TOWN OF LLOYD, NEW YORK

ZONING BOARD OF APPEALS

In the Matter of the Appeal of

BRUCE EPPERSON,

Appellant,

— against —

DAVID BARTON, in his official capacity as Building, Planning and Zoning Officer for the Town of Lloyd, New York,

Appellee.

MEMORANDUM IN RESPONSE TO APPEAL OF ADMINISTRATIVE ZONING DETERMINATION DATED JULY 8, 2026

Re: Proposed Concrete Batch Plant, 3260 Route 9W, Highland, New York (S.B.L. 80.3-2-8)

Appeal filed: July 28, 2026

Determination appealed from: *Determination: Concrete Batch Plant as Light Industry Use*, Town of Lloyd Building Department, July 8, 2026 (the "Determination")

I. PRELIMINARY STATEMENT

1. Appellee David Barton, Building, Planning and Zoning Officer for the Town of Lloyd, respectfully submits this memorandum in response to the appeal of Bruce Epperson dated July 28, 2026 (the "Appeal"). The Determination held that a concrete batch plant, as proposed and as expressly conditioned, satisfies the definition of "Light Industry" at Town of Lloyd Zoning Code § 100-8, and is therefore an appropriate use within the Town's LI (Light Industrial) zoning district, subject to site plan review by the Planning Board.

2. The Appellant advances three points. Each fails, and each fails on grounds that appear within the four corners of the Appeal itself.

3. **Point One** asserts that the Determination circumvents the procedure for special use permits. It rests on a premise that is never established and cannot be established: that "Light Industry" is a use requiring a special use permit in the LI district. The Appellant cites no provision of the Zoning Code imposing that requirement — because none exists. In its place, the Appellant cites a recommendation contained in the 2005 Comprehensive Plan that the Town *adopt* special use permit provisions for light industry. A recommendation the Town Board did not enact is not law. The citation demonstrates the absence of the very requirement the Appeal needs.

4. **Point Two** asserts that the Determination treats similarly situated citizens of Lloyd differently depending on their status as landowners or residents. Point Two asks this Board to extend into the LI district a categorical prohibition that the Town Board wrote for the Walkway/Gateway district alone. That is legislation, not interpretation, and Town Law § 267-b confers no such authority on a zoning board of appeals. Point Two also concedes the Determination's holding in terms, at Appeal ¶ 39.

5. **Point Three** asserts that the Determination is incorrect and irrational because the facility will, by any reasonable measure, emit objectionable levels of smoke, noise, dust, odor and other recognized pollutants. Point Three devotes the substantial majority of its length to water withdrawal, wastewater, fuel storage, and highway traffic. None of those subjects appears among the six impacts enumerated in the § 100-8 definition. As to the material that *is* within the definition, the Appellant's quantitative assertions do not survive verification. Four independent calculations contain errors — one overstating the result by a factor of approximately 7.5, another by nearly an order of magnitude, and a third employing a probability model in a manner that its own assumptions do not permit. Those verifications are set out in **Appendix A**, and Appellee invites the Board and the Appellant to check every one of them.

6. Finally, and centrally: the Determination decides classification and nothing else. It approves no site plan, authorizes no construction, waives no environmental review, and confers no right to operate. Site plan review under § 100-53 of the Town Code, and review under the State Environmental Quality Review Act, lie entirely ahead.

Section 100-53(F)(3) requires that a public hearing be held within 62 days of the application's acceptance as complete, on notice published at least five days beforehand and mailed by certified mail, return receipt requested, to adjacent property owners at least ten days beforehand. Section 100-53(B)(8)-(9) requires referral to the Town Engineer, Fire Chief, Chief of Police, Highway Superintendent, Building Department, and, where applicable, the Water and Sewer District, and requires the Planning Board to consider their comments and recommendations. Section 100-53(F)(2) and (4) empower the Planning Board to approve, disapprove, or approve with conditions, on a decision due within 62 days of the close of that hearing. Every protection the Appellant contends was withheld — notice, comment, and public hearing among them — remains fully available and unwaived; it has simply not yet occurred, because the only proceeding to date has been the classification determination now on appeal.

7. *Note on citation.* The Appellant's paragraph numbering restarts at several points, with the result that certain numbers appear more than once in the document. To avoid ambiguity, citations herein are to the Appeal's paragraph number as printed together with the page on which the paragraph appears (e.g., "Appeal ¶ 14, p. 6").

II. WHAT THE DETERMINATION DECIDES, AND WHAT IT DOES NOT

8. Chapter 42 of the Town of Lloyd Code of Ordinances does not merely permit the Determination. It creates the office that issues it, compels its issuance, names the instrument, prescribes its content, and fixes this Board as its sole reviewer.

9. Section 42-3(A)(2) provides that the Building Department Director, in addition to serving as a Code Enforcement Officer, holds "the additional duty of making determinations exclusively, being authorized and directed to make the initial determination as to whether a proposal delineated in a particular application submitted pursuant to state and federal law and Town Code Chapters 42 and 100 is in compliance with the requirements of said law and Town Code chapters." Section 42-4(B) repeats the assignment: the Director "is hereby **exclusively authorized and directed** to make the initial determination." Both provisions add that such

determinations "shall only be reviewable by the Town of Lloyd Zoning Board of Appeals."

10. Sections 42-3(A)(3) and 42-4(C) then prohibit any Town official from granting any application "without first obtaining a written verification from the Building Department Director that the **proposed use** described in said application **is permitted in the zoning district** where it is proposed to be located or developed." Section 42-4 is captioned, in the Town Board's own words, "Building and zoning permits; conformance required; **zoning verification**."

11. The Determination is that instrument. It states the conclusion the Code directs the Director to reach, on the question the Code directs him to answer, in the form the Code requires, and it is reviewable by the body the Code designates. It is not an invention.

12. The Appellant establishes the essential point himself. At ¶ 19, p. 8, he states that the Code requires the Director to make an initial determination of zoning compliance, that no Town official may grant an approval without it, and that Planning Board members are therefore barred from acting until it issues. (The Appellant attributes these provisions to § 42-4(A) and § 42-4(B); they are § 42-4(B) and § 42-4(C), together with § 42-3(A)(2) and (3).) That is precisely what occurred. An official who performs a duty the Code compels, in the sequence the Code prescribes, has not — as Appellant at ¶ 29, p. 10 contends — "created his own administrative special use permit scheme."

13. The Determination confers no right to construct or to operate. It does not approve a site plan. It does not complete or displace SEQRA review under 6 NYCRR Part 617. It does not authorize a highway work permit, resolve stormwater permitting, approve a water supply, approve wastewater disposal, or determine whether air emissions permitting is required under 6 NYCRR Parts 200, 201, 211 or 212. Each of those remains open, and each remains subject to the agency holding jurisdiction over it.

14. The Determination is further self-limiting by its own terms:

> This determination is conditioned on the batch plant being constructed and operated substantially as represented to the Department... Any material deviation from these representations that results in objectionable levels of smoke, noise, dust, odor, glare, or vibration beyond the property boundaries shall void this determination and require re-review by the Department.

15. That condition is a continuing obligation, and Chapter 42 supplies the means of enforcing it. The Code Enforcement Officer may issue a compliance order under § 42-15(A), a stop-work order under § 42-6(A), and appearance tickets under § 42-15(B); civil penalties of up to $200 for each day a violation continues are recoverable under § 42-15(C); and injunctive relief, including an order abating the violating condition, is available under § 42-15(D). Section 42-15(E) provides that these remedies are cumulative and may be pursued at any time. If the facility as built or as operated ever produces objectionable levels of any of the six enumerated impacts beyond the property line, it ceases to satisfy § 100-8 by the express operation of the Determination, and the Town possesses the tools to say so. The Appellant does not address this provision or these remedies.

16. The practical answer to a large part of the Appeal is therefore one of sequencing — and the sequence is the one Chapter 42 lays down. Section 42-4(E) provides that once the Director "has determined that a proposed use is permitted within the subject zoning district, said determination shall be transmitted to the appropriate Town officials, who may then **further process** the subject application(s)." It continues: "If, as the subject progresses through the approval process, compliance with any other requirements of this chapter is identified as an issue(s), the Building Department Director shall **also determine** such issue(s) of compliance... and such issues **must be resolved** before the application(s) being applied for may be granted by any Town official."

17. The Town Board thus expressly contemplated that the initial determination is a gateway rather than a terminus: that further processing follows it, that additional compliance questions will surface during that processing, and that they must be resolved before anything is granted. Concerns regarding water supply, wash water, diesel storage, stormwater, wetlands, and highway access are raised and resolved in that sequence. That they have not yet been resolved at the classification stage is not

evidence that the classification is wrong. It is a description of where in the process the application currently sits — and the process is the one the Code prescribes.

III. THE QUESTION BEFORE THE BOARD AND THE APPLICABLE STANDARD

18. Under Town Law § 267-b(1), this Board may reverse, affirm or modify the determination appealed from and make such determination as in its opinion ought to have been made by the administrative official. The Board's review is of the Determination.

19. The question presented is narrow: does the proposed use, as represented and as conditioned, fall within the § 100-8 definition of Light Industry? The Board is not asked to decide whether a concrete batch plant is a desirable neighbor, whether this parcel is the best available site, whether additional studies would be useful, or whether the Town's Use Table should be amended. Those are legislative and site-plan questions. They are not before the Board.

20. Where a zoning determination requires the application of a code definition to a set of facts, and rests on familiarity with local conditions, the interpretation of the official charged with administering the code is entitled to deference and will be sustained if it has a rational basis. *Matter of Toys "R" Us v. Silva*, 89 N.Y.2d 411, 418–19 (1996); *Matter of Frishman v. Schmidt*, 61 N.Y.2d 823 (1984); *Matter of Appelbaum v. Deutsch*, 66 N.Y.2d 975 (1985). A determination is arbitrary and capricious only if it is without sound basis in reason and taken without regard to the facts. *Matter of Pell v. Board of Educ.*, 34 N.Y.2d 222, 231 (1974).

IV. STANDING (PRESERVED, NOT PRESSED)

21. Appellee preserves an objection to the Appellant's standing but does not ask the Board to dispose of this appeal on that ground. The issues raised are better resolved on their merits, and are addressed on their merits below. Three observations are nonetheless appropriate for the record.

22. *First*, "special damages" in the zoning context requires an adverse impact different in kind and degree from that experienced by the community generally. *Matter of Colella v. Board of Assessors*, 95 N.Y.2d 401, 410 (2000), cited at Appeal ¶ 8, p. 3. The Appeal states that the Appellant's residence is 3,430 feet from the site (¶ 10, p. 3), and its own footnote 7 identifies six residences substantially closer — at 704, 1,177, 1,247, 1,669, 2,169 and 2,174 feet. The Appeal thus places on the record that at least six households would experience each alleged impact more acutely than the Appellant.

