

Michael Spector, P.E.
[REDACTED] Ridgewood Drive
Mechanicville, NY 12118
[REDACTED]

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Date: April 21, 2026

To: Town of Clifton Park Town Board

Re: Public Comment for the Official Record — Moratorium on Concrete Batch Mixing Plants

STATEMENT SUBMITTED FOR THE PUBLIC RECORD

Dear Members of the Board,

Good evening. My name is Michael Spector, and I live at [REDACTED] Ridgewood Drive.

Concrete batch plants handle cement and sand — both of which contain respirable crystalline silica, classified by the International Agency for Research on Cancer as a known human carcinogen. Prolonged inhalation causes silicosis, an irreversible and potentially fatal lung disease. OSHA has strict workplace exposure limits for this reason.

But those limits apply to workers inside the fence.

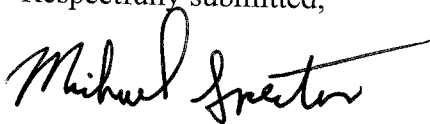
As a Professional Engineer licensed in New York, my career is built on evaluating technical risks and applying safety standards. I know firsthand that industrial hazard controls do not extend beyond property lines.

My children play outside in our Rolling Hills neighborhood with their friends nearby the proposed concrete batch plant. Our neighbors and residents of nearby developments do the same. None of them have any of the protections that workers inside the fence of the proposed concrete batch plant receive.

This moratorium gives the Town the opportunity to assess what protective standards must be in place before an operation like this could ever be permitted in a residential corridor.

I urge you to vote yes on this moratorium. Thank you.

Respectfully submitted,



Michael Spector, P.E.
Resident, Rolling Hills Estates

Town of Clifton Park Concrete Batch Plant Moratorium Public Hearing on April 21, 2026 Statement by David Miller

I stand in support of the proposed Concrete Batch Plant Moratorium for the Town of Clifton Park and with said action that the Town will not consider any application of its kind until a full review of the process and impacts are undertaken. The Town Board and staff must review whether such activities are allowed in light industrial zones of the town as well as consideration of amendments to the Zoning law to clarify the intent of the code. Furthermore, the moratorium review process should consider listing concrete batch plants as a prohibited use under our Light Industrial Code for clarity since it currently does not meet performance standards hence prohibiting it as a permitted use.

Furthermore, I enter for the record the January letter from Riverkeeper, the organization dedicated to protecting the Hudson River and its tributaries, citing all the reasons this proposal will harm the environment and residents and calls for a positive declaration of proposed project and a full EIS (environmental impact statement) if it were to go forward. I also submit the Friends of Clifton Park Open Space letter of October 2026 citing all the impacts to brook trout spawning habitats that this project would cause. These irreversible impacts will not only impact brook trout on site but brook trout throughout the Dwasskill Nature Preserve. The Dwasskill Preserve which the Town created with over \$300,000 in federal, state, and local funds in the 2000's is truly a place to be protected for all generations. And for the record, I with the Open Space Committee and Town officials negotiated these grants covering 90% of the purchase with the Pataki administration.

I also urge Town Board members to further review the record and see all the additional opposition from citizens as well as groups and boards including from the Town's Open Space Committee, the ECC, Friend of Clifton Park Open Space, Trout Unlimited, the Residents for Responsible Development and more. This Project Conceptual Plan had so many flaws that the Planning Board to date has taken no official action to review it, deeming it incomplete for consideration and furthermore petitioned NYSDEC to become lead agency under SEQRA for this project due to level of expertise and staff resources needed to formally conduct a full EIS process.

we sent out D&C response in 2016,

So, as ~~we wait for that decision~~, let us look at one of the most important reasons a moratorium is needed at this time. The Zoning determination process was never conducted properly and the project should have never been brought forward in the first place. These summary findings are after an extensive review of all documents under a full FOIL request by multiple parties. It became clear that an official zoning determination was never made or filed with Town Clerk and posted for public comment.

And when the project came to the Planning Board agenda, it was done improperly because it was initially listed in application as a Commercial Building (really?). As I stated, the Zoning officer never made an official determination in writing to Town Clerk as

required by Town law when permitted use questions arise. The only action taken in June of 2026 occurred when ZBA ruled to accept a variance on site to allow for a sixty-foot building but never discussed variances for other prohibited activities.

Since then, no other official actions have been taken, only comments at Planning Board meetings by the Zoning Officer that such an official determination could only be made when the required performance standards were met. These conditions still have not been met in the draft plans put forth by the applicant.

Hence, the application is incomplete and again a review of all documents finds that no official determination has ever been submitted to Town Clerk in writing and listed for public notice. Let us consider the magnitude of this when nowhere else in the Town has anything else like or an actual Concrete Batch Plant been ever approved in the past.

And now a formal legal challenge (an appeal) has been submitted to ZBA on the question of zoning determination. The issue has been tabled so it could become part of the review process to take place during this proposed moratorium. What more does one need to consider in order to put a pause on any further review by the ZBA or Planning Board (which has not started a formal review yet/no clock on Planning Board review initiated).

In conclusion, no further action or oversight should take place on this issue until the moratorium is in place. This will enable the Town Attorneys, Staff and Town Board to review entire situation, assess resetting the zoning determination process and make all necessary clarifications and recommendations in regard to the Town's Light Industrial Zoning Code. It is imperative for the Town Board to act and adopt this moratorium.

Let us keep the Park in Clifton Park's name and not turn it into Clifton Plant!

Thank you.

David j. Miller

Chair of Clifton Park Open Space, Trails, and Riverfront Committee



January 8, 2026

VIA EMAIL TO planning@cliftonpark.org

Honorable Rocco Ferraro, Chair,
Members of the Planning Board
Town of Clifton Park
1 Town Hall Plaza
Clifton Park, NY 12065

Re: #2025-017 1910 Route 9 Commercial Buildings Site Plan (Batch Concrete Plant)

Dear Chair Ferraro and Members of the Planning Board,

I write on behalf of Riverkeeper, Inc. (“Riverkeeper”) to urge the Clifton Park Planning Board (“the Board”) to order preparation of an Environmental Impact Statement (EIS) for the Batch Concrete Plant proposed for 1910 Route 9 (“the Project”) pursuant to the State Environmental Quality Review Act (SEQRA). An EIS is legally required because the materials submitted by the Applicant indicate that the Project may result in significant adverse environmental impacts. SEQRA therefore calls for a detailed, science-based evaluation of those impacts, examination of reasonable alternatives, and the identification of measures to avoid or mitigate environmental harm. Specifically, the Project poses potential risks to local surface water, groundwater, and wetlands, as well as the local native trout population. Additionally, the Project would conflict with the community’s investment in the nearby Dwaas Kill Nature Preserve and appears to be in violation of the Town of Clifton Park’s Zoning Code. For these reasons, the Planning Board should take a hard look at the Project’s impacts through a full EIS.

Riverkeeper is a member-supported environmental watchdog organization dedicated to protecting and restoring the Hudson River and its tributaries and safeguarding drinking water supplies. Riverkeeper pursues its mission through advocacy rooted in community partnerships, science, and law. The Dwaas Kill is a tributary of the Hudson River.

Under SEQRA, the lead agency must require an EIS unless the available information demonstrates “either that there will be no adverse environmental impacts or that the identified adverse environmental impacts will not be significant.”¹ If the lead agency determines that a proposed action may result in a significant adverse impact, the agency must issue a “Positive Declaration” and require an EIS.² New York courts have found that there is a relatively “low threshold” for triggering a Positive Declaration.³ Under SEQRA, specific factors that a lead agency should consider when determining whether an EIS is warranted include: the potential for a significant impact on ground or surface water quality or quantity,⁴ a conflict with the community’s current plans,⁵ a substantial interference with the movement of any resident fish species or other impacts on a significant habitat area,⁶ or an impact on air quality.⁷

Bonded Concrete (“the Applicant”) proposes to construct a ready-mix concrete production plant at 1910 Route 9 in Clifton Park. Concrete plants pose risks to human health and the environment, particularly through their wastewater and air emissions. The frequent cleaning of trucks and other equipment at concrete plants generates large amounts of toxic and highly alkaline wastewater. If not managed, stored, and disposed of properly, this wastewater can contaminate soil, groundwater, and surface water. Additionally, mixing activities at concrete plans generate large amounts of dust, which must be properly contained to avoid harmful air pollution.

¹ 6 NYCRR 617.7.

² 6 NYCRR 617.12.

³ See *Tehan v. Scrivani*, 97 AD2d 769 (2nd Dept 1983).

⁴ 6 NYCRR § 617.7(c)(1)(i).

⁵ *Id.* at (iv).

⁶ *Id.* at (ii).

⁷ *Id.* at (i).

A number of the characteristics of the proposed site for the Project increase the risk that a concrete plant may have significant adverse impacts on the environment. The site is on top of the Colonie Channel Aquifer, an average of approximately 200 feet from the banks of the Dwaas Kill, and near wetlands. The Dwaas Kill is already impaired by elevated levels of phosphorus, and pollution that increases the alkalinity of the water and increases the risk of elevated phosphorus levels leading to harmful algal blooms.

In addition, the Dwaas Kill and its tributaries are native Eastern Brook Trout habitat, which may be degraded by any surface water impacts of the Project. In part due to the desire to protect native trout habitat, the Town of Clifton Park recently invested \$320,000 to preserve 250 acres of land that formed the Dwaas Kill Nature Preserve just upstream from the proposed Project. The Applicant has yet to adequately study the potential impact of pollution on the native trout population, nor have they addressed how they will mitigate such impacts.

Furthermore, the Project is located in the Light Industrial Zoning District which prohibits the “manufacture of cement or abrasives.”⁸ Concrete is an abrasive product, and as such, concrete manufacturing is prohibited in the Light Industrial Zoning District. To date, the Applicant has not applied for or received a use variance. Any one of these issues alone obligates the Board to require an EIS for the Project.

⁸ Town of Clifton Park Zoning Code § 208-64(C)(3).

and wildlife propagation and survival,¹⁴ and waters classified as trout habitat have heightened water quality standards for dissolved oxygen.¹⁵ For the last two decades, the Dwaas Kill has been listed as impaired for phosphorus stemming from urban runoff and construction.¹⁶ In light of this impairment, the alkalinity of concrete washwater poses a particularly significant concern for the Dwaas Kill, as increased alkalinity makes more phosphorus bioavailable in waterways.¹⁷ This, in turn, increases the risk of algal blooms fed by the excess phosphorus, which depletes the dissolved oxygen in the water.¹⁸ The Applicant has neither identified nor addressed the additional risk of the alkalinity of the wastewater aggravating the pre-existing issues with phosphorus in the Dwaas Kill.

An additional factor to consider when determining whether an EIS is required is if there is a substantial interference with the movement of any resident fish species or other impacts on a significant habitat area.¹⁹ The Applicant must be required to prepare an EIS because of the potential impact on local fish species, specifically the native Eastern Brook Trout population. Eastern Brook Trout are native to headwater reaches of rivers and streams in eastern North America, such as the Dwaas Kill. Eastern Brook Trout require excellent water quality and undegraded habitat to thrive, and currently “less than 9% of the areas that historically supported brook trout are intact.”²⁰ Recent observations in the Dwaas Kill watershed indicate that Eastern Brook Trout populations are surviving, and spawning in the watershed. This has excited trout enthusiasts, local leaders, and the general public because it is widely accepted that a stream that supports

¹⁴ 6 NYCRR 701.8.

¹⁵ 6 NYCRR 703.2.

¹⁶ N.Y. State Department of Environmental Conservation Water Quality Assessment (N.Y. 2024) accessible at <https://dec.ny.gov/nature/waterbodies/watersheds/management/assessment>.

¹⁷ Bruno da Silva Cerozi & Kevin Fitzsimmons, *The effect of pH on phosphorus availability and speciation in an aquaponics nutrient solution*, 219 *Bioresource Technology* 778 (2016) accessible at <https://www.sciencedirect.com/science/article/abs/pii/S096085241631207X#:~:text=Phosphorus%20availability%20decreased%20with%20increase,maintained%20from%205.5%20to%207.2>.

¹⁸ B.M. Rakibul Hasan et al., *Modeling the Effects of Algal Bloom on Dissolved Oxygen in Eutrophic Water Bodies*, *Journal of Mathematics* (2023) accessible at <https://onlinelibrary.wiley.com/doi/10.1155/2023/2335570>.

¹⁹ 6 NYCRR § 617.7(c)(1)(ii).

²⁰ Eastern Brook Trout Joint Venture, *Eastern Brook Trout: Roadmap to Restoration*, accessible at https://tumadriver.org/wp-content/uploads/2025/01/RoadmapToRestoration_FINAL.pdf.

trout is a healthy stream with many environmental and community benefits.”²¹ The Applicant must prepare an EIS to provide an analysis of the potential impacts on native Eastern Brook Trout populations and identify mitigation measures to reduce and control such impacts.

B. Impacts to Wetlands

The Applicant recognizes the presence of wetlands on the proposed site,²² but has not requested a jurisdictional determination from the New York State Department of Environmental Conservation (NYSDEC) to determine the extent of protected wetlands on the property, as is required under NYSDEC's updated Part 664 regulations.²³ According to NYSDEC's environmental resource mapper, it is possible that there are NYSDEC regulated wetlands on the property. The Applicant has not obtained and considered all information necessary to ensure that the Project would not physically alter, encroach into, or otherwise impact any existing wetland. An EIS is necessary to evaluate potential impacts to the wetlands on the property and identify mitigation measures to best protect these critically important areas.

C. Impacts to Groundwater

The Project would be located above the Colonie Channel aquifer, an important source of drinking water for the community.²⁴ The soil on the proposed site is predominantly sand and silt that is well to moderately well drained,²⁵ suggesting a porous soil. Therefore, it can be reasonably expected that there is a risk of contaminating the groundwater in the Colonie Channel aquifer. Contamination of a drinking water

²¹ The town of Clifton Park, *The Dwaas Kill Nature Preserve 2009 Concept & Management Plan* at 29, accessible at <https://cliftonparkny.gov/document-center/open-space/1702-dwasskill-management-plan-final/file>.

²² Long EAF at 11, Section E.2.h.

²³ 6 NYCRR § 664.

²⁴ U.S. Geological Survey, *Ground-Water Resources of the Clifton Park Area, Saratoga County, New York* (2002) at 3 (“The Clifton Park Water Authority maintains a well and pumping station on an adjacent property along Kinns Road - making the Preserve a part of the groundwater recharge area for the public drinking water supply.”) accessible at <https://pubs.usgs.gov/wri/2001/4104/wri20014104.pdf>. *The Dwaas Kill Nature Preserve 2009 Concept & Management Plan* at 4.

²⁵ Long EAF at 11, Section E.2.h.

aquifer with highly alkaline wastewater containing toxic metals poses a human health hazard.²⁶ An EIS is required to ensure that this risk is analyzed and mitigated.

The Project may also impact the availability of ground water. The Applicant anticipates that the Project will require withdrawals of 10,000 (ten thousand) gallons a day from a private well on the site. The likely source of this water is the Colonie Channel aquifer.²⁷ Withdrawals are likely exceeding recharge rates in this aquifer,²⁸ and therefore the operations of the Project may reduce the long term availability of drinking water for the community. Such impacts must be reviewed and evaluated in an EIS. Additionally, the Project's water withdrawals may impact the flow of the Dwaas Kill, as the Dwaas Kill is fed by groundwater. The Applicant has not adequately evaluated how the proposed withdrawals will impact the quantity of groundwater and the flows of the Dwaas Kill.

II. Conflict with the Community's Current Plans or Goals

The Planning Board must also consider whether the Project creates "a material conflict with a community's current plans or goals as officially approved or adopted."²⁹ The Board should require the Applicant to prepare an EIS because the Project appears to conflict with the Town of Clifton Park Zoning Codes and recent investment in a nearby nature preserve.

²⁶ 6 NYCRR § 617.7(c)(1)(vii).

²⁷ U.S. Geological Survey, *Ground-Water Resources of the Clifton Park Area, Saratoga County, New York* (2002) at 15 ("Ground-water flow under natural, unconfined conditions generally parallels the local topography and is downgradient toward discharge areas such as streams, wetlands, and lakes (fig. 5). Within the study area, water in the lacustrine sand aquifer discharges mostly to Stony Creek, the Dwaas Kill, and other smaller drainages.").

²⁸ *Id.* at 20.

²⁹ 6 NYCRR § 617.7(c)(1)(iv).

A. Zoning

The proposed site is in a district that is zoned “light industrial,” where the manufacturing of abrasives is explicitly prohibited unless a use variance has been granted.³⁰ The purpose of the light industrial district is to allow for selective industrial activities that do not negatively impact human health or the environment, and, accordingly, heavy industrial uses are prohibited due to “the potential adverse and/or harmful impacts.”³¹ The Town of Clifton Park Zoning Code prohibits the “manufacture of cement or abrasives” in light industrial districts.³² Concrete is an abrasive,³³ and manufacturing is defined as “[t]he mechanical or chemical transformation of materials or substances into products, including the assembling of component parts, the manufacturing of products[,] and *the blending of materials*.”³⁴ Therefore, the mixing and delivering of cement constitutes manufacturing under the zoning code’s definition, and is prohibited in this light industrial zone. The Applicant has not been issued a use variance, and therefore, the proposed facility is prohibited.

B. Dwaas Kill Nature Preserve

In 2004, the Town of Clifton Park spent \$320,000 to preserve 250 acres of land that formed the Dwaas Kill Nature Preserve,³⁵ located approximately a mile upstream from the Project. The Project’s water impacts have the potential to directly conflict with many of the benefits that the nature preserve provides to the Town. The Dwaas Kill Nature Preserve was created by the Town of Clifton Park to preserve habitat for trout and other aquatic species, and improve water quality in the Dwaas Kill by protecting wetlands, and

³⁰ Town of Clifton Park, NY, General Legislation, § 208-64(C)(3) (“Zoning - manufacture of cement or abrasives”).

³¹ *Id.* at § 208-62 (“Light Industrial Districts LI”).

³² *Id.* at § 208-64(C)(3) (“Light Industrial Districts LI”).

³³ Q. Liu et al., *Studying the abrasion damage of concrete for hydraulic structures under various flow conditions*, Cement and Concrete Composites (2023) accessible at <https://www.sciencedirect.com/science/article/pii/S0958946522004425>.

³⁴ *Id.* at § 208-7 (“Definitions and word usage.”) (emphasis added).

