

State Environmental Quality Review Act

Notice of Completion of Draft Environmental Impact Statement

Date of Notice: May 4, 2023

Lead Agency: Town of Hamburg Planning Board (“Planning Board”)

Project Name: Camp Road Hot Mix Asphalt Plant (“Project” or “Action”)

Project Sponsor: A.L. Asphalt Corporation (“Project Sponsor” or “Applicant”)

SEQR Classification: Unlisted

Location of Action: 5690 Camp Road, Hamburg, NY 14075

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 of the Environmental Conservation Law (State Environmental Quality Review Act).

The Planning Board, as Lead Agency, has determined that the proposed Hot Mix Asphalt Plant may have a significant effect on the environment including the potential for adverse impacts to the surrounding area by way of noise, odors, and pollution, impacts on water, air, plants & animals, transportation, energy use, and the community character and aesthetic quality of the existing area.

As a result, a Draft Environmental Impact Statement (“**Draft EIS**”) was prepared by the Project Sponsor and has been accepted by the Planning Board, as Lead Agency, for public review and comment, subject to the Listed Deficiencies indicated below.¹

A copy of the Draft EIS may be obtained at <https://www.townofhamburgny.gov/wp-content/uploads/2023/05/4.4.23-DEIS-with-Town-Revisions-COMPRESSED.pdf>, or

¹ The New York State Department of Environmental Conservation’s SEQRA Handbook (the “ SEQRA Handbook”) provides that where a lead agency believes a draft EIS contains deficiencies, but the draft EIS preparer ignores, refuses or otherwise declines to make revisions or additions in response to the lead agency’s request for the inclusion of necessary information, the lead agency may nevertheless release the draft EIS for public review, but may explain the fundamental disagreement in its notice of completion and invite public comment related to the disagreement, in addition to comments on the draft EIS itself. SEQRA Handbook, p. 129.

hard copies are on file with Joshua Rogers at the Hamburg Town Hall, 6100 South Park Avenue, Hamburg, NY 14075, 716-649-2023.

Comments on the Draft EIS and the Listed Deficiencies indicated below are requested and encouraged by the Planning Board. Comments will be accepted until Wednesday July 28, 2023. A public hearing will be held to receive comments on the Draft EIS and will be scheduled during the public comment period, no later than 60 days after the date of this Notice of Completion, in accordance with 6 NYCRR 617.9(4)(ii). A separate Notice of Hearing will be filed at least 14 days in advance of the public hearing in accordance with 6 NYCRR 617.12(c).

Planning Board's Listed Deficiencies with Respect to the Draft DEIS

There is a fundamental disagreement between the Lead Agency and the Project Sponsor regarding the basic content and analysis to be included in the Draft EIS. The Project Sponsor prepared and submitted the Draft EIS to the Planning Board on August 5, 2022. With assistance from its consultants and Town departments, the Planning Board reviewed the Draft EIS to determine its completeness for public review consistent with the standards set forth at 6 NYCRR 617.9. At a Planning Board meeting on September 21, 2022 the Planning Board determined that the Draft EIS was incomplete for purposes of public review in accordance with 6 NYCRR 617.9, and provided the Applicant with a document titled "Inadequacies/Deficiencies of the AL Asphalt DEIS" to detail nineteen deficiencies that the Planning Board identified in the Draft EIS that would benefit from revision and supplementation to assist public review of the document (the "**Listed Deficiencies**").

In response to its receipt of the Listed Deficiencies the Project Sponsor did not revise or supplement the Draft EIS but rather submitted a Deficiency Response Letter dated October 11, 2022 that asserted the Planning Board acted improperly in violation of 6 NYCRR 617.9(a)(2) by reserving its rights to raise issues regarding the Draft EIS through this public comment process, and impermissibly increased the scope of the Draft EIS as compared to the Final Scoping Document in violation of 617.8(f). By correspondence to the Applicant dated November 10, 2022, the Planning Board significantly reduced the number of deficiencies for which it requested revision and supplementation to only those Listed Deficiencies it believed were most critical to assist public review – specifically, only those identified below at Sections 4.2, 4.3, 4.4, 4.5.1, 4.5.6 and 4.5.10 – and the Board again reserved its rights to use this public comment period to address the full set of Listed Deficiencies. By letter dated December 6, 2022 the Applicant advised the Planning Board that it would not revise the Draft EIS in response to even the reduced set of Listed Deficiencies. By letter to the Applicant dated January 5, 2023, the Planning Board reiterated that to assist public review of the document, the Project Sponsor should revise the Draft EIS to address the Listed Deficiencies, specifically as reduced. The Applicant replied by letter dated January 31, 2023 and again

