

APPENDIX A  
SEQRA DOCUMENTATION



14-16-2 (2/87)-7c

SEQR

617.21  
Appendix A  
State Environmental Quality Review  
FULL ENVIRONMENTAL ASSESSMENT FORM

**Purpose:** The full EAF is designed to help applicants and agencies determine, in an orderly manner, whether a project or action may be significant. The question of whether an action may be significant is not always easy to answer. Frequently, there are aspects of a project that are subjective or unmeasurable. It is also understood that those who determine significance may have little or no formal knowledge of the environment or may be technically expert in environmental analysis. In addition, many who have knowledge in one particular area may not be aware of the broader concerns affecting the question of significance.

The full EAF is intended to provide a method whereby applicants and agencies can be assured that the determination process has been orderly, comprehensive in nature, yet flexible to allow introduction of information to fit a project or action.

**Full EAF Components:** The full EAF is comprised of three parts:

**Part 1:** Provides objective data and information about a given project and its site. By identifying basic project data, it assists a reviewer in the analysis that takes place in Parts 2 and 3.

**Part 2:** Focuses on identifying the range of possible impacts that may occur from a project or action. It provides guidance as to whether an impact is likely to be considered small to moderate or whether it is a potentially-large impact. The form also identifies whether an impact can be mitigated or reduced.

**Part 3:** If any Impact in Part 2 is identified as potentially-large, then Part 3 is used to evaluate whether or not the impact is actually important.

**DETERMINATION OF SIGNIFICANCE -Type 1 and Unlisted Actions**

Identify the Portions of EAF completed for this project:  Part 1  Part 2  Part 3

Upon review of the information recorded on this EAF (Parts 1 and 2 and 3 if appropriate), and any other supporting information, and considering both the magnitude and importance of each impact, it is reasonably determined by the lead agency that:

- A. The project will not result in any large and important impact(s) and, therefore, is one which will not have a significant impact on the environment, therefore a **negative declaration will be prepared.**
- B. Although the project could have a significant effect on the environment, there will not be a significant effect for this Unlisted Action because the mitigation measures described in PART 3 have been required, therefore a **CONDITIONED negative declaration will be prepared.\***
- C. The project may result in one or more large and important impacts that may have a significant impact on the environment, therefore a **positive declaration will be prepared.**

\* A Conditioned Negative Declaration is only valid for Unlisted Actions

AJM @ Swan Lake Estates - Kelly Bridge Road Subdivision

Name of Action

Town of Liberty Planning Board

Name of Lead Agency

John Schmidt

Chairman

Print or Type Name of Responsible Officer in Lead Agency

Title of Responsible Officer

Signature of Responsible Officer in Lead Agency

Signature of Preparer (If different from responsible officer)

12/7/04

Date

### PART 1-PROJECT INFORMATION

Prepared by Project Sponsor

NOTICE: This document is designed to assist in determining whether the action proposed may have a significant effect on the environment. Please complete the entire form, Parts A through E. Answers to these questions will be considered as part of the application for approval and may be subject to further verification and public review. Provide any additional information you believe will be needed to complete Parts 2 and 3.

It is expected that completion of the full EAF will be dependent on information currently available and will not involve new studies, research or investigation. If information requiring such additional work is unavailable, so indicate and specify each instance.

NAME OF ACTION <b>AJM @ Swan Lake Estates- Kelly Bridge Road Subdivision</b>			
LOCATION OF ACTION (Include Street Address, Municipality and County) <b>Kelly Bridge Road, Town of Liberty, Sullivan County</b>			
NAME OF APPLICANT/SPONSOR <b>AJM @ Swan Lake Estates, LLC</b>		BUSINESS TELEPHONE <b>( 631 ) 673-6860</b>	
ADDRESS <b>11 Wendover Drive</b>			
CITY/PO <b>Huntington</b>		STATE <b>NY</b>	ZIP CODE <b>11743</b>
NAME OF OWNER (If different) <b>Same</b>		BUSINESS TELEPHONE <b>( )</b>	
ADDRESS			
CITY/PO			
		STATE	ZIP CODE
DESCRIPTION OF ACTION  The proposed action consists of the subdivision of a 114.02 acre parcel into 21 lots. 20 lots will be for single family homes. One lot will be used as a recreational lot and lake access for home owners in the subdivision. 16 of the residential lots will be 5.01 acres or larger. 5 lots will be less than 5.01 acres. The smallest lot will be 2.38 acres in size and will contain the common lake access. The smallest residential lot will be 3.00 acres. All lots will be served by individual wells and septic systems. The access road through the subdivision will remain privately owned and maintained by the home owners association.			

Please Complete Each Question - Indicate N.A. if not applicable

#### A. Site Description

Physical setting of overall project, both developed and undeveloped areas.

1. Present land use:     Urban     Industrial     Commercial     Residential (suburban)     Rural (non-f arm)  
                                   Forest     Agriculture     Other

2. Total acreage of project area:    114.02    acres.

APPROXIMATE ACREAGE

	PRESENTLY	AFTER COMPLETION
Meadow or Brushland (Non-agricultural)	<u>0</u> acres	<u>0</u> acres
Forested	<u>114.02</u> acres	<u>81.02</u> acres
Agricultural (Includes orchards, cropland, pasture, etc.)	<u>0</u> acres	<u>0</u> acres
Wetland (Freshwater or tidal as per Articles 24, 25 of ECL)	<u>0</u> acres	<u>0</u> acres
Water Surface Area	<u>0</u> acres	<u>0</u> acres
Unvegetated (Rock, earth or fill)	<u>1</u> acres	<u>1</u> acres
Roads, buildings and other paved surfaces	<u>0</u> acres	<u>12</u> acres
Other (Indicate type) <u>lawns and landscaped areas</u>	<u>0</u> acres	<u>21</u> acres

3. What is predominant soil type(s) on project site? Arnot/Oguaga, Riverhead, Wellsboro/Wurtsboro, Swartswood

- a. Soil drainage:     Well drained 85 % of site     Moderately well drained 15 % of site  
                                   Poorly drained \_\_\_\_\_ % of site

b. If any agricultural land is involved, how many acres of soil are classified within soil group 1 through 4 of the NYS Land Classification -System? NA acres. (See 1 NYCRR 370).

4. Are there bedrock outcroppings on project site?     Yes     No

a. What is depth to bedrock? 0 - >5' (In feet)

5. Approximate percentage of proposed project site with slopes:  0-10% 50 %  10-15% 25 %  
 15% or greater 25 %
6. Is project substantially contiguous to, or contain a building, site, or district, listed on the State or the National Registers of Historic Places?  Yes  No
7. Is project substantially contiguous to a site listed on the Register of National Natural Landmarks?  Yes  No
8. What is the depth of the water table? 2 - >5 (in feet)
9. Is site located over a primary, principal, or sole source aquifer?  Yes  No
10. Do hunting, fishing or shell fishing opportunities presently exist in the project area?  Yes  No
11. Does project site contain any species of plant or animal life that is identified as threatened or endangered?  
 Yes  No According to General Observation / Letter from DEC  
 Identify each species \_\_\_\_\_
12. Are there any unique or unusual land forms on the project site? (i.e., cliffs, dunes, other geological formations)  
 Yes  No Describe \_\_\_\_\_
13. Is the project site presently used by the community or neighborhood as an open space or recreation area?  
 Yes  No If yes, explain \_\_\_\_\_
14. Does the present site include scenic views known to be important to the community?  
 Yes  No
15. Streams within or contiguous to project area: NA  
 a. Name of Stream and name of River to which it is tributary \_\_\_\_\_
16. Lakes, ponds, wetland areas within or contiguous to project area:  
 a. Name Swan Lake b. Size (in acres) +/- 352
17. Is the site served by existing public utilities?  Yes  No  
 a) If Yes, does sufficient capacity exist to allow connection?  Yes  No  
 b) If Yes, will improvements be necessary to allow connection?  Yes  No
18. Is the site located in an agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304?  Yes  No
19. Is the site located in or substantially contiguous to a Critical Environmental Area designated pursuant to Article 8 of the ECL, and 6 NYCRR 617?  Yes  No
20. Has the site ever been used for the disposal of solid or hazardous wastes?  Yes  No

### B. Project Description

1. Physical dimensions and scale of project (fill in dimensions as appropriate)
- a. Total contiguous acreage owned or controlled by project sponsor 114.02 acres.
- b. Project acreage to be developed: 114.02 acres initially; 114.02 acres ultimately.
- c. Project acreage to remain undeveloped 0 acres.
- d. Length of project, in miles: NA (If appropriate)
- e. If the project is an expansion, indicate percent of expansion proposed NA %;
- f. Number of off-street parking spaces existing 0, proposed 60
- g. Maximum vehicular trips generated per hour 40 (upon completion of project)?
- h. If residential: Number and type of housing units:
- |            | One Family | Two Family | Multiple Family | Condominium |
|------------|------------|------------|-----------------|-------------|
| Initially  | <u>20</u>  | _____      | _____           | _____       |
| Ultimately | <u>20</u>  | _____      | _____           | _____       |
- i. Dimensions (in feet) of largest proposed structure 35 height; 40 width; 60 length.
- j. Linear feet of frontage along a public thoroughfare project will occupy is? 236 ft.

2. How much natural material (i.e., rock, earth, etc.) will be removed from the site? 0 tons/cubic yards
3. Will disturbed areas be reclaimed?  Yes  No  N/A
  - a. If yes, for what intended purpose is the site being reclaimed? roadways and lawn areas
  - b. Will topsoil be stockpiled for reclamation?  Yes  No
  - c. Will upper subsoil be stockpiled for reclamation?  Yes  No
4. How many acres of vegetation (trees, shrubs, ground covers) will be removed from site? 12 acres.
5. Will any mature forest (over 100 years old) or other locally-important vegetation be removed by this project?  Yes  No Trees over 100 years old
6. If single phase project: Anticipated period of construction 24 months. (including demolition).
7. If multi-phased:
  - a. Total number of phases anticipated \_\_\_\_\_ (number).
  - b. Anticipated date of commencement phase 1 \_\_\_\_\_ month \_\_\_\_\_ year, (including demolition).
  - c. Approximate completion date of final phase \_\_\_\_\_ month \_\_\_\_\_ year.
  - d. Is phase 1 functionally dependent on subsequent phases?  Yes  No
8. Will blasting occur during construction?  Yes  No
9. Number of jobs generated: during construction 20, after project is complete 0
10. Number of jobs eliminated by this project 0
11. Will project require relocation of any projects or facilities?  Yes  No If yes, explain \_\_\_\_\_
12. Is surface liquid waste disposal involved?  Yes  No
  - a. If yes, indicate type of waste (sewage, industrial, etc.) and amount \_\_\_\_\_
  - b. Name of water body into which effluent will be discharged \_\_\_\_\_
13. Is subsurface liquid waste disposal involved?  Yes  No Type residential septic tank effluent
14. Will surface area of an existing water body increase or decrease by proposal?  Yes  No  
Explain \_\_\_\_\_
15. Is project or any portion of project located in a 100 year flood plain?  Yes  No
16. Will the project generate solid waste?  Yes  No
  - a. If yes, what is the amount per month 1.5 tons
  - b. If yes, will an existing solid waste facility be used?  Yes  No
  - c. If yes, give name Sullivan County Landfill; location Monticello, NY
  - d. Will any wastes not go into a sewage disposal system or into a sanitary landfill?  Yes  No
  - e. If Yes, explain \_\_\_\_\_
17. Will the project involve the disposal of solid waste?  Yes  No
  - a. If yes, what is the anticipated rate of disposal? \_\_\_\_\_ tons/month.
  - b. If yes, what is the anticipated site life? \_\_\_\_\_ years.
18. Will project use herbicides or pesticides?  Yes  No
19. Will project routinely produce odors (more than one hour per day)?  Yes  No
20. Will project produce operating noise exceeding the local ambient noise levels?  Yes  No during construction
21. Will project result in an increase in energy use?  Yes  No No after development  
If yes, indicate type(s) electricity and fossil fuels
22. If water supply is from wells, indicate pumping capacity 5 gpm min. gallons/minute.
23. Total anticipated water usage per day 8800 gallons/day.
24. Does project involve Local, State or Federal funding?  Yes  No  
If Yes, explain \_\_\_\_\_

25. Approvals Required:

	Type	Submittal Date
City, Town, Village Board	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
City, Town, Village Planning Board	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Subdivision Approval
City, Town Zoning Board	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	9/24/04
City, County Health Department	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Other Local Agencies	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Other Regional Agencies	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
State Agencies	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Federal Agencies	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

**C. Zoning and Planning Information**

- Does proposed action involve a planning or zoning decision?  Yes  No  
 If Yes, indicate decision required:  
 zoning amendment    zoning variance    special use permit    subdivision    site plan  
 new/revision of master plan    resource management plan    other \_\_\_\_\_
- What is the zoning classification(s) of the site? Rural Development - RD
- What is the maximum potential development of the site if developed as permitted by the present zoning?  
82 single family lots
- What is the proposed zoning of the site? no change
- What is the maximum potential development of the site if developed as permitted by the proposed zoning?  
82 single family lots
- Is the proposed action consistent with the recommended uses in adopted local land use plans?  Yes  No
- What are the predominant land use(s) and zoning classifications within a 1/4 mile radius of proposed action?  
Rural residential uses. Zoning classifications include RD, RS and AC.
- Is the proposed action compatible with adjoining/surrounding land uses within a 1/4 mile?  Yes  No
- If the proposed action is the subdivision of land, how many lots are proposed? 21  
 a. What is the minimum lot size proposed? 2.68 acres (recreation lot)
- Will proposed action require any authorization(s) for the formation of sewer or water districts?  Yes  No
- Will the proposed action create a demand for any community provided services (recreation, education, police, fire protection)?  Yes  No  
 a. If yes, is existing capacity sufficient to handle projected demand?  Yes  No
- Will the proposed action result in the generation of traffic significantly above present levels?  Yes  No  
 a. If yes, is the existing road network adequate to handle the additional traffic?  Yes  No

**D. Informational Details**

Attach any additional information as may be needed to clarify your project. If there are or may be any adverse impacts associated with your proposal, please discuss such impacts and the measures which you propose to mitigate or avoid them.

**E. Verification**

I certify that the information provided above is true to the best of my knowledge.

Applicant/Sponsor Name D. Randel Wasson Date 10/20/04  
 Signature *D. Randel Wasson* Title Project Engineer

If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment.

## Part 2-PROJECT IMPACTS AND THEIR MAGNITUDE

Responsibility of Lead Agency

**General Information (Read Carefully)**

- In completing the form the reviewer should be guided by the question: Have my responses and determinations been reasonable? The reviewer is not expected to be an expert environmental analyst.
- Identifying that an impact will be potentially large (column 2) does not mean that it is also necessarily significant. Any large impact must be evaluated in PART 3 to determine significance. Identifying an impact in column 2 simply asks that it be looked at further.
- The Examples provided are to assist the reviewer by showing types of impacts and wherever possible the threshold of magnitude that would trigger a response in column 2. The examples are generally applicable throughout the State and for most situations. But, for any specific project or site other examples and/or lower thresholds may be appropriate for a Potential Large Impact response, thus requiring evaluation in Part 3.
- The impacts of each project, on each site, in each locality, will vary. Therefore, the examples are illustrative and have been offered as guidance. They do not constitute an exhaustive list of impacts and thresholds to answer each question.
- The number of examples per question does not indicate the importance of each question.
- In identifying impacts, consider long term, short term and cumulative effects.

**Instructions (Read carefully)**

- a. Answer each of the 19 questions in PART 2. Answer Yes if there will be any impact.
- b. Maybe answers should be considered as Yes answers.
- c. If answering Yes to a question then check the appropriate box (column 1 or 2) to indicate the potential size of the impact. If impact threshold equals or exceeds any example provided, check column 2. If impact will occur but threshold is lower than example, check column 1.
- d. If reviewer has doubt about size of the impact then consider the impact as potentially large and proceed to PART 3.
- e. If a potentially large impact checked in column 2 can be mitigated by change(s) in the project to a small to moderate impact, also check the Yes box in column 3. A No response indicates that such a reduction is not possible. This must be explained in Part 3.

### IMPACT ON LAND

1 Will the proposed action result in a physical change to the project site?  
 NO  YES

Examples that would apply to column 2

- Any construction on slopes of 15% or greater, (15 foot rise per 100 foot of length), or where the general slopes in the project area exceed 10%.
- Construction on land where the depth to the water table is less than 3 feet.
- Construction of paved parking area for 1,000 or more vehicles.
- Construction on land where bedrock is exposed or generally within 3 feet of existing ground surface.
- Construction that will continue for more than 1 year or involve more than one phase or stage.
- Excavation for mining purposes that would remove more than 1,000 tons of natural material (i.e., rock or soil) per year.
- Construction or expansion of a sanitary landfill.
- Construction in a designated floodway.
- Other impacts \_\_\_\_\_

• Will there be an effect to any unique or unusual land forms found on the site? (i.e., cliffs, dunes, geological formations, etc.)  NO  YES

• Specific land forms: \_\_\_\_\_

1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated By Project Change
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
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<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No



IMPACT ON WATER

3. Will proposed action affect any water body designated as protected?  
(Under Articles 15, 24, 25 of the Environmental Conservation Law, ECL)

NO  YES

Examples that would apply to column 2

- Developable area of site contains a protected water body.
- Dredging more than 100 cubic yards of material from channel of a protected stream.
- Extension of utility distribution facilities through a protected water body.
- Construction in a designated freshwater or tidal wetland.
- Other impacts: \_\_\_\_\_

4. Will proposed action affect any non-protected existing or new body of water?

NO  YES

Examples that would apply to column 2

- A 10% increase or decrease in the surface area of any body of water or more than a 10 acre increase or decrease.
- Construction of a body of water that exceeds 10 acres of surface area.
- Other impacts: Construction activity will include boat launch and sand fill; individual dikes may also be constructed

5. Will Proposed Action affect surface or groundwater quality or quantity?

NO  YES

Examples that would apply to column 2

- Proposed Action will require a discharge permit.
- Proposed Action requires use of a source of water that does not have approval to serve proposed (project) action.
- Proposed Action requires water supply from wells with greater than 45 gallons per minute pumping capacity.
- Construction or operation causing any contamination of a water supply system.
- Proposed Action will adversely affect groundwater.
- Liquid effluent will be conveyed off the site to facilities which presently do not exist or have inadequate capacity.
- Proposed Action would use water in excess of 20,000 gallons per day.
- Proposed Action will likely cause siltation or other discharge into an existing body of water to the extent that there will be an obvious visual contrast to natural conditions.
- Proposed Action will require the storage of petroleum or chemical products greater than 1,100 gallons.
- Proposed Action will allow residential uses in areas without water and/or sewer services.
- Proposed Action locates commercial and/or industrial uses which may require new or expansion of existing waste treatment and/or storage facilities.
- Other Impacts- \_\_\_\_\_

6. Will proposed action alter drainage flow or patterns, or surface water runoff?

NO  YES

Examples that would apply to column 2

- Proposed Action would change flood water flows.

1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated By Project Change
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
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<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

- Proposed Action may cause substantial erosion.
- Proposed Action is incompatible with existing drainage patterns.
- Proposed Action will allow development in a designated floodway.
- Other impacts: \_\_\_\_\_

**IMPACT ON AIR**

7. Will proposed action affect air quality?  NO  YES  
 Examples that would apply to column 2

- Proposed Action will induce 1,000 or more vehicle trips in any given hour.
- Proposed Action will result in the incineration of more than 1 ton of refuse per hour.
- Emission rate of total contaminants will exceed 5 lbs. per hour or a heat source producing more than 10 million BTU's per hour.
- Proposed action will allow an increase in the amount of land committed to industrial use.
- Proposed action will allow an increase in the density of industrial development within existing industrial areas.
- Other impacts: \_\_\_\_\_

**IMPACT ON PLANTS AND ANIMALS**

8. Will Proposed Action affect any threatened or endangered species?  NO  YES  
 Examples that would apply to column 2

- Reduction of one or more species listed on the New York or Federal list, using the site, over or near site or found on the site.
- Removal of any portion of a critical or significant wildlife habitat.
- Application of pesticide or herbicide more than twice a year, other than for agricultural purposes.
- Other impacts: \_\_\_\_\_

9. Will Proposed Action substantially affect non-threatened or non-endangered species?  NO  YES  
 Examples that would apply to column 2

- Proposed Action would substantially interfere with any resident or migratory fish, shellfish or wildlife species.
- Proposed Action requires the removal of more than 10 acres of mature forest (over 100 years of age) or other locally important vegetation.

**IMPACT ON AGRICULTURAL LAND RESOURCES**

10. Will the Proposed Action affect agricultural land resources?  NO  YES  
 Examples that would apply to column 2

- The proposed action would sever, cross or limit access to agricultural land (includes cropland, hay fields, pasture, vineyard, orchard, etc.)

1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated By Project Change	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
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<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

- Construction activity would excavate or compact the soil profile of agricultural land.
- The proposed action would irreversibly convert more than 10 acres of agricultural land or, if located in an Agricultural District, more than 2.5 acres of agricultural land.
- The proposed action would disrupt or prevent installation of agricultural land management systems (e.g., subsurface drain lines, outlet ditches, strip cropping); or create a need for such measures (e.g. cause a farm field to drain poorly due to increased runoff)
- Other impacts: \_\_\_\_\_

**IMPACT ON AESTHETIC RESOURCES**

11 Will proposed action affect aesthetic resources?  NO  YES  
 (If necessary, use the Visual EAF Addendum in Section 617.21, Appendix B.)

Examples that would apply to column 2

- Proposed land uses, or project components obviously different from or in sharp contrast to current surrounding land use patterns, -whether man-made or natural.
- Proposed land uses, or project components visible to users of aesthetic resources which will eliminate or significantly reduce their enjoyment of the aesthetic qualities of that resource.
- Project components that will result in the elimination or significant screening of scenic views known to be important to the area.
- Other impacts: \_\_\_\_\_

**IMPACT ON HISTORIC AND ARCHAEOLOGICAL RESOURCES**

12. Will Proposed Action impact any site or structure of historic, pre-historic or paleontological importance?  NO  YES

Examples that would apply to column 2

- Proposed Action occurring wholly or partially within or substantially contiguous to any facility or site listed on the State or National Register of historic places.
- Any impact to an archaeological site or fossil bed located within the project site.
- Proposed Action will occur in an area designated as sensitive for archaeological sites on the NYS Site Inventory.
- Other impacts: \_\_\_\_\_

**IMPACT ON OPEN SPACE AND RECREATION**

13. Will Proposed Action affect the quantity or quality of existing or future open spaces or recreational opportunities?

Examples that would apply to column 2

- The permanent foreclosure of a future recreational opportunity.
- A major reduction of an open space important to the community.
- Other impacts: \_\_\_\_\_

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated By Project Change
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

**IMPACT ON TRANSPORTATION**

14. Will there be an effect to existing transportation systems?  
 NO  YES

Examples that would apply to column 2

- Alteration of present patterns of movement of people and/or goods.
- Proposed Action will result in major traffic problems.
- Other impacts: \_\_\_\_\_

**IMPACT ON ENERGY**

15. Will proposed action affect the community's sources of fuel or energy supply?  
 NO  YES

Examples that would apply to column 2

- Proposed Action will cause a greater than 5% increase in the use of any form of energy in the municipality.
- Proposed Action will require the creation or extension of an energy transmission or supply system to serve more than 50 single or two family residences or to serve a major commercial or industrial use.
- Other impacts: \_\_\_\_\_

**NOISE AND ODOR IMPACTS**

16. Will there be objectionable odors, noise, or vibration as a result of the Proposed Action?  
 NO  YES

Examples that would apply to column 2

- Blasting within 1,500 feet of a hospital, school or other sensitive facility.
- Odors will occur routinely (more than one hour per day).
- Proposed Action will produce operating noise exceeding the local ambient noise levels for noise outside of structures.
- Proposed Action will remove natural barriers that would act as a noise screen.
- Other impacts: \_\_\_\_\_

**IMPACT ON PUBLIC HEALTH**

17. Will Proposed Action affect public health and safety?  
 NO  YES

Examples that would apply to column 2

- Proposed Action may cause a risk of explosion or release of hazardous substances (i.e. oil, pesticides, chemicals, radiation, etc.) in the event of accident or upset conditions, or there may be a chronic low level discharge or emission.
- Proposed Action may result in the burial of "hazardous wastes" in any form (i.e. toxic, poisonous, highly reactive, radioactive, irritating, infectious, etc.)
- Storage facilities for one million or more gallons of liquified natural gas or other flammable liquids.
- Proposed action may result in the excavation or other disturbance within 2,000 feet of a site used for the disposal of solid or hazardous waste.
- Other Impacts: \_\_\_\_\_

1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated By Project Change	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
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<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

**IMPACT ON GROWTH AND CHARACTER OF COMMUNITY OR NEIGHBORHOOD**

18. Will proposed action affect the character of the existing community?  
 NO  YES

Examples that would apply to column 2

- The permanent population of the city, town or village in which the project is located is likely to grow by more than 5%.
- The municipal budget for capital expenditures or operating services will increase by more than 5% per year as a result of this project.
- Proposed action will conflict with officially adopted plans or goals.
- Proposed action will cause a change in the density of land use.
- Proposed Action will replace or eliminate existing facilities, structures or areas of historic importance to the community.
- Development will create a demand for additional community services (e.g. schools, police and fire, etc.)
- Proposed Action will set an important precedent for future projects.
- Proposed Action will create or eliminate employment.
- Other impacts: \_\_\_\_\_

1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated By Project Change	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes	<input type="checkbox"/> No

19. Is there, or is there likely to be, public controversy related to potential adverse environmental impacts?  
 NO  YES

**If Any Action in Part 2 Is Identified as a Potential Large Impact or If You Cannot Determine the Magnitude of Impact, Proceed to Part 3**

**Part 3-EVALUATION OF THE IMPORTANCE OF IMPACTS**

Responsibility of Lead Agency

Part 3 must be prepared if one or more impact(s) is considered to be potentially large, even if the impact(s) may be mitigated.

**Instructions**

Discuss the following for each impact identified in Column 2 of Part 2:

- 1 Briefly describe the impact.
2. Describe (if applicable) how the impact could be mitigated or reduced to a small to moderate impact by project change(s).
3. Based on the information available, decide if it is reasonable to conclude that this impact is **important**.

To answer the question of importance, consider:

- The probability of the impact occurring
- The duration of the impact
- Its irreversibility, including permanently lost resources of value
- Whether the impact can or will be controlled
- The regional consequence of the impact
- Its potential divergence from local needs and goals
- Whether known objections to the project relate to this impact.

(Continue on attachments)



## PART 2 - PROJECT IMPACTS AND THEIR MAGNITUDE

### Responsibility of Lead Agency

**General Information (Read Carefully)**

- In completing the form the reviewer should be guided by the question: *Have my responses and determinations been reasonable?* The reviewer is not expected to be an expert environmental analyst.
- The **Examples** provided are to assist the reviewer by showing types of impacts and wherever possible the threshold of magnitude that would trigger a response in column 2. The examples are generally applicable throughout the State and for most situations. But, for any specific project or site other examples and/or lower thresholds may be appropriate for a Potential Large Impact response, thus requiring evaluation in Part 3.
- The impacts of each project, on each site, in each locality, will vary. Therefore, the examples are illustrative and have been offered as guidance. They do not constitute an exhaustive list of impacts and thresholds to answer each question.
- The number of examples per question does not indicate the importance of each question.
- In identifying impacts, consider long term, short term and cumulative effects.

**Instructions (Read carefully)**

- a. Answer each of the 20 questions in PART 2. Answer **Yes** if there will be any impact.
- b. **Maybe** answers should be considered as **Yes** answers.
- c. If answering **Yes** to a question then check the appropriate box(column 1 or 2)to indicate the potential size of the impact. If impact threshold equals or exceeds any example provided, check column 2. If impact will occur but threshold is lower than example, check column 1.
- d. Identifying that an Impact will be potentially large (column 2) does not mean that it is also necessarily **significant**. Any large impact must be evaluated in PART 3 to determine significance. Identifying an impact in column 2 simply asks that it be looked at further.
- e. If reviewer has doubt about size of the impact then consider the impact as potentially large and proceed to PART 3.
- f. If a potentially large impact checked in column 2 can be mitigated by change(s) in the project to a small to moderate impact, also check the **Yes** box in column 3. A **No** response indicates that such a reduction is not possible. This must be explained in Part 3.

1	2	3
Small to Moderate Impact	Potential Large Impact	Can Impact Be Mitigated by Project Change

#### Impact on Land

1. Will the Proposed Action result in a physical change to the project site?

NO  YES

**Examples that would apply to column 2**

- |   |                                     |                          |                              |                             |
|---|-------------------------------------|--------------------------|------------------------------|-----------------------------|
| <input type="checkbox"/> Any construction on slopes of 15% or greater, (15 foot rise per 100 foot of length), or where the general slopes in the project area exceed 10%. | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Construction on land where the depth to the water table is less than 3 feet.   | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Construction of paved parking area for 1,000 or more vehicles.   | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Construction on land where bedrock is exposed or generally within 3 feet of existing ground surface.   | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Construction that will continue for more than 1 year or involve more than one phase or stage.  | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Excavation for mining purposes that would remove more than 1,000 tons of natural material (i.e., rock or soil) per year.                         | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
<input type="checkbox"/> Construction or expansion of a sanitary landfill.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Construction in a designated floodway.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

2. Will there be an effect to any unique or unusual land forms found on the site? (i.e., cliffs, dunes, geological formations, etc.)

NO  YES

<input type="checkbox"/> Specific land forms:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
---	--------------------------	--------------------------	--

**Impact on Water**

3. Will Proposed Action affect any water body designated as protected? (Under Articles 15, 24, 25 of the Environmental Conservation Law, ECL)

NO  YES

Examples that would apply to column 2

<input type="checkbox"/> Developable area of site contains a protected water body. <i>B(T) Stream to EAST END OF LMR SUBDIVISION</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Dredging more than 100 cubic yards of material from channel of a protected stream.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Extension of utility distribution facilities through a protected water body. <i>For one single-family home.</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Construction in a designated freshwater or tidal wetland. <i>DRIVEWAY for one single family home.</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

4. Will Proposed Action affect any non-protected existing or new body of water?

NO  YES

Examples that would apply to column 2

<input type="checkbox"/> A 10% increase or decrease in the surface area of any body of water or more than a 10 acre increase or decrease.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Construction of a body of water that exceeds 10 acres of surface area.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No



1  
Small to  
Moderate  
Impact

2  
Potential  
Large  
Impact

3  
Can Impact Be  
Mitigated by  
Project Change

5. Will Proposed Action affect surface or groundwater quality or quantity?

NO  YES

Examples that would apply to column 2

- Proposed Action will require a discharge permit. *NO*    Yes  No
- Proposed Action requires use of a source of water that does not have approval to serve proposed (project) action. *NO*    Yes  No
- Proposed Action requires water supply from wells with greater than 45 gallons per minute pumping capacity. *NO*    Yes  No
- Construction or operation causing any contamination of a water supply system. *NO*    Yes  No
- Proposed Action will adversely affect groundwater. *NO*    Yes  No
- Liquid effluent will be conveyed off the site to facilities which presently do not exist or have inadequate capacity. *NO*    Yes  No
- Proposed Action would use water in excess of 20,000 gallons per day. *8,800 + 7,920 = 16,720 gpd. from individual wells*    Yes  No
- Proposed Action will likely cause siltation or other discharge into an existing body of water to the extent that there will be an obvious visual contrast to natural conditions. *NO*    Yes  No
- Proposed Action will require the storage of petroleum or chemical products greater than 1,100 gallons. *NO*    Yes  No
- Proposed Action will allow residential uses in areas without water and/or sewer services. *Individual homes Yes.*    Yes  No
- Proposed Action locates commercial and/or industrial uses which may require new or expansion of existing waste treatment and/or storage facilities. *NO*    Yes  No
- Other impacts:    Yes  No

1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
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6. Will Proposed Action alter drainage flow or patterns, or surface water runoff?

NO  YES

Examples that would apply to column 2

- |   |                        |                                     |                          |                              |                             |
|---|------------------------|-------------------------------------|--------------------------|------------------------------|-----------------------------|
| <input type="checkbox"/> Proposed Action would change flood water flows                   | <i>NO</i>              | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Proposed Action may cause substantial erosion.                   |                        | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Proposed Action is incompatible with existing drainage patterns. |                        | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Proposed Action will allow development in a designated floodway. | <i>NO</i><br><i>NO</i> | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Other impacts:   |                        | <input type="checkbox"/>            | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

**IMPACT ON AIR**

7. Will Proposed Action affect air quality?

NO  YES

Examples that would apply to column 2

- |  |           |                          |                          |                              |                             |
|--|-----------|--------------------------|--------------------------|------------------------------|-----------------------------|
| <input type="checkbox"/> Proposed Action will induce 1,000 or more vehicle trips in any given hour.  | <i>NO</i> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Proposed Action will result in the incineration of more than 1 ton of refuse per hour.  | <i>NO</i> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Emission rate of total contaminants will exceed 5 lbs. per hour or a heat source producing more than 10 million BTU's per hour. | <i>NO</i> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Proposed Action will allow an increase in the amount of land committed to industrial use.                                       | <i>NO</i> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Proposed Action will allow an increase in the density of industrial development within existing industrial areas.               | <i>NO</i> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Other impacts:  |           | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

**IMPACT ON PLANTS AND ANIMALS**

8. Will Proposed Action affect any threatened or endangered species?

NO  YES

Examples that would apply to column 2

- |  |                          |                                     |   |                             |
|--|--------------------------|-------------------------------------|---|-----------------------------|
| <input type="checkbox"/> Reduction of one or more species listed on the New York or Federal list, using the site, over or near the site, or found on the site. | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
|--|--------------------------|-------------------------------------|---|-----------------------------|

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
<input type="checkbox"/> Removal of any portion of a critical or significant wildlife habitat.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<i>(CONSTRUCTION MAY OCCUR WITHIN 350' OF ONE INACTIVE NEST SITE)</i> <input type="checkbox"/> Application of pesticide or herbicide more than twice a year, other than for agricultural purposes.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

9. Will Proposed Action substantially affect non-threatened or non-endangered species?  
 NO  YES

Examples that would apply to column 2

<input type="checkbox"/> Proposed Action would substantially interfere with any resident or migratory fish, shellfish or wildlife species.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Proposed Action requires the removal of more than 10 acres of mature forest (over 100 years of age) or other locally important vegetation.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

**IMPACT ON AGRICULTURAL LAND RESOURCES**

10. Will Proposed Action affect agricultural land resources?  
 NO  YES

Examples that would apply to column 2

<input type="checkbox"/> The Proposed Action would sever, cross or limit access to agricultural land (includes cropland, hayfields, pasture, vineyard, orchard, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Construction activity would excavate or compact the soil profile of agricultural land.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> The Proposed Action would irreversibly convert more than 10 acres of agricultural land or, if located in an Agricultural District, more than 2.5 acres of agricultural land.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
<input type="checkbox"/> The Proposed Action would disrupt or prevent installation of agricultural land management systems (e.g., subsurface drain lines, outlet ditches, strip cropping); or create a need for such measures (e.g. cause a farm field to drain poorly due to increased runoff).	NO <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

**IMPACT ON AESTHETIC RESOURCES**

11. Will Proposed Action affect aesthetic resources? (If necessary, use the Visual EAF Addendum in Section 617.20, Appendix B.)

NO  YES

Examples that would apply to column 2

<input type="checkbox"/> Proposed land uses, or project components obviously different from or in sharp contrast to current surrounding land use patterns, whether man-made or natural. NO	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Proposed land uses, or project components visible to users of aesthetic resources which will eliminate or significantly reduce their enjoyment of the aesthetic qualities of that resource. NO	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Project components that will result in the elimination or significant screening of scenic views known to be important to the area. NO	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

**IMPACT ON HISTORIC AND ARCHAEOLOGICAL RESOURCES**

12. Will Proposed Action impact any site or structure of historic, prehistoric or paleontological importance?

NO  YES

Examples that would apply to column 2

<input type="checkbox"/> Proposed Action occurring wholly or partially within or substantially contiguous to any facility or site listed on the State or National Register of historic places. NO	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Any impact to an archaeological site or fossil bed located within the project site. NO	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Proposed Action will occur in an area designated as sensitive for archaeological sites on the NYS Site Inventory. NO	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

1  
Small to  
Moderate  
Impact

2  
Potential  
Large  
Impact

3  
Can Impact Be  
Mitigated by  
Project Change

Other impacts:

Yes No

**IMPACT ON OPEN SPACE AND RECREATION**

13. Will proposed Action affect the quantity or quality of existing or future open spaces or recreational opportunities?

NO  YES

Examples that would apply to column 2

The permanent foreclosure of a future recreational opportunity.

Yes No

A major reduction of an open space important to the community.

NO  
NO

Yes No

Other impacts:

Yes No

**IMPACT ON CRITICAL ENVIRONMENTAL AREAS**

14. Will Proposed Action impact the exceptional or unique characteristics of a critical environmental area (CEA) established pursuant to subdivision 6NYCRR 617.14(g)?

NO  YES

List the environmental characteristics that caused the designation of the CEA.

Examples that would apply to column 2

Proposed Action to locate within the CEA? NO

Yes No

Proposed Action will result in a reduction in the quantity of the resource?

NO

Yes No

Proposed Action will result in a reduction in the quality of the resource?

NO

Yes No

Proposed Action will impact the use, function or enjoyment of the resource?

NO

Yes No

Other impacts:

Yes No

1	2	3
Small to Moderate Impact	Potential Large Impact	Can Impact Be Mitigated by Project Change

**IMPACT ON TRANSPORTATION**

15. Will there be an effect to existing transportation systems?

NO     YES

Examples that would apply to column 2

- |   |                          |                          |                              |                             |
|---|--------------------------|--------------------------|------------------------------|-----------------------------|
| <input type="checkbox"/> Alteration of present patterns of movement of people and/or goods. <span style="margin-left: 100px;">NO</span> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Proposed Action will result in major traffic problems. <span style="margin-left: 100px;">NO</span>             | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Other impacts:   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

**IMPACT ON ENERGY**

16. Will Proposed Action affect the community's sources of fuel or energy supply?

NO     YES

Examples that would apply to column 2

- |  |                          |                          |                              |                             |
|--|--------------------------|--------------------------|------------------------------|-----------------------------|
| <input type="checkbox"/> Proposed Action will cause a greater than 5% increase in the use of any form of energy in the municipality. <span style="margin-left: 100px;">NO</span>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Proposed Action will require the creation or extension of an energy transmission or supply system to serve more than 50 single or two family residences or to serve a major commercial or industrial use. <span style="margin-left: 100px;">NO</span> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Other impacts:  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

**NOISE AND ODOR IMPACT**

17. Will there be objectionable odors, noise, or vibration as a result of the Proposed Action?

NO     YES

Examples that would apply to column 2

- |   |                          |                          |                              |                             |
|---|--------------------------|--------------------------|------------------------------|-----------------------------|
| <input type="checkbox"/> Blasting within 1,500 feet of a hospital, school or other sensitive facility. <span style="margin-left: 100px;">NO</span>  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Odors will occur routinely (more than one hour per day). <span style="margin-left: 100px;">NO</span>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Proposed Action will produce operating noise exceeding the local ambient noise levels for noise outside of structures. <span style="margin-left: 100px;">NO</span> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input type="checkbox"/> Proposed Action will remove natural barriers that would act as a noise screen. <span style="margin-left: 100px;">NO</span>   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| <input checked="" type="checkbox"/> Other impacts:  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

SMALL IMPACTS RELATED TO CONSTRUCTION NOISE WILL LIKELY OCCUR DURING CONSTRUCTION OF THIS PROJECT. THIS IMPACT WILL BE MITIGATED BY

ITS TEMPORARY NATURE, Page 18 of 21  
 TIMING OF MOST TYPICAL WORKING HOURS (DAYTIME HOURS),  
 LACK OF NEARBY SENSITIVE RECEPTORS AND OTHER MEASURES.

1  
Small to  
Moderate  
Impact

2  
Potential  
Large  
Impact

3  
Can Impact Be  
Mitigated by  
Project Change

**IMPACT ON PUBLIC HEALTH**

18. Will Proposed Action affect public health and safety?

NO  YES

- Proposed Action may cause a risk of explosion or release of hazardous substances (i.e. oil, pesticides, chemicals, radiation, etc.) in the event of accident or upset conditions, or there may be a chronic low level discharge or emission. *No*  Yes  No
- Proposed Action may result in the burial of "hazardous wastes" in any form (i.e. toxic, poisonous, highly reactive, radioactive, irritating, infectious, etc.) *No*  Yes  No
- Storage facilities for one million or more gallons of liquefied natural gas or other flammable liquids. *No*  Yes  No
- Proposed Action may result in the excavation or other disturbance within 2,000 feet of a site used for the disposal of solid or hazardous waste. *No*  Yes  No
- Other impacts:  Yes  No

**IMPACT ON GROWTH AND CHARACTER OF COMMUNITY OR NEIGHBORHOOD**

19. Will Proposed Action affect the character of the existing community?

NO  YES

Examples that would apply to column 2

- The permanent population of the city, town or village in which the project is located is likely to grow by more than 5%. *No*  Yes  No
- The municipal budget for capital expenditures or operating services will increase by more than 5% per year as a result of this project. *No*  Yes  No
- Proposed Action will conflict with officially adopted plans or goals. *No*  Yes  No
- Proposed Action will cause a change in the density of land use. *No - Proposed density consistent with existing zoning*  Yes  No
- Proposed Action will replace or eliminate existing facilities, structures or areas of historic importance to the community. *No*  Yes  No
- Development will create a demand for additional community services (e.g. schools, police and fire, etc.)  Yes  No

	1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact Be Mitigated by Project Change
<input type="checkbox"/> Proposed Action will set an important precedent for future projects.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Proposed Action will create or eliminate employment.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Other impacts:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Yes <input type="checkbox"/> No

NO

NO

20. Is there, or is there likely to be, public controversy related to potential adverse environment impacts?

NO  YES

*Public Comments and Objections already received.*

If Any Action in Part 2 Is Identified as a Potential Large impact or if you Cannot Determine the Magnitude of Impact, Proceed to Part 3

*See Attached*



## Part 3 - EVALUATION OF THE IMPORTANCE OF IMPACTS

### Responsibility of Lead Agency

Part 3 must be prepared if one or more impact(s) is considered to be potentially large, even if the impact(s) may be mitigated.

**Instructions** (If you need more space, attach additional sheets)

Discuss the following for each impact identified in Column 2 of Part 2:

1. Briefly describe the impact.
2. Describe (if applicable) how the impact could be mitigated or reduced to a small to moderate impact by project change(s).
3. Based on the information available, decide if it is reasonable to conclude that this impact is **Important**.

To answer the question of importance, consider:

- The probability of the impact occurring
- The duration of the impact
- Its irreversibility, including permanently lost resources of value
- Whether the impact can or will be controlled
- The regional consequence of the impact
- Its potential divergence from local needs and goals
- Whether known objections to the project relate to this impact.

*See Attached*



617.21  
State Environmental Quality Review

**SEQR Full Environmental Assessment Form**  
**Part 3 - Evaluation of the Importance of Impacts (Continuation)**

**Project Numbers:** 3-4836-00245/00001 & 3-4836-00248/00001

**Date:** March 31, 2006

**Name of Action:** Kelly Bridge Road & Lake Marie Road Subdivisions

**SEQR Status:** Type 1

**Preparer's Name :** Scott E. Sheeley, Deputy Regional Permit Administrator  
NYSDEC Division of Environmental Permits  
21 South Putt Corners Rd, New Paltz NY 12561-1696  
(845) 256-3050

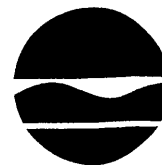
**Evaluation of the Importance of Impacts:**

- I. Impact on Wildlife: According to Part 1 of the EAF, and NYS Department of Environmental Conservation records, the project site contains bald eagle (*Haliaeetus leucocephalus*) nesting habitat. In addition, there is also active bald eagle nest habitat located near the project site on the west side of Swan Lake on an existing, undeveloped 31± parcel controlled by the project sponsor. The close proximity of this project to several nest sites raises the potential for adverse impacts to this species. The bald eagle is a federally- and State-listed threatened species. The project sponsor has incorporated the following measures into the project proposal to mitigate the potential adverse impacts:
- A. Provision of a 350-foot buffer of no development or construction around the active nest site on the Lake Marie Road Subdivision site. This protective buffer also includes State-designated Freshwater Wetland LW-16, further increasing the protective buffer;
  - B. Implementation of a conservation easement around the remaining active nest sites located on the 31± acre parcel located on the west side of Swan Lake to be held by the Delaware Highlands Conservancy, or like non-profit land trust. The conservation easement will provide for permanent protection of the most active nest sites on the lake. The easement will also allow DEC access to each nest site for monitoring and research.
  - C. Limitation of water craft use by the residents of each subdivision, and their guests, to allow only electric-only motorized craft and non-motorized craft. This restriction will be implemented from any land under the control of the project sponsor.
  - D. Preservation of a vegetative buffer between each proposed residence and the Lake. Vegetation clearing will be limited to only that necessary to provide a curved path to the lake shore, and within this area only woody vegetation with a diameter at breast height of three (3) inches or less may be removed. The clearing of any vegetation outside the path limits and within the 100-foot buffer area of State-designated wetlands will be prohibited.
  - E. A common lake access lot will be provided on the Lake Marie Road Subdivision site. The common access point will be located outside the 350-foot protective buffer and as

far from the active nest on the site as practicable. Provision of this common access lot eliminates proposed lake access from individual lots with lake frontage located near the active nest site.

Potential impacts to bald eagles at Swan Lake are important due to the status of this species on the State-threatened list, and its symbolic status as our national bird. The close proximity of the project sites to the nest sites at Swan Lake warrant further examination of the mitigation measures proposed in the context of an environmental impact statement. In addition, there are known objections to the project related to the potential impacts on bald eagles.

**New York State Department of Environmental Conservation**  
**Region 3, Division of Environmental Permits**  
21 South Putt Corners Road, New Paltz, NY 12561-1620  
(845) 256-3000 FAX (845) 255-3042  
Website: www.dec.state.ny.us



Denise M. Sheehan  
Commissioner

December 22, 2006

Via Facsimile (845-265-4418) and U.S. Mail

Chris Robbins  
Tim Miller Associates, Inc.  
10 North Street  
Cold Spring, New York 10516

RE: Draft Environmental Impact Statement Acceptance  
Town of Liberty, Sullivan County  
DEC No. 3-4836-00245/00001

Dear Mr. Robbins:

The New York State Department of Environmental Conservation (DEC) has reviewed the third draft Draft Environmental Impact Statement (DEIS) that was received by the Department on December 18, 2006. Based on our review, the DEIS has been accepted for public distribution and comment. Please find enclosed a "Notice of Draft Environmental Impact Statement Acceptance and Notice of Public Hearing".

Posting of Notices and DEIS

All material between the double horizontal lines in the enclosed notice must be published in the official newspaper of the Town of Liberty at least once during the week of January 1, 2007. Prior to or at the hearing, please provide the Department with an original affidavit of publication from the newspaper as proof that the enclosed hearing notice was duly published.

At this time, please also post the DEIS on the website indicated in the notice, which was the website address provided in your prior e-mail to the Department dated October 12, 2006.

Also enclosed is a "Notice of Complete Application" and cover letter that pertains to the Article 24, Freshwater Wetland permit application. This notice must also be published once during the week of January 1, 2007, in accordance with instructions contained in the cover letter.

Public Hearing

As outlined in the hearing notice, the Department has determined that a joint public hearing will be held on the DEIS and pending Article 24, Freshwater Wetland permit application. This hearing will serve as both a hearing on the DEIS pursuant to SEQR (6 NYCRR Part 617.9 (a) (4)), and a legislative hearing under UPA (6 NYCRR Part 621.8) on the pending Article 24 Freshwater Wetland permit application. Please provide a stenographer to be present at the hearing to create a record of the statements made at the hearing, and provide a written transcript following.

Mr. Robbins; December 22, 2006  
Kelly Bridge Road Subdivision- DEIS  
Page 2

If you have any questions about any of this information, I may be reached at (845) 256-3050. Please note, however, that I will be out of the office from December 25, 2006 through January 2, 2007, returning January 3, 2007.

Sincerely,



Scott E. Sheeley  
Deputy Regional Permit Administrator

Enclosures

cc: (with enclosures)  
M. Moran  
W. Rosenbach  
M. Duke  
B. Rudge  
S. Joule  
S. Goverman  
P. Nye, DEC Albany (4754)  
ALJ Villa, DEC Albany (1550)  
A. Murolo, AJM @ Swan Lake Estates, LLC  
R. Wasson, P.E.  
F. Eisenbud, Lamb & Barnosky, LLP

State Environmental Quality Review

**NOTICE OF DRAFT ENVIRONMENTAL IMPACT STATEMENT ACCEPTANCE  
and  
NOTICE OF PUBLIC HEARING**

Project Number: 3-4836-00245/00001

Date: December 22, 2006

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act; "SEQR") of the Environmental Conservation Law, and pursuant to Part 621 of the implementing regulations pertaining to Article 70 (New York State Uniform Procedures Act; "UPA") of the Environmental Conservation Law.

The NYS Department of Environmental Conservation (DEC), as lead agency, has accepted a Draft Environmental Impact Statement (Draft EIS) for the proposed action described below. In addition, DEC has determined that a public hearing will be held on Tuesday, February 6, 2007 at 7:00 p.m. to accept unsworn, oral comments on the Draft EIS and the Article 24, Freshwater Wetland Permit Application. Written comments on the Draft EIS and Permit Application will be accepted by the Department until February 26, 2007.

**Name of Action:** Kelly Bridge Road Subdivision

**SEQR Status:** Type 1

**UPA Status:** Major

**Description of Action:** The project proposal involves the construction of a residential subdivision adjacent to Swan Lake known as the Kelly Bridge Road Subdivision. The project involves the subdivision of a 114± acre parcel into 21 lots. One lot in the subdivision would be designated as a common use lot for lake access by the subdivision residents and their guests. The subdivision would be served by individual wells and septic systems. A second subdivision, previously known as the Lake Marie Road subdivision, is no longer proposed and the application before the Department for that project has been withdrawn.

**Location:** The project site is located on the northwest side of Kelly Bridge Road approximately 1,000 feet north of Kelly Bridge in the Town of Liberty, Sullivan County.

**Document Availability:** Copies of the Draft Environmental Impact Statement are available for public review at the following locations during normal business hours, and on the internet at the following website:

Town of Liberty Public Library  
189 North Main Street  
Liberty, New York 12754  
(845) 292-6070

NYS DEC Region 3 Office  
21 South Putt Corners Road  
New Paltz, New York 12561  
(845) 256-3050

Town of Liberty Town Hall  
120 North Main Street  
Liberty, New York 12754  
(845) 292-5110

On-line for viewing and downloading at:  
<http://www.timmillerassociates.com/publicreview>

**Public Hearing:** A legislative public hearing will be held on Tuesday, February 6, 2007 at 7:00 p.m. to hear unsworn, oral comments on the Draft EIS and the Article 24, Freshwater Wetland Permit Application. The hearing will be held at the Town of Liberty Recreation Hall located at 119 North Main Street, Liberty, New York 12754.

In the event of inclement weather and hearing cancellation by the Department, the hearing will be held at the same location on Thursday, February 15, 2007 at 7:00 p.m.

It is not necessary to file in advance to speak at the legislative hearing. Lengthy statements should be in writing and summarized for oral presentation. Reasonable time limits may be set for each speaker to afford everyone an opportunity to be heard. Equal weight will be given to both oral and written statements. The hearing location is reasonably accessible to persons with a mobility impairment. Pursuant to the State Administrative Procedure Act ("SAPA"), interpreter services shall be made available to hearing impaired persons, at no charge, upon written request to the Department's contact person at the address below.

**Public Comments:** Written public comments on the Draft EIS and Article 24, Freshwater Wetland permit application will be accepted by the lead agency until February 26, 2007 (Contact Person Below).

**For Further Information:**

Contact Person: Scott E. Sheeley, Deputy Regional Permit Administrator  
Address: NYS DEC Region 3  
21 South Putt Corners Rd.  
New Paltz NY 12561-1620  
Telephone Number: (845) 256-3050

---

**Distribution:**

***Involved Agencies (with Draft EIS)***

New York State Department of Environmental Conservation  
New York State Department of Health, Monticello  
Town of Liberty Planning Board  
Supervisor and Town Board, Town of Liberty

***Interested Agencies (Notice Only)***

Town of Liberty Police Department  
White Sulphur Springs Volunteer Fire Department  
Liberty Central School District  
U.S. Fish & Wildlife Service (with DEIS)

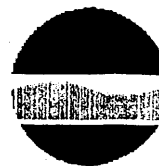
***Interested Individuals, Applicant, and Applicant Representatives (Notice Only)***

C. Edwards	F. Eisenbud, Esq., Lamb and Barnosky, LLP
C. Karras	R. Wasson, Wasson Engineering
J. Parker, Esq.	A. Murolo, AJM at Swan Lake, LLC
L. Killian	C. Robbins, Tim Miller Associates
M. Rubin	



THIS IS NOT A PERMIT

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**New York State Department of Environmental Conservation  
Notice of Complete Application**

*Date:* 12/22/2006

*Applicant:* AJM @ SWAN LAKE ESTATES LLC  
11 WENDOVER DR  
HUNTINGTON, NY 11743

*Facility:* KELLY BRIDGE RD SUBDIVISION  
KELLY BRIDGE RD  
LIBERTY, NY 12754

*Application ID:* 3-4836-00245/00002

*Permits(s) Applied for:* 1 - Article 24 Freshwater Wetlands

*Project is located:* in LIBERTY in SULLIVAN COUNTY

*Project Description:*

The applicant proposes to install 11 floating docks, walking paths, and one residential driveway within State-designated Freshwater Wetland LW-22 (Class II) and its 100-foot adjacent area associated with a residential subdivision known as the Kelly Bridge Road Subdivision. The project site is located on the west side of Kelly Bridge Road, approximately 800 feet north of Kelly Bridge. Each dock will be 6 feet by 20 feet, except one common dock, which will be 6 feet by 40 feet. As proposed the project will result in the disturbance of approximately 1.5 acres of the wetland 100-foot adjacent area and less than 0.01 acre of the wetland. A Stormwater Pollution Prevention Plan has been prepared in accordance with the SPDES General Permit for Stormwater Discharges from Construction Activities (GP-02-01).

In addition, the project is the subject of a Draft Environmental Impact Statement (EIS). A public hearing on the permit application and the Draft EIS will be held on February 6, 2007 at 7:00 p.m. at the Town of Liberty Recreation Hall located at 119 North Main Street, Liberty, New York.

*Availability of Application Documents:*

Filed application documents, and Department draft permits where applicable, are available for inspection under the provisions of the Freedom of Information Law during normal business hours at the address of the contact person.

*State Environmental Quality Review (SEQR) Determination*

A draft environmental impact statement has been prepared on this project and is on file.

*SEQR Lead Agency* NYS Department of Environmental Conservation

*State Historic Preservation Act (SHPA) Determination*

Cultural resource lists and map have been checked. No registered, eligible or inventoried archaeological sites or historic structures were identified at the project location. No further review in accordance with SHPA is required.

*Availability For Public Comment*

Comments on this project must be submitted in writing to the Contact Person no later than 02/26/2007

*Contact Person*

SCOTT E SHEELEY  
NYSDEC  
21 SOUTH PUTT CORNERS RD  
NEW PALTZ, NY 12561-1620  
(845) 256-3054  
3850

---

**CC List for Complete Notice**

Supervisor, Town of Liberty  
Town of Liberty Planning Board  
D. Gaugler, DEC Region 3  
J. Swentusky, DEC Region 3  
S. Joule, DEC Region 3  
C. Robbins, Tim Miller Associates  
R. Wasson, Wasson Engineering  
F. Eisenbud, Esq.  
NYS Dept. of Health, Monticello  
J. Parker, Esq.  
C. Edwards  
C. Karras  
L. Killian  
M. Rubin  
ENB

U S F W S - C O R T L A N D

Kelly B. [redacted] Kelly Bridge Road and Lake Marie Road Subdivisions  
AJM @ Swan Lake Estates, LLC  
Town of Liberty, Sullivan County

## State Environmental Quality Review Act (SEQRA)

### FINAL SEQRA SCOPING DOCUMENT

May 22, 2006

#### INTRODUCTION AND PURPOSE OF THIS DOCUMENT

As lead agency, the New York State Department of Environmental Conservation (DEC) has determined that a Draft Environmental Impact Statement (DEIS) will be prepared in accordance with the requirements of 6 NYCRR Part 617.8 to assess the potential significant adverse impacts regarding the above-referenced action, which involves two projects located on separate, non-contiguous sites. On February 10, 2006, following its review of a SEQRA Full Environmental Assessment Form as required by SEQRA's preliminary "determination of significance" procedures, the Department determined that the action had the potential for at least one significant adverse impact and would therefore require the preparation of a DEIS. As required by SEQRA regulations, a Positive Declaration was issued and circulated to all involved agencies and the public that a DEIS would be prepared. In accordance with SEQRA regulations, the Positive Declaration also stated that "scoping" would be conducted through the preparation and circulation of a draft "scope document" for public and agency review and an opportunity to comment. The public comment period for the draft scope ended on April 28, 2006.

The primary goals of scoping are to focus the DEIS on potentially significant adverse impacts and to eliminate consideration of those impacts that are irrelevant or non-significant. The scoping document specifies the DEIS content and level of detail of the analysis, the range of alternatives, the mitigation measures needed and the identification of non-relevant issues (see 6 NYCRR Part 617.8).

Scoping requires the lead agency to prepare and circulate a copy of a "draft scope" to all involved agencies and the public for comment, and then the issuance of a "final scope" following the close of the scoping comment period. The public comment period for the draft scope ended on April 28, 2006. After the Department's review of the comment letters received, this final scope has been adopted. SEQRA regulations define the required content of a final scoping statement [see 6 NYCRR Part 617.8 (f)] and these are presented below.

#### DESCRIPTION OF THE PROPOSED ACTION

The project proposal involves the construction of two residential subdivisions adjacent to Swan Lake. The first subdivision is known as Kelly Bridge Road Subdivision and involves the

subdivision of a 114± acre parcel into 21 lots. The second subdivision is known as the Lake Marie Road subdivision and involves the subdivision of a 121± acre parcel of land into 20 lots. One lot in each subdivision would be designated as a common use lot for lake access by the subdivision residents and their guests. Each subdivision would be served by individual wells and septic systems.

The Kelly Bridge Road Subdivision project site is located on the northwest side of Kelly Bridge Road approximately 1,000 feet north of Kelly Bridge. The Lake Marie Road Subdivision site is located on the south side of Lake Marie Road approximately 0.6 mile southeast of the intersection with Townsend Road.

### GENERAL SCOPING CONSIDERATIONS

Unless otherwise directed by this scoping document, the provisions of 6 NYCRR Part 617.9(b) shall apply to the content of the DEIS and are incorporated herein by reference. The DEIS will assemble relevant and material facts, evaluate reasonable alternatives, and will be written in plain language that can be easily read and understood by the public. Highly technical material will be summarized and, if it must be included in its entirety, referenced in the DEIS and included as an appendix.

The DEIS will be written in the third person without the use of the terms I, we, and our. Narrative discussions will be accompanied to the greatest extent possible by illustrative tables and graphics. All graphics will clearly identify the project area, and footnotes will be used to cite references. All assertions will be supported by evidence, while opinions of the sponsor that are unsupported by evidence will be identified as such.

Full scale site plans are to be included with the DEIS as an appendix and reduced copies of such plans will be included in the text of the DEIS. The entirety of the DEIS will be provided in sufficient copies to be distributed to each involved and interested agency and at least one public repository to be located in the Town of Liberty. In addition, the entirety of the DEIS will be provided to the lead agency in electronic format as Adobe Acrobat Reader files on a CD-Rom for electronic posting pursuant to recently enacted changes to Article 8 of the Environmental Conservation Law.

### DEIS SCOPE AND CONTENT

- i. DEIS cover sheet listing names, addresses, and phone numbers of the individuals or organizations that prepared any portion of the DEIS, title of the project, DEIS identification, location, name and address of the lead agency, as well as the name and telephone number of the person at the lead agency who can provide further information, and relevant dates (i.e., date of DEIS submittal, provision for insertion date of acceptance by the NYSDEC, date, time, and place of the public hearing, final date for acceptance of written comments).

- ii. DEIS table of contents including listing of tables, figures, maps, charts, appendices, and any items that may be submitted under separate cover (and identified as such).

## 1.0 EXECUTIVE SUMMARY

All of the information presented in the Executive Summary will be repeated in greater detail and substance in the "Existing Setting", "Potential Environmental Impacts", and "Proposed Mitigation Measures" sections of the DEIS as appropriate. Section 1.0 will be presented in a brief and succinct format, and should not constitute an exhaustive narrative discussion that will be provided elsewhere.

### 1.1 Description of the Proposed Action

A description of the action addressing both sites/projects will be provided, including:  
Site location (roads, Town, County, Tax ID Numbers);

- Total site acreage;
- Easements affecting the site;
- Existing zoning;
- Existing access;
- Existing site character and vegetative conditions;
- A list of abutting properties; and
- Any known plans for development on abutting parcels owned or under contract by the Sponsor.

### 1.2 List of Involved Agencies

A list of all involved agencies will be provided, along with the required approvals and permits they are responsible for granting.

### 1.3 List of Interested Agencies

A complete list of all interested agencies will be provided. This list shall include the U.S. Fish and Wildlife Service, Cortland, New York Field Office.

### 1.4 Summary of Potential Impacts and Mitigation Measures

A summary of the proposed project's potential impacts and proposed mitigation measures will be provided.

### 1.5 Summary of Project Alternatives Considered

A summary of the project alternatives considered will be provided.

## 2.0 DESCRIPTION OF THE PROPOSED ACTION

Section 2.0 of the DEIS will provide a description of the project sites and their location, a description of each proposed project, the public need as well as general social and economic benefits of each project, the objectives of the project sponsor, and a description of required approvals, reviews, and permits.

### 2.1 Site Location and Description

A written and graphic description of the site locations will be provided. This will include zoning designations and land uses on each site and within a 1/4-mile radius of each site.

A description of the existing infrastructure serving the project sites and/or the immediate environs, including existing water supply, wastewater treatment, site access, and road network will be provided.

### 2.2 Project Purpose, Need, and Benefits

The purpose or objectives of the project sponsor will be clearly stated. The public need and benefits of the proposed action will be defined and evaluated.

## 3.0 POTENTIAL ENVIRONMENTAL IMPACTS

This section of the DEIS will evaluate potential significant adverse impacts to natural resources that may result from the proposed projects.

### 3.1 Wildlife

The project sites are located near and contain nest sites used by bald eagles (*Haliaeetus leucocephalus*). The bald eagle is a federally- and State-listed threatened species. The project's proximity to several nest sites raise the potential for adverse impacts to this species.

#### *Existing Conditions*

The DEIS shall contain a description of the existing vegetation and wildlife conditions on each site, Swan Lake itself, and the lands contiguous to Swan Lake.

#### *Potential Impacts*

An evaluation of potential impacts to bald eagles will be provided. The evaluation will include potential impacts to habitats used by bald eagles at the project sites, within Swan Lake, and the lands contiguous to Swan Lake. Bald eagle uses considered in the evaluation shall include, but not be limited to, nesting, foraging, roosting, and overwintering. The evaluation of potential impacts shall include a discussion of lake access and use from each project site and all lands controlled by the project sponsor within or contiguous to Swan Lake.

### *Mitigation Measures*

A discussion of applicable mitigation measures identified as necessary or required by the NYSDEC or U.S. Fish & Wildlife Service will be provided. Reference to applicable portions of the Northern States Bald Eagle Recovery Plan will be included and may be attached as an appendix to the DEIS.

## **4.0 ADVERSE UNAVOIDABLE SIGNIFICANT ENVIRONMENTAL IMPACTS IF PROJECT IS IMPLEMENTED**

The EIS will include a discussion of any adverse environmental impacts identified in Section 3.0 that can be expected to occur regardless of the mitigation measures proposed.

## **5.0 ALTERNATIVES**

The project alternatives identified in the list below will be evaluated in the EIS. Each alternative identified, with the exception of the no-build alternative, will be presented in narrative form and in a small (11 inches by 17 inches) conceptual plan or layout with the sensitive environmental resources or areas clearly identified. The preferred alternative shall also include full size plan sheets.

- The "No Build" Alternative will be addressed, as required under 6 NYCRR Part 617.9 (b) (5);
- Maximum density subdivision allowed by existing zoning;
- Cluster subdivision that would avoid direct impacts to sensitive environmental resources (e.g. wetlands, streams, and important eagle habitat) while achieving a maximum number of lots;
- A preferred alternative;
- A conventional subdivision that would avoid all impacts to wetlands, streams, and the secondary protection zone for bald eagles identified in the Northern States Bald Eagle Recovery Plan.

## **6.0 APPENDICES**

In addition to any required appendices identified above, the appendices listed below shall be included in the DEIS. Additional appendices may be provided as necessary.

- Full scale project site plans, and, if already available, grading plans;
- The bald eagle mitigation plan prepared for the project;
- Where necessary, applicable portions of the Northern States Bald Eagle Recovery Plan.
- A CD-Rom containing the entirety of the DEIS in electronic format suitable for posting on an internet web site.

## 7.0 ISSUES NOT TO BE ADDRESSED IN THE DEIS

Several issues were determined not relevant or not environmentally significant and they will not be addressed in the environmental impact statement for this project. Such issues and potential impacts include those related to the following:

### 7.1 Impacts on Transportation

Each project site has current access to roads maintained by the Town of Liberty. According to the Part 1 of the Environmental Assessment Forms prepared for the Kelly Bridge Road site and the Lake Marie Road site, a maximum of 36 and 40 vehicular trips per hour will be generated from each site, respectively. These estimates include two trips to or from each residence at each development within the same one hour period. The sponsor anticipates that these residences will be occupied primarily as second homes on the weekends or infrequently for longer periods. Therefore, the traffic estimates provided in the EAF are not likely to reflect the normal traffic levels at the site. Nevertheless, Kelly Bridge Road and Lake Marie Road are both lightly traveled rural roads and the additional traffic generated at each site will not adversely impact the level of service provided by these roads. Therefore, the potential effects on transportation do not require further evaluation in the EIS.

### 7.2 Wetlands and Vegetation

Portions of State-designated Freshwater Wetland Numbers LW-22 and LW-16 occur within the Kelly Bridge Road and Lake Marie Road sites, respectively. Each wetland consists of shallow floating, emergent, and woody vegetation growing along the lake shore. Freshwater Wetland LW-22 also includes the wide, meandering stream corridor along a tributary of Swan Lake that flows from northeast to south west just north of the Kelly Bridge Road site. The estimated area of State-designated wetlands and buffer areas on the Kelly Bridge Road and Lake Marie Road Subdivision sites are noted in the following table:

Estimate of State-Designated Wetland Areas and Impacts	Kelly Bridge Road	Lake Marie Road	Total
Wetlands (acres)	6	8	14
100-foot Adjacent Area (acres)	14	10	24
Wetland Impacts (acres)	0.08	0.02	0.10
100-foot Adjacent area	0.34	0	0.34

Disturbances within the wetlands and their 100-foot adjacent areas will include some selective clearing of woody vegetation less than 3-inches in diameter to create lake access paths, installation of floating docks, construction of one residential driveway, and installation of a stormwater outfall. The remainder of construction activities on each site will avoid the regulated wetland and buffer areas. The total area of wetland disturbance proposed is approximately 0.10 acres and 0.34 acre of the 100-foot adjacent area. This represents less than one percent of the



entire wetlands and about 1.4 percent of the 100-foot adjacent area. Therefore, the potential effects on wetlands do not require further evaluation in the EIS.

### 7.3 Water quality

The project sites are both adjacent to Swan Lake, an impounded waterbody that is classified B under the New York State water quality classification system. There are no classified streams that flow through the Kelly Bridge Road site. There are two tributaries of Swan Lake that flow through the Lake Marie Road Site [Water Index Nos. D-10-22-P128-1a, Class B(T), and D-10-22-P128-2, Class B(T)]. These streams flow through the eastern and western limits of the site. A single residential driveway is proposed across one tributary on the eastern side of the site, which will require an Article 15, Protection of Waters Permit from the DEC. No construction is proposed across the western tributary. Each project will require coverage under the State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activities (GP-02-01) for the disturbance of over one acre of land. This permit, administered by the NYSDEC, requires the implementation of a Stormwater Pollution Prevention Plan (SWPPP) that includes temporary erosion control measures, as well as long-term stormwater management measures. The NYSDEC must review and approve the measures included in the SWPPP prior to authorizing the sponsor's coverage under this SPDES General Permit. The DEC review of each SWPPP, and the sponsor's strict compliance with the approved plan, will minimize adverse impacts of each project on the water quality of Swan Lake and its tributary streams during and after construction.

The project sites will be served by individual wells and subsurface wastewater disposal systems. As proposed, the estimated total water demand of both development sites is approximately 16,720 gallons per day. Provided that these systems are designed and constructed in accordance with good engineering practice and all applicable building codes, no adverse impacts on groundwater quality are expected to result from this project. The subdivision layout, water service, and sewage disposal system, are all subject to approval by the NYS Department of Health pursuant to NYS Realty Subdivision Laws (Article 11, Title II of the Public Health Law and Article 17, Title 15 of the Environmental Conservation Law). Therefore, the potential effects on water quality do not require further evaluation in the EIS.

### 7.4 Land

The project will result in the disturbance of approximately 33 acres of land at the Kelly Bridge Road site and 22.5 acres of land at the Lake Marie Road site. Temporary erosion control measures will be required in accordance with the State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activities (GP-02-01). A portion of the Kelly Bridge Road site that has already been disturbed, prior to gaining coverage under SPDES GP-02-01, has been stabilized to prevent soil erosion. Following construction, the site will be permanently stabilized through landscaping, and construction of finished roadway and building surfaces. For these reasons, the potential effects on land do not require further evaluation in the EIS.

According to the NYS Department of Agriculture & Markets map of agricultural districts, the Lake Marie Road site is within Sullivan County Agricultural District No. 1. However, the site is not currently in agricultural production and no adverse impacts to agriculture are anticipated. In addition, the Town of Liberty is required to consider agricultural impacts in its review of the local application for site plan approval and coordinate its review with the Sullivan County Planning Board or Agency, in accordance with Section 283-a of New York State Town Law. In accordance with this provision, the sponsor must provide an agricultural data statement for the project describing agricultural activities on and near the site which may impact, or be impacted by, the proposed project.

#### **7.5 Community Character**

The land uses surrounding each project site include rural residential areas with scattered single family residences. In addition, each proposal is consistent with the existing local zoning requirement that apply to each site. According to the Environmental Assessment Form, the proposed densities of the Kelly Bridge Road and Lake Marie Road developments are approximately 25% and 50% of the density allowed by current zoning, respectively. Therefore, the potential effects on community character do not require further evaluation in the EIS.

#### **7.6 Aesthetics**

The areas surrounding each project site are characterized by rural residential land use. Views of each structure proposed within the Kelly Bridge Road site will be screened from Kelly Bridge Road and Swan Lake by forested vegetation. Some vegetative screening exists along Lake Marie road that will screen the view of some structures at the Lake Marie Road site. Most structures proposed on the Lake Marie Road site will be screened from view from Swan Lake by the existing forested vegetation present along the lake shore. Those that remain visible from either Lake Marie Road or Swan Lake will not create any significant visible contrast with the surrounding land uses. Therefore, the potential effects on aesthetics do not require further evaluation in the EIS.

#### **7.7 Noise**

There will be some short-term noise generated on each site during construction. Such noise would include activities such as vegetation clearing, site excavation & grading, building construction, and landscaping. No blasting is proposed at either site. Construction noise will generally occur during daytime hours. In addition, there are no nearby sensitive receptors (e.g., schools, churches etc.). Because the proposed land use is consistent with surrounding residential uses, no long-term, adverse noise impacts are anticipated to result from this project. For the reasons noted above, the potential effects on noise do not require further evaluation in the EIS.

## 7.8 Air Quality

A small quantity of fugitive dust may be generated at each project construction site during construction. However, these construction areas are generally well-screened from any nearby residences by existing forests. Where vegetative screening does not exist, there are no residences within several hundred feet of the proposed construction sites. This potential impact is also temporary. Therefore, the potential effects on air quality do not require further evaluation in the EIS.

## 7.9 Community Services and Growth Inducing Aspects

The projects will result in the construction of an additional 39 homes. The subdivision roadways will remain private and no additional demand for municipal highway maintenance services will result from this project. In addition, according to the project information provided, it is likely that these homes will be occupied as seasonal or second homes that will not result in any significant level of additional demand for school, emergency, or other municipal services. Each residence will be served by individual water and sewer systems and no increase in municipal water or sewer services will result from this project. Therefore, the potential effects on the use and community services or community growth do not require further evaluation in the EIS.

## 7.10 Historic/Cultural Resources

Based on a review of records maintained by the New York State Office of Parks, Recreation and Historic Preservation (OPRHP), neither project site contains structures on or eligible for inclusion in the State or National Registers of Historic Places. Further, OPRHP records indicate that neither site is located within an area considered sensitive for archaeological resources. Therefore, the potential effects on cultural resources do not require further evaluation in the EIS.

## 7.11 Impacts on Non-listed Plants and Wildlife

The project will result in the clearing of approximately 55 acres of vegetation from currently forested or mown lawn. This area includes 33 acres of forested land at the Kelly Bridge Road site, 11 acres of forested land at the Lake Marie Road site, and 11.5 acres of mown lawn at the Lake Marie Road. The proposed impacts represent approximately 23 percent of the combined acreage of the two project sites. Approximately 76 percent, or 179 acres of these sites will be preserved. Therefore, no significant adverse impacts to the common plant species found on the site are expected to result from this project. In addition, the clearing within the wetland buffer vegetation along the Swan Lake shoreline at each site will be restricted through conditions imposed by the Department pursuant to Article 24, of the Environmental Conservation Law in a Freshwater Wetlands permit. Some wildlife may be displaced from the site during construction. However, the project is not expected to have a significant adverse impact on species that are present on the site since such species are common elsewhere in the area.

## 7.12 Critical Environmental Areas

The project sites are not within or near a designated Critical Environmental Area.

## 7.13 Dam Safety

Water levels in Swan Lake are maintained by a concrete dam located at the south end of the lake near the intersection of NYS Route 55 and Sullivan County Route 142. The dam is owned by the sponsor of the Lake Marie Road and Kelly Bridge Road Subdivision projects. The dam meets the Department's regulatory thresholds for dams pursuant to Article 15, Title 5 of the Environmental Conservation Law. However, the current condition and ongoing operation of the dam are subject to State regulations concerning dam safety independent of the proposed construction of the Lake Marie Road and Kelly Bridge Road Subdivisions. Likewise, the construction of the proposed subdivisions are not dependent on or related to the ongoing maintenance and operation of the dam. Therefore, an evaluation of the condition and operation of the dam will not be included in the EIS for this project.

## 7.14 Property Values

Impacts on property values are not considered environmental impacts pursuant to SEQRA regulations and they will not be addressed in the EIS for this project [Sec 6 NYCRR Part 617.2 (l) and 617.7 (c) (1)].

## 7.15 Effects on the Use and Conservation of Energy Resources

As proposed, the total number of homes that will be constructed is 39. The addition of 39 homes will not result in a significant increase in the use of energy resources within the Town of Thompson. Typically, new home construction utilizes newer, more energy conserving materials and equipment compared to older existing homes. Such materials and equipment would include windows, doors, insulation, and heating/cooling systems. Therefore, the potential effects on the use and conservation of energy do not require further evaluation in the EIS.

APPENDIX B

PUBLIC HEARING AND WRITTEN  
COMMENTS RECEIVED ON THE  
DEIS



1 DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
-----  
2  
3 In the Matter of  
4 KELLY BRIDGE ROAD SUBDIVISION  
5 Applicant: AJM SWAN LAKE ESTATES LLC  
6 Application I.D.: 3-4836-00245/00002  
7 Permits applied for: Article 24  
8 Freshwater Wetlands  
9 Project location: Liberty, Sullivan  
County.  
-----  
10 LEGISLATIVE HEARING  
11 February 6, 2007  
12 7:00 p.m.  
13 119 N. Main St.  
14 Liberty, New York  
15  
16 BEFORE: MARIA E. VILLA  
17 Administrative Law Judge  
18 DEC Office of Hearings  
19 625 Broadway, 1st Floor,  
20 Albany, New York 12233-1550  
21  
22 ALSO PRESENT:  
23 For Applicant: RANDALL WASSON  
24 Wasson Engineering  
CHRIS ROBBINS  
Tim Miller Associates  
TONY MUROLO  
AJM Associates Inc.  
For DEC: SCOTT E. SHEELEY  
Environmental Analyst  
Reported by: KAREN SCHMIEDER, RDR, CSR  
Schmieder & Meister Inc.





1                   JUDGE VILLA: Good evening.  
2           My name is Maria Villa. I'm an  
3           Administrative Law Judge with the  
4           Office of Hearings and Mediation  
5           Services of the New York State  
6           Department of Environmental  
7           Conservation. I've been assigned to  
8           conduct the hearing in this matter.

9                   The Office of Hearings is a  
10          separate office within the Department  
11          we are separate from counsel's office,  
12          the regional office and the program  
13          divisions. The sole purpose of our  
14          office is to conduct administrative  
15          hearings, such as this one, to write  
16          recommendations based upon a hearing  
17          record, and when requested, to provide  
18          mediation services.

19                  My role at this hearing is  
20          limited to ensuring that public  
21          comments on this application are  
22          received in an orderly manner. This  
23          is a New York State DEC Administrative  
24          Permit Hearing, held pursuant to

1 Articles 3, 8 and 24 of the  
2 Environmental Conservation Law or the  
3 ECL and Part 617, 621, and 663 of the  
4 Official Compilation of Codes, Rules  
5 and Regulations of the State of New  
6 York or 6 NYCRR.

7 The staff of the Region 3  
8 office of the Department has accepted  
9 a Draft Environmental Impact  
10 Statement, or DEIS, for the proposed  
11 project, as well as a Freshwater  
12 Wetlands Permit Application pursuant  
13 to ECL Article 24 and 6 NYCRR Part  
14 663.

15 The project, referred to as  
16 the Kelly Bridge Road subdivision, is  
17 located approximately 1,000 feet north  
18 of Kelly Bridge Road in the Town of  
19 Liberty, Sullivan County. The project  
20 involves the construction of a  
21 residential subdivision adjacent to  
22 Swan Lake and would result in the  
23 subdivision of an approximately 114  
24 acre parcel into 21 lots. One lot in

2 a common use lot for lake access by  
3 the subdivision residents and their  
4 guests.

5 The subdivision would be  
6 served by individual wells and septic  
7 systems. And a second subdivision  
8 known as the Lake Marie Road  
9 subdivision, is no longer proposed.  
10 That application before the Department  
11 has been withdrawn.

12 Notice of this hearing was  
13 published in the January 3rd, 2007  
14 edition of the Department's  
15 Environmental Notice Bulletin. Notice  
16 of Complete Application and Notice of  
17 the Department's Acceptance of the  
18 DEIS was also published in the  
19 Sullivan County Democrat on January 5,  
20 2007.

21 At this hearing public  
22 comments on the application can be  
23 made and both oral and written  
24 comments can be received. They'll be

5

1 afforded equal weight. Written  
2 comments on the DEIS and the permit

020607 AJM Kelly Bridge.txt  
3 application will also be accepted by  
4 the Department until Monday, February  
5 26, 2007. If you want to make a  
6 statement on the record, please fill  
7 out one of the cards back on the table  
8 there and give it to me. I'll call  
9 the speakers in the order that I've  
10 received the cards. The applicant  
11 will first have the opportunity to  
12 make a presentation, and then I'll  
13 call the speakers.

14 Is there anyone here, any  
15 federal elected officials? Any state  
16 elected officials? Or any local  
17 elected officials? Okay, sir, are you  
18 planning to speak on the record?

19 MALE SPEAKER: Yes.

20 JUDGE VILLA: Would you  
21 kindly give me a card, if you haven't  
22 already done so. And your name,  
23 please?

24 MR. DE MAYO: Frank De Mayo.

6

1 JUDGE VILLA: All right,  
2 thank you.

3 we can begin then with the  
4 presentation by the applicant,

5 represented here by Randall Wasson and  
6 Chris Robbins. Whenever you're ready,  
7 gentlemen.

8 MR. WASSON: Good evening.  
9 My name is Randall Wasson with Wasson  
10 Engineering, located here in Liberty.  
11 We prepared the site plans for this  
12 project, the subdivision plans, the  
13 construction details and so forth.

14 I'm here with Chris Robbins  
15 and Jim Bates, both of Tim Miller  
16 Associates. They prepared the DEIS,  
17 and Jim is a wetland specialist as  
18 well.

19 I apologize for the scale of  
20 the drawing; we were trying to get the  
21 whole lake on this one, but I'll just  
22 point by way of orientation as to  
23 where we are. Outlined in blue is  
24 Swan Lake; it is a 352-acre lake.

7

1 Down at this end is New York State  
2 Route 55, the Stevensville Hotel is  
3 approximately here. This is Kelly  
4 Bridge Road right here. And this is  
5 the project site, what you see in the

020607 AJM Kelly Bridge.txt  
6 dark line. That's the project  
7 roadways. They come in off of Kelly  
8 Bridge Road. As you can see there's a  
9 loop road and short cul-de-sac over  
10 here.

11 As was mentioned, there is a  
12 total of 21 lots on this subdivision.  
13 One lot, located right here, would  
14 have a pavilion, a small parking lot  
15 and a boat launch for the residents of  
16 the subdivision. The other 20 lots  
17 will contain single-family homes.  
18 Average lot size is about five acres.  
19 There are four lots that are less than  
20 five acres, the smallest one of those  
21 is three acres in size.

22 One of the concerns and one  
23 of the reasons we're here is that  
24 there are some existing eagles and

8

1 eagle nests on Swan Lake, and they are  
2 right in the center of these circles  
3 right here. I'm sure it's hard to  
4 see. I hope you can see the larger  
5 circle. The yellow one represents a  
6 750-foot radius from the nearest nest,  
7 so you can see the circle relative to

8 the project site and the rest of the  
9 lake.

10 I'll just say, as was  
11 mentioned also, this was formerly the  
12 Lake Marie subdivision that was  
13 proposed, and that is no longer  
14 proposed. There is no application, no  
15 valid application for that. So we're  
16 not here for that tonight.

17 Also as mentioned, all the  
18 lots would be served by individual  
19 wells and septic systems.

20 There is a little bit larger  
21 scale. Again Kelly Bridge Road up  
22 here, Swan Lake here. There is a DEC  
23 wetland fringe for the most part right  
24 along the lake's edge, and it comes

9

1 and goes around the edge of the lake,  
2 and also shown is the buffer area.  
3 All work associated with that under  
4 the proposed layout would be outside  
5 of those areas, with some very small  
6 exceptions, primarily pathways down to  
7 the lake for the individual lots and  
8 also for the common lot right here, to

020607 AJM Kelly Bridge.txt  
9 get to some docks that are proposed.  
10 And the biggest dock would be  
11 approximately 200 square feet. That  
12 would be the maximum size for the  
13 common lot. The others would be  
14 approximately half that.

15 I think with this layout I  
16 believe we are disturbing about  
17 one-hundredth of an acre, about 400  
18 square feet roughly of wetland. The  
19 rest of the disturbance is also, as I  
20 said, minimal. It is hand-cleared  
21 pathways. There is not going to be  
22 any construction equipment down in  
23 there. And the details, part of the  
24 application and so forth indicates how

10

1 this is going to be handled and how  
2 the clearing is going to be done.

3 The houses generally are 200  
4 foot or more from Swan Lake. The lone  
5 exception being the one out on the  
6 peninsula here, that's a little bit  
7 over a 100 feet from the lake.

8 That's mainly it. I'm going  
9 to turn this over now to Chris  
10 Robbins, he prepared the DEIS.



11 MR. ROBBINS: Good evening.  
12 Chris Robbins, Tim Miller Associates.

13 As Randy mentioned, we were  
14 the company that put together the  
15 Draft Environmental Impact Statement  
16 for the Swan Lake Estates project.

17 I would like to take a  
18 minute to run through quickly both the  
19 eagle mitigation plan that was  
20 presented for this and the DEIS.  
21 Prior to the environmental review  
22 process for this project, the  
23 applicant, the applicant's consultants  
24 and the DEC worked closely together to

11

1 develop a Bald Eagle mitigation plan  
2 that will adequately offset any  
3 potential significant project-related  
4 impacts resulting from the development  
5 of both the Lake Marie site and the  
6 Kelly Bridge site. Subsequent to that  
7 the DEIS process was initiated. A  
8 positive declaration was issued, and a  
9 draft scope was generated for this  
10 environmental review process. That  
11 draft scope was put together by the

020607 AJM Kelly Bridge.txt  
12 state DEC in accordance with the SEQ  
13 requirements. That was distributed to  
14 both the public and involved and  
15 interested agencies. Comments were  
16 received back. Those comments were  
17 reviewed and incorporated into a final  
18 draft or final scope, which this Draft  
19 Environmental Impact Statement was  
20 generated from. That scope included  
21 mainly issues and impacts associated  
22 with the existing Bald Eagles on the  
23 site. There were some other wildlife  
24 aspects and wetland buffer impacts

12

1 that were addressed in this document.  
2 The other requirement was to  
3 put forth several alternatives, which  
4 are also in this package that was  
5 Engineering put together. There was a  
6 cluster subdivision plan, and I won't  
7 go through this. This is only a  
8 document, and we don't need to review  
9 it further. The maximum subdivision  
10 plan and conventional subdivision plan  
11 on top of the plan that was proposed  
12 as the action in this document.

13 It should be noted that the  
Page 11

14 document itself, the DEIS,  
15 incorporates all of the eagle  
16 mitigation measures that were put  
17 together in the eagle mitigation plan  
18 that were directly related to the  
19 Kelly Bridge Road subdivision and also  
20 those that were put together to  
21 address cumulative impacts between the  
22 development of both of the proposed  
23 subdivisions, in that the Lake Marie  
24 Road subdivision was removed,

1 application withdrawn. That is not  
2 addressed in this document, but all of  
3 the mitigation measures proposed for  
4 both the Kelly Bridge Road site and  
5 the cumulative impacts are addressed  
6 in this document.

7 The document itself does  
8 conform with all the requirements of  
9 the scope. It addresses all of the  
10 issues that were raised, and as such  
11 it's here in front of you. It was  
12 accepted as complete by the DEC back  
13 in December. And we're here to hear  
14 what your comments are on this

15 020607 AJM Kelly Bridge.txt  
document.

16 with that I would like to  
17 turn it back over to Judge Villa.

18 JUDGE VILLA: Thank you very  
19 much.

20 At this point we're going to  
21 go ahead and take in public comments.  
22 I think the court reporter can hear  
23 you if you stand in your place, as  
24 long as you speak up. If you don't

14

1 speak up, then you're going to have to  
2 be brave and come up here, so she can  
3 hear what you are saying to take down  
4 your comments.

5 We are going to begin with  
6 Mr. De Mayo, the Town of Liberty  
7 Supervisor. Mr. De Mayo.

8 MR. FRANK DE MAYO: Okay,  
9 there's been a lot of discussion about  
10 the process. And this developer, I  
11 think has gone through the steps of  
12 the process and process of work, and  
13 here's why I believe that initially  
14 the Planning Board really had no  
15 reason to believe that eagles were an  
16 issue.

17           There was a letter that they  
18           received in their packets from the DEC  
19           that said there were no known impacts.  
20           Now, at that time the public had  
21           advised differently, and I think  
22           that's a good thing, especially for  
23           the people that live there, they  
24           realized there were eagles living

15

1           there, and nests there, and so they  
2           advised differently. The Planning  
3           Board went through their part of the  
4           process, and then yielded the lead  
5           agency status over to the DEC, where  
6           it belongs when we are dealing with  
7           something like eagles. That's part of  
8           the reason we're here tonight.

9           I know I had attended a  
10          meeting with the developer, DEC,  
11          engineer and a whole host of folks. I  
12          honestly can say I've never seen a  
13          developer that really, really tried to  
14          work out all of the issues that were  
15          presented to him. The Planning Board,  
16          I mean had to be a good 18 months of  
17          just constantly saying go back to the

020607 AJM Kelly Bridge.txt  
18 drawing board. And this developer did  
19 go back to the drawing board and  
20 mitigated all of those issues of  
21 concern.

22 And I think also too, in so  
23 far as the town is concerned, this is  
24 a really good development.

16

1 Especially, from what I can see, the  
2 developer has taken great pains to  
3 make it very favorable to the  
4 environment. I think he's been  
5 careful with those issues. This type  
6 of development -- and conservatively  
7 speaking -- will generate over  
8 \$800,000 in property taxes for the  
9 taxing authorities. Not to mention  
10 that the homes are not going to be  
11 inexpensive. The folks that move into  
12 these homes will have disposal income  
13 which will help to further fuel the  
14 Sullivan County economy. With this  
15 type of development sensitive to the  
16 environment we will be inviting others  
17 to join in the beauty and  
18 environmental benefits that we all  
19 enjoy as residents of this town. I

20 prefer to think that Liberty is a town  
21 that welcomes new neighbors to share  
22 in this beauty. And I thank you for  
23 your time.

24 JUDGE VILLA: Thank you, Mr.

17

1 De Mayo.

2 I am now going to go ahead,  
3 unless we have any other elected  
4 officials present, and hearing no  
5 response, I'm going to go ahead and  
6 call the speakers in the order that I  
7 received the cards. Once again, if  
8 you'll remember to please keep your  
9 voice up so the court reporter can  
10 hear you. First speaker, John Parker.

11 MR. JOHN PARKER: Hello. My  
12 name is John Parker. I represent a  
13 number of local residents. My office  
14 is 565 Taxter Road, Suite 100,  
15 Elmsford, New York 10523.

16 I want to thank the DEC, the  
17 applicant, the consultants and  
18 everybody else who has come out  
19 tonight. It is a bit of a cold night,  
20 as we all can obviously see. So I

020607 AJM Kelly Bridge.txt  
21 think that really shows the importance  
22 to all of us, to the applicant and the  
23 respect for the process.

24 In following supervisor

18

1 De Mayo, I just wanted to raise a few  
2 legal issues. Because although I do  
3 appreciate goodwill expressed, as I  
4 know we all do, I think we ought to  
5 talk about some of the legal aspects  
6 of what's going on here and some of  
7 the legal standards by which this  
8 ought to be measured. By which, if we  
9 have anything to say about it, we'll  
10 try it make sure it is measured by.

11 The purpose of our public  
12 hearing tonight, as we've heard  
13 already, is to listen to the public,  
14 learn more about environmental costs  
15 of the proposal. The requirement is  
16 that DEC take a hard look, that's the  
17 standard requirement of SEQRA. That's  
18 the reason why we have a detailed  
19 Environmental Impact Statement. And  
20 in addition, there's a legal  
21 obligation on the lead agency to make  
22 sure that the adverse environmental



23 impacts identified and discussed are  
24 mitigated.

19

1 The DEIS review is a very  
2 serious thing, as you'll hear tonight  
3 from a variety of members of the  
4 community. Because as we all know,  
5 once you start building these types of  
6 projects you rarely see them come  
7 down. It is a housing project, a  
8 number of homes in a subdivision and  
9 it will be a permanent lasting  
10 community impact.

11 The impacts that will happen  
12 to the eagles, while they may be short  
13 lived, will be long-lasting. Now,  
14 after a long history with this case,  
15 it's been longer than 18 months. I  
16 could say proudly that the number of  
17 local folks in this room have stood in  
18 here for about 20 months to make sure  
19 we got to this stage.

20 I've been trying to figure  
21 out a way to address the DEIS briefly,  
22 and I would say it's a story in some  
23 ways, which I'll briefly get to, about

020607 AJM Kelly Bridge.txt  
24 what the DEIS does not have as much as

20

1 what the DEIS does say. So from that  
2 perspective I would like to take a few  
3 moments and run through this.

4 One of the things I think is  
5 very important that we keep in  
6 perspective is some of DEC's  
7 leadership on endangered species. I  
8 call this in their own words. In  
9 January 2006, just a year ago, the DEC  
10 endangered species specialist, Peter  
11 Nye said something very simple and  
12 profound that ought to be included in  
13 this public record. When I first  
14 heard about the residential  
15 subdivision my gut reaction was that  
16 there should be no houses on Swan  
17 Lake. That's a direct quote.

18 Consistent, a year later, we  
19 like to see that when it is on the  
20 merits and incorrect. His quote was  
21 this: Alteration of the landscape  
22 required by Bald Eagles continues to  
23 be the biggest single threat to this  
24 species, logging, development of all

1 kind and increasing demand for public  
2 use of all kinds are increasing at a  
3 tremendous rate. Not all are  
4 commensurate with the protection of  
5 the landscape. We have got to  
6 maintain these landscapes. We have  
7 got to sound the alarm. January 10th,  
8 local paper, the Town Crier, a direct  
9 quote.

10 And in a minute I want to  
11 talk a little bit about the history,  
12 very briefly, I will do this in a more  
13 expanded way in written comments, but  
14 for the sake of keeping this very  
15 brief, another quote is important.  
16 Because Mr. Murolo, in I believe it  
17 was the May 18th edition of the Town  
18 Crier. The paraphrase says Tony  
19 Murolo of AJM said the presence of  
20 eagles, quote, certainly was taken  
21 into account in regard to the  
22 subdivision. And in a minute you'll  
23 see why that's important.

24 Now, I want to talk about

1 the proposed project. We're back at  
2 the overall lake plan map. As you can  
3 see, there was two pieces to this.  
4 Lake Marie, which we've seen very  
5 briefly discussed, and Swan Lake  
6 estates. Now, we're looking at half  
7 the proposal, as we said, 21-lot  
8 residential subdivision. The  
9 complicating factor here, irrespective  
10 of which one you look at, is the  
11 American Bald Eagles. They nest, they  
12 perch, they roost upon these  
13 properties.

14 I do respect Mr. Murolo for  
15 this point -- and many others, matter  
16 of fact. He thought this would be a  
17 great place for many home sites, but  
18 so does the Bald Eagle. It's their  
19 home too. This is a species that he  
20 protected under the Endangered Species  
21 Act, which I would like to talk about  
22 very briefly.

23 And I'm going to run down  
24 briefly a couple points on history

1           because I think it is very important  
2           for a variety of reasons. The EAF was  
3           submitted to the town in December of  
4           2004, that's the Environmental  
5           Assessment Form. It indicated no  
6           threatened or endangered species. By  
7           April 27th there was preliminary  
8           Planning Board approval of this  
9           project. In May, final approval, May  
10          5th. And the quote we talked about  
11          Mr. Murolo came out about two weeks  
12          later.

13                         Now, one of the reasons why  
14          we're even here is because of the  
15          vigilance, the concern and the care of  
16          local residents who said wait a  
17          minute, there are Bald Eagles here.  
18          They fly over and we see the nests  
19          identified, which earlier on we were  
20          not allowed to know the exact location  
21          from the Department for a variety of  
22          legal reasons. After the proposal was  
23          grant DEC issues a consent order --  
24          see, there is a long history here --

1 for unpermitted construction and  
2 discharge, I'm reading from a quote --  
3 discharge of turbid water in the  
4 vicinity of Kelly Bridge. There was a  
5 fine imposed and the Department signed  
6 that consent decree in December 15,  
7 2005. It is a matter of public  
8 record.

9 Now, yes, the DEC eventually  
10 becomes lead agency, but a few things  
11 happen in the interim. In November  
12 2005, before they become lead agency,  
13 they tell the town, look, we really  
14 are the proper lead agency. There  
15 wasn't a coordinated environmental  
16 review, which is what we are doing now  
17 in terms of the environmental review.  
18 By December the Town of Liberty  
19 decides to withdraw. That's four  
20 something months -- let the record  
21 show, I didn't know it was nine  
22 months. But it's nine months later,  
23 it is removed and brought to DEC.  
24 That's the reason why we're here today

25

1 because the Department has taken it  
Page 23

2 away from the town. January we submit  
3 a number of concerns about scoping,  
4 which I'll talk about very briefly.  
5 we had issues with the scoping with  
6 respect to the environmental review.  
7 In March of 2006 the pos dec is  
8 issued. In May the scoping document  
9 is released. And in December, as the  
10 notice indicates, the 22nd -- anyway  
11 in December it is accepted as  
12 complete. These are all very  
13 important and relevant concerns for  
14 the duration of this case.

15 Now why? well, there's a  
16 legal question before the Department  
17 which I think we ought to talk about  
18 in a public way. And I try to boil  
19 this down to two simple questions,  
20 I'll go through it quickly again for  
21 purposes of the record. Can the DEC  
22 certify that they have taken a hard  
23 look required by Article 8 of the ECL,  
24 and can the DEC certify that the

26

1 adverse environmental impacts  
2 identified as required by law have

020607 AJM Kelly Bridge.txt  
3 been avoided, minimized to the maximum  
4 extent and mitigated as specifically  
5 required by Code Section 617.11(d).  
6 we believe that the record, which  
7 you'll hear in a few minutes as folks  
8 come to talk, speaks for itself and  
9 that these standards cannot be said to  
10 be met based upon what's before the  
11 Department at the moment.

12 Now, I want to say as we  
13 move forward we have a public comment  
14 period that ends on Monday, the 26th,  
15 as we heard clearly stated on the  
16 record. why is that important?  
17 Because the public is a partner here.  
18 And it's nice because SEQRA is a  
19 procedural and substantive statute.  
20 And I encourage everybody, if you  
21 don't get to say what you want to say  
22 today, to do it by the 26th. The  
23 legal obligation of the Department is  
24 to address and make sure the concerns

27

1 are addressed that we raise.

2 Now, I'm going to go through  
3 quickly the legal obligations, because  
4 I think everybody should understand



5 them. I've been told folks don't  
6 understand a lot about this. There  
7 are a couple little points. The  
8 617.2(n) of the DEC regulations  
9 require systematic consideration of  
10 all adverse environmental impacts here  
11 tonight in the draft statement. We  
12 talked earlier about scoping, which  
13 I'm going to revisit for one second  
14 because it is important. It is in  
15 617.8. It says, we are going to look  
16 at this, this is the scope; it is like  
17 the road map of what we are going to  
18 look at. It is spelled out in the  
19 code what we are talking about. The  
20 legal obligation, which we just  
21 mentioned, that the DEC must require  
22 that the substantive public comments  
23 raised tonight through the 26th are  
24 addressed. That's 617.9(a). And the

28

1 Department is responsible for the  
2 legal adequacy and accuracy of this  
3 record and this Department and this  
4 DEIS, irregardless of the fact that  
5 they did not prepare it. And they

020607 AJM Kelly Bridge.txt  
6 must also certify these adverse  
7 environmental impacts are avoided,  
8 minimized to the maximum extent  
9 practical. It's very important.

10 The other thing we need to  
11 talk about briefly is the Endangered  
12 Species Act. We should understand  
13 three small concepts that are very  
14 important. It is 16 USC 1531 and the  
15 following sections and the  
16 implementing regulations. It's a lot  
17 of language, but essentially this is  
18 what it means. The law prohibits the  
19 taking of a federal listed species --  
20 American Bald Eagle would be one of  
21 them, that means no harassment,  
22 harming, pursuing, hunting, shooting,  
23 wounding, killing, trapping or  
24 capturing of these species. What does

29

1 harm mean? Well, we know because it  
2 says; this is what it says: An act  
3 which kills or injures wildlife,  
4 including significant habitat  
5 modification or degradation by  
6 significantly impairing essential  
7 behavioral patterns including

8 breeding, feeding or sheltering. And  
9 harass is defined as well, it's the  
10 last section I will talk about.  
11 Intentional or a negligent act that  
12 creates the likelihood of injury that  
13 also can result in endangerment of  
14 habitat.

15 It's through these legal  
16 frameworks, which is what do we have  
17 to review and what does it mean and  
18 what is the federal law obligations in  
19 addition to the state law obligations  
20 that are relevant. Because in the  
21 DEIS we keep seeing, as in other  
22 DEISS, the statement that certain  
23 construction, certain projects are as  
24 of right. I think it's important that

30

1 we acknowledge and understand from the  
2 beginning that as of right means one  
3 thing from some people's perspective,  
4 but I think legally might mean  
5 something different. It means we have  
6 to overlay the laws, local, state and  
7 federal. They come together to make  
8 this happen. That's what we are

020607 AJM Kelly Bridge.txt  
9 talking about tonight with the adverse  
10 impacts. That's why we're doing this  
11 in addition to what the town has done.

12 Now, we have some experts  
13 that are looking at this. We are not  
14 prepared to put a statement on the  
15 record. I have a brief conclusion and  
16 ten points that very briefly raise for  
17 purpose of the record at this point  
18 and to share with the public some of  
19 the issues we've identified. I do  
20 believe on the record later on you'll  
21 hear these not repeated but expanded  
22 upon. This is just a quick bullet  
23 list.

24 we feel at this point that

31

1 the DEIS as presented to the  
2 Department is incomplete; it is  
3 inconsistent at points; it is  
4 inaccurate at others, and overall it  
5 is inadequate. Now the potential  
6 adverse environmental impacts, they  
7 are significant, and it's inaccurately  
8 addressed.

9 Issue number one. The loss  
10 of breeding nest A is discussed as if

11 it still exists. For anybody familiar  
12 with this who knows, breeding nest A  
13 is gone, about as gone as it could be.  
14 It is destroyed.

15 2. Dam and lake management  
16 issues are not addressed. It is an  
17 issue that's been raised for many  
18 years on the record at this point. It  
19 is important everybody in Sullivan  
20 County understands flooding and dam  
21 safety issues. It is a legal  
22 obligation of the Department for  
23 managing and permitting of dams.  
24 You'll hear folks talk about how it

32

1 has been addressed. Why is this  
2 relevant? Because there's a  
3 homeowners agreement which essentially  
4 says okay, Swan Lake estates folks,  
5 it's all you. I think it's great that  
6 it says that it's all you, but writing  
7 that down on a piece of paper doesn't  
8 make you a dam management expert.  
9 What ought to talk about what a dam  
10 management strategy means and on the  
11 record. We are not talking about a

020607 AJM Kelly Bridge.txt  
12 little piddly thing. If the dam isn't  
13 managed property, it has ramifications  
14 for public safety but certainly about  
15 whether or not the eagle will be able  
16 to survive. The dam level has been  
17 lowered and there are consequences.

18 3. There really hasn't been  
19 a thorough review of the septic  
20 systems and the long-term impacts they  
21 will bring to the water quality of  
22 this lake and ultimately the habitat  
23 as it needed by the eagles to survive.

24 4. There is a legal

33

1 obligation under federal law and  
2 implementing regulations for the Fish  
3 and Wildlife Service to be an integral  
4 party to this in terms of how we are  
5 dealing with the management of these  
6 federally protected species, and  
7 that's not yet been done.

8 There's been no  
9 consideration of real alternatives to  
10 their proposal. I know we've looked  
11 and seen some stuff here. I would  
12 like to flip the map as well, again,  
13 this is the site plan, that's the 21.

14 Those who are familiar with this  
15 process will realize the map, as you  
16 see here although not the same, is  
17 similar. We'll hear some folks talk  
18 about that. And there are other  
19 proposals like this one, maximum  
20 density, and this one, cluster  
21 subdivision -- in reality, the  
22 proposal of the EIS has been to keep  
23 the 21. We are going to do the 21 we  
24 want to do and we are going to do the

34

1 21 the way we want to do it. That's  
2 the way it has been presented. I don't  
3 think there's been a full review,  
4 assessment and analysis of other  
5 potential impacts, including no-build  
6 and including adequate conservation  
7 plans in each.

8 6. Inaccurate description  
9 of behavior of Bald Eagles on Swan  
10 Lake. You'll hear people talking  
11 about that tonight. Crucial to  
12 protecting their habitat is  
13 understanding how they are, how they  
14 act. This is their home, as we

020607 AJM Kelly Bridge.txt  
15 discussed earlier.

16 7. Is their failure to  
17 discuss and accurately analyze the  
18 recreational use of folks who use and  
19 enjoy Swan Lake. Yes, it is important  
20 because they also impact the eagles as  
21 they use it now and as they are  
22 anticipating to use it in the future.

23 There's been a failure to  
24 discuss and acknowledge the limited

35

1 time period for construction to avoid  
2 significant adverse impacts to the  
3 eagles. It's in documents that are in  
4 the appendices to the DEIS. We know  
5 from other studies and from federal  
6 guidance there are certain windows,  
7 and if you construct out of that the  
8 eagles are seriously impacted. They  
9 are very sensitive to these type of  
10 disturbances. That's not addressed  
11 here.

12 And finally, a failure to  
13 consider the multiple impacts set  
14 forth by local residents in January of  
15 2006, which I discussed earlier. That  
16 was the time when we talked about the



17 scope, what all we look at. At that  
18 point, and I want to give you the  
19 quick list, a number of issues were  
20 raised. They interrelate with the  
21 eagle habitat. I think it's plain and  
22 evident on its face. You'll hear  
23 people talk about it expand on it in a  
24 moment.

36

1 Air quality, ground and  
2 surface water quality, the traffic and  
3 the noise, the noise from folks who  
4 live there, the noise from  
5 construction, the noise from traffic.  
6 A substantial possible increase in  
7 erosion, floodings, leaching and  
8 drainage. And ultimately other issues  
9 including community character will be  
10 alternated as we all look over the  
11 sunset and see the beautiful  
12 undisturbed countryside. And finally,  
13 the intensity and uses of projects  
14 either proposed or approved and  
15 corridors surrounding Swan Lake  
16 Estates.

17 This project and the impacts

020607 AJM Kelly Bridge.txt  
18 to the eagles do not exist in a  
19 vacuum, irrespective of how it is  
20 stated in this draft document.

21 To close, we will submit our  
22 written comments by the close of  
23 public comment period, in February.  
24 The DEC, which I want to remind them

37

1 on the record, as lead agency is  
2 legally accountable for the accuracy  
3 of the DEIS and the mitigation  
4 measures imposed. We talked about it  
5 earlier and we cited the sections of  
6 the code. It is there for everybody  
7 to see.

8 Ultimately, whatever happens  
9 here and whatever is decided will  
10 impact the residents forever. These  
11 houses are likely not to be taken down  
12 and once roads are put in, which we  
13 know they are already in, it is going  
14 to be there for the duration. We ask  
15 that the spirit and intent and the  
16 words of the state law and the federal  
17 law that protect these species and  
18 protect the public's rights in  
19 environmental review be protected and

20 fairly applied by the Department.

21 We agree with your initial  
22 call by the Department there is a  
23 potentially significant adverse  
24 environmental impact here. We have

38

1 seen nothing at this preliminary stage  
2 for us in our review of the contents  
3 of the EIS that have changed our  
4 feelings about that. We don't think  
5 it thoroughly addresses the eagle  
6 impacts as it is required, and it  
7 certainly doesn't address the other  
8 impacts we discussed in scoping. For  
9 these reasons we believe the DEIS is  
10 legally insufficient. And for the  
11 additional reason of the segmentation  
12 and cancellation of half of a project  
13 in the middle of a process. Certainly  
14 also earlier there's a whole bunch  
15 more circles on the other part and a  
16 whole bunch more eagle issues to run  
17 into.

18 In the end we intend, the  
19 citizens of Swan Lake and those who  
20 I've been involved with, to protect

020607 AJM Kelly Bridge.txt  
21 the legal rights under SEQRA and the  
22 substantive legal rights provided by  
23 the statute. And I want to again  
24 thank the Department for coming out on

39

1 this cold night. Thank you.

2 JUDGE VILLA: Thank you,  
3 sir.

4 The next speaker is Cora  
5 Edwards.

6 MS. CORA EDWARDS: First of  
7 all, I'm just curious, how many people  
8 had a chance to read the DEIS?

9

10 (Show of hands).

11

12 I am actually also very grateful to be  
13 able to speak today at the public  
14 hearing. I know -- where is Mr.  
15 Murolo? Was it back in June of 2005  
16 we asked to have a public hearing.  
17 It's taken us 20 months to get here,  
18 and we didn't know a lot of the time  
19 if we would actually get this far.  
20 The reason we didn't get public  
21 hearing notice is because the state  
22 law is you get a notice in the mail if

23 you're within 500 feet of the driveway  
24 of a development. So I'm just curious

40

1 how many people here live outside of  
2 the 500-foot range of the development?

3

4 (Show of hands).

5

6 How many people -- well, see I'm glad  
7 that at least this public hearing is  
8 including people who are more than 500  
9 feet away and are still interested.  
10 we think it is because a lot of us  
11 live around the lake that we share a  
12 common border, we share a common  
13 space. We share the same water, we  
14 share the same air, the same views.  
15 And they are all things that we want  
16 to make sure are part of our future.  
17 So I want to thank the DEC that we're  
18 able to have this public hearing  
19 today. So we can strike a balance  
20 between the wilderness there and the  
21 area that the developer would like to  
22 put houses on.

23 As John said, I've been

24 020607 AJM Kelly Bridge.txt  
involved with this -- I've been

41

1 following this project for the last 20  
2 months. John has gone through the  
3 details of how we got here. For any  
4 of those people who have read the  
5 DEIS, I stopped after the first  
6 chapter when I got to about 28  
7 mistakes and inaccuracies. I decided  
8 well, I'll save the rest for another  
9 day. I've got until the 26th. So out  
10 of those 28 inaccuracies or omissions  
11 or misrepresentations or flat out  
12 mistakes, I think I'll just stick to a  
13 couple.

14 Like John said before, I'm a  
15 little bit concerned that when we  
16 first brought up on the 7th of June  
17 the areas that we really wanted --  
18 whew! Sorry. So this road here  
19 corresponds to that road there. And I  
20 don't know if you recall, but one of  
21 the first things I brought up was why  
22 is there a parking lot so close to  
23 this stream where the wetlands are? I  
24 know there's a wetlands permit, a

1 wetlands disturbance permit, and this  
2 is the part I'm referring to right  
3 here, where the stream -- the location  
4 would be on the eastern corner of the  
5 northern lake. So that would be the  
6 northernmost corner of where the  
7 subdivision is.

8 So on June 7th, 2005, when  
9 we had the opportunity to meet with  
10 the developer, we asked why is the  
11 parking lot there. And I don't really  
12 see that there's been that much of a  
13 change in the location of it. At the  
14 time there was supposed to be a stream  
15 land -- a stream crossing, a  
16 disturbance permit, and I think that's  
17 been removed as well. But I don't  
18 understand the process that went  
19 behind that, how you keep the place  
20 the same and then you don't need the  
21 permit.

22 Now, the other problem I saw  
23 with the DEIS that jumped out of the  
24 page on me was, you know, it's cold

1           today, and according to the DEIS Swan  
2           Lake freezes over in the winter. Now,  
3           those of you who have seen the eagles  
4           at Swan Lake winter, spring, summer  
5           and fall know that there's always  
6           running water at Swan Lake. People  
7           are nodding. That running water is  
8           east of Kelly Bridge. My house is  
9           right there. And a lot of people who  
10          have gone past that section, because  
11          it is Kelly Bridge have actually seen  
12          the eagles take prey, lay it out on  
13          the ice. And that's the part where  
14          right as the water comes, they can see  
15          it. So when I first read one of the  
16          earlier versions of the DEIS it said  
17          Swan Lake freezes over completely and  
18          the eagles go to Florida. I was  
19          wondering if maybe that wasn't  
20          confusing people at Presidential  
21          Estates.

22                        But anyway, the irony is  
23                        that the Delaware Valley area is where  
24                        hundreds of eagles come from Canada.



1           So the eagles here at Swan Lake  
2           actually like where they are all year  
3           round. Like some residents. They  
4           don't go to the Chesapeake Bay area.  
5           So that was another sort of oopsy that  
6           I noticed.

7                         The other sort of thing that  
8           jumped out at me was it says that the  
9           national guideline for managing Bald  
10          Eagles encourages landowners to work  
11          cooperatively with state and federal  
12          agencies. So yesterday when I talked  
13          to the U.S. Fish and wildlife Service  
14          in Cortland, New York, they told me  
15          they have never received any replies  
16          to your letters. So maybe that is  
17          cooperative work, I don't know.

18                        But anyway, as I said  
19          before, lot 13 hasn't changed  
20          substantially in its proximity to the  
21          stream and wetlands. And I don't see  
22          that happening on any of the  
23          alternative plans either.

24                        Now, as to the other

1 mitigations, I didn't realize that  
2 putting two nests for sale on the  
3 market is actually a mitigation plan,  
4 but I'll accept that in this context.  
5 Because my understanding was that, you  
6 know, as far as the eagles are  
7 concerned they don't really know when  
8 they are going to phase one or phase  
9 two. Oh, now I'm in the Conservancy  
10 area, now I'm in phase one. So  
11 really, I think I need to get either a  
12 new definition of the word mitigation  
13 or have a better understanding of what  
14 actually changed with this plan.

15 My understanding was that  
16 the plan that was submitted and  
17 approved to the town Planning Board on  
18 the 5th of May did not include any  
19 docks, it did not include any paths.  
20 And in October, when Mr. Wasson went  
21 back to the Planning Board to ask for  
22 docks on a revised plan, I believe it  
23 was Mr. Schmidt at the time who said  
24 that they had in fact given their

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1 final approval and that they weren't  
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2 going to be revising any more plans  
3 until after the DEIS had made a  
4 determination. So it is hard for me to  
5 understand how reducing plans that  
6 weren't there on the first plan is a  
7 mitigation, or adding docks that  
8 weren't there is a mitigation. Maybe  
9 I'm looking at a different dictionary.

10 Now, I think also you might  
11 remember back in June when we had our  
12 discussion I said that I had seen  
13 really beautiful conservation  
14 residential subdivisions where I had  
15 taken my mother for retirement  
16 communities. And since that time  
17 people have told me about a lot of  
18 conservation residential subdivisions  
19 where wetlands are enhanced, where the  
20 houses are unobtrusive, where there's  
21 a real concerted effort to look at the  
22 lay of the land and to start fresh and  
23 to really build something that could  
24 be a showcase for our county and for

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1 our region.

2 I'm a little bit disturbed

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3 by the fact that this plan slightly  
4 altered with this plan slightly  
5 altered and a lot of it to me has to  
6 do with the fact that these  
7 configurations of four lots under five  
8 acres and however many at 5.01 and  
9 5.02 are specifically designed not to  
10 trigger Department of Health permits.  
11 And given the local laws with regard  
12 to the incline, the amount of  
13 wetlands, the type of soil, the shale  
14 fissures and so on, I think that Swan  
15 Lake deserves something better than a  
16 cookie cutter plan that's everywhere  
17 else. And that's what I hoped we'd be  
18 seeing today. But maybe I was naive.  
19 Anyway, we talked about the  
20 dam. we talked about the housing  
21 association. we talked about the no  
22 impact of the docks. The other thing  
23 that I'm a little concerned about is  
24 that the DEIS treats the mitigation

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1 plans as these circles as nests. Their  
2 primary perching, feeding, roosting,  
3 flyway areas are completely -- they  
4 are either generalized, or they're  
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5 missing, they're in the pine trees  
6 here and they are roosting, but  
7 nothing really in the context of their  
8 home, of the whole lake. So I don't  
9 really know whether a circle around a  
10 nest is also a mitigation plan. Those  
11 are the questions that I have.  
12 Particularly when it comes to -- oh,  
13 this was one of the other  
14 inconsistencies I noticed. It is  
15 recommended there's a 1500 radius in  
16 the DEIS, and so sometimes it's used  
17 and sometimes it's not. And I'm not  
18 really sure why there is that kind of  
19 level of inconsistency there.

20 And I think I mentioned that  
21 I had seen a map in Sullivan County  
22 Clerk's office from 1856 of Swan Lake.  
23 And all of the wilderness areas that  
24 are here now were there then. So I

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1 don't know exactly how the definite  
2 second growth forest is determined.

3 I think I've pretty much  
4 finished, not all 28, but I'm making  
5 headway. So I'll let somebody else

020607 AJM Kelly Bridge.txt  
6 speak. Thank you so much for your  
7 time and for letting me have this  
8 opportunity. I appreciate it

9 JUDGE VILLA: Thank you.  
10 The next speaker, Cynthia Karras.

11 MS. CYNTHIA KARRAS: My name  
12 is Cynthia Karras. I live at Swan  
13 Lake. I've been there for six years.

14 One of the things that I  
15 would like to talk about today is what  
16 we've seen as far as the sediment  
17 problems with the lake since this  
18 development has started, the  
19 construction of this development. I  
20 just happen to have pictures that I  
21 took in September 14, 2004. This is  
22 preconstruction. We had a major  
23 flood. As you all can see, the water  
24 is the same height here,

1 preconstruction, as it is post-  
2 construction since this development  
3 has been started.

4 what's interesting to  
5 note -- and we can mitigate all we'd  
6 like, but what happened is that this  
7 happened and this lake looks like

8 this, which is the same soil from up  
9 above, which is the road that they  
10 carved into the mountain. This was  
11 after they had completed by DEC the  
12 requirements for stormwater prevention  
13 measures. So even when they had done  
14 everything DEC had asked them to do,  
15 we still have this. This is a  
16 problem. This will kill the fish, it  
17 will cut off the food chain for the  
18 Bald American Eagle. And we aren't up  
19 in this area, because the eagle flies  
20 through the whole lake. It doesn't  
21 stay in the circle. What happens is  
22 that it fishes here. I've seen -- I  
23 live at about here -- I've seen them  
24 here with the ice and then the

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1 fishermen make the hole to go ice  
2 fishing, whatever, we have seen them  
3 to be here, down here. We have seen  
4 them to be over the whole entire lake.  
5 My concern is even if we have these  
6 measures in place, is it enough? I'm  
7 not sure it is.

8 Also, the site plan must

020607 AJM Kelly Bridge.txt  
9 have a maintenance schedule for each  
10 type of water quality measure  
11 proposed. Once again, we're finding  
12 what is written on paper is not  
13 practiced at this site. The large  
14 retention pond, which sits  
15 approximately right here, the large  
16 retention pond for the development,  
17 which is like the main retention pond  
18 has not had any maintenance as  
19 required by DEC.

20 I spoke with Mrs. Swintusky  
21 in June of 2006 when I saw this, just  
22 because I had been noticing that that  
23 retention pond had not had any  
24 maintenance. What I did see was that

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1 back hill of that retention pond  
2 that's supposed to filter and be the  
3 aqua filter for this from not  
4 happening from here was falling into  
5 the retention pond. So what happens  
6 then? It basically was not  
7 stabilized. She assured me in June of  
8 2006 and today when you go up there  
9 and you look at this retention pond,  
10 it is still falling in. She assured  
Page 49



11 me that the developer would have to  
12 stabilize as soon as it was able to do  
13 so safely, because we had just been  
14 through a flood, that they would go up  
15 there. We are still now six months  
16 later, and I'm still seeing that hill  
17 has not been stabilized. So once  
18 again on paper but not in practice.

19 So the water also has not  
20 been allowed to drain from this pond.  
21 My first thought about that was that  
22 there's no fence around this pond.  
23 What if a child should come along.  
24 This pond is so deep that if a child

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1 came along and fell in that water,  
2 they would drown. Yes, they could  
3 fall in the lake and drown, but  
4 legally, you're responsible for that  
5 pond.

6 Now, my other concern is  
7 that that pond is on this property, on  
8 parcel number one. Who is going to be  
9 responsible -- I would like to know.  
10 That's just a simple question -- for  
11 that pond? Will that pond be now the

020607 AJM Kelly Bridge.txt  
12 owner's responsibility of parcel  
13 number one, or will the homeowner's  
14 association have that responsibility?  
15 And if they do have the responsibility  
16 or if parcel number one, people who  
17 are buying this, buyer should beware.  
18 Because now you're going to be  
19 responsible for that retention pond,  
20 and it is a very important retention  
21 pond.

22 Now, Janet Swintusky, DEC  
23 Region 3, memorandum dated June 23,  
24 2005, I'll quote: The soil types

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1 found on this site have historically  
2 been prone to sediment transport, and  
3 sites with these conditions require  
4 aggressive measures to prevent this  
5 from occurring. Simple question: How  
6 are you going to keep this from  
7 occurring? Already done what's  
8 required by DEC, but it still  
9 happened.

10 These are aerial photos that  
11 we took in spring of 2006.

12 Interesting to note that when we went  
13 to the Planning Board meetings -- and

14 we have been to many Planning Board  
15 meetings, even Mr. Schmidt had said  
16 wow, you got so far in the road, even  
17 after a cease and desist, this road  
18 was completed. How did that happen?  
19 How did that happen? We were being  
20 told it was stabilized. We told the  
21 DEC, there's more going on up there.  
22 We can hear it. We know that there's  
23 a man down sitting on the end of Kelly  
24 Bridge Road on both ends and waiting

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1 to see to make sure you don't come,  
2 the DEC, to see what we were hearing  
3 and what we were seeing. We finally  
4 had a completed view of a road that  
5 was completed. How does this happen?  
6 This is a map of what it looked like  
7 as far as Kelly Bridge Road without a  
8 road. They were really only as far as  
9 this when they were stopped. Simple  
10 questions, just something for thought.

11 why hasn't Mr. Murolo signed  
12 the easement to the Delaware Highland  
13 Conservancy for the 23 acres that did  
14 have the three eagles nests but now

020607 AJM Kelly Bridge.txt  
15 only has two. The main eagle breeding  
16 nest was destroyed in August of 2006.  
17 Just a question. Mr. Murolo you said  
18 to the newspapers you had already  
19 signed this easement, another  
20 misconception. That easement has not  
21 been signed. Why does the DEIS  
22 submitted by Tim Miller Associates  
23 does not make mention that the  
24 breeding nest is gone, no less where

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1 they are going to be breeding this  
2 year, will they be using one of the  
3 other nests or are they rebuilding a  
4 new nest and where? We are only going  
5 to know this if we -- we are not going  
6 to know this unless somebody actually  
7 goes out there and looks. Because now  
8 is the time of year that the eagles  
9 will breed and build their new nest.  
10 we don't know. You think they are  
11 going to stay just in this circle? I  
12 don't know. They could go here or  
13 they could go wherever they want to.  
14 It's their right.

15 what will the impact be for  
16 the eagles if the subdivision is

17 approved? what effect will this have  
18 on the eagles' ability to continue to  
19 breed successfully? I don't know  
20 about you, but I don't think telling  
21 them, jee, we are going to be in  
22 construction for two years, just don't  
23 mind us. We are just going to be  
24 here, but the noise and everything

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1 else, but don't mind us, we'll be gone  
2 in two years and you can go back to  
3 having little babies then. why such a  
4 narrow DEIS and not be considered?  
5 why are not the wetland and  
6 vegetations and the water quality, the  
7 sewage disposal systems, air quality,  
8 noise, are these not also important to  
9 the eagles? But yet we are not  
10 discussing those tonight, because they  
11 are not on the DEIS. We are doing a  
12 very narrow, only the eagles. So we  
13 are not talking about those.

14 Can the DEC or any other  
15 state or federal governmental agency  
16 definitively say that this development  
17 won't hurt the critical habitat of the

020607 AJM Kelly Bridge.txt  
18 American Bald Eagle they call home

19 here on Swan Lake?

20 This I thought was very  
21 important, because this shows everyone  
22 in the room that this was taken May  
23 2005. This is the eagle nest as it  
24 was. This also is a picture of the

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1 eagle nest as it was. And I encourage  
2 everyone to come up and take a look,  
3 because you won't see that anymore.  
4 That eagles nest as of August 2006 is  
5 now gone. The DEIS does not even  
6 acknowledge that it's gone. This is  
7 the mama sitting on her nest. I say  
8 again: why is it such a limited DEIS?  
9 Do the eagles not need a good water  
10 quality? Can they survive in this?  
11 Can they sustain life in that? I  
12 don't know. Can noise and aesthetics  
13 and impact on the plants and the  
14 wildlife, the dam safety -- we all  
15 know what happens if you don't take  
16 care of that dam. There are people  
17 here who are going to discuss tonight  
18 what happens when the dam is not  
19 maintained safely. And it is -- and  
Page 55

20 when boards aren't put in and aren't  
21 taken out at the right time of year,  
22 what impact that has to the people who  
23 live there. These are critical  
24 environmental areas. This bird just

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1 doesn't stay right here. The whole  
2 lake is its environmental area. The  
3 whole lake. Yes, that's where main  
4 breeding nests are. But we don't know  
5 now where they are, because the main  
6 breeding nest is gone. We don't know  
7 if they are going to go up here, back  
8 to this nest. We don't know where  
9 they are going to go. We know they  
10 like to perch, roost, do all their  
11 things here. We see them. We see  
12 them fly and wait. We see the mama  
13 who used to be in that nest and the  
14 male eagle will be over here and  
15 watch. We do see that. We know that  
16 this area in here is extremely -- this  
17 especially right here on this  
18 peninsula is their area that they like  
19 to be in. But today this is what it  
20 looks like. The eagles nest is gone.

020607 AJM Kelly Bridge.txt  
21 we asked questions why is it gone?  
22 what happened? Nobody knows. It just  
23 happened. So while we sit and we  
24 debate possible negative impacts, one

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1 of the worst things has already  
2 happened. The eagles nest, the main  
3 breeding nest, the successful breeding  
4 nest that had three eagles last  
5 year -- and anybody will tell you is  
6 exceptional, three eagles, baby  
7 eaglets, the only thing worse that can  
8 happen down here at Swan Lake for  
9 these eagles is that whatever happens  
10 with this development they will just  
11 fly away.

12 We do things from so far  
13 away because we don't really want to  
14 disturb them. But you can see the  
15 mama that was in that particular nest,  
16 that's now gone. You can see how the  
17 dad sits over here. Contrary to  
18 people not knowing that there were  
19 eagles, contrary to that, this was  
20 taken on May 2005, when we first  
21 started to come to the town that says  
22 there are eagles. Contrary to people



23 saying they didn't know and they  
24 checked boxes that weren't absolutely

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1 right, let's just put it out there,  
2 that were signed by Mr. Schmidt from  
3 the town Planning Board, maps on May  
4 5th when they were given final  
5 approval that had on the map eagles  
6 nest. Contrary to belief, the eagle  
7 paper that came from the Heritage  
8 group that says there are no known  
9 endangered eagles, but that doesn't  
10 mean -- you need to go out and look.  
11 This came two months after they  
12 declared a negative declaration on the  
13 SEQ. It happened two months after.  
14 So trying to use that now and saying  
15 that that was their legitimate reason  
16 for its declaring a neg dec that there  
17 were no eagles, they are trying to  
18 catch up with the horse with the cart.  
19 They put the cart before the horse  
20 because they hadn't actually gotten a  
21 letter from the Heritage group that  
22 said as far as in their data banks  
23 there were no known American Eagles.

24 020607 AJM Kelly Bridge.txt  
But this sign was posted by DEC, and

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1 it was there on the property.

2           Given that Swan Lake is home  
3 to a successful breeding pair of  
4 American Bald Eagles and yearly  
5 offspring, and this is a critically  
6 endangered species environmental area,  
7 is it prudent to allow this  
8 development to be built? Incorporated  
9 in this whole process is a no-build  
10 option. Even Peter Nye said his first  
11 instinct as he reported at the Town  
12 Crier at the Eagle Fest in 2005 was  
13 that no houses should ever be built  
14 there. In the 2006 at the last -- in  
15 the Town Crier at the Eagle Fest, Dr.  
16 Lawrence Niles, biologist with the  
17 Wildlife Foundation of New Jersey,  
18 stated we are concerned that if you  
19 start removing the protections that  
20 you get from the Endangered Species  
21 Act, that you will no longer be able  
22 to fight that intrusion.

23           Shoreline development is a  
24 serious issue. What people want most

1 to develop is the Bald Eagle's  
2 habitat, the waterfront. And what our  
3 contention is that this entire lake is  
4 its habitat, not just within the  
5 circle. And I would venture to think  
6 that the eagle thinks so too, because  
7 we see them flying over our house. We  
8 see them with the two baby eaglets  
9 that don't go away in the wintertime.  
10 They don't go to Florida or  
11 Chesapeake. Although it would be nice  
12 if we could all go there tonight, how  
13 cold it is. But they don't go. They  
14 stay.

15 So basically what I'm asking  
16 is we need to look at all of the  
17 mitigations. I don't think that they  
18 have been fully addressed in this  
19 DEIS. And we know. I'm glad that  
20 we've had an opportunity to speak to  
21 all of you and to have this time to  
22 talk and really air what our feelings  
23 are. Thank you so much.

24 JUDGE VILLA: Thank you.

1 The next speaker is Soterios Karras.

2 MR. SOTERIOS KARRAS: Hi,  
3 I'm Mr. Karras. As you all know I'm  
4 Cindy's husband.

5 I'm a licensed wastewater  
6 operator with the Department of  
7 Environmental Conservation, and my  
8 license comes from Region 3. My job  
9 here is basically to give you some  
10 kind of an insight on how leachfields  
11 work. I think we all know about  
12 stories and horror stories about how  
13 people have leachfields, they fill up  
14 and they no longer do their job, and  
15 they have a big problem. The  
16 life-span in this area we all know of  
17 a leachfield is probably less than  
18 five years. We hear horror stories  
19 all over Sullivan County about  
20 leachfields and all of their effects.  
21 And how people have problems on lakes  
22 in the area with leachfields that were  
23 in place, that were grandfathered in  
24 from years ago. And we've tried our

1 best with our ability to provide  
2 sewage for these communities and in  
3 some cases we can and in some cases we  
4 do. Some cases we don't.

5 But in this particular  
6 habitat, and if you don't mind, I  
7 would like to use your map -- we go  
8 back to this 21-house development.  
9 And there's a very interesting part,  
10 very interesting map here on the  
11 second page which gives the proposed  
12 areas. They are in boxes, and if we  
13 can all see, there's like a line here,  
14 which is what they call basically that  
15 100-foot buffer around the lake. Do  
16 you see that blue line? And if you  
17 could just notice, if you come up  
18 closely later, you can see there are  
19 little boxes right next to those lines  
20 where those proposed leachfields are  
21 going to be placed for the homeowners.

22 Now, we all know without  
23 having to go over to the property what  
24 the soil conditions are over there and

1 what the ramifications of leachfields  
2 in these locations will pose to the  
3 environment of the eagles, which is  
4 the lake. We all know that. That's a  
5 given. And we all know historically  
6 what leachfields do in this area as  
7 far as failure is concerned.

8 Now, given the fact that  
9 this is located in a place that is the  
10 habitat, so to speak, of these eagles,  
11 it wouldn't be prudent, and it isn't a  
12 good idea, so to speak to have  
13 leachfields approximately 100 feet  
14 away from the water's edge. If the  
15 leachfields, quote unquote, were  
16 doable or workable, so to speak, and  
17 are not prone to failure, then I would  
18 suggest that we move those leachfields  
19 up further in the lot area. But we  
20 can't do that because of the failure  
21 issues of lake leachfields. The  
22 homeowners would then wind up with  
23 their own waste in their homes. So  
24 with gravity, you have to understand

2 is an incline. Up by the road here is  
3 about maybe 150 feet above the  
4 shoreline. So if these leachfields  
5 were not prone to failure, then why  
6 wouldn't they be located in other  
7 areas of the lot?

8 From what I recollect, when  
9 we talked about this at one time in  
10 June with Mr. Wasson, he explained to  
11 us that in his own words, he tried his  
12 best on several occasions and had  
13 failed on his perk tests in his own  
14 words with 50 people in the room. And  
15 it's no wonder, because the location  
16 and the terrain of this area is not  
17 conducive to leachfields. Now, do you  
18 want to take a chance? I live right  
19 over here, on this part of the lake,  
20 downstream. If these leachfields fail  
21 over here in this region, aside from  
22 the eagles' issues with contamination  
23 of the waterways and this and that,  
24 I'm downstream. That's going to end

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1 up on my property so to speak. I  
2 don't think that that's fair to me.

3 Do you think that's fair? while he's  
4 building so to speak million dollar  
5 homes on the other side of the lake,  
6 my million dollar home on this side of  
7 the lake is worth nothing now because  
8 he possibly polluted me. Do I want  
9 that? I don't want that.

10 That's why in 1982 on this  
11 side of the lake they put a sewer  
12 system in, town sewers. They did them  
13 in Presidential Estates, they did them  
14 everywhere they proposed to build  
15 around this lake because they knew  
16 they had to protect the water quality.

17 This does not protect the  
18 water quality. It's very simple. I  
19 can explain how it works. You've got  
20 a hill. It works very simple. I'll  
21 basically draw it out for you, how it  
22 works with a leachfield. Pretty  
23 simple. If this were the hill, this  
24 were the lake, this were the house

1 built on top of the hill. This would  
2 be the five-foot, the type of  
3 leachfields that are being built are  
4 called subsurface treatment. You can



5 find the classifications under Part  
6 7-5-A of the Environmental  
7 Conservation Laws with regards to  
8 wastewater treatment standards,  
9 individual household systems,  
10 statutory authority Public Health Law  
11 201-1 in parentheses. These I believe  
12 are being used under the DEIS; these  
13 are the standards going to be used to  
14 mitigate this proposal. It's pretty  
15 simple. They've got a five-foot or  
16 four-foot zone where there is bedrock.  
17 You basically have a holding tank in  
18 the ground, which is probably about a  
19 thousand gallons for a three- to  
20 four-bedroom home. Simply, you have  
21 pipes coming out of that tank to what  
22 they call distribution boxes. Those  
23 distribution boxes are usually lower  
24 in elevation because we use gravity in

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1 sewage, and as you get closer and  
2 closer to the water the failures in  
3 these fields tend to happen  
4 downstream. Way down here. So if  
5 we're at the 100-foot buffer, let's

020607 AJM Kelly Bridge.txt  
6 say right here, and these fields fail,  
7 and there is bedrock five feet or four  
8 feet below, where do we think that  
9 water is going to end up? You draw  
10 your own conclusions. That's why we  
11 don't use them anymore on lakes. We  
12 did away with them. We don't live in  
13 the third world.

14 If we go a little bit  
15 further, with their own maps over  
16 here, we can see why we have sewage,  
17 we have sewage treatment facilities  
18 and why we use them. Because as we go  
19 further down the road, how are those  
20 leachfields ever going to service all  
21 of these possible homes in the future?  
22 They are not. This is not even a  
23 reality. You can't have this in the  
24 future with leachfields. They just

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1 don't work. You're just not going to  
2 have it. You don't have the space.  
3 You don't have the room. You don't  
4 have it. So I would propose that in  
5 this particular case, with this  
6 presentation to the Department of  
7 Environmental Conservation that they  
Page 67

8 seriously consider a no-build unless  
9 proper sewers are installed.

