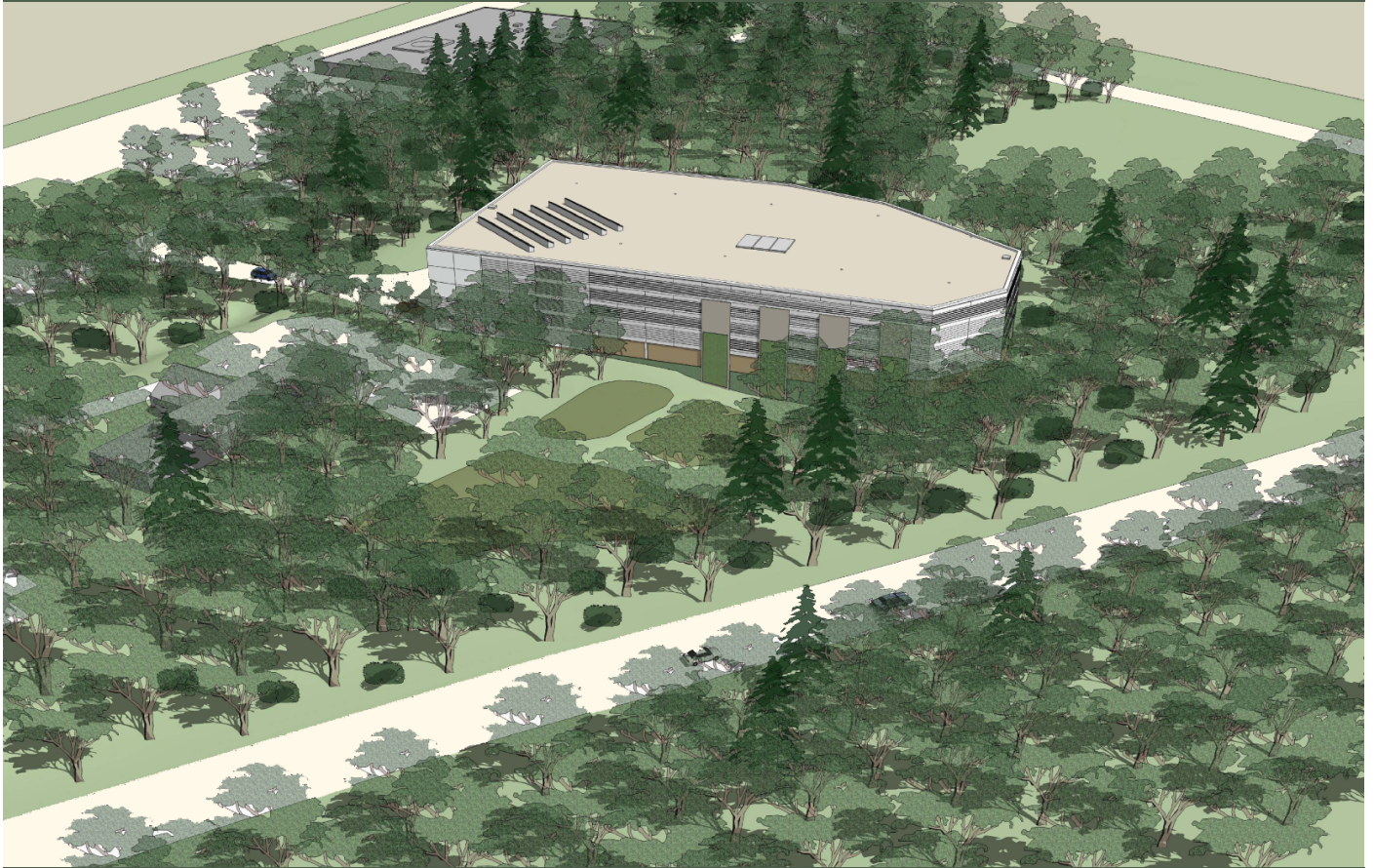


# PARK PLACE AT WESTCHESTER AIRPORT

11 New King Street  
Town of North Castle, New York



## Final Environmental Impact Statement

Prepared by:



Project Sponsor:

**11 New King Street, LLC**

Lead Agency:

**Town of North Castle Planning Board  
17 Bedford Road  
Armonk, NY 10504**

January 2015

**PARK PLACE AT WESTCHESTER AIRPORT**  
**FINAL ENVIRONMENTAL IMPACT STATEMENT**

January 2015

Lead Agency: Town of North Castle Planning Board, North Castle, New York

Applicant: 11 New King Street, LLC  
11 New King Street  
White Plains, New York 10604

Prepared by: AKRF, Inc.  
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White Plains, New York 10601



**PARK PLACE AT WESTCHESTER AIRPORT  
PRELIMINARY FINAL ENVIRONMENTAL IMPACT STATEMENT**

Project Name: Park Place

Project Location: 11 New King Street, Town of North Castle, NY 10604  
Section 3, Block 4, Lot 14B  
Section 3, Block 4, Lot 13A (partial)

Lead Agency: Town of North Castle Planning Board  
Town of North Castle  
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FEIS Acceptance Date: January 12, 2015

This document is the Final Environmental Impact Statement (FEIS) for the above-referenced project. Copies are available for review at the office of the Lead Agency (Planning Department, North Castle Town Hall), the North Castle Public Library, and the North White Plains Public Library. A copy of this document has also been made available on the Internet at the following address: [http://www.northcastleny.com/hall\\_department\\_planning.php](http://www.northcastleny.com/hall_department_planning.php).

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## **Chapter 1: Description of the Modified Project**

**A. INTRODUCTION**

11 New King Street, LLC (the “Applicant”) proposes to construct a multi-level automated parking structure (the “proposed project”) at 11 New King Street (the “project site”) in the Town of North Castle, Westchester County. This project would address an existing demand for a convenient and assured parking facility for travelers who fly from Westchester County Airport. Currently, the lack of convenient and assured parking has created a situation where many passengers arrange to be driven to and picked up from the airport rather than take the chance that parking would be unavailable. This existing condition can increase the number of trips per passenger from two to four, thus increasing the vehicle miles associated per passenger, and the attendant adverse environmental impacts from these additional vehicle trips.

A public hearing on the Draft Environmental Impact Statement (DEIS) was held on May 2, 2011.<sup>1</sup> The pDfEIS review process was placed on hold pending the filing of a drainage easement for the proposed project. The preparation of the Final Environmental Impact Statement (FEIS) resumed in March 2014 and a revised pDfEIS was submitted to the Town in June 2014.

This Final Environmental Impact Statement (FEIS) describes the modifications to the proposed project and presents the supplemental analyses that were done in response to comments on the Draft Environmental Impact Statement (DEIS). This FEIS has been prepared in accordance with 6 NYCRR Part 617: Preparation and content of environmental impact statements of the Environmental Conservation Law of New York State.

In concert with alleviating an existing parking shortage at Westchester County Airport, the proposed project would incorporate green and sustainable design elements that would result in additional benefits to the community and environment, including:

- Treatment of stormwater runoff from the project site and a portion of an adjacent developed site, where none is currently provided;
- Avoids the NYCDEP reservoir stem limiting distance (buffers);
- Avoids disturbing on-site federal and Town wetlands;
- Minimizing new ground disturbance by re-developing a previously developed site,;
- Reduced traffic within a congested traffic network;
- Improved traffic flow at several area intersections (Airport Road/NYS Route 120, Airport Road/Interstate 684 northbound ramps, and Airport Road/Interstate 684 southbound ramps) through mitigation measures;
- To mitigate potential traffic impacts the Applicant would be responsible for implementing and funding the following improvements (see Figure 1 in **Appendix H**)::

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<sup>1</sup> Written comments on the DEIS were received through June 1, 2011.

## **Park Place at Westchester Airport FEIS**

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- Airport Road at I-684 Northbound Entrance Ramp – install a traffic signal at this intersection and interconnect with the signal at Airport Road and NYS Route 120 by using a double cycle length. Channelize westbound right turn with striping and yield control.
- Airport Road at NYS Route 120 – coordinate with new signal at Airport Road/I-684, change cycle length from 120 to 100 seconds, and implement new phasing plan.
- Eastbound Airport Road receiving lanes– restripe departure to include two travel lanes
- I-684 SB Ramp to Airport Road – install “Force-Out” detector on Airport Road
- I-684 NB Exit Ramp to Airport Road – install “Force-Out” detector on I-684 ramp.
- Reduced air emissions as a result of increased efficiency traffic flow due to the enclosed automated facility whereby vehicles would not idle or circulate within the structure;
- Design of the project to achieve LEED certification; and
- Increased tax revenue.

The name of the proposed parking facility will be *Park Place at Westchester Airport* (“Park Place”). The Applicant has submitted a Site Plan application along with a petition to amend the text of the existing Industrial AA (IND-AA) zoning district to allow parking structures as a principal use with a special permit. Currently, the IND-AA zoning district permits parking structures as an accessory use (rather than a principal use).

### **PROJECT REVIEW HISTORY**

For purposes of review under the State Environmental Quality Review Act (SEQRA), the Town of North Castle Planning Board is the Lead Agency. On March 28, 2011, a DEIS for the project was accepted as complete by the Town of North Castle Planning Board for purposes of commencing public review. The DEIS was circulated to all involved and interested agencies, posted on the Town’s website, and distributed to any other parties requesting a copy. The DEIS is incorporated herein by reference. A public hearing was held on May 2, 2011 at the H.C. Crittenden Middle School in Armonk, NY with the public comment period extending until June 1, 2011 for written comments. At the public hearing, oral comments were recorded by a stenographer in a transcript which was provided to the Lead Agency and the Applicant.

Subsequent to the circulation of the DEIS and in response to DEIS comments, the proposed project has been modified. This FEIS presents the modifications that were made to the proposed project and the supplemental information that was requested by commenters on the DEIS. This document also provides responses to comments on the DEIS made during the public hearing held on May 2, 2011 as well as written comments received through June 1, 2011.

Chapter 1, “Description of Modified Project,” of this FEIS provides a description of the revisions that were made to the project in response to comments, and the supplementary information obtained subsequent to circulation of the DEIS. Chapter 2, “Probable Impacts of the Revised Proposed Project,” provides an analysis of potential environmental impacts related to the modified project as they differ from what was presented in the DEIS. All substantive comments (both oral and written) with responses are included in, Chapter 3, “Comments and Responses,” of this FEIS. The DEIS is incorporated herein by reference. A copy of the full public hearing transcript and copies of all written comments received are provided in **Appendix A**.