23. *Second*, the Appellant's principal theory of particularized injury — drawdown of a shared aquifer by the facility's well (¶¶ 11–13, pp. 3–4; ¶ 17, p. 5) — has in any event been overtaken by the application itself. As set out in Part VII.E.1 below, the applicant has represented in the pending site plan review that it intends to connect to the municipal water supply rather than withdraw from the on-site well. Whatever the merits of the drawdown analysis, it no longer describes the project.

24. *Third*, the common-law standing doctrine invoked at Appeal ¶ 18, p. 5 applies where a denial of standing would erect an impenetrable barrier to any judicial or administrative scrutiny of government action. *Boryszewski v. Brydges*, 37 N.Y.2d 361, 364 (1975); *Saratoga County Chamber of Commerce v. Pataki*, 100 N.Y.2d 801, 814 (2003). Where six nearer property owners plainly satisfy the ordinary test, no such barrier exists. Relatedly, the extended passage quoted at Appeal ¶ 14, p. 6 is drawn from Judge Hancock's dissent in *Society of the Plastics Indus. v. County of Suffolk*, 77 N.Y.2d 761 (1991). The holding of the majority in that case, which is controlling, tightened rather than relaxed standing requirements in land use matters.

25. The Appellant also devotes Appeal ¶¶ 19 and 10, p. 5 to arguing that the Town's 30-day appeal rule is preempted by the 60-day period in Town Law § 267-a(5)(b). The Determination issued July 8, 2026 and the Appeal is dated July 28, 2026 — the twentieth day. The appeal is timely under either period, and Appellee does not contend otherwise. The preemption question is not presented by this filing and requires no ruling.

V. RESPONSE TO POINT ONE: NO SPECIAL USE PERMIT WAS REQUIRED, SOUGHT, OR ISSUED

A. A determination that authorizes nothing is not a permit.

26. Town Law § 274-b(1), quoted at Appeal ¶ 23, p. 9, defines a special use permit as "an authorization of a particular land use which is permitted in a zoning ordinance or local law." The Determination authorizes no land use. It permits no construction, no occupancy, no operation, and no site disturbance. It classifies a proposed use within a defined category so that the application may proceed to the body that *does* hold approval authority. Sections 42-3(A)(3) and 42-4(C) make the written verification a **precondition to** approval; a document that must be obtained *before* any Town official may grant anything is by definition not the grant.

27. The Zoning Code and Chapter 42 also supply this instrument with a name. Section 42-4 is captioned "zoning verification," § 42-4(D) is headed "An application for zoning verification," and §§ 42-3(A)(3) and 42-4(C) describe its content as a verification "that the proposed use… is permitted in the zoning district." The Appellant characterizes the Determination as an administrative device of the Director's own devising. It is a document the Town Board named, required, and prescribed the contents of.

B. The Zoning Code does not require a special use permit for Light Industry in the LI district, and the Appellant cites none.

28. Point One requires, as its foundational premise, that Light Industry be a special-permit use in the LI district. The Appellant never cites a provision so providing. What he cites instead, at Appeal ¶ 22, p. 9, is Recommended Task 145 of the 2005 Comprehensive Plan, urging that the Town "[a]dopt special use permit provisions and design standards for light industry."

29. That citation is fatal to Point One rather than supportive of it. A comprehensive plan is a policy document; its recommendations acquire regulatory force only when the legislative body enacts them. Town Law § 272-a(11)(a) requires that zoning be *in accordance with* a comprehensive plan; it does not convert an unadopted recommendation into an operative code requirement, and it does not authorize an

administrative officer or a zoning board of appeals to enact one. Had the Town Board wished to make light industry a special-permit use in the LI district, it had twenty-one years and at least two comprehensive code actions (Local Law 4-2013 and Local Law 4-2014) in which to do so. It did not.

C. The premise that the Determination "duplicated" special use permit criteria is factually incorrect.

30. At ¶ 29, p. 10, the Appellant asserts that the Determination "duplicated the special use permitting process criteria mandated in state statutes and town law." A side-by-side comparison of the two sets of criteria — both of which the Appeal itself supplies — refutes this.

31. The Determination applied the six impact factors stated in § 100-8: **smoke, noise, dust, odor, glare, and vibration**, measured beyond the property boundaries.

32. Section 100-40(C)(1), quoted at Appeal ¶ 31, p. 11, states an entirely different set of criteria: "[t]he location and size of the use; the nature and intensity of the operations...; the prevailing character of the neighborhood within the district; the public health, safety and welfare; the size of the site in relation to it; and the location of the site with respect to streets giving access to it..."

33. These lists share no element. The Determination did not apply the § 100-40(C) criteria, was not required to, and did not purport to. There is no duplication to complain of.

D. The argument proves far too much.

34. The logic of Point One is that because the § 100-8 definition contains a qualitative element — whether impacts are "objectionable" — any administrative application of that definition is necessarily a special use permit in disguise. If that were correct, then no definition in § 100-8 containing an evaluative term could ever be applied by the Building Department, and the duty imposed by § 42-4(B) and § 42-3(A)(2) would be impossible to discharge. A construction that renders another provision of the same Code inoperable is disfavored. Nearly every zoning definition requires judgment in application; that is what administration of a zoning code consists of.

E. Internal inconsistencies in Point One.

35. Appellant, at ¶ 31, p. 11, complains that "[t]he town's zoning board of appeals was given no chance to evaluate the application." But this Board does not issue special use permits. As the Appellant states at ¶ 24, p. 9, the Town delegated that authority to the **Planning Board** under § 100-40(B). And this Board's opportunity to evaluate the Determination is the present proceeding.

36. Appeal ¶ 30, p. 11 cuts against the Appellant. *North Shore Steak House v. Board of Appeals of Inc. Vil. of Thomaston*, 30 N.Y.2d 238 (1972), stands for the proposition that classification of a use as permitted in a district is tantamount to a legislative finding that the use is in harmony with the general zoning plan and will not adversely affect the surrounding neighborhood. The Town Board made exactly that legislative finding when it listed Light Industry as a permitted use in the LI district.

F. The relief requested does not follow from the argument made.

37. Point One argues that a special use permit process should have been followed. The Appellant's prayer for relief, however, asks the Board to hold that a concrete batch plant "is not a 'Light Industry' as defined in section 100-8(108) and is therefore not a permitted use." Those are different things. If Point One were correct, the remedy would be to require a special use permit application — not a declaration that the use is prohibited. The conclusion does not follow from the premise.

G. Section 100-12(A) does not prohibit the use.

38. The Appellant argues (Introduction, p. 1; ¶ 35, p. 12) that because "concrete batch plant" is not itself enumerated in the Use Table, § 100-12(A)'s instruction that "[u]ses that are not listed are prohibited" bars the use. Light Industry **is** a listed use. The Use Table lists use *categories*, not individual businesses, and § 100-8 exists to give those categories content. On the Appellant's reading, the Table would prohibit every business whose exact trade name does not appear in it — bakeries, cabinet shops, machine shops, printers, laboratories — because no zoning code enumerates every business type in existence. That reading would make the Town's Use Table unadministrable and is not the law of Euclidean zoning, which classifies by category.

VI. RESPONSE TO POINT TWO: DISTRICT-SPECIFIC REGULATION IS THE MECHANISM OF ZONING, NOT A DEFECT IN IT

A. Point Two is directed at the Town Board, not at the Determination.

39. Point Two's grievance is that concrete manufacturing is categorically excluded from the Walkway/Gateway district but is not categorically excluded from the LI district. That distinction was drawn by the Town Board in Local Law 4-2013. Neither the Building Department nor this Board may extend a district-specific prohibition into a district where the legislative body declined to place it. To do so would be to amend the Zoning Code by adjudication.

B. Treating districts differently is what a zoning code does.

40. The Appellant describes the Town's code at ¶ 34, p. 12 as Euclidean — dividing the municipality into districts with different permitted uses in each — and his footnote 12 cites *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). Differentiation among districts is the entire operative mechanism of that system. If different treatment of the same use in different districts were arbitrary and capricious, no zoning code in New York could stand. The Appellant cites the case that forecloses his own argument.

C. Appeal ¶ 39 concedes the Determination's holding.

41. Appellant, at ¶ 39, p. 13, states:

> Thus, "cement and concrete manufacturing" uses are automatically excluded in the Walkway/Gateway district, but are allowed in the LI (Light Industrial) district as a general "light industry" use if deemed to "not [emit] objectionable levels" of commonly recognized pollutants and/or nuisances.

42. That is the Determination's holding, stated in the Appellant's own words. What follows in Point Two is an argument that the Town Board should have legislated differently — a matter for the Town Board.

D. Appeal ¶ 40 addresses a rationale the Determination does not employ.

43. Appellant, at ¶ 40, p. 14, asserts that the Determination "considers only the impact of a proposed development… within the boundaries of its zoning district." It does not. The § 100-8 test, which the Determination applied factor by factor, measures impacts

beyond the property boundaries — a line far closer to neighboring residents, and materially more protective of them, than a district boundary would be. The Determination nowhere suggests that impacts crossing a district line are permissible.

E. The landowner/land-user distinction at Appeal ¶ 41 has no basis in the text.

44. Appellant, at ¶ 41, p. 14, contends that the WG prohibition protects landowners while residents and visitors near the LI district are only "conditionally protected." Nothing in § 100-38(C)(3) keys to ownership. The prohibition protects the pedestrian and downtown character of the WG district, and residents, employees and visitors in that district receive precisely the same benefit as owners. Outside the WG district, all persons — owners, residents and visitors alike — receive the protection of the § 100-8 property-line standard, applied identically.

F. The Appellant does not address the Town Board's most direct statement on this question.

45. Local Law 4-2014 added to § 100-8 a definition of "Industrial Light" that expressly includes:

> …manufacturing of articles or merchandise from previously prepared or natural materials, such as cardboard, **cement**, cloth, cork, fiber, glass, leather, paper, plastics, wood, metals, stones and other such prepared materials…

46. This is the Town Board's own enacted statement, adopted *after* the 2013 code and after the Walkway/Gateway exclusions, identifying manufacture from cement as falling within the light industrial family. It is the single most direct piece of legislative evidence bearing on the question before the Board. The Appellant does not mention it — not in Point One, not in Point Two, and not in Point Three.