declined to make any revisions to the Draft EIS. By letter dated February 21, 2023 the Planning Board requested a meeting with the Applicant to discuss the Listed Deficiencies and seek a good faith resolution of the dispute. Following a meeting between representatives of the Lead Agency and the Project Sponsor on March 17, 2023, the Project Sponsor prepared and submitted a revised Draft EIS dated April 5, 2023 with certain minor changes, including the addition of a aerial view of aggregate stockpiles, stormwater pollution prevention plan map, additional narrative discussion of aggregate use and storage in Section 4.5.1, and additional narrative discussion of the Project's consistency with the Town's recently adopted Comprehensive Plan in Section 4.5.10.

Despite repeated attempts by the Planning Board and the Project Sponsor to resolve good faith differences with regard to which information and analysis should be included in the Draft EIS, the Applicant has otherwise largely declined to revise the Draft EIS to address the Listed Deficiencies. Because the SEQRA process is intended to be collaborative, and the Planning Board finds that the Draft EIS as revised April 5, 2023 contains a sufficient description of the proposed Action, plus some reasonably supported discussions of significant impacts, references to alternatives, and cursory review of mitigation measures requested by the lead agency, it meets SEQRA's bare minimum requirements to assist public review.

However, because the Lead Agency believes that the Draft EIS still contains deficiencies, the Planning Board accepts the Draft EIS, but includes the Listed Deficiencies described below in this Notice, and invites public comment thereon, to aid the Lead Agency in its preparation of the Final Environmental Impact Statement ("**Final EIS**"). The Lead Agency takes this course pursuant to the SEQRA Handbook's guidance to resolve the good faith dispute between the Lead Agency and the Project Sponsor with regard to the inclusion of certain topics and analysis in the Final EIS. Each of the Listed Deficiencies is described below, as provided to the Project Sponsor by Planning Board resolution dated September 21, 2022 and pursuant to the correspondence described herein.

The Planning Board respectfully invites public comment on the dispute that has arisen between the Applicant and the Lead Agency regarding the Listed Deficiencies below, in addition to inviting comments on the Draft EIS itself.

- 4.2 Executive Summary: The Executive Summary does not provide a full summary of the Draft EIS.
- 4.3 Description of the Action: Certain components listed in the corresponding portion of the Final Scoping Document are not addressed, including:
 - purpose and objectives of the Hot Mix Asphalt Plant
 - public need and benefits (as those terms are used in the NYSDEC SEQRA Handbook)

- on-site traffic circulation
 - hours of operation for workers and contractors and deliveries
 - proposed site access
- 4.4 Environmental Setting/Existing Conditions: The Planning Board believes that additional mapping and visual exhibits would aid the description of the existing conditions, including the addition of a topographic map, wetlands map, and other items identified in the Final Scoping Document.

The Planning Board believes that further explanation from the Project Sponsor is required to clarify whether any existing multi-sector general permit (“MSGP”) is applicable to the Hot Mix Asphalt Plant, and to justify the Project Sponsor’s statements throughout the Draft EIS that the site contains existing approved operations, though the Planning Board notes that concrete product manufacturing does not appear to be presently occurring at the Site.

