues and Party Status, Sept. 8, 2017 [CALJ September 2017 Ruling] at 3).

The existing caverns are located near the western shore of Seneca Lake, north of the Village of Watkins Glen. Associated surface facilities would extend uphill to the west with compressors east of NYS Route 14 south of the intersection with NYS Route 14A. The stored LPG was to be withdrawn by displacement of propane with brine when demand occurred during the heating season, and displacement of butane with brine during the gasoline blending season.

During storage operations, the brine displaced by LPG or butane was proposed to be stored and contained in two (2) double-lined brine ponds: the East Brine Pond and the West Brine Pond. The 2.25-acre East Brine Pond was to be located on the east side of NYS Route 14 approximately 2,000 feet south of the intersection of NYS Routes 14 and 14A, and would have had a capacity of approximately 0.17 million barrels (7.14 million gallons). The 6.35-acre West Brine Pond would be located approximately 1,500 feet west of the intersection of NYS Routes 14 and 14A, and would have a capacity of approximately 0.80 to 0.81 million barrels (33.6 to 33.9 million gallons) (see CALJ September 2017 Ruling at 3; applicant letter to CALJ

[1] Gas Free Seneca, in its petition for party status, states that it is a group of concerned citizens and 266 local business owners (see Gas Free Seneca Petition for Party Status dated January 16, 2015 at 4).

[2] Twelve of the region's municipalities filed a petition for party status under the name Seneca Lake Communities. These municipalities included Seneca County, Yates County, the Town of Fayette, the Town of Geneva, the Town of Ithaca, the Town of Romulus, the Town of Starkey, the Town of Ulysses, the Town of Waterloo, the City of Geneva, the Village of Watkins Glen, and the Village of Waterloo.

McClymonds dated September 12, 2016 at 6 & Exhibit 3 [providing further brine pond calculations]).

The facility would connect to the existing TE Products Pipeline Company, LLC (TEPPCO) LPG interstate pipeline for shipment of LPG into and out of the facility. As originally proposed, LPG was also to be shipped by truck via NYS Routes 14 and 14A, and by rail via the existing Norfolk & Southern Railroad. The original project also involved the construction of a new rail and truck LPG transfer facility, consisting of a six-rail siding capable of allowing loading and unloading of 24 rail cars within 12 hours, and a truck loading station capable of loading four trucks per hour (see CALJ September 2017 Ruling at 4).

On August 8, 2016, applicant filed a letter detailing several project modifications that it committed to implementing (Applicant's August 8, 2016 Letter). The modifications include:

(1) the elimination of the proposal to store liquid butane at the facility and the reduction of propane storage capacity from 2.1 million barrels to 1.5 million barrels;

(2) the elimination of the project's rail and truck loading facilities, thereby eliminating the delivery of liquefied petroleum gas by rail or truck to or from the project -- as a result, all deliveries of liquefied petroleum gas would be by pipeline;

(3) the elimination of the proposed East Brine Pond on the east side (or lakeside) of Route 14 and the relocation of the flare stack to the West Brine Pond; and

(4) a proposal to provide resources ranging from financial resources to technical resources (mining data) to support community initiatives for the preservation and improvement of water quality in the area, including Seneca Lake (see CALJ September 2017 Ruling at 10).

The stated purposes of the modifications were to reduce the scale and environmental impacts of the project and to respond to the concerns expressed by those participating in the issues conference, as well as stakeholders outside the Department's permit hearing proceeding. Responses to Applicant's August 8, 2016 Letter were submitted by Department staff and by the following petitioners: Gas Free Seneca; Seneca Lake Pure Waters Association; Seneca Lake Communities; Schuyler County Legislator Michael L. Lausell; and Finger Lakes Wine Business Coalition. The petitioners raised various concerns and questions regarding applicant's proposal. By letter dated September 12, 2016 (Applicant's September 2016 Letter), applicant provided a response to the petitioners' submissions.

SEQRA STATUS

Department staff determined that the project is a Type I action pursuant to ECL article 8 (SEQRA). The Department, which is the lead agency for the SEQRA review of the action, issued a positive declaration of environmental significance on November 17, 2010. SEQRA review of the project was the subject of scoping (see 6 NYCRR 617.8), and a final scoping outline for a draft supplemental environmental impact statement[3] was issued by the Department on February 15, 2011 (see CALJ September 2017 Ruling at 4).

A DSEIS was initially submitted by applicant on March 15, 2011, and revisions were received in June, July, and August of that year. On August 17, 2011, Department staff accepted the DSEIS as adequate for public review and comment. As indicated, in response to the ongoing environmental review of the project, applicant made further modifications to the project (see e.g. Applicant's August 8, 2016 Letter, noted above).

As required by SEQRA, prior to DEC's decision on an action that has been the subject of a final environmental impact statement,[4] the agency must file a written findings statement (see 6 NYCRR 617.11[b] and [c]; see also ECL 8-0109[8]). The SEQRA decisionmaking and findings requirements are set forth at 6 NYCRR 617.11. According to the regulations, findings "must:

> (1) consider the relevant environmental impacts, facts and conclusions disclosed in the final EIS;
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> (2) weigh and balance relevant environmental impacts with social, economic and other considerations;
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> (3) provide a rationale for the agency's decision;
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> (4) certify that the requirements of [6 NYCRR part 617] have been met; and
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> (5) certify that consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable" (6 NYCRR 617.11[d]).

The time sequence and manner of the filing and distribution of the findings statement are set forth at 6 NYCRR 617.11(a) and (b), and 6 NYCRR 617.12(b).

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[3] The DSEIS is a project-specific draft supplemental environmental impact statement to the Department's 1992 Final Generic Environmental Impact Statement for the Oil, Gas, and Solution Mining Regulatory Program (see CALJ September 2017 Ruling at 5).

[4] Regulations relating to the completion of a final environmental impact statement are set forth at 6 NYCRR 617.9 and 617.12.

RULINGS

Following the completion of the issues conference, the CALJ issued his ruling on issues and party status (CALJ September 2017 Ruling). The ruling addressed potential issues relating to ECL article 23, title 13 (Underground Storage of Gas) and SEQRA, and found no issues for adjudication. The issues relating to title 13 of article 23 of the ECL included gas storage permit standards, the gas storage permit application, staff's application review, cavern integrity issues, potential salinization of Seneca Lake, and the approval by the State Geologist (see CALJ September 2017 Ruling at 15-43). In addressing SEQRA issues, the CALJ reviewed the applicable standards of review and evaluated whether adjudicable issues were raised with respect to impacts on water resources, noise impacts, impacts on public safety, alternatives, cumulative impacts, impacts on community character, and indemnification language in the draft permit (see id. at 44-71).

The CALJ September 2017 ruling, however, concluded that the record of potential alternative sites in the general project area under the control of applicant was not clear. To complete the record on alternative sites, the ruling directed applicant "to confirm whether it owns or has options on other sites in New York that contain salt caverns other than the Savona facility and, if so, to provide an alternatives analysis for those sites" (CALJ September 2017 Ruling at 65).

Other than the issue of alternative sites, which remained open for receipt of additional information, the CALJ ruling concluded that petitioners failed to raise any issues under ECL article 23 or SEQRA that required adjudication (see id. at 73).

In a supplemental ruling dated November 6, 2017 (CALJ November 2017 Ruling), the CALJ, based on his review of additional papers submitted concerning alternative sites, concluded that petitioners Seneca Lake Pure Waters Association, Gas Free Seneca, and Seneca Lake Communities failed to raise any adjudicable issues concerning available alternative sites for applicant's project (see CALJ 2017 November Ruling at 3-5, 6). Because the CALJ had previously ruled that petitioners had not raised any issues under ECL article 23 or SEQRA requiring adjudication, the CALJ denied the petitions for full party status (see id. at 6). Petitioners' filings, as well as Department staff's responses, were accepted as comments on the DSEIS, and, as such, could be considered by the final agency decision maker when making SEQRA findings (see CALJ September 2017 Ruling at 73 [filings by petitioners for full party status as well as amicus submissions]; CALJ November 2017 Ruling at 6).

The CALJ canceled further hearings in this proceeding, closed the hearing record and directed that the matter be remanded to Department staff to continue processing the application to issue the requested permits (see id.). With the issuance of the CALJ September 2017 Ruling and CALJ November 2017 Ruling, a schedule for the filing of appeals and replies was established.[5]

[5] The CALJ also issued a ruling addressing the confidentiality of various documents submitted with the application (see Ruling of the Chief Administrative Law Judge on Motion to Affirm Confidentiality of Protected Materials, Sept 8, 2017). No parties sought leave to appeal from the CALJ's confidentiality ruling.

APPEALS AND REPLIES

Seneca Lake Communities, Seneca Lake Pure Waters Association and Gas Free Seneca all filed appeals from the CALJ rulings. The three petitioners contended that several issues required adjudication. Subsequently, applicant filed papers in support of the CALJ's rulings, as did Department staff. The appeals and replies are noted below. A further review of the specific issues raised appears under the relevant subheadings of the "Discussion" section of this decision.

Seneca Lake Communities – appeal dated November 14, 2017 (SLC Appeal). Seneca Lake Communities appealed from the rulings with respect to cavern safety, community character, alternatives, and whether the project received approval from a duly-appointed State Geologist.

