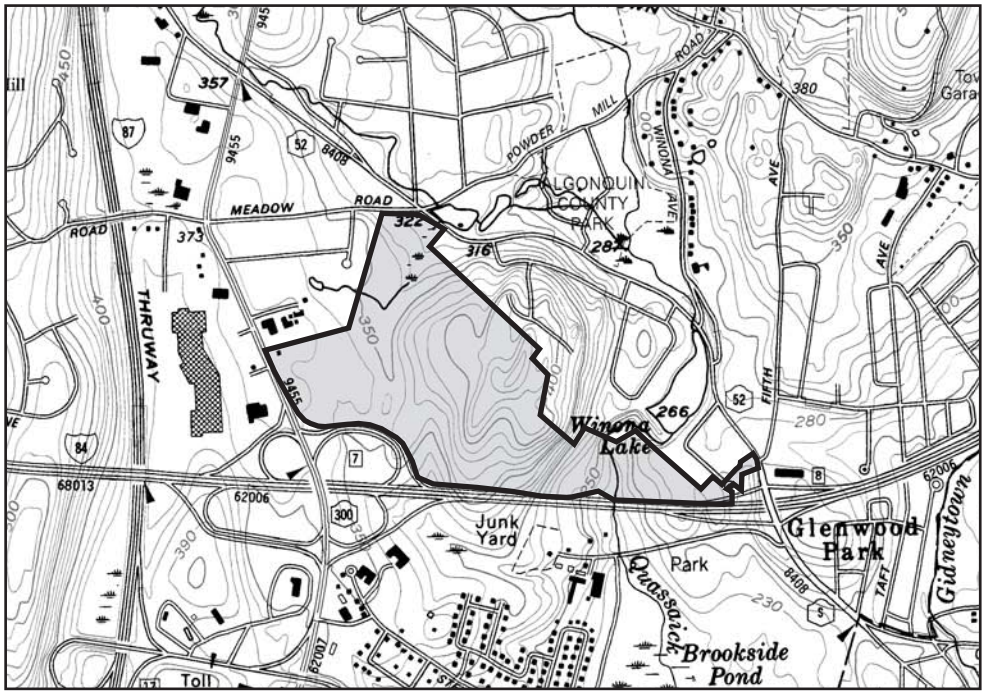
FINAL ENVIRONMENTAL IMPACT STATEMENT

VOLUME I



THE MARKETPLACE AT NEWBURGH

TOWN OF NEWBURGH
ORANGE COUNTY, NEW YORK

Prepared by:
Tim Miller Associates, Inc.

Project Sponsor:
Wilder Balter Partners, Inc.

Lead Agency:
Town of Newburgh Planning Board

March 15, 2007

THE MARKETPLACE AT NEWBURGH
FINAL ENVIRONMENTAL IMPACT STATEMENT (FEIS)

Volume 1 of 2 - Comment/Response

Project Description: The applicant proposes the construction of a commercial shopping center consisting of approximately 850,000 square feet on 127.6 acres of primarily vacant land within the Interchange Business (IB) zoning district opposite and east of the Newburgh Mall.

Location: The project site is located at the northeast quadrant formed by the intersection of NYS Route 300 with Interstate Route 84 in the unincorporated area of the Town of Newburgh, Orange County, NY. Access to the site would be via NYS Route 300 and NYS Route 52.

Tax Map Identification: (Tax Map/Block/Lot Numbers): 60/3/49.22; 60/3/49.1; 60/3/41.3; 60/3/48; 60/3/41.4; 60/3/49.21; 71/4/7; 71/4/8; 71/4/9; 71/4/10; 71/4/11-14; 71/5/9; 71/5/15,16; 97/1/13.3; 97/1/20.3.

Lead Agency and Contact Person: TOWN OF NEWBURGH PLANNING BOARD
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Attention: Tim Miller, AICP
(845) 265-4400

Lead Agency Acceptance Date: March 15, 2007

March 15, 2007

LIST OF PRIMARY CONSULTANTS

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Site Engineer/ Stormwater Management:	DIVNEY TUNG SCHWALBE One North Broadway, 14th Floor White Plains, NY 10601 (914) 428-0010 Contact: Mark Gratz, P.E.
Architect/Site Planning:	MSA COLLABORATIVE 23 Nepperhan Avenue Elmsford, NY 10523 (914) 345-1333 Contact: Ian Levy, RA, AIA
Architect/Life Style Center:	ADD Inc. 210 Broadway Cambridge, MA 02139 (617) 234-3100 Contact: Larry Grossman, RA, AIA
Traffic Engineer:	JOHN COLLINS ENGINEERS, P.C. 11 Bradhurst Avenue Hawthorne, NY 10532 (914) 347-7500 Contact: Philip Grealy, P.E.
Surveyor/Wetlands:	THE CHAZEN COMPANIES 356 Meadow Avenue Newburgh, NY 12550 (845) 567-1133 Contact: Martin Bayard
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Land Use Attorney:	JACOBOWITZ & GUBITS 158 Walden Avenue Walden, NY 12586 (845) 778-2121 Contact: Larry Wolinsky, Esq.

Marketplace at Newburgh
Final Environmental Impact Statement
Town of Newburgh, Orange County, New York

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1.0 INTRODUCTION

This Final Environmental Impact Statement (FEIS) provides responses to agency and public comments received by the lead agency on the Draft Environmental Impact Statement (DEIS) prepared for the Marketplace at Newburgh project, Town of Newburgh, New York. The FEIS has been prepared in accordance with Section 8-0101, et. seq. of the Environmental Conservation Law and the regulations promulgated by the New York State Department of Environmental Conservation (NYS DEC) thereunder, which appear at 6 NYCRR, Part 617, NY State Environmental Quality Review Act ("SEQRA").

The Applicant prepared a Draft Environmental Impact Statement (DEIS) in response to a Positive Declaration issued by the Town of Newburgh. The DEIS scope was established by a scoping outline developed by the Newburgh Planning Board, acting as lead agency, in cooperation with all other involved agencies and interested parties. The Scoping Outline was adopted February 10, 2005.

The DEIS was originally submitted to the Town of Newburgh on November 23, 2005. Based upon comments received from the lead agency, the applicant submitted a revised DEIS to the Planning Board on January 3, 2006; additional revisions were made and the DEIS submitted again on April 4, 2006. The lead agency reviewed the DEIS for adequacy with respect to its scope, adequacy and content for the purpose of public review, and issued a Notice of Completion for the DEIS and a Notice of SEQRA Hearing on May 4, 2006. The Planning Board conducted a Public Hearing on the DEIS on June 1, 2006. This hearing was continued on June 29, 2006, and the open public comment period was extended to July 31, 2006. The accepted scope outlining the information to be covered in the DEIS is provided in Appendix A of the DEIS.

The FEIS consists of this volume and accompanying set of drawings and the DEIS, which is hereby incorporated by reference into this FEIS.

Since the review of the DEIS, the applicant has modified the proposed project and the Site Plan by incorporating elements of several of the alternatives discussed in the DEIS.

1.1 Summary of Proposed Action

The project sponsor, Wilder Balter Partners, Inc. ("WBP"), proposes to construct an approximately 850,000 square foot open air shopping center development on an 127.6 acre project site located at the northeast quadrant formed by Interchange 7 of Interstate Route 84 with New York State Route 300 (a.k.a Union Avenue).

Ninety eight (98%) percent of the Marketplace site is zoned IB (Interchange Business) and all the buildings and parking would be constructed in the IB zoned portion of the property. The proposed secondary access from Route 52 in the vicinity of Exit 8 on I-84 would be constructed though a small portion of the site, some of which is zoned R-3. Revisions to the site plan move this road further to the south, onto land controlled by the New York State DOT, so as to expand the distance between this access road and existing residences on Wintergreen Avenue and Brookside Avenue.

The open air retail center site would contain two shopping formats. The area closest to Route 300 would support approximately 200,000 square feet of single-level retail space and would be

designed as a "lifestyle center". Lifestyle centers, the fastest growing segment of the retail industry, are designed in a neighborhood or village setting, and contain higher end, smaller shops (under 20,000 square feet) with an emphasis on clothing, dry goods, specialty shops, and restaurants. In the event that the third access to the site can not be built due to permitting issues and the project is scaled back, the applicant has committed to building at least 100,000 square feet in the lifestyle center. Such a modification would require Planning Board review of an amended site plan.

Pedestrian, brick-paver walkways, landscaping, varied facades, as well as a mix of small shops all work together to contribute to the ambiance of a lifestyle center. This lifestyle center component will also provide the lower scale, visual appeal from Exit 7 on I-84 and from Route 300 that the Town Planning Board and their consultants have requested.

The remainder of the site would be occupied by larger retail tenants housed in attached buildings or in a standalone format, totaling up to 650,000 square feet of gross floor area.

Vehicular access to the Marketplace at Newburgh would be via three access roads. The main access road would intersect with NYS Route 300 at the existing intersection of Route 300 with the Newburgh Mall's southerly access driveway. The road is designed as a boulevard road for approximately 2,500 feet of its length. At the boulevard's intersection with Route 300, the road has been designed with six lanes, fully signalized and coordinated with other signals on Route 300 to maximize the level of service for vehicles on Route 300. Four lanes will provide egress from the site, with a right turn lane, a through lane and two left turn lanes onto Route 300. The ingress will have two lanes entering, with a third lane splitting off to access the lifestyle center. The primary access boulevard would be reduced to two lanes approximately 1,500 feet into the Marketplace site, past the lifestyle center as it bisects the proposed buildings and parking areas in the central and eastern portion of the development.

The primary concerns that generated comments to the DEIS included the overall amount of grading and disturbance on the site, visual impacts and proximity to existing residences, the amount of proposed impervious surface, loss of vegetation and wildlife habitat, development on steep slopes, and traffic resulting from the project and potential traffic impacts to Routes 52 and 300.

1.2 Proposed Modifications to the Site Plan

Revised Project Layout

The revised Site Plan (attached in Volume 2) includes relocation of the access road to Route 52 at Fifth Avenue by moving it from 200 to 500 feet farther to the south, adoption of the expanded buffer plan for those proposed buildings adjacent to Hilltop Avenue (with a minimum vegetated buffer of 75 feet and minimum building setback of 125 feet), and adjustments to the internal road layout that will result in a decreased impact to regulated wetlands of 0.70 acres (from 1.75 acres to 1.05 acres). A revised layout for the Lifestyle Center is also proposed, utilizing a "Main Street" design rather than the circular road layout originally proposed.

Another significant modification involves the re-alignment of the five way intersection at Route 52 and Meadow Avenue. Based on comments from the Town's traffic consultant and the New York State DOT, the applicant is now proposing the construction of a roundabout at this location. The use of the roundabout, as shown on the revised site plans, creates smoother

traffic flow and reduces wetland impacts in that area. Wetland impacts have been reduced from 1.75 acres in the DEIS to 1.05 acres in the current plan. The roundabout will be constructed concurrent with the installation of the site accesses from Route 300 and Route 52 at Fifth Avenue.

1.3 SEQRA Background

In accordance with SEQRA, this FEIS provides written responses to substantive and relevant comments on the DEIS received by the lead agency during the public review period, including oral comments made at the June 1 and June 29, 2006 Public Hearing. Complete copies of all written comments received on the DEIS are included in Appendix A. Comments received from Town consultants after the public review and during the preparation of the FEIS are also included in Appendix H. A transcript of the Public Hearing is provided in Appendix B.

During the course of the DEIS public comment period, the following letters on the DEIS were received from various agencies and interested parties:

Letters of Comment Received in Response to Marketplace at Newburgh DEIS		
Letter No.	From	Date
1	David Church, Commissioner of Planning, Orange County, Goshen, NY	July 21, 2006
2	William Schuster, Ph.D., Cornwall, NY	September 8, 2006
3	William Schuster, Ph.D., Cornwall, NY	August 10, 2006
4	Lawrence G. Biegel, Environmental Analyst I, NYS DOEC, New Paltz, NY	June 8, 2006
5	Edwin J. Garling, Garling Associates, Goshen, NY	June 19, 2006
6	Anthony Marino, County Legislator, Town of Newburgh District # 17, NY	July 31, 2006
7	Mark C. Taylor, Attorney, New Windsor, NY	July 28, 2006
8	David Church, Commissioner of Planning, Orange County, Goshen, NY	July 28, 2006
9	Timothy P. Pillsworth, Chief, Winona Lake Fire Engine Co., Newburgh, NY	June 1, 2006
10	Glenn T. Boucher, NYS DOT, Poughkeepsie, NY	June 29, 2006
11	Darrin J. Scalzo, Division Permit Coordinator, NYS Thruway Authority, Suffern, NY	July 31, 2006
12	Eric L. Gordon, Keane & Beane, White Plains, NY	July 20, 2006
13	Eric L. Gordon, Keane & Beane, White Plains, NY	July 31, 2006
14	Nathaniel J. Parish, Parish & Weiner Inc., Elmsford, NY	July 31, 2006
15	Nathaniel J. Parish, Parish & Weiner Inc., Elmsford, NY	July 28, 2006
16	J. G. Barbour, Ecological Consultant, Saugerties, NY	July 21, 2006
17	Nancy Neuman, Sandstone Environmental Assoc., Highland Park, NJ	July 28, 2006
18	Katherine J. Beinkafner, Ph.D, Mid-Hudson Geosciences, Clintondale, NY	July 28, 2006
19	CEA Engineers, Monroe, NY	May 31, 2006
20	John Parker, Attorney for Save Open Space, Elmsford, NY	July 31, 2006
21	John Parker, Attorney for Save Open Space, Elmsford, NY	May 30, 2006
22	John Parker, Attorney for Save Open Space, Elmsford, NY	July 20, 2006
23	Sandra Kissan, Newburgh, NY	July 31, 2006
24	Jeanette V. Tully, Newburgh, NY	July 25, 2006
25	Diana Krautter, Newburgh, NY	June 1, 2006
26	Jeanette V. Tully, Newburgh, NY	June 2, 2006
27	Warren S. Craig	July 31, 2006

28	Dorothy and Al Schorno, Newburgh, NY	June 1, 2006
29	Sibylle M. Tulve, Newburgh, NY	July 24, 2006
30	Eleanor Doderer, Newburgh, NY	July 25, 2006
31	Michael E. Ghihas, Vaughn Ghihas, Newburgh, NY	July 25, 2006
32	The Torelli Family, Newburgh, NY	July 20, 2006
33	Patricia Randall, Newburgh, NY	July 27, 2006
34	Kate Lindemann, Newburgh, NY	July 27, 2006
35	Gloria Oehmne, Newburgh, NY	July 27, 2006
36	Sal & Josefa Mandarino, Newburgh, NY	July 22, 2006
37	Michael Murphy, Newburgh, NY	June 14, 2006
38	John Gebhards, Newburgh, NY	June 1, 2006
39	Lisabeth Stelz Riach, Newburgh, NY	July 31, 2006
40	Roberta Boyea, Newburgh, NY	July 30, 2006
41	Wendy Lofaro, Newburgh, NY	July 11, 2006
42	Muriel Mead	July 10, 2006
43	Laura Kohlmann, Newburgh, NY	May 29, 2006
44	Ross & Carolyn Topliff, Newburgh, NY	July 13, 2006
45	Wayne Booth, Newburgh, NY	March 30, 2006
46	Lisabeth Stelz Riach, Newburgh, NY	March 28, 2006
47	Christopher & Nicole Jones, Newburgh, NY	May 28, 2006
48	Ruth L. Pierpont, Director, NYS Office of Parks, Recreation and Historic Preservation, Waterford, NY	June 15, 2006

The FEIS is arranged in sections, with comment summaries and responses arranged by subject area similar to the DEIS. A comment summary, in some cases, may incorporate more than one individual comment on the same subject, followed by a response to that comment. The sources of each comment are referenced. The format of the comments and responses is as follows:

Comment # (Source): Comment summary text.

Response #: *Response text.*

2.0 PROJECT DESCRIPTION COMMENTS AND RESPONSES

Comment 2-1 (Letter # 9, Timothy P. Pillsworth, Fire Chief Winona Lake, June 1, 2006): How much frontage is the Winona Lake Engine Company # 2 expected to loose? We CANNOT lose any frontage to our apron. When our ladder is pulled from the bay, the front bumper is at the edge of the road while the rear is at a the face of the building. With any lose of frontage will turn an already difficult working condition and make it unsafe. No loss of frontage will be accepted.

> ***Response 2-1:*** *There will be no loss of road frontage on the northeast side of Route 52 in front of the Winona Lake Engine Company building. Coordination with the Winona Lake Engine Co. No. 2 will be undertaken during the final design phase to insure minimal interruption to the facility and to ensure that vehicles can adequately enter and exit the station. The current plans are to construct a roundabout at this location, while maintaining shoulders and providing additional road width. The roundabout will be constructed concurrent with the installation of the site access from Route 300 and the site access from Route 52 at Fifth Avenue. The construction of the roundabout will improve existing conditions and mitigate traffic impacts from the project.*

Comment 2-2(Letter # 26, Jeanette V. Tully, 23 Patton Road, Newburgh, New York, June 2, 2006): Because of the huge project and the number of homes adjacent to the project I emphatically ask that Wilder Balter Partners, Inc. form a committee of at least ten (10) homeowners so that in good faith they can discuss the work as it is progressing. I suggest this because there will be many issues as the construction is being done. Otherwise, homeowners will be phoning and actually bog down the developer, and it will be very frustrating for them not to be able to talk to someone.

At last nights meeting you heard from various homeowners, some not close to the parking lots gave pros and cons about The Marketplace. I feel it's imperative and in good faith by the developers to have a committee of homeowners.

> ***Response 2-2:*** *The Planning Board and the Town Board will consider whether the formation of a committee is productive as a means of ensuring that the public is kept informed about the progress of the site activities and as a forum for concerns. The applicant will discuss with the Town Board the conditions of a "developer's agreement", which could include the hiring of a site monitor, at the applicant's expense, to act as a liaison between the developer and the Town and to handle complaints or concerns of the neighbors. The applicant has held a number of informational meetings for interested members of the public outside of the SEQRA process, and has expressed a willingness to do so throughout the construction process. Other ideas, including the use of a website with weekly status reports, and a regular meeting of Town and other agency representatives will also be considered by the Town and Planning Boards.*

Comment 2-3 (Public Hearing, Mike Edelstein, 26 Murray Avenue, Goshen, New York, June 1, 2006): What we see in the project description is the idea of a lifestyle center as a bone for talking about traditional neighborhood values. Again in reality the project has many aspects that degrade or destroy community values rather than create them, and in fact the lifestyle center is interestingly enough occupying the area of the site furthest away from the residential neighborhood and its "pedestrian friendly area" of the shopping area you would have to drive to, it can't be walked to because it's not proximate to the closest neighbors. That raises the

question of whether the contention in the Impact Statement there's protection and enhancement of existing community character is in fact true. Also a question as to whether or not the intent to serve only people within a fifteen-mile radius is accurate given the intention beyond the lifestyle center to have big box stores that have a draw that is much wider, and we have along Route 84 the possibility of a Danbury-Newburgh kind of strip which is reminiscent of other areas where we have this kind of commercialization.

Response 2-3: *Many residents have commented during the SEQRA process of their preference to not have the retail project in their "backyard", so direct pedestrian connections to existing residential areas are not proposed. This is consistent with most shopping trends. The Urban Land Institute and International Council of Shopping Centers have ascertained that the typical shopper will not park more than 300 feet from a store and will often wait for a nearby spot rather than walk. Furthermore, if they are already parked and are going to a second store the majority of shoppers will move their car to a closer parking space if the next store is more than 250 feet away. Thus, in the applicant's opinion, while the lifestyle center may not be in close walking distance to many of the nearby residents, the "feel" of the lifestyle center, as an open air pedestrian shopping plaza with shopping and dining opportunities, enhances neighborhood character. The applicant has committed to building sidewalks to Route 300 (for future connection to the Newburgh Commons site) and to Route 52 at the proposed roundabout, as well as an internal network of sidewalks if shoppers do want to walk from store to store.*

Current trends encourage people to walk more within a shopping complex by creating a conducive environment that is pedestrian friendly. This is one intention pursued by the "Lifestyle Center". In most cases the mindset of a typical shopper is to move the car closer to their final shopping departure largely due to the weight of the goods they plan on procuring. The nature of the "Lifestyle Center" allows for some greater flexibility in these distances because the tenant mix has more restaurants and stores that sell smaller specialty goods. Economically, the lifestyle center shops are dependent on drive by traffic and road visibility from Route 300, Route 84, and the main Marketplace entry road. To isolate the lifestyle center at the far end of the Marketplace without such visibility and traffic flow may make this portion of the Marketplace unmarketable to such tenants.

The commentator is correct in speculating that some of the shoppers will be coming from more than 15 miles away. Existing traffic traveling along the Thruway to and from New York and Albany, or going to and from Connecticut may visit the site. However the vast majority of the consumers are existing residents in the area that are currently traveling outside Newburgh to find their wares. The retailers hope to capture more local shopping dollars that are currently being spent outside the County. With large retail centers along Route 9 in Dutchess County, ranging from Fishkill north through Poughkeepsie, and the retail and commercial center in Middletown including the Galleria at Crystal Run, there is every reason to expect that most of the shoppers will be in a close radius to Newburgh.

Comment 2-4 (Public Hearing, Laura Kohlmann, 18 Wintergreen Avenue, Newburgh, New York, June 1, 2006): One question I had as I read the Market Place DEIS was how well this project benefited the citizens of our town. As a resident who lives near the site it's clear to me that the project will not benefit my neighborhood. It has already caused a number of residents

to sell their properties in an attempt to get the most out of them before the project comes in and devalues the homes in the area.

Response 2-4: *The Marketplace project clearly has the potential to be a financial benefit to the Town of Newburgh by increasing the ratable tax base without increasing the number of school children, increasing employment opportunities for the Town and surrounding areas, and providing additional shopping options and opportunities. The project is projected to yield over 40 million dollars in total tax revenue. Over three million dollars goes to the local schools and community services.*

One of the key driving forces behind the project as proposed is to offer a strong sense of place, creating a location for people to meet and greet each other as they are going to dine and or shop. Currently there are no locations in the Town of Newburgh where a family or couple could go out, park their car, walk to shopping, sit outside while having dinner underneath an umbrella, window shop on the way back to their car and bump into their neighbors who are on their way to get some ice cream with their children. This will be offered by the Marketplace and certainly could enhance the community.

There is no evidence to support the notion that retail projects depress residential values. It is more likely that the opposite would be true. Simply stated, some people wish to be isolated and travel greater distances for retail services. However, multiple others prefer to have restaurants, entertainment, and shopping conveniently located to their home. In the neighborhood surrounding the Marketplace, some people have sold their homes. There are also residents who have made the most of an opportunity to sell at a premium price to a developer looking for additional land. In any event, there has been buyers for the homes sold and it appears that the homes have all sold at healthy market values.

Comment 2-5 (Letter # 24, Jeanette V. Tully, 23 Patton Road, Newburgh, New York, June 2, 2006): Lifestyle Center The developers refuse to tell the public what will be going into this center. Since they know most of the big box stores planning to move into the Marketplace, it's not clear why such a mystery prevails.

If the rumor is true that the developers feel the LC would be a meeting place for residents to spend time at, what will be there? As one resident said at the meeting the other night we do not need a center to visit and talk with other residents. I ask what will be in the center, tables, chairs, restrooms, food counters, ATM, computer game machines, a lottery ticket sale booth, etc.?

Response 2-5: *At this time, the applicant does not have signed commitments from tenants, although they have been in negotiations with a number of large national retailers. No leases have been signed. Costco, Best Buy and JC Penney have expressed interest in the Marketplace. There are numerous other retailers that expressed serious interest in Newburgh and as these agreements become more concrete the developer will advise the Town.*

Most of the stores in the lifestyle center would be under 15,000 square feet and their commitment to the Marketplace is dependent on finalization of leases with some of the larger retailers. However, the applicant has made clear the concept of the lifestyle center. It is likely to include a bank with an ATM; outdoor eating areas with benches and tables and specialty shops. Restrooms will be within the retail establishments. Final

design and layout of the lifestyle center will be completed with input from the Planning Board during final site plan approval. While some residents may not be interested in the more social atmosphere envisioned for the lifestyle center, it is part of the Comprehensive Plan to have such a place, and it is the developer's intention to bring this concept to the Town of Newburgh.

Comment 2-6 (Letter # 24, Jeanette V. Tully, 23 Patton Road, Newburgh, New York, June 2, 2006): However, if this project goes through as designed or scaled down, the homeowners should be informed every step of the way regarding the comprehensive work on this land, demolition of trees etc. And the building phase. A committee of 10 homeowners should be involved on a regular basis, having a committee will avoid homeowners making several phone calls to the Town's departments and the developer each day.

Homeowners should be given an umbrella insurance policy to cover any damage or inconvenience to their daily lives, as well as possible overnight hotel stays if the electricity or water is not available.

They should also be covered up to five year after the Marketplace is open for business.

I feel with the tax breaks the Marketplace will receive for 10 years and the rents they will be charging the stores, this request is not unreasonable.

Response 2-6: *See response to Comment 2-2.*

WBP will enter into an agreement with the Town Board (the "developer's agreement") to address or repair damage to personal or real property of adjacent homeowners. This would include damage to wells, utilities, or other property improvements caused by the construction of the Marketplace. The details of this agreement will be worked out prior to final approval of the project, and will include a protocol for assessing damage to drinking water wells both for yield and water quality. This discussion will consider the chain of command for assessing damage and at what point the various mitigation measures may be required. To secure its obligation under this agreement, WBP would post a bond in a satisfactory and agreed upon amount to include the identification and remediation of those problems, and ensure such repair and restoration work to neighboring properties occurs promptly.

Comment 2-7 (Public Hearing, Laura Kohlmann, 18 Wintergreen Avenue, Newburgh, New York, June 1, 2006): It will also apparently add vermin to our backyards. There is a management plan in the DEIS for pest control.

Response 2-7: *Comment noted. Large scale retail requires a plan for the consideration of pest management should a problem occur.*

Comment 2-8 (Public Hearing, Elizabeth Stelz-Riach, Fern Avenue, Newburgh, New York, June 1, 2006): The site plan. Pedestrian friendly? Not from what I've read. There's going to be a lot of traffic congestion it appears. It needs to be reworked. The placement of the big buildings, the placement of the lifestyle center, there's no connection to it.

Response 2-8: *See responses 2-4 and 2-5. Section 4.0 of the DEIS includes a plan for pedestrian connections between the big box retail and lifestyle centers, the Newburgh*

Mall and Route 52. There will be opportunities for shoppers to use pedestrian connections if they wish. At this time, all pedestrian access is internal to the site. Discussions with the Town Board will include consideration of pedestrian connections along each of the site access roads. The current pedestrian circulation plan is shown in Section 3.10 as Figure 3.10-6. Based on comments from the public and DOT, pedestrian connections off the site may not be desirable, but are shown on the current site plans.

Comment 2-9 (Public Hearing, Elizabeth Stelz-Riach, Fern Avenue, Newburgh, New York, June 1, 2006): What is a lifestyle center? What is it? How is it a focal point of the development? What will be the nature of the establishments? How many? How does this Board, Mr. Ewasutyn, review and analyze it when there's nothing specific given to us so far? The first wave of tenants, let's say they had two years leases. What happens when they go away, they turn around, they don't want to lease the stores any more? What comes in? What are the plans to watch that, or are there plans? Overall the lifestyle center in my opinion is way too ambiguous.

Response 2-9: *A lifestyle center is an alternative to malls and traditional big box power centers. Many mall tenants were looking for an alternative to the high rents and growing common area maintenance costs of a mall. In malls large department stores often get their space for free and do not contribute to the common area maintenance. This left the smaller retailers to pay for all the cost of the lighting, air conditioning, and cleaning of the enclosed areas, beyond the costs associated with real estate taxes, property management and security fees and rent.*

Eventually a group of these tenants got together with a few developers, led by The Gap, and started tenanting unanchored open air sites. Rents were much lower since there were no department stores getting a free ride. In addition there were no large enclosed common areas to maintain. The early "Lifestyle Centers" were smaller than they are today, typically found in extremely affluent areas, and the tenants were made up of high end restaurants, and top of the line retailers.

Over the past decade the "Lifestyle" concept has morphed to include a wider variety of retailers. The centers have grown in size and included retailers that were never typically found in a mall setting. The concept of being in an open air shopping center, even in the colder climates, has continued to maintain momentum with consumers and the retailers. Retailers prefer the lower rents, the lower common area maintenance charges, the better visibility, the easier store operation and accessible rear loading, and the better tenant mix.

The consumers have also shown that they prefer the convenience and the atmosphere of the open air shopping center and or Lifestyle Center with their shopping dollars. Over the last ten years more shoppers gravitated to the open air shopping centers citing convenient parking and choice of stores and the open environment as reasons.

As the Lifestyle center concept has matured, it is now commonly matched up with a power center to create what some are calling an Omni Center, which is the combination of a lifestyle center and a power center. A "Power Center" was a category of development that was born in the 80's. It effectively is the opposite of a lifestyle center which is all small tenants without any anchors. A Power Center was all anchors, also known as

large format retailers, without any smaller tenants, and on occasion a few restaurant pads. The combination of the two of these have created what is seen in the Marketplace, a lifestyle center with a version of a power center to create what the industry now refers to an Omni Center, or large scale open air center.

The goal of a lifestyle center is to bring together a critical mass of small shops and stores in what is typically a re-creation of a main street setting with limited parking in front of the stores and with pedestrian friendly connections. Typical lifestyle tenants are under 15,000 square foot and include restaurants, dry goods, boutique stores, men's and women's clothing and jewelry shops, and phone stores. While these particular retailers are not new in shopping centers, the main street pedestrian atmosphere, enhanced by the main street design and diversified architectural facades improves the shopping experience. This creates a place where people want to shop (discretionary shopping and people who enjoy the shopping experience) vs. a place where people need to shop for daily or weekly household needs.

Leases are typically a minimum of 10 years with multiple options. There is turnover when new retail concepts prove to be more profitable than obsolete concepts. As stated above, the applicant has not disclosed the names of the retailers and restaurants at this time because negotiations have not been completed.

Comment 2-10 (Public Hearing, Michael Torelli, 12 Valentine Road, Newburgh, New York, June 1, 2006): When we talk about potential taxes, everyone should understand that a balanced growth is necessary. Take a look at your next Planning Board agenda. I think there's fifteen items and they're all residential projects. When you take a balance to outweigh some of this, positive commercial development creates jobs and lowers residential tax burdens.

Response 2-10 *Comment noted. The applicant provided projections in the DEIS regarding the tax revenue and employment benefits of this proposal (Section 3.7).*

Comment 2-11 (Public Hearing, Jeff Wilkinson, June 1, 2006): Are there other sustainable green architecture implements? Why couldn't there be a different type of mall where those components like using green growth which would help mitigate stormwater and also other aspects. This could be modeled for something very different. It could be amazing.

Response 2-11: *Regarding energy usage, the project will be constructed in full conformance with NYS Energy Code requirements. The applicant is proposing several methods of stormwater treatment and mitigation, including the use of created wetlands, pervious pavement on four acres of the parking lot, use of bottomless culverts at stream and wetland crossings, and the use of stormwater infiltration for providing water to landscape islands. It is also noted that the detention basins will be planted with native wetland vegetation, and when mature will emulate the functions of a wetland, including water quality treatment and wildlife habitat.*

Comment 2-12 (Letter # 32, The Torelli Family, 12 Valentine Road, The Anderson Family, 8 Stori Road, The Anderson Family 34 Adonna Drive, Newburgh, New York, July 20, 2006): The Marketplace Mall project is exactly where it needs to be--at the intersection of two major interstates. The property is zoned for this use and has been marketed for sale for over 5 years. The growth on this corridor is expected and welcomed by many residents of the T.O.N. and Orange County.

Response 2-12: *Comment noted.*

Comment 2-13 (Letter # 7, Mark C. Taylor, Attorney for the Town, Rider, Weiner & Frannkel, P.C., 655 Little Britain Road, New Windsor, New York, July 28, 2006): The applicant should be cautioned that the Town Board is continuing with the implementation of recommended Zoning Code amendments under the recently adopted Comprehensive Plan Update which may have an effect on its project's layout and design.

Response 2-13: *Comment noted. As of the date of this FEIS, no changes to the code have been adopted that impact the design of the project. The project as currently configured meets the existing code.*

Following a detailed discussion with Town consultants regarding the proposed buffer law, the applicant has prepared a plan that meets the requirements of the new law. Buildings C, D and 1 have been moved to the south to meet the proposed 150 foot setback, and a 100 foot landscaped zone is provided between the edge of pavement and the property line. In addition, the fence along this property line has been raised to 10 feet high, and extends a minimum of 50 feet beyond the ends of the buildings on either side. It is noted that in the original proposal the proposed eight foot high fence also extends several hundred feet in each direction past the ends of the buildings. Any final site plan for approval before the Planning Board must meet the requirements of the Town buffer law.

Comment 2-14 (Letter # 1, Orange County Department of Planning, July 21, 2006): We encourage the "Lifestyle Center" concept as it promotes a downtown type concept for retail in a smaller, pedestrian friendly type of environment. However, the development should be constructed this way throughout the entirety of the site, in keeping with the concept of "New Urbanism" or "Smart Growth." Parking should be placed in the rear of the structures with ample provisions for walking with benches; street furniture and places were people can relax, similar to the function of a town square, with pedestrian connectivity between buildings. The same buildings mentioned above also should be relocated and moved closer to the sidewalks, of the proposed main road that runs through the site, and the parking lots could be placed behind the buildings, and this would continue the main street planned for the "Lifestyle" section.

Response 2-14: *Comment noted. In the applicant's opinion, the site is best served with a combination of lifestyle center and more conventional "big box" development; a site this large could not function in such a fashion as described in this comment. Please see the response to Comment 2-9, above.*

Comment 2-15 (Letter #1, Orange County Department of Planning, July 21, 2006): As recommended under "Design guidelines for Highway Commercial Development" in the Orange County Comprehensive Plan and due to the enormous amount of proposed parking and impervious surface, trees should be placed between every ten or twenty parking spaces in the lots, This could help shade the parking lot in the summer and create less of a continuous expanse of asphalt.

Response 2-15: *The applicant is proposing to plant over 1,500 trees and shrubs on the site, with more than half of them in the islands within the parking lots.*

Comment 2-16 (Letter #1, Orange County Department of Planning, July 21, 2006): We encourage the sidewalks that are proposed. However, it is unclear why some intersections and street connections do not have crosswalks beyond the lifestyle section periphery. Crosswalks should be installed all over the proposed development, and should incorporate raised or bricked speed tables for traffic calming measures.

Response 2-16: *Final locations of crosswalks will be determined during final site plan review, but the applicant has no objection to their use and the use of traffic calming measures where appropriate. The attached landscape plan shows the locations of crosswalks, bus stops and other pedestrian features (see also Figure 3.10-6 in the Visual Impacts section).*

Comment 2-17 (Letter #1, Orange County Department of Planning, July 21, 2006): Angled parking on one side of the street, or the complete removal of all parking is recommended for the "Lifestyle Section". This would create more of a traditional main street ambiance, or creating a pedestrian only section could also be a concept to explore. Wider sidewalks, as a result of parallel parking would create space for al fresco dining, cafes and other attractive amenities in popular main streets across the country.

Response 2-17: *The site plans submitted with this FEIS show angled parking in the area of the lifestyle center. Other such site plan details will be considered during final site plan review.*

Comment 2-18 (Letter #1, Orange County Department of Planning, July 21, 2006): Signage should be consistent in design and appearance.

Response 2-18: *Comment noted. The DEIS presented a concept for building and site design which included examples of signage. The Planning Board, as part of the final site plan review, has an architectural review process and will review all sign locations and color.*

Comment 2-19 (Letter #1, Orange County Department of Planning, July 21, 2006): While some neighbors may not prefer sidewalks, we recommend that if possible, sidewalks be connected to neighboring developments to the Marketplace site.

Response 2-19: *Based on discussions with the Planning Board and Board consultants, the applicant is now proposing sidewalks to Route 300 and the new Route 52/Meadow Avenue roundabout. The locations of these sidewalks and crosswalks are shown on Figure 3.10-6, and may be subject to further refinements as a condition of site plan approval.*

3.0 ENVIRONMENTAL CONDITIONS

3.1 SOILS AND TOPOGRAPHY COMMENTS AND RESPONSES

Comment 3.1-1 (Letter #26, Mrs. Jeanette V. Tully, June 2, 2006): Any construction, blasting and work by any developer's workers should be done with all precautions and professionalism and I do expect from The Marketplace.

> ***Response 3.1-1:*** *Comment noted. The DEIS set forth measures to be implemented during construction.*

Comment 3.1-2 (Letter #4, Lawrence G. Biegel June 8, 2006): As indicated (p3.4-6), a waiver will be required from our Division of Water from the maximum five acre soil disturbance limit at any one time normally needed to obtain the required coverage under the Department's SPDES "General" permit for Stormwater Discharges. Such waivers are not readily granted, and are discouraged. Such a waiver would require intensive stormwater treatment measures which appear to be addressed in section 3.4 but must still meet DEC approval. For guidance in this matter, our primary contact is Mr. Patrick Ferracane at our White Plains sub-office at (914) 428-2505.

> ***Response 3.1-2:*** *The Applicant submitted on June 29, 2006 a letter to Patrick Ferracane of NYSDEC Division of Water requesting a waiver of the Department's 5-acre soil disturbance limit. Supporting documentation submitted by the Applicant included a draft of the project's Stormwater Pollution Prevention Plan and associated site plan drawings. These documents must be approved by DEC for coverage under the SPDES General Permit For Stormwater Discharges from Construction Activity (Permit No. GP-02-01.) The Applicant is in the process of finalizing the site plan and obtaining additional data at the request of the Department to assist its on-going review of the Applicant's request.*

Comment 3.1.3 (Public Hearing, Katherine Beinkafner, 1003 Route 44/55, Clintondale, New York, June 1, 2006): The relationship of blasting to the wells. The discussion in the DEIS did mention the possibility of change in quality of water in the wells or possibly some physical damage, rock cave ins. He did not mention about the possibility of contamination. It's my understanding that some blasting agents are toxic materials, things that you would not want to sample in your drinking water. So I think we need to know a lot more about the blasting plans and what agents they're going to use.

Also with respect to the promises given in the DEIS about doing a pre-blasting survey and guaranteeing that if there's a problem with a well the project would deepen the well, or drill another one, or put in filters, I think more than the twenty wells that were mentioned within the 500-foot radius, I think all twenty-eight wells that are mentioned in the DEIS should be candidates for that pre-blasting survey, and they should be looked at very carefully.

Also I think you need to have a formal agreement, a legal agreement between the project people and the citizens who have these bedrock wells on their property that are their water supplies.

> ***Response 3.1-3:*** *The applicant can find no evidence to confirm that blasting, if undertaken according to the protocol outlined in the DEIS, will impact the adjacent*

neighborhoods. However, Wilder Balter Partners, Inc. (WBP) is prepared to enter into an agreement and provide adequate financial security, via a bond to the Town, to repair any damage to personal or real property. See Response 2-6.

All blasting companies are licensed and are required to provide significant insurance coverage. Where state or local law provides and where the insurance provider requires, the applicant intends to use blasting mats along with other blasting techniques to minimize the potential for damage to adjacent properties.

Any pre-blasting well monitoring will occur in conformance with all laws, regulations and ordinances. The applicant also proposes to install any water filters on water lines to prevent temporary sedimentation occurring after blasting. WBP has requested all potentially affected neighbors provide all well information including type of well, date well drilled, depth of well, water flows from each well, repair history of wells and pumps, etc. To date, the adjacent homeowners have not provided WBP with any of this information. Appendix J of this FEIS includes the proposed Well Response Protocol.

Comment 3.1-4 (Public Hearing, Ellen Jane Gonyea, 26 Linden Drive, Newburgh, New York, June 1, 2006): Blasting. The blasting needed to displace a portion of this 128 acres will impact three specific neighborhoods. Mitigation offers. Pre-blasting inspection, use of blasting mats and well monitoring of those within 500 feet. Increase this to 2,000 feet, get the other few houses involved. ... Make installation of particular filters for water. ... Provide residents with safe off-site lodging during the blasting. Guarantee restitution for damages by prearranging the insurance riders.

Response 3.1-4: *The blasting mitigation plan, which was included in the DEIS, addresses the issues brought up by home owners in the vicinity of the subject property. The applicant is prepared to adhere to those conditions that may reasonably be imposed in connection with blasting protocol, however, the protocol presently set forth is consistent with good engineering practice and has been commonly applied in Orange county and other New York suburban areas. As stated in the blasting mitigation plan, the applicant and/or the applicant's contractor will take responsibility for any damage to homes or private wells directly related to the blasting proposed to be conducted on the property. Please see Appendix J of this FEIS for additional details.*

Comment 3.1-5 (Public Hearing, Michael Murphy, 6 Hilltop Avenue, Newburgh, New York, June 1, 2006): All the homes have been here for approximately fifty years. Most of the homes have plaster walls and block foundations that are subject to possible severe damage. Many of these homes are actually resting on the same ledge that they are blasting.

Response 3.1-5: *See blasting protocol and mitigation measures set forth in the Draft EIS.*

Comment 3.1-6 (Public Hearing, Katherine Beinkafner, 1003 Route 44/55, Clintondale, New York, June 1, 2006): On page 3.4-3, bedrock wells are installed into metamorphic gneisses and granitic gneisses found locally. First of all, there are no gneisses or granitic gneisses in this part of the county that I'm aware of.

Elsewhere on another page, page 3.1-3, the site is underlaying by normanskill formation which is described as shale, artalyte and till stone. That's true as far as I know but there is certainly

discrepancies. Apparently the DEIS was not prepared carefully nor was anyone reading various parts to make sure it all agreed.

> ***Response 3.1-6:*** *Both entries in the DEIS have been checked and have found to be correct. The entry on page 3.1-3, within the Soils and Topography section of the DEIS, describes the primary geology on the project site. Page 3.4-3, within the water resources section of the DEIS, describes the geology in the vicinity of the homes on Hilltop Avenue. The information for both these sections was obtained from the Geologic Map of New York, Lower Hudson Valley Sheet (Fisher, 1970). This map indicates that the normanskill formation is present on the property and extends west of the property. It also indicates a small, localized area of metamorphic gneisses and granitic gneisses just northeast of the subject property, where the homes on Hilltop Avenue are located.*

Comment 3.1-7 (Public Hearing, Nat Parish, Consultant to Newburgh Mall, June 29, 2006): ...we're going to put in a technical report that establishes that there have not been adequate geotechnical studies with respect to the impact of blasting. You're going to have rocks from as much as forty feet. In an area such as this you have to have a geotechnical expert who will say not only what we're going to try to protect but what are the impacts in terms of migration, in terms of wells, in terms of noise, what's the duration of the impact, that's the decibel level, what are the impacts to the wells and other construction impacts. That must be done by a qualified geotechnical expert. I don't think all of the construction period impacts, the period of construction, have been adequately described in this report.

> ***Response 3.1-7:*** *Geotechnical migration is not an understandable term of usage. Duration and noise from blasting was addressed in the Draft EIS as was potential impact on local wells. The geotechnical studies done in connection with ascertaining areas of blasting were prepared using contemporary engineering protocol. Construction impacts, potential duration of construction and related matters were also addressed in the DEIS.*

Comment 3.1-8 (Letter #29, Sibylle M. Tulve, 107 Highland Avenue, Newburgh, New York, July 24, 2006): There are many issues that need to be addressed. However, rather than devote a lengthy paragraph for each, I will simply list some of my concerns and follow each with a simple statement as to why it is of concern.

Blasting

- Potential hazard to existing wells and septic systems
- Potential destruction of the aquifer supplying these wells
- Potential damage to buildings and foundations near blasting site
- Additional pollutants to air and surrounding community from "fallout"

> ***Response 3.1-8:*** *The above concerns were addressed in the DEIS and the blasting mitigation plan provided in the DEIS. There is a very low potential for blasting to adversely affect existing wells and aquifers. Appendix J presents a response protocol in the unlikely event of well damage. This was discussed in detail in the DEIS. There is little likelihood of septic systems impacts as properly constructed systems are placed only in soil and the blast vibration is not conveyed sufficiently through soils to adversely affect septic fields. Damage to buildings has been addressed in the Draft EIS. Dust control as also been addressed.*

3.2 WETLANDS COMMENTS AND RESPONSES

Comment 3.2-1 (Letter #4, Lawrence G. Biegel, June 8, 2006): 3. The potential exists that the two larger on-site federal wetlands (9.7 and 4.36 acres respectively) could cumulatively qualify for state regulation (over 12.4 acres), if interconnected and in certain proximity. Staff of our Bureau of Habitat is currently investigating this matter. If confirmed, a major re-configuration may be required as the filling of 1.76 acres of state-regulated wetland for a shopping center may not be acceptable and may not meet the applicable standards for permit issuance (Part 663.5(e)). Also, Article 24 regulates all disturbances within 100 feet of the boundary of a state regulated wetland. As indicated (p. 3.2-7), if found to be acceptable, on-site mitigation would be required but at a greater ratio than the Army Corps of Engineers ratio indicated (i.e., "two for one") and with performance bonding.

> ***Response 3.2-1***: *Mr. Doug Gaugler of the DEC Region 3 Bureau of Habitats visited the site after this letter was written and confirmed that the aforementioned wetlands are not regulated by the New York State DEC. A copy of his correspondence is included in Appendix A.*

Comment 3.2-2 (Public Hearing, John Parker, Counsel, Save Open Space, June 1, 2006): Wetlands. There are wetlands on that site. There's no question about that. I was able to contract with a highly qualified, well known environmental expert in this community, and you know what he said to me about that. This is what he said, and I'm going to quote, "I can give you no formal opinion about the accuracy of the on-site delineation without site access and the inspection of the subject wetlands."

> ***Response 3.2-2:*** *The DEIS confirms in numerous locations the existence of wetlands on the site. These wetlands were flagged by a certified professional wetland scientist from the Chazen Companies and were confirmed on site by the Army Corps of Engineers, as indicated in their correspondence dated November 30, 2005, which was included in the DEIS (Appendix D). As noted above, the DEC has also walked the site and confirmed that the wetlands do not meet the requirements for State jurisdiction. There is no jurisdictional question about the accuracy of the delineation or extent of the wetlands on site.*

Comment 3.2-3 (Public Hearing, James Barbour, 5 Fish Creek Road, Saugerties, New York as read by Maggie Mayer, 10 Wintergreen Avenue, Newburgh, NY, June 1, 2006): 4.88 acres of wetlands to be filled could be important breeding sites for amphibians including special concerned species such as Blue Spotted Salamander and Jefferson Salamander. This is not acknowledged in the DEIS. These isolated wooded wetlands are commonly known as vernal pools and are critical habitats for many animal species. The New York State DEC has requested that the New York State legislature act to protect vernal pools through out the state. Vernal pools are protected in the State of Massachusetts

> ***Response 3.2-3:*** *The DEIS notes the possibility that spotted salamander (Ambystoma maculata) and wood frog (Rana sylvatica), both of which are vernal pool breeding species, could potentially utilize this site, although none were observed in the early work done for the DEIS. During the Planning Board process that led to the acceptance of the DEIS, site surveys continued, including observations of standing water on the site during the period from February to early May of 2006.*

As described in greater detail in Section 3.3, Aquatic and Terrestrial Ecology, amphibian breeding surveys were conducted as part of continuing site surveys within the site wetlands in April of 2006. Areas with potential vernal hydrology were identified in Wetlands A and B.

Generally, vernal pool habitats are small, and have seasonal hydrology. The pools begin to flood in late fall/early winter, and remain wet until mid-summer. This cycle is very important for several reasons. The seasonal nature of this hydrology, where there are annual dry periods in the late summer and fall, prevents the establishment of fish populations that would eat the eggs of the amphibian species that breed in the pool. These species include the ambystomid or mole salamanders (Jefferson, blue spotted and yellow spotted salamanders) and several frog species (particularly wood frog and green frog).

The length of the season is also very important. As mentioned above, too long a season may result in the establishment of a fish population that would eat all eggs and/or the hatched larvae. Too short a season could result in desiccation of the pool before the larvae have developed to a stage that can survive on land.

Surveys were conducted on cool, wet evenings on March 25, April 1 and April 8, 2006. These dates coincided with surveys done by Tim Miller Associates on other sites where amphibian breeding was observed in the area. Surveys were conducted between 8 pm and 11 pm. Air temperature was around 30 degrees F.

While some pockets of water remained, no breeding amphibians were observed in Wetland B. During subsequent site walks in early and mid May, the pockets were dry, indicating that the hydroperiod for these pools was too short to sustain egg laying, hatching and larval development. It is noted that one young-of-the-year spotted salamander was observed in Wetland B during a site walk with a town representative on September 1, 2006.

In Wetland A, a single pair of spotted salamanders (Ambystoma maculatum) were observed on the evening of April 1, 2006. Calls of wood frogs and spring peepers were also noted, although no breeding individuals were observed. On April 8, 2006, spermatophores were observed attached to submerged leaves, but no individual salamanders, egg masses or larvae were observed. By way of reference, a vernal pool that was surveyed during the same three evenings in southern Ulster County had many salamanders and egg masses recorded, so the surveyors are confident that the timing of the surveys was appropriate.

Based on these surveys, it can be reasonably concluded that while some breeding by vernal pool amphibians was observed on the site (in Wetland A), the breeding occurs at a very low level and the site is not an important breeding habitat for the observed species. The two species observed, spotted salamanders and wood frogs, are not state-listed species of concern. Moreover, the portion of Wetland A where the salamanders were observed will not be disturbed as part of this proposal. The applicant has volunteered to follow up the 2006 surveys with additional field work in Spring of 2007. *Should these surveys result in the observation of State species of special concern in areas of proposed disturbance, the observed individuals will be re-located to the known habitat areas in the undisturbed portion of Wetland A. Based on the previous*

surveys, it is considered unlikely that this will be necessary. The revised site plan provided with this FEIS shows a reduction in wetland impacts from the DEIS plan, and saves additional area adjacent to the wetland from encroachment.

***Comm*ent 3.2-4 (Public Hearing, Ross Topliff, 30 Algonquin Drive, Newburgh, New York, June 29, 2006)**: The wetlands provide a valuable function in flood control for stormwater runoff. Part of the wetlands regulations that many people may not be aware of is there's a provision in both the State and Federal law that allows for smaller areas to be protected that are "of unusual local importance." That's from both the State and Federal law. Based on the information that I have found through my searches, I believe that these wetlands can be protected under that provision.

Response 3.2-4: *Jurisdictional determinations have been completed by both Federal and State representatives and they determined those wetlands on the subject site that warranted protection under application regulations.*

The DEIS noted that the primary function of Wetland B is the storage of stormwater runoff, although there is a relatively small watershed that drains to the wetland. The mitigation to this functional impact will be the creation of stormwater basins that meet the State criteria for storage and water quality treatment. These basins will also be landscaped as wetlands, although the applicant will take no jurisdictional credit for them as mitigation. When the vegetation has matured, they will provide many of the same functions as a wetland.

As described in the DEIS, the impacts to Wetland A will occur only because of construction of the site access road. With this FEIS the applicant has provided a site plan that further minimizes the impact to wetland area and provides additional mitigation area to increase the mitigation ratio.

Regarding "wetlands of unusual local importance", Title 6 of Environmental Conservation Law states that any person may nominate such an area for this purpose by providing evidence that the wetland contains any Class I characteristic as described in the law. Specifically, this includes[1]*:*

1) a classic kettlehole bog;
2) resident habitat for an endangered or threatened animal species;
3) it contains a threatened or endangered species;
4) it supports an animal species in abundance or diversity unusual for the State or for the region of the State in which it is found;
5) it is tributary to a body of water which could subject a substantially developed area to significant damage from flooding or from additional flooding should the wetland be modified, filled or drained;
6) it is adjacent or contiguous to a reservoir or other body of water that is used primarily for public water supply, or it is hydraulically connected to an aquifer which is used for public water supply.

The site wetlands do not meet any of these characteristics.

[1] Article 6, Environmental Conservation Law, Part 664.5.

Comment 3.2-5 (Public Hearing, Laura Kohlmann, 18 Wintergreen Avenue, Newburgh, New York, reading a report from CEA Engineers, P.C., June 29, 2006): Our review of the wetlands sections of these documents and related maps and the aerial photographs from other sources suggest that some changes to the delineation of on-site wetlands may be warranted. However, no formal opinion about the accuracy of the on-site delineation can be offered without site access and inspection of the subject wetlands.

> ***Response 3.2-5:*** *The wetland delineation as shown on all site plans was prepared by a certified wetland scientist and confirmed by the Army Corps of Engineers, the only agency with regulatory authority over site wetlands, during site walks in September, 2004 and May, 2005. A jurisdiction determination has been made by the ACOE. The opinion of a lay person or even an expert working on behalf of the town, would have no bearing on the jurisdictional determination.*

Comment 3.2-6 (Public Hearing, Nat Parish, Consultant to Newburgh Mall, June 29, 2006): I've been working since the passage of SEQRA on development projects for developers, reviewing it for communities and for people who have been concerned. I've been on all sides of this. Never, never have I been involved in a project in which there's been a denial of either the experts or the community itself to walk on the project area and to perform a survey. It's never happened. I don't know whether or not you can cite the specific chapter or law, but certainly precedence in terms of the review. I don't know whether this Board has ever had an experience in which a developer has denied access to a site. Certainly if that continues then it makes a sham of the whole review process because there can't be public review unless you can look at all of the factors. You can't look at the factors if you can't see the simple evidence on the site itself. There is evidence, however—there are many reasons why a developer, and I'm just speculating but I think it's reasonable in this case because of his adamant refusal that perhaps there are factors, wetlands on the site that haven't been fully delineated, there's a different interpretation of where its boundaries are. Perhaps those wetlands extend to other wetlands to make them eligible as DEC wetlands. Perhaps there are endangered species on the site that we're not supposed to know about. All of these—perhaps I'm wrong but without being able to review that and to look at the site, look at it independently and fairly, your Board doesn't know, the public doesn't know and the whole process of a hard look simply is down the drain.

> ***Response 3.2-6:*** *The Planning Board knows of no legal authority for providing the public physical access to private property pursuant to SEQRA. The applicant, as a private citizen, is under no obligation to grant the general public physical access to his lands. In fact, it would be a unique exception to the common practice in practically all communities in New York State, to permit such access to private property. While the Board understands the concerns of the public regarding a fair and balanced review of the information provided by the applicant, the Board is also concerned about the liability issues that would be raised and the objectivity of information gathered by parties that are vocally against a project. The potential for liability and property damage, even manipulation of environmental conditions would be exceedingly high if such access were to occur. It is noted that in November of 2006 the Orange County Supreme Court dismissed an action filed by a citizens' group and nearby property owner to require such access. Rather it has been the practice of the Board to hire its own consultants, at the applicant's expense, to review and comment on the submitted materials. In this way the Board may take a hard look at all the necessary information and make a decision that is fair and based on the best information available.*

As is common practice, the Planning Board, experts consultants hired by the Planning Board and all regulatory agencies that must make decisions based on the information provided during the SEQRA process do have access to the site. As discussed above in Responses 3.2-1 and 3.2-5, the Army Corps of Engineers has walked the site several times and confirmed the delineation. A representative of New York State DEC has walked the site. The Town has also hired Dr. William Schuster of the Black Rock Forest Preserve to review the information provided in the DEIS and the applicant's conclusions based on that information. Dr. Schuster and Mr. Pat Hines of McGoey Hauser and Edsall walked the site on behalf of the Town with representatives of the applicant on September 1, 2006. More discussion of Dr. Schuster's findings is provided in Section 3.3.

The Draft EIS provides ample data in the form of detailed topographic mapping, aerial photos, surveys and inventories, to establish the veracity of onsite conditions. That is the obligation of the DEIS process and is fully consistent with the requirements of part 617 of Environmental Conservation Law.

Comment 3.2-7 (Letter #22, John Parker, Attorney for Save Open Space, 565 Taxter Road, Suite 100, Elmsford, NY, July 20, 2006): The wetlands and endangered species analyses in the DEIS are inadequate. ... If the project is approved and construction and blasting begin, these important environmental resources that are required to be addressed and protected under state and federal law will be no more. Clearly, such a result is contrary to SEQRA. Endangered species were found nearby, and coupled with wetlands issues, are perhaps interchangeable on this site. Requiring such a Supplemental DEIS on these issues also meets the criteria because a more thorough analysis particularly for endangered species will be 'newly discovered' evidence that meet the "('a') the importance and relevance of the information; and ('b') the present state of the information in the EIS" criteria of the regulations. 6 NYCRR Section 617.7(c)(1)(v). At present, the Board has been duly informed of the independent expert analysis VOID on these issues, particularly for wetlands, and further on-site access will provide for third party analysis on these key issues. Thus, care and thoroughness is not only prudent, it is legally necessary to meet the mandates of SEQRA, and requiring a Supplemental SEIS will accomplish that goal.

For the following reasons, and on the preceding topics, we respectfully submit that a SEIS be required for the Marketplace project. The public, and my clients have worked very hard to understand and participate in the environmental review process for this project, and have had those efforts frustrated by the inability to independently and objectively evaluate the content of documents submitted to the Board by the Applicant. Not only are the documents legally inadequate for omission of important historical and archeological information and required analysis as set forth above, the submission has effectively stifled and rendered meaningless public participation under SEQRA for areas identified in the process as potentially significant and adverse to the community, such as wetlands.

***Response 3.2-7**: The commentor has not provided data regarding what species were found "nearby", when they were found and where "nearby" is relative to the Marketplace site. It is therefore impossible to speculate on this issue further. What is known is that there is no historic recording of protected species on the subject site in the NYSDEC files or the United States Fish and Wildlife files. Moreover, detailed surveys of the subject site to ascertain the physical presence of protected species have been*

undertaken by the applicant's experts and none were observed. Finally, experts visited the site on behalf of the town of Newburgh and did not identify any threatened or endangered species.

The criteria for preparing a supplemental EIS is quite clear. The New York State Department of Environmental Conservation ("DEC") has provided specific regulatory guidance on the need for an SEIS under SEQRA. An SEIS for a specific project will only be required to address "...the specific significant adverse environmental impacts not addressed or adequately addressed in the EIS." 6 N.Y.C.R.R. 617.9(7)(i). These environmental impacts must arise from either "(a) changes proposed for the project; (b) newly discovered information; or (c) a change in circumstances related to the project," 617.9(7)(i)(a)-(c), which must potentially cause a significant adverse environmental effect. Gerrard ET. AL., Environmental Impact Review in New York 3.13[2][a] (2004).

