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Re: Patrick Farm,
US Rte 202 - Rte 306 Suffern, New York 10901
NYSDEC Application No. 3-3926-00570/00002

Dear Mr. Peterson:

This Firm represents residents of the Town of Ramapo ("Town") who are organized under the name Ramapo Organized for Sustainability and a Safe Aquifer ("ROSA"). Many of ROSA's members live in immediate proximity to the site ("Site") of the above-referenced application ("Application"), and others live in the surrounding community. ROSA is submitting to the Department a letter detailing the impacts of the Project. (See Letter to Adam Peterson, NYS DEC from Deborah Munitz, ROSA 4 Rockland Inc., dated Nov. 26, 2012.) These letters should be read conjunctively. Respectfully, the Department does not have an adequate empirical basis upon which to issue permits for the Patrick Farm Development (the "Project") as there appear to be multiple unrecognized areas of potential significant environmental impact in connection with the Application.

We understand that the Department has already received many comments submitted by Town residents, public officials, and other individuals, which, as a threshold issue, evidences a "significant degree of public interest" in the Application, meriting a Legislative Hearing. See 6 N.Y.C.R.R. § 621.8(c). This Project has also been the subject of multiple legal

challenges. The Appellate Division recently affirmed the standing of area residents and an adjoining municipality to challenge the Lead Agency's Findings under the State Environmental Quality Review Act ("SEQRA") for the Project. See Shapiro v. Town of Ramapo, 98 A.D.3d 675, 950 N.Y.S.2d 154, 156 (2d Dept. 2012) & Village of Pomona v. Town of Ramapo, 94 A.D.3d 1103, 943 N.Y.S.2d 146, 151 (2d Dept. 2012). Moreover, the Supreme Court Rockland County recently annulled the Applicant's: (i) Subdivision Approval for the Project (i.e., Final Plat Approval); (ii) Final Site Plan Approval for the Patrick Farm Condominiums; and (iii) Final Site Plan Approval for the Patrick Farm Volunteer Housing. Bodin et al v. Planning Bd. of the Town of Ramapo, et al., Index No. 149/12 (Sup. Ct. Rockland Co. Sept. 10, 2012), at 5; see also Shapiro v. Planning Bd. of Town of Ramapo, et al., Index No. 159/12 (Sup. Ct. Rockland Co. Sept. 10, 2012) (Copies of the *Bodin* and *Shapiro* Decisions are annexed hereto as Exhibit "A").

This Application also clearly raises "substantive and significant" issues, including the reasonable likelihood that the Application must be denied or granted only with major modifications, requiring an Adjudicatory Public Hearing. See 6 N.Y.C.R.R. § 621.8(b). These issues will be further developed during the Legislative Hearing and comment period.

SEQRA

Respectfully, the Department lacks an adequate empirical basis upon which it could issue rational SEQRA Findings. Moreover, the Department may be engaging in improper segmentation, including because the Applicant is only asking the Department to review its Subdivision Plans, and not its more detailed Site Plans. As the Department is aware, as an Involved Agency, it must issue its own SEQRA Findings before taking any action on the Project. See 6 N.Y.C.R.R. § 617.11(c) ("No involved agency may make a final decision to undertake, fund, approve or disapprove an action that has been the subject of a final EIS, until . . . the agency has made a written findings statement."). The intent of this requirement is to ensure that each agency's "different perspectives on the information in an EIS based on their particular jurisdiction" is applied during SEQRA review. Final Generic EIS on the Proposed Amendments to the SEQRA Regulations (DEC Sept. 6, 1995) (the "SEQRA GEIS") at 75; see also In re E. Tetz & Sons, Inc., 2003 WL 1736444, at *5 (N.Y.D.E.C. March 20, 2003) ("An involved agency is not obligated to make the same findings as the lead agency. This reflects differing agency perspectives toward balancing various factors."); Goldhirsch v. Flacke, 114 A.D.2d 998, 495 N.Y.S.2d 436, 438 (2d Dept. 1985), appeal denied, 67 N.Y.2d 604, 500 N.Y.S.2d 1026 (1986) ("Notwithstanding the lead agency's determination that the proposed project, with modifications, will have no significant effect on the quality of the human environment under the guidelines of the State Environmental Quality Review Act, the commissioner had the authority to deny a permit to petitioner if the proposed project did not comply with the standards for the issuance of an interim permit under [that involved agency's regulations].").

Under CPLR Section 7803(3), "[a] determination will [only] be deemed rational if it has some *objective factual basis*." Halperin v. City of New Rochelle 24 A.D.3d 768, 809 N.Y.S.2d 98 (2d Dept. 2005) (emphasis added), appeal dismissed, 6 N.Y.3d 890, 817 N.Y.S.2d

674 (Table) & appeal denied, 7 N.Y.3d 708, 822 N.Y.S.2d 482 (Table) (2006); see also Sasso v. Osgood, 86 N.Y.2d 374, 633 N.Y.S.2d 259, 264 n. 2 (1995) (holding that “courts consider ‘substantial evidence’ [under the arbitrary and capricious standard] only to determine whether the record contains sufficient evidence to support the rationality of the Board’s determination”). Courts regularly overturn administrative determinations that lack the necessary factual foundation. See, e.g., Trump on Ocean, LLC v. Cortes-Vasquez, 76 A.D.3d 1080, 908 N.Y.S.2d 694 (2d Dept. 2010) (holding that agency’s determination was irrational where the “evidence reveals that its reasoning misapprehended or disregarded the facts and was overly speculative”).

Initially, the Department does not have a complete understanding of how the Project would affect waters of the United States, which is critical to the SEQRA Findings it must issue in connection with Section 401 Water Quality Certification. It has become apparent, in the first instance, that the United States Army Corps of Engineers (“ACOE”) never signed off on a wetland delineation for the Project. In April 2011, ACOE specifically told the Applicant that it should contact ACOE for “a project-specific *jurisdiction determination*” concerning “whether a Department of Army permit will be required.” (Emphasis added.) (A copy of the quoted ACOE Letter is annexed hereto.) In proceedings in the Supreme Court, Rockland County, the Applicant essentially ignored the referenced April 2011 ACOE Letter, asserting that “ACOE issued a letter serving as a jurisdictional determination regarding the wetland delineation of the subject property on February 1, 2007.” (Scenic Development LLC’s Memorandum of Law, dated May 31, 2012 (“Scenic Brief”), at 36.) The Applicant never explained why, four (4) years after the 2007 Letter it claims “serv[ed] as a jurisdictional determination,” the ACOE specifically advised that “a project-specific *jurisdiction determination*” was still “required.”

Moreover, as ROSA’s consultant, Kim Copenhaver, explained in her Reply Affidavit, the referenced 2007 Letter is simply not a jurisdictional determination – *i.e.*, a sign-off by ACOE on the delineation of all ACOE-regulated wetlands on the Site. (Reply Affidavit of Kim Copenhaver, sworn to June 20, 2012 (“Copenhaver Reply Aff.,” copy annexed hereto as Exhibit “B”), ¶¶ 8-19.)¹ The referenced 2007 letter is simply not the type of letter ACOE would issue in connection with a jurisdictional determination, particularly for a Project of this scope or magnitude. (*Id.*, ¶¶ 8-9.) It does not use the words “jurisdictional determination,” or discuss the acceptance by ACOE of wetland boundaries on the Site. (*Id.*, ¶ 10; see also Reply Affidavit of Andrew Willingham, sworn to June 2012 (“Willingham Reply Aff.,” copy annexed hereto as Exhibit “C”), ¶¶ 32-54.) Attached as Exhibit “B” to the Willingham Reply Affidavit is a copy of

¹ Copenhaver has substantial experience with the ACOE. She has over eighteen (18) years of experience in environmental assessment, including seven (7) years as a Project Manager for ACOE, Regulatory Branch, where her responsibilities included jurisdictional determinations and permit decisions, and the past ten (10) years as a private consultant representing clients’ projects and properties to the ACOE for jurisdictional determinations and permit decisions. (See Copenhaver Reply Aff., ¶ 5.)

an actual ACOE jurisdictional determination, which bears no resemblance to the Letter that the Applicant now references.²

Further, the Applicant's Plans do not show all wetlands identified in National Wetland Inventory ("NWI") Mapping and even propose siting parking areas and a building directly in an area identified on NWI Maps as an ACOE wetland. (See Affidavit of Andrew Willingham, sworn to April 23, 2012 ("Willingham Aff.," copy annexed hereto as Exhibit "D"), ¶¶ 43-44.) NWI Maps submitted to the Planning Board also illustrate ACOE wetland boundaries. (*Id.*, ¶ 42.) The identification of ACOE wetlands on NWI Maps correlates, on almost every occasion, to an ACOE wetland actually being "field delineated" in the same location. (*Id.*, ¶ 42.)

Accordingly, it is evident that the ACOE wetlands on the Site have never been delineated for the Project. For this reason alone, the Department cannot issue SEQRA Findings.³

The Project plans also do not show all wetlands on the Site in addition to those subject to ACOE jurisdiction, which is significant, including because impacts on these areas could also adversely impact waters the Department is required to protect under the Clean Water Act. See Park Ridge Neighborhood Ass'n v. Crotty, 38 A.D.3d 903, 832 N.Y.S.2d 653, 655 (2d Dept. 2007) (discussed *infra*). The Plans submitted to the Town Planning Board, which we understand are actually more complete than the Plans submitted to the Department, fail to show wetlands on many low lying areas where hydric soils, which are an indicator of wetlands, are mapped. (Affidavit of Kim Copenhaver, sworn to April 20, 2012 ("Copenhaver Aff.," copy annexed hereto as Exhibit "E"), ¶ 17.) The Project's soil survey specifically notes that Alden silt loam, a hydric soil, is present in low lying areas on the Site, yet these areas are not delineated as wetlands. (*Id.*, ¶¶ 18-19.) The Plans also do not include wetlands within certain riparian zones and stream corridors, the absence of which is highly unlikely. (See *id.*, ¶ 15.) The Plans further indicate that a large pond, smaller ponds, and many tributaries exist on the Site; these areas also would ordinarily qualify as wetlands. (Willingham Aff., ¶¶ 21, 59-60.)

² In its narrative in its Steam Disturbance Report to the Department, the Applicant references November 28, 2012 ACOE correspondence, which, it asserts, "indicates that an individual permit is not required for work at Location 'B' and verifies that work could be accomplished under Nationwide Permit Number 14." (Leonard Jackson Assocs., Stream Disturbance Report, dated Feb. 24, 2012, Narrative at 2.) On its face, this letter does not claim to constitute a delineation of the entire Site. It does, however, as discussed below, trigger Section 401 Water Quality Certification.

³ The Department cannot rely on the Lead Agency's SEQRA Findings because they did not take into account all wetlands on the Site. Similarly, the Planning Board's Resolution attached to the Applicant's Permit Application is flawed, in relevant part, because it relies on the mistaken assumption that the ACOE reviewed and accepted the delineation of the Site's wetlands for the Project. (See Resolution at 5.) As noted above, the Appellate Division has recently affirmed the standing of area residents and an adjoining municipality to challenge the Lead Agency's SEQRA Findings. See Shapiro, 950 N.Y.S.2d at 156 & Village of Pomona, 943 N.Y.S.2d at 151.

In addition, by Petition dated December 12, 2011 and letter dated March 16, 2012, ROSA requested that the Department designate certain wetlands on the Site as being of “unusual local importance” (“ULI”). ROSA recently received a letter from the Department, dated November 16, 2011, indicating that this request has been denied. ROSA anticipates appealing this denial.

Without an understanding of how the Project will affect all wetlands on the Site, the Department cannot rationally assess how the Project would affect waters it must review, including as part of the Section 401 Water Quality Certification.

The Department is also unable to rationally assess the Project impacts because it does not appear to have a complete understanding of the scope and details regarding the Project itself. The Applicant mistakenly states, in the Narrative for its Stream Disturbance Report, that “[f]or the purposes of the application to the [Department], only the subdivision is applicable because all proposed work under the jurisdiction of the [Department] shall be performed in conjunction with the subdivision.” The Applicant has, however, submitted Site Plans, which show far more detail concerning the Project and its impacts.⁴ The Plans provided to the Department, for example, do not show construction details, limits of disturbance, cut and fill details, or utility lines.

It therefore appears that the Department lacks a basic “plan of the proposed project,” showing all Project-related activities and sensitive resources that might be impacted by them. See 6 N.Y.C.R.R. § 608.6(a)(1). There is no rational basis for limiting the Department’s review to the Project’s “subdivision” impacts, when the Project clearly contemplates impacts in connection with its Site Plan. See 6 N.Y.C.R.R. § 617.3(g) (“The entire set of activities or steps must be considered the action, whether the agency decision-making relates to the action as a whole or to only part of it.”) Without this information, the Department lacks an empirical basis for a holistic and complete understanding of the Project and its impacts.

⁴ Under New York Law, Site Plan review and Subdivision review have very distinct purposes. While Subdivision review largely concerns the “division of a parcel into multiple lots” pursuant to the applicable zoning regulations, Site Plan review is intended to establish the “design and layout of the improvements to be placed on a parcel.” Moriarty v. Planning Bd. of Sloatsburg, 119 A.D.2d 188, 506 N.Y.S.2d 184, 185 (2d Dept. 1986). Of special relevance, a Site Plan is intended to set forth the “design and layout” of the Project, including building locations, safe ingress and egress, and impacts on neighboring land uses. Id.; see also Riegert Apartments Corp. v. Planning Bd. of Clarkstown, 57 N.Y.2d 206, 455 N.Y.S.2d 558, 560-61 (1982) (“A site plan is not a subdivision plat. A site plan usually evidences the proposed development of a single lot, whether for one principal building and permitted accessory buildings, or for a group of buildings (such as a group residential development or an industrial park), intended to remain in one ownership. A subdivision plat contemplates division of one tract into a number of smaller lots with eventual separate ownership of each such lot.” (citation omitted)).

Moreover, in this case, the Department is, respectfully, obligated to review Project alternatives that would better mitigate the Project's adverse impacts. In re SES Brooklyn Co., LP & the City of N.Y., 1989 WL 163659, *21 (N.Y. D.E.C. Nov 14, 1989) (Fourth Interim Decision) ("If the New York State Department of Environmental Conservation, in its SEQRA capacity as an involved agency, identified some overriding environmental impact associated with the [proposed project] which could not be mitigated, it would have the opportunity to look further at other alternatives which might better mitigate adverse impacts."). Alternatives the Department should consider should include less dense development that avoids all sensitive areas of the Site, as well as potentially, significant modification of Permit conditions or denial of the requested Permits. It is impossible, however, for the Department to review the Project's alternatives because the scope of the Project's impacts are still currently unknown.

Water Certification

Although the Applicant's Joint Application Form fails to reflect that the Project requires Section 401 Water Quality Certification, the Department's Notice of the Application, posted in the October 17, 2012 Environmental Notice Bulletin, correctly notes that Certification is required. The Department's regulations require all applicants for federal permits that would result in a discharge to "navigable" waters to "apply for and obtain a water quality certification from" the Department. 6 N.Y.C.R.R. § 608.9. While ROSA believes that the ACOE wetlands that will be impacted by the Project are more extensive than the Applicant acknowledges, the Nationwide Permit that the Applicant concedes it requires triggers the Department's 401 Water Quality Certification requirement, which cannot be waived. See Park Ridge Neighborhood Ass'n, 832 N.Y.S.2d at 655; see also 33 C.F.R. §§ 325.1(d)(4), 336.1(a)(1) & 336.1(b)(8).

Respectfully, the Department cannot rationally conduct the required Section 401 Water Quality Certification Review without a delineation of the ACOE wetlands on the Site and without a complete understanding of how other Project activities would affect these waters. The Department's review responsibility under Section 401 broadly encompasses *all* Project activities that may adversely impact waters of the United States, regardless of whether the Department would otherwise have jurisdiction over them. In Park Ridge Neighborhood Association, a matter prosecuted by this Firm, the Appellate Division, Second Department held that

[t]he Department's argument that its regulations require water quality certification only where the waters in issue fall within its jurisdiction under the Freshwater Wetlands Act (ECL art. 24) is inconsistent with the terms of the regulation, pursuant to which the certification requirement applies to *any* permit 'that may result in any discharge into navigable waters as defined in section 502 of the Federal Water Pollution Control Act.'

832 N.Y.S.2d at 655, quoting 6 N.Y.C.R.R. § 608.9[a] (emphasis added.) As such, the Department must consider all Project activities that may impact waters of the United States. This is because the Department's responsibilities under the Clean Water Act and the State Water

Pollution Control Law have distinct legal bases from the Department's other jurisdictional sources. See 33 U.S.C. § 1341 (Clean Water Act) & N.Y. Envtl. Conserv. L. § 17-303 (setting forth the Department's power and duties on Water Pollution Control).

Under the Clean Water Act, States are intended to be the "prime bulwark" against water pollution:

The states remain, under the Clean Water Act, the "prime bulwark in the effort to abate water pollution," and Congress expressly empowered them to impose and enforce water quality standards that are more stringent than those required by federal law.

Keating v. F.E.R.C., 927 F.2d 616, 622 (D.C. Cir. 1991) (citations omitted). Indeed, in enacting the Clean Water Act, Congress expressly declared its intention that States have the "primary" responsibility for preventing water pollution within their jurisdictions:

It is the policy of the Congress to recognize, preserve, and protect the *primary responsibilities and rights of States* to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this chapter.

33 U.S.C. § 1251(b) (emphasis added).

Thus, the Department has significant authority under Section 401 to impose conditions and/or deny certification completely for the Project if it would adversely impact the environment. See Keating, 927 F.2d at 622 ("Section 401 offers a veto power to states with water quality related concerns about licensing activities of the various agencies, including the . . . Corps of Engineers. . . ." (citation omitted)). Indeed, the Clean Water Act empowers States to impose conditions in their Certification mandated by any "appropriate requirement of State law." 33 U.S.C. § 1341(d). As the Court of Appeals for the District of Columbia held, "[o]ne of the primary mechanisms through which the states may assert the *broad authority reserved to them is the certification requirement set out in section 401 of the Act.*" Keating, 927 F.2d at 622 (emphasis added). "Through this requirement, *Congress intended that the states would retain the power to block, for environmental reasons, local water projects that might otherwise win federal approval.*" Id. (emphasis added).

The Department, however, cannot rationally undertake Section 401 Water Quality Certification until it has a complete understanding of the waters on the Site and how the Project would impact them. Moreover, there are both State protected streams and many lower classification streams that discharge into navigable waters on the Site. These streams must also be taken into account if the Department provides the Applicant with certification for the Site.

Stream Disturbance

The Department's lack of a complete and holistic understanding of the Project and its impacts also prevents it from rationally reviewing the Applicant's Stream Disturbance Application. In connection with the Stream Disturbance Application, the Department must "ascertain the probable effect on the health, safety and welfare of the people of the state, and the effect on the natural resources of the state, including soil, forests, water, fish and aquatic resources therein, likely to result from the proposed project or work." N.Y. Env'tl. Conserv. L. § 15-0501(3)(a). For the reasons discussed above, the Department lacks empirical basis required to understand the Project's effect on the public's health, safety and welfare and on natural resources.

As discussed above, for example, it appears that the Applicant has only provided the Department with plans relating to the Subdivision of the Site, and that the Department does not have plans showing the more comprehensive Site work required for the Applicant's Site Plans, which appear to show more potential impacts to streams on the Site. In any event, even the Plans provided to the Department by the Applicant appear show more stream disturbances than the Applicant seeks coverage for. Of course, the Department must consider whether any of these streams fall within the Department's jurisdiction. Even if some of the streams may not fall within the Department's jurisdiction, the Department must consider impacts to them that would affect streams within its jurisdiction. N.Y. Env'tl. Conserv. L. § 15-0501(3)(a); cf. Park Ridge Neighborhood Ass'n, 832 N.Y.S.2d at 655 (holding that the Department must consider impacts to waters outside its Freshwater Wetlands Act jurisdiction if those impacts could ultimately affect waters under its jurisdiction).

Likewise, the Applicant in its Disturbance Summary Table, does not even include the Pond as a regulated stream, even though prior submissions made on behalf of the Applicant include the Pond. Based on these prior submissions it appears that there may be disturbances to the banks of the pond. The Applicant's omission of the Pond as a regulated stream while concurrently proposing disturbances to the Pond must be evaluated by the Department before a permit is issued.

The Department had also previously requested further details regarding the walkway proposed for the vicinity of the "farm pond." (Letter from the Department to Applicant, dated Dec. 30, 2009, at 2.) To our knowledge, this has never been provided to the Department by the Applicant.

Accordingly, it would appear premature for the Department to consider the Applicant's Stream Disturbance Application.

Dam

The Department has not provided the public with the ability to even comment on or evaluate the issues related to the re-construction of the Dam on the Site. The Department must “ascertain the probable effect on the health, safety and welfare of the people of the state, and the effect on the natural resources of the state likely to result from the proposed project or work.” N.Y. Env'tl. Conserv. L. § 15-0503(2)(a). The Dam plays an integral role with respect to the Project’s impacts on the public health, safety and welfare, and on natural resources. It is impossible, however, for the public to comment and/or identify substantive and significant issues when little to no information has been disseminated on the re-construction, maintenance, safety, and environmental impact of the proposed newly re-constructed Dam. The Department must consider a means that would accommodate the public’s Due Process rights, perhaps such as *in camera* review of the relevant documents.

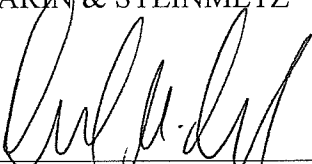
Conclusion

Respectfully, the Department does not have a rational basis for decision making in relation to the requested Permits. The Department should, in the first instance, hold a Legislative Hearing, followed by an Adjudicatory Hearing to ensure that the issues are appropriately addressed.

Please let us know if you have any questions.

Respectfully,

ZARIN & STEINMETZ

By: 
Daniel M. Richmond
Jeremy E. Kozin

DMR/mth

encs.

cc: William Janeway, Regional Director
ROSA

Exhibit A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

-----X
DR. SONYA SHAPIRO and MILTON B. SHAPIRO,

Petitioners,

-against-

DECISION AND ORDER

INDEX NO. 000159/2012

MOTION DATE: 6/29/12

PLANNING BOARD OF TOWN OF RAMAPO, THE
TOWN OF RAMAPO, TOWN BOARD OF THE TOWN
OF RAMAPO, SCENIC DEVELOPMENT LLC,
FORTY SIX-FIFTY TWO WADSWORTH TERRACE
CORP., and NEWFIELD ESTATES, INC.,

Respondents.
-----X

In this Article 78 proceeding, the petitioners seek vacatur of the Town of Ramapo Planning Board's decisions granting (1) final subdivision approval to the Patrick Farm project, (2) final site plan approval for the Patrick Farm condominiums, and (3) final site plan approval for the Patrick Farm volunteer housing. The following sets of papers numbered 1 to 27 were considered on the Shapiros' application:

- Notice of petition, petition; Copenhaver affidavit, Quinn affidavit, and exhibits; memorandum of law 1, 2
- Ramapo's verified answer and objections; Berman affirmation in opposition and exhibits A-K; memorandum of law 3-5
- Scenic's verified answer; Rocks affidavit in opposition and exhibits; exhibit A; Yechiel Lebovits affidavit; Yitzchok Lebovits affidavit; memorandum of law 6-11
- Petitioners' reply brief 12
- Ramapo's record and return ("R&R") vol. 1; R&R vol. 2; responses to comments (R&R exh. 103); jurisdictional applications report (R&R exh. 104); sanitary pump station

report (R&R exh. 134); three rolls of drawings (R&R exhs. 135, 136, 137); draft EIS vol. 1 (R&R exh.140); draft EIS vol. 2 (R&R exh.141); final EIS (R&R exh. 139); supplemental record and return; drawing (overview plan); stormwater pollution prevention plan vol. 1; stormwater pollution prevention plan vol. 2

13-27

Upon review of the foregoing, the Shapiros' application is granted with respect to their fourth cause of action. The remaining causes of action are dismissed. This matter is remitted to the Planning Board pending review by the Community Design Review Committee ("CDRC").

The Patrick Farm project involves three parcels of undeveloped land totaling 208 acres in the Town of Ramapo. This proceeding is the latest of several attempts by the Shapiros, residents of the Town of Ramapo who live across the street from the Patrick Farm property, to derail project in its current form.

In their twelve causes of action, the Shapiros allege that the Planning Board failed to (1) satisfy several conditions imposed by the Town Board when it granted the zone change for the Patrick Farm property; (2) meet all of the conditions sought by the Columbia Gas Transmission LLC; (3) comply with the Town's Scenic Roads law; (4) obtain review by the Community Design Review Committee prior to granting final approval; (5) either set aside land for recreational use or explain its choice to accept money in lieu thereof; (6) properly deduct all existing wetlands in calculating permissible density; (7) comply with the Town's Aquifer and Well Field Protection Zone Law; (8) comply with the Town's Sediment and Erosion Control law; (9) comply with State Environmental Quality Review Act; (10) properly deduct encumbered property in the form of wetlands; (11) require a supplemental environmental impact statement; and (12) comply with Ramapo's Site Development Plan Rules.

In support of their standing to bring this proceeding, the Shapiros allege that they will suffer adverse impacts from increased traffic, reduced home value, a change in the character of the community, deleterious effects on drainage and drinking water, and increased danger from the natural gas pipeline owned and operated by Columbia Gas Transmission LLC ("Columbia"). The respondents, as is their wont, challenge the Shapiros' standing.

The Appellate Division has now addressed the Shapiros' standing in at least two decisions. In a proceeding entitled *Village of Chestnut Ridge v Town of Ramapo* (45 AD3d 74, *lvs dismissed* 12 NY3d 793 [2009], 15 NY3d 817[2010]), the Shapiros challenged Ramapo's enactment of a local law permitting adult student living facilities in residential zones, including that Patrick Farm site. Noting that the Shapiros lived directly across the street from the site, the Appellate Division found that they had standing "because it is inferred from their proximity to the site that they will suffer environmental injury (citations omitted)." *Supra* at 90.

The Appellate Division recently issued a decision in *Shapiro v Town of Ramapo* (2012 WL 3590385 [2d Dept 2012]), the Shapiros' challenge to the rezoning of the Patrick Farm property (hereinafter, "*Shapiro I*"). The Appellate Division ruled that

[s]ince the petitioners live in close proximity to the portion of the site that is the subject of the challenged determinations, they did not need to show actual injury or special damage to establish standing (citations omitted).

Supra at __.

Based on these rulings, it is clear that the Shapiros, by virtue of their proximity to the Patrick Farm project, have standing to assert claims under the State Environmental Quality Review Act ("SEQRA"), as well as any claims that have environmental implications.

First Cause of Action (Town Board Conditions)

In granting a zone change, the Ramapo Town Board attached certain conditions. The Shapiros claim several of the conditions have not been met, including (1) that there be a plan for the administration of the volunteer housing; (2) that the volunteer housing be affordable; and (3) that a homeowners association be responsible for maintenance of common areas.

Volunteer Housing

The Shapiros' claim that there is no valid plan of administration of the volunteer housing because the Planning Board does not have the authority to adopt regulations with respect to either administration or determinations of affordability. According to the Shapiros, the Planning Board can only make recommendations to the Town Board, and that any such regulations would be subject to a mandatory referendum. They maintain that the designation of a Planning Board member to determine eligibility for volunteer housing is a violation of Municipal Home Rule.

The Shapiros' argument is based on the premise that the zone change granted by the Town Board was an instance of "incentive zoning." See Town Law §267-b(1)(c). However, the Court agrees with the respondents that while the Town Board may have had an incentive to grant the zone change sought by the developer, no incentives or bonuses have been *offered* by the Town; *i.e.*, the Town has granted no exemptions from the MR-8 zone requirements which now apply to the property. See Town Law §267-b(1)(c). Therefore, the provisions of the Town Law applicable to incentive zoning are inapposite.

Affordability

The Shapiros go to considerable lengths to establish "conventional definitions of affordability." See affidavit of Lance Freeman, petitioners' reply memorandum of law, exh B.

They claim that in order to be deemed "affordable," the price of a unit should not exceed \$195,300.00. However, the Town Board did not define the term "affordable." Further, the phrase actually used in the Town Board's condition, and throughout the Town Board's resolution, is "below market rate." (See petitioner's reply memorandum of law, exh. C, p 8.) The restriction set by the Planning Board, *i.e.*, that the price not exceed the actual cost of construction, plus a 10% profit, meets that goal.

Fair Housing Act

As for the Shapiros' contention that four-bedroom units discriminate against singles, the Court would observe that the Shapiros are not singles, and this is an instance where they lack standing to complain. See *Village of Chestnut Ridge v Town of Ramapo*, 45 AD3d 74, 89 (2d Dept 2007). Their argument, that four-bedroom units favor Hasidim, itself smacks of discrimination. Whatever the history of prior developments by those associated with the developer in this case, there is nothing about this development that excludes any group, and there is no evidence of any illegal preference. If the development is marketed in a fashion that violates the law, aggrieved parties may pursue their remedies. The Court sees no basis to compel the Planning Board to take preemptive measures.

Maintenance of Common Areas

In paragraph 109 of their memorandum of law, the Shapiros point to six instances where the Planning Board allegedly failed to comply with the Town Board's condition that one or more homeowners' associations be required to maintain common elements. Two of the alleged "violations" relate to access easements, and the rest relate to drainage equipment or facilities. According to the Town, the drainage facilities in question do not serve the multi-family portion

of the project, but rather the single-family dwellings.

The Town Board's requirement regarding maintenance of common elements appears designed to insure that *some* entity be responsible for common elements, not that the Town, acting in its own interest and the interest of the residents, is precluded from assuming maintenance responsibility of particular facilities. However, the Shapiros have a point when they say that the Planning Board should have made control of common areas by a homeowners association a condition of final approval. Upon remittal, the Planning Board shall do so.

Phased Construction

The issue of phased construction was raised by the Shapiros in *Shapiro II*, and deferred by the Court until the site plan approval phase of the project. The Shapiros maintain that construction is not properly phased because section one of that construction will erect 49% of the multi-family housing, and only 19% of the single-family units. However, the ratio of multi-family to single-family construction is not as important as the fact that the first phase of building will consist of a buffer of 21 single-family dwellings on the perimeter of the development in order to mitigate the visual impact of the multi-family portion of the development. There is no evidence that this plan fails to adhere to the Town Board's requirement of phased construction.