10 I mean why should I have to  
11 pay taxes for sewers in my home, on my  
12 side of the lake and have somebody  
13 come along, 40 years in the making of  
14 contractors who have tried to build  
15 over here and were unsuccessful and  
16 they are giving him carte blanche to  
17 put leachfields in, a hundred feet.

18 Now, around this, to protect  
19 these leachfields there is what they  
20 call curtain drains. That's so that  
21 surface water does not come down and  
22 wipe this all into the lake. well,  
23 when these fields fail uphill,  
24 upstream, or in the lot before, when

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1 they fail up here, those curtain  
2 drains run those waters right down  
3 into the lake directly. There is no  
4 if, and or buts. That's what happens.  
5 Is that what we want for our homes? I  
6 don't think so. Thank you very much.

7 JUDGE VILLA: Thank you,  
8 sir.

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Nathanson.  
  
MS. DEENY NATHANSON: The first thing, in listening to everything, that I have to say is if things were done responsibly to begin with, I don't think we'd be back at this point again. So in answer to Mr. De Mayo saying the town, that everybody did the right thing, what they were supposed to, they were responsible and they followed all the rules -- we wouldn't be back here if that were the case.  
  
Another thing that I noticed, before I read my little

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letter, maybe I will use a visual. There's a peninsula on our lake that is practically a hundred percent wetlands. If you notice on their own drawings, right here, if you notice on all their drawings, they are not putting anything there. This whole thing is empty. why? On the other drawings is there nothing there, and all of a sudden now over here they are

11 sticking in the middle of wetlands one  
12 little house. That disturbs me  
13 tremendously.

14 In the beginning of all  
15 this, nobody knew there were wetlands.  
16 DEC came along, and from what I  
17 understand in speaking to people, the  
18 entire lake, around the borders of the  
19 entire lake are wetlands. I'm not  
20 opposed to development. I will agree  
21 with whoever speaks in the future, we  
22 do need the tax money.

23 I still never got an answer  
24 to any questions for me as to the

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1 intake of the tax money is great, but  
2 what's the out spend of that? what's  
3 being spent? You know, police,  
4 firemen, or any of the other public/  
5 governmental facilities or utilities  
6 that are going to be needed? I don't  
7 believe there's ever been a study.  
8 without forethought and being  
9 responsible, who could go along with  
10 saying yeah, I want a development?

11 I like Mr. Murolo. where is

020607 AJM Kelly Bridge.txt  
12 he? we get along great. It's not a  
13 question of likability. It is about  
14 responsibility.

15 I've lived on Swan Lake  
16 since 1969. I lived directly across  
17 from lot 7, which is that peninsula.  
18 I've seen the Bald Eagle for long as I  
19 could remember. They soar around.  
20 They do not fly south, as the DEIS  
21 states, as prepared by Tim Miller  
22 Associates. Actually, they were on  
23 the semi-frozen lake foraging by lots  
24 7, 8, 9, 10, all up in here just last

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1 week. I've seen the eagles roost atop  
2 the trees across from lots 13 and 14,  
3 over here. I have also seen them  
4 perch throughout lots 6, 7, 8, 9, 10,  
5 11, 12, 13 and 14. That's practically  
6 everything. So as other people were  
7 saying, this circle, I mean you're not  
8 fenced in. They are not fenced in.

9 I don't consider myself a  
10 birder, yet how can one not take  
11 notice of such magnificent sites. In  
12 addition to the Bald Eagles you find  
13 pairs of swans, several blue herons,

14 swimming and wading in the shores of  
15 the above-mentioned lots. They all  
16 come in here; they wade in here, the  
17 eagles hang out in here on top of the  
18 white pine trees. During the summer  
19 the eagle can be seen many times  
20 throughout the day, there or above  
21 those lot locations. Although I do  
22 use -- I do ride the lake via a boat,  
23 I've never driven that close enough to  
24 disturb the eagles in their

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1 activities. Binoculars and telephoto  
2 lenses work great.  
3 Since Swan Lake was  
4 established the following events have  
5 occurred. Flooding of my property,  
6 flooding of County Road 142 for the  
7 past three years. The disappearance  
8 of lily pads and the strangulation of  
9 them by the never-ending growth of  
10 water chestnuts and reeds. The  
11 mismanagement of the dam. A  
12 successful eagles nest disappearing  
13 from view in August of 2006. Yearly  
14 weeds that used to float to shore come

020607 AJM Kelly Bridge.txt  
15 August have now disappeared. And now  
16 the plant growth actually reaches the  
17 surface of the water, clouding the  
18 lake and giving it a smell. From the  
19 picture window of my home I see eagles  
20 soar, perch, roost, feed as many as  
21 four at a time. The Bald Eagles  
22 flying over the peninsula, lot 7 and  
23 rest atop of those white pine trees.  
24 Given the sensitivity of the

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1 Bald Eagle any disturbance of their  
2 habitat, which includes the breeding  
3 nests and the white pine trees which  
4 they perch and roost on will  
5 negatively impact their very  
6 existence. One of the nests is gone.  
7 They feed in waters that directly abut  
8 lot 7. This above any other parcel is  
9 most critical for these birds'  
10 survival.

11 I have taken telephoto  
12 pictures of the eagles resting, flying  
13 and feeding. And somebody has them in  
14 a stamp that I made up. You just  
15 catch them, beautiful photographs,  
16 beautiful sight, swooping the fish out



17 of the lake.

18 Since the establishment of  
19 Swan Lake Estates the boards from the  
20 dam have not been removed or added  
21 properly. This dam controls the level  
22 of water for Swan Lake. The timing  
23 and placement of these boards maintain  
24 the continual existence of this

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1 man-made lake. They create space for  
2 mountain flow-off of melted snow and  
3 leaves room for rainwater when  
4 excessive rains do come our way.  
5 Without proper management of this dam,  
6 all living creatures, large and small,  
7 will continue to be negatively  
8 impacted. A road was completed  
9 without official permits. Lake water  
10 levels dropped four to six weeks  
11 during the peak summer season of 2005  
12 without any approval or reason. Swan  
13 Lake has been muddied from improper  
14 construction. Wetland areas have been  
15 plowed through without permits. Fires  
16 burned without permits.

17 These development plans

020607 AJM Kelly Bridge.txt  
18 include septic systems that have  
19 leachfields to be used for sewage.  
20 Where do you think the sewage will  
21 wind up, especially without anyone  
22 checking disposal water quality and  
23 drainage? The homeowners association  
24 covenants and restrictions for the

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1 future Swan Lake Estates allows for a  
2 guest house on each parcel. The  
3 potential now is not 20 homes, but  
4 it's 40 homes. That's according to  
5 our town records. This is not  
6 addressed in the current DEIS. Since  
7 the Department of Health is not  
8 involved, this will become the  
9 problem, the responsibility of the  
10 town building, Liberty building  
11 inspector.

12 with all the many new  
13 developments that are being approved  
14 by our Planning Board, the lack of  
15 information regarding the perk tests  
16 for this development site, how are we  
17 assured that septic systems of these  
18 leachfields will be done correctly and  
19 monitored properly? I think it's

20 within the DEC's power to do the right  
21 thing, and I beg you all to follow the  
22 correct laws and procedures and  
23 implement a system of checks and  
24 balances. It's not what you do. It's

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1 how you do it. And if you can't do it  
2 properly, don't do it at all.

3 JUDGE VILLA: If you have  
4 your statement in writing and you can  
5 give it to the court reporter, that's  
6 obviously a big help.

7 The next speaker, Lori  
8 Malone.

9 MS. LORI MALONE: I'm  
10 actually not against this project. I  
11 remember initially going to some  
12 meetings, and I think that Mr. Murolo  
13 has made compromises from when I first  
14 saw the plans put before everyone. I  
15 think the compromise requires two  
16 people to come to the middle, not just  
17 one.

18 I also don't hear any  
19 solutions. Opposition, opposition,  
20 opposition. What is the solution? No

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21 building at all? Mr. Murolo, feel  
22 free to own the property, pay the  
23 taxes on it, insure it, maintain it  
24 and get nothing out of it. That's

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1 tantamount to eminent domain, the  
2 government coming in and telling a  
3 landowner what they can do with their  
4 property or forced to sell it. Same  
5 thing. He owns the property, he is  
6 trying to compromise.

7 If you're not going to come  
8 to the table, if you're not going to  
9 help make this work, we are all going  
10 to suffer in the end. We need to get  
11 this going, one way or another.  
12 Opposing it, just continually opposing  
13 it, the intelligent people at this  
14 table, the effort that you put into  
15 just opposing this, you could have  
16 already come up with a solution to  
17 this.

18 MALE SPEAKER: I did.

19 JUDGE VILLA: No, no, excuse  
20 me, please. Everyone has the  
21 opportunity to speak.

22 MS. MALONE: That's what we  
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23 need to do. We could all say this is  
24 what I believe and this is -- the

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1 bottom line is we need a solution. We  
2 need to remedy this.

3 This man owns this property.  
4 He's come to our community. He's  
5 trying to make a profit, and he's  
6 entitled to because the last I checked  
7 that's what we do. We try to go  
8 through life, do what we can, earn a  
9 living. This is America. We have our  
10 freedoms. We own property. We should  
11 be allowed to do what we want with our  
12 property. If it impacts other people,  
13 we have to be mindful of that. All of  
14 you have the right -- I'm not trying  
15 to change anyone's mind. Everyone  
16 here has the right to believe what  
17 they want. But if you want this to  
18 work, you have to be willing to  
19 compromise. Thank you.

20

21 (Applause.)

22

23 JUDGE VILLA: Thank you.

1 MALE SPEAKER: Gone.

2 JUDGE VILLA: Okay, Miss  
3 Stettner is not here.

4 Nancy Levine.

5 MS. NANCY LEVINE: I've  
6 lived in Swan Lake my entire life, and  
7 it's nice to see that people are  
8 finally interested in Swan Lake.

9 As far as I know, Mr. Murolo  
10 is not responsible for the floods that  
11 we have had in the last two years,  
12 which were major floods and the worst  
13 floods we have had in as long as I can  
14 remember. And I think that that was  
15 caused by a higher power, and Mr.  
16 Murolo should not be blamed for that.

17 As far as the eagles are  
18 concerned, they have been on my front  
19 lawn. I live on the other side of the  
20 lake, the small side of the lake. I  
21 live in a house and the eagles are  
22 there, the swans have come across. I  
23 have herons there every day in the  
24 summer. And I don't really understand

1           why it's okay for the houses to be on  
2           one side of the lake for the eagles  
3           and not on the other, but maybe  
4           somebody can explain that to me later,  
5           Deeny.

6                        The sediment I know was a  
7           problem. As far as I can remember, as  
8           long as I can remember, when we've had  
9           major floods, and nothing has been as  
10          bad as the ones that we have had the  
11          last two years. It has already been  
12          that muddy lake for a couple days  
13          afterwards. So I really don't know  
14          how much impact the development had,  
15          especially this past year when  
16          everything was in place.

17                      As far as the logging is  
18          concerned, I've been up there, I've  
19          seen the road. I've seen the trees  
20          that were cut down, and I hope that  
21          every developer who comes to Swan Lake  
22          takes as much care as Mr. Murolo did  
23          cutting down trees. There was minimal  
24          impact up there as far as that's

1 concerned. And it's a beautiful  
2 natural setting. You're not going to  
3 see the houses from the other side of  
4 the road.

5                   Swan Lake residents cannot  
6 afford expensive lawyers, but I can  
7 tell you that there are many people in  
8 Swan Lake who are looking forward to  
9 this development, and we're welcoming  
10 developments of this quality. I'm  
11 glad that people are concerned about  
12 the environment in Swan Lake, and I  
13 hope that these people will be as  
14 concerned with the other developments  
15 that are coming to Swan Lake as they  
16 are with this one. Thank you.

17                   JUDGE VILLA: Thank you,  
18 ma'am.

19                   Ana La Gattuta.

20                   MS. ANA LA GATTUTA: Hi,  
21 I've been a resident of Swan Lake  
22 since 1969. I am very much in favor  
23 of this development. I feel it would  
24 be a wonderful thing coming to Swan



1 Lake. And like Nancy said, it's nice  
2 to see finally someone has taken an  
3 interest in Swan Lake. I agree with  
4 everything that Miss Malone said, and  
5 I would really like to see this  
6 happening. And it seems to me that he  
7 is trying to do everything that he has  
8 been asked to do. So compromise would  
9 be good.

10 JUDGE VILLA: Thank you.  
11 Heinrich Strauch.

12 MR. HEINRICH STRAUCH: I'm  
13 Heinrich Strauch. I am the Executive  
14 Director of the Liberty Community  
15 Development Corporation, and I would  
16 like to state into the record that the  
17 development as it is proposed in the  
18 current form fits into the economic or  
19 community development plan as it was  
20 defined by the residents or by the  
21 engaged residents of Liberty in  
22 2004-2005. I would like to offer my  
23 support to that development.

24 We expect the development to

1 add to the diversity of housing that  
2 we have in Liberty. We expect  
3 economic benefits directly, as the  
4 Supervisor stated, in terms of tax  
5 ratables that come into the town. We  
6 also expect indirect benefits through  
7 consumption that these residents will  
8 have in the town.

9 In terms of the proposed  
10 eagle mitigation plan, I find that the  
11 plan as stated in the DEIS currently  
12 seems a practical solution to a  
13 project that we are all aware of. I  
14 also live in close vicinity to Swan  
15 Lake. I live on Hiley Road, which is  
16 basically a half a mile up the hill.  
17 The eagles come all the way up there.

18 I would also like to remind  
19 that construction has been going on in  
20 that area. It has not been a  
21 completely undisturbed area. Shore  
22 Road was replaced. There was drainage  
23 and water lines put in. There were  
24 individual houses built just on the

2 Lake alongside Shore Road. All of  
3 that has apparently not led to a  
4 significant disturbance for the eagles  
5 that led to their migration. So I  
6 think that with the proposed  
7 mitigation plan there is a solution  
8 going forward. Thank you.

9 JUDGE VILLA: Thank you.  
10 Evan Beck.

11 MR. EVAN BECK: Hello,  
12 everyone. My name is Evan Beck. My  
13 family, is actually at 1362 Brisco  
14 Road, which I guess is over here. And  
15 my family has owned the house there  
16 for I guess it is close to 40 years.

17 The first thing I want to  
18 say is I'm struck -- even though we  
19 may have opposing views, I do find it  
20 touching. I mean we are all talking  
21 about the lake that we love. And  
22 everybody I think -- I mean we're all  
23 out for our own self interests, but I  
24 think it's nice to actually hear

1 somebody talking about Swan Lake,  
2 which we are always concerned about

3 it.

4 We are up here in the  
5 summer, which is I guess June, July,  
6 August, and we come maybe one or two  
7 weekends during the winter. So I  
8 guess that gives us about a 40 percent  
9 say in what happens, maybe not a full  
10 say.

11 But I've never met Mr.  
12 Murolo. From all accounts he sounds  
13 like a nice man, and I have no axe to  
14 grind. I wouldn't call myself an  
15 environmentalist. In fact, I'm a loan  
16 originator for a company called Love  
17 Funding. We finance real estate, so  
18 I'm the last person to go willy nilly  
19 and decide to be antidevelopment.

20 But what I am concerned  
21 about, what I love about the lake  
22 generally is the quietude, the  
23 serenity, the wildlife, which includes  
24 the eagles, it includes the herons,

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1 the swans and all things in nature. I  
2 love the peace and quiet of the lake.

3 I remember at one time when  
4 the lake seemed like it was being

5 regulated and there were strict  
6 guidelines on horsepower -- I just  
7 remember these things as a child  
8 growing up -- there was a certain  
9 motor size, that the boards were  
10 regulated and there seemed to be kind  
11 of a plan. And I guess what I can say  
12 is that one of my greatest pleasures  
13 is coming up and bringing friends up  
14 on weekends and actually kayaking out  
15 to see the eagles.

16 Now, I don't know exactly  
17 how long it's been. I mean this nest  
18 for example, I'd say maybe that's  
19 probably about three years, I used to  
20 go what I call the secondary lake,  
21 which is further out, extending, and  
22 the nest was in a different place for  
23 a couple of years. But that is one of  
24 the great pleasures that we have which

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1 is kayaking out to that point. What I  
2 do know that's happened, and I can  
3 correlate it to the beginning of the  
4 development, is just I guess I would  
5 point to them as observations. I

6 don't know I can offer solutions,  
7 which I think you very eloquently put.  
8 But the changes that I have noticed is  
9 I have to say that when the flooding  
10 happened -- and surely Mr. Murolo  
11 didn't create the flooding, or if he  
12 did, he's more powerful than we all  
13 know. But I never remember the lake  
14 turning that muddy color and for the  
15 duration that it turned the muddy  
16 color. I haven't done environmental  
17 studies myself, and I'm not an  
18 environmentalist, but I can't imagine  
19 that's good for the wildlife. Just  
20 plain and simple, just in observation  
21 of just being alive.

22 The second thing is, and  
23 again, I have no idea if this has  
24 anything to do with the development,

1 is the especially down by where we  
2 are, what I call that further lake  
3 pushing out, which is the  
4 proliferation of these water  
5 chestnuts, which someone referred to  
6 as choking the lake. I think that's a  
7 very apt description. In fact, I have

8 trouble sometimes getting through on a  
9 kayak because they are so thick into  
10 the secondary lake. I don't know how  
11 they got there.

12 The one observation I can  
13 make just by eyes, I know there are  
14 some tournaments, and I see boats of  
15 people that are not on Swan Lake  
16 coming into Swan Lake and having  
17 fishing tournaments. It was suggested  
18 to me that perhaps this is something  
19 that's part of these boats and that it  
20 got introduced from another  
21 environment. But I can tell you from  
22 the 35 years prior I never saw those  
23 water chestnuts before. Again, it is  
24 just an observation. I don't know if

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1 it was caused by the development, but  
2 I notice it.

3 I also don't know the mating  
4 rituals or when the eagles are there  
5 or not there. I know they are always  
6 there in the summer. But I didn't see  
7 them I'd say after July of this year.  
8 So that seemed like kind of a change.

9 I remember seeing them in August in  
10 the past.  
11 And then just a few concerns  
12 that I have. One, obviously the  
13 development has gone on and now it is  
14 not going on, but I thought of a  
15 couple of things as I was sitting  
16 here. Obviously, there is going to be  
17 more land clearing, more roads built,  
18 more foundations cleared. There is  
19 going to be landscaping, wells built  
20 and there's going to be septic  
21 systems. And it just strikes me as  
22 logical that this is going to create  
23 greater and further impact and  
24 negative impact on the lake itself. I

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1 think Mr. Murolo has a right to a  
2 profit, as anybody else does, but it  
3 needs to be doled out responsibly.  
4 I guess the other question  
5 is: Is there going to be a waste  
6 treatment plant? When you have this  
7 amount of homes, it strikes me you  
8 need a plant. So that's a question I  
9 would ask: Is there going to be a  
10 waste treatment plant?



11                   So obviously, what potential  
12           impact is the building going to have  
13           obviously? I don't know what impact  
14           the low-water level has. But the  
15           water level has been extremely low in  
16           the last couple of years. It is a  
17           situation with the boards. I don't  
18           know if it has a negative impact. I  
19           know aesthetically it is not pleasing,  
20           but I would like some questions  
21           answered about that.

22                   I know I mentioned  
23           initially -- and I'll finish up here,  
24           that one of the pleasures that I have

1           is taking people that come to visit  
2           kayaking and taking them to see the  
3           eagles. And when the nest was on --  
4           again what I call that far lake past  
5           Shore Road, I used to go there. One  
6           day I was actually trying to impress a  
7           woman -- this is why I really remember  
8           it. We went there on a kayak, and I  
9           was very disappointed to find the  
10          eagles weren't there. So not that  
11          impressive, wasn't scoring any points

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12 there. We started to come back with  
13 the kayak, and all of a sudden I heard  
14 a sound. As I was sitting there I was  
15 trying to think how I would describe  
16 it to you, kind of like a little buzz  
17 or hum, and I heard this quiet hum and  
18 then I saw from a far distance one of  
19 the eagles coming towards the nest.  
20 we both stopped paddling. I put my  
21 paddle down, and I was just awestruck.  
22 It was one of the most beautiful and  
23 touching things that I have ever seen.  
24 The eagle came over our heads and

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1 landed in the nest. And while I don't  
2 want to go and sound completely a tree  
3 hugger and Mutual of Omaha's wild  
4 Kingdom, when I hear the situation  
5 being leveraged against taxation and  
6 earning more money for Swan Lake,  
7 which obviously I support, I wouldn't  
8 leverage the experience that I had  
9 that day on the kayak, hearing and  
10 seeing the eagle, for a few more tax  
11 dollars.

12 We are not the richest  
13 county in the world. We are never

14 going to be. I go down Main Street,  
15 it is depressing. For some reason we  
16 stay, we love it, and we enjoy. I  
17 want it to stay that way. I think all  
18 the questions need to be asked. And  
19 on both sides, people for the  
20 development, they are passionate, they  
21 care about it. And if it's built, I  
22 hope the right thing is done.

23 JUDGE VILLA: Thank you,  
24 sir.

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1 Eli Goldschmidt. Is Mr.  
2 Goldschmidt here? There's no  
3 response.

4 Paul Edelstein.

5 MR. PAUL EDELSTEIN: I guess  
6 I should say hello to some of my  
7 neighbors who have probably never seen  
8 me before.

9 My name is Paul Edelstein.  
10 I live at 1363 Briscoll Road. I bought  
11 the house from Evan's father about  
12 three or four years ago, but I have a  
13 quite a history at this lake.

14 My parents met at the

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15 Presidential Estates when I was not  
16 yet born, obviously. And I used to  
17 spend time at a Half Moon Bungalow  
18 Colony. So I bought my place very  
19 differently than maybe the people who  
20 buy your houses, because I had been  
21 coming here quite a bit. So I knew  
22 what this lake was about. Which is  
23 the opposite of what I'm used to  
24 during my daily life.

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1 I am a litigator. I am an  
2 expensive plaintiff's lawyer. So I  
3 know about procedures, and I know  
4 about credibility. And I didn't know  
5 much about this project until a few  
6 weeks ago. So I feel like I came in  
7 here somewhat level headed into  
8 hearing what's been going on.  
9 Now I've heard both sides of  
10 the fence. What I've heard is that  
11 procedures have been violated and  
12 there's a tremendous credibility  
13 question on this side of the table,  
14 and I want to know why. But my reason  
15 for buying this house was coming up in  
16 that there was nobody here. At least

17 not on this lake. There would be the  
18 occasional fisherman and there would  
19 be the occasional cars, more so in the  
20 summer. That's it. Then when I  
21 bought this house and started using it  
22 myself I realized why. If you jump  
23 off your kayak, you're hitting the  
24 bottom.

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1 Then I realized as I spent  
2 more time here there was a vast  
3 difference in the quality of this  
4 water and the wildlife that was going  
5 on in the beginning of the summer and  
6 the end. Plant life would rise,  
7 things would change. So it doesn't  
8 take a genius to realize the  
9 sensitivity of this place and how  
10 easily it could be impacted.

11 And then this lake turned  
12 brown. I understand you obviously had  
13 nothing to do with the floods and  
14 rains, but now I'm hearing people who  
15 have been here for 30 years all the  
16 time -- I'm not -- and never saw that  
17 before. There's got to be a reason.

18  
19 experts -- undoubtedly you are one --  
20 as to the impact that leachfields  
21 might have on this.

22 I'm also thinking of putting  
23 more money into my own house, which I  
24 paid a lot of money to Evan's father

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1 for, and I'm being told I have to go  
2 through certain procedures and pay  
3 certain money, hire my own attorneys,  
4 because nobody would represent  
5 themselves, to go about and do these  
6 things. Now I'm thinking, why would I  
7 want to put more money into this thing  
8 when the whole reason for me sinking  
9 money into it and buying it in the  
10 first place was this be undisturbed.

11 And those kayaks you hear  
12 Evan loving are my kayaks and you  
13 being able to do the very same things.  
14 what I mean is you should be able to  
15 do a profit. This would be great  
16 getting more tax dollars, fix up  
17 everything. Every improvement you see  
18 on this lake we see probably more than  
19 anybody. Any little thing we notice

20 because we live here. But you'll be  
21 selling to people something they won't  
22 get, because you'll be selling what we  
23 have, which may not be there anymore.  
24 If there are guarantees and

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1 assurances that this project will not  
2 disturb the eagles and the habitat,  
3 then more power to it. It will be  
4 better for everyone. But if it does  
5 disturb these things, you'll have 20  
6 beautiful houses, great and wonderful.  
7 20 millionaires will come in and when  
8 they get out on their kayak and boat  
9 they are going to go what happened, no  
10 fish, no bird, brown disgusting water  
11 and all these problems. They will be  
12 gone. Because millionaires come and  
13 they go. These people I think have  
14 been here a lot longer and they look  
15 not like the people that may buy this  
16 development. But the people that will  
17 buy this will buy it for the all the  
18 reasons that all these people have  
19 stayed here their whole lives. If you  
20 alter that character, you'll have a

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21 big problem.  
22 All these questions seem  
23 valid. I'm certainly willing to  
24 listen to to both sides of the table.

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1 I've heard both. I think you're  
2 right: We need to find some solution.  
3 But these concerns have to be met.  
4 One side of the table is easier able  
5 to meet them and hopefully with the  
6 assistance of the government. Thank  
7 you.

8 JUDGE VILLA: Thank you.  
9 Jonathan Hyman.

10 MR. JONATHAN HYMAN: My name  
11 is Jonathan Hyman. I am not a  
12 resident of Liberty, although I  
13 frequent pass through Swan Lake.

14 Two different people have  
15 spoken about something I thought I  
16 might help out with and participate in  
17 simply as a person who happens to be  
18 here observing. Liberty is not alone.  
19 I live in the town of Bethel, and I  
20 think it's safe to say that all across  
21 the entire county we are really facing  
22 a defining moment, and community by



23 community we are asking ourselves can  
24 we, should we, how do we redefine our

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1 self image. Growth is coming.  
2 Development is coming. And I think  
3 the one thing that I'm hearing tonight  
4 and you will not hear this -- I'm  
5 sorry you will hear this everywhere  
6 and you won't hear people say they are  
7 antidevelopment. I think for the most  
8 part people in Sullivan County are  
9 fairly level-headed people. But what  
10 you will hear is an impassioned plea  
11 for appropriate development, for  
12 measured responses, for development  
13 that meets the needs of individual  
14 communities and every community is  
15 different.

16 So I thought I would add to  
17 the discussion, because it's been  
18 mentioned twice, and so I want to  
19 bring something up because a study has  
20 been done. I'm in possession here of  
21 a study that's called a Cost of  
22 Community Services Study for Sullivan  
23 County. It is put out by the Division

1 of Sullivan County, and also by the  
2 Partnership For Economic Development.  
3 So I come here today as an impartial  
4 person to just tell you a little bit  
5 about what the study says so you can  
6 know. Because this is part of setting  
7 priorities and redefining a self image  
8 for a town.

9 So they have conducted a  
10 study to find out how towns, tax  
11 people and where tax dollars go,  
12 because this is part of the growth of  
13 the county. So the study says that in  
14 the Town of Liberty for every dollar  
15 that Liberty collects in residential  
16 taxes from residential people it costs  
17 the Town of Liberty \$1.32 to service  
18 that community. You're not the  
19 highest. Now, for every dollar that  
20 Liberty collects in commercial revenue  
21 from the commercial sources to service  
22 them is only 40 cents. So you get a  
23 profit. For every dollar that Liberty  
24 collects in agricultural taxation, 42

1 cents; another profit for the Town of  
2 Liberty. For every dollar that  
3 Liberty collects from open space it  
4 only costs 38 cents to service that  
5 open space.

6 So if you'll allow me to  
7 just read something right from the  
8 report, I think it's germane to the  
9 discussion you've having tonight.  
10 Again, I'm throwing it out to you  
11 because I'm sitting in the back, and I  
12 don't have any interest in this as far  
13 as I'm from Liberty or from Swan Lake.  
14 It says the towns of Fallsburg and  
15 Forestburg reveal relatively high-cost  
16 burdens for residential development in  
17 comparison to other towns. Both of  
18 these towns spend over \$1.56 to cover  
19 services for every dollar and revenue  
20 they generate. A somewhat similar  
21 trend is exhibited in the Town of  
22 Liberty and in the town of Lumberland  
23 where these municipalities spend \$1.32  
24 to underwrite services for every

1           dollar and revenue they collect from  
2           residential properties.

3                         Data for commercial,  
4           agricultural and open space property  
5           types indicate that these land uses  
6           are positive contributors to town  
7           budgets. For these land users the  
8           cost of service in all fifteen towns  
9           in Sullivan County was less than the  
10          amount of revenue generated by the  
11          taxes for these kinds of land uses.

12                        So I'm just throwing it out  
13          to you -- all of you, whatever side  
14          you're on -- you should know that when  
15          you factor in what it is you want to  
16          bring into a town in terms of  
17          development, it's a little more  
18          complicated than just saying people  
19          are going to come in and spend money  
20          in our community, they are  
21          millionaires or for whatever it is. I  
22          just want to throw that out to you.  
23          Again, if you're interested I'm sure  
24          you can find this online, Sullivan

1 20/20, Defining an Image and Managing  
2 change. Okay, fair enough?

3

4 (Applause.)

5

6 JUDGE VILLA: Thank you,  
7 sir.

8 The next speaker is Melissa  
9 Olton for Christopher Karras.

10 MS. MELISSA OLTON: Good  
11 evening, everyone. How are you today?  
12 My name is Melissa Olton. And I am  
13 speaking on behalf of my brother  
14 Christopher, who is away at school  
15 right now.

16 When this process all  
17 started, he did read this at a board  
18 meeting, so it is a little apropos to  
19 read it for today. This is what he  
20 wrote. It is called Saving the  
21 Eagles.

22 Imagine you and your family  
23 have lived in an area for a long time,  
24 and all of a sudden you hear a giant

1 machine in the background. It is a  
2 bulldozer and tree-cutting equipment  
3 getting ready to clear the land for  
4 the rich in order to build gated  
5 communities that will eventually put  
6 you out of your house and home. Well,  
7 this is happening to an American icon,  
8 as we speak. The biggest of all, a  
9 Bald Eagle. The situation will get  
10 pretty nasty in the future to come for  
11 those animals, and eventually the  
12 ecosystem of the entire area will be  
13 changed and abused, all for money.  
14 This is always the case, and as I go  
15 on further I will greatly express the  
16 impacts that this will have on the  
17 eagles and on the ecosystem they  
18 inhabit.

19 why save the Bald Eagle and  
20 its environment? Basically the Swan  
21 Lake owners association is trying to  
22 build almost directly across from the  
23 nest in which the eagle lives. Human  
24 occupation will greatly impact this

2 move on. This will be ashame because  
3 this bird has probably lived on this  
4 lake for approximately 20 years,  
5 judging from the nest. Who knows how  
6 many generations have come to know  
7 this lake. As well there are many  
8 other nests in and around this area  
9 and the babies. I was on the lake  
10 yesterday, and when we pulled up about  
11 30 feet from the shoreline the bird  
12 was perched right by its nest. As we  
13 got closer it began to move over in  
14 its tree to hide itself. Now, if two  
15 people on a boat is enough to make a  
16 bird nervous, imagine in if a whole  
17 entire community invades their space.  
18 The eagle will have no other choice  
19 but to move on.

20 The rich plan to build gated  
21 communities so that they can profit  
22 off the land that has not been  
23 developed. Selling Sullivan County  
24 does need to boost their tax and

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1 overall income so it can stay afloat  
2 in such unstable times, but at what

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3 cost? well, think of this: They have  
4 all this money to build these  
5 communities and the roads leading to  
6 them, but just like with everything  
7 and everyone, they are trying to cut  
8 corners. What I mean by this is after  
9 they build them, they will provide the  
10 homeowners with leachfields for the  
11 homeowners' waste. This will ruin the  
12 lake's vitality in the future to come.  
13 You can see firsthand when you look at  
14 the lakes in and around the Sullivan  
15 County, which is White Lake. Also  
16 there is a plan to build a small  
17 marina which will greatly populate the  
18 lake and which will also affect the  
19 eagle and the ecology of the  
20 environment.

21 The old timers were smart in  
22 their day when they constructed on our  
23 side of the lake. They put in a sewer  
24 system in order to prevent the

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1 destruction of this great and  
2 wonderfully diverse animal population,  
3 including the Bald Eagles, fish, swan,  
4 wild game and the list goes on. There



5 are so many people in this world that  
6 are just doing as I am with their  
7 never ending pursuit to save and  
8 conserve the wildlife that we are so  
9 fortunate to have and hopefully  
10 continue to have in the future to  
11 come. Money talks in today's society,  
12 and it would be ashame if we would  
13 stand by and let the greed and  
14 destruction of this deed go by  
15 unchecked. This will keep the  
16 builders honest, so they don't try and  
17 cut those corners that we know so  
18 often they do.

19 It is my hope that we can  
20 save these birds only when we as a  
21 society become consciously aware of  
22 the impact that we have on our  
23 environment as well as the wildlife  
24 inhabiting it. we will become better

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1 aware of our actions and consequences  
2 that follow. The right to save these  
3 eagles will not be easy because of the  
4 amount of money at stake. I hate that  
5 people with money can do whatever they

020607 AJM Kelly Bridge.txt  
6 want no matter the impact. I have  
7 bitten my tongue for far too long and  
8 I have always said to keep a low key,  
9 but that will just let these people do  
10 as they please with no intervention.  
11 what do you say, why don't you release  
12 some of that pressure off your tongue  
13 and speak out for the so many animals  
14 that don't have a voice, just a  
15 soaring cry.

16 And that's what he wrote.

17 JUDGE VILLA: The next  
18 speaker, Avram R. Vann.

19 MR. AVRAM VANN: For about  
20 20 years my wife and I have owned a  
21 home right along the lake, somewhere  
22 over here. I've listened carefully to  
23 everything that's been said tonight.  
24 And I recognize that when the

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1 developer bought the piece of land  
2 that he did, he bought it because Swan  
3 Lake does exist and because it offers  
4 so much.

5 Ford, General Motors,  
6 Maytag, they have one thing in common.  
7 Recourse. They put out a product, it

8 don't work, they have to recall it.  
9 Sam talked about the  
10 leaching fields and his concern that  
11 they may not endure. My concern is if  
12 DEC decides that the developer is  
13 entitled to develop and if Sam is  
14 correct in his concerns about five  
15 years or ten years or fifteen years  
16 from now and these leaching fields not  
17 working and affecting the lake, what  
18 will happen? we're told we are going  
19 to have ratables and tax dollars.  
20 They shouldn't have to go to clean up  
21 a mess in the lake. The taxpayers of  
22 Sullivan County shouldn't have to pay  
23 for it. The State of New York should  
24 not have to pay for it. So it seems

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1 to me that what ought to happen is  
2 that if DEC decides to allow the  
3 developer to develop based upon his  
4 plan, there should be a surety bond in  
5 place to protect us, the citizens and  
6 taxpayers of Swan Lake, of Sullivan  
7 County, and frankly the State of New  
8 York, to make sure that if any cleanup

020607 AJM Kelly Bridge.txt  
9 is needed, the money to clean up will  
10 be there. Not at taxpayer expense,  
11 because then bye-bye go the ratables  
12 that we talked about. But at the  
13 expense of a bonding company that will  
14 be around.

15 Some of you may wonder, why  
16 not go to the developer then. The  
17 answer to that is pretty simple. In  
18 my experience as an attorney, every  
19 developer sets up a separate  
20 corporation or entity for each  
21 development. When he finishes he  
22 liquidates that entity and it's gone.  
23 If this problem should come up in five  
24 years or ten years or fifteen years,

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1 AJM will be history. Unless there's a  
2 bond in place to protect us, the  
3 taxpayers, the citizens and the people  
4 who love Swan Lake so much, we're all  
5 going to be devastated.

6 So I submit to DEC that you  
7 do what you're supposed to do in  
8 accordance with law. And if your  
9 decision is that they are allowed to  
10 develop, make sure that we are

11 protected down the road. Thank you.

12

13 (Applause.)

14

15 JUDGE VILLA: Thank you,  
16 sir. I do not have any more speaker  
17 cards. Is there anyone who filled out  
18 a card and hasn't turned it in?

19 (No response.)

20 If there are no other  
21 speakers, then we'll adjourn this  
22 public hearing. I very much  
23 appreciate everyone coming out. It's  
24 a very cold night. I also appreciate

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1 the town making this venue available  
2 for us.

3 A reminder that written  
4 comments on the DEIS and the permit  
5 application will be accepted until  
6 February 26, 2007. Thank you all.

7

8 (Whereupon, the  
9 above-captioned proceedings concluded  
10 at 9:01 p.m.)

11



020607 AJM Kelly Bridge.txt

14 set my hand this 7th day of February 2007.

15

16

17

KAREN SCHMIEDER, CSR, RMR  
Registered Diplomate Reporter

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2

**From:** "NANCY LEVINE" <swanlake43@earthlink.net>  
**To:** <sesheelee@gw.dec.state.ny.us>  
**Date:** 1/20/2007 8:27:12 PM  
**Subject:** FW: AJM Swan Lake Project

----- Original Message -----

**From:** NANCY LEVINE  
**To:** sesheelee@gw.dec.state.ny  
**Sent:** 1/20/2007 7:53:46 PM  
**Subject:** AJM Swan Lake Project

Mr. Sheele,

I am a lifelong resident of Swan Lake. I have seen the work that has been done at the site, and I am very impressed with many things: the care that was taken to leave as many trees standing as possible, the large lots that the homes will be on, the fact that one will not be able to see the homes from the other side of the lake, and much more. I believe that this is a quality development, and if you are familiar with Swan Lake, then you will understand that we are desperately in need of upscale homes that will provide much-needed tax contributions while requiring very few services. I know that many residents will not take the time to write, however, there is much support for this development in Swan Lake. I hope that this project comes to fruition; and I also hope any future developments will come under the same careful scrutiny that this one has received. Thank you.

Sincerely,

NANCY LEVINE



3

**From:** "pandmBWF" <pandm@beaverwoodfarm.com>  
**To:** <sesheelee@gw.dec.state.ny.us>  
**Date:** 1/22/2007 7:51:04 PM  
**Subject:** in favor of Kelly Bridge development

Dear Mr. Sheely,

In 2000 we moved to Swan Lake, to escape the city and start a better life. In the 7 years we've been here, we have met many local people, created a wonderful, nearly self sufficient "educational farm" for summer guests to enjoy. We have also dramatically improved both our property and home, begun several profitable small businesses and have basically fallen in love with the area.

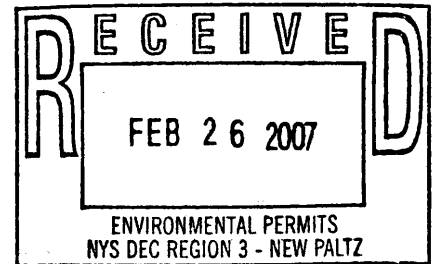
We are quite familiar with the development beginning on Kelly Bridge Road, and are all in favor of it.

It seems to have made only a minimal environmental impact, as large areas were not cleared as is commonly done. The development also seems as if it will bring new consumers to our local stores, as well as people looking to start a better life away from the city, as we did. This helps us to be confident that those properties will be made beautiful and be well maintained and only add to the beauty of our ever improving area. Finally, this development will bring more property tax income to our tax-starved county, something I'm sure everyone looks forward to. We hope that the development will be allowed to be completed, and look forward to meeting our new neighbors.

Thank you for your time,  
Paul Jeanneney and Marilyn Wood  
[www.BeaverWoodFarm.com](http://www.BeaverWoodFarm.com)



Dr. Michael Edwards  
1495 Briscoe Road  
PO Box 446  
Swan Lake, New York 12783



January 22, 2007

Scott Sheeley  
NYS – DEC  
Region #3  
21 South Putts Corner Road  
New Paltz, New York 12561

Dear Mr. Sheeley,

Public Comment – DEIS for Swan Lake Estates, LLC – Kelly Bridge Road Subdivision

I am writing to submit my comments to the forthcoming Public Review of the Environmental Impact Assessment of the proposed Swan Lake Estates, LLC development in Swan Lake, New York. I cannot attend the Public review in person because I will be out of the country at the time.

My residence is located at 1495 Briscoe Rd in Swan Lake, at the corner of Briscoe and Kelly Bridge Roads in the Town of Liberty, and I have lived in the area since 2002.

I have read the Environmental Impact Assessment for this project compiled by Tim Miller Associates, and have the following comments to make:

1. It is not possible to download or print the document because Tim Miller Associates has placed a password encryption lock on the document. It would be helpful if the DEIS was available for downloading and printing, since it is a public document.
2. The Assessment explicitly excludes consideration of the impact of septic tanks and leach fields on the American Bald Eagles habitat at Swan Lake and its water quality. Much of the research on eagle preservation states that eagles need three things to survive: a clean food supply, fresh water, and a relative lack of disturbance from human activity. In an environmental assessment therefore, it makes no sense to leave water quality out of the equation. As has been proven with similar sewerage arrangements on lakes elsewhere in Sullivan County, pollution of the lake waters is likely to occur from leakage through the subsoil and shale fissures. The effects of twenty one septic tanks and leach fields on Swan Lake – the last clean-water lake of such size in the County according to many experts – would be disastrous.
3. The Assessment says that “Swan Lake freezes over during the winter” (p32) but this is untrue, especially in a warm winter such as now. Even in a normal winter, a

large area of the lake surrounding Kelly Bridge remains unfrozen, almost up to the eastern boundary of the project site. This is where the bald eagles fish during the winter months, as I have observed myself numerous times. Therefore, any activity at or near this area will affect the eagles.

4. The Assessment claims that no significant damage will be done to Kelly Bridge Road during the construction or other phases of the project. I have personally observed the deterioration of Kelly Bridge Road and the bridge itself, due to the damage caused by Nastro vehicles in the construction of the access road through the project site. The road will obviously be eroded even further during the construction of the 21 houses. It is my understanding, having read the Bald Eagles Management Guidelines, that construction should not take place during the eagles' nest-building, breeding and hatching stages. What guarantees are in place to ensure that construction activities will not interfere with the eagles' breeding cycle?
5. In addition, the use of County Road 142 for all construction traffic will place an intolerable burden along this section of Briscoe and Kelly Bridge Roads. During the construction of the access road through the project site, we did not have one moment's peace from May to September of 2005 because of the continuous convoys of heavy trucks in the area from 7:00 am until 4:30 pm. During those months, the eagles made themselves scarce in the areas where we would normally see them. The eagles would, however, return to their normal feeding areas of the lake on weekends when the construction noise temporarily abated. At the very least, rigid restrictions must be placed on the hours of operation of trucks and construction equipment at and to the project site, with no activity allowed on weekends, before 9.30am or after 5pm.

Therefore, I am requesting that a full, proper and comprehensive mitigation plan be prepared covering all aspects of the potential damage caused by this project to the surrounding eagle habitat, to public health and safety, to water quality and to the preservation of bio-diversity.

There are more than four separate residential subdivisions currently planned for the immediate vicinity of Kelly Bridge Road and at the intersection of Briscoe and Kelly Bridge Road, totaling over 200 new homes. Unfortunately, the combined impacts of these subdivisions on the eagle habitat, with plans to divert effluent and storm water run-off into the stream (B1 classification) that feeds into Swan Lake and into Swan Lake itself, have not been taken into account.

I would like to suggest that there is a much better alternative to further residential development of this kind in the area, regardless of which plan is used (high, low or medium density). This would be for the State Parks and Recreation Department to purchase Swan Lake and its surroundings as a wildlife refuge and public-access site of great natural beauty so that the entire area can be preserved in perpetuity for generations still to come. By common consent, Swan Lake is one of the last, if not *the* last, clean

lakes in Sullivan County with a substantial amount of undeveloped wetland and forest still remaining. When pretty much every other lake in the county has been developed, why not preserve at least one for the public to enjoy in its current condition? This would be a wonderful statement by the DEC, fully in keeping with its mission.

I hope that these suggestions will be taken into consideration before the final environmental impact statement is produced. Thank you for your help.

Sincerely Yours,

A handwritten signature in black ink, appearing to read 'MA Edwards', with a long horizontal flourish extending to the right.

(Dr) Michael A. Edwards





JOHN L. PARKER  
*Attorney-at-Law*

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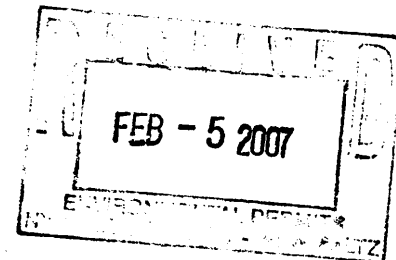
565 Taxter Road, Suite 100  
Elmsford, NY 10523

(914) 347-2290  
(914) 347-2331 fax  
parkerjlp@yahoo.com

January 31, 2007

VIA FACSIMILE AND CERTIFIED MAIL

Steven Goverman  
Assistant Regional Attorney  
Department of Environmental Conservation  
Division of Legal Affairs, Region 3  
21 South Putt Corners Road  
New Paltz, NY 12561-1696



Re: **Swan Lake Estates**  
**Order on Consent Case No. R3-20050621-53.**  
**DEC Id Nos. 3-4836-00245/00001**  
**3-4836-00245/00002**  
**Draft Environmental Impact Statement**

Dear Mr. Goverman:

I write in reply to your letter of January 4, 2007, which was a reply to my letter of November to Regional Director Marc Moran and Regional Attorney Vincent Altieri regarding violations of State law pertaining to the above referenced project. As you know, there is considerable history with respect to this proposed subdivision, as previous enforcement actions by the DEC and the Sullivan County District Attorney attest. The DEC is currently designated as lead agency under the State Environmental Quality Review act, which will put the applicant's draft Environmental Impact Statement before the public for a hearing on February 6, 2007.

I write to express distress at the suggestion in your correspondence that members of the public should submit additional information regarding flagrant, obvious and documented violations of the DEC's Consent Order and governing this project and state law. It is unclear to me precisely what additional information should be submitted for your consideration.

Because of the suggestion that the November letter was unclear on several points, I thought it appropriate to briefly address the issues raised and respond point by point.

**I. KELLY BRIDGE ROAD SUBDIVISION IS IN VIOLATION OF THE CONSENT DECREE.**

As you will agree, the Consent Order places a clear and explicit Cease and Desist order regarding work at the site until required DEC permits are obtained. *See Letter of John Parker to Regional Director Marc Moran and Regional Attorney Vincent Altieri, November 27, 2006, attached hereto.* The Consent Order was in response to a rather egregious violation of water quality standards described in the Consent Order as a "discharge of turbid water in the vicinity of Kelly

Bridge," observed by DEC staff. Your response of January 4 indicates that Division of Water staff advised you that "based on numerous site visits over the last year, no new or recent construction has been observed at the Kelly Bridge Road subdivision other than remedial work." Your letter further states that "It thus appears . . . the installation of *underground utilities* at the subdivision is intended as a prospective description, rather than a statement of actual current site conditions." *Emphasis added.* The information submitted to DEC on this point is a notarized statement made by a member of the public after a call to the applicant / developers agent's regarding the sale of lots at the Kelly Bridge Road subdivision. Such call was placed after local residents witnessed utility at the site. The statement provided to DEC clearly indicates that the applicant / developer's agent stated "the *underground electrical* has been installed." *Emphasis added.* Despite your reply to the contrary, such a statement by the agent of the applicant / developer, and the eyewitness accounts that prompted the discussion with that agent, it does not appear to be a "prospective description." Perhaps the site visits by DEC did not correspond with such construction activities, and further investigation is warranted based upon the evidence respectfully submitted to your offices. Such activity would constitute an additional documented violation, albeit by members of the public, of the Consent Order.

**II. KELLY BRIDGE ROAD SUBDIVISION MAY BE IN VIOLATION OF STATE LAW BECAUSE IT IS BEING SOLD TO THE PUBLIC EVEN THOUGH STATE LAW PROHIBITS SUCH SALE AT THIS POINT.**

As you know, the ECL and PHL are clear on the issue of pre-approved sales for subdivisions such as the project in question. "No subdivision or portion thereof shall be sold, offered for sale, leased or rented by any corporation, company or person, and no permanent buildings shall be erected thereon, until a plan or map of such subdivision shall be filed with and approved." ECL § 17-1505(1), PHL § 1116. Your reply to me indicates that "it is unclear to me from your letter whether contracts of sale of individual lots, as would constitute a legally valid offer of sale, are being entered into by the project sponsor." The information submitted to DEC on this point is a notarized statement made by a member of the public indicating that the applicant/ developer's agent stated that "one lot is "in contract"; lot # 12. According to Hunt, this means that McKean Realty has accepted a binder of \$1000." Again, this statement clearly demonstrates that an individual lot, # 12 is in contract - and that \$1,000 has changed hands evidencing the transaction. This is a statement of the applicant/ developer's agent. Please advise regarding additional information that would more clearly address this issue. Such activity would constitute an additional documented violation, albeit by members of the public, of various provisions of State Law cited above.

**III. THE APPLICANT'S REPEATED VIOLATION OF THE ECL AND THE CONSENT ORDER RAISE THE ISSUE OF SUITABILITY OF THE APPLICANT FOR PENDING DEC PERMIT APPLICATIONS, AND SHOULD BE CONSIDERED.**

It is irrefutable that DEC addressed violations of clean water requirements of ECL §§ 17-0803 and 17-0501 in the Consent Order it signed on September 15, 2005, and that it is still in force. The issues raised in the letter to DEC officials of November 27, 2006 and this reply indicate that there is plain, clear and sufficient evidence to establish additional violations of that Consent Order, the ECL and the PHL, which DEC cooperatively works with the Department of Health to implement and enforce. Despite the January 4 reply letter's representations to the contrary, plain and straightforward statements by the applicant/ developer's agent that amount to

admissions of violations of State Law is serious and significant, irrespective if DEC has not yet addressed these violations. The underlying principles of the Record of Compliance Enforcement Guidance Memorandum, its legal validity and the importance of such considerations in DEC action are irrefutable and unquestioned. The Guidance Memo stands on its face, and upon closer examination, the evidence present to DEC warrant its application to permits the DEC is considering regarding this subdivision.

The local folks that live on, around and nearby Swan Lake have done the yeoman's share of work regarding full and fair consideration of the environmental impacts and implications of the above proposed project, its pending SEQRA review and the pending permit applications. Their persistence and hard work have prompted DEC to enter the 2005 Consent Order in this case - it has also resulted in a SEQRA review because of potentially significant impacts under the Endangered Species Act, amongst others, that has come despite the applicant/ developer's assertions that no American Bald Eagles were on site during the Town's review, while only weeks later publicly indicating that such eagles are a key to his interest in the proposed site and the value to the public in its subdivision and sale. *See Eagle Angst, The Towne Crier, May 18 - 24, 2005, attached hereto.*

The November 27, 2006 request for DEC review and investigation and enforcement stands. It is unclear to me at this time what could possibly be submitted by members of the public that would be sufficient to demonstrate the violations admitted by the applicant's agent that was presented to DEC last November. At the minimum, it should trigger a full DEC investigation. Thus, I again ask that DEC to further review the evidence submitted to them, and conduct a full and thorough investigation.

Thank you for your consideration.

Respectfully submitted,

  
John Parker

cc: w/o enclosures.

Judith Enck  
Deputy Secretary for the Environment  
Office of Governor Eliot Spitzer

Marc Moran  
Regional Director



JOHN L. PARKER  
*Attorney-at-Law*

565 Taxter Road, Suite 100  
Elmsford, NY 10523

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parkerjlp@yahoo.com

November 27, 2006

Marc Moran  
Regional Director  
Department of Environmental Conservation, Region 3  
21 South Putts Corner Road  
New Paltz, New York 12561

Vince Altieri  
Division Attorney  
Department of Environmental Conservation Region 3  
21 South Putts Corner Road  
New Paltz, New York 12561-1620

**Re: Swan Lake Estates**  
**Order on Consent Case No. R3-20050621-53.**  
**DEC Id Nos. 3-4836-00245/00001**  
**3-4836-00245/00002**  
**Draft Environmental Impact Statement**

Dear Messrs. Moran and Altieri:

I write to you regarding the permit applications, order on consent, and environmental impact statement review under SEQRA, for which the Department ("DEC") is lead agency, for the above referenced project in the Town of Liberty. As you know, this is a case of great importance to my clients, which are neighbors to the site of the proposed subdivision and are gravely concerned about the environmental quality of the area, and the federally protected Endangered Species that are under significant negative pressure. A few months ago, we discovered that the main breeding nest was no longer in the tree.

I write to request your immediate action with respect to violations of State Law that undermines DEC jurisdiction, defies the order on consent in this case, and to a situation that may trigger joint DEC - DOH jurisdiction for review and approval of water and sewage systems. These violations of law raise serious questions about the suitability of the applicant for DEC approval of permits, and require DEC to immediately revisit September 2005 Consent Order. We request that DEC take such action without delay.

**I. KELLY BRIDGE ROAD SUBDIVISION IS IN VIOLATION OF THE CONSENT ORDER.**

Kelly Bridge Road subdivision is being actively sold and marketed to the public. The representations made by the applicant's real estate agents indicate a violation of the DEC

consent order and likely of state law. The September 15, 2005 Order on Consent prohibits construction activities prior to obtaining DEC permits. *In the Matter of the Alleged Violations of Article 17 of the New York State Environmental Conservation Law ("ECL"), by: AJM at Swan Lake Estates, LLC, Respondents, Order on Consent Case No. R3-20050621-53, attached hereto as Exhibit A.* Amongst other requirements, it requires that applicant

Has agreed to *cease construction* of the project until coverage has been gained under general stormwater permit GP-02-01, and to obtain any other DEC permits which may be required for the project, *prior to recommencing construction.*

*Emphasis added. Id. at § 4.* The construction work involved installing utility infrastructure on the subdivision site, which the applicant's realtor described as "underground electrical." *See Statement of Julie Grim, October 24, 2006, attached hereto as Exhibit B.* Thus, the applicant's real estate sales representative conclusively established such construction activity had occurred on-site as part of its active marketing campaign to the public.

DEC entered into a Consent Order because of violations of the clean water requirements of ECL Article 17, specifically ECL § 17-0803 and § 17-0501. There is no question that DEC believed that such violations were significant enough to warrant a \$15,000 civil penalty. This penalty was reduced by \$2,500 "provided Respondent strictly adheres to the terms and conditions of this order." The actions of the applicant, however, based upon the statements of their agents clearly indicates that stringent requirements of strict compliance have not been met. The applicant admits that their construction schedule proceeded despite the Consent Order. The Department must review and reassess the deterrent effect of the penalty amount it assessed in the Consent Order and should require additional penalties. At a minimum, DEC must collect the \$2,500 of the civil penalty it initially suspended.

## **II. KELLY BRIDGE ROAD SUBDIVISION MAY BE IN VIOLATION OF STATE LAW BECAUSE IT IS BEING SOLD TO THE PUBLIC EVEN THOUGH STATE LAW PROHIBITS SUCH SALE AT THIS POINT.**

The lot sizes of the Kelly Bridge Road subdivision are an important issue in this case because State law prohibits certain subdivisions from being offered for sale, lease or rent unless properly filed plans identify amongst other things the methods for obtaining and furnishing the "adequate and satisfactory water supply" and "adequate and satisfactory sewage facilities" for the lots are duly filed with the County Clerk. *PHL § 1116, ECL § 17-1505.* State law requires DOH and DEC to approve water supply and sewage systems involved in approval of the Kelly Bridge subdivision. *PHL Article 11, ECL Title 15, Article 17.* These lots are in fact for sale even without complying with these important public health and environmental provisions of state law requiring such compliance be filed with the County Clerk. A full inquiry on this important legal issue is urgently needed.

The proposed lot sizes approved by the Town of Liberty on May 3, 2005 range from about two to five plus acre lots. On March 22, 2006, the DOH based upon the site plan or AJM at Swan Lake Estates - Kelly Bridge Road Subdivision concluded that

the proposed realty subdivision does not fall within this Department's jurisdiction as found under Article 11, Title II, Public Health Law § 115.1

*Letter of Timothy B. Rose, P.E., BCEE Department of Health to Scott E. Sheeley, DEC, March 2, 2006, attached hereto as Exhibit C.* This conclusion should be reviewed, however, because the ultimate determination requires interpretation of both Town and State Law. It is unclear that both laws were fully applied prior to reaching such a conclusion.

The responsibilities and jurisdiction of the State agencies overlap under the State statutory scheme, and a Memorandum of Understanding governs how these agencies work together. ECL § 17-1509. In relevant part the law requires that,

No subdivision or portion thereof shall be sold, offered for sale, leased or rented by any corporation, company or person, and no permanent building shall be erected thereon, until a plan or map of such subdivision *shall be filed with and approved* by the department or city, county or part-county department of health having jurisdiction and such plan or map thereafter filed in the office of the clerk of the county ins which such subdivision is located.

*Emphasis added.* ECL § 17-1505(1), PHL § 1116. These requirements apply to any "residential lot" or "residential building plot" that is "five acres or less." ECL § 17-1501(3), PHL § 1115(3). These provisions apply to subdivision "divided into five or more parcels." ECL § 17-501(1), PHL § 1115(1). The "plan or map" shall show methods for obtaining and furnishing adequate and satisfactory "water supply" and "sewerage facilities." ECL § 17-1505(2), PHL § 1116(2). The installation of these systems "shall be in accordance with the plans or any revision or revisions thereof approved." ECL § 17-1505(3), PHL § 1116(3). If five or more lots are less than the five acre threshold, joint DEC - DOH action is necessary.

The Town of Liberty code further clarifies the legal definition of what "residential lot" means for the purposes of the DOH and DEC inquiry. In full, the Town Code defines Lot Area as

The area contained within the limits of the property lines bounding that lot. Any portion of a lot included in a street right-of-way, designated wetland, utility right-of way or land under water shall not be included in calculating lot area.

*Liberty Town Code § 130-10.* Of particular relevance to lot size calculation in this case is the large amount of wetlands on site. The Town of Liberty Code broadly and liberally defines wetland as it relates to lot size issues. *Chapter 82 of the Town Code.* ECL § 24-0301. The Town Code does not restrict the definition of wetland to the state wetland definition.<sup>1</sup> Thus, State law and the more liberally defined Town Code must be applied by DEC under the principles of Home Rule.

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<sup>1</sup> See Chapter 82. There is no definition of the word "designated wetlands" in the Town Code regarding lot area. Further, a review of ECL Article 24 and implementing regulations reveals that there is no definition of "designated wetland" with respect wetlands either. ECL § 24-0101 et seq.

DOH guidance is entirely consistent with this approach. DOH has clearly acknowledged that "Property under water (e.g. ponds, streams, wetlands, etc.) are typically considered in the lot size determination." *Emphasis added. Department of Health: Realty Subdivisions: Frequently Asked Questions (FAQs), attached hereto as Exhibit D.* In Liberty, wetlands and lot area are not "typical" as DOH uses that word. Thus, as a matter of Town and State law, when considering the size of the subdivision lots regarding approval of water and sewage systems DEC and DOH must deduct wetlands from the calculation of lot area. When properly applied, there are significant questions about whether there are more than five lots below the five-acre criteria in the Kelly Bridge Road subdivision given the significant amount of wetlands present on the site. Deducting the wetlands from the lot area calculations as per Town Law will result in the lot sizes of up to five additional sites falling below the five acre threshold criteria requiring joint DEC - DOH involvement. Full review of this issue is crucial and necessary and full state review is required.

**III. THE APPLICANT'S REPEATED VIOLATION OF THE ECL AND THE CONSENT ORDER RAISE THE ISSUE OF SUITABILITY OF THE APPLICANT FOR PENDING DEC PERMIT APPLICATIONS, AND SHOULD BE CONSIDERED.**

The conduct of the applicant in this case raises questions about the "suitability" for issuance of DEC permits. As discussed above, the Consent Order addressed violations of the clean water requirements of ECL §§ 17-0803 and § 17-0501. These violations, in the view of DEC at the time, resulted in a \$15,000 civil penalty. The actions of the applicant, however, have far larger consequences to this case. The DEC Record of Compliance Enforcement Guidance Memorandum makes clear that the

policy and procedures by which the Department of Environmental Conservation (the "Department") is to ensure that persons who are unsuitable to carry out responsibilities under Department permits, certificates, licenses or grants, are not authorized to do so.

*Record of Compliance: Enforcement Guidance Memorandum, March 5, 1993 § I ("Record of Compliance Memo").* This policy has been in effect for over twenty years. The reasons for the ROC Memo are clearly articulated

The courts have recognized that the environmental compliance history of a permit applicant is a relevant consideration regarding qualification for permitting [*Matter of Bio-Tech Mills Inc. v. Williams*, 105 A.D. 2d 301 (3d Dept., 1985), *Aff'd*, 65 N.Y. 2d 855 (1985), *Olsen v. Town Board of Saugerties*, \_\_AD 2d \_ (3rd Dept., 1990)].

In addition to the general authority to deny, suspend, condition or revoke permits, the Legislature has specified criteria for such actions in certain statutory schemes. It is clear from the explicit authority as well as both implied legislative authority and the general authority provided in ECL Sections 1-0101, 3-0301 and for Uniform Procedures Act permits, 70-0115, that the Department can modify, suspend deny or revoke any permit it issues based on the unsuitability of a



permitted applicant to carry out the work authorized in a lawful and environmentally protective manner.

Record of Compliance Memo § III. The legal authority for DEC to consider the violations in this case requiring the Consent Order regarding the suitability of this applicant for issuance of permits is clear, and should be considered in any permit proceeding.

The practical impact of these actions is very significant. The gravamen of the complaint of local residents in this case is that federally protected endangered species were never considered in the Town of Liberty's review and approval of the subdivision application. The failure to consider the American Bald Eagle and its habitat needed to remain for its survival at Swan Lake is one of the bases for the Environmental Impact Statement review currently underway. The applicant's violations of law by clear-cutting and excavating and grading for the roads on-site, burning tree stumps without permits, contributing to the serious turbidity and destruction of water quality at Swan Lake prior to issuance of DEC permits, moving forward with construction on-site and at the Swan Lake dam, and now selling subdivision lots without complying with law directly and negatively impacts the Endangered Species that DEC is required by law to protect. The Draft EIS has not even been judged complete by DEC and thus not been subject to review by the public on its merits, and particularly with respect to required mitigation measures. Nonetheless, the applicant continues with business as usual.

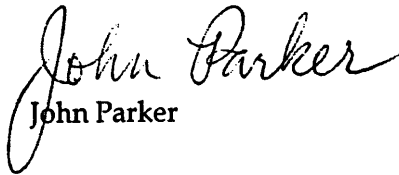
The DEC has had a long history with the proposed Swan Lake Estates project currently known as the Kelly Bridge Road Subdivision. Local residents have been vigilant and contacted DEC to inform them of violations of law, and of the threat to the endangered bald eagles that live on Swan Lake. A Consent Order resulted in response to these actions, as did an Environmental Impact Statement. During the course, however, the applicant has proceeded with its proposal despite and in spite of the requirements and obligations imposed upon it by DEC's Consent Order and State Law. Those actions must be considered under DEC's own policy guidance memos when they consider pending permit applications. These actions are also resulting in a continuing and ongoing violation of the Consent Order and State law - the site has had construction activities and is now being sold despite likely legal prohibitions on such action. The applicant sales agent assure members of the public that the lot's will be available in the spring and that DEC is reviewing the site because of six eagles nests even though only four remain since Swan Lake Estates came to the area and questions regarding violation of the Endangered Species Act remain unanswered.<sup>2</sup> The situation on Swan Lake was never that easy - it is about the State's environmental review laws and whether or not DEC would enforce the law as it is obligated to do to protect the neighbors and the endangered species.

---

<sup>2</sup> The applicant was on notice on October 6, 2005 from U.S. Department of the Interior, Fish and Wildlife Service that "Section 9 of ESA prohibits the "take" of any federally-listed animal species by any person subject to the jurisdiction of the United States. As defined by ESA, take means" ...to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in such conduct." "Harm" in the definition of take means an act which kills or injures wildlife. Such an act may include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR part 17.3). Letter of David A. Stilwell, Field Supervisor to Anthony J. Murolo, Swan Lake Estates, October 6, 2005, attached hereto as Exhibit E.

We respectfully request that DEC review and investigate the enforcement issues raised above regarding the Kelly Bridge Road subdivision. The implications of these violations are quite clear. We ask that DEC take such actions before they proceed with any further steps regarding permit applications or environmental review. We look forward to your reply and the actions you take regarding these enforcement issues. Please do not hesitate to contact me if you need further information.

Respectfully submitted,

  
John Parker

cc: w/o attachments

Judith Enck  
Policy Advisor  
New York State Department of Law

Denise Sheehan  
Commissioner  
Department of Environmental Conservation

Scott Sheeley  
Deputy Regional Permit Administrator  
DEC Region 3

Stephen Joule  
Biologist  
DEC Region 3

**Exhibit A**



STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

X-----X

In the Matter of the Alleged Violation of  
Article 17 of the New York State Environmental  
Conservation Law ("ECL"), by:

ORDER ON CONSENT  
CASE NO. R3-20050621-53

AJM at Swan Lake Estates, LLC,

Respondents

(Sullivan County)

X-----X

WHEREAS:

1. The New York State Department of Environmental Conservation ("DEC" or "Department") is responsible for the administration and enforcement of law and regulation pursuant to Article 17 of the New York State Environmental Conservation Law.
2. On June 6, 2005, Department of Environmental Conservation Staff observed a discharge of turbid water in the vicinity of Kelly Bridge, located at Kelly Bridge Road, Town of Liberty, New York in contravention of applicable water quality standards. Additionally, a search of DEC records indicates that AJM at Swan Lake Estates, LLC had not obtained coverage under the GP-02-01 general stormwater permit prior to commencing construction on the roadway comprising a portion of the Swan Lake Estates project. DEC alleges such activities are in violation of ECL Article 17-0803 Discharging without a SPDES Permit and Article 17-0501 Violation of Water Quality Standards-- visual contrast to receiving water
3. Respondent alleges that the turbidity to the receiving water noted by DEC Staff was produced by pre-existing ruts in exposed earth in the shoulder of Kelley Bridge Road, and was not due to the work conducted by Respondent, and that Respondent had placed and maintained erosion control measures in the area of work. Additionally Respondent alleges that Respondent's engineer mailed and Notice of Intent to gain coverage under the general stormwater permit prior to DEC commencing construction, but admits that it did not receive acknowledgment that such coverage had been granted prior to commencing work.
4. Respondent has agreed to cease construction of the project until coverage has been gained under general stormwater permit GP-02-01, and to obtain any other DEC permits which may be required for the project, prior to recommencing construction.
3. Respondent states that it wishes to come into compliance with applicable state

environmental laws and regulations, and, without admitting violation of ECL Article 17 as regards turbidity, affirmatively waives the right to a public hearing in this matter in the manner provided by 6 NYCRR Part 622, and consents to the entering and issuing of this Order, and agrees to be bound by the terms and conditions of this Order.

NOW, having considered this matter and being duly advised, it is ORDERED that:

I. Respondent shall be liable to pay a civil penalty in the amount of \$15,000.00, of which \$12,500.00 is payable and must be submitted with this Order bearing the signature of Respondent; the remaining amount, \$2,500.00, is suspended provided Respondent strictly adheres to the terms and conditions of this Order, including the Compliance Schedule attached hereto.

II. This Order shall not become effective until it is signed by the Regional Director on behalf of the Commissioner.

III. This Order may be changed only by written order of the Commissioner or the Commissioner's designee;

IV. This Order shall be deemed binding on Respondent, any successors and assigns and all persons, firms and corporations acting under or for Respondent, including, but not limited to those who may carry on any or all of the operations now being conducted by Respondents, whether at the present location or at any other in this State.

V. Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent and any successors (including successors in title) and assigns.

Dated: New Paltz, New York

September 15, 2015

Commissioner

DENISE M. SHEEHAN Acting

New York State  
Department of Environmental Conservation

By: 

MARC MORAN  
Regional Director

Region 3

This Order on Consent has been reviewed and approved by the Regional Attorney as to form.

By:   
\_\_\_\_\_  
VINCENT ALTIERI  
Regional Attorney

Date: \_\_\_\_\_ 9/5 20 05 \_\_\_\_\_





**AJM at Swan Lake Estates LLC  
CASE NO. R3-20050621-53**

**COMPLIANCE SCHEDULE**

**I. GENERAL REQUIREMENTS:**

**Immediately:** Respondent(s) shall cease and desist from any and all future violations of the New York State Environmental Conservation Law and the rules and regulations enacted pursuant thereto.

Respondent(s) shall certify completion of the work required under this schedule, to the Department within five (5) days of its completion.

All technical submittals to the Department required under this Order shall be made by Respondent(s) as follows:

Three copies to Janet Swentusky, Region Three, New York State Department of Environmental Conservation, 21 South Putt Corners Road, New Paltz, New York 12561.

**II. SPECIFIC REQUIREMENTS:**

Within (5) days from the date of the Execution of this Order	Obtain coverage under GP-02-01 & send a copy of the Notice of Intent to this office
Prior to recommencing construction of the project	Obtain all DEC Permits
Within (30) days from the date of the Execution of this Order	Implement sediment & erosion control measures which include, properly installing silt fence, stabilizing construction entrances, stabilizing stockpiled soil, mulching/seeding exposed soils, stabilizing roadways with gravel/rock, construction and stabilizing of temporary retention traps/basins and diversionary swales.

**CONSENT BY RESPONDENT**

Respondent hereby consents to the issuance and entry to this Order without further notice, waives its right to a hearing in this matter, and agrees to be bound by the terms, conditions and provisions of this Order.

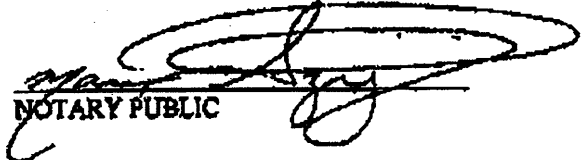
AJM at Swan Lake Estates, LLC



MEMBER  
ANTHONY J. MUROLO

STATE OF NEW YORK )  
                                  ) ss:  
COUNTY OF Suffolk )

On the 8 day of September, 2005 before me, the undersigned, personally appeared Anthony J. Murolo, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) as shown in the instrument, and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



NOTARY PUBLIC

STATE OF NEW YORK  
Notary Public, State of New York  
No. 01005110001  
Qualified in Suffolk County  
Commission Expires May 24, 2008

**Exhibit B**



October 24, 2006

I spoke with Mary Hunt (office 845 583-6003, cell 845 701-7324) of McKean Realty by phone this morning regarding the building lots at Swan Lake Estates. She gave me the following information:

- There are 21 lots available; 13 are water front (one of those will be the communal beach/boat launch area). Price range for the properties is from \$100,000 to \$650,000.
- One lot is "in contract"; lot #12. According to Hunt, this means that McKean Realty has accepted a binder of \$1000 pending the DEC approval, which she says they will have "in January 2007". After the DEC approval the realtor will prepare the Purchase and Sale agreements, and ask for an additional binder to total 10% of the purchase price.
- The reason for the DEC review is "six eagle nests were found across the lake." The property owner, Tony Marolo, has assured McKean that all of the lots will be ready for building in the spring.
- The property owner is also ready to review building plans and approve or reject them as an architectural review, since none of the covenants for the development are completed. He will do this review before any initial deposit is accepted.
- The realtor represents that Swan Lake Estates will own the entire lake, all lake rights and exclusive access to the lake. No other persons will be permitted any use of the lake at all.
- The realtor represents that all of the lots have been surveyed and perk tested, septic fields and well locations delineated. She has sent me a map (by email) showing the lots and the house and driveway locations. I have attached this map and a copy of the email to this document.
- The realtor represents that the underground electrical has been installed and the roads will be crushed stone, "maybe some will be paved". The community will be gated.
- I called to inquire about MLS #15098. Hunt told me that this lot is at the entrance to the development and was 6.1 acres in size; cost \$100,000. It does not have a water view.

Julie Grimm  
1 West Street #2130  
New York, NY 10004

Rosemary Repole  
 Notary Public State of New York  
 No. 01-RE3254930  
 Qualified Kings County  
 Term Expires Feb 28, 2010

# Mckean Real Estate

Click photo to enlarge



## Beautiful Building Lots in Gated Lake Community

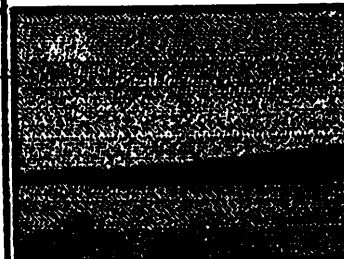
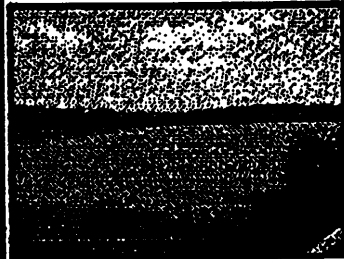
(\$100,000 +)  
Listing # MLS15098

Swim, Fish, Non-motor boating on pristine mountain lake.  
Brand New! Please call for additional information on lot sizes and pricing.

Print This Listing

Contact Mckean Real Estate

Send This Page To A Friend



**Exhibit C**







STATE OF NEW YORK  
DEPARTMENT OF HEALTH

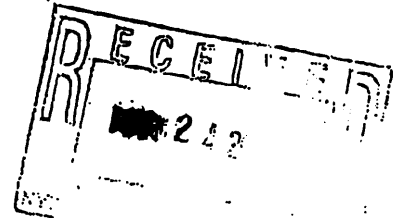
Monticello District Office 50 North Street Suite 2 Monticello, NY 12701-1711 (845)-794-2345 Fax (845)-794-3165

Antonia C. Novello, M.D., M.P.H., Dr. P.H.  
Commissioner of Health

Dennis P. Whalen  
Executive Deputy Commissioner

March 22, 2006

Mr. Scott E. Sheeley  
Deputy Regional Permit Administrator  
New York State Department Environmental Conservation  
Region 3, Division of Environmental Permits  
21 South Putt Corners Road  
New Paltz, NY 12561-3042



Re: Kelly Bridge Road and Lake Marie Road  
Subdivisions  
Town of Liberty, County of Sullivan

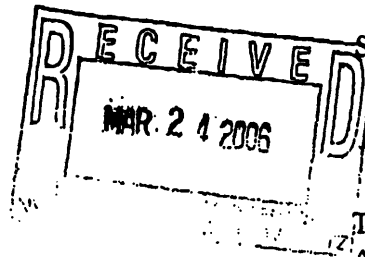
Dear Mr. Sheeley:

Reference is made to your letter dated March 8, 2006 and supporting documentation concerning the above referenced proposed realty subdivisions. After review of the documentation, this Department offers the following findings:

1. This Department does not wish to serve as the State Environmental Quality Review Act (SEQR) lead agency for this project.
2. The site plan for *AJM at Swan Lake Estates – Lake Marie Road Subdivision* does not contain the acreage of each individual lot and therefore a determination of whether-or-not this Department will play a regulatory role in the approval process cannot be established at this time.
3. The site plan for *AJM at Swan Lake Estates – Kelly Bridge Road Subdivision* indicates the subdivision is comprised of five lots that are equal to or less than five acres and 16 lots greater than five acres. Because one of the lots is a non-residential lot (2.38-acre lot with a proposed pavilion), the proposed realty subdivision does not fall within this Department's jurisdiction as found under Article 11, Title II, Public Health Law, §1115.1.
4. Since the two subdivisions are proposed within a three-year period and the lands are under one ownership or under common control of a group of persons acting in concert as part of a common scheme or plan, the subdivisions may be regulated by this Department. This is dependant on whether-or-not the boundary line of the Lake Marie Road Subdivision is less than ½ mile from any point on the boundary line of the Kelly Bridge Road Subdivision.

Be advised that should this Department not play a regulatory role in the subdivision process, it does not preclude the possibility that this Department may play a role in the future approval of sewage disposal systems within these subdivisions. This Department is responsible for approving all proposed alternative sewage disposal systems within the County of Sullivan. Therefore, approval from this Department must be

obtained before any alternative sewage disposal systems are constructed within said subdivisions. Should you have any questions/comments in regard to this Department's findings, I may be reached at (845) 794-2045.



Sincerely,

Timothy B. Rose, P.E., BCEE  
Associate Sanitary Engineer

Cc: Mr. Frank DeMayo, Supervisor, Town of Liberty  
Mr. John Schmidt, Chairman, Town of Liberty Planning Board  
Mr. Randy Wasson, P.E., Wasson Engineering  
AJM at Swan Lake Estates, LLC  
File

**Exhibit D**





## NEW YORK STATE DEPARTMENT OF HEALTH

*Bureau of Water Supply Protection*

*Flanigan Square, 547 River Street, Troy, New York 12180-2216*

### REALTY SUBDIVISIONS: Frequently Asked Questions (FAQs)

**1. What constitutes a Realty Subdivision?**

*As defined in PHL, Article 11, Title II, Sections 1115 to 1120 and ECL, Article 17, Title 15, Sections 17-1501 to 17-1515. The sale, rental or offer for sale or lease of a contiguous tract of land, under one ownership or common scheme, which has been divided into five (5) or more lots each comprising of five (5) acres or less within any three (3) year period. The common phrase used is the "5,5,3 rule", for "5" lots, less than "5" acres, within "3" years.*

**2. What is a "contiguous" tract of land?**

*Contiguous is physically adjoining tracts of land designated by property lines. However, a tract of land can be subdivided by the owner into non-contiguous tracts when residential lots (<5.0 acres) or tracts are created that are separated by greater than 0.5 miles regardless of physical separation features (e.g., roads, streams, wetlands, etc.). The purchase of adjoining properties or tracts by one owner will create one new contiguous tract of land. If a public road crosses through a tract of land, the tract is still contiguous however the road will create separate lots.*

**3. Can a developer designate land or lots as "not available for residential purposes"?**

*Acreage or subdivided lots on a tract of land can be designated by the developer/owner as "not for residential purposes" or lands can be legally restricted from residential building through local zoning laws, utility easements, local right-of-ways or deed restrictions. Some examples would be: designated commercial lots, commonly owned lands (Homeowners Association (HOA)), reserved parkland, utility easements, public roadways and storm water management areas. If a developer wants to designate land or lots as "not available for residential purposes", the designation must be clearly shown and labeled on the plans and deed restrictions indicating the same shall be filed with the County Clerk.*

**4. What land is excluded from determining a lot's total size?**

*Public roadways, utility easements and local right-of-ways that legally restrict the development of such property are excluded from the lot size determination. Property under water (e.g., ponds, streams, wetlands, etc.) are typically considered in the lot size determination.*

**5. How is the "4-lots every 3-years." requirement interpreted?**

*The 3-year period begins when the first residential lot is "offered" for sale. When a fifth residential lot is offered for sale within three years of the initial lot offering, all previously sold lots will become subject to the Realty Subdivision regulations. However, if a landowner offers for sale only 4-residential lots within a 3-year period, the lots and tract will not be subject to the realty subdivision regulations. The best defense against illegal realty subdivision formation is the education of and coordination with the County Clerk's Office to alert the jurisdictional Department of Health office staff when owners attempt to file property plats where suspected violations of the Intent of the Realty Subdivision Laws may be an issue.*

**6. What is the intent of the 5-year approval expiration in the "Conditions of Approval"?**

*The limited approval time frame listed on the "Conditions of Approval" must be clearly stated on the plans. The NYSDOH realty subdivision plan approval expires after 5-years and gives the developer/owner 5-years to complete construction or sell all the lots of the realty subdivision in accordance with the approved plans. The intent of the 5-year limited approval or "sunset" clause is to avoid having "indefinite" Realty Subdivision plan approvals. Over time, some of the currently applied rules and regulations concerning realty subdivision planning can change and site conditions could be altered. In addition, a time frame gives the Health Department the ability to halt and/or re-evaluate further construction on remaining lots if a history of problems has been reported or witnessed during construction of the subdivision. After 5-years, if construction is not complete or all the lots are not sold, the developer/owner must apply for an approval extension. A site inspection is recommended and concerns of the municipality, if any, should be addressed before approving the extension. If there are no proposed changes, the extension process may be as simple as a letter to the owner and filing the letter with the approved plans through the County Clerk.*

**7. Can historically approved subdivisions that do not meet today's standards still be constructed?**

*Historically approved Subdivisions without an expiration date (i.e., before the 5-year conditional approval was implemented), can legally still be developed, in accordance with the approved plans, even if current site condition requirements cannot be met. Municipalities have the authority through the building codes to require a new application to meet current standards or to refuse a building permit if local codes or other jurisdictional requirements cannot be met.*

**8. What is required to be filed with the County Clerk?**

*PHL, Article 11, §1116 and Article 17, §17-1505, requires only the sections of the stamped plans which show the methods of obtaining and furnishing an adequate water supply and sewerage facilities, to be filed. A plat plan stamped by a Licensed Land Surveyor (LLS) must also be filed with the water supply and sewerage plans. However, if the County Clerk is agreeable, it is recommended that a full set of plans be filed with the County Clerk for reference. Only plans that have also been stamped (e.g. approved) by the Health Department having jurisdiction can be accepted by the County Clerk. The health department having jurisdiction should also keep a complete paper or electronic copy of the stamped plans.*

**9. Can community water and/or sewers be required for subdivisions of less than 50 lots?**

*Yes, if there is good reason to require public services such as, public services are within a reasonable distance, poor well water quality/quantity or unacceptable site conditions for OWTs.*

**10. How can a developer "un-subdivide" or alter approved plans?**

*An approved Realty Subdivision may need or want to be changed by the developer for some reason such as: slow sales, tax savings, changing lot sizes, etc. In such cases, the developers must re-submit new stamped plans for approval that clearly illustrate the new proposal and illustrate any existing construction already performed in the Subdivision. The new plans, when approved, shall be filed with the County Clerk and clearly marked to supercede the original plans.*

**11. Can alternative OWTs be used in Realty Subdivisions?**

*Where LHDs perform site evaluation, approve designs and certify construction, alternative systems, typically raised systems with gravity flow, may be acceptable on a limited basis. This should be on a limited case-by-case basis with all public health and environmental protections taken into account. An alternative system in a Realty Subdivision should be specifically designed for a lot and dwelling. Alternative systems may also be used on non-jurisdictional lots (greater than 5 acres) within an approved subdivision tract of land. A few local counties have established sanitary codes, approved by NYSDOH, that address alternative systems in realty subdivisions. For other counties and DOH district offices, a variance from the NYSDOH Regional Office is required for use of alternative systems within a particular subdivision, however such variances are not typically recommended to be issued.*

**12. How should Health Departments implement SEQRA for Realty Subdivisions?**

*10 NYCRR Part 97 is the NYSDOH regulation implementing the State Environmental Quality Review Act (SEQRA) (Article 8 of the Environmental Conservation Law). 10 NYCRR Section 97.14(b)(2)(ii) states that initial plan approval of a realty subdivision is a Type I action which requires the completion of either a full environmental assessment form (FEAF) or a draft environmental impact statement (EIS). A short form EAF cannot be used for a Type I action. Applications for Realty Subdivisions should be accompanied by a FEAF or a draft EIS. The municipality (e.g. Town Board) typically acts as the Lead Agency to review the FEAF. The FEAF is a decision making "tool" for municipalities to review all environmental factors associated with the proposed subdivision and to identify all agencies involved with the project. The lead agency, based upon the FEAF, will determine if the project can "continue" by issuing a negative declaration. Plan approval should not occur until such documentation is provided.*

**13. Are lots ( $\geq 5$  lots each  $< 5.01$  acres) which are "gifted" or "willed" to family members subject to the realty subdivision regulations?**

*Lots which are given as a gift or left in a will to family members are not subject to the realty subdivision because there was no sale or offer for sale of the lots. However, the gift of lots as a common scheme or plan with the intent to avoid the Realty Subdivision regulations is prohibited.*

MAY 18 - MAY 24, 2005  
Volume 13, Issue 20

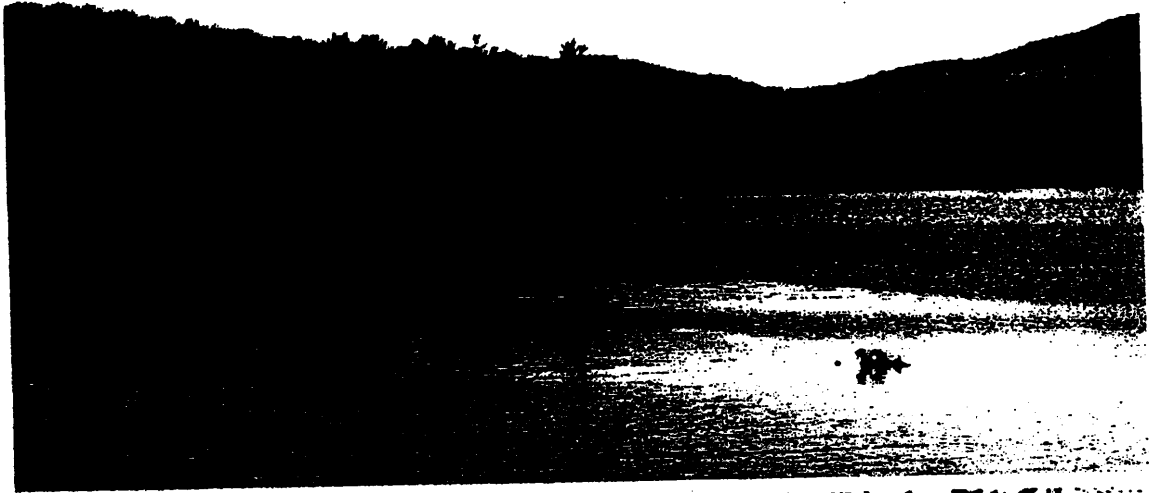
# The Towne Crier

Published every  
Wednesday

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75 CENTS



## Eagle Angst

■ *Swan Lake residents fear for well-being of national bird as development moves forward.*

► Story on Page 5



LINDA GIER PHOTO



WIKI MORROW PHOTO

## Puppet Piscatorial

*The fish to wish upon in next month's parade.*

PAGE 7



PIGON DOLE PHOTO

## Kudos from Red Cross

*It's not all play for Forestburgh producer.*

PAGE 13

► WHAT'S HAPPENING CRIER CALENDAR, PAGE 20, 21



**ON THE COVER:** A view across Swan Lake toward the general vicinity of a bald eagle's nest; and, on the periphery of a postcard area, Chris Karras points out that there is acknowledgement from the state of the sensitive nature of some lands around Swan Lake. The "critical" area is located across the lake from the nesting spot and up Briscoe Road by about a mile from the development area. *BY BARBARA GREI*



# From Soaring Spot to Sore Spot

■ Residents wonder if new subdivision will force eagles out of Swan Lake.

When 19-year-old Christopher Karras read his college essay to the Town Board Monday night, he gave a stirring case for the protection of the American Bald Eagle.

"The fight to save these eagles will not be easy," Karras said, "because of the amount of money at stake."

The thing is, Karras did not create his essay from thin air. His inspiration came from real life.

**Story by Barbara Grei**  
Monday night, a group of Swan Lake residents told the Liberty Town Board they were worried for the welfare of bald eagles that also live at Swan Lake. Some say they have seen up to a dozen eagles there. At least one nesting pair is known to live in a tree along the undeveloped lake shore.

The birds, these residents fear, are about to leave town. Heavy machinery and road construction has already begun on a subdivision of 20 luxury homes on the north shore of the lake. It's phase one of a two-phase project with the next phase scheduled to be closer to the eagles' nesting area.

People like Cora Edwards, the Karras family and several of their neighbors turned out at the town meeting to learn "where to start" in their quest to better protect the eagles.

They are a group that, up until this point, has only organized in order to "adopt" their local road - they pick up stray garbage and make sure the shoulders are free of trash. The maze of public agencies that gets involved in approving subdivisions was new to them.

But in just a few days' time, they started a petition drive, made phone calls and filed freedom of information requests with the town clerk in order to get documents.

They found, to their dismay, that the first phase has been fully approved. They also found out that the planning board checked off a box labeled "no" when the environmental assessment form asked if the site contains any species of plant or animal life that is identified as threatened or endangered.

That was the finding despite the fact that some of the lake shore at Swan Lake has been marked as home to endangered species, though which species is not named.

For many years, the bald eagle was listed as an endangered species. Because the population has made a comeback, it is now con-

sidered a threatened species and remains a federally protected bird.

Extensive efforts have been made to protect and monitor the comeback of the bald eagle in New York State. The bird now appears on magazine covers and in brochures which tout tourism in places like Sullivan County.

Despite the presence of eagles on Swan Lake, the planning board did not require an Environmental Impact Study for phase one of the subdivision. The residents feel this was a mistake and that the construction alone could cause the eagles, "to vote with their wings," as Edwards said - and fly away.

"We want an environmental review," said Cindy Karras.

Monday night, the Town board members listened to their concerns, but emphasized to the residents that they were in the wrong place.

The planning board which approved the subdivision is a free-standing body that's not under the control of the town board, Town Attorney Ken Klein told the residents.

Still, their plea about the eagles did not go without notice.

Lynn Killian, the town board member who is liaison to Swan Lake, said she spent three days looking over the documents and visiting the lake. She noted there's been some accommodation made for the birds and pointed out that an area around the eagles' nest has been preserved as undeveloped in the plans.

But, Killian added, "I am personally concerned about the whole process and I'm working to help you find the path you have to go on," she said.

Scene in the town board audience advised the residents they'd have to take their case to the state Department of Environmental Conservation.

Others mentioned an Article 78 proceeding which is essentially a lawsuit against a governmental body. In this case, the lake residents would have to sue the town planning board to overturn the approval or halt the construction.

The subdivision is planned and owned by AJM Associates of Huntington, NY, on Long Island. AJM also owns the lake.

Tony Marolo of AJM said the presence of eagles "certainly was taken into account" in regard to the subdivision. The first phase, he said, was not close to the eagles' nest. And



**WARRING EAGLES:** The presence of Bald Eagles near their home for more than five years, Chris and Sam Karras are among a group of Swan Lake residents who are concerned over the effect of construction and a new subdivision on the lake. *BY BARBARA GREI*

while the second phase, in which 19 homes are planned, is nearer to the nest area, there's already been provisions made to protect the birds.

Each of the subdivisions exceeds 100 acres; the lots are large, 5 acres and more. The homes are geared toward the second home market and are expected to sell from between \$500,000 to \$1 million each. The second phase is now before the planning board but has not been approved.

Marolo said it would be counterproductive to disturb the habitat or chase away the eagles.

"They are a beautiful selling point," he said. "There's no reason for me to displace any of that; it doesn't make any sense."

He went so far as to say he would be happy to answer questions about the plans at the next planning board meeting on June 7.

Knowing that some development is beneficial to the town and its tax base, the residents note they are not flat-out opposed to the plan.

"We're not anti-development," said Cora Edwards. "We're for sustainable, ecological development. We want the developer to rec-

ognize the unique ecology of Swan Lake and not kill the goose that laid the golden egg."

In this case, Town of Liberty Planning Board chairman John Schmidt said the board followed the advice of the state Department of Environmental Conservation in making the determinations about the first subdivision and in granting the approval for phase one.

Meanwhile, residents fear that if the heavy construction continues as it is now, including a steady stream of truck traffic on an otherwise quiet road, it could spell an irreversible move for the eagles. The birds are notoriously sensitive to human disturbances, especially during their breeding season, which is the spring.

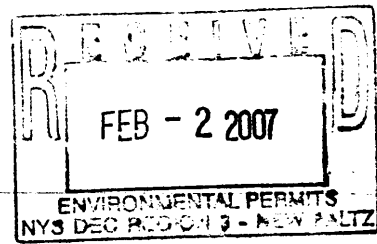
People like the Karras family - and the close to 10 people who've signed petitions of concern for the eagles - feel there has got to be immediate action taken to make sure the eagles are not disturbed.

"I want them to do the right thing here," said Cindy Karras.

The next meeting of the Town of Liberty Planning Board takes place Tuesday, June 7, at 7 p.m. at Liberty Town Hall on Main Street.



Scott Sheeley



(6)

Although I wish there would be no developing, Please get them to reduce the building lots!

If the project abuts the Shore line and four eagle nests, then shouldn't the state step in to postpone the project. Reduce the lots in the area of concern to protect the Eagles.

As are the signs on state land "warning Endangered Species Protected Area," in the region where the Eagles are, then Reduce the area nearest the Eagle Nest!

I come to Sullivan County 5 years ago. I moved only a short distance up from Orange County, town of Tuxedo.

There was a very exclusive Building Project to build an area in Sterling Forest. The state stepped in at first to halt the project and wanted the area reduced due to the many Rattlesnake Dens in the area. Rattlers are also endangered. If you check the records, after quite a few years of town board meetings the Projected owner finally gave in and the state bought the property (just recently) and added it ~~to~~ to the Bear Mountain State which was ~~an~~ already encompassed around the area. Please Reduce this Swan Lake Project

Sincerely

Suzanne Stylians  
229 Cold Spring Rd  
Liberty, NY 12754





⑦

Mr. Scott Sheeley  
NYS Department of Environmental Conservation  
Region 3, Division of Environmental Permits and Bureau of Wildlife  
21 South Putt Corners Road  
New Paltz, NY 12561-1696

Dear Mr. Sheeley,

This letter is in support of the Kelly Bridge Road Subdivision project put forth by AJM at Swan Lake, LLC. The Sullivan County Chamber of Commerce supports this project and its positive economic impact to Sullivan County. We have reviewed the potential impacts and mitigation measures put forth by the company and the NYSDEC and believe there to be no significant adverse environmental impacts especially pertaining to the nesting bald eagles there.

We believe this project will have a positive economic impact on the area businesses in Swan Lake and the surrounding Liberty area. Some of these businesses include two deli's (one a gas station), a landscape contracting business, a hairdresser, a motel and several other seasonal businesses as well as the businesses on nearby main street Liberty. Some other benefits include short term employment for 30 to 40 persons during the construction which also provides for the economic benefits they provide during the construction time period, low density housing stock to meet the continuing demand for housing in Sullivan County, and preservation of 81 acres of land as open space and undisturbed natural habitat. All of these benefits are more than enough reason for the Sullivan County Chamber of Commerce to support this project and strongly urge you to do so as well. Thank you for your time. Please feel free to contact me at the above number if you have any questions or concerns.

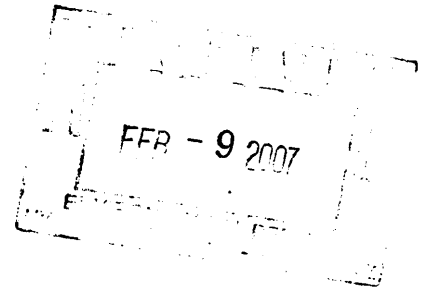
Respectfully yours,

A handwritten signature in black ink, appearing to read "Terri Hess", written over a horizontal line.

Terri Hess  
President/CEO



Dave Colavito  
145 Bowers Road  
Rock Hill, NY 12775-6815  
845-794-1964  
[dcolavi@pronetisp.net](mailto:dcolavi@pronetisp.net)



February 7, 2007

Scott E. Sheeley, Deputy Regional Permit Administrator  
NYS DEC, Region 3  
21 South Putt Corners Rd.  
New Paltz, NY 12561-1620

Re: Public Comments: Kelly Bridge Road Subdivision

Dear Mr. Sheeley:

I have reviewed the DEIS – though not in great detail - and attended the public hearing held February 6, 2007 to accept public comments on the DEIS for this project and the Article 24, Freshwater Wetlands Permit Application.

My remarks here will focus on several items not discussed in the DEIS, and aspects of what I learned from the public hearing last evening. I did not participate in the public scope.

The final section of the DEIS indicated that community character was not considered in the DEIS. In my opinion this project has the potential to significantly affect the character of the Swan Lake community. From what I've learned there are presently few, if any, homes in proximity to the lake in the area of this project, which comprises a substantial portion of the lake perimeter. Offsetting homes so they are not seen from the opposite lakeshore, or from the water, (neither of which I'm sure will be the case, particularly during periods of minimal foliage) does not preclude a significant affect on community character, irrespective of preexisting homes located elsewhere in the vicinity of Swan Lake. The DEIS should include an analysis on the impact to community character, and the analysis should include increases in traffic and impact to the area view shed.

The DEIS should contain a cost benefits analysis that covers the community of Swan Lake, the town of Liberty and the County of Sullivan. Several people at the hearing expressed their opinion that this project would be beneficial to the area economy by virtue of increased property taxes and the increase in discretionary spending those new residents would provide. Although I understand this sentiment, I've also come to learn that assessing overall economic benefit is substantially more complex than many of us realize. The common temptation is to focus primarily on increasing the tax base and associated increased local spending activity, while neglecting the longer-term costs of the additional community services required. As was pointed out at last night's hearing, the Sullivan County 2020 plan tabulates results of relative increased community costs against

the benefits of an increased tax base, for several different forms of development. Those results are consistent with many studies across the country in concluding that, quite often, residential development projects do not pay for themselves; the future costs of increased services required, exceed, by wide margins, the increase in realized tax base, and these additional future costs are effectively subsidized by surrounding communities. These future costs should be borne by the developer, not the community, and should be factored into the cost of proceeding with this project. Whether this is achieved in some "upfront" fashion or through an appropriate bond, is best left for others to decide.

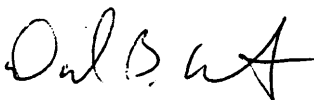
Several people at the hearing expressed their opinion that the developer has been very cooperative and has a right to make a profit on his property. They urged compromise and suggested that not permitting this development would be akin to invoking eminent domain. While I also understand this sentiment, it begs for proper context and precision in language.

Several revelations at the meeting highlight credibility issues with this project: road building continued after instructions were given for it to cease; Bald Eagle signage existed at the project site, while the EAF indicated that endangered species were not present. I do not know the background for this, but it is cause for concern.

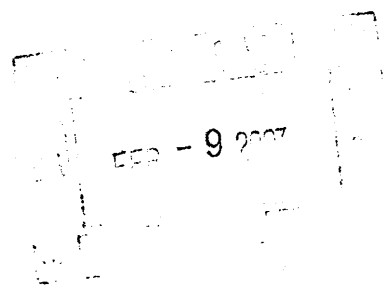
I do believe that appropriate compromise is in order. But in this instance, appropriate compromise goes beyond considering only human interests, and needs to give proper footing to the Bald Eagle and its endangered status. I do not know how we get the Eagle to compromise on its needs for survival in order for others to realize their financial ambitions. Decisions regarding Eagle compromise should include concurrence from appropriately trained biologists, and should be guided by the best available science. If critical gaps exist in that knowledge, then given the Eagle's endangered status, we should invoke the precautionary principle, erring on the side of doing no harm. Human inconvenience precludes neither the Eagle's endangered status nor our responsibilities.

Equating eminent domain with development restrictions is a stretch. I've heard no talk of the government either "taking" the developer's property, or imposing restrictions on his ability to sell it. As far as I'm aware, none of us have any "guarantee" to make a profit on our investment; what we do have is the "opportunity to try" and profit financially. This is so should we decide to sell our home, buy stock, or open an ice cream shop on Main Street, and certainly holds for real estate speculation. All who invest incur risk. I wish the developer the very best in his business dealings, insofar as he is able to profit without impacting the needs of others.

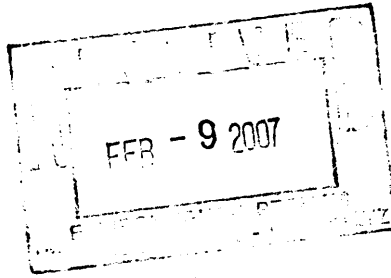
Respectfully,



Dave Colavito



Mr. Scott Sheeley  
NYS DEC Region 3  
21 South Putt Corners Road  
New Paltz, N.Y. 12561-1620



9

Dear Mr. Sheeley,

My name is Evan Beck and my family has owned a home at 1362 Briscoe Road in Swan Lake, New York for the last 40 years. We live directly on the lake.

I am writing to express my concern over the proposed 20 home building project on Swan Lake. After attending a recent DEC meeting, I have become aware that work has stopped on this project. It is my understanding that the current work stoppage occurred because it was determined by the DEC that further study was required to determine if the American Bald Eagles, which are protected under the Endangered Species Act of 1973 that nest near Swan Lake would be adversely affected by this development. It is also my understanding that the developer wantonly and knowingly continued development in violation of this stoppage and was fined as a result.

Having lived on and enjoyed the pristine and bucolic conditions of Swan Lake for the last several decades, I have grave concerns that the proposed development will have serious consequences for the fragile environment there. Already, since work has commenced I have noticed several changes, including the following:

- A large nest where the eagles reside has been dislodged and is lying at the bottom of the tree where it once stood.
- After a period of heavy rain this summer, the lake turned a murky brown and stayed that way for over a week. In the 40 years we have had the house we have seen many floods, but have never seen the lake turn muddy and brown. I believe this must have been due to the excavation and road development for this project.
- The level of the lake is precipitously low and a good deal of the water is now choked by water chestnuts and algae. This is also a condition that I have never observed before. It should be noted that as the owner of the lake the developer is responsible for and controls boards which regulate the flow of water out of the lake.
- I have not seen the eagles since late July. In previous years I had numerous sightings all through August and September.

The developer has not shown the proper respect for the local environment and has flagrantly violated the law by continuing work after the decreed stoppage. He must be monitored so that all parties concerned can be confident that the development will not do irreparable damage to the ecosystem.

It is my belief that a detailed study must be done that addresses the following pressing questions regarding Swan Lake:

- Will the disturbance of long established wetlands be a detriment to Swan Lake?

- Will 20 docks being built on the lake stress the environment and invite a glut of motorized vehicles that will disturb and threaten the eagles and contaminate our water?
- Will the lack of a sewage treatment plant or sewer system for the development cause contaminants to ultimately drain into and pollute the lake?

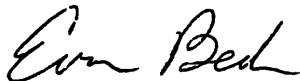
As a real estate financier I am a supporter of development. However, I believe this development should occur only if it is done in a responsible manner. We must all adhere to the laws of the land. This includes both the Clean Water Act and the Endangered Species Act.

One does not need an MBA or a PHD in environmental studies to see that there will be serious consequences for the eagles and our pristine lake if the development goes through as currently conceived. I also know that once built these structures will not be brought down, and that if we ignore the damage that may be done it will be irreparable.

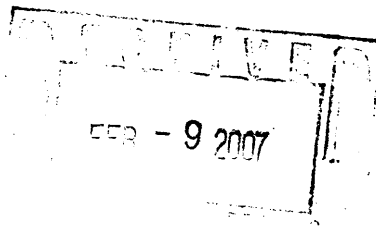
Now is the only time that something can be done.

I am against this development because I believe it will have strong negative consequences for the Eagles, the lake and the pristine environment we currently enjoy at Swan Lake. If the development is allowed to continue, though, I am hoping that the DEC will do the right thing and study this situation so that it will be done in a way that respects both the rights of man and nature. I am also sending a copy of this letter to the Environmental Protection Agency to assure this matter receives the attention it deserves.

Thank you.



Evan Beck  
141-40 84<sup>th</sup> drive  
Jamaica NY, 11435  
(Permanent residence)



CC: Mr. Alan J. Steinberg EPA  
US EPA Region 2  
290 Broadway  
New York, N.Y. 10007-1866



# DEC PUBLIC HEARING NOTICE

State Environmental Quality Review

**NOTICE OF DRAFT ENVIRONMENTAL IMPACT STATEMENT ACCEPTANCE  
and  
NOTICE OF PUBLIC HEARING**

Project Number: 3-4836-00245/00001

Date: December 22, 2006

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act; "SEQR") of the Environmental Conservation Law, and pursuant to Part 621 of the implementing regulations pertaining to Article 70 (New York State Uniform Procedures Act; "UPA") of the Environmental Conservation Law.

The NYS Department of Environmental Conservation (DEC), as lead agency, has accepted a Draft Environmental Impact Statement (Draft EIS) for the proposed action described below. In addition, DEC has determined that a public hearing will be held on Tuesday, February 6, 2007 at 7:00 p.m. to accept unsworn, oral comments on the Draft EIS and the Article 24, Freshwater Wetland Permit Application. Written comments on the Draft EIS and Permit Application will be accepted by the Department until February 26, 2007.

**Name of Action:** Kelly Bridge Road Subdivision

**SEQR Status:** Type 1

**UPA Status:** Major

**Description of Action:** The project proposal involves the construction of a residential subdivision adjacent to Swan Lake known as the Kelly Bridge Road Subdivision. The project involves the subdivision of a 114± acre parcel into 21 lots. One lot in the subdivision would be designated as a common use lot for lake access by the subdivision residents and their guests. The subdivision would be served by individual wells and septic systems. A second subdivision, previously known as the Lake Marie Road subdivision, is no longer proposed and the application before the Department for that project has been withdrawn.

**Location:** The project site is located on the northwest side of Kelly Bridge Road approximately 1,000 feet north of Kelly Bridge in the Town of Liberty, Sullivan County.

**Document Availability:** Copies of the Draft Environmental Impact Statement are available for public review at the following locations during normal business hours, and on the internet at the following website:

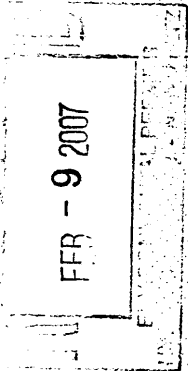
Town of Liberty Public Library  
189 North Main Street  
Liberty, New York 12754  
(845) 292-6070

NYS DEC Region 3 Office  
21 South Putt Corners Road  
New Paltz, New York 12561  
(845) 256-3050

Town of Liberty Town Hall  
120 North Main Street  
Liberty, New York 12754  
(845) 292-5110

On-line for viewing and downloading at:  
<http://www.timmlerassociates.com/publicreview>

Impact on Eagles + Habitat  
Tuesday - February 6, 2007 @ 7pm  
Town of Liberty Rec. Hall - 119 Main St.



**Public Hearing:** A legislative public hearing will be held on Tuesday, February 6, 2007 at 7:00 p.m. to hear unsworn, oral comments on the Draft EIS and the Article 24, Freshwater Wetland Permit Application. The hearing will be held at the Town of Liberty Recreation Hall located at 119 North Main Street, Liberty, New York 12754.

In the event of inclement weather and hearing cancellation by the Department, the hearing will be held at the same location on Thursday, February 15, 2007 at 7:00 p.m.

It is not necessary to file in advance to speak at the legislative hearing. Lengthy statements should be in writing and summarized for oral presentation. Reasonable time limits may be set for each speaker to afford everyone an opportunity to be heard. Equal weight will be given to both oral and written statements. The hearing location is reasonably accessible to persons with a mobility impairment. Pursuant to the State Administrative Procedure Act ("SAPA"), interpreter services shall be made available to hearing impaired persons, at no charge, upon written request to the Department's contact person at the address below.

**Public Comments:** Written public comments on the Draft EIS and Article 24, Freshwater Wetland permit application will be accepted by the lead agency until February 26, 2007 (Contact Person Below).

**For Further Information:**

Contact Person: Scott E. Sheeley, Deputy Regional Permit Administrator  
Address: NYS DEC Region 3  
21 South Putt Corners Rd.  
New Paltz NY 12561-1620  
Telephone Number: (845) 256-3050

**Distribution:**

**Involved Agencies (with Draft EIS)**

New York State Department of Environmental Conservation  
New York State Department of Health, Monticello  
Town of Liberty Planning Board  
Supervisor and Town Board, Town of Liberty

**Interested Agencies (Notice Only)**

Town of Liberty Police Department  
White Sulphur Springs Volunteer Fire Department  
Liberty Central School District  
U.S. Fish & Wildlife Service (with DEIS)

**Interested Individuals, Applicant, and Applicant Representatives (Notice Only)**

C. Edwards	F. Eisenbud, Esq., Lamb and Barnosky, LLP
C. Karras	R. Wasson, Wasson Engineering
J. Parker, Esq.	A. Murolo, AJM at Swan Lake, LLC
L. Killian	C. Robbins, Tim Miller Associates
M. Rubin	

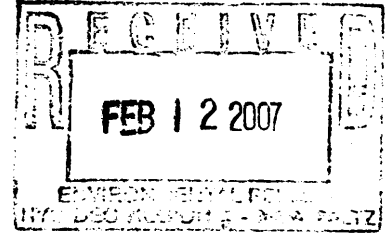
# **NASTRO INC.**

10

**BOX 6 MONGAUP VALLEY, NY 12762**

**CUSTOM BUILDERS • COMMERCIAL • RESIDENTIAL  
COMPLETE SITE DEVELOPMENT**

**PHONE 845 583-6062**



February 08, 2007

Deputy Permits Adm.  
N.Y.S. DEC  
21 South Putt Corners Rd.  
New Paltz, NY 12561

Att: Scott Sheeley

Dear Mr. Sheeley,

My name is Michael Nastro President of Nastro Inc. I am the contractor for AJM Associates at Kelly Bridge. I was present at the public hearing Tuesday night January 6, 2007.

Before I offer my comments, I would like to thank you and your staff for holding this public hearing. I would like to begin by commenting on the speeches and presentations of the few individuals who oppose the project.

Mr. Karras spoke about the use of septic systems. He claims that a septic system has the life of only 5 years. This as you know is absolutely untrue. Mr. Karras claims to be some kind of expert in waste water treatment. I don't believe he has a degree in engineering in this field, as it was very apparent by his presentation. In addition, to Mr. Karras comments on public sewars on his side of the lake, the reason for public sewars has to do with density. The houses are on extremely small lots and are right next to each other. There is no room for septic systems. Mr. Karras would like to make people believe that public sewars are needed on large lots, but that is not true. A properly designed septic system can last many decades.

I would like to comment next on comments made by Cora Edwards and Mrs. Karras. Mrs. Karras displayed photos of discolored water beneath Kelly Bridge. The photos show muddy water after one of the largest rain storms in many years. There was flooding across the region and county wide damage due to this storm. I was present at the Kelly Bridge property the day of this storm. I witnessed the discolored water flowing down Kelly Bridge Road from above the entrance of the sub-division. I took approximately 100 pictures displaying the source of the ditch water. Just days before this storm, the town of Liberty did some ditch work to Kelly Bridge Rd. There was freshly disturbed ditches which made loose soil wash down the road to Kelly Bridge. These photos were shown to DEC officers who visited the site days later. Mr. Murolo was unfairly accused of discoloring the water in his own lake. Periodically, I check the roads after storms to make sure there are no trees in the road. I also check the ditches, when I see ditch water running it is clear and clean in appearance.

Mr. Murolo seems to be portrayed as being the big bad wolf, being responsible for the disappearance of nests, the appearance of water chestnuts, what next? Blame him for global warming? The fact of the matter is that Tony Murolo of AJM associates is a responsible developer who cares about nature and his neighbors. The last thing he would want to do would be to damage his own lake, the very lake that is the focal point of his sub-division.

This sub division is very low density with large lots. The reason for this is to keep the pristine beauty of the site and not to have homes on top of one another like the people across the lake, the very same people who oppose this project. It seems hypocritical to me. The people who oppose this subdivision should be grateful that a developer like AJM purchased this property. Other developers would much rather get every possible square inch out of this property and increase the number of units by five times the existing plan.

In reference to the eagles, I am also a person who loves wildlife. I am a avid outdoorsman, a hunter and a fisherman. I practice conservation on my properties. The eagles on this project would not be adversely effected. The proposed homes are set back hundreds of feet back from the water and are not easily visible from the lake. The existing nest are on the opposite side of the lake and are actually closer to the existing homes.

The Eagles are not disturbed by the existing homes that are right on the lake. The existing homes all have docks with various water crafts. The new subdivision has one location for docks for lot owners. This leaves almost all of the shore line untouched and pristine.

My final comments on this project are ones of frustration. I think it is a shame that a hand full of people could put this project to a halt. The people who oppose this project, have not come up with any factual reasons why this project should not exist. What they did do is cause people to lose jobs, cause the town to lose tax dollars and cause the developer to loose money.

It is my opinion, and rumored to be, is that they wish to slow the process up so much, that the developer will go bust. Basically the people who oppose this project want the lake to themselves. The truth is that AJM associates owns the lake and has a right to use his property within the law, just as they do.

I would hope Mr. Sheeley, that you see fit to allow AJM associates to complete this great project in a timely manner. Mr. Murolo has been a gentleman throughout this whole process and does not deserve this treatment.

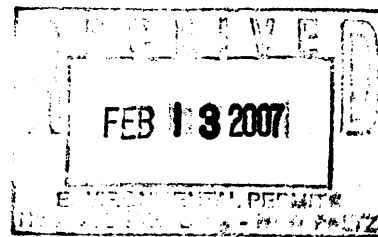
Thank You,

A handwritten signature in black ink that reads "Michael Nastro". The signature is written in a cursive, flowing style.

Michael Nastro  
President Nastro Inc.



Scott E. Sheeley  
NYS DEC Region 3  
21 South Putt Corners Rd  
New Paltz, NY 12561-1620



11

February 6, 2007

Dear Mr. Sheeley,

I have lived on Swan Lake since 1969. I live directly across the lake from Lot 7 on Briscoe Road. I have seen the bald eagles for as long as I can remember. They soar thru the air year round. They do NOT fly south as stated in the DEIS which was prepared by Tim Miller Associates. Actually they were on the semi frozen lake foraging by Lots 7, 8, 9, 10, & soaring across the entire lake as recent as January 21, 2007. I have seen the eagles roost atop the trees across from Lot 13 & 14. I also have seen them perch, soar and fish throughout Lots 6, 7, 8, 9, 10, 11, 12, 13, & 14. I do not consider myself a birder yet how can one not take notice of such magnificent sights. In additions to the bald eagles, you also can find a pair of Swans and several Blue Herons swimming and wading by the shores of the above mentioned lots.

During the summer the eagles can be seen many times throughout the day, daily near or by the above lot locations. Although I do use ride the lake via boat, I have never driven the boat close enough to disturb the eagles and their activities. Binoculars and telephoto lens work great.

Since Swan Lake Estates was established the following events have occurred:  
Flooding of my property and County Road 142 yearly. The disappearance of lily pads and the strangulation of them by the never ending growth of water chestnuts and reeds. The mismanagement of the dam.  
A successful eagle nest disappearing from view, August, 2006. Yearly weeds that use to float to shore come August have disappeared. Now the plant growth actually reaches the surface of the water, clouding the lake and giving it a smell.

From the picture window of my home, I see the eagles soar, perch, roost, feed as many as 4 at a time. The Bald eagles flying over the peninsula (lot 7) and rest on top of the white pine trees.

Given the sensitivity of the bald eagle, any disturbance of their habitat, which includes the breeding nests and white pine trees which they perch and roost on, will negatively impact their very existence. They feed in the waters that directly abut Lot 7. This above any other parcel is the most critical for these birds' survival. I have taken telephotos of the eagles resting, flying and feeding from my back yard, please find them enclosed.

Since the establishment of Swan Lake Estates, the boards from the dam have not been removed or added properly. This dam controls the level of water for Swan Lake. The timing and placement of these boards maintain the continual existence of this man made lake. It creates space for mountain flow off of melted snow, and leaves room for rain water when excessive rains do come our way.

Without proper management of this dam, all living creatures large and small will continue to be negatively impacted.

A road was completed without official permits, lake water levels dropped 4-6ft. during the peak Summer season in 2005 without any approval or reason. Swan Lake has been muddied from improper construction, wetland areas have been plowed through without permits, fires burned without permits. These developments plans include septic systems that have leach fields to be used for sewage. Where do you think this sewage will wind up especially without anyone checking disposal water quality and drainage?

The homeowner association covenants and restrictions for the future Swan Lake Estates allows for a Guest House on each parcel. The potential for now is not 20 homes but 40 according to our town records. This is not addressed in the current DEIS. Since the Department of Health is not involved and ultimately This will become the responsibility of the Town of Liberty Building Inspector. With all the many new developments that are being approved by our planning board, the lack of information regarding the perk tests for this development site, how are we assured that the septic systems of these leach fields will be done correctly and monitored properly.

I truly think it is within the DEC's power to do the right thing!! I beg you to follow all the correct laws and procedures and implement a system of checks and balances.

Sincerely,

Deeny Nathanson  
1399 Briscoe Road  
Swan Lake, NY 12783







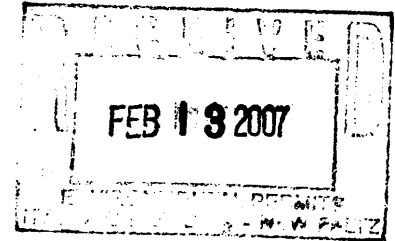
IF done responsibly - we would not be here  
Empty Peninsula on alternative maps why?

- Need tax funds  
but at what cost

LEACHFIELDS  
1000 GAL = 3-4 Bedroom Home  
NTW - double house what will happen

THE NEXT WE USE TO BOAT  
TO SEE IS GONE

Chris Karras  
Speech  
Persuasive Speech  
05/08/05



12

## Saving the Eagles

Imagine you and your family have lived in a area for a long time and all of a sudden you hear a giant machine in the back ground. It is a bulldozer and tree cutting equipment getting ready to clear the land for the rich in order to build gated communities that will eventually put you out of house and home. Well this is happening to an American icon as we speak. The biggest of all, a bald Eagle. This situation will get pretty nasty in the future to come for those animals and eventually the ecosystem of the entire area will be changed and abused, all for money. This is always the case and as I go on further, I will greatly express the impacts that this will have on the eagles and the ecosystem they inhabit.

Why save the Bald Eagle and its environment? Basically, the Swan Lake Owners Association is trying to build almost directly across from a nest in which the eagle lives. Human occupation will greatly impact this bird and will eventually force it to move on. This would be a shame because this bird has probably lived on this lake for approximately twenty years judging from the nest. Who knows how many generations have come to know this lake. As well, there are many other nests in and around that area and the areas that they intend to build. I have personally seen two full grown bald eagles and several of their babies. I was on the lake yesterday and when we pulled up about thirty feet from the shore line. The bird was perched right by its nest. As we got closer it began to move over in the tree to hide itself. Now, if two people in a boat is enough to make the bird nervous imagine if a whole entire community invades their space. The eagle will have no other choice but to move on.

The rich plan to build gated communities so they can profit off the land that has not been developed. Sullivan County does need to boost their tax and overall income so it can stay afloat in such unstable times, but at what cost. Well think of this. They have all this money to build these communities and the road leading to them but just like with everything and everyone, they are trying to cut corners. What I mean by this is after they build them they will provide the home owners with leach fields for the homeowners waste. This will ruin the lakes vitality in the future to come. You can see first hand when you look at lakes in and around Sullivan County. Such as White Lake. Also there is a plan to build a small marina which will greatly Populate the lake which will also affect the eagle and the ecology of the environment.

The old-timers were smart in their day when they constructed on our side of the lake. They put in sewer systems in order to prevent the destruction of this great and wonderfully diverse animal population. Including the Bald eagles, fish, swamp life, wild game, and the list goes on. There are many people in the world that are doing just as I am with their never ending pursuit to save and conserve the wildlife that we are so fortunate to have and hopefully continue to have in the future to come. Money talks in today's society and it would be a shame if we just stand by and let the greed and destruction of this plan to go by unchecked. This will keep the builders honest, so they don't try and cut those corners that we know so often they do.

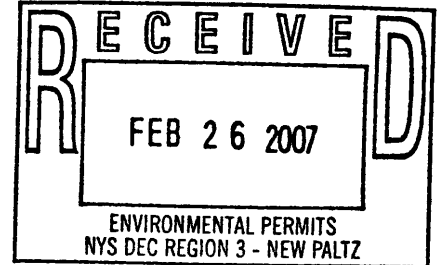
It is my hope that we can save these birds. Only when we as a society become consciously aware of the impact that we have on our environment, as well as, the wildlife inhabiting it, will we become better aware of our actions and the consequences that follow. The fight to save these eagles will not be easy, because of the amount of money at stake.. I hate that people with money can do what ever they want no

matter the impact. I have bitten my tongue for to long and I have always said to keep low-key but that will just let these people do what they please with no intervention. So what do you say? Why don't you release some of that presser off your own tongues and speak out for the so many animals that don't have a voice. Just a soaring cry!

Mr. Andrew Brower  
396 Kelly Bridge Road  
Swan Lake, NY 12783-6913

February 15, 2007

Mr. Scott Sheeley, Deputy Regional Permit Administrator  
NYSDEC Region 3  
21 South Putt Corners Road  
New Paltz, NY 12561



**REGARDING:**

**APPLICATION I.D.: 3-4836-00245/00002**

**KELLY BRIDGE ROAD SUBDIVISION  
LIBERTY, SULLIVAN COUNTY, NY  
APPLICANT: AJM SWAN LAKE ESTATES  
ARTICLE 24 FRESHWATER WETLANDS PERMIT**

Dear Mr. Sheeley:

**I am hereby submitting my written comments regarding the DEIS and the above-mentioned NYSDEC Article 24 Freshwater Wetlands Permit.**

I am a new resident of Swan Lake as of May, 2006, and was attracted to this tranquil lake community for at least the preceding 5 years based upon the natural, unspoiled beauty of the lake, a rare and endangered habitat in Sullivan County! The possibility of a new subdivision being constructed in this pristine setting is appalling from both an aesthetic and environmental point-of-view! Starting with the adverse environmental impact of such a development, there are many issues of concern: Adverse impact to the nesting, breeding, and sustenance of the native bald eagle population, which is devastating within the proposed construction area as well as the entire lake area. An adverse environmental impact would be bestowed upon the lands bordering Swan Lake, BOTH shorelines, as well as upon the water quality of Swan Lake itself. Firstly, the adverse physical impact of this subdivision to the eagles (and other wildlife) created by the destruction of the forests is implicit: It cannot be avoided no matter how many mitigating factors are included in the DEIS and permit application. **And this is in an ideal situation, certainly not the case with the current proposed Kelly Bridge Road Subdivision.** The adverse impacts created by approval of this DEIS and Article 24 Permit application approval are significantly greater! These include the potentially immense adverse environmental impact resulting from the proposed installation of septic systems and associated leachfields for wastewater treatment for each of the planned residential units. The leachfields, to be located upslope in this case, are proposed to be located only approximately 100 feet from the shoreline of Swan Lake. If they fail, and leachfields

have historically been prone to failure in lake communities such as ours, then not only would the eagles be devastated, but the lake itself (the water quality, the diverse animal population, the beautiful quality of life that we all experience from the unspoiled nature of Swan Lake, the tourism boost to the local economy), as well the lands bordering both sides of the lake will be devastated! Indeed, this is why town sewerage lines were extended to the opposite side of the lake and why, in 1982, Presidential Estates, as well as ALL proposed new construction, were required to be served by town sewerage lines for piping to sewage treatment plants. The devastation to the environment that would be caused by failure of the septic systems would be monumental, including contamination of individual well water where applicable in the entire area, including the proposed new subdivision!

Another potential environmental impact created by this development would be pollution and contamination of lake water during construction AND afterward by soil erosion and subsequent sediment influx by discharge of turbid water into the lake leading to muddying of the water and sediment filling of Swan Lake. This was evident in the recent heavy flooding that we experienced here which, even though prefaced by heavy rainfall, was due in large part to increased soil erosion resultant from land clearing brought about by proposed construction of the Swan Lake Estates subdivision.

Significant and unacceptable pollution and contamination of the waters of Swan Lake, which I have learned is the last unspoiled lake in Sullivan County, will result due to the close proximity of these proposed new residential structures. Additional significant and unacceptable pollution and contamination of Swan Lake waters will occur as a result of the increase in automobile traffic to and from the proposed subdivision, specifically by automotive fluids, including ethylene glycol antifreeze, which is highly toxic to both marine life and land and air based ecology (INCLUDING THE BALD EAGLES, swans, fish, and numerous other examples)!. This is not to mention increased general refuse and litter increases. This is also not to mention the increase in air pollution resultant from this increase in vehicular traffic in general, or the very significant increase in automobile and truck emissions which occur during idling periods (even though this increase in air pollution is not an issue included here in this freshwater wetlands permit application and DEIS review).

On the topic of water quality, how were the applicants allowed to revise their mitigation plan AFTER it was submitted to and approved by the town Planning Board to include docks? Do they think that they can slip this by everyone else? The DEC wetland fringe buffer area not only would be infringed upon, but would be eliminated at these "surprise" docks and in the areas where pathways down to these docks would be cleared (not to mention the proposed pathways down to the lake for the individual lots). The maximum dock size quoted was 200 square feet, with several other smaller docks to also be constructed. This would have severe impact on the water quality of the lake not only by gasoline boat engine leaks and emissions but by increased refuse and litter concerns as well as potential increased soil erosion issues. One of the most attractive aspects of Swan Lake is that it is not a "Motorboat Lake" (such as White Lake, among many other examples) overrun with loud boat motors and sometimes equally loud tourists who treat the lake simply as an amusement with little to no regard for the quality of the lake water and the surrounding land areas. Do the citizens who support the proposed and presented

DEIS really support such a future vision of Swan Lake? They state that the proposed development Swan Lake Estates is "a wonderful thing," and they speak of the "happy" feelings that they have for someone who is interested in Swan Lake as they are. Are "AJM Swan Lake Estates LLC" really interested in the things that make Swan Lake so special to all of us who maintain residences on and near the lake? To the rest of us, the unspoiled nature of Swan Lake is the beauty which has attracted us all to this special place and has made us act to fulfill our dreams of owning a house here!

In closing, the NYSDEC must protect the legal rights rights of the town of Swan Lake and it's concerned citizens who oppose the presented DEIS. DEC must "Follow the SEQR Path" as their web site states and analyze the significant adverse environmental impacts of the proposed Swan Lake Estates development, environmental impacts which are, in this case, not included in the proposed DEIC.

Thank you very much for your time and consideration with regard to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Andrew Brower". The signature is written in black ink and has a long, sweeping underline that extends to the right.

Andrew Brower





Cynthia J. Karras  
87 Redwood Lane  
Swan Lake New York 12783

February 17<sup>th</sup>, 2007

New York State Department of Environmental Conservation  
Office of Hearings  
625 Broadway, 1<sup>st</sup> Floor, Albany, New York, 12233-1550

New York State Department of Environmental Conservation  
Division of Environmental Permits, Region 3  
21 South Putt Corners Road, New Paltz, New York, 12561-1620

ATTN: Honorable Judge, Mrs. Maria E. Villa  
Legislative Hearing, February 6<sup>th</sup>, 2007, and

State Of New York, Department of Environmental Conservation, Region 3  
Office, Mr. Scott E. Sheeley, DEC Environmental Analyst

Written Public Comments Submission;  
Last Filing Date: February 26<sup>th</sup>, 2007

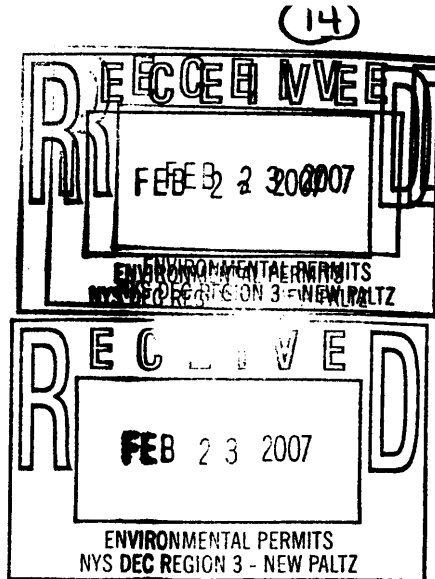
Dear Madame / Sir

I am submitting this letter to also be included with the testimony I have already presented at the Public Hearing for the DEIS Swan Lake Estates LLC, Kelly Bridge Road subdivision on February 6, 2007.

I will not be reiterating what is already part of the record. Instead, I would like to bring other concerns to address the issue of approving permits under consideration for this applicant A. J. Murolo Swan Lake Estates LLC.

The man made lake that is known as Swan Lake is not just home to a very successful breeding pair of American Bald Eagles and their off springs. It is home to a variety of water fowls, minks, beavers, owls, hawks and at least 1 Bear. The bear cave is on AJM's subdivision property.

Maybe I am naïve but when I read that, an environmental study would be done for the permit process I believed that an actual accounting of what is here on Swan Lake would be addressed. Instead, what is submitted by Tim Miller Associates is a sham. When one reads this DEIS it is clear that most of the information supplied as their mitigation measures are carbon copied from a book that then is used for every other client's DEIS. It does not address Swan Lake as a real entity. The information is so broad based that they



try to make it apply in any similar scenario. It is a generic cookie cutter copy. We know no more after reading AJM's DEIS then we knew through the EAF that was submitted. It actually has less information, because we expected to actually read factual information that pertained to Swan Lake and it's natural eco system.

Listening to Chris Robbins, Tim Miller Associates Representative explain their DEIS maps, it became very clear that he had not spent any quality time here at Swan Lake. How do you submit a DEIS in December 2006 and still talk about the eagle breeding nest A on February 6, 2007 as if it is still being used and continue to mitigate for something which has been gone since August 2006? Clearly, Mr. Robbins had not been kept informed about current events ( last 6 months ) on Swan Lake.

This Developer has consistently made claims he is environmentally friendly. Let us take a look at his record of accomplishment.

#### **Non - Compliance**

1. He built a road that had no DEC approval or permits.
2. He completed the same road under a cease and desist and went beyond the intent of the order.
3. He left unattended fires of 100-year-old tree stumps burning on Kelly Bridge road property over Memorial Day Weekend 2005.

#### **Water Quality**

4. He had no Storm water prevention practices in place, which resulted in Swan Lake being polluted. Fines were imposed.

#### **Water Quality and Lake Maintenance**

5. He purposely lowered the water table depth of more then ( 18 inches according to DEC), which resulted in a massive fresh water mussel kill. This all was done during a drought period of time June - Sept 2005. We had three times the amount of water the previous summer 2004 and he did not lower the lake. It is my contention due to the continued road building that he lowered the water table to allow his heavy earth moving equipment access so as not to sink in the mud. This only goes to show you that the water table under the land is such that they themselves say now " Hand clearing " of the lake access paths will be done. What they do not say it is because heavy trucks sink if the lake is not dewatered by over 18 inches. Will they dewater the lake again when heavy equipment is needed and used to clear for house and driveway 's to be built?

Actual water recorded as per the Swan Lake Waste Water Facilities Operation report June 2004 to September 2004, we had 32.3 inches of rain.  
June 2005 to September 2005, we had only 10.3 inches of rain.

### **Water Quality**

6. The Town of Swan Lake Sewage Treatment Plant cannot accommodate any new hook ups to the current system. They are currently almost running at capacity. The only alternative was Subsurface Sewage Treatment ( leach fields ). These are not environmentally friendly in any capacity. They are known to fail within five years time.

### **Water Quality and Retention Pond**

7. DEC mandated that he build a main Water Retention Pond as part of his Storm Water Prevention Plan. This retention pond requires regular maintenance on an ongoing basis. This developer has not done any maintenance. The soil on the back hill continually is falling into the pond and virtually renders this pond ineffective. This is clearly visible from the road entrance. It also has not been drained of any water that has built up to an alarming height. This water will become stagnant during the warm months and pose a health risk due to now setting up a breeding ground for a mosquito infestation.

### **Water Quality and Storm Water Runoff**

8. The water run off coming from this development has cause extensive deep ravines that cost the town tax payers to pay for the repair to reclaim and fix Kelly Bridge road.

### **Water Quality, Chestnut Weed and Lake Maintenance**

9. Mr. Murolo has been made aware as has the DEC that the invasive water chestnut weed is alive and well and spreading dramatically over the last two years at Swan Lake. This invasive weed was introduced into this lake environment. If Mr. Murolo owns the lake then he is responsible to maintain this lake. This weed left to its own device will continue to thrive and eventually suffocate and kill this lake. He has done nothing about this critical environmental issue.

### **Eagles**

10. Mr. Murolo has had the Delaware Conservancy Easement document for well over a year to be signed. He has yet to sign the easement for the 31 acres that now have only nests B and C. We do not know if the eagles will rebuild nest A or go somewhere else on Kelly Bridge Road subdivision property. He has not made any attempt to protected this Critical Eagle Habitat. If his intentions were to be environmentally friendly wouldn't he have signed the easement months ago regardless of the out come of his permit process?

**Eagles continued**

11. Mr. Murolo was asked months ago to include Eagles Nests D and E in the Delaware Highland Conservancy Easement but instead sold that property known as Lake Marie Subdivision without making sure that those two nests were protected.

12. Mr. Murolo openly admits in the Democrat Newspaper June 2005 " that he knew Eagles nested here on Swan lake and thought it was a great selling point". If that was so then why in December 2004 did he state in the SEQR that no known endangered species lived here? To compound the issue the Town of Liberty planning board had not even received the DEC Heritage letter until February 2005 but had already declared a negative declaration on the SEQR December 7, 2004. They then filled in next to that question ( basically back filling) using the document ( DEC Heritage ) they received in February 2005 over two months **after** the determination.

I spoke with Mr. Scott Sheeley regarding the permit process . I was told that permits can be transferred by the developer once obtained. We have since seen a troubling pattern emerge here in Swan Lake.

Developers transferring property and their permits to a new developer. We have witnessed another development project has gone through three different developers on Kelly Bridge Road. So far ( formerly RNR, then Y&H now someone else). This road is completed. They are now requesting that the Town of Liberty release a road bond yet again for a road that no DEC SPDES permit has ever been applied for. Sound familiar?

This is an issue that could well happen. with A J Murolo Swan Lake Estates LLC here on Swan Lake. Once Mr., Murolo obtains the necessary permits required, he is within his legal right to sell his property. The new developer now comes in after the process has taken place and initiates its own homeowner rules and regulations. How will we ever be adequately assured this new developer will abide by everything that Mr. Murolo has agreed to in order to receive these valuable DEC permits? How are we assured having received the permits from DEC that they now don't try to build the 82 houses as stated on the EAF that the zoning law of Liberty allows for? We the residents have seen allot of bate and switch tactics done in these last 20 months. What's written isn't put into practice on many occasions.

If permits are issued for this development we the ( residents ) can expect to watch each and every aspect of this projects process until completion. Our experience so far with our own Town of Liberty and this developer has been non-compliance of NYS laws and our officials that are entrusted to up hold these laws have turned a blind eye.

I believe the harm that this proposed development will irrefutably change the very

essence of what Swan Lake is today. My biggest concern has always been what subsurface sewage system's ( leach fields ) will do to the American Bald Eagles habitat that is this **entire** lake.

A prospecting land developer has right to purchase property and “ **opportunity**” to **profit, not a right**. That is what this is all about profit and loss.

Mr. Murolo stands to make a substantive profit and Swan Lake's natural environment and American Bald Eagles loss will be of equal proportions.