It should be noted that the purpose of the DEIS is to inform the public and other public agencies of the proposed project and solicit comments to assist the lead agency in determining the project's environmental impacts. ECL 8-0109(4). The DEIS is only a preliminary statement of the proposal prepared in the early stages of the SEQRA review process. The FEIS reflects the incorporation of responses or revisions to the DEIS as a result of the consideration of these public and other public agency comments. As described above, the project has been modified from that described in the DEIS, in part, due to comments from the Lead Agency, other agencies and the public. Therefore, the SEQRA regulations contemplate that the FEIS will include a more detailed and extensive analysis, including discussion of issues that were not discussed or addressed in the DEIS.

The first circumstance under which the lead agency can require an SEIS is where changes are proposed for the project that will cause a potentially significant adverse effect. Mere changes in the proposal will not automatically trigger the need for an SEIS. See, e.g., Glen Head-Glenwood Landing Civic Council, Inc. v. Town of Oyster Bay, 453 N.Y.S.2d 732 (2d Dept. 1982). Notably, an SEIS has not been required for such project changes as the use of different access routes to the site, Town of Clarkston v. Montgomery, Otsego, Schoharie Solid Waste Management Authority, 651 N.Y.S.2d 708 (3d Dept. 1997) or omission of a development alternative. See Webster Assocs. v. Town of Webster, 59 N.Y.2d 220 (1983). Here, there are no proposed changes to the Marketplace proposal that would allow a lead agency to require an SEIS. As described above, the minor modifications to the project result in either a reduction or no change in environmental impacts and do not create any new impacts.

The second circumstance under which a lead agency could require an SEIS is where there is "newly discovered information." Under the SEQRA regulations, this "newly discovered information" must be considered in light of the relevance of the information and the current information in the EIS section 1617.9(7)(ii). There must be a substantial omission that cannot be cured by addressing the issue in the FEIS. Here, the commentator's letter does not present any "newly discovered information." The mere presence of archeological features in the Town of Newburgh is insufficient. It is noted that following the publication of the DEIS, the State Office of Parks, Recreation and Historic Preservation reviewed the cultural resources studies submitted by the applicant, and found them to be acceptable. No further studies are required, and no adverse impacts expected. Copy of this correspondence is provided in Appendix H.

The third circumstance where an SEIS could be required is where there is a change in circumstances related to the project. These "changed circumstances" must result in a significant adverse environmental effect, such as the unavailability of the neighboring municipality's sewage treatment facility to service the project. See Glen Head-Glenwood Landing Civic Council, Inc., 453 N.Y.S.2d 732. Here, there are not any "changed circumstances" to the Marketplace project that would result in a significant adverse environmental impact.

None of the issues put forth in the commentor's letter satisfies the regulatory criteria that would necessitate an SEIS. The alleged "outstanding issues" that have not been "identified" or "mitigated" are broad topical generalizations. The only specific issues presented by the letter have already been addressed in the DEIS, or are addressed in the FEIS. There is no informational need or legal basis for the lead agency to require an SEIS.

Comment 3.2-8 (Public Hearing, John Gebhards, 48 Wintergreen Avenue, Newburgh, New York, June 1, 2006): The wetlands that are being filled amount to forty percent of the area. Although they're going to mitigate, and that's almost 6 acres, they're going to mitigate only 1.7 acres. The Corps of Engineers has given them the option or the waiver on 4.8 acres of wetlands. Tell the frogs and salamanders their homes don't matter.

Response 3.2-8; *As described in the DEIS, the wetlands that will be filled for this proposal are low functioning remnants of wetlands that existed on the site before the construction of Route 84 and improvements of Route 300. Their lack of a significant level of many of the important wetland functions, including hydrologic connection and habitat value, was the basis for determining them that the adverse impacts to this area are not significant. It is the lack of a hydrologic nexus to other federally regulated wetlands that makes them ineligible for regulation under Federal guidelines. The wetlands function primarily for the capture and treatment of stormwater runoff; the loss of this function will be mitigated by the substantial areas of stormwater detention and quality basins that are proposed. As described in the DEIS, these basins will be landscaped as wetlands and perform very similar functions to those areas being lost.*

The ACOE does not give a waiver for the filling of these lands; they simply do not fall under the legal jurisdiction of the Corps. As discussed above in Response 3.2-3 and further described in Section 3.3, the wetlands to be filled do not support sensitive species that are dependent solely on wetland habitat. The most common species found in Wetland B was red-backed salamander, which was found throughout the site and is very common in Newburgh and Orange County.

Comment 3.2-9 (Letter #29, Sibylle M. Tulve, 107 Highland Avenue, Newburgh, New York, July 24, 2006): There are many issues that need to be addressed. However, rather than devote a lengthy paragraph for each, I will simply list some of my concerns and follow each with a simple statement as to why it is of concern.

Wetlands

- Help control flooding
- In conjunction with trees, they improve water quality
- Home to numerous reptiles and amphibians

Response 3.2-9: *The DEIS describes which wetlands on the site provide functional benefits, and which do not. Regarding the first two points, flooding and water quality, the applicant agrees that wetlands provide these functions, albeit at different levels depending on landscape position, soil conditions and many other factors. The applicant is required by the New York State DEC to ensure that any development will not have a adverse impact on stormwater runoff quality or quantity, either on adjacent properties or to receiving water bodies. The Town of Newburgh also has stormwater regulations that must be adhered to. The wetlands to be impacted on this site function primarily for the capture and treatment of stormwater runoff. The project engineer has designed a stormwater pollution prevention plan that will accommodate increases in flow and provide treatment of runoff according to State guidelines. Therefore no impacts are expected if the plan is constructed and maintained according to the plans that are ultimately approved.*

Regarding wildlife habitat, the data provided in this subject area was expanded with additional wildlife surveys and observations. Wetland B, a non-jurisdictional wetland, was not observed to provide habitat for any significant wetland-dependent species.

Wetland A and the Quassaic Creek corridor, which were found to support salamanders and two species of turtles, will be largely unaffected by the development proposal.

3.3 TERRESTRIAL AND AQUATIC ECOLOGY COMMENTS AND RESPONSES

Introduction

Comments were made during the public review of the DEIS regarding the adequacy of the ecological surveys that were conducted as part of the background information for the DEIS. The Scoping Document adopted by the Planning Board for the DEIS was not specific regarding survey requirements or the level of detail to be presented in the DEIS. The Scope required the following discussion in the Draft EIS:

> "a. Existing habitat types and typical associated wildlife. Tree cover, tree species and location of special trees and trees above 18 inches in diameter within 200 feet of lot lines shall be discussed and shown on plans.
>
> b. Potential for use of the site by rare, endangered or protected species."

Because of the nature of the site, its former status as agricultural land and its current condition as largely second growth hardwood forest, a common habitat type in the area, the adopted Scope did not anticipate the need for a detailed vegetative analysis or extensive surveys of wildlife species utilizing the site. These matter were not raised during the Scoping Hearing held on January 13, 2005.

However, based on continuing discussions between the Town's and applicant's consultants during the ongoing review of this application, the applicant continued site observations of vegetation and wildlife, with specific protocols for species of special concern. As described below, breeding bird surveys, surveys for pool breeding amphibians and continued site evaluations for plant species were conducted throughout the course of 2006.

Surveys were conducted by biologists from the Natural Resources section at Tim Miller Associates. Mr. Steve Marino, PWS, is a certified wetland scientist with more than 20 years experience in delineating, evaluating and constructing wetlands. He has conducted numerous wildlife surveys, particularly for reptiles and amphibians, in southeastern New York. Mr. Chris Robbins is a field biologist with particular interest in avian species and has been doing bird surveys for more than 10 years. Mr. Bruce Friedmann is a fisheries and herbaceous plant specialist. Mr. Jim Bates is a wetland scientist and field biologist. All four took part in the numerous surveys and site walks that were conducted on the Marketplace property.

Lists of plant and animal species common to the area which could reasonably be expected to utilize the site or the surrounding environment were provided in the DEIS in Tables 3.3-2 and 3.3-3. These tables specifically identified those species that were observed on site during site walks conducted in 2005. As the Scope suggested, additional species that are likely to utilize the site were also identified in those tables.

Observed species were marked on the tables with an asterisk. It is noted that this list is not solely based on observations at the site, but uses research carried out during the Quassaic Creek Biodiversity Study, studies for the Westchester County Department of Planning, and regional experience of the consulting biologists for similar habitat conditions on this and other nearby sites. Thus it is possible that many of the species listed are utilizing the site but were not observed due to weather conditions, time of day or seasonal patterns. It is stressed, however, that the list includes species that were observed on site, not only those species that are listed in

the literature as being known to inhabit the area. As discussed below, subsequent site visits confirmed many of the expected species and added additional species that were not listed in the DEIS.

Follow up field survey dates were consistent with times of high wildlife activity. The late spring dates were chosen for observation of nesting birds, breeding salamanders and other amphibians, spring movement of turtles from winter hibernaculum and increased activity by mammals during spring mating and rearing of young. These additional surveys were conducted in August and October of 2005 and April, June and August of 2006.

Reptiles and Amphibians

Surveys were conducted for reptiles and amphibians in two different ways.

Surveys were conducted in April of 2006 for the presence or absence of amphibian species known to breed in the early spring, i.e., pool breeding frogs and salamanders. Surveys were conducted during the late afternoon and evenings of March 25, April 1 and April 8, 2006, at a time when several other sites in Orange, Ulster and Putnam Counties were being surveyed and it was known that both salamanders and frogs were actively breeding. Surveys were conducted in knee high boots with flashlights and dip nets. Mating calls of frogs and identification of egg masses or spermatophores if observed were also noted.

While isolated pockets of water were observed, no breeding amphibians were identified in Wetland B. During subsequent site walks in early and mid May, the water pockets were dry indicating that the hydroperiod for these pools was not long enough to sustain egg laying, hatching and larval development.

In Wetland A, a single pair of spotted salamanders (Ambystoma maculatum) were observed on the evening of April 1, 2006. Calls of wood frogs and spring peepers were also noted, although no breeding individuals were observed. On April 8, 2006, spermatophores were observed attached to submerged leaves, but no individual salamanders, egg masses or larvae were observed. By way of reference, a vernal pool that was surveyed during the same three evenings in southern Ulster County had many salamanders and egg masses recorded, so the surveyors are confident that the timing of the surveys was appropriate. While vernal hydrology was observed during the March 25 survey, no evidence of amphibian activity was observed.

Based on these surveys, the surveyors conducting the field review conclude that while some breeding by vernal pool amphibians was observed on the site (in Wetland A), the breeding occurs at a very low level. The site is not an important breeding habitat for the observed species. It is noted that the two species observed, spotted salamanders and wood frogs, are not state-listed species of concern, and that no salamander egg masses were observed, although mature adults were observed.

Wetland A, where the salamanders were observed, will not be disturbed as part of this proposal. The revised site plan provided with this FEIS further reduces wetland impacts from the DEIS plan, and saves additional adjacent area of the wetland from encroachment.

Three species of pool breeding amphibians were identified during the course of these surveys, as listed below.

Table 3.3-1 Observed Pool Breeding Species			
Common Name	**Species**	**Where identified**	**Method of Identification**
Wood frog	Rana sylvatica	South central portion of Wetland A	Direct observation; mating call; two egg masses
Spring peeper	Hyla crucifer	South central portion of Wetland A	Mating calls
Spotted salamander	Ambystoma maculatum	South central portion of Wetland A	Direct observation; two individuals

Additional surveys for observation of reptiles and amphibians were then conducted on three days during the month of June, where temperatures ranged from 72 to 90 degrees. All days were clear and partly sunny. A total of 24 man hours were spent on the site making these observations, which occurred between 8 am and 6 pm.

Field observation methods used on the Marketplace site included establishment of transects through the site for wildlife observation, observation of biological indices (scat, prints, carcasses, etc.) and prolonged observation of several areas of the site. Site surveys did not include trapping, mist netting or other means of live animal collection. Generally the surveyor began on the trail behind the existing restaurant on Route 300, using zigzag patterns off of various traveled ways and ATV trails. In this way all habitat types on the site were covered. Access to the Quassaic Creek corridor was via the stream channel from the common area near Brookside well as down the slope from the main part of the site.

Survey activities for reptiles and amphibians included the turning over of logs, rocks, sheets of plywood and other flat materials, digging through wood and brush piles, stationary observation from fixed points for 15 minute intervals, and chance observations. All areas of the site that are the subject of this action were covered a minimum of three times. During these surveys, additional observations of birds and mammals were also noted, as described below.

Eight additional species of reptiles and amphibians were identified during the course of these surveys, as listed below.

Table 3.3-2 Other Observed Amphibian and Reptile Species			
Common Name	**Species**	**Where identified**	**Method of Identification**
Eastern box turtle	Terrapene carolina	In the central wooded areas; in Wetland A	Direct observation
Wood turtle	Clemmys insculpta	On the slope above Quassaic Creek in woods in the eastern portion of the site	Direct observation
Ribbon snake	Thamnophis sauritus	In the open fill area north of the I-84 off ramp	Direct observation
Garter snake	Thamnophis sirtalis	In the open fill area north of the I-84 off ramp	Direct observation
Milk snake	Lampropeltis triangulum	In the open fill area north of the I-84 off ramp	Direct observation
Red backed salamander	Plethodon cinereus	throughout the site	Direct observation
Slimy salamander	Plethodon glutinosus	In rotting logs in northeastern portion of site	Direct observation

Of note is the observation of three box turtles and one wood turtle on the site.

Box Turtles

Box turtles are typically land-dwelling reptiles, but sometimes retreat to woodland pools or puddles. Some individuals have reportedly lived for more than a hundred years, and "can live their entire life in an area no larger than a football field provided the environment doesn't change"[1]. Their typical habitat is moist forests, fields and floodplains. They feed on invertebrates, wild fruits and mushrooms, being most active in the morning. In New York State, the eastern box turtle is listed as a species of special concern.

Three box turtles were observed on the site on June 22, 2006. Two males were observed adjacent to the main walking trail along the southern portion of the site, one to the east of Wetland B and one more central in the site. A third turtle (a female) was found within Wetland A in the northwest corner of the site.

Wood Turtles

Wood turtles prefer moving streams, creeks or brooks with sand or gravel bottoms and overhanging banks. Quassaic Creek meets the habitat requirements of the wood turtle, which also includes a wooded fringe along the stream, with some adjacent open areas for foraging and nearby areas of sand and gravel for egg laying. The wood turtle is a mobile turtle, and can be found several hundred feet from its stream habitat during the summer months. They can be found feeding on snails, slugs, insects and other invertebrates. They will also eat wild fruit. In New York State wood turtles are listed as a species of special concern**.**

A mature male wood turtle was observed just off site along the I-84 right of way on June 23, 2006. This turtle was to the south of the trail along the right at the top of the steep slope up from Quassaic Creek.

Birds

A bird survey was conducted on June 23, 2006 between the hours of 5:30 AM and 10:30 AM to identify avian species using the project site. Weather on the date of the survey was fair with mostly sunny skies with temperatures ranging from the mid sixties to the mid seventies.

Survey Methodology

Based on existing ecological community data from the previous site visits as well as knowledge of bird survey techniques, seven (7) representative survey points were selected across the site. These points were chosen to provide data that would represent bird use in all ecological community types found on the property.

During the surveys, point counts were performed at eight (8) locations, one more than originally planned. The extra survey point was added to increase the probability of observing additional bird species. Point 1 is located in the southwest corner of the site in the forested wetland (Wet-

[1]Western New York Herpetological Society website

land B). Point 2 is located in the meadow to the east of Wetland B and south of Wetland A. Point 3 is located along the stream channel that runs through Wetland A. Points 4 and 6 are in the northeast of the property on ridges in the forest. Point 5 is along the path that runs along the southern border of the site. Point 7 is centrally located in the open forest and Point 8 is along the power line easement in the northern portion of the property.

At each of the data collection points, bird surveys were conducted for a minimum of twenty minutes. The surveyor recorded all birds heard and/or seen during the point counts. In addition, as the surveyor traveled between point locations and through the different habitats incidental observations of birds were documented. The additional data gathered while walking over the site was added to the list of species observed during the point counts. Birds on the wing were also included in the counts as "Flyby" to indicate that these individuals were observed passing overhead.

Observations

A total of 30 (thirty) bird species were identified either on, adjacent to, or "flying by" the project site during the formal bird surveys. Species were identified by their calls and/or by visual observation. This typically results in the recording of a higher proportion of birds that are more vocal and/or have a load call (e.g. red-eyed vireo and ovenbird) and a lower proportion of those that are not as vocal and/or have softer or high pitched call (e.g. black and white warbler).

Vocal birds may also be counted in habitats they do not typically use because their calls can carry for long distances making it difficult to accurately place their location. During the surveys, there were occasions on which calling birds were not identified due to similarities in the calls of different species, duration of the call or song, distance from the calling or singing bird, etc.

Five species not observed during the formal bird survey were identified during other wildlife and habitat surveys performed on the site. These species are included in the Table. Bird species that were not observed but use habitat similar to that present on the project site are also included in Table 3.3-3 and marked with an asterisk. This table is updated from the information provided in the DEIS based on these more formal surveys.

Of the birds identified during the survey, only the sharp-shinned hawk is listed by the New York State Department of Environmental Conservation (NYSDEC) as protected (Species of Special Concern). A species of Special Concern is defined by NYSDEC as “any native species for which a welfare concern or risk of endangerment has been documented in New York State.”[2] Special Concern species are not afforded any protection under State law and are listed for informational purposes only. The sharp-shinned hawk was observed flying by the site being chased by a eastern kingbird. It likely this bird uses habitat on and/or in the vicinity of the project site to forage and nest. No sharp-shinned hawk nest was observed on the property during this or other surveys. According to the USFWS’s website of listed threatened and endangered species, none of the observed species are afforded protection at the federal level.

Breeding Bird Atlas

[2]New York State Department of Environmental Conservation. 2006. List of Endangered, Threatened and Special Concern Fish and Wildlife Species of NYS webpage: http://www.dec.state.ny.us/website/dfwmr/wildlife/endspec/etsclist.html

The New York State Breeding Bird Atlas (NYS BBA) is a comprehensive, statewide bird survey that documents the breeding birds identified by trained volunteers in three-mile square blocks. The most recent surveys (2000 through 2004) have been completed and data is being compiled for inclusion in the final report to be released in 2008. The listings include data on the breeding behavior observed, the year the bird(s) was observed and the state protection status of the species.

The Marketplace project site falls within the Breeding Bird Atlas Block number 5957A.[3] The breeding bird list for this block is available from the recent, 2000 to 2004 surveys, but is considered "interim data" until released officially as part of the final report as well as from the 1980 to 1985 survey. Both are included in Appendix D of this document.

Birds will choose to breed in the habitat most suitable to their species. Therefore, the listing of a particular bird in a block does not mean that species will breed everywhere in that block. The list for each block will include a greater number of breeding birds than will utilize any given site within that block. These BBA lists were used to assist in determining the species expected to use the site. These species are included in the Table 3.3-3 and identified by an asterisk.

Of the birds identified as potential users of the project site, the Cooper's hawk and cerulean warbler are listed by the NYSDEC as Species of Special Concern. None of the species expected to use the property are protected at the federal level.*

Conclusion

Based on the surveys conducted, the Marketplace project site has suitable habitat for several bird species (cerulean warbler, Cooper's hawk, sharp-shinned hawk) that are listed as Species of Special Concern by the State. As noted previously, none of the observed or expected bird species are afforded protection under federal law. Of these species, only the sharp-shinned hawk was observed at the site.

[3]New York State Department of Environmental Conservation. 2006. NYS Breeding Bird Atlas website: http://www.dec.state.ny.us/apps/bba/results/.

Table 3.3-3
Observed and Expected Bird Species

Common Name	Scientific Name	Habitat Type					
Birds		**FW**	**SC**	**ED**	**FB**	**SF**	**OF**
American Crow	*Corvus brachyrhynchos*				X		
American Goldfinch	*Carduelis tristis*			X	X		X
American Redstart	*Setophaga ruticella*			X			
American Robin	*Turdus migratorius*	X		X		X	X
American Woodcock *	*Philohela minor*	X				X	
Baltimore Oriole	*Icterus galbula*			X		X	
Barred Owl *	*Strix varia*					X	
Black-and-white Warbler	*Mniotilta varia*					X	
Black-capped Chickadee	*Parus atricapillus*	X	X	X		X	X
Black-throated Blue Warbler *	*Dendroica caerulescens*			X		X	
Black-throated Green Warbler *	*Dendroica virens*			X			
Blue Jay	*Cyanocitta cristata*					X	X
Blue-winged Warbler *	*Vermivora pinus*			X			X
Broad-winged Hawk	*Buteo platypterus*					X	
Brown-headed Cowbird *	*Molothrus ater*			X			X
Canada Warbler *	*Wilsonia canadensis*					X	
Cedar Waxwing *	*Bombycilla cedrorum*			X			X
Cerulean Warbler *	*Dendroica cerulea*					X	
Chimney Swift	*Chaetura pelagica*				X		
Chipping Sparrow *	*Spizella passerina*			X			
Common Grackle	*Quiscalus quiscula*				X		
Common Yellowthroat *	*Geothlypis trichas*			X			X
Cooper's Hawk *	*Accipiter cooperii*			X		X	X
Dark-eyed Junco *	*Junco hymalis*			X		X	X
Downy Woodpecker	*Picoides pubescens*	X	X			X	
Eastern Kingbird	*Tyrannus tyrannus*			X			
Eastern Phoebe *	*Sayornis phoebe*			X		X	
Eastern Screech Owl *	*Otus asio*			X		X	
Eastern Towhee *	*Pipilo erythrophthaslmus*			X		X	
Eastern Wood Peewee	*Contopus Virens*	X				X	
Empidonax Flycatcher	*Empidonax spp.*						
Field Sparrow	*Spizella pusilla*			X			X
Finch Species *	*Carpodacus spp.*			X		X	X

Table 3.3-3
Observed and Expected Bird Species (Continued)

Common Name	Scientific Name	Habitat Type					
Birds		**FW**	**SC**	**ED**	**FB**	**SF**	**OF**
Golden-crowned Kinglet *	*Regulus satrapa*					X	
Gray Catbird	*Dumetella carolinensis*	X		X			X
Great-crested Flycatcher *	*Myiarchus crinitus*			X		X	
Great-horned Owl *	*Bubo virginianus*			X		X	
Hairy Woodpecker	*Picoides villosus*					X	
Indigo Bunting *	*Passerina cyanea*			X			X
Mourning Dove	*Zenaida macroura*			X			
Northern Cardinal	*Cardinalis cardinalis*		X	X			
Northern Flicker	*Colaptes auratus*	X		X		X	
Northern Mockingbird *	*Mimus polyglottos*			X			
Ovenbird	*Seiurus aurocapillus*		X			X	
Pileated Woodpecker *	*Dryocopus pileatus*					X	
Red-bellied Woodpecker	*Melanerpes carolinus*					X	
Red-eyed Vireo	*Vireo olivaceus*	X	X			X	
Red-tailed Hawk	*Buteo jamaicensis*					X	
Rose-breasted Grosbeak	*Pheucticus ludovicianus*			X		X	
Ruby-throated Hummingbird	*Archilochus colubris*						X
Scarlet Tanager	*Piranga olivacea*			X		X	
Sharp-shinned Hawk	*Accipiter striatus*				X		
Song Sparrow	*Melospiza melodia*			X			X
Tufted Titmouse	*Parus bicolor*		X			X	
Turkey Vulture	*Cathartes aura*				X		
Veery *	*Catharus fuscescens*					X	
Warbling Vireo *	*Vireo gilvus*					X	
White-breasted Nuthatch *	*Sitta carolinensis*	X				X	
White-throated Sparrow *	*Zonotrichia albicollis*	X	X	X		X	
Wild Turkey	*Meleagris gallopavo*					X	
Wood Thrush	*Hylocichla mustelina*	X	X			X	
Worm-eating Warbler *	*Helmitheros vermivorus*					X	
Yellow-billed Cuckoo *	*Coccyzus americanus*			X		X	
Yellow Warbler	*Dendroica petechia*			X			X

Habitat type: FW - Forested (Red Maple Hardwood) Wetland, SC - Stream Corridor, ED - Edge Habitat, FB - Flyby, SF - Second Growth (Northern Hardwood) Forest, OF - Successional Old Field

* Species that were not observed during formal bird surveys but use habitat similar to that on the site.
Sources: Tim Miller Associates, Inc., 2006., NYS BBA data, 1980-1985 and 2000-2004.

Mammals

During the same survey dates when reptiles and amphibians were being observed, a number of mammalian species were also identified from direct observation or other sign. These species are listed on Table 3.3-4 below.

Table 3.3-4
Observed Mammal Species

Common Name	Species	Where identified	Method of Identification
White tailed deer	Odiocoileus virginana	Throughout site	Direct observation; scat
Eastern cotton tail rabbit	Sylvilagus floridanus	Coming out of brush along eastern edge of center road	Direct observation
White footed mouse	Permomyscus leucopus	Throughout site; under plywood in open meadow area	Observed nests, trails through tall grass, burrows
Meadow vole	Microtus pennsylvanicus	In dense grass in open meadow area	Direct observation
Eastern mole	Scalopus aquaticus	On path in eastern portion of site	Mole hill
Woodchuck	Marmota monax	Several dens found around site	Dens found
eastern chipmunk	Eutamias sp.	Throughout the site	Direct observation
gray squirrel	Sciurus carolinensis	Throughout the site	Direct observation
Red fox	Vulpes vulpes	Throughout the site	Tracks; Scat
Coyote	Canis latrans	Northeast portion of site	Tracks; scat
Striped Skunk	Mephitis mephitis	Northeast portion of site	Tracks; scat

Plants

The DEIS provided a long and detailed list of plants that were either observed on the site or were considered to be very likely on the property (Table 3.3-2, pp. 3.3-5 and 3.3-6). During the subsequent site surveys, additional species were observed and recorded, and are provided in this FEIS as Table 3.3-5. Regarding plants that are considered to be rare in New York State, a total of three survey days were dedicated to searching all parts of the site for two species that were discussed in the DEIS, specifically the woodland or beaked agrimony (Agrimonia rostellata) and narrow-leaved sedge (Carex amphibola). The highest degree of effort was made in those areas of the site (mesic woods, particularly sloped areas, and the wooded slopes above the Quassaic Creek corridor) that had the highest potential for supporting these two species.

Table 3.3-5
Additions to DEIS Table 3.3-2 - Project Site Vegetation

Common Name (Scientific Name)	
TREES	Nakedflower tick-trefoil (*Desmodium nudiflorum*)
Catalpa (*Catalpa speciosa*)	Northern horsebalm (*Collinsonia canadensis*)
Black maple (*Acer nigrum*)	Panicled tick-trefoil (*Desmonium paniculatum*)
	Partridgeberry (*Mitchella repans*)
FORBS AND VINES	Perfoliated bellwort (*Uvularia perfoliata*)
American pennyroyal (*Hedeoma pulegioides*)	Pilewort (*Erechtites hieraciifolia*)
Arrowhead (*Sagittaria latifolia*)	Pointedleaf ticktrefoil (*Desmodium glutinosum*)
Bay forget-me-not (*Myosotis laxa*)	Pokeweed (*Phytolacca americana*)
Birdsfoot trefoil (*Lotus corniculatus*)	Purslane (*Portulaca oleracea*)
Black nightshade (*Solanum nigrum*)	Rough cinquefoil (*Potentilla norvegica*)
Bloodroot (*Sanguinaria canadensis*)	Selfheal (*Prunella vulgaris*)
Canada moonseed (*Menispermum canadense*)	Smooth carrionflower (*Smilax herbacea*)
Clearweed (*Pilea pumila*)	Stout blue-eyed grass (*Sisyrinchium angustifolium*)
Climbing hempweed (*Mikania scandens*)	Sulfur cinquefoil (*Potentilla recta*)
Common dodder (*Cuscata gronovii*)	Sweet cicely (*Osmorhiza claytonii*)
Common evening primrose (*Oenothera biennis*)	Tall beard-tongue (*Penstemon digitalis*)
Common speedwell (*Veronica officinalis*)	Virginia jumpseed (*Polygonum virginianum*)
Common threeseed mercury (*Acalypha rhomboidea*)	Water speedwell (*Veronica anagallis-aquatica*)
Common viper's bugloss (*Echium vulgare*)	Waxflower shinleaf (*Pyrola elliptica*)
Cow vetch (*Vicia cracca*)	White avens (*Geum canadense*)
Canada moonseed (*Menispermum canadense*)	White baneberry (*Actaea pachypoda*)
Deptford pink (*Dianthus armeria*)	White wood aster (*Eurybia divaricata*)
Early goldenrod (*Solidago juncea*)	Widowsfrill (*Silene stellata*)
False nettle (*Boehmeria cylindrica*)	Wild basil (*Clinopodium vulgare*)
False pimpernel (*Lindernia dubia*)	Wild columbine (*Aquilegia canadensis*)
Flat-top goldenrod (*Euthamia graminifolia*)	Wild yam (*Dioscorea villosa*)
Hairy solomons seal (*Polygonatum pubescens*)	
Hog peanut (*Amphicarpaea bracteata*)	**FERNS AND CLUBMOSSES**
Indian hemp (*Apocynum cannabinum*)	Ebony spleenwort (*Asplenium platyneuron*)
Indian tobacco (*Lobelia inflata*)	
Lanceleaf wild licorice (*Galium lanceolatum*)	**GRASSES AND SEDGES**
Largefruit blacksnakeroot (*Sanicula trifoliata*)	Bottle-brush grass (*Hystrix patula*)
Lentil vetch (*Vicia tetrasperma*)	Fox sedge (*Carex vulpinoides*)
Lizard's-tail (*Saurusus cernuus*)	Green bulrush (*Scirpus atrovirens*)
Meadow hawkweed (*Hieracium caespitosum*)	Path rush (*Juncus tenuis*)
Moth mullein (*Verbascum blattaria*)	Umbrella sedge (*Cyperus strigosus*)
Mugwort (*Artemisia vulgaris*)	Fringed sedge *(Carex crinita)*

*Note: These additional seasonally prominent species and/or species uncommonly found on the site were initially noted during site visits conducted on the following dates during 2006: 16 June, 17 August, 23 August, and 1 September.

Source: Tim Miller Associates, 2006.

Surveys were conducted in July and August of 2006. Specimens of agrimony were observed at five locations across the property, with from 3 to 12 or more plants located. A total of about 45 plants were noted. Three locations were along the southern portion of the property along existing trails near the Route 84 off ramp; the other two sites were adjacent to Wetland A in the northwest part of the property.

Based on field identifications, none of the plants appeared to be A. rostellata as all of the plants observed had pubescent stems, not the glabrous stem characteristic of A. rostellata. Pubescent stemmed agrimonies found in this part of New York State, with the leaf count/shape characteristics of the plants observed, would be either tall hairy agrimony (Agrimonia gryposepala) or soft agrimony Agrimonia pubescens). Both of these species also have sharp points at the end of the leaf lobes; A. Rostellata has rounded lobes. Closer identification was not definitive between these two species, because the "hair" characteristics on the stems can overlap, and since neither species is State listed, exact identification was not considered to be necessary.

Populations of the agrimony were exclusively observed within or pathside of the ATV trails on the property and may be adventitiously spread by traffic along these trails. Each time that a population of agrimony was observed within a pathway, the adjoining forested areas were examined for up to ~15 feet from the pathway, but in all instances no agrimonies were found greater than a couple of feet from the trailways. Other commonly observed trailside forbs such as Virginia jumpseed and white avens were observed to range from the trailway to much deeper into the woodside.

As noted, none of the transect lines outside of the ATV trails, i.e.: along the stream corridor slopes, within recently disturbed sections of the wooded site (where populations of pokeweed and pilewort were developing within these small disturbed clearings, most probably from dormant seedstock), or within areas of the forest that had relatively sparse, open understory and herbaceous coverage - none of these transects revealed any agrimony. It is therefore the applicant's opinion that the site does not support woodland agrimony.

Regarding the narrow-leaved sedge, several sedge species were found and identified on the site, as listed above. No *Carex amphibola* was observed. One specimen shared several characteristics with *C. amphibola*, but when examined had a single terminal fruiting spike rather than the combination of lateral and terminal spikes found on *C. amphibola*.

The lead agency must consider all potential environmental impacts in giving this application a "hard look" under SEQRA. However, the potential or even the presence of rare plants on a site does not preclude development of that site. Rare plant status does not offer plants any legal protection on private lands, only on public lands. Regardless, the applicant has conducted surveys to determine presence or absence and has concluded that the two species identified by outside sources are not present on this site. It is also noted that correspondence from both the DEC Environmental Permits Section and the Natural Heritage Program did not identify any threatened or endangered species to be known in the area.

Section 3.3 Comment/Response

Comment 3.3-1 (Public Hearing, James Barbour, 5 Fish Creek Road, Saugerties, New York as read by Maggie Mayer, 10 Wintergreen Avenue, Newburgh, NY, June 1, 2006): In my opinion, the developer has, number one failed to provide the information sufficient to determine whether or not expected rare and protected species occur on the site.

Number two, evidence nonstandard, inconsistent and incomplete on-site survey work.

Number three, presented faulty analysis of on-site conditions and potential of the occurrence of rare species.

Number four, repeatedly misrepresented and misinterpreted data in order to present a picture of The Market Place site as degraded, isolated and generally poor in habitat value when the evidence actually indicates that this is not so.

> ***Response 3.3-1:*** *The information provided above in the introduction to this section describes the work that was completed on this site, and offers a detailed description of survey methods used and dates of the surveys. The DEIS described the potential for the site to support species that are listed by the State as endangered, threatened or species of special concern. For example, the DEIS disclosed that:*
>
> > *"(b)ased on habitat availability, there is also the potential that two turtles categorized as species of special concern may use this property. The box turtle (Terrapene carolina) may utilize any of the upland forest or wooded wetlands on the site. No box turtles were observed during lengthy wildlife reconnaissance, but the turtles are not uncommon in the Town of Newburgh. Box turtles are not rare but have been collected as pets impacting the long term population and breeding opportunities.*
>
> *The wood turtle (Clemmys insculpta) may use the Quassaic Creek corridor as cover and for overwintering. This turtle tends to prefer wooded stream corridors adjacent to open fields, which do not exist in this site today, but did historically."*
>
> *As described in the introduction to this section, both of these species were found on the site during recent site surveys. Based on the total of the survey work that has been completed to date, the applicant concludes that with the exception of the Quassaic Creek corridor, which supports at least one wood turtle, the site provides second growth habitat for species that are generally common in New York State and particularly in Orange County. While the surveys did show a diversity of species on the site, the population densities are low and the impact of the proximity of Route 84 and Route 300 are evident over a large part of the site.*

Comment 3.3-2 (Public Hearing, James Barbour, 5 Fish Creek Road, Saugerties, New York as read by Maggie Mayer, 10 Wintergreen Avenue, Newburgh, NY, June 1, 2006): The DEIS presents no description of survey methods or details about survey dates and times, no rationale for these choices. Essential surveys such as breeding amphibian and breeding bird surveys are also missing. Important plant groups were not determined as species, for example,

caribs, scerud, bikus, and cyprus agrimony. There is no basis for claims that two rare species that I found along Quassaic Creek south of The Market Place site, narrow leaf sedge and woodland agronomy, do not occur on The Market Place site. Apparently specimens were not collected, or if they were, were not termed species.

Animals were also poorly documented with some groups identified only to genus, for example Warbler. In the animal species list there are twenty-eight species of Warblers in eastern North America according to Petersons. Identification to species is essential since species nor genera have rarity or protected status.

Rare species are inadequately addressed. For example, Cooper's Hawk of special concern is on the list of potentially occurring animals but its status is not acknowledged. There is no analysis of the potential impacts on Cooper's Hawk and there appears to have been no search for Cooper's Hawk nests on the site. The Wood Turtle and Eastern Box Turtle probably occur on the site. A search for potential turtle nesting areas should have been performed.

> ***Response 3.3-2:*** *The information that was provided in the DEIS exceeded that which was required in the scope. However, based on both Planning Board and public comment, additional information has been provided, as described above.*
>
> *A detailed breeding bird survey was conducted; the conclusions of this survey are provided. Cooper's hawk was not observed on the site during this survey, but red-tailed, broad-winged and sharp-shinned hawks were observed. All warblers that were observed have been identified to species.*
>
> *Surveys were conducted to try to identify woodland agrimony and narrow-leaved sedge on the site, for a total of 16 man-hours. While other agrimony and sedge species were identified, as described above, these two species were not.*
>
> *Box turtles and one wood turtle were observed during follow-up surveys, as described above.*

Comment 3.3-3 (Public Hearing, James Barbour, 5 Fish Creek Road, Saugerties, New York as read by Maggie Mayer, 10 Wintergreen Avenue, Newburgh, NY, June 1, 2006):
The DEIS reverses the logical interpretation of Quassaic Creek biodiversity study. The Market Place DEIS states that the site has little or no potential for the occurrence of rare species because it is located in an urban developed context. The Quassaic Creek corridor has a high biodiversity including two rare plants and a rare animal for its historically disturbed ecosystem in an urban setting. There's no supporting evidence of or analysis the DEIS asserts the site does not support known threatened or endangered species or state listed species of concern. Eastern box turtle, a special concern species, has been observed along the site boundary and on the site. Contrary to what the DEIS says, the site is not biologically isolated from neighboring undeveloped areas such as Algonquin Park and Brookside Pond. Continuity of waterways and stream corridors exist in underpasses.

> ***Response 3.3-3:*** *In the opinion of the applicant's biologists in agreement with Dr. Schuster's opinion?, the described connections are tenuous for turtles and salamanders. They require movement through the highly eroded stream corridor off site to the north and east, crossing of the dam structure at Lower Winona Lake, navigating of the lake during high or low water conditions, and following the underpass under Route 52. While*

the commentator may feel that this is not an impediment to movement of terrestrial species, the applicant's experts disagree. An avian corridor connects the Quassaic Creek corridor on site with Algonquin and Brookside Park, however, this corridor is not expected to be significantly affected since the Quassaic Creek corridor will remain relatively undisturbed.

To date, the isolation of the site from upstream areas has served to protect it from the invasive common reed and purple loosestrife that have taken over the Upper Winona Lake since the failure of the dam at that location.

Comment 3.3-4: (Public Hearing, James Barbour, 5 Fish Creek Road, Saugerties, New York as read by Maggie Mayer, 10 Wintergreen Avenue, Newburgh, NY, June 1, 2006):
The DEIS states the development won't affect known rare plant occurrences downstream along the Quassaic Creek when it is commonly known and repeatedly demonstrated that impacts such as pollution, turbidity, et cetera can be transported any distance downstream.

Response 3.3-4: *Pollution, turbidity, etc., can impact downstream receiving waters and the vegetative communities associated with them. The applicant's engineers have developed a detailed erosion and sedimentation control plan, based on New York State and the Town of Newburgh standards, to ensure that such conditions do not occur. As described in the DEIS Water Resources section, these plans include phasing of construction to minimize open areas, use of structural and other best management practices to contain erosion during storm events, capture and treatment of stormwater runoff to meet State goals for water quality, and site monitoring by certified specialists at a minimum of once per week.*

Comment 3.3-5 (Public Hearing, James Barbour, 5 Fish Creek Road, Saugerties, New York as read by Maggie Mayer, 10 Wintergreen Avenue, Newburgh, NY, June 1, 2006):
Wood turtle of special concern forages in many types of habitat including forests, not just fields as stated in the DEIS to support the conclusion that there is poor foraging habitat for wood turtle.

Response 3.3-5: *The DEIS states that "this turtle tends to prefer wooded stream corridors adjacent to open fields, which do not exist on the site today, but did historically." The point of this passage was to note that while open field areas, which are the wood turtles preferred foraging habitat, do not currently exist in the Quassaic Creek corridor, they did historically when the site was used for agricultural purposes before the construction of Route 84. Therefore a population of wood turtles in the area could well have been established prior to the succession of the site to second growth, and the remnants of that population may continue to use the site. This theory was confirmed by the observation of a wood turtle on the site on June 23, 2006.*

Comment 3.3-6 (Public Hearing, James Barbour, 5 Fish Creek Road, Saugerties, New York as read by Maggie Mayer, 10 Wintergreen Avenue, Newburgh, NY, June 1, 2006):
4.88 acres of wetlands to be filled could be important breeding sites for amphibians including special concerned species such as Blue Spotted Salamander and Jefferson Salamander. This is not acknowledged in the DEIS. These isolated wooded wetlands are commonly known as vernal pools and are critical habitats for many animal species. The New York State DEC has requested that the New York State legislature act to protect vernal pools through out the state. Vernal pools are protected in the State of Massachusetts

Response 3.3-6: *As described in the introduction to this section, amphibian breeding surveys were conducted on the site in the spring of 2006. Spotted salamanders, wood frogs and spring peepers were identified as pool breeding species that utilize a portion of Wetland A for breeding. None of these species are state listed species of special concern. It is noted that with the proposed revisions to the site plan, less of Wetland A will be impacted, and the portion of the wetland where these species were observed is more than 100 feet from any proposed disturbance.*

Comment 3.3-7 (Public Hearing, Laura Kohlmann, 18 Wintergreen Avenue, Newburgh, New York as read by Ted Coleman, June 1, 2006): On June 23, 2005 Save Open Space sent a letter to the Town of Newburgh Planning Board and the Town Board requesting that a comprehensive ecological study be done based on the 2004 Quassaic Creek biodiversity study. The letter was to alert them of the possibility of narrow leaf sedge, an S-1 endangered species, and Woodland agrimony, a New York State threatened plant species, existing on The Market Place site. The letter also noted a possible vernal pool on the site near the corner of Route 52 and Meadow Avenue. I would also like to add that the Eastern Box Turtle is not uncommon in the neighborhoods adjacent to the site, because my own son once tried to keep one as a pet, and I know others who have also found them in the area.

Response 3.3-7: *See the introduction and responses above.*

Comment 3.3-8 (Public Hearing, John Gebhards, 48 Wintergreen Avenue, Newburgh, New York, June 1, 2006): The Quassaic Creek is designated in the Orange County Open Space Plan as a significant wildlife biodiversity area. 126 acres of this project are a vital part of this corridor. This development plan has certainly taken no concerns for wildlife that currently live in that portion of the Quassaic Creek corridor. The Market Place is so lacking that it will totally eliminate any existing habitat on over 100 acres of the 128 leaving only a portion of the wetlands intact.

Response 3.3-8: *The steep topography between the creek and the remainder of the site to the west separates the "Quassaic Creek corridor" from the rest of the site. It is also isolated by residential development to the north and I-84 to the south. The revised plans minimize the impacts to the Quassaic Creek corridor by crossing the creek at its narrowest portion on site. Using the DOT land adjacent to Route 84, this crossing eliminates wetland fill near the creek, reduces total disturbance for the crossing, and proposes large box culverts to allow free flow and wildlife movement. The areas of disturbance near the creek will be clearly staked out and appropriate fencing installed prior to the commencement of construction in this area.*

Large areas of the rest of the site will be disturbed, which is required in order to implement the zoning designation of the site. However, the Quassaic Creek corridor will be used for access only; no new buildings or parking areas are proposed within a minimum of 300 feet of the creek.

Comment 3.3-9 (Public Hearing, J. G. Barbour as read by Maggie Mayer, 10 Wintergreen Avenue, Newburgh, New York, June 29, 2006): From the evidence of the DEIS, the biological survey of The Market Place site is one of the worst I've come across in over twenty-five years of biological consulting and survey work. I should point out that because I was denied access to the site I cannot draw conclusions beyond those I've stated in this testimony. However, I have

thoroughly analyzed and investigated the surrounding areas, which may be reasonably assumed to resemble the site. … No information is given as to who did the field survey, what methods were used, how much time was spent, and when or what the surveyor's credentials and qualifications are. This is an unacceptable omission entirely out of line with professional standards and practices. …Knowledge of the geography of the site where important habitats are located is essential in reviewing any site plan. The standard procedure is to precisely map the habitats using GPS technology and GIS digital mapping. But the resulting maps are only as good as the groundwork that precedes them. I was stunned to see that in the DEIS the habitat map for this project had only two habitat units, Northern Hardwoods and Hardwood Swamp. Other habitats are mentioned in the DEIS including isolated wetlands which could be vernal pools, a critical habitat for several rare salamanders. These are not mapped. The Quassaick Creek and its flood plain, known reservoirs of high biodiversity, are not mapped, though the creek is easily seen on the aerial photo in the DEIS.

One recent project of mine was a survey of the Quassaick Creek in 2003 and 2004 from the Hudson River in the City of Newburgh upstream to Algonquin Park across the street from The Market Place site. My study was commissioned by the City of Newburgh and the Quassaick Creek Coalition to provide supporting information for a planned urban park and trail system along the Quassaick Creek. I found the Quassaick Creek and its surroundings to be surprisingly rich in plant and animal species, even rare ones. I found two rare plants and a rare animal along the creek within the city itself. …

Rare species issues are not addressed in the DEIS. The most important kinds of plants on the site were not identified to species, only to genus. The DEIS acknowledges that sedges and an agrimony were found on the site during surveys conducted by the developer's consultant. These genera are significant because I found Narrow Leaf Sedge, a New York State endangered species, and Woodland Agrimony, a New York State threatened, along the Quassaick Creek south of the site in 2003. Most important, why? Astonishingly the consultant uses this failure to identify plant specimens to claim that no rare plant species occur on the site. Is the biological consultant deliberately not identifying plant specimens? Many plants require specialists to identify them, and in such cases it is standard practice to call in these specialists to make accurate identifications. …

An agrimony and an unknown number, the DEIS doesn't say how many species, of sedges were found on The Market Place site. The agrimony verdict: "Probably" not Woodland Agrimony but more likely Downy Agrimony, an unprotected species. Probably is not an acceptable scientific conclusion, particularly given the developer's proposal which would remove the entire site through blasting and regarding from a natural habitat to a flat, featureless and impervious surface and big box retail.

The sedge verdict: Except for the common Tussock Sedge, sedges were not identified to species and are referred to as Carex species in the consultant's list of plant species found on the site. Yet they conclude Narrow Leaf Sedge does not occur on the site. How and why? Because Narrow Leaf Sedge was not identified on site. Excuse me? Failure to properly identify these species brings into question the thoroughness and validity of the entire section of the DEIS provided to the Board.

Perhaps the most personally galling is this: The Market Place DEIS refers to my Quassaick Creek study but in what I see as an effort to condemn The Market Place site as biologically worthless, it turns the main finding of my study on its head. My Quassaick Creek survey shows

that jewels of biodiversity can be found in urban settings. The Market Place DEIS contends that the existing development around the site isolates and degrades the site so much that development is the best possible use. This is in total disagreement with my conclusion that high biodiversity and urban development can and do exist side by side. …

In summation, the DEIS has hardly any actual information on biological resources. What is does provide is useless and falls far short of the basic requirements of State Environmental Quality Review. The developer has simply not addressed the issues. In terms of the biology of the site, the DEIS provides no basis on which to make a decision regarding The Market Place development proposal.

> ***Response 3.3-9:*** *The introduction to this section includes a summary of additional surveys that were completed on the site during and since the public review of the DEIS. This includes an expanded list of birds, plants and herpetiles identified to species. These studies included a more intense search for narrow leafed sedge and woodland agrimony. These species were not found on the site although many hours were spent searching. As discussed in the DEIS, these two species are known to be exceptionally rare in Orange County, so it is not surprising that they were not observed on this property.*
>
> *Regarding the habitat and vegetative communities, please see the response to Comment 3.3-14, below.*
>
> *Regarding Mr. Barbour's Quassaic Creek study, this study was referenced several times in the DEIS as a resource for information regarding potential fish species and rare plant and animal species that may utilize the site. The DEIS did not make any judgments on the subject parcel based on the conclusions of the study, either for or against the proposed Marketplace project, and did not distort the conclusions of the study to benefit the applicant. The Quassaic Creek study demonstrated that biodiversity can exist in an urban/suburban setting, even in close proximity to commercial and industrial development. As discussed in Response 3.3-67, below, the DEIS concluded that there are a significant number of species that can and do utilize this property. There is, however, a difference between biodiversity and the preservation of rare and endangered species. The subject site has been zoned for commercial development for many years; there must have been some expectation that trees would be removed and habitat altered in order to accomplish commercial development in an area that is uniquely suited to it. It is noted again that large areas of this site were cleared as recently as 40 years ago for agricultural use. This is not virgin forest.*
>
> *Thus, while a site may exhibit a high number of species, development should not be avoided if all of the species are common within the setting and no unique or unusual habitats exist. That is the case with the Marketplace site. Except for two turtle species that are listed as "species of special concern", and which are not afforded any legal protection under state law, no such species were observed on this site. The wood turtle was found along the Quassaic Creek corridor; this corridor will remain intact except for a road crossing which will be designed to ensure a continuing corridor. Three box turtles were observed on the site; this relatively common species will continue to utilize Wetland A, the Quassaic Creek corridor and wooded areas around the perimeter of the site. The benefits of commercial development, as discussed in both the Town and County com-*

prehensive plans, will mitigate to some extent the loss of open space associated with this development.

Comment 3.3-10 (Letter #5, Edwin J. Garling, AICP, Garling Associates, 301 Main Street, Goshen, New York, June 19, 2006): No landscape irrigation is proposed. How will plants survive the initial years of growth? Water will be trucked in for early growth of plantings.

Response 3.3-10: *As stated on p. 3.4-6 of the DEIS, water for irrigation during initial grow in, i.e., the first two growing seasons, will be trucked into the site as necessary from commercial sources. Following plant establishment, it is expected that long term watering of trees and shrubs will not be necessary. Hardy trees and shrubs that are suitable for street tree and urban landscaping have been chosen for the site to ensure that selected species will survive the expected conditions. In some areas, the applicant will use slotted curbing or some other method on the upgrade side of the traffic islands to capture some portion of the runoff from storm events to also help with watering. Final design of the curbing in these areas will be reviewed and approved prior to final site plan approval. The applicant agrees that proper water is critical to the long term survival of the parking lot and street trees.*

Comment 3.3-11A (Letter #43, Laura Kohlmann, 18 Wintergreen Avenue, Newburgh, New York, May 29, 2006): The Draft Environmental Impact Statement (DEIS) for the Marketplace states on page 1-10 that "the site does not support known threatened or endangered species or State-listed species of special concern." While the Marketplace DEIS references the *2004 Quassaick Creek Biodiversity Study* written by John G. Barbour, Mr. Barbour himself disagrees with their findings. Mr. Barbour, in his report to the Town Planning Board, criticizes the "poor environmental work" and "faulty, unsupported, and negatively biased ecological analysis" found in the Marketplace DEIS.

Also see Comment 3.3-7 above that was read at the public hearing and is included in the May 29, 2006 letter.

Response 3.3-11A: *Please see the introduction to this section and the responses to Comment 3.3-9.*

Comment 3.3-11B (Public Hearing, Diana Krautter, Wintergreen Avenue, Newburgh, New York, June 1, 2006): Surely before buying my house in Newburgh many years ago I walked around my new street at 10:00 at night just to see if I could hear those wonderful night sounds I was used to hearing in the summer, tree frogs, crickets and big old bull frogs croaking going around on humid nights. I love those sounds of nature and was afraid they might not be here on Wintergreen Avenue. To my surprise, most of the wonderful symphony of these sounds are still with us today. But wait, now that over a hundred acres of natural woodland habitat will be destroyed along with its vernal pools and wildlife, there won't be any natural earthy sounds, just roaring diesel delivery trucks at The Market Place.

Response 3.3-11B: *As described above and elsewhere in this EIS, portions of the site will remain as open space that will continue to support wildlife, particularly in the area of the Quassaic Creek. However, changes to the habitat characteristics of the site are inevitable if it is to be developed in accordance with zoning, and if the economic benefits of such development are to be obtained.*

Comment 3.3-12 (Public Hearing, John Gebhards, 48 Wintergreen Avenue, Newburgh, New York, June 1, 2006): The inadequacy of the terrestrial and aquatic section of the DEIS is such that we should require a complete additional detailed survey of flora and fauna of these wetlands and forest so we know what's there. Only when that's done can the Board again have the information to determine the proposed development.

Response 3.3-12: *Please see the introduction to this section, above.*

Comment 3.3-13 (Letter #34, Kate Lindemann, 12 Victory Court, Newburgh, New York, July 27, 2006): The document claims that there are no rare or protected species. That is an empirical claim. But where is the scientific evidence offered to support this claim. What studies were done? By whom? When were they done? [A winter or late Fall study would be hard pressed to document certain species of plants or wildlife].

And what is very troubling to me is the claim that the developer will not allow hydrologist or other technical/scientific professionals on the site to check the claims in the DEIS statement. A company that will not provide evidence documented by reliable sources AND who will not allow other scientific or technical persons on to the site should not be allowed to go ahead until these things are provided.

Response 3.3-13: *Regarding rare or endangered species, please see the introduction above, and several other responses to comments.*

Regarding the review of other technical information, the Town of Newburgh Planning Board as Lead Agency has utilized the expertise of a number of consultants hired by the town at the applicant's expense during the review of this application. A number of these consultants have walked the site as part of their review. It is incorrect to state that there has been no objective review by knowledgeable experts of the technical information provided by the applicant.

Comment 3.3-14 (Letter #3, William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, August 10, 2006): Existing plant communities and types. Section 3.3 of the DEIS states that there are only two (2) community types on the project area, which is not correct. At least stream, floodplain forest, forested wetland, groundwater seep, disturbed areas, young successional forest, and upland oak forest communities are found on the site. From the data presented I would expect that vernal pools may also be present and it should be clearly documented if any shrub wetlands are present (transects quantifying canopy cover by species would clarify this). Former agricultural lands should be identified and shown on the community type map along with the areas that have been graded in the past ("culturally impacted" communities).

Response 3.3-14: *Based on the followup survey work that was done on the site, the applicant's consultants revised the vegetative communities map as shown on Figure 3.3-1. As stated previously, the scope for the DEIS was very general, and thus the analysis done remained general. There is a difference in how vegetative association and habitat types are presented in the DEIS. The two primary vegetative community types, northern successional hardwood and hardwood swamp, are accurate descriptions of the general vegetative communities present on the site. Within these two broader categories, the DEIS should have included a more detailed break out of the smaller communities, including successional field, floodplain forest and oak-tulip tree forest. The tree survey that*

was required for the perimeter of the property indicated 24 different species of trees. Forty-six percent of these larger trees are red oak.

Regarding habitat types, which consider the vegetation along with geologic and hydrologic conditions, landscape position and the condition of the vegetative community, the DEIS could have gone into more detail regarding smaller habitat types within the broader landscape. Existing stone walls that might be used by amphibians, snakes or small mammals are also shown.

Comment 3.3-15 (Letter #3, William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, August 10, 2006): The first cited community type is red maple/hardwood swamp, mapped as occupying all of the stream and wetland areas. This may be accurate but there was insufficient survey data to show that other wetland community types are not also present.

Response 3.3-15: *Section 3.2 of the DEIS, "Wetlands", describes each of the wetland types in detail. With the exception of Wetland D, which is described in the DEIS as a wetland created by "groundwater discharge", all of the wetlands on site are wooded wetlands with a tree canopy dominated by red maple (Acer rubrum). This conclusion in the DEIS was based on the wetland delineations done for the Army Corps of Engineers. Within that larger set of "wooded wetlands", there is a riparian wetland associated with the floodplain of the Quassaic creek, and three depressional wetlands (A, B and C) created by a perched water table and characterized by the red maple canopy. Within Wetland A there is a depressional area that exhibits vernal hydrology, and was the site of observed salamander breeding as described above. This location is now shown on Figure 3.3-1.*

Comment 3.3-16a (Letter #3, William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, August 10, 2006): The second cited community type is successional northern hardwoods occupying the remainder of the site, but appears to be a misclassification. Of the eight species that dominate successional northern hardwood forests, seven (aspen, white pine, paper birch, cherry, gray birch, green ash, elm) were not found in the tree survey or were only represented by a single individual. Oak forests of one or more types apparently dominate much of the site. The maturity of the forest stands should also be more carefully documented. Some sections are undoubtedly "successional" and the EIS extrapolates that the majority of trees are only about 30-50 years old. But the tree survey identified approximately ten trees per acre larger than 18 inches in diameter. A significant number of these were very large trees from two to almost four feet in diameter. This indicates sections of the site are mature forest from 90-150 years old. The community type work, classification, and mapping should be accomplished with greater deal (sic) to properly document the resources present.

Comment 3.3-16b (Letter #2, William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, September 8, 2006): To assess stand age I obtained increment cores from five large trees on the property as located on the attached map. The first core was too rotten to date, but the others yielded excellent samples with very clear ring patterns...The two trees successfully cored in the Wetland B area indicate this section of the forest is over 120 years old...Trees of this age appear common in the area. The second tree was a 47.2 inch diameter white oak. I recorded a growth ring from 1923 on the inside of a sample ten inches deep and estimate the age of this tree as roughly 165 years. Trees this large and old are present but uncommon on the site...The fourth tree I cored was in a hardwood stand in the south central portion of the property. The tree was a 33.4 inch diameter chestnut oak. I took a 10.5 inch core which did not

reach the reach the center of the tree...Based on its diameter I estimate the age of this tree as 160 years, and a number of trees around this portion of the site may be similarly old. Finally I cored a representative canopy tree along the northern edge of the property to estimate average stand age adjacent to the nearby houses...I estimate the tree's total age as about 90 years, a rough approximation of the stand age in this area...There are large trees on the interior of the site that appear to be not mapped in the DEIS.

> ***Response 3.3-16a and b:*** *Based on the conditions encountered on the site, in combination with the aerial photographs and other mapping available, the applicant disagrees that there are areas of the site with mature forest that is over 100 years old. Dr. Schuster selected only the largest trees in particular areas for coring. Many of these trees were along former stone walls which would have been used to separate pastures when this site was used for agricultural purposes. These walls would have created hedgerows, where larger trees could have grown and been preserved. But areas within the pastures are now successional forests, dominated by red maple, birch and several oak species. Occasionally a large or "wolf" tree was observed within these areas, which would have been left for shading of livestock. That explains the presence of older trees in some areas of the site, but to classify the entire forest as mature would not be correct in the opinion of the applicant. Other large, older trees were observed within Wetland B, which would not have been suitable for agriculture and therefore is relatively undisturbed.*
>
> *Regarding unmapped trees in the interior of the site, the applicant was not required to survey the entire property. When a property is zoned as this one is, and is uniquely located between exit ramps for an interstate highway, it is likely that many trees will have to be removed to accomplish grading and the construction of buildings and parking areas. There are no code restrictions for the removal of trees of any size within the IB zone. Tree replacement within and adjacent to parking areas is required, and was described in the DEIS.*

Comment 3.3-17 (Letter #3, William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, August 10, 2006): The document says "only common species are expected to occur" but this highlights the fact that not enough survey work has been done to know one way or the other. I expect in an undeveloped area of 128 acres with high documented tree diversity (42 tree species documented in the tree survey) that careful studies would find uncommon, and potentially, rare wildlife species.