G. Section 100-38(C)(3) does two distinct things, and only one of them is district-specific.

47. Section 100-38(C)(3) first performs a **taxonomic** function: it identifies Cement and Concrete Manufacturing (NAICS 3273) as a *light industrial* use. That classification supports the Determination. It then performs a **district-specific policy** function: it excludes that light industrial use, along with nineteen others, from the

Walkway/Gateway district because that district is a pedestrian-oriented extension of the Hamlet of Highland.

48. The scope of the second function is set by its own terms. Section 100-38 is captioned "Supplementary standards for the W-G District" and operates there. Where a legislative body specifies a prohibition in one place and omits it in another, the omission is presumed deliberate — the principle of expressio unius est exclusio alterius, codified in New York at McKinney's Cons. Laws of N.Y., Book 1, Statutes § 240 ("Expression of one thing as excluding others"), and applied by the Court of Appeals in Thoreson v. Penthouse Intl., Ltd., 80 N.Y.2d 490 (1992). The inference does not stand alone here. The Town Board demonstrated in 2013 that it knew exactly how to prohibit concrete manufacturing categorically, and how to draft the list to do it. It applied that prohibition to one district. Reading it into the LI district would insert language the Town Board omitted.

H. The 2013 remark quoted at Appeal ¶ 42 does not bear on this interpretation.

49. Appellant, at ¶ 42, pp. 14–15, quotes Town Board minutes of July 17, 2013 concerning the general need for amendments to the newly adopted code. The quoted passage identifies no inconsistency in § 100-8, offers no interpretation of the Light Industry definition, and addresses neither the LI district nor concrete manufacturing. To the extent the record establishes that the Zoning Code contains provisions requiring reconciliation, §§ 42-3(A)(2) and 42-4(B) assign responsibility for that reconciliation to the Building Department Director in the first instance, and *Toys "R" Us* counsels deference to the resulting interpretation where it is rational.

I. The Comprehensive Plan language is illustrative, not limiting.

50. The Appellant twice quotes the 2005 Comprehensive Plan's observation that "[s]ome examples of light industries include research facilities, professional offices, small manufacturing, and high tech firms" (¶¶ 22, 36). The passage says "some examples… include." It is illustrative and by its own terms not exhaustive. A plan's illustrations do not narrow an enacted definition, and the operative enactments here

— the 2013 Use Table, the § 100-8 definition, the 2014 "Industrial Light" definition, and § 100-38(C)(3) — all point the same way.

VII. RESPONSE TO POINT THREE: THE FACTUAL ASSERTIONS

A. Threshold: § 100-8 enumerates six impacts, and the list is closed.

51. The definition reads: "Manufacture, assembly, treatment, processing, or packaging of products that does not emit objectionable levels of **smoke, noise, dust, odor, glare, or vibration** beyond the property boundaries."

52. Water withdrawal, wash water, wastewater disposal, diesel fuel storage, wetlands, stormwater, and highway traffic appear nowhere in that list. Point Three devotes ¶¶ 48–49 (water), ¶¶ 52–53 (wash water), ¶ 54 (fuel), and ¶¶ 57–61 (traffic) — approximately half its length — to subjects the definition does not reach. Those subjects are real and are properly examined; they are examined at site plan review and in SEQRA, by the Planning Board and by the agencies holding jurisdiction. They are not criteria for use classification under § 100-8.

53. That the list is closed is not an accident of drafting, and the Appeal itself supplies the proof. The Comprehensive Plan passage the Appellant quotes twice describes light industry as not generating "excessive noise, **truck traffic**, fumes or other nuisances." The Town Board thus had the broader formulation — expressly including truck traffic — before it when it enacted § 100-8, and it enacted a narrower list that omits traffic. Under settled principles of construction, that omission is presumed intentional. The Appellant's own exhibit forecloses his traffic argument.

54. The Appellant, at ¶ 46, p. 16, seeks to replace the Code's term "objectionable" with "nuisance," using a definition from a private planning dictionary. The Town Board chose the word it chose. Substituting a common-law tort concept for the enacted term would import a standard the Town Board did not adopt and would sweep back in precisely the categories of impact — water, traffic, wastewater — that the enumerated list excludes. The Board should apply the Code as written.

B. Noise — the Appellant's own exhibit does not support the conclusion he draws from it.

55. Noise is within the definition, and Appellee addresses it directly. The only acoustical evidence in this record is the *Noise Impact Assessment* prepared by Strategic Mining Solutions LLC, dated September 25, 2025, which the Appellant submits as Tabs 7 and 15. It was prepared, by its own terms, in accordance with the NYSDEC program policy discussed below. Read in full — including its methodology sections, its conclusion, and its appended calculation sheets — it refutes the position for which the Appellant offers it.

55.1. *Method and source level.* Source levels were obtained by direct octave-band measurement at an operating concrete batch plant in Hudson, New York, at four positions around the plant while it was in full operation, with a loader feeding aggregate, a cement truck transferring into a silo, and mixer trucks being loaded. The study identifies the cement blower — used to transfer cement from delivery trucks to the silos — as the **primary** source of noise, the mixer trucks as secondary, and aggregate loading as tertiary. Table 2 reports the measured level as 89.6 dBA normalized to 50 feet, while Table 3 and every appended calculation sheet use **89.3 dB(A) at 50 feet**. The appendix resolves the discrepancy: the ten measured octave-band levels combine to 89.3 dBA, which is the operative figure.

55.2. *The study's conservatism.* Section 4.1 lists the assumptions built into the calculation. Only the loudest directional sound levels were used. Ground attenuation "was **not calculated** or used for impact determination to be conservative" — § 2.4.4 explains that all surfaces were assumed acoustically hard, though thick grass may reduce sound by as much as 10 dB per 100 meters at 2,000 Hz. Only the **lowest** atmospheric attenuation values expected anywhere in the annual temperature range were applied. Transition-zone barrier attenuation was "not factored in an effort to be conservative" (§ 2.4.2). And § 3.4 models the plant "with the loudest side of the plant facing each receptor" — a condition that cannot obtain at all three receptors at once.

55.3. *The study's results.* Table 3 propagates the source level to three receptors. At R1 (567 feet) the calculated level is 67.3 dB(A); at R2 (568 feet), 64.6 dB(A); and at R3, the closest residence at 1,907 feet, **50.6 dB(A)**. Against the measured ambient of 67.8 dB(A), the study reports differences from ambient of **−0.5, −3.2 and −17.2 dBA**. Every receptor, including the residence, was calculated to be at or below the sound level already present.

55.4. *The study's conclusion.* Section 4.3 states that "no further analysis is necessary when it is demonstrated that potential sound level increases are less than 6 dBA above the ambient sound levels," and finds that "[u]sing a conservative methodology, the sound level of the proposed plant at all nearby commercial and residential receptors is calculated to be less than the existing ambient sound level." It adds that actual levels "will be even less than what is presented here" owing to equipment directionality, plant cycle times, and "additional attenuation from soft ground." It concludes that the plant "is well below the threshold for impact, and no further analysis is required." That is the document the Appellant submits in support of his noise case.

55.5. The Appeal reproduces two numbers from that analysis — 89.3 and 50.6 — and none of its findings. Neither the receptor results, nor the differences from ambient, nor the conclusion appears anywhere in it. Beyond the omission, five statements the Appeal makes about the study do not match the document.

55.6. *There was one ambient monitoring location, not three.* Appeal ¶ 55 states that "all three ambient noise receptor sites" were similarly situated. Table 1 lists a single ambient monitoring location — Location A, "Concrete Batch Plant Property" — at 67.8 dBA. R1, R2 and R3 are receptor locations, not ambient monitoring stations; the single ambient figure was applied to all three.

55.7. *The claim about where that measurement was taken is unsupported.* Appeal ¶ 15 states that "the only measurements were taken at the entry to the site, along a busy highway," and ¶ 55 that the sites were "within 75 feet of Highway 9W." The Clifton Park site is on **US Route 9** in Saratoga County, not Route 9W. Section 1.0 places the plant approximately 500 feet west of US Route 9, and § 3.2 states that the monitoring location "was chosen to acquire sound levels representative of ambient levels at the nearby receptors" — not sited at the highway edge. Nothing in the document supports a distance of 75 feet.

55.8. *The 89.3 dBA figure is a level at 50 feet, and the study says so throughout.* Appeal ¶ 15 states that the plant "can be expected to generate 89.3 decibels of noise," without qualification. Table 2 is captioned "Sound Level **Normalized To 50'**," Table 3 "Concrete Batch Plant Sound Level **at 50'**," and each appended calculation sheet "Equipment Octave Band Sound Level (dBA) **at 50 Feet**." A source level stripped of its reference distance describes conditions nowhere except fifty feet from the equipment.

55.9. *The 67.8 dBA figure is the measured ambient at Clifton Park, not a plant emission.* Appeal ¶ 56 reasons that "a sound impact of 67.8 decibels will create a noise impact on the Scenic Hudson preservation lands somewhere between 10 and 100 times higher than the current ambient sound levels." Section 3.2 identifies 67.8 dBA as the existing background at the Clifton Park property, "dominated by traffic noise from U.S. Route 9, which experiences annual average daily traffic (AADT) levels of over 16,000 vehicles/day." It is a measurement of traffic in Saratoga County — not a sound the plant would make, and not a level predicted to occur anywhere in the Town of Lloyd.

55.10. *The 45 dBA estimate in ¶ 56 is attributed to a source that does not contain it.* The Appeal cites "Figure 1: 'Common Sound Levels'" for the proposition that ambient in a preserve 500 feet from a highway is "around 45 decibels." Figure 1 is a generic reference chart of everyday sound levels — carrier jet takeoff at 140, quiet residential area at 50, library at 40, threshold of hearing at 0. It contains no distances, no highways, and no entry for a preserve.

55.11. What the study does and does not carry to this site. The Appellant is correct on one point: the ambient environment at Clifton Park is not that of a rural road. Section 3.1 describes a light-industrial parcel among "a mix of industrial and commercial development," and § 3.2 attributes the 67.8 dBA ambient to a highway carrying over 16,000 vehicles daily. But that observation defeats his use of the study rather than supporting it. What transfers between sites is the **measured source level,** a property of the equipment. What does not transfer is the comparison to Clifton Park's ambient — and it is that comparison, not the source level, that the Appeal invokes.

55.12. The appended calculation sheets identify precisely what the intervening attenuation at Clifton Park consisted of. **Barrier attenuation is 0.00 dB at every one of the ten octave bands, at all three receptors.** The 5.0 dB shown in Table 3 for R3 as "Barriers and Vegetation" is entirely vegetation, derived from an assumed 200 feet of wooded area along that path; the corresponding figures are 100 feet at R2 and none at R1. Whether any comparable screening exists between the proposed plant and the Appellant's residence is a question no party has addressed.

