SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

In the Matter of

HILCREST FIRE COMPANY NO. 1, LENA BODIN, JOHN PORTA, WILLIAM ABRAMSKY, ELF LAWRENCE AHEARN, SANDRA SOLOMON, SUSAN HITO SHAPIRO, as Executor for the Estate of MILTON B. SHAPIRO,

Petitioners,

For a Judgment pursuant to Article 78 of the CPLR,

-against-

TOWN OF RAMAPO, THE TOWN BOARD OF THE TOWN OF RAMAPO, THE PLANNING BOARD OF THE TOWN OF RAMAPO,

Respondents,

-and-

SCENIC DEVELOPMENT, LLC, SCENIC DEVELOPMENT SM, LLC, FORTY-SIX-FIFTY TWO WADSWORTH TERRACE CORP., NEWFIELDS ESTATES, INC.,

Nominal Respondents.

Index No. 2015-001791

NOTICE OF VERIFIED AMENDED ARTICLE 78 PETITION

PLEASE TAKE NOTICE, that upon the annexed Verified Amended Petition of Petitioners, verified on the 23nd day of December 2015, and all exhibits annexed thereto, application will be made to the Supreme Court of the State of New York, County of Rockland, 1 South Main Street, New City, New York 10956 on the 26th day of February 2016, at 9:30 o'clock in the

forenoon, or as soon thereafter as counsel can be heard, for a judgment granting the relief requested in the Petition as follows:

(1) rescinding, annulling, and vacating the determination of the Town Board of the Town of Ramapo ("Town") designated as Resolution No. 2015-404, dated September 17, 2015 ("Resolution"), in connection with a development project, referred to as Patrick Farm (the "Project"), proposed for real property located on the east side of Route 202, 0 feet south of Route 306, which is known and designated on the Ramapo Tax Map as Sections 32.11-1-12, 32.11-1-13, 32.11-1-14,32.11-1-16,32.11-1-2,32.11-1-3, 32.11-1-4, and 32.14-2-3 (the "Site"), together with the "Findings Addendum", referenced and purportedly adopted by said Resolution (the Resolution and the Findings Addendum are annexed to the Verified Amended Article 78 Petition as Exhibits A & B);

(2) compelling Respondents to prepare a Supplemental Environmental Impact Statement ("SEIS") in connection with the Project's unstudied potential significant adverse environmental impacts, based on Project changes, new information, and/or changes of circumstance pursuant to the New York State Environmental Quality Review Act ("SEQRA")

(3) compelling Respondents to engage in a review of Project's potential impacts, based on Project changes, new information and/or changes of circumstance, in complete conformance with the requirements of the Town Code;

(4) enjoining Respondents, or any of their agents or assigns, from conducting any demolition, site preparation, and/or development activities whatsoever on the Site until they have complied with all applicable land use and environmental review laws and procedures, including SEQRA and the Town Code;

(5) enjoining the Planning Board and/or other Town agencies and/or officials from issuing any approvals or permits in connection with the Project and/or the Site until they have complied with all applicable land use and environmental review laws and procedures, including SEQRA and the Town Code;

(6) awarding Petitioners the costs and disbursements of this action; and,

(7) granting such other and further relief as this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE, that pursuant to Section 7804(c) of the Civil Practice Laws and Rules ("CPLR"), a Verified Answer and supporting affidavits, if any, must be served at least five (5) days before the return date of this application and that, pursuant to CPLR Section 7804(c), Respondents are directed to file a certified copy of the proceedings to be considered herein.

Dated: Nanuet, New York
December 23, 2015

Respectfully submitted,
SUSAN H. SHAPIRO

By: _____

Attorney for Petitioners
75 N. Middletown Rd
Nanuet, NY
(845) 371-2100

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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In the Matter of

HILCREST FIRE COMPANY NO. 1, LENA BODIN, JOHN PORTA, WILLIAM ABRAMSKY, ELF LAWRENCE AHEARN, SANDRA SOLOMON, SUSAN HITO SHAPIRO, as Executor for the Estate of MILTON B. SHAPIRO,

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Nominal Respondents.

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Index No. 2015-001791

VERIFIED AMENDED ARTICLE 78 PETITION

Petitioners HILLCREST FIRE COMPANY NO. 1, LENA BODIN, JOHN PORTA, WILLIAM ABRAMSKY, ELF LAWRENCE AHEARN, SANDRA SOLOMON, and SUSAN HITO SHAPIRO, as Executor for the ESTATE OF MILTON B. SHAPIRO ("Petitioners"), by their attorney Susan H. Shapiro, Esq., as and for their Verified Amended Petition herein, respectfully, allege as follows:

SUMMARY OF ACTION

1. This is a proceeding brought by Petitioners pursuant to Article 78 of the New York State Civil Practice Law and Rules ("CPLR") to annul and vacate a September 17, 2015 determination by the Respondent Town Board ("Town Board") of the Town of Ramapo ("Town"), in connection with a development project (the "Project") on a 197-acre[1] parcel of property commonly known as the Patrick Farm, located on the east side of route 202, 0 feet south of Route 306, which is known and designated on the Ramapo Tax map as Sections 32.11-1-2, 32.11-1-3, 32.11-1-4, 32.11-1-12, 32.11-1-13, 32.11-1-14, (32.11-1-15), 32.11-1-16 and Section 32.14-2-3 (the "Site") and compel the preparation of a Supplemental Environmental Impact Statement ("SEIS"), pursuant to the New York State Environmental Quality Review Act ("SEQRA").

2. More particularly, the determination challenged herein is a September 17, 2015 resolution of the Town Board, acting as Lead Agency, Resolution No. 2015-404 (the "Resolution"), attached hereto as Exhibit A – Town Board Resolution 2014-404. The Resolution states that it "adopts a FINDINGS ADDENDUM dated September 11, 2015, with respect to the Patrick Farm Project" purportedly pursuant to SEQRA (the "Findings Addendum").

3. The SEQRA Findings Addendum, dated September 17, 2015, was submitted to the Town Planner by the consultant to Respondent Scenic Development, LLC (the "Project Sponsor"

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[1] The Findings Addendum erroneously refers the site as 208.5-acres, which was the original site of the Project considered that included Lot 89/32.11-1-15 north of Rt. 202, but this lot was subsequently omitted from the Applicant's submissions and the Town's approvals. Thus, it is unclear why the original acreage is once again being used in the Findings Addendum and whether the bulk calculations have been duly adjusted.

or "Applicant") by cover letter dated September 11, 2015. The Findings Addendum and cover letter are attached hereto as Exhibit B; these materials were forwarded by the Town Planner to the Town Board with an accompanying September 11, 2015 memorandum from the Town Planner, attached hereto as Exhibit C.

4. The Findings Addendum focused, in part, on new information and circumstances related to the Project, which arose after the Project Sponsor finally obtained a Jurisdictional Determination ("JD") from the Army Corps of Engineers ("ACOE") certifying the delineation of federal wetlands and waters on the Site. A copy of the JD is contained in Exhibit B, Appendix D.

5. Over the course of the past five years, some or all of the Petitioners have commenced legal challenges to earlier determinations of the Town Board and Town Planning Board relating to the Project, including the adoption of the original SEQRA Findings Statement of January 25, 2010, as well as challenges to the Project's Preliminary Subdivision, Final Subdivision, and Final Site Plan approvals. These challenges were based, in large part, on the Applicant's incomplete and inaccurate wetland mapping and lack of an ACOE JD, which was identified as necessary in the Final Scoping Document for the Draft Environmental Impact Statement ("DEIS").

6. The regulated waters and wetlands identified in the belated ACOE JD (obtained more than six years after SEQRA scoping and five years after the DEIS publication) included significantly more federal wetlands and waters (i.e., 35-76% more) in midst of the high-density multi-family development planned for the Site, than was disclosed in the DEIS and subsequent Final Environmental Impact Statement ("FEIS").

7. When the Applicant finally obtained the required ACOE JD, the Applicant's documentation acknowledged at least a 34.9% increase in federal wetlands over the 18.45 acres

of wetland "within the area of development" identified in the DEIS/FEIS and during the original SEQRA review (See the accompanying Affidavit of Steven M. Gross, sworn to on December 21, 2015, ¶ 24, hereinafter referred to as the "Gross Aff.").

8. However, lot-by-lot calculations in the Applicant's subdivision plat yield an even higher amount of federal wetlands within the area of development. (Gross Aff. ¶ 26). When areas of submergent or emergent vegetation within the identified stream/tributary corridors and the wetland pond are added, there is an increase of 14.02 acres (i.e., a total of 32.47 acres) or over 76% over the 18.45 acres originally identified during the SEQRA review and in the DEIS and FEIS. (See Gross Aff. ¶¶ 27-28).

9. This is at least one-third to three-quarters more wetlands than had been previously considered or planned for. These discrepancies in existing wetland acreage is the result of the information provided by the Applicant in different parts of its current submission, and the direct and indirect adverse impacts to these newly designated federal wetlands and waters, can only be resolved formally in a SEIS. (See Gross Aff., ¶¶ 25-27).

10. Whatever calculations are used, the on-site federal wetlands and waters are significantly higher than what had been provided by the Applicant and included in the DEIS and FEIS, and considered by the Town Board during its SEQRA review and in its SEQRA Findings. Accurate foundational wetland maps were never part of the DEIS record or the comprehensive SEQRA procedures that protect public and agency scrutiny of and comments on the DEIS.

11. Despite lack of federally certified wetlands mapping, the Town granted many land use approvals even though it did not have enough information to take SEQRA's "hard look" and make a reasoned determination that the on-site wetlands would not be disturbed or otherwise

damaged or otherwise adversely impacted. The JD showed that the prior development and site plans approved by the Town, contrary to prior findings of the Town, would have disturbed on-site federal wetlands.

12. By the Applicant's own admission "the previously approved plans would have affected wetlands identified in the" ACOE JD. (Exhibit B, p. 1 of 7)

13. As a result of the JD, the Project's Sponsor and Scenic Development SM, LLC (together, the "Applicants") submitted a revised Final Subdivision Plan and revised Final Site Plan for Condominiums, updated June 16, 2014, to the Town Planning Board in March of 2015.

14. Consistent with all prior legal proceedings, Petitioners made specific requests to the Town Board and Town Planning Board following the release of the ACOE JD and the submission of a revised Final Subdivision Plan and Revised Final Site Plan for Condominiums, specifically requesting that the Town Board "immediately rescind all land use decisions connected to this project" and "conduct a new, or supplemental SEQR review based on the new information and incontrovertible information identified by the ACOE JD." (See Exhibit D – Shapiro Letters of April 9, 2015 and August 24, 2015.") Neither the Town Board nor the Town Planning Board responded to these requests.

15. However, when the Applicant submitted the request to the Town Board for approval of the Findings Addendum, it appears from the dated paperwork that the Town Planner reviewed the request in less than a day, and it was on the Town Board meeting agenda less than one week later., without notice to the public or interested and involved agencies.

16. Although the revised subdivision and site plans that had not yet been reviewed or approved by the Planning Board, the Town Board relied on the revised plans in issuing its SEQRA Findings Addendum.

17. The Findings Addendum certifies that the "Environmental Impact Statement and additional information submitted" meet the requirements of SEQRA with regard to "social, economic, and other essential considerations" (Exhibit B, p.7 of 7) and that the Project, as updated in a revised Site Plan "avoids or minimizes adverse environmental impacts to the maximum extent practicable" (*Id.*) and that new information concerning significant increase in delineated federal wetlands "does not rise to the level of requiring a supplemental EIS." ("SEIS"). (Exhibit B., p. 6 of 7).

18. Neither the Town nor the Applicant considered accurate and complete wetland maps, a necessary element of the DEIS even though, pursuant to Environmental Conservation Law §8-0109 (2), an environmental impact statement "shall include a detailed statement setting forth [] a description of the proposed action and its environmental setting" (a) a description of the proposed action and its environmental setting." The basis of any site's environmental setting must obviously include accurate wetlands mapping, which in fact was required here by Final Scoping.