If we lived in a perfect world and Swan Lake Sewage Treatment Plant could handle the additional housing demand we would be in a totally different mind set. The reality is it **cannot**. Does that mean permits should be given anyway because the only recourse to be able to build these homes are ( leach fields)? I don't think it should be automatically assumed permits are granted. Mr. Murolo states in the River Reporter February 15 -21 edition after DEC hearing on February 6, 2007. “ He expects that the DEC will ultimately grant him the permits he needs to go forward with this project, although it may take several more months”.

We stand firmly in our position that the DEC do not approve any permits for this development if the plans include a subsurface sewage system ( leach fields).

### **Conclusion : Alternate Solutions**

Lori Malone at the DEC hearing made a point give “alternative solutions“. Here are a few

1. Require developer to post a bond so that when the leach fields fail the tax payers of Swan Lake are not left footing the clean up bill for the environmental disaster.
2. Do not approve any permits until Swan Lake Sewage Treatment Plant can accommodate this housing subdivision and maintain the integrity of the community that resides around Swan Lake. It was required by the town in 1982 to have public sewer systems and abolished the use of leach fields on the southern edge of Swan Lake.
3. If you ultimately decide to give Mr. Murolo permits for this project, these permits are **non-transferable**. That only Mr. Murolo Swan Lake Estates LLC can build this subdivision. If he should sell this property the new developer would have to submit his or her own plans and start their own permit process before any construction could begin.
4. New York State, Dept. of Environmental Conservation ( DEC ) negotiated once before to purchase the lake and surrounding property of Kelly Bridge Road 114 acres, Lake Marie Road 120 acres and the 31 acres on Shore Road that has Nest B and C. It was the intention then that this remain as a Natural Environmental Sanctuary. This developer has

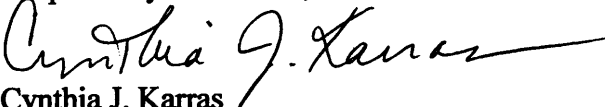
Page 6

already sold off Lake Marie 120 acres Nests D and E; isn't it possible for NYS to purchase the remainder of this environmentally critical property and hold it in perpetuity for the American Bald Eagles continued habitat here on Swan Lake?

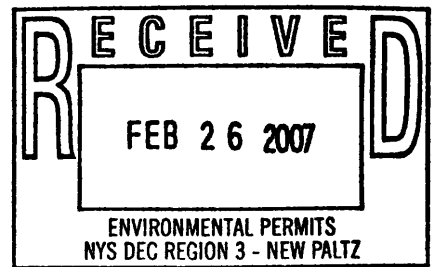
We the residents of Swan Lake will be standing vigil. We will ensure that every aspect of NYS Environmental Laws are upheld and those who are entrusted to uphold them do so.

Thank you very much for your time and consideration in this matter.

Respectfully Submitted;

  
Cynthia J. Karras

(15)



Soterios (Sam) T. Karras  
87 REDWOOD LANE  
SWAN LAKE, N.Y. 12783  
(845) 292 - 0614

February 17<sup>th</sup>, 2007

New York State Department of Environmental Conservation  
Office of Hearings  
625 Broadway, 1<sup>st</sup> Floor  
Albany, NY 12233-1550

New York State Department of Environmental Conservation  
Division Of Environmental Permits, Region 3  
21 South Putt Corners Road  
New Paltz, NY 12561-1620

ATTN: Honorable Judge, Mrs. Maria E. Villa  
Legislative Hearing, February 6<sup>th</sup>, 2007

State Of New York, Department Of Environmental Conservation, Region 3  
Office, Mr. Scott E. Sheeley, DEC Environmental Analyst

Pursuant To Article 3, 8, and 24 (Freshwater Wetlands Permit Application)  
State Of New York, Environmental Conservation Law, and Part 617, 621 and  
663 of the Official Compilation of Codes, Rules and Regulations of the  
State of New York.

Applicant; AJM Swan Lake Estates, Limited Liability Corporation  
Applicant I.D. # : 3-4836-00245/00002 & 3-4836-00248/0001

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Dear Madam:

I would like to take moment to thank you for your interest in our wonderful scenic Swan Lake and its future. The lake is basically the "last un-touched water resource" in our Historic Sullivan County, New York, and in the entire Department of Environmental Conservation Region 3 area. Swan Lake is a Federally Protected Waterway. It is a tributary to the West Branch of the Mongaup River that spills into the Delaware River Basin, and ultimately to the Atlantic Ocean.

**Qualifications:** I am a local resident, and plumber. I posses a current NYSDEC Grade 2A Wastewater Operators License. I served the residents of the county of Westchester, Department of Environmental Facilities (DEF), as a Wastewater Operator for roughly ten (10) of my fifteen (15) years of public service. The balance of my civic duty for DEF was in the Maintenance Departments of the various countywide Treatment Facilities.

### **Background information on Swan Lake.**

Most people know Swan Lake by its size, covering some three hundred fifty-two (352) acres. The applicant's dam enables the present day size of Swan Lake, and without it the lake would be a small river approximately fifteen feet wide at this location /elevation. That includes the adjacent area upstream that this developer (AJM) intends to build his one hundred fourteen (114) acre subdivision, known as Swan lake Estates, LLC at Kelly Bridge Road project on. At the February 6<sup>th</sup>, 2007 Legislative Hearing before the Honorable Judge, Mrs. Maria E. Villa, the applicant verbally withdrew the Lake Marie Road Subdivision proposal and thereby segmented the Kelly Bridge Road subdivision portion of his application being reviewed by DEC officials.

*\* The applicant's DEIS does not discuss this withdrawal or the segmenting of the project, although a fax statement dated August 28, 2006 by Mr. Murolo is included in the appendix. Since the DEIS was accepted as complete in December 2006, why did it not include this relevant information? This furthers the inaccuracy of the DEIS.*

My written Public Comment letter will focus and pay special attention to the applicants Domestic Water and Wastewater (Sewage) plans submitted for the proposed project. The following bulleted passages represent 'facts' pulled from the DEIS or otherwise.

### **Daily water usage and waste loading inaccurate.**

- \* The applicant specifies on page seven (7) of ten (10), *7.3 Water Quality, Kelly Bridge Road/ Lake Marie Road Subdivision. Final Scoping Document, May 22, 2006*, that "the projects sites will be served by individual wells and subsurface wastewater disposal systems. As proposed, the estimated total water demand of both development sites is approximately 16,720 gallons per day." The DEIS for the Kelly Bridge Road subdivision never discloses the estimated total water demand for this portion of this application.

The facts presented would lead us to believe that the 16,720 gpd figure provided by the applicant in the Scoping document would be cut in half because the Lake Marie application is dropped, and therefore drop water demand to 8,360 gpd. This is not the case, and the applicant's DEIS needs to be accurate on this point.

### **The possibility of two homes per lot renders the subsurface water systems likely to fail, and the proposal has evaded state review.**

- \* The applicant claims that twenty (20) of the twenty-one (21) parcels proposed would be served by the subsurface wastewater system.
- \* The applicant never disclosed to DEC officials the fact that the Town of Liberty Code allows for one un-specified sized "guest home" on each of the twenty parcels, *in addition*



*to those proposed on the site plan.* This results in forty (40) possible homes, bringing the water demand back to the 16,720 gallons per day, or

more... depending on the size of the guest home. The figures provided by the applicant for both subdivisions misrepresent this possible outcome. This subdivision, when presented as one project (both Kelly Bridge Road and Lake Marie Road), would have required permits from the NYS Department of Health (DOH). According to Tim Rose at the DOH, when he requested all proposed plans for both parcels from this developer they were never sent to his attention. Instead this developer chose to withdraw the Lake Marie Road subdivision application.

The Kelly Bridge Road subdivision of 20 homes does not require the DOH septic and well permits. There are only 4 parcels under 5.0 acres, and the rest are mostly 5.01 and 5.02 acres –with a few larger. This guest home will be tied into the original homes Subsurface Waste Sewage System, *after permits have already been issued.* The practical result is that homes under 5 acres – an additional guest home - effectively evades public review and State scrutiny.

\* The location of the subsurface wastewater systems (leach fields) are on the submitted maps approximately two hundred (200) feet away from the “present day waters edge” of Swan Lake. The natural downward landscape slopes towards the lake leading directly to the outlined hundred (100) foot “NYSDEC Designated Fresh Water Wetlands Buffer Zone.” The applicant’s own subsurface wastewater systems figures lead me to conclude that failure of these systems is imminent for the leach fields. Regardless of the poor soil conditions, percolation test results were never disclosed, not currently on file in the town Planning Board records, nor were any other means made available to the public by the applicant to justify resorting to these subsurface wastewater systems. Everybody living around Swan Lake uses municipal sewer lines to address these crucial issues, because of the known damage leach fields caused to Swan Lake prior to 1982. The failure of those earlier systems caused much harm to this man made lake. Given this known experience and on-site characteristics, the applicant must be made to conform to the same set of public health, safety and environmental responsibility requirements that the rest of the community around Swan Lake adheres to protect the eagle habitat. Based on the DEIS alternatives proposed, this leads to the “no build option” as the only way to avoid environmental catastrophe a few years down the road. **From a civic engineering point of view, and as a certified expert on these matters, this issue cannot be swept aside and not analyzed by the DEIS for any reason - economic, or otherwise.**

There is “justifiable cause” of certain threat to the Federally Protected Endangered Species that live here now, namely the American Bald Eagles, and the other species we witness here that the DEIS fails to even discuss, and also for concern for all the lakeside homeowners.

\* Swan Lake is presently in “recovery” from years of significant negative leach field pollution impacts and other dumping issues. Now, the DEIS proposes that this community return to that primitive state that existed prior to 1982, without analysis or scientific reasoning justifying such conclusions.

Is this really what the applicant wants? Does this justify members of the public paying a \$1 million dollar price tag for these lots and homes if they do not know this? Or is this just what he has been advised to do to subvert the SEQR process?

\* Subsurface wastewater systems (leach fields) are “incapable” of removing the harmful by-products that raw sewage produces, such as, nitrogen, phosphorus, and ammonia. These are just some of many examples of the very harmful chemicals that can destroy potential “habitable environments“ especially the small and shallow lake that the Bald Eagles living here rely upon to survive. **There is NO discussion in the DEIS of the ramifications of the failure of these systems.**

*Reference; Appendix 75-A, Wastewater Treatment Standards- Individual Household Systems, Sections 75-A.1 through 75 A.11, [Statutory Authority: State Of New York Public Health Law, 201(1)(1)]*

Following the applicant throughout the entire SEQR process, leading up to the applicant’s DEIS, it does not disclose why the entire EAF form for the Kelly Bridge Road Estates was never completed.

*Reference: 617.20 Appendix A, State of New York, State Environmental Quality Review, Full Environmental Assessment Form, Page (9) of (21), line number (5) and (6) Titled; Zoning and Planning Information.*

*Why was the applicant’s DEIS accepted as being complete by the DEC officials without this important and necessary information?*

In fact, in accordance to Local Town Codes, and the applicant’s own EAF submission, Town of Liberty actually allows this project eighty-two (82) single home dwellings, on the one hundred fourteen (114) acres.

Lines 5, reads as follows: Question:” What is the maximum potential development of the site if developed as permitted by the proposed zoning?”

*Applicant's answer: “82 single family lots.”*

Line 6, reads as follows: Question: “ Is the proposed action consistent with the recommended uses in adapted local land use plans” Applicants answer:(box is checked) “Yes” , “The primary permitted use in the RD zone is a single family residential development on minimum 60,000 sf ( 1.38 acre ) lots.”

The applicant's DEIS never makes mention of these facts. Without it, DEC would be actually awarding permits to the applicant for water demands up to, and over 33,440 gallons per day.

If that's really the case, we can look forward to the entire hillside being leveled. Imagine that: nearly thirty-five (35 %) percent of the entire eagles habitat gone for houses and leach fields. What about the wells for potable water for these homes? Now, they have "permissio" to drill eighty-two (82) individual wells, above all these leach fields.


\* In 1982, the Swan Lake residents on the other side of the lake were made to tie in to the Public Sewer Service provided by the Swan Lake Sewer Treatment Plant, NYSDEC No. 3-4836-00037/0002, SPDES No. NY 003 0252, Max. Effluent Limitations 0.425 MGD (Millions of Gallons per Day).

\* The Town has limitations in providing potable water service to its present day residents who pay taxes, and this is documented by DEC's own records that the Swan lake Sewage and Water Treatment Plant has failed its SPDES inspections for over eight months in a row.

I personally have town sewer service for my home, but I don't have town water service on the lake. My neighbors across the street have access to town water. My concern is who's next on the list – will it be the applicant's proposed project across the lake, or the residents who already live here in harmony with present day environment, and the endangered species that thrive? As a duly licensed NYSDEC Grade 2A Wastewater Operator, I can say that the DEIS failure to address the crucial septic and water impact issues renders the document a useless tool to analyze and evaluate the negative environmental impacts of this proposal. We know this because Swan Lake has already suffered these significant environmental insults. The lake and the bald eagles must not be subjected to this again – more will die, and/or leave or both – and the nutrient loading that will result from these septic systems failure will kill our beautiful Swan Lake. SEQRA is supposed to be a 'hard look' – but this DEIS fails to even raise one of the most significant potential impacts at all. For these reason, the DEIS fails and DEC must require it be redone consistent with these comments including a full analysis of these impacts.

Thank you all in advance for your concerns in this delicate matter. Please feel free to call on me at my home phone 1-845-292-0614 anytime if you should have any more questions regarding these matters.

Respectfully Submitted,

  
Soterios T. Karras

February 17, 2007



Michael Shanahan  
91 Redwood Lane  
Swan Lake, New York 12783

February 18<sup>th</sup>, 2007

New York State Department of Environmental Conservation  
Office of Hearings  
625 Broadway, 1<sup>st</sup> Floor, Albany, New York, 12233-1550

New York State Department of Environmental Conservation  
Division of Environmental Permits, Region 3  
21 South Putt Corners Road, New Paltz, New York, 12561-1620

ATTN; Honorable Judge, Mrs. Maria E. Villa  
Legislative Hearing, February 6<sup>th</sup>, 2007, and

State Of New York, Department of Environmental Conservation, Region 3  
Office, Mr. Scott E. Sheeley, DEC Environmental Analyst

Written Public Comments Submission;  
Last Filing Date: February 26<sup>th</sup>, 2007

Dear Mr. Sheeley,

As a resident of Swan Lake I am writing today to have my written comments submitted for the DEIS - AJM Swan Lake Estates, LLC Kelly Bridge Road subdivision due date February 26, 2007.

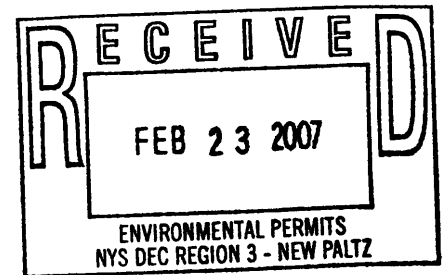
Since the AJM project began, I have seen deterioration in the quality of the lake, with the lowering of lake water levels, red clay mud - colored water, soil erosion at the project entrance and a change in the behavior of the wildlife on the northern lakeshore.

The DEC has stood by and watched while a 5800-foot road was carved out of the hillside when AJM began building without any permits that were required for this project.

AJM has ignored DEC recommendations to put ALL the eagles' nests, including nests D and E, into a conservation easement. Instead, AJM has chosen to sell the parcel of land where nests D and E are located.

According to the River Reporter dated Feb 15 - 21, 2007 AJM "frustrated with the length of the process" and intends to get his permits to build in a few months.

I am questioning how the DEC has allowed this developer to get to this point, having



Page 2

Ignored or circumvented NYS Environmental Conservation law in such a flagrant and obvious manner.

This behavior on the part of AJM the developer and the DEC demonstrates to me the dangerous precedent that has been set for Swan Lake.

By only looking at the potential negative impacts to the eagles, ( without the effect on the other aspects of their habitat, such as water quality, noise levels, loss of their main breeding nest storm water controls and overall degrading of the environment we have already experienced ) the DEC is being negligent in their job. If the DEC continues to ignore these very real cumulative impacts for this project, it is sending a clear signal to all other residential subdivisions awaiting approval on Kelly Bridge Road (RNR, 95 units on 60 acres) and (Briscoe Road - 68 Units on 33 acres) that the SEQR process does not matter and public participation is an "inconvenient delay "in the permitting process.

The DEC must do its job to protect the environment under NY State law in the case of AJM @ Swan Lake Estates, LLC.

The DEC must assess the past, present and future negative impacts the AJM project poses not just to the eagles' habitat, but also to the citizens and residents of the area.

If the DEC does not do its job as stated by NY State Environmental Conservation Law, then who will do this job. It is up to the DEC to take responsibility and accountability of this proposed project.

Do the right thing here. Do not allow this project to destroy the beautiful natural habitat here on Swan Lake. You have the option of "No Build" please take it.

Thank you for your time and consideration in this matter.

Sincerely;

A handwritten signature in black ink, appearing to read 'Michael Shanahan', with a long horizontal flourish extending to the right.

Michael Shanahan

(17)

**From:** "NANCY LEVINE" <swanlake43@earthlink.net>  
**To:** "sesheele" <sesheele@gw.dec.state.ny.us>  
**Date:** 2/20/2007 8:49:05 AM  
**Subject:** AJM

Dear Mr. Sheeley,

I attended the public hearing regarding AJM Development and spoke out in favor of it. This morning's paper, the T.H. Record, unfairly quoted Cora Edwards as follows, "New York State law allows for community concerns to be addressed in the environmental impact review process. Everyone who cares about the fate of American bald eagles in Sullivan County is entitled to send their views," said Cora Edwards, one of the neighbors who spearheaded the call for DEC intervention. The Record should have asked for an opinion from the many residents who are in favor of AJM.

Yesterday I e-mailed one of Cora's group, and informed them about another much larger development coming into the Town of Bethel; however, it is also considered part of Swan Lake. This has been planned for quite some time, and I believe they are aware of it. The river runs along this development and the eagles are often seen there. I am not complaining about this development; Swan Lake needs development, however, I wonder if Mrs. Edwards and her group have done anything about this. There are also many houses being built just a little farther up the road than AJM's. Have you heard from them concerning THOSE houses????

In my opinion, and others, this is absolutely an attempt to preserve their "neighborhood," and has very little to do with the eagles. As you already know, the houses are set back from the lake, a minimal amount of trees have been cut to put in the road and the houses, the eagles and wetlands will be protected, and I believe that the only thing this group is concerned about is how much traffic will be going down the road, and that the eagles are being used for their own agenda.

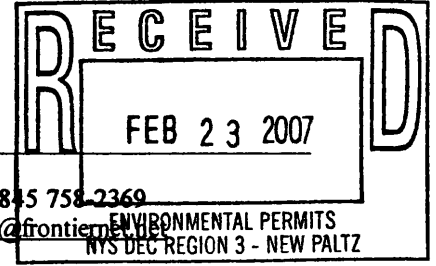
I hope you will take this into consideration when you make your decision. Thank you.

NANCY LEVINE





Hickory Creek Consulting LLC



Karen Schneller-McDonald  
25 Carriage Drive  
Red Hook, New York 12571

845 758-2369  
katykill@frontier.com  
ENVIRONMENTAL PERMITS  
NYS DEC REGION 3 - NEW PALTZ

Mr. Scott Sheeley  
Deputy Regional Permit Administrator  
NYSDEC Region 3  
21 South Putt Corners Road  
New Paltz, New York 12561

February 21, 2007

Dear Mr. Sheeley,

Please find enclosed a copy of my comments on the Draft Environmental Impact Statement for Swan Lake Estates in the Town of Liberty, Sullivan County. I am forwarding you an electronic copy as well.

Sincerely,

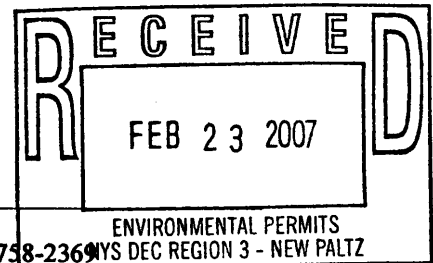
*Karen Schneller-McDonald*  
Karen Schneller-McDonald



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## Swan Lake Estates DEIS Review and Comments

February 21, 2007

These comments are based on a review of the DEIS for the Swan Lake Estates project in the Town of Liberty, Sullivan County. SEQRA requires rigorous review of potential significant impacts so that they can be avoided or properly mitigated. The DEIS does not reflect this 'hard look' at potential impacts; in fact, standard information that is normally included in an EIS is not provided. The information that is provided by the DEIS is completely inadequate as a basis for professional scientific evaluation of significant adverse impacts- and subsequently their mitigation. Therefore, conclusions regarding impacts and mitigation as stated in the DEIS are based on insufficient information. Until all significant impacts are fully described, it is not possible to develop and evaluate effective mitigation. The following comments support this conclusion.

**A. Insufficient information regarding impacts on bald eagles. The DEIS does not provide sufficient information to determine the significance of impacts on bald eagles because it doesn't evaluate all of the necessary, pertinent information regarding the eagles' entire habitat at Swan Lake-including year round conditions, nesting, roosting, breeding, feeding (eg condition of prey species), and wintering. When impacts are not adequately described, mitigation cannot be effectively evaluated- therefore all mitigation described in the DEIS regarding bald eagles should be re-designed and re-evaluated after all the impacts have been described and discussed.**

**This repeated failure to include necessary information includes but is not limited to the following:**

**1. Soils information** necessary for habitat/vegetation evaluation, wetland and hydric soil description, erosion potential on steep slopes, and depth to water table, is missing from the DEIS. This information is essential for a complete evaluation of vegetation and habitat, and water quality considerations.

**2. Full description of all onsite (and adjacent) habitats** including uplands, wetlands, and aquatic habitats. These should be identified and described using standard, widely-recognized and accepted source such as Edinger's 'Ecological Communities of New York State'. This information is not found in the DEIS.

**3. Evaluation of habitat quality and condition** describes the value of the habitats for non-protected as well as protected species (as per SEQRA Environmental Assessment Form part 2, a completed copy of which is not included in the DEIS). This includes habitat for breeding, nursery habitat, foraging, seasonal movements, nesting, overwintering, and population dispersal. Because a species like the bald eagle requires multiple habitat conditions, and occupies a large range, *the entire Swan Lake area eagle habitat, not just the project site, must be evaluated. For the DEIS to be scientifically valid the entire lake and its interrelationships with eagles must be included. Because no species exists in a vacuum, all habitats and other species on which it depends, or with which it relates, must also be described. This includes all prey species.* This information will be used to document the determination of whether or not a proposed project will incur significant impacts on habitat or species.

Description of habitat quality or condition (all of which is missing from the DEIS) includes:

Habitat patch size

Degree of fragmentation

Connectivity with other habitats or corridors

Age or size of trees (height, dbh)

Abundance of downwood, standing snags, rocks, organic debris, woody hummocks, and other microhabitat features

Level of human disturbance (e.g., from logging, ATVs, foot traffic, etc.)

Abundance of non-native or invasive species

Diversity of native plant species

Observable quality of surface water and substrates for streams

Cumulative impacts from development and human activities (including proposed developments on Kelly Bridge, Briscoe and Shore roads )

**4. Recovery Plan references.** Instead of providing a thorough and valid analysis and evaluation regarding the references to the Bald Eagle Recovery Plan (reproduced in part in the appendix of the DEIS) the DEIS instead extracts bits of information out of context from the Recovery Plan in an effort to justify its claims that there will either be no impacts on the eagles at Swan Lake, or that all impacts will be completely mitigated. Neither claim is well-documented. Two examples of this include:

a. discussions surrounding nest "D" and its apparent abandonment-- notwithstanding information in the Recovery Plan which states that nests may be returned to after many years of apparent 'abandonment', and

b. the presentation of misleading statements regarding the ability of eagles to become less sensitive to human disturbance- a subject which is by no means conclusive if one reads the entire Recovery Plan. There is a 'level of disturbance' point at which eagles will cease to nest at Swan Lake-- and at which they will cease to occupy the lake at all. The DEIS contains no rigorous discussion of this subject- which should include a complete assessment of cumulative impacts on the entire Swan Lake habitat system.

**5. Impacts on other species of conservation concern.** See 'B' below.

**6. Impacts on water quality.** See 'C' below.

7. Additional impacts and effects on roosting, feeding, nesting, etc. from increased levels of **noise and lighting** as a result of development.

**B. Scoping Document requirements are not met by the DEIS. The Scoping Document calls for a description of vegetation and wildlife on the project site and Swan Lake. This project involves the direct loss of approximately 33 acres of existing habitat. Even the minimal amount of information required by the Scoping Document is not provided in the DEIS. The information provided is so cursory that it is virtually useless for purposes of impact evaluation. Until this information is provided, potential significant impacts cannot be evaluated and effective mitigation cannot be developed.**

**1. Impacts on protected and non-protected species.** The EAF Part 2 contains a section for evaluating impacts of protected, and non-protected species. But this form has not been filled in. To respond to questions as to whether a project will have significant impacts on all of the resources identified in the EAF (as a basis for the contents of the DEIS), adequate description of habitat types (and their condition) found on or in the vicinity of the site and species (protected and unprotected) that are associated with those habitats, must be included.

**2. Species of conservation concern, in addition to the bald eagle, are likely to be found on this site and these are not even mentioned in the DEIS.** Under New York and federal law, there has been no onsite analysis or evaluation of the presences of these species on the project site. Only the bald eagle is mentioned in the text of the DEIS as a species of concern. Because of specific bald eagle high quality habitat requirements, it is even more likely that such habitat supports additional plants and animals of conservation concern. This is further supported by evidence in the project records which demonstrates that the site has remained largely undisturbed for over a hundred years.

Provision of this additional information is appropriate as documented by the following:

The Environmental Conservation Law (ECL) of New York State regulates wildlife habitat protection. Section 9 of the ECL is designed to protect rare plants; sections 11-0535 and 11-0536 protect at-risk fish and wildlife. Under SEQRA, Parts 1 and 2 of the Environmental Assessment Form (EAF) contain questions pertaining to potential impacts of a project on both protected species (threatened and endangered) and non-protected species (EAF Part 2).

**A listing of all plants and animals of conservation concern should be provided in the DEIS. "Conservation concern" includes the following:**

- a. Endangered or Threatened under the federal Endangered Species Act
- b. NYS list of Endangered, Threatened, Rare, or Special Concern species (animals)
- c. NYS list of Endangered threatened, rare, and exploitably vulnerable species (plants)
- d. NYS Comprehensive Wildlife Strategy ([www.dec.state.ny.us](http://www.dec.state.ny.us))
- e. S1, S2, or S3 by the New York Natural Heritage Program
- f. Regionally rare, scarce, declining, or vulnerable in Kiviat and Stevens (2001)
- g. NYNHP Rare plant status list ([www.nynhp.org](http://www.nynhp.org))

**3. Discussion of project impacts on all species of conservation concern and their habitats** should be included in the DEIS. All of this is relevant to the health of the bald eagles' habitat.

**4. Impacts on species in adjacent wetlands.** Because wetlands adjacent to this site are part of a large wetland and stream complex, species of conservation concern that are found in adjacent or otherwise connected areas should also be described, as their habitat (which includes water quality) will be affected by project activities.

**5. Additional species information.** The DEIS should include information commonly provided at this stage of SEQRA impact assessment, including:

- a. discussion of habitat requirements and impacts on all birds of conservation

concern; the Breeding Bird Atlas for New York State identifies a number of species of conservation concern in the vicinity of this site, including raptors and warblers. The DEIS mentions a few common species without putting them into the context of the area's biodiversity, or mix of common species, invasive species, and species of conservation concern. A breeding bird survey should be conducted by a qualified professional during the late spring/early summer.

b. Reptiles and amphibians. Several species of conservation concern are likely to use this site, and this requires considerably more information in the DEIS- including information on any nearby or adjacent vernal pools and their value for pool-breeding amphibians.

c. A rare plant survey should be conducted. The NYS Natural Heritage program Rare Plants Status report provides extensive information on all species of conservation concern.

**C. Wetlands and water quality issues are inadequately described, discussed and evaluated in the DEIS.** A significant component of the eagles' habitat is the lake and surrounding wetlands, with high water quality necessary to maintain these viable ecosystems. Existing condition of these habitat features (including water quality), and subsequent potential impacts to them are not discussed in the DEIS.

1. **Wetland delineation.** The DEIS does not document adequate wetland delineation for this site. The only wetland maps provided in the DEIS are DEC and NWI maps- both of which are based on aerial photography and are commonly recognized as being inadequate for purposes of field information necessary for site specific review. For water quality and watershed protection purposes, all wetlands regardless of federal or state jurisdictional status must be field delineated, including wetlands along the shore of Swan Lake, and wetlands or portions of wetlands that do not fall under federal or state jurisdiction. While the DEC and COE are concerned only with wetland areas under their jurisdiction, **additional wetlands, or expanded wetland areas may in fact be present**



**on this site.** For example, vernal pools typically fall outside this jurisdiction, but must be included on wetland delineation maps. This watershed approach to wetland delineation enables the town to better evaluate impacts on its water quality and supply, and habitats. It is a necessary component of environmental impact assessment.

**2. Wetland impacts.** The DEIS mentions that several small activities will occur in wetlands, but does not adequately discuss their significance as impacts. These activities include: selective clearing of vegetation, trails, driveway, floating docks, and installation of stormwater outfall.

**3. Wetland and watershed functions.** An assessment of wetland functions is essential for impact identification and evaluation. The DEIS should include a description of the contributing drainage area for each wetland or stream (landscape features that transmit water to wetlands, including surface drainage areas, groundwater recharge areas, stormwater outfalls). This is part of wetland functions assessment, and is essential for evaluation of impacts on water quality and supply.

**4. Wetland buffers.** The use and effectiveness of wetland and stream buffer zones for mitigating the effects of specific impacts such as water quality and habitat should be discussed in the DEIS.

**a. Buffer size.** The DEC wetland buffer requirement of 100 feet is a minimum standard. Is 100 feet enough to adequately protect water quality on this site? Is 200 feet sufficient for protection of lake water quality, aquatic and shore habitats? Will such buffers allow the identified threatened species (and other species of conservation concern) to survive at Swan Lake based on current and reasonably extrapolated future behavior? Buffers are mentioned in the DEIS but the rationale for their size and placement is not addressed. Established research information (e.g. studies cited in Environmental Law Institute's 2003 publication "Conservation Thresholds for Land Use Planners") should support selected buffer size criteria. According to this publication, "To provide water quality and wildlife protection, buffers of at least 100 meters [approximately 330 ft.] are recommended."

Larger buffers may be required to adequately protect habitat depending on the particular species onsite.

**b. Buffer composition.** In addition to buffer size, the type of vegetation, degree of slope, and soil type within the buffer are also critical components of buffers that protect water quality and habitat. Specific onsite conditions thus determine the effectiveness of buffers in the protection of water quality and habitat. None of this is addressed in the DEIS.

**5. Indirect impacts on wetlands.** The DEIS discusses only direct impacts to wetlands, i.e. filling. It fails to assess a variety of indirect and cumulative impacts, and (incorrectly) assumes that only direct impacts to wetlands may be significant. In fact it is well documented (e.g. by the Center for Watershed Protection) that indirect impacts to wetlands may be significant to the extent that they can destroy wetland habitat and completely change the composition of wetland biota-- thus incurring subsequent changes (i.e. impairment) in wetland function. All of the following indirect impacts should be addressed in the DEIS.

- a. Watershed urbanization impacts** (includes increase in total impervious surfaces and loss of 18 acres of forested cover within the contributing drainage area)
- b. Changes in hydroperiod**, i.e. water supply and normal seasonal fluctuations in water level
- c. Changes in ponding** (water depth) within wetlands
- d. Impacts on each of the wetland and stream functions** described as per #3 above
- e. Increased stormwater runoff** (uncontrolled, untreated)
- f. Decreased groundwater recharge** (An increase in the area of impervious surfaces associated with land development prevents natural recharge, and so a net decrease in groundwater recharge rates is associated with urbanizing watersheds. This in turn would have a negative impact on associated plants and animals)
- g. Flow constrictions** (construction of roads, structures, utility crossings across wetlands or upstream/downstream of them)

**h. Increased water level fluctuation**

- i. Changes in water quality** including sediment deposition, pollutant accumulation in wetland sediments, fate of untreated stormwater pollutant load, nutrient enrichment, road salt (see following section on Stormwater Management for details)
- j. Cumulative impacts** on wetland functions and vegetation, and on the watershed. aquatic invertebrates, reptiles, amphibians, birds and mammals.

**6. Water use and wells.** Impacts on wetland hydroperiod, lake levels, streamflow and groundwater during drought years or other periods of low water are not addressed; this needs to be added to the DEIS.

**7. Septics.** Evaluation of soil and topographic site conditions regarding placement of septics, and discussion of impacts (including cumulative impacts) of a significant number of new septics in close vicinity to Swan Lake and adjacent wetlands are not discussed; nor are discussions included regarding the long term requirements for these systems and impacts on the long term water quality of the lake. These should be addressed in the DEIS.

**8.** Because **stormwater management activities** may have a significant effect on water resources, including wetlands and streams, compliance with the new DEC Phase II Stormwater Management regulations also will affect, and be affected by, the vegetation and soil characteristics of certain habitats, particularly wetlands, ponds, lakes and streams. The SWPPP and a description of its impacts on wetlands and the lake is missing from the DEIS. These impacts include changes to hydroperiod and seasonal (including drought) availability of water in wetlands and streams, introduction of invasive species, buffer disturbance, and pollutant loading impacts on receiving waters (wetlands and lake) as stormwater is concentrated into smaller areas. All of these potential impacts need to be assessed in the DEIS, and effective mitigation for them must be developed.

**9. Pollutant loading.** The construction of stormwater management facilities does not necessarily ensure an adequate treatment of the pollutant load in stormwater runoff.

This is particularly relevant to Swan Lake, a shallow, clean lake under increasing development pressure from this and other development that will contribute to overall water quality degradation. Even if the DEC Stormwater Management Design Guidelines are followed scrupulously, stormwater management ponds and other facilities can only remove a certain percentage of pollutants- and this is only if they are designed properly, built as designed, maintained regularly, and are operating at maximum efficiency.

a. For effective impact assessment, it is essential that the pollutant load for both pre- and post- development for the following pollutants (page 2-3 of the DEC Stormwater Management Design Manual) are calculated and presented for review in the DEIS : BOD, COD, TSS, TDS, total phosphorus, total nitrogen (including Nitrates/nitrites), lead, copper, zinc and cadmium. The Simple Method (Scheuler, T. 1987, *Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMPs*. Metropolitan Washington Council of governments, Washington, D.C.) , or a comparable professionally accepted method, may be used for this purpose; but the same method must be used for all calculations. This will provide information regarding the extent of water quality impacts expected to result from the proposed development. Oil and grease and chlorides (ie road salt) are other common constituents of stormwater runoff that should also be considered during impact assessment. This level of impact assessment is especially appropriate where significant impacts to habitat (including wetlands and lakes) for protected species may occur.

b. The DEIS does not discuss **road salt** and its impacts/mitigation. Road salt cannot be removed from stormwater by standard stormwater management practices. Impacts from snowpack (ie plowed snow) should be included in the SWPPP and DEIS. Where will this snow be deposited after it is plowed? Where will it melt, thus releasing its load

of pollutants? The proximity of roads and parking areas to significant wetlands incurs a significant impact from road salt during the winter months. Road salt concentrations can significantly alter vegetation patterns and thus habitat in wetlands and water bodies. This is a water quality issue that should be discussed fully in the DEIS.

**c. Pollutant loading at this site will be directed into wetlands, and Swan Lake, thus contributing to the cumulative effect of regional pollutant loading; this is not addressed in the DEIS. The wetlands on this site are all part of a larger watershed. Potential serious water quality degradation throughout the larger watershed system is a very real threat. It may even extend to groundwater and wells.**

**d. Pesticides, herbicides and fertilizers are among the common constituents of stormwater runoff that must be considered in the DEIS. The project includes a gain of approximately 21 acres of lawn to replace existing vegetation. Pesticides and herbicides will be present in stormwater runoff, and will be likely to impact wetlands. This impact needs to be addressed, and mitigation evaluated.**

**10. Erosion and sediment control issues.** Serious negative impacts on the water quality of Swan Lake from soil erosion resulting from recent road construction on the project site have been documented. Neither these nor future potential impacts have been addressed in the DEIS.

**D . All potentially significant impacts of this project have not been evaluated in the DEIS. The Scoping Document has omitted consideration of a number of potentially significant impacts including water quality. There is no documentation provided to support the seemingly arbitrary conclusion that assessment of additional impacts is unwarranted. In fact, it is apparent that other significant impacts, normally discussed in an EIS, are likely. Therefore, all of the items listed as 'not addressed' in the scoping document should be evaluated in a**

**supplemental EIS. These items include: wetlands and vegetation, water quality, land issues, transportation, community character, aesthetics, noise, air quality, community services and growth-inducing impacts, solid waste disposal, effects on the use and conservation of energy resources.**

**1. Impact assessment deficiencies.** Part 2 of the Environmental Assessment form is not filled out. There is no indication from information contained in the DEIS of a serious review of other potential impacts, so glibly dismissed in the Scoping Document.

**2. The area of disturbance map** in the DEIS is not complete. This map should include all areas (including stormwater management facilities) where the existing vegetation is to be removed, and where any grading or soil compaction (by heavy equipment) occurs. All wetlands and all proposed construction should also be depicted on this same map to enable the planning board to discern the spatial relationship between natural resources and site disturbance.

**3. Relate impacts to appropriate mitigation measures.** Each significant impact should also be discussed in terms of mitigation. Some impacts cannot be mitigated; this should be noted when appropriate.

**4. Increased impervious surfaces.** This project will result in covering approximately 12 acres of the project site with impervious surfaces. This dramatically increases the volume of stormwater runoff, and the amount of pollution it contains. Disruption of drainage patterns and seasonal water levels, also associated with large areas of impervious surface, can lead to wetland loss and increased flooding problems – both onsite and offsite. The DEIS needs to address these impacts directly, instead of assuming that it will all be taken care of by the project's Stormwater Pollution Prevention Plan (SWPPP)- which is not even included in the DEIS.

**5. Stormwater management and impact mitigation.** According to DEC's *Stormwater*

*Design Manual* its purpose is “to provide standards for the design of the Stormwater Management Practices (SMPs) to protect the waters of the State of New York from the adverse impacts of urban stormwater runoff.” The purpose for including mitigation practices in a DEIS under SEQR is to “alleviate, avoid, or minimize the adverse impacts of a proposed action” (SEQRA Handbook). This is accomplished first by alterations in the project plan itself so that adverse impacts are minimized *before* stormwater management practices are applied and a SWPPP is prepared. Thus a SWPPP is not a substitute for other forms of impact mitigation. The DEIS should discuss this relationship between the SWPPP and mitigation.

6. Who will be responsible for the **maintenance of stormwater facilities**? This should be provided through establishment of a bond; other management plans or entities such as Homeowner’s Associations have proven to be much less effective in implementing adequate maintenance over time. This issue is not mentioned in the DEIS, yet it is critical for future water quality protection.

7. **Fate of pollutant-laden sediments.** Detention pond sediments trap a percentage of stormwater pollutants over time. As part of normal maintenance, this sediment must be removed periodically. How will this be done to ensure that nearby wetlands are not impacted, and where will the pollutant-laden sediment be deposited?

8. **Fiscal impacts.** These too are minimized in the scoping document. Statements to the effect of no impact on local schools or emergency services are completely undocumented and warrant more detailed scrutiny. This is the minimum required to protect the interests of the residents of the Town.

9. **Project alternatives do not include any low-impact designs.** Alternatives such as conservation subdivisions, and Low Impact Development practices should be evaluated in this section of the DEIS.

**10. Low Impact Development (LID)** is a design alternative that should be included in the DEIS. LID offers an effective way to address storm water management through site design modifications and best management practices (Low Impact Development Center; National Association of Flood and Stormwater Management Agencies). These practices include using permeable pavers instead of impermeable pavement, design modifications to reduce the size of impermeable surfaces, rain gardens, and distribution of runoff throughout the site rather than channeling it into large collection areas.

**11. Mitigation of water quality impacts.** Several options for mitigating water quality impacts are available, but are not discussed in the DEIS-- in part because the DEIS omits discussion of water quality impacts. Beyond designing and building stormwater management facilities as optimally as possible, the only way to further reduce pollutant loads is to reduce the area of impervious surfaces over which stormwater passes before it reaches a detention basin or other stormwater management facility. Generally, damage to water resources from development is directly proportional to the amount of impervious surface on the developed site. This needs to be discussed in the DEIS, and mitigation for potentially significant impacts to water quality and supply needs to be developed and evaluated in the DEIS.

## **E. Conclusions**

1. The DEIS for the Swan Lake Estates LLC project does not provide the information required for a scientific assessment significant impacts and evaluation of mitigation for this project. Without documentation, data, or other valid reason, the DEIS excludes logical areas of inquiry into all potentially significant adverse impacts that have been, and are likely to be, caused by this project. Not only does this DEIS present an inadequate environmental review under SEQRA, it also falls below professional scientific review standards, and provides conclusions about environmental impact mitigation that are based



on insufficient documentation. Because of this lack of environmental impact information it is not possible to provide a thorough professional review of 1. Project impacts on a threatened species, the bald eagle, 2. Other potentially significant impacts which have not been addressed in the DEIS, or 3. Effective mitigation for impacts.

2. The DEIS does not comply with the narrowly tailored Scoping Document, in its lack of adequate description of impacts on bald eagles, and it's completely inadequate assessment of existing vegetation, habitat and other wildlife– and subsequent impacts on bald eagles.

3. Mitigation cannot be effectively evaluated until all significant impacts are sufficiently identified, described, discussed and evaluated.

4. The scoping document, by specifically noting the subjects that are not to be addressed in the DEIS, falls far short of allowing a 'hard look' at all of the significant impacts that this project is likely to have on Swan Lake, adjacent natural resources, and the Town of Liberty. These subjects that are not addressed are commonly part of standard EIS review.

5. The magnitude of issues not addressed in the DEIS requires that a supplemental EIS be prepared to correct the above described deficiencies of information, so that all significant impacts are adequately and professionally described, and effective mitigation can be evaluated.



(19)

**From:** "Lori Malone" <lorimalone@riverreporter.com>  
**To:** <sesheelee@gw.dec.state.ny.us>  
**Date:** 2/26/2007 2:41:00 PM  
**Subject:** RE: Swan Lake

sesheelee@gw.dec.state.ny

February 22, 2007

Dear Mr. Sheeley,

I am in support of the Swan Lake Estates Development and strongly feel that some who are opposed to it are manipulating the system by using environmental protection to stymie and harass this particular developer for self-serving purposes.

Nancy Levine, a life-long resident of Swan Lake and president of the Swan Lake Renaissance group, expressed at the DEC hearing how "impressed" she was with Mr. Murolo's willingness to respond to the concerns of the community. She personally toured the development site and was pleased with the "restraint used" in the process of clearing trees. Her favorable position of this development has not gone without backlash. While executing the final stages of a renaissance project in 2005, Ms. Levine had a "stop work order" levied against her volunteer workers after the "concerned citizens group" members complained to the DEC that the renaissance group was polluting the lake. Their accusations were unfounded but cost the group precious time and money.

Heinrich Strauch, Executive Director of the Liberty Community Development Corporation and resident of Liberty, NY, also in attendance at the DEC hearing, stated that other construction projects have been ongoing in this same area and "have not had any negative impact" on wildlife or the environment. Or have received the opposition this project has received.

Which leads me to the crux of my issue; there are many problems in Swan Lake and many of these problems have been brought to the attention of this group, so why has opposition to this particular development received such effort while other problems are ignored? Could it be that Cora Edwards (the leader of the opposition and part-time resident of Swan Lake) does not want to be disturbed by the noise and traffic this development will initially generate? She does own two properties on each side of Kelly Bridge Road, the same road that is and will continue to be the primary thoroughfare for Swan Lake Estates. When I met Ms. Edwards she was gathering community support to oppose this development in June of 2005. At that time she expressed to me that she came to the lake from the city "to escape the noise" and didn't want to contend with it here. When she asked me to participate in the weekly meetings for the Concerned Citizen's of Swan Lake, I did. In fact, I was responsible for taking the minutes at those meetings. I stopped attending, because I disagreed with the tactics being employed, particularly, excluding community residents from attending the meetings who had expressed a different opinion. There was also a lot of pressure to contribute money for lawyers. I was surprised, at the first meeting, when Cora Edwards held up a big board outlining her "Dream Team" of attorneys before even sitting down with Mr. Murolo to discuss her concerns about the development. When I

volunteered to write down a comprehensive list of concerns, it became a list of demands that included a cover bridge and preserving the land in perpetuity.

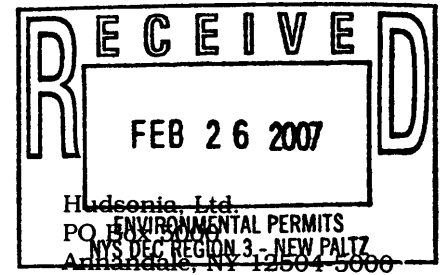
The bottom line is that this land will be developed as long as someone owns it. I can't imagine anyone willing to pay for land, insure it, maintain it and pay taxes on it without the benefit of profit. Short of finding a benefactor to purchase this land from Mr. Murolo and preserve it in perpetuity, I believe this development will go forward. I trust that the DEC will provide the necessary direction to ensure that wildlife and wetlands are safeguarded. I believe other measures should also be taken to protect the rights of current residents who own property bordering the lake as well as legal assurances that the development's home-sites cannot be subdivided at a later date.

Personally, I prefer the development of 20 new luxury homes rather than another developer coming along and building 100 new homes on this site. I am also pleased that the second proposed development on Lake Marie Road, which is closer to the eagles' nest, was abandoned. When I mentioned to Cora Edwards at the close of the DEC hearing that she should take solace in that, she simply stated that she "didn't care about the Lake Marie Road development, only this one." Hmm.

Lori Malone  
(Full-Time Resident)  
Swan Lake, NY



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**Comments on the Draft Environmental Impact Statement  
submitted to the Department of Environmental Conservation  
for Swan Lake Estates**

**Town of Liberty, Sullivan County, New York**

**Kelly Bridge Road Subdivision  
Project No. 3-4836-00245/00001**

by Jason Tesauro and Erik Kiviat

Hudsonia Ltd.  
P.O. Box 5000, Annandale NY 12504

Prepared for Save Swan Lake

23 February 2007



Hudsonia was retained by a group of local residents in Swan Lake, New York, to review the 30 November 2006 Draft Environmental Impact Statement (DEIS) prepared by Tim Miller Associates, Inc. for the proposed Swan Lake Estates residential development in the Town of Liberty, Sullivan County, New York. The purpose of our review was to evaluate and comment on: 1) the potential impacts of Swan Lake Estates, LLC on bald eagles (*Haliaeetus leucocephalus*) and other wildlife; 2) the adequacy of the DEIS in addressing the bald eagle issue; and 3) the proposed bald eagle mitigation plan.

Hudsonia Ltd. is a non-advocacy, nonprofit, scientific research institute based in the Hudson Valley of New York. Hudsonia does not oppose or support land development projects. We collect data, analyze impacts, raise questions, and make recommendations for reduction of impacts to the environment especially with regard to issues of biological diversity. This review is a collaboration of Hudsonia and J. Tesauro Ecological Associates.

## I. General Comments on the DEIS.

Hudsonia finds the Swan Lake Estates DEIS to be deficient in several ways.

### **A. The Narrow Scope of the DEIS Makes it Impossible to Reach Necessary Conclusions**

The DEIS fails to address the potential impacts of Swan Lake Estates on the aquatic ecosystem of Swan Lake. DEIS Section 3, focuses almost entirely on the potential impacts to the bald eagle nesting, perching, and roosting habitat. The DEIS does not clearly identify where the bald eagle perching and roosting locations are in relation to the subdivision proposed lots (Lots 3-12). While bald eagle habitat is critical, water quality and the integrity of the lake ecosystem is also crucial both in and of itself and as the system on which the eagles depend.

Water quality, however, is inadequately addressed and it is only vaguely stated that erosion and stormwater plans will be in “compliance with state regulations” and therefore there will be limited impacts to Swan Lake itself. There is no description of these plans and how they will be enforced. Portions of the land slated for Swan Lake Estates are much higher in elevation than the lake itself and therefore present a high potential for the run-off of sediment and debris. The construction of the Swan Lake Estates access road in 2005 has already caused substantial erosion and sedimentation of Swan Lake and resulted in fines imposed by the New York State Dept. of Environmental Conservation (NYSDEC), and further construction activities were prohibited until all permits were granted.

Furthermore, there is no mention in Section 3 of septic systems and their potential impact to Swan Lake. We are particularly concerned about the impact of septic effluent on the water quality of Swan Lake.

### **C. The DEIS Fails to Address the Potential Impacts on Rare or State-listed Wildlife Other than the Bald Eagle**

We have observed the red-shouldered hawk (*Buteo lineatus*), a New York State Special Concern Species, on several occasions in the vicinity of Swan Lake (March 2006-February 2007). In New York, this species is dependent upon large tracts of wetland and upland forest. It has been classified as Special Concern due to habitat loss (e.g., deforestation, forest fragmentation), and it is regarded as highly sensitive to human disturbance (NYSDEC, 2007). Wetland LW-22, which borders the northwestern corner of the Swan Lake Estates parcel, is a 55.4-acre forest/shrub riparian wetland situated within a large matrix of upland forest including Swan Lake Estates. LW-22 and the adjoining woodlands appear to provide suitable breeding habitat for red-shouldered hawks. The DEIS states that LW-22 will be protected with 100-foot buffer; however, should red-shouldered hawks be nesting in LW-22 or in adjacent area, 100 feet is unlikely to be adequate protection from disturbance where the forest has been fragmented by subdivision (see Crocoll 1994). Surveys for breeding red-shouldered hawks should be conducted to determine if there is the potential for Swan Lake Estates to have an adverse effect on this declining raptor.

The DEIS should specifically address the potential for the occurrence of other endangered, threatened, special concern, or New York Natural Heritage Program-tracked rare animals and plants.

## II. Specific Comments on Potential Impacts to Bald Eagles.

### **A. Water Quality Impacts Are Inadequately Addressed**

Bald eagles derive most of their diet from fish and, to a lesser extent, waterfowl (Stalmaster, 1987; Thompson et al., 2005; Watson et al., 1991). It has been well demonstrated that residential development adjacent to lakes increases turbidity from erosion and run-off and creates eutrophic, low-oxygen conditions primarily from septic effluent and stormwater run-off. These water quality impacts can have dramatic effects on aquatic organisms including vegetation, amphibians, and fish (Radomski and Goeman, 2001; Taillon and Fox, 2004; Woodford and Meyer, 2003). Large fish species typically preyed upon by bald eagles [e.g., large-mouthed bass (*Micropterus salmoides*), yellow perch (*Perca flavescens*), American eel (*Anguilla rostrata*)] are often in the upper levels of the lake ecosystem food chains and therefore are most vulnerable to any changes to lower trophic levels, i.e., vegetation, insects, and amphibians. For example, the growth of the exotic invasive aquatic plant, water chestnut (*Trapa natans*), which is already extensive in Swan Lake, would be facilitated by increases in nitrogen and phosphorus. Water chestnut is known to lower oxygen levels in lakes, which detrimentally affect fish and other aquatic organisms. It is also a poor food resource for waterfowl and out-competes native vegetation that provides important forage for waterfowl (Hummel and Kiviat, 2004). As with increased turbidity, dense mats of water chestnut could also directly affect resident bald eagles' ability to visually detect prey. Based on typical bald eagle habitat preferences, Swan Lake is relatively small but the small size is perhaps compensated for by abundant food resources. Maintaining the existing water quality may therefore be critical to the long-term health and reproductive success of the bald eagles at Swan Lake.

To adequately meet the requirements of SEQRA and provide assurance that there will be no significant change to the current water quality of Swan Lake, it is necessary that the applicant



submit to public review detailed plans and water quality protection measures of the proposed stormwater and sewage management systems.

## **B. Human Disturbance Caused by the Proposed Project Is Inadequately Addressed**

We recognize that Swan Lake has been a popular seasonal recreation area for decades, which did not deter the eagles from inhabiting it, or from routinely producing successful clutches. A few people who live on the lake use motorboats. However, the DEIS acknowledges two documented instances at Swan Lake where human disturbance has led to the mortality of eaglets and the abandonment of a nest. What makes Swan Lake unique compared to other privately-owned recreation lakes in the region is that its shoreline is largely undeveloped, except for a portion of the southern shore. The upper portion of Swan Lake (defined as the section northwest of Kelly Bridge Road), in particular, shares similarities in landscape context and character to other documented lacustrine bald eagle nesting sites in southern New York, most of which are water-supply reservoirs with undeveloped shorelines and recreation that is limited to fishing (NYSDEC, personal communication). Unlikely by coincidence, the adult and juvenile bald eagles of Swan Lake prefer the upper portion of the lake (from the southern peninsula near proposed building lot 7 northward almost to Townsend Road) for nesting and most of their foraging and resting activities. The proposed location of Swan Lake Estates occupies a 55-acre area more or less in the middle of this upper portion of the lake's northeastern shore. Swan Lake Estates will be the first major shoreline development on the northern shore of Swan Lake, affecting approximately 3,000 feet of the shoreline. Maintaining undeveloped shoreline was cited as the most critical component of bald eagle management in Maryland (Beuhler et al., 1991; Chandler et al., 1995), and regulating shoreline land use has been a major focus in state and federal bald eagle protection efforts nationally.

## **III. Proposed Mitigation Plan Inadequately Addresses Potential Adverse Impacts.**

The DEIS generally acknowledges that Swan Lake Estates will have some impacts to the bald eagles, primarily in the form of increased noise from construction and home occupancy, visual impacts to the shoreline, and permanent alteration of adjacent forest. We agree that increased noise and human disturbance from Swan Lake Estates will impact the bald eagles, potentially causing the resident pair to abandon nesting at Swan Lake altogether. The DEIS provides a Bald Eagle Mitigation Plan (AJM Eagle Plan), which was developed with input from NYSDEC to mitigate the potential impacts of increased levels of noise and visual disturbances from the nesting area (nests B and C located on the opposite shore from Swan Lake Estates.) On several occasions, local residents have told DEC that the main breeding nest for at least the last three years, nest A, is no longer present. This was reported to Peter Nye of the DEC in September 2006. The DEIS does not acknowledge the loss of this nest. While some of the mitigation measures are appropriate, e.g., prohibiting the use of gasoline-powered watercraft on all of Swan Lake, the overall plan falls short of adequately offsetting the potential impacts.

## **A. Activity along the Shoreline is Insufficiently Regulated**

First, the AJM Eagle Plan prohibits any alteration of the vegetation along the shoreline, presumably to protect perching and roosting areas and limit disturbance within view from nests

B and C, but it does not call for the regulation of activity along shoreline. Owners of lots 3-12 are provided with the option of installing floating docks. These docks and associated human activity will be clearly visible from the nesting area and may present a disturbance to the bald eagles. The suitable perches along the shoreline between lots 3-12 will not be altered as per the mitigation plan but will be rendered less suitable for bald eagles by the human activity on the docks and along the surrounding shoreline. While the resident bald eagles are clearly accustomed to the current level of recreation on the lake, most residents concur that perched adult and juvenile eagles are easily flushed (i.e., disturbed from resting or foraging perches) by human activity, often from distances of up to 1000 feet or more. Being flushed from perches frequently can lead to physiological stress (especially in the winter) and interfere with foraging.

The DEIS states that Swan Lake freezes over in winter and the Swan Lake eagles leave the area. Swan Lake residents report eagles fishing in these open water areas when the lake is frozen. Eagles are present at Swan Lake throughout the year. Residents report that the shoreline along the proposed development (Lots 3- 12) is a commonly used perching area, most likely because it is opposite the nesting area and provides an unobstructed view of the nest and fishing grounds.

### **B. Construction and Visual Impacts are Insufficiently Mitigated**

Second, the AJM Eagle Plan does not include measures to reduce or mitigate the impacts of construction-related noise and visual disturbance. The clearing, grading, and construction of 21 lots will be a major disruption to the environment of Swan Lake. Section 3 of the DEIS assumes that the bald eagles will relocate to 'quieter areas' during construction, yet does not identify where those quieter areas are located or analyze eagle behavior in comparable situations. The DEIS does not consider that relocating could lead to nest failure or increased physiological stress depending on the timing of the construction. It is also assumed in Section 3 that the eagles will return to the shoreline after construction and continue to use it despite the increase in disturbance from the new homes. New noise, according to Section 3, will not affect the bald eagles, stating that they are accustomed to the noise from existing residences along the shoreline. We consider it likely that there will be a cumulative impact of noise and visual disturbance from existing and new homes. The logic presented in the DEIS is dubious and unsubstantiated; moreover it is contradictory to other statements in Section 3 that acknowledge noise as a potential impact.

### **C. The 31-acre Conservation Easement is not Mitigation for the Proposed Project.**

As part of the mitigation, a 31-acre parcel that contains bald eagle nest trees B and C is to be permanently protected through a conservation easement. We believe that the permanent protection of this parcel is critical; however, we feel that it is misrepresented as a mitigation measure because it 1) does not specifically mitigate any impacts associated with Swan Lake Estates; and 2) does not provide adequate protection for the entire documented nesting habitat at Swan Lake. The 31-acre parcel is located over 1,500 feet from Swan Lake Estates and is not to be altered by the current development plans. The potential impacts to this portion of the bald eagle habitat will be primarily in the form of visual and noise disturbance from shoreline recreation and activity on the open water. To mitigate these impacts we recommend that all lake activity be prohibited within a substantial distance of nest trees A, B, and C when nests are active

(Nye, 2000; Stalmaster, 1987; see discussion below). NYSDEC requires similar protection measures on bald eagle nests elsewhere.

The 31-acre parcel contains only three of the five known nest trees (four of which still contain nests). The two nests (D and E) that occur in the Lake Marie Road section of Swan Lake were used for at least four of the eleven years that bald eagles have been known to nest at Swan Lake. These nests are located over 3,000 feet from Swan Lake Estates and are well buffered by forest. They are unlikely to be impacted by the development or lake recreation, and, in light of the potential disturbances associated with Swan Lake Estates, may become active again. The threat of a substantial increase in human activity near nest trees B and C makes it critical that all documented and potential nesting habitat be protected at Swan Lake. Suitable nest trees are typically limited in the environment (Fraser, 1988), and it is important for bald eagles to have access to alternate nesting trees, especially in areas affected by human disturbance. The DEIS notes that nest tree D will soon be considered inactive since it has not been used in five years. Although this a federal and state policy, we encourage regulatory agencies to re-evaluate their decision regarding nest tree D in the context of Swan Lake Estates and its potential impacts to other nesting areas. Nest trees D and E and the surrounding forest may become the only suitable nesting area on Swan Lake in the future. The developer chose not to include nests D and E in the conservation easement, and we understand that the entire Lake Marie parcel (108 acres) has been sold.

#### **D. The Proposed AJM Eagle Plan Inadequately Mitigates Project Impacts**

The DEIS's proposed mitigation measures will help limit some noise (i.e., gas-powered boat motors), but the fact is that 21 homes will lead to a significant increase in potentially human-eagle interactions and the loss of a significant portion of the shoreline as suitable perching and roosting habitat. The DEIS acknowledges two documented instances at the current level of recreation where human disturbance has led to the mortality of eaglets and the abandonment of a nest. While individual bald eagles seem to have a certain 'tolerance threshold' for disturbance, it can only be assessed after eagles have been driven away. The DEIS cites studies that have demonstrated an increased tolerance of bald eagles to human disturbance; however, a recent study in the lower Hudson River demonstrated that eagles generally avoided areas of high human activity (Thompson et al., 2005). Because of the unpredictability of animal behavior, it is prudent to err on the side of caution in animal conservation. Therefore we make the following recommendations to be incorporated into the mitigation plan:

- To help preserve the integrity and suitability of the shoreline along Swan Lake Estates, prohibit the installation of docks while still permitting foot access to the lake. Docks not only represent a new structure in the lake environment but also encourage more sustained human activities (e.g., picnicking, sunbathing, fishing, etc.) that could cause greater disturbance to the bald eagles, as opposed to onshore fishing or occasional launching of a canoe.
- NYSDEC guidelines recommend a 330-750 foot primary buffer around a nest tree, and where there is human activity in full view of the nest NYSDEC recommends up to a 1300 foot buffer with the actual buffer width depending on site conditions and the tolerance of

an individual pair of eagles. Swan Lake nest trees A, B, and C are near the lake shoreline where human activity on the lake is fully visible to eagles at the nest trees. Although the current nesting pair tolerates the existing level of human activity, we are unable to predict the eagle-human interactions with increased levels of recreation and possible change of one or both members of the eagle pair. Therefore, we prefer to err on the side of caution and we recommend a buffer greater than 750 feet. We also recommend independent professional observation of the behavior of the nesting eagles this year to allow a more scientific setting of the buffer width.

- The buffer zone around the nest trees should be demarcated with buoys, or with stakes when the lake is frozen. This should be conducted in consultation with NYSDEC on an annual basis, as the nesting period can vary.
- In addition to banning gasoline-powered watercraft, snowmobiles should be prohibited from the upper portion of Swan Lake and its shores. The use of snowmobiles on Swan Lake coincides with the early stages of the nesting period. It is also critical for bald eagles to conserve energy at this time of year, as they are stressed by cold temperatures and typically limited by food resources. The DEIS is inaccurate in stating that the bald eagles forage elsewhere due to freezing of the lake.
- Coordinate with NYSDEC to impose an appropriate timing restriction for construction. The most critical period to avoid disturbance is during nesting season (February to August); however, December and January can also be critical, especially in cold winters. The open-water winter refuge under Kelly Bridge is close enough to Swan Lake Estates that construction noise may interfere with bald eagle foraging.
- To maintain water quality and reduce run-off, prohibit the use of fertilizers and pesticides and encourage natural landscaping. "Rain gardens" should be used to capture and treat runoff from parking areas. The use of de-icing salts should be minimized.
- Allocate a portion of homeowner's fees towards the control of water-chestnut through manual (i.e. non-herbicidal) methods.
- Integrity of the existing dam, management of lake levels, and management of the invasive water-chestnut are critical to the ecology of Swan Lake and the protection of the eagles. Therefore we recommend the creation of a lake management plan that will ensure permanent maintenance and appropriate management of the lake habitats.

#### IV. Conclusions

What has been presented in the DEIS is inadequate to identify and evaluate the environmental impacts to Swan Lake and its bald eagles.

The mitigation proposed also falls short of offsetting the potentially significant adverse environmental impacts of the project that the DEIS is required to address.

Because of pervasive contamination by PCBs and other chemicals potentially toxic to eagles on the Hudson River, uncontaminated lakes such as Swan Lake are all the more important to breeding and wintering bald eagles. The bald eagle has recovered from near-extirpation in New York, aided by the expensive efforts of the NYSDEC and other entities. We all need to cooperate to protect this investment and the bald eagle as a marvelous component of native biological diversity.



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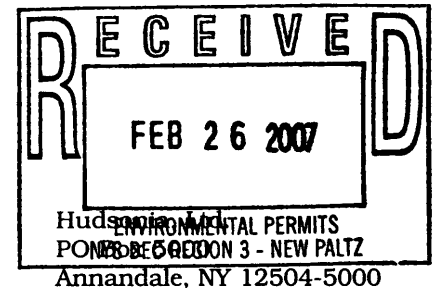






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14 December 2006

## ERIK KIVIAT

### Professional Experience

**Hudsonia Ltd.:** *Executive Director*; 1988- (excepting two years); *Ecologist*, 1981-1988; Co-founder.

**Bard College:** Currently *Professor of Environmental Studies*; Graduate School of Environmental Studies, 1987-2005, Center for Environmental Policy, 2000-; Research Associate, Division of Natural Sciences and Mathematics, 2002-.

**Technical assistance to:** Non-governmental organizations; landowners; businesses; planning, law, and engineering firms; sporting associations; federal, state and local government: more than 200 reports prepared, 1975-.

**Fellowships:** Cary Summer Research Fellowship 1993, Institute of Ecosystem Studies, Millbrook, NY. Vegetation and biogeochemistry of Blanding's turtle habitats. Short-term Visitor, 1995, Smithsonian Environmental Research Laboratory, Edgewater, MD. Freshwater-tidal and nontidal wetland studies.

**Peer Reviewer:** *Biological Invasions*; *Chelonian Conservation and Biology*; *Estuaries*; *Journal of Herpetology*; *Journal of the Marine Biological Association of the United Kingdom*; *New York State Museum Bulletin*; *Northeastern Naturalist*; *Studies in Avian Biology*; *Wetlands*; *Wetlands Ecology and Management*; *Wilson Bulletin*; American Museum of Natural History; Countryman Press; Hudson River Foundation; Long Island Sound License Plate Fund; Marsh Ecology Research Program (NJ); Rutgers University Press; San Francisco Bay-Delta Research Enhancement Program; Sea Grant (Connecticut; Rhode Island); State University of New York Press; The Nature Conservancy; U.S. Fish and Wildlife Service; U.S. Geological Survey; U.S. Office of Technology Assessment.

**Volunteer (selected):** Ontario Breeding Bird Atlas, Hudson Bay Lowland, Canada, 1985; Osprey survey and herpetological survey, St. Catherine's Island, GA, 1973, Reptile and amphibian population studies, Kalbfleisch Field Research Station, Long Island, NY, 1963, Reptile and amphibian surveys in U.S. and Mexico, American Museum of Natural History, 1961-62.

### Education

Ph.D. Ecology, Union Institute and University, 1991. Thesis: *Wetland human ecology*.

M.A. Biology, State University College at New Paltz, NY, 1979. Thesis: *Hudson Estuary shore zone: Ecology and management*.

B.S. Natural Sciences, Bard College, 1976. Thesis: *Snapping turtle ecology in a New York tidemarsh*.

*Professional courses:* Wildlife Study Design (1 day), The Wildlife Society, 2002; Biology of Spiders (5 days), Humboldt Field Research Institute, ME, 2001; Mosquito Identification and Surveillance (2 days), New York State Department of Health, 2000; Applied Multivariate Methods (5 days), Institute for Professional Education, VA, 1995; Control of Mosquitoes and Mosquito-borne Diseases in the U.S. (5 days), International Center for Public Health Research, SC, 1993; Understanding Wetland Soils (2 days), Cook College, Rutgers University, NJ, 1989; Landscape Preservation: Ecological and Social Issues (1 day), Institute of Ecosystem Studies, Millbrook, NY, 1987; Energy Analysis (1 day), University of Georgia, Athens, 1977; Freshwater Fishes of New York (5 days), American Museum of Natural History, New York, 1970.

### **Research Interests**

Wetland ecology and management; Ecology and management of invasive species; Turtle ecology and conservation; Habitat ecology, assessment, monitoring, creation, restoration; Human cultural adaptations to wetlands and vector-borne diseases; Ethnobotany and economic botany.

### **Additional Field Work**

Arizona, California, Colorado, Connecticut, Florida, Georgia, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Nebraska, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, Vermont, Washington; Manitoba, Nova Scotia, Ontario, Québec; México; Trinidad; Czech Republic; England; Hungary.

**Languages:** French and Spanish (reading).

### **Professional Certifications**

Certified Ecologist, Ecological Society of America, 1992-; Professional Wetland Scientist, Society of Wetland Scientists, 1995-; Certified Wildlife Biologist, The Wildlife Society, 1983-.

### **Honors**

Awarded to Erik Kiviat or to Hudsonia for projects or programs he directed: Nomination for National Wetlands Award 2002; Certificate of Appreciation, New York State Department of Environmental Conservation, 2000; Good Land Award, Winnakee Land Trust, 1999; Project Facilitation Award, Society for Ecological Restoration, 1997; Marion Thompson Fuller Brown Conservation Award, Garden Clubs of America, 1996; Environmental Award, Museum of the Hudson Highlands, 1996; Award for Environmental Sensitivity, Mohonk Consultations on the Earth's Environment, 1995; Researcher of the Year Award, Hudson River Environmental Society, 1994; Service Award, Dutchess County Environmental Management Council, 1982.

### **Professional Societies**

American Bryological and Lichenological Society; American Ornithologists' Union; Association of Field Ornithologists; Association of State Wetland Managers; Ecological Society of America; Natural Areas Association; Society for Conservation Biology; Society for Ecological Restoration; Society for the Study of Amphibians and Reptiles; Society of Wetland Scientists; Southern Appalachian Botanical Club; Torrey Botanical Society; Wilson Ornithological Society.

### **Public Service**

Co-sponsor, Japanese Knotweed Managers' Workshop, 2005; co-convenor, Hackensack Meadowlands Symposium, 2003; Greene County (New York) Habitat Management Advisory Committee, 2003-; Advisory Committee for Hudson River Estuary Exhibit, Liberty Science Center, 2002-; Scientific Advisory Committee, New York - New Jersey Trail Conference, 2002-; Co-sponsor, *Phragmites* Forum,

2002; Convenor of the workshop *Purple Loosestrife and Wildlife in North America*, Northeast Fish and Wildlife Conference, 2001; Conservation and Recovery of the Bog Turtle (invited participant), U.S. Fish and Wildlife Service, 1998; Jug Bay Wetlands Sanctuary Advisory Committee, 1998-; Scientific Advisory Committee, Friends of the Great Swamp, 1998-; Hudson River Biodiversity Project Steering Committee, New York State Department of Environmental Conservation, 1997-; Scientific Advisory Committee, Hudson River Habitat Restoration Program, U.S. Army Corps of Engineers, 1994-; Editorial Board, *Water Ways: New York's Waterfront News*, 1990-92; Hudson River National Estuarine Research Reserve Advisory Committee, 1983-, Hudson River Fisheries Advisory Committee, 1979-83, Hudson River Valley Study Advisory Committee, 1978, New York State Department of Environmental Conservation; Wildlife Society New York Chapter, Committee on Exotic Plants (1981-87); Advisory Board of the Trevor Zoo (1981-94); Dutchess County Environmental Management Council Significant Areas Committee (1980-82); Storm King School Environmental Institute Advisory Board, 1983-85; Convenor of Hudson River Marsh Workshop, Hudson River Environmental Society, 1976.

**Technical Publications** (\* Peer reviewed)

- Kiviat, E. & C. Swarth. Submitted. Invasive Plants in Tidal Freshwater Wetlands - North America. In D.F. Whigham et al., eds. *Freshwater Tidal Wetlands*. (Invited chapter.)
- Schmidt, R.E. & E. Kiviat. Submitted. State records of clam shrimp (Crustacea: Conchostraca: *Caenestheriella gynecia*) in New York and New Jersey. *Canadian Field-Naturalist*. \*
- Swarth, C. & E. Kiviat. Submitted. Animals (North America). In D.F. Whigham et al., eds. *Freshwater Tidal Wetlands*. (Invited chapter.)
- Kiviat, E. Submitted (in revision). Invasive wetland plants and wildlife in the New York City region. Wildlife Conservation Society, Metropolitan Conservation Alliance Technical Report. Rye, New York. \*
- Kiviat, E., G. Mihocko, G. Stevens, P.M. Groffman & D. Van Hoewyk. Submitted (in revision). Vegetation, soils, and land use in fens of eastern New York and adjacent Connecticut. *Rhodora*. \*
- Kiviat, E., C. Winters & F. Baumgarten. Submitted (in revision). Use of *Phragmites australis* by breeding birds in North America. *Environmental Management*. \*
- Hartwig, T. & E. Kiviat. In press. Microhabitat use by Blanding's turtle in constructed and reference wetlands. *Journal of Wildlife Management*. \*
- Kiviat, E., S.E.G. Findlay & W.C. Nieder. 2006. Tidal wetlands. P. 279-295 in J.S. Levinton & J.R. Waldman, eds. *The Hudson River Estuary*. Cambridge University Press, New York, NY. (Invited chapter.)
- Kiviat, E., guest editor. 2004. The Hackensack Meadowlands: History, ecology, and restoration of a degraded urban wetland. *Urban Habitats* 2(1) ([www.urbanhabitats.org](http://www.urbanhabitats.org)). \*
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- Hummel, M. & E. Kiviat. 2004. Review of world literature on water-chestnut (*Trapa natans*) with implications for management in North America. *Journal of Aquatic Plant Management* 42(1):17-28. \*
- Kiviat, E. 2004. Occurrence of *Ailanthus altissima* on a Maryland freshwater tidal estuary. *Castanea* 69(2):139-142. \*
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### ***Popular Publications (selected)***

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- Kiviat, E. 2005 and in press. What does reed (*Phragmites*) ecology tell us about reed management? Parts 1-2. *News from Hudsonia* 20(1-2).
- Kiviat, E. & K. MacDonald. 2006. The Hackensack Meadowlands, a metropolitan wildlife refuge. *Meadowlands Conservation Trust*, Lyndhurst, New Jersey. 41 p.
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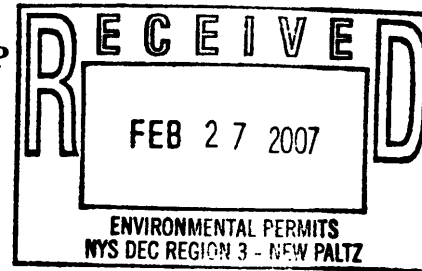


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21

February 23, 2007

Scott Sheeley  
Permit Analyst  
DEC Region #3  
21 South Putts Corner Road  
New Paltz, New York 12561

Re: Swan Lake Conservation

Dear Mr. Sheeley,

I am writing to express my concern with regard to the building project currently being undertaken in Swan Lake, New York. I am a homeowner on the lake at 1363 Briscoe Road although I do not reside there year round. My chief concern is obviously the health, welfare and future care of the lake itself. In my mind it has always been an "undiscovered gem" due to the relatively small amount of homes on the lake but more so due to the sparse human interaction it receives. Very rarely have I seen more than just a few slow moving fishing boats, none of which are powered by anything other than small engines.

It is likely the fact that the lake receives so little in the way of human interaction that it has remained in the state that it is. This has undoubtedly made it so inviting to all the varied wildlife I have experienced on and surrounding it. The eagles are but one bird species we've had the pleasure of experiencing. Herons and others also make it their home. There are innumerable turtles and it seems nearly impossible not to catch some

type of fish so long as one has a line in the water. In addition, my experience on the lake at various times throughout the year, but mostly from Spring till Fall have revealed just how fragile the balance of nature can be. To understand why, one must realize how extremely shallow the lake is. For the most part, in my experience, it is perhaps six feet deep at most and far shallower over the bulk of the area. Thus from the beginning of the season until the end, you can actually see for yourself the changes in plant life, particularly algae and the effect it has on the lake. For me it signals how easily any change in the lake itself or the surrounding area could have drastic consequences.

The lack of human activity, the small size and shallow nature of the lake along with the great variety of creatures and plant life would all seem to point to the conclusion that there will certainly be a drastic effect on some if not all by way of a large construction project that is not carefully monitored. Unfortunately we have already seen the effect of same by way of the lake turning mud brown from soil runoff during a storm. In order to prevent this type of occurrence or likely something far more severe from happening again, I am strongly in favor of a strict review and monitoring by the DEC. If the Eagles are the justification for the instigation of said review, than surely every other creature, plant and human visitor to this area has them to thank for it, however, it surly seems a shame that more care wouldn't otherwise be paid to such a small slice of unspoiled nature that has been virtually the same for as long as I can remember and longer. My parents met on this very lake some forty years ago and in their return visits with me they marvel at how unchanged it all still is. I surely hope we can all work together to preserve this.

Very truly yours,



Paul J. Edelstein

22

500 E. 85th Street, no.16B  
New York, NY 10028

# **urgent**

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f a c s i m i l e

**To:** NYSDEC Region 3 - ATTN: Scott Sheeley  
**Fax Number:** 1 845 255-3042

**From:** Joan Kittredge  
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**Pages:** 3  
**Date/Time:** 2/26/2007 4:04:01 PM  
**Subject:** Public Comments - DEIS for Kelly Bridge Road Subdivision

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Scott -  
Please see the attached letter.

Thank you,  
Joan Kittredge



Joan Kittredge and Robert Shapiro  
500 E. 85<sup>th</sup> Street, Apt. 16B  
New York, New York 10028  
(212) 570-0431

VIA EMAIL AND FACSIMILE

February 25, 2007

Scott Sheeley  
Deputy Regional Permit Administrator  
NYS DEC Region 3  
21 South Putts Corner Road  
New Paltz, New York 12561-1620

Re: Public Comments - Draft EIS for Kelly Bridge Road Subdivision

Dear Mr. Sheeley:

The developer, AJM Swan Lake Estates LLC, has the right to purchase and develop land, but must do so responsibly and with respect for the neighbors in the surrounding community - including the bald eagles. The developer, DEC, Town and community residents each participate and have a role to play in the review process of the proposed subdivision. State and Federal Laws that protect property rights of neighboring properties and the environment, and that provide protection for an endangered species such as the bald eagle, need to be followed during this process. Thus far, it appears that the developer, Town and DEC have not fully complied with these laws. As a result, an unfair burden seems to have been placed on neighbors in the community to make sure that the review process is followed as intended under SEQRA. This is not right.

Based on comments at the DEIS public hearing on February 6, people in the community still have many unanswered questions about how the proposed Kelly Bridge Road Subdivision could impact the ecology of Swan Lake, and about the manner in which the SEQR process has been handled. The DEC is required under SEQRA to take a "hard look" at the potentially adverse environmental impacts that could be caused by the proposed Kelly Bridge Road Subdivision. The bald eagles and their entire, year-round habitat - which includes the Lake and surrounding wetlands, vegetation and other wildlife species -- need to be thoroughly described and evaluated as one ecosystem. This was not sufficiently addressed in the DEIS, and it needs to be done so that all the potentially adverse impacts to this ecosystem can be accurately identified and mitigated as required under SEQRA.

Some of the questions that have not been fully addressed include the following:

- Absence of breeding nest A is not included description of bald eagle habitat. How will the loss of the primary nest impact the bald eagles in the upcoming breeding season? What mitigations will be put in place to address possible new location for breeding nest A? How will the proposed construction for the Kelly Bridge Road Subdivision permanently affect the bald eagles ability to breed and survive?
  
- Coordination between DEC and other agencies, i.e. to assist in description of vegetation and wildlife of Swan Lake ecosystem. How does the DEC plan to work with agencies such as the US Fish and Wildlife Service and US Army Corps of Engineers in order to obtain accurate info and assessments concerning vegetation, wildlife, the Lake shoreline and wetlands?

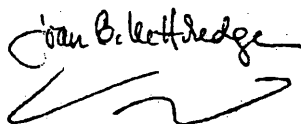
- Some of the additional potentially adverse impacts that need to be addressed include: dam maintenance and increased recreational use of Swan Lake in terms of impacts to water quality; with the guest houses being allowed on each lot, the number of homes could potentially increase from 20 to 40 homes and significantly increase impacts such as stormwater runoff, traffic, noise, recreational use of Lake, etc. How will the cumulative effects of the all the potentially adverse impacts be mitigated and the Swan Lake ecosystem be restored to its pre-construction state, i.e., water level of Lake?

The proposed Kelly Bridge Road Subdivision is located within Sullivan County, which is part of the foothills of the Catskill Mountains and contains a complex network of streams, wetlands, ponds, lakes and rivers that become the source for much of the water flowing into the Delaware River. The importance and environmental sensitivity of the ecosystems located within the watersheds of this region must not be underestimated when reviewing the potentially adverse environmental impacts caused by proposed subdivisions such as the Kelly Bridge Road Subdivision at Swan Lake.

The purpose of the SEQRA laws is to allow a careful review before subdivisions are approved and any potentially irreversible harm is done to the environment. With the renewed push for a casino in Sullivan County, there will be an increase in the number of developments being proposed in this region. How does the DEC plan to apply SEQRA laws in their review of the proposed Kelly Bridge Road Subdivision in order to establish a precedent for future subdivision reviews that will insure the protection of Sullivan County's network of watershed ecosystems? What precedents can be set now by the DEC in order to insure that Sullivan County will continue for many generations to be home to ecosystems, like the one at Swan Lake, that support such treasures as the American bald eagle? If there was ever a time to get this right, now is certainly the time to please do it. The residents and taxpayers of Swan Lake, the Town of Liberty and Sullivan County are relying on you to not falter in your responsibilities on our behalf.

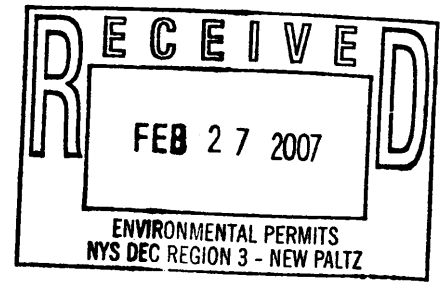
Thank you very much for your attention to the review of this project, and we look forward to your response to our questions.

Respectfully,



Joan Kittredge and Bob Shapiro  
East Hill Road, White Sulphur Springs  
Town of Liberty, New York

PO Box 238  
White Sulphur Springs  
NY 12787



23

February 23, 2007

Mr. Scott Sheeley, Deputy Regional Permit Admin.  
NYS DEC Region 3  
21 South Putt Corners Road  
New Paltz, NY 12561

Dear Mr. Sheeley;

I understand you are looking for input on the Swan Lake project owned by AJM. It is my understanding that the houses proposed would be on 2 to 5 acres of land. If this were true I certainly would support this development.

Sincerely,

  
Joyce Teed

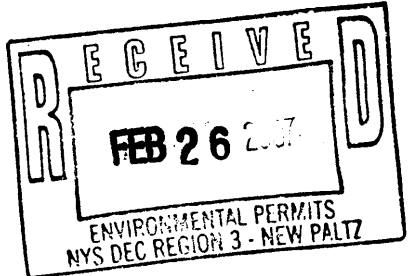




**CORA EDWARDS**  
1495 Briscoe Road  
Swan Lake, NY12783  
edwardscora@aol.com

February 26, 2007

Scott Sheeley  
Deputy Regional Permit Administrator  
DEC Region 3  
21 South Putts Corner Road  
New Paltz, NY 12561



**Re: DEIS Comments - Potential Negative Impacts of the 21 lot residential subdivision known as "AJM at Swan Lake Estates, LLC - Kelly Bridge Road Subdivision" on the American Bald Eagle habitat at Swan Lake, NY (Town of Liberty, Sullivan County)**

Dear Mr. Sheeley:

Please accept these written comments into the public record.

**Section 1. Background of American Bald Eagles Habitat (*Haliaeetus leucocephalus*) at Swan Lake, NY.**

Swan Lake is a man-made 352-acre lake with three unnamed tributaries (D-10-22-P128-12 and D-10-22-P128-2 on the "upper lakes") feeding into the lake. A man-made dam exists at the Route 55 end of the lake with water outfall over the dam that eventually runs into the Mangaup River, Delaware River and Atlantic Ocean. The Homeowner's Association Covenants and Restrictions submitted by Anthony J. Murolo places dam maintenance responsibility with the Homeowner's Association. The lake waters are under the jurisdiction of the US Army Corps of Engineers, a relevant fact in the permitting process of this case.

As far back as 1969, people have seen resident eagles nesting, breeding, fledging, flying, roosting, perch hunting, foraging, and soaring in and around the entire shoreline of the lake throughout the year. *References to oral public comments by Diane Nathanson and Evan Beck - Feb 06, 2007; written comments by Walter Keller 2006.*

**Loss of Nest A:**

In 2004, there were 6 eagles' nests at Swan Lake. According to a statement Mr. Murolo made in August 2005, the eagles nest on the Kelly Bridge Road subdivision location was "destroyed by raccoons." Now in 2007 the number of nests is down to four, of which two nests (B and C) have been included in an unsigned conservation easement with the Delaware Highland Conservancy. The breeding nest A, (which the breeding pair has used for at least the last three consecutive

years by the eagles at Swan Lake for hatching eggs) disappeared from its tree and was reported as such to the DEC-Albany Endangered Species Unit in September 2006.

#### **Nest Tree A:**

In the final Hudsonia, Ltd. report on the eagle habitat at Swan Lake, specific references to the nest tree A are made "because the tree is still standing and should be protected and buffered in case the eagles build a new nest in that tree. The fact that there was a nest in that tree indicates the suitability (and potential value) of that tree for a future nest." *Email from Erik Kiviat to Cora Edwards February 25, 2007 included in Appendices.*

#### **Eagle Territory and Home Range:**

"Biologists make a distinction between *breeding territories* (areas around the nest that are actively defended against intruders) and a raptor's *home range* (all the land a bird uses, including areas that may overlap with home ranges of other individual birds)." *The Raptor Almanac by Scott Weidensaul 2004.*

The average breeding territory size for the bald eagle is 10.4 square miles; average hunting territory size is 25 square miles. *Brown and Amadon 1968; Craighead and Craighead 1956; Johnsgard 1990 p. 105 of The Raptor's Almanac.*

According to public comments made at the DEC public hearing on Feb 06, 2007, residents have seen eagles at the Route 55 end of Swan Lake and at the opposite end, over Heinle Road, although it is not clear if they are identifying the same resident eagles which breed at Swan Lake.

#### **Failure of Eagle Mitigation Plan to Address Potential Negative Impacts of Residential Subdivision on Eagles' Habitat**

The Federal Bald Eagle Protection Act states: "The Act prohibits the taking or possession of and commerce in bald and golden eagles, with limited exceptions." **Definitions.** "Take": includes pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or **disturb**.

The documents submitted by Mr. Anthony Murolo specifically mention disturbances that have already occurred to the eagles nesting habitat at Swan Lake. The likelihood of these disturbances increasing with the addition of 20 homes are also mentioned. However, the Bald Eagle Mitigation plan submitted on Mr. Murolo's behalf do not specifically outline how disturbances to the eagles will be minimized with the introduction of 20 new homes, additional guesthouses, garages, driveways, impermeable surfaces, slopes, loss of forested areas to lawns, pesticides, fertilizers, increased home and street-lighting in an area that currently has no street lights, leach fields and "nutrients" in the leach fields, wells, septic tanks and increased levels of human activity in an area that is commonly used for the eagles perching and foraging activities (Lots 3,4,5,6,7,8,9,10,13,14), other than to say that paths will be hand-cut and a restricted access sign will be placed in the water around the breeding nests in the conservation easement. The 'common lot' for recreation activities is still located in the same place it was as the original site

division plans with visual distance of nests B and C, and adjacent to the stream and wetlands areas.

The insufficiencies of this 'mitigation' plan were addressed in a paper entitled: Commentary on Bald Eagle Mitigation Plan submitted to the DEC in March 2006, and the insufficiencies of this plan, for the most part, remain today. Two words from this Commentary were later incorporated onto Mr. Murolo's final eagle 'mitigation' plan: *roosting* and *perching*, although the areas where the eagles roost and perch at the Kelly Bridge Road subdivision location are never clearly identified in any documents submitted by Mr. Murolo.

**Buffer zones:**

The plan that AJM submitted for eagle protection is basically a yellow circle drawn on a map representing 750' foot primary buffer around the eagles' nests B and C, with restricted access signs to be placed in the water. *Public Hearing Oral Comments by R. Wasson – Feb 06, 2007.* Access to this area in late spring and summer is already restricted to boat traffic, due to the surface of the lake water being covered by invasive chestnut weed, making it nearly impossible to navigate a canoe or kayak into those waters anyway. Since the lowering of the lake level in 2005 by the developer for numerous reasons (in a citation by DEC Encon Officer Eric Templeton – August 2005), the water level in this area remains around 18" – 24" inches deep.

It is not clear how these proposed signs will actually do anything to protect the eagles from the negative impacts of the subdivision of 20 homes proposed on Kelly Bridge Road, well within the 10 mile breeding territory size, and just outside of the 1500' secondary buffer zone around the eagles' nests.

**How are the signs a mitigation plan?**

**Conservation Easement:**

The recommendation made by the DEC to include Nests D and E in the proposed conservation easement have not been honored by the developer. Nest D and E have remained part of the Lake Marie Road parcel. According to the developer, that parcel has been sold. *River Reporter Newspaper article dated Feb 15, 2007.* This is selectively adopting DEC recommendations.

The 31 acres that are included in the conservation easement proposed (for Nests B and C) are "below road grade," according to the property description filed with the Sullivan County Clerk's Office in Monticello, NY. That means that houses could not be built on this 31-acre parcel anyway, and therefore limited the commercial value of this specific parcel.

So it was convenient for Mr. Murolo to include 31 acres of "below road grade" quality in a conservation easement for Nests B and C. It was not convenient for Mr. Murolo to include Nests D and E in the conservation easement as recommended by the DEC. Perhaps it was because the commercial value of the Lake Marie Road parcel was \$1.5 million dollars, according to the property listing on the McKean Realty website for this parcel. Mr. Murolo himself is quoted as saying that he considered the eagles a 'good selling point' in the Towne Crier newspaper article

dated May 18, 2005. The DEIS on page 1-2 states: "There are no easements affecting the site." Therefore what does the 31 acre parcel mitigate?

**Selective Compliance, Non-Compliance and Circumvention Issues: Refer to Section 2 for complete listing, and to Section 3 for Comprehensive Timeline.**

There has been a consistent theme throughout the case that the developer did not comply with laws and permit regulations. Briefly mentioned below are four examples. For further details, refer to the "TABLE OF NON-COMPLIANCE" in the Appendix section.

- **Prior knowledge of eagles at Swan Lake before the DEC Heritage Program Letter of January 2005.**  
The developer was aware of the existence of the eagles at Swan Lake, as there is a reference point with an arrow to the Eagles Nest (A) on the Land Survey Maps registered with the Sullivan County Clerk's Office with survey dated April 2004. This map was also signed by the Town of Liberty Planning Board chairman. However, the developer chose to indicate on the EAF dated December 7, 2004 that there were no endangered species present at Swan Lake. Even after receiving a corrected letter from the DEC Heritage Program – Albany in May 2005, the developer did nothing to remedy the situation and continued with construction activities without a single DEC permit at Kelly Bridge Road.
- **The items put into the consent order dated September 8 and signed September 15, 2005 were selectively carried out.**  
The specific requirements section of the consent order state: "Stabilizing roadways with gravel/rock." The developer this to mean completing a road of 5800' feet that was not previously there. However, the section on "stabilizing of temporary retention traps/basins" was never done and to this day hill behind the retention pond at the entrance (Lot#1) is still eroding into the pond itself. Tree cutting and blasting continued September 19 – 21, 2005 and was reported to Encon Officer Marc Klein.
- **Violations through 2006:**  
Correspondence with John Parker: November 27, 2006: Violations of consent order continued as evidenced by AJM realtor's representation that the lots already had electricity infrastructure, a binder had already been taken on Lot #14 even while under an active Article 17 Order on Consent and while an under SEQRA is in process.
- **Further non-compliance issues listed in Section 2 with negative impacts already experienced.**

### **Water Quality.**

Various sources on eagle habitat concur on the criteria for eagle survival: clean food supply (free from toxins as bald eagles are at the top of the aquatic food chain), habitat protection, and

freedom from human disturbance. *Fraser 1988 and American Bald Eagle Management Guidelines 2000.*

As one of the primary sources of the eagles diet is fresh fish from the lake, it is an oversight that the potential negative impact on water quality has been specifically omitted from the DEIS. The AJM Eagle Plan does not consider the possible contamination of water quality and therefore to the eagles food supply due to increase pesticides, fertilizers and "nutrients" such as phosphorus, nitrates and ammonia in the individual leach fields and septic tanks as a result of the site plan configuration with additional 20 homes.

In the DEIS and AJM Eagle Plan, disturbances to the eagles due to increased human activity are only limited to visual impacts of the proposed subdivision of 21 lots with homes, leach fields, septic tanks, wells, drains, driveways, paths, docks and boat craft. The document does not look at the cumulative loss of 'available landscape' at Swan Lake for the eagles to continue to survive and breed in the future.

### **Stormwater Runoff.**

In addition to neglecting possible contamination of food supply and water quality, the document also neglects to indicate the level increased stormwater runoff into the lake as a result of a decrease in the forest (acres noted in EAF form) and an increase in impermeable surfaces such as rooftops, parking lots, driveways, and so on..

Given the percentage of slopes and inclines of the terrain in question, and the well-documented violations the project has already accumulated with respect to lack of adequate erosion controls and effective storm water prevention plans, these critical impacts on water quality should be taken into consideration. The approximate percentage of proposed project site with slopes is stated as 0-10% slope on 50% of the site; 10-15% slope at 25% of the site; and 15% slope or greater at 25% of the site. *Question #5 page 3 of 21 in EAF form for Kelly Bridge Road subdivision.*

### **Limited Scope.**

Construction vehicles for the project site used Kelly Bridge Road, Briscoe Road and Route 55 from 7:00 am to 4:30 pm every week day from May 2005 to September 2005 to carry gravel and dirt for the road construction. During that time, the noise, dust and degradation to the roads became obvious to residents within a 5 mile radius of the site. These complaints were brought to the Town of Liberty Board on May 16, 2005. The Town of Liberty supervisor said he would ask the developer to slow down the construction vehicles and ask them to use an alternate route. Unfortunately, the vehicles continued through September 2005 until they finished the entire access road length of 5800 feet.. Even the eagles did not frequent their customary perching and foraging spots in the lots 3-12 during the week, only returning on weekends when the activities had temporarily ceased.

By having such a narrow scope and limited mitigation plan, the document creates an impression of a lower level of disturbance that has already occurred and may still occur to the eagles habitat range as a result of these site plans proposed.

### **Quality of Wintering Habitat:**

According to the Raptor Almanac, "The quality of wintering habitat can mean the difference between survival and death, especially for immature raptors in their first year. It also greatly affects the following breeding season, especially for females; a meager winter may reduce her overall condition, cutting the number of eggs she can produce come spring." s

It should be noted that the resident pair of breeding eagles at Swan Lake live at the lake all year around, and do not migrate to the Chesapeake Bay area as mentioned in the DEIS. Yet the DEIS conclusively states that Swan Lake freezes over in the winter (parts of the lake waters run freely under Kelly Bridge) and states that the eagles migrate to the Chesapeake Bay area in winter. How was this conclusion drawn without the benefit of the eagles at Swan Lake having radio transmitters fitted to relay their flying patterns?

In the spring of 2006, three eaglets hatched from Nest A and were banded by the DEC endangered Species Unit. With Nest A no longer in existence, which nest will the eagles use in spring of 2007 for breeding? How will proposed construction activities affect the next breeding cycle?

### **Further Inaccuracies of the DEIS documents.**

The following section is a list of all inaccuracies in the document submitted by Tim Miller Associates/DEIS:

Part 1.0 of the Executive Summary of the DEIS document (page 1-1) dated November 30, 2006 states that the applicant has withdrawn the Lake Marie Road subdivision. That withdrawal occurred on August 28, 2006, according to a fax submitted by AJM and included in the DEIS appendix. Yet, the EAF forms for Kelly Bridge and Lake Marie subdivisions, which are both included in the final DEIS submission, state the requirement of upwards of 16,000 gallons of water per day for both subdivisions. This leads to confusion on the part of the reader as to the actual requirements for just the Kelly Bridge Road subdivision. Is the higher water requirement included so that the guesthouses proposed in the Home Owner's Association Covenants and Restrictions, but not in the site plan can get by under the radar of the site plan configuration? If each guesthouse allowed under the Housing Association Covenant and Restrictions is actually built, then there could be 40 homes on a site plan originally planned for 20 homes. The Homeowner's Association Covenants and Restrictions was not submitted to the Town of Liberty Planning Board at the time that the site plan received final approval in May 2005.

### **1.1 Description of Proposed Action**

States that the lake is used for a variety of purposes, including fishing and boating. What this statement neglects to add is the relative infrequency of recreational use due to the shallowness of

the upper lakes (18 As coverage under State Pollution Discharge Elimination System (SPDES) inches to 2 feet in some areas), the un-navigability of the waters due to a covering of chestnut weed on the lake water surface (Also inspected by DEC staff Bernie Lohman and Officer Templeton in August of 2005). Most of the activity on the lake is by non-residents, including bass fishing tournaments with motorboats sanctioned by the lake owner AJM. Of all the jet-skiers and snow mobilers I have seen use the lower lake, put in their recreational vehicles at the Route 55 end of the lake and do not live here. When I have canoed to the "upper lakes" I have never seen more than two rowboats on the lake at any given time in the summer. Over the last two summers, the lake water levels have made the use of motorboats prohibitive as there are many tree stumps in the shallow waters.

#### 1.1 "Variety of recreational purposes":

Does not mention that lake is infrequently used for recreation , although bass fishing tournaments sanctioned by the developer occur several times a year. What is current frequency of recreational use and how will frequency increase with additional 20 homes and boats? A 'sandy beach' is mentioned in the Homeowner's Association by-laws although the site plans do not indicate where this sandy beach will be, nor of any permits indicate a "fill in" of lake waters as would be required for a 'sandy beach' Further, the Swan Lake Estates LLC Home Owner's Association by-laws indicates that maintenance of the dam is part of the home owner's responsibility. Given the list of repairs required by the DEC dam inspection report dated 5/11/06, there should be a "buyer beware" notice listed with the potential purchase of a lot in the subdivision.

- "The site also supports large canopy trees, including white pine along the lake shore, which serve as roost trees for nesting bald eagles." The DEIS and eagle plan do not indicate how this area of eagle habitat will be protected nor do they indicate on which lots those perching or roosting areas exist.
- "Owners of lots 3-12." The document suggests that individual homes will have private floating docks. This specific aspect, docks, was brought up to the Town of Liberty Planning Board by R. Wasson in October 2005, after the final approval of the site plan and was rejected by the planning board until all requirements of the DEC and permits had been met.
- Lot #7 is exempted by the minimum 200 foot buffer presumably because the developer does not want to sacrifice having a house on that lot. However, the "peninsula lot" is a well-frequented area for the eagles, and everyone at Swan Lake knows that.

#### 1.4 Existing Conditions state:

The eagles have utilized a total of five large white pine trees on or in the immediate vicinity of the Swan Lake shoreline. This is patently false. I myself have seen the eagles in so many locations and trees around the lake. This statement makes it appear that the eagles only utilize the trees where the nests are or used to be located.

#### 1.4.2 Wetlands Delineation:

The wetlands are not delineated on the map included to show what type of wetlands exist on the Kelly Bridge - Swan Lake Estes parcel itself, only a 100 foot buffer. Until the wetlands on the shoreline and on the entire parcel are delineated, it is not accurate to say that the existing wetlands are 5.11 acres.

#### 1.4.3 Mitigation measure.

The document states that the National Guidelines for managing bald eagles encourage land owners to work cooperatively with state and federal wildlife agencies. The US Fish and Wildlife office in Cortland, NY has not received any response to two letters sent to the developer since 2005. This statement will have to be altered before another version is published or the developer actually does cooperate with US Fish and Wildlife Service.

- The DEIS document states that “a number of changes were made to protect the nesting eagles from potential impact:

Relocated common dock: The maps included do not show where the dock was nor where the new location is.

Reduced the width of access paths: the original site plan did not show any access paths, therefore how could they now be reduced?

Changed configuration of the paths to maximize the distance between them and the eagle nest trees across the lake: This does not take into consideration that the roosting and or perching trees are on those very lots.

- Restricted Area Signs have existed at the 31-acre parcel since before the building of the access road at Kelly Bridge. Signs in the summer in the lake - those waters are not navigable due to the amount of chestnut weed on the surface of the lake water. The signs are needed in the winter when snow mobile tracks show traffic right up to the 31-acre parcel.

#### 1.5 Alternatives considered:

No “Conservation Subdivision Plan” is considered, and as is widely accepted in conservation literature, “wide-spaced, large lot zoning is NOT the answer to protecting wildlife and water quality as it fragments natural areas.” (NEMO Project fact sheet #9 – UConn Cooperative Extension and National Lands Trust). Out of all the “alternatives” put forward in the DEIS, the only rational alternative left is the “No Build” alternative put forward which does not cause “unavoidable” negative impacts..

Figure 2-4: Does not show existence of walkways or paths as mentioned elsewhere.

#### 2.1.4 Environmental characteristics:

“The portions the State wetland on the site were delineated by NYSDEC in December 2004. No



maps that show what those DEC delineations are. According to DEC eagle monitor who came to positively identify the eagles nests in May 2005, Gene Weinstein: "The entire shoreline of Swan Lake is wetlands." If that is the case, then where are the maps that show this? The "wetlands buffer" is shown on the site plan but not the wetlands themselves. Figure 2-5 does not show any wetlands delineation on the Kelly Bridge Road site.

Project purpose and need:

2.2.1 The project intends to address the following:

- Increase the town's housing stock and help satisfy the demand for single family residences in the town of Liberty and northern Sullivan county: According to [www.datplace.org](http://www.datplace.org), Sullivan County has the second highest home owner vacancy rate in New York State.
- "Cost of community services": The cost of road repairs by the construction vehicles have not been met by the developer and the town has not repaired Kelly Bridge Road back to pre-construction standard (April 2005). This development will require more in cost of community services when all infrastructure is in than when it was a wilderness habitat area.
- "Preserve existing bald eagle nesting habitat, wooded and wetlands areas and adjacent areas?; If that is truly the case, a "Habitat Conservation Plan" should be submitted instead of an inadequate "mitigation plan."

2.2.2 Benefits of the Project:

"Increase workforce and pool of civic minded residents, some who may be volunteers in local social services": The Swan Lake Estes LLC marketing brochures are contradictory on this point, as the "gated community" is presented as a place to disengage from work week pressure. Therefore, without a basis for making a reasoned judgment, these statements should be taken out of a DEIS that is supposed to focus on the potential negative impacts of the subdivision on the eagles habitat.

"The 31 acre easement preserves in perpetuity..." "Until the conservation easement is signed, nothing is preserved in perpetuity.

2.2.2 Objectives of the applicant: the project responds to a demand for high quality, 4 bedroom housing in the Town of Liberty and Sullivan County. As stated elsewhere, Sullivan County has the second highest homeowner vacancy rate in New York State. Unless there is substantial evidence to the contrary, the statement about demand for this type of housing should be taken out of the document.

2.3 Required list of approvals: Now that changes are proposed to the final subdivision application and site plan approved by the Town of Liberty Planning Board on May 5, 2005, which agency will look at the other potential (and actual) negative impacts caused by this subdivision to the roads, water quality, wetlands, noise, traffic, schools,

community character, etc?

### 3.0 Potential Environmental Impacts.

The mitigation measures only identify nesting trees, not measures to protect the eagles habitat. Where is the documentation on how these measures will protect the "home range of the eagles at Kelly Bridge subdivision?

#### 3.1.1 Existing Conditions:

four of the five nest trees (ABC and E) are in areas of little or no recent disturbance. This is patently false, as the nest in tree A is no longer situated in the tree, and has not been since was reported to DEC in September 2006. Nest trees D and E were not included in the conservation easement.

Many residences are occupied year around: How many? Swan Lake: page 3-3: Water levels do not accurately reflect that levels have been as low as 18" (not four to six feet) near the proposed development and the shoreline where eagles perch would require extensive alteration to accommodate individual docks and a "sandy beach" as noted in the home owner's Association by-laws.

#### 3.1.2 Potential impacts:

Interactions between eagles and humans: The word "interactions" is not defined. My own experience is that even canoeing in the area north of the "peninsula" lot #7 can disturb the eagles, so I do not canoe up there. If one canoe can disturb the eagles in the nest or perching in the peninsula, what will 20 homes and all the loss of available landscape do to the eagles habitat?

Recent observational data suggests that bald eagles are becoming more tolerant of human disturbance near nesting sites: How is that true at Swan Lake?

"Productivity in urban areas do not differ significantly from nest in more rural areas." How does this apply to Swan Lake? The eagles are here before the proposed houses, not the other way around. The area of Kelly Bridge subdivision has been shown on a map of 1856 at the Sullivan County Clerk's office to show that the wilderness area then and now is the same.

"The eagles appear to be unaffected by the habitation of existing residences" the eagles do not normally perch in the trees where there are existing residences; although they fly over those residences, they do not land.

"Noise during the construction period may cause eagles to move to quieter areas: The area proposed for the subdivision is the quieter area, and during construction from May 2005-October 2005, the eagles were not seen at all, except on weekends when the construction vehicles were not around..

Page 3-6 "Roosting areas will not be disturbed by 100 foot setback except for Lot #7" It has to be explained why Lot#7, will not have the same amount of setback, given this is the area most

frequented by the eagles.”

Disturbances are limited to noise and visual impacts, not to the “unalterable” changes in the landscape due to 20 additional homes, driveways, parking lots, impervious surfaces, leach fields, wells, and impacts on water quality and fish supply, increased carbon dioxide emissions from lighting systems, and loss of available habitat.

“Nest D is considered inactive,” although notes in the AJM file in New Paltz have requested that there is no activity near nest D until after Spring 2007. This is not indicated in the report.

“Impacts of the eagles and their roosting, foraging and nesting habitat resulting from the use of the lake and proposed docks, while not anticipated to be significant, will occur. What is the level that determines “significant?”

“Eagle roosting or foraging in the area of the subdivision and docks will likely move to another location on the lake: this is not a mitigation measure. page 3-7: Stormwater and erosion and sediment control plans for the proposed subdivision will comply with applicable state regulations: This is not correct, as the retention ponds have not been adequately maintained (observation from Kelly Bridge Road makes that clear). Further, road construction activities continued past the intent of the cease and desist order, to the full extent of the 5800 feet of the road as the site plan shows. This put more pressure on having adequate erosion controls so that the pattern of mudslides into the lake would not have occurred. The tree cutting at the road site made it harder for any erosion controls to operate adequately, as there was no mud in the lake during rainstorms prior to the road construction from May 2005 –October 2005.

Swan Lake does not entirely freeze over in the winter, and the eagles remain at Swan Lake all year around.

#### 4.0 Unavoidable adverse impacts:

Construction and delivery vehicles. Twice as many homes as now exist on Kelly Bridge Road itself. We have already experienced long-term negative impacts due to the deterioration of Kelly Bridge Road by the construction vehicles

Potential loss of soil due to erosion. This is an actual negative impact as it has already happened twice, with mud slides into the lake (even with erosion controls supposedly in place) when the trees were cut. (June 2005 and September 2006). However the flood of April 2004 had no mud colored water – that was before construction activities began on Kelly Bridge Road.

Air pollution – limited to increased vehicles at the subdivision, but does not take into account the increased emissions in CO2 from lighting systems where there is complete dark sky now. The Town of Liberty does not have a dark sky ordinance to protect areas like this from becoming an urbanized skyscape at night and affecting the eagles nocturnal habits and sleeping patterns.

Increase in ambient noise levels: Noise reverberated for miles around Swan Lake. When there was blasting at the construction site, it could be heard from all parts of the lake, as well as the

tree-cutting and access road construction. The eagles were not seen during the construction period (May 2005 – October 2005) until the weekends when all was quiet again.  
Loss of woodland: Creation of 5800 foot access road is already a permanent negative impact that everyone around Swan Lake has witnessed.

Proposed mitigation measures to offset impact that include storm water management systems to preserve water quality: These inadequate systems have failed more than once at Swan Lake., as mentioned elsewhere. Restoration of 39 acres of disturbed area with lawn and landscaped areas: Conservation literature cites lawns as one of the most invasive species of weed mono-culture, requiring pesticides and fertilizers that run off down the slopes and into the lake waters, affecting the food supply of all wildlife including the eagles. To consider a lawn as a mitigation measure is contrary to that basic principle of the force of gravity.

6.0 Issues Not to be Addressed in the DEIS:

- Impacts on transportation (doubling the number of homes and vehicles on Kelly Bridge)
- Wetlands and Vegetation
- Water Quality
- Land Issues
- Community Character
- Aesthetics
- Noise
- Air Quality
- Community services and Growth Inducing Impacts
- Historic or Cultural Resources
- Impacts on Non-Listed Plants and Wildlife
- Critical Environmental Areas
- Dam Safety
- Property Values
- Effects on the Use and Conservation of Energy Resources

If, as lead agency, the DEC will not uphold the intention of a full SEQRA review by ignoring the above, which agency will do what is required by New York State Conservation Law and the will of the people and taxpayers of Swan Lake?

Thank you for your consideration.

Regards,



Cora Edwards

## Section 2.

**The Developer has created a detailed record of non-compliance at Swan Lake.**

- In November 2004, the Kelly Bridge Road subdivision received *conditional approval* from the town of Liberty engineer, T. Kelly based on the subdivision submitting a SPDES permit, SWPP application and any other required environmental permits. However, on or about April 4, 2005 tree cutting and road clearing construction activities began before final approval was granted on May 5, 2005 for the Kelly Bridge Road subdivision by the Town of Liberty Planning Board, according to a statement made by project engineer Randel Wasson to the town of liberty Planning board in June 2005.

**Construction activities began before final approval was granted and DEC permits were applied for.**

- On May 13, 2005 I placed a call to DEC permit office in Albany and spoke with Bob Ewing. I asked about the construction activities at Kelly Bridge Road and what permits were on file for those construction activities, given the extensive wetlands and known eagle habitat at Swan Lake. Mr. Ewing said there were no records of permits or an NOI for anything at that location. He advised me to go through the Region #3 permit office for further information.

**Six months later, still no DEC permits or applications were on file with the DEC before construction activities began.**

- That same day, I phone Lynn Killian, town of Liberty council member and Swan Lake representative to see what was happening at Swan Lake with all the construction activities. After an on-site inspection, Ms. Killian wrote a report to the Town of liberty stating that the noise and dust levels of the construction activities were creating a negative impact. She also informed the town attorney that construction activities had begun without all permits in hand.

**Actual negative impacts to traffic, noise dust and permanent road damage by Nastro construction vehicles were observed and reported by an elected town official and town attorney.**

- Upon later inspection of the AJM file in the town of Liberty Planning office, a neighbor discovered that the NOI form signed by Randel Wasson stated that there would be less than 5 acres disturbance at the project site.

**The Environmental Assessment Short form stated that the subdivision application totaled 114 acres, not 5 acres as written in the NOL**

- In the AJM file with the Town of Liberty Planning Board, I noticed that on December 7, 2004 the Town of Liberty Planning Board attorney signed an Environmental Assessment Sort form stating that there were no known endangered species at the subdivision

location, based on a letter sent from the DEC Heritage Program dated January 24, 2005.

**Clearly the EAF was signed on December 7, 2004 prior to receiving the DEC letter from the Heritage program dated January 24, 2005.**

- On or about May 13, 2005 I spoke with Steve Joule, Endangered Species specialist in Region #3 office and 7, that construction activities had begun in the vicinity of American Bald Eagles breeding and nesting sites. He visited the site over the following weekend. On May 17, I called Peter Nye/Endangered Species Specialist in Albany and left a message that the DEC Heritage Program database was incorrect and that there are eagles at Swan Lake, and that the DEC heritage program letter of January 24, 2005 was incorrect.. Gene Weinstein from DEC made a positive determination of the eagles, On May 24, 2005a corrected letter was sent to the developer positively identifying American Bald Eagles and nesting sites at Swan Lake. On May 18, 2005, the Towne Crier newspaper quoted the developer, Anthony Murolo as saying that he knew that there were eagles at Swan Lake and considered them a "good selling point."

**If the developer knew there were eagles at Swan Lake, then why did the EAF have the box with "No Known Endangered Species" marked on the form?**

- On May 16, 2005 a group of concerned residents fro Swan Lake went to the Town of Liberty Board meeting and put on the record all the violations that the developer was accumulating at a rapid pace at the construction site at Kelly Bridge Road. The town of Liberty supervisor directed all the concerns to the Planning Board. One of the complaints, however he said he could take care of by phoning the developer was to make the construction vehicles abide by the speed and tonnage limits. Construction vehicles were tearing up the road surface, creating noise and dust, going at a dangerous speed up and down Kelly Bridge Road (a one-lane road and bridge) and causing a traffic hazard as a neighbor's son had to swerve into a ditch as the trucks whizzed past. Another neighbor had to have a new car axle installed after going on the road at night with dangerous potholes created by the construction vehicles. Yet, from May through September 2005, those construction vehicles began dumping gravel and dirt from 7:30 am to 4:30 pm constantly for 5 months, except weekends when all was quietly back to normal again. During the weekends, the eagles would come back to their customary feeding and perching areas around Kelly Bridge Road. The road was "repaired" with little patches of tar and asphalt, completely inadequate for the size of the ditches created. The town said it was not worth complete repair while the construction project was going on. So as a result, Kelly Bridge traffic has had to put up with totally substandard road finishes in all kinds of weather.

**Why does the scoping document for the DEIS state that an increase in traffic would cause no significant impact when the road deterioration is plainly obvious from photos submitted to DEC?**

- I spoke with DEC, Albany Permits Officer, Bob Ewing about what I had seen in the Planning Board files, although 5 months of minutes were had not been files. The Permit

Officer talked me through the SEQR process, and asked why no findings statement had been included with the EAF documents. He said that it was the jurisdiction of the Region 33 office, and that I had to speak with them. I spoke to Alec Ciesluk and submitted copies of the site plan maps (paid for at my own expense) and other documents from the AJM file.

- On the Friday before Memorial Day weekend, May 29, 2005, I phoned Dec Regional Director, Marc Moran and spoke to him about my concerns with the development at Swan Lake continuing without any permits. He stated that the DEC would do what was necessary to bring the developer into compliance. Over Memorial Day weekend, my brother, husband and I were canoeing on Swan Lake. We noticed smoke coming from the area near the Kelly Bridge construction site. Upon closer inspection, we noticed that there were the remains of burning tree stumps on the side of the access road in the construction area, and it could be seen from Kelly Bridge Road. The site was unattended. I phoned Donny Sherwood, the Swan Lake fire chief and he said that the town had changed local law so that permits were no longer required for tree stump burning. At a subsequent meeting with the developer on June 7, 2005 about the concerns residents with the way the developer was continuing road construction without permits, he produced a DEC fire permit dated June 1-June 7, 2005. The permit dates do not correspond

**What purpose does it serve to obtain a fire permit for dates that do not correspond to the time when there were unattended smoke sites?**

**The violation had already occurred, yet no fines were imposed. Why?**

- On June 5 and 6, 2005, there was a heavy rainstorm. Since the developer had neither applied for a SPDES permit, nor had any erosion controls been implemented at the site, the lake waters were muddied with the stormwater flowing from the access road entrance, down the steep incline of Kelly Bridge Road and into Swan Lake. The subcontractors at the construction site admitted to the DEC Encon Officers issuing a ticket for "pollution of lake waters" that the muddy stormwater came from the construction site, according to Sullivan County Assistant District Attorney Karen Manino, the subcontractor for the project, Mike Nastro, pleaded not guilty, later settled with a "civil compromise" although it took another year for the subcontractor to pay a reduced fine. Around this time, there was an email sent from Scott Sheeley (dated June 6 or 7, 2005) to Alec Ciesluk and or Peter Nye/Steve Joule asking whether a cease and desist order needed to be issued to AJM.

**Why did the DEC allow the developer to complete building a 5800', double lane 'boulevard' into a known wetlands area without a single permit for over 5 months after receiving the first notice of violation June 13, 2005?**

- Phone conversation with US Army Corps of Engineers, Chris Mallery, that a stream disturbance permit had been filed and subsequently withdrawn although the site plans had not changed.

**What is the justification for dropping this permit when the site plans did not change?**

- August 2, 2005 Letter from Marc Moran to Cora Edwards state that the DEC will not allow construction activities without permits, however photos taken on August 2, 2005 show that construction activities beyond merely stabilizing the access road construction to point where the road ended in May 2005, to completion of the 5800 access road and lot clearing through October 2005 without stabilizing the retention pond as required. Aerial photos taken April 2006 show that the access road was completed will under DEC jurisdiction.
- August 3, 2005 Sam Karras went to the DEC regional office and submitted a report to the Encon Officer in charge that there was significant loss of water and mussel kill, laying exposed all dried up.
- Citation by Encon Officer Templeton. Residents of Swan Lake notice alarming levels of water coming out of spillway and phone Don Kershley who maintains the flashboards at the dam. I phoned DEC Encon Office to request a site visit. While I was driving past the dam, I noticed don Kershley there with his son. Mr. Kershley said that the flashboards had been removed by 'troublemakers' and pointed to the boards lying at the bottom of the waterfall. Just then Officer Templeton came by and Kershley's son said: "Oh, no." Officer Templeton took a statement from Mr. Kershley that the boards had been removed because there was supposed to be a site visit by an engineer to look at the dam, but the engineer never came. The boards were again removed a few days later. The photos in the DEC file show that 18" of water were removed (photo of Scott Sheeley under Kelly Bridge showing water line.)
- August 3, 2005. Preapplication meeting with DEC, developer, town supervisor and planning board chair. Frank de Mayo said at a Town Board meeting that lake levels were lowered due to a town sewage pipe running under the dam and needed to inspect it.
- Article 17 order on Consent violations – dated September 8 and signed September 15. Obviously continued construction activities between Sept 19-21, 2005 and notified officer Marc Klein
- August 31 – Violated intent of cease and desist
- September 28 DEC letter to John Parker – "no documentation" that the road construction went beyond the notice of violation of June 2005, and beyond the intent of the cease and desist order August 2005.
- October 2005 R. Wasson states in a presentation to the Planning Board that the road was 'cut in order to stabilize the road'. When I called Janet Swentusky to ask how it was that the road was still being constructed, she said that the developer had been given permission to stabilize the road to prevent further erosion and to maintain the retention pond. Unfortunately, the retention pond was never maintained and the whole cliff behind



it has eroded into the retention pond, yet construction activities continued until the Article 17 order on consent when the road was finished.

**When there had already been a series of violations and ENCON officer involvement at Swan Lake, why was the developer allowed to continue building the road and yet never did the required maintenance on the critical retention pond where the mudslide occurred in the first place?**

**Other 'selective' non-compliance issues:**

- Developer chose not to include nest D and E in conservation easement and sold it off.
- Although not a DEC recommendation, developer wants to limit gasoline powered boat activity although bass fishing tournaments are held with his approval.
- Rather than make dam repairs himself, the developer chose to put it in Homeowners Association by-laws. The HOA was not submitted at the time the subdivision application was made with the town planning board.

Submitted by:

*Cora Edwards*

Cora Edward



DECLARATION OF COVENANTS, RESTRICTIONS  
EASEMENTS, CHARGES & LIENS

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Not submitted  
prior to May 2005  
Town Board  
Approval

**DRAFT**

**SWAN LAKE HOMEOWNERS ASSOCIATION, INC.**  
Kelly Bridge Road  
Town of Liberty  
County of Sullivan  
State of New York

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Declarant: **AJM@SwanLake Estate LLC**  
11 Wendover Drive  
Huntington, New York 11743

Dated: \_\_\_\_\_, 2005

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Record & Return to:

Lamb & Barnosky, LLP  
534 Broadhollow Road, Ste. 210  
P.O. Box 9034  
Melville, New York 11747-9034

Sandy Beach  
P4 (x)

Dam reference  
P 2 Article 1  
(g) C. + D. (e)



## ARTICLE I. DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration shall, unless the context otherwise prohibits, have the meanings set forth below:

(a) "Additional Property" – property not currently subject to the Declaration but which may be added to the scope of the Declaration at a later date as provided by Article II, Section 3 hereof.

(b) "Association" shall mean and refer to Swan Lake Estates Homeowners Association, Inc., a New York Not-for-Profit corporation, its successors and assigns.

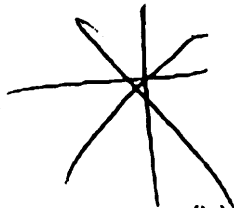
(c) "Association Property" shall mean and refer to the Common Area of the Property.

(d) "Board" shall mean and refer to the Board of Directors of the Association, as the same may be constituted from time to time.

(e) "By-Laws" shall mean and refer to the By-Laws governing the operation of the Association, as the same may be amended from time to time.

(f) "Common Expenses" shall mean and refer to those expenses (including reserves) which are incurred or assessed by the Association in fulfilling its lawful responsibilities (herein sometimes referred to as "Assessment").

(g) "Common Area" or "Common Property" shall mean and refer to certain areas of land excluding the residential lots which are in the initial Phase of the Development or which may be located in any subsequent Phase of the Development that are or will be owned by the Association, including but not limited to:



- a. private interior roadways;
- b. the motorized gates;
- c. the Lake and the dam that services the Lake;
- d. Recreation Areas.

(h) "Community" or "Development" shall mean Swan Lake Estates, a single family residential home development being developed on the Property, which will initially consist of Phase I consisting of twenty (20) lots for single family home development and may, at Declarant's sole option, include up to an additional nineteen (19) lots for single family home development in Phase II and Additional Property, as provided for in Article II, Section 3 hereof.

(i) "Declaration" shall mean and refer to this Declaration of Covenants, Restrictions, Easements, Charges and Liens, as the same may, from time to time, be amended.

(j) "Declarant" or "Sponsor" shall mean and refer to AJM@Swan Lake Estate LLC, a New York limited liability company and its successors and assigns.

(k) "Final Sale Date" shall mean and refer to the date of the closing of the transaction in which the Declarant sells or otherwise disposes of the last Lot in Phase I or, if Phase II is brought within the scheme of this Declaration, the last Lot in Phase II, but in no event a date that is more than five (5) years from the date of the closing of the sale of the first Lot that is subject to this Declaration, whichever is earlier.

(l) "Home" or "Homes" shall mean and refer to all units of residential housing situated on, or to be constructed by or on behalf of the Purchasers upon the Lots on the Property.

(m) "Improved Lot" shall mean any lot upon which a Home has been or is being constructed.

(n) "Lake" shall mean and refer to Swan Lake and the dam that services the lake.

(o) "Lot" shall mean and refer to any plot, piece or parcel of land intended for residential uses shown on the Subdivision Plan that has been or will be approved by the Town of Liberty for each Phase of the Development, or any other Lot(s) for residential use that is/are brought into the scheme of the Declaration, but shall not include the Common Areas

(p) "Lot Owner" or "Owner" shall mean and refer to the record owner of the fee interest to any Lot, including the Sponsor with respect to any Unsold Home or Lot. However, the Sponsor has reserved certain easement rights, veto rights, amendment rights and voting rights in the Declaration and By-Laws which do not apply to other Owners. Every Lot Owner shall be treated for all purposes as a single owner for each Lot held, irrespective of whether such ownership is joint, in common or tenancy by the entirety. Where such ownership is joint, in common or tenancy by the entirety, such collective ownership shall constitute one (1) Member.

(q) "Maintenance Charges" shall mean and refer to the charges paid by each Member to the Association to be used for Common Expenses and may be referred to as an "Assessment".

(r) "Member" shall mean and refer to each holder of a membership interest in the Association, as such interest is set forth in Article III. Each Member shall be entitled to one (1) vote.

(s) "Permitted Mortgage" shall mean and refer to any first mortgage covering a Lot or a mortgage encumbering an unsold lot then owned by Sponsor or its designee.



(t) "Permitted Mortgagee" shall mean and refer to the holder of a Permitted Mortgage.

(u) "Phase I" - The portion of the Community which will include twenty (20) Lots in the Community to be developed for single family residential use and certain Common Areas to be conveyed to Swan Lake Estates Homeowners Association, Inc.

(v) "Phase II" or "Phased Property" - The portion of the property upon which the Sponsor intends, but is not obligated to offer for sale an additional nineteen (19) Lots to be developed for single family residential use which Sponsor may elect to bring into the Association pursuant to Article II, Section 2 hereof, along with certain Common Areas to be conveyed to the Association.

(w) "The Property" shall mean and refer to all property described in Article II and all such properties which may be brought within the scheme of the Declaration pursuant to Article II, Section 2 hereof.

(x) "Recreation Area" shall mean and refer to the Lake, and the open recreation area containing a sandy beach area, gravel parking area and open pavilion, on the land to be conveyed to the Association.

(y) "Supplemental Declaration" shall mean and refer to any Supplemental Declaration of Covenants, Restrictions, Easements, Charges and Liens which is to be recorded in the Sullivan County Clerk's Office in order to bring the Phased Property and/or Additional Properties within the scheme of the Declaration, pursuant to Article II hereof.

(z) "Unsold Lot" shall mean and refer to any Lots owned by the Sponsor and its successors or assigns until such time as the same have been sold and title conveyed to a third party. It shall not include a home which is used for personal occupancy of the Sponsor, any of its principals or any of its successors or assigns.

## ARTICLE II. PROPERTY SUBJECT TO THIS DECLARATION

**Section 1. The Property.** The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is all that certain plot, piece or parcel of land situate, lying and being in Swan Lake, Town of Liberty, County of Sullivan and State of New York, being more particularly bounded and described in Schedule "A" annexed hereto and located on approximately 467.92 acres in Phase I, identified as parcels A, D, E, F, F-1, G and J on that certain Key Map of the Lands of NFB Development Corp., prepared by Robert T Loundsbury dated March 18, 1995 (the "Key Map"), annexed Sheet 1A of the 21 Lot Subdivision Plan – Kelly Bridge Road, prepared by Wasson Engineering and approved by the Town of Liberty Planning Board on May 3, 2005 ("the Kelly Bridge Subdivision Plan"). As set forth on the Kelly Bridge Subdivision Plan, Phase I of the Property will contain a total of 20 separate Lots for single family residential





Construction on the Kelly Bridge Road Subdivision site,  
August 2, 2005.

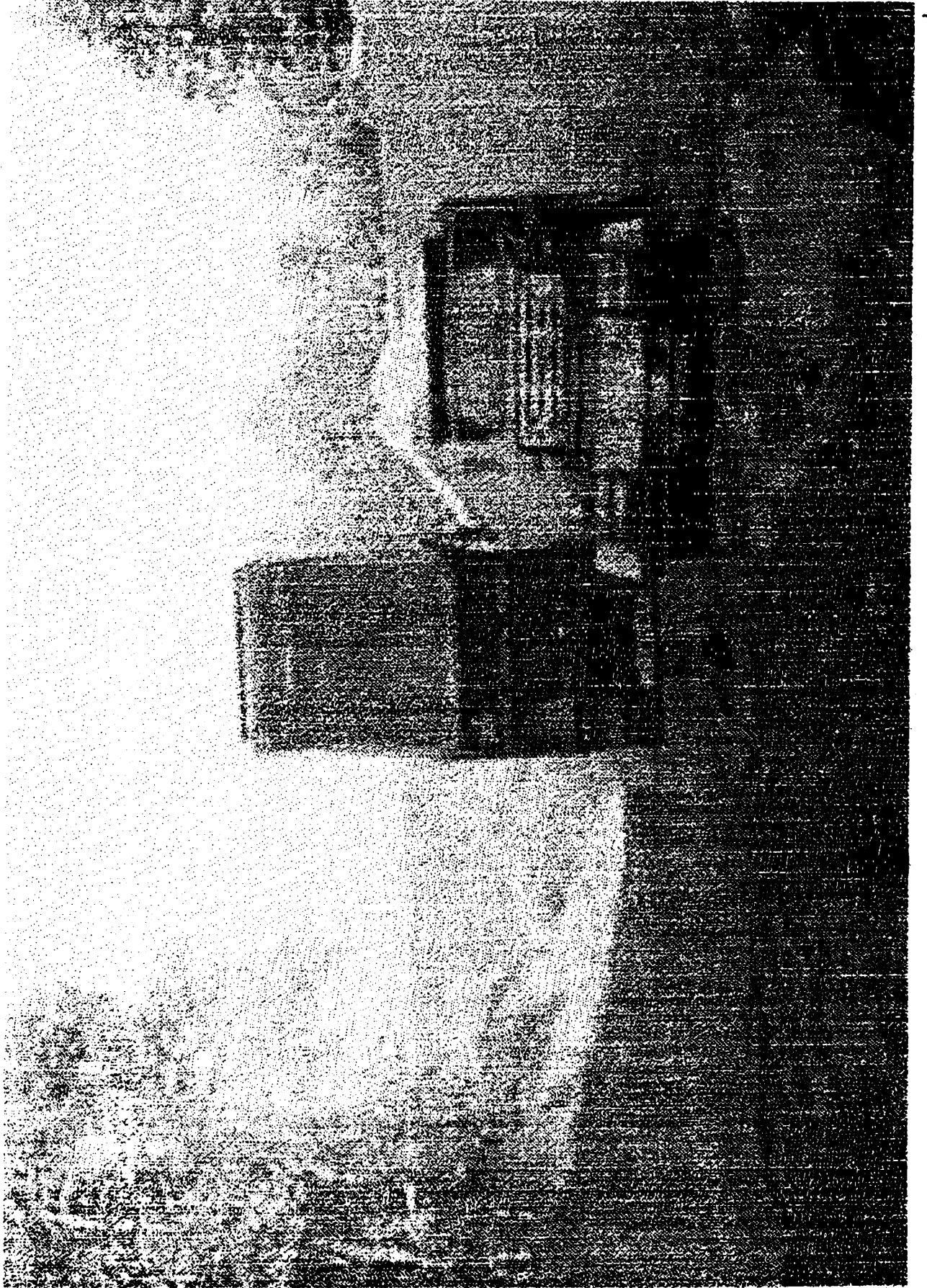
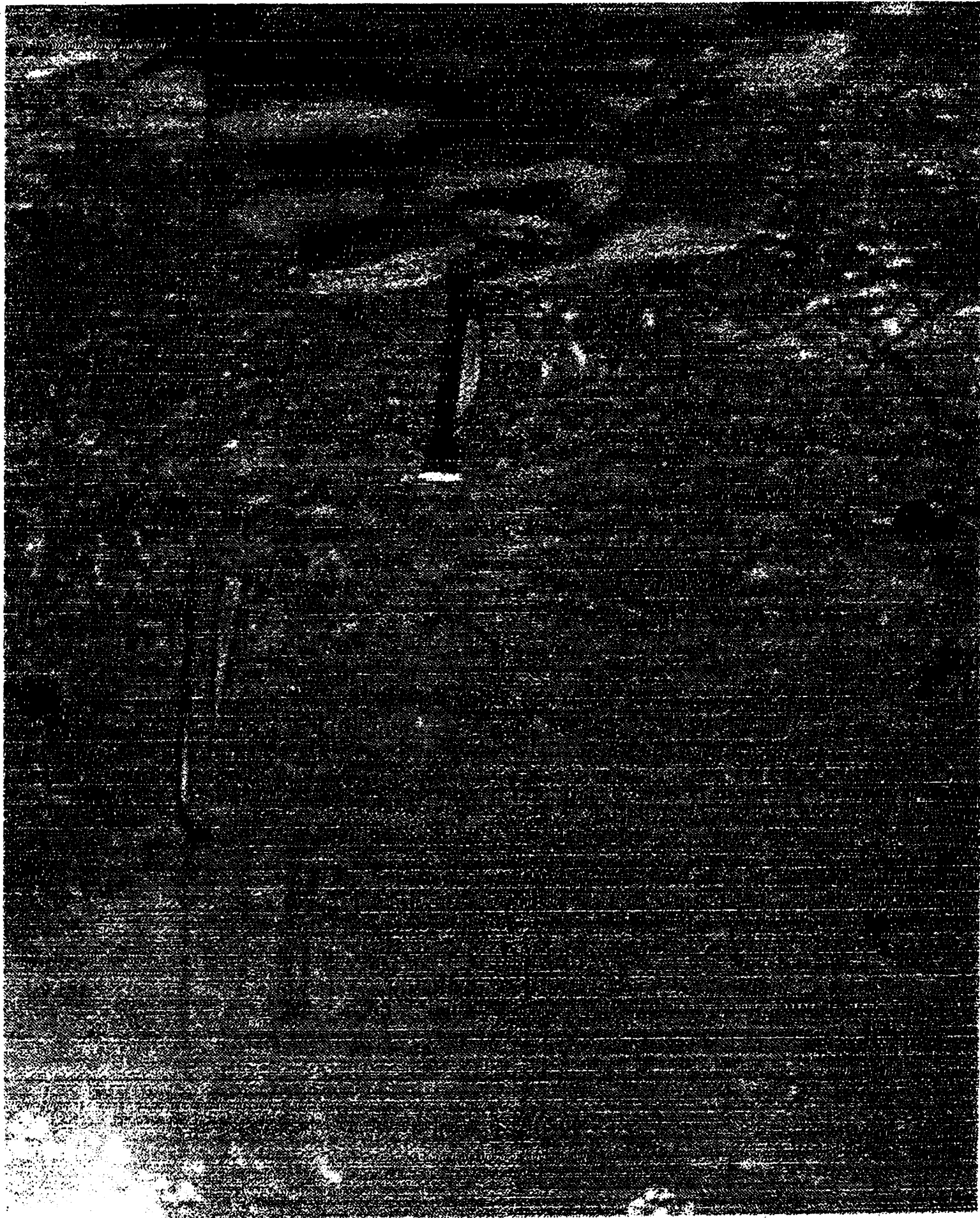


photo1







Aug 02, 2005

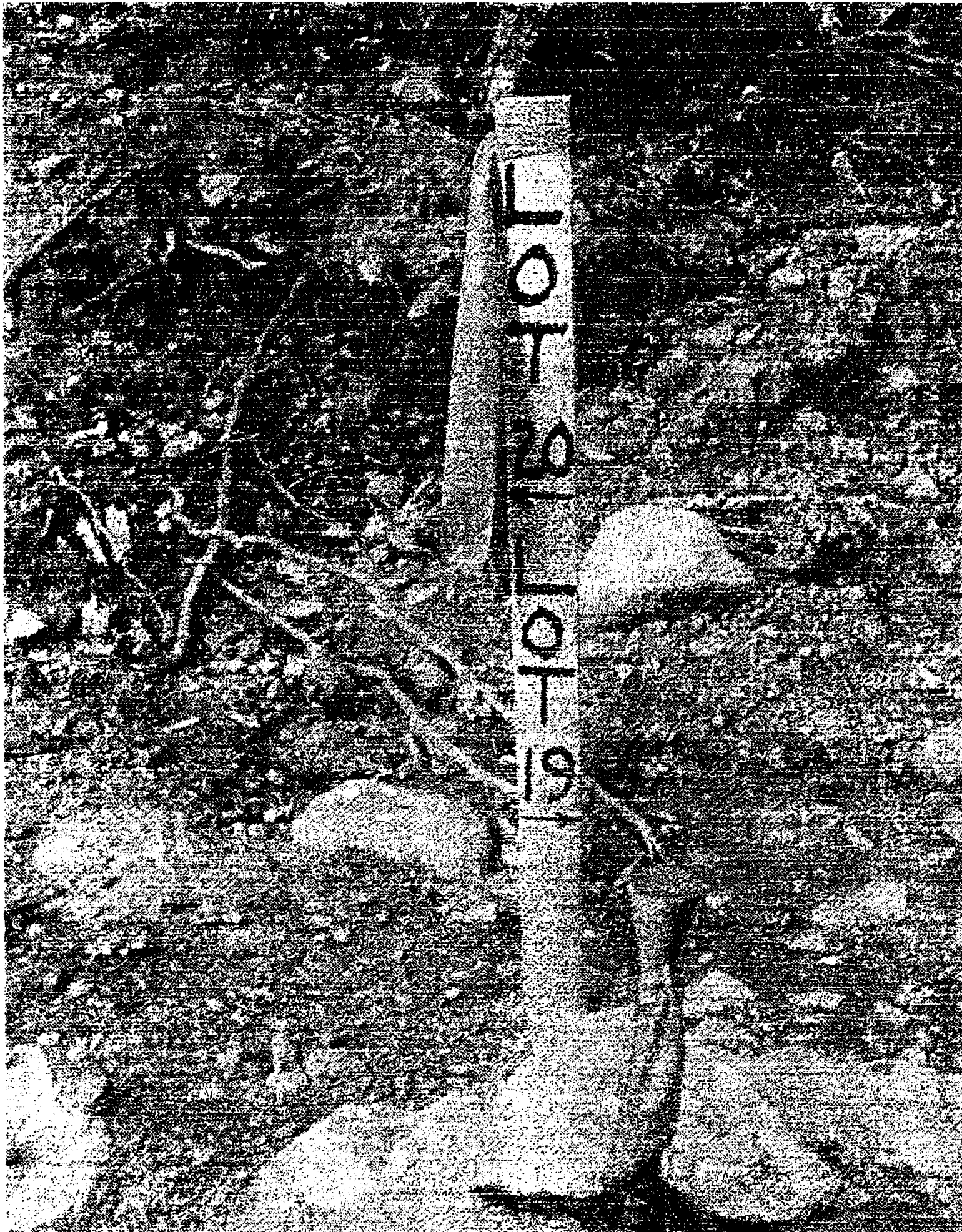
road width doubled



60

Warpers usure Road ended Aug 02, 2005





AUGUST 2 2005 Markers showing Lot 20 & Lot 19 where road ended









NUM WINTH DENVER

SHIBUZI 2001

2



**From:** <edwardscora@aol.com>  
**To:** <sesheele@gw.dec.state.ny.us>  
**Date:** 3/2/2007 11:19:44 AM  
**Subject:** confirmation of documents submitted for DEIS - Swan Lake Estates

Scott Sheeley  
DEC  
Region 3  
21 South Putts Corner Road  
New Paltz, NY 10561

Dear Mr. Sheeley:

DEIS for Swan Lake Estates, LLC – Written Comments

Thank you for your phone call yesterday requesting clarification of the documents I faxed to your office regarding my written public comments for the above-mentioned DEIS.