Second Cause of Action (Columbia's Conditions)

In their second cause of action, the Shapiros point out that as a condition of preliminary approval, the Planning Board directed the developer to comply with conditions imposed by Columbia. Columbia issued a "no-objection" letter on December 11, 2011, but the Shapiros make several arguments as to why the Planning Board should not rely upon this letter. One argument is that the letter is based upon the plans as they existed on November 1, 2011, and that

modifications were made subsequent to that date. However, the modifications in question (*see* paragraph 68 of the Shapiros' memorandum of law) are *de minimis*, and there is no indication that they impact Columbia's interests. In short, the Shapiros have not shown that Columbia has *any* objections to the project.

The Shapiros also argue that Columbia's December 12, 2011 "no objection" letter is illusory because, by its terms, the letter cannot be recorded or assigned. The Shapiros argue that the letter therefore affords no protection to the Town from future liability. Suffice it to say that the Planning Board was aware of the restrictions contained in the letter, and it was within its discretion to proceed under those restrictions. The Shapiros concern about future liability and the potential impact upon them as taxpayers is speculative.

Although Columbia has not raised any concerns about fire safety, such concerns were raised by the Hillcrest Fire Company No. 1 ("the fire company"), which has jurisdiction over the Patrick Farm property; and the Shapiros raise the issue as an area of concern to them as well. Chief among their concerns are the proximity of the housing to the pipeline, and the width of the driveways.

As the respondents point out, though, the issue of fire safety was fully aired before the Planning Board, and various modifications were made to address some of the fire company's concerns. The plans for the development meet or exceed the requirements of all current fire codes. While the appeal of a design that optimizes fire safety is obvious, the Planning Board's determination cannot be said to be arbitrary and capricious, and the Court cannot substitute its judgment for that of the Planning Board. *See Riverkeeper, Inc. v Planning Board of Town of Southeast*, 9 NY3d 219 (2007).

Third Cause of Action (Scenic Roads District Law)

The Shapiros claim that the Planning Board failed to comply with the Town's Scenic Roads law because it approved the construction of housing that is architecturally incompatible with the surrounding area. In *Shapiro II*, the Court addressed the issue of Scenic Roads, and observed that "[t]he Scenic Road District law is not applicable until Scenic seeks site plan approval; and it appears that the project complies with that law." The Shapiros' argue that the first part of the Court's observation means that the issue was not ripe for review, and that the second part was *dicta*.

Now that the issue is unquestionably ripe for review, the Court holds that the Planning Board's finding that the project is architecturally compatible with the surrounding area had a rational basis. The Planning Board's finding was first made at the preliminary approval stage, and was specifically readopted by the Planning Board in the three decisions challenged in this proceeding. The architectural design of the individual structures will be reviewed by the CDRC.

Fourth Cause of Action (Architectural Review)

The Shapiros' fourth cause of action alleges that the Planning Board violated Town law by granting final approval without first obtaining review by the CDRC. While Town Code §376-102(A)(3) permits deferral of architectural review at the subdivision stage, Town Law §376-102(A)(7) mandates such review prior to site plan approval. The respondents maintain that, historically, CDRC review takes place before the Building Inspector will issue permits. However, they cite no authority or rationale for deviating from the statutory scheme. Accordingly, the Court will annul the Planning Board's resolutions pending review and report by the CDRC.

Fifth Cause of Action (Recreational Requirements)

With respect to the Table of Recreational Requirements, the Shapiros' allege that the Planning Board should have either required that land be set aside for recreational use, or else adequately explained why it was accepting money in lieu of such set-asides. In this case, the developer chose to pay money in lieu of land; and the Shapiros cite no specific provision of law or regulation which requires that the Planning Board explain why this arrangement is acceptable.

Sixth Cause of Action (Bulk Tables)

The Shapiros' allege that the Planning Board failed to comply with the Bulk Table requirements because it did not properly deduct all existing wetlands in calculating permissible lot size. The delineation of wetlands is another recurring issue in the Shapiros' Article 78 proceedings. In *Shapiro II*, the Court discussed wetlands as follows:

With respect to wetlands, the Planning Board considered the July 12, 2010 memorandum from Town Engineer Ed Moran. Since wetlands are governed by the Department of Environmental Conservation ("DEC") and the Army Corps of Engineers ("ACOE"), the Planning Board was justifiably satisfied by the fact that DEC issued a Wetland Boundary Validation, and ACOE has issued a jurisdictional determination that the project could proceed under a nationwide general permit.

The Shapiros now claim new evidence on the subject, including a National Wetland Inventory map which shows additional wetlands. This map, however, is generalized, and is contradicted by the affidavit of Dennis Rocks stating that wetlands were surveyed and flagged during the development of the Patrick Farm project. Neither the DEC nor the ACOE have raised any concerns about the impact of this development upon wetlands. (While DEC's jurisdiction over wetlands is limited, the jurisdiction of the ACOE is not, and it would be foolhardy of the developer to proceed in violation of ACOE regulations.)

It is not the Court's role to definitively determine the accuracy of the developer's wetlands map. Nor is the Planning Board required to update its information at each stage of the proceeding. See *Jackson v New York State Urban Development Corp.*, 67 NY2d 400, 425-426 (1986). The Court finds that the Planning Board's determination not to revisit the issue of wetlands delineation was supported by substantial evidence, and was not arbitrary and capricious.

Seventh Cause of Action (Aquifer and Well Field Protection Zone Law)

The Shapiros also attempt to rehash the issue of aquifer protection. They allege, as they have in previous proceedings, that the Planning Board did not comply with the Town's Aquifer law. In *Shapiro II*, the Court ruled upon this issue.

With respect to the aquifer, the draft environmental impact statement ("DEIS") contains an erosion and sediment control plan, a water quality mitigation plan, a water quality attenuation plan, and a groundwater recharge plan. Further, the Planning Board correctly determined that Local Law No. 8-2004, the Aquifer and Well Field Protection Zone law is not applicable because the wastewater that the project would produce is connected to publicly-owned treatment facilities. The stormwater plans in the DEIS conform to the New York State 2003 design manual, which is applicable to this project, and the Town Board found that the storm water run-off plan exceeded typical mitigation measures.

The Shapiros' argue that the Court's ruling at the preliminary approval stage is not binding with respect to the final approval stage. They also advance the theory that the Town's Aquifer and Well Field Protection Zone Law is applicable because the development will involve activities regulated by the statute, *i.e.*, the storage of internal combustion vehicles and underground storage and piping.

The Court disagrees with the Shapiros' interpretation of the statute. The parking of cars does not constitute the "storage of internal combustion vehicles," and ordinary basement

plumbing does not constitute "underground storage and piping." Therefore the Court finds no basis to reconsider its prior ruling upholding the determination that the Aquifer and Well Field Protection Zone Law does not apply to this project.

Eighth Cause of Action (Sediment and Erosion Control Local Law)

Another familiar issue is the Shapiros' contention that the Planning Board should have insisted upon the use of the latest design manual in preparation of the SWPPP for this development. While a 2010 manual exists, the respondents have shown that their use of a 2008 manual was permitted by DEC regulations because the developer sought preliminary approval prior to March 1, 2011.

In this proceeding, the Shapiros specifically argue that the use of the 2008 manual violated the Town's Stormwater Management and Sediment and Erosion Control Law, which provides for use of the "most current version or its successor...." Town Code 237-12(A)(1). However, the inclusion of the phrase "or its successor" leads the Court to conclude that this provision refers to the "most current version" required by DEC. The Planning Board's finding that this project would have zero net runoff was also supported by substantial evidence.

Ninth Cause of action (SEQRA)

The Shapiros' claim that the granting of final approval violated SEQRA because the issues of visual impact and fire safety were not adequately considered, and because several of the SEQRA findings were incorrect. Each of these issues has been discussed herein, and framing the issue in terms of SEQRA does not warrant further discussion.

Tenth Cause of Action (Town Code §376-42)

The Court's discussion of the delineation of wetlands with respect to the Shapiros' sixth

cause of action is equally applicable to the Shapiros' argument that the Planning Board did not properly deduct wetlands under Town Code §376-42 for the purposes of determining lot size and unit density.

Eleventh Cause of Action (Supplemental Environmental Impact Statement)

The Court also finds no merit to the Shapiros cause of action claiming that the Planning Board should have required a supplemental environmental impact statement ("SEIS") based upon the submissions of the development's opponents and the new issues raised. 6 NYCRR

§617.9(a)(7) provides as follows:

(i) The lead agency may require a supplemental EIS, limited to the specific significant adverse environmental impacts not addressed or inadequately addressed in the EIS that arise from:

- ((a)) changes proposed for the project; or
- ((b)) newly discovered information; or
- ((c)) a change in circumstances related to the project.

The Planning Board found that the plans before it were essentially the same as those approved at the preliminary approval stage. Each of the issues raised before the Planning Board was fully aired, and the Planning Board's determination that an SEIS was not warranted was neither arbitrary and capricious, nor unsupported by the evidence. *See Muir v Town of Newburgh*, 49 AD3d 744, 746 (2d Dept 2008).

Site Development Plan Rules and Regulations

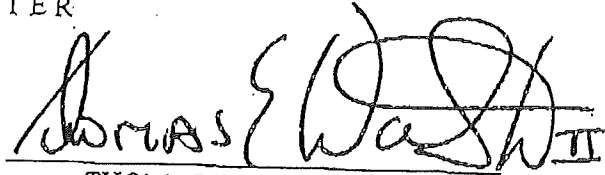
The claim is that the Planning Board failed to comply with proper procedure because it left inadequate time for comments is belied by the record. After conclusion of the applicant's response to public comments, any member of the public wishing clarification must ask at that time. *See Rule 376-604(E)(6)*. The only discussion of clarifications was addressed to Columbia,

which was not a party to the hearing. (R&R 0065.) Even after the hearing was closed, the Planning Board provided additional time for written comments.

This decision shall constitute the order of this Court.

ENTER

Dated: New City, New York
September 10, 2012



THOMAS E. WALSH, III
ACTING SUPREME COURT JUSTICE

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

-----X
IN THE MATTER OF THE APPLICATION OF
LENA BODIN, LYNDA GELLIS, NANCY KENT,
SHERYL SANTI LUKS, JOHN PORTA, ROBERT
SOLOMON, SANDRA SOLOMON, EDITH
THORNBURG, JOHN THORNBURG, ANNE
WILLIAMS, WILLIAM ABRAMSKY, BARBARA
ABRAMSKY, and HILLCREST FIRE COMPANY
NO. 1,

Petitioners-Plaintiffs,

-against-

PLANNING BOARD OF THE TOWN OF RAMAPO,
THE TOWN BOARD OF THE TOWN OF RAMAPO,
THE TOWN OF RAMAPO, SCENIC
DEVELOPMENT, LLC, FORTY SIX-FIFTY
TWO WADSWORTH TERRACE CORP., and
NEWFIELD ESTATES, INC.,

Respondents-Defendants.
-----X

In this Article 78 proceeding, the petitioners seek vacatur of the Town of Ramapo Planning Board's decisions granting (1) final subdivision approval to the Patrick Farm project, (2) final site plan approval for the Patrick Farm condominiums, and (3) final site plan approval for the Patrick Farm volunteer housing. The following sets of papers numbered 1 to 24 were considered on the petitioners' application:

January 26, 2012 notice of verified petition, summons, verified petition and complaint, and exhibit A; February 14, 2012 notice of Verified amended petition, amended summons, verified amended petition and complaint, and exhibit A; Richmond affirmation, exhibits A-D, Kramar affidavit, exhibits A-F, Copenhaver affidavit, exhibits A-D, Willingham affidavit, exhibits A&B,

DECISION & ORDER

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MOTION DATE: 6/29/12

Abramsky affidavit, Mitchell affidavit, and exhibit A; memorandum of law	1-4
Ramapo's May 29, 2012 verified answer and objections; Berman affirmation in opposition and exhibits A-K; memorandum of law;	5-7
Scenic 's May 31, 2012 verified answer and objections; Rocks affidavit and exhibits; memorandum of law	8-10
Richmond reply affirmation, exhibit A, Kramar reply affidavit, exhibits A&B, Copenhaver reply affidavit, Willingham reply affidavit, exhibits A-H, Bodin affidavit, Gellis affidavit, Kent affidavit, Porta affidavit, Santi Luks affidavit, Solomon affidavit, Thornburg affidavit; memorandum of law	11-12
Ramapo's record and return ("R&R") vol. 1; R&R vol. 2; responses to comments (R&R exh. 103); jurisdictional applications report (R&R exh. 104); sanitary pump station report (R&R exh. 134); three rolls of drawings (R&R exhs. 135, 136, 137); draft EIS vol. 1 (R&R exh.140); draft EIS vol. 2 (R&R exh.141; final EIS (R&R exh. 139); supplemental record and return; drawing (overview plan); stormwater pollution prevention plan vol. 1; stormwater pollution prevention plan vol. 2	13-24

Upon review of the foregoing, the petitioners' application is granted with respect to the second cause of action. The remaining causes of action are dismissed. This matter is remitted to the Planning Board pending review by the Community Design Review Committee ("CDRC").

The background of the Patrick Farm development is set forth in the Court's October 18, 2011 decision on a prior proceeding in which many of the same petitioners challenged the Planning Board's preliminary subdivision approval of the project. In this proceeding, in eleven causes of action, the petitioners allege that the Planning Board failed to (1) comply with the Town's Scenic Roads law; (2) obtain timely architectural review; (3) comply with the Town's Aquifer and Well Field Protection Zone Law; (4) properly consider public safety; (5) take a hard look at environmental considerations and address newly-discovered evidence; (6) properly

deduct wetlands from the permissible area of development; (7) apply the proper criteria for the project's stormwater management plan; (8) implement the conditions that the Town Board attached to its approval of the rezoning of the property; (9) comply with Town law as it relates to floodplain management; (10) comply with the regulations governing public hearings; and (11) address deferred issues under the State Environmental Quality Review Act ("SEQRA").

On February 14, 2012, the original petition in this proceeding was amended to add William and Barbara Abramsky and the Hillcrest Fire Company No. 1 ("the fire company") as petitioners. The respondents argue that the statute of limitations to bring this proceeding ran on January 27, 2012, and that the new petitioners' claims are therefore untimely. The Court disagrees.

[A] party may be permitted to intervene and to relate its claim back if the proposed intervenor's claim and that of the original petitioner are based on the same transaction or occurrence. Also, the proposed intervenor and the original petitioner must be so closely related that the original petitioner's claim would have given the respondent notice of the proposed intervenor's specific claim so that the imposition of the additional claim would not prejudice the respondent.

Greater New York Health Care Facilities Association v DeBuono, 91 NY2d 716, 721 (1998).

Because the new petitioners merely joined in the claims previously made in the original petitions, there is nothing about the addition of the new petitioners that prejudices the respondents.

Many of the issues raised by the petitioners in this proceeding were raised in the earlier proceeding ("*Bodin I*"). The petitioner's contend that the Court's rulings on the Planning Board's preliminary approval of the project are not binding with respect to final approval, and that the Planning Board should have addressed new evidence before it. *Res judicata* and

collateral estoppel aside, the Court finds that the issues raised by the petitioners in this proceeding were fully aired before the Planning Board, and that the Planning Board's determinations with respect to these issues, with the exception of CDRC review, had a rational basis and were not arbitrary or capricious.

First Cause of Action (Scenic Roads District Law)

The petitioners contend that the Town's Scenic Roads District Law requires a finding by the Planning Board that the development under consideration is architecturally compatible with the surrounding area. Town Code §215-4(A)(3). The petitioners allege that the Planning Board made no such finding; and indeed that it could not have, because the project is *not* architecturally compatible with the surrounding single-family homes.

The resolutions adopted by the Planning Board clearly indicate that, in the Planning Board's opinion, it has already addressed the issue of architectural compatibility at the preliminary subdivision approval stage. In Schedule A of the Planning Board's March 8, 2011 amended decision, the Planning Board stated

Architectural Compatibility with Surrounding Structures:
proposed project places single family residence lots around the perimeter of the development to diminish the visibility of the multi-family units internal to the project, Single family residences and lot sizes are similar to the existing homes in the site vicinity.

The Planning Board referred to that determination in its current decisions, and specifically readopted that finding. While the petitioners may disagree with the accuracy of the Planning Board's finding, the mitigation measures built into the project, including the plan to buffer the view along Route 202 with a perimeter of single-family homes, provide a rational basis for the Planning Board's finding regarding compatibility. CDRC review upon remittal will address the architectural design of the structures themselves.

Second Cause of Action (Architectural Review)

The petitioners allege that under Town Code §376-102(A)(7), the Planning Board was required to refer this project to the Community Design Review Committee ("CDRC") *prior* to final approval. The Town contends that, as a matter of custom and practice, site plans are reviewed by the CDRC after final approval, but before building permits are issued by the Building Inspector.

Whatever the Town's *practice* may be, the letter of the law, which is consistent with good planning principles, is that design review *not* be deferred, and that the Planning Board have the benefit of design review before considering final approval. The respondents cite no authority to, in effect, delegate responsibility for design review to the Building Inspector. For this reason, the Court annuls the Planning Board's decisions, and remits this matter for referral to the CDRC.

Third Cause of Action (Aquifer and Well Field Protection Zone Law)

In *Bodin I*, the petitioners argued that the Patrick Farm project was subject to Ramapo's Aquifer and Well Field Protection Zone Law. In that proceeding, the Court stated that

the Planning Board found, and the Court agrees, that the Aquifer and Well Field Protection Zone Law (Local Law No. 8-2004) is not applicable to a subdivision plan where the project is connected to publicly-owned treatment facilities.

The petitioners raise this issue again, arguing that the Patrick Farm project involves two regulated activities under the law: "storage of internal combustion vehicles;" and "underground storage and piping." According to the petitioners interpretation, the parking of motor vehicles by residents constitutes the "storage of internal combustion vehicles;" and ordinary basement plumbing constitutes "underground storage and piping" within the meaning of the statute. The Court agrees with the respondents that the petitioners' interpretation of the statute is tortured; and

the Court reiterates its prior finding that the Aquifer and Well Field Protection Zone Law is inapplicable to this development.

Fourth Cause of Action (Public Safety)

The petitioners correctly point out that one of the factors in the approval of a project under §376-91 of the Town Code is public safety. That provision reads, in pertinent part, as follows:

In considering and acting upon site plan development plans, the Planning Board shall take into consideration the public health, safety and welfare, the comfort and convenience of the public in general and of the prospective occupants of the proposed development and of the immediate neighborhood in particular and may prescribe such appropriate conditions and safeguards as may be required in order to further the expressed intent of this chapter....

The focus of the petitioners' safety concerns is the proximity of the natural gas pipeline operated by Columbia Gas Transmission LLC ("Columbia"), the density of the housing, and perceived deficiencies in the design of the buildings from a fire safety perspective.

The petitioners are wrong to say that the Planning Board gave inadequate consideration to the fire company's concerns. Several changes were made to accommodate those concerns, including the widening of driveways to 26 feet, the removal of landscaped islands from the plans, and the addition of more off-street parking to avoid the potential for visitors blocking driveways. Furthermore, the buildings in question are designed to have sprinklers, something not required by the Fire Code.

It is reasonable that the fire company would wish optimal conditions for fire-fighting under various scenarios, and many would no doubt agree that constructing residences in proximity to a natural gas pipeline is problematical. Nonetheless, the project is code-compliant

and, there is no basis to say that the Planning Board's approval of the project, after having duly considered these concerns, was arbitrary and capricious.

Fifth Cause of Action (Wetlands/SEQRA)

The petitioners contend that under SEQRA, the Planning Board was required to consider new evidence that there exist wetlands that were not taken into account in the environmental impact statement ("EIS"). Scenic contends that there have been no significant changes in the project since its inception, and that there is no need for a supplemental environmental impact statement ("SEIS").

The wetlands issue is not a new one. In *Bodin I*, the Court stated as follows:

The Planning Board...had before it, however, a November 13, 2009 delineation from the New York State Department of Environmental Conservation ("DEC"), which has state jurisdiction over wetlands. That delineation was certified for 10 years. The Army Corps of Engineers ("ACOE"), which has federal jurisdiction, had issued a determination that the project could proceed under a nationwide general permit. Accordingly, there was a substantial basis for the Planning Board to find that the project would not impact wetlands. In addition, further approval of the project is contingent upon compliance with DEC and ACOE regulations.

The petitioners' opinion about inadequate mapping of wetlands has been repeated throughout the Planning Board process. The developer was advised by the Army Corps of Engineers ("ACOE") that it could proceed under a Nationwide Permit, and the developer contends that none of the changes to the project since then involves any incursion upon wetlands. Even if one were to accept the argument that the Army Corps of Engineers ("ACOE") has not made a formal jurisdictional determination regarding the project in its current form, it does not follow that wetlands were not properly mapped by the developer at the outset. There was more than sufficient evidence for the Planning Board to conclude the delineation was properly made at

the outset, and no conclusive evidence that it was not. Accordingly, the Planning Board's determination that an SEIS is not warranted should not be disturbed. *See Muir v Town of Newburgh*, 49 AD3d 744, 746 (2d Dept 2008).

Sixth Cause of Action (Deduction of Wetlands)

Town Code §376-42 requires that at least 50% of wetlands be deducted from the permissible building area. The petitioners' argument that the permissible area for development was not properly calculated is a corollary of their argument regarding inadequate delineation of wetlands, and that argument fails for the same reasons applicable to the fifth cause of action.

Seventh Cause of Action (Stormwater Management)

For this proceeding, the petitioners resurrect the argument that the Planning Board violated the Town Code by applying the criteria in the 2008 design manual as opposed the 2010 design manual. This issue was addressed by the Court in *Bodin I*, and the same finding applies here. DEC permitted the use of the older manual for any project which had reached the preliminary approval stage prior to March 1, 2011.

The petitioners also take issue with the developer's figures concerning run-off from the site. This is another issue that was settled at the SEQRA stage of this project, and the developer's response before the Planning Board in support of its figures provided a rational basis for the Planning Board's decision not to revisit this issue.

Eighth Cause of Action (Town Board Conditions)

The Court finds no merit to the petitioners' contention that the Planning Board failed to provide for coordinated phased construction as required by the Town Board. According to the respondents, the first phase of construction will include 21 units of single-family dwellings to be

built on the perimeter of the development in order to mitigate the visual impact of the multi-family housing. This is complied with the Town Board's expectations.

Ninth Cause of Action (Floodplain and Flood Hazard Management Law)

The petitioners contend that part of the development is in a special flood hazard area, and that the Town Code mandates that a floodplain development permit be obtained. According to the Town, however, this is a concern of the Building Inspector, and not the Planning Board. *See* Town Code §149-9.

Tenth Cause of Action (Site Development Plan Rules and Regulations)

The petitioners contend that in the Planning Board's rush to judgment, insufficient time was permitted for review of the plan, and that the Planning Board refused any extensions. The public hearing was held on December 13 and 14, 2011; written submissions were required by Dec. 21, 2011; and the Planning Board rendered its decision on Dec. 27, 2011. The petitioners claim that the public never had an opportunity to ask the developer for clarifications. However, the record reveals that no pertinent requests for clarification were made. R&R 0065.

Eleventh Cause of Action (Deferred SEQRA Issues)

The petitioners contend that in the SEQRA process, the Town Board deferred consideration of fire safety, architectural review, drainage, and erosion control. They argue that a SEIS is needed based upon new evidence, and that absent an SEIS, neither the Town Board nor the Planning Board can be said to have taken a hard look at environmental considerations.


The petitioners' contention has no merit. This project involved a considerable environmental review process, and each of the considerations cited by the petitioners was explored in depth. What the petitioners deem to be deferrals were merely observations that each

of these considerations would be touched upon again at various stages of the process, and this is indeed what happened.

This decision shall constitute the order of this Court.

ENTER

Dated: New City, New York
September 10, 2012



THOMAS E. WALSH, JR.
ACTING SUPREME COURT JUSTICE

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Exhibit B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

-----X
In the Matter of

LENA BODIN, LYNDA GELLIS, NANCY KENT,
SHERYL SANTI-LUKS, JOHN PORTA, ROBERT
SOLOMON, SANDRA SOLOMON, EDITH THORNBURG,
JOHN THORNBURG, ANNE WILLIAMS, WILLIAM
ABRAMSKY, BARBARA ABRAMSKY, and HILLCREST
FIRE COMPANY No. 1,

Index No. 149/12
(Walsh, J.)

Petitioners-Plaintiffs,

For a Judgment pursuant to Article 78 of the CPLR,

- against -

THE PLANNING BOARD OF THE TOWN OF RAMAPO,
THE TOWN BOARD OF THE TOWN OF RAMAPO, THE
TOWN OF RAMAPO, SCENIC DEVELOPMENT, LLC,
FORTY- SIX- FIFTY TWO WADSWORTH TERRACE
CORP., and NEWFIELDS ESTATES, INC.

**REPLY AFFIDAVIT OF
KIM COPENHAVER
IN FURTHER
SUPPORT OF
VERIFIED PETITION
AND COMPLAINT**

Respondents-Defendants.

-----X

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

KIM COPENHAVER, being duly sworn, hereby deposes and, under penalties of perjury,
states as follows:

1. I am Kim Copenhaver. I submit this Reply Affidavit in further support of
Petitioners' request that the Court annul, vacate, and set aside the Subject Decisions issued by
the Town Planning Board on December 27, 2011 in connection with the Patrick Farm Project.¹

2. In particular, I respond herein to certain statements in the Affidavit of Dennis
Rocks, sworn to May 31, 2012 (the "Rocks Aff.").

¹ I employ herein the same abbreviations as were used in my Affidavit, sworn to April 20, 2012
("Copenhaver Aff.").

3. Rocks misses the fundamental significance of the statements in my moving Affidavit in seeking to dismiss them because, he claims. I “ha[ve] been a stranger to the many years of the review process” and “did not complete site or detailed scientific investigations.” (Rocks Aff., ¶¶ 85-88.)

4. Simply put, the problems in the Applicant’s analysis are evident, on paper, to anyone with experience with the permitting processes at issue.

5. Again, I have over eighteen (18) years of experience in environmental assessment, including seven (7) years as a Project Manager for the U.S. ACOE, Regulatory Branch, where my responsibilities included jurisdictional determinations and permit decisions, and the past ten (10) years spent representing clients projects and properties to the ACOE for jurisdictional determinations and permit decisions as a private consultant

6. As such, I am well positioned to comment on the Applicant’s claims, particularly with respect to ACOE.

Scenic’s Claim That ACOE Signed Off On Wetland Boundaries At The Site Is Flawed

7. Thus, for example, I did not need to conduct in-depth field investigations to understand the error in Rocks’ claim that ACOE “issued a letter serving as a jurisdictional determination regarding the wetland delineation at the subject property on February 1, 2007.” (Rocks. Aff., ¶ 57.) I have reviewed the letter that Rocks references.

8. Once again, based on my experience, including my work for ACOE, the letter Rocks references is simply not the type of letter ACOE would issue in connection with a jurisdictional determination, particularly for a Project of this scope or magnitude.

9. A true jurisdictional determination would be an acceptance by ACOE of specific wetland boundaries mapped on an identified piece of property. If it were truly intended by

ACOE to be a jurisdictional determination, it would reference the five (5) year validity period applicable to such determinations and the acreage of the waters of the U.S., including streams, and wetlands.

10. The 2007 letter that Rocks references, however, does not use the words “jurisdictional determination,” or discuss the acceptance by ACOE of wetland boundaries on the Site.

11. Again, the 2007 letter is missing all the typical elements of a jurisdictional determination.

12. Moreover, Rocks does not address the internal email among ACOE staff, which was sent four (4) years after the 2007 letter that Rocks references. I discussed this in my moving Affidavit. (See Copenhaver Aff., ¶ 54.)

13. As I previously explained, Dr. Christopher Mallery, ACOE Chief, Western Section, clearly states in that email that it is his “impression that [the Applicant] will have to come in for a whole new [ACOE] authorization (including a new [Jurisdictional Determination], with a substantial 106 [i.e., ACOE] review.” (A copy of the referenced email is attached to my moving Affidavit as Exhibit “C”).)

14. Nor does Rocks reconcile his reliance on the 2007 letter with a letter ACOE sent to the Applicant four (4) years afterward. (See Copenhaver Aff., ¶ 55).

15. As discussed in my moving Affidavit, Stacey M. Jensen, Chief, Eastern Permits Section, clearly told the Applicant that “[i]f your proposal would involve [] regulated work, you should contact this office immediately so that a project-specific jurisdiction determination can be made as to whether a Department of Army permit will be required.” (A copy of this letter is annexed to my moving Affidavit as Exhibit “D”).

16. Notably, I discussed this ACOE correspondence in my moving Affidavit to show the error in the Applicant's claim that another ACOE letter, dated January 5, 2011 "confirmed that no Corps of Engineers permits are required for the project as Wetlands and Waters of the United States have been avoided." (See Copenhaver Aff., ¶¶ 44-52.)

17. Rocks only effort to address this correspondence is his statement that "[t]he April 18, 2011 letter is a generic letter which might apply to any disturbance in a regulated area." (Rocks Aff., ¶ 93.)

18. Rocks is correct only to the extent he is saying this is the type of "generic letter" that ACOE would send to an Applicant as a recommendation when it has *not signed off on its project*.

19. Again, the fact that, in April 2011, ACOE told the Applicant that it should contact ACOE for "a project-specific *jurisdiction determination*" concerning "whether a Department of Army permit will be required" contradicts Rocks claims that ACOE signed off on the Project in previous correspondence. (See Copenhaver Aff., ¶ 55; (a copy of this letter is annexed to my moving Affidavit as Exhibit "D").

Even If The 2007 Letter Had Set Forth A Jurisdictional Determination, It Would Have Expired

20. Moreover, even if the 2007 letter had constituted a jurisdictional determination, it would have expired this past February 2012 (i.e., five (5) years after its issuance).

21. ACOE Regulatory Guidance establishes that jurisdictional determinations are only valid for five (5) years

22. This is almost invariably set forth on the fact of a true ACOE jurisdictional determination.

**The Applicant's Reliance On Self-Serving Letters From
The Applicant's Former Land Use Counsel Is Unavailing**

23. Rocks reference to self-serving correspondence from the Applicant's former land use counsel is unavailing for several reasons. (See Rocks Aff., ¶¶ 59-61.)

24. Perhaps most obviously, it is from an Applicant's land use counsel, not ACOE. As such, it is no substitute for an actual ACOE jurisdictional determination.