³⁵ The Town of Clifton Park, *The Dwaas Kill Nature Preserve 2009 Concept & Management Plan* at 57, accessible at <https://cliftonparkny.gov/document-center/open-space/1702-dwasskill-management-plan-final/file>.

includes “a heterogeneous mix of upland, wetland, and aquatic habitats in a relatively undisturbed state.”³⁶ These wetlands are “ecologically significant features” that “maintain[] the health of the... greater ecological network.”³⁷ Other intended benefits to the community include “[q]uiet passive recreation, environmental education, and scientific research.”³⁸ As the nature preserve is part of a larger watershed, any construction within the watershed may have some impact on the preserve, including potentially reducing habitat and isolating species that live within the Preserve.³⁹ Accordingly, the Riverkeeper urges the Board to require the Applicant to prepare an EIS to evaluate the Project’s impacts to the community’s investment in the Dwaas Kill Nature Preserve.

C. Potential Impacts on Air Quality

Under SEQRA, an EIS is required when there is a “reasonable expect[ation]” of “a substantial adverse change in existing air quality.”⁴⁰ The Applicant should be required to prepare an EIS given the potential for air pollution from the Project. At concrete plants, cement silos and truck loading points are significant emission points for dust pollution, and the absence of suitable dust collection and filter systems can adversely impact the surrounding air quality.⁴¹ The Applicant has not provided any information on how this air pollution will be mitigated. Accordingly, the Board should require the Applicant to prepare an EIS to analyze such impacts and identify mitigation measures.

³⁶ *Id.* at 6.

³⁷ *Id.* at 7.

³⁸ *Id.* at i.

³⁹ *Id.* at 8.

⁴⁰ 6 NYCRR § 617.7(c)(1)(i).

⁴¹ Rice University Kinder Institute for Urban Research, *It’s hard to breathe with a concrete plant in your backyard* (2020) accessible at <https://kinder.rice.edu/urbanedge/its-hard-breathe-concrete-plant-your-backyard>.

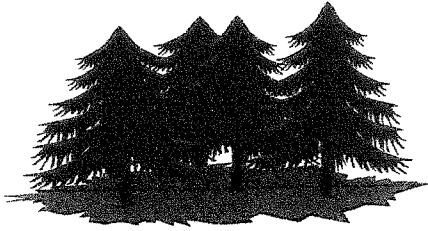
Conclusion

There is a reasonable expectation that the Project may have substantial impacts on water quality and quantity as well as air quality. In addition, the Project appears to directly conflict with the Town of Clifton Park's Zoning Code and conservation goals. Therefore, it is both appropriate and necessary for the Board to require an EIS to study such impacts in greater detail and identify mitigation options for these environmental impacts. We thank the Board for its time and consideration, and look forward to working together to protect the community's waters.

Sincerely,



Larissa Liebmann
Staff Attorney
Riverkeeper, Inc.
20 Secor Road, Ossining, NY 10562
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Email: LLiebmann@riverkeeper.org



*Friends of Clifton Park Open Space
P.O. Box 821
Clifton Park, New York 12065*

RECEIVED

OCT 29 2025

CLIFTON PARK
TOWN CLERK

Contact Information:

Friends of Clifton Park Open Space
email: **Friends @cpopenspace.org**

Board of Directors

Frank Berlin, President
James Ruhl, Exec Vice President
Dan Mathias, Vice Pres. Communications
Margaret Catellier, Treasurer
Ray Seymour, Secretary
Donald Harris, Director
William Koebbeman, Director

October 29, 2025

Members of the Clifton Park Planning Board

The Friends of Clifton Park Open Space (FRIENDS) opposes the construction of the concrete batch production plant proposed for 1910 NYS Route 9 in the Town of Clifton Park. The proposed facility would be located on land that borders the Dwaas Kill Creek, a Class A trout stream. To ensure a thorough evaluation of the proposal, FRIENDS implores the Planning Board, as **Lead Agency**, to require the applicant to undertake a full Environmental Impact Study (EIS) to consider the full range of potential adverse environmental impacts. Beneficially, an EIS requires the applicant to identify measures that must be taken to avoid or minimize adverse impacts to the project site and surrounding area under the State Environmental Quality Review Act (SEQRA). If identified mitigations are not adequate, the EIS would be the primary rationale for denial.

The Dwaas Kill is an important ecological resource in Saratoga County. In recognition of this, the Town of Clifton Park, at a cost of \$320,000, created the 250-acre Dwaas Kill Nature Preserve upstream of the proposed project in 2004. The stream is listed on New York State's "303(d) list" of impaired waterways, a requirement of the federal Clean Water Act for waterbodies that do not meet water quality standards. Despite the impairment, the stream supports both native and stocked brook trout.

In 1997, Hudsonia Ltd. (Bard College Field Station, Annandale NY), a nonprofit environmental research institute, was engaged by the Saratoga Land Conservancy – now Saratoga PLAN, to study the Dwaas Kill Natural Area (approximately 500-acres). Hudsonia issued a report entitled "Biological Assessment of the Dwaas Kill Natural Area" and cited a New York State Department of Environmental Conservation (DEC) Fisheries Unit (Region 5) survey conducted in June 1996, that 16 species of fish in the Dwaas Kill including collections taken at the Route 9 crossing (near the proposed project). In addition, the report stated that Wood Turtles and Spotted Turtles, species of special concern in NYS, were probably present in the wooded and herbaceous floodplain and wetland habitats. ***Attached to this letter is a paper outlining the challenges posed to Brook Trout in their natural habitats.***

The presented site plan poses risks to the Dwaas Kill environment. The batch plant would be located very close to the stream (138 feet). As we understand it, the facility would rely on its own well and

pump station to provide 10,000 gallons of water daily for concrete production, which is problematic. The site is over a significant aquifer (the Colonie Channel Aquifer), but there is no data in the application regarding the water table or an analysis of the soil composition. We are concerned that the withdrawal of this volume of water daily cannot be naturally replenished (see attachment). Second, considering that it takes approximately 300 gallons of water for each truck load, we question whether 10,000 gallons per day is accurate. Would 33 to 34 truckloads per day be economically viable or is the actual target a higher volume of activity? If 10,000 gallons per day presents a problem for the Dwaas Kill and the aquifer, a higher amount will be even worse.

While the total parcel is 19.4 acres, the area of physical disturbance is approximately 3.60 acres. The usable area is constrained by an existing county sewer district line, which forces the design of the stormwater management retention basin to be placed next to the 100-foot stream buffer with an overflow that will drain directly into the buffer in the event of a large rain event. It appears that most of this construction area is composed of a porous gravel surface, which could easily leach quantities of product run-off into the ground or the retention basin, impacting its effectiveness. Normally, batch plant sites and adjacent roadways are coated with fine dust that, in addition to being airborne, result in water pollution from process runoff. This dust eventually filters through porous gravel and soil to ground level water and into nearby streams. The sediment produced during the process inherently contains one of the three constituents – cement.

In recent years, New York state has cited concrete plants for adverse impacts on the environment. In early May 2025, the U.S. Environmental Protection Agency (EPA) in collaboration with the NYS Department of Environmental Conservation (NYSDEC) issued an enforcement order to SRM Concrete, a plant in Westchester County, for discharging runoff into the Hutchinson River. In 2016, a DKN Ready Mix batch facility was cited for illegally discharging runoff into Newtown Creek, a significant estuary in New York City. *Note, these citations are not cement manufacturing facilities, but concrete mixing plants.*

Considering the proximity of the proposed plant to the Dwaas Kill, the amount of water needed for operations and its source, the traditional pollution risks associated with industrial facilities of this type, and the information contained in the attachment, the Town of Clifton Park Planning Board must require a full Environmental Impact Statement to assess the environmental risks. If it does this, we are sure the Planning Board will conclude that the proposal is not worth the risk.

FRIENDS appreciate the opportunity to express its concerns about this project.

Very truly yours,



Frank Berlin
President

cc: Members of the Town Board
Mr. John Scavo, Town Planning Director



*Friends of Clifton Park Open Space
P.O. Box 821
Clifton Park, New York 12065*

General Requirements and Threats to Eastern Brook Trout:

According to the Eastern Brook Trout Joint Venture (EBTJV) study of 2005, Brook Trout require cold, clean water, high oxygen content, substrates free of silt, and are sensitive to changes in their environment (Smith 1985; Werner 2004; Stauffer et al. 2016). Thus, modifications to waterbodies that alter these habitat conditions will be threats to their persistence. Today, the most common threats to Brook Trout habitat are land use changes and riparian clearing due to agricultural activities, lumbering, and development (Stauffer et al. 2016). The EBTJV study in 2005 identified the key stressors throughout a portion of the Brook Trout's native range. They found that four of the top five stressors are habitat related, which follow: "increased water temperatures (20%), agriculture (15%), urbanization (10%), one or more exotic fish species (7%), and degraded riparian habitat (7%) (NJCFMP 2005)." Additionally, reduced stream connectivity from dams and culverts may also lead to a reduction in habitat connectivity and availability for Brook Trout, resulting in reduced dispersal and spawning potential (Nislow et al. 2011). Other threats to Brook Trout include biotic interactions with introduced non-native species. Brown Trout (*Salmo trutta*) and Rainbow Trout (*Onchorynchus mykiss*) are two species that have been introduced to much of the Brook Trout's native range for sport. Several studies have shown that Brown Trout especially can outcompete Brook Trout for resources and have negative impacts on their populations and distributions (Fausch & White 1981; Hitt et al. 2016; Zorn et al 2020).

A further explanation of threats:

The New York State Department of Environmental Conservation (DEC) completed a draft Comprehensive Wildlife Conservation Strategy (CWCS) study in 2025 that, among other wildlife, identified incremental threats to Brook Trout.

Habitat Degradation & Loss:

Urbanization and Land Use: Development can lead to loss of forest cover along streams, which reduces shade and causes warming waters. Agricultural and poor forest land use practices (erosion of soils, pesticides and fertilizers) can also degrade stream habitat. Excessive pumping of groundwater can reduce stream flows (quantity needed to survive) and increase the temperature of the remaining stream water.

General Requirements and Threats to Eastern Brook Trout (Cont'd)

Loss of Physical Habitat: Loss of physical cover in streams can make brook trout more vulnerable to predators and affect their food sources.

Habitat Fragmentation: Dams, culverts, and other barriers can fragment brook trout populations preventing movement, migration and spawning.

Climate Change:

Warming Waters: Increased air temperatures, a result of climate change, directly impact water temperatures, threatening brook trout populations that require cold water.

Altered Flood Patterns: Changes in the timing and frequency of floods can negatively affect brook trout egg survival and resulting future fish. Large flood events also carry excessive silt that deposits in stream beds.

Water Pollution:

Acid Precipitation and Mine Drainage: These sources of acid can severely impact the water quality of streams and lakes, posing a significant threat to brook trout.

Eutrophication: This process can reduce the amount of dissolved oxygen in water bodies, impacting fish health.

Biological Threats:

Invasive Species: Non-native fish species pose a significant threat through competition for resources and, in some cases, predation.

Other Impacts:

Beaver Dams: While a natural process, beaver dams can create barriers and alter stream flow, negatively impacting brook trout populations.

Natural Character of the Dwaas Kill

Sandy Soils:

The Dwaas Kill stream bed is composed of sandy soil. This helps keep a stream's water cool by facilitating a strong interconnection between the stream and cooler groundwater beneath it. Unlike other types of soil, sand's large, coarse particles allow water to move quickly and efficiently, creating a constant supply of chilled water that buffers the stream against temperature fluctuations. Excess surface water can quickly and easily seep down through the sand to recharge the local groundwater system. In turn, cool groundwater can flow up from the aquifer to replenish the stream's flow.

General Requirements and Threats to Eastern Brook Trout (Cont'd)

Water temperature Buffering:

The continuous inflow of geothermally buffered groundwater acts as a temperature regulator for the stream. This cold-water input from subsurface ground water to the streambed is most significant during summer, when surface heating from the sun raises the temperature of the stream's surface layer. The cool, dense groundwater mixing from below helps counteract this effect. Groundwater temperature remains stable year-round because it is insulated from air temperature changes by the earth. In streams with a strong groundwater connection through sandy soil, this mitigates seasonal and daily temperature swings that affect surface water. The most notable impacts occur in the hot summer months when storm water drains from roads and parking lots into nearby streams. Consequently, during summer, this buffering moderates the high temperatures, and in winter, it prevents water from freezing.

Conclusion:

Activity that changes the water quality, flow, and temperature of a trout stream will negatively impact on the survival possibilities of Brook Trout that require cold, clean water. Activity that changes a trout stream bed will negatively impact or eliminate the fish's spawning grounds.

RESEARCH MEMORANDUM

Zoning Classification of Concrete Batch Plants

New York State & National Practice

Prepared for: Town of Clifton Park Town Board & Zoning Board of Appeals

April 21, 2026

KEY FINDING

Concrete batch plants are universally classified as heavy industrial uses across virtually every jurisdiction that has addressed them in its zoning code — and are consistently found to be incompatible with residential neighborhoods, requiring at minimum a heavy industrial designation and, in most modern codes, a conditional or special use permit with public review.

1. Purpose of This Memorandum

This memorandum summarizes research into how concrete batch mixing plants are classified and regulated under zoning codes across New York State and the broader United States. It is intended to inform the Town of Clifton Park Town Board and Zoning Board of Appeals as they consider:

- The ZBA appeal of Dr. Lewis Morrison challenging the zoning interpretation for the proposed concrete batch plant at 1910 U.S. Route 9 (ZBA Agenda Item 4, April 6, 2026)
- Councilman Mario Fantini's resolution to adopt a 180-day moratorium on Batch Concrete Mixing Plants (Town Board, April 7, 2026)
- The Town's longer-term goal of examining the treatment of concrete batch plants across all zoning districts and adopting permanent amendments that provide clear, code-wide protection consistent with the character of each district

Note on submission: This memorandum is submitted on April 21, 2026 to both the Clifton Park Town Board and the Zoning Board of Appeals for inclusion in the public record. It is intended to inform the Town Board's consideration of Councilman Fantini's moratorium resolution and to support the ZBA's consideration of the Morrison appeal at the merits hearing, if and when one is scheduled following a finding of standing. The public hearing record on the moratorium resolution will remain open following the April 21 hearing to allow for receipt of the Saratoga County Planning Board's referral response, expected in mid-May 2026. The Town Board is anticipated to close the hearing record and vote on the moratorium resolution at its next meeting following receipt of that response. The 1910 Route 9 application itself remains at the preliminary review stage: no lead agency has been designated, no formal SEQRA action has been taken, and the application has not been deemed complete for Planning Board review. The Planning Board is expected to table the application pending resolution of the ZBA appeal and the moratorium vote. The substantive research contained herein — regarding zoning classification, Clifton Park's own code, and national practice — is offered to support both bodies' deliberations

Upstate New York towns show a consistent pattern in how they treat heavy industrial uses — and the findings bear directly on the situation in Clifton Park.

The Town of North Hempstead (Nassau County) places transit mix hoppers and equipment for the storage and manufacture of sand, stone, cement, or gravel for concrete mix in its most intensive 'Industrial B' district — alongside petroleum gas manufacturing, paper mills, and central power plants. Even there, the code imposes strict performance standards on dust, particulate matter, and odors, with required abatement measures. This is the most permissive treatment found in any NYS town code reviewed — and even it confines these uses to the most intensive industrial category available.

The Town of Amherst (Erie County) takes a stricter approach, expressly prohibiting on-site crushing of stone, concrete, or similar processing within 500 feet of any residential zoning district — a statutory buffer that reflects the well-recognized incompatibility of concrete-related industrial operations with residential uses.

CLIFTON PARK'S OWN ZONING CODE — THE MOST DIRECT EVIDENCE

Clifton Park Town Code Article IX governing the Light Industrial (LI) District may be the most important evidence in this entire record. The code's stated purpose is to permit 'selective industries whose activities do not adversely impact the environment or quality of life of the residents.' It then states explicitly: 'due to the potential adverse and/or harmful impact of heavy industrial uses, such uses are explicitly excluded from this district.' Critically, the code's prohibited uses list — described as 'not all inclusive' — explicitly names by example: Asphalt plant; Manufacture of cement or abrasives; Manufacture, processing, storage, production or refining of petroleum or other flammable liquids or gasses; and other analogous heavy industrial operations. A concrete batch plant — which mixes cement and aggregates at industrial scale — is directly analogous to both 'Asphalt plant' and 'Manufacture of cement or abrasives,' both of which are named as prohibited heavy industrial uses in the LI district where this plant has been proposed. This is precisely the interpretation at the heart of the Morrison ZBA appeal.

This makes the Clifton Park situation especially clear: the Town does not need to look to other jurisdictions to classify a batch plant as heavy industrial. Its own code already does so by exclusion — by expressly prohibiting heavy industrial uses from the LI district where this facility has been proposed.

A Closer Reading: How Clifton Park's Own LI Code Would Have Supported Denial

A careful, provision-by-provision reading of Clifton Park's own LI District code makes clear that a Zoning Administrator applying the code as written could have — and in the view of many who have reviewed it, should have — ruled a concrete batch plant a prohibited use without ever reaching the question of national precedent. The Morrison ZBA appeal, filed March 12, 2026 by Colleen Pierson, Esq. of Abrams Fensterman, LLP on behalf of Dr. Lewis Morrison, challenges the zoning interpretation contained in a January 13, 2026 letter from Zoning Administrator Scott Reese — which itself was a clarification letter responding to Ms. Pierson's January 2, 2026 letter to the Planning Board requesting a formal use determination. The underlying written determination was originally issued on April 18, 2025 and filed with the Town Clerk on May 29,

independently prohibited by items (1), (24), and (29), each of which describes operational characteristics that concrete batching demonstrably exhibits. The “not all inclusive” language confirms that the listed examples do not exhaust the prohibited uses; they illustrate the type of industrial character the Town has determined is incompatible with the LI District. Concrete batching fits that character on multiple independent grounds.