To confirm:

I faxed a draft and final copy with my signature for the document dated February 26, 2007, sections one and two.

Please consider the "Timeline" starting with 2004 of several pages to be an appendix to the dated letter.

Sincerely,  
Cora Edwards

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AOL now offers free email to everyone. Find out more about what's free from AOL at AOL.com.

**CC:** <parkerjohnlp@yahoo.com>



## The Development of Swan Lake Estates

2004

May 6, 2004. Sullivan County Democrat newspaper article entitled: **Planning Board considers Swan Lake development plan** states that developer Anthony J Murolo (AJM Associates), brought plans to the Town of Liberty Planning Board to develop 362 acres on the east side of the lake for 68 homes. Sixty-five lots would be 5-plus acre sites; the remainder would be 3 acres.

Protected wetlands and American Eagles breeding sites have flourished for over thirty years adjacent to the waters of Swan Lake, which are under the federal jurisdiction of US Army Corps of Engineer, US Fish and Wildlife Commission, and New York State Department of Environmental Conservation. The NYS DEC tried to purchase Swan Lake but was denied by previous owner, NORTH FORK BANK in favor of private residential development.

September 2004. First of two severe floods mark high water levels at Swan Lake, with many homes flooded by over four feet of water.

November 1, 2004. Letter from Kelly Engineering to R. Wasson, engineer for the AJM development states that environmental permits are required prior to final approval from the Town of Liberty Planning Board. (letter attached).

November and December 2004. Two public hearings are held at the Town of Liberty Planning Board for Phase One (Kelly Bridge Road Suvdivision) on the AJM development. Certified letters are sent to 10 residents who live within 500 feet of the development entrance under New York State law; one letter is returned with no objection to the development.

November 2004. In a private conversation, Swan Lake residents question the Town of Liberty Supervisor about the impact of the development on the American Eagles breeding site. Town of Liberty Supervisor assures residents that the development will conform to environmental standards and that an environmental impact study will be conducted.

2005

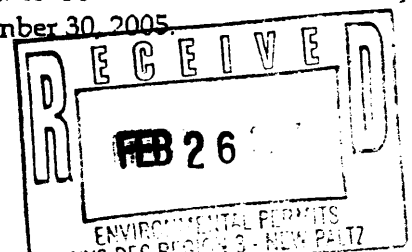
January 7, 2005. Randel Wasson writes to DEC asking if there are "threatened or endangered species on site."

January 24, 2004. Letter from Heritage Program/DEC Albany states that there are no known endangered/protected or rare species in their database for Swan Lake. However, that does not substitute for an on-sight survey.

January - May 2005. Five months worth of minutes of the Town of Liberty Planning Board are not filed and approved until July 7, 2005.

March 2005. Town of Liberty Planning Board meeting is cancelled.

March 30, 2005. An irrevocable letter of credit for \$625,000. is issued to Town of behalf of developer requiring on-site private road improvements to be completed by September 30, 2005.



April 4, 2005. Road construction begins prior to final approval by Town Board and before any DEC or federal permit applications are submitted, according to AJM Engineer Randel Wasson in a letter to the DEC dated May 31, 2005.

April 21, 2005. Message from Anthony J. Murolo to Town of Liberty Supervisor Frank de Mayo states that he would like to speak to Frank on Friday regarding the project at Swan Lake.

April 25, 2005. Phone message from Anthony Murolo to Town of Liberty Supervisor re: Condo legislation.

May 3, 2005. Town of Liberty Planning Board file shows final approval date as May 3, 2005. Applications for DEC and federal permits have not been filed.

May 13, 2005. Residents call Town Council Member Lynn Killian to visit construction site and eagles breeding area. Lynn Killian writes a report stating that the noise and dust levels of construction are creating negative impact. Residents call New York State DEC Region # 3 Biologist Steve Joule who makes a site visit. Residents call DEC Permits Offices in Region #3 and DEC/Albany and find that no permit applications for the development have been submitted for the construction site.

Residents begin petition to Governor George Pataki to protect American Eagles Breeding site and for developers to cease and desist until an environmental impact study is made. Petition submitted with over 300 local and state signatures to preserve the eagles breeding site.

May 16, 2005. Swan Lake residents question Town of Liberty Council Members at Town Hall meeting about the AJM Associates at Swan Lake development regarding the lack of an environmental impact study (EIS) being conducted prior beginning the road construction. Residents also ask why the Town Planning Board issued a Negative Declaration of the SEQR for Phase One ("No negative impact on the environment and no known endangered or protected species") and the lack of permit applications for the construction site adjacent to protected wetlands. Town of Liberty Council members refer residents to the Town of Liberty Planning Board since "final approval" has already been given.

AJM project engineer Randel Wasson phone message to John Schmidt, Chairman of Town of Liberty Planning Board states that he contacted DEC and there were no endangered species in the Swan Lake area.

May 17, 2005. Residents notify Jean Petruziak of the DEC/Albany Heritage Program and Peter Nye of the Endangered Species Unit that the DEC database is incorrect and that American Bald Eagles have at least three nests and breeding habitat adjacent to Swan Lake shore. DEC dispatches Gene Weinstein to verify the eagles nesting site and habitat at Swan Lake. Gene tells Swan Lake resident Cindy Karras that the undeveloped lake shore is considered wetlands. The wetlands designation maps need updating from 1985 version being used by the Town of Liberty.

May 18 - 24. Volume 15, Issue 20. The Towne Crier newspaper publishes article "Eagle Angst: From Soaring Spot to Sore Spot" with photographs of eagles and DEC signs confirming Endangered Species Restricted Area under DEC patrol pursuant to sections 11-0321 and 11-0535 of wildlife law. Newspaper also interviews developer Anthony J Murolo and concerned Swan Lake residents. Developer Anthony J.



Murolo states that he knew the eagles exist at the site and thought they would be a good "selling point" for the development.

May 20, 2005. Sullivan County Democrat Newspaper reports headline and article: "Residents Claim Eagles Nest at Development" about May 16 meeting with Liberty Town Council.

May 24, 2005. DEC letter to R. Wasson (engineer for AJM developer) validates that there is an active American Bald Eagles' Breeding site in the areas where construction is taking place, and informs developer of all New York environmental law permits required for the project.

DEC Heritage Program Jean Petruziak phones resident Cora Edwards to read first paragraph of DEC letter to Randel Wasson confirming that American Bald Eagles have been entered into database.

May 26, 2005. Swan Lake resident Cindy Karras phone message to Town of Liberty Supervisor re: AJM Swan Lake Project to set up an appointment regarding DEC correspondence about eagles at the site.

*May 29 - Phone conversation Cora Edwards + Marc Moran: DEC will ensure compliance.*

May 30 - 31, 2005 Memorial Day weekend: Smoke from unattended construction site prompts residents to phone Donny Sherwood, Fire Marshall for Swan Lake who says that according to a new law passed by the Town of Liberty, fire permits are not required by the developer on private property. (photo included).

May 31, 2005. Randel Wasson letter to DEC states that construction on Swan Lake Estates Phase One (Kelly Bridge Road subdivision) began April 4, 2005 and required paperwork will be submitted to DEC by June 6, 2005.

June 3, 2005 Swan Lake resident Natalie Marx files complaint form that the development on Kelly Bridge Road is causing brown silt run-off to pollute the lake and requests that something is done since rain is forecast for that afternoon. Additional note on complaint form states: "Spoke to Randy and the developer. They are taking the necessary steps to prevent erosion." Form signed by Kathleen Farrand of Town of Liberty.

Phone message from Cindy Karras to Town of Liberty Supervisor Frank de Mayo requesting use of Town Hall Conference Room for residents' meeting with developer Anthony J. Murolo prior to Town Planning Board Meeting on June 7, 2005.

June 6, 2005. Rainstorm washes mud down from AJM road construction site down Kelly Bridge Road and into Swan Lake, causing pollution of lake waters. Nastro contractors seek retroactive fire permit from DEC (attached).

June 7, 2005. Swan Lake residents meet with Anthony J. Murolo to discuss pollution of lake waters due to storm water runoff. Anthony J. Murolo invites residents to view the construction site at anytime to see for themselves the condition of the site.

At following Town Planning Board meeting, residents discuss lack of DEC permits, no environmental impact study and incorrect information on State Environmental Quality Review Assessment Form.

Town of Liberty Planning Board responds that Final Approval for Phase One (Kelly Bridge Road subdivision) and Phase Two (Lake Marie Road subdivision) have already been given therefore no changes or corrections will be made at this time. Residents request a second public hearing for Phase Two and are told that it will be put into consideration. A second public hearing on Phase Two was not held.

June 8, 2005. Times-Herald Record Newspaper publishes article headlined: "**People across lake grill developer.**" Article mentions storm water runoff pollutes Swan Lake during storm, and June 7 meeting with developer at Town Hall.

June 10, 2005. Violation ticket issued by DEC ENCON Officer Marc Klein to Nastro subcontractors for polluting "lake waters in contravention of standards." (violation ticket attached). Nastro fined \$1,000.00.

June 13, 2005. DEC Region 3 issues to developer a "Notice of Violation" and a cease and desist order with respect to DEC identified environmental law violations.

July 5, 2005. Sullivan County Democrat article: "**Developer, Contractor Say They've Taken the Right Steps.**" Subcontractor Nastro states he is innocent of the charges made by the New York State Dept of Conservation (DEC) for alleged contravention of water standards. Developer AJM was issued an Article 17 violation (cease and desist order) prohibiting him from continuing any construction on the site until he received a State Pollutant Discharge Elimination System (SPDES) permit for all disturbances of more than five acres.

July 8, 2005. DEC Region #3 New Paltz issues 3 page letter to R. Wasson, engineer for AJM developer, validating Swan Lake residents concerns that environmental standards are not being complied with, violations are occurring, and permit applications have not been made by the developer. (See attachment).

July 26, 2005. Article in Sullivan County Democrat: - "**Contracting Company Agrees to Compromise**" Nastro Contracting Company agrees to a \$1,000. fine for contravention of water standards. Developer Anthony J. Murolo was issued and Article 17 violation prohibiting any further construction on the site until he receives a SPDES permit.

August 10, 2005. Residents meet with Sullivan County Legislative Chair, Chris Cunningham; Legislator for District 5 Rodney Gaebel and Sullivan County Director of Planning, Dr. Pammer. Dr. Pammer suggests researching the town "Master Plan" as a guide to what development can take place.

August 12, 2005. *Cora Edwards + Mike Edwards* Residents meet with DEC Region #3 Director Marc Moran who confirms that a cease and desist order for the developer is still in place for Phase One - Kelly Bridge Road Subdivision. Developer Anthony J. Murolo's site plans will have to be altered to conform to environmental law to protect wetlands and endangered American Bald Eagles species as part of Dec permit applications review process. *Marc Moran states that situation with AJM does not require intervention from Attorney General's office of environmental protection at this stage.*

August 16, 2005. DEC letter to John Schmidt, Chairman of Town of Liberty Planning Board, states that AJM at Swan Lake Estates - Phase Two of the proposed Subdivision at Lake Marie Road will require permits for:

- the disturbance of more than one area (SPDES),
- Article 15 - protection of waters and
- Article 24 - proposed disturbances of freshwater wetlands
- Environmental conservation law 11 - 0535 - proposed disturbances to threatened eagles species habitat.
- GP 02 01 - storm water protection

August 30, 2005. DEC Regional Director Marc Moran letter to Swan Lake residents Cynthia and Soterios Karras states that "the DEC will seek the necessary information to ensure compliance with all applicable State environmental regulations."

September 05, 2005. Residents contact Attorney General's Office of Environmental Protection Bureau in Albany for advice. The AG's office will take the case on the basis of violation of environmental law if the DEC refers the case to the AG's office for enforcement.

September 08, 2005 Developer Anthony J. Murolo signs compliance schedule requiring permits to be applied for before construction activities continue.

September 09, 2005. DEC Regional Director Marc Moran phone message to resident states that the violations do not yet warrant referral to the AG's office.

September 12, 2005. Letter from Environmental Attorney, John Parker, on behalf of Swan Lake residents outlines the case history to Reg. Director Moran, cites the Cease and Desist Order, and requests that DEC refer the case to the Attorney General's Office for enforcement.

September 15, 2005. Cornell University students conduct planning meeting at Swan Lake Firehouse. Residents raise concerns that the area under consideration in "Master Plan" only covers a small portion of two roads leading into Swan Lake, and does not include subdivision entrance site on Kelly Bridge Road.

September 15, 2005. Order on Consent signed by DEC Regional Director Marc Moran and DEC Attorney, Vince Altieri for AJM to pay penalty of \$12, 500. under Article 17.

September 16, 2005. Town of Liberty Council member Lynn Killian makes a visit to the cease and desist site and is told all permit applications have been submitted..

September 20, 2005. Sullivan County Democrat newspaper article: **A 'Master Plan' for Swan Lake; Residents Air Their Concerns** states that two roads are included in the Cornell University students study and does not take Kelly Bridge Road into account.

*Sept 19-21 Construction activities at Swan Lake Estates heard throughout shoreline areas by residents Marc Klein contact*

September 22, 2005. Telephone conversation between Scott Sheeley (Environmental Permits Analyst and Assistant Director of Permits - DEC Region #3) and Swan Lake resident Walter Keller. Scott Sheeley states that NO DEC permits have been applied for by AJM at Swan Lake Estates for phase one Kelly Bridge Road, and a cease and desist order is still in place.

September 23, 2005 ECO Marc Klein called Cora Edwards and said that the construction site stopped logging due to complaints from neighbors. Enforcement action: Janet Swentusky is making weekly inspections to insure that they are only stabilizing road storm water prevention measures and not performing new construction. When asked why the developers have not yet applied for permits, his response was he didn't know. He thought that given the other projects the developer, subcontractor and engineer have done, they should know better. They know they are being watched and have no excuse.

September 28, 2005 Marc Moran Region #3 Director letter to John Parker, environmental lawyer for Swan Lake residents, states that "Staff determined no violations of cease and desist order could be documented."

Sept 28 - October 4, 2005. The Town Crier Newspaper. Volume 15, Issue 39 Headlines: "No More Ugly Duckling: Swan Lake writes the next chapter of Towns seeking rebirth."

September 30, 2005. Jeffersonville Bank letter of credit stipulates road must be completed by this date.

October 4, 2005. Swan Lake resident Soterios Karras calls DEC ENCON Police to report further tree cutting noise at AJM site.

October 5, 2005. Six Swan Lake residents invited to "Community Design Tools Seminar" hosted by Sullivan Renaissance, Sullivan County Department of Planning, and Sullivan County Center for Preservation and Conservation" presented by Peter Manning, NTS Dept of State - Local Govt. Unit to learn more about procedures involved in planning board processes.

October 6, 2005. US Fish and Wildlife Commission letter to AJM requesting permit applications for construction project in American Bald Eagles' habitat.

Phone call with Peter Nye about peninsula where eagles fishing area is adjacent to the AJM development. Peter Nye states that the eaglets were tagged at 5 weeks old.

October 7, 2005. Return phone call from Betty Ann Hughes - Permits - DEC/Albany is asked to determine when public notice period begins and ends for AJM permit applications for Swan Lake. Betty Ann indicates that there is something "odd" in the process after looking up information on her computer and states that she will phone Scott Sheeley in Region #3 DEC to find out what is going on.

October 7, 2005. DEC applications link on website states that AJM submitted permit applications for infill of navigable waters and wetlands.

October 10, 2005. Resident Cora Edwards visits DEC-Albany HQ and meets with Bill Adriance - Permits Director about procedure for AJM to file permit applications, and delivers updated info packet to Commissioner Denise Sheehan's office and John McKuan's office.

October 11, 2005. AJM engineer, R. Wasson, makes a presentation to Town of Liberty Planning Board with revised plans for the Kelly Bridge Road subdivision. John Schmidt, Chair of Planning Board questions R. Wasson about status of DEC permit applications and R. Wasson states that all have been submitted. DEC shows no record of SPDES permit application being received. Other possible

discrepancies include whether original plans had floating docks on each lot and status of road completion.

Will Swan Lake get the kind of development that is responsive to the wildlife habitat surrounding it?



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**From:** <EGoldschmi@aol.com>  
**To:** <sesheele@gw.dec.state.ny.us>  
**Date:** 2/26/2007 10:40:12 PM  
**Subject:** Comments on AJM's DEIS

I am a homeowner along Swan Lake. I attended the meeting in Liberty on February 7th, and I also read the eagle expert's comments on the Draft Environmental Impact Statement for Swan Lake Estates. I totally agree that AJM did not provide sufficient information in the DEIS, especially regarding the impact on the bald eagle population.

Sincerely,

Eli Goldschmidt

79 Redwood Lane

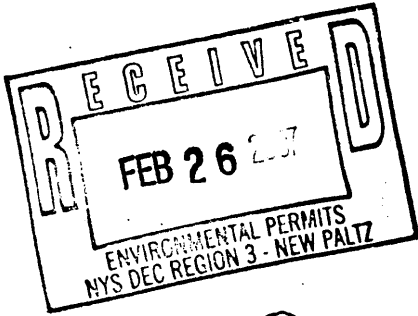
<BR><BR><BR>\*\*\*\*\*<BR> AOL now offers free email to everyone. Find out more about what's free from AOL at <http://www.aol.com>.





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JOHN L. PARKER  
*Attorney-at-Law*



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Elmsford, NY 10523

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Fax: (914) 347-2331

Email: parkerjlp@johnparkerlaw.com

# Fax Cover Sheet

Send to: <i>Groff Sheeley</i>	From: <i>John Parker</i>
Attention:	Office location:
Office location:	Date:
Fax number: <i>846 255-3042</i>	Phone number:

<input checked="" type="checkbox"/> URGENT	<input type="checkbox"/> REPLY ASAP	<input type="checkbox"/> PLEASE COMMENT	<input type="checkbox"/> PLEASE REVIEW	<input type="checkbox"/> FOR YOUR INFORMATION
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Total pages, including cover: 24

Comments:

Mr. Sheeley:

Please accept these Swan Lake  
DEIS comments,

Thank You,

*John Parker*

NOTE: The information in this fax and any documents included therewith have been sent by an attorney or his/her agent, and is or are intended to be confidential and for the use of only the individual or entity named above. The information may be protected by attorney/client privilege, work product immunity or other legal rules. If the reader of this message and any documents included therewith is not the intended recipient, you are notified that retention, dissemination, distribution or copying of this fax and any attachments is strictly prohibited.



**WRITTEN COMMENTS OF**

**JOHN L. PARKER, ESQ.**

**ON THE**

**DRAFT ENVIRONMENTAL IMPACT STATEMENT**

**FOR SWAN LAKE ESTATES,  
TOWN OF LIBERTY, NEW YORK**

**PRESENTED TO THE**

**DEPARTMENT OF ENVIRONMENTAL CONSERVATION,  
AS LEAD AGENCY.**

**FEBRUARY 26, 2007**



Written Comments of John L Parker, Esq. on the  
Draft Environmental Impact Statement for the  
Kelly Bridge Road Subdivision.

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## INTRODUCTION.

These written comments on the *Draft Environmental Impact Statement* for Swan Lake Estates, Kelly Bridge Road Subdivision, November 30, 2006, ("Swan Lake DEIS" or "DEIS") are submitted on behalf of local residents that live nearby and adjacent to the proposed site and are dedicated to Saving Swan Lake.<sup>1</sup> These comments are to be incorporated into the public record, and to be fully addressed according to the provisions of New York State law and regulation by the Department of Environmental Conservation ("DEC"), which is the "lead agency" for this review. These comments emphasize important aspects of this case, and are meant to be considered with the attached Exhibits, and with the extensive public record in this case.

The State Environmental Quality Review Act ("SEQRA") process requires government to take a 'hard look' at the environmental impacts of a proposed action at the earliest stages, to mitigate the potentially significant impacts, and to determine whether it should be approved or disapproved. In this case, the 'hard look' requirement was ignored at the early stages, and only with significant efforts by local residents because of violations of State and federal law, has any substantive SEQRA review been required. It was local folks that live on, around and nearby Swan Lake that have done the yeoman's share of work regarding full and fair consideration of the environmental impacts and the implications of the above proposed project. The SEQRA review that has taken place has been disappointing and inadequate. These governmental failures have resulted in the grading and construction of roads on a pristine forested hillside overlooking Swan Lake without required state permits and have resulted in damage to the lake through increased turbidity, from mismanagement and the lack of proper maintenance and upkeep. The environmental damage caused by the failure to properly comply with SEQRA is further exacerbated by the inadequate Draft Environmental Impact Statement ("DEIS") that fails to meet requirements of the Environmental Conservation Law ("ECL"). Plainly stated the SEQRA review was late, inadequate and as presented fails to meet the legal requirements of state law.

The permit applications for Swan Lake Estates should not be granted based upon the current record before the DEC. As the record shows, there are serious questions about the wetlands, whether they are properly delineated, and whether there is sufficient information in

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<sup>1</sup> The DEIS was prepared by Tim Miller Associates, Inc. and is dated November 30, 2006. It was accepted by DEC on December 22, 2006.

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the DEIS to analyze and evaluate whether the permit should be granted based upon the inadequate SEQRA review. Thus, a final permit decision is inappropriate at this time. The proposed docks that require this permit were not approved by the Town Planning Board for the Swan Lake Estates, Kelly Bridge Road Subdivision. Further, the applicant's actions in this case have been responsible for the considerable environmental damage and violations, and must be taken into consideration under DEC long-standing guidance when full consideration of the permit applications is legally appropriate.

#### THE PROPOSED PROJECT.

The project is a Type 1 action, which is described by DEC as:

The project proposal involves a construction of a for residential subdivision adjacent to swan Lake known as the Kelly Bridge Road subdivision project involves the subdivision of approximately 114 acres into 21 lots. One lot in this subdivision would be designated as a common use lot for Lake access by the subdivision residents and their guests. The subdivision would be served by individual septic systems. A second subdivision, previously known as the Lake Marie Road subdivision, is no longer proposed and the application before the Department for that project has been withdrawn.

*Notice of Draft Environmental Impact Statement Acceptance and Notice of Public Hearing, December 22, 2006.*

#### THE PROPOSED FRESHWATER WETLANDS PERMIT.

The proposed Article 24 Freshwater Wetlands permit, Permit Application, ID No. 2-4836-00245/00002, is described by DEC as:

The applicant proposes to install eleven of floating knocks, walking paths, and one of residential driveway within state designated freshwater wetlands LW-22 (Class II) and its 100-foot adjacent area associated with a residential subdivision known as the Kelly Bridge Road subdivision. The project site to is located on the west side of Kelly Bridge Road, approximately 800 feet north of Kelly Bridge. Each doc will be 6 feet by 20 feet, except one common dock, which will be the 6 the feet by 40 feet. As proposed the project will result in the disturbance of approximately 1.5 acres of the wetlands 100-foot adjacent area and less than 0.01acre of the wetland. A Stormwater Pollution Prevention Plan has been prepared in accordance with the SPDES General Permit for Stormwater Discharges from construction activities (GP-02-01).

*Notice of Complete Application, December 22, 2006.*

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## LEGAL REQUIREMENTS OF STATE ENVIRONMENTAL QUALITY REVIEW ACT.

The State Environmental Quality Review Act requires government to take a 'hard look' at the environmental impacts before undertaking any action on projects like Swan Lake Estates. ECL Article 8. The law and regulations broadly define "environment" for the purposes of the review of the project.

*Environment* means the physical conditions that will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, resources of agricultural, archaeological, historic or aesthetic significance, existing patterns of population concentration, distribution or growth, existing community or neighborhood character, and human health.

6 NYCRR § 617.2 (l). The Environmental Impact Statement ("EIS") is the mechanism of the environmental review and it is required to "systematically consider significant adverse environmental impacts." 6 NYCRR § 617.2(n). The purpose is to facilitate "the weighing of social, economic and environmental factors early in the planning and decision-making process."<sup>2</sup> *Id.* The DEIS must "assemble relevant and material facts upon which an agency's decision is to be made. It must analyze the significant adverse impacts and evaluate all reasonable alternatives." 6 NYCRR § 617.9(b)(1). An EIS is required to be understandable and accessible by members of the public and must address "those potential significant adverse environmental impacts that can be reasonably anticipated and/or have been identified in the scoping process." 6 NYCRR § 617.9(b)(2).

DEC as "lead agency" is required, as a matter of law, to respond to and address substantive comments made by members of the public. 6 NYCRR § 617.9(8). The legal responsibilities of DEC with respect to the review of the EIS are substantial, with state law making clear that the "lead agency is responsible for the adequacy and accuracy of the final EIS, regardless of who prepares it." 6 NYCRR § 617.9(8). At the end of the EIS process, the lead agency is required to review all documents submitted by the Applicant for the project, address

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<sup>2</sup> *Environmental impact statement (EIS)* means a written "draft" or "final" document prepared in accordance with sections 617.9 and 617.10 of this Part. An EIS provides a means for agencies, project sponsors and the public to systematically consider significant adverse environmental impacts, alternatives and mitigation. An EIS facilitates the weighing of social, economic and environmental factors early in the planning and decision-making process. *Emphasis added.* 6 NYCRR § 617.2(n).

the substantive issues raised in the public comments submitted by members of the public and make detailed findings. State law requires specified findings be made by the lead agency which include:

- (1) consider the relevant environmental impacts, facts and conclusions disclosed in the final EIS;
- (2) weigh and balance relevant environmental impacts with social, economic and other considerations;
- (3) provide a rationale for the agency's decision;
- (4) certify that the requirements of this Part have been met;
- (5) certify that consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures that were identified as practicable.

6 NYCRR § 617.11(d). It is upon the Final EIS, and the findings made by the lead agency, that DEC's ultimate decision on the environmental impacts will be based.

#### **THE PROCESS OF ENVIRONMENTAL IMPACT REVIEW OF SWAN LAKE ESTATES HAS BEEN FLAWED.**

The core principle of SEQRA requires the lead agency to take a look at the potentially significant adverse environmental impacts at the earliest possible time in the review. 6 NYCRR § 617.2(n). This principle has not been adhered to in this case. The Town of Liberty Planning Board approved the proposed Kelly Bridge Road subdivision without any coordinated SEQRA review. In fact, an obvious and egregious violation of the requirements of the Environmental Assessment Form ("EAF") process resulted when representatives of the applicant told the Planning Board that there were no threatened or endangered species on the site. *Letter of Cora Edwards to Scott Sheeley, DEC: DEIS Comments, February 26, 2007 at Section 2.* These and subsequent actions endangered the bald eagles and Swan Lake. The applicant's representative claimed that this mistake was based upon an error in the reply they received from the DEC, after the applicant sent a letter to DEC requesting on-site threatened and endangered species



information. See *Letter of John Parker to Scott Sheeley, DEC: Positive Declaration, January 20, 2006, attached hereto as Exhibit 18 at 4 - 5*. The record, however, shows such a claim is specious at best. During the final stages of the Town Planning Board's review, the owner and applicant was quoted in a local newspaper that the presence of bald eagles on site was one of the main selling points for the project. *Id. at Exhibit B; Letter of Cora Edwards to Scott Sheeley, DEC: DEIS Comments, February 26, 2007 at Section 2*. The public brought information to DEC's attention and attempted to get them actively involved. *Letter of John Parker to Marc Moran, DEC: Swan Lake Water Levels, September 12, 2005, attached hereto as Exhibit 2*. Upon subsequent information uncovered by local residents it became clear to them and DEC that there was no evidence in the record that a coordinated SEQRA review was sought, and therefore, DEC was obligated by law to act. *Letter of Marc Moran, DEC to John Parker: Swan Lake Reply, September 28, 2005, attached hereto as Exhibit 3*. As a result, in December 2005, DEC determined that it would conduct the SEQRA review as the lead agency. The Town of Liberty and the applicant concluded that such DEC review was appropriate for Kelly Bridge Road and the Lake Marie Subdivision. But by this point, major environmental damage at Swan Lake caused by the failure to comply with State environmental law was already done. *Letter of Cora Edwards to Scott Sheeley, DEC: DEIS Comments, February 26, 2007 at Section 2*.

The American bald eagle and its habitat at Swan Lake is the stated basis for requiring the DEIS. At the earliest stages, the Town of Liberty failed to consider the bald eagles, and approved the subdivision plan. The applicant's violations of State law started from the beginning. There were many violations: clear-cutting and excavating and grading newly carved on-site out roadways, burning tree stumps without permits, and construction and clear-cutting without needed DEC approvals that contributed to the serious turbidity and destruction of water quality at Swan Lake. *Id.* The applicant's actions resulted in a Consent Order that addressed violations of the clean water requirements of ECL § 17-0803, and ECL § 17-0501. *DEC Order on Consent, September 15, 2005, attached hereto as Exhibit 1*. These serious violations resulted in a \$15,000 civil penalty. The applicant's actions directly and negatively impacted the Endangered Species that DEC is required by law to protect, and was based upon a plan that was neither reviewed for environmental impacts, nor had mitigative measures been fully examined. In this case, the lead agency has witnessed the significant adverse impacts caused by the

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applicant, and now is required by law to ensure that further violations do not result in the future.

#### **THE SWAN LAKE ESTATES DEIS IS INADEQUATE AS A MATTER OF LAW.**

The DEIS was reviewed by pre-eminent experts in biological and natural resources sciences with extensive experience in New York. Erik Kiviat and Jason Tesauro concluded that

What has been presented in the DEIS is inadequate to identify and evaluate the environmental impacts to Swan Lake and its bald eagles.

The mitigation proposed also falls short of offsetting the potentially significant adverse environmental impacts of the project that the DEIS is required to address.

*Expert Comments on DEIS of Erik Kiviat and Jason Tesauro, Hudsonia, February 23, 2007 at 6, ("Kiviat Expert Comments"), attached hereto as Exhibit 16.* The DEIS was also reviewed by Ms. Karen Schneller-McDonald of Hickory Creek Consulting. Ms. Schneller-McDonald concluded that *"The information that is provided by the DEIS is completely inadequate as a basis for professional scientific evaluation of significant adverse impacts- and subsequently their mitigation."* *Emphasis in original. Expert Comments on DEIS of Karen Schneller-McDonald, Hickory Creek Consulting LLC, February 21, 2007, ("Schneller-McDonald Expert Comments"), attached hereto as Exhibit 15.*

The DEIS for the Swan Lake Estates LLC project does not provide the information required for a scientific assessment significant impacts and evaluation of mitigation for this project. Without documentation, data, or other valid reason, the DEIS excludes logical areas of inquiry into all potentially significant adverse impacts that have been, and are likely to be, caused by this project. Not only does this DEIS present an inadequate environmental review under SEQRA, it also falls below professional scientific review standards, and provides conclusions about environmental impact mitigation that are based on insufficient documentation. Because of this lack of environmental impact information it is not possible to provide a thorough professional review of 1. Project impacts on a threatened species, the bald eagle, 2. Other potentially significant impacts which have not been addressed in the DEIS, or 3. Effective mitigation for impacts.

*Schneller-McDonald Expert Comments at 15.* As their attached comments demonstrate, the conclusions they reached are based upon their expertise, and a careful reading and understanding of the public record on the DEIS for Swan Lake Estates. Compounding the

problems with the DEIS is that it is riddled with inaccurate statements that fully undermine the credibility of the analysis presented to DEC. *Letter of Cora Edwards to Scott Sheeley, DEC: DEIS Comments, February 26, 2007 at Section 2.*

## **DEFICIENCIES IN SWAN LAKE ESTATES DEIS.**

### **SCOPING REQUIREMENTS AND PROCESS.**

The scoping requirements of SEQRA process are set forth in DEC regulations. Scoping is specifically defined as

the process by which the lead agency identifies the potentially significant adverse impacts related to the proposed action that are to be addressed in the draft EIS including the content and level of detail of the analysis, the range of alternatives, the mitigation measures needed and the identification of nonrelevant issues. Scoping provides a project sponsor with guidance on matters which must be considered and provides an opportunity for early participation by involved agencies and the public in the review of the proposal.

6 NYCRR § 617.2(af). For actions such as those involving Swan Lake Estates, a full Environmental Assessment form assists in this process, and Parts 1 and 2 must be completed.<sup>3</sup> The complete EAF is necessary for an adequate and accurate initial assessment of environmental impact. 6 NYCRR § 617.6. The completed Part 2 of the EAF is required under SEQRA. 6 NYCRR § 617.6 (a)(2). DEC regulations require that the lead agency provide the final written scope for the DEIS, which is required to include

(2) the potentially significant adverse impacts identified both in the positive declaration and as a result of consultation with the other involved agencies and the public, including an identification of those particular aspect(s) of the environmental setting that may be impacted;

(3) the extent and quality of information needed for the preparer to adequately address each impact, including an identification of relevant existing information, and required new information, including the required methodology(ies) for obtaining new information;

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<sup>3</sup> For Type I actions, a full EAF (see section 617.20, Appendix A, of this Part) must be used to determine the significance of such actions. The project sponsor must complete Part 1 of the full EAF, including a list of all other involved agencies that the project sponsor has been able to identify, exercising all due diligence. The lead agency is responsible for preparing Part 2 and, as needed, Part 3. 6 NYCRR § 617.6 (a)(2).

- (4) an initial identification of mitigation measures;
- (5) the reasonable alternatives to be considered;
- (6) an identification of the information/ data that should be included in an appendix rather than the body of the draft EIS; and
- (7) those prominent issues that were raised during scoping and determined to be not relevant or not environmentally significant or that have been adequately addressed in a prior environmental review.

6 NYCRR § 617.8(f). SEQRA requires that the “potentially significant adverse impacts” be identified and the “extent and quality of information” needed to “adequately address each impact” is required in the scoping document and the DEIS. This is a key part of the ‘hard look’ process mandated by SEQRA. The scoping “must include an opportunity for public participation” which is usually done by “public to review and provide written comments on a draft scope.” 6 NYCRR § 617.8(e).

The original EAF submitted by the applicant to the Planning Board was completely inaccurate. *Letter of Cora Edwards to Scott Sheeley, DEC: DEIS Comments, February 26, 2007 at Section 2.* The EAF submitted to DEC for Swan Lake Estates did not have a completed Part 2. *DEIS, Appendix A.* A complete and accurate EAF has never been submitted in this case.

In January 2006, DEC received a request by local residents to issue a ‘positive declaration’ for the SEQRA review for Swan Lake Estates. *Letter of John Parker to Scott Sheeley, DEC: Positive Declaration, January 20, 2006, attached hereto as Exhibit 18.* The comments identified a number of potentially significant adverse impacts that trigger an EIS and that should be analyzed in the SEQRA process. The areas presented to the DEC included: water quality issues and the related question of dam management, traffic issues, noise issues, septic issues including the potential for leaching and drainage problems, and wildlife issues based upon the abundance of wildlife seen throughout the Swan Lake area. DEC was also informed about other possible threatened or endangered species on-site. *Letter of John Parker to Stephen Joule, DEC: Endangered Species, November 1, 2005, attached hereto as Exhibit 5.*

Although DEC concluded on March 31, 2006 that an EIS was required, it rejected all of the evidence and concerns of local residence with respect to the environmental impacts they identified when determining the scope of the environmental review. Members of the public

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urged DEC to reconsider.<sup>4</sup> *Letter of John Parker to Scott Sheeley, DEC: Eagle Mitigation, April 28, 2006, attached hereto as Exhibit 8.* The plea for a thorough and proper DEIS included comments on the need to consider all the impacts on Swan Lake.

It is my sincere belief that these observations about the seasons on Swan Lake illustrate an important and overarching point about the scope of the environmental review. Simply stated, it is that everything possible must be included into the proposed Draft Scope because of the interrelated and holistic nature of the environment of Swan Lake, and its impacts on the wildlife like the bald eagles that live there.

*Letter of Cora Edwards to Scott Sheeley, DEC: Eagle Mitigation, April 28, 2006 at 2, attached hereto as Exhibit 9.* In fact, DEC made the extraordinary and perhaps unprecedented conclusion for a 'major subdivision' on a 114 acre site that had been untouched for about 150 years on the shores of one of the last remaining clean lakes in the area, that only the American bald eagle impacts need to be required for the scope of the DEIS. DEC provided little if any rationale for excluding these significant issues from the scope of the DEIS. The experts that reviewed the DEIS concluded that there is no basis for such a narrow scope of review.

#### **THE NARROW SCOPE RESULTS IN A DEIS THAT FAILS TO MEET THE REQUIREMENTS OF SEQRA.**

The DEIS was reviewed by our team of natural resources and raptor experts well versed in environmental assessment and review in New York. Each expert concluded that the scope of the DEIS provides an inadequate amount of information for a thorough analysis of impacts required by SEQRA, and that the scope of the DEIS that was required - limited to bald eagles only - does not provide a basis for the analysis and mitigation of environmental impacts. As the

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<sup>4</sup> Amongst other things, the request stated: "This submittal provides sufficient basis for DEC to expand the scope of the positive declaration for EIS review, and a corresponding expansion of the draft scope beyond what is currently proposed. Should the DEC determine that such reconsideration is not warranted in this case, there is abundant support in the attached documentation indicating that the draft scope for the above applications must be expanded to incorporate a number of additional issues raised by Ms. Edwards and others because of the interrelated impacts the identified areas will have on the eagle habitat. Contrary to the assertions in the draft scope, that attached submission establishes that these important areas for consideration are "relevant" and necessary for a thorough and comprehensive "hard look" consistent with the legal obligations of SEQRA." *Letter of John Parker to Scott Sheeley, DEC: Eagle Mitigation, April 28, 2006, Exhibit 8.*

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record clearly shows, DEC made this decision despite being repeatedly urged to fully consider all of the environmental impacts to the Swan Lake ecosystem, in addition to the American bald eagles that rely upon it for survival. These potential impacts should have been reasonably anticipated and included in the DEIS as required. 6 NYCRR § 617.9(b)(3).

The validity of the DEIS and the conclusions garnered from the process are only as valid as the information that provides the basis of the required analysis. In this case, the limited scope of the DEIS improperly treats analysis of the American bald eagle as though it can be taken out of the habitat and ecosystem where it lives - in this case Swan Lake - as though they exist in a vacuum. According to Erik Kiviat of Hudsonia, the "*The Narrow Scope of the DEIS Makes it Impossible to Reach Necessary Conclusions.*" *Emphasis in Original. Expert Comments on DEIS of Erik Kiviat and Jason Tesauro, Hudsonia, February 23, 2007, ("Kiviat Expert Comments"), attached hereto as Exhibit 16.* The narrow scope has serious implications for the adequacy of the DEIS.

The DEIS fails to address the potential impacts of Swan Lake Estates on the aquatic ecosystem of Swan Lake. DEIS Section 3, focuses almost entirely on the potential impacts to the bald eagle nesting, perching, and roosting habitat. The DEIS does not clearly identify where the bald eagle perching and roosting locations are in relation to the subdivision proposed lots (Lots 3-12). While bald eagle habitat is critical, water quality and the integrity of the lake ecosystem is also crucial both in and of itself and as the system on which the eagles depend.

*Kiviat Expert Comments at 1.* The narrow scope of the DEIS raises additional concerns in the Kiviat analysis.

Water quality, however, is inadequately addressed and it is only vaguely stated that erosion and stormwater plans will be in "compliance with state regulations" and therefore there will be limited impacts to Swan Lake itself.

Furthermore, there is no mention in Section 3 of septic systems and their potential impact to Swan Lake. We are particularly concerned about the impact of septic effluent on the water quality of Swan Lake.

*Kiviat Expert Comments at 1.* The adequacy of the DEIS analysis was crippled from the outset, resulting in a document that misses key issues.

We have observed the red-shouldered hawk (*Buteo lineatus*), a New York State Special Concern Species, on several occasions in the vicinity of Swan Lake (March 2006-February

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2007).

The DEIS states that LW-22 will be protected with 100-foot buffer; however, should red-shouldered hawks be nesting in LW-22 or in adjacent area, 100 feet is unlikely to be adequate protection from disturbance where the forest has been fragmented by subdivision (see Crocoll 1994).

The DEIS should specifically address the potential for the occurrence of other endangered, threatened, special concern, or New York Natural Heritage Program-tracked rare animals and plants.

*Kiviat Expert Comments at 2.* The problems caused by the narrow scope of the DEIS are the main reason Hudsonia concluded that the DEIS is inadequate.

The DEIS was also reviewed by Ms. Karen Schneller-McDonald of Hickory Creek Consulting. Ms. Schneller-McDonald concluded that *"The information that is provided by the DEIS is completely inadequate as a basis for professional scientific evaluation of significant adverse impacts and subsequently their mitigation."* *Emphasis in original. Expert Comments on DEIS of Karen Schneller-McDonald, Hickory Creek Consulting LLC, February 21, 2007, ("Schneller-McDonald Expert Comments")*, attached hereto as Exhibit 15. The limited scope of the DEIS impacts its ability to analyze and evaluate: impacts on protected and non-protected species, species of conservation concern, in addition to the bald eagle, impacts on species on adjacent wetlands and additional species on site and adjacent to Swan Lake Estates. *Schneller-McDonald Expert Comments at 4 - 5.*

*All potentially significant impacts of this project have not been evaluated in the DEIS. The Scoping Document has omitted consideration of a number of potentially significant impacts including water quality. There is no documentation provided to support the seemingly arbitrary conclusion that assessment of additional impacts is unwarranted. In fact, it is apparent that other significant impacts, normally discussed in an EIS, are likely. Therefore, all of the items listed as 'not addressed' in the scoping document should be evaluated in a supplemental EIS. These items include: wetlands and vegetation, water quality, land issues, transportation, community character, aesthetics, noise, air quality, community services and growth-inducing impacts, solid waste disposal, effects on the use and conservation of energy resources.*

*Emphasis in original. Schneller-McDonald Expert Comments at 11, 10 -14.* The public and the experts agree on the failure of the DEIS to adequately look at and analyze the Swan Lake Estates project. Despite the narrow scope, or perhaps because of it, the DEIS also fails to adequately analyze impacts to the American bald eagle. *Schneller-McDonald Expert Comments at 1.*

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The DEIS also fails to analyze the implications of the proposed septic systems. The concerns regarding pollution from septic systems are an issue for all experts that reviewed the DEIS. The Schneller-McDonald comments discuss the proposed septic systems and the failure of the DEIS to address them stating "nor are discussion included regarding the long term requirements for these systems and impacts on the long term water quality on the Lake. These should be addressed in the DEIS." *Schneller-McDonald Expert Comments at 9.* Kiviat addresses the implications of these systems on water quality

It has been well demonstrated that residential development adjacent to lakes increases turbidity from erosion and run-off and creates eutrophic, low-oxygen conditions primarily from septic effluent and storm water run-off. These water quality impacts can have dramatic affects on aquatic organisms including vegetation, amphibians and fish.

*Kiviat Expert Comments at 2.* This has serious implications for bald eagles and the viability of Swan Lake.

Based on typical bald eagle habitat preferences, Swan Lake is relatively small but the small size is perhaps compensated for by abundant food resources. Maintaining the existing water quality may therefore be critical to the long-term health and reproductive success of the bald eagles at Swan Lake.

*Kiviat Expert Comments at 2.*

The applicant's own subsurface wastewater systems figures lead me to conclude that failure of these systems is imminent for the leach fields. Regardless of the poor soil conditions, percolation test results were never disclosed, not currently on file in the town Planning Board records, nor were any other means made available to the public by the applicant to justify resorting to these subsurface wastewater systems. Everybody living around Swan Lake uses municipal sewer lines to address these crucial issues, because of the known damage leach fields caused to Swan Lake prior to 1982. The failure of those earlier systems caused much harm to this man made lake.

Given this known experience and on-site characteristics, the applicant must be made to conform to the same set of public health, safety and environmental responsibility requirements that the rest of the community around Swan Lake adheres to protect the eagle habitat. Based on the DEIS alternatives proposed, this leads to the "no build option" as the only way to avoid environmental catastrophe a few years down the road. *From a civic engineering point of view, and as a certified expert on these matters, this issue cannot be swept aside and not analyzed by the DEIS for any reason - economic, or otherwise.*

*Emphasis in original. Expert Comments on DEIS of Sam Karras, STK Plumbing, February 17, 2007 at 3 - 4, attached hereto as Exhibit 17.* These potentially significant adverse impacts were of particular



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concern because of their implications for the future of Swan Lake, but also because of what Karras described as the negative impacts and environmental stress and damage caused by similar systems in the past, which resulted in their removal from the Swan Lake area. Such a failure to fully consider and evaluate these significant adverse impacts violates SEQRA because it increases impacts, not mitigates them, and DEC must not allow to be reintroduced to Swan Lake.

#### **THE DEIS FAILS TO ADEQUATELY ADDRESS IMPACTS OF THE PROPOSED PROJECT ON THE AMERICAN BALD EAGLE.**

Although directed to review and analyze impacts of the proposed Swan Lake Estates project on the American bald eagle, the experts concluded that the DEIS failed to meet this requirement. The Kiviat analysis reaches this conclusion because a variety of impacts, such as water quality and other species in the habitat area, are not analyzed, but also because the proposed mitigation fails to address the potentially significant adverse impacts of the project. *Kiviat Expert Comments*. "What has been presented in the DEIS is inadequate to identify and evaluate the environmental impacts to Swan Lake and its bald eagles." *Kiviat Expert Comments at 6*. The Schneller-McDonald analysis reaches the same conclusion.

*The DEIS does not provide sufficient information to determine the significance of impacts on bald eagles because it doesn't evaluate all of the necessary, pertinent information regarding the eagles' entire habitat at Swan Lake-including year round conditions, nesting, roosting, breeding, feeding (eg condition of prey species), and wintering. When impacts are not adequately described, mitigation cannot be effectively evaluated- therefore all mitigation described in the DEIS regarding bald eagles should be re-designed and re-evaluated after all the impacts have been described and discussed.*

*Emphasis in original. Schneller-McDonald Expert Comments at 1.* The inadequate scope of the DEIS, which ignores the inter-related web of life that comprises the American Bald Eagle habitat on Swan Lake, and the potentially significant impacts to this habitat caused by the project resulted in the DEIS' failure to meet its stated requirement - analyze and mitigate impacts to the American bald eagle.

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### THE PROPOSED MITIGATION INADEQUATELY ADDRESSES POTENTIAL IMPACTS.

The experts concur that Swan Lake Estates, as proposed, will negatively impact the bald eagles. As Kiviat explains, "we agree that the increased noise and human disturbance from Swan Lake Estates will impact the bald eagles, potentially causing the resident pair to abandon nesting at Swan Lake all together." *Kiviat Expert Comments at 3*. With respect to the proposed mitigation, Kiviat concludes, "the overall plan falls short of adequately offsetting the potential impacts." *Kiviat Expert Comments at 3*. A problem with the mitigation is that it insufficiently regulates human activity on the shores of Swan Lake. "These docks will be clearly visible from the nesting area and may present a disturbance to the bald eagles," impacts that are increased because "the perched adult and juvenile eagles are easily flushed," resulting in "physiological stress (especially in the winter) and interfere with foraging." *Kiviat Expert Comments at 3-4*. Protecting the eagles from shoreline disturbance by humans is important because this area is used for perching "most likely because it is opposite the nesting area and provides an unobstructed view of the nest and fishing grounds." *Kiviat Expert Comments at 4*. These are key areas needed for the bald eagles' survival on Swan Lake. Construction and individual impacts are similarly insufficiently mitigated. The DEIS assumes eagles will move to quieter areas during construction, without explanation, and it also concludes that associated construction noise "will not affect the bald eagles, stating that they are accustomed to the noise from existing residences along the shoreline." Kiviat rejects such a conclusion stating

We consider it likely that there will be a cumulative impact of noise and visual disturbance from existing and new homes. The logic presented in the DEIS is dubious and unsubstantiated; moreover it is contradictory to other statements in Section 3 that acknowledge noise as a potential impact.

*Kiviat Expert Comments at 4*. The proposed mitigation measures fail for the same reasons that the DEIS does - the fail to take a comprehensive approach to this requirement, and fail to apply a rigorous analysis and evaluation to the statements asserted.

Ms. Schneller-McDonald agrees that the mitigation is inadequate. The incomplete analysis leaves mitigation conclusions elusive. Mitigation cannot be effectively evaluated until all significant impacts are sufficiently identified, described, discussed and evaluated." *Schneller-McDonald Expert Comments at 15*. Specific areas, however, are clearly inadequately addressed. These include: water quality impacts, stormwater management and impact mitigation, and areas that cannot be mitigated. *Schneller-McDonald Expert Comments at 12, 14*.

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The proposed 31-acre conservation easement which is viewed as *critical* to eagle survival on Swan Lake is *not* viewed as mitigation for the impacts of Swan Lake Estates. Kiviat reaches this conclusion because the easement does not directly address Swan Lake Estates and it cannot provide "adequate protection for the entire documented nesting habitat at Swan Lake." *Kiviat Expert Comments at 4*. These conclusions underscore the public's complaints, and the experts' considered criticisms of the inadequate scope of the DEIS: the entire habitat of the American bald eagle and Swan Lake is not fully addressed as required by SEQRA, and a piecemeal approach is not adequate.

#### **ADDITIONAL MITIGATION MEASURES NEEDED TO COMPLY WITH SEQRA.**

Additional mitigation measures have been identified as necessary for the impacts caused by Swan Lake Estates. The applicant's first proposed mitigation measures were similarly inadequate. *AJM Eagle Mitigation Plan, January 18, 2006, attached hereto as Exhibit 6; Letter of Cora Edwards to Scott Sheeley, DEC: Eagle Mitigation, April 28, 2006, attached hereto as Exhibit 9*. These additional measures include: prohibiting docks, increased buffer areas around nests, year round professional observation of the eagles, buoys around buffers, no gasoline powered watercraft or snowmobiles, restricted construction timeframes - excluding December through August, prohibiting fertilizers, pesticides and encouraging natural landscaping, manual water chestnut removal, and a lake management plan for permanent maintenance and management of the lake. *Kiviat Expert Comments at 5 - 6*. The dam management issues and the lowering of Swan Lake waters were brought to DEC's attention in September 2005. *Letter of John Parker to Marc Moran, DEC: Swan Lake Water Levels, September 12, 2005, attached hereto as Exhibit 2*. This issue has important public safety and lake water quality implications. DEC never addressed this issue in its responses. DEC acknowledged that the dam is a high hazard dam and that the applicant has ownership and management responsibilities. *Letter of Scott Braymer, DEC to Anthony Murolo: Dam Safety, December 19, 2006, attached hereto as Exhibit 11*. The Town may share a portion of that responsibility. *Letter of Scott Braymer, DEC to Frank DeMayo: Dam Safety, January 8, 2007 attached hereto as Exhibit 14*. The Swan Lake Estates homeowners' covenants obligate homeowners to be responsible for the lake and dam. *Swan Lake Homeowners*

*selected excerpt at 2 - Art. 1 (g), attached hereto as Exhibit 19.* Water levels and dam management must be addressed in the mitigation measures to satisfy SEQRA. Therefore, a viable and legally secured management plan must be put into place, and reviewed by the public, as soon as possible. Survival of the bald eagles on Swan Lake, and Swan Lake itself depend on such a plan, and its successful implementation as mitigation for Swan Lake Estates.

**THE FRESHWATER WETLANDS PERMIT APPLICATION SHOULD BE REJECTED.**

*The Applicant's Repeated Violation of the ECL and the Consent Order Raise The Issue of Suitability of the Applicant for Pending DEC Permit Applications, and Must Be Considered.*

The applicant's conduct in this case raises questions about whether they are "suitable" for issuance of a DEC permit. The issue was brought to DEC's attention prior to acceptance of the DEIS, and prior to the determination that the permit application was complete. *Letter of John Parker to Marc Moran, DEC: Consent Decree Violations, November 27, 2006, attached hereto as Exhibit 10.* The Consent Order issued by DEC addressed violations of the clean water requirements of ECL § 17-0803, and ECL § 17-0501. *See Exhibit 1.* The DEC required a \$15,000 civil penalty, not an insignificant judgment of the malfeasance in this case. Nonetheless, the record shows that the applicant continued with business as usual. The violations are many and repeated: starting with the failure to identify American bald eagles it knew were on site, telling the Town officials there were none, unpermitted construction, non-complying construction, apparently installing utility infrastructure after the DEC told the applicant to cease further construction activity, and selling real estate without meeting legal filing requirements in violation of State law. *See Letter of John Parker to Scott Sheeley, DEC: Positive Declaration, January 20, 2006 at 4 - 5, attached hereto as Exhibit 18; Letter of Cora Edwards to Scott Sheeley, DEC: DEIS Comments, February 26, 2007 at Section 2.* DEC must act on these violations, but has been tentative. *Letter of Steven Goverman, DEC to John Parker: Consent Decree Violations, January 4, 2007, attached hereto as Exhibit 12.* Nonetheless, the record of the actions of this applicant is clear and irrefutable. *Letter of John Parker to Steven Goverman, DEC: Consent Decree Violations, January 31, 2007, attached hereto as Exhibit 13.*

The applicant was also on notice from the federal government regarding potential federal Endangered Species Act violations. The U.S. Department of the Interior, Fish and Wildlife Service sent a letter on October 6, 2005 that stated that "Section 9 of ESA prohibits the

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"take" of any federally-listed animal species by any person subject to the jurisdiction of the United States. As defined by ESA, take means "...to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in such conduct." *Letter of David A. Stilwell, Field Supervisor to Anthony J. Murolo, Swan Lake Estates, October 6, 2005, Exhibit E, Letter of John Parker to Marc Moran, DEC: Consent Decree Violations, November 27, 2006, attached hereto as Exhibit 10.* "Harm" in the definition of take means an act which kills or injures wildlife. Such an act may include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR part 17.3). *Id.* The 5<sup>th</sup> eagle nest on Swan Lake, the primary breeding nest, was destroyed in August 2006. All that remains is a tree, and a possible return by the bald eagles to rebuild the nest on that tree.<sup>5</sup>

These applicant's actions have consequences regarding the wetlands permit application. The DEC Record of Compliance Enforcement Guidance Memorandum makes clear that the policy and procedures by which the Department of Environmental Conservation (the "Department") is to ensure that persons who are unsuitable to carry out responsibilities under Department permits, certificates, licenses or grants, are not authorized to do so.

*Record of Compliance: Enforcement Guidance Memorandum, March 5, 1993 § I ("Record of Compliance Memo").* This policy has been in effect for over twenty years. The reasons for the ROC Memo are clearly articulated:

The courts have recognized that the environmental compliance history of a permit applicant is a relevant consideration regarding qualification for permitting [*Matter of Bio-Tech Mills Inc. v. Williams*, 105 A.D. 2d 301 (3d Dept., 1985), *Aff'd*, 65 N.Y. 2d 855 (1985), *Olsen v. Town Board of Saugerties*, \_\_AD 2d \_\_ (3rd Dept., 1990)].

In addition to the general authority to deny, suspend, condition or revoke permits, the Legislature has specified criteria for such actions in certain statutory schemes. It is clear from the explicit authority as well as both implied legislative authority and the general authority provided in ECL Sections 1-0101, 3-0301 and for Uniform Procedures Act permits, 70-0115, that the Department can modify, suspend deny or revoke any permit it issues based on the unsuitability of a permitted applicant to carry out the work authorized in a lawful and environmentally protective manner.

<sup>5</sup> The loss of the primary breeding nest in August 2006 is insufficiently discussed in the DEIS.

*Record of Compliance Memo § III.* The legal authority for DEC to consider the applicant's violations is clear. The applicant's actions, repeated as they have been, are equally clear and compelling. The Guidance Memo speaks for itself, and upon closer examination, the evidence presented to DEC warrants its application to the permit that DEC is considering regarding this subdivision.

There were significant questions raised by the experts regarding the wetlands analysis in the DEIS that underscore the reasons the permit cannot be issued at this time. These areas include the adequacy of the DEIS analysis on: delineation, wetlands impacts, wetland and watershed functions, indirect impacts, wetlands buffering and water height fluctuations.

*Schneller-McDonald Expert Comments at 6 - 9.*

*Wetlands and water quality issues are inadequately described, discussed and evaluated in the DEIS. A significant component of the eagles' habitat is the lake and surrounding wetlands, with high water quality necessary to maintain these viable ecosystems. Existing condition of these habitat features (including water quality), and subsequent potential impacts to them are not discussed in the DEIS.*

*Emphasis in Original.* *Schneller-McDonald Expert Comments at 6.* Thus, there is not even a valid SEQRA record before DEC to make a determination regarding the wetlands permit, and further adjudicatory hearings may be needed.

#### **THE NUMEROUS INADEQUACIES AND A SIGNIFICANT OMISSION REQUIRE A SUPPLEMENTAL EIS BE PREPARED FOR SWAN LAKE ESTATES.**

Prior to the DEC determination to require a DEIS in this case, and during the scoping stage, the public called for a comprehensive and detailed DEIS to evaluate all impacts to Swan Lake before any decisions were made. The evidence presented to DEC in 2005 and 2006 clearly demonstrated the potentially significant adverse environmental impacts of Swan Lake Estates, and also the inter-related nature of the ecosystem of Swan Lake and its surrounding areas. *See Exhibits 7, 8, 9, 18.* DEC rejected the evidence and these requests. The experts that have reviewed the DEIS now universally agree with the issues raised by the public, and the experts similarly conclude that a significantly expanded EIS is needed. Such additional comprehensive analysis, and the volume of work necessary to complete it will result in a large degree of new information to be presented to DEC. The public must not have its procedural and substantive rights to participate in that review, including the right to full public comment on these new

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additions, taken away. *See* 6 N.Y.C.R.R. § 617.7(c)(1)(v). Thus, based upon the failure of the DEIS to meet the requirements of SEQRA, and the volume of newly discovered information required to be analyzed in it, we request that DEC require a Supplemental EIS. Such request meets SEQRA legal requirements, and should be granted.

The SEQRA regulations set forth the grounds upon which the lead agency can require a Supplemental EIS. These regulations, in full, state:

(7) Supplemental EISs.

(i) The lead agency may require a supplemental EIS, limited to the specific significant adverse environmental impacts not addressed or inadequately addressed in the EIS that arise from:

- (a) changes proposed for the project; or
- (b) newly discovered information; or
- (c) a change in circumstances related to the project.

(ii) The decision to require preparation of a supplemental EIS, in the case of newly discovered information, must be based upon the following criteria:

- (a) the importance and relevance of the information; and
- (b) the present state of the information in the EIS.

(iii) If a supplemental is required, it will be subject to the full procedures of this Part. 6 N.Y.C.R.R. § 617.7(c)(1)(v). The purpose of the EIS process is to facilitate "the weighing of social, economic and environmental factors early in the planning and decision-making process." 6 NYCRR § 617.2(n). This was not done in this case. Large gaps exist in the DEIS, and to complete the process properly and in accordance with the expert commentary herein, much on-site investigation and additional analysis will be required, significant amounts. The applicant also segmented review of the entire project by dropping plans for Lake Marie Road subdivision, and then selling the parcel. Further review of the implications of failing to place conservation easements on these adjacent properties, which have known nesting sites for the bald eagles, is a change in the proposed project and its circumstances directly impacting Swan Lake. These changes must also be considered in the SEIS. The Schneller analysis reaches the same conclusion.

The magnitude of issues not addressed in the DEIS requires that a supplemental EIS be prepared to correct the above described deficiencies of information, so that all significant

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impacts are adequately and professionally described, and effective mitigation can be evaluated.

*Schneller-McDonald Expert Comments at 15.* The record clearly meets the SEIS requirements, and the public requests that DEC require it for Swan Lake Estates.

DEC regulations make clear that granting such a request for a Supplemental DEIS also necessarily triggers the full public comment and hearing requirements of SEQRA. 6 N.Y.C.R.R. § 617.7(c)(1)(v). DEC is well aware of the significance and considerable public interest in this case. The same situation and facts exist for public comment and hearing on the Supplemental DEIS. Therefore, we also request DEC to require another public comment and review period and additional public hearings to address issues raised once the Supplemental DEIS is completed.

#### CONCLUSION.

For these reasons, the DEIS cannot meet the legal requirements of SEQRA. The DEIS is based on a scoping document that was too narrowly focused only on the American bald eagle. In essence the review undermines a fundamental tenant of the environmental and ecological sciences, and treats one species as though it can live and thrive in a vacuum disconnected from its environment. Swan Lake is not a vacuum and the American Bald Eagles that live there are part of the entire web of life who call the area home. The eagles survival depends upon their relationship to and interaction with their entire habitat. The DEIS loses sight of this important, undeniable, irrefutable and fundamental fact. The experts in natural resources and raptor sciences that reviewed this document have concluded in unison that it does not analyze and evaluate the impacts of Swan Lake Estates on the environment of Swan Lake, nor the steps needed to minimize impacts and ensure the survival of the American bald eagle. The DEIS fails this basic legal test.

The DEIS fails the bald eagles, Swan Lake and SEQRA in profound ways. It inadequately assesses and analyzes what is there, such as the soil characteristics, the on-site and adjacent habitat characteristics and quality, protected and non-protected species, impacts on wetlands both on-site and adjacent, water quality - from non-point sources and from septic systems, shoreline disturbances, human disturbances, construction and everyday noise impacts,



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and visual impacts. This results in a DEIS with glaring omissions and deficiencies. The main mitigation proposed, an off-site conservation easement has also been rejected as mitigation for the proposed project, and an extensive list of mitigation omissions has been identified. The easement, while critical and necessary, does not satisfy SEQRA requirements on its own.

The lack of necessary information has significant implications beyond the adequacy of the DEIS. Significant additional information needs to be analyzed and evaluated in a revised EIS. So much additional information is required that DEC must conclude that it will constitute newly discovered evidence within the meaning of SEQRA. Along with project changes, a Supplemental EIS should be required by DEC. Incorporating such a dramatic amount of analysis and new information into a draft Final EIS would improperly curtail important procedural and substantive rights for public comments under SEQRA. It would also unfairly remove the public who brought this significant case to DEC in the first place. A Supplemental EIS is clearly needed.

As we have presented in our public comments, DEC is legally responsible for the adequacy, accuracy and content of the Environmental Impact Statement it must certify. The competency and validity of the Applicant's conclusions in the DEIS have been questioned, reviewed and directly criticized by experts in their respective fields. Based on the current record, DEC does not have sufficient information to determine if the environmental impacts can be mitigated. To the contrary, experts have not only criticized the contents of the document and its so called mitigation, but provided lists of areas that must be included if such mitigation can succeed. There has already been significant environmental impacts and damage caused by illegal activity on the Swan Lake Estates project. The American bald eagles, the environment and the community will be forever negatively impacted if DEC does not require a substantial re-writing and revising of this DEIS before it attempts to render a SEQRA finding and determination. The record in this case makes this clear.

The record also makes clear that the history of lawbreaking by this applicant must be taken into consideration in determining whether to issue the requested permit. Failing to take such illegal actions into consideration will have the same effect as considering this DEIS about bald eagles and not the entire habitat where they live - allowing a decision on an incomplete record. Clearly basing such an important decision on the submitted and legally inadequate and deficient DEIS is a result contrary to SEQRA, and contrary to the mission and legal

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responsibility of the Department of Environmental Conservation. Equally as clear, however, is that DEC is legally responsible for preventing such a result.

## EXHIBITS

## Exhibit 1

DEC Order on Consent, *September 15, 2005.*

## Exhibit 2

Letter of John Parker to Marc Moran, DEC: Swan Lake Water Levels, *September 12, 2005.*

## Exhibit 3

Letter of Marc Moran, DEC to John Parker: Swan Lake Reply, *September 28, 2005.*

## Exhibit 4

Letter of John Parker to Marc Moran, DEC: SEQRA and Swan Lake, *October 20, 2005.*

## Exhibit 5

Letter of John Parker to Stephen Joule, DEC: Endangered Species, *November 1, 2005.*

## Exhibit 6

AJM Eagle Mitigation Plan, *January 18, 2006.*

## Exhibit 7

Letter of John Parker to Scott Sheeley, DEC: Eagle Mitigation, *March 8, 2006.*

## Exhibit 8

Letter of John Parker to Scott Sheeley, DEC: Eagle Mitigation, *April 28, 2006.*

## Exhibit 9

Letter of Cora Edwards to Scott Sheeley, DEC: Eagle Mitigation, *April 28, 2006.*

## Exhibit 10

Letter of John Parker to Marc Moran, DEC: Consent Decree Violations, *November 27, 2006.*

## Exhibit 11

Letter of Scott Braymer, DEC to Anthony Murolo: Dam Safety, *December 19, 2006.*

## Exhibit 12

Letter of Steven Goverman, DEC to John Parker: Consent Decree Violations, *January 4, 2007.*

## Exhibit 13

Letter of John Parker to Steven Goverman, DEC: Consent Decree Violations, *January 31, 2007.*

## Exhibit 14

Letter of Scott Braymer, DEC to Frank DeMayo: Dam Safety, *January 8, 2007.*

## Exhibit 15

Expert Comments on DEIS of Karen Schneller-McDonald, Hickory Creek Consulting LLC, *February 21, 2007.*

Exhibit 16

Expert Comments on DEIS of Erik Kiviat and Jason Tesauro, Hudsonia, *February 23, 2007.*

Exhibit 17

Expert Comments on DEIS of Sam Karras, STK Plumbing, *February 17, 2007.*

Exhibit 18

Letter of John Parker to Scott Sheeley, DEC: Positive Declaration, *January 20, 2006.*

Exhibit 19

Swan Lake Homeowners Association, selected excerpt.

JOHN L. PARKER  
*Attorney-at-Law*

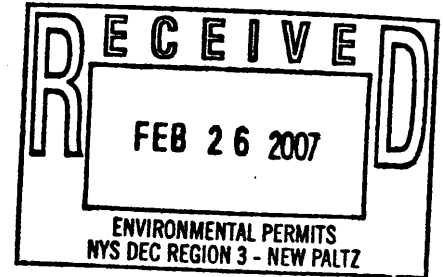
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VIA Fed Ex

February 23, 2007

Scott Sheeley  
Region 3 DEC  
21 South Putts Corner Road  
New Paltz, New York 12561-1696



**Draft Environmental Impact Statement  
Swan Lake Estates**

**Project No. 3-4836-00245/00001**

Dear Mr. Sheeley:

Please find enclosed the Exhibits for the Comments on the DES for the above referenced project.

The narrative will be sent via fax and electronically on February 26, 2007.

Thank you for your attention.

Regards,

  
John Parker



**ЕХНІВІТ 1**





STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

X-----X

In the Matter of the Alleged Violation of  
Article 17 of the New York State Environmental  
Conservation Law ("ECL"), by:

ORDER ON CONSENT  
CASE NO. R3-20050621-53

AJM at Swan Lake Estates, LLC,

Respondents

(Sullivan County)

X-----X

WHEREAS:

1. The New York State Department of Environmental Conservation ("DEC" or "Department") is responsible for the administration and enforcement of law and regulation pursuant to Article 17 of the New York State Environmental Conservation Law.

2. On June 6, 2005, Department of Environmental Conservation Staff observed a discharge of turbid water in the vicinity of Kelly Bridge, located at Kelly Bridge Road, Town of Liberty, New York in contravention of applicable water quality standards. Additionally, a search of DEC records indicates that AJM at Swan Lake Estates, LLC had not obtained coverage under the GP-02-01 general stormwater permit prior to commencing construction on the roadway comprising a portion of the Swan Lake Estates project. DEC alleges such activities are in violation of ECL Article 17-0803 Discharging without a SPDES Permit and Article 17-0501 Violation of Water Quality Standards-- visual contrast to receiving water

3. Respondent alleges that the turbidity to the receiving water noted by DEC Staff was produced by pre-existing ruts in exposed earth in the shoulder of Kelley Bridge Road, and was not due to the work conducted by Respondent, and that Respondent had placed and maintained erosion control measures in the area of work. Additionally Respondent alleges that Respondent's engineer mailed and Notice of Intent to gain coverage under the general stormwater permit prior to DEC commencing construction, but admits that it did not receive acknowledgment that such coverage had been granted prior to commencing work.

4. Respondent has agreed to cease construction of the project until coverage has been gained under general stormwater permit GP-02-01, and to obtain any other DEC permits which may be required for the project, prior to recommencing construction.

3. Respondent states that it wishes to come into compliance with applicable state

environmental laws and regulations, and, without admitting violation of ECL Article 17 as regards turbidity, affirmatively waives the right to a public hearing in this matter in the manner provided by 6 NYCRR Part 622, and consents to the entering and issuing of this Order, and agrees to be bound by the terms and conditions of this Order.

NOW, having considered this matter and being duly advised, it is ORDERED that:

I. Respondent shall be liable to pay a civil penalty in the amount of \$15,000.00, of which \$12,500.00 is payable and must be submitted with this Order bearing the signature of Respondent; the remaining amount, \$2,500.00, is suspended provided Respondent strictly adheres to the terms and conditions of this Order, including the Compliance Schedule attached hereto.

II. This Order shall not become effective until it is signed by the Regional Director on behalf of the Commissioner.

III. This Order may be changed only by written order of the Commissioner or the Commissioner's designee;

IV. This Order shall be deemed binding on Respondent, any successors and assigns and all persons, firms and corporations acting under or for Respondent, including, but not limited to those who may carry on any or all of the operations now being conducted by Respondents, whether at the present location or at any other in this State.

V. Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent and any successors (including successors in title) and assigns.

Dated: New Paltz, New York

September 15, 2005

Commissioner

DENISE M. SHEEHAN Acting

New York State  
Department of Environmental Conservation

By: \_\_\_\_\_

MARC MORAN  
Regional Director

Region 3

This Order on Consent has been reviewed and approved by the Regional Attorney as to form.

By:   
\_\_\_\_\_  
VINCENT ALTIERI  
Regional Attorney

Date: \_\_\_\_\_ 9/15 20 05



**AJM at Swan Lake Estates LLC  
CASE NO. R3-20050621-53**

**COMPLIANCE SCHEDULE**

**I. GENERAL REQUIREMENTS:**

**Immediately:** Respondent(s) shall cease and desist from any and all future violations of the New York State Environmental Conservation Law and the rules and regulations enacted pursuant thereto.

Respondent(s) shall certify completion of the work required under this schedule, to the Department within five (5) days of its completion.

All technical submittals to the Department required under this Order shall be made by Respondent(s) as follows:

Three copies to Janet Swentusky, Region Three, New York State Department of Environmental Conservation, 21 South Putt Corners Road, New Paltz, New York 12561.

**II. SPECIFIC REQUIREMENTS:**

Within (5) days from the date of the Execution of this Order	Obtain coverage under GP-02-01 & send a copy of the Notice of Intent to this office
Prior to recommencing construction of the project	Obtain all DEC Permits
Within (30) days from the date of the Execution of this Order	Implement sediment & erosion control measures which include; properly installing silt fence, stabilizing construction entrances, stabilizing stockpiled soil, mulching/seeding exposed soils, stabilizing roadways with gravel/rock, construction and stabilizing of temporary retention traps/basins and diversionary swales.



CONSENT BY RESPONDENT

Respondent hereby consents to the issuance and entry to this Order without further notice, waives its right to a hearing in this matter, and agrees to be bound by the terms, conditions and provisions of this Order.

AJM at Swan Lake Estates, LLC

By: [Signature]

Title: MEMBER

ANTHONY J. MUROLO

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF Suffolk )

On the 8 day of September, 2005 before me, the undersigned, personally appeared Anthony J. Murolo, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) as shown in the instrument, and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature]  
NOTARY PUBLIC

MARC SZCZUROWSKI  
Notary Public, State of New York  
No. 01826110360  
Qualified in Suffolk County  
Commission Expires May 24, 2008





## ЕХНІВІТ 2



JOHN L. PARKER  
*Attorney-at-Law*

565 Taxter Road, Suite 100  
Elmsford, NY 10523

(914) 347-2290  
(914) 347-2331 fax  
*parkerjlp@yahoo.com*

September 12, 2005

Marc Moran  
Regional Director  
DEC Region 3  
21 South Putts Corner  
New Paltz, NY 12561

Re: Swan Lake Estates  
Town of Liberty, Sullivan County

Dear Regional Director Moran:

I am writing on behalf of my client, Cora Edwards with respect to the ongoing development of Swan Lake Estates in the Town of Liberty, Sullivan County. My clients and others have written numerous letters to the Department ("DEC") over the past several months requesting intervention and action to enforce the law. At issue are two separate approvals for two subdivisions that comprise the Swan Lake Estates project. Phase I, the Kelly Bridge Subdivision has received final subdivision approval of the Town Planning Board in April 2005 and is proceeding despite DEC orders to the contrary. The second approval is site plan approval for Phase II, the Lake Marie Subdivision, which is currently the topic of some debate regarding lead agency designation under the State Environmental Quality Review Act. The concerns brought to the DEC's attention by my client over the past several months involve Phase I and include the lack of an environmental impact study, continuing construction despite the failure to comply with ECL permit requirements and contrary to a cease and desist order, the considerable lowering of Swan Lake water levels, and environmental review of Phase II.

With respect to Phase I, on June 13, 2005 DEC issued a Notice of Violation to the Developers for amongst other things, failure to obtain a SPDES general permit for Stormwater discharges from construction activity and water quality violations observed by DEC staff. *Letter of Janet Swentusky to Mr. Tony Murolo, AJM at Swan Lake LLC, June 13, 2005.* On July 8 DEC again issued a letter to the developer that discusses a litany of environmental law violations and restates the

DEC cease and desist order imposed on the construction site in June and warns of enforcement actions for past violations. *Letter of Scott E. Sheeley, Deputy Regional Permit Administrator to Randel Wasson, Wasson Engineering, July 8, 2005.* The DEC identified issues for the two proposed subdivisions include: Endangered and Threatened Species, Freshwater Wetlands impacts, Stormwater management, and State Environmental Quality Review compliance. Despite the seriousness and importance of these issues, on-site construction of Phase I continues unabated. Apparently, the developer is under considerable time pressure to complete road improvements on site by September 24, 2005. *Irrevocable Letter of Credit, First National Bank of Jeffersonville to the Town of Liberty, March 30, 2005.* Thus, for the following reasons, we believe that the record in this case clearly establishes the need for immediate action and Department should take all necessary steps to enforce its July 8 order. I write to request such immediate DEC action with respect to the cease and desist order by referring the case to the Attorney General's Office, and to take further action consistent with the provisions of the Environmental Conservation Law as set forth below.

**Phase I of the Project Has Evaded a State Environmental Quality Review Act -  
Environmental Impact Statement Review.**

The July 8 DEC letter was instigated by the considerable public interest generated by the Swan Lake Estates project. Many long-term and year around residents of Swan Lake who live on or adjacent to the lake, such as my client, were shocked and dismayed to learn that Phase I of the project - *that could significantly impact American Bald Eagle breeding sites and protected wetlands* - was approved with little public participation and no environmental impact study. Thus there was no publicly reviewed mitigation of potentially significant environmental impacts as required by State law. The environment surrounding Swan Lake is ecologically rich and diverse for species in addition to the bald eagle, which are attributes that local residents actively enjoy on a daily basis.

The Planning Board's SEQRA negative declaration for the Phase I did not require full environmental impact statement review, in part because of a DEC clerical error in notifying the Town about the bald eagles, which on January 24 indicated that "no records of known occurrences of rare or state-listed animals or plants" exist on site. *Letter of Betty Ketcham,*

*Information Services, New York Natural Heritage Program to D. Randel Wasson, Wasson Engineering, January 24, 2005. On May 24, this view was retracted when DEC indicated that*

According to Department records, the site is located near known records of bald eagles (*Haliaeetus leucocephalus*), a federally- and state-listed threatened species. The potential impacts of the proposed project [Phase I] should be fully evaluated during the review of the project pursuant to SEQRA.

*Letter of Scott E. Sheeley, Deputy Regional Permit Administrator to Donald Nichals, Chairman of the Town of Liberty Planning Board, May 24, 2005. DEC correspondence aside, there was widespread knowledge of the bald eagles on the lake by local residents, including my client. In fact, the developer actively promoted that fact that there were bald eagles on site as a reason for people to buy into his Swan Lake Estates project. "Eagle Angst," Town Crier, May 18-May 24, attached hereto. Contrary to the DEC suggested "full evaluation" pursuant to SEQRA, there would be no such review, the Planning Board granted final subdivision approval on April 4.*

#### **DEC Should Require Full SEQRA Compliance for Any DEC issued Permits for Phase I.**

Phase I of the Swan Lake Estates project (Kelly Bridge Road subdivision) has evaded full environmental impact statement review. The fact that endangered and threatened bald eagles are present in and around Phase I is a sufficient basis to require a full environmental impact statement for Phase I. SEQRA requires government to take a 'hard look' at the environmental impacts before undertaking any action on projects like Swan Lake Estates. *ECL Article 8.* SEQRA is both a procedural and substantive statute that must be fully complied with for the actions of government to be legally valid. If there is "the potential for at least one significant adverse environmental impact" an Environmental Impact Statement should be required. *6 NYCRR § 617.7(a)(1).* This incredibly low legal threshold is met for both the Phase I and Phase II of this project, based upon the possible threat to the bald eagle population. As DEC has already found

Based on DEC staff inspections of the project areas, nest sites are located within the Lake Marie Road project boundaries and on the western shore of Swan Lake. These nest sites will likely be adversely impacted by the project as currently proposed, and mitigation measures should be incorporated into each project to avoid and minimize impacts to bald eagles.

*Letter of Scott E. Sheeley, Deputy Permit Administrator, July 8, 2005 at 2.* The fact that no such environmental review and consideration of mitigation measures under fully public scrutiny has occurred for Phase I violates both the letter and spirit of SEQRA. Thus, any DEC permits for Phase I that similarly do not require SEQRA review and the full consideration of the potentially significant adverse environmental impacts would similarly violate SEQRA. Thus, we submit that DEC action of approving any permit required for Phase 1 is a "government action" requiring full SEQRA compliance including consideration of whether a full environmental impact statement is required under the environmental conservation law. I write to request that DEC require such full SEQRA review for each permit.

#### **DEC Should Serve as Lead Agency for Phase II.**

Environmental review concerns also exist for Phase II of the Swan Lake project. The DEC has yet to receive the necessary documentation from the project sponsor and the bald eagle and its nesting sites are also found in Phase II. DEC has indicated that it would be the appropriate lead agency based upon the potential for adverse impacts to the eagles. *Letter of Scott E. Sheeley, Deputy Regional Permit Administrator to John Schmidt, Chairman, August 16, 2005.* Without the adequate documentation, the DEC maintains it cannot determine if the Town of Liberty Planning Board should be the Phase II SEQRA lead agency. Despite this finding and without explanation, DEC indicated that it will be an involved agency for environmental review "of these projects and seek the necessary information to ensure compliance with all applicable State environmental regulations." *Letter of Marc Moran, Regional Director to Mr. And Mrs. Soterios T. Karras, August 30, 2005.* It is unclear to what environmental review of "projects" (Phase I) this letter is referring to. With respect to the environmental sensitivity of the project, which as in Phase I, likely goes well beyond the threatened and endangered species issues, the particular expertise of the DEC as lead agency is required to comply with the provisions of Article 8 of the ECL. DEC was correct on this initial finding. If DEC has in fact made a determination to not serve as lead agency, we ask that the Department revisit such decision and reverse its determination, but should it choose not to take lead agency status for Phase II, please provide the basis of such decision.

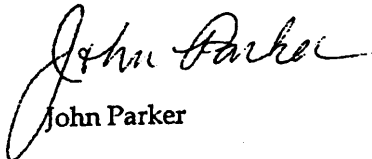
**Swan Lake Level Has Been Lowered By the Developer.**

My client has been informed that the Army Corps of Engineers inspected the Swan Lake Dam in July and determined that repairs were necessary. On its own initiative, the developer actively lowered the level of the lake by approximately 3 to 4 feet between July 14 and 16. It was common knowledge at the time that the area was suffering drought conditions as the Town's own warning bulletin indicates. The draining of the lake was reported to the DEC and an ECO responding on July 16 was told by the lake keeper that the water was, in fact, being drawn down to allow for repairs and reconstruction of the dam. The lake draining had considerable environmental impacts. DEC was informed on August 3 that a significant "mussel kill" on the newly uncovered lake shoreline was plainly visible. The DEC has yet to take any legal action with respect to this issue, or reach any legal conclusions regarding its jurisdiction, even though my client has sought action by written correspondence, the most recent dated August 19, 2005. DEC has plainly concluded that a Protection of Waters permit is required for "disturbance of bed and banks of a tributary of Swan Lake." *Letter of Scott E. Sheeley, Deputy Regional Permit Administrator, August 16, 2005.* When will such determination be made with respect to draining the lake and preparation of repairs of the dam for the lake?

With respect to any additional action by the Department on Swan Lake Estates, I request that my Client be considered an interested person and be copied on all Departmental documents and meetings. Please forward any such documentation to my office at the above listed address.

I look forward to your reply, and to the Department's prompt action to address the numerous environmental issues and questions with respect to enforcement of the environmental conservation law that have been requested in this case, by this letter, and to the Department's referral of this case to the Attorney General's office. Swan Lake is a considerable environmental jewel that must be protected to the fullest extent of the law.

Respectfully Submitted,

  
John Parker

Letter to Marc Moran, Regional Director  
DEC Region 3

September 12, 2005  
page 6 of 6

w/ encl.

New York State Department of Environmental Conservation  
Vince Altieri  
Division Attorney  
Region #3 Office  
21 South Putts Corner Road  
New Paltz, New York 12561-1620  
Fax: 845.255.3042

Denise Sheehan  
Acting Commissioner  
NY State DEC  
625 Broadway  
Albany NY 12233-4757  
Fax: 518.402.8541 (Attn: Caitlin)

Judith Enck  
NYS Office of the Attorney General  
Environmental Protection Bureau  
Justice Building 12224

US Fish and Wildlife  
Director - Field Office  
3817 Luker Road  
Cortland, NY 13045

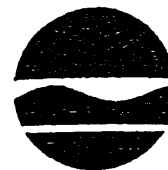
Lt. Richard Tomer  
US Army Corps of Engineers  
Jacob K. Javits Federal Building  
26 Federal Plaza, Room 2109  
New York, NY 10278-0090

Dr. William Pammer,  
Director  
Sullivan County Division of Planning  
Government Center  
100 North Street  
PO Box 5012  
Monticello, New York 127701

Chris White  
Congressman Maurice Hinchey's Office  
Middletown, NY



**New York State Department of Environmental Conservation**  
**Division of Water, Region 3**  
21 South Putt Corners Road, New Paltz, New York 12561-1696  
Phone: (845) 256-3157 • FAX: (845) 255-3414  
Website: [www.dec.state.ny.us](http://www.dec.state.ny.us)



Erin M. Crotty  
Commissioner

June 13, 2005

**NOTICE OF VIOLATION**

**CERTIFIED MAIL**  
**RECEIPT # 7003 2260 0007 6255 6371**

Mr. Tony Murolo  
AJM at Swan Lake LLC  
11 Wendover Drive  
Huntington NY 11743

Re: **Notice of Violation:**  
**Failure to gain coverage under SPDES Permit for Stormwater Discharge from**  
**Construction Activity (GP 02 01), Water Quality Violation.**  
**Cease & Desist Directive**

Dear Mr. Murolo,

The AJM at Swan Lake Estates subdivision, Town of Liberty, is a construction project which has resulted in a total site disturbance of greater than one acre. Projects which result in one or more acres of disturbance are required to gain coverage under this Department's SPDES General Permit for Stormwater Discharges from Construction Activity (GP-02-01). Our records do not indicate that the project has gained coverage under this Permit. Failure to gain coverage under the General Permit may result in the unauthorized discharge of pollutants from the construction activity. The unauthorized discharge of pollutants would be in violation of Article 17-0803 of the NYS Environmental Conservation Law (ECL), which is subject to penalties of up to \$37,500 per day per violation. You must immediately gain coverage by submitting a Notice of Intent (NOI) consenting to the terms of the aforementioned permit, mailing it to the address at the top of the NOI; and sending a copy to this office. This permit in its entirety may be found on the NYS DEC Website [www.dec.state.ny.us/dow](http://www.dec.state.ny.us/dow).

Additionally, a Water Quality violation was observed on June 6, 2005. This violation is a contravention of the NYS Standards (6NYCRR, Chap. X, Part 703.2) and violates Article 17-0501 of the NYS ECL which is also subject to penalties of up to \$37,500 per day per violation. These violations are being referred to our Division of Legal Affairs, and appropriate compliance action is pending.

Since construction activity has commenced without coverage under the General Permit, you must Cease and Desist all construction activities, exclusive of those activities necessary to prevent the contravention of the New York State Water Quality Standards in the receiving water, until this Department notifies you in writing that construction activities may re-commence. Failure to abide by this Cease & Desist Directive will result in additional penalties under the ECL.

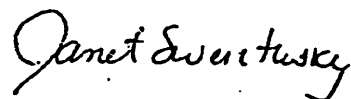
Aggressive Sediment and Erosion control measures must be initiated immediately, and be in conformance with measures found in the NYS Standards for Erosion and Sediment Control. These should include, but not be limited to: properly installed silt fencing protecting natural drainage ways and roadways; exposed soils stabilized; lot entrances stabilized; road gullies stabilized; etc. Soil disturbance must be limited to 5 acres or less at any one time. Silt fencing/hay bales are unacceptable in a concentrated flow.

A Certified Professional must inspect this project weekly, and after every ½ inch of rain of sediment and Erosion control measures. This inspection log must be kept on site for review by any regulatory authority. A copy of the NOI, the Permit ( GP-02-01), the Project's Storm Water Pollution Prevention Plan (SWPPP) and corresponding Site Plans must also be kept on site.

The above corrective measures must be implemented immediately to prevent further contravention of NYS Water Quality Standards. All erosion and sediment control measures must be properly installed, continuously maintained, and modified as necessary to prevent the contravention of the NYS Water Quality Standards in the receiving water.

I can be reached at 845-256-3159 if you have questions.

Sincerely,



Janet Swentusky  
Division of Water

cc: Town of Liberty Planning Department  
Randy Wasson

**New York State Department of Environmental Conservation**  
**Region 3, Division of Environmental Permits**  
 21 South Park Corners Road, New Paltz, NY 12561-1636  
 (845) 255-3000 FAX (845) 255-3042  
 Website: [www.dec.state.ny.us](http://www.dec.state.ny.us)



Cynthia M. Stinson  
 Acting Commissioner

July 8, 2005

Via Facsimile (845-292-0010) and U.S. Mail

Randal Wasson  
 Wasson Engineering  
 31 North Main Street  
 Liberty, New York 12754

Re: **AJM at Swan Lake Estates LLC - Kelly Bridge Road and Lake Marie Road Subdivisions**  
 DEC Per-Application No. 3-4835-00245/00001  
 Town of Liberty, Sullivan County

Dear Mr. Wasson:

The NYS Department of Environmental Conservation (DEC) has reviewed additional information provided by your office concerning the above-referenced projects.

Information provided for the Kelly Bridge Road subdivision included a Stormwater Pollution Prevention Plan and a plan set consisting of 18 sheets. Information provided for the Lake Marie Road subdivision included a single plan sheet (Sheet No. 1) entitled "Site Plan - Lake Marie", dated May 3, 2005. In addition, DEC Staff have inspected the sites on several occasions within the last several weeks to investigate issues related to stormwater and State-listed species. Based on our review of the information provided and staff site inspections, we offer the following comments:

**DEC Jurisdiction**

**Kelly Bridge Road Subdivision**

According to the plans provided, a boat launch and "sand pipe" will be constructed as part of this project. An Article 15, Protection of Waters Permit is required for construction of the sandpipe. Any excavation or fill below the mean high water line of Swan Lake for construction of the boat launch also requires a Protection of Waters Permit. In addition, an Article 24, Freshwater Wetland permit will be required for any disturbance within State-designated Freshwater Wetland LW-22 or its 100-foot adjacent area. Based on a recent site inspection by DEC Staff, the limits of Freshwater Wetland LW-22 include areas along the western and southern limits of the project area. A Freshwater Wetland permit will be required for development of the lake access lot and may also be required for the construction of residential structures on some lots.

**Lake Marie Road Subdivision**

The Lake Marie Road subdivision contains portions of State-designated Freshwater Wetland LW-16 (Class II) and two protected tributaries of Swan Lake (DEC Water Index Nos. D-10-22-P128-1a and -2; Class B(I)) (see enclosed map). An Article 15, Protection of Waters permit is required for the proposed roadway and driveway crossings. In addition an Article 24, Freshwater Wetland permit is required for any proposed disturbance within the wetland or 100-foot adjacent area.

In addition, both projects will require coverage under the SPDES General Permit for Stormwater Discharges from Construction Activities (GP-02-01). Coverage under this SPDES general permit is not granted until all necessary permits have been applied for and obtained from the Department. Consequently, there is currently no authorization for coverage under this SPDES General Permit for either of these projects. (See additional comments related to stormwater below).

Ms. Watson, July 8, 2005  
 ADM at Swan Lake Estates, LLC  
 Page 2

As you should be aware, the Department is obligated to conduct a concurrent review of a SWPPP and all applications for DEC permits related to a project and, therefore, all applications for DEC permits must be submitted with the SWPPP prior to the initiation of construction of any phase or stage of a project. In certain instances, the Department's review also requires evaluation of archaeological and historic resources, various project alternatives, and visual impacts, all of which must necessarily occur before the initiation of any construction activities on a site. Therefore, contrary to the comments in your letter dated May 31, 2005 regarding delayed permit applications, sufficient detail for regulated activities should be developed and permit applications submitted to the Department at the earliest opportunity in the planning stages of a project. To date, we have received no permit applications related to either project.

#### Threatened & Endangered Species

According to Department records, both the Lake Marie Road site and Kelly Bridge Road site are located near known occurrences of bald eagles (*Haliaeetus leucocephalus*), a federally- and state-listed threatened species. Based on DEC staff inspections of the project areas, nest sites are located within the Lake Marie Road project boundaries and on the western shore of Swan Lake. These nest sites will likely be adversely impacted by the projects as currently proposed, and mitigation measures should be incorporated into each project to avoid and minimize impacts to bald eagles. Specifically, DEC staff have noted the following concerns with the proposed projects:

1. The proposed boat launch location within the Kelly Bridge Road subdivision is directly across from, and within 1,500 feet of, an active nest site.
2. Regardless of the boat launch location, increased boat traffic in the vicinity of the nest site during the breeding season may have impacts on nest success of the eagles.
3. Construction is proposed near nest trees within the Lake Marie Road subdivision, which in previous years had been used by the Swan Lake nesting pair.

To mitigate adverse impacts to bald eagles, a no-disturbance buffer zone 750 feet or more should be established around each nesting tree on the Lake Marie Road Subdivision Site. In addition, the boat launch on the Kelly Bridge Road site should be moved as far south as possible and boating traffic should be restricted in the vicinity of any nest sites during the breeding season. It may also be appropriate to limit the use of each lake access lot to non-motorized or electric-only motorized boats.

Without incorporation of the mitigation measures noted above, adverse impacts to bald eagles are likely to occur that would constitute a taking of a bald eagle and, therefore, a permit would be required from DEC under Article 11, Title 5 of the Environmental Conservation Law (ECL § 11-0535). However, please be advised that such a permit would not likely be granted. Because the bald eagle is also a federally-listed species, further approvals from the United States Fish and Wildlife Service are also likely to be required.

#### Stormwater Management

As noted above, there is currently no coverage under the SPDES General Permit for Stormwater Discharges from Construction Activities for either project. In addition, we have received no formal applications for DEC permits noted above. However, DEC staff have provided preliminary comments on the Stormwater Pollution Prevention Plan (SWPPP) for the Kelly Bridge Road Subdivision. Please see the enclosed memo from Ms. Janet Swensky dated June 23, 2005.

Mr. Watson, July 8, 2005  
 AJM at Swan Lake Estates, LLC  
 Page 3

Notwithstanding our preliminary comments on the SWPPP for the Kelly Bridge Road subdivision, no coverage under the SPDES General Permit is currently in effect for the project. Therefore, further clearing and construction activities at the site should cease and the area should be stabilized to prevent erosion from the site. Any past and future water quality violations resulting from clearing and construction activities at the site will be investigated and any necessary enforcement action will be taken.

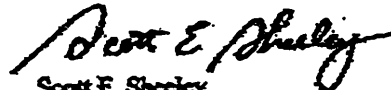
State Environmental Quality Review Act (SEQR)

We have no record that the Town of Liberty provided the DEC with a copy of the SEQR Full EAF, project applications, or project plans in the course of its SEQR review for either project. In addition, we have received no additional information related to either project from the Town of Liberty Planning Board in response to our request dated May 24, 2005. It is our understanding from recent conversations with you that the Town of Liberty may undertake a coordinated SEQR review of the Lake Marie Road Subdivision site.

When a coordinated SEQR review has not been performed, the Department will be obligated to undertake its own review pursuant to the requirements of SEQR upon receipt of applications for the DEC permits noted above. Additional information and details regarding such project's potential impacts on water quality, wildlife, State-listed species, freshwater wetlands, streams, and other relevant environmental impacts may be requested to assist us in our Determination(s) of Significance.

By copy of this letter we are advising project representatives and Town of Liberty officials of the need for these approvals and of our comments on these projects. We believe a meeting between the Department, the project sponsor, and any other involved parties may be helpful in addressing the regulatory and environmental issues raised above. If you have any questions regarding this matter, or would like to schedule a meeting, I may be reached at 845-256-3653.

Sincerely,



Scott E. Sheeley  
 Deputy Regional Permit Administrator

Enclosures

cc: With Enclosures:

M. Moran, Regional Director  
 V. Ahern, Regional Attorney  
 W. Rudge, Natural Resources Supervisor  
 M. Dake, Regional Permit Administrator  
 W. Rosenbach, DEC Region 3  
 S. Jone, DEC Region 3  
 P. Nye, DEC Albany (4754)  
 J. Swensky, DEC Region 3  
 D. Gaugler, DEC Region 3  
 Supervisor and Town Board, Town of Liberty, via certified mail RRR # 7003 2260 0007 6526 3881  
 Town of Liberty Planning Board, via certified mail RRR # 7003 2260 0007 6526 3867  
 U.S. Fish & Wildlife Service, Cortland  
 U.S. Army Corps of Engineers, NY District  
 AJM at Swan Lake Estates, LLC, via certified mail RRR # 7003 2260 0007 6526 3874



New York State Department of Environmental Conservation  
Region 3, Division of Environmental Permits  
21 South Putt Corners Road, New Paltz, NY 12561-1896  
(845) 256-3000 FAX (845) 255-3042  
Website: www.dec.state.ny.us



Denise M. Sheehan  
Acting Commissioner

August 16, 2005

Certified Mail RRR #7003 2260 0007 6256 3997

John Schmidt, Chairman  
Town of Liberty Planning Board  
120 North Main Street  
Liberty, New York 12754

Re: AJM at Swan Lake Estates LLC - Lake Marie Road Subdivision  
DEC Pre-Application No. 3-4836-00248/00001  
Town of Liberty, Sullivan County

Dear Mr. Schmidt:

The NYS Department of Environmental Conservation (DEC) has reviewed the State Environmental Quality Review Act (SEQR) lead agency coordination request for the above-referenced project, which we received on August 10, 2005. The coordination notice provided to DEC consisted of a single page notice dated August 2, 2005 with no attachments or enclosures.

**DEC Jurisdiction**

Based on our review of a preliminary subdivision plat and location map provided to the Department by the sponsor's consultant, the project will require the following DEC permits:

1. Article 15, Protection of Waters - For proposed disturbances to the bed and banks of a tributary of Swan Lake [DEC Water Index No. D-10-22-P128-2; Class B(T)].
2. Article 24, Freshwater Wetlands - For proposed disturbances within State-designated Freshwater Wetland LW-16 and its 100-foot adjacent area.
3. Compliance with the State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activities (GP-02-01) - For the disturbance of over one acre of land area.

By copy of this letter we are advising project representatives of the need for these approvals. As discussed at our recent meeting, no coverage under the SPDES General Permit noted above can be authorized by the Department until all necessary DEC permits are applied for and issued. Therefore, until DEC permits are applied for and issued, no site clearing, grading or other construction activities associated with this project should take place. We have received no applications for any DEC permits related to this project to date. It is possible that the DEC permit requirements listed above may change based on additional information received or as project modifications occur.

**Lead Agency Designation**

During our recent meeting at the DEC New Paltz office we discussed potential impacts to bald eagle nest sites located on the project site. The bald eagle is a State- and federally-listed threatened species and is a natural resource of statewide and national concern. Therefore, DEC would be the appropriate lead agency based on the criteria found in SEQR regulations if there is a potential for adverse impacts to this species [see 6 NYCRR Part 617.6 (b) (5)]. It is possible that a permit under NYS Environmental Conservation Law Section 11-0535 could be required if the Department determines that a "take" of this species is likely to result from this project.

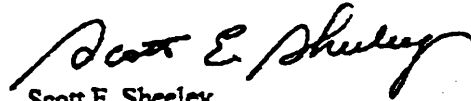
Mr. Schmidt; August 16, 2005  
AJM at Swan Lake Estates, LLC - Lake Marie Road  
Page 2

Based on our discussion with the project sponsor, and as noted in our prior letter to Mr. Randel Wasson dated July 8, 2005, additional evaluation of the project site is necessary and project changes may be required to adequately mitigate potential adverse impacts to the bald eagles and nests on the site. Since our meeting, the development of appropriate mitigation measures has not yet taken place and the Department currently has insufficient information to agree to the Town of Liberty Planning Board acting as the SEQR lead agency for this project.

In addition, pursuant to SEQR regulations [6 NYCRR Part 617.6 (b) (3) (i)], the coordinating agency must transmit a copy of Part 1 of the Environmental Assessment Form and a copy of any application it has received to all involved agencies along with its lead agency coordination notice. The Department did not receive this information with the Town of Liberty Planning Board's notice. To assist us in our position regarding lead agency designation, please provide the required information.

If you have any questions regarding this matter, I may be reached at 845-256-3050.

Sincerely,



Scott E. Sheeley  
Deputy Regional Permit Administrator

cc: M. Moran, Regional Director  
V. Altieri, Regional Attorney  
W. Rudge, Natural Resources Supervisor  
M. Duke, Regional Permit Administrator  
W. Rosenbach, DEC Region 3  
S. Joule, DEC Region 3  
P. Nye, DEC Albany (4754)  
J. Swentusky, DEC Region 3  
D. Gaugler, DEC Region 3  
Supervisor and Town Board, Town of Liberty  
U.S. Fish & Wildlife Service, Cortland  
AJM at Swan Lake Estates, LLC  
R. Wasson, P.E.



**New York State Department of Environmental Conservation  
Office of the Regional Director, Region 3**

21 South Putt Corners Road, New Paltz, New York 12561-1620  
Phone: (845) 256-3003 • FAX: (845) 255-3042  
Website: www.dec.state.ny.us



August 30, 2005

Mr. and Mrs. Soterios T. Karras  
87 Redwood Lane  
Swan Lake, NY 12783

Dear Mr. and Mrs. Karras:

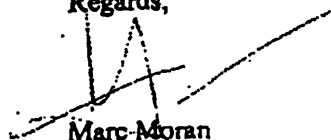
Thank you for your recent letter regarding two proposed housing developments near Swan Lake in the Town of Liberty, Sullivan County. The New York State Department of Environmental Conservation (Department) has received several inquiries related to these proposals, which include a 20-lot residential subdivision off Kelly Bridge Road and a 20-lot residential subdivision off Lake Marie Road.

As an involved agency pursuant to the State Environmental Quality Review Act (SEQR), the Department has provided written comments to the project sponsor and the Town of Liberty Planning Board. For your information, I have enclosed a copy of our letter dated July 8, 2005 to Mr. Randel Wasson, P.E., and a copy of our most recent letter to the Town of Liberty Planning Board dated August 16, 2005. In addition, Department staff in program areas related to wetlands, stormwater, endangered species, and environmental permits have been alerted to these projects and have been active in monitoring both sites to ensure compliance with State environmental laws and take appropriate enforcement action, when necessary.

Please be assured that the Department will continue to participate in the environmental review of these projects and seek the necessary information to ensure compliance with all applicable State environmental regulations. I hope you find this information helpful in your understanding of the Department's involvement with these proposals.

Again, thank you for sharing your concerns regarding this matter.

Regards,



Marc Moran  
Regional Director

Enclosures



# The Towne Crier

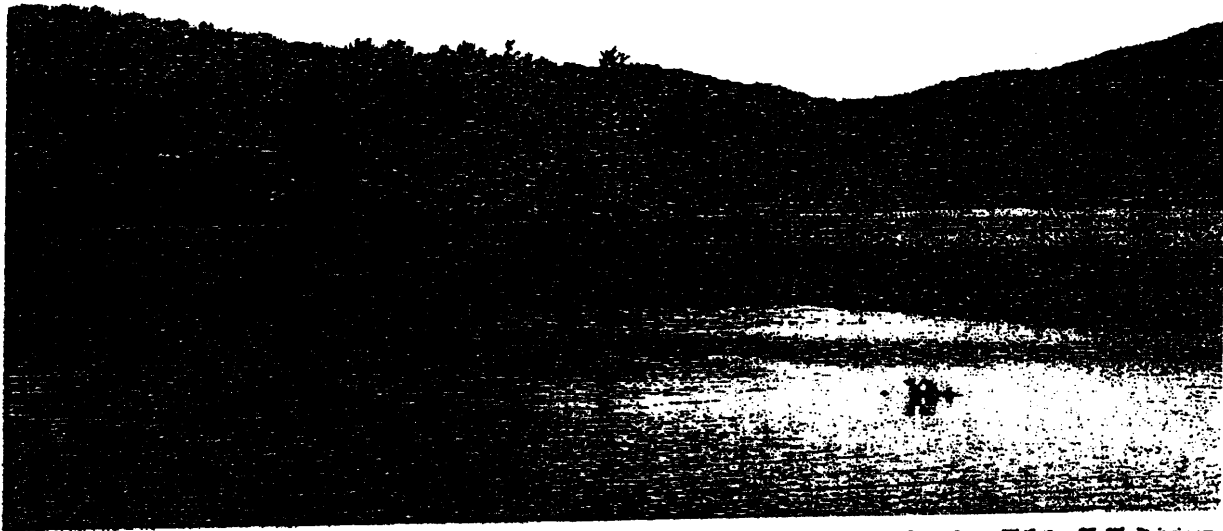
MAY 18 - MAY 24, 2005  
Volume 13, Issue 20

Published every  
Wednesday

FREE SPEECH THE WAY IT WAS MEANT TO BE

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75 CENTS



## Eagle Angst

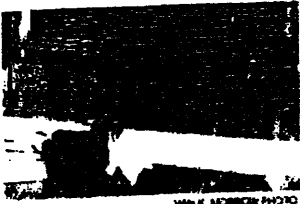
■ *Swan Lake residents fear for well-being of national bird as development moves forward.*

► Story on Page 5



BREATH GRIFF PHOTO





WIKI LONDON PHOTO

# Puppet Piscatorial

*The fish to wish upon in next month's parade.*

PAGE 7



ASOK DOLL PHOTO

# Kudos from Red Cross

*It's not all play for Forestburgh producer.*

PAGE 13

▶ WHAT'S HAPPENING - CRIER CALENDAR, PAGE 20, 21

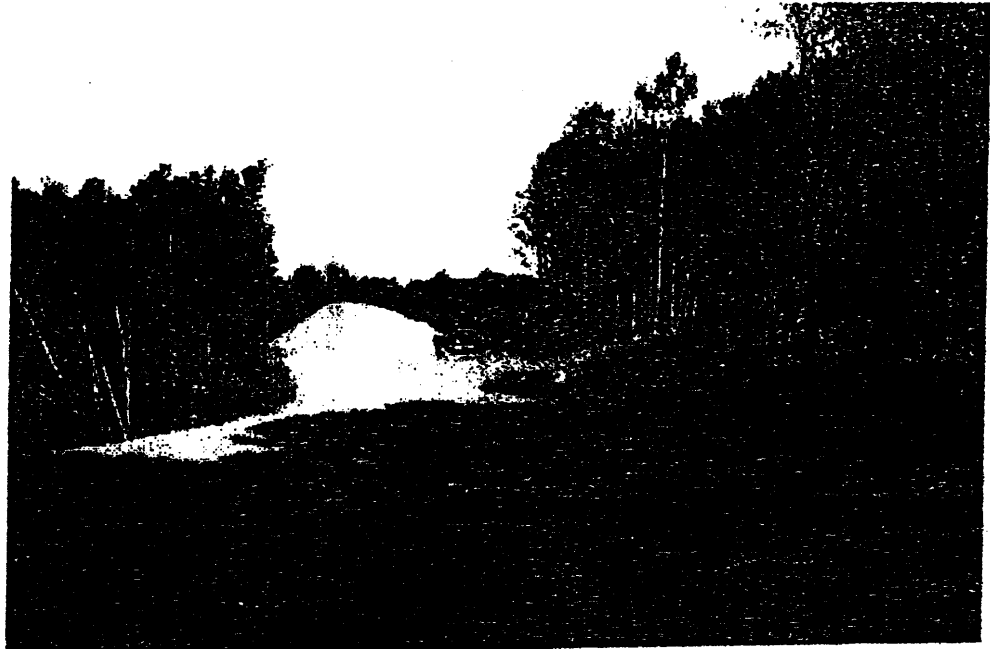
50

May 18 - May 21 2005

THE TOWNECRIER 5



**ON THE COVER:** A view across Swan Lake toward the general vicinity of a bald eagle's nest; and, on the periphery of a posted area, Chris Karras points out that there is acknowledgement from the state of the sensitive nature of some lands around Swan Lake. The "critical" area is located across the lake from the nesting spot and up Briscoe Road by about a mile from the development.



# From Soaring Spot to Sore Spot

■ Residents wonder if new subdivision will force eagles out of Swan Lake.

When 19-year-old Christopher Karras read his college essay to the Town Board Monday night, he gave a stirring case for the protection of the American Bald Eagle.

"The fight to save these eagles will not be easy," Karras said, "because of the amount of money at stake."

The thing is, Karras did not create his essay from thin air. His inspiration came from real life.

**Story by Barbara Greif**  
**The Towns Crier**  
Monday night, a group of Swan Lake residents told the Liberty Town Board they were worried for the welfare of bald eagles that also live at Swan Lake. Some say they have seen up to a dozen eagles there. At least one nesting pair is known to live in a tree along the undeveloped lake shore.

The birds, these residents fear, are about to leave town. Heavy machinery and road construction has already begun on a subdivision of 20 luxury homes on the north shore of the lake. It's phase one of a two-phase project with the next phase scheduled to be closer to the eagles' nesting area.

People like Cora Edwards, the Karras family and several of their neighbors turned out at the town meeting to learn "where to start" in their quest to better protect the eagles.

They are a group that, up until this point, has only organized in order to "adopt" their local road -- they pick up stray garbage and make sure the shoulders are free of trash. The maze of public agencies that gets involved in approving subdivisions was new to them.

But in just a few days time, they started a petition drive, made phone calls and filed freedom of information requests with the town clerk in order to get documents.

They found, to their dismay, that the first

sidored a threatened species and remains a federally protected bird.

Extensive efforts have been made to protect and monitor the comeback of the bald eagle in New York State. The bird now appears on magazine covers and in brochures which tout tourism in places like Sullivan County.

Despite the presence of eagles on Swan Lake, the planning board did not require an Environmental Impact Study for phase one of the subdivision. The residents feel this was a mistake and that the construction alone could cause the eagles, "in violation with their wings," as Edwards said, "and fly away."

"We want an environmental review," said Cindy Karras.

Monday night, the Town board members listened to their concerns, but emphasized to the residents that they were in the wrong place.

The planning board which approved the subdivision is a free-standing body that's not under the control of the town board, Town Attorney Ken Klein told the residents.

Still, their plea about the eagles did not go without notice.

Lynn Killian, the town board member who is liaison to Swan Lake, said she spent three days looking over the documents and visiting the lake. She noted there's been some accommodation made for the birds and pointed out that an area around the eagles' nest has been preserved as undeveloped in the plans.

But Killian added, "I am personally concerned about the whole process and I'm working to help you find the path you have to go on," she said.

Some in the town board audience advised the residents they'd have to take their case to the state Department of Environmental Conservation.



**HAVING ENJOYED** the presence of Bald Eagles near their home for more than five years, Chris and Sam Karras are among a group of Swan Lake residents who are concerned over the effect of construction and a new subdivision on the lake.

while the second phase, in which 19 homes are planned, is nearer to the nest area, there's already been provisions made to protect the birds.

Each of the subdivisions exceeds 100 acres; the lots are large, 5 acres and more. The homes are geared toward the second home market and are expected to sell from between \$500,000 to \$1 million each. The second phase is now before the planning board but has not been approved.

Murphy said it would be counterproductive to disturb the habitat or chase away the eagles.

"They are a beautiful wildlife resource," he

emphasized. "Swan Lake is a unique ecology and not all the geese that laid the golden egg."

In this case, Town of Liberty Planning Board chairman John Schmidt said the board followed the advice of the state Department of Environmental Conservation in making the determinations about the first subdivision and in granting the approval for phase one.

Meanwhile, residents fear that if the first construction goes through, it could include a steady stream of heavy trucks on an often used road that could spell an even sadder news for the eagles. The birds are notoriously sensitive to human disturbance, especially

phase has been fully approved. They also found out that the planning board checked off a box labeled "no" when the environmental assessment form asked if the site contains any species of plant or animal life that is identified as threatened or endangered.

That was the finding despite the fact that some of the lake shore at Swan Lake has been marked as home to endangered species, though which species is not named.

For many years, the bald eagle was listed as an endangered species, because the population has made a comeback, it is now con-

Others mentioned an Article 78 proceeding which is essentially a lawsuit against a governmental body. In this case, the lake residents would have to sue the town planning board to overturn the approval or halt the construction.

The subdivision is planned and owned by AJM Associates of Huntington, NY, on Long Island. AJM also owns the lake.

Tony Muroko of AJM said the presence of eagles "certainly was taken into account" in regard to the subdivision. The first phase, he said, was not close to the eagles' nest. And

said, "There's no reason for me to displace any of that; it doesn't make any sense."

He went so far as to say he would be happy to answer questions about the plans at the next planning board meeting on June 7.

Knowing that some development is beneficial to the town and its tax base, the residents note they are not flat-out opposed to the plan.

"We're not anti-development," said Cora Edwards. "We're for sustainable, ecological development. We want the developer to rec-

during their breeding season, which is the spring.

People like the Karras family - and the close to 10 people who've signed petitions of concern for the eagles - feel there has got to be immediate action taken to make sure the eagles are not disturbed.

"I want them to do the right thing here," said Cindy Karras.

*The next meeting of the Town of Liberty Planning Board takes place Tuesday, June 7, at 7 p.m. at Liberty Town Hall on Main Street.*



*McKean/Bank*

MAIN OFFICE  
JEFFERSONVILLE, NY 12748  
(845) 482-4000

March 30, 2005

*Irrevocable Letter of Credit # 0287*

Town of Liberty  
120 North Main St  
Liberty, NY 12754

RE: AJM @ Swan Lake Estate, LLC - Subdivision

Gentlemen/Mesdames:

This letter is our irrevocable credit in favor of the Town of Liberty, Sullivan County, New York (hereinafter "the Town"), available by your drafts at sight drawn on us for a sum not exceeding Six Hundred Fifty-Two Thousand, Four Hundred Seventy-Five, and 00/100 Dollars (\$652,475.00) for the account of AJM @ Swan Lake Estate, LLC (hereinafter "the Developer"), to be accompanied by your signed statement that drawing is due to the default or failure to perform by the Developer of the following improvements on or before September 30, 2005:

The construction of a 7,140 lf private road and cul-de-sac and associated Improvements (hereinafter "the Road") in accordance with a Subdivision Plan prepared by Wasson Engineering, dated September 24, 2004, and as thereafter revised, and as given conditional final approval by the Town of Liberty Planning Board (hereinafter "the Subdivision Plan").

Each draft drawn under this letter of credit must be accompanied by a signed certification of an official of the Town stating that the Developer has failed to complete construction of the Road in compliance and in conformance with the Subdivision Plan and the agreement between the Town and the Developer with respect thereto and that the amount drawn down represents the amount of money necessary to complete the Road.

We engage with you that drafts drawn and presented in compliance with the terms of this letter of credit shall be duly honored by us if presented at any of our offices on or before November 30, 2005, no later than 4:00 p.m.

Very truly yours,

The First National Bank of Jeffersonville

By: *Andrew McKean*  
Andrew McKean, Vice President





**SENDER: COMPLETE THIS SECTION**

- Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Marc Moran  
Regional Director  
DEC Region 3  
21 South Putts Corner  
New Paltz, NY 12561

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  Addressee  
*x Beth Thornton*

B. Received by (Printed Name) C. Date of Delivery  
*Beth Thornton* *9/15/05*

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number  
(Transfer from service label)

7004 0750 0001 2125 7072



**EXHIBIT 3**



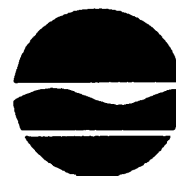
## New York State Department of Environmental Conservation

### Regional Director, Region 3

21 South Putt Corners Road, New Paltz, New York 12561-1620

Phone: (845) 256-3003 • FAX: (845) 255-3042

Website: [www.dec.state.ny.us](http://www.dec.state.ny.us)



Denise M. Sheehan  
Acting  
Commissioner

September 28, 2005

John L. Parker  
Attorney at Law  
565 Taxter Road, Suite 100  
Elmsford, New York 10523

Dear Mr. Parker:

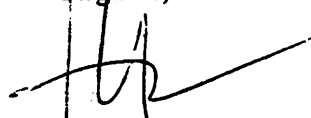
This replies to your letter of September 12<sup>th</sup>, on behalf of your client Cora Edwards, regarding the proposed development along Swan Lake in the Town of Liberty.

Earlier this month, Department of Environmental Conservation staff met with project representatives to review recent work at the Kelly Bride Subdivision site. Staff determined that no violations of the cease and desist order could be documented. An Order on Consent has been executed resolving the underlying violations, and the Order's compliance requirements have been reviewed with the project sponsor. I have enclosed a copy of the Consent Order as well as related correspondence, for your information. Department staff will monitor this site to assure compliance with the Consent Order and state environmental conservation law.

Department staff have met with the project sponsor and the Town of Liberty, and requested additional information regarding the need to protect state wetlands and bald eagle nesting sites on the property. The Department has deferred the question of leading the SEQR review of the Phase 2 Lake Marie Subdivision pending further submissions from the project sponsor. I have enclosed copies of letters dated July 8, August 16 and September 16 which more fully explain the Department's position. As explained in Scott Sheeley's July 8<sup>th</sup> letter to Mr. Randel Wasson, "[w]here a coordinated SEQR review has not been performed, the Department will be obligated to undertake its own review pursuant to the requirements of SEQR upon receipt of applications for the DEC permits noted above."

Thank you for bringing your concerns to my attention.

Regards,



Marc Moran  
Regional Director

John L. Parker  
September 28, 2005  
Page 2

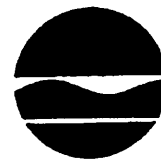
enclosures

cc: Cora Edwards (w/enclosures)

DEC: Scott Sheeley  
Margaret Duke  
Richard Baldwin  
Lenny Meyerson  
Vincent Altieri  
Bill Rudge  
Ted Kerpez

---

**New York State Department of Environmental Conservation**  
**Region 3, Division of Environmental Permits**  
21 South Putt Corners Road, New Paltz, NY 12561-1696  
(845) 256-3000 FAX (845) 255-3042  
Website: www.dec.state.ny.us

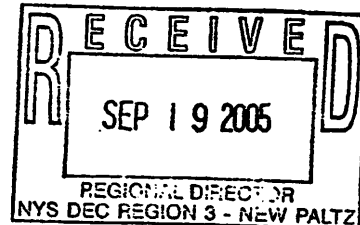


Denise M. Sheehan  
Acting Commissioner

September 16, 2005

Via Facsimile (845) 292-2562 and  
Certified Mail RRR #7005 0390 0005 4037 2838

John Schmidt, Chairman  
Town of Liberty Planning Board  
120 North Main Street  
Liberty, New York 12754



Re: AJM at Swan Lake Estates LLC - Lake Marie Road Subdivision  
DEC Pre-Application No. 3-4836-00248/00001  
Town of Liberty, Sullivan County

Dear Mr. Schmidt:

The NYS Department of Environmental Conservation (DEC) has reviewed the State Environmental Quality Review Act (SEQR) lead agency coordination request for the above-referenced project, which we received on August 23, 2005. The coordination notice provided to DEC consisted of a single page notice dated August 18, 2005 with the following enclosures: Full Environmental Assessment Form, copy of the Town of Liberty Subdivision Application, and a single-sheet site plan.

**DEC Jurisdiction**

Based on our review of a preliminary subdivision plat and location map provided to the Department by the sponsor's consultant, the project will require the following DEC permits:

1. **Article 15, Protection of Waters** - For proposed disturbances to the bed and banks of a tributary of Swan Lake [DEC Water Index No. D-10-22-P128-2; Class B(T)].
2. **Article 24, Freshwater Wetlands** - For proposed disturbances within State-designated Freshwater Wetland LW-16 and its 100-foot adjacent area.
3. **Compliance with the State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activities (GP-02-01)** - For the disturbance of over one acre of land area.

By copy of this letter we are advising project representatives of the need for these approvals. As discussed at our recent meeting, no coverage under the SPDES General Permit noted above can be authorized by the Department until all necessary DEC permits are applied for and issued. Therefore, until DEC permits are applied for and issued, no site clearing, grading or other construction activities associated with this project should take place. We have received no applications for any DEC permits related to this project to date. It is possible that the DEC permit requirements listed above may change based on additional information received or as project modifications occur.

**Lead Agency Designation**

During our recent meeting at the DEC New Paltz office we discussed potential impacts to bald eagle nest sites located on the project site. The bald eagle is a State- and federally-listed threatened species and is a natural resource of statewide and national concern. Therefore, DEC would be the appropriate lead agency based on the criteria found in SEQR regulations if there is a potential for adverse impacts to this

Mr. Schmidt; September 16, 2005  
AJM at Swan Lake Estates, LLC - Lake Marie Road  
Page 2

species [see 6 NYCRR Part 617.6 (b) (5)]. It is possible that a permit under NYS Environmental Conservation Law Section 11-0535 could be required if the Department determines that a "take" of this species is likely to result from this project.

Based on our discussion with the project sponsor, and as noted in our prior letter to Mr. Randel Wasson dated July 8, 2005, additional evaluation of the project site is necessary and project changes may be required to adequately mitigate potential adverse impacts to the bald eagles and nests on the site. Since our meeting, an additional on-site meeting with the project sponsor has been held and appropriate mitigation measures remain under development. Therefore, the Department currently has insufficient information to agree to the Town of Liberty Planning Board acting as the SEQR lead agency for this project.

If you have any questions regarding this matter, I may be reached at 845-256-3050.

Sincerely,

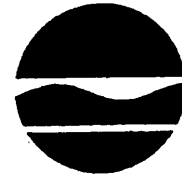


Scott E. Sheeley  
Deputy Regional Permit Administrator

cc: M. Moran, Regional Director  
V. Altieri, Regional Attorney  
W. Rudge, Natural Resources Supervisor  
M. Duke, Regional Permit Administrator  
W. Rosenbach, DEC Region 3  
S. Joule, DEC Region 3  
P. Nye, DEC Albany (4754)  
J. Swentusky, DEC Region 3  
D. Gaugler, DEC Region 3  
Supervisor and Town Board, Town of Liberty  
U.S. Fish & Wildlife Service, Cortland  
AJM at Swan Lake Estates, LLC  
R. Wasson, P.E.

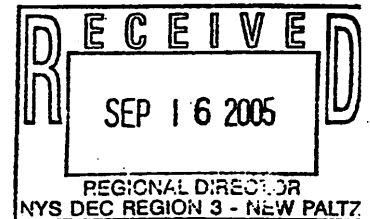


**New York State Department of Environmental Conservation**  
**Division of Legal Affairs, Region 3**  
21 South Putt Corners Road, New Paltz, New York 12561-1696  
Phone: (845) 256-3000 • FAX: (845) 255-3042  
Website: www.dec.state.ny.us



Denise M. Sheehan  
Acting Commissioner

September 14, 2005



Fred Eisenbud, Esq.  
Lamb & Barnosky, LLP  
534 Broadhollow Rd.  
PO Box 9034  
Melville, NY 11747-9034

Re: AJM at Swan Lake Estates - Order on  
Consent Case No. R3-20050621-53

Dear Mr. Eisenbud:

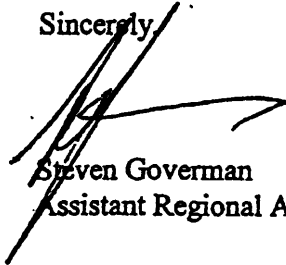
Based on the site inspection by Department representatives yesterday, it appears that the grading activities performed on the interior roadways to date, which was the subject of Ms. Swentusky's August 31 notice, was preparatory to placement of gravel to stabilize the area as required by the Order on Consent's Schedule A. Accordingly, the August 31 Notice of Violation is withdrawn. Additionally, Staff notes that the placement of silt fencing and erosion controls along the roadway is in compliance with Order on Consent as well.

AJM may continue placement of gravel on presently graded roadways, only as needed to stabilize exposed soil; however no gravel may be placed on the final approximate 300 feet leading up to the cul de sac or the cul de sac itself as these areas are proximate to regulated wetlands. Department Staff has determined that mulch may be utilized in these areas instead of gravel. AJM is not authorized to cut additional trees or to otherwise clear the site or excavate additional soil for the purposes of roadway construction, or to perform any other clearing or construction at the site until staff have completed their review of the project's Stormwater Pollution Prevention Plan, the requisite Department permits are issued, and coverage under the SPDES General Permit for Stormwater Discharge from Construction Activities (GP-02-01) is authorized.

Finally, this letter will serve to extend the time for placement of the gravel in the specified

roadway areas by ten (10) days to compensate for the time lost due to the stop work order.

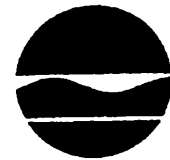
Sincerely,

A handwritten signature in black ink, appearing to be 'S. Goverman', is written over the typed name and title.

Steven Goverman  
Assistant Regional Attorney

cc: M. Moran  
J. Swentusky  
P. Ferricane  
V. Altieri  
S. Sheely  
P. Duke

New York State Department of Environmental Conservation  
Region 3, Division of Environmental Permits  
21 South Putt Corners Road, New Paltz, NY 12561-1696  
(845) 256-3000 FAX (845) 255-3042  
Website: www.dec.state.ny.us

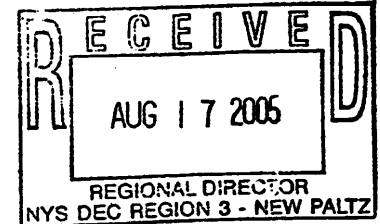


Denise M. Sheehan  
Acting Commissioner

August 16, 2005

Certified Mail RRR #7003 2260 0007 6256 3997

John Schmidt, Chairman  
Town of Liberty Planning Board  
120 North Main Street  
Liberty, New York 12754



Re: AJM at Swan Lake Estates LLC - Lake Marie Road Subdivision  
DEC Pre-Application No. 3-4836-00248/00001  
Town of Liberty, Sullivan County

Dear Mr. Schmidt:

The NYS Department of Environmental Conservation (DEC) has reviewed the State Environmental Quality Review Act (SEQR) lead agency coordination request for the above-referenced project, which we received on August 10, 2005. The coordination notice provided to DEC consisted of a single page notice dated August 2, 2005 with no attachments or enclosures.

**DEC Jurisdiction**

Based on our review of a preliminary subdivision plat and location map provided to the Department by the sponsor's consultant, the project will require the following DEC permits:

1. **Article 15, Protection of Waters** - For proposed disturbances to the bed and banks of a tributary of Swan Lake [DEC Water Index No. D-10-22-P128-2; Class B(T)].
2. **Article 24, Freshwater Wetlands** - For proposed disturbances within State-designated Freshwater Wetland LW-16 and its 100-foot adjacent area.
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**Lead Agency Designation**

During our recent meeting at the DEC New Paltz office we discussed potential impacts to bald eagle nest sites located on the project site. The bald eagle is a State- and federally-listed threatened species and is a natural resource of statewide and national concern. Therefore, DEC would be the appropriate lead agency based on the criteria found in SEQR regulations if there is a potential for adverse impacts to this species [see 6 NYCRR Part 617.6 (b) (5)]. It is possible that a permit under NYS Environmental Conservation Law Section 11-0535 could be required if the Department determines that a "take" of this species is likely to result from this project.

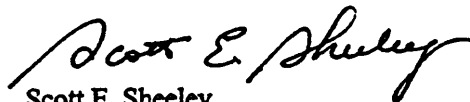
Mr. Schmidt; August 16, 2005  
AJM at Swan Lake Estates, LLC - Lake Marie Road  
Page 2

Based on our discussion with the project sponsor, and as noted in our prior letter to Mr. Randel Wasson dated July 8, 2005, additional evaluation of the project site is necessary and project changes may be required to adequately mitigate potential adverse impacts to the bald eagles and nests on the site. Since our meeting, the development of appropriate mitigation measures has not yet taken place and the Department currently has insufficient information to agree to the Town of Liberty Planning Board acting as the SEQR lead agency for this project.

In addition, pursuant to SEQR regulations [6 NYCRR Part 617.6 (b) (3) (i)], the coordinating agency must transmit a copy of Part 1 of the Environmental Assessment Form and a copy of any application it has received to all involved agencies along with its lead agency coordination notice. The Department did not receive this information with the Town of Liberty Planning Board's notice. To assist us in our position regarding lead agency designation, please provide the required information.

If you have any questions regarding this matter, I may be reached at 845-256-3050.

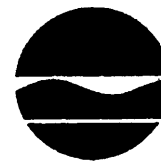
Sincerely,



Scott E. Sheeley  
Deputy Regional Permit Administrator

cc: M. Moran, Regional Director  
V. Altieri, Regional Attorney  
W. Rudge, Natural Resources Supervisor  
M. Duke, Regional Permit Administrator  
W. Rosenbach, DEC Region 3  
S. Joule, DEC Region 3  
P. Nye, DEC Albany (4754)  
J. Swentusky, DEC Region 3  
D. Gaugler, DEC Region 3  
Supervisor and Town Board, Town of Liberty  
U.S. Fish & Wildlife Service, Cortland  
AJM at Swan Lake Estates, LLC  
R. Wasson, P.E.

**New York State Department of Environmental Conservation**  
**Region 3, Division of Environmental Permits**  
21 South Putt Corners Road, New Paltz, NY 12561-1696  
(845) 256-3000 FAX (845) 255-3042  
Website: www.dec.state.ny.us

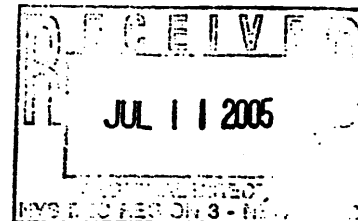


Denise M. Sheehan  
Acting Commissioner

July 8, 2005

Via Facsimile (845-292-0010) and U.S. Mail

Randel Wasson  
Wasson Engineering  
31 North Main Street  
Liberty, New York 12754



Re: AJM at Swan Lake Estates LLC - Kelly Bridge Road and Lake Marie Road Subdivisions  
DEC Pre-Application No. 3-4836-00245/00001  
Town of Liberty, Sullivan County

Dear Mr. Wasson:

The NYS Department of Environmental Conservation (DEC) has reviewed additional information provided by your office concerning the above-referenced projects.

Information provided for the Kelly Bridge Road subdivision included a Stormwater Pollution Prevention Plan and a plan set consisting of 18 sheets. Information provided for the Lake Marie Road subdivision included a single plan sheet (Sheet No. 1) entitled "Site Plan - Lake Marie", dated May 3, 2005. In addition, DEC Staff have inspected the sites on several occasions within the last several weeks to investigate issues related to stormwater and State-listed species. Based on our review of the information provided and staff site inspections, we offer the following comments:

**DEC Jurisdiction**

***Kelly Bridge Road Subdivision***

According to the plans provided, a boat launch and "stand pipe" will be constructed as part of this project. An Article 15, Protection of Waters Permit is required for construction of the standpipe. Any excavation or fill below the mean high water line of Swan Lake for construction of the boat launch also requires a Protection of Waters Permit. In addition, an Article 24, Freshwater Wetland permit will be required for any disturbance within State-designated Freshwater Wetland LW-22 or its 100-foot adjacent area. Based on a recent site inspection by DEC Staff, the limits of Freshwater Wetland LW-22 include areas along the western and southern limits of the project area. A Freshwater Wetland permit will be required for development of the lake access lot and may also be required for the construction of residential structures on some lots.

***Lake Marie Road Subdivision***

The Lake Marie Road subdivision contains portions of State-designated Freshwater Wetland LW-16 (Class II) and two protected tributaries of Swan Lake (DEC Water Index Nos. D-10-22-P128-1a and -2; Class B(T)) (see enclosed map). An Article 15, Protection of Waters permit is required for the proposed roadway and driveway crossings. In addition an Article 24, Freshwater Wetland permit is required for any proposed disturbance within the wetland or 100-foot adjacent area.

In addition, both projects will require coverage under the SPDES General Permit for Stormwater Discharges from Construction Activities (GP-02-01). Coverage under this SPDES general permit is not granted until all necessary permits have been applied for and obtained from the Department. Consequently, there is currently no authorization for coverage under this SPDES General Permit for either of these projects. (See additional comments related to stormwater below).

As you should be aware, the Department is obligated to conduct a concurrent review of a SWPPP and all applications for DEC permits related to a project and, therefore, all applications for DEC permits must be submitted with the SWPPP prior to the initiation of construction of any phase or stage of a project. In certain instances, the Department's review also requires evaluation of archaeological and historic resources, various project alternatives, and visual impacts, all of which must necessarily occur before the initiation of any construction activities on a site. Therefore, contrary to the comments in your letter dated May 31, 2005 regarding delayed permit applications, sufficient detail for regulated activities should be developed and permit applications submitted to the Department at the earliest opportunity in the planning stages of a project. To date, we have received no permit applications related to either project.

#### Threatened & Endangered Species

According to Department records, both the Lake Marie Road site and Kelly Bridge Road site are located near known occurrences of bald eagles (*Haliaeetus leucocephalus*), a federally- and state-listed threatened species. Based on DEC staff inspections of the project areas, nest sites are located within the Lake Marie Road project boundaries and on the western shore of Swan Lake. These nest sites will likely be adversely impacted by the projects as currently proposed, and mitigation measures should be incorporated into each project to avoid and minimize impacts to bald eagles. Specifically, DEC staff have noted the following concerns with the proposed projects:

1. The proposed boat launch location within the Kelly Bridge Road subdivision is directly across from, and within 1,500 feet of, an active nest site.
2. Regardless of the boat launch location, increased boat traffic in the vicinity of the nest site during the breeding season may have impacts on nest success of the eagles.
3. Construction is proposed near nest trees within the Lake Marie Road subdivision, which in previous years had been used by the Swan Lake nesting pair.

To mitigate adverse impacts to bald eagles, a no-disturbance buffer zone 750 feet or more should be established around each nesting tree on the Lake Marie Road Subdivision Site. In addition, the boat launch on the Kelly Bridge Road site should be moved as far south as possible and boating traffic should be restricted in the vicinity of any nest sites during the breeding season. It may also be appropriate to limit the use of each lake access lot to non-motorized or electric-only motorized boats.

Without incorporation of the mitigation measures noted above, adverse impacts to bald eagles are likely to occur that would constitute a taking of a bald eagle and, therefore, a permit would be required from DEC under Article 11, Title 5 of the Environmental Conservation Law (ECL § 11-0535). However, please be advised that such a permit would not likely be granted. Because the bald eagle is also a federally-listed species, further approvals from the United States Fish and Wildlife Service are also likely to be required.

#### Stormwater Management

As noted above, there is currently no coverage under the SPDES General Permit for Stormwater Discharges from Construction Activities for either project. In addition, we have received no formal applications for DEC permits noted above. However, DEC staff have provided preliminary comments on the Stormwater Pollution Prevention Plan (SWPPP) for the Kelly Bridge Road Subdivision. Please see the enclosed memo from Ms. Janet Swentusky dated June 23, 2005.

Notwithstanding our preliminary comments on the SWPPP for the Kelly Bridge Road subdivision, no coverage under the SPDES General Permit is currently in effect for the project. Therefore, further clearing and construction activities at the site should cease and the area should be stabilized to prevent erosion from the site. Any past and future water quality violations resulting from clearing and construction activities at the site will be investigated and any necessary enforcement action will be taken.