25. Moreover, I note that in the October 8, 2008 letter Rocks references, the Applicant's former land use counsel "request[ed] confirmation that the proposed development" does not need an individualized ACOE permit. (See Rocks Aff., ¶ 60.)

26. Rocks cannot point to any written ACOE response to this request, much less the requested "confirmation."

27. Rocks' reference to a July 27, 2010 letter from the Applicant's former land use counsel also does not help the Applicant. In that letter, the Applicant's former land use counsel represented that a plan "(dated August 21, 2008) was sent to Dr. Mallery [and that] in a telephone conversation . . . Dr. Mallery advised that this plan was satisfactory." (Rocks Aff., ¶ 61.)

28. Once again, Rocks does not address the internal email among ACOE staff, which was sent almost a year after this 2010 letter was sent, in which Dr. Mallery wrote that the Applicant "will have to come in for a whole new [ACOE] authorization (including a new [Jurisdictional Determination], with a substantial 106 [i.e., ACOE] review." (Copenhaver Aff., ¶ 54; (a copy of the referenced email is attached to my moving Affidavit as Exhibit "C").)

29. At a minimum, Dr. Mallery changed his mind, and not in a way that was favorable to the Applicant.

**The Applicant's Continuing Claim An ACOE Letter, Which Only Concerns
Certain Stream Crossings, Authorizes The Entire Project Is Still Wrong**

30. Rocks states that “the January 5, 2011 letter from ACOE includes attached site-specific Patrick Farm part-plans of each crossing and form the basis of the letter,” (Rocks Aff., ¶ 92), but, again, ignores the facts that: (i) the referenced ACOE letter only concerns certain “arch culverts;” (ii) does not reference the Project at issue or the development as a whole; (iii) contains no citation of the drawings, plans or acreages within ACOE’s review area, and; (iv) does not state that the ACOE received a request to review the development plans for a residential development on what is collectively known as Patrick Farm. (Copenhaver Aff., ¶¶ 44-52.)

31. Again, all of these elements, at a minimum, would be in an ACOE letter signing off on a project of this size and magnitude.

Notably, The Applicant Does Not Claim That ACOE Ever Visited The Site In Connection With The Project

32. It is also notable that, in contrast to Rocks’ repeated assertions that DEC has visited the Site in connection with the Project, he is silent as whether ACOE reviewed the wetland delineation on Site.

33. Rocks states that his office “ha[s] had numerous interaction [sic] with the ACOE,” (Rocks Aff., ¶ 58), but, tellingly, never represents that ACOE was at the Site to confirm wetland boundaries or in any way in connection with the instant Project.

34. Again, it is standard ACOE protocol, in connection with the issuance of a jurisdictional determination, for ACOE staff to visit and review the entire site to confirm a delineation.

The Applicant’s Reliance On The DEC Delineation Is Misplaced

35. To the extent the Applicant claims that the DEC delineation sets forth all wetlands on the Site, that claim would not be correct.

36. In its Memorandum of Law, the Applicant states that its consultants “met onsite twice with DEC staff since 2009 to revisit and reconfirm the extent of wetlands and watercourses on the entire property.” (Respondent Scenic Development LLC’s Memorandum of Law, dated May 31, at 35 (“Scenic Brief”).)

37. The Court should be clear that DEC would only have been confirming wetlands that fall within its jurisdiction.

38. The DEC delineation, for example, would not have reflected ACOE wetlands.

39. Again, a formal delineation of ACOE wetlands would be the product of a jurisdictional determination.

40. I respectfully take issue with the Applicant’s statement that “[o]nly by following the foregoing [i.e., DEC] procedure to define and pin down the location of onsite wetlands could the Patrick Farm project be designed over a period of several years. (Scenic Brief at 35.)

41. This statement fails to recognize that there are other procedures for defining wetlands that are beyond DEC jurisdiction, such as an ACOE jurisdictional determination.

42. To my knowledge, ACOE has not been on the Site for six (6) years, and only then in connection with a violation.

43. There is simply no evidence that ACOE ever inspected wetlands on the Site in the field, other than in the area of the 2004 violation.

**The Applicant Effectively Concedes That
Not All Wetlands On The Site Have Been Mapped**

44. In seeking to discredit another consultant for the Petitioners, Rocks appears to have conceded that there are additional, unmapped wetlands on the Site.

45. Rocks draws a false distinction between “waters of the United States” and “wetlands.” (citation) (Rocks Aff., ¶ 64.)

46. In fact, ACOE regulations have clarified over the years that, under the Clean Water Act, wetlands are within the ACOE's jurisdiction *as* regulated "waters of the United States." See 40 C.F.R. § 230.3(s). That is to say, ACOE jurisdiction includes wetlands as waters. As such, for the purposes of ACOE jurisdiction, there is no distinction.

47. Rocks, however, appears to contend that there is a distinction between "wetlands" and "waters" in response to a showing by Andrew Willingham, P.E., in his Affidavit, sworn to April 25, 2012 ("Willingham Aff."), that the Applicant's consultant also had previously identified ACOE wetlands on other areas of the Site, which are not shown on its current plans, including in connection with a Cease and Desist Order issued to the Applicant in 2004 in response to some evident, unauthorized wetland disturbances at the site. (See Rocks Aff., ¶ 64; see also Willingham Aff., ¶¶ 27-31.)

48. To the extent Rocks is arguing that because the Cease and Desist Order concerned "waters," these "waters" do not need to be shown on the Applicant's "wetland" map, he is, in my professional experience, including my work at ACOE, wrong.

49. All "Waters" under ACOE jurisdiction need to be shown on maps submitted in connection with an ACOE jurisdictional determination and permit reviews. See 40 C.F.R. § 230.3(s).

50. Indeed, Rocks states previously in his Affidavit that "*Army Corps 'wetlands' apply to any wetlands or waters of the United States.*" (Rocks Aff., ¶ 63 (emphasis added).)

51. This statement expressly and correctly concedes that the Army Corps "wetlands" includes wetlands as waters of the United States. (Rocks Aff., ¶ 63).

52. Accordingly, Rocks has effectively conceded that there are regulated ACOE wetlands that are not shown on the Applicant's plans, as Andrew Willingham and I have said all

along.

The Applicant's Counsel Fails To Understand The Current ACOE Permit Process

53. The Applicant's counsel states that my contention that "construction is located 'too close' to regulated wetlands is incomprehensible." (Scenic Brief at 40.) Showing a lack of familiarity with current ACOE permit requirements, it states that "[i]n terms of jurisdictional regulation, a proposed disturbance is located within a regulated area or it is located outside of a regulated area; there is no such thing as 'too close' in the world of environmental regulation." (Scenic Brief at 40.)

54. In fact, in my experience with ACOE, particularly with the current requirements of the New York District in project approvals, is that ACOE has implemented policies to maintain a buffer of no less than 15 feet in areas where grading abuts wetland boundaries.

55. This is in recognition of the fact that construction activity "too close" to a regulated wetland can result in direct and indirect impacts to that wetland..

56. The areas where I noted construction appeared too close were specifically those types of areas, where the grading indicates that proximate construction activity could impact the recognized wetlands.

57. For this very reason, a confirmed accurate, surveyed delineation is necessary to assess impacts.

I Did Not Need To Visit The Site To Make Any Of These Comments, But I Would Be Happy To Do So If The Applicant Would Let Me

58. Ultimately, I do not see how the fact that I "did not complete site or detailed scientific investigations," as Rocks contends, has any relevance to the veracity of my statements in this Affidavit, in my previous one, and in my comments to the Planning Board.

59. In any event, as I have stated throughout my review, I have not visited the Site because the land is privately owned and the Applicant has not asked me to visit.

60. I would gladly visit the site.

61. In any event, my concerns regarding the accuracy and level of detail of the wetland delineation are well supported by my professional experience and my office review.

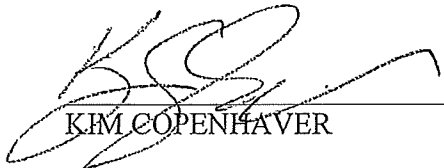
62. The reality is that I conducted scientific investigation for this matter, using all appropriate scientific methods to assess the general location of the wetlands and point out areas of seeming inaccuracy.

The Applicant Should Also Invite ACOE To The Site

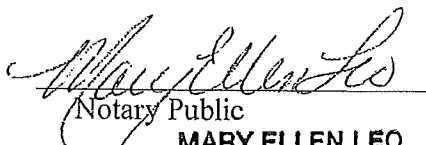
63. The fact remains, however, that the most glaring apparent absence from the Site has been ACOE.

64. The Applicant has noticeably avoided the only real solution to doubts concerning the accuracy of the delineation by refusing to ask the ACOE to come and revisit the Site and validate the current wetland map.

65. Ultimately, the only evidence concerning ACOE involvement at this Site concerns the Applicant violation of ACOE regulations and a negotiated settlement (as reflected in the 2007 letter Rocks references), and, after many years, being provided with partial plans of stream crossings to be reviewed. (See Copenhaver Aff., ¶¶ 44-52.)


KIM COPENHAVER

Sworn to before me this
20 day of June 2012


Notary Public

MARY ELLEN LEO
Notary Public, State of New York
Qualified in Saratoga County
Reg. No. 01LE6218884
My Commission Expires March 15, 2014

Exhibit C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

-----X

In the Matter of

LENA BODIN, LYNDA GELLIS, NANCY KENT,
SHERYL SANTI-LUKS, JOHN PORTA, ROBERT
SOLOMON, SANDRA SOLOMON, EDITH THORNBURG,
JOHN THORNBURG, ANNE WILLIAMS, WILLIAM
ABRAMSKY, BARBARA ABRAMSKY, and HILLCREST
FIRE COMPANY No. 1,

Index No. 149/12
(Walsh, J.)

Petitioners-Plaintiffs,

For a Judgment pursuant to Article 78 of the CPLR,

- against -

THE PLANNING BOARD OF THE TOWN OF RAMAPO,
THE TOWN BOARD OF THE TOWN OF RAMAPO, THE
TOWN OF RAMAPO, SCENIC DEVELOPMENT, LLC,
FORTY- SIX- FIFTY TWO WADSWORTH TERRACE
CORP., and NEWFIELDS ESTATES, INC.

**REPLY AFFIDAVIT OF
ANDREW
WILLINGHAM, P.E.
IN FURTHER
SUPPORT OF
VERIFIED PETITION
AND COMPLAINT**

Respondents-Defendants.

-----X

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

ANDREW WILLINGHAM, being duly sworn, hereby deposes and, under penalties of perjury, states as follows:

1. I am Andrew Willingham. I am a licensed engineer. I submit this Reply Affidavit in further support of Petitioners' request that the Court annul, vacate, and set aside the Subject Decisions issued by the Town Planning Board on December 27, 2011 in connection with the Patrick Farm Project.¹

2. In particular, I respond herein to certain statements in the Affidavit of Dennis

¹ I employ herein the same abbreviations as were used in my Affidavit, sworn to April 23, 2012 ("Willingham Aff.").

Rocks, sworn to May 31, 2012 (the "Rocks Aff.").

3. Initially, I am puzzled by Mr. Rocks' contention that my expert testimony has been "previously raised" and "rejected." (Rocks Aff., ¶ 49)

4. I note at the outset that this Court ruled that my prior Affidavit was not before the Planning Board in connection with the preliminary subdivision approval and thus this Court did not consider my prior testimony. Bodin, et al. v. Town of Ramapo, et al., Index Nos. 1013/2011 & 3051/2011, slip op. at 8 (Sup. Ct. Rockland Co. 2011)

5. Accordingly, this Court never reviewed, much less "rejected", my expert testimony in connection with the preliminary subdivision approval.

6. Moreover, despite Mr. Rocks' most recent Affidavit, I stand by my comments in this proceeding that the Applicant has failed to identify all of the wetlands on the Project Site.

7. The Applicant's failure to identify all on-site wetlands deprived the Planning Board from making a rational decision about the impacts of this massive Project, particularly because the Board did not consider the omitted wetlands.

8. The Applicant's failure to identify all on-site wetlands also resulted in the Planning Board's inaccurate and improper calculation of the developable land pursuant to Town law, resulting in an illegally dense project.

9. The fact that wetland areas are missing from the Applicant's Wetland Location Map is not a mere technicality. The Applicant is planning, as the Subject Decisions allow, to disturb and build in some of these unidentified wetland areas. (Willingham Aff., ¶ 44)

10. As will be discussed in more detail below, the Applicant's reliance on the

DEC validation stamp on the Wetland Location Map is misplaced, as that validation stamp, by its express terms, only validates the boundaries of the two delineated DEC wetlands (i.e., freshwater wetlands of 12.4 acres or more) on the Project Site. (See Exhibit “A”-“Wetland Location Map” prepared by Atzl, Scatassa & Zigler P.C. for Scenic Development, dated October 22, 2009)

11. This limited DEC validation stamp does not purport to validate any ACOE wetlands or other on-site freshwater wetlands (i.e., those less than 12.4 acres). As discussed later, the DEC specifically referred the Applicant to the ACOE to determine federally regulated areas. (See ¶¶ 27-28, below).

12. Most telling is what is missing from this Wetland Location Map, upon which the Planning Board relied.

13. There is no ACOE validation or certification on this Wetland Location Map.

14. There is no ACOE document referring to this Map or any other map confirming that it identifies all on-site ACOE wetlands and the delineation of the boundaries of those ACOE wetlands (as the DEC has done with respect to its jurisdictional wetlands).

15. There is nothing that even purports to be a valid ACOE “jurisdictional determination”, much less one that is in any way is similar to genuine ACOE determination (such as the one in Exhibit “B,” which is a redacted ACOE jurisdictional determination from another one of my projects).

16. Similarly, there is no validation or certification by any wetland delineator

confirming that this Wetland Map accurately depicts the non-DEC wetlands.²

17. Instead, we are left only with the representation of the Applicant's engineer, Mr. Rocks, that the Wetland Location Map (which by its validation stamp only validates two DEC freshwater wetlands and not ACOE and other freshwater wetlands) is a complete and accurate wetlands map for the Site.

18. As will be discussed, Mr. Rocks' "wetland comments are erroneous," not mine. (Rocks Aff., ¶ 50)

The Approved Plans Do Not Reflect All On-Site Wetlands

19. Identifying all on-site wetlands is important to any project design and is critically important where, as here, the Project spans 208 acres; includes the construction of approximately 497 housing units (410 of them are high density multi-family); and has on-site wetlands located within the headwaters of the Mahwah River watershed and which help recharge the underlying sole source aquifer.

The DEC Wetlands

20. Here, the Wetland Location Map submitted by the Applicant (included as Attachment "A") did identify the two on-site DEC wetlands, TH-14 and TH-30. There is a DEC validation stamp expressly validating these two wetlands.³

21. The title of the validation is "NYSDEC FRESHWATER WETLAND BOUNDARY VALIDATION" and it states, "The freshwater wetland boundary as represented on these plans accurately depicts the limits of Freshwater Wetland TH-

² While it is sealed by a licensed surveyor, the survey relates only to the wetlands that were identified by the Applicant on the Site. As stated, there is no submission from a wetland delineator or any agency that the survey represents all of the wetlands on the Site.

³ My original affidavit (at ¶¶ 50-52) noted a discrepancy between the current DEC validation and an earlier DEC delineation. I have since learned, after reviewing DEC notes that were produced in connection with a FOIL request, that DEC's current delineation was a result of an affirmative decision to change the boundary of DEC wetland TH-30. This change underscores the importance of a genuine jurisdictional determination to determine precise wetland boundaries.

14/TH-30 as delineated by [illegible signature] 11/1/03.” The validation stamp is signed by DEC Staff member, Brian Drumm and dated 11/13/2009.

22. The stamp states the DEC validation is good for 10 years (i.e., the DEC wetland delineation validation will expire on 11/13/2019).

23. Mr. Rocks further states that he met with the DEC on two separate occasions after the DEC wetlands were validated, in order “to reconfirm the extent of wetlands and watercourses on the entire property.” (Rocks Aff., ¶¶ 53).

24. I am fairly certain that Mr. Rocks meant to say that he met with the DEC to reconfirm the extent of the *DEC’s* jurisdictional wetlands and watercourses.

25. I make this statement because, again, the original validation by its express terms refers only to the two DEC wetlands.

26. Moreover, on April 3, 2009, the Applicant requested a jurisdictional determination from DEC regarding resources on the Project Site. (See Letter from Adam Peterson, DEC to Dennis Rocks, dated June 16, 2009, attached as Exhibit “C”).⁴

27. In response, the DEC identified two NYS DEC freshwater wetlands (TH-14 and TH-30), and went on to state that “the site also contains portions of wetlands that may be federally regulated. *Federally regulated wetlands fall under the jurisdiction of the Army Corps of Engineers.*” (Emphasis added).

28. DEC then directed the Applicant to communicate with ACOE with respect to the on-site federally regulated ACOE wetlands to determine federal requirements. The June 16, 2009 letter states “*Correspondence with that agency is required to determine any additional permit requirements that may apply.*”

⁴ This letter specifically states that DEC “received [the Applicant’s] request for a jurisdictional determination regarding resources located within the above-referenced 208 acre parcel.”

29. As stated in this letter, it must be determined whether the Project involves the filling of any federally regulated wetland. Before any permits are issued by the NYSDEC, they will almost certainly require a valid Jurisdictional Determination from the ACOE for this purpose, which has not been provided by the Applicant (this assertion is further discussed below).

30. The DEC's written jurisdictional determination also identifies NYS DEC protected streams, and other NYS permits and State agency determinations that would be required for the Project.

31. It strains credulity, and flies in the face of the direct correspondence with DEC, to argue that the DEC delineated or rendered any opinions as to federal wetlands, which are outside the DEC's limited jurisdiction.

There Has Never Been An ACOE Wetland Delineation

32. Unlike the way the Applicant went about ascertaining the two DEC wetlands, it has not properly delineated and validated the location and boundaries of the ACOE regulated wetlands on the Site.

33. First, Applicant has not produced any wetland map that has been validated or certified by ACOE, nor has a Jurisdictional Determination been obtained from the ACOE.

34. Second, unlike the identified Site visits with the DEC over the past three years, there is no reference to any *specific* ACOE site visits.

35. Rather, there is a vague reference to ACOE visiting the site along with Applicant's environmental consultants, Carpenter Environmental Associates (CEA).

36. It is true, from what I have reviewed, that ACOE and CEA were on the Site

together, *but the Site visits were connected to ACOE's May 17, 2004 Cease & Desist Order against the Applicant.* To my knowledge, the Project was not even formulated at that time, much less presented to ACOE.

37. As described in the ACOE letter of Christopher S. Mallery, included in Exhibit 3 to the Rocks Affidavit (hereinafter, the Cease & Desist Closure Letter), the Site visits occurred between the issuance of the Cease & Desist Order in 2004 and ACOE's administrative closing of the remedial action almost three (3) years later on February 1, 2007.

38. The Applicant's efforts to turn this Cease & Desist Closure Letter into an approved ACOE "jurisdictional determination" simply do not withstand scrutiny. (Rocks Aff., ¶ 57).

39. First, this Cease & Desist Closure Letter does not even mention the words "jurisdictional determination."

40. Second, the letter was issued by an enforcement division within ACOE, not the permitting department, which typically handles jurisdictional determinations.

41. Third, a valid jurisdictional determination would be an acceptance of the ACOE wetland boundaries. The Cease & Desist Closure Letter neither mentions acceptance of a wetland delineation, the quantity of wetlands and their areas, site visits by ACOE to confirm boundaries, nor refers to any wetland boundaries shown.

42. In my experience, a jurisdictional determination from ACOE, like the validation from the DEC for this Project, will specifically refer to wetland boundaries and the 5 year validation period. A jurisdictional determination will also include a copy a map showing the wetland boundaries (with flagging) and jurisdictional determination

form data sheets that include extensive specific data regarding each ACOE wetland that is located on the project site.

43. Please see the attached 28 page ACOE issued jurisdictional determination (Exhibit "B"-redacted to protect privacy), which I have received in connection with another matter, to show how far afield this Cease & Desist Closure Letter is from a genuine jurisdictional determination. After a brief comparison between the documents, it is clear that there is little or no resemblance between the two.

44. The Cease and Desist Closure Letter is a 2 page document which predominantly discusses unauthorized placement of fill and subsequent remediation, with some vague discussion of a previous less dense development plan, while containing no reference to a wetland boundary whatsoever.

45. Alternatively, the valid 28-page Jurisdiction Determination that is attached as Exhibit B to this Affidavit discusses and details the approved wetland boundaries and associated approved mapping almost exclusively, with specific, detailed information regarding wetland delineation methodology, a description each wetland, wetland areas, wetland locations, and supporting data.

46. Perhaps most notably, the words "jurisdictional determination" and "delineation" are used uniformly and consistently throughout the document, leaving little doubt regarding the purpose of the document.

47. Instead of providing a valid jurisdictional determination, Mr. Rocks references the Applicant's prior attorney's unsubstantiated opinion that this Cease & Desist Closure Letter somehow serves as a jurisdictional determination that is valid for 5 years. (Rocks Aff., ¶ 57).

48. Such an unsupported opinion from Applicant's prior counsel is simply no substitute for an actual jurisdictional determination.

49. What is most interesting to me is that all the Applicant had to do was ask the ACOE for a jurisdictional determination for all ACOE wetlands and resources on the Site, just as it asked DEC for one relating to NYS jurisdictional wetlands and other resources.

50. Interestingly, as late as November 30, 2011, a representative of the Town emailed ACOE stating that the Applicant's engineer "has always maintained that they did not need a jurisdictional determination from USACOE." (See 11/30/11 Email from Ed Moran to Naomi Handell of ACOE, attached as Exhibit "D").

51. This Town engineer who was charged with reviewing the Applicant's plans had sent an earlier March 2010 email to ACOE stating, "It's pretty obvious to me that a JD is necessary, however the applicant is stating that since the NYSDEC certified the limits of the wetlands in 2009, they don't need to go to you [ACOE] for a JD." (See 3/30/10 Email from Ed Moran to Stacey Jensen of ACOE, attached as Exhibit "E").

52. It is puzzling that the Applicant would assert the above claim. The certification of the DEC wetlands does not effect the need for a Jurisdictional Determination from the ACOE, since federal wetlands are regulated by a separate agency (ACOE) and are regulated under separate regulations (CFR), and DEC had already notified the Applicant of the need to go to ACOE.

53. Respectfully, ACOE jurisdictional determinations cannot be manufactured.

54. It is critical for a Project of this scope and density for the location and boundaries of all ACOE wetlands to be actually determined and verified, as the law

requires.

At Most, the Cease & Desist Closure Letter Relates to 139 Single Family Homes, Not 410 High Density Multi-Family Units and 89 Single Family Homes

55. The Cease & Desist Closure Letter upon which Applicant relies for its claim that it received a jurisdictional determination and that the Project does not require individualized ACOE review, in fact, related to a very different, less impactful project than the current proposal.

56. The Letter was based on a plan for 139 single-family homes, which is a far cry from the current plan of 497 housing units (410 high density multi-family and 87 single family homes).

57. The ACOE letter from Dr. Mallery specifically states that he is looking at “the [then] current project, which involves construction of 139 single-family homes.” (Rocks Aff., Exhibit 3).

58. Dr. Mallery goes on to state that the ACOE office has reviewed the proposal to develop the site “specifically the above-referenced drawings” (i.e., showing 139 single-family homes). (Rocks Aff., Exhibit 3).

59. It should be noted that, while Mr. Rocks relies heavily on this ACOE Letter, he fails to include the critical “Preliminary Layout Study” for the 139 single-family homes.

60. This is a particularly conspicuous absence, as the cited Study is also the alleged basis for the claim that there was an ACOE delineation.

61. Possibly this absence is explained because ACOE wetlands are shown on previous maps, which are not shown on the current Wetland Location Map upon which the Planning Board relied. (Willingham Aff., ¶ 27)

62. In any event, a change in development plans from 139 homes to close to 500 housing units is hardly “minor in scope,” as was the prior change in layout plan.

63. The fact that a change of such magnitude would require further review by ACOE is evidenced by an April 15, 2011 email from Dr. Mallery, which refers to the 2004 enforcement case against the Applicant and states that after remediation, “I wrote them [Applicant] off for a nationwide [NWP] for their then-proposed project, *with the warning that, if their project changed, they would need considerably more review from us.*” (See 4/15/11 Email from Dr. Mallery to Stacey Jensen, ACOE, attached as Exhibit “F”) (Emphasis added)

64. Dr. Mallery further recounts that the developer’s prior attorneys “asked for approval for an expanded project for the site a few years later” and he responded that “it would be very difficult for him to get a new approval and that he would be better off following the old proposal.”

65. While Dr. Mallery reports that it was sufficient for the attorney at the time, “not everyone was listening, as the developer (Scenic Development) has come up with a new proposal that involves twice as many houses as the previous one.”

66. Dr. Mallery concludes in this email that it would be his impression that the developer “will have to come in for a whole new authorization.”

67. The need for further ACOE review of Project is reinforced by Dr. Mallery’s “Memorandum for Record” stamped April 18, 2011 (the Mallery Memo), prepared well after his Cease & Desist Closure Letter (See 4/18/11 Memorandum for Record, prepared by Dr. Christopher Mallery of ACOE, attached as Exhibit “G”).

68. The Mallery Memo reconfirms the “subsequent telephone conversation with

Mr. Chertok” regarding a change in development plans from those referred to in the February 1, 2007 Cease & Desist Closure Letter.

69. Dr. Mallery wrote, “*In this context, the review of these submittals for such authorization would involve the necessity for further information concerning jurisdictional and cultural resource issues that was not required for the [NWP] authorization of the previously proposed project.*” (Emphasis added).

70. According to the Mallery Memo, “Mr. Chertok stated that it would not be necessary to proceed with the additional processing of the requests.”

71. The Mallery Memo also states that he received a letter on 9/28/09, containing a similar request for a determination from another of the Applicant’s professionals. Dr. Mallery wrote, “It was determined that [this consultant] was not aware that Mr. Chertok declined the further review of the matter.”

72. On the same date as the Mallery Memo (4/18/11), Stacey Jensen (ACOE Chief, Eastern Permits Section) notifies the Applicant in writing that it should contact ACOE for “a project-specific *jurisdiction determination*” concerning “whether a Department of Army permit will be required.” (See Copenhaver Aff., Exhibit “D”).

73. The above-referenced documents refute Rocks’ claim that ACOE signed off on this Project by virtue of the 2007 Cease and Desist Closure Letter.

NWI Inventory Maps Demonstrate That There are Additional On-Site Wetlands

74. Contrary to Mr. Rocks’ assertions (in ¶ 65), I understand that National Wetland Inventory (NWI) maps are provided for general mapping purposes (*i.e.*, they provide general locations of ACOE wetlands) and not necessarily for precise wetland delineations.

75. As I have said, however, it is very rare in my experience that a wetland that is shown on a NWI map does not actually exist; more often, the ACOE wetland not only exists in that general location it is actually larger than that depicted on the NWI Mapping.

76. Mr. Rocks says that, for purposes of development, it is important to know the “precise jurisdictional boundaries of wetlands” rather than using NWI mapping. (Rocks Aff., ¶ 65).

77. I agree wholeheartedly with the critical importance of “precise jurisdictional boundaries” for the purpose of planning developments and that is why I am befuddled that the Applicant did not request a jurisdictional determination from ACOE, which would have provided such precision.

78. To date, the Applicant has refused to request an ACOE jurisdictional determination that would give the “precise jurisdictional boundaries”, which Mr. Rocks concedes are critically important for proper planning.

79. Maybe the words of a reviewing engineer from 4/12/10 ring true: “The applicant is adamant that he’ll fight us if we insist on a new delineation from the Corp and all but admitted to me it’s *because he knows there are acres of additional wetlands on the site.*” (See 4/12/10 Email from Ed Moran to Naomi Handell of ACOE, attached as Exhibit “H”). (Emphasis added).

80. It bears repeating that identifying these omitted additional wetlands to the Planning Board is critical.

81. Had they been properly identified, it is hard to believe that the Planning Board would have approved proposed parking areas and a building directly over an ACOE wetland—one that is clearly shown on the NWI mapping and identified in a sketch

attached to the Leonard Jackson Associates 05/17/04 Letter but is not on Applicant's map. (Willingham Aff., ¶¶ 29-30, 44).

The Applicant Is Wrong In Its Continuing Claim That An ACOE Letter, Which Only Concerns Certain Arch Culverts, Authorizes The Entire Project

82. The Applicant is simply wrong when it contends that a January 5, 2011 letter somehow suggests that there are no impacts to the ACOE wetlands on the site.

83. By its terms, this letter relates only work on specific arch culverts.

84. This letter is not a review of the development plans in their entirety; it does not purport to be a jurisdictional determination or, in any way, determine the "precise jurisdictional boundaries" of any on-site ACOE wetlands.

85. Indeed, my opinion is actually supported by Mr. Rocks when he concedes that "the January 5, 2011 letter applies to all proposed stream crossings" (Rocks Aff., ¶ 66). That is to say, it does not relate to this entire Project.

The Applicant Effectively Concedes That Not All Wetlands On The Site Have Been Mapped

86. In seeking to discredit me, Rocks appears to have conceded that there are additional, unmapped wetlands on the Site.

87. Rocks claims that "[a]bsolutely no wetlands disturbance was associated with the Cease & Desist Order." (Rocks Aff., ¶ 64).

88. The very letter from ACOE that he submits to the Court contradicts this statement. (Rocks Aff., Exhibit 3)

89. The Cease & Desist Closure Letter states that "fill had been placed in waters of the United States, particularly streams and wetlands...." (See Rocks Aff., Exhibit 3, first paragraph).

90. It is these very wetlands surrounding the large Pond on the Site that were identified by the Applicant to ACOE in connection with the Cease & Desist Order, which are missing from the wetland Location Map that was submitted to and relied on by the Planning Board. (See Willingham Aff., ¶¶ 27-31)

91. And, it is on one of the missing ACOE regulated areas where the Planning Board has approved actual development such as parking lots, retention basins and high density multi-family housing units. (Willingham Aff., Map W-2)⁵

92. I also must note that Mr. Rocks contradicts himself when on the one hand he claims that I am failing to distinguish between “waters of the United States” and “wetlands” (Rocks Aff., ¶ 64) and on the other hand he states that “Army Corps ‘wetlands’ apply to any wetlands *or* waters of the United States.” (Rocks Aff., ¶ 63) (Emphasis supplied).

93. In sum, Rocks has in effect conceded that there are regulated ACOE wetlands that were shown on prior maps that are not shown on the Applicant’s plans or current wetland Location Map, as I and Ms. Copenhaver have said all along.