## MODIFIED PROPOSED PROJECT

In consideration of comments received, the Applicant has made several modifications to the proposed project. The most significant modification is that the size of the parking structure itself has been reduced. The footprint of the building has been reduced from +/-51,000 square feet to +/-45,000 square feet, a 12 percent reduction. In addition, the parking capacity of the project has been reduced from 1,450 spaces in the DEIS to 1,380 spaces in the FEIS. These modifications have enabled the total amount of impervious areas to be reduced from 68,579 square feet as presented in the DEIS, to 63,447 square feet as presented in this FEIS, a 7.5 percent reduction. The total area of site disturbance was reduced from 122,038 square feet to 110,703 square feet, a 9 percent reduction. The design components of the building have also been modified such that the building would be able to achieve LEED certification. Finally, the car wash service proposed in the DEIS has been removed from the project, thereby reducing estimated water usage. Project modifications are summarized in **Table 1-1**.

**Table 1-1**  
**Summary of Project Modifications**

	Original Project (DEIS)	Modified Project (FEIS)	Difference	% Difference
Number of Parking Spaces	1,450	1,380	-70 Spaces	- 5%
Building Footprint	50,915 sf	44,812 sf	-6,103 sf	-12%
Building Height	56 ft	59 ft	+3 ft	+5%
Limit of Disturbance Area	122,038 sf	110,703 sf	-11,335 sf	-9%
Excavated Material	25,075 cubic yards	19,949 cubic yards	-5,126 sf	-20%
Wetland Disturbance	5,699 sf	0 sf	-5,699 sf	-100%
Impervious Surfaces	68,579 sf	63,447 sf	-5,132 sf	-7.5%
Impervious Surface within 100-foot Town Wetland and Watercourse Buffer*	40,722 sf	36,514 sf	-2,741 sf	-10%
Water Usage	1,345 gpd	820 gpd	-525 gpd	-39%
<b>Notes:</b> *This impervious surface coverage includes approximately 5,800 square feet of pervious pavers. 100' wetland buffer has been revised based on inclusion of 25% slopes in buffer.				

The automated parking system proposed for Park Place will be state-of-the-art technology, similar to an automated warehousing system. The automated parking system would stack the vehicles using conveyors and pallets to transport cars to their 'parking space.' Therefore, by eliminating the vehicular circulation used in a conventional garage, the interior space can be used more efficiently and economically. As discussed in greater detail below, the modified proposed parking facility design uses a steel frame building rather than a concrete structure as proposed in the DEIS. This steel frame design eliminates the need for interior columns, allowing more useable space and greater design flexibility. These revisions have made it possible to reduce both the area of the building footprint and the overall volume of the structure from that presented in the DEIS.

Apart from the design of the structure, the operational characteristics of Park Place will remain the same as those discussed in the DEIS. Customers will drop off their vehicles in loading bays, after which automated machinery will transport the vehicle to a storage space within the facility. As the design has evolved, the interior layout has been modified from a five story garage in the DEIS to an eight level storage system. The proposed building height has increased slightly from 56 feet to 59 feet, but remains below the 60-foot height limit included in the proposed zoning text amendment.

The reduction in overall site disturbance has made it possible to avoid any disturbance to the U.S. Army Corps of Engineers (USACE) delineated wetland on the site<sup>1</sup> and the wetland that was delineated by the Town's wetland consultant. See **Figure 1-1**, "Existing Conditions," for the location of the wetland boundaries.

Finally, the Applicant will be designing a building capable of achieving LEED certification. The proposed parking facility will require the deconstruction of an existing 10,000 square foot office building and the construction of an enclosed fully-automated, multi-level parking structure. Within the facility are proposed a variety of 'green low-impact' practices which will lengthen the building's useful life and lessen its impact on the surrounding environment. As a 'sustainable building,' the project's planning has considered both site and building elements from the conceptual design of site features to the commissioning of the building systems.

### PROJECT SITE

The proposed parking structure has been designed, in the Applicant's opinion, with careful consideration to avoid significant adverse impacts to existing natural resources on the project site. As in the DEIS, Park Place will incorporate green and sustainable building initiatives that will have beneficial environmental effects and improve some aspects of local natural resources compared to the existing site conditions. The project site itself was previously disturbed and is not in its natural state. The property had been developed for its current use, with a one story commercial /office structure and adjacent paved parking area. A large portion of the site that is currently used as a surface parking areas was previously altered from its natural state and filled.

As described in the DEIS, the project site is located in the southern portion of the Town of North Castle adjacent to Westchester County Airport near the Connecticut state line. In total, the project site is 3.34 acres. It comprises two contiguous parcels: 11 New King Street, designated on the official North Castle tax map as Section 3, Block 4, Lot 14B (referred herein as Lot 14B), and a portion of 7 New King Street, designated as Section 3, Block 4, Lot 13A (referred herein as Lot 13A). The proposed parking facility will be located on Lot 14B, a 2.47-acre lot. A 0.87-acre portion of Lot 13A will comprise a drainage easement for the proposed stormwater management system (see **Figure 1-2**, "Proposed Site Plan").

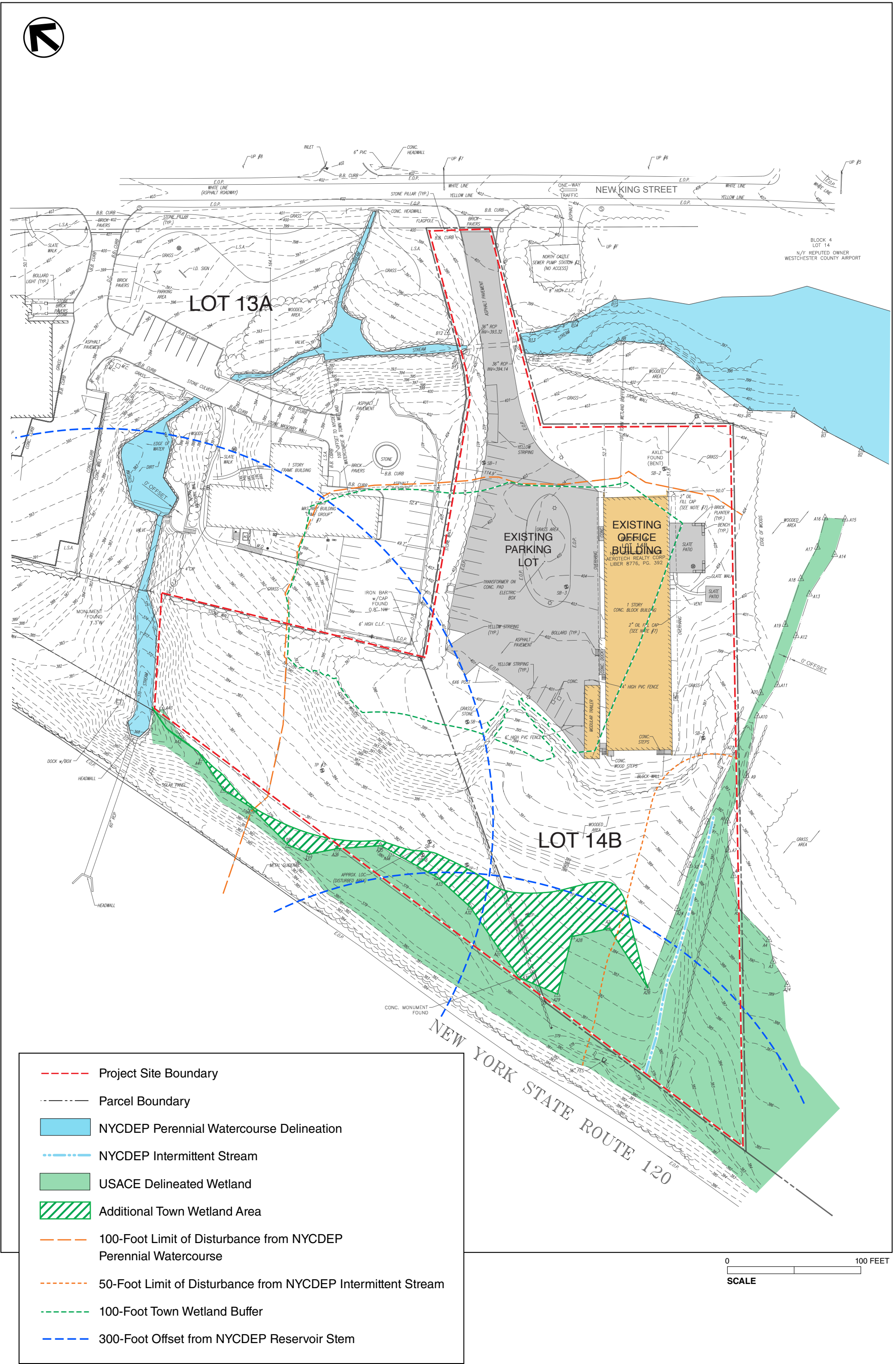
Lot 14B currently comprises an approximately 10,000-square-foot office building and accessory parking area. This lot is owned by the Applicant. Lot 13A is owned by JAM Airport, LLC. The portion of Lot 13A that will be used for the stormwater management practices is currently wooded and undeveloped. An easement agreement to use this portion of Lot 13A for stormwater management practices has been entered into by both property owners (see **Appendix B**). The remaining portion of the property contains a small two-story office building and associated parking. The title report for each property is provided in **Appendix C**.

### B. PROJECT BACKGROUND, PURPOSE AND NEED

In a passenger survey conducted in 2007 by Westchester County Airport, the lack of parking scored highest by an order of magnitude as an issue of concern for both Westchester County residents and non-residents using the airport. Consequently, airport management has been

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<sup>1</sup> A field survey was made by the United States Army Corps of Engineers (USACE) on June 1, 2011, and the wetland boundary certified in a Jurisdictional Determination (JD) letter dated 2/1/12, included herein as **Appendix D**.







engaged in a rigorous campaign to discourage travelers from driving and then parking at the airport. Instead, passengers are urged to be dropped off, use alternate modes of transportation (e.g., taxi or car services), or use off-site parking services (e.g. SUNY Purchase and adjacent hotels). The result of this parking shortage has been for airport passengers to avoid the risk of not finding a parking space by making arrangements to be dropped off and picked up often resulting in twice the number of trips to the airport. In fact, the results of a Westchester County Airport passenger survey revealed that only 25 percent of passengers drove to the airport compared to an average of 46 percent at other comparable airports. See **Appendix E**, “Estimate of Potential Parking Demand for Prospective New Garage to Serve: Westchester County Airport” (October 24, 2011), prepared by Carl Walker Associates, Inc.

To meet this demand, the Applicant proposes to construct a parking facility adjacent to the airport that will provide supplementary long-term (24 hours or more) parking for travelers driving themselves to the airport. Increasing the availability of convenient parking will reduce the number of passengers engaging a driver to make multiple trips to/from the airport, reduce pre-flight travel stress, and increase traffic safety by reducing instances of illegally parked vehicles in the existing airport garage.

