

**2.0 Geology and Topography, Comments and Responses**

Subsequent to the DEIS public hearing, further discussions with the Village, and recent amendments to the Village Zoning Code, the Project Sponsor prepared a residential subdivision plan for the project site pursuant to the adopted zoning amendments. (Refer to the Introduction section for the chronology of the project plans for this site.) A comparison of potential impacts of the residential plan versus the 9-building commercial plan as related to the project impacts associated with geology and soils for each comment is presented below.

**2.1 Potential Impacts**

The residential alternative and the overall conceptual differences between the construction of an office/parking lot development and the construction of residential homes lots would provide greater opportunities to preserve existing trees and to avoid wetlands disturbances.

With either plan, the greatest area of site disturbance will result from the grading and development activity at the center of the site. The amount of rock and soil to be removed from the site will be less with the residential alternative and a greater portion can be utilized on-site to establish final grades as the terracing of building sites will be reduced. Creation of level building sites and regrading necessary for road and stormwater infrastructure will change the overall topography of the site. The terrain of the site will ultimately blend with the surrounding existing conditions without the use of extensive retaining walls or artificially stabilized slopes.

The preferred alternative minimizes the extent of soil exposure to the greatest extent practicable in accordance with the NYS DEC erosion and sediment control SPDES guidelines (Permit No. GP-02-01). Erosion and sedimentation will be controlled during the construction period by temporary devices according to an Erosion Control Plan developed specifically for the project. The plan addresses erosion control and slope stabilization activities applicable to all cleared areas of the site as well as to fill areas and to temporary soil storage stockpiles created on the site during construction. The proposed location of temporary soil storage areas during each phase of construction will be identified on the Erosion Control Plan, as well as the perimeter sediment control structures and maximum exposure periods for unstabilized soils that are stockpiled on the site.

Construction of the on-site permanent stormwater management systems will commence as part of the initial earthwork for the project so that these systems are functional as early as possible in the construction period. Following construction, erosion will be prevented by the use of established vegetation and by the stormwater management devices shown on the plans.

A greater proportion of the property (5.36 acres) will be covered by landscaping and revegetated areas and a lesser portion (2.73 acres) covered by impervious surfaces with development of the residential alternative. Compared to the commercial development, the residential alternative will avoid the direct impacts to the site wetlands that would occur with the commercial plan, and no wetland mitigation areas would need to be developed on either on-site or off-site properties.

**2.2 Proposed Mitigation**

The proposed construction for either alternative would result in disturbance to soils and require measures to avoid impacts associated with erosion and sedimentation. The project will comply with the requirements of the NYS DEC General Permit-02-01 for stormwater discharges from construction sites, including implementation of an Erosion and Sediment Control plan. The Ero-

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sion and Sediment Control plan prepared by the Project Sponsor will be submitted to the Village as part of the Site Plan review process.

Cast stone grading walls will be installed in areas where grading disturbances are to be minimized. These retaining walls would generally be from 3 to 6 feet in height.

Soils taken from grading cuts on the property will be used to the extent practicable in areas of designated fill in order to reduce the amount of rock and soil needed to be trucked from the site. For the proposed 22-lot Residential Subdivision plan the volume of grading cuts are estimated to be 16,531 cubic yards (CY) and the estimated volume of fill required is 15,127 CY which yields an estimate of 1,404 CY of fill to be removed from the site.

### **2.3 Comments on the DEIS and Responses to Comments**

**Comment 2-1 (Public Hearing, Barry Schoenberg, 648 North Broadway, 11/8/04):** [W]as this approval of this subdivision based on the same study that was incorrect on the Beaty property? And, if so, what ramifications, ultimately, will that have?

***Response 2-1: Commercial Nine Building and Residential Subdivision Plans - All engineering studies were specifically undertaken for the proposed use on the subject site.***

**Comment 2-2 (Letter #12, Douglas Schuetz, Rockland County Department of Planning, 12/23/04):** Prior to the start of construction or grading, a soil and erosion control plan shall be developed and in place for the entire site that meets the New York State Guidelines for Urban Erosion and Sediment Control.

***Response 2-2: Commercial Nine Building and Residential Subdivision Plans - As noted in the DEIS, the project requires coverage under the NYS DEC SPDES General Permit 02-01. A Soil and Erosion Control Plan is a requirement of this general permit, and as such, the construction practices for the proposed development would be consistent with this comment and the requirements of all applicable DEC permits. Due to the size of the project, a full stormwater pollution prevention plan (SWPPP) must be prepared and submitted to the NYS DEC. The Erosion Control Plan is part of the SWPPP, which would be submitted to the Village Engineer for approval.***

**Comment 2-3 (Letter #12, Douglas Schuetz, Rockland County Department of Planning, 12/23/04):** Section 1.2.1 of the Executive Summary miscalculates the number of trips necessary if the use of 12 cubic yard trucks is required. This shall be recalculated and the appropriate number inserted.

***Response 2-3: Commercial Nine Building Plan - Comment noted. As described in Chapter 1, a revised nine building plan is now proposed for the commercial alternative. The grading plan has been altered to substantially reduce the amount of excess material from the site, as compared to the DEIS plan.***

*The revised nine building plan would result in approximately 5,200 cubic yards of excess material, as compared to approximately 31,625 cubic yards of excess material with the ten building plan. The revised nine building plan reduces the amount of excess earth material to be transported off-site by nearly 84 percent of the volume proposed in the DEIS plan.*

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*This change significantly reduces the number of truck trips on Route 9W. With a 12 cubic yard capacity haul vehicle, the excess material represents approximately 431 truck loads of material or 862 round trips. With a 20 cubic yard capacity haul vehicle, the excess material represents approximately 259 truck loads of material or 518 round trips. These numbers include a 15 percent soil bulking factor.*

**Residential Subdivision Plan** - *The grading needs associated with the residential alternative further substantially reduces the amount of excess material from the site, as compared to either of the commercial plans.*

*The residential plan would result in approximately 1,404 cubic yards of excess material, as compared to approximately 31,625 cubic yards of excess material with the ten building plan presented in the DEIS or 5,200 cubic yards of excess material with the nine building plan presented in this FEIS. The residential plan reduces the amount of excess earth material to be transported off-site to only 4 percent of the volume proposed in the DEIS plan.*

*This change significantly reduces the number of truck trips on Route 9W. With a 12 cubic yard capacity haul vehicle and a 15 percent soil bulking factor applied the loadings, this lower amount of excess material represents approximately 116 truck loads of material or 232 round trips. With a 20 cubic yard capacity haul vehicle, the excess material represents approximately 70 truck loads of material or 140 round trips.*

**Comment 2-4 (Public Hearing, James Sarna, 305 Fairview Avenue, 1/11/05):** The comment that I'd like to address for the EIS is, it appears that there's been some activity on the site, on that 11 acre piece of property. Some people have come to me and said someone was on the property cutting some trees down. I know that the developer is not here to comment on that tonight, but if there has been any activity, I would like it to be disclosed in the Environmental Impact Statement what activities happened on the property of any substantive nature from the November public hearing through today, and, if there has been that activity, how is that authorized?

***Response 2-4: Commercial Nine Building and Residential Subdivision Plans*** - *The Project Sponsor has cut some smaller trees (less than 6) in order to conduct soil testing. The Village was informed of these soil tests and consented to the tree cutting. None of the trees cut were "specimen trees."*

**Comment 2-5 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Page 1-4, second to the last paragraph, second to the last sentence states: "In certain locations of the proposed parking area, cast stone walls will be installed to reduce grading disturbance." This statement seems to be inconsistent with the fact that, as proposed, 85% of the site will be stripped and re-graded. Without the walls, will more of the site require grading?

***Response 2-5: Commercial Nine Building and Residential Subdivision Plans*** - *Retaining walls are proposed in certain areas (see full-size plans in the rear of this document) to limit the amount of grading and disturbance that would otherwise be required. The use of retaining walls is a common engineering practice to reduce grade changes and disturbance.*

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**Comment 2-6 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Section 3.1.2 Potential Impacts [of Land Resources], page 3.1-4. In the middle of the page there is a discussion of how excess material created during construction of the site will be hauled in 20-yard trucks, resulting in 1,581 truck trips along Route 9W necessary for moving the material off site. The document calculates that if 20-yard trucks are used the trips generated from the trucks to move material will equal approximately "10-17 trips" per day plus an equal number of truck trips during the first 6 months of the project construction period. If one is to assume the "worst case scenario" of 34 total trips, in an 8-hour workday, the truck activity from hauling excess material would create 4.25 trips an hour. It is not feasible to be reliant on a longer workday, because of the cost of overtime, and during the spring and fall there is not enough sunlight to work a 12-hour day. The assumption that peak hours would not be impacted does not seem to be realistic, and if it is not feasible to use 20-yard trucks for the duration of the project, traffic entering and exiting the site would be even higher. If peak hours are avoided, then perhaps the duration of earth moving on the site will be longer. In addition, does this calculation include carting trees from the site and trucking space required to accomplish tree removal?

**Response 2-6: Commercial Nine Building Plan** - *As described in Chapter 1, a revised nine building plan is now proposed. The grading plan has been altered to substantially reduce the need to export excess material from the site, as compared to the DEIS plan. The revised nine building plan would result in approximately 5,200 cubic yards of excess material, as compared to approximately 31,625 cubic yards of excess material with the ten building plan. The revised nine building plan reduces the amount of excess earth material to be transported off-site by nearly 84 percent of the volume proposed in the DEIS plan.*

*If a smaller a 12 cubic yard capacity haul vehicle is used to remove excess material, approximately 431 truck loads would be generated, which represents 862 round trips. If a larger 20 cubic yard capacity haul vehicle is used to remove excess material, approximately 259 truck loads would be generated, which represents 518 round trips. These numbers include a 15 percent soil bulking factor.*

*By comparison, the ten building DEIS plan anticipated 2,635 truck loads of excess material or 5,270 round trips with a 12 cubic yard haul vehicle and 1,581 truck loads of excess material or 3,162 round trips with a 20 cubic yard haul vehicle.*

*The removal of trees is not included in the above calculations and would require additional trips. Smaller trees and brush are likely to be chipped and utilized on-site for erosion control and soil stabilization.*

*The 12 to 18 month construction period described in the DEIS for the ten building plan is also anticipated for the nine building FEIS plan.*

*The reduction of excess material achieved in the nine building FEIS plan will have the benefit of reducing construction trips, air emissions, noise, dust, and traffic disruption to levels below what was described in the DEIS.*

**Residential Subdivision Plan** - *See discussion for nine building plan regarding tree removal and construction scheduling. As discussed in Response 2-3 above, with this alternative the need for offsite movements of trucks associated with the disposal of excess soil materials would be reduced to less than 5 percent of the DEIS requirements.*

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**Comment 2-7 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Where is the depository for the excess material generated from site grading?

***Response 2-7: Commercial Nine Building Plan*** - *The grading plan has been altered to substantially reduce the need to export excess material from the site, as compared to the DEIS plan. Construction related details, such as identifying depositories for clean fill material, are not yet designated and would not typically be known at this stage in the review process.*

***Residential Subdivision Plan*** - *See discussion for nine building plan regarding identification of disposal areas for excess material. As discussed in Response 2-3 above, the need for offsite disposal with this alternative would be reduced to less than 5 percent of the DEIS requirements.*

**Comment 2-8 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Section 3.1 Impact on Land, starting on page 3.1-1. The DEIS does not examine alternatives that would reduce the amount of export of material off site. What would the development look like if the grading on site were balanced between cut and fill?

***Response 2-8: Commercial Nine Building Plan*** - *Comment noted. In response to the above comment, the nine building plan has been revised to substantially reduce the need to export excess material from the site. The layout of the site is essentially the same as shown on prior nine-building alternative plan provided in the DEIS. A total balance of cut and fill could be achieved by raising the elevations of the proposed buildings approximately one half foot above what is proposed in the nine building FEIS plan.*

***Residential Subdivision Plan*** - *As discussed in Response 2-3 above, the need for off-site disposal with this alternative would be reduced to less than 5 percent of the DEIS requirements. Of the several proposed development plans, this alternative provides the greatest balance of cut and fill needs*

**Comment 2-9 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Section 3.1.2 Potential Impacts [of Land Resources]. Please provide a graphic representation of how 20-yard trucks would enter and exit the site, and where waiting areas would be for the truck for loading.

***Response 2-9: Commercial Nine Building Plan*** - *The project engineer prepared figures titled "Site Phasing Plan and Truck Routing Diagram" which shows the requested information. These figures are provided at the end of this section.*

***Residential Subdivision Plan*** - *For this alternative the site phasing plan will provide the requested information. Due to the significant reduction in truck traffic associated with the residential alternative, the locating of truck staging areas is not presumed to be a problem.*

**Comment 2-10 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Figure 3.1-3, Existing Slopes Categories. Please provide an additional map identifying where slopes exceed 25%.

***Response 2-10: Commercial Nine Building and Residential Subdivision Plans*** - *The slope categories shown on the Existing Slope Map provided in the Introduction*

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*chapter of this document are based on the village slope regulations as listed in section 9, article III of the amended village general regulations.*

*The Existing Slope Map already shows the following categories: 0 to 10%, 10-15%, 15-20%, 20-40%, 40%+.*

**Comment 2-11 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Section 3.1.2 Potential Impacts [of Land Resources], page 3.1-3. The DEIS states that the bulk of the grading will occur in the center of the site. Although it is true that the center of the site will be an area where most of the material is removed, downslope areas will be filled to raise existing slopes, which will result in a change of grade for the site. Therefore, grading will occur over 85% of the site. There is little discussion regarding the impacts that can occur with large amounts of fill, and mitigation strategies are not presented.

**Response 2-11: Commercial Nine Building and Residential Subdivision Plans -** *Stability is a primary concern associated with the use of fill material and no professional builder would proceed with construction without addressing the stability of fill areas. Without proper engineering or design, areas of fill could potentially subside or shift. The Project Sponsor will hire an engineering firm specializing in soil compaction, soil friction angles, and maximum slope for construction stability to provide certified compaction for the filling process. The firm will need to supply regular reports to the Village during the soil lift cycles which will be filed with the Village.*

*During this construction process the Stormwater Pollution Prevention Plan professional will need to provide reports per the regulations for filing with the NYS DEC and the Village. This required inspection details temporary structures, biotechnical, vegetative measures and disturbed area calculations. The structures will be classified for efficiency, location and maintenance.*

*The easterly side of the proposed basins where fill is proposed would be constructed with a two foot wide internal clay cut off wall to protect the integrity of the basin as required by the NYS DEC. These construction details will be subject to review by the Village during the site plan review process.*

*In addition, management of the stormwater, as proposed, will further help to protect the fill materials from being undermined. The surface of the fill materials will be stabilized by paving or with vegetated ground cover and landscaping.*

**Comment 2-12 (Letter #33, Shirley Thorman, Town of Clarkstown, 1/28/05):** The proposed extensive cutting and filling of the property gives no consideration to the existing topography of the site. The limits of disturbance come within 20 feet of the property lines at places. This is likely to adversely impact what little vegetation is proposed to remain around the periphery of the site. The Planning Board recommends that the 75-foot buffer required in the Village Code be left undisturbed to protect existing vegetation that screens the site from surrounding residences and prevents soil erosion.

**Response 2-12: Commercial Nine Building Plan -** *Comment noted. The Project Sponsor now proposes a revised nine building plan in which the grading has been revised to significantly reduce the amount of cut and fill and the full 75 foot wide vegetated buffer is proposed.*

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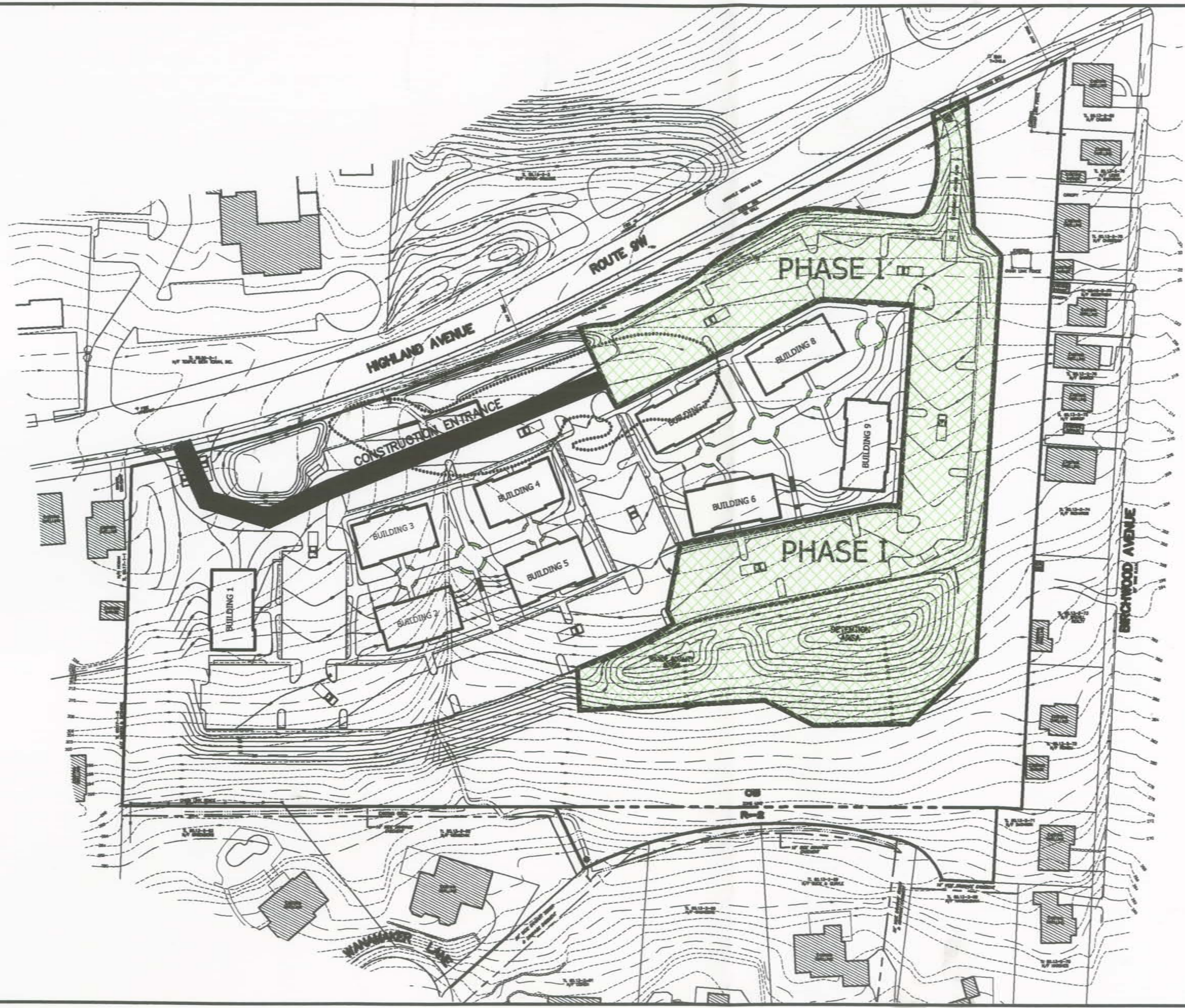
December 21, 2006

**Residential Subdivision Plan** - *Comment noted. The 75-foot buffer requirement is not applicable to the residential alternative.*

**Comment 2-13 (Letter #33, Shirley Thorman, Town of Clarkstown, 1/28/05):** Soil analysis is provided for soil types WeC (Wetherfield gravelly silt loam, 8-15%) and WuD (Wetherfield-Urban land complex, 15-25%). The soil map provided seems to show that the site contains soil types WeC and WeD, not WuD. A new soil analysis may be necessary.

**Response 2-13: Commercial Nine Building and Residential Subdivision Plans -** *Both the WeD and the WuD soil complexes are part of the Wetherfield soil type and share the same soil properties. The on-site soil borings conducted by Leggette, Brashears & Graham, Inc. in 1997, 1998 and 2004 indicate that the on-site soils are consistent with the Wetherfield soil group.*

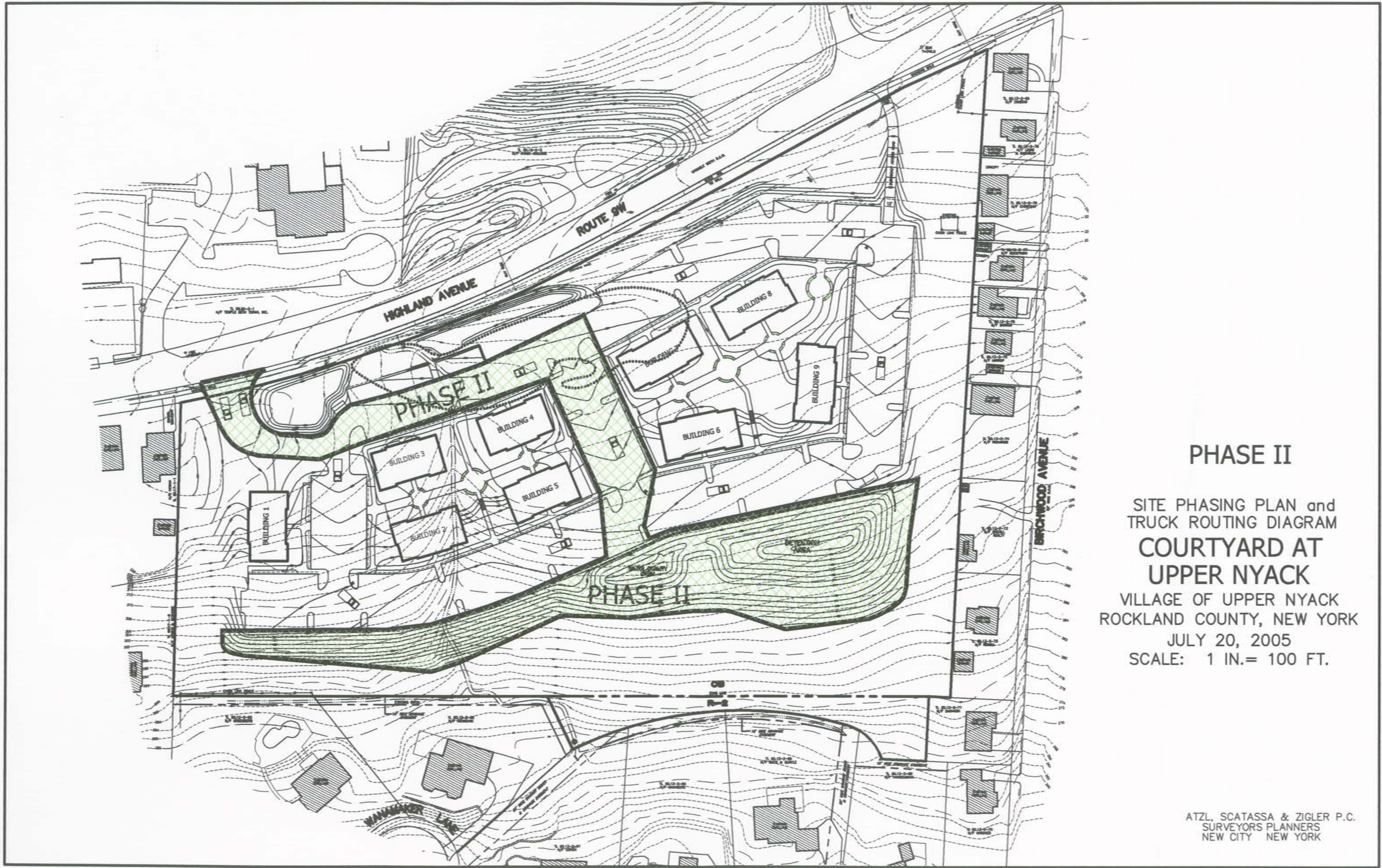




**PHASE I**

SITE PHASING PLAN and  
 TRUCK ROUTING DIAGRAM  
**COURTYARD AT  
 UPPER NYACK**  
 VILLAGE OF UPPER NYACK  
 ROCKLAND COUNTY, NEW YORK  
 JULY 20, 2005  
 SCALE: 1 IN.= 100 FT.





**PHASE II**

SITE PHASING PLAN and  
 TRUCK ROUTING DIAGRAM  
**COURTYARD AT  
 UPPER NYACK**  
 VILLAGE OF UPPER NYACK  
 ROCKLAND COUNTY, NEW YORK  
 JULY 20, 2005  
 SCALE: 1 IN. = 100 FT.



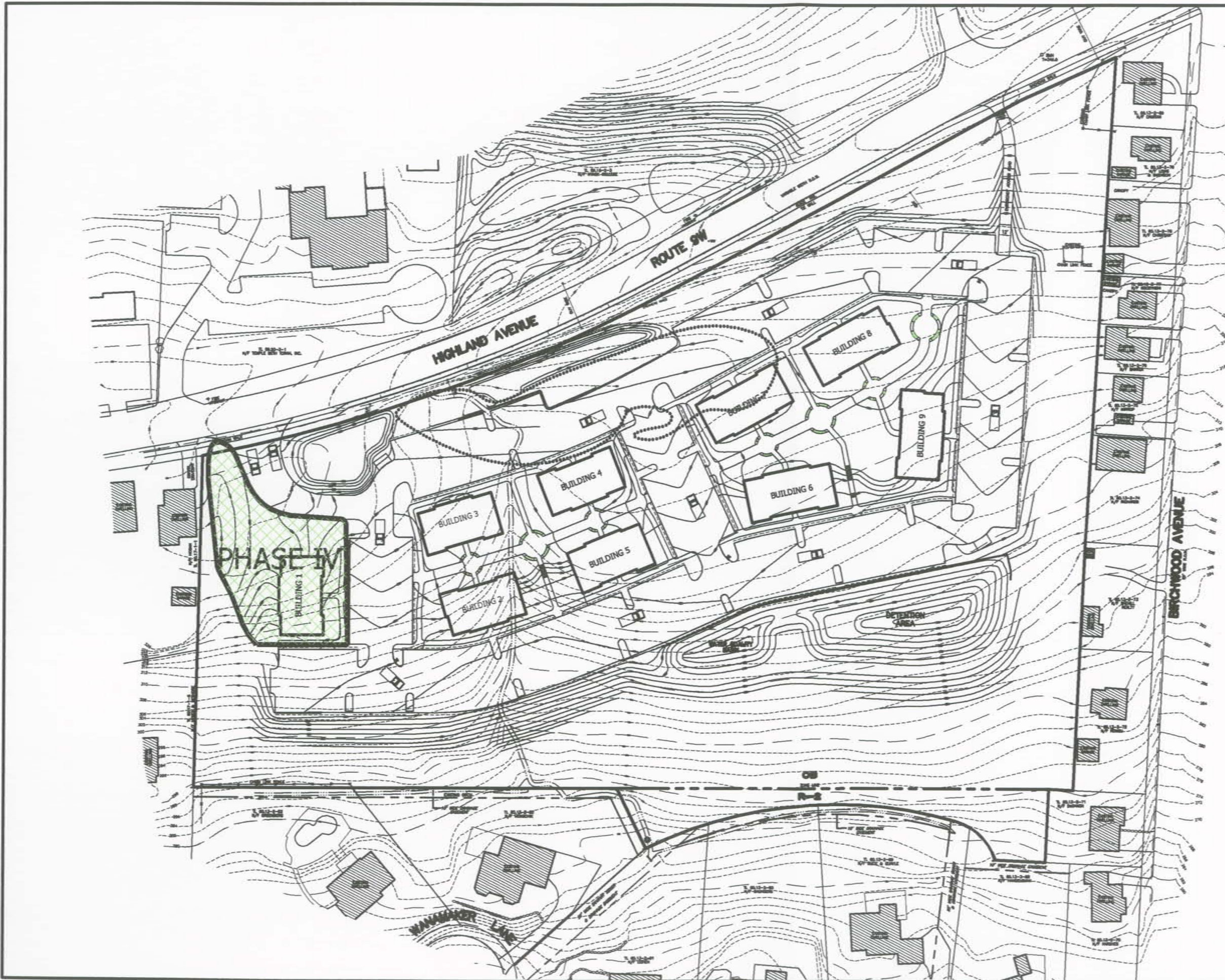


### PHASE III

SITE PHASING PLAN and  
TRUCK ROUTING DIAGRAM  
**COURTYARD AT  
UPPER NYACK**  
VILLAGE OF UPPER NYACK  
ROCKLAND COUNTY, NEW YORK  
JULY 20, 2005  
SCALE: 1 IN.= 100 FT.

ATZL, SCATASSA & ZIGLER P.C.  
SURVEYORS PLANNERS  
NEW CITY NEW YORK



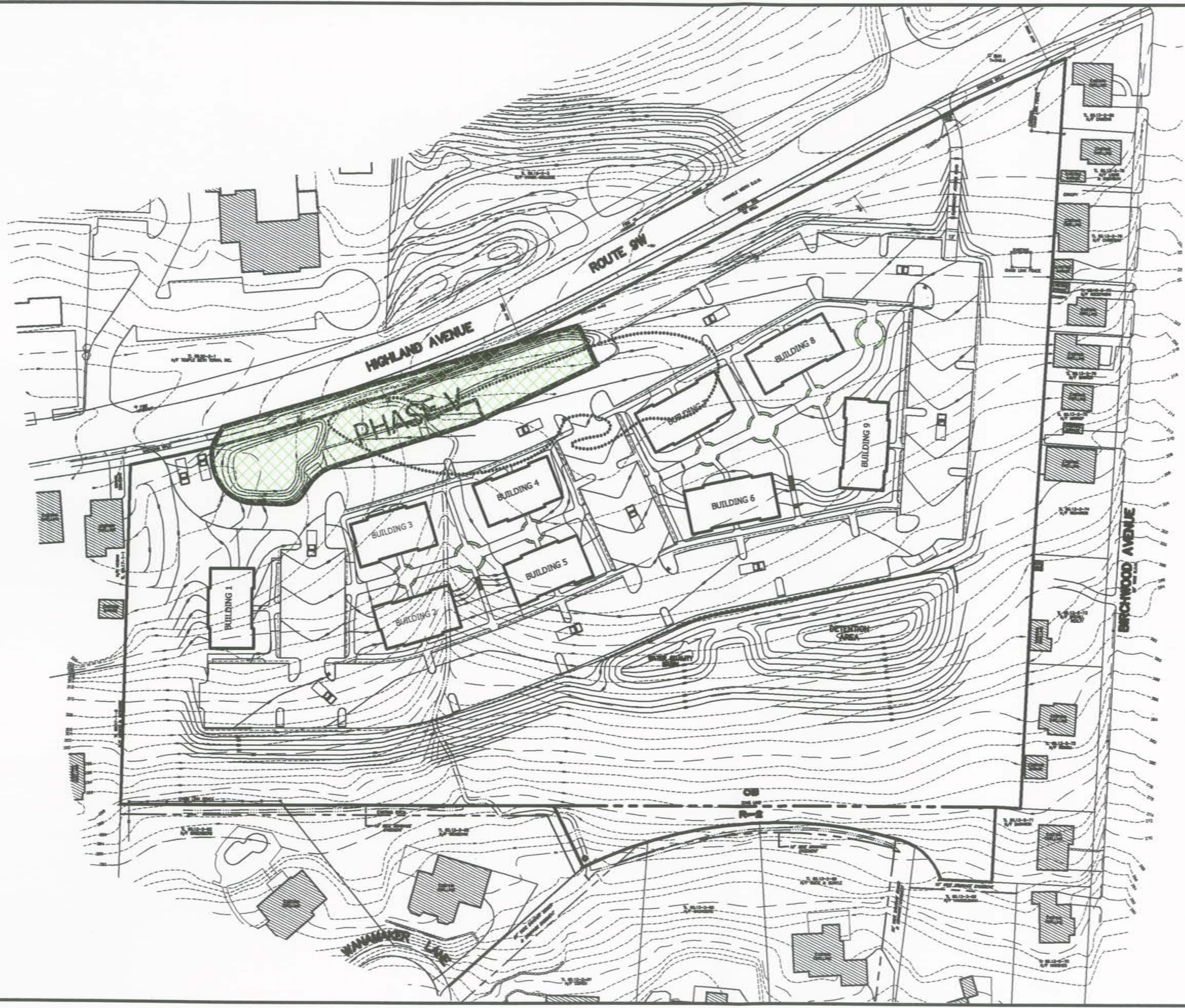


**PHASE IV**

SITE PHASING PLAN and  
 TRUCK ROUTING DIAGRAM  
**COURTYARD AT  
 UPPER NYACK**  
 VILLAGE OF UPPER NYACK  
 ROCKLAND COUNTY, NEW YORK  
 JULY 20, 2005  
 SCALE: 1 IN.= 100 FT.