The Planning Board believes the Draft EIS should include a description and characterization of the setting and existing conditions with respect to:

- wetlands and waters of the United States on and adjacent to site, including a site-specific wetland delineation report
 - existing surface and ground water resources on and in vicinity of site
 - existing mapped floodway and floodplain boundaries
 - existing means of site drainage and stormwater management, including description of existing discharges
 - existing air quality and noise conditions
- 4.5.1 Impacts on Surfacewater, Groundwater, and Flooding: In the Planning Board’s opinion the Draft EIS lacks a meaningful discussion of materials stored on-site and any run-off that may be associated with such storage. Further discussion or clarification of proposed means of storage should be provided by the Project Sponsor so that the Lead Agency can assess impacts on surfacewater, groundwater, and flooding. A specific analysis of run-off from the Hot Mix Asphalt Plant to those culverts specifically identified in the Final Scoping Document and as further clarified in the Deficiency Correspondence is required to fully assess whether there are any significant environmental impacts associated with surfacewater, groundwater, and flooding. Downstream waterbodies should be evaluated, in addition to a full analysis of impacts to wetlands. The Project Sponsor should also provide additional information with regard to management or mitigation of surface flows from the Hot Mix Asphalt Plant, such as discussion of any stormwater systems or containment systems to keep materials from entering downstream waterbodies or culverts.

- 4.5.2 Impacts on Air: The Draft EIS contains references to a separate proposed project at an alternate location in neighboring Niagara County and uses that proposed project's design and siting details for purposes of estimating the likely air emissions to be associated with the Hot Mix Asphalt Plant. The Lead Agency believes this reference has little relevance to the Hot Mix Asphalt Plant as proposed in the Town and for that reason such references should be removed so as not to create a false comparison for purposes of evaluating this Action's impacts. Further, the Lead Agency believes the Draft EIS inadequately addresses those issues identified in the NYSDEC Notice of Incomplete Application, dated November 5, 2019, and fails to fully discuss potential mitigation measures to reduce impacts on air. The Project Sponsor has declined to address the foregoing in the Draft EIS, though the Lead Agency believes its preparation of the Final EIS should address such issues, and invites public comment thereon.
- 4.5.3 Impact on Plants and Animals: The Lead Agency notes that a United States Fish and Wildlife Survey project planning tool indicates that a proposed candidate species, the Monarch Butterfly, is in the vicinity of the Hot Mix Asphalt Plant, though the Draft EIS does not assess Project impacts to same. The Lead Agency anticipates that the Final EIS should evaluate the Monarch Butterfly's presence in the Project area and consider impacts to same. Additionally, though the Draft EIS includes a limited analysis of endangered, threatened or special concern species on the site, the Lead Agency believes any Final EIS should broaden the analysis of the Project's impacts to include flora and fauna species actually on and adjacent to the site, regardless of state/federal listed status. Finally, the Lead Agency believes the Draft EIS lacks a robust discussion of the Project's impacts on adjacent undeveloped areas (particularly from noise, light and activity). The Lead Agency invites comment on the foregoing.
- 4.5.4 Impact on Aesthetic Resources: The Lead Agency notes that the Project Sponsor did not contact Town of Hamburg or Village of Hamburg representatives with respect to identifying locally significant resources in the vicinity of the Project in connection with the Project Sponsor's preparation of the Draft EIS and its assessment of impacts to aesthetic resources. Accordingly, the Lead Agency anticipates that it will consult the appropriate Town and Village representatives and departments in its preparation of the Final EIS to adequately assess impacts to local aesthetic resources. Further, the Lead Agency notes that the Draft EIS inadequately addresses visual impacts to aesthetic resources from water-based vapors emitted from the concentrated source of emissions at the Hot Mix Asphalt Plant-specifically, the fabric filter baghouse stack. Even where such emissions may not constitute a "plume" and are water-based, the impacts to aesthetic resources from such Project related activities should be evaluated in any

Final EIS. The Lead Agency invites comment on the foregoing from the public and the Project Sponsor to aid in preparation of the Final EIS.

