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**MEMORANDUM**

**DATE:** January 5, 2013

**RE:** Comments for the Public Hearing on DEC permit Application Number 3-3926-00570-00006/00002/00004 for the work associated with the Patrick Farm Development, located between NYS Route 202 and 306 in the Town of Ramapo, Rockland County, NY, by Scenic Development, LLC

**TO:** DEC Hearing Officer on Record for January 7, 2013, Public Hearing

**CC:** ROSA, Susan Shapiro

The DEC is preparing their record for review of the impacts associated with the above referenced project. I have reviewed many documents related to the project's aquatic resources mapping and many other documents pertaining to the regulatory record for the project. I have also reviewed the proposed development plans. The following comments are respectfully submitted your consideration during the review process.

Overall, I believe that the applicant has not provided accurate or clear information to the local, state and federal reviewing agencies to accurately assess the potential direct and indirect impacts the project would have on the natural environment. The application should not be considered complete for processing. Additional information is warranted.

The primary point I will try to demonstrate is the importance of the ACOE jurisdictional determination (JD), including a survey of the regulated waters of the United States for the site. This all started as the result of a Clean Water Act (CWA), Section 404 violation in 2006 and a clean up resolution that somewhat casually gave authorization to construct an entire residential subdivision on the site. What was the intention of the ACOE years ago? They never gave a formal jurisdictional determination on the site. They clearly stated that if site plans changed at all, they would have to review the project plans. The ACOE trusted the project sponsor to "do the right thing". Instead, the project has been expanded and the this one action by the ACOE has been used to manipulate the regulatory review process. Evidence prevails that there is no record that the ACOE has reviewed the site in its entirety or in accordance with current wetland delineation standards. There is no evidence that the ACOE has reviewed the entire site in accordance with the current definitions, regulations and guidance of the CWA. In fact, my clients just received a letter from the ACOE that states that no JD was completed. Therefore, the project's compliance with intent of the CWA, and with NEPA and NYS environmental laws and regulations can not be determined.

Wetland Mapping - The wetland delineation for the project site is not accurate and or complete. After reviewing the sites current wetland map, in comparison to the previous wetland maps, available online resource maps, and statements from individual who have visited the site, as well as the ACOE JD history for this project it is very clear that the wetlands are not accurately shown on the subdivision plans currently under review. Therefore impacts to the aquatic environment and functions and services that it provides, cannot be adequately or accurately measured and balanced. The following items are provided to supports this.

1. The application states that they received a jurisdictional determination from the ACOE. There is no record of a formal jurisdictional determination being completed for the site. Given the extent of work that is shown within, immediately adjacent to, or within close proximity to wetlands and other waterways on site; a formal flagged and surveyed delineation should be completed and certified by the appropriate agency.
2. The record of correspondence from the ACOE states that their enforcement action approval is not valid since the plans have changed. Later the ACOE recommends that the project sponsor come in to the agency to review the project and even later the ACOE states that there no JD was completed for the Patrick Farm Site.
3. Maps are provided for the record that demonstrate that waters of the United States that were once asked to be restored by the ACOE as part of an enforcement action, as well as others resource area that were reviewed by the ACOE in 1997, have been removed from the current wetland maps, without any confirmation or approval of that removal from the ACOE.
4. There are several “warnings” from both the ACOE and the U.S. Environmental Protection Agency that there is a concern that the extent of waters of the United states and/or the extent of impacts to water or the U.S. may not be accurate.
5. In other correspondence, the ACOE basically states that there hands are tied because the applicant or project sponsor has not requested a formal review. The ACOE would gladly revisit the site to close this question, but they have to be asked by the project sponsor.

A formal, legal, and approved Jurisdictional Determination (JD) has not been completed. The town asked them for a formal JD and project sponsor provided a vague and unacceptable documents. The DEC can and should require a formal JD from the ACOE as part of the permit record, so that it can render a factual decision on the development about the habitat and aquatic resources and impacts to the environment.

Completeness of the Permit Record - The project sponsor appears to be using a segmented or piece-meal approach in the review and approval process and is not meeting the standards and requirements that most all other developments must meet. There is concern that there is some sort of special treatment that is being given. The project sponsors have continuously stated that the all of the information is provided and that permits or reviews have been completed or are not necessary. However, this is not the case as demonstrated below.

1. The findings and processes completed by the SEQRA Lead Agency for this project have been questioned be residents and by the courts. Questions about the project impacts are outstanding.
2. Approvals for the potential impacts to waters of the U.S. for part of the project have been received. However, the state highway bridge work authorized by the ACOE; was not for the overall subdivision. Other authorizations or signoff's from the federal reviewing agencies were presented, but are in question given the circumstances surrounding the delineation and the piece-meal reviews that have been completed.
3. There are impacts that will occur to federal wetlands, federal and state regulated streams and state regulated wetland adjacent areas that are not being considered in this permit application. All direct and indirect impacts to the aquatic environment should be considered.