4. The Performance Standards (§ 208-64F) Cannot Be Met by a Batch Plant

Even assuming the use were somehow permitted, § 208-64F imposes performance standards that a concrete batch plant demonstrably cannot satisfy without a rigorous, site-specific assessment that has never been conducted. These standards include: (1) noise not to exceed 65 decibels at the property line during daytime hours — federal construction noise data (FHWA Construction Noise Handbook, Table 9.1) lists the Spec emission limit for concrete batch plants at 83 dB at 50 feet, and the Spec limit for concrete mixer trucks at 85 dB at 50 feet (with an actual measured average of 79 dB across 40 field samples), raising a serious and unresolved question as to whether the § 208-64F standard can be met at this site; (2) no discharge of toxic or noxious matter on or off site; (3) no vibration perceptible at the zone boundary; (4) no heat or glare beyond the property line; and (5) no odor detectable outside the property line. The Town’s own code defines “noxious” as “that which causes or tends to cause injury to health.” Cement dust and high-pH concrete washwater — documented by EPA and state environmental agencies as injurious to aquatic ecosystems, and flagged specifically by Clifton Park’s own Environmental Conservation Committee — constitute noxious matter within the meaning of that definition. That fine particulates generated by concrete batch plant operations travel beyond property lines under normal operating conditions is confirmed by EPA New Source Performance Standards for concrete batch plants and by photographic documentation obtained by Residents for Responsible Development from a participant in the Clifton Park Planning Board’s site visit to the applicant’s Wilton, New York facility — photographs that show visible dust clouds generated during routine truck maneuvering and aggregate handling on a clear, calm day (see accompanying Photo Exhibit). Tellingly, Zoning Administrator Reese himself acknowledged in his April 18, 2025 zoning comments that the applicant would need to provide “a narrative demonstrating that the proposed use will not result in any noxious noise or odors outside the district, will not have a deleterious effect on air or water quality, and will not exceed any of the performance standards set forth in Town Code Chapter § 208-64(F)” — yet issued a conditional determination of permissibility before that information was ever provided. A personal, informal site visit by Mr. Reese to one of the applicant’s own operating concrete batch plants — as noted in the April 2025 review comments where he states he “did not observe/hear/smell any noxious or deleterious conditions” — is not a substitute for the quantifiable, site-specific technical data the code requires, and is not an assessment of the proposed 1910 Route 9 site, which sits 180 feet from a Class A trout stream and within an aquifer recharge area. Photographic documentation obtained by Residents for Responsible Development from a participant in the Planning Board’s site visit to the applicant’s Wilton facility directly contradicts any inference that batch plant operations are conducted without visible dust or detectable environmental impact. No site-specific assessment of 1910 Route 9 has been conducted. These performance standards were never properly evaluated before the application advanced to site plan review — a sequence improper under § 208-64E. The Morrison ZBA appeal directly challenges this: a contingent determination conditioning permissibility on future proof of compliance is, as Ms. Pierson’s brief states, “no determination at all.”

5. The Height Variance Circumvented the Required Zoning Determination

Section § 208-65D establishes that the maximum permitted height in the LI District is 50 feet, but that for any structure proposed over 35 feet, the Planning Board must conduct a visual assessment and require the applicant to complete an Environmental Quality Review Visual EAF

New York City	M-3 Heavy Manufacturing	Characteristic M-3 use; most intensive district
Town of North Hempstead, NY	Industrial B (heaviest)	Permitted only in most intensive industrial zone
Town of Amherst, NY	Industrial district	500-ft buffer from all residential zones required
Dallas, TX	IM Industrial Manufacturing only	Must be in IM district + Specific Use Permit
Fresno County, CA	M-3 Heavy Industrial	Permitted use in M-3 only
St. Charles County, MO	Heavy Industrial	Off-site product: heavy industrial only
Firebaugh, CA	M-2 Heavy Industrial	Conditional Use Permit required

3. Conditional and Special Use Permits

Even in heavy industrial zones where batch plants may be permitted as a listed use, most modern codes require more than a standard building permit. Conditional Use Permits (CUP) or Special Use Permits (SUP) are commonly required, triggering public notice, public hearings, and board review before a plant can be approved.

The City of Dallas, Texas provides one of the most instructive recent national precedents:

DALLAS, TEXAS — A NATIONAL PRECEDENT

Concrete batch plants were previously allowed in most Dallas zoning districts — including residential districts — with only administrative approval. Dallas adopted Ordinance No. 32209 on May 11, 2022, requiring that all new temporary and permanent concrete or asphalt batch plants must be located in the IM Industrial Manufacturing District AND obtain a Specific Use Permit (SUP) triggering full public hearings before the City Plan Commission and City Council. This dual requirement — both an industrial district location AND a public hearing process — reflects exactly the kind of protective framework that the moratorium resolution and permanent zoning amendments before the Clifton Park Town Board are designed to establish.

Other key findings on conditional/special use requirements:

- Fresno County, CA: Concrete batch plants, ready-mix concrete, and concrete and cement products are listed as permitted uses within the M-3 Heavy Industrial District — confirming that heavy industrial classification is the floor, not the ceiling, for these facilities.
- Firebaugh, CA: Batch plants require a Conditional Use Permit even within the M-2 Heavy Industrial District — and are commonly restricted to temporary uses tied to specific construction projects only.

4. Residential Proximity and Buffer Requirements

Wherever batch plants are permitted at all, buffer zones from residential uses are a standard condition. Industry permitting guidance consistently identifies the following as required steps before a concrete plant can be established:

- Zoning or use variance approval confirming the land is approved for industrial use
- Site plan approval including traffic patterns, parking, buffers, and lighting
- Public planning board presentations and hearings in most jurisdictions
- Construction permits covering electrical, plumbing, and fire code compliance

Industry permitting guidance for concrete batch plants consistently identifies buffer requirements from sensitive land uses as a standard condition of approval. The University of Texas Environmental Law Clinic's Guide to Air Quality Permitting for Concrete Batch Plants documents that community advocates and planning professionals routinely push for substantial buffers near residences, schools, and parks — recognizing that dust, noise, and traffic from batch plant operations extend beyond the facility's property line under typical operating conditions.

5. Environmental Permitting

On top of local zoning requirements, concrete batch plants face a separate and significant layer of environmental permitting at the state and federal level. These requirements apply regardless of local zoning approvals and cannot be waived by municipalities:

- Air quality permits (for dust, particulate matter, and cement emissions) — required in virtually every state, including under EPA New Source Performance Standards
- NPDES stormwater permits — required under the federal Clean Water Act for industrial stormwater discharges
- Spill Prevention, Control, and Countermeasure (SPCC) plans — required under EPA oil spill prevention regulations for facilities storing more than 1,320 gallons of oil in aboveground containers with a reasonable potential for discharge to navigable waters; a threshold typical of operations of this type given on-site diesel fuel storage for truck fleets and heavy equipment
- State-specific air emission licenses or general permits (e.g., NYS DEC air permitting for stationary sources)

Even mobile or temporary concrete operations are subject to stormwater and air permitting at minimum. Industry guidance is explicit: there is no such thing as 'too remote to regulate' when it comes to these environmental requirements.

6. Implications for Clifton Park

ground in ruling that no valid use determination was ever made, and that the use is prohibited under the plain language of the Town's own code.

The moratorium resolution before the Town Board rests on a legitimate, research-grounded basis that is entirely independent of any single application. Three independent foundations support it. First, the explicit code-wide gap: Clifton Park's zoning code does not contain an express, town-wide prohibition on concrete batch plants across every district where 'light manufacturing,' 'processing,' or 'assembling/fabrication' uses are permitted, leaving open the theoretical argument that such a use could be characterized as permitted processing in districts beyond LI-2. Second, the structural implication of the code itself: the Town of Clifton Park has no heavy industrial zoning designation anywhere. Because every Clifton Park zoning district is designed for uses compatible with residential quality of life, and because concrete batch plants are universally classified as heavy industrial, the logical conclusion of a systematic code review is an explicit, town-wide prohibition — analogous to how asphalt plants are already treated. Concrete batch plants share the same industrial character and operational profile as asphalt plants: both generate dust, noise, high truck volumes, and significant environmental impacts at industrial scale, and both appear by name on the LI District's prohibited uses list. The moratorium creates the framework to codify that equivalence explicitly and permanently across all districts. Third, the active and incomplete application: the 1910 Route 9 proposal remains at the preliminary review stage — no lead agency has been designated, no formal SEQRA action has been taken, and the application has not been deemed complete for Planning Board review. The moratorium is therefore precisely what New York Municipal Home Rule Law § 10 contemplates: a local law to preserve the status quo on an active, incomplete application while the Town conducts the code review that should have preceded it. New York courts have long upheld town moratoria as valid exercises of the police power where grounded in legitimate planning concerns and not imposed for an unreasonable duration. The moratorium is grounded not in community opposition but in the extensive scientific and planning record assembled here: federal SIC classification treating ready-mix concrete production as Division D Manufacturing; research across more than a dozen comparable jurisdictions finding uniform classification as heavy industrial; EPA New Source Performance Standards governing batch plant emissions; FHWA noise data placing batch plant operations at 83 dB — well above the Town's 65-decibel LI District performance standard; and photographic documentation of visible dust emissions during normal operations at the applicant's own Wilton facility. Dallas, Texas discovered the cost of code inaction when batch plants proliferated across districts never designed for them, requiring legislative correction in 2022. Clay, New York confronted the same gap in its I-1 corridor in 2024. The Town of Clifton Park need not wait for a second application to close the same door. The 180-day moratorium — a valid exercise of the Town's police power under the Municipal Home Rule Law and consistent with NYS Department of State guidance on temporary land-use moratoria — gives the Town the time to examine this question systematically across all relevant districts, adopt code language that is clear and durable, and ensure that Clifton Park's zoning framework explicitly reflects what the structure of the code already implies: that uses carrying the industrial profile of a concrete batch plant have no lawful home in any Clifton Park zoning district. Residents for Responsible Development respectfully urges the Town Board to adopt the moratorium resolution and commit to a permanent code amendment process grounded in the research record compiled here.

The precedent consequences of allowing this application to proceed without proper zoning clarification are significant and cut in three directions. First, the "not all inclusive" character of the LI District's prohibited uses list — a protection the Town relies on to exclude uses not expressly named — would be undermined by a permissive administrative interpretation. If a

7. Authority to Act: A Direct Ask to Both the Town Board and the ZBA

This section addresses both bodies before which this memorandum is submitted on April 21, 2026: the Town Board, which is considering the moratorium resolution, and the Zoning Board of Appeals, which holds authority over the pending zoning interpretation appeal. Each has clear legal authority to act; each has before it a research record that supports action; and each is being asked to exercise that authority in a disciplined, code-grounded way. New York law recognizes that municipalities may adopt temporary land use moratoria as a legitimate planning tool where there is uncertainty as to how existing zoning provisions apply to certain categories of uses. Such actions are evaluated under the same standard as other zoning decisions — whether they are reasonable, time-limited, and supported by a clear planning purpose. Courts reviewing such actions under Article 78 do not substitute their judgment for that of the municipality, but instead assess whether the action is rational, legislative in nature, and supported by the record. Where a temporary pause is adopted to allow a municipality to evaluate its zoning framework, assess potential impacts, and ensure consistency with the intent of its code, such actions are recognized as a proper exercise of municipal authority. The proposed moratorium is legislative in nature, as it applies generally to defined categories of uses that raise common land use and compatibility considerations, and is intended to allow the Town to evaluate and, if necessary, amend its zoning framework to ensure consistent application across all similarly situated properties. New York appellate authority confirms that a municipality may respond to evolving or uncertain land use questions by pausing review, evaluating its zoning framework, and subsequently amending its zoning laws, where those actions are undertaken through proper legislative procedures and supported by a rational basis. See *Matter of Frontier Stone, LLC v. Town of Shelby*, 174 AD3d 1382 (4th Dep't 2019) (upholding a town's legislative response to a pending industrial land-use application following a temporary pause in processing and subsequent zoning amendments restricting the use; enacted pursuant to Municipal Home Rule Law). Of particular relevance, the same Third Department that would review any challenge to the current moratorium has upheld Clifton Park's own use of temporary, finite local laws to manage development in response to planning concerns. In *Matter of Albany Area Bldrs. Assn. v Town of Clifton Park*, 172 AD2d 54 (3d Dep't 1991), the court upheld Clifton Park's Phased Growth Law — a local law limiting the pace of building permits in a designated development area — as a valid exercise of municipal authority under the Municipal Home Rule Law, finding it to be an authorized zoning regulation rationally related to a legitimate government interest. The court upheld the law as rationally related to a legitimate government interest and expressly permissible under the Municipal Home Rule Law — characterizing it as a reasonable middle course between a complete moratorium on building and uncontrolled growth. That holding applies directly here: Clifton Park's Town Board has previously enacted time-limited local laws restricting development activity on planning grounds, the Third Department has upheld that authority, and the same framework supports the current moratorium. See also NYS Department of State, *Land Use Moratoria* (James A. Coon Local Government Technical Series). Those principles apply here. Certain industrial and processing uses — particularly those involving material handling, outdoor operations, or potential off-site impacts — raise material questions under the Town's zoning framework, including the structure of permitted uses, prohibited uses, and performance standards governing noise, dust, vibration, traffic, and other external effects. These considerations warrant careful evaluation to ensure that the Town's zoning provisions clearly contemplate and consistently regulate such uses before approvals are granted. The purpose of the moratorium is not to address any single application, site, or zoning district, but to ensure that the Town's zoning framework is applied uniformly and

articulated determination, and build a record that reflects that analysis. That is precisely the type of decision that courts consistently uphold.

Residents for Responsible Development respectfully makes the following direct requests to each body.

To the Town Board: Adopt the moratorium resolution. The research record before you — spanning federal SIC classifications, more than a dozen comparable jurisdictions, EPA and FHWA standards, and photographic documentation of batch plant operations — provides a substantial, evidence-based foundation that is entirely independent of any individual application or community sentiment. The moratorium is not a response to neighborhood outcry; it is a responsible act of planning governance, grounded in documented evidence that the Town’s current code leaves a gap that should be closed systematically and permanently, across all districts where processing or light manufacturing uses are listed.

To the Zoning Board of Appeals: Interpret the LI-2 zoning district as written, and make a disciplined, clearly articulated determination as to whether a concrete batch plant is a permitted use — grounded in the sequential application of the code’s own analytical framework: first, whether the use is expressly listed as permitted; second, whether it falls within the expressly prohibited categories or their analogues under the “not all inclusive” prohibited uses list; third, whether — even if arguably within a permitted category — it can meet the performance standards the district imposes as a condition of any permitted use; and fourth, whether the proposed classification is consistent with the district’s stated purpose and intent. That sequence is the structure the code itself prescribes, and it is the structure that produces a record courts will sustain. Pursuant to Town Code § 208-109(c)(1), the ZBA has full authority to make that determination. The strength of the zoning arguments developed in this memorandum and in the Morrison appeal brief is significant. Not pairing them with a clear, well-reasoned determination — one that creates a reviewable record grounded in the code — would leave that strength unrealized. A determination that is disciplined, clearly articulated, and firmly grounded in the code is not only appropriate: it is exactly the type of decision that New York courts have consistently upheld under judicial review. Conversely, expanding the scope of permitted uses beyond what is supported by the code’s text introduces unnecessary legal risk and undermines the consistency and predictability that zoning is intended to ensure.

Sources Consulted

- Town of Clifton Park, NY — Town Code Chapter 208, Article IX, Light Industrial Districts LI (§208-62 Purpose; §208-64 Permitted and Prohibited Uses; §208-64D District Regulations; §208-64E Suitability Determinations; §208-64F Performance Standards; §208-65 Space and Bulk Standards including height requirements), eCode360
- Town of Clifton Park, NY — Town Code §208-109(c)(1) — ZBA authority to reverse, affirm, or modify administrative determinations and make such determination as in its opinion ought to have been made
- Town of Clifton Park Planning Board Minutes, October 14, 2025 — public comment on 1910 U.S. Route 9 batch plant application
- Town of Clifton Park Town Board Meeting, April 7, 2026 — auto-generated transcript (YouTube, publicly available)

- U.S. Federal Highway Administration (FHWA): Construction Noise Handbook (FHWA-HEP-06-015) — Construction Equipment Noise Level Reference Data, including Concrete Batch Plant (Spec: 83 dB at 50 ft); Concrete Mixer Truck (Spec: 85 dB; actual measured average: 79 dB across 40 field samples, at 50 ft)
- RMA Environmental: 'Permitting a Concrete Plant' (2025)
- University of Texas Environmental Law Clinic: 'Guide to Air Quality Permitting for Concrete Batch Plants' (2019)
- U.S. EPA: General Permit Regulation for Concrete Batch Plants
- U.S. Occupational Safety and Health Administration (OSHA): SIC Manual, SIC Code 3273 (Ready-Mixed Concrete) — Division D: Manufacturing ([osha.gov/sic-manual/3273](https://www.osha.gov/sic-manual/3273))
- U.S. Occupational Safety and Health Administration (OSHA): SIC Manual, SIC Code 3531 (Construction Machinery and Equipment — Heavy Machinery) — Division D: Manufacturing ([osha.gov/sic-manual/3531](https://www.osha.gov/sic-manual/3531))

Comments in opposition to the proposed ready-mix concrete plant moratorium by Luke Clemente made before the Clifton Park Town Board on April 21, 2026.

I am not here this evening to advocate for our concrete plant. There is already an established planning board process underway to review and address concerns regarding our proposal.

No—what brings me here this evening is something much more serious and important. We are a country witnessing a rupture with respect to the rule of law, both nationally and locally.

For over a year, our application has been pending before the Town of Clifton Park Planning Board. During that time, we have participated in multiple rounds of review, made meaningful progress with refinements to our proposal in addressing planning board and public concerns. We also appeared before the Zoning Board of Appeals and successfully obtained a height variance for our proposed ready-mix concrete plant.

Now, after all that progress, the Town Board proposes a moratorium on ready-mix concrete plants. Let's be clear—this is not about any old concrete plant- it is targeted attack on my family's proposed concrete plant. We are the only applicant, and to our knowledge, the only applicant to ever apply for a concrete plant in the town of Clifton Park.

This all begs the question: what justifies this action now? What has changed over the past year that warrants abandoning the established planning board review process in favor of a moratorium?

There has been no sudden influx of concrete plant applications. No new conditions. No emergency. Justification simply does not exist.

The Town Board's consideration of this moratorium raises serious concerns about fairness, due process, and respect for property rights.

The Board should consider the implications carefully. Is it appropriate to interrupt an ongoing, lawful planning board process? And is the Town prepared to bear the potential legal and financial consequences of doing so? The board has a simple choice for avoiding a legally defective and inherently unjust and unfair moratorium: Say no to this moratorium or simply exclude our application from the moratorium's reach.

As I said at the outset, what is at stake here is much more than a concrete plant. It is about whether decisions will be made in this town utilizing consistent, lawful processes—or by abrupt town board fiat that disrespects them.

As John F. Kennedy once said:

“The rights of every man are diminished when the rights of one man are threatened.” We all stand at risk this evening from an arbitrary and capricious exercise of government power. And I would lastly observe that there is no sense in standing for the Pledge of Allegiance at the outset of this meeting if you are not committed to upholding the ideals for which she stands.

Thank you for your time and consideration.