- 4.5.5 Impact on Historic and Archeological Resources: The Lead Agency notes that the Final Scoping Document required an analysis of the need for potential mitigation measures as determined in consultation with the Village of Hamburg Historic Preservation Commission (among many others). A March 16, 2022 letter from the Village of Hamburg Historic Preservation Commission to the Project Sponsor alerted the Applicant of historical and archeological resources that may be eligible for listing with the State or National Registers and which are within 0.5 miles of the site, and further requested a detailed map of the targeted area of potential Project activity for assessment, including the site and off-site locations to be impacted by truck traffic and other growth-inducing aspects of the Project. The Draft EIS was submitted by the Applicant without further consultation with the Village of Hamburg Historic Preservation Commission in response to the March 16, 2022 letter. Accordingly, the Lead Agency invites public comment as to the need for mitigation measures to limit Project impacts to locally significant resources or to historical or archeological resources that may be eligible for listing with the State or National Registers and which are within 0.5 miles of the site.
- 4.5.6 Impact on Transportation: The Lead Agency notes that the Draft EIS does not adequately identify truck routes, or provide visuals of same, nor does it evaluate whether certain route control measures could function to mitigate Project impacts, nor does the Draft EIS evaluate the feasibility of avoiding bicycle routes, addition/relocation of sidewalks on proposed routes, improvements to reduce crashes, timing/scheduling of truck traffic, and the utilization of certain road use agreements, all of which are identified as relevant for evaluation in the Final Scoping Document. The Lead Agency invites the Project Sponsor to use the public comment period to respond to the foregoing and to provide a description of the types of vehicles proposed for Project activities and describe the most common routes each type of vehicle is expected to take, which will aid the Planning Board in its assessment of the Hot Mix Asphalt Plant's impact to transportation. The Lead Agency invites the public's comments on likely impacts to transportation.
- 4.5.7 Impact on Energy: The Final Scoping Document required the Draft EIS to assess potential mitigation measures associated with energy use such as: use of energy efficient equipment for Project Activity, timing of Project activities to coincide with off-peak energy demand, use of renewable sources of energy as alternatives to conventional fossil fuels. As the Draft EIS does not address these items, the Lead Agency anticipates that it will analyze the same for inclusion in a

Final EIS and invites the Project Sponsor and the public to provide comment on energy related impacts and potential energy mitigation measures.

- 4.5.8 Impact from Noise Odor and Light: The Final Scoping Document required analysis of all potential impacts to noise, odor and light. The Lead Agency believes that any such analysis must include the Project Sponsor's identification of all noise producing equipment and the level of sound (and other characteristics such as pitch, timing, duration) typically created by each item of noise producing equipment used at the Hot Mix Asphalt Plant. The Lead Agency specifically invites the Project Sponsor to identify the same as part of the public comment period, in addition to inviting the public's comments generally on the foregoing, to aid in the Planning Board's analysis of noise related impacts.

As to lighting, the Lead Agency believes that its analysis of potential impacts and required mitigation is hindered by the Draft EIS's general description of lighting to be used at the Hot Mix Asphalt Plant. Instead the Planning Board would request that the Project Sponsor use the public comment period to provide technical specifications of existing and proposed lighting, including location, wattage, and hours of operation, to aid the Planning Board in its assessment of the impact of light to adjoining lands.

The Lead Agency Notes that the Final Scoping Document required an analysis of potential mitigation efforts to reduce Project impacts from noise, odor and light, but that the Draft EIS does not identify or evaluate potential mitigation measures to reduce such impacts. Accordingly, the Lead Agency invites comments from the Project Sponsor and the public to help identify and evaluate potential impacts and proposed mitigation measures for noise, odor, and light associated with the Hot Mix Asphalt Plant.

- 4.5.9 Impact to Human Health: The Final Scoping Document required that the Draft EIS analyze potential mitigation measures to reduce impacts to human health from odorous pollutants, reduction of emission rates, implementation of more effective emission control equipment, and diversion or restriction of run-off from the Hot Mix Asphalt Plant to downstream culverts (such as towards Sunset Drive and the Forest Glen neighborhood as described in the Deficiency Correspondence). The Draft EIS does not address such mitigation measures, and the Lead Agency anticipates that it will retain experts or other consultants to assess the Project's potential impacts to human health. The Lead Agency invites comment on the Project's impact to human health and potential mitigation measures to be evaluated in a Final EIS.
- 4.5.10 Consistency with Community Plans: The Lead Agency believes that the Draft EIS does not contain a sufficient analysis of how the Project would impact

surrounding neighborhood developments. In the Lead Agency's opinion the Draft EIS does not adequately consider mitigation measures described in the Final Scoping Document to reduce the potential impact to community plans, such as common sense consideration of location and screening of equipment on site, methods to reduce noise/odor/air impacts to surrounding properties, and the potential for revisions to the Project to ensure greater consistency with the goals and objectives in the Town's Comprehensive Plan. The Lead Agency invites comment regarding the Project's consistency with community plans.