19. On September 11, 2015, in less than one day, the Town Planner reviewed the less than seven (7) page Findings Addendum, which purports to amend thousands of pages of DEIS and FEIS documentation, and thousands of pages in the public record related to the land use plans that are currently the subject of twelve (12) legal challenges. After cursory consideration, the Planner came to the simplistic conclusion that Findings Addendum "is suitable and appropriate

for adoption by the Town Board" with no further analysis, elaboration, or suggestions for additional study of or any opportunity for public or agency review or comment on the cumulative impacts of the Project on the vastly increased wetlands. (See Exhibit C).

20. With no notice to the Petitioners or the public at large, the Town Board managed to add this matter to the agenda for a meeting only four business days later and, after turning down a request by the public to comment, voted to approve the Findings Addendum.

21. As alleged more fully herein, the Town Board's determination should be set aside for failure to take the requisite "hard look" required by SEQRA.

22. Petitioners seek an order from the Court setting aside the Findings Addendum and requiring the Town Board, as Lead Agency for the Project's environmental review under SEQRA, to require the preparation of a SEIS for the Project based on significant new information, changes in circumstances, and changes proposed for the Project and for associated impacts that were not sufficiently addressed in the prior SEQRA review, as documented in the original SEQRA Findings Statement –adopted by the Town Board in Resolution No. 2010-98 on January 25, 2010 (the "SEQRA Findings") and re-certified in the Findings Addendum that is the subject of this action.

23. The new information and change of circumstances relates to critical environmental information that should have been subject to public and agency scrutiny and review.

24. Examples of the significant change of circumstances or newly discovered information include, but are not limited to:

i. The Applicant's failed to disclose, and the Town failed to consider, the presence of a newly designated threatened species-- the Northern Long-eared Bat (myotis septentrionalis) on the Site. The Northern Long-eared Bat was identified in the DEIS as being located on the Site, in and around the newly delineated wetland areas. Approximately six months before the Applicant's submission and the Town Board's adoption of the Findings Addendum, the Northern Long-eared Bat was listed as a threatened species, protected under both federal and state law. (See Exhibit K to the Amended Petition, Item 2).

ii. The Applicant's omission of at least 34.9% and up to 76% of federal wetlands and waters within the area of development in both the DEIS and FEIS, did not allow the Town Board to identify cumulative impacts or take a "hard look" at the Project's adverse impacts on the newly delineated significantly larger wetland system, nor did the Town Board consider mitigation measures needed to protect the new wetlands, their buffers and their valuable functions.

iii. The Town Board, in the Findings Addendum, without justification and contrary to fact, incredulously changed and contradicted its earlier SEQRA findings, and found that "**the Patrick Farm does not overlie the Mahwah Valley aquifer as identified by the USGS and NYSDOH**." (emphasis in the original). This patently false statement inexplicably relies on outdated aquifer mapping; was made without notice to the public and interested and involved agencies; and is contrary to federal and state determinations. Moreover, this statement ignores new current geological studies and new USGS mapping that provide new information shoing an expanded aquifer area and hydrological conenctions that were not known when the DEIS/FEIS were prepared. See the accompanying Affidavit of hydrogeologist Paul Rubin, President of Hydroquest, an expert in both surface water and groundwater technology, with specialized

expertise in contaminant transport in fractured bedrock, unconsolidated and karst aquifers (hereinafter, the "Rubin Aff."),

iv. Architectural plans filed after the DEIS/FEIS and original SEQRA Findings, but before the adopted Findings Addendum, establish that population figures projected in the DEIS and FEIS do not reflect current floor plans and are, thus, significantly low. These proposed plans submitted result in a significant, adverse environmental impacts due to greatly increased population and growth inducing factors, which were not addressed in the DEIS and FEIS. Thus the new population projections contained in the adopted Findings Addendum are irrationally low and result in significant unconsidered adverse impacts, including serious fire safety impacts putting lives and property at risk, as well as other increased population impacts that were never studied. (See the accompanying Affidavit of Hillcrest Fire Company No. 1 President Peter Gessner, hereinafter the "Hillcrest Aff.").

25. In addition, a "change of circumstances" means any change in physical setting of, or regulatory standards applicable to the proposed Project. (cite SEQRA statute). The Town Board's amendments to at least five (5) land use Local Laws that resulted in new land use rules, are relevant to significant adverse environmental impacts, and thus a supplemental EIS is warranted.

26. Lead Agency should not be allowed to put on blinders and sweep under the rug so many serious issues and accept, without question, the assertions of Applicants, particularly where the Applicant has previously presented misleading and false information to the Town Boards and Courts. The Lead Agency, failed to conduct its own analysis and merely accepted the Applicant's unsupported statements that the increase of on-site federal wetlands and waters will not result in adverse environmental impacts, that population estimates have decreased when new

information reveals that it has actually increased, and that the property does not sit atop an aquifer notwithstanding federal and state determinations, and irrefutable geology studies to the contrary. Where, as here, an agency refuses to undertake the necessary analysis or does not support its conclusions with rationally based assumptions and studies or other empirical evidence, the SEQRA determination must be vacated as arbitrary and irrational and a proper SEQRA review ordered.

27. Where, as here, an agency refuses to undertake the necessary analysis or does not support its conclusions with rationally based assumptions and studies, the SEQRA determination must be set aside as arbitrary and irrational.

THE PARTIES

28. Petitioner Lena Bodin resides at 40 Scenic Drive Suffern NY 10901, tax lot number 32.14-2-4, in the Town of Ramapo, County of Rockland. Bodin's property directly abuts the Patrick Farm along her lengthy northern property line. There is an ACOE regulated stream on her property that connects to streams and wetland areas on the Patrick Farm Site. She would be directly and uniquely impacted by the Town Board's failure to adequately consider and mitigate adverse impacts to the newly delineated ACOE waters and wetlands, which could increase flooding on her property. Additionally, Bodin obtains potable water from United Water. There is a groundwater protection zone adjacent to the Site established by Rockland County for two of United Water's groundwater supply fields. Respondents' failure to require a SEIS on Project impacts to the newly designated federal wetlands and waters as they relate to aquifer and water quality/quantity could also adversely impact Bodin. Finally, increases in population estimates

due to new information contained in the post-SEQRA architectural plans could adversely impact her in connection with fire and other emergency services, as well as traffic among other things.

29. Petitioner John Porta resides at and owns the property located at 19 Hidden Valley Drive, Suffern, New York 10901, tax lot number 32.15-1-51, in the Town of Ramapo, County of Rockland. His property borders the Patrick Farm Site, with the entire rear portion abutting a portion of the Patrick Farm. Porta's water is derived from his private well, which draws water from the aquifer that flows by the Patrick Farm. Porta can suffer particular harm by the Town Board's failure to require a SEIS to review, among other things, the Project's impacts to acres of newly delineated on-site federal wetlands and waters, or to consider an adequate wetland buffer to protect the quality and quantity of his water supply. In addition, increases in population estimates due to new information contained in the post-SEQRA architectural plans could adversely impact him in connection with fire and other emergency services, as well as traffic, among other things.

30. Petitioner William Abramsky resides at and owns the property located at 4 Cottage Lane, Suffern, New York 10901, tax lot number 32.07-1-28-0-0, in the Town of Ramapo, County of Rockland, just north of the Patrick Farm Site. Abramsky is so close to the Site that he can see into it from his back and front yards. Abramsky has a private well on his property that supplies his drinking water. The quantity and quality of his private water could be adversely impacted by the failure of the Town board to adequately review the Project's negative impacts on the newly discovered federal wetlands and waters and appropriate wetland buffers.

31. Petitioner Elf Ahearn resides at 236 Haverstraw Road, Montebello, New York 10901, tax lot number 48.13-1-18, in the Town of Ramapo, County of Rockland. Ahearn's property is

located west of the Site along Route 202 (also known as Haverstraw Road), downstream and across from the Mahwah River. Ahearn has previously witnessed and suffered the impacts of flooding from the Mahwah River and can suffer harm caused by increased flooding of the Mahwah River. Ahearn could be adversely impacted by the Town Board's failure to consider the Project's adverse impacts to the newly designated federal wetlands and waters, and associated buffer areas. This failure could greatly exacerbate the downstream flooding.

32. Petitioner Sandra Solomon resides at and owns property at 28 Scenic Drive, Suffern, New York 10901, tax lot number 32-15-2-6-0-0, in the Town of Ramapo, County of Rockland. Solomon's property is adjacent to the Patrick Farm, as it spans both sides of Scenic Drive and its northern property line abuts the Site. A stream that runs alongside her property connects to the Patrick Farm Site. She would be directly and uniquely impacted due to exacerbated flooding that could result from the Project's unstudied, adverse impacts relating to the newly designated federal wetlands and water on the Site. Additionally, Solomon receives water from United Water and there is a ground water protection zone adjacent to the Site established by Rockland County for United Water's groundwater supply fields.

33. Petitioner Hillcrest Fire Company No. 1 (Hillcrest Fire Company) is a fire and emergency response organization that protects over 10,000 residences and businesses in an area of about thirty-six (36) square miles, the largest residential fire district in Rockland County. Hillcrest Fire Company's main offices are located at 300 North Main Street, Spring Valley, NY 10977. Hillcrest Fire Company also has a fire station that directly abuts the Site, at 631 Route 306 Suffern, New York 10901. Hillcrest Fire Company No.1 would be directly and uniquely impacted by the failure to properly assess population projections in the Findings Addendum, which could seriously compromise Hillcrest Fire Company No. 1's ability to respond to

emergencies at the Project Site, and endanger local residents, future residents of the Project, visitors, and emergency first responders, including Hillcrest Fire Company.

34. The Estate of Petitioner-Plaintiff Milton B. Shapiro ("Estate"), which owns the property and home located at 34 Scenic Drive, Suffern, NY 10901, ("Estate Property") where Mr. Shapiro and his wife Sonya resided for over 44 years, is within 30 feet of the Patrick Farm and within 200 feet of the wetlands area in question. After signing the verified Article 78 Petition on the morning of October 16, 2015, Mr. Shapiro had emergency surgery at or around 6:00 PM of the same day. Unfortunately Mr. Shapiro died on October 20, 2015 and accordingly his Estate is being substituted for the decedent. The Appellate Division has twice held that Mr. Shapiro had standing to raise Article 78 challenges regarding environmental matters on the Patrick Farm, and that due to the Estate's proximity to the Patrick Farm site it is not required to allege particularized harm (See *Shapiro v Town of Ramapo*, 98 AD3d 675 (2d Dept 2012) and *Chestnut Ridge v Town of Ramapo,* 45 AD3d 74 (2d Dept 2007). In any event, a stream that runs through the Estate Property is directly connected to the newly delineated wetlands. The failure of the Lead Agency to require an SEIS in connection with the newly discovered significant wetlands identified in the ACOE JD, and the Lead Agency's failure to mitigate the proposed high density development's adverse impacts to these wetlands can negatively impact the Estate as it could result in the portion of the Patrick Farm adjacent to the Estate property to flood, become swampy or increase stagnation.

35. Respondent TOWN OF RAMAPO, New York is an incorporated town and municipal corporation of the State of New York, located in the County of Rockland, State of New York with principal offices at 237 Route 59, Suffern, New York 10901.

36. Respondent TOWN BOARD OF THE TOWN OF RAMAPO is an elected board governing the Town of Ramapo, New York, with offices at Town Hall, 237 Route 59, Suffern, New York 10901. The Town Board issued the Resolution and Findings Addendum that are being challenged herein.

37. Respondent PLANNING BOARD OF THE TOWN OF RAMAPO is an appointed board governing planning for the Town of Ramapo, New York, with offices at Town Hall, 237 Route 59, Suffern, New York 10901.