55.13. Propagating the source level to the Appellant's residence at 3,430 feet, by the study's own method: 89.3 dB(A) at 50 feet less 36.7 dB of distance attenuation is **52.6 dBA**; applying the study's atmospheric absorption scaled to the greater distance gives approximately **49 dBA**; applying in addition vegetation attenuation equivalent to the Clifton Park path would give approximately **44 dBA**. Every one of those figures is a ceiling rather than a prediction, because ground attenuation is excluded throughout — the study itself identifies that exclusion as conservative and notes that soft ground can absorb on the order of 10 dB per 100 meters. On the study's own Figure 1, a level near 49 dBA sits just below "Quiet Residential Area."

55.14. One further distinction bears on the transfer of these figures. The study identifies the cement blower, transferring cement from delivery trucks into the silos in the open air, as the primary source of noise at the facility measured. The Determination conditions its classification on dust collection and depressurization at the cement transfer point and on the substantial enclosure of mechanical equipment within structures. The Clifton Park figures therefore describe a facility operating without the controls on which this Determination is expressly conditioned.

56. The governing guidance is the Department of Environmental Conservation's program policy *Assessing and Mitigating Noise Impacts* (DEP-00-1, rev. Feb. 2, 2001) — the same policy under which the Appellant's own exhibit was prepared. It sets a

graduated scale: increases of 0 to 3 dBA should have no appreciable effect; increases of 3 to 6 dBA "may have potential for adverse noise impact only in cases where the most sensitive of receptors are present"; and increases of more than 6 dBA "may require a closer analysis of impact potential depending on existing noise levels and character of surrounding land use." It sets one absolute limit: the addition of a noise source in a non-industrial setting "should not raise the ambient noise level above a maximum of 65 dB(A)."

56.1. Sound levels combine logarithmically rather than arithmetically, so an increase over ambient is not obtained by subtracting one level from another. The Appellant's own exhibit explains the principle at § 2.3: two sources of equal level raise the total by about 3 dB, a quieter source raises it by less, and "[o]nce the difference between two sound levels is 10 dB or more the total sound level is essentially the sound level of the louder source." The increase the policy measures is the difference between the level before the plant operates and the level with the plant operating — the latter being the combination of the plant and the background that continues alongside it.

56.2. That scale measures an increase, and an increase is measured from ambient. The Appellant asserts an ambient at his residence of "less than 40 decibels" (¶ 15, p. 4). He offers no measurement, no instrument, no date, no duration and no metric. He criticizes the Determination for resting on conclusions rather than data while resting his own noise case on an unmeasured number — and the same DEC policy directs that where existing information does not accurately reflect ambient sound levels, field measurements should be undertaken.

56.3. The consequence is that no increase can be computed on this record, and Appellee will not pretend otherwise. Taking the mid-range propagation figure of approximately 49 dBA: against the Appellant's asserted 40 dBA the increase would be roughly 9 dBA; against the 45 dBA that the same DEC policy assigns, for estimation purposes, to "a quiet seemingly serene setting such as rural farmland," it would be roughly 5 dBA. That four-decibel swing is produced entirely by a figure the Appellant never measured, and which he sets below the State's own estimate for the very setting he describes. A party seeking reversal on noise grounds bears the burden of supplying that measurement.

56.4. Two further points bound the significance of the exercise. First, the DEC policy is guidance offered to this Board as an aid in giving content to the word "objectionable"; it is not incorporated into § 100-8, and its 6 dBA screening figure is a trigger for closer analysis rather than a finding of adverse impact — the policy expressly allows that greater increases "might be acceptable." Second, the operative test under § 100-8 is objectionability at and beyond the property boundary, judged by a reasonable person. On every figure above, the level at a residence two-thirds of a mile away remains at least twelve decibels below the one absolute limit the policy sets.

57. Appeal ¶ 56 rests on a geographic premise that the Appellant contradicts elsewhere. Paragraph 16, p. 7 states that "[t]he east boundary of the property fronts onto Highway 9W" and that "[t]he west boundary of the site backs onto environmentally protected lands owned and maintained by Scenic Hudson." Paragraph 56, p. 19 states that "[t]he east boundary of the proposed Town of Lloyd plant site abuts an environmental conservation site owned and operated by Scenic Hudson." Both statements cannot be correct. The applicant's Traffic Assessment locates the project "on the east side of US Route 9W" (§ 1.0 and Figure 1), which indicates that ¶ 16 is the erroneous statement and that the site fronts the highway on its western boundary. Appellee notes the discrepancy so that the Board may rely on the Conceptual Site and Grading Plan (Tab 8) rather than on either characterization in the Appeal.

58. The substantive defects in ¶ 56 are independent of the site's orientation. The Appellant asserts no interest in and no use of the Scenic Hudson parcel, alleges no receptor upon it, and has no standing to assert injury to a third party's undeveloped land. And for the reasons given at ¶¶ 55.7 and 55.8 above, neither of the two figures the paragraph compares — the 67.8 dBA measured ambient at a Saratoga County highway property, and the 45 dBA drawn from a generic reference chart — describes any sound level at any location in the Town of Lloyd.

59. It bears noting that the Appellant, who bears the burden on this appeal, has offered no acoustical measurement, model, or study of his own for this site. The only acoustical material in the record is the Clifton Park study he submits — which, on its own figures, does not support the conclusion he draws from it.

C. Dust.

60. The Determination did not rest on a bare conclusion as to dust. It identified two specific transfer points at which fugitive dust can escape containment — cement transfer into the batching plant, and discharge into the truck — and required engineered controls at each: depressurization with collection bags at the first, and a chute sealed against the truck intake at the second. Those are the two points at which dust control at a batch plant is achieved, and the Determination conditions the classification on their installation and operation.

61. The Appellant's dust showing consists of a single study of the Buzzard Point neighborhood of Washington, D.C. By the Appellant's own description, that study reports two findings that do not assist the Appellant:

61.1. PM-10 exceeded EPA action-level standards "for only two of ten days" (¶ 50, pp. 16–17); and

61.2. "[a] major contributing source of particulate emissions was **not** the operation of the batch plant themselves, but the operation of diesel engines on site… and from cement delivery trucks" (¶ 50, p. 17), a conclusion the Appellant repeats at ¶ 51.

62. The Appellant thus attributes the principal particulate contribution to diesel engines — a source common to any facility receiving and dispatching trucks, including warehouses, distribution centers, contractors' yards, and the several categories the "Industrial Light" definition expressly enumerates. If diesel truck emissions disqualified a use under § 100-8, the definition would exclude most of the uses the Town Board listed in 2014.

63. Buzzard Point is a dense urban waterfront district hosting two concrete plants alongside major stadium construction and heavy arterial traffic. Attributing the

reported asthma prevalence to batch plant operations across that confounding is an ecological inference the study, as the Appellant describes it, does not support. No monitoring data from the Town of Lloyd, or from any comparable rural highway-frontage site, is offered.

64. As to the scale of the diesel activity at issue, the applicant's Traffic Assessment (Appeal Tab 16, Table 1) projects a maximum of **88 truck trips per day** at maximum operations — 44 entering and 44 departing, inclusive of mixers, cement tankers and aggregate deliveries — during a season running from March 15 to December 15. That figure is approximately 22 percent below the applicant's existing Wilton facility, from which it was derived by direct count.

65. Finally, the assertion at Appeal ¶ 14, p. 4 — that PM-10 emissions pose "an measurable asthma risk at distances greater than 700 meters (2,300) from the source" — is unbounded. A risk statement with a stated lower bound and no upper bound establishes no risk at any particular distance. That assertion is also sourced not to the article itself but to a staff comment in another municipality's project file characterizing the article (Tab 5, at 18), and it is in tension with the Appellant's own later description of the same article at ¶¶ 50–51. Appeal ¶ 17, p. 5 further adds PM-2.5 to the claimed injury without any supporting citation.

D. Smoke, odor, glare and vibration are unrebutted.

66. The Determination made findings on all six enumerated factors. The Appellant offers no evidence as to smoke, no evidence as to glare, and no evidence as to vibration. Although the heading of Point Three includes "odor," and although the Appellant captions ¶¶ 50–51 "Dust and odor," the text beneath contains no odor analysis of any kind. Four of the six statutory factors therefore stand unchallenged on this record.

E. Matters outside the definition, addressed *arguendo*.

67. Because the Board may wish to understand the reliability of the Appellant's technical showing as a whole, Appellee addresses the remaining assertions notwithstanding that they lie outside § 100-8. Full arithmetic is set out in **Appendix A**.

1. Water withdrawal (Appeal ¶¶ 12, 48).

68. The foundational conversion in ¶ 48 is incorrect. One acre-foot is 43,560 **cubic feet**, which is **325,851 gallons**. At 10,000 gallons per day, an acre-foot is withdrawn every **32.6 days**, not every 4.3 days as the Appellant states. The figure of 4.3 days results from treating 43,560 — the number of *cubic feet* in an acre-foot — as though it were a number of gallons.

69. The error propagates through the entire section. Over the 2,352 days the Appellant posits, total withdrawal is 23,520,000 gallons, which is **72.2 acre-feet**, not the 540 acre-feet stated. (Dividing 23,520,000 by 43,560 yields 539.9 — the figure the Appeal rounds to 540 — confirming the mechanism of the error.) Every drawdown conclusion in ¶¶ 12 and 48 — the one-to-ten-foot impact at 500 feet, the 5,000-foot radius, and the standing theory built upon them — is overstated by a factor of approximately **7.5**.

70. The section has further difficulties independent of the arithmetic. Kunkel, *Time, Distance and Drawdown Relationships in a Pumped Ground-Water Basin* (USGS Circular 433, 1960) is a generalized methods publication, not a site hydrogeologic study. The Appellant supplies no transmissivity value, no storativity value, no well log, no pump test, and no aquifer characterization for this site. Paragraph 48 concedes that the results depend "upon the characteristics of the aquifer" — which is an acknowledgment that no conclusion can be drawn from what has been submitted. The assertion that the Appellant's well, 3,430 feet distant, draws from the same aquifer is likewise unsupported by any hydrogeologic evidence.

71. The section is also internally inconsistent: ¶ 12 uses 250 operating days per year while ¶ 48 uses 260; and ¶ 12 asserts "a measurable drawdown impact on the aquifer at a radius of 5,000 feet," which ¶ 48 downgrades to "[t]he potential for lesser drawdown impacts… up to 5,000 feet."