Procedurally, Seneca Lake Communities requested that "the Commissioner . . . decide this case on the merits without further hearings" (SLC Appeal at 3 [emphasis added]). In this regard, Seneca Lake Communities stated that the Commissioner should "oversee and complete the preparation of the final EIS" (id.).

Gas Free Seneca – appeal dated November 15, 2017 (Gas Free Seneca Appeal). Gas Free Seneca, on its appeal, reiterated the fact that numerous municipalities, concerned citizens and business owners are opposed to the project. It also contended, among other things, that: the caverns are not adaptable for storage purposes; the proposed project constitutes a significant threat to public safety, community character, and the socio-economic health of the Finger Lakes region; the project's DSEIS alternatives analysis is deficient, in part because it failed to evaluate the no-action alternative; no competent evidence exists that an authorized New York State Geologist issued the required written approval for the project; and applicant has failed to satisfy all of the legal requirements for underground gas storage under ECL 23-1301.

Seneca Lake Pure Waters Association – appeal dated November 15, 2017 (SLPWA Appeal). Seneca Lake Pure Waters Association contended that: no approval was received from a duly-authorized State Geologist; flaws existed in applicant's cavern integrity analysis; and the no-action alternative should be adopted due to the significant and unmitigated adverse impacts of the proposed project.

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Applicant and Department staff argued that the CALJ rulings should be upheld, the SEQRA process should be completed and the permits for the project should be issued.

Department Staff – reply dated December 15, 2017 (Department Staff Reply). Department staff contended that the rulings applied the correct legal standards in determining that no adjudicable issues exist. Department staff further noted that the mitigation reflected in the draft permit conditions as well as the downsizing of the project (as described in applicant's August 8, 2016 letter) (see Department Staff Reply at 2-4) supported the approval of the project.

Applicant – reply dated December 15, 2017 (Applicant Reply). Applicant addressed each of the issues that were raised on the appeals, and contended that the CALJ properly found no adjudicable issues.

APPLICANT'S MAY 17, 2018 LETTER

By letter dated May 17, 2018 (Applicant's May 2018 letter), applicant advised that U.S. Salt (which is a separate entity from Finger Lakes LPG) found that well 64, which U.S. Salt is presently developing for solution mining, "may be in communication with either Gallery 10 (which consists of wells 18, 52 and 57) and/or other nearby wells" (Applicant's May 2018 letter at 1). The letter further stated:

> "Under the draft permit issued by Department Staff [for the proposed project], Finger Lakes would be required to conduct a pressure test of Gallery 10 to ensure that there is no connection with Finger Lakes Gallery 1, as well as to identify whether other adjacent wells are in communication with Gallery 10. Given the recent information about well 64, Finger Lakes has decided to proceed with its pressure test of Gallery 10 now, but will include . . . as additional monitoring points wells 17, 29, 61 (it is known that well 61 is in communication with wells 60 and 62) and 64. In addition, Finger Lakes will install a pressure monitor on well 44, which is one of the wells accessing Finger Lakes Gallery 1" (id.).

Applicant requested that my decision on the pending appeals be held in abeyance "until the outcome of the pressure test has been reported to the Department and those involved in this proceeding have had an opportunity to comment" (id.).

By letter dated May 18, 2018, Gas Free Seneca (Gas Free Seneca May 2018 letter) responded to Applicant's May 2018 letter, reiterating its concerns about cavern integrity flaws. Gas Free Seneca stated that "[t]he inadequately described conditions that prompted the letter – most likely, undisclosed pressure changes in one or more wells – are grounds enough for denying [applicant's] application for underground storage of [liquefied petroleum gas]" (Gas Free Seneca May 2018 letter at 2).

Gas Free Seneca further stated that, "[a]t the very least," applicant should be required to disclose all studies of the wells at the site (including those conducted by U.S. Salt and other entities affiliated with applicant) that have been conducted in the past five years and were not included in the record of this proceeding (id.). Gas Free Seneca concluded by stating that "[o]nly by submitting all of this information for independent third-party review (and potential examination at an adjudicatory hearing), can [DEC] provide the residents of the Finger Lakes with any confidence that their concerns about cavern integrity are receiving serious, unbiased evaluation" (id.).

APPLICABLE STANDARDS GOVERNING IDENTIFICATION OF ISSUES

The standards for adjudicable issues are set forth at 6 NYCRR 624.4(c). An issue is adjudicable if it relates to a dispute between Department staff and applicant over a substantial term or conditions of the draft permit or to a matter cited by Department staff as a basis to deny the permit and is contested by applicant (see 6 NYCRR 624.4[c][1][i] & [ii]). Neither of these bases for an adjudicable issue were raised here.

Where, however, contested issues are not the result of a dispute between an applicant and Department staff, but are proposed by a third party, an issue must be both "substantive" and "significant" to be adjudicable (see 6 NYCRR 624.4[c][1][iii]).

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]). In determining whether an issue is substantive, the ALJ "must consider the proposed issue in light of the application and related documents, the draft permit, the content of any petitions filed for party status, the record of the issues conference and any subsequent written arguments authorized by the ALJ" (id.).

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]).

Pursuant to 6 NYCRR 624.4(c)(4), where Department staff has determined 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 a potential party proposing any issue related to that component to demonstrate that it is both substantive and significant." A potential party's burden of persuasion at the issues conference is met with an appropriate offer of proof supporting its proposed issues.

Any assertions that a potential party makes must have a factual or scientific foundation. Speculation, expressions of concern, or conclusory statements are insufficient to raise an adjudicable issue. Equally important, even where an offer of proof is supported by a factual or scientific foundation, "it may be rebutted by the application, the draft permit and proposed conditions, the analysis of Department staff, or the record of the issues conference, among other relevant materials and submissions" (Matter of Waste Management of New York, LLC, Decision of the Commissioner, October 20, 2006, at 5).

Regarding SEQRA issues, where, as here, the Department is the lead agency and has required the preparation of an environmental impact statement (as noted previously, the Department required that a DSEIS be prepared), the determination at the issues conference stage to adjudicate issues regarding the sufficiency of the DSEIS or the ability to make SEQRA findings pursuant to 6 NYCRR 617.11 are governed by the standards set forth in section 624.4(c)(1) (see 6 NYCRR 624.4[c][6][i][b]). SEQRA however does not require the Department to use the adjudicatory forum to resolve the issues raised (see Matter of Crossroads Ventures, LLC, Interim Decision of the Deputy Commissioner, December 29, 2006, at 11, 73).

As discussed in the September 2017 CALJ Ruling, the purpose of the issues conference was to determine whether the DSEIS provided an adequate record upon which to make SEQRA findings. If it was determined that the DSEIS did not provide an adequate record, the DSEIS could be supplemented "either through accepting the submissions of the parties into the SEQRA record or by adjudication if substantive and significant issues requiring adjudication [were] raised" (CALJ September 2017 Ruling at 47).

As noted previously, the CALJ determined that no adjudicable issues were raised (see CALJ September 2017 Ruling at 73 ["[o]ther than the issue of alternative sites, which remains open, petitioners have failed to raise any issues under ECL article 23 or SEQRA requiring adjudication"]; CALJ November 2017 Ruling at 6 ["[f]ull party status petitioners (Seneca Lake Pure Waters Association, Gas Free Seneca, and Seneca Lake Communities) have failed to raise any adjudicable issues concerning available alternative sites for applicant's project"]).

Although the CALJ ruled that the participants to the issues conference did not raise any adjudicable issues, he indicated that various submissions filed during the administrative process supplemented the analysis set forth in the DSEIS or would be accepted as comments on the DSEIS, and would be part of the record for the decision maker's consideration in making the required SEQRA findings. This included, for example, information relating to impacts on water resources (see CALJ September 2017 Ruling at 50-51), noise impacts (id. at 56), public safety (id. at 59, 61), community character (id. at 69), and bonding/insurance requirements (id. at 71) (see also CALJ November 2017 Ruling at 6 [alternative sites]; Department staff initial post-issues conference brief dated April 17, 2015 at 102 [issues relating to community character, noise and traffic "may serve as comments on the DSEIS and can be addressed in a responsiveness summary and findings"]).

DISCUSSION

The DSEIS prepared for the project included a review of the environmental setting, significant environmental impacts, and mitigation measures. Applicant's August 8, 2016 letter outlined various modifications to the project which further mitigated certain impacts of the proposed project.

During the appeals process, Seneca Lake Communities requested that "the Commissioner . . . decide this case on the merits without further hearings" (SLC Appeal at 3 [emphasis added]). Seneca Lake Communities' position was that the Commissioner should "oversee and complete the preparation of the final EIS" (id.). Applicant objected to the request of Seneca Lake Communities (see Applicant Reply at 10-11).

The CALJ indicated that various submissions filed during the administrative process supplemented the analysis set forth in the DSEIS or would be accepted as comments on the DSEIS, and would be part of the record for my consideration in making the required SEQRA findings (see e.g. CALJ September 2017 Ruling at 50-51 [impacts on water resources], 56 [noise impacts], 59 and 61 [public safety], 69 [community character], and 71 [bonding/insurance requirements]; see also CALJ November 2017 Ruling at 6 [alternative sites]). I have reviewed

the submissions in each of the aforementioned areas. The submissions and comments involving community character embrace matters relating to local and regional development, local land use plans, noise and visual considerations, and industrialization, among others, and I have considered these to the extent applicable.