**State Environmental Quality Review Act (SEQR)**

We have no record that the Town of Liberty provided the DEC with a copy of the SEQR Full EAF, project application, or project plans in the course of its SEQR review for either project. In addition, we have received no additional information related to either project from the Town of Liberty Planning Board in response to our request dated May 24, 2005. It is our understanding from recent conversations with you that the Town of Liberty may undertake a coordinated SEQR review of the Lake Marie Road Subdivision site.

Where a coordinated SEQR review has not been performed, the Department will be obligated to undertake its own review pursuant to the requirements of SEQR upon receipt of applications for the DEC permits noted above. Additional information and details regarding such project's potential impacts on water quality, wildlife, State-listed species, freshwater wetlands, streams, and other relevant environmental impacts may be requested to assist us in our Determination(s) of Significance.

By copy of this letter we are advising project representatives and Town of Liberty officials of the need for these approvals and of our comments on these projects. We believe a meeting between the Department, the project sponsor, and any other involved parties may be helpful in addressing the regulatory and environmental issues raised above. If you have any questions regarding this matter, or would like to schedule a meeting, I may be reached at 845-256-3050.

Sincerely,



Scott E. Sheeley  
Deputy Regional Permit Administrator

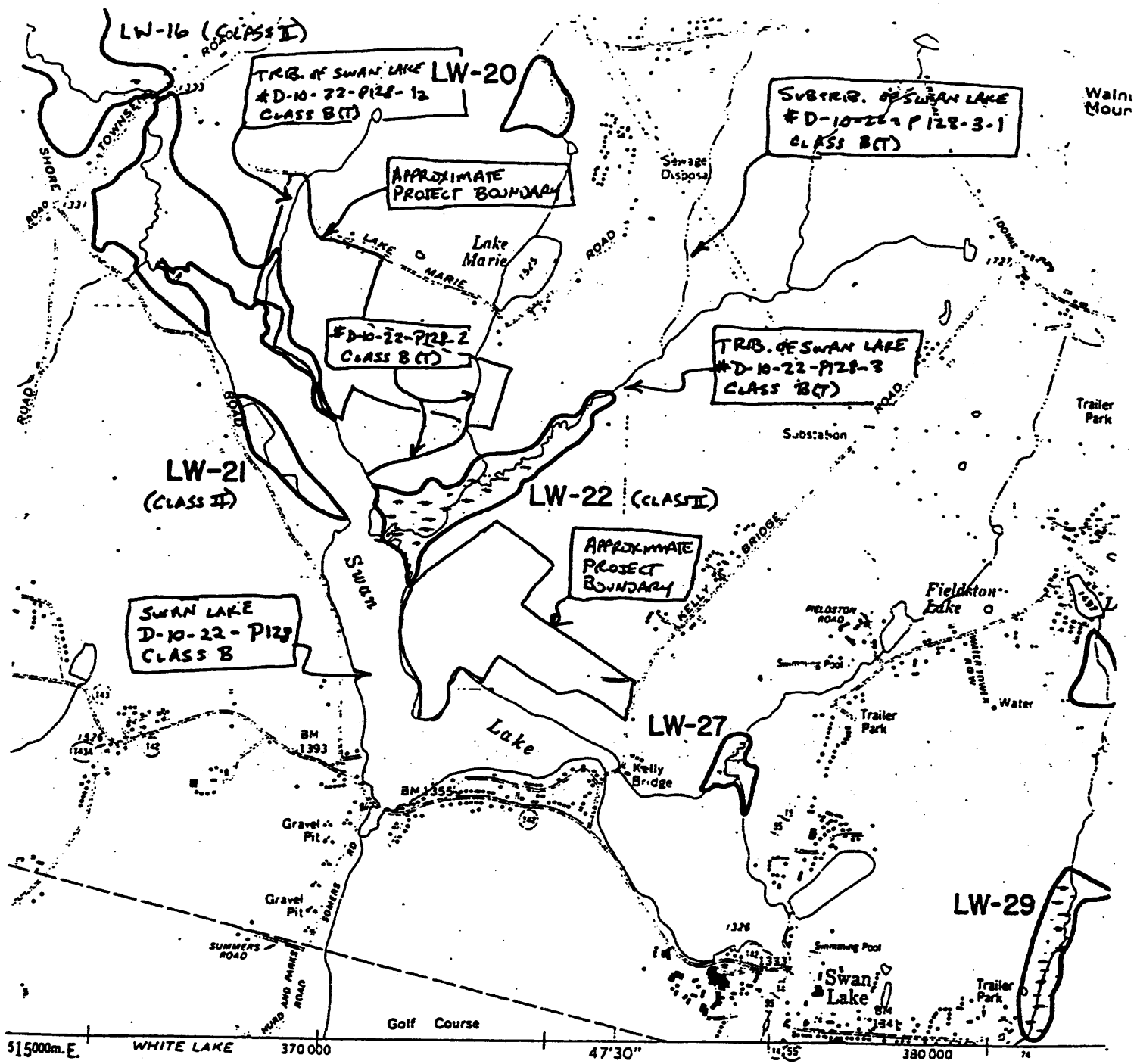
Enclosures

cc: With Enclosures:

- M. Moran, Regional Director
- V. Altieri, Regional Attorney
- W. Rudge, Natural Resources Supervisor
- M. Duke, Regional Permit Administrator
- W. Rosenbach, DEC Region 3
- S. Joule, DEC Region 3
- P. Nye, DEC Albany (4754)
- J. Swentusky, DEC Region 3
- D. Gaugler, DEC Region 3
- Supervisor and Town Board, Town of Liberty, via certified mail RRR # 7003 2260 0007 6526 3881
- Town of Liberty Planning Board, via certified mail RRR # 7003 2260 0007 6526 3867
- U.S. Fish & Wildlife Service, Cortland
- U.S. Army Corps of Engineers, NY District
- AJM at Swan Lake Estates, LLC, via certified mail RRR # 7003 2260 0007 6526 3874

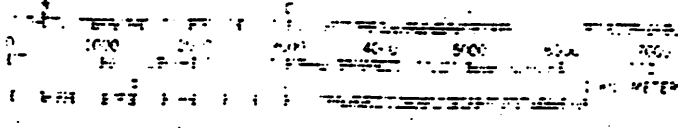






515000m.E. WHITE LAKE 370 000 47°30" 114°55' 380 000 74

SCALE 1:24,000



**FINAL FRESHWATER WETLANDS MAP**  
**SULLIVAN COUNTY**

Prepared pursuant to Article 24 of the  
 Environmental Conservation Law

NYS Department of Environmental Conservation

FILED DATE: AUGUST 13, 1986

(LAST REVISED: \_\_\_\_\_)

APPROXIMATE SCALE: 1 INCH EQUALS 2000 FEET

(All Wetland Boundaries Are Approximate)

LIBERTY WEST QUAD

- BOUNDARIES:**
- State.....
  - County.....
  - Town or City.....
  - Incorporated Village.....
  - Federal Aid Urban Area.....

- ROADS:**
- Touring Route markers:
  - Interstate.....
  - U. S. ....
  - State.....
  - State Highway number and limit.....
  - County road.....
  - Interchange number.....

Polyconic projection, 1927 North American datum.

30-meter ticks based on the New York Transverse Mercator grid, and 78° West Longitude, this grid is identical to Zone 18 of the Universal Transverse Mercator grid. Areas east of 72° and west of 78° are direct mathematical extensions of Zone 18.

100-foot ticks based on the New York Plane Coordinate grid, East Zone.





## Memorandum

**DATE:** June 23, 2005  
**TO:** Scott Sheeley  
**FROM:** Janet Swentusky  
**RE:** Review of AJM at Swan Lake Estates  
(T) Liberty Sullivan

### General

The soil types found on this site have historically been prone to sediment transport, and sites with these conditions require aggressive measures to prevent this from occurring.

### Sediment and Erosion Control

- Permit conditions allow 5 acres or less of soil disturbance at any one time during construction. A detailed sequential plan must be established limiting site disturbance to permit requirements.
- All temporary sediment basins/traps must be installed with an acceptable dewatering device in conformance with those found in NYS Standards and Specifications for Erosion and Sediment Control
- The Haybale Silt barrier is an unacceptable practice in a concentrated flow
- Areas requiring soil matting must be clearly indicated on the Site Plan
- Site Plan must show more Sediment and Erosion control details on the lot for the proposed community use access to Swan Lake

### Stormwater Management

- Although *Imperviousness* is a component of the Water Quality Volume calculations, it is only one component. Water Quality Volume must conform to NYS sizing criteria, and Stormwater measures must meet these standards for all proposed water quality structures.
- The four drainage swales discharging into Swan Lake must either meet NYS Water Quality standards, or have a pretreatment meeting these requirements prior to discharging into Swan Lake
- All *required elements* of the proposed Micro Pool Extended Detention Pond must be addressed/indicated on the Site Plan ( IE --25 ft Pond buffer, forebay, emergency overflow, anti-seep collar, aquatic bench, landscape plan, adjustable gate valve, pond drain, maintenance access etc...)

### Maintenance

- Site Plan must include a maintenance schedule for each type of Water Quality measure proposed



**EXHIBIT 4**



JOHN L. PARKER  
*Attorney-at-Law*

565 Taxter Road, Suite 100  
Elmsford, NY 10523

(914) 347-2290  
(914) 347-2331 fax  
parkerjlp@yahoo.com

VIA FACSIMILE AND CERTIFIED U.S. MAIL

October 20, 2005

Marc Moran  
Regional Director  
Department of Environmental Conservation, Region 3  
21 South Putts Corner  
New Paltz, NY 12561

Re: **Swan Lake**  
**Town of Liberty, Sullivan County**

Permit Applications Nos.    **3-4836-00245/00001**  
  **3-4836-00245/00002**

Dear Regional Director Moran:

I am in receipt of your letter of September 28, 2005 regarding Swan Lake Estates that responds to my letter of September 12, 2005. My letter raised a number of critical substantive environmental law issues, particularly under the State Environmental Quality Review Act ("SEQRA"), under Article 15, title 5 of the Environmental Conservation Law ("ECL") and under the cease and desist order put in place after the applicant received a Notice of Violation for unpermitted on-site activities in June 2005. Not all issues in that letter have been addressed, so I again attach my letter to you.

As you know, we have many concerns regarding the Swan Lake project. My clients foremost concern is that there be a complete, thorough and transparent environmental review of the potentially significant adverse environmental impacts caused by the Swan Lake project, and that such impacts be mitigated or eliminated. Ms. Edwards and the many others who have written and spoken about Swan Lake with you and other offices of both state and federal government, must live with the environmental impact of the decisions DEC makes in this case. Because the stakes are so high, we ask that DEC address the questions that we have raised in previous correspondence, that DEC fully comply with the provisions of SEQRA for all Swan Lake permits and other approvals, and that the DEC address issues regarding the lowering of the lake levels and dam repairs on Swan Lake.

This letter is based upon the documents in the publicly available record. We have attempted to patch together the record in this case by making numerous visits to DEC offices and by making Freedom of Information Law requests. We have also asked that DEC consider Ms. Edwards to be an interested party and to copy her on all documents involved in this case, which has gone unanswered. We hereby renew that request.

In your September 28<sup>th</sup> reply letter, you indicated that

As explained in Scott Sheeley's July 8<sup>th</sup> letter to Mr. Randel Wasson, "[w]here a coordinated SEQR review has not been performed, the Department will be obligated to undertake its own review pursuant to the requirements of SEQR upon receipt of applications for the DEC permits noted above."

*Letter of Marc Moran, Regional Director to John L. Parker, Esq., September 28, 2005.* We seek to hold DEC to your clear statement of its legal obligations under SEQRA to all actions in this case - from full environmental review of the Town of Liberty's approval processes for the Swan Lake project to the currently pending DEC permit process discussed below.

**TWO PERMITS ARE PENDING BEFORE DEC.**

There have been a number of developments since I last wrote. According to the Environmental Notice Bulletin ("ENB"), there are two permit applications currently pending before the DEC.

Application ID:	3-4836-00245/00001	Excavation and Fill in Navigable Waters
	3-4836-00245/00002	Freshwater Wetlands

The posting in the electronic ENB indicates that applications were received by the Department on October 7 and that the Completeness Determination is due as of October 24, 2005. These permits are necessary for the applicant to construct Phase 1 - the Kelly Bridge Subdivision - of its project. Upon recent review of the ENB, we note that the applicants name has changed to Rnr housing from AJM? Is this a new applicant? Is AJM no longer applying for these permits?

**THE PERMIT APPLICATIONS ARE NOT COMPLETE, AS A MATTER OF LAW, AND A COMPLETENESS DETERMINATION BY DEC ON OCTOBER 24<sup>TH</sup> IS PREMATURE.**

The applicant has not submitted applications for all of the permits *necessary for their project*. Under DEC Uniform Procedures Act ("UPA") regulations

In order to be determined complete for the purpose of commencing department review, the application for a permit listed in section 621.2 of this Part must meet the requirements specifically listed in section 621.4 of the Part as well as the following criteria:

If a project requires more than one department permit, the applicant must simultaneously submit *all the necessary applications*, or demonstrate to the department's satisfaction that there is good cause not to do so.

*Emphasis added.* 6 NYCRR Part 621.3(a)(3). The language of the regulation is very broad and all encompassing on this point. According to the DEC in this case,

The project will require the following DEC permits:



1. Article 15, Protection of Waters - For proposed disturbances to the bed and banks of a tributary of Swan Lake [DEC Water Index No. D-10-22-P128-2; ClassB(T)].
2. Article 24, Freshwater Wetlands. - For proposed disturbances within State-designated Freshwater Wetland LW-16 and its 100-foot adjacent area.
3. Compliance with the State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater discharges from Construction Activities (GP-02-01) - For the disturbance of over one acre of land area.

*Letter of Scott Sheeley, Deputy Regional Permit Administrator to John Schmidt, Chairman, September 16, 2005.* A major aspect of the development project, Swan Lake, however, is not addressed by this DEC letter, or by the permit applications submitted. It also appears that another vital part of the project - the endangered species - the American Bald eagle and its habitat protection may also need a permit before the project can proceed.<sup>1</sup>

The continued viability of the lake is a necessary and integral part of the project. The project calls for destruction of wetlands to access docks in the lake and the construction and placement of docks in Swan Lake. Thus, all permits needed to maintain the lake are necessary permits for the project. The September 28<sup>th</sup> response failed to address the issue of the lake with respect to the lowering of the lake levels which occurred in July 2005 and the repairs to the dam that are necessary to enable the lake to survive. See *Letter of John Parker, Esq. to Marc Moran, Regional Director, September 12, 2005 at 5.* Each of these activities requires DEC permits under Title 5 of Article 15 of the ECL- protection of waters. See also 6 NYCRR § 621.4(a). DEC staff and the responding Environmental Conservation Officers ("ECO") are well aware of this lake issue, as is the Army Corp. of Engineers. As you know, the DEC has yet to make a determination regarding the applicant's lowering of these water levels of Swan Lake for the purposes of repairing or replacing the dam.

We expect DEC to treat the lake water withdrawal and dam repair issue and compliance with the ECL on this point as it has viewed other ECL violations in this case. As DEC has noted, "Any past and future water quality violations resulting from clearing and construction activities at the site will be investigated and any necessary enforcement action will be taken." *Letter of Scott Sheeley, Deputy Regional Permit Administrator to Randel Wasson, Wasson Engineering, July 8, 2005 at 3.* We assume that on the water withdrawal issue that DEC is acting accordingly and that the dam permit issue will be held to the same standard and that appropriate determinations and corresponding DEC action are underway.

It is plainly evident that without the protection of waters permits needed for lake water lowering and dam repair that "all permits necessary" have not been submitted to DEC. Thus, without these additional and necessary DEC permits, the applicant cannot meet the

---

<sup>1</sup> In addition to this important permitting issue, there may be federal Endangered Species Act permits required for this project. *Letter of David a. Stilwell, Field Supervisor, Fish and Wildlife Service, U.S. Department of the Interior to Mr. Anthony J. Murolo, Swan Lake Estates, LLC, October 6, 2005.*

requirements of 6 NYCRR Part 621.3(a)(3). The permit application is not "complete," and DEC, as a matter of law, cannot reach any other determination.

**THE PERMIT APPLICATIONS CANNOT BE DEEMED COMPLETE WITHOUT FULL SEQRA REVIEW.**

The currently pending permit applications are not exempt from SEQRA. While we do not have all of the application documents, we are unaware of any SEQRA reviews or determinations with respect to these permit applications. This holds true whether such permit applications are deemed major or minor under the Uniform Procedures Act, ECL Article 70 and its implementing regulations.<sup>2</sup> Even if considered minor, DEC regulations do not preclude SEQRA review.

*If it is determined that a minor project may have a significant effect on the environment under SEQRA or requires a public hearing, the project will thereafter be processed as a major project for purposes of this Part.*

*Emphasis added.* 6 NYCRR Part 621.3(c)(3).

When a project involves simultaneous permit applications for multiple activities, all of which are minor, all are processed as minor for purposes [sic] this Part unless it is determined that the project may have a significant effect under SEQRA.

6 NYCRR Part 621.3(c)(5). In this case, the permits, considered together and simultaneously, enable a project that clearly meets the legal threshold - that the project *may have* a significant environmental effect - to require full SEQRA review. As a major permit, such review is subject to the full public notice and comment provisions of §§ 6 NYCRR § 621.6 and 7.

The Swan Lake permits, which enable the development project to meet the legal threshold under SEQRA for full environmental review, which only requires that the project "*may have* a significant effect on the environment". The record with respect to endangered species as noted in DEC and United States Fish and Wildlife Service correspondence indicates that the possible adverse impacts may be significant. The endangered species impacts, coupled with the wetlands and other wildlife and ecosystem impacts that have not yet been objectively reviewed and the considerable public interest and concern in this case plainly meet the low threshold and requirements for full SEQRA environmental impact statement review of the permit applications. Full SEQRA project review is triggered under 6 NYCRR § 621.3(c)(3) and (c)(5) because these permits, considered together, will allow a project - Phase 1 - to proceed that "*may have* a significant effect under SEQRA". Phase 1 (and Phase 2 so far) has never been subject to any full and thorough environment review process - from scoping through to Final EIS. Without such review, DEC would be complicit in allowing the project to evade the mandates of SEQRA contrary to the ECL.

---

<sup>2</sup> The definition of minor projects notes that such projects "are not likely to have a significant effect on the environment." 6 NYCRR § 621.1(m).

For the purpose of a permit application "completeness determination" it is irrefutable from the record that there is "the potential for at least one significant adverse environmental impact". For that reason, an Environmental Impact Statement should be required. 6 NYCRR § 617.7(a)(1). Because of the potential for these adverse environmental impacts, DEC cannot deem the permit application complete without submission of an environmental assessment form *and* the draft Environmental Impact Statement as required by law. 6 NYCRR § 621.3(a)(6).

#### **THE APPLICANT CONTINUES TO VIOLATE THE DEC CONSENT DECREE AND THE ECL.**

The applicant entered into a Consent Decree with the DEC, which they signed on September 8 and which the DEC executed on September 15, 2005. *In the Matter of the Alleged Violations of Article 17 of the New York State Environmental Conservation Law ("ECL"), by: AJM at Swan Lake Estates, LLC, Respondents, Order on Consent Case No. R3-20050621-53.* Amongst other requirements, the Consent Order requires that applicant

Has agreed to cease construction of the project until coverage has been gained under general stormwater permit GP-02-01, and to obtain any other DEC permits which may be required for the project, prior to recommencing construction.

*Id.* at § 4. Local residents believe that such activity continues despite the Order.

Local residents have raised substantial questions regarding whether the applicants have complied with the prior cease and desist order and the provisions of this September 2005 Consent Order. Ms. Edwards and other local residents have heard tree cutting on September 20 to 22, 2005. On September 22, they called the ECO assigned to this case, who indicated the next day that the contractors agreed to discontinue with the buzz saws since various neighbors had also complained. On September 26 local Town Officials visited the AJM at Kelly Bridge Road site and noted that the road construction had continued far beyond the original cease and desist demarcation. Local residents who hear the daily construction activities of AJM at Kelly Bridge Road wonder what enforcement procedures have allowed the developers to construct over a mile of roadway while they claim it is shoring up a road *that did not previously exist*, but was constructed during the period that the DEC cease and desist order was supposedly in place. This fact is irrefutable - there is about a mile worth of road completed on-site that did not exist in June 2005. There are also concerns about the impacts of this extensive construction activity on Swan Lake and its surroundings, including damage to 100 year old trees, pollution of lake waters, mussel kill, unpermitted dewatering of lake during a drought period and unattended fires without permits. and potential negative impacts in the future on wetlands, wildlife habitat and protected, rare and endangered species.

For the reasons set forth herein and in previous correspondence, local residents believe the applicant continues to avoid compliance with the ECL.

#### **CONCLUSION**

Under the provisions of the UPA and SEQRA, full environmental review is required for the Swan Lake permits. If the policies and goals of SEQRA requiring a 'hard look' of potentially significant adverse environmental impacts are to be followed by the DEC on these permit applications, such review is mandated by law. As our correspondence has made clear, such

review was evaded for Phase 1 - the Kelly Road Subdivision, and there is currently serious unresolved issues with respect to the process for such review on Phase 2 - the Lake Marie Subdivision. These permit applications, if granted, will enable Phase 1 to move to the construction phase. Notwithstanding that full SEQRA review is required for these applications under UPA regulations, failure to require such review will allow the applicant to segment the review of the entire project into two pieces, and simultaneously evade review of half of the project. It would also have a similarly legally troubling result - it would make the DEC the approving agency of a project with potentially significant adverse impacts - without conducting necessary environmental review contrary to law.

For these reasons, it is clear from a review of the facts and law in this case, that DEC cannot determine that the applicants permit submissions are complete at this time - all necessary permits have not been applied for, and legally required SEQRA review has not been undertaken. In this case, a draft environmental impact statement is necessary before the DEC can make its "completeness determination". In this permit review process, the regulations require DEC to fully comply with all public notice and comment and public hearing requirements set forth in UPA regulations. It is also necessary for DEC to take further action to ensure that the applicant fully complies with the provisions of the Consent Order the applicant voluntarily entered with DEC.

I look forward to your reply, to the Department addressing issues raised in this and previous correspondence and to the Department's actions consistent with this letter

Respectfully Submitted,

  
John Parker

w/ encl.

Denise Sheehan  
Acting Commissioner  
NY State DEC  
625 Broadway  
Albany NY 12233-4757

Vince Altieri  
Division Attorney  
Department of Environmental Conservation, Region 3  
21 South Putts Corner Road  
New Paltz, NY 12561-1620

Scott Sheeley  
Deputy Regional Permit Administrator  
Department of Environmental Conservation, Region 3  
21 South Putt Corners Road  
New Paltz, NY 12561

Letter to Marc Moran, Regional Director  
DEC Region 3

October 20, 2005  
page 7 of 7

Judith Enck  
NYS Office of the Attorney General  
Environmental Protection Bureau  
Justice Building  
Albany, NY 12224

US Fish and Wildlife  
Director - Field Office  
3817 Luker Road  
Cortland, NY 13045

Lt. Richard Tomer  
US Army Corps of Engineers  
Jacob K. Javits Federal Building  
26 Federal Plaza, Room 2109  
New York, NY 10278-0090

Dr. William Pammer,  
Director  
Sullivan County Division of Planning  
Government Center  
100 North Street  
PO Box 5012  
Monticello, NY 127701

Chris White  
District Representative  
Office of Congressman Maurice Hinchey's  
City Hall, 3<sup>rd</sup> floor  
16 James Street  
Middletown, NY 10940



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1. Article Addressed to:

Marc Moran  
Regional Director  
DEC, Region 3  
21 South Putts Corner  
New Paltz, NY 12561

2. A  
PS F

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X *Beth Thornton*  Agent  Addressee

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*Beth Thornton*

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**EXHIBIT 5**



JOHN L. PARKER  
*Attorney-at-Law*

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parkerjlp@yahoo.com

VIA FACSIMILE AND CERTIFIED U.S. MAIL

November 1, 2005

Stephen Joule  
Biologist  
Department of Environmental Conservation, Region 3  
21 South Putts Corner  
New Paltz, NY 12561

Dear Mr. Joule:

**Re: Threatened / Endangered Species at Swan Lake**

**Permit Applications Nos. 3-4836-00245/00001  
3-4836-00245/00002**

On behalf of my client, Cora Edwards, I want to thank you for your visits to Swan Lake.

As you know, there is quite an extensive amount of documentation with respect to the threatened / endangered species - bald eagle - living in and around Swan Lake. The U.S. Department of the Interior - Fish and Wildlife Service has also taken particular interest in the bald eagles on-site. The two proposed developments for Swan Lake, for which permit applications to DEC are pending, have been the subject of considerable public interest and scrutiny, particularly because there has been no meaningful SEQRA review that thoroughly analyzed and mitigated impacts to the environment, in general, and to the threatened and endangered species, in particular.

**Additional Threatened / Endangered Species Have Been Witnessed On-Site.**

I write to bring your attention to the sighting of two possible additional threatened / endangered species on and around Swan Lake that have recently come to my attention, and that need to be investigated to determine whether the proposed project may significantly negatively impact, harm or destroy them.

In May, Ms. Edwards specifically discussed with the DEC permit analyst for the AJM development at Swan Lake a photo of woodpecker habitat she had taken around portions of the proposed development (Kelly Bridge Subdivision Lots # 13 and 14) on the peninsula adjacent to the lake.

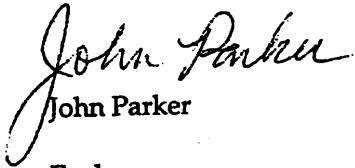
Ms. Edwards, who attended the Bethel Harvest Festival last month, saw the DEC endangered species display. At that time, Ms. Edwards remarked that the display on the bog turtle looked just exactly like the one she and her husband witnessed on their property adjacent to the Swan Lake shoreline the previous week. The Edwards were

particularly certain of the markings they witnessed on the turtle – similar markings as the bog turtle display. Unfortunately, they did not have a camera with them to take a photo of the turtle. As you know, the bog turtle in question has been found in areas near Swan Lake.

As you will agree, New York and DEC's commitment to protecting threatened and endangered species is a significant and important part of the agency fulfilling its mission. This mandate is part of the legacy of the Department because if these species are "taken," harmed or destroyed in situations where such damage should have been avoided, they could be extinguished forever. While other DEC divisions work to determine what type of environmental review will be undertaken before final DEC approvals are given to the project, we ask that before such decisions are rendered that DEC investigate and determine if either the bog turtle or wood pecker witnessed by local residents on Swan Lake are in fact there, if other threatened or endangered species are on-site, and what appropriate steps must be taken to protect habitat and to ensure survival of these species. It is imperative that this information regarding the investigation be immediately and widely disseminated to all DEC Divisions that have jurisdiction over the Swan Lake project.

I look forward to the Department undertaking the important biological review and assessment that we have requested. The need for such a study underscores the importance of a comprehensive environmental study to assess proper mitigation for the impacts of this project. Thank you in advance for undertaking this assessment, for sharing the information uncovered with us for further review, and to your reply.

Respectfully submitted,

  
John Parker

Encl.

Cc: w/o encl.

Denise Sheehan  
Acting Commissioner  
Department of Environmental Conservation  
625 Broadway  
Albany NY 12233-4757

Marc Moran  
Regional Director  
Department of Environmental Conservation, Region 3  
21 South Putts Corner  
New Paltz, NY 12561

Vince Altieri  
Division Attorney

Letter to Stephen Joule, Biologist  
DEC Region 3

November 1, 2005  
page 3 of 3

Department of Environmental Conservation, Region 3  
21 South Putts Corner Road  
New Paltz, NY 12561-1620

Scott Sheeley  
Deputy Regional Permit Administrator  
Department of Environmental Conservation, Region 3  
21 South Putt Corners Road  
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Chris White  
District Representative  
Office of Congressman Maurice Hinchey's  
City Hall, 3<sup>rd</sup> floor  
16 James Street  
Middletown, NY 10940



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**ЕХІВІТ 6**



# **BALD EAGLE MITIGATION PLAN**

**Kelly Bridge Road and Lake Marie Road Subdivisions**

**Town of Liberty, Sullivan County, New York**

**Project Sponsor: AJM at Swan Lake, LLC  
11 Wendover Drive  
Huntington, NY 11743**

**Project Engineer: WASSON ENGINEERING  
31 North Main Street  
Liberty, NY 12574**

**Prepared By: TIM MILLER ASSOCIATES, Inc.  
10 North Street  
Cold Spring, New York 10516**

**Prepared For:**

**New York State Department of Environmental Conservation  
Region 3, Division of Environmental Permits and Bureau of Wildlife  
21 South Putt Corners Road, New Paltz, NY 12561-1696**

**Town of Liberty Planning Board  
120 North Main Street  
Liberty, NY 12574**

**January 18, 2006**



## 1.0 INTRODUCTION

### 1.1 Purpose

This mitigation plan is intended to document both existing and proposed conditions on Swan Lake in the Town of Liberty, Sullivan County, New York, the potential impacts to nesting bald eagles and their habitat under both of these conditions, and the proposed mitigation to be employed to offset the potential impacts resulting from the development of two subdivisions (Kelly Bridge Road and Lake Marie Road) proposed by the Applicant, AJM at Swan Lake Estates, LLC.

### 1.2 Bald Eagle Information

The bald eagle (*Haliaeetus leucocephalus*) is a Federally and New York State listed threatened species. As such this bird species is afforded protection under both state and federal laws. National Management Guidelines have been generated to provide measures that can be taken to protect and maintain existing bald eagle populations throughout its range in the U.S. including the incorporation of protection zones around known nesting trees. A copy of these guidelines, portions of which were used as a baseline for generating this mitigation plan, can be obtained from the New York State Department of Environmental Conservation (NYSDEC) or the U.S. Fish and Wildlife Service. The NYSDEC Bald Eagle Fact Sheet, which contains a species description, information on the birds life history, its distribution and habitat in the state, its protected status, and information on management and research needs can be found in Appendix A.

## 2.0 SITE CONDITIONS

### 2.1 Existing

Swan Lake and the surrounding terrestrial habitat have supported a pair of nesting bald eagles for at least the past ten years. These eagles have utilized a total of five large white pine trees (*Pinus strobus*) on or in the immediate vicinity of the lake's shoreline. Two of these trees are located on the proposed Lake Marie Road subdivision site with the remaining three trees clustered on a peninsula on the opposite side of the lake from vacant land that will separate the two proposed subdivisions. Additional mature trees along and in the immediate vicinity of the lake's shoreline represent good roosting habitat for these birds.

Four of the five nest trees (one of the two on the Lake Marie Road subdivision site and the three on the opposite side of the lake from the proposed development) are in areas with little or no recent disturbance. The fifth tree is within approximately 100 feet of a mowed lawn and a cleared access path that leads down to the lake. Both cleared areas are associated with an existing cabin on the proposed Lake Marie Road subdivision site.

The eagles nested in the cluster of three trees across the lake from the proposed subdivisions in 1996 through 2000 and again in 2005. The nest tree on the Lake Marie Subdivision site located closest to the lake and furthest from cleared areas near the existing cabin was used by this pair of eagles in 2003 and 2004. The tree nearest the cabin was the location of active nests in both 2001 and 2002.

Currently, there are residences along the southern end of Swan Lake to the west of Kelly Bridge Road and to the north of County Road 142. Many of these residences are occupied year round and some have floating docks from which gasoline powered boats are operated.

### 2.2 Proposed

The Applicant proposes to construct two separate subdivisions to the west of Kelly Bridge Road on Swan Lake. Although the parcels are zoned "Rd" for Kelly Bridge Road (i.e., approximately one and a third acres per lot) and "Ac" for Lake Marie Road (i.e., two acres per lot), the density for the two subdivisions is far less than the law allows.

The Kelly Bridge Road subdivision would result in 21 lots ranging in size from 3.00 to 8.37 acres on approximately 114 acres of land (see Appendix B, Wetland Disturbance Details, Kelly Bridge Road). Owners of Lots 3 through 12 of this subdivision will be permitted pathways to access the lake shore and private, floating, non-permanent docks of no greater than 100 square feet in size. Lot 13 will be the communities Common Lot with parking, a pavilion, and a pathway leading to the lake and a 200 square foot floating dock. This Common Lot will be for use by subdivision residents and their guests only. All the proposed homes in this subdivision, with the exception of that planned for Lot 7, would be set back a minimum of 200 feet from the lakeshore. Since Lot 7 is on a peninsula, the available home site configurations limit setback distances.

The Lake Marie Road subdivision (See Appendix C, Conceptual Subdivision Plan, Lake Marie Road, which should be considered confidential and should not be released to the public as it depicts the location of the eagle nest trees on the project site), located on approximately 120 acres of land, would result in 19 lots ranging in size from 3.01 to 17.24 acres. None of the proposed lots in this subdivision other than the Common Lot (Lot 4) will be permitted pathway access to or private docks on Swan Lake. The Common Lot in this subdivision would also provide parking, a pavilion, and a pathway leading to the lake and a 40-foot by 5-foot floating dock. Use of this lot and access to the lake would again be restricted to resident and guest use. This Common Lot has been configured to include the eagle protection and wetland regulated areas as agreed to by the Applicant and the NYSDEC. As with the Kelly Bridge Road subdivision, all the proposed homes in the Lake Marie Road subdivision would be set back a minimum of 200 feet from the lake shore.

## 3.0 POTENTIAL IMPACTS

### 3.1 Existing

Impacts to nesting eagles on Swan Lake would be limited to the continued or expanded use of gasoline powered boats and other watercraft, the use and maintenance of the cleared areas around the existing cabin and the use of the lake by the occasional fisherman.

### 3.2 Proposed

The impacts associated with the proposed subdivisions would include both short-term effects due to the construction of the proposed single family homes and required infrastructure, mainly increased noise resulting from lot clearing and grading and building activities and alteration of habitat adjacent to the lake, and long-term effects of home occupancy, mainly increased noise and visual impacts related to human activity near and on the lake and the permanent change of forested habitat in the vicinity of the lake to homes, roads and maintained lawns.

#### 4.0 PROPOSED MITIGATION MEASURES

As noted in the National Guidelines for Managing Bald Eagles, "[v]arying levels of protection for eagles may be needed due to differing eagle responses to human activity or site-specific factors such as topography and vegetation." The guidelines encourage land owners to work cooperatively with state or federal wildlife agencies "...to address management issue." Consistent with this guideline, the Applicant has met with representatives from the NYSDEC Bureau of Wildlife, Endangered Species Program on several occasions including once at the project sites on Swan Lake, to develop a site-specific plan to mitigate for impacts to bald eagles and their habitat associated with the proposed Kelly Bridge Road and Lake Marie Road subdivisions. This collaborative effort led to the agreement that the following mitigative actions would be employed by the Applicant as part of the overall development plan to offset the above-identified impacts.

It is important to note that this particular pair of eagles has been able to successfully nest on Swan Lake with the existing level of human activity and noise associated with the homes, boats and other ongoing recreational activities.

##### Kelly Bridge Road Subdivision

The proposed Common Lot 13 dock has been relocated from the original proposed location to a point as far south along the shoreline as practical, thereby maximizing the distance between it and eagle nest trees "A", "B" and "C" (see Appendix D, Overall Lake Plan, which should be considered confidential and should not be released to the public as it depicts the location of the eagle nest trees on Swan Lake) and reducing visual impacts to the nesting eagles.

While owners of Lots 3 through 12 can have their own floating docks, only those at Lots 9 through 12, if installed, would be visible from the eagle nest trees "A", "B" and "C" at the distances indicated on the enclosed plan in Appendix D. None of the proposed docks would be visible from nest trees "D" or "E".

The width of the proposed pathways from the homes to the lakeshore on Lots 3 through 12 has been reduced from the originally proposed 12 feet to 8 feet. In addition, the diameter at breast height of saplings and shrubs that can be removed to create these pathways is now three inches down from the originally proposed four inches. The Home Owner Association documents will be modified to reflect these changes. All clearing required to create the proposed pathways would be done by hand to reduce potential noise impacts. Finally, each pathway has been reconfigured to incorporate a curve to increase the distance to the nest trees and eliminate a direct line of sight from the lake and the nest trees to the proposed homes. Refer to the plan in Appendix B for details on all of these mitigation measures.

Clearing outside of the pathway limits in the wetland and its associated adjacent area would be prohibited. As a result existing roost trees along the lakeshore on the project site will remain undisturbed and visual impacts minimized.

The Applicant anticipates that the proposed houses will be, for the most part, second homes with only intermittent occupancy throughout the year.

Lake Marie Road Subdivision

The proposed Common Lot has been relocated from Lot 6 to Lot 4 to reduce impacts to the 350-foot protection zone around eagle nest tree "E". In addition, Lots 4 and 5 in the original plan have been combined, thereby reducing the number of proposed lots, and the lot lines have been modified to include all of the lakeshore wetland on the project site and the 350-foot protection zone of nest tree "E". As the 350-foot protection zone around eagle nest tree "D" currently includes the cleared lawn and lake access areas associated with the existing cabin, only the previously undisturbed portions of the zone have been included in the Common Lot 4 plan. The existing pathway to the lake associated with the cabin will be used as the Common Lot access to the proposed common dock eliminating the need to create access to the lake elsewhere and confining future human activity to this previously disturbed area. Single-family private docks on and access pathways to Swan Lake will not be permitted in the Lake Marie Road subdivision.

In order to further protect eagle nest tree "E", "RESTRICTED AREA" signs, which will be provided by the NYSDEC, are to be placed along the circumference of the tree's 350-foot protection zone as indicated on the plans. Refer to Appendix E for a copy of the "RESTRICTED AREA" sign to be placed around tree "E". Signs will not be posted around nest tree "D" per the NYSDEC. NYSDEC personnel would be afforded access to the nest trees on the project site to allow eagle nest monitoring and research.

Swan Lake Overall Plan

The Applicant has agreed to place tax parcel 44-1-2.5, the roughly 31 acre lot that contains eagle nest trees "A", "B" and "C", in a conservation easement as documented in the attached Declaration of Covenants, Easements and Restrictions (Appendix F). Without consent of the NYSDEC, the three eagle nest trees and the surrounding terrestrial habitat on the property are to be protected in their natural state in perpetuity. As part of the declaration, the NYSDEC will be granted the right to access the property to monitor and research eagle nesting activity.

The Applicant will prohibit the use of any and all gasoline powered watercraft including those currently in use on the lake. Restricting vessel access to those utilizing small electric motors, wind, oars or paddles will reduce existing noise levels and their potential future impacts on nesting bald eagles.

With the incorporation of the mitigation measures noted above, the NYSDEC has agreed that development in accordance with the restrictions identified herein and on the included plans, will not significantly impact nesting bald eagles or their local habitat.



**EXHIBIT 7**



JOHN L. PARKER  
*Attorney-at-Law*

565 Taxter Road, Suite 100  
Elmsford, NY 10523

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(914) 347-2331 fax  
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**VIA FACSIMILE AND CERTIFIED U.S. MAIL**

March 8, 2006

Scott E. Sheeley  
Deputy Regional Permit Administrator  
Department of Environmental Conservation, Region 3  
21 South Putts Corner  
New Paltz, NY 12561

Re: SEQRA Review at Swan Lake, Liberty, New York.

Permit Applications Nos. 3-4836-00245/00001  
3-4836-00245/00002

DEC Pre-Application No. 3-4836-00248/00001

Dear Mr. Sheeley:

I write regarding the Department's (or "DEC") State Environmental Quality Review ("SEQRA") of the above referenced applications for the Kelly Bridge and Lake Marie Subdivisions (the "Swan Lake Development Project"). It is our understanding that the application remains incomplete and that the DEC has yet to make a SEQRA determination of significance.


I have attached for your consideration a commentary on the applicant's submitted Eagle Mitigation Plan by Cora Edwards. It is thorough and compelling in its criticism of shortcomings and problems with the plan. The environmental impact of the proposed project on the American Bald Eagle population of the Swan Lake area is just one of the potentially significant adverse impacts resulting from the proposed project. As you know, on January 20, 2006 we submitted to your office a number of personal statements of local residents outlining other potentially significant adverse impacts of the proposed project.

Over the past several months, we have had considerable difficulty understanding the process underlying DEC's SEQRA review and its determination of significance. As Lead Agency, we look to and expect the Department to make a fair and open determination. Our difficulty stems from our repeated requests to DEC to keep us informed about meetings and developments in the application. Nonetheless, despite numerous requests, we have not been informed about such meetings with the applicant. In addition, we have been given access to documents sometimes months after they have been submitted to the DEC. To resolve this situation as we move forward, we again request to be kept apprised of developments in this case, to be copied on correspondence and to have requested documents provided to us in a timely fashion.

As our previous submissions indicated, and as the commentary confirms, there is ample evidence that the projects in question have the potential to cause significant adverse environmental impacts, and thus under SEQRA warrant full and open Environmental Impact Statement review. The SEQRA process sets forth substantive and procedural rights following the positive declaration. Not only is such a positive determination supported by the record in this case, it will alleviate the difficulty that the public has had understanding and participating in developing an accurate record. It is in that process, that a fair, open and meaningful review of all of the potential impacts will be possible. There has been such great public interest in this case and in full EIS review because when dealing with threatened and endangered species and such ecologically valuable properties, the decision that will be made will have permanent impacts, and thus, there is no room for error.

We look forward to your consideration of this submission and to your reply.

Respectfully submitted,

  
John Parker

Encl.

Cc:

Denise Sheehan  
Commissioner  
Department of Environmental Conservation  
625 Broadway  
Albany NY 12233-4757

Marc Moran  
Regional Director  
DEC, Region 3  
21 South Putts Corner  
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US Fish and Wildlife  
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## COMMENTS ON AMERICAN BALD EAGLE MITIGATION PLAN FOR KELLY BRIDGE ROAD AND LAKE MARIE ROAD SEGMENTATION

Cora Edwards  
March 3, 2006

### 1.0 Introduction.

The American Bald Eagle Mitigation Plan ("Eagle Mitigation Plan") submitted by Tim Miller Associates, Inc. on January 18, 2006 on behalf of AJM Associates of Swan Lake Estates covers potential impacts of the proposed development and mitigation plans for the eagles breeding nests at Swan Lake, Town of Liberty, Sullivan County, New York. This commentary reviews the Plan section by section.

As developer Anthony J. Murolo noted in late May 2005, the presence of eagles "certainly was taken into account" with regard to the construction project. Referring to the eagles, he continued: "They are a beautiful selling point. There is no reason for me to displace any of that; it doesn't make sense." Towne Crier, May 18-24, 2005. It is also well-documented that the "loss of habitat is regarded as one of the biggest threats against the growing Bald Eagle population, especially in an area like ours which is under great development pressures." Quote of Jason Dole, Town Crier, Volume 6, Number 13, January 18-24, 2006.

The Eagle Mitigation Plan submitted to DEC does not look comprehensively at the project footprint and the surrounding areas used by the bald eagles, and therefore raises many questions about the potential impacts on the American Bald Eagles territory and their continued survival for future generations of offspring at Swan Lake.

Three decades ago, America's first comprehensive endangered species legislation was passed by a nation alarmed by the imminent extinction of such creatures as its proud symbol, the bald eagle.

Chadwick, Douglas H. and Joel Sartore: America's Endangered Species: The Company We Keep, 1996 edition.

We now pay much closer attention to the chemicals in our environment. We take more seriously the evidence that the same ecosystems these creatures depend upon ultimately sustain humankind. Future generations may look back and decide that while we were trying to save the bald eagle, what really happened is that the eagle saved us.

Chadwick, Douglas H and Sartore, Joel: America's Endangered Species: The Company We Keep at 26.

### 1.1 Purpose.

The purpose of this commentary is to address key elements omitted from the Eagle Mitigation Plan submitted to DEC, and the deficiencies in what was submitted. The commentary will focus on these missing key elements which include: the roosting, perching and foraging locations of the American Bald Eagles at Swan Lake and other factors resulting from the proposed project that may also disturb the eagles and the territory where they live.

According to the National Bald Eagle Management Guidelines – Public Review Draft (February 2006), a "disturbance" is defined as: "In the context of BGEPA (Bald and Golden Eagle Protection Act), to agitate or bother an eagle to the degree that interferes with or interrupts normal breeding, feeding, or sheltering habits causing injury, death, or nest abandonment."

It is beyond dispute that the proposed development will disturb Swan Lake's eagle population. The Eagle Mitigation Plan, however, does not fully address the "disturbance" as it is defined in law.

## 1.2 Sullivan County Bald Eagle: Basic Information.

The Catskills region and the system of rivers and lakes, of which Swan Lake is a part, "plays a critical role in the recovery and survival of the bald eagle. Every winter, nearly 200 eagles migrate to this region for its open water, ample fish and large, undisturbed stands of trees. By spring, most of these eagles return to their northern breeding grounds, but many adult pairs remain here, building nests and raising young. In fact, more than 20 pairs now call this region home." Eagles Among Us: A Guide to Sharing Habitat with Eagles, The Eagle Institute; 2006 edition.

## 1.3 Protection of Bald Eagles Plan Requirements.

There are three key factors in determining the future success of American Bald Eagles in Sullivan County: Protecting nesting habitat; suitable prey; and freedom from human disturbance at the nest sites and fishing areas.

Fraser: A Strategy for Protecting Bald Eagle in Sullivan County, NY. The wilderness habitat at Swan Lake provides these three factors, and a successful mitigation plan should also address these three factors.

### 1.3.1 Protection of nesting habitat.

Recommendations for various types of protection zones for the well being of the American Bald Eagle (*Haliaeetus leucocephalus*) in this geographical area have been documented in a report entitled: A Strategy for Protecting Bald Eagles in Sullivan County, New York by James D. Fraser, Ph.D. 1988 edition. While the report was written at a time when the Bald Eagles' future success was more precarious than it is now, many of the basic factors, such as minimal distances from human disturbances and residential development, still apply to the nesting pair and offspring at Swan Lake.

Swan Lake is in the lucky position to have been chosen by a nesting pair of bald eagles and subsequent offspring over thirty years ago to live year around at the nesting, breeding and roosting sites that surround the waters of the lake. Is it due to the optimum conditions (nesting habitat, suitable prey, relative freedom from human disturbance) cited earlier?

### 1.3.2 Roosting and Perching Areas.

Eagles spend most of their time perched. Much of this perching occurs in feeding areas where eagles hunt, eat captured prey and rest on perches. Human disturbance in perching areas can interrupt feeding and cause eagles to fly unnecessarily using energy best provided for metabolism, thermoregulation and other essential activities. Potential perching zones should be cataloged for two reasons: Firstly, habitual perching areas may change from year to year.

(Fraser, 1988) Secondly, the growth of the eagle population suggests: "Sullivan County will be colonized by breeding and summering subadult eagles." Fraser, 1988.

Both these conditions exist at Swan Lake. Last years fledglings are now beginning to molt with white feathers on their chests, and presumably will be using one of the five nests at Swan Lake while the adult breeding pair begins another breeding and hatching cycle this spring 2006. The resurgence of the American Bald Eagle population in Sullivan County has not happened by accident, as staff of the New York State DEC and US Fish and Wildlife Service have worked hard and long to document and tag fledglings in all kinds of inclement weather, and initiated programs to protect the habitat of this beloved bird and necessary habitat for survival in our area of our national symbol.

### 1.3.3 Flyways.

Flyways used by eagles as they travel in the vicinity of perching, roosting and nesting areas should, to the extent possible, be kept free of humans and should remain undeveloped. Special attention should be given to the following flyways:

Roosting to perching area;  
Nest to perching area;  
Perching to perching area.

At the time of Dr. Fraser's report, "Little quantitative study has been directed at determining the effect on eagles of people below their intended flight path. Nevertheless, the well-documented eagle avoidance of people in other situations and the fact that flushed eagles typically avoid the source of disturbance has led some authorities to recommend minimizing human traffic in these areas." In the case of the eagles at Swan Lake, it is clear that the eagles avoid the "lower lake" east of Kelly Bridge when there are ice-fishing activities near Route 55.

### 1.3.4 Prey base.

Swan Lake is one of the last clean water lakes of its size in the Catskills region, and is abundant with a variety of fish species that rely on clean water for survival. As mentioned elsewhere, the eagles are routinely spotted catching fish off the peninsula on Lot #7 of the Kelly Bridge Road segment.

In the winter months of December 2005 and January 2006, when the lake is frozen, the eagles were seen laying their prey out on the ice and returning to it over a period of several days in the lower lake area east of Kelly Bridge.

According to Fraser: "The prey base should be protected by maintaining water quality and minimum base flows, and by effecting other fish management activities as needed."

## 2.0 Site Conditions.

### 2.1 Existing Site Conditions: American Bald Eagles at Swan Lake.

The Swan Lake wilderness area and surrounding habitat have supported a pair of breeding American Bald Eagles and offspring since at least 1969, as long term residents of Swan Lake have attested in observational paragraphs submitted to the DEC Region #3. (Names available upon request.) The local Audubon Society conducted eagle etiquette and viewing tours over the years.

At one time, there was an American Bald Eagles nest located on the shoreline of Swan Lake adjacent to what is now called Briscoe Road. A long-time Swan Lake resident, (Name available upon request) informed Albany DEC Eagle Specialist Peter Nye that the American Bald Eagles were being harassed by a pair of neighborhood boys. The eagles relocated to the relatively undisturbed portions of lake where there were no human residences at that time. Subsequently the naughty boys relocated as well, although no traces of the former eagles' nest exist at present.

The remaining nests have been documented over the years by the DEC when fledglings are tagged by DEC staff, and in one case when a pair of eaglets died shortly after hatching, although the cause of premature death is unknown.

In the spring of 2005 a pair of eaglets hatched and were tagged at around five weeks old, according to Steve Joule - DEC Biologist in Region 3. That pair of offspring is now beginning to molt and show white feathers on the chest.

**2.1.1 Site Conditions: The Eagle Mitigation Plan Inaccurately Describes the Scope of the Applicant's Proposals Currently Under Review.**

The Eagle Mitigation Plan states that "The Applicant proposes to construct two separate subdivisions to the west of Kelly Bridge Road on Swan Lake." It must be noted that both parcels share a common border: the waters of Swan Lake itself, as evidenced by the many different versions of maps submitted by the project engineer, R. Wasson and the property description submitted to the Sullivan County Clerk as part of the deed records, which state:

The subject property is located on several roads in Swan Lake that wrap around the lake in the Town of Liberty, County of Sullivan, State of New York. The subject property consists of 628.56 acres, which consists of a 352.65-acre lake. The land is situated on the north side and south side of the lake. A 25.35-acre parcel is off Kelly Bridge Road. It has 210 feet of road frontage. The parcel connects with an adjoining 88-acre parcel, which has good lake frontage.

There is another property consisting of two adjoining parcels a little further west that also borders the northern side of the lake. It totals 120.69 acres with good road frontage on Lake Marie Road. The property also has land on the south side of this section of the lake, totaling 31 acres. This land is narrow at points and below road grad (sic.)

The above description clearly outlines the scope of the actual project and the actual total acreage of affected areas, including the "upper lake" west of Kelly Bridge.

The Kelly Bridge Road segment had a site plan submitted to the Town of Liberty Planning Board on May 3, 2005. The Planning Board has repeatedly stated that it will not review subsequent revised plans based for the site until the project gets DEC approval. The original "approved" site plan does not resemble what apparently is being addressed by the Eagle Mitigation Plan, notably the approved plan did not include pathways through protected wetlands nor individual floating docks on Lots 3 - 12.

Deliberate segmentation by AJM in the "subdivision applications" is contrary to the intent of the State Environmental Quality Review Act (SEQRA) and directly impacts the eagle habitat if DEC allows segmented project to avoid full and public review. Thus far, AJM has avoided having an Environmental Impact Study conducted on all types of wilderness habitat affected by previous construction activities and permanent impacts over the long term.

**2.2 Proposed Site Conditions.****2.2.1 Kelly Bridge Road Segment Impacts.**

The BAEA National Management Guidelines 2000 at 14 states:

Foraging Areas: Disruption within    mile (1320 feet) of a Bald Eagle feeding area or perch site should be minimized when Bald Eagles are present. No activities, which significantly alter the landscape or vegetation, should occur within the primary zone. Important eagle roosts and food sources should not be destroyed or degraded.

Parking Lot: The parking facility proposed for Common Lot #13 was discussed at a meeting between the developer, AJM and Swan Lake residents on June 7, 2005 at the Town of Liberty Government Center. At issue was the proximity of the parking lot to the protected wetlands and wilderness areas. Another issue is the cumulative impact of impermeable surfaces near the critical environmental areas, storm water runoff as a result, and the potential for adverse impacts on the water quality of the lake due to leach fields and septic tanks, and the potential impact of contaminated fish on the American Bald Eagles food supply.



### 2.2.2 Lake Marie Road Segment Impacts.

The Eagle Mitigation Plan considers the Lake Marie Road segment to be confidential and that the conceptual plan should not be released to the public.

**Yet it has been the public that has been most protective of this national treasure with respect to the eagle territory at Swan Lake. It is no secret that American Bald Eagles and their nests are here, the developer has discussed it in the newspapers, and all of the local resident's are well aware of them.**

Over three hundred local and state residents and taxpayers signed a petition in May of 2005 for American Bald Eagle protection at the construction site on Swan Lake. The petition was sent to Governor Pataki's office and the DEC, and requested an immediate cease and desist order on the construction activities until an Environmental Impact Study is conducted for the project area, and before AJM receives permits to proceed.

Protection of eagles in Sullivan County is consistent with the desires of the American people. Not only is this species protected by a variety of state and deferral laws, it is the national bird of the United States and occupies a unique place in the cultural tradition of the country. Bald Eagles have inhabited North America for millions of years. Now rapid development of shoreline habitats places the species at increasing risk; only careful management and habitat protection will ensure its survival during the 21st century.

Fraser, James Ph.D. [A Strategy or Protecting Bald Eagles in Sullivan County](#), 1988.

In any case, the same potential adverse impacts identified for the well documented Kelly Bridge Road segment apply to the Lake Marie segment, only with more protective primary and secondary buffer zones required, given that two remaining eagles nests exist in close proximity to proposed construction and the existing "log cabin" which will become part of the common lot on Lake Marie Road with frontage on Swan Lake. These nests would benefit from a comprehensive conservation easement area similar to the nests on the 31 acres adjacent to Shore Road on the opposite side of Swan Lake.

The Eagle Mitigation Plan submitted demonstrates an inconsistent application of the buffer zones. For example, various distances ranging from 1200 to 1600 feet are shown to separate the nests on the Shore Road side from the proposed lots on the Kelly Bridge Road segment.

What are the buffer zones for these same nests with regard to the Lake Marie Road segment and proposed construction areas?

Why do the buffer zones not comply with the 2600 foot buffer zones around perching and feeding sites set forth in the BAEA National Management Guides 2000 at 12?

There aren't any primary or secondary circumferences shown for these buffer zones.

### 3.0 Potential Impacts.

#### 3.1 Existing Impacts of Proposed Swan Lake Estates Project.

Impacts to the nesting eagles are already in evidence, given the disruption in perching and fishing patterns due to the noise of construction without permits on the road leading to the protected wetlands on the Kelly Bridge segment. The eagles did not go near the noisy construction during the weekdays when construction vehicles were pounding, grinding and tree cutting and moving gravel. They did return to the nesting and feeding areas on the weekends when all was quiet again. Local residents observations on this point have already been submitted to Region 3 Permit Analyst.

Other potential adverse impacts in winter include the ice fishing near Route 55 that disturbs the eagles feeding on prey east of Kelly Bridge, and snowmobile nightriders that leave tracks in the snow less than 50 feet away from the eyries on Shore Road. In the summer, the annual bass fishing competition with motorboats over 25 horsepower, and the jet skis, cause disturbances not just to the eagles but to the normally quiet wilderness areas. How will these activities be limited and necessarily stopped on Swan

Lake and what enforcement mechanisms will be put in places to ensure compliance?

### **3.1.1 Project Impacts Exacerbated by Applicant's Actions on Proposed Project.**

Actions undertaken by the developer of Swan Lake Estates have already impacted the eagles territory and the current site conditions. These actions include:

Construction activities into the wetlands and American Bald Eagles feeding peninsula area (Lot #7 of the Kelly Bridge Road segment) in April 2005 prior to final approval by the Town of Liberty Planning Board on May 3, 2005;

Lack of state and federal permit applications before commencing the above activities;

An Article 17 Order on Consent signed in September 2005 not to resume construction activities until ALL Permits have been obtained;

Subpoena issued February 6, 2006 to subcontractor Michael Nastro by Sullivan County District Attorney for trial in April 2006 for non-payment of "civil compromise" fine for pollution of lake waters in contravention of standards due to lack of erosion controls in June 2005; and

Submitting an arguably incomplete American Bald Eagle Mitigation Plan in January 2006, a full 19 months after first approaching the Town of Liberty Planning Board in May 2004 for approval to develop adjacent to the upper portion of Swan Lake despite prior knowledge of the presence of American Bald Eagles at the present site.

## **3.2 Proposed.**

### **3.2.1 Long Term Impacts of Proposed Development Project.**

The long term effects of home occupancy, increased noise, visual impacts and increased lighting still have to be determined since an environmental impact study has not yet been conducted. But the "permanent change of forested habitat in the vicinity of the lake to homes, roads and maintained lawns," is acknowledged by the Eagle Mitigation Plan.

Other permanent changes from a wilderness forest habitat to a gated community include the effect of lawn fertilizers and pesticides, clear cutting of mature trees for roads and driveways; and an increase in impermeable surfaces, and in the aesthetic views that are the hallmark of the lake at present.

### **3.2.2 Water Quality Impacts.**

Potential health risks include the positioning of leach fields and septic systems adjacent to the wetlands on ground water and lake water quality. These concerns were also discussed with developer AJM and his engineer R. Wasson on June 7, 2005 at the residents' meeting. Residents were told that the Town of Liberty does not have the capacity to install municipal water and sewage systems as other residents have on the south side of the lake.

How will seepage from the septic systems affect water quality and fish populations?

How will shoreline buffers adequately contain fertilizer and other garden chemicals that might degrade water quality?

How will pesticides and or herbicides use affect water quality?

The waters of Swan Lake also fall under the Us Army Corps of Engineers. During a phone conversation in May of 2005 with US Army Corps of Engineers Compliance officer, Chris Mallery, he stated his concern with the gradient of the property, type of shale, and possible fissures in the shale that Sullivan County is so well known for having, and the overall effect on the water quality of Swan Lake should there be leaching that pollutes the groundwater, and possible effluent into the lake.

On more than one occasion, sewage smells from the existing septic tanks at camps on Briscoe Road have made the whole area smell with sewage, as reported to B. Lohman of the DEC.

Eagles Among Us publication states: "Toxic waste disposal sites that may present a risk of contamination to eagles or their food resources should be identified and monitored."

In a paper by M.W. Hall on Water Pollution Control in Low Density Areas: Proceedings of a Rural Engineering Conference, 1975 states:

There are a number of ways in which septic systems pollute. To start with, they are notorious for failure. When a system fails, effluent from the tank backs up and spills out onto the area surrounding it. Any pathogens present become an immediate health hazard and pollutants in the system may make their way to the nearby surface water.

Even when operating properly, septic systems are not very effective with certain pollutants. For example, nitrogen and phosphorus are excreted in large quantities by humans and go directly into their septic systems. The subsurface soil environment performs some nutrients removal under optimal conditions but most leaches directly into the groundwater. This is especially true of nitrogen, almost all of which is converted to the nitrate form (NO<sub>3</sub>) upon leaving the septic system.

Canter and Knox 1986 Septic Tank System Effects on Ground Water Quality states:

"Other pollutants also enter the environment through the septic system. Many people are remarkably unconcerned with that they wash down their sinks and toilets."

It is not clear to what extent the modified Housing Association guidelines for Swan Lake Estates can effectively monitor or even enforce what individuals choose to flush down their toilets.

#### **4.0 Proposed Mitigation Measures: Eagle Mitigation Plan Submitted by Applicant.**

The Eagle Mitigation plan discusses the twenty-one evenly spaced lots on the Kelly Bridge Road segment and nineteen evenly spaced lots on the Lake Marie Road segment. The lots were intentionally sized so as not to trigger Department of Health permit requirements for septic tanks and leach fields on each lot adjacent to protected wetlands.

As Doug Gross, Endangered Bird Specialist said at the EagleFest in Narrowsburg, NY on January 14, 2006; "Even spacing of the homes of a development is a prescription for disaster, wildlife wise...be anti-dumb development. Be smart about how you plan it out." Quote of Jason Dole, Town Crier, Volume 6, Number 13, January 18-24, 2006.

According to the Eagle Mitigation Plan, (Page 1 Section 2.1): "Additional mature trees along and in the immediate vicinity of the lake's shoreline represent good roosting habitat for these birds." The Mitigation Plan does not specifically identify those trees, nor does it recognize that the peninsula area (Lot #7 of Kelly Bridge Road segment) is a habitual roosting, perching and foraging zone. The eagles have

been photographed around this peninsula area with long range photos since it is one of their favorite spots in the summer months for diving for fish. The water in this part of the lake is much deeper than the 18" – 24" inch depth of the lake near the nests.

Furthermore, Lot #7 is a well-documented daily feeding peninsula for the American Bald Eagles and offspring, except during the period of heavy construction noise between May – November 2005. It is not clear how adding docks and paths will lessen the potential for adverse impacts on the American Bald Eagles feeding habits on that wetland peninsula (Lot #7). As a habitual feeding area, the peninsula (Lot #7) deserves conservation easement status, as has been given to the 31 acres nesting area on the opposite shore of the lake.

At present, the Eagle Mitigation Plan does not contain primary or secondary buffer zones depicted surrounding the peninsula perching and feeding area. Rather, the Mitigation Plan states that: "Since Lot #7 is on a peninsula, the available home site configurations limit setback distances." So a critical perching and feeding area does not even merit a 200 feet setback from the protected wetlands and lakeshore as the other lots in the Kelly Bridge segment require.

#### **4.1 The Swan Lake Estates Development Project is Only One of a Number of Development Projects Resulting in the Loss of Habitat and Cumulative Development Pressures.**

There are numerous developments that need to be considered when addressing the cumulative potential impacts of all the new residential homes being planned for the area surrounding Swan Lake. These cumulative impacts are particularly relevant to the purpose of the Eagle Mitigation Plan, which is mitigating the impacts to the existing and future eagle populations of the proposed project and are required to be addressed by SEQRA.

The NYS DEC – Region #3 has been made aware of an additional 95-unit trailer park proposed for 62 acres on Kelly Bridge Road, with sewage discharge planned to flow into one of the Swan Lake tributaries. That proposal is now in front of the Town of Liberty Planning Board awaiting final approval. In addition, 40 acres have been proposed for 18 single-family homes on Kelly Bridge Road toward the northern end of the road.

Other developments planned for Swan Lake include 100 acres (purchased by D. Roth) on the western side of Shore Road, opposite the "Critical Area" where the American Bald Eagles eyrie is situated on the eastern side of Shore Road overlooking Swan Lake. Thirty-three acres on Briscoe Road on the south side of the "lower lake" is being developed by Panorama Estates.

All these developments will effectively ring Swan Lake on all sides, except the northern shore of the "lower lake" which may well be the only shoreline left for undisturbed wetlands of any depth to remain.

While these housing developments are in different stages of the planning process, the cumulative impacts are not being systematically assessed on important factors for the future well being of the American Bald Eagle nesting pair and offspring at Swan Lake, including habitat degradation of perching, roosting and feeding locations, water quality and feeding opportunities, flyways and open space.

#### **4.2 Eagle Mitigation Plan Inadequate: Key Factors Not Addressed.**

The Eagle Mitigation Plan submitted by the applicant does not adequately protect the eagles and mitigate the project impacts, on its face, and is incomplete by covering only the nest sites and not the perching and roosting zones.

There are three key factors in determining the future success of American Bald Eagles in Sullivan County: Protecting nesting habitat; suitable prey; and freedom from human disturbance at the nest sites and fishing areas.

Fraser: A Strategy for Protecting Bald Eagle in Sullivan County, NY. The wilderness habitat at Swan Lake provides these three factors, and a successful mitigation plan should also address these three factors.

Recommended management actions and standards include: establishment of current and potential perching, roosting and nesting zones...and important habitat components in which human activities would be restricted, such as 2600 foot buffer zones around perching and feeding sites.

BAEA National Management Guides 2000 at 12.

With regard to perching zones, Fraser, at 21, states:

Visible human presence, including walking, snowmobiling, boating, hunting, fishing and firearm use, but excepting eagle management functions, should be prohibited within 2600 feet of eagle perching zones...While changing the existing traffic patterns on public roads would be difficult, the siting of new roads should include careful consideration of restricted zones.

While the eagles live at Swan Lake year around, their habits differ according to the seasons: In winter perching occurs near open water that does not ice over (such as east of Kelly Bridge), where they can catch fish coming up for air. Such activities were spotted with regular frequency this winter during December 2005 and January 2006. In the summer, perching habits reflect the abundance of fish in shallower shores and the upper reaches of the lake.

"Vegetation in perching zones should be protected and managed to provide a sustained yield of large old-growth trees." Fraser 1988.

The actual nest trees on the Lake Marie Road segment and the feeding and perching zones on Lot #7 of the Kelly Bridge segment would benefit from a permanent conservation easement as protected critical areas, since it is not known what future homeowners of the Swan Lake Estates will do with their properties in terms of future tree cutting, subdividing of acreage, installing swimming pools, increased vehicular traffic within the gated community, and presumably an increase in boat traffic due to the increased number of docks being considered.

While the applicant "Anticipates that the proposed houses will be for the most part, second homes with only intermittent occupancy throughout the year" it is unlikely that a Homeowners Association can mandate or enforce the frequency of such use.

The Mitigation Plan of January 18, 2006 does not adequately address all necessary factors, nor does it mention the use of restricted water zones, such as buoys, during the critical breeding times in the spring. Therefore, the Mitigation Plan of January 18, 2006 is incomplete and in some respects inadequate in protecting the actual nesting sites from disturbances due to construction activities and human activity proposed during the breeding cycle.

#### **4.3 Other Critical Omissions in the Eagle Mitigation Plan.**

Restricted activities during nest building, egg laying, incubation, hatching and fledgling; see Chronology from National Bald Eagle Management Guidelines at 5, attached hereto;

The impact of additional boat traffic, power lines, telephone, cable, satellite and lighting systems on the flyway patterns of the eagles;

Human activities on the site during the nesting season, such as logging, road construction, blasting, pile-driving and operation of heavy construction equipment;

Use of toxic chemicals, such as pesticides, that affect the food supply such as the fish that live in Swan Lake, for the eagles, and the potential negative impacts on water quality of the septic systems proposed to be used by the proposed project;

Seasonal considerations during winter roosting, spring breeding and hatching, and increased human traffic in summer months.

**5.0 Conclusion: Eagle Mitigation Plan Inadequate to Protect Swan Lake Eagles.**

The American Bald Eagle is a cherished resource that chooses Swan Lake and its environs as its home. State and federal law protects its right to so live by protecting its habitat areas and requiring negative human impacts, disturbance and interference to be avoided. Any impacts of the proposed project that may potentially and may significantly impact the eagles must be thoroughly analyzed in an open and public process. For the American Bald Eagles to maintain an active nesting, perching, roosting and feeding life at Swan lake, the impacts on these key elements and the other areas raised herein must be fully addressed. The submitted Eagle Mitigation Plan reviewed by this commentary does not address and properly protect the key elements that experts in the field stress are necessary for success. In addition, water quality, human interference with nests and eagle behavior and the cumulative impacts of the many projects in and around Swan Lake, must similarly be thoroughly addressed. They have not been addressed.

In summary, the Eagle Mitigation Plan as submitted, will likely result in the wilderness area and eagle habitat that currently exists at Swan Lake being degraded beyond recognition. The Swan Lake area is the home to these eagles, and the piecemeal approach put forward by the applicant sacrifices the forest for the trees. Much more needs to be done along the lines addressed in this commentary before the DEC can accept the proposed Eagle Mitigation Plan for Swan Lake Estates.

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**DRAFT NATIONAL BALD EAGLE  
MANAGEMENT GUIDELINES**

**U.S. Fish and Wildlife Service**

**February 2006**

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## INTRODUCTION

These National Bald Eagle Management Guidelines (the Guidelines) apply to bald eagles (*Haliaeetus leucocephalus*) in the event the species is no longer listed as threatened under the Federal Endangered Species Act (ESA). If delisted under ESA, bald eagles remain protected by the Bald and Golden Eagle Protection Act (BGEPA) and the Migratory Bird Treaty Act (MBTA). Therefore, certain human-caused impacts to bald eagles are still prohibited by law. Commercial and residential development, forestry practices, outdoor recreation, natural resource recovery operations, and other human activities can potentially interfere with bald eagles or permanently degrade or destroy bald eagle nesting, roosting, and foraging areas. In some cases, such impacts amount to violations of the provisions of the BGEPA and/or MBTA that protect bald eagles.

The U.S. Fish and Wildlife Service (Service) developed the Guidelines to advise landowners, land managers, and others who share public and private lands with bald eagles when and under what circumstances the protective provisions of the BGEPA may apply to them. The Guidelines will promote the continued conservation of the bald eagle following its removal from the Federal List of Endangered and Threatened Wildlife and Plants (protection under the ESA).

The Guidelines are intended to:

- (1) Publicize the provisions of the BGEPA that continue to protect bald eagles, in order to reduce the possibility that people will violate the law,
- (2) Advise landowners, land managers and the general public of the potential for various human activities to disturb bald eagles, and
- (3) Encourage land management practices that benefit bald eagles and their habitat.

We wish to emphasize that these Guidelines are not intended to serve as a national management plan for bald eagles or as habitat management guidelines. While the Guidelines include general recommendations for land management practices that will benefit bald eagles, the document is primarily a tool for land owners and planners who seek information and recommendations regarding how to avoid disturbing bald eagles. Many States have developed state-specific management plans, regulations, and/or guidance for land owners and land managers to protect and enhance bald eagle habitat, and we encourage the continued development and use of these planning tools to benefit bald eagles.

Adherence to the Guidelines herein will benefit individuals, agencies, organizations, and companies by helping them avoid potential violations of the law. However, the Guidelines themselves are not law. Rather, they are recommendations based on several decades of behavioral observations, science, and conservation measures to avoid or minimize adverse impacts to bald eagles.

Although it is not possible under the BGEPA or the MBTA to absolve from liability individuals or entities who follow the Guidelines, the Service will prioritize its enforcement efforts to focus on those individuals or entities who take bald eagles or their parts, eggs, or nests without undertaking the measures recommended by the Guidelines.

The Guidelines are applicable throughout the United States, including Alaska. Prior to their development, the Service relied on various State and regional guidelines when providing technical assistance to landowners and project proponents. For purposes of compliance with Federal law, the Guidelines herein will supersede the Service's reliance on pre-existing State and regional guidelines. However, the public needs to be aware that the primary purpose of these Guidelines is to provide information that will minimize or prevent violations only of Federal laws governing bald eagles. In addition to Federal laws, most States have additional laws and regulations protecting bald eagles, and in some cases those State laws may be more protective (restrictive) than these Federal guidelines. If you are planning activities that may affect bald eagles, we recommend that you contact both your nearest U.S. Fish and Wildlife Service Field Office (see the contact information on p. 15) and your State wildlife agency for assistance.

## LEGAL PROTECTIONS FOR THE BALD EAGLE

### **The Bald and Golden Eagle Protection Act**

The BGEPA (16 U.S.C. 668-668c), enacted in 1940, and amended several times since then, prohibits anyone, without a permit issued by the Secretary of the Interior, from "taking" bald eagles, including their parts, nests, or eggs. The Act provides criminal penalties for persons who "take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or any manner, any bald eagle ... [or any golden eagle], alive or dead, or any part, nest, or egg thereof." The Act defines "take" as "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb."

For purposes of these guidelines, "disturb" means: "*To agitate or bother a bald or golden eagle to the degree that interferes with or interrupts normal breeding, feeding, or sheltering habits, causing injury, death, or nest abandonment.*" In addition to immediate impacts, this definition also covers impacts that result from human-induced alterations initiated around a previously used nest site during a time when eagles are not present. If, upon the eagle's return, such alterations agitate or bother an eagle to a degree that interferes with or interrupts normal breeding, feeding, or sheltering habits, and causes injury, death or nest abandonment.

A violation of the Act can result in a fine of \$100,000 (\$200,000 for organizations), imprisonment for one year, or both, for a first offense. Penalties increase substantially for additional offenses, and a second violation of this Act is a felony.

### **The Migratory Bird Treaty Act**

The MBTA (16 U.S.C. 703-712), prohibits the taking of any migratory bird or any part, nest, or egg, except as permitted by regulation. The MBTA was enacted in 1918; a 1972 agreement supplementing one of the bilateral treaties underlying the MBTA had the effect of expanding the scope of the Act to cover bald eagles and other raptors. Implementing regulations define "take" under the MBTA as "pursue, hunt, shoot, wound, kill, trap, capture, possess, or collect."

Copies of the BGEPA and the MBTA are available at: <http://permits.fws.gov/ltr/ltr.shtml>.

**State laws and regulations**

Most States have their own regulations and/or guidelines for bald eagle management. Some States may continue to list the bald eagle as endangered, threatened, or of special concern. If you plan activities that may affect bald eagles, we urge you to familiarize yourself with the regulations and/or guidelines that apply to bald eagles in your State. Your adherence to the Guidelines herein does not ensure that you are in compliance with State laws and regulations because State regulations can be more specific and/or restrictive than these Guidelines.

**NATURAL HISTORY OF THE BALD EAGLE**

Bald eagles are a North American species that historically occurred throughout the contiguous United States and Alaska. After severely declining in the lower 48 States between the 1870's and the 1970's, bald eagles have rebounded and re-established breeding territories in each of the lower 48 States except Vermont. The largest North American breeding populations are in Alaska and Canada, but there are also significant bald eagle populations in Florida, the Pacific Northwest, the Greater Yellowstone area, the Great Lakes States, and the Chesapeake Bay region. Bald eagle distribution varies seasonally. Bald eagles that nest in southern latitudes frequently move northward in late spring and early summer, often summering as far north as Canada. Most eagles that breed at northern latitudes migrate southward during winter, or to coastal areas where waters remain unfrozen. Migrants frequently concentrate in large numbers at sites where food is abundant and they often roost together communally. In some cases, concentration areas are used year-round: in summer by southern eagles and in winter by northern eagles.

Juvenile bald eagles have mottled brown and white plumage, gradually acquiring their dark brown body and distinctive white head and tail as they mature. Bald eagles generally attain adult plumage by 5 years of age. Most are capable of breeding at 4 or 5 years of age, but in healthy populations they may not start breeding until much older. Bald eagles may live 15 to 25 years in the wild. Adults weigh 8 to 14 pounds (occasionally reaching 18 pounds in Alaska) and have wingspans of 5½ to 8 feet. Those in the northern range are larger than those in the south, and females are larger than males.

**Where do bald eagles nest?**

Breeding bald eagles occupy "territories," areas they will typically defend against intrusion by other eagles. In addition to the active nest, a territory may include one or more alternate nests - nests built or maintained by the eagles but not used for nesting in a given year. The BGEPA prohibits removal or destruction of both active and alternate bald eagle nests. Bald eagles exhibit high nest site fidelity and nesting territories are often used year after year. Some territories are known to have been used continuously for over half a century.

Bald eagles generally nest near coastlines, rivers, large lakes or streams that support an adequate food supply. They often nest in mature or old-growth trees; snags (dead trees); cliffs; rock promontories; rarely on the ground; and with increasing frequency on human-made structures such as power poles and communication towers. In forested areas, bald eagles often select the tallest trees with limbs strong enough to support a nest that can weigh more than 1,000 pounds. Nest sites typically include at least one perch with a clear view of the water where the eagles usually forage. Shoreline trees or snags located in reservoirs provide the visibility and accessibility needed to locate aquatic prey. Eagle nests are constructed with large

sticks, and may be lined with moss, grass, plant stalks, lichens, seaweed, or sod. Nests are usually about 4-6 feet in diameter and 3 feet deep, although larger nests exist.



Copyright Birds of North America, 2000

The range of breeding bald eagles in 2000 (shaded areas). This map shows only the larger concentrations of nests; eagles have continued to expand into additional nesting territories in many states. The dotted line represents the bald eagle's wintering range.

#### When do bald eagles nest?

Nesting activity begins several months before egg-laying. Egg-laying dates vary throughout the U.S., ranging from October in Florida, to late April or even early May in the northern United States. Incubation typically lasts 33-35 days, but can be as long as 45 days. Eaglets make their first unsteady flights about 10 to 12 weeks after hatching, and fledge (leave their nests) within a few days after that first flight. However, young birds usually remain in the vicinity of the nest for several weeks after fledging because they are almost completely dependent on their parents for food until they disperse from the nesting territory approximately 6 weeks later.

The bald eagle nesting season tends to be longer in the southern U.S., and re-nesting following nest failure is more common there as well. The following table shows the timing of bald eagle nesting seasons in different regions of the country. The table represents the range of time within which the majority of nesting activities occur in each region and does not apply to any specific nesting pair. Because the timing of nesting activities can vary within a given region, you should contact the nearest U.S. Fish and Wildlife Service Field Office (see page 15) and/or your State wildlife conservation agency for more specific information on nesting chronology in your area.



Chronology of typical reproductive activities of bald eagles in the United States.

Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	March	April	May	June	July	Aug.												
<b>SOUTHEASTERN U.S. (FL, GA, SC, NC, AL, MS, LA, TN, KY, AR, eastern 1/4 of TX)</b>																							
Nest Building → → → → → → → → → → → →																							
Egg Laying/Incubation → → → → → → → → → → → →																							
Hatching/Rearing Young → → → → → → → → → → → →																							
Fledging Young → → → → → → → → → →																							
<b>CHESAPEAKE BAY REGION (VA, MD, DE, southern 1/4 of NJ, eastern 1/2 of PA, panhandle of WV)</b>																							
Nest Building → →																							
Egg Laying/Incubation → → →																							
Hatching/Rearing Young → → → → →																							
Fledging Young																							
<b>NORTHERN U.S. (ME, NH, MA, RI, CT, NY, northern 1/2 of NJ, western 1/2 of PA, OH, WV exc. panhandle, IN, IL, MI, WI, MN, IA, MO, ND, SD, NB, KS, CO, UT)</b>																							
Nest Building → →																							
Egg Laying/Incubation → →																							
Hatching/Rearing Young → →																							
Fledging Young → → → →																							
<b>PACIFIC REGION (WA, OR, CA, ID, MT, WY, NV)</b>																							
Nest Building → →																							
Egg Laying/Incubation → →																							
Hatching/Rearing Young → →																							
Fledging Young → → → →																							
<b>SOUTHWESTERN U.S. (AZ, NM, OK panhandle, western 1/2 of TX)</b>																							
Nest Building → → → → →																							
Egg Laying/Incubation → →																							
Hatching/Rearing Young →																							
Fledging Young →																							
<b>ALASKA</b>																							
Nest Building → → → → → →																							
Egg Laying/Incubation																							
Hatching/Rearing Young → → →																							
Fledging Young																							
<table border="1"> <tr> <td>Sept.</td> <td>Oct.</td> <td>Nov.</td> <td>Dec.</td> <td>Jan.</td> <td>Feb.</td> <td>March</td> <td>April</td> <td>May</td> <td>June</td> <td>July</td> <td>Aug.</td> </tr> </table>												Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	March	April	May	June	July	Aug.
Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	March	April	May	June	July	Aug.												

**How many chicks do bald eagles raise?**

The number of eagle eggs laid will vary from 1-4, with 1-2 eggs being the most common. Only one eagle egg is laid per day, although not always on successive days. Hatching of young occurs on different days with the result that chicks in the same nest are sometimes of unequal size. The overall national fledging rate is approximately one chick per nest, annually, which amounts to a healthy expanding population.

**What do bald eagles eat?**

Bald eagles are opportunistic feeders. Fish comprise much of their diet, but they also eat waterfowl, shorebirds/colonial waterbirds, small mammals, turtles, and carrion (often along roads or at landfills). Because they are visual hunters, eagles typically locate their prey from a conspicuous perch, or soaring flight, then swoop down and strike. Wintering bald eagles often congregate in large numbers along streams to feed on spawning salmon or other fish species, and often gather in large numbers in areas below reservoirs, especially hydropower dams, where fish are abundant. Wintering eagles also take birds from rafts of ducks at reservoirs and rivers, and congregate on melting ice shelves to scavenge dead fish from the current or the soft melting ice. Bald eagles' penchant for feeding on roadkill and euthanized animal carcasses at landfills and feedlots can be deadly: collision with cars and secondary poisoning by ingestion of sodium pentobarbital are both significant causes of eagle mortalities.

During the nesting season, adults carry prey to the nest to feed the young. Adults feed their chicks by tearing off pieces of food and holding them to the beaks of the eaglets. After fledging, immature eagles are slow to develop hunting skills, and must learn to locate reliable food sources and master feeding techniques. Young eagles will congregate together, often feeding upon easily acquired food such as carrion and fish found in abundance at the mouths of streams and shallow bays and at landfills.

**The Impact of human activity on nesting bald eagles**

During the nesting season, bald eagles are sensitive to a variety of human activities. However, not all bald eagle pairs react to human activities in the same way. Some pairs nest successfully just dozens of yards from human activity, while others abandon nest sites in response to activities much farther away. This variability may be related to a number of factors, including visibility, duration, noise levels, extent of the area affected by the activity, prior experiences with humans, and tolerance of the individual nesting pair. The relative sensitivity of bald eagles during various stages of the breeding season is outlined in the following table.

**Nesting Bald Eagle Sensitivity to Human Activities**

Phase	Activity	Sensitivity to Human Activity	Comments
I	Courtship and Nest Building	Most sensitive period; likely to respond negatively	Most critical time period. Disturbance is manifested in nest abandonment. Bald eagles in newly established territories are more prone to abandon nest sites.
II	Egg laying	Very sensitive period	Human activity of even limited duration may cause nest desertion and abandonment of territory for the nesting season.
III	Incubation and hatching	Very sensitive period	Adults are less likely to abandon the nest near and after hatching. However, flushed adults leave eggs and young unattended; eggs are susceptible to cooling, loss of moisture, overheating, and predation; young are vulnerable to elements.
IV	Nestling period	Moderately sensitive period	Likelihood of nest abandonment and vulnerability of the nestlings to elements gradually decreases. However, nestlings may miss feedings, which may affect their survival, or may prematurely leave the nest due to disruption, resulting in their death.

If agitated by human activities, eagles may inadequately construct or repair their nest, may expend energy defending the nest rather than tending to their young, or may abandon the nest altogether. Activities that cause prolonged absences of adults from their nests can jeopardize eggs or young. Depending on weather conditions, eggs may overheat or cool too much and fail to hatch. Unattended eggs and juveniles are subject to predation. Young nestlings are particularly vulnerable because they rely on their parents to provide warmth or shade, without which they may die as a result of hypothermia or heat stress. If food delivery schedules are interrupted, the young may not develop healthy plumage, which can affect their survival. In addition, adults startled while incubating or brooding young may damage eggs or injure their young as they abruptly leave the nest. Older nestlings no longer require constant attention, but they may be startled by loud or intrusive human activities and prematurely jump from the nest before they are able to fly or care for themselves.

**The impact of human activity on foraging and roosting bald eagles**

Disruption, destruction, or obstruction of roosting and foraging areas can also negatively affect bald eagles. Nesting bald eagles may inadequately feed their young if the adults are prevented or discouraged from feeding at preferred sites. Migrating and wintering bald eagles congregate at specific sites for purposes of feeding and sheltering. Bald eagles rely on established roost sites because of their proximity to sufficient food sources. Roost sites are usually in mature trees where the eagles are somewhat sheltered from the wind and weather. Human activities near or within communal roost sites may prevent eagles from feeding or taking shelter, especially if there are not other undisturbed and productive feeding and roosting sites available. Disruptive activities in the flight path between nesting and roosting sites and important foraging areas can interfere with feeding. Activities that permanently alter eagle habitat can altogether eliminate the elements that are essential for feeding and sheltering eagles.

Where a human activity agitates or bothers roosting or foraging bald eagles to the degree that interferes with or interrupts breeding, feeding, or sheltering behavior, causing injury, death, or nest abandonment, the conduct of the activity constitutes a violation of the BGEPA's prohibition against disturbing eagles. The circumstances that might result in such an outcome are difficult to predict without detailed site-specific information. If your activities may disturb roosting or foraging bald eagles, you should contact your local Fish and Wildlife Service Field Office (see page 15) for advice and recommendations for how to avoid such disturbance.

### **RECOMMENDATIONS FOR AVOIDING BALD EAGLE DISTURBANCE AT NEST SITES**

In developing these Guidelines, we relied on existing State and regional bald eagle guidelines, scientific literature on bald eagle disturbance, and recommendations of State and Federal biologists who monitor the impacts of human activity on eagles. Despite these resources, uncertainties remain regarding the effects of many activities on eagles and how eagles in different situations may or may not respond to certain human activities. The Service recognizes this uncertainty and views the collection of better biological data on the response of eagles to disturbance as a high priority. To the extent that resources allow, the Service will continue to collect data on responses of bald eagles to human activities conducted according to the recommendations within these Guidelines to ensure that adequate protection from disturbance is being afforded, and to identify circumstances where the Guidelines might be liberalized. This data will be used to make future adjustments to the Guidelines.

To avoid disturbing nesting bald eagles, we recommend (1) maintaining natural forested (or vegetative) buffers around nest trees, and (2) avoiding certain activities during the nesting season. The buffer areas serve to minimize visual and auditory impacts associated with human activities near nest sites. Ideally, the buffers should be large enough to protect existing nest trees and provide for alternative or replacement nest trees.

The size and shape of effective buffers varies depending on the topography and other ecological characteristics surrounding the nest site. In open areas where there are little or no natural forested buffers, such as in many western States, the distance alone will serve as a buffer. Consequently, the buffers in open areas may need to be larger than for areas with denser vegetation or other natural screening.

In addition to the physical features of the landscape, appropriate buffer size may vary according to the historical tolerances of eagles to human activities in particular localities, and may also depend on the location of the nest in relation to feeding and roosting areas used by the eagles. Increased competition for nest sites may lead bald eagles to nest closer to human activity.

Seasonal restrictions can prevent the potential impacts of many shorter-term, obtrusive activities that do not entail landscape alterations (e.g. fireworks, outdoor concerts). In proximity to the nest, these kinds of activities should be conducted only outside the nesting season. For activities that entail both short-term, obtrusive characteristics and more permanent impacts (e.g., building construction), we recommend a combination of both approaches: retaining a landscape buffer *and* observing seasonal restrictions.

For assistance in determining the appropriate size and configuration of buffers or the timing of activities in the vicinity of a bald eagle nest, we encourage you to contact the nearest U.S. Fish and Wildlife Service Field Office (see page 15).

### Existing Uses

Eagles are unlikely to be disturbed by routine use of roads, homes, and other facilities where such use pre-dates the eagles' successful nesting activity in a given area. Therefore, in most cases *ongoing* existing uses may proceed with the same intensity with little risk of disturbing bald eagles. However, some *intermittent, occasional, or irregular* uses that pre-date eagle nesting in an area may disturb bald eagles. For example: a pair of eagles may begin nesting in an area and subsequently be disturbed by activities associated with a county fair, even though the county fair has been held annually at the same location. In such situations, human activity should be adjusted or relocated to minimize potential impacts on the nesting pair.

### Activity-Specific Guidelines

The following section provides the Service's management recommendations for avoiding bald eagle disturbance as a result of new or intermittent activities proposed in the vicinity of bald eagle nests. Activities are separated into 8 categories (A – H) based on the nature and magnitude of impacts to bald eagles that usually result from the type of activity. Activities with similar or comparable impacts are grouped together.

In most cases, impacts will vary based on the visibility of the activity from the eagle nest and the degree to which similar activities are already occurring in proximity to the nest site. Visibility is a factor because, in general, eagles are more prone to disturbance when an activity occurs in full view. For this reason, we recommend that people locate activities farther from the nest structure in areas with open vistas, in contrast to areas where the view is shielded by rolling topography, trees, or other screening factors. The recommendations also take into account the existence of similar activities in the area because the continued presence of nesting bald eagles in the vicinity of the existing activities indicates that the eagles in that area can tolerate a greater degree of human activity than we can generally expect from eagles in areas that experience fewer human impacts. To illustrate how these factors affect the likelihood of disturbing eagles, we incorporated the recommendations for some activities into tables (categories A and B).

First, determine which category your activity falls into (between categories A – H). If the activity you plan to undertake is not specifically addressed in these guidelines, follow the recommendations for the most similar activity represented.

If your activity is under A or B, our recommendations are in table form. The vertical axis shows the degree of visibility of the activity from the nest. The horizontal axis (header row) represents the degree to which similar activities are ongoing in the vicinity of the nest. Locate the row that best describes how visible your activity will be from the eagle nest. If the nest is visible from where the activity will be conducted, then your activity will be visible from the nest. If the nest is not visible from where your activity will be conducted, the activity will not be visible from the nest. Then, choose the column that best describes the degree to which similar activities are ongoing in the vicinity of the eagle nest. The box where the column and row come together contains our management recommendations for how far you should locate your activity from the nest to avoid disturbing the eagles. The numerical distances shown in the tables are the closest the activity should be conducted relative to the nest. In some cases we have included additional recommendations (other than recommended *distance* from the nest) you should follow to help ensure that your activity will not disturb the eagles.

For activities that entail permanent landscape alterations that may result in bald eagle disturbance, these recommendations apply to both active and alternate bald eagle nests. Disturbance becomes an issue with regard to alternate nests if eagles return for breeding purposes and react to land use changes that occurred while the nest was inactive. The likelihood that an alternate nest will again become active decreases the longer it goes unused. Over most of the United States, after 5 years of disuse, the probability of an alternate bald eagle nest becoming active is considered remote enough that protection from disturbance is no longer necessary. However, in the southwestern U.S., suitable nest sites are in short supply, and the probability of reuse remains high for up to 10 years of disuse.

If you plan activities in the vicinity of an alternate bald eagle nest and have information to show that the nest has not been active for the preceding 5 years (10 years in Arizona, New Mexico, and west of the 100<sup>th</sup> meridian in Texas), the recommendations provided in these guidelines for avoiding disturbance around the nest site may no longer be warranted. The nest itself remains protected by other provisions of the BGEPA, however, and may not be destroyed.

If special circumstances exist that make it unlikely an inactive nest will be reused before 5 years (10 years in the southwestern States noted above) of disuse have passed, and you believe that the probability of reuse is low enough to warrant disregarding the recommendations for avoiding disturbance, you should be prepared to provide all the reasons for your conclusion, including information regarding past use of the nest site. Without sufficient documentation, you should continue to follow these guidelines when conducting activities around the nest site. If we are able to determine that it is unlikely the nest will be reused, we may advise you that the recommendations provided in these guidelines for avoiding disturbance are no longer necessary around that nest site.

For activities that have temporary impacts, such as the use of loud machinery, fireworks displays, or summer boating activities, we recommend seasonal restrictions. These types of activities can generally be carried out outside of the nesting season without causing disturbance. The recommended restrictions for these types of activities can be lifted for alternate nests within a particular territory, including nests that were attended during the current nesting season but not used to raise young, after eggs laid in another nest within the territory have hatched (depending on the distance between the alternate nest and the active nest).

In general, activities should be kept as far away from nest trees as possible; loud and disruptive activities should be conducted when eagles are not nesting; and activity between the nest and the nearest foraging area should be restricted. If the activity you plan to undertake is not specifically addressed in these guidelines, follow the recommendations for the most similar activity addressed, or contact your local U.S. Fish and Wildlife Service Field Office for additional guidance.

If you believe that special circumstances apply to your situation that increase or diminish the likelihood of bald eagle disturbance, or if it is not possible to adhere to the guidelines, you should contact your local Service Field Office for further guidance.

Contact information for our Field Offices is on page 15.

**Category A:**

Building construction, 1 or 2 story, where the project footprint is ½ acre or less.

Construction of roads, trails, canals, power lines, and other linear utilities.

Agriculture – new or expanded operations.

Alteration of shorelines or wetlands.

Installation of docks or moorings.

Water impoundment.

Aquaculture.

<b>Category A</b>	<b><i>If there is no similar activity within 1 mile of the nest</i></b>	<b><i>If there is similar activity closer than 1 mile from the nest</i></b>
<b><i>If the activity will be visible from the nest</i></b>	660 feet. Clearing, external construction and landscaping should be done outside nesting season. Landscaping buffers are recommended.	660 feet, or as close as existing tolerated activity of similar scope. Clearing, external construction and landscaping should be done outside nesting season. Landscaping buffers are recommended.
<b><i>If the activity will not be visible from the nest</i></b>	330 feet. Clearing, external construction and landscaping should be done outside nesting season.	330 feet, or as close as existing tolerated activity of similar scope. Clearing, external construction and landscaping should be done outside nesting season.

**Category B:**

Building construction, 3 or more stories.

Building construction where the project footprint is larger than ½ acre.

Mining.

Oil and natural gas drilling and refining.

<b>Category B</b>	<b><i>If there is no similar activity within 1 mile of the nest</i></b>	<b><i>If there is similar activity closer than 1 mile from the nest</i></b>
<b><i>If the activity will be visible from the nest</i></b>	660 feet. Clearing, blasting, external construction and landscaping should be done outside the nesting season. Landscaping buffers are recommended.	660 feet, or as close as existing tolerated activity of similar scope. Clearing, external construction and landscaping should be done outside the nesting season. Landscaping buffers are recommended.
<b><i>If the activity will not be visible from the nest</i></b>	660 feet. Clearing, external construction and landscaping should be done outside the nesting season.	330 feet, or as close as existing tolerated activity of similar scope. Clearing, external construction and landscaping should be done outside the nesting season.

### C. Timber Operations and Forestry Practices

- Avoid clear cutting within 330 feet of the nest at any time.
- Avoid timber harvesting operations, including road construction and chain saw and yarding operations, during the nesting season within 660 feet of the nest.
- Selective thinning and other silviculture management practices designed to conserve or enhance habitat, including prescribed burning close to the nest tree, should be undertaken outside the nesting season. Precautions such as raking leaves and woody debris from around the nest tree should be taken to prevent crown fire or fire climbing the nest tree. If it is determined that a burn during the nesting season would be beneficial, preferred, or safer for the birds, then, to ensure that no take or disturbance will occur, these activities should be conducted only when neither adult eagles nor young are present at the nest tree (i.e., at the beginning of, or end of, the nesting season, either before the particular nest is active or after the young have fledged from that nest). Appropriate Federal and State biologists should be consulted before any prescribed burning is conducted during the nesting season.
- Avoid construction of log transfer facilities and in-water log storage areas within 330 feet of the nest.

**D. Off-road vehicle use (including snowmobiles).** No buffer is necessary around nest sites outside the nesting season. During the nesting season, do not operate off-road vehicles within 330 feet of the nest. In open areas, where there is increased visibility and exposure to noise, this distance should be extended to 660 feet.

**E. Motorized Watercraft use (including jet skis/personal watercraft).** No buffer is necessary around nest sites outside the nesting season. During the nesting season, within 330 feet of the nest, (1) do not operate jet skis (personal watercraft), and (2) avoid concentrations of noisy vessels (e.g. commercial fishing boats and tour boats), except where eagles have demonstrated tolerance for such activity. Other motorized boat traffic passing within 330 feet of the nest should attempt to minimize trips and avoid stopping in the area where feasible, particularly where eagles are unaccustomed to boat traffic.

**F. Non-motorized recreation and human entry (including hiking, camping, fishing, hunting, canoeing).** No buffer is necessary around nest sites outside the nesting season. If the activity will be visible or highly audible from the nest, maintain a 330-foot buffer during the nesting season, particularly where eagles are unaccustomed to such activity.

### G. Helicopters and fixed-wing aircraft.

Except for authorized biologists trained in survey techniques, avoid operating aircraft within 1000 feet of the nest during the nesting season, except where eagles have demonstrated tolerance for such activity.

### H. Blasting and other loud, intermittent noises.

Avoid blasting and other activities that produce extremely loud noises within 1/2 mile of active nests (or within 1 mile in open areas), unless greater tolerance to the activity (or similar activity) has been demonstrated by the eagles in the nesting area. This recommendation applies to the



use of fireworks classified by the Federal Department of Transportation as Class B explosives, which includes the larger fireworks that are intended for licensed public display.

### **ADDITIONAL RECOMMENDATIONS FOR PROTECTING BALD EAGLES**

The following are additional management practices that land owners and planners can exercise to benefit bald eagles. Many of these recommendations are designed to protect and preserve bald eagle habitat. In some cases, these practices can be critical to ensure against illegal take under the BGEPA.

1. Protect and preserve communal roost sites, potential nest sites, and important foraging areas. Retain mature trees and old growth stands wherever possible, particularly within ½ mile from water.
2. Avoid potentially disruptive activities and development in the eagles' direct flight path between their nest and roost sites and important foraging areas.
3. Locate long-term and permanent water-dependent facilities away from important eagle foraging areas.
4. Avoid recreational and commercial boating and fishing near eagle foraging areas during peak feeding times (usually early to mid morning and late afternoon), except where eagles have demonstrated tolerance to such activity.
5. Do not use explosives within ½ mile (or within 1 mile in open areas) of communal roosts when eagles are congregating, without prior coordination with the U.S. Fish and Wildlife Service and your state wildlife agency.
6. Locate aircraft corridors no closer than 1,000 feet vertical or horizontal distance from communal roost sites.
7. Use pesticides, herbicides, fertilizers, and other chemicals only in accordance with Federal and State laws and labeled instructions for their use.
8. Identify and monitor contaminants associated with hazardous waste sites (legal or illegal), permitted releases, and runoff from agricultural areas, especially within watersheds where eagles have shown poor reproduction or where bioaccumulating contaminants have been documented. These factors present a risk of contamination to eagles and their food sources.
9. Where nests are blown from trees during storms or are otherwise destroyed by the elements, continue to protect the site in the absence of the nest for up to three (3) complete breeding seasons. Many eagles will rebuild the nest and reoccupy the site.
10. Site wind turbines and high voltage transmission power lines away from bald eagle communal roost sites to avoid collisions, where feasible. Bury utility lines along forested shorelines and roadways in new development projects.

## GLOSSARY

The definitions below apply to these National Bald Eagle Management Guidelines:

**Communal roost sites** – Areas where bald eagles gather and perch overnight – and sometimes during the day in the event of inclement weather. Communal roost sites are usually in large trees (live or dead) that are relatively sheltered from wind and are generally in close proximity to foraging areas. These roosts may also serve a social purpose for pair bond formation and communication between eagles. Many roost sites are used year after year.

**Disturbance** – In the context of BGEPA, to agitate or bother an eagle to a degree that interferes with or interrupts normal breeding, feeding, or sheltering habits, causing injury, death, or nest abandonment. In addition to immediate impacts, this definition also covers impacts that result from human-induced alterations initiated around a previously used nest site during a time when eagles are not present, if, upon the eagle's return, such alterations agitate or bother an eagle to a degree that interferes with or interrupts normal breeding, feeding, or sheltering habits, and cause injury, death or nest abandonment.

**Fledge** – To leave the nest and begin flying. For bald eagles, this normally occurs at 10-12 weeks of age.

**Fledgling** – A juvenile bald eagle that has taken the first flight from the nest but is not yet independent.

**Foraging area** – An area where eagles feed, typically near open water such as rivers, lakes, reservoirs, and bays where fish and waterfowl are abundant, or in areas with little or no water (i.e., rangelands, barren land, tundra, suburban areas, etc.) where other prey species (e.g., rabbit, rodents, deer) or carrion (such as at landfills) are abundant.

**Landscape buffer** – A natural or human-made landscape feature that screens eagles from human activity (e.g., strip of trees, hill, cliff, berm, sound wall).

**Nest** – A structure built, maintained, or used by bald eagles for the purpose of reproduction. An active nest is a nest that is attended (built, maintained or used) by a pair of bald eagles during a given nesting season, whether or not eggs are laid. An alternate nest is a nest that is not used for breeding by eagles during a given nesting season.

**Nest abandonment** – Nest abandonment occurs when adult eagles desert or stop attending to a nest and do not subsequently return and successfully raise young in that nest for the duration of a breeding season. A nest can be abandoned due to alterations around the site that occurred prior to the nesting season, if such alterations agitate or bother the eagle to a degree that causes the eagles to either (1) not use the nest for breeding purposes, or (2) not occupy the nest at all that season. For eagles that migrate during the non-nesting season, nest abandonment can occur at any point between the time the eagles return to the nesting site for the breeding season and the time when all progeny from the breeding season have dispersed. If the eagles remain in the area throughout the non-breeding season, nest abandonment can occur at any point after the eagles initiate behaviors that indicate they will use the nest for breeding purposes until such time that all progeny of the breeding season have dispersed.

**Project footprint** – The area of land (and water) that will be permanently altered for a development project, including access roads.

**Similar scope** – In the vicinity of a bald eagle nest, an existing activity is of similar scope to a potential new activity where the types of impacts to bald eagles are similar in nature, and the impacts of the existing activity are of the same or greater magnitude than the impacts of the potential new activity. Examples: (1) An existing single-story home 200 feet from a nest is similar in scope to an additional single-story home 200 feet from the nest; (2) An existing multi-story, multi-family dwelling 150 feet from a nest has impacts of a greater magnitude than a potential new single-family home 200 feet from the nest; (3) One existing single-family home 200 feet from the nest has impacts of a lesser magnitude than three single-family homes 200 feet from the nest. The existing activities in examples (1) and (2) are of similar scope, while the existing activity in example (3) is not.

**Vegetative buffer** – An area surrounding a bald eagle nest that is wholly or largely covered by forest, vegetation, or other natural ecological characteristics, and separates the nest from human activities.



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- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mail piece or on the front if space permits.

1. Article Addressed to:  
Scott E. Sheeley  
Reg. Permitt. Admin.  
DEC, Region 3  
21 So. Putts Corner  
New Paltz, NY 12561

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
*Keith Daly*  Addressee  
B. Received by (Printed Name)  C. Date of Delivery  
*Keith Daly* *3/13/06*  
D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

3. Service Type  
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 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number  
(Transfer from service label)

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**EXHIBIT 8**



JOHN L. PARKER  
*Attorney-at-Law*

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VIA FACSIMILE AND CERTIFIED U.S. MAIL

April 28, 2006

Scott E. Sheeley  
Deputy Regional Permit Administrator  
Department of Environmental Conservation, Region 3  
21 South Putts Corner  
New Paltz, NY 12561

Re: SEQRA Review at Swan Lake, Liberty, New York.

Permit Applications Nos. 3-4836-00245/00001  
3-4836-00245/00002

DEC Pre-Application No. 3-4836-00248/00001

Dear Mr. Sheeley:

I write on behalf of my clients Cora Edwards and others who live along Swan Lake in response to the call for public comments on the draft scoping document for the environmental impact statement review of the above referenced applications.

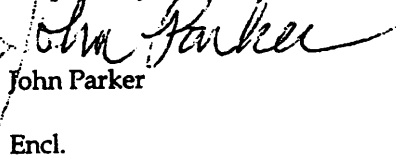
The positive declaration issued on March 31, 2006 and the draft scoping document dated March 30, 2006 indicate that the SEQRA review will be limited to issues related directly to the bald eagles. In fact, the draft scope indicates that a number of specified issues "were determined not relevant, or not environmentally significant, or that have been adequately addressed in a prior environmental review." Section 10.0, Draft Scoping Document. Based upon our careful and thorough review of the available information regarding the above applications, we believe such determination may be in error and ask that DEC reconsider the scope of issues that will be considered pursuant to the positive declaration and environmental impact statement review process. In support of such request for reconsideration of the draft scope, I again submit into the official public comment for the draft scope my letter to you of January 20, 2006 which includes numerous eyewitness accounts and other evidence regarding specific issues and the significance of the potential impacts caused by the above referenced projects. This submittal provides sufficient basis for DEC to expand the scope of the positive declaration for EIS review, and a corresponding expansion of the draft scope beyond what is currently proposed. Should the DEC determine that such reconsideration is not warranted in this case, there is abundant support in the attached documentation indicating that the draft scope for the above applications must be expanded to incorporate a number of additional issues raised by Ms. Edwards and others because of the interrelated impacts the identified impacts will have on the eagle habitat. Contrary to the assertions in the draft scope, that attached submission establishes that these

issues raised in the January 20, 2006 letter are important, and are "relevant" and necessary for a thorough and comprehensive "hard look" consistent with the DEC's legal obligations under SEQRA.

In addition, please consider this letter in further support of the April 28, 2006 submission of Cora Edwards into the public record for the draft scope document, which is attached. Ms. Edward's comments carefully analyze and dissect the reasons that the scope of the draft scope must be expanded before the EIS review process begins in earnest.

Thank you for accepting this submission into the public record in the SEQRA review of the above referenced applications. We greatly appreciate the DEC's determination regarding the positive declaration, which we believe will make an important difference in the future of Swan Lake.

Respectfully submitted,



John Parker

Encl.

cc: w/o attach.

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Albany NY 12233-4757

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District Representative  
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**ЕХНІВІТ 9**



CORA EDWARDS  
PO Box 446  
Swan Lake, NY 12783

April 28, 2006

Scott Sheeley  
Deputy Regional Permit Administrator  
NYS – DEC Region #3  
21 South Putts Corner Road  
New Paltz, NY 12561-1696

**Re: Draft SEQRA Scoping Document, March 30, 2006  
SEQR Positive Declaration  
Kelly Bridge Road and Lake Marie Road Subdivisions  
DEC Nos. 3-4836-00245 and 3-4836-00248/00001**

Dear Mr. Sheeley:

**American Bald Eagle Activity at Swan Lake: Spring, Summer, Fall and Winter and the  
Need to Expand the Scope of the DEIS Beyond the March 30, 2006 Draft Proposal.**

I am writing to share observations about the bald eagles at Swan Lake that are relevant to the Draft SEQRA Scoping Document ("Scoping Document") dated March 30, 2006, and to ask that they be incorporated into the public record. As you know, the Environmental Impact Statement ("EIS") is only as good as the Scoping Document that sets forth the parameters of the review process. In this case, the facts and unique environmental situation at Swan Lake necessitate the most expansive Scoping document possible.

My house is situated at 1495 Briscoe Road, overlooking Kelly Bridge Road and faces the east side of Swan Lake where the sun rises over the wetlands. It is spring-time at Swan Lake, and I am beginning to see the American Bald eagle activity habitual to this time of year.

There is a nesting pair of American Bald Eagles that live in one of the nests adjacent to Shore Road on the "upper" lake. The head of the mother eagle can now be seen just popping above the nest. I understand that this is an indication that the mother eagle is waiting for this year's eaglets to hatch, as in years past.

This morning around 11 am, I noticed a beautiful young eagle with wingspan completely outstretched gliding toward the three maple trees that line our property facing the "lower lake" shore east of Kelly Bridge. This young eagle made a direct flight into a group of 5 blackbirds that were sitting on branches of the tree. After several minutes of squawking and agitated rustling, the black birds dispersed and the eagle glided over the lake waters toward the wetlands, circling and surveying the waters below for several turns before stopping in one of the pine trees by the wetlands east of Kelly Bridge.

For the last several days, three young eagles have circled over this area of the "lower lake" and the hill on the west side of Briscoe Road in the afternoons usually between 4:00 – 6:00 pm.

Last Spring, during the last weekend in April 2005, I saw for the first time above the lower lake, at least eleven eagles catching the wind currents, circling higher and higher in the skies above until it was difficult to see them with the naked eye. Fortunately, my husband and several friends were standing there witnessing this "eagle conference" in flight and we are able to share this memory together.

Each summer, the eagles swoop down for fish in the "upper lakes" area. The summer before last, a friend asked if he could bring his kayak to Swan Lake. When I asked him afterwards how he liked his kayaking, he told me that he was very moved by his experience because he saw an eagle swoop down and catch a fish while he was kayaking. The eagles often perch and wait at the "peninsula" (opposite Briscoe and Shore Road) as a favorite place for catching fish, and over the years many photos have been taken of the eagles by residents who have lived here for many years.

Last summer around Memorial Day weekend, my brother and I went canoeing and we could see the mother eagle carefully guarding her brood and the father eagle watching like a sentry from the bare tree that is near the "major nest" adjacent to Shore Road. As the summer progressed, we saw the fledglings staying close to the nest. We were cautious and careful not to bring the canoe near any of the nests because the young eagles would open their wings in a nervous manner if the canoe came closer than about 1000' (one thousand feet or so). We have never taken our canoe any farther than that spot because it feels that we are entering a private zone that belongs to the eagles and other birds that live there.

Although the eagles used to be seen flying as far as Route 55 and Stanton Corners and beyond, neighbors at that end of Swan Lake have not seen the eagles there recently. (See comments by Mr. Roberto Lugo).

Last winter, from the porch of our home, my husband and I saw the eagles on the ice on the lake (east of Kelly Bridge Road), and took our binoculars out, since they were so far away. We saw what looked like some kind of prey they had caught and lay out on the ice to eat. Each morning between 10:00 am and 11:00 am, from December 24, 2005 – January 3, 2006, the eagles came to this same spot for their "buffet table on ice." The eagles would not alight on the ice if there were people fishing quite a distance away near the hotel on Briscoe Road and the intersection with Route 55.

It is my sincere belief that these observations about the seasons on Swan Lake illustrate an important and overarching point about the scope of the environmental review. Simply stated, it is that everything possible must be included into the proposed Draft Scope because of the interrelated and holistic nature of the environment of Swan Lake, and its impacts on the wildlife like the bald eagles that live there. With respect to the eagles, this requires the Scope to extensively and thoroughly investigate and address the habitat and behavior of bald eagles regarding breeding, foraging, perching, roosting and nesting at Swan Lake will provide comprehensive documentation so the eagles habitat can be best protected, not just for the immediate future, also for the eaglets yet to be born and generations to come.

I have seen residential subdivision properties in other parts of the US where great care, expense and due diligence have helped to preserve and protect marshes, wetlands, riverfronts and lakeside and wildlife habitat. A thorough and compelling investigation was a necessary component of those success stories and Swan Lake must be no different. As lead agency DEC is now responsible to ensure that everything is done to address the Swan Lake eagles and their habitat; they have chosen to live continuously here for so many years, and we expect that will continue if we act prudently now.

We look forward to DEC expanding the Scope of the EIS beyond what was incorporated into the Draft Scope that is the subject of this public comment period, and that every possible step be taken to make sure that the most expansive and thorough Scoping document be used to examine the impacts of the proposed Swan Lake development project.

Thank you for your attention to this matter, and for the DEC's careful and thoughtful determination that the facts and situation on Swan Lake merited a full and thorough Environmental Impact review. It is an important decision in the history of Swan Lake and was the right thing to do.

Sincerely,

Cora Edwards



**PUBLIC COMMENTS OF CORA EDWARDS**  
**DRAFT SCOPING DOCUMENT – MARCH 30, 2006**

**I. THE DRAFT SCOPING DOCUMENT MUST EXPLICITLY INCLUDE ALL IDENTIFIED EAGLE USES TO ADEQUATELY EXAMINE THE POTENTIALLY SIGNIFICANT ADVERSE IMPACTS OF THE PROJECT.**

The Draft Scoping document states:

*Potential Impacts*

An evaluation of potential impacts to bald eagles will be provided. The evaluation will include potential impacts to habitats used by bald eagles at the project sites, within Swan Lake, and the lands contiguous to Swan Lake. Bald eagle uses considered in the evaluation shall include, but not be limited to, nesting, foraging, roosting, and overwintering. The evaluation of potential impacts shall include a discussion of lake access and use from each project site and all lands controlled by the project sponsor within or contiguous to Swan Lake.

Draft Scoping document at 4 – 5.

By definition, the uses considered for the evaluation are too narrowly defined.

There are three key factors in determining the future success of American Bald Eagles in Sullivan County: Protecting nesting habitat; suitable prey; and freedom from human disturbance at the nest sites and fishing areas.

A Strategy for Protecting Bald Eagle in Sullivan County, New York, by James D. Fraser, Ph.D. 1988 edition. The Scope of the EIS must explicitly include the suitability of prey, and the necessary buffer zones and flyways to enable all key bald eagle uses, and thus their survival to continue on Swan Lake.

*Roosting and Perching Areas.*

Eagles spend most of their time perched. Much of this perching occurs in feeding areas where eagles hunt, eat captured prey and rest on perches. Human disturbance in perching areas can interrupt feeding and cause eagles to fly unnecessarily using energy best provided for metabolism, thermoregulation and other essential activities. Potential perching zones should be cataloged for two reasons: Firstly, habitual perching areas may change from year to year.

A Strategy for Protecting Bald Eagles in Sullivan County, New York by James D. Fraser, Ph.D. 1988 edition.

*Flyways.*

Flyways used by eagles as they travel in the vicinity of perching, roosting and nesting areas should, to the extent possible, be kept free of humans and should remain undeveloped. Special attention should be given to the following flyways:

Roosting to perching area;  
Nest to perching area;  
Perching to perching area.

At the time of Dr. Fraser's report, "Little quantitative study has been directed at determining the effect on eagles of people below their intended flight path. Nevertheless, the well-documented eagle avoidance of people in other situations and the fact that flushed eagles typically avoid the source of disturbance has led some authorities to recommend minimizing human traffic in these areas." In the case of the eagles at Swan Lake, it is clear that the eagles avoid the "lower lake" east of Kelly Bridge when there are ice-fishing activities near Route 55.

#### ***Prey base.***

Swan Lake is one of the last clean water lakes of its size in the Catskills region, and is abundant with a variety of fish species that rely on clean water for survival. As mentioned elsewhere, the eagles are routinely spotted catching fish off the peninsula on Lot #7 of the Kelly Bridge Road segment.

In the winter months of December 2005 and January 2006, when the lake is frozen, the eagles were seen laying their prey out on the ice and returning to it over a period of several days in the lower lake area east of Kelly Bridge. According to Fraser: "The prey base should be protected by maintaining water quality and minimum base flows, and by effecting other fish management activities as needed."

## **II. THE EXISTING SITE CONDITIONS MUST BE ACCURATELY AND EXPLICITLY IDENTIFIED IN THE SCOPE.**

***There must be a full accounting and consideration of all relevant property, and all eagle nest sites on and around each project site, Swan Lake and the lands contiguous to Swan Lake in the EIS process.***

It is important to note that the project sites subject to this EIS are contiguous property owned and controlled by the same person because the developer owns Swan Lake itself, which connects the two sites. These properties comprise the Swan Lake wilderness area, and along with the surrounding habitat have supported a pair of breeding American Bald Eagles and offspring since at least 1969. There are currently five nests. According to various accounts, another nest on the Kelly Bridge Road side of the property another nests was "destroyed by raccoons."

The remaining nests have been documented over the years by the DEC when fledglings are tagged by DEC staff, and in one case when a pair of eaglets died shortly after hatching, although the cause of premature death is unknown. In a conversation with Kathy Michell, wildlife and eagle conservationist from Narrowsburg, NY she told me that one year an eaglet died because a group of people were watching the eagles from too close a proximity, and the mother could not get back to the nest to shade the eaglet from over-exposure and then it died.

In the spring of 2005 a pair of eaglets hatched and were tagged at around five weeks old, according to Steve Joule - DEC Biologist in Region 3. That pair of offspring is now beginning to molt and show white feathers on the chest.

The Lake Marie Road subdivision is adjacent to a "log cabin" belonging to AJM. That log cabin has clear-cut acreage down to the shore of Swan Lake and within 350 feet of two eagles nests (identified as D and E nests). That log cabin property is now on the real estate market, as evidenced by the McKean Realty sign posted in front of the property. This action by the developer also raises pertinent questions regarding the potential of "adverse impact" on the eagle's habitat.

**How will the sale of this log cabin property affect the eagle's nests sites?**

**What restrictions must be placed on this adjacent property of the sponsor to ensure the potentially adverse impacts of the proposed action are addressed and mitigated?**

**How will future owners of the 'log cabin' conduct activities to insure that no harm or disturbance takes place to the eagles' nests while they are living there?**



**Are there restrictions or covenants for this cabin and the land around it for future owners so they do not inadvertently "harm, disturb or harass" the eagles and wildlife habitat?**

With regard to the sale of lots by AJM, it was my understanding that the developer had agreed NOT to sell lots until all permits were in place. Time and again, the developer has stated publicly and in local newspapers that he would not do anything to displace the eagles. His mitigation plans appeared inadequate and now he has a property adjacent to the eagle's nest for public sale. What conclusions can be drawn from his words and subsequent actions?

***The Swan Lake Dam Must Be Explicitly Included in the Scoping Document.***

The Draft Scoping Document does not mention the Swan Lake dam located at the Route 55 end of Swan Lake. The Swan Lake dam is a necessary component to the maintenance and survival of Swan Lake. Thus, it is an integral component for the prey base survival.

It has come to my attention that the proposed Swan Lake Housing Association covenants, deeds restrictions and by-laws state that anyone who purchases lots at Swan Lake Estates LLC property will be liable for dam maintenance as part of the regular fees of the Swan Lake Estates Housing Association.

This poses several pertinent questions with regard to 'potential adverse impacts' to the American Bald Eagle Habitat at Swan Lake:

**How will dam inspection and safety records be made available for anyone seeking to purchase a home or lot at Swan Lake Estates with regard to dam maintenance? Will it be simply be a case of "buyer beware" or are there alternative scenarios for dam maintenance responsibilities?**

**How will dam maintenance issues be addressed during the Environmental Review Process?**

**How will daily and seasonal dam maintenance and water flow levels over the dam be addressed as a "potential adverse impact" on the water and food supply of the eagles at Swan Lake?**

**How will the seasonal variations in water levels and water flow over the dam be regulated and maintained during the environmental review period?**

**To what extent did last summer (2005) drought, de-watering and lack of timely water flow regulation (i.e. taking the flashboards out in the fall and putting them back in before the summer as customary in previous years) create an adverse effect on the existing ecosystem and food chain upon which the eagles rely?**

**The question of dam maintenance and relative water levels of the lake have a direct impact on the eagles ability to forage in their traditional feeding spots on the lake shore, in terms of the amount of energy the eagles have to expend for food. How will that affect their energy reserves for other activities such as nesting and feeding?**

***The Need for Maximum Buffer Zones Must Be Explicitly Discussed in the Scoping Document.***

The BAEA National Management Guidelines 2000 at 14 states:

**Foraging Areas: Disruption within    mile (1320 feet) of a Bald Eagle feeding area or perch site should be minimized when Bald Eagles are present. No activities, which significantly alter the**

landscape or vegetation, should occur within the primary zone. Important eagle roosts and food sources should not be destroyed or degraded.

**Parking Lot:** The parking facility proposed for Common Lot #13 was discussed at a meeting between the developer, AJM and Swan Lake residents on June 7, 2005 at the Town of Liberty Government Center. At issue was the proximity of the parking lot to the protected wetlands and wilderness areas. Another issue is the cumulative impact of impermeable surfaces near the critical environmental areas, storm water runoff as a result, and the potential for adverse impacts on the water quality of the lake due to leach fields and septic tanks, and the potential impact of contaminated fish on the American Bald Eagles food supply.

***Description of action:***

The potential adverse impacts identified for the Kelly Bridge Road segment apply to the Lake Marie segment, only with more protective primary and secondary buffer zones required, given that two remaining eagles nests exist in close proximity to proposed construction and the existing "log cabin" which will become part of the common lot on Lake Marie Road with frontage on Swan Lake. These nests would benefit from a comprehensive conservation easement area similar to the nests on the 31 acres adjacent to Shore Road on the opposite side of Swan Lake.

In the previously submitted "Eagle Mitigation Plan" submitted demonstrates an inconsistent application of the buffer zones. For example, various distances ranging from 1200 to 1600 feet are shown to separate the nests on the Shore Road side from the proposed lots on the Kelly Bridge Road segment.

**What are the buffer zones for these same nests with regard to the Lake Marie Road segment and proposed construction areas?**

**Why do the buffer zones not comply with the 2600 foot buffer zones around perching and feeding sites set forth in the BAEA National Management Guides 2000 at 12?**

There aren't any primary or secondary circumferences shown for these buffer zones.

Impacts to the nesting eagles are already in evidence, given the disruption in perching and fishing patterns due to the noise of construction without permits on the road leading to the protected wetlands on the Kelly Bridge segment. The eagles did not go near the noisy construction during the weekdays when construction vehicles were pounding, grinding and tree cutting and moving gravel. They did return to the nesting and feeding areas on the weekends when all was quiet again. Local residents observations on this point have already been submitted to Region 3 Permit Analyst.

Other potential adverse impacts in winter include the ice fishing near Route 55 that disturbs the eagles feeding on prey east of Kelly Bridge, and snowmobile nightriders that leave tracks in the snow less than 50 feet away from the eyries on Shore Road. In the summer, the annual bass fishing competition with motorboats over 25 horsepower, and the jet skis, cause disturbances not just to the eagles but to the normally quiet wilderness areas. How will these activities be limited and necessarily stopped on Swan Lake and what enforcement mechanisms will be put in places to ensure compliance?

### **III. DEC INCORRECTLY IDENTIFIES IMPORTANT ISSUES AS "NOT RELEVANT."**

There are many aspects of Swan Lake that demonstrate the interconnectedness of life in the ecosystem, and that for a proper consideration of the potentially significant adverse environmental impacts of the project, must be specifically addressed in the EIS.

#### **Water Quality.**

Swan Lake is one of the "last clean water lakes" left in Sullivan County. The lake waters provide an abundant and necessary food supply for the eagles nesting around Swan Lake in each season of the year, including winter-feeding. Specific eyewitness observations confirm this. Many residents of Swan Lake

have seen the eagles feeding and foraging areas. Local resident Eli Goldschmidt's comments regarding foraging areas on the lake shore opposite 79 Redwood Lane have previously been submitted to DEC and this issue is also addressed in and George Fulham's comments re: foraging and feeding on the "upper lakes").

Since the food source found in the lake – fish, is of such importance, the ability of the lake and its water quality to maintain this important, historical and necessary food source is equally relevant. This is particularly important given the proposed use of septic systems and their potential negative impacts to the water quality of Swan Lake.

There are a number of ways in which septic systems pollute. To start with, they are notorious for failure. When a system fails, effluent from the tank backs up and spills out onto the area surrounding it. Any pathogens present become an immediate health hazard and pollutants in the system may make their way to the nearby surface water.

Even when operating properly, septic systems are not very effective with certain pollutants. For example, nitrogen and phosphorus are excreted in large quantities by humans and go directly into their septic systems. The subsurface soil environment performs some nutrients removal under optimal conditions but most leaches directly into the groundwater. This is especially true of nitrogen, almost all of which is converted to the nitrate form (NO<sub>3</sub>) upon leaving the septic system.

Water Pollution Control in Low Density Areas: Proceedings of a Rural Engineering Conference, M.W. Hall (1975).

Canter and Knox 1986 Septic Tank System Effects on Ground Water Quality states:

"Other pollutants also enter the environment through the septic system. Many people are remarkably unconcerned with that they wash down their sinks and toilets."

It is not clear to what extent the modified Housing Association guidelines for Swan Lake Estates can effectively monitor or even enforce the need to properly maintain a septic system that will protect the levels of water quality necessary to maintain the food supply for the bald eagles. This is particularly complicated by the nature of Sullivan County soil, the gradient of the slopes, the fissures in the shale and the type of septic and sewage systems.

Specific questions that the EIS should address on this point include:

**How will water quality for the eagle's habitat be monitored during and after the environmental impact period?**

**How will the potential adverse impacts of these proposed septic systems be assessed, monitored and regulated?**

**Wetlands and Vegetation:**

There are various categories of wetlands encircling the shoreline, although it is not clear that all the wetlands areas have been fully investigated and marked accordingly. The design of the project raises questions about the future viability of these wetlands. It is still unclear which version of site plans are being evaluated by the DEC, since there is one set of "approved" plans registered with the county clerk's office, which had one long boat launch and a subsequent set of plans presented to the Town of Liberty with individual docks that did not receive an approval stamp from the Town of Liberty Planning Board.

Specific questions that the EIS should address on this point include:

**On which site plan will the SEQRA review process be based with regard to potential adverse impacts?**

**How will potential adverse impacts of the two recreational lots, impermeable surfaces of proposed parking lots and driveways affect wetlands, and how will potential adverse impacts to the wetlands and vegetation be addressed in the SEQRA review process?**

**Land:**

Seasonal considerations during winter roosting, spring breeding and hatching, and increased human traffic in summer months.

The total amount of acreage (project site totaling over 234 acres) will irrevocably alter the current wilderness habitat characteristics into a "gated communities" in the suburbs. The defining characteristic of the upper Swan Lake area is currently wilderness, and the cumulative impacts of all the other proposed development projects encircling Swan Lake (RNR construction on Kelly Bridge Road, Roth properties on Shore Road and Panorama Estates on Briscoe Road) will irrevocably alter the treasured and valued ecology forever.

**Aesthetics:**

Swan Lake is much more than just the sum of its parts. Swan Lake is more than just a wilderness and forested habitat, an ecosystem of lakes and streams, and the distinctive curve of Walnut Mountain against the expansive sky. Together these features combine and create a unique vista and identifiable landmark throughout Sullivan County. When the early morning mist rises and the sun breaks over the eastern shore, it is the same sight people would have seen 100 years ago. The unusual L-shaped format ion of the lake means that the sun bathes in the lake waters twice a day – at sunrise and again at sunset.

**Noise:**

The noise levels of construction vehicles passing every three minutes on Kelly Bridge Road last May until September 2005, all the while spewing ravel and lurching sounds from the shifting gears was an incongruous sounds to the normal bird calls we usually hear. The normally peaceful one-lane country road sounded like a two lane highway. A constant roar of vehicles surged past from 7:30 am every morning to 4:30 pm each afternoon. Some nights I was awakened by the sounds of logging vehicles going past midnight. These sounds carry all the way across the lake.

Even worse was the tree-cutting noise, and its impacts upon the wildlife and its remaining habitat during the destruction of the natural surroundings. Many of us came to Swan Lake for peace and quiet, but during the tree-cutting and gravel hauling activities, I escaped to my apartment New York City just so I could "hear myself think" – literally. Now I know what that phrase really means, because I could not concentrate on work while all that noise disturbed the lake. If it was like that for me on the south west (east facing) side of Kelly Bridge Road, then what would it be like for the eagles nests in much closer proximity?

**How did the noise levels from last year's activities adversely affect the eagles' ability to breed, nest and forage this year?**

**Property Values:**

AJM is by trade a property developer. Property development sometimes lends itself to land speculation and artificially inflated property prices. For example, AJM properties purchased a small wood frame cottage at the far end of Redwood Lane last year for \$107,000. That cottage had been listed for sale at \$17,000 the summer before. By inflating the lake side value of property more than five times the original price, AJM has now made properties that were once affordable to the local population out of reach. A neighbor could not compete with AJM's bidding on the cottage and dropped out at \$100,000. The property developer, AJM has shown himself to be out of alignment with community character on this purchase.

He has donated a plot of limited commercial value adjacent to the tennis courts by the Swan Lake Hotel to the Town of Liberty as part of a beautification effort.

As requested, AJM has stated in local media to donate 31 acres (of "below road -grade property") for the eagle's conservation easement. As the eagles soar from one end of Swan Lake to the other, are they aware of when they have left their designated conservation easement zone and are entering the property zones of each different resident of Swan Lake?

Other potential adverse impacts that should be included in the scope of the EIS include:

**Disruptive activities impacting nesting areas during nest building, egg laying, incubation, hatching and fledgling cycles of the lives of the bald eagles;**

**The impact of additional boat traffic, power lines, telephone, cable, satellite and lighting systems on the flyway patterns of the eagles and other behaviors of the current population of bald eagles that have never experienced such disruptions in their home environments;**

**Human activities on and or around the eagle nest sites during the nesting season, such as ingress and egress, lawn maintenance, logging, road construction, blasting, pile-driving and operation of heavy construction equipment.**

Traffic: Between May 2005 – September 2005, a battalion of construction vehicles carry tins of dirt and gravel continuously rode over Kelly Bridge Road from as early as 7:00 am until 4:30 in the afternoons. This incessant construction traffic on a one-lane country road and bridge caused visible deterioration as the days, weeks and months went by. In response to public requests, the Sullivan County Department of Public Works sent an inspector to the bridge and made an interim memo with regard to the need for bridge repairs. Photos from the inspection and memo are attached. These reports indicate that "potential adverse impacts" were in fact "actual" adverse impacts due to the fact that the bridge was not made to withstand the type of constant construction vehicle use.



**EXHIBIT 10**





JOHN L. PARKER  
*Attorney-at-Law*

565 Taxter Road, Suite 100  
Elmsford, NY 10523

(914) 347-2290  
(914) 347-2331 fax  
parkerjlp@yahoo.com

November 27, 2006

Marc Moran  
Regional Director  
Department of Environmental Conservation, Region 3  
21 South Putts Corner Road  
New Paltz, New York 12561

Vince Altieri  
Division Attorney  
Department of Environmental Conservation Region 3  
21 South Putts Corner Road  
New Paltz, New York 12561-1620

Re: **Swan Lake Estates**  
**Order on Consent Case No. R3-20050621-53.**  
**DEC Id Nos. 3-4836-00245/00001**  
**3-4836-00245/00002**  
**Draft Environmental Impact Statement**

Dear Messrs. Moran and Altieri:

I write to you regarding the permit applications, order on consent, and environmental impact statement review under SEQRA, for which the Department ("DEC") is lead agency, for the above referenced project in the Town of Liberty. As you know, this is a case of great importance to my clients, which are neighbors to the site of the proposed subdivision and are gravely concerned about the environmental quality of the area, and the federally protected Endangered Species that are under significant negative pressure. A few months ago, we discovered that the main breeding nest was no longer in the tree.

I write to request your immediate action with respect to violations of State Law that undermines DEC jurisdiction, defies the order on consent in this case, and to a situation that may trigger joint DEC - DOH jurisdiction for review and approval of water and sewage systems. These violations of law raise serious questions about the suitability of the applicant for DEC approval of permits, and require DEC to immediately revisit September 2005 Consent Order. We request that DEC take such action without delay.

**I. KELLY BRIDGE ROAD SUBDIVISION IS IN VIOLATION OF THE CONSENT ORDER.**

Kelly Bridge Road subdivision is being actively sold and marketed to the public. The representations made by the applicant's real estate agents indicate a violation of the DEC

consent order and likely of state law. The September 15, 2005 Order on Consent prohibits construction activities prior to obtaining DEC permits. *In the Matter of the Alleged Violations of Article 17 of the New York State Environmental Conservation Law ("ECL")*, by: *AJM at Swan Lake Estates, LLC, Respondents, Order on Consent Case No. R3-20050621-53, attached hereto as Exhibit A.* Amongst other requirements, it requires that applicant

Has agreed to *cease construction* of the project until coverage has been gained under general stormwater permit GP-02-01, and to obtain any other DEC permits which may be required for the project, *prior to recommencing construction.*

*Emphasis added. Id. at § 4.* The construction work involved installing utility infrastructure on the subdivision site, which the applicant's realtor described as "underground electrical." *See Statement of Julie Grim, October 24, 2006, attached hereto as Exhibit B.* Thus, the applicant's real estate sales representative conclusively established such construction activity had occurred on-site as part of its active marketing campaign to the public.

DEC entered into a Consent Order because of violations of the clean water requirements of ECL Article 17, specifically ECL § 17-0803 and § 17-0501. There is no question that DEC believed that such violations were significant enough to warrant a \$15,000 civil penalty. This penalty was reduced by \$2,500 "provided Respondent strictly adheres to the terms and conditions of this order." The actions of the applicant, however, based upon the statements of their agents clearly indicates that stringent requirements of strict compliance have not been met. The applicant admits that their construction schedule proceeded despite the Consent Order. The Department must review and reassess the deterrent effect of the penalty amount it assessed in the Consent Order and should require additional penalties. At a minimum, DEC must collect the \$2,500 of the civil penalty it initially suspended.

## **II. KELLY BRIDGE ROAD SUBDIVISION MAY BE IN VIOLATION OF STATE LAW BECAUSE IT IS BEING SOLD TO THE PUBLIC EVEN THOUGH STATE LAW PROHIBITS SUCH SALE AT THIS POINT.**

The lot sizes of the Kelly Bridge Road subdivision are an important issue in this case because State law prohibits certain subdivisions from being offered for sale, lease or rent unless properly filed plans identify amongst other things the methods for obtaining and furnishing the "adequate and satisfactory water supply" and "adequate and satisfactory sewage facilities" for the lots are duly filed with the County Clerk. *PHL § 1116, ECL § 17-1505.* State law requires DOH and DEC to approve water supply and sewage systems involved in approval of the Kelly Bridge subdivision. *PHL Article 11, ECL Title 15, Article 17.* These lots are in fact for sale even without complying with these important public health and environmental provisions of state law requiring such compliance be filed with the County Clerk. A full inquiry on this important legal issue is urgently needed.

The proposed lot sizes approved by the Town of Liberty on May 3, 2005 range from about two to five plus acre lots. On March 22, 2006, the DOH based upon the site plan or AJM at Swan Lake Estates - Kelly Bridge Road Subdivision concluded that

the proposed realty subdivision does not fall within this Department's jurisdiction as found under Article 11, Title II, Public Health Law § 115.1

*Letter of Timothy B. Rose, P.E., BCEE Department of Health to Scott E. Sheeley, DEC, March 2, 2006, attached hereto as Exhibit C.* This conclusion should be reviewed, however, because the ultimate determination requires interpretation of both Town and State Law. It is unclear that both laws were fully applied prior to reaching such a conclusion.

The responsibilities and jurisdiction of the State agencies overlap under the State statutory scheme, and a Memorandum of Understanding governs how these agencies work together. ECL § 17-1509. In relevant part the law requires that,

No subdivision or portion thereof shall be sold, offered for sale, leased or rented by any corporation, company or person, and no permanent building shall be erected thereon, until a plan or map of such subdivision *shall be filed with and approved* by the department or city, county or part-county department of health having jurisdiction and such plan or map thereafter filed in the office of the clerk of the county in which such subdivision is located.

*Emphasis added.* ECL § 17-1505(1), PHL § 1116. These requirements apply to any "residential lot" or "residential building plot" that is "five acres or less." ECL § 17-1501(3), PHL § 1115(3). These provisions apply to subdivision "divided into five or more parcels." ECL § 17-501(1), PHL § 1115(1). The "plan or map" shall show methods for obtaining and furnishing adequate and satisfactory "water supply" and "sewerage facilities." ECL § 17-1505(2), PHL § 1116(2). The installation of these systems "shall be in accordance with the plans or any revision or revisions thereof approved." ECL § 17-1505(3), PHL § 1116(3). If five or more lots are less than the five acre threshold, joint DEC - DOH action is necessary.

The Town of Liberty code further clarifies the legal definition of what "residential lot" means for the purposes of the DOH and DEC inquiry. In full, the Town Code defines Lot Area as

The area contained within the limits of the property lines bounding that lot. Any portion of a lot included in a street right-of-way, designated wetland, utility right-of way or land under water shall not be included in calculating lot area.