## **DEMAND STUDY**

In response to comments concerning the need for the proposed project, the Applicant commissioned a study to estimate the level of unmet parking demand that could support a proposed private parking structure to serve the Westchester County Airport. The study, “Estimate of Potential Parking Demand for Prospective New Garage to Serve: Westchester County Airport,” (“Demand Study”) prepared by Carl Walker Associates, is included with this FEIS (see **Appendix E**) and summarized below.

The Demand Study examined current parking conditions at Westchester County Airport, reviewed industry standards for the number of parking spaces typically provided in a comparably sized/positioned airport, and analyzed existing parking utilization at Westchester County Airport.

### ***EXISTING PARKING CONDITIONS AT THE AIRPORT***

Westchester County Airport is served by a 3-level, 1,051 space parking structure located across the curbside roadway from the terminal building. The entire structure is used for public parking. The all-day rate for the garage at the time of the parking demand study (**Appendix E**) was \$27.45. There is also a 186-space uncovered overflow surface parking area close by. The \$27.45 rate applied here as well in 2011.<sup>1</sup> Per agreement, parking rates increase 5 percent each year and this has pushed Long-Term rates to the same level as Short-Term parking at other airports with much higher passenger volume.<sup>2</sup>

Occupancy of the garage and overflow parking are often in excess of 90 percent. However, even when spaces may be available, management often loads the garage entry in anticipation of a full

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<sup>1</sup> The current parking rate at Westchester County Airport (May, 2014) has since risen to \$28.80/day.

<sup>2</sup> For regional comparison, the current daily maximum rate for the short-term parking areas at Kennedy, LaGuardia, and Newark airports is \$33. Only LaGuardia prices its long-term parking at the same daily rates (\$33) as its short-term rate. Short term parking at Stewart International Airport is priced at \$30, but it provides long-term parking at \$10 per day.

## Park Place at Westchester Airport FEIS

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garage - to ensure that cars on the ramps park uniformly to leave a sufficient drive path. This security related practice gives the appearance of a full garage when space may still be available. This practice can compound the perception of insufficient parking that is a negative factor for travelers using this airport.

Off-airport parking is also available 4.9 miles from the terminal on the campus of Purchase College (SUNY), and La Quinta Inn, which is 4.6 miles away. SUNY provides a shuttle to the airport with a parking rate of \$10 to \$15/day (depending on the availability of \$5.00 discount coupons). La Quinta charges \$10/day to park and a shuttle is provided to the airport. Neither of these two options appears to meet a significant demand for airport parking.

### *ESTIMATE OF PROBABLE DEMAND*

To estimate the likelihood that passengers would use the proposed facility, the Demand Study surveyed existing airport customers. Over two days during typical morning travel peaks (Tuesday, August 11, 2011 and Thursday August 16, 2011), surveys were conducted of 1,351 passengers. The Demand Study asked passengers to respond to the following:

- mode of transportation to the airport
- number of passengers
- purpose of their trip, business vs. leisure and trip length

Of those surveyed, only 879 passengers lived locally; the remaining 472 passengers were flying out after visiting the area.

As shown in **Table 1-2**, of the local passengers interviewed, 76 percent were dropped off by family/friends, black car, taxi or shuttle. Only 25 percent drove themselves to the airport and parked in either the airport lot, SUNY lot, or the La Quinta Inn lot.

As shown in **Table 1-3**, this 25 percent 'drive' rate is significantly lower than the 45 percent 'drive' rate that would be expected from airports of comparable size.

**Table 1-2**  
**Airport Transport/ Parking Survey Results**

	Drivers/ Parkers		Non- Drivers					Totals
	Airport	SUNY	Drop	Black Car	Taxi	Rental Car	Hotel Shuttle	
Number of <b>Groups</b> of airport passengers arriving together	98	16	283	46	25	1	3	472
	20.8%	3.4%	60%	9.7%	5.3%	.2%	.6%	
Number of Airport <b>Passengers</b>	186	35	504	97	49	2	6	879
	21.2%	4.0%	57.3%	11%	5.6%	.2%	.7%	
Airport Passengers per Group	1.90	2.19	1.78	2.11	1.96	2.00	2.00	1.86

**Table 1-3**  
**Percent of Passengers Parking at Airport**

	<b>Enplanements</b>	<b>% Parking</b>
Austin-Bergstrom (2001-02)	3,426,846	62.1%
New Orleans (1986)	758,148	61.5%
Oklahoma City (2007)	1,859,935	48.0%
Port Columbus (2010-2011)	3,181,792	42.2%
Clearwater-St.Pete (2010-2011)	385,000	39.4%
Louisville (2011)	1,694,800	38.3%
Long Beach – 13 mos (2011)	1,634,658	29.1%
<b>Average</b>	<b>45.8%</b>	
Westchester County (2011)	999,752	25%

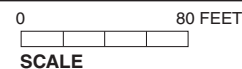
The Demand Study concluded that there appears to be a significant need for a convenient and moderately priced parking option at the Airport, a need that the proposed parking facility would meet if priced at a rate comparable to rates offered at other airports in the region. As previously stated, based on the passenger surveys, only 25 percent of passengers arrived by a car that is parked either at the airport or at one of the alternate locations (e.g. SUNY or La Quinta Inn). This is significantly less than the 46 percent drive/park rate that would be expected for this type/size of airport. These findings indicate that the ‘unconstrained drive rate’<sup>1</sup> for Westchester County Airport passengers would be 84 percent greater than the number of travelers that currently park at the airport, or 2,208 vehicles. Adjusting for external factors, the study concluded that the proposed parking facility would have the potential to draw approximately 1,300 parking customers at a rate that would be competitive with the existing Westchester County Airport garage. The study applied reasonable assumptions about the number of travelers currently being dropped-off, and the number of travelers using commercial transportation to reach the airport who would likely change and become customers of the new garage.

## C. DESCRIPTION OF MODIFIED PROPOSED PROJECT

The Applicant has considered the responses received during the public comment period and has made several important revisions to the proposed project. Most notably, the size of the building footprint has been reduced from 51,000 square feet in the DEIS to under 45,000 square feet and the parking capacity of the proposed structure has been reduced from 1,450 cars, to 1,380. The proposed height of the building has been increased from 56 feet as presented in the DEIS to 59 feet — but within the 60 foot height limit proposed in the text amendment for the IND-AA district. The Applicant notes that the Planning Department has expressed their concern with the proposed zoning text amendment permitting a 60 foot parking garage within the IND-AA Zoning District, and the ability for the structure to be adequately screened from view.

The 12 percent reduction in the size of the footprint has several beneficial effects on the overall proposed Site Plan. The Modified Project avoids disturbance to both the USACE-delineated wetland and the more conservative Town-delineated wetland as well (See **Figure 1-3**, “Comparison of DEIS Building Footprint and Revised FEIS Building Footprint”). In addition,

<sup>1</sup> The level of parking demand that will be generated by the airport if parking was not constrained by high cost and limited capacity.



## Comparison of DEIS Building Footprint and Revised FEIS Building Footprint

Figure 1-3

due to the reduction in the size of the footprint the depth of the vegetated buffer between the proposed structure and NYS Route 120 has increased by 20 to 50 feet.

Project modifications, refinements and clarifications, discussed in detail in this section, include issues related to Site Plan and architectural components, and natural resources/ sustainable design elements.

## **REVISED SITE PLAN AND ARCHITECTURAL COMPONENTS**

### *REDUCED BUILDING FOOTPRINT AND SIZE OF STRUCTURE*

As discussed above, the footprint of the parking structure has been reduced from 50,915 square feet in the DEIS to the current proposed 44,812 square feet. The average height of the structure remains under 60 feet, at 59.5 feet tall, as required by the proposed zoning text amendment. The reduction in the overall volume of the structure has resulted in the number of parking spaces being decreased from 1,450 spaces (in the DEIS) to 1,380 spaces. The orientation of the building on the project site is similar to that presented in the DEIS, but the internal organization of the loading bays and office area has been revised to improve efficiency of space and traffic circulation.

### *REVISED FACILITY AND AUTOMATED PARKING SYSTEM DESIGN*

#### *Revised Automated Facility*

The characteristics of the proposed automated facility will be significantly more efficient and more compact than a conventional parking structure. In contrast to the previous DEIS design that used a concrete structural frame, floor, and wall panel system, the revised building design will use a steel building envelope that will contain the automated parking system. The primary structural system will be made up of perimeter columns and a clear spanning roof truss. There will be additional steel columns and a steel deck /concrete composite floor system at both the partial main and mezzanine floors. The automated vehicle storage units will consist of an independent structural system which will be erected within the building envelope. The compact structural design of the facility will allow for eight levels of automated parking, or vehicle storage.

#### *Garage Operation*

A driver would enter one of several queuing lanes where they would be advised via an overhead LED (or directed by a parking attendant) to proceed to an available entry 'cabin.' Each entry cabin would be roughly the size of a garage in a single family home and would contain sensing devices and an LED display. Once directed to proceed, the driver would drive the vehicle into the entry cabin and position the vehicle by following the directions and prompts. The driver would then exit the vehicle, leave the entry cabin, and proceed to a ticketing machine/smartcard scanner station located immediately outside the entry cabin. There, the driver would collect a ticket or swipe a smartcard.

The storage and retrieval of a vehicle would be accomplished with a 'lift and a shuttle' working in conjunction with one another. The lift would retrieve a vehicle from the entry cabin by positioning itself in front of the entry cabin and sending a signal to the parking control system (PCS) that it is ready. The roll door between the lift and entry cabin will then open to allow the vehicle to be moved from the entry cabin to the lift. The lift will ascend/descend to the computer assigned parking level while a shuttle on the computer assigned parking level will move laterally to position itself in front of the lift. The vehicle will then be transferred from the lift to the

shuttle and the shuttle will move laterally to the computer assigned parking space where the vehicle will be stored.

To retrieve a vehicle, a vehicle owner will swipe the parking ticket or smartcard at a card reader to activate the retrieval process. A shuttle will retrieve the vehicle from its parking space, slide laterally and transfer the vehicle to a lift. The lift will then ascend/descend to the ground floor and transfer the vehicle to the exit cabin. Once the vehicle is available, the driver will be prompted to go to the appropriate exit cabin and retrieve the vehicle and exit the garage.

#### *Unit Load (Vehicle)*

The proposed parking system and machinery will be able to accommodate a variety of automobile sizes from SUV's (87" x 219" x 78" high) to sedans (87" x 219" x 60" high). The maximum load weight will be 6,600 lbs. Vehicles exceeding these dimensions will not be capable of being stored in the garage.