38. Upon information and belief, Nominal Respondent SCENIC DEVELOPMENT, LLC, is a domestic limited liability corporation having offices at 404 East Route 59 Nanuet, New York 10954 and 3 Ashel Lane, Monsey, New York 10952, is owned by Yechiel Lebovits who resides at 3 Ashel Street Monsey, NY 10952, and has been listed as the applicant for all applications in connection with the Project and has been an owner of several parcels of real property situated at the south side of Route 202 and the west side of Route 306in the unincorporated Town of Ramapo, designated on the Tax Map as Sections 32.11-1-2, 32.11-1-4 & 32.15-2-1, 32.11-1-13, 32.11-1-14, 32.11-1-16 and 32.14-2-3.

39. Upon information and belief, Nominal Respondent SCENIC DEVELOPMENT SM, LLC, is a domestic limited liability corporation having offices at 404 East Route 59 Nanuet, New York 10954 and 3 Ashel Lane, Monsey, New York 10952, is owned by Yechiel Lebovits who resides at 3 Ashel Street Monsey, NY 10952, and may be the current owner of several parcels of real property situated at the south side of Route 202 and the west side of Route 306 in the unincorporated Town of Ramapo, including but not limited to those sections designated on the Tax Map as 32.11-1-4, 32.11-1-15, and 32.11-1-16.

40. Upon information and belief, Nominal Respondent FORTY SIX-FIFTY TWO WADSWORTH TERRACE CORP. is a domestic corporation having offices at 193 Hewes Street, Brooklyn, NY 11211, is owned by Alexander Feig residing at 193 Hewes Street, Brooklyn, NY 11211 and is the owner of the real property situated in the unincorporated Town of Ramapo, designated on the Tax Map as Section 32.11-1-12.

41. Upon information and belief, Nominal Respondent NEWFIELD ESTATES, INC. is a domestic corporation having a mailing t P.O. Box 1047, Monsey, NY 10952, whose agent Mendy Plotzker resides at 30 Park Ave, Monsey, NY 10952, and is the owner of the real property situated in the unincorporated Town of Ramapo, designated on the Tax Map as Section 32.11-1-13.

42. The Patrick Farm Subdivision Tax Lots consist of 9 tax lots designated on the Town of Ramapo Tax Map 32.11-1-2, 32.11-1-4, 32.11-1-12, 32.11-1-13 32.11-1-13, 32.11-1-14, 32.11-1-16, 32.14-2-3, and 32.15-2-1. The property is situated in the northeastern portion of the Town of Ramapo and is commonly known as Patrick Farm. It is owned by four distinct entities, Scenic Development LLC, Scenic Development, SM LLC, Forty Six-Fifty Two Wadsworth Terrace Corp and Newfield Estates, Inc. who, individually and collectively, are hereinafter referred to as "Applicant".

JURISDICTION

43. The Court has subject matter jurisdiction, and may exercise personal jurisdiction over the Respondents in this matter.

44. Pursuant to CPLR Sections 504 and 506(b), venue is proper in this Court. The determinations complained of were made and the material events took place in the County of Rockland, which is situated within the Ninth Judicial District.

45. While Petitioners prior challenges raised SEQRA issues and requested supplemental SEQRA review in connection with the Project, no prior application for this or any similar relief with respect to the subject Resolution and Findings Addendum has been made to this or any other Court.

STATEMENT OF FACTS

46. On August 29, 1992 the EPA designated the Ramapo River Basin Aquifer System to be a Sole Source Aquifer ("SSA") designated under the Authority of § 14.24(e) of the Safe Drinking Water Act, 57 FR 39201. The SSA designation means that it is an aquifer system that provides drinking water and where there are no viable alternative drinking water sources of sufficient supply; and if contamination were to occur, it would pose a significant hazard to the public health. The EPA determined that, "Any incident of surface water contamination may potentially impact wells tapping the aquifer. On that basis, the Ramapo River Basin, which encompasses the recharge areas and streamflow source areas for the Ramapo River Basin Aquifer Systems is designated as a Sole Source Aquifer".

47. NYS Law Chapter 43-B 8-0109(9)-Preparation of Environmental Impact Statement, requires that, for any action found to have a significant impact on special groundwater protection area,[2] such as federally protected sole source Ramapo River Basin Sole Source Aquifer System,

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[2] N.Y. Environmental Conservation Law § 55-0111 – Special Groundwater Protection

it "shall meet the requirements of the most detailed environmental impact statement required by this section."

48. As stated in the USGS Upstate Superficial Aquifer Mapping Program, "aquifer boundaries were drawn to include adjacent areas of permeable material hydraulically connected to the primary and principal aquifer." On February 8, 2008, the USGS published updated USGS GIS maps in which it can readily be seen that the Mahwah Valley Aquifer extends to the northwestern portion of the Patrick Farm Site. See Rubin Aff., ¶¶ 15-19.

49. As per the 2010 USGS study of water resources for Rockland County[3], the Ramapo River Basin Aquifer System provides approximately one third of the drinking water for Rockland County.

50. The 2010 USGS study Figures 11 and 20 show that the site is also situated on top of Zone A of the bedrock aquifer system that underlays much of Rockland County, which provides the basis for another one third of the drinking water of Rockland County.

51. The NYS DEC Bureau of Watershed Assessment and Management Division of Water's Ramapo/Hackensack River Basin Waterbody Inventory and Priority Waterbodies List classifies the stream that is fed by the newly expanded wetland system as NJ 11-12, a Class B tributary stream. This stream feeds into the Class A Mahwah River, and the Ramapo Sole Source

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Areas; Designation.

[3] Heisig, P.M., 2010, Water resources of Rockland County, New York, 2005–07, with emphasis on the Newark basin bedrock aquifer: U.S. Geological Survey Scientific Investigations Report 2010–5245, 130 p., at http://pubs.usgs.gov/sir/2010/5245/.

Aquifer System and recharge fields, all of which provide drinking water for a large portion of Rockland County and northern New Jersey.

52. The Site is immediately adjacent to property owned by United Water where active public water wells are located (see map on last page of Exhibit B).

53. United Water submitted a letter dated December 20, 2011 to the Town of Ramapo Planning Board, attached as Exhibit E, confirming that:

> *"The proposed Patrick Farm subdivision is within the United States Environmental Protection Agency designated Ramapo Sole Source Aquifer and is adjacent to a Rockland County established groundwater protection zone for two of United Water's groundwater supply well fields."*

54. Waters that fall on, or flow through, the property – that do not evaporate or are taken up by vegetation – either filter down to the bedrock aquifer, flow via groundwater to the recharge areas for the sole source Ramapo Basin Valley Fill Aquifer, or flow via surface waters to the wetlands and water areas that comprise the headwaters of the Mahwah River; all sources of public drinking water.

55. "As future water demand increases, protection and maintenance of New York State's existing and finite groundwater resources is critical." (Rubin Aff., ¶ 6)

56. In January 2004, the Town of Ramapo adopted its Comprehensive Plan, which placed the Patrick Farm within the Town's Conservation Development overlay and it was designated for "Low Density Residential (1 to 2 dwelling units per acre)" in compliance with NY ECL §55-0115 (7) and (8) (i.e., standards relating to special groundwater protection areas). The Conservation development Overlay included the environmentally sensitive area adjacent to and

overlaying the EPA protected interstate Ramapo-Mahwah Sole Source Aquifer and recharge fields, upon which the Patrick farm is located. (See Town of Ramapo Comprehensive Plan - Land Use Map 2004 attached as Exhibit F).

57. Although the Town's Comprehensive Plan was amended in 2009 at the Applicants' request and for the benefit of this Project, it did not remove the Patrick Farm from the Conservation Development Overlay and it did not amend the intent of the Comprehensive Plan to safeguard groundwater protection areas.

58. In conjunction with the Comprehensive Plan, the Town also adopted the Scenic Road District Local Law No. 7-2004 ("Scenic Road Law") and the Aquifer and Well Field Protection Zone Local Law No. 8-2004, to ensure protection of this and other environmentally sensitive lands.

59. On May 12, 2004, ACOE issued a Cease and Desist order against the Applicant for illegally filling federal wetlands and waters of the United States on the Site without prior authorization. (See Exhibit B, Appendix B, ACOE Letter of 2/1/2007).

60. On February 1, 2007, ACOE released the Cease and Desist Order and agreed that 139 single-family homes could be built on the property under a Nationwide Permit. [*Id.*]

61. On or about May 5, 2008, the Applicant submitted an application to the Town to permit the subdivision of Patrick Farm to allow for 497 housing units instead of the contemplated 139 single-family homes. The Applicant sought permission to build 314 townhouses, 72 condominium units, 24 rental apartments, and 87 single-family homes on the Site. (See Exhibit B, Appendix A, p. 2)

62. In May of 2008, the Town Board declared itself Lead Agency in connection with the Amendment to the Comprehensive Plan and Rezoning Application submitted by Applicant.

63. On June 25, 2008, the Lead Agency adopted a Final Scoping Document ("Final Scoping") "to serve as the foundation for the identification of all potentially significant adverse impacts" associated with the Project.

64. Under "Wetlands" the Final Scoping required the Applicant to include in the Environmental Impact Statement ("EIS") the **"[l]ocation and description of all wetlands, wetland buffers, and watercourses...These are to include Federal, State and local wetlands and the connections of the various wetlands should be shown to protect the overall integrity of the wetlands infrastructure"**, and to **"[d]elineate and flag the boundary of all State and Federal Jurisdictional Wetlands .... [b]oundaries to be confirmed by the permit agencies."** (See Exhibit G- Final Scoping Document p. 5) (emphasis supplied).

65. The April 15, 2009 DEIS stated: "As the Lead Agency, the Town of Ramapo Town Board has primary responsibility for review of this application and for determining its conformity with Town's regulations. The following reviews, permit and approvals would be necessary to implement the action: Federal U.S. Army Corps of Engineer Nationwide Permit and "Wetlands Jurisdictional Determination" ("ACOE JD"). (Exhibit H – DEIS, pp. 1-42 and 2-17)

66. The Applicant did not obtain the required federal wetlands delineation and ACOE confirmation of wetland boundaries and there was clear evidence before the Town Board that the necessary federal ACOE JD was entirely missing and that the Applicant's Wetland Location Map was grossly inaccurate and incomplete.

67. On January 25, 2010, even though the delineation and confirmation of federal Jurisdictional Wetlands boundaries that was required by Final scoping was omitted from the EIS, the Town Board, as Lead Agency, adopted Resolution No. 2010-98 issuing its "SEQRA Findings Statement" pursuant to SEQRA ("SEQRA Findings") and, without foundation in fact, stated that "No disturbance is proposed for the wetland communities on the site." (Exhibit B, Appendix A, p. 9 of 29)

68. This erroneous SEQRA Finding and the Applicant's incomplete Wetland Location Map on which it was based became the basis of many land use decisions for the Patrick Farm by the Town and its various boards from 2009 to 2014, as well as agency determinations. Which were consequently affected by the Town Board's irrational finding that there would be "[n]o disturbance" to wetlands on the Site.

69. The Town and its Boards relied on the erroneous and irrational SEQRA wetland Findings to grant the following land use approvals:

(i) an amendment to the Town's recently adopted Comprehensive Plan in order allow high density development on the Patrick Farm, even though it had been specifically identified as an environmentally sensitive site by both EPA, New York State, Rockland County and Town of Ramapo;

(ii) a zone change to permit an increase in development density from one home per acre (R-40) to eight homes per acres (MR-8);

(iii) preliminary subdivision and sketch plat approvals with sited construction of structures within the unmapped wetlands areas;

(iv) an access easement bordering adjacent properties;

(v) final subdivision and site plans which sited construction of structures within the unmapped wetlands areas ; and,

(vi) a second final subdivision and site plan approval which once again sited construction of structures within the unmapped wetlands areas and flood plains.

70. Petitioners and others were compelled to commence many Article 78 challenges to all of these Town decisions, and along with other causes of action, repeatedly challenged the Town's land use approvals, which were all based on an incomplete and misleading EIS that omitted a significant amount of on-site wetlands from Applicant's initial Wetland Location Map and was missing the ACOE JD. The omission from the Applicants' wetland maps of at approximately 35% and up to 76% of the development area wetlands made it impossible for the Town board to take the required hard look at the Project's impacts to federal wetlands and make rational and reasonable land use decisions.