4. The projects potential impacts to the public water supply aquifer have not been fully addressed. If any agency should be helping the people of New York State protect their water supplies, the state DEC should be, with the help of the State Health Department. Look at the detailed scientific review that is being done by the state for hydro-fracking where a few individual private wells could potentially be affected. But here where several municipal wells are located near by, no in-depth review has been done by the DEC. I have been informed by my clients that several parts of the project's stormwater management plan have been recently changed. It is imperative that the DEC review the Stormwater Pollution Prevention Plan. The local community is not qualified to complete this review, particularly in light of the constantly changing engineering plans and the recent changes to the general permit regulations for stormwater pollution prevention. This aquifer is of regional importance and the way in which stormwater is managed for the site could have a direct and profound impact on the aquifer that cannot be repaired once it is damaged.
5. The current stormwater plan should meet current standards for management of water quality and water quantities, with specific concern for flooding and pollution to the wetlands, the streams and overall tributary system, taken into consideration, as well as concern for the aquifer.
6. The impacts to wildlife habitat and open space should be closely reviewed, as should the loss of wetlands and shallow water aquatic habitat from any potential increase in the pond water elevations, whether it is a continual increase or occasional flood water increases.

This is a single and complete project to create a residential subdivision. The permit record should be clear, concise and complete so that the public can be assured that the impacts have been accounted for and mitigated to the maximum extent practical.

Fairness and Meeting Standards: It is clear that there are significant on and off site natural resource issues related to protecting public water supply, floodwater management, wildlife and surface water and wetland quality and quantity. However, it appears that standards and requirements that are required and met by other developments throughout the state are not being required for this project. The following list of provides some clarification of this concern.

1. Set back distances for the yards of residential homes that are regularly required as part of reasonable review process for subdivisions are not being required. The project plans dated 5/24/10 clearly show disturbances within DEC wetland adjacent areas. It unlikely that impacts would not occur to the wetland adjacent areas for lots 44, 45 and 46. The wetland adjacent area goes right up to the back door of the home proposed at lot 45 and 46. The new owners would want a reasonable landscaped yard, a deck, pool, shed or swing set of some sort. In addition, grading would occur in the adjacent area just to construct the foundation of the home. During a phone conversation last week a DEC Region 3 representative stated that although the work is very "tight", the project sponsor is stating that no impacts to the wetland adjacent area would occur. It is clearly reasonable to require that the applicant show an adequate back yard for each home. A bit of lawn in your back yard is a standard feature for residence in suburban America. It is unreasonable that the DEC would issue a permit without assessing potential impacts to wetland adjacent areas when the adjacent area comes right up to the back yard of a proposed home. An article 24 permit review should be completed as part of the permit application.
2. Current stormwater management and pollution prevention requirements are not being met.
3. A request to have the State's wetland jurisdiction over the site revisited due to the size and local importance of the resources has not been fully weighed in the review process.

4. The photographs provided as part of the permit application are dated 2007. These are very blurry and of very poor quality. In addition, significant storm events have occurred over the past 5 years including hurricanes and flooding event. Circumstances may have changed. Recent photos should be provided to adequately assess and quantify the impacts to the resources and the extent of filling or natural resource impacts that may occur.
5. The pond has been considered regulated under article 15 as an in stream pond but it isn't clear why the streams above the pond are not regulated under the same classification. Have these streams been studied as to how much flow they have and if they should be classified the same as the downstream tributaries that they feed? These additional condominium road crossings of these tributaries are not referenced in the WQC review portion of the project documents. A Water Quality Certificate review is not just limited to streams that the State of New York determines to be of importance. All streams and waterways have value under the CWA and the Water Quality Certification program must assess and mitigate any impacts to those waters.

ACOE Approval - The applicant states that the project has been approved by the ACOE. However, there is no evidence that the subdivision plans that are currently under review by your agency have been approved by the ACOE. The following shows inconsistencies in the approval record:

1. the application references an ACOE permit letter dated November 28, 2012, when it actually is 2011;
2. the ACOE NWP 14 was issued to the NYS DOT for work associated with a single road crossing of a State Highway. Not the entire subdivision;
3. the NWP 14 for the DOT road work has expired and is no longer valid;
4. work associated with the dam rehabilitation work has not been reviewed by the ACOE;
5. the application cites an ACOE letter dated January 5, 2011, that no ACOE permits are needed for the stream crossing associated with the Condominiums project on the site, but without a formal wetland delineation the ACOE cannot clearly assert that without a doubt;
6. There is no documentation that the most recent subdivision plans for the entire property were reviewed and approved by the ACOE.

The applicant appears to be misleading or somewhat twisting the ACOE's involvement in the review process. This should be a red flag to the DEC, a bit red flag. The project should be under review by all appropriate agencies using all of the current project drawings and plans. The impacts must be fully presented, clearly balanced and reasonably considered before an application is considered complete and a decision on any permit rendered.