### **MODIFIED VEHICULAR ACCESS AND CIRCULATION**

In response to comments, the ingress and egress at the main level of the parking structure has been redesigned to improve access to the proposed automated parking system (See **Figure 1-4**, "Proposed Circulation Plan"). The vehicular circulation system has been revised to allow for safe, logical and understandable access to the garage drop-off and pick-up areas.

As shown in **Figure 1-3**, drivers will approach the facility after entering the site at the existing access point on New King Street. The driver will enter the structure at the far right (north) in one of three lanes. The right-most lane of the three entry lanes will be designated as an 'express lane'. The left-most lane will provide the ability to drop off passengers and luggage at the 'curbside drop-off area'. The three entry lanes will lead to five entry cabins and one drive-thru lane. The driver wishing to drop off a car will pull into an entry cabin, leave the car and walk to the waiting room to board an airport shuttle bus. Similarly, there will be five pick-up bays where the driver will pick up the car. A widened lane adjacent to a curb side pick-up area will allow the driver to pick up passengers and luggage, and then proceed to exit the structure to the driveway leading to New King Street.

A designated bus lane and bus turn-around loop will lead to the bus drop-off/pick-up area within the structure. Separate lanes for private vehicles and shuttle buses will provide an additional measure of traffic safety.

### **IMPROVED COLLECTION AND TREATMENT OF STORMWATER**

#### *Summary of Project Modifications*

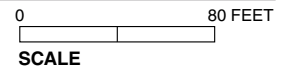
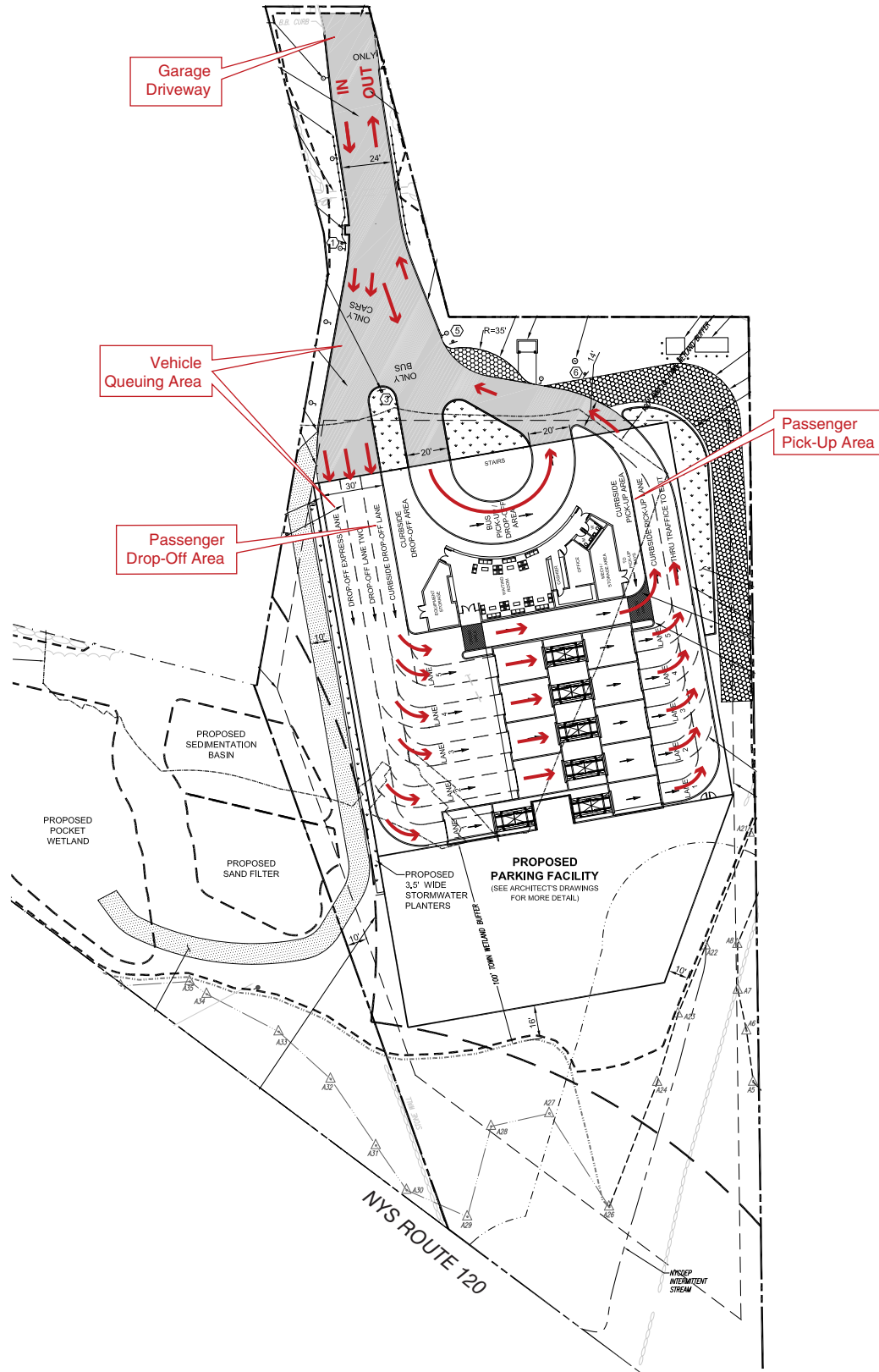
As presented in the DEIS, under existing conditions untreated stormwater from the site is conveyed directly to the wetland located to the west and discharged **without treatment** into the Kensico Reservoir. In addition, under existing conditions stormwater runoff from the adjacent Lot 13A travels either overland from the parking area into the wetland along NYS Route 120, or into the existing stream located to the north and west of the development – **also without treatment**.

In response to comments and as a result of a revised plan that includes a 12 percent smaller building footprint from that presented in the DEIS, the stormwater management plan has been re-examined and enhanced to incorporate additional volume within the green infrastructure practices. As proposed, the revised stormwater management plan will collect stormwater via overland flow and roof drains from the project site as well as a portion of the adjacent site (that





NEW KING STREET





is, Lot 13A). The stormwater will then be conveyed to multiple treatment mechanisms in a series, including catch basins with deep sumps, a sedimentation basin, a sand filter, and a pocket wetland. Stormwater collected from the roof of the parking facility will be directed into stormwater planters and then conveyed into the stormwater facilities before discharging to the Kensico Reservoir. The green infrastructure practices that have been added to the stormwater plan will function as belts-and-suspenders and will provide significant improvements to the quality of water entering the reservoir as compared to existing conditions.

In addition to the enhancement made to the proposed stormwater management plan, the proposed automated parking facility itself will be beneficial in minimizing potentially adverse impacts to stormwater runoff. The reason for this is that the automated system will be a fully contained system within an enclosed building, thus reducing potentially adverse pollutants typical for a parking structure. As stated above, under existing conditions, stormwater that currently lands on existing impervious surfaces (i.e. roof and paved parking areas) has the potential to come into contact with pollutants emanating from automobiles and de-icing materials while making its way to the adjacent wetlands and then to the Kensico Reservoir. This stormwater is currently untreated. Under the proposed condition, automobiles will be parked within an enclosed structure and the oils, hydrocarbons, and other pollutants that typically emanate from these automobiles will be intercepted, collected and discharged into the proposed sanitary collection system designed within the building. The sediments collected within this system will ultimately be conveyed and treated at the wastewater treatment plant – and will NOT enter the stormwater system, and will NOT enter the Kensico Reservoir.

#### *Revised Peak Flow Analysis*

In light of reductions made to the building size, the reduction in overall impervious surfaces, and enhancements made to the stormwater plan, the peak flow rates for each of the Design Analysis Points were revised (see **Table 1-4**).

#### *Supplemental Stormwater Analysis*

In response to comments, and in an effort to clarify the relative impacts of the proposed design on stormwater runoff, supplementary stormwater analyses were conducted. **Table 1-5** illustrates runoff flow for the project site in the following three conditions:

- In a vegetated state with no impervious surface;
- In the existing/current condition; and
- With the proposed project/post construction conditions.

The table illustrates that the rate of runoff flow for each design point and for each design storm will be reduced under the ‘proposed project’ from both the ‘no impervious surface’ and ‘existing’ conditions. It should be noted that the ‘no impervious surface’ condition is not the same as undisturbed. For the purpose of this analysis the runoff flow was calculated by substituting lawn or groundcover type vegetation for the existing impervious surfaces.

Summary **Tables 1-6 and 1-7** provide the drainage areas to each drainage design point for both existing and developed conditions.

**Table 1-4**  
**Revised Peak Flow**

		<b>Pre- Development</b>	<b>Post- Development</b>
<b>Design Point 1</b>			
1 – Year Storm	Flow (cfs)	4.72	4.17
	Volume ( cf )	22,583	20,356
2 – Year Storm	Flow (cfs)	6.09	5.41
	Volume ( cf )	28,501	25,835
10 – Year Storm	Flow (cfs)	11.38	10.22
	Volume ( cf )	51,461	47,234
25 – Year Storm	Flow (cfs)	17.51	15.83
	Volume (cf)	78,568	72,657
50 – Year Storm	Flow (cfs)	21.73	19.72
	Volume ( cf )	97,535	90,505
100 – Year Storm	Flow (cfs)	28.16	25.66
	Volume ( cf )	126,875	118,176
<b>Design Point 2</b>			
1 – Year Storm	Flow (cfs)	3.12	0.42
	Volume (cf)	11,431	21,495
2 – Year Storm	Flow (cfs)	3.78	0.52
	Volume (cf)	13,802	25,195
10 – Year Storm	Flow (cfs)	6.15	2.68
	Volume (cf)	22,548	38,641
25 – Year Storm	Flow (cfs)	8.74	6.24
	Volume (cf)	32,376	53,689
50 – Year Storm	Flow (cfs)	10.47	7.91
	Volume (cf)	39,079	63,945
100 – Year Storm	Flow (cfs)	13.06	9.87
	Volume (cf)	49,255	79,502
<b>Design Point 3</b>			
1 – Year Storm	Flow (cfs)	2.27	0.98
	Volume (cf)	7,925	4,029
2 – Year Storm	Flow (cfs)	2.76	1.22
	Volume (cf)	9,612	4,989
10 – Year Storm	Flow (cfs)	4.58	2.14
	Volume (cf)	15,864	8,631
25 – Year Storm	Flow (cfs)	6.56	3.17
	Volume (cf)	22,925	12,841
50 – Year Storm	Flow (cfs)	7.89	3.87
	Volume (cf)	27,753	15,753
100 – Year Storm	Flow (cfs)	9.87	4.93
	Volume (cf)	35,101	20,225
<b>Notes:</b> cfs= cubic feet per second cf= cubic feet			