71. There are twelve (12) appeals pending in the Appellate Division, almost all of which raise the improper wetland mapping as an issue. The Article 78 proceedings and related appeals have resulted in large expenditures of municipal, judicial and community resources and time.

72. Throughout the years of processing the proposed Patrick Farm Project, the Applicant intentionally misrepresented the completeness of its wetlands maps and adamantly refused to apply to ACOE for a certification of the on-site federal wetlands and waters.

73. In violation of 6 NYCRR §617.9(8) the Town Board, the Lead Agency failed to ensure the adequacy and accuracy of the final EIS, and instead adopted the inaccurate and incomplete

EIS and refused to require the Applicant to supplement the incomplete and grossly inaccurate wetlands maps with accurate wetlands maps, even though the Town's own Engineer, Ed Moran put the Town on notice that wetlands were missing from the Applicant's maps and plans:

> *"[d]uring a site visit, the presence of wetlands was apparent which are not shown on the plan. A wetlands specialist should be sent out for a current delineation. A wetlands delineation map should be created showing flagged points. This will then have to be certified by the appropriate agencies."* (Exhibit I – Town Engineer Ed Moran to CDRC, Item 11)

74. Mr. Moran wrote that the Applicant's omission of federal wetlands was purposeful since, "The applicant is adamant that he'll fight us [the Town] if we insist on a new delineation from the corps [ACOE] and all but admitted to me it's because he knows there are acres of additional wetlands on the site." (Exhibit J – Ed Moran Email to ACOE)

75. During all the time from 2009 to 2014, neither the Applicant nor the Lead Agency ever attempted to cure the inaccurate wetlands maps, and instead insisted that accurate complete wetlands maps of the wetlands and waters of the United States were either included or not necessary.

76. Finally in 2014, thanks to this Court and correspondence from the United States Environmental Protection Agency ("EPA"), ACOE, NYSDEC and the Rockland County Sewer District #1, the Applicant filed its long overdue application to ACOE for a JD.

77. On December 5, 2014, AOCE issued a JD, which for the first time certified the delineation of the boundaries and borders of federal wetlands and waters on the Site, and identified large areas of contiguous, hydrologically connected wetland systems that contained, according to the Applicant, an additional 6.44 acres (or 35% more) federal wetlands than were previously identified and mapped. (Exhibit B, p.2 of 7 and Gross Aff., ¶24).

78. However, based on the Applicant's lot-by-lot calculations, and other information contained in the Applicant's submissions and the ACOE JD, the actual omission of federal wetlands and waters from the original mapping would exceed 76%. (Gross Aff., ¶27).

79. Rather that rationally incorporating the belated ACOE JD into the decision making process for the Project, the Sponsor and the Town irrationally collaborated to blunt the lawful impact the JD should have had, and ignored its responsibilities under SEQRA.

80. Without any notice to the public or involved agencies, less than one week after receipt of the proposed Findings Addendum, and the one page memo from the Town's Planner, on September 17, 2015, the Town Board considered the request allowing the Applicant's representative and the Town Planner to each speak briefly before putting it to a vote with no questions or discussion. Public comments and questions were prohibited.

81. The Town Board hastily adopted the Findings Addendum, which irrationally concluded that the newly discovered information of the significantly increased wetland areas in conjunction with a slightly revised site plan did not require a SEIS, even though these wetland areas were never identified, considered or evaluated in the DEIS/FEIS due to the misrepresentations of and omissions by the Applicant.

82. Moreover, the Town Board conducted only a cursory review, simplistically limited to whether the revised Project would touch the wetlands, rather than considering the cumulative impact of the Project as a whole on the newly delineated wetland areas, as required by SEQRA, 6 NYCRR §617.9(a)(7)(i)(c).

83. The Lead Agency, without question or investigation, certified in the Findings Addendum the erroneous statement made by the Applicant's consultants that, "**the Patrick Farm Site does not overlie the Mahwah River Valley aquifer as identified by the USGS...**" (See Exhibit B, p. 3 of 7 & Figure 1) (emphasis in original).

84. Not only is this statement false and contrary to Applicant's prior submissions[4], as well as federal and state determinations, but once again, the Applicant provides misleading and outdated piecemeal information and totally ignores post DEIS/FEIS USGS and GIS mapping that supersedes the obsolete aquifer mapping that Applicant resubmitted and raises significant new information concerning critical water resources that were never considered in DEIS/FEIS. (See Rubin Aff., ¶¶ 13-21).

85. Additionally, the Findings Addendum included a new population estimate based on the removal of eighteen housing units, but totally ignored the post-DEIS/FEIS floor plans that were submitted during this Court's mandated architectural review that show at least seven bedrooms in each condominium unit under Town Code, as opposed to the four bedrooms represented by Applicant during SEQRA review.

86. As alleged more fully below, the Town Board, even though it had the benefit of post-DEIS/FEIS floor plans, irrationally ignored the tremendous increase in bedrooms, and the floor plan notations to accessory apartments, when improperly recalculating the population in the 2015 Findings Addendum. Despite these floor plans, and the growth-inducing aspects of the proposed action due to this new information (see 6 NYCRR 617.9(b)(5()iii)(e)), the public and interested

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[4] The Applicant's Environmental Assessment Form acknowledges the Site is over a sole source aquifer.

involved agencies were denied the right to scrutinize and review proper and significantly increased population estimates and its adverse impacts on fire, emergency and other community services, aquifer protection, water demand, sewage, traffic, noise, etc.

87. The Lead Agency also critically erred when, without question or investigation, it certified in the Findings Addendum the erroneous statement made by the Applicant's consultants, Leggette, Brashears & Graham, Inc. ("LBG") that, "**the Patrick Farm Site does not overlie the Mahwah River Valley aquifer as identified by the USGS...**" and includes a map that purports to show the extent of the aquifer. (See Exhibit B, p. 3 of 7 & Figure 1) (emphasis in original).

88. Not only is this statement false and contrary to Applicant's prior submissions, as well as federal and state determinations, but once again, the Applicant discloses misleading and outdated piecemeal information and totally ignores post DEIS/FEIS USGS and GIS mapping that supersedes the obsolete aquifer mapping that LBG has resubmitted. (See Rubin Aff., ¶¶ 13-21).

89. The Town Board also failed to address, in any way, the change in circumstance and law when a bat species that was found on the property during the SEQRA review was listed as a threatened species under federal and state law approximately six months before the adoption of the Findings Addendum.

90. The Town Board also failed to address the change in circumstance and local laws which the Town Board amended at least five (5) times within the past two years before the adoption of the Findings Addendum, in direct response to previous violation by the Town Boards of its own local law in relation to this Application, as challenged by Petitioners in other related Article 78 proceedings and appeals.

91. Additionally, the Town Board issued an the Findings Addendum without abiding by the required procedures set forth in 6 NYCRR §617.12(b) which requires notice of hearing and findings to all involved agencies and to any person who as requested a copy, as the Petitioners have repeatedly.

92. As alleged more fully below, these issues should have require the preparation of a SEIS, with required notice, hearing and public comment period, and the Town Board's failure to so require is irrational, arbitrary and without foundation in law and fact.

STATUTORY AUTHORITY

93. SEQRA requires that all governmental agencies identify the relevant areas of environmental concern associated with their contemplated actions, and take a "hard look" at them and make a reasoned elaboration of the basis of their decisions.

94. "SEQRA's fundamental policy is to inject environmental considerations directly into governmental decision making." Merson v. McNally, 90 N.Y.2d 742, 665 N.Y.S.2d 605, 609 (1997) (citation omitted), quoting Coca-Cola Bottling Co. of N.Y. v. Bd. of Estimate of the City of N.Y., 72 N.Y.2d 674, 536 N.Y.S.2d 33, 35 (1988); see also Jackson v. N.Y. State Urban Dev. Corp., 67 N.Y.2d 400, 503 N.Y.S.2d 298, 303 (1986) ("SEQRA makes environmental protection a concern of every agency.").

95. SEQRA's "basic purpose" is to require agencies, such as both Boards here, to incorporate the consideration of environmental factors into their decision-making processes. 6 N.Y.C.R.R. § 617.1(c) ("The basic purpose of SEQR is to incorporate the consideration of environmental factors into the existing planning, review and decision-making processes of state, regional and local government agencies at the earliest possible time.").

96. In enacting SEQRA, the State Legislature made clear its intent that all agencies, including the Town Board and the Planning Board, "conduct their affairs with an awareness that they are stewards of the air, water, land, and living resources," and that they are specifically "obligat[ed] to protect the environment for the use and enjoyment of this and all future generations":

> It is the intent of the legislature that all agencies conduct their affairs with an awareness that they are stewards of the air, water, land, and living resources, and that *they have an obligation to protect the environment for the use and enjoyment of this and all future generations.*

N.Y. Envtl. Conserv. Law § 8-0103(8) (emphasis added); see also 6 N.Y.C.R.R. § 617.1(b) ("In adopting SEQR, it was the Legislature's intention that all agencies conduct their affairs with an awareness that they are stewards of the air, water, land, and living resources, and that *they have an obligation to protect the environment for the use and enjoyment of this and all future generations*." (emphasis added)).

97. The State Legislature further intended that all agencies, including both Boards, must give "due consideration" to "preventing environmental damage" when considering actions that may adversely impact the environment:

> It is the intent of the legislature that all agencies which regulate activities of individuals, corporations, and public agencies which are found to affect the quality of the environment *shall regulate such activities so that due consideration is given to preventing environmental damage.*

N.Y. Envtl. Conserv. Law § 8-0103(9) (emphasis added).

98. Where an action has the potential for a significant environmental impact, SEQRA requires that an agency take the requisite "hard look" by preparing an environmental impact statement ("EIS") to assess a project's impacts and potential mitigation measures. See 6 N.Y.C.R.R. § 617.7(a).

99. SEQRA's "hard look" requirement applies with full force to a lead agency's determination regarding the necessity for a SEIS. Riverkeeper, Inc. v. Planning Bd. of Town of Southeast, 9 N.Y.3d 219, 851 N.Y.S.2d 76, 81 (2007).

100. As the Court of Appeals indicated in that case, an agency's "discretionary" determination whether to require an SEIS is subject to review under CPLR Section 7803(3) Article 78 to determine whether it is an "abuse of discretion."

101. Supplemental environmental review is required for significant adverse environmental impacts that were not addressed or inadequately addressed in the EIS that arise from: (a) changes proposed for the project; (b) newly discovered information; or (c) changes in circumstances related to the project. 6 N.Y.C.R.R. § 617.9(a)(7)(i). The decision to require preparation of a supplemental EIS ("SEIS"), in the case of newly discovered information, must be based upon: (a) the importance and relevance of the information; and (b) the present state of the information in the EIS. 6 N.Y.C.R.R. § 617.9(a)(7)(i).

102. The Second Department has repeatedly recognized the importance of supplemental SEQRA review where, as here, public drinking water sources are at stake. See Doremus v. Town of Oyster Bay, 274 A.D.2d 390, 711 N.Y.S.2d 443 (2d Dept. 2000); Bryn Mawr Properties, Inc. v. Fries, 160 A.D.2d 1004, 554 N.Y.S.2d 721 (2d Dept. 1990); see also 6 N.Y.C.R.R. §

617.7(c)(1)(i) (establishing that substantial adverse changes in ground or surface water quality or quantity are indicative of significant adverse impacts on the environment).

103. The New York State Environmental Conservation Law establishes that "Any loss of freshwater wetlands deprives the people of the state of some or all of the many and multiple benefits to be derived from wetlands, [including, but not limited to]: (a) flood and storm control by the hydrologic absorption and storage capacity of freshwater wetlands; (b) wildlife habitat by providing breeding, nesting and feeding grounds and cover for many forms of wildlife, wildfowl and shorebirds, including migratory wildfowl and rare species such as the bald eagle and osprey; (c) protection of subsurface water resources and provision for valuable watersheds and recharging ground water supplies . . . (e) pollution treatment by serving as biological and chemical oxidation basins; and (f) erosion control by serving as sedimentation areas and filtering basins, absorbing silt and organic matter and protecting channels and harbors." N.Y. Env. Conserv. L § 24-0105(7).