> ***Response 3.3-17:*** *As described above, numerous additional surveys including surveys targeted at specific species and habitat types have been conducted since the initial preparation of the DEIS. No rare wildlife types were identified during these surveys, which were conducted during appropriate times of the year. It is not surprising that no rare species were observed in what is essentially an island of habitat in an urbanized area. That is not to say that the site does not support a diverse plant and animal community; the applicant's consultants have identified more than 230 species of trees, plants and animals that utilize or are likely to utilize the site. But the specialized habitat types and requirements of threatened or endangered species do not exist on this parcel.*

Comment 3.3-18 (Letter #3, William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, August 10, 2006): The fact that field crews only documented 3 mammals, no reptiles, one amphibian, and 11 bird species highlights the cursory nature of the wildlife documentation

to date. This does not constitute a "lengthy wildlife reconnaissance" as stated, and is inadequate to determine if wildlife "populations are sparse" as is also stated in the EIS.

Response 3.3-18: *Please see the introduction to this section, above, for information regarding additional surveys and observations.*

Comment 3.3-19 (Letter #3, William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, August 10, 2006): A significant number of large, mature and "potential mammal habitat" trees were identified in the tree survey work to date. These should be identified on the remainder of the site (not just in the 200 foot boundary), and preserved wherever possible. The plans show no efforts to purposefully save or avoid the destruction of large trees.

Response 3.3-19: *The space and grading requirements of large scale retail development make it difficult to preserve trees in areas where there are 25 foot cuts and 30 foot fills. Town code requirements will result in the planting of a number of trees on site to mitigate the loss of site trees, and approximately 18.3 acres of the site will remain undisturbed.*

Based on discussions with the Town's consultants, the landscape plans have been revised to include more trees and shrubs, in groupings where appropriate, to mitigate the loss of sign woody vegetation. Currently the plans illustrate 1004 street and parking lot trees, 287 evergreen trees and 244 minor trees for a total of 1535 trees along the roads, in parking areas and at the top of embankments. An additional 56 trees and several hundred shrubs will be used within the proposed wetland mitigation areas and detention basins. Areas that will be re-graded for embankments will also be stabilized and re-seeded with seed mixes that include hardy grasses and woody plants, so that ultimately these slopes will re-vegetate as woody slopes.

Comment 3.3-20 (Letter #3, William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, August 10, 2006): Thorough amphibian and reptile species lists must be compiled for wetlands A and B. It is important to know what will be lost in directly impacted areas if the project proceeds and that the habitat requirements of those wetland species that will survive the initial construction will be met to ensure they will have viable populations after construction. Section 1.3.3 of the EIS states amphibian and reptiles are "limited in number" but insufficient data are presented to support this conclusion.

Response 3.3-20: *As noted above, additional surveys for amphibians and reptiles were conducted from March through July of 2006. An additional site walk was conducted with Dr. Schuster on September 1. During breeding season surveys, three pool breeding amphibian species were identified on the site - yellow spotted salamander, wood frog and spring peeper. None of these species are state listed as rare or endangered. Red backed salamander and slimy salamanders, which are terrestrial salamanders occurring in moist woods, were also observed during site surveys. Two turtle species, wood turtle and box turtle, were also observed. Three snake species, ribbon snake, garter snake and milk snake, were also identified.*

With the exception of one young individual, all spotted salamanders were observed within a vernal pool in the eastern portion of Wetland A. This area will not be disturbed during construction, and is more than 200 feet from the proposed limit of disturbance. This area also served as a breeding pool for the two frog species.

The young of the year spotted salamander observed during the site walk with Dr. Schuster was found in Wetland B approximately 100 feet from the western property line near the off ramp for Route 84. There is a depressional area in the wetland at this location that may exhibit vernal characteristics, based on the decayed leaf substrate and root formations of the red maple trees within the depression. However, during the wetland surveys and vernal pool breeding investigations no water was observed in this pool, so there is some question as to whether this pool truly exhibits vernal hydrology. As stated in the DEIS, the hydrology for wetland B tends toward a "drier" wetland, considering the very small drainage area that flows to this wetland. The applicant therefore continues to propose to fill Wetland B for the proposed lifestyle center.

Comment 3.3-21 (Letter #3, William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, August 10, 2006): Federally protected wetland A appears to have high value but is proposed to be cut into four pieces by new roadways. A portion is proposed to be excavated and incorporated into a sediment trap in Phase 1 and other portions are to be filled and converted to roadway and embankment. This may cause wetland A to lose some of its species and function, regardless of other areas being converted to artificial wetlands. Other options for roadway layout should be considered, or perhaps the employment of large (40-foot?) arching culverts over the wetlands, such as is proposed for the Quassaick Creek crossing. The proposed culverts under the road and mitigation plans as described are unlikely to provide sufficient ecological connections (biologic, hydrologic) between the newly divided wetlands.

Response 3.3-21: *It is the applicant's opinion that the access to Route 52 at Meadow Avenue, which requires disturbance of Wetland A, is critical to the overall development project. The current FEIS plans shows revisions to this intersection, including the use of a roundabout, to address traffic concerns, and results in the further reduction of wetland impacts. This access facilitates the important improvements to the Meadow Avenue/52 intersection, and is necessary for traffic flow for any significant project on this site. The revised plans submitted with this FEIS reduce the wetland impact to Wetland A by proposing the use of a roundabout intersection instead of that design which was proposed with the DEIS. The roundabout can be constructed more directly in the upland area between two of the sections of Wetland A, and results in a further reduction of expected wetland impacts. The elimination of the access road around the north side of Building C and the use of retaining walls at the edge of the wetland to minimize grading impacts are also now proposed. While the final design has not been completed, the applicant believes that the placement of large culverts at several locations under this access road will result in continued corridors for wildlife and maintenance of wetland hydrology. Studies in Massachusetts, Washington and elsewhere have shown that these measures can be very effective in allowing free movement along existing wildlife corridors if properly designed and installed. The key is to "funnel" amphibians and reptiles to the culverts, forcing them to avoid the road. Use of these culverts will be a condition of final approval.*

Another significant development with the revised plan is the use of the DOT property along the north side of Route 84 for the site access to the east, rather than the winding access road originally proposed. This will result in a crossing that is much narrower than the original proposal, and significant reductions in wetland impact. This includes the elimination of the proposed impact at the floodplain area associated with Quassaic Creek. While the final design of the crossing has not been completed, it is anticipated to

incorporate arched culverts across the creek to eliminate disturbance of the stream bottom and provide wide access for north-south movement of wildlife.

Prior to final site plan approval, the applicant will prepare a sequencing plan to the satisfaction of the Town and the DEC that will segregate the site into several distinct sections. In order to avoid large scale clearing in areas where construction is not yet scheduled, the developer will commit to preserving a minimum 150 foot setback to property lines in those areas. This is intended to maintain a vegetated buffer between site disturbance and adjacent parcels and roads until final clearing is necessary to begin construction.

Comment 3.3-22 (Letter #3, William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, August 10, 2006): Due to the high concentration of mature trees, wetland B appears to be a high quality wetland, regardless of its presence or absence of hydrologic connections to other waters. More inventories should be accomplished so it is known exactly what will be lost along with this wetland. It is not clear that the primary function of this wetland is only the storage of stormwater runoff, as is stated in the DEIS. It may provide important animal habitat, water quality improvement, and groundwater recharge. Section 3.2-4 states that "based on seasonal observations this is generally a dry wetland". However data supporting this are not given and the statement seems at odds with the fact that it is underlain by a typical wetland soil type (Canandaigua silt loam).

Response 3.3-22**:** *Neither the DEIS nor the wetland report attached to it imply that Wetland B is not a wetland. It is clear from site observations over many months that the hydrology to Wetland B is limited, particularly by the size of the watershed that drains to it. The dense Canandaigua soils help to "perch" the water table, providing sufficient hydrology to support hydrophytic vegetation. But in this wetland the water table is generally just below the surface rather than at or above the surface. Therefore the soil saturation is lower, the vegetation growing tends toward the "facultative end of the scale, and limits the use of the wetland by wildlife species that are dependent on more substantial wetland hydrology.*

The DEIS provided a functional assessment of the site wetlands, and based on this assessment and site observations, the applicant concluded that the primary function of this wetland is for stormwater storage. Loss of this function can be mitigated by the construction of stormwater management structures as proposed. As shown on the submitted landscape plans, these basins will be graded and planted to appear as wetlands in form and function, using only native plant species that are appropriate for the site hydrology. It is noted that they are not proposed specifically as mitigation for wetland losses under ACOE permitting.

Comment 3.3-23 (Letter #3, William Schuster, Ph.D., 131 Continental Road, ad, Cornwall, New York, August 10, 2006): The possible presence of state-threatened species such as wood turtles, box turtles, Jefferson salamanders and federally endangered northern cricket frogs and/or bog turtles should be assessed and discussed.

Response 3.3-23: *As identified in the introduction above, no state listed amphibians were identified on the site. Two species of turtle that are listed were observed, the wood turtle and the box turtle. There is no potential bog turtle habitat on this site.*

DEC documentation indicates that the box turtle is listed as a species of special concern due to the likelihood of its being collected as a pet. This species is relatively common on wooded tracts throughout the area. Three individuals were identified on the Marketplace site. Two of the individuals were found in the central wooded portion of the site; the third was found within Wetland A.

The wood turtle is listed by the DEC as a species of special concern due to threats to wood turtle preferred habitat, i.e., moving streams, creeks or brooks with sand or gravel bottoms and overhanging banks. Quassaic Creek meets the habitat requirements of the wood turtle, which also includes a wooded fringe along the stream, with some adjacent open areas for foraging and nearby areas of sand and gravel for egg laying. The wood turtle is a mobile turtle, and can be found several hundred feet from its stream habitat during the summer months. The wood turtle on the Marketplace site was observed on the slopes above the west bank of the creek, in an area that will not be disturbed during construction.

Comment 3.3-24 (Letter #3, William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, August 10, 2006): Many wetland species are seasonally dependent on adjacent upland areas, but the DEIS proposes that areas surrounding wetland A will be predominantly developed. Drier hilly areas currently in the immediate vicinity of wetland A are slated to be completely removed and replaced with artificial wetlands. Edges of the roadways and improvements will feature rip rap embankments, but these will not be suitable for travel or use by most wetland species. These features may endanger the future population viability of wetland species.

Response 3.3-24: *The applicant is applying for an individual permit from the Army Corps of Engineers, recognizing that there will be wetland impacts associated with developing this property in conformance with the Town Comprehensive Plan and zoning. As discussed in the DEIS, all of the wetland impacts are associated with site access; no buildings, parking areas or other structures are proposed within or adjacent to wetlands. Two sensitive wetland areas were identified on the site; the vernal pools in the northern part of Wetland A and the Quassaic Creek corridor. The vernal pools will remain undisturbed and are more than 200 feet from any site activities. The Quassaic Creek will be crossed by the proposed access road to Route 52 near Exit 8, but the original plan has been revised to minimize this impact. Using either arches or large box culverts, the flow of the creek and wildlife movement will be maintained.*

As discussed above, the original site plan has been modified to reduce impacts to Wetland A associated with the access road to Route 52, leaving additional room between the wetland boundary and the toe of slope for the road where possible.

Comment 3.3-25 (Letter #3, William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, August 10, 2006): If the wetlands really are to be affected as proposed, much more than a 1:1 ratio of destroyed to recreated wetlands should be proposed since artificial wetlands are often not as functionally effective as native wetlands. I doubt seriously that with the current plan there will be a "net increase of wetland function and benefits to the site following construction" as is stated in the plan.

Response 3.3-25: *Impacts to wetlands have been reduced from 1.76 acres to 1.05 acres with the revised FEIS plan. Mitigation (wetland construction) areas have been increased to 2.17 acres for a ratio of 2.28:1.*

Comment 3.3-26 (Letter #3, William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, August 10, 2006): As far as I can determine the major wetlands were appropriately delineated by the Chazen companies in 2004 and by site visits by the US Army Corps of Engineers in 2004 and 2005. However vernal pools seem conspicuously absent and additional data should be gathered and/or presented to confirm only one wetland type (red maple hardwood swamp) is present.

Response 3.3-26: *As discussed above in Response 3.3-14, red maple hardwood swamp represents an overview of the habitat type, and can include smaller inclusions of other types. For example, vernal pool habitats are most often found within the more general "red maple swamp" habitat, and this is also true on this site. The vernal pool that was observed on the site is within an open canopy area in the north side of Wetland A. Similarly, the stream corridor associated with the Quassaic Creek can be characteristic of floodplain wetlands and red maple swamps associated with seasonal overflow of the creek. Isolated vernal pools do not exist on this site.*

Comment 3.3-27 (Letter #3, William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, August 10, 2006): Boundary tree surveys appear to have been appropriately accomplished in 2005. However I would recommend interior areas also be surveyed due to the significant number of large, mature trees identified in the boundary survey.

Response 3.3-27: *The boundary tree survey that was done was completed as per the adopted scope for the EIS. The large, mature trees along the property perimeter are not representative of the site overall, where a relatively young second growth forest dominates with occasional large "wolf" trees and trees along the stone wall demarcation of former pasture.*

Comment 3.3-28 (Letter #3, William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, August 10, 2006): The vegetation and wildlife surveys (spring 2004, spring 2005, and July 26 2005) looking for beaked agrimony and narrow leaved sedge and October 5, 2005 (looking for Indiana bat habitat) appear to be insufficient to properly document the resources present. Thorough and more quantitative biological field surveys should be made in the spring, summer, and fall to properly document vascular plants, ferns, club mosses, mammals, amphibians, reptiles, and birds present. Species present at the site in these groups may only be discernible in a single season in some cases. Many species were undoubtedly missed and quantitative data were presented only for trees.

Response 3.3-28: *Regarding the agrimony and sedge, please see the introduction to this section.*

Regarding a vegetative inventory, the applicant has completed a detailed vegetative inventory. Much of the information was provided in the DEIS, and additional information is provided with previous responses in this FEIS.

Based on continued concern by the Town's consultant about the Indiana bat, the applicant has agreed to contract with a knowledgeable specialist to perform an additional habitat evaluation for this property. If the habitat is found to exist on the site, the applicant will follow the Fish and Wildlife Service recommendations to prevent adverse impacts to the bats. This typically requires that individual trees most likely to support bats

will be felled outside of the bat roosting season (which is generally May 15 through August 15) to ensure that trees will not be cut down while being used by Indiana bats.

Comment 3.3-29 (Letter #3, William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, August 10, 2006): Threatened and federally listed beaked (woodland) agrimony (*Agrimonia rostellata*) has been found near Quassaick Creek downstream toward the Hudson River and could be present at this site. The surveys to date do not seem thorough enough to determine this. The DEIS states that field crews found two individuals of agrimony in flower but could not tell the species for certain. Careful inspection of flowers and/or especially fruits of agrimony plants should be adequate to definitively identify the species. This should be carefully reexamined at an appropriate juncture (*i.e.* during late summer/early fall).

Response 3.3-29: *As discussed in the introduction to this section, a detailed survey of the site was conducted to determine the presence/absence of woodland agrimony and narrow leaf sedge on this site. Although other sedge and agrimony species were identified, these two species were not found on the property.*

Although no impacts have been identified, following discussions with Dr. Schuster the applicant has agreed to conduct additional survey work prior to construction in those impacted areas of the site that are most likely to support this species, i.e., moist woodlands. Prior to site work, a knowledgeable botanical specialist will survey the area for A. rostellata. These surveys will be conducted during a period when the plant is in flower and fruiting, as this is the best time for positive identification. If found on the site, individual specimens will be relocated to another suitable area on the site and monitored for survival.

Comment 3.3-30 (Letter #3, William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, August 10, 2006): Federally listed narrow leaved sedge (*Carex amphibola*) has been found not far below this site in a wet, forested site near Quassaick Creek. A careful survey for this species on the forested wetland areas of this site should be conducted when the flowers and/or fruits would be present to enable unambiguous identification (i.e., moister and richer sections of the site, in or very close to the month of June in this area).

Response 3.3-30: *Please see the response to Comment 3.3-29. However, following discussions with Dr. Schuster, the applicant has agreed to conduct additional survey work prior to construction in those impacted areas of the site that are most likely to support this species, i.e., the culvert crossing at Quassaic Creek and the road crossing at Wetland A. Prior to site work, these areas will be staked out and flagged, and a knowledgeable botanical specialist will survey the area for C. amphibola. These surveys will be conducted during a period when the plant is in flower and fruiting, as this is the best time for positive identification. If found on the site, individual specimens will be relocated to elsewhere in the wetland and monitored for survival.*

Comment 3.3-31 (Letter #3, William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, August 10, 2006): Federally listed Indiana bats have hibernacula in the region and have been documented in the summer as using this type of forest at locations within ten miles of the project site (they were found this summer in the Black Rock Forest in Cornwall). These bats roost under loose bark of large live and dead trees, such as occupy the site. The DEIS states that there are approximately 2000 trees greater than 12 inches in diameter and candidate trees are specifically shown in photos 7 and 9 of Appendix B. Potential use by this species should be

more thoroughly evaluated and discussed. Its presence or absence should be investigated with on-site bat surveys and further habitat evaluations during the summer months. Plans that spare a larger number of large trees with loose bark could be beneficial in preventing the extinction of this species. Section 3.3-12 concludes that the tree community is "not compatible" with summer roosting of Indiana bats, but I disagree. At least 5% of the trees appear potentially suitable for roosting, and there is appropriate foraging habitat on the site.

> ***Response 3.3-31:*** *Habitat evaluations were conducted during summer months as well as winter months. The DEIS provides a detailed habitat analysis and reasons for the conclusion that Indiana bats are unlikely to use this site. Subsequent site walks confirm that the limited number of trees on the site that might provide bat habitat are located within dense stands of second growth forest rather than along edges with reasonable sun penetration. This condition was noted by Dr. Schuster during the site walk.*
>
> *However, based on continued concern about this species, the applicant has agreed to contract with a knowledgeable specialist to perform an additional habitat evaluation for this property. If the habitat is found to exist on the site, the applicant will follow the Fish and Wildlife Service recommendations to prevent adverse impacts to the bats. This typically requires that trees individual trees most likely to support bats will be felled outside of the bat roosting season (which is generally May 15 through August 15) to ensure that trees will not be cut down while being used by Indiana bats.*

Comment 3.3-32 (Letter #3, William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, August 10, 2006): Potential stream impacts are significant because portions of the property slated for development include a tributary of Quassaick Creek and a section of Quassaick Creek itself. In addition two State listed wetlands are downstream of runoff from the site, NB-28 (in Algonquin Park) and NB-29 (around Brookside Lake). On page 2-12 of the DEIS it states that the development of The Marketplace will not impact wetland NB-28, but such impact is a possibility since much of the site runoff will travel through this area and then proceed downstream. Further downstream, Brookside Pond and marsh (NB-29) in particular is a high quality wetland resource and significant habitat area for waterfowl and migrating songbirds. Disturbances of 108 acres of land and the presence of 19 acres of steep slopes indicate high potential for sedimentation of the creek and these protected wetlands during and after construction if any portions of the sedimentation plan do not function optimally. Safeguards should be added to the plan and monitoring and maintenance must be done frequently enough to prevent problems before they become major. Incentives for not discharging sediment and/or penalties for discharging sediment should be considered. 75 acres of new impervious surface replacing forested land is an area of concern. Stormwater discharges could potentially cause flooding and basin scouring downstream. Incorporation of more infiltration areas and vegetative filtering would benefit the ecology and would increase the effectiveness of the proposed sediment/erosion control/stormwater management plan.

> ***Response 3.3-32:*** *The applicant has developed a stormwater management plan which includes phasing of construction, erosion and sedimentation controls, water quality best management practices, and a number of other requirements of the New York State DEC and the Town of Newburgh. All construction sites must now be monitored on a weekly basis for compliance with stormwater pollution prevention plans (more frequently in case of rain events). The applicant must also comply with very strict guidelines regarding the velocity of water leaving the site so that downstream areas are protected.*

Comment 3.3-33 (Letter #3, William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, August 10, 2006): Downstream impacts due to the stated, planned use of herbicides and pesticides and high pollutant loadings including hydrocarbons, metals, and road salt are expected from runoff over roods, vehicle use areas, and asphalt. It seems insufficiently clear how the current plan will deal with these pollutant issues and it is somewhat disturbing that an increase in stream runoff of metals is projected.

Response 3.3-33: *The applicant's stormwater pollution prevention plan, which must meet the requirements of New York State General Permit GP-02-01, will be reviewed by the DEC as part of the Water Quality Certification that the DEC must provide in response to the applicant's request to a wetland permit from the Army Corps of Engineers. This permit has strict requirements for the capture and treatment of stormwater runoff from developed areas. If the applicant meets those standards, it is assumed that water quality goals are met.*

Comment 3.3-34 (Letter #3, William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, August 10, 2006): The applicant should consider more forest preservation and/or planting more than 1000 trees (this is only 10 trees per acre) to avoid wetland and stream impacts after development. Salt runoff impacts to streams are already severe in this area. The DEIS says "strict guidelines:" will be employed for use of salt. These guidelines, and the amounts and types of storage facilities should be given in the documents and shown on maps.

Response 3.3-34: *The nature of the development proposed will result in the loss of wooded area on this site. The applicant is preserving approximately 18 acres of woodlands on the site. With the replanting of the proposed detention basins and graded slope areas, more than 28 acres of the site will be vegetated following construction. These areas vary from 6 to 11 acres in size.*

The applicant has also reviewed the plan relative to offsite open space areas that are contiguous to the site. As shown on the aerial photos, the portions of the site that will remain open are adjacent to existing open spaces associated with Winona Lake, lands behind the existing tile store and strip mall on Route 300, and Town owned land south of Wintergreen and Hilltop Avenue. When viewed in the context of remaining open space, these areas range from 10 to 29 acres and total more than 56 acres.

However, the Town zoning and Comprehensive Plan allow the construction of large scale retail on this site, and this type of development requires large buildings, very large parking areas and large stormwater facilities. The applicant is substantially exceeding the Town requirements for tree replacement.

The landscape plan has been enhanced since the early discussions with Dr. Schuster and Ms. Arent. Currently the plans illustrate 1004 street trees, 287 evergreen trees and 244 minor trees for a total of 1535 trees along the roads, in parking areas and at the top of embankments. An additional 56 trees and several hundred shrubs will be used within the proposed wetland mitigation areas and detention basins.

With the exception of the access road to Route 52 over the Quassaic Creek, no salt will be applied in close proximity to the creek. A large detention and water quality basin is proposed between Building E and the creek; associated impervious surfaces are more

than 350 feet away from the stream edge, and must drain through the stormwater quality structures before discharge to the stream.

Comment 3.3-35 (Letter #3, William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, August 10, 2006): The fact that significant natural resources are present (large, mature trees, diverse plant community, significant wetlands) means that more intensive plant and animal surveys should be accomplished to produce accurate documentation of the biota and communities present. Without this, potentially inaccurate conclusions appear to have already been drawn ("only common species are expected to occur", "populations are sparse"). It is still not clear what will be lost with the heavy development of this site and the data are too limited to know whether the primary mitigation strategy proposed (constructing wetlands) will significantly mitigate the impacts.

Response 3.3-35: *As described above, follow up surveys were completed.*

Comment 3.3-36 (Letter #3, William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, August 10, 2006): An evaluation of vernal pools in the springtime should be undertaken; none was apparent from the material in the EIS. I would expect a property of this nature to contain vernal pools, which often provide important biological and environmental services. Threatened and endangered species should be sought specifically in the seasons in which they can be located and identified. In light of the potential for Indiana bat use of the site, possible roost trees should be surveyed on the interior of the parcels (areas not included in the previous tree surveys). The seep area (Wetland D) in particular should be checked for unusual biota, including endangered beaked agrimony and narrow leaved sedge.

Response 3.3-36: *Please see the introduction to this section above and the Response to Comment 3.3-31.*

Comment 3.3-37 (Letter #3, William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, August 10, 2006): The authors should note that this is NOT within the Hudson Highlands (as is stated in section 3.1-1), whose northern terminus lies several miles to the south in Cornwall.

Response 3.3-37: *Comment noted.*

Comment 3.3-38 (Letter #3, William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, August 10, 2006): I note that non-native plant species are abundant, probably too abundant for overall environmental health, in the landscaping plan. Table 3.3-5 also includes several non-native species.

Response 3.3-38: *The landscaping plan has been revised to include only native tree and shrub species in areas that are intended to be naturalized following construction. This includes the buffer plantings along Route 300, behind the Hilltop neighborhood, on the stabilized slopes at the perimeter of the site, and along the I-84 corridor. All native species will also be used in the proposed detention basins and wetland mitigation areas. It is expected that the Planning Board will encourage the use of native plantings around the new buildings when final site designs are submitted. However, for the street and parking lot trees, native plants will be used where appropriate, but there are many non-native species that are better suited to the stresses of these areas, and these will be*

chosen by a landscape architect in consultation with the Town. No species characterized as being invasive will be used anywhere on the site.

The applicant has examined the tree survey completed for the site, and concluded that no trees greater than 18 inches are located within the proposed wetland mitigation areas. All trees greater than 12 inches in diameter will be preserved to the greatest extent practicable by making site adjustments to the final grading in a manner as to preserve the trees and root structures.

Comment 3.3-39 (Letter #3, William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, August 10, 2006): In the Appendix A SEQRA project information, Part 1.A.15, it states no streams are present, but the site clearly includes an unnamed tributary of Quassaick Creek in the northwestern portion.

Response 3.3-39: *When the original long form EAF was prepared, the parcel with the Quassaic Creek was not available to the applicant and was not part of the overall property. The applicant has since purchased this property, and the EAF is updated by reference in this EIS.*

Comment 3.3-40 (Letter #3, William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, August 10, 2006): In Section B.5 of this document it says that no forest over 100 years old or important vegetation will be removed. The numerous large trees seem to conflict with this and tree ring samples should be obtained and analyzed to determine this.

Response 3.3-40: *Based on an evaluation of site conditions, the applicant continues to conclude that there is no "forest" present on this site that is more than 100 years old. While there may be a few individual trees that are that old, this does not constitute a forest, and clearly the site has been used as pasture and agricultural land much more recently than 100 years ago.*

Comment 3.3-41 (Letter #3, William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, August 10, 2006): Map scale appears incorrect on wetlands maps W1 and W1.

Response 3.3-41: *After a review of the plans, it was determined that the scale was accurate at 1" = 100'.*

Comment 3.3-42 (Letter #3, William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, August 10, 2006): The applicant has an opportunity to better document the ecological and environmental resources, to improve the site design and mitigation plans, and to make this an ecologically enlightened development proposal. Alternative plans could include less impact to wetlands and high quality habitat areas and a higher proportion of native vegetation to provide climate control, visual appeal, screening, runoff infiltration, pollutant filtering, and habitat preservation for native species.

Response 3.3-42: *With this FEIS the applicant has provided additional information regarding wildlife and vegetative inventory. The wetland impacts have been reduced to the extent practicable considering the need for access to the site and improvements to the intersection of Route 52 and Meadow Avenue, and the wetland mitigation plan has been further expanded to a ratio of 2.28:1.*

Comment 3.3-43 (Letter #14, Nathaniel J. Parish, Parish & Weiner Inc., 101 Executive Boulevard, Elmsford, New York, July 31, 2006): The interested parties have been deprived access for the project site. Thus, they and their professional consultants have been unable to prepare a full evaluation of impacts on: wetlands, threatened endangered and rare species, storm water flow, cultural and archeological impacts.

Wetland Impacts

The DEIS informs that there are at least five wetland areas on the site and a number of water courses. The mitigation proposed for wetlands to be filled is inadequate in terms of the ratio of wetlands destroyed to wetlands purported to be added. There is insufficient data provided as to the potential for success of the new wetlands to be created.

A major wetlands area, Wetlands "B", with almost five acres of wetland area, is to be obliterated with no mitigation proposed The DEIS asserts is that there is no governmental jurisdiction over this wetlands. As I discuss below, this conclusions needs to be reviewed. However, even if a thorough review and analysis affirms this conclusion, it does not relieve the Planning Board from its site plan and SEQR review functions which require that any impacts be mitigated to the maximum extent possible. There is no justification for the removal of a five acre wetland without any mitigation. The one and only reason for its removal is the applicant's objective of maximizing development of the site. That is not a sufficient reason for the Planning Board not to require an alternate plan.

The conclusion that Wetland "B" is not a wetland under U.S. Army Corps of Engineers jurisdiction is apparently based on a prior interpretation of the Federal law. However, recent Supreme Court decisions are causing a review of previous jurisdictional determinations. A Corps of Engineer website, First Gov, last updated 7/18/2006, informs:

> "In the wake of the recent Supreme Court decisions in the United States V. Rapanos and United States v. Carabell, the U.S. Army Corps of Engineers and the Environmental Protection Agency are examining the methods in which we describe and document Jurisdictional determinations (JDs) pursuant to the Clean Water Act (CWA)."

The Planning Board must await a current determination as to whether, under the new rulings, Wetland "B" would fall under U.S. Army Corps of Engineers jurisdiction. If so, it would absolutely require a change in the plan inasmuch as there would be no basis for filling the wetland in order to construct the "Village Center shopping area" portion of the plan.

> ***Response 3.3-43:*** *The applicant received a jurisdictional determination from the Army Corps of Engineers dated November 30, 2005 confirming that Wetland B is not a regulated wetland. No policy changes have been made by the Corps as of the date of this FEIS, so that determination remains valid. The Army Corps of Engineers New York District is currently revising its regional conditions for nationwide permits, which do not apply to this application. The applicant has acknowledged that an individual permit is required for this project.*
>
> *The applicant acknowledges in the DEIS that there will be some loss of wetland function associated with the filling of Wetland B. The primary functional benefit of Wetland B is for stormwater management and water quality, and the applicant has mitigated the proposed loss of this function with a comprehensive stormwater management plan.*

The potential impacts to regulated Wetland A have been reduced to the extent possible in the plan submitted with this FEIS. Total Impact of regulated wetlands on the site has now been reduced to 1.05 acres, and the areas of mitigation have been increased to 2.17 acres for a ratio of 2.28:1. The applicant's consultant specializes in the design and construction of created wetlands, and has used those methods described in State and Federal guidelines for the design of the mitigation areas. The Army Corps of Engineers will ultimately decide if the plan is acceptable as proposed as part of the review for the individual Section 404 Wetland Permit.

Comment 3.3-44 (Letter #14, Nathaniel J. Parish, Parish & Weiner Inc., 101 Executive Boulevard, Elmsford, New York, July 31, 2006): The applicant's failure to allow access to the site for physical inspection by consultants to interested parties makes it impossible to determine whether the applicant's assertions as to wetlands delineation and jurisdiction are accurate. There are substantial reasons for requiring such a review and these are discussed below.

The applicants presented Maps W-1 and W-2, Wetlands Survey map which purport to delineate wetlands found on the site by the applicants consultant Chazen Engineering and Land Surveying Co. P.C. and which note in the DEIS text, the governmental entity, if any, assumed to have regulatory jurisdiction over those wetlands.

The delineation of wetlands boundaries are often subject to varying interpretations by professional wetlands experts, as are decisions on the matter of whether they should properly fall under governmental jurisdiction.

Therefore it is of utmost importance that interested parties are afforded the opportunity for their experts to either confirm or provide differing information with respect to these issues.

The easterly boundary of Wetlands "B" is within approximately 400 feet of the boundary of Wetlands "A" which is 9.69 acres, and also shown on map W-1.

If instead of being separated Wetlands "A" and "B" were to be connected, they would fall under New York State Department of Conservation ("DEC") jurisdiction as the total area would exceed the DEC 12.4 acre criteria. It is doubtful that the obliteration of Wetlands "B" would be permitted by the DEC, and Wetlands "A" would be required to have a 100 foot surrounding buffer area, which would then require a major change in the project plan.

There is a possibility that Wetlands "A" and "B" should be delineated as one contiguous area. Spot elevations within a corridor between the two wetlands are within a 362-363 range. Spot elevations within Wetlands B are within a 365-369 range, and within Wetlands A they are within a 345-347 range. Thus, from these elevations, there is a basis for assuming water flow from Wetland B, through the corridor to Wetland A, and the possibility that the soil and wildlife species within the corridor provide a basis for the two wetlands to be delineated as one contiguous area. This hypothesis can neither be confirmed nor discounted without a physical examination of the site.

Wetlands survey Map W-1 shows Wetlands C, a 0.52 acre area identified as a federal ("COE") wetland, and a Wetlands Survey map W--2 identifies Wetland D, a 0.06 acre wetland [letter reads 'Wetland D, 1 0.06 acre wetland'] also identified as an COE wetland, and Wetland E, an area of 1.47 acres which is not identified as an COE wetland. Wetlands Survey Map W-2 shows

that wetlands "D" and "E" are connected by the Quassaick Creek and north of Wetlands E, the Quassaick creek connects with Winona Lake and north of Winona Lake the Quassaick creek continues for a long distance to the north.

The mapped connection of Wetlands "D", "E", the Quassaick Creek and Winona Lake raise a question as to whether the entire wetlands/watercourse/water body system should not be considered in its combined form as an aquatic system that falls within the jurisdiction of either COE or DEC, or both. A determination as to whether an interested party can confirm or discount this possibility cannot be finally determined without a physical inspection. If such a jurisdiction were to be established, there is a substantial question as to whether the road which is proposed to bisect the wetlands complex would be permitted. If not permitted the applicant's traffic plan will not hold up.

Comments on the project were prepared for the DEIS record by CEA Engineers PC, May 31, 2006, a prominent and highly respected engineering firm. On the subject of wetlands they concluded:

"Our review of the wetland section of these documents and related maps and aerial photographs from other sources suggest that some changes to the delineation of on-site wetlands may be warranted: however, no formal opinion about the accuracy of the on-site delineation can be offered without site access and inspection of the subject wetlands."

> ***Response 3.3-44:*** *As stated in earlier responses, the wetland delineation on this site was completed by a certified wetland specialist and reviewed and confirmed by the Army Corps of Engineers. The DEC has walked the site and confirmed that none of the wetlands on the property are DEC regulated.*

Comment 3.3-45 (Letter #14, Nathaniel J. Parish, Parish & Weiner Inc., 101 Executive Boulevard, Elmsford, New York, July 31, 2006): Rare, Threatened and Endangered Species This subject was almost totally ignored in the DEIS. This is confirmed by a letter from the McGoey, Hauser & Edsall, P.C. ("MHE") the Board's review engineers. (Footnote: The date of the letter is confusing. It is noted as 4 October 2005 on the firm's letterhead copy, yet is stamped as having been received July 24, 2006 by the Town of Newburgh Planning Board.)

The MHE letter informs the Board that they have retained a consultant, William Schuster, to "evaluate the ecological resources on the subject site". It further informs that "..he would be performing his evaluation and field work during the last week of July, first week of August and providing his response to this office soon thereafter". Thus this important information was not available for public review and comment when the public comment period ended on July 31st. It is obviously information which should have been in the DEIS.

The deficiency of the DEIS was noted by J.G. (Spider) Barbour ("Barbour"), a highly respected ecological consultant, in a comment paper on June 15, 2006, which is included in the public hearing record. Mr. Barbour had conducted a study of the Quassaick Creek, in 2003 and 2004, for the City of Newburgh and the Quassaick Creek Coalition. This creek flows adjacent to and within, a portion of the project area.

Barbours comments establish:
That a detailed professional field study to determine whether there are or are not rare plant species was not performed in the DEIS.

That there are rare species, woodland agrimony and narrow-leaf sedge in the vicinity of the project, raising the distinct possibility that they exist within the project itself.
a. The possibility that isolated wetlands on the site could be vernal pools which are a critical habitat for certain rare salamanders.
b. A field inspection is required in order to properly determine whether the site does or does not contain threatened, endangered or rare species or wildlife.

Obviously, the consultant now retained by MHE will be performing the field inspection and report preparation that should have been in the DEIS. But without access to the site, the interested parties will have no way of determining whether the survey is complete and accurate.
The results of the Schuster survey must be reported in a Supplementary DEIS.

Response 3.3-45: *In the interest of appropriate diligence, onsite ecological survey work was conducted for this site before, during and following the preparation of the DEIS.*

The DEIS scope, however, did not require any more than cursory examination of habitat types and "typical wildlife" on the site. The applicant pursued further surveys in response to comments at the public hearing.

The Town's consultant was not hired to conduct surveys for inclusion in the DEIS, but rather to review the DEIS for substance and comment where appropriate about the conclusions of the DEIS. Dr. Schuster's comments are appropriately included and considered in the text of this FEIS.

Comment 3.3-46 *(Letter #2,* William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, September 8, 2006): The forested wetlands on the property are unlikely to contain endangered bog turtles or northern cricket frogs. More thorough work in other seasons, especially spring, would strengthen the DEIS species lists for the two significant wetlands, A and B.

Response 3.3-46: *As noted above and in the introduction, additional amphibian surveys were conducted within the site wetlands. Two spotted salamanders were observed mating in Wetland A, although no eggs were observed. A young of the year spotted salamander was observed during a site walk with Dr. Schuster in the southern part of Wetland B, where no breeding was observed during spring surveys. No impacts to Wetland A in the vicinity of the known vernal pool are proposed. The applicant will continue spring vernal pool surveys in March/April of 2007 to confirm the conclusions of the previous site surveys. Should these surveys result in the observation of State species of special concern in areas of proposed disturbance, the observed individuals will be re-located to the known habitat areas in the undisturbed portion of Wetland A. Based on the previous surveys, it is considered unlikely that this will be necessary.*

Comment 3.3-47 (Letter #2, William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, September 8, 2006): I expect that the road and pond construction planned for the Wetland A area will impact and later restrict movement of wetland-dependent species. A significant area of adjacent upland should be preserved to enable critical seasonal movements. Ecological and hydrologic connectivity should be emphasized for long-term preservation and function.

Response 3.3-47: *The revised plans included with this FEIS include a reduction of wetland and adjacent area impacts in the vicinity of Wetland A for the road access to Route 52. The proposed roundabout reconfigures the access at this location, utilizing more of*

the adjacent upland and reducing wetland impacts by at least an additional 0.25 acres. The access road behind buildings C and D, which originally was proposed for this area, has been eliminated. As described in the DEIS, oversize culverts connecting the portions of Wetland A to be split by the road access will be installed under the road for continued hydrologic connectivity and for movement of wildlife. Final design of these culverts, which will include methods to lead crawling wildlife toward these culverts rather than over the road, will be completed during final site plan design.

Comment 3.3-48 (Letter #*2,* William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, September 8, 2006): Wetland B is a high quality, mature forested wetland, regardless of its lack of connection to other waterways. We located one spotted salamander, a species of special concern in New York State, and many redback salamanders. Many large trees of excellent habitat potential are distributed around the wetland. Wetland B appears to have value as habitat for native wetland species and groundwater recharge in addition to storage of stormwater runoff. The area was moist when we visited and is probably an important early season amphibian breeding habitat.

Response 3.3-48: *No vernal pool breeding habitat was observed during spring breeding surveys in Wetland B. The applicant's consultants did not view Wetland B as a high quality wetland. It is very unlikely that Wetland B has any recharge function, since the wetland is created by a perched water table over dense subsoils that restrict infiltration. While the applicant agrees that there are large trees within and adjacent to the wetland, the proximity of the wetland to Route 300 and the relatively dry hydrology of the wetland limit its value as a significant habitat for wetland dependent species. Red-backed salamanders, which are common in all moist woodlands, were found throughout the site, and were not in any way limited to Wetland B.*

Comment 3.3-49 (Letter #2, William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, September 8, 2006): Wetland E is indeed a narrow floodplain corridor along Quassaick Creek. The most ecologically important feature of this area is probably the ecological continuity of the creek corridor. The proposed 40-foot arching culvert, if installed with proper methods and controls, should avoid impacting or restricting the creek and Wetland E. Despite the box culverts under Route 84 and the dam upstream, the Quassaick Corridor remains moderately healthy and is an important biological corridor enhancing the long term environmental health of the area.

Response 3.3-49: *Comment noted. While the final design of the culvert crossing of Quassaic Creek has not been completed, it will include some combination of arches or three sided box culverts to minimize streambed disturbance and maintain an open corridor for water flow and wildlife movement. The Town engineering and ecological consultants will review this design prior to final approval. As described elsewhere, the current plan moves the crossing south onto the DOT property, avoiding entirely the crossing thorough the floodplain area that was shown in the DEIS. This results in a significant reduction in wetland impacts in one of the more critical areas of the site.*

Comment 3.3-50 (Letter #2, William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, September 8, 2006): I observed no areas outside of the wetlands that appear to function as vernal ponds in my four-hour visit.

Response 3.3-50: *Comment noted. During the numerous site visits conducted by the applicant's consultants, no vernal pools were observed outside of the area in the northern portion of Wetland A.*

Comment 3.3-51 (Letter #2, William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, September 8, 2006): The DEIS remains incomplete in its list of wildlife species. My visit was not a full wildlife survey but did I observe animals, and record animal sign, present on this August afternoon: spotted salamander, redback salamander, garter (?) snake, whitetail deer, gray squirrel, chipmunk, white footed mouse, groundhog, redtail hawk, robin, blue jay, crow, chickadee, downy/hairy woodpecker, turkey vulture.

Response 3.3-51: *The DEIS included these and many other species as using or likely to use the site. This FEIS includes records of a number of additional species that were observed during the more intensive surveys done during the spring and early summer of 2006.*

Comment 3.3-52 (Letter #2, William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, September 8, 2006): There are large trees on the interior of the site that appear to be not mapped in the DEIS.

Response 3.3-52: *The DEIS scope did not require the identification of any trees out side of the 200 foot area around the perimeter of the property, as it was anticipated that trees to the interior of the site would be difficult to preserve in view of the grading needed to prepare the site for a retail use.*

Comment 3.3-53 (Letter #2, William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, September 8, 2006): I found a population of about 15 agrimony plants and collected specimens (these were examined fresh, dried, mounted and labeled and reexamined under microscope). I believe the population is non-endangered *Agrimonia pubescens,* due to hypanthium size and shape, lack of glands on abaxial leaf surfaces and inflorescence stalks, and an abundance of fine hairs on stems. I am consulting with another botanist to confirm this. This fact does not mean there is no endangered beaked agrimony on site.

Response 3.3-53: *Comment noted. The applicant came to the same conclusion regarding these specimens of agrimony. The applicant took a hard look at the site over several survey dates as described above, and did not find beaked or woodland agrimony on this site. Regarding State-listed plants, it is important to note that this protection only legally extends to public state lands, and that property owners are legally within their rights to remove any vegetation on privately owned property. Regardless, the applicant was willing to survey the site for both the agrimony species and Carex amphibola, as described elsewhere, based on the Quassaic Creek report prepared by James Barbour. Neither of these species was found on the site. Please see the response to Comments 3.3-29 and 3.3-30.*

Comment 3.3-54 (Letter #2, William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, September 8, 2006): There is *Carex* in the area of some of the wetlands. I did not find endangered *Carex amphibola* but this would have flowered and fruited earlier in the season.

Response 3.3-54: *Please see the introduction above and the response to Comment 3.3-53.*

Comment 3.3-55 (Letter #2, William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, September 8, 2006): I did not observe any Indiana bats, although I discovered a white footed mouse living under the loose bark of one large snag, highlighting the mammal-habitat functions of many of the large trees and snags. Some of the trees in the wetland B and other mature sections of the property could conceivably be summer roost trees for Indiana bats.

> ***Response 3.3-55:*** *The applicant completed an analysis of Indiana bat habitat potential in the DEIS, and found that it was unlikely that bat habitat exists on this property. Although some trees were observed that have physical characteristics necessary for bat roosting, the closed canopy on the site in the vicinity of these trees makes bat use very unlikely. The wood line around the one open area of the site, near the former staging area for the I-84 off ramp east of Wetland B, was examined and no trees that have high potential for bat roosting were observed.*
>
> *However, based on continued concern about this species, the applicant has agreed to contract with a knowledgeable specialist to perform an additional habitat evaluation for this property. Please see the response to Comment 3.3-31.*

Comment 3.3-56 (Letter #*2,* William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, September 8, 2006): The large acreage of the new impervious surface proposed to replace forested land remains an area of concern. Stormwater discharges could potentially cause flooding and scouring of the Quassaick if controls do not work optimally at all times. I strongly suggest incorporation of more infiltration area and semi-permeable surfaces. Groundwater recharge would benefit from this and vegetative filtering would enhance the ecology, reduce pollution, and increase the effectiveness of the stormwater management plan.

> ***Response 3.3-56:*** *The stormwater pollution prevention plan meets the criteria required for the New York State DEC General Permit for stormwater (GP-02-01). This permit requires a high level of stormwater capture and treatment for water quality. The proposed stormwater basins will be landscaped in a manner similar to open meadow wetlands, and filtering will certainly occur as part of a comprehensive stormwater quality plan.*

Comment 3.3-57 (Letter #*2,* William Schuster, Ph.D., 131 Continental Road, Cornwall, New York, September 8, 2006): Since large areas of mature forest including many large trees and the area of wetland B are to be almost completely developed according to the plans, it would be desirable to have additional surveys conducted by mammal, amphibian, bird, and rare plant experts in the seasons in which key organisms can best be located and identified.

> ***Response 3.3-57:*** *See the introduction to this section and many of the subsequent responses based on follow-up surveys of the site.*

Comment 3.3-58 (Letter #*16,* J.G Barbour, 5 Fishcreek Road, Saugerties, New York, 21 July, 2006): For on-site surveys, the DEIS gives no description of survey methods, and no details about time spent (just the adjective “lengthy”). Some dates are given in tables but no narrative or table of all survey dates and times is provided, nor any textual or tabular account of survey locations.

More egregiously, no information is given as to who did the field survey, what methods were used, how much time was spent and when, or what the surveyors’ credentials and qualifications

are. This is an unacceptable omission entirely out of line with professional standards and practices. Besides the town board, the concerned public and their chosen representatives have a right to know who performed this work, and when the work was performed.

Response 3.3-58: *Please see the introduction to this section for additional information about subsequent site surveys.*

Comment 3.3-59 (Letter #*16,* J.G Barbour, 5 Fishcreek Road, Saugerties, New York, 21 July, 2006): Rare species issues are not adequately addressed by the DEIS. In view the developer's consultant has actually circumvented these issues. The most important kinds of plants on the site were not identified to species, only to genus. These genera are significant because I found narrow-leaf sedge (*Carex amphibola*, NYS Endangered) and woodland agrimony (*Agrimonia rostellata*, NYS Threatened) along Quassaick Creek south of the site in 2003.

Response 3.3-59: *Please see the response to Comment 3.3-53.*

Comment 3.3-60 (Letter #*16,* J.G Barbour, 5 Fishcreek Road, Saugerties, New York, 21 July, 2006): Again and again the DEIS reflects bad science or non-science. Consider sedges. Except for the common tussock sedge (Carex stricta), all sedges are lumped together as Carex spp.! There is no way to tell how many species of sedges were found on the site. Other plant groups that were not determined to species were bulrushes (Scirpus) and flatsedges (Cyperus). There are a number state endangered and threatened species in each of these genera, some reported from Orange County. For example, NYNHP database contains records of Georgia bulrush (Scirpus georgianus), Houghton's flatsedge (Cyperus houghtonii) and redroot flatsedge (C. erythrorhizos) from within 10 miles of the Marketplace site.

Response 3.3-60: *The DEIS reflects what was asked for in the scope, and as such was accepted by the Town of Newburgh as complete to commence the public review process. Based in part on the response from involved agencies and the public, additional site work was done as described throughout this section.*

Comment 3.3-61 (Letter #*16,* J.G Barbour, 5 Fishcreek Road, Saugerties, New York, 21 July, 2006): In regard to agrimonies, the agrimony found on the site could be anyone of five species, and in my opinion probably not downy agrimony. Downy agrimony is an uncommon species in my experience. In Orange County it appears to be less common than woodland agrimony. In 15 years of botanical surveys in the Hudson Highlands, I have encountered downy agrimony only once in New York, in Rockland County. The cautionary "probably [downy agrimony]" of the DEIS provides no confidence whatever that woodland agrimony does not occur on the site, or that the plant(s) observed by the surveyors were not woodland agrimony. As with narrow-leaf sedge, it can only be concluded that the occurrence of woodland agrimony is a strong possibility.

Response 3.3-61: *Please see the response to comment 3.3-53.*

Comment 3.3-62 (Letter #*16,* J.G Barbour, 5 Fishcreek Road, Saugerties, New York, 21 July, 2006): Now we come to animals. Of 96 animal taxa determined "likely to occur" on the site, only 15 were observed. Both are indications of an inadequate survey. Certainly more animal species than 15 must occur on the site. As with plants, in some groups identification is only to genus. A notable example is "warbler (Dendroica)" in the animal species list. There are 17 species in the genus. Dendroica, and Dendroica is not the only genus of warblers; there are 11

additional genera and a total of 28 species of warblers in eastern North America (Peterson 1980). Identification to species is absolutely essential since only species, not genera, have rarity/protected status. Additionally, the narrative account of mammals observed on site (p. 3.3-9) and the list of "Project Site Wildlife" (Table 3.3-3) do not correspond. Eastern chipmunk, gray squirrel and eastern cottontail are mentioned in the text, but in the table are not indicated by an asterisk as occurring on the site.

Response 3.3-62: *More intense surveys for mammals, reptiles, amphibians and birds were conducted as part of this FEIS. Please see the introduction to this section for detailed information regarding these surveys.*

Comment 3.3-63 (Letter #*16,* J.G Barbour, 5 Fishcreek Road, Saugerties, New York, 21 July, 2006): It appears that no specific surveys were performed for ecologically significant plant and animal groups such as breeding birds, reptiles, breeding amphibians, fish (in Quassaick Creek), small mammals including bats, dragonflies and damselflies (Odonates) or butterflies. There is only the statement that wetlands on site are "likely to provide habitat for amphibians." These wetlands are poorly described and there is reason to doubt that some are depicted on maps, particularly those described as "isolated." These isolated wetlands are likely vernal pools, important breeding habitats for amphibians, including several rare species.

Response 3.3-63: *The term "isolated" is used by the Army Corps of Engineers in determining whether a wetland is connected hydrologically to other wetlands or to features that are described as "waters of the U.S." The jurisdictional determination letter written by the Corps for this property states that Wetlands B, C and D are "isolated" and therefore outside of federal jurisdiction.*

There are no wetlands outside of the delineated areas that are not shown on maps, as verified by the Corps during field inspections. A vernal pool area was identified within Wetland A as described above during amphibian breeding surveys. The initial site information provided with the DEIS was adequate based on the adopted scope. Although detailed surveys and inventories of all flora and fauna groups, which often include tag and release, trapping, mist netting and other methods may be desirable research mechanisms, they are generally not required under SEQRA and were not requested for this project. Regardless, the applicant did take a hard look at breeding birds, amphibians and reptiles during the 2006 surveys. Nothing was identified that is state listed as threatened or endangered.

Comment 3.3-64 (Letter #*16,* J.G Barbour, 5 Fishcreek Road, Saugerties, New York, 21 July, 2006): The possibility remains that narrow-leaf sedge, woodland agrimony, additional rare sedge species, rare species in other plant groups, and a number of rare animal species might occur on the site. With so many possibilities for rare species occurrences, it is likely that at least one or more rare species does occur on the site. Therefore it would be irresponsible and against SEQRA requirements to accept the Marketplace DEIS as accurate and complete.

Response 3.3-64: *The DEIS was found to be complete, based on the information requested in the adopted scope, by the Planning Board as Lead Agency. Because this property is privately owned, there is no legal protection of rare plant species extended to the property, although the applicant did take a hard look for the presence of the species identified by Mr. Barbour based on his work elsewhere in the Quassaic Creek corridor. These species were not observed on site.*

It is noted again that this site has been zoned for commercial use for more than thirty years, and it must be expected that a significant loss of vegetation will occur if the property is to be developed as allowed under zoning. The current plan meets all the criteria of the zoning code.

Comment 3.3-65 (Letter #*16,* J.G Barbour, 5 Fishcreek Road, Saugerties, New York, 21 July, 2006): In my study of the Quassaick Creek corridor I gathered and analyzed detailed data about past and present land use and biodiversity, and supplemented existing data with detailed observation obtained in the field throughout the 2003 growing season. The Marketplace site is located along the Quassaick Creek corridor, so that the information and conclusions of my study may fairly apply to the site. However, such a comparison cannot substitute for on-site surveys by independent qualified scientists.

Response 3.3-65: *See comments above.*

Comment 3.3-66 (Letter #*16,* J.G Barbour, 5 Fishcreek Road, Saugerties, New York, 21 July, 2006): Survey results and conclusions of the developer's consultant are highly questionable. An accurate assessment of the habitat value and rare species potential of the Marketplace site is not possible using only the information provided in the DEIS. The habitat maps in the DEIS are inadequate for interpretation by anyone unfamiliar (or perhaps even familiar) with the site. There is a pressing need for additional on-site surveys by qualified independent biologists with field experience in the region of the site, expertise in habitat assessment and rare species biology, and strong species identification skills.

Response 3.3-66: *As described above, the biologists that performed the on-site surveys have many years of experience in general ecology with individual specialties that were appropriate for the surveys performed. An independent biologist (Dr. Schuster) was asked by the Town to evaluate the information provided in the DEIS as well as walk the site to confirm this information. Dr. Schuster's comments and concerns are addressed in this FEIS.*

Comment 3.3-67 (Letter #*16,* J.G Barbour, 5 Fishcreek Road, Saugerties, New York, 21 July, 2006): The DEIS cites Barbour 2004, the Quassaick Creek Biodiversity study, but reverses the logical interpretation of a major finding of that study. In this study I emphasize the correct implication of this finding: the surprisingly high biodiversity (including 2 rare plants and a rare animal) for a historically disturbed wild ecosystem in an urban setting. Even though it cites my Quassaick study, the Marketplace DEIS states flatly that the site has little or no potential for the occurrence of rare species because it is located in an urban, developed context, describing it as an isolated "island" or "sink" (p. 3.3-13.)

Response 3.3-67: *The DEIS states that the biodiversity of the Marketplace site is not rare or unique to Newburgh, Orange County or the Hudson Valley. The species listed in the DEIS would be applicable to many, many sites in the County where running perennial water can be found. The point made in the DEIS is that the ecotypes and biodiversity found on this property are not "special" enough to deny a use of the site that complies with zoning and has long been targeted by the community for such a use, if proper mitigation measures are in place.*

Comment 3.3-68 (Letter #*16,* J.G Barbour, 5 Fishcreek Road, Saugerties, New York, 21 July, 2006): On page 3.3-13 is the statement that the site is "cut off by previous development" from neighboring undeveloped areas such as Algonquin Park and wild lands surrounding Brookside Pond, despite the continuity of waterways and stream corridors (including road underpasses) in the Quassaick Creek watershed.

> ***Response 3.3-68:*** *There are existing physical barriers to wildlife movement around the site. The Route 300 corridor to the west, the Hilltop residential neighborhood to the north, and Interstate 84 to the south and east are obstacles to all local wildlife, excepting birds. Even the Quassaic Creek corridor is interrupted upstream by areas of significant erosion, collapse of concrete structures, the now empty Lower Winona Lake and Route 52. Downstream the corridor is interrupted by I-84.*
>
> *While the eight foot box culverts under I-84 provide continuity of hydrology and may offer some species an avenue for movement under the highway, it is the applicant's opinion that this does not represent a significant "corridor" in its existing condition. This does not denigrate the habitat value of the creek on site as it does exist; existing conditions are described throughout this report, and the applicant has revised the plan to ensure that the creek is preserved to the extent practicable.*

Comment 3.3-69 (Letter #*16,* J.G Barbour, 5 Fishcreek Road, Saugerties, New York, 21 July, 2006): Another questionable statement in the DEIS (page 3.3-13) is that development won't affect known rare plant occurrences and their habitats (and by extension, other significant habitats and species) downstream simply because of distance, when it is commonly known and repeatedly demonstrated that impacts such as pollution, turbidity, nutrient load, etc. can be transported any distance downstream, and rapidly.

> ***Response 3.3-69:*** *The applicant is required by state law under the stormwater general permit and under Town code to ensure that no significant pollution, nutrient loading or other water quality impact occurs on site or on downstream properties. The stormwater pollution prevention plan will address all water quality impacts and must be approved by the state as part of the Water Quality Certification.*

Comment 3.3-70 (Letter #*16,* J.G Barbour, 5 Fishcreek Road, Saugerties, New York, 21 July, 2006): The DEIS claims that the site is poor foraging habitat for wood turtle (p.3.3-13) because of the lack of fields, with no supporting citation. In fact wood turtle forages quite successfully in many types of habitat, including forests, wetlands and brushy areas (Klemens 1993). The species has been found to use forested habitats near streams or at considerable distances from streams.

> ***Response 3.3-70:*** *As described above, a wood turtle was found on the site in June of 2006, confirming the information set forth in the DEIS that wood turtles may use the site. The description in the DEIS regarding wood turtle preference for foraging in open areas remains valid in the experience of the applicant's consultants.*

3.4 WATER RESOURCES COMMENTS AND RESPONSES

Comment 3.4-1 (Letter #4, Lawrence G. Biegel, June 8, 2006): 2. Departmental jurisdiction (Water Quality Certification, Dam Construction and SPDES (stormwater) General Permit is correctly stated.

Response 3.4-1: *Comment noted.*

Comment 3.4-2 (Public Hearing, Katherine Beinkafner, 1003 Route 44/55, Clintondale, New York, June 1, 2006): On page 3.4-6, on-site groundwater is not intended to be used. That's stated in the DEIS.

Response 3.4-2: *As stated, there are no plans to utilize existing groundwater resources for this proposal.*

Comment 3.4-3 (Public Hearing, Katherine Beinkafner, 1003 Route 44/55, Clintondale, New York, June 1, 2006): On page 3.4-4, it says groundwater flow direction on the site is not known but is expected to flow -- generally flow towards the east and north, towards the Quassaic Creek and Winona Lake, and I would also add toward the homes in the area using groundwater from the wells, from the bedrock of those homes on Hilltop Avenue directly northeast of the proposed project. Let me call your attention to this 440 foot elevation hill right in the middle of the project site. It's believed to be totally bedrock, and this is an area that they want to blast. ... I believe that this area is actually the recharge area for the bedrock aquifer that provides the water for the homes to the north and east.