**Table 1-5**  
**Runoff Flow Analysis**

Design Point	No Impervious Surface (cfs)	Existing Conditions (cfs)	Proposed Project (cfs)	Change in Flow Rate			
				Existing to Proposed		No Impervious to Proposed	
1-year storm							
DP1	4.42	4.72	4.17	-0.55	-12%	-0.25	-6%
DP2	1.90	3.12	0.42	-2.7	-87%	-1.48	-78%
DP3	1.55	2.27	0.98	-1.29	-57%	-0.57	-37%
10-year storm							
DP1	10.95	11.38	10.22	-1.16	-10%	-0.73	-7%
DP2	4.57	6.15	2.68	-3.47	-56%	-1.89	-41%
DP3	3.61	4.58	2.14	-2.44	-53%	-1.47	-41%
25-year storm							
DP1	17.01	17.51	15.83	-1.68	-10%	-1.18	-7%
DP2	7.02	8.74	6.24	-2.5	-29%	-0.78	-11%
DP3	5.49	6.56	3.17	-3.39	-52%	-2.32	-42%
100-year storm							
DP1	27.60	28.16	25.66	-2.5	-9%	-1.94	-7%
DP2	11.27	13.06	9.87	-3.19	-24%	-1.4	-12%
DP3	8.81	9.87	4.93	-4.94	-50%	-3.88	-44%

**Table 1-6**  
**Pre-Development Drainage Area**

Design Point	Subcatchment	Total Area (square feet)
DP-1	PRE 1	261,194
DP-2	PRE 2	85,244
DP-3	PRE 3	61,828

**Table 1-7**  
**Post-Development Drainage Area**

Design Point	Subcatchment	Total Area (square feet)
DP-1	POST 1	248,549
DP-2	POST 2A	4,907
	POST 2B	14,630
	POST 2C	44,895
	POST 2D	8,410
	POST 2E	13,510
	POST 2F	4,258
	POST 2G	23,333
	POST 2H	14,691
DP-3	POST 3A	33,605
	POST 3B	5,082

### *Runoff Reduction Requirements*

The additional green infrastructure practices that are being proposed exceed treatment requirements for the project as outlined in the New York State Storm Management Design Manual (NYSSMDM). **Table 1-8** below summarizes the different water quality volumes provided by each green infrastructure practice. It should be noted that runoff reduction volume is not required for this project as it is a redevelopment project. Nonetheless, the green infrastructure practices proposed are intended to enhance the overall water quality treatment of the site.

### *REVISED LANDSCAPING PLAN*

In consideration of comments raised on the DEIS, the landscaping plan has been revised and uses only native plant species to address a variety of site design goals. Of primary importance were the following objectives:

- Improve aesthetics;
- Enhance wetland functionality;
- Maximize erosion control; and
- Maintain existing large trees wherever possible.

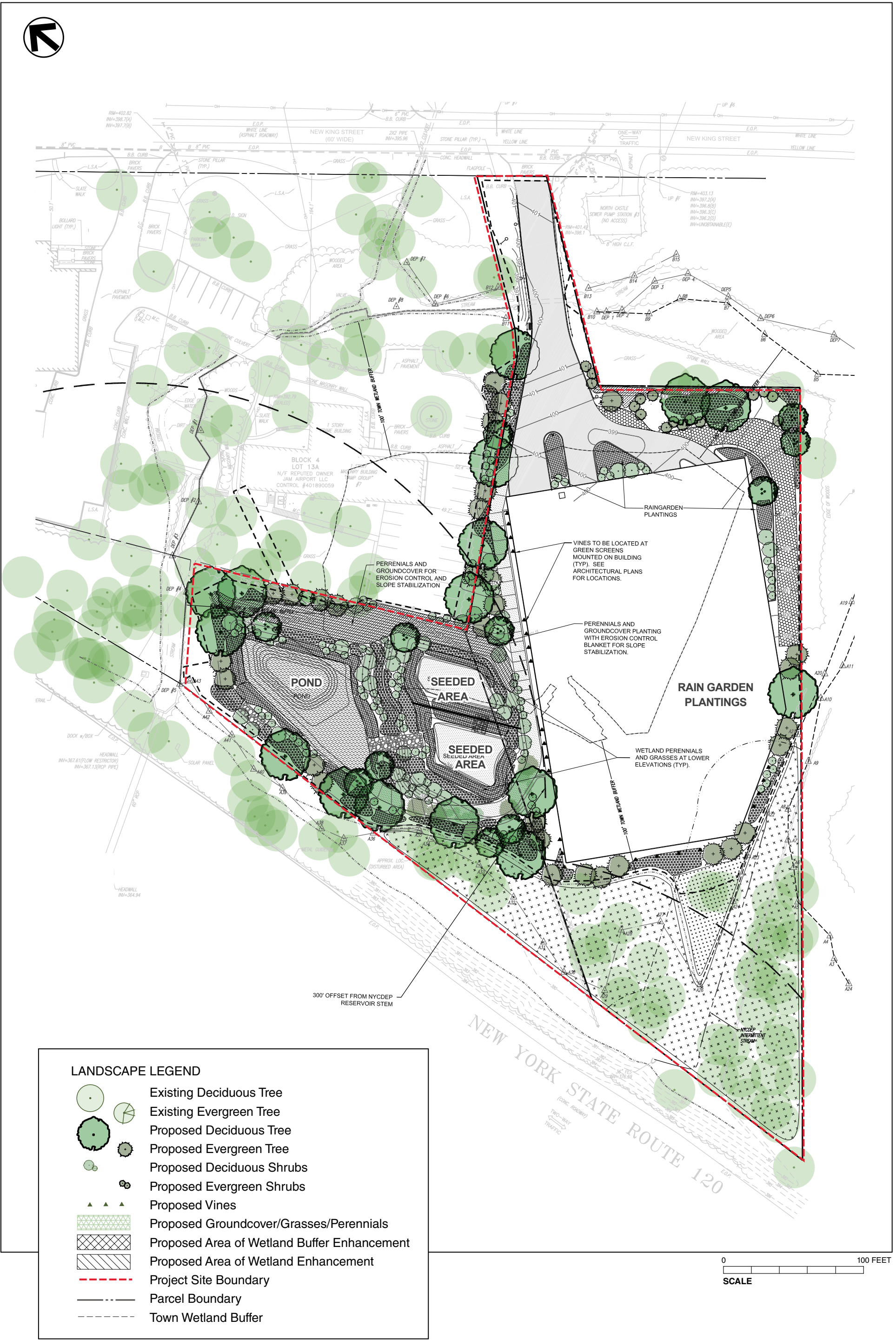
All plant material throughout the site will be native, drought and pest resistant material and will minimize the need for long term maintenance, fertilizer, pesticides and irrigation. No sand/salt or other de-icing measures would be necessary on the Drainage Easement of Lot 13A. Onsite de-icing practices will follow guidance established by the NYS Office of the Attorney General to minimize impacts by using deicers that contain 50 parts per million total phosphorous or less.

### *Aesthetic Concerns*

While the site users' perspective was considered in the development of the landscape plan, the primary aesthetic objective was to buffer the view of the proposed structure from off-site viewpoints. Due to the irregular shape of the property, opportunities for using common screening techniques, such as topographic changes and planting large stands of evergreen vegetation was limited. The revised landscape plan incorporates evergreen trees located at the highest elevations and immediately adjacent to the structure to obscure views of the structure from distant viewpoints (see **Figure 1-5**, Proposed Site Landscape Plan). Large canopy trees will be used throughout the site, wherever feasible, to provide additional visual contrast and screening during the spring, summer and fall seasons. In addition, *Greenscreen* trellises will be attached to the building's façade to support growth of vines to further soften the appearance of the proposed structure. Nonetheless, the Planning Department has expressed its concern with the proposed height of the structure given the limited screening opportunities on the site.

### *Wetland Functionality*

In coordination with the design of the stormwater treatment system, improvements were made to the landscape plan to maximize stormwater retention and treatment through natural processes. The areas immediately adjacent to the stormwater basins and retention pond will be planted with perennials, groundcovers, and shrubs selected for their value in bioremediation of stormwater runoff along with their beneficial qualities for wildlife.



**Table 1-8**  
**Stormwater Management Practices**

Water Quality Volume Required*			9,176 cf	
Standard Practices for Water Quality Treatment				
Practice	Contributing Drainage Area (sf)		Water Quality Volume Provided (cf)	
Surface Sand Filter**	86,352		12,775	
Pocket Wetland***	113,943		4,908	
Green Infrastructure for Water Quality Treatment				
Stormwater Planters	Contributing Roof Area (sf)	Stormwater Planter Size (sf)	Water Quality Volume Provided (cf)	Runoff Reduction Volume Provided (45%WQv) (cf)
North Planters	8,979	665	592	266
East Planters (A)	8,979	727	647	291
East Planters (B)	8,979	510	454	204
South Planters	8,979	1,849	1,646	741
West Planters	8,979	1,044	929	418
Total	44,895	4,795	4,268	1,920
Other Green Infrastructure				
Grass Pavers	Drainage Area (sf)	Surface Area (sf)		
Fire Truck Access Path	4,040	3,576		
Fire Truck Access Pull-Off	1,060	315		
Maintenance Path	8,000	4,306		
Total Green Infrastructure Area		11,427		
Total WQv Provided			21,951	
Notes:				
* Includes driveway, building, concrete pads				
** Includes Sedimentation Basin				
*** Includes extended detention				

To promote the overall wetland functionality on the project site, additional measures are proposed for areas beyond the proposed project's limits-of-disturbance (see **Appendix F**, "Wetlands and Wetlands Buffer Enhancement Plan"). In the areas to the south of the proposed automated parking structure and to the south of the stormwater treatment area, the existing wetlands and wetlands buffer will be improved through a prescribed process of invasive species removal, introduction of appropriate native species, and long term maintenance and monitoring. These efforts have been designed to promote the long-term health and functionality of the existing wetlands. The objective of this plan will be to enhance and reinforce a productive ecosystem within the existing wetlands and wetlands buffer areas to support functionality both in terms of stormwater quality treatment and wildlife habitat.

#### *Erosion Control*

In areas of steep slopes, a mix of grasses, groundcovers and perennials have been designed to promote slope stability over the short and long-term. The total area of steep slopes for the project and the area of disturbance for the steep slopes are indicated in **Table 1-9**.