Script 13 — Lessons from Other Communities (John DelGiudice) [REDACTED]

Category: Air Quality & Public Health | April 21, 2026 Public Hearing | 2 minutes

We do not have to guess what happens when heavy industrial concrete operations are sited near homes without adequate protections. Communities across New York State and nationally have faced years of complaints about dust, noise, traffic, and water quality once these facilities are operational. The Town of Clay in Onondaga County denied a batch plant permit in its light industrial zone in 2024, after months of packed public meetings. Palm Coast, Florida rejected two concrete plant rezonings in seven months in 2025 and 2026 — their mayor said it plainly: a concrete batch plant is just not compatible with a light industrial area. Those communities acted before the damage was done. Tonight this Board can do the same. Vote yes.

Good evening members of the ~~Planning~~ Board.

My name is Eric Grignon my family and I reside in Clifton Park. We chose to raise our family here very intentionally. Like many families, we came to Clifton Park because it is a safe, welcoming community with strong schools, quiet neighborhoods, and access to green spaces that are increasingly rare.

Those qualities are part of our daily lives. We walk local trails, spend time outdoors, and appreciate the creeks and waterways that run through our town. They are part of what makes this community feel like home.

That is why I am here tonight to speak in opposition to the proposed concrete batch plant.

This type of heavy industrial use is simply not the right fit for Clifton Park; especially in the proposed location. Placing a facility like this so close to the Dwaas Kill, a protected trout stream, and within close proximity to established neighborhoods raises serious concerns about water quality, air quality, noise, and long-term impacts on the health and well-being of residents.

I am particularly concerned about the potential impact on our water resources — not just locally, but regionally. Many communities in this area share interconnected groundwater systems and aquifers. Any risk to those systems is not contained to one site or one town. Protecting our water means taking a long-term, cautious approach.

As a parent, I think about what this means for my family and for others who live nearby. Increased truck traffic, dust, particulate matter, and noise are not abstract concerns, they affect the air we breathe, the environment we live in, and the character of our neighborhoods. Even with assurances and safeguards, no system is fail-proof. When problems occur it is residents who bear the consequences.

I grew up in the construction industry, so I understand the importance of growth and economic activity. I am not opposed to development. But I do believe strongly that any proposal with potential environmental or public health impacts must receive a rigorous, transparent review with meaningful public engagement.

Clifton Park is not an industrial corridor, and that is by design. The town has done a good job over time balancing residential and commercial development, creating a community that offers both economic opportunity and a high quality of life. This proposal disrupts that balance.

We chose Clifton Park because it values open space, environmental stewardship, and thoughtful planning. The trails, the waterways, and the preserved natural areas deserve to be protected.

For these reasons, I strongly support the Town's decision to place a moratorium on concrete batch plants. Taking the time to carefully evaluate whether this type of use is appropriate and where it may or may not belong is not only reasonable, it is responsible.

I respectfully ask that you continue to protect the character of this community and ensure that decisions made today support the health, safety, and quality of life of residents for years to come.

Thank you for your time and for your service to our community.

Script 10 — PM2.5 and Respiratory Disease (Andrew Gaul)

Category: Air Quality & Public Health | April 21, 2026 Public Hearing | 2 minutes

Concrete batch plants are significant generators of fine particulate matter — particles small enough to penetrate deep into the lungs and enter the bloodstream. PM2.5 exposure is linked to increased rates of asthma, COPD, cardiovascular disease, and premature death. These are established findings from decades of public health research. Our town should not be approving a facility that generates these emissions in a residential corridor, adjacent to a Class A Trout Stream, without a town-wide health assessment. The moratorium creates the space to conduct that assessment. Please vote yes.

 Outlook


Comment on Moratorium for Concrete Batch Plant from Town's Open Space-Trails-Riverfront Committee

From Jennifer Viggiani <JViggiani@cliftonpark.org>

Date Tue 4/21/2026 12:38 PM

To Phil Barrett <PBarrett@cliftonpark.org>; Agatha Reid <areid@cliftonpark.org>; Zabed Manir <zmanir@cliftonpark.org>; Nancy Bellamy <nBellamy@cliftonpark.org>; Mario Fantini <mFantini@cliftonpark.org>

Cc Caitlin Fantini <CFantini@cliftonpark.org>; John Scavo <jscavo@cliftonpark.org>; David J. MILLER [REDACTED]; Ray Seymour [REDACTED]

 1 attachment (15 KB)

OSC - Support a 6-month moratorium on Concrete batch plants in Clifton Park 4-8-26.docx;

Good afternoon, Supervisor Barrett and Town Board, and Town Clerk Fantini,

Attached please find an Open Space, Trails, and Riverfront Committee's resolution from April 8, 2026, supporting the Town Board adopting a 6-month moratorium on concrete batch plants within the Town of Clifton Park, for your kind consideration, as approved by the committee.

Thank you for your attention to and addition of this comment into the public hearing record.

Sincerely,

Jennifer Viggiani
Open Space Coordinator
Town of Clifton Park – Planning Department
One Town Hall Plaza
Clifton Park, NY 12065
www.cliftonparkny.gov
www.cliftonparkopenspaces.org
www.cliftonparkfarms.com

518-371-6054

Access [Clifton Park Connect](#) – the Town's Community Engagement Hub!

Town of Clifton Park Open Space, Trails, and Riverfront Committee

OSC Resolution: Support the Town Board's enactment of a 6-month moratorium on concrete batch plants in the Town of Clifton Park, 4-8-2026

The Clifton Park Open Space, Trails and Riverfront Committee strongly supports a Town Board resolution to enact a six-month moratorium on concrete batch plants in the Town of Clifton Park. Over the past year, the Committee has raised serious concerns about the impacts of concrete batch plants to our natural resources if allowed. Specifically, one site potentially proposed would have adverse impacts to our Dwaas Kill Nature Preserve, the Dwaas Kill stream and its Brook Trout (native) habitats. We urge the adoption of this resolution and full review of zoning issues associated with such proposals.

This resolution was approved for submission to the Town of Clifton Park Town Board by the Open Space, Trails, and Riverfront Committee at their regular meeting held on April 8, 2026, at Clifton Park Town Hall – Meeting Room C.

Fw: Concrete Batch Mixing Plant Proposal Clifton Park/Halfmoon

From Leighann Nastasia <LNastasia@cliftonpark.org>
on behalf of
Clerk <clerk@cliftonpark.org>

Date Tue 4/21/2026 9:06 AM

To Caitlin Fantini <CFantini@cliftonpark.org>

From: Stu Bossom [REDACTED]
Sent: Monday, April 20, 2026 7:08 PM
To: Clerk <clerk@cliftonpark.org>
Subject: Concrete Batch Mixing Plant Proposal Clifton Park/Halfmoon

To whom it may concern,

My name is Stu Bossom, I live at [REDACTED] Mann Boulevard in HalfMoon, formally Clifton Park, 12065. I am emailing regarding the proposed concrete patch mixing plant in Clifton Park, which will border the town of Halfmoon and my residential Neighborhood. Unfortunately I cannot attend tomorrow night's meeting at 7 PM in Clifton Park, and I'm not even sure my voice matters since my residence is officially in Halfmoon - (albeit a 3 iron over the border)


Nevertheless, I must voice my utter horror at the idea of concrete batch mixing plant a mile away from my residential development and even closer to other residential developments. Some right across the street. In fact, within 3 miles there must be thousands of families if not more. All of these families will be affected. As well as adjacent protected park and wildlife. You have to know this.

I can imagine property values will plummet, residents will flee, roads will be even more congested, I don't understand how this can even be considered, unless it be for an overlooked zoning regulation loophole.

I wanted to add my voice to the thousands already voicing their opinions against this atrocity of a project.

With all respect, thank you very much,
Stu Bossom

Any iPhone autocorrect grammatical errors are accidental and unintended.

 Outlook

Fw: NO to Concrete Batch plant project

From Leighann Nastasia <LNastasia@cliftonpark.org>
on behalf of
Clerk <clerk@cliftonpark.org>
Date Tue 4/21/2026 9:06 AM
To Caitlin Fantini <CFantini@cliftonpark.org>

From: Jana Hanagan [REDACTED]
Sent: Monday, April 20, 2026 9:24 PM
To: Clerk <clerk@cliftonpark.org>
Subject: NO to Concrete Batch plant project

We oppose the Concrete Batch plant.

Steve and Jana Hanagan
[REDACTED]

FW: Public Hearing - Concrete Plant Moratorium

From: Leighann Nastasia <LNastasia@cliftonpark.org>
on behalf of
Clerk <clerk@cliftonpark.org>
Date: Tue 4/21/2026 11:54 AM
To: Caitlin Fantini <CFantini@cliftonpark.org>

From: James Leggett [REDACTED]
Sent: Tuesday, April 21, 2026 11:40 AM
To: Clerk <clerk@cliftonpark.org>
Subject: Public Hearing - Concrete Plant Moratorium

Dear Town Clerk,

I am submitting a written comment regarding the public hearing tonight for the Concrete Plant planned for 1910 Route 9. I am a resident of Halfmoon for the past 22 years residing at 64 Mann Blvd and very close to the proposed site. I sincerely request that a full environmental assessment is completed for this activity to ensure that the safety of our residents and surrounding environment is not negatively impacted or put at risk. Until such assessment is completed and determined to be of negligible risk, I do not support the approval of this application.

Sincerely,

James Leggett

Jim Leggett
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

This e-mail and any attachment hereto, is intended only for use by the addressee(s) named

FW: Comments regarding the proposed Concrete Batch plant

From Leighann Nastasia <LNastasia@cliftonpark.org>
on behalf of
Clerk <clerk@cliftonpark.org>
Date Mon 4/20/2026 4:47 PM
To Caitlin Fantini <CFantini@cliftonpark.org>

From: Neils Schmitt [REDACTED]
Sent: Monday, April 20, 2026 2:40 PM
To: Clerk <clerk@cliftonpark.org>
Subject: Comments regarding the proposed Concrete Batch plant

Dear Town Clerk: I am not able to attend the public hearing, but would like to offer my comments and concerns regarding the new facility as follows....
My main concerns are environmental, near to the Dwaas Kill waterway.

- runoff from operations including silt, concrete waste, truck lubricants & fuels which may inadvertently enter the Dwaas Kill stream
- dust from stone, concrete & sand transfers which will settle over adjoining lands, and thus ultimately into the Dwaas Kill
- Diesel trucks running to & from the site, increasing local air pollution, wear & tear on route 9, and blocking traffic patterns. Heavy haul vehicles are loud, sooty, and lumbering.
- Industrial activity with acoustic impacts upon wildlife, certain to drive creatures from the area. The Dwaas is likely a wildlife corridor which will be disrupted by a new loud manufacturing facility
- Additional pipe laying for the process water supply, disrupting the landscape

- Consumption of large amounts of potable water that the town would possibly need to import from nearby municipalities. Daily water use of 30,000 gallons per day equates to over 80 times the average use of a 4 person household.

Frankly, this type of plant is much better suited to a brownfield location where utility infrastructure already exists. Not next to a pristine natural area.

Sincerely,

Neils C Schmitt - homeowner

■ Castle Pines

Clifton Park

FW: Comments in support of moratorium on concrete batch plants in town

From Leighann Nastasia <LNastasia@cliftonpark.org>
on behalf of
Clerk <clerk@cliftonpark.org>
Date Mon 4/20/2026 11:40 AM
To Caitlin Fantini <CFantini@cliftonpark.org>

From: Elisa Gallaro [REDACTED]
Sent: Monday, April 20, 2026 10:00 AM
To: Clerk <clerk@cliftonpark.org>
Subject: Comments in support of moratorium on concrete batch plants in town

Due to another meeting conflict, it is unlikely that I'll be able to attend the April 21 public hearing on the proposed moratorium on concrete batch plants in Clifton Park. To ensure that my comments are on the record, I am submitting them here.

1. I support the moratorium to give the Town the time necessary to investigate all issues related to the proposed concrete batch plant, including what is permitted under the current zoning--and whether that zoning is appropriate for the proposed location. The Town has used moratoriums effectively in the past to thoughtfully consider other complex zoning issues and would be wise to take a similar course of action here.
2. I oppose the request to locate a concrete batch plant at the proposed location for many of the same reasons shared via petitions, public comment sessions, etc. Particulate matter emitted by such plants is known to have a negative impact on air quality and the respiratory health of nearby residents. Runoff from this proposed plant also poses a threat to the nearby Dwaas Kill, which already is classified as an "impaired water body." The plant's location, near residential neighborhoods and medical offices/facilities, also increases the potential harm to young children and patients with respiratory and other health conditions.
3. I also take great offense at the way the Town originally planned to review this project. The proposal was listed only by the location's address, in an apparent attempt to disguise the nature of the request. At an early Planning Board meeting, when the applicant was asked if they were willing to conduct a full environmental impact review, the applicant actually said "No." (I was present at this meeting.) Since then, the Town has taken the appropriate step of requesting the DEC serve as the lead agency in determining if such a review is necessary. That is definitely a step in the right direction.

Thank you for adding the above to the record and for taking them into consideration.

Elisa Gallaro
[REDACTED] Longview Drive
Clifton Park

--

Elisa Gallaro
Writer/Communications Strategist

[REDACTED]
[REDACTED]
[REDACTED]

FW: Clifton Park resident comment on batch concrete plant proposal and moratorium

From Leighann Nastasia <LNastasia@cliftonpark.org>
on behalf of
Clerk <clerk@cliftonpark.org>
Date Mon 4/20/2026 9:37 AM
To Caitlin Fantini <CFantini@cliftonpark.org>

From: Mark Marchand [REDACTED]
Sent: Monday, April 20, 2026 8:00 AM
To: Clerk <clerk@cliftonpark.org>
Subject: Clifton Park resident comment on batch concrete plant proposal and moratorium

Dear Clifton Park officials:

I will be unable to attend Tuesday night's public hearing on the proposed moratorium for batch concrete plants in Clifton Park. I would like my short comments to be recorded in the ongoing record on this matter.

1) As I said when I attended the January Planning Board meeting, I am steadfastly opposed to a concrete batch plant being located on Route 9, for many reasons - most of which are environmental in nature. My wife and I live about a mile as the crow flies from the site. We are fearful of the negative impact particle pollution would have on the clean air we breathe today. Also, the proximity to the Dwaaskill Creek is a significant concern. I believe there are no material solutions that exist to prevent wastewater and other pollutants from reaching those waters. In short, we and others have called for a full and complete state and local environmental impact study. That should be a first step. I also agree wholeheartedly that a 180-day moratorium on consideration of such plants is a good step, allowing for further study and review.

2) Adding frequent cement truck traffic to the already-busy Route 9 would have a negative impact on overall traffic flow in the area.

3) My wife and I remain concerned with how this project was considered at first and listed on Planning Board agendas. The first time we saw the agenda the fact that it involved a batch concrete plant wasn't listed in the headline for the agenda item. One had to read further to learn what it was about. Also, with little or no public notice the plant received a zoning variance.

4) We have a very special town that is simply a great place to live. We need you and other town officials to keep representing our interests to keep it that way.

With thanks for considering my comments,

Mark A. Marchand
[REDACTED] Longview Drive
Clifton Park, NY 12065
[REDACTED]

[Redacted]



--
Mark Marchand
Writing, Editing and Communications Consulting

[Redacted]

RECEIVED

PUBLIC COMMENT

APR 17 2026

CLIFTON PARK
TOWN CLERK

April 16, 2026

FROM: Lorna Kircher, Lilac Court, Clifton Park, NY 12065
TO: Town Clerk, Town of Clifton Park Town
RE: Comment regarding Application #2025-017 for a concrete batch plant operation

This public comment letter is being submitted in support of a moratorium on the approval of the proposed cement plant on Rt 9

The issues presented by this Application are so technical and so extensive that the public requires sufficient time to evaluate the proposal in the context of the issues it presents. Specifically, a moratorium needs to be long enough to allow for an evaluation of the following questions:

1. What is actually being done at this plant?

In general, we know that a concrete batch mixing operation for bonded concrete mixes sand or silica with water and bonding chemicals. Basically, those materials include:

- Limestone or Silica which has its own issues with silica dust causing lung diseases
- Calcium oxide (lime) – when this material touches water, it becomes calcium hydroxide. If this dust is inhaled, the water in lung tissue can turn this dust into a caustic alkaline substance that scars lung tissue. If released into a water supply, it would probably kill everything in that water.
- Hexavalent chromium (Cr(VI)) – triggers allergies and is a known carcinogen
- Cadmium and lead are in limestone - We all know about lead. Cadmium can accumulate in the body over time and takes decades to eliminate. Cadmium is a leading cause of kidney damage and the primary cause of atherosclerosis when inhaled.
- Cement itself includes volatile organic compounds (VOCs)

Additionally, depending on the proposed use for the concrete, various chemicals may be added to make the concrete durable for the application, including:

- Plasticizers & Superplasticizers – improve workability
- Accelerators – speed up setting and strength gain.
- Retarders – delay setting time in hot climates or large pours.
- Air-Entraining Agents – introduce tiny air bubbles for freeze–thaw resistance.
- Waterproofing Admixtures – reduce water absorption and leakage.
- Corrosion Inhibitors – protect embedded steel reinforcement.
- Bonding Agents & Sealers – enhance adhesion and surface protection.

It is my understanding that the Application does not specifically list what the chemical composition of their bonded cement is. I think the Town of Clifton Park officials would want time to get more clarity on exactly chemicals will be used here.

2. Given the toxicity of bonded cement materials, what ability does the Applicant have to confine whatever materials they use to the plant site?

There are 2 ways to look at that question.

One way is to look at the company's representations and applicable laws already in place that regulate emissions or leakages. Residents in Clifton Park and Halfmoon who are environmental advocates (i.e. Friends of Open space) have already raised questions regarding the adequacy of these environmental controls on contaminants with respect to the Daawskill Creek.

The second way, is to look at what actually happens in real life. This company already operates a similar plant in Saratoga County in Wilton NY. Some site visit reports indicate that dust is not adequately contained at this location.

We may also have to consider what is happening to the Loughberry Lake water reservoir serving Saratoga Springs, which now has excessive levels of trihalomethanes (TTHM). TTHM is created when chlorine used in water purification is mixed with organic matter. The current opinion of governmental officials is that an increase in organic matter in Loughberry Lake is the source of the contamination which occurs when they chlorinate it.

I believe that limestone is used as the base material in batch mixing operation for bonded concrete at the plant in Wilton. Limestone sand used in cement contains various levels of organic materials. Ground water and rain water passing through

limestone sand may leach minerals into groundwater feeding Loughberry Lake. Does anyone know if the limestone dust from the cement plant in Wilton a few miles north of Loughberry Lake has contributed to the level of organic matter in the lake? If so, then resultant public water problems are possibly impossible to solve.

In short, I think we need some time to investigate if there is any evidence of environment impact at these other similar locations.