In this proceeding, as discussed below, the record is more than sufficient to determine that the project will have a significant adverse impact on the environment with respect to community character that cannot be avoided or minimized and, accordingly, no findings statement in support of the project can be issued. Together with my decision, I am finalizing the supplemental environmental impact statement for this project, and preparing a SEQRA findings statement that does not approve the project. Even though I have determined that adjudicable issues are otherwise raised in the proceeding, the outcome of any adjudication of those issues would not alter this finding on community character as discussed below.

■ COMMUNITY CHARACTER

The parties' positions differ about which community values and trends deserve protection. The DSEIS, together with the public comments received throughout the administrative process, however, provide a more than sufficient record at this stage to allow me to evaluate these trends and values and the project's consistency with them, and render SEQRA findings with respect to community character. Accordingly, a determination can be made at this stage of the proceeding without adjudication of the community character issue (see Matter of Crossroads Ventures, LLC, Interim Decision of the Commissioner, December 29, 2006, at 73 [noting that the existing record following the issues conference provided sufficient information to evaluate the project's consistency with community character for purposes of the Department's SEQRA review and that no adjudication of community character was necessary]; see also Matter of Hyland Facility Assocs., Third Interim Decision of the Commissioner, August 20, 1992, at 4 [Department not required to use adjudicatory hearing process to discharge its obligations as SEQRA lead agency]). [6]

Community character is specifically referenced by SEQRA. SEQRA defines "environment" to include "the physical conditions which will be affected by a proposed action, including . . . existing patterns of population concentration, distribution, or growth, and existing community or neighborhood character" (ECL 8-0105[6]; see also 6 NYCRR 617.2[l]). Unique to each case is the "community" to be evaluated – it will relate to the type of action that is being proposed, the factual circumstances and the nature of the impacts. For some projects, the "community" may be only the municipality in which the proposed action would occur. Here, the interests of a range of communities within the vicinity of Seneca Lake, as in part reflected by the submissions of the Seneca Lake Communities in this proceeding, are clearly relevant to the analysis. The evaluation of community character in this specific matter is not solely limited to

[6] Department staff has agreed that the "larger character of Seneca Lake and the wine growing region needs to be factored into the community character analysis in the final supplemental [environmental impact statement] and in findings" (see Department Staff Reply at 45). Applicant concurred with the rulings of the CALJ that issues relating to community character were not adjudicable (see Applicant Reply at 38-41), and noted that comments on community character "were appropriately accepted into the SEQRA record as comments on the DSEIS which the final agency decision maker will consider when making SEQRA findings on the [p]roject" (see id. at 39).

the communities (Town of Reading and County of Schuyler) in which the proposed facility would be sited but entails an evaluation of communities in and around Seneca Lake and the Finger Lakes region whose economies and environmental interests are directly intertwined.

Community character relates "not only to the built and natural environments of a community, but also to how people function within, and perceive, that community" (SEQR Handbook at 87 [3rd Edition 2010]; see also Matter of Village of Chestnut Ridge v Town of Ramapo, 45 AD3d 74, 94-95 [2007], lv dismissed 12 NY3d 793 [2009], 15 NY3d 817 [2010][discussing nature of community character]; Matter of Wal-Mart Stores v Planning Bd. of Town of N. Elba, 238 AD2d 93, 98 [1998][consideration of economic impact on character of the community]).

Indicators of significant adverse impacts on the environment include "the creation of a material conflict with a community's current plans or goals as officially approved or adopted" and "the impairment of the character or quality of important historical, archeological, architectural, or aesthetic resources or of existing community or neighborhood character" (6 NYCRR 617.7[c][1][iv] & [v]). "The impact that a project may have on . . . existing community character, with or without a separate impact on the physical environment, is a relevant concern in an environmental analysis" (Chinese Staff & Workers Assn. v City of New York, 68 NY2d 359, 366 [1986]).

The Department considers local land use plans in its evaluation of community character. Adopted local plans are relevant in ascertaining whether a project is consistent with community character (see Matter of Crossroads Ventures, LLC, Interim Decision of the Deputy Commissioner, December 29, 2006, at 71; Matter of Lane Construction Co., Interim Issues Rulings, February 22, 1996, at 16 [local zoning ordinance as "the expression of the community's vision of itself"]; Matter of William E. Dailey, Inc., Interim Decision of the Commissioner, June 20, 1995, at 8 ["[i]f a zoning ordinance or other local land use plan exists, it would be evidence of the community's desires for the area and should be consulted when evaluating the issue of community character as impacted by a project"]). Where a project's potential impact is not limited to a specific locale but has the potential for wider impacts (as here, with potential impacts to Seneca Lake and the surrounding environs), local plans of the various communities are to be considered.

In considering the character of this community, the CALJ notes that the larger community in which the proposed project is to be located "includes a burgeoning wine and tourism industry" (CALJ September 2017 Ruling at 69). The Finger Lakes wine country "is of particular regional and State-wide significance" with the wineries, together with other tourist attractions, of significant economic importance to the locality (see id.). The Finger Lakes Region is a natural resource of significant importance to our State, and the region's present and future economic drivers are closely aligned with the tourism, winery, and agricultural economies. Furthermore, environmental considerations such as views and vistas, noise and water resources are components of the character of the community and need to be considered in this analysis.

Moreover, that a specific issue may not be adjudicable under the standard established by 6 NYCRR part 624 does not restrict or otherwise eliminate its consideration in an evaluation of

community character pursuant to SEQRA. In this proceeding, the CALJ concluded that noise and aesthetic resources were not adjudicable under 6 NYCRR part 624. Nevertheless, impacts to noise and aesthetic resources as revealed on the current record are essential components in the evaluation of impacts on community character in the context of this proposed project.

Gas Free Seneca, as part of its submissions, has maintained that the proposed facility would be disruptive to the local and regional community and would be inconsistent with the local and regional setting including scenic views of the area, the established and developing wineries, and recreational activities including but not limited to those that use Seneca Lake. The analyses proffered by Gas Free Seneca – Community Character Analysis, Harvey K. Flad, Ph.D., January 15, 2015 (Exhibit 5 to the Gas Free Seneca Petition for Full Party Status) (Flad Report), and Sources of Economic Development in the Finger Lakes Region: The Critical Importance of Tourism and Perceptions of Place, Dr. Susan Christopherson, January 14, 2015 (Exhibit 6 to the Gas Free Seneca Petition for Full Party Status) (Christopherson Report) – detail the environmental setting of the Seneca Lake area and the local and regional economic development strategies.

The Flad Report describes the area's scenic views and aesthetic resources, the local wineries and other aspects of the local landscape, notes the historic sites and districts in the area and the designated viticulture areas, and underscores the dependence and fostering of local tourism (see Flad Report at 15-29). Dr. Flad states that, between 2013 and 2015, over a dozen resolutions were adopted by local governments expressing concerns about the proposed project. He presents a figure that, as of the date of his report, shows four counties (Ontario, Seneca, Tompkins and Yates), nine towns (Fayette, Geneva, Ithaca, Romulus, Starkey, Ulysses, Waterloo, Brighton and Rush), and three cities and villages (Geneva, Watkins Glen and Waterloo) that are opposed to gas storage in Seneca Lake salt caverns, as well as the location of various businesses that opposed gas storage at the site (see Flad Report at 32).[7] The proposed facility with its "industrial" image is seen to be in conflict with the local and regional setting (see Flad Report at 37 [proposed project "completely at odds with the current cultural landscape and . . . contrary to future progress as planned by local, regional and state officials"], 39 [project would "overlay an indelible industrial impact on the cultural landscape of Seneca Lake"]).

The Christopherson Report concludes that the construction and operation of the proposed liquefied petroleum gas storage facility "will have significant unmitigated adverse impacts on the region's economic success" (Christopherson Report at 11). According to the report, the "prominent growth industries in the area – vineyards, wineries and tourism – are heavily dependent on a regional 'brand' that features a scenic landscape and specialized agriculture" (id.). The proposed project is not seen to be compatible with the local economic engines and "[e]ven a minor industrial accident could do serious brand damage and dampen investment in New York wine country" (id.).

Seneca Lake Communities contends that the application and DSEIS fail to recognize the local and regional character that now exists and its dependence on tourism, the wine industry and agriculture as a basis for its economic health and growth. In its petition, Seneca Lake

[7] Copies of the resolutions in opposition to the proposed project are referenced as being available on the Gas Free Seneca website (www.gasfreeseneca.com) (see Flad Report at 32 n 83).

Communities emphasizes that the "predominant" physical and economic character of the region is characterized by "wineries, breweries, and protected natural areas" (Seneca Lake Communities Petition for Full Party Status dated January 16, 2015 at 9; see also id. at 10 [noting that proposed project is a "visible, heavy industrial use" that is not consistent with the "identity" of the region, its siting is inconsistent with local and regional planning efforts, and poses significant risks "distinct from other industries").