**Table 1-9**  
**Steep Slopes Summary Table**

<b>Steep Slopes</b>		
	<b>Within *LOD (sf)</b>	<b>Outside LOD (sf)</b>
25 - 35 % SLOPE	6,613	254
>35 % SLOPE	3,344	762
<b>Note: *LOD = Limit of Disturbance</b>		

*Proposed Plant List*

The following is the list of plants to be used on the project site within the limit of disturbance for the project construction work and stormwater treatment area (see **Table 1-10**).

**Table 1-10**  
**Landscape Plant List**

<b>Deciduous Trees</b>	
<i>Amelanchier canadensis</i>	serviceberry
<i>Betula nigra</i> 'cully'	river birch
<i>Cornus florida</i>	flowering dogwood
<i>Quercus bicolor</i>	swamp white oak
<i>Crataegus phenopyram</i>	Washington hawthorn
<b>Evergreen Trees</b>	
<i>Juniperus virginiana</i>	eastern red cedar
<i>Pinus strobus</i>	white pine
<b>Shrubs</b>	
<i>Amelanchier stolonifera</i>	running serviceberry
<i>Aronia arbutifolia</i>	red chokeberry
<i>Clethra alnifolia</i>	sweet pepperbush
<i>Cornus amomum</i>	silky dogwood
<i>Cornus racemosa</i>	red -pinicled dogwood
<i>Cornus sericea</i>	redosier dogwood
<i>Ilex glabra</i>	winterberry
<i>Lindera benzoin</i>	spicebush
<i>Myrica pensylvanica</i>	northern bayberry
<i>Vaccinium corymbosum</i>	highbush blueberry
<i>Viburnum dentatum</i>	arrowwood viburnum
<i>Viburnum acerifolium</i>	mapleleaf viburnum
<b>Perennials</b>	
<i>Aquilegia canadensis</i>	columbine
<i>Asclepias incarnata</i>	swamp milkweed
<i>Caltha palustris</i>	marsh marigold
<i>Penstemon digitalis</i>	white beardtongue
<i>Potentilla fruticosa</i>	bushy cinquefoil
<b>Groundcovers, Ferns, Vines</b>	
<i>Asarum canadense</i>	wild ginger
<i>Onoclea sensibilis</i>	sensitive fern
<i>Pachysandra procumbens</i>	Allegheny spurge
<i>Parthenocissus quinquefolia</i>	Virginia creeper
<i>Phlox divaricatus</i>	creeping phlox
<i>Polystichum acrostichoides</i>	christmas fern
<i>Rhus aromatica</i> 'gro-low'	low growing aromatic sumac
<b>Grasses</b>	
<i>Carex stricta</i>	tussock sedge
<i>Schizachyrium scoparium</i>	little bluestem



Additional plant species will be used for habitat and wetland function enhancement within the delineated wetlands and undisturbed wetland buffer areas. Native warm season grasses, such as little bluestem, big bluestem (*Andropogon gerardi*), indian grass (*Sorghastrum nutans*), switchgrass (*Panicum virgatum*), and sideoats grama (*Bouteloua curtipendula*) will be seeded in regraded upland areas to enhance soil stabilization and provide wildlife habitat. Within the planted stormwater basins, a native wetland seed mix, containing a mix of sedges/rushes will be provided upon final grading to fill growing space and supplement the individual plugs of wetland herbaceous plants.

***CLARIFICATION / STATUS OF NYCDEP-REGULATED STREAM AND RESERVOIR STEM LIMITING DISTANCES***

NYCDEP visited the project site in October 2008 to demarcate streams/waters regulated by its own regulations. At that time, only the perennial stream (the Class “A” stream that wraps around the project site but is located almost entirely offsite) was flagged by NYCDEP. As a “perennial stream”, the NYCDEP regulates a 100-foot limiting distance (buffer) from the banks of this stream. In addition, this perennial stream is tributary to the Kensico Reservoir. Therefore the 300-foot limiting distance to the reservoir stem occupies a portion of the project site.

A subsequent site inspection by NYCDEP conducted on December 16, 2011 resulted in the DEP taking jurisdiction of the lower reaches of the ephemeral drainageway running along the project site’s southern boundary. As such, this segment of the drainageway is regulated as an “intermittent stream” and includes a 50-foot limiting distance. An additional portion of the project site is within the 300-foot limiting distance of the reservoir stem to the Kensico Reservoir.

The NYCDEP-regulated limiting distances from the onsite streams and the reservoir stems are shown in **Figure 1-1**.

In accordance with the NYC Watershed Rules and Regulations (WRR), an expansion of impervious surfaces up to 25% within the 100-foot limiting distance of a regulated watercourse is allowed with an approved SWPPP. However, the proposed project will result in an expansion of impervious surfaces in excess of 25%. Therefore a variance from WRR §18-39(a)(4)(iii) will be required.

Please note, the proposed parking structure and all impervious surfaces are located outside of the 300-foot limiting distance to both reservoir stems.

Because the Proposed Action is proposing new impervious surface with the limiting distance of a NYCDEP-regulated watercourse, the NYCDEP has permit approval authority and must review and approve the project SWPPP (WRR §18-39(a)(1)).

***CLARIFICATION / STATUS OF ON-SITE WETLANDS DELINEATION***

As described in the DEIS, the wetland consultant for the Town of North Castle conducted a preliminary wetland delineation on the project site in December 2010 to confirm the wetland boundary delineated by the Applicant’s representatives in June and October 2008. Although the wetland boundary delineated by the Applicant’s representatives was based on federal and Town criteria, the Town’s preliminary wetland boundary was found to be more conservative, pending confirmation during the growing season (i.e., spring 2011). In the spring of 2011, the Town’s wetland consultant revisited the project site and felt that the wetland delineation performed in December 2010 was appropriate. On June 1, 2011, the United States Army Corp of Engineers (USACE) conducted a site inspection as required under its jurisdictional determination (JD) process to confirm the extent of any federally-regulated wetlands onsite. Although the USACE-



approved wetland boundary<sup>1</sup> was coterminous with the boundary delineated by the Applicant's representatives (see **Figure 1-1**, "Existing Conditions"), the Town's wetland consultant delineated a slightly larger area – expanding the size of the wetland by 6,973 square feet.

In consideration of both of these wetland delineations, the Applicant reduced the size of the building footprint and modified the Site Plan to remove **any** potential disturbance of either the USACE wetland boundary or the Town-delineated wetland boundary. The original proposed project presented in the DEIS will have resulted in approximately 5,700 square feet of direct disturbance to the Town-delineated wetland.

As revised, there will be no disturbance to either USACE or Town wetlands. There will, however, be some disturbance to the Town regulated wetland buffer for two reasons. First, the existing building and parking area are already within the wetland buffer, and second, the proposed building, being larger than the existing building, will also extend into the wetland buffer. However, the quantity of proposed permanent buffer disturbance has been reduced from 40,722 square feet (impervious surfaces and grass/stone pavers) in the DEIS to 36,514 square feet with the revised project present in the FEIS. This is a reduction of 4,208 square feet. As mitigation for disturbing these Town buffers a Buffer Enhancement Plan has been prepared. A summary of the mitigation plan is provided below, and the complete Wetland Buffer Enhancement Plan is provided as **Appendix F**.

#### **WETLAND AND BUFFER ENHANCEMENT**

As mitigation for disturbance within the wetland buffer area, the Applicant is proposing measures intended to improve the quality of the natural resources remaining on the project site. The information and guidelines below outline invasive plant removal activity and native plant augmentation to be conducted as part of the proposed project. These guidelines will be used in the field by the project ecologist who will supervise all activity beyond the limit of the project's disturbance and within enhancement areas (see **Figure 1-5**).

Based on inspection of areas on the property that will not be disturbed by the proposed project, much of it wetland and wetland buffer areas, invasive plant cover approaches 50 percent. Invasive species are typically non-native plants which disrupt the natural balance of an ecosystem by outcompeting with native plants for nutrients, water or sunlight. These plant species, which are foreign to the region, may have been imported from other countries for ornamental gardening or agricultural purposes. Having escaped from cultivation and with no natural predators these species have become naturalized in the region. The lack of natural controls allows these species to become dominant, reducing biodiversity and thereby degrading habitats. Controlling invasive plant populations is important to regain ecological stability, maintain habitat for native wildlife and reduce negative impacts on the nearby resources.

The goal of the enhancement plan will be to increase the ecological function of the existing wetland through intervention. The objective of the plan will be to eliminate, or significantly reduce, the *target species*- the non-native, invasive species currently found on the project site- and to reintroduce appropriate native plant species. The augmentation of the native species population, in conjunction with removal of invasive species and up to 5 years of monitoring, will give an advantage to the native species types to regain dominance. The intent of this Enhancement Plan will be to reverse the degradation of the wetland ecology typical of disturbed land.

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<sup>1</sup> USACE 2/1/12 JD Confirmation Letter. Permit Application # NAN-2011-00486-ESO

Clearing of invasive species and replanting with native plants will be used only where necessary. All existing native plants and non-target species vegetation in the undisturbed portions of the project site will be protected during the enhancement activities. The activities described in the enhancement plan are in addition to the proposed project. As part of the proposed project construction (separate from the Wetland Buffer Enhancement Plan activities) all unpaved but re-graded areas of the site will be planted, using exclusively native plant species, to address a variety of site design goals including aesthetic concerns, wetland functionality, and erosion control. The planting plan proposed for the area cleared for construction of the project is shown in **Figure 1-5**.

#### *USE OF HERBICIDES*

Non-chemical means of control are generally preferred, but in some cases the use of chemical controls will be necessary to significantly reduce or eliminate invasive species from the designated areas. An herbicide-based approach may be required to control an infestation that has become well established or widespread. Glyphosate or triclopyr may be used for the control of some of the target species. Glyphosate has low oral toxicity (acute or chronic) to humans or other animals but some formulations are irritating to skin or eyes. Glyphosate does not persist or bioaccumulate in the environment. The oral toxicity of triclopyr is fairly low relative to other pesticides, but not as low as that of glyphosate. Amine-based triclopyr formulations are corrosive and damaging to eyes and skin. Toxicity to birds and fish is relatively low, although ester formulations are more toxic to fish than amine formulations or the parent acid of triclopyr.

#### *EXTENT OF ENHANCEMENT ACTIVITIES*

As shown in **Figure 1-5**, the Enhancement Plan will apply to undisturbed areas of the site - i.e. those areas not cleared and regraded for the proposed project. The area shown for proposed wetland enhancement is approximately 20,000 square feet and the area shown for proposed wetland buffer enhancement is approximately 8,000 square feet. The exact location and extent of wetland buffer enhancement activities will be determined by the project ecologist based on field conditions.