*Liberty Town Code § 130-10.* Of particular relevance to lot size calculation in this case is the large amount of wetlands on site. The Town of Liberty Code broadly and liberally defines wetland as it relates to lot size issues. *Chapter 82 of the Town Code.* ECL § 24-0301. The Town Code does not restrict the definition of wetland to the state wetland definition.<sup>1</sup> Thus, State law and the more liberally defined Town Code must be applied by DEC under the principles of Home Rule.

---

<sup>1</sup> See *Chapter 82.* There is no definition of the word "designated wetlands" in the Town Code regarding lot area. Further, a review of ECL Article 24 and implementing regulations reveals that there is no definition of "designated wetland" with respect wetlands either. ECL § 24-0101 *et seq.*

DOH guidance is entirely consistent with this approach. DOH has clearly acknowledged that "Property under water (e.g. ponds, streams, wetlands, etc.) are typically considered in the lot size determination." *Emphasis added. Department of Health: Realty Subdivisions: Frequently Asked Questions (FAQs), attached hereto as Exhibit D.* In Liberty, wetlands and lot area are not "typical" as DOH uses that word. Thus, as a matter of Town and State law, when considering the size of the subdivision lots regarding approval of water and sewage systems DEC and DOH must deduct wetlands from the calculation of lot area. When properly applied, there are significant questions about whether there are more than five lots below the five-acre criteria in the Kelly Bridge Road subdivision given the significant amount of wetlands present on the site. Deducting the wetlands from the lot area calculations as per Town Law will result in the lot sizes of up to five additional sites falling below the five acre threshold criteria requiring joint DEC - DOH involvement. Full review of this issue is crucial and necessary and full state review is required.

**III. THE APPLICANT'S REPEATED VIOLATION OF THE ECL AND THE CONSENT ORDER RAISE THE ISSUE OF SUITABILITY OF THE APPLICANT FOR PENDING DEC PERMIT APPLICATIONS, AND SHOULD BE CONSIDERED.**

The conduct of the applicant in this case raises questions about the "suitability" for issuance of DEC permits. As discussed above, the Consent Order addressed violations of the clean water requirements of ECL §§ 17-0803 and § 17-0501. These violations, in the view of DEC at the time, resulted in a \$15,000 civil penalty. The actions of the applicant, however, have far larger consequences to this case. The DEC Record of Compliance Enforcement Guidance Memorandum makes clear that the

policy and procedures by which the Department of Environmental Conservation (the "Department") is to ensure that persons who are unsuitable to carry out responsibilities under Department permits, certificates, licenses or grants, are not authorized to do so.

*Record of Compliance: Enforcement Guidance Memorandum, March 5, 1993 § I ("Record of Compliance Memo").* This policy has been in effect for over twenty years. The reasons for the ROC Memo are clearly articulated

The courts have recognized that the environmental compliance history of a permit applicant is a relevant consideration regarding qualification for permitting [*Matter of Bio-Tech Mills Inc. v. Williams*, 105 A.D. 2d 301 (3d Dept., 1985), *Aff'd*, 65 N.Y. 2d 855 (1985), *Olsen v. Town Board of Saugerties*, \_\_AD 2d \_\_ (3rd Dept., 1990)].

In addition to the general authority to deny, suspend, condition or revoke permits, the Legislature has specified criteria for such actions in certain statutory schemes. It is clear from the explicit authority as well as both implied legislative authority and the general authority provided in ECL Sections 1-0101, 3-0301 and for Uniform Procedures Act permits, 70-0115, that the Department can modify, suspend deny or revoke any permit it issues based on the unsuitability of a

permitted applicant to carry out the work authorized in a lawful and environmentally protective manner.

Record of Compliance Memo § III. The legal authority for DEC to consider the violations in this case requiring the Consent Order regarding the suitability of this applicant for issuance of permits is clear, and should be considered in any permit proceeding.

The practical impact of these actions is very significant. The gravamen of the complaint of local residents in this case is that federally protected endangered species were never considered in the Town of Liberty's review and approval of the subdivision application. The failure to consider the American Bald Eagle and its habitat needed to remain for its survival at Swan Lake is one of the bases for the Environmental Impact Statement review currently underway. The applicant's violations of law by clear-cutting and excavating and grading for the roads on-site, burning tree stumps without permits, contributing to the serious turbidity and destruction of water quality at Swan Lake prior to issuance of DEC permits, moving forward with construction on-site and at the Swan Lake dam, and now selling subdivision lots without complying with law directly and negatively impacts the Endangered Species that DEC is required by law to protect. The Draft EIS has not even been judged complete by DEC and thus not been subject to review by the public on its merits, and particularly with respect to required mitigation measures. Nonetheless, the applicant continues with business as usual.

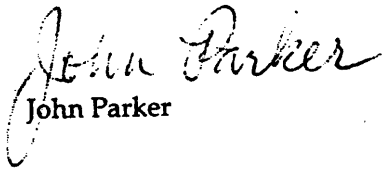
The DEC has had a long history with the proposed Swan Lake Estates project currently known as the Kelly Bridge Road Subdivision. Local residents have been vigilant and contacted DEC to inform them of violations of law, and of the threat to the endangered bald eagles that live on Swan Lake. A Consent Order resulted in response to these actions, as did an Environmental Impact Statement. During the course, however, the applicant has proceeded with its proposal despite and in spite of the requirements and obligations imposed upon it by DEC's Consent Order and State Law. Those actions must be considered under DEC's own policy guidance memos when they consider pending permit applications. These actions are also resulting in a continuing and ongoing violation of the Consent Order and State law - the site has had construction activities and is now being sold despite likely legal prohibitions on such action. The applicant sales agent assure members of the public that the lot's will be available in the spring and that DEC is reviewing the site because of six eagles nests even though only four remain since Swan Lake Estates came to the area and questions regarding violation of the Endangered Species Act remain unanswered.<sup>2</sup> The situation on Swan Lake was never that easy - it is about the State's environmental review laws and whether or not DEC would enforce the law as it is obligated to do to protect the neighbors and the endangered species.

---

<sup>2</sup> The applicant was on notice on October 6, 2005 from U.S. Department of the Interior, Fish and Wildlife Service that "Section 9 of ESA prohibits the "take" of any federally-listed animal species by any person subject to the jurisdiction of the United States. As defined by ESA, take means "...to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in such conduct." "Harm" in the definition of take means an act which kills or injures wildlife. Such an act may include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR part 17.3). Letter of David A. Stilwell, Field Supervisor to Anthony J. Murolo, Swan Lake Estates, October 6, 2005, attached hereto as Exhibit E.

We respectfully request that DEC review and investigate the enforcement issues raised above regarding the Kelly Bridge Road subdivision. The implications of these violations are quite clear. We ask that DEC take such actions before they proceed with any further steps regarding permit applications or environmental review. We look forward to your reply and the actions you take regarding these enforcement issues. Please do not hesitate to contact me if you need further information.

Respectfully submitted,

  
John Parker

cc: w/o attachments

Judith Enck  
Policy Advisor  
New York State Department of Law

Denise Sheehan  
Commissioner  
Department of Environmental Conservation

Scott Sheeley  
Deputy Regional Permit Administrator  
DEC Region 3

Stephen Joule  
Biologist  
DEC Region 3

**Exhibit A**





STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

X-----X

In the Matter of the Alleged Violation of  
Article 17 of the New York State Environmental  
Conservation Law ("ECL"), by:

ORDER ON CONSENT  
CASE NO. R3-20050621-53

AJM at Swan Lake Estates, LLC,

Respondents

(Sullivan County)

X-----X

WHEREAS:

1. The New York State Department of Environmental Conservation ("DEC" or "Department") is responsible for the administration and enforcement of law and regulation pursuant to Article 17 of the New York State Environmental Conservation Law.
  2. On June 6, 2005, Department of Environmental Conservation Staff observed a discharge of turbid water in the vicinity of Kelly Bridge, located at Kelly Bridge Road, Town of Liberty, New York in contravention of applicable water quality standards. Additionally, a search of DEC records indicates that AJM at Swan Lake Estates, LLC had not obtained coverage under the GP-02-01 general stormwater permit prior to commencing construction on the roadway comprising a portion of the Swan Lake Estates project. DEC alleges such activities are in violation of ECL Article 17-0503 Discharging without a SPDES Permit and Article 17-0501 Violation of Water Quality Standards-- visual contrast to receiving water
  3. Respondent alleges that the turbidity to the receiving water noted by DEC Staff was produced by pre-existing ruts in exposed earth in the shoulder of Kelley Bridge Road, and was not due to the work conducted by Respondent, and that Respondent had placed and maintained erosion control measures in the area of work. Additionally Respondent alleges that Respondent's engineer mailed and Notice of Intent to gain coverage under the general stormwater permit prior to DEC commencing construction, but admits that it did not receive acknowledgment that such coverage had been granted prior to commencing work.
  4. Respondent has agreed to cease construction of the project until coverage has been gained under general stormwater permit GP-02-01, and to obtain any other DEC permits which may be required for the project, prior to recommencing construction.
3. Respondent states that it wishes to come into compliance with applicable state

environmental laws and regulations, and, without admitting violation of ECL Article 17 as regards turbidity, affirmatively waives the right to a public hearing in this matter in the manner provided by 6 NYCRR Part 622, and consents to the entering and issuing of this Order, and agrees to be bound by the terms and conditions of this Order.

NOW, having considered this matter and being duly advised, it is ORDERED that:

I. Respondent shall be liable to pay a civil penalty in the amount of \$15,000.00, of which \$12,500.00 is payable and must be submitted with this Order bearing the signature of Respondent; the remaining amount, \$2,500.00, is suspended provided Respondent strictly adheres to the terms and conditions of this Order, including the Compliance Schedule attached hereto.

II. This Order shall not become effective until it is signed by the Regional Director on behalf of the Commissioner.

III. This Order may be changed only by written order of the Commissioner or the Commissioner's designee;

IV. This Order shall be deemed binding on Respondent, any successors and assigns and all persons, firms and corporations acting under or for Respondent, including, but not limited to those who may carry on any or all of the operations now being conducted by Respondents, whether at the present location or at any other in this State.

V. Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent and any successors (including successors in title) and assigns.

Dated: New Paltz, New York

September 15, 2005

Commissioner

DENISE M. SHEEHAN Acting

New York State  
Department of Environmental Conservation

By: 

MARC MORAN  
Regional Director

Region 3

This Order on Consent has been reviewed and approved by the Regional Attorney as to form.

By:   
\_\_\_\_\_  
VINCENT ALTIERI  
Regional Attorney

Date: 9/15 2005



**AJM at Swan Lake Estates LLC  
CASE NO. R3-20050621-53**

**COMPLIANCE SCHEDULE**

**I. GENERAL REQUIREMENTS:**

**Immediately:** Respondent(s) shall cease and desist from any and all future violations of the New York State Environmental Conservation Law and the rules and regulations enacted pursuant thereto.

Respondent(s) shall certify completion of the work required under this schedule, to the Department within five (5) days of its completion.

All technical submittals to the Department required under this Order shall be made by Respondent(s) as follows:

Three copies to Janet Swentusky, Region Three, New York State Department of Environmental Conservation, 21 South Platt Corners Road, New Paltz, New York 12561.

**II. SPECIFIC REQUIREMENTS:**

Within (5) days from the date of the Execution of this Order	Obtain coverage under GP-02-01 & send a copy of the Notice of Intent to this office
Prior to recommencing construction of the project	Obtain all DEC Permits
Within (30) days from the date of the Execution of this Order	Implement sediment & erosion control measures which include, properly installing silt fence, stabilizing construction entrances, stabilizing stockpiled soil, mulching/seeding exposed soils, stabilizing roadways with gravel/rock, construction and stabilizing of temporary retention traps/basins and diversionary swales.

**CONSENT BY RESPONDENT**

Respondent hereby consents to the issuance and entry to this Order without further notice, waives its right to a hearing in this matter, and agrees to be bound by the terms, conditions and provisions of this Order.

AJM at Swan Lake Estates, LLC

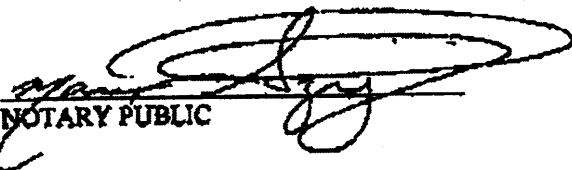
  
\_\_\_\_\_

MEMBER  
\_\_\_\_\_

Anthony J. Murolo

STATE OF NEW YORK    )  
                                  ) ss:  
COUNTY OF SUFFOLK    )

On the 5 day of September, 2005 before me, the undersigned, personally appeared Anthony J. Murolo, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) as shown in the instrument, and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
\_\_\_\_\_  
NOTARY PUBLIC

STATE NOTARY PUBLIC  
Notary Public, State of New York  
No. 0162611028  
Qualified in Suffolk County  
Commission Expires May 24, 2008

**Exhibit B**





October 24, 2006

I spoke with Mary Hunt (office 845 583-6003, cell 845 701-7324) of McKean Realty by phone this morning regarding the building lots at Swan Lake Estates. She gave me the following information:

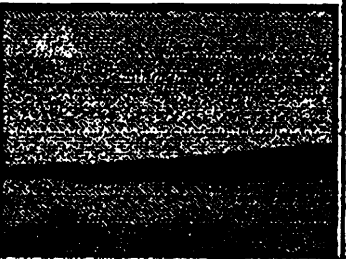
- There are 21 lots available; 13 are water front (one of those will be the communal beach/boat launch area). Price range for the properties is from \$100,000 to \$650,000.
- One lot is "in contract"; lot #12. According to Hunt, this means that McKean Realty has accepted a binder of \$1000 pending the DEC approval, which she says they will have "in January 2007". After the DEC approval the realtor will prepare the Purchase and Sale agreements, and ask for an additional binder to total 10% of the purchase price.
- The reason for the DEC review is "six eagle nests were found across the lake." The property owner, Tony Marolo, has assured McKean that all of the lots will be ready for building in the spring.
- The property owner is also ready to review building plans and approve or reject them as an architectural review, since none of the covenants for the development are completed. He will do this review before any initial deposit is accepted.
- The realtor represents that Swan Lake Estates will own the entire lake, all lake rights and exclusive access to the lake. No other persons will be permitted any use of the lake at all.
- The realtor represents that all of the lots have been surveyed and perk tested, septic fields and well locations delineated. She has sent me a map (by email) showing the lots and the house and driveway locations. I have attached this map and a copy of the email to this document.
- The realtor represents that the underground electrical has been installed and the roads will be crushed stone, "maybe some will be paved". The community will be gated.
- I called to inquire about MLS #15098. Hunt told me that this lot is at the entrance to the development and was 6.1 acres in size; cost \$100,000. It does not have a water view.

Julie Grimm  
1 West Street #2130  
New York, NY 10004

Rosemary Repole  
 Notary Public State of New York  
 No. 01-RE3254930  
 Qualified Kings County  
 Term Expires Feb 28, 2010

# McKean Real Estate

Click photo to enlarge



## Beautiful Building Lots in Gated Lake Community

(\$100,000 +)  
Listing # MLS15088

Swim, Fish, Non-motor boating on pristine mountain lake.  
Brand New! Please call for additional information on lot sizes and pricing.

Print This Listing

Contact McKean Real Estate

Send This Page To A Friend

**Exhibit C**





STATE OF NEW YORK  
DEPARTMENT OF HEALTH

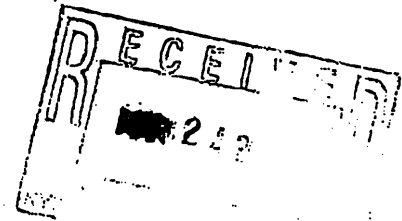
Monticello District Office 50 North Street Suite 2 Monticello, NY 12701-1711 (845)-794-2045 Fax (845)-794-3165

Antonia C. Novello, M.D., M.P.H., Dr. P.H.  
Commissioner of Health

Dennis P. Whalen  
Executive Deputy Commissioner

March 22, 2006

Mr. Scott E. Sheeley  
Deputy Regional Permit Administrator  
New York State Department Environmental Conservation  
Region 3, Division of Environmental Permits  
21 South Putt Corners Road  
New Paltz, NY 12561-3042



Re: Kelly Bridge Road and Lake Marie Road  
Subdivisions  
Town of Liberty, County of Sullivan

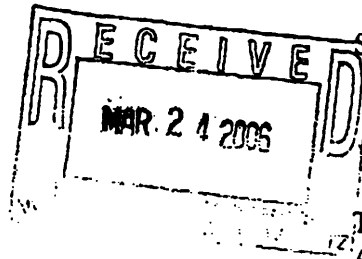
Dear Mr. Sheeley:

Reference is made to your letter dated March 8, 2006 and supporting documentation concerning the above referenced proposed realty subdivisions. After review of the documentation, this Department offers the following findings:

1. This Department does not wish to serve as the State Environmental Quality Review Act (SEQR) lead agency for this project.
2. The site plan for *AJM at Swan Lake Estates – Lake Marie Road Subdivision* does not contain the acreage of each individual lot and therefore a determination of whether-or-not this Department will play a regulatory role in the approval process cannot be established at this time.
3. The site plan for *AJM at Swan Lake Estates – Kelly Bridge Road Subdivision* indicates the subdivision is comprised of five lots that are equal to or less than five acres and 16 lots greater than five acres. Because one of the lots is a non-residential lot (2.38-acre lot with a proposed pavilion), the proposed realty subdivision does not fall within this Department's jurisdiction as found under Article 11, Title II, Public Health Law, §1115.1.
4. Since the two subdivisions are proposed within a three-year period and the lands are under one ownership or under common control of a group of persons acting in concert as part of a common scheme or plan, the subdivisions may be regulated by this Department. This is dependant on whether-or-not the boundary line of the Lake Marie Road Subdivision is less than ½ mile from any point on the boundary line of the Kelly Bridge Road Subdivision.

Be advised that should this Department not play a regulatory role in the subdivision process, it does not preclude the possibility that this Department may play a role in the future approval of sewage disposal systems within these subdivisions. This Department is responsible for approving all proposed alternative sewage disposal systems within the County of Sullivan. Therefore, approval from this Department must be

obtained before any alternative sewage disposal systems are constructed within said subdivisions. Should you have any questions/comments in regard to this Department's findings, I may be reached at (845) 794-2045.



Sincerely,

A handwritten signature in cursive script that reads "Timothy B. Rose".

Timothy B. Rose, P.E., BCEE  
Associate Sanitary Engineer

Cc: Mr. Frank DeMayo, Supervisor, Town of Liberty  
Mr. John Schmidt, Chairman, Town of Liberty Planning Board  
Mr. Randy Wasson, P.E., Wasson Engineering  
AJM at Swan Lake Estates, LLC  
File

**Exhibit D**





**NEW YORK STATE DEPARTMENT OF HEALTH***Bureau of Water Supply Protection**Flanigan Square, 547 River Street, Troy, New York 12180-2216***REALTY SUBDIVISIONS: Frequently Asked Questions (FAQs)****1. What constitutes a Realty Subdivision?**

*As defined in PHL, Article 11, Title II, Sections 1115 to 1120 and ECL, Article 17, Title 15, Sections 17-1501 to 17-1515. The sale, rental or offer for sale or lease of a contiguous tract of land, under one ownership or common scheme, which has been divided into five (5) or more lots each comprising of five (5) acres or less within any three (3) year period. The common phrase used is the "5,5,3 rule", for "5" lots, less than "5" acres, within "3" years.*

**2. What is a "contiguous" tract of land?**

*Contiguous is physically adjoining tracts of land designated by property lines. However, a tract of land can be subdivided by the owner into non-contiguous tracts when residential lots (<5.0 acres) or tracts are created that are separated by greater than 0.5 miles regardless of physical separation features (e.g., roads, streams, wetlands, etc.). The purchase of adjoining properties or tracts by one owner will create one new contiguous tract of land. If a public road crosses through a tract of land, the tract is still contiguous however the road will create separate lots.*

**3. Can a developer designate land or lots as "not available for residential purposes"?**

*Acreage or subdivided lots on a tract of land can be designated by the developer/owner as "not for residential purposes" or lands can be legally restricted from residential building through local zoning laws, utility easements, local right-of-ways or deed restrictions. Some examples would be: designated commercial lots, commonly owned lands (Homeowners Association (HOA)), reserved parkland, utility easements, public roadways and storm water management areas. If a developer wants to designate land or lots as "not available for residential purposes", the designation must be clearly shown and labeled on the plans and deed restrictions indicating the same shall be filed with the County Clerk.*

**4. What land is excluded from determining a lot's total size?**

*Public roadways, utility easements and local right-of-ways that legally restrict the development of such property are excluded from the lot size determination. Property under water (e.g., ponds, streams, wetlands, etc.) are typically considered in the lot size determination.*

**5. How is the "4-lots every 3-years." requirement interpreted?**

*The 3-year period begins when the first residential lot is "offered" for sale. When a fifth residential lot is offered for sale within three years of the initial lot offering, all previously sold lots will become subject to the Realty Subdivision regulations. However, if a landowner offers for sale only 4-residential lots within a 3-year period, the lots and tract will not be subject to the realty subdivision regulations. The best defense against illegal realty subdivision formation is the education of and coordination with the County Clerk's Office to alert the jurisdictional Department of Health office staff when owners attempt to file property plats where suspected violations of the Intent of the Realty Subdivision Laws may be an issue.*

**6. What is the intent of the 5-year approval expiration in the "Conditions of Approval"?**

*The limited approval time frame listed on the "Conditions of Approval" must be clearly stated on the plans. The NYSDOH realty subdivision plan approval expires after 5-years and gives the developer/owner 5-years to complete construction or sell all the lots of the realty subdivision in accordance with the approved plans. The Intent of the 5-year limited approval or "sunset" clause is to avoid having "indefinite" Realty Subdivision plan approvals. Over time, some of the currently applied rules and regulations concerning realty subdivision planning can change and site conditions could be altered. In addition, a time frame gives the Health Department the ability to halt and/or re-evaluate further construction on remaining lots if a history of problems has been reported or witnessed during construction of the subdivision. After 5-years, if construction is not complete or all the lots are not sold, the developer/owner must apply for an approval extension. A site inspection is recommended and concerns of the municipality, if any, should be addressed before approving the extension. If there are no proposed changes, the extension process may be as simple as a letter to the owner and filing the letter with the approved plans through the County Clerk.*

**7. Can historically approved subdivisions that do not meet today's standards still be constructed?**

*Historically approved Subdivisions without an expiration date (i.e., before the 5-year conditional approval was implemented), can legally still be developed, in accordance with the approved plans, even if current site condition requirements cannot be met. Municipalities have the authority through the building codes to require a new application to meet current standards or to refuse a building permit if local codes or other jurisdictional requirements cannot be met.*

**8. What is required to be filed with the County Clerk?**

*PHL, Article 11, §1116 and Article 17, §17-1505, requires only the sections of the stamped plans which show the methods of obtaining and furnishing an adequate water supply and sewerage facilities, to be filed. A plat plan stamped by a Licensed Land Surveyor (LLS) must also be filed with the water supply and sewerage plans. However, if the County Clerk is agreeable, it is recommended that a full set of plans be filed with the County Clerk for reference. Only plans that have also been stamped (e.g. approved) by the Health Department having jurisdiction can be accepted by the County Clerk. The health department having jurisdiction should also keep a complete paper or electronic copy of the stamped plans.*

**9. Can community water and/or sewers be required for subdivisions of less than 50 lots?**

*Yes, if there is good reason to require public services such as, public services are within a reasonable distance, poor well water quality/quantity or unacceptable site conditions for OWTs.*

**10. How can a developer "un-subdivide" or alter approved plans?**

*An approved Realty Subdivision may need or want to be changed by the developer for some reason such as: slow sales, tax savings, changing lot sizes, etc. In such cases, the developers must re-submit new stamped plans for approval that clearly illustrate the new proposal and illustrate any existing construction already performed in the Subdivision. The new plans, when approved, shall be filed with the County Clerk and clearly marked to supercede the original plans.*

**11. Can alternative OWTs be used in Realty Subdivisions?**

*Where LHDs perform site evaluation, approve designs and certify construction, alternative systems, typically raised systems with gravity flow, may be acceptable on a limited basis. This should be on a limited case-by-case basis with all public health and environmental protections taken into account. An alternative system in a Realty Subdivision should be specifically designed for a lot and dwelling. Alternative systems may also be used on non-jurisdictional lots (greater than 5 acres) within an approved subdivision tract of land. A few local counties have established sanitary codes, approved by NYSDOH, that address alternative systems in realty subdivisions. For other counties and DOH district offices, a variance from the NYSDOH Regional Office is required for use of alternative systems within a particular subdivision, however such variances are not typically recommended to be issued.*

**12. How should Health Departments implement SEQRA for Realty Subdivisions?**

*10 NYCRR Part 97 is the NYSDOH regulation implementing the State Environmental Quality Review Act (SEQRA) (Article 8 of the Environmental Conservation Law). 10 NYCRR Section 97.14(b)(2)(ii) states that initial plan approval of a realty subdivision is a Type I action which requires the completion of either a full environmental assessment form (FEAF) or a draft environmental impact statement (EIS). A short form EAF cannot be used for a Type I action. Applications for Realty Subdivisions should be accompanied by a FEAF or a draft EIS. The municipality (e.g. Town Board) typically acts as the Lead Agency to review the FEAF. The FEAF is a decision making "tool" for municipalities to review all environmental factors associated with the proposed subdivision and to identify all agencies involved with the project. The lead agency, based upon the FEAF, will determine if the project can "continue" by issuing a negative declaration. Plan approval should not occur until such documentation is provided.*

**13. Are lots (≥ 5 lots each <5.01 acres) which are "gifted" or "willed" to family members subject to the realty subdivision regulations?**

*Lots which are given as a gift or left in a will to family members are not subject to the realty subdivision because there was no sale or offer for sale of the lots. However, the gift of lots as a common scheme or plan with the intent to avoid the Realty Subdivision regulations is prohibited.*

**Exhibit E**





# United States Department of the Interior



## FISH AND WILDLIFE SERVICE

3817 Luker Road  
Cortland, NY 13045

October 6, 2005

Mr. Anthony J. Murolo  
Swan Lake Estates, LLC  
11 Wendover Drive  
Huntington, NY 11743

Dear Mr. Murolo:

This is in regards to the proposed Kelly Bridge Road and Lake Marie Road residential subdivisions (Phase 1 and 2, respectively, of Swan Lake Estates) in the Town of Liberty, Sullivan County, New York.

The U.S. Fish and Wildlife Service (Service) has been made aware of the proposed project(s) through coordination with the New York State Department of Environmental Conservation (NYSDEC), the Town of Liberty Planning Board, and several concerned citizens. The following comments are provided as technical assistance pursuant to the Endangered Species Act (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*). This does not preclude additional Service comments under other legislation.

As you are aware, the Federally- and State-listed threatened bald eagle (*Haliaeetus leucocephalus*) has been observed nesting near what we understand to be the proposed residential subdivision project area. Typically, bald eagle nest sites are associated with large trees, often white pines, near aquatic habitats (lakes, rivers, coastal areas). We are concerned about any potential direct or indirect impacts from the proposed project on bald eagles (*e.g.*, loss and/or fragmentation of nesting, roosting, or foraging habitat; disturbance of eagles from construction activities; disturbance of eagles from human post-construction activities including recreational activities on the lake; reduction in prey resources due to adversely impacted water quality).

We understand that you have been coordinating with the NYSDEC to develop potential project modifications that may avoid or minimize the "take" of bald eagles as defined by New York State law. We request a copy of the most recent site plans including a detailed description of any measures you are proposing to undertake to avoid or minimize direct and/or indirect impacts to bald eagles. We will use this information to evaluate potential impacts to the bald eagle or their habitat and determine the need for further coordination or consultation pursuant to the Federal ESA.

Section 9 of the ESA prohibits the "take" of any Federally-listed animal species by any person subject to the jurisdiction of the United States. As defined in the ESA, take means "...to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in such conduct." "Harm" in the definition of take means an act which kills or injures wildlife. Such an

act may include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR part 17.3). "Harass" means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. The term "person" is defined as "...an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal government, of any State, municipality, or political subdivision of a State, or any other entity subject to the jurisdiction of the United States." Section 11 of the ESA provides for both civil and criminal penalties for those convicted of Section 9 violations.

Take incidental to an otherwise lawful activity may be authorized by one of two procedures. If a Federal agency is involved with the permitting, funding, or carrying out of the project and a listed species will be adversely affected, then initiation of formal consultation between that agency and the Service pursuant to Section 7 of the ESA is required. Such consultation would result in a biological opinion addressing the anticipated effects of the project to the listed species, and may authorize a limited level of incidental take. If a Federal agency is not involved in the project, and Federally-listed species may be taken as a result of the project, then an incidental take permit pursuant to Section 10(a)(1)(B) of the ESA should be obtained. The Service may issue such a permit upon completion of a satisfactory habitat conservation plan for the listed species that would be taken by the project. We are uncertain as to whether a Federal agency, such as the U.S. Army Corps of Engineers (Corps), may be involved with the proposed project and request clarification regarding this question.

Except for the bald eagle and occasional transient individuals, no other Federally-listed or proposed endangered or threatened species under our jurisdiction are known to exist in the project impact area. In addition, no habitat in the project impact area is currently designated or proposed "critical habitat" in accordance with provisions of the ESA. Should project plans change, or if additional information on listed or proposed species or critical habitat becomes available, this determination may be reconsidered. The most recent compilation of Federally-listed and proposed endangered and threatened species in New York\* is available for your information. If your project is not completed within one year from the date of this determination, we recommend that you contact us to ensure that listed species presence/absence information for your proposed project is current.

Work in certain waters of the United States, including wetlands and streams, may require a permit from the Corps. If a permit is required, in reviewing the application pursuant to the Fish and Wildlife Coordination Act, the Service may concur, with or without recommending additional permit conditions, or recommend denial of the permit depending upon potential adverse impacts on fish and wildlife resources associated with project construction or implementation. The need for a Corps permit may be determined by contacting the appropriate Corps office(s).\* In addition, as mentioned above, should any part of the proposed project be authorized, funded, or carried out, in whole or in part, by a Federal agency, such as the Corps, further consultation between the Service and that Federal agency pursuant to the ESA may be necessary.

Thank you for your time. If you require additional information please contact Robyn Niver at (607) 753-9334. Future correspondence with us on this project should reference project file 52713.

Sincerely,



David A. Stilwell  
Field Supervisor

\*Additional information referred to above may be found on our website at:  
<http://nyfo.fws.gov/es/section7.htm>

cc: Congressman M. Hinchey, Middletown, NY (Attn: C. White)  
Town of Liberty, NY (Attn: Planning Board)  
J. L. Parker, Elmsford, NY  
J. Freedman, Swan Lake, NY  
S. Karras, Swan Lake, NY  
NYSDEC, New Paltz, NY (Attn: S. Joule/S. Sheeley)  
NYSDEC, Albany, NY (Endangered Species; Attn: P. Nye)  
COE, New York, NY





**ЕХНІВІТ 11**



2

New York State Department of Environmental Conservation  
Division of Water

Bureau of Flood Protection and Dam Safety, 4<sup>th</sup> Floor  
625 Broadway, Albany, New York 12233-3504  
Phone: (518) 402-8185 • FAX: (518) 402-8082  
Website: www.dec.state.ny.us



December 19, 2006

Anthony J. Murolo  
Swan Lake Estates, LLC  
11 Wendover Drive  
Huntington, NY 11743

Frank Demayo, Supervisor  
Town of Liberty  
120 North Main Street  
Liberty, NY 12754

Re: Swan Lake Dam (State ID# 147D-0279), T. Liberty, Sullivan Co.

Gentlemen:

It is my understanding that you are, or represent, the owner(s) of the above referenced Class C - High Hazard dam. On May 11, 2006 a routine visual inspection of this dam was conducted as part of DEC's ongoing Dam Safety program. This dam was again visited on July 17, 2006, following the June flood event. During these inspections, and associated review of our file, I have noted the following long standing issues. Copies of my inspection notes are enclosed for your information.

1. Spillway capacity is severely limited, with an abandoned bridge and suspended utility lines partially obstructing the spillway. There is evidence that this dam (and the abandoned bridge above) was overtopped during the both the April 2005 and the June 2006 flood events. It is my understanding that the abandoned bridge and utilities above the spillway are owned by the Town of Liberty.
2. Erosion at base of the retaining wall along the left, downstream face of the dam.
3. Cracking and deterioration of the concrete slab and walls of the spillway.
4. Existing low level drain is plugged.
5. Bulge in downstream masonry face in the vicinity of penstock.
6. Seepage from the vicinity of the penstock and low level drain.
7. There does not appear to be an Emergency Action Plan (EAP) for this dam. If an EAP has been developed, then please forward a copy for our files.

Please note that under Environmental Conservation Law (ECL) Title 5, Section 15-0507, "Any owner of a dam or other structure which impounds waters shall at all times operate and maintain said structure and all appurtenant structures in a safe condition." This section goes on to define "owner" as "...any person or public corporation who owns, erects, reconstructs, repairs, maintains or uses a dam or other structure which impounds waters."

In order to protect public safety, you should hire a Professional Engineer (P.E.), licensed in NYS and knowledgeable in the field of dam safety, to evaluate the current condition of the dam for compliance with DEC's "Guidelines for Design of Dams," revised January 1989. These Guidelines can be downloaded from:

<http://www.dec.state.ny.us/website/dow/hprip/ds/index.htm>

You should implement appropriate remedial measures at your earliest opportunity in order to bring the dam into compliance. As such, I request that the respective parties provide, in writing, within 45-days of receipt of this letter, a coordinated response regarding a proposed plan and schedule for bringing the dam into compliance, and your plan for the future inspection, operation and maintenance of the dam.

#### Potential Sources of Funding

There are three sources of funding that I am aware of, which may be available to assist you in bringing the dam into compliance with applicable safety criteria: the Clean Water/Clean Air Bond Act, special taxing districts and environmental groups. Applications for Bond Act funding must be submitted by a municipality, and the municipality must own a sufficient interest in the property before it can be reimbursed for the work. Special taxing districts can be created by municipalities to include those residents that benefit from the dam and its impoundment. Some environmental groups have been known to provide funding for dam removals.

#### New Dam Safety Regulations

The dam safety regulations are currently under revision. Under the current version, the owners of Class C - high hazard dams will be required to:

1. Maintain in good order all available records regarding the dam.
2. Develop and implement an Inspection, Operations and Maintenance Plan.
3. Retain, at the dam owner's sole expense, an engineer to perform a dam safety inspection every 2-years, and to perform an engineering assessment at a minimum every 10-years. The first engineering assessment must be submitted within three years of the effective date of the regulations.
4. Develop and submit an Emergency Action Plan (EAP), and review and update the plan at least annually.
5. Provide for and demonstrate financial assurance necessary to either repair or breach the structure.
6. Submit annual certification of ownership, and that the O&M plan is current and being implemented and that the EAP is current.

The current version of the new regulations can be downloaded from the following website:

<http://ftp.dec.state.ny.us/dow/damsafety>

We expect that an updated draft will be available for public comment in the near future.

**Permits and Potential Enforcement**

Please keep in mind that any repair or construction activities related to the dam may require permits from DEC. Well before beginning work on the dam, please check with the Regional Permit Administrator at the DEC New Paltz office (845-256-3054) to see if any permits are needed.

If you will not voluntarily bring this dam into compliance in a timely manner, then the Department may be forced to initiate formal enforcement proceedings to compel the you to complete remedial measures. If you cannot complete the required work, then the Department will have the authority to conduct the remedial measures, which may include breaching the dam.

Please contact our office if you have any questions or comments.

Very truly yours,



Scott M. Braymer, P.E.  
Dam Safety Section

cnc: Visual Observations, dated 5/11/06 and 7/17/06

cc w/ enc: Howard Russel, Supervisor, Town of Bethel

cc w/o enc: Leonard Meyerson, NYSDEC Region 3 - Water Engineer  
Scott Sheeley, NYSDEC Region 3 - Permits  
Berhanu Gonfa, NYSDEC Region 3



Visual Observations

*Dam Name:* Swan Lake      *State ID:* 147-0279  
*Hazard Class:* C      *Section:* B  
*County:* Sullivan      *Nearest City/Town:* Stevensville  
*Owner:* Anthony Murolo, Swan Lake Estates  
*Inspectors:* SMB/BL      *Date of Inspection:* 5/11/06

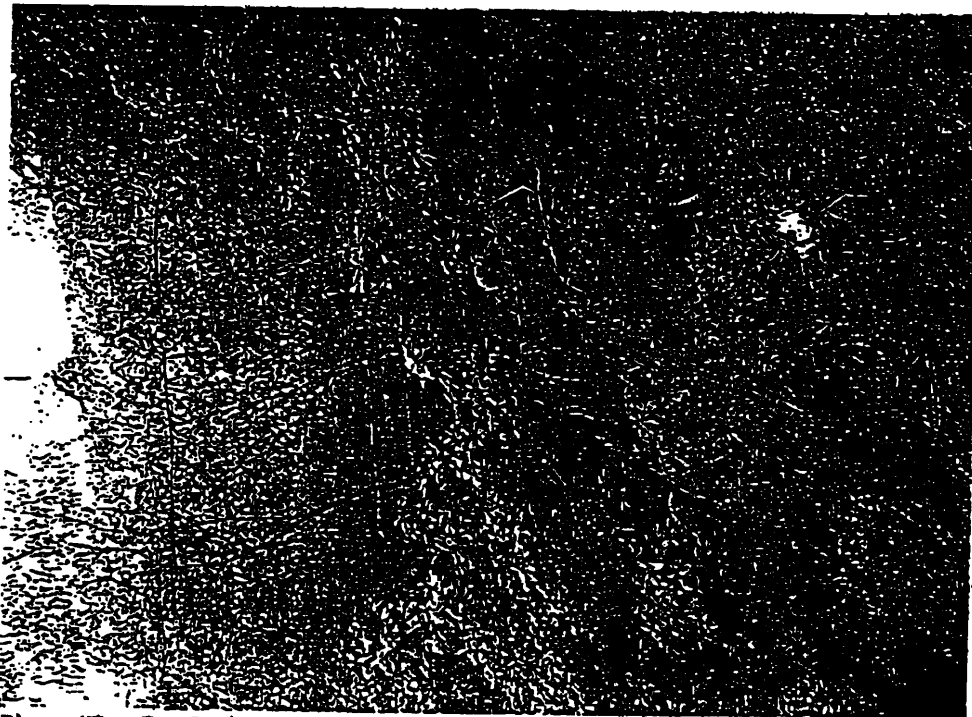
*Water Level Behind Dam:* 3-feet high stop logs in left and center chutes, with 1-2 inches above logs. Approx 2.5-foot logs in right chute. It appears from waterline that one log was recently removed, dropping lake level.

*Drain Operation:* Not observed

- Downstream face difficult to access, could not get to right downstream side. View partially obscured by vegetation and flow over spillway.
- Rebars exposed, right downstream edge of spillway slab.
- Metal retaining wall at left abutment collapsed, slope eroding (see Photo #1).
- Cracks in concrete retaining wall to left of spillway (see Photo #2, 3).
- Penstock is flowing.
- Old road across top of dam has plantings/flowers arranged like a park (see Photos # 4, 5, 6).



**Photo #1 – Metal retaining wall at right downstream abutment.**



**Photo #2 – Cracks in downstream face**





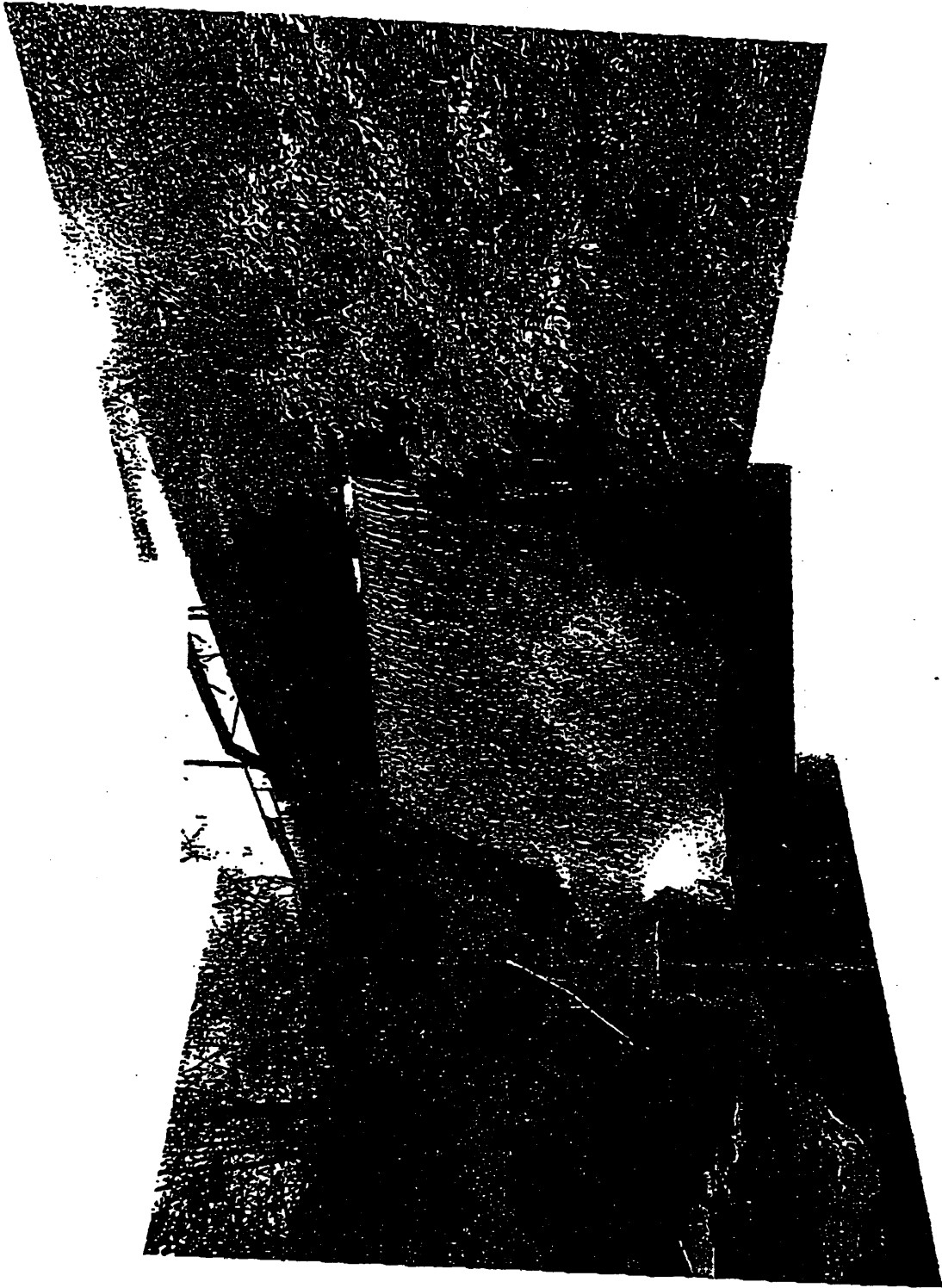


Photo #3 - Downstream face of dam.

SwanI aka doc



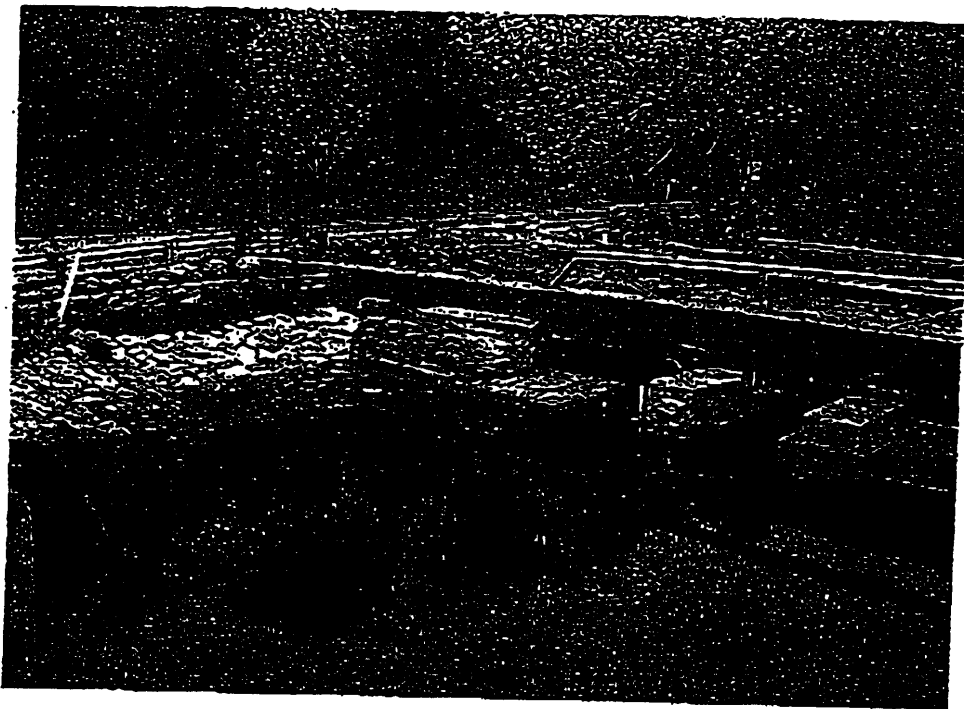


Photo #4 - Upstream face, left side.

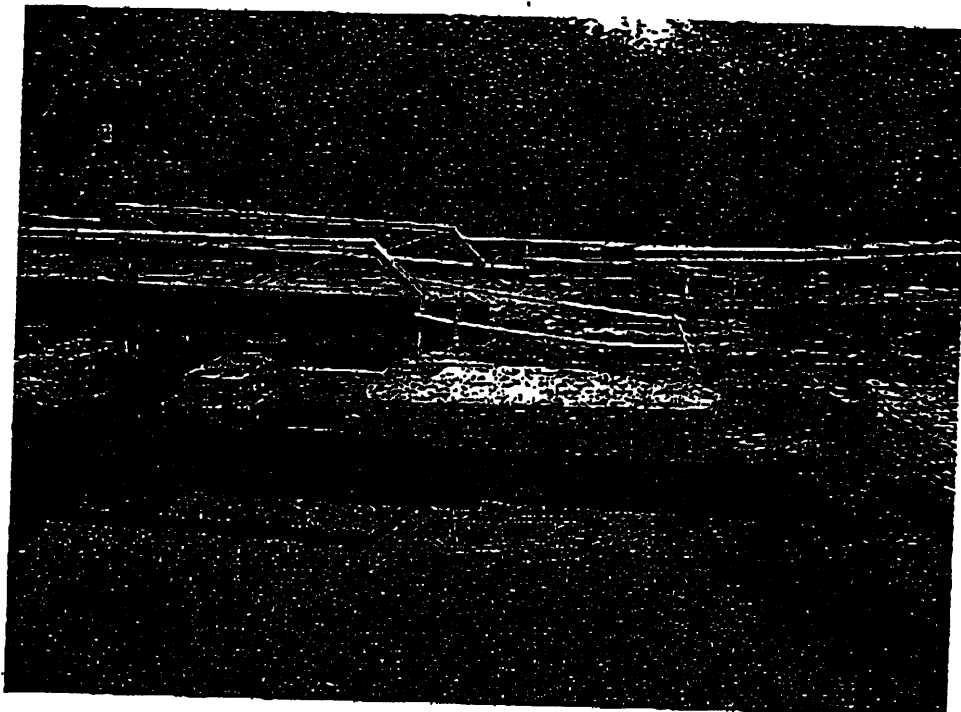


Photo #5 - Upstream face, center/right side.

SivanI aka dar





Photo #6 - Upstream face, far left side.



New York State Department of Environmental Conservation  
Division of Water  
Bureau of Flood Protection and Program Resources

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**Post Flood Site Visits**  
**Visual Inspection Notes**

*Dam Name:* Swan Lake Dam                      *State ID:* 147-0279  
*Hazard Class:* C                                      *Section:* D  
*County:* Sullivan  
*Nearest City/Town:* Stevensville  
*Owner:* Anthony Murolo – Swan Lake Estates, LLC

**Observations**

*Inspectors:* SMB/AD                              *Date of Inspection:* 7/17/06

*Water Level Behind Dam:* Above top of stop logs.

*Drain Operation:* Not observed.

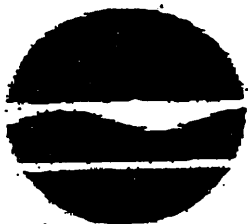
*Deficiencies:*

*Notes:*

- Erosion hole (18" deep x 3' wide x 8' long) due to overtopping along right side of bridge, along upstream 1/2 of dam (see Photo #1).
- Right end of bridge I-beam exposed by erosion (see Photo #2)
- Notch (missing stones?), about 10" wide x 2' deep, in downstream edge of top of dam, in line with erosion hole (see Photo #3).
- No other changed conditions noted.







# State Funding Available for Selected Municipal Dam Safety Projects

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Applications are now being accepted for the cost of dam safety projects which have been approved by the Commissioner of the Department of Environmental Conservation. Statewide, the Clean Water/Clean Air Bond Act of 1996 will provide \$6 million for these projects. Municipalities can receive up to 75 percent of total eligible costs or \$1 million, whichever is less. Funding is only available to municipalities that own or have sufficient legal interest in the dam, including rights-of-way and necessary easements before the start of the project.

Applications will be accepted continuously until all available funding has been awarded. Application forms may be printed out from the DEC website at [www.dec.state.us/website/dow/wqip.html](http://www.dec.state.us/website/dow/wqip.html), or requested by email, phone or mail from:

New York State Department of Environmental Conservation  
Division of Water  
625 Broadway, 4th Floor  
Albany, NY 12233-3507  
Telephone: (518) 402-8227  
FAX: (518) 402-9029  
email: [Bill.Earley@dec.state.ny.us](mailto:Bill.Earley@dec.state.ny.us)

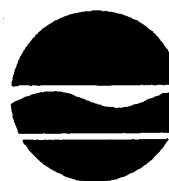
You are encouraged to contact the Department's Division of Water, Dam Safety Section with questions on your specific project at (518) 402-8151. Also, see our website at [www.dec.state.us/website/dow/wqip.html](http://www.dec.state.us/website/dow/wqip.html) for more information.



**EXHIBIT 12**



**New York State Department of Environmental Conservation**  
**Division of Legal Affairs, Region 3**  
21 South Putt Corners Road, New Paltz, New York 12561-1696  
Phone: (845) 256-3000 • FAX: (845) 255-3042  
Website: [www.dec.state.ny.us](http://www.dec.state.ny.us)



Denise M. Sheehan  
Acting Commissioner

January 4, 2007

John L. Parker, Esq.  
565 Taxter Rd., Suite 100  
Elmsford, NY 10523

Re: AJM at Swan Lake Estates  
DEC Permit Application Nos. 3-4836-00245/0001 and 3-4836-11245/00002

Dear Mr. Parker:

This responds to your November 27, 2006 letter to Regional Director Marc Moran and Regional Attorney Vincent Altieri.

With respect to Point I of your letter, I am advised by the DEC Region 3 Division of Water Staff that based on numerous site visits over the last year, no new or recent construction has been observed at the Kelly Bridge Road subdivision other than the remedial work set out in the consent order executed by AJM. It thus appears that the reference by Ms. Grim, AJM's sales representative, with regard to the installation of underground utilities at the subdivision is intended as a prospective description, rather than a statement of actual current site conditions. If you should have information that this is not the case, please let me know and I will pursue the matter further.

With regard to Point II, although preliminary advertising and marketing of the subdivision may have commenced, it is unclear to me from your letter whether contracts of sale of individual lots, as would constitute a legally valid offer of sale, are being entered into by the project sponsor in advance of filing of the subdivision plat. If you should have information that this is indeed occurring, please let me know. Any opinions as to the subsidiary points relative to the jurisdiction of the Department and New York State Department of Health, as well as interpretation of the local zoning code would be premature as this predicate fact has not been documented.

With Regard to Point III, Staff is of the opinion that the Sponsor has cooperatively resolved the Article 17 violations and to date has complied with all substantive terms of the 2005 consent order. As this is the sole instance of documented environmental non-compliance, there is no pattern of non-compliance which would trigger further scrutiny under the Department's Record of Compliance Policy.

If I can provide any further information, please contact me at (845)-256-3164 or by email at [segovern@gw.dec.state.ny.us](mailto:segovern@gw.dec.state.ny.us). I will be representing Department Staff at the upcoming legislative hearing on the project.

Sincerely,



Steven Goverman  
Assistant Regional Attorney

cc: M. Moran  
J. Swentusky  
P. Ferricane  
V. Altieri  
S. Sheely  
P. Duke  
W. Rudge

**EXHIBIT 13**





JOHN L. PARKER  
*Attorney-at-Law*

565 Taxter Road, Suite 100  
Elmsford, NY 10523

(914) 347-2290  
(914) 347-2331 fax  
parkerjlp@yahoo.com

January 31, 2007

**VIA FACSIMILE AND CERTIFIED MAIL**

Steven Goverman  
Assistant Regional Attorney  
Department of Environmental Conservation  
Division of Legal Affairs, Region 3  
21 South Putt Corners Road  
New Paltz, NY 12561-1696

**Re: Swan Lake Estates  
Order on Consent Case No. R3-20050621-53.  
DEC Id Nos. 3-4836-00245/00001  
3-4836-00245/00002  
Draft Environmental Impact Statement**

Dear Mr. Goverman:

I write in reply to your letter of January 4, 2007, which was a reply to my letter of November to Regional Director Marc Moran and Regional Attorney Vincent Altieri regarding violations of State law pertaining to the above referenced project. As you know, there is considerable history with respect to this proposed subdivision, as previous enforcement actions by the DEC and the Sullivan County District Attorney attest. The DEC is currently designated as lead agency under the State Environmental Quality Review act, which will put the applicant's draft Environmental Impact Statement before the public for a hearing on February 6, 2007.

I write to express distress at the suggestion in your correspondence that members of the public should submit additional information regarding flagrant, obvious and documented violations of the DEC's Consent Order and governing this project and state law. It is unclear to me precisely what additional information should be submitted for your consideration.

Because of the suggestion that the November letter was unclear on several points, I thought it appropriate to briefly address the issues raised and respond point by point.

**I. KELLY BRIDGE ROAD SUBDIVISION IS IN VIOLATION OF THE CONSENT DECREE.**

As you will agree, the Consent Order places a clear and explicit Cease and Desist order regarding work at the site until required DEC permits are obtained. See *Letter of John Parker to Regional Director Marc Moran and Regional Attorney Vincent Altieri, November 27, 2006, attached hereto*. The Consent Order was in response to a rather egregious violation of water quality standards described in the Consent Order as a "discharge of turbid water in the vicinity of Kelly

Bridge," observed by DEC staff. Your response of January 4 indicates that Division of Water staff advised you that "based on numerous site visits over the last year, no new or recent construction has been observed at the Kelly Bridge Road subdivision other than remedial work." Your letter further states that "It thus appears . . . the installation of *underground utilities* at the subdivision is intended as a prospective description, rather than a statement of actual current site conditions." *Emphasis added.* The information submitted to DEC on this point is a notarized statement made by a member of the public after a call to the applicant / developers agent's regarding the sale of lots at the Kelly Bridge Road subdivision. Such call was placed after local residents witnessed utility at the site. The statement provided to DEC clearly indicates that the applicant / developer's agent stated "the *underground electrical* has been installed." *Emphasis added.* Despite your reply to the contrary, such a statement by the agent of the applicant / developer, and the eyewitness accounts that prompted the discussion with that agent, it does not appear to be a "prospective description." Perhaps the site visits by DEC did not correspond with such construction activities, and further investigation is warranted based upon the evidence respectfully submitted to your offices. Such activity would constitute an additional documented violation, albeit by members of the public, of the Consent Order.

**II. KELLY BRIDGE ROAD SUBDIVISION MAY BE IN VIOLATION OF STATE LAW BECAUSE IT IS BEING SOLD TO THE PUBLIC EVEN THOUGH STATE LAW PROHIBITS SUCH SALE AT THIS POINT.**

As you know, the ECL and PHL are clear on the issue of pre-approved sales for subdivisions such as the project in question. "No subdivision or portion thereof shall be sold, offered for sale, leased or rented by any corporation, company or person, and no permanent buildings shall be erected thereon, until a plan or map of such subdivision shall be filed with and approved." ECL § 17-1505(1), PHL § 1116. Your reply to me indicates that "it is unclear to me from your letter whether contracts of sale of individual lots, as would constitute a legally valid offer of sale, are being entered into by the project sponsor." The information submitted to DEC on this point is a notarized statement made by a member of the public indicating that the applicant/developer's agent stated that "one lot is "in contract"; lot # 12. According to Hunt, this means that McKean Realty has accepted a binder of \$1000." Again, this statement clearly demonstrates that an individual lot, # 12 is in contract - and that \$1,000 has changed hands evidencing the transaction. This is a statement of the applicant/ developer's agent. Please advise regarding additional information that would more clearly address this issue. Such activity would constitute an additional documented violation, albeit by members of the public, of various provisions of State Law cited above.

**III. THE APPLICANT'S REPEATED VIOLATION OF THE ECL AND THE CONSENT ORDER RAISE THE ISSUE OF SUITABILITY OF THE APPLICANT FOR PENDING DEC PERMIT APPLICATIONS, AND SHOULD BE CONSIDERED.**

It is irrefutable that DEC addressed violations of clean water requirements of ECL §§ 17-0803 and 17-0501 in the Consent Order it signed on September 15, 2005, and that it is still in force. The issues raised in the letter to DEC officials of November 27, 2006 and this reply indicate that there is plain, clear and sufficient evidence to establish additional violations of that Consent Order, the ECL and the PHL, which DEC cooperatively works with the Department of Health to implement and enforce. Despite the January 4 reply letter's representations to the contrary, plain and straightforward statements by the applicant/ developer's agent that amount to

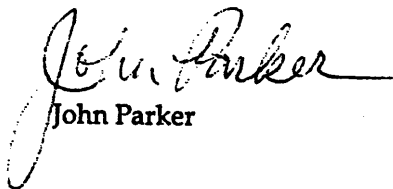
admissions of violations of State Law is serious and significant, irrespective if DEC has not yet addressed these violations. The underlying principles of the Record of Compliance Enforcement Guidance Memorandum, its legal validity and the importance of such considerations in DEC action are irrefutable and unquestioned. The Guidance Memo stands on its face, and upon closer examination, the evidence present to DEC warrant its application to permits the DEC is considering regarding this subdivision.

The local folks that live on, around and nearby Swan Lake have done the yeoman's share of work regarding full and fair consideration of the environmental impacts and implications of the above proposed project, its pending SEQRA review and the pending permit applications. Their persistence and hard work have prompted DEC to enter the 2005 Consent Order in this case - it has also resulted in a SEQRA review because of potentially significant impacts under the Endangered Species Act, amongst others, that has come despite the applicant/ developer's assertions that no American Bald Eagles were on site during the Town's review, while only weeks later publicly indicating that such eagles are a key to his interest in the proposed site and the value to the public in its subdivision and sale. *See Eagle Angst, The Towne Crier, May 18 - 24, 2005, attached hereto.*

The November 27, 2006 request for DEC review and investigation and enforcement stands. It is unclear to me at this time what could possibly be submitted by members of the public that would be sufficient to demonstrate the violations admitted by the applicant's agent that was presented to DEC last November. At the minimum, it should trigger a full DEC investigation. Thus, I again ask that DEC to further review the evidence submitted to them, and conduct a full and thorough investigation.

Thank you for your consideration.

Respectfully submitted,

  
John Parker

cc: w/o enclosures.

Judith Enck  
Deputy Secretary for the Environment  
Office of Governor Eliot Spitzer

Marc Moran  
Regional Director



JOHN L. PARKER  
*Attorney-at-Law*

565 Taxter Road, Suite 100  
Elmsford, NY 10523

(914) 347-2290  
(914) 347-2331 fax  
parkerjlp@yahoo.com

November 27, 2006

Marc Moran  
Regional Director  
Department of Environmental Conservation, Region 3  
21 South Putts Corner Road  
New Paltz, New York 12561

Vince Altieri  
Division Attorney  
Department of Environmental Conservation Region 3  
21 South Putts Corner Road  
New Paltz, New York 12561-1620

Re: **Swan Lake Estates**  
**Order on Consent Case No. R3-20050621-53.**  
**DEC Id Nos. 3-4836-00245/00001**  
**3-4836-00245/00002**  
**Draft Environmental Impact Statement**

Dear Messrs. Moran and Altieri:

I write to you regarding the permit applications, order on consent, and environmental impact statement review under SEQRA, for which the Department ("DEC") is lead agency, for the above referenced project in the Town of Liberty. As you know, this is a case of great importance to my clients, which are neighbors to the site of the proposed subdivision and are gravely concerned about the environmental quality of the area, and the federally protected Endangered Species that are under significant negative pressure. A few months ago, we discovered that the main breeding nest was no longer in the tree.

I write to request your immediate action with respect to violations of State Law that undermines DEC jurisdiction, defies the order on consent in this case, and to a situation that may trigger joint DEC - DOH jurisdiction for review and approval of water and sewage systems. These violations of law raise serious questions about the suitability of the applicant for DEC approval of permits, and require DEC to immediately revisit September 2005 Consent Order. We request that DEC take such action without delay.

**I. KELLY BRIDGE ROAD SUBDIVISION IS IN VIOLATION OF THE CONSENT ORDER.**

Kelly Bridge Road subdivision is being actively sold and marketed to the public. The representations made by the applicant's real estate agents indicate a violation of the DEC

consent order and likely of state law. The September 15, 2005 Order on Consent prohibits construction activities prior to obtaining DEC permits. *In the Matter of the Alleged Violations of Article 17 of the New York State Environmental Conservation Law ("ECL"), by: AJM at Swan Lake Estates, LLC, Respondents, Order on Consent Case No. R3-20050621-53, attached hereto as Exhibit A.* Amongst other requirements, it requires that applicant

Has agreed to *cease construction* of the project until coverage has been gained under general stormwater permit GP-02-01, and to obtain any other DEC permits which may be required for the project, *prior to recommencing construction.*

*Emphasis added. Id. at § 4.* The construction work involved installing utility infrastructure on the subdivision site, which the applicant's realtor described as "underground electrical." *See Statement of Julie Grim, October 24, 2006, attached hereto as Exhibit B.* Thus, the applicant's real estate sales representative conclusively established such construction activity had occurred on-site as part of its active marketing campaign to the public.

DEC entered into a Consent Order because of violations of the clean water requirements of ECL Article 17, specifically ECL § 17-0803 and § 17-0501. There is no question that DEC believed that such violations were significant enough to warrant a \$15,000 civil penalty. This penalty was reduced by \$2,500 "provided Respondent strictly adheres to the terms and conditions of this order." The actions of the applicant, however, based upon the statements of their agents clearly indicates that stringent requirements of strict compliance have not been met. The applicant admits that their construction schedule proceeded despite the Consent Order. The Department must review and reassess the deterrent effect of the penalty amount it assessed in the Consent Order and should require additional penalties. At a minimum, DEC must collect the \$2,500 of the civil penalty it initially suspended.

## **II. KELLY BRIDGE ROAD SUBDIVISION MAY BE IN VIOLATION OF STATE LAW BECAUSE IT IS BEING SOLD TO THE PUBLIC EVEN THOUGH STATE LAW PROHIBITS SUCH SALE AT THIS POINT.**

The lot sizes of the Kelly Bridge Road subdivision are an important issue in this case because State law prohibits certain subdivisions from being offered for sale, lease or rent unless properly filed plans identify amongst other things the methods for obtaining and furnishing the "adequate and satisfactory water supply" and "adequate and satisfactory sewage facilities" for the lots are duly filed with the County Clerk. *PHL § 1116, ECL § 17-1505.* State law requires DOH and DEC to approve water supply and sewage systems involved in approval of the Kelly Bridge subdivision. *PHL Article 11, ECL Title 15, Article 17.* These lots are in fact for sale even without complying with these important public health and environmental provisions of state law requiring such compliance be filed with the County Clerk. A full inquiry on this important legal issue is urgently needed.

The proposed lot sizes approved by the Town of Liberty on May 3, 2005 range from about two to five plus acre lots. On March 22, 2006, the DOH based upon the site plan or AJM at Swan Lake Estates - Kelly Bridge Road Subdivision concluded that

the proposed realty subdivision does not fall within this Department's jurisdiction as found under Article 11, Title II, Public Health Law § 115.1

*Letter of Timothy B. Rose, P.E., BCEE Department of Health to Scott E. Sheeley, DEC, March 2, 2006, attached hereto as Exhibit C.* This conclusion should be reviewed, however, because the ultimate determination requires interpretation of both Town and State Law. It is unclear that both laws were fully applied prior to reaching such a conclusion.

The responsibilities and jurisdiction of the State agencies overlap under the State statutory scheme, and a Memorandum of Understanding governs how these agencies work together. ECL § 17-1509. In relevant part the law requires that,

No subdivision or portion thereof shall be sold, offered for sale, leased or rented by any corporation, company or person, and no permanent building shall be erected thereon, until a plan or map of such subdivision *shall be filed with and approved* by the department or city, county or part-county department of health having jurisdiction and such plan or map thereafter filed in the office of the clerk of the county ins which such subdivision is located.

*Emphasis added.* ECL § 17-1505(1), PHL § 1116. These requirements apply to any "residential lot" or "residential building plot" that is "five acres or less." ECL § 17-1501(3), PHL § 1115(3). These provisions apply to subdivision "divided into five or more parcels." ECL § 17-501(1), PHL § 1115(1). The "plan or map" shall show methods for obtaining and furnishing adequate and satisfactory "water supply" and "sewerage facilities." ECL § 17-1505(2), PHL § 1116(2). The installation of these systems "shall be in accordance with the plans or any revision or revisions thereof approved." ECL § 17-1505(3), PHL § 1116(3). If five or more lots are less than the five acre threshold, joint DEC - DOH action is necessary.

The Town of Liberty code further clarifies the legal definition of what "residential lot" means for the purposes of the DOH and DEC inquiry. In full, the Town Code defines Lot Area as

The area contained within the limits of the property lines bounding that lot. Any portion of a lot included in a street right-of-way, designated wetland, utility right-of way or land under water shall not be included in calculating lot area.

*Liberty Town Code § 130-10.* Of particular relevance to lot size calculation in this case is the large amount of wetlands on site. The Town of Liberty Code broadly and liberally defines wetland as it relates to lot size issues. *Chapter 82 of the Town Code.* ECL § 24-0301. The Town Code does not restrict the definition of wetland to the state wetland definition.<sup>1</sup> Thus, State law and the more liberally defined Town Code must be applied by DEC under the principles of Home Rule.

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<sup>1</sup> See Chapter 82. There is no definition of the word "designated wetlands" in the Town Code regarding lot area. Further, a review of ECL Article 24 and implementing regulations reveals that there is no definition of "designated wetland" with respect wetlands either. ECL§ 24-0101 et seq.

DOH guidance is entirely consistent with this approach. DOH has clearly acknowledged that "Property under water (e.g. ponds, streams, wetlands, etc.) are typically considered in the lot size determination." *Emphasis added. Department of Health: Realty Subdivisions: Frequently Asked Questions (FAQs), attached hereto as Exhibit D.* In Liberty, wetlands and lot area are not "typical" as DOH uses that word. Thus, as a matter of Town and State law, when considering the size of the subdivision lots regarding approval of water and sewage systems DEC and DOH must deduct wetlands from the calculation of lot area. When properly applied, there are significant questions about whether there are more than five lots below the five-acre criteria in the Kelly Bridge Road subdivision given the significant amount of wetlands present on the site. Deducting the wetlands from the lot area calculations as per Town Law will result in the lot sizes of up to five additional sites falling below the five acre threshold criteria requiring joint DEC - DOH involvement. Full review of this issue is crucial and necessary and full state review is required.

**III. THE APPLICANT'S REPEATED VIOLATION OF THE ECL AND THE CONSENT ORDER RAISE THE ISSUE OF SUITABILITY OF THE APPLICANT FOR PENDING DEC PERMIT APPLICATIONS, AND SHOULD BE CONSIDERED.**

The conduct of the applicant in this case raises questions about the "suitability" for issuance of DEC permits. As discussed above, the Consent Order addressed violations of the clean water requirements of ECL §§ 17-0803 and § 17-0501. These violations, in the view of DEC at the time, resulted in a \$15,000 civil penalty. The actions of the applicant, however, have far larger consequences to this case. The DEC Record of Compliance Enforcement Guidance Memorandum makes clear that the

policy and procedures by which the Department of Environmental Conservation (the "Department") is to ensure that persons who are unsuitable to carry out responsibilities under Department permits, certificates, licenses or grants, are not authorized to do so.

*Record of Compliance: Enforcement Guidance Memorandum, March 5, 1993 § I ("Record of Compliance Memo").* This policy has been in effect for over twenty years. The reasons for the ROC Memo are clearly articulated

The courts have recognized that the environmental compliance history of a permit applicant is a relevant consideration regarding qualification for permitting [*Matter of Bio-Tech Mills Inc. v. Williams*, 105 A.D. 2d 301 (3d Dept., 1985), *Aff'd*, 65 N.Y. 2d 855 (1985), *Olsen v. Town Board of Saugerties*, \_\_AD 2d \_\_ (3rd Dept., 1990)].

In addition to the general authority to deny, suspend, condition or revoke permits, the Legislature has specified criteria for such actions in certain statutory schemes. It is clear from the explicit authority as well as both implied legislative authority and the general authority provided in ECL Sections 1-0101, 3-0301 and for Uniform Procedures Act permits, 70-0115, that the Department can modify, suspend deny or revoke any permit it issues based on the unsuitability of a



permitted applicant to carry out the work authorized in a lawful and environmentally protective manner.

Record of Compliance Memo § III. The legal authority for DEC to consider the violations in this case requiring the Consent Order regarding the suitability of this applicant for issuance of permits is clear, and should be considered in any permit proceeding.

The practical impact of these actions is very significant. The gravamen of the complaint of local residents in this case is that federally protected endangered species were never considered in the Town of Liberty's review and approval of the subdivision application. The failure to consider the American Bald Eagle and its habitat needed to remain for its survival at Swan Lake is one of the bases for the Environmental Impact Statement review currently underway. The applicant's violations of law by clear-cutting and excavating and grading for the roads on-site, burning tree stumps without permits, contributing to the serious turbidity and destruction of water quality at Swan Lake prior to issuance of DEC permits, moving forward with construction on-site and at the Swan Lake dam, and now selling subdivision lots without complying with law directly and negatively impacts the Endangered Species that DEC is required by law to protect. The Draft EIS has not even been judged complete by DEC and thus not been subject to review by the public on its merits, and particularly with respect to required mitigation measures. Nonetheless, the applicant continues with business as usual.

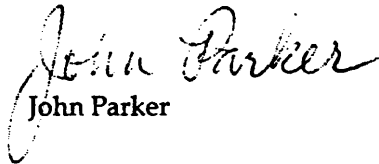
The DEC has had a long history with the proposed Swan Lake Estates project currently known as the Kelly Bridge Road Subdivision. Local residents have been vigilant and contacted DEC to inform them of violations of law, and of the threat to the endangered bald eagles that live on Swan Lake. A Consent Order resulted in response to these actions, as did an Environmental Impact Statement. During the course, however, the applicant has proceeded with its proposal despite and in spite of the requirements and obligations imposed upon it by DEC's Consent Order and State Law. Those actions must be considered under DEC's own policy guidance memos when they consider pending permit applications. These actions are also resulting in a continuing and ongoing violation of the Consent Order and State law - the site has had construction activities and is now being sold despite likely legal prohibitions on such action. The applicant sales agent assure members of the public that the lot's will be available in the spring and that DEC is reviewing the site because of six eagles nests even though only four remain since Swan Lake Estates came to the area and questions regarding violation of the Endangered Species Act remain unanswered.<sup>2</sup> The situation on Swan Lake was never that easy - it is about the State's environmental review laws and whether or not DEC would enforce the law as it is obligated to do to protect the neighbors and the endangered species.

---

<sup>2</sup> The applicant was on notice on October 6, 2005 from U.S. Department of the Interior, Fish and Wildlife Service that "Section 9 of ESA prohibits the "take" of any federally-listed animal species by any person subject to the jurisdiction of the United States. As defined by ESA, take means" ...to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in such conduct." "Harm" in the definition of take means an act which kills or injures wildlife. Such an act may include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR part 17.3). Letter of David A. Stilwell, Field Supervisor to Anthony J. Murolo, Swan Lake Estates, October 6, 2005, attached hereto as Exhibit E.

We respectfully request that DEC review and investigate the enforcement issues raised above regarding the Kelly Bridge Road subdivision. The implications of these violations are quite clear. We ask that DEC take such actions before they proceed with any further steps regarding permit applications or environmental review. We look forward to your reply and the actions you take regarding these enforcement issues. Please do not hesitate to contact me if you need further information.

Respectfully submitted,

  
John Parker

cc: w/o attachments

Judith Enck  
Policy Advisor  
New York State Department of Law

Denise Sheehan  
Commissioner  
Department of Environmental Conservation

Scott Sheeley  
Deputy Regional Permit Administrator  
DEC Region 3

Stephen Joule  
Biologist  
DEC Region 3

## Exhibit A



STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

X-----X

In the Matter of the Alleged Violation of  
Article 17 of the New York State Environmental  
Conservation Law ("ECL"), by:

ORDER ON CONSENT  
CASE NO. R3-20050621-53

AJM at Swan Lake Estates, LLC,

Respondents

(Sullivan County)

X-----X

WHEREAS:

1. The New York State Department of Environmental Conservation ("DEC" or "Department") is responsible for the administration and enforcement of law and regulation pursuant to Article 17 of the New York State Environmental Conservation Law.
2. On June 6, 2005, Department of Environmental Conservation Staff observed a discharge of turbid water in the vicinity of Kelly Bridge, located at Kelly Bridge Road, Town of Liberty, New York in contravention of applicable water quality standards. Additionally, a search of DEC records indicates that AJM at Swan Lake Estates, LLC had not obtained coverage under the GP-02-01 general stormwater permit prior to commencing construction on the roadway comprising a portion of the Swan Lake Estates project. DEC alleges such activities are in violation of ECL Article 17-0803 Discharging without a SPDES Permit and Article 17-0501 Violation of Water Quality Standards-- visual contrast to receiving water
3. Respondent alleges that the turbidity to the receiving water noted by DEC Staff was produced by pre-existing ruts in exposed earth in the shoulder of Kelley Bridge Road, and was not due to the work conducted by Respondent, and that Respondent had placed and maintained erosion control measures in the area of work. Additionally Respondent alleges that Respondent's engineer mailed and Notice of Intent to gain coverage under the general stormwater permit prior to DEC commencing construction, but admits that it did not receive acknowledgment that such coverage had been granted prior to commencing work.
4. Respondent has agreed to cease construction of the project until coverage has been gained under general stormwater permit GP-02-01, and to obtain any other DEC permits which may be required for the project, prior to recommencing construction.
3. Respondent states that it wishes to come into compliance with applicable state

environmental laws and regulations, and, without admitting violation of ECL Article 17 as regards turbidity, affirmatively waives the right to a public hearing in this matter in the manner provided by 6 NYCRR Part 622, and consents to the entering and issuing of this Order, and agrees to be bound by the terms and conditions of this Order.

NOW, having considered this matter and being duly advised, it is ORDERED that:

I. Respondent shall be liable to pay a civil penalty in the amount of \$15,000.00, of which \$12,500.00 is payable and must be submitted with this Order bearing the signature of Respondent; the remaining amount, \$2,500.00, is suspended provided Respondent strictly adheres to the terms and conditions of this Order, including the Compliance Schedule attached hereto.

II. This Order shall not become effective until it is signed by the Regional Director on behalf of the Commissioner.

III. This Order may be changed only by written order of the Commissioner or the Commissioner's designee;

IV. This Order shall be deemed binding on Respondent, any successors and assigns and all persons, firms and corporations acting under or for Respondent, including, but not limited to those who may carry on any or all of the operations now being conducted by Respondents, whether at the present location or at any other in this State.

V. Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent and any successors (including successors in title) and assigns.

Dated: New Paltz, New York

September 15, 2005

Commissioner

DENISE M. SHEEHAN Acting


New York State  
Department of Environmental Conservation

By: \_\_\_\_\_

MARC MORAN  
Regional Director

Region 3

This Order on Consent has been reviewed and approved by the Regional Attorney as to form.

By:   
VINCENT ALTIERI  
Regional Attorney

Date: 9/15 2005





**AJM at Swan Lake Estates LLC  
CASE NO. R3-20030621-53**

**COMPLIANCE SCHEDULE**

**I. GENERAL REQUIREMENTS:**

**Immediately:** Respondent(s) shall cease and desist from any and all future violations of the New York State Environmental Conservation Law and the rules and regulations enacted pursuant thereto.

Respondent(s) shall certify completion of the work required under this schedule, to the Department within five (5) days of its completion.

All technical submittals to the Department required under this Order shall be made by Respondent(s) as follows:

Three copies to Janet Swentusky, Region Three, New York State Department of Environmental Conservation, 21 South Putt Corners Road, New Paltz, New York 12561.

**II. SPECIFIC REQUIREMENTS:**

Within (5) days from the date of the Execution of this Order	Obtain coverage under GP-02-01 & send a copy of the Notice of Intent to this office
Prior to recommencing construction of the project	Obtain all DEC Permits
Within (30) days from the date of the Execution of this Order	Implement sediment & erosion control measures which include; properly installing silt fence, stabilizing construction entrances, stabilizing stockpiled soil, mulching/seedling exposed soils, stabilizing roadways with gravel/rock, construction and stabilizing of temporary retention traps/basins and diversionary swales.

CONSENT BY RESPONDENT

Respondent hereby consents to the issuance and entry to this Order without further notice, waives its right to a hearing in this matter, and agrees to be bound by the terms, conditions and provisions of this Order.

AJM at Swan Lake Estates, LLC

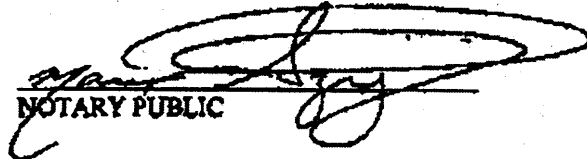
  
\_\_\_\_\_

MEMBER  
\_\_\_\_\_

ANTHONY J. MUROLO  
\_\_\_\_\_

STATE OF NEW YORK )  
  ) ss:  
COUNTY OF SUFFOLK )

On the 8 day of September, 2005 before me, the undersigned, personally appeared Anthony J. Murolo, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) as shown in the instrument, and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
\_\_\_\_\_  
NOTARY PUBLIC

MARC SCZCZYNOWSKI  
Notary Public, State of New York  
No. 07026112001  
Qualified in Suffolk County  
Commission Expires May 24, 2008

**Exhibit B**



October 24, 2006

I spoke with Mary Hunt (office 845 583-6003, cell 845 701-7324) of McKean Realty by phone this morning regarding the building lots at Swan Lake Estates. She gave me the following information:

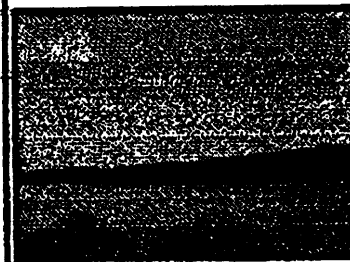
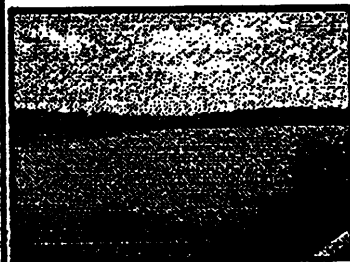
- There are 21 lots available; 13 are water front (one of those will be the communal beach/boat launch area). Price range for the properties is from \$100,000 to \$650,000.
- One lot is "in contract"; lot #12. According to Hunt, this means that McKean Realty has accepted a binder of \$1000 pending the DEC approval, which she says they will have "in January 2007". After the DEC approval the realtor will prepare the Purchase and Sale agreements, and ask for an additional binder to total 10% of the purchase price.
- The reason for the DEC review is "six eagle nests were found across the lake." The property owner, Tony Marolo, has assured McKean that all of the lots will be ready for building in the spring.
- The property owner is also ready to review building plans and approve or reject them as an architectural review, since none of the covenants for the development are completed. He will do this review before any initial deposit is accepted.
- The realtor represents that Swan Lake Estates will own the entire lake, all lake rights and exclusive access to the lake. No other persons will be permitted any use of the lake at all.
- The realtor represents that all of the lots have been surveyed and perk tested, septic fields and well locations delineated. She has sent me a map (by email) showing the lots and the house and driveway locations. I have attached this map and a copy of the email to this document.
- The realtor represents that the underground electrical has been installed and the roads will be crushed stone, "maybe some will be paved". The community will be gated.
- I called to inquire about MLS #15098. Hunt told me that this lot is at the entrance to the development and was 6.1 acres in size; cost \$100,000. It does not have a water view.

Julie Grimm  
1 West Street #2130  
New York, NY 10004

Rosemary Repole  
Notary Public State of New York  
No. 01-RE3254930  
Qualified Kings County  
Term Expires Feb 28, 2010

# McKean Real Estate

Click photo to enlarge



## Beautiful Building Lots in Gated Lake Community

(\$100,000 +)

Listing # MLS15098

Swim, Fish, Non-motor boating on pristine mountain lake.  
Brand New! Please call for additional information on lot sizes  
and pricing.

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**Exhibit C**







STATE OF NEW YORK  
DEPARTMENT OF HEALTH

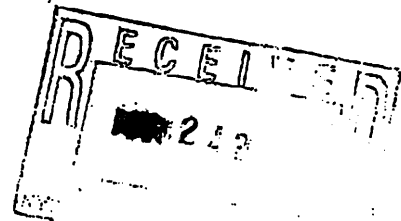
Monticello District Office 50 North Street Suite 2 Monticello, NY 12701-1711 (845)-794-2345 Fax (845)-794-3165

Antonia C. Novello, M.D., M.P.H., Dr. P.H.  
Commissioner of Health

Dennis P. Whalen  
Executive Deputy Commissioner

March 22, 2006

Mr. Scott E. Sheeley  
Deputy Regional Permit Administrator  
New York State Department Environmental Conservation  
Region 3, Division of Environmental Permits  
21 South Putt Corners Road  
New Paltz, NY 12561-3042



Re: Kelly Bridge Road and Lake Marie Road  
Subdivisions  
Town of Liberty, County of Sullivan

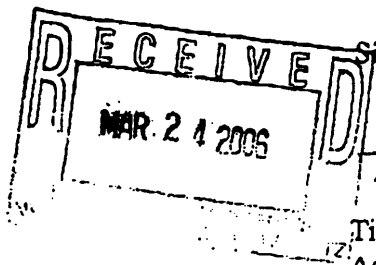
Dear Mr. Sheeley:

Reference is made to your letter dated March 8, 2006 and supporting documentation concerning the above referenced proposed realty subdivisions. After review of the documentation, this Department offers the following findings:

1. This Department does not wish to serve as the State Environmental Quality Review Act (SEQR) lead agency for this project.
2. The site plan for *AJM at Swan Lake Estates – Lake Marie Road Subdivision* does not contain the acreage of each individual lot and therefore a determination of whether-or-not this Department will play a regulatory role in the approval process cannot be established at this time.
3. The site plan for *AJM at Swan Lake Estates – Kelly Bridge Road Subdivision* indicates the subdivision is comprised of five lots that are equal to or less than five acres and 16 lots greater than five acres. Because one of the lots is a non-residential lot (2.38-acre lot with a proposed pavilion), the proposed realty subdivision does not fall within this Department's jurisdiction as found under Article 11, Title II, Public Health Law, §1115.1.
4. Since the two subdivisions are proposed within a three-year period and the lands are under one ownership or under common control of a group of persons acting in concert as part of a common scheme or plan, the subdivisions may be regulated by this Department. This is dependant on whether-or-not the boundary line of the Lake Marie Road Subdivision is less than ½ mile from any point on the boundary line of the Kelly Bridge Road Subdivision.

Be advised that should this Department not play a regulatory role in the subdivision process, it does not preclude the possibility that this Department may play a role in the future approval of sewage disposal systems within these subdivisions. This Department is responsible for approving all proposed alternative sewage disposal systems within the County of Sullivan. Therefore, approval from this Department must be

obtained before any alternative sewage disposal systems are constructed within said subdivisions. Should you have any questions/comments in regard to this Department's findings, I may be reached at (845) 794-2045.



Sincerely,

A handwritten signature in cursive script, appearing to read "Timothy B. Rose".

Timothy B. Rose, P.E., BCEE  
Associate Sanitary Engineer

- Cc: Mr. Frank DeMayo, Supervisor, Town of Liberty
- Mr. John Schmidt, Chairman, Town of Liberty Planning Board
- Mr. Randy Wasson, P.E., Wasson Engineering
- AJM at Swan Lake Estates, LLC
- File

**Exhibit D**





## NEW YORK STATE DEPARTMENT OF HEALTH

Bureau of Water Supply Protection

Flanigan Square, 547 River Street, Troy, New York 12180-2216

### REALTY SUBDIVISIONS: Frequently Asked Questions (FAQs)

#### 1. What constitutes a Realty Subdivision?

As defined in PHL, Article 11, Title II, Sections 1115 to 1120 and ECL, Article 17, Title 15, Sections 17-1501 to 17-1515. The sale, rental or offer for sale or lease of a contiguous tract of land, under one ownership or common scheme, which has been divided into five (5) or more lots each comprising of five (5) acres or less within any three (3) year period. The common phrase used is the "5,5,3 rule", for "5" lots, less than "5" acres, within "3" years.

#### 2. What is a "contiguous" tract of land?

Contiguous is physically adjoining tracts of land designated by property lines. However, a tract of land can be subdivided by the owner into non-contiguous tracts when residential lots (<5.0 acres) or tracts are created that are separated by greater than 0.5 miles regardless of physical separation features (e.g., roads, streams, wetlands, etc.). The purchase of adjoining properties or tracts by one owner will create one new contiguous tract of land. If a public road crosses through a tract of land, the tract is still contiguous however the road will create separate lots.

#### 3. Can a developer designate land or lots as "not available for residential purposes"?

Acreage or subdivided lots on a tract of land can be designated by the developer/owner as "not for residential purposes" or lands can be legally restricted from residential building through local zoning laws, utility easements, local right-of-ways or deed restrictions. Some examples would be: designated commercial lots, commonly owned lands (Homeowners Association (HOA)), reserved parkland, utility easements, public roadways and storm water management areas. If a developer wants to designate land or lots as "not available for residential purposes", the designation must be clearly shown and labeled on the plans and deed restrictions indicating the same shall be filed with the County Clerk.

#### 4. What land is excluded from determining a lot's total size?

Public roadways, utility easements and local right-of-ways that legally restrict the development of such property are excluded from the lot size determination. Property under water (e.g., ponds, streams, wetlands, etc.) are typically considered in the lot size determination.

#### 5. How is the "4-lots every 3-years" requirement interpreted?

The 3-year period begins when the first residential lot is "offered" for sale. When a fifth residential lot is offered for sale within three years of the initial lot offering, all previously sold lots will become subject to the Realty Subdivision regulations. However, if a landowner offers for sale only 4-residential lots within a 3-year period, the lots and tract will not be subject to the realty subdivision regulations. The best defense against illegal realty subdivision formation is the education of and coordination with the County Clerk's Office to alert the Jurisdictional Department of Health office staff when owners attempt to file property plats where suspected violations of the intent of the Realty Subdivision Laws may be an issue.

#### 6. What is the intent of the 5-year approval expiration in the "Conditions of Approval"?

The limited approval time frame listed on the "Conditions of Approval" must be clearly stated on the plans. The NYSDOH realty subdivision plan approval expires after 5-years and gives the developer/owner 5-years to complete construction or sell all the lots of the realty subdivision in accordance with the approved plans. The intent of the 5-year limited approval or "sunset" clause is to avoid having "indefinite" Realty Subdivision plan approvals. Over time, some of the currently applied rules and regulations concerning realty subdivision planning can change and site conditions could be altered. In addition, a time frame gives the Health Department the ability to halt and/or re-evaluate further construction on remaining lots if a history of problems has been reported or witnessed during construction of the subdivision. After 5-years, if construction is not complete or all the lots are not sold, the developer/owner must apply for an approval extension. A site inspection is recommended and concerns of the municipality, if any, should be addressed before approving the extension. If there are no proposed changes, the extension process may be as simple as a letter to the owner and filing the letter with the approved plans through the County Clerk.

**7. Can historically approved subdivisions that do not meet today's standards still be constructed?**

*Historically approved Subdivisions without an expiration date (i.e., before the 5-year conditional approval was implemented), can legally still be developed, in accordance with the approved plans, even if current site condition requirements cannot be met. Municipalities have the authority through the building codes to require a new application to meet current standards or to refuse a building permit if local codes or other jurisdictional requirements cannot be met.*

**8. What is required to be filed with the County Clerk?**

*PHL, Article 11, §1116 and Article 17, §17-1505, requires only the sections of the stamped plans which show the methods of obtaining and furnishing an adequate water supply and sewerage facilities, to be filed. A plat plan stamped by a Licensed Land Surveyor (LLS) must also be filed with the water supply and sewerage plans. However, if the County Clerk is agreeable, it is recommended that a full set of plans be filed with the County Clerk for reference. Only plans that have also been stamped (e.g. approved) by the Health Department having jurisdiction can be accepted by the County Clerk. The health department having jurisdiction should also keep a complete paper or electronic copy of the stamped plans.*

**9. Can community water and/or sewers be required for subdivisions of less than 50 lots?**

*Yes, if there is good reason to require public services such as, public services are within a reasonable distance, poor well water quality/quantity or unacceptable site conditions for OWTs.*

**10. How can a developer "un-subdivide" or alter approved plans?**

*An approved Realty Subdivision may need or want to be changed by the developer for some reason such as: slow sales, tax savings, changing lot sizes, etc. In such cases, the developers must re-submit new stamped plans for approval that clearly illustrate the new proposal and illustrate any existing construction already performed in the Subdivision. The new plans, when approved, shall be filed with the County Clerk and clearly marked to supercede the original plans.*

**11. Can alternative OWTs be used in Realty Subdivisions?**

*Where LHDs perform site evaluation, approve designs and certify construction, alternative systems, typically raised systems with gravity flow, may be acceptable on a limited basis. This should be on a limited case-by-case basis with all public health and environmental protections taken into account. An alternative system in a Realty Subdivision should be specifically designed for a lot and dwelling. Alternative systems may also be used on non-jurisdictional lots (greater than 5 acres) within an approved subdivision tract of land. A few local counties have established sanitary codes, approved by NYSDOH, that address alternative systems in realty subdivisions. For other counties and DOH district offices, a variance from the NYSDOH Regional Office is required for use of alternative systems within a particular subdivision, however such variances are not typically recommended to be issued.*

**12. How should Health Departments implement SEQRA for Realty Subdivisions?**

*10 NYCRR Part 97 is the NYSDOH regulation implementing the State Environmental Quality Review Act (SEQRA) (Article 8 of the Environmental Conservation Law). 10 NYCRR Section 97.14(b)(2)(ii) states that initial plan approval of a realty subdivision is a Type I action which requires the completion of either a full environmental assessment form (FEAF) or a draft environmental impact statement (EIS). A short form EAF cannot be used for a Type I action. Applications for Realty Subdivisions should be accompanied by a FEAF or a draft EIS. The municipality (e.g. Town Board) typically acts as the Lead Agency to review the FEAF. The FEAF is a decision making "tool" for municipalities to review all environmental factors associated with the proposed subdivision and to identify all agencies involved with the project. The lead agency, based upon the FEAF, will determine if the project can "continue" by issuing a negative declaration. Plan approval should not occur until such documentation is provided.*

**13. Are lots ( $\geq 5$  lots each  $< 5.01$  acres) which are "gifted" or "willed" to family members subject to the realty subdivision regulations?**

*Lots which are given as a gift or left in a will to family members are not subject to the realty subdivision because there was no sale or offer for sale of the lots. However, the gift of lots as a common scheme or plan with the intent to avoid the Realty Subdivision regulations is prohibited.*

**Exhibit E**







# United States Department of the Interior



## FISH AND WILDLIFE SERVICE

3817 Luker Road  
Cortland, NY 13045

October 6, 2005

Mr. Anthony J. Murolo  
Swan Lake Estates, LLC  
11 Wendover Drive  
Huntington, NY 11743

Dear Mr. Murolo:

This is in regards to the proposed Kelly Bridge Road and Lake Marie Road residential subdivisions (Phase 1 and 2, respectively, of Swan Lake Estates) in the Town of Liberty, Sullivan County, New York.

The U.S. Fish and Wildlife Service (Service) has been made aware of the proposed project(s) through coordination with the New York State Department of Environmental Conservation (NYSDEC), the Town of Liberty Planning Board, and several concerned citizens. The following comments are provided as technical assistance pursuant to the Endangered Species Act (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*). This does not preclude additional Service comments under other legislation.

As you are aware, the Federally- and State-listed threatened bald eagle (*Haliaeetus leucocephalus*) has been observed nesting near what we understand to be the proposed residential subdivision project area. Typically, bald eagle nest sites are associated with large trees, often white pines, near aquatic habitats (lakes, rivers, coastal areas). We are concerned about any potential direct or indirect impacts from the proposed project on bald eagles (e.g., loss and/or fragmentation of nesting, roosting, or foraging habitat; disturbance of eagles from construction activities; disturbance of eagles from human post-construction activities including recreational activities on the lake; reduction in prey resources due to adversely impacted water quality).

We understand that you have been coordinating with the NYSDEC to develop potential project modifications that may avoid or minimize the "take" of bald eagles as defined by New York State law. We request a copy of the most recent site plans including a detailed description of any measures you are proposing to undertake to avoid or minimize direct and/or indirect impacts to bald eagles. We will use this information to evaluate potential impacts to the bald eagle or their habitat and determine the need for further coordination or consultation pursuant to the Federal ESA.

Section 9 of the ESA prohibits the "take" of any Federally-listed animal species by any person subject to the jurisdiction of the United States. As defined in the ESA, take means "...to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in such conduct." "Harm" in the definition of take means an act which kills or injures wildlife. Such an

act may include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR part 17.3). "Harass" means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. The term "person" is defined as "...an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal government, of any State, municipality, or political subdivision of a State, or any other entity subject to the jurisdiction of the United States." Section 11 of the ESA provides for both civil and criminal penalties for those convicted of Section 9 violations.

Take incidental to an otherwise lawful activity may be authorized by one of two procedures. If a Federal agency is involved with the permitting, funding, or carrying out of the project and a listed species will be adversely affected, then initiation of formal consultation between that agency and the Service pursuant to Section 7 of the ESA is required. Such consultation would result in a biological opinion addressing the anticipated effects of the project to the listed species, and may authorize a limited level of incidental take. If a Federal agency is not involved in the project, and Federally-listed species may be taken as a result of the project, then an incidental take permit pursuant to Section 10(a)(1)(B) of the ESA should be obtained. The Service may issue such a permit upon completion of a satisfactory habitat conservation plan for the listed species that would be taken by the project. We are uncertain as to whether a Federal agency, such as the U.S. Army Corps of Engineers (Corps), may be involved with the proposed project and request clarification regarding this question.

Except for the bald eagle and occasional transient individuals, no other Federally-listed or proposed endangered or threatened species under our jurisdiction are known to exist in the project impact area. In addition, no habitat in the project impact area is currently designated or proposed "critical habitat" in accordance with provisions of the ESA. Should project plans change, or if additional information on listed or proposed species or critical habitat becomes available, this determination may be reconsidered. The most recent compilation of Federally-listed and proposed endangered and threatened species in New York\* is available for your information. If your project is not completed within one year from the date of this determination, we recommend that you contact us to ensure that listed species presence/absence information for your proposed project is current.

Work in certain waters of the United States, including wetlands and streams, may require a permit from the Corps. If a permit is required, in reviewing the application pursuant to the Fish and Wildlife Coordination Act, the Service may concur, with or without recommending additional permit conditions, or recommend denial of the permit depending upon potential adverse impacts on fish and wildlife resources associated with project construction or implementation. The need for a Corps permit may be determined by contacting the appropriate Corps office(s).\* In addition, as mentioned above, should any part of the proposed project be authorized, funded, or carried out, in whole or in part, by a Federal agency, such as the Corps, further consultation between the Service and that Federal agency pursuant to the ESA may be necessary.

Thank you for your time. If you require additional information please contact Robyn Niver at (607) 753-9334. Future correspondence with us on this project should reference project file 52713.

Sincerely,



David A. Stilwell  
Field Supervisor

\*Additional information referred to above may be found on our website at:  
<http://nyfo.fws.gov/es/section7.htm>

cc: Congressman M. Hinchey, Middletown, NY (Attn: C. White)  
Town of Liberty, NY (Attn: Planning Board)  
J. L. Parker, Elmsford, NY  
J. Freedman, Swan Lake, NY  
S. Karras, Swan Lake, NY  
NYSDEC, New Paltz, NY (Attn: S. Joule/S. Sheeley)  
NYSDEC, Albany, NY (Endangered Species; Attn: P. Nye)  
COE, New York, NY

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75 CENTS



## Eagle Angst

■ *Swan Lake residents fear for well-being of national bird as development moves forward.*

► Story on Page 5



SWAN LAKE CRIER PHOTO



WIKI MORROW PHOTO

## Puppet Piscatorial

*The fish to wish upon in next month's parade.*

PAGE 7



JASON DOLE PHOTO

## Kudos from Red Cross

*It's not all play for Forestburgh producer.*

PAGE 13

► WHAT'S HAPPENING CRIER CALENDAR, PAGE 20, 21



**ON THE COVER:** A view across Swan Lake toward the general vicinity of a bald eagle's nest, and, on the periphery of a posted area, Chris Karras points out that there is acknowledgement from the state of the sensitive nature of some lands around Swan Lake. The "critical" area is located across the lake from the nesting spot and up Briscoe Road by about a mile from the development area. SWANLAKE.COM 05-07-05



# From Soaring Spot to Sore Spot

■ Residents wonder if new subdivision will force eagles out of Swan Lake.

**W**hen 19-year-old Christopher Karras read his college essay to the Town Board Monday night, he gave a stirring case for the protection of the American Bald Eagle.

"The right to save these eagles will not be easy," Karras read, "because of the amount of money at stake."

The thing is, Karras did not create his essay from thin air. His inspiration came from real life.

**Story by  
Barbara Greif  
The Towns Crier**

Monday night, a group of Swan Lake residents told the Liberty Town Board they were worried for the welfare of bald eagles that also live at Swan Lake. Some say they have seen up to a dozen eagles there. At least one nesting pair is known to live in a tree along the undeveloped lake shore.

The birds, these residents fear, are about to leave town. Heavy machinery and road construction has already begun on a subdivision of 20 luxury homes on the north shore of the lake. It's phase one of a two-phase project with the next phase scheduled to be closer to the eagles' nesting area.

People like Cora Edwards, the Karras family and several of their neighbors turned out at the town meeting to learn "where to start" in their quest to better protect the eagles.

They are a group that, up until this point, has only organized in order to "adopt" their local road - they pick up stray garbage and make sure the shoulders are free of trash. The maze of public agencies that gets involved in approving subdivisions was new to them.

But in just a few days' time, they started a petition drive, made phone calls and filed freedom of information requests with the town clerk in order to get documents.

They found, to their dismay, that the first phase has been fully approved. They also found out that the planning board checked off a box labeled "no" when the environmental assessment form asked if the site contains any species of plant or animal life that is identified as threatened or endangered.

That was the finding, despite the fact that some of the lake shore at Swan Lake has been marked as home to endangered species, though which species is not named.

For many years, the bald eagle was listed as an endangered species. Because the population has made a comeback, it is now con-

sidered a threatened species and remains a federally protected bird.

Extensive efforts have been made to protect and monitor the comeback of the bald eagle in New York State. The bird now appears on magazine covers and in brochures which tout tourism in places like Sullivan County.

Despite the presence of eagles on Swan Lake, the planning board did not require an Environmental Impact Study for phase one of the subdivision. The residents feel this was a mistake and that the construction alone could cause the eagles, "to vote with their wings," as Edwards said - and fly away.

"We want an environmental review," said Cindy Karras.

Monday night, the Town board members listened to their concerns, but emphasized to the residents that they were in the wrong place.

The planning board which approved the subdivision is a free-standing body that's not under the control of the town board. Town Attorney Ken Klein told the residents,

"Still, their plea about the eagles did not go without notice.

Lynne Killian, the town board member who is liaison to Swan Lake, said she spent three days looking over the documents and visiting the lake. She noted there's been some accommodation made for the birds and pointed out that an area around the eagles' nest has been preserved as undeveloped in the plans.

But, Killian added, "I am personally concerned about the whole process and I'm working to help you find the path you have to go on," she said.

Some in the town board audience advised the residents they'd have to take their case to the state Department of Environmental Conservation.

Others mentioned an Article 78 proceeding which is essentially a lawsuit against a governmental body. In this case, the lake residents would have to sue the town planning board to overturn the approval or halt the construction.

The subdivision is planned and owned by AJM Associates of Huntington, NY, on Long Island. AJM also owns the lake.

Tony Marolo of AJM said the presence of eagles "certainly was taken into account" in regard to the subdivision. The first phase, he said, was not close to the eagles' nest. And



**HAIRING HEATED:** The presence of Bald Eagles near their home for more than five years, Chris and Sam Karras are among a group of Swan Lake residents who are concerned over the effect of construction and a new subdivision on the lake. swanlake.com photo

while the second phase in which 19 homes are planned, is nearer to the nest area, there's already been provisions made to protect the birds.

Each of the subdivisions exceeds 100 acres; the lots are large, 5 acres and more. The homes are geared toward the second home market and are expected to sell from between \$500,000 to \$1 million each. The second phase is now before the planning board but has not been approved.

Marolo said it would be counterproductive to disturb the habitat or chase away the eagles.

"They are a beautiful selling point," he said. "There's no reason for me to displace any of that; it doesn't make any sense."

He went so far as to say he would be happy to answer questions about the plans at the next planning board meeting on June 7.

Knowing that some development is beneficial to the town and its tax base, the residents note they are not flat-out opposed to the plan.

"We're not anti-development, said Cora Edwards. "We're for sustainable, ecological development. We want the developer to rec-

ognize the unique ecology of Swan Lake and not kill the goose that laid the golden egg."

In this case, Town of Liberty Planning Board chairman John Schmidt said the board followed the advice of the state Department of Environmental Conservation in making the determinations about the first subdivision and in granting the approval for phase one.

Meanwhile, residents fear that if the heavy construction continues as it is now, including a steady stream of truck traffic on an otherwise quiet road, it could spell an irreversible move for the eagles. The birds are notoriously sensitive to human disturbance, especially during their breeding season, which is the spring.

People like the Karras family - and the close to 100 people who've signed petitions of concern for the eagles - feel there has got to be immediate action taken to make sure the eagles are not disturbed.

"I want them to do the right thing here," said Cindy Karras.

The next meeting of the Town of Liberty Planning Board takes place Tuesday, June 7, at 7 p.m. at Liberty Town Hall on Main Street.

**ЕХІВІТ 14**

**New York State Department of Environmental Conservation**  
**Division of Water**  
Bureau of Flood Protection and Dam Safety, 4<sup>th</sup> Floor  
625 Broadway, Albany, New York 12233-3504  
Phone: (518) 402-8185 - FAX: (518) 402-8082  
Website: www.dec.state.ny.us



January 8, 2007

Frank Demayo, Supervisor  
Town of Liberty  
120 North Main Street  
Liberty, NY 12754

Re: Swan Lake Dam (State ID# 147D-0279), T. Liberty, Sullivan Co.

Dear Supervisor Demayo:

First, let me again express my and the Department's appreciation of the Town's assistance in resolving the safety issues associated with the Triple L Lake dam. The Town's timely response helped to avert a potentially dangerous threat to downstream lives and property. The issues related to Swan Lake dam (as discussed in my 12/19/06 letter) while perhaps not as immediate as those with Triple L, are serious and have been identified since the Corps of Engineers Phase I Report was completed in March of 1979. Being a Class C - High Hazard dam, the consequences of the failure of this dam are even greater than those associated with Triple L.

It is my understanding that the Town's partial ownership of the Swan Lake dam stems from the abandoned road and the active sewer line that cross the dam, and partially obstruct the spillway. In addition to being a partial owner of the dam, I presume that it is in the best interests of the Town and its residents to retain Swan Lake in its current condition, and therefore also in your best interests to have the dam in full compliance with current standards.

Funding may be available to assist the Town in bringing the dam into compliance with applicable safety criteria: either through the Clean Water/Clean Air Bond Act, or through setting up a special taxing district, or both. A special taxing district would include those residents that enjoy the benefits of the lake created by the dam, but currently do not contribute to the costs of its operation, maintenance and repair.

As described in the enclosed flyer, Applications for Bond Act funding are being accepted on a continuous basis. Being a high hazard dam, Swan Lake dam would likely score well when competing for the available funds, and the application is relatively simple to complete. If the Town is interested in taking over full ownership of the dam, or in obtaining a "sufficient legal interest" in the dam, then I encourage you to submit an application at your earliest opportunity.

For your information, "sufficient legal interest" means having an easement of sufficient duration and extent to allow the Town to access the dam for operation, maintenance and repair. Under the assistance contract, the Town would be required to accept responsibility for completing these tasks for a minimum of 30-years, and to identify an owner who will be responsible for the dam after the easement expires. The geographic extent of the easement will be assessed by technical staff based on review of the

applicant's proposal. This sufficient interest must be in place prior to receiving any assistance payments, but not necessarily before submission of the application.

Please keep in mind that any repair or construction activities related to the dam may require permits from DEC. Well before beginning work on the dam, please check with the Regional Permit Administrator at the DEC New Paltz office (845-256-3054) to see if any permits are needed.

Please contact our office if you have any questions or comments.

Very truly yours,



Scott M. Braymer, P.E.  
Dam Safety Section

enc: State Funding Flyer

cc w/o enc: Leonard Meyerson, NYSDEC Region 3 - Water Engineer  
Scott Shceley, NYSDEC Region 3 - Permits  
Berhanu Gonfa, NYSDEC Region 3



**EXHIBIT 15**



## Hickory Creek Consulting LLC

---

Karen Schneller-McDonald  
25 Carriage Drive  
Red Hook, New York 12571

845 758-2369  
[katykill@frontiernet.net](mailto:katykill@frontiernet.net)

### Swan Lake Estates DEIS Review and Comments

February 21, 2007

These comments are based on a review of the DEIS for the Swan Lake Estates project in the Town of Liberty, Sullivan County. SEQRA requires rigorous review of potential significant impacts so that they can be avoided or properly mitigated. The DEIS does not reflect this 'hard look' at potential impacts; in fact, standard information that is normally included in an EIS is not provided. The information that is provided by the DEIS is completely inadequate as a basis for professional scientific evaluation of significant adverse impacts- and subsequently their mitigation. Therefore, conclusions regarding impacts and mitigation as stated in the DEIS are based on insufficient information. Until all significant impacts are fully described, it is not possible to develop and evaluate effective mitigation. The following comments support this conclusion.

**A. Insufficient information regarding impacts on bald eagles. The DEIS does not provide sufficient information to determine the significance of impacts on bald eagles because it doesn't evaluate all of the necessary, pertinent information regarding the eagles' entire habitat at Swan Lake-including year round conditions, nesting, roosting, breeding, feeding (eg condition of prey species), and wintering. When impacts are not adequately described, mitigation cannot be effectively evaluated- therefore all mitigation described in the DEIS regarding bald eagles should be re-designed and re-evaluated after all the impacts have been described and discussed.**

**This repeated failure to include necessary information includes but is not limited to the following:**

**1. Soils information** necessary for habitat/vegetation evaluation, wetland and hydric soil description, erosion potential on steep slopes, and depth to water table, is missing from the DEIS. This information is essential for a complete evaluation of vegetation and habitat, and water quality considerations.

**2. Full description of all onsite (and adjacent) habitats** including uplands, wetlands, and aquatic habitats. These should be identified and described using standard, widely-recognized and accepted source such as Edinger's 'Ecological Communities of New York State'. This information is not found in the DEIS.

**3. Evaluation of habitat quality and condition** describes the value of the habitats for non-protected as well as protected species (as per SEQRA Environmental Assessment Form part 2, a completed copy of which is not included in the DEIS). This includes habitat for breeding, nursery habitat, foraging, seasonal movements, nesting, overwintering, and population dispersal. Because a species like the bald eagle requires multiple habitat conditions, and occupies a large range, *the entire Swan Lake area eagle habitat, not just the project site, must be evaluated. For the DEIS to be scientifically valid the entire lake and its interrelationships with eagles must be included. Because no species exists in a vacuum, all habitats and other species on which it depends, or with which it relates, must also be described. This includes all prey species.* This information will be used to document the determination of whether or not a proposed project will incur significant impacts on habitat or species.

Description of habitat quality or condition (all of which is missing from the DEIS) includes:

Habitat patch size

Degree of fragmentation

Connectivity with other habitats or corridors

Age or size of trees (height, dbh)

Abundance of downwood, standing snags, rocks, organic debris, woody hummocks, and other microhabitat features

Level of human disturbance (e.g., from logging, ATVs, foot traffic, etc.)

Abundance of non-native or invasive species

Diversity of native plant species

Observable quality of surface water and substrates for streams

Cumulative impacts from development and human activities (including proposed developments on Kelly Bridge, Briscoe and Shore roads )

**4. Recovery Plan references.** Instead of providing a thorough and valid analysis and evaluation regarding the references to the Bald Eagle Recovery Plan (reproduced in part in the appendix of the DEIS) the DEIS instead extracts bits of information out of context from the Recovery Plan in an effort to justify its claims that there will either be no impacts on the eagles at Swan Lake, or that all impacts will be completely mitigated. Neither claim is well-documented. Two examples of this include:

a. discussions surrounding nest “D” and its apparent abandonment-- notwithstanding information in the Recovery Plan which states that nests may be returned to after many years of apparent ‘abandonment’, and

b. the presentation of misleading statements regarding the ability of eagles to become less sensitive to human disturbance- a subject which is by no means conclusive if one reads the entire Recovery Plan. There is a ‘level of disturbance’ point at which eagles will cease to nest at Swan Lake-- and at which they will cease to occupy the lake at all. The DEIS contains no rigorous discussion of this subject- which should include a complete assessment of cumulative impacts on the entire Swan Lake habitat system.

**5. Impacts on other species of conservation concern.** See ‘B’ below.

**6. Impacts on water quality.** See ‘C’ below.

7. Additional impacts and effects on roosting, feeding, nesting, etc. from increased levels of **noise and lighting** as a result of development.

**B. Scoping Document requirements are not met by the DEIS.** The Scoping Document calls for a description of vegetation and wildlife on the project site and Swan Lake. This project involves the direct loss of approximately 33 acres of existing habitat. Even the minimal amount of information required by the Scoping Document is not provided in the DEIS. The information provided is so cursory that it is virtually useless for purposes of impact evaluation. Until this information is provided, potential significant impacts cannot be evaluated and effective mitigation cannot be developed.

1. **Impacts on protected and non-protected species.** The EAF Part 2 contains a section for evaluating impacts of protected, and non-protected species. But this form has not been filled in. To respond to questions as to whether a project will have significant impacts on all of the resources identified in the EAF (as a basis for the contents of the DEIS), adequate description of habitat types (and their condition) found on or in the vicinity of the site and species (protected and unprotected) that are associated with those habitats, must be included.

2. **Species of conservation concern, in addition to the bald eagle, are likely to be found on this site and these are not even mentioned in the DEIS.** Under New York and federal law, there has been no onsite analysis or evaluation of the presences of these species on the project site. Only the bald eagle is mentioned in the text of the DEIS as a species of concern. Because of specific bald eagle high quality habitat requirements, it is even more likely that such habitat supports additional plants and animals of conservation concern. This is further supported by evidence in the project records which demonstrates that the site has remained largely undisturbed for over a hundred years.

Provision of this additional information is appropriate as documented by the following:

The Environmental Conservation Law (ECL) of New York State regulates wildlife habitat protection. Section 9 of the ECL is designed to protect rare plants; sections 11-0535 and 11-0536 protect at-risk fish and wildlife. Under SEQRA, Parts 1 and 2 of the Environmental Assessment Form (EAF) contain questions pertaining to potential impacts of a project on both protected species (threatened and endangered) and non-protected species (EAF Part 2).

**A listing of all plants and animals of conservation concern** should be provided in the DEIS. "Conservation concern" includes the following:

- a. Endangered or Threatened under the federal Endangered Species Act
- b. NYS list of Endangered, Threatened, Rare, or Special Concern species (animals)
- c. NYS list of Endangered threatened, rare, and exploitably vulnerable species (plants)
- d. NYS Comprehensive Wildlife Strategy ([www.dec.state.ny.us](http://www.dec.state.ny.us))
- e. S1, S2, or S3 by the New York Natural Heritage Program
- f. Regionally rare, scarce, declining, or vulnerable in Kiviat and Stevens (2001)
- g. NYNHP Rare plant status list ([www.nynhp.org](http://www.nynhp.org))

**3. Discussion of project impacts on all species of conservation concern and their habitats** should be included in the DEIS. All of this is relevant to the health of the bald eagles' habitat.

**4. Impacts on species in adjacent wetlands.** Because wetlands adjacent to this site are part of a large wetland and stream complex, species of conservation concern that are found in adjacent or otherwise connected areas should also be described, as their habitat (which includes water quality) will be affected by project activities.

**5. Additional species information.** The DEIS should include information commonly provided at this stage of SEQRA impact assessment, including:

- a. discussion of habitat requirements and impacts on all birds of conservation

concern; the Breeding Bird Atlas for New York State identifies a number of species of conservation concern in the vicinity of this site, including raptors and warblers. The DEIS mentions a few common species without putting them into the context of the area's biodiversity, or mix of common species, invasive species, and species of conservation concern. A breeding bird survey should be conducted by a qualified professional during the late spring/early summer.

b. Reptiles and amphibians. Several species of conservation concern are likely to use this site, and this requires considerably more information in the DEIS- including information on any nearby or adjacent vernal pools and their value for pool-breeding amphibians.

c. A rare plant survey should be conducted. The NYS Natural Heritage program Rare Plants Status report provides extensive information on all species of conservation concern.

**C. Wetlands and water quality issues are inadequately described, discussed and evaluated in the DEIS.** A significant component of the eagles' habitat is the lake and surrounding wetlands, with high water quality necessary to maintain these viable ecosystems. Existing condition of these habitat features (including water quality), and subsequent potential impacts to them are not discussed in the DEIS.

1. **Wetland delineation.** The DEIS does not document adequate wetland delineation for this site. The only wetland maps provided in the DEIS are DEC and NWI maps- both of which are based on aerial photography and are commonly recognized as being inadequate for purposes of field information necessary for site specific review. For water quality and watershed protection purposes, all wetlands regardless of federal or state jurisdictional status must be field delineated, including wetlands along the shore of Swan Lake, and wetlands or portions of wetlands that do not fall under federal or state jurisdiction. While the DEC and COE are concerned only with wetland areas under their jurisdiction, **additional wetlands, or expanded wetland areas may in fact be present**



**on this site.** For example, vernal pools typically fall outside this jurisdiction, but must be included on wetland delineation maps. This watershed approach to wetland delineation enables the town to better evaluate impacts on its water quality and supply, and habitats. It is a necessary component of environmental impact assessment.

**2. Wetland impacts.** The DEIS mentions that several small activities will occur in wetlands, but does not adequately discuss their significance as impacts. These activities include: selective clearing of vegetation, trails, driveway, floating docks, and installation of stormwater outfall.

**3. Wetland and watershed functions.** An assessment of wetland functions is essential for impact identification and evaluation. The DEIS should include a description of the contributing drainage area for each wetland or stream (landscape features that transmit water to wetlands, including surface drainage areas, groundwater recharge areas, stormwater outfalls). This is part of wetland functions assessment, and is essential for evaluation of impacts on water quality and supply.

**4. Wetland buffers.** The use and effectiveness of wetland and stream buffer zones for mitigating the effects of specific impacts such as water quality and habitat should be discussed in the DEIS.

**a. Buffer size.** The DEC wetland buffer requirement of 100 feet is a minimum standard. Is 100 feet enough to adequately protect water quality on this site? Is 200 feet sufficient for protection of lake water quality, aquatic and shore habitats? Will such buffers allow the identified threatened species (and other species of conservation concern) to survive at Swan Lake based on current and reasonably extrapolated future behavior? Buffers are mentioned in the DEIS but the rationale for their size and placement is not addressed. Established research information (e.g. studies cited in Environmental Law Institute's 2003 publication "Conservation Thresholds for Land Use Planners") should support selected buffer size criteria. According to this publication, "To provide water quality and wildlife protection, buffers of at least **100 meters** [approximately 330 ft.] are recommended."

Larger buffers may be required to adequately protect habitat depending on the particular species onsite.

**b. Buffer composition.** In addition to buffer size, the type of vegetation, degree of slope, and soil type within the buffer are also critical components of buffers that protect water quality and habitat. Specific onsite conditions thus determine the effectiveness of buffers in the protection of water quality and habitat. None of this is addressed in the DEIS.

**5. Indirect impacts on wetlands.** The DEIS discusses only direct impacts to wetlands, i.e. filling. It fails to assess a variety of indirect and cumulative impacts, and (incorrectly) assumes that only direct impacts to wetlands may be significant. In fact it is well documented (e.g. by the Center for Watershed Protection) that indirect impacts to wetlands may be significant to the extent that they can destroy wetland habitat and completely change the composition of wetland biota-- thus incurring subsequent changes (i.e. impairment) in wetland function. All of the following indirect impacts should be addressed in the DEIS.

**a. Watershed urbanization impacts** (includes increase in total impervious surfaces and loss of 18 acres of forested cover within the contributing drainage area)

**b. Changes in hydroperiod,** i.e. water supply and normal seasonal fluctuations in water level

**c. Changes in ponding** (water depth) within wetlands

**d. Impacts on each of the wetland and stream functions** described as per #3 above

**e. Increased stormwater runoff** (uncontrolled, untreated)

**f. Decreased groundwater recharge** (An increase in the area of impervious surfaces associated with land development prevents natural recharge, and so a net decrease in groundwater recharge rates is associated with urbanizing watersheds. This in turn would have a negative impact on associated plants and animals)

**g. Flow constrictions** (construction of roads, structures, utility crossings across wetlands or upstream/downstream of them)

**h. Increased water level fluctuation**

- i. Changes in water quality** including sediment deposition, pollutant accumulation in wetland sediments, fate of untreated stormwater pollutant load, nutrient enrichment, road salt (see following section on Stormwater Management for details)
- j. Cumulative impacts** on wetland functions and vegetation, and on the watershed. aquatic invertebrates, reptiles, amphibians, birds and mammals.

**6. Water use and wells.** Impacts on wetland hydroperiod, lake levels, streamflow and groundwater during drought years or other periods of low water are not addressed; this needs to be added to the DEIS.

**7. Septics.** Evaluation of soil and topographic site conditions regarding placement of septic systems, and discussion of impacts (including cumulative impacts) of a significant number of new septic systems in close vicinity to Swan Lake and adjacent wetlands are not discussed; nor are discussions included regarding the long term requirements for these systems and impacts on the long term water quality of the lake. These should be addressed in the DEIS.

**8.** Because **stormwater management activities** may have a significant effect on water resources, including wetlands and streams, compliance with the new DEC Phase II Stormwater Management regulations also will affect, and be affected by, the vegetation and soil characteristics of certain habitats, particularly wetlands, ponds, lakes and streams. The SWPPP and a description of its impacts on wetlands and the lake is missing from the DEIS. These impacts include changes to hydroperiod and seasonal (including drought) availability of water in wetlands and streams, introduction of invasive species, buffer disturbance, and pollutant loading impacts on receiving waters (wetlands and lake) as stormwater is concentrated into smaller areas. All of these potential impacts need to be assessed in the DEIS, and effective mitigation for them must be developed.

9. **Pollutant loading.** The construction of stormwater management facilities does not necessarily ensure an adequate treatment of the pollutant load in stormwater runoff.

This is particularly relevant to Swan Lake, a shallow, clean lake under increasing development pressure from this and other development that will contribute to overall water quality degradation. Even if the DEC Stormwater Management Design Guidelines are followed scrupulously, stormwater management ponds and other facilities can only remove a certain percentage of pollutants- and this is only if they are designed properly, built as designed, maintained regularly, and are operating at maximum efficiency.

a. For effective impact assessment, it is essential that the pollutant load for both pre- and post- development for the following pollutants (page 2-3 of the DEC Stormwater Management Design Manual) are calculated and presented for review in the DEIS : BOD, COD, TSS, TDS, total phosphorus, total nitrogen (including Nitrates/nitrites), lead, copper, zinc and cadmium. The Simple Method (Scheuler, T. 1987, *Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMPs*. Metropolitan Washington Council of governments, Washington, D.C.) , or a comparable professionally accepted method, may be used for this purpose; but the same method must be used for all calculations. This will provide information regarding the extent of water quality impacts expected to result from the proposed development. Oil and grease and chlorides (ie road salt) are other common constituents of stormwater runoff that should also be considered during impact assessment. This level of impact assessment is especially appropriate where significant impacts to habitat (including wetlands and lakes) for protected species may occur.

b. The DEIS does not discuss **road salt** and its impacts/mitigation. Road salt cannot be removed from stormwater by standard stormwater management practices. Impacts from snowpack (ie plowed snow) should be included in the SWPPP and DEIS. Where will this snow be deposited after it is plowed? Where will it melt, thus releasing its load

of pollutants? The proximity of roads and parking areas to significant wetlands incurs a significant impact from road salt during the winter months. Road salt concentrations can significantly alter vegetation patterns and thus habitat in wetlands and water bodies. This is a water quality issue that should be discussed fully in the DEIS.

**c. Pollutant loading at this site will be directed into wetlands, and Swan Lake, thus contributing to the cumulative effect of regional pollutant loading; this is not addressed in the DEIS. The wetlands on this site are all part of a larger watershed. Potential serious water quality degradation throughout the larger watershed system is a very real threat. It may even extend to groundwater and wells.**

**d. Pesticides, herbicides and fertilizers are among the common constituents of stormwater runoff that must be considered in the DEIS. The project includes a gain of approximately 21 acres of lawn to replace existing vegetation. Pesticides and herbicides will be present in stormwater runoff, and will be likely to impact wetlands. This impact needs to be addressed, and mitigation evaluated.**

**10. Erosion and sediment control issues. Serious negative impacts on the water quality of Swan Lake from soil erosion resulting from recent road construction on the project site have been documented. Neither these nor future potential impacts have been addressed in the DEIS.**

**D . All potentially significant impacts of this project have not been evaluated in the DEIS. The Scoping Document has omitted consideration of a number of potentially significant impacts including water quality. There is no documentation provided to support the seemingly arbitrary conclusion that assessment of additional impacts is unwarranted. In fact, it is apparent that other significant impacts, normally discussed in an EIS, are likely. Therefore, all of the items listed as 'not addressed' in the scoping document should be evaluated in a**

**supplemental EIS. These items include: wetlands and vegetation, water quality, land issues, transportation, community character, aesthetics, noise, air quality, community services and growth-inducing impacts, solid waste disposal, effects on the use and conservation of energy resources.**

**1. Impact assessment deficiencies.** Part 2 of the Environmental Assessment form is not filled out. There is no indication from information contained in the DEIS of a serious review of other potential impacts, so glibly dismissed in the Scoping Document.

**2. The area of disturbance map** in the DEIS is not complete. This map should include all areas (including stormwater management facilities) where the existing vegetation is to be removed, and where any grading or soil compaction (by heavy equipment) occurs. All wetlands and all proposed construction should also be depicted on this same map to enable the planning board to discern the spatial relationship between natural resources and site disturbance.

**3. Relate impacts to appropriate mitigation measures.** Each significant impact should also be discussed in terms of mitigation. Some impacts cannot be mitigated; this should be noted when appropriate.

**4. Increased impervious surfaces.** This project will result in covering approximately 12 acres of the project site with impervious surfaces. This dramatically increases the volume of stormwater runoff, and the amount of pollution it contains. Disruption of drainage patterns and seasonal water levels, also associated with large areas of impervious surface, can lead to wetland loss and increased flooding problems – both onsite and offsite. The DEIS needs to address these impacts directly, instead of assuming that it will all be taken care of by the project's Stormwater Pollution Prevention Plan (SWPPP)- which is not even included in the DEIS.

**5. Stormwater management and impact mitigation.** According to DEC's *Stormwater*

*Design Manual* its purpose is “to provide standards for the design of the Stormwater Management Practices (SMPs) to protect the waters of the State of New York from the adverse impacts of urban stormwater runoff.” The purpose for including mitigation practices in a DEIS under SEQR is to “alleviate, avoid, or minimize the adverse impacts of a proposed action” (SEQRA Handbook). This is accomplished first by alterations in the project plan itself so that adverse impacts are minimized *before* stormwater management practices are applied and a SWPPP is prepared. Thus a SWPPP is not a substitute for other forms of impact mitigation. The DEIS should discuss this relationship between the SWPPP and mitigation.

6. Who will be responsible for the **maintenance of stormwater facilities**? This should be provided through establishment of a bond; other management plans or entities such as Homeowner’s Associations have proven to be much less effective in implementing adequate maintenance over time. This issue is not mentioned in the DEIS, yet it is critical for future water quality protection.

7. **Fate of pollutant-laden sediments.** Detention pond sediments trap a percentage of stormwater pollutants over time. As part of normal maintenance, this sediment must be removed periodically. How will this be done to ensure that nearby wetlands are not impacted, and where will the pollutant-laden sediment be deposited?

8. **Fiscal impacts.** These too are minimized in the scoping document. Statements to the effect of no impact on local schools or emergency services are completely undocumented and warrant more detailed scrutiny. This is the minimum required to protect the interests of the residents of the Town.

9. **Project alternatives do not include any low-impact designs.** Alternatives such as conservation subdivisions, and Low Impact Development practices should be evaluated in this section of the DEIS.

**10. Low Impact Development (LID)** is a design alternative that should be included in the DEIS. LID offers an effective way to address storm water management through site design modifications and best management practices (Low Impact Development Center; National Association of Flood and Stormwater Management Agencies). These practices include using permeable pavers instead of impermeable pavement, design modifications to reduce the size of impermeable surfaces, rain gardens, and distribution of runoff throughout the site rather than channeling it into large collection areas.

**11. Mitigation of water quality impacts.** Several options for mitigating water quality impacts are available, but are not discussed in the DEIS-- in part because the DEIS omits discussion of water quality impacts. Beyond designing and building stormwater management facilities as optimally as possible, the only way to further reduce pollutant loads is to reduce the area of impervious surfaces over which stormwater passes before it reaches a detention basin or other stormwater management facility. Generally, damage to water resources from development is directly proportional to the amount of impervious surface on the developed site. This needs to be discussed in the DEIS, and mitigation for potentially significant impacts to water quality and supply needs to be developed and evaluated in the DEIS.

## **E. Conclusions**

1. The DEIS for the Swan Lake Estates LLC project does not provide the information required for a scientific assessment significant impacts and evaluation of mitigation for this project. Without documentation, data, or other valid reason, the DEIS excludes logical areas of inquiry into all potentially significant adverse impacts that have been, and are likely to be, caused by this project. Not only does this DEIS present an inadequate environmental review under SEQRA, it also falls below professional scientific review standards, and provides conclusions about environmental impact mitigation that are based



on insufficient documentation. Because of this lack of environmental impact information it is not possible to provide a thorough professional review of 1. Project impacts on a threatened species, the bald eagle, 2. Other potentially significant impacts which have not been addressed in the DEIS, or 3. Effective mitigation for impacts.

2. The DEIS does not comply with the narrowly tailored Scoping Document, in its lack of adequate description of impacts on bald eagles, and it's completely inadequate assessment of existing vegetation, habitat and other wildlife– and subsequent impacts on bald eagles.

3. Mitigation cannot be effectively evaluated until all significant impacts are sufficiently identified, described, discussed and evaluated.

4. The scoping document, by specifically noting the subjects that are not to be addressed in the DEIS, falls far short of allowing a 'hard look' at all of the significant impacts that this project is likely to have on Swan Lake, adjacent natural resources, and the Town of Liberty. These subjects that are not addressed are commonly part of standard EIS review.

5. The magnitude of issues not addressed in the DEIS requires that a supplemental EIS be prepared to correct the above described deficiencies of information, so that all significant impacts are adequately and professionally described, and effective mitigation can be evaluated.



**EXHIBIT 16**



**Comments on the Draft Environmental Impact Statement  
submitted to the Department of Environmental Conservation  
for Swan Lake Estates**

**Town of Liberty, Sullivan County, New York**

**Kelly Bridge Road Subdivision  
Project No. 3-4836-00245/00001**

by Jason Tesauro and Erik Kiviat

Hudsonia Ltd.  
P.O. Box 5000, Annandale NY 12504

Prepared for Save Swan Lake

23 February 2007



Hudsonia was retained by a group of local residents in Swan Lake, New York, to review the 30 November 2006 Draft Environmental Impact Statement (DEIS) prepared by Tim Miller Associates, Inc. for the proposed Swan Lake Estates residential development in the Town of Liberty, Sullivan County, New York. The purpose of our review was to evaluate and comment on: 1) the potential impacts of Swan Lake Estates, LLC on bald eagles (*Haliaeetus leucocephalus*) and other wildlife; 2) the adequacy of the DEIS in addressing the bald eagle issue; and 3) the proposed bald eagle mitigation plan.

Hudsonia Ltd. is a non-advocacy, nonprofit, scientific research institute based in the Hudson Valley of New York. Hudsonia does not oppose or support land development projects. We collect data, analyze impacts, raise questions, and make recommendations for reduction of impacts to the environment especially with regard to issues of biological diversity. This review is a collaboration of Hudsonia and J. Tesauro Ecological Associates.

#### I. General Comments on the DEIS.

Hudsonia finds the Swan Lake Estates DEIS to be deficient in several ways.

##### **A. The Narrow Scope of the DEIS Makes it Impossible to Reach Necessary Conclusions**

The DEIS fails to address the potential impacts of Swan Lake Estates on the aquatic ecosystem of Swan Lake. DEIS Section 3, focuses almost entirely on the potential impacts to the bald eagle nesting, perching, and roosting habitat. The DEIS does not clearly identify where the bald eagle perching and roosting locations are in relation to the subdivision proposed lots (Lots 3-12). While bald eagle habitat is critical, water quality and the integrity of the lake ecosystem is also crucial both in and of itself and as the system on which the eagles depend.

Water quality, however, is inadequately addressed and it is only vaguely stated that erosion and stormwater plans will be in "compliance with state regulations" and therefore there will be limited impacts to Swan Lake itself. There is no description of these plans and how they will be enforced. Portions of the land slated for Swan Lake Estates are much higher in elevation than the lake itself and therefore present a high potential for the run-off of sediment and debris. The construction of the Swan Lake Estates access road in 2005 has already caused substantial erosion and sedimentation of Swan Lake and resulted in fines imposed by the New York State Dept. of Environmental Conservation (NYSDEC), and further construction activities were prohibited until all permits were granted.

Furthermore, there is no mention in Section 3 of septic systems and their potential impact to Swan Lake. We are particularly concerned about the impact of septic effluent on the water quality of Swan Lake.

##### **C. The DEIS Fails to Address the Potential Impacts on Rare or State-listed Wildlife Other than the Bald Eagle**

We have observed the red-shouldered hawk (*Buteo lineatus*), a New York State Special Concern Species, on several occasions in the vicinity of Swan Lake (March 2006-February 2007). In New York, this species is dependent upon large tracts of wetland and upland forest. It has been classified as Special Concern due to habitat loss (e.g., deforestation, forest fragmentation), and it is regarded as highly sensitive to human disturbance (NYSDEC, 2007). Wetland LW-22, which borders the northwestern corner of the Swan Lake Estates parcel, is a 55.4-acre forest/shrub riparian wetland situated within a large matrix of upland forest including Swan Lake Estates. LW-22 and the adjoining woodlands appear to provide suitable breeding habitat for red-shouldered hawks. The DEIS states that LW-22 will be protected with 100-foot buffer; however, should red-shouldered hawks be nesting in LW-22 or in adjacent area, 100 feet is unlikely to be adequate protection from disturbance where the forest has been fragmented by subdivision (see Crocoll 1994). Surveys for breeding red-shouldered hawks should be conducted to determine if there is the potential for Swan Lake Estates to have an adverse effect on this declining raptor.

The DEIS should specifically address the potential for the occurrence of other endangered, threatened, special concern, or New York Natural Heritage Program-tracked rare animals and plants.

## II. Specific Comments on Potential Impacts to Bald Eagles.

### **A. Water Quality Impacts Are Inadequately Addressed**

Bald eagles derive most of their diet from fish and, to a lesser extent, waterfowl (Stalmaster, 1987; Thompson et al., 2005; Watson et al., 1991). It has been well demonstrated that residential development adjacent to lakes increases turbidity from erosion and run-off and creates eutrophic, low-oxygen conditions primarily from septic effluent and stormwater run-off. These water quality impacts can have dramatic effects on aquatic organisms including vegetation, amphibians, and fish (Radomski and Goeman, 2001; Taillon and Fox, 2004; Woodford and Meyer, 2003). Large fish species typically preyed upon by bald eagles [e.g., large-mouthed bass (*Micropterus salmoides*), yellow perch (*Perca flavescens*), American eel (*Anguilla rostrata*)] are often in the upper levels of the lake ecosystem food chains and therefore are most vulnerable to any changes to lower trophic levels, i.e., vegetation, insects, and amphibians. For example, the growth of the exotic invasive aquatic plant, water chestnut (*Trapa natans*), which is already extensive in Swan Lake, would be facilitated by increases in nitrogen and phosphorus. Water chestnut is known to lower oxygen levels in lakes, which detrimentally affect fish and other aquatic organisms. It is also a poor food resource for waterfowl and out-competes native vegetation that provides important forage for waterfowl (Hummel and Kiviat, 2004). As with increased turbidity, dense mats of water chestnut could also directly affect resident bald eagles' ability to visually detect prey. Based on typical bald eagle habitat preferences, Swan Lake is relatively small but the small size is perhaps compensated for by abundant food resources. Maintaining the existing water quality may therefore be critical to the long-term health and reproductive success of the bald eagles at Swan Lake.

To adequately meet the requirements of SEQRA and provide assurance that there will be no significant change to the current water quality of Swan Lake, it is necessary that the applicant



submit to public review detailed plans and water quality protection measures of the proposed stormwater and sewage management systems.