As noted, the directions and goals of the local land use plans for this area are important to the analysis of community character. Scott Gibson, the Deputy Mayor of the Village of Watkins Glen (which is a community approximately two miles south of the proposed project[8]) submitted an affidavit that was included with the Seneca Lake Communities' petition in which he noted that the village adopted a comprehensive plan in 2015 that identified the village's reliance on tourism and that the proposed project threatens the village's character (see Affidavit of Scott Gibson sworn to January 16, 2015 at 3-4 ¶¶ 7-8, 10).

Seneca Lake Communities, in its post-issues conference brief, cited various local land use documents and plans that expressed the desire to preserve the local and regional rural and small town character and resources (see e.g. Seneca Lake Communities Post-Issues Conference Brief, April 17, 2015, at 12-13 [citing, among others, documents of the Towns of Fayette,[9] Hector, and Starkey (comprehensive plan cites popular preference of promoting small, locally developed businesses, light industry and the present agrarian economy),[10] and the Cities of Geneva and Watkins Glen]; see also Seneca Lake Communities[11] Post-Issues Conference Reply Brief, May 29, 2015, at 10-15 [discussing, among others, the comprehensive plan of the Town of Reading in which the storage facility is proposed to be located][12]).

Similarly, the Finger Lakes Wine Business Coalition (Coalition), which filed a petition for amicus status, has emphasized the impacts of the proposed facility on the local winery and

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[8] The proposed project is approximately two and a quarter to two and a half miles from the village's downtown area (see Affidavit of Scott Gibson sworn to January 16, 2015 at 3-4 ¶ 8).

[9] The Comprehensive Plan for the Towns of Fayette and Varick, adopted 2005/2006 (Fayette Plan), referenced in the brief and of which I take official notice, states among its goals the retention of the "rural, agricultural character," and the management of development to "preserve farmland, natural resources and scenic views" (Fayette Plan at 1). The Towns of Fayette and Varick are in the north central part of Seneca County and are southeast of Geneva, New York.

[10] The Town of Starkey is in Yates County, and to the south of Geneva. Its eastern boundary is along Seneca Lake and it is to the north of the Town of Reading.

[11] As noted previously, petitioner Seneca Lake Communities is composed of a coalition of twelve local municipal units that oppose this project (see n 2, above).

[12] Seneca Lake Communities cited language from the Town of Reading's Comprehensive Plan and Local Land Use Law noting an intent to discourage large-scale development that would change the Town's character and to protect the water quality of Seneca Lake (see Seneca Lake Communities Post-Issues Conference Reply Brief at 11; see Land Use Law for the Town of Reading [Local Law No. 1 of 1995 with amendments of the year 2009] at Chapter 1, 1-2 [purpose of land use law to maintain rural appearance and physical character, and its rural way of life], Chapter 1, 1.4-9 [goal of protecting water quality of Seneca Lake], Chapter 4, 4.1-2 [prohibiting activities that would cause a safety or health hazard due to fire or explosion] and Chapter 4, 4.1-4 [prohibiting storage of materials either indoors or outdoors that may endanger public health and safety or the natural environment]).

tourism industries (see Petition for Amicus Status, Finger Lakes Wine Business Coalition, January 16, 201[5], at 13-19). The Coalition, representing over one hundred businesses (wineries, food producers and artisans) (see id. Exhibit A), contends that the proposed project would result in significant adverse environmental impacts to the character of Seneca Lake and Finger Lakes Wine Country "as well as the social and economic vitality and base of the area" (id. at 3-4; see also Exhibits C-J [affidavits from local business representatives noting the adverse environmental and economic impacts of the proposed project]).

Various other governmental units submitted, as public comments, resolutions and statements on the proposed project that focused on environmental issues (see e.g. references to municipal resolutions and statements in the three charts attached to this decision). Seneca County reiterated its opposition to the project by Resolution No. 167-16 adopted on July 12, 2016, noting potential impacts to Seneca Lake and risks associated with gas storage. Ontario County, by Resolution No. 306-2013 adopted May 30, 2013, requested that DEC withhold approval for the project and for the agency to "exercise its power in assisting in determining a more appropriate location for any such storage site." It noted concerns with the geologic stability of the subterranean caverns, the threat of discharge from surface storage facilities as well as discharges during movement of material between caverns and surface storage, and LPG seepage (see also Cayuga County Resolution No. 69-15 adopted February 24, 2015 [expressing similar concerns]; Onondaga County Resolution No. 129 adopted August 4, 2015 [opposing project on various environmental grounds, including risks to Seneca Lake]; and Yates County Resolution No. 332-14 adopted October 14, 2014 [requesting DEC to withhold approval "of any plan for mass storage of LPG adjacent to or under Seneca Lake and [to] exercise its power in assisting in determining a more appropriate location for any such storage site"]).

Several towns in the area have adopted resolutions in opposition to the project which also were submitted for purposes of the record. These include, for example:

- Town of Caroline -- Town Board Resolution 61 adopted January 14, 2015 (noting risks of gas storage in salt caverns and the threat to the agrarian livelihood and tourist industry of the region);

- Town of Geneva -- Town Board Resolution No. 27-2014 adopted February 11, 2014 (noting among other subjects the project's industrialization of the region and the resultant "damage [to] the long-standing and growing agriculture, wine and tourist industries that form the backbone of the region" and the project's posing of unacceptable risks of pollution to Seneca Lake);

- Town of Rush -- Town Board Resolution No. 6-2015 adopted January 14, 2015 (noting cavern integrity issues, risks of pollution [including risks to Seneca Lake], and impacts on natural beauty and regional economy of wineries and agriculture);

- Town of Skaneateles -- Town Board Resolution dated April 16, 2015 (noting the importance of Seneca Lake as a drinking water source, for recreation, as a natural habitat and in supporting "the thriving tourism of the Finger Lakes Region," and the environmental risks of storing liquefied propane gas at the site);

- Town of Torrey -- Town Board Resolution adopted on July 12, 2016 (mentioning among other issues the threat to the agrarian livelihood of the region and the local tourism industry);

- Town of Varick -- Town Board Motion passed April 7, 2015 (urging DEC to deny the permit for the project and work with the company to find an alternate location for the project); and

- Town of Waterloo -- Town Board Resolution No. 2014-025 adopted March 24, 2014 (noting importance of Seneca Lake, its designation as a scenic by-way, and its role as a recreational asset and in promotion of area tourism, and asking that the DEC "withhold approval of any plan for mass storage of LP Gas adjacent to or under Seneca Lake and exercise its power in assisting in determining a more appropriate location for any such storage site").

See also City of Geneva Resolution No. 31-2014 adopted May 7, 2014 (opposing the proposed project).

The project has garnered some municipal support. By letter dated August 9, 2016, the Deputy Clerk of Schuyler County, the county in which the proposed project would be located, forwarded for the record a certified copy of Schuyler County Legislative Resolution 251-16 adopted on August 8, 2016. The resolution requested that DEC finalize its review and issue the permit requested. Two towns in Schuyler County submitted resolutions in support of the project (see Town of Montour Town Board [undated/uncertified] Resolution [referencing also the Schuyler County Council of Governments] received by DEC on November 28, 2016, and Town of Tyrone Town Board Resolution No. 22 adopted December 13, 2016).[13]

The Town Board of the Town of Reading, the town in which the project would be located, by resolution dated December 28, 2016 noted that the Town had "refrained from taking any position on [the project] in deference to the greater expertise and effort [of] the DEC and State" but was now calling on the DEC to "finalize its review and make a final SEQRA determination."

Overall, with a few exceptions, the submissions of local and regional governments have not been supportive of the proposed project, and have reflected the directions and conclusions contained in the local land use and comprehensive plans for this region.

As for the individual comments, many local residents, businesses and area representatives have expressed concerns that this project is inconsistent with the existing community character and the local wine, tourism and agricultural industries. The position that the proposed facility was at variance with the local setting was well reflected in public comments at the public hearings and in the public correspondence received on this project. The proposed facility did

[13] Press reports indicate that, on July 9, 2018, the Schuyler County Legislature passed a resolution withdrawing the County's support for the project pending completion of future pressure testing and subsequent review and approval by DEC. As of the date of this decision, however, no formal notice of the legislative action has been submitted for the record of this proceeding.

elicit support from some local residents and businesses indicating, among other things, that gas storage has co-existed in upstate New York with farm, winery and other local-oriented business for many years. Others contended that the new facility would add to local tax revenues, provide for about 50 construction jobs initially and upwards of 10 permanent positions, and would ensure an adequate and accessible supply of propane.

Among the environmental issues that affect community character are noise and visual impacts. The project would introduce new noise and visual impacts to the area. As to noise, applicant has made certain modifications to the project. It has consented to incorporating a permit condition confirming that truck and rail transportation are not part of the project (see Applicant's September 2016 Letter at 6), and accordingly, noise associated with those two modes of propane transport would be eliminated. Although unavoidable noise impacts would be associated with the construction phase of the project, applicant has agreed to limit construction activity to the hours from 6 a.m. to 8 p.m. except for certain activities that must be performed continuously or otherwise listed in the permit (see CALJ September 2017 Ruling at 55; see also id. at 52 n 20 [directing Department staff to incorporate construction hours condition into the permit]; Draft Permit updated September 21, 2017,[14] Attachment 3, Special Condition D.4 [listing exceptions to the restrictions on construction activity]). Notwithstanding these mitigations, the intrusion of new sources of industrial-related noise from this proposed facility, both during construction and then during the ongoing operation of the facility, would impact the existing community character.