3. Where will the water come from?

It is my understanding that the plant will be tapping into the Clifton Park public water supply for water used in cement mixing. I do not know exactly how much water that is, but I have to assume it is a significant draw on the water managed by the CPWA. As reported in the local news media, Clifton Park residents have already experienced water supply issues this year from changes to ground water that feed wells used to supply the CPWA. Is the CPWA capable of responding to more changes in the water supply created by a high water use cement plant?

I think we need time to have the CPWA evaluate what impact this plant would have on the public water supply and report that there would be no adverse effect to the quality of public water.

4. Is this really Light Industry?

The Clifton Park Town code defines what "Light Industry" is and lists specific types of businesses that are excluded. An excerpt from the code says:

".....**The following uses are expressly prohibited in the LI District** as constituting either heavy industrial use or incompatible light industrial use:

(1)

Asphalt plant.

(2)

Manufacture or storage of fireworks, explosives or munitions.

(3)

Manufacture of cement or abrasives.

(4)

Manufacture of fertilizer or glue.

(5)

Manufacture, processing, storage, production or refining of petroleum or other flammable liquids or gasses.

(6)

Manufacture of alcohol, dye or rubber.

(7)

Manufacture of corrosive acid or alkali.

[Amended 2-28-2011 by L.L. No. 7-2011].....”

I think we need a legal opinion of counsel on whether the Application describes the “Manufacture of cement” and if Calcium Hydroxide is an “alkali”, and does that disqualify it as Light Industry under the Code.

5. This is complicated

One of the challenges of citing locations for highly technical industrial processes is that few people understand them. The average resident of Clifton Park does not have an engineering degree. Residents may be able to raise common sense questions such as presented above, but professionals really have to evaluate what environmental risks to the community a proposal such as cement batch processing plant really poses. This takes time.

Further, those professional evaluations have to be communicated to residents in a manner that is understandable. This involves a bit of education on the part of the public and that also takes time. As a resident of Clifton Park, I want to hear the evaluation of qualified professionals regarding the risks to our health that this Application presents. I also want to hear from the CPWA that the proposed water usage of this plant can be accommodated without disruption to the public water supply.

A moratorium has to be long enough to allow the public time to get sufficiently informed to make informed judgments.

Finally, I think we need to be aware of the burden these kinds of approvals place on public officials who are charged with making these very difficult decisions that can have wide ranging consequences. Along with our appreciation for their service, these officials deserve adequate time and information to make decisions they have to personally live with.

Signed: Lorna Kircher Dated 4/16/2026
Lorna Kircher

FW: Proposed cement plant

From Leighann Nastasia <LNastasia@cliftonpark.org>
on behalf of
Clerk <clerk@cliftonpark.org>
Date Thu 4/16/2026 3:07 PM
To Caitlin Fantini <CFantini@cliftonpark.org>

From: Jeanne Tuttle [REDACTED]
Sent: Thursday, April 16, 2026 2:26 PM
To: Clerk <clerk@cliftonpark.org>
Subject: Proposed cement plant

It is time to put a halt to the cement plant or at least have a full EIS done. So far the town has refused to do that bringing to question their motives. Do a real traffic study. Where are these trucks going. Knns Road, 146 Rt 9. Are they going on the Northway to some other town?

Besides the noise pollution check the air pollution. This plant is not far from commercial and residential buildings. The meeting I went to showed piles, uncovered, or supplies to make the cement and an uncovered conveyor belt taking the material into the plant.

Do we want this company who will only hire two employees and truck drivers? How is that helping our town.

How much did this company contribute in donations to Phill Barretts re- election campaign last year.

Listen to the Clean Trout people.

This is not needed in Clifton Park

Jeanne Tuttle

FW: Statement from Residents for Responsible Development

From Leighann Nastasia <LNastasia@cliftonpark.org>
on behalf of
Clerk <clerk@cliftonpark.org>
Date Wed 4/15/2026 10:26 AM
To Caitlin Fantini <CFantini@cliftonpark.org>

From: Amanda T. [REDACTED]
Sent: Wednesday, April 15, 2026 7:28 AM
To: Clerk <clerk@cliftonpark.org>
Subject: Statement from Residents for Responsible Development

Good Morning,

My name is Amanda Trent and I am a resident at [REDACTED] Spice Mill Blvd. (Dater Farm Neighborhood). I have been a resident for the past 20 years and a recent retiree from the Shenendehowa school district as an elementary school teacher.

I am in contact with hundreds of community members and there is one common statement they share regarding the proposed concrete plant.


They are vehemently opposed to this concrete plant. They are most concerned with the environmental impacts, most of which we will never know of until **years after the fact**. They "hope" our elected officials responsible for this decision making process, look at the facts and exercise the best and most responsible judgement for the group as a whole.

Life is busy, most people complain about finding time to cook dinner let alone attend Town Meetings to fight for something that seems so obviously wrong.

We implore you to make the responsible decision on behalf of our community.

We appreciate your service.

Amanda and Rod Trent

 Outlook

FW: Concrete Batch Plant Moratorium: Public Hearing

From Leighann Nastasia <LNastasia@cliftonpark.org>
on behalf of
Clerk <clerk@cliftonpark.org>
Date Fri 4/17/2026 11:08 AM
To Caitlin Fantini <CFantini@cliftonpark.org>

From: Halfmoon Democrats <halfmoonnydemocrats@gmail.com>
Sent: Friday, April 17, 2026 9:53 AM
To: Clerk <clerk@cliftonpark.org>
Subject: Fwd: Concrete Batch Plant Moratorium: Public Hearing

----- Forwarded message -----

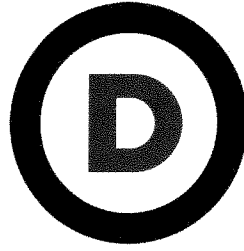
From: **Toni Asbury** [REDACTED]
Date: Fri, Apr 17, 2026 at 9:43 AM
Subject: Re: Concrete Batch Plant Moratorium: Public Hearing
To: Halfmoon Democratic Committee <communications@halfmoondemocrats.org>

I live 1.6 miles from the proposed Route 9, Halfmoon Concrete Batch Plant. I am very opposed to that location for obvious health reasons, noise issues and increased traffic that would result on an already busy road!
I will not be able to attend the upcoming public hearing.

Thank you for letting me voice my concerns.
Toni Asbury

On Fri, Apr 17, 2026 at 8:10 AM Halfmoon Democratic Committee
<communications@halfmoondemocrats.org> wrote:

[View in browser](#)



Subject: Public Hearing: Concrete Plant Moratorium — Tuesday, April 21

Residents of Halfmoon,

On Tuesday, April 21, the Clifton Park Town Board will hold a public hearing on a resolution to adopt a 180-day moratorium on concrete batch mixing plants in the Town.

The proposal that prompted this action is a concrete batch mixing plant at 1910 Route 9. The parcel straddles the municipal boundary, with a portion of the site located within the Town of Halfmoon. Any impacts from the facility — dust, noise, truck traffic, and risks to the Dwaas Kill — would be felt directly by Halfmoon residents. Your voice belongs in this record.

A moratorium would pause new applications while the Clifton Park Town Board reviews the zoning code and considers permanent protections.

HEARING DETAILS

Date: Tuesday, April 21, 2026

Time: 7:00 PM

Location: Clifton Park Senior Center, 6 Clifton Common Blvd, Clifton Park, NY 12065

Agenda Item: Moratorium Resolution on Batch Concrete Mixing Plants

IF YOU WANT TO SPEAK

The hearing includes a Public Privilege period for comments to be entered into the public record.

- Sign in when you arrive. Arrive early to allow time to sign in and be seated before the meeting starts.
- State your name and address before your comments begin. This is required for the record.
- Each speaker is typically allowed 2–3 minutes.
- Comments should be civil and on topic.

IF YOU CANNOT ATTEND

Written comments submitted to the Town Clerk at clerk@cliftonpark.org before or at the hearing are part of the official public record. You do not need to be a Clifton Park resident to submit a comment — Halfmoon residents with a direct interest in the impacts of this facility are entitled to be heard.

IF YOU WANT TO ATTEND WITHOUT SPEAKING

Attendance alone is entered by sign-in and contributes to the public record of community interest. A strong turnout matters.

Please share this notice with others in the community.

For more information, see rrdr9.org

Halfmoon Democrats

5 Cinnamon Lane, Clifton Park, NY
12065
United States of America



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 Outlook

**FW: Submission to Public Record — Research Memorandum and Photo Exhibit | April 21, 2026
Public Hearing on Moratorium Resolution**

From Leighann Nastasia <LNastasia@cliftonpark.org>
on behalf of
Clerk <clerk@cliftonpark.org>
Date Fri 4/17/2026 11:08 AM
To Caitlin Fantini <CFantini@cliftonpark.org>

 2 attachments (2 MB)

Clifton_Park_Batch_Plant_Zoning_Research_v23.pdf; Photo_Exhibit_Wilton_Site_Visit_v2.pdf;

From: Christine Matthews <[REDACTED]>
Sent: Friday, April 17, 2026 9:46 AM
To: Phil Barrett <PBarrett@cliftonpark.org>; Agatha Reid <areid@cliftonpark.org>; Nancy Bellamy <nBellamy@cliftonpark.org>; Mario Fantini <mFantini@cliftonpark.org>; Zabed Manir <zmanir@cliftonpark.org>; Clerk <clerk@cliftonpark.org>; Kevin Dailey <kdailey@cliftonpark.org>
Cc: [REDACTED] Scott Reese <SReese@cliftonpark.org>; John Scavo <jscavo@cliftonpark.org>
Subject: Submission to Public Record — Research Memorandum and Photo Exhibit | April 21, 2026 Public Hearing on Moratorium Resolution

Dear Supervisor Barrett and Members of the Town Board,

Residents for Responsible Development submits the following two documents for inclusion in the public record for the April 21, 2026 public hearing on the proposed moratorium on Batch Concrete Mixing Plants:

1. Research Memorandum: Zoning Classification of Concrete Batch Plants — New York State & National Practice (April 21, 2026)
2. Photo Exhibit: Conditions Observed During the Planning Board's Site Visit — Applicant's Wilton, New York Concrete Batch Plant Facility (April 2026)

Both documents are attached to this email.

RESEARCH MEMORANDUM

The Research Memorandum documents how concrete batch plants are classified and regulated across New York State and the broader United States. Its findings are consistent and unambiguous: every jurisdiction reviewed — including New York City, the Town of North Hempstead, the Town of Amherst, Dallas, Fresno County, and others — classifies concrete batch plants as heavy industrial uses, permitting them only in the most intensive industrial zones and subject to the most rigorous public review processes available.

Critically, the memorandum establishes that Clifton Park's own Light Industrial District code

already provides the answer. The code's purpose statement expressly excludes heavy industrial uses from the LI District. The prohibited uses list names asphalt plants and the manufacture of cement or abrasives as examples of the industrial character the Town has determined is incompatible with that district. A concrete batch plant — which processes cement and aggregates at industrial scale — is directly analogous on multiple independent grounds.

The memorandum also documents the basis for the proposed moratorium: Clifton Park has no heavy industrial zoning designation anywhere in the Town, and no district where a use universally classified as heavy industrial could lawfully be sited. The moratorium gives the Town the time to codify that conclusion permanently, across every district where any ambiguity might otherwise be argued.

The Board should also consider the precedent this determination would set. If a concrete batch plant is permitted in the LI District as a form of "processing," that reasoning applies equally to any heavy industrial use that can characterize its operations in similar terms — asphalt plants, cement manufacturing, aggregate crushing, and comparable facilities. Clifton Park's LI District was designed to exclude heavy industrial uses precisely to protect the Town's residential character. Allowing one such use through a permissive interpretation of ambiguous language opens the door to others. The moratorium exists to ensure that door is closed permanently and uniformly — not left ajar by a single contingent determination. Palm Coast, Florida learned this lesson firsthand: Vice Mayor Theresa Pontieri warned, when that city faced the identical situation, that approving the first application would make it "harder and harder" to deny future heavy industrial applications, including asphalt plants and fuel depots. Clifton Park need not repeat that experience.

PHOTO EXHIBIT

The Photo Exhibit is submitted in direct response to a factual claim in the public record. In his April 18, 2025 Planning Board review comments (Exhibit C to the Morrison ZBA Appeal), Zoning Administrator Scott Reese stated that he "visited one of the applicant's operating concrete batch plants and did not observe/hear/smell any noxious or deleterious conditions."

These photographs were taken during the Clifton Park Planning Board's own October 2025 site visit to the applicant's operating facility in Wilton, New York. They were obtained by Residents for Responsible Development from a participant in that visit.

Three of the six photographs capture visible dust clouds generated during routine operations — truck maneuvering, aggregate handling, and simultaneous mixer truck activity — on a clear, calm day. This is not an exceptional condition. It is the ordinary operational character of a concrete batch plant.

Under Clifton Park Town Code § 208-64D(1), even permitted uses are prohibited if dust can be "distinctly seen" beyond the LI District boundary. Under § 208-64C(29), any use producing "objectionable noise, dust, vibrations, noxious fumes, smoke or odors" is expressly prohibited. These photographs constitute direct visual evidence that the type of operation proposed for 1910 Route 9 produces visible airborne dust as a routine, inherent feature of normal operations — not an exceptional event.

The photographs also establish that an informal visit to a facility selected and hosted by the applicant does not constitute a site-specific assessment of 1910 Route 9, which sits 180 feet from the Dwaas Kill, a Class A trout stream, and within an aquifer recharge area.

Residents for Responsible Development respectfully requests that both documents be entered into the public record for the April 21, 2026 hearing and retained as part of the record for all

pending proceedings related to the 1910 Route 9 application, including the Morrison ZBA appeal.

We look forward to addressing the Board in person at the upcoming hearing.

Respectfully submitted,

Christine Matthews on behalf of
Residents for Responsible Development
Clifton Park, NY

Attachments:

- Research Memorandum: Zoning Classification of Concrete Batch Plants (April 21, 2026)
- Photo Exhibit: Conditions Observed During the Planning Board's Site Visit (April 2026)

RESEARCH MEMORANDUM

Zoning Classification of Concrete Batch Plants

New York State & National Practice

Prepared for: Town of Clifton Park Town Board & Zoning Board of Appeals

April 21, 2026

KEY FINDING

Concrete batch plants are universally classified as heavy industrial uses across virtually every jurisdiction that has addressed them in its zoning code — and are consistently found to be incompatible with residential neighborhoods, requiring at minimum a heavy industrial designation and, in most modern codes, a conditional or special use permit with public review.

1. Purpose of This Memorandum

This memorandum summarizes research into how concrete batch mixing plants are classified and regulated under zoning codes across New York State and the broader United States. It is intended to inform the Town of Clifton Park Town Board and Zoning Board of Appeals as they consider:

- The ZBA appeal of Dr. Lewis Morrison challenging the zoning interpretation for the proposed concrete batch plant at 1910 U.S. Route 9 (ZBA Agenda Item 4, April 6, 2026)
- Councilman Mario Fantini's resolution to adopt a 180-day moratorium on Batch Concrete Mixing Plants (Town Board, April 7, 2026)
- The Town's longer-term goal of examining the treatment of concrete batch plants across all zoning districts and adopting permanent amendments that provide clear, code-wide protection consistent with the character of each district

Note on submission: This memorandum is submitted on April 21, 2026 to both the Clifton Park Town Board and the Zoning Board of Appeals for inclusion in the public record. It is intended to inform the Town Board's consideration of Councilman Fantini's moratorium resolution and to support the ZBA's consideration of the Morrison appeal at the merits hearing, if and when one is scheduled following a finding of standing. The public hearing record on the moratorium resolution will remain open following the April 21 hearing to allow for receipt of the Saratoga County Planning Board's referral response, expected in mid-May 2026. The Town Board is anticipated to close the hearing record and vote on the moratorium resolution at its next meeting following receipt of that response. The 1910 Route 9 application itself remains at the preliminary review stage: no lead agency has been designated, no formal SEQRA action has been taken, and the application has not been deemed complete for Planning Board review. The Planning Board is expected to table the application pending resolution of the ZBA appeal and the moratorium vote. The substantive research contained herein — regarding zoning classification, Clifton Park's own code, and national practice — is offered to support both bodies' deliberations

on the appropriate treatment of concrete batch plants across all zoning districts in the Town of Clifton Park, and on the need for permanent zoning clarification to address ambiguities that the current code leaves unresolved.

The research strongly supports the position that a concrete batch plant is, by any standard measure, a heavy industrial use — one that municipalities consistently place far from residential neighborhoods and subject to the most stringent approval processes available under local law.

2. Standard Zoning Classification: Heavy Industrial

Across every jurisdiction reviewed — in New York State, Texas, California, Missouri, and Florida — concrete batch plants are categorized as heavy industrial uses. This classification reflects the nature of the operation: large-scale material processing, high truck traffic volumes, significant dust and particulate emissions, noise, and the use of cement, aggregate, and water at industrial scale. That characterization is confirmed at the federal level by the U.S. Occupational Safety and Health Administration's own Standard Industrial Classification (SIC) Manual, which provides two reinforcing data points. First, ready-mixed concrete production is classified under SIC Code 3273 (Ready-Mixed Concrete) within Division D: Manufacturing — placing it squarely in the manufacturing sector alongside other heavy industrial operations, not in commercial or light industrial categories. Second, and equally instructive, the equipment that defines a concrete batch plant — concrete mixers — is classified by OSHA under SIC Code 3531 (Construction Machinery and Equipment), which covers establishments engaged in manufacturing “heavy machinery and equipment” for the construction industries. The federal government's own industrial classification system thus treats both the process and the equipment as heavy industrial in character. This is entirely consistent with how municipalities across the country zone these facilities — and directly contradicts any characterization of a concrete batch plant as a light industrial use.

New York City

In New York City's zoning framework, the M-3 district is the most intensive manufacturing classification in the Zoning Resolution. The NYC Zoning Resolution itself describes M-3 districts as designed “to accommodate the essential heavy industrial uses which involve more objectionable influences and hazards, and which, therefore, cannot reasonably be expected to conform to those performance standards which are appropriate for most other types of industrial development” (NYC ZR Article IV, Chapter 1). Industry and planning practice consistently places concrete batch plants in M-3 zones — alongside power plants, waste facilities, and similarly intensive operations — as uses carrying the highest permitted levels of noise and environmental impact of any manufacturing designation. This association with the most intensive end of the zoning spectrum reflects the recognized severity of the impacts these facilities generate.

Importantly, upstate New York municipalities do not use the NYC Zoning Resolution. Under New York Town Law §261, each town enacts its own zoning ordinance. However, the principle that batch plants belong in the most intensive industrial category — not in commercial or mixed-use zones — is consistent throughout the state's zoning practice.