Response 3.4-3: *The recharge area for the homes on Hilltop Avenue is a function of many factors. Wells in this area are constructed into the fractured bedrock and receive water from fractures in the bedrock. Local well depth and the number of fractures that are intersected are not known. A shallow well can intersect a high yielding fracture and be very productive, or one or more small fractures and be unreliable. This is why wells are often deepened to improve their yield. Deepening a well increases the likelihood of intersecting additional water bearing fractures and often improves well reliability.*

Fractures can extend for long distances, well beyond the immediate area of the well site. Well yields are a function of the size and physical extent of the fracture, number of fractures intersected, the nature of the local overburden, the type of bedrock geology and other hydrologic features in the area and of course seasonal weather patterns. For this reason, it is only a gross approximation to use surficial recharge as a basis of establishing potential well yield.

There are some 23 homes in the Fern Avenue/Hilltop/New Street neighborhood and if the population averages four persons per home and the water demand is 75 gallons per person per day the typical daily water demand for the neighborhood would be 6,900 gallons per day. If this water demand was doubled to 14,000 gallons per day, the total daily water demand would be slightly less than 10 gallons per minute for the neighborhood.

Water recharge in Orange County has been evaluated in a number of publications. A general rule of thumb for recharge in the area is 1.6 gallons per minute per acre of land. In order to accommodate the typical demand in the Hilltop neighborhood, about 8 acres

of land would be required for recharge, double the amount to accommodate a more conservative demand of 14,000 gallons per day. The land area in the Hilltop neighborhood itself is sufficient to provide the recharge for wells that service the 23 homes in the area. However, this does not take into account the high likelihood that bedrock fractures extend outside the neighborhood and are thus receiving recharge from a larger watershed. In addition, more than 50 acres of land on the Marketplace site will be pervious and available for recharge. The local aquifer will also be recharged by rain water being held in stormwater management basins.

As part of the mitigation proposal for this project, the applicant is including the use of pervious pavement in those parking areas immediately to the east and west of Buildings C and D, an area of more than four acres.

Comment 3.4-4 (Public Hearing, Katherine Beinkafner, 1003 Route 44/55, Clintondale, New York, June 1, 2006): In the discussions of stormwater management, page 348, stormwater volumes are expected to increase due to increases in impervious surfaces. ... You would expect lots more runoff every time it rains and much less infiltration, much less recharge of this aquifer. I think over the long term, and I don't know how long the term is, it might be the short term, by reducing the infiltration, by reducing the recharge the water level in this aquifer would drop and therefore you would get lower and lower water levels, but it's impossible to know. Someone would have to do a computer model and try to estimate how long it would take or what would happen, what level the water would be at. I think that it's one thing that the applicant did not look at, did not tell us, told us they weren't going to do anything but blast away at the bedrock. ... If the water table were to decline and the wells were to go dry I think this project would be responsible and would owe it to the neighbors to hook them up to City water.

Response 3.4-4: *See comment 3.4-3 regarding recharge. The applicant will be held responsible for any impacts to wells. If well yields or quality are impacted from the construction and development of the Marketplace, it would be the responsibility of WBP to mitigate this impact. As stated in the DEIS, "Potential impacts to off-site groundwater wells is viewed as being highly unlikely, based on past experiences in the region. Nonetheless, should such impacts occur, potential mitigation measures could include the deepening of existing wells, drilling of new wells, repair or improvement of existing well casings or connection to the existing municipal system. Any such measures would be coordinated with the Town of Newburgh and the Orange County Department of Health, and implemented at no cost to the affected party." WBP would include this representation in an agreement with the Town Planning Board or Town Board and provide a bond to guarantee and secure performance of the agreement by WBP. The details of such an agreement, i.e., pre-construction monitoring of those wells belonging to residents that might be interested in this program, duration of the agreement, and which of the alternative mitigation measures might be most suitable on an individual basis, will be negotiated with the Planning Board and Town Engineer as the process moves forward.*

Comment 3.4-5 (Public Hearing, Elizabeth Stelz-Riach, Fern Avenue, Newburgh, New York, June 1, 2006): I have well and septic concerns. It's imperative that this Board puts in some safeguards, see to it that we are protected. ... There is nothing in the DEIS thus far that protects us.

Response 3.4-5: *Please see Response 3.4-4. Local septic systems are not projected to be affected by any of the activities associated with this proposal.*

Comment 3.4-6 (Public Hearing, Ellen Jane Gonyea, 26 Linden Drive, Newburgh, New York, June 1, 2006): Water runoff, 3.53. 128 acres of land will be covered by 75 acres of impervious parking and buildings, leaving 53 acres of land to absorb and route all water runoff. This runoff will include sharp increases of contaminants, lead, zinc, copper, chromium, nickel and add for six months of the year deicing chemicals. Underground fractures and conduits are inadequate at this point to sustain the runoff, especially from Meadow Winds, and the Meadow Winds problem is a local problem to the concerns of the proposed Market Place mall.

Response 3.4-6: *The Applicant proposes to install water quality/detention basins designed in accordance with the criteria presented in the NYS Stormwater Management Design Manual dated August 2003. As designed, the basins will detain and treat stormwater runoff from all impervious surfaces and mitigate any increases in the off-site conveyance of such pollutants through settling and biological uptake mechanisms. As required by the State permit, a "water quality volume" must be captured and treated to the satisfaction of the State before a stormwater plan can be approved. DEC will review this plan as part of its requirement to issue a "water quality certification" under Section 401 of the Clean Water Act.*

The difficulties with the Meadow Winds project took place prior to the more intense Town oversight of such projects, and before the State requirement that a site be inspected weekly or after every large storm to ensure that proper management practices are being utilized. With these safeguards in place, a repeat of Meadow Winds is not expected.

Comment 3.4-7 (Public Hearing, Frank Carbone, Jr. 39 Wintergreen Avenue, Newburgh, New York, June 1, 2006): I have concerns for downstream Quassaic Creek Water temperatures increasing as a result of high temperature runoff from the 70 acres of blacktop on the project.

Response 3.4-7: *This segment of the Quassaic Creek is not a cool water stream, in part because of the shallow open water bodies (Algonquin Park, Lower Winona Lake and what remains of Upper Winona Lake) that heat up in the summer and drain into it. It is noted in the DEIS that this reach of the creek is designated as Class D by the DEC, the lowest stream classification.*

The Quassaic Creek watershed is very large compared to the small contributing area from the Marketplace. A very small area will actually drain to the creek itself; all the upper reaches of the watershed first drain through Algonquin Park and Lower Winona Lake, where the shallow surface water is already very warm.

The water flowing through the lower section of the creek, below Lower Winona Lake, cools significantly between the dam, where warm water from the shallow lake enters the creek, and the culverts under I-84. This is due primarily to the shaded streambanks along the creek. With the exception of the road crossing on the DOT property, there will be no changes to the vegetative cover along the stream edge.

Water temperatures leaving the asphalt areas will also be mitigated by capture and treatment within the densely vegetated stormwater basins that are proposed for the site prior to discharge to the creek. Much of the warm water that initially runs off of parking areas will be captured and held in the basins, and infiltrated through the soils which significantly reduces temperatures.

Comment 3.4-8 (Public Hearing, Laura Kohlmann, 18 Wintergreen Avenue, Newburgh, New York, reading a report from CEA Engineers, P.C., June 29, 2006): The Town of Newburgh Code requires the stormwater management plan to maintain the existing hydrologic characteristics of the watershed. The DEIS fails to demonstrate that stormwater runoff volume and the timing of stormwater discharge from the newly created detention basins will not adversely affect downstream structures or properties. According to Town of Newburgh Code, structures which convey streams must be checked for capacity to carry fifty-year flows. The DEIS indicates that the I-84 culvert will be reviewed in compliance with New York State DOT regulations which are less stringent than those of the Town of Newburgh. No calculations are presented in the DEIS or stormwater management plan that demonstrate the existing I-84 culvert is capable of carrying fifty-year flows under post-development conditions.

Town of Newburgh Code requires no change in upstream or downstream water surface elevations without agreement of upstream or downstream property owners. No calculations are present in the DEIS or stormwater management plan that demonstrate through flood routing that no increase in surface water elevation will occur.

The applicant has not provided the profiles of the proposed drainage facilities including their size and type of material as required by the Town of Newburgh Code. We request the necessary information be added for review.

The Town of Newburgh Code requires that plans demonstrate safe overland conveyance of the one-hundred year storm through the development of the site. The stormwater conveyance system was designed to convey a twenty-five year/twenty-four hour storm event. The DEIS does not contain a demonstration that a hundred year storm event could be safely conveyed across the site.

The drainage boundaries shown for the site drainage areas are difficult if not impossible to read on drawings DA-1 and DA-2. The lack of clear drainage boundaries makes it extremely difficult for professionals to evaluate stormwater management for the site. It makes it virtually impossible for the public to do so.

The stormwater management plan describes drainage areas A and C as predominantly consisting of lawn/landscape areas. Drainage areas A and C, as CEA is able to read the drainage boundaries, appear to be predominantly wooded. It appears that the areas of impervious cover and lawn/landscaped areas are overstated. If so, the stormwater calculations for pre-development conditions would overstate the pre-development runoff because runoff rates, curve numbers, are higher for lawn/landscape areas than for the wooded areas. Because of difficulty in reading the drainage area boundaries, the amount by which pre-development runoff may be overstated cannot be determined. We request the applicant provide drawings that clearly delineate drainage area boundaries and alter pre-development runoff calculations if necessary.

As just described, the DEIS identifies drainage areas A and C as predominantly consisting of lawn/landscaped areas. The pollutant loading analysis performed by—and pre-development conditions calculated the pollutant loadings from these areas assuming that the areas were predominantly lawn/landscape rather than woods. Wooded areas were ignored in calculations of pollutant loadings. Lawns export significantly—lawns export significantly higher pollutant loads, particular for nutrients, than do wooded areas. Thus by considering wooded areas as lawn/landscape the DEIS grossly overestimates the pre-development nutrient loadings from stormwater. Pre-development metals and sediment loadings are also overstated. The failure to consider pre-development pollutant export from wooded areas overstates the pre-development pollutant export and results in a false comparison with post-development conditions.

Lastly, the stormwater management plan states of page 4-3 that drainage area C-3 will direct its runoff to a subsurface infiltration system. Design standards contained in the Town of Newburgh Code require that innovative stormwater management facilities may be proposed provided that they are accompanied by detailed engineering plans and demonstrate performance capabilities that are acceptable to the town engineer. The DEIS in supporting documents does not provide the required detailed engineering plans for the proposed system, nor does is provide specific performance capabilities. We request the applicant provide such information.

In addition, because use of infiltration systems is not allowed without the approval of the town engineer, the DEIS should identify alternatives to infiltration from stormwater management.

> ***Response 3.4-8:*** *The project's design approach to stormwater runoff management is to limit the peak rate of runoff from the developed site to levels equal to or below the existing pre-development peak rates of runoff. As presented in the Stormwater Management Report (included in the DEIS) this objective has been achieved for all design storms. Thus, no increase in either upstream or downstream water surface elevations are expected since no increase in the peak rates of stormwater runoff are anticipated; this includes stormwater flows through the I-84 culvert.*
>
> *Storm drain profiles have been added to the plans (refer to Drawing SP-5.1, FEIS Site Plan Storm Drain Profiles.) The Town Engineer will review these profiles as well as all engineering plans for conformance with Chapter 157: Stormwater Management, §157-6.M of the Town of Newburgh Code, and is further responsible for approving the use of all on-site pipe materials.*
>
> *Improved graphics for the Stormwater Management Report Figures DA-1 and DA-2 are included in the FEIS and presented as Figures 3.4-1 and 3.4-2. Note, copies of DA-1 and DA-2 were also included in the original set of DEIS Site Plan drawings. These drawings are 36"x48" in size, contain the same information and also perhaps easier to read.*
>
> *Estimated runoff rates presented in the Stormwater Management Report from Drainage Areas A and C are based on the existing wooded site conditions. Though not previously presented in the report, Table 4A, Drainage Area Design Data, details the existing site conditions used in calculating pre-development runoff rates. Pollutant loadings were calculated using NYSDEC pollutant load concentrations defined as "lawn" in the NYS Stormwater Management Design Manual (October 2001, Appendix A). Thus, for comparison, Table 7A, Weighted Pollutant Concentrations Based On Land Cover Conditions and Table 9A, Estimated Stormwater Pollutant Loads have been prepared using*

pollutant load calculations defined as "landscaping" in the NYS Stormwater Management Design Manual (October 2001, Appendix A). There are no defined "wooded area" pollutant load concentrations presented in the NYS Stormwater Management Design Manual. Tables 4A, 7A and 9A are included with this FEIS as Appendix D.

It is also very important to note that the New York State DEC criteria require only that the "water quality volume" be captured and treated. As stated in the Design Manual, "It is assumed that by meeting the WQ_v requirements through employment of the practices presented in Table 5.1 a project will, by default, meet water quality objectives."[1] As stated previously, the DEC will review this plan for compliance with GP-02-01 as part of its review for water quality certification.

The Applicant has eliminated the previously proposed subsurface water quality structure and routed the stormwater runoff from this sub-watershed area to the conventional water quality/detention basin to be constructed on the southerly end of the site. Refer to Drawing SP- 2.0, FEIS Site Plan Grading & Drainage Plan. All engineering plans will be reviewed and approved by the Town Engineer.

Comment 3.4-9 (Letter #43, Laura Kohlmann, 18 Wintergreen Avenue, Newburgh, New York, May 29, 2006): Another area of concern that I have is the current Town of Newburgh water supply. We know that the Town of Newburgh currently taps into the Delaware Aqueduct for part of its water supply. We also know that the Delaware Aqueduct has some major leaks (sprouting around 30 million gallons per day) that are in need of repairs that could take up to one year to complete, and will require the shutting down of the Delaware Aqueduct (www.recordonline.com 8/12/04, 5/1/05). What is the plan for the Town of Newburgh to supply water to its residents and all the new projects that are in the planning stages when the Delaware Aqueduct is shut down and all we have for water is Chadwick Lake? Again, how will the Marketplace, which will require 117,000 gallons of water per day, benefit the citizens of our Town?

Response 3.4-9: *The combination of Chadwick Lake and the Delaware Aqueduct are capable of supplying adequate water to meet the Town's present average daily water demands. In the event that the Delaware Aqueduct is shut down, the Town Engineer has indicated that Chadwick Lake is capable of supplying adequate water to the Town of Newburgh in the short term, particularly if water conserving measures are enforced. However, the Town of Newburgh is also investigating possible future alternative water supply sources including, but not limited to, an interconnection with the City of Newburgh water system and/or a second connection (in addition to the existing Union Ave. connection) to the New Windsor water supply system which receives its water supply from the Catskill Aqueduct.*

Comment 3.4-10 (Letter #44, Ross and Carolyn Topliff, 30 Algonquin Drive, Newburgh, New York, July 13, 2006): We did not find rainfall estimates for the severe weather events that will tax the retention pond system. Do they include some estimates of the flooding that may result if we receive 6 - 10 inches of rain in less than 12 hours as has happened twice in the last 15 - 20 years. This happened most notably with Hurricane Floyd. All indications are that severe weather is getting worse. We cannot rely solely on rainfall estimates from the past 100 years when these are dumping increasing amounts of rain as time progresses.

[1] NYS Stormwater Management Design Manual, p. 4-3

Response 3.4-10: *All specified rainfall events within the Town of Newburgh Code, Chapter 157: Stormwater Management, §157-6.M(4) were analyzed in accordance with the regulation and are included in the project Stormwater Management Report.*

Comment 3.4-11 (Public Hearing, Mike Edelstein, June 1, 2006): It's been pointed out that irretrievable and irreversible impacts of damages to the site, particularly around issues of recharge and groundwater in other areas as well, are significant.

Response 3.4-11: *The planning board will evaluate potential impacts and the proposed mitigation and pursuant to the requirements of SEQRA will need to make findings consistent with those requirements. Please see the response to Comment 3.4-3 regarding the recharge analysis.*

Comment 3.4-12 (Public Hearing, John Parker, 565 Taxter Road, Elmsford, New York, June 1, 2006): On March 12th we asked the Town Board, and members were copied of this Board, to have some procedural safeguards to try to protect the drinking water supply of the next door neighbors that I represent. It's a serious issue. It's their shower, it's their water. There was no reply to that letter. April 19th we asked that we have at least ninety days to comment here. It's a 2,000 page document. It's serious. This is technical stuff. A sixty-day lead time for a hearing. We had no reply to that. On May 4th we find out a hearing is June 1st. It's not even thirty days to take a document that's been accepted, to read through, review, get experts, have them compile it and present it to you. The consultant for the engineer had fifteen minutes to sit and talk about the project. That's five times what you're allowing us to speak. Not fair.

Response 3.4-12: *The timing of public notices, hearings, etc., and the process for comments and responses to date meet the requirements of SEQRA. As this process continues, many of these issues will be resolved and mitigation measures will be put in place for those impacts that can not be avoided.*

Comment 3.4-13 (Public Hearing, Elizabeth Stelz-Riach, Fern Avenue, Newburgh, New York, June 1, 2006): To Mr. Wilder, I'd ask if you can and are willing to assist a handful of residents along Route 52 to mitigate their flooding issues. You have offered financial assistance to restore the manmade Winona Lake, its dam, spillway, et cetera which at best appears to me a tad murky.

Response 3.4-13: *Although it is unclear from the comment which residents are seeking assistance, the DEIS states on Page 3.4-12 that "(t)he project sponsor, at the request of citizens in the neighborhood, has agreed to incorporate into its proposed Stormwater Management Plan improvements designed to alleviate existing drainage problems on NYS Route 52 in the vicinity of the pond at Algonquin Park. Implementation of the proposed stormwater management plan will intercept existing stormwater runoff which presently drains toward the residences along Route 52, resulting in septic and flooding problems, and stormwater would be redirected to the on-site wetlands to eliminate these problems." This remains an important part of this proposal.*

Comment 3.4-14 (Public Hearing, Kate Lindemann, 12 Victory Court, Newburgh, New York, June 1, 2006): Then when they talk about the roads they said they were going to use calcium -- sodium chloride which is the cheapest but it's also the most polluting. Most homes will not use it. We at least use calcium chloride. So if you're going to prove it I think what you need to do is to take this company at its word. They have said there will not be a problem. Tell

them to take out an insurance policy and if the homeowners in that region have to deepen their wells or if the wells get polluted and they have to go on Town water, that that will pay. That does three things. It takes care of the concern of the homeowners, it allows the developer to put their money where their mouth is, and it protects the Town because if they pollute the water and the economic they're talking about does come and they abandon it, we're going to be worse than we are with a staler thing because people's wells would be affected. It also gives the Town Planning Board a wonderful way because if the developer said oh, we can't do this, that should be five red flags that they don't trust their own engineering studies.

Response 3.4-14: *Please see the response to Comment 3.4-4.*

Comment 3.4-15 (Public Hearing, Michael Murphy, 6 Hilltop Avenue, Newburgh, New York, June 1, 2006): They will be blasting a total of 480,000 cubic yards of material. This extensive blasting in our immediate area would be putting our wells, our sole source of water, that's all we have, there's no Town water up there. Everybody says we can't get it up there because it's solid rock. That's all the water we have. Now when they destroy it where do we go? What do we do?

Response 3.4-15: *As described in the response to Comment 3.4-4 and Appendix J, the applicant is proposing a number of measures to mitigate impact to wells in the unlikely event that they occur. Future connection to Town water is only one option.*

Comment 3.4-16 (Letter #11, Darrin Scalzo, Division Permit Coordinator, New York State Thruway Authority, Suffern, New York, July 31, 2006): Drainage - You will find attached the Thruway Authority's criteria for Hydraulic Design of New Facilities and Developments Utilizing Thruway (I-84) Drainage.

Response 3.4-16: *Comment noted. Based on these criteria, the drainage plan proposed meets the requirements of the DOT, as will the final plan ultimately approved by the state.*

Comment 3.4-17 (Letter #34, Kate Lindemann, 12 Victory Court, Newburgh, New York, July 27, 2006): One of the concerns about the development plan is that as rendered, is that it requires extensive blasting. There is concern about area wells. After all if even one septic is cracked by blasting, multiple wells could become contaminated. In addition there are concerns about the water table, actually well shafts themselves etc.

The DEIS statement says that it is 'rare' that any harm has come to wells as a result of such blasting. But there is no evidence offered to support this claim. In fact, the term 'rare is vague. Is it rare because such blasting so near wells and septics is so rarely done, that even 100% damage would count as 'rare;'? Or it is that the company the developers plan to use has done hundreds of such blastings and can show that only 1-2% have resulted in damaged septics, well shafts, water table etc.

The document claims that despite clear cutting, removal of a deep rock formation, blacktopping and using NACL to control ice [a high polluting deicer] there will be no negative effect on the water table. But there are no scientific studies offered in evidence for this claim. Where are the computer simulations by a hydrologist? Where are geological or hydrological studies?

Response 3.4-17: *The applicant has committed to a blasting protocol that will limit offsite vibration to levels that have been scientifically established to avoid causing structural damage.*

SEQRA requires that impacts be evaluated at a level consistent with their likelihood of occurrence. These matters were taken into consideration during the scoping of the Draft EIS. In the US, shopping centers have been constructed in every developed suburb of every metropolitan area. Many of these developers have occurred at a larger scale than the proposed Marketplace, and there simply is very little recorded evidence of the types and degree of impact occurring that would suggest added investigation is warranted.

As discussed in Response 3.4-4, the applicant continues to propose that in the unlikely event that off-site well yields or quality are impacted from the construction and development of the Marketplace, it would be the responsibility of WBP to mitigate this impact. Response 3.4-4 and Appendix J provide specific proposals for mitigation.

Comment 3.4-18 (Letter #33, Particia Randall, 59 Wintergreen Avenue, Newburgh, New York, July 27, 2006): It has been said that blasting, if permitted as presently proposed, could possibly destroy, or seriously compromise the wells of people on Hilltop Avenue, plus the septic tanks of the general area. If these wells are not destroyed, their water levels could be lowered, which could be a great concern, especially in a drought year!

After blasting, if my information is correct, much of the area that was blasted will be black-topped. That area now absorbs rain water. Where will the runoff go if blacktopping is allowed? Probably into the cellars of the people living on the West side of Wintergreen Avenue. I do not think that blasting or blacktopping should be allowed as presently projected by the developer. Destroying peoples' only water supply would be a tremendous hardship for them. I would like to respectfully suggest that a supplemental DEIS be issued.

Response 3.4-18: *Please see the response to Comment 3.4-17 and Comment 3.4-4.*

Comment 3.4-19 (Letter #30, Eleanor Doderer, 83 Wintergreen Avenue, Newburgh, New York, July 25, 2006): As you are aware, Winona Lake's dam needs to be repaired. With the increase of impervious surfaces, increased rainfall and development, the dam is no longer able to handle the added runoff. The Winona Lake Homeowners Assoc. 6/23/06 has sent an e-mail of issues affecting the Lake, many of which directly relate to the increased water flow as a result of the construction of the Marketplace, such as: The creek is cutting into the earthen dam with possible subsequent undermining of the dam. The bridge abutments have to be removed to help the flow.

A buttress needs to be constructed across from the spillway to direct the increased water flow. The entire lake needs to be dredged At this time 25' from shore the lake needs to be eight feet deep.

If two detention ponds will be sufficient for the runoff, why then are all these demands being made for Winona Lake? Could Winona Lake become another detention pond? If drainage in this area is poor, how will the Lake handle additional and projected increases already at unprecedented levels, considering the recent rainfalls?

Response 3.4-19: *The Stormwater Management Plan for the Marketplace has been designed to limit off-site, post-development peak rates of stormwater discharge to at or below pre-development levels. Thus, no impacts to Lake Winona as a result of the development of the Marketplace are anticipated. Further, estimates presented in the Stormwater Management Report prepared for the project and included in the DEIS anticipate a reduction in the peak rate of runoff reaching Lake Winona as a result of the design and construction of the proposed on-site stormwater detention basins. There is no proposal or need to use Lower Winona Lake for detention associated with this project. As stated above, the New York State DEC will review and confirm that the proposed stormwater management plan will meet the rigid State requirements.*

The Lake Winona dam, a man made lake and dam constructed approximately 70 years ago, has been failing for some time and the concrete dam structure no longer functions. As such, the water levels in Winona Lake have dropped significantly over the past several years and the surface water in the lake is now less than half its original size. All this has occurred while the Marketplace site remains undeveloped. The applicant has offered as part of its mitigation plan to spend $150,000 to repair the dam, and has assisted the Lake Winona Home Owners Association in making applications to the County for an additional $450,000 to reconstruct Lake Winona and rebuild the dam.

The storm water detention system planned for the Marketplace has been designed to address 100% of the increase in storm water flows from the Marketplace. There is no plan by WBP to use part or all of Lake Winona to satisfy any storm water management requirements of the Marketplace. Moreover, the DEC regulations relating to storm water management would not permit using Winona Lake for the Marketplace storm water management program.

Comment 3.4-20 (Letter #7, Mark C. Taylor, Attorney for the Town, Rider, Weiner & Frannkel, P.C., 655 Little Britain Road, New Windsor, New York, July 28, 2006): Groundwater. The Supervisor and Town Board have received numerous letters expressing concern with respect to potential impact of the large scale blasting, excavation and grading operations that are required for the project on the wells and septic systems of residents in the Hilltop, Fern, New and Laurel area. The DEIS offers only a limited treatment and conclusion that potential impact "is highly unlikely based on past experience in the region" which relies upon anecdotal interviews with health department representatives in three counties, rather than unbiased, expert hydrogeologic analysis. It also indicates the blasting contractor (rather than the developer) will have the responsibility to remedy any damages to private wells, but does not proffer preventative alternatives.

Town maps show the area within the boundaries of the Consolidated Water District. Accordingly, the area could likely be served with municipal water by a new lateral, without the need for a water district boundary extension or New York City approval. Town Engineer Osborne advises that the water pressure in the area is sufficient so that it is unlikely that a pump station would be required. In the event the Lead Agency determines it appropriate, the Town Board is amenable to the approval of a lateral water main extension to serve this area with both the dedicated facilities and the house connections to be either installed or paid for by the developer.

Response 3.4-20: *The applicant has indicated in the past that connection to the municipal water system is one of several options for mitigation of potential impacts. It is*

a very costly option, and based on the applicant's analysis of the potential impacts of blasting on neighboring wells, one that is unlikely to be necessary. Such an option would likely include significant blasting within the existing roadbeds and potentially for the water lines to individual dwellings, which the applicant would prefer to avoid.

Comment 3.4-21 (Letter #14, Nathaniel J. Parish, Parish & Weiner Inc., 101 Executive Boulevard, Elmsford, New York, July 31, 2006): Storm Water Impacts The report submitted by CEA Engineers PC ("CEA"), documented the deficiencies in the storm water analysis in terms of the assumed design storm calculations, ground-cover assumptions, pre-development flow assumptions and the adequacy of the plan for avoiding downstream flooding impacts and degrading the water quality of off-site runoff.

In their review of storm water impacts CEA took issue with a number of DEIS assumptions. These assumptions can only be fully confirmed or required to be revised after a field inspection of the site. Among the issues that CEA found that required field study:

a. Drainage area boundaries
b. Types of existing ground cover; whether areas are lawn/landscaped areas or are wooded areas. The characterization is important as it affects assumption of calculations of the development site nutrient loading, and ultimately the calculations of the effectiveness of the water quality plan.
c. The areas within which subsurface infiltration systems, an innovative storm water management facility are to be placed. If field inspection were to reveal that it is not likely that the areas suggested for these facilities will result in feasible treatment other solutions and their impacts would need to be considered.

Response 3.4-21: *The final SWPPP, based on the final site plan, will be reviewed by both the Town's engineering consultants per Town code and the DEC as part of the Water Quality Certification process. The final approved plan will meet all of the Town and State criteria to ensure stormwater quantity and quality management control.*

Stormwater management for the Marketplace site will include provisions for infiltration of stormwater within the proposed detention basins and in areas of pervious pavement. Infiltration has benefits of cleansing water of impurities. In parking lot runoff situations these impurities will typically consist of hydrocarbons, nutrients from atmospheric deposition and, seasonally, road salt. Provisions will also be made to allow for the infiltration of stormwater into the landscaped islands to provide water to trees and shrubs within these islands. This will be accomplished with slotted curbing, infiltration areas along the upgrade curbs of islands, use of PVC piping to convey water through solid curbing, or other similar method. Final design of this feature, including soil mixtures, plant details and other details will be reviewed by the Town's consulting landscape architect prior to final approval.

The applicant will use pervious pavement in parking areas northeast of the extension of front building lines for Buildings C and D to increase the potential for groundwater infiltration. In these areas, closest to the residences on Hilltop Avenue, there may be the added benefit of recharging the groundwater which supplies neighboring residential wells. Final design, maintenance plan and cross section of the pervious pavement will be reviewed and approved during the final site plan review.

Comment 3.4-22 (Letter #18, Mid-Hudson Geosciences, July 28, 2006): Blasting agents commonly contain a chemical known as "perchlorate." In the process of blasting bedrock, perchlorate can and has become a groundwater contaminant by escaping into bedrock fractures from the boreholes used to place the charge**.** The large volume of bedrock to be blasted on the site and the proximity of the water table in the area increase the likelihood of potential contamination from the use of perchlorate.

Response 3.4-22 *According to the USEPA, perchlorate is a group of naturally occurring and man-made salts which are used in a wide range of applications including: solid rocket propellant, military munitions, blasting agents, fireworks, matches and certain types of fertilizers. According to the USEPA, improper storage and/or disposal related to the uses listed above are the most typical route for perchlorate to enter the environment.*

Perchlorate salts are highly soluble in water and can be very mobile in groundwater. The sources of perchlorate contamination, transport and persistence in the environment and human health impacts have only recently been the subject of widespread study and concern. Perchlorate contamination in the United States was documented after 1997, when an analytical method was developed with a quantitation level of 4 ppb. Since then, detection of the contaminant in soil, surface water, and/or drinking water wells has been reported in 35 states (USEPA).

In February 2005, the USEPA established an official reference dose (RfD), which is a scientific estimate of daily exposure level that is not expected to cause adverse health affects in humans. The new RfD translates to a Drinking Water Equivalent of 24.5 ppb. Perchlorate affects human health by interfering with iodide uptake into the thyroid. According to the National Academy of Sciences (NAS) this process of iodide uptake inhibition is not an "adverse", or harmful affect. NAS studies have found that perchlorate only affects the thyroid gland. There is no evidence that it causes brain damage, birth defects or cancer in humans. It is not stored in the body, it is not metabolized and any effects of perchlorate on the thyroid gland are fully reversible once exposure stops.

As indicated above, the majority of documented perchlorate impacts to water supplies are related to the storage, disposal and manufacturing of munitions, explosives and perchlorate. There is little documentation regarding blasting and perchlorate contamination. According to a study by the Interstate Technology & Regulatory Council (September, 2005), the amount of perchlorate in explosives is quite variable, and can range from 72 percent in some seismic products to 4 percent in water gel products.

Given the uncertainty regarding blasting and the introduction of perchlorate into the environment, the applicant will require the blasting contractor to utilize blasting agents with the minimum concentration of perchlorate necessary to complete the work. All blasting agents will be properly stored and disposed of, in accordance with NYS regulations.

Comment 3.4-23 (Letter #18, Mid-Hudson Geosciences, July 28, 2006): The discussion in paragraph two of page 3.4-5 seems to make the assumption that the recharge rate will remain

the same post-development as pre-development. With the increase in impermeable surfaces such as parking lots and buildings, there will have to be much more runoff after development, because there is nowhere for water to infiltrate into the soil. In reality, recharge will be on the order of 5 percent and runoff about 95 percent.

Response 3.4-23 *The proposed water source for the project is municipal water and not groundwater from on-site supply wells. Recharge of the local aquifer will continue to occur on portions of the subject property that are not covered with impervious surface. A recharge analysis is provided on Page 3.4-4 of the DEIS. According to project plans, approximately 75 acres of the 108.6 acres site will be developed with impervious surface. Therefore, 33.6 acres, or approximately 31 percent of the site will remain available for recharge of the local aquifer from precipitation. A modified recharge analysis, accounting for impervious surface, indicates substantial amounts of water will continue to recharge the aquifer following project construction.*

Table 3.41
Recharge Calculations

Acres *(pervious surface available for recharge)*	33.6
Square Feet	1,463,616
Average rainfall per year (inches) *	47
Average rainfall per year (feet)	3.92
Cubic feet of precipitation per year	5,737,375
Gallons of precipitation per year	42,915,562
Amount lost to evapotranspiration and runoff (75%)	32,186,671
Amount, in gallons, available for recharge per year	10,728,991
Amount, in gallons, available for recharge per day	29,394
Amount, in gallons, available for recharge per minute	20.4
Source: Tim Miller Associates, Inc., * USDA Soil Survey of Orange County, Table 1	

As shown in the table above the estimated groundwater recharge for the project site alone is 29,394 gallons per day. This is a conservative estimate, using standard estimates for evapotranspiration and run-off. This estimate is for the unpaved portions of the property alone, and does not take into account the stormwater that enters the stormwater management system, a portion of which also recharges the local aquifer. Although the proposed development of the property will affect the groundwater recharge, the impact is not considered significant.

Comment 3.4-24 (Letter #18, Mid-Hudson Geosciences, July 28, 2006): When comparing pre and post-development peak flow rate (cuft/sec) shown in Table 3.4-4, if the runoff volume is increasing by 10 to 20 percent, it would seem that the flow rate would also increase. What explanation can be offered for the decrease in peak flow rates shown by comparison of pre- and post-development peak flow rate in Table 3.4-4?

Response 3.4-24: *The decrease in the off-site pre- and post-development stormwater discharge peak flow rates is a function of the design of the proposed detention system and its controlling outlet structure. It is the Applicant's obligation comply with state and local stormwater regulations (under the NYSDEC SPDES General Permit for*

Stormwater Discharges and the Town of Newburgh Code, Chapter 157) to maintain the peak rate of discharge from the developed site to levels at or below preexisting conditions.

Comment 3.4-25 (Letter #18, Mid-Hudson Geosciences, July 28, 2006): In Table 3.4-5, it appears that the stormwater volumes are greater post-development when compared with pre-development. However, the more infrequent events (100- and 50-year) seem to not have as great a change as the more frequent (2- and 10-year). Is there an explanation for this apparent inconsistency?

Response 3.4-25: *It is to be expected that stormwater volumes will be greater post-development than pre-development since there is an increase in impervious area. Impervious areas generate a greater volume of stormwater runoff from that which would be expected from a predominately wooded site similar to The Marketplace site in its pre-developed state. Further, the difference in 24-hour rainfall intensities causes the changes in runoff volumes between storm events. In computing the volumes of stormwater runoff, the Applicant used the intensities from Chapter 157: Stormwater Management of the Town of Newburgh Codes. In accordance with this local governing regulation, there is a 2-inch difference in rainfall intensity between the 2-year and 10-year storm events while only a ½-inch difference in rainfall intensity between the 50-year and 100-year storm events. Note, rainfall intensities for the 2, 10, 25, 50 and 100-year storm events can be found in Volume 2 of the DEIS, Appendix F, Stormwater Management Report on page III-3.*

Comment 3.4-26 (Letter #18, Mid-Hudson Geosciences, July 28, 2006): On pages 3.4-8 to 3.4-9, there is a discussion of estimating pre-development loadings of phosphorous, nitrogen, total suspended solids, metals, and bacteria in stormwater runoff. Rather than estimating pollutant concentrations with no real site-specific data, sampling of stormwater runoff and laboratory analysis will provide baseline measurements before development. After development, annual sampling can be used to demonstrate variations from baseline. Computer generated estimates will not protect the public from future contamination.

Response 3.4-26: *The New York State General Permit for stormwater (GP-02-01) requires that a water quality volume (WQ_V) be captured and stored. This volume is a function of impervious surface area, rainfall intensity and percentage of the site that is impervious. The goal is to capture and treat, at a minimum, the runoff from impervious surfaces from 90 percent of the annual rainfall events, which in Newburgh is all events less than or equal to 1.1 inches. As stated in the state Stormwater Management Design Manual, "It is assumed that by meeting the WQ_V requirements through employment of the practices...a project will, by default, meet water quality objectives." The final stormwater management plan will meet the water quality volume requirements, and therefore meets the objectives of the state permit. The state included this requirement in the general permit in part to avoid the errors inherent in computer modeling and the great variation in pollutant loading and treatment level from site to site.*

3.5 ZONING AND SURROUNDING LAND USES COMMENTS AND RESPONSES

Comment 3.5-1 (Public Hearing, Elizabeth Stelz-Riach, Fern Avenue, Newburgh, New York, June 1, 2006): I'd like to revisit the buffers again with you. I question would it not be wise to await any new zoning or code changes that are due relative to the Town's comprehensive master plan revisions?

> ***Response 3.5-1:*** *Changes in Town Zoning Regulations are the purview of the Town Board and not the Town Planning Board. Any zoning amendments must follow a specific procedure under town law which would include a proposed action, proposed changes, a public hearing, referral to and input from the Town Planning Board and the County Planning Board and the public and finally a resolution by the Town Board to adopt such zoning amendments and a negative declaration under SEQRA for the action. The Planning board must review and approve or deny site plans based on the current zoning regulations in effect at the time of the site plan application. The Planning Board is legally bound to review site plan applications in accordance with existing applicable laws. The applicant has acknowledged at numerous meetings that the final approved site plan for this project will be required to meet the conditions of any buffer law that is in effect at the time of that approval.*
>
> *However, the applicant recognizes that the Town has begun the process of considering changes to the buffer requirements in the zoning code, and following a detailed discussion with Town consultants regarding the proposed buffer law, the applicant has prepared an additional alternative layout that meets the requirements of the new law as they are currently interpreted. In this alternative, Buildings C, D and 1 have been moved to the south to meet the proposed 150 foot setback, and a 100 foot landscaped zone is provided between the edge of pavement and the property line. In addition, the fence along this property line has been raised to 10 feet high, and extends a minimum of 50 feet beyond the ends of the buildings on either side. It is noted that in the primary proposal the proposed eight foot high fence also extends several hundred feet in each direction past the ends of the buildings. This adjustment to the site plan results in the loss of approximately 20,000 square feet of building footprint, while leaving all available parking spaces.*

Comment 3.5-2 (Letter #5, Edwin J. Garling, AICP, Garling Associates, 301 Main Street, Goshen, New York, June 19, 2006): Page 3.5-4 item 6, recommends the town examine whether residential uses such as senior and affordable housing are appropriate permitted uses in the IB District. We cannot say the board states they are not desirable at this point.

> ***Response 3.5-2:*** *Comment noted. The applicant was taking relevant information form the Town's Comprehensive Plan, and not offering judgment on behalf of the Town Board or Planning Board.*

Comment 3.5-3 (Letter #5, Edwin J. Garling, AICP, Garling Associates, 301 Main Street, Goshen, New York, June 19, 2006): Page 3.5-6 This section shall add that the glide slope of the primary runway 9-27 lies to the south of the site with a centerline directly over exit 8 at Route 52.

> ***Response 3.5-3:*** *Comment noted.*

Comment 3.5-4 (Letter #5, Edwin J. Garling, AICP, Garling Associates, 301 Main Street, Goshen, New York, June 19, 2006): Page 3.5-7 Sign regulations should note that Route 84 and its ramps are considered fronting streets for the purposes of the sign regulation calculations.

Response 3.5-4: *Comment noted.*

Comment 3.5-5 (Letter #5, Edwin J. Garling, AICP, Garling Associates, 301 Main Street, Goshen, New York, June 19, 2006): Page 3.5-7 Setbacks and buffers should indicate that buffer revisions are being considered.

Response 3.5-5: *As stated in Response 3.5-1, the applicant acknowledges that the Town is considering revising the buffer requirements in the zoning code, and has developed an alternative concept for Planning Board consideration that meets the proposed requirements as they are currently understood.*

Comment 3.5-6 (Letter #5, Edwin J. Garling, AICP, Garling Associates, 301 Main Street, Goshen, New York, June 19, 2006): Page 3.5-11 The last sentence of the first paragraph to be reviewed.

It is noted that adjacent residential areas could be impacted from noise of: waste disposal equipment and vehicles, snow clearing operations and roof top mechanical noises. Therefore, screening and hours of operation should address these issues.

In the last paragraph eliminate the reference to suburban sprawl. A shopping center of 850,000 square feet on 127 acres without residences could be considered a form of suburban sprawl. Certainly it conforms to the county and town plans which limit commercial development.

Response 3.5-6: *Comment noted. Noise studies in the Draft EIS indicate that with mitigation measures proposed, noise levels should not exceed town performance standards. As shown on the revised landscape plans, additional planting and the installation of higher fences is proposed along the eastern access road from Route 52 in the area closest to Brookside Avenue. Additional discussion about potential noise impacts and mitigation measures is provided in Section 3.9 of this FEIS.*

Comment 3.5-7 (Letter #5, Edwin J. Garling, AICP, Garling Associates, 301 Main Street, Goshen, New York, June 19, 2006): Page 3.5-14 At the end of the second paragraph, prior to the section on Environmentally Sensitive Areas, there should be a paragraph in regard to proposed changes to current buffer requirements. This statement will have to be added as part of the FEIS and/or the plans will have to be modified to address these requirements should they be adopted.

Response 3.5-7: *As of the date of this FEIS, revisions to the zoning code relative to buffers have not been adopted. The applicant has modified the site plan to increase the depth of the buffer and if the code changes, plan adjustments may be necessary or variances may be required. The current plan shows an expanded buffer treatment as shown in the DEIS as Alternative 4.3, which includes a 75 foot vegetated buffer and a minimum building setback of 129 feet. However, as described above, the applicant has provided an alternative plan that meets the proposed buffer requirements as they currently exist.*

Comment 3.5-8 (Letter #5, Edwin J. Garling, AICP, Garling Associates, 301 Main Street, Goshen, New York, June 19, 2006): Page 3.5-16 Mitigation measures may be added or referenced to sections on noise and visual impacts.

Response 3.5-8: *Comment noted.*

***Co*mment 3.5-9 (Public Hearing, Maureen Halahan, 40 Matthews Street, Goshen, New York, June 1, 2006):** Aside from it being zoned appropriately, it does not ask for any variances for the project. It has been aligned with the Town's master plan, the Town's long-term growth plan and the priority growth plan.

Response 3.5-9: *Comment noted. The applicant has maintained throughout this process that the subject site is ideally situated for the proposed development, has long been zoned for such development and is specifically identified in the Comprehensive Plan as a desirable location for such development. The County has also identified this site as being in a "Priority Growth Area" in the County Comprehensive Plan.*

Comment 3.5-10 (Public Hearing, Eric Gordon, Keane & Beane, P.C., representing Newburgh Mall, June 1, 2006): In regard to planning issues, as I said before we're going to wind up -- if we allow this much retail space what are we going to wind up with in a few years? There will be vacant space at the Newburgh Mall, there may be vacant space at The Market Place. This is just not the appropriate project for the community at this time.

Response 3.5-10: *Competition between retail users happens regularly and has been determined by the NYSDEC to not be an environmental issue to be addressed in the SEQRA process.*

The commentor, an attorney, is not a known expert in the retail marketplace and the comment above, that there will be vacant space at the Newburgh Mall, is speculative, at best - no technical support is offered to support his contention.

The Newburgh Mall is in a unique situation. The Mall principals don't own the mall but rather hold a land lease that someday expires. This may potentially influence decisions on reinvestment in the Newburgh Mall. There is just as likely a possibility that the Marketplace will contribute to the revitalization of the Newburgh Mall, by bringing new visitors to the area, with no investment on the part of the Newburgh Mall, in construction, infrastructure, signage or advertising.

3.6 TRAFFIC AND TRANSPORTATION COMMENTS AND RESPONSES

Comment 3.6-1 (Letter #9, Timothy P. Pillsworth, Fire Chief, Winona Lake, June 1, 2006):
In the past 10 years, there have been 4 new traffic lights installed on Route 300 between Route 52 and Route 17K. With each light our response has been slowed and made more dangerous. With traffic back-ups between the signals on a regular basis, and our members are vastly delayed during their response to the station. The addition of an additional traffic light at the entrance to the Market Place and the south entrance to the Newburgh Mall on Route 300 should replace the existing light at the north entrance to the mall and CB Driscoll's. A service road (access through the parking lot) needs to be constructed to service CB Driscoll's strip mall and Sherwood tile, and the existing entrances need to be closed. The north entrance to the Newburgh Mall needs to be reconfigured into right turn in/out only. This would replace an existing signal which has very limited value for the CB Driscoll's mall and no value to Sherwood Tile. All lights between Route 52 and Route 300 need to be interconnected for efficient traffic movement and reduce the back-ups we encounter everyday. Route 300 is not Steward Avenue, this naming should be corrected. The traffic light at Powder Mill Road and Route 52 will need to have fire department control reconnected. The grade differential between the apron and Route 52 cannot be made any larger. If greater, the apparatus will bottom out responding and returning to the station. The intersection with Route 52 and Interstate 84 needs to be investigated to insure there cannot be an entrance to Interstate 84 directly, in place of placing traffic on secondary roads effecting residences and response. The existing signals on Route 52 for Interstate 84 need to be interconnected with the new light on Route 52. The lights on Route 52 need to be primary direction, not Interstate 84 or the mall.

How much frontage is the Winona Lake Engine Company # 2 expected to loose? We CANNOT lose any frontage to our apron. When our ladder is pulled from the bay, the front bumper is at the edge of the road while the rear is at a the face of the building. With any lose of frontage will turn an already difficult working condition and make it unsafe. No loss of frontage will be accepted.

> ***Response 3.6-1****: The traffic signals along Route 300 are proposed to be interconnected and coordinated to provide more efficient operation for the corridor. The new signal at the Newburgh Mall/Marketplace driveway is proposed to be interconnected with the I-84 ramp signals as well as the signals at the north driveway and at Meadow Avenue. By interconnecting and coordinating these signals, traffic movements not only to the Marketplace but to the adjacent C.B. Driscoll's and other access points can be managed efficiently. The applicant has agreed to provide a right of way from the main site access drive to the Newburgh Commons and CB Driscoll's property in case the Planning Board determines that future connection in some form may be desirable.*
>
> *The base survey plan for Route 300 references Stewart Avenue. This notation has been eliminated from the conceptual improvement plans. The construction of the proposed roundabout will be coordinated to insure that proper grade transitions are provided to accommodate the fire department's vehicles entering and exiting the station. The roundabout will be constructed concurrent with the installation of the site access from Route 300 and the access from Route 52 at Fifth Avenue.*
>
> *Interstate 84 is a controlled access facility under the jurisdiction of the Federal Highway Administration and a direct access connection to private developments is not permitted because of this control. The signals on Route 52 including the proposed signal at 5th*

Avenue and the access to the Marketplace will be interconnected and coordinated with adjacent signals at the I-84 Exit 8 ramps.

Coordination with the Winona Lake Engine Co. No. 2 will be undertaken during the final design phase to insure minimal interruption to the facility and to insure that vehicles can adequately enter and exit the station. The current plans are to construct a roundabout at the intersection, rebuild the shoulders and widen on the opposite side of Route 52 to gain the additional width needed. The existence of the roundabout, with required yields entering the roundabout, will act as a traffic calming measure.

Comment 3.6-2 (Letter #26, Mrs. Jeanette V. Tully, June 2, 2006): Fire Lane- I noticed in the plans on display there is no FIRE LANE on any of the routes where traffic will increase, mainly-Rt. 300. The traffic lane on Rt. 300 before proceeding down to Rt. 52 narrows into ONE LANE, and the other LANE is for a left hand turn. DOT should be permitted to purchase some land on both sides of Rt. 300 from I-84 just passed Rt. 52 to add extra traffic lanes.

Overhead Walkway-from the Newburgh Mall to The Marketplace. This will give people a walkway and provide access to both shopping centers, thus not needing to take their cars from one location to the other. The walkway will lessen some of the traffic congestion, and it will insure the welfare of the Mall, rather than have it abandoned by the stores because of competition of The Marketplace.

Miscellaneous: Someone last night suggested a bus service from the City of Newburgh to The Marketplace. There is a bus service that runs from the City and makes stops at all the stores in the Town of Newburgh. There happens to be a regular schedule. His intention was for people from the City to get to the stores for employment purposes. People wanting to work can do this now. The speaker's intention was that jobs will be available. Many of our stores in the hub of Town have a need now to fill jobs in their stores.

***Response 3.6-2**: Appropriate fire pre-emption is proposed at the key area signals surrounding the Marketplace. Additional turn lanes and widening are proposed to insure the movement of traffic to and from the Marketplace. There is no proposed overhead walkway from the Newburgh Mall to the Marketplace. However, as part of the development plans, the provision of a localized jitney and/or expansion of the Orange County Bus Service is being explored, and discussions with the Newburgh Mall to cooperatively provide such a shuttle would be welcomed. The Applicant will coordinate with the Town and the local neighbors to ensure that during construction activities will be coordinated to minimize any impact on the adjoining neighborhoods.*

Appendix G of the DEIS included information regarding the available bus service in and around the Newburgh area, with discounts available for senior and disabled citizens. Two routes are operated by the Leprechaun Lines, and additional schedule and bus stop location information is available at www.leprechaunlines.com. Stops include the Newburgh Mall, Stop and Shop, Wal-Mart and Adams Fairacre Farms, with service the Route 17K bus terminal and Broadway in the City of Newburgh.

The idea of a walkway across Route 300 was briefly considered at the beginning of this process, but feedback from DOT, the scale and logistics of having accessible ramps and stairways, and ultimately the extraordinary cost of such a structure made it unfeasible.

Comment 3.6-3 (Public Hearing, Jeff Wilkinson, 20 Crystal Farm Road, Newburgh, New York as read by Grace Mayer, 10 Wintergreen Avenue, Newburgh, NY, June 1, 2006): My main concern is overwhelming traffic, both car and truck, which of course brings a major increase in noise and air pollution, though not according to the DEIS statement.

A major concern of mine is one that normally does not appear in these traffic studies, it's what major new point source of traffic will do in creating traffic flow throughout the areas of the Town of Newburgh. It is typical that once major routes such as Route 300 and Route 52 become less drivable that motorists simply look for quicker routes.

> ***Response 3.6-3:*** *The proposed improvements to serve the Marketplace include access to Route 300, Route 52 and to Meadow Avenue/Powder Mill to allow sufficient access to the Marketplace to avoid impact on local roadways. Furthermore, the proximity of the I-84 interchanges and the planned reconstruction of the I-87 interchange will allow a significant portion of the traffic to access the facility in close proximity to these roadways, which will lessen any impact on local roadways.*
>
> *Individually, these three access points are expected to have capacity to support 450,000 square feet of retail (Route 300/Exit 7 access), 250,000 square feet (Route 52 at Fifth Avenue/Exit 8), and 150,000 square feet (Route 52 at Powder Mill and Meadow Avenue). If the roundabout can not be built concurrent with the accesses to the site from Union Avenue and Route 52 at Fifth Avenue, approximately 700,000 square feet of retail space will be built and a site plan amendment must be filed. An analysis confirming road capacity for this reduced development with only two access is provided in Appendix C.*

Comment 3.6-4 (Public Hearing, Laura Kohlmann, 18 Wintergreen Avenue, Newburgh, New York as read by Ted Coleman, June 1, 2006): The Market Place will clearly not help our roads. Although The Market Placed DEIS calls for many changes to the roads bordering the site, Routes 300, 52, Meadow Avenue and Fifth Avenue, the improvements by their own calculations will be nullified by the addition of 2,500 cars per hour entering and exiting those areas. Route 52 is a direct service corridor to St. Luke's-Cornwall Hospital. Both the Winona Lake Fire Department and the Town of Newburgh Volunteer Ambulance Corps, TONVAC, are located on Route 52. TONVAC states that it is currently very difficult to get to calls through the traffic on Route 52. How can the addition of 2,200 cars per hour on this road be mitigated by adding multi-lane approaches that only cue 15 cars at each intersection?

> ***Response 3.6-4:*** *The multiple access connections to the Marketplace are proposed to allow traffic to efficiently access the Marketplace but also provide alternate routes for emergency vehicles since the proposed site plan provides a connecting road between Route 52, Route 300 and Meadow Avenue. In addition, subject to the approvals of the New York State Department of Transportation, appropriate fire/emergency vehicle pre-emption is being proposed at various signalized intersections.*

Comment 3.6-5 (Public Hearing, Anna Grabler-Pratt, 42 Wintergreen Avenue, Newburgh, New York, June 1, 2006): Tonight I wish to specifically address the new road which has been proposed. According to the plans I've seen, this road shall come far too close to my backyard feeding off Route 52. It shall not parallel with 300 but instead bypass lands owned by the Department of Transportation and dip far in coming towards my backyard and the backyard of my neighbor. This shall without question expose us to the constant drum of traffic that would be as a result. ... I fail to believe an eight-foot fence is going to keep the exhaust fumes and the

resultant litter and all those negative things that would come from the exhaust fumes of cars away from our lands.

> ***Response 3.6-5:*** *The original access connection to the site from Route 52 was designed to utilize the lands controlled by the Applicant. The alignment is such that mitigation measures including berming and fencing are proposed to minimize any impacts on adjacent residential area. An alternative alignment, which requires the acquisition or permission to cross the lands controlled by the State of New York, is now the preferred alternative following discussions with the DOT. This access road would certainly provide increased distance separation from the residences.*

Comment 3.6-6 (Public Hearing, Christopher Jones, 105 Locust Lane, Newburgh, New York, June 1, 2006): Will the Town of Newburgh ever pave Powder Mill Road. Already it's like a war zone. It's proven that you cannot take care of the roads as they are. How are you going to do it with 2,500 extra cars?

Next, Algonquin and Cronomer Park facilities are great. Do you have any plans for the safety of our kids crossing Powder Mill Road between parks or over at Gardnertown Road from the parking lot to Cronomer Park? Do you have any plan to do that because the traffic is going to be impossible through there? ... The next thing is if Route 52 is flooded with this amount of traffic, again I'll reiterate how will the Ambulance Corps, the Winona Lake Fire Department and Goodwill Fire Department get to anybody in an emergency situation? ...

The next is has the developer been working with the head of transportation from the Newburgh school system? The buses are going to be stopped because of that traffic.

> ***Response 3.6-6:*** *As part of the construction of the proposed roundabout at the Route 52/Meadow Avenue/Powder Mill intersection, the immediate approaches to the intersection will be resurfaced. However, currently there no plans by the Applicant to repave other portions of Powder Mill Road. This roadway would be resurfaced as part of the normal maintenance schedule for the Town of Newburgh. Traffic calming measures such as speed humps or speed tables in the vicinity of Algonquin Park on Powder Mill Road are possible methods which can be used, and will be considered as part of the DOT and Town Board final review for the proposed traffic improvements.*
>
> *There are not expected to be 2,500 new cars on this roadway since it will handle only localized traffic. The proposed roundabout will ease the flow of traffic in the area, by not requiring signalization and regular stoppage of traffic, so that emergency vehicles can be expected to move more effficiently thhrough this intersection. The roundabout is being proposed based on continued input from the State DOT, which prefers the roundabout design in this type of situation.*
>
> *Plans for this development have been sent to the Newburgh school system. The proposed roundabout has been designed to State standards and will accommodate the existing traffic including school bus traffic in the area as well as the additional traffic generated by the mall.*

Comment 3.6-7 (Public Hearing, Christopher Jones, 105 Locust Lane, Newburgh, New York, June 1, 2006): I have a study of my own. At the end of the session on Memorial Day, from 5:30 to 6:30 p.m. I counted 380 automobiles in that hour. That was the Sunday of

memorial Day. That's not high traffic. From all the figures I have here which I'll give you, I 'm not a professional, I'm just figuring this out on my own, it will increase to 388 autos per hour. That's just during that time. That's not during peak time.

> ***Response 3.6-7:*** *The existing traffic volumes on the area roadway were documented as part of the Traffic Impact Study. During peak time periods, Meadow Avenue between Route 52 and Route 300 currently handles approximately 670 vehicles during the Weekday PM Peak Hour and 750 vehicles during the Saturday PM Peak Hour. During other hours of the day, the volumes are less. The expected increases in traffic due to the Marketplace development on this roadway segment is expected to be in the order of 40 vehicles per hour during the weekday and 54 vehicles per hour during the Saturday peak hours. Figures 3.6-9 and 3.6-10 in the DEIS show the additional site generated traffic volumes for the area intersections which were analyzed as part of the DEIS. These figures represent peak one hour increases and would be lower during other hours of the day.*

Comment 3.6-8 (Public Hearing, Kate Lindemann, 12 Victory Court, Newburgh, New York, June 1, 2006): If I go to Crystal Run, from the very beginning Crystal Run had one entrance and one exit off a six-lane highway. Woodbury Commons, one entrance, one exit off a six-lane highway. If they put something on 52 all the traffic from the northeast is going to come through Taft, Algonquin, Fifth Avenue. ... I assumed that there would be one entrance directly off 84. It makes sense. If the mall is going to be there, there should be one entrance, one exit off 84 which is a live highway and then allow--there should not be any entrance on 300.

> ***Response 3.6-8:*** *The Marketplace at Newburgh has been designed to have a primary access to 300 immediately north of I-84. In addition, supplemental access connections are provided on Route 52 opposite Fifth Avenue and access to the Meadow Avenue and Powder Mill Road and Route 52 intersection. The purpose of the multiple access points is to allow good regional access to the site from I-84 and the I-87 corridors as well as from the more local area via the Meadow Avenue access. Direct access from I-84 would not be permitted, and two exits already exist in very close proximity to the site.*
>
> *The Galleria at Crystal Run in the Town of Wallkill has always had several points of access including the main access off of Route 211 via North Galleria Drive, access to Ballard Road via East Galleria Drive and the third access via Smith Road, which also connects to Ballard Road. The provision of these multiple access points has allowed better overall circulation for the area and convenient access for both regional and localized access.*

Comment 3.6-9 (Public Hearing, Roberta Lee, 7 Brookside Avenue, Newburgh, New York, June 1, 2006): The developer has not limited themselves to one entrance, which is already overcrowded, on Route 300. Personally, Wal-Mart has one entrance or exit I should say unless you can sneak in through Applebee's or whatever that's called. It took me fifteen minutes literally to get out of Wal-Mart on Good Friday. Fifteen minutes. So I see a development of different entrances and exits safer for an emergency. Living on Brookside Avenue, of course I urge you to make that entrance parallel to 84 if possible. The entrance to Meadow Hill with 52 is very, very dangerous. I look forward to that being improved as does the ambulance corps and the fire department.