72. Neither operating-day figure is supported by the record. The applicant's Traffic Assessment — which the Appellant submits as Tab 16 — states that the facility's season runs from **March 15 to December 15**. That is 276 calendar days, containing

197 weekdays before holidays. The Appellant expressly models "operation of the well only during weekdays" (¶ 48) at 250 and 260 days per year, overstating the available weekdays by approximately 27 to 32 percent. (The facility also operates a partial day on Saturdays, which the Appellant's model excludes.)

73. Correcting the acre-foot conversion and the operating season together, the cumulative withdrawal the Appellant places at 540 acre-feet over 9.04 years is approximately 54.7 acre-feet — an overstatement of roughly **tenfold**.

74. Finally, 10,000 gallons per day is an order of magnitude below the 100,000 gallons-per-day threshold at which a water withdrawal permit is required under ECL Article 15, Title 15 and 6 NYCRR Part 601. The Appellant's own analogy — that the withdrawal equals "a 40-unit apartment building or 31 single-family residences" (¶ 48, p. 16) — concedes that it falls within the range of ordinary residential development that occurs as of right and that no one contends is disqualifying.

75. One further matter should be brought to the Board's attention, offered as an independent ground and **without conceding** that water supply falls within the § 100-8 definition at all. The withdrawal on which this entire section of the Appeal depends is no longer necessarily part of the proposal. In the site plan review presently pending before the Planning Board, the applicant represented that he had contacted the Town's Water & Sewer Department and that the Department was exploring connecting the facility to the **municipal water supply**, as an alternative to drawing upon the on-site well identified in the Full Environmental Assessment Form. Town of Lloyd Planning Board, Regular Meeting Minutes (June 25, 2026).

76. If that representation is carried into the approved site plan, the premise of Appeal ¶¶ 12, 48 and 49 — a 10,000 gallon-per-day withdrawal from an aquifer shared with the Appellant's residence — no longer describes the project, and the drawdown analysis constructed upon it, however computed, has nothing left to operate on.

77. The change also illustrates the point made in Part II above. The Appellant's complaint is that the facility's impacts were resolved administratively, in a single document, without scrutiny. In fact the water supply question was raised and

addressed in the site plan process — the forum to which the Zoning Code assigns it — in the ordinary course. Nor does the change disturb the Determination or trigger its re-review clause: it touches none of the six enumerated impacts, and it reduces rather than increases the facility's effect upon surrounding properties.

2. Wash water and wastewater (Appeal ¶¶ 52–53).

78. The mix-water calculation does not reconcile. Paragraph 52 states that 300 cubic yards per day at 16 percent water requires "about 9,000 pounds of water or 1,125 gallons." That works out to 30 pounds of water per cubic yard. Concrete conventionally contains on the order of **250 to 300 pounds of mix water per cubic yard.** Applying the Appellant's own 16 percent figure as a volumetric fraction of a cubic yard (27 cubic feet) gives 4.32 cubic feet, or approximately **32 gallons per cubic yard** — roughly **9,700 gallons per day** at 300 cubic yards, not 1,125.

79. Corrected, the Appellant's own premises collide. If 300 cubic yards per day were the daily average, mix water alone would consume essentially the entire 10,000 gallons per day the Appellant attributes to the facility, leaving nothing for washing. It follows that 300 cubic yards per day is a **targeted peak**, not a daily average — as the underlying source describes it. Annualizing peak production across 250 operating days therefore invalidates every volume derived in ¶¶ 52–53.

80. The stated surplus does not follow from the Appellant's own inputs either. A surplus of 6 gallons per cubic yard (25 generated less 19 absorbable), at 300 cubic yards per day over 250 days, is approximately **450,000 gallons** per year — not the "between 200,000 and 360,000 gallons" the Appellant states. Both the stated range and that figure assume peak production on every operating day, across a season the applicant's own engineers describe as running only from March 15 to December 15. The record establishes no average daily production, and without it no annual volume can be computed at all.

81. The ASTM C-94 derivation converts a **solids** limit (approximately 15 pounds per cubic yard) into a **water volume** limit without stating the solids concentration

assumption required to make that conversion valid. Without that assumption the 19-gallon figure cannot be checked.

82. The characterization of wash water as "a hazardous waste" is a legal conclusion offered without support. A pH of 11.5 is alkaline; hazardous waste classification is governed by 6 NYCRR Part 371 and is not established by pH alone. Concrete process water is routinely and lawfully managed as industrial process water under SPDES and Multi-Sector General Permit coverage, with pH adjustment, settling, and reclamation of solids. How this facility will do so is a site plan, SEQRA and SPDES question, and it will be answered in those forums.

3. Diesel fuel storage (Appeal ¶ 54).

83. Fuel storage is not among the six enumerated impacts. Bulk petroleum storage is separately regulated under 6 NYCRR Parts 613 and 614, and containment, secondary containment and spill response are standard subjects of site plan review. The observation that these details are not yet in the record at the classification stage describes the stage of the application; it is not evidence that the use is misclassified.

84. The Town is not without its own mechanism, either. Section 42-10(A)(1) requires an operating permit for "[m]anufacturing, storing or handling hazardous materials in quantities exceeding those listed in" the referenced tables of the Fire Code of New York State, and for "[h]azardous processes and activities." Section 42-10(B) authorizes the Code Enforcement Officer to require such tests or reports as he deems necessary to verify conformance, **at the applicant's expense**; § 42-10(C) requires an inspection before issuance; and § 42-10(F) requires revocation or suspension where the activity does not comply. Whether the proposed diesel storage crosses the Fire Code thresholds is a question for that process. It is not a question the § 100-8 definition asks.

4. Highway traffic (Appeal ¶¶ 57–61).

85. Traffic is not among the six impacts enumerated in § 100-8, and its omission was deliberate: the Comprehensive Plan passage the Appellant quotes twice describes light industry as not generating "excessive noise, **truck traffic**, fumes or other

nuisances," and the Town Board enacted a narrower list that drops truck traffic. Appellee nonetheless addresses the traffic argument in full, because it is the Appellant's most extended quantitative showing and because highway safety is a matter on which the Board is entitled to a complete record. Every figure that follows is drawn from the Appellant's own Tab 16 and can be verified with a calculator.

(a) The assessment, and what it actually did.

86. Tab 16 is the *Traffic Assessment, Highland Batch Plant, US Route 9W, Town of Lloyd*, prepared by Creighton Manning Engineering & Surveying, PLLC (CM Project No. R251377.00, October 21, 2025). Automatic traffic recorder data was collected on US Route 9W near both turnarounds from September 6 through September 18, 2025. The gap analysis in § 4.0 uses the data for Wednesday, September 10, 2025. The trip-generation rates were derived from a driveway count at the applicant's existing Wilton plant on August 19, 2025.

87. The assessment did not estimate gaps from a statistical distribution. It **measured** them. Section 4.0 compares the gaps actually present in the traffic stream, hour by hour from 5:00 a.m. to 6:00 p.m., against the critical gaps required by the Highway Capacity Manual, and tabulates the results in Tables 4 and 5. Appeal ¶¶ 58 and 60 reproduce the required-gap figures from that analysis and omit its findings entirely.

(b) The volume of traffic at issue.

88. Table 1 projects a maximum of **108 daily trips** at maximum operations: 54 entering and 54 departing, comprising 88 truck trips and 20 passenger-vehicle trips. That is approximately 22 percent fewer than the 138 daily trips counted at the applicant's existing Wilton plant (108 ÷ 138 = 0.78). Table 2 projects **18 trips in the AM peak hour** (10 entering, 8 departing) and **16 trips in the PM peak hour** (7 entering, 9 departing).

89. The assessment distributes site traffic approximately 50 percent to and from the north and 50 percent to and from the south. The maximum increase on any single approach to any nearby intersection is therefore about **five new vehicle trips** in the peak hour — one order of magnitude below the 50-vehicle screening threshold in the

Institute of Transportation Engineers' *Multimodal Transportation Impact Analysis for Site Development* (2023), below which detailed intersection analysis is not indicated.

90. For scale: US Route 9W carries approximately 6,280 vehicles per day northbound and 6,245 southbound on a typical weekday. The facility's 108 daily trips are spread across both directions and a thirteen-hour operating day, within a season the applicant's engineers describe as running from March 15 to December 15.

(c) The site's access geometry.

91. The site lies on the **east side** of US Route 9W, adjacent to the northbound travel lanes. The highway carries two 11-foot travel lanes in each direction, separated by an **eight-foot median with a guiderail.** Left turns into and out of the property are physically precluded by that median. The parcel's two curb cuts already exist and presently serve Aldo's Automotive Precision Machine Ltd. Two existing NYSDOT turnarounds lie 2,850 feet north and 750 feet south of the site.

92. Because of that geometry, **every vehicle that visits the site uses a turnaround, and uses one exactly once.** A vehicle bound south exits by a right turn onto the northbound lanes, travels 2,850 feet to the Northern Turnaround and reverses direction there; on its return it approaches from the south, already northbound, and enters by a direct right turn. A vehicle bound north exits by a direct right turn; on its return it is in the southbound lanes, passes the site, uses the Southern Turnaround 750 feet south to reverse direction, and enters by a right turn.

93. Neither pattern permits a vehicle to avoid a turnaround, and neither requires two. The directional distribution is therefore irrelevant to the count, and the unit of measure is the **visit**, not the one-way trip. The assessment's 108 daily trips are 54 round trips, producing **54 turnaround uses per day**, of which **44** are trucks (88 truck trips ÷ 2).

(d) Which movements require a gap in traffic, and which are crossings.

94. Appeal ¶ 57 describes "three conflicting (crossing-path) turning movements" and lists, for an entry: (1) a left turn to enter the turnaround; (2) a right turn to exit the

turnaround into the traffic stream; and (3) a right turn out of the traffic stream into the site's driveway. Those three movements are not equivalent, and only one of them is a crossing.

95. **Movement (1) is a crossing.** A vehicle leaves its travel lane and crosses the opposing stream to enter the turnaround. It requires an accepted gap — 4.1 seconds for a passenger car, 6.1 seconds for a truck.

96. **Movement (2) is a merge.** A vehicle stopped in the turnaround enters the adjacent stream travelling in the same direction. It requires an accepted gap — 6.9 seconds for a passenger car, 8.9 seconds for a truck. It crosses nothing.

97. **Movement (3) is a diverge.** A vehicle already travelling in the northbound lane decelerates and turns right into the driveway. It yields to no stream and **requires no gap at all.** The Appeal's compound calculation nonetheless assigns it a gap probability.

98. Counting a full round trip rather than the entry alone, each visit involves three gap-acceptance movements — the right turn out of the driveway, the left turn into a turnaround, and the right turn out of the turnaround — but still only **one crossing movement**. Characterizing all three as crossing-path conflicts overstates the crossing exposure threefold.