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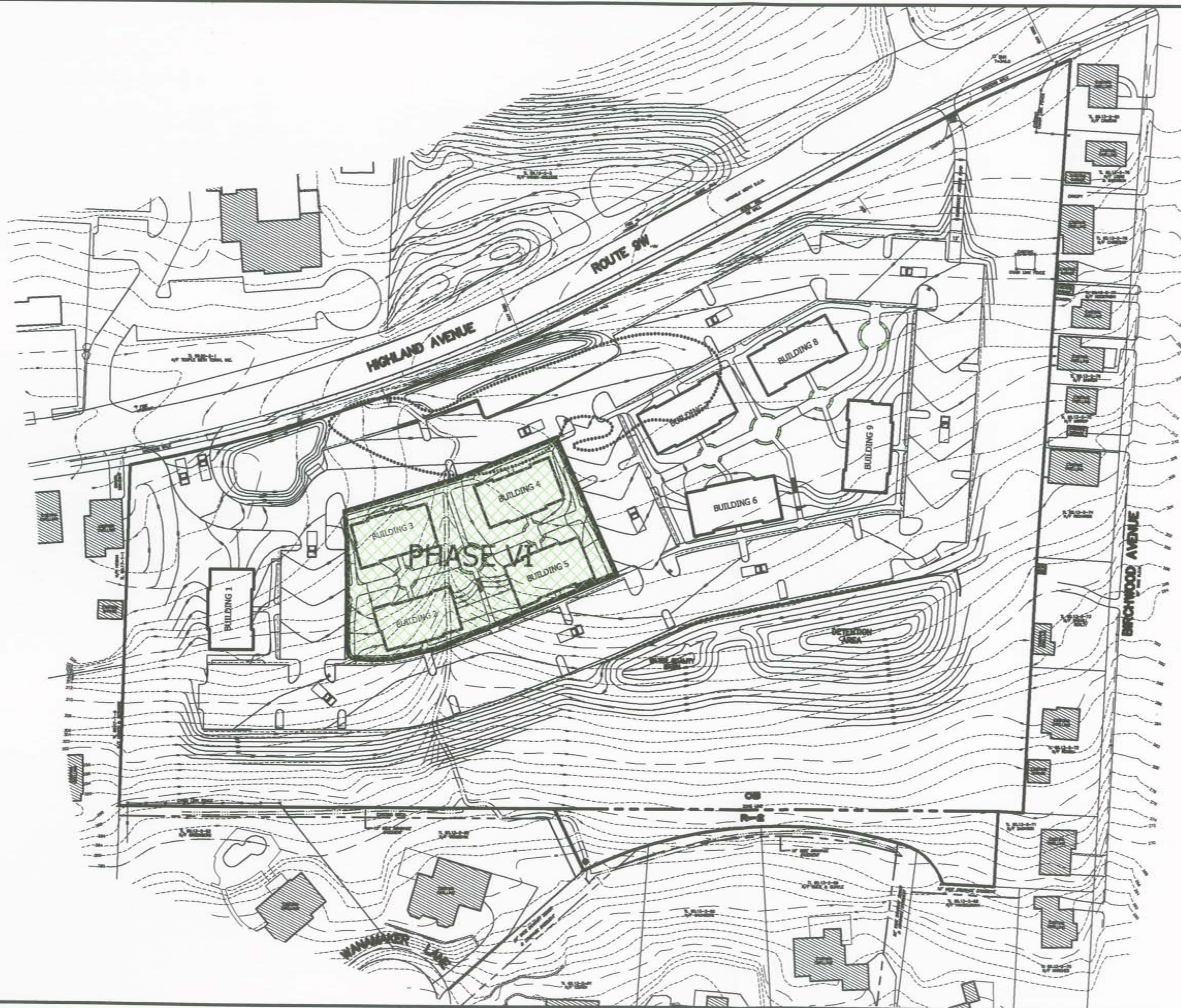




**PHASE V**

SITE PHASING PLAN and  
 TRUCK ROUTING DIAGRAM  
**COURTYARD AT  
 UPPER NYACK**  
 VILLAGE OF UPPER NYACK  
 ROCKLAND COUNTY, NEW YORK  
 JULY 20, 2005  
 SCALE: 1 IN.= 100 FT.



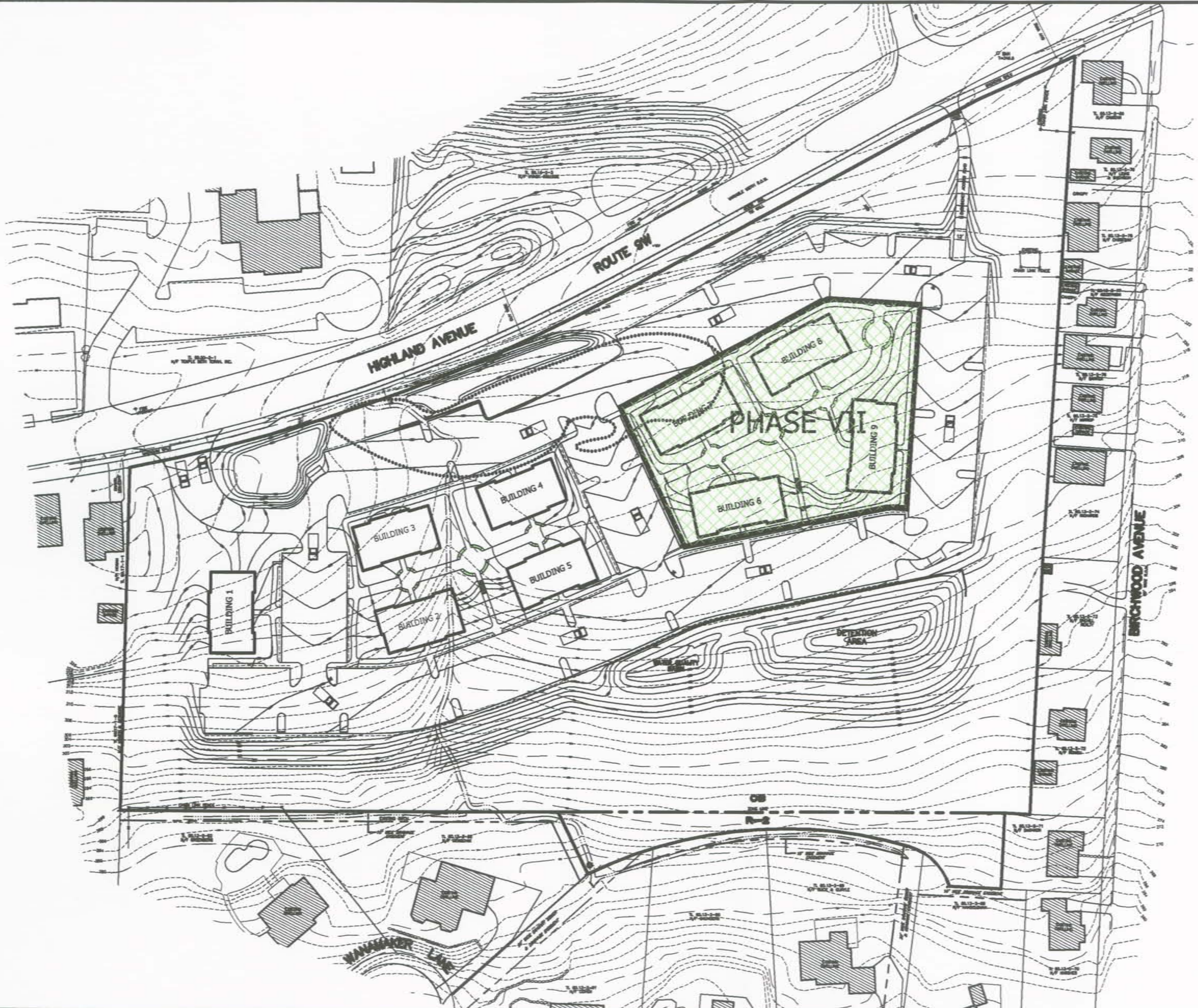


**PHASE VI**

SITE PHASING PLAN and  
 TRUCK ROUTING DIAGRAM  
**COURTYARD AT  
 UPPER NYACK**  
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 ROCKLAND COUNTY, NEW YORK  
 JULY 20, 2005  
 SCALE: 1 IN.= 100 FT.

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**PHASE VII**

SITE PHASING PLAN and  
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 UPPER NYACK**  
 VILLAGE OF UPPER NYACK  
 ROCKLAND COUNTY, NEW YORK  
 JULY 20, 2005  
 SCALE: 1 IN.= 100 FT.



### **3.0 Water Comments and Responses**

Subsequent to the DEIS public hearing, further discussions with the Village, and recent amendments to the Village Zoning Code, the Project Sponsor prepared a residential subdivision plan for the project site that complies with the zoning amendments. (Refer to the Introduction section for the chronology of the project plans for this site.) A comparison of potential impacts of the residential plan versus the 9-building commercial plan as related to the project impacts associated with water resources for each comment is presented below.

### **3.1 Potential Impacts**

The design of the stormwater pollution prevention plan (SWPPP) for either Courtyard at Upper Nyack proposal must meet NYS DEC and local requirements (Zoning Law of the Village of Upper Nyack: Article VIII – Stormwater Control) which include water quality renovation and zero net increase in peak flow rates of discharge at each of the four points of interest (discharge) from the site.

These regulations were derived to avoid exacerbating downstream stormwater problems that may exist. When a reduction in peak rate of discharge is practicable, such a reduction will tend to reduce existing downstream discharges and flooding problems. The extent of such a benefit can only be quantified by detailed analysis of downstream flooding problems; a task not applicable to a project's design although within the purview of a Village's regional analysis.

The review responsibility of a Village engineering consultant and Village engineer is a matter determined by the Village as described in §33.4 of Article VIII of the Village Zoning Code. Such responsibility would likely include review of project design for compliance with NYS DEC and local regulations. The Village in this case has retained a consultant (LMS) to address reported downstream flooding problems. The Village consultant report titled "Drainage Report for Village of Upper Nyack," was completed in October 2005. Analyses conducted for the report included the information presented in the Courtyard at Upper Nyack DEIS for stormwater flows from the property under both existing conditions and for the proposed commercial developments. The Drainage Report concluded that "the flows show no increase between existing and developed conditions" for the 100-year storm and "almost negligible" differences for all other tested storm events with the effective design and functioning of the proposed stormwater detention facilities. As the proposed residential development of the site would generate a smaller volume of stormwater runoff than analyzed for the LMS Drainage Report, the conclusions of the report in relation to the development of the Courtyard property would not be negatively impacted.

### **3.2 Proposed Mitigation**

Under the residential alternative, there would be no direct disturbance and little or no indirect impact to the on-site federally regulated wetland. As with the commercial alternative, a portion of the existing aboveground watercourse that intermittently conveys storm flows from the wetlands to the edge of the property would be eliminated and the flows would be redirected underground across the site into the stormwater conveyance system.

The residential alternative would incorporate the use of two stormwater basin systems, each with a micro-pool water quality basin and an extended detention basin located in the northeast section of the property. These basins, and their combined volume, would all be smaller than the single stormwater basin system required for the commercial alternative as the residential alternative would have a smaller area of impervious surfaces (118,702 square feet, in comparison to

161,172 square feet for the nine building plan) to generate stormwater runoff. The basins for the residential alternative would have a combined total basin volume of 1.265 acre-feet, which is approximately 40.2 percent of the total basin volume required for the commercial plan (3.150 acre-feet). In addition, the maximum depths of the stormwater basins for the residential alternative would be from 6-7 feet in contrast to the 14 foot depth of the basin sized for the commercial plan.

For either project, the detention basins would function to regulate downstream flows by releasing runoff at controlled rates into the Village stormwater management system. As discussed above for the Village's drainage consultant report, the detention basin flow control structures would be designed to release the runoff at rates equal to or less than the existing runoff rates from the site. There would be a zero net increase in peak rates of runoff at each of the four points of interest on the site and the runoff rates would not exacerbate the present downstream off-site stormwater flows to the Hudson River.

A copy of the project engineer's Drainage and Hydrology Report for the residential alternative, dated August 22, 2006, is provided in the appendix of this Final EIS. The stormwater management practices (SMPs) proposed for the project have been designed to conform to the New York State Stormwater Design Manual 2003. As described in the report, the SMPs allow for the maintenance of existing peak flow rates or reductions in the peak flow rates for a wide variety of storms at all of the design points where runoff exits the property. Controlled outlet structures within each stormwater basin will utilize multiple orifices and weirs to passively achieve the scheduled discharge rates. With the proposed stormwater management system, no on-site or downhill off-site drainage-related impacts are anticipated to occur.

As described in this report, the water quality basins are designed as storm water pocket pond extended detention basins (Design P-5, as per NYSDEC Design Manual) which requires both a forebay and a permanent pond area. Water quality treatment is provided passively (i.e. by natural biological, physical and chemical processes) within these ponds to attain the following pollutant removal efficiencies:

- Suspended Sediment - 100%
- Phosphorous - 80%
- Nitrogen - 60%
- BOD - 60%

The project engineer has calculated the pollutant loads from the preferred residential alternative with the proposed stormwater management plan. A copy of the project engineer's Stormwater Treatment Plan is provided in Appendix F of this FEIS.

The project engineer has prepared an Erosion Control Plan (ESC) for the construction phase of this alternative. A full size copy of the plan is provided in the rear of the document. The plan includes the installation of silt fencing, hay bale barriers and temporary sedimentation basins. The plan also includes drain inlets protections and temporary material stockpiles with silt fencing protection. Detailed information on the proposed erosion control measures is illustrated in the full size detail sheet in the rear of the document.

It is expected that the Village will require construction monitoring to ensure the proper installation and maintenance of stormwater and erosion controls as a condition of its approval. The Village may also require the Project Sponsor to pay an inspection fee to offset the costs of project monitoring by the Village of Upper Nyack Stormwater Management Officer as described in §39.1 of Article VIII of the Village Zoning Code. This monitoring is likely to be conducted on a



weekly basis by the Village's environmental monitor or a Village consultant throughout the construction period until the site is fully stabilized.

The Project Sponsor would be responsible for monitoring construction progress and contractor adherence to the approved ESC plans and specifications. During the entire construction period, the Project Sponsor's construction project manager would be required to maintain weekly progress reports at the site and they would be made available for review by the Village Engineer.

Article VIII of the Village Zoning Code includes guidelines defining maintenance easements and securities for approved stormwater pollution prevention plans. Maintenance easements to ensure access to all site stormwater facilities for the purpose of inspection and repair shall be recorded on the SWPPP and shall remain in effect with transfer of title to all subsequent landowners (§37.3 of Article VIII of the Village Zoning Code). Performance securities for SWPPP activities throughout the construction and post-construction phases of a project are defined, respectively, in §39.6.1 and §39.6.2 of Article VIII of the Village Zoning Code.

During construction, maintenance of all site stormwater facilities shall be performed by the developer, and will include a final cleaning subsequent to all construction activities and final site stabilization. The applicant will develop, in conjunction with the Village, a site management manual that will outline maintenance responsibilities of the individual stormwater management features on the lots.

At present, the Village assumes all operational and maintenance responsibilities for all village-wide stormwater structures and conveyances and recovers these costs through property taxation or other public funding sources. Should the Village similarly assume responsibility for the post-construction maintenance of the stormwater features of the Courtyard project, this would commit village personnel to conducting routine inspections for structural conditions, debris removal, mowing and structural repairs. Each of the two stormwater ponds should be inspected on an annual basis. Inspections should include the features of the forebays, riprap dissipaters, drains, sediment accumulations, clogging of outlet control structures and erosion control measures in the contributory drainages. Establishment of trees and woody shrubs should be prevented on embankments, emergency spillways and buffer areas through periodic seasonal mowing. Debris and litter should be removed from the surface of the pond, surrounding buffer areas, and riser and outlet areas in conjunction with the mowing operations. While more frequent clean-out may be needed in the forebays and around outlet control structures, a typical clean-out cycle for the lower stages of an extended detention facility should range from 5 to 10 years.

### **3.3 Comments on the DEIS and Responses to Comments**

#### **Comment 3-1 (Letter #1, The Village Board of Upper Nyack, 11/8/04, Public Hearing, Mayor Michael Esmay, 11/8/04):**

Another area of concern is the proposed detention structure. We have already had a bad experience with large-scale detention structures. The detention ponds created for the Nyack High School, we have been advised, do not function properly in maintaining the rate of runoff from the site. It is uncertain if they ever functioned properly. It remains uncertain whose responsibility it is to inspect the ponds and maintain them over the long run. The flooding problems caused by these nonfunctional detention ponds are evident all along the Old Mountain stream. Long time residents whose properties abut the stream state that their drainage problems began when the High School was built in 1986 and have worsened since that time. We don't want that to happen with this project.

Just a few months ago, the Village Board commissioned a Drainage Study Work Plan from LMS engineering in order to gain a better understanding of the overall drainage in the Village and to identify trouble areas. Number one on the list of critical items warranting review were the detention basins on the Nyack High School property.

It should be noted that the High School property has relatively a small percentage of impervious surface proportional to the size of the property, which leaves a lot of open ground to absorb water before it ever gets to the detention ponds. Regardless, we are being flooded downhill of these ponds. Frankly, the Village is drowning.

By comparison, the Courtyard proposal shows a percentage of impervious surface that is much, much higher than at the High School. The percentage of impervious surface proposed will dramatically change the flow of water on the site. It will disrupt the movement of ground water and the movement of surface water. It will concentrate all of the water on the site into the detention structure. This structure has an unending potential to negatively impact the Village if it should ever cease to function correctly.

***Response 3-1: Commercial Nine Building Plan - Maintenance responsibility of the proposed stormwater system, including the basins, would reside with the project Project Sponsor and its successors. The Village would not assume any maintenance responsibilities or costs associated with the on-site stormwater management system. This requirement could be included as a condition of approval for the project.***

*The Village has the authority under New York State Village Law (see excerpt in Response 1-2) to take action to require the Project Sponsor and/owner (or subsequent owner) to assure the stormwater system is adequately maintained. The Village can authorize necessary maintenance work to be done and place a lien on the property to recoup the costs.*

*Neither the posting of security for future maintenance of the stormwater system nor the use of covenant to specify maintenance of the stormwater system are proposed by the Project Sponsor. Such measures are not customary, and the Project Sponsor does not believe them to be necessary, as the Village would already have the authority to inspect the site and authorize any necessary maintenance work that would be described as an approval condition. Nonetheless, the Planning Board will determine if these methods will be incorporated as conditions of any approvals.*

***Residential Subdivision Plan - This system could be offered in dedication to the Village to be included within its municipal stormwater control system. Alternatively, the Project Sponsor could establish a homeowners association which will have the responsibility to maintain the stormwater system and pay associated costs. It is also noted that under any proposal, the stormwater management system has been and will continue to be reviewed by LMS engineering and the Village Engineer to ensure that it is designed properly to avoid adverse impacts.***

**Comment 3-2 (Letter #1, The Village Board of Upper Nyack, 11/8/04, Public Hearing, Mayor Michael Esmay, 11/8/04):** The configuration of the proposed drainage system concerns the Village Board as regards discharge points and rates; proximity of detention pond to surrounding properties; long term maintenance responsibilities and the impact of increased concentration and resultant velocities of discharge into the village stormwater and sanitary sewer systems. Detention structures are a complicated alternative to more natural alternatives for storm water retention and management.

***Response 3-2: Commercial Nine Building and Residential Subdivision Plans - The goal of the stormwater management system, as specified in the NYS DEC regulations is a "net zero increase" in the rate of peak flows off site. The Project Sponsor's engineer advises that the stormwater plan meets or exceeds these standards and will relieve some of the current flooding downhill. The Village's engineering consultant and the Village Engineer will continue to review the proposed stormwater management plan and ensure that it operates as designed.***

*Detention basins are a well established and proven method to effectively manage stormwater runoff and are accepted throughout the United States.*

**Comment 3-3 (Letter #1, The Village Board of Upper Nyack, 11/8/04, Public Hearing, Mayor Michael Esmay, 11/8/04):** Reducing the percentage of impervious surface by reducing the number of buildings with their attendant parking spaces would also help to manage the stormwater and ground water that runs through and under the site.

***Response 3-3: Commercial Nine Building Plan - Comment noted. The total volume of runoff from a project such as Courtyard at Upper Nyack will increase. Groundwater inflow may diminish depending upon the design of the stormwater system. Generally, stormwater runoff is captured, detained and released at a rate of discharge lower than the pre-project rate of discharge as is required by NYS DEC and local regulations. Rate of discharge, as opposed to volume of discharge, is generally the controlling factor which overtaxes a drainage system and leads to flooding.***

*A detailed hydrologic analysis has been prepared to quantify pre and post Courtyard at Upper Nyack site discharges for a series of storm frequencies to assure compliance with regulatory requirements (see Appendix D of DEIS). The Village's engineering and drainage consultants reviewed this analysis for compliance and incorporated this data into their regional drainage analysis prepared for the Village.*

*The revised nine building plan does reduce the amount of impervious surfaces to 3.70 acres as compared to the ten building DEIS plan.*

***Residential Subdivision Plan - The residential alternative further reduces the amount of impervious surfaces contributing to the generation of runoff to 2.17 acres in comparison to the commercial alternative (3.70 acres).***

**Comment 3-4 (Letter #2, Robert J. DeGiorgio, Lawler, Matusky & Skelly Engineers LLP, 11/8/04):** The existing deficiencies in the Village's drainage infrastructure downstream of the project site and the potential impacts on the infrastructure associated with the development of the project site warrant further consideration by the Village and the Applicant. It is recommended that the Village request that the Applicant provide suggested improvements by the Applicant in the areas identified as deficient in the initial downstream analysis and/or in other defi-

cient areas that may be identified in the more expansive downstream analysis, if the Village chooses to request compliance with the 10% rule.

**Response 3-4: Commercial Nine Building Plan** - *A review of the adequacy of the downstream drainage system has been undertaken by Lawler Matusky & Skelly (LMS) on behalf of the Village drainage improvement program, and therefore, there is no need for duplication of this task. The Project Sponsor's drainage engineer had provided LMS with documentation of the Courtyard at Upper Nyack hydrologic analysis for incorporation into their regional drainage analysis for the Village. Also, see Response 3-11.*

*The effect of piping the existing stream through the site, and the effects of the site's development have been evaluated in the submitted hydrologic analysis of the project.*

*The proposed project will convey an existing intermittent stream through the site in a piped system. The onsite runoff from the development will be piped to a detention/water quality basin. This stormwater management system will direct routed discharges which are no greater than existing discharges into the existing downstream piped system.*

*Presently the runoff from the site is conveyed overland and intercepted in swales which are directed towards the existing piped system into Wanamaker Lane. The introduction of detention and an onsite piped system reduces the likelihood that overland flow will otherwise bypass the existing system in Wanamaker Lane.*

*If the existing piped system is undersized (as is probable based upon reported drainage problems and older design criteria upon which the existing downstream system was designed) surcharging of the existing system, resulting in street gutter flows, (as opposed to reported overland flows) may occur. Flows in the street would be preferable to overland flows which are more likely to affect dwellings. Some reduction in downstream peak flows may be provided by onsite detention system dependent upon the final project design configuration, though such reduction is not mandated by State or Local regulation.*

**Residential Subdivision Plan** - *The above response is also applicable to the residential alternative, however this alternative would generate a smaller volume of stormwater runoff and that would be detained in two smaller detention basins prior to discharge to the village stormwater system.*

**Comment 3-5 (Letter #2, Robert J. DeGiorgio, Lawler, Matusky & Skelly Engineers LLP, 11/8/04):** *Alternatively, the Village could consider requesting that the Applicant mitigate the downstream impacts of this development on-site. One form of on-site mitigation could be to select one of the two alternative development plans identified by the Applicant. The first plan consisted of two larger professional buildings and associated parking. However, the stormwater impact of this alternative were not assessed in this review as it seems this plan is out of character with the preferred alternative for which the drainage report has been written and for the 75-foot buffer alternative for which drawings were provided in the DEIS. The second plan, known as the 75-foot buffer plan, may warrant additional consideration as the impervious percentage for the site would be less than that for the preferred plan, thus decreasing the additional runoff associated with development. The zoning code allows the Planning Board to require buffers between 50 and 75-feet.*

**Response 3-5: Commercial Nine Building Plan** - *Comment noted. As recommended by the Village drainage consultant as a means of on-site mitigation, the Project Sponsor*



*revised the proposed development to the nine building plan which provides the full 75 foot buffer zoning requirement.*

**Residential Subdivision Plan** - *The residential alternative serves to provide on site mitigation of the downstream impacts by increasing the percentage of the site acreage that will be revegetated or landscaped, thereby reducing the total volume of stormwater to be detained for the property. This alternative also preserves the full functioning of the on site wetlands, including its rainwater detention and retention functions as well as its water infiltration and evapotranspiration functioning, all of which reduces the rate of runoff from the site onto downstream areas.*

**Comment 3-6 (Letter #2, Robert J. DeGiorgio, Lawler, Matusky & Skelly Engineers LLP, 11/8/04):** However, should the Planning Board deem this alternative most appropriate for the site, it is recommended that the stormwater detention system be designed for the preferred plan so as to provide additional capacity in the detention basin. Provision of this additional capacity could provide some relief for the downstream deficiencies such that development of the site would actually be beneficial for the downstream drainage infrastructure, Village residents, structures and buildings.

**Response 3-6: Commercial Nine Building Plan** - *Comment noted. As recommended by the Village drainage consultant, the proposed basins for the revised nine building plan provide additional capacity beyond what is required by the NYS DEC. The proposed basins shown in the proposed nine building plans (see full size plans) are essentially the same size as those previously proposed for the ten building plan. However, as noted previously, the nine building plan proposes 3.5 acres of impervious surfaces, compared to 5.3 acres with the ten building plan. This decrease will have a corresponding decrease in the amount of runoff collected and conveyed into the stormwater system. It is also noted, that at the suggestion of the Village's drainage engineers, the proposed catch basins and pipes will be designed to allow for infiltration of stormwater water into the ground, which will also provide additional capacity to the detention basin.*

*The final configuration of the project and its associated detention system must be defined in order to quantify a potential reduction in downstream discharge rates. The project will meet the NYSDEC requirement which allows zero increase in peak rate of runoff for 2-year to 100-year storm frequencies. Reductions in downstream discharges are not mandated, but may be provided.*

**Residential Subdivision Plan** - *The stormwater detention system proposed for the residential alternative will be smaller in all dimensions in comparison to the commercial plan due to the reduction in impervious surface coverage and, while reductions in downstream discharges are not mandated, they may result from the creation of a stormwater management system on the property.*

**Comment 3-7 (Letter #2, Robert J. DeGiorgio, Lawler, Matusky & Skelly Engineers LLP, 11/8/04):** Two on-site drainage alternatives may also warrant consideration to allow for additional detention capacity for the site. The first was discussed in *Section 4.5 - Alternative Stormwater Management Plan* of the Alternatives section of Volume I of the DEIS. This plan assessed the feasibility of storing the entire water quality volume associated with the building rooftops in leaching basins of approximately 10-feet in diameter and 4 - 8-feet in depth, depending on the depth of groundwater. Provision of these leaching basins in addition to the detention basin as it

is currently designed may be another means of providing relief for the downstream drainage infrastructure deficiencies.

**Response 3-7: Commercial Nine Building and Residential Subdivision Plans -** *The use of leaching basins to provide water quality for the rooftop areas will be further considered during the final stormwater analysis once the site layout is finalized.*

**Comment 3-8 (Letter #2, Robert J. DeGiorgio, Lawler, Matusky & Skelly Engineers LLP, 11/8/04):** A second on-site drainage alternative for consideration by the Village and the Applicant is related to the detention basin design. The NYSDEC allows for maximum side slopes of 1V:3H or 33% for the basin walls. Drawing No. B13 - Stormwater Basin Cross Sections depicts the west walls of the basin and forebay at the maximum allowable slope, and the east walls a lesser slope of 1V:4H or 25%. Additional capacity could be achieved in the detention basin by increasing the side slopes of the east walls thus providing potential relief for the downstream deficiencies.

**Response 3-8: Commercial Nine Building Plan -** *The side slopes of the stormwater basin are currently at the maximum allowed by the NYS DEC. The maximum allowable side slope is 1V:4H in areas adjacent to the maintenance access road with a maximum of 1V:3H in all other areas. The design as presented maximizes the stormwater detention volumes.*

**Residential Subdivision Plan -** *This comment is not applicable to the residential alternative as the side slopes of the basins do not have to be maximized in order to detain the lesser volume of stormwater generated, which will be only approximately 40.2 percent of the total basin volume required for the commercial plan.*

**Comment 3-9 (Letter #2, Robert J. DeGiorgio, Lawler, Matusky & Skelly Engineers LLP, 11/8/04):** Although it may be confirmed, after clarification by the Applicant of the items identified in this review, that the current design does result in a net zero increase in peak runoff for rainfall events up to the 100-year storm, an increase in overall runoff volume will be realized by the downstream drainage system after development of this site. As such, LMS recommends that the Village request that the Applicant evaluate the alternatives presented in this review, and, if desired propose additional alternatives, such that this development will be beneficial for the Applicant, the Village and Village residents.

**Response 3-9: Commercial Nine Building and Residential Subdivision Plans -** *Comment noted. As previously noted, the Project Sponsor is now proposing a revised nine building plan that results in less stormwater runoff as compared to the ten building DEIS Plan. All other alternative developments discussed in the DEIS, including the residential alternative, involve similar or less impervious surfaces as compared to the ten building plan and would therefore generate equal or less runoff and potential for stormwater impacts. The stormwater system for the proposed nine building plan would provide excess stormwater storage, as compared to the ten building DEIS plan. See also Response 3-6.*

**Comment 3-10 (Letter #2, Robert J. DeGiorgio, Lawler, Matusky & Skelly Engineers LLP, 11/8/04):** It is recommended that the Village request that the Applicant include the control storms recommended by NYSDEC in the downstream analysis.

***Response 3-10: Commercial Nine Building and Residential Subdivision Plans -***  
*The analysis of the downstream drainage system has been completed by Lawler Matusky & Skelly (LMS) on behalf of the Village drainage improvement program, and therefore, there is no need for duplication of this task. The Project Sponsor's stormwater management engineer has provided LMS with documentation of the Courtyard at Upper Nyack hydrologic analysis for incorporation into their regional drainage analysis being prepared for the Village. The Village consultant report titled "Drainage Report for Village of Upper Nyack," was completed in October 2005. The Drainage Report concluded that "the flows show no increase between existing and developed conditions" for the 100-year storm and "almost negligible" differences for all other tested storm events with the effective design and functioning of the proposed stormwater detention facilities.*

*In accordance with NYS DEC regulations, the proposed stormwater system maintains the peak flow rates at or below existing levels for all required storm events.*

**Comment 3-11 (Letter #2, Robert J. DeGiorgio, Lawler, Matusky & Skelly Engineers LLP, 11/8/04):** It is recommended that the Village request that the Applicant extend the limits of the downstream analysis in accordance with the 10% rule defined in *Section 4.7 Downstream Analysis* of the New York State Stormwater Management Design Manual.

***Response 3-11: Commercial Nine Building and Residential Subdivision Plans -***  
*The purpose of the NYS DEC 10% rule analysis is to determine if a waiver of detention on-site is merited. However, detention is required on this site and will be provided. As such, no waiver is sought.*

**Comment 3-12 (Letter #2, Robert J. DeGiorgio, Lawler, Matusky & Skelly Engineers LLP, 11/8/04):** It is recommended that the Applicant assess the viability of provision of leaching holes in the bottom of each of the drainage manholes along the 30-inch pipe diverting off-site flow through the site to POI 'A' or suggest some other means to reduce the off-site flow to POI 'A'.

***Response 3-12: Commercial Nine Building and Residential Subdivision Plans -***  
*The Project Sponsor's consulting stormwater management engineer advises the mentor that this practice is not permitted before water quality renovation as per the NYS DEC's stormwater technical requirements.*

*The discharge of stormwater from pavement into a leaching system without pretreatment is contrary to NYSDEC requirements. A detention/water quality basin is provided to meet water quality requirements. Increased velocities and reduced times of concentration are parameters factored into the submitted hydrologic analysis.*

*See also Response 3-4.*

*The Project Sponsor proposes several measures to improve local drainage conditions. First, the temporary storage capacity of the existing basin on the west side of Route 9W will be increased as a result of the proposed off-site wetland mitigation. In addition, the wetland plantings in the off-site mitigation area will help to improve the water quality of the runoff that eventually flows through the existing pipe under Route 9W into the project site.*

*Second, the runoff entering the site from this pipe will flow into an expanded on-site wetland that is being created as part of the proposed on-site wetland mitigation. This on-site wetland mitigation area will also be designed to provide additional storage capacity and will also provide water quality benefits to the runoff. The overflow from the on-site wetlands will be conveyed into the Village's existing drainage system.*

*Third, the proposed stormwater system will collect, detain and treat runoff from the project site prior to discharging it into the Village's existing drainage system at flow rates that are below the existing rates at which stormwater is discharged into the Village drainage system.*

*Due to these measures, the off-site runoff which flows through the project site and the on-site runoff exiting the site is expected to enter the Village drainage system at reduced rates following storm flows than under existing conditions. Subsequently, the project is not expected to have an adverse impact relating to the capacity of the Village's existing stormwater system.*

*The analysis prepared by Leonard Jackson Associates (LJA) meets NYSDEC criteria for detention and zero increase in rate of discharge from the developed site. Final detailed design calculations will be provided to verify each of the analyses made. If offsite wetlands west of Route 9W (upstream of the site) are improved and storage is increased there, the effect will tend to reduce the net peak rate of discharge onto and leaving the project site. The net effect of this system on downstream discharges is calculated by summing the hydrographs from the detention basin and the stream bypass piped system. The proposed onsite project with detention meets the requirements of the NYSDEC criteria without reliance on offsite work. It is not necessary to direct offsite flows to the detention system to yield downstream reductions in peak flow.*

**Residential Subdivision Plan** - *The residential alternative will not alter the existing runoff pattern from properties draining to the site from the western side of Route 9W, nor will the wetlands benefits cited by the commentator as presently provided by the on site wetlands be altered by this plan.*

**Comment 3-23 (Letter #6, Joseph F. Menschik, 209 Wanamaker Lane, 11/8/04, Public Hearing, Joseph Menschik, 209 Wanamaker Lane, 11/8/04):** The Courtyard presentation shows that 40% of storm runoff is absorbed and 20% evaporates thus we will have 60% more water going in to our 24" pipe than before. If their figures are too low (as described below) then the water load on the system will be even greater.