## **B. Human Disturbance Caused by the Proposed Project Is Inadequately Addressed**

We recognize that Swan Lake has been a popular seasonal recreation area for decades, which did not deter the eagles from inhabiting it, or from routinely producing successful clutches. A few people who live on the lake use motorboats. However, the DEIS acknowledges two documented instances at Swan Lake where human disturbance has led to the mortality of eaglets and the abandonment of a nest. What makes Swan Lake unique compared to other privately-owned recreation lakes in the region is that its shoreline is largely undeveloped, except for a portion of the southern shore. The upper portion of Swan Lake (defined as the section northwest of Kelly Bridge Road), in particular, shares similarities in landscape context and character to other documented lacustrine bald eagle nesting sites in southern New York, most of which are water-supply reservoirs with undeveloped shorelines and recreation that is limited to fishing (NYSDEC, personal communication). Unlikely by coincidence, the adult and juvenile bald eagles of Swan Lake prefer the upper portion of the lake (from the southern peninsula near proposed building lot 7 northward almost to Townsend Road) for nesting and most of their foraging and resting activities. The proposed location of Swan Lake Estates occupies a 55-acre area more or less in the middle of this upper portion of the lake's northeastern shore. Swan Lake Estates will be the first major shoreline development on the northern shore of Swan Lake, affecting approximately 3,000 feet of the shoreline. Maintaining undeveloped shoreline was cited as the most critical component of bald eagle management in Maryland (Beuhler et al., 1991; Chandler et al., 1995), and regulating shoreline land use has been a major focus in state and federal bald eagle protection efforts nationally.

## **III. Proposed Mitigation Plan Inadequately Addresses Potential Adverse Impacts.**

The DEIS generally acknowledges that Swan Lake Estates will have some impacts to the bald eagles, primarily in the form of increased noise from construction and home occupancy, visual impacts to the shoreline, and permanent alteration of adjacent forest. We agree that increased noise and human disturbance from Swan Lake Estates will impact the bald eagles, potentially causing the resident pair to abandon nesting at Swan Lake altogether. The DEIS provides a Bald Eagle Mitigation Plan (AJM Eagle Plan), which was developed with input from NYSDEC to mitigate the potential impacts of increased levels of noise and visual disturbances from the nesting area (nests B and C located on the opposite shore from Swan Lake Estates.) On several occasions, local residents have told DEC that the main breeding nest for at least the last three years, nest A, is no longer present. This was reported to Peter Nye of the DEC in September 2006. The DEIS does not acknowledge the loss of this nest. While some of the mitigation measures are appropriate, e.g., prohibiting the use of gasoline-powered watercraft on all of Swan Lake, the overall plan falls short of adequately offsetting the potential impacts.

### **A. Activity along the Shoreline is Insufficiently Regulated**

First, the AJM Eagle Plan prohibits any alteration of the vegetation along the shoreline, presumably to protect perching and roosting areas and limit disturbance within view from nests

B and C, but it does not call for the regulation of activity along shoreline. Owners of lots 3-12 are provided with the option of installing floating docks. These docks and associated human activity will be clearly visible from the nesting area and may present a disturbance to the bald eagles. The suitable perches along the shoreline between lots 3-12 will not be altered as per the mitigation plan but will be rendered less suitable for bald eagles by the human activity on the docks and along the surrounding shoreline. While the resident bald eagles are clearly accustomed to the current level of recreation on the lake, most residents concur that perched adult and juvenile eagles are easily flushed (i.e., disturbed from resting or foraging perches) by human activity, often from distances of up to 1000 feet or more. Being flushed from perches frequently can lead to physiological stress (especially in the winter) and interfere with foraging.

The DEIS states that Swan Lake freezes over in winter and the Swan Lake eagles leave the area. Swan Lake residents report eagles fishing in these open water areas when the lake is frozen. Eagles are present at Swan Lake throughout the year. Residents report that the shoreline along the proposed development (Lots 3- 12) is a commonly used perching area, most likely because it is opposite the nesting area and provides an unobstructed view of the nest and fishing grounds.

#### **B. Construction and Visual Impacts are Insufficiently Mitigated**

Second, the AJM Eagle Plan does not include measures to reduce or mitigate the impacts of construction-related noise and visual disturbance. The clearing, grading, and construction of 21 lots will be a major disruption to the environment of Swan Lake. Section 3 of the DEIS assumes that the bald eagles will relocate to 'quieter areas' during construction, yet does not identify where those quieter areas are located or analyze eagle behavior in comparable situations. The DEIS does not consider that relocating could lead to nest failure or increased physiological stress depending on the timing of the construction. It is also assumed in Section 3 that the eagles will return to the shoreline after construction and continue to use it despite the increase in disturbance from the new homes. New noise, according to Section 3, will not affect the bald eagles, stating that they are accustomed to the noise from existing residences along the shoreline. We consider it likely that there will be a cumulative impact of noise and visual disturbance from existing and new homes. The logic presented in the DEIS is dubious and unsubstantiated; moreover it is contradictory to other statements in Section 3 that acknowledge noise as a potential impact.

#### **C. The 31-acre Conservation Easement is not Mitigation for the Proposed Project.**

As part of the mitigation, a 31-acre parcel that contains bald eagle nest trees B and C is to be permanently protected through a conservation easement. We believe that the permanent protection of this parcel is critical; however, we feel that it is misrepresented as a mitigation measure because it 1) does not specifically mitigate any impacts associated with Swan Lake Estates; and 2) does not provide adequate protection for the entire documented nesting habitat at Swan Lake. The 31-acre parcel is located over 1,500 feet from Swan Lake Estates and is not to be altered by the current development plans. The potential impacts to this portion of the bald eagle habitat will be primarily in the form of visual and noise disturbance from shoreline recreation and activity on the open water. To mitigate these impacts we recommend that all lake activity be prohibited within a substantial distance of nest trees A, B, and C when nests are active

(Nye, 2000; Stalmaster, 1987; see discussion below). NYSDEC requires similar protection measures on bald eagle nests elsewhere.

The 31-acre parcel contains only three of the five known nest trees (four of which still contain nests). The two nests (D and E) that occur in the Lake Marie Road section of Swan Lake were used for at least four of the eleven years that bald eagles have been known to nest at Swan Lake. These nests are located over 3,000 feet from Swan Lake Estates and are well buffered by forest. They are unlikely to be impacted by the development or lake recreation, and, in light of the potential disturbances associated with Swan Lake Estates, may become active again. The threat of a substantial increase in human activity near nest trees B and C makes it critical that all documented and potential nesting habitat be protected at Swan Lake. Suitable nest trees are typically limited in the environment (Fraser, 1988), and it is important for bald eagles to have access to alternate nesting trees, especially in areas affected by human disturbance. The DEIS notes that nest tree D will soon be considered inactive since it has not been used in five years. Although this a federal and state policy, we encourage regulatory agencies to re-evaluate their decision regarding nest tree D in the context of Swan Lake Estates and its potential impacts to other nesting areas. Nest trees D and E and the surrounding forest may become the only suitable nesting area on Swan Lake in the future. The developer chose not to include nests D and E in the conservation easement, and we understand that the entire Lake Marie parcel (108 acres) has been sold.

#### **D. The Proposed AJM Eagle Plan Inadequately Mitigates Project Impacts**

The DEIS's proposed mitigation measures will help limit some noise (i.e., gas-powered boat motors), but the fact is that 21 homes will lead to a significant increase in potentially human-eagle interactions and the loss of a significant portion of the shoreline as suitable perching and roosting habitat. The DEIS acknowledges two documented instances at the current level of recreation where human disturbance has led to the mortality of eaglets and the abandonment of a nest. While individual bald eagles seem to have a certain 'tolerance threshold' for disturbance, it can only be assessed after eagles have been driven away. The DEIS cites studies that have demonstrated an increased tolerance of bald eagles to human disturbance; however, a recent study in the lower Hudson River demonstrated that eagles generally avoided areas of high human activity (Thompson et al., 2005). Because of the unpredictability of animal behavior, it is prudent to err on the side of caution in animal conservation. Therefore we make the following recommendations to be incorporated into the mitigation plan:

- To help preserve the integrity and suitability of the shoreline along Swan Lake Estates, prohibit the installation of docks while still permitting foot access to the lake. Docks not only represent a new structure in the lake environment but also encourage more sustained human activities (e.g., picnicking, sunbathing, fishing, etc.) that could cause greater disturbance to the bald eagles, as opposed to onshore fishing or occasional launching of a canoe.
- NYSDEC guidelines recommend a 330-750 foot primary buffer around a nest tree, and where there is human activity in full view of the nest NYSDEC recommends up to a 1300 foot buffer with the actual buffer width depending on site conditions and the tolerance of

an individual pair of eagles. Swan Lake nest trees A, B, and C are near the lake shoreline where human activity on the lake is fully visible to eagles at the nest trees. Although the current nesting pair tolerates the existing level of human activity, we are unable to predict the eagle-human interactions with increased levels of recreation and possible change of one or both members of the eagle pair. Therefore, we prefer to err on the side of caution and we recommend a buffer greater than 750 feet. We also recommend independent professional observation of the behavior of the nesting eagles this year to allow a more scientific setting of the buffer width.

- The buffer zone around the nest trees should be demarcated with buoys, or with stakes when the lake is frozen. This should be conducted in consultation with NYSDEC on an annual basis, as the nesting period can vary.
- In addition to banning gasoline-powered watercraft, snowmobiles should be prohibited from the upper portion of Swan Lake and its shores. The use of snowmobiles on Swan Lake coincides with the early stages of the nesting period. It is also critical for bald eagles to conserve energy at this time of year, as they are stressed by cold temperatures and typically limited by food resources. The DEIS is inaccurate in stating that the bald eagles forage elsewhere due to freezing of the lake.
- Coordinate with NYSDEC to impose an appropriate timing restriction for construction. The most critical period to avoid disturbance is during nesting season (February to August); however, December and January can also be critical, especially in cold winters. The open-water winter refuge under Kelly Bridge is close enough to Swan Lake Estates that construction noise may interfere with bald eagle foraging.
- To maintain water quality and reduce run-off, prohibit the use of fertilizers and pesticides and encourage natural landscaping. "Rain gardens" should be used to capture and treat runoff from parking areas. The use of de-icing salts should be minimized.
- Allocate a portion of homeowner's fees towards the control of water-chestnut through manual (i.e. non-herbicidal) methods.
- Integrity of the existing dam, management of lake levels, and management of the invasive water-chestnut are critical to the ecology of Swan Lake and the protection of the eagles. Therefore we recommend the creation of a lake management plan that will ensure permanent maintenance and appropriate management of the lake habitats.

#### IV. Conclusions

What has been presented in the DEIS is inadequate to identify and evaluate the environmental impacts to Swan Lake and its bald eagles.

The mitigation proposed also falls short of offsetting the potentially significant adverse environmental impacts of the project that the DEIS is required to address.

Because of pervasive contamination by PCBs and other chemicals potentially toxic to eagles on the Hudson River, uncontaminated lakes such as Swan Lake are all the more important to breeding and wintering bald eagles. The bald eagle has recovered from near-extirpation in New York, aided by the expensive efforts of the NYSDEC and other entities. We all need to cooperate to protect this investment and the bald eagle as a marvelous component of native biological diversity.



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**EXHIBIT 17**



Soterios (Sam) T. Karras  
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SWAN LAKE, N.Y. 12783  
(845) 292 - 0614

February 17<sup>th</sup>, 2007

New York State Department of Environmental Conservation  
Office of Hearings  
625 Broadway, 1<sup>st</sup> Floor  
Albany, NY 12233-1550

New York State Department of Environmental Conservation  
Division Of Environmental Permits, Region 3  
21 South Putt Corners Road  
New Paltz, NY 12561-1620

ATTN: Honorable Judge, Mrs. Maria E. Villa  
Legislative Hearing, February 6<sup>th</sup>, 2007

State Of New York, Department Of Environmental Conservation, Region 3  
Office, Mr. Scott E. Sheeley, DEC Environmental Analyst

Pursuant To Article 3, 8, and 24 (Freshwater Wetlands Permit Application)  
State Of New York, Environmental Conservation Law, and Part 617, 621 and  
663 of the Official Compilation of Codes, Rules and Regulations of the  
State of New York.

Applicant; AJM Swan Lake Estates, Limited Liability Corporation  
Applicant I.D. # : 3-4836-00245/00002 & 3-4836-00248/0001

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Dear Madam:

I would like to take moment to thank you for your interest in our wonderful scenic Swan Lake and its future. The lake is basically the "last un-touched water resource" in our Historic Sullivan County, New York, and in the entire Department of Environmental Conservation Region 3 area. Swan Lake is a Federally Protected Waterway. It is a tributary to the West Branch of the Mongaup River that spills into the Delaware River Basin, and ultimately to the Atlantic Ocean.

**Qualifications.**

I am a local resident, and plumber. I posses a current NYSDEC Grade 2A Wastewater Operators License. I served the residents of the county of Westchester, Department of Environmental

Facilities (DEF), as a Wastewater Operator for roughly ten (10) of my fifteen (15) years of public service. The balance of my civic duty for DEF was in the Maintenance Departments of the various countywide Treatment Facilities.

### **Background Information on Swan Lake.**

Most people know Swan Lake by its size, covering some three hundred fifty-two (352) acres. The applicant's dam enables the present day size of Swan Lake, and without it the lake would be a small river approximately fifteen feet wide at this location /elevation. That includes the adjacent area upstream that this developer (AJM) intends to build his one hundred fourteen (114) acre subdivision, known as Swan lake Estates, LLC at Kelly Bridge Road project on. At the February 6th, 2007 Legislative Hearing before the Honorable Judge, Mrs. Maria E. Villa, the applicant verbally withdrew the Lake Marie Road Subdivision proposal and thereby segmented the Kelly Bridge Road subdivision portion of his application being reviewed by DEC officials.

*The applicant's DEIS does not discuss this withdrawal or the segmenting of the project, although a fax statement dated August 28, 2006 by Mr. Murolo is included in the appendix. Since the DEIS was accepted as complete in December 2006, why did it not include this relevant information? This furthers the inaccuracy of the DEIS.*

My written Public Comment letter will focus and pay special attention to the applicants Domestic Water and Wastewater (Sewage) plans submitted for the proposed project. The following bulleted passages represent 'facts' pulled from the DEIS or otherwise.

### **Daily water usage and waste loading inaccurate.**

\* The applicant specifies on page seven (7) of ten (10), 7.3 *Water Quality, Kelly Bridge Road/ Lake Marie Road Subdivision. Final Scoping Document, May 22, 2006*, that "the projects sites will be served by individual wells and subsurface wastewater disposal systems. As proposed, the estimated total water demand of both development sites is approximately 16,720 gallons per day." The DEIS for the Kelly Bridge Road subdivision never discloses the estimated total water demand for this portion of this application.

The facts presented would lead us to believe that the 16,720 gpd figure provided by the applicant in the Scoping document would be cut in half because the Lake Marie application is dropped, and therefore drop water demand to 8,360 gpd. This is not the case, and the applicant's DEIS needs to be accurate on this point.

**The possibility of two homes per lot renders the subsurface water systems likely to fail, and the proposal has evaded state review.**

\* The applicant claims that twenty (20) of the twenty-one (21) parcels proposed would be served by the subsurface wastewater system.

\* The applicant never disclosed to DEC officials the fact that the Town of Liberty Code allows for one un-specified sized "guest home" on each of the twenty parcels, *in addition to those proposed on the site plan*. This results in forty (40) possible homes, bringing the water demand back to the 16,720 gallons per day, or more... depending on the size of the guest home. The figures provided by the applicant for both subdivisions misrepresent this possible outcome.

This subdivision, when presented as one project (both Kelly Bridge Road and Lake Marie Road), would have required permits from the NYS Department of Health (DOH). According to Tim Rose at the DOH, when he requested all proposed plans for both parcels from this developer they were never sent to his attention. Instead this developer chose to withdraw the Lake Marie Road subdivision application.

The Kelly Bridge Road subdivision of 20 homes does not require the DOH septic and well permits. There are only 4 parcels under 5.0 acres, and the rest are mostly 5.01 and 5.02 acres – with a few larger. This guest home will be tied into the original homes Subsurface Waste Sewage System, *after permits have already been issued*. The practical result is that homes under 5 acres – an additional guest home - effectively evades public review and State scrutiny.

\* The location of the subsurface wastewater systems (leach fields) are on the submitted maps approximately two hundred (200) feet away from the "present day waters edge" of Swan Lake. The natural downward landscape slopes towards the lake leading directly to the outlined hundred (100) foot "NYSDEC Designated Fresh Water Wetlands Buffer Zone."

The applicant's own subsurface wastewater systems figures lead me to conclude that failure of these systems is imminent for the leach fields. Regardless of the poor soil conditions, percolation test results were never disclosed, not currently on file in the town Planning Board records, nor were any other means made available to the public by the applicant to justify resorting to these subsurface wastewater systems. Everybody living around Swan Lake uses municipal sewer lines to address these crucial issues, because of the known damage leach fields caused to Swan Lake prior to 1982. The failure of those earlier systems caused much harm to this man made lake.

Given this known experience and on-site characteristics, the applicant must be made to conform to the same set of public health, safety and environmental responsibility requirements that the rest of the community around Swan Lake adheres to protect the eagle habitat. Based on the DEIS alternatives proposed, this leads to the "no build option" as the only way to avoid environmental catastrophe a few years down the road. **From a civic engineering point of view, and as a**

**certified expert on these matters, this issue cannot be swept aside and not analyzed by the DEIS for any reason - economic, or otherwise.**

There is “justifiable cause” of certain threat to the Federally Protected Endangered Species that live here now, namely the American Bald Eagles, and the other species we witness here that the DEIS fails to even discuss, and also for concern for all the lakeside homeowners.

\* Swan Lake is presently in “recovery” from years of significant negative leach field pollution impacts and other dumping issues. Now, the DEIS proposes that this community return to that primitive state that existed prior to 1982, without analysis or scientific reasoning justifying such conclusions.

Is this really what the applicant wants? Does this justify members of the public paying a \$1 million dollar price tag for these lots and homes if they do not know this? Or is this just what he has been advised to do to subvert the SEQR process?

\* Subsurface wastewater systems (leach fields) are “incapable” of removing the harmful by-products that raw sewage produces, such as, nitrogen, phosphorus, and ammonia. These are just some of many examples of the very harmful chemicals that can destroy potential “habitable environments” especially the small and shallow lake that the Bald Eagles living here rely upon to survive. **There is NO discussion in the DEIS of the ramifications of the failure of these systems.**

*Reference; Appendix 75-A, Wastewater Treatment Standards- Individual Household Systems, Sections 75-A.1 through 75 A.11, [Statutory Authority: State Of New York Public Health Law, 201(1)(1)]*

Following the applicant throughout the entire SEQR process, leading up to the applicant’s DEIS, it does not disclose why the entire EAF form for the Kelly Bridge Road Estates was never completed.

*Reference: 617.20 Appendix A, State of New York, State Environmental Quality Review, Full Environmental Assessment Form, Page (9) of (21), line number (5) and (6) Titled; Zoning and Planning Information.*

*Why was the applicant’s DEIS accepted as being complete by the DEC officials without this important and necessary information?*

In fact, in accordance to Local Town Codes, and the applicant’s own EAF submission, Town of Liberty actually allows this project eighty-two (82) single home dwellings, on the one hundred fourteen (114) acres.

Lines 5, reads as follows: Question: "What is the maximum potential development of the site if developed as permitted by the proposed zoning?"

*Applicant's answer: "82 single family lots."*

Line 6, reads as follows: Question: "Is the proposed action consistent with the recommended uses in adapted local land use plans" Applicants answer: (box is checked) "Yes", "*The primary permitted use in the RD zone is a single family residential development on minimum 60,000 sf ( 1.38 acre ) lots.*"

The applicant's DEIS never makes mention of these facts. Without it, DEC would be actually awarding permits to the applicant for water demands up to, and over 33,440 gallons per day.

If that's really the case, we can look forward to the entire hillside being leveled. Imagine that: nearly thirty-five (35 %) percent of the entire eagles habitat gone for houses and leach fields. What about the wells for potable water for these homes? Now, they have "permission" to drill eighty-two (82) individual wells, above all these leach fields.

\* In 1982, the Swan Lake residents on the other side of the lake were made to tie in to the Public Sewer Service provided by the Swan Lake Sewer Treatment Plant, NYSDEC No. 3-4836-00037/0002, SPDES No. NY 003 0252, Max. Effluent Limitations 0.425 MGD (Millions of Gallons per Day).

\* The Town has limitations in providing potable water service to its present day residents who pay taxes, and this is documented by DEC's own records that the Swan lake Sewage and Water Treatment Plant has failed its SPDES inspections for over eight months in a row.

I personally have town sewer service for my home, but I don't have town water service on the lake. My neighbors across the street have access to town water. My concern is who's next on the list – will it be the applicant's proposed project across the lake, or the residents who already live here in harmony with present day environment, and the endangered species that thrive? As a duly licensed NYSDEC Grade 2A Wastewater Operator, I can say that the DEIS failure to address the crucial septic and water impact issues renders the document a useless tool to analyze and evaluate the negative environmental impacts of this proposal. We know this because Swan Lake has already suffered these significant environmental insults. The lake and the bald eagles must not be subjected to this again – more will die, and/or leave or both – and the nutrient loading that will result from these septic systems failure will kill our beautiful Swan Lake. SEQRA is supposed to be a 'hard look' – but this DEIS fails to even raise one of the most significant potential impacts at all.

For these reason, the DEIS fails and DEC must require it be redone consistent with these comments including a full analysis of these impacts.

Thank you all in advance for your concerns in this delicate matter. Please feel free to call on me at my home phone 1-845-292-0614 anytime if you should have any more questions regarding these matters.

Respectfully Submitted,

Soterios T. Karras



EXHIBIT 18



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VIA FACSIMILE AND CERTIFIED U.S. MAIL

January 20, 2006

Scott E. Sheeley  
Deputy Regional Permit Administrator  
Department of Environmental Conservation, Region 3  
21 South Putts Corner  
New Paltz, NY 12561

Re: SEQRA Review at Swan Lake, Liberty, New York.

Permit Applications Nos. 3-4836-00245/00001  
3-4836-00245/00002

DEC Pre-Application No. 3-4836-00248/00001

Dear Mr. Sheeley:

I write regarding the Department's (or "DEC") State Environmental Quality Review ("SEQRA") of the above referenced applications for the Kelly Bridge and Lake Marie Subdivisions (the "Swan Lake Development Project"). My clients, Cora and Mike Edwards, and others, are directly affected and impacted by the proposed projects. While the Department appears to be in the early stages of SEQRA review, we insist that a "positive declaration" is both legally necessary and appropriate in this case. In addition to the significant and substantial protection of endangered and threatened species issues represented by the presence of multiple American Bald eagles and their nesting sites throughout the entire project site, there are a multitude of potentially significant adverse environmental impacts resulting from the proposed project that easily trigger the very low legal threshold of "one potentially adverse impact" that we don't want the Department to overlook when addressing the endangered species issues. Upon consideration of all necessary and relevant information, we believe the DEC will conclude this project requires full, open and transparent Environmental Impact Statement ("EIS") review under Environmental Conservation Law ("ECL") Article 8 and its implementing regulations.

As you know, the DEC by letter of November 22, 2005 determined that for review of the Swan Lake Development Project it "would be the appropriate lead agency based on the criteria

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Deputy Regional Permit Administrator, DEC Region 3

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found in SEQRA regulations." Letter Scott E. Sheeley, Deputy Regional Permit Administrator, DEC to John Schmidt, Chairman, Town of Liberty Planning Board, November 22, 2005. ("Sheeley November 22, 2005 Letter"). Subsequently, the Town of Liberty Planning Board withdrew its prior notice of intent to be lead SEQRA agency for both the Kelly Bridge and Lake Marie subdivisions, thus leaving DEC as the undisputed SEQRA lead agency for the entire project. Letter of John Schmidt, Chairman, Town of Liberty Planning Board to Scott E. Sheeley, Deputy Regional Permit Administrator, DEC, December 6, 2005; See 6 NYCRR § 617.6. The Department clearly articulated its jurisdiction over six months ago

Where a coordinated SEQR review has not been performed, the Department will be obligated to undertake its own review pursuant to the requirements of SEQR upon receipt of applications for the DEC permits noted above. Additional information and details regarding such projects potential impacts on water quality, wildlife, State-listed species, freshwater wetlands, streams and other relevant environmental impacts may be requested to assist us in our Determination(s) of Significance.

Emphasis added. Letter of Scott E. Sheeley, Deputy Regional Permit Administrator to Randel Wasson. Wasson Engineering, July 8, 2005 at page 3. The Department correctly stated the terms of their review,

As lead agency, the Department would review and evaluate the adequacy of bald eagle impact mitigation plan, along with other potential environmental impacts that may result from the Lake Marie Road and Kelly Bridge Road Subdivision projects.

Emphasis added. Sheeley November 22, 2005 Letter at page 2. Thus, the scope and extent of the DEC SEQRA review of the Swan Lake Development Project in its entirety are settled in this case. The Department has requested information necessary to commence the SEQRA review when it asked that "[t]o adequately evaluate issues that are of primarily local concern, the Department would welcome written comments from the Town of Liberty related to zoning, traffic, and other local land use issues." Sheeley November 22, 2005 Letter at page 3.

It is our position, and an accurate reading of the law, that the impacts of these subdivisions need to be considered together in one SEQRA review process. As the developer made clear to the Planning Board in 2004, prior to segmenting the project into two "phases" that in their plan for their Swan Lake properties "he wants to build 68 upscale houses on 362 acres east of the lake. Sixty-five lots would be 5-plus acres sites; the remainder would be 3 acres. All would have lake rights." "Planning Board considers Swan Lake development plan," Time-Herald Record, May 6, 2004, attached hereto as Exhibit "A". If the impacts are not considered

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Deputy Regional Permit Administrator, DEC Region 3

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together, segmentation contrary to law will result and frustrate the environmental impact review of projects. 6 NYCRR § 617.3(g). SEQRA defines segmentation as

Segmentation means the division of the environmental review of an action such that various activities or stages are addressed under this Part as though they were independent, unrelated activities, needing individual determinations of significance.

6 NYCRR § 617.2(ag). The record makes clear that the Swan Lake Development project simultaneously affects the same area and wildlife habitat, are portions and phases of the same project, as the developer noted to the Planning Board, are contiguously connected by property the developer owns and for which separate review would constitute duplication of effort and may compromise the ability to be protective of the environment. Despite the applicant's and the Planning Board's assertions to the contrary, and because there was no coordinated SEQRA review, the DEC cannot now segment its review of the Swan Lake Development Projects because the applicant and Planning Board think it appropriate. As Lead Agency, SEQRA prohibits such actions and the situation the developer find themselves in, as the record makes abundantly clear, is a result of their own actions over the past year - Kelly Bridge is further along, in part, because actions were taken in violation of law, notably without proper permits duly issued by DEC. As lead agency, DEC is now responsible for its actions in this SEQRA review.

Enclosed are compelling and persuasive comments from concerned and affected local residents, which we ask the Department consider part of the record in its ongoing SEQRA analysis in this case during consideration of whether to issue a positive declaration and thus, requiring a full EIS review.

#### STATE ENVIRONMENTAL QUALITY REVIEW ACT.

SEQRA requires government to take a 'hard look' at all of the environmental impacts before undertaking actions like approving a project and their authorizing permits. ECL Article 8. SEQRA is both a procedural and substantive statute that must be fully complied with for the actions of government to be legally valid.

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Deputy Regional Permit Administrator, DEC Region 3

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### Determining Significance of Environmental Impacts.

The DEC, as lead agency, must "determine the significance" of the action in writing in accordance with specified criteria. 6 NYCRR § 617.7(a)(1). In making the determination the DEC must

review the EAF, the criteria contained in subdivision (c) of this section and any other supporting information to identify the relevant areas of environmental concern. 6 NYCRR § 617.7(b)(2).

*Ms. Edwards and others have made numerous requests for documents under the Freedom of Information Act ("FOIL") to obtain all documents in possession of the Department related to the application of the Swan Lake Development Project. DEC staff has been particularly helpful in these efforts. The last visit to DEC offices to obtain FOILED documents was in mid-December 2005. Based upon that visit and review of those documents in the case file we have unable to determine which EAF form or forms DEC is using for purposes of this determination. We have received the 'original' EAF dated October 20, 2004 and its corresponding determination of significance signed on December 7, 2004 which is limited in scope to Kelly Bridge Road. This EAF is patently incorrect, most notably stating that the proposed action will not affect any threatened or endangered species." Full Environmental Assessment Form, verified by Randel Wasson, Project Engineer, October, 20, 2004. There does not seem to be any dispute that there are endangered species - the American Bald Eagle - in several nesting sites throughout the Swan Lake Development Project site, yet documents in the official record still do not recognize this fact. If other EAF forms are being considered by DEC, please advise in your response and provide such copies to my offices.*

*Amongst other statements in the EAF that we believe to be inaccurate are the conclusory assertions that the project will not affect - Aesthetic Resources, Open Space and Recreation, and Transportation - which are more fully discussed below.*

In early December 2005, the applicant, again, curiously refers to the January 24, 2005 letter of Betty A. Ketcham, Division of Fish & Wildlife to Randel Wasson as 'dictating' its position on the adequacy of the Planning Board's actions. Letter of Frederick Eisenbud to Scott E. Sheeley, Deputy Regional Permit Administrator, December 6, 2005. ("Eisenbud December 2005 Letter") citing Letter of Betty A. Ketcham, Division of Fish & Wildlife, DEC to D. Randel Wasson, Wasson Engineering, January 24, 2005 ("Ketcham Letter"). It is unclear why the applicant again raises this issue. The Eisenbud December 2005 Letter conveniently and selectively cites the Ketcham Letter stating that

Mr. Murolo's consulting engineer, Randy Wasson, wrote to the New York Natural Heritage Program to determine if there were any known rare or state-listed animals or plants of concern on or in the immediate vicinity of the Kelly Bridge project. The January 24, 2005 response from the Natural Heritage Program, stating that they have no

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Deputy Regional Permit Administrator, DEC Region 3

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known records of such animals or plants of concern, was provided to the Planning Board by Mr. Wasson.

Eisenbud December 2005 Letter at page 1. Key portions of the Ketcham Letter are excluded from this letter. It states in full

We have no records of known occurrences of rare or state-listed animals or plants significant natural communities or other significant habitats on or in the immediate vicinity of your site.

Emphasis in original. Ketcham Letter. And goes on to state

The absence of data does not necessarily mean that rare or state-listed species, natural communities or other significant habitats do not exist on or adjacent to the proposed site. Rather our files currently do not contain any information which indicates their presence. For most sites, comprehensive field surveys have not been conducted. For these reasons, we cannot provide a definitive statement on the presence or absence of rare or state-listed species, or of significant natural communities. This information should not be substituted for on-site surveys that may be required for environmental assessment.

Emphasis added. Ketcham Letter. There is no evidence that the applicant conducted such on-site surveys and apparently still insists that the EAF it submitted stating that there are no bald eagles present is adequate. It is not. It appears from the record that only a brief conversation between the consultant and the developer would have clarified that bald eagles are in fact on-site. The developer actively promoted that fact that there were bald eagles as a reason for people to buy into his Swan Lake Estates project. "Eagle Angst," Town Crier, May 18-May 24, attached hereto as Exhibit "B". The record was never corrected by the applicant or the Planning Board despite the obviousness and common knowledge regarding the eagles. In fact, when the Heritage Program was alerted to the mistake in May 2005 by Ms. Edwards, a correction letter dated May 24, 2005 was issued, a detail that the applicant and the Town of Liberty still fail to acknowledge in the December 2005 correspondence with DEC.

Furthermore, DEC is obligated to:

thoroughly analyze the identified relevant areas of environmental concern to determine if the action may have a significant adverse impact on the environment. 6 NYCRR § 617.7(b)(3).

*Without an adequate and accurate EAF submitted by the applicant for the proposed Swan Lake Development Project, and given the patently incorrect statements contained in the 2004 EAF on file and the incompleteness of the July 2005 EAF, DEC does not have a complete up-to-date and correct submission upon which to analyze "identified relevant areas of environmental concern" as required by its regulations. Nonetheless,*

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Deputy Regional Permit Administrator, DEC Region 3

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*my clients and others have preliminarily shared their observations, eyewitness accounts and experiences with respect to Swan Lake in the attached letters to help demonstrate the potentially significant adverse impacts associated with the Swan Lake Development Project.*

set forth its determination of significance in a written form containing a reasoned elaboration and providing reference to any supporting documentation. 6 NYCRR § 617.7(b)(4).

*With necessary documentation not available to review, and thus an inaccurate record, such written reasoned elaboration is not possible at this time. Please see below for important observations, eyewitness accounts and experiences with respect to Swan Lake provided by those residents who live there.*

If there is "the potential for at least one significant adverse environmental impact" an EIS should be required. Emphasis added. 6 NYCRR § 617.7(a)(1). For DEC

To determine that an EIS will not be required for an action, the lead agency must determine either that there will be no adverse environmental impacts or that the identified adverse environmental impacts will not be significant.

6 NYCRR § 617.7(a)(2). As the available record continues to be developed we believe DEC will conclude an EIS is required. To aid us in assisting in such process, we ask that you provide us with a timeline for the process and consider us an interested party for all future activities. Despite numerous requests to be copied on DEC documents, my client has had to make numerous FOIL requests and to travel to the DEC Region 3 offices for updates.

#### Criteria for Determining Significance.

In making its determination of significance, DEC must compare the impacts of the Swan Lake Development Project that are "reasonably expected to result from the proposed action" against specified "criteria" that are considered "illustrative, not exhaustive" of all that are possible. 6 NYCRR § 617.7(c).

(i) a substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic or noise levels; a substantial increase in solid waste production; a substantial increase in potential for erosion, flooding, leaching or drainage problems. 6 NYCRR § 617.7(c)(1).

There are a number of projects that are moving through the approval process on Kelly Bridge Road that must be considered as part of the analysis, because cumulative they, along the Swan Lake Development Project, have the potential to substantially adversely affect traffic and



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solid waste production. As Cora Edwards notes

In addition to the 21 housing units being planned by AJM on Kelly Bridge Road, and 19 units on the Lake Marie Road portion of Swan Lake, the Town of Liberty Planning Board has determined "no negative impact" for two other housing developments on Kelly Bridge Road: Developer Y and H of Kiryas Joel, from Monroe New York has 17 units planned on 40 acres on the eastern side of Kelly Bridge Road. Richard and Russell Baum Construction (RnR) of Sullivan County has a 95 unit trailer park planned on the 62 acres on the western side of Kelly Bridge Road.

Letter of Cora Edwards, January 15, 2006, at page 1. Attached hereto as Exhibit "C". She notes

No environmental impact study has been made to date to monitor how the cumulative impacts of an additional 130 housing units, increased streetlights proposed developments on Lake Marie Road and Kelly Bridge Road (Y and H development on 40 acres, RnR with 95 trailer park units on 62 acres and AJM with 21 and 19 units respectively on several hundred acres) will adversely impact the migratory patterns of these birds with a permanent increase in auto traffic, night lights and streetlights, the noise and dust from construction vehicles and the potential for a deterioration in water quality with discharge and effluent from the sewage systems and leach fields entering the waters of Swan Lake as proposed.

Letter of Cora Edwards at page 5. DEC should immediately obtain the full and complete records regarding these development projects so it can make its own determination, as it must as lead agency, regarding the potential adverse impacts of each project considered together with the Swan Lake Development Project. These questions also go to the ability of local roads to sustain the traffic, as Ms. Edwards notes "Residents in the area voiced their concerns and filed written complaints with the Town of Liberty that the tonnage sign on Kelly Bridge was changing every few days from 10 ton limit to 20 ton limit to 15 ton limit." Letter of Cora Edwards at page 2.

As is well documented in this case, the applicant has been the subject of an enforcement action with respect to its actions in building the project in contravention of and without complying with key provisions of the ECL.

In June 2005 muddy water from a rainstorm ran down from the entrance of the AJM construction site into the waters of Swan Lake. This has been documented in photos taken by resident Cindy Karras and sent by email to NYS DEC and substantiated with violation tickets by the DEC enforcement officers leading to fines imposed on the subcontractor, Mike Nastro for pollution of lake waters.

Letter of Cora Edwards at page 2. These actions caused damage to the water quality in the lake,

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and have lowered the lake level itself. See also Letter of John Parker to Marc Moran, Regional Director, DEC Region 3, September 12, 2005; Letter of John Parker to Marc Moran, Regional Director, DEC Region 3, October 20, 2005.

**Ground or water surface quality:** the waters of Swan Lake on the West side of Kelly Bridge were polluted by run-off from the AJM construction site in June 2005 after a heavy rainstorm washed down a huge quantity of soil and debris. In addition, the level of the lake was lowered by AJM during the hot summer months last year, drying out the existing wetlands, exposing mussel beds and turning large areas of the lake into a swamp.

Letter of Michael Edwards, January 10, 2006. Attached hereto as Exhibit "D". Ms. Edwards notes

In July and August 2005, AJM lowered the water level of Swan Lake by over 18" during the height of a drought. At this time, it was impossible for swimming and canoeing activities to take place as we have done each summer. Long strands of lake grasses, algae and chestnut weed covered the lake surface. Areas of the lake shore that were normally wetlands became mudflats. Heron accustomed to the wetlands on the west side of Briscoe Road saw their habitat disappear completely, and two heron relocated their fishing activities to the relatively undisturbed wetlands on the north eastern shore of Swan Lake east of Kelly Bridge (often referred to as the "first lake" on old maps) and the undisturbed portions on the southern shore of the first lake east of Kelly Bridge.

When DEC officer B. Lohman visited the lake, he noted the drop in the water levels and predicted that fishkill would occur in two weeks' time. I was taken aback by his prediction. Several weeks later, however, I did notice a big change in the lake shore by our house. Aside from several feet of mud where the lake waters used to be, clam shells that were normally closed and usually half buried in the mud by the lake shore became exposed to the open air, and the shells were open and empty instead of closed and under water when the lake was at normal levels.

By lowering the lake waters in a time of drought, AJM put a number of species and habitat at risk, yet AJM benefited from the "dewatering" and drying out of the protected wetlands because the earthmoving equipment could then continue into the 'cul-de-sac' area which would have been too wet and muddy for the equipment otherwise. AJM also benefited from the dewatering by having less water pressure on the dam at the Route 55 end of Swan Lake.

Letter of Cora Edwards at page 2 - 3. To our knowledge, DEC has yet to make a determination regarding the lowering of the lake and dam repair issues pursuant to Title 5, Article 15 of the ECL. These observations give an indication of significant environmental damage already done by illegal and questionable activities by the developer, but also shed light on potential future negative impacts due to the documented failure of the applicant to comply with the ECL.

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Please advise us on whether DEC will address the dam and lake water level lowering issues that have been repeatedly brought to its attention.

The DEC is also required to look at the potential impacts of leaching and solid waste production. With respect to the leaching issues, Ms. Edwards notes

In phone discussions with US Army Corps of Engineers Compliance Officer Chris Mallery in May 2005, I was told that the potential for fissures in the shale and the gradient of the slope from the road construction was of concern and would have to be monitored under US Army Corps of Engineers jurisdiction.

It is also well documented that the Town of Liberty is not able to adequately monitor the summer levels of septic and sewage effluent at Swan Lake. Three times over the course of the summer 2005, I could smell sewage from summer camps on Briscoe Road (past Shore Road), where discharge goes into tributaries of Swan Lake.

Letter of Cora Edwards at page 3. On solid waste impacts, she notes her experiences in this case, stating

I spoke to William Cutler, Coordinator of Solid Waste Facility in Monticello on January 5, 2006 and he told me had not been made aware of the AJM development projects on Lake Marie and Kelly Bridge and the above mentioned projects on Kelly Bridge. When I asked him about the impact that these developments will have on the solid waste facility in Monticello, he said that the calculation is generally one ton of solid waste per person per year.

It has been documented in a series of local news articles that the Sullivan County landfill site has pending DEC permits to expand the Monticello landfill site since it often reaches close to capacity in the summer. It is also a fact that the AJM project will produce additional solid waste that will have to go to the local landfill, however the Town of Liberty Planning Board did not take solid waste and refuse impacts of the projects into account into when making their initial determination of "no negative impact" on December 7, 2004 as lead agency. A determination should be made in the new SEQR review of the AJM project of the impact of additional solid waste.

Letter of Cora Edwards at page 3. These two issues represent ongoing and potential significant problems that are real and have been observed and are ongoing. As The U.S. Army Corp and the Coordinator of Solid Waste note, they need additional information and potentially monitoring with respect to these potentially significant adverse environmental impacts.

(ii) the removal or destruction of large quantities of vegetation or fauna; substantial interference with the movement of any resident or migratory fish or wildlife species; impacts on a significant habitat area; substantial adverse impacts on a threatened or endangered species of animal or plant, or the habitat of such a species; or other significant adverse impacts to natural resources. 6 NYCRR § 617.7(c)(1).

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The American Bald Eagle issues are well documented, as are the deficiencies by the applicant in acknowledging and satisfactorily and transparently addressing the endangered and threatened species issues. The developer's actions with respect to this project have already caused observed and documented significant and adverse environmental changes. As resident Giselle and Eli Goldschmidt observed

Although Swan Lake is not a very large lake, it is the home of a wide array of fish, more than you would find in much larger lakes: sunfish, perch, pickerel, small- and large-mouthed bass, chubs, catfish and fresh-water flatfish, to name a few. The complex ecology of the lake allows them all to thrive here. In addition, there are fresh-water mussels, frogs, snakes and other aquatic life. To our dismay, the intentional lowering of the water level this past summer caused many of these crustaceans to be killed.

Letter of Giselle and Eli Goldschmidt, December 21, 2005. Attached hereto as Exhibit "E".

Similarly, Ms. Nathanson observed

This summer a bear came from AJM property near Kelley Bridge Road swimming across the lake. Where was he going? Why was he seen? I would say that the construction within the AJM Phase One property displaced this bear from his den and familiar surroundings and so he was searching for a new home.

Letter of Diane Nathanson, January 12 2006. Attached hereto as Exhibit "G". Similarly, Mr. Shanahan noted

There is also a flourishing aquatic plant life, turtles and a variety of fish including, according to local fishermen, prizewinning bass. Although I did not see it myself, two of my neighbors recently witnessed a black bear fleeing the woods near the construction zone and swimming across the lake to my backyard. Swan Lake is a delicate ecosystem which risks being irreversibly damaged or possibly destroyed by AJM's disregard of this delicate balance.

Letter of Michael Shanahan. Attached hereto as Exhibit "I". On this point, Ms. Edwards observations on migratory birds and beaver are particularly relevant.

There are beaver dams at various locations on tributaries that feed into Swan Lake. One of the tributaries runs parallel to Kelly Bridge Road. Every year when the tributary overflows in the spring when the winter ice and snow melts, the local electrical company dismantles the beaver dam and the water flows into Swan Lake again. Every year, the beavers build their dam again and the cycle continues. The AJM developments have cited stream disturbances in their proposals, yet have not addressed the issue of how they will co-exist, or not, as the case may be, with the beavers and their dam-building activities.

I have personally witnessed hundreds of migrating ducks and geese flying over Swan Lake in the spring and fall of each year. In the evenings I have heard the ducklings and

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goslings being honked at by their parents, and instructed to fly and land in the water by the older generations of birds. It is a series of honks and splashes that continue as the ducks and geese perfect their landings and take offs. By day they learn how to dive for fish in the waters and nest in the wetlands areas surrounding the lake shore. This year was the first time that I saw the ducks and ducklings come to an area on the southern shore of the first lake, and it occurred to me that since that area was normally under several feet of water, it was not a habitual spot for the migratory birds. When the lake level was significantly lowered and full of algae and other grasses, the upper lakes became too shallow for the ducks to learn to swim and had to find deeper parts of the lake to make new nests.

Letter of Cora Edwards at page 6. Thus, the developer's actions many of which were subject to DEC enforcement action on this project before SEQRA review have already significantly adversely impacted a sizable portion of the habitat and the species that are on the project site.

(v) the impairment of the character or quality of important historical, archaeological, architectural, or aesthetic resources or of existing community or neighborhood character. 6 NYCRR § 617.7(c)(1).

Ms. Nathanson is particularly concerned that the proposed project will negatively impact her use and enjoyment of the unique and natural aesthetic in their neighborhood and on Swan Lake as she knows it. She observed

I have consistently watched and appreciated all of nature's wonders on this lake. Swan Lake is a lake surrounded by wetlands and many assorted animal habitats. There are animals within this development that I had no idea even existed until this summer.

Letter of Diane Nathanson. These observations are common. As Mr. Shanahan notes, with respect to his enjoyment of the natural aesthetic at Swan Lake

I have seen and enjoyed a multitude of wildlife, marine life and waterfowl who make this lake their home. I have personally witnessed bald eagles in their nest close to the construction zone. I have seen wild swans, herons, woodpeckers, Canadian geese, ducks and other water birds both migrating and local to the lake. I have also seen deer, beavers and something that looks like an otter or a mink or perhaps a muskrat. The waters of the lake are also home to water snakes, dragonflies, frogs, crayfish and some kind of fresh water shellfish (perhaps mollusks).

Letter of Michael Shanahan. He goes on to note

In closing I would like to express one more time that an environmental impact study is ABSOLUTELY necessary before anymore work is done by AJM so that the lake is preserved and so that those of us who have purchased properties on the lake for the sole purpose of enjoying the beauty of this bio-gem can continue to do so for years to come.

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Letter of Michael Shanahan. Ms. Karas had similar experiences, noting

The Eagles are not the only species I have seen. Every winter I wait to see the dark chocolate brown mink run across the lake to my neighbors yard. I sit almost every morning drinking my coffee and as soon as the lake freezes I watch to see it scamper across so I know it has survived and is well. I have not seen it yet this year.

Letter of Cindy Karras, January 13, 2006, Attached hereto as Exhibit "F". Ms. Karras also noted

When we first moved here I would go and talk to the fishermen on Kelly Bridge and see them pull huge big mouth bass and pickerel (they have huge teeth) from the lake. I would hear them yelling when they had the big one. The big one always broke their line. The big one turned out to be a huge turtle that I saw three summers ago. I watch for it now and think twice about swimming in lake.

Letter of Cindy Karas. The Goldschmidts expressed similar sentiments

We have been residents of Swan Lake for the past 18 years, residing at 79 Redwood Lane, and using our home for weekends and vacations throughout the year. What drew us to Swan Lake in the first place was its uniqueness as a peaceful, pristine place of natural beauty, untouched by the modern world.

Letter of Giselle and Eli Goldschmidt. The Goldschmidts' view the potentially adverse impacts that the proposed project will bring to their existing use and enjoyment of this natural treasure as tragic. As is evident, local residents view the nature and undisturbed setting is integral to their views of their neighborhood and something cherished by each of them. A value that will be forever altered by the construction of the proposed gated community that is the Swan Lake Development Project.

(viii) a substantial change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing uses. 6 NYCRR § 617.7(c)(1).

As the preceding paragraphs note, the use, enjoyment and observation of the natural surroundings where their homes are located are key recreational pursuits of these local residents. They enjoy viewing and recreating in what the undisturbed and unspoiled nature provides. The Goldschmidts' observe

Although we are not birders, we have noticed a wide variety of birds populating the area. Some birds that we recognize are woodpeckers, hummingbirds, robins and blue jays. In addition, there are many more that we don't recognize by name.

Over the years, we have taken delight in watching the herons perched across the lake

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from our house. We have also been thrilled to see the growing family of eagles who now make their home in Swan Lake. They put on a daily show for us as they soar majestically above the lake or swoop down to catch some fish.

Letter of Giselle and Eli Goldschmidt.

Each summer I swim across the lake from the southern shore east of Kelly Bridge to the northern shore. This summer it was impossible due to the amount of algae and the long length of the underwater grasses curling around my neck and arms when the level of the lake was lowered by AJM developer during a drought in July and August 2005.

Although we canoe each summer as weather permits, most of the upper lake of Swan Lake wasn't navigable this year due to the amount of growth on the lake and lack of normal water levels.

The proposed Kelly Bridge and Lake Marie subdivisions will forever alter the look, feel and recreational value of this area. We canoe out to these spots because of the peace and tranquility that the undisturbed hill, forest and wildlife and wetlands provide to our family and all of us that enjoy Swan Lake. Roads, trees cut down and forests gone and houses in their place in these same spots will forever alter the value that these open spaces provide to cherished by my family and neighbors.

In a series of workshops conducted by Cornell University for Swan Lake residents in September and December 2005, one topic was brought up by an overwhelming number of residents: Keeping the rural and natural woodlands areas intact and continuing to have open space as the defining characteristic of the community.

Letter of Cora Edwards at page 7. There is no question that a housing development on the site of such cherished natural beauty actively enjoyed by neighbors will be forever significantly adversely by this project.

(xi) changes in two or more elements of the environment, no one of which has a significant impact on the environment, but when considered together result in a substantial adverse impact on the environment. 6 NYCRR § 617.7(c)(1).

The combined and cumulative impact of other projects discussed above on Kelly Bridge Road and the entire impact of the Swan Lake Development Project must be considered together. The Department determination regarding the entire Swan Lake Development Project, both the Kelly Bridge Subdivision and the Lake Marie Subdivision, must be considered one project, because amongst other reasons they are interrelated, practically identical and have potentially significant adverse impacts on the same area and communities and habitat for wildlife. Consideration as separate projects would constitute illegal segmentation as previously noted.

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(xii) two or more related actions undertaken, funded or approved by an agency, none of which has or would have a significant impact on the environment, but when considered cumulatively would meet one or more of the criteria in this subdivision. 6 NYCRR § 617.7(c)(1).

The combined and cumulative impact of other projects discussed above on Kelly Bridge Road and the entire impact of the Swan Lake Development Project must be considered together. The Department determination regarding the entire Swan Lake Development Project, both the Kelly Bridge Subdivision and the Lake Marie Subdivision, must be considered one project, because amongst other reasons they are interrelated, practically identical and have potentially significant adverse impacts on the same area and communities and habitat for wildlife. Consideration as separate projects would constitute illegal segmentation as previously noted.

As the personal statements make abundantly clear, the local residents directly affected by the Swan Lake Development Projects are particularly concerned about the numerous potential significant adverse environmental impacts that will result from the project. They have identified the numerous ways in which what they have observed and enjoyed about the area will be significantly negatively impacted. In this case, each specified criteria that the Department must analyze includes the potential for at least one significant adverse impact. Certainly, the magnitude of the personal observations, endangered and threatened species, the scope and scale of the Swan Lake Development Project and the cumulative impacts of this along with other projects in the immediate vicinity on the same road provides a sufficient basis for a full Environmental Impact Statement review. The weight of the evidence necessarily requires the Department to err on the side of caution - because the potential significant adverse environmental impacts that may be caused by this project are not reversible once it is constructed. That reality is reflected in the very low legal threshold requiring EIS review. As you are well aware, if there is "the potential for at least one significant adverse environmental impact" an EIS should be required. Emphasis added. 6 NYCRR § 617.7(a)(1). This legal threshold has been met in this case.

#### ENVIRONMENTAL IMPACT STATEMENT REQUIREMENTS.

The purpose of the EIS inquiry is to determine what environmental impacts will result should the project be approved, and to compare them to environmental conditions if the project is not approved and require mitigation in an open, transparent and accountable process. The



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EIS requires the lead agency to "systematically consider significant adverse environmental impacts." 6 NYCRR § 617.2(n). The purpose is to facilitate "the weighing of social, economic and environmental factors early in the planning and decision-making process." Id. The purpose of the document is to "assemble relevant and material facts upon which an agency's decision is to be made. It must analyze the significant adverse impacts and evaluate all reasonable alternatives." 6 NYCRR § 617.9(b)(1). An EIS is required to be understandable and accessible by members of the public and must address "those potential significant adverse environmental impacts that can be reasonably anticipated and/or have been identified in the scoping process." 6 NYCRR § 617.9(b)(2). The lead agency is required, as a matter of law, to respond to and address substantive comments made by members of the public. 6 NYCRR § 617.9(8). The legal responsibilities associated with an EIS are substantial, with the state law making clear that the "lead agency is responsible for the adequacy and accuracy of the final EIS, regardless of who prepares it" 6 NYCRR § 617.9(8).

The process enables the public to have meaningful input – on the record and from the beginning – regarding which impacts need to be studied, and lead agency will be required to follow a clearly articulated process and procedure with substantive rights afforded to the public. The facts of this case, as the above discussion of the significance criteria show, there is the potential for at least one significant adverse environmental impact warranting a "positive declaration" by DEC. The full EIS process should then commence to provide affected local residents with the ability to meaningfully contribute.

#### CONCLUSION.

The Department has significant legal responsibilities under SEQRA regarding the Swan Lake Development Project. Fulfilling the responsibilities mandated by law is necessary to protect the environment affected by the Swan Lake Development Project and the local residents rights. The Department must continue to implement and enforce both State law and regulations in its SEQRA review of these permit applications. It is not refutable that the project has been allowed to proceed to this point without coordinated SEQRA review. But such review is now underway and the project cannot move forward without the DEC permits even though the developer has already undertaken significant construction and destruction activities on site, all of which must be considered anew. The ongoing 'private' discussions between the developer and DEC clearly reflect this reality and further increase the frustration of local residents. Based

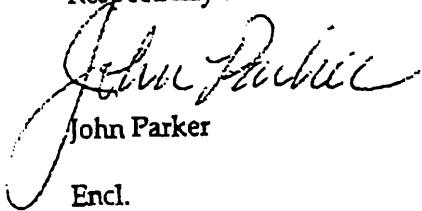
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upon the information currently in the record, and from the enclosed observations and eyewitness accounts of Swan Lake by local residents, it is clear that at least one potentially significant adverse environmental impact could result from approval of the Development Project. For these reasons, we urge a "positive declaration" by DEC and commencement of the EIS process under SEQRA as mandated by State law and regulation. Swan Lake is exactly what the ECL laws are meant to protect.

We look forward to your reply.

Respectfully submitted,



John Parker

Encl.

Cc: w/o encl.

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**Exhibit A**

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May 6, 2004

## Liberty Planning Board considers Swan Lake development plan

The Long Island-based developer who bought Swan Lake and a chunk of land adjacent to it has officially unveiled his plans for the site.

Anthony Murolo of Huntington told the Liberty town Planning Board he wants to build 68 upscale houses on 362 acres east of the lake. Sixty-five lots would be 5-plus acre sites; the remainder would be 3 acres. All would have lake rights.

Murolo said his investor group, AJM Associates, envisions a single-family residential development using the "same concept" as The Chapln Estate in Bethel.

The Bethel development, a gated, 124-lot community, has homes in the \$1 million-plus range. "I'm not ready to start throwing out prices yet," said Murolo.

Board reaction was limited.

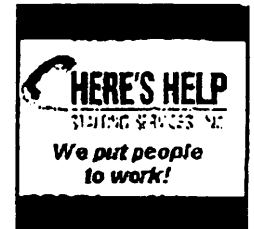
"A clear plan for ownership of the lake is all we care about," said board attorney Walter Garigliano. "If you have to sell the thing off, we don't want to have the lake as a remnant."

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**Exhibit B**





# The Towne Crier

MAY 18 - MAY 24, 2005  
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## Eagle Angst

■ *Swan Lake residents fear for well-being of national bird as development moves forward.*

► Story on Page 5



ESPERANZ GAZZARD PHOTO



WIKI WARDON PHOTO

## Puppet Piscatorial

*The fish to wish upon in next month's parade.*

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JAYON DODD PHOTO

## Kudos from Red Cross

*It's not all play for Forestburgh producer.*

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► WHAT'S HAPPENING • CRIER CALENDAR, PAGE 20, 21

May 18 - May 24, 2005

THE TOWNE CRIBR 5



ON THE COVER: A view across Swan Lake toward the general vicinity of a bald eagle's nest; and, on the periphery of a posted area, Chris Karras points out that there is some development from the state of the sensitive nature of some lands around Swan Lake. This "critical" area is located across the lake from the nesting spot and up Briscoe Road by about a mile from the development and...



# From Soaring Spot to Sore Spot

## Residents wonder if new subdivision will force eagles out of Swan Lake.

When 19-year-old Christopher Karras read his college essay to the Town Board Monday night, he gave a stirring case for the protection of the American Bald Eagle.

"The fight to save these eagles will not be easy," Karras read, "because of the amount of money at stake."

The thing is, Karras did not create his essay from thin air. His inspiration came from real life.

Story by  
**Barbara Orif**  
The Towne Crier

Monday night, a group of Swan Lake residents told the Liberty Town Board they were worried for the welfare of bald eagles that also live at Swan Lake. Some say they have seen up to a dozen eagles there. At least one nesting pair is known to live in a tree along the undeveloped lake shore.

The birds, these residents fear, are about to leave town. Heavy machinery and road construction has already begun on a subdivision of 20 luxury homes on the north shore of the lake. It's phase one of a two-phase project with the next phase scheduled to be closer to the eagles' nesting area.

People like Cary Edwards, the Karras family and several of their neighbors turned out at the town meeting to learn "where to start" in their quest to better protect the eagles.

They are a group that, up until this point, has only organized in order to "adopt" their local road - they pick up stray garbage and make sure the shoulders are free of trash. The maze of public agencies that gets involved in approving subdivisions was new to them.

But in just a few days' time, they started a petition drive, made phone calls and filed invasion of information requests with the town clerk in order to get documents.

They found, to their dismay, that the first phase has been fully approved. They also found out that the planning board checked off a box labeled "no" when the environmental assessment form asked if the site contains any species of plant or animal life that is identified as threatened or endangered.

That was the finding despite the fact that some of the lake shore at Swan Lake has been marked as home to endangered species, though which species is not named.

For many years, the bald eagle was listed as an endangered species. Because the population has made a comeback, it is now con-

sidered a threatened species and remains a federally protected bird.

Extensive efforts have been made to protect and monitor the comeback of the bald eagle in New York State. The bird now appears on magazine covers and in brochures which tout tourism in places like Sullivan County.

Despite the presence of eagles on Swan Lake, the planning board did not require an Environmental Impact Study for phase one of the subdivision. The residents feel this was a mistake and that the construction alone could cause the eagles "to vult with their wings," as Edwards said - and fly away.

"We want an environmental review," said Cindy Karras.

Monday night, the Town board members listened to their concerns, but emphasized to the residents that they were in the wrong place.

The planning board which approved the subdivision is a free-standing body that's not under the control of the town board, Town Attorney Ken Klein told the residents.

Still, their plea about the eagles did not go without notice.

Lynn Killian, the town board member who is liaison to Swan Lake, said she spent three days looking over the documents and visiting the lake. She noted there's been some recommendations made for the birds and pointed out that an area around the eagles' nest has been preserved as undeveloped in the plans.

But Killian added, "I am personally concerned about the whole process and I'm working to help you find the path you have to go on," she said.

Some in the town board audience advised the residents they'd have to take their case to the state Department of Environmental Conservation.

Others mentioned an Article 28 proceeding which is essentially a lawsuit against a governmental body. In this case, the lake residents would have to sue the town planning board to overturn the approval or halt the construction.

The subdivision is planned and owned by AFM Associates of Huntington, NY, on Long Island. AFM also owns the lake.

Tony Marolo of AFM said the presence of eagles "certainly was taken into account" in regard to the subdivision. The first phase, he said, was not close to the eagles' nest. And



BARBARA ORIF/STAFF PHOTOGRAPHER  
BARRAS BLANDED the presence of Bald Eagles near their home for more than five years. Chris and Sam Karras are among a group of Swan Lake residents who are concerned over the effect of construction and a new subdivision on the lake.

while the second phase, in which 19 homes are planned, is nearer to the nest area, there's already been provisions made to protect the birds.

Each of the subdivisions exceeds 100 acres; the lots are large, 5 acres and more. The houses are geared toward the second home market and are expected to sell from between \$500,000 to \$1 million each. The second phase is now before the planning board but has not been approved.

Marolo said it would be counterproductive to disturb the habitat or chase away the eagles.

"They are a beautiful selling point," he said. "There's no reason for me to displace any of that; it doesn't make any sense."

He went so far as to say he would be happy to answer questions about the plans at the next planning board meeting on June 7.

Knowing that some development is beneficial to the town and its tax base, the residents note they are not flat-out opposed to the plan.

"We're not anti-development," said Cary Edwards. "We're for sustainable ecological development. We want the developer to rec-

ognize the unique ecology of Swan Lake and not kill the goose that laid the golden egg."

In this case, town of Liberty Planning Board chairman John Schmidt said the board followed the advice of the state Department of Environmental Conservation in making the determinations about the first subdivision and in granting the approval for phase one.

Meanwhile, residents fear that if the heavy construction continues as it is now, including a steady stream of truck traffic on an otherwise quiet road, it could spell an irreversible move for the eagles. The birds are notoriously sensitive to human disturbances, especially during their breeding season, which is the spring.

People like the Karras family - and the close to 10 people who've signed petitions of concern for the eagles - feel there has got to be immediate action taken to make sure the eagles are not disturbed.

"I want them to do the right thing here," said Cindy Karras.

The next meeting of the Town of Liberty Planning Board takes place Tuesday, June 7, at 7 p.m. at Liberty Town Hall on Main Street.

# The Towne Crier

MAY 18 - MAY 24, 2003  
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75 CENTS



## Eagle Angst

■ *Swan Lake residents fear for well-being of national bird as development moves forward.*

► Story on Page 5



REPORT BY GREG RYAN



PHOTO BY GREG RYAN

### Puppet Piscatorial

*The fish to wish upon in next month's parade.*

PAGE 7



PHOTO BY GREG RYAN

### Kudos from Red Cross

*It's not all play for Forestburgh producer.*

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► WHAT'S HAPPENING • CRIER CALENDAR, PAGE 20, 21

September 24 - October 6, 2005

THE TOWN CRIER 5

# Swan Lake Swims Back Upstream

■ A diverse and forgotten place convenes for the common good.

Back in July, when Walter Keller, poet laureate of Liberty, wrote an ode to the place he calls home, he ended the verse with an unusual observation.

"It might as well be in Swan Lake," wrote Keller, "dead center of Sullivan County and the rest of the universe."

Many might have agreed that Swan Lake seemed somewhat dead; few would say it's the focal point of the universe.

But Keller is a Swan Lake, and as recent times have shown, there is a certain resilience and a certain new energy to the town very recently known as ramshackle and neglected. More than that, Swan Lake has become a central figure when it comes to small town pride and that, for the time being, is putting it in the center of some universes.

Story, photos by **Barbara Greif**

The Towne Crier

In a tale that may soon rival the Livingskin Alamo war-torn story, Swan Lake has dashed itself off and is picking itself up.

Last year, a handful of business swam against the tide and, instead of giving in to the bowled-up back, they fixed their storefronts and painted their buildings. Soon after that, an effort began at planning flowers.

This past August, the townspeople won a \$10,000 Renaissance prize for transforming a Swan Lake eyesore to a sparkling park that revealed a waterfall that many had never before seen.

Now, like the king on the cake, the hamlet of Swan Lake is about to get the Ivy League treatment.

Earlier this month, a professor and students from the Cornell University Department of City and Regional Planning swept into Swan Lake to address some of the age-old issues there. As part of their course in community planning, they will devise a blueprint for betterment in Swan Lake. It will be about economic revitalization, traffic flow, parking, and the look of the streets and the hamlet as a whole.

The Liberty Community Development Corporation is involved. Swan town officials.

But, as Town Supervisor Frank Doherty said, this is all about the power of the people.

When the Liberty Town Board took its meetings on the road, Doherty said, "You guys are the ones that showed up."

Showing up and showing they cared is what made the difference for Swan Lake.

Few know that better than Nancy Levine.

Together with a core group of long-time residents and a few others, Levine got in on the heavy lifting at the early stages.

An elementary school teacher with a passion for her hometown, she grew up as a kid and then as a waitress in her dad's Swan Lake Hotel back in the day when there were 40 to 50 hotels in the hamlet. Now, the sprawling Swan Lake Resort, formerly known as the Stevensville back in the glory times, sits along the lake shore and now or two other small hotels and bungalow colonies operate in the hamlet. There's a convenience store, a deli and a few shops in the "downtown" plus some service businesses including a landscaper and Black River Fuel Oil.

She and residents like brothers Tommy and Mark La Gallina took stock of Swan Lake's assets and saw past its eyesores to create the Renaissance park that earned the town its pride and got it a chunk of its pride back.

People who are enthused to see something positive happen, they'd stop their own, break their horns and pledge donations, she said. "People who saw us started sending money," Levine says.

### What's Next

The Cornell students will return to town with the information garnered at the meeting and commence work on the new master plan. It will be presented at a public meeting in the Swan Lake Resort Hotel in December 2005.

The Cornell plan study area encompasses the area between Rochelle Mobile Home Park on the east and Swan Lake Resort Hotel on the west, and from the Golden Swan motel and restaurant and Presidential Estates south to the town line.

Consideration is now also turned toward including the Kelly Bridge Road in the plan, a point that was raised during the meeting. Among the challenges for the class will be the idea of tying the hamlet of Swan Lake with its rural business district to the adjacent area that includes the Swan Lake Resort Hotel (Stevensville).

Here's a short list of concerns and wishes raised at the Sept. 26 session:

- ▶ Public access to lake
- ▶ No more boarded buildings
- ▶ A traffic or signal light
- ▶ Prorated over-development



WALTER KELLER, by left, poet laureate of Liberty, Nancy Levine and Tommy La Gallina,

record that Swan Lake was first listed at a meeting in the Swan Lake Firehouse Soc. 15.

Many people want to see new sidewalks and infrastructure, and an end to unimportant buildings. **BELOW,** Joe Leibowitz, left, pledges help from his community in the restoration of Swan Lake's faded glory.

Joe Leibowitz, left, pledges help from his community in the restoration of Swan Lake's faded glory.

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Together with a crew of five workers from the Daytop Rehab center, they restored and landscaped the waterfall area.

Levine, like a lot of people, felt it was the moment for Swan Lake to shine.

"I think we all forgot about [the town]," she said, just recently, she said to herself, "Now, it's time to do this."

The hamlet itself, with a notably gnarly three-way intersection and a distinct lack of sidewalks, suffers from too many people on the few weekends of the high season and

then from too few people the rest of the time. The summer plans get boarded up. The traffic, which can be bedlam for pedestrians and motorists alike on Fridays in summer, goes back to its slow pace the rest of the year.

All of these issues and more were laid at the feet of the student planners this month. These are the topics that are already heavily on the minds of the residents.

Issues like these, plus contentious feelings over new housing developments and environmental concerns, would threaten to divide most small places.

But Swan Lake and Cornell have so far managed to get beyond the petty. For now, Swan Lake has seen a meeting of the minds bonded by a common cause: which is a better Swan Lake. So far, home owners have made peace with year-rounders, and rabid from the Orthodox community have pledged land for more parking plus a better effort when it comes to businesses and their summer-season appearances.

"We want to work it out in the interest of Swan Lake," said Joe Leibowitz.

The forward momentum was such that Bill Liblick, president of Swan Lake Estates, predicted a whole new era for his hamlet.

"We want to restore Swan Lake to a certain look so people will say 'This is a nice little town,'" he said.

"This summer, everyone got along. A lot of it had to do with the unity created by the hard work of the Renaissance project. Our focus should be on Swan Lake and the beautification of Swan Lake, not on hostility against the summer community."

Already, this vision seems to be edging toward a permanent truth.

Even in the days that came after the meeting - and in the many weeks that followed the close of the Renaissance beautifying season - teams continued to work to plant flowers, paint buildings, clear dilapidated signs from drive fronts and otherwise contribute to the fledgling success story of a town.

With so much already under the Swan Lake's belt, the long, long list of things that are yet to be done seems just a little lighter to those who've seen this through so far.

To that end, discouragement is not part of the equation. As Nancy Levine says: "I look at the bright side of things ... I look at the things we've accomplished rather than the things that still need to be done."

- ▶ Sidewalks
- ▶ Sidewalks with lighting
- ▶ Permanent limit cars on corners
- ▶ Kelly Bridge Road
- ▶ Preservation of the old Barnstein building (old soda fountain)
- ▶ Roll the tax base
- ▶ Worry about the impact of 400 to 500 new homes
- ▶ Dining and biking trails
- ▶ Sustained parking
- ▶ Preservation of the rural feeling
- ▶ Widening existing streets in summer
- ▶ More public transportation (buses)
- ▶ The "searched-ness" of it all

**Exhibit C**

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Cora Edwards  
PO Box 448  
Swan Lake, New York 12783

NYS Department of Environmental Conservation  
Region #3 – Permits  
21 South Putts Corner Road  
New Paltz, New York 12561

January 15, 2008

Re: Anthony J. Murolo (AJM) at Swan Lake Estates LLC  
Kelly Bridge Road Subdivision and Lake Marie Road Subdivision  
Town of Liberty, Sullivan County

**To Whom It May Concern;**

Since 2002, I have resided at 1495 Briscoe Road at Kelly Bridge Road Swan Lake NY 12783. I have been a summer resident of Sullivan County since 1979, and my mother's ties to the area go back to the 1940's when she was a summer counselor at Camp Shady Brook on Denman Mountain in Grahamsville in the Town of Neversink overlooking the reservoirs. All these years, we have appreciated the unique beauty of the wilderness areas of the Catskills region that have been undisturbed by man-made development for over 100 years.

I am writing so that my personal observations of the wildlife habitat at Swan Lake and the adverse impacts to the local community and environment of the AJM subdivision developments on Kelly Bridge Road and Lake Marie Road are entered into the public record as part of the SEQR process currently underway with the DEC Region #3 as lead agency for the project.

In addition to the 21 housing units being planned by AJM on Kelly Bridge Road, and 19 units on the Lake Marie Road portion of Swan Lake, the Town of Liberty Planning Board has determined "no negative impact" for two other housing developments on Kelly Bridge Road: Developer Y and H of Klyas Joel, from Monroe New York has 17 units planned on 40 acres on the eastern side of Kelly Bridge Road. Richard and Russell Baum Construction (RnR) of Sullivan County has a 95 unit trailer park planned on the 62 acres on the western side of Kelly Bridge Road.

Residents of the area including Kelly Bridge Road and Lake Marie Road have voiced their concerns directly to the Town of Liberty Planning Board about the potential of adverse environmental impacts, yet the projects appear to be going forward without these concerns being addressed in the proposals. Furthermore, it appears that the Planning Board has issued negative declarations for these projects despite requests to reconsider these "negative declarations" in public hearings and to conduct proper studies conduct before issuing negative declarations on the Environmental Assessment Forms.

On December 6, 2005 (one full year after issuing a negative declaration for AJM at Kelly Bridge Road on December 7, 2004) the Town of Liberty Planning Board withdrew as lead agency for the SEQR process, rather than revise their original assessment.

**Adverse changes in Existing Air Quality, Traffic and Noise Levels:**

On May 13, 2005 I personally witnessed a convoy of construction trucks carrying tons of gravel and dirt up and down Kelly Bridge Road, which is a one-lane country road with 17 homes, a summer camp, open fields for horses, and thick forest on both sides for most of the road. The vehicles were coming at a rate of one every three minutes in each direction from 8:30 am to 4:30 pm. The trucks created a road hazard with speeds of over 50 miles an hour, spewing dust and gravel in their wake, turning the one lane road into a noisy, dusty two-lane roadway all day long, with deep gouges on each shoulder of the road.

Residents in the area voiced their concerns and filed written complaints with the Town of Liberty that the tonnage sign on Kelly Bridge was changing every few days from 10 ton limit to 20 ton limit to 15 ton limit.

I placed a call to the Town of Liberty liaison for Swan Lake, Councilperson Lynn Killian, about the danger and disruption on the town road. She came to the construction site and personally submitted a report to the Town of Liberty about the negative impact the construction was having on the quality of the town roads and normally peaceful surroundings.

In a town board meeting on May 16, 2005 the Town of Liberty Supervisor said he would call the developer, AJM, and personally ask that the construction vehicles obey existing laws on speed and tonnage. However, over the course of the next several months, the trucks did not obey the laws, so residents phoned the State Patrol, who sent patrol vehicles to the intersection of Kelly Bridge Road and Redwood Lane to monitor the speeding and weight violations.

The noise levels of the pounding, tree cutting and earth-moving equipment from May to November 2005 caused a great deal of disruption to the quiet neighborhood on Kelly Bridge Road surrounding Swan Lake. The noises carried to all corners of the lake so that neighbors on Briscoe Road, Shore Road as well as Kelly Bridge and Lake Marie Road could hear construction activities from early morning until late afternoon. During this time it was impossible to hear the distinctive calls of the woodpecker, geese, ducks and other birds that frequent the lakeshore.

The eagles' habitual pattern of feeding from the peninsula on the north side of the second lake was disrupted and we only saw the eagles on the weekends when all was quiet again. I discussed this disruption in phone conversations with Peter Nye (DEC Albany) and Steve Joule (DEC - Region # 3).

On several occasions, logging trucks passed my house on Kelly Bridge Road at 3:30 am, so even getting a good night's sleep was out of the question.

I have also contacted the Sullivan County Chairman of the Legislature, Chris Cunningham about the cracks on Kelly Bridge itself that measure two feet long and he has said that he would have relevant staff look into it.

All this construction activity occurred without an NOI on file with the DEC, and without a single permit application, to the relevant state and federal agencies that oversee protected wetlands and wildlife habitat, and road and bridge maintenance until October 7, 2005. It is my understanding that as of the writing of this letter, the permit applications are still "incomplete."

#### **Ground or water surface quality:**

On June 7, 2005 muddy water from a rainstorm ran down from the entrance of the AJM construction site into the waters of Swan Lake. This has been documented in photos taken by resident Cindy Karras and sent by email to NYS DEC and substantiated with violation tickets by the DEC enforcement officers leading to fines imposed on the subcontractor, Mike Nastro for pollution of lake waters.

In July and August 2005, AJM lowered the water level of Swan Lake by over 18" during the height of a drought. At this time, it was impossible for swimming and canoeing activities to take place as we have done each summer. Long strands of lake grasses, algae and chestnut weed covered the lake surface. Areas of the lake shore that were normally wetlands became mudflats. Heron accustomed to the wetlands on the west side of Briscoe Road saw their habitat disappear completely, and two heron relocated their fishing activities to the relatively undisturbed wetlands on the north eastern shore of Swan Lake east of Kelly Bridge (often referred to as the "first lake" on old maps) and the undisturbed portions on the southern shore of the first lake east of Kelly Bridge.



When DEC officer B. Lohman visited the lake, he noted the drop in the water levels and predicted that fishkill would occur in two weeks' time. I was taken aback by his prediction. Several weeks later, however, I did notice a big change in the lake shore by our property. Aside from several feet of mud where the lake waters used to be, fresh water shellfish or mollusks that were normally closed and usually half buried in the mud by the lake shore became exposed to the air, and the shells were open and empty instead of closed and under water as when the lake was at normal levels.

By lowering the lake waters in a time of drought, AJM put a number of species and habitat at risk, yet AJM benefited from the "dewatering" and drying out of the protected wetlands because the earthmoving equipment could then continue into the 'cul-de-sac' area which would have been too wet and muddy for the equipment otherwise. AJM also benefited from the dewatering by having less water pressure on the dam at the Route 55 end of Swan Lake.

The waters of the upper lakes are extremely shallow, not even two feet deep even in years without drought or deliberate de-watering by AJM. Sometimes it is too shallow even for a canoe to pass by. I think it is disingenuous for potential buyers of lake front property to be led to believe that they will have docks and boats on what is essentially a shallow pond in that part of the lake. If AJM intends to put in floating docks, and to excavate and dredge that area to create more depth, then they should file for permits to do so at the same time as all the other permits, and not after the fact.

#### **Potential Leaching and Drainage Problems:**

In phone discussions with US Army Corps of Engineers Compliance Officer Chris Mallery in May 2005, I was told that the potential for fissures in the shale and the gradient of the slope from the road construction was of concern and would have to be monitored under US Army Corps of Engineers jurisdiction.

It is also well documented that the Town of Liberty is not able to adequately monitor the summer levels of septic and sewage effluent at Swan Lake. Three times over the course of the summer 2005, I could smell sewage from summer camps on Briscoe Road (past Shore Road), where discharge goes into tributaries of Swan Lake.

#### **Substantial increase in solid waste production:**

I spoke to William Cutler, Recycling Coordinator of the Sullivan County Division of Solid Waste at the Monticello facility, January 5, 2006. He told me had not been made aware of the AJM development projects on Lake Marie and Kelly Bridge and the other two projects on Kelly Bridge by Town of Liberty officials. When I asked him about the impact that these developments will have on the solid waste facility in Monticello, he said that the calculation is generally one ton of solid waste per person per year, depending on how much recycling is done (generally 20-30% per ton is recyclable if properly sorted).

It has been documented in a series of local news articles that the Sullivan County landfill site has pending DEC permits to expand the Monticello landfill site since it often reaches close to capacity in the summer on cell 5 and cell 6 will be ready next summer. . It is also a fact that the AJM project, being marketed as "second homes" will produce additional solid waste that will have to go to the local landfill. However, the Town of Liberty Planning Board did not take solid waste and refuse impacts of the projects into account into when making their initial determination of "no negative impact" on December 7, 2004 as lead agency. A determination should be made in the new SEQR review of the AJM project of the impact of additional solid waste.

**Removal or destruction of large quantities of vegetation or fauna:**

The area where AJM is building their housing development has many "old-growth trees" and has thick forest surrounding both sides, aside from an old logging road. Now the entrance to the AJM development has a two-lane boulevard leading to a cul-de-sac adjacent to the protected wetlands. The entrance to the construction site looks as wide as the entrance to highway Route 17, and is incongruent with the entrances and driveways in the area. All the tree cutting and road building over a mile long has created an impermeable area where mosses, ferns, trees and a variety of wild rhododendrons and other bushes used to be. During the tree cutting in May 2005, the fires at the construction site created a disgusting smell of burning, dank vegetation that spread all over the surrounding neighborhood.

On Memorial Day weekend in May of 2005, my brother and I noticed spirals of smoke coming from the construction area and phoned the Swan Lake Fire Department. I was told by Donny Sherwood, the local fire marshal, that the developer was not obligated to get a local fire permit for the site. At a subsequent meeting on June 7 with Anthony J Murolo at the Town of Liberty Government Center, I showed him a photo of the unattended logging site with smoldering plumes of smoke arising from the charred logs and tree stumps. Anthony Murolo told me that he was under the impression that a fire permit had been filed. Documentation shows that the DEC fire permit applied for on June 2, 2005 was retroactive for the period June 1 – July 2, 2005 and did not cover Memorial Day weekend (May 31, 2005) when the photos were taken.

Also at the June 7 meeting with Anthony J. Murolo, I mentioned that I have seen housing developments that respects property owners views, with unobtrusive walkways and paths through forests and nature areas that are actually improved by proper stewardship. In fact my mother lives in a community called "The Preserve at Brookwood" near the Chattahoochee Niver Nature Preserve where such measures are very popular with homeowners. However, Anthony J. Murolo has not taken up any of those options in his revised proposals, and it appears that he will only act when law enforcement measures require him to come into compliance with well-established conservation laws.

For the first time since moving to Swan Lake, I am able to see the house on the hill adjacent to the AJM development on Kelly Bridge since the road construction and cutting of the trees has completely changed the terrain. It used to be thick forest, with towering pines above the hardwoods. Even when all the leaves dropped in autumn in years past, the forest was thick. Now the snowy hillside has an unsightly gash through it, as a balding man with thinning hair can't hide the scalp underneath. The look of the neighborhood and the hills and trees of Swan Lake, which are an integral part of our neighborhood, have been severely and adversely affected and changed by this construction. Clearly further site construction will greatly magnify the damage that has already been done to the aesthetics of this once proud and beautiful spot.

Currently, the road constructed by AJM over the last 7 months (while permit applications remain incomplete) is under snow and ice. There is the potential for more adverse impacts when the snow melts in the spring of 2006, as in April of 2005. On the weekend of April 2-4, 2005 the roadway south of Kelly Bridge was under four feet of water from melting snow and rain water, and Kelly Bridge remained impassable for over a week. The local highway and road department has still not repaired road and bridge damage from that rainstorm damage in 2005, let alone the additional loss of the vegetation and forest from the new road construction by AJM.

**Impairment of the environmental characteristics of a Critical Environmental Area:**

**American Bald Eagles habitat:**

On May 13, 2005 I contacted Steve Joule in the DEC office in New Paltz about the construction activities taking place at the Kelly Bridge site without any DEC permits on file. I also contacted DEC's Heritage Program (Albany) and Peter Nye's office (Albany) to inform that there was a

mistake in the January 24, 2005 DEC Heritage Program letter (obtained by FOIL requests with the Town of Liberty planning Board) stating that there were "no known endangered species" at Swan Lake. Jean Petruziak phoned me back to say that a correction letter would be sent, dated May 24, 2005.

As the DEC is aware, the AJM property was clearly and distinctly with DEC yellow and black signs which state Critical Environmental Area where the eagles nests are located on the west side of the lake adjacent to Shore Road prior to the January 24, 2005 letter

In addition, this American Bald Eagles habitat at Swan Lake has been well documented by Peter Nye (DEC-Albany) and the local Audubon Society over the years. Additional nests exist on the east side of the lake and all the nests are used throughout the year. One very large nest looked abandoned. The American Bald Eagles feeding and breeding habitat area covers the entire lake, not just the areas where they nest. The breeding sites on Kelly Bridge Subdivision and Lake Marie Subdivision and the lake itself are inextricably linked together and constitute a whole environment.

Developer Anthony J Murolo acknowledged in the May 16, 2005 issue of the Towne Crier newspaper (attached) that he was aware of the American Bald Eagles habitat at Swan Lake and considered the eagles to be a "selling point" for his gated community while at the same time relying on erroneous eagle information in his presentations to the planning board of environmental impacts of its project. As recently as December 6, 2005 his lawyers continue to cite the January 24, 2005 letter from the DEC Heritage program, which also clearly states that the database is constantly being updated and the letter does not substitute for on-site observations. The lawyers do not cite the correction letter issued by the DEC Heritage Program of May 24, 2005 documenting the eagles habitat. It is my understanding that in the past seven months, the AJM developer has yet to submit his comprehensive mitigation plan on the endangered species habitat for DEC review.

All of Swan Lake is the eagles' habitat, from Route 55 to the top of the "fourth lake" near Lake Marie Road. The eagles do not distinguish whether they are flying in Phase One and Phase Two. This year, two fledglings matured at the nest along the western side of Shore Road and I could see them learning to fly, land and how to catch prey on the "first lake" east of Kelly Bridge Road and Briscoe Road as well as on the upper lakes by Shore Road and Lake Marie Road..

My husband and I have canoed on the lake every summer. When we arrive at the Shore Road end of the lake, we are very cognizant of the fact that the eagles in the nests near Shore Road (western side of the lake) are watching us and will fly away or get agitated if we come within even 1000 feet of their habitat, so we are very careful not to proceed if they begin to shy away or flap their wings as a warning. It's clear from our experience that even getting as close as 1000 feet plainly changes the eagles behavior as they respond our presence in a canoe.

This past April, we personally saw 12 eagles flying in slow circles on the southern shore of Swan Lake, east of Kelly Bridge. Two visiting friends also saw this phenomenon, and we quietly stood at the edge of the lake and watched them high in the sky for over half an hour. In September 2004, another friend brought his kayak to the lake and later told me that while he was on the upper lake he was amazed to see an eagle swoop into the lake and scoop up a fish.

This past December 2005, while the lake was frozen, my husband noticed two huge bald eagles eating their prey in the middle of the lake on the eastern side of Kelly Bridge near the wetlands area on the northern shore. We looked at them through binoculars from since we did not want to disturb them. Each morning between 10:00 am and 11:00 am the eagles came back to this same spot to eat their prey, which appeared to be several feet long spread out on the ice. Only once the eagles had finished would other kinds of birds go to this spot and eat the remains.

Over new Year's Weekend, 2006 the eagles were back at this spot but were disturbed by people ice fishing at the far end of Swan Lake by Route 55, about one quarter mile away, and the eagles have not returned to this spot although the unfinished prey remains. We have witnessed how the eagles are very sensitive to any changes and human interference on all parts of the lake.

It remains unclear to me how the proposed AJM development will not irrevocably the landscape and endangered eagles habitat after so much effort to restore the eagle population in this region.

**Substantial interference with movement of any resident or migratory wildlife species and habitat area:**

This past summer, a pair of wild swans (photo enclosed) made a nest near the wetlands on the opposite side of the lake from our property on the south side of Kelly Bridge Road east of Kelly Bridge. It was beautiful to watch the swans glide on the lake itself and fly in perfect unison over the water and return to their nest in the grasses and reeds of the wetlands. It wasn't until I spoke with a neighbor from the Shore Road end of Swan Lake who said that the wild swans had disappeared from their habitual nesting place of six years on the upper lake that I realized that the swans had been displaced from their original site and were now in the only undisturbed portion of the wetlands left at Swan Lake, even though the lowered water levels had significantly reduced the size of the wetlands this summer.

One day when canoeing, we encountered a beaver about three feet long swimming alongside the canoe to the beaver dam on the opposite shore. The beaver was obviously unafraid of our presence in the canoe, and blinked at us a few seconds before continuing on its way undisturbed.

There are beaver dams at various locations on tributaries that feed into Swan Lake. One of the tributaries runs parallel to Kelly Bridge Road. Every year when the tributary overflows in the spring when the winter ice and snow melts, the local electrical company dismantles the beaver dam and the water flows into Swan Lake again. Every year, the beavers build their dam again and the cycle continues. The AJM developments have cited stream disturbances in their proposals, yet have not addressed the issue of how they will co-exist, or not, as the case may be, with the beavers and their dam-building activities.

**Migrating Birds:**

I have personally witnessed hundreds of migrating ducks and geese flying over Swan Lake in the spring and fall of each year. In the evenings I have heard the ducklings and goslings being honked at by their parents, and instructed to fly and land in the water by the older generations of birds. It is a series of honks and splashes that continue as the ducks and geese perfect their landings and take offs. By day they learn how to dive for fish in the waters and nest in the wetlands areas surrounding the lake shore. This year was the first time that I saw the ducks and ducklings come to an area on the southern shore of the first lake, and it occurred to me that since that area was normally under several feet of water, it was not a habitual spot for the migratory birds. When the lake level was significantly lowered and full of algae and other grasses, the upper lakes became too shallow for the ducks to learn to swim and had to find deeper parts of the lake to make new nests.

When I am canoeing on the upper lakes and see score of ducks and geese making that area their home, I wonder how these migrating birds habitat and flight patterns will be affected by the increased density of these proposed homes, streetlights and utilities, cables and satellite dishes, pesticides and fertilizers for lawns and the corresponding decrease in wetlands and diminishing habitat.

No environmental impact study has been made to date to monitor how the cumulative impacts of an additional 130 housing units, increased streetlights proposed developments on Lake Marie Road and Kelly Bridge Road (Y and H development on 40 acres, RnR with 95 trailer park units on

62 acres and AJM with 21 and 19 units respectively on several hundred acres) will adversely impact the migratory patterns of these birds with a permanent increase in auto traffic, night lights and streetlights, the noise and dust from construction vehicles and the potential for a deterioration in water quality with discharge and effluent from the sewage systems and leach fields entering the waters of Swan Lake as proposed.

#### Woodpecker habitat:

In April 2005 at a Town of Liberty Board meeting at the Swan Lake Firehouse, an elderly gentleman (name unknown) who has lived in the area all his life commented on that there are several species of woodpecker that make nests in the old hardwood trees surrounding Swan Lake and he wanted to know how the development proposed would impact the woodpecker habitat.

In May 2005 I spoke to Alec Ciesluk and Scott Sheeley about the woodpecker habitat on the proposed lots for development by AJM (on the maps numbered lots 13 and 14) and sent in photos of the clearly identifiable woodpecker habitat. The woodpecker has a distinctive call that can also be pinpointed to that area, however since the construction of a two-lane boulevard to the wetlands on the AJM development site without permits, it was difficult to hear the woodpecker's call above the heavy pounding of gravel and road construction and tree cutting.

With the destruction of many old hardwood trees on the AJM site, the woodpeckers have been displaced and have sought other old trees in other parts of the area to make their homes, including two maple trees adjacent to Kelly Bridge Road that are over 100 years old on our property. Although many people consider the woodpeckers to be a nuisance because of their pecking noises and distinctive calls, I do not want to chase them from our maple trees because I know that their former habitat away from all human disturbances does not exist since the road construction began.

#### Damsel and Dragonflies:

When I have canoed in the lake over the summers, I have seen damsel and dragonflies in various colors of blue, green and red. They are often flying around the yellow water lilies that grow in various parts of the lake. This past summer, with the lowering of the lake waters, the fly pads died off before the summer was halfway over, and the damsel and dragonflies disappeared as well. What will be the permanent impact of the AJM development on this species?

#### Turtles:

During the drought this past summer, the lake levels were lower than normal. The problem appeared exacerbated by the fact that the water level was intentionally lowered by AJM in July, and so the lakeshore receded by 4 feet turning much of the wetlands into mudflats. When the lake levels were disturbingly low, we saw a turtle with markings that looked similar to the displays that Steve Joule had at the Bethel Woods fair. What will the impact of this development be on the turtle habitat at Swan Lake?

#### Substantial change in the use of open space or recreational resources:

Each summer I swim across the lake from the southern shore east of Kelly Bridge to the northern shore. This summer it was impossible due to the amount of algae and the long length of the underwater grasses curling around my neck and arms when the level of the lake was lowered by AJM developer during a drought in July and August 2005.

Although we canoe each summer as weather permits, most of the upper lake of Swan Lake wasn't navigable this year due to the amount of growth on the lake and lack of normal water levels.

The proposed Kelly Bridge and Lake Marie subdivisions will forever alter the look, feel and recreational value of this area. We canoe out to these spots because of the peace and tranquility that the undisturbed hill, forest and wildlife and wetlands provide to our family and all of us that enjoy Swan Lake. Roads, trees cut down and forests gone and houses in their place in these same spots will forever alter the value that these open spaces provide to cherished by my family and neighbors.

In a series of workshops conducted by Cornell University for Swan Lake residents in September and December 2005, one topic was brought up by an overwhelming number of residents: Keeping the rural and natural woodlands areas intact and continuing to have open space as the defining characteristic of the community.

Gated communities as defined by AJM's proposed plans are not in keeping with the local population's identity and wishes for the area. Gated communities may be the norm where AJM is from in Huntington, Long Island, however recently built gated communities in Sullivan County have actually not had the level of sales the developers anticipated, as documented in real estate columns of local newspapers, particularly the Chapin Estate on Swinging Bridge Reservoir and The Eagles' Nest on Route 97.

Prospective buyers are especially wary of buying land with septic tanks and leach fields given the well-publicized difficulties homeowners have had selling their properties on Tennesse Lake in southeast Sullivan County, where septic tanks and leach fields have leaked effluent into the waters. Engineers bringing proposals to the Town of Liberty Planning Board have asked to be hooked up to the municipal sewer systems because prospective home buyers are not eager to buy property with septic tanks and leach fields, but the Town of Liberty does not have the capacity to do so. Questions remain about the impacts of leach fields, effluent, and run off from the proposed house sites on surrounding wetlands and the lake itself, particularly due to the unique geological and soil characteristics of the proposed site.

AJM's actions with respect to the applications in question have been extremely problematic. They does not have a good track record when it comes to filing an NOI, getting appropriate and timely fire permits, and filing permit applications required by state law and on stewardship of lake levels and land use management. Because of AJM's actions, the DEC has imposed fines and signed a consent order to curb illegal activities.

Request for environmental impact study:

As you can see, Swan Lake is a unique and special place cherished by all who live here, use and enjoy it. That use and enjoyment and the environmental integrity of Swan Lake will be significantly adversely impacted by the proposed Kelly Bridge and Lake Marie Subdivisions.

Until a comprehensive environmental impact study is conducted to catalog the varied species that make Swan Lake their home and the extent that they and all of use will be impacted, how will anyone be able to suggest that the AJM and other developments will have no negative or adverse impact on the wildlife habitat and surrounding community that has existed and thrived here for generations?

Swan Lake is more than just a home to endangered species. For these reasons, we request DEC carry out a full study of the unique ecological resources found at Swan Lake. There is little question that the project could have many potentially significant impacts that must be studied and mitigated as required by state law.

Sincerely



Cora Edwards

**Exhibit D**

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Michael Edwards  
PO Box 213  
Ferndale, New York 12734

NYS Department of Environmental Conservation  
Region #3 – Permits  
21 South Putts Corner Road  
New Paltz, New York 12561

January 10, 2006

RE: Anthony J. Murolo (AJM) at Swan Lake Estate  
Kelly Bridge Road Subdivision  
Town of Liberty, Sullivan County

To Whom It May Concern

In 2002, my wife and I purchased an old farmhouse overlooking Swan Lake in Sullivan County. We were drawn to this spot because the shoreline opposite our house is a wetland, where a pair of wild swans and at least two families of heron have their nests. Every day we see American bald eagles and other protected and endangered species of birds, including a woodpecker with a red head and black and white markings about twelve inches high that is making a home in a 100-year old maple tree outside our living room window. However, since the initiation of road construction adjacent to Swan Lake by AJM Associates of Long Island early in 2005, these sightings have become increasingly rare. Among the adverse environmental impacts I have witnessed personally are the following:

**Ground or water surface quality:** the waters of Swan Lake on the West side of Kelly Bridge were polluted by run-off from the AJM construction site in June 2005 after a heavy rainstorm washed down a huge quantity of soil and debris. In addition, the level of the lake was lowered by AJM during the hot summer months last year, drying out the existing wetlands, exposing mussel beds and turning large areas of the lake into a swamp.

**Potential Leaching and Drainage Problems:** the AJM site plans call for septic tanks to be placed alongside the lakeshore in an area where sewage is bound to leak into the lake waters through fissures in the surrounding shale. This would be disastrous for the environmental health and safety of the lake and the ecosystem it supports.

**Impairment of the environmental characteristics of a Critical Environmental Area:** Swan Lake is a permanent breeding site for American Bald Eagles. On my vacation last week, two fully-grown bald eagles came each day to the lake between 9 and 11am in the morning and landed on a spot about 200 yards from

our house. It looked as though they had captured some prey and were dissecting it little by little. This Eastern part of the lake is now the only section left undisturbed by AJM's activities.

I am writing to you to ask that you include my personal observations of these adverse impacts in the public record as part of the SEQR process currently underway with the DEC Region #3, and that you undertake a full and proper environmental assessment of the potential impact of the AJM project and any other development project that may be planned for Swan Lake. The rich natural heritage of this area is too valuable to be left to chance.

Thank you for your help in this matter.

Sincerely Yours,

A handwritten signature in black ink, appearing to read 'ME', with a long horizontal flourish extending to the right.

Michael Edwards

**Exhibit E**

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**Giselle and Eli Goldschmidt**  
79 Redwood Lane  
Swan Lake, NY 12783

December 21, 2005

Department of Environmental Conservation, Region 3  
21 South Putts Corner  
New Paltz, NY 12561

To Whom It May Concern:

We have been residents of Swan Lake for the past 18 years, residing at 79 Redwood Lane, and using our home for weekends and vacations throughout the year. What drew us to Swan Lake in the first place was its uniqueness as a peaceful, pristine place of natural beauty, untouched by the modern world.

Although Swan Lake is not a very large lake, it is the home of a wide array of fish, more than you would find in much larger lakes: sunfish, perch, pickerel, small- and large-mouthed bass, chubs, catfish and fresh-water flatfish, to name a few. The complex ecology of the lake allows them all to thrive here. In addition, there are fresh-water mussels, frogs, snakes and other aquatic life. To our dismay, the intentional lowering of the water level this past summer caused many of these crustaceans to be killed.

Although we are not birders, we have noticed a wide variety of birds populating the area. Some birds that we recognize are woodpeckers, hummingbirds, robins and blue jays. In addition, there are many more that we don't recognize by name.

Over the years, we have taken delight in watching the herons perched across the lake from our house. We have also been thrilled to see the growing family of eagles who now make their home in Swan Lake. They put on a daily show for us as they soar majestically above the lake or swoop down to catch some fish.

Our backyard has also become the home to a family of mole-like creatures, who occasionally come out of their underground tunnel and go for a dip in the lake. The Canadian geese are regular visitors to our lawn, as are baby deer and sometimes a black bear.

What is most remarkable is that all this natural habitat has been a constant as long as we've been here, and, from what we've heard from local residents who are more familiar with its past, for the last 140 years. It would be tragic if the unique ecology of this area were significantly altered by any development.

Your truly,

Giselle and Eli Goldschmidt



**Exhibit F**





Cynthia J. Karras  
87 Redwood Lane  
Swan Lake, New York 12783

Scott Sheeley  
N.Y.S. DEC  
Region 3, Division of Environmental Permits  
21 South Pitt Corners Road  
New Paltz, NY 12561 -1696

January 13, 2006

Dear Scott,

I wanted to write today so that my comments and first hand observation and knowledge of the unique and special place Swan Lake is so it can be included in the determination for the SEQR process.

I moved from Westchester County N.Y. five years ago to Swan Lake. My first impression when I saw this lake was how amazing this oven still exists somewhere. My friend had a summer house that overlooked south end of the lake. I sat on her porch and fell in love with the rural untouched nature. The lake was sky blue and mature forests of 100 plus year old evergreen trees. I decided right then I wanted to move and buy a house here. I was very fortunate a house was for sale and I bought my little piece of nature heaven. Imagine my surprise after I moved in not one but a pair of bald eagles flew over my back deck. Then every spring we have witnessed the babies appear with their parents and grow to adulthood. Three years ago my husband called me to the back deck he thought he saw turkey vultures but it turned out to be two adolescent eagles being watched over by their mom who was flying above. They had pulled a fish out of a hole in the ice. I can almost time my watch for when the Eagles fly over my house every day about 6:30 am and again around 4:30 pm. The other day for the first time both of the adult Eagles were flying and swooping in unison through the trees and lake. I have paid particular attention to the Eagles this past summer. I saw them swoop and catch fish right out of the lake. They would take the fish and fly into the trees on the point of land across the lake from their nest. This whole lake is their habitat.

The Eagles are not the only species I have seen. Every winter I wait to see the dark chocolate brown mink run across the lake to my neighbors yard. I sit almost every morning drinking my coffee and as soon as the lake freezes I watch to see it scamper across so I know it has survived and is well. I have not seen it yet this year.

This past June my neighbor purchase a weeping willow tree and planted it in his back yard. He came back the following weekend to find it had been chewed in half. He came back the next weekend to find the top half of tree was completely gone. I have seen beavers here and knew his tree had made this one very happy beaver.

When we first moved here I would go and talk to the fishermen on Kellybridge and see them pull huge big mouth bass and pickerel ( they have huge teeth) from the lake. I would hear them yelling when they had the big one. The big one always broke their line. The big one turned out to be a huge turtle that I saw three summers ago. I watch for it now and think twice about swimming in lake.

We were also told a funny story about last homeowners mom calling 911 because 2 bears were in back yard. She was told welcome to Sullivan County. We also were told by neighbors (that have lived across road for years) they also had seen bears on our property. The last owners only came up during the summer season. But we had never seen any now that someone lived here full time until this past summer. I watched a video of a bear cave that was taken on AJM Estates property in June. It was taken to try and document the devastation to the property and show proof when the stop work order had been given by DEC and how they continued to complete the road. I was at a neighbors outdoor party in July about 30 people witnessed and heard my son yelling from our yard a bear was swimming in the lake. He said it came from across from AJM property swam and came up and disappeared through our other neighbors yard. He knew it was a brown / black bear its head was visible above the water. We have not ever witnessed a bear before they started development on AJM property. Just the other day we noticed over by our outside garbage holder huge paw prints with long nails in the snow. Since our dog hasn't been outside gate and no other dogs have been seen in neighborhood we are wondering if the bear has been around and has been disturbed and displaced by AJM development.

I have seen many varieties of woodpeckers. Some are white and black others have a red patch. Three

houses down from us a woodpecker has put a huge hole into the tree. Every spring and fall I see also many varieties of migratory geese and ducks. One that stands out are all white with jet black heads. They stay around for about 2-3 weeks late April to May and then return October to November. This was the first time I saw the two huge white swans swim past my back yard this past spring and summer. I have seen them in the upper part of lake in past years but they don't like to be disturbed by humans so I was surprised to see them many times this past summer flying over my house. I was so surprised I heard this huge noise and looked up to see these 2 swans flying above me.

I spent many hours and days sitting out on a friend's boat this past summer. I saw many varieties from tiny to large in size and color dragonflies. I counted one day this past August along the shore 10 Herons. I also can tell you we had fresh water mussels. There were hundreds that lived a foot or so from shore all around the lake perimeter. This past June they were there then the lake was dewatered over 3 feet in July and August and all around the perimeter of the lake were hundreds of open dead shells of mussels. There is no doubt in my mind the mass killing of these fresh water mussels was a direct result of negligence of A J Murolo's inability to maintain the dam control of water levels on the lake. This had a devastating effect on all the water vegetation and wetlands. I saw the the wetlands in the upper north end of the lake turn from a rich green color in June to a brown dry color by September. Early Summer the lily plants were in full bloom and flourishing by late summer very kinds of them were flowering and looked shriveled around its leaves. I would put the Orr into the middle of the upper lake to measure how deep it was. In the dead center was only three to four feet deep. When I swam in same spot one year before it was over my head.

I worry about what the impact of a two mile road with huge street lights will effect this rural mountain side. What impact will lighting up a once untouched forest have on its inhabitants. Right now its pitch black across this lake at night. I could hear coyotes howling Winter of 2005 I have not heard them this Winter yet. When lights are installed it will forever ever change from a rural setting to a suburban housing development. How will this not have a direct negative impact? This is one of the last untouched fresh water lake in this region. How will this lake be in ten years from now after leach fields have failed and polluted this sensitive balanced environment Who will be responsible then?

This lake was offered to the Nature Conservatory about 3 to 4 years ago. As I understand it was never transferred to DEC because the Norfolk Bank (the owners) wanted to make restrictions in regard to who and what could have access to use this lake. We have yet to see The Homeowners Association Covenants and restrictions for this development. According to the Town Board minutes this was suppose to be completed 1 month after they gave road approval To date we only have been able to foil pages 17 - 24. Where are pages 1 - 17? Is it not significant to know what impact this document will have on the environment and how we see this lake today esthetically?

What will happen when these homes are built by individual separate contractors? As per a conversation I had with you back in the summer. You told me that AJM can have each new individual parcel owner be responsible for there own DEC permit application. So tell me did Mr. Anthony Murolo get away without having 1 single permit?

He is actively trying to sell the Kellybridge Road Estates on the Internet (McKlean Real-estate) and Catskill shopper newspaper. Has Mr. Murolo and his Engineer Mr. Wasson already broken all the DEC regulations? This developer has already had a negative impact on this environment. I saw my lake last June turn red with storm water pollution. I saw water pouring down out of his development because no SWIPP was submitted to DEC or even implemented at work site.

It is not unreasonable to believe a negative impact will happen for this lake and its Vegetative and Animal inhabitants. Animals are being displaced. Hundred year old mature trees are being cleared, leach fields are being installed, pesticides will be used for a green lawn. What will the garbage and refuse generated by these new homes do for the already overloaded system @ Monticello NY. What impact will it have for more cars that use local roads and Rt 55 and 52. This is not the only development in a 3 mile radius area planned. Collectively over 600 new units have been approved.

If this lake does not meet the criteria to find a positive declaration on the SEQRA Assessment for Kellybridge Road and Lake Marie Road Subdivisions I don't know what would.

I truly believe an EIS must be done to take inventory of all our Animal and Vegetations Species. We must make every effort to protect one of the last freshwater lakes in this region. We must make sure that the least amount of negative impact will happen so that these species are not destroyed and it remains the same aquatic jewel that has been like this for last 200 years and longer.

I thank you very much for your time and consideration in this matter. If you should have any questions do not hesitate to call me @ ( 845 ) 292 - 0614.

Sincerely,



**Exhibit G**



Diane Nathanson  
PO Box 202  
Swan Lake, NY 12783

January 12, 2006

Department of Environmental Conservation, Region 3  
21 South Putts Corner  
New Paltz, NY 12561

Re: Anthony J Murolo (AJM) at Swan Lake Estates, LLC-  
Kelly Bridge Road Subdivision and Lake Marie Road Subdivision  
Swan Lake, Town of Liberty, Sullivan County, NY

To Whom It May Concern:

I write today as a homeowner on Swan Lake since 1969. I have consistently watched and appreciated all of nature's wonders on this lake. Swan Lake is a lake surrounded by wetlands and many assorted animal habitats. There are animals within this development that I had no idea even existed until this summer. This summer a bear came from AJM property near Kelley Bridge Road swimming across the lake. Where was he going? Why was he seen? I would say that the construction within the AJM Phase One property displaced this bear from his den and familiar surroundings and so he was searching for a new home.

It is well known that within these acres of land purchased by AJM that there are eagles, beavers, bears, endangered dragon flies, turtles, egrets, heron, swans, ferrets, frogs, Canadian Geese, ducks, woodpeckers, blue birds, cardinals, eagle nests, beaver dams, lizards and only an environmental study would show all of the above and possibly even more.

Within each ecological area there are life cycles that allow these inhabitants to survive. When the circle of life is disrupted, these inhabitants either relocate or die. Without an Environmental Impact Study no one can be sure just what inhabitants there are and what negative impact completion of this project will create additionally.

I write to beg you to assist in getting the powers that be do the right thing and perform this study. Thanking you in advance for any and all assistance.

Sincerely,

Diane Nathanson



**Exhibit H**





Richard A. Rowland  
Post Office Box #225  
Swan Lake, New York 12783

January 13, 2006

Department of Environmental Conservation, Region 3  
21 South Putts Corner  
New Paltz, NY 12561

To whom this may concern,

The purchase of my home on Swan Lake took place in 1996. The attraction to move here was obviously the truly beautiful undeveloped shoreline and tranquility of this small lake. In the recent past it has been undeniable that much of the wildlife has become more comfortable on this bank the opposite. The pair of swans no longer raises a brood and spends much of the time on the south side of the lake. Loons and other unique fowl are easily observed just yards from my dock which was not always the case. In the past these birds would stay further north and much less easily identified.

The great blue heron had been startled repeatedly over this summer when I would find myself by the waters edge. This has not happened in the past. A deer was found sleeping on this side and stayed all day which made me think it was hurt. Turns out that it was just resting then swam across to the Shore Road side of the lake. After September eleventh I went to the dock and looked out over this beautiful representation of America and took great satisfaction to see the American Bald Eagle soar overhead.

Since moving to Swan Lake ten years ago it has been my prime objective to maintain the integrity of the lake. The construction of my log cabin included underground electric, natural slate on the roof and placing the home within a buffer of mature trees. This came at an expense. The shoreline is undisturbed and seems to be an acceptable retreat from their habitat that has been significantly impacted to send them across the lake. The cabin won an award for the best new construction under 2500 feet in the Sullivan County Showcase Awards. The wildlife that is being displaced is in my opinion and fact.

The changes are not subtle to a resident of Swan Lake.

Sincerely



Richard Rowland



**Exhibit I**





Michael Shanahan  
91 Redwood Lane  
Swan Lake, NY 12783

January 12, 2006

DEC Region 3  
21 South Putts Corner  
New Paltz, NY 12561

To whom it may concern:

I am writing to you to impress upon you the need for an environmental impact study on Swan Lake prior to the continuation the AJM construction development.

My name is Michael Shanahan and I am a homeowner and year round resident on Swan Lake. I live at 91 Redwood Lane and in the years I have owned my home since October 2000, I have seen and enjoyed a multitude of wildlife, marine life and waterfowl who make this lake their home. I have personally witnessed bald eagles in their nest close to the construction zone. I have seen wild swans, herons, woodpeckers, Canadian geese, ducks and other water birds both migrating and local to the lake. I have also seen deer, beavers and something that looks like an otter or a mink or perhaps a muskrat. The waters of the lake are also home to water snakes, dragonflies, frogs, crayfish and some kind of fresh water shellfish (perhaps mollusks).

There is also a flourishing aquatic plant life, turtles and a variety of fish including, according to local fishermen, prizewinning bass. Although I did not see it myself, two of my neighbors recently witnessed a black bear fleeing the woods near the construction zone and swimming across the lake to my backyard. Swan Lake is a delicate eco-system which risks being irreversibly damaged or possibly destroyed by AJM's disregard of this delicate balance.

If this lake is not a candidate for an environmental impact study, I cannot imagine anywhere else that would be. In closing I would like to express one more time that an environmental impact study is **ABSOLUTELY** necessary before anymore work is done by AJM so that the lake is preserved and so that those of us who have purchased properties on the lake for the sole purpose of enjoying the beauty of this bio-gem can continue to do so for years to come.

Sincerely,

Michael Shanahan

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**Exhibit J**





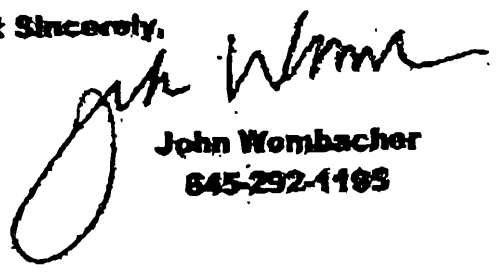
**To Whom It May Concern-**

I have lived fulltime at 4864 State Route 55, Fonda, NY 12734, which is about 100 yards from Swan Lake, since August 31st, 2001 and am concerned regarding developments near this beautiful area. Swan Lake is truly a treasure for the many animal species which inhabit the surroundings, I have personally seen American Bald Eagles, bears, beaver, opossum, skunks, Canadian geese, deer, raccoons and countless varieties of birds and other animals. To allow these animals' future to be compromised would be a tragedy for us and future generations.

The lake is a sensitive ecosystem which, I believe needs a more systematic stewardship than has been exhibited by the current caretakers. The recent runoff incidents, the disturbance of eagle habitats, the lowering of lake levels should all be addressed and the lake's health more strictly monitored. I have noted times this summer when large areas of the lake were completely dried up and I have never witnessed that previously. It would seem, particularly with the problems at Swinging Bridge and Briscoe that Swan Lake's future could be in jeopardy unless concerted efforts are made by all concerned parties to work together.

We really must ask who is in charge here and why don't they seem to care about what may certainly be the demise of Swan Lake. The resources this lake and associated region offer are too numerous to mention, and I am not a wildlife specialist, just a person who appreciates nature. The rich wildlife is an irreplaceable feature which should be cherished and not allowed to be jeopardized. The choice is clear, the people who value wildlife, open space, clean air and water are saying our lake and its' future should be of utmost importance. I hope those who are able to save it are listening.

Most Sincerely,



John Wombacher  
845-292-1195



EXHIBIT 19



**DECLARATION OF COVENANTS, RESTRICTIONS  
EASEMENTS, CHARGES & LIENS**

---

**DRAFT**

**SWAN LAKE HOMEOWNERS ASSOCIATION, INC.**

**Kelly Bridge Road  
Town of Liberty  
County of Sullivan  
State of New York**

---

**Declarant:           AJM@SwanLake Estate LLC  
                          11 Wendover Drive  
                          Huntington, New York 11743**

**Dated:               \_\_\_\_\_ , 2005**

---

**Record & Return to:**

**Lamb & Barnosky, LLP  
534 Broadhollow Road, Ste. 210  
P.O. Box 9034  
Melville, New York 11747-9034**

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**DECLARATION OF COVENANTS, RESTRICTIONS,  
EASEMENTS, CHARGES AND LIENS**

Declaration made as of this \_\_\_\_\_ day of **DRAFT**, 2005, by AJM@Swan Lake Estate LLC a New York, Inc., a New York limited liability company with offices at 11 Wendover Drive, Huntington, New York, hereinafter referred to as "Sponsor" or "Declarant".

**WITNESSETH:**

WHEREAS, Declarant is the owner of the real property described in Article II of this Declaration which Declarant desires to develop as a residential community (the "Community") with various permanent open spaces, a lake and other common areas for the benefit of the Community; and

WHEREAS, Declarant plans to sell the real property, other than the common areas, to purchasers (the "Owners") as unimproved building lots for single family residential use or as improved by a single family residence, all to be a part of the Community known as Swan Lake Estates; and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities in said Community and for the maintenance of the open spaces, lake and other common areas; and, to this end, desires to subject the real property described in Article II to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said Community and each Owner thereof; and

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said Community to create an agency to which should be delegated and assigned the powers of (i) maintaining and administering the Community property and improvements, (ii) administering and enforcing the covenants, restrictions, easements, charges and liens, and (iii) collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has incorporated Swan Lake Estates Homeowners Association, Inc. under the Not-For-Profit Corporation Law of the State of New York for the purpose of exercising the aforesaid functions;

NOW THEREFORE, the Declarant, for itself, its successors and assigns, declares that the real property described in Article II is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth.

## ARTICLE I. DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration shall, unless the context otherwise prohibits, have the meanings set forth below:

(a) "Additional Property" – property not currently subject to the Declaration but which may be added to the scope of the Declaration at a later date as provided by Article II, Section 3 hereof.

(b) "Association" shall mean and refer to Swan Lake Estates Homeowners Association, Inc., a New York Not-for-Profit corporation, its successors and assigns.

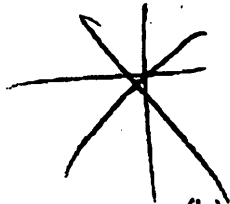
(c) "Association Property" shall mean and refer to the Common Area of the Property.

(d) "Board" shall mean and refer to the Board of Directors of the Association, as the same may be constituted from time to time.

(e) "By-Laws" shall mean and refer to the By-Laws governing the operation of the Association, as the same may be amended from time to time.

(f) "Common Expenses" shall mean and refer to those expenses (including reserves) which are incurred or assessed by the Association in fulfilling its lawful responsibilities (herein sometimes referred to as "Assessment").

(g) "Common Area" or "Common Property" shall mean and refer to certain areas of land excluding the residential lots which are in the initial Phase of the Development or which may be located in any subsequent Phase of the Development that are or will be owned by the Association, including but not limited to:



- a. private interior roadways;
- b. the motorized gates;
- c. the Lake and the dam that services the Lake;
- d. Recreation Areas.

(h) "Community" or "Development" shall mean Swan Lake Estates, a single family residential home development being developed on the Property, which will initially consist of Phase I consisting of twenty (20) lots for single family home development and may, at Declarant's sole option, include up to an additional nineteen (19) lots for single family home development in Phase II and Additional Property, as provided for in Article II, Section 3 hereof.

(i) "Declaration" shall mean and refer to this Declaration of Covenants, Restrictions, Easements, Charges and Liens, as the same may, from time to time, be amended.

(j) "Declarant" or "Sponsor" shall mean and refer to AJM@Swan Lake Estate LLC, a New York limited liability company and its successors and assigns.

(k) "Final Sale Date" shall mean and refer to the date of the closing of the transaction in which the Declarant sells or otherwise disposes of the last Lot in Phase I or, if Phase II is brought within the scheme of this Declaration, the last Lot in Phase II, but in no event a date that is more than five (5) years from the date of the closing of the sale of the first Lot that is subject to this Declaration, whichever is earlier.

(l) "Home" or "Homes" shall mean and refer to all units of residential housing situated on, or to be constructed by or on behalf of the Purchasers upon the Lots on the Property.

(m) "Improved Lot" shall mean any lot upon which a Home has been or is being constructed.

(n) "Lake" shall mean and refer to Swan Lake and the dam that services the lake.

(o) "Lot" shall mean and refer to any plot, piece or parcel of land intended for residential uses shown on the Subdivision Plan that has been or will be approved by the Town of Liberty for each Phase of the Development, or any other Lot(s) for residential use that is/are brought into the scheme of the Declaration, but shall not include the Common Areas

(p) "Lot Owner" or "Owner" shall mean and refer to the record owner of the fee interest to any Lot, including the Sponsor with respect to any Unsold Home or Lot. However, the Sponsor has reserved certain easement rights, veto rights, amendment rights and voting rights in the Declaration and By-Laws which do not apply to other Owners. Every Lot Owner shall be treated for all purposes as a single owner for each Lot held, irrespective of whether such ownership is joint, in common or tenancy by the entirety. Where such ownership is joint, in common or tenancy by the entirety, such collective ownership shall constitute one (1) Member.

(q) "Maintenance Charges" shall mean and refer to the charges paid by each Member to the Association to be used for Common Expenses and may be referred to as an "Assessment".

(r) "Member" shall mean and refer to each holder of a membership interest in the Association, as such interest is set forth in Article III. Each Member shall be entitled to one (1) vote.

(s) "Permitted Mortgage" shall mean and refer to any first mortgage covering a Lot or a mortgage encumbering an unsold lot then owned by Sponsor or its designee.

(t) "Permitted Mortgagee" shall mean and refer to the holder of a Permitted Mortgage.

(u) "Phase I" - The portion of the Community which will include twenty (20) Lots in the Community to be developed for single family residential use and certain Common Areas to be conveyed to Swan Lake Estates Homeowners Association, Inc.

(v) "Phase II" or "Phased Property" - The portion of the property upon which the Sponsor intends, but is not obligated to offer for sale an additional nineteen (19) Lots to be developed for single family residential use which Sponsor may elect to bring into the Association pursuant to Article II, Section 2 hereof, along with certain Common Areas to be conveyed to the Association.

(w) "The Property" shall mean and refer to all property described in Article II and all such properties which may be brought within the scheme of the Declaration pursuant to Article II, Section 2 hereof.

(x) "Recreation Area" shall mean and refer to the Lake, and the open recreation area containing a sandy beach area, gravel parking area and open pavilion, on the land to be conveyed to the Association.

(y) "Supplemental Declaration" shall mean and refer to any Supplemental Declaration of Covenants, Restrictions, Easements, Charges and Liens which is to be recorded in the Sullivan County Clerk's Office in order to bring the Phased Property and/or Additional Properties within the scheme of the Declaration, pursuant to Article II hereof.

(z) "Unsold Lot" shall mean and refer to any Lots owned by the Sponsor and its successors or assigns until such time as the same have been sold and title conveyed to a third party. It shall not include a home which is used for personal occupancy of the Sponsor, any of its principals or any of its successors or assigns.

## ARTICLE II. PROPERTY SUBJECT TO THIS DECLARATION

**Section 1. The Property.** The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is all that certain plot, piece or parcel of land situate, lying and being in Swan Lake, Town of Liberty, County of Sullivan and State of New York, being more particularly bounded and described in Schedule "A" annexed hereto and located on approximately 467.92 acres in Phase I, identified as parcels A, D, E, F, F-1, G and J on that certain Key Map of the Lands of NFB Development Corp., prepared by Robert T Loundsbury dated March 18, 1995 (the "Key Map"), annexed Sheet 1A of the 21 Lot Subdivision Plan - Kelly Bridge Road, prepared by Wasson Engineering and approved by the Town of Liberty Planning Board on May 3, 2005 ("the Kelly Bridge Subdivision Plan"). As set forth on the Kelly Bridge Subdivision Plan, Phase I of the Property will contain a total of 20 separate Lots for single family residential

development and a separate lot on which the Common Areas, including private interior roadways, Recreation Area and Lake are located. The Sponsor shall have the right to, but is not obliged to cause any legally permissible Home to be constructed on one or more Lots in Phase I.

**Section 2. Phase II Property.** Phase II is identified on the Key Map as parcel H-1. The Sponsor, its successors and assigns may, but shall not be obligated to bring the Phase II property within the scheme of this Declaration. If it is brought into the scheme of the Declaration, the Phase II of the Property will contain a total of 19 separate Lots for single family residential development and a separate lot on which Common Areas, including a Recreation Area and private interior roadways are located. The additions and conveyance of additional Common Area authorized under this subsection shall be made by the Sponsor prior to the conveyance of any Lot within the Phase II Property, without the consent of the Association, its Board of Directors or its Members, by (i) the recording in the Sullivan County Clerk's Office of Supplemental Declaration of Covenants, Restrictions, Easements, Charges and Liens with respect to the Phase II Property, which shall extend the scheme of the covenants, restrictions, easements, charges and liens of this Declaration to such Phased Property, and (ii) the conveyance and recording in the Sullivan County Clerk's Office of a deed to the Association for the additional Common Area. The Sponsor shall have the right but not the obligation to cause any legally permissible Home construction on one or more Lots in Phase II. The provisions of this Article II, Section 2 may not be amended without the written consent of the Declarant or its successors.

**Section 3. Additional Property.** In addition to the Property, Additional Property may become subject to this Declaration in the following manner:

a. Prior to the Final Sale Date. At any time prior to the Final Sale Date, the Sponsor, its successors and assigns may, but shall not be obligated to bring the Additional Property within the scheme of this Declaration. The inclusion of Additional Property authorized under this subsection shall be made with the consent of the Association, its Board of Directors or its Members, by the recording in the Sullivan County Clerk's Office of Supplemental Extending Declaration of Covenants, Restrictions, Easements, Charges and Liens with respect to the Additional Property which shall extend the scheme of the covenants, restrictions, easements, charges and liens of this Declaration to such Additional Property.

Such Supplemental Declaration(s) may contain such complementary additions and modifications of this Declaration as may be necessary to reflect the different character, if any, of the Additional Property as are not inconsistent with the scheme of this Declaration. In no event, however, shall any such Supplemental Declaration conflict with any right or obligation contained herein, and in the case of any conflict, the provisions herein shall control.

b. Subsequent to the Final Sale Date: The owner of any property who desires to add such property to the scope of this Declaration and to subject it to the

jurisdiction of the Association may do so upon (i) written approval of the Association pursuant to a vote of its Members as provided in its By-Laws, and (ii) by filing an amendment to this Declaration, but such amendment must be approved by two-thirds (2/3) of the Members of the Association.

Upon the filing of a Supplemental Declaration and conveyance of a Lot, a Lot Owner of any such Lot shall become a Member of the Association.

The provisions of this Article II, Section 3 may not be amended without the written consent of Declarant or its successors and assigns.

### **ARTICLE III. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

**Section 1. Formation of the Association.** Pursuant to the Not-for Profit Corporation Law of the State of New York, the Sponsor has formed Swan Lake Estates Homeowners Association, Inc. to own, operate and maintain the Association Property, enforce the covenants, conditions and restrictions set forth in this Declaration and to have such other specific rights, obligations, duties and functions as are set forth in this Declaration and in its Certificate of Incorporation and the By-Laws of the Association, as same may be amended from time to time. Subject to the additional limitations provided in this Declaration and the Certificate of Incorporation, the Association shall have all the powers and be subject to the limitations of a no-for-profit corporation as contained in the New York State Not-for-Profit Corporation law as the same may be amended from time to time.

**Section 2. Membership.** The Association shall have one (1) class of membership interest which shall include all Owners of Lots within the Property. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to this Declaration. Ownership of a Lot shall be the sole requirement for membership in the Association. Membership in the Association shall lapse and terminate when a member shall cease to be an Owner; however, any delinquent assessments will continue to be the personal liability of said Owner despite termination of membership. This Section 2 of Article III may not be amended.

**Section 3. Voting Rights.** Each Member, including the Sponsor, is entitled to one (1) vote regardless of the number of Lots owned by a Member. When more than one person or entity holds such interest in the membership, the one vote attributable to such membership shall be exercised as such persons mutually determine but not more than one vote may be cast with respect to any such Member. No Member shall split or divide its votes on any motion, resolution or ballot. For the purposes of this Section 3 of Article III, the Declarant shall have one (1) vote for all Lots retained by the Declarant that are subject to this Declaration.

Any person or entity that holds an interest in a Lot merely as a security for the performance of an obligation shall not be a Member.



Any Member shall be entitled to assign his right to vote, by power of attorney, by proxy or otherwise, provided that such assignment is made pursuant to the By-Laws of the Association.

Notwithstanding such right to vote, the Sponsor shall have the exclusive right to select the initial three member Board of Directors of the Association and shall have the sole right to select a majority of the members of the Board of Directors until the Final Sale Date. After the Final Sale Date, the Owners shall have the right to elect all members of the Board of Directors. The Sponsor shall have the right, but not the obligation to transfer control of the Board of Directors to the Owners a date earlier than the Final Sale Date.

**Section 4. Transfer of Membership.** Membership in the Association shall be appurtenant to, and may not be transferred, except in conjunction with the lawful sale or conveyance of a Lot. No Lot Owner shall be permitted to sell or convey his or her Lot unless and until he or she shall have paid in full to the Board all unpaid Common Expenses and other amounts required by the Board to be paid and assessed by the Board against such Lot. Upon such sale or conveyance, the seller of such Lot shall relinquish his or her membership in the Association and the purchaser of such Lot shall automatically become a Member, subject to this Declaration, the By-Laws and the Rules and Regulations.

#### **ARTICLE IV. BOARD OF DIRECTORS**

**Section 1. Election of Directors.** The affairs of the Association will be conducted by its Board of Directors which will consist of a minimum of three (3) Members, all of whom shall be Owners. The term of each Director will be one (1) year. The Directors shall be elected by a majority vote of the Members of the Association at the annual meeting of the Association, a quorum of the members being present. For purposes of this Declaration, a quorum shall consist of at least fifty-one (51%) of the members in person or by proxy, each Member having one (1) vote no matter how many Lots are owned by the Owner. Any provision of this Declaration or of the By-Laws notwithstanding, Declarant shall have the right to elect a majority of Directors (who need not be Owners) until the Final Sale Date, and each Owner hereby grants to Declarant an irrevocable proxy, coupled with an interest, to elect such Directors.

#### **Section 2. Powers and Duties of the Board.**

a. The Board of Directors is vested with the power, on behalf of the Association, to (i) own, maintain, manage, repair and control the Association Property; (ii) maintain, manage and promulgate rules and regulations regarding the use of the Property; (iii) enforce the terms and conditions of this Declaration; and (iv) manage the affairs of the Association. These functions include the hiring of a manager and employing and dismissing personnel necessary to exercise the functions of the Association; preparing and adopting the annual budget required for the affairs of the Association; billing and collecting Assessments from the Owners of

the Lots based upon such annual budget, and special assessments from Owners when deemed advisable by the Directors; adopting and amending rules and regulations covering details of the operation and use of the Association Property and the Property; obtaining insurance for the Association Property in such amounts and for such coverage as the Directors deem advisable from time to time; adjusting and settling claims under insurance policies, and delivering releases in settlement of such claims on behalf of all Members and other interested parties; and performing such other functions permitted or required by the By-Laws of the Association and the applicable laws of the State of New York.

b. For purposes of this Section, as of the date this Declaration is recorded Declarant shall be deemed to own any unsold lots. Until the Final Sale Date, the Board of Directors may not, without first obtaining Declarant's consent: (i) make any addition, alteration or capital improvement to the Association Property; (ii) create a security interest in the Association Property or any part thereof by borrowing money or otherwise; (iii) assess any maintenance or other charges or dues for the creation of, addition to or replacement of all or part of a reserve contingency or surplus fund in excess of five (5%) percent of the estimated expenses for the projected year of operation; (iv) hire any employee in addition to any employee referred to in the "Estimated Budget for the First Year of Homeowners Association Operation" contained in the CPS-7 Application; (v) enter into any service or maintenance contracts for work not required by law or covered in the Budget referred to in the preceding clause; and (vi) take any action or permit anything to be done regarding the Association Property which would alter the availability or quantity of Association Property.

c. The Board of Directors, which may consist of Members designated by Declarant, may contract with Declarant and any affiliated corporations or entities, at then competitive rates, without incurring any liability for self-dealing.

**Section 3. Indemnification of Officers and Directors.** Every director and officer of the Association shall be, and is hereby indemnified by the Association against all expenses and liabilities, including fees of counsel, reasonably incurred by or imposed upon such director or officer in connection with any proceeding to which such officer or director may be a party, or in which such officer or director may become involved, by reason of being or having been a director or officer of the Association, or, any settlement thereof, whether or not such person is a director or officer at the time such expenses are incurred, except in such cases wherein the director or officer is adjudged guilty of fraud, willful misfeasance or malfeasance in the performance of duties, provided that, in the event of a settlement, the indemnification herein shall apply only when the Board of Directors approves such settlement as being in the best interests of the Association. The foregoing right of indemnification shall be in addition to, and shall not be exclusive of, all rights to which each such director or each such officer may otherwise be entitled.

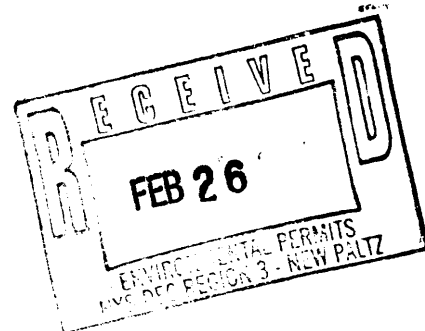
27

Cynthia Karras  
Redwood Lane  
Swan Lake, NY 12783  
845-292-0614

Feb 25, 2007

Scott Sheeley  
DEC Region #3  
21 South Putts Corner Road  
New Paltz, NY 12561

RE: DEIS Comments  
Swan Lake Estates, LLC  
Kelly Bridge Road Subdivision Swan Lake, NY  
Town of Liberty, Sullivan County



Dear Mr. Sheeley:

Please add the following information to my previous written comments on the above-referenced DEIS.

There are a series of Covenants and Restrictions in the Home Owner's Association By-laws that govern the use of the lots purchased at Swan Lake Estates, LLC. This document is on file with the Town of Liberty.

Included in the provisions are requirements that homeowners at Swan Lake Estates, LLC are responsible for the financial support and maintenance of the dam at Swan Lake (State ID: 147D-0279 located at the intersection of County Road 15 and County Road 172). The provisions also name a local company, Nastro, as the subcontractor that will carry out such maintenance duties pursuant to this requirement.

This information is relevant to this case given the history of concerns about dam maintenance and water quality issues at Swan Lake that have been brought to the attention of the DEC between 2005 to the present day.

These issues include lowering of the lake water levels over 18" in 2005 during a drought period; lack of necessary repairs undertaken subsequent to the DEC dam repair report conducted 5/11/06; and inconsistent removal of the 'flashboards' at the dam regulating water levels at critical times throughout the year.

Sincerely,

*Cynthia J. Karras*  
Cynthia Karras



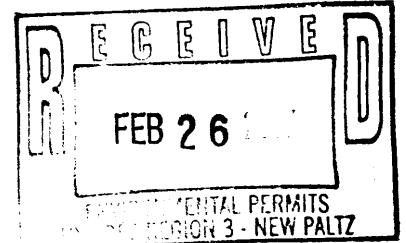
Cynthia J. Karras  
87 Redwood Lane  
Swan Lake, New York 12783

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February 25, 2007

New York State Department of Environmental Conservation  
Office of Hearings  
625 Broadway, 1<sup>st</sup> Floor, Albany, New York, 12233-1550

New York State Department of Environmental Conservation  
Division of Environmental Permits, Region 3  
21 South Putt Corners Road, New Paltz, New York, 12561-1620



ATTN; Honorable Judge, Mrs. Maria E. Villa  
Legislative Hearing, February 6<sup>th</sup>, 2007, and

State Of New York, Department of Environmental Conservation, Region 3  
Office, Mr. Scott E. Sheeley, DEC Environmental Analyst

Written Public Comments Submission;  
Last Filing Date: February 26<sup>th</sup>, 2007

Addendum : 2

**Non - Compliance Issues**

Dear Madame / Sir

I am submitting as part of the DEIS an assortment of documents that will give credence to this fact.

**1. Mr Marc Moran DEC Regional Director, did have proof that AJ Murolo had gone beyond Cease and Desist Directive of June 13, 2005.**

Mr. Murolo was sent a letter dated June 13, 2005 and was told he must "Cease and Desist all construction activities, exclusive of those activities necessary to prevent the contravention of the New York State Water Quality Standards in the receiving of water, until this Department notifies you in writing that construction activities may re - commence".

DEC must answer these questions.



**A. If Mr. Murolo was issued a cease and desist on June 13, 2005 then why almost two months later is DEC Meeting Agenda Dated August 3, 2005 under II Project (s) Back ground C. Kelly Bridge Road - "Clearing and Construction To Date".**

How is it possible that DEC doesn't know how much clearing was done as of June 13, 2006 when project was supposedly stopped? It was DEC responsibility to have staff making weekly inspections.

Mr. Marc Moran, Regional Director, letter dated August 30, 2005 sent to my attention writes " In addition, Department staff in program areas related to wetlands, storm water, endangered species, and environmental permits have been alerted to these projects and have been active in monitoring both sites to ensure compliance with State environmental laws and take appropriate enforcement action, when necessary".

August 31, 2005 Letter sent to Mr. Tony Murolo Re: Violation of Cease and Desist - AJM at Swan Lakes. " Based on site inspection by Department representatives on August 25, 2005, it appears construction activity at the above mentioned site has moved beyond the original intent of the allowable activities outlined in Schedule A of the Draft Order on Consent and my inspection letter of June 13, 2005".

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The letter dated September 28, 2005 sent to the attention of John L. Parker, Attorney at Law stated " Staff determined no violations of the cease and desist order could be documented."

I had requested in a letter addressed to Janet Swentusky, dated July 10, 2006. I asked for the documentation that AJ Murolo had completed all requirements for his SWPP and the inspection log that was to be kept on site so as it can be inspected / reviewed by any regulatory authority. I would ask to mandate that this log become part of this hearing's public record.





Cynthia J. Karras  
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Swan Lake, New York  
12783  
[Cindykarras@hotmail.com](mailto:Cindykarras@hotmail.com)  
(845) 292 - 0614

Janet Swentusky  
New York State Department of Environmental Conservation  
Division of Water, Region 3  
21 South Putt Corners Road, New Paltz, New York 12561 - 1696

Re: A. J. M. Swan Lake Estates

Date: July 10, 2006

Dear Ms. Swentusky,

I am writing today to make you aware of what transpired here on Swan Lake N.Y. on June 28 & 29, 2006. I sent photo's I had taken on June 29, 2006 to Mr. Scott Sheeley via email. I had asked that he contact me about this matter but as of yet I have not received any confirmation he received photo's. I am sending to your attention the photo's of Swan Lake's questionable water quality and red clay discoloration.

It is my understanding that the construction project at the AJM site on Kelly Bridge Road did not complete all the erosion control measures requested by last October 2005, and were given permission to complete those erosion control measures this past May 2006. It is not clear to me what has been done to complete the erosion controls and storm water management, since the color of the water this past storm, June 29, 2006 was muddy red clay color. I have enclosed photos to show you that during the previous flooding on September 14, 2004, the water was not that color.

I also wanted to inform you that Nastro Construction has not agreed to the civil compromise and all negotiations with the Sullivan County District Attorney have failed. The trial has been set for July 27, 2006 at 9:30 am.