Response 3.6-9: *The provision of multiple access points to the Marketplace not only provides more convenient access for the public but also provides better overall emergency access for the area since it provides alternate routes for the emergency vehicles which can utilize the new road connections. As seen on the submitted revised site plans, the access road to Route 52 near Brookside Avenue has been moved tothe south, maximizing the distance between the road and the Brookside Avenue neighborhood. The plans for the development include upgrading the intersection of Route 52 and Meadow Avenue/Powder Mill with a roundabout design to help alleviate the existing accident conditions, and will include regrading and paving to improve the drainage in this area.*

Comment 3.6-10 (Public Hearing, Mike Edelstein, 26 Murray Avenue, Goshen, New York, June 1, 2006): The Impact Statement does not even discuss cumulative effects as John Gebhards pointed out, and that should be done with regard to traffic, with regard to air and other features. It doesn't, and it's required, talk about long-term as well as short-term impacts. That's missed. The discussion of growth inducing impacts is not accurate. It leaves out the impacts of sprawl and inducing traffic growth over a large area. In fact, there's a statement on page 1.16 that's completely I think inaccurate about being consistent with the Town's objectives to avoid sprawl.

Response 3.6-10: *The traffic study includes traffic projections for other developments in the area and accounts for background growth as well as the traffic from the Marketplace and other planned developments in the area.*

Comment 3.6-11 (Public Hearing, Mike Edelstein, 26 Murray Avenue, Goshen, New York, June 1, 2006): Let me mention the energy analysis is completely deficient because it has to take into account where the traffic is going to come from and what the energy impacts, and the pollution impacts, and the global climate change impacts are of this traffic impact.

Response 3.6-11: *The traffic analysis does account for the expected arrival and departures to the site in proportioning the increases on the various roadways. The analysis of global climate change and potential long term regional pollution are beyond the scope of any single project of this type.*

Comment 3.6-12 (Public Hearing, Ellen Jane Gonyea, 26 Linden Drive, Newburgh, New York, June 1, 2006): Sixteen of the intersection to be impacted by the project are DOT level of service ratings Ds and Fs and most of the rest are C. As I previously noted to this Board, emergency hospital routing for St. Luke's, Newburgh has not been considered and you have not projected an adequate plan for holiday use of the area to enter across from the Newburgh Mall.

Response 3.6-12: *The Applicant has proposed improvements to upgrade intersection Levels of Service by a combination of geometric and signal coordination improvements. There are still intersections in the area which will experience long delays with or without the proposed Marketplace development. The provision of emergency vehicle pre-emption devices has been proposed to help accommodate emergency vehicle traffic in the area.*

Comment 3.6-13 (Public Hearing, Eric Gordon, Attorney from Keane & Beane, P.C., June 1, 2006): The entrance of the Newburgh Mall sits directly across from the proposed main

entrance to The Market Place on 300. Traffic is one of the main issues and impacts from the proposed project. The Newburgh Mall is going to be significantly impacted by this change in traffic, the 2,500 additional cars per hour. What is the Board or what is the applicant going to do in regard to the impacts of the traffic upon the Newburgh Mall?

Response 3.6-13: *The proposed access to the Marketplace on Route 300 is located across from the Newburgh Mall and intersection improvements are proposed to accommodate the additional traffic volumes. These include provision of the turning lanes as well as signalization to accommodate the Marketplace traffic. In addition, by aligning with the Newburgh Mall driveway, it will make the ability for cross traffic between these two commercial centers to function more conveniently. In fact, in many areas where a new retail complex such as this is located in immediate proximity of other older retail facilities, the older retail facilities benefit from the increase of traffic in the area and even become more successful with the increased activity, especially when the older facilities upgrade or refurbish. This has been evident locally with Orange Plaza and the Galleria at Crystal Run in Wallkill.*

Comment 3.6-14 (Public Hearing, Nat Parish, Consultant to the Newburgh Mall, June 1, 2006): I want to tell you there's a big error in the traffic thing. What have they done. They've taken an ITE Institute of Transportation table, taken it off and said hey, we're going to discount that by twenty-five percent because the so-called pass-by trips. That's wrong. You can take a pass-by trip--that means somebody that ordinarily would be on that highway anyhow so it's not an extra trip. A twenty-five percent reduction is an awful lot of reduction.

Response 3.6-14: *For a facility such as the Marketplace, it is common for pass-by and/or diverted link trips to be even higher than 25%, especially when this development occurs in the area where there are already other existing retail opportunities. In fact, with the existing Newburgh Mall being directly across from this site, the two sites will tend to function as one larger entity and in this case would be the equivalent of a regional facility well in excess of one million square feet. The total trip generation figures for the larger facility are lower than that analyzed for the Marketplace. This is the result of interplay or cross movement of trips between the facilities.*

Thus, whether they are classified as pass-by trips or a combination of pass-by, interplay and diverted link trips, the actual new traffic added to the roadway system is expected to be less than that which was analyzed in the Traffic Impact Study. In any event, as requested, a supplemental sensitivity analysis was undertaken utilizing a lower pass-by credit of 15%. The traffic analysis contained in this FEIS appendix has included the figures showing the traffic from other proposed developments in the area. This traffic has been included in the updated analysis including the sensitivity analysis referenced above. The sensitivity analysis results indicated that slightly longer delay times will occur but does not change the conclusions or the recommendations of the study.

Comment 3.6-15 (Public Hearing, Nat Parish , Consultant to Newburgh Mall, June 29, 2006): First of all, the one major deficiency is that in the analysis there's a mention that there are six proposed projects, other projects, that will be built, and they're truthfully listed. Your Board said to the clients take them into account. The traffic from those other six projects when you look at the calculations of the build and no build scenario does not include the traffic for those. When you really add those in you're going to find that some of the conclusions as to the level of service which seem to be marginally okay, just manage to squeak by, isn't going to

squeak by any more and you're going to go to level of service F, which of course is a failing grade. You're going to find that on a number of movements.

Response 3.6-15: *See previous response 3.6-14. Also, the improvements identified have been selected to improve conditioning.*

Comment 3.6-16 (Public Hearing, Nat Parish, Consultant to Newburgh Mall, June 29, 2006): There's a second deficiency which adds to that. The applicant—the traffic analysis took a so-called pass-by credit of 25 percent. That's the maximum you can take in terms of the Institute of Transportation trip generation handbook. Actually, when you look carefully at the basis for that, there's no basis for taking that full 25 percent, and they took it. So they reduced traffic by 25 percent and there was no basis for that reduction. When you add that traffic back in to the traffic I originally mentioned, you're going to find again that those intersection movements start to breakdown.

Response 3.6-16: *See previous Response 3.6-14.*

Comment 3.6-17 (Public Hearing, Nat Parish, Consultant to Newburgh Mall, June 29, 2006): Then we have the next problem is the—there's a signalization as one of the mitigations. It's very important, certainly to my clients and to the whole movement along Route 300, is the signalization proposed at the Newburgh Mall's south driveway where it intersects with this driveway. The signalization that they've proposed does not comply with New York State Department of Transportation operation standards. So they proposed a signalization concept that isn't going to work. They have a permissive left turn—two-lane left turns against opposing through traffic.

Response 3.6-17: *The traffic analysis for the signalized driveway of Newburgh Mall, Marketplace and Route 300 has been updated so that for both the PM and Saturday conditions reflect the signal phasing which is proposed and which has a protected double left turn movement for traffic exiting the Marketplace onto Route 300.*

Comment 3.6-18 (Public Hearing, Nat Parish, Consultant to Newburgh Mall, June 29, 2006): At the intersection of 300 and 52 the capacity analysis assumes a separate right turn lane. That doesn't exist. It also assumes eastbound and westbound green arrow signal phases. They don't exist. Now, when you take all of those into account you're going to start to find that the various levels of service that were projected don't work.

Response 3.6-18: *The intersection of Route 300 and Route 52 under current conditions has a paved shoulder on the eastbound approach which is used by right turning vehicles. Based on actual field observations, this has been considered in the analysis of Existing, No-Build and Build conditions. The analysis does not assume any eastbound and westbound green arrow phases under Existing, No-Build or Build conditions. However, an additional analysis is presented for future conditions which identifies improvements that would be beneficial to this intersection operation with or without the Marketplace development. These "with improvement" analyses do incorporate separate signal left turn phases.*

Comment 3.6-19 (Public Hearing, Nat Parish, Consultant to Newburgh Mall, June 29, 2006): The traffic doesn't work during Christmas. They say we're going have a traffic management program but they haven't proposed what it is. Certainly I don't think they're going to propose closing fifty percent of the stores to reduce traffic during that time. I think your Board

has to require them to propose a plan that will address the very problems that they themselves have cited.

> ***Response 3.6-19:*** *The DEIS included an evaluation of traffic conditions in the Christmas shopping season. The analysis indicates that there will be increased delays as a result of the increased traffic during these time periods. As part of the traffic management plan, the Applicant will work with the Town of Newburgh to provide traffic management such as alternate route signing, temporary restriction of certain turning movements and if necessary coordination with the Town of Newburgh Police Department. The Marketplace will also consider using off-duty Town of Newburgh police officers for traffic control during peak shopping seasons. Periodic emergency management meetings will be held after peak events to discuss performance and possible improvements to the plan.*

Comment 3.6-20 (Public Hearing, Nat Parish, Consultant to Newburgh Mall, June 29, 2006): Earlier I talked about the traffic impacts that haven't been accurately examined. They are not minor, they're major deficiencies. When the traffic study is redone to take care of all these deficiencies, we're quite confident it's going to establish that a number of intersection movements are operating at a level of service that can't be accepted as mitigating adverse impacts.

> ***Response 3.6-20:*** *The traffic analysis has been updated to respond to various technical comments and also includes a sensitivity analysis relative to pass-by trips. Based on the analysis, with the improvements proposed the additional traffic generated by the Marketplace will be accommodated without creating a significant adverse impact on traffic conditions in the area. There are certain intersections in the area, such as Route 52 and Route 300, which will require improvements regardless of the Marketplace and the Applicant has expressed it's willingness to participate in a fair-share contribution towards any regional solution to this location.The details of this participation will be discussed with the Town Board during review of the "developr's agreement" with the Town.*

Comment 3.6-21 (Letter #22, John Parker, Attorney for Save Open Space, 565 Taxter Road, Suite 100, Elmsford, NY, July 20, 2006): The expert testimony presented to the Board at the June 29, 2006 public hearing also illustrate the need for a supplemental DEIS. The comments made on the record that day indicate that the traffic analysis presented to the Board by the applicant were so fundamentally flawed as to render them meaningless. The evidence in the record establishes that for a variety of fundamental reasons, from basic assumptions to signalage mitigation proposals, the entire traffic analysis needs to be re-done and re-submitted to the Board. Transcript of June 29, 2006 Public Hearing before the Town of Newburgh Planning Board at page 147 to 151. As you know, traffic has been viewed as one of the potentially significant adverse environmental impacts of the proposed project since the beginning of the SEQRA review. The importance of the traffic analysis component to the EIS, and the Board's legal responsibilities is manifest, and the legal requirements for an SEIS are met if such request is granted. 6 N.Y.C.R.R. Section 617.7(c)(1)(v). To satisfy the "hard look" and public participation requirements, the re-submission of a new traffic analysis should be considered newly discovered evidence, and the public should be given the full and fair opportunity demanded by SEQRA for public review and comment. 6 N.Y.C.R.R. Section 617.3, 617.9.

Response 3.6-21: *The traffic analysis contained in the DEIS was not fundamentally flawed. Supplemental analyses are contained in this FEIS responding to various technical comments and also include the sensitivity analysis relative to the pass-by traffic expected at the site.*

Comment 3.6-22 (Letter #10, Glenn T. Boucher, Civil Engineer II, State of New York, Department of Transportation, Poughkeepsie, New York, June 29, 2006): The Department is in the process of reviewing the plans and documents associated with the proposed Marketplace development in Newburgh. The following are preliminary in nature and should not be considered the Departments final comments.

1. The methodology utilized in the traffic impact study, including the existing traffic volumes, background growth rate of 1.5%, trip generation rates and no-build traffic volumes appear to be reasonable.
2.The Department suggests, in the interest of providing a conservative estimate, that a 15% pass-by credit be used to develop the build traffic instead of the proposed 25% pass-by credit.
3.A Synchro traffic simulation model, build and no-build, will be required for the entire impacted road network. This will help the Department evaluate the impacts of the project and the proposed mitigation.
4.The proposed access layout along Route 300 appears reasonable.
5.The intersection of Route 52, Site drive, Powder Mill Road and Meadow Avenue should be evaluated as a roundabout, as well as a signalized intersection (as proposed).
6.The proposed access drive at the intersection of Route 52 and 5th Avenue is a serious concern. The operation of the intersection and its proximity to the Exit 8 ramps will require significant, detailed review by the Department.

Response 3.6-22: *1. Comment noted. The acceptance of the existing traffic volumes, background growth rate and trip generation rates is noted.*

2. A sensitivity analysis has been undertaken to evaluate the effect of a lower pass-by credit (i.e., 15%). However, as indicated in Response 3.6-14, it is likely that the combination of pass-by, interplay and diverted link trips will result in even lower peak hour traffic generation from the project.

3. The SYNCHRO analysis was included as part of the DEIS. These analyses have been updated for No-Build and Build conditions to reflect any updates as well as for the sensitivity analysis described above.

4. Comment acknowledges the acceptability of the access layout on Route 300.

5. Based on continuing discussions with the DOT and the Town of Newburgh consultant, the FEIS site plans have been revised to include a roundabout at the five-way intersection at Route 52 and Meadow Avenue.

6. The proposed access connection to Route 52 north of I-84 Exit 8 interchange has been designed to accommodate entering and exiting traffic as well as provide upgraded lanes exiting I-84 by providing two full lane approaches for a greater distance. In addition, the signal system at this interchange is being upgraded and interconnected with the proposed access signal to provide the necessary coordination and to insure that

the area of the three intersections will function adequately. This is presented in the SYNCHRO analysis. Queue detectors will also be added on the off ramps as per NYSTHA requirements. The final details of the design will be coordinated with the NYSDOT and NYSTHA as part of the Highway Work Permit process.

Comment 3.6-23 (Letter #5, Edwin J. Garling, AICP, Garling Associates, 301 Main Street, Goshen, New York, June 19, 2006): Our preliminary question is the functioning of the Lifestyle Center or Village Center area. This is questioned relative to: 1) meeting the proposed town buffering requirements, 2) traffic coming into and through this area, 3) traffic leaving this area and 4) the separation of vehicular and pedestrian traffic. We-Bryant, Karen and I-believe this area will have to be entirely revised. However, we do like the idea of the alternate plan relative to less traffic on the main access within the center and the larger store as a focal point at the end. On the other hand, a pad site in front and all traffic going directly to the main street are not desirable.

Response 3.6-23: *The Applicant will work with the Town's consultants regarding traffic circulation in the vicinity of the Lifestyle Center/Village Center as part of the site plan review process. Modifications will be incorporated to insure adequate pedestrian and vehicle traffic interface. Regarding the specific comments:*

1) Proposed buffering requirements have continued to change and were proposed after the project was designed. It is understood that new language is forthcoming which specifically addresses this project. In response to the Board and the neighbors concerns, the Developer has already increased the landscaped buffer by at least 50% near the homes along Hilltop and has met or exceeded the expected language as far as planting materials. The applicant has acknowledged at numerous meetings that the final approved site plan for this project will be required to meet the conditions of any buffer law that is in effect at the time of that approval.

2 - 4) Regarding the general layout, the developer agrees that the Alternative Plan shown in the DEIS is an improvement, and this plan is now shown as the preferred alternative in this FEIS. Further refinements will be made throughout the process to improve the functionality of the project, and the applicant looks forward to working with the Town's consultants to this end.

Comment 3.6-24 (Letter #5, Edwin J. Garling, AICP, Garling Associates, 301 Main Street, Goshen, New York, June 19, 2006): With some final massaging, the big box buildings appear to function properly. However, the new regulations are going to impact buildings C, 1 And D. Whatever does occur, the buildings will be smaller and farther from the residences and would have a lesser impact. Basic traffic circulation would likely not be impacted. Building 2 needs more room in front of the main entrance area.

The retaining wall along the entrance road from Exit 8 and Route 52 is 65 feet high. However, as a driver approaches this area, Building E, which is likely to be around 30 feet tall, is 140 feet above the road where the road elevation is 270 feet. We will need some visuals of this area. Therefore, we favor the alternate access road.

Response 3.6-24: *The final traffic circulation plan in the vicinity of Building E will be reviewed with the Town Planning Board and its consultant as part of the site plan*

approval process and will incorporate any changes necessary as a result of a shift in building locations, etc.

Note, the FEIS Site Plan shifts Buildings C, 1 & D approximately 25' to the southwest (away from the residences on Hilltop Avenue) and allows the Applicant to maintain a 50' undisturbed vegetative buffer. Further, as a result of the revised site plan Buildings C, 1 & D are setback a minimum of 125' from the easterly property line (adjacent to the residences along Hilltop Avenue) and the 65' retaining wall has been eliminated and replaced with a graded embankment.

Comment 3.6-25 (Letter #5, Edwin J. Garling, AICP, Garling Associates, 301 Main Street, Goshen, New York, June 19, 2006): An off-site concern has always been the blind right turn onto I-84 westbound from Route 300 southbound with no deceleration lane. That is not addressed on the plan, but the new intersection design now under construction shown on DOT plans relocates that access 350 feet or more to the south with a separate right turn lane at a new signal. We feel the new interchange will benefit the area and should be referred to more specifically.

Response 3.6-25: *The proposed interchange modifications being advanced by the New York State Thruway Authority at the Route 300/I-84 interchange incorporate new intersection designs including signalization and improved geometrics. Copies of these preliminary plans are contained in Appendix C. These modifications will not only improve current operations but are designed to accommodate increased traffic in the area. The proposed modifications will also improve the interface between Interstate 87 and Interstate 84, which should further improve traffic operations along the Route 300 corridor.*

Comment 3.6-29 (Letter #5, Edwin J. Garling, AICP, Garling Associates, 301 Main Street, Goshen, New York, June 19, 2006): Page 3.6-10 Projects proposed for development by 2008 under no-build conditions should include:

- Projects at the Northeast Business Center
- Brighton Green-154 townhouses on Meadow Hill Road
- Golden Vista-senior housing
- Thruway-84 connection impacts
- Shayam and BC and N Carpets on Route 52
- 300 Realty on Route 300 north of Route 52

Response 3.6-29: *The 2008 No-Build and Build conditions have been updated to reflect the currently proposed developments in the area.*

Comment 3.6-30 (Letter #5, Edwin J. Garling, AICP, Garling Associates, 301 Main Street, Goshen, New York, June 19, 2006): Page 3.6-16 Intersection 3 is the Newburgh Commons Driveway. Plans in past years called for this driveway to provide access to what is now the Marketplace site and to possibly be signalized. The report should discuss if this could be addressed today based on the proposed Marketplace plan and if not, why? In regard to the monitoring discussed on page 3.6-26, who would be responsible to monitor traffic and/or install the signal?

Response 3.6-30: *No connection is currently proposed between the Marketplace and the Newburgh Commons development due to the significant wetland which separates*

the two properties. The need for signalization of the driveway connection from Newburgh Commons to Route 300 is primarily controlled by the traffic generation from that facility and it should be monitored as part of that development. If there are modifications or changes to the site driveway and site located directly across from this location, this could effect the turning movements at this intersection and thus the need for signalization. The applicant has agreed to provide a right of way from the main site access drive to the Newburgh Commons and CB Driscoll's property in case the Planning Board determines that future connection in some form may be desirable. This right of way could provide a vehicular access into the Newburgh Commons property (using a right turn in, right turn out), or pedestrian access. The current site plans now show a crosswalk across the proposed site access road and sidewalks to Route 300 and the Newburgh Commons property.

Comment 3.6-31 (Letter #5, Edwin J. Garling, AICP, Garling Associates, 301 Main Street, Goshen, New York, June 19, 2006): Page 3.6-17 Intersection 5 has always been considered a state issue beginning when Meadow Winds was approved. It is now ten years later and we will soon be close to build out along the Rt. 300 corridor in this area. At least by 2010-12 development along the corridor to Jeanne Drive will be complete. What has to be done to address this intersection?

Response 3.6-31: *The traffic analysis evaluated the intersection of Route 52 and Route 300 and identified improvements which could be implemented to accommodate traffic conditions with or without the Marketplace. These improvements would improve provision of turning lanes and upgraded signalization. The Applicant has committed to a fair-share contribution towards this intersection if these improvements are advanced by the Town or by NYSDOT.*

Comment 3.6-32 (Letter #5, Edwin J. Garling, AICP, Garling Associates, 301 Main Street, Goshen, New York, June 19, 2006): Page 3.6-25 In the discussion of the Route 52 Meadow Avenue improvements a parcel of land would be created for development and attached to the present gas station. Provision must either be made for this area to be open space or partial open space with any future commercial uses tied in with the gas station access points.

Response 3.6-32: *Comment noted. This will be coordinated with the Town. The roundabout design leaves access to the gas station from the Meadow Avenue leg of the roundabout, and two large islands in the former roadbed of Meadow Avenue which will be landscaped with input from the town as part of the developer's agreement.*

Comment 3.6-33 (Letter #5, Edwin J. Garling, AICP, Garling Associates, 301 Main Street, Goshen, New York, June 19, 2006): Page 3.6-28, item 3.6-17. We should request a visual SIM traffic movement presentation of traffic movements as we did with Pilot.

Response 3.6-33: *A SYNCHRO/SIM traffic analysis has been prepared for the area roadway networks and has been submitted to the Town and its traffic consultant for review.*

Comment 3.6-34 (Letter #44, Ross and Carolyn Topliff, 30 Algonquin Drive, Newburgh, New York, July 13, 2006): Will the developer sign contracts to make the changes to Routes 52 and 300 stated in the DEIS, subject to NYS DOT approval for the changes?

Response 3.6-34: *Page 3.6-25 of the DEIS lists those items that the applicant is proposing to fund for the traffic improvements, including signalization, turn lanes, etc. The Applicant has committed to a fair-share contribution towards any improvements at the Route 52/Route 300 intersection which are advanced by the Town or NYSDOT. Final discussions with the Town Board regarding the proposed "developer's agreement" will include a means of determining what this fair share might be if Route 300/52 improvements are proposed in the future.*

Comment 3.6-35 (Public Hearing, John Gebhards, 48 Wintergreen Avenue, Newburgh, New York, June 1, 2006): Who will pay for the obvious upgrade in transportation services and the potential delays in emergency services, not to mention the mental health aspect of being stuck in traffic jams? All of these need real answers, not just a they will be taken care of type of reply.

Response 3.6-35: *With one exception, all improvements proposed, including signal upgrades, emergency vehicle pre-emption, widening of Route 52, creation of turn lanes, etc., will be completed at the cost of the Applicant. Wilder Balter Partners, Inc. Is paying for all the improvements to the three proposed intersections including traffic signal improvements as part of the mitigation measures for the Marketplace. The exception to this is the intersection of Routes 52 and 300, where the applicant is offering a fair-share contribution to improving an intersection which is in need of improvement regardless of any future projects.*

Comment 3.6-36 (Public Hearing, Michael Torelli, 12 Valentine Road, Newburgh, New York, June 1, 2006): The Department of Transportation is already going through a $60,000,000 plus rehab of that interchange. You already have Drury Lane being built. You have two major projects in excess of $100,000,000 to alleviate traffic on the State level. Also on the State level this site has been on the New York State site finders list for well over twenty years. This has been targeted for development on a State level for a long time.

Response 3.6-36: *The major interchange modifications at Drury Lane and the improved connection between I-87 and I-84 are designed to improve traffic flow in the area. The Marketplace site is conveniently located to access both I-84 and I-87 and improvements are proposed at the access connection to Route 52 and Route 300 to accommodate these and traffic flows.*

Comment 3.6-37 (Public Hearing, Michael Torelli, 12 Valentine Road, Newburgh, New York, June 1, 2006): On the County level, it's been on the County's economic development website and targeted for development for a very long time. The previous owners, the Miron family as some of us may know, had a home business where they would sell different building materials and stuff. They previously owned the property. The property has been on the market and it's at the interchange of two major interstates. This is where malls are built. It has all the proper infrastructure. This is where malls are built.

Response 3.6-37: *Comment noted.*

Comment 3.6-38 (Public Hearing, Jeff Wilkinson, June 1, 2006): One is is there any plans for public transportation between the city of Newburgh and this mall? That would alleviate transportation. It would also help people that might have jobs to be able to get to the job as many of them don't have cars.

Response 3.6-38: *The site is currently accessible by bus via the Orange County Bus Service. The Applicant will work with the Town and bus company to provide appropriate stops and accommodations within the development to enhance existing public transportation services in the area.*

Comment 3.6-39 (Letter #11, Darrin Scalzo, Division Permit Coordinator, New York State Thruway Authority, Suffern, New York, July 31, 2006): Traffic - The DEIS did not include any detail data in regards to the development of the arrival and departure patterns. Given the potential regional nature of this development, marketing data should be provided to substantiate the arrival and departure rates.

Response 3.6-39: *The arrival and departure distribution patterns were developed based upon a review of existing traffic volumes in the area as well as marketing and traffic data for similar projects in the region.*

Comment 3.6-40 (Letter #11, Darrin J. Scalzo, Division Permit Coordinator, New York State Thruway Authority, Suffern, New York, July 31, 2006): The distribution of generated traffic assumes that westbound traffic arriving from I-84 would be about the same for both I-84 Exit 7 (15%) and Exit 8 (14%). Given that I-84 Exit 8 (Route 52) is closer to the Market Place access drive (across from Fifth Avenue), the I-84 Westbound arrival rate may potentially be higher. This would result in additional traffic impacts to the route 52/I-84 ramp intersections. With the projected arrival rate of 14%, the queuing analysis (Table #3 in Appendix G) indicates that the queues will extend beyond the available storage lengths for certain movements at the Route 52/I-84 Eastbound and Westbound ramp intersections. This is also reflected in the higher volume/capacity ratio shown in the Build peak hour capacity analysis (Table 3.6-6).

Additional mitigation should also be developed to address the traffic impacts to the Route 51/I-84 intersections noted above. We will complete our review once the marketing data and additional analysis are provided to our office.

Response 3.6-40: *The Marketplace access connection to Route 52 is still in excess of 2000 feet from the building locations. Considering this as well as the ability to access the site directly from Route 300 via exit 7, (i.e., right turn from I-84 and a separate right turn channelized into its own lane entering into the Marketplace access road) makes this a very convenient and faster means of access for I-84 westbound traffic destined to the western portion of the center. The split analyzed accounts for the site plan layout and the travel time.*

Comment 3.6-41 (Letter #11, Darrin Scalzo, Division Permit Coordinator, New York State Thruway Authority, Suffern, New York, July 31, 2006): In regards to the I-84 Eastbound and Westbound Off-Ramps at Exit 8, the DEIS indicates that the proposed mitigation plan will increase the length of the right turn lane for the I-84 Westbound Off-Ramp. To address the traffic impacts of the proposed development, the I-84 Eastbound Off-Ramp right turn lane also needs to be lengthened and queue detectors need to be installed on both the I-84 Eastbound and Westbound Off-Ramps with interconnection to the traffic signals along Route 52 to address potential queues extending to the mainline of I-84.

Response 3.6-41: *As part of the interchange improvements, the Applicant will address both the eastbound and westbound exit lanes to provide the appropriate left and right*

turn stacking distances. The signal upgrades and interconnect will also be reviewed with New York State Thruway and New York State Department of Transportation as part of the work permit process. In addition, queue detectors will be provided on both exit ramps to insure that vehicle queues do not extend on to the mainline of I-84.

Comment 3.6-42 (Letter #11, Darrin Scalzo, Division Permit Coordinator, New York State Thruway Authority, Suffern, New York, July 31, 2006): Signing - Any signing adjacent to I-84 must meet the Thruway's regulations for commercial signs adjacent to the I-84 property. Attached are the Thruway Authority's criteria for signage.

Response 3.6-42: *Comment noted. The Applicant is in receipt of the Thruway Authority criteria for signage and all signing will meet the New York State Thruway Authority regulations for commercial signage.*

Comment 3.6-43 (Letter #11, Darrin Scalzo, Division Permit Coordinator, New York State Thruway Authority, Suffern, New York, July 31, 2006): Fencing - A 6 ft. chain link fence needs to exist between the facility and the I-84 mainline.

Response 3.6-43: *Where chain link fencing has not already been installed by the NYS Thruway Authority or NYSDOT, along the I-84 mainline, the Marketplace will provide a six foot high chain link fence. The site perimeter will be inspected prior to construction and areas where existing fences requirement replacement will be repaired.*

Comment 3.6-44 (Letter #34, Kate Lindemann, 12 Victory Court, Newburgh, New York, July 27, 2006): What was the 'clock' used to estimate the average number of vehicles per hour? Was it a 10 hour clock, a 12 hour clock or a 24 hour clock? This is very important since if the clock was 12 or 24 hours, then the average number of cars per hour during will be much higher during actual shopping times than the numbers offered.

In the auto count, I do not see anything that addressed the practical aspects of exiting onto Rt. 300 from this proposed mall. Currently cars traveling North on Rt. 300 are often halted by the Newburgh Mall traffic light. When this happens in late afternoon, the cars on Rt. 300 are often backed up as far as the South edge of where the Exonn gas station used to be. This would leave very little, if any room for cars to exit the Mall! And as I understand it, a timing of the lights to allow those cars to exit would mean that the cars halted at the proposed new light at Marketplace would be backing up past the Rt. 84 exist so that cars would not be able to leave the exit ramp onto 300.

All the major Orange County Malls [Woodbury, Galleria etc.] Have 1 exit onto a 6 lane highway. This allows better flow of traffic and in the case of Woodbury requires fewer security officers to be deployed during peak shopping times. Is the Marketplace going to pay for the widening of Rt. 300 to 6 lanes? Should this high traffic proposal be delayed until such a road way exists? Why is the Marketplace not planning to use a single entrance and exit off Rt. 894 which is wider. It would be easy to add a 2nd lane to the exit ramp and allow it to swing around directly into the Mall.

The use of a Rt. 52 entrance for shoppers [an not just emergency vehicles] is going to burden side streets North of Rt. 52; stop lights will be needed at Gardnertown and Gidney etc. Since these areas are already overburdened.

Since Rt. 300 and Rt. 9W are the only direct N-S corridors through the Town and into New Windsor, adding traffic to Rt. 300 will mean that more drivers from the North, will use 9W...and that will result in more traffic opting to use Balmville and Grand Ave as alternatives. Has anyone explored a Rt. 84 connection for such a high traffic development?

Response 3.6-44: *The peak hour traffic generation rates utilized in the traffic study were based on the peak one hour period as published by the Institute of Transportation Engineers which is the result of study observation of other existing retail facilities. Thus, the traffic analysis considers the peak hour conditions based on the base data and the analysis criteria required by the New York State Department of Transportation.*

The proposed signalization of the Route 300/Marketplace and Newburgh Mall Driveway also includes an interconnection to adjacent traffic signals at the I-84 ramps and those signals located north its intersections on Route 300. This design is provided to insure efficient movement of traffic along this corridor and to eliminate any excess queues.

The Woodbury Commons has only one access road which has to accommodate all traffic entering and exiting the site. The Marketplace has three proposed access connections which is more consistent with the Galleria Crystal Run, which has three access connections, i.e., Route 211, Ballard Road and Smith Road. The provision of the multiple access points distributes traffic entering and exiting the site and reduces any congestion that sometimes results from having single access connection.

The provision of the Route 52 entrance should make it more convenient for shoppers including localized trips to and from the facility. Corresponding intersection and signal upgrades are being implemented to accommodate this traffic.

Comment 3.6-45 (Letter #33, Patricia Randall, 59 Wintergreen Avenue, Newburgh, New York, July 27, 2006): Traffic at peak hours, and sometimes at "off" hours is horrendous now. What will it be like if the Marketplace, with 2,500 cars per hour predicted to be on Union Avenue, and Route 52, is allowed? Will emergency services be able to respond on time?

Response 3.6-45: *Improvements are being implemented to accommodate the additional traffic generated by the Marketplace during peak hours. These include multiple access points, geometric and signal improvements including appropriate pre-emption devices for emergency vehicles.*

Comment 3.6-46 (Letter #28, Dorothy and Al Schorno, 133 Gardnertown Road, Newburgh, New York, June 1, 2006): Yesterday afternoon, May 31, 2006, at approximately 4:30 I got on Union Avenue off 17K, and headed home. It was a few minutes after 5PM that I arrived at Citizen's Bank to make a night deposit. It took 30 minutes to go from 17K to the Bank. The traffic was terrible, and it was becoming worse.

What will the traffic be like when and if the Marketplace Mall is open. With the estimated 2500 cars per hour entering the already heavy traffic area, we will be faced with a nightmare. In an emergency, the Police, the Ambulance Corps and the Fire Companies will be unable to reach the troubled area in time to handle the emergency. All day long our Town of Newburgh and surrounding area residents will be plagued with heavy traffic, which will lead to Road Rage and many, many accidents. This reason alone is sufficient to deny the developers the right to proceed with the Marketplace Disaster.

Response 3.6-46: *The planned improvements interconnecting I-87 and I-84 should improve traffic flow on Route 300 between I-84 and Route 17K. The additional traffic generated by the Marketplace together with the provision of the multiple access points and related off-site intersection improvements will accommodate this traffic without significantly impacting vehicle delays on the surrounding roadway network.*

Comment 3.6-47 (Letter #35, Gloria Oehme, 25 Patton Road, Newburgh, New York, July 27, 2006): One can sit on 300 inching ones way up to 17K for the light by Nissan a good 15 min. Why would we want more traffic? We need traffic lights that give "arrows" from the 52 & 300 coming up to Stop & Shop so badly! Our needs are heavy and we don't need a Marketplace Mall.

Response 3.6-47: *See previous Response 3.6-46. In addition, the traffic study identified improvements at the Route 52/Route 300 intersection including installation of turning lanes and turning signals. These are improvements which are recommended regardless of the Marketplace at Newburgh.*

Comment 3.6-48 (Letter #30, Eleanor Doderer, 83 Wintergreen Avenue, Newburgh, New York, July 25, 2006): The Town of Newburgh has in excess of 30,000 residents, of which approximately ½ are registered voters. It appears approximately 50% would have to travel either Route 52, Route 300 or the Route 17K corridor to get to and from their homes. This is a major traffic corridor. Traffic will simply by shifted from one major intersection to secondary roads.

How will simply making minor road widening restriping and resignaling prevent additional road congestion, traffic delays, additional pollution on secondary roads? Who will pay to improve secondary roads, already experiencing increased traffic, if an additional 2,500 cars per hour are put on these roads during peak hours? Mr. Nat Parish, expert traffic attorney, has stated the signaling is not in compliance with DOT requirements.

Our town government states that they are very concerned about quality of life issues. I would ask them to consider how sitting in extended traffic delays for most times one would travel this already congested traffic corridor would improve one's quality of life?

Response 3.6-48: *While the Marketplace development is expected to attract traffic from the regional area, and its proximity to I-84 and I-87 will allow this traffic convenient access to the site, it will also allow traffic from the immediate area, which currently travels to other destination, to have other retail opportunities in closer proximity. This will reduce the need to travel to Middletown, Dutchess County or Woodbury. The updated traffic analysis indicates that with the improvements including the revised signal phasing, the traffic can be accommodated adequately.*

Comment 3.6-49 (Letter #29, Sibylle M. Tulve, 107 Highland Avenue, Newburgh, New York, July 24, 2006): There are many issues that need to be addressed. However, rather than devote a lengthy paragraph for each, I will simply list some of my concerns and follow each with a simple statement as to why it is of concern.

Traffic

- Roads already heavily congested

- 2500 more cars per hour projected for peak shopping times
- Increased number of traffic lights resulting in more emissions as cars idle in "stacking" lanes
- Ripple effect as drivers find alternate routes through residential areas.

Response 3.6-49: *See previous Responses 3.6-1 and 3.6-9.*

Comment 3.6-50 (Letter #7, Mark C. Taylor, Attorney for the Town, Rider, Weiner & Frannkel, P.C., 655 Little Britain Road, New Windsor, New York, July 28, 2006): Pedestrian Access. While the DEIS addresses pedestrian movement within the site to a certain degree, it fails to discuss pedestrian off-site access. It indicates only that pedestrian connections to Routes 300 and 52 will be provided if the Planning Board determines them desirable. The developer's traffic consultants may not have observed pedestrians or bicyclists along the State highway corridors, but the Supervisor and others have seen enough instances of dangerous attempts to cross the highways (Route 300 in particular) to believe that the pedestrian crossing issue must be addressed. NYS Route 9 for example has crosswalks at each intersection. Given the project's traffic impacts and proposed improvements, provisions should be made for crosswalks (or pedestrian bridges or tunnels) at or near critical state highway intersections. Future potential trail usage along Quassaick Creek should also be addressed.

Additionally, residents have expressed concerns to the Town Board that increased traffic along Powder Mill Road derived from the proposed NYS Route 52/Meadow Avenue intersection will present risks to children and other park users crossing from parking areas to play and field areas in Algonquin and Cronomer Hill Parks. If that intersection continues as an element of the site plan, provisions for safe pedestrian crossings and traffic calming to prevent speeding on the road sections used by park patrons should be provided as part of the mitigation measures.

Response 3.6-50: *The construction of the access road intersections to both Route 300 and Route 52 will incorporate pedestrian crosswalks and pedestrian signals if required by the Town and approved by the New York State Department of Transportation. Discussions with the DOT and the Army Corps of Engineers now include presentation of alternative sidewalk plans to Routes 300 and 52 at Meadow Avenue, so that ultimately the Town Board can determine if such connections are feasible and desirable. In addition, the Applicant will work together with the Town to explore traffic calming measures along Powder Mill Road in the vicinity of the Algonquin and Cronomer Parks. Figure 3.10-6 in Section 3.10 shows the proposed pedestrian circulation plan. Although it is not currently proposed to provide a sidewalk to reach Route 52 at the east end of the site, a mowed grass strip adjacent to the access road will be available for pedestrians who insist on traveling that way.*

Comment 3.6-51 (Letter #15, Nathaniel J. Parish, Parish & Weiner Inc., 101 Executive Boulevard, Elmsford, New York, July 28, 2006): Generated traffic from the six "other potential" developments was not included in the 2008 No-Build or Build condition traffic volumes, thus understating the future traffic at many, if not all, locations.

Response 3.6-51: *The traffic from other development projects has been added to the background traffic conditions. The revised analysis contained in the Appendix to this FEIS incorporates the 2008 No-Build Traffic Volumes with the additional traffic from each of these other potential developments.*

Comment 3.6-52 (Letter #15, Nathaniel J. Parish, Parish & Weiner Inc., 101 Executive Boulevard, Elmsford, New York, July 28, 2006): The pass-by factor for site-generated traffic has been incorrectly applied, resulting in an understating of traffic at the three intersections of the site access roads with the surrounding road system.

> ***Response 3.6-52:*** *Based on input received from the New York State Department of Transportation, additional sensitivity analyses have been undertaken applying a 15% pass-by credit. The revised analysis reflects conditions at the access intersections with the surrounding road network.*

Comment 3.6-53 (Letter #15, Nathaniel J. Parish, Parish & Weiner Inc., 101 Executive Boulevard, Elmsford, New York, July 28, 2006): Road improvements have been identified and incorporated into the analysis at a number of locations on the State highway system. There is no timetable given for these improvements, no documentation that the State is planning such improvements or has them on any schedule for improvements, and no indication that the State, or anyone else, has allocated funds for these improvements. The DEIS is not clear as to which, if any, improvements will be fully funded by the Applicant. Any improvements which are not likely to be in place by the time that the development is opened should not be considered in the analysis.

> ***Response 3.6-53:*** *The Applicant proposes to complete the access related improvements associated with the development of the site, including turn lanes and the signal at Route 52/Exit 8, which will be coordinated with the phasing of the construction of the individual access points. In addition, the signal coordination and the interconnection of the traffic signals along Route 300 will also be undertaken at the time of the signal installation at the access connection to Route 300.*
>
> *The analysis also identifies other improvements which are proposed for the area, including the New York State Thruway Authority improvements at the Exit 7 Interchange, although these improvements have not been accounted for in the analysis for the year of completion. In addition, the study identifies other recommended off-site improvements such as at the intersection of Route 52 and Route 300. This intersection will require improvements regardless of the proposed Marketplace development. At this location, the Applicant has committed to a fair-share contribution towards future improvements at this intersection.*

Comment 3.6-54 (Letter #15, Nathaniel J. Parish, Parish & Weiner Inc., 101 Executive Boulevard, Elmsford, New York, July 28, 2006): The existing road configuration has been incorrectly reported at two locations, and has been incorporated into the capacity analyses.

> ***Response 3.6-54:*** *The existing road configuration has been revised in all capacity analyses to incorporate current operations.*

Comment 3.6-55 (Letter #15, Nathaniel J. Parish, Parish & Weiner Inc., 101 Executive Boulevard, Elmsford, New York, July 28, 2006): At the intersection of Route 300 and the site access drive a nonconforming traffic signal operation has been incorporated into the capacity analysis.

Response 3.6-55: *The traffic signal phasing shown at the Route 300 site access drive has been modified to reflect the planned improvements and associated signal phasing which eliminates the conflicting phase.*

Comment 3.6-56 (Letter #15, Nathaniel J. Parish, Parish & Weiner Inc., 101 Executive Boulevard, Elmsford, New York, July 28, 2006): Trucks and other heavy vehicles were not counted separately during the traffic counts, and the effect of these heavy vehicles may not have been factored into the capacity analyses.

Response 3.6-56: *The truck factors utilized in the Highway Capacity Analysis are consistent with those used in other studies in the area and are also based on data published by the New York State Department of Transportation.*

Comment 3.6-57 (Letter #15, Nathaniel J. Parish, Parish & Weiner Inc., 101 Executive Boulevard, Elmsford, New York, July 28, 2006): The section on Peak Seasonal Traffic Conditions, Section 3.6-16, is incomplete, some of the referenced material in Traffic Appendix G, including the summary of the capacity analyses, appears not to have been included, and there are no documented conclusions. A Traffic Management Program is mentioned, but without description, and no details are given.

Response 3.6-57: *The Seasonal Traffic Conditions has been analyzed to reflect peak operations in the vicinity of the site during Christmas shopping season including all capacity analysis. Additional details regarding the proposed Traffic Management Program are presented in Response 3.6-19.*

Comment 3.6-58 (Letter #15, Nathaniel J. Parish, Parish & Weiner Inc., 101 Executive Boulevard, Elmsford, New York, July 28, 2006): The use of appendices to present data and other material is confusing. The DEIS contains eight Appendix sections, of which Traffic and Transportation is Appendix G, but the Traffic Impact Study also contains eight Appendix sections, including an Appendix G. In addition, some of the traffic appendices are found in Appendix G on the website, some on the CD, and some on both.

Response 3.6-58: *Comment noted. The traffic study has its own appendices that are listed separately in its table of contents.*

Comment 3.6-59 (Letter #15, Nathaniel J. Parish, Parish & Weiner Inc., 101 Executive Boulevard, Elmsford, New York, July 28, 2006): At the intersection of Route 300 and the Newburgh Mall South Driveway, the road inventory in the traffic analysis includes a southbound right turn lane. This lane does not currently exist.

Response 3.6-59: *The capacity analysis for the Route 300/Newburgh Mall South Driveway has been revised to reflect the proposed conditions. The future conditions include improvements proposed within the Route 300 right of way at this intersection.*

Comment 3.6-60 (Letter #15, Nathaniel J. Parish, Parish & Weiner Inc., 101 Executive Boulevard, Elmsford, New York, July 28, 2006): At the intersection of Route 300 and Route 52, the capacity analysis includes a 20-foot wide eastbound right turn lane. This lane does not currently exist. There is a paved shoulder, but it is only 7 ½ feet wide, and is too narrow to accommodate either moving traffic or queues. Long single-lane queues were observed during a

weekday mid-afternoon on this single-lane eastbound approach. The capacity analysis will have to be re-run here, and a poor level of service may result.

> ***Response 3.6-60:*** *At the intersection of Route 300 and Route 52, on the eastbound approach at this intersection, there is currently one travel lane together with a paved shoulder which based on field observations is currently used for right turning vehicles. This has been accounted for in the analysis. Furthermore, for this location, the analysis identifies that improvements are required at this intersection regardless of the proposed Marketplace development and the traffic study also analyzes those conditions.*

Comment 3.6-61 (Letter #15, Nathaniel J. Parish, Parish & Weiner Inc., 101 Executive Boulevard, Elmsford, New York, July 28, 2006): The No-Build and Build conditions timetable used in the traffic analysis assumes a project completion in 2008. This may be somewhat optimistic given the size and complexity of the project, and especially in view of the significant level of off-site roadway and operational improvements, most of which are on State highways, listed as required to mitigate project impacts. A "design" year of 2010 would be more realistic.

> ***Response 3.6-61:*** *Comment note. The 2008 Design Year is considered appropriate and has accounted for the other developments in the area.*

Comment 3.6-62 (Letter #15, Nathaniel J. Parish, Parish & Weiner Inc., 101 Executive Boulevard, Elmsford, New York, July 28, 2006): The traffic study, on page 3.6-10, lists six other potential developments in the area, but does not give their size (floor area), the amount of traffic estimated to be generated by these developments, or the distribution of this traffic to the road system. Without such information it is not possible to confirm that appropriate levels of traffic were added to the surrounding streets.

The traffic study, on page 3.6-10, lists six projects which were included in the No-Build condition. However, it does not appear that traffic from any of these projects was actually included in the No-Build traffic projections. The No-Build volumes shown in Figures 3.6-5 and 3.6-6 are exactly six percent higher than the existing traffic volumes shown in Figures 3.6-3 and 3.6-4, and this represents only the background growth, four years (2004 to 2008) at 1.5 percent annually. This would mean that the projected volumes are understated in both the No-Build and Build condition at all intersections, or at least at all of the intersections along Route 300. The capacity analyses will have to be re-run for all of these intersections for both the No-Build and Build conditions, and with certain lane groups projected in the traffic analysis to operate at Level of Service E and/or with volume/capacity (v/c) ratios in excess of 0.95 at five of the intersections along Route 300, it is likely that some Level of Service F conditions will occur once the additional generated traffic from these developments is factored in.

> ***Response 3.6-62:*** *Additional figures have been added to the traffic analysis which include the traffic from the other projects in the area based on available data including the traffic studies which were prepared for each of those projects. These volumes were added to the projected traffic volumes to reflect the No-Build Traffic Volumes for each intersection. The capacity analyses for each intersection have been recomputed for the future No-Build and Build conditions and the Level of Service tables have been updated accordingly.*

Comment 3.6-63 (Letter #15, Nathaniel J. Parish, Parish & Weiner Inc., 101 Executive Boulevard, Elmsford, New York, July 28, 2006): The 25 percent pass-by percentage used in

the analysis is too high. The ITE Trip Generation Handbook suggests, for an 850,000 SF shopping center, percentages of 21 percent for the weekday P.M. Peak hour and 18 percent for the Saturday peak hour.

Response 3.6-63: *At the request of the New York State Department of Transportation, a traffic sensitivity analysis has been completed utilizing a lower pass-by percentage. See also Response 3.6-14.*

Comment 3.6-64 (Letter #15, Nathaniel J. Parish, Parish & Weiner Inc., 101 Executive Boulevard, Elmsford, New York, July 28, 2006): The site-generated traffic estimates, shown in Table 3.6-5, include a 25 percent pass-by factor. It seems, however, that the pass-by factor has been incorrectly applied, and does not conform to the accepted methodology. It appears that the report has simply reduced the generated traffic across the board by 25 percent. The correct method, as set forth in the ITE Trip Generation Handbook, is to apply the full entering and exiting traffic volumes at all of the site driveway intersections, diverting the pass-by percentage traffic from the passing through movements. Since the pass-by factor was not correctly applied, the Build condition traffic projections at the three site driveway intersections are understated. Considering that Level of Service E conditions are projected on four lane groups at the intersection of the site driveway with Route 300, it is likely that a recalculation of the capacity analysis at this location will result in projected Level of Service F operations.

Response 3.6-64: *See previous Response 3.6-52.*

Comment 3.6-65 (Letter #15, Nathaniel J. Parish, Parish & Weiner Inc., 101 Executive Boulevard, Elmsford, New York, July 28, 2006): The directional distribution of the site-generated traffic needs more than the one sentence explanation on page 3.6-15. According to Figures 3.6-7, 8, the distribution of traffic to and from The Marketplace at Newburgh is 21 percent to and from north of the site, 74 percent to and from south of the site (including I-84), and five percent to and from Newburgh Mall. The DEIS states that the traffic counts at the Newburgh Mall driveways were used as one of the criteria in setting these distributions. However, according to the counts at the Newburgh Mall (see Figures 3.6-3, 4), the distribution traffic to and from the north should be higher. This is shown in the following comparison table.

Comparison of Directional Distributions

The Marketplace at Newburgh		Newburgh Mall			
		Arrive		Depart	
		Weekday	Saturday	Weekday	Saturday
North	21%	24%	30%	34%	37%
South	74%	76%	70%	66%	68%
Newburgh Mall	5%				

Note also that because of the minor Newburgh Mall access to Meadow Avenue the north distribution could be slightly higher.

The directional distribution of site-generated traffic needs to be better documented.

Response 3.6-65: *The traffic distributions at the Newburgh Mall were reviewed in determining current shopper origins. However, based on marketing information and*

consideration of the market draw for a larger size retail facility, it is expected that a higher percentage of traffic will arrive to the site via I-84 and I-87. This is reflected in the traffic distributions utilized in the traffic report.

Comment 3.6-66 (Letter #15, Nathaniel J. Parish, Parish & Weiner Inc., 101 Executive Boulevard, Elmsford, New York, July 28, 2006): According to the directional distributions shown on Figures 3.6-7, 8, the Route 300 access drive would handle 61 percent of the arriving traffic and 53 percent of the departing traffic, while the Route 52/Fifth Avenue driveway would handle 27 percent of the arriving traffic and 34 percent of the departing traffic. The major reason seems to be that all of the traffic arriving on I-84 from the west is assumed to enter via the Route 300 driveway, while one half of this traffic is assumed to exit via the Route 52/Fifth Avenue driveway. This needs to be explained and justified.

Response 3.6-66: *The arrival and departure distributions are based on the layout of the site as well as the proposed signing to direct traffic to various routes. Based on this, a portion of the westbound exiting traffic will utilize the Exit 8 interchange especially since they will be exiting in the form of right turns onto Route 52 and right turns onto the I-84 ramps.*

Comment 3.6-67 (Letter #15, Nathaniel J. Parish, Parish & Weiner Inc., 101 Executive Boulevard, Elmsford, New York, July 28, 2006): The DEIS has identified a number of road improvement measures intended to mitigate the impacts of the additional site-generated traffic, as well as to address problem areas which already exist or will exist in the 2008 No-Build condition. Many of these measures have been assumed as being implemented in the 2008 No-Build and Build conditions. These include the following:

- Route 300 and Newburgh Mall South Driveway - construct new access drive to The Marketplace at Newburgh, add turning lanes on Route 300, reconfigure the driveway to Newburgh Mall, possibly acquire additional right of way on the southeast corner, install a traffic signal
- Route 52 and Meadow Avenue/Powder Mill Road - construct new access drive to The Marketplace at Newburgh, relocate Meadow Avenue, add turning lanes, upgrade the existing signal installation
- Route 52 and Fifth Avenue - construct new access drive to The Marketplace at Newburgh, construct northbound left turn lane on Route 52, reconfigure the Fifth Avenue intersection approach, install a traffic signal
- Route 52 and I-84 Ramps - Widen the westbound exit ramp to provide a longer right turn lane, construct a right turn lane on the northbound Route 52 approach to the eastbound ramps, upgrade the existing traffic signals at both ramp intersections and interconnect them with the new signal at Fifth Avenue/access drive to The Marketplace at Newburgh
- Route 300 and Route 51 - Construct left turn lanes on the Route 52 eastbound and westbound approaches, construct a right turn lane on the Route 52 eastbound approach, possible property acquisition, upgrade the traffic signal
- Route 300 and Newburgh Commons Driveway - Install a traffic signal
- Interconnect the traffic signals along Route 300 between I-84 and Meadow Avenue/Meadow Hill Road
- Route 300 and Route 32 - Construct turning lanes and upgrade the traffic signal. (According to the DEIS these improvements are currently being completed. The DEIS should include an estimated date of completion)

Section 3.6 of the DEIS does not state which improvements are to be paid for by the Applicant. One would expect that the first three listed above, those involving the access drives into the shopping center, would be the total responsibility of the Applicant. For the other improvements (excluding the intersection of Routes 300 and 32), there is no indication as to who would be responsible and who would pay for them. There is no timetable given for these improvements, no documentation that the State is planning such improvements or has them on any schedule for improvements, and no indication that the State, or anyone else, has allocated funds for these improvements. All of these improvements are on State highways, and some may require property acquisition. Unless these improvements can reasonably be expected to be completed by the time that the shopping center is opened, they should not be included in any analyses of the Build conditions.

Response 3.6-67: *The improvements identified and which are proposed to be constructed by the Applicant in association with the Marketplace development include the following access related improvements:*

- *Route 300 at the Newburgh Mall South Driveway/Marketplace access intersection improvements*
- *Route 52 and Meadow Avenue/Powder Mill Road roundabout intersection and access drive improvements.*
- *Route 52 and Fifth Avenue/Site Access improvements including turning lanes*

Route 52 and I-84 Ramps improvements including ramp widening and signal modifications. The signal coordination at the ramps and the site access will also be included.

The interconnect and coordination of the traffic signals along Route 300 including the Marketplace driveway, Route 300 and Meadow Avenue/Meadow Hill Road and I-84 ramps inclusive will be interconnected as per the requirements of the NYSDOT. The intersection of Route 300 and Newburgh Commons Driveway was identified as a potential candidate for signalization. The need for signalization is a function of the traffic entering and exiting that project and would have to be monitored by them.

It should be noted that all access improvements proposed by the Applicant are within the State right-of-way or on lands controlled by the Applicant.

At the intersection of Route 300 and Route 52, current conditions as well as conditions in the future without the Marketplace identify the need for additional turning lanes and signal improvements. These improvements are required regardless of the Marketplace development. The Applicant has indicated their willingness to participate in a fair-share contribution towards this improvement, and will include this issue in the discussions with the Town Board regarding the "developer's agreement".

Lastly, the New York State Department of Transportation has recently completed the improvements of the intersection of Route 300 and Route 32 including the provision of turning lanes and updated signalization.

Comment 3.6-68 (Letter #15, Nathaniel J. Parish, Parish & Weiner Inc., 101 Executive Boulevard, Elmsford, New York, July 28, 2006): Prevailing truck traffic does not seem to be taken into account. With a location on two state highways and near the interchange of two interstate highways, and with a nearby airport, a fairly high amount of truck traffic should be expected. The raw traffic counts do not show that any separate counts were made of truck traffic, and there is no indication as to what heavy vehicle percentage, if any, was used in the capacity calculations. If a default of two percent was used, it is probably too low, and the resultant calculations may show better operations than are likely to exist.

Response 3.6-68: *The capacity analysis for peak time periods is based on the truck factor which was developed for other studies in the area and is based on this information.*

Comment 3.6-69 (Letter #15, Nathaniel J. Parish, Parish & Weiner Inc., 101 Executive Boulevard, Elmsford, New York, July 28, 2006): The intersection of Route 300 with Meadow Avenue, Route 52 and the Stop & Shop Driveway are analyzed with advanced (leading) protected green arrow phases on the Route 300 approaches. Field observations indicate that these are actually delayed (lagging) turn phases. (This may also be true at other intersections as well.) This may affect the results of the capacity analyses.

Response 3.6-69: *The capacity analysis includes updated signal phasing and timings based on the SYNCHRO analysis for the Route 300 and Route 52 corridors.*

Comment 3.6-70 (Letter #15, Nathaniel J. Parish, Parish & Weiner Inc., 101 Executive Boulevard, Elmsford, New York, July 28, 2006): The capacity analyses at all of the signalized intersections assume full actuation. This needs to be confirmed. Some of them appear to be operating as semi-actuated installations.

Response 3.6-70: *The future conditions include actuation at all intersections including updated controllers and signal phasing which will be finalized with the New York State Department of Transportation as part of the Highway Work Permit process.*

Comment 3.6-71 (Letter #15, Nathaniel J. Parish, Parish & Weiner Inc., 101 Executive Boulevard, Elmsford, New York, July 28, 2006): At the intersection of Route 300 and the Newburgh Mall South Driveway/Marketplace Access Drive, the capacity analysis for the Build condition shows the through eastbound movement (from Newburgh Mall) moving on the same signal phase as the opposing westbound two-lane left turn exiting from The Marketplace. This appears to be a nonconforming operation. The New York State Department of Transportation generally does not permit a signal operation where a two-lane left turn operates in the same signal phase with an opposing through movement. Either a separate signal phase would have to be provided for the eastbound through movement, which would adversely affect the operation of the signal, probably moving it into Level of Service F operation, or the eastbound movement would have to be prohibited and the exist limited to right turns, as at present, in which case the eastbound through movement would have to be reassigned to a right turn at the north driveway and a left turn into The Marketplace access drive.

Response 3.6-71: *The signal phasing utilized in the capacity analysis has been updated to reflect the current improvements including a dual left turn exiting the Marketplace development. The signal phasing is now in conformance with NYSDOT criteria including a separate signal phase for both the eastbound and westbound approaches.*

Comment 3.6-72 (Letter #15, Nathaniel J. Parish, Parish & Weiner Inc., 101 Executive Boulevard, Elmsford, New York, July 28, 2006): At the intersection of Route 300 and Route 52, the capacity analysis for the 2008 Build condition, summarized in Table 3.6-6, assumes that mitigation measures, including the provision of eastbound and westbound left turn lanes (as well as assuming a full operating eastbound right turn lane, which does not exist at present) will have been implemented. Even with these improvements Level of Service F is projected for two lane groups in the weekday P.M. Peak hour. Without the improvements, however, the capacity analyses, shown in Table 2 in Appendix G and in the capacity computation printouts, shows Level of Service F operations on several lane groups in both peak hours, as well as for the overall intersection in the weekday P.M. Peak hour, and with volume/capacity ratios significantly over 1.0.