104. The Second Department has determined that a Board's decision was properly annulled and further review was necessary where "neither the DEIS nor the FEIS fully identified the nature and extent of all the wetlands that would be disturbed or affected by the construction...and how such disturbance, if any, would affect the salutary flood control, pollution absorption, groundwater recharge and habitat functions of those wetlands." *County of Orange v. Kiryas Joel*, 44 A.D.3d 765, 768, 844 N.Y.S.2d 57 (2d Dept. 2007).

105. As the lower Court wrote in the *County of Orange* case, "[o]ne cannot presume that the requisite 'hard look' was taken based on the thickness of the DEIS or because the [agency's] consultants were highly regarded in their fields." See Cnty. of Orange v. Vill. of Kiryas Joel, 11

Misc. 3d 1056(A), 815 N.Y.S.2d 494 (Sup. Ct. Orange Cnty. 2005) aff'd as modified, 44 A.D.3d 765, 844 N.Y.S.2d 57 (2d Dept. 2007).

106. Where, as here, there is significant new information or changes of circumstance subsequent to the filing of a DEIS, a SEIS is required:

> The law recognizes that in situations in which significantly new information has been discovered subsequent to the filing of a draft EIS, which new information is relevant to the environmental impact of the proposed action, a supplemental EIS containing this information should be circulated to the relevant agencies so as to insure that the decision making authorities are well informed. Horn v. Int'l Bus. Machines Corp., 110 A.D.2d 87, 493 N.Y.S.2d 184, 192 (2d Dept. 1985), appeal denied, 67 N.Y.2d 602, 499 N.Y.S.2d 1027 (1986)

107. Of particular relevance here is that the Town Board must, as a matter of law, subject the required, previously unaddressed issues to further public review:

> [C]ourts have cautioned that the omission of required information from a draft EIS cannot be cured by simply including the required data in the final EIS since the abbreviated comment period for the final EIS "is not a substitute for the extended period and comprehensive procedures for public and agency scrutiny and comment on the draft EIS." Horn, 493 N.Y.S.2d at 192, quoting Webster Assoc. v. Town of Webster, 59 N.Y.2d 220, 228, 464 N.Y.S. 2d 431 (1983).

AS And FOR A FIRST CAUSE OF ACTION
(Violation of SEQRA-SEIS required on impacts to unmapped wetlands)

108. Petitioners respectfully repeat and re-allege the allegations set forth in Paragraphs 1 through 107 of this Verified Amended Petition as if fully stated herein.

109. The Town's original SEQRA Findings were based on a wetland location map ("Applicant's Wetland Delineation") submitted by the "Applicant," which was included in the

April 15, 2009 DEIS and December 22, 2009 FEIS and formed the basis of the SEQRA Findings.

110. Although evidence, including statements from the Town's own engineer, was presented to the Town Board, and subsequently the Town's Planning Board ("Planning Board") during preliminary site plan approval and final sketch plat and site plan approval, that the Applicant's Wetland Delineation was inaccurate and omitted acres of federal wetlands, neither the Town Board nor Planning Board ever required any further review of the Applicant's Wetland Delineation.

111. The Town Board and Planning Board consistently failed to require the Applicant obtain a JD from ACOE, even though there was significant evidence that the Applicant's federal wetland was grossly inaccurate and despite the fact that the June 26, 2008 SEQRA Final Scoping Document required that the federal jurisdictional wetland boundaries were to be confirmed by the federal agency.

112. When the Applicant was finally forced to obtain an ACOE JD due to actions of third party agencies, the December 4, 2014 JD identified significantly more wetlands than had been included in the Applicant's wetlands mapping, and thus never previously considered in the DEIS/FEIS.

113. In fact, based on the new information, "the total amount of wetland within the area of development should be calculated as 32.47 acres, 14.02 acres (76.15%) greater than the 18.45 acres of wetland "within the development" identified during the [initial] SEQRA review." (See Gross Aff., ¶27)

114. The new evidence, in the form of a federal ACOE JD, was presented to the Town Board in connection with the Town Board's determination that is the subject of this proceeding.

115. Yet, the Town Board did not require a SEIS, despite the gross inaccuracy of the prior wetland mapping and instead determined that slightly modified site plans would not directly impact the newly delineated wetlands because the amended plans allegedly avoided disturbing the areas within the wetland boundaries.

116. The Town Board failed to rationally address the fact that the ACOE JD established that there are extensive systems, which the Project, even as revised, would adversely impact.

117. The Town Board did not rationally address the Project's continuing unmitigated and cumulative adverse impacts to critical wetland buffer areas.

118. The Findings Addendum falsely states that the revised plans "were amended to avoid disturbance to any of the wetland or wetland adjacent areas as shown on the revised plan." In fact, the Project, even as revised, does not avoid areas adjacent to the federally regulated wetlands, as identified by the ACOE JD.

119. As such, this statement and the following statement in the Findings Addendum that "there is no disturbance to any wetland or wetland adjacent area" are patently false and/or misleading on their face.

120. One look at the referenced map (Exhibit B, Appendix F) clearly shows that there are buildings, roads and retention basins immediately adjacent to the expanded wetland areas identified in the ACOE JD.

121. It is flawed to limit the assessment of the Project's adverse impacts to wetlands to a simple calculation of fill within regulatory wetlands. Essentially all wetland benefits are dependent upon and inseparable from the condition of the surrounding upland areas, regardless of whether they are regulated as a "wetland buffer" or "adjacent area" by any interested agency. (Gross Aff., ¶ 15) .

122. That is to say, regardless of the fact that ACOE does not regulate areas adjacent to wetlands, the Town Board still had an independent obligation under SEQRA and ECL §55-0115 to assess and mitigate the Project's adverse impacts to the areas adjacent to the newly recognized federal wetlands.

123. Any assessment of wetland disturbance under SEQRA must also consider grading, clearing, and conversion of the immediately surrounding upland areas, not just within the wetlands. (Gross Aff., ¶ 15).

124. These surrounding upland and adjacent areas play critical roles in protecting wetlands and ensuring their functionality, including by removing storm water-carried sediments, binding dissolved nutrients, and removing contaminants from both storm water and groundwater through plant uptake and biological breakdown. Nutrient levels within wetlands increase substantially where the width of surrounding vegetated uplands has been reduced, and even more where the upland vegetation has been eliminated, which results in significant adverse environmental impacts. (Gross Aff., ¶ 16.)

125. The importance of these surrounding upland areas has now been recognized by biologists and wetland scientists to be so critical, that they are now being referred to by many scientists as "core habitats" rather than buffers. The distinction is intended to demonstrate that

this surrounding upland is not just reducing, or buffering, impacts to the functions provided by a wetland. Rather, these adjacent upland habitats in conjunction with the wetlands provide a critical function as a whole, inseparable habitat. (Gross Aff., ¶ 19).

126. The combination of the two seemingly distinct habitat types as a single whole habitat is essential to a number of species that would be absent from either habitat alone. (Gross Aff., ¶ 19).

127. The Town Board, in adopting the Findings Addendum, failed to identify or even look at the impact of the Project to the surrounding "core habitats" of the newly delineated wetlands.

128. The impact of the Project upon wetland disturbance from the grading, clearing, and converting of the adjacent upland areas will therefore likely include, but will not be limited to, increased sedimentation, increased nutrient loading, increased fluctuation in temperatures, driving a number of wildlife species from the wetland, and the possible "extinction" of one or multiple wildlife species from the wetland. (Gross Aff., ¶ 23).

129. This failure of the Town Board not to look beyond the boundary of the wetlands, is even more critical given that the expanded wetland system was where a species of bats, which has recently been designated as "threatened," was discovered by Applicant in its DEIS bat study. (See Exhibit K and Gross Aff., ¶ 12).

130. The Northern Long-eared Bat is an example of a species that lives in the buffers surrounding the wetlands because the wetlands are its foraging area. (See Exhibit K).

131. The Town Board did not consider that the Northern Long-eared Bat's recent designation as "threatened" compels a heightened obligation to protect its habitat. Cf. State v.

Sour Mtn. Realty, Inc., 276 A.D.2d 8, 714 N.Y.S.2d 78, 80-81 (2d Dept. 2000) (holding that DEC has statutory authority under the Endangered Species Act to protect the habitat of endangered and threatened species)

132. Moreover, the value of a small, low-diversity wetland is lower than a larger, high-diversity wetland system, so likewise is the value of the corresponding surrounding upland to supporting the functions of that low-functioning wetland. Conversely, with a wetland system of a larger size, as was recently disclosed in the ACOE JD, the function of the surrounding upland becomes more critical. (Gross Aff., ¶ 30).

133. Therefore, the ACOE JD establishes that the Project has the potential for more significant adverse impacts as the result of grading, clearing, and converting the upland areas around wetlands at the Patrick Farm Site than the Town Board recognizes. (Gross Aff., ¶ 30.)

134. The newly disclosed amount of wetlands on the Site therefore represents significant new information, which the Applicant had failed to previously disclose, and which the Town Board failed to rationally address the Finding Addendum at issue in this matter.

135. Contrary to prior assertions made by Applicant's counsel, these newly mapped wetlands have been present for generations, and did not "shift and expand" due to "natural processes." (Gross Aff., ¶ 32). A review of Rockland County soils maps indicate hydric soils were already present where these newly mapped wetlands have now been surveyed, and as the record indicates, several people testified to their existence. It is obvious that these wetlands should have been surveyed from the start during the initial SEQRA review. (Gross Aff., ¶ 32).

136. In any event, the presence of more wetlands on the Site that the Applicant previously acknowledged is now incontrovertible, and must be rationally addressed.

137. As it is now clear that the Project's impervious surfaces adjoins a far larger wetland system than previously acknowledged, the calculable amount of wetland disturbance resulting from the proposed project has increased since the Town Board conducted its initial SEQRA review. Gross Aff., ¶ 33. It was irrational for the Town Board to ignore these now manifest potential significant adverse environmental impacts.

138. The changes proposed for the Project, although showing a decreased lot count and relocated structures, nonetheless still place units directly at the edge of wetland resources. These changes may have also actually located proposed development features in areas that might have a greater impact upon wetland resources than before. (Gross Aff., ¶ 34.) Only further analysis, in a SEIS, can make this determination. *Id.*

139. The newly mapped wetlands also demonstrate that the Patrick Farm Site is even more constrained for development activities than previously believed. Had the correct wetland information been supplied during SEQRA review, the consideration and weighing of environmental impacts of low-density residential zoning of one home per acre versus the high density zoning could have led to a very different determination. (Gross Aff., ¶ 35).

140. The Applicant's utter failure to disclose all of the existing wetlands, and omission of a significant percentage of wetlands (i.e., between 35% and 76% of the federal wetlands and waters on the Site, see Gross Aff., ¶¶ 24-27) in this high-density development in an environmentally constrained and special groundwater protected area violated SEQRA procedures and denied the public, and interested and involved agencies the critical and protected opportunity

to scrutinize and comment on the Project's impacts on the previously undisclosed federal wetlands and water areas.

141. This non-disclosure permeated every step of the land use process and denied the public and interested and involved agencies, as well as the Town Boards, the opportunity to meaningfully access the impacts of the extreme downzoning against potential environmental impacts to critical federal wetlands during all of the Towns land use decisions for the Patrick Farm including the amendment to the Comprehensive Plan and Zone Change from one home per acre to 8 homes per acres, the sketch plat approval, and final site plan and subdivision approvals.

142. At each step, when accurate mapping of the extensive wetlands on the property should have been made available to municipal officials, other interested and involved agencies, and the public, the Applicant fought the proper disclosure (see Exhibit J), severely limiting stakeholders' statutory rights to meaningfully participate in the SEQRA process.