**Response 3-23: Commercial Nine Building and Residential Subdivision Plans -** *See Response 3-22. The capacity of the stormwater system is designed based on an analysis that follows accepted NYS DEC technical procedures. The proposed stormwater system will maintain or reduce the rate of stormwater runoff entering the existing*



*drainage system as compared to existing conditions, which is more important to the drainage system's capacity than stormwater volume.*

**Comment 3-24 (Letter #6, Joseph F. Menschik, 209 Wanamaker Lane, 11/8/04):** If the 24" pipe, which has proven at times to be insufficient to handle major storms for period of time is filled to capacity, it will flood streets through catch basins, flood the areas supporting dry wells that service footing and roof drains in residences preventing them from draining for longer periods of time. This could blow out those lines, which were not constructed to sustain prolonged stresses. The cost to village citizens and the disruption and ensuing damage could be catastrophic. If the 24" pipe fills to capacity the balance of the site drainage plan would be forced into the smaller 18" pipe in area B compounding the damage to property below the site. If the proposed retention areas, which are taking on 150% more water from drained site areas than previously flowed on the surface (40% absorbed before and 20% evaporated) overflowed, the site would flood the residences below. Also note that flood insurance does not cover personal property in one's basement and it is expensive to obtain.

***Response 3-24: Commercial Nine Building and Residential Subdivision Plans - As previously noted, the rate of runoff from the developed project site into the Village's drainage system will be reduced and should therefore help to alleviate capacity problems during peak storm flows. See also Response 3-22.***

**Comment 3-25 (Letter #6, Joseph F. Menschik, 209 Wanamaker Lane, 11/8/04, Public Hearing, Joseph Menschik, 209 Wanamaker Lane, 11/8/04):** The existing 24" and 18" pipes join on North Midland Avenue and flow northward to other parts of the village. Many streets drain into the system. What will happen to the other properties if their storm runoff cannot properly drain? We have already seen this in peak storms on many occasions over the past five years.

***Response 3-25: Commercial Nine Building and Residential Subdivision Plans - As previously noted, the rate of runoff from the developed project site into the Village's drainage system will be reduced and should therefore help to alleviate capacity problems during peak storm flows. See also Response 3-22.***

**Comment 3-26 (Letter #6, Joseph F. Menschik, 209 Wanamaker Lane, 11/8/04, Public Hearing, Joseph Menschik, 209 Wanamaker Lane, 11/8/04):** The developers do not acknowledge or account for water sheeting in heavy storms on Rt. 9W which flows downward toward the proposed entrance to Courtyard on 9W and will flow onto the site (which it does not do now) nor do they account for the added volume.

***Response 3-26: Commercial Nine Building and Residential Subdivision Plans - The drainage study accounts for water that flows onto the site from Route 9W during all analyzed storm events.***

**Comment 3-27 (Letter #6, Joseph F. Menschik, 209 Wanamaker Lane, 11/8/04, Public Hearing, Joseph Menschik, 209 Wanamaker Lane, 11/8/04):** The issue of a breeding ground for West Nile Disease is a serious one posed by these proposed open retention areas. The Health Commissioner of Connecticut advised citizens to regularly drain birdbaths. These are much larger and do not drain out totally.

**Response 3-27: Commercial Nine Building and Residential Subdivision Plans -**  
*Each proposed detention basin is designed to fully drain following storm events, minimizing its ability to support mosquitos.*

*Each proposed forebay basin is proposed to be a permanent pool. This is a standard water quality measure and would follow the standard detail of the NYSDEC. Periodic cleaning at the outlet orifice is required to assure that they remain open and operate as designed. The NYSDEC has recommended that such pools be stocked with minnows; a factor that will be incorporated into the project's requirements.*

*It is presumed that incorporating NYSDEC details into a project design achieves NYSDEC goals and precludes creating a mosquito health risk. The Project Sponsor's drainage engineer defers to the NYSDEC criteria relative to their standard design details.*

**Comment 3-28 (Letter #6, Joseph F. Menschik, 209 Wanamaker Lane, 11/8/04, Public Hearing, Joseph Menschik, 209 Wanamaker Lane, 11/8/04):** There are no plans for the drainage of the 75" buffers on the easterly, northerly or southerly perimeters of the property all of which are bordered by residences of village citizens. This composes more than 3.75 acres or more than 1/3 of the total project without a drainage plan and the construction will disrupt the existing drainage of the site, some of which currently flows into the 24" and 18" pipes that will no longer be available for this drainage. Where will the increased water flow go? This land will likely be clear cut and the land absorption of rain is significantly reduced which would cause the water flow on the land to be multiplies of what it was before. The Draft Environmental Impact Statement fails to even deal with this issue.

**Response 3-28: Commercial Nine Building and Residential Subdivision Plans -**  
*The runoff from the undisturbed wooded buffer areas would continue to drain downhill to the east. No clear cutting would occur in the proposed buffer areas. Most of the runoff from the site, however, would be collected, detained and treated by the proposed stormwater management system.*

**Comment 3-29 (Letter #6, Joseph F. Menschik, 209 Wanamaker Lane, 11/8/04, Public Hearing, Joseph Menschik, 209 Wanamaker Lane, 11/8/04):** The Courtyard people say Rockland County averages 45" of rain a year. They do not show any statistics for Upper Nyack for the past five years or give a time frame for the 45". They say the land absorbs 40% of rainfall and 20% evaporates but they do not say for what kind of land. Absorption rates vary greatly and we are talking about sloped land where their proposal will decrease absorption rates.

**Response 3-29: Commercial Nine Building and Residential Subdivision Plans -**  
*See Response 3-21.*

**Comment 3-30 (Letter #6, Joseph F. Menschik, 209 Wanamaker Lane, 11/8/04, Public Hearing, Joseph Menschik, 209 Wanamaker Lane, 11/8/04):** A study of ground water absorption rates published in the Economist on October 23, 2004 dealing with sloped land show a great variance of absorption rates based on vegetation. What we have now on the site is a sloped wooded area that is forested for more than 25 years. The study quoted was under the direction for Dr. Howard Wheater of the Imperial College of London. It showed that a sloped broad leafed forest with seven year old planting absorbed more than eight times than that of a grassy slope. We currently have sloped woodlands in the 75' buffers that will be clear-cut. What will the runoff from this area do to the bordering residential properties?

**Response 3-30: Commercial Nine Building Plan** - See Response 3-21. No clear cutting would occur in the proposed buffer areas. Runoff from these areas will not change. As previously noted, the revised nine building plan is now proposed which fully retains the existing vegetation in the 75 foot buffer areas required for the commercial plan. In addition, the stormwater from the developed portions of the site will be retained in the proposed detention basin and released at or below existing rates in accordance with the SPDES Permit requirements.

*The net overland flow has been reduced by intercepting onsite runoff and piping it to a detention basin (see Drawing SF-1 at the end of this section).*

*The Project Sponsor's drainage engineer indicates that the hydrologic analysis and project designs stand on their own merits. A forest or grassed slope has higher groundwater recharge absorption rates than a paved parking lot over the course of a year. However, reductions in groundwater recharge are not expected to result in adverse impacts. Local residents have complained about high groundwater levels. A net reduction in groundwater levels resulting from reduced pervious area may benefit these neighbors.*

*The analysis and designs are required to meet the NYS DEC requirement for zero increase in peak rate of runoff for intense storms because it is acknowledged that surface runoff volume increases and groundwater recharge volume decreases as a result of the development.*

**Residential Subdivision Plan** - *The above response is also applicable to the residential alternative.*

**Comment 3-31 (Letter #6, Joseph F. Menschik, 209 Wanamaker Lane, 11/8/04, Public Hearing, Joseph Menschik, 209 Wanamaker Lane, 11/8/04):** We are given statistics but no time frames. The statistics are countywide and not specific to our area. What are the sources for these statistics and are there other statistics from other sources? What are the ranges of statistics given? What are the trends? These questions are not answered.

**Response 3-31: Commercial Nine Building and Residential Subdivision Plans** - See Response 3-21.

**Comment 3-32 (Public Hearing, Steve Schlanger, 216 Wanamaker Lane, 11/8/04):** I am very worried about that - that we will be sold on a system that may, ultimately, fail. And, so, I'm standing in front of you asking you to guarantee me that my home is going to be protected and that the health and safety of my family and of my neighbors will be protected.

**Response 3-32: Commercial Nine Building and Residential Subdivision Plan** - *The proposed stormwater management systems are designed in conformance with all applicable NYS DEC requirements and these systems have worked reliably throughout the United States for many years.*

*Under New York State Village Law (see excerpt in Response 1-2), the Village of Upper Nyack has the authority to take action to ensure that maintenance measures are implemented and seek reimbursement by the Project Sponsor or its successors. As such, the project would have adequate protection measures to safeguard against adverse impacts to downgradient properties.*

*The Village's engineering consultant and the Village Engineer will continue to review the proposed stormwater management plan and ensure that it is constructed and operates as designed (See Response 3-1).*

**Comment 3-33 (Public Hearing, Israel Cohen, 406 North Broadway, 11/8/04):** You take eleven acres on top of a hill and you cover it over with blacktop and cut down all the trees and what's going to happen to that water? I mean it will only go one way - downhill.

***Response 3-33: Commercial Nine Building and Residential Subdivision Plans -***  
*Comment noted. The proposed stormwater management system is also based on gravity, and is designed to collect, detain and treat runoff from the developed portions of the project site. Runoff will be discharged from the site below existing discharge rates into the Village drainage system.*

**Comment 3-34 (Public Hearing, Joseph Menschik, 209 Wanamaker Lane, 11/8/04):** The document presented shows limited data on the storm drainage system... Imperative drainage issues are not even addressed.

***Response 3-34: Commercial Nine Building and Residential Subdivision Plans -***  
*Comment noted. It is unclear what the commentor regards as deficient in the Drainage Analyses. It is noted, however, that the drainage plan has been and will continue to be reviewed by the Village Engineer and drainage consultants and will not be approved unless determined to be accurate and in full conformance with applicable standards.*

**Comment 3-35 (Public Hearing, Joseph Menschik, 209 Wanamaker Lane, 11/8/04):** With the existing drainage infrastructure proving inadequate, in some instances, to handle the storm water, their development would add additional flow to this.

***Response 3-35: Commercial Nine Building and Residential Subdivision Plans -***  
*Because the proposed stormwater management system would detain stormwater on the project site and release it more slowly into the existing drainage system following peak storm flows, the project would not create a capacity problem for the Village drainage system.*

**Comment 3-36 (Public Hearing, Maxine Silverman, 11/8/04):** I'd like the Board to consider what effect the runoff will, you know, domino effect.

***Response 3-36: Commercial Nine Building and Residential Subdivision Plans -***  
*The drainage analyses included in both the DEIS and the FEIS do take under consideration both the off-site runoff and the potential impact to downgradient areas in the Village.*

**Comment 3-37 (Public Hearing, Ed Cucksey, 510 Hudson View Road, 11/8/04):** I was wondering how they're gonna take care of all the big snow that comes up there. Eleven acres is almost a half a million square feet. Now, that's gonna be piled up, and, as that snow melts, it's gonna be running downhill for weeks on end. And they say they're gonna pour it into the storm drains that are already there down on Midland Avenue. Midland Avenue is flooding down into - to Broadway.

The last heavy snowstorm -- rainstorm we had, I had a doctor's appointment down in Nyack, and I got out while it was raining and the water was covering Midland Avenue when I turned

down onto Broadway, down on Birchwood Avenue. I got down to Broadway. Broadway was covered from curb-to-curb with water. Now, that continued all the way down to the first street that you could get down to the river where the water was now running, pouring down in there.

**Response 3-37: Commercial Nine Building and Residential Subdivision Plans -** *Under existing conditions, snowmelt on the project site flows towards the existing storm drainage system to the east. With the proposed development, the snow on paved areas will be plowed to the perimeter of the pavement. At this location, snowmelt that occurs over paved areas will be conveyed by the drainage system into the proposed basins for treatment and detention. The capacity of the drainage systems are designed based on the climatic conditions in Rockland County, including precipitation and snow fall data. Snowmelt that occurs over non-paved areas will flow overland as sheet flow towards the existing storm drainage system to the east.*

**Comment 3-38 (Public Hearing, Ed Cucksey, 510 Hudson View Road, 11/8/04):** They say they're gonna pour the water off the -- it's 500,000 square feet of water is gonna drain down to the water basins down on Broadway -- on Midland Avenue, but, from there down to the river, there's no -- they need to, at least, triple the runoff capabilities in the storm drains to make it work.

**Response 3-38: Commercial Nine Building and Residential Subdivision Plans -** *See Comment 3-22. Based on the drainage analysis provided in the DEIS, the project is not expected to create capacity-related problems on the Village drainage system.*

**Comment 3-39 (Public Hearing, Scott Lewis, 245 Birchwood Avenue, 11/8/04):** My house backs up to the site. We get water in the basement now. I don't know that this plan would add to that, but clear-cutting it, certainly, is gonna add a lot of water, and, unlike some of the other surrounding properties, the synagogue or the seminary, there will be, virtually, no trees other than the perimeter and, effectively, you're paving something the size of the Nyack Hospital parking lot. Whereas, the Nyack Hospital parking lot is on a flatter terrain, here, we're just shunting water down the hill.

**Response 3-39: Commercial Nine Building Plan** *See Comment 3-22. The proposed stormwater management system would collect, detain and treat runoff prior to releasing it into the Village drainage system at rates below existing conditions.*

**Residential Subdivision Plan -** *This above response is also applicable to the residential alternative, although the amount of land under pavement would be reduced to approximately 24 percent (or less) of the site and the amount of land remaining revegetated or landscaped will be more extensive with this alternative.*

**Comment 3-40 (Public Hearing, Dr. Bruce Handelsman, 217 Wanamaker Lane, 11/8/04):** Eleanor and I live right next to the proposed detention drains, and, presently, there are storm-drain pipes on the east side of our property that become filled with debris and silt, and we would like to know who is going to be responsible for keeping them cleared. The storm pipes - presently, they are not monitored at all.

**Response 3-40: Commercial Nine Building and Residential Subdivision Plans -** *The existing storm drains on Wanamaker Lane are owned and maintained by the Village of Upper Nyack. The Village is responsible for the maintenance of the Village facilities.*



**Comment 3-41 (Public Hearing, Dr. Bruce Handelsman, 217 Wanamaker Lane, 11/8/04):** If and when this proposed drainage system fails, we're concerned that, during construction and on a completed site of this size with 10 buildings and 441 parking spots, overflow of surface water will allow dangerous chemicals, such as road salt, fertilizer, pesticides, antifreeze and brake dust to come onto our property and our neighbors' property. This is gonna be harmful to children playing on the lawns. It will damage our lawns. It will damage our trees and our pets.

We are also concerned about this water causing structural damage to our underground foundations and the pipes feeding into our homes. We would like to know what kind of assurances the Planning Board can provide us that water will not come cascading down our property. Who will be responsible for repairs or damages to our property as a result of work coming off the construction site onto our property? Who will monitor, maintain and repair the drainage system as it ages? How long is the Applicant going to be responsible for maintaining the system?

And I ask that these guarantees be placed in writing. Will the existing infrastructure on Wanamaker Lane be able to handle the water coming off the detention systems?

**Response 3-41: Commercial Nine Building Plan** - *The above comment appears to contain two assumptions: first, that a failure of the proposed stormwater management facility will occur resulting in downstream flooding, and second, that the runoff from the office complex and parking lot will contain dangerous chemicals.*

*The proposed detention basin will be constructed to meet all applicable NYS DEC requirements relating to structural integrity (See Section 3-1, above). This basin will be subject to State and Village inspections during and following construction. It is also important to note that the basin is designed to fully drain, and will only contain runoff during and immediately following rain events. The basin will have an overflow structure that will prevent it from exceeding its storage capacity during heavy rain events.*

*The quality of the runoff from the development is unlikely to pose a danger to downstream people or property as suggested in the above comment. The proposed development would involve limited seasonal use of salt. The use of fertilizers or pesticides would be minimized through the use of hardy plantings. Chemical applications would be conducted by licensed landscaping professionals in accordance with state and local requirements that are designed to reduce public exposure to the chemicals registered for use as fertilizers and herbicides. Any incidental automotive related chemicals in stormwater runoff would be minor and highly diluted. Furthermore, the stormwater management system will provide treatment to improve the water quality of runoff prior to discharge into the Village drainage system at rates that are below existing levels.*

*The maintenance responsibilities associated with the storm drainage system will likely be stipulated as a condition of a project approval. Under New York State Village Law (see excerpt in Response 1-2), the Village of Upper Nyack has the authority to take action to ensure that maintenance measures are implemented and seek reimbursement by the Project Sponsor or its successors (see Response 3-1).*

*The drainage engineer consulted with the NYS DEC Dam Safety Unit regarding the possible need for a dam permit for the proposed stormwater basins. According to the NYS DEC, a dam permit is required if one of the following is exceeded:*

- A) *The embankment exceeds 15 feet in height, as measured from the downhill toe of the fill placed for the embankment to the top of the embankment; or*
- B) *The impoundment at the crest of the embankment exceeds 3 million gallons.*

*The measurements for the proposed basin are:*

- A) *14 feet in height (294 at top of embankment, 280 at toe of slope);*
- B) *Impoundment of 1.08 million gallons (3.3 acre-ft).*

*Since neither of these values exceeds the thresholds, a dam permit from the NYS DEC is not required for this project (see correspondence from Leonard Jackson Associates, dated July 25, 2005 in Appendix A)*

**Residential Subdivision Plan** - *For the residential alternative, all stormwater basin structures will be substantially reduced in size to become only approximately 40.2 percent of the total basin volume required for the commercial alternative. In spite of the reduced size of the basins, the same state-mandated construction and maintenance procedures will be utilized for their design, installation and monitoring. The water collected in the basins would contain chemicals from the runoff of rainwater that are typical for, and at levels typical for, similarly sized residential neighborhoods within the Village.*

**Comment 3-42 (Public Hearing, Barry Schoenberg, 648 North Broadway, 11/8/04):** I'm concerned about the environmental impact and the water flow that comes from the back of our temple from the mountain, which we abut, comes down our driveways and will, undoubtedly, based on the position of the driveway here, certainly, enter the driveway of the proposed development, which will add, again, significant water flow to the area, increase the already -- the potential for significant rainfall just from a normal rainfall but the cascading effect from our facility into that development and the subsequent downhill ride that it would take through Bruce's house and everybody else's house and, ultimately, end up in my basement will, definitely, have an impact on all of us.

**Response 3-42: Commercial Nine Building and Residential Subdivision Plans** - *See Comment 3-22. The proposed stormwater management systems provide catch basins to collect and convey stormwater from the developed portions of the site to the proposed basin, including runoff on the proposed internal drive and parking areas.*

**Comment 3-43 (Public Hearing, James Sarna, 305 Fairview Avenue, 11/8/04):** Will you pay to repair the damage if your projections and your hydrologist's information turns out to be incorrect?

**Response 3-43: Commercial Nine Building and Residential Subdivision Plans** - *See Response 3-1.*

*Under New York State Village Law (see excerpt in Response 1-2), the Village of Upper Nyack has the authority to take action to ensure that maintenance measures are implemented and seek reimbursement by the Project Sponsor or its successors (see Response 3-1).*

*It is also noted that the proposed stormwater plan will continue to be reviewed by the Village's drainage consultants prior to final approval to ensure that it complies with all applicable state requirements.*

*The Project Sponsor will also carry an insurance policy against which claims could be made for any damages resulting from the drainage system.*

**Comment 3-44 (Public Hearing, Ted Koczynski, 239 Birchwood Avenue, 11/8/04):** I'd like to remind everybody that, when it does freeze and the ground freezes solid, with the added lack of absorption, it's gonna be tremendous. You're not gonna stop it. If the retention pond is frozen from the previous little bit of rain, it's not gonna stop.

***Response 3-44: Commercial Nine Building and Residential Subdivision Plans -***  
*The proposed stormwater management systems are designed to be effective at all times of the year and would not be hampered by surficial ground freezing.*

**Comment 3-45 (Letter #12, Douglas Schuetz, Rockland County Department of Planning, 12/23/04):** The location of the stormwater basins are of concern to the County Planning Department. In the event that one of the detention basins malfunctions, the properties to the east could be severely impacted. This concern is for the general health and welfare of the down gradient property owners to the east. The Village Engineer must be assured that the overall drainage plan for the property is achievable and will provide adequate stormwater control.

***Response 3-45: Commercial Nine Building and Residential Subdivision Plans -***  
*The proposed basins are designed to comply with all applicable NYS DEC technical requirements. The stormwater management system design is being reviewed by the Village Engineer and the Village drainage consultants as part of the approval process. In addition, the system will be subject to inspections during and after construction to ensure that it is built and functions properly. The Village is likely to require construction bonds to ensure that the drainage system is constructed according to the approved plans.*

*Under New York State Village Law (see excerpt in Response 1-2), the Village of Upper Nyack has the authority to take action to ensure that maintenance measures are implemented and seek reimbursement by the Project Sponsor or its successors. See also Response 3-1.*

**Comment 3-46 (Letter #12, Douglas Schuetz, Rockland County Department of Planning, 12/23/04):** The long term maintenance agreement between the applicant and the Village should include a yearly inspection of the stormwater management facilities and a report to the Village ensuring the safety of the facilities and of the residents located to the east. The Village should also ensure that the applicant has the financial ability to maintain these features in the future. This agreement should run with the land and be upheld by future owners of the property.

***Response 3-46: Commercial Nine Building and Residential Subdivision Plans -***  
*The Project Sponsor and its successors will be responsible for future on-site maintenance costs associated with the proposed development and these responsibilities would be stipulated as a condition of approval by the Village. Under New York State Village Law (see excerpt in Response 1-2), the Village of Upper Nyack has the authority to take action to ensure that maintenance measures are implemented and seek reimbursement by the Project Sponsor or its successors. See also Response 3-1.*

**Comment 3-47 (Letter #12, Douglas Schuetz, Rockland County Department of Planning, 12/23/04):** The impervious surfaces proposed for the site are of concern to the County Planning Department. The increased impervious surface and diminished natural vegetation on the site may lead to increased runoff on sites downhill and decreased recharge of the groundwater system. The grading of the site will drastically impact the existing intermittent stream and wetland area. By forcing the water through the proposed piping system, the amount of surface water on the site will be dramatically reduced, thus the amount of water recharging the groundwater supply will also decrease. Every effort must be made to retain as much natural vegetation and grading on the site as possible, and to limit, to the extent feasible, the amount of impervious surfaces.

***Response 3-47: Commercial Nine Building and Residential Subdivision Plans -*** *The proposed stormwater management systems are designed specifically to address the potential for increased runoff from the site and decreased recharge due to the development. The stormwater management systems are designed to permit recharge to occur. In addition, the proposed on-site wetland creation mitigation measures proposed for the commercial plan, and the naturally vegetated buffers, will all permit on-site recharge to occur.*

*Surface water entering the site through the existing culvert will provide hydrology to the portion of the existing wetland to be retained and the on-site wetland mitigation areas, if any. An overflow structure will convey excess water in the wetland across the more steeply sloped portions of the site into the Village drainage system. Currently water flows through a steep on-site gully to swales that direct the flow overland towards the Village drainage system. The intermittent water that flows down this steep gully during and following rain events does not recharge groundwater. This surface flow has, during heavy storm events, flooded the properties of downgradient neighbors, according to public hearing testimony. As the stream channel has become a gully across the steeper portions of the site, the intermittent stream flows are clearly erosive and carry sediment downstream. The piping of the excess intermittent stream flows over this steeper portion of the site would correct these problems, and would make no difference to groundwater recharge.*

*No significant adverse impacts are anticipated resulting from any overall reductions in groundwater recharge with the proposed development. This concern was also addressed in the DEIS (see Appendix G reports prepared by Leggette, Brashears & Graham, Inc.).*

**Comment 3-48 (Letter #12, Douglas Schuetz, Rockland County Department of Planning, 12/23/04):** In order to reduce the amount of impervious surface on the site and potentially increase the amount of water recharged into the ground water system, the applicant should consider the use of pervious pavers in outlying parking areas. Additionally, islands that could serve as drainage swales should be considered.

***Response 3-48: Commercial Nine Building Plan -*** *The consulting drainage engineer considered the use of pervious pavers for the outlying parking areas but does not believe that it would provide any significant recharge benefits. Alternatively, the plan has been modified to include open bottom catch basins and perforated piping in the stormwater conveyance system to allow limited groundwater recharge. Drainage swales in the islands were also considered. Where topographically appropriate, the Project Sponsor is*

*willing to construct these islands as depressed beds that can receive some of the runoff from the parking areas. These beds would be planted with suitable landscaping material.*

**Residential Subdivision Plan** - *This comment is not applicable to the residential alternative which will, by design, retain a much higher percentage of naturally recharging surfaces than would the commercial plan.*

**Comment 3-49 (Letter #12, Douglas Schuetz, Rockland County Department of Planning, 12/23/04):** Since the proposed grading has the potential to encounter the groundwater table during seasonally wet periods and may alter the naturally occurring depth and flow of the groundwater, the DEIS should take into consideration the effects that the proposed construction may have on the groundwater in areas down gradient which may rely on groundwater as a water source.

**Response 3-49: Commercial Nine Building and Residential Subdivision Plans** - *Based on the groundwater test well drilling results provided in the DEIS, the project is not expected to have adverse impacts on groundwater. Public water service (via United Water) provides potable water to all developed properties in the Village, including those down gradient of the project site.*

**Comment 3-50 (Letter #12, Douglas Schuetz, Rockland County Department of Planning, 12/23/04):** It is unclear what size drainage area is being referenced in the last paragraph on page 3.2-1 under section 3.2.1, Existing Conditions.

**Response 3-50: Commercial Nine Building and Residential Subdivision Plans** - *This paragraph is describing "Subarea 2" as depicted in full-size map A-7, found in the DEIS drainage report in Appendix D. This drainage area is 0.24 acres in size.*

**Comment 3-51 (Letter #12, Douglas Schuetz, Rockland County Department of Planning, 12/23/04):** On page 3.2-9, paragraph three, sentence two under stormwater management plan, should read "The applicant and Village Engineer would be responsible..."

**Response 3-51: Commercial Nine Building and Residential Subdivision Plans** - *Comment noted.*

**Comment 3-52 (Letter #14, Charles Christian, 12/16/04):** I have received mail from people living below this area concerning the matter of drainage difficulty due to heavy rain fall. Years ago a brook ran diagonally across the approximate 25 acres. This brook, I presume is now gone, or has dwindled in width and depth, due to the clear cutting that was done quite a few years ago. Today we have a new growth of trees and brush on the upper half of the property. Below there is a beautiful group of newer homes with blacktopped roads and driveways. Where does the rain water that is not absorbed by the few remaining trees, shrubs and lawns on these steep hill go? If a proper drainage pipe was not installed during the development on the east side off the original property, the brook could not flow down under Midland Ave, through the Nyack Field Club property north of Upper Nyack Elementary School and under Broadway down to the Hudson River. Where does the water that runs down Wanamaker Lane go during a storm?

**Response 3-52: Commercial Nine Building and Residential Subdivision Plans** - *The Village's drainage system extends up Wanamaker Lane to the eastern side of the property to collect and convey this runoff.*

*The water quality and stormwater management detention requirements of the NYS DEC were applied and complied with in order that a regional stormwater analysis would not be required for a local development.*

**Comment 3-53 (Letter #16, Walter and Florence Katzenstein, 12/15/04):** The addition of nine commercial buildings and their parking lots, the removal of trees, vines and brush can only lead to a catastrophic increase in the volume of water racing through the Old Mountain Road stream and the stream on our property on its way to the river.

***Response 3-53: Commercial Nine Building Plan*** - *The proposed stormwater management system is designed to collect, detain and treat stormwater from the project site and discharge it directly into the Village drainage system at flow rates at or below existing conditions.*

*Drainage from the project site goes to the piped drainage system in Wanamaker Lane, to Midland Avenue, then to the Mountain Road stream, eventually to the Hudson River.*

***Residential Subdivision Plan*** - *This response is also applicable to the residential alternative. In addition, the residential alternative will, by design, retain approximately 75 percent of the naturally recharging surfaces across the site.*

**Comment 3-54 (Letter #18, Dorothy and Edward Cucksey, 12/07/04):** You must consider that ridiculous catch basin -- in clay soil -- a disaster in-waiting for nearby homes and all homes down to the river. It was designed by "TEXTBOOK ENGINEERING." People who actually deal with water problems know that this is a simplistic, undependable idea.

***Response 3-54: Commercial Nine Building Plan*** - *The proposed drainage system is designed to meet all applicable NYS DEC technical requirements and was designed by a licensed New York State Engineer with extensive professional stormwater management experience.*

***Residential Subdivision Plan*** - *For the residential alternative, all stormwater basin structures will be substantially reduced in size to become only approximately 40.2 percent of the total basin volume required for the commercial alternative. The reduced sized basins will still have the same state-mandated construction and maintenance procedures for their design, installation and monitoring.*

**Comment 3-55 (Public Hearing, Joseph Menschik, 209 Wannamaker Lane, 1/11/05):** The County Planning Board recommends perpetual bonding and inspection and maintenance of the storage facility to run with the land. The Village should control this inspection and pass on the cost to the landowner.

***Response 3-55: Commercial Nine Building and Residential Subdivision Plans*** - *The Project Sponsor and its successors will be responsible for future on-site maintenance costs associated with the proposed development and these responsibilities would be stipulated as a condition of approval by the Village. Under New York State Village Law (see excerpt in Response 1-2), the Village of Upper Nyack has the authority to take action to ensure that maintenance measures are implemented and seek reimbursement by the Project Sponsor or its successors. See also Responses 3-1 and 3-45.*



**Comment 3-56 (Public Hearing, Joseph Menschik, 209 Wannamaker Lane, 1/11/05):** We have significant evidence of the failure of retention basins. Detention basins at Nyack High School have failed as expressed previously at the last meeting by our Mayor, Michael Esmay. We know that the detention basins at the Palisades Mall have also failed because Route 59 has been flooded on a couple of occasions. If they overflow here, they will flood our homes and even the best homeowner insurance policies written do not cover this. If we had a detention facility under the parking lot and it failed, we would first see the parking lot flooded. High curbs and berms could serve as additional retention areas. It would then flood the proposed development and, finally, if that were not sufficient, it would flow downhill to us. I think the developer would have more of an incentive to see that the detention plans exceed requirements in this case than as proposed in the DEIS.

***Response 3-56: Commercial Nine Building and Residential Subdivision Plans - As designed, the proposed stormwater management systems would improve the drainage conditions for the downgradient properties. The basins are designed to fully drain and would generally be empty except during or immediately following storm events. The basins would meet all applicable NYS DEC design requirements which are intended to avoid adverse impacts. It is also noted that the Village's drainage consultants agree that surface basins are preferable to subsurface detention (see page 4 of LMS letter dated November 8, 2004)***

**Comment 3-57 (Public Hearing, Jerry Greenberg, 1/11/05):** The drainage, according to the County, cannot be handled appropriately.

***Response 3-57: Commercial Nine Building and Residential Subdivision Plans - Comment noted. The Village Planning Board is in receipt of the comments of the Rockland County Planning Department, and is obligated to consider these comments during the SEQRA review and site plan review of the project.***

**Comment 3-58 (Letter #20, Karen Tarapata, Village of Upper Nyack, 1/25/05):** As the Village Trustee in charge of overseeing the Village's compliance with the new stormwater regulations, I would ask that the Planning Board consider requiring bio-retention filters in the parking islands to slow and reduce the discharge of water from the site and to also consider requiring pervious paving surfaces as mitigation for the impact of the parking area on the site.