(e) The gaps the assessment measured.

99. Table 4 tabulates, hour by hour, the number of vehicles the available gaps could accommodate turning **left from US Route 9W into** each turnaround. Table 5 does the same for vehicles turning **right from** each turnaround onto US Route 9W. Taking the worst hour of the day for each movement at either turnaround, the measured gaps could accommodate **659 passenger cars or 383 trucks** turning left in, and **343 passenger cars or 215 trucks** turning right out.

100. Against those capacities, the assessment projects a demand of **at most five vehicles** in each movement during the peak periods evaluated. The ratios of measured

capacity to projected demand are therefore 659 ÷ 5 = **132** and 383 ÷ 5 = **77** for the left-turn entry, and 343 ÷ 5 = **69** and 215 ÷ 5 = **43** for the right-turn exit.

101. Stated another way: the **entire day's** 44 truck turnaround uses amount to 44 ÷ 215 ≈ **20 percent** of what the single busiest hour can accommodate for the more constrained of the two movements. The engineers concluded that adequate gaps exist "for all conditions, while providing desirable operating conditions," and recommended no mitigation at either turnaround.

(f) The probability calculation in Appeal ¶ 60.

102. The calculation contains five independent defects.

103. *First, the model does not apply at this location.* The negative exponential headway model — P(gap ≥ *t*) = e^(−λt) — derives from a Poisson arrival process and is valid only where arrivals on the major street are random and the flow uninterrupted. US Route 9W is signalized at Red Top Road and North Riverside Road, which the assessment itself places approximately 0.55 miles — about **2,900 feet** — south of the site's curb cuts. Northbound traffic passing the site and both turnarounds has been released from that signal and arrives in **platoons**: closely spaced within a platoon, separated by extended gaps between platoons. Arrivals are not random and headways are not exponentially distributed. The Highway Capacity Manual provides a separate procedure for unsignalized intersections lying within the influence of an upstream signal for precisely this reason.

104. *Second, the arithmetic does not verify.* Taking the Appellant's own stated volume of 649 vehicles per hour: λ = 649 ÷ 3,600 = 0.1803 vehicles per second. Then P(gap ≥ 6.1 s) = e^(−0.1803 × 6.1) = e^(−1.100) = **0.333**, not the 0.45 stated; and P(gap ≥ 8.9 s) = e^(−0.1803 × 8.9) = e^(−1.604) = **0.201**, not the 0.37 stated.

105. *Third, the two stated probabilities are inconsistent with each other.* Solving each for the volume it implies: 0.45 at 6.1 seconds requires λ = −ln(0.45) ÷ 6.1 = 0.1309 per second, or **471 vehicles per hour**; 0.37 at 8.9 seconds requires λ = −ln(0.37) ÷ 8.9 = 0.1117 per second, or **402 vehicles per hour**. No single traffic volume — including the 649 the Appeal states — produces both figures.

106. *Fourth, the calculation assigns a gap probability to a movement that requires no gap.* The third factor in ".45 × .37 × .37" corresponds to the right turn from the through lane into the site driveway, which yields to no conflicting stream at all.

107. *Fifth, and most fundamentally, the method is inapplicable.* Multiplying gap probabilities treats three **sequential** movements as though they had to occur in the same instant. They need not. A driver waits for a gap, executes the movement, travels to the next decision point, and waits again. The compound probability of simultaneity has no application here. The correct measure of the burden described is **expected delay**, computed by the standard unsignalized-intersection methodology of the Highway Capacity Manual — which is what the assessment's gap study performs.

108. The figure does appear in the assessment's underlying data, though not in the tables or analysis the Appeal purports to summarize. Attachment B's continuous recorder log records a single reading of 649 vehicles in the 4:00–5:00 p.m. hour, northbound, at the station nearest the site, on Friday, September 5, 2025 — the first hour for which that recorder produced any reading at all.

109. That single hour does not represent the roadway's actual operating condition, and the same recorder log establishes as much on its own terms. At the identical station and hour, the eight weekday readings taken once the counter had been running continuously were 597, 580, 574, 579, 593, 580, 543, and 604 vehicles — a range of 543 to 604 and a mean of approximately 582, some 10 to 20 percent below the 649 the Appeal treats as the operative volume. The two days immediately following the 649 reading — Saturday, September 6, and Sunday, September 7 — recorded only 346 and 319 vehicles in that same hour. Whatever produced the single spike, the sustained weekday volume the fourteen-day count actually supports is approximately 582 vehicles per hour. That correction changes no other part of the analysis above: at 582 vehicles per hour the model described in ¶¶ 103–107 remains inapplicable for the same reason, and no volume drawn from the record reconciles the Appeal's two stated probabilities.

110. None of this modeling was necessary in the first instance. The assessment measured the gaps, at both turnarounds, across a two-week recorder period, at locations lying 2,154 feet and 5,754 feet north of the signalized intersection — and therefore under the platooned conditions that actually exist. An empirical count requires no distributional assumption and is not vulnerable to the choice of one.

(g) The "88 times per day" figure.

111. Appeal ¶ 60 concludes that interference "will occur 88 times per day." The figure is unsourced, but it is precisely the total daily truck trips in Table 1 — 60 mixer trips plus 6 cement delivery trips plus 22 aggregate delivery trips = 88 — which suggests every truck trip in both directions has been treated as a separate turnaround maneuver.

112. It cannot be. Those 88 truck trips are 44 entering and 44 departing: **44 round trips, and therefore 44 turnaround uses.** The figure overstates the turnaround maneuvers by a factor of two.

113. The concluding sentence is also ambiguous. Having computed 0.062 as the probability that a truck completes all movements without interference, the Appeal states: "This will occur 88 times per day." If "this" refers to the interference-free maneuver, the sentence implies $88 \div 0.062 \approx$ **1,419** maneuvers each day — more than thirteen times the 108 total daily trips the assessment projects. If "this" refers instead to the maneuver itself, 88 is double the 44 the record supports. The figure does not reconcile under either reading.

(h) The claim that the impact is "triple."

114. Appeal ¶ 59 asserts that "the traffic impact will be triple that of a facility with a simple right-and-left in-and-out entry with a left-turn entry pocket on the public roadway." There are three difficulties with that comparison.

115. *The comparison facility cannot be built here.* Left turns into and out of the site are precluded by an eight-foot raised median with a guiderail on a State arterial. A median break would require NYSDOT approval, which the Determination neither

grants nor addresses. The Appeal measures the proposal against a configuration that cannot exist at this location.

116. *Three movements are not triple the impact.* Traffic impact is measured in delay and in conflict points, not in the number of turns a vehicle makes. Of the three movements, one requires no gap at all, and only one is a crossing.

117. *The comparison does not favor the counterfactual in any event.* On an undivided roadway with a left-turn pocket, a vehicle bound south would leave the site by turning left out of the driveway — crossing the northbound stream and merging into the southbound stream in a single movement, which requires an adequate gap in **both** directions at once. A vehicle returning from the north would turn left across the northbound stream to enter. Either way there is one crossing movement per visit, and it occurs **at the site driveway**. Under the existing configuration there is likewise one crossing movement per visit, but it occurs at a purpose-built, stop-controlled turnaround, and the maneuver is decomposed into two separate movements — each requiring a gap in a single stream — with a protected storage area between them. What the turnaround arrangement adds is merge movements, not crossings.

(i) Sight distance and vehicle tracking are unaddressed.

118. The two measures by which highway access safety is actually evaluated go unmentioned in the Appeal.

119. *Sight distance* (§ 3.0, Table 3). Available intersection sight distance at both site driveways exceeds **1,200 feet**, against an AASHTO and NYSDOT recommendation of 1,005 feet for the largest combination truck — a margin of roughly 19 percent (1,200 ÷ 1,005 = 1.19). Available stopping sight distance likewise exceeds 1,200 feet against a recommendation of 645 feet, a margin of roughly 86 percent. Those evaluations were performed at design speeds of 65 mph northbound and 60 mph southbound — the **measured 85th percentile speeds**, which exceed the 55 mph posted limit. The consultant tested against observed operating conditions rather than the more favorable posted speed.

120. *Vehicle tracking* (§ 5.0). An Auto-Turn assessment was performed for the worst-case design vehicles — 60-foot cement tractor-trailers, 50-foot aggregate units, 33-foot mixers and 30-foot dump trucks — at both turnarounds. It establishes that each can complete the left turn into the turnaround and the right turn back onto US Route 9W. The engineers state that mitigation is not recommended at these intersections.

(j) Appeal ¶ 61: off-site movements and "public nuisance."

121. Paragraph 61 argues that because two of the three movements occur at the turnarounds — 2,850 feet north and 750 feet south — "the majority of the adverse traffic hazards and impacts are generated at locations distant for the proposed project," and that this aggravates matters under the "beyond the property boundaries" language of § 100-8.

122. That clause will not bear the weight placed on it. It modifies the emission of the six enumerated impacts — smoke, noise, dust, odor, glare and vibration. It does not convert every vehicle movement on a public highway into an emission from the property.

123. The argument also proves far too much. If a vehicle movement occurring beyond the property line disqualified a use, then every use generating a single trip would fail the definition, and **no use in the Town of Lloyd could ever qualify as Light Industry** — including the research facilities, professional offices and small manufacturing that the 2005 Comprehensive Plan offers as its examples.

124. Jurisdiction lies elsewhere in any event. US Route 9W is a **State** highway under the jurisdiction of the New York State Department of Transportation; although it lies on the National Highway System, it is not federally maintained and is not the "federal highway" of Appeal ¶ 57. The turnarounds are existing NYSDOT facilities. Access, turning movements, sight lines and the adequacy of those turnarounds fall within NYSDOT's highway work permit process, which is separate from and unaffected by the Determination.

125. Finally, the characterization of these movements as a "public nuisance" is a legal conclusion offered without support. A public nuisance is an unreasonable

interference with a right common to the general public, and a private party asserting one must show injury different in kind from that suffered by the public at large. Turning movements made lawfully on a State highway, at volumes an order of magnitude below the threshold at which detailed intersection analysis is even indicated, using facilities the State constructed for that purpose, do not answer that description.

F. The Town of Clifton Park materials (Appeal ¶¶ 62–65).

126. The Clifton Park comparison does not transfer. It concerns a different municipality, a different zoning code, a different site (19.4 acres versus 4.82 acres), a different highway, and a different stage of review. The operative Clifton Park language quoted at Appeal ¶ 64, p. 22 conditions such uses on the absence of noxious noise or odor "outside the district" — a different standard from Lloyd's property-boundary test, and one the Appellant elsewhere criticizes Lloyd for supposedly applying.