Gas Free Seneca has referenced adverse visual impacts of the flare stack, brine pond, and infrastructure on the lake and the local landscape (see Gas Free Seneca Appeal at 16; see also id. at 20). Seneca Lake Communities argued that the project's aboveground features will be visible, and "will convey the message that this is an industrial area" (Seneca Lake Communities Appeal at 7). Applicant has noted that the project modifications made in 2016 eliminated the aboveground storage tanks (Applicant Reply at 39-40), and the only remaining aboveground features are an "unobtrusive" brine pond and a 25-foot flare stack (see id.). Notwithstanding the modification, the addition of a brine pond and flare stack to the site represents features of industrialization that do not comport with the character of this area. In this record, these visual impacts are magnified because of the stark contrast to the character of the region, and the communities' local land use and comprehensive plans for the area.

The existing record provides sufficient information to evaluate the project's consistency with community character for purposes of the Department's SEQRA review. My evaluation of the entire record, including, but not limited to local land use plans and ordinances, the positions of the governmental entities in the region, the Flad and the Christopherson Reports which detail the impacts to the local and regional community character, and the past and current development of the winery, agricultural, and tourism industries as bulwarks to the Finger Lakes economies, demonstrates that approval of this proposed facility, on a site located along the western side of Seneca Lake, would have a significant adverse environmental impact on the local and regional community character.

[14] The Draft Permit updated September 21, 2017 is referenced under the following Office of Hearings and Mediation Services document number: 201166576-00078A.

The record is compelling that the permitting of this proposed gas storage facility on the western side of Seneca Lake is inconsistent with the character of the local and regional Finger Lakes community. Local land use plans focus on retaining open space and the natural setting, protecting water quality and preserving the rural/small town atmosphere -- this proposed facility would not be conducive to those goals. It is clear that adding a facility of this type would also not comport with local and regional economic drivers, which focus on tourism, the wine industry, and agriculture. The widespread opposition of municipalities in the area, from the village and town to the county level, as reflected in the adopted resolutions and motions noted above, underscores the position that this proposed project does not comport with the character of the community. Furthermore, irrespective of modifications to the proposal, the facility would add noise and scenic impacts to this area.

Notwithstanding some ascribed benefits of the project, I do not see any social, economic or other considerations that diminish or otherwise outweigh this impact on community character. To the contrary, social considerations of the local communities and the economic infrastructure in the tourism and winery sector would be negatively impacted by the project. Accordingly, significant adverse impacts on community character will not be avoided or minimized to the maximum extent practicable and no conditions can be incorporated into the proposal that would avoid or minimize these impacts to the maximum extent practicable.

Prior administrative proceedings have determined that it is prejudicial to require an applicant to bear the expense and delay of an adjudicatory hearing if all proposed issues have been satisfactorily addressed in the record (see e.g. Matter of Bonded Concrete, Inc., Interim Decision of the Commissioner, June 4, 1990, at 2 [holding that, where an offer of proof is rebutted by the record, "it would be a disservice to the applicant and the public at large to proceed any further with time consuming and costly litigation"]). Similarly, it would be prejudicial to allow this proceeding to continue where a SEQRA findings statement in support of the project cannot be made.

As previously mentioned, continuing this proceeding by directing adjudication of issues discussed below would not and cannot overcome the project's significant adverse environmental impacts on community character. Remanding the proceeding for further review or engaging in further supplementation of the record at the Commissioner level would in no way alleviate the significant adverse environmental impacts relating to community character which mandate a negative findings statement. Expending further time and resources on a project that is not approvable under SEQRA would only result in unnecessary delay and expense, and would be administratively inefficient and prejudicial to the parties.

■ ISSUES OTHERWISE REQUIRING ADJUDICATION

Although I am denying the permit applications at this time and on this record based on adverse impacts on community character, my review of the record indicates that, absent the denial on SEQRA grounds, several issues would otherwise require adjudication. The DSEIS addressed various environmental impacts arising from the project – these included impacts on land, water resources, noise, traffic and transportation, aesthetic resources, and public safety. It also evaluated alternatives to the proposed action, and project need and benefits, among other

topics. The administrative proceeding and subsequent developments have underscored the deficiencies in the evaluation of certain impacts, as well as an insufficient review of project alternatives and need. A review of these substantive and significant issues follows.

Brine Pond

Brine pond construction at the site and the impacts of any release of brine were reviewed in the DSEIS and were further considered in the administrative proceeding. Addressed were impacts to vegetation, impacts to groundwater and to Seneca Lake, visual impacts, and the suitability of on-site soil for construction (see e.g. DSEIS §§ 4.1.2.2, 4.2.1.2, and 4.2.2.2). The DSEIS outlined proposed mitigation measures and alternatives (see e.g. DSEIS §§ 4.1.2.3, 4.2.1.3, 4.2.2.3). Although various configurations relating to brine ponds were evaluated, applicant now proposes to construct one aboveground brine pond (West Brine Pond) as set forth in Applicant's August 8, 2016 Letter. The previously proposed East Brine Pond has been eliminated to resolve concerns regarding its proximity to Seneca Lake and potential water quality impacts from breaches or overflows from the East Brine Pond.

The western shore of Seneca Lake is close to where the storage caverns are located. Seneca Lake is the source of drinking water for many local residents (see DSEIS at 93 [lake serving as public water supply for the City of Geneva and the Villages of Ovid, Waterloo and Watkins Glen]). The high salinity of Seneca Lake was referenced throughout the proceeding. An October 2014 study found concentrations of sodium at 75 mg/L and concentrations of chloride at 122 mg/L, which are concentrations significantly higher than other of the Finger Lakes (see Affidavit of John Halfman, Ph.D., January 15, 2015, Seneca Lake Communities Petition for Party Status, Attachment I, ¶ 3 [referencing U.S. Environmental Protection Agency drinking water advisory level of 20 mg/L for sodium], ¶ 4 [noting that concentrations of chloride and sodium are up to ten times greater than concentrations detected in the neighboring Finger Lakes]; see also Technical Memorandum of Tom Myers, Ph.D., January 15, 2015 corrected January 21, 2015, Gas Free Seneca Petition, Exhibit 3 [addressing salinity issues]; see generally Affidavit of Matthew Horn [City Manager of the City of Geneva] dated January 15, 2015, Seneca Lake Communities Petition for Party Status, Attachment G [noting potential failures at the proposed facility resulting in adverse impacts on City of Geneva water resources and treatment facility]; Affidavit of James Bromka, dated January 16, 2015, Seneca Lake Communities Petition for Party Status, Attachment H [potential impacts on water resources for the Village of Waterloo and its treatment facility]).

Although applicant has reduced the overall capacity of on-site storage, even with these reductions, the remaining 6.35-acre West Brine Pond would have a capacity of approximately 0.80 to 0.81 million barrels (see Applicant's September 2016 Letter at 6 & Exhibit 3 [calculating brine pond capacity of 806,364 barrels or 33,867,278 gallons]). A spill from a failure of the on-site brine pond to Seneca Lake could lead to an increase in brine concentration in the vicinity of the release. Applicant has set forth design, operation, and monitoring controls in its facility plans. Depending upon the level of sodium in the discharged brine, the discharge could adversely impact groundwater and Seneca Lake, as well as the surrounding soil and vegetation.

The construction and operation of the brine pond and the procedures that would be implemented in the event of any spill are critical to protect against a breach and to minimize the impact if any breach occurred. Based on my review, the scope of the measures proposed to prevent any breach (including monitoring of the brine pond), and, in the event of any breach, the measures proposed to contain the breach, to remediate any soil contamination and vegetation impacts, and to address any impacts on water resources should be adjudicated to determine if they are sufficient or if additional measures are required. This would include consideration of the special permit conditions regarding the construction and operation of the brine pond (see Draft Permit updated September 21, 2017, Attachment 3 [Section B: Brine Pond Liner Construction and Section C: Brine Pond Operation]).

Cavern Integrity

Central to this proceeding has been the question of the integrity of the caverns in which liquefied petroleum gas is proposed to be stored at the facility. The issue regarding cavern integrity has also been a focal point of local and regional community attention during this proceeding. Public comments throughout the process, whether in written correspondence or in remarks at the legislative hearings, underscored matters relating to cavern safety and integrity. Seneca Lake Communities, Gas Free Seneca and Seneca Lakes Pure Waters Association in their petitions, in their remarks during the issues conference, and in their appeal papers have further underscored cavern integrity concerns.