#### *INVASIVE PLANT REMOVAL*

The invasive plants will be removed by hand with cutting tools and digging to remove root mass. As discussed in detail in **Appendix F**, several of these plants will be disposed of off-site to prevent spread of remnant seed and vegetative re-growth of rhizomes. Limited use of herbicide will be required for plant species that are less likely to be successfully eradicated by hand-removal alone. The determination as to whether and when to use herbicide and how it is to be applied in the field will be made by the project ecologist in consultation with the licensed landscape professional who will conduct the application. The landscape professional must be licensed in the application of all herbicides used.

The predominant non-native, invasive plants found onsite and to be removed during the wetland and wetland buffer enhancement activities are listed in **Appendix F**. For each target species a brief description is provided along with details on preferred removal techniques, alternative removal techniques, and a recommended schedule of removal activities.

#### *HABITAT ENHANCEMENT / AUGMENTATION OF NATIVE SPECIES*

The primary objective of the re-vegetation effort will be to create a foundation for long term stability of a productive wetland ecology. The initial planting must address erosion control

issues while providing an environment which gives an advantage to the establishment of appropriate native species.

Invasive species removal and native plant establishment will occur within the areas shown in **Figure 1-5**. At approximately 50 percent invasive plant cover at present, this amounts to 4,000 square feet of invasive plant removal in the wetlands buffer, with another 10,000 square feet of invasive plant removal in the wetland. This is a conservative estimate used to approximate plant cover/density and costs required to implement the initial replanting of the site after selective removal of invasives has occurred. Clearing of invasive species and replanting with native plants will be used only where necessary. These areas will be re-vegetated with native plant seedlings, seeding and plant-plugs soon after removals are complete for erosion control and habitat restoration.

Both woody plants and herbaceous species appropriate for the site conditions will be specified. There is an opportunity to collect desirable species from areas of the project which will be excavated and/or regraded prior to site demolition. The project ecologist will be on site to direct collection activities. All collected plant material must be replanted immediately or stored in conditions to maintain its viability.

Additional plant material will be required to supplement the collected material and to introduce native species not currently found on the project site. Herbaceous plant material will be specified in a variety of sizes for each species; in small containers and plugs. Depending on the species, the vegetation will be planted at 6" to 2'-0" on-center to provide uniform cover of the enhancement area within the first year of growth. Woody plant materials will be specified in a variety of types and sizes; containerized plant and live stakes. Planting of all herbaceous materials will take place in the spring. Containerized trees and shrubs will take place either spring or fall. Live stakes of shrubs will be planted during the shrub's dormant season.

A list of appropriate plants to be used during the enhancement effort is provided in **Appendix F** along with an outline of planting, maintenance, and monitoring recommendations.

## **PROPOSED 'GREEN'/'SUSTAINABLE' DESIGN COMPONENTS**

In response to comments, the Applicant has revised the building program such that the project will incorporate additional sustainability components and will be designed to achieve LEED certification.

The proposed parking facility will require the deconstruction of an existing 10,000 square foot office building and the construction of an enclosed fully-automated, multi-level parking structure. Within the facility are proposed a variety of 'green low-impact' practices which will lengthen the building's useful life and lessen its impact on the surrounding environment. As a 'sustainable building', the project's planning has taken into account both site and building elements from the conceptual design of the site features to the commissioning of the building systems.

### ***THE 'GREEN PROJECT' CONCEPT***

Sustainability for the proposed project began at the conceptual level. Providing additional parking for the airport will reduce traffic in the immediate surroundings and the region. It was determined, based on the parking demand study that nearby and convenient parking will reduce the number of multiple trips required by airport passengers who are currently transported via family members, friends or car services. Each trip reduction will reduce fossil fuel usage and lower emissions of air pollutants. The shuttle vehicles which will transport travelers between the garage and the airport will be fuel efficient and will use alternate energy vehicles.

### *DEMOLITION AND REMOVALS*

The existing building and impervious site materials will be deconstructed rather than demolished. The recyclable material, such as glass, steel, and concrete, will be separated out of the 'waste' material and will be reused on site where possible. For example, material such as concrete will be crushed on site and reused as structural fill within the proposed facility under slab work. It is anticipated that up to 87 percent of all material that will have once automatically been placed directly into landfill will be recycled.

### *STORMWATER MANAGEMENT*

As previously noted, stormwater will be collected, slowed down and treated on the project site through a multiple basin filtering process. The stormwater management plan has been designed to improve the quality of stormwater runoff. Under existing conditions, stormwater that falls on the impervious surfaces is conveyed directly into the wetland located to the west - **untreated**. Under proposed conditions stormwater will be designed to be conveyed via overland flow or roof drains to the stormwater facilities located within the drainage easement. This will provide treatment for previously untreated stormwater runoff and a significant benefit to surface water quality which will reduce the risk of negatively impacting the groundwater.

In addition, the proposed design will allow a portion of the currently untreated stormwater runoff from the parking lot on the adjacent property, Lot 13A, to be collected in the proposed sedimentation basin, sand filter and pocket wetland. Under existing conditions stormwater runoff from the adjacent lot, travels either overland from the parking area into the existing wetland area along NYS Route 120 or overland into the existing stream located to the north and west of the development.

The proposed project will be constructed on a portion of the site which currently is mostly impervious surface (the asphalt roadway parking area and building). Although the proposed project will result in more impervious surfaces than the existing site conditions, it will also result in a significant improvement in stormwater runoff quantity and quality. The proposed stormwater basins have been oversized to accommodate runoff from the proposed project site as well as a portion of the impervious area on the adjacent site (i.e., Lot 13A).

### *SPECIFICATION OF APPROPRIATE NATIVE PLANT SPECIES*

Each basin will be planted with indigenous wetlands plantings that both stabilize the basin construction, provide wildlife habitat and aesthetic beauty. All plant material throughout the site will be native, drought and pest resistant material and will minimize the need for long term maintenance, fertilizer, pesticides and irrigation.

### *MINIMIZE POLLUTANTS IN STORMWATER RUNOFF*

The proposed project will be an enclosed building which will be sited on a portion of the property that is currently primarily impervious surface (the asphalt roadway, parking area, and building), and previously disturbed. Currently, stormwater is conveyed across existing impervious and previously disturbed areas and, potentially, comes into contact with pollutants while making its way to the adjacent wetlands. Under the proposed conditions automobiles will be parked within the structure where the stormwater runoff will not be in contact with oils, hydrocarbons, and other potential pollutants. All potential pollutants associated with the parked vehicles will be conveyed to the sanitary system and will ultimately be treated in the wastewater treatment plant. Additionally, stormwater collected from the roof of the garage will be directed into stormwater planters and then conveyed into the stormwater

system that will include sedimentation catch basins, sand filters, and a pocket wetland before discharging to the Kensico Reservoir.

#### *REDUCTION OF EMISSIONS AND ENERGY USE*

The proposed building will utilize state of the art engineering to provide a fully automated parking facility that reduces the emissions and energy usage from that of a conventional garage. Unlike a conventional parking garage, the proposed project will not result in vehicle emissions within the facility or significant vehicle idling on the subject site. In the automated parking facility the engine will be turned off upon entering the entry cabin and transported to their storage location by an electronic automated mechanism that will not generate air pollutant emissions on site. In a conventional parking structure a car will be driven in at low speed, will need to be maneuvered to enter and exit the space and will idle at the pay station.

#### *EFFICIENT USE OF SPACE*

The efficiency of the automated system will allow a greater number of vehicles to be stored in a smaller volume than a traditional self-park garage. This efficiency will be achieved by constructing a lower floor to floor height and providing only one double-loaded transit aisle with 4-space deep stacking on both sides. The net gain is approximately 50 percent more capacity in the same volume.

#### *‘SUSTAINABLE’ BUILDING TECHNOLOGY*

The building will be primarily constructed of cast-in-place concrete and steel structural framing and siding material. Both concrete and steel are readily recycled material with the steel industry utilizing 97 percent recycled content in their fabrications. Most material for this project will be from facilities within 500 miles of the site reducing fuel consumption related to material transport. In comparison to a similar capacity conventional garage, there will be a significant reduction in construction materials used and construction activity required.

The design of the automated parking facility will include many green building and systems concepts including:

- Efficient, Low level emergency artificial lighting. The majority of the building will be dedicated to automated vehicle storage. As such, the only lighting required will be the minimal level required for building technicians and for emergency and maintenance needs. There will also be a series of rooftop skylight monitors along the central aisle which will naturally illuminate the storage area during daylight hours. The lighting for the waiting room, office and other enclosed building service spaces will be highly efficient, fluorescent fixtures connected to occupancy sensors.
- Plumbing requirements for this facility will be limited. Low flow plumbing fixtures that will reduce up to 30 percent of water usage are proposed for the waiting room area.
- Mechanical systems will be limited to make-up air and exhaust air units in the storage areas. Due to ‘no emissions’ in the storage spaces, two units are proposed with multiple fan speeds and a carbon monoxide detector to allow the system to run on the minimum amount of mechanically processed air necessary to keep the building properly ventilated.
- Local building materials, wherever possible, will be incorporated to reduce transportation costs. This will be considered within the project specifications and will be reviewed during the construction administration phase on a regular basis with the team of contractors.

## Park Place at Westchester Airport FEIS

- High levels of recycled building materials with no VOC's will be listed in the project specifications.
- Wall mounted planting trellis systems are proposed for portions of the building façade.
- Light-colored heat reflective roofing to reduce the 'heat island effect' of traditional dark roofs.
- Minimal site light fixtures with cut-off type housings will be included along the entrance drive to allow safe passage of vehicles and pedestrians while minimizing any offsite light spillage. All light levels at the property line will be at zero foot candles.
- A regular building maintenance plan will be incorporated which utilizes bio-degradable cleaning products.
- The vehicle palettes are designed to contain fuel in the case of a leaking automobile. Drains are not designed into the storage floors, so that a spill will sit on the sealed floor surface until scheduled cleaning is performed.

Throughout the design process the project team has continued to research products and grants for alternative energy building and transport systems. One system under review is the incorporation of solar thermal (hot water systems) and photovoltaic cells (use of the sun to create electrical energy) as potential life-cycle energy savings options. As such, the currently proposed plan depicts a photovoltaic array on the roof.

Similar to the process that Westchester County follows, the Applicant will utilize the United States Green Building Council's LEED rating system to evaluate all aspects of sustainability that will be suitable for a parking garage facility. The LEED system allows for innovation points for which the automated parking system will qualify. Based on the initial review of the LEED checklist (See **Figure 1-6**, "LEED Project Checklist") and possible credits, the Applicant intends to design a building that will achieve that required for a LEED certified building.