***Response 3-58: Commercial Nine Building Plan - The stormwater management system, as proposed, satisfies the NYS DEC SPDES Permit requirements, without the need for any of the adjunct practices suggested in the above comments. The Project Sponsor believes that such supplemental measures would provide only marginal benefits, if any, above what is already proposed by the stormwater management plan.***

*The proposed detention/water quality basin is a standard practice stormwater system consistent with the NYS DEC guidelines and found to be the most practicable solution to stormwater management for the Courtyard project. Alternative systems requiring separate detention and water quality filters were found to be impractical based upon size, cost and maintenance requirements.*

*See also Response 3-47 and 3-48.*

**Residential Subdivision Plan** - *This comment is not applicable to the residential alternative.*

**Comment 3-59 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Section 3.2, Impact on Water, general comment. Lawler Matusky and Skelly, LLP reviewed the drainage study submitted by the applicant and has several recommendations (see letter dated November 8th, 2004). We concur with their analysis and recommend that additional information, as requested by LMS, be provided in the FEIS. In addition, LMS observed that no substantial drainage study was prepared for the alternative layout showing the 75 foot buffer, and there is no real basis for comparison of the impact on stormwater drainage in the DEIS. We recommend that a preliminary stormwater drainage plan be developed for the FEIS to allow for realistic comparison of the impact of both plans.

**Response 3-59: Commercial Nine Building Plan** - *The revised nine building plan would result in less impervious surfaces and runoff as compared to the ten building DEIS plan. As recommended by the Village drainage consultants (LMS) as "on-site mitigation" for drainage, (see Comment 3-5), the Project Sponsor revised the proposal to the nine building plan that fully preserves the vegetation in the 75 foot buffer. Also, as recommended by LMS, the proposed basin for the nine building plan now has excess capacity above what is required by the NYS DEC, since it is sized for the 10 building plan. Therefore, the nine building plan compares favorably to the ten building plan with respect to drainage issues.*

*A drainage analysis and preliminary design of a stormwater system has been prepared to meet the detention and water quality requirements of the NYSDEC which allows no increase in peak rate of runoff for design storms ranging from the 2 year through 100 year frequencies. The Project Sponsor can exceed NYSDEC stormwater management regulations by reducing, rather than maintaining, existing downstream discharge rates, however the provision or extent of such reduction is not mandated by law.*

*The size of this system varies as a function of the amount of disturbance and impervious cover provided on the developed site as compared to the existing underdeveloped site. By constructing nine buildings in lieu of ten buildings, thereby reducing impervious coverage by approximately 10%, the size of the basins may be reduced slightly though not significantly. The basins will still require a forebay, a means of access, a wet pond, an outlet structure and other facilities which do not vary in direct proportion to the amount of impervious cover. Similarly, the volume stored within a basin, and the hydraulic characteristics of the outlet structure, (two key design parameters) do not vary proportional with impervious cover. There is no significant difference between the basins required under the ten building plan versus nine building plan.*

**Residential Subdivision Plan** - *Detailed analyses for the residential alternative are provided in Appendix F - Drainage Report. The Project Sponsor is required to comply with local and NYSDEC stormwater management regulations for the final configuration.*

**Comment 3-60 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Section 3.2.1, Existing Conditions [Impact on Water]. During the public hearing, it was learned that during certain storm events, water flows across one of the properties on Wanamaker Lane, apparently overflowing a headwall or stream bank, and a photograph, showing the water flows, was received by the Board. Please prepare a map to illustrate the flow of the water during this storm event, and what effect the development of this property will have on this particular problem.

**Response 3-60: Commercial Nine Building and Residential Subdivision Plans -** *The Project Sponsor's drainage engineer prepared a map to illustrate the areas of possible overland sheet flow resultant from overtopping of the detention pond (see Drawing SF-1 following Comment 3-30). With the proposed project, runoff from the developed portions of the property would be captured and conveyed by the on-site stormwater management system to basins, where the runoff would be released directly into the Village's existing drainage system at or below existing rates. This improvement would directly benefit on the downhill properties that currently receive overland sheet flow during major rain events.*

**Comment 3-61 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Section 3.2.2, Potential Impacts [Impact on Water], page 3.2-4, under heading Grading impacts on Stream and Wetland. The DEIS indicates that the "stream would be eliminated by the proposed grading for the development." It is understood that the plans include piping the stream from Route 9W, across the site, to the area of the stormwater easement located between the Menschik and Cohen properties adjacent to the pipe. How will the applicant insure that this runoff will not exacerbate current problems with runoff experienced by these properties? Will the proposed piping increase the velocity of the flow of the water?

**Response 3-61: Commercial Nine Building Plan -** *As described in Chapter 1, the on-site and off-site wetland mitigation measures will retain some of the water that is piped underneath Route 9W. These measures involve lowering grades and installation of plantings to retain and filter the off-site water that flows through the site. This will reduce the volume and rate of water that flows into the piped portion of the stream. With the piping and stormwater management system, more of the on-site water will be conveyed to the proposed basins, where it will be discharged at or below existing rates.*

*Both the NYS DEC and the Village require that there be no increase in the peak rate of stormwater runoff as a result of the proposed development. This requirement has been adopted to prevent exacerbation of existing drainage problems. This will be accomplished through the provision of a detention system designed in accordance with established, accepted standard analysis and design procedures.*

*Changes to the velocity of runoff through the site, both from onsite and off-site stormwater, due to conveyance through pipes as compared to conveyance overland and in the bed of a stream will have no direct bearing upon downstream drainage problems as the runoff is directly through a detention system where the velocity is reduced to near zero, then it passes through a small orifice where the velocity is then increased, then into a larger pipe where it is again reduced, and finally into the existing storm drain system where the velocity is exactly the same as it was for pre-developed conditions as the rate of runoff has not changed.*

*None of the stream flow is proposed to be routed to the stormwater system, although much of the on-site area that currently drains to the stream will be developed and have its runoff directed through the proposed drainage system.*

*See also Responses 3-4 and 3-22.*

**Residential Subdivision Plan -** *The existing wetland will not be reduced in size under this plan. The volume and rate of water that flows into the piped portion of the stream*

*from the existing wetland will remain largely unchanged from the existing undeveloped condition. A small portion of on-site stormwater will be conveyed from new impervious surfaces created within the existing stream watershed. This runoff will be directed to the proposed stormwater basins, where it will be discharged at or below existing rates.*

*Both the NYS DEC and the Village require that there be no increase in the peak rate of stormwater runoff as a result of the proposed development. This requirement has been adopted to prevent exacerbation of existing drainage problems. This will be accomplished through the provision of a detention system designed in accordance with established, accepted standard analysis and design procedures.*

*Changes to the velocity of runoff in the existing stream due to conveyance through pipes as compared to conveyance overland and in the bed of a stream will have no direct bearing upon downstream drainage problems as the runoff is directed into the existing storm drain system where the velocity would be exactly the same as it is now for pre-developed conditions.*

*None of the stream flow is proposed to be routed to the stormwater system, although much of the on-site area that currently drains to the stream will be developed and have its runoff directed through the proposed drainage system.*

*See also Responses 3-4 and 3-22.*

**Comment 3-62 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Section 3.2.2, Potential Impacts [Impact on Water], page 3.2-5, subheading “(ii) Increased Nutrient Loading and Contamination.” The larger paragraph under this heading seems to discuss the stormwater conditions, as does the text on this page. The sentence following the paragraph states, “The potential for nutrient leaching would also be lessened by connecting the proposed development to public sewers rather than utilizing on-site septic systems.” Is an on-site septic system a realistic possibility, from a physical or permitting perspective? Does the DEIS suggest that nutrient loading of the stormwater system can be solved by connecting the site to the public sewers?

***Response 3-62: Commercial Nine Building and Residential Subdivision Plans -***  
*The reference to septic systems is not relevant to the proposed development and should be disregarded. The use of septics is not proposed or desirable in locations where sanitary sewers are available. There is no connection between the stormwater infrastructure and the sanitary sewer infrastructure.*

**Comment 3-63 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Section 3.2.2, Potential Impacts [Impact on Water], page 3.2-6, second paragraph states that the pollutant loading analysis shows “slight increases: in the amount of pollutants, whereby Section 3.4.2, page 3.4-10, under the subheading “Increased Erosion” indicates a reduction of existing levels of sediment and pollutants.

***Response 3-63: Commercial Nine Building and Residential Subdivision Plans -***  
*Comment noted. The referenced sentence on page 3.4-10 of the DEIS should be revised to strike “and pollutants”.*

**Comment 3-64 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Section 3.2.3, Mitigation Measures [Impact on Water], page 3.2-9. Second to last paragraph. Please provide draft of maintenance agreement for the SPPP Plan, as part of the FEIS.

**Response 3-64: Commercial Nine Building and Residential Subdivision Plans -** *The Project Sponsor's drainage consultant has indicated that the proposed stormwater management plan will require the following maintenance practices:*

1. *The outlet structures must be inspected once per year and, if necessary, cleaned of debris and/or accumulated material.*
2. *The depth of accumulated silt and material in the water quality basins must be inspected once per year, and this material must be removed from the basin when exceeds a depth of 3 feet.*

*The Board will impose maintenance responsibilities of the stormwater management system on the owner/operator of the site that will include proof of inspection and maintenance on a scheduled basis as a condition of final site plan review.*

*The form of the agreement will be determined by the Planning Board with the advice of the Village Attorney (See also Response 3-1).*

*In addition, as a requirement of the coverage under the NYS DEC SPDES General Permit 02-01, the Project Sponsor will need to submit a letter to the state describing the provision of post-development maintenance services and identify the responsible parties for providing such services. This letter, which will remain on file with the NYS DEC, is regarded as a maintenance agreement by the NYS DEC.*

**Comment 3-65 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Section 3.2.3, Mitigation Measures [Impact on Water], page 3.2-9 and 10. The catch basins mentioned at the bottom of page 3.2-9 should be inspected and cleaned after every major storm event.

**Response 3-65: Commercial Nine Building and Residential Subdivision Plans -** *Comment noted. The inspection schedule will be determined during the process of final site plan review.*

**Comment 3-66 (Letter #24, Joseph Menschik, 1/11/05):** The Lawler, Matusky, & Skelly report addressed the DEIS submission but did not appear to go beyond the submission itself. I would like the Village to instruct them to assess the drainage implications of the site plan for the buffer areas and what will happen to the easterly neighbors from ground water runoff when the areas that currently catch and remove the water are sealed up (Areas A & B). I would also like them to take a second look at Area B as intuitively I feel that this has to fail at the point that the pipes converge with the runoff from Area A which they show a failing.

**Response 3-66: Commercial Nine Building and Residential Subdivision Plans -** *Comment noted. The Village drainage consultants have completed a comprehensive analysis of the Village stormwater system. The proposed stormwater management system would capture and detain runoff from developed portions of the site and discharge water for the 1 through 100-year storms events at or below existing rates directly into the Village's drainage system. The on-site stormwater management system is designed to*

*improve the existing drainage conditions and will have no adverse drainage implications for the wooded buffer areas on the east side of the property or the easterly downhill neighbors. The proposed stormwater management plan will continue to be reviewed by the Village engineer, Village drainage consultants and the NYS DEC to ensure that it is properly designed.*

*As concluded in the 2004 hydrogeologic assessment report for the project prepared by Leggette, Brashears, & Graham, Inc. (see Appendix G of the DEIS), the proposed site development plan will reduce the recharge to the surficial water table, and thus less groundwater will be available for off-site seepage on the hillside along the eastern side of the property. The proposed drainage features will also convey shallow groundwater to the Village drainage system. As a result, the proposed site drainage system “should not cause any new drainage problems or override drainage improvements made on any neighboring properties, and will improve downgradient seepage problems.”*

**Comment 3-67 (Letter #24, Joseph Menschik, 1/11/05):** LM&S is one of our village consultants and I feel they should be more proactive in favor of the Village. I was very unhappy with their assessment in paragraph 3 page 4 of the study that an underground storage facility has a greater likelihood than the detention basins of having deficiencies go unnoticed. I question this conclusion. The Care Matrix Development had an underground storage facility, which was approved by the Village. The County Planning Board recommends perpetual bonding for the inspection and maintenance of the storage facility to run with the land. The Village should control the inspection and pass on the cost to the landowner. The cost to the developer should not be a concern of anyone other than the developer. The only concern for the Village is that things be done in a way that best serves its residents and has some margin for error in our favor. We have significant evidence of the failure of retention basins. The detention basins at Nyack High School have failed as expressed by our mayor, Michael Esmay, in the last public hearing and we all know that those protecting the Palisades Mall have also failed on multiple occasions in the past year. If they overflow here they will flood our homes and even the best homeowner insurance policy does not cover this. If we had a detention facility under the parking lot, and it failed we would first see the parking lot flooded and high curbs and brumes could serve as an additional retention area. It would then flood the proposed development and finally if this were not sufficient it would flow down hill to us. I think the developer would have more of an incentive to see that the detention plans exceed requirements in this case than as proposed in the DEIS.

***Response 3-67: Commercial Nine Building and Residential Subdivision Plans - The proposed stormwater management systems have been designed with excess capacity beyond what is required by the NYS DEC. The systems have been and will continue to be reviewed by the Village drainage consultants to ensure that they are properly designed to meet all applicable regulatory requirements and do not result in significant adverse impacts to the Village drainage infrastructure (see Response 3-1).***

*The Project Sponsor’s drainage consultant has indicated that the proposed stormwater management plan will require the following maintenance practices:*

- 1. The outlet structures must be inspected once per year and, if necessary, cleaned of debris and/or accumulated material.*
- 2. The depth of accumulated silt and material in the water quality basins must be inspected once per year, and this material must be removed from the basin when it exceeds a depth of 3 feet.*

*Although the drainage system is designed as a low maintenance system, the potential lack of maintenance could adversely impact the system function. An excessive amount of accumulated material in the outlet structures or basins could impede the system's ability to properly drain and reduce the holding capacity of the system.*

**Comment 3-68 (Letter #25, Glenna Marra, 1/31/05):** The proposed development of ten office buildings with parking lots raises serious concerns that the drainage and sewage systems would be overtaxed. I am aware that this area is aligned with a drainage area already in existence across the road where the Missionary Alliance building and Temple Beth Torah stand. It is only reasonable that the overflow onto the proposed development would overtax these systems and would require building expanded drainage and sewage systems at the Village's (and taxpayers') expense. The houses on Wanamaker Lane below the proposed area would appear to be particularly vulnerable to run-off, but it is likely that the ecological consequences would be far-reaching, and perhaps irreparable, in a village that is already experiencing drainage problems from recent development.

**Response 3-68: Commercial Nine Building and Residential Subdivision Plans -** *Comment noted. The Planning Board and its engineering consultants will review the proposed stormwater management plan. The goal of stormwater management plans is to achieve a zero-net increase of the rate of stormwater runoff or better for all storm events under the 100 year storm, with sufficient bio-retention to mitigate potential pollutants that would be contributed as a result from activities on site. The Project Sponsor's engineer believes that the proposed plans meet these standards and is compliant with guidelines established by the NYS DEC. The plans are under the review of the NYS DEC, and will also require a state permit before construction commences.*

*Drainage from the project site goes to the piped drainage system in Wanamaker Lane, to Midland Avenue, then to the Mountain Road stream, eventually to the Hudson River.*

*See also Response 10-1.*

**Comment 3-69 (Letter #27, Patrice Stambovsky, 1/27/05):** The Old Mountain Stream cuts through my front yard at the corner of Old Mountain Road. The increase of water in the stream over the last few years has caused extreme erosion, loss of two stonewalls and several trees. The water is threatening the embankment that holds up the front of our beloved historic home. My concern regarding the development of more paved parking lot areas and general development of this new medical center, is the compete erosion of the embankment, and further destruction of the fragile path of this stream.

Have the new developers addressed the need for retention pools, and drainage systems that do not include dumping more water (and debris) into this stream?

When there are huge rains and winter storms this stream boils and rages over 10 ft. stonewalls! We cannot have any more water pouring into these streams.



I have financed and maintained the walls for 10 years. And I can tell you that whatever DEIS research was done did not include my property or my neighbors. Please advise us on a course of action that would improve the drainage problems that are already existing, as well as preventing even more serious flooding in the future.

**Response 3-69: Commercial Nine Building and Residential Subdivision Plans -**  
*Comment noted. See Response 3-68.*

**Comment 3-70 (Letter #30, Mary and Steve Beck, 1/14/05):** We are Upper Nyack residents, living at 511 North Broadway since 1976. During that time, our property has experienced repeated severe and damaging floods. In 2004 alone we experienced 4 floods.

The primary problem is the limited capacity of the culvert under North Broadway at Old Mountain Road. When the capacity of the culvert is exceeded during a rainstorm, water leaves the brook bed and flows onto North Broadway. It then floods numerous properties, especially ours, on the east side of North Broadway.

Building the captioned project will make this already severe problem much worse. The runoff control plan for the captioned project contemplates delivering the collected runoff from the property into the same brook that already overflows its bed. Therefore, the Village Planning Board should not approve this project.

When the Nyack High School was built in Upper Nyack, we were assured that stormwater discharges into that same brook would be controlled. We now know that we were misled. How can we feel secure that the Courtyard project will do any better?

**Response 3-70: Commercial Nine Building and Residential Subdivision Plans -**  
*Comment noted. See Response 3-68.*

**Comment 3-71 (Letter #30, Mary and Steve Beck, 1/14/05):** We are happy to see that the Village Board has decided to address our existing drainage problems and has engaged LMS Engineering to study the current situation in a comprehensive way. Approving the Courtyard project would seem to contradict this initiative and in fact totally overwhelm the good it could do for the Village.

**Response 3-71: Commercial Nine Building and Residential Subdivision Plans -**  
*Comment noted. See Response 3-68.*

**Comment 3-72 (Letter #30, Lawrence Campbell, 1/12/05):** Drainage is my other concern. Upper Nyack already has drainage issues. A development of this size is sure to cause many others downhill from this site. Regardless of what is planned to minimize drainage problems, they will occur. If this project is allowed to continue, the village needs to ensure it has protected itself from having to pay the cost of correcting problems later that are a direct effect of this project. As a taxpayer in the Village of Upper Nyack, I do not want to pay to fix a problem that has been caused by the development of this commercial site.

**Response 3-72: Commercial Nine Building and Residential Subdivision Plans -**  
*Comment noted. (See Response 3-1).*

*Under New York State Village Law (see excerpt in Response 1-2), the Village of Upper Nyack has the authority to take action to ensure that maintenance measures are implemented and seek reimbursement by the Project Sponsor or its successors*

**Comment 3-73 (Letter #33, Shirley Thorman, Town of Clarkstown, 1/28/05):** The Planning Board is particularly concerned that the runoff from the 7.75 acres of the Christian Missionary Alliance and Temple Beth Torah properties located on the west side of Route 9W will be piped through the site to an existing drainage system on Wanamaker Lane. The existing stream and wetland on the property allows some recharge and evaporation of runoff, thereby reducing the contribution to the existing drainage system. We question whether the existing system can handle the additional increased flow that will result from piping the drainage from the properties on the west side of Route 9W along with the increased runoff from this development. Furthermore, a failure or obstruction in the proposed pipe could create significant flooding problems to the site and the surrounding neighborhood.

**Response 3-73: Commercial Nine Building Plan** - *As previously described, the off-site drainage that presently flows from the west under Route 9W through the existing pipe onto the project site would continue to provide water to the proposed on-site wetland mitigation areas which would provide opportunities for recharge, transpiration, and evaporation. Overflow from the on-site wetland would be piped to the Village's existing drainage system. The amount of water conveyed by this pipe would be less than existing conditions, because it would not include runoff from any of the on-site developed areas which would instead be conveyed to the proposed stormwater management basin that would detain and release water at or below existing discharge rates. Design measures would be employed to protect the pipe inlet from clogs, and there is no reason to believe that the pipe itself would suffer any sort of failure. However, if for some reason the pipe did not convey the overflow as designed, the proposed stormwater management system would serve as a back up system to ensure that the site and neighborhood does not flood during a major rain event.*

**Residential Subdivision Plan** - *This comment is not applicable to the residential alternative as this plan does not include any alteration of the lands to the west of Route 9W that presently drain onto the property through the existing pipe under Route 9W.*

**Comment 3-74 (Letter #33, Shirley Thorman, Town of Clarkstown, 1/28/05):** The DEIS states that only 0.49 acres of wetland will be impacted, necessitating a US Army Corps of Engineer's Nationwide Permit #39. The proposed cutting and filling of the property includes the entire 0.64 acres of the wetland, thus indicating that more than 0.49 acres will be involved. It seems that this project would not be covered under the Nationwide Permit #39, as it will impact more than 0.5 acres of wetlands, and does not show any mitigation as required by the applicable general conditions.

**Response 3-74: Commercial Nine Building Plan** - *The project would not impact more than 0.49 acres of federally regulated wetlands (see revised Cut and Fill map). The Project Sponsor has proposed wetland mitigation for this impact, which includes 0.23 acres of on-site wetland creation and 0.54 acres of off-site wetland creation on the opposite side of Route 9W. The Planning Board has not yet made a final determination on the applicant's proposed wetland mitigation.*

**Residential Subdivision Plan** - *This comment is not applicable to the residential alternative.*

**Comment 3-75 (Letter #33, Shirley Thorman, Town of Clarkstown, 1/28/05):** The DEIS contemplates the use of off-site mitigation of disturbance to wetlands. Creating a wetland off-site on a separate tax parcel, possibly in the Town of Clarkstown, could be a potential problem. If the owner fails to pay taxes for this lot, because it does not have income producing viability, the lot may be seized for payment, and could become a liability to the Town or Village.

***Response 3-75: Commercial Nine Building Plan -*** *The Project Sponsor proposes to seek and obtain a permit from the United States Army Corp of Engineers to create 0.23 acres of on-site wetland mitigation and 0.54 acres of off-site wetland mitigation on the property on the opposite side of Route 9W. This property is owned by the Nyack College (a.k.a.: Christian Missionary Alliance) and is currently exempt from property taxes. The Planning Board has not yet made a final determination on the Project Sponsor's proposed wetland mitigation.*

***Residential Subdivision Plan -*** *This comment is not applicable to the residential alternative.*





COURTYARD AT UPPER NYACK SITE

SWALE TO HW 'B'

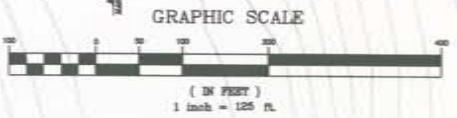
HEADWALL 'B'

AREA OF POSSIBLE OVERLAND SHEET FLOW TO WANAMAKER LANE

SWALE TO HW 'A'

HEADWALL 'A'

EXISTING STREAM



LEGEND	
COURTYARD AT UPPER NYACK SITE	
AREA OF POSSIBLE OVERLAND SHEET FLOW	

REV.	DESCRIPTION	DATE

LEONARD JACKSON ASSOCIATES CONSULTING ENGINEERS 26 FIDELITY MEMORIAL DRIVE, PONOHIA, NEW YORK 10970 phone: (845) 354-4382 fax: (845) 354-4401
<b>LJA</b>
<b>COURTYARD AT UPPER NYACK</b> VILLAGE OF UPPER NYACK ROCKLAND COUNTY, NEW YORK OVERLAND SHEET FLOW PLAN
Job number: 03118
Drawn by: JS
Date: 05/03/05
Scale: 1"=60'
Drawing Number: SF1



#### **4.0 Ecology Comments and Responses**

Subsequent to the DEIS public hearing the Project Sponsor entered into discussions with the Village that resulted in an amendment to the Village Zoning Code that allows residential use in the OB zoning district by special permit. The Project Sponsor believes that a residential use represents a mitigation plan that addresses many of the potential impacts that were of concern in connection with the office project application.

The Project Sponsor prepared a residential subdivision plan for the project site that responds to the revised zoning code. (Refer to the Introduction section for the chronology of the project plans for this site.) This residential plan is the preferred alternative of the Project Sponsor for the proposed development. The residential alternative is a mitigation concept for the project site prepared in response to comments made on the DEIS commercial site plan. The Project Sponsor believes this residential alternative, which is described below, would allow for the site to be developed in a more environmentally sensitive manner.

A comparison of potential impacts of the residential plan versus the nine-building commercial plan as related to each comment is presented below.

#### **4.1 Potential Impacts**

A single family residential development would involve fewer potential impacts to plants and animal resources as compared to a commercial development as less grading disturbance would be needed and a greater amount of landscaped, gardened or revegetated land would be present. Existing wildlife and vegetation communities on the subject site have been thoroughly described in the accepted DEIS. The residential alternative would conserve the existing area of the on-site wetlands that, under the commercial development, would have been altered and mitigated by the addition of a larger area of created wetlands.

#### **4.2 Proposed Mitigation**

Either plan would incorporate some mitigative measures for lost wildlife habitat by the provision of broad areas of landscaped, revegetated and wetlands habitat. Opportunities for landscaping and other soft surfaces would be greater for the residential option by at least an additional 40,000 square feet. This habitat would be generally considered most beneficial to bird and mammal species that are adaptable to the suburban environment that will exist on the property and in the surrounding neighborhoods.

The site is not known to provide habitat for any species listed as endangered or threatened by the New York State Department of Environmental Conservation and site inspections carried out during the course of this review have not revealed conditions of a unique nature that would harbor such species. No protected wildlife species are known to occur on the project site. Therefore, the project is not anticipated to adversely impact any protected wildlife species.

Trees outside of the limits of disturbance will be preserved. Using the site Tree Survey as a guide, the limits of disturbance will be established in the field and marked with erosion control fencing. No trees beyond these limits will be disturbed.

Where necessary for preservation of large trees, specimens will be protected through the use of tree wells. These wells will typically be constructed with excess rock from on site excavation activities. The walls of the wells will be dry laid, with provision for positive drainage out of the wells.

#### **4.3 Comments on the DEIS and Responses to Comments**

**Comment 4-1 (Letter #1, The Village Board of Upper Nyack, 11/8/04, Public Hearing, Mayor Michael Esmay, 11/8/04):** Wetlands are one natural solution to water retention and runoff. The Village Board is concerned about the valuable wetland area that is eliminated in the proposed development plan. It is our clear understanding that the detention pond being proposed is in no way compensatory for the loss of runoff attenuation and absorption provided by the existing wetland. Maintaining the existing wetland is the stormwater management solution that would have the least impact on the environment.

***Response 4-1: Commercial Nine Building Plan*** - *As described in the DEIS, it is the Project Sponsor's environmental planning consultant's opinion that "...the wetland impacts would not create a significant adverse impact. Due to its small size (less than one acre), isolated nature and overall condition, the wooded wetland does not perform significant wetland functions such as flood control, erosion control, nutrient trapping, groundwater recharge, wildlife habitat, fish habitat, unique vegetation, or recreational opportunities. As this wetland provides little wetland functional value, the proposed disturbance (less than 0.5 acres) would not create a significant adverse impact."*

*The project includes both on-site and off-site measures to mitigate the proposed wetland loss at a replacement ratio of 1.57 to 1. The proposed stormwater management system is not intended to compensate for the wetland loss, although, it will provide some similar water quality and attenuation functions. The Planning Board has not yet made a final determination on the Project Sponsor's proposed wetland mitigation.*

*As indicated in the Drainage Analysis, the proposed stormwater management system would maintain or decrease the rate of runoff from the project as compared to existing conditions.*

***Residential Subdivision Plan*** - *The residential alternative does not impact the existing wetland.*

**Comment 4-2 (Letter #1, The Village Board of Upper Nyack, 11/8/04, Public Hearing, Mayor Michael Esmay, 11/8/04):** The proposal as presented gives no indication of what is proposed to compensate for the wetland being eliminated.

***Response 4-2: Commercial Nine Building Plan*** - *A wetland mitigation plan was prepared, and includes both on site and off site components. This plan shows expanded wetlands and creation of new wetland areas adjacent to an existing detention basin at the Nyack College site on the west side of Route 9W. In total, this plan will add an additional 0.54 acres of wetland. An additional 0.23 acres is proposed to the east of Route 9W on the project site. These areas are intended to offset the loss of 0.49 acres due to the proposed development.*

*The mitigation concept for the proposed Courtyard at Upper Nyack property is to regrade a portion of the hill on the west side of Route 9W to create a series of depression areas that will pick up runoff and hillside seepage. This site is owned by the Christian Theological Alliance, but the Project Sponsor has reached an agreement with the owners to utilize a portion of the property for wetland mitigation. A copy of the letter confirming this agreement is attached in Appendix A.*

*Considering the runoff from the adjacent property to the south, the long slope from the Christian Alliance building and some input directly off of Route 9W, this will provide enough regular input of water to saturate the area and promote the growth of wetland tolerant plants. The proposal does not depend on groundwater for hydrology. All of the species shown on the list will tolerate wet conditions, and have also been chosen to be attractive to people and wildlife.*

*Detailed information on the proposed wetland mitigation is provided in Appendix D.*

**Residential Subdivision Plan** - *The residential alternative does not impact the existing wetland.*

**Comment 4-3 (Letter #1, The Village Board of Upper Nyack, 11/8/04 Public Hearing, Mayor Michael Esmay, 11/8/04):** The amount of impervious surface in the proposed development also brings up a concern of the Village Board about the removal of vegetation on this site and the loss of habitat for the deer herd currently living there. Displacing these animals will increase deer populations elsewhere in the Village, increasing their impact on the environment throughout the Village and increasing the number of accidents caused by deer on Village streets.

***Response 4-3: Commercial Nine Building and Residential Subdivision Plans*** - *The use of the 11.19 on-site woodlands by deer will be reduced by the proposed development. As indicated in the DEIS, deer are highly mobile animals with a typical home range of 600 acres, and therefore do not rely exclusively on one location. Deer populations will ultimately stabilize based on a variety of factors including competition for food, mating, disease and predation. In the short term, deer that currently utilize the site will be displaced as indicated in the comment.*

**Comment 4-4 (Public Hearing, Israel Cohen, 406 North Broadway, 11/8/04):** The other point I want to make has to do with the herd of deer which Michael Esmay mentioned lives up there. These animals wander across the Village and eat everything in their sight. They contribute to the browning of Upper Nyack. It's impossible to have a garden without extensive precautions against the deer. With the absence of that habitat for the deer, I think that the results in the rest of the Village are going to be very very harmful.

If you notice, along the side of the stream, which is, probably, the last remaining wild area in Upper Nyack are no new saplings. When the trees that are there now die, there's going to be no new trees because the deer eat them all, eat all the saplings.

[I]f this project is to be built of any size at all, it has to be accompanied with some kind of deer control program, horrible as that may seem to certain people.

***Response 4-4: Commercial Nine Building and Residential Subdivision Plans*** - *As noted in Response 4-3, the proposed development will eliminate existing woodlands that are utilized by deer. With the elimination of the woodlands, it is possible that the deer population in the Village may be slightly reduced. The Project Sponsor is not in a position to manage deer in the Village. Deer management is a municipal issue best advanced by municipal or state agencies.*

**Comment 4-5 (Public Hearing, Lawrence Alpern, 115 Birchwood Avenue, 11/8/04):** I fear that there will be more of a deer problem if these wetlands and wooded areas disappear.



**Response 4-5: Commercial Nine Building and Residential Subdivision Plans - See Responses 4-3 and 4-4.**

**Comment 4-6 (Public Hearing, Burton Saunders, 608 North Midland, 11/8/04):** Number one, doesn't the Federal Bureau have to be involved when you're destroying wetlands? Don't you have to stay 100 feet away from any wetlands? And if there is a significant wetlands, you can't touch it. You can't eliminate it. You have to stay 100 feet away from it.

**Response 4-6: Commercial Nine Building Plan -** *The proposed amount of wetland impact is below the 0.5 acre individual permit threshold and is therefore eligible for coverage under the US Army Corps of Engineer's Nationwide #39 wetland permit. There are no buffer requirements applicable to federal wetlands.*

**Residential Subdivision Plan -** *The residential alternative does not impact the existing wetland.*

**Comment 4-7 (Letter #12, Douglas Schuetz, Rockland County Department of Planning, 12/23/04):** The existing vegetation helps to prevent soil erosion on the site's steep slopes, therefore it is important to maintain as much of the existing vegetation as possible throughout all phases of the project. Clearing limit lines and construction fencing shall be in place prior to any construction equipment being onto the site.

**Response 4-7: Commercial Nine Building and Residential Subdivision Plans -** *Comment noted. The limits of disturbance and proper erosion control measures will be established on the site prior to the commencement of construction activities.*

**Comment 4-8 (Letter #12, Douglas Schuetz, Rockland County Department of Planning, 12/23/04):** The DEIS does not give substantial mitigation measures for the proposed disturbance of the wetland area on the site. Simply discussing possibilities of creating an off-site wetland with other property owners is not true mitigation. The DEIS should clearly state the mitigation of the filled wetlands, not speculate that nearby landowners will allow the construction of an off-site wetland. Alternate plans, including retaining the wetlands must be provided.