Upstate New York Towns

Upstate New York towns show a consistent pattern in how they treat heavy industrial uses — and the findings bear directly on the situation in Clifton Park.

The Town of North Hempstead (Nassau County) places transit mix hoppers and equipment for the storage and manufacture of sand, stone, cement, or gravel for concrete mix in its most intensive 'Industrial B' district — alongside petroleum gas manufacturing, paper mills, and central power plants. Even there, the code imposes strict performance standards on dust, particulate matter, and odors, with required abatement measures. This is the most permissive treatment found in any NYS town code reviewed — and even it confines these uses to the most intensive industrial category available.

The Town of Amherst (Erie County) takes a stricter approach, expressly prohibiting on-site crushing of stone, concrete, or similar processing within 500 feet of any residential zoning district — a statutory buffer that reflects the well-recognized incompatibility of concrete-related industrial operations with residential uses.

CLIFTON PARK'S OWN ZONING CODE — THE MOST DIRECT EVIDENCE

Clifton Park Town Code Article IX governing the Light Industrial (LI) District may be the most important evidence in this entire record. The code's stated purpose is to permit 'selective industries whose activities do not adversely impact the environment or quality of life of the residents.' It then states explicitly: 'due to the potential adverse and/or harmful impact of heavy industrial uses, such uses are explicitly excluded from this district.' Critically, the code's prohibited uses list — described as 'not all inclusive' — explicitly names by example: Asphalt plant; Manufacture of cement or abrasives; Manufacture, processing, storage, production or refining of petroleum or other flammable liquids or gasses; and other analogous heavy industrial operations. A concrete batch plant — which mixes cement and aggregates at industrial scale — is directly analogous to both 'Asphalt plant' and 'Manufacture of cement or abrasives,' both of which are named as prohibited heavy industrial uses in the LI district where this plant has been proposed. This is precisely the interpretation at the heart of the Morrison ZBA appeal.

This makes the Clifton Park situation especially clear: the Town does not need to look to other jurisdictions to classify a batch plant as heavy industrial. Its own code already does so by exclusion — by expressly prohibiting heavy industrial uses from the LI district where this facility has been proposed.

A Closer Reading: How Clifton Park's Own LI Code Would Have Supported Denial

A careful, provision-by-provision reading of Clifton Park's own LI District code makes clear that a Zoning Administrator applying the code as written could have — and in the view of many who have reviewed it, should have — ruled a concrete batch plant a prohibited use without ever reaching the question of national precedent. The Morrison ZBA appeal, filed March 12, 2026 by Colleen Pierson, Esq. of Abrams Fensterman, LLP on behalf of Dr. Lewis Morrison, challenges the zoning interpretation contained in a January 13, 2026 letter from Zoning Administrator Scott Reese — which itself was a clarification letter responding to Ms. Pierson's January 2, 2026 letter to the Planning Board requesting a formal use determination. The underlying written determination was originally issued on April 18, 2025 and filed with the Town Clerk on May 29,

2025. That determination classified the use as “assembling/fabrication, processing” — a permitted use under § 208-64(B)(1) — but simultaneously conditioned permissibility on the applicant’s future submission of documentation demonstrating compliance with all performance standards. As Ms. Pierson’s appeal brief states directly: “a zoning determination that is contingent upon proof the use is compliant with the zoning requirements is no determination at all.” The Town Code does not authorize the Zoning Administrator to make contingent, conditional determinations on permissibility — the code requires a use to conform with zoning regulations before it proceeds, not after. Each of the substantive provisions that should have compelled outright denial is addressed in turn.

1. The Purpose Statement (§ 208-62) Expressly Excludes This Use

The purpose section of the LI District is not merely aspirational — it is operative. It limits the district to “selective industries whose activities do not adversely impact the environment or quality of life of the residents of the Town or create an impact which is injurious to the public health, safety or general welfare.” It then states unambiguously: “due to the potential adverse and/or harmful impact of heavy industrial uses, such uses are explicitly excluded from this district.” A concrete batch plant — with its industrial-scale cement and aggregate processing, high-volume truck traffic, particulate emissions, caustic washwater, and proximity to a Class A trout stream and residential neighborhoods — self-evidently creates adverse impacts on the environment and quality of life. The purpose statement alone provided ample basis for denial.

2. The Permitted Uses List (§ 208-64A) Does Not Include This Use

The permitted uses listed in § 208-64A are specific and enumerated. They include light manufacturing, assembly and fabrication, warehousing, offices, research and development, breweries, EV-related uses, and similar activities. Ready-mix concrete production appears nowhere on this list. The closest arguably applicable provision — § 208-64A(1)(a), covering “assembling/fabrication, processing or light manufacturing of products” — contains an explicit internal limitation: such activity must “not result in any noxious noise or odor outside the district and does not have a deleterious effect on the air or water quality.” Industrial-scale concrete production, with its cement dust, mixer noise, and high-caustic washwater, fails this standard on its face. Even if a batch plant were argued to fall within “processing,” it would be excluded by the plain language of the very provision it would need to rely upon.

3. The Prohibited Uses List (§ 208-64C) Names Directly Analogous Operations

The prohibited uses list in § 208-64C is expressly “not all inclusive” — meaning it establishes a floor for prohibited uses, not a ceiling. Among the named prohibitions are: (1) Asphalt plant; (3) Manufacture of cement or abrasives; (24) Stone or gravel crushing; and (29) Any other use which produces objectionable noise, dust, vibrations, noxious fumes, smoke or odors. A concrete batch plant engages in all of the following: it processes cement (item 3); it crushes and handles aggregate (analogous to item 24); it generates industrial noise, dust, and vibration (item 29); and it is operationally analogous to an asphalt plant (item 1) in terms of industrial character, heavy equipment use, and truck volume. The prohibited list provides at least four independent textual hooks for denial, any one of which would have supported a ruling that the use is not permitted. The Zoning Administrator has argued that a concrete batch plant is distinguishable from the prohibited “manufacture of cement or abrasives” because cement manufacturing involves high-temperature kiln processes — thermal processes that concrete batching does not share. This argument misreads the prohibited uses list. The code does not prohibit only cement manufacturing; it prohibits “manufacture of cement or abrasives” as a named example within a broader list that expressly includes “any other use which produces objectionable noise, dust, vibrations, noxious fumes, smoke or odors.” A concrete batch plant is not required to match the thermal profile of cement manufacturing to fall within the prohibited category — it is

independently prohibited by items (1), (24), and (29), each of which describes operational characteristics that concrete batching demonstrably exhibits. The “not all inclusive” language confirms that the listed examples do not exhaust the prohibited uses; they illustrate the type of industrial character the Town has determined is incompatible with the LI District. Concrete batching fits that character on multiple independent grounds.

4. The Performance Standards (§ 208-64F) Cannot Be Met by a Batch Plant

Even assuming the use were somehow permitted, § 208-64F imposes performance standards that a concrete batch plant demonstrably cannot satisfy without a rigorous, site-specific assessment that has never been conducted. These standards include: (1) noise not to exceed 65 decibels at the property line during daytime hours — federal construction noise data (FHWA Construction Noise Handbook, Table 9.1) lists the Spec emission limit for concrete batch plants at 83 dB at 50 feet, and the Spec limit for concrete mixer trucks at 85 dB at 50 feet (with an actual measured average of 79 dB across 40 field samples), raising a serious and unresolved question as to whether the § 208-64F standard can be met at this site; (2) no discharge of toxic or noxious matter on or off site; (3) no vibration perceptible at the zone boundary; (4) no heat or glare beyond the property line; and (5) no odor detectable outside the property line. The Town’s own code defines “noxious” as “that which causes or tends to cause injury to health.” Cement dust and high-pH concrete washwater — documented by EPA and state environmental agencies as injurious to aquatic ecosystems, and flagged specifically by Clifton Park’s own Environmental Conservation Committee — constitute noxious matter within the meaning of that definition. That fine particulates generated by concrete batch plant operations travel beyond property lines under normal operating conditions is confirmed by EPA New Source Performance Standards for concrete batch plants and by photographic documentation obtained by Residents for Responsible Development from a participant in the Clifton Park Planning Board’s site visit to the applicant’s Wilton, New York facility — photographs that show visible dust clouds generated during routine truck maneuvering and aggregate handling on a clear, calm day (see accompanying Photo Exhibit). Tellingly, Zoning Administrator Reese himself acknowledged in his April 18, 2025 zoning comments that the applicant would need to provide “a narrative demonstrating that the proposed use will not result in any noxious noise or odors outside the district, will not have a deleterious effect on air or water quality, and will not exceed any of the performance standards set forth in Town Code Chapter § 208-64(F)” — yet issued a conditional determination of permissibility before that information was ever provided. A personal, informal site visit by Mr. Reese to one of the applicant’s own operating concrete batch plants — as noted in the April 2025 review comments where he states he “did not observe/hear/smell any noxious or deleterious conditions” — is not a substitute for the quantifiable, site-specific technical data the code requires, and is not an assessment of the proposed 1910 Route 9 site, which sits 180 feet from a Class A trout stream and within an aquifer recharge area. Photographic documentation obtained by Residents for Responsible Development from a participant in the Planning Board’s site visit to the applicant’s Wilton facility directly contradicts any inference that batch plant operations are conducted without visible dust or detectable environmental impact. No site-specific assessment of 1910 Route 9 has been conducted. These performance standards were never properly evaluated before the application advanced to site plan review — a sequence improper under § 208-64E. The Morrison ZBA appeal directly challenges this: a contingent determination conditioning permissibility on future proof of compliance is, as Ms. Pierson’s brief states, “no determination at all.”

5. The Height Variance Circumvented the Required Zoning Determination

Section § 208-65D establishes that the maximum permitted height in the LI District is 50 feet, but that for any structure proposed over 35 feet, the Planning Board must conduct a visual assessment and require the applicant to complete an Environmental Quality Review Visual EAF

Addendum. The applicant’s proposed cement silo is 61 feet — taller than a five-story building — and would require this review. The application proceeded to the Planning Board for site plan review and obtained a height variance on the silo — but this occurred without any prior written use determination under § 208-64E confirming the use was permitted at all. This is confirmed on the public record: at the April 7, 2026 Town Board meeting, a board member stated explicitly that the ZBA was involved solely for “a variance on the 60-foot height of the batch plant” and that there was “never any zoning determination.” This sequencing was fundamentally improper. A use that is prohibited cannot be rendered permissible by obtaining a variance on one of its physical features. The height variance question should never have been reached without the written use determination the code requires. This procedural failure is at the core of the Morrison ZBA appeal.

6. District Regulations (§ 208-64D) Provide an Additional Independent Bar

Section § 208-64D(1) provides that even permitted uses are prohibited if the following can be detected beyond the LI District boundary: noise clearly heard; vibration clearly felt; fumes or odors plainly smelled; or dust that settles from or floats through the air and can be distinctly seen. These are not aspirational guidelines — they are independent grounds for prohibition, applicable even to otherwise-permitted uses. A concrete batch plant, by its nature, generates all four: mixer truck engine noise, vibration from aggregate handling, cement and chemical odors, and fine particulate dust. The record before the Planning Board already contains ECC documentation of these concerns. Section § 208-64D(1) provides yet another basis on which the Zoning Administrator could have — and should have — ruled the use prohibited.

Summary: The January 2026 Determination Was Wrong on Multiple Independent Grounds

The Morrison ZBA appeal, filed March 12, 2026 by Colleen Pierson, Esq. of Abrams Fensterman, LLP, challenges the validity of the April 18, 2025 zoning determination and the January 13, 2026 clarification letter issued by Zoning Administrator Scott Reese. Both documents treated the proposed use as conditionally permissible — requiring the applicant to demonstrate future compliance with performance standards rather than confirming compliance as a precondition to approval. As the Morrison appeal brief argues, and as the code itself confirms through § 208-64E, a determination conditioned on future proof of compliance is not a valid zoning determination. Each of the six substantive provisions identified above would have compelled outright denial had the required analysis been applied at the threshold. The application was instead allowed to advance to site plan review and height variance consideration while the fundamental question of use permissibility remained unresolved. The code, read correctly, required that question to be answered first — and answered in the negative. The ZBA appeal is the mechanism by which the Morrison team is seeking to correct that procedural error; the moratorium and permanent zoning amendments are the mechanism by which the Town Board is being asked to ensure the code is clear and protective going forward — for this application and for any future proposal of this type, in any district.

National Examples

The following table summarizes findings across multiple jurisdictions:

Jurisdiction	Zoning Classification	Approach
Clifton Park, NY (own code)	LI District — heavy industrial EXCLUDED	Expressly prohibited in LI zone

New York City	M-3 Heavy Manufacturing	Characteristic M-3 use; most intensive district
Town of North Hempstead, NY	Industrial B (heaviest)	Permitted only in most intensive industrial zone
Town of Amherst, NY	Industrial district	500-ft buffer from all residential zones required
Dallas, TX	IM Industrial Manufacturing only	Must be in IM district + Specific Use Permit
Fresno County, CA	M-3 Heavy Industrial	Permitted use in M-3 only
St. Charles County, MO	Heavy Industrial	Off-site product: heavy industrial only
Firebaugh, CA	M-2 Heavy Industrial	Conditional Use Permit required

3. Conditional and Special Use Permits

Even in heavy industrial zones where batch plants may be permitted as a listed use, most modern codes require more than a standard building permit. Conditional Use Permits (CUP) or Special Use Permits (SUP) are commonly required, triggering public notice, public hearings, and board review before a plant can be approved.

The City of Dallas, Texas provides one of the most instructive recent national precedents:

DALLAS, TEXAS — A NATIONAL PRECEDENT

Concrete batch plants were previously allowed in most Dallas zoning districts — including residential districts — with only administrative approval. Dallas adopted Ordinance No. 32209 on May 11, 2022, requiring that all new temporary and permanent concrete or asphalt batch plants must be located in the IM Industrial Manufacturing District AND obtain a Specific Use Permit (SUP) triggering full public hearings before the City Plan Commission and City Council. This dual requirement — both an industrial district location AND a public hearing process — reflects exactly the kind of protective framework that the moratorium resolution and permanent zoning amendments before the Clifton Park Town Board are designed to establish.

Other key findings on conditional/special use requirements:

- Fresno County, CA: Concrete batch plants, ready-mix concrete, and concrete and cement products are listed as permitted uses within the M-3 Heavy Industrial District — confirming that heavy industrial classification is the floor, not the ceiling, for these facilities.
- Firebaugh, CA: Batch plants require a Conditional Use Permit even within the M-2 Heavy Industrial District — and are commonly restricted to temporary uses tied to specific construction projects only.

- Multiple jurisdictions restrict off-site batch plants (those producing concrete for general commercial sale, not tied to a specific construction project on the same parcel) to the most restrictive industrial zones with the highest level of public review.

Two very recent cases — one in New York State and one from March 2026 — are particularly instructive for Clifton Park:

TOWN OF CLAY, NEW YORK — A NYS PRECEDENT (2024)

In 2024, Goguen Drive Realty LLC applied for a special permit to build a concrete batch plant in the Town of Clay (Onondaga County) in the town's I-1 light industrial corridor — near neighborhoods, parks, schools, and a YMCA. Hundreds of residents packed town board meetings over several months in opposition. Community members argued directly that the I-1 light industrial zone “excludes this type of industry” — that batch plants belong in outlying areas with adequate safety buffers, not in a light industrial zone near homes. The applicant's own plans projected 504 total truck trips per day — more than one per minute — between 7 a.m. and 3 p.m., and water usage of 18,900 gallons per day. Despite the applicant's claims of a “state-of-the-art” facility, the Clay Town Board denied the special permit in June 2024. The parallels to Clifton Park are direct: same zoning category conflict (light industrial), same community character concerns, same outcome — and notably, Clay denied an application with far greater projected truck volumes than the 108 daily trips cited by the Clifton Park applicant's own traffic study.

PALM COAST, FLORIDA — TWICE REJECTED (2025–2026)

Palm Coast, Florida rejected concrete batch plant rezoning applications twice in seven months — unanimously on final vote in August 2025, and again 4-1 in March 2026. The two applications involved separate companies on adjacent parcels within the same Hargrove Grade light industrial park: SRM Concrete in August 2025 and Hard Rock Materials in March 2026. Both sought to rezone from light industrial to heavy industrial, and the City Council rejected both on the same grounds of incompatibility with the surrounding light industrial business community. Note on attribution: the opposition on both votes was led by Vice Mayor Theresa Pontieri, not Mayor Norris, who initially supported the first application before reversing. It is Vice Mayor Pontieri's reasoning that maps most directly onto Clifton Park's situation. On the August 2025 SRM vote, Pontieri warned that approval would be “lazy” and “shortsighted” and would make it “harder and harder” to deny future heavy industrial applications — including asphalt plants and fuel depots — in what is currently protected as a light industrial area. On the March 2026 Hard Rock vote, Pontieri stated plainly: “We're not talking about Hard Rock. We're talking about Industrial 2 — and I think we're setting a really dangerous standard.” Notably, the SRM applicant in Palm Coast disclosed that its batch plant would use 10,000 to 14,000 gallons of water per day from an on-site well — the same range cited by Clifton Park's Environmental Conservation Committee regarding the 1910 Route 9 proposal, confirming that these water demands are industry-typical, not site-specific anomalies. This is precisely the confirmation that the water demand and operational impacts of batch plants are industry-typical — not dependent on site-specific conditions — and that the Town's concern is well-founded regardless of which site or application is under consideration.

4. Residential Proximity and Buffer Requirements

Wherever batch plants are permitted at all, buffer zones from residential uses are a standard condition. Industry permitting guidance consistently identifies the following as required steps before a concrete plant can be established:

- Zoning or use variance approval confirming the land is approved for industrial use
- Site plan approval including traffic patterns, parking, buffers, and lighting
- Public planning board presentations and hearings in most jurisdictions
- Construction permits covering electrical, plumbing, and fire code compliance

Industry permitting guidance for concrete batch plants consistently identifies buffer requirements from sensitive land uses as a standard condition of approval. The University of Texas Environmental Law Clinic's Guide to Air Quality Permitting for Concrete Batch Plants documents that community advocates and planning professionals routinely push for substantial buffers near residences, schools, and parks — recognizing that dust, noise, and traffic from batch plant operations extend beyond the facility's property line under typical operating conditions.