On its appeal, Seneca Lake Communities noted that the proposed facility would be designed to store 1.5 million barrels, or 63,000,000 gallons, of liquefied petroleum gas (see SLC Appeal at 4). It contended that "at least" two areas existed where the integrity of the storage caverns was in doubt (id.). Seneca Lake Communities questioned the integrity of Cavern 58 and its "sagging" roof (id. at 4-5). Seneca Lake Communities concluded that '[i]n view of this sag and the unknown properties of the caprock above the Cavern, there is . . . a clear risk of roof collapse" (id. at 5). Seneca Lake Communities also raised a concern that the liquefied petroleum gas to be stored in Cavern 34 will leak and eventually flow into Cavern 44, where it is not permitted to be stored (see id.). It also expressed the concern that the exchange of undersaturated brine and liquefied petroleum gas in Cavern 34 will, over time, wear away the "salt lip" that separates Caverns 34 and 44, resulting in the flow of liquefied petroleum gas into Cavern 44 (see id. at 5-6).

Gas Free Seneca has maintained that the caverns are not adaptable for storage purposes. Gas Free Seneca contended that the cross-section and sonar studies of Cavern 58 show that the cavern's roof is sagging and at risk of collapse (see Gas Free Seneca Appeal at 9-13). It also contended that the salt barrier between Caverns 34 and 44 shows that the salt barrier between those two caverns will dissolve from exposure to undersaturated brine, thereby allowing leakage of liquefied petroleum gas into Cavern 44 (under the project, Cavern 44 may not be used for LPG storage) (see id. at 13-16).

Seneca Lake Pure Waters Association contended that flaws existed in applicant's cavern integrity analysis and that applicant failed to demonstrate a valid Gallery 1 pressure test and failed to adequately characterize the geology of the proposed storage site (see SLPWA Appeal at

7). It presented examples of alleged deficiencies as to salt healing of the cavern wall surfaces, applicant's finite element analysis, pressure test results, and the status of the cavern below Gallery 1 (see id. at 10-22).

Applicant in its reply to the appeals contended that the CALJ properly found that no adjudicable issue existed with respect to: the integrity of the roof of Cavern 58 (see Applicant Reply at 15-17); alleged liquefied petroleum gas leakage from Cavern 34 into Cavern 44 (see id. at 18-19); salt healing or faulting creating brine pathways between the caverns and Seneca Lake (see id. at 20-23 [noting ability of salt to heal fractures]; see also id. at 24-26); the finite element analysis (see id. at 26-31 [rejecting Seneca Lake Pure Waters Association arguments that the analysis was deficient]); the pressure tests conducted by applicant (see id. at 31-34); or the abandoned salt cavern associated with Cavern 43 (see id. at 34-36). Department staff also supported the finding that no adjudicable issue existed with respect to cavern integrity (Department Staff Reply at 8-36).[15]

Notwithstanding the recommendations of the rulings or the replies of Department staff and applicant to the appeals, my review of the record indicates that petitioners Gas Free Seneca, Seneca Lake Pure Waters Association and Seneca Lake Communities have made compelling arguments concerning cavern integrity and, in particular, potential gas or other leakage that would lead me to reject the conclusion that no adjudicable issues exist. Even if that were not the case, Applicant's May 2018 letter, as well as the Gas Free Seneca response thereto, provides a sufficient basis to identify cavern integrity as an adjudicable issue.

As noted, applicant advised that U.S. Salt (which is a separate entity from Finger Lakes LPG) found that well 64, which U.S. Salt is presently developing, "may be in communication with either Gallery 10 (which consists of wells 18, 52 and 57) and/or other nearby wells" (Applicant's May 2018 letter at 1). Applicant indicated that it will be submitting the results of pressure testing of Gallery 10, which will include various wells as additional monitoring points, and requests that the other participants in the proceeding have the opportunity to comment. In this instance, such a comment process is insufficient – the results and their implications, particularly as they are being provided at this late date, render the adjudication of the cavern integrity issue as the more appropriate course in this situation. The results of the pressure testing of Gallery 10 and information from the additional monitoring points must be fully evaluated in the context of the prior analyses relating to gas migration, leakage and other aspects of cavern integrity.

Any such further investigation may challenge or disprove the data and studies upon which the safety of this project has been based and upon which the CALJ relied. Accordingly, it cannot be determined whether the DSEIS and the application materials provide sufficient information to evaluate the suitability of the caverns at the site for the storage of liquefied petroleum gas or to take the hard look required by SEQRA to determine whether the caverns may leak or otherwise result in significant adverse environmental impacts. Depending upon the results of the pressure testing and other investigation that may be undertaken with respect to

[15] The replies filed by applicant and Department staff were based on information that existed prior to the issuance of Applicant's May 2018 letter.

Applicant's May 2018 Letter, it is possible that other pathways for contamination flow would need to be evaluated.

A substantive and significant issue has been raised. Accordingly, the adjudication of the cavern integrity issue would not only be warranted, but demanded. Any adjudication would need to address the extent to which the findings of the investigation affect the conclusions of any of the matters relating to cavern integrity that were contained in the petitions and whether any new cavern-related integrity issues or contamination pathways have been identified.

Public Safety Preparedness

For any proposed project relating to fuel storage, safety-related issues deserve the utmost consideration. As set forth by the CALJ, applicant's analysis of the public safety impacts arising from the facility's operations are included in the DSEIS (see CALJ September 2017 Ruling at 56). The DSEIS is supplemented by a quantitative risk analysis (QRA) prepared by Quest Consultants Inc. for applicant, which "provides an analysis of the level of risk posed to the public from potential releases of flammable fluids originating from the facility" (id.). The QRA evaluated the risk to public safety posed by any release of liquefied petroleum gas from the proposed facility under various scenarios.

Public comment on the public safety issue was divided. Several commenters noted that gas had been safely stored in various regions of New York State for many years, and that such storage is subject to a variety of legal requirements. Others expressed concerns about the risks of storing gas at this location and impacts of any accidents, including the ability of local municipalities to address such accidents.

In their submissions, Gas Free Seneca, Seneca Lake Communities and Seneca Lakes Pure Water Association raised concerns about the safety of the project (see e.g. Gas Free Seneca Appeal at 16-20 [project risks including risk of a catastrophic accident]) and challenged the QRA presented by applicant.

Applicant rejected the arguments of Gas Free Seneca with respect to the QRA, and maintained that the analysis was properly conducted and demonstrated that the project's risk "is well below accepted risk acceptance criteria" (Applicant Reply at 43). Applicant further noted that Gas Free Seneca's witness was not qualified to offer a risk assessment with respect to liquefied petroleum gas storage and transportation (see id. at 42-43). With respect to public safety, Department staff referenced the QRA's evaluation of risks posed by a release of liquefied petroleum gas from the proposed facility (see Department Staff Reply at 36). Department staff also challenged the qualifications of the proposed expert proffered by Gas Free Seneca on the public safety issue (see id. at 36-38; see also CALJ September 2017 Ruling at 59 [questioning the qualifications of the proffered witness on the public safety issue]).

Although certain of petitioners' arguments seemed excessive in tone, the underlying concerns that they raise are serious and cannot be dismissed. Whether the local jurisdictions in the vicinity possess sufficient emergency resources, financial or otherwise, to address a catastrophic or even a more limited emergency event at the facility is a substantive and

significant issue. The risks inherent with respect to this facility -- for example, a compromise or breach of the brine pond and discharge of fluid, or an explosive event associated with propane handling and storage -- may leave the local municipalities exposed to significant expense both as to addressing any accident as well as any resultant environmental cleanup (see e.g. Seneca Lake Communities Petition for Party Status, Affidavits of Richard Kuprewicz, President of Accufacts Inc., Attachment F, ¶¶ 15-16 [expressing judgment that State and local emergency response plans and emergency response personnel are not likely to "effectively handle" a catastrophic release of liquefied propane gas from the salt caverns at the proposed project], and Supervisor of the Town of Geneva Mark A. Venuti, Attachment E, ¶¶ 9-12 [indicating that a catastrophic event and other serious incidents would impact the limited local emergency response capability]).

The record before me fails to demonstrate that the issue regarding the availability and sufficiency of emergency resources has been adequately evaluated and, with respect to this project, the issue is substantive and significant and warrants adjudication. In any such adjudication, the measures and resources (including financial) that Finger Lakes LPG will have at its disposal to address any breach of the brine pond, any site explosion or fire, or any other gas-related accident or release associated with the facility, as well as the extent to which local jurisdictions will be relied upon to assist and the sufficiency of the resources currently available to them (including but not limited to funding, trained personnel and necessary equipment) should be addressed.

Alternative Sites/Sizing/Need

In proposing additional propane infrastructure, the DSEIS addresses capacity and need for liquefied petroleum gas, and notes that the proposed facility would lower propane supply costs, increase efficiency in pipeline operation, and minimize distribution risk associated with other methods of propane transportation (see DSEIS at 16-18, ¶¶ 3.3.3 and 3.3.4).[16] Any project, such as this one, which proposes to significantly expand energy infrastructure must however be evaluated in light of the State's energy policy and goals.

As to alternatives, Seneca Lake Communities requests that the permits be denied "for, among other reasons, the failure to demonstrate need and the reality that the no-action alternative is the proper resolution of this case" (Seneca Lake Communities Appeal at 3). Seneca Lake Communities states that the new operational propane rail terminal in Montgomery, New York, and the proposed enlargement of the Savona, New York facility need to be considered (see id. at 8). It also contends that further evaluation of the no-action alternative is necessary as no meaningful evaluation of that alternative has been undertaken (see id. at 8-9).