**Response 4-8: Commercial Nine Building Plan -** *Wetland mitigation details are provided in Appendix D. As described in this appendix, the Project Sponsor proposes to construct 0.23 acres of new wetlands on-site and 0.54 acres off-site to compensate for the 0.49 acres of proposed wetland disturbance. The willingness of the Nyack College property owner to allow the proposed off-site wetland mitigation to be constructed on their property is indicated in a letter dated July 13, 2005 (see Appendix A) which refers to an easement agreement between the Project Sponsor and Nyack College for the proposed off-site mitigation.*

*The Planning Board has not yet made a final determination on the Project Sponsor's proposed wetland mitigation. The Planning Board as Lead Agency specified the alternatives to be studied in the adopted DEIS scope, and the DEIS was accepted as complete by the Planning Board. Additional alternative layouts are not required.*

**Residential Subdivision Plan -** *The residential alternative does not impact the existing wetland and therefore no mitigation measures, on or offsite.*

**Comment 4-9 (Letter #12, Douglas Schuetz, Rockland County Department of Planning, 12/23/04):** The Applicant shall adhere to the Village of Upper Nyack Tree Maintenance and Management Operations as described in the Village Code when dealing with the specimen trees on the site.

**Response 4-9: Commercial Nine Building and Residential Subdivision Plans -**  
*Comment noted.*

**Comment 4-10 (Letter #12, Douglas Schuetz, Rockland County Department of Planning, 12/23/04):** On page 3.4-4 in the first full paragraph, the word "species" is misspelled.

**Response 4-10: Commercial Nine Building and Residential Subdivision Plans -**  
*Comment noted.*

**Comment 4-11 (Letter #12, Douglas Schuetz, Rockland County Department of Planning, 12/23/04):** There is a misplaced parenthesis in the first sentence on page 3.4-7.

**Response 4-11: Commercial Nine Building and Residential Subdivision Plans -**  
*Comment noted.*

**Comment 4-12 (Letter #17, Hank Beresin and Jen Bell, 11/6/04):** Doesn't Upper Nyack want to protect the little natural beauty that we have left? How could the village board even consider approving the loss of 11 acres of beautiful woods? Tearing down this small forest and wetlands to build office space makes us sick! We have plenty of office space available in downtown Nyack. Why not focus on beautifying our downtown before constructing more commercial space that may never even be used? Nyack does not lack space for businesses. What we lack are trees, parks, and land that is untouched!

**Response 4-12: Commercial Nine Building and Residential Subdivision Plans -**  
*Comment noted. The Project Sponsor purchased the subject parcel and his original proposal for office use conformed to the Village of Upper Nyack's zoning and land use regulations. Now that the Village has modified its zoning code, the Project Sponsor is considering amending his application to a residential alternative that would also be designed to conform to the Village code. The Village has not pursued the option of purchasing the site to use it as a park. See Response 1-34.*

**Comment 4-13 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Page 1-7, under 1.2.4 Plants and Animal Resources, and Section 3.4.2 Potential Impacts, page 3.4-9 third paragraph, the DEIS indicates that one specimen tree will need to be removed to accommodate grading for the emergency connection road. Were alternatives explored to avoid the removal of the tree?

**Response 4-13: Commercial Nine Building Plan -** *The site plan requires the removal of Tree #688 (a birch) in order to construct the emergency connection access road to Route 9W in the northwest corner of the site. This impact is unavoidable in order to provide the emergency access road in the most suitable location. An alternative emergency access layout was considered during the development of the DEIS that would have required the removal of two additional specimen trees, however, the plan was changed to reduce the tree loss.*

*As currently proposed, the emergency access road is in the best location with respect to sight distance on Route 9A, minimizing environmental impacts and accommodating the necessary turning radius for emergency access vehicles (i.e. fire trucks). Relocating the emergency access road elsewhere on the Route 9W frontage would produce greater topographic, tree and wetland impacts, and have would have less desirable sight distance than the proposed location. Also, relocating the emergency access road to another location would produce more difficult turning movements for emergency vehicles, which could defeat the purpose of having an emergency access road.*

**Residential Subdivision Plan** - *This site plan also requires the removal of Tree #688 in order to construct the egress/access road to Route 9W in the northwest corner of the site. As currently proposed, the northern terminus of the internal road is in the best location with respect to establishing a safe sight distance on Route 9A while minimizing environmental impacts on the property.*

**Comment 4-14 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Page 1-8 of the DEIS, third and fourth paragraph, and Section 3.4.1 Existing conditions on page 3.4-1, third and fourth paragraph on page. The third paragraph states that the state does not maintain a habitat ranking program, and the fourth paragraph references the "NYS DEC publication Ecological Communities of New York State (1990)," and classifies the on-site habitat as "Successional Southern Hardwoods, " in accordance with descriptions found in this guide. It appears that the two paragraphs contradict each other. Furthermore, in the Appendix, the report submitted by City/Scape cultural resource consultants describes the wooded area as being more typical of an "Upland Deciduous Forest," and indicates that the project lies within the "Northern Hardwood Forest" zone (see page 4 of the report in Appendix E.) Please clarify the classifications.

**Response 4-14: Commercial Nine Building and Residential Subdivision Plans** - *Comment noted. As indicated on Page 3.4-1, the site appears to most closely match the NYS DEC's ecosystem classification "Successional Southern Hardwoods", which is ranked as demonstrably secure globally (G-5) and in the state (S-5).*

**Comment 4-15 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Page 1-24, under Involved Agencies and Required Approvals/Permits. In their letter of November 3rd, 2004, the New York DEC indicated that this project might also require a section 401 water quality certification from the proposed disturbance of .49 acres of Federally-Regulated Wetlands. Has the Applicant confirmed the need for a permit?

**Response 4-15: Commercial Nine Building** - *The issuance of a water quality certificate from the NYS DEC is anticipated for this project.*

**Residential Subdivision Plan** - *This comment is not applicable to the residential alternative as it does not involve a disturbance to Federally-regulated wetlands.*

**Comment 4-16 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Figure 3.1-7 shows the entire portion of the wetland as a cut, and Figure 3.2-4 leads the reader to believe that part of the wetlands will be undisturbed. In addition, Figure 3.4-3 shows the entire wetland inside the area where trees are to be removed. This is inconsistent. Please address.

***Response 4-16: Commercial Nine Building Plan - These map inconsistencies have been corrected (see revised nine building plan in Introduction chapter of this document which shows no grading or disturbance in the portion of wetland to be retained).***

***Residential Subdivision Plan - This comment is not applicable to the residential alternative as it does not involve a disturbance to wetlands.***

**Comment 4-17 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Section 3.2-1 Impact on Water, Existing Conditions. Page 3.2-2. Near the bottom of the page, a description of a "small .64 wooded acre wetland" is described. This area was compared to the map in the City/Scape report, (see Appendix E) illustrating the test holes for the cultural resources investigation. Several areas on this map indicate that the soils adjacent to areas delineated as wetlands were met, and therefore eliminated as possible habitable areas for ancient communities. Several photographs show "wind thrown trees," which could also be the result of roots rotting out because of excess moisture, therefore leaving nothing to support the portion of the tree above the soil. In addition, several of the test holes were abandoned because water was present 4 or 5 inches under the soil. Why were these areas not included in the wetland areas delineated on the map?

***Response 4-17: Commercial Nine Building and Residential Subdivision Plans - The aforementioned areas did not meet the criteria for a wetland as promulgated by the US Army Corps of Engineers (ACOE). The boundaries of the federally regulated wetlands on the site were delineated in the field by representatives of the ACOE based on the 1987 methodology which requires the presence of three wetland parameters (hydrology, vegetation, and soils). No other portions of the site were found to meet the necessary conditions to be federally regulated. A jurisdictional determination was issued by the ACOE to this effect and is provided in Appendix B of the DEIS. This jurisdictional determination is valid for five years.***

**Comment 4-18 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Figure 3.2-4 illustrates undisturbed wetland to the edge of the parking curbs. It seems unlikely that disturbance will not occur past the curb delineated on the drawing. Please provide in written or graphic terms how the wetland will be protected during curb and pavement construction. In addition, what would be the impact to the onsite wetland if the naturally flowing stream is piped, and the majority of the wetland is used for development? Would the wetland cease to function?

***Response 4-18: Commercial Nine Building Plan - The proposed wetland mitigation details are provided in Appendix D of the FEIS.***

***The installation of the curbing for the internal drive and parking area would cause perhaps one to two feet of temporary disturbance on the wetland side beyond the curbing during construction. Following construction, this narrow strip of disturbed area is proposed to be replanted with wetland vegetation as shown on the plans in Appendix D. This area is accounted for in the proposed limits of disturbance.***

*The 0.15 acres of on-site wetland proposed to remain and the 0.23 acres of wetland proposed to be built on-site would continue to receive water from the pipe underneath Route 9W. These wetland areas will be landscaped and planted to improve overall wetland function and appearance. At the downhill point of these wetland areas where development is proposed, the overflow will be piped and conveyed directly into the Village's existing drainage infrastructure. The Planning Board has not yet made a final determination on the Project Sponsor's proposed wetland mitigation.*

**Residential Subdivision Plan** - *This comment is not applicable to the residential alternative as it does not involve a roadbed or other disturbance to the wetlands.*

**Comment 4-19 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Section 3.2.2, Potential Impacts [Impact on Water], page 3.2-4, near the bottom of the page, the DEIS contemplates the use of off-site mitigation. We recommend on-site avoidance or on site mitigation, since it ties directly into the approved site plan and is easier to enforce. The Army Corps of Engineers in their letter of May 27th, 2004 also recommended avoidance. Policing the use of off-site wetlands would be more difficult for the Village to enforce over time. It should never be accepted if the mitigation proposed creates a wetland in an adjacent municipality, since technically this requires the Village of Upper Nyack to enforce a land use in an adjacent municipality.

**Response 4-19: Commercial Nine Building Plan** - *Comment noted. A combination of 0.23 acres of on-site wetland mitigation and 0.54 acres of off-site wetland mitigation is proposed by the Project Sponsor. The off-site wetland mitigation is situated on the west side for Route 9W on the Nyack College (a.k.a.: Christian Missionary) property directly across from the project site. This area currently drains directly to the project site via a culvert that is located beneath Route 9W. Monitoring and maintenance of the proposed wetland mitigation areas would be the Project Sponsor's responsibilities. The details of these responsibilities can be stipulated as a condition of approval for the project by the Project Sponsor. The Project Sponsor or its successors will have a legal responsibility to monitor and maintain the wetlands off-site. The Village would not be expected to "police" these areas, as they fall under the jurisdiction of the Army Corps of Engineers. The Planning Board has not yet made a final determination on the Project Sponsor's proposed wetland mitigation.*

**Residential Subdivision Plan** - *This comment is not applicable to the residential alternative as it does not involve a disturbance to wetlands.*

**Comment 4-20 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Section 3.4.1 Existing Conditions [Impact on Plants and Animals], on page 3.4-3. Second paragraph at the bottom of the page. The DEIS indicates that "to definitely ascertain whether or not it [Thicket Sedge] occurs on the project site additional field surveys will continue to be conducted during the 2004 growing season." The DEIS does not state whether this has been done, nor does it provide the results of the study.

**Response 4-20: Commercial Nine Building and Residential Subdivision Plans** - *According to the NYS DEC records, thicket sedge (Carex abscondita) was most recently documented in the vicinity of the project site in 1891. To verify the presence/absence of the thicket sedge, field investigations were conducted by the Project Sponsor's environmental consultants at the project site on the following dates during the 2004 growing season (4/5, 6/11, 8/4, 9/27). Some of the field surveys were timed to coincide with the presence of diagnostic features (i.e. green flowers, brown seeds) when identification can*



*be most readily assured. During the field surveys the entire site was covered. No specimens were observed anywhere on the project site during any of the field investigations.*

*The NYS DEC records were based on sightings that occurred more than 113 years ago without subsequent sightings. Moreover, the site was previously cleared for agricultural use. Therefore, it does not appear likely that this species occurs on the project site. In view of these circumstances, the Project Sponsor's environmental consultants believe that additional field investigations are not warranted.*

**Comment 4-21 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Section 3.4.1 Existing Conditions [Impact on Plants and Animals], page 3.4-4. Third paragraph from the top of the page. The DEIS states "However, to definitely ascertain whether or not it [Nodding Pogonia] occurs on site additional field surveys will be conducted during the 2004 growing season." The DEIS does not state whether this has been done, nor does it provide the results of the study.

***Response 4-21: Commercial Nine Building and Residential Subdivision Plans –*** *According to the NYS DEC records, nodding pogonia (Triphora trianthophora) was most recently documented in the vicinity of the project site in 1871. To verify the presence/absence of the nodding pogonia, field investigations were conducted by the Project Sponsor's environmental consultants at the project site on the following dates during the 2004 growing season (4/5, 6/11, 8/4, 9/27). Some of the field surveys were timed to coincide with the presence of diagnostic features (i.e. white flowers in sets of three) when identification can be most readily assured. During the field surveys the entire site was covered. No specimens were observed anywhere on the project site during any of the field investigations.*

*The NYS DEC records were based on sightings that occurred more than 133 years ago without subsequent sightings. Moreover, the site was previously cleared for agricultural use. Therefore, it does not appear likely that this species occurs on the project site. In view of these circumstances, the Project Sponsor's environmental consultants believe that that additional field investigations are not warranted.*

**Comment 4-22 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Section 3.4.1 Existing Conditions [Impact on Plants and Animals], page 3.4-7, fourth paragraph on the page. The DEIS suggests that the wildlife population on site "fluctuates widely" as the animals continuously enter and leave the project site. The example given of the types of species that migrate are deer and wild turkeys. Although it is understood that these species move over larger areas as they forage for food, the majority of the species listed on Table 3.4-2 are non migratory, once they have made themselves a nest or burrow.

***Response 4-22: Commercial Nine Building and Residential Subdivision Plans - As indicated in the DEIS, the proposed project would preclude future use of the developed portions of the property by wildlife species. This is an unavoidable result of developing the property. However, as no protected or rare species occur on the site and the property is not critical habitat for any species, no significant adverse ecological impacts were projected to result from the project.***

**Comment 4-23 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Section 3.4.2, Potential Impacts [Impact on Plants and Animals], page 3.4-8, discussion regarding wildlife impacts. Essentially, this discussion implies that most of the on-site wildlife would leave the site at the start of the construction, and live elsewhere, therefore there is no impact to wildlife. This as-

sumption is not necessarily true. Although initially those species that could run off the site would go to other forested areas would do so, however, as competition for food and shelter increase on undeveloped sites or reserve land, some of the wildlife population dies off. This loss of wildlife population is an impact, even if none of the species being displaced are listed as endangered species. This fact is true of any development; the only decision left to the Board is to decide whether or not it is an acceptable loss; or whether some existing habitat, in the form of a required buffer area, should be maintained in order to lessen the impact to a more acceptable threshold.

**Response 4-23: Commercial Nine Building Plan - Comment noted.** *The proposed nine building plan provides additional undisturbed buffer land as compared to the ten building DEIS plan.*

**Residential Subdivision Plan -** *The proposed residential plan, in contrast to the commercial plan, would include a greater amount of landscaped and revegetated area and not disturb the wetlands.*

**Comment 4-24 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Figure 3.4-2 shows areas that are to remain undisturbed. Some areas that are to remain undisturbed are shown as cut or fill areas on map 3.1-7. Please clarify.

**Response 4-24: Commercial Nine Building Plan -** *These map inconsistencies have been corrected. The nine building plan shows no grading or disturbance in the portion of wetland to be retained.*

**Residential Subdivision Plan -** *This comment is not applicable to the residential alternative.*

**Comment 4-25 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Section 3.4.2 Potential Impacts [Impacts on Plants and Animals] page 3.4-9. The second sentence, first paragraph states, "The project is expected to result in the loss of approximately 9.5 of second growth woodlands." 9.5 of what? Please clarify.

**Response 4-25: Commercial Nine Building Plan - Comment noted.** *The word "acres" should be inserted in the sentence following 9.5. However, the new calculation is 7.75 acres of disturbance for the commercial plan.*

**Residential Subdivision Plan -** *The comparable acreage is reduced to 6.90 for the residential alternative.*

**Comment 4-26 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Section 3.4.3 Mitigation Measures [Impacts on Plants and Animals] page 3.4-10, bottom of page. The DEIS claims that the site was cleared in the early 1960s in anticipation of development. What evidence does the Applicant have to support this claim? Is there a particular relevance to the statement, or is it provided for historic perspective?

**Response 4-26: Commercial Nine Building and Residential Subdivision Plans -** *This anecdotal information about the project site history was ascertained by verbal communication with a longtime adjacent Birchwood Avenue resident familiar with the property. It bears little relevance to the proposed project, except in terms of explaining the types of vegetation occurring at the site (successional, second growth vegetation).*

**Comment 4-27 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Section 3.4.3 Mitigation Measures [Impacts on Plants and Animals] page 3.4-11. Under the title Preservation of Trees, the DEIS suggests that trees within the development areas will be selected and preserved, if possible. It seems to be entirely impractical to retain any trees within the development area, considering the changes in grade on the property illustrated in the grading plan. The Applicant should illustrate where it is possible to retain existing trees on the property, given the ambitious grading plan, and the location of pavement on the property. Will the drip line be protected? Will tree wells be used? How will grading and potential changes to the water table affect these trees to be preserved? In addition, it is likely that areas just outside the grading areas will also be affected, resulting in a higher amount of disturbance than 85%, as suggested in the document.

***Response 4-27: Commercial Nine Building Plan - Comment noted. The nine building plan will preserve more existing vegetation within the buffer areas than the ten building DEIS plan. The existing vegetation within the area of disturbance of the revised nine building plan would be removed. All existing vegetation outside the limits of disturbance would be retained.***

***Residential Subdivision Plan - The existing vegetation within the area of disturbance would similarly be removed, and all existing vegetation outside the limits of disturbance would be retained. This residential plan has less disturbance (6.90 vs. 7.75 acres) than the commercial plan.***

**Comment 4-28 (Letter #25, Glenna Marra, 1/31/05):** In addition to the woods, it is a site of a stream and wetland, a natural world that would never be recovered once development occurred.

***Response 4-28: Commercial Nine Building and Residential Subdivision Plans - Loss of certain resources are an unavoidable result of land development. Mitigation is proposed for any wetland loss as described in Appendix D. The project is consistent with the prescribed uses permitted under zoning and envisioned by the Village Comprehensive Plan. The residential alternative has no wetland impacts and less vegetated disturbance than the commercial plan.***

**Comment 4-29 (Letter #25, Glenna Marra, 1/31/05):** It is my opinion that the preservation of this woodland is a far greater priority for its long-term value to our village than an office complex to satisfy the immediate desire for profit by its developers. The beauty it embodies and the protection it gives our village from further drainage and sewage problems should be given the highest consideration. I urge the Planning Board to guard this land carefully for present residents and for future generations.

***Response 4-29: Commercial Nine Building and Residential Subdivision Plans - Comment noted. The Planning Board is appreciative of all comments submitted by the residents and will consider all substantive comments seriously as the review process moves forward. See also Responses 3-2 and 10-1. The residential alternative protects the onsite wetland and reduces impacts to trees and vegetated lands versus the commercial alternative.***

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**Comment 4-30 (Letter #30, Mary and Steve Beck, 1/14/05):** The negative effect on deer habitat and the substantial expense the Village will incur as a result of approving a project like Courtyard are two additional reasons to reject any proposal that would contribute to the storm-water runoff problem from the property in question.

***Response 4-30: Commercial Nine Building and Residential Subdivision Plans - See Responses 4-4 and 4-29.***

## **5.0 Visual Comments and Responses**

Subsequent to the DEIS public hearing, further discussions with the Village, and recent amendments to the Village Zoning Code, the Project Sponsor prepared a residential subdivision plan for the project site pursuant to the adopted zoning amendments. (Refer to the Introduction section for the chronology of the project plans for this site.) A comparison of potential impacts of the residential plan versus the 9-building commercial plan as related to the project impacts associated with visual resources for each comment is presented below.

### **5.1 Potential Impacts**

The views of the site will change for either developmental plan primarily from the traffic corridor along Route 9W which has frontage on the site. Views into the site from adjacent residential streets will be through existing residential developments, their structures and periphery landscaping.

The nine building commercial development will incorporate architectural features that will present the overall character of large residences for the nine buildings, however that will be accompanied by expansive parking areas and associated lighting and landscaped features. One access point would be developed from Route 9W as will one emergency access point.

With the single-family residential development alternative, the site would change in appearance from a wooded site to a developed site with homes, yards, landscaping, and an internal road with street trees much like the surrounding residential areas.

With the residential development approximately 400 feet of the Route 9W road frontage in the central portion of the site would remain undeveloped as part of a conservation parcel where existing trees and understory vegetation would be preserved. Only six lots abut Route 9W (Lots 1, 22, 20, 19, 13, and 14) and none would take access directly from the State Route. Perhaps four would be visible from the Road.

It is expected for the most part that the vegetation along Route 9W will be preserved, except in proximity to the two access points where some clearing would take place for road construction and clear sight lines.

Ten single family homes abut the north side of the Courtyard site on relatively small lots and most of these homes have little to no rear yards. The neighborhood at this property line would see the addition of six homes (lots 8 through 13) with minimum rear yards of 20 feet where existing woods would be retained.

Proposed lots on the east are large and abut six existing residential lots that are downslope from the Courtyard property line. The existing homes on Wanamaker Lane are of more recent vintage and have deeper backyards than the smaller lots on the north side of the Courtyard site. The Courtyard project would have five lots abutting these residences on the west. These proposed lots (Lots 3 through 7) range in size from approximately 22,000 to 35,000 s.f. Except where two small detention ponds are sited, the rear yards of these lots will remain wooded with relatively deep buffers.

Proposed Lots 1, 2 are on the southerly property line and average about 15,000 s.f. in size. They abut two existing residential lots.



## **5.2 Proposed Mitigation**

The nine building commercial development would be set back from abutting residential properties by the preservation of the 75-foot Village buffer that, on this property, is enhanced by existing vegetation of shrubs and trees, as well as by topographical changes. In addition, new landscaping would further screen views into the site.

The residential project would have ample opportunities to preserve existing vegetation in rear yards and provide more visual compatibility with the surrounding neighborhood than the office project.

## **5.3 Comments on the DEIS and Responses to Comment**

**Comment 5-1 (Public Hearing, Ed Cucksey, 510 Hudson View Road, 11/8/04):** Now, didn't I hear they said that this is gonna be a clapboard construction deal?

***Response 5-1: Commercial Nine Building Plan - The proposed buildings will have traditional architectural features including clapboard-style siding.***

***Residential Subdivision Plan - This comment is not applicable to the residential alternative.***

**Comment 5-2 (Public Hearing, Mark Braunstein, 221 Birchwood Avenue, 11/8/04):** Nobody has really addressed some of the... lighting issues coming from the parking lots.

***Response 5-2: Commercial Nine Building Plan - Information on site lighting from Chapter 5 of the DEIS is repeated below for the convenience of the reader.***

*Site lighting will consist of parking lot and walkway lighting, and lighting around entrances. Lighting impacts on adjacent streets and properties will be barely noticeable as design levels are generally less than 0.1 lumen and in many locations are 0.0 lumens, or nonexistent. The only area where lighting levels are higher are opposite Building 7, along Route 9W where they peak at 0.34 lumens. However this is an area where the roadbed sits above the site and since the light is being cast down, the actual light level at the edge of the ROW is anticipated to be significantly lower. On site light levels will be similar to other office uses, and less intensive than a shopping mall or similar use where high light levels are typically maintained throughout the site for all building and parking areas.*

*The lighting will be controlled with photoelectric cells to activate at dusk and turn off at a preset evening time. Beyond the set evening light limit time, only security lights will be left on. The light fixtures will be 14 feet tall and spaced approximately 75 feet apart in the parking areas*

*Site lighting will be restricted to areas within the perimeter of the property line. This will be accomplished through use of fixtures designed to cast light down and within a limited spread. Additionally light will be focused on the areas of use which are inside the proposed 50 foot setback buffer. The lighting design limits the level of light at the property line and beyond by placing parking lot poles and down lighting fixtures at the building side of the parking lot so that the highest levels of illumination are closest to the new buildings and the lowest levels of illumination are towards the property line.*

*A photometric plan has been developed for the project by Dynamic Lighting. A full size copy of this plan is in the back of the DEIS. The photometric plan notes the projected light levels at the perimeter of the property based on the proposed location and type of lighting fixtures. Along the Route 9W right of way line, the lumen level ranges from 0.01 to 0.41. Along the north, south and east property lines the lumen level ranges from 0.01 to 0.02. Light impacts on Route 9W will be within allowable NYS Department of Transportation light levels for uses adjacent to state highways. Light impacts at the residential property lines will be barely detectable at the design lumen levels of less than 0.1 lumen at the property line, and in no case exceeding 0.02 lumens at the property line.*

**Residential Subdivision Plan** - *This comment is not applicable to the residential alternative as it does not include commercial parking lot lighting.*

**Comment 5-3 (Letter #12, Douglas Schuetz, Rockland County Department of Planning, 12/23/04):** The 9-buildings will be located downhill from New York State Route 9W, making rooftop mechanical air handling devices visible to passing motorists. The DEIS should include mitigation measures for the Route 9W view shed, such as the use of parapets to shield the mechanical air handling devices.

**Response 5-3: Commercial Nine Building Plan** - *As described in the DEIS, from the west (Route 9W)) the proposed buildings will appear as two story buildings with pitched shingled roofs. The project would not involve any rooftop mechanical equipment.*

**Residential Subdivision Plan** - *This comment is not applicable to the residential alternative.*

**Comment 5-4 (Letter #16, Walter and Florence Katzenstein, 12/15/04):** The fine old homes along Broadway that add so much to the beauty of Upper Nyack will be undermined and impossible to maintain.

**Response 5-4: Commercial Nine Building and Residential Subdivision Plans** - *The project site would not be visible from Broadway, as there is considerable distance, topography, vegetation, and existing development between the project site and Broadway. As such, the proposed development could not visually impact these homes.*

**Comment 5-5 (Public Hearing, Susan McWhinney, 310 Front Street, 1/11/05):** I was driving by that space tonight and looking at it and seeing how lovely it is in the snow. Moving up here from the City, I really moved up here to get this environment, to be able to have a sense of community and a Town and have that natural beauty in close proximity to a wonderful City as New York, is a very rare and wonderful thing. I think it would be a shame for all of us to lose that.

**Response 5-5: Commercial Nine Building and Residential Subdivision Plans** - *Comment noted. The Planning Board is appreciative of all comments submitted by residents and will consider all substantive comments seriously as the review process moves forward. The Planning Board is obligated to review site and subdivision plan applications submitted to the Board. The Project Sponsor believes that the massing and scale of the individual buildings and the landscaping plan has sufficiently mitigated the visual impacts of the property, and these matters are under review by the Planning Board.*

**Comment 5-6 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Section 3.5.2, Potential Impact [Impact on Aesthetic Resources], page 3.5-5. The DEIS states that “the construction of the stormwater detention facilities will result in the removal of existing vegetation within the 75 foot buffer from the residential zone boundary located on the subject property,” and maintains that a “significant buffer” will be retained on the property and the adjacent property. The mitigation should not include trees on adjacent property, since the area is not under the control of the applicant, and requiring that the buffering stand on its own merit is within the purview of the Planning Board. When the grading plan (Figure 3.1-7) and tree removal plan (Figure 3.4-3) is examined, it is unlikely that much of the natural foliage, with the exception of 10 feet would remain on the property. Virtually none of the existing foliage would remain on the OB zoned portion of the property near the drainage basin.

**Response 5-6: Commercial Nine Building Plan** - *As previously noted, the Project Sponsor is now proposing the revised nine building plan which retains all of the existing vegetation in the 75 foot on-site buffer area in accordance with the zoning code. The above comment is no longer relevant.*

**Residential Subdivision Plan** - *This comment is not applicable to the residential alternative.*

**Comment 5-7 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Section 3.5.3, Mitigation Measures [Impact on Aesthetic Resources]. The discussion is not specific enough to evaluate the landscaping plan in location close to the detention area on the north side of the property. The existing house on tax lots 60.13-2-72 and 60.13-2-73 are within 50 feet of the area to be graded for the detention basin. More detail should be provided regarding the change in grades in this area, with an approximate grade of the existing houses, to explain how much of the drainage basin will be visible from the house on first and second floors.

**Response 5-7: Commercial Nine Building Plan** - *As previously noted, the Project Sponsor is now proposing the revised nine building plan which retains all of the existing vegetation in the 75 foot on-site buffer area in accordance with the zoning code. This revision significantly increases the amount of intervening buffer vegetation between the neighboring homes and the drainage basin. From both of these homes, the views towards the berm will be obscured by 75 feet of buffer vegetation. Landscape plantings are also proposed around the stormwater basin and the perimeter of the property that will further obscure views of the basin from the both the first and second floors of these neighboring homes.*

*The proposed grading plan shows the home on Lot 60.13-2-72 at approximately elevation 290 and the home on Lot 60.13-2-73 at approximately elevation 298. The basin on the side closest to these homes has a berm height of 304, which is approximately four to five feet higher than the existing grade at this location.*

**Residential Subdivision Plan** - *The residential alternative reduces all dimensions of the stormwater basin located near these two properties. In addition to a lower berm height, the elevation of the top of the berm is also lowered, so that the homes on these two properties would be above the grade of the berm. The designation of landscape and wetlands plantings for this basin would increase in importance as a means to preserve the views from these properties, as the width of the buffer will be less than for the commercial plan.*

**Comment 5-8 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Section 3.5.3, Mitigation Measures [Impact on Aesthetic Resources], under the subheading of Landscaping. The DEIS states that “nursery plants are better suited to buffer screening as nursery grown plants are generally fuller than ‘volunteer species.’” Although it is true that they are grown in ideal environments and are generally healthier and thicker, smaller plants may be necessary to insure the viability of the plant over time, and full screening will not be achieved for several years. It is doubtful that in the first few years the screening provided by the nursery grown plants would equal that of the naturally occurring woods.

***Response 5-8: Commercial Nine Building and Residential Subdivision Plans - Comment noted. The screening benefits are expected to increase over time as vegetation grows and thickens. The proposed landscaped trees would likely be six to eight feet tall when planted, and would take several years of growth to fill in.***

**Comment 5-9 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** The proposed landscape plan, labeled Sheet L-1, shows an easement around the property for the benefit of the neighbors. If this area is to be counted as part of the buffer, the easement should be removed, since with the easement, the applicant may lose control over the use of the property.

***Response 5-9: Commercial Nine Building and Residential Subdivision Plans - Comment noted. No easement is proposed at this location.***

**Comment 5-10 (Letter #25, Glenna Marra, 1/31/05):** This tract of land appears to be one of the last areas of wooded property along a road that had expansive woodlands only a short time ago. I lament the loss of the beautiful woodlands and feel it is imperative to protect this section of 9W from further development.

***Response 5-10: Commercial Nine Building and Residential Subdivision Plans - See Response 5-5.***

**Comment 5-11 (Letter #29, Laurel Robertson, 1/21/05):** Please vote against building this huge, ugly, unnecessary monolith in our midst.

***Response 5-11: Commercial Nine Building and Residential Subdivision Plans - See Response 5-5.***

**Comment 5-12 (Letter #33, Shirley Thorman, Town of Clarkstown, 1/28/05):** The DEIS makes no mention of the potential impact of the development on the views from the Long Path at the top of the Palisades escarpment.

***Response 5-12: Commercial Nine Building and Residential Subdivision Plans - The Long Path extends from the George Washington Bridge northwards through Rockland County and beyond. Much of this southern portion of the path travels through and near heavily developed areas, and views of development are common along the path. Closest to the project site, the Long Path actually passes through a parking lot for the Mountainview condominium development located in the Town of Clarkstown. It is possible that from more distant locations, the proposed development could be viewed from the Long Path, however, as noted above, from these distant locations an observer would also be able to view a considerable amount of development in the Village of Nyack and***

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*Upper Nyack. As the proposed development consists of 2 or 2½ story buildings surrounding green courtyards or residential yards with landscaping, the potential impacts to the view shed would not be significant.*

## **6.0 Open Space Comments and Responses**

Subsequent to the DEIS public hearing the Project Sponsor entered into discussions with the Village that resulted in an amendment to the Village Zoning Code that allows residential use in the OB zoning district by special permit. The Project Sponsor believes that a residential use represents a mitigation plan that addresses many of the potential impacts that were of concern in connection with the office project application.

The Project Sponsor prepared a residential subdivision plan for the project site that responds to the revised zoning code. (Refer to the Introduction section for the chronology of the project plans for this site.) This residential plan is the preferred alternative of the Project Sponsor for the proposed development. The residential alternative is a mitigation concept for the project site prepared in response to comments made on the DEIS commercial site plan. The Project Sponsor believes this residential alternative, which is described below, would allow for the site to be developed in a more environmentally sensitive manner.

As the project site currently supports no active or passive public recreational uses, the proposed development of the property would not affect any recreational opportunities associated with the site.

## **6.1 Comments on the DEIS and Responses to Comment**

**Comment 6-1 (Letter #29, Laurel Robertson, 1/21/05):** Nyack has so few untouched areas of green left, why must this wooded area be destroyed?