127. The NYSDOT letter (Tab 18) concerns US Route 9 in Saratoga County and addresses alignment with the Town of Clifton Park's comprehensive plan. It makes no finding about the Town of Lloyd, about Route 9W, or about the § 100-8 definition.

128. The substance of Appeal ¶ 63 is that Clifton Park's site plan review has surfaced questions — fuel containment, stormwater and MSGP coverage, air permitting applicability, wetlands — that Lloyd has not yet developed. That is correct, and it is the expected state of affairs: Lloyd's site plan review and SEQRA process have not yet occurred. What another town's site plan review surfaced is not evidence that Lloyd's use classification is wrong. Reduced to its essentials, ¶ 63 observes that the Town has not yet done what the Code does not require it to have done at this stage.

129. The underlying document (Tab 17) is a submission prepared by a residents' opposition group in another municipality, not an independent technical review. Its characterization of "twelve-plus months of review" also does not reconcile with the Appellant's own ¶ 62, which dates the Clifton Park application to August 2025 and the report to May 8, 2026 — an interval of approximately nine months.

VIII. CLARIFICATION OFFERED ON THE RECORD

130. Appeal ¶ 44, p. 15 observes that the Determination does not define "objectionable." Appellee does not regard that as a defect requiring reversal — the Determination applies the reasonable person standard expressly, and § 100-8 supplies the six factors and the measurement line — but welcomes the opportunity to state the standard applied and invites the Board to adopt it in its decision:

130.1. (a) the reasonable person standard, applied to conditions at and beyond the property boundary, not at the plant;

130.2. (b) informed, where such guidance exists, by recognized State and federal reference points — NYSDEC program policy DEP-00-1 for noise; 6 NYCRR Parts 200, 201, 211 and 212 and NYSDEC DAR-1 for air contaminants; and the National Ambient Air Quality Standards for particulate matter; and

130.3. (c) applied to the facility as designed, constructed and conditioned — with the dust collection and depressurization systems, the sealed truck-loading chute, and the enclosure of mechanical equipment in place — rather than to a generic, unmitigated facility.

131. Appellee notes finally that the state of the record is what Chapter 42 contemplates at this stage. Sections 42-3(A)(2) and 42-4(B) direct the Building Department Director to determine whether a proposal complies with the Zoning Code. Neither converts that determination into an evidentiary hearing, and neither imposes on the Department any obligation to commission studies. On the contrary, § 42-4(D) specifies what an application for zoning verification must contain, and the list is documentary rather than technical: a description of the approvals sought, a narrative description of the proposed use, a plot plan, the address and tax map identifiers, and prior variance and Planning Board history. No noise study, air quality analysis, traffic count, or hydrogeologic report appears among the required submissions. Section 42-4(D)(7) permits the Director to request '[s]uch other information as [he] may deem reasonably necessary'; it does not oblige him to commission a technical record before he may answer the question the Code puts to him. Technical

submissions — acoustical modeling, air quality analysis, stormwater design, water supply and wastewater engineering — are compelled from the applicant during site plan review and SEQRA, where the Planning Board may require them, condition approval upon them, or deny the application for want of them.

132. The burden on this appeal, moreover, rests with the Appellant. It is his to show that the Determination lacks a rational basis; it is not the Department's to produce a body of technical evidence to sustain a classification the Zoning Code and the Town Board's own enactments already support.

IX. CONCLUSION

133. The question before the Board is whether the proposed use, as represented and as conditioned, falls within § 100-8. Wet concrete is a product. Batching its constituent materials is manufacture and processing. And on this record, the six enumerated impacts — smoke, noise, dust, odor, glare and vibration — are not shown to reach objectionable levels beyond the property boundaries, subject to the conditions the Determination imposes and to whatever further conditions site plan review and SEQRA may add.

134. Three enactments of the Town Board point the same way: the Use Table, which lists Light Industry as a permitted use in the LI district; Local Law 4-2014, which defines "Industrial Light" to include manufacture from previously prepared materials "such as… cement"; and § 100-38(C)(3), which places Cement and Concrete Manufacturing within the light industrial family while excluding it from one specifically identified pedestrian district. The Appellant engages the third, concedes its taxonomic effect, and does not mention the second at all.

135. Nothing in the Appeal identifies an error of law. Point One rests on a special use permit requirement the Zoning Code does not contain and asks for relief that would not follow if it did. Point Two asks this Board to legislate a district-wide prohibition the Town Board declined to enact, and concedes the Determination's holding at ¶ 39. Point Three is addressed largely to subjects the definition does not include, and its quantitative showing on the subjects that remain does not survive verification.

136. For the foregoing reasons, Appellee respectfully requests that the Board AFFIRM the Determination of July 8, 2026, and hold that a concrete batch plant, constructed and operated as represented and as conditioned, is a Light Industry use within the meaning of § 100-8 and an appropriate use within the Town's LI (Light Industrial) zoning district, subject to site plan review and environmental review.

Respectfully submitted,

David Barton
Building, Planning and Zoning Officer
Town of Lloyd, New York
Dated: Aug 3, 2026

APPENDIX A

VERIFICATION OF THE APPELLANT'S QUANTITATIVE ASSERTIONS

Each calculation below is reproduced from the Appellant's own stated inputs, or from the exhibits the Appellant himself submits — principally Tab 16, the Creighton Manning Traffic Assessment of October 21, 2025. No assumption is introduced that the Appellant or his own exhibits do not supply. Every figure can be independently verified with a calculator, and Appellee invites the Board and the Appellant to do so.

Appellant assertion	Figure as stated	Figure as verified	Basis of the discrepancy
Days to withdraw one acre-foot at 10,000 gal/day (¶ 48)	4.3 days	32.6 days	One acre-foot = 43,560 cubic feet = 325,851 gallons. 325,851 ÷ 10,000 = 32.6. The stated figure results from 43,560 ÷ 10,000 = 4.36, i.e., treating cubic feet as gallons.
Total withdrawal over 2,352 days (¶ 48)	540 acre-feet	72.2 acre-feet	2,352 × 10,000 = 23,520,000 gal; ÷ 325,851 = 72.2 AF. Note 23,520,000 ÷ 43,560 = 539.9, confirming the source of the error. Overstated ≈ 7.5×.
Operating weekdays per year (¶¶ 12, 48)	250 and 260	197 before holidays	Tab 16 states a March 15 – December 15 season: 276 calendar days containing 197 weekdays. Overstated by 27–32%.
Cumulative withdrawal over 9.04 years, both corrections applied	540 acre-feet	≈ 54.7 acre-feet	9.04 yr × 197 weekdays = 1,781 days × 10,000 gal = 17,810,000 gal ÷ 325,851 = 54.7 AF. Overstated ≈ 10×.
Mix water required at 300 cu. yd./day, 16% water (¶ 52)	9,000 lb ≈ 1,125 gal/day	≈ 9,700 gal/day	16% of 27 cu. ft. = 4.32 cu. ft. ≈ 32.3 gal per cu. yd.; × 300 = 9,695 gal. The stated figure implies 30 lb of water per cu. yd.; concrete conventionally contains 250–300 lb per cu. yd.
Annual surplus wash water (¶ 53)	200,000 – 360,000 gal/yr	≈ 450,000 gal/yr	From the Appellant's own inputs: (25 − 19) gal/cu. yd. × 300 cu. yd. × 250 days = 450,000. The stated range does not follow from the stated inputs. Both figures further assume peak production every operating day.
Probability of a 6.1-second gap at 649 veh./hr (¶ 60)	0.45	0.333	Poisson: λ = 649 ÷ 3,600 = 0.1803/sec; P(gap ≥ t) = e^(−λt) = e^(−1.100) = 0.333.

Appellant assertion	Figure as stated	Figure as verified	Basis of the discrepancy
Probability of an 8.9-second gap at 649 veh./hr (¶ 60)	0.37	0.201	e^(−0.1803 × 8.9) = e^(−1.605) = 0.201.
Applicability of the negative exponential headway model (¶ 60)	applied as though valid	governing assumption not satisfied	The model requires random, uninterrupted arrivals. US Route 9W is signalized at Red Top Rd / N. Riverside Rd, which Tab 16 places 0.55 mi (≈ 2,900 ft) south of the site. Northbound arrivals are platooned, not random.
Internal consistency of the two stated probabilities (¶ 60)	0.45 at 6.1 s and 0.37 at 8.9 s	mutually inconsistent	0.45 at 6.1 s implies λ = 0.1309/sec ≈ 471 veh/hr. 0.37 at 8.9 s implies λ = 0.1117/sec ≈ 402 veh/hr. No single volume — including the stated 649 — yields both.
Compound probability of three movements (¶ 60)	0.062	0.0135 by the Appellant's method; the method is inapplicable	Corrected inputs give 0.333 × 0.201 × 0.201 = 0.0135. But multiplying gap probabilities treats three sequential movements as simultaneous. The correct measure is expected delay (HCM unsignalized methodology), which Tab 16 § 4.0 performs.
Daily turnaround maneuvers (¶ 60)	88 per day	44 per day (54 incl. passenger vehicles)	Tab 16, Table 1: 60 mixer + 6 cement + 22 aggregate = 88 daily truck trips = 44 entering + 44 departing = 44 round trips. The median precludes left turns, so each round trip uses a turnaround exactly once — on departure if southbound, on return if northbound. Neither pattern requires two.
Turnaround capacity vs. demand, worst hour (not addressed in Appeal)	not addressed	43× to 132× margin	Tab 16, Tables 4–5 (measured gaps): left-turn entry 659 cars / 383 trucks; right-turn exit 343 cars / 215 trucks — against a projected demand of 5 vehicles each. The full day's 44 truck turnaround movements ≈ 20% of the single worst hour's truck capacity (44 ÷ 215).
Peak-hour trips on any one approach (not addressed in Appeal)	not addressed	≈ 5, vs. a 50-vehicle screening threshold	Tab 16, Table 2: 18 AM and 16 PM peak-hour trips, 50/50 directional split. Ten times below the ITE threshold for detailed intersection analysis.