Gas Free Seneca likewise contends that the project's alternatives analysis is deficient, in part for failure to evaluate the no action alternative (Gas Free Seneca Appeal at 20-27). Gas Free

[16] See also petitions for amicus status filed by: New York L.P. Gas Association, Inc. dated January 13, 2015; National Propane Gas Association dated January 14, 2015 and its brief dated April 17, 2015; Propane Gas Association of New England, dated January 14, 2015; and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC dated January 16, 2015 and its brief dated April 17, 2015.

Seneca also referenced the new operational propane rail terminal in Montgomery, New York, and the proposed enlargement of the Savona, New York facility (see id. at 22-24). Gas Free Seneca maintained that the proposed project "cannot satisfy its own stated purpose and need; that other facilities are reasonable and feasible alternatives to underground storage at Seneca Lake" (id. at 26). It contends that the final supplemental environmental impact statement should be rewritten in favor of adopting the no-action alternative (see id. at 28-29).

Seneca Lake Pure Waters Association also stated its concurrence with the arguments that Gas Free Seneca made regarding the deficiencies in the DSEIS and contended that "this case demonstrates that the significant and unmitigated adverse environmental impacts of [applicant's] proposed underground storage project can be avoided only with adoption of the no action alternative" (SLPWA Appeal at 22).

Applicant maintained that the alternatives analysis in the DSEIS complied with the requirements under SEQRA, provided a sufficient analysis of public need, and adequately addressed the "no action" alternative (see Applicant Reply at 45-60).

My review indicates that the submissions relating to the availability of alternative sites support identifying this issue as substantive and significant. The existing record, including the submissions that preceded the issuance of the CALJ November 2017 Ruling and the appeals, do not satisfactorily resolve whether appropriate alternatives exist. The record needs, at minimum, further development whether the propane rail terminal in Montgomery, New York, or the Savona LPG facility could be suitable alternatives.

Furthermore, I cannot determine on this record whether the proposed capacity of this facility is appropriate or necessary, particularly if the propane rail terminal or the Savona LPG facility could be developed to handle at least a portion of the proposed capacity at the site. In this regard, State energy policy deserves appropriate attention.

New York State has adopted a State Energy Plan that establishes climate and clean energy goals, including a 40% reduction in greenhouse gas emissions from 1990 levels by 2030 and an 80% reduction by 2050, a commitment to source 50% of New York's electricity from renewables by 2030, and achieving a 600 trillion Btu increase in energy efficiency by 2030 (see 2015 New York State Energy Plan, https://energyplan.ny.gov; see also Energy Law § 6-104[5][b][requiring that agency actions be consistent with "long-range energy planning objectives and strategies contained in the plan"]; Executive Order No. 166 dated June 1, 2017 [reiterating the State policy to reduce greenhouse gas emissions and directing that the actions of State entities under the executive authority of the Governor "shall be reasonably consistent" with the policies set forth in the Executive Order and the 2015 New York State Energy Plan]; DEC Commissioner Policy (CP) 49, October 22, 2010 at 1, 6-7 [incorporation of climate change considerations into all DEC activities including permitting]).

Even under the modified proposal, the propane storage capacity of the proposed project would be 1.5 million barrels (see CALJ September 2017 Ruling at 10). Additional expansion of the State's fossil energy infrastructure must be evaluated in the context of the State policy's commitment to renewable energy as well as the energy needs of the State.

Accordingly, the issue to be adjudicated would be whether the propane rail terminal in Montgomery, New York, the Savona LPG facility or the two facilities together are appropriate alternatives to the proposed project in whole or in part. If it is determined that these two facilities are not appropriate alternatives or can only handle a portion of any additional storage that is shown to be needed, the issue should then address whether the need exists for a facility with a capacity of this proposed magnitude, whether a smaller-sized facility is more appropriate, or whether any facility is needed.[17]

RESPONSE TO COMMENTS

Comments on the project, both in opposition and in support, have been received throughout the administrative process. On the charts attached to this decision, the name and address of the submitting individual or entity, the date of the correspondence (if no date was included on the correspondence, the postmarked or receipt date is referenced) and a summary notation of the issues or other subjects raised are included for each letter.

The first chart includes comments received at the 2011 legislative hearings and the accompanying public comment period during that year. The second chart includes comments that were subsequently filed with the Department's Office of Hearings and Mediation Services. The third chart lists comments that were provided to DEC Region 8 and which the Region forwarded to the Office of Hearings and Mediation Services and the participants to the issues conference under cover of a letter dated June 14, 2018. The second and third charts were prepared by the Office of Hearings and Mediation Services.

During this proceeding, a number of comments became moot in light of project changes, most notably Applicant's August 8, 2016 letter. In this regard, comments relating to the storage of liquid butane at the facility, the delivery of liquefied petroleum gas by rail or truck to or from the project, and the location and impact of the proposed East Brine Pond on the east side (lakeside) of Route 14 are now moot.

Furthermore, the CALJ September 2017 Ruling addressed proposed issues that were raised by participants during the issues conference on the project, both as to issues under title 13 of ECL article 23 and issues under SEQRA. The ECL issues included gas storage permit standards, the gas storage permit application and its review by Department staff, cavern integrity

[17] Department staff notes the demand for propane in many of the rural areas of the State where propane serves as a primary fuel (see Department Staff Reply at 43 n 9). Seasonal shortages and price increases arising from such shortages are factors to be considered in ensuring adequate supply. Public comments ranged from those stating that no need exists for this facility to those who saw the proposed facility as integral to the State's energy infrastructure. The facility was seen as a means to prevent spikes in the price of propane due to supply shortages by ensuring an available supply. Several supporters of the project also contended that by providing for more available and accessible propane storage the reliance on foreign oil would be reduced.

Thoughtful arguments were raised on both sides of the supply issue. However, the present record is insufficient to demonstrate that the large amount of capacity proposed at this site is necessary or that the other two identified alternative sites would not be suitable or available to handle all or some portion of the product. Also, in any adjudication of this issue, whether the intention is for the facility to serve as a regional (Northeastern) storage hub or solely for the New York State market would need to be clarified.

issues, potential salinization of Seneca Lake, and the approval of the New York State Geologist.[18] SEQRA issues addressed included impacts on water resources, noise impacts, impacts on public safety, alternatives analysis, cumulative impacts,[19] impacts on community character, and an indemnification clause in the draft permit for the proposed project. The CALJ November 2017 Ruling addressed issues concerning alternative sites.[20]

Accordingly, a number of comments have been addressed in the context of the CALJ rulings, Applicant's August 8, 2016 letter, and the "Discussion" section of this decision. My responses to various other comments are set forth below.

Improper Segmentation. Some concerns were expressed about improper segmentation with respect to this project and other potential gas and gas pipeline developments. Nothing in this record indicates that any improper segmentation exists. The entire project and its impacts are being considered in the context of this SEQRA review.

Corporate Practices. Questions were raised regarding the corporate practices, prior environmental violations, and other actions of Crestwood Midstream Partners, L.P., as well as those of another business entity, Inergy. Many of these comments were general in nature, with limited if any details. However, with respect to this entity, Finger Lakes LPG, no specific corporate practice issues were raised.

Indemnity. Comments were raised that applicant was not providing any indemnity or insurance to protect local communities in the event of a catastrophic event. The issue of indemnification was in part addressed by the CALJ in his discussion of draft permit condition 9 which relates to applicant's legal responsibility for damages, direct or indirect, of whatever

[18] As discussed in the September 2017 CALJ Ruling, the written approval of the State Geologist is required before an underground storage of gas permit may be issued (see ECL 23-1301[1]). SLPWA contended that Dr. Andrew Koslowski who signed the March 15, 2013 letter approving applicant's project did not have the authority to do so. The CALJ concluded that "SLPWA has not provided evidence sufficient to overcome the presumption that Dr. Kozlowski was the Acting State Geologist in March 2013" or to overcome the presumption that Dr. Kozlowski "had the authority as Acting State Geologist to approve applicant's project" (September 2017 CALJ Ruling at 43). This issue was raised on appeal by petitioners (see SLC Appeal at 9-10, SLPWA Appeal at 2-6, and Gas Free Seneca Appeal at 3-9), and responded to by applicant (see Applicant Reply at 60-66) and Department staff (see Department Staff Reply at 5-8). I have reviewed the papers and see no reason to disturb the determination of the CALJ.

[19] As to cumulative impacts, Gas Free Seneca and various public commenters contended that insufficient consideration was given to the potential cumulative impacts of this proposed project with the proposal by Arlington Storage Company (an affiliate of applicant) to develop Arlington Gallery 2 natural gas storage facility on property adjacent to the site. As stated in the CALJ September 2017 Ruling, in addition to considering the cumulative impacts analysis conducted by the Federal Energy Regulatory Commission on the Arlington Gallery 2 application, Department staff conducted an inquiry into the potential cumulative impacts of the two projects (see CALJ September 2017 Ruling at 66; see also DEC Staff Initial Post Issues Conference Brief at 95-100). The CALJ September 2017 Ruling notes that press reports indicate that the Arlington Gallery 2 natural gas storage facility project has been abandoned which would render this concern moot. No formal notice of the abandonment of that project however has yet been submitted for the record in this proceeding (see CALJ September 2017 Ruling at 65 n 24).