Water quality Certification - Issuance of water quality certification in compliance with the requirements of the CWA is a very important responsibility that has been passed to the DEC. This requires that all of the impacts of the project be quantified and assessed for their impacts to all surface waters on site and downstream in the tributary systems watershed. The public aquifer adjacent should also be considered. The review should consider the proposed and cumulative impacts of the development on these important natural resources. The following list provides my concerns and I apologize if they are a bit redundant.

1. Without knowing the full extent of wetland impacts proposed, there is no way to determine if the project meets current water quality certificate standards, as well as other general environmental standards under SEQRA and Uniform Procedures Act.

2. Direct impacts to the aquatic environment from grading, filling and flooding are not accurately or clearly shown or documented in the record.
3. The adjacent area limitations that the project sponsor may have indicated would be put in place on several "tight" lots near proposed houses about the adjacent area are unreasonable not only during construction, but after construction as well.
4. Indirect impacts to the aquatic resources from redirecting drainage away from the wetlands to stormwater infrastructure are not being assessed.
5. Reasonably anticipated impacts from the development due to pollutant loading lawn chemicals stormwater infrastructure and driveway runoff are clearly not being assessed.
6. Wetland filling would occur without any documentation or mitigation. One particular area of concern is the area where the playground and stormwater management basin surround a small wetland swale, near the condominium site. Other areas of undocumented impact are of concern are shown in the drawings provided with this document.

As stated over and over, the impacts of the project are not clearly presented and therefore they cannot be assessed and the project can not be permitted

Mitigation - Mitigation requirements must be clearly outlined to address all of the project impacts. Given the project location in relation to several major streams, several high quality tributaries and wetlands, and a public aquifer; the DEC should require strict and comprehensive mitigation measures. These mitigation measures should include the following, as a minimum standard:

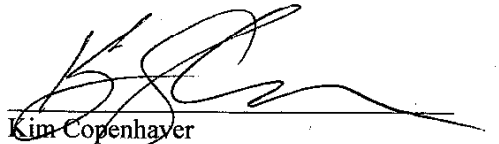
1. aquatic resources and other adjacent upland areas that will not be disturbed should be required by the DEC and the ACOE to have forever wild deed restrictions or third party conservation easements placed on them. This includes areas located on lots proposed for private ownership. If the applicant cannot guarantee the preservation of these areas by such means, then impacts to these areas should be assessed to the level of what can be reasonably expected to occur,
2. once the project's wetland impacts are accurately assessed based on a formal jurisdictional determinations, then compensatory mitigation must be required to replace the functions and services that those aquatic resources provide,
3. financial assurance bonds should be required for environmental protection and mitigation requirements,
4. onsite independent environmental monitors should be required to make sure that wetlands and waterways or other important habitat is protected during construction. Stormwater management or erosion control professionals would not be adequate for this oversight.
5. restrictions on landscape chemical uses should be required for all future properties on the site due to the importance of the aquifer and high class streams and wetlands around the site,
6. long-term monitoring and accountability of ground water and floodwater management should be required to insure that the impacts of the project can be adjusted and mitigated if they fail to meet the limits that are presented in the documents provided by the application.

Overall it seems that the permit decision record as it relates to the aquatic environment and the habitat it provides is incomplete and inconsistent. This is not what is generally considered acceptable by other development applications around the state. This seems to be the case with the stormwater management record and parts of the SEQRA record. The community needs the DEC to complete a detailed review with all of the environmental impacts weighed and balanced. Mitigation measures should be required to off set the project impacts and to guarantee that the extent of impacts represented by the project sponsor, will truly be the extent of impacts that will occur.

The DEC should require a formal Jurisdictional Determination and permit documentation for the entire project from the ACOE, prior to issuing any permit or water quality certificate. This site has important aquatic resources and upland wildlife habitat within a heavily populated riparian corridor along a major river in the state. The population density around this area and the fact that there is an aquifer adjacent to the site makes it very important on a regional basis. It is not enough to just focus on the stream crossings or the dam reconstruction work. It is not enough to take the word of the project sponsor about their review and approval record. It is not enough to utilize the town's SEQRA documentation or the local review of the drainage studies and stormwater pollution prevention measures.

The community needs the DEC to reassure them that a complete review of the environmental impacts has occurred and that no short cuts or segmentation of the project has occurred. The community needs to be assured that the impacts have been fully assessed and mitigated for. A clear and detailed record of decision should be presented for public review and comment. This has not been the way this project has been handled since its inception and is not what has been completed to date.

Thank you for your consideration of these comments. A list of references is provided to accompany this document is provided below. Please contact me for additional information (518) 874-1888.



Kim Copenhaver  
Principal Biologist and Regulatory Specialist

References provided in the attached CD Entitled "Comment Attachments, Patrick Farm DEC #3-392600570, by Copeland Env. 1/6/2013