143. Here, the Town Board did not and could not take a "hard look" at the Project's impact to undisclosed wetlands during the initial DEIS/FEIS process, and also failed to satisfy the "hard look" standard during its cursory review, without any public or interested agency participation, prior to adoption of the Findings Addendum. At no time did the Town Board scrutinize, evaluate, or weigh the potential direct and indirect environmental impacts on all the on-site wetlands against the benefits of the proposed rezoning of the property for high-density development.

144. Whether the gross omission of wetlands was intentional, as the evidence more than suggests (see Exhibit J), there were flagrant omissions nonetheless. In any event, once the Town Board had a map clearly showing the existence of more extensive wetlands on the Site than it

previously recognized or studied, it was required to rationally incorporate this information into its deficient EIS and take the necessary "hard look" and provide the reasoned elaboration that SEQRA requires.

145. Beyond the direct impacts to the wetlands, there are also many indirect impacts to the wetlands that must be evaluated as well. There are many diverse benefits and values of wetlands and their buffers that need to be considered when a Lead Agency evaluates potential significant adverse impacts to such areas and their buffers. (See NYS DEC page "Freshwater Wetlands Program. Why Are Wetlands Valuable?, http://www.dec.ny.gov/lands/4937.html). The Town Board failed to evaluate the multiple benefits and values of wetlands and their buffers -- and the unstudied potential adverse impacts posed by the Project on these functional values-- as follows in making its determination:

146. "Wetlands and their buffers often serve as groundwater discharge sites; maintaining base flow in streams and rivers; and supporting ponds and lakes. In some places, wetlands are very important in recharging groundwater supplies. Wetlands also improve water quality by absorbing pollutants and reducing turbidity." [*Id.*]

147. "Wetlands and their buffers cleanse water by filtering out natural and many manmade pollutants, which are then broken down or immobilized. In wetlands, organic materials are also broken down and recycled back into the environment, where they support the food chain." [*Id.*]

148. "Wetlands are one of the most productive habitats for feeding, nesting, spawning, resting and cover for fish and wildlife, including many rare and endangered species." [*Id.*]

149. "Wetlands and their buffers provide critical flood and storm water control functions. They absorb, store, and slow down the movement of rain and melt water, minimizing flooding and stabilizing water flow." [*Id.*]

150. Rationally, the significant increase in wetlands should have triggered a more comprehensive review of the potentially significant adverse environmental impacts and their functional values not addressed or inadequately addressed in the EIS, and should be subject to the scrutiny and procedures of a SEIS as provided in SEQRA.

151. Moreover, the Applicant is continuing its efforts to misrepresent the amount of wetlands on the site. As the accompanying Gross Affidavit, ¶28 states: "It is therefore apparent that the amount of wetland on the subject property, which was woefully underestimated during the SEQRA review as 18.45 acres, has still been misrepresented by the applicant at just 24.89 acres. The applicants themselves already admit to at least 28.15 acres of wetlands in what may be considered a "hidden" calculation, and attempt to further downplay the true amount of wetland within the development area by misrepresenting 4.27 acres of wetland as a "farm pond." This misrepresentation provides a clear example of why SEQRA requires that such critical data be provided early on and subjected to the light of public and agency review. These clear discrepancies need to be resolved in a transparent fashion in a Supplemental Environment Impact Statement."

152. Therefore, the Lead Agency erred when, it adopted the Findings Addendum, which includes a statement that the revised delineation of the waters and wetlands of the United States does not result in a change in circumstances to warrant the preparation of a SEIS.

153. For these reasons the Court should set aside the Town Board's Resolution adopting the Findings Addendum and require the preparation of a SEIS.

AS AND FOR A SECOND CAUSE OF ACTION
(Violation of SEQRA-SEIS required for newly designated threatened species)

154. Petitioners respectfully repeat and re-allege the allegations set forth in Paragraphs 1 through 153 of this Verified Amended Petition as if fully stated herein.

155. When the Town Board considered changes in circumstances and adopted the Finding Addendum it irrationally failed to consider the change in circumstances and law, and the resulting environmental impacts, caused by the positive identification of the Northern Long-eared bat (Myotis septentrionalis) on the Site, which has recently been listed as a threatened species. (See Exhibit K, Letter, dated October 14, 2015, from Michael S. Fishman, SWB, QBS, Biological Field Services Manager-Protected Species at Natural Resource Group).

156. Indeed, this threatened species was found in the areas of the newly mapped wetlands. (See Exhibit K & Exhibit L – Letter dated October 13, 2015 from James Quinn, P.E., principal at Thorton, Tomasetti).

157. The recent designation of the Northern Long-eared Bat as a "threatened" species rationally should have compelled the Town Board to pay particularly close attention to this issue. Cf. State v. Sour Mtn. Realty, Inc., 276 A.D.2d 8, 714 N.Y.S.2d 78, 80-81 (2d Dept. 2000) (holding that DEC has statutory authority under the Endangered Species Act to protect the habitat of endangered and threatened species)

158. The Lead Agency's Finding Addendum, however, erroneously claims that "no significant adverse environmental impacts are identified" (Exhibit B, Appendix A, p. 1) and irrationally and incorrectly reaffirms the 2010 Adopted Findings that "the site is not known to provide habitat for any wildlife species listed as endangered or threatened by the regulatory agencies. As such, the Proposed Project does not pose a significant adverse impact to existing wildlife." (Exhibit B, Appendix A, p. 10)

159. However, the reaffirmed 2010 Findings are no longer valid, nor can they be relied upon due to a significant change in circumstances since the Applicant conducted a bat survey in 2008. (See Exhibit K and Gross Aff., ¶¶6-13) Out of the eleven (11) bats captured on the Site, two (2) were Northern Long-eared Bats, and both were in areas of the newly expanded wetland systems. (See Exhibits K and L).

160. The Applicant failed disclose the change of status of this documented species when it sought to obtain the SEQRA Findings Addendum, even though this species was listed as a threatened species in April of 2015. (See Exhibit K).

161. Accordingly, the Town Board failed to consider or evaluate the presence of a protected threatened species on the Patrick Farm in the Findings Addendum, including how the original Project and any changes to it would impact the protected species, as well as the need to buffer newly delineated wetlands to protect the habitat of this threatened species. A SEIS is necessary to ensure that SEQRA is enforced with respect to this new information and change of circumstances.

162. Since 2008 when the bat survey was conducted, the Northern Long-eared Bat has been severely impacted by the emergence of the white nose syndrome, resulting in the elimination of

upwards of 90% of their populations. As a result of this severe population crash, the Northern Long-eared Bat has been given protection as a threatened species under both federal and New York State regulations. (Gross Aff., ¶¶ 8-9).

163. Due to this population crash, in April 2015, the Northern Long-eared Bat was listed by the U.S. Fish & Wildlife Service ("USFWS") as a threatened species under the ESA (50 CFR Part 17)[5]. As such, it simultaneously became listed as a threatened species in New York State per 6 NYCRR Part 182.2(z)(2), which identifies threatened species as, "any species that are species listed as threatened by the United States Department of the Interior in the Code of Federal Regulations (50 CFR Part 17)". Northern Long-eared Bats were found on the site in 2008, and once a listed species is determined to be present, it is assumed to be present in perpetuity until such time as it is definitively determined to be absent. (See Exhibit K). No such definitive determination has been made.

164. Therefore, the Patrick Farm site is considered occupied habitat of a state and federally-listed threatened Northern Long-eared Bat, regulated under the Endangered Species Act at the federal level, and under 6 NYCRR Part 182 and NYSECL Article 11 at the state level.

165. Section 9 of the Endangered Species Act prohibits the taking of threatened species, either intentionally, or incidentally. If a proposed action is determined to be likely to result in the incidental taking of a threatened species, the project sponsor must coordinate with the USFWS under Section 10 of the Endangered Species Act.

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5 U.S. Fish & Wildlife Service (USFWS). 2015a. Endangered and Threatened Wildlife and Plants; Threatened Species Status for the Northern Long-Eared Bat With 4(d) Rule; Final Rule and Interim Rule. Federal Register. Vol. 80, No. 63, Thursday, April 2, 2015, Rules and Regulations. Pp. 17974-18025.

166. If a federal agency is involved in the action (e.g., a federal wetland permit is required, or federal funding is provided) then the federal agency must cooperate with USFWS under Section 7 of the Endangered Species Act to make sure that the continued survival of the listed species is not jeopardized by the proposed action.

167. Moreover here, the Applicant has been required to request an Environmentally Sensitive Area ("ESA") waiver from the EPA in order to develop the Patrick Farm site. Upon information and belief, the Applicant did not disclose the presence of a threatened species when it applied for the ESA waiver and thus improperly obtained the waiver in July of 2015.

168. Upon information and belief, since the Applicant and the Lead agency disregarded the newly listed threatened Northern Long-Eared bat species, they did not coordinate with either EPA, USFWS or the EPA prior to the Town Board's adoption of the Findings Addendum to address the significant adverse effects of clearing more than 100 acres of forested habitat from an occupied core habitat of a species that relies on forested habitat for roosting and foraging and which may provide a core maternity roosting or foraging site for Northern Long-eared bat.

169. Removal of this forest habitat could alter this species' essential behaviors and thereby increase stress on individuals that are already stressed by the, white-nose syndrome, which would result in placing this species' local population in further jeopardy. (See exhibit K).

170. Moreover, as alleged more fully in the first cause of action, prior to adopting the Finding Addendum, the Lead Agency failed to identify, consider or provide reasoned elaboration as to fact that the ACOE JD indicates additional wetlands system which in turn results in placing additional Northern Long-ear bat habitat at preventable risk.

171. These newly mapped wetlands provide a critical food source for these threatened bats in the form of insect populations. There is a high probability that the bat roosting sites are in trees close to their food source. (See Exhibit L and Gross Aff., ¶12).

172. Nor did the Town Board consider the impact on the threatened species habitat of the high-density development of many large multi-family structures to be constructed in the areas where the threatened bats were found.

173. A SEIS would require the Board to consider potential mitigation measures to protect the bat, including greater buffers.

174. These potentially significant adverse effects have not been adequately addressed, considered or mitigated by the Lead Agency in its SEQRA Findings of 2010 or its Findings Addendum of 2015. Therefore a SEIS is necessary to consider this new information and change of circumstance and law.

175. For these reasons, Petitioners are requesting that the Court require the preparation of a SEIS analyzing the Projects impacts on the newly designated threatened species Northern Long-eared Bat.

AS AND FOR A THIRD CAUSE OF ACTION
(Violation of SEQRA-amended findings relating to aquifer are arbitrary and irrational)

176. Petitioners respectfully repeat and r-eallege the allegations set forth in Paragraphs 1 through 175 of this Verified Amended Petition as if fully stated herein.

177. The Lead Agency also critically erred when, without question or investigation, it certified in the Findings Addendum the erroneous statement made by the Applicant's consultants, Leggette, Brashears & Graham, Inc. ("LBG") that, "**the Patrick Farm Site does not overlie the Mahwah River Valley aquifer as identified by the USGS...**" and includes a map tht purports to show the extent of the aquifer. (See Exhibit B, p. 3 of 7 & Figure 1) (emphasis in original).

178. Not only is this statement false and contrary to Applicant's prior submissions[6], as well as federal and state determinations but once again, the Applicant emphasizes misleading and outdated piecemeal information, and totally ignores post DEIS/FEIS USGS and GIS mapping that supersedes and updates the old aquifer mapping that LBG has resubmitted and relies upon. (See Rubin Aff., ¶¶ 13-21).

179. This updated geologic information makes clear that "**A portion of the Patrick Farm development site DOES overlie the Mahwah River Valley Aquifer.**" (Rubin Aff., ¶ 17) (emphasis in original).

180. In fact, the new geologic information is very significant "because it clearly points out that much of the proposed development site is mantled by permeable sediments that readily provide recharge and groundwater flow to one of New York State's 17 primary aquifers." (Rubin Aff., ¶ 19).