I obtained a memorandum that I foiled last February 2006. This was a memorandum, you sent to Scott Sheeley on June 23, 2005 you gave him a review of what AJM at Swan Lake Estates would be required to do for Sediment and Erosion Control, Storm Water Management and Maintenance. It was detailed and mandated so as not have happen to the water quality of this lake that took place here on June 28 & 29, 2006. Unfortunately again our lake has had a significant muddying of waters but much worse then what happened last June 2005 when AJM Swan Lake Estates and Nastro Construction were issued tickets for pollution of this lake. I would like to have forward to my attention documentation that AJM Estates had completed all requirements for his SWIPP and that proper Maintenance had been performed. We the residents have been very watchful of all the retention ponds. We have not seen anyone on site draining the largest pond by Kelly Bridge Road entrance. It just keeps filling up. The hillside behind this pond is not being held back in any way and crumbling into that pond. As you can see in the pictures of Kelly Bridge Road the water came out of this property and took everything in its path into Swan Lake. Yet on the same road opposite AJM Estates, no erosion of the same road happened. Also, see picture taken just above AJM Estates property same side of road no erosion came from above either. Red Clay Color of Swan Lake on June 29, 2006 came from AJM Estates property. We the residents are asking for a full investigation into what went wrong and how this will not happen again in the future. Swan Lake was not RED CLAY COLOR during a more severe flood in Sept. 2004 then this past week. I took pictures in about same area Sept 14, 2004 and again this past flood June 28 & 29 2006. These pictures show the lake water quality was Pre Construction of AJM Estates Sept. 2004 vs. June 2006 Post Construction AJM Estates. There is a huge difference in water quality.

I personally saw the red clay discoloration come across the lake from his side up and down the entire length side of the lake, that he has completed the road. This discoloration infiltrated this entire lake. The body of water nearest the dam did not turn this bright red clay color until the next day. I would venture to say that if you inspect his property you will see evidence that not only did run off come down Kelly Bridge

Road but through out his property to the lake.

Anthony Murolo's miss management of maintaining the Swan lake Dam has been a constant worry among it's residents that are impacted by his negligence. It seems that when he want's to lower this lake by 4 feet like he did summer of 2005 ( draught ), and giving the excuse thunder storms were predicted and never happened was ok. However, after having, a week of constant rainstorms and heavier rainfall predicted that not one board was removed. Mr. Murolo's lack of action to remove boards resulted in the dam being damaged and Resident's homes having over 4 feet of water in their basements. What is wrong with this picture I must ask? Plenty.

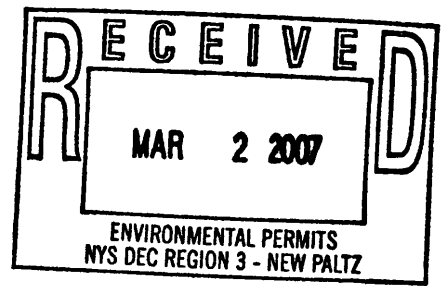
Please do an investigation into this matter. This lake and this Environmentally Sensitive area has taken enough abuse. All we ask is for every precaution to be taken to ensure that this lake and its vast population of animals, birds, fish and insect inhabitants survive.

Thank you so much for your continued cooperation in this matter. Please feel free to contact me if any assistance is needed.

Sincerely:

Cynthia J. Karras

Cynthia J. Karras  
87 Redwood Lane  
Swan Lake, New York 12783



February 25, 2007

New York State Department of Environmental Conservation  
Office of Hearings  
625 Broadway, 1<sup>st</sup> Floor, Albany, New York, 12233-1550

New York State Department of Environmental Conservation  
Division of Environmental Permits, Region 3  
21 South Putt Corners Road, New Paltz, New York, 12561-1620

ATTN; Honorable Judge, Mrs. Maria E. Villa  
Legislative Hearing, February 6<sup>th</sup>, 2007, and

State Of New York, Department of Environmental Conservation, Region 3  
Office, Mr. Scott E. Sheeley, DEC Environmental Analyst

Written Public Comments Submission;  
Last Filing Date: February 26<sup>th</sup>, 2007

Addendum : 2

**Non - Compliance Issues**

Dear Madame / Sir

I am submitting this addendum 2 to be included as testimony of my comments for the DEIS Public Hearing . This information will give credence to this fact:

**Mr Marc Moran DEC Regional Director, did have proof that AJ Murolo had gone beyond Cease and Desist Directive of June 13, 2005.**

Mr. Murolo was sent a letter dated June 13, 2005 and was told he must "Cease and Desist all construction activities, exclusive of those activities necessary to prevent the contravention of the New York State Water Quality Standards in the receiving of water, until this Department notifies you in writing that construction activities may re - commence".

DEC must answer these questions.

Page 2

**Mr. Murolo was issued a cease and desist on June 13, 2005 then why almost two months later in a DEC document it states, DEC " Meeting Agenda " Dated August 3, 2005, listed under II Project (s ) Back ground C. Kelly Bridge Road - "Clearing and Construction To Date".**

How is it possible that DEC doesn't know how much clearing was done as of June 13, 2006 when project was supposedly **stopped**? It was DEC responsibility to have staff making weekly inspections. It was suppose to be documented at the time the cease and desist was issued on **June 13, 2006**, exactly how much area had been cleared and disturbed for this road. If staff had come out to make a weekly inspection like they say they did why are they asking **two months later** how much clearing and construction to **date** had been done?

**What part of a cease and desist order doesn't mean stop all construction as of June 13, 2005? Why didn't DEC enforce the cease and desist directive?**

Mr. Marc Moran, Regional Director, letter dated August 30, 2005 sent to my attention writes " In addition, Department staff in program areas related to wetlands, storm water, endangered species, and environmental permits have been alerted to these projects and have been active in monitoring both sites to ensure compliance with State environmental laws and take appropriate enforcement action, when necessary".

**Mr. Marc Moran is saying all the right things. The resident's of Swan Lake were calling and advising DEC that what is being said by Mr, Moran and his staff isn't what is actually going on. This developer and his contractor continued the clearing and completing of the Kelly Bridge subdivision road. We requested that enforcement action be taken repeatedly for this developer.**

August 31, 2005 Letter sent to Mr. Tony Murola **Re: Violation of Cease and Desist - AJM at Swan Lakes.** " Based on site inspection by Department representatives on August 25, 2005, it appears construction activity at the above mentioned site has moved beyond the original intent of the allowable activities outlined in Schedule A of the Draft Order on Consent and my inspection letter of June 13, 2005"

**Ms. Janet Swentusky actually now says AJ Murolo has violated the cease and desist order of June 13, 2005.**

This is a serious violation. What happened to the documentation she used to come to the conclusion and basis for this letter to be sent to A J Murolo? I would request that what ever documentation that had been used to make that determination be submitted to this public hearing for inspection.

**What ever happened to this letter? Why was it not enforced? Why did Mr. Moran**

**retract this letter?**

I spoke with Mr. Marc Moran on September 2, 2005. We discussed the fact that residents had heard construction activities going on ie.. hearing chain saws, blasting, large trees falling and seeing large timber's being transported out of Kelly Bridge Road entrance at the site these past three months while under a cease and desist order. I also advised him at that time we had a video tape that would show what this site looked like just after that order had been issued on June 13, 2005. The road had only been cleared about ¼ of the planned roadway when the cease and desist directive was issued. I offered to send him this video tape to see for himself but he declined my offer and said he would lose it on his desk. Had Mr. Moran taken a look at this video he would have needed no other proof, it was beyond any doubt that this developer had willfully and purposely violated the DEC cease and desist order. We told DEC officials over and over that look out men with a two way radio were stationed at both ends of Kelly Bridge Road all summer. Why were we being told by DEC officials this Developer was ( only ) stabilizing the ¼ completed road when given a stop work order? **Then what was the need for look out men?**

**Today there is a completed road. It is almost exactly what their subdivision plans showed when they submitted it to The Liberty Town Planning Board in December 2004. How does this happen?**

A letter dated September 28, 2005 sent to the attention of John L. Parker, Attorney at Law stated " Staff determined no violations of the cease and desist order could be documented."

**Mr. Marc Moran had knowledge that a video tape existed that would prove that A J Murolo had violated the cease and desist directive order. Why did he chose to ignore this important piece of information? Why did he chose not to enforce the NY State Environmental Laws that he is entrusted to up hold?**

I had requested in a letter addressed to Janet Swentusky, dated July 10, 2006. I asked for the documentation that AJ Murolo had completed all requirements for his SWPP. I also asked for a copy of the inspection log that was to be kept on site so as it can be inspected / reviewed by any regulatory authority. I would ask to mandate that this log become part of this hearing's public record.

I submitted in the July 10, 2006 letter to Janet Swentusky pictures that were taken during a flood that occurred on **September 13, 2004 Pre Construction AJM Kelly Bridge Road Subdivision on Swan Lake NY**. I also submitted pictures taken of the flood **June 28 and 29, 2006 Post Construction Kelly Bridge Road subdivision**. Both rain storms produced the same amount of flood water levels. The lake pre construction pictures have no red clay color. The post construction pictures shows so much red clay color that enveloped

the entire Swan Lake for weeks afterward. How is this possible if AJM had completed the SWPP required by DEC?. **What ever SWPP measures that were done were inadequate.** It did not stop the exposed surface soil from being picked up and deposited right into Swan Lake. It is written in the DEIS that 33 acres more will be exposed on this site to build homes, clearing paths to the lake shore, driveways and lets not forget subsurface septic system ( leach fields ). The 33 acres does not include 20 possible guest homes and driveways. What will happen if another significant rain storm should occur? Can we expect that Swan Lake will have to endure another pollution event? How much can we assault this fragil eco system before we do irreparable harm? What will be the cumulative effect on the American bald Eagle?

**All questions I believe deserve a realistic answer before any permits can be issued for this development**

**We now have aerial photo's that show conclusively that this road was completed under the Department of Environmental Conservation's watch. It was DEC responsibility to uphold the Environmental Laws of N.Y. State.**

In Conclusion:

1. There was documentation to prove that AJ Murolo, Swan Lake Estates Kelly Bridge Road subdivision did violate the cease and desist directive issued on June 13, 2005.
2. Mr. Marc Moran, DEC Regional Director, had knowledge that documentation ( video tape ) was available and offered to him to proved that AJ Murolo committed a violation. Mr. Moran then denied having any documentation to support that Mr. Murolo violated the cease and desist directive in his letter to John Parker dated September 28, 2005.
3. DEC took over 3 months to issue an Article 17 and AJ Murolo to sign an Order on Consent September 15, 2005 , all the while this developer continued to clear and build a road that still had no permits, while under the supervision of DEC and a cease and desist.
4. We ask that all Ms. Swentusky's documentation of on site visits such as the required log book, inter office memo's, any and all correspondences regarding AJ Murolo Swan Lake Estates be submitted to this public hearing for inspection.
5. Developer A J Murolo was required to stabilize retention ponds, roads, seed and mulch and this still did not stop the pollution of Swan Lake. This is because the **maintenance** of this construction site was not completed according to NYS Environmental Conservation Laws.
6. The DEC was the responsible agency to make sure Mr. Murolo's signed Order on

Page 6

Consent and ALL New York State Environmental Laws were adhered to at the AJ Murolo Swan Lake Estates Subdivision construction site.

**DEC failed to do their job and must be held accountable.**

Thank You for your time and consideration in this matter.

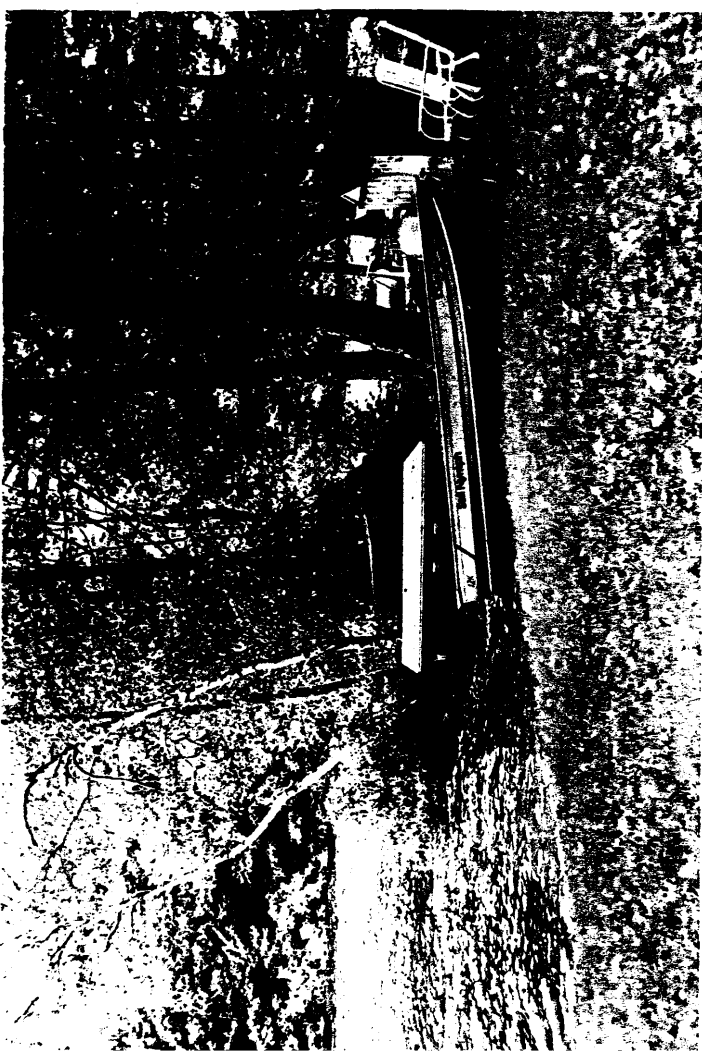
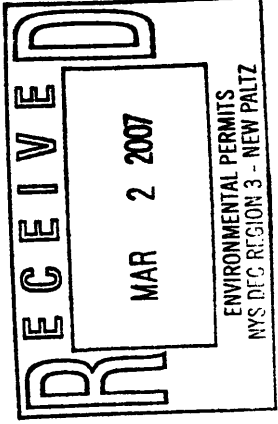
Respectfully submitted;

  
Cynthia J. Karras

Flood - Sept 13, 2004

Picture taken Sept. 14, 2004

Pre ASm Estates Construction  
Water is Not Red Clay Color.



Flood June 28 + 29 2006

Picture taken June 29, 2006

Post ASm Estates Construction  
Water is Red Clay Color







Picture taken Sept 14, 2004  
Pre AJM Estates construction  
Water is not Red Clay Color.

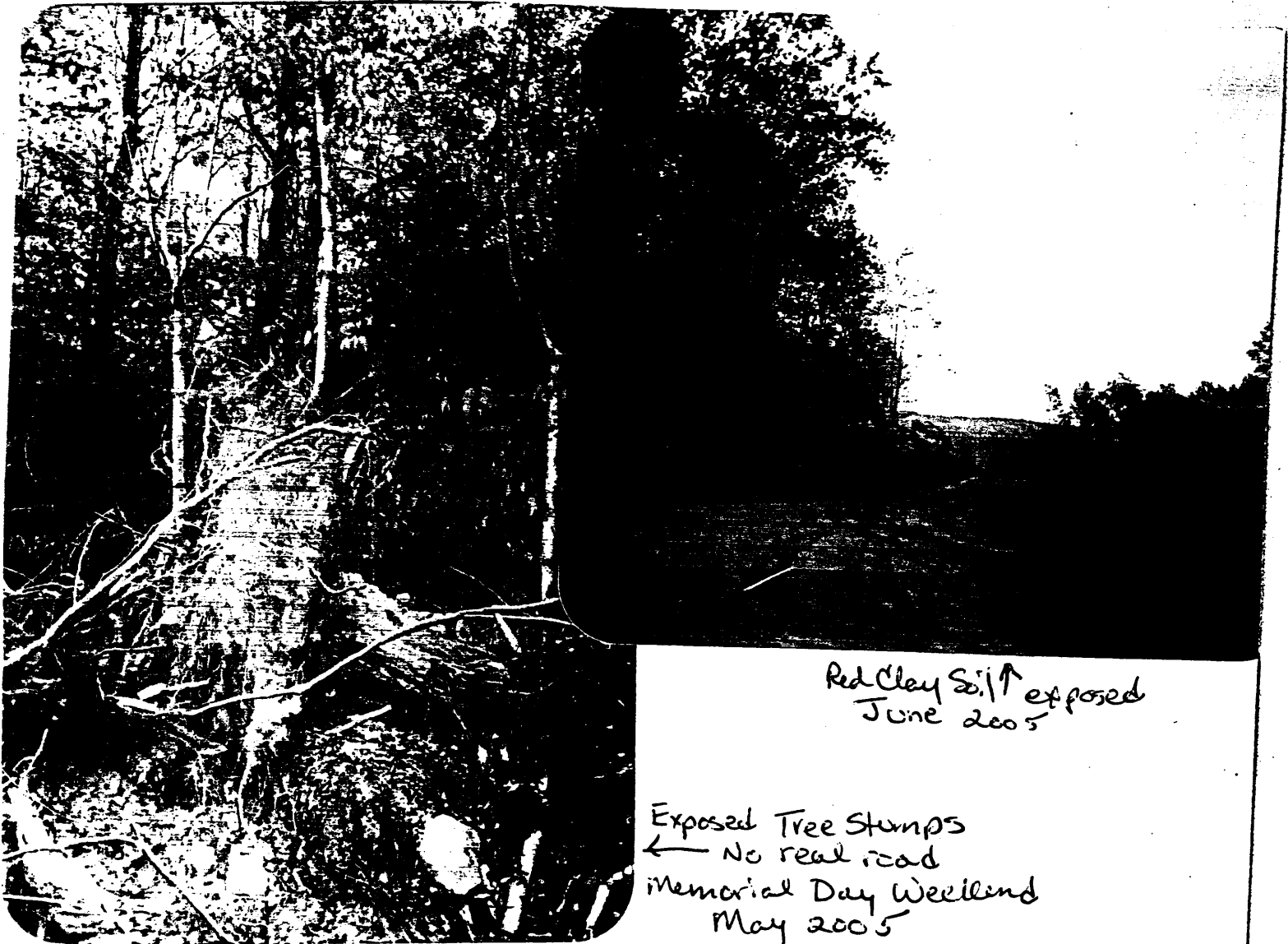


Picture taken June 29, 2006  
Post AJM Estates construction  
Water is Red Clay Color.





Gwin  
Lake Estate  
Aerial  
Photo  
Spring 2005



Red Clay Soil ↑ exposed  
June 2005

Exposed Tree Stumps  
← No real road  
Memorial Day Weekend  
May 2005

APPENDIX C

DECLARATION OF COVENANTS,  
RESTRICTIONS, EASEMENTS,  
CHARGES & LIENS



DRAFT

DECLARATION OF COVENANTS, RESTRICTIONS  
EASEMENTS, CHARGES & LIENS

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**SWAN LAKE HOMEOWNERS ASSOCIATION, INC.**  
Kelly Bridge Road  
Town of Liberty  
County of Sullivan  
State of New York

---

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Declarant:       AJM@SwanLake Estate LLC  
                          11 Wendover Drive  
                          Huntington, New York 11743

Dated:           \_\_\_\_\_, 2006

---

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**Record & Return to:**

Lamb & Barnosky, LLP  
534 Broadhollow Road, Ste. 210  
P.O. Box 9034  
Melville, New York 11747-9034



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**DECLARATION OF COVENANTS, RESTRICTIONS,  
EASEMENTS, CHARGES AND LIENS**

Declaration made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by AJM@Swan Lake Estate LLC a New York, Inc., a New York limited liability company with offices at 11 Wendover Drive, Huntington, New York, hereinafter referred to as "Sponsor" or "Declarant".

**WITNESSETH:**

WHEREAS, Declarant is the owner of the real property described in Article II of this Declaration which Declarant desires to develop as a residential community (the "Community") with various permanent open spaces, a lake and other common area for the benefit of the Community; and

WHEREAS, Declarant plans to sell the real property, other than the common area, to purchasers (the "Owners") as unimproved building lots for single family residential use or as improved by a single family residence, all to be a part of the Community known as Swan Lake Estates; and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities in said Community and for the maintenance of the open spaces, lake and other Common Area; and, to this end, desires to subject the real property described in Article II to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said Community and each Owner thereof; and

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said Community to create an agency to which should be delegated and assigned the powers of (i) maintaining and administering the Community property and improvements, (ii) administering and enforcing the covenants, restrictions, easements, charges and liens, and (iii) collecting and disbursing the Assessments and charges hereinafter created; and

WHEREAS, Declarant has incorporated Swan Lake Estates Homeowners Association, Inc. under the Not-For-Profit Corporation Law of the State of New York for the purpose of exercising the aforesaid functions;

NOW THEREFORE, the Declarant, for itself, its successors and assigns, declares that the real property described in Article II is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth.

## ARTICLE I. DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration shall, unless the context otherwise prohibits, have the meanings set forth below:

(a) "Additional Property" – property not currently subject to the Declaration but which may be added to the scope of the Declaration at a later date as provided by Article II, Section 3 hereof.

(b) "Adjacent Property" – various parcels owned by the Sponsor or unrelated third parties that are located immediately adjacent to the Lake but which are not currently subject to the Declaration and not otherwise entitled to the use of the Lake pursuant to a recorded instrument providing for such use, or as permitted by law. Adjacent Property may be added to the scope of the Declaration for the limited purpose of affording the record owners of the Adjacent Property Tier III membership in the Association.

(c) "Association" shall mean and refer to Swan Lake Estates Homeowners Association, Inc., a New York Not-for-Profit corporation, its successors and assigns.

(d) "Association Property" shall mean and refer to the Common Area of the Property.

(e) "Board" shall mean and refer to the Board of Directors of the Association, as the same may be constituted from time to time.

(f) "By-Laws" shall mean and refer to the By-Laws governing the operation of the Association, as the same may be amended from time to time.

(g) "Common Expenses" shall mean and refer to those expenses (including reserves) which are incurred or assessed by the Association in fulfilling its lawful responsibilities (herein sometimes referred to as "Assessment").

(h) "Common Area" or "Common Property" shall mean and refer to certain areas of land excluding the residential lots which are in the initial Phase of the Development or which may be located in any subsequent Phase of the Development that are or will be owned by the Association, including but not limited to:

- a. private interior roadways;
- b. the motorized gates;
- c. the Lake and the dam that services the Lake;
- d. Recreation Areas.

(i) "Community" or "Development" shall mean Swan Lake Estates, a single family residential home development being developed on the Property, which will initially consist of Phase I consisting of twenty (20) lots for single family home development and may, at Declarant's sole option, include up to an additional

nineteen (19) lots for single family home development in Phase II and/or Additional Property, as provided for in Article II, Section 3 hereof.

(j) "Declaration" shall mean and refer to this Declaration of Covenants, Restrictions, Easements, Charges and Liens, as the same may, from time to time, be amended.

(k) "Declarant" or "Sponsor" shall mean and refer to AJM@Swan Lake Estate LLC, a New York limited liability company and its successors and assigns.

(l) "Final Sale Date" shall mean and refer to the date of the (i) closing of the transaction in which the Declarant sells or otherwise disposes of the last Lot in Phase I or, if Phase II is brought within the scheme of this Declaration by Declarant as a subdivision of up to nineteen (19) single family home lots, (ii), but in no event a date that is more than five (5) years from the date of the closing of the sale of the first Lot that is subject to this Declaration, whichever is earlier.

(m) "Home" or "Homes" shall mean and refer to all units of residential housing situated on, or to be constructed by or on behalf of the Purchasers upon the Lots on the Property.

(n) "Improved Lot" shall mean any lot upon which a Home has been or is being constructed.

(o) "Lake" shall mean and refer to Swan Lake and the dam that services the lake.

(p) "Lot" shall mean and refer to any plot, piece or parcel of land intended for residential uses shown on the Subdivision Plan that has been or will be approved by the Town of Liberty for each Phase of the Development by Sponsor.

(q) "Lot Owner" or "Owner" shall mean and refer to the record owner of the fee interest to any Lot, including the Sponsor with respect to any Unsold Home or Lot. However, the Sponsor has reserved certain easement rights, veto rights, amendment rights and voting rights in the Declaration and By-Laws which do not apply to other Owners. Every Lot Owner shall be treated for all purposes as a single owner for each Lot held, irrespective of whether such ownership is joint, in common or tenancy by the entirety. Where such ownership is joint, in common or tenancy by the entirety, such collective ownership shall constitute one (1) member.

(r) "Maintenance Charges" shall mean and refer to the charges paid by each Member to the Association to be used for Common Expenses.

(s) "Permitted Mortgage" shall mean and refer to any first mortgage covering a Lot or a mortgage encumbering an unsold lot then owned by Sponsor or its designee.

(t) "Permitted Mortgagee" shall mean and refer to the holder of a

Permitted Mortgage.

(u) "Phase I" - The portion of the Community which will include twenty (20) Lots in the Community to be developed for single family residential use and certain Common Area to be conveyed to Swan Lake Estates Homeowners Association, Inc.

(v) "Phase II" or "Phased Property" - The portion of the property upon which the Sponsor intends, but is not obligated to offer for sale an additional nineteen (19) Lots to be developed for single family residential use which Sponsor may elect to bring into the Association pursuant to Article II, Section 2 hereof, along with certain Common Area to be conveyed to the Association.

(w) "The Property" shall mean and refer to all property described in Article II, Section 1 and brought into the scheme of the Development as set forth in said Article II, Section 2.a.

(x) "Recreation Area" shall mean and refer to the Lake, and the open recreation area containing a sandy beach area, gravel parking area and open pavilion, on the land to be conveyed to the Association.

(y) "Tier I Member" – each holder of a membership interest in the Association by reason of the ownership of a Lot.

(z) "Tier II Member" – the holder of a membership interest in the Association by reason of the ownership of 100% the Phase II Property, if such Phase II Property is conveyed to a third party rather than developed by Sponsor, and any person(s) acquiring an interest in the Phase II Property if such Third Party Purchaser elects to convey or subdivide the Phase II Property. A Tier II Member shall be required to pay Maintenance Fees and Assessments relating to the use, care, upkeep, maintenance and improvement of the Lake only, and his/her right to use Association Property is limited to the right to use the Lake for swimming, fishing and boating.

(aa) "Tier III Member" – the holder of a membership interest in the Association admitted to the Association by the Sponsor or the Association, pursuant to separate agreement. A Tier III Member shall be required to pay Maintenance Fees and Assessments relating to the use, care, upkeep, maintenance and improvement of the Lake only and his/her right to use Association Property is limited to the right to use the Lake for swimming, fishing and boating.

(bb) "Supplemental Declaration" shall mean and refer to any Supplemental Declaration of Covenants, Restrictions, Easements, Charges and Liens which is to be recorded in the Sullivan County Clerk's Office in order to bring the Phased Property and/or Additional Properties within the scheme of the Declaration, pursuant to Article II hereof.



(cc) "Unsold Lot" shall mean and refer to any Lots owned by the Sponsor and its successors or assigns until such time as the same have been sold and title conveyed to a third party. It shall not include a home which is used for personal occupancy of the Sponsor, any of its principals or any of its successors or assigns.

## **ARTICLE II. PROPERTY SUBJECT TO THIS DECLARATION**

**Section 1. The Property.** The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is all that certain plot, piece or parcel of land situate, lying and being in Swan Lake, Town of Liberty, County of Sullivan and State of New York, being more particularly bounded and described in Schedule "A" annexed hereto and located on approximately 467.92 acres in Phase I, identified as parcels A, D, E, F, F-1, G and J on that certain Key Map of the Lands of NFB Development Corp., prepared by Robert T Loundsbury dated March 18, 1995 (the "Key Map"), annexed Sheet 1A of the 21 Lot Subdivision Plan – Kelly Bridge Road, prepared by Wasson Engineering and approved by the Town of Liberty Planning Board on May 3, 2005 ("the Kelly Bridge Subdivision Plan"). As set forth on the Kelly Bridge Subdivision Plan, Phase I of the Property will contain a total of 20 separate Lots for single family residential development and a separate lot on which the Common Area, including private interior roadways, Recreation Area and Lake are located. The Sponsor shall have the right to, but is not obliged to cause any legally permissible Home to be constructed on one or more Lots in Phase I.

**Section 2. Phase II Property.** Phase II is identified on the Key Map as parcel H-1. The Sponsor, its successors and assigns may, but shall not be obligated to bring the Phase II property within the scheme of this Declaration. If it is not sold to a third party, but is brought into the scheme of the Declaration by the Sponsor, the Phase II of the Property will contain a total of 19 separate Lots for single family residential development and a separate lot on which Common Area, including a Recreation Area and private interior roadways are located. The additions and conveyance of additional common areas authorized under this subsection shall be made by the Sponsor prior to the conveyance of any Lot within the Phase II Property, without the consent of the Association, its Board of Directors or its members, by (i) the recording in the Sullivan County Clerk's Office of Supplemental Declaration of Covenants, Restrictions, Easements, Charges and Liens with respect to the Phase II Property, which shall extend the scheme of the covenants, restrictions, easements, charges and liens of this Declaration to such Phased Property, and (ii) the conveyance and recording in the Sullivan County Clerk's Office of a deed to the Association for the additional common area. The Sponsor shall have the right but not the obligation to cause any legally permissible Home construction on one or more Lots in Phase II. The provisions of this Article II, Section 2 may not be amended without the written consent of the Declarant or its successors.

The Sponsor, its successors and assigns also reserves the right to sell the property that comprises the Phase II Property to a third party on such terms as the

Sponsor, in its sole discretion shall deem commercially reasonable, provided that such sale shall provide that the Phase II Property shall be subject to this Declaration, the rules and restrictions contained herein and those rules and/or restrictions that may become effective hereafter, solely with respect to the Lake and the use of the Lake, and for the purpose of permitting the owner thereof the use of the Lake for swimming, boating and fishing, and that the Owner of the Phase II Property and all subsequent Owners of any portion thereof shall become Tier II members of the Association and shall be personally responsible for the maintenance charges assessed to him or her with respect to the Lake (the "Lake Maintenance Charges").

**Section 3. Adjacent Property.** In addition to the Property and the Phase II Property, the Sponsor shall have the right to, but not the obligation to bring properties that are adjacent to the Lake, and not otherwise entitled to the use of the Lake by reason of recorded instruments granting such rights, into the scheme of the Development subject to this Declaration, the rules and restrictions contained herein and those rules and/or restrictions that may become effective hereafter, solely with respect to the Lake and the use of the Lake, and for the purpose of permitting the owners thereof the use of the Lake for swimming, boating and fishing, and that the owners of such Adjacent Property, and all subsequent owners thereof shall become Tier III members of the Association and shall be personally responsible for the maintenance charges assessed to him or her with respect to the Lake (the "Lake Maintenance Charges").

**Section 4. Additional Property.** In addition to the Property, the Phase II Property and Adjacent Property, Additional Property may become subject to this Declaration in the following manner:

a. Prior to the Final Sale Date. At any time prior to the Final Sale Date, the Sponsor, its successors and assigns may, but shall not be obligated to bring the Additional Property within the scheme of this Declaration. The inclusion of Additional Property authorized under this subsection shall be made with the consent of the Association, its Board of Directors or its Members, by the recording in the Sullivan County Clerk's Office of Supplemental Extending Declaration of Covenants, Restrictions, Easements, Charges and Liens with respect to the Additional Property which shall extend the scheme of the covenants, restrictions, easements, charges and liens of this Declaration to such Additional Property.

Such Supplemental Declaration(s) may contain such complementary additions and modifications of this Declaration as may be necessary to reflect the different character, if any, of the Additional Property as are not inconsistent with the scheme of this Declaration. In no event, however, shall any such Supplemental Declaration conflict with any right or obligation contained herein, and in the case of any conflict, the provisions herein shall control.

b. Subsequent to the Final Sale Date: The owner of any property who desires to add such property to the scope of this Declaration and to subject it to the jurisdiction of the Association may do so upon (i) written approval of the Association

pursuant to a vote of its Members as provided in its By-Laws, and (ii) by filing an amendment to this Declaration, but such amendment must be approved by two-thirds (2/3) of the Members of the Association.

Upon the filing of a Supplemental Declaration and conveyance of a Lot, a Lot Owner of any such Lot shall become a Member of the Association.

The provisions of this Article II, Section 3 may not be amended without the written consent of Declarant or its successors and assigns.

### **ARTICLE III. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

**Section 1. Formation of the Association.** Pursuant to the Not-for Profit Corporation Law of the State of New York, the Sponsor has formed Swan Lake Estates Homeowners Association, Inc. to own, operate and maintain the Association Property, enforce the covenants, conditions and restrictions set forth in this Declaration and to have such other specific rights, obligations, duties and functions as are set forth in this Declaration and in its Certificate of Incorporation and the By-Laws of the Association, as same may be amended from time to time. Subject to the additional limitations provided in this Declaration and the Certificate of Incorporation, the Association shall have all the powers and be subject to the limitations of a no-for-profit corporation as contained in the New York State Not-for-Profit Corporation law as the same may be amended from time to time.

**Section 2. Membership.** The Association shall have three (3) classes of membership interest. The Tier I Class shall include all Owners of Lots within the Property. The Tier II Class shall include the initial record owner of the Phase II Property if the Sponsor sells the entire Phase II Property to a third party and all subsequent owners of all or any portion of the former Phase II Property, if such Third Party Purchaser elects to subdivide it. The Tier III Class shall include owners of Adjacent Property. Membership shall be appurtenant to and may not be separated from ownership of any Lot, the Phase II Property (or any portion thereof) and/or Adjacent Property which is subject to this Declaration. Ownership of a Lot, the Phase II Property or an Adjacent Property shall be the sole requirement for membership in the Association. Membership in the Association shall lapse and terminate when a member shall cease to be an Owner; however, any delinquent Assessments will continue to be the personal liability of said Owner despite termination of membership. This Section 2 of Article III may not be amended.

**Section 3. Voting Rights.** Each Tier I Member, including the Sponsor, is entitled to one (1) vote regardless of the number of Lots owned by such Tier I Member. When more than one person or entity holds such interest in the membership, the one vote attributable to such membership shall be exercised as such persons mutually determine but not more than one vote may be cast with respect to any such Member. No Member shall split or divide its votes on any motion, resolution or ballot. For the purposes of this Section 3 of Article III, the Declarant shall have one (1) vote for all Lots retained by the Declarant that are

subject to this Declaration.

Tier II Members and Tier III Members shall be entitled to vote only with respect to those issues that concern special assessments necessitated by reason of the upkeep, maintenance, operation and/or capital improvements to the Lake. The rules prohibiting split voting and limiting votes to one per member as set forth above shall equally apply to Tier II and Tier III Members.

Any person or entity that holds an interest in a Lot or in the Property of a Tier II or Tier III member merely as a security for the performance of an obligation shall not be a Member.

Any Member shall be entitled to assign his right to vote, by power of attorney, by proxy or otherwise, provided that such assignment is made pursuant to the By-Laws of the Association.

Notwithstanding such right to vote, the Sponsor shall have the exclusive right to select the initial three member Board of Directors of the Association and shall have the sole right to select a majority of the members of the Board of Directors until the Final Sale Date. After the Final Sale Date, the Owners shall have the right to elect all members of the Board of Directors. The Sponsor shall have the right, but not the obligation to transfer control of the Board of Directors to the Owners a date earlier than the Final Sale Date.

**Section 4. Transfer of Membership.** Membership in the Association shall be appurtenant to, and may not be transferred, except in conjunction with the lawful sale or conveyance of a Lot, the Phase II Property (or any portion thereof, if same has been subdivided) or an Adjacent Property. No Lot Owner, shall be permitted to sell or convey his or her Lot unless and until he or she shall have paid in full to the Board all unpaid Common Expenses and other amounts required by the Board to be paid and assessed by the Board against such Lot. Upon such sale or conveyance, the seller of such Lot, shall relinquish his or her membership in the Association and the purchaser of such Lot, shall automatically become a Member, subject to this Declaration, the By-Laws and the Rules and Regulations. No owner of the Phase II Property or Adjacent Property shall be permitted to transfer his or her membership in the Association until he or she shall have paid in full to the Board all unpaid Common Expenses and other amounts required by the Board to be paid and assessed by the Board against his or her property. Upon such sale or conveyance, the seller of such property, shall relinquish his or her membership in the Association and the purchaser of such property, shall automatically become a member, subject to this Declaration, the By-Laws and the Rules and Regulations. Should the owner of the Phase II Property or Adjacent Property fail to pay in full to the Board all unpaid Common Expenses or other amounts required by the Board to be paid, upon such sale or conveyance, the purchaser shall not become a member of the Association until such amounts are paid in full to the Association.

## ARTICLE IV. BOARD OF DIRECTORS

**Section 1. Election of Directors.** The affairs of the Association will be conducted by its Board of Directors which will consist of a minimum of three (3) Members, all of whom shall be Owners. The term of each Director will be one (1) year. The Directors shall be elected by a majority vote of the Tier I Members of the Association at the annual meeting of the Association, a quorum of the members being present. For purposes of this Declaration, a quorum shall consist of at least fifty-one (51%) of the Tier I Members in person or by proxy, each such Member having one (1) vote no matter how many Lots are owned by the Owner. Any provision of this Declaration or of the By-Laws notwithstanding, Declarant shall have the right to elect a majority of Directors (who need not be Owners) until the Final Sale Date, and each Owner hereby grants to Declarant an irrevocable proxy, coupled with an interest, to elect such Directors.

### **Section 2. Powers and Duties of the Board.**

a. The Board of Directors is vested with the power, on behalf of the Association, to (i) own, maintain, manage, repair and control the Association Property; (ii) maintain, manage and promulgate rules and regulations regarding the use of the Property; (iii) enforce the terms and conditions of this Declaration; and (iv) manage the affairs of the Association. These functions include the hiring of a manager and employing and dismissing personnel necessary to exercise the functions of the Association; preparing and adopting the annual budget required for the affairs of the Association; billing and collecting Assessments from the Owners of the Lots based upon such annual budget, and Special Assessments from Owners and the owner or owners of the Phase II Property and the owners of the Adjacent Property (i.e. the Tier II Member(s) and Tier III Members) when deemed advisable by the Directors; adopting and amending rules and regulations covering details of the operation and use of the Association Property and the Property; obtaining insurance for the Association Property in such amounts and for such coverage as the Directors deem advisable from time to time; adjusting and settling claims under insurance policies, and delivering releases in settlement of such claims on behalf of all Members and other interested parties; and performing such other functions permitted or required by the By-Laws of the Association and the applicable laws of the State of New York.

b. For purposes of this Section, as of the date this Declaration is recorded Declarant shall be deemed to own any unsold lots. Until the Final Sale Date, the Board of Directors may not, without first obtaining Declarant's consent: (i) make any addition, alteration or capital improvement to the Association Property; (ii) create a security interest in the Association Property or any part thereof by borrowing money or otherwise; (iii) assess any maintenance or other charges or dues for the creation of, addition to or replacement of all or part of a reserve contingency or surplus fund in excess of five (5%) percent of the estimated expenses for the projected year of

operation; (iv) hire any employee in addition to any employee referred to in the "Estimated Budget for the First Year of Homeowners Association Operation" contained in the CPS-7 Application; (v) enter into any service or maintenance contracts for work not required by law or covered in the Budget referred to in the preceding clause; and (vi) take any action or permit anything to be done regarding the Association Property which would alter the availability or quantity of Association Property.

c. The Board of Directors, which may consist of Members designated by Declarant, may contract with Declarant and any affiliated corporations or entities, at then competitive rates, without incurring any liability for self-dealing.

**Section 3. Indemnification of Officers and Directors.** Every director and officer of the Association shall be, and is hereby indemnified by the Association against all expenses and liabilities, including fees of counsel, reasonably incurred by or imposed upon such director or officer in connection with any proceeding to which such officer or director may be a party, or in which such officer or director may become involved, by reason of being or having been a director or officer of the Association, or, any settlement thereof, whether or not such person is a director or officer at the time such expenses are incurred, except in such cases wherein the director or officer is adjudged guilty of fraud, willful misfeasance or malfeasance in the performance of duties, provided that, in the event of a settlement, the indemnification herein shall apply only when the Board of Directors approves such settlement as being in the best interests of the Association. The foregoing right of indemnification shall be in addition to, and shall not be exclusive of, all rights to which each such director or each such officer may otherwise be entitled.

**Section 4. Amendment of Association Documents.** The Association's corporate documents may be amended, modified or terminated in whole or in part as at a regular or special meeting of the Board or of the Members, at which a quorum is present, by a vote of the majority of the Directors or the Tier I Members, as the case may be; provided, however, that no provisions of such corporate documents may be modified, amended, terminated, revoked or rescinded if such provisions contain a prohibition against amendment, termination, revision or revocation with or without Declarant's consent. For so long as Declarant is the Owner of one (1) or more Lots, the Association's Certificate of Incorporation and the By-Laws may not be amended, modified or terminated so as to adversely affect Declarant without the prior written consent of Declarant. In addition, the provisions of the By-Laws of the Association relating to the use of the Association Property or the manner of apportioning Assessments or dues may not be amended or modified without the prior written consent of every Member affected by such amendment or modification.

## **ARTICLE V. PROPERTY RIGHTS AND EASEMENTS**

**Section 1. Dedication of Association Property.** The Sponsor intends to convey to the Association, subsequent to the recording of this Declaration, and subject to the provisions of this Declaration, certain land and the Lake within the

Property for the use and enjoyment of the Members and identified as parcel 13 on the Kelly Bridge Subdivision Map. The Sponsor has the obligation to convey such property to the Association, and the Association must accept any such conveyance made by the Sponsor, provided that such conveyance is made for nominal consideration. The Sponsor is deemed to be authorized by this Section to execute on behalf of the Association any transferee documents required to record the deed to the Association Property in Office of the Clerk of the County of Sullivan. Should Sponsor bring Phase II into the scheme of the Development, additional land will be conveyed to the Association and the Association must accept such conveyance made by the Sponsor provided that such conveyance is made for nominal consideration.

**Section 2. Members' Easement of Enjoyment.** Subject to the provisions of Section 3 of this Article, and the provisions of the By-Laws, every Tier I Member and their permitted occupants of the Lots and their respective family members and guests shall have a right and easement of enjoyment in and to the Association Property and such easement shall be appurtenant to and shall pass with the title to every Lot and every Tier II Member and Tier III Member and their permitted occupants and their respective family members and guests shall have a right and easement of enjoyment in and to the Lake only

Every Owner shall also have (i) an easement and right of access for himself (and any of his contractors, employees and agents) in, over and to and across the Association Property to maintain, repair or replace any property of such Member which the Association has no obligation to maintain, (ii) an easement for ingress and egress by vehicle or on foot; and (iii) common utility and conduit easements as set forth herein. These easements will be subject to the rights of the Association as set forth herein; provided however, that any conveyance or encumbrance referred to herein shall be subject to said easement of each Owner for ingress and egress.

**Section 3. Extent of Members' Easements.** The rights and easements created hereby shall run with the land and shall be subject to the following: In order to preserve and enhance the property values and amenities of the Community, the Association Property and all facilities now or hereafter built or installed thereon, shall at all times be maintained in good repair and condition and shall be operated in accordance with high standards. The maintenance and repair of the Association Property shall include the following:

- i. Maintenance, repair of any damage and any required replacement to the private interior roads;
- ii. Maintenance, repair of any damage and any required replacement to the common parking area;
- iii. Maintenance, repair of any damage and any required replacement to the Recreation Area and any part thereof;

- iv. Snow removal and general cleaning of the private interior roads and Common Area;
- v. Maintenance, operation, repair of any damage and replacement to the motorized gateway entrances to the Community and the storm drainage system;
- vi. Maintenance, repair of any damage and any required replacement of any utilities located on or in the Common Area which utilities are not maintained, repaired or replaced by the respective utility company.
- vii. Maintenance and repair of the Lake and the dam that services the Lake.

Except as otherwise specifically provided in this Declaration, the By-Laws or the rules and regulations promulgated by the Board, the Board may not impose any limitations upon the use and enjoyment of the Association Property by Members and the permitted occupants of the Lots and their respective family members and guests. The Board may establish a limitation on guest privileges by guests of Members or permitted occupants of the Lots and the Board may establish a limitation on the use of the Common Area for a party, meeting or other similar event. Except as otherwise specifically provided in this Declaration or in the By-Laws, the Board may not impose any fee for the use and enjoyment of the Common Area by Members or permitted occupants of Homes and their respective family members, other than Assessments against a Member's Lot unless the Common Area are used for a party, meeting or other similar event.

This Section shall not be amended, to reduce or eliminate the obligation for maintenance and repair of the Common Area.

**Section 4. Common Utility and Conduit Easement.** All pipes, wires, coaxial cables, conduits and public utility lines that are located on the Association Property shall be owned by the Association. Every Owner and the Declarant shall have an easement, in common with the Owners of the other Lots to use such pipes, wires, coaxial cables, conduits and public utility lines that are located on the Association Property.

All pipes, wires, coaxial cables, conduits and public utility lines that may be located on each Lot shall be owned by the Owner of such Lot. Every Owner shall have an easement in common with the Owners of other Lots to maintain and use all pipes, wires, coaxial cables, conduits, drainage areas and public utility lines located on other Lots or on Association Property and servicing such Owner's Lot. Each Lot shall be subject to an easement in favor of the Owners of other Lots to maintain and use pipes, wires, coaxial cables, conduits, drainage areas and public utility lines servicing, but not located on such other Lot. The Association (and its employees, contractors and agents) shall, upon reasonable notice to the Owners directly involved, if any, have an easement and right of access to each Lot for maintenance,



repair or replacement of any pipes, wires, coaxial cables, conduits, drainage areas or public utility lines located on any Lot which are used for the provision of services to Association Property or another Lot. The cost of such repair, maintenance or replacement shall be a common expense funded from the Maintenance Assessments, except that, if occasioned by a negligent or willful act or omission of a specific Owner or Owners, it shall rather be considered a special expense allocable to the Owner or Owners responsible and such costs shall be added to the Assessment of such Owner or Owners and, as part of that Assessment, shall constitute a lien on the Lot or lots of such Owner or Owners to secure the payment thereof.

**Section 5. Common Access Easement.** The Sponsor and all Owners and their permitted occupants, guests, licensees and invitees shall have an easement by vehicle or foot for ingress and egress in common with one another over all walkways and roadways located on the Association Property and the Association shall have an easement of access to each Lot for the maintenance, repair and replacement of any property or facilities the maintenance of which is the responsibility of the Association.

**Section 6. Association Easement for Inspection, Maintenance and Repairs.** The Association, its employees, contractors and agents, shall, upon reasonable notice to the Owner(s) directly involved, if any, have an easement and right of access to any portion of the Property, excluding the Homes, to (i) inspect Lots for the purpose of ascertaining compliance with the provisions of this Declaration, the By-Laws or with any Rules and Regulation promulgated pursuant to this Declaration; and (ii) the maintenance, repair or replacement of any property or facilities, the maintenance of which is the responsibility of the Association, except that in any emergency, the Association shall have the right, without notice, to enter upon any portion of the Property, excluding the Homes, to make necessary repairs or to prevent damage to any portion of the Association Property or any other property for which it is responsible for maintaining, repairing or replacing as provided for in this Declaration. The repair of any damage caused in gaining access in an emergency shall be at the expense of the Association.

**Section 7. Easement for Emergency Access.** Declarant hereby establishes an easement of ingress and egress over the roadway and all other Association Property for the benefit of all emergency vehicles and personnel including, but not limited to police, fire and medical purposes.

**Section 8. Easement for Repair.** The Association or Board, or their contractors, employees or agents, and any other person authorized by any of the foregoing, shall have, and the Common Area shall be subject to, an easement in, to and through the Common Area or any portion thereof (a) to operate, maintain, repair, alter, rebuild, restore and replace any of the Common Area, including, without limitation, the maintenance of any sign identifying the Association located at the

entrance thereto and any advertising and/or directional signs, and (b) to perform any of their respective duties in accordance with the By-Laws.

**Section 9. Easement for Completion.** Each Member hereby grants a right of access to his Lot to Declarant or its designee, and any contractors, subcontractors, agents, and employees of the foregoing for the purposes of the repair and completion of any installation, construction, modification, alteration, renovation, maintenance, repair, restoration, replacement, or change including, without limitation, the correction of any construction defects being performed or to be performed by or on behalf of Declarant with respect to the Association Property and/or the Lots.

**Section 10. Encroachments on Lots or Common Area.** In the event that any portion of any roadway, walkway, parking area, driveway, drainage lines, electric meters, utility lines, light standards, building or any other structure or improvement as originally constructed by Sponsor encroaches on any Lot or the Common Area, it shall be deemed that the Lot Owner of such Lot or the Association has granted a perpetual easement to the Lot Owner of the adjoining Lot or the Association, as the case may be, for continuing maintenance and use of such encroaching roadway, walkway, driveway, parking area, driveway, drainage lines, electric meters, utility lines, light standards, building or any other structure or improvement. The foregoing shall also apply to any replacements of any such roadway, walkway, driveway, parking area, driveway, drainage lines, electric meters, utility lines, light standards, building or any other structure or improvement, if same are constructed in substantial conformance to the original. The encroachment for utility lines shall also apply to utility lines which may run under, over, or adjacent to the Home or building on a Lot. The foregoing conditions shall be perpetual in duration and shall not be subject to amendment of these covenants and restrictions.

**Section 11. Rights of the Association.** With respect to the Property, and in accordance with the Certificate of Incorporation and By-Laws of the Association, the Association shall have, in addition to any other rights granted to the Association herein or in the By-Laws, the right:

- a. to promulgate rules and regulations for the use and enjoyment of the Association Property and to take such steps as are reasonably necessary to protect the Association Property and to enforce the terms and provisions of this Declaration, the By-Laws, and any of the Association's Rules and Regulations;
- b. to suspend the enjoyment rights of any Tier I Member, Tier II Member or Tier III Member for a period during which any Assessment remains unpaid and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations;
- c. to dedicate or transfer all or any part of the Common Area, to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Tier I Members, provided that no such dedication or

transfer, determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by Tier I Members and their mortgagees entitled to cast eighty (80%) percent of the eligible votes has been recorded agreeing to such dedication, transfer, purpose or condition and unless written notice of the action is sent to every Member at least ninety (90) days in advance of any action taken;

d. to grant and reserve easements and rights-of-way, in, through, under, over, upon and across The Property, with or without consideration for the installation, maintenance and inspection of lines and appurtenances for public or private water, electric, sewer, drainage, cable television, gas and other utilities;

e. to charge reasonable admission and other fees for the use of Association Property;

f. to enter into agreements, reciprocal or otherwise, with other homeowners associations, condominiums, cooperatives and/or individuals for the use or sharing of facilities. Such agreements shall require the consent of two-thirds (2/3) of the total votes of all Tier I Members voting upon written ballot which shall be sent to every Tier I Member not less than ten (10) days nor more than sixty (60) days in advance of the date of the date set for voting thereon;

g. to construct, modify, alter or demolish improvements on Association Property upon the affirmative vote of a majority of the Board of Directors, provided that the Sponsor may veto any such action of the Board so long as it holds title all or any portion of the Property that is subject to this Declaration.

**Section 12. Rights of the Sponsor.** With respect to the Property and in addition to the rights otherwise reserved herein, so long as the Sponsor holds title to any property which is subject to this Declaration or any amendment thereof or Supplemental Declaration, the Sponsor shall have the right:

a. to grant and reserve easements and rights-of-way, in, through, under, over, upon and across the Property for the completion of the Declarant's work in all Phases of the Development. In the event an easement that is placed on the property by the Sponsor requires the Lot or Home located thereon to be disturbed, Sponsor will be obligated to restore the Lot or Home to its original condition;

b. to grant and reserve easements and rights-of-way for the installation, maintenance, repair, replacement and inspection of utility lines, wire, coaxial cables, pipes and conduits, including but not limited to, water, gas, electric cable television, telephone and sewer;

c. to use the Association Property for ingress to and egress from the Property;

d. to operate a sales center and to have prospective purchasers and others visit such sales center and use certain portions of Association Property,

including, but not limited to, parking spaces;

e. to grant to itself or to others such other easements and rights-of-way as may be reasonably necessary for the orderly development of the Property.

**Section 13. Maintenance of Association Property.** In order to preserve and enhance the property values and amenities of the Association Property, the Association shall at all times maintain the facilities in good repair and condition and shall operate such facilities in accordance with high standards.

**Section 14. Right of Association to Contract Duties and Functions.** The Association may contract with any person, corporation, firm, trust company, bank, property management company or other entity for the performance of its various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management agreements with other associations, condominiums and cooperatives.

**Section 15. Roadway Dedication and Maintenance.** As a condition to the approval of the subdivision plan, the Declarant was required to dedicate and has dedicated, by separate Declaration of Covenants, Easements and Restrictions, the first 25 feet of the private interior roadway in Phase I, as shown on the Kelly Bridge Subdivision Plan to the Town of Liberty for the purpose of maintaining and improving the Kelly Bridge Road and, as set forth in the aforesaid Declaration, has agreed to accept full responsibility for the maintenance and repair of the interior roadways. In accordance therewith, upon formation of the Association, the Association shall be deemed a successor to the Declarant for purposes of such maintenance and the cost and expense of such maintenance shall constitute an expense of the Association, subject to General and Special Assessments. Pursuant to such Declaration, the Town of Liberty has the right, but not the obligation, to enter upon the Property to maintain the subdivision road (if the Association fails to do so) and assess the costs of such maintenance as a lien against the Declarant or the Association as the case may be.

**Section 16. Future Easements.** Declarant shall retain the right, so long as there are any Unsold Lots on the Property, to place any easements in, to or under the Property which Declarant shall deem necessary for the benefit of the Association and its Members.

The easements, rights-of-way and other rights reserved herein shall run with the land and shall be binding upon and for the benefit of the Association, the Sponsor and their successors and assigns. This Article shall not be amended without the prior written consent of the Sponsor, its successors or assigns.

## **ARTICLE VI. COVENANT FOR MAINTENANCE ASSESSMENTS**

**Section 1. Creation of the Lien and Personal Obligation.** The Declarant, for each Lot and the Phase II Property then subject to the Declaration of Covenants, Restrictions, Easements, Charges and Liens owned by it within The Property,

hereby covenants and each Lot Owner and the owner of the Phase II Property by acceptance of a deed therefore, whether or not it shall be expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association such Maintenance Charges as are fixed by the Association's Board of Directors for Common Expenses and are assessed to the Lot Owners as hereinafter provided. Any Special Maintenance Charge Assessments, should they be required, shall be levied and paid for in the same manner as herein above provided for regular Maintenance Charges. All Maintenance Charges and other sums assessed by the Association that remain unpaid, together with such interest thereon and the cost of collection thereof as is hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property owned by such Lot Owner against which each such Maintenance Charge or other sums assessed is made. Each such Maintenance Charge and Assessment, together with interest thereon and cost of collection thereof, as hereinafter provided shall be a personal obligation of the person who was the Lot Owner of such property at such time as the Maintenance Charges or other sums assessed fell due.

**Section 2. Purpose of the General Assessment.** The Maintenance Charges levied by the Association shall be used for Common Expenses and exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in The Property as a Community and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area and of the Homes and Lots situated upon The Property, including, without limiting the foregoing, the payment of taxes (if any), insurance thereon, and repair, replacement and additions to the Common Area, and the cost of labor, equipment, materials, services, management and supervision thereof.

**Section 3. Date of Commencement of Maintenance Charges.** The General Assessments provided for herein shall commence upon the date of the closing of the first to occur of the sale of the first Lot or the sale of the Phase II Property to a third party purchaser.

**Section 4. Common Expenses.** The Association's Board of Directors shall, from time to time, but at least annually, fix and determine the budget representing the sum or sums necessary and adequate for the continued operation of the Association and shall send a copy of the budget and any supplement to the budget to each Lot Owner and the owners of the Phase II Property and Adjacent Property prior to assessing the General and Lake Maintenance Charges to the Lot Owners and the owners of the Phase II Property and the Adjacent Property. General Maintenance Charges relating to the Property shall be payable only by Tier 1 Members and Lake Maintenance Charges, which shall relate solely to the use, operation, repair, upkeep, maintenance, insurance and taxes with respect to the Lake shall be payable by all members. The Board shall determine the total amount required, including the operational items such as insurance, repairs, reserves, maintenance and other operating expenses, as well as charges to cover any deficits from prior years and capital improvements approved by the Board. The total annual

requirements and any supplemental requirements shall be allocated between, assessed to, and paid by the Lot Owners and the owners of the Phase II Property and Adjacent Property as follows:

Each Lot Owner (Tier I Member) shall pay a portion of said General Maintenance Charges, the numerator of which shall be one (1) and the denominator of which shall be equal to the number of Lots, whether built upon or unbuilt, on the Property then subject to this Declaration. The Declarant's obligation for such General Maintenance Charges on Unsold Lots subject to this Declaration will be limited to the difference between the actual operating costs of the Association, including reserves on the Common Area, and the General Maintenance Charges levied on the Lot Owners who have closed title on their Lots ("Deficiency Contribution"). Such General Maintenance Charges paid by said Lot Owners are to be based on a full-occupancy budget of all Lots and Unsold Lots, built or unbuilt, then subject to the Declaration. In no event, however, will the Declarant be required to make a Deficiency Contribution in an amount greater than it would otherwise be liable for if it were paying full General Maintenance Charges on Unsold Lots for the Unsold Lots, built upon or unbuilt, then subject to the Declaration of Covenants and Restrictions. In the event the General Maintenance Charges exceed the amount contributed by the Lot Owners who have closed title plus the maximum amount the Declarant is obligated to contribute, the additional General Maintenance Charges are to be pro-rated equally among the Lot Owners who have closed title and the Unsold Lots still owned by the Declarant. The amount of any Deficiency Contribution on the part of the Declarant shall not include uncollected General Maintenance Charges from Lot Owners. Surplus funds from any prior year, except Reserve Funds, shall first be applied to reimburse to Declarant any Deficiency Contribution of the Declarant in prior years. The funding of any Reserve Fund is to commence upon the completion of the item for which the Reserve Fund is to be established.

Each member (Tier I Members, Tier II Member(s) and Tier III Members) shall pay a portion of said Lake Maintenance Charges, the numerator of which shall be one (1) and the denominator of which shall be equal to the sum of (a) the number of Lots, whether built upon or unbuilt, on the Property then subject to this Declaration, plus (b) the number of individual parcels of Adjacent Property that are at the time subject to this Declaration, plus either (c) one (1) representing the Phase II Property, so long as the Third Party Purchaser has not subdivided the Phase II Property or (d) the number of lots, whether built upon or unbuilt, on the Phase II Properties, if such Third Party Purchaser subdivides the Phase II Property (in which event the person acquiring each such lot shall be responsible for the Lake Maintenance Charge assessed against it). The Declarant's obligation for such Lake

Maintenance Charges on Unsold Lots subject to this Declaration will be limited to the difference between the actual operating costs of the Association, including reserves on the Lake, and the Lake Maintenance Charges levied on the Lot Owners who have closed title on their Lots ("Deficiency Contribution"). Such Lake Maintenance Charges paid by said Lot Owners are to be based on a full-occupancy budget of all Lots and Unsold Lots, built or unbuilt, then subject to the Declaration. In no event, however, will the Declarant be required to make a Deficiency Contribution in an amount greater than it would otherwise be liable for if it were paying full Lake Maintenance Charges on Unsold Lots for the Unsold Lots, built upon or unbuilt, then subject to the Declaration of Covenants and Restrictions. In the event the Lake Maintenance Charges exceed the amount contributed by the Lot Owners who have closed title plus the maximum amount the Declarant is obligated to contribute, the additional Lake Maintenance Charges are to be pro-rated equally among the Lot Owners who have closed title and the Unsold Lots still owned by the Declarant. The amount of any Deficiency Contribution on the part of the Declarant shall not include uncollected Lake Maintenance Charges from Lot Owners. Surplus funds from any prior year, except Reserve Funds, shall first be applied to reimburse to Declarant any Deficiency Contribution of the Declarant in prior years. The funding of any Reserve Fund is to commence upon the completion of the item for which the Reserve Fund is to be established.

The sum due the Association from each individual Lot Owner shall constitute a Maintenance Charge of the Board of Directors and unpaid Maintenance Charges shall constitute liens on the individual Homes and the personal obligation of each Lot Owner, subject to foreclosure as hereinafter provided.

**Section 5. Due Dates; Duties of the Board of Directors.** All Maintenance Charges shall be payable monthly in advance or in such other manner as determined by the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the Maintenance Charges against each Lot and shall prepare a roster of the Lots, the Phase II Property and the Adjacent Property and Maintenance Charges applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by any member.. Upon the written request of a member or a Permitted Mortgagee, the Board shall promptly furnish such member or Permitted Mortgagee with a written statement of the unpaid Maintenance Charges due from such member.

**Section 6. Special Assessments.** In addition to the General Assessments authorized by this Article, the Association may levy, in any assessment year, a Special Assessment applicable to that year only, for the purpose of defraying, in whole or in part (i) any deficiency or shortfall in the amount of the General Assessment or installments thereof, whether due to nonpayment by one or

more Members or otherwise, or (ii) the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvements with respect to Association Property or Common Easements, including the necessary fixtures and personal property related thereto. Special Assessments shall be paid at such times, intervals and in amounts to be determined by the Board of Directors.

**Section 7. Effect of Non-Payment of Maintenance Charges, The Personal Obligation of the Lot Owner; The Lien, Remedies of the Association.**

If the Maintenance Charge assessed against a Lot Owner is not paid on the date when due, as fixed by the Board of Directors, then such Maintenance Charge shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot Owner's Home and/or Lot which shall bind such property in the hands of the Lot Owner, his or her heirs, devisees, personal representatives and assigns. Such lien shall be prior to all other liens except: (a) tax or assessment liens on the Home and/or Lot by the taxing subdivision of any governmental authority, including but not limited to state and local municipal taxing agencies; and (b) all sums unpaid on any Permitted Mortgage. The personal obligation of the Lot Owner who was the Lot Owner when the Maintenance Charge fell due to pay such Maintenance Charge, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

In the event any Lot Owner, owner of the Phase II Property or any portion thereof or Adjacent Property fails to make payment of the Maintenance Charge assessed against their lot, such person shall be obligated to pay (a) a "late charge" of \$ .05 for each \$1.00 of such amounts which remain unpaid for more than ten (10) days from their due date (although nothing herein shall be deemed to extend the period within which such amounts are to be paid); and (b) interest at the rate of 1% per month (but in no event in excess of the maximum rate permitted by law) on such unpaid amounts (less any "late charges" theretofore collected on such amounts) computed from the due date thereof, and (c) all expenses, including, without limitation, attorneys' fees paid or incurred by the Board or by any Managing Agent in connection with the Board's attempt to collect such unpaid Maintenance Charge including but not limited to, other than, with respect to Tier II Members and Tier III Members, an action to foreclose the lien on such Lot Owner's Lot and Home arising from said unpaid Maintenance Charge in the manner permitted by applicable law and any and all costs associated with the filing of a lien against the Lot. All such "late charges", interest and expenses shall be added to and shall constitute additional Maintenance Charges payable by such Lot Owner in the same manner as other Maintenance Charges.

In the event that a Tier II Member or Tier III Member fails to make payment of the Maintenance Charge assessed against their property, the Board, in addition to any rights that it may have at law and pursuant to this Declaration, shall suspend that member's right to the use of the Lake and shall have the right to bring suit to recover a money judgment for unpaid Maintenance Charges, at the option of the Board. The Board (on behalf of the Lot Owners) shall have the right to bring an



action to foreclose a lien on a Lot Owner's Lot and/or Home in the event such Lot Owner is in default in the payment of Maintenance Charges. In addition to the Board's right to bring an action to foreclose a lien on a Home Owner's Lot/Home, the Board (on behalf of the Lot Owners) shall have the right to bring suit to recover a money judgment for unpaid Maintenance Charges at the option of the Board, without foreclosing or waiving the lien securing such charges.

In the event of a foreclosure sale of a Lot by a Permitted Mortgagee or by the Board of its lien on any Lot for unpaid Maintenance Charges, if the net proceeds of the foreclosure sale (after deduction of all legal fees, advertising costs, brokerage commissions and other costs and expenses incurred therewith) shall be insufficient for the payment of such unpaid Maintenance Charges, or if a Lot is acquired by a mortgagee or purchaser in foreclosure, the owner of such Lot prior to the foreclosure sale shall remain liable for the payment of all unpaid Maintenance Charges which accrued prior to such sale.

**Section 8. No Waiver or Amendment.** No member may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Area or the abandonment of his/her Lot. This Article VI may not be amended.

## **ARTICLE VII. ARCHITECTURAL CONTROL.**

**Section 1. Purpose.** For the purpose of assuring the development of the Community as an area which is aesthetically pleasing, the Sponsor reserves the right and power of prior approval of the size and exterior design of all proposed Homes, structures and/or improvements to be constructed by Tier I Members on the Lots. For the purpose of this Article VII, unless stated otherwise, all references to the Sponsor shall be deemed a reference to the Board of Directors (or an Architectural Control Committee appointed by the Board of Directors) after the Final Closing Date, at which time the Board of Directors (or an Architectural Control Committee appointed by the Board of Directors) will assume the right and obligation to enforce the provisions of this Article VII.

**Section 2. Approval Required.** No Home or other structure or improvement (including all buildings, swimming pools, tennis courts, or other structure of any kind or nature, whether permanent or temporary) shall be erected, placed or altered on any Lot, until the proposed building plan or plans, the materials list, exterior color of finish, plot plan (showing the proposed location of such building or structure, driveway and any accessory structure requiring a Building Permit) are approved in writing, by the Sponsor. All construction, once commenced, shall continue on a business-like basis with each Home, structure and/or improvement being completed within six (6) months of the start date (whenever reasonably possible).

Proposed Homes will have a minimum required square footage of enclosed dwelling area of 2,200 square feet and a maximum square footage of enclosed

dwelling area of 10,000 square feet. The term "enclosed dwelling area" as used herein shall mean the total enclosed area within a dwelling; provided however, that such term does not include garages, terraces, decks, open porches and the like; and further provided that shed-type porches, even though attached to the house are specifically excluded from the definition of "enclosed dwelling area".

The proposed Homes and other structures shall conform to the style and appearance of the Homes built in the Community, in accordance with approved plans, and shall be harmonious with the general appearance and topography of the Community as determined by the Sponsor in its sole and absolute discretion.

**Section 3. Alterations to and Modification of Homes.** The exterior of any Home or other structure or improvement on the Lot, once erected in accordance with the approved plans, or any other structure, once erected pursuant to the Sponsor's written approval, shall not be altered, modified, added to, reconstructed or extended without the prior written approval of the Sponsor in each instance. The proposed alteration, modification or reconstruction shall meet the same standards as those set forth in Sections 2 of this Article.

**Section 4. Submission of Plans.** No construction or action as set forth in sections 2 or 3 hereinabove, which requires the approval of the Sponsor shall be taken unless and until a plan or plans therefore, in such form and detail as the Sponsor requires, have been submitted to and reviewed and approved by the Sponsor. The Sponsor shall not charge a purchaser for the review of any such plans. After such time as the Board of Directors assumes responsibility for the review of submissions for construction and/or alteration under this Article, the Board of Directors may charge and collect a reasonable fee for the examination of plans submitted for approval.

**Section 5. Basis of Disapproval of Plans.** The plans submitted pursuant to Section 4 hereinabove may be disapproved for any of the following reasons:

- a. the failure of such plans to comply with any protective covenants, conditions and restrictions contained in the Declaration and which benefit or encumber the Lot or other portion of The Property;
- b. the failure to comply with covenants, restrictions or easements of record;
- c. the failure to include information in such plans as requested;
- d. objection to the site plan, exterior design, appearance or materials of any proposed improvements, including without limitation, colors or color scheme, finish, proportion, style of architecture or proposed parking;
- e. incompatibility of proposed improvements or use of proposed improvements with existing improvements or uses in the vicinity;

- f. failure of proposed improvements to comply with any zoning, building, health or other governmental laws, codes, ordinances, rules and regulations;
- g. any other matter which in the judgment and sole discretion of the Sponsor would render the proposed improvements, use or uses, inharmonious or incompatible with the general plan of improvement of the Property or a portion thereof or with improvements or uses in the vicinity.

**Section 6. Approval of Plans.** Upon approval or qualified approval by the Sponsor of any plans submitted hereunder, the Sponsor shall notify the applicant in writing of such approval or qualified approval, which notification shall set forth any qualifications or conditions of such approval, shall file with the books and records of the Association a copy of such plans as approved for permanent record (together with such qualification or conditions, if any), and if requested by the applicant shall provide the applicant with a copy of such plans bearing a notation of such approval or qualified approval. Approval of any such plans relating to any Lot shall be final as to such Lot and such approval may not be revoked or rescinded thereafter provided that (i) the improvement or uses approved are not substantially changed or altered; (ii) that the improvements or uses shown or described on or in such plans do not violate any protective covenants, conditions or restrictions set forth in the Declaration which benefit or encumber the Lot or a portion of The Property; and (iii) that such plans and any qualifications or conditions attached to such approval of the plans do not violate any covenants, restrictions, agreements or easements of record or any applicable governmental law, rule or regulation, zoning, building, health or other code or ordinance. Approval of any plans for use in connection with any Lot shall not be deemed a waiver of (i) the right of the Sponsor to disapprove similar plans or any of the features or elements included therein if such plan, features or elements are subsequently submitted for use in connection with any other Lot, (ii) the purchaser's obligation to obtain the required permit and approvals from the Town of Liberty, County of Sullivan and/or State of New York, or (iii) a representation by Sponsor that such plans comply with any covenants, restrictions, agreements or easements of record or any applicable governmental law, rule or regulation, zoning, building, health or other code or ordinance.

**Section 7. Written Notification of Disapproval of Plans.** In any case where the Sponsor disapproves any plans submitted hereunder, the Sponsor shall so notify the applicant in writing together with a statement of the grounds upon which such action was based. In any such case, the Sponsor shall, if requested and if possible, shall make reasonable efforts to assist and advise the applicant so that acceptable plans can be prepared and re-submitted for approval.

**Section 8. Failure of Board to Act.** If any applicant has not received notice from the Sponsor within forty five (45) days after submission thereof, said applicant may notify the Sponsor, in writing of that fact. Such notice shall be sent by certified mail, return receipt requested. If the applicant sends such notice and in

such manner, the plans shall be deemed approved by the Sponsor fifteen (15) days after the date of receipt of such notice by the Sponsor, unless the Sponsor provides applicant with written notice of disapproval prior to the expiration of the fifteen (15) day period.

**Section 9. Rules and Regulations.** Subject to the provisions of the Sponsor may from time to time promulgate rules and regulations governing the form and content of plans to be submitted for approval or with respect to the approval or disapproval of certain types of construction, alterations, additions or modification to improvements and/or uses; provided however, that no such rule or regulation shall be deemed to bind the Sponsor to approve or disapprove any plans submitted for approval, or to waive the exercise of the Sponsor's discretion as to such plans, and provided further that no such rule or regulation shall be inconsistent with the provisions of the Declaration or any applicable governmental law, code, ordinance, rule or regulation.

**Section 10. Design Parameters.** The Sponsor may promulgate rules governing improvements on Lots, including without limitation, minimum square footage, height requirements, front, rear and side yard setbacks, exterior lighting, materials and landscaping. The Sponsor may also issue statements of policy with respect to approval or disapproval of the architectural styles of details, or other matters. Such rules and statements of policy may be amended or revoked by Sponsor at any time and no inclusion in, omission from or amendment of any such rule or statement shall be deemed to bind the Sponsor to approve or disapprove any feature or matter subject to approval, or to waive the exercise of the Sponsor as to any such matter, but no change of policy shall affect the finality of any approval granted prior to such change. All plans and specification submitted pursuant to this Article VII for any structure requiring a building permit shall be prepared by a registered architect licensed as such in the State of New York and shall show and specify, among other things, all exterior elevations, colors and finishes proposed to be used in, on and around such structure. For purposes of this Article VII, any change (including a change in color or texture) of any exterior surface, finish or detail of a structure shall be considered an alteration requiring Sponsor's prior written approval.

**Section 11. Inspection of Work.** Inspection of work and correction of defects therein shall proceed as follows:

a. The Sponsor, or its duly authorized representative(s) may, at any time and from time to time, inspect any work for which approval of the plans and specifications is required. If, as a result of such inspection the Sponsor finds that the work was not done in substantial compliance with the plans approved by the Sponsor, it shall notify the Owner, in writing of the failure to comply with this Article, specifying the particulars of noncompliance. The Sponsor shall have the authority to require the Owner to take such action as the Sponsor deems necessary to remedy the non-compliance.

b. If the Owner fails to comply with the remedial actions mandated by the Sponsor within five (5) business days of Notice, or if the remedial actions are incapable of being completed within such five (5) business day period, the Owner fails to commence such remedial action within such five (5) day period and thereafter diligently prosecute such remediation to its completion, then the Sponsor, at its option, may take whatever action it may have, at law, in equity or in this Declaration or the By-Laws to assure such compliance. If the Sponsor retains any professional or consultant to assist in the procurement of such compliance, then the costs, fees and expenses thereof, including but not limited to reasonable attorneys fees and disbursements, shall be the responsibility of the Owner and a continuing lien upon the Lot of such Owner, which, if not satisfied, may be enforced by the Sponsor or the Board in the same manner in which the Sponsor or Board may enforce the lien for an unpaid Assessment.

**Section 12. Work Performed Without Approvals.** Any work performed without the Sponsor's approval for which such approval was required, shall be subject to a stop work order by the Sponsor, the removal thereof by the Owner at the direction of the Sponsor, the restoration of the property upon which such work was performed to its status prior to the commencement of such work, as the case may be. If such Owner fails to stop or remove such work in accordance with the order of the Sponsor, then the Sponsor may (i) remove such work and restore the property upon which such work is being performed to the status of such property immediately preceding such work, an/or (ii) pursue any and all other remedies, at law or in equity, to assure compliance by such Owner with the provisions of this Article VII as it applies to the work. The Owner shall be responsible for the payment of all costs, fees and expenses incurred by the Sponsor in pursuing its remedies and such costs, fees and expenses shall be a lien against the Lot of the Owner which lien may be enforced by the Sponsor in the same manner as enforcement of the lien for the payment of Assessments.

**Section 13. Time of Work, Insurance, Indemnification, Undertaking to Pay Special Assessment.**

a. All work within the scope of this Article VII must be done at the times permitted by the requirements of the Town of Liberty, County of Sullivan and State of New York in connection with such work. The work must be done so as to create the least amount of disturbance to the quiet enjoyment of the Property.

b. The individuals and entities who supply the materials and work must carry general commercial liability insurance in an amount of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, naming the Association and all Members as additional insureds, and a Builder's Risk Policy in amount and scope of coverage designated by Sponsor naming the Association as an additional insured thereunder. Further, such individuals and entities must agree to release the Association and the Members from any action, cause of action and/or claim in connection with their work, except for the gross negligence and willful misconduct of the Association or the Member.

c. The Owners upon whose Lot such work is being performed shall defend and hold the Association and Members harmless from and against any loss, cost, damage and expense that the Association and Members may incur in connection with such work.

**Section 14. Liability of the Sponsor.** No action taken by the Sponsor, its agents, employees, members, successors or assigns shall entitle any person to rely thereon with respect to conformity with any laws, regulations, codes or ordinances. Neither the Sponsor, its agents, employees, members, successors or assigns shall be liable to anyone submitting plans to them for approval or to any disapproval thereof, including without limitation, mistakes in judgment, negligence or nonfeasance. Every person or other entity submitting plans to the Sponsor agrees, by submission of such plans, that no action or suit will be brought against the Sponsor or the Association (or any member thereof) in connection with such submission.

**Section 15. Architectural Compliance Certificate.** Upon written request of any Owner (or any prospective Owner, Permitted Mortgagee or title insurer) of a Lot, the Sponsor shall, issue and furnish to the person or entity making the request a certificate in writing ("Architectural Compliance Certificate") stating, as of the date of such Certificate, whether or not the Lot, or any improvement thereon, violates any of the provisions of the Declaration pertaining to appearance, design, construction or maintenance and describing such violations, if any. After the transfer of the last Lot that is subject to the provisions of this Declaration, the Board of Directors may impose a reasonable charge for the issuance of such Architectural Compliance Certificate.

**Section 16. Restrictions on Change of Architectural Controls, Rules and Regulations.** Any changes of or modifications to the controls set forth in this Article VII and the Use Restrictions set forth in Article VIII hereinafter and any other rules and regulations, shall be made at the sole discretion of the Sponsor until the Final Sale Date. Thereafter, the controls set forth in this Article VII and the Use Restrictions set forth in Article VIII hereinafter and any other rules or regulations shall not by act or omission be changed, waived or abandoned, unless consented to in writing by not less than two-thirds (2/3) of the total votes of all Tier I Members voting in person or by proxy, written notice of which change shall be sent to all Members at least thirty (30) days in advance of the date or initial date set for voting thereon and shall set forth the purpose of the vote. This provision shall not apply to rules enacted pursuant to Section 9 of this Article VII.

## **ARTICLE VIII. USE OF PROPERTY – GENERAL COVENANTS AND RESTRICTIONS**

**Section 1. Use Restrictions.** The use of a Lot and/or Home by a Member or other occupant shall be subject to the rules, regulations and provisions of this Declaration, the By-Laws and any rules and regulations of the Association as they may be added to or promulgated from time to time by the Board of Directors and the

following covenants and restrictions:

(a) Each Lot is restricted to the Member's use shall be maintained in good repair and overall appearance, including but not limited to: the regular maintenance of any landscaping contained on such Lot, the pruning and trimming of all trees and shrubbery so that the same do not encroach upon adjoining Lots and are not obstructive of views or unattractive in appearance, and the repair and painting (or other appropriate external care) of all improvements. This provision is subject to any covenant restricting trimming or removal of growing plants and trees encumbering the Property.

(b) Occupancy of the Lots shall be restricted to single family occupancy which shall be defined as residential occupancy by one or more persons but no more than four (4) unrelated by blood, marriage or legal adoption. Rental of the Lot to any person shall be in accordance with such single family occupancy. No commercial or industrial uses shall be permitted.

(c) Any Lot Owner who mortgages or sells his or her Home or Lot shall immediately notify the Board of Directors providing the name and address of his or her mortgagee or new Home Owner.

(d) The Board of Directors shall, at the request of the mortgagee of the Home, report any delinquent Common Maintenance Charges or other Assessments due from the Owner of such Home or Lot.

(e) No nuisances shall be allowed upon The Property nor shall any use or practice be allowed which is a source of annoyance to residents or which interferes with the peaceful possession and proper use of any of The Property or Common Area by others.

(f) No improper, offensive or unlawful or immoral use shall be made of The Property nor any part thereof, and all valid laws, zoning ordinances, the regulations of all governmental bodies having jurisdiction thereof, shall be observed.

(g) No boats, boat trailers, habitable vehicles of any nature, mobile homes, trailers, trucks, equipment, commercial vehicles, unlicensed or derelict vehicles, or any other similar property shall be parked or stored within the Property unless parked or stored inside a garage or Home or adequately screened from the road, neighboring Lots and Common Area.

(h) Regulations promulgated by the Board of Directors concerning the use of The Property shall be observed by the Members.

(i) The Common Maintenance Charges shall be paid when due.

(j) No animals or reptiles of any kind shall be raised, bred, or kept in or about any Home and/or Lot or in the Common Area of the Association, except that dogs, cats or other common household pets, may be kept in Homes and on the Lots,

subject to the rules and regulations adopted by the Board of Directors, including those prohibiting any animals being kept or maintained for any commercial purposes; and provided further that any such pet causing or creating a nuisance or unreasonable disturbance or noise shall be permanently removed from the Property upon five (5) days written notice from the Board of Directors. All dogs, cats, and other pets must be leashed and shall not be permitted to run loose. Lot Owners shall be responsible for picking up and disposing of their pet's waste and for any damage caused by their pets to the Common Area.

(k) No sign of any character or kind shall be displayed or placed upon any part of any Lot without the prior approval of the Board of Directors, except: owner's name signs and street number signs. This restriction shall not apply to the Sponsor prior to the sale of the respective Lots by the Sponsor or by Sponsor's successors or assigns.

(l) Modular homes and prefabricated homes are not permitted.

(m) No fence, gate or mailbox shall be erected on The Property without the prior written consent of the Board of Directors.

(n) No Lot Owner shall move, remove, add or otherwise change the landscaping on the Common Area of the Association, if any, without the consent of the Board of Directors or any Architectural Committee.

(o) All Lot Owners shall adhere to the Architectural Control provisions as provided for in Article VII of the Declaration of Covenants and Restrictions and Article XIV of the By-Laws of the Association.

(p) Lots shall not be subdivided, sold or conveyed, except as a whole.

(q) No person shall park an automobile, boat, trailer, off-track vehicle, camper, bus, truck, snowmobile or other commercial or recreational vehicle (collectively "Vehicles") on the Common Area of the Association. Any person parking a Vehicle illegally shall be subject to having their Vehicle towed or the imposition of a fine by the Board of Directors, or both. In the event a Vehicle is towed, all costs associated with the removal of the Vehicle shall be the responsibility of the owner of the Vehicle and the Association shall not be held responsible for any damage to the Vehicle.

(r) No person shall be permitted to use the Common Area, except in accordance with the rules and regulations established by the Association's Board of Directors.

(s) Any part of the Recreation Area may be rented to a Lot Owner subject to any rules, regulations and costs that may be imposed by the Board of Directors. The Board of Directors may require a security deposit and adequate insurance for any damage that may be incurred as a result of the use of the Recreation Area. The Board of Directors is not required to rent any portion of the Recreation Area.



(t) No Lot Owner shall make or permit any disturbing noises in or around any Lot and/or Home or do or permit anything to be done therein, which will interfere with the rights, comforts or conveniences of other Lot Owners.

(u) The Common Area shall not be obstructed, littered, defaced or misused in any manner.

(v) It is prohibited to hang garments, rugs, etc., or to string clothes lines on any portion of the Home, Lot, or Common Area, except in areas of the Lot that are not visible from any location outside the Lot.

(w) Every Member shall be liable for any and all damage to the Common Area and the property of the Association, which shall be caused by said Member, its permitted occupants of Homes, their respective family members, tenants, licensees and guests and such other person for whose conduct the Member is legally responsible.

(x) No alcoholic beverages may be sold in any of the Lots and/or Homes.

(y) Nothing shall be done or kept on the Association Property which will increase the rate of insurance of the Common Area or contents thereof without the prior written consent of the Board. No Member shall permit anything to be done or kept on The Property which will result in the cancellation of insurance on the Common Area or which would be in violation of any law.

(z) The agents of the Board of Directors or the Managing Agent, and any contractor or workman authorized by the Board of Directors or the managing agent, may enter any Home or Lot at any reasonable hour of the day for the purpose of performing any work authorized pursuant to the Declaration and By-Laws of the Association.

(aa) Lots in this subdivision shall be residential lots, and each Lot shall contain only one Home and, if desired no more than one (1) guesthouse.

(bb) Each Lot Owner shall provide space for parking a minimum of three (3) vehicles off the street prior to the occupancy of any dwelling constructed on said Lot in accordance with reasonable standards established by the Sponsor.

(cc) Except to the extent that the applicable utility company shall be obligated to maintain and repair its lines, each Owner shall maintain and keep in good repair any and all lines, wires, pipes, conduits, cable lines, sewer drainage lines, street, road, driveway or walkway which may, from time to time, run through or under its Lot. All utility lines shall be above ground.

(dd) Each Lot Owner shall provide a screened area not generally visible from the road, other Lots or the Common Area to serve as a service area and an area for the storage of garbage receptacles and fuel tanks. Plans for such fence or screened area delineating the size, design, texture, appearance and location must

be approved by the Sponsor prior to construction. No lumber, metals, bulk materials, refuse or trash shall be kept in, stored or allowed to accumulate on any Lot. Trash, garbage and other waste shall be picked up and carried away on a regular and recurring basis.

(ee) No discharge of guns, ammunition, fireworks or explosives is permitted at any time on any Lot or Common Area.

(ff) Without the prior written consent of the Sponsor, no building, antenna or other structure may be constructed on any Lot so that any portion thereof would extend above the lower height of two (2) stories (plus normal attic space) or elevation 36 feet. All such buildings, antennas to other structures, if permitted, shall be attached to and constitute an integral part of the Home. Dish antennas are prohibited in all events unless so located as to be concealed from view of all neighboring and nearby Lots and residences.

(gg) Fences shall not be constructed anywhere on the Property unless (1) they are reasonably necessary for the health and safety of the Owners and other occupants, and (2) the prior written approval of the Sponsor has been obtained with respect to the location, finish and height of any such fence. Without limiting the foregoing, fences shall be limited to a height of four feet above natural grade.

(hh) All swimming pools shall be fenced in accordance with the provisions hereof, and any applicable ordinance, rule or code or the Town of Liberty, County of Sullivan and State of New York. If this paragraph and any applicable ordinance, rule or code are inconsistent, the ordinance, rule or code shall prevail.

(ii) In order to preserve its scenic and natural beauty and wildlife, the Property shall also be subject to the following restrictions: (a) a forested/landscape buffer of at least 150 feet will be maintained between the lake shoreline and any development on Lots 8-13 and only hand clearing of vegetation no greater than three inches in diameter at breast height in an area no greater than eight feet in width shall be permitted; (b) a forested/landscape buffer of at least 100 feet will be maintained between the lake shoreline and any development on Lots 3-7 and only hand clearing of vegetation no greater than three inches in diameter at breast height and only to create a walking path not greater than eight feet in width shall be permitted; and (c) for all Lots, no trees measuring four (4) inches or more in diameter at a point two (2) feet above ground level may be removed without the written approval of the Sponsor, unless located on the foot print for the dwelling or an accessory building, or within thirty (30) feet of the dwelling or accessory building.

(jj) The Board of Directors or the Managing Agent may retain a pass-key to each Home for the purpose of performing any work authorized pursuant to the Declaration and By-Laws of the Association. The Lot Owner shall not alter any lock on any door leading to his or her Home without the written consent of the Board of Directors or the Managing Agent. If such consent is given, the Board of Directors or the Managing Agent shall be provided with a key.

(kk) If any key or keys are entrusted by a Home Owner or occupant or by their agent, servant, employees, licensee or visitor to any employee of the Board of Directors, whether for such Home or an automobile or other time of personal property, the acceptance of the key shall be at the sole risk of such Lot Owner or occupant, and the Board of Directors shall not be liable for injury, loss or damage of any nature whatsoever directly or indirectly resulting therefrom or connected therewith.

(ll) Planting of flowers, shrubbery, trees, grasses, tubers or vegetables by an Owner is absolutely prohibited in or on any Common Area of the Association.

(mm) Declarant shall have the right to display signs for promotional, sales, exhibit and administrative purposes upon any portion of the Common Area or upon any Unsold Lot until the last Unsold Lot within The Property is sold and conveyed. Declarant shall have the right, the foregoing notwithstanding, to place permanent signs on Lots of its choice, at sites chosen by Declarant. Declarant shall also have the right to install fencing and walls on the Homes at sites chosen by Declarant. No Home Owner (other than Declarant) or tenant or other person on the premises shall remove, alter, change, interfere with or tamper with, in any way, said signs, walls or fences, which shall be maintained in good condition by the Association and its Board of Directors.

(nn) The finished grade of any parcel shall be such as to conform with any drainage plan prepared by the Sponsor and all drainage swales or ditches required by the drainage plan shall be kept free and clear of spoil, debris or other material by the Owner and any landscaping installed by the Owner shall not interfere with or alter the drainage plan in any way.

(oo) Prior to occupancy of any Home or other structure constructed on a Lot, a sewage disposal system of a standard design and in a location approved in writing by the Sponsor shall be installed by the Owner and such system shall comply with the requirements of all local and state sanitary codes. The effluent from such disposal system shall not be permitted to discharge into any storm water sewer, open ditch, drain, stream, pond or lake, but shall be disposed of in such manner as may be approved by the Declarant.

(pp) No excavation shall be made on any Lot except for the purpose of approved building thereon and not until the time when building operations are commenced.

(qq) Use of the Lake shall be limited to swimming, fishing and boating. Boating shall be limited to craft of wind, manual or small electric power and subject to all local, state and federal rules and regulations concerning same. No petroleum powered craft shall be permitted. The Declarant reserves unto itself, its successors and assigns, the right to make all reasonable rules and regulations in connection with the use and control of the Lake and to lower the water of the Lake for maintenance purposes. The rights of the Owners of Lakefront Lots and those

subject to this Declaration, to use the Lake, as aforesaid, shall be in common with the Declarant and all Lot Owners, the owners of the Phase II Property and the owners of Adjacent Property, and others pursuant to covenants, restrictions, agreements and easements of record. The Owners of Lakefront Lots may erect private boat docks, upon prior written approval of the Board of Directors pursuant to Article VII, but only of the "floating" or "pontoon" type and they may not extend farther than 30 feet from the shoreline. Prior to any Owner of a lakefront Lot, any owner of all or a portion of the Phase II Property or the owner of Adjacent Property placing a boat into the waters of the Lake, said owner shall obtain and maintain insurance as is required from time to time by the Board, naming the Association and its members as additional insureds thereon, so as to insure against damage that may be caused by the boat, the use of the boat and so as to insure any boat dock installed on the property as well as liability insurance with respect to personal injury in connection with such construction or use.

(rr) All persons using the interior roadways, Recreation Areas and other Common Area in the Development do so at their own risk and responsibility; and the Sponsor, its successors and assigns, shall in no way be held liable for any accident, damage or other costs arising from or in the course of the use of such interior roads, Recreation Area or other Common Area, and the Association and members hereby indemnify and save harmless the Declarant, its successors and assigns, from and against any and all claims, losses, damages or injuries arising thereby.

(ss) The Board shall have the power to amend these use restrictions and to make such additional rules and regulations as may be necessary to carry out the intent of these use restrictions without obtaining the approval, consent or signature of the Members of the Association and shall have the right to bring lawsuits to enforce the Rules and Regulations promulgated by it.

(tt) Home Owners will faithfully observe the procedures established from time to time by the Board of Directors or the Managing Agent with respect to services provided and management of the Community.

(uu) Subject to Article VII, Section 16, any consent or approval given under these Rules and Regulations may be added to, amended or repealed at any time by resolution of the Board of Directors.

(vv) For any of the Lots and any portion of the Phase II Property containing portions of fresh water or wetlands, the Deed for such Lot shall contain a Notice as hereinafter set forth:

This property contains State regulated freshwater wetlands and/or regulated 100 foot adjacent area. For as long as any portion of the property described in this Deed is subject to regulation under Article 24 (The Freshwater Wetlands Act) of the Environmental Conservation Law (ECL) of the State of New York, there shall be no construction, grading, filling, excavating,

clearing or other regulated activity as defined by Article 24 of the Environmental Conservation Law on this property within the freshwater wetland area or 100 foot adjacent area at any time without having first secured the necessary permission and permit required pursuant to the above noted Article 24 from the NYS Department of Environmental Conservation (DEC). This restriction shall bind the Grantees, their successors and assigns and shall be expressly set forth in all subsequent deeds to this property.

**Section 2. Violation of Use Restrictions.** Upon receipt by the President of the Board of Directors or by the Managing Agent, of a signed written complaint alleging violation of any of the By-Laws or Rules as herein established or hereafter established or adopted by the Board of Directors, the President of the Board, or in the President's absence, the Vice President together with any two (2) members of the Board, without a formal meeting of the Board, shall make a determination as to the validity of the complaint. If in their determination the complaint is valid and justified the Managing Agent or Board member, if no agent, shall be directed to send written notice of such violation to the violator. If the violation is not corrected or eliminated within a period of five (5) days from the date of receipt of such notice another notice will be sent levying a fine of up to \$100.00 upon the violator. Such fine is to be considered as an additional Maintenance Charge to the account of the violator and shall be treated as such regarding late penalties and a lien upon the Property as elsewhere provided. If after imposition of a fine, the violation is not corrected or eliminated within five (5) days, the Board of Directors may assess additional fines of up to \$100.00 each after serving written notice upon the violator as provided for above. If the violation results in loss of or damage to property classified as the Common Area of the Association, the Board of Directors shall direct the Managing Agent or a member of the Board, if there is no Managing Agent, to have said loss or damage repaired or replaced, and the actual cost of said repair or replacement shall be assessed to said violator as an additional Maintenance Charge.

Any costs incurred by the Board of Directors to remedy or cure any violation of the Declaration, By-Laws or the Rules or Regulations of the Association as herein or hereafter established, shall be an additional Maintenance Charge charged to the violator in addition to the fine(s) levied upon the violator. Fines may be levied against a Home Owner's tenant, if the tenant is in violation of the Declaration, By-Laws or the Rules or Regulations of the Association and the Home Owner shall be jointly and severally liable with his or her tenant for the payment of same. In the event the Association institutes legal action for the collection of any fines or the enforcement of any of the provisions of the Declaration, By-Laws and/or rules and regulations of the Association, then the defendant shall be responsible for payment of all costs in connection therewith including reasonable attorney's fees of the Association plus interest and costs of suit.

The foregoing provisions shall not apply to Declarant unless required: (a) to

comply with applicable municipal laws or regulations, or (b) to remedy any municipal notice of violation.

An Owner, the owners of all or any portion of the Phase II Property and/or an owner of Adjacent Property shall at all times be and remain responsible for the acts and/or omissions of his or her permitted occupants and their family members, guests or invitees.

## **ARTICLE IX. MAINTENANCE AND OTHER OBLIGATIONS**

**Section 1. Maintenance Obligations.** The Association's maintenance obligations shall include but not be limited to the following:

- a. Maintenance and replacement, as necessary to the natural and landscaped areas located outside the boundary of each individual Lot;
- b. Maintenance, repair of any damage and any required replacement to the private interior roads;
- c. Maintenance, repair of any damage and any required replacement to the Common Area;
- d. Snow removal and general cleaning of the private interior roads;
- e. Snow removal and general cleaning of all Common Area parking spaces;
- f. Maintenance, repair of any damage and any required replacement of all utilities located on or in the Common Area which are not maintained by the respective utility company;
- g. Maintenance, repair and replacement to the motorized gate for entrance to the Community;
- h. Maintenance and repair of the dry fire hydrants.

Each Lot Owner will be solely responsible for the maintenance, repair and replacement of all areas of the Lot Owner's Lot/ Home, including but not limited to the following:

- a. All maintenance, repair and replacement to all interior and exterior portions of the Home and any other structures constructed on the Lot, including, but not limited to any accessory buildings, balcony, deck, patio, the garage, all windows, skylights, the roof and the exterior facade;
- b. All parking facilities located on or within their Lot;

- c. Any pathway or walkway leading to each Home or other structure on the Lot;
- d. Utilities located on each individual Lot and in or on each Home that service the respective Lot or Home;
- e. All curbs on or abutting a Home Owner's Lot;
- f. Any retaining walls on or abutting a Home Owner's Lot;
- g. Individual septic system servicing the individual Home on the Lot;
- h. Lot Owner installed landscaping and improvements located on an individual Lot Owner's Lot;
- i. Individual area drains and/or drainage systems located on an individual Home Owner's Lot;
- j. All appurtenances, pipes and wires for utilities to a Home and/or other structures constructed on the Lot that service the individual Home and/or other structures on the Lot that are not maintained by the Association or the applicable utility company;
- k. All wells and water pipes and lines located in or on the interior or the exterior of each Home and Lot;
- l. All fuel tanks and pipes servicing the individual Homes and/or other structures on the Lot; and
- m. The removal of all trash and other waste from the Lot.

**Section 2. Disrepair of Lots.** In the event the Lot Owner of any Lot in The Properties shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors of the Association, including but not limited to the situation where such maintenance, repair and replacement functions are not otherwise directed by the provisions of this Declaration to be performed by the Association, upon direction of the Board of Directors, it shall have the right, through its agents and employees to enter upon the Lot upon which said Home is located and to repair, maintain and restore the Lot and the Home and any other improvements erected thereon or to take whatever legal action it may deem necessary. The cost of such maintenance, repair and replacement, including any legal fees necessary to enforce the above, shall be added to and become part of the Assessments to which such Home is subject.

**Section 3. Damages.** The Association will not be responsible for any consequential, incidental, special and/or indirect damages to the Home and other improvements or structures on the Lot caused as a result of its maintenance, repair and replacement obligations.

## ARTICLE X. INSURANCE

### Section 1. Common Area Master Policy.

a. To the extent reasonably obtainable and to the extent obtainable at a reasonable cost, and to the extent determined by the Board to be appropriate, the Board shall obtain and maintain, the following insurance: (i) workers' compensation and New York State disability benefits insurance for any employees, if applicable; (ii) fidelity insurance covering all officers, Board members, directors and employees of the Association and of the managing agent or agents who handle funds of the Association (other than Sponsor or Sponsor's representative); (iii) directors' and officers' errors and omissions insurance; (iv) comprehensive general liability insurance against claims for personal injury, death or property damage occurring upon, in or about the Association Property and in such limits as the Board may from time to time determine, covering the Board, any managing agent appointed by the Board, each Board member and each Association Member and any lessee, occupant and family member of a Member; and (v) such other insurance as the Board may determine. The premiums for all such insurance shall be a Common Expense and shall be borne by the Association.

b. Members shall not be prohibited from carrying other insurance for their own benefit, at their own expense, and the Board shall not be prohibited from carrying additional insurance, provided that any such policies shall contain waivers of subrogation, and further provided that the liability of the carriers issuing insurance obtained by the Board shall not be affected or diminished by reason of any such additional insurance carried by any Member.

c. All policies of insurance shall be written by carriers licensed to do business in the State of New York and having a rating of at least "A" in Best's Guide.

**Section 2. Restoration After Fire and Other Casualty.** In the event that the Common Area or any part thereof is damaged or destroyed by fire or other casualty the Board will arrange for the prompt repair and restoration thereof and the Board, shall disburse the net proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. If the insurance proceeds are less than sufficient to cover the cost of repairs and restoration, the deficit, will be borne equally by all Lot Owners as a Common Expense.

## ARTICLE XI. OCCUPANCY AND LEASING RESTRICTIONS

**Section 1. Occupancy Requirements.** The Homes are to be used for single family occupancy only.

**Section 2. Leasing Requirements.** Except as noted in Sections 4 and 5, every lease on every Home in the Community is subject to the following rules and regulations, regardless of whether stated in the lease:



(a) the lease must be in writing and must be provided to the Managing Agent or if no Managing Agent, to an officer or director of the Association, at least fifteen (15) days prior to its execution for approval of its content and form by the Board of Directors;

(b) the lease must be for the entire Home;

(c) the lease must be for a minimum period of not less than one (1) month and each Renewal thereof must be for not less than one (1) additional month;

(d) the use of the premises by a lessee is subject to the Declaration, the By-Laws and the rules and regulations of the Development;

(e) within two (2) days of occupancy by the tenant, the name and telephone number of the tenant, together with a clear and complete copy of the lease, must be furnished to the Managing Agent or if no Managing Agent to an officer or director of the Association;

(f) the Home cannot be used as a motel or hotel or otherwise for transient tenants;

(g) if any Home Owner (landlord) or tenant is in violation of any of the provisions of the Declaration or By-Laws, or both, including any rules and regulations, the Association may bring an action in its own name or in the name of the Home Owner, or both, to have the tenant evicted or to recover damages, or both. If the court finds that the tenant is or has violated any of the provisions of the Declaration, the By-Laws of the Association or the rules and regulations, the court may find the tenant guilty of forcible detainer despite the fact that the Home Owner is not a party to the action and/or that the tenant is not otherwise in violation of tenant's lease or other rental agreements with the Home Owner. For purposes of granting the forcible detainer against the tenant, the court may consider the Home Owner a person in whose name a contract (the lease or rental agreement) was made for the benefit of another (the Association).

The remedy provided by this subsection is not exclusive and is in addition to any other remedy or remedies available to the Association. If permitted by present or future law, the Association may recover all of its costs, including court costs and reasonable attorney's fees, and these costs shall be a continuing lien on the Home that shall bind the home in the hands of the then Home Owner and the Home Owner's successors and assigns. The Association shall give the tenant and the Home Owner written notice of the nature of the violation of the rules, and five (5) business days from the mailing of the notice in which to cure the violation before the Association may file for eviction.

**Section 3. Tenant Bound by Declaration.** By becoming a tenant, each tenant agrees to be bound by the Declaration, By-Laws and the other rules and regulations of the Association, and recognizes and accepts the right of the power of the Association to evict the tenant for any violation by the tenant of the Declaration,

the By-Laws and the other rules and regulations of the Association.

**Section 4. Costs for Violations.** In the event it becomes necessary for Declarant to enforce any provisions of this Declaration, the By-Laws, Rules or Regulations against the Lot Owner, for violations of the terms thereof by a tenant, the Home Owner will be required to reimburse Declarant or the Board for any costs incurred in connection herewith, including attorneys fees. The Lot Owner shall at all times be and remain responsible for his Tenant's actions or omissions.

**Section 5. Sponsor.** The terms of this Article XI shall not be applicable to the Declarant.

## **ARTICLE XII. GENERAL PROVISIONS**

**Section 1. Beneficiaries of Easements, Rights and Privileges.** The easements, licenses, rights or privileges established, created and granted by this Declaration shall be for the benefit of and restricted solely to, the Sponsor, the Association the Lot Owners, and the owners of the Phase II Property and the owners of the Adjacent Property; and such owners may also grant the benefit of such easement, license, right or privilege to their guests, tenants and their immediate families for the duration of their visits, subject in the case of the Common Area to the rules and regulations of the Board of Directors, but the same is not intended nor shall it be construed as creating any rights in or for the benefit of the general public.

**Section 2. Duration and Amendment.** The covenants and restrictions of this Declaration shall run with, and bind the land, and shall inure to the benefit of, and be enforceable by the Association, any member, or the owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, until December 31, 2080, unless otherwise expressly limited herein, after which time, said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by sixty-six and two-thirds (66-2/3) of the Tier 1 Members, then subject to the Declaration, has been recorded, agreeing to change or remove said covenants and restrictions in whole or in part. Notwithstanding the foregoing, the easements, licenses, rights and privileges established and created with respect to the Property herein shall be perpetual, run with the land, and shall survive any destruction, reconstruction and relocation of any physical structure, unless said provision is abrogated by the unanimous written consent of all the Tier 1 Members.

Unless specifically prohibited or different requirements are provided herein, this Declaration may be amended by an instrument signed by Tier 1 Members holding not less than sixty-six and two-thirds (66 2/3) of the Tier I Members then subject to the Declaration. Any amendment must be properly recorded to be effective.

Notwithstanding any provision contained herein to the contrary, no amendment, modification, addition or deletion of, to or from this Declaration, the By-

Laws or any rules and regulations shall be effective in any way against Declarant or its designee or any Unsold Home, as long as the Sponsor owns one (1) or more Unsold Lots on The Property, unless Sponsor has given its prior written consent thereto.

Sponsor hereby reserves the right to amend, modify, add to or delete from this Declaration at any time without the requirement of obtaining the approval, consent or signature of the Board or any Tier I Member for the purpose of making any technical corrections or additions or any other changes that do not materially and adversely affect the Home Owners and their respective Permitted Mortgagees. Such amendment, modification, addition, or deletion of, to or from this Declaration, duly executed, in form for recording, shall be recorded by Sponsor against the Property and theretofore subject to this Declaration.

**Section 3. Disposition of Assets Upon Dissolution of Association.**

Upon dissolution of the Association, its real and personal assets, including the Common Area, shall be dedicated to an appropriate public agency or utility to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. In the event such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. No such disposition of the Association properties shall be effective to divest or diminish any right or title to any Member vested in him under the licenses, covenants and easements of this Declaration, or under any subsequently recorded covenants, deeds or other documents applicable to the Properties, except as may be otherwise provided in this Declaration or said covenants, deeds or other documents, as the case may be, nor shall any other party under any such deeds, covenants or other documents be deprived of any rights hereunder on account of such disposition.

**Section 4. Notices.** Any notice required to be sent to any member under the provisions of this Declaration shall be deemed to have been properly sent when mailed, to the last known address of the person who appears as the member on the records of the Association at the time of such mailing.

**Section 5. Administration.** The administration of the Association shall be in accordance with the provisions of the Association By-Laws which are made a part of this Declaration and attached hereto as Exhibit "B" to this Declaration.

**Section 6. Severability.** Invalidation of any of the covenants, limitations or provisions of this Declaration by judgment or court order shall in no way affect any of the remaining provisions hereof and the same shall continue in full force and effect.

**Section 7. Special Rights of Declarant.** Notwithstanding anything to the contrary contained herein until the Final Sale Date Declarant and any designee of Declarant shall have the right, without requiring the consent of either the Association

or any other Member(s), and without charge or limitation, to:

(a) have its employees, contractors, subcontractors and sales agents present on The Property and in or on the Unsold Homes or Lots;

(b) erect and maintain signs and other promotional materials (including, without limitation, "For Sale", and "For Rent" signs), in connection with the promotion, sale, leasing, management, or operation of the Unsold Homes or Lots;

(c) use any one or more Lots;

(i) for the construction of homes or model homes;

(ii) for offices for the promotion, sale, rental, management and/or operation of the Unsold Homes or Lots,

(iii) for offices in connection with any installation, construction, modification, alteration, renovation, maintenance, repair, restoration, replacement, or change being performed, or to be performed, by, or on behalf of, Sponsor with respect to the Common Area and/or the Lots or Unsold Lots;

(iv) for any other lawful purpose; and

(d) do and cause to be done all of the things that are necessary, desirable or appropriate (including, without limitation, the use of the Common Area and the Unsold Lots) for the purpose of:

(i) the promotion, sale, rental, management and/or operation of the Unsold Homes or Lots;

(ii) the performance and completion of installation, construction, modification, alteration, renovation, maintenance, repair, restoration, replacement, or change being performed, or to be performed, by, or on behalf of, Declarant with respect to the Common Area and/or

(iii) the exercise performance and discharge of Declarant's other rights and obligations under this Declaration, the By-Laws or the rules and regulations. In no event, however, shall Declarant or such designee be entitled to use any portion of the Common Area in such a manner as will unreasonably interfere with the use of the same or of any Home for its permitted purposes.

(e) use the Recreation Area or portion thereof as;

(i) offices for the promotion, sale, rental, management and/or operation of the Unsold Lots;

- (ii) offices in connection with any installation, construction, modification, alteration, renovation, maintenance, repair, restoration, replacement, or change being performed, or to be performed, by, or on behalf of, Declarant with respect to the Common Area and/or the Homes or Unsold Lots; and/or
- (iii) for any other purpose.

In no event, however, shall Declarant or such designee be entitled to use any portion of the Common Area in such a manner as will unreasonably interfere with the use of the same or of any Lot for its permitted purposes.

The provisions of this Article XII Section 7 may not be amended without the written consent of the Declarant, or its successors or assigns.

**AJM@Swan Lake Estate LLC**  
**By: A.J.M Associates, Inc., a member**

By: \_\_\_\_\_  
Anthony J. Murolo, President

STATE OF NEW YORK    )  
  ) ss.:  
COUNTY OF SUFFOLK    )

On the \_\_\_\_ day of \_\_\_\_\_ in the year 2006, before me personally appeared Anthony J. Murolo, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

APPENDIX D  
CORRESPONDENCE





05104  
CF



# United States Department of the Interior



## FISH AND WILDLIFE SERVICE

3817 Luker Road  
Cortland, NY 13045

June 20, 2007

Mr. Chris Robbins  
Tim Miller Associates, Inc.  
10 North Street  
Cold Spring, NY 10516

Dear Mr. Robbins:

This is in regards to the proposed Kelly Bridge Road residential subdivisions (Swan Lake Estates) in the Town of Liberty, Sullivan County, New York.

The U.S. Fish and Wildlife Service (Service) previously provided comments on a proposed, initially larger project (Kelly Bridge Road and Lake Marie Road subdivisions) in our October 6, 2005, letter to Mr. Anthony J. Murolo, of AJM at Swan Lake, LLC. In that letter, we discussed the occurrence of the Federally- and State-listed (threatened) bald eagle (*Haliaeetus leucocephalus*) within the vicinity of the proposed project area. We also discussed prohibitions under the Endangered Species Act (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) and requested additional information to determine whether “take” of bald eagles from the proposed project was likely.

Since that time, we have reviewed the Draft Environmental Impact Statement (Tim Miller Associates, Inc. 2006), additional materials forwarded by the New York State Department of Environmental Conservation (NYSDEC) pursuant to the State Environmental Quality Review Act, and letters from concerned citizens in the area. We understand that no Federal agencies will be conducting, authorizing, or funding any part of the proposed project. We also understand that the applicant has been coordinating with the NYSDEC to develop a project that will avoid or minimize the “take” of bald eagles under New York State law.

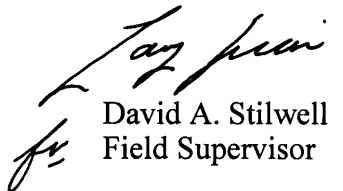
As you may be aware, on July 6, 1999, the Service proposed to remove the bald eagle from the list of threatened species under the ESA. On February 16, 2006, the Service re-opened the comment period on this proposal. Should the bald eagle be delisted, they will still receive protections under the Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 668-668d) and the Migratory Bird Treaty Act (MBTA) (40 Stat. 755; 16 U.S.C. 703-712). In preparation of delisting, on June 5, 2007, the Service announced the availability of National Bald Eagle Management Guidelines (Guidelines) to provide guidance to avoid disturbing (a form of “take” under the BGEPA) bald eagles post-delisting. The Guidelines are available on our website for your review.\* As a reminder, all protections under the ESA remain in effect until the time of delisting.

We reviewed the February 23, 2007, written comments prepared by Hudsonia Ltd. and agree with many of their statements regarding the measures designed to avoid impacts to nesting eagles. For example, the proposed buffer zones around the nests should be clearly demarcated for easy understanding by the public. We also agree that construction activities that can be seen/heard by nesting eagles should be not be conducted during the nesting season (January 1 to September 1). Finally, we agree that prohibiting loud activities (*e.g.*, snowmobiles) near nests during the early nesting window will help avoid disturbance of eagles. We understand that Swan Lakes Estates, LLC, has recently revised their bald eagle avoidance plan. We request a copy of the most current plan for a final review of the potential for “take” under the ESA and BGEPA.

Except for the bald eagle and occasional transient individuals, no other Federally-listed or proposed endangered or threatened species under our jurisdiction are known to exist in the project impact area. In addition, no habitat in the project impact area is currently designated or proposed “critical habitat” in accordance with provisions of the ESA. Should project plans change, or if additional information on listed or proposed species or critical habitat becomes available, this determination may be reconsidered. The most recent compilation of Federally-listed and proposed endangered and threatened species in New York is available for your information.\* Until the proposed project is complete, we recommend that you check our website every 90 days from the date of this letter to ensure that listed species presence/absence information for the proposed project is current.\*

Thank you for your time. If you require additional information please contact Robyn Niver at (607) 753-9334. Future correspondence with us on this project should reference project file 70751.

Sincerely,



David A. Stilwell  
Field Supervisor

\*Additional information referred to above may be found on our website at:  
<http://www.fws.gov/northeast/nyfo/es/section7.htm>

Reference:

Tim Miller Associates, Inc. November 30, 2006. Draft Environmental Impact Statement Swan Lake Estates Kelly Bridge Road Subdivision, Town of Liberty, Sullivan County, New York. Tim Miller Associates, Inc., Cold Spring, NY.

cc: AJM at Swan Lake, LLC, Huntington, NY (Attn: T. Murolo)  
Town of Liberty, NY (Attn: Planning Board)  
NYSDEC, New Paltz, NY (Attn: S. Joule/S. Sheeley)  
NYSDEC, Albany, NY (Endangered Species; Attn: P. Nye)  
COE, New York, NY

APPENDIX E  
STORMWATER POLLUTION  
PREVENTION PLAN



APPENDIX F  
NYSDEC SIGNED WETLAND MAP



APPENDIX G

DETAILED SITE PLANS A AND B  
AND SEPTIC DESIGN DATA SHEET





APPENDIX H  
ORDER OF CONSENT



**New York State Department of Environmental Conservation  
Division of Legal Affairs, Region 3**

21 South Putt Corners Road, New Paltz, New York 12561-1620

Phone: (845) 256-3000 • FAX: (845) 255-3042

Website: www.dec.state.ny.us

Cert. Mail/RRR # 7004 2510 0000 7793 3202



Denise M. Sheehan  
Acting  
Commissioner

September 26, 2005

ANTHONY MUROLO, MEMBER  
AJM AT SWAN LAKE ESTATES LLC  
11 WENDOVER DRIVE  
HUNTINGTON NY 11743

RE: AJM at Swan Lake Estates -Kelly Bridge  
R3-20050621-53  
Order on Consent executed on September 15, 2005

Dear Mr. Murolo:

Served upon you herewith, as an authorized representative of AJM at Swan Lake Estates LLC, is a photocopy of the fully executed Consent Order.

This letter will also acknowledge that AJM at Swan Lake Estates LLC has paid a civil penalty in the amount of \$12,500.00 as required by the Order. A receipt is enclosed.

Thank you for your attention to this matter.

Sincerely,

STEVEN GOVERMAN  
Assistant Regional Attorney

Enclosures

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

X-----X

In the Matter of the Alleged Violation of  
Article 17 of the New York State Environmental  
Conservation Law ("ECL"), by:

ORDER ON CONSENT  
CASE NO. R3-20050621-53

AJM at Swan Lake Estates, LLC,

Respondents

(Sullivan County)

X-----X

WHEREAS:

1. The New York State Department of Environmental Conservation ("DEC" or "Department") is responsible for the administration and enforcement of law and regulation pursuant to Article 17 of the New York State Environmental Conservation Law.

2. On June 6, 2005, Department of Environmental Conservation Staff observed a discharge of turbid water in the vicinity of Kelly Bridge, located at Kelly Bridge Road, Town of Liberty, New York in contravention of applicable water quality standards. Additionally, a search of DEC records indicates that AJM at Swan Lake Estates, LLC had not obtained coverage under the GP-02-01 general stormwater permit prior to commencing construction on the roadway comprising a portion of the Swan Lake Estates project. DEC alleges such activities are in violation of ECL Article 17-0803 Discharging without a SPDES Permit and Article 17-0501 Violation of Water Quality Standards-- visual contrast to receiving water

3. Respondent alleges that the turbidity to the receiving water noted by DEC Staff was produced by pre-existing ruts in exposed earth in the shoulder of Kelley Bridge Road, and was not due to the work conducted by Respondent, and that Respondent had placed and maintained erosion control measures in the area of work. Additionally Respondent alleges that Respondent's engineer mailed and Notice of Intent to gain coverage under the general stormwater permit prior to DEC commencing construction, but admits that it did not receive acknowledgment that such coverage had been granted prior to commencing work.

4. Respondent has agreed to cease construction of the project until coverage has been gained under general stormwater permit GP-02-01, and to obtain any other DEC permits which may be required for the project, prior to recommencing construction.

3. Respondent states that it wishes to come into compliance with applicable state

environmental laws and regulations, and, without admitting violation of ECL Article 17 as regards turbidity, affirmatively waives the right to a public hearing in this matter in the manner provided by 6 NYCRR Part 622, and consents to the entering and issuing of this Order, and agrees to be bound by the terms and conditions of this Order.

NOW, having considered this matter and being duly advised, it is ORDERED that:

I. Respondent shall be liable to pay a civil penalty in the amount of \$15,000.00, of which \$12,500.00 is payable and must be submitted with this Order bearing the signature of Respondent; the remaining amount, \$2,500.00, is suspended provided Respondent strictly adheres to the terms and conditions of this Order, including the Compliance Schedule attached hereto.

II. This Order shall not become effective until it is signed by the Regional Director on behalf of the Commissioner.

III. This Order may be changed only by written order of the Commissioner or the Commissioner's designee;

IV. This Order shall be deemed binding on Respondent, any successors and assigns and all persons, firms and corporations acting under or for Respondent, including, but not limited to those who may carry on any or all of the operations now being conducted by Respondents, whether at the present location or at any other in this State.

V. Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent and any successors (including successors in title) and assigns.

Dated: New Paltz, New York

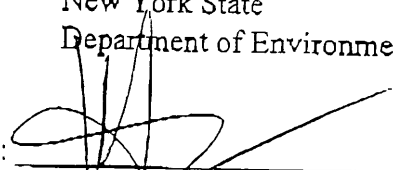
September 15, 2005

Commissioner

DENISE M. SHEEHAN Acting

New York State  
Department of Environmental Conservation

By:

  
\_\_\_\_\_  
MARC MORAN  
Regional Director

Region 3

This Order on Consent has been reviewed and approved by the Regional Attorney as to form.

By:   
\_\_\_\_\_  
VINCENT ALTIERI  
Regional Attorney

Date: 9/5 2005

**AJM at Swan Lake Estates LLC  
CASE NO. R3-20050621-53**

**COMPLIANCE SCHEDULE**

**I. GENERAL REQUIREMENTS:**

Immediately: Respondent(s) shall cease and desist from any and all future violations of the New York State Environmental Conservation Law and the rules and regulations enacted pursuant thereto.

Respondent(s) shall certify completion of the work required under this schedule, to the Department within five (5) days of its completion.

All technical submittals to the Department required under this Order shall be made by Respondent(s) as follows:

Three copies to Janet Swentusky, Region Three, New York State  
Department of Environmental Conservation, 21 South Putt Corners  
Road, New Paltz, New York 12561.

**II. SPECIFIC REQUIREMENTS:**

Within (5) days from the date of the Execution of this Order	Obtain coverage under GP-02-01 & send a copy of the Notice of Intent to this office
Prior to recommencing construction of the project	Obtain all DEC Permits
Within (30) days from the date of the Execution of this Order	Implement sediment & erosion control measures which include; properly installing silt fence, stabilizing construction entrances, stabilizing stockpiled soil, mulching/seeding exposed soils, stabilizing roadways with gravel/rock, construction and stabilizing of temporary retention traps/basins and diversionary swales.





32-01-3 (6/90)-101



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

NUMBER  
511859

RECEIPT

Region Number 3

Date 9/12/05

Location New Paltz Division Legal Affairs

Received of AJM @ Swan Lake Estate LLC

In the amount of Twelve thousand <sup>five hundred and</sup> no/100s/ \$ 12,500.00

For civil penalties Article 17

Case # R3-20050621-53

Cash Department Representative JJ Cutler

Check Number 1174 Title Sec'y. 1

Money Order

ORIGINAL



APPENDIX I

NEW YORK STATE DEPARTMENT  
OF HEALTH PERC TEST DATA  
SHEETS



See instructions on reverse side.  
 Development/Site: AIM @ SWAN LAKE ESTATES

(T/N/C): TOWN OF LIBERTY

County: SULLIVAN

Date: 8/27/04, 8/30/04 & 9/1/04

Tests Conducted By: L. SUTTER & R. WASSON

Test Hole No.	Test Hole Depth (inches)	Lot No.	Soil Profile	Presoaking Date & Time	Percolation Test Runs						
					Time	1	2	3	4	5	6
1A	24"	1	SEE PLAN SHEET 9	8/26 AM	END	11:00:00	11:28:30	12:06:15	12:49:15		
					BEGIN	10:43:45	11:01:00	11:29:30	12:07:30		
					RESULT	16 MIN	28 MIN	38 MIN	42 MIN		
1B	22"	1	SEE PLAN SHEET 9	8/26 AM	END	11:01:30	11:31:30	12:16:00	1:04:15		
					BEGIN	10:39:45	11:02:45	11:33:00	12:17:00		
					RESULT	22 MIN	30 MIN	43 MIN	47 MIN		
2A	14"	2	SEE PLAN SHEET 9	8/26 AM	END	9:31:30	9:40:00	9:50:45	10:07:30		
					BEGIN	9:27:00	9:32:15	9:40:45	9:52:00		
					RESULT	5 MIN	8 MIN	10 MIN	16 MIN		
2B	24"	2	SEE PLAN SHEET 9	8/26 AM	END	9:00:15	9:41:30	10:31:15	11:27:15		
					BEGIN	8:31:00	9:01:00	9:42:15	10:33:00		
					RESULT	29 MIN	40 MIN	49 MIN	54 MIN		
3A	18"	3	SEE PLAN SHEET 9	8/26 AM	END	10:39:15	11:16:15	12:00:45	12:50:15		
					BEGIN	10:15:00	10:41:30	11:17:00	12:02:00		
					RESULT	24 MIN	35 MIN	44 MIN	48 MIN		
3B	18"	3	SEE PLAN SHEET 9	8/26 AM	END	10:27:45	10:50:00	11:25:00	12:04:45	12:48:45	
					BEGIN	10:12:30	10:28:30	10:50:45	11:26:00	12:07:00	
					RESULT	15 MIN	22 MIN	34 MIN	39 MIN	42 MIN	

Begin time, end time and result in minutes for a water elevation change from 6" to 5" above the bottom of the test hole.

NEW YORK STATE DEPARTMENT OF HEALTH  
 Bureau of Community Sanitation and Food Protection

Percolation Test Data

See instructions on reverse side.  
 Development/Site: AJM @ SWAN LAKE ESTATES

(T/M/C): TOWN OF LIBERTY

County: SULLIVAN

Date: 8/27/04, 8/30/04 & 9/1/04

Tests Conducted By: L. SUTTER & R. WASSON

Test Hole No.	Test Hole Depth (inches)	Lot No.	Soil Profile	Presoaking Date & Time	Percolation Test Runs						
					Time						
					1	2	3	4	5	6	
4A	18"	4	SEE PLAN SHEET 9	8/26 AM	END	11:09:45	11:19:30	11:31:30	11:47:00	12:05:30	
					BEGIN	11:01:30	11:10:30	11:20:15	11:32:15	11:48:15	
					RESULT	8 MIN	9 MIN	11 MIN	15 MIN	17 MIN	
4B	18"	4	SEE PLAN SHEET 9	8/26 AM	END	11:16:30	11:36:00	11:58:00			
					BEGIN	11:03:30	11:17:15	11:37:00			
					RESULT	13 MIN	19 MIN	21 MIN			
5A	24"	5	SEE PLAN SHEET 9	8/26 PM	END	9:50:15	10:17:15	10:46:30	11:18:45		
					BEGIN	9:37:15	9:51:00	10:18:00	10:47:15		
					RESULT	13 MIN	26 MIN	29 MIN	32 MIN		
5B	18"	5	SEE PLAN SHEET 9	8/26 PM	END	9:48:15	10:02:00	10:18:45	10:40:00	11:04:00	
					BEGIN	9:39:15	9:49:15	10:02:45	10:19:30	10:41:45	
					RESULT	9 MIN	13 MIN	16 MIN	20 MIN	22 MIN	
6A	18"	6	SEE PLAN SHEET 9	8/26 PM	END	11:58:15	12:39:45	1:28:15	2:20:45		
					BEGIN	11:30:00	12:00:00	12:41:00	1:29:00		
					RESULT	28 MIN	40 MIN	47 MIN	52 MIN		
6B	12"	6	SEE PLAN SHEET 9	8/26 PM	END	11:47:15	12:16:30	12:47:45			
					BEGIN	11:28:00	11:48:15	12:17:15			
					RESULT	19 MIN	28 MIN	31 MIN			

Begin time, end time and result in minutes for a water elevation change from 6" to 5" above the bottom of the test hole.

DOH 1327 (1/95)

See instructions on reverse side.

Development/Site: AIM @ SWAN LAKE ESTATES

(T/M/C): TOWN OF LIBERTY

County: SULLIVAN

Date: 8/27/04, 8/30/04 & 9/1/04

Tests Conducted By: L. SUTTER & R. WASSON

Test Hole No.	Test Hole Depth (inches)	Lot No.	Soil Profile	Presoaking Date & Time	Percolation Test Runs						
					Time	1	2	3	4	5	6
7A	24"	7	SEE PLAN SHEET 9	8/26 PM	END	12:50:00	1:33:45	2:25:30			
					BEGIN	12:19:15	12:50:45	1:39:00			
					RESULT	31 MIN	43 MIN	47 MIN			
					END	12:27:45	12:38:00	12:51:30	1:08:15		
7B	24"	7	SEE PLAN SHEET 9	8/26 PM	BEGIN	12:21:30	12:28:45	12:39:00	12:52:45		
					RESULT	6 MIN	9 MIN	13 MIN	16 MIN		
					END	11:59:30	12:05:15	12:12:45	12:24:00	12:36:45	
					BEGIN	11:55:45	12:00:00	12:06:00	12:13:30	12:25:15	
8A	24"	8	SEE PLAN SHEET 9	8/26 PM	RESULT	4 MIN	5 MIN	7 MIN	11 MIN	12 MIN	
					END	12:01:15	12:08:30	12:14:45			
					BEGIN	11:57:15	12:04:00	12:09:15			
					RESULT	4 MIN	5 MIN	6 MIN			
8B	24"	8	SEE PLAN SHEET 9	8/26 PM	END	11:25:15	11:30:45	11:52:30/3"			
					BEGIN	11:21:00	11:26:30	11:31:45			
					RESULT	4 MIN	4 MIN	7 MIN/1"			
					END	11:27:30	11:34:00	11:58:45/2"			
9A	24"	9	SEE PLAN SHEET 9	8/26 PM	BEGIN	11:22:45	11:28:00	11:34:45			
					RESULT	5 MIN	6 MIN	12 MIN/1"			
					END	11:27:30	11:34:00	11:58:45/2"			
					BEGIN	11:22:45	11:28:00	11:34:45			
9B	24"	9	SEE PLAN SHEET 9	8/26 PM	RESULT	5 MIN	6 MIN	12 MIN/1"			
					BEGIN	11:22:45	11:28:00	11:34:45			

Begin time, end time and result in minutes for a water elevation change from 6" to 5" above the bottom of the test hole.

DOH 1327 (1/95)

NEW YORK STATE DEPARTMENT OF HEALTH  
 Bureau of Community Sanitation and Food Protection

Percolation Test Data

See instructions on reverse side.  
 Development/Site: AJM @ SWAN LAKE ESTATES (T/M/C): TOWN OF LIBERTY County: SULLIVAN

Date: 8/27/04, 8/30/04 & 9/1/04 Tests Conducted By: L. SUTTER & R. WASSON

Test Hole No.	Test Hole Depth (inches)	Lot No.	Soil Profile	Presoaking Date & Time	Percolation Test Runs						
					Time	1	2	3	4	5	6
10A	25"	10	SEE PLAN SHEET 9	8/31 PM	END	10:52:00	11:10:15	11:21:30	11:45:00		
					BEGIN	10:40:00	10:53:30	11:11:00	11:22:15		
					RESULT	12 MIN	17 MIN	21 MIN	23 MIN		
10B	24"	10	SEE PLAN SHEET 9	8/31 PM	END	10:55:00	11:08:00	11:50:30			
					BEGIN	10:43:15	10:57:45	11:08:45	FOR 2 5/8"		
					RESULT	6 MIN/1"	10 MIN	16 MIN			
11A	23"	11	SEE PLAN SHEET 9	8/31 PM	END	10:17:00	10:29:45	10:48:00	11:01:00	11:24:45	
					BEGIN	10:07:45	10:18:00	10:30:30	10:49:30	11:01:45	
					RESULT	9 MIN	12 MIN	18 MIN	21 MIN	23 MIN	
11B	24"	11	SEE PLAN SHEET 9	8/31 PM	END	10:19:45	10:34:00	10:51:15	11:11:30	11:22:45	
					BEGIN	10:09:45	10:20:30	10:34:45	10:52:15	11:12:00	
					RESULT	10 MIN	14 MIN	17 MIN	19 MIN	21 MIN	
12A	18"	12	SEE PLAN SHEET 9	8/31 PM	END	9:55:15	10:12:15	10:26:00	10:44:15		
					BEGIN	9:47:30	9:56:30	10:13:15	10:27:00		
					RESULT	8 MIN	16 MIN	13 MIN	17 MIN		
12B	19"	12	SEE PLAN SHEET 9	8/31 PM	END	9:49:00	9:57:15	10:06:00			
					BEGIN	9:45:45	9:49:45	9:58:00			
					RESULT	3 MIN/1"	6 MIN/1"	8 MIN			

1 Begin time, end time and result in minutes for a water elevation change from 6" to 5" above the bottom of the test hole.

DOH 1327 (1/95)



NEW YORK STATE DEPARTMENT OF HEALTH  
 Bureau of Community Sanitation and Food Protection

Percolation Test Data

See instructions on reverse side.  
 Development/Site: AJM @ SWAN LAKE ESTATES (T/M/C): TOWN OF LIBERTY County: SULLIVAN

Date: 8/27/04, 8/30/04 & 9/1/04 Tests Conducted By: L. SUTTER & R. WASSON

Test Hole No.	Test Hole Depth (Inches)	Lot No.	Soil Profile	Presoaking Date & Time	Percolation Test Runs						
					Time	1	2	3	4	5	6
13A	18"	13	SEE PLAN SHEET 9	8/31 PM	END	2:15:00	2:36:15	2:59:45			
					BEGIN	2:00:00	2:15:30	2:37:00			
					RESULT	15 MIN	21 MIN	23 MIN			
13B	16"	13	SEE PLAN SHEET 9	8/31 PM	END	2:13:00	2:30:15	2:48:45			
					BEGIN	2:01:30	2:14:00	2:31:00			
					RESULT	12 MIN	16 MIN	18 MIN			
14A	24"	14	SEE PLAN SHEET 9	8/31 PM	END	2:42:30	3:29:30	4:21:30			
					BEGIN	2:16:45	2:43:15	3:30:45			
					RESULT	26 MIN	46 MIN	51 MIN			
14B	24"	14	SEE PLAN SHEET 9	8/31 PM	END	2:37:00	2:55:00	3:29:15			
					BEGIN	2:14:45 1 5/8	2:38:00	2:56:00	1 3/8" DROP		
					RESULT	17 MIN/1"	17 MIN	24 MIN/1"			
15A	24"	15	SEE PLAN SHEET 9	8/31 AM	END	3:22:30	4:02:00	4:33:15	5:20:00		
					BEGIN	3:00:30	3:23:45	4:03:30	4:34:00		
					RESULT	22 MIN	38 MIN	41 MIN	46 MIN		
15B	24"	15	SEE PLAN SHEET 9	8/31 AM	END	3:36:00	4:20:30	5:07:45			
					BEGIN	3:02:30	3:36:45	4:21:15			
					RESULT	34 MIN	43 MIN	47 MIN			

1 Begin time, end time and result in minutes for a water elevation change from 6" to 5" above the bottom of the test hole.

DOH 1327 (1/95)

See instructions on reverse side.  
Development/Site: AIM @ SWAN LAKE ESTATES

(T/M/C): TOWN OF LIBERTY

County: SULLIVAN

Date: 8/27/04, 8/30/04 & 9/1/04

Tests Conducted By: L. SUTTER & R. WASSON

Test Hole No.	Test Hole Depth (inches)	Lot No.	Soil Profile	Presoaking Date & Time	Percolation Test Runs						
					Time	1	2	3	4	5	6
16A	24"	16	SEE PLAN SHEET 9	8/31 AM	END	2:40:30	3:16:00	4:00:15	4:49:00		
					BEGIN	2:16:45	2:41:30	3:16:45	4:01:30		
					RESULT	24 MIN	35 MIN	44 MIN	48 MIN		
16B	24"	16	SEE PLAN SHEET 9	8/31 AM	END	1:48:00	2:12:15	2:55:15	3:44:15	4:38:30	
					BEGIN	1:35:00	1:48:45	2:13:00	2:56:00	3:45:15	
					RESULT	7 MIN	24 MIN	42 MIN	48 MIN	53 MIN	
17A	18"	17	SEE PLAN SHEET 9	8/31 AM	END	8:28:30	8:53:15	9:25:00	9:59:30		
					BEGIN	8:15:00	8:30:00	8:54:00	9:25:45		
					RESULT	14 MIN	23 MIN	31 MIN	34 MIN		
17B	18"	17	SEE PLAN SHEET 9	8/31 AM	END	8:42:30	9:10:15	9:54:45	10:45:00		
					BEGIN	8:17:00	8:43:45	9:11:00	9:56:00		
					RESULT	26 MIN	37 MIN	44 MIN	49 MIN		
18A	18"	18	SEE PLAN SHEET 9	8/31 AM	END	9:03:15	9:47:45	10:38:15			
					BEGIN	8:25:00	9:04:00	9:48:30			
					RESULT	38 MIN	45 MIN	50 MIN			
18B	18"	18	SEE PLAN SHEET 9	8/31 AM	END	8:55:00	9:37:30	10:28:15	11:21:15		
					BEGIN	8:27:15	8:56:00	9:38:45	10:29:00		
					RESULT	28 MIN	42 MIN	50 MIN	52 MIN		

Begin time, end time and result in minutes for a water elevation change from 6" to 5" above the bottom of the test hole.

See instructions on reverse side.  
Development/Site: AJM @ SWAN LAKE ESTATES

(T/N/C): TOWN OF LIBERTY

County: SULLIVAN

Date: 8/27/04, 8/30/04 & 9/1/04

Tests Conducted By: L. SUTTER & R. WASSON

Test Hole No.	Test Hole Depth (inches)	Lot No.	Soil Profile	Presoaking Date & Time	Percolation Test Runs						
					Time	1	2	3	4	5	6
19A	24"	19	SEE PLAN SHEET 9	8/31 AM	END	12:47:45	1:16:00	1:59:45	2:47:45		
					BEGIN	12:26:45	12:48:45	1:17:30	2:01:15		
					RESULT	17 MIN/1"	27 MIN	42 MIN	47 MIN		
19B	24"	19	SEE PLAN SHEET 9	8/31 AM	END	12:49:30	1:00:15	1:17:15	1:39:00	2:04:15	
					BEGIN	12:28:30	12:50:00	1:01:00	1:18:30	1:40:30	
					RESULT	4 MIN/1"	10 MIN	16 MIN	21 MIN	24 MIN	
20A	18"	20	SEE PLAN SHEET 9	8/31 AM	END	2:08:30	2:59:00	3:54:45			
					BEGIN	1:28:00	2:10:00	3:02:00			
					RESULT	41 MIN	49 MIN	53 MIN			
20B	20"	20	SEE PLAN SHEET 9	8/31 AM	END	1:40:15	2:04:45	2:35:30	3:12:15		
					BEGIN	1:26:30	1:41:30	2:05:45	2:40:00		
					RESULT	11 MIN/1"	23 MIN	30 MIN	32 MIN		
21A	18"	21	SEE PLAN SHEET 9	8/31 AM	END	2:30:30	3:10:45	3:56:15			
					BEGIN	2:02:30	2:31:15	3:12:00			
					RESULT	28 MIN	40 MIN	44 MIN			
21B	18"	21	SEE PLAN SHEET 9	8/31 AM	END	2:32:30	3:13:15	4:02:00	4:55:30		
					BEGIN	2:05:45	2:33:30	3:14:30	4:03:00		
					RESULT	27 MIN	40 MIN	48 MIN	53 MIN		

Begin time, end time and result in minutes for a water elevation change from 6" to 5" above the bottom of the test hole.