[20] As noted in this decision, I have determined that several of these subject areas – brine pond, cavern integrity, public safety preparedness, and alternative sites/sizing/need – are issues otherwise requiring adjudication.

nature arising from the storage facility's construction and operation (see CALJ September 2017 Ruling at 69-71). The CALJ ruled that no adjudicable issue had been raised regarding draft permit condition 9, but noted that I "may consider whether to impose [a]. . . bonding or insurance requirement when making SEQRA findings on the project" (id. at 71). Because I am denying the application on community character grounds, whether to require bonding or insurance is moot at this stage. However, this question regarding the provision of indemnity or insurance to local communities would have been part of any adjudication of the public safety preparedness issue (see above).

Air Quality and Air Pollution. Several comments raised concerns regarding the transport of product to the proposed facility and the potential air quality impacts due to the resulting emissions. As noted in the CALJ September 2017 Ruling, under applicant's current proposal, all propane delivered to and from the facility would be by pipeline (see CALJ September 2017 Ruling at 53; see also Applicant's August 8, 2016 Letter at 2-3). The draft permit (see Attachment 3 to the Draft Permit updated September 21, 2017 [Draft Permit], Special Condition Section D.5) provides that the transportation of LPG directly to or from the facility by truck or rail is not authorized. Accordingly, emissions from these modes of product transport have been eliminated.

Use of Cleaner Burning Fuel Sources and Climate Change Considerations. Various commenters questioned the extent to which allowing for greater storage of propane and thereby facilitating its use as a fuel was appropriate in light of efforts to expand the use of renewable fuels. Other commenters, however, contended that propane was a cleaner burning fuel source that would be preferable to, and could replace, other fuel sources such as heating oil. This matter, as indicated previously, would have been addressed as part of the alternatives issue adjudication but, as noted, this project is being rejected based on community character impacts.

Cultural, Historical and Archeological Studies. Questions were raised regarding impacts on cultural and historical features of the area, and the status of archeological studies. The DSEIS provides a review of the national and State register of historic places, parks, and other aesthetic resources in the area (see DSEIS § 4.5.2). A review of archeological and historic resources is also noted on pages 29 and 30 of the DSEIS. By letter dated October 14, 2009, the New York State Office of Parks, Recreation and Historic Preservation stated that the proposed project "will have No Impact upon cultural resources in or eligible for inclusion in the State and National Register of Historic Places" (DSEIS, Appendix E [Correspondence]). Furthermore, the draft permit contains a special condition (see Attachment 3 to the Draft Permit, Special Condition Section D.3) which provides that, if any human or archeological remains are encountered during excavation, work in the area of the remains is to cease, the Department's Regional Permit Administrator is to be notified, and work shall not resume unless written permission is received from the Department.

Future Development of the Project Site. Concerns were expressed about the possibility of future development of the project site. Any future development that is subject to the regulatory jurisdiction of the Department will be considered by the Department in accordance with the Department's laws and regulations.

Impact on Plants and Wildlife. Concerns were raised about the proposed project's impacts on plants and wildlife, and, in particular, the wildflower Leedy's Roseroot. The DSEIS notes that a review of the U.S. Fish & Wildlife Service website for Schuyler County identified Leedy's Roseroot as the one threatened species in the vicinity of the project. As discussed in the DSEIS:

> "Leedy's Roseroot is a cliffside wildflower found in only two places in New York State; on cliffs along the west shore of Seneca Lake and a single plant in Watkins Glen State Park. It will only live in cliffside habitats" (DSEIS at 29).

The DSEIS notes that "[n]o part" of the proposed project will affect the cliffside shores of Seneca Lake and that the wildflower's habitat "does not occur within the project area" (id.).

On November 11, 2010, applicant sent a letter requesting a determination on the presence of any State-listed species of plant or animal life that are identified as threatened or endangered at the proposed site to the New York Natural Heritage Program. The response did not indicate the presence of an endangered or threatened species in the project area (see id.; see also DSEIS, Appendix E [Correspondence]).

Regarding concerns about potential waterfowl mortality as a result of exposure to the brine, the draft permit (Attachment 3 to the Draft Permit, Special Condition D.2) provides that the West Brine Pond will be visually inspected at least monthly for the presence of waterfowl mortality. Upon discovery of any mortality, applicant is required to report it to the Department. Applicant would be required to submit a plan for corrective action to prevent future waterfowl mortalities, and must implement appropriate measures, as the Department would direct.

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Accordingly, the record of the administrative proceeding (including but not limited to the DSEIS and revisions thereto, the rulings of the CALJ, the submissions of Department staff, applicant, and petitioners, the comments on the DSEIS as well as the comments received during the administrative proceeding),[21] and the response to comments herein, constitute the final supplemental environmental impact statement for this project.

SEQRA FINDINGS STATEMENT AND CONCLUSION

As stated in the SEQR Handbook:

> "In reaching a decision whether to approve, approve with conditions, or deny, applications for an action which is the subject of an [environmental impact statement], each involved agency is required to weigh and balance the public need and other social, economic and environmental benefits of the project against identified environmental harm. Thus, for an agency to approve an action with potential to create significant environmental damage, or to adversely affect important environmental resources, the

[21] Attached to this decision are three charts listing comments received.

> agency must be able to conclude that the action which the agency will approve, including any conditions attached to that approval, avoids or minimizes anticipated impacts to the maximum extent practicable, or that public needs and benefits outweigh the identified environmental harm. Where public needs and benefits cannot be shown to outweigh the environmental risks of a project, the agency may be compelled to deny approvals for the action"

(SEQR Handbook at 119-120 [3rd Edition 2010]; see also id. at 153 [an agency "must not undertake, approve or fund any part of an action, if it cannot support positive findings"]).

My responsibility is to apply the Environmental Conservation Law fairly and in the manner intended by the Legislature. In this regard, I need to give weight to environmental protection considerations as well as to social, economic and other essential considerations. The Department has, in the past, rejected projects referred for administrative hearings upon SEQRA grounds. In the Matter of Lane Construction Company, which involved the application for a mined land reclamation and related permits to construct and operate a rock quarry, the Deputy Commissioner for Natural Resources, who served as the decision maker in that proceeding, [22] held that the project's long term visual impacts and impacts on the community were unacceptable (see Matter of Lane Construction Company, Decision of the Deputy Commissioner, June 26, 1998, at 1). The Deputy Commissioner concluded that he was unable to make the necessary findings under SEQRA and, accordingly, denied the application (id. at 4; see also Matter of Titan Group, Inc., Decision of the Commissioner, December 11, 1981, at 1 [holding the existing record as insufficient to enable a definitive assessment of the alternatives to make the affirmative findings required by ECL 8-0109 and the accompanying SEQRA regulations]). Although rejection of the permit applications in Lane Construction Company occurred subsequent to an adjudicatory hearing, nothing precludes an earlier rejection of a permit application where it is manifest that SEQRA requirements cannot be satisfied.

The project before me involves significant adverse unmitigated impacts with respect to local and regional community character in this area of New York State. Based on my review of the record and the final supplemental environmental impact statement in this matter, it is clear that this project is not permittable. Even if the outcome of the adjudication of issues regarding cavern integrity, alternative sites/sizing/need, public safety preparedness, and the brine pond was favorable to the project, I still would be unable to issue a SEQRA findings statement in support of the proposed project on community character grounds.

Notwithstanding the downsizing of the proposed project as set forth in applicant's August 8, 2016 letter, other mitigation offered by applicant, and the conditions incorporated into the draft permit, the significant adverse environmental impacts on the local and regional community character have not been avoided or minimized to the maximum extent practicable, and there are

[22] The Deputy Commissioner of Natural Resources served as decisionmaker in that proceeding because the then DEC Commissioner had been the agency's General Counsel during the time that the issues conference and hearings took place on the Lane Construction Company application. Accordingly, the Commissioner recused himself and delegated decision-making authority to the Deputy Commissioner of Natural Resources.

no means to do so in the context of the project as proposed. Based on the record before me, the permit applications for this project must be denied.

I hereby certify that the requirements of SEQRA and 6 NYCRR part 617 have not been met, and I further certify that, consistent with social, economic and other essential considerations, from among the reasonable alternatives available, the action is not one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will not be avoided or minimized to the maximum extent practicable by incorporating as conditions to the permits those mitigative measures that were identified as practicable.

Accordingly, I am hereby denying the permit applications for this project. Agencies and the public shall be afforded with an opportunity to consider the final supplemental environmental impact statement consistent with the requirements of 6 NYCRR 617.11(a). This decision denying the application for this project, as well as this SEQRA findings statement, will not become effective until ten (10) calendar days from the date that Department staff publishes the notice of completion of the final supplemental environmental impact statement in the Department's Environmental Notice Bulletin and the applicable SEQRA filing and distribution requirements in 6 NYCRR 617.12(b) are satisfied.

New York State Department of
Environmental Conservation

By: _____/s/_____
Basil Seggos
Commissioner

Dated: Albany, New York
July 12, 2018

To: Louis A. Alexander, Assistant Commissioner
James T. McClymonds, Chief Administrative Law Judge
Attached Service List

ATTACHMENT (3 charts)