5. Environmental Permitting

On top of local zoning requirements, concrete batch plants face a separate and significant layer of environmental permitting at the state and federal level. These requirements apply regardless of local zoning approvals and cannot be waived by municipalities:

- Air quality permits (for dust, particulate matter, and cement emissions) — required in virtually every state, including under EPA New Source Performance Standards
- NPDES stormwater permits — required under the federal Clean Water Act for industrial stormwater discharges
- Spill Prevention, Control, and Countermeasure (SPCC) plans — required under EPA oil spill prevention regulations for facilities storing more than 1,320 gallons of oil in aboveground containers with a reasonable potential for discharge to navigable waters; a threshold typical of operations of this type given on-site diesel fuel storage for truck fleets and heavy equipment
- State-specific air emission licenses or general permits (e.g., NYS DEC air permitting for stationary sources)

Even mobile or temporary concrete operations are subject to stormwater and air permitting at minimum. Industry guidance is explicit: there is no such thing as 'too remote to regulate' when it comes to these environmental requirements.

6. Implications for Clifton Park

The research record is clear and consistent — and crucially, it begins with Clifton Park’s own code. The application at 1910 U.S. Route 9 brought into focus a question that the Town’s zoning code does not fully resolve across all of its industrial districts: where, if anywhere, could a concrete batch plant be permitted in Clifton Park? The answer, on a careful reading of the code, is nowhere in the Town — and for a reason that goes beyond any individual district’s specific prohibitions. Unlike many municipalities, the Town of Clifton Park has no heavy industrial zoning designation at all. There is no M-3, no Heavy Industrial District, no zone designed to accommodate the most intensive category of industrial use. Every district in Clifton Park is designed for uses compatible with the Town’s residential character and quality of life. The LI District’s own purpose statement makes this explicit: it exists for selective industries whose activities do not adversely impact the environment or quality of life of the residents, and it expressly excludes heavy industrial uses. Because no heavy industrial zone exists anywhere in Clifton Park, there is no district in the Town where a use of this type — universally classified as heavy industrial across every jurisdiction reviewed in this memorandum — could lawfully be sited under current code. The moratorium gives the Town the time and legal framework to codify that conclusion unambiguously and permanently, across every district where any ambiguity might otherwise be argued. A concrete batch plant is the kind of heavy industrial use that:

- Is expressly prohibited in Clifton Park’s own Light Industrial District, which explicitly excludes ‘heavy industrial use’ by name and by purpose — and was the subject of a conditional zoning determination by Zoning Administrator Scott Reese (April 18, 2025, filed with Town Clerk May 29, 2025; clarified January 13, 2026) that the Morrison ZBA appeal (filed March 12, 2026, Abrams Fensterman, LLP) argues constitutes no valid determination at all, having conditioned permissibility on future proof of compliance rather than requiring it as a threshold to approval
- Is universally classified in the most intensive industrial zoning categories in every comparable jurisdiction reviewed nationally and across New York State
- Is routinely found incompatible with residential neighborhoods, mixed-use zones, and light industrial corridors
- Requires at minimum a conditional or special use permit with public review in most modern codes — and is outright prohibited near sensitive uses in a growing number of municipalities
- Generates significant impacts on community character, air quality, traffic, noise, and public health that are well-documented and widely recognized

The Morrison ZBA appeal challenges the absence of a proper written use determination on exactly these grounds. The national and statewide research reinforces what Clifton Park’s own code already says: a facility of this type does not belong in a Light Industrial zone explicitly designed to exclude heavy industrial uses. This research is submitted to both boards on April 21, 2026 for inclusion in the public record and is intended for full consideration at the ZBA merits hearing when scheduled. A note on the applicable legal standard: New York courts hold that a ZBA’s interpretation of its own zoning code is entitled to “great deference” (*Matter of Brancato v Zoning Bd. of Appeals of City of Yonkers*, 30 AD3d 515 [2006]). However, that same line of authority makes clear that where the question is one of pure legal interpretation of statutory terms — i.e., what the plain language of the code means — judicial deference is not required. Here, Clifton Park’s LI District code expressly prohibits heavy industrial uses and names asphalt plants and the manufacture of cement as examples. Any administrative interpretation permitting a concrete batch plant in the LI District runs counter to the clear wording of the code itself and is not entitled to deference. The ZBA, at the appropriate merits hearing, would be on firm legal

ground in ruling that no valid use determination was ever made, and that the use is prohibited under the plain language of the Town's own code.

The moratorium resolution before the Town Board rests on a legitimate, research-grounded basis that is entirely independent of any single application. Three independent foundations support it. First, the explicit code-wide gap: Clifton Park's zoning code does not contain an express, town-wide prohibition on concrete batch plants across every district where 'light manufacturing,' 'processing,' or 'assembling/fabrication' uses are permitted, leaving open the theoretical argument that such a use could be characterized as permitted processing in districts beyond LI-2. Second, the structural implication of the code itself: the Town of Clifton Park has no heavy industrial zoning designation anywhere. Because every Clifton Park zoning district is designed for uses compatible with residential quality of life, and because concrete batch plants are universally classified as heavy industrial, the logical conclusion of a systematic code review is an explicit, town-wide prohibition — analogous to how asphalt plants are already treated. Concrete batch plants share the same industrial character and operational profile as asphalt plants: both generate dust, noise, high truck volumes, and significant environmental impacts at industrial scale, and both appear by name on the LI District's prohibited uses list. The moratorium creates the framework to codify that equivalence explicitly and permanently across all districts. Third, the active and incomplete application: the 1910 Route 9 proposal remains at the preliminary review stage — no lead agency has been designated, no formal SEQRA action has been taken, and the application has not been deemed complete for Planning Board review. The moratorium is therefore precisely what New York Municipal Home Rule Law § 10 contemplates: a local law to preserve the status quo on an active, incomplete application while the Town conducts the code review that should have preceded it. New York courts have long upheld town moratoria as valid exercises of the police power where grounded in legitimate planning concerns and not imposed for an unreasonable duration. The moratorium is grounded not in community opposition but in the extensive scientific and planning record assembled here: federal SIC classification treating ready-mix concrete production as Division D Manufacturing; research across more than a dozen comparable jurisdictions finding uniform classification as heavy industrial; EPA New Source Performance Standards governing batch plant emissions; FHWA noise data placing batch plant operations at 83 dB — well above the Town's 65-decibel LI District performance standard; and photographic documentation of visible dust emissions during normal operations at the applicant's own Wilton facility. Dallas, Texas discovered the cost of code inaction when batch plants proliferated across districts never designed for them, requiring legislative correction in 2022. Clay, New York confronted the same gap in its I-1 corridor in 2024. The Town of Clifton Park need not wait for a second application to close the same door. The 180-day moratorium — a valid exercise of the Town's police power under the Municipal Home Rule Law and consistent with NYS Department of State guidance on temporary land-use moratoria — gives the Town the time to examine this question systematically across all relevant districts, adopt code language that is clear and durable, and ensure that Clifton Park's zoning framework explicitly reflects what the structure of the code already implies: that uses carrying the industrial profile of a concrete batch plant have no lawful home in any Clifton Park zoning district. Residents for Responsible Development respectfully urges the Town Board to adopt the moratorium resolution and commit to a permanent code amendment process grounded in the research record compiled here.

The precedent consequences of allowing this application to proceed without proper zoning clarification are significant and cut in three directions. First, the "not all inclusive" character of the LI District's prohibited uses list — a protection the Town relies on to exclude uses not expressly named — would be undermined by a permissive administrative interpretation. If a

concrete batch plant is characterized as permitted “processing” under the LI District, that determination becomes part of the public record. The next applicant — whether an asphalt terminal, a stone crushing operation, or another heavy industrial use of equivalent or lesser character — can point to that precedent and argue that the Town has already ruled such operations permissible in the LI zone. The open-ended language of the prohibited uses list, which is the Town’s strongest tool for excluding unanticipated heavy industrial uses, is neutralized the moment a use of this type is allowed through. Second, Clifton Park has no heavy industrial zoning district anywhere in the Town. Unlike municipalities that can redirect heavy industrial applications to a designated M-3 or Heavy Industrial zone, Clifton Park has nowhere else to draw the line. If batch plants are permitted in LI-2, there is no limiting principle available to exclude the next comparable use from the same zone — or from LI-1, or from any other district where processing uses are listed as permitted. The moratorium is the mechanism to establish that limiting principle before a permissive precedent is set. Third, once an applicant obtains a valid approval and undertakes substantial construction and expenditure in reliance on it, New York common law vested rights doctrine can significantly constrain the Town’s ability to apply a more restrictive code interpretation to that applicant’s project. Under New York law, vested rights require both a legally issued permit and substantial changes and expenditures so significant that later municipal action would render the improvements essentially valueless — but the risk of that scenario arising is real if this application advances without proper threshold determination. The moratorium preserves the Town’s full legal options before any such reliance can occur; allowing the application to advance without that determination narrows them. The experience of other jurisdictions confirms this dynamic. Palm Coast Vice Mayor Theresa Pontieri warned explicitly on the public record that approving one heavy industrial rezoning would make it “harder and harder” to deny future applications for asphalt plants, fuel depots, and similar uses in what is currently protected light industrial territory. Dallas, Texas discovered the same problem at scale: once batch plants were allowed to proliferate across zones that were never designed for them — including residential districts where they required only administrative approval — a contentious legislative correction was required to restore appropriate controls. Clifton Park is at the precise moment — before approval, before reliance, before precedent — where a moratorium can prevent all three of these consequences at once.

BOTTOM LINE

Clifton Park’s own Light Industrial District code expressly prohibits heavy industrial uses — the category into which concrete batch plants universally fall in every jurisdiction reviewed. The Fantini moratorium resolution and the Town’s pursuit of permanent zoning protections are squarely grounded in the Town’s own code and in the prevailing practice of municipalities across New York State and the nation. The 1910 Route 9 application served as the catalyst for a necessary examination of how Clifton Park’s code addresses concrete batch plants — an examination that reveals a need for permanent, code-wide clarity that the moratorium is designed to provide. The research supports the Town Board’s authority and responsibility to adopt protective zoning measures — and, at the appropriate merits hearing before the ZBA, supports the conclusion that no valid written use determination was ever made allowing this application to proceed, that the use is prohibited under the plain language of the Town’s own code, and that any administrative action treating the use as permitted is contrary to that code and not entitled to judicial deference under controlling New York authority (Matter of Brancato v Zoning Bd. of Appeals of City of Yonkers, 30 AD3d 515 [2006]).

7. Authority to Act: A Direct Ask to Both the Town Board and the ZBA

This section addresses both bodies before which this memorandum is submitted on April 21, 2026: the Town Board, which is considering the moratorium resolution, and the Zoning Board of Appeals, which holds authority over the pending zoning interpretation appeal. Each has clear legal authority to act; each has before it a research record that supports action; and each is being asked to exercise that authority in a disciplined, code-grounded way. New York law recognizes that municipalities may adopt temporary land use moratoria as a legitimate planning tool where there is uncertainty as to how existing zoning provisions apply to certain categories of uses. Such actions are evaluated under the same standard as other zoning decisions — whether they are reasonable, time-limited, and supported by a clear planning purpose. Courts reviewing such actions under Article 78 do not substitute their judgment for that of the municipality, but instead assess whether the action is rational, legislative in nature, and supported by the record. Where a temporary pause is adopted to allow a municipality to evaluate its zoning framework, assess potential impacts, and ensure consistency with the intent of its code, such actions are recognized as a proper exercise of municipal authority. The proposed moratorium is legislative in nature, as it applies generally to defined categories of uses that raise common land use and compatibility considerations, and is intended to allow the Town to evaluate and, if necessary, amend its zoning framework to ensure consistent application across all similarly situated properties. New York appellate authority confirms that a municipality may respond to evolving or uncertain land use questions by pausing review, evaluating its zoning framework, and subsequently amending its zoning laws, where those actions are undertaken through proper legislative procedures and supported by a rational basis. See *Matter of Frontier Stone, LLC v. Town of Shelby*, 174 AD3d 1382 (4th Dep't 2019) (upholding a town's legislative response to a pending industrial land-use application following a temporary pause in processing and subsequent zoning amendments restricting the use; enacted pursuant to Municipal Home Rule Law). Of particular relevance, the same Third Department that would review any challenge to the current moratorium has upheld Clifton Park's own use of temporary, finite local laws to manage development in response to planning concerns. In *Matter of Albany Area Bldrs. Assn. v Town of Clifton Park*, 172 AD2d 54 (3d Dep't 1991), the court upheld Clifton Park's Phased Growth Law — a local law limiting the pace of building permits in a designated development area — as a valid exercise of municipal authority under the Municipal Home Rule Law, finding it to be an authorized zoning regulation rationally related to a legitimate government interest. The court upheld the law as rationally related to a legitimate government interest and expressly permissible under the Municipal Home Rule Law — characterizing it as a reasonable middle course between a complete moratorium on building and uncontrolled growth. That holding applies directly here: Clifton Park's Town Board has previously enacted time-limited local laws restricting development activity on planning grounds, the Third Department has upheld that authority, and the same framework supports the current moratorium. See also NYS Department of State, *Land Use Moratoria* (James A. Coon Local Government Technical Series). Those principles apply here. Certain industrial and processing uses — particularly those involving material handling, outdoor operations, or potential off-site impacts — raise material questions under the Town's zoning framework, including the structure of permitted uses, prohibited uses, and performance standards governing noise, dust, vibration, traffic, and other external effects. These considerations warrant careful evaluation to ensure that the Town's zoning provisions clearly contemplate and consistently regulate such uses before approvals are granted. The purpose of the moratorium is not to address any single application, site, or zoning district, but to ensure that the Town's zoning framework is applied uniformly and

as intended across all areas of the Town and all similarly situated uses, thereby avoiding inconsistent or ad hoc determinations. Proceeding without this review risks inconsistent application of the zoning code and approvals that may be difficult to defend. By contrast, a narrowly tailored moratorium, supported by a clear and articulated planning rationale, is the type of action courts have recognized as reasonable and non-arbitrary. The Zoning Board of Appeals' authority is equally clear. Pursuant to Town Code § 208-109(c)(1), the ZBA has authority to "reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter." That authority encompasses the Morrison appeal in its entirety. Under New York law, courts reviewing ZBA determinations defer to the Board's interpretation so long as it is reasonable and grounded in the language and purpose of the code — disturbing such interpretation "only if it is irrational or unreasonable." *Matter of Brancato v Zoning Bd. of Appeals of City of Yonkers*, 30 AD3d 515 (2d Dep't 2006). Courts may set aside a ZBA determination only where the board acted illegally, arbitrarily, abused its discretion, or merely succumbed to generalized community pressure — not where the Board's decision is rational and supported by the record. *Matter of Pecoraro v Board of Appeals of Town of Hempstead*, 2 NY3d 608, 613 (2004). A well-reasoned, code-anchored determination is precisely what courts uphold.

This role is particularly important where a proposed use is not expressly identified in the zoning code. In those situations, the Board is not required to expand the scope of permitted uses; rather, it must determine whether the use clearly and unambiguously falls within the categories that are listed, consistent with the intent of the district. New York courts have stated the baseline principle clearly: it is a basic tenet of zoning jurisprudence that an ordinance which lists permitted uses excludes any uses that are not listed. *Incorporated Vil. of Old Westbury v Alljay Farms*, 100 AD2d 574, 575 (2d Dep't 1984). A concrete batch operation is not expressly listed among the permitted uses in LI-2. Characterizing it as falling within the permitted "assembling/fabrication, processing" category would represent an expansion of those uses beyond what the code actually permits — not an application of the code as written.

The Clifton Park LI-2 district permits certain types of light manufacturing and processing uses, but imposes strict performance standards requiring that noise, dust, vibration, and other impacts not be detectable beyond the property line — reflecting the Town's intent to strictly limit the external impacts of uses in this district. A concrete batch operation's inherent operational characteristics — aggregate handling, high-volume truck traffic, cement dust, and particulate emissions — raise legitimate and unresolved questions as to whether such a use can consistently meet these performance standards. As demonstrated by the photographic evidence obtained from a participant in the Planning Board's site visit to the applicant's own Wilton facility, visible dust is generated under normal operating conditions on a clear, calm day. This is not a theoretical concern; it is a documented operational reality. Refer to Photo Exhibit - Conditions Observed During the Planning Board's Site Visit submitted by Residents for Responsible Development for the record on April 21, 2026.

The Town's situation is distinguishable from the circumstances that created vulnerability in prior zoning litigation in this region. In the Van Patten Drive Article 78 proceeding, the Town's determination was challenged successfully because it was not sufficiently articulated or grounded in the specific language of the code, creating an opening for the applicant. Here, the foundation is different: the LI-2 district's structure — what is expressly listed as permitted, what is expressly listed as prohibited, and the performance standards that define the district's character — provides a clear and specific basis for a code-grounded determination. The ZBA is not being asked to create new law; it is being asked to apply the code as written, make a clearly

articulated determination, and build a record that reflects that analysis. That is precisely the type of decision that courts consistently uphold.

Residents for Responsible Development respectfully makes the following direct requests to each body.

To the Town Board: Adopt the moratorium resolution. The research record before you — spanning federal SIC classifications, more than a dozen comparable jurisdictions, EPA and FHWA standards, and photographic documentation of batch plant operations — provides a substantial, evidence-based foundation that is entirely independent of any individual application or community sentiment. The moratorium is not a response to neighborhood outcry; it is a responsible act of planning governance, grounded in documented evidence that the Town's current code leaves a gap that should be closed systematically and permanently, across all districts where processing or light manufacturing uses are listed.

To the Zoning Board of Appeals: Interpret the LI-2 zoning district as written, and make a disciplined, clearly articulated determination as to whether a concrete batch plant is a permitted use — grounded in the sequential application of the code's own analytical framework: first, whether the use is expressly listed as permitted; second, whether it falls within the expressly prohibited categories or their analogues under the "not all inclusive" prohibited uses list; third, whether — even if arguably within a permitted category — it can meet the performance standards the district imposes as a condition of any permitted use; and fourth, whether the proposed classification is consistent with the district's stated purpose and intent. That sequence is the structure the code itself prescribes, and it is the structure that produces a record courts will sustain. Pursuant to Town Code § 208-109(c)(1), the ZBA has full authority to make that determination. The strength of the zoning arguments developed in this memorandum and in the Morrison appeal brief is significant. Not pairing them with a clear, well-reasoned determination — one that creates a reviewable record grounded in the code — would leave that strength unrealized. A determination that is disciplined, clearly articulated, and firmly grounded in the code is not only appropriate: it is exactly the type of decision that New York courts have consistently upheld under judicial review. Conversely, expanding the scope of permitted uses beyond what is supported by the code's text introduces unnecessary legal risk and undermines the consistency and predictability that zoning is intended to ensure.