Because the Planning Board Did Not Factor In All Wetlands On Site, It Approved and Illegally Dense Project

94. As I set forth in my prior affidavit, the Planning Board could not rationally determine whether the Project meets the Town of Ramapo’s basic zoning requirements because the Site’s wetlands have not been accurately identified. (Willingham Aff., ¶¶ 53-63.)

95. Again, the Town Code requires that fifty percent (50%) of wetland areas must

⁵ Map W-2, shows approved construction over a NWI mapped ACOE wetland area. This unfortunate consequence underscores the impact of the Applicant’s failure to obtain an ACOE jurisdictional determination, or otherwise identify all ACOE wetlands.

be subtracted from the lot area when determining minimum lot area (e.g. Subdivision) and maximum unit density (e.g. Site Plan) (See Town Code, § 379-42.)

96. My point was that in order to correctly subtract 50% of the wetland area (as is required by the Code) the Planning Board must have the correct wetland area, which it did not have.

97. I believe I have established that ACOE wetlands were not identified and therefore not included in this calculation.

98. As I have said, the DEC only has jurisdiction over freshwater wetlands that are 12.4 acres or larger in size.

99. There are many freshwater wetland areas that are less than 12.4 acres, which provide specific wetland benefits such as flood and storm control, erosion control, wildlife habitat and protection of subsurface water resources.

100. Even if some of the omitted wetlands are not ACOE or DEC jurisdictional wetlands, they are “wetlands” nonetheless.

101. The Town Code does not limit the “wetland” area calculation to DEC and ACOE wetlands. (See Town Code, § 379-42), and it does not define “wetland” to include only those two types of wetlands.

102. In fact, the only Town definition of “wetland” that I could find is quite broad and is not limited to ACOE or DEC jurisdictional wetlands. It defines “wetland” as:

[A]n area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as ‘hydrophytic vegetation

(See Chapter 237, Stormwater Management and Sediment Erosion Control, § 237-6).

103. Again, Mr. Rocks misses my central point: No matter what calculations the Applicant provided, or what review was done by the Planning Board or Town on those calculations, they cannot be accurate if wetlands are omitted.

104. To make it even clearer, I am challenging the under-representation of wetlands on the property, which would change the numbers in the decisive math equation.

105. I am also puzzled by Mr. Rocks response to my assertion that Section 45(B)(4) of the Town Subdivision Code requires that the proposed stormwater detention ponds should be subtracted from the minimum lot area, and they were not. (Willingham Aff., ¶¶ 61-62)

106. Mr. Rocks claims that I ignore an “apparent inconsistency” between this subdivision regulation and a Town zoning law regulation, and, thus, my opinion is “conjecture and speculation.” (Rocks Aff., ¶¶ 69-71, 77).

107. I do not see how the two provisions cited by Applicant are inconsistent.

108. Section 376-42(A) of the Town Zoning Law requires a **minimum** of 50% of the low lying or flooded lands to be deducted from the minimum lot area; whereas, Section 45(B)(4) of the Town’s Subdivision Regulations requires the full amount (i.e., 100%) to be subtracted.

109. I do not see an inconsistency as both Town provisions can be met.

110. I stand by my opinion that as a result of these errors, it appears that the Planning Board has approved an illegally dense Project.

The Applicant’s Stormwater Pollution Prevention Plan Does Not Meet Town Code

111. As I stated, per Town Code Section 237-12(A)(1), stormwater

management practices must be designed and constructed in accordance with the most current version of the New York State Stormwater Management Design Manual (Design Manual). (Willingham Aff., ¶ 64).

112. My review of the Applicant's Stormwater Pollution Prevention Plan (SWPPP) confirms that it does not conform to or even acknowledge the current 2010 Design Manual, but rather uses an the old 2008 Design Manual ⁶ (Willingham Aff., ¶¶ 65-71).

113. Mr. Rocks seems to have completely disregarded my reference to this Town mandate that the current Design Manual must be used.

114. Instead, he argues that only the State has "the jurisdiction to compel an application to comply with a particular Stormwater Management Design Manual." (Rocks Aff., ¶ 79).

115. This statement is not correct.

116. First, the Town, as a NYS authorized MS4 (Municipal Separate Storm Sewer System), is delegated authority over local SWPPPs, although the DEC retains supervisory authority. In fact, as an MS4, the Town of Ramapo must review and approve all SWPPP's, while alternatively the NYSDEC reviews SWPPPs only under certain conditions (e.g. other NYSDEC permits are required).

117. Second, while the DEC Guidance made it *permissible* to use the older (i.e., 2008) Design Manual it did not make it *mandatory*.

118. However, the Town, in the exercise of its delegated authority, has in fact made it mandatory to use the 2010 Design Manual through the enactment of Town Code Section 237-12(A)(1).

⁶ This 2010 Design Manual includes substantial revisions to the 2008 Design Manual.

119. I stand by my contention that the Planning board has approved a SWPPP and associated stormwater management design that does not meet Town Code.

120. Moreover, I have reviewed the SWPPP produced by the Town after Petitioners served their moving papers. This SWPPP also does not comply with the most recent DEC Design Manual.

**The Planning Board Did Not Follow Proper Procedure
Under the Town's Scenic Road District Law or Its Zoning Code**

121. The Scenic Road District includes all property within one thousand (1,000) feet from the center lines of Route 202 and Route 306 (north of Grandview Ave.), both of which have been designated Scenic Roads (Town Code, § 215-3) and abut the Project Site.

122. The approved high density development will largely be built within the 1,000 foot area.

123. The views in the Scenic Road area will be significantly adversely impacted by the Project.

124. I have already said, "the Project will decimate the scenic and natural features of the site with its extremely dense and highly visible development." (Willingham Aff., ¶¶ 97-102).

125. Additionally, poor architectural choices, particularly in the high density multi-family structures, could substantially exacerbate the Project's incompatibility with the character of the surrounding community and to other beneficiaries of the Scenic Road District.

126. I understand that the Planning Board did not make the findings that it "*must*" make with respect to architectural compatibility and preservation of scenic and

natural features that are required by Town Code, § 215-4 (A)(3), in “order to grant site plan approval.”

127. I also understand that the Respondents failed to fulfill the Town Code requirement that the Planning Board refer the Project to the Town’s Community Design Review Committee (C.D.R.C.) for architectural review. (Town Code § 376-102(A)(7)).

128. Specifically, the Town Code requires the Planning Board to refer this architectural review to the C.D.R.C. “prior to site plan approval.” (Town Code §§ 376-102(A)(7)); 376-102(A)(7) (establishing that “[a]ll site development plans submitted to the Planning Board, such plan to be submitted to the C.D.R.C. for architectural review by the Planning Board in time to provide for C.D.R.C. advisory *prior to Planning Board site plan approval.*” (emphasis added).)

129. This C.D.R.C. review is not limited to projects in the Scenic Road District; it applies to *all* projects requiring site plan approval.

130. Recognizing that the necessary referral for architectural review did not occur before site plan approval, the Applicant contends that review will occur after Site Plan approval and that “no other method of review is practically feasible.” (Rocks Aff., ¶ 165).

131. In fact, apart from apparently violating the plain terms of the Town Code, deferring architectural review until after Site Plan review substantially vitiates the positive impact that this architectural review can have on a project.

132. Architectural review prior to Site Plan approval is much more meaningful because the architectural elements of a project can be reviewed concurrently with other elements of the project.

133. As such, comments generated from the architectural review may affect the Site Plan Approval process.

134. For example, the architectural review may yield comments regarding the placement of buildings or landscape screening, which by code must be addressed during the Site Plan Approval process.

135. Deferring the architectural review until after Planning Board approval reduces its effectiveness by separating the architectural issues from all other design elements of the project and limiting the ability to revise the project accordingly.

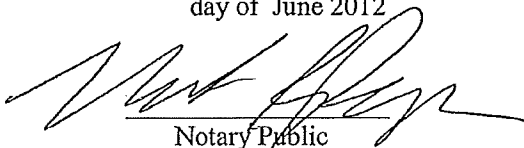
136. Finally, even if “conceptual architecture” was “discussed” at some point in connection with the DEIS (Rocks Aff., ¶ 167), it would not release the Planning Board from its independent responsibilities to review and “make findings” under the Scenic Roads Law, as well as to refer to the CDRC at the site plan approval stage.

137. In any event, the SEQRA Findings for the Project deferred review of the Project’s architecture, stating that “[t]he multifamily dwellings will be subject to architectural review.” (R. at 1154.)

138. The time for that review, as the Town Code establishes, is at Site Plan review.


ANDREW WILLINGHAM

Sworn to before me this
day of June 2012


Notary Public

NATHAN B. ROPER
Notary Public, State of New York
NO. 01RO6221158
Qualified in Ulster County
Commission Expires April 26, 2014



Exhibit A



DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
NEW YORK, N.Y. 10278-0090

REPLY TO
ATTENTION OF:
Regulatory Branch

SUBJECT: Permit Application Number [REDACTED]
by [REDACTED]

[REDACTED]

Dear Mr. [REDACTED]

On [REDACTED], 2011, the New York District of the U.S. Army Corps of Engineers received a request for a Department of the Army jurisdictional determination for the above referenced project. This request was made by [REDACTED], as consultants for [REDACTED] LLC. The site consists of approximately [REDACTED] acres along the [REDACTED] in the Town of [REDACTED] County, New York.

In a letter received on [REDACTED], 2011, your office submitted a proposed delineation of the extent of waters of the United States within the project boundary. A site inspection was conducted by a representative of this office on [REDACTED], 2011, in which it was agreed that no additional revisions to the delineation would be necessary.

Based on the material submitted and the observations of the representatives of this office during the site visit, this site has been determined to contain jurisdictional waters of the United States based on: the presence of wetlands determined by the occurrence of hydrophytic vegetation, hydric soils and wetland hydrology according to criteria established in the 1987 "Corps of Engineers Wetlands Delineation Manual," Technical Report Y-87-1 that are either adjacent to or part of a tributary system; the presence of a defined water body (e.g. stream channel, lake, pond, river, etc.) which is part of a tributary system; and the fact that the location includes property below the ordinary high water mark, high tide line or mean high water mark of a water body as determined by known gauge data or by the presence of physical markings including, but not limited to, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter or debris or other characteristics of the surrounding area.

The jurisdictional waters of the United States are shown on the drawings entitled "Wetland Delineation Map [REDACTED]" sheets 1 and 2, prepared by [REDACTED], dated [REDACTED] 2011. These drawings indicate that there are seven (7) principal wetland areas with a total of 18.31-acres on the project site that are considered to be waters of the United States.

Wetland A is located in the eastern section of the property and is approximately 0.46-acres within the subject property. Wetland B is located throughout central section of the property and is approximately 8.74-acres within the subject property. Wetland C is located along the northern boundary of the property and is approximately 0.16-acres within the subject property. Wetland D is located in the southwestern section of the property and is approximately 2.76-acres within the

subject property. Wetland E is located in the southwestern section of the property and is approximately 1.03-acres within the subject property. Wetland F is located in the western section of the property and is approximately 1.55-acres within the subject property. Wetland G is located along the western boundary of the property and is approximately 3.63-acres within the subject property.

It should be noted that, in light of the U.S. Supreme Court decision (Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers, No. 99-1178, January 9, 2001), the wetland areas designated as Isolated Wetlands 1, 2, 3, 4, 5 and 6, as shown on the above referenced drawing, do not meet the current criteria of waters of the United States under Section 404 of the Clean Water Act. The Court ruled that isolated, intrastate waters can no longer be considered waters of the United States, based solely upon their use by migratory birds.

This determination regarding the delineation shall be considered valid for a period of five years from the date of this letter unless new information warrants revision of the determination before the expiration date.

This determination was documented using the Approved Jurisdictional Determination Form, promulgated by the Corps of Engineers in June 2007. A copy of that document is enclosed with this letter, and will be posted on the New York District website at:

<http://www.nan.usace.army.mil/business/buslinks/regulat/jurisdet/index.htm>.

This delineation/determination has been conducted to identify the limits of the Corps Clean Water Act jurisdiction for the particular site identified in this request. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed is a combined Notification of Appeal Process (NAP) and Request For Appeal (RFA) form. If you request to appeal this determination you must submit a completed RFA form to the North Atlantic Division Office at the following address:

Michael G. Vissichelli, Administrative Appeals Review Officer
North Atlantic Division, U.S. Army Engineer Division
Fort Hamilton Military Community
General Lee Avenue, Building 301
Brooklyn, New York 11252-6700

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR Part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by 2012 . It is not necessary to submit an RFA form to the Division Office if you do not object to the determination in this letter.

This delineation/determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service prior to starting work.

It is strongly recommended that the development of the site be carried out in such a manner as to avoid as much as possible the discharge of dredged or fill material into the delineated waters of the United States. If the activities proposed for the site involve such discharges, authorization from this office may be necessary prior to the initiation of the proposed work. The extent of such discharge of fill will determine the level of authorization that would be required.

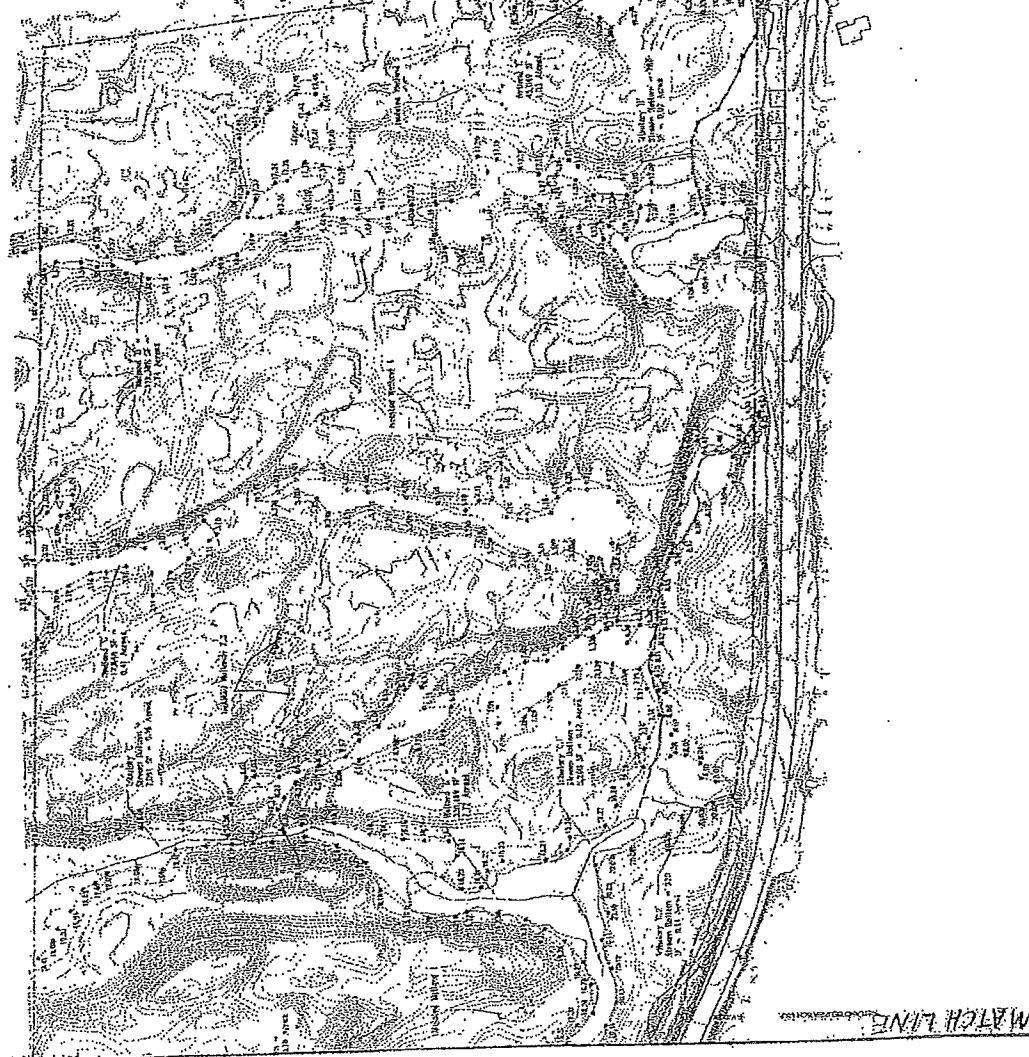
If any questions should arise concerning this matter, please contact Stephan Ryba, of my staff, at (917) 790-8512.

Sincerely,

A handwritten signature in cursive script, appearing to read "Christopher S. Mallery".

Christopher S. Mallery, PhD
Chief, Western Permits Section

Enclosures



USACE Jurisdictional Determination Wetland Names

Wetland A =	0.46-acre	(Sum of Wetland A & Tributary A)
Wetland B =	8.74-acre	(Sum of Wetlands B, C, Tributaries B, C, C1, & C2)
Wetland C =	0.14-acre	
Wetland D =	2.76-acre	(Sum of Wetland D & Tributary D)
Wetland E =	1.05-acre	
Wetland F =	1.55-acre	(Sum of Wetland F, Tributaries E, E1, & E2)
Wetland G =	3.63-acre	(Sum of Wetland G, Tributaries F & F1)

WETLAND DELINEATION MAP

PROJECT NO. [REDACTED]

DATE [REDACTED]

LOCATION [REDACTED] HUNTSVILLE COUNTY, NEW YORK

SCALE 1" = 400'

NO.	DATE	BY	REVISION

WETLAND DELINEATION MAP

PROJECT NO. [REDACTED]

DATE [REDACTED]

LOCATION [REDACTED] HUNTSVILLE COUNTY, NEW YORK

SCALE 1" = 400'

PROJECT NO. [REDACTED]

DATE [REDACTED]

LOCATION [REDACTED] HUNTSVILLE COUNTY, NEW YORK

SCALE 1" = 400'

MATCH LINE

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: [REDACTED]	File Number: [REDACTED]	Date: [REDACTED]
Attached is:		See Section Below
<input type="checkbox"/>	INITIAL PROFFERED PERMIT (Standard Permit or Letter of Permission)	A
<input type="checkbox"/>	PROFFERED PERMIT (Standard Permit or Letter of Permission)	B
<input type="checkbox"/>	PERMIT DENIAL	C
<input checked="" type="checkbox"/>	APPROVED JURISDICTIONAL DETERMINATION	D
<input type="checkbox"/>	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://www.usace.army.mil/CECW/Pages/rep_permit.aspx or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the New York District Engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations (JD) associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the New York District Engineer. Your objections must be received by the New York District Engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the New York District Engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the New York District Engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the New York District Engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the North Atlantic Division Engineer, ATTN: CENAD-PD-PSD-O, Fort Hamilton Military Community, Building 301, General Lee Avenue, Brooklyn, NY 11252-6700. This form must be received by the Division Engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the North Atlantic Division Engineer, ATTN: CENAD-PD-PSD-O, Fort Hamilton Military Community, Building 301, General Lee Avenue, Brooklyn, NY 11252-6700. This form must be received by the Division Engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the North Atlantic Division Engineer within 60 days of the date of this notice with a copy furnished to the New York District Engineer.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:
 Richard L. Tomer
 U.S. Army Corps of Engineers, New York District
 Jacob K. Javits Federal Building
 New York, NY 10278-0090
 (917) 790-8510

If you only have questions regarding the appeal process you may also contact:
 Michael G. Vissichelli, Administrative Appeals Review Officer
 North Atlantic Division, U.S. Army Engineer Division
 Fort Hamilton Military Community
 General Lee Avenue, Building 301
 Brooklyn, NY 11252-6700
 (718) 765-7163
 E-mail: Michael.G.Vissichelli@usace.army.mil

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.	Date:	Telephone number:
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APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): [REDACTED]

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: New York District, [REDACTED]

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: NY - New York
 County/parish/borough: [REDACTED]
 City: [REDACTED]
 Lat: [REDACTED]
 Long: [REDACTED]
 Universal Transverse Mercator: Folder UTM List
 UTM list determined by folder location
 [REDACTED]
 Waters UTM List
 UTM list determined by waters location
 [REDACTED]
 Name of nearest waterbody: [REDACTED]
 Name of nearest Traditional Navigable Water (TNW): [REDACTED]
 Name of watershed or Hydrologic Unit Code (HUC): [REDACTED]

- Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
- Check if other sites (e.g., offsite mitigation sites, disposal sites, etc.) are associated with the action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION:

- Office Determination Date: [REDACTED]
- Field Determination Date(s): [REDACTED]

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION

There "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

- Waters subject to the ebb and flow of the tide.
- Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

Explain:

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area:¹

Water Name	Water Type(s) Present
Isolated Wetland 1	Isolated (interstate or intrastate) waters, including isolated wetlands
Isolated Wetland 2	Isolated (interstate or intrastate) waters, including isolated wetlands
Isolated Wetland 3	Isolated (interstate or intrastate) waters, including isolated wetlands
Isolated Wetland 4	Isolated (interstate or intrastate) waters, including isolated wetlands
Isolated Wetland 5	Isolated (interstate or intrastate) waters, including isolated wetlands
Isolated Wetland 6	Isolated (interstate or intrastate) waters, including isolated wetlands

ORM Printer Friendly JD Form

b. Identify (estimate) size of waters of the U.S. in the review area:

Area: (m²)

Linear: (m)

c. Limits (boundaries) of jurisdiction:

based on: 1987 Delineation Manual.

OHWM Elevation: (if known)

2. Non-regulated waters/wetlands:³

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: These wetland areas do not exhibit any evidence of surface or subsurface drainage off-site and are surrounded by upland plant communities and upland non-hydric soils. Wetlands 2, 3 and 5 were surrounded by non-hydric soils which were shallow in some areas and located within rocky outcroppings. These wetlands do not appear to have any hydrologic connection to any waters of the U.S. which are present on-site or off-site to the immediate north, south, east or west. The wetlands under review are not present on the NWI and USGS maps for this area. Based on field observations and data wetlands 1-6 were determined to be not jurisdictional.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

1. TNW

Not Applicable.

2. Wetland Adjacent to TNW

Not Applicable.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size:

Drainage area:

Average annual rainfall: inches

Average annual snowfall: inches

(ii) Physical Characteristics

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through [] tributaries before entering TNW.

:Number of tributaries

Project waters are river miles from TNW.

Project waters are river miles from RPW.

Project Waters are aerial (straight) miles from TNW.

Project waters are aerial(straight) miles from RPW.

Project waters cross or serve as state boundaries.

Explain:

Identify flow route to TNW:⁵

Tributary Stream Order, if known:

Not Applicable.

(b) General Tributary Characteristics:

Tributary is:

Not Applicable.

Tributary properties with respect to top of bank (estimate):

Not Applicable.

Primary tributary substrate composition:
Not Applicable.

Tributary (conditions, stability, presence, geometry, gradient):
Not Applicable.

(c) Flow:
Not Applicable.

Surface Flow Is:
Not Applicable.

Subsurface Flow:
Not Applicable.

Tributary has:
Not Applicable.

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction:

High Tide Line Indicated by:
Not Applicable.

Mean High Water Mark Indicated by:
Not Applicable.

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Not Applicable.

(iv) Biological Characteristics. Channel supports:
Not Applicable.

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:
(a) General Wetland Characteristics:
Properties:
Not Applicable.

(b) General Flow Relationship with Non-TNW:

Flow Is:
Not Applicable.

Surface flow is:
Not Applicable.

Subsurface flow:
Not Applicable.

(c) Wetland Adjacency Determination with Non-TNW:
Not Applicable.

(d) Proximity (Relationship) to TNW:
Not Applicable.

(ii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Not Applicable.

(iii) Biological Characteristics. Wetland supports:
Not Applicable.

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3. Characteristics of all wetlands adjacent to the tributary (if any):

All wetlands being considered in the cumulative analysis:
Not Applicable.

Summarize overall biological, chemical and physical functions being performed:
Not Applicable.

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Significant Nexus: Not Applicable

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE:

1. TNWs and Adjacent Wetlands:
Not Applicable.

2. RPWs that flow directly or indirectly into TNWs:
Not Applicable.

Provide estimates for jurisdictional waters in the review area:
Not Applicable.

3. Non-RPWs that flow directly or indirectly into TNWs:⁸
Not Applicable.

Provide estimates for jurisdictional waters in the review area:
Not Applicable.

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.
Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:
Not Applicable.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs:
Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:
Not Applicable.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs:
Not Applicable.

Provide estimates for jurisdictional wetlands in the review area:
Not Applicable.

7. Impoundments of jurisdictional waters:⁹
Not Applicable.

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS:¹⁰

Waters Name	Interstate/Foreign Travelers	Fish/Shellfish Commerce	Industrial Commerce	Interstate Isolated	Explain	Other Factors	Explain
Isolated Wetland 1	-	-	-	-	-	-	-
Isolated Wetland 2	-	-	-	-	-	-	-
Isolated Wetland 3	-	-	-	-	-	-	-
Isolated Wetland 4	-	-	-	-	-	-	-
Isolated Wetland 5	-	-	-	-	-	-	-
Isolated Wetland 6	-	-	-	-	-	-	-

Identify water body and summarize rationale supporting determination:

Water Name	Adjacent To TNW Rationale	TNW Rationale
Isolated Wetland 1	-	-
Isolated Wetland 2	-	-
Isolated Wetland 3	-	-
Isolated Wetland 4	-	-
Isolated Wetland 5	-	-
Isolated Wetland 6	-	-

Provide estimates for jurisdictional waters in the review area:

Water Name	Type	Size (Linear) (m)	Size (Area) (m ²)
Isolated Wetland 1	Isolated (interstate or intrastate) waters, including isolated wetlands	-	80.93712
Isolated Wetland 2	Isolated (interstate or intrastate) waters, including isolated wetlands	-	242.81136
Isolated Wetland 3	Isolated (interstate or intrastate) waters, including isolated wetlands	-	242.81136
Isolated Wetland 4	Isolated (interstate or intrastate) waters, including isolated wetlands	-	323.74848
Isolated Wetland 5	Isolated (interstate or intrastate) waters, including isolated wetlands	-	687.96552
Isolated Wetland 6	Isolated (interstate or intrastate) waters, including isolated wetlands	-	202.3428
Total:		0	1780.61664

F. NON-JURISDICTIONAL WATERS. INCLUDING WETLANDS

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements:
- Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce:
- Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR):
- Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (Explain):

Other (Explain):

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment:

Water Name	Type	Size (Linear) (m)	Size (Area) (m ²)
Isolated Wetland 1	Isolated (interstate or intrastate) waters, including isolated wetlands	-	80.93712
Isolated Wetland 2	Isolated (interstate or intrastate) waters, including isolated wetlands	-	242.81136
Isolated Wetland 3	Isolated (interstate or intrastate) waters, including isolated wetlands	-	242.81136
Isolated Wetland 4	Isolated (interstate or intrastate) waters, including isolated wetlands	-	323.74848
Isolated Wetland 5	Isolated (interstate or intrastate) waters, including isolated wetlands	-	687.96552
Isolated Wetland 6	Isolated (interstate or intrastate) waters, including isolated wetlands	-	202.3428
Total:		0	1780.61664

Provide acreage estimates for non-jurisdictional waters in the review area, that do not meet the "Significant Nexus" standard, where such

a finding is required for jurisdiction.

Water Name	Type	Size (Linear) (m)	Size (Area) (m ²)
Isolated Wetland 1	Isolated (interstate or intrastate) waters, including isolated wetlands	-	80.93712
Isolated Wetland 2	Isolated (interstate or intrastate) waters, including isolated wetlands	-	242.81136
Isolated Wetland 3	Isolated (interstate or intrastate) waters, including isolated wetlands	-	242.81136
Isolated Wetland 4	Isolated (interstate or intrastate) waters, including isolated wetlands	-	323.74848
Isolated Wetland 5	Isolated (interstate or intrastate) waters, including isolated wetlands	-	687.96552
Isolated Wetland 6	Isolated (interstate or intrastate) waters, including isolated wetlands	-	202.3428
Total:		0	1780.61664

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD
 (listed items shall be included in case file and, where checked and requested, appropriately reference below):

Data Reviewed	Source Label	Source Description
--Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant	-	-
--Data sheets prepared/submitted by or on behalf of the applicant/consultant	-	-
---Office concurs with data sheets/delineation report	-	-
--U.S. Geological Survey Hydrologic Atlas	-	-
---USGS 8 and 12 digit HUC maps	-	-
--U.S. Geological Survey map(s).	-	-
--National wetlands inventory map(s).	-	-
--Photographs	-	-
---Aerial	-	-
---Other	-	-

B. ADDITIONAL COMMENTS TO SUPPORT JD:
 Not Applicable.

1. Boxes checked below shall be supported by completing the appropriate sections in Section III below.
2. For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
3. Supporting documentation is presented in Section III.F.
4. Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
5. Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.
6. A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
7. Ibid.
8. See Footnote #3.
9. To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.
10. Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): [REDACTED]

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: New York District [REDACTED]

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: [REDACTED]
 County/parish/borough: [REDACTED]
 City: [REDACTED]
 Lat: [REDACTED]
 Long: [REDACTED]
 Universal Transverse Mercator
 Folder UTM List
 UTM list determined by folder location
 • [REDACTED]
 Waters UTM List
 UTM list determined by waters location
 • [REDACTED]
 Name of nearest waterbody: [REDACTED]
 Name of nearest Traditional Navigable Water (TNW): [REDACTED]
 Name of watershed or Hydrologic Unit Code (HUC): [REDACTED]

- Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
- Check if other sites (e.g., offsite mitigation sites, disposal sites, etc.) are associated with the action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION:

- Office Determination Date: [REDACTED]
- Field Determination Date(s): [REDACTED]

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION

There "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

- Waters subject to the ebb and flow of the tide.
- Waters are presently used, or have been used in the past, or may be susceptible for use to transport Interstate or foreign commerce.

Explain:

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area:¹

Water Name	Water Type(s) Present
Isolated Wetland 1	Isolated (interstate or intrastate) waters, including isolated wetlands
Isolated Wetland 2	Isolated (interstate or intrastate) waters, including isolated wetlands
Isolated Wetland 3	Isolated (interstate or intrastate) waters, including isolated wetlands
Isolated Wetland 4	Isolated (interstate or intrastate) waters, including isolated wetlands
Isolated Wetland 5	Isolated (interstate or intrastate) waters, including isolated wetlands
Isolated Wetland 6	Isolated (interstate or intrastate) waters, including isolated wetlands

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b. Identify (estimate) size of waters of the U.S. in the review area:

Area: (m²)

Linear: (m)

c. Limits (boundaries) of Jurisdiction:

based on: 1987 Delineation Manual.