***Response 6-1: Commercial Nine Building and Residential Subdivision Plans - See Response 1-34. Both proposed office and residential development options are consistent with the use of the site envisioned in the Village Comprehensive Plan and permitted through the adopted Zoning Code. The site has public utilities and fronts a state highway, making it an appropriate location for commercial, as well as residential, uses. A residential use presents an opportunity for more wooded areas to be preserved, in particular the wooded wetland along Route 9W.***



## **7.0 Traffic Comments and Responses**

Subsequent to the DEIS public hearing the Project Sponsor entered into discussions with the Village that resulted in an amendment to the Village Zoning Code that allows residential use in the OB zoning district by special permit. The Project Sponsor believes that a residential use represents a mitigation plan that addresses many of the potential impacts that were of concern in connection with the office project application.

The Project Sponsor prepared a residential subdivision plan for the project site that responds to the revised zoning code. (Refer to the Introduction section for the chronology of the project plans for this site.) This residential plan is the preferred alternative of the Project Sponsor for the proposed development. The residential alternative is a mitigation concept for the project site prepared in response to comments made on the DEIS commercial site plan. The Project Sponsor believes this residential alternative, which is described below, would allow for the site to be developed in a more environmentally sensitive manner.

A comparison of potential impacts of the residential plan versus the nine-building commercial plan as related to each comment is presented below.

### **7.1 Potential Impacts**

The relative impacts of the two different land uses on local traffic along Route 9W present one of the greatest differences between the two plans. The 22-lot single family residential development is projected to generate 25 AM peak hour trips and 27 PM peak hour trips compared to the commercial development (with 60,759 usable square feet) that would generate 146 AM peak hour trips and 148 PM peak hour trips.

Due to this significant difference in traffic generation, the residential alternative would maintain higher levels of service at the studied intersections than the commercial plan. In fact, trip generation at a rate of about one car every two minutes, would not cause a measurable change to levels of service.

### **7.2 Proposed Mitigation**

The commercial plan could require that mitigation measures be considered to accommodate the expected increase in traffic and lower levels of service projected for some intersections. These measures could extend as far as 0.75 miles south on Route 9W, to the intersection with Route 59 (See Comment 7-41, below).

The residential alternative does not require any mitigation measures to accommodate the modest traffic increases.

### **7.3 Comments on the DEIS and Responses to Comments**

**Comment 7-1 (Letter #1, The Village Board of Upper Nyack, 11/8/04, Mayor Michael Es-may, 11/8/04):** This brings up our concern on traffic. As stated in the DEIS on page 3-7-28, increased traffic is an unavoidable result of the proposed development. It is the concern of the Village Board that backups on Route 9W caused by the increased traffic will cause motorists to detour into the Village via our local roads. A number of years ago, the Village Board chose to close

the 9W spur at Old Mountain Road in order to reduce the amount of traffic coming from 9W and going through the Village on Midland Avenue.

**Response 7-1: Commercial Nine Building Plan** - *Route 9W will provide access to the proposed development. The use of local roads by project generated traffic is not likely because it will require greater travel distances, more stopping and longer time. Most traffic to the site is expected to come from points south and north, and the use of the local roads to the east would not benefit this traffic.*

*As noted by the Village traffic consultant, the traffic analysis assigns eight percent of the site generated traffic to the local streets east of Route 9W, which results in a total of 11 vehicle trips in the a.m. peak hour and 12 vehicle trips in the p.m. peak hour with the larger ten building DEIS plan. Even if a percentage slightly higher than eight percent were used in the analysis, the resultant trip assignment would not be significantly higher. Fewer overall site generated trips are expected to be generated by smaller nine building FEIS plan.*

*The traffic analysis provided in the DEIS indicates that traffic into or out of the project site at Route 9W will not decrease the level of service for the northbound or southbound through movements. The level of service is based on intersection delay time.*

*The Village traffic consultant's summary of the effect of the project on nearby Route 9W intersections, based on the DEIS traffic analysis, is quoted here:*

*[Quoted]: Route 9W and Christian Herald Road*

*In the a.m. peak hour the southbound approach and the overall intersection go from level of service C to level of service D, with several seconds of increased average vehicle delay time. On the eastbound approach, while the operation remains in the level of service D range, the average vehicle delay increases by nine seconds, and the volume/capacity ratio goes from 0.94 to 0.98. These are significant impacts, although mitigation measures are not required at this time. In the future, more green signal time may have to be allocated to the eastbound Christian Herald Road approach, which will increase further the average vehicle delay times on the Route 9W approaches.*

*In the p.m. peak hour the v/c [volume to capacity] ratio on the northbound Route 9W approach increases from 0.82 to 0.92, although the operation remains in the level of service C range. No mitigation is required now, although in the future, more green signal time may have to be allocated to this approach.*

*Route 9W and Sixth Avenue*

*In the p.m. peak hour the westbound Sixth Avenue approach at this unsignalized intersection is projected to operate at level of service E in both the No-Build and Build conditions, with an increase in average vehicle delay time of seven seconds in the Build condition, bringing it close to the level of service F threshold. See Comment 7-13. The increase delay is caused by the increased traffic volumes on Route 9W, not by any additional traffic on the Sixth Avenue approach. Since the traffic volumes on Sixth Avenue would not meet the State warrants for signalization, no mitigation can be provided, and it is possible that in the future*

*some of the traffic on Sixth Avenue (although relatively low) may divert to parallel streets, depending on the volumes of those streets. In the peak hours turns from all of the side streets onto Route 9W, particularly left turns, are now and will continue to be difficult at the unsignalized intersections.*

*Route 9W and Route 59/Main Street*

*This is the critical intersection in the entire study area, both limiting the capacity of the two State highways and influencing the amount of traffic on the local streets. It is for these reasons that it was added originally to the study area.*

*In the a.m. peak hour the average vehicle delay on the left turn lane from Route 59 eastbound to Route 9W northbound increases from 54.6 in the No-Build condition to 74.9 seconds in the Build condition, and the operation drops from level of service D to level of service E. The v/c ratio increases from 0.86 to 0.97. These are significant impacts. In the p.m. peak hour this movement is at level of service F, with v/c ratios of over 1.00 in both the No-Build and Build conditions. Several of the intersection approaches and lane groups, as well as the overall intersection, are projected to operate at or near capacity, at level of service E. When an intersection is operating near or at capacity no additional traffic impact can be termed insignificant.*

*The Route 59 Corridor Study, dated January 1990, prepared for the Route 59 Task Force of the Legislature of Rockland County, identified the intersection of Route 9W and Route 59 as having capacity deficiencies for both the 1990 and projected 2000 years, and recommended improvements including the provision of additional turning lanes and an upgraded traffic signal. To the best of my knowledge no action has been taken on these improvements.*

*Mitigation measures at this intersection go well beyond the responsibility and capability of this Project Sponsor, although the Project Sponsor could be required to pay a proportionate fair share if improvements were to be done in the reasonably near future and some authority were established to assess and collect these payments. It should be noted that this intersection is not within the Village of Upper Nyack; so establishing this under SEQR review may be problematical.*

*Route 9W and High Avenue*

*The traffic analysis in the DEIS does not identify any traffic operation problems at this intersection. However, queues of traffic on southbound Route 9W backed up from the signal at Route 59 have been observed to extend through the High Avenue intersection. Addressing the problems at Route 59, along with better coordination of the traffic signals at the two intersections, should alleviate most of the congestion at High Avenue.*

*[End of quoted text]*

*Only a less intensive land use, such as residential or a lower traffic generating commercial use will accomplish some of the Village's goals for minimizing traffic growth in the corridor.*

**Residential Subdivision Plan** - *The less intensive land use accompanying this alternative will address the goal of the Village for minimizing traffic growth associated with the development of the Route 9W corridor transecting the Village.*

**Comment 7-2 (Letter #1, The Village Board of Upper Nyack, 11/8/04, Mayor Michael Es-may, 11/8/04):** Increased traffic from the proposed development will undermine what we worked so hard to achieve in reducing traffic levels on Midland Avenue.

**Response 7-2: Commercial Nine Building Plan** - *The proposed development is not expected to adversely impact traffic flow on Midland Avenue. The site is only accessible from Route 9W, which provides direct access to points south and north. The traffic analysis in the DEIS indicates that the project would not significantly impact traffic operations on Route 9W. Therefore, there is expected to be little benefit for site generated traffic to utilize Midland Avenue instead of Route 9W.*

*The Village's traffic consultant further elaborated on the concern regarding the potential traffic effect on local streets, as quoted here:*

*[Quoted]: Midland Avenue, North Broadway and other local streets in Upper Nyack do not offer a reasonable alternative to through traffic on Route 9W. They are possible alternatives only to traffic with one trip end in the Villages of Upper Nyack, Nyack and perhaps South Nyack. Thus the amount of potential diversion to Midland Avenue and the local streets is limited.*

- When the 9W Spur at Old Mountain Road was closed a few years ago, there was a significant decrease in traffic on Midland Avenue. This does indicate that some traffic at that time diverted to Route 9W from Midland Avenue. It is uncertain whether some of the traffic has returned to Midland Avenue. However, since the counted traffic volumes turning left from Route 9W southbound into the local streets south of Old Mountain Road, including Main Street, are relatively low (see table below), there does not seem to be that much more traffic that could be diverted.*

- The concern is raised that further delays on Route 9W will cause drivers to divert to the local streets. The capacity analyses indicate that no significant delays will result from the increased site-generated traffic for through traffic on Route 9W. Such delays usually are found on signalized intersection approaches, and it is noted that there is only one signalized intersection (at Birchwood Avenue) between Old Mountain Road/Christian Herald Road and High Avenue. As noted above, some increases in average vehicle delay times may occur on the stop-sign controlled side street approaches to Route 9W.*



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- *If any additional traffic diversion should develop it is unlikely that it would occur on Birchwood Avenue (see Comments 7-5 and 7-9). Based on the existing traffic counts reported in the DEIS, the largest amount of traffic turning left from Route 9W into the side streets or turning right from the side streets occurs at Old Mountain Road, as shown on the following table.*

	AM Peak Hour	PM Peak Hour
Left Turn from Route 9W Southbound		
at Old Mountain Road	23	95
at Birchwood Avenue	6	20
at other streets*	28	53
Right Turn into Route 9W Northbound		
at Old Mountain Road	50	143
at Birchwood Avenue	10	8
at other streets*	44	16

\* Other streets include Highmont Avenue, Sixth Avenue, High Avenue and Main Street. Traffic volumes turning into and out of Birchwood Avenue are relatively low.

*[End of quoted text]*

*Also, see Response 7-1.*

**Residential Subdivision Plan** - *The less intensive land use accompanying this development is not expected to adversely impact traffic flow on Midland Avenue.*

**Comment 7-3 (Public Hearing, Joseph Menschik, 209 Wanamaker Lane, 11/8/04):** What will happen to the traffic flow on this important Village artery that leads to Nyack Hospital and the closest area to the emergency room?

**Response 7-3: Commercial Nine Building and Residential Subdivision Plans** - *The traffic analysis provided in the DEIS indicates that the traffic into or out of the project site at Route 9W will not decrease the level of service for the northbound or southbound through-movements. Also, see Response 7-1.*

**Comment 7-4 (Public Hearing, Maxine Silverman, 11/8/04):** But the traffic that would be engendered by this project is a great safety concern. High school students, the upperclassmen are not required to stay on campus during their off or free periods. They can leave.

There are four lunch periods. These are all new drivers. So, it's not just when classes begin at 7:30 in the morning and dismiss at 2:00 o'clock, 2:15, but it extends into the evening when there are extracurricular activities.

If you've taken a look, and I don't know since -- I don't know if you're from our community, whether you have observed how many cars are in that parking lot and the rate of trips back and forth all day long. It's significant. If you add 400 parking spaces and one assumes that those won't be filled once, instead, it will be filled subsequent times, many times throughout the day, I think you'd have to agree that this will be a significant impact.

**Response 7-4: Commercial Nine Building and Residential Subdivision Plans** - *As indicated in the DEIS, the highest volumes of site generated traffic is expected during*

*the morning and afternoon peak commuting hours, with lower volumes occurring during the day. The traffic analysis evaluates the peak hour conditions, because these periods coincide with the highest volumes of commuter traffic on the area roadways and therefore, represent a typical "worst case" traffic condition. The mid-day traffic impacts from the project would be lower because less site generated traffic is generated and there is less overall traffic on the area roadways.*

**Comment 7-5 (Public Hearing, Felicitas Griffin, 415 Centre Street, 11/8/04):** My concern about this project is to safety of my children and all the children in the neighborhood, especially, the ones living on and off of Birchwood Avenue. Birchwood Avenue is, probably -- maybe, a few people can know -- is a major access road for all the school-aged children, not just elementary school but the high school and even the middle school because the buses for the middle school would drop off the children either on 9W or down on Midland Avenue, and children living on or off of Birchwood will use Birchwood Avenue to go home. Birchwood Avenue has no sidewalk. So, I would like to ask you to consider this.

***Response 7-5: Commercial Nine Building and Residential Subdivision Plans -***  
*Comment noted. As indicated in the DEIS, little of the site generated traffic is expected to be distributed onto Birchwood Avenue, as most traffic will be traveling to and from destinations north and south. Also, see Response 7-1.*

**Comment 7-6 (Public Hearing, Larry Kintisch, 208 Hilltop Drive, 11/8/04):** Whenever traffic flows, freely, it's, usually, because there's a lot of spacing, and how do you get congestive flow - this is something I studied in my engineering program - it's due to too many cars too close together, too much interference, cars driving into the traffic flow from side streets or driveways, and I think what will, certainly, be necessary for a facility of this many traffic operations per hour will be another traffic light on 9W. I think that traffic light should be paid for by the developers. I think it should be the kind of traffic light that is not only timed but, also, controlled by the requirement of exit from the facility such as we see at Crossfields where the traffic flows, regularly, and then, periodically, it is controlled.

An example of a similar type of property is on Route 9 -- Route 45, about a half a mile south of the intersection with the Palisades Parkway and Route 45. There is a property with, perhaps, eight similar-sized buildings on it, I would imagine, and there's always traffic flowing in and out of that, especially, medical doctors appointments. I would say that traffic light is going all the time, stopping. And the net effect of that is, at certain times in the day, the congestive flow on 9W will increase. Certainly, it's more in the daytime and the morning hours when there's school traffic, people going to jobs around Nyack and Congers, and even having that traffic light will be a tremendous - I would say an average two to four-minute delay for people going through that part of the Village.

***Response 7-6: Commercial Nine Building and Residential Subdivision Plans -***  
*Based on the NYS DOT thresholds, the proposed development does not meet the NYS DOT warrants for a traffic signal on Route 9W. Further, the traffic analysis provided in the DEIS, indicates that the project will not have a significant adverse impact on traffic flow on Route 9W. The Village's traffic consultant has noted that while a traffic signal has not been shown to be necessary to handle traffic into and out of the site, the installation of a signal would result in additional delay times for traffic traveling Route 9W.*

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**Comment 7-7 (Public Hearing, Larry Kintisch, 208 Hilltop Drive, 11/8/04):** Also, in crossing, we do want to allow students to cross. Right now, there's a crossing control point at Birchwood. I don't believe there's a crossing control point at Old Mountain Road-Christian Herald Road, and, perhaps, that has to be added. I'm not sure if that's a timed light or if it is a controlled light where there are control loops by the gas station.

***Response 7-7: Commercial Nine Building and Residential Subdivision Plans - No additional pedestrian crossings on Route 9W are proposed for the project. The development would not generate demand for any new pedestrian crosswalks.***

**Comment 7-8 (Public Hearing, Barry Schoenberg, 648 North Broadway, 11/8/04):** I'm speaking as President of Temple Beth Torah, which is the temple that is right across the street, the synagogue across the street from the proposed development. We're a congregation of 400 families with, approximately, 40 families who reside in the Village of Upper Nyack, some of whom are here this evening.

Our concern is - is, basically, traffic and environmental. Certainly, from a traffic standpoint, we have a school, a religious school that functions three days a week and exits, approximately, between 4 and 5:00 o'clock, plus, the associated staff. We sublet the synagogue on a daily basis to the Summit School, which began when they had their horrendous fire, and they have maintained the position of subletting the school there. So, there are school buses coming in on a daily basis and exiting around 3:00 to 4:00 o'clock, usually, the time of which the exiting of doctors' office, and I know that from a personal standpoint, what time most doctors' offices exit during the day. So, from a traffic standpoint, certainly, a traffic light would be warranted. That's number one.

***Response 7-8: Commercial Nine Building Plan - Exiting traffic from the proposed development will be dispersed throughout the day, with the greatest volumes occurring during the p.m. peak commuting period, which is typically between 5 and 6 p.m.***

*Based on the NYS DOT thresholds, the proposed development does not meet the NYS DOT warrants for a traffic signal on Route 9W. Further, the traffic analysis provided in the DEIS, indicates that the project will not have a significant adverse impact on traffic flow on Route 9W. See also Response 7-6.*

***Residential Subdivision Plan - This comment is not applicable to the residential alternative.***

**Comment 7-9 (Public Hearing, Lawrence Alpern, 115 Birchwood Avenue, 11/8/04, Mark Braunstein, 221 Birchwood Avenue, 11/8/04):** I'm also afraid of cars and traffic coming up and down my block on Birchwood Avenue. Right now, it's a problem because they don't have sidewalks and it's only gonna get worse.

***Response 7-9: Commercial Nine Building and Residential Subdivision Plans - See Responses 7-1 and 7-5.***

**Comment 7-10 (Public Hearing, Mark Braunstein, 221 Birchwood Avenue, 11/8/04):** In addition, about 2, 3:00 o'clock every afternoon, there is a huge number of high-school students that just walk down that street just freely and they're just having a good time. So, the amount of cars that would, actually, come because of this project would be enormous.

**Response 7-10: Commercial Nine Building Plan** - See Responses 7-5 and 7-8.

**Residential Subdivision Plan** - *This comment is not applicable to the residential alternative.*

**Comment 7-11 (Public Hearing, James Gurrere, 306 North Midland, 11/8/04):** I come from Clarkstown School in the afternoon. I live on Midland Avenue. I have a difficult time getting in my driveway. In order to get into the driveway, I have to go over and come down Highmount Avenue down to Midland and back into my driveway. And, mornings now, it's getting worse and worse there getting out, and you're gonna have traffic there coming up there on 9W? The other day, I'm coming south on 9W. I had to wait for three lights so that I could make a left turn to come into Upper Nyack. This is what you guys want? Think about it.

**Response 7-11: Commercial Nine Building Plan** - *The traffic study prepared by the Project Sponsor's consultants for the DEIS indicates an increase of 2 vehicles during peak hours on Midland Avenue. The traffic study was reviewed by a traffic consultant retained by the Village, who agrees that traffic generated by the project is only a minor increase on this particular road. However, traffic generation in the immediate area is becoming problematic and, with or without this project, regional solutions to better control the volume of traffic along Midland Avenue, State Route 9W, and State Route 59 are needed, and perhaps are beyond the scope of this particular project.*

**Residential Subdivision Plan** - *The above response is also applicable to the residential alternative.*

**Comment 7-12 (Public Hearing, Karen Hughes, 214 Wanamaker Lane, 11/8/04):** There's statements in here the proposed office park development has potential to generate ancillary services, but the current building, the permit right now is only for professional or medical use. So, to Jim's point, there will be no restaurant or ancillary services. These people will be on the road at lunchtime.

So, you move down in the study and it says the development is predicted to generate, approximately, 159 trips through the a.m. peak hour, 161 trips during the p.m. peak hour. Nobody talks about lunchtime in this study.

**Response 7-12: Commercial Nine Building Plan** - *As indicated in the traffic analysis provided in the DEIS, the greatest volume of trips generated by the proposed development would be during the weekday a.m. and p.m. peak hours. These periods were analyzed because they coincide with the highest volumes of traffic on the local road network, therefore creating a "worst case" traffic scenario. The project will generate fewer trips during mid-day, and the traffic volumes on the local roads will be lower during the mid-day period.*

**Residential Subdivision Plan** - *This comment is not applicable to the residential alternative.*

**Comment 7-13 (Public Hearing, Karen Hughes, 214 Wanamaker Lane, 11/8/04):** Sixth Avenue at U.S. Route 9W shows an increase in delays in the p.m. peak hour. Because of the availability of alternative routing, traffic may be diverted to parallel streets, reducing delays at Sixth Avenue. They then don't say what they're gonna do about that diverted traffic.



**Response 7-13: Commercial Nine Building Plan** - *As indicated in the Table 3.7-28 of the DEIS, the traffic analysis indicates that during the a.m. peak hour the proposed development would result in a 0.2 second delay for southbound motorists on Route 9W and a 1.5 second delay for westbound motorists on Sixth Avenue at this location. Table 3.7-31 of the DEIS indicates that during the p.m. peak hour the proposed development would result in a 0.1 second delay for southbound motorists on Route 9W and would increase average delay time by 7 seconds for westbound motorists on Sixth Avenue at this location from 37.9 seconds to 44.9 seconds. These very small delays do not change the level of service at this intersection, and are not expected to result in any alternative routing.*

**Residential Subdivision Plan** - *This comment is not applicable to the residential alternative.*

**Comment 7-14 (Public Hearing, Karen Hughes, 214 Wanamaker Lane, 11/8/04):** Who is it who talked about Birchwood having no sidewalks for our kids? They're talking about diverting traffic as if, hey, it's okay if Sixth Avenue and 9W gets choked, everybody else will take another route.

**Response 7-14: Commercial Nine Building and Residential Subdivision Plans** - *Based on the results of the traffic analysis, the project is not anticipated to result in any alternative routing of traffic from Route 9W onto local roads.*

**Comment 7-15 (Public Hearing, Karen Hughes, 214 Wanamaker Lane, 11/8/04):** Somebody here talked about the death of a young boy, five years ago. That was a neighbor right behind me. I witnessed that. I don't want to see it again. You know why it happened? Because drivers realize that coming off 9W, they could make a quick hit down Old Mountain onto Midland. The same thing is gonna happen here if we don't take care of business. People are gonna see that 9W is congested, they're gonna have a hard time coming out at lunchtime and trying to make a left on 9W, they're gonna make a right on 9W and they're going to fly down Birchwood.

I heard somebody say right now that people go down at 40 miles an hour. It's a lot more cars going down at 40 miles an hour.

**Response 7-15: Commercial Nine Building and Residential Subdivision Plans** - *As indicated in the DEIS, the project is not anticipated to significantly affect traffic volumes on Birchwood Avenue or other local roads.*

**Comment 7-16 (Public Hearing, Karen Hughes, 214 Wanamaker Lane, 11/8/04):** [T]here's a lot of verbiage here about the site access driveway, the intersection sight distance. The reference -- I won't read the whole thing, but, apparently, it seems to be addressing the ability of drivers to see up and down Route 9W as they come out of their driveway, and it says, essentially, the intersection sight distance could be achieved by reducing the speed limit of U.S. Route 9W from 35 to 30 miles an hour and posting advisory signs on U.S. 9W and site access driveway or relocating the driveway further north. Great. These measures are not proposed at this time.

**Response 7-16: Commercial Nine Building Plan** - *Based on the analysis in the DEIS, the sight distance at the proposed site access is adequate and mitigation is not needed.*

**Residential Subdivision Plan** - *The stopping sight and intersection sight distances at each of the two proposed site roadway egress/access locations along Route 9W will comply with NYS DOT requirements. The NYSDOT will have permit authority over these new connections to the State Highway.*

**Comment 7-17 (Public Hearing, Lynn Barker, 237 Birchwood Avenue, 11/8/04):** I just would like to say that people do fly up and down that street, and, you know, a lot of the streets that run that way, east-west, on these hills, at certain times of the day, are blinded by the sun, and I've lived on there almost 13 years, and my neighbor Ted Koczynski will remember this incident, too, a kid was hit one spring or summer day by someone driving up the hill who was blinded by the sun. I don't think she wasn't going, particularly, fast. Thank God, he wasn't hurt, badly. The ambulance came, took him to Nyack Hospital, he was there a few days. It was, extremely, frightening, but, you know, if traffic is diverted and we have people speeding to get home, I think, you know, potential for an accident waiting to happen is just, you know, increased, exponentially.

**Response 7-17: Commercial Nine Building and Residential Subdivision Plans** -  
*See Response 7-15.*

**Comment 7-18 (Public Hearing, David McCleary, 400 North Midland, 11/8/04):** [W]hat I really wanted to mention was, in just a couple years that my wife and I have been here, we can sit on the front porch and just count the number of cars that go right past the stop signs there. They just, you know -- you know, it's not a stop, it's a slow down to 40 miles an hour and keep going at 50. And it's really -- I mean it's ridiculous. And if you add in the people who want to get home from work, who are late for work or are trying to zip through the roads to avoid all the stop lights, you have traffic - traffic signs, traffic lights are all well and good. You know, they control things as best they can, but the fact of the matter is a bad traffic pattern is a bad traffic pattern, and I think that overloading these small streets with all this traffic is a bad idea.

**Response 7-18: Commercial Nine Building and Residential Subdivision Plans** -  
*See Response 7-15.*

**Comment 7-19 (Letter #12, Douglas Schuetz, Rockland County Department of Planning, 12/23/04):** The decreased level of service for area roadways is of concern to the County Planning Department. The proposed development will decrease levels of service on Route 9W, Main Street, High Street, and 6th Avenue thus the wait time per vehicle will increase anywhere from 7 to 30 seconds. The decreased levels will result in ratings of E for Main Street at Route 9W for both AM and PM peak hours, E for High Street at Route 9W for AM peak hours, E for 6th Avenue at Route 9W for PM peak hours, and F for Route 9W at Main Street during PM peak hours. All proposed mitigation measures shall be thoroughly discussed and adequately addressed with the New York State Department of Transportation.

**Response 7-19: Commercial Nine Building Plans** - *Mitigation measures are described in the DEIS to address the potential traffic impacts from the proposed development. Implementation of these measures, as well as development of the proposed access drives onto Route 9W require the issuance of a Highway Work Permit from the NYS DOT. As such, the NYS DOT is an involved agency for the project. The NYS DOT has been provided copies of the accepted DEIS document for their review. The Project Sponsor's consultants have met with the NYS DOT to discuss the project and the mitigation measures. The project cannot be developed without the issuance of the appropriate permit approvals from the NYS DOT. Also, see Response 7-1.*

**Residential Subdivision:** *The residential subdivision is not projected to adversely affect levels of service at area intersections.*

**Comment 7-20 (Letter #12, Douglas Schuetz, Rockland County Department of Planning, 12/23/04):** The proposed 3,162 to 5,270 construction truck movements on and off the state highway could impact traffic flow on Route 9W. Therefore, the New York State Department of Transportation shall review the applicant's construction plans relative to the state highway.

**Response 7-20: Commercial Nine Building Plans -** *See Response 7-19. As noted above, the NYS DOT is an involved agency, and as such, is provided copies of the DEIS and FEIS for their review. These documents describe the anticipated construction trips associated with the proposed development.*

*Each of the FEIS alternatives reduces the amount of excess earth material to be transported off-site in comparison to the volume proposed in the DEIS plan. The revised nine building plan reduces the amount of excess earth material to be transported off-site by nearly 84 percent of the volume proposed in the DEIS plan. This change significantly reduces the number of truck trips on Route 9W. With a 12 cubic yard capacity haul vehicle, the excess material represents approximately 431 truck loads of material or 862 round trips. With a 20 cubic yard capacity haul vehicle, the excess material represents approximately 259 truck loads of material or 518 round trips.*

**Residential Subdivision Plan:** *Excess material is projected to be approximately 1400 cubic yards which would generate between 70 and 120 round trips depending upon the capacity of trucks being used.*

**Comment 7-21 (Letter #12, Douglas Schuetz, Rockland County Department of Planning, 12/23/04):** The proposed disposal site for fill shall be listed in order to determine the full effect on the State Highway system and the impacts on local traffic using this roadway. Additionally, the applicant shall abide by all regulations regarding the disposal of fill from construction projects.

**Response 7-21: Commercial Nine Building and Residential Subdivision Plans -** *The Project Sponsor will abide by any regulations that relate to the disposal of clean earth fill material from a construction site. The locations of the proposed fill disposal are not known at this time and cannot be listed.*

**Comment 7-22 (Letter #12, Douglas Schuetz, Rockland County Department of Planning, 12/23/04):** Since the proposed project may contain medical offices used by residents of all ages, the site plan must be in compliance with standards needed to provide service to residents using the County's T.R.I.P.S service. Therefore, during the site plan process the project shall be reviewed by the Rockland County Department of Public Transportation, operators of the T.R.I.P.S. service, to ensure adequate access and maneuverability within the site for their buses.

**Response 7-22: Commercial Nine Building Plan -** *Comment noted. The Rockland County Department of Public Transportation will be provided a copy of the site plan during the site plan review process.*

**Residential Subdivision Plan -** *This comment is not applicable to the residential alternative.*

**Comment 7-23 (Letter #12, Douglas Schuetz, Rockland County Department of Planning, 12/23/04):** All Figures relating to Traffic and Transportation mislabel Route 9W as Highlands Avenue, which should be Highland Avenue.

***Response 7-23: Commercial Nine Building and Residential Subdivision Plans - Comment noted, this typographical error was corrected.***

**Comment 7-24 (Letter #14, Charles Christian, 12/16/04):** There is a concern regarding the amount of extra traffic that will be generated from this proposal. Someone mentioned that large trucks and emergency vehicles such as fire trucks and ambulances would have difficulty entering and leaving in a proper manner.

***Response 7-24: Commercial Nine Building Plan - The site plan was reviewed the by Nyack Fire Department with respect to access for fire apparatus, and the plan was modified slightly to address their concerns. The site plan is designed to accommodate fire apparatus and trucks.***

***Residential Subdivision Plan - The residential subdivision will have an internal access street built to Village standards. It is not expected to present access constraints to local fire apparatus.***

**Comment 7-25 (Letter #17, Hank Beresin and Jen Bell, 11/6/04):** [A] new office complex will increase the dangers for our High School students. Isn't 9W dangerous enough already? Aren't we concerned with increased traffic? Currently, the use of 9W and Birchwood poses risks for High School walkers. If Upper Nyack approves this new construction so close to the High School, these risks will rise exponentially.

***Response 7-25: Commercial Nine Building Plan - There is an existing sidewalk along the east side of Route 9W to allow pedestrians to walk safely along this road. Pedestrians using this sidewalk will need to cross the proposed driveway at a proposed crosswalk. Traffic signs will instruct exiting vehicles from the site to stop at Route 9W. Inbound vehicles will be turning from Route 9W, and as such, would be traveling at low speeds. Therefore, the traffic into and out of the project site is not expected to create dangerous situations for pedestrians using the Route 9W sidewalk.***

***As indicated in the DEIS traffic analysis, little of the site generated traffic is expected to be distributed onto Birchwood Avenue, as most traffic will be traveling to and from destinations north and south.***

***Residential Subdivision Plan - This comment is not applicable to the residential alternative.***

**Comment 7-26 (Public Hearing, Jeffrey Friedberg, 425 Tompkins, 1/11/05):** I can just imagine a night like this with 456 spaces filled with people leaving at the end of the day and pulling out onto 9W, where the speed limit is 35 miles an hour, which most of us know that most people drive between 45 and 55 miles an hour as it is on that stretch of road. I just think it's not realistic.

***Response 7-26: Commercial Nine Building Plan - The traffic analysis provided in the DEIS indicates that the proposed access road intersection would operate at acceptable levels during the peak a.m. and p.m. commuting hours. It should also be noted, that typi-***



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*cal commuting arrival and departure patterns are spread over a one to two hours time period, which helps to disperse the traffic impact. Also, see Response 7-1.*

**Residential Subdivision Plan** - *The residential alternative will generate about one trip every two minutes during peak hours and not represent the same potential level of impacts discussed in the above comment.*

**Comment 7-27 (Public Hearing, Jeffrey Friedberg, 425 Tompkins, 1/11/05):** I think it's asking for a project like this, with the amount of parking spaces, the amount cars exiting onto the road, proximity to the high school, it's an accident waiting to happen.

**Response 7-27: Commercial Nine Building and Residential Subdivision Plans -**  
*See Response 7-4.*

**Comment 7-28 (Public Hearing, Sally Bell, 110 Birchwood Avenue, 1/11/05):** It's not good for the high school students who will be hit.

**Response 7-28: Commercial Nine Building and Residential Subdivision Plans -**  
*Comment noted. See Response 7-4.*

**Comment 7-29 (Public Hearing, Susan McWhinney, 310 Front Street, 1/11/05):** As a safety concern, I lived on Front Street and that's sort of the jog point where High Mountain comes down from 9W. People take it as a cut through between Broadway, Midland and 9W. Where it jogs, it comes down High Mountain, comes down from 9W, it hits Front Street and it jogs and then drops down to Midland. That's an area where a lot of kids on my block play. It's a dead end street on Front Street and that area has tons of kids playing on it. They're on their skateboards. They're on their bicycles. They play basketball. They play hockey. It's great because these kids have this chance to play there. I see cars already tearing down that straight and near misses. It would just be a shame for you to see traffic on this street and run the risk of having one child hurt or possibly killed.