- 5.0 Evaluation of Mitigation Measures: As a general matter with respect to the Draft EIS, the Planning Board believes there is not a sufficient analysis of the mitigation measures as identified for analysis in the Final Scoping Document. In response to the Listed Deficiencies as further clarified by the Deficiency Correspondence, the Project Sponsor respectfully declined to include additional analysis of mitigation measures, and noted that its analysis in the Draft EIS as submitted has identified no impacts from the Project and as such no mitigation need be analyzed or required. The Lead Agency invites comment on the foregoing.
- 6.0 Alternatives to be Evaluated: The Lead Agency respectfully asserts that the Draft EIS as submitted does not sufficiently evaluate alternative technology or alternative layout for the Project, nor does it include a sufficient discussion of alternative sites considered--all as specified in the Final Scoping Document. In response to the Deficiency Correspondence the Project Sponsor has indicated that the Draft EIS (on pages 79-84, 86, and 87) fully analyzes the foregoing and has respectfully declined to include additional analysis. The Planning Board invites comment on the foregoing to aid in resolution of the dispute.

Furthermore, the Planning Board believes the Draft EIS does not meaningfully analyze the Project's relation to the Comprehensive Plan and Camp Road Gateway Area initiative under development by the Town. In response to the Deficiency Correspondence, the Project Sponsor respectfully declined to consider the Project in relation to the Comprehensive Plan and Camp Road Gateway Area initiative. The Lead Agency respectfully invites comment on the foregoing dispute.

- Section 7.0 Cumulative Impacts: The Planning Board believes that the Draft EIS does not adequately consider cumulative impacts from the Project because the Draft EIS confines its analysis of cumulative impacts to only those actions occurring on the project parcel itself. In the Planning Board's opinion the Draft EIS ought to consider impacts from the Project taken together with other projects and initiatives on adjacent and nearby sites. In response to the Deficiency Correspondence the Project Sponsor declined to further assess cumulative

impacts from the Project in relation to other adjacent or nearby developments. The Lead Agency invites comment on these different baselines for evaluating cumulative impacts, as well as more general comment on the Project's cumulative impacts.

- Section 8.0 Growth Inducing Impacts: The Final Scoping Document required an assessment of the Project's impacts on growth and the character of the surrounding neighborhood in the Town of Hamburg, including an analysis of whether the Project would encourage additional industrial uses in the vicinity of the Project site. The Lead Agency respectfully believes that the Draft EIS does not contain such an analysis. Though in response to the Deficiency Correspondence the Project Sponsor maintained that such an analysis is complete and declined to revise the Draft EIS in response. The Planning Board invites comment on the differences between the Lead Agency's and the Project Sponsor's assessment of the Draft EIS for inclusion of such analysis, as well as more general comment on the growth inducing impacts associated with the Project.
- Appendices: The Final Scoping Document suggested the Draft EIS include certain documents as appendices where such documents are site-specific and not readily available to the public. Upon the absence of such documentation from the Draft EIS as submitted by the Applicant, the Lead Agency requested specific documents as follows: Minutes of Meetings of the Town of Hamburg Planning Board relative to the Project; Project Sponsors corrected Air Permit Application Materials; NYSDEC Notice of Incomplete Application for Air Permit; Current SPDES Permit and other existing site specific permits; and an engineer's report of facility size and layout. In response to the Deficiency Correspondence the Project Sponsor declined to include such documents as appendices to the Draft EIS and asserted that where documents would be subject to a Freedom of Information Law request (e.g. board meeting minutes or NYSDEC permit information) they need not be provided with the Draft EIS. The Lead Agency invites comment on the dispute regarding whether such documents ought to be included as appendices for ready reference with the Final EIS.