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[6] The Applicant's Environmental Assessment Form acknowledges the Site is over a sole source aquifer.

181. The new geological information that was never (but should have been) disclosed by LBG, far from supporting any decrease in the Town's Aquifer and Well Field Protection Zone, fully supports the expansion of the Aquifer Protection Zone "to encompass the entire Patrick Farm." (Rubin Aff., ¶ 19).

182. Based on the new information and clear hydrogeological connections, '"the proposed large-scale development would substantially alter the groundwater flow regime that directly borders the headwater portion of the Mahwah Valley Aquifer." (Rubin Aff., ¶¶19 & Figures 1 & 2).

183. As already alleged, the Patrick Farm is part of the Mahwah River Drainage Basin. NYCRR §860.2 defines this basin, "The Ramapo River and Mahwah River drainage basins shall be deemed to include the following areas: All land and water areas, the natural surface water drainage from which is directly or indirectly tributary to the Ramapo River and Mahwah River in New York state."

184. In addition, "**Importantly, development of the nature proposed would, with a reasonable degree of scientific certainty, adversely impact the very water supply the project developer seeks to utilize**" and upon which much of Rockland County relies on. Rubin Aff., ¶19) (emphasis in original).

185. It is shocking that after the Applicant's five (5) year long wetland mapping fiasco (see Cause of action 1 herein), the Applicant is once again submitting an incomplete, inaccurate and outdated map and consultant's report. The Applicant and its consultant have resubmitted an outdated 2010 report and map that totally ignores the most recent USGS maps and hydrological information, in an attempt to railroad through the Findings Addendum.

186. It is also shocking in light of prior history, that the Town Board would refuse any public or agency review prior to its rubber stamp approval based on outdated, inaccurate, misinformation again provided by the Applicant.

187. What is clear is that this misleading, irrational and unreasonable conduct and review cannot satisfy the "hard look" requirement of SEQRA, and a new hydrogeologic study and SEIS should be required based on all the new federal and state data and information made available since the 2010 out-of-date LBG report, with full scrutiny by interested and involved agencies, and the public. (Rubin Aff., ¶ 25).

188. While courts are loathe to interfere with determinations of administrative agencies made in good faith, they have by no means abdicated their judicial responsibility to review and pass upon administrative action claimed to be arbitrary and without foundation in fact or in law.

189. It is axiomatic that "in an Article 78 proceeding, the reviewing court is not expected to act as a mere rubber stamp, but, rather, exercises a genuine judicial function and does not confirm a determination simply because it was rendered by an administrative agency." Denial of Pistol License Application of Fauntleroy v. Kelly, 4 Misc. 3d 1014(A), 791 N.Y.S.2d 868 (Sup. Ct. N.Y. Cnty. 2004); SoHo Cmty. Council v. N.Y. State Liquor Auth., 173 Misc. 2d 632, 661 N.Y.S.2d 694, 696 (Sup. Ct. N.Y. Cnty. 1997) (same).

190. A finding of an administrative agency "is supported by the evidence only when the evidence is so substantial that from it an inference of the existence of the fact found may be drawn reasonably." (Matter of Stork Restaurant, Inc., v. Boland, 282 N.Y. 256, 273.) Insufficient evidence, it has frequently been held, is, in the eyes of the law, no evidence. (Matter of Case, 214 N.Y. 199, 204.) See 54 Cafe & Restaurant, Inc. v. O'Connell, 274 A.D. 42

191. An agency's action that contradicts the facts is irrational. See Halperin v. City of New Rochelle, 24 A.D.3d 768, 809 N.Y.S.2d 98, 105 (2d Dept. 2005) (establishing that an agency's land use determination can only be deemed rational "if it has some objective factual basis"), leave to appeal denied by 6 N.Y.3d 890, 817 N.Y.S.2d 624 (Table), and by 7 N.Y.3d 708, 822 N.Y.S.2d 482 (Table) (2006).

192. The Town Board's decision to adopt the Findings Addendum, which included a patently false aquifer finding and obsolete map, must be vacated and a SEIS encompassing the new and current aquifer mapping and hydrological studies should be required, given the importance of this Site to drinking water supplies.

193. Pursuant to NYS Law Chapter 43-B 8-0109(9) Preparation of Environmental Impact Statement, requires that for any action found to have a significant impact on special groundwater protection area,[7] such as federally protected sole source Ramapo River Basin Sole Source Aquifer System, shall meet the requirements of the most detailed environmental impact statement.

194. Here, as in 2010 when the Town incorrectly accepted, without question, the Applicant's consultant false assertion that an ACOE JD confirming the federal wetland boundaries was obtained and included in the EIS. Now once again the Town Board is rubber-stamping incorrect assertions made by Applicant's consultant—this time in connection with the vital sole source federally protected aquifer.

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[7] N.Y. Environmental Conservation Law § 55-0111 – Special Groundwater Protection Areas; Designation.

195. The Court should not sanction this irrational and unsupportable pattern of conduct.

196. While Paul Rubin's affidavit sets forth with incredible detail and specificity the negative impacts this Project will likely have on the aquifer and our water resources based on new geological information, there are other recent changes in circumstance/new information that also supports further underscores the importance of taking a sufficient hard look at this issue.

197. On December 17, 2015, by Order 13-W-0303, the Public Service Commission directed United Water to better manage Rockland County's water supply over the next decade by using conservation, leak control and incremental new supply measures while prohibiting a highly opposed desalination plant on the Hudson River.

198. United Water a has already acknowledged the importance of the Site to drinking water protection: "[t]he proposed Patrick Farm subdivision is within the United States Environmental Protection Agency designated Ramapo Sole Source Aquifer and is adjacent to a Rockland County established groundwater protection zone for two of United Water's groundwater supply well fields." (See Exhibit E).

199. Based on current information, the proposed Project "would disturb and alter most of the project site. This would dramatically change the natural recharge to the Mahwah River valley aquifer (i.e., Ladentown Aquifer), would alter the subsurface flow of groundwater to existing water supply wells, and would greatly increase the risk of groundwater contamination—all within the very limited headwater region of the Mahwah River and the Ladentown aquifer." (Rubin Aff., ¶ 8).

200. Again, based on the new information that the Applicant, failed to disclose, **"Additional hydrogeologic analysis is warranted."** (Rubin Aff., ¶ 8) (emphasis in original).

201. It is also important to note that Town Code Chapter 96, the Aquifer and Well Field Protection Law, upon which LBG purports to rely in its December 14, 2010 letter report, promulgated a set of Standards (§96-7) that must be reviewed to determine that site activities will not:

> "(1) *Alter the subsurface flow of groundwater to private wells and existing water supply wells... and*
>
> *(5)Increase the risk of groundwater contamination through the removal of soils, sand, stone, or gravel which provide a protective mantle for groundwater which is part of the geological deposits comprising the Town's aquifer."*

202. As alleged, based on current information, the Project cannot meet these standards. (See Rubin Aff., ¶¶ 7-10).

203. Moreover, the Aquifer Protection Law, by its express language (see §96-3), recognizes the importance of maintaining aquifer and well field buffers: "The area of the Town of Ramapo as contained on the Town's Aquifer and Well Protection Zone Map representing wells, streams, water bodies, water courses **and buffers**." (emphasis supplied). (See also Rubin Aff., ¶11).

204. Based on the updated, expanded size of the aquifer and new hydrogeological studies, impacts to this increased area and new buffers have never been examined.

205. Further, the proposed construction of detention and water quality basins now "must be examined in greater depth in the context of a Supplemental Environmental Impact Statement." (Rubin Aff., ¶12).

206. Based on current information, "Alteration and removal of soils, sand, and gravel (§96-7 Standards), as contemplated at the Patrick Farm site, may irreparably harm existing groundwater recharge and flow, thereby compromising aquifer integrity, water supply wells, water quality, and public health and safety." (Rubin Aff., ¶ 24)..

207. The actions of the Applicant and the Town Board are particularly egregious as the public and interested and involved agencies were given no notice that this critical change of SEQRA findings related to the aquifer was to be considered, much less given any opportunity to be heard prior to the adoption of this misguided and false new aquifer findings.

208. Additionally it is egregious because it provides irrefutable proof that the Town Board did not consider the evidence in any reasoned or unbiased manner.

209. The new SEQRA aquifer findings, adopted with no notice or opportunity to review or be heard, which relied on outdated and inaccurate mapping, and were fully contradicted by recent studies, as well as federal and state agency determinations, and the statements of Rockland County's water supplier, must be set aside as irrational and without basis in law or fact, a SEIS ordered to examine this issue as a result of post-DEIS/FEIS studies and mapping. Whether the Applicant intentionally ignored the updated information or it refused to include it, as it had done before with the wetland issue, or it did not do its due diligence, the bottom line is that critical issues relating to the aquifer and crucial water resources were removed from proper SEQRA review.

210. For all these reasons the Town's adoption of the Findings Addendum, with respect to the aquifer was arbitrary and irrational and should be set aside, and a SEIS ordered..

AS AND FOR A FOURTH CAUSE OF ACTION
(Violation of SEQRA-SEIS required on additional population.)

211. Petitioners respectfully repeat and re-allege the allegations set forth in Paragraphs 1 through 210 of this Verified Petition as if fully stated herein.

212. The Findings Addendum reduces the projected population for the Project by less than 4%, allegedly due to a slightly revised Site layout necessitated by an approximate 35% -76% increase in recognized on-Site wetlands.

213. The Findings Addendum, Table 4 "Impact Comparisons", states that the population estimate for the Project will be reduced from the 1,932 population projection of the 2010 Findings by seventy (70) people to 1,862, due to a reduction in total units from 497 to 479 (i.e., an 18 unit reduction), leading to a false conclusion that: "The reduction in the number of dwelling units will also reduce ...the demand on community services...." (See Exhibit B, p. 5 of 7)

214. As alleged more fully below, this population recalculation was done without the benefit of a SEIS, and the alleged decrease in population, as a result of removing the 18 units, is based on the multipliers used in the Project's outdated 2009 SEQRA population analysis and findings.

215. The projections in the Findings Addendum completely fail to address significant new facts revealed by the Project's post-DEIS/FEIS SEQRA architectural review (the "Architectural Review") – which support the conclusion that the population projections in the Findings

Addendum are significantly and irrationally underestimated putting lives and property in dangerous peril. (Hillcrest Aff., ¶ 7).

216. Specifically, the architectural plans submitted by the Applicant, **after** the DEIS/FEIS and the original SEQRA Findings show unequivocally that the multi-family housing units are planned with seven to eight rooms that meet the legal definition of a "bedroom" under Town of Ramapo Zoning Code 376-5(15), as opposed to the four bedrooms that Applicant represented, and the Town Board considered, during SEQRA review.

217. The unconsidered 3 to 4 bedrooms create growth-inducement potential which was not identified in the Finding Addendum, causing the upper limits of growth not to be evaluated by the involved agencies in order to reach findings which consider the impacts of the upper limits of induced growth in the area of the proposed Project as required by SEQR.

218. The Town Zoning Code §376-6(15) defines a "bedroom" as "any habitable space in excess of 100 square feet, other than a living room, dining room, bathroom, hallway or kitchen."

219. On the only floor plans provided by the Applicant for the Project's 299 town houses, there are four rooms labeled "bedroom" **plus a Guest Room, Comp/Exercise Room, and Playroom that are all as least 100 square feet** and, thus, meet the definition of a "bedroom" under Ramapo's Zoning Code. (See Exhibit N-Floor Plans for Proposed Residences-6 Unit Bldg. Patrick Farms Town House (A)).

220. As can be seen on the four-story floor plans submitted during Architectural Review (Exhibit N), there are four rooms identified as a "bedroom" on the third floor; as well as a multitude of other rooms that are not listed as "bedrooms" but clearly meet the Town Code

definition of "bedroom" including: a play room on the second floor, and a guest room and an exercise/computer room on the first floor.