**Response 7-29: Commercial Nine Building and Residential Subdivision Plans -**  
*The proposed development is not expected to add traffic to Front Street. Most of the traffic is expected to travel on Route 9W from points north and south.*

**Comment 7-30 (Public Hearing, Susan McWhinney, 310 Front Street, 1/11/05):** I also moved to Nyack because I'm a bicyclist. I know a lot of people have their own issues with cyclists, but, as a group, I think we're pretty responsible and I ride on 9W a lot and I have many friends and I know of many people who have been hit on 9W. It's a hard road to ride on. It's supposed to be a shared road. Myself and those people I know try to ride as responsibly as we can, but I'm thinking of the increase in traffic in that area and I'm thinking of over a year's worth of construction with large trucks, which don't always have clear site lines turning in and out of a construction site. I personally do not want to be smacked by the construction trucks and I don't want anyone I know or care about smacked by a construction truck. And I don't want a truck driver feeling they hurt a bicyclist. Those things would all be a shame.

**Response 7-30: Commercial Nine Building and Residential Subdivision Plans -**  
*Comment noted. Construction has occurred for many years in the Village without catastrophic results. Construction vehicles will be driven with appropriate care to avoid potential accidents with vehicles, bicycles and pedestrians.*

**Comment 7-31 (Public Hearing, Lawrence Kintisch, 208 Hilltop Drive, 1/11/05):** Those of you who see the kinds of traffic we get here in the summertime because of people going to the lake, we know that the traffic builds up and becomes congested and, at certain times, you cannot go on 9W.

So the point of this, with respect to the development is, every single square yard, every acre, does not have to be developed. Of course, we have to come up with alternatives if somebody owns the land and, therefore, has the right to develop it. And perhaps the suggestion that, Mr. Mayor, you send a letter around and see if people want to, under these circumstances, buyout the owners and leave it undeveloped, but for every new development along Route 9W, there will be additional traffic flow against the commons, which is our highway, and we have to live with that and, I'll tell you, it's not going to be pretty in 20 years if every foot going up the hill, pieces of the park are taken over through changes here and changes there.

***Response 7-31: Commercial Nine Building and Residential Subdivision Plans - As described in the DEIS traffic analysis, the traffic generated by the proposed development is not anticipated to create significant traffic impacts. Also, see Response 7-1.***

**Comment 7-32 (Public Hearing, Jerry Greenberg, 1/11/05):** The traffic cannot be handled appropriately.

***Response 7-32: Commercial Nine Building and Residential Subdivision Plans - As described in the DEIS traffic analysis, the traffic generated by the proposed development is not anticipated to create significant traffic impacts. Also, see Response 7-1.***

**Comment 7-33 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Section 3.7, Impact on Transportation. Please see John Sarna's review of January 10, 2005 (attached). John Sarna indicated that "because no left turn lane is provided, southbound traffic on Route 9W, particularly in the A.M. Peak hour, may be subject to some delays behind vehicles waiting to make the left turn into the site." The FEIS should explore the feasibility of providing a dedicated left hand turn lane on 9W into the site.

***Response 7-33: Commercial Nine Building and Residential Subdivision Plans - The traffic analysis shows that the proposed site access operates at acceptable levels of service without the provision of a left turn lane on Route 9W. However, as shown on the figure at the end of this section, there is sufficient space to create a southbound left turn lane at this location, should it be needed in the future. It is much less likely to be needed with the residential alternative which generates very low traffic volumes.***

*A corresponding northbound left turn lane on Route 9W also appears to be feasible within the Route 9W right-of-way area. Because the traffic analysis demonstrates no need for a southbound left turn lane on Route 9W, it is not proposed by the Project Sponsor at this time. As Route 9W is a state highway, the NYS DOT will ultimately determine whether any left turn lanes are to be provided at this location. The project requires a highway work permit from the NYS DOT, and cannot be constructed without their technical review, which includes consideration of the left turn lanes. This project has been discussed with the NYS DOT, but their review will not be completed until after the SEQR process concludes.*

**Comment 7-34 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Section 3.7.9 Mitigation Measures [Impact on Transportation]. The DEIS acknowledges the increase in traffic in Nyack around the intersection of State Route 59 and State Route 9W, and considers the possibility of adjusting timing at the light, and modification of State Route 9W to encourage diversions onto Cemetery Lane, as shown on Figure 3.7-14. John Sarna, the traffic engineer reviewing the plan on behalf of the Village indicates that NYSDOT should be the agency responsible for coordinating plans to improve traffic flows in this area. Although we are essentially in agreement with his findings, another alternative would be to require the developer to post a bond for a partial cost of the improvement, since the traffic from the project would be contributing to the failure of the intersection's level of service. This bond could be used to offset costs, and perhaps encourage the NYSDOT to put this intersection higher on the priority list for improvement.

**Response 7-34: Commercial Nine Building Plan - Comment noted.** *The Project Sponsor has expressed the opinion that the traffic data does not support posting a bond for such a remote and unlikely impact. Based on the traffic analysis, the project-generated traffic will contribute a very small amount of traffic to the overall volumes that passes through this intersection during the peak hours (63 vehicles out of 2,071 total vehicles during the a.m. peak hour [3 percent], 39 vehicles out of 2,410 total vehicles during the p.m. peak hour [1.6 percent]). The Project Sponsor believes that any future contribution by the Project Sponsor for improvements to this intersection should be determined on a "fair share" basis according to the traffic it contributes.*

*As improvements to this intersection must be carried out by the NYS DOT, and no such improvements are currently planned or programmed by the NYS DOT, the Project Sponsor believes it is premature to extract bond funds from this (or any) Project Sponsor. Any future fair share contribution by the Project Sponsor should occur at such time when intersection improvement plans are carried forward by the NYS DOT. The Project Sponsor believes there is no reason to expect that the extraction of bond funds from the Project Sponsor, which would likely represent a small percentage of the total improvement costs, would cause the NYS DOT to put this intersection higher on the priority list for improvement.*

*The Planning Board has not made a final determination on this matter.*

**Residential Subdivision Plan -** *The residential alternative is not likely to have a measurable impact at any local intersections. No mitigation measure is proposed.*

**Comment 7-35 (Letter #23, John Sarna, 1/10/05):** [I]n several of the intersection analyses, notable the signalized intersections of Route 9W with Route 59/Main Street, with High Avenue and with Christian Herald Road, the grades entered for various intersection approaches appear questionable. For example, at the intersection of Route 9W with Route 59/Main Street, the westbound approach, which is on an upgrade, is entered as a six percent downgrade, the northbound approach, which is on a downgrade, is listed as a nine percent upgrade, and the eastbound and southbound approaches, which are essentially flat, are entered as a nine percent upgrade and a six percent downgrade respectively. Similar questionable grades are found on the analyses for the other two signalized intersections. (Note: In examining the capacity computation worksheets, a "+" entry represents an upgrade and a "-" entry represents a downgrade.)

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On the site driveway approach to Route 9W the grade is entered as "0", essentially flat, while the site plan shows it as a five percent upgrade. (Note: Any westbound approach in Nyack and Upper Nyack is probably an upgrade.)

**Response 7-35: Commercial Nine Building and Residential Subdivision Plans -** *Comment noted. In response to the above comment, the Project Sponsor's consultants performed a supplemental traffic analysis to evaluate the effect of the grade discrepancies on the level of service calculations (see Appendix E). The supplemental traffic analysis concludes that the revised grade information does not result in any significant changes to the DEIS traffic analysis. It is noted that the proposed nine building plan will generate less traffic than the traffic analyzed in the DEIS or Appendix E, and as such, will further reduce the potential for adverse traffic-related impacts.*

*The residential alternative will have little measurable impact on any intersection studied.*

**Comment 7-36 (Letter #23, John Sarna, 1/10/05):** Old Mountain Road is shown on the traffic diagrams with a channelized right turn on the westbound approach to Route 9W, by-passing the traffic signal. In reality this channelization was closed several years ago. This comment was included in my review of July 23, 2004, and was corrected in one version sent to me, but it apparently did not get into this final version. It should be noted that this is a minor comment, as the discrepancy is not reflected in any of the analyses.

**Response 7-36: Commercial Nine Building and Residential Subdivision Plans -** *Comment noted.*

**Comment 7-37 (Letter #23, John Sarna, 1/10/05):** On page 3.7-9 there is a discussion about the use of the site during the evening and on weekends for overflow parking for the two institutional neighbors on the west side of Route 9W. If this could reduce or eliminate the occasional parking along Route 9W, it would be beneficial, but as the site driveways do not line up and there are no sidewalks along Route 9W, the pedestrian crossing may not be safe.

**Response 7-37: Commercial Nine Building Plan -** *The Project Sponsor is not opposed to lending parking space to neighboring property owners during the weekends or evenings when space is available. However, it is expected that this would occur for special events and not on a regular basis. Should this occur, the Project Sponsor would request the neighboring property to take appropriate pedestrian safety measures such as placing traffic safety cones at the crossing locations and/or retaining a "crossing guard" to assist pedestrians if necessary. At this time, none of the neighboring property owners has requested any special parking arrangements.*

**Residential Subdivision Plan -** *This comment is not applicable to the residential alternative.*

**Comment 7-38 (Letter #23, John Sarna, 1/10/05):** The traffic analysis has been done following the standard practice in terms of content and methodology, and is acceptable.

The purpose of an Environmental Impact Statement is to disclose the conditions and impacts of a particular action or proposal, not to serve as a document of advocacy. The traffic analysis presents the impacts and findings fairly, and meets this standard.

***Response 7-38: Commercial Nine Building and Residential Subdivision Plans - Comment noted.***

**Comment 7-39 (Letter #23, John Sarna, 1/10/05):** The project does add traffic to the road system. Because the only access to the site is from Route 9W, most of the traffic increases should be confined to Route 9W. The only site-generated traffic which should use Midland Avenue, North Broadway and other streets within Upper Nyack are those trips with their other trip end within the Villages of Upper Nyack and Nyack.

***Response 7-39: Commercial Nine Building and Residential Subdivision Plans - Comment noted.***

**Comment 7-40 (Letter #23, John Sarna, 1/10/05):** Because no left turn lane into the site is being provided, southbound traffic on Route 9W, particularly in the A.M. peak hour, may be subject to some delays behind vehicles waiting to make the left turn into the site.

***Response 7-40: Commercial Nine Building - Comment noted. See Comment 7-33.***

***Residential Subdivision Plan - The residential alternative generates such a low volume of traffic that there will be little delays to southbound traffic as a result of left turns into the site.***

**Comment 7-41 (Letter #23, John Sarna, 1/10/05):** Based on the presented material, the only intersection which is significantly impacted by the site-generated traffic (subject to any revisions in the capacity analyses -- see above) is the intersection of Route 9W and Route 59/Main Street, primarily because this location already exhibits low operating levels. This is an existing problem, and the intersection was included in the scope of the study primarily to document it and point out the need for some action to be taken. Since it is the intersection of two State highways, the NYSDOT should be the agency responsible, and since it is within the Village of Nyack, that village should be the one to take the initiative with the state.

***Response 7-41: Comment noted.***

**Comment 7-42 (Letter #23, John Sarna, 1/10/05):** As I stated in an earlier review, I believe that the distribution of site-generated traffic will be heavier to the south than that assumed in the DEIS analysis. However, the sensitivity analysis, covered in pages 3.7-27 to 3.7-30 and summarized in Tables 3.7-25 and 3.7-26, shows that the increased traffic impact on Route 9W south of the site could still be accommodated by the road system.

***Response 7-42: Comment noted.***



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**Comment 7-43 (Letter #23, John Sarna, 1/10/05):** The only mitigation measure presented in the DEIS involves an improvement to the intersection of Polhemus Street with Route 59, with the purpose of diverting a portion of the southbound right turn traffic from Route 9W into Route 59 to High Avenue and Polhemus Street. It does increase the capacity of this route somewhat. However, as it involves two extra turns, including a left turn at a four-way Stop-controlled intersection, and as this routing already exists, the amount of traffic diversion, and thus the benefit derived from this improvement may be relatively small.

***Response 7-43: Commercial Nine Building Plan - Comment noted. However, as indicated in the DEIS, this mitigation measure is expected to improve the traffic conditions in the Build Condition. The Villages' traffic consultant has noted that if the addition of a southbound right turn lane on Route 9W were to be constructed, as recommended in 1990 within the Route 59 Corridor Traffic Study, the improvement at Polhemus Street would become redundant.***

***Residential Subdivision Plan - This comment is not applicable to the residential alternative because of its low traffic generating characteristics..***

**Comment 7-44 (Letter #29, Laurel Robertson, 1/21/05):** I have concerns for the safety of students from Nyack High School who drive and walk along this section of Route 9W on their way to and from school.

***Response 7-44: Commercial Nine Building and Residential Subdivision Plans - There are already sidewalks along this section of Route 9W. Cross walks are proposed over site driveways at Route 9W.***

**Comment 7-45 (Letter #29, Laurel Robertson, 1/21/05):** I have serious reservations about the increased traffic load on an already dangerous and heavily traveled road. I cannot imagine that the construction of the ten two story buildings, each measuring 80' by 45', and surrounded by over 400 parking spaces will be an addition to the landscape.

***Response 7-45: Commercial Nine Building Plan - As noted in the DEIS, the traffic from the proposed development is not expected to have a significant adverse impact. Also, see Response 7-1.***

***Residential Subdivision Plan - The residential alternative will generate approximately one sixth of the traffic projected for the commercial plan. The increase in traffic will not be noticeable or cause noticeably increased delays over existing conditions at local intersections.***

**Comment 7-46 (Letter #30, Lawrence Campbell, 1/12/05):** My children will be entering Nyack High School over the next three years and I already have concerns about them and others crossing Route 9W at Christian Herald Road. Drivers are not obeying the "no turn on red" signs as it is and rarely yield to walkers. It seems ludicrous that after sidewalks were put in several years ago along Christian Herald Road and continuing down the upper portion of Old Mountain Road that a crossing signal was not installed at Christian Herald Road and Route 9W as there is at the top of Birchwood Avenue. As no children in Upper Nyack are bused to Nyack High School and most are walkers this is an accident waiting to happen. Allowing Courtyard at Upper Nyack to be built will only hasten this chance. To say students should walk up to Birchwood to cross is silly. Students will not walk the extra distance and go out of their way up to Birchwood Avenue to cross Route 9W. If development of this size is allowed to be built, traffic will increase.

*Courtyard at Upper Nyack FEIS*

**Response 7-46: Commercial Nine Building and Residential Subdivision Plans -** *Comment noted. The above comment describes an existing pedestrian safety concern that should be addressed by the Village and the NYS DOT, regardless of the proposed Courtyard at Upper Nyack project.*

**Comment 7-47 (Letter #33, Shirley Thorman, Town of Clarkstown, 1/28/05):** The DEIS discusses how excess soil and debris generated during construction will be hauled in 20-yard trucks or 12-yard trucks, resulting in 3,162 or 5,270 truck trips, respectively along State Route 9W. The DEIS also states that all truck trips would head north on State Route 9W and would occur during the first six months of construction. Although the DEIS states that all trips are planned during offpeak hours, this would be hard to enforce, given the hauling of material off site will most likely occur when it is most efficient in terms of keeping up with construction schedules. The impacts of the additional trucks on traffic patterns on State Route 9W are not addressed in the DEIS. State Route 9W north of this site has heavy traffic at times, road capacity that is often limited to two lanes and is winding. We request more serious consideration of the traffic impacts of construction traffic from this site, particularly where these truck trips would turn off Route 9W onto Town roads. Consideration should also be given to the impact of this truck traffic on vehicles existing Nyack High School.

**Response 7-47: Commercial Nine Building and Residential Subdivision Plans -** *As described in the Introduction Chapter of this document, two revised alternatives are now proposed. The grading plan for either has been altered to substantially reduce the need to export excess material from the site, as compared to the DEIS plan.*

*The revised nine building plan would result in approximately 5,179 cubic yards of excess material, as compared to approximately 31,625 cubic yards of excess material with the ten building plan. The revised nine building plan reduces the amount of excess earth material to be transported off-site by nearly 84 percent of the volume proposed in the DEIS plan.*

*This change significantly reduces the number of truck trips on Route 9W. With a 12 cubic yard capacity haul vehicle, the excess material represents approximately 431 truck loads of material or 862 round trips. With a 20 cubic yard capacity haul vehicle, the excess material represents approximately 259 truck loads of material or 518 round trips. With this reduction in truck trips, it will be easier to schedule truck trips during the off-peak hours and to avoid scheduling trips immediately following the dismissal of Nyack High School.*

*See response to comment 7-20.*

**Comment 7-48 (Letter #33, Shirley Thorman, Town of Clarkstown, 1/28/05):** The estimated post construction traffic generated during the peak AM hour is 159 trips and for the peak PM hour is 161 trips. Vehicles entering and exiting the site will affect area traffic patterns, especially on major thoroughfares. Several intersections surrounding this site currently have levels of service D, especially those on State Route 9W and State Route 59 leading to the Thruway. Even without the proposed construction, the intersections of State Route 9W and Main Street (Route 59) are predicted to have a level of service F. Mitigation is not proposed, since these areas affect state-owned roads, and it is assumed that the State will provide the funding to address traffic concerns. However, the road improvements may not be made for some time, since the State's priorities for funding may not include this portion of State Route 9W and State Route 59.

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**Response 7-48: Commercial Nine Building Plan** - *As indicated in the DEIS traffic analysis, the proposed development is not expected to result in significant adverse impacts, and mitigation is proposed to improve the operation of this intersection in the Village of Nyack to acceptable levels in the Build Condition. Further, the now proposed revised nine building plan will generate less traffic than the ten building plan proposed in the DEIS. Also, see Response 7-1.*

**Residential Subdivision Plan** - *The residential alternative will generate approximately one sixth of the traffic projected for the commercial plan and will not require mitigation.*

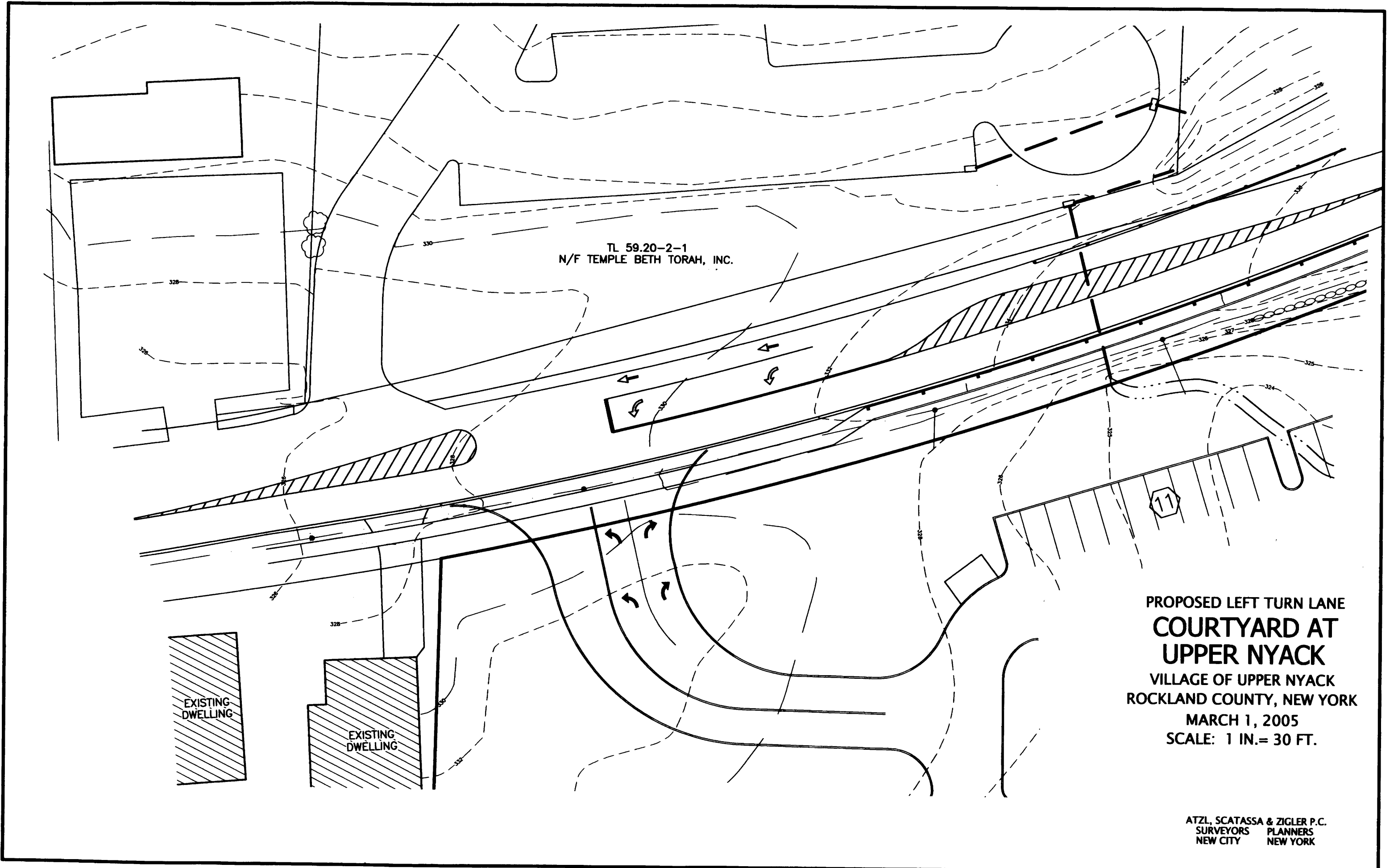
TL 59.20-2-1  
N/F TEMPLE BETH TORAH, INC.

PROPOSED LEFT TURN LANE  
**COURTYARD AT  
UPPER NYACK**  
VILLAGE OF UPPER NYACK  
ROCKLAND COUNTY, NEW YORK  
MARCH 1, 2005  
SCALE: 1 IN. = 30 FT.

EXISTING  
DWELLING

EXISTING  
DWELLING

ATZL, SCATASSA & ZIGLER P.C.  
SURVEYORS PLANNERS  
NEW CITY NEW YORK



**8.0 Energy Comments and Responses**

Subsequent to the DEIS public hearing the Project Sponsor entered into discussions with the Village that resulted in an amendment to the Village Zoning Code that allows residential use in the OB zoning district, by special permit. The Project Sponsor believes that a residential use represents a mitigation plan that addresses many of the potential impacts that were of concern in connection with the office project application.

The Project Sponsor prepared a residential subdivision plan for the project site that responds to the revised zoning code. (Refer to the Introduction section for the chronology of the project plans for this site.) This residential plan is the Project Sponsor's preferred alternative for the proposed development. The residential alternative is a mitigation concept for the project site prepared in response to comments made on the DEIS commercial site plan. The Project Sponsor believes this residential alternative, which is described below, would allow for the site to be developed in a more environmentally sensitive manner

The total building area in a residential development that would need to be heated and cooled would be similar to the square footage of the nine building commercial office alternative and thus the energy related impact of either FEIS alternative is expected to be less than the ten building DEIS commercial plan.

No energy-related comments were received during the public comment period.



**9.0 Noise and Odor Comments and Responses**

Subsequent to the DEIS public hearing the Project Sponsor entered into discussions with the Village that resulted in an amendment to the Village Zoning Code that allows residential use in the OB zoning district, by special permit. The Project Sponsor believes that a residential use represents a mitigation plan that addresses many of the potential impacts that were of concern in connection with the office project application.

The Project Sponsor prepared a residential subdivision plan for the project site that responds to the revised zoning code. (Refer to the Introduction section for the chronology of the project plans for this site.) This residential plan is the Project Sponsor's preferred alternative for the proposed development. The residential alternative is a mitigation concept for the project site prepared in response to comments made on the DEIS commercial site plan. The Project Sponsor believes this residential alternative, which is described below, would allow for the site to be developed in a more environmentally sensitive manner

A residential development would generate various residential-related noises similar to the noises generated in other nearby residential neighborhoods. Traffic noise, however, would be lower throughout the Village than with the development of the commercial plan because the residential alternative generates significantly less traffic than the office proposal.

**Comment 9-1 (Public Hearing, Mark Braunstein, 221 Birchwood Avenue, 11/8/04):** Nobody has really addressed some of the other noise pollution issues.

***Response 9-1: Commercial Nine Building and Residential Subdivision Plans - Potential noise impacts are addressed in Chapter 3.9-4 of the DEIS, and the project is not anticipated to result in adverse significant impacts. In comparison to the DEIS plan, the revised nine building plan would generate less traffic and preserve more existing vegetation than the ten building plan, which would help to further reduce noise levels associated with the project.***

*The residential subdivision would have an overall "softer" surface when compared to the commercial project - that is there are fewer expanses of pavement (such as parking areas) in the residential project. Large paved areas tend to have lower attenuating effects over distance, than soft surfaces such as lawns.*

*Most significantly, the residential project will generate a fraction of the traffic that the commercial project would generate. Therefore, there will be generally lower noise levels on local streets and intersections in connection with traffic.*

**10.0 Growth and Community Services Comments and Responses**

Subsequent to the DEIS public hearing, further discussions with the Village, and recent amendments to the Village Zoning Code, the Project Sponsor prepared a residential subdivision plan for the project site that complies with the zoning amendments. (Refer to the Introduction section for the chronology of the project plans for this site.) A comparison of potential impacts of the residential plan versus the 9-building commercial plan as related to the project impacts associated with community growth and services for each comment is presented below.

**10.1 Potential Impacts**

While the commercial plan would not directly increase the village population, a 22-unit residential development would be projected to increase the resident population of the Village by approximately 80 persons, about one-quarter of whom would be school age children. The increased population would require community services and facilities that the office project would not, including provisions for school age children.

A 22-unit residential development would generate approximately \$29,249 in annual property tax revenues to the Village and \$231,526 to the School District, compared to \$9,208 and \$80,370 from the nine building commercial development, based on projected assessed evaluations.

Increased costs to the Village for the residential development would be approximately \$33,280. This is a conservative analysis wherein all projected costs are distributed over the residential tax base. The cost to the school district to educate the anticipated 19 students would be approximately \$325,565. This represents about half of one percent of the total school budget.

These revenue projections do not include taxes paid to the sewer, water and composting/solidwaste districts. The additional taxes to be collected for these districts will be determined based on actual usage rates after the project is fully developed.

The Village of Upper Nyack is responsible for operations, maintenance and capital costs for improvements to the sewer collection system within the village, however the Upper Nyack pump station is operated by the Orangetown Sewer District and the capital costs for repairs and replacement are split equally between the Orangetown Sewer District and the village of Upper Nyack. The Upper Nyack sewer pump station is somewhat outdated and undersized and has historically had a capacity problem associated with significant inflow and infiltration into the village system during peak wet weather conditions. Presently the Orangetown sewer treatment system has sufficient capacity during dry weather conditions for the additional flow from either the residential or the commercial development.

An Upper Nyack pump station redesign project will be put out to bid in September, 2006, (along with other work for the Orangetown Sewer District) and upgrade improvements should be completed within one year to increase the pump station capacity from its existing 1.4 million gallons per day (mgd) to an upgraded capacity of 2.3 mgd.

The demand for water and sewer services at the Courtyard site would increase to an estimated 8,000 gallons per day (0.008 mgd) for the residential development in comparison to an estimated demand of approximately 6,500 gallons per day for the commercial nine-building plan.

The incremental demand for other services, such as sanitation, parks, recreation, police, fire and ambulance for a 22 lot residential development would not be expected to increase substantially the current level of demand in the Village for these services.

## Growth and Community Services Comments and Responses

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Community character would be less affected by the much lower traffic generation of the residential option in comparison to the commercial option.

### **10.2 Proposed Mitigation**

The Project Sponsor has proposed to conduct and/or fund a smoke test on the sewer line to identify illegal connections to the sewer system, with the expectation that elimination of any such connections would sufficiently offset the sewer effluent generated by the proposed development. The project engineer estimates that the elimination of illegal roof drain connections from one or two average size homes would exceed the estimated peak daily flow from the proposed development. This would improve the capacity of the sewer system, and help to eliminate overflow problems that result from the conveyance of stormflows that the sewer system is not designed to handle.

### **10.3 Comments on the DEIS and Responses to Comment**

**Comment 10-1 (Letter #3, Ronald C. Delo, Town of Orangetown, Dept. of Env. Management and Engineering, 11/5/04):** Please be advised that it may not be prudent to allow the above referenced project to connect to public sewers at this time due to the frequent sewage overflows from the Upper Nyack Pumping Station during peak wet weather conditions. The sewage flows from the above referenced project would be tributary to the Upper Nyack Pumping Station and this additional flow would further exacerbate an already unacceptable condition.

***Response 10-1: Commercial Nine Building and Residential Subdivision Plans - Comment noted. The Project Sponsor will continue to work with the appropriate local authorities to evaluate the ability of the sewer system to service the proposed development and to identify any appropriate mitigation measures that may be applicable after the Village and the Orangetown Sewer District complete their planned system upgrades. As described in the Introduction chapter, the Project Sponsor proposes to conduct and/or fund a smoke test on the sewer line to identify any illegal connections to the sewer system with the expectation that elimination of any such illegal connections would sufficiently offset the sewer effluent created by the proposed development.***

**Comment 10-2 (Letter #3, Ronald C. Delo, Town of Orangetown, Dept. of Env. Management and Engineering, 11/5/04):** The Town is currently doing an engineering evaluation of the Upper Nyack Pumping Station and tributary service area to determine what upgrading and expansion is necessary in order to provide sufficient capacity to handle current and future peak sewage flows.

***Response 10-2: Commercial Nine Building and Residential Subdivision Plans - See Response 10-1.***

**Comment 10-3 (Letter #3, Ronald C. Delo, Town of Orangetown, Dept. of Env. Management and Engineering, 11/5/04):** In addition, an evaluation of the sewers tributary to the pumping station is needed to determine the sources of extraneous water, infiltration and inflow, entering the system and develop a plan to eliminate and/or reduce same.

***Response 10-3: Commercial Nine Building and Residential Subdivision Plans - See Response 10-1***

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**Comment 10-4 (Letter #3, Ronald C. Delo, Town of Orangetown, Dept. of Env. Management and Engineering, 11/5/04):** Until the above referenced evaluations are completed, plans developed and improvements made, any additional connections to the sewer system should be carefully considered in light of the consequences of adding additional sewage flow to this system.

**Response 10-4: Commercial Nine Building and Residential Subdivision Plans -**  
*See Response 10-1*

**Comment 10-5 (Letter #6, Joseph F. Menschik, 209 Wanamaker Lane, 11/8/04):** The document presented shows limited data on the storm drainage system, acknowledges the existence of a sewage system but fails to address the sanitary sewage system except for five lines in the plan which contain inaccuracies and boiler plate language.

**Response 10-5: Commercial Nine Building and Residential Subdivision Plans -**  
*See Response 10-1*

**Comment 10-6 (Letter #6, Joseph F. Menschik, 209 Wanamaker Lane, 11/8/04, Public Hearing, 11/8/04):** It states that the liquid sewage flow from the site will be 7,000 gallons per day. Where does this figure come from? We do not even know the makeup of the tenancy of this project, nor do the developers. It could include restaurants and medical facilities, which would have a greater degree of waste. How many people will populate the site? This might have some bearing too. What is the source of this statistic?

**Response 10-6: Commercial Nine Building Plan -** *The source of this calculation is the NYS DEC Publication "Design Standards for Wastewater Treatment Works" (1988, page 13). The published rate for office use is 0.1 gallon per day per square foot, which was rounded upwards to 7,000 gallons per day for the proposed development.*

**Residential Subdivision Plan -** *The water demand calculated for the residential plan is based on a 100 gallon-per-day-per-person multiplier provided by the Village engineer. Sewer demand would typically be less than the water demand calculated for a residential development, but is conservatively treated here to be equal to the water demand.*

**Comment 10-7 (Letter #6, Joseph F. Menschik, 209 Wanamaker Lane, 11/8/04 Public Hearing, 11/8/04):** The Courtyard people state that waste on the site will be handled by 8" pipes and only implies that pipes of this size service all of Wanamaker Lane. Nowhere does it say what is in the ground on Wanamaker Lane or what is the infrastructure configuration. Wanamaker Lane is a development of 12 residential properties that was started by a developer who folded after constructing four residences. Do you think that developer overbuilt the utility infrastructure? It is for sure that it was not constructed with anything approaching accommodation of a development of the size of the Courtyard at Upper Nyack. If the pipes in the ground on Wanamaker cannot accommodate the load, will Wanamaker have to be dug up to tie dedicated sewage lines to Midland? Will Midland have to be dug up? What will happen to the traffic flow on this important village artery that leads to Nyack Hospital? These are many questions that need to be addressed and have not been.

**Response 10-7: Commercial Nine Building and Residential Subdivision Plans -**  
*The existing sewer pipes in Wanamaker Lane are 8 inch diameter pipes, as are the proposed sewer pipes from the project which would connect the Wanamaker Lane infrastructure. These pipes can accommodate the load from the proposed development. The*

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*traffic on Wanamaker Lane and Midland Avenue would not be impacted by the proposed sewer connection.*

**Comment 10-8 (Public Hearing, Ed Cucksey, 510 Hudson View Road, 11/8/04):** Do they have fire protection in there? What happens if it ever had a fire in there?