Appellant assertion	Figure as stated	Figure as verified	Basis of the discrepancy
Sound level at Appellant's residence, 3,430 ft (¶¶ 15, 55)	not computed	52.6 dBA distance only; ≈ 49 dBA with atmospheric absorption	Tab 7/15 source level 89.3 dB(A) at 50 ft (confirmed by the appended octave-band sheets), less $20 \cdot \log_{10}(3{,}430 \div 50) = 36.7$ dB = 52.6 dBA; less atmospheric absorption scaled from the study's 2.1 dB at 1,907 ft ≈ 49 dBA. Ground attenuation excluded throughout, per § 2.4.4. Barrier attenuation in the study is 0.00 dB at every octave band; the 5.0 dB at R3 is vegetation from 200 ft of woods and is site-specific.
The study's own findings and conclusion (¶¶ 15, 55)	not stated in the Appeal	−0.5, −3.2 and −17.2 dBA vs. ambient; "well below the threshold for impact"	Tab 7/15, Table 3: calculated levels of 67.3 / 64.6 / 50.6 dB(A) at 567 / 568 / 1,907 ft against a measured ambient of 67.8 dB(A). Section 4.3 concludes the plant is calculated "to be less than the existing ambient sound level" and that "no further analysis is required." The Appeal reproduces the 89.3 and 50.6 figures and none of these results.

Appellee does not suggest that these errors were other than inadvertent. They are set out because the Appellant asks the Board to reverse a zoning determination on the strength of these figures, and because the Appellant's principal criticism of the Determination is that it lacks quantitative support.

Determination: Concrete Batch Plant as Light Industry Use

Date: July 8, 2026

Background

An applicant, Clemente Materials, Inc., applied to the Planning Board for a Concrete Batch Plant (CBP) located at 3260 Route 9W, Highland, NY 12528 (S.B.L. 80.3-2-8) in the Town of Lloyd. A CBP is a facility used to store materials for, mix, and deliver wet concrete to a job site. As such, the CBP has storage for various items, such as aggregate, sand, water, and cement. Discussion concerning the type of use the plant would fall under in the Zoning Code was held. The closest classification in the Use Table is Light Industry, defined in §100-8 of the Zoning Code as follows:

> *LIGHT INDUSTRY*
>
> *Manufacture, assembly, treatment, processing, or packaging of products that does not emit objectionable levels of smoke, noise, dust, odor, glare, or vibration beyond the property boundaries.*

Proposals such as that here under consideration must be reviewed against this definition using the reasonable person standard to assess what would constitute objectionable levels, as well as whether the proposed use is permitted within the zoning of the parcel under consideration.

Light Industry Manufacturing/Processing

Concrete is made by processing various raw or previously processed materials by mixing them and adding water. Concrete is a product of that processing and is customarily "batched" by truckload for delivery to a job site. Accordingly, any proposed operation must satisfy the first element of the Light Industry definition — the manufacture, assembly, treatment, processing, or packaging of a product as well as whether the operation, as proposed, would emit objectionable levels of smoke, noise, dust, odor, glare, or vibration beyond the property boundaries. Each of these factors is addressed in turn below.

Dust

Of all the items listed, cement has the most potential for the creation of adverse dust production.

The proposed use must be designed to contain, to the greatest extent possible, any dust associated with the storage, mixing, or transport of the various materials used in the creation of wet concrete. This may be achieved by creating areas of dust collection that use depressurization and dust collection bags to capture any possible dust at two points where dust could otherwise escape containment: (1) where the cement product is moved into the batching portion of the plant, and (2) where the concrete is ported into the concrete truck for transport to the job site. At this second point, the chute that delivers the concrete into the truck should be sealed against the intake of the truck, preventing dust from escaping.

Such measures would ensure against levels of objectionable dust beyond the property line.

Noise

Noise is another concern that has traditionally been associated with CBPs. At some facilities, aggregate is processed on site using rock crushing machines, which are very loud and create both noise and vibration. This will not be the case at this site.

Some noise would be expected from the use of conveyor systems, hoppers, and mixing units. A large portion of the mechanical equipment used in any proposed facility must be located inside structures, and enclosing the cement hopper, under which concrete trucks are loaded would further suppress noise emissions.

Based on these measures, no levels of objectionable noise are expected beyond the property line.

Smoke

No smoke is expected to be generated on site. No levels of objectionable smoke are expected beyond the property line.

Glare

No glare is expected to be generated on site. No levels of objectionable glare are expected beyond the property line.

Odor

No odor is expected to be generated on site. No levels of objectionable odor are expected beyond the property line.

Vibration

Vibration is possible due to various equipment on the property. Loaders are often used to move some materials into a transfer system. Vibration is also possible from the mechanical equipment associated with batching materials to create concrete loads. As noted above, this could be eliminated through the use of enclosed structures to suppress any noise or vibration emanating from the property.

Based on these measures, no levels of objectionable vibration are expected beyond the property line.

Additional Items Considered

The Zoning Code of the Town of Lloyd (Chapter 100 of the Town of Lloyd Ordinance) contains two definitions in §100-8 – Definitions which could be interpreted as applying to Light Industry uses. The primary definition is noted above but is repeated here for clarity:

LIGHT INDUSTRY

> *Manufacture, assembly, treatment, processing, or packaging of products that does not emit objectionable levels of smoke, noise, dust, odor, glare, or vibration beyond the property boundaries.*

This has been the traditional definition. Similar language existed in the Zoning Code adopted in 1974 and continued until the adoption of the Zoning Code in 2013. The 1974 Code listed concerns about smoke, dust, odor, and vibration, indicating that the Town has long anticipated potential environmental impacts in connection with Light Industry uses and has long considered impacts of this kind — if not always this exact list of factors — relevant to that classification. The Town's qualitative, impact-based approach to defining Light Industry has remained consistent since 1974, even as the specific list of factors has been refined.

A second definition reads:

> *INDUSTRIAL LIGHT*
>
> *Includes limited manufacturing, wholesaling, warehousing, research and development, and related commercial/service activities such as: beverage bottling, distribution and warehousing; contractors offices and storage buildings; including general contractors, plumbers, electricians, heating, ventilating, air-conditioning contractors, masons, painters, refrigeration contractors, roofing contractors, and other such construction occupations; distribution centers; ice production, storage, sales and distribution; laboratories for research, testing and experimental purposes; manufacture of computers, computer peripherals, electrical appliances, electronic equipment, medical instruments, and other similar products from previously manufactured components; manufacture of precision instruments and equipment, such as watches, electronics equipment, photographic equipment, optical goods and similar products; manufacturing of articles or merchandise from previously prepared or natural materials, such as cardboard, cement, cloth, cork, fiber, glass, leather, paper, plastics, wood, metals, stones and other such prepared materials; printing and publishing. [Added 10-15-2014 by L.L. No. 4-2014]*

This definition was added in 2014 in connection with an addendum to the Blue Point Overlay District. It is helpful to the understanding of Light Industry that this definition includes "...manufacturing of articles or merchandise from previously prepared...materials, such as...cement..." are among the materials contemplated for "Industrial Light" uses.

Another location in the Zoning Code that describes Light Industrial uses is §100-38 – Supplementary standards for the W-G District. Under §100-38.C, Light Industrial uses are allowed in the Walkway Gateway Zone if they follow specific standards. Section 100-38.C(3) states specifically that:

> *Light industrial uses deemed to be high-impact uses are expressly prohibited. High-impact uses include industrial or manufacturing processes engaged in the production of any products classified under the following North American Industry Classification (NAIC) 2007 system code numbers: Veneer, Plywood and Engineered Wood Product Manufacturing (3212), except for Truss Manufacturing (321214), which shall*

not be included as a high-impact use; Pulp, Paper and Paperboard Manufacturing (3221); Petroleum and Coal Manufacturing (3241); Basic Chemical Manufacturing (3251); Pesticide, Fertilizer and Other Agricultural Chemical Manufacturing (3253); Other Chemical Products and Preparation Manufacturing (3259); Clay Product and Refractory Manufacturing (3271); Glass and Glass Product Manufacturing (3272); Cement and Concrete Manufacturing (3273); Lime and Gypsum Manufacturing (3274); Other Nonmetallic Mineral Product Manufacturing (3279); Iron Steel Mills and Ferroalloy Manufacturing (3311); Steel Product Manufacturing from Purchased Steel (3312); Alumina and Aluminum Production and Processing (3313); Nonferrous Metal (Not Alum) Production and Processing (3314); Foundries (3315); Resin, Synthetic Rubber, and Artificial Synthetic Fibers and Filaments Manufacturing (3252); Rubber Products Manufacturing (3262); and Leather and Allied Product Manufacturing (3161).

This section of the Code, although it does not apply to zones besides the Walkway Gateway Zone, states specifically that "Cement and Concrete Manufacturing" is a category of light industrial use, albeit one treated as having high-impact potential.

It is helpful that the list of uses classified as light industrial in this section includes cement and concrete manufacturing, even though that use is excluded from the Walkway Gateway Zone specifically. That exclusion makes sense given that the Walkway Gateway District is designed to be a pedestrian-friendly zone with mixed uses that act as an extension of the traditional downtown area known as the Hamlet of Highland. The Walkway Gateway District imposes a categorical, mitigation-blind prohibition on certain Light Industrial uses because it is a special pedestrian/downtown extension zone, whereas the Light Industry classification under §100-8 turns solely on the actual impact of the use at the property line — impacts for which the applicant, Clemente Materials, Inc., has proposed specific mitigation measures, and which the Planning Board would further consider during its site-plan review. A concrete batch plant is accordingly a Light Industry use appropriately located within the Town's Light Industry zone.

Determination

Pursuant to §42-4.B of the Town of Lloyd Ordinance, the Code Enforcement Officer, David Barton, interprets the Use Table as follows.

Using the reasonable person standard, the Building Department finds that the proposed concrete batch plant satisfies the definition of Light Industry. Wet concrete is a product, and batching the constituent materials to create it is a form of manufacture and processing. Based on the mitigation measures described by the applicant — including dust collection and depressurization at the cement transfer point, a sealed delivery chute at the truck-loading point, and the substantial enclosure of mechanical equipment within structures — the Department further finds that a concrete batching plant designed to protect against objectionable levels of smoke, noise, dust, odor, glare, or vibration beyond the property boundaries would not violate the definition.

Section 100-38.C(3) of the Code identifies Cement and Concrete Manufacturing (NAICS 3273) as a light industrial use that is treated as high-impact, and on that basis prohibited, within the Walkway Gateway District specifically. That prohibition is a categorical, district-specific policy choice for a pedestrian-oriented zone and does not apply to or limit the Light Industry zone, where the governing test is the actual, measured impact of the use at the property line rather than its NAICS classification. The Department accordingly concludes that a concrete batch plant is an appropriate Light Industry use within the Town's Light Industry zone.

This determination is conditioned on the batch plant being constructed and operated substantially as represented to the Department, including the dust collection and depressurization systems, the sealed truck-loading chute, and the enclosure of mechanical equipment described above. Any material deviation from these representations that results in objectionable levels of smoke, noise, dust, odor, glare, or vibration beyond the property boundaries shall void this determination and require re-review by the Department.