The DEIS, on page 3.6-26, reports that improvements at this intersection will be required regardless of the proposed development, and, on page 3.6-17, reports that the Town has identified this intersection as needing improvements to accommodate future traffic volumes. There is, however, no timetable given for these improvements, no documentation that the State is planning such improvements or has them on any schedule for improvements, and no indication that the State, or anyone else, has allocated funds for these improvements. (The Applicant apparently is not paying for them, only proposing a "fair-share" contribution.) Unless the DEIS can provide documentation that these improvements actually will be completed by the opening in 2008, the Build condition analysis without the improvements must be shown in Table 3.6-6 so that the actual operating conditions in 2008 are disclosed. The capacity analysis results including the improvements also can be shown, with the understanding that there is no commitment for these improvements.

> ***Response 3.6-72:*** *The Level of Service capacity analysis results for the 2008 conditions for the Route 300 and Route 52 intersection show Levels of Service both with and without improvements at this intersection. As can be seen from a review of the Level of Service Table, this intersection will experience long delays with or without proposed Marketplace development. The Build without improvements analysis results are also indicated in the revised Level of Service Table. Thus, the table now shows No-Build and Build conditions without improvements as well as with improvements.*

Comment 3.6-73 (Letter #15, Nathaniel J. Parish, Parish & Weiner Inc., 101 Executive Boulevard, Elmsford, New York, July 28, 2006): At the intersection of Route 300 and the Newburgh Commons driveway, the capacity analysis for the 2008 Build condition, summarized in Table 3.6-6, assumes that the intersection will be signalized as a mitigation measure. As with the previous comment, however, there is no timetable given for this improvement, no documentation that the State is planning such an improvement or has it on any schedule for improvements, and no indication that the State, or anyone else, has allocated funds for this signal. Unless the DEIS can provide documentation that this signalization actually will be completed by the opening in 2008, the Build condition analysis without the improvements must be shown in Table 3.6-6 so that the actual operating conditions in 2008, which are projected as Level of Service F for the driveway approach, are disclosed.

> ***Response 3.6-73:*** *The Route 300/Newburgh Commons Driveway was identified as a potential candidate for signalization. This will have to be monitored in the future with or without the Marketplace development.*

Comment 3.6-74 (Letter #15, Nathaniel J. Parish, Parish & Weiner Inc., 101 Executive Boulevard, Elmsford, New York, July 28, 2006): At the intersection of Route 52 and the I-84 eastbound ramps, the capacity analysis for the 2008 Build condition, summarized in Table 3.6-6, assumes that a northbound right turn ramp will be constructed as a mitigation measure. {Note: Table 3.6-6 and the text on page 3.6-18 refer to it as a "southbound" right turn lane; it should read "northbound."} As with the previous comments, however, there is no timetable given for this improvement, no documentation that the State is planning such an improvement or has it on any schedule for improvements, and no indication that the State, or anyone else, has allocated funds for this improvement. Unless the DEIS can provide documentation that this improvement actually will be completed by the opening in 2008, the Build condition analysis without the improvement must be shown in Table 3.6-6 so that the actual operating conditions in 2008 are disclosed.

> ***Response 3.6-74:*** *Comment noted. Table 3.6-6 has been updated to reflect the existing northbound right turn lane. The improvement proposed as part of the Marketplace development is a southbound right turn lane at the westbound ramp.*

Comment 3.6-75 (Letter #15, Nathaniel J. Parish, Parish & Weiner Inc., 101 Executive Boulevard, Elmsford, New York, July 28, 2006): The report calls for the installation of a coordinated signal system along Route 300. This requires the same signal cycle lengths at all intersections. The cycle lengths in the capacity analysis along Route 300 range fro 90 to 120 seconds.

> ***Response 3.6-75:*** *Comment noted. The SYNCHRO analysis for the Route 300 corridor incorporates the coordinated signal system and vehicle queue lengths.*

Comment 3.6-76 (Letter #15, Nathaniel J. Parish, Parish & Weiner Inc., 101 Executive Boulevard, Elmsford, New York, July 28, 2006): In Appendix G, the Level of Service Summary, Tables 2 and 2A, reports the Level of Service only on an approach and overall intersection basis. A long-standing directive from the New York State Department of Transportation requires reporting both Level of Service and volume/capacity ratio for each lane group. At some locations, notably the intersection of Routes 300 and 52 without mitigation, the Level of Service F operation on several lane groups is not disclosed in this table.

> ***Response 3.6-76:*** *Comment noted. The approach Levels of Service are indicated in the DEIS. The individual movement Levels of Service are shown on the analysis contained in the Traffic Appendix of the document.*

Comment 3.6-77 (Letter #15, Nathaniel J. Parish, Parish & Weiner Inc., 101 Executive Boulevard, Elmsford, New York, July 28, 2006): Accident Data Other than a very brief description of the number of years of accident data collected and what appendix it is located in, there is no discussion of any kind regarding the relative safety record of roadways and intersections in the study area. For example, in 2000, at the intersection of Routes 300 and 32, there were 12 accidents of varying degrees of severity. It is not determined if this represents a particularly poor history (i.e., a hazardous intersection) or whether this location is typical of the safety record of similar locations (relative to number of lanes and traffic volume) throughout New York State. It is noted, however, that the accident rate for Route 300 in the study area has been generally well above the State wide average. A discussion of the accident history should be added, as should an evaluation of how this record may be impacted by the proposed project.

This is particularly important at locations that have been identified as requiring/recommended for improvements.

Response 3.6-77: *The accident data were reviewed to identify locations where repeat accident patterns were identified, such as left turning accidents and rear-end accidents. The improvements identified in the traffic study such as the roundabout at the intersection of Route 52 and Powder Mill Road/Meadow Avenue are proposed in order to alleviate these accident conditions and improve the flow of traffic through this section of the network.*

At the referenced intersection of Routes 300 and Route 32 the 12 accidents in the year 2000 were due primarily to left and rear-end accidents. The NYSDOT completed the reconstruction of this intersection in 2005 to provide separate turn lanes and new signalization in order to alleviate the accident conditions at this location. Furthermore, a summary of the accident rates and comparison to state wide averages was prepared for each of the roadway segments. The identified roadway improvements outlined in the DEIS address high accident locations.

Comment 3.6-78 (Letter #15, Nathaniel J. Parish, Parish & Weiner Inc., 101 Executive Boulevard, Elmsford, New York, July 28, 2006): Peak Seasonal Traffic Conditions Section 3.6-16 is intended to cover conditions in the December pre-Holiday period. However, the following deficiencies are noted:

- The referenced December 2003 counts cover only the intersections of Route 300 with Route 17K and Route 300 with the Thurway Exit 17/Unity Place.
- The referenced copies of machine traffic counts, which were made in December, 2004, apparently by John Collins Engineers, are found in Appendix F under the heading "NYS DOT Data." The comparison of counted traffic volumes, referred to on page 3.6-27, is not found either in the text or in Traffic Appendix G.
- Figures 2A and 3A contain the 'regular" counts, not the December counts.
- There is no documentation to support the claim that overall intersection traffic volumes are only slightly higher in December at the driveways of Newburgh Mall.
- The December analysis apparently uses the study's No-Build condition volumes and adds the projected December generated volumes from The Marketplace at Newburgh. Under this assumption the other shopping centers, and Newburgh Mall in particular, would have no December seasonal variations in traffic, a highly unlikely condition.
- The seasonal traffic figures in Appendix G cover only the revised intersections of Route 300 with I-87 and I-84. They do not cover any of the proposed site driveway intersections or any other intersections along Route 300.
- The results from the reported capacity analysis of December conditions are missing. Table 2A, referred to on page 3.6-28, is a comparative summary of the typical (non-December) capacity analyses for intersections 8-18 in the Existing, No-Build and Build Conditions.
- Section 3.6-16 seems to minimize the conditions that would occur during the pre-Christmas shopping season. According to the ITE Trip Generation Handbook, Saturday peak hour volumes during the Christmas season run about 35 percent higher than the average Saturday volumes. Since Level of Service E is projected on several lane groups at the Route 300 access drive intersection and several other intersections under average conditions (and possibly at Level of Service F once the above corrections are made), it can be expected that unacceptable operating conditions will prevail during

the Christmas season. The report text, on page 3.6-28, says only that "the intersections will experience longer peak hour delays and a traffic management program will have to be implemented to accommodate the expected future traffic volumes during these time periods." The report does not, and should, describe what kind of traffic management programs will, or can, be implemented. (Do they propose to close 35 percent of the stores?)

Response 3.6-78: *Comment noted. See Response 3.6-19.*

Comment 3.6-79 (Letter #15, Nathaniel J. Parish, Parish & Weiner Inc., 101 Executive Boulevard, Elmsford, New York, July 28, 2006): Traffic Simulation Analysis Section 3.6-17 states that a Synchro/Sim traffic simulation was prepared "to evaluate the signal system operation and to define the signal timings and coordination for the existing and proposed traffic signals." The Synchro/Sim printouts are included in Traffic Appendix G; however, there is no discussion of these analyses in the main text, no explanation of the program or the methodology, and no conclusions presented as to what the results mean and whether an acceptable signal timing and progression can be established.

The Synchro/Sim traffic simulation also produced a Queue Length Summary Table, referred to in the text as Table Q-1, but designated as Table No. 3 in Traffic Appendix G. In this table it is noted that a number of calculated 95th percentile queue lengths are greater than the available queuing storage length. These instances should be identified, and measures to mitigate these conditions should be discussed.

At some new intersections the available storage lengths is reported as "N/A". For the Build condition these storage lengths can be obtained from the plans, and should be included in the Table 3.

Response 3.6-79: *The revised SYNCHRO/SIM traffic analysis incorporates the signal improvements proposed along the various intersections. For the new intersections, the available storage lanes have been added to the Build conditions and are now included in Table No. 3 in Appendix C.*

Comment 3.6-80 (Letter #15, Nathaniel J. Parish, Parish & Weiner Inc., 101 Executive Boulevard, Elmsford, New York, July 28, 2006): Queue Lengths The statement on Page 3.6-25 that "...queue lengths and storage capacity at each intersection provides for a minimum of 15 vehicles" seems to be in error.

At the intersection of Route 52 with relocated Meadow Avenue (Figure 3.6-14), the stacking distance between relocated Meadow Avenue and route 532 is about 130 feet, which provides stacking for only six passenger cars (at an average queuing headway of 22 feet). The left turn lane from Route 52 westbound provides stacking for 10 cars.

At the intersection of Route 52 with fifth Avenue (Figure 3.6-15), the northbound left turn lane on Route 52 is about 180 feet long, providing stacking for 8 cars. The Synchro/Sim traffic simulation, in Table 3, shows a 95th percentile Saturday queue length of 275 feet, or 13 cars.

At the intersection with Route 300 opposite the Newburgh Mall driveway, the stacking lengths cannot be measured because figure 3.6-13 does not cover enough area.

It should be particularly noted that the above stacking lengths are of necessity approximate because the distance keys (1"=?) have not been provided on Figures 3.6-13, 14 and 15, an absolute engineering drawing requirement.

Response 3.6-80: *Page 6-25 incorrectly identified the queue distance. Table No. 3 provides a summary of the storage lengths at each intersection.*

Comment 3.6-81 (Letter #14, Nathaniel J. Parish, Parish & Weiner Inc., 101 Executive Boulevard, Elmsford, New York, July 31, 2006): Traffic Impacts My comment letter July 28, 2006 discussed in detail the major deficiencies of the DEIS Traffic studies. The incorrect assumptions of traffic to be generated, omission of "no build project traffic", incorrect assumptions as to existing physical conditions, permissible movements, and the total lack of information as to the feasibility and acceptability by the various governmental jurisdictions of the various mitigation proposals -- singly and together, establish that this traffic report is neither a valid analysis of project impacts, nor a presentation of the mitigation which is required to address impacts.

Traffic is certainly one of the most critical impacts in a shopping mall of this mega-scale. The Board cannot continue to process this application until it and public are presented with a new traffic report. This must be done in the form of a Supplementary DEIS which the public can review and comment on.

Response 3.6-81: *The improvements identified in the Traffic Impact Study are designed to accommodate the traffic expected from the Marketplace development. Based on comments received, additional analyses have been completed including sensitivity analysis addressing items such as pass-by credits and effective of other No-Build projects. The Traffic Appendix contained in this FEIS addresses those items in detail. The Applicant proposes specific mitigation measures to support this project and will continue to work with the Town, the New York State Department of Transportation and other involved agencies to implement these improvements. There is no need for a supplemental DEIS based on the information presented in this FEIS.*

Comment 3.6-82 (Letter #1, Orange County Department of Planning, July 21, 2006): We strongly support transit elements in any and all alternatives. Bus stops and convenient locations with pedestrian connectivity and with proper street furniture, signage and lighting is essential.

Response 3.6-82: *Comment noted. These features are shown on the submitted site plans, and will be included during the preparation of final site plans. A bus stop is shown centrally located in front of Buildings C and D on the main access road. It is likely that this location will be part of the existing "Southside Route" scheduled by the Newburgh Beacon Bus Corp., with prior stops at Stop and Shop and the Newburgh Mall. The bus company will ultimately determine the routing and revised schedules as development proceeds.*

3.7 COMMUNITY SERVICES/SOCIOECONOMICS COMMENTS AND RESPONSES

Comment 3.7-1 (Letter #26, Mrs. Jeanette V. Tully, June 2, 2006): Homeowners-Foremost, I feel the homeowners that are directly involved, close to The Marketplace's parking areas should be issued some legal agreement by the Wilder Balter Partners, Inc. To repair any damage or interruption of water supplies or contamination that might occur at the time of excavation, during the building of The Marketplace structures, roads, landscaping and five (5) years after completion.

> ***Response 3.7-1:*** *WBP has agreed to enter into an agreement with the Town Planning Board or Town Board regarding repair or damage to personal or real property of adjacent homeowners such as damage to wells, electricity, or drainage caused by construction of the Marketplace. The details of this agreement will be negotiated prior to final approval of the project. To secure its obligation under this agreement, WBP would post a bond in a satisfactory and agreed upon amount to ensure such repair and restoration work to neighboring properties occurs promptly.*

Comment 3.7-2 (Public Hearing, Christopher Jones, 105 Locust Lane, Newburgh, New York, June 1, 2006): What's the projected increase in the police force as we know proven through Woodbury Commons that they have a massive shoplifting problem there that they have to address?

> ***Response 3.7-2:*** *As set forth in the DEIS, the Marketplace will be a very different commercial venue than Woodbury Commons and thus the potential demand for police service is not comparable. Chief Kwiatkowski of the Woodbury police department acknowledged that Woodbury Commons is a unique retail center with its own unique police enforcement requirements.*
>
> *At this time, the specific demand placed on the Newburgh police department is unknown and depends on a variety of factors, including but not limited to: the effectiveness of the Marketplace's own security system as well as individual tenant security measures; the specific mix of retail tenants; and, the available manpower capacity of the Newburgh police department at the time the facility is constructed and occupied.*
>
> *The DEIS indicated that additional demand would be placed on the Newburgh police department, and the applicant has met with Police Chief Kehoe to determine what security measures should be implemented so that the need for local police enforcement is minimized. The Marketplace would contribute approximately $271,000 annually in property tax revenues to the General/Highway funds, and these revenues would be available to fund potential costs associated with police services.*

Comment 3.7-3 (Public Hearing, Ross Topliff, 30 Algonquin Drive, Newburgh, New York, June 29, 2006): My second concern is for the emergency response services in that area of Town, specifically the Winona Lake Engine Company 2 and the Town of Newburgh Volunteer Ambulance Corps. … The increased traffic mentioned specifically in the DEIS is a thirty percent increase in traffic along Route 52. It goes in front of both Winona Lake Engine Company 2 and Town of Newburgh Volunteer Ambulance Corps. …This increased traffic will inevitably lead to delays in members arriving at both of those stations. The delayed response will result in

increased damage from fire incidents. It can mean the difference between life and death for an emergency medical situation.

> ***Response 3.7-3:*** *The proposed new signalization at NYS Route 52 and Powder Mill Road will include interconnected traffic signals, and signal preemption devices will be provided for the firehouse as per the fire department's requirements. The final design of the widening of Route 52 in the vicinity of the fire house will be coordinated to insure that proper grade transitions are provided to accommodate the fire department's vehicles entering and exiting the station.*

Comment 3.7-4 (Public Hearing, Tony Marino, 1257 Union Avenue, Newburgh, New York, June 29, 2006): At the first session we had there was some discussion about sales tax revenue that would be generated at The Market Place, between $37,000,000 and $40,000,000, and they were looking at a fifteen-mile radius that the shoppers would come from. If you take fifteen miles west and south of The Market Place you're drawing from shoppers who are already shopping in Orange County. That revenue is going to the Commons or the Middletown Galleria. I can assure you the new revenue that will be created at The Market Place, new revenue, will be $10,000,000 or less because you're going to draw only from Duchess County if they come across the river and possibly, possibly north Marlboro, slightly above Marlboro, not much further because they will go to the Poughkeepsie Galleria. The $10,000,000 that's generated, the County gets its share first, we share next with the cities and lastly the towns and villages. The Town of Newburgh will get less than $1,000,000 of new sales tax revenue from The Market Place. …

Then they talk about the Town is going to get $520,000 in property tax from The Market Place. That may be. Someone said tonight it was going to be less than that. I'm not really sure what that number is. If that $510,000 had to be passed upon the homeowners of the Town of Newburgh at the rate that is used, if you have a $60,000 home assessed in the Town of Newburgh, and most homes in the Town of Newburgh are assessed between $50,000 and $75,000, if you have a $60,000 home at $0.40 per $1,000, that's $24. Certainly there are some who don't want to pay that but it's important we keep things in proper perspective.

> ***Response 3.7-4:*** *The Orange County Department of Finance maintains records on annual sales tax revenues that accrue to the County. If retail development expansion in Orange County was progressing in a manner whereby new development was capturing existing demand only, these trends would be observable in the sales tax revenue data. Specifically, a trend of stagnating or possible decreases in total annual sales tax revenues from year to year would be observed. The following represents tax data for the last ten years (Source: 2005 Comprehensive Annual Financial Report, prepared by Orange County Department of Finance):*

Year	*Co. Sales Tax Revenues*	*% Annual Increase/(Decrease)*
1996	*$ 70,544,905*	
1997	*$ 73,452,204*	*+ 4.1*
1998	*$ 77,437,394*	*+ 5.4*
1999	*$ 82,860,864*	*+ 7.0*
2000	*$ 95,007,201*	*+14.7*
2001	*$ 97,663,699*	*+ 2.8*
2002	*$107,294,432*	*+ 9.9*
2003	*$111,659,199*	*+ 4.0*
2004	*$140,926,670*	*+26.2**
2005	*$161,650,640*	*+14.7*

**Effective June 2004, local sales tax rate increased from 3 percent to 3.75 percent.*

Thus, new retail development in Orange County has resulted in continuing annual increases in total sales tax revenues. Development of the Marketplace would add additional tax revenues. To the extent that the Marketplace would be accessible to residents in Dutchess, Putnam, and Ulster Counties and residents from those counties make purchases in Orange County instead of their resident counties, the County would experience net sales tax revenues from these expenditures. Overall, new retail development in Orange County has resulted in significant fiscal benefits to the counties and its communities.

Estimates that Marketplace will generate approximately $40 million dollars in sales tax revenues appear to be realistic. It is not certain what portion of that figure is already being generated in Orange County. Based on the current tax-revenue sharing formula, the Town of Newburgh would receive approximately $278,000 in sales tax revenues generated by the development.

The DEIS also sets forth the projected ad valorem (real estate) tax revenues from the Marketplace. The Marketplace would generate approximately $2.6 million annually based on projected assessed values. Taxes would not only accrue to the Town of Newburgh, but would also accrue to the Newburgh Enlarged City School District, the County, Orange Lake and Goodwill fire districts as well as the sewer and water districts in which the project would be located.

The County and State determine best how to budget the sales tax dollars which is used to fund improvements such as traffic improvements, purchasing land for parks and recreation, funding county educational, health and social services, and other services.

Comment 3.7-5 (Letter #5, Edwin J. Garling, AICP, Garling Associates, 301 Main Street, Goshen, New York, June 19, 2006): Page 3.7-1 The Marketplace is eligible for tax incentives over a ten year period whereby property taxes are only 50 percent the first year. The report should indicate what benefits are to be requested, that these figures represent current year tax rates projected beyond ten years and that sales tax benefits represent the current distribution formula. Also, what other impacts this project may have such as decreasing tax revenues from other sources (Newburgh Mall), increasing other tax revenues by encouraging development or obtaining a 485 b tax abatement are all speculative.

Response 3.7-5: *Comment acknowledged. As indicated in the note contained on p. 3.7-5 of the DEIS, commercial projects throughout the Town of Newburgh benefit from an exemption authorized under Section 485-b of the New York State Real Property Tax Law intended to promote economic development. Under the exemption, taxes are paid on half the increase in assessed value attributable to building construction or improvements in the first year. In each succeeding year, for a period of ten years, the amount of assessment is increased by 5% until full value is reached. The exemption applies to all taxing jurisdictions, except fire districts. The tax revenues are based on the property taxes that would be generated after the exemption ends, in today's dollars. The Marketplace would be eligible for, and would receive, the Section 485-b tax exemption.*

It is standard procedure to conduct fiscal impact analyses using current year tax rates. As per Burchell and Listokin's Fiscal Impact Handbook, the fiscal impact analysis considers the fiscal effect of the proposed shopping center development by considering the current costs and revenues generated by the center if it were constructed and operational today. Also, the sales tax benefits and distributions that would be generated by the Marketplace were determined using the current distribution formula, and assuming the Marketplace were completed and fully occupied.

Comment 3.7-6 (Letter #5, Edwin J. Garling, AICP, Garling Associates, 301 Main Street, Goshen, New York, June 19, 2006): Page 3.7-7 How do we know that many construction workers will come from Newburgh and surrounding areas and how is "many" qualified? This could become a union issue or question if it is in the DEIS.

Response 3.7-6: *Economic and employment reports provide evidence that a number of workers would come from the Newburgh area although this number is not quantified. The New York State Comptroller's office has published an economic report entitled Economic Trends in the Hudson Valley, a region which includes Orange County and the Town of Newburgh. During the first eight months of 2005, jobs were added in the construction sector (2.4 percent) indicating healthy job growth. This is consistent with other reports published by Marist College and other organizations that conclude that construction employment has been growing in the Hudson Valley region.*

A study conducted by the University of California (Crane and Chapman, As Jobs Sprawl, Whither Commute) in 2003 concluded that as suburban locations within metropolitan areas grow, the decentralization of population and employment has resulted in commutes of shorter distances, specifically for construction workers.

Lastly, according to U.S. Census estimates that are summarized in Table 3.7-5, the Town of Newburgh had a higher percentage of workers that were in the construction industries when compared with Orange County and New York. These studies and statistics support the conclusion that many construction workers would come from the Town of Newburgh and the immediate region.

Comment 3.7-7 (Letter #5, Edwin J. Garling, AICP, Garling Associates, 301 Main Street, Goshen, New York, June 19, 2006): Page 3.7-8 Long Term Employment discusses 2,600 possible jobs with a variety (presumably) of skills, levels, part and full-time jobs, etc. While the employees are likely to come from four counties due to Newburgh's location, there should be some reference to bus service for employees from the City of Newburgh where unemployment

levels are higher than the balance of the county. This would have little substantive impact on traffic, but it could impact parking.

> ***Response 3.7-7:*** *As discussed in Section 3.6.14 of the DEIS, public bus routes are identified in Appendix G. The Newburgh Beacon Bus Corporation operates several schedules which originate in the City of Newburgh and that currently stop at the Newburgh Mall which is located opposite one of the proposed entrances to the Marketplace. With the development of the Marketplace, coordination with the Orange County Department of Planning will be undertaken to provide bus service and on-site bus stops to accommodate patrons to the shopping center. These will be coordinated during the site plan approval process. A letter from Robert Parrington, Transit Coordinator for Orange County, indicates Orange County' support for incorporating public transit and private bus service. His letter is included in Appendix B of the DEIS. The availability of public transit is likely to reduce the need for employee parking spaces.*

Comment 3.7-8 (Letter #5, Edwin J. Garling, AICP, Garling Associates, 301 Main Street, Goshen, New York, June 19, 2006): Page 3.7-16 Mitigation measures for solid waste disposal could be supplemented with the comment that any exterior dumpster enclosure had to be designed to match the exterior material of the building it serviced and would be subject to architectural review by the ARB.

> ***Response 3.7-8:*** *The applicant has no objection to final site plan design items such as this being subject to architectural review. The Planning Board will make the final decision on such details.*

Comment 3.7-9 (Letter #44, Ross and Carolyn Topliff, 30 Algonquin Drive, Newburgh, New York, July 13, 2006): We have heard differing opinions on the pay range that employees of the various stores etc. In this project can expect to receive. Please ask the project planners to provide some actual data on pay rates for similar jobs in the Newburgh area.

What is a typical ratio of supervisor to employees for these retail positions?

The tax payments to the Newburgh School District and Orange Lake Fire District are certainly attractive. Will the developers be requesting and granted tax abatements (as is typical) that will reduce these payments for up to ten years? What is the expected abatement rate and period?

Little was said about the influx of jobs during construction. Do we have any assurances that the developers will give preference to hiring local construction personnel before bringing in outside workers? This would keep more of the pay for these personnel in the local economy.

What is the expected sales tax revenue impact of stores leaving the Newburgh Mall and relocating to the Marketplace Mall? This will certainly decrease the anticipated increase in sales tax receipts for all municipalities.

> ***Response 3.7-9:*** *There will be an influx of jobs during construction. As the construction process goes through its lifecycle there will be various types of jobs available with a range of skill sets. Many of the jobs will be rather standardized in which local unskilled and skilled labor will be able to fulfill the needs of the construction contractors and other jobs will be more specialized requiring skills that are sometimes not available in the immediate area.*

In regards to the impact on the sales in the Mall, it is the belief of successful retail professionals that the Marketplace will add to the Mall's over all sales, especially if they invest in the necessary improvements and clean up their image and parking lot. The Mall will be able to feed off of the additional attention that the Marketplace will generate and the two locations combined will establish itself as a retail destination. For further discussion see previous comments (3.7-5 and 3.5-11).

Comment 3.7-10 (Public Hearing, Laura Kohlmann, 18 Wintergreen Avenue, Newburgh, New York, June 1, 2006): It is estimated the Market Place of Newburgh will produce $467,500,000 in retail sales. It will generate $40,000,000 of annual real estate and sales tax. Of that the Town of Newburgh will receive an estimated $270,000 in sales tax revenue and $242,000 in property tax revenue for a grant total of $520,000 in annual tax revenues. How will $520,000 benefit the citizens of our Town? Will it offset the increase of police needed for the increase in crime? Let's take a look at the Town of Woodbury. Town of Woodbury received $862,000 in annual tax revenue generated by Woodbury Commons. Of that amount, $820,000 is produced -- is used by the police department in the Town of Woodbury. Although only twenty-five percent of the police calls come from the Commons, seventy-one percent of the arrests in the Town of Woodbury are generated by those calls.

Response 3.7-10: *Woodbury Commons is not comparable to the Marketplace and thus any comparisons of revenues versus costs is not applicable. As stated in the response to Comment 3.7-2 and the DEIS, the Marketplace will be a very different commercial venue than Woodbury Commons and thus the potential demand for police service is not comparable. The Woodbury Police Chief has characterized Woodbury Commons as an "anomaly" and the experience of the Woodbury Commons shopping center would not be comparable to a more conventional "big box" retail shopping center such as the proposed Marketplace at Newburgh.*

Woodbury Commons contains over 800,000 square feet of retail space that includes 220 retail outlet stores, which is five times the number of stores expected at the proposed Marketplace in Newburgh. The Commons experiences between 12 million to 20 million visitors annually and is currently the number one tourist attraction in the region.

Woodbury Commons has visitors daily from the following five states: Connecticut, New York, New Jersey, Massachusetts, and Vermont and is frequented by international tourists annually. Chief Kwiatkowski acknowledged that Woodbury Commons is a unique retail center, and a major tourist destination in the Hudson Valley region, with its own unique police enforcement requirements.

The Woodbury Center, located in the vicinity of Woodbury Commons, housing Kohl's and Michael's is a more appropriate comparison to the Marketplace. At Woodbury Center, there is a substantially less criminal activity and most calls are for fire and burglary alarms, false calls, and parking lot accidents. Demand from Woodbury Center is nominal in comparison with Woodbury Commons. This is because of the combination of internal measures used by the shops in that center, the external security patrols that are made, and the more limited number of customers to that center versus Woodbury Commons.

Comment 3.7-11 (Public Hearing, Laura Kohlmann, 18 Wintergreen Avenue, Newburgh, New York, June 1, 2006): How will the Market Place of Newburgh benefit the citizens of our Town? Some will say that The Market Place will bring 1,600 new jobs to the area. The mean household income in 2000 in Orange County was $52,000. What will the mean income for jobs generated by The Market Place at Newburgh be? Even the average job is -- even if the average job is greater than minimum wage, we are still talking less than $20,000 per year, and that is not a living wage in Orange County.

Response 3.7-11: *It cannot be calculated with certainty what the "mean income would be of all employees of the Marketplace - this will depend on the specific tenants and tenant mix that is unknown at this time. The Marketplace would introduce employment opportunities in a number of categories, including but not limited to sales, management, and maintenance, and at a range of pay scales.*

The New York State Department of Labor publishes workforce and industry data for the Hudson Valley region. According to wage information published by the Department of Labor, the mean annual wage for "sales and related occupations" is $36,810 per employee. Average wages for "managers" in the Hudson Valley region is $107,370 annually. "Food preparation and serving related occupations" average $22,030 annually. It should be noted that the average per capita income in Orange County, adjusted to 2005 inflation-adjusted dollars, is $26,491; the median household income, adjusted to 2005 inflation-adjusted dollars, is $62,951.

The Marketplace would introduce a host of employment opportunities ranging from persons seeking a part-time job, e.g., mothers, some senior citizens, and students, to persons seeking full-time employment positions.

Comment 3.7-12 (Public Hearing, Kate Lindemann, 12 Victory Court, Newburgh, New York, June 1, 2006): The cost to the police and the judicial system down there was high. People are talking about this as being a great help if Dynergy loses its taxes. It's not going to be any help to us if we have to add to the police forces or because the police are taking care of problems or traffic at the mall that there's a rash of burglaries over on Fostertown or over in Balmville.

Response 3.7-12: *Comment noted.*

Comment 3.7-13 (Public Hearing, Eleanor Doderer, 83 Wintergreen Avenue, Newburgh, New York, June 1, 2006): First, according to the DEIS, The Market Place is anticipated to employ 1,600 people in various positions including sales, management administration, accounting, security and maintenance. However, I believe the bulk of these positions would be in the sales, security and maintenance sector. According to the U.S. Department of Labor Statistics, May 2005, the New York State annual salaries in those occupations range from $15,900 to a high of $26,000. The DEIS reports the 2000 median household income for Orange County was $52,000. Taking into consideration the average price of housing in the Town of Newburgh, it seems reasonable to assume most of those employed at The Market Place would be unable to afford to reside here. Once again comes into play the issue that many of those who work in the Town of Newburgh often are unable to live here due to low wages and the high cost of living. How will jobs of this nature benefit residents of the Town of Newburgh?

Response 3.7-13: *See response to Comment 3.7-11.*

Comment 3.7-14 (Public Hearing, Eleanor Doderer, 83 Wintergreen Avenue, Newburgh, New York, June 1, 2006): Wilder, Balter has stated the Town will receive $550,000 per year in taxes. All commercial projects in the Town of Newburgh benefit from the economic development. The Town will only receive one half that amount the first five years and it would take ten years to get to the full value of taxes. The possibility also exists however that the mall may receive tax abatements. Will the tax benefits at maximum ever begin to cover what it will cost the taxpayers? If more big business is the answer to our financial problems, I would ask why it is that in the forty-three years I have lived in the Town taxes have consistently increased while the quality of life has consistently decreased.

Response 3.7-14: *It would be conjecture on the part of this FEIS to opine on the future tax status of the Newburgh Mall. As stated in the response to Comment 3.7-5, the DEIS notes that the Marketplace would benefit from a 485-b tax exemption as do other new commercial developments in the Town of Newburgh - this tax abatement is intended to attract new businesses to a community, and numerous communities in Orange County offer this abatement. Commercial land uses are not alone in being eligible for tax abatements; residential properties are also eligible for various tax abatements, depending upon eligibility, including STAR exemptions, veteran exemptions, etc.*

With regard to the fiscal impact of nonresidential development on a community, the American Farmland Trust has prepared numerous cost of community service (COCS) studies for communities throughout the United States that document the revenues and costs associated with agricultural, commercial and residential land uses - these studies have been done locally for communities in Orange and Dutchess counties.

In summary, these studies conclude that commercial, industrial and agricultural land uses result in net property tax revenues, i.e., the taxes generated exceed the costs associated with government services. Even if there were no changes in land use or the ratable base in a community, taxes would likely increase to cover annual increases in wages and other costs that are subject to inflationary pressures.

Comment 3.7-15 (Public Hearing, Michael Torelli, 12 Valentine Road, Newburgh, New York, June 1, 2006): The proven fact is as more and more businesses come in, they can go ahead and offset the potential of future impacts and future increases in school taxes and property taxes and diversify, spread it out. In the Town of Newburgh you're tops in the actual county. Over 54 percent of the taxes paid in the Town of Newburgh, all the taxes, are paid by the commercial industry. That's a very, very strong fact. What ends up happening is when those increases do have to happen they're spread out and they affect the residential landowner and homeowner less.

Response 3.7-15: *Comment noted. Based on a review of the Town of Newburgh's municipal taxable value as per the 2005 tax roll, residential properties made up 45 percent of the tax roll, while all other properties including commercial properties made up 55 percent of the Town's taxable assessment roll.*

Comment 3.7-16 (Public Hearing, Maureen Halahan, 40 Matthews Street, Goshen, New York, June 1, 2006): You really can't be a volunteer in your town if you're commuting two hours a day for jobs, so I would like to speak about those 1,600 jobs really quickly. There is room for part-time jobs. High school kids, college kids, senior citizens need jobs, these type of retail jobs.

On top of that, the Department of Labor has also stated that the management jobs in retail begin at about $60,000 a year. There are HR positions, there are maintenance and security jobs. We never mentioned anything about construction jobs while this whole project is underway.

Response 3.7-16: *Comment noted. Construction jobs would be in addition to the long-term employment opportunities generated by the Marketplace.*

Comment 3.7-17 (Public Hearing, Ellen Jane Gonyea, 26 Linden Drive, Newburgh, New York, June 1, 2006): Should this new mall go in, $0.40 per $1,000 on an $885,000 house, that equals $354. Considering those taxes, we talk about the loss of tax money should the Dynergy suit go against the Town. School taxes generated through this property, and correct me for my accountancy misconceptions if they are that, school taxes for this property will go to the Newburgh School District and that's not the school district I live in. The school district that I live in is Valley Central School District. Dynergy is Marlboro School District. So correct that fallacy. There are four school districts for this Town. That money is not going to all the citizens of this town.

Response 3.7-17: *It is not evident from this comment why the commentator is discussing the effect of a $0.40 per $1,000 tax rate. However, it is noted that there are few homes in Newburgh that are assessed at $885,000. Based on a 2006 equalization rate of 32.5 percent, a home with a market value of $885,000 would have an assessment value of approximately $300,000. Assuming a tax rate of $0.40 per $1000, the annual real estate taxes would be approximately $120 per year.*

The Marketplace is located in the Newburgh Enlarged City School District (NECSD) and would pay tax revenues to that district. Marlboro Central, Wallkill Central, and Valley Central also cover portions of the Town of Newburgh. However, the majority of the Town of Newburgh is located in the NECSD. The Marketplace would pay taxes to the Town General and Highway Funds which would benefit the entire Town of Newburgh. Dynergy is located in the Marlboro School District.

Comment 3.7-18 (Public Hearing, Josefa Mandarino, 15 Starrow Drive, Newburgh, New York, June 1, 2006): Fire protection, solid waste dumpsters. Who is going to take care of that? All of those things are sectioned off. People will get their own police, their own security. It's not a unified process where there's one security for that whole mall or garbage disposal. I live there now. I see the problems with police, with the garbage where they have all kinds of birds bringing debris around. We talk about the virus and bird flu and all of that. There's a health issue of concern to me there.

Response 3.7-18: *Individual tenants would contract with a solid waste contractor to dispose of garbage on a regular basis so as to avoid any potential health problems. Based on a review of information published by the Centers for Disease Control and Prevention (CDC), avian flu does not originate from birds rummaging through garbage.*

The buildings associated with the Marketplace development would be sprinklered and would be required to conform to the New York State Uniform Fire Prevention and Building Code in order to be issued a certificate of occupancy. In the event of an emergency which requires municipal response, fire protection service would be provided by the Orange Lake Fire District.

In terms of security, during initial operation of the shopping center, it is expected that the police department and the retailers would evaluate security requirements, and establish internal and external security procedures. Various methods of deterrence would be implemented, e.g., a visible security camera network on a close circuit television system visible to the public, and/or private security staff. Security will be addressed at both the tenant and central management level. Individual store tenants typically have their own security devices, including burglar alarms, video surveillance, mystery shoppers (plain clothes security personnel), and internal training of staff are responsibilities of the tenants. Central management would retain the services of a private security firm whose responsibility would be to advise the landlord on the appropriate security measures and to implement them. Private security patrol of the parking lots and maintenance of the security camera network would be their primary function. It is expected that the security force would assist persons in addressing minor incidents such as locked cars. The security patrols would also act as a deterrent to such activities as car break-ins and automotive theft.

Comment 3.7-19 (Public Hearing, Nat Parish, Consultant to the Newburgh Mall, New York, June 1, 2006): What's been presented in terms of the benefits are what are at best an estimate of the gross numbers. In other words, they say okay, there's going to be additional sales tax revenues of some $38,000,000 that are going to go into the State and County and some of that is going to be left to the County, so on. That's not the total picture. Obviously a million square foot mall isn't going to come here and be all new business. You can't believe that. You shouldn't believe it . It doesn't make any sense to say it's all new business. What's it going to do? It's going to take away from, yes, the sales revenues of other malls. Certainly. That means they'll be paying less sales tax to the County and the State, and so the net is not $37,000,000, it's a much, much smaller number. How much of that comes back to the Town of Newburgh? Well, you don't have any guarantees any come back to the Town of Newburgh. At the moment there is a tax shift, a revenue sharing agreement whereby the County takes some of the sales taxes it gets and distributes it to the County all around. For those of you who don't understand, that's not based on what the performance will be of this project but rather the total amount of money that comes into the County. Everybody takes a portion of that and gives it to everybody. There's somebody in Port Jervis that gives some money to Wallkill. It goes back to everybody. You're going to get a certain percentage of it, whatever it is and whatever is politically determined by the County Legislature. That could change at any given point in time. There's no guarantee.

Response 3.7-19: *It is a correct statement to say there are no guarantees. It is also a correct statement to say that the estimated $38 million of sales taxes which would be paid to Orange County and New York State are expended throughout the County and State for a variety of County and State projects. As set forth in the DEIS, based on the current tax-share formula, it is estimated that the Town of Newburgh would receive $278,000 of the estimated $17,531,250 of sales tax revenue that would accrue to Orange County. See also the response to Comment 3.7-4 with regard to the annual increases in Orange County sales tax revenues. It is important to note that occupancy of major retail developments are phased over several years, so the increases in tax revenues is incremental and spread over several years. The Marketplace, an open air shopping centers, provides a different venue than enclosed malls. Certain retailers will always prefer to be associated with, and attached to, an enclosed mall.*

Comment 3.7-20 (Public Hearing, Nat Parish, Consultant to the Newburgh Mall, New York, June 1, 2006): Somebody said $8,000,000 in property tax. That's a total error because the report itself doesn't claim $8,000,000. What it says is that the Town of Newburgh, its general fund and highway fund will get an additional property tax revenue of $271,000. That's a lot less. That is again a gross number. Why? Because if this comes in and there are vacancies in other places, what are those property owners going to do? They are going to come in for certiorari because they have vacancies or they have to lower their store rents. That's not a theory, that's what happens.

> ***Response 3.7-20:*** *As per the DEIS, the annual real estate taxes paid by the project, including Town, County and School district taxes is projected to be $2.6 million. Sales tax revenues that accrue to New York State, Orange County, and the Metropolitan Commuter Transportation District may total approximately $38 million annually. Of this total, Orange County is estimated to receive up to approximately $17.5 million annually, of which the Town of Newburgh, based on the current tax-share formula, would receive $278,000 annually. The tax projections are estimates based on current conditions. As mentioned previously, Orange County has continued to experience annual increases in sales tax revenues.*

Comment 3.7-21 (Letter #34, Kate Lindemann, 12 Victory Court, Newburgh, New York, July 27, 2006): The entire preplanning marketing for this project has emphasized that it is to be upscale and unlike the Newburgh Mall. And yet when it comes to security needs, the developer uses the Newburgh Mall as a comparative site.

Now we all know that the more upscale a mall, the greater is need for police services. Criminals are attracted to the 'better haul'.

The DEIS states that Woodbury Commons should not be used for comparison since that mall is so much larger. But the Marketplace is ¼ the size of the current Woodbury. Why not use 25% of that malls statistics? Or since the proposed Marketplace is the same size as the original WC, why not offer historical data. This is a very important issue. There will be no tax benefit to the Town if this proposed Mall, like Woodbury Commons, uses up all the taxes generated [or even exceeds those revenues] by its need for town services.

If our police department is tied up at the Marketplace, we could find an outbreak of crime along Rock Cut or in Balmville or ..... Criminals take advantage.

Also the document states that individual stores will provide their own security. But there is no statement that this will be a requirement for rental. This needs to be addressed so we are not in the position of giving an approval to a development but then finding that the developer is not requiring tenants to do the things claimed in the DEIS statement.

DEIS statements about security are wide ranging and upbeat. However, the data to support the claims is either unrelated to the actual claims or it is insufficient. The Planning Board needs to ask for better data before action on this proposal. There also needs to be some realism and be sure that all police services are included in any report of potential use of services. WCommons, for example, makes demands on the Town of Woodbury Police to direct traffic on major shopping days. Such things need to be factored into the security part of this plan or it needs to be agreed in writing that the Marketplace will pay for all security related to traffic during heavy shopping times.

Response 3.7-21: *The applicant was directed by the town to review the security issues of the Newburgh Mall and for this reason discussed it in the Draft EIS.*

The commentator does not provide any reference to the assertion that the "more upscale" the mall, that additional demand would be placed on police services and this opinion does not seem to be supported by statistics. With regard to comparisons with the Woodbury Commons and general security matters, see responses to Comments 3.7-2 and 3.7-10.

Comment 3.7-22 (Letter #33, Patricia Randall, 59 Wintergreen Avenue, Newburgh, New York, July 27, 2006): Schools are crowded now. Some workers at this mall will probably be local. Some workers, and possibly CEO's and/or managers, may come from other areas, possibly with children who will further crowd our schools. I do not see that situation helping to lower our school taxes, especially when "X" numbers of possible children could be living in the new developments now being built.

Response 3.7-22: *Retail commercial developments do not generate school age children. Retail development occurs in response to residential development already in a community or planned residential development in and around the community.*

The Town, as part of its planning review functions, also considered the environmental impacts associated with residential development as those projects are proposed. The Marketplace development will contribute approximately $1.9 million annually to the Newburgh ECSD.

Comment 3.7-23 (Letter #32, The Torelli Family, 12 Valentine Road, The Anderson Family, 8 Stori Road, The Anderson Family 34 Adonna Drive, Newburgh, New York, July 20, 2006): The number of jobs to be created as well as the sales tax revenue that a facility like this generates is an extreme positive, especially in Orange County, where the county portion of the sales tax is partially distributed down to the municipalities. This sharing of sales tax revenue, as well as the property taxes to be generated, will help continue to balance the tax burden shared by the T.O.N. Residents and businesses alike. There is no better place where these burdens are shared equally in the entire region. This tax burden balance helps make the T.O.N. A more affordable place to live and work.

Response 3.7-23: *Comment noted.*

Comment 3.7-24 (Letter #30, Eleanor Doderer, 83 Wintergreen Avenue, Newburgh, New York, July 25, 2006): (See comments 3.7-13 and 3.7-14 above) Expert testimony at Public Hearings has demonstrated revenue will not be all new sales revenue, but transferred from other existing locations. If W/B revenue predictions assume all revenue will be new money, isn't this estimate inaccurate for new revenue for the TON? Will the tax benefits at maximum even begin to cover the additional costs to taxpayers?

Senator Wm. Larkin, chairman of the Senate Gaming Comm. Has said he is in favor of Video Lottery Terminal gambling and likes the location of Rte. 84 and the Thruway in the Town of Newburgh. How can we be assured this location will not be used for gambling?

Response 3.7-24: *No expert public testimony regarding sales tax revenues was made at the DEIS public hearing.*

As per the DEIS, Orange County has a sales tax sharing agreement with its municipalities by which the localities receive a share of Orange County' sales tax revenues. In 2004, the Town of Newburgh received $2.7 million in sales tax revenues, representing 1.6 percent of the total sale tax revenues received by Orange County in that year. Based on the Town of Newburgh's historic percentage of sales tax revenues received from the County, it is estimated that 1.6 percent of the total sales tax revenues to go to the County (County would receive $17,531,250) would be distributed to the Town, which would be $278,000 annually.

Chapter 64 of the Code of the Town of Newburgh regulates "games of chance". In the legislative intent section of this chapter, the regulations state:

> *"The Town Board finds the raising of funds for the promotion of bona fide charitable, educational, scientific, health, religious and patriotic causes and undertakings, where the beneficiaries are undetermined, to be in the public interest and that the mandate of § 9 of Article 1 of the Constitution of the State of New York, as amended, should be carried out by rigid regulations to prevent commercialized gambling, prevent participation by criminal and other undesirable elements and prevent the diversion of funds from the purposes herein authorized" (emphasis added).*

It is a decision of the Town of Newburgh to determine whether video terminal lottery gambling is an appropriate use in the community. As per the Town's current regulations, this potential activity appears to be inconsistent with the Town's existing laws.

Comment 3.7-25 (Letter #30, Eleanor Doderer, 83 Wintergreen Avenue, Newburgh, New York, July 25, 2006): Once this project is completed and no additional opportunities exist for the developer, is it feasible to think they will be here when the existing environmental problems are made worse? What if business expectations aren't forthcoming? Is this then going to be a handout and an area for crime and shoplifting? Woodbury Commons accounts for 72% of the arrests in the Town of Woodbury. The DEIS specifically states the mall "will increase the demand for police services in the town." Of the taxes projected by the developer, the full amount will not be realized for 10 years, assuming no tax abatements are given, and the economy will not experience a significant downturn. Even retailers such as Wal Mart are experiencing significant economic consequences.

How can the developer guarantee that this project will be fully rented to desirable tenants and not become a mammoth, empty ghost town or an area for crime to thrive?

Response 3.7-25: *Mr. Parrish, representing the Newburgh Mall made a cogent observation in Comment 3.7-19...there are no guarantees. The fortunes of developers and retailers and the general public rise and fall with the ebb and flow of the national and international economy. Experienced retailers and experienced developers follow models of action that are intended to maximum the potential for success and minimize the downside of economic downturns.*

With regard to comparisons with the Woodbury Commons, see responses to Comments 3.7-2 and 3.7-10.

WBP has proposed this major retail development based on the current and projected market strength project of Orange County and the region. It is an established fact in the retail market, that retailers are not in the business of locating their stores in markets that cannot support a targeted minimum level of sales per square foot. This is studied carefully by the retailers long before making a commitment to build or lease space and takes into consideration population densities within reasonable travel times, competition from other retailers, disposable income market area, access to regional transportation infrastructure, etc., in the substantial amount of sales.

Comment 3.7-26 (Letter #30, Eleanor Doderer, 83 Wintergreen Avenue, Newburgh, New York, July 25, 2006): According to the DEIS the project site is currently served by Consolidated Water and Crossroads Sewer Dist., therefore, no extension of water and sewer is necessary. I believe this statement fails to take into account all of the other future Town building projects. When these infrastructure limits are reached, new construction will then be critical for the TON. Will Town residents and taxpayers ultimately bear the financial and environmental burdens both predicted and unknown as a result of this project, long after the developers have ended their responsibility?

Response 3.7-26: *According to discussions with the Town Engineer, there is sufficient capacity available for water and wastewater demands of this project, taking into consideration other pending projects. The sewer and water districts are financed through user charges - individual property owners pay their fair share of the cost associated with these utilities based on the amount of demand placed thereon. For example, if demand for water were to increase at the Marketplace, the user charges to pay for this additional demand would also increase. Thus, it is not anticipated that the residents would bear any costs associated with water demand, increased sewage generation, or infrastructure improvements associated with the Marketplace.*

The project would generate 105,200 gallons per day of domestic sewage - the two million gallon per day expansion of the Newburgh wastewater treatment plant can accommodate this additional flow.

Water demand would total 117,000 gallons per day - the Town has a surplus of 1.5 million gallons per day of water, indicating that there is adequate supply to address demand introduced by the Marketplace.

The DEIS takes into account all the known and proposed projects serviced or to be serviced by these utility districts. The Crossroads Sewer District will receive and the Consolidated Water District will receive additional revenues from the project as well as income from user fees that would be expected to offset additional expenses.

Comment 3.7-27 (Letter #7, Mark C. Taylor, Attorney for the Town, Rider, Weiner & Frankel, P.C., 655 Little Britain Road, New Windsor, New York, July 28, 2006): Police and Emergency Services. The DEIS indicates that there will be a central, private security force for the Marketplace and security camera network. The Planning Board should ensure through appropriate findings and conditions that the representations in this regard continue to be honored and are not discontinued.

Response 3.7-27: *Comment noted. The individuals tenants in both the "big box" stores and the lifestyle center will provide their own security measures, which in many cases will include some provision for security cameras in and out of the stores. Some means of coordination of these security measures will be discussed with the Town Board as the final details of the developer's agreement are worked out. If necessary, based on discussions with prospective tenants and the Town Board, the management company for the Marketplace will consider use of security personnel.*

Comment 3.7-28 (Letter #7, Mark C. Taylor, Attorney for the Town, Rider, Weiner & Frannkel, P.C., 655 Little Britain Road, New Windsor, New York, July 28, 2006): The DEIS also states that the Transportation Management Plan is expected to include "potential use of police or other manned traffic control at key interval and potentially some external intersections." The Town will require compensation for any such use of its police force in connection with traffic control, and a reimbursement agreement and performance security should be required to be in place prior to any final approval of the project. The State Police should also potentially be consulted or treated as an interested agency in this regard.

Response 3.7-28: *Comment noted. As part of the traffic management plan, the Applicant will work with the Town of Newburgh to provide traffic management such as alternate route signing, temporary restriction of certain turning movements and if necessary coordination with the Town of Newburgh Police Department. The Marketplace will also consider using off-duty Town of Newburgh police officers for traffic control during peak shopping seasons. Periodic emergency management meetings will be held after peak events to discuss performance and possible improvements to the plan. If the Transportation Management Plan coordinated with the Town Board requires the occasional use of Town Police, the management company for the Marketplace will be responsible for compensating the Town. The details of this agreement will be part of the "developer's agreement" worked out with the Town Board prior to final approval.*

Comment 3.7-29 (Letter #7, Mark C. Taylor, Attorney for the Town, Rider, Weiner & Frannkel, P.C., 655 Little Britain Road, New Windsor, New York, July 28, 2006): The fiscal analysis of the proportionality of the projected tax revenues to the demands The Marketplace will place on the Town's police force, Justice Court and emergency services is incomplete. While the applicant distinguishes Woodbury Commons as an anomaly, the Town is well aware of the demands that retail complex has placed upon the Town of Woodbury's police force, with reportedly just over a quarter of the department's calls for service, 72% of its arrests, and roughly 1/3 of its time in 2004 devoted to that shopping center. The Marketplace is also located near major interstate highways and is closer to residential neighborhoods. While the project may not create as great as on-site demands for service, assuming its current "market rate" retail format remains in place, there may be a greater need for community policing than in Woodbury, particularly if there is massing of buildings and improvements in close proximity to residential neighborhoods. The DEIS indicates that the Town will receive approximately $271,359 in real property taxes at buildout (including highway and not accounting for initial partial tax exemption) and $278,000 in sales tax revenue (without analysis of how much of this will be as a result of business drawn from other Orange County retailers).

Response 3.7-29: *Comment noted. The statistics presented by the commentator are well established, but in the applicant's opinion, are not predictive of the demand that the*

Marketplace may have on local police services. Onsite security is proposed as mitigation to potential added demand that the project may have on police services.

Comment 3.7-30 (Letter #7, Mark C. Taylor, Attorney for the Town, Rider, Weiner & Frankel, P.C., 655 Little Britain Road, New Windsor, New York, July 28, 2006): Potential increases in Justice Court costs are ignored by the DEIS. The lead agency should require further analysis and give consideration to requiring the applicant to fund, at least during the initial 10 year period when the project will receive partial tax exemption, additional police officers and/or safety equipment and facilities for both the site's protection (the DEIS indicating that the Marketplace would benefit from patrols on bicycles, motorcycles and ATVs, an increase in the C line patrol from 3:00 p.m. To 11:00 p.m. and an on-site substation including a computer system, holding cell, booking area, live scan and desks) and community policing if the project is massed along the boundaries of residential neighborhoods without adequate buffering and/or barriers.

Response 3.7-30: *Potential increases in Justice Court costs have not been determined as it is difficult to predict increased demand. No model is known to exists for such an analysis. The expenditures for the Town Court were approximately $280,000 in 2004. A ten percent increase in activities will result in added costs, but it is not known it would be directly proportional to an increase in activities.*

Comment 3.7-31 (Letter #7, Mark C. Taylor, Attorney for the Town, Rider, Weiner & Frankel, P.C., 655 Little Britain Road, New Windsor, New York, July 28, 2006): Comments have been made by residents to the Town Board that the fence proposed by the applicant will be inadequate for both their protection and screening. Likely demands for on-site parking enforcement and Town staffing needs should also be addressed, and fire department and emergency medical service and funding requirements should be further reviewed.

Response 3.7-31: *Comment noted. It is the applicant's opinion that the fencing, as described in the Project Description, Visual Impacts and Noise sections of this FEIS will be adequate. Perimeter fencing will be used where appropriate, generally in areas where required by Zoning Code or the proposed buffers law. Such fencing must meet the requirement of those statutes. As indicated elsewhere, fencing along the boundary of Route 84 currently exists, but will be inspected and repaired/replaced where necessary. Fencing will not be used where steep topography would generally deter access to or form the site.*

Please see comments above for responses to items related to town staffing requirements.

The applicant will petition the Town Board under Section 1601 of the Vehicle and Traffic Law for Town enforcement of on-site parking and traffic rules. Discussions with the Town Board will include appropriate compensation for such enforcement.

3.8 AMBIENT NOISE LEVELS COMMENTS AND RESPONSES

Comment 3.8-1 (Public Hearing, Jeff Wilkinson, June 1, 2006): In terms of a sound buffer, everybody knows that mass is the main coefficient. You need masonry to actually reduce sounds. Wood fences do not work.

> ***Response 3.8-1:*** *As described in the DEIS (p. 3.8-4), different materials result in different sound transmission loss. The currently proposed sound barriers are vinyl panel fences. Final barrier design plans will be submitted during site plan review. The height, length and location of the barriers are shown on the site and landscape plans submitted with this FEIS. The applicant is also increasing the height of the proposed walls to 10 feet (from eight feet in the DEIS), which will further break the line of sight from the adjacent parcels and result in greater deflection of sound from the developed areas. The timing of fence installation will depend on the final sequencing and construction plans for each of the individual site plans, but the noise barrier will be installed as early as possible in the process.*

Comment 3.8-2 (Public Hearing, Josefa Mandarino, June 1, 2006: Rock crushers. In one place they say there will be no noise. Rock crushers, large, loud. There should be some kind of control with sound panels water curtains.

> ***Response 3.8-2:*** *The DEIS does not state that there will be no noise, but that the increases in noise will be below a discernible level with the proposed mitigation measures. As described in the DEIS, the expected noise levels will meet the requirements of the Town Code when these mitigation measures are installed Final conditions of the developer's agreement, determined during discussions with the Town Board, will include provisions for periodic monitoring of noise levels by a Town representative.*
>
> *As described elsewhere in this FEIS, the applicant has made revisions to the original plan for a number of reasons, and these changes will also result in lower expected noise levels to the sensitive receptors. The "buffer" alternative described in the DEIS is now the preferred plan, which requires a minimum 75 vegetated buffer and minimum 125 foot setback for buildings from the property line near the Hilltop residences. This preferred plan now also includes the alternative access road to Route 52 through the existing DOT property, which will put significant distance between the access road and the homes on Brookside and Wintergreen. As this access road gets closer to Route 84, the discernible change in noise levels becomes imperceptible to human hearing.*
>
> *As described in the DEIS, a rock crusher at 1,000 feet has a noise level of approximately 69 dB(A), which is within the allowable daytime noise levels. Any processing areas with rock crushers during construction will be a minimum of 1,000 feet from any dwellings. Rock crushing operations will be limited to between the hours of 7 am and pm, with no operations on Sunday.*

Comment 3.8-3 Public Hearing, Michael Murphy, 6 Hilltop Avenue, Newburgh, New York, June 1, 2006): Also, the trees in the buffer area should remain standing. They will give us some privacy, help to collect some water for the wells, block out the parking lot elimination and also to absorb the noise from the unloading docks which is going to be right behind us.

Response 3.8-3: *It is anticipated that all trees in the 50 foot buffer will remain standing. Moreover, the developer is proposing a 75 foot buffer area (50% increase) which will be revegetated where disturbed and which will have a sound barrier fence installed along the perimeter of this 25 foot revegetated area. Based on the height and density specifications of the fence the applicant is now considering (32 dBA sound transmission loss), the calculations presented in the DEIS are conservative.*

Comment 3.8-4 (Letter #14, Nathaniel J. Parish, Parish & Weiner Inc., 101 Executive Boulevard, Elmsford, New York, July 31, 2006): The DEIS does not examine the huge and extended noise impacts during the excavation (blasting) rock crushing over an extended period of time.