Sources Consulted

- Town of Clifton Park, NY — Town Code Chapter 208, Article IX, Light Industrial Districts LI (§208-62 Purpose; §208-64 Permitted and Prohibited Uses; §208-64D District Regulations; §208-64E Suitability Determinations; §208-64F Performance Standards; §208-65 Space and Bulk Standards including height requirements), eCode360
- Town of Clifton Park, NY — Town Code §208-109(c)(1) — ZBA authority to reverse, affirm, or modify administrative determinations and make such determination as in its opinion ought to have been made
- Town of Clifton Park Planning Board Minutes, October 14, 2025 — public comment on 1910 U.S. Route 9 batch plant application
- Town of Clifton Park Town Board Meeting, April 7, 2026 — auto-generated transcript (YouTube, publicly available)

- Morrison ZBA Appeal (Application for Appeal of Administrative Determination) — Dr. Lewis Morrison, Applicant; Colleen Pierson, Esq., Abrams Fensterman LLP; filed March 12, 2026; Property: 1910 Route 9 Clifton Park
- Scott Reese, Zoning Administrator, Town of Clifton Park — Zoning determination letter, April 18, 2025 (filed with Town Clerk May 29, 2025); clarification letter January 13, 2026 (Exhibit B to Morrison ZBA Appeal); Project #2025-017 Review Comments (Exhibit C)
- Colleen Pierson, Esq., Abrams Fensterman LLP — Letter to Planning Board, January 2, 2026 (Exhibit A to Morrison ZBA Appeal); Appeal Letter to ZBA, March 12, 2026
- NYC Zoning Resolution — M-1, M-2, M-3 Manufacturing District classifications
- New York Town Law §261 — Municipal zoning enabling authority
- NYS Department of State guidance on temporary zoning moratoria; Land Use Moratoria (James A. Coon Local Government Technical Series)
- Matter of Brancato v Zoning Bd. of Appeals of City of Yonkers, 30 AD3d 515 (2d Dep’t 2006) — New York standard of judicial deference to ZBA code interpretations; plain-language exception
- Matter of Frontier Stone, LLC v. Town of Shelby, 174 AD3d 1382 (4th Dep’t 2019) — upholding a town’s legislative response to a pending industrial land-use application following a temporary pause in processing and subsequent zoning amendments restricting the use; enacted pursuant to Municipal Home Rule Law
- Matter of Albany Area Bldrs. Assn. v Town of Clifton Park, 172 AD2d 54 (3d Dep’t 1991) — upholding Clifton Park’s Phased Growth Law as a valid exercise of municipal authority under the Municipal Home Rule Law; the Third Department found such a time-limited local law restricting development activity on planning grounds to be an authorized zoning regulation rationally related to a legitimate government interest and permissible under the Municipal Home Rule Law
- Matter of Pecoraro v Board of Appeals of Town of Hempstead, 2 NY3d 608 (2004) — New York Court of Appeals: courts uphold ZBA determinations that are rational and grounded in the record; courts may set aside ZBA determinations only where the board acted illegally, arbitrarily, abused its discretion, or succumbed to generalized community pressure.
- Incorporated Vil. of Old Westbury v Alljay Farms, 100 AD2d 574 (2d Dep’t 1984) — basic tenet of zoning jurisprudence: an ordinance which lists permitted uses excludes any uses not listed
- Town of Amherst, NY — Zoning Ordinance Part 6, Use Regulations (concrete processing buffer requirements), eCode360
- Town of Clay, NY — Special Permit denial for concrete batch plant, June 2024 (Goguen Drive Realty LLC application); CNY Central and LocalSYR news coverage
- Palm Coast, FL — City Council rejections of concrete batch plant rezonings: (1) SRM Concrete, 11 Hargrove Lane — unanimous denial (5-0) on final vote, August 19, 2025; (2) Hard Rock Materials, 56 Hargrove Grade — denied 4-1, March 2026. Opposition led by Vice Mayor Theresa Pontieri on both votes. Sources: FlaglerLive (flaglerlive.com) and Flagler County Buzz news coverage; Palm Coast Observer and Ormond Beach Observer
- Fresno County, CA — Zoning Ordinance, Section 845, M-3 Heavy Industrial District
- St. Charles County, MO — Industrial District zoning ordinance, eCode360
- City of Firebaugh, CA — Chapter 29, Industrial Zones M-1/M-2

- U.S. Federal Highway Administration (FHWA): Construction Noise Handbook (FHWA-HEP-06-015) — Construction Equipment Noise Level Reference Data, including Concrete Batch Plant (Spec: 83 dB at 50 ft); Concrete Mixer Truck (Spec: 85 dB; actual measured average: 79 dB across 40 field samples, at 50 ft)
- RMA Environmental: 'Permitting a Concrete Plant' (2025)
- University of Texas Environmental Law Clinic: 'Guide to Air Quality Permitting for Concrete Batch Plants' (2019)
- U.S. EPA: General Permit Regulation for Concrete Batch Plants
- U.S. Occupational Safety and Health Administration (OSHA): SIC Manual, SIC Code 3273 (Ready-Mixed Concrete) — Division D: Manufacturing ([osha.gov/sic-manual/3273](https://www.osha.gov/sic-manual/3273))
- U.S. Occupational Safety and Health Administration (OSHA): SIC Manual, SIC Code 3531 (Construction Machinery and Equipment — Heavy Machinery) — Division D: Manufacturing ([osha.gov/sic-manual/3531](https://www.osha.gov/sic-manual/3531))

PHOTO EXHIBIT

Conditions Observed During the Planning Board's Site Visit

Applicant's Wilton, New York Concrete Batch Plant Facility

Submitted to the Public Record | Town of Clifton Park Town Board & Zoning Board of Appeals | April 2026

Source and Purpose of This Exhibit

These photographs were taken during the October 2025 Clifton Park Planning Board's site visit to one of the applicant's (Clemente Materials / Bonded Concrete, Inc.) operating concrete batch plant facilities in Wilton, New York. The photographs were obtained by Residents for Responsible Development from an individual who participated in that site visit. They are submitted to the public record because they bear directly on conditions observable at the type of facility proposed for 1910 U.S. Route 9, Clifton Park.

Specifically, these photographs are relevant to a factual claim made by Zoning Administrator Scott Reese in the April 18, 2025 Planning Board review comments (Project #2025-017, Exhibit C to the Morrison ZBA Appeal): that he **"visited one of the applicant's operating concrete batch plants and did not observe/hear/smell any noxious or deleterious conditions."** The photographs below document what was observable at the same type of facility — the applicant's own operating plant — during normal operations on a clear, calm day. They show visible dust emissions as a routine, inherent characteristic of concrete batch plant operations.

Under Clifton Park Town Code § 208-64D(1), even permitted uses are prohibited if dust "settles from or floats through the air and can be distinctly seen" beyond the LI District boundary. Under § 208-64C(29), any use producing "objectionable noise, dust, vibrations, noxious fumes, smoke or odors" is expressly prohibited. These photographs confirm that the type of operation proposed for 1910 Route 9 generates visible airborne dust under ordinary operating conditions.

Summary

The six photographs below, documenting conditions observed at the applicant's own Wilton, New York concrete batch plant facility during normal operations, establish the following for the public record:

1. Concrete batch plants generate visible airborne dust as a routine, inherent feature of normal operations — not an exceptional event.
2. Visible dust is produced during aggregate handling, truck loading, and mixer truck maneuvering — all activities that would occur continuously at the proposed 1910 Route 9 facility.
3. An informal visit to a facility selected and hosted by the applicant does not constitute a site-specific assessment sufficient to satisfy the performance standards of § 208-64F, and does not assess the conditions at 1910 Route 9.
4. These photographs constitute direct visual evidence that the type of operation proposed for 1910 Route 9 produces dust "distinctly seen" under normal conditions — meeting the threshold for prohibition under § 208-64D and constituting noxious matter under the Town's own code definition.
5. The scale, equipment, and operational character of this facility is unambiguously heavy industrial, consistent with the classification findings in the accompanying Research Memorandum.

Photographs

Exhibit 1



Main batch plant building and cement silos. Person at base provides scale.

This view shows the main batch plant structure with multiple cement silos rising well above the roofline of the industrial building. A person standing at the base illustrates the height and mass of the equipment. The proposed 61-foot cement silo at 1910 Route 9 would be of comparable scale — triggering the visual assessment requirement under § 208-65D and visible from Route 9 and surrounding residential areas.

Exhibit 2



Wide site view showing silos, operational yard, and mixer truck preparing to depart.

This wider view captures the full operational footprint: multiple cement silos, the batch plant building, open aggregate storage areas, and an orange mixer truck in position. The surrounding tree line illustrates proximity to adjacent land. At 1910 Route 9, the proposed operation would be 180 feet from the Dwaas Kill, a Class A trout stream — a far narrower separation than the wooded buffer visible at this Wilton facility.

Exhibit 3 ▲ VISIBLE DUST EMISSIONS CAPTURED



Mixer truck maneuvering in yard — VISIBLE DUST CLOUD generated during routine operations on a clear day.

A concrete mixer truck is shown maneuvering through the facility yard during routine loading operations. A clearly visible dust cloud is generated by the truck's movement and aggregate handling — on a clear, calm day. This is precisely the type of emission that § 208-64D identifies as a basis for prohibition: dust that “settles from or floats through the air and can be distinctly seen” beyond the LI District boundary.

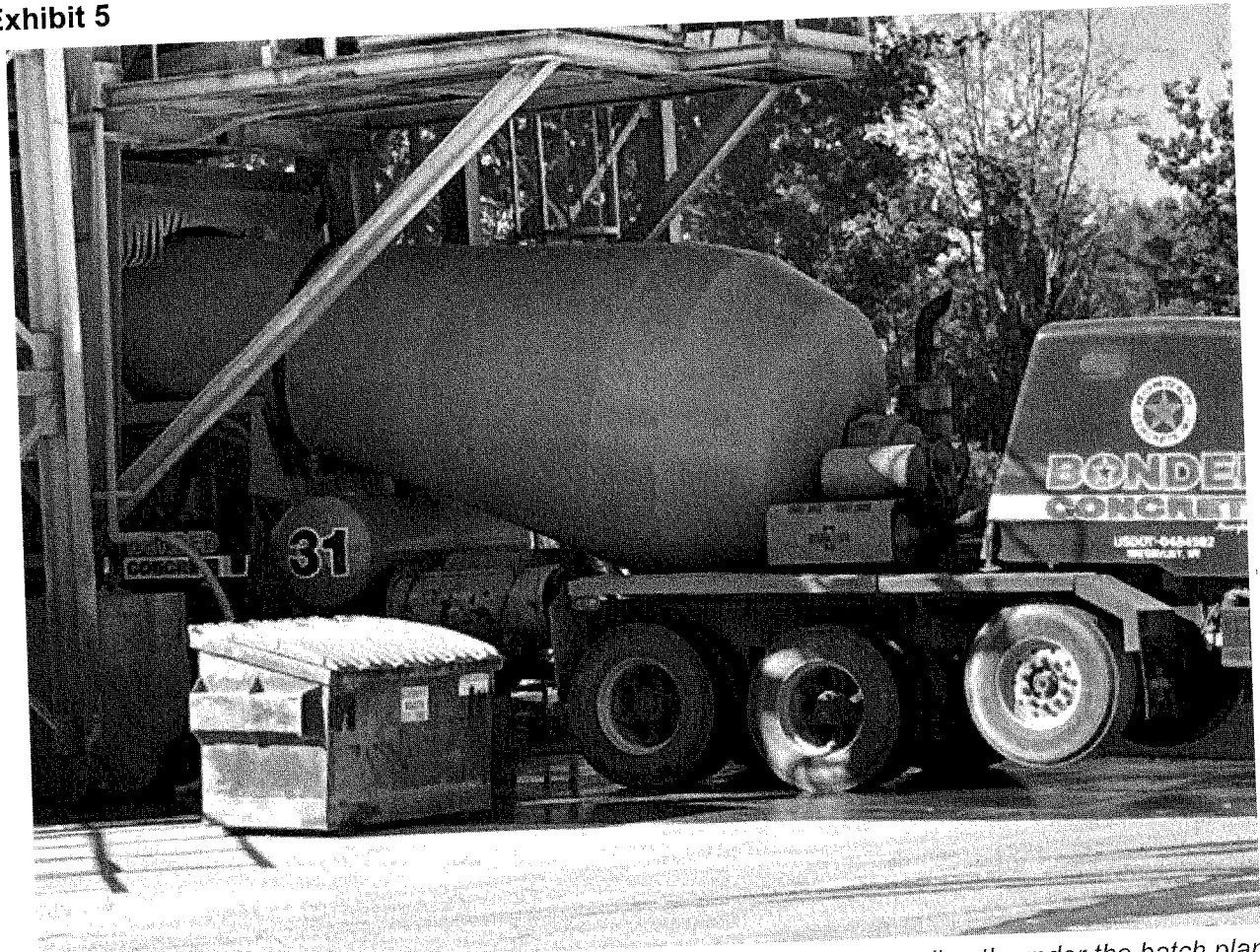
Exhibit 4 ▲ VISIBLE DUST EMISSIONS CAPTURED



Front-end loader handling aggregate — VISIBLE DUST PLUME rising behind machinery.

A front-end loader moves aggregate material in the yard with a visible dust plume rising against the tree line. This is standard aggregate-handling equipment that would operate continuously at the proposed 1910 Route 9 facility. The Town's ECC specifically cited "gravel dust, silicate, and other chemicals harmful to the Dwaas Kill environment" as concerns in the April 2025 Planning Board review comments.

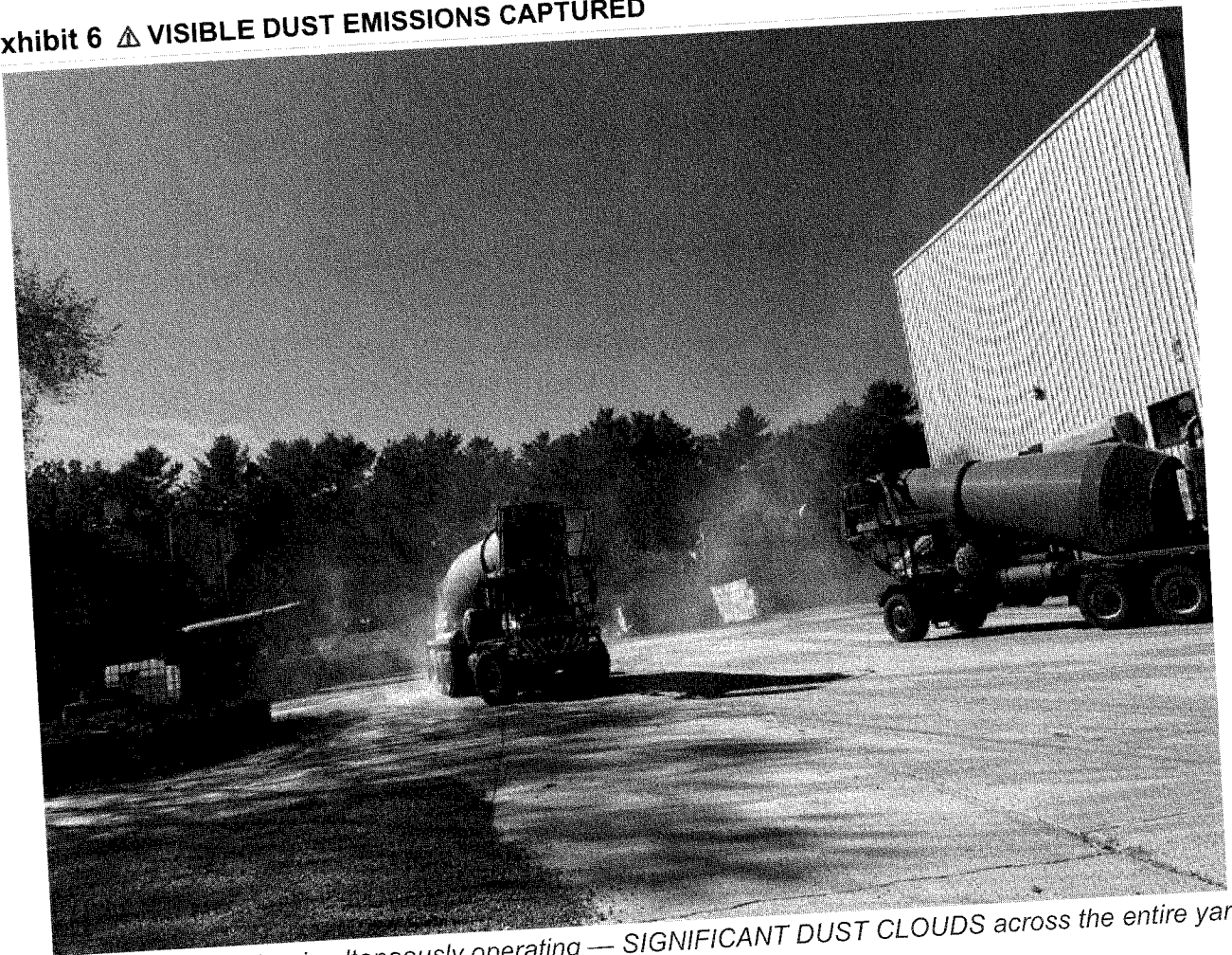
Exhibit 5



Bonded Concrete mixer truck (USDOT-0484592, Watervliet, NY) loading directly under the batch plant structure.

A Bonded Concrete mixer truck is shown loading under the batch plant structure, illustrating the scale of the equipment and the loading operation. At 1910 Route 9, the applicant's own traffic assessment projects 108 daily truck trips (54 inbound, 54 outbound) — vehicles of this size traversing Route 9 and maneuvering within the site, generating the noise, vibration, and emissions that § 208-64F performance standards are designed to prevent from reaching neighboring properties.

Exhibit 6 ▲ VISIBLE DUST EMISSIONS CAPTURED



Multiple mixer trucks simultaneously operating — SIGNIFICANT DUST CLOUDS across the entire yard on a clear, calm day.

Multiple Bonded Concrete mixer trucks are shown simultaneously maneuvering in the facility yard, with substantial dust clouds visible throughout the operational area — on a clear, calm day. This is the ordinary condition of a concrete batch plant during peak operations, and visually confirms that the § 208-64F performance standards (no dust detectable beyond the property line; no noxious matter discharged on or off site) cannot be presumed to be met without a rigorous, site-specific assessment — assessment that has never been conducted for the proposed 1910 Route 9 facility.

These photographs are submitted by Residents for Responsible Development as part of the public record for the April 21, 2026 public hearing on the proposed moratorium on Batch Concrete Mixing Plant facilities (Town Board Resolution, April 7, 2026) and in support of the Morrison ZBA appeal (filed March 12, 2026, Abrams Fensterman, LLP). The photographs were taken during the Clifton Park Planning Board's October 2025 site visit to the applicant's Wilton, New York facility and were obtained by Residents for Responsible Development from a participant in that visit.