OHWM Elevation: (if known)

2. Non-regulated waters/wetlands.³

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: These wetland areas do not exhibit any evidence of surface or subsurface drainage off-site and are surrounded by upland plant communities and upland non-hydric soils. Wetlands 2, 3 and 5 were surrounded by non-hydric soils which were shallow in some areas and located within rocky outcroppings. These wetlands do not appear to have any hydrologic connection to any waters of the U.S. which are present on-site or off-site to the immediate north, south, east or west. The wetlands under review are not present on the NWI and USGS maps for this area. Based on field observations and data wetlands 1-6 were determined to be not jurisdictional.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

1. TNW

Not Applicable.

2. Wetland Adjacent to TNW

Not Applicable.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size:

Drainage area:

Average annual rainfall: inches

Average annual snowfall: inches

(ii) Physical Characteristics

(a) Relationship with TNW:

Tributary flows directly into TNW.

Tributary flows through [] tributaries before entering TNW.

:Number of tributaries

Project waters are river miles from TNW.

Project waters are river miles from RPW.

Project Waters are aerial (straight) miles from TNW.

Project waters are aerial(straight) miles from RPW.

Project waters cross or serve as state boundaries.

Explain:

Identify flow route to TNW:⁵

Tributary Stream Order, if known:

Not Applicable.

(b) General Tributary Characteristics:

Tributary is:

Not Applicable.

Tributary properties with respect to top of bank (estimate):

Not Applicable.

Primary tributary substrate composition:
Not Applicable.

Tributary (conditions, stability, presence, geometry, gradient):
Not Applicable.

(c) Flow:
Not Applicable.

Surface Flow Is:
Not Applicable.

Subsurface Flow:
Not Applicable.

Tributary has:
Not Applicable.

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction:

High Tide Line indicated by:
Not Applicable.

Mean High Water Mark Indicated by:
Not Applicable.

(iii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Not Applicable.

(iv) Biological Characteristics. Channel supports:
Not Applicable.

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:
(a) General Wetland Characteristics:
Properties:
Not Applicable.

(b) General Flow Relationship with Non-TNW:

Flow is:
Not Applicable.

Surface flow is:
Not Applicable.

Subsurface flow:
Not Applicable.

(c) Wetland Adjacency Determination with Non-TNW:
Not Applicable.

(d) Proximity (Relationship) to TNW:
Not Applicable.

(ii) Chemical Characteristics:
Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Not Applicable.

(iii) Biological Characteristics. Wetland supports:
Not Applicable.

3. Characteristics of all wetlands adjacent to the tributary (if any):

All wetlands being considered in the cumulative analysis:
Not Applicable.

Summarize overall biological, chemical and physical functions being performed:
Not Applicable.

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Significant Nexus: Not Applicable

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE:

1. TNWs and Adjacent Wetlands:
Not Applicable.

2. RPWs that flow directly or indirectly into TNWs:
Not Applicable.

Provide estimates for jurisdictional waters in the review area:
Not Applicable.

3. Non-RPWs that flow directly or indirectly into TNWs:⁹
Not Applicable.

Provide estimates for jurisdictional waters in the review area:
Not Applicable.

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.
Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:
Not Applicable.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs:
Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:
Not Applicable.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs:
Not Applicable.

Provide estimates for jurisdictional wetlands in the review area:
Not Applicable.

7. Impoundments of jurisdictional waters:⁹
Not Applicable.

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS:¹⁰

Waters Name	Interstate/Foreign Travelers	Fish/Shellfish Commerce	Industrial Commerce	Interstate Isolated	Explain	Other Factors	Explain
Isolated Wetland 1	-	-	-	-	-	-	-
Isolated Wetland 2	-	-	-	-	-	-	-
Isolated Wetland 3	-	-	-	-	-	-	-
Isolated Wetland 4	-	-	-	-	-	-	-
Isolated Wetland 5	-	-	-	-	-	-	-
Isolated Wetland 6	-	-	-	-	-	-	-

Identify water body and summarize rationale supporting determination:

Water Name	Adjacent To TNW Rationale	TNW Rationale
Isolated Wetland 1	-	-
Isolated Wetland 2	-	-
Isolated Wetland 3	-	-
Isolated Wetland 4	-	-
Isolated Wetland 5	-	-
Isolated Wetland 6	-	-

Provide estimates for jurisdictional waters in the review area:

Water Name	Type	Size (Linear) (m)	Size (Area) (m ²)
Isolated Wetland 1	Isolated (interstate or intrastate) waters, including isolated wetlands	-	80.93712
Isolated Wetland 2	Isolated (interstate or intrastate) waters, including isolated wetlands	-	242.81136
Isolated Wetland 3	Isolated (interstate or intrastate) waters, including isolated wetlands	-	242.81136
Isolated Wetland 4	Isolated (interstate or intrastate) waters, including isolated wetlands	-	323.74848
Isolated Wetland 5	Isolated (interstate or intrastate) waters, including isolated wetlands	-	687.96552
Isolated Wetland 6	Isolated (interstate or intrastate) waters, including isolated wetlands	-	202.3428
Total:		0	1780.61664

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS

- If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements:
- Review area included isolated waters with no substantial nexus to Interstate (or foreign) commerce;
- Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR);
- Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (Explain):
- Other (Explain):

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (ie., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment:

Water Name	Type	Size (Linear) (m)	Size (Area) (m ²)
Isolated Wetland 1	Isolated (interstate or intrastate) waters, including isolated wetlands	-	80.93712
Isolated Wetland 2	Isolated (interstate or intrastate) waters, including isolated wetlands	-	242.81136
Isolated Wetland 3	Isolated (interstate or intrastate) waters, including isolated wetlands	-	242.81136
Isolated Wetland 4	Isolated (interstate or intrastate) waters, including isolated wetlands	-	323.74848
Isolated Wetland 5	Isolated (interstate or intrastate) waters, including isolated wetlands	-	687.96552
Isolated Wetland 6	Isolated (interstate or intrastate) waters, including isolated wetlands	-	202.3428
Total:		0	1780.61664

Provide acreage estimates for non-jurisdictional waters in the review area, that do not meet the "Significant Nexus" standard, where such

a finding is required for jurisdiction.

Water Name	Type	Size (Linear) (m)	Size (Area) (m ²)
Isolated Wetland 1	Isolated (interstate or intrastate) waters, including isolated wetlands	-	80.93712
Isolated Wetland 2	Isolated (interstate or intrastate) waters, including isolated wetlands	-	242.81136
Isolated Wetland 3	Isolated (interstate or intrastate) waters, including isolated wetlands	-	242.81136
Isolated Wetland 4	Isolated (interstate or intrastate) waters, including isolated wetlands	-	323,74848
Isolated Wetland 5	Isolated (interstate or intrastate) waters, including isolated wetlands	-	687.96552
Isolated Wetland 6	Isolated (interstate or intrastate) waters, including isolated wetlands	-	202.3428
Total:		0	1780.61664

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (listed items shall be included in case file and, where checked and requested, appropriately reference below):

Data Reviewed	Source Label	Source Description
--Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant	-	-
--Data sheets prepared/submitted by or on behalf of the applicant/consultant	-	-
---Office concurs with data sheets/delineation report	-	-
--U.S. Geological Survey Hydrologic Atlas	-	-
---USGS 8 and 12 digit HUC maps	-	-
--U.S. Geological Survey map(s).	-	-
--National wetlands inventory map(s).	-	-
--Photographs	-	-
---Aerial	-	-
---Other	-	-

B. ADDITIONAL COMMENTS TO SUPPORT JD:
Not Applicable.

1. Boxes checked below shall be supported by completing the appropriate sections in Section III below.
2. For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
3. Supporting documentation is presented in Section III.F.
4. Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
5. Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.
6. A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
7. Ibid.
8. See Footnote #3.
9. To complete the analysis refer to the key in Section III.D.8 of the Instructional Guidebook.
10. Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): [REDACTED]

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: New York District [REDACTED]

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: [REDACTED]
County/parish/borough: [REDACTED]
City: [REDACTED]
Lat: [REDACTED]
Long: [REDACTED]
Universal Transverse Mercator [REDACTED]

Folder UTM List [REDACTED]
Waters UTM List [REDACTED]

Name of nearest waterbody: [REDACTED]
Name of nearest Traditional Navigable Water (TNW): [REDACTED]
Name of watershed or Hydrologic Unit Code (HUC): [REDACTED]

Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
Check if other sites (e.g., offsite mitigation sites, disposal sites, etc.) are associated with the action and are recortted on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION:

Office Determination Date: [REDACTED]
Field Determination Date(s): [REDACTED]

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION

These "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

Waters subject to theebb and flow of the tide.
Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

Explain:

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

These "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

1. Waters of the U.S.
a. Indicate presence of waters of U.S. in review area.1

Water Name	Water Type(s) Present
Wetland A	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

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Wetland B	Relatively Permanent Waters (RPWs) that flow directly or indirectly into TNWs
Wetland C	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
Wetland D	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
Wetland E	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
Wetland F	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
Wetland G	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs

b. Identify (estimate) size of waters of the U.S. in the review area:

Area: (m²)
Linear: (m)

c. Limits (boundaries) of jurisdiction:
based on: 1987 Delimitation Manual.
OHWM Elevation: (if known)

2. Non-regulated waters/wetlands:³

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain: These wetland areas do not exhibit any evidence of surface or subsurface drainage off-site and are surrounded by upland plant communities and upland non-hydric soils. Wetlands 2, 3 and 5 were surrounded by non-hydric soils which were shallow in some areas and located within rocky outcroppings. These wetlands do not appear to have any hydrologic connection to any waters of the U.S. which are present on-site or off-site to the immediate north, south, east or west. The wetlands under review are not present on the NWI and USGS maps for this area. Based on field observations and data wetlands 1-6 were determined to be not jurisdictional.

SECTION III: CWA ANALYSIS:

A. TNWs AND WETLANDS ADJACENT TO TNWs

1. TNW
Not Applicable.

2. Wetland Adjacent to TNW
Not Applicable.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size:

Drainage area:

Average annual rainfall: inches

Average annual snowfall: inches

(ii) Physical Characteristics

(a) Relationship with TNW:

- Tributary flows directly into TNW.

- Tributary flows through [] tributaries before entering TNW.

:Number of tributaries

Project waters are river miles from TNW.

Project waters are river miles from RPW.

Project waters are aerial (straight) miles from TNW.

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Project waters are aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries.

Explain:

Identify flow route to TNW:⁵

Tributary Stream Order, if known:

Order	Tributary Name
2	Welland B

(b) General Tributary Characteristics:

Tributary Name	Natural	Artificial	Explain	Manipulated	Explain
Welland B	X	-	-	-	-

Tributary properties with respect to top of bank (estimated):

Tributary Name	Width (ft)	Depth (ft)	Side Slopes
Welland B	5	3	3:1

Primary tributary substrate composition:

Tributary Name	Silt	Sands	Concrete	Cobble	Gravel	Muck	Bedrock	Vegetation	Other
Welland B	X	-	-	X	-	X	X	-	-

Tributary (conditions, stability, presence, geometry, gradient):

Tributary Name	Conditions/Stability	Geometry	Gradient (%)
Welland B	Areas of eroding banks under mature trees with over hanging root systems. Water color is clear. Wetland areas within project area appeared to be in a natural state without evidence of any prior impacts.	Relatively straight	-

(c) Flow:

Tributary Name	Provides for	Events Per Year	Flow Regime	Duration & Volume
Welland B	Perennial flow	20 (or greater)	-	-

Surface Flow is:

Tributary Name	Surface Flow	Characteristics
Welland B	Discrete and confined	Throughflow system located within lower elevation areas between high sloped stone outcroppings.

Subsurface Flow:

Tributary Name	Subsurface Flow	Explain Findings	Dye (or other) Test
Welland B	Unknown	-	-

Tributary has:

			Discontinuous
--	--	--	---------------

Tributary Name	Bed & Banks	OHWM	OHWM?	Explain
Wetland B	X	X	-	-

Tributaries with OHWM⁶ - (as indicated above)

Tributary Name	OHWM	Clear	Leaf Litter	Changes in Soil	Destruction Vegetation	Shelving	Wreck Line	Material/Absent Vegetation	Sediment Sorting	Leaf Litter	Scour	Sediment Deposition	Flow Events	Water Staining	Changes Plant	Other
Wetland B	X	-	X	-	-	-	X	-	-	X	-	X	X	X	X	-

If factors other than the OHWM were used to determine lateral extent of CWA jurisdictions:

High Tide Line indicated by:
Not Applicable.

Mean High Water Mark indicated by:

Tributary Name	OHWM	Survey to Datum	Physical Markings	Vegetation Lines Change in Type
Wetland B	X	-	-	X

(ii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality/general watershed characteristics, etc.).
Tributary Name Explain Identify specific pollutants, if known
Wetland B Water color was clear and the wetland appeared to be of high quality.

(iv) Biological Characteristics: Channel supports:

Tributary Name	Riparian Corridor	Characteristics	Wetland Fringe	Characteristics	Habitat
Wetland B	X	-	-	-	X

Habitat for (as indicated above)

Tributary Name	Habitat	Federally Listed Species	Explain Findings	Fish/Spawn Areas	Explain Findings	Other Environmentally Sensitive Species	Explain Findings	Aquatic/Wildlife Diversity	Explain Findings
Wetland B	X	X	-	X	-	-	-	X	Visible evidence of use by deer and birds.

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Wetland Name	Size (Acres)	Wetland Type	Wetland Quality	Cross of Serve as State Boundaries: Explain
Wetland A	46	Forested emergent wetland.	The quality of this wetland was excellent. Wetland is used by deer and birds as evidenced by sightings of individual species and tracks during inspection.	-
Wetland C	41	Forested wetland, emergent	Wetlands on site appeared to be of excellent quality.	-
Wetland D	2.76	Perennial stream with associated forested wetland.	Water color is clear. Wetland areas within project area appeared to be in a natural state without evidence of any prior impacts.	-
Wetland E	1.03	Forested emergent.	Wetlands on site appeared to be of excellent quality.	-
Wetland F	1.55	Forested emergent and scrub shrub.	Wetlands on site appeared to be of excellent quality.	-

Wetland G	3.63	stream. Perennial stream with associated forested wetland.	Wetlands on site appeared to be of excellent quality.
-----------	------	---	---

(b) General Flow Relationship with Non-TNWs:

Wetland Name	Flow	Explain
Wetland A	Perennial flow.	-
Wetland C	Perennial flow.	-
Wetland D	Perennial flow.	-
Wetland E	Perennial flow.	-
Wetland F	Perennial flow.	-
Wetland G	Perennial flow.	-

Wetland Name	Flow	Characteristics
Wetland A	Discrete and confined	Wetland appeared to be throughflow system. There was evidence of surface overland flow from higher elevation upland areas adjacent to wetland. The topography facilitated the delineation of the wetland as the wetlands were situated in between areas of abrupt increases in elevation.
Wetland C	Discrete and confined	-
Wetland D	Discrete and confined	-
Wetland E	Discrete and confined	Some evidence of drainage patterns along surface of rocky outcroppings along edge of wetland.
Wetland F	Discrete and confined	-
Wetland G	Discrete and confined	-

Subsurface flow:

Wetland Name	Subsurface Flow	Explain Findings	Dys (or other) Test
Wetland A	Unknown	-	-
Wetland C	Unknown	-	-
Wetland D	Unknown	-	-
Wetland E	Unknown	-	-
Wetland F	Unknown	-	-
Wetland G	Unknown	-	-

(c) Wetland Adjacency Determination with Non-TNWs:

Wetland Name	Directly Abutting	Discrete Wetland Hydrologic Connection	Ecological Connection	Separated by Berm/Barrier
Wetland A	Yes	X	X	X
Wetland C	Yes	-	-	-
Wetland D	Yes	X	X	-
Wetland E	No	-	-	-
Wetland F	Yes	-	-	-
Wetland G	No	-	-	-

(d) Proximity (Relationship) to TNW:

Wetland Name	River Miles From TNW	Aerial Miles From TNW	Flow Direction	Within Floodplain
Wetland A	1-2	1-2	Wetland to navigable waters	50 - 100-year
Wetland C	1-2	1-2	Wetland to navigable waters	50 - 100-year
Wetland D	1-2	1-2	Wetland to navigable waters	50 - 100-year
Wetland E	1-2	1-2	Wetland to navigable waters	50 - 100-year
Wetland F	1-2	1-2	Wetland to navigable waters	50 - 100-year
Wetland G	1-2	1-2	Wetland to navigable waters	50 - 100-year

(f) Chemical Characteristics: Characterize tributary (e.g., water color is clear, discolored, oily film; water quality, general watershed characteristics, etc.).

Wetland Name	Explain	Identify specific pollutants, if known
Wetland A	-	-
Wetland C	-	-
Wetland D	-	-
Wetland E	-	-
Wetland F	-	-
Wetland G	-	-

(iii) Biological Characteristics. Wetland supports:

Wetland Name	Characteristics		Vegetation	Explain
	Riparian Buffer	Wetland Buffer		
Wetland A	X	-	X	As the inspection was completed at the end of the season, the evidence of significant vegetative cover consisted of the observation of standing dead plant species.
Wetland C	X	-	X	-
Wetland D	X	-	X	emergent scrub shrub
Wetland E	X	-	X	Emergent, scrub shrub and forested wetland vegetation.
Wetland F	X	-	X	-
Wetland G	X	-	X	Emergent, scrub shrub and forested wetland vegetation.

Habitat for:

Wetland Name	Habitat	Federally Listed Species	Explain Findings	Spawn Area	Explain Findings	Other Environmentally Sensitive Species	Explain Findings	Aquatic Wildlife Diversity	Explain Findings
Wetland A	X	-	-	-	-	X	-	X	Wetland is used by deer and birds as evidenced by sightings of individual species and tracks during inspection.
Wetland C	-	-	-	-	-	-	-	-	-
Wetland D	-	-	-	-	-	-	-	-	-
Wetland E	-	-	-	-	-	-	-	-	-
Wetland F	-	-	-	-	-	-	-	-	-
Wetland G	-	-	-	-	-	-	-	-	-

3. Characteristics of all wetlands adjacent to the tributary (if any):

All wetlands being considered in the cumulative analysis:
Not Applicable.

Summarize overall biological, chemical and physical functions being performed:
Not Applicable.

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Significant Nexus: Not Applicable

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE:

1. TNWs and Adjacent Wetlands:
Not Applicable.

2. RPWs that flow directly or indirectly into TNWs:

Wetland Name	Flow	Explain
Wetland B	PERENNIAL	This wetland consisted of the Mantle Kill and adjacent emergent wetlands along banks. The hydrologic indicators included standing water, throughflow, open water, saturated soils and water stained leaves along banks of Mantle Kill.

Provide estimates for jurisdictional waters in the review area:

Wetland Name	Type	Size (Linear) (m)	Size (Area) (m ²)
Wetland B	Relatively Permanent Waters (RPWs) that flow directly or indirectly into TNWs	-	36369.52144
Total:		0	36369.52144

3. Non-RPWs that flow directly or indirectly into TNWs:
Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

Wetland Name	Flow	Explain
Wetland A	PERENNIAL	Wetland appeared to be throughflow system. Hydrologic indicators include water stained leaves standing water and ground surface/soils which were either inundated or saturated.
Wetland C	PERENNIAL	Hydrologic indicators include saturated soils, inundation, water stained leaves and wetland drainage patterns.
Wetland D	PERENNIAL	Hydrologic indicators include saturated soils, inundation, throughflow stream generally running north to south through the property, water stained leaves and wetland drainage patterns.
Wetland E	PERENNIAL	Hydrologic indicators include saturated soils, inundation, water stained leaves, and hummock/tussock formations.
Wetland F	PERENNIAL	Hydrologic indicators include saturated soils, inundation, throughflow stream, water stained leaves and wetland drainage patterns.
Wetland G	PERENNIAL	Hydrologic indicators include saturated soils, inundation, throughflow stream generally running north to south through the property, water stained leaves and wetland drainage patterns.

Provide average estimates for jurisdictional wetlands in the review area:

Wetland Name	Type	Size (Linear) (m)	Size (Area) (m ²)
Wetland A	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs	-	1861.55378
Wetland C	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs	-	1058.21096
Wetland D	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs	-	11189.32256

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Wetland E	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs	-	4168.28168
Wetland F	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs	-	8272.8288
Wetland G	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs	-	14580.08728
Total		0	39821.06304

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs:
Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:
Not Applicable.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs:
Not Applicable.

Provide estimates for jurisdictional wetlands in the review area:
Not Applicable.

7. Impoundments of jurisdictional waters:⁹
Not Applicable.

E. ISOLATED (INTERSTATE OR INTRA-STATE) WATERS INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS:¹⁰
Not Applicable.

Identify water body and summarize rationale supporting determination:
Not Applicable.

Provide estimates for jurisdictional waters in the review area:
Not Applicable.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS

If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland-Delineation Manual and/or appropriate Regional Supplements:

Review areas included isolated waters with no substantial nexus to interstate (or foreign) commerce:

Prior to the Jan. 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR):

- Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (Explain):

Other (Explain):

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment:
Not Applicable.

Provide acreage estimates for non-jurisdictional waters in the review area, that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction.
Not Applicable.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD

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(listed items shall be included in case file and, where checked and requested, appropriately reference below):
Not Applicable.

B. ADDITIONAL COMMENTS TO SUPPORT JD:
Not Applicable.

- 1-Boxes checked below shall be supported by completing the appropriate sections in Section III below.
- 2-For purposes of this form, an RFPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
- 3-Supporting documentation is presented in Section III.F.
- 4-Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.
- 5-Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.
- 6-A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
- 7-*Ibid.*
- 8-See Footnote 10.
- 9 -To complete the analysis refer to the key in Section III.D.9 of the Instructional Guidebook.
- 10 -Prior to assessing or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Reparoos.

Exhibit C

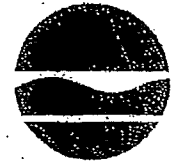
New York State Department of Environmental Conservation

Division of Environmental Permits, Region 3

21 South Putt Corners Road, New Paltz, New York 12561-1620

Phone: (845) 256-3000 • FAX: (845) 255-4659

Website: www.dec.ny.gov



Alexander B. Grannis
Commissioner

June 16, 2009

DENNIS ROCKS
LEONARD JACKSON ASSOCIATES
26 FIREMANS MEMORIAL DRIVE
POMONA, NY 10970

RE: DEC Pre-Application #3-3926-00570/00002
Patrick Farm
497 Residential Units on 208 Acres
Town of Ramapo, Rockland County

Dear Mr. Rocks,

On April 3, 2009 the New York State Department of Environmental Conservation (Department) received your request for a jurisdictional determination regarding resources located within the above referenced 208 acre parcel. The Department has screened the subject parcel and determined the following:

1. Freshwater Wetlands (Article 24) -- The subject parcel contains portions of two NYS Freshwater Wetlands, TH-14 (Class I) and TH-30 (Class II). Any disturbance within these two wetlands or their respective 100 foot adjacent areas requires a Freshwater Wetlands permit from this Department. The site also contains portions of wetlands that may be federally regulated. Federally regulated wetlands fall under the jurisdiction of the Army Corp of Engineers. Correspondence with that agency is required to determine any additional permit requirements that may apply. Please note that if the project involves the filling of any federally regulated wetland a 401 Water Quality Certification is required from this Department.

2. Protection of Waters (Article 15) -- The subject parcel contains portions of two NYS Protected streams; both are Class B tributaries to the Mahwah River (Water Index No's NJ 11-12 and NJ 11-14). Any disturbance within the bed or banks of these protected streams requires a Protection of Waters permit from this Department.

3. Dam Safety (Article 15) -- According to the documentation provided, the site includes an earthen dam which is 10 feet high and impounds greater than 3 million gallons of water. Any proposed repair to this impoundment requires a dam safety permit from this Department.

4. Water Supply (Article 15) -- The recently accepted Draft Environmental Impact Statement (DEIS) for this project indicates that United Water New York will provide water service to this project and has sufficient excess capacity to do so. As the subject parcel is located within an existing water district, a water supply permit from this Department is not required for this project.

RE: Patrick Farm Jurisdictional Determination
June 16, 2009
Page 2 of 2

5. SPDES Wastewater – The recently accepted DEIS for this project indicates that sanitary wastewater will be discharged to the Rockland County Sewer District #1 (RCSD #1) municipal system. The DEIS also indicates that RCSD #1 has sufficient capacity to accept and treat this flow. Therefore, a sanitary SPDES permit is not required for this project.

Note: The sewer extension (physical connection to existing infrastructure) requires site plan review and approval from this Department.

6. Compliance with the State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activities (GP-0-08-001) – Compliance with this SPDES General Permit is required for construction projects that disturb one or more acres of land. When other DEC permits are required, the Stormwater Pollution Prevention Plan (SWPPP) required by the SPDES General Permit must be submitted along with the permit application for concurrent review. Authorization for coverage under the SPDES general permit is not granted until approval of the SWPPP and issuance of the other necessary DEC permits.

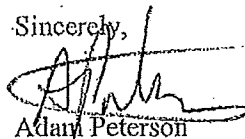
7. SHPA - A review of the statewide inventory of archeological resources maintained by the New York Office of Parks, Recreation and Historic Preservation (OPRHP), indicates that the proposed project is located within an area considered to be sensitive with regard to archeological resources. Pursuant to the State Historic Preservation Act, a determination of the project's effect on cultural resources would need to be made by the OPRHP, if permits or approvals are required from a state agency for this work.

Upon submission of formalized plans, the Department will issue a definitive determination as to which of the above referenced potential permit jurisdictions are applicable to this proposal.

Note: The Department is in receipt of the recently accepted DEIS and is preparing comments to submit to the lead agency, the Town of Ramapo Town Board, by the July 8, 2009 deadline. Our comments on the DEIS may have more specific information pertaining to Department jurisdictions, depending upon the project specific details provided within DEIS.

Contact me with any questions or concerns that you may have at (845) 256-3096.

Sincerely,



Adam Peterson
Environmental Analyst

Cc: Scenic Development, LLC
Town of Ramapo Town Board
USACOE

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Exhibit D

Ed Moran

From: Ed Moran
Sent: Wednesday, November 30, 2011 8:27 AM
To: 'Handell, Naomi J NAN02'
Subject: FW: Scanned from MFP-05387723 11/30/2011 09:15
Attachments: DOC113011.pdf

Hi Naomi...

Attached is a copy of a letter sent from Stacey Jensen in reference to the Patrick Farm project. As you recall, there's a long history that's developed here; first with Dr. Mallery and then with Stacey. The applicant's engineer has always maintained that they did not need a jurisdictional determination from the USACOE because they were staying out of wetlands and waters of the US. Even their crossings were going to span the entire bed and banks of any streams. In Stacey's letter, she states that the corp "regulates construction activities in navigable waterways" and "if your proposal would involve such regulated work, you should contact this office immediately so that a project-specific JD can be made..."

In one of the engineer's response letters to comments received from this office, Leonard Jackson Associates states "No work is proposed within the ACOE "Waters of the US" with the exception of the Route 202 culvert replacement which will be performed under a Nationwide Permit."

Stacey Jensen's letter appeared quite clear that if any work was to be performed within any "waters of the US", your office had to be contacted. Is that accurate? Am I correct in stating that until the site is reviewed by your office, the work is NOT covered under a Nationwide Permit?

Please let me know.
Thanks,
Ed Moran

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

From: toshiba copier [mailto:townoframapo@ramapo-ny.gov]
Sent: Wednesday, November 30, 2011 12:16 PM
To: Ed Moran
Subject: Scanned from MFP-05387723 11/30/2011 09:15

Scanned from MFP-05387723.
Date: 11/30/2011 09:15
Pages:2
Resolution:200x200 DPI

Ed Moran

From: Jensen, Stacey M NAN02 [Stacey.M.Jensen@usace.army.mil]
Sent: Tuesday, March 30, 2010 10:07 AM
To: Ed Moran
Subject: RE:

Thank you for the heads up; if I see it come in, I will take a look at it.

Best wishes,
Stacey

Stacey M. Jensen
Chief, Eastern Section
Regulatory Branch
NY District U.S. Army Corps of Engineers
26 Federal Plaza, Room 1937
New York, NY 10278
Phone (917) 790-8420/BlackBerry (718) 715-9050/Fax (212) 264-4260

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

From: Ed Moran [mailto:MoranE@ramapo-ny.gov]
Sent: Tuesday, March 30, 2010 10:04 AM
To: Jensen, Stacey M NAN02
Subject: RE:

Thanks for checking. It's a 200 acre project, 500 housing units, with approximately 30 acres of federal and DEC wetlands.

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

From: Jensen, Stacey M NAN02 [mailto:Stacey.M.Jensen@usace.army.mil]
Sent: Tuesday, March 30, 2010 9:55 AM
To: Ed Moran
Subject: RE:

Ed,

We generally do not comment on EIS documents unless it is a large project wherein we feel our comments would be useful for the process, or where another federal agency is the lead. Therefore, no we have not seen nor commented on the documents you mentioned for the Patrick Farm project. We do not review or comment until we receive an application for a project like this. Thank you.

Best wishes,
Stacey

Stacey M. Jensen
Chief, Eastern Section
Regulatory Branch
NY District U.S. Army Corps of Engineers
26 Federal Plaza, Room 1937
New York, NY 10278
Phone (917) 790-8420/BlackBerry (718) 715-9050/Fax (212) 264-4260

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

From: Ed Moran [mailto:MoranE@ramapo-ny.gov]

Sent: Tuesday, March 30, 2010 9:45 AM

To: Jensen, Stacey M NAN02

Subject:

Hey Stacey...

Hope all is well. I'm sure you're swamped and I doubt me acknowledging that you're swamped is any consolation...but I was hoping you had a minute to look into whether or not your department ever received or reviewed the Patrick Farm DEIS or FEIS. The site, which is located adjacent to Route 202 and Route 306 within Ramapo has numerous jurisdictional waters/wetlands and I'm concerned that you, or your department, hasn't had a chance to comment on the plans. There's a pond within the site adjacent to one of the federal wetlands and the applicant's engineer, Leonard Jackson Associates, is not listing it as a jurisdictional water. There are also numerous streams, etc leading to the wetland areas. The site is rather extensive and I want to make sure you've had an opportunity for review. It's pretty obvious to me that a JD is necessary, however the applicant is stating that since the NYSDEC certified the limits of the wetlands in 2009, they don't need to go to you for a JD. Please let me know if you've seen the DEIS, FEIS, or the plans for this project. You can either email me back, or reach me at 845-357-0591 ext 122, or on my cell at 201-403-8670.