Response 3.8-4: *Please see the response to Comment 3.8-2.*

Comment 3.8-5 (Letter #17, Sandstone Environmental Associates, Inc. (SEA), July 28, 2006): In general, the DEIS and appendices lack descriptive text and documentation that would enable the reader to determine whether the data sources and methodologies comply with EPA, NYSDOT, and NYSDEC procedures for environmental analysis. Because protocols established by these agencies guide the analyses, there should be no such concerns. What has been provided in the DEIS and Appendix H shows deficiencies that make evaluation of the potential impacts impossible until the DEIS has been revised with appropriate computer modeling of roadway impacts. Of the problems found in the DEIS, the items listed below are of particular concern:

- The lack of computer modeling with the FHWA's TNM model to determine the impact of noise levels from new access roads. Noise levels have simply been assumed based on assumptions about speeds and mixtures of trucks on other roadways that may not adequately represent the traffic and topography at the site.
- The assumptions about the efficiency of various fences and walls to reduce noise without adequate modeling to determine the length and height of such a barrier. Furthermore, these barriers may not mitigate noise levels at second-floor bedroom windows.
- The lack of documentation in the form of manufacturers' specifications regarding noise levels from HVAC units, trash compactors, and other equipment. Standard procedure is to provide information about actual types of equipment showing noise levels at distances of 7 or 23 meters.
- The lack of information on how many pieces of noisy equipment (specifically, rock drills) would be present during construction phases and for how long. This could be very significant, as contractors typically employ multiple rock drills to maintain the project schedule.

Therefore, the Board should not rely upon the DEIS to form conclusions about the potential noise impacts associated with the proposed action.

Response 3.8-5 *The potential for noise impacts associated with the new access roads was evaluated based on existing measurements at nearby locations, and adjustments to these noise levels based on reasonable and generally accepted methods that account for the anticipated differences in speeds, volumes, distance, and attenuation due to walls and vegetation. This information, provided in the DEIS on Page 3.8-12, confirms that the noise generated from the new access drives will be below the criteria established by the Town Code, i.e., 80 dBA between the hours of 8 am and 10 pm, and 70 dBA between 10 pm and 8 am.*

In the current alternative (see Response to Item 3.8-2), the proposed eastern access road (which represents the worst case condition for noise due to the proximity of the homes) has now been pushed farther from the residences. Therefore, any calculations presented in the DEIS are conservative.

By moving this noise source further away from sensitive receptors (residences along Brookside Avenue, the project's contribution to ambient noise levels would be decreased, compared to the previously-analyzed site plan.

Nevertheless, at the suggestion of the Town's consultant, the FHWA Traffic Noise Model (TNM) was run at Brookside Avenue (TNM Version 2.5) These models were run at 35 mph, although signs will indicate a maximum speed of 25 mph. The impact assessment was performed at a representative noise monitoring location based on the data provided in support of the DEIS. Data was collected in April 2006. A summary of the noise level estimates is provided in Table 3.8-1 below.

Table 3.8-1
Summary of Noise Level Estimate with and without 10 foot Noise Barrier (Leq (1hr) dB(A))
Marketplace at Newburgh

	Measured Noise Level	*Access Road Traffic Noise w/o Barrier*		*Total Noise Level w/o Barrier*		*Total Noise Level Change w/o Barrier*		*Access Road Traffic Noise with Barrier*		*Total Noise Level with Barrier*		*Total Noise Level Change with Barrier*	
	PM	*PM*	*Sat*	*PM*	*Sat*	*PM*	*Sat*	*PM*	*Sat*	*PM*	*Sat*	*PM*	*Sat*
S6 Brookside #2	*53*	*50*	*51*	*55*	*55*	*+2*	*+2*	*45*	*46*	*54*	*54*	*+1*	*+1*

Source: Lemonides Heiineman Associates, 2007

The noise analysis was completed to determine whether traffic from the new access roadway at Brookside Avenue would have the potential to affect noise levels at nearby residential properties to a significant degree. Measured PM peak-hour noise levels were used as the baseline forthis study. Marketplace project traffic volumes, speeds and vehicle types were inputs to the TNM model. TNM-predicted noise levels form the access road operations were added to measured PM noise levels at the closest residence on Brookside Avenue (described as site S6 Brookside #2 in the DEIS) to obtain the overall noise level at the residence. The results of the TNM modeling indicate that without any noise barrier, peak hour PM ambient noise levels can be expected to increase by 2 decibels, from 53 dBA to 55 dBA. With a ten foot noise barrier in place noise levels will rise by only one decibel. However, since the modeling effort did not include traffic from nearby I-84, the acoustic effectiveness of the noise barrier for reducing noise levels from I-84 was not quantified. Overall, the predicted noise level increases with and without the noise barrier are below the threshold of perceptibility and are also 10 dBA below the NYSDOT 66 dBA noise impact criteria for residential land uses. The construction of the noise barrier will ensure that future peak hour noise levels do not increase significantly from those predicted here, especially if additional vehicle movements into and out of the Marketplace occur in the future.

As an overall summary, which will be explained below in further detail, the additive effect of the access road is below a discernible level due to its close proximity to I84, which is the major noise source at this location. Moving the access road closer to I84 and further

from the residential receptor locations eliminates the need for a sound-attenuating wall, which was incorporated into the previous plan.

For a variety of reasons, the additive noise from the access road would not be discernible.

1) At the point where the access road is the closest to any residence, the road is approximately 100 feet from I84. Noise measurements conducted in 2005 reveal that the ambient noise at this distance from the highway is 66.5 dBA during the daytime and 63.1 during the overnight period. Based on the worst-case assumptions used in the preparation of the DEIS, the access road could produce a noise level of 54.8 dBA (compared to the 55 dBA predicted by the TNM). Because sound pressure levels are based on a logarithmic scale, the addition of two noise sources is a function of the numerical difference between their two noise levels . Considering a hypothetical worst-case condition in which peak hour access drive noise (54.8 dBA) is added to overnight ambient noise level (63.1 dBA), the total noise level would be 63.6 dBA – the higher noise level, plus 0.5 decibels. This 0.5 decibel increment is well below the 2 to 3 decibel increase which is the minimum level that is perceptible to human hearing. The TNM predicts a 1 decibel increase.

2) The distance from the realigned portion of the access road to the closest receptor location is over 200 feet. Sound decreases as a function of distance, with a decrease of 3 decibels for each doubling of distance from a line source of noise, such as a roadway. The access road is projected to generate 54.8 dBA at a distance of 50 feet. 200 feet would constitute two doublings, and therefore a 6 dBA decrease in noise. Therefore noise from the access road at the nearest residential receptor location would be 48.8 dBA. As measured in 2005, existing daytime noise level at this location is 52.9 (Leq). Again using the additive properties of noise's logarithmic function, the combination of these two noise levels would result in a 1 decibel noise increase, to 53.9 dBA. Again, this 1 decibel increment is indiscernible to human hearing.

3) The developer's intent to install a solid fence between Rte. 52 and a point 100 feet west of Brookside Avenue would decrease overall sound levels at Brookside Avenue residences by 10 dBA. This would result in ambient noise levels lower than exist today.

Addition of Noise Levels

Table 3.8-2
Addition of Decibels

Numerical difference between two noise levels [dB(A)]	*Amount to be added to the higher of the two noise levels [dB or dB(A)]*
0	*3.0*
0.1 - 0.9	*2.5*
1.0 - 2.4	*2.0*
2.4 - 4.0	*1.5*
4.1 - 6.0	*1.0*
6.1 – 10	*0.5*
10	*0.0*

***Step 1**: Determine the difference between the two levels and find the corresponding row in the left hand column.*
***Step 2**: Find the number [dB or dB(A)] corresponding to this difference in the right hand column of the table.*
***Step 3**: Add this number to the higher of the two decibel levels.*
http://www.ccohs.ca/oshanswers/phys_agents/noise_basic.html#_1_13

The noise attenuating properties of various types of walls have been identified in the DEIS. The DEIS specifies that any sound walls would be constructed so that they break the line-of site between the noise sources and the affected residences. The height of sound walls has now been increased to ten feet along the back of the project, and to ten feet along the new access road that crosses near the residences on Brookside Avenue.

The applicant has not specified the actual manufacturers and/or model numbers that will be used for the HVAC and trash compacting equipment. It is not practical to specify equipment that will be installed during a construction period of several years. Moreover, any such equipment will likely be replaced over the lifetime of the project. Therefore, the DEIS was written to include ranges of noise levels for various types of equipment. It is possible that better, quieter equipment may become available as the project progresses through the construction phase, and as equipment is replaced and/or upgraded in the future years of operation. Regardless, the applicant has committed to exploring other options for noise attenuation from the rooftop and compactor units, including prefabricated sound barriers designed specifically for rooftop HVAC units. A secondary benefit of these barriers would be to attenuate HVAC noise that would reach the second story windows of nearby residences.

Regarding the effects of rock crushing, please see Response to Item 3.8-2.

Comment 3.8-6 (Letter #17, Sandstone Environmental Associates, Inc. (SEA), July 28, 2006): Existing Conditions - DEIS Section 3.8.1: Please provide a summary paragraph of the evaluation criteria to be used in evaluating the proposed action. Although a variety of tables and legislation are presented, and the use of Newburgh's noise regulations is implied, no paragraph specifically states the criteria to be used.

***Response 3.8-6** The evaluation criteria includes an impact criteria (an increase in noise of at least 3 dBA - barely perceptible), and a discussion on how the proposed project would be in compliance with Newburgh's noise regulations. These regulations require that a development in an IB zone generate noise at levels no greater than 80 dBA be-*

tween the hours of 8 am and 10 pm, and 70 dBA between 10 pm and 8 am.

Comment 3.8-7 (Letter #17, Sandstone Environmental Associates, Inc. (SEA), July 28, 2006): Page 3.8-3. While the 1969 United Nations report and the 1973 Bolt Baranek and Newman report provide useful information, a table showing information from NYSDEC's *Assessing and Mitigating Noise Impacts* (2003) would be a more pertinent reference to include.

Response 3.8-7 *The tables "Perception of Changes in Noise Levels" and "Community Responses to Increases in Noise Levels" were included to provide a framework for understanding how various levels of noise are experienced by individuals and by communities. Table B from the DEC report (2001) is included below, and is consistent with the information provided in the DEIS.*

Table 3.8-3
Human Reaction to Increases in Sound Pressure Level

Increase in Sound Pressure (dB)	*Human Reaction*
Under 5	*Unnoticed to tolerable*
5 – 10	*Intrusive*
10 – 15	*Very noticeable*
15 – 20	*Objectionable*
Over 20	*Very objectionable to intolerable*

Comment 3.8-8 (Letter #17, Sandstone Environmental Associates, Inc. (SEA), July 28, 2006): Page 3.8-7. The last paragraph states that "there are no local regulations relative to temporary construction noise." However, Section 125-9 of the Code specifically exempts construction noise from 7 am to 7 pm, which implies that noise from 7 pm to 7 am would be regulated under the code. Please modify the text accordingly.

Response 3.8-8 *It is acknowledged that the Newburgh Town code exempts construction noise from 7 am to 7 pm, and that by implication, would be regulated under the code from 7 pm to 7 am. Since no construction is scheduled after 7:00 PM, the project would be in conformance with the code.*

Comment 3.8-9 (Letter #17, Sandstone Environmental Associates, Inc. (SEA), July 28, 2006): Page 3.8-8. The third paragraph states that the Town Code has no provisions for various noise sources. However, some of these sources are mentioned in the Code. Some are specifically exempted; others are exempted during specific hours of the day. Please modify the text accordingly.

Response 3.8-9 *It is acknowledged that Newburgh's noise code exempts noise from aircraft, delivery, and customary residential activities landscaping activities during the hours from 6:00 AM to 10:00 PM. Nevertheless, it is appropriate to discuss the maximum noise levels associated with these activities and how these would relate to maximum noise levels generated by sporadic activities occurring on the project site.*

Comment 3.8-10 (Letter #17, Sandstone Environmental Associates, Inc. (SEA), July 28, 2006): Page 3.8-8. The third paragraph states that noise generated by aircraft from Stewart Airport violates Newburgh's noise regulations. However, Section 125-9 specifically exempts aircraft noise, which is regulated by the Federal Aviation Administration, from the Town's noise code. Please modify the text accordingly.

Response 3.8-10 *Please see Response to Item 3.8-9.*

Comment 3.8-11 (Letter #17, Sandstone Environmental Associates, Inc. (SEA), July 28, 2006): Page 3.8-8. The fourth paragraph states that a number of locations experience noise levels in violation of the town's noise code, based on monitored noise levels, without indicating the sources of the noise. Section 125-6 of Newburgh's noise code adopts the NYS Vehicle and Traffic Law for the *private roads* in the Town of Newburgh. This specifies a maximum sound of 88 dBA at a distance of 50 feet. Table 3.8-4 does not indicate any exceedance of this level. In addition, noise from I-84 would not be included in Newburgh's noise code. Please modify the text accordingly.

Response 3.8-11 *Please see Response to Item 3.8-9.*

Comment 3.8-12 (Letter #17, Sandstone Environmental Associates, Inc. (SEA), July 28, 2006): Page 3.8-8. The fourth paragraph states that landscaping activities and occasional truck deliveries "likely" exceed the Town standards without providing documentation. These sources are specifically addressed in Section 125-9, which exempts noise from such activities between 6 am and 10 pm. There is no basis for assuming that current activities exceed the Town standards. Please modify the text accordingly.

Response 3.8-12 *Please see Response to Item 3.8-9.*

Comment 3.8-13 (Letter #17, Sandstone Environmental Associates, Inc. (SEA), July 28, 2006): Page 3.8-10. Please provide a description of the noise monitoring methods, length of monitoring periods, and equipment. Indicate whether the monitoring procedures are in compliance with NYSDOT guidelines.

Response 3.8-13 *The surveys were performed for twenty minute periods using a Larson Davis Model 712 Noise Meter.*

Comment 3.8-14 (Letter #17, Sandstone Environmental Associates, Inc. (SEA), July 28, 2006): Page 3.8-10. Standard procedure is to take concurrent traffic classification counts during noise monitoring in the vicinity of roadways. This includes volumes by type of vehicle (autos, medium trucks, heavy trucks). Then the monitored noise levels are adjusted to reflect the "Existing" traffic based on differences between observed traffic and traffic provided by the traffic study. It appears that no classification counts were made. Please state why this was not done, because the monitored levels otherwise cannot be relied upon in preparing tables for existing and future traffic noise.

Response 3.8-14 *The traffic study was prepared based on the assumption that the proposed project would not significantly alter the existing traffic composition during peak hours. This is a reasonable assumption – the vast majority of peak hour project traffic will be automobile traffic. The noise calculations were therefore based on the reasonable assumption that vehicle classifications do not vary greatly from day-to-day, and will not be significantly different upon completion and operation of the project.*

Comment 3.8-15 (Letter #17, Sandstone Environmental Associates, Inc. (SEA), July 28, 2006): Page 3.8-11. The fourth paragraph states that there are violations of the Town's overnight noise threshold, but does not provide any documentation that this is the case. Noise from individual vehicles on private roads would be limited to a maximum of 88 dBA, and natural

sounds such as crickets would not be included in a town noise ordinance. Please modify the text accordingly.

Response 3.8-15 *Please see Response to Item 3.8-9.*

Comment 3.8-16 (Letter #17, Sandstone Environmental Associates, Inc. (SEA), July 28, 2006): Potential Impacts - DEIS Section 3.8.2: Page 3.8-12. What vehicular mix was used in comparing the volumes? Please explain the rationale for using it. Does the analysis assume that the Marketplace traffic mix would be the same as No Build Conditions?

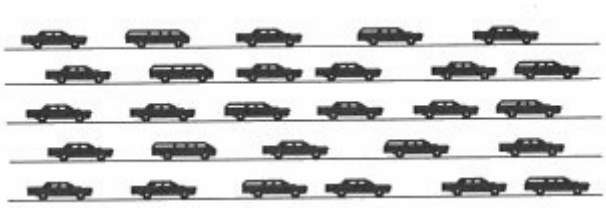
Response 3.8-16 *Please see Response to Item 3.8-14.*

Comment 3.8-17 (Letter #17, Sandstone Environmental Associates, Inc. (SEA), July 28, 2006): Page 3.8-13. Please provide the specific date and page number for the FHWA's Highway Traffic Noise Report, as we were unable to find such a report at the specified website with stated that one truck was equal to 28 cars. In fact, the calculation of PCEs is dependent on whether the vehicle is a medium truck or a heavy truck.

Response 3.8-17 *The source is listed in the DEIS and can be found at http://www.fhwa.dot.gov/environment/htnoise.htm. The specific table is provided below:*

How Trucks Affect Traffic Noise

One truck at 55 miles per hour sounds as loud as



28 cars at 55 miles per hour

Based on the illustration, the assumption is that the FHWA study was using a heavy truck, i.e., an 18-wheeler, to make this comparison.

Comment 3.8-18 (Letter #17, Sandstone Environmental Associates, Inc. (SEA), July 28, 2006): Page 3.8-13. Please provide a table showing the project-generated volume of trucks, by type of truck for the hours of the day so that the PCEs can be accurately calculated.

Response 3.8-18 *Please see Response to Item 3.8-14.*

Comment 3.8-19 (Letter #17, Sandstone Environmental Associates, Inc. (SEA), July 28, 2006): Page 3.8-13. Calculations based on one truck being equivalent to 28 cars are inappro-

priate. Heavy trucks are equivalent to more than 28 cars. The calculations should be revised to show industry standards regarding the PCEs from medium and heavy trucks.

> ***Response 3.8-19*** *In the applicant's opinion, the Federal Highway Administration is a generally accepted reference. Based on this document, one tractor trailer truck at 55 MPH will potentially sound as loud as 28 cars at 55 MPH (see graphic presented in Response 3.8-17).*

Comment 3.8-20 (Letter #17, Sandstone Environmental Associates, Inc. (SEA), July 28, 2006): Page 3.8-13. FHWA does not intend for noise levels on a new roadway on a site where no roadway previously existed to be estimated using PCEs for trucks or assumptions regarding halving of speeds. New access roads must be modeled using the FHWA's TNM model using the appropriate speeds, volumes, and vehicular mixes. Please provide modeling with TNM for Build Conditions and compare the results with No Build noise levels. TNM also accounts for differences in terrain, type of ground cover (including the loss of trees between highways and homes), and ground elevations, all of which are important in determining noise levels at surrounding sensitive receptors.

> ***Response 3.8-20*** *The potential for noise impacts associated with the new access roads was evaluated based on existing measurements at nearby locations, and adjustments to these noise levels based on reasonable and generally accepted methods that account for the anticipated differences in speeds, volumes, distance, and attenuation due to walls and vegetation. The target survey site was chosen to resemble the proposed access drives in terms of terrain, ground cover, and elevations. Please see the response to Comment 3.8-5.*

Comment 3.8-21 (Letter #17, Sandstone Environmental Associates, Inc. (SEA), July 28, 2006): Page 3.8-13. The statement in the last paragraph that access drive noise would approach zero does not account for 24-hour delivery trucks.

> ***Response 3.8-21*** *The number of truck trips occurring during the overnight period will be small, but cannot be further quantified at this time without knowledge of future users. Based on the truck equivalence table provided in 3.8-17, the number of PCE's would be far smaller during the overnight periods than during the daytime periods analyzed. Therefore the statement that the effects of the access drive noise would approach zero is valid. In addition, deliveries at any time of the day would be entering the site from Route 300 rather than the Exit 8 access road.*

Comment 3.8-22 (Letter #17, Sandstone Environmental Associates, Inc. (SEA), July 28, 2006): Page 3.8-14. The statement in the first paragraph that a noise attenuating fence would reduce access drive noise by 10 dBA needs to be substantiated with TNM computer modeling that determines how long and how high the fence should be in order to break the line of site and create a decrease of 10 dBA.

> ***Response 3.8-22*** *The sound attenuation properties for various wall types and for various wall positioning is described on Page 3.8-4. The values presented represent noise level reductions at the interior of a building based on the mass and density of the exterior walls. It is noted that the DEIS assumes an attenuation of 10 dBA for areas that will have a sound wall that blocks a line-of-site. As shown on Page 3.8-4, walls ranging from half*

inch plywood sheeting to concrete block provide attenuation levels of between 20 and 34 dBA, so the calculations are considered to be conservative.

With this FEIS, the applicant is proposing to use a vinyl fence as a barrier wall in areas that are close to adjacent residences and as otherwise required by the proposed buffer law. This fence will be ten feet high (rather than eight feet as originally proposed), and will extend more than 100 feet beyond the ends of the buildings adjacent to Hilltop Avenue. This results in clear breaks in the line of sight, as shown on the cross sections provided with the DEIS and revised for this FEIS. The design and specifications of the barriers will be reviewed during the final site plan process to verify the expected sound attenuation levels.

Comment 3.8-23 (Letter #17, Sandstone Environmental Associates, Inc. (SEA), July 28, 2006): Page 3.8-15. Statements about the sound attenuating wall in the second paragraph need to be substantiated with TNM computer modeling to demonstrate the height and length of the wall and the feasibility of its location. Since trucks would be active during late night hours, the wall should be high enough to protect second-floor bedrooms in affected residences.

Response 3.8-23 *Please see Responses to Items 3.8.5 and 3.8-22.*

Comment 3.8-24 (Letter #17, Sandstone Environmental Associates, Inc. (SEA), July 28, 2006): Page 3.8-16. The analysis of the HVAC noise needs more detail to substantiate the statements. Please provide documentation and manufacturers specifications for the noise level for the single HVAC unit. How big is it? What type of manufacturer is assumed? How many such units would be operating at one time on the rooftops of all the stores?

Response 3.8-24 *Although an analysis of HVAC noise is not called for in the scoping document, a detailed analysis is provided in the DEIS (p. 3.8-15), that includes the potential effects of multiple units. Regarding the type and manufacturer of this equipment, please see Response 3.8-4 and the response to Comment 3.8-5.*

Comment 3.8-25 (Letter #17, Sandstone Environmental Associates, Inc. (SEA), July 28, 2006): Page 3.8-16. Table 3.8-6 shows a 10 decibel reduction due to a retaining wall and fence, but none of the sites lines on Figure 3.8-3 show a wall intercepting the site line. Please revise the calculations in the table.

Response 3.8-25 *The noise attenuating properties of various types of walls have been identified in the DEIS. The DEIS specifies that any sound walls would be constructed so that they break the line-of site between the noise sources and the affected residences. The height of sound walls has now been increased to ten feet along the back of the project, and to ten feet along the new access road that crosses near the residences on Brookside Avenue. The design and specifications of the barriers will be reviewed during the final site plan process to verify the expected sound attenuation levels.*

Comment 3.8-26 (Letter #17, Sandstone Environmental Associates, Inc. (SEA), July 28, 2006): Page 3.8-16. Table 3.8-6 shows that four additional HVAC units would add 5.5 decibels to the noise, but formulas for calculating multiple noise sources indicate that the added noise from four additional units would be 7.0 decibels. Please revise the table and calculations.

Response 3.8-26 *In the applicant's opinion, the projected 5.5 decibel increase is correct. Please also see the response to Comment 3.8-5.*

Comment 3.8-27 (Letter #17, Sandstone Environmental Associates, Inc. (SEA), July 28, 2006): Page 3.8-16. Revise Table 3.8-6 to show the impact of nighttime noise levels for the HVAC units, as nighttime noise levels include a 10 decibel penalty to account for the greater annoyance.

Response 3.8-27 *We believe the DEIS addresses the nighttime levels and how they relate to existing noise. As indicated, the noise contribution from the HVAC units is projected to be 22 dBA. Although the applicant believes that the analysis as conducted was conservative, the criteria to which all the analysis must be compared is the Town requirement that nighttime noise levels in an IB zone must not exceed 70 dBA, The proposed action complies with this requirement. Please also see the response to Comment 3.8-5.*

Comment 3.8-28 (Letter #17, Sandstone Environmental Associates, Inc. (SEA), July 28, 2006): Page 3.8-16. The methods of calculating truck noise from a new roadway is inadequate for this type of study. The noise should be modeled using the TNM model, which can account for terrain, ground cover, vegetation, etc. Otherwise, the statement that a full sized truck would not be heard over the existing nighttime ambient noise cannot be substantiated for this project.

Response 3.8-28 *As discussed above, the potential for noise impacts associated with the new access roads was evaluated based on existing measurements at nearby locations, and adjustments to these noise levels based on reasonable and generally accepted methods that account for the anticipated differences in speeds, volumes, distance, and attenuation due to walls and vegetation.*

In the current alternative (see Response to Item 3.8-2), the proposed eastern access road (which represents the worst case condition for noise due to the proximity of the homes) has now been pushed farther from the residences. Therefore, any calculations presented in the DEIS are conservative.

For more detail, please see Response 3.8-5.

Comment 3.8-29 (Letter #17, Sandstone Environmental Associates, Inc. (SEA), July 28, 2006): Page 3.8-16. Back-up alarms are in a narrow octave band range, and may not attenuate at 3 decibels per distance doubling. Please provide documentation of this attenuation rate.

Response 3.8-29 *A doubling of distance generally results in a halving of sound, or a loss of 3 dBA. As shown in Table 3.8-7, based on this assumption, a total of 12 dBA "credit" was taken to account for the 600 foot distance between the noise sources and the nearest homes. As indicated in Table 3.8-7, the contribution inside the homes is projected at 33.5 dBA. If there is a difference in noise reduction over distance for the type of noise generated by the alarms, this would not alter the conclusions drawn in the DEIS.*

Comment 3.8-30 (Letter #17, Sandstone Environmental Associates, Inc. (SEA), July 28, 2006): Page 3.8-16. What would be the duration of a truck making a delivery on-site? Would trucks delivering food be idling for long periods in order to maintain their refrigeration units?

Response 3.8-30 *The exact schedule of truck deliveries is not known at this time. The individual truck delivery schedule and operations will be determined as part of the final*

site plan review when specific tenants are identified. Delivery locations and noise attenuation will then be evaluated.

Comment 3.8-31 (Letter #17, Sandstone Environmental Associates, Inc. (SEA), July 28, 2006): Page 3.8-17. Please provide manufacturers specifications regarding the size and type of a trash compactor to substantiate the statement that it would not exceed the 90 dBA described for truck back-up alarms.

Response 3.8-31 *Although an analysis of trash compacting noise is not called for in the scoping document, an analysis is provided in the DEIS. Regarding the type and manufacturer of this equipment, please see Response 3.8-4.*

Comment 3.8-32 (Letter #17, Sandstone Environmental Associates, Inc. (SEA), July 28, 2006): Page 3.8-17. Please provide a graphic showing the locations of all the noise sources – trash compactor, loading/unloading docks, roadways, etc.

Response 3.8-32 *Where this information is currently available it is provided on the proposed site plan. Many of these details will not be known until the final site plan applications for each building unit. Specific loading dock and compactor locations will be reviewed and approved during final site plan approval.*

Comment 3.8-33 (Letter #17, Sandstone Environmental Associates, Inc. (SEA), July 28, 2006): Page 3.8-18. TNM modeling should be used to determine noise from new roadways in Tables 3.8-9 and 3.8-10.

Response 3.8-33 *Please see Response 3.8-28*

Comment 3.8-34 (Letter #17, Sandstone Environmental Associates, Inc. (SEA), July 28, 2006): Page 3.8-19. Delete the reference to the FHWA noise level as it is not valid for this project as it is not a DOT project. HUD criteria would be more appropriate.

Response 3.8-34 *The FHWA is a generally accepted source for noise standards.*

Comment 3.8-35 (Letter #17, Sandstone Environmental Associates, Inc. (SEA), July 28, 2006): Construction Activities - Page 3.9-19. How many rock drills would be in operation at the same time, and how long would the drills be in operation in terms of hours per day and months of construction. Detailed noise analysis should be carried out for the construction equipment, rock drills, rock crushers, and on-site trucks.

Response 3.8-35 *Please see Response 3.8-2.*

Comment 3.8-36 (Letter #17, Sandstone Environmental Associates, Inc. (SEA), July 28, 2006): Page 3.8-20. The first paragraph refers to rock crushers at other sites. This is not relevant to the rock crusher that would be used on this site. The statement that rock processing machines have become very quiet needs to be quantified. How quiet is very quiet?

Response 3.8-36 *The DEIS acknowledges that rock crushers are assumed to have a noise level of 89 dB(A) at 100 feet, and 69 dB(A) at 1,000 feet. As described in the DEIS, a rock processor used on a recent project in Westchester County was rated at 85 dB(A) at 100 feet. The applicant has committed to limiting rock processing operations to*

at least 1,200 feet from the residences on Hilltop Avenue and Wintergreen Avenue. Noise levels at or below 69 dB(A) during day time hours will not be perceptible as a significant change in noise levels from truck traffic on I84 and other ambient noise. Final conditions of the developer's agreement, determined during discussions with the Town Board, will include provisions for periodic monitoring of noise levels by a Town representative.

3.9 AIR QUALITY COMMENTS AND RESPONSES

Comment 3.9-1 (Letter #4, Lawrence G. Biegel, June 8, 2006): 5. Please ask the project sponsor to consult with our Division of Air Resources (contact: Robert Stanton 845-256-3045) whether additional DEC approval is needed for the described on-site crushing of approximately 100.000 cubic yards of stone (p.2-23).

Response 3.9-1: *The applicant contacted Mr. Tom Miller of the DEC Division of Air Resources. Because the rock processing operation is expected to take longer than 30 days, the applicant will require proper permitting from Air Resources. Permitting will include conditions relating to dust control and enforceable measures for the reduction of particulate emissions. The operation for aggregate processing will conform with the requirements of 40CFR Part 60 "New Source Performance Standards", specifically 40CFR60 subpart 000 "Nonmetallic Mineral Processing." Water will be made available during processing, including the areas of conveyance and screening, for dust suppression.*

Comment 3.9-2 (Public Hearing, John Gebhards, 48 Wintergreen Avenue Newburgh, New York, June 1, 2006): This project was originally promoted to be one to draw shoppers from miles around. However, regarding air quality, the DEIS states, "The Market Place will not result in a significant increase in vehicle miles traveled on a regional basis." Therefore it is claimed that consideration of the impact of ozone produced by the project is not warranted. When considered with all the other development taking place in the area that brings in additional traffic, this increased pollution may be significant. We need to know as The Market Place is the largest by far of the developments being built along Route 300. I ask the Planning Board to require as is provided through the SEQRA process that The Market Place developers do a cumulative impact study on traffic, its related pollution and potential health impact on our citizens, then you as the lead agency have the information to evaluate if the quality of our lives will be impacted.

Response 3.9-2: *Ozone is of concern on a regional level. As stated in the NYSDOT Environmental Procedures Manual, the following types of projects should require a mesoscale analysis:*

"Projects with build alternatives that could have a significant impact on emissions on a regional basis should have a mesoscale analysis performed. Examples of these types of projects include:
_ HOV lanes vs general use lanes,
_ new or significant modifications to interchanges on access-controlled facilities,
_ large-scale signal coordination projects,
_ in attainment area, projects having alternatives (including the no-build) with significantly different (10%) VMT,
_ in nonattainment and maintenance areas, and included in the regional emissions analysis supporting the conformity determination for the TIP and Plan, projects having build alternatives with significant different (10%) VMT. (For projects not included in the regional emissions analysis supporting the conformity determination for the TIP and Plan, see the discussion on projects not from a conforming Plan and TIP in Section 13),
_ widening to provide additional travel lanes more than a mile in length"

Since the proposed project meets none of these criteria, it does not have the potential for significant impacts on a regional basis and does not warrant a mesoscale analysis. This applies to nitrous oxide and volatile organic compounds as well as ozone.

Comment 3.9-3 (Public Hearing, Calvin Hyatt, 2 Hilltop Avenue Newburgh, New York, June 1, 2006): As per The Market Place at Newburgh DEIS, page 1-29, 1.3.9, air quality, it states no significant adverse air quality impacts will result from the proposed project. ... Over a hundred acres of trees proposed to be destroyed by this project, air purification will most definitely be affected. An additional 2,500 cars per hour coming into our area will bring major air pollution with it. ... The DEIS has no plan of attack for this future problem.

> ***Response 3.9-3:*** *The potential air impacts of project-induced traffic are considered in the DEIS. There have been no recognized standards promulgated for evaluating the air quality effects of tree removal on a project-specific basis. The scale of tree removal associated with the proposed project would have a negligible effect on overall tree coverage in the region. Our modeling of CO and particulates assumes 100% reflection from ground (no sinks) and didn't take any credit for pollutant filtering from trees or deposition to the ground. The results of the analyses indicate that there is no potential for impact under these very conservative assumptions.*

Comment 3.9-4 (Public Hearing, Mike Edelstein, 26 Murray Avenue, Goshen, New York, June 1, 2006): The issues of air pollution have already been discussed but I would add the issue of particulate matter to the concerns raised about ozone because in fact we're in Orange County not in compliance for particulate as well as ozone. That is not even acknowledged let alone discussed in the air section.

> ***Response 3.9-4:*** *The project's potential for impacts related to PM10 and PM2.5 are considered. The DEIS noted that, based upon 2004 data, all criteria contaminants have achieved acceptable levels within Orange County. Newburgh/Orange County is located within an 8-hour moderate non-attainment area for ozone.*

Comment 3.9-5 (Public Hearing, Carolyn Topliff, 30 Algonquin Drive, Newburgh, New York, June 29, 2006): According to the Virginia Cooperative Extension at the Virginia College Institute and State University, one tree releases about 100 gallons of water into the air each day. One tree absorbs the carbon dioxide for 50 cars driven for twelve hours. Therefore, removing 100 acres of trees eliminates 5,000 vehicles worth of carbon dioxide removal. Putting this another way, removing these 100 acres of trees removed the purification capacity for 60,000 hours of vehicle operation. ….What will be the impact on air pollutant levels in this busy, congested area as resolved to removing over 100 acres of trees in addition to the increased 2,500 cars per hour and added emissions from the buildings? The DEIS states there will be no negative impact to air quality as a result of this development. The facts I present show that this statement cannot be true.

> ***Response 3.9-5:*** *There have been no recognized standards promulgated for evaluating the air quality effects of tree removal on a project-specific basis. The scale of tree removal associated with the proposed project would have a negligible effect on overall tree coverage in the region is negligible. The dispersion model incorporated in the CAL3QHC algorithms assumed 100% reflectivity – the analyses assumed no credit for tree filtering and ground deposition. Even using these conservative assumptions, the analyses project no impacts.*

Comment 3.9-6 (Public Hearing, Ned Parish , Consultant to Newburgh Mall, June 29, 2006): Once the traffic study is redone, then the air quality study has to be done properly because that's a function of traffic. If there's congestion in certain intersections, there has to be a

total analysis then of what the air quality impacts are. Similarly, the noise impacts for this type of project are a function of traffic. So once you start with revising the traffic you have to revise the noise, you have to revise the air quality.

> ***Response 3.9-6:*** *This comment is not applicable – the traffic analysis is not being revised. While increased traffic in the region and its potential to adversely impact air quality remain a concern, no regulations have ever been promulgated limiting development that generates traffic, nor have any regulations been developed limiting tree clearing. The Planning Board has required that the applicant analyze and describe the expected changes resulting from the Marketplace development, and has concluded that the project will not result in adverse impacts based on current standards.*

Comment 3.9-7 (Letter #33, Patricia Randall, 59 Wintergreen Avenue, Newburgh, New York, July 27, 2006): The developer has proposed that many trees will need to be cut down; trees that now buffer some of the noise from airplane traffic and Route 84 and filter some of the ozone and other particles will be gone with the wind! And the air itself will add to the breathing problems of anyone with asthma or related respiratory problems.

> ***Response 3.9-7:*** *The DEIS notes: In order to reduce noise between a source and a receiver, there must be a full blockage of the line of sight or the movement of the energy wave through the air by a solid barrier. Deciduous trees generally, do very little to reduce noise. The Federal Highway Administration has stated that "In general, plantings by themselves do not provide much sound attenuation." (Physical Techniques to Reduce Noise Impacts, FHWA.gov).*
>
> *The air quality standards promulgated by the Federal and State governments are intended to protect human health and welfare. The DEIS concludes that the project would not result in violations of standards for particulates. Ozone, which is of regional concern, is not a relevant pollutant of concern for a site-specific action such as the proposed project.*
>
> *Regarding air filtering effects of trees, see response to Comment 3.9-5*

Comment 3.9-8 (Letter #29, Sibylle M. Tulve, 107 Highland Avenue, Newburgh, New York, July 24, 2006): According to the air quality section of the developer's DEIS statement, there is a paragraph that states:

"Ozone is a regional constituent that is affected largely by changes in the transportation system that are much larger than those associated with the proposed project. Ozone concentrations in the project area will not be meaningfully affected by the proposed project and no further analysis for ozone is warranted."

This is only one example of the Marketplace developers' utter lack of concern and complete disregard for the people who reside in the Town of Newburgh. It underscores the "profit at any cost" mindset of the developer over the need for a rational analysis of the benefits versus the harm generated by this proposed uncontrolled growth.

As a retired Science teacher, I wholeheartedly disagree with simply brushing most of these issues to the side as being of no, or minor, consequence. We have arrived at a time where it is of absolute importance that we, as a society, address major environmental problems, many of which are relevant here.

There are many issues that need to be addressed. However, rather than devote a lengthy paragraph for each, I will simply list some of my concerns and follow each with a simple statement as to why it is of concern.

Trees
☒ Act as filters to remove harmful substances from the air
☒ Lessen noise from highways
☒ Return oxygen to the atmosphere
☒ Are most beneficial when mature, not newly planted
☒ Prevent creation of "heat islands" which result in adverse local weather conditions
☒ Benefits provided by 120+ acres of trees will be lost

Air Quality
☒ Studies seem incomplete (methodology not adequately explained)
☒ Pertinent pollutants not adequately addressed
☒ According to American Lung Association, Orange County already has "dirty" air
☒ Increased traffic results in increased ozone making the problem worse
☒ Carbon-based emissions increasing nationally due primarily to trucking

Response 3.9-8: *The differences one could expect between receptors located in an area that contains heavily landscaped residential development adjacent to a forest, vs. those same receptors located in an area containing heavily landscaped residential development adjacent to a paved shopping center, are small.*

The effects of the loss of trees on highway noise are discussed in Section 3.8 of the DEIS – there will be no significant change in highway noise at the residential receptors due to tree removal. The ability of mature trees to return oxygen to the air is well understood, and there are serious concerns about global warming. However, as described above, the amount of forest being removed is negligible compared to the overall forest coverage of Orange County and the rest of New York State, for example. In order to study the overall effects of forest removal on the environment, a much more comprehensive study of state-wide, national, and even global deforestation would need to be addressed. Clearly, this is beyond the scope of the EIS. The effects of heat islands is an active area of research, and it is possible that the temperature of the parking areas will be different from what it is today, especially in the Summer months. However, this project would not result in any changes in area-wide weather patterns.

The air quality studies, the list of pollutants included, and the attainment status for the various pollutants, were performed in conformance with the NYS guidelines, which are discussed in the DEIS. As discussed above, these analyses are based on conservative assumptions, and the results indicate that the project would not significantly impact air quality in the immediate vicinity of the site, or in the sections of Orange County.

Comment 3.9-9 (Letter #14, Nathaniel J. Parish, Parish & Weiner Inc., 101 Executive Boulevard, Elmsford, New York, July 31, 2006): The DEIS does not describe the air quality impacts of tree removal in an area in which increased vehicular travel will no doubt increase already high levels of air pollution. Air quality impacts of excavation and rock crushing are not examined.

Response 3.9-9: *Please see the responses to Comments 3.9-1, 3.9-2, 3.9-5 and 3.9-8.*

Comment 3.9-10 (Letter #17, Sandstone Environmental Associates, Inc., (SEA), July 28, 2006): In general, the DEIS and appendices lack descriptive text and documentation that would enable the reader to determine whether the data sources and methodologies comply with EPA, NYSDOT, and NYSDEC procedures for environmental analysis. Because protocols established by these agencies guide the analyses, there should be no such concerns. What has been provided in the DEIS and Appendix I shows deficiencies and some serious errors that make evaluation of the potential impacts impossible until the DEIS has been revised. Of the problems found in the modeling and presentation of results, the items listed below are of particular concern:

" the lack of any apparent analysis to support the conclusions that parking lots and stationary sources for this 850,000 sq. foot development would have no impact on surrounding residents and Algonquin Powder Mill Park
" computer printouts in the appendix that indicate higher 8-hour CO concentrations from traffic volumes than those shown on the tables in the text, and
" apparent mistakes in the computer modeling of pollutant concentrations from traffic that include, among other things, CO emission factors that are approximately 3% of what they should be. Thus, the CO concentrations for the project may be much higher than shown in the tables and text.

Because the identified mistakes and deficiencies call into question the validity and accuracy of the entire air quality study, the Board should not rely upon the DEIS to form conclusions about the potential air quality impacts associated with the proposed action

Response 3.9-10 *The DEIS contains an analysis of the parking areas, and also evaluates how parking lot emissions would overlap with line sources at a worst-case receptor location along Route 300 at the project site drive. The analysis concludes that there is no potential for impact at this worst-case receptor, where parking area emissions would overlap with line source emissions. Therefore, and consistent with SEQR guidelines, it is concluded that there is no potential for impacts at other, non worst-case receptors, either in the residential areas, or in the park The computer printouts in the DEIS had been revised. The current printouts are provided on a CD. These printouts contain the correct emission factors and the results of these analyses are consistent with the summary tables in the DEIS.*

Comment 3.9-11 (Letter #17, Sandstone Environmental Associates, Inc., (SEA), July 28, 2006): Page 3.9-1- The second paragraph should include Algonquin Powder Mill Park among the sensitive receptors within ½ mile of the proposed action.

Response 3.9-11 *As stated in the comment immediately above, the DEIS looked at worst-case receptor locations. Therefore, and consistent with SEQR guidelines, it is concluded that there is no potential for impacts at other, non worst-case receptors, either in the residential areas, or in the park.*

Comment 3.9-12 (Letter #17, Sandstone Environmental Associates, Inc., (SEA), July 28, 2006): Page 3.9-1 - The second paragraph should note whether the Newburgh Mall, which is in the vicinity of the site on the other side of Route 300, is considered a stationary source of air pollution.

Response 3.9-12 *Existing emissions sources are accounted for in the background DEC monitoring. The mall is over ½-mile from our receptor locations and would not have a direct measurable effect on the residential areas.*

Comment 3.9-13 (Letter #17, Sandstone Environmental Associates, Inc., (SEA), July 28, 2006): Page .3.9-1- The third paragraph should include PM2.5 among the pollutants monitored within Region 3. The reference to total suspended particulates should be deleted, as this pollutant is not monitored in Region 3.

Response 3.9-13 *It is acknowledged that the third paragraph should include PM2.5 among the pollutants monitored within Region 3. The reference to total suspended particulates should be deleted, as this pollutant is not monitored in Region 3.*

Comment 3.9-14 (Letter #17, Sandstone Environmental Associates, Inc., (SEA), July 28, 2006): Page 3.9-2 The last sentence in the first paragraph should state that Orange County is also in nonattainment of PM2.5. Delete the reference to carbon monoxide, as the county is not designated as nonattainment for CO.

Response 3.9-14: *Comment noted. It is acknowledged that on Page 3.9-2 the last sentence in the first paragraph should state that Orange County is also in nonattainment of PM2.5, and that the county is not designated as nonattainment for CO.*

Comment 3.9-15 (Letter #17, Sandstone Environmental Associates, Inc., (SEA), July 28, 2006): Page 3.9-3 Table 3.9-2 should indicate the averaging periods and the year in which the concentrations were monitored. For the FEIS, the table should be updated with 2005 data.

Response 3.9-15 *The analyses were prepared based on the then most currently available data (2004).*

Comment 3.9-16 (Letter #17, Sandstone Environmental Associates, Inc., (SEA), July 28, 2006): Page 3.9-3 Table 3.9-2 should include nitrogen dioxide, which is a criteria pollutant with NAAQS.

Response 3.9-16 *It is acknowledged that on Page 3.9-3 Table 3.9-2 should include nitrogen dioxide, which is a criteria pollutant with NAAQS.*

Comment 3.9-17 (Letter #17, Sandstone Environmental Associates, Inc., (SEA), July 28, 2006): Page 3.9-3 Please correct Table 3.9-2 to should show that the units for inhalable particulates, lead, and PM Sulfate, Nitrate are millionths of a gram (ug/$m^{3)}$, not grams (g/$m^{3)}$.

Response 3.9-17 *It is acknowledged that on Page 3.9-3 Table 3.9-2 should show that the units for inhalable particulates, lead, and PM Sulfate, Nitrate are millionths of a gram (ug/m3), not grams (g/m3).*

Comment 3.9-18 (Letter #17, Sandstone Environmental Associates, Inc., (SEA), July 28, 2006): Page 3.9-3 The first paragraph also should discuss PM10 and PM2.5, which are pollutants associated with vehicular exhaust from diesel-powered vehicles.

Response 3.9-18: *It is acknowledged that on Page 3.9-3 the first paragraph also should discuss PM10 and PM2.5, which are pollutants associated with vehicular exhaust from diesel-powered vehicles.*

Comment 3.9-19 (Letter #17, Sandstone Environmental Associates, Inc., (SEA), July 28, 2006): General: Please provide a clear indication of the impact criteria to be used in evaluating

air quality. The use of the National Ambient Air Quality Standards is implied, but NYSDEC's de minimis criteria for evaluating significant impacts from PM 2.5 are not mentioned anywhere in the report.

Response 3.9-19: *The air quality analyses were performed based on the guidelines governing the preparation of Environmental Impact Statements in New York State, i.e., those promulgated in the NYS Environmental Procedures Manual.*

Comment 3.9-20 (Letter #17, Sandstone Environmental Associates, Inc., (SEA), July 28, 2006): Microscale Carbon Monoxide Analysis: Page 3.9-4 The CO emission factors used for the analysis require description of the modeling and/or methodology used to determine them. Please provide discussion and documentation of the emission factors mentioned in the second paragraph. Specifically:

a. Do the emission factors represent MOBILE6.2, which is the model currently required for CO analysis? If not, please revise the analysis to include MOBILE6.2.
b. Was the most current (June 2004) version of the Environmental Procedures Manual used to obtain emission factors? If not, please revise the analysis accordingly.
c. What peak traffic hour do the emission factors represent?
d. What type of roadway and/or functional class do the emission factors represent? It seems unlikely that all roadways in the study area would have the same functional class, in which case different emission factors for each type of roadway should be calculated.
e. What vehicular mix was used to calculate the composite emission factors?
f. What is the source of the vehicular mix that was used?
g. Do the emission factors assume that all of the roadway links in the study area have the same vehicular mix? If so, this seems unlikely, and emission factors should be calculated for different vehicular mixes.
h. What vehicular speed was assumed in calculating the composite emission factors?
i. What is the source of the speed that was assumed?
j. Do the stated emission factors assume that all of the vehicles are traveling at the same speed on all of the roadway links in the study area? If so, this seems unlikely, and emission factors should be calculated for multiple speeds.

Response 3.9-20:
a) The emissions factors are directly from the 2004 EPM which are based on Mobile6.2.
b) The 2004 EPM was used .
c) Emission factors are not dependent on peak hour.
d) The most conservative functional class for each of the roadways were used.
e) The vehicular mix published in the EPM was used.
f) The vehicular mix published in the EPM was used.
g) The analyses were based on the vehicle mix published in the EPM.
h) A vehicular speed of 15 MPH was used for free flow links. This is considered to be conservative relative to the default values published in the EPM, which are between 25 and 45 MPH.
i) See item h above.
j) See item h above.

Comment 3.9-21 (Letter #17, Sandstone Environmental Associates, Inc., (SEA), July 28, 2006): Page 3.9-4 The third paragraph states that three worst-case intersections were selected, but does not document the rationale for their selection. Please include a table(s) showing vol-

umes, intersection delay, and levels of service for the intersections in the study area for Existing, No Build, and Build Conditions.

Response 3.9-21 *These traffic volumes are presented in the traffic study.*

Comment 3.9-22 (Letter #17, Sandstone Environmental Associates, Inc., (SEA), July 28, 2006): Page 3.9-4 The last paragraph does not explain why the weekday PM and Saturday peaks were selected for analysis. Do they represent a worst case? Please state the rationale for their selection.

Response 3.9-22 *The weekday PM and the Saturday peak hours represent the worst-case conditions for background traffic, and for project generated traffic.*

Comment 3.9-23 (Letter #17, Sandstone Environmental Associates, Inc., (SEA), July 28, 2006): Page 3.9-4 Was CAL3QHC used to model the CO concentrations? If so, please state this in the last paragraph.

Response 3.9-23 *Yes – the CAL3QHC model was used.*

Comment 3.9-24 (Letter #17, Sandstone Environmental Associates, Inc., (SEA), July 28, 2006): Page 3.9.4 The last paragraph does not provide a description of the modeling methodology. Did the modeling include roadway links extending to 1,000 feet along each leg of the intersection, which is the industry standard? If not, please revise the modeling. Were receptor points placed along each leg of the intersection at 20-foot intervals for 100 feet in each direction in order to determine the worst-case receptor point? If not, please revise the analysis.

Response 3.9-24 *The link diagrams were prepared according to the guidelines presented in the EPM.*

Comment 3.9-25 (Letter #17, Sandstone Environmental Associates, Inc., (SEA), July 28, 2006): Page 3.9-5 Please indicate the units (e.g., ppm) for the CO concentrations in Table 3.9-3.

Response 3.9-25 *It is acknowledged that Page 3.9-5 should indicate the units (e.g., ppm) for the CO concentrations in Table 3.9-3.*

Comment 3.9-26 (Letter #17, Sandstone Environmental Associates, Inc., (SEA), July 28, 2006): Page 3.9-5 The source of the background concentrations in Table 3.9-3 has not been provided. Please describe how they were obtained/derived and whether the method was approved by NYSDOT or NYSDEC.

Response 3.9-26 *The background concentrations were taken from the EPM. It is expected that future year background concentrations will be lower if current trends continue, so this is a conservative analysis.*

Comment 3.9-27 (Letter #17, Sandstone Environmental Associates, Inc., (SEA), July 28, 2006): p.3.9-5 The text in the first paragraph states that the worst-case 8-hour concentration is 4.0 ppm, but Table 3.9-3 shows a concentration of 4.1.

Response 3.9-27 *As discussed above, the back-up tables have been revised and are included on a CD – these numbers now correspond with those in the DEIS tables.*

Comment 3.9-28 (Letter #17, Sandstone Environmental Associates, Inc., (SEA), July 28, 2006): Page 3.9-5 et al. The information in Tables 3.9-3, 3.9-4, and 3.9-5 does not correspond with the CAL3QHC printouts in Appendix I. Based on the printouts, the maximum predicted concentrations in the table should be higher, and some of the worst-case receptors are different. No printouts were provided for NYS Route 52 @ 5th Avenue Access, so they could not be compared with the table. Please include the additional printouts and correct the table and text to show the higher CO concentrations.

Response 3.9-28 *As discussed above, the back-up tables have been revised and are included on a CD – these numbers now correspond with those in the DEIS tables.*

Comment 3.9-29 (Letter #17, Sandstone Environmental Associates, Inc., (SEA), July 28, 2006): Page 3.9-5. The text in the first paragraph states that the worst-case 1-hour concentration is 5.7 ppm. Please indicate how much of this is background and how much is the modeled concentration.

Response 3.9-29 *The modeled 1-hour concentration is 2.6 ppm (the 8-hour multiplied by the persistence factor, or 4.1 times 0.7).*

Comment 3.9-30 (Letter #17, Sandstone Environmental Associates, Inc., (SEA), July 28, 2006): Page 3.9-8 Please indicate the source of the 2008 CO background concentrations, as they are identical to those for 2004, which seems unusual. Were the NYSDOT procedures for calculating future background values used?

Response 3.9-30 *The analyses assumed a background of 2.2 ppm, based on 2004. Future values were calculated using DOT methodology. The 2008 background is expected to be lower; the analysis as presented is conservative.*

Comment 3.9-31 (Letter #17, Sandstone Environmental Associates, Inc., (SEA), July 28, 2006): Page 3.9-11. Please provide an appendix with a description and calculations of how the parking analysis was prepared. Include the emission factors, incoming and outgoing volumes, lot dimensions, receptor locations, and formulas.

Response 3.9-31 *The parking area analysis was prepared based on the traffic volumes presented in the traffic study, the parking area dimensions shown on the site plans, and the Mobile6.2 emission factors published in the EPM.*

Comment 3.9-32 (Letter #17, Sandstone Environmental Associates, Inc., (SEA), July 28, 2006): Appendix I - Please review the coordinates and inputs for the CAL3QHC modeling. The following were noted as possible problems that would require substantial revisions to the modeling and conclusions:

Some receptor points (e.g., Receptors 22 and 23 for Route 300 at Site Access) appear to be too far from the roadways. Receptors should be placed at mid-sidewalk and just beyond the mixing zone.

" The roadway links apparently extend only 500 feet from an intersection in each direction, whereas the CAL3QHC manual recommends 1,000 feet. The idle emission factors for CO of (e.g.) 1.99 gm/hr and 2.80 gm/hr shown on the printouts are much too low, especially given the representative emission factors of 126.15 gm/hr and 76.80 gm/hour referenced on page 3.9-4. As a result, the maximum predicted CO concentrations are underestimated.

" Saturation flow rates of (e.g.) 3445 vehicles per hour shown on the printouts are much too high. According to the CAL3QHC manual, saturation flow rate should represent vehicles/hour/lane, not the total for multiple lanes on a link. Since a volume of approximately 2000 vehicles per hour is considered to be the capacity of a lane under LOS A, the values that exceed this number are incorrect. As a result, the maximum predicted CO concentrations are underestimated.

Response 3.9-32: *1) These receptors are placed at mid-sidewalk, beyond the mixing zone. The mixing zones were revised so that the free flow mixing zones are the width of the lanes plus a 10 foot dispersion area, and the queue mixing zones are represented by the lane width with no additions. The revision was only done for the particulate (PM) analyses, since the CO analyses screen as discussed in the DEIS. The results of the revised PM analyses are presented below:*

PM 10 Summary - One Hour (ug/m3)

		EX	NB	BD	BD-NB	REC
Route 300/Access Drive	PM	7	8	10	2	12
	SAT	3	7	10	3	12
Route 300/Route 52	PM	7	8	9	1	13
	SAT	2	5	6	1	13

PM 2.5 Summary - One Hour (ug/m3)

		EX	NB	BD	BD-NB	REC
Route 300/Access Drive	PM	3	4	5	1	12
	SAT	3	3	4	1	12
Route 300/Route 52	PM	3	4	4	0	13
	SAT	2	2	3	1	13

PM 10 Summary - 24 Hour (ug/m3)

		EX	NB	BD	BD-NB	REC
Route 300/Access Drive	PM	2.80	3.20	4.00	0.80	12
	SAT	1.20	2.80	4.00	1.20	12
Route 300/Route 52	PM	2.80	3.20	3.60	0.40	13
	SAT	0.80	2.00	2.40	0.40	13

PM 2.5 Summary - 24 Hour (ug/m3)

		EX	NB	BD	BD-NB	REC
Route 300/Access Drive	PM	1.20	1.60	2.00	0.40	12
	SAT	1.20	1.20	1.60	0.40	12
Route 300/Route 52	PM	1.20	1.60	1.60	0.00	13
	SAT	0.80	0.80	1.20	0.40	13

PM 10 Summary - Annual (ug/m3)

		EX	NB	BD	BD-NB	REC
Route 300/Access Drive	PM	0.70	0.80	1.00	0.20	12
	SAT	0.30	0.70	1.00	0.30	12
Route 300/Route 52	PM	0.70	0.80	0.90	0.10	13
	SAT	0.20	0.50	0.60	0.10	13

PM 2.5 Summary - Annual (ug/m3)

		EX	NB	BD	BD-NB	REC
Route 300/Access Drive	PM	0.30	0.40	0.50	0.10	12
	SAT	0.30	0.30	0.40	0.10	12
Route 300/Route 52	PM	0.30	0.40	0.40	0.00	13
	SAT	0.20	0.20	0.30	0.10	13

As shown in the tables presented above, the maximum difference between the No Build and Build conditions for the PM2.5 analyses are 0.4 and 0.1 PPM for the 24-hour and annual concentrations, respectively. These are below the impact criteria of 5.0 and 0.3 PPM for 24-hour and annual concentrations, respectively.

2) Extending the links another 500 feet from the receptors immediately near the intersection would not alter the conclusions presented in the DEIS.

3) This is reflected in the current backup files (Appendix G).

4) This is possible. However, it is not likely that the change would alter the conclusions presented in the DEIS – the CO concentrations are well below the NAAQS standards, and there has not been a CO violation in Orange County for well over 10 years.

Comment 3.9-33 (Letter #17, Sandstone Environmental Associates, Inc., (SEA), July 28, 2006): Microscale PM10 and PM2.5 Analysis - Page 3.9-6 - Please indicate the MOBILE6.2 vehicular mix used to derive the PM10 and PM2.5 emission factors.

Response 3.9-33 *The default vehicle mix from the EPM was used.*

Comment 3.9-34 (Letter #17, Sandstone Environmental Associates, Inc., (SEA), July 28, 2006): Page 3.9-6. Please indicate whether the CAL3QHCR model was run with 5 years of meteorological data, which is standard procedure for this type of analysis.

Response 3.9-34 *CAL3QHC was used, a more conservative model, which does not rely on meteorological data.*

Comment 3.9-35 (Letter #17, Sandstone Environmental Associates, Inc., (SEA), July 28, 2006): Page 3.9-6 et al. Please provide more information on NYSDEC's background concentrations for Tables 1 through 8, as they are higher than the monitored concentrations shown in Table 3.9-2.

Response 3.9-35 *The background concentrations (2.2 ppm) were taken from the EPM for Orange County.*

Comment 3.9-36 (Letter #17, Sandstone Environmental Associates, Inc., (SEA), July 28, 2006): Page 3.9-6 et al. Please provide documentation (e.g., input and output files) for the CAL3QHCR runs for Tables 1 through 8 for Existing, No Build and Build Conditions. The tables should be numbered consecutively for the FEIS.

Response 3.9-36 *The input and output files are provided with this FEIS as Appendix G on a CD-ROM.*

Comment 3.9-37 (Letter #17, Sandstone Environmental Associates, Inc., (SEA), July 28, 2006): Page 3.9-6 et al. Change Tables 1 through 8 for Existing, No Build and Build Conditions to show they represent the CAL3QHCR model.

Response 3.9-37: *They are based on the CAL3QHC model.*

Comment 3.9-38 (Letter #17, Sandstone Environmental Associates, Inc., (SEA), July 28, 2006): Page 3.9-9. Please indicate the source of the 2008 PM10/2.5 background concentrations, as they are identical to those for 2004.