221. Accordingly, there are at least seven "bedrooms" pursuant to Town Code in each town house, as opposed to the four bedrooms disclosed during SEQRA review. It should be noted that there is a large room, well exceeding the 100 square foot minimum, labeled "family room" that would also meet the definition of bedroom under the Town Code, technically constituting an eighth bedroom. [8]

It was irrational and arbitrary for the Town Board to consider only new (i.e., post-SEQRA) information that would decrease the population estimate (i.e., the elimination of 18 housing units) and not the new information (i.e., the floor plans submitted during Architectural Review) that would substantially increase Project population. Here, even with the reduction of eighteen (18) units referred to in the Findings Addendum, the revised site plans show there are 299 units. Each unit would have at least three additional bedrooms than originally contemplated in the initial Findings Statement (which was adopted prior to the submission of the floor plans) or considered in the Findings Addendum, which totally ignores the "bedrooms" reflected on the floor plans in its revised population calculation.

222. Thus, without any accessory apartment (which is also referenced in the floor plans- See Exhibit O to this Amended Petition), there are at least seven bedrooms in these four level

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[8] It is difficult to fathom why the EIS preparers chose to consider a playroom as a bedroom for the workforce condominium flats, but not for the larger townhouses. Such action underscores the arbitrariness of the population calculations.

units that must be considered for population estimates and reasonable fire planning purposes, rather than the four that are listed on the plans.

223. To continue to use a multiplier of only 3.83 people per unit (i.e., the multiplier used in the DEIS/FEIS) for housing that has at least seven bedrooms pursuant to Town Code flies in the face of reality and does not allow for any rational or reasonable fire safety planning, thereby putting lives and property in unnecessary and unreasonable danger.

224. The population estimates and multiplier, which have no rational connection to the facts disclosed after the initial SEQRA review, are even further afield because the town house floor plans expressly refer to an accessory apartment and are specifically designed to support an accessory apartment.

225. The architectural notes on the first floor plan expressly refer to such an accessory apartment:

> *"Note: 1) Entire **ceiling above accessory apt.** to be 5/8" ,type "X" S.R. on channel, VI, L512. 2) Trusses design data to be submitted by license P.E. sealed."* (See Exhibit O) (emphasis supplied).

226. This clear reference to an accessory apartment, and designing the building specifically to enable the referenced accessory apartment, make concerns about increased population due to accessory apartments very serious and not speculative. Moreover, based on the experience of the Hillcrest Fire Company, basements have been built out and used as residences in similar projects in the Town, often without official approval. (Hillcrest Aff., ¶ 40).

227. In fact, this is exactly what happened with another high-density project sponsored by the same Applicant who is sponsoring this Project. In that project, Adar Homes in Monsey, New York, the Applicant originally applied for approval of fifty-four (54) units, yet ultimately received approval for 108 units. Subsequently, it appears that the basements in that project were converted into separate units, which added additional units, bringing the total number of units to over 150. (Hillcrest Aff., ¶ 41).

228. The Adar Homes project, which was not planned to accommodate the residents of these basement units and, in particular, their cars, is now extremely congested, and presents serious problems for emergency responders placing lives and property in peril. (Hillcrest Aff., ¶ 41).

229. In addition to referencing accessory apartments, the floor plans include certain key design considerations, which show that each town house unit will likely be subdivided into two apartments, each consisting of two stories, with five bedrooms on the top two floors (i.e., the second and third floors) and a similarly sized apartment on the bottom two floors (i.e., the basement and first floor). Based on prior experience, Petitioner Hillcrest Fire Company is concerned that a four-bedroom townhouse will become a ten bedroom multiplex. (Hillcrest Aff., ¶45).

230. Design elements included in the floor plans further support the conclusion that there will be accessory apartments without mitigation or deed restrictions; these elements include the odd placement of the kitchen and dining room on the second floor rather than the first floor, the sizing of the first floor bathroom to clearly accommodate a standard 60" tub/shower fixture, and

the inclusion of a walk-out basement with a ceiling height that would allow for an accessory apartment. (Hillcrest Aff., ¶ 46).

231. If occupied, accessory apartments in this Project would lead to an even larger population than that already grossly underestimated in the Findings Addendum.

232. In fact, if you were to double the number of townhouse units based on splitting them into two units of five bedrooms each, and then applied a 4.52 multiplier (i.e., the multiplier used for the 5 bedroom single family homes in the Project), the calculations would net 2,703 people in the 299 townhomes (i.e, 299 homes x 2 apartments x 4.52), which is more than double the population estimate contained in the Findings Addendum (i.e., 1,145 people) in the townhouses alone. (Hillcrest Aff., ¶ 48).

233. Given the fact that there are at least seven bedrooms in each unit under the Town Code, plus a referenced accessory apartment, a 4.52 population multiplier would still be irrationally low, and thus a reasonable population estimate would be even higher than 2,703 people just in the townhouses.

234. Even limiting each of the 299 townhouses to one unit with seven bedrooms as per Town Code would total over 2000 people.

235. The critical point here is that the current estimate in the Findings Addendum of 1,145 people in 299 seven-bedroom townhouses (even without considering the referenced accessory apartments) is arbitrary and unreasonable, bordering on the ludicrous, and a supplemental population study must be required in order to protect the health, safety and welfare of the current

and future community members and emergency responders, including the Hillcrest Fire Company. (Hillcrest Aff., ¶ 51).

236. The inaccurate underestimated population has significant adverse consequences on public health and safety. Peter Gessner, the President of Hillcrest Fire Company, which will be the first responders for a Patrick Farm fire or other emergency states that, "Proper population and occupancy projections, along with Project design, are the linchpins and necessary for proper fire safety and emergency planning in order to protect life and property." (Hillcrest Aff., ¶ 4).

237. Further, "the Project's gross underestimation of population and resulting poor planning and design would directly impact the Hillcrest Fire Company and its responsibility and ability to protect life and property." (Hillcrest Aff., ¶22).

238. As the Hillcrest fire Company has emphasized:

a. Reasonable and proper population estimates are critical for rational fire safety planning and precautions in order to protect life and property. (Hillcrest Aff., ¶11).

b. Increased population projections directly relate to necessary staffing requirements, fire apparatus and other resources of the Hillcrest Fire Company that are critical to protect life and property. (Hillcrest Aff., ¶12).

c. Increased population projections lead to an increase in parking needs, which must be sufficiently addressed to allow for ample access for fire apparatus and emergency vehicles in order to protect life and property. (Hillcrest Aff., ¶13).

d. Increased population projections relate to overall water demand/availability/sizing, which is of great concern to the Hillcrest Fire Company in responding to fire emergencies in order to protect life and property. (Hillcrest Aff., ¶14).

e. Increased population will increase traffic, which also impacts the ability of the Hillcrest Fire Company to promptly respond to emergencies in a 500 housing unit development with only one entrance. (Hillcrest Aff., ¶15).

239. Additionally, the increase in population based on the Applicant's own floor plans will a result in unstudied increased impacts to other community services, community character, sewage, and the like. The DEC states that, "An environmental assessment and a determination of significance must include consideration of the potential for primary (direct) and secondary (indirect) impacts, long and short term impacts and cumulative impacts of an action. Including growth inducing effects related to changes in patterns of land use and population density."[9] Cumulative changes in population patterns or community character likely to be induced by a project have been held by the courts to be relevant concerns in environmental review (see Chinese Staff and Workers Association et al., v. City of New York 68 NY2d 359, 364 [1986], 1986).

240. The Town Board's failure to safeguard the public health, safety and welfare in approving the Findings Addendum without reasonably measuring the population density is particularly egregious here because a major high-pressure natural gas transmission line bisects the Site. Thus, in addition to normal fire safety planning and staffing considerations, the risk of a

[9] http://www.dec.ny.gov/docs/permits_ej_operations_pdf/seqrhandbook.pdf p 82

catastrophic fire safety incident is higher for this Project than others contemplated by the Town of Ramapo and as such the accuracy of population and planning is even more critical for this Project. (Hillcrest Aff., ¶17).

241. Neither the DEIS/FEIS nor the Findings Addendum acknowledge or identify the reasonably foreseeable catastrophic impacts of building a large multi-family, densely populated development with only one access road in extremely close proximity to the pre-existing large natural gas pipeline which bisects the property (and which is now slated for expansion to 42" diameter). Thus the Town never considered the likelihood that a catastrophic impacts could occur based on existing credible scientific evidence, nor did it consider alternatives and mitigation measures to prevent such catastrophic impacts as required by 6 NYCRR §617.9(b)(5)(iii) and §617.9(b)(6).

242. The Town has engaged in a pattern of not providing information to the Hillcrest Fire Company or delivering detailed and important materials that must be reviewed with an unacceptably insufficient time for it to review the materials prior to the Town's decisions in this matter, which can result in life-threatening consequences. (Hillcrest Aff., ¶60).

243. The Hillcrest Fire Company has been largely ignored when it has raised general and specific fire safety concerns with respect to this Project and has taken prior legal action against the Town in connection with this Project as a result out "the poor and irrational planning from a fire safety perspective that jeopardizes the health and safety of the Project's future residents, the surrounding community and emergency service responders." (Hillcrest Aff., ¶¶ 25, 28-29).

244. Here, Hillcrest Fire Company was not even notified in advance of the Town Board's consideration of the SEQRA Findings Addendum or given any opportunity to scrutinize or

review findings, including revised population estimates that relate to fire and other community services. (Hillcrest Aff., ¶59).

245. Such conduct is even more alarming in light of New York State findings that "the Town has failed to exercise its code enforcement powers in due and proper manner so as to extend to the public protection from the hazards of fire and inadequate building construction." (Hillcrest Aff., ¶30) and that many specific deficiencies in the Town's administration and enforcement of the New York State Uniform Fire Prevention and Building Code have resulted in "serious life-safety issues." (Hillcrest Aff., ¶44).

246. Again, it was irrational and arbitrary for the Town Board to consider only new (i.e., post-SEQRA) information that would decrease the population estimate (i.e., the elimination of 18 housing units) and not the new information (i.e., the floor plans submitted during Architectural Review) that would substantially increase Project population.

247. It is arbitrary and capricious for the Town Board to calculate population projections other than on the basis of its own definition of "bedroom"

248. For all of the reasons alleged herein, the Findings Addendum should be set aside and a rational modeling of population must be compelled, and all "bedrooms" under the Town Code must be taken into consideration so as to project a realistic potential population for planning and environmental review purposes, based on the most recent information submitted since the DEIS/FEIS and original SEQRA Findings.

RELIEF REQUESTED

249. For all of the above reasons the Court should annul, vacate and set aside Town Board Resolution 2014-404 and require a SEIS addressing the Project's potential adverse impacts from the following new information and changes of circumstances:

i. The newly delineated wetlands, associated buffers and related core habitat areas;

ii. The newly designated threatened species – the Northern Long Eared Bat;

iii. The new information on the aquifer, including updated geological studies and USGS maps, that the Applicant failed to disclose, and the impact of this new information on critical water resources; and

iv. The significantly increased bedroom counts disclosed after the DEIS/FEIS and the impacts on population, the community, and community services, particularly fire safety protection and planning.

WHEREFORE the Petitioner requests that the Court grant the relief requested in this petition as well as the costs of this proceeding and such other and further relief as to the court may seem just and proper.

Dated: Nanuet, New York
December 23, 2015

Respectfully submitted,
SUSAN H. SHAPIRO

By: _____
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VERIFICATION

STATE OF NEW YORK)
) SS:
COUNTY OF ROCKLAND)

I, SUSAN HITO SHAPIRO, as Executor of the Estate of Milton B. Shapiro, am a Petitioner in the within Article 78 Proceeding. I have read the foregoing Petition and know the contents thereof. The contents are true to my own knowledge, except as to matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

SUSAN HITO SHAPIRO,
as Executor of the Estate of
MILTON B. SHAPIRO, Petitioner

Subscribed and Sworn to before
me on this 13rd day of December, 2015

NOTARY PUBLIC

PATRICIA E. FRENCH
Notary Public, State of New York
No. 01FR5041486
Qualified in Rockland County
Commission Expires 04/03/2019