Thanks for your help...

Take care,

Ed

Mallery, Christopher S NAN02

From: Mallery, Christopher S NAN02
Sent: Friday, April 15, 2011 8:31 AM
To: Jensen, Stacey M NAN02
Subject: Project in Rockland County (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Stacey:

I got a call this morning from an engineer who was hired by a local community organization to block a large project in Rockland County known as Patrick Farm (I think it's in the Town of Ramapo). Craig had worked on this in the distant past, and I had been involved with an enforcement case with it, based on some stream work they had done that really messed up the flow of water on the site. They put things back together as well as they could, and I wrote them off for a nationwide for their then-proposed project, with the warning that, if their project changed, they would need considerably more review from us. Their attorney (Mark Chertok, from SP&R) asked for approval for an expanded project for the site a few years later, and I told him that, since the new project would affect the historic property on the site (the farmhouse), it would be very difficult for him to get a new approval, and that he would be better off following the old proposal that he had an authorization for. That was sufficient for him at the time, but apparently not everyone was listening, as the developer (Scenic Development) has come up with a new proposal that involves twice as many houses as the previous one.

It would be my impression that they will have to come in for a whole new authorization (including a new JD), with a substantial 106 review, but I will leave that decision to you. He said he would call you.

I think I may still have Chertok's submittal on my desk somewhere.

Thanks.
- Chris M.

Classification: UNCLASSIFIED
Caveats: NONE

APR 18 2011

CENAN-OP-RW

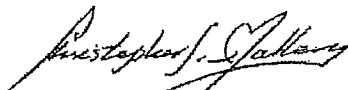
MEMORANDUM FOR RECORD

SUBJECT: Enforcement Case No. 2004-047 (NAN-2004-00505)

Scenic Development, LLC

Town of Ramapo, Rockland County, New York

1. To insure completeness of the administrative record, I have been asked to document the disposition of a request for a regulatory determination with regard to Scenic Development, LLC, and the development of a residential project known as Patrick Farm, contained in a letter to this office and attached submittals from Mark Chertok, of Sive, Paget & Riesel, PC, dated 2 Oct 2008.
2. In a subsequent telephone conversation with Mr. Chertok a few months after these submittals (I do not recall the exact date), I pointed out to Mr. Chertok that my letter of 1 Feb 2007 had stated that any modifications to the project that would have additional impacts to wetlands and waters of the United States would require additional written authorization from this office. In this context, the review of these submittals for such authorization would involve the necessity for further information concerning jurisdictional and cultural resources issues that was not required for the authorization of the previously proposed project.
3. Mr. Chertok stated that it would not be necessary to proceed with the additional processing of these requests.
4. A letter to this office from Ann Cutignola, of Tim Miller Associates, Inc., dated 28 Sep 2009, contained a similar request for a determination. It was determined that Ms. Cutignola was not aware that Mr. Chertok had declined the further review of the matter.
5. Accordingly, no further action was necessary for these requests and submittals.



CHRISTOPHER S. MALLERY
Chief, Western Section

Exhibit H

Handell, Naomi J NAN02

From: Edward Moran [rnan.edg@gmail.com]
Sent: Monday, April 12, 2010 9:57 AM
To: Handell, Naomi J NAN02
Subject: Re:

Naomi,

I hate to do this to you as I'm sure you guys are overworked, but another project is in for review; Patrick Farm. It's a 200+ acre project with numerous DEC and USACOE wetlands on site. After walking the site, I noticed acres of potential wetlands not shown on the drawings; which have been created by Leonard Jackson Associates. I was hoping you could possibly research the history of the project and see if the Corp has given it's approval of the delineation shown on the drawings. Back in 2006 the Corp put the site in violation due to the removal/disturbance of wetland areas. Dr. Mallery was in charge of the enforcement I believe. He also issued a letter after the cleared areas were restored stating that the proposed project would be covered under the nationwide permit; however he based that on a plan depicting 139 single family homes. The project is now for 497 housing units. The applicant is adamant that he'll fight us if we insist on a new delineation from the Corp and all but admitted to me it's because he knows there are acres of additional wetlands on the site. The NYSDEC is also currently reviewing the application.

I'd appreciate it if you could check into it and let me know. I'd be happy to meet with you at your office to show you the plans if that would help.

Thanks,
Ed

2005 326 NMP for restoration ^{stream}

Exhibit D

located on the east side of Route 202, 0 feet south of Route 306 (the "Site").

2. The engineering firm that I work for, David Clouser and Associates ("Clouser"), was retained by Ramapo Organized for Sustainability and Safe Aquifer ("ROSA"), which represents the interests of many of the Petitioners, to assist it in its technical review of the materials underlying the Subject Decisions.

3. I set forth the results of my review of the Project materials in a detailed written submission, dated December 21, 2011, which was submitted during the Public Hearing held in conjunction with the Planning Board's issuance of the Subject Decisions. (The "December 21st Submission," copy annexed hereto as Exhibit "B"). I understand that a copy of this submission is contained in the Certified Record prepared by the Town at page 377-383, and that maps I prepared are set forth in the Record at pages 912-914.

4. As I advised the Planning Board in my December 21st Submission, the Project documentation fails to accurately depict the wetlands that exist on the Site.

5. Wetland areas that the Applicant's engineering consultant previously acknowledged are now not only missing from the Site Plans, but, are proposed to be developed.

6. As a result of the Planning Board's use of an inaccurate wetland delineation, the Planning Board failed to properly calculate, as required by the Town Code, the amount of developable land at the Site.

7. Section 376-42 of the Town Code requires that fifty percent (50%) of wetland areas must be subtracted from the lot area when determining minimum lot area (e.g. Subdivision) and maximum unit density (e.g. Site Plan).

8. By failing to factor in all wetlands on the Site, the Planning Board erroneously approved an illegally dense Project.

9. In addition, as set forth in my December 21st Submission, the Project materials contain a substantial error in its stormwater analysis, such that the Project lacks proper sized stormwater management structures.

10. Basic stormwater management planning mandates that post-development stormwater runoff rates correlate to pre-development stormwater runoff rates. This ensures that a project does not exacerbate flooding conditions in the area.

11. Our review indicates, however, that the Applicant has overestimated pre-development runoff. As a result the Applicant has not properly planned for post-development stormwater management, which will likely exacerbate downstream flooding.

Professional Experience

12. I received a Bachelor of Science in Civil Engineering from the State University of New York at Buffalo in 2000.

13. Since graduating, I have worked for several engineering firms. I have been with David Clouser and Associates (“Clouser”) since 2005.

14. Clouser is an engineering consulting firm that specializes in Civil & Environmental Engineering, land planning and development, environmental reviews and assessments, as well as land surveying throughout the Hudson Valley.

15. Clouser currently serves as the Planning Board Review Engineer for numerous municipalities including the Towns of New Paltz, Plattekill, and Stanford, and the Villages of New Paltz and Millbrook. Our planning review services include subdivision and commercial site plan development review, with particular emphasis on SEQRA review, local code compliance, drainage and stormwater permitting requirements, state and federal wetland regulations, water supply and sewage disposal systems, and traffic and safety issues.

16. My responsibilities at Clouser include serving as a Senior Project Manager and Engineer for complex land development projects.

The Approved Plans Do Not Reflect All Wetlands On Site

17. Regarding the present project, our review focused primarily on engineering and associated environmental elements, with particular emphasis on stormwater management, wetlands, and conformance with zoning laws.

18. We advised the Planning Board in the December 21st Submission that a review of the Record clearly shows that the Project's wetland mapping shows that the mapping was crude, incomplete, and inaccurate.

19. By way of background, the Applicant's plans only reflect wetlands that are subject to the jurisdiction of the United States Army Corps of Engineers ("ACOE") and the New York State Department of Environmental Conservation ("DEC").

20. While these are certainly important wetlands, there may be wetlands on the Site other than those subject to ACOE and DEC jurisdiction.

21. In our experience, many of the site features shown on the plan, including the large pond, smaller ponds, and many of the tributaries on the Site would ordinarily qualify as wetlands. They are not, however, identified as such on the plans.

22. In any event, as discussed below, I believe the vast majority of wetlands that have not been mapped would be considered ACOE wetlands if that delineation process were conducted properly.

23. I prepared a Map, titled "W-1 – Wetland Mapping," which superimposes several standard wetland references onto the subject property, including both wetlands identified on the current development plans and likely additional wetland areas.

24. I understand that a copy of Map W-1 is included in the Certified Record at page 912. I understand, however, that this copy is in black and white. Attached hereto as Exhibit "B" is a copy of the Map in color, which is how it was provided to the Planning Board.

25. As shown on Map W-1, there are significant areas of the Site that should constitute wetlands under Town Code Section 376-42, but do not appear to have been properly included in the Applicant's plans submitted for review by the Planning Board's.

The Site Almost Certainly Contains More ACOE Wetlands

26. As we advised the Planning Board, the Site, further, almost certainly contains more wetlands that are subject to ACOE jurisdiction. Again, Section 376-42 of the Town Code obviously encompasses ACOE wetlands.

27. The Applicant's consultant also had previously identified ACOE wetlands on other areas of the Site, which are not shown on its current plans. The Applicant identified these areas in submissions it made to ACOE several years ago in response to a Cease and Desist Order.

28. The ACOE issued a Cease and Desist Order to the Applicant in 2004 in response to some evident, unauthorized wetland disturbances at the site. (See December 21st Submission at 2.)

29. In response, the Applicant's engineer, Leonard Jackson Associates, provided ACOE with recommended mitigation measures for some of these disturbed wetland areas. This was set forth in correspondence dated May 17, 2004.

30. The May 17, 2004 letter included a sketch of some of the disturbed areas, all of which were located to the north and southeast of the existing large pond located towards the western portion of the property. The purpose of this letter was to request permission from the ACOE to allow the Applicant to install erosion control measures in these regulated wetland

areas, in an effort to stabilize the previous disturbance.

31. Critically, *these same areas identified as wetlands in the Leonard Jackson Associates sketch are not identified as regulated wetlands on the current development plans.*

32. The Court is respectfully referred to the map attached to my December 21st Submission, entitled “W-2 – Wetland Disturbance – Pond Area”, which superimposes the areas identified as wetlands on the Applicant’s 2004 sketch submission to ACOE onto the current Site Plans.

33. I understand that a copy of Map W-2 is set forth in the Certified Record at page 913, but that it has been reproduced in black and white. To facilitate the Court’s understanding of the aforementioned problem, I have attached hereto as Exhibit “B” color copies of this Map, which is how it was originally presented to the Planning Board.

34. Map W-2 clearly shows not only that these regulated wetland areas are erroneously missing from the Site Plans, but, moreover, they are proposed to be disturbed by the development.

35. In our December 21st Submission, we urged the Planning Board to consider how it could reconcile the fact that certain Site areas constituted ACOE wetlands for the purposes of the 2004 Cease and Desist Order, with the fact that exactly the same areas are not identified ACOE wetlands on the current Plan. (December 21st Submission at 3.)

36. To my knowledge, however, the Planning Board made no effort to reconcile these conflicting facts.

37. Similarly, as we also advised the Planning Board, the record of the 2004 Cease and Desist Order quantifies more wetlands on the Site than are currently shown.

38. The “Memorandum of Record” attached to an ACOE letter to the Applicant,

dated May 17, 2004, indicates that a previous jurisdictional determination of the wetlands revealed that the Site consists of “28 acres of wetlands.”

39. The Applicant’s current plans, however, *only show 26.90 acres* of ACOE wetlands.

40. Again, we urged the Planning Board to clarify how the Site’s ACOE regulated wetlands could have been reduced by 1.1 acres since a previously approved wetland delineation. To my knowledge, however, the Planning Board did not provide a clarification.

41. Moreover, the 2004 ACOE documents actually indicate that there are more wetlands than the 28 acres acknowledged at that time. The caption under the last photo attached to the ACOE correspondence of May 17, 2004 indicates “*This particular wetland that was impacted had not appeared in a previous delineation*”. Since the previous delineation yielded 28 acres of wetlands, this statement implies that there are additional wetlands beyond the 28 acres previously mentioned.

42. We also included in the Maps submitted to the Planning Board ACOE wetland boundaries that were taken from the National Wetland Inventory (“NWI”) Mapping, which is published by the United States Fish and Wildlife Service. NWI mapping was created to provide general locations of known federally regulated (ACOE) wetlands. In our experience, the presence of ACOE wetlands on the property per NWI mapping results, on almost every occasion, in actual ACOE wetlands being field delineated in the same location. Further, field delineated ACOE wetlands are typically larger than shown on NWI Mapping.

43. Again, our review shows that the Applicant’s Plans do not show all wetlands identified in NWI Mapping.

44. As shown on Map W-2, again, an ACOE wetland is identified to be directly under

proposed parking areas and a building proposed as part of the Patrick Farm development.

**The Applicant's Claim That ACOE Confirmed
The Site's Wetland Boundaries Appears Inaccurate**

45. I understand that the Applicant's engineering consultant represented to the Planning Board that it received "a letter from the USACOE dated January 5, 2011 . . . which confirms that no Corps of Engineers permits are required for the project as Wetlands and Waters of the United States have been avoided." (LJA, December 20, 2012 at 6.)

46. My review of the letter referenced by the Applicant's consultant indicates that it only concerns certain "arch culverts [that would] serve as pedestrian and linear transportation crossings."

47. The referenced "arch culverts," however, do not reflect the entire universe of the Project's impacts on ACOE wetlands.

48. By way of example, I again refer the Court to Map W-2, which we prepared. This Map shows that the roads and residential structures would be developed in ACOE wetlands.

49. As such, I respectfully submit that the Applicant's assertion that the ACOE January 5, 2011 letter "confirms that no Corps of Engineers permits are required for the project as Wetlands and Waters of the United States have been avoided" is misleading.

DEC Wetlands Also Appear To Be Missing

50. As shown on Map W-1, there is an approximately 1.2 acre area in the northeast portion of the DEC wetland referenced as "TH-30" that was previously identified by DEC staff in 1997 as a DEC regulated wetland. Specifically, the NYSDEC signed a wetland validation block on a map showing this additional wetland area. The map was entitled "Clarkstown Municipal Golf Course -- Freshwater Wetlands Map", dated last revised July 24, 1997, prepared by Atzl, Scatassa & Zigler, P.C.

51. The current Site Plans, however, do not identify this area as wetland.

52. Clearly, the wetland delineation on the plans is inaccurate and must be amended to accurately show wetland areas and the proposed disturbance.

Because The Planning Board Did Not Factor In All Wetlands On Site, It Approved An Illegally Dense Project

53. As set forth in our December 21st submission, the Planning Board could not rationally determine whether the Project meets the Town of Ramapo's basic zoning requirements because the Site's wetlands have not been accurately delineated.

54. The Project density would be reduced if the wetlands on the site were properly delineated.

55. The Town Code requires that fifty percent (50%) of wetland areas must be subtracted from the lot area when determining minimum lot area (e.g. Subdivision) and maximum unit density (e.g. Site Plan). (See Town Code, § 376-42.)

56. Specifically, Section 376-42 of the Town Code establishes that the Planning Board must subtract at least fifty percent (50%) of land encumbered by wetlands and other sensitive properties when calculating minimum lot area or maximum unit density:

As part of any minimum lot area requirement of this chapter for all uses, not more than fifty percent of any land underwater, subject to or within the one-hundred-year-frequency floodplain, wetlands,.... shall be counted towards meeting the minimum lot area. The application of this section to any particular lot shall be the responsibility of the Town Planning Board at the time of subdivision or site development plan approval.

57. Again, based on our review of Site documentation and photographs, we are almost certain that all wetlands are not properly shown on the plans.

58. In addition, it does not appear that the Planning Board properly considered other areas that should be deducted in making density calculations pursuant to Section 376-42.

59. The Applicant, for example, appears to have subtracted the large pond on the Site as regulated “land underwater” pursuant to Section 376-42, but did not factor in the various streams or smaller ponds on the Site.

60. Similarly, there is a floodplain along Brian Brook, which affects lots 66, 67, 68, 71 and 72, which is not shown on the plan. The floodplain limit cannot be verified to determine if the density calculation is correct because it is not shown on the plans.

61. Moreover, Section 45(B)(4) of the Town Subdivision Code also indicates “*Low-lying lands along watercourses subject to flooding or overflowing during storm periods, whether or not included in areas for dedication, shall be preserved Such land or lands subject to periodic flooding shall not be computed in determining the number of lots to be utilized for average density procedure nor for computing the area requirement of any lot.*”

62. The proposed stormwater detention ponds are subject to flooding by design and should be subtracted from the minimum lot area.

63. Consequently, it appears that the Planning Board has approved an illegally dense Project.

The Applicant’s Stormwater Pollution Prevention Plan Does not Meet Town Code

64. Per Town Code Section 237-12(A)(1), stormwater management practices must be designed and constructed in accordance with the most current version of New York State Stormwater Management Design Manual (“Design Manual”).

65. The most current version of the Design Manual is dated August 2010 and includes substantial revisions from its previous version. The extensive revisions to the Design Manual include but are not limited to; requirements to infiltrate runoff volume, the use of “Green

Infrastructure Practices” and the requirement to decompact soils that are altered/disturbed during construction.

66. I am advised by Petitioners’ Counsel that Section 237-22 of the Town Code requires that a stormwater pollution prevention plan (“SWPPP”), consistent with the requirements set forth in the Code, is required for Site Plan approval.

67. Per our review of the project’s latest Stormwater Pollution Prevention Plan, dated last revised October 10, 2010, the project’s design does not conform or even acknowledge the current August 2010 Design Manual.

68. The extensive new requirements included in the August 2010 Design Manual have not been met.

69. The new Design Manual requirements were added to minimize the impact of impervious surfaces associated with new development. Specifically, the proposed stormwater management design must include infiltration and Green Infrastructure Practices that replenish the water table and mimic predevelopment hydrology. Additionally, the new Design Manual mandates that the stormwater management design require a Minimum Runoff Reduction calculated in accordance with the new Design Manual.

70. Conformance with the August 2010 Design Manual would likely require substantial revisions to the project’s Stormwater Pollution Prevention Plan (“SWPPP”) and stormwater management design.

71. The Planning Board has approved an SWPPP and associated stormwater management design that does not meet Town Code.

The Applicant’s Stormwater Pollution Prevention Plan Is Premised On A Substantial Error, Which Could Exacerbate Downstream Flooding Conditions

72. We also advised the Planning Board in our December 21st Submission that there was a substantial error in the Applicant's calculations regarding stormwater management.

73. Town Code Section 237-12(A)(1) requires conformance with the New York State Stormwater Management Design Manual, which mandates that post-development stormwater runoff rates be reduced to at or below pre-development stormwater runoff rates for applicable storm events. As such, consistent with the Design Manual requirements, the Town Code Section 237-8(C)(5) requires a "[c]omparison of post-development stormwater runoff conditions with predevelopment conditions."

74. This requirement is intended to ensure that post-development runoff rates equal to or less than pre-development runoff rates in order to prevent downstream flooding caused by a proposed development.

75. Our review indicates, however, that the Applicant has overestimated pre-development runoff. As a result the Applicant has not properly planned for post-development stormwater management, which could exacerbate downstream flooding.

76. One of the fundamental and most important parameters in calculating runoff for a given drainage area is the Curve Number.

77. The Curve Number characterizes the runoff properties for a particular soil and ground cover. It is dependent on the soil types in the drainage area (defined by the Rockland County Soil Survey) and the ground cover conditions on the site, which are determined by the design engineer.

78. The higher the Curve Number assumed in the calculations for a specific drainage area, the more runoff will be calculated to discharge from that area, and vice versa for lower Curve Numbers.

79. Our review indicates that the Applicant's stormwater analysis contains a serious error involving the Curve Number used for the wooded areas on the Site.

80. The Site is currently almost entirely wooded. Therefore, the assumptions regarding the Curve Numbers used for wooded areas are critical.

81. By way of background, the Curve Numbers for "*Fair Condition*" are higher than for "*Good Condition*" – i.e., areas in a Fair Condition would have a higher runoff rate.

82. All of the wooded areas located on the property were assumed to be "*Woods in Fair Condition*", which is defined in the TR-55 method (i.e., the method used in the project's SWPPP) as "*Woods are grazed but not burned, and some forest litter covers the soil*".

83. To our knowledge, however, the woods on the Site are not grazed and forest litter adequately covers the soil. The analysis should have more accurately used "*Woods in Good Condition*," which is defined as "*Woods are protected from grazing, and litter and brush adequately cover the soil*".

84. In fact, nearly all of the wooded areas in the Hudson Valley should be characterized as "*Good Condition*", since the adequate rainfall and the climate in the area typically allows for dense vegetation and ground cover.

85. Indeed, the Applicant assumed that the wooded areas associated with the offsite drainage areas were in "*Good Condition*."

86. We advised the Planning Board that it should require the Applicant to explain why it characterized offsite wooded areas to be in a different condition than onsite wooded areas. It appears that the Planning Board did not provide an explanation.

87. Moreover, the Applicant's analysis assumed that the identical wooded areas in the pre-development condition, which were assumed for pre-development analysis to be in "*Fair*

Condition,” somehow would rise to being in “*Good Condition*” for the post-development condition. This is an obvious error.

88. The Curve Number – which generates the expected runoff rate – of undisturbed wooded areas would not change due to the development of land in other areas of the site. Development in other areas would not alter the perviousness of undisturbed areas, for example.

89. Thus, as we advised the Planning Board, the Applicant’s analysis is incorrect with regard to the Curve Numbers assumed for the undisturbed wooded areas. These wooded areas on the site are in “Good Condition” for the both the pre-development and post-development condition.

90. As a result of the Applicant’s mischaracterization of the wooded areas, it overestimated pre-development runoff.

91. As a result, the Applicant designed the post-development condition to provide runoff rates equal to the overestimated and inaccurate pre-development runoff rates. Therefore, the Project’s potential runoff impacts have been underestimated.

92. As a result, due to the overestimation of pre-development runoff, *the proposed detention ponds are likely undersized.*

93. As the Planning Board was aware, substantial flooding conditions are prevalent downstream. This was evidenced, for example, in video footage displayed to the Planning Board at the Project’s December 13, 2011 Public Hearing.

94. As approved, the Project could exacerbate existing flooding conditions because of the inadequately sized detention basins.

The Applicant’s Plans Do not Meet The Requirements Of The Town’s Scenic District Law

95. The property is located within the Town of Ramapo’s Scenic Road District which

triggers specific requirements under the Town Code (Local Law No. 7-2004).

96. Section 215-4(A)(3) of the Town Scenic District Law requires that the Planning Board “must find” that “important scenic and natural features of the site will be substantially preserved.”

97. Per our review of the plans, however, the Project will decimate the scenic and natural features of the Site with its extremely dense and highly visible development.

98. In addition, Section 215-4(A)(4)(e) of the Town Scenic Road Law requires that “[e]xisting vegetation shall be preserved to the maximum extent possible.” It establishes that “[e]very attempt shall be made to limit cutting so as to maintain native vegetation as a screen for structures as seen from road, parks and other public views within the Ramapo Scenic Road District.”

99. To the contrary, the Site’s perimeter vegetation will largely be removed and clear views of the Project from the surrounding roadways will result.

100. Per our review of the plans, there will be a clear view of the condominium buildings from the entrance drive along Route 202.

101. Unsightly stormwater detention ponds will also be in clear view.

102. As such, the Project design conflicts with the mandates of the Scenic Road Law.


ANDREW WILLINGHAM

Sworn to before me this
23rd day of April 2012


Notary Public



DEBORAH L. MULLIN
Notary Public, State of New York
Reg. 01M1J6145244
Qualified in Ulster County
Commission Expires May 01, 2014

ANDREW WILLINGHAM, P.E.

POSITION Associate Engineer
David Clouser and Associates, New Paltz, New York

PROFESSIONAL LICENSES Professional Engineer of New York No. 83984

EDUCATION State University of New York @ Buffalo (1995-2000)
Degree: B.S. Civil Engineering

EXPERIENCE **David Clouser and Associates, (2005 - Present)**
New Paltz, New York – Project Engineer, Associate Engineer

Oswald & Gillespie, P.C., (2003 – 2004)
Hopewell Junction, New York – Project Engineer

The Chazen Companies (2000 – 2003)
Poughkeepsie, New York – Staff Engineer, Project Engineer

RESPONSIBILITIES AND PROJECT EXPERIENCE

Responsible for the management of land development, municipal, environmental, utility infrastructure and construction administration projects. Previous experience includes serving as project engineer/designer for multifaceted land development projects of varying scope and scale, providing management and technical expertise through complex review and permitting processes.

Land Planning and Development

Project manager and design engineer in charge of complex land development projects that include commercial and industrial site plans, residential subdivisions, stormwater management, small sewer and water infrastructure and treatment systems as well as recreational facilities. Guiding projects through the design, environmental review, permitting and construction process. Project scale ranges from small developments to massive land development projects.

Municipal Services

Serve as Assistant Town Engineer to various municipalities throughout the Hudson Valley Region, representing Planning Boards in reviewing development plans for conformance with local codes and ordinances, and advising the Board through SEQRA review procedures. Provide construction administration and inspection of infrastructure systems to be dedicated or owned by the municipality. Designed new recreation parks, bridges, roads and other improvements as needed by the municipality.

Environmental Services

Steer projects through the State Environmental Quality Review (SEQR) process and analyze a project's impact on the environment with regard to zoning, wetlands, stormwater, site disturbance, potable water, sanitary sewer and other potential impacts. Recommend mitigation measures to minimize impacts to the environment on behalf of developers, municipalities or concerned citizen groups.

Surveying and Mapping

Manage survey crew for land survey projects that include engineering design, property boundary, construction stakeout and land development projects.

Construction Administration

Provide construction management and inspection services for quality assurance and conformance with approved documents. Projects involve utility installation, road construction, erosion and sediment control, general excavation, septic system installation and stormwater management.

AFFILIATIONS / COMMUNITY SERVICE

Member - American Society of Civil Engineers
Town of New Paltz Environmental Conservation Commission –
Past Member

Exhibit B

David Clouser & Associates

Licensed Professional Engineers and Land Surveyors
One Paradise Lane ♦ Suite 200
New Paltz, New York 12561 www.dcaengrs.com

Telephone: (845) 256 - 9600
Fax: (845) 256 - 9700
E-mail: dbsea@dcaengrs.com

December 21, 2011

Town of Ramapo Planning Board
237 Route 59
Suffern, NY 10901

Re: Patrick Farm Site Plan / Subdivision
State Routes 202 & 306
Town of Ramapo, New York
Technical Evaluation of Project Documents

Dear Mr. Chairman and Members of the Planning Board:

Our firm has been retained by Rockland Organized for Sustainability and Safe Aquifer (ROSA) to review the submitted Site Plan and Subdivision Approval materials for the proposed Patrick Farm Development. Our review focused primarily on the engineering and associated environmental elements of the proposed project, with particular emphasis on stormwater management, wetlands, and conformance with zoning laws. The following review comments are being submitted on behalf of our client, to be entered into the public hearing record for this proposed development.

I. Summary of Review Findings

Our review of the Site Plans and Subdivision materials was conducted to determine whether substantive impacts associated with the proposed development require further investigation and to identify if the project's design meets Town Zoning Code requirements and other applicable laws.

The results of our review indicate that the project documentation:

- Does not demonstrate conformance with basic Town of Ramapo Zoning requirements.
- Does not include an accurate depiction of the regulated wetlands that exist on the site.
- Does not include an accurate stormwater analysis and proper sizing of stormwater management structures.

The following details the substantial errors and omissions regarding the Site Plan/ Subdivision application, failure to correctly map onsite wetlands and the clear nonconformance with Town of Ramapo Zoning Laws.

II. Wetlands

As the Board knows, in any proposed land development, it is critical to properly identify the location of regulated wetlands on a site. The direct impact and disturbance of wetlands is regulated by multiple governmental agencies, therefore it is critical that the wetlands are delineated on the plans accurately to ensure compliance with all applicable laws.

Conformance with Zoning

The Town of Ramapo requires a subtraction of 50% of area that is considered wetlands. Specifically, §376-42 (A) states "*As part of any minimum lot area requirement of this chapter for all uses, not more than fifty percent of any land underwater, subject to or within the one-hundred-year-frequency floodplain, wetlands, shall be counted towards meeting the minimum lot area. The application of this section to any particular lot shall be the responsibility of the Town Planning Board at the time of subdivision or site development plan approval.*"

Clearly, an accurate delineation of the wetlands on the site has a substantial effect on the development potential of a property with regard to the project's conformance to the basic zoning requirements within the Town of Ramapo. Specifically, 50% of wetland areas must be subtracted from the lot area when determining minimum lot area (e.g. Subdivision) or maximum unit density (e.g. Site Plan).

Despite the clear need to properly identify the site's wetlands to determine conformance with Town Code, we found that this task was completed in crude, incomplete and inaccurate fashion, as further detailed below. As a result, the Applicant has not shown that the project meets the Town of Ramapo's basic zoning requirements and we believe the project density would be substantially reduced if the wetlands on the site were properly delineated.

ACOE Wetlands

Per our review of the project plans, the proposed limit of land disturbance comes to within inches of the federally regulated Army Corps of Engineer's (ACOE) wetlands that are identified on the plans. When a development's limits are directly adjacent to regulated wetland areas, it is critical that the regulatory agency's staff confirm the wetland delineation that has been delineated by the Applicant's consultants. In our experience, a wetland delineation will often change after the review of the wetland delineation by the regulatory agency.

Per our review of the documentation provided by the Applicant, the confirmation and documentation of the ACOE regulated wetlands on the site by ACOE staff is fragmented and incomplete. After a review of historic documentation and site photos, we are almost certain that all of the regulated wetlands are not properly shown on the plans.

The ACOE issued a cease and desist order in 2004 (See "Memorandum of Record" that is attached to an ACOE letter addressed to the Applicant dated May 17, 2004) in response to some evident wetland disturbances at the site. Although it is not clear exactly where some of the areas were located (no maps were provided in the ACOE reports), the applicant's engineer, Leonard

Jackson Associates, provided a recommendation for mitigation of some of these disturbed wetland areas in a correspondence from their office to the ACOE dated May 17, 2004. The letter included a sketch of some of the disturbed areas, all of which were located to the north and southeast of the existing large pond located in the western portion of the property. The purpose of the letter was to request permission from the ACOE to allow the Applicant to install erosion control measures in these regulated wetland areas, in an effort to stabilize the previous disturbance.