Response 3.9-38: *The 2004 values were used for future year analyses as well.*

Comment 3.9-39 (Letter #17, Sandstone Environmental Associates, Inc., (SEA), July 28, 2006): Page 3.9.11. Standard protocol calls for a neighborhood scale analysis of PM2.5 as well as an intersection analysis. Please provide a neighborhood scale analysis as well as discussion of NYSDEC's de minimis criteria for PM2.5 for both intersection and neighborhood scales of analysis.

Response 3.9-39 *– The EPM guidelines indicate that the need for an area-wide (mesoscale) analysis for particulates follows the same standards as for the need for a mesoscale analysis for other particulates, and these criteria are included in Section 9 of the EPM Air Section. As discussed in Response 3.9-2, these include:*

_ HOV lanes vs general use lanes,
_ new or significant modifications to interchanges on access-controlled facilities,
_ large-scale signal coordination projects,
_ in attainment area, projects having alternatives (including the no-build) with significantly different (10%) VMT,
_ in nonattainment and maintenance areas and included in the regional emissions analysis supporting the conformity determination for the TIP and Plan, projects having build alternatives with significant different (10%) VMT. (For projects not included in the regional emissions analysis supporting the conformity determination for the TIP and Plan, see the discussion on projects not from a conforming Plan and TIP in Section 13),
_ widening to provide additional travel lanes more than a mile in length"

Since the proposed project meets none of these criteria, it does not have the potential for significant impacts on a regional basis and does not warrant a mesoscale analysis, either for ozone, nitrous oxide or volatile organic compounds.

Comment 3.9-40 (Letter #17, Sandstone Environmental Associates, Inc., (SEA), July 28, 2006): Page 3.9-12. The results of the modeling for PM10 and PM2.5 are the same for Build as for No Build. Given the volume of additional traffic, this seems questionable. Please provide information on the model inputs and outputs, including vehicular mix, volumes, and emission factors.

Response 3.9-40 – *The results have been verified. Each of the inputs are the same across analysis scenarios, except traffic volumes.*

Comment 3.9-41 (Letter #17, Sandstone Environmental Associates, Inc., (SEA), July 28, 2006): Stationary Source Fuel Combustion - Page 3.9-14. The second paragraph dismisses the potential for impacts due to the HVAC pollutant emissions from the proposed 850,000 sq. ft. shopping center without providing any quantifiable basis for this decision. Please provide a quantifiable analysis, including fuel types and a description of methods that would form the basis for conclusions about the HVAC emissions.

Response 3.9-41: *The HVAC units would be fueled by natural gas, and would burn relatively cleanly. The units are not immediately adjacent to any sensitive receptors. The*

effects of the HVAC units were not considered as part of the publicly reviewed scope of work for the DEIS.

Comment 3.9-42 (Letter #17, Sandstone Environmental Associates, Inc., (SEA), July 28, 2006): Construction Activities - Page 3.9-14. What is the length of the construction period for the proposed action? Detailed analysis of annual fugitive dust, SO2, NO2, PM10, and PM2.5 should be carried out for the construction equipment, rock crushers, on-site trucks, and worker vehicles to ensure that the annual emissions would not violate state and federal de minimis standards.

Response 3.9-42: *Please see response to Comment 3.9-1.*

Comment 3.9-43 (Letter #17, Sandstone Environmental Associates, Inc., (SEA), July 28, 2006): Page 3.9-15. Due to the project's location in a nonattainment area for ozone and PM2.5, construction equipment should be equipped to use low-sulfur fuel and be fitted with devices to reduce nitrogen oxide emissions.

Response 3.9-43: *As stated in Response 3.9-1, NYSDEC has been contacted, and will be reviewing the project. The applicant will be required to adhere to any NYSDEC recommendations.*

Comment 3.9-44 (Letter #1, Orange County Department of Planning, July 21, 2006): This proposed project will have regional significance and may require a mesoscale air quality analysis meeting NYSDOT's standards in order to determine whether NYSDOT may approve the proposed road and intersection changes which would enable construction of the entire proposed project. The applicant should consult with NYSDOT and report in the FEIS regarding the potential impacts on transportation conformity. See Section 9, page 1.1-31 of NYSDOT Environmental procedures manual entitled "Criteria" for projects requiring a mesoscale analysis.

Response 3.9-44: *As stated in the NYSDOT Environmental Procedures Manual, the following types of projects should require a mesoscale analysis:*

"Projects with build alternatives that could have a significant impact on emissions on a regional basis should have a mesoscale analysis performed. Examples of these types of projects include:
_ HOV lanes vs general use lanes,
_ new or significant modifications to interchanges on access-controlled facilities,
_ large-scale signal coordination projects,
_ in attainment area, projects having alternatives (including the no-build) with significantly different (10%) VMT,
_ in nonattainment and maintenance areas and included in the regional emissions analysis supporting the conformity determination for the TIP and Plan, projects having build alternatives with significant different (10%) VMT. (For projects not included in the regional emissions analysis supporting the conformity determination for the TIP and Plan, see the discussion on projects not from a conforming Plan and TIP in Section 13),
_ widening to provide additional travel lanes more than a mile in length"

Since the proposed project meets none of these criteria, it does not have the potential for significant impacts on a regional basis and does not warrant a mesoscale analysis. This includes an analysis of ozone, nitrous oxides and volatile organic compounds.

Comment 3.9-45 (Creighton Manning Engineering, January 31, 2007: Based on the information provided in the air quality study, the project screens out fro requiring a detailed CO analysis. Therefore, there was no need to further review the detailed CO analysis presented in the study as it was not required. Detailed information on the emission factor calculations should be included in the documentation in order to verify the use of Table 3C as part of the CO screening procedure. Details on the emission factor calculations used as input in the PM analysis should also be provided.

Response 3.9-45: *The composite emission factor (CEF) was calculated based on the emission factors for each class of vehicle and the distribution of vehicle classes. The vehicle distributions were taken from CO Table EF3 in the NYSDOT EAB. The emission factors for existing (2004) and future year (2008) conditions were also taken from CO Table EF3. The emission factor calculation is shown in the table below.*

Emission Factor Calculation

	CLASS 14/16 (1)	2004 0 MPH EF (2)	CLASS 14/16 (1)	2004 30 MPH EF (2)	CLASS 14/16 (1)	2008 0 MPH EF (3)	CLASS 14/16 (1)	2008 30 MPH EF (3)
LDGV	55.96%	120.6	55.96%	10.4	55.96%	72	55.96%	6.1
LDGT1	6.28%	129.3	6.28%	11.3	6.28%	69.2	6.28%	6.2
LDGT2	21.00%	128.8	21.00%	11.2	21.00%	72.2	21.00%	6.5
LDGT3	7.83%	114.2	7.83%	10	7.83%	61.5	7.83%	5.4
LDGT4	3.69%	115.2	3.69%	10	3.69%	62.1	3.69%	5.4
HDGV2B	1.06%	150.4	1.06%	10.9	1.06%	133.9	1.06%	9.7
HDGV3	0.45%	253.9	0.45%	18.3	0.45%	221.5	0.45%	16
HDGV4	0.19%	192.2	0.19%	13.9	0.19%	175.6	0.19%	12.7
HDGV5	0.20%	507.2	0.20%	36.6	0.20%	497.7	0.20%	35.9
HDGV6	0.09%	764.4	0.09%	55.2	0.09%	742.3	0.09%	53.6
HDGV7	0.14%	889.1	0.14%	64.2	0.14%	880.6	0.14%	63.6
HDGV8A	0.19%	1308.3	0.19%	94.5	0.19%	1373.2	0.19%	99.2
LDDV	0.13%	8.9	0.13%	0.7	0.13%	8.1	0.13%	0.7
LDDT12	0.13%	7.3	0.13%	0.6	0.13%	5.9	0.13%	0.5
LDDT34	0.58%	7.2	0.58%	0.6	0.58%	5.7	0.58%	0.5
HDDV2B	0.13%	11.3	0.13%	0.9	0.13%	8.7	0.13%	0.7
HDDV3	0.10%	13.3	0.10%	1.1	0.10%	10.7	0.10%	0.9
HDDV4	0.09%	15.8	0.09%	1.3	0.09%	13.8	0.09%	1.1
HDDV5	0.08%	20	0.08%	1.6	0.08%	16	0.08%	1.3
HDDV6	0.09%	20.1	0.09%	1.7	0.09%	16.2	0.09%	1.3
HDDV7	0.23%	24.9	0.23%	2	0.23%	19.7	0.23%	1.6
HDDV8A	0.49%	52.7	0.49%	4.2	0.49%	37.4	0.49%	3
HDDV8B	0.42%	55.2	0.42%	43.4	0.42%	39.4	0.42%	3.2
HDGB	0.09%	1023.2	0.09%	73.9	0.09%	1074.4	0.09%	77.6
HDDBT	0.18%	80.2	0.18%	6.4	0.18%	69	0.18%	5.5
HDDBS	0.18%	29.1	0.18%	2.3	0.18%	23.3	0.18%	1.9
MC	0.00%	252.8	0.00%	8.9	0.00%	252.3	0.00%	8.9
	100.00%	121.89761	100.00%	10.47054	100.00%	72.55194	100.00%	6.19803
		2.94039		0.21615		2.95072		0.21633
		1.34946		0.26445		1.29858		0.0966
CEF		126.19		10.95		76.80		6.51

(1): Table EF3.1 EAB - NYSDOT (Urban Arterials and Collector Streets)

(2): CO Table EF3 EAB - NYSDOT (Year 2004)

(3): CO Table EF3 EAB - NYSDOT (Year 2008)

3.10 VISUAL QUALITY COMMENTS AND RESPONSES

Comment 3.10-1 (Public Hearing, Laura Kohlmann, 18 Wintergreen Avenue, Newburgh, New York as read by Ted Coleman, June 1, 2006): The current vegetative buffer for The Market Place is fifty feet. While there's a buffer alternative that calls for seventy-five feet, even this is not enough.

The Market Place DEIS calls for a fence to be placed at the top of a berm but neglects to mention who is responsible for maintaining the fence. Fifty feet between the back of one's yard and the beginning of an 850,000 square foot shopping center is not acceptable. The Market Place at Newburgh should be required to follow the buffer guidelines that are being proposed under the new comprehensive Town plan.

> ***Response 3.10-1:*** *The plans submitted with this FEIS include the larger, 75 foot buffer originally proposed as an alternative in the DEIS. The applicant or future landowners of the Marketplace will be responsible for the maintenance of all perimeter and screening fences. This will be a condition of site plan approval and the Town will be responsible for enforcement of site plan conditions.*
>
> *Following a detailed discussion with Town consultants regarding the proposed buffer law, the applicant has prepared an additional alternative layout that meets the requirements of the new law as they are currently interpreted. Buildings C, D and 1 have been moved to the south to meet the proposed 150 foot setback, and a 100 foot landscaped zone is provided between the edge of pavement and the property line. In addition, the fence along this property line has been raised to 10 feet high, and extends a minimum of 50 feet beyond the ends of the buildings on either side. It is noted that in the original proposal the proposed eight foot high fence also extends several hundred feet in each direction past the ends of the buildings. This adjustment to the site plan results in the loss of approximately 20,000 square feet of building footprint, while leaving all available parking spaces. Revised cross-sections in this area are presented with this FEIS as Figure 3.10-1.*

Comment 3.10-2 (Public Hearing, Elizabeth Stelz-Riach, Fern Avenue, Newburgh, New York: The visual impact. I didn't see any studies regarding the visual impacts. If someone could point me in those directions it would be appreciated.

> ***Response 3.10-2:*** *Section 3.10 of the DEIS goes into great detail, including plans, photographs and cross-sections, regarding potential visual impacts. These cross sections have been updated and submitted again with this FEIS as Figures 3.10-1 through 3.10-3. Enhanced descriptions of various treatments are also provided below and in the following responses.*
>
> *The concept of a unified architectural theme was discussed at length in the DEIS, beginning on Page 3.10-8. Future development of the site will generally follow the guidelines adopted by a number of municipalities across the country, including Fort Collins, Colorado, Georgetown Kentucky, Somerset County New Jersey, and others. These guidelines establish standards for ensuring that big box and "super center" developments consider a basic level of architectural variety, compatible scale, pedestrian and bicycle access and mitigation of negative visual and community impacts. Facades and exterior walls, detail features, awnings and roof lines, materials and colors*

and entryways can be integrated to ensure that design proceeds in a manner or style so that the end result contributes positively to the overall development.

Specifically, these guidelines offer recommendations to review boards to encourage:

1. *the articulation of long facades to reduce scale and provide visual interest, thereby mitigating the potential for uniform, impersonal appearance;*
2. *provision of architectural features, patterns and detail at pedestrian level to reduce massive aesthetic effects and recognize local character;*
3. *varying roof lines to add interest to and reduce the scale of large buildings, in a manner consistent with adjoining neighborhoods; and*
4. *use of color and textures in a manner that is aesthetically pleasing and compatible with materials and colors in the adjoining neighborhood.*

A copy of these guidelines (specifically from Georgetown, Kentucky) are provided as Appendix I of this FEIS.

The views from Interstate 84 will be mitigated by on site plantings. The plantings specifically sited to mitigate the Interstate 84 views of the buildings and parking areas in the development are those located at the tops of embankments (Figure 3.10-2 and the Landscape Plan). These plantings consist of a naturalistic mix of trees and shrubs. These plantings will eventually be augmented with a succession of woody plant material on the embankments as the woody seed from the conservation mix germinates and matures on the face of the embankments.

Comment 3.10-3 (Letter #5, Edwin J. Garling, AICP, Garling Associates, 301 Main Street, Goshen, New York, June 19, 2006): How will lighting from the proposed gasoline station be screened from the neighbors? That lighting impact is not shown on Sheet 1 of 2 for lighting and is not mentioned in the DEIS.

Response 3.10-3: *The proposed warehouse club fueling facility, which is only available to members of the warehouse club, has been relocated more than 1,000 feet southeast of the location shown on the DEIS site plan, and away from residential neighborhoods. The proposed warehouse club, building E on the site plan, is situated between and buffers the residential homes from this proposed fueling facility (Figure 3.10-2).*

The project sponsor will work with the potential future tenant for whom the gas station location has been provided to determine if an alternative location can be identified on site. The alternative location will be selected based on criteria of reducing visibility and light impacts, especially from Interstate 84, and reducing grading impacts currently resulting in the need for a retaining wall on the south side of the facility. This issue will be further reviewed by the Planning Board during the final site plan review phase.

Comment 3.10-4 (Letter #5, Edwin J. Garling, AICP, Garling Associates, 301 Main Street, Goshen, New York, June 19, 2006): Page 3.10-8 and figures 3.10-9 and 3.10-10. The discussion and view of the proposed lifestyle center are very attractive, but certain items should be clarified and/or redesigned. Based on a considered evaluation of the plans we prefer the basic plan showing the traffic circle provided:

1. The arrow showing the view of figure 9 is shifted to depict the review more accurately.

2. The traffic in the circle is one way counterclockwise. This will make for fewer crossing movements. The parking in this area could also be angle parking.
3. The sidewalks must be at least ten feet wide and there should be roof overhangs for parts of all stores. Where any outdoor seating areas are located the sidewalk should provide for a walkway area at least ten feet wide beyond the seating area.
4. The buffer area along the road should be at least 50 feet wide, particularly along Route 300 with buffers of trees and walls or berms. The wall discussed in the plan should be shown.
5. The road through the site is merely a parking lot aisle and is too narrow to serve as a roadway. Either it must be wider or the parking must be angle parking and one way.

Response 3.10-4: *In the current FEIS plan, the traffic circle has been eliminated and many of the comments considered in the new design. This plan also shows a minimum of 40 feet between the proposed curb on Route 300 and the parking area. Average width is more than 50 feet. The stone wall on the property line along Route 300 is shown on the revised plans.*

The view of the parked cars from Route 300 will be mitigated by the establishment of a three foot high stone wall along the property line backed by an earth berm topped with plantings. The wall will act as a retaining wall for the three foot high planting berm behind it. On top of the berm and just behind the stone wall face will be planted a continuous evergreen hedge designed to achieve a height of thirty inches. This will result in a visual barrier of approximately five and one half feet along the westerly side of the parking lot essentially removing the view of the parking lot from the street. Behind the hedge will be located street trees which will further soften the view from the street of the new buildings. A cross section and illustrative elevation of this area presented as Figures 3.10-4 and 3.10-5 in this FEIS.

Existing plant material in this buffer area will be preserved by clear delineation of the limits of disturbance. There are no plans to remove and replace the NYS DOT fence, although the applicant will inquire of DOT whether the fence might be removed or, in the alternative, if the fence might be replaced with a more aesthetically pleasing alternative that would compliment the stone wall and plantings. The stone wall will only be placed along the Route 300 frontage and in this location the limit of disturbance will coincide with the property line. The placement of the stone wall and sufficient planting area behind it can be accommodated without infringing on the NYS DOT right of way. In previous discussions it had been agreed that there would not be plantings in front of the wall as this would obscure the wall and negate the use of it as a design feature.

A looped walkway system will be provided for the entire Marketplace development (Figure 3.10-6). This sidewalk will interconnect the major stores and will allow for a potential future connection to Route 52 at the north side of the site. The walkway system will interconnect store access areas via crosswalks and sidewalks located in planted islands. The sidewalks will be located on the sides of islands to insure enough room for plantings.

The sidewalk surface will be brick shaped pavers in a pattern consisting of a border of soldier course pavers, and a center of running bond (Figure 3.10-7). A two color scheme will be used that may consist of a maroon soldier course with brick red running

bond, or a charcoal soldier course with a medium gray running bond. The color scheme will be illustrated on individual building applications.

The width of the pattern may be adjusted along the storefronts where the sidewalks are wider, and where the facade articulation may impact the regularity of the sidewalk width. These building specific sidewalk width and overall pattern details will be shown at the site plan review stage for each building. However in general sidewalks will be a minimum of six (6) feet in width adjacent to buildings and a minimum of five (5) feet in width in other areas. Also sidewalk roadway crossings will be clearly marked, and consideration will be given to continuing the paver pattern across the roadways in these locations to serve as the crossing marking.

Comment 3.10-5 (Letter #5, Edwin J. Garling, AICP, Garling Associates, 301 Main Street, Goshen, New York, June 19, 2006): Page 3.10-9 No plastic insert slats. They are not pleasing and do not fit with this proposal. The architectural themes on prior pages do not match figure 9. Figure 9 shows the small store fronts and figures 11-13 are the big box buildings which are located opposite each other, but not shown on the plan in that fashion. Karen Arent should review these plans and we should discuss this at a work session prior to the preparation of an FEIS.

Marketplace entry signs should have one or two or no major retailer's names. Based on the plans, buildings A-E could all be major retailers and five names would be too many. Drawing 15 has nine names which is excessive. Newburgh Mall has no names on their pylon sign. This issue must be considered by the Planning Board in regard to the future architectural and site plan approvals. A determination should be made during the SEQRA process.

Response 3.10-5: *The building facades provided in the DEIS are conceptual, based on similar existing developments, and are provided to demonstrate how similar architectural elements can be used throughout a retail center for uniformity of appearance. As discussed above (Response 3.10-2), this FEIS provides a number of recommendations and techniques for the Planning Board to follow when reviewing the design of individual buildings.*

Final design and sizing of signage and specific site plan elements can be discussed with the Planning Board prior to final site plan approval and included as conditions of permitting. A cohesive signage plan that meets zoning codes and allocates square foot area for both the larger retailers and the lifestyle centers will be developed as a condition of final site plan approval. Some discussion of way finding and traffic control signage will also be part of this discussion. The aesthetic qualities of the signs will be included in this plan. Any modifications to this plan will require amended site plan approval from the Planning Board.

Street furniture will consist of waste receptacles and occasional benches. These will be most evident in the "Lifestyle" section where a walking streetscape will be established. It is anticipated that the street furniture will be consistent for each building and, if possible, throughout the site. Generally the style of the outdoor furniture will be consistent with the theme chosen for the architectural elements of the buildings, i.e., "Victorian" style furniture will not be used if the overall architectural theme is "colonial". Street furniture selection will be included with the architectural review guidelines.

Plantings along the facades of new buildings will be detailed with individual building plans as tenants seek a custom design for their locations. These plantings will likely consist of trees and possibly shrubs and herbaceous material. These plantings will provide visual interest to the facades, mitigate the impact of the scale of the facades, and serve to provide some additional screening from surrounding public view vantage points. Plantings for new buildings will be identified with the architectural review guidelines.

Conceptual pylon and direction signs were presented in the DEIS. It is expected that the final design of the signs will be consistent with the architectural theme of the development as determined by the Planning Board at final site plan approval. Signage selection will be included with the architectural review guidelines.

As described above, it is proposed that awnings and other architectural detail elements will be consistent with the overall theme and the design guidelines. Awning designs will be submitted with site specific designs for specific buildings during the final site plan review by the Planning Board. Awning selection will be included with the architectural review guidelines.

Comment 3.10-6 (Letter #5, Edwin J. Garling, AICP, Garling Associates, 301 Main Street, Goshen, New York, June 19, 2006): Page 3.10-10 and 11 Before these mitigation measures are agreed to in any form we must address the issues of:

1. The access road from Route 52 at Exit 8 which must be the alternate closest to I-84.
2. The type of fence along the Hilltop Avenue properties that will afford a reasonable sound barrier.
3. An alternate showing the proposed, expanded buffers that are likely to be adopted before this project is approved.
4. Public Hearing Comments
5. A meeting of the applicant's and town's consultants to develop a suitable design.

Response 3.10-6: *1) The DOT road access alternative is presented as the preferred alternative in this FEIS.*
2) The fence along Hilltop Avenue will be a ten foot high vinyl fence, with panels that will be foam filled if required by the final conditions of the noise study. If alternative means of noise abatement are determined to be more appropriate, the ten foot fences may not be foam filled.
3) As discussed above (Response 3.10-1), the applicant has prepared an alternative layout that meets the proposed buffer requirements as they are currently understood. The current plan incorporates the expanded 75 foot buffer alternative.
4) All substantive public hearing comments are addressed throughout this FEIS.
5) It is expected that a work session between the Town's consultants and the applicant's design team will occur prior tot he adoption of SEQRA Findings.

Comment 3.10-7 (Public Hearing, Anna Grabler-Pratt, 41 Wintergreen Avenue, Newburgh New York, June 1, 2006): Undesired evening lighting, not to mention the litter and pollution that accompanies roads such as these, will in some way, shape or form impact negatively on us.

Response 3.10-7: *The conclusion of the analysis in the DEIS is that there will be no increase in lighting levels at the property lines of adjoining properties. Page 3.10-8 of the DEIS explains those measures that will be utilized to ensure this:*

"It is expected that night lighting will produce levels of illumination that would not create a nuisance to nearby residences or an objectionable nighttime "glow" over the project site. The lighting of the primary roadways of the shopping center will be laid out as an integral design for all-night illumination. All lighting will be "down" lighting with the exception of some sign lighting, which may be installed in the ground and cast upwards. Lighting, in select locations near residential areas, will include appropriate shields, if needed, to limit stray light, and will be designed such that energy is not wasted by illuminating nonessential surfaces. At the residential property lines, the foot candle level will be zero (0)."

Comment 3.10-8 (Public Hearing, Diana Krautter, Wintergreen Avenue, Newburgh, New York, June 1, 2006): Never have I understood why buildings and parking lots have to be so well lit at night. Is that to keep the thieves away or help them find whatever they're looking for? To me it's a waste of electricity.

Response 3.10-8: *Parking lots are lit well at night for a variety of reasons, the primary being security and safety. A well lit parking lot leads to fewer parking lot accidents, whether it is someone walking, or someone driving, the more visibility the less likely the chance of them making a mistake*.

A well lit area is also safer for employees leaving when the stores are closed. As any security expert would explain, the most unsafe area to travel is a dark, isolated area out of sight from the general public.

In the 1970's an effort was made to reduce the amount of light being used in retail parking lots to conserve energy. Many new shopping centers put in highly efficient low level lighting. The experiment proved that the savings in electricity was not worth the sacrifice to safety and security. Since then low level lit parking lots are not considered safe and many municipalities require light minimums for security and safety reasons.

Comment 3.10-9 (Public Hearing, Jeff Wilkinson, June 1, 2006): Most of these malls are single story. Can they be introduced as two or three stories with vertical transportation just also reducing the amount of footprint required?

Response 3.10-9: *By and large retail not on the ground floor typically does not do well and often fails. Even in the urban environments with high density and a scarcity of land it is rare to see retail occupying more than the first floor.*

Some large department stores will go multiple levels, but even they try to avoid doing this. Retail sales not on the first level are significantly lower than on the ground floor. The same goes for multi-story malls; non-ground floor space has cheaper rents due to the lower sales volumes.

In the case of the Marketplace, the Developer is not proposing a traditional Mall. The Marketplace has no internal climate controlled area to create a second story for multi-level shops as described. It is possible that some buildings will have second story

space, but this will be done on a very limited basis due to the challenges the second story space will have.

The national tenants, who will comprise most of the retailers in the Marketplace, do not have prototypical plans for elevated, multi-level stores. These multi-level formats are only used in major cities where land is not available for single floor retail facilities.

Comment 3.10-10 (Public Hearing, Michael Murphy, 6 Hilltop Avenue, Newburgh, New York, June 1, 2006): Buffer zones. An area designed to buffer and protect against sight, sound and damaging effects. One buffer zone designation cannot fit all circumstances in a town. We have been residents of 6 Hilltop Avenue, a residential area of approximately twenty-five homes, for the last fifty-five years. We raised our three children and enjoy a very peaceful lifestyle.

Response 3.10-10: *As described elsewhere in this FEIS, the applicant has chosen to utilize several concepts from the alternatives presented in the DEIS, including the use of the wider 75 foot buffer from Hilltop Avenue. This buffer will include the preservation of existing trees, enhancement of undisturbed areas with shrubs and trees along the edge of the existing tree line, re-planting of disturbed areas with trees and shrubs, and use of solid fencing for noise and visual mitigation. The closest building to Hilltop will be 129 feet from the adjacent property line, and more than 160 feet from the nearest residence. The existing trees along the rear of the Hilltop properties are a mix of mature oaks, cherries, birches, beeches and some red maple, and combined with the proposed plantings will create a significant visual barrier and soft edge to the transitional area between the residences and the proposed development.*

Comment 3.10-11 Letter #11, Darrin Scalzo, Division Permit Coordinator, New York State Thruway Authority, Suffern, New York, July 31, 2006): Lighting - The Authority's design practice for non-lighted areas of the highway requires that site lighting from new developments must not increase the foot-candle magnitude more than one tenth (0.1) foot-candle above the existing foot-candle magnitude at the outside edge of the outside travel land of our roadway.

Response 3.10-11: *The projects lighting plan falls well within these guidelines. The lighting plan for the Marketplace will provide that the foot candle illumination increase at the edge of the traveled way for I-84 will be less than .1 foot candle. In addition, the lighting plan calls for 0 foot candle increases in illumination at all residential property boundaries.*

Comment 3.10-12 (Letter #31, Michael E. And Vaughn Ghikas, 331 Frozen Ridge Road, Newburgh, New York, July 25, 2006): We have adjoining land to the proposed Market Place which is a 3-lot subdivision approval with conditions set by the Newburgh Planning Board. It states than an interlocking block retaining wall has to be constructed on one of the three lots prior to any of these lots having a home built on them. This, I might add, was something that our surveyor, Jim Raab, was totally unaware of and since we are laymen, we did not understand this decision by the Town. Too, we were required to put up a $10,000 landscaping fee of which we have done. This fee was in addition to thousands of dollars paid to the town for meetings and fees required by the Town, etc. The Town took several years to come to this unfair decision/approval.

At the Winona Lake Association meeting on June 28, Mr. Wilder from the Market Place) stated that an 8 foot wooden fence would be built and a 35' - 50' barrier would be placed between the Market Place and all adjoining properties. ...

The Market Place should be required to put up an interlocking block retaining wall as the Town demanded from us or something as substantial for the health, safety and welfare of the Town. We are not the threat to the area that the Market Place is.

The Market Place landscaping should protect us from soil erosion of the land, water in basements, noise, security, resale value, etc. for all Town neighbors as their wall should.

Response 3.10-12: *The Marketplace site plan utilizes retaining walls, rip-rapped slopes, vegetated slopes, stabile rock cuts, sound fences and berms and other practices that are necessary and appropriate for the site construction. The Town is likely to bond many of these practices to ensure that they are constructed and maintained in an acceptable manner to ensure long term function.*

The Marketplace SWPPP submitted to the DEC has been designed to prevent soil erosion and water infiltration into adjacent properties or residences on these adjacent properties.

Embankments on the proposed site will be necessary between areas where significant grade differentials result from the creation of relatively level buildings, access drives and parking platforms on the varied topography of the site. The embankments will typically be constructed from material excavated from areas of cut. These materials will be analyzed for stability characteristics, and will include significant amounts of blast rock.

It is anticipated that the material used to construct fill areas, including the embankments, will be relatively porous, especially since the inclusion of blast rock will result in some voids. Therefore it is likely that most rainfall falling on the fill embankments will percolate down to a relatively impervious layer of soil and/or rock beneath the fill, and then flow via subsurface movement to either recharge the aquifer(s) or surface in the lower elevation wetlands or streams on or adjacent to the site. Please note that the only water to be percolating through the embankment material will be rainwater falling directly on the embankments, as any water falling on adjacent parking areas or buildings will be collected in the stormwater system and thence handled for filtration, infiltration and retention in accordance with the NYS DEC stormwater regulations.

The applicant proposes to surface the embankments with two (2) feet of soil which will be comprised of a minimum of eighteen (18) inches of subsoil and six (6) inches of topsoil (Figure 3.10-8). This proposed proportionate mix is based on the need to create a soil face with a stable angle of repose. The subsoil will be a mixture of loamy, well drained soil and some rock while the topsoil will have a higher organic content. Both soil types will be collected from site operations and stockpiled for later use on the embankments.

Landscape materials proposed for the embankments will include two types of plantings. Over the entire embankment will be seeded a conservation mix of native herbaceous and woody materials. Initially the annual and perennial herbaceous materials will be

evident, and gradually over time the seeded woody materials will begin to establish dominance.

Along the top of the embankments will be planted a mixture of native woody materials including major and minor deciduous trees, evergreen trees and shrub masses. In these areas the planting scheme will be more naturalistic with groups and clumps of trees and shrubs. Plantings in these areas will function to screen the new buildings as well as to return a portion of the site to a naturalized environment.

Rip rap has not been used as a finish cover on embankments on site, except for a relatively small section at the southeast corner of Building E where it abuts a commercial zone. As shown on the revised plans, seed mixes using low maintenance native species will be used on the re-graded embankments which are being surfaced with soil.

Comment 3.10-13 (Letter #1, Orange County Department of Planning, July 21, 2006): The proposed structures that are located closest to the residential neighborhoods off Hilltop Avenue should have more than a 50 foot buffer. These include the proposed retail buildings of C, 1, D and E. They are large structures that would need more buffering then the current zoning recommends (and that the applicant has provided in the site plan) to screen against these homes. Also as mentioned above, moving the buildings closer to the proposed main thorough fare road would create a less noticeable buffer than if it were closer to the residential neighborhoods adjoining the site.

Response 3.10-13: *As stated elsewhere throughout this FEIS, the applicant's preferred plan uses several elements discussed in the alternatives section of the DEIS, including relocation of the eastern access road to Route 52 onto DOT lands, and the expanded buffer alternative. This alternative uses a 75 foot vegetated buffer and a minimum 129 foot building setback in the area of the site adjacent to Hilltop Avenue. It is also proposed to use a ten foot high sound deadening fence between the buffer and the proposed buildings. (Please see additional information in Section 3.9, Noise). Along Brookside, where the access road approaches Route 52, a ten foot high fence is also proposed.*

Additional trees have been added to the Landscape Plan resulting from several changes. The spacing of major deciduous trees has been reduced from 50 feet to 40 feet. Additional trees have been located along the top of embankments, and in islands in the parking lots. Additional trees have also been added in wetland mitigation areas.

Since the future building facades have yet to be designed, it is not possible to provide a specific tree count for placement immediately adjacent to buildings at this time. This placement will need to be sensitive to window, door and circulation considerations. However the project sponsor commits to proposing the maximum number of reasonably achievable tree locations at the time of filing final site plans.

Currently the plans illustrate 1004 street trees, 287 evergreen trees and 244 minor trees for a total of 1535 trees along the roads, in parking areas and at the top of embankments. An additional 56 trees and several hundred shrubs will be used within the proposed wetland mitigation areas and detention basins.

Also please note that no invasive species will be used in the landscape plans for the site.

Comment 3.10-14 (Letter #5, Edwin J. Garling, AICP, Garling Associates, 301 Main Street, Goshen, New York, June 19, 2006): Brookside Avenue ends in a turnaround at I-84 and that end of the road will be eliminated. A new turnaround is now proposed north of the new access road. The turnaround should be shown on the landscape plan along with more landscaping to buffer residences now more exposed to both I-84 and the new access road to the Marketplace.

Response 3.10-14: *Comment noted. These comments are reflected on the revised Landscape Plan submitted with this FEIS. A breakaway gate for emergency vehicles will also be provided at the new Brookside cul-de-sac.*

Comment 3.10-15 (Letter #5, Edwin J. Garling, AICP, Garling Associates, 301 Main Street, Goshen, New York, June 19, 2006): Buildings A and B will rise 70 to 80 feet above the westbound I-84 ramp at Exit 7 to Route 300. Based on the current plan with no additional setbacks there is no way to screen this structure which sits above a 20-25 foot wall.

Response 3.10-15: *The retaining wall does not extend along the entire north side of the ramp, nor is it of continuous height. Also Building A/B does not sit directly above the retaining wall. It is situated 45 to 127 feet behind the wall. The Town Center buildings vary from approximately 80 to 120 feet behind the wall. To ameliorate the potential visual impacts in this area, plantings will be added along the south edge of pavement. This will screen the more objectionable views of parking and loading areas, but will not screen most of the building mass. However it is necessary for a retail development to be visible to be successful, and so some visibility is desirable for this reason.*

Comment 3.10-16 (Letter #5, Edwin J. Garling, AICP, Garling Associates, 301 Main Street, Goshen, New York, June 19, 2006): How will the new 50 foot hill behind the houses on Route 52 be screened? Will the existing woods be fully protected from erosion and will the erosion controls work?

Response 3.10-15: *This hill will be rip rapped with stone which will provide the finish surface. There is no practical re-vegetation method for stone rip rap, so the finish face will be what is visible to the extent that it is visible through the remaining woods separating it from the area residences. The erosion controls have been designed by a licensed NYS Engineer experienced in erosion.*

3.11 Historical and Archeological Comments and Responses

Comment 3.11-1 (Letter #22, John Parker, Attorney for Save Open Space, 565 Taxter Road, Suite 100, Elmsford, NY, July 20, 2006): We have obtained a letter from Hartgen Archeological Associates, cultural and historical experts. It indicates that their investigation has revealed that New York State and Federal National historical registries show numerous historical buildings existed within one mile of the proposed project site. SEQRA requires, amongst other things, careful consideration and a hard look at potentially significant adverse environmental impacts. At the heart of this inquiry of significance is consideration of "the impairment of the character or quality of important historical, archaeological, architectural, or aesthetic resources or of existing community or neighborhood character." 6 NYCRR Section 617.7(c)(1)(v). The Draft Environmental Impact Statement does not include any analysis of "historical" or "archaeological" resources, nor does it include any discussion of why such an analysis should not be required under the plain language of SEQRA. To the contrary, based upon the review of available documentary evidence, the Hartgen investigators concluded that

> Based upon the presence of five known archeological sites, a National Register Listed Property and a National Register Listed District (which is directly adjacent to the project area) all located within less than one mile from the project area, it is our opinion that a professional archeological investigation of this property is needed prior to any construction.

Letter of Karen Hartgen, Principal Investigator, Hartgen Archeological Associates, Inc. to Bernie Buller, Parish, Weiner, and Maffia, Inc., July 18, 2006. There is also no documentation in the DEIS that there has been compliance with New York State Preservation Office review requirements. Absent of **such** documentation, discussion or analysis of potentially significant adverse impacts to the historical and archeological resources on the proposed site, the Draft EIS as submitted to the Board **make** it legally inadequate.

The newly discovered evidence easily meets the criteria for requiring a SEIS. The regulations require such decision based upon "('a') the importance and relevance of the information; and ('b') the present state of the information in the EIS." 6 NYCRR Section 617.7(c)(1)(v). In this case, the proposed project calls for the obliteration and destruction of almost the entire site -- approximately 108 acres of a 120 acre site. This will be accomplished by blasting of approximately 480,000 cubic feet of bedrock from the center of the site, effectively removing about 30 feet from one side of the site and repositioning it and raising the other side by about the same 30 to 40 feet. It is unfathomable how any person could argue that the extent of the destruction of the site may not have a potentially significant adverse environmental impact on whatever historical or archeological resources may be currently found there. The answer to what historical or archeological resources are on-site is unknown, because the Applicant failed to include such analysis and review, contrary to the significance determination criteria of SEQRA in its submissions to the Board. Therefore, and for these reasons, the SEQRA SEIS criteria is clearly satisfied, and the request should be granted.

> ***Response 3.11-1:*** *The aforementioned information does not represent "newly discovered information", nor does it rise to the legal requirement for requiring a Supplemental EIS. The requirement to do a cultural resource study was not included*

in the adopted scope because there was no evidence that it represented an area of potential impact, nor was such request made at the public scoping meetings.

Nonetheless, the applicant retained a professional archaeologist as part of his own due diligence to conduct a Phase 1 cultural resources investigation project Area of Potential Impact (APE) in accordance with the NYS Office of Parks, Recreation and Historic Preservation (OPRHP) guidelines.

The Phase 1A site assessment study was carried out between January and November 2005 to evaluate the potential of the study area for containing Native and/or European American era cultural remains, based on known settlement patterns associated with these two occupations, documented cultural resources in the immediate vicinity of the project, and a reconnaissance of the property to identify areas of greater and lesser archaeological sensitivity. The flatter portions of the APE were considered to have an above-average potential for containing buried Native American cultural remains, while the northwestern most portion of the property was identified as having the highest potential for containing European American cultural resources.

As part of the Phase 1A study, standing structures adjacent to and within view of the project area were evaluated with regarding to meeting minimum age requirements for inclusion on the State or National Register of Historic Places. No structures meeting these criteria were identified within view of the proposed development. The Orange Mill Historic District, whose southwestern edge is located across South Plank Road from the northeastern most portion of the study area, has at most a possible view of the northeastern entrance drive of the proposed development.

A Phase 1B identification survey was carried out between October 2005 and March 2006, to determine whether buried cultural remains were subject to project impact. The survey investigated the affected areas by means of hand-dug screened shovel test holes. No evidence of Native American activity was encountered in the 1179 shovel tests executed. A small number of late twentieth century European American era items was encountered in a sparse, scattered context in sampling in the vicinity of Union Avenue, behind the existing residential structures adjacent to the eastern portion of the development area, and on the lots sampled along Brookside Avenue and South Plank Road.

Based on these investigations, the proposed Marketplace development may be seen to have no impact on either Native American or European American era cultural resources and no further work is warranted.

The complete Phase I report is included in the appendix of this document, and was forwarded to the NYS Office of Parks, Recreation and Historic Preservation for review. On November 13, 2006, the applicant received a determination from OPRHP that the proposed project will have no impact on cultural resources. This letter is also included in the appendix.

Comment 3.11-2 (Letter #13, Eric L. Gordon, Attorney representing Newburgh Mall, Keane & Beane, P.C., 445 Hamilton Avenue, White Plains New York, July 19, 2006): In this case, a supplemental DEIS is necessary because any review under SEQRA requires

consideration of cultural and archeological impacts. As discussed below, there is a strong likelihood that the proposed project will have a significant impact on cultural and archeological resources. In addition, the Applicant has failed to comply with the New York State Historic Preservation Office ("NYSHPO") requirements by undertaking the appropriate review required by the NYSHPO.

The DEIS does not contain any historic preservation review in regard to the Marketplace Project. There is also no discussion regarding why such a review is unnecessary in this case. Therefore, the public can only assume that the review was never undertaken. Simply deferring analysis of this issue is not appropriate under the "hard look" standard required by SEQRA. ...

The Mall has recently obtained a report from Hartgen Archeological Associates, Inc. Stating that:

> Based upon the presence of five known archeological sites, a National Register Listed Property and a National Register Listed District (which is directly adjacent to the project area) all located within less than one mile from the project area, it is our opinion that a professional archeological investigation of this property is needed prior to any construction.

(A copy of a study from Hartgen Archeological Associates, Inc., dated July 18, 2006, is attached.) This study establishes that there is a significant likelihood that the proposed project will impact cultural and archeological resources.

> ***Response 3.11-2:*** *The commentator is incorrect in stating that "any review under SEQRA requires consideration of cultural and archeological impacts." In the case of this project, the planning board conducted public scoping with an eye to focus the DEIS analysis to those areas of potential impacts, consistent with the requirements of SEQRA. As noted above, an archaeological investigation was not included in the Scope of work for the proposed Marketplace DEIS, however, the applicant carried out the investigation anyway. As stated above, a determination was received from the OPRHP that the proposed project will have no adverse impact on cultural resources.*

Comment 3.11-3 (Letter #48, Ruth L. Pierpont, Director, New York State Office of Parks, Recreation and Historic Preservation, Waterford New York, June 15, 2006): Based on reported resources, there is an archeological site in or adjacent to your project area. Therefore the Office of Parks, Recreation and Historic Preservation (OPRHP) recommends that a Phase 1 archeological survey is warranted for all portions of the project to involve ground disturbance, unless substantial prior ground disturbance can be documented. If you consider the project area to be disturbed, documentation of the disturbance will need to be reviewed by OPRHP. Examples of disturbance include mining activities and multiple episodes of building construction and demolition.

A Phase 1 survey is designed to determine the presence or absence of archeological sites or other cultural resources in the project's area of potential effect. The OPRHP can provide standards for conducting cultural resource investigations upon request. Cultural resource surveys and survey reports that meet these standards will be accepted and approved by the OPRHP. ...

Documentation of ground disturbance should include a description of the disturbance with confirming evidence. Confirmation can include current photographs and/or older photographs of the project area which illustrate the disturbance (approximately keyed to a project area map), past maps or site plans that accurately record previous disturbances, or current soil borings that verify past disruptions to the land. Agricultural activity is not considered to be substantial ground disturbance and many sites have been identified in previously cultivated land.

Response 3.11-3*: See Response 3.11-1 and Phase 1 report in Appendix.*

Comment 3.11-4 (Letter #14, Nathaniel J. Parish, Parish & Weiner Inc., 101 Executive Boulevard, Elmsford, New York, July 31, 2006): Cultural Archeological Resources The New York State office of Parks, Recreation and Historic Preservation Office (OPRHP) in a June 15, 2006 letter informed the Board that it would require a Phase I archeological survey. There was absolutely no information on the subject provided in the DEIS.

The OPRHP letter confirms the conclusions reached by Hartgen Archeological Associates, Inc. ("Hartgen") Cultural Resource Specialists, a firm which has performed many archeological and cultural resource studies throughout the Hudson Valley and the State of New York. They prepared a comment report, dated July 18, 2006, which has been transmitted for insertion in the public hearing records.

The Hartgen report summarizes its findings based solely on a preliminary archeological site file search. Customarily such a preliminary study would include a field review of the site, but that was not permitted by the applicant.

The Hartgen report concluded: "Based upon the presence of five known archeological sites, a National Register Listed Property and a National Register Listed District (which is directly adjacent to the project area) all located within less than one mile from the project area, it is our opinion that a professional archeological investigation of this property is needed prior to any construction.

It is my experience that this type of professional investigation always includes a field review of the site. If interested parties and the consultants are denied access to the site, they would be unable to provide knowledgeable comments with respect to whatever conclusions are reached by the applicants consultants.

The Cultural Resources Survey, when completed, must be included in a Supplementary DEIS.

Response 3.11-4: *See Response 3.11-1 and 2.*

4.0 ALTERNATIVES COMMENTS AND RESPONSES

Comment 4.-1 (Public Hearing, Eric Gordon, Keane & Beane, P.C. on behalf of Newburgh Mall, Newburgh, New York, June 29, 2006): SEQRA requires consideration and discussion of reasonable alternatives to the proposed action, which would achieve the same or similar objectives. Here the DEIS consists of six pages and a few diagrams out of—what did Mr. Parker mention—about 2,000 pages. The first one as he mentioned, no action. Obviously this project is in a commercial zone. As people said, there should be some type of reasonable development there. The remaining access road alternatives, buffer alternatives which suggest removing some parking, not eliminating any of the 850,000 square feet but eliminating parking to put in additional buffers; again, that's not a reasonable alternative. The other one is about modifying the design of the lifestyle center. Again, that does not clearly say that there's any elimination of the actual 850,000 square feet of retail space. None of these proposed alternatives contemplates a reduction of the scope or density of the overall project. It proposes alternative land use plans by reducing the scope of the project. For example, if you could eliminate some of the density and preserve some open space or provide for alternative land uses, many of the impacts you heard about in the last two public hearings, and I'm sure you'll be hearing more of in regard to trees, air pollution, traffic, drainage, wetlands, would be mitigated if they just presented a reasonable alternative development plan. The failure to consider and present reasonable alternatives is a violation of SEQRA and applicable law, and the developer should be required to prepare a Supplemental DEIS to address this deficiency and include real alternatives.

Response 4-1 *The adopted scope for the DEIS called for the analysis very specific alternatives. It did not include project alternatives that were smaller in scope, or suggest analysis of uses of the site that would affect a smaller footprint. Specifically, the scope required an analysis of the following alternatives:*

A. No Action

B. Site design alternative (building orientation)

C. Other Alternatives

The alternatives presented in the DEIS responded to those requirements. The DEIS considered alternative site access, site design alternatives (increased buffer at Buildings C and D, alternate lifestyle center configuration, options for pedestrian access). In finding the DEIS to be complete, the Planning Board determined that these alternatives were appropriate for continued SEQRA review. The site plan submitted with this FEIS incorporates features of these alternatives.

The commentator suggests that mitigation of certain impacts would be achieved by making the project smaller, such as trees, air pollution, drainage, etc. However, the applicant has developed a plan that conforms to zoning, stormwater regulations, blasting protocols and addresses other impacts such as those associated with traffic, visual, etc. That being the case, addressing a smaller alternative would not have a function, in view of the goals of the town with respect to site zoning and the comprehensive plan, and the applicant with respect to attracting tenants and completing a successful project.

Comment 4.-2 (Public Hearing, Nat Parish, Consultant to Newburgh Mall, June 29, 2006): In this particular case we're dealing with a project which has serious potential adverse impacts. They have been talked about all night here in this hearing and the previous hearing. What's demanded therefore, because of those serious impacts is not to just create another alternative but to create alternatives that better address, better mitigate the impacts that have been cited. I believe that those need to be those which will generate less traffic, those which will preserve more of the open space on the site and those which will involve less excavation and regrading of the site. I think a sensitive land use plan can be developed.

> ***Response 4.-2:*** *The commentator expresses the opinion that the Marketplace project will have serious adverse impacts. However, the analysis presented in the Draft EIS, along with mitigation measures incorporated into the plans, suggests that in fact, traffic will continue to flow at acceptable levels in the area, and adjoining land uses will be able to continue in a compatible fashion. The applicant believes that the mitigation measures proposed to date, are consistent with the intentions of SEQRA and do reduce impacts to acceptable levels. However, at the end of these proceedings, ultimately, it is the planning board's duty as Lead Agency to make Findings that address the adequacy of the mitigation of impacts.*
>
> *This property has been zoned for more than 40 years for the proposed use and is consistent with the densities permitted under the Town of Newburgh Planning & Zoning Ordinances. Moreover, the property and its location have been targeted in both the recently adopted Town and County Comprehensive plans for commercial development. The zoning for the site targets commercial uses and, except for senior housing, does not permit residential uses. There are better land options for warehouses and office buildings in the Town of Newburgh. With respect to retail development, siting such a use proximate to interstate highways and multiple access points directly off those interstate highways make the site very unique. There is no other site in the Town better suited for retail development. During almost continuous review of the Town's comprehensive plan over many years, this site has remained zoned in this manner in anticipation of high density commercial development. Potential adverse impacts can be mitigated in a number of ways, which are described throughout this FEIS.*
>
> *The zoning permits the development of 1.1 million square feet of retail space. The proposal is to develop 850,000 square feet of retail, or 20% less than the zoning ordinance permits.*

Comment 4.0-3 (Public Hearing, Diana Krautter reading a letter from John Gebhards, 48 Wintergreen Avenue, Newburgh, New York, June 29, 2006): Other than the no action alternative that leaves the tract of land as is, the other alternatives, access, road realignment, buffer and the life center provide little meaningful relief from the maladies of the proposed design. Too much traffic, pollution, stormwater impacts, habitat destruction. These alternatives are only minor tweaks, not significant alternatives. The developer refused to consider a more significant and meaningful alternative, a project that could truly serve the Town of Newburgh, such as a new urban center that could mean less traffic and pollution, more area left in a natural state but perhaps less profitable for the developer. … The Final DEIS should contain an evaluation of this alternative, a cumulative impact with the rapid rate

of development along Route 300 and Route 52. No one knows what the true impact will be when all is built out.

Response 4.-3: *See Response 4.-2 above.*

Comment 4.0-4 (Letter #5, Edwin J. Garling, AICP, Garling Associates, 301 Main Street, Goshen, New York, June 19, 2006): Alternatives must be discussed by the Planning Board prior to preparation of the FEIS. The alternatives and our comments are as follows:

1. **No action alternative** - Obviously, this is a SEQRA comparison alternative and not a realistic alternative.
2. **Access Road Realignment Alternative** - Shifting the road closer to I-84 and making it farther from residences has some real benefits for neighbors. This alignment eliminates a good deal of the blasting and wall.
3. **Buffer Alternative** - the newly proposed codes should be used. This alternative is likely to be part of the project and should be part of the FEIS, if not the DEIS.
4. **Alternative Lifestyle Center Design** - We favor some of the features of this plan, but do not believe that a "pad" site should be a part of the Lifestyle Center-the area should be fully integrated as a Main Street.

Response 4.0-4: *As mentioned above, the new preferred plan submitted with this FEIS incorporates the alternative access road layout to Exit 8/Route 52, shifting it several hundred feet to the south and away from residences on Brookside.*

Following a detailed discussion with Town consultants regarding the proposed buffer law, the applicant has prepared an additional alternative layout that meets the requirements of the new law as they are currently interpreted. Buildings C, D and 1 have been moved to the south to meet the proposed 150 foot setback, and a 100 foot landscaped zone is provided between the edge of pavement and the property line. In addition, the fence along this property line has been raised to 10 feet high, and extends a minimum of 50 feet beyond the ends of the buildings on either side. It is noted that in the original proposal the proposed eight foot high fence also extends several hundred feet in each direction past the ends of the buildings. This adjustment to the site plan results in the loss of approximately 20,000 square feet of building footprint, while leaving all available parking spaces.

The applicant is prepared to address other configurations of buildings in the lifestyle center, that will not change the building envelope, amount of parking, or square footage during the site plan review proceedings.

Comment 4.0-5 (Letter #5, Edwin J. Garling, AICP, Garling Associates, 301 Main Street, Goshen, New York, June 19, 2006): Page 4-1 to 4-4 Item .2 does not address the greatest benefits which are the elimination of the 65 foot wall, removal of extra site material and visual impact approaching the site from Route 52 at Exit 8.

Response 4.0-5: *The applicant agrees that Alternative site plan 3 is preferred to the original DEIS plan with respect to reducing visual impacts. The DOT has agreed to provide land adjacent to I-84 to permit the proposed access road to parallel I-84, if the Planning Board determines that this is the preferred location. This plan reduces*

the retaining wall in the DEIS site plan and locates the access road approximately 300 ft. closer to I-84 and away from residential neighborhoods.

Comment 4.0-6 (Letter #5, Edwin J. Garling, AICP, Garling Associates, 301 Main Street, Goshen, New York, June 19, 2006): Page 4-4 The buffer alternative should include the buffers currently being considered by the Town Board.

Response 4.0-6: *As noted above, the applicant has met with the Town's consultants to discuss the proposed buffer requirements, and has prepared an alternative plan that addresses them. Please see the response to Comment 4.0-4. The buffer on the final approved site plan will be whatever is required by law at the time of final site plan approval.*

In response to comments by neighbors on Hilltop Avenue, the developer has revised the proposed action, extending the vegetative buffers from 50 to 75 feet (a 50% increase) and to provide a building setback in the Hilltop area from 100 feet to an average of 135 feet, an increase of 35%.

Comment 4.0-7 (Letter #5, Edwin J. Garling, AICP, Garling Associates, 301 Main Street, Goshen, New York, June 19, 2006): Page 4-5 and Figure 4-4 The alternate for the lifestyle center has some of the angle parking benefits discussed, but virtually all traffic to it from Route 300 must come down the main street and all exiting traffic goes past Building A. Both alternate lifestyle centers must be discussed at a meeting between consultants.

Response 4.0-7: *The Main Street life style center is more pedestrian friendly and creates a sense of place. In order to accomplish this feeling and sense of place, parking needs to be located behind the building main street with walkways between buildings to provide access from the parking areas to the retail facades and retail front entrances. Final traffic flow and design aspects will be resolved during the final site plan discussions between the Board, the Town consultants and the applicant.*

Comment 4.0-8 (Public Hearing, Mike Edelstein, 26 Murray Avenue, Goshen, New York, June 1, 2006): The whole issue of alternative construction for the site is deficient. It's not necessarily the case that the site should not be used for something or has no purpose, but more mixed uses of the site should be also considered.

Response 4.0-8: *The existing zoning code limits the types of "mixed use" that a property in the IB zone can consider. The applicant's interest in this property is as a commercial development. Residential uses apart from senior housing are not permitted in the IB zone. To the best of the applicant's knowledge, no IB property in the Town of Newburgh has ever been partially or completely developed for senior housing.*

In major retail centers, critical mass creates demand and desirability for retailers. Many of the major retailers are requiring or will require a total retail project size that would not be feasible if other approved uses were included, such as office buildings and warehouses or truck stops.

Comment 4.0-9 (Public Hearing, Ellen Jane Gonyea, 26 Linden Drive, Newburgh, New York, June 1, 2006): I support the development of this property along the lines of the village

center, a model of which was proposed out of Congressman Hinchey's office early on in negotiations amongst the community and the developer. The mixed use of a village center, town center if you want, would include small business retail opportunities. That enhances and sustains private enterprise, private enterprise that is touchable by residents who may own those small businesses, not concerns that may come out of Knoxville, Tennessee as the Pilot Truck Stop. A village center might include townhouses. ... A village center would include a civic center for this Town where virtually there is no good place to meet. ... It would have a lifestyle center. The enhancement would include restaurants, museums, art centers which we don't have in our Town, and parking--excuse me, park facilities and recreation. This was an opportunity to add open space and recreational use. It's development, it's sustainable it protects the right of the developer to use his private property but adheres to the needs of the community. Such development plans would be of primary benefit to the concerned resident taxpayers now rather than to a transient tourist shopping population.

> ***Response 4.0-9:*** *As described in the DEIS, the lifestyle center proposed incorporates many of these ideas.*
>
> *Many of the uses proposed mentioned, such as civic centers, museums, recreational opportunities, art centers are typically public purpose developments and are constructed by governments on municipally owned land. It is not required of private developers to provide these facilities, although space could be available if a private party or public agency was interested in leasing space for such a facility.*
>
> *Mr. Hinchey's proposal, as the applicant understands it, was to build a multi-story urban retail and residential complex in the middle of the site. Mr. Hinchey's office would pursue federal funds to construct the required multi-level parking garage to service the project. In the applicant's opinion, there is no economic viability to this concept in Newburgh or its surrounds. Moreover, multistory buildings and residential uses are not permitted under the current planning and zoning ordinance. The guaranteed funding for multilevel parking garages with federal funds for private shopping centers would certainly be a concern.*
>
> *Generally, for most shoppers price is an important consideration and the national or regional retailers are often more competitive on price than local businesses. Where service is an important part of the retail business, local merchants often are more nimble and more successful than larger retailers. This is especially true with restaurants and boutique stores, such as those expected to locate in the lifestyle center.*

Comment 4.0-10 (Letter #14, Nathaniel J. Parish, Parish & Weiner Inc., 101 Executive Boulevard, Elmsford, New York, July 31, 2006): One of the most critical deficiencies of this DEIS is its total failure to include a consideration of alternative plans which would address, or at least mitigate the major impacts that the proposed plan will generate. It is certainly customary and appropriate for a lead agency to require an applicant to present and analyze plans which will have a lesser adverse impact, particularly where, as in this case, the impacts will be most severe.

The obliteration of a five acre wetland, the denuding of all the trees and vegetation within an almost 200 acre site, the excavation of 40 feet of rock within many portions of the site, and the severe traffic congestion which will occur at many intersection proximate to the

site--singly and together require the presentation and consideration of alternatives which will sharply reduce the scale of the proposal and/or provide a mix of land uses which will have lesser impacts.

The developer does not have an inherent right to develop the site to 100% of its theoretical zoning capacity. That is the maximum permitted development. But, it is within the Planning Board's site plan and SEQR review functions to require the developer to consider and present lesser impact plans--and for the Board to ultimately determine which of those plans will best address the public interest and have the least adverse impacts on the neighborhood. Thus far, the Board does not have those alternatives, and it must obtain them and present them for public review in a Supplementary DEIS.

Response 4.-10: *The developer is not developing the site to 100 percent of its zoning capacity. The proposed plan represents a program that is hundreds of thousands of square feet less. In order to achieve full development, structured parking would need to be provided and the applicant is not proposing that.*

The reader is directed to response 3.2-7 which discusses and sets forth the criteria for conducting a supplemental DEIS. That criteria would not be met in so far as the DEIS met the obligation for alternative review and the applicant's revised plan represents further mitigation of impacts, but does not rise to the level of requiring review in a supplemental Draft EIS.

As discussed in Response 4.-1 and 2, the applicant met the requirements of the adopted scoping document in the DEIS that was accepted as complete by the Planning Board. The applicant presented several alternatives related to site design in the DEIS. With the exception of a permit from the Army Corps of Engineers, for wetland impacts related to the access road to Route 52 at Meadow Avenue, the applicant does not require any special or unusual permits for the proposed project.

The layout as designed meets the zoning requirements and the intent of the comprehensive plan. While the applicant acknowledges that a number of trees will be cut and regrading of a large area of the site will be necessary, this is not a surprise considering the use that has been envisioned for this site for more than 30 years. Moreover, the treed condition of the site is one that is temporary at best. Aerial photographs indicate that much of the site was open field in the mid 1900's. The second and third growth trees that inhabit the site do not represent an unusual or unique condition.