There's one entrance to get in and out. Immediately, people would block the entrance and the thing would never have a chance to get the fire trucks in there. I can't believe that. You know, they have one main entrance and an emergency entrance on the other side. If there was a fire there, you can be assured that anybody that was still in there would block those entrances right off and both entrances would be blocked off and nobody could get a fire truck in there.

***Response 10-8: Commercial Nine Building and Residential Subdivision Plans - Each proposed site plan includes a secondary access for emergency vehicles from Route 9W in the northwest portion of the site.***

**Comment 10-9 (Public Hearing, James Sarna, 305 Fairview Avenue, 11/8/04):** [W]hen the sewer system on Midland Avenue, which, currently, has a very difficult time, if not is completely inadequate for the water that runs off now, when that breaks, I ask the developer whose responsibility is that?

***Response 10-9: Commercial Nine Building and Residential Subdivision Plans - The local governments are responsible for fixing any existing inadequacies associated with the municipal sanitary sewer and storm sewer systems. The Project Sponsor would be responsible for addressing any infrastructure inadequacies resulting from the proposed development.***

**Comment 10-10 (Public Hearing, James Gurrere, 306 North Midland, 11/8/04):** Nobody has brought up anything there that's most important thing to all us firemen: What do we do if we have a fire? How big is the water main up here? If I recall, it's a small water main, which Spring Valley Water Company never changed - at least, there, I never saw it.

***Response 10-10: Commercial Nine Building and Residential Subdivision Plans - The project will be connected to existing public water infrastructure and include fire hydrants as shown on the proposed plans. In addition any commercial buildings will be fully sprinklered. The water main to which the project will be connected is a 12-inch diameter pipe. The water supply is sufficient for fire fighting purposes.***

**Comment 10-11 (Public Hearing, James Gurrere, 306 North Midland, 11/8/04):** Also, as I understand, there's only one entrance into this project. We got here 100-foot area of tractor drawing, that's gone with the first piece of apparatus arriving at the scene. Once that's in there, how are you going to fit pumpers in there?

***Response 10-11: Commercial Nine Building and Residential Subdivision Plans - Each proposed site plan includes a secondary access for emergency vehicles from Route 9W in the northwest portion of the site.***



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**Comment 10-12 (Public Hearing, James Gurrere, 306 North Midland, 11/8/04):** I ask you, too, what is the size of the water main? If I remember, correctly, it's a small one up there on 9W. You put one pumper there, you got it, that's it. That means you're gonna have to relay water from Christian Herald Road and, believe me, it's no fun.

***Response 10-12: Commercial Nine Building and Residential Subdivision Plans - See Response 10-10.***

**Comment 10-13 (Public Hearing, James Gurrere, 306 North Midland, 11/8/04):** Also, their sewer - where -- don't forget our sewer line is the storm sewer and sanitary sewer all into one, and, when you start filling that up, you're going to have water flowing near all - all over, everywhere.

***Response 10-13: Commercial Nine Building and Residential Subdivision Plans - Separate sanitary sewer and storm sewer lines are proposed to service the project.***

**Comment 10-14 (Public Hearing, Burton Saunders, 608 North Midland, 11/8/04):** First of all, I want to compliment this gentleman over here. I think you knew more than the engineers. I can't believe that these engineers have a degree, sign a statement, when they don't realize that they're taking a - oh, let me see - a 30-inch line going into a 25-inch.

***Response 10-14: Commercial Nine Building and Residential Subdivision Plans - As described in the drainage analysis and as required by the NYS DEC, the rate of flow discharged from the stormwater system into the existing drainage system will be at or below existing conditions. The rate of discharge from the stormwater management system is not a function of the diameter of the conveyance pipe but rather of the design of the outflow structure and orifice.***

**Comment 10-15 (Letter #12, Douglas Schuetz, Rockland County Department of Planning, 12/23/04):** Projects requiring water main extensions and all public water supply improvements shall be reviewed by the Rockland County Department of Health prior to construction. Plans must be signed and stamped by a NYS Professional Licensed Engineer and shall be accompanied by a completed NYS Department of Health Form 348, which must be signed by the public water supplier.

***Response 10-15: Commercial Nine Building and Residential Subdivision Plans - As indicated in the DEIS, the Rockland County Department of Health is identified as an Involved Agency. The project requires approval from this agency for the proposed water and sewer connections. Approval applications will be submitted with all appropriate plans and forms to the County Health Department following the conclusion of the SEQRA process.***

**Comment 10-16 (Letter #12, Douglas Schuetz, Rockland County Department of Planning, 12/23/04):** Water is a scarce resource in Rockland County; thus proper planning and phasing of this project are critical to supplying the current and future residents of the Towns, Villages, and County with an adequate supply of water. Prior to approval of the proposed project, a letter from the public water supplier shall be issued, indicating that there will be a sufficient water supply during peak demand periods and in a drought situation.

***Response 10-16: Commercial Nine Building and Residential Subdivision Plans - A letter dated March 15, 2004 from United Water New York (UWNY), the water service***

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*provider to the site is provided in Appendix F of the DEIS. This letter indicates that water service can be made available to the proposed development, and does not identify any anticipated problems with the provision of domestic water. Additionally, the Rockland County Health Department (RCHD) must assess the adequacy of UWNY to support the projected demand of realty subdivisions to be serviced by the utility. The RCDH "Procedure for Water Main Engineering Submittals and Installations" is the applicable document for submittal to the Department for RCHD approval of a water main extension to the project site.*

**Comment 10-17 (Public Hearing, Jerry Greenberg, 1/11/05):** [T]he bottom line is, our infrastructure cannot handle the sewage. We can't. We're going to have put in a whole new sewage system just to handle this and that means increased taxes for everyone.

**Response 10-17: Commercial Nine Building and Residential Subdivision Plans -** *The Project Sponsor is working with the Village and the Town of Orangetown officials to ensure that the infrastructure can accommodate the sewage from the proposed development either with or without the planned upgrades to the collection and pumping systems.*

**Comment 10-18 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Page 1-22 of the DEIS states that the sewer line that services Wanamaker Lane is expected to be sufficient to service Courtyard at Upper Nyack.. In their letter of November 5, 2004, the Department of Environmental Management and Engineering of Orangetown (the provider of sewers for Upper Nyack) indicated that they might not allow connection of public sewers because of current overflow problems experienced at the Upper Nyack Pumping Station. In light of this letter, the FEIS should discuss existing conditions and problems experienced by Orangetown at the pump station and outline potential mitigation strategies to address capacity needs for the project, and where funding would be obtained to correct these deficiencies.

**Response 10-18: Commercial Nine Building and Residential Subdivision Plans -** *In response to the November 5, 2004 letter, the Project Sponsor met with Mr. Ronald Delo, PE of the Orangetown Department of Environmental Management and Engineering in December 2004. At this meeting, potential remedies to address the existing sewer overflow problem were discussed. One contributing factor to this problem is believed to be illegal storm drain connections from residential lots to the sanitary sewer line that result in overloading the sanitary sewer capacity during peak wet weather conditions. It was agreed that eliminating illegal storm drain connections would improve the sanitary sewer line capacity at minimal costs. It was also agreed that the additional sewer effluent from the proposed development could be potentially offset by eliminating illegal roof drain connections from just two average sized single-family homes.*

*As described in the letter to Mr. Ronald Delo and Mr. Denis Letson (dated February 24, 2005, see Appendix A), the Project Sponsor proposes to pay for a smoke test to identify any illegal storm drain connections so that such connections can be eliminated to improve the sewer system capacity.*

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**Comment 10-19 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Page 1-23, under 1.6, Growth Inducing Aspects. The second paragraph under this heading indicates that the project will not induce future growth. The third paragraph indicates that “on a cumulative basis,” increased long term demands for goods and services will have a steady multiplier effect in the project area. These two paragraphs seem to contradict each other.

**Response 10-19: Commercial Nine Building Plan -** *The term “future growth” was intended to refer to inducing future residential growth in the community. The reference to “increased long term demands for goods and services” was intended to refer to the local commerce that would be stimulated by the proposed office development, such as purchasing of office supplies, food and beverage, gas, etc..*

*No ancillary service business can be located on the project site without issuance of special permit. The Project Sponsor is not proposing any uses or designing facilities to accommodate any uses other than office use*

*The Project Sponsor cannot specify which, if any, of the uses allowed by special permit might be proposed in the future. In such an event, an application will need to be made to the Planning Board for a special permit at that time. Should this occur, it would be an obligation of the special permit Project Sponsor to provide appropriate information to the Village during the special permit review process.*

**Residential Subdivision Plan -** *This residential alternative is projected to add 80 residents to the Village population, 19 of whom would be school age children. The Village would be required to assess and collect taxes on the developed properties commensurate with its need to provide community services to the additional population. Village-wide demand for most community services, such as sanitation, parks, recreation, police, fire and ambulance would not be expected to increase substantially in relation to the current level of demand in the Village for these services.*

**Comment 10-20 (Letter #33, Shirley Thorman, Town of Clarkstown, 1/28/05):** The DEIS indicates that the project will not induce future growth. In the way of support businesses, little exists along this stretch of State Route 9W, and the project could increase growth potential in the immediate area, which may in turn increase traffic along State Route 9W. Upper Nyack zoning permits office and business offices by right, and other permitted uses, that are allowed by special permit include restaurants, delis, a variety of retail uses, hair salons, etc.; many of which can generate traffic during regular business hours and lunch hours.

**Response 10-20: Commercial Nine Building and Residential Subdivision Plans -** *Comment noted. The project may induce future commercial growth in areas along Route 9W zoned for such uses in the Village. Generally, municipalities zone areas for the uses that they desire to occur in a given area in accordance with their Comprehensive Plan. Commercial uses along Route 9W inherently involve some level of traffic increase, an impact that was obviously contemplated by the Village when the zoning was adopted.*

## **11.0 Alternatives Comments and Responses**

Subsequent to the DEIS public hearing, further discussions with the Village, and recent amendments to the Village Zoning Code, the Project Sponsor prepared a residential subdivision plan for the project site that complies with the zoning amendments. (Refer to the Introduction section for the chronology of the project plans for this site.) A comparison of potential impacts of the residential plan versus the 9-building commercial plan for each comment is presented below.

### **11.1 Comments on the DEIS and Responses to Comment**

**Comment 11-1 (Letter #1, The Village Board of Upper Nyack, 11/8/04, Public Hearing, Mayor Michael Esmay, 11/8/04):** [S]ingle family homes on the property would potentially generate much more revenue at less cost to the Village.

***Response 11-1: Commercial Nine Building Plan - . The Village Board designated this site for Office-Business zoning, in accordance with the Comprehensive Plan, and the commercial plan was developed in accordance with this zoning.***

***Residential Subdivision Plan - The fiscal impact of single-family homes has been evaluated because it is presently a permitted use of the property under the current zoning code. Preliminary calculations suggest that 22 single-family homes would generate substantially more property tax revenue than commercial use of the property.***

**Comment 11-2 (Letter #2, Robert J. DeGiorgio, Lawler, Matusky & Skelly Engineers LLP, 11/8/04):** Consider alternatives outlined in the "Conclusions" section of this review.

***Response 11-2: Commercial Nine Building and Residential Subdivision Plans - Comment noted.***

**Comment 11-3 (Letter #6, Joseph F. Menschik, 209 Wanamaker Lane, 11/8/04, Public Hearing, 11/8/04):** The Planning Board rejected an earlier presentation by the developer and directed them to come back with a plan that had no structures of any kind in the 75' buffer. This is shown in maps 1A & 2A but nothing else including the maps showing the drainage and utilities were modified to fit this requirement. All other maps need reconfiguring but specifically maps C2, 3, and 5 deal with critical issues and if they were not redesigned then the engineering for the site could be severely flawed in regard to drainage.

***Response 11-3: Commercial Nine Building Plan - The nine building alternative that preserves the full 75 foot buffer without any Planning Board waivers is now the proposed plan. A full set of plans is included with the FEIS submission.***

***Residential Subdivision Plan - A full set of plan maps and supporting documentation for the residential alternative will be presented, after Village review, as part of the Final Draft of the FEIS.***

**Comment 11-4 (Letter #6, Joseph F. Menschik, 209 Wanamaker Lane, 11/8/04, Public Hearing, 11/8/04):** The project has to be significantly scaled down, modified, and rethought. The village should give serious consideration to other uses such as single family residences on ¾

acre lots even though the property is now zoned commercial. Many residents would be in favor of this and the homes would have much smaller footprints and impermeable surfaces.

**Response 11-4: Commercial Nine Building Plan - See Response 11-1.**

**Residential Subdivision Plan - See Responses 11-1 and 11-3.**

**Comment 11-5 (Public Hearing, Israel Cohen, 406 North Broadway, 11/8/04):** [B]asically, that's all that I have to say, and if the project is going to be approved, I think that it should be approved in a much more diminutive manner. Should be much more smaller than proposed.

**Response 11-5: Commercial Nine Building and Residential Subdivision Plans - Comment noted.**

**Comment 11-6 (Public Hearing, Jerry Greenberg, 207 Wanamaker Lane, 11/8/04):** There's a serious deficiency in the alternatives chapter of this draft. It does not address a reasonable alternative in terms of a smaller project. It should be presented.

We request that the Planning Board require the developer to come up with a scaled-back model with, maybe, five or six buildings.

**Response 11-6: Commercial Nine Building and Residential Subdivision Plans - The Planning Board specified the alternatives to be analyzed in the DEIS, which included a project with reduced density. The DEIS was accepted by the Planning Board as complete and satisfied the adopted scope.**

**Comment 11-7 (Public Hearing, Deb Krikan, 204 Glenbrook Road, 11/8/04):** The other thing that I really feel that can be -- that we, as a community for our Board, whatever we can help them with as far as engineering and legal help, we must do that because one thing that's very clear after all these issues tonight is that I do not believe any commercial zoning could take place in that 11 acres, and if there's anything that we can do for a referendum to turn it to a residential zoning -- which could be, environmentally, safe, we would much rather have homes than have commercial parking lots.

So, whatever we can do to help you guys and gals to be able to do a referendum and turn that commercial zoning to a residential, we would much rather have families and children than parking lots.

**Response 11-7: Commercial Nine Building and Residential Subdivision Plans - Comment noted. The Village Board has the authority to make changes to the zoning designation of the subject property. The proposed uses conform with the current zoning regulations that apply to the property. See Responses 11-1 and 11-4.**

**Comment 11-8 (Public Hearing, Burton Saunders, 608 North Midland, 11/8/04):** [T]hese people have spent a lot of money purchasing the land, going these surveys, you can't expect them to go away. They're not gonna disappear. They're entitled to make a profit. I'm going to suggest that we give them the profit, float a bond issue and make this a park.

**Response 11-8: Commercial Nine Building and Residential Subdivision Plans - Comment noted. The Village government has not expressed any interest in purchas-**



*ing this site for preservation. Such action would be contrary to the Village decision to zone this property for other uses, as recommended in the Village Comprehensive Plan.*

**Comment 11-9 (Letter #12, Douglas Schuetz, Rockland County Department of Planning, 12/23/04):** Figure 4.2, which illustrates the 9-building plan, shows 10 buildings and 424 parking spaces. This must be corrected.

***Response 11-9: Commercial Nine Building Plan - Comment noted. Full-size maps 1A and 2A in the DEIS showed the 9 building site plan. The revised nine building plan is also shown in the figures provided in Chapter 1 of this FEIS.***

***Residential Subdivision Plan - This comment is not applicable to the residential alternative.***

**Comment 11-10 (Letter #12, Douglas Schuetz, Rockland County Department of Planning, 12/23/04):** It should be noted that Table 4-1 states the 9-building plan will allow for 60,759 square feet of office use and the site development plan for the 9-building plan states that 65,882 square feet of office use would be available. Additionally, the grading plan for the 9-building plan states that 409 parking spaces are shown, when there are only 348 shown on the grading plan. These inconsistencies shall be corrected.

***Response 11-10: Commercial Nine Building Plan - Comment noted. These inconsistencies have been corrected (see revised full size plans). The nine building plan has 348 parking spaces (versus 441 spaces with the 10 building DEIS plan).***

***Residential Subdivision Plan - This comment is not applicable to the residential alternative.***

**Comment 11-11 (Letter #14, Charles Christian, 12/16/04):** I have read a letter concerning the cost the village will incur due to sewage, rubbish and other things to be examined. What will the taxes from this development be? Will it be in the Village's favor?

***Response 11-11: Commercial Nine Building Plan - As described in the DEIS the project will have a beneficial impact to the Village taxpayers. The development is projected to generate \$102,881 in annual tax revenues to the School District with no associated costs. The School District currently represents more than 66 percent of the annual tax bill paid by the Village residents each. This tax revenue will directly benefit all tax payers in the Village. By comparison, the portion of the annual taxes that goes to the Village is about six percent.***

*The development is projected to generate approximately \$9,000 in annual tax revenues to the Village. The project is not expected to generate significant costs to the Village government. Garbage collection will be through a private carter and not the Village. The Project Sponsor is committed to working with the Village to ensure that the drainage and sewage from the facility can be accommodated by the existing infrastructure without significant problems or expenses. The project is not expected to generate any other significant expenses to the Village.*

***Residential Subdivision Plan - A 22-unit residential development would generate approximately \$29,249 in annual property tax revenues to the Village and \$231,526 to the School District, based on projected assessed evaluations.***

*Courtyard at Upper Nyack FEIS*

*This residential alternative is projected to add 80 residents to the Village population, 19 of whom would be school age children. The Village would be required to assess and collect taxes on the developed properties commensurate with its need to provide community services to the additional population. Village-wide demand for most community services, such as sanitation, parks, recreation, police, fire and ambulance would not be expected to increase substantially in relation to the current level of demand in the Village for these services.*

*These revenue projections do not include taxes paid to the sewer, water and composting/solidwaste districts. The additional taxes to be collected for these districts will be determined based on actual usage rates after the project is fully developed.*

**Comment 11-12 (Letter #14, Charles Christian, 12/16/04):** If businesses are not allowed on that property then I presume homes might be nice there. If each house was built on approximately 1/3 acre that would mean approximately 20-25 homes with driveways and access roads. There would be less cutting of trees. Families with children attending our schools would move in. Of course proper drainage would have to be taken into consideration. I wonder how many cars there would be from this type of development as well as the revenue from taxes. Which project will be best for the aesthetic charm of Upper Nyack, as a family community, as well as the revenues generated by taxes?

***Response 11-12: Commercial Nine Building Plan - See Responses 11-1 and 11-4.***

***Residential Subdivision Plan - See Responses 11-1 and 11-3.***

**Comment 11-13 (Letter #15, Liza Altman, 12/15/04):** I know that Rockland is a small county, and that this side of the river used to be quite a port and industrial area. But surely the commercial plot on Birchwood and 9W can be turned to better advantage than an office park. Can't we get a grant from some conservation organization or agency to purchase the as yet undeveloped ground from its corporate owners and gently prune it into a wilderness trail (perhaps with a special bicycle path for those hardy hill-climbers)?

***Response 11-13: Commercial Nine Building and Residential Subdivision Plans - Comment noted. The Village government has not expressed any interest in purchasing this site for preservation. Such action would be contrary to the Village's decision to zone this property for other uses, as recommended in the Village's Comprehensive Plan.***

**Comment 11-14 (Letter #16, Walter and Florence Katzenstein, 12/15/04):** President Bush has signed the Highlands Conservation Act authorizing \$110 million to preserve open space in a four-state area including Rockland County. Upper Nyack is a village without even one public park (Hook Mountain is a state park). I strongly urge you to consider buying this property for a passive park. Merely trimming the trees would open up a beautiful river view. A small parking lot and a few benches would add so much to the charm of the Village.

***Response 11-14: Commercial Nine Building and Residential Subdivision Plans - Comment noted. See Response 11-13.***

**Comment 11-15 (Letter #19, Burton and Lucille Saunders, 11/11/04):** The alternative to development is to purchase the land for preservation or a park.

***Response 11-15: Commercial Nine Building and Residential Subdivision Plans - Comment noted. See Response 11-13.***

**Comment 11-16 (Public Hearing, Burton Saunders, North Midland, 1/11/05):** I think the only way we can do it, in my uneducated opinion, is to get grants and buy it.

***Response 11-16: Commercial Nine Building and Residential Subdivision Plans - See Response 11-15.***

**Comment 11-17 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Section 4.4 Minimum 75 Foot Buffer Plan [Alternatives], page 4-5 discusses a nine building plan, and the Figure on 4-2 shows ten buildings. Please clarify.

***Response 11-17: Commercial Nine Building Plan - Comment noted. Full-size maps 1A and 2A in the DEIS showed the 9 building site plan. The revised nine building plan is also shown in the figures provided in Chapter 1 of this FEIS.***

***Residential Subdivision Plan - This comment is not applicable to the residential alternative.***

**Comment 11-18 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Section 4.4 Minimum 75 Foot Buffer Plan [Alternatives], starting on page 4-5. The comparison of the impacts as it relates to the proposed development is not very well substantiated. Please provide the following information:

- A. Impact on Land: calculate land disturbance, estimate fill and cut, and number of trips generated from the site.
- B. Impact on Water: provide a preliminary drainage study to aid in the comparison of the two development scenarios, as requested in the LMS letter dated November 8th, 2004.
- C. Impact on Plants and Animals: estimate areas that will remain undisturbed.
- D. Impact on Transportation: revise plan to illustrate traffic generation from site, and estimate traffic impact on all intersections shown in the original report that have no build scenarios of LOS "C" or worse.
- E. Impact on Community Services: estimate sewer and water usage from site, based on Revised Plan.

Please provide a comparative analysis in a tabular form in the FEIS.

***Response 11-18: Commercial Nine Building and Residential Subdivision Plans - As previously noted, to reduce impacts, the Project Sponsor is now proposing a residential subdivision plan in favor of the ten building commercial plan. As compared to the ten building plan in the following table, the proposed alternatives have less impacts in each of above listed categories.***

<b>Comparison of Revised Nine Building FEIS Plan and Ten Building DEIS Plan</b>			
	<b>22-Lot Residential Plan</b>	<b>9 Building FEIS Plan</b>	<b>10 Building DEIS Plan</b>
Acres of land disturbed	6.90	7.75	9.50
Cut and Fill (cubic yards)	1,404	5,179	31,625
No. of truck trips	232 *	862 *	5,270 *
Drainage	See text below **		
Acres of land undisturbed	4.29	3.44	1.69
No. of site generated trips (per hour)	AM: 25 PM: 27	AM: 146 PM: 148	AM: 159 PM: 161
Sewer effluent/ water usage (gpd)	8,000 gpd	6,456 gpd	7,000 gpd
* Assumes 12 cubic yard truck and 100% round trips			
** The size of the drainage system varies as a function of the amount of disturbance and impervious cover provided on the developed site as compared to the existing underdeveloped site. By constructing nine buildings in lieu of ten buildings, thereby reducing impervious coverage by approximately 10%, the size of the detention/water quality basin may be reduced slightly though not significantly. This is because a detention/water quality basin will still require a fore bay, a means of access, a wet pond, an outlet structure and other facilities which do not vary in direct proportion to the amount of impervious cover. Similarly, the volume stored within a basin, and the hydraulic characteristics of the outlet structure (two key design parameters), do not vary proportionally with impervious cover. For all practicable purposes, there is no significant difference between the basins required for the ten building versus nine building alternatives.			

**Comment 11-19 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Section 4, Alternative Section: Please describe an alternative that includes no disturbance to the wetlands as they are currently delineated, as recommended by the Army Corps of Engineers in their letter of May 27th, 2004, and with no discretionary waivers granted by the Planning Board.

**Response 11-19: Commercial Nine Building Plan -** *If the entire wetland remained undisturbed, the site plan proposed by the developer would look similar to Alternate Layout (Figure 4-1) as presented in the DEIS. Under this plan, the project size would remain the same or increase based on a 2 building, 2-story configuration or potentially increase in size by 50 percent to approximately 100,000 square feet if a third story was added. The height limitation of 35 ft. permits a 3 story commercial building.*

*The two buildings shown in Figure 4-1 were designed by the Project Sponsor's engineer to conform with the Village's regulations pertaining to building length and size. Building A would have a footprint of 150 feet by 110 feet. Building B would have a footprint of 150 feet by 133 feet.*

*In order to accommodate the additional parking as required under the OB zone and to make up for the loss of parking proposed in the wetlands area and in increasing the buffer area to 75 ft. from the 50 ft. shown on Figure 4-1, underground parking would be provided under both buildings.*

*It was the Project Sponsor's belief that the Village of Upper Nyack and the Village Planning Board strongly preferred the smaller, gabled roof "village scale plan" with landscaped courtyards to the larger, flat roofed, commercial buildings.*

**Residential Subdivision Plan** - *The residential alternative includes no disturbance to the wetlands as they are currently delineated and requires no discretionary waivers granted by the Planning Board.*

**Comment 11-20 (Letter #26, Gisele and Matt Shelley, 2/1/05):** While our preference, and those of all of our neighbors, is that we have no development along that road, if there must be one, we would like it to be as small, unobtrusive and environmentally friendly as possible.

**Response 11-20: Commercial Nine Building Plan** - *Comment noted. The project proposes 60,759 square feet of floor area, which is less than 25 percent of the +/- 243,900 square feet of density permitted under the recently revised Zoning Code.*

**Residential Subdivision Plan** - *This residential alternative is a mitigation concept for the project site prepared in response to comments made on the DEIS plan from the public and municipal officials. This alternative would develop the site in a more environmentally sensitive manner, particularly with regard to compatibility with the local residential neighborhoods.*

**Comment 11-21 (Letter #30, Mary and Steve Beck, 1/14/05):** Courtyard is one proposal for the property on 9W, but there will probably be others, as there have been many in the past. It seems to us that the problem must be addressed once and for all by changing the zoning on this property so that any permitted development is severely limited in how much of the property can be paved.

**Response 11-21: Commercial Nine Building and Residential Subdivision Plans** - *Comment noted. The zoning on this parcel has been modified in the past to conform with the articulated goals of the Village as expressed in the adopted Comprehensive Plan.*



## **12.0 Air Resources Comments and Responses**

Subsequent to the DEIS public hearing, further discussions with the Village, and recent amendments to the Village Zoning Code, the Project Sponsor prepared a residential subdivision plan for the project site that complies with the zoning amendments. (Refer to the Introduction section for the chronology of the project plans for this site.) A comparison of potential impacts of the residential plan versus the 9-building commercial plan as related to the project impacts associated with air resources for each comment is presented below.

### **12.1 Potential Impacts**

Both the nine building commercial and the 22 unit single-family residential development would have generally similar short-term construction-related emissions impacts. The residential development, however, would generate significantly less traffic after completion than would a commercial development and therefore produce less vehicle-related emissions in the long term.

### **12.2 Proposed Mitigation**

This alternative would generate less traffic-generated emissions in the long term than would the commercial development and no long-term air quality impacts related to project generated traffic are expected to result from this conventional subdivision development.

The creation of dust and the release of vehicle emissions during construction would generate the most significant contributions to air quality impacts from the proposed development. Dust controls methods would be identified and enacted as part of the project Soil Erosion and Control Plan and will include provisions to limit the extent of soils exposed during each phase of the construction plans as well as methods such as dampening exposed soils and cleaning of roadways to reduce the potential for the generation of dust from the site.

The Project Sponsor is willing to ensure that construction trucks utilized at the site meet all applicable air emission standards. To the extent practicable, "no idling" instructions for construction and delivery vehicles will be in effect while vehicles are parked at the site. During construction, it will be the responsibility of the construction manager to ensure that truck idling is avoided as practicable.

Potential air quality impacts related to the generation of dust may result from the removal of vegetation and trees. The proposed residential project would result in the disturbance of a smaller area of currently wooded land, all of which would be ultimately stabilized by conversion to lawns and landscaped areas, and roads, driveways and buildings. The potential impacts caused by vegetation removal during project construction would be temporary and mitigated throughout the construction phase. Following project construction, unvegetated areas on the site currently exposed to wind and stormwater would be either developed or landscaped, thereby eliminating the long-term potential for dust generation from the project area.

**12.3 Comments on the DEIS and Responses to Comment**

**Comment 12-1 (Letter #12, Douglas Schuetz, Rockland County Department of Planning, 12/23/04):** The DEIS states that depending on the size of the construction truck used, the site will generate anywhere from 3,162 to 5,270 truck trips in a 12-18 month period. Given this high number of truck trips, the Village should consider requiring the applicant to use clean diesel fuel trucks and equipment with particulate traps to reduce the fine particulate matter in the air, which has been found to be associated with serious health problems such as asthma, heart attacks, chronic bronchitis, and premature death. These types of vehicles are currently required to be used in New York City.

***Response 12-1: Commercial Nine Building and Residential Subdivision Plans - As previously noted, the Project Sponsor is now proposing alternative plans which substantially reduce the amount of excess cut and fill on the site to as low as 1,404 cubic yards and will significantly reduce the number of construction truck trips associated with removing excess fill from the development to as low as 232 trips (See Response 2-3). As requested in the above comment, construction trucks typically utilize diesel fuel. The Project Sponsor is willing to ensure that construction trucks utilized at the site meet all applicable air emission standards.***

**Comment 12-2 (Letter #12, Douglas Schuetz, Rockland County Department of Planning, 12/23/04):** Use of construction equipment and trucks shall be limited or avoided on designated ozone action days.

***Response 12-2: Commercial Nine Building Plan - Comment noted. The Planning Board will take this concern into consideration during the approval process. The Board is not aware of any federal, state or county air quality regulations that require construction activity to be limited or avoided during ozone action days. The revised nine building site plan reduces the number of truck trips by 85 percent as compared to the ten building DEIS plan.***

***Residential Subdivision Plan - The above response is also applicable to the residential alternative.***

**Comment 12-3 (Letter #12, Douglas Schuetz, Rockland County Department of Planning, 12/23/04):** The “no idling” signs to be posted to instruct delivery professionals to turn off their vehicle engines while making deliveries at the site seems reasonable. However, the County Planning Department questions how this will be enforced. We also question if the “no idling” will be applied to heavy construction equipment and trucks during the construction phase of the project?

***Response 12-3: Commercial Nine Building and Residential Subdivision Plans - Like many laws, the no idling signs will largely require voluntary compliance. When at the site, it will be the responsibility of the property manager to instruct delivery trucks to turn off engines when idling trucks are encountered. During construction, it will be the responsibility of the construction manager to ensure that truck idling is avoided to the extent practicable.***

**Residential Subdivision Plan** - *The above response is also applicable during the construction phase of the residential alternative.*

**Comment 12-4 (Letter #12, Douglas Schuetz, Rockland County Department of Planning, 12/23/04):** The DEIS does not state who will be responsible for ensuring that the proper mitigation measures, described on page 3.3-9, are performed when dealing with dust prevention and control measures during the construction phase.

***Response 12-4: Commercial Nine Building and Residential Subdivision Plans -***  
*The Project Sponsor's on-site construction manager will be responsible for overseeing the implementation of all construction-related mitigation measures, including the SWPPP. Construction activities and adherence to mitigation measures will be subject to monitoring and inspection by the Village (or representatives of the Village) and the NYS DEC.*

**Comment 12-5 (Public Hearing, Sally Bell, 110 Birchwood Avenue, 1/11/05):** It's not good for the proliferation of pollution.

***Response 12-5: Commercial Nine Building and Residential Subdivision Plans -***  
*Based on the information provided in the DEIS, the project is not expected to result in significant adverse air quality related impacts.*

**Comment 12-6 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Section 3.3.2, page 3.3-6, under the title Short-term Construction related Emissions [Impact on Air]. Because of the proximity of surrounding homes on three sides of the property, the Planning Board should consider limiting construction to an eight-hour workday during weekdays, excluding legal holidays, to lessen the impact of construction noise and emissions to a more acceptable level.

***Response 12-6: Commercial Nine Building and Residential Subdivision Plans -***  
*Comment noted. The Planning Board will consider limiting the hours of construction if warranted prior to the adoption of the Findings Statement.*

**Comment 12-7 (Letter #22, Robert Geneslaw, Robert Geneslaw Co., 2/1/05):** Section 3.3.3, Mitigation Measures [Impact on Air], page 3.3-9. The first sentence under the heading Dust Prevention and Control Measures states "Methods to control dust include minimizing the area of the site which is subject to disturbance at any one time (five acres)." What does the "(five acres)" mean?

***Response 12-7: Commercial Nine Building and Residential Subdivision Plans -***  
*The NYS DEC SPDES General Permit #02-01 require no more than five acres of a site be unstabilized at any one time without advanced approval from the NYS DEC. As indicated in the DEIS, the project requires coverage under the NYS DEC SPDES General Permit.*

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**Comment 12-8 (Letter #33, Shirley Thorman, Town of Clarkstown, 1/28/05):** With the up to 5,270 truck trips for removing soil and debris, and other construction equipment on the site, air quality will be affected by exhaust emissions and dust generated during construction. In addition to prohibiting idling of delivery vehicles, construction equipment should also be limited.

***Response 12-8: Commercial Nine Building and Residential Subdivision Plans - As previously noted, the Project Sponsor is now proposing alternative plans which reduce the amount of cut and fill on the site and will significantly reduce the number of construction truck trips associated with the development. As requested in the above comment, construction truck idling will be limited to the extent practicable.***