These same areas identified as wetlands in the Leonard Jackson Associates sketch are not identified as regulated wetlands on the current development plans. Please see the attached map entitled "W-2 – Wetland Disturbance – Pond Area", prepared by this office. We have superimposed the areas identified as wetlands on the Leonard Jackson Associates sketch onto the current Site Plans. The map clearly shows that these regulated wetland areas are not only erroneously missing from the Site Plans, they are proposed to be disturbed by the development. It must be clarified as to how certain areas would warrant a cease and desist order from the ACOE for their disturbance, whereas these exact same areas are not identified and subsequently regulated as ACOE wetlands on the current plan.

ACOE wetland boundaries were also taken from National Wetland Inventory Mapping, which is published by the United States Fish and Wildlife Service. As shown on map W-2 , an ACOE wetland is identified to be directly under parking and a building proposed as part of the Patrick Farm development. Clearly, the wetland delineation on the plans is inaccurate and must be amended to accurately show wetland areas and the proposed disturbance.

The "Memorandum of Record" that is attached to an ACOE letter addressed to the Applicant dated May 17, 2004 indicates that a previous jurisdictional determination of the wetlands revealed that the site consists of "28 acres of wetlands". Per our review of the current plans, 26.90 acres of ACOE regulated wetlands are shown. It must be clarified how the site's ACOE regulated wetlands have been reduced by 1.1 acres since a previously approved wetland delineation.

The caption under the last photo attached to the ACOE correspondence of May 17, 2004 indicates "*This particular wetland that was impacted had not appeared in a previous delineation*". Although it was unclear where this particular wetland is located, the statement implies that there are additional wetlands beyond the 28 acres previously mentioned.

NYSDEC Wetlands

In our experience, many of the site features shown on the plan, including the large pond, smaller ponds, and many of the tributaries on the site typically qualify as ACOE and/or NYSDEC wetlands, however most are not identified as such on the plans. Per the attached drawing "W-1 – Wetland Mapping" prepared by this office, several wetland references have been superimposed onto the subject property, including wetlands identified on the current development plans and likely additional wetland areas. Please note that an approximate 1.2 acre area in the northeast portion of NYSDEC wetland TH-30 was previously identified by NYSDEC staff in 1996 as NYSDEC regulated wetland. However, the current site development plans do not identify that

area as wetland. Additionally, we believe the wetlands within and connected to the pond (both to the north and to the south) have a high potential to be interconnected with NYSDEC wetland TH-14, which is located to the west of the proposed development. Should these areas be deemed wetland and connected to Wetland TH-14, a 100-foot regulated wetland buffer would be imposed on these wetlands which would likely substantially alter the Patrick Farm development layout to allow compliance with NYSDEC permit requirements.

III. Stormwater

Conformance with 2010 NYSDEC Design Manual

As the Board knows, the project requires coverage for the discharge of stormwater under the NYSDEC administered SPDES Permit GP-0-10-001. As a requirement of this permit, the project's Stormwater Pollution Prevention Plan (SWPPP) and associated stormwater management design must be in conformance with the latest New York State Stormwater Management Design Manual (hereafter referred to as the "Design Manual").

The Design Manual was revised in August 2010, which included substantial revisions from the previous edition. Among the many new requirements within the 2010 Design Manual, are minimum infiltration volume (Runoff Reduction Volume – RRV), the required use of Green Infrastructure Practices, and the requirement to decompact altered/disturbed soils. Per our review of the latest SWPPP (dated 10/04/10) provided by the Applicant, there is no conformance with or acknowledgement whatsoever of the revised Design Manual.

Per NYSDEC policy, to be "grandfathered" under the previous Design Manual, the project must have received the necessary permits from the NYSDEC, or have filed a Notice of Intent which would authorize the project under the General SPDES Permit on or before March 1, 2011. It should be noted that the filing of a Notice of Intent would require signoff on the SWPPP from the Stormwater Management Officer for the Town of Ramapo, since the town is a designated MS4 (Municipal Separate Storm Sewer System) municipality. To our knowledge, the project has not received permits from the NYSDEC nor has a Notice of Intent been filed with the NYSDEC. Therefore, the project's SWPPP must be revised in accordance with the August 2010 Design Manual.

As mentioned above, the new requirements are extensive, which will likely require a substantial change in the projects proposed stormwater management design. The most notable revisions to the Design Manual relate to the need to provide infiltration into the subsoil with detailed, specific calculations required per the Design Manual in this regard, and to be shown in the SWPPP. The calculations were not provided in the latest SWPPP.

The revised Design Manual also has requirements for soil decompaction of disturbed soils. If soil decompaction is not undertaken at the site, substantial revisions to the calculations are necessary to account for the reduced perviousness of the soil. This information was not provided or accounted for in the latest SWPPP.

The project's SWPPP must be revised to be in conformance with SPDES permit GP-0-10-001, which requires conformance with the latest Design Manual of August 2010. With the Ramapo Sole Source Aquifer directly underneath the property and the issues associated with that water supply (lack of quantity in the summer months), the issue of providing infiltration of stormwater (recharge) becomes even more substantial.

Runoff Curve Numbers

One of the fundamental and most important parameters in calculating runoff for given drainage areas is the Curve Number. The higher the curve number assumed in the calculations for a specific drainage area, the more runoff will be calculated to discharge from that area, and vice versa for lower curve numbers. The curve number is dependent on the soil types in the drainage area (defined by the Rockland County Soil Survey) and the ground cover conditions on the site, which are determined by the design engineer.

As a requirement under the NYSDEC SPDES permit, the post-development runoff rates must be limited to the pre-development runoff rates to prevent downstream flooding caused by the proposed development. Per our review, a substantial error exists in the calculations that has overestimated runoff in the pre-development condition and subsequently incorrectly predicted that the project will not have a runoff impact downstream.

Specifically, the error involved the Curve Number used for the wooded areas on the site. The property is currently almost entirely wooded, therefore the assumptions regarding the curve numbers used for wooded areas are critical. All of the wooded areas located on the property were assumed to be "*Woods in Fair Condition*", which is defined in the TR-55 method (method is used in the project's SWPPP) as "*Woods are grazed but not burned, and some forest litter covers the soil*". To our knowledge, the woods on the site are not grazed and forest litter adequately covers the soil. The analysis should have more accurately used "*Woods in good condition*", which is defined as "*Woods are protected from grazing, and litter and brush adequately cover the soil*". Nearly all of the wooded areas in the Hudson Valley should be characterized as "*Good Condition*", since the adequate rainfall and the climate in the area typically allows for dense vegetation and ground cover.

The Curve Numbers for "*Fair Condition*" are higher than for "*Good Condition*", therefore the result is an overestimation of pre-development runoff, and a subsequent underestimation of the runoff impacts when compared to the post-development condition.

The wooded areas associated with the offsite drainage areas analyzed were assumed to be in "*Good Condition*". It must be clarified how it was determined that the offsite wooded areas are in a different condition than onsite wooded areas.

Moreover, the analysis assumed that the identical wooded areas in the pre-development condition that were assumed to be in "*Fair Condition*" became in "*Good Condition*" for the post-development condition. This is an obvious error, since undisturbed wooded areas would not change perviousness due to the development of land in other areas of the site. The analysis is incorrect with regard to the Curve Numbers assumed for the wooded areas. The wooded areas

on the site are in “Good Condition” for the both the pre-development and post-development condition.

The analysis must be revised to accurately represent site conditions and accurately estimate the project’s impact with regard to stormwater runoff. Due to the overestimation of pre-development runoff, the proposed detention ponds are likely undersized. As the Board knows, substantial flooding conditions are prevalent downstream, as evidenced in video footage displayed at the project’s 12/13/11 Public Hearing.

IV. Viewshed/Scenic Drive

The property is located within the Town of Ramapo Scenic Road District which has requirements under the Town Code (Local Law No. 7-2004). The law requires that the project substantially preserve the scenic and natural features of the site. Per our review of the plans, the development will decimate the scenic and natural features of the site with extremely dense and highly visible development.

The law also requires that the project preserve existing vegetation to screen structures from public view. To the contrary, the site’s perimeter vegetation will largely be removed providing clear views of the project from the surrounding roadways. Per our review of the plans, there will be a clear view of the condominium buildings from the entrance drive along Route 202 buildings with very little existing vegetation and no noticeable screening preserved. Unsightly stormwater detention ponds will be at the forefront of the view. The development’s design does not meet the requirements of this section of law in any regard.

V. Zoning Conformance

Lot Width

According to the Town Zoning Code, lot width is measure at the front setback line (50’ setback in R-40) with a minimum lot width of 160’. The Subdivision Plans (see bulk table on Subdivision Plat Sheets 1 and 2) show that Lots 10, 11, 12, 13, 22, and 65 do not have the minimum 160’ lot width. The table also inaccurately states that Lots 69, 70 and 71 have over 350 feet of lot width each, when they actually all have less than 160’. There are nine (9) lots that do not meet the minimum lot width requirements.

§376-42 (D) allows the Board to reduce the lot width, however, we could not find any record of the Board granting this waiver. In fact, the Preliminary Approval Resolution states “*No lot width variances are sought or required.*”(Comment 18)

Lands Underwater/Subject to Flooding

§376-42 (A) states that fifty (50%) percent of any land underwater, subject to or within the 100-year floodplain, wetlands, overhead utility easements and steep slopes 25% or greater must be subtracted from the minimum lot area. For lands underwater, we question the Applicant’s rational to subtract the farm pond but not the streams or smaller ponds.

With regard to lots 66, 67, 68, 71 and 72 the floodplain along Brian Brook is not shown on the plan. The floodplain limit cannot be verified to determine if the density calculation is correct because it is not shown on the plans.

§45 (B) (4) of the Subdivision Code also indicates "*Low-lying lands along watercourses subject to flooding or overflowing during storm periods, whether or not included in areas for dedication, shall be preserved Such land or lands subject to periodic flooding shall not be computed in determining the number of lots to be utilized for average density procedure nor for computing the area requirement of any lot.*" The proposed stormwater detention ponds are subject to flooding by design and should be subtracted from the minimum lot area.

VI. Conclusions and Recommendation -

As detailed above, an inaccurate delineation of the wetlands on the property prevents the determination of the project's conformance with basic zoning requirements. The Board should require, at a minimum, an accurate delineation of all of the wetlands on site with meaningful correspondence and documentation from the ACOE and NYSDEC regarding their review and approval of the wetland delineation proposed by the Applicant. The stormwater management calculations are incorrect, resulting in the likely undersizing of the proposed stormwater management ponds and runoff impacts downstream caused by the development.

We strongly urge the Board to require the Applicant to provide the very basic information above before any further consideration of this project.

Thank you for your consideration of this matter and appreciate the opportunity to provide these comments. Please feel free to contact me at your convenience with any questions or comments.



Sincerely,
David Clouser & Associates

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

Andrew Willingham, PE
NYS Professional Engineer No. 083984

cc: Suzanne Mitchell / ROSA

MAP NOTES:

1. BASE MAP INFORMATION, INCLUDING EXISTING FEATURES TAKEN FROM A MAP ENTITLED "PATRICK FARM - BOUNDARY & TOPOGRAPHIC SURVEY" DATED JUNE 2, 2010, PREPARED BY ATZL, SCATNESSA & ZIGLER, P.C.



- WATERS OF THE UNITED STATES
- ACCE REGULATED WETLANDS AS SHOWN ON CURRENT DEVELOPMENT PLANS FOR PATRICK FARM
- NYSDEC REGULATED WETLANDS AS SHOWN ON CURRENT DEVELOPMENT PLANS FOR PATRICK FARM
- WETLAND AREAS DISTURBED IN 2004, WHICH RESULTED IN A CEASE & DESIST ORDER FROM THE ARMY CORPS OF ENGINEERS
- ADDITIONAL NYSDEC WETLANDS ACCEPTED BY NYSDEC STAFF ON 05/23/96

IDENTIFIED AS ACCE WETLANDS ON NATIONAL WETLANDS INVENTORY MAPPING

DATE	DRAWN BY
12/09/11	JAVR
PROJECT NO.	
80039	
SHEET NO.	
W-1	

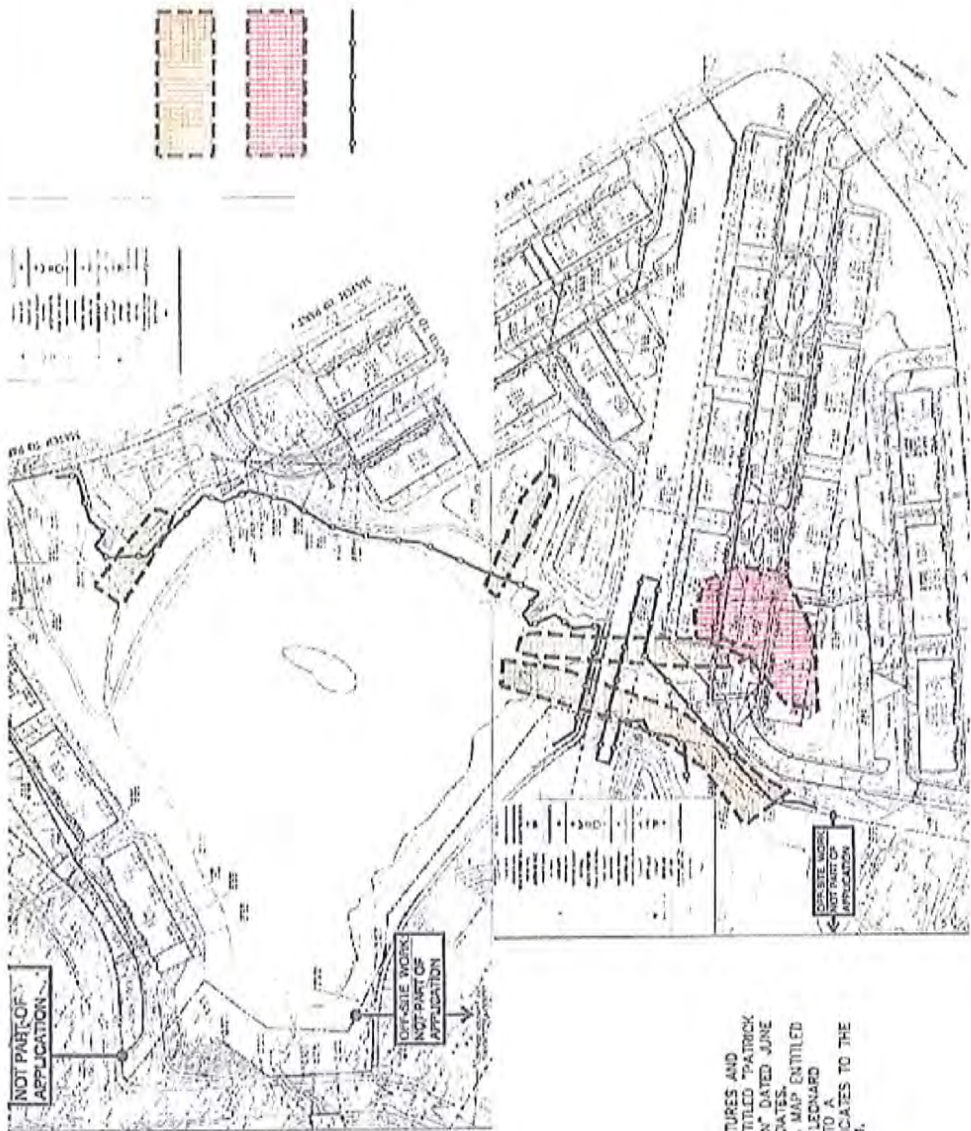
WELAND DISTURBANCE
 PATRICK FARM
 ROOFLAND URGANIZED FOR SUSTAINABILITY & A SAFE AQUITER
 STATE ROUTES PROJECT
 ROCKLAND COUNTY, WEST YORK

David Clouser & Associates
 Professional Engineers & Land Surveyors
 1 Paradise Lane - Suite 202
 New Paltz, NY 12561
 Phone: (845) 254-1100 Fax: (845) 254-1100
 www.dcaengr.com

REV	DATE	DESCRIPTION



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WETLAND AREAS DISTURBED IN 2004, WHICH RESULTED IN A CEASE & DESIST ORDER FROM THE ARMY CORPS OF ENGINEERS

IDENTIFIED AS ACCE WETLANDS ON NATIONAL WETLANDS INVENTORY MAPPING

APPROXIMATE PROPOSED LIMIT OF DISTURBANCE PER CURRENT PROPOSED DEVELOPMENT PLANS



- MAP NOTES:**
1. BASE MAP INFORMATION, INCLUDING EXISTING FEATURES AND PROPOSED DEVELOPMENT TAKEN FROM A MAP ENTITLED "PATRICK FISH CO. BOYCOTT TAKEN FROM A MAP ENTITLED "PATRICK FISH CO. BOYCOTT BY GRADING & DRAINAGE PLAN" DATED JUNE 2, 2004, PREPARED BY LEONARD JACKSON ASSOCIATES, INC. DISTURBED WETLAND AREAS WERE TAKEN FROM A MAP ENTITLED "SKETCH" DATED JUNE 7, 2004, PREPARED BY LEONARD JACKSON ASSOCIATES, INC. WETLANDS WERE TAKEN FROM A MAP ENTITLED "CORPORATE MAP" DATED JUNE 17, 2004, PREPARED BY LEONARD JACKSON ASSOCIATES, INC. WETLANDS WERE TAKEN FROM A MAP ENTITLED "CORPORATE MAP" DATED MAY 17, 2004.



DATE	DRAWN BY
12/09/11	AVB
PROJECT NO.	
80039	
SHEET NO.	
W-2	

WELAND DISTURBANCE - POND AREA

PATRICK FARM
 ROCKLAND ORGANIZED FOR SUSTAINABILITY A.A.S.A. CHAPTER
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 ROCKLAND COUNTY, NEW YORK

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 WWW.DCAENGINEERING.COM

REV	DATE	DESCRIPTION



Exhibit E

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

-----X
In the Matter of

LENA BODIN, LYNDA GELLIS, NANCY KENT,
SHERYL SANTI-LUKS, JOHN PORTA, ROBERT
SOLOMON, SANDRA SOLOMON, EDITH THORNBURG,
JOHN THORNBURG, ANNE WILLIAMS, WILLIAM
ABRAMSKY, BARBARA ABRAMSKY, and HILLCREST
FIRE COMPANY No. 1,

Index No. 149/12
(Walsh, J.)

Petitioners-Plaintiffs,

For a Judgment pursuant to Article 78 of the CPLR,

- against -

**AFFIDAVIT OF KIM
COPENHAVER
IN SUPPORT OF
VERIFIED PETITION
AND COMPLAINT**

THE PLANNING BOARD OF THE TOWN OF RAMAPO,
THE TOWN BOARD OF THE TOWN OF RAMAPO, THE
TOWN OF RAMAPO, SCENIC DEVELOPMENT, LLC,
FORTY- SIX- FIFTY TWO WADSWORTH TERRACE
CORP., and NEWFIELDS ESTATES, INC.

Respondents-Defendants.

-----X

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

KIM COPENHAVER, being duly sworn, hereby deposes and, under penalties of perjury,
states as follows:

1. I am Kim Copenhaver. I am an environmental assessment professional with over
eighteen (18) years of experience in Local, State, and Federal environmental regulatory
compliance and aquatic resource management. A copy of my resume is attached hereto as
Exhibit "A."

2. I submit this Affidavit in support of Petitioners' effort, pursuant to Article 78 of
the New York State Civil Practice Law and Rules to annul, vacate, and set aside three (3)

Decisions (the “Subject Decisions”) issued by the Planning Board (“Planning Board”) of the Town of Ramapo (“Town”) on December 27, 2011 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 (the “Site”).

3. My firm, Copeland Environmental LLC (“Copeland”), was retained by the Village of Pomona, Milton and Sonya Shapiro, and Ramapo Organized for Sustainability and Safe Aquifer (“ROSA”), which represents the interests of many of the Petitioners, to assist in the technical review of certain materials underlying the Subject Decisions.

4. I set forth the results of my review of the Project materials in a detailed written submission, dated December 5, 2011, which was submitted during the Public Hearing for the Project (the “December 5th Submission”). I am informed by Counsel that an incomplete copy of this Submission is included in the Certified Record produced by the Town at pages 779 to 786. I am attaching a complete copy of this Submission, which was duly submitted to the Town, as Exhibit “B”.

5. As I advised the Planning Board in my December 5th Submission, the Project documentation’s wetland delineation appears inadequate in its representation of the wetlands and waterways on the Site, including areas subject to the jurisdiction of the United States Army Corps of Engineers (“U.S. ACOE”) and the New York State Department of Environmental Conservation (“DEC”).

6. As a result of the Planning Board’s use of an inaccurate wetland delineation, the Planning Board would have failed to properly calculate, as required by the Town Zoning Code, the amount of developable land at the Site, resulting in illegal and excessive Project density.

Professional Experience

7. I am the owner of Copeland Environmental LLC which is an independently owned environmental consulting firm established in 2002 with offices at 3 Buchman Drive, Albany, NY 12211.

8. I received my B.S. in Environmental Biology from the State University of New York, Empire State College in 1993.

9. Since graduating, I have worked for the U.S. ACOE Regulatory Branch in Troy, NY (Project Manager/Biologist), the Town of Clifton Park (Environmental Specialist), and the NYS Department of Environmental Conservation, Division of Regulatory Affairs, Central Office, Albany, NY (Assistant Environmental Analyst).

10. I have completed numerous professional training certifications by the U.S. ACOE and other professional institutions including Environmental Assessment and Regulatory Training, Wetlands Development and Wetlands Hydrology, Stream and Riparian Corridor Assessment, Erosion and Sediment Control, and Ecological Assessment, Hydrology of Constructed Wetlands, among others.

11. Copeland Environmental has extensive experience in Local, State, and Federal environmental regulatory compliance and aquatic resource management. I personally have over eighteen (18) years of environmental assessment experience.

12. Regarding the proposed Project, Copeland's review focused primarily on site plans, previous existing conditions plans, topography and soils maps, aerial photographs, and other drainage indicators which are the primary indicator of wetlands on a property.

Wetlands And Stream Delineations Need To Be Properly Delineated, Surveyed, And Reviewed

13. As I advised the Planning Board in our December 5th Submission, it could not rationally determine the Project's impacts in relation to the wetlands or waterways because the Site's wetlands have not been accurately delineated.

14. There appear to be significant wetland areas that are not reflected on the Plans approved by the Planning Board.

15. The Plans, for example, do not show wetlands along the majority of the riparian areas on Site.

16. It is highly unlikely that there are no wetlands within these riparian zones and stream corridors.

17. The Plans also fail to show wetlands on many low lying areas where hydric soils are mapped. Hydric soils are a likely indicator of wetlands. This is set forth in guidance documents including, the U.S. ACOE Wetland Delineation Manual, and the Northeast Regional Supplement for the ACOE Wetland Delineation Manual.

18. The Project soil survey indicates that Alden silt loam is present in low lying areas. Alden silt loam is a hydric soil.

19. It is highly unlikely that there are no wetlands within these low lying areas with recognized hydric soils.

20. In addition, my review of the Project materials indicates, for example, that additional tributaries and wetlands are likely to exist on the following proposed lots based on topographic reliefs, landscape position and my years of experience searching for unmapped wetlands on vacant lands:

- (a) swale or other drainage way at the back of lot 70;

- (b) two open stream lines merging on lot 34 and 35;
- (c) potential swales through lots 63, 73, 43 and 44, based on topography;
- (d) the wetland line should be reviewed on lot 55;
- (e) lot 28 shows the confluence of two tributaries where wetlands are usually located.

21. Topography indicates that a tributary crosses lot 63 and 73. This tributary is not shown on the Plans.

22. A tributary or swale may be located at the main access road to the Site from Old Haverstraw Road and would be impacted. Topographic relief demonstrates that a small tributary may be located in this area.

23. As such, there appears to be numerous areas of wetlands that the Planning Board did not recognize in approving the Plans at issue.

The Wetlands Appear To Be Improperly Delineated

24. Perhaps even more fundamentally, the Planning Board does not appear to have had the benefit of a formal surveyed wetland delineation in the final approved plans.

25. As I advised the Planning Board in my December 5th Submission, the wetland delineation does not appear to be a flagged and surveyed wetland boundary on the approved Project Plans. Direct and indirect impacts to protected aquatic resources, or to proximate existing residences or the Town as a whole, cannot be assessed accurately without flagged and surveyed aquatic resource boundaries, especially for the lots that are of concern and within impact areas.

26. This compounds my concern that the Planning Board did not consider all wetlands on the Site.

27. Stream channels, for example, as shown, are not detailed enough to assess the

temporary and permanent impacts to the stream beds or banks, or to the adjacent riparian areas because there are no surveyed wetland points or lines shown.

28. Furthermore, the topography used on the plans does not line up with the stream lines at road and utility crossings in several locations and New York State Stream classifications are not shown on all tributaries. Several streams are noted as Class B protected streams, but this classification is not carried up to the other tributaries that directly feed into these streams.

29. Additionally, streams in lots 17, 19, and 24 are too close to the homes or grading line. Impacts associated with a driveway crossing and utilities also will occur on lot 21 yet there is no formal surveyed delineation in this area as well.

30. A tributary exists on lot 88, just below SMH #33 that appears to continue upslope and could be impacted by the proposed utility line.

31. The delineation of lots 87 & 88 also requires review because it appears that utility lines may be placed in wetlands that are running parallel to a stream. The ACOE Section 404 Clean Water Act regulations do not allow this activity without an individual permit review and authorization.

32. The driveway and home on lot 55 appear to be too close to the mapped stream. This area should be flagged as waters of the United States and reviewed for potential impacts.

33. The stormwater basin and back yards of lots 27 and 28 are too close to assess if impacts to aquatic resources are occurring. There is no surveyed delineation in this area.

34. In many areas the access roads for maintenance of the stormwater basins are located right next to streams and wetlands. This can lead to long term problems, such as deposition of sediments from the basin into low-lying wetland areas. There is a concern, for example, that such a situation exists on the back of lot 35.

**The Applicant's Efforts To
Refute My Concerns Are Misguided**

35. I am aware that the Applicant's consultant sought to refute my concerns, in a submission made to the Planning Board dated December 20, 2011. I am informed by Counsel that this response is included in the Certified Record at pages 148 and 149. The consultant's response, however, fails to address my concerns.

36. The Applicant's consultant claimed that "DEC and ACOE staff [] established the limits of the wetlands and watercourses at the site."

37. In the first instance, the fact that some wetlands may not fall within DEC or ACOE jurisdiction does not mean that they do not exist. DEC and ACOE both have fairly narrow definitions of the wetlands and other waterways that fall within their respective jurisdictions. Clear examples of this include the lower classification streams that are not regulated by the DEC, and isolated wetlands that are not regulated by the ACOE.

38. Wetland areas do exist that are not subject to DEC or ACOE jurisdiction, but which still warrant consideration.

39. Moreover, it is specifically notable that the Applicant's consultant fails to reference a wetland delineation confirmation letter from ACOE.

40. Based on my experience, including my employment at ACOE, reference to a wetland delineation confirmation letter is standard practice for developments of this size and complexity.

41. In addition, it is standard practice in letters from ACOE concerning developments of this size and complexity for it to reference the extent of land that they reviewed at a development site, whether or not regulated waters of the U.S were found, and the total acreage of those waters subject to ACOE jurisdiction, including the linear footage of streams.

42. While the Applicant's consultant does reference a DEC validation of its wetland mapping, again, DEC's wetland jurisdiction is fairly narrowly circumscribed. In general, a wetland must be at least 12.4 acres before DEC will assume jurisdiction, (see 6 N.Y.C.R.R. § 664(2)(f)), unless there are wetlands that are found to be of some unique local importance as determined by the DEC Commissioner, pursuant to State Environmental Law Section 24 -301.

43. As such, again, the fact that a wetland is not reflected on the map verified by DEC does not mean it does not exist. To the contrary, wetlands frequently exist beyond DEC jurisdiction.

The Applicant's Claim That ACOE "Confirmed" That Wetlands Under Its Jurisdiction "Have Been Avoided" Is Dubious

44. Similarly, the Applicant's consultant claimed that it received a letter from ACOE, dated January 5, 2011 "which confirms that no Corps of Engineers permits are required for the project as Wetlands and Waters of the United States have been avoided."

45. Again, based on my experience, including my work for ACOE, this is not the typical letter the ACOE would issue in connection with a Project of this scope or magnitude.

46. The referenced ACOE letter only concerns certain "arch culverts." I am informed by Counsel that this letter is included in the Certified Record at pages 165 and 166.

47. The letter simply does not reference the Project at issue or the development as a whole. There is no indication in this letter from ACOE that they reviewed the Site, confirmed the wetland delineation on it, or reviewed, confirmed, or approved the Subdivision and Site Development Plans.

48. The letter contains no citation of the drawings, plans or acreages within ACOE's review area. Furthermore, the letter does not state that the ACOE received a request to review the development plans for a residential development on what is collectively known as Patrick Farm.

49. Again, based on my experience, an ACOE letter concerning a Project of this magnitude would, as a matter of course, contain this information.

50. Instead, however, the letter referenced by the Applicant's consultant only indicates that ACOE reviewed certain "arch culvert" plans. Indeed, the letter states on its face that it is only responding to a request concerning "a number of arch culverts to serve as pedestrian and linear transportation crossings."

51. Again, at the risk of being redundant, if ACOE were truly signing off on a development project of this magnitude, in its ordinary course it would provide a permit approval or a letter of no jurisdiction concerning the entire subdivision activities. It would state that ACOE reviewed all wetlands at the site, specifically stating how many acres of land were reviewed in connection with the project site, and a brief description of the development activities proposed. It would state, for example, that ACOE "reviewed plans for the development of a 100-lot residential and its attendant features that is proposed on 200 acres of land." ACOE would indicate that it had reviewed development plans, which it would specifically identify, and indicate how many acres the project would impact, including all attendant features.

52. These letters also will generally indicate the date that the wetland delineation on the development site was reviewed and confirmed by the ACOE, to prove that the ACOE did a complete review including field investigations of the entire development site.

53. Moreover, ACOE documents issued subsequent to the January 5, 2011 letter referenced by the Applicant raise further doubts that ACOE signed off on this Project.

54. In an internal email among ACOE staff, dated April 15, 2011, for example, Dr. Christopher Mallery, ACOE Chief, Western Section, clearly states that it is his "impression that

[the Applicant] will have to come in for a whole new [ACOE] authorization (including a new [Jurisdictional Determination], with a substantial 106 [i.e., ACOE] review.” (A copy of this email is attached hereto as Exhibit “C”).)

55. In a subsequent letter to the Applicant from ACOE, dated April 18, 2011, Stacey M. Jensen, Chief, Eastern Permits Section, clearly suggested that the Applicant contact ACOE for a review of its Project plans, stating “[i]f your proposal would involve [] regulated work, you should contact this office immediately *so that a project-specific jurisdiction determination can be made as to whether a Department of Army permit will be required.*” (Emphasis added.) (A copy of this letter is annexed hereto as Exhibit “D”).

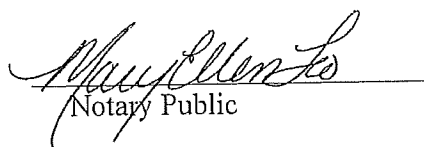
56. This April 18, 2011 letter appears to clearly refute the Applicant’s claim that the ACOE wetlands on the Site and the proposed impacts of the development have been reviewed and accepted.

57. It also contradicts the Applicant’s consultant’s representation that the January 5, 2011 ACOE letter it references “confirms that no Corps of Engineers permits are required for the project.”



KIM COPENHAVER

Sworn to before me this
20 day of April 2012



Notary Public

MARY ELLEN LEO
Notary Public, State of New York
Qualified in Saratoga County
Reg. No. 01LE6218884
My Commission Expires March 15, 2014

KIM COPENHAVER
Environmental Biologist and Regulatory Specialist

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Multi-tasked project management skills include:

- Site Assessment
- Jurisdictional Determinations
- Permit Management and Compliance
- Interagency Coordination
- Environmental Impact Assessment
- Site Plan Review

Natural resource skills include:

- Habitat Assessment
- Natural Resource Planning
- Wetland Delineations
- Wetland Mitigation Design
- Morphological Stream Assessment
- Bio-technical Bank Stabilization Design
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Exhibit B

**Aquatic Resource Review
of the
Patrick Farm Proposed Residential Development
Town of Ramapo, Rockland County, New York**

Prepared by

**Copeland Environmental LLC
Regulatory Consulting Wetlands and Waterways
3 Buchman Drive, Albany, NY, 12211
(518) 874-1888 www.copelandenvironmental.com**

December 5, 2011

Introduction:

This report outlines the findings of an aquatic resource review completed of the proposed development on the Patrick Farm property located along Haverstraw Road, in the Town of Ramapo, NY. Online resources, site plans, previous existing conditions plans and other documents provided to the consultant were used in our research for this report. The findings of this review are based on the best professional judgment of the wetland consultant. The sketches and recommendations within this report are to be used as a guide.

The review was completed by Kim Copenhaver, owner and senior wetland consultant for Copeland Environmental LLC. Ms. Copenhaver is an environmental assessment professional who has over 18 years of extensive experience in local, state and federal environmental regulatory compliance and aquatic resource management with a focus on aquatic environments, and the regulations surrounding them. A copy of Ms. Copenhaver's qualifications is provided as an attachment to this report.

We did not complete site work or detailed scientific investigations. Topography, soils, aerial photographs and other drainage indicators are the primary indicator of wetlands on a property. When seeking out the location of wetlands to be delineated, these are some of the primary factors that are used by wetland specialists.

Wetland Delineation Review

Copeland Environmental reviewed the proposed plans for the site, as well as additional materials provided by ROSA and available online natural resources maps. Our comments are related to the site plan entitled "Final Subdivision Plans Prepared for the Patrick Farm Subdivision, Town of Ramapo, Rockland County, New York", Sheets 2 and 3, Sheets 13-29, Sheets 87-89 and Sheets 80 and 81; all prepared by Leonard Jackson Associates dated 5/24/10 or 9/9/11 and last revised on 11/1/11 and/or 9/9/11. Development plans for lots 87 and 88 of the subdivision were not reviewed in detail.

We have found that the wetland delineation does not appear to be an adequate or accurate representation of the potential waters of the United States or the potential New York State jurisdictional waters. The following deficiencies should be brought to the attention of the appropriate agencies:

Wetland Delineation Review (continued)

1. The wetland delineation does not appear to be a flagged and surveyed wetland boundary. The lines are not representing meets and bounds in the field. Surveyed delineations are always required for a sites that are proposed for development, particularly in the areas of potential impact to wetlands and waterways. Direct impact and indirect impacts to protected aquatic resources cannot be assessed accurately without clearly flagged and surveyed aquatic resource boundaries. The following recommendations are made:
 - a. Ask the U.S. Army Corps of Engineers Regulatory Branch if they have confirmed the wetland delineation on the property. If so, get a copy of the wetland delineation map that was confirmed and get the details of when and by whom it was confirmed. Changes in the wetland delineation procedures and ACOE Jurisdictional Determination procedures have occurred over the past 5 years. These should be addressed fully.
 - b. Ask the NYS Department of Environmental Conservation if they have confirmed the wetland delineation on the property. If so, get a copy of the wetland delineation map that was confirmed and get the details of when and by whom it was confirmed. The DEC wetland verifications are usually good for only 3 to 5 years. This wetland boundary should be revisited with a flagged and surveyed wetland line; at least on the lots that are of concern and within impact areas.
2. There is no reference note on the site plans regarding who or when the wetland delineations were completed and what agencies may have reviewed or confirmed the wetland delineation. Without this, there is no trail for the review or reference to how old the delineation work is.
3. Streams - There are no wetlands shown along the majority of the riparian areas associated with the streams on site. It is highly unlikely that there are no wetlands within these riparian zones and stream corridors. Our review clearly indicates that there are some riparian areas that should be reviewed by a professional wetland delineator. See the attached sketch.
 - a. The stream channels are shown as a line or two placed at the bottom of a ravine. This is not detailed enough to assess the impacts to the stream beds or banks. Both temporary and permanent impacts are of concern.
 - b. Topography on the plans does not line up with the stream lines at road and utility crossings in several locations.
 - c. NYS Stream classifications are not shown on all tributaries. Several streams are noted as Class B protected streams, but the classification is not carried to the others tributaries which directly feed into these streams.
4. The soil survey indicates that Alden silt loam is listed as a hydric soil. These soils are listed to be found in depressions and the soil has an 80 component of hydric soil conditions. The wetland delineation leaves out many low lying areas where this hydric soil is mapped. The wetland boundary within these areas should be more closely reviewed.
5. Our review of the materials provided raises some concerns that additional tributaries or wetlands exist on the following proposed lots:
 - a. Swale or other drainageway at the back of lot 70
 - b. Two open stream lines merging on lot 34 and 35
 - c. Potential swales through lots 63, 73, 43 and 44 based on topography.

Wetland Delineation Review (continued)

- d. The wetland line should be reviewed on lot 55
 - e. Lot 28 shows the confluence of two tributaries. This area should be closely looked at.
6. Because of the importance of the resources on the site, you should consider if the pond and its adjacent wetland areas should be considered eligible for re-mapping as a DEC wetland. In certain cases, when a wetland holds unique and/or important functions or benefits to the community, the watershed or the natural environment, the DEC can considered taking jurisdiction over the wetland; whether or not they meet the 12.4 acre NYS DEC threshold, or not. The engineering firm for the project mentioned that the pond averages 1.5 feet in depth which is well within the range of wetland and special aquatic site parameters. Therefore, other preferences and protections that are afforded to wetlands and riparian areas, such as disturbance set backs, regulated adjacent areas, and preservation initiatives, should be considered.

Summary: Overall the wetland delineation has numerous deficiencies and inconsistencies. The level of detail provided does not allow for an accurate assessment of the limits of waters of the U.S. on the site, or a reasonable measurement of potential direct and indirect impacts to the aquatic environment that could occur. This level of detail is well below the standards required by the ACOE and DEC for other, much smaller projects. You should insist that the same level of detail be provided here; and that all of the current procedures for assessing wetlands and the potential impacts to wetlands are complied with.

You should have the DEC revisit the wetland delineation that was confirmed by their staff. It appears that not only could the limits of the "FWW TH 30" be expanded to include smaller adjacent wetland areas, but the pond and associated wetland complexes on the remaining portion of the site appear to potentially warrant the state's jurisdiction as under Article 24 due to their importance to the community and the watershed at large. You should petition the state to review an expansion of their Article 24 jurisdiction on the site.

Aquatic Resource Impact Assessment

We reviewed the above referenced plans and additional materials provided to us. Of particular importance within these materials includes letters from the ACOE and DEC that were obtained by FOIL and FOIA requests, and the 2009 "Request for a Jurisdiction Determination by the NYSDEC" prepared by Leonard Jackson Associates. Please note that we did not review detailed grading plans of the development proposed for lots 87 and 88. It appears that permits will be needed from the DEC and from the ACOE for the project as follows:

1. Direct impacts to the wetlands would require authorization under sections 404 and 401 of the Clean Water Act (U.S. Army Corps of Engineers Permit and DEC Water Quality Certificate). Although it appears that the ACOE authorized the project 2007 under the Nationwide General Permits, and later a portion of the project referenced as "Patrick Farm Condominiums" was given a no-permit-needed letter, these appear to be invalid or inconsistent for the following reasons:
 - a. The project scope has significantly changed since the time the 2007 approval was issued,
 - b. The Nationwide General Permits referenced in the letter expired in March of 2007 and are due to expire once again in March of 2012. The conditions of the nationwide permits have changed.
 - c. There is a new regional wetland delineation manual for this area that should be followed.

Aquatic Resource Impact Assessment (continued)

- d. Over the past 5 years there has been additional guidance providing clarification of the limits of Waters of the United States, and associated coordination processes for jurisdictional determinations. These should be complied with.
- e. Although it appears that a no permit needed letter was issued, the letter does not reference which drawings were reviewed. There is no drawing cited. There is also a reference to a submittal on September 29, 2020, which is 10 years in the future. In addition, this is only one lot of the subdivision (Condominium Lot). This should never have been reviewed as a single and complete project. This has made it very confusing for the municipalities and for the community at large.

Overall, it appears that there has been a great deal of confusion around this project due to the submitting of partial information about the scope of the project, by using old outdated jurisdictional determination or by using enforcement actions as a means to circumvent the full environmental review process. It is time that the entire project be put on the table with an accurate and current Jurisdictional Determination so it can be reviewed in accordance with the currently applicable federal regulations and guidance documents.

2. Direct impacts will occur from grading within NYS "FWW TH-30" regulated adjacent area. Therefore an Article 24 wetland permit would be required.
3. Direct disturbances to the bed and bank of NYS protected streams would occur from road crossings. This will require a DEC permit under Article 15 for stream disturbances.
4. A water quality certificate will likely be required from the DEC in accordance with the section 401 of the Clean Water Act for the discharge of fill material into a water of the U.S.
5. You should check with DEC to see if water and sewer supply permits will be required.
6. The DEC should also provide a review of the proposed stormwater management plan to insure that project meets current standards, particularly given the project's proximity to the Mahwah River and aquifers that support existing residences. Pollutants and flooding could be significant from a project of this size and scope.

We have summarized some particular impact areas of potential concern, as well as some general comments to consider and to present to the agencies during their review.

1. Without a surveyed wetland delineation boundary of the limits of waters of the U.S. and the NYS jurisdictional waterways and wetlands, the impacts cannot be accurately measured or analyzed. The Federal Regulations require that the 404 B1 guidelines demonstrate that a project sponsor has avoided, minimized and mitigated for both direct and indirect impacts to the project. Without confirmation of the limits of the aquatic resources I don't see how the agencies could make a determination of compliance with these important guidelines. The wetland delineation should be confirmed by the ACOE on the entire site and in off site work areas. If a previous confirmation was completed, we believe that it should be revisited given the inconsistencies in delineation maps and the additional information provided to the agencies in this report and others (affidavits from engineer and biologist).

Aquatic Resource Impact Assessment (continued)

2. There is no limit of clearing and grading placed on the map. Without this, and an accurate surveyed delineation, it is unclear if the numerous road crossing and outfall structures near or over the streams would result in a discharge of fill materials.
3. Dewatering activities are likely to be needed to construct some of these stream crossing. These often involve a discharge of temporary fill material and disruption to the stream flows.
4. Potential waters of the U. S. that do not appear to have been delineated may be filled as a result of the project. Other waters of the U.S. are situated too close for comfort, so that that one could reasonably expect impacts to the wetland or tributary would occur by the contractor building the project or by future property owners. These are listed below and are shown on our sketch:
 - a. Lots 17, 24 and 19, the streams are too close to the homes or grading line. These areas need to be professionally delineated and surveyed.
 - b. A tributary or swale may be located at the main access road to the site from old Haverstraw Road and would be impacted. Topographic relief demonstrates that a small tributary may be located in this area.
 - c. The catch basin proposed near Lot 34 is close to a wetland, impacts can be expected.
 - d. At Lot 35 there appears to be an impact associated with a proposed sewer line towards the rear. In addition, the storm basin behind that has access roads and outfalls in the stream. There is some concern about accurate wetland mapping and impacts in this area.
 - e. The stormwater basin and back yards of lots 27 and 28 are too close to assess if impacts are occurring. There is no surveyed delineation in this area.
 - f. Impacts associated with a driveway crossing and utilities will occur on lot 21 and there is no formal delineation in this area.
 - g. There appears to be a swale or tributary located on Lot 70 that is not marked or mapped at all. A culvert extends across Ladentown Road on to Lot 70, where topography shows a swale is potentially located. Grading is proposed within the swale, right behind a proposed house.
 - h. Topography indicates that a tributary crosses lot 63 and 73. This tributary is not mapped at all. The agencies should review this area.
 - i. The tributary on lot 88, just below SMH #33, appears to continue upslope and could be impacted by the utility line.
 - j. The delineation on the two out-parcels (Lots 88 & 87) should be reviewed. In some cases it appears that utility line may be placed in wetlands that are running parallel to a stream. This is not allowed by the regulations. The agencies should review wetland delineation near SMH 35C to insure that all impacts are assessed.
 - k. There appears to be a small tributary that crosses the proposed house location and back yard of Lots 43 and 44. This potential tributary feeds into the DEC wetland and should be protected.
 - l. The driveway and home on lot 55 appears to be too close to the stream. This area should be flagged for waters of the United States and revisited for potential impacts.

Overall there appear to be a considerable amount of potential impacts from the project that need to be quantified and addressed during the State and Federal permit processes.

5. There are several areas throughout the site where utilities will be installed within wetlands or across streams. This will generally require permits if the work results in a discharge of fill material into these waterways. Temporary dewatering activities for this work should be reviewed.

Aquatic Resource Impact Assessment (continued)

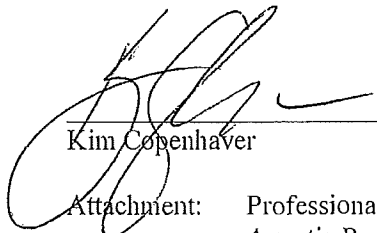
6. There are numerous areas where the outfall pipes and their rock armoring are located in waters of the United States. These should be closely reviewed with a formal surveyed delineation.
7. In many areas the access road for maintenance of the stormwater basins are located right along streams and wetlands. This can lead to long term problems. Experience has shown that when accumulated sediment is removed from stormwater basins, it is often side case nearby, within low lying areas that are commonly wetlands. There is a concern about this on the back Lot 35.
8. The agencies should take a close look at areas where off site impact could occur for utility connections and upgrades to the existing municipal roads. Our review indicates that culverts are proposed to be replaced, lengthened or just enhanced with riprap armoring, as well as road shoulder improvements that are proposed. This work could result in a discharge of fill material into waters of the U.S. or state regulated waters. "But for" the subdivision, these potential impacts would not occur. Therefore, they should be reviewed in cumulatively, along with any other impacts proposed and they should be included in the total project area, the jurisdictional determination area and the area of potential effect for archeological review.
9. Indirect impact to the aquatic resources (such as thermal pollution to stream, habitat fragmentation, water quality and flood an storm flow impacts, and the spread of invasive species, and aquifer recharge protection) should closely considered on this site.
10. Has there been an archeological review completed for the site in accordance with the requirement of the National Historic Preservation Act and companion NYS Historic Preservation rules? Have the coordination requirements been completed for state and federal permit processes. You must make sure that there are no short cuts being taken at this site. Make sure that the state and federal agencies are aware of the historic and prehistoric potential importance of this site. The archeological report completed for the site should be reviewed in detail to ensure that they have been undertaken with all of the current standards and that all of the resources are clearly identified and presented to the agencies.
11. Who has completed the Endangered Species evaluation of the site? Will the agencies be overseeing this? The following federal species may be a concern for this site, Indian Bat (*Myotis sodalis*) and Bog turtle, (*Clemmys muhlenbergii*). NYS protected plants and wildlife should also be considered in the DEC permit review. New state endangered species policies should be considered in their permit review to insure that any habitat of concern is identified and impacts to the species or their potential habitat are clearly analyzed.
12. Single and Complete project - Lots 87 and 88 appear to be separated out of this subdivision as an independent project with separate utility. This definitely appears to be an attempt to avoid following state and federal regulations. There are three separate projects represented on this site that at one time were considered as one. These projects appear to be dependent on one another for the roads, sewer, water, power and stormwater infrastructure. It is unreasonable to conclude that these projects are not related and dependent upon one another. Impacts proposed on Lots 87 and 88 would not occur without the approval of Patrick Farm Subdivision. This makes them dependent and a single and complete project under the "but for clause". The project sponsor should show the proposed impacts on the two out parcels so that a completed and throughout review can be completed. These three projects should not be reviewed separately.

Aquatic Resource Impact Assessment (continued)

13. I have noticed several stub streets proposed in the site plan. The need and purpose of these stub streets should be clarified. Stub streets often indicate that additional phases of the project can reasonably be expected to occur? You should ask the agencies to consider if there are any wetlands at the edge of these stub streets, and if so; they should be clearly marked for future development.

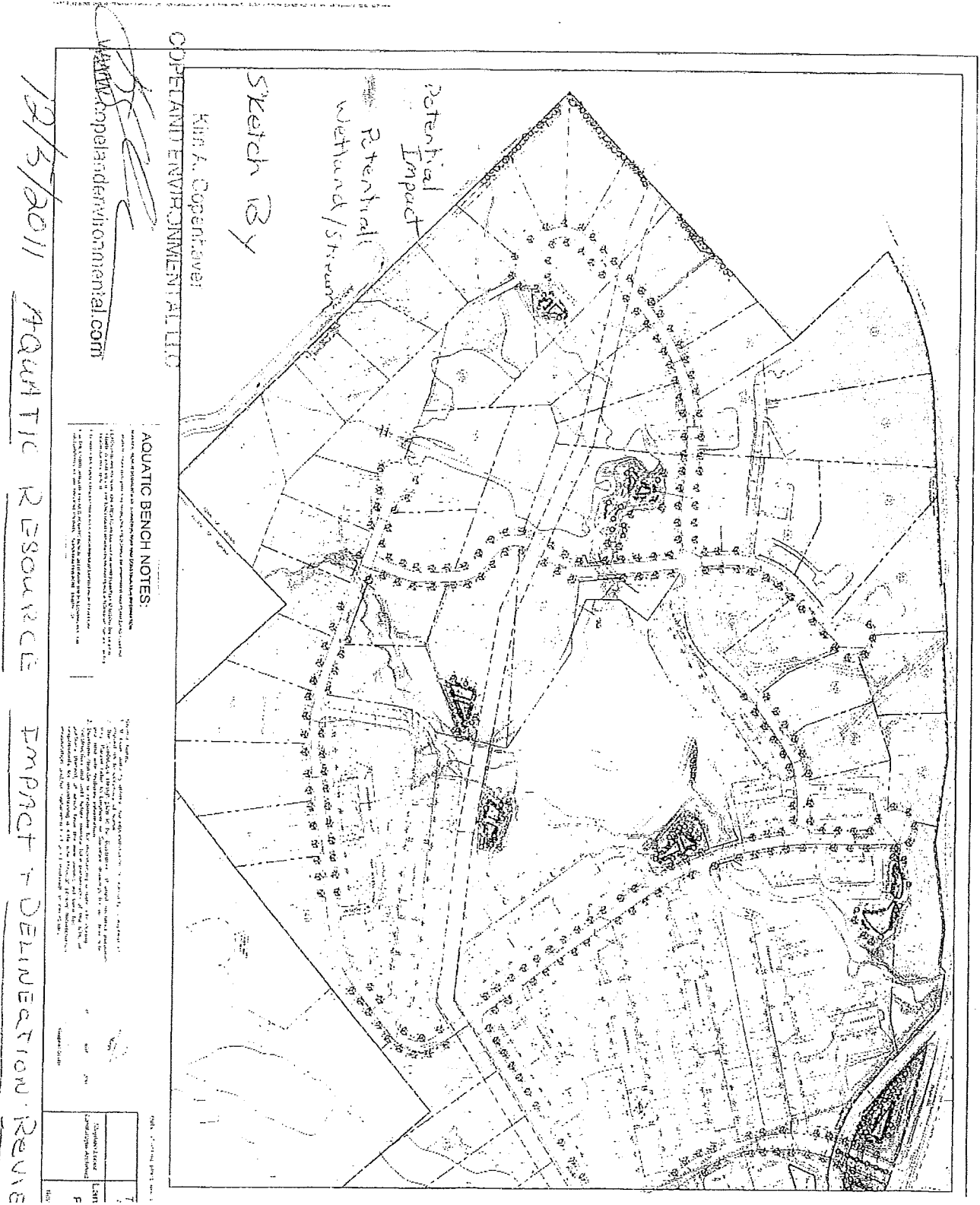
Summary: There appear to be numerous areas where proposed impacts to the aquatic environment are not clearly identified or evaluated. The direct and indirect impacts of such an expansive development located near important aquifer areas and adjacent to or within close proximity to protected waterways should be closely reviewed. These areas have a long standing natural and cultural history that should not be easily set aside during the environmental review process. The functions and benefits of these streams, wetlands, and riparian areas are very important to protecting the community from pollutants, flooding, erosion and sediment control issues and for maintaining a healthy aquifer. In addition, the functions and benefits that these resources provide to the natural environment for wildlife habitat, transportation corridors, nutrient production and biodiversity should also be closely reviewed and considered in the approval process.

This assessment was prepared by Kim Copenhaver of Copeland Environmental LLC. Please contact Kim with any questions or concerns at kim@copelandenvironmental.com.



Kim Copenhaver

Attachment: Professional Profile for Kim Copenhaver
Aquatic Resource Impact and Delineation Sketch



KIM A. COPENTOWER
 COPELAND ENVIRONMENTAL LLC
 WWW.COPELANDENVIRONMENTAL.COM

12/5/2011

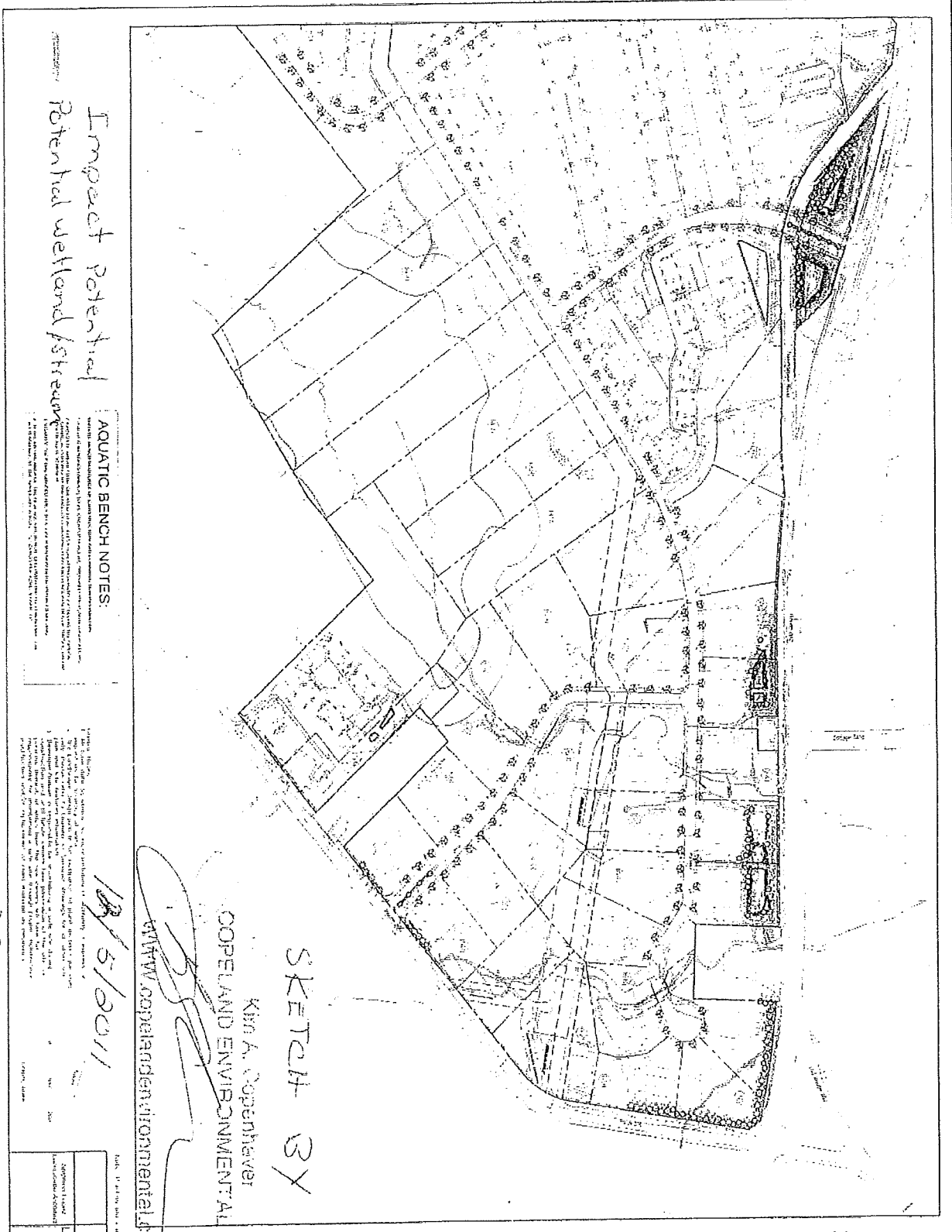
AQUATIC RESOURCE

IMPACT + DELINEATION REVIEW

AQUATIC BENCH NOTES:
 1. Review of site plan and aerial photography for potential aquatic resources.
 2. Review of site plan and aerial photography for potential wetlands and streams.
 3. Review of site plan and aerial photography for potential wetland and stream buffers.
 4. Review of site plan and aerial photography for potential wetland and stream buffers.
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Impact Potential
Potential Wetland/Stream

AQUATIC BENCH NOTES:

1. All aquatic resources identified on this map are based on field observations and aerial photography. The location and extent of aquatic resources may change over time due to natural processes or human activities. The information presented on this map is for informational purposes only and does not constitute a warranty of accuracy or completeness. The user of this map assumes all liability for any use of the information presented hereon.

AQUATIC RESOURCE IMPACT & DEPENDENT REVIEW

SKETCH BY
Kim A. Coppenhaver
COPELAND ENVIRONMENTAL
www.coplandenvironmental.com

1/3/2011

Project Name: Aquatic Resource Review
Client: Copeland Environmental LLC
Date: 1/3/2011
Scale: 1" = 100'

DATE	BY	REVISION
1/3/2011	Kim A. Coppenhaver	Initial Draft

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Exhibit C

Mallery, Christopher S NAN02

From: Mallery, Christopher S NAN02
Sent: Friday, April 15, 2011 8:31 AM
To: Jensen, Stacey M NAN02
Subject: Project in Rockland County (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Stacey:

I got a call this morning from an engineer who was hired by a local community organization to block a large project in Rockland County known as Patrick Farm (I think it's in the Town of Ramapo). ~~Craig had worked on this in the distant past, and I had been involved with an~~ enforcement case with it, based on some stream work they had done that really messed up the flow of water on the site. They put things back together as well as they could, and I wrote them off for a nationwide for their then-proposed project, with the warning that, if their project changed, they would need considerably more review from us. Their attorney (Mark Chertok, from SP&R) asked for approval for an expanded project for the site a few years later, and I told him that, since the new project would affect the historic property on the site (the farmhouse), it would be very difficult for him to get a new approval, and that he would be better off following the old proposal that he had an authorization for. That was sufficient for him at the time, but apparently not everyone was listening, as the developer (Scenic Development) has come up with a new proposal that involves twice as many houses as the previous one.

It would be my impression that they will have to come in for a whole new authorization (including a new JD), with a substantial 106 review, but I will leave that decision to you. He said he would call you.

I think I may still have Chertok's submittal on my desk somewhere.

Thanks.
- Chris M.

Classification: UNCLASSIFIED
Caveats: NONE

Exhibit D



DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
NEW YORK, N.Y. 10278-0090

APR 18 2011

REPLY TO
ATTENTION OF:
Regulatory Branch-Eastern Permits Section

SUBJECT: Patrick Farm Residential Development in Ramapo, Rockland
County, New York
by Scenic Development, LLC

Scenic Development, LLC
c/o Yechiel Lebovits
3 Ashel Lane
Monsey, NY 10952

Dear Mr. Lebovits:

Your proposed residential development for the Patrick Farm site
in Ramapo, Rockland County, New York has been brought to our
attention for possible regulated streams and wetland filling under
Section 404 of the Clean Water Act. Under Title 33, CFR Part
325.1(b), if the district becomes aware of planning for work which
may require a Department of the Army permit, we contact the
principals involved to advise them of the possible requirement for
a permit.

Please note that the Department of the Army regulates
construction activities in navigable waterways and discharges of
dredged or fill material into water of the United States, including
inland and coastal wetlands. If your proposal would involve such
regulated work, you should contact this office immediately so that a
project-specific jurisdiction determination can be made as to
whether a Department of the Army permit will be required.
Background material on the Corps of Engineers Regulatory Program is
enclosed for your use.

If any questions should arise concerning this matter, please contact the undersigned at (917) 790-8420.

Sincerely,



Stacey M. Jensen
Chief,

Eastern Permits Section

Enclosures

Copy furnished without enclosures:

Leonard Jackson Associates
26 Firemens Memorial Drive
Pomona, NY 10970

Carpenter Environmental Services
307 Museum Village Road
PO Box 656
Monroe, NY 10950

Sive, Paget and Reisel
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