**Table 1-11**

### Required Approvals and Involved Agencies

Approval/Permit/Review	Involved Agency
<b>Town of North Castle</b>	
Site Plan Approval	Planning Board
Wetland Permit	Planning Board
Tree Removal Permit	Planning Board
Zoning Text Amendment	Town Board
Sanitary Sewer Connection	Building Department
<b>Westchester County</b>	
Sanitary Sewer Connection	Department of Health (WCDOH)
Water Supply Well	WCDOH
Roadway/Signal Improvements	Department of Public Works (WCDPW)
<b>New York City</b>	
SWPPP	Department of Environmental Protection (NYCDEP)
Sanitary Sewer Connection	NYCDEP
Limiting Distance Disturbance	NYCDEP
<b>New York State</b>	
Roadway/Signal Improvements (NYS Route 120)	Department of Transportation (NYSDOT)
SPDES Permit (GP-0-10-001)	Department of Environmental Conservation (NYSDEC)
<b>Federal</b>	
Height Limitation	Federal Aviation Administration (FAA)
Notice of Proposed Construction or Alteration	FAA
Nationwide Permit, if applicable	U.S. Army Corps of Engineers (USACE)

✱



# LEED 2009 for New Construction and Major Renovations

## Project Checklist

Project Name

Date

### 10 16 Sustainable Sites Possible Points: 26

Y	?	N			
Y			Prereq 1	Construction Activity Pollution Prevention	
	1		Credit 1	Site Selection	1
	5		Credit 2	Development Density and Community Connectivity	5
	1		Credit 3	Brownfield Redevelopment	1
	6		Credit 4.1	Alternative Transportation—Public Transportation Access	6
1			Credit 4.2	Alternative Transportation—Bicycle Storage and Changing Rooms	1
3			Credit 4.3	Alternative Transportation—Low-Emitting and Fuel-Efficient Vehicles	3
	2		Credit 4.4	Alternative Transportation—Parking Capacity	2
	1		Credit 5.1	Site Development—Protect or Restore Habitat	1
1			Credit 5.2	Site Development—Maximize Open Space	1
1			Credit 6.1	Stormwater Design—Quantity Control	1
1			Credit 6.2	Stormwater Design—Quality Control	1
1			Credit 7.1	Heat Island Effect—Non-roof	1
1			Credit 7.2	Heat Island Effect—Roof	1
1			Credit 8	Light Pollution Reduction	1

### 6 4 Water Efficiency Possible Points: 10

Y	?	N			
Y			Prereq 1	Water Use Reduction—20% Reduction	
4			Credit 1	Water Efficient Landscaping	2 to 4
	2		Credit 2	Innovative Wastewater Technologies	2
2	2		Credit 3	Water Use Reduction	2 to 4

### 11 7 14 Energy and Atmosphere Possible Points: 35

Y	?	N			
Y			Prereq 1	Fundamental Commissioning of Building Energy Systems	
Y			Prereq 2	Minimum Energy Performance	
Y			Prereq 3	Fundamental Refrigerant Management	
5	14		Credit 1	Optimize Energy Performance	1 to 19
4	3		Credit 2	On-Site Renewable Energy	1 to 7
	2		Credit 3	Enhanced Commissioning	2
2			Credit 4	Enhanced Refrigerant Management	2
			Credit 5	Measurement and Verification	3
	2		Credit 6	Green Power	2

### 5 1 8 Materials and Resources Possible Points: 14

Y	?	N			
Y			Prereq 1	Storage and Collection of Recyclables	
	3		Credit 1.1	Building Reuse—Maintain Existing Walls, Floors, and Roof	1 to 3
	1		Credit 1.2	Building Reuse—Maintain 50% of Interior Non-Structural Elements	1
2			Credit 2	Construction Waste Management	1 to 2
	2		Credit 3	Materials Reuse	1 to 2

### Materials and Resources, Continued

Y	?	N			
2			Credit 4	Recycled Content	1 to 2
1	1		Credit 5	Regional Materials	1 to 2
	1		Credit 6	Rapidly Renewable Materials	1
	1		Credit 7	Certified Wood	1

### 8 7 Indoor Environmental Quality Possible Points: 15

Y	?	N			
Y			Prereq 1	Minimum Indoor Air Quality Performance	
Y			Prereq 2	Environmental Tobacco Smoke (ETS) Control	
	1		Credit 1	Outdoor Air Delivery Monitoring	1
	1		Credit 2	Increased Ventilation	1
1			Credit 3.1	Construction IAQ Management Plan—During Construction	1
1			Credit 3.2	Construction IAQ Management Plan—Before Occupancy	1
1			Credit 4.1	Low-Emitting Materials—Adhesives and Sealants	1
1			Credit 4.2	Low-Emitting Materials—Paints and Coatings	1
1			Credit 4.3	Low-Emitting Materials—Flooring Systems	1
1			Credit 4.4	Low-Emitting Materials—Composite Wood and Agrifiber Products	1
	1		Credit 5	Indoor Chemical and Pollutant Source Control	1
	1		Credit 6.1	Controllability of Systems—Lighting	1
	1		Credit 6.2	Controllability of Systems—Thermal Comfort	1
	1		Credit 7.1	Thermal Comfort—Design	1
	1		Credit 7.2	Thermal Comfort—Verification	1
1			Credit 8.1	Daylight and Views—Daylight	1
1			Credit 8.2	Daylight and Views—Views	1

### 1 Innovation and Design Process Possible Points: 6

Y	?	N			
			Credit 1.1	Innovation in Design: Specific Title	1
			Credit 1.2	Innovation in Design: Specific Title	1
			Credit 1.3	Innovation in Design: Specific Title	1
			Credit 1.4	Innovation in Design: Specific Title	1
			Credit 1.5	Innovation in Design: Specific Title	1
1			Credit 2	LEED Accredited Professional	1

### 2 1 Regional Priority Credits Possible Points: 4

Y	?	N			
1			Credit 1.1	Regional Priority: EAc2 1%	1
1			Credit 1.2	Regional Priority: SS c6.2	1
	1		Credit 1.3	Regional Priority: WE c2	1
			Credit 1.4	Regional Priority: Specific Credit	1

### 43 13 45 Total Possible Points: 110

Certified 40 to 49 points Silver 50 to 59 points Gold 60 to 79 points Platinum 80 to 110

## LEED Project Checklist

Figure 1-6

## **Chapter 2: Probable Impacts of the Modified Project**



## **A. INTRODUCTION**

This chapter summarizes and evaluates the potential environmental impacts from the Draft Environmental Impact Statement (DEIS), and includes analysis of proposed project refinements and relevant new information since publication of the DEIS. The topics below are the same as those addressed and analyzed in the DEIS. Each project refinement, if any, is analyzed in the topic area where the potential for environmental impacts exists; and for the reasons stated below, these refinements do not have the potential to generate any significant adverse environmental impacts in those subject areas.

## **B. LAND USE, ZONING AND PUBLIC POLICY**

The modifications to the proposed project would not alter the proposed land use for the site as was discussed in the DEIS. The proposed project would result in a parking facility in an area dominated by office uses and large-scale transportation uses including Westchester County Airport, Interstate 684, and NYS Route 120. The project site is separated from nearby residences by other office buildings and is separated from Kensico Reservoir by NYS Route 120 and Interstate 684. In the Applicant's opinion, the project site would be an appropriate setting for a parking facility within the context of surrounding office and transportation uses.

The proposed zoning amendment submitted with the DEIS has not been modified and is still pending before the Town Board. In the Applicant's opinion, the zoning amendment was carefully crafted to be appropriate for the Industrial (IND-AA) zoning district. The modified proposed project would continue to comply with the regulations established through the zoning amendment.

As discussed in the DEIS, the proposed project would fulfill a number of objectives outlined in various local and regional public policy documents. With its reduced building footprint, the modified proposed project would further reduce ground and habitat disturbance, in line with regional goals and objectives. The modified proposed project would continue to support other local and regional goals and objectives by redeveloping an already developed site and by reducing traffic volume in the study area, which in return would reduce air pollutants and greenhouse gas emissions, as discussed in Chapter 13, "Traffic and Transportation," and Chapter 14, "Air Quality and Greenhouse Gas Emissions," of the DEIS.

## **C. VISUAL RESOURCES**

Due to the reduction in the size of the structure's footprint, in the modified Site Plan the closest point of the building is 11 feet further from the property line along NYS Route 120. The area of vegetative buffer immediately to the west of the structure in the modified proposed plan is 20 feet to 45 feet wider than in the DEIS. The building height and overall perceived massing would be similar to that evaluated in the DEIS, but there would be additional screening from the

western side of the project site as viewed from NYS Route 120. Views from northern, southern, and eastern vantage points would be similar to that analyzed in the DEIS. Although the proposed structure may be visible from surrounding areas, it is expected to blend with the existing office character of New King Street. The nearest sensitive land uses (i.e., residences) are located on King Street in the Town of Greenwich, CT, approximately 615 feet from the project site. In response to comments, a Supplemental Visual Impact Analysis was conducted to assess potential impacts on these residences (see below).

It should be noted that the proposed building would not comply with the existing IND-AA building height regulations. Therefore, the Planning Board, in their role as the Lead Agency, would closely evaluate the visual impacts associated with the proposed zoning text amendment permitting a 60 foot tall structure on the subject property.

### **SUPPLEMENTAL VISUAL IMPACT ANALYSIS**

A Supplemental Visual Impact Analysis was conducted that expanded the ¼ mile study area radius to ½ mile in order to include residences on King Street in Greenwich, CT.

The study below analyzes the potential visibility of the proposed project from several vantage points. The analysis uses USGS topographic maps, aerial photographs, field surveys and photographs taken during both leaves-on and leaves-off conditions.

Four locations, A-D in **Figure 2-1**, “Key Plan,” were identified to illustrate the relationship of the project site to the public rights-of-way within nearby residential neighborhoods. **Figure 2-1** also shows the profile lines for these view points which refer to the illustrations in **Figures 2-2**, “Profiles at Viewpoints A and B,” and **Figure 2-3**, “Profiles at Viewpoints C and D.” These locations were considered to be the most likely locations where the project could be viewed based on topography, existing vegetation and distance from the proposed project. In addition, photos E and F (**Figure 2-4**, “Viewpoints E and F”) are included to document the views from the relative topographic high points within the ½-mile study area.

As indicated by the profiles and photographs in **Figures 2-2, 2-3, and 2-4**, during leaves-on conditions views of the proposed project would be imperceptible from the ground at eye level of the residential properties within ½ mile of the proposed project. Only one vantage point along the public right-of-way of King Street was identified where the uppermost points of the proposed project may be visible beyond the parking lot in the foreground and dense vegetation in the distance (Viewpoint C) in the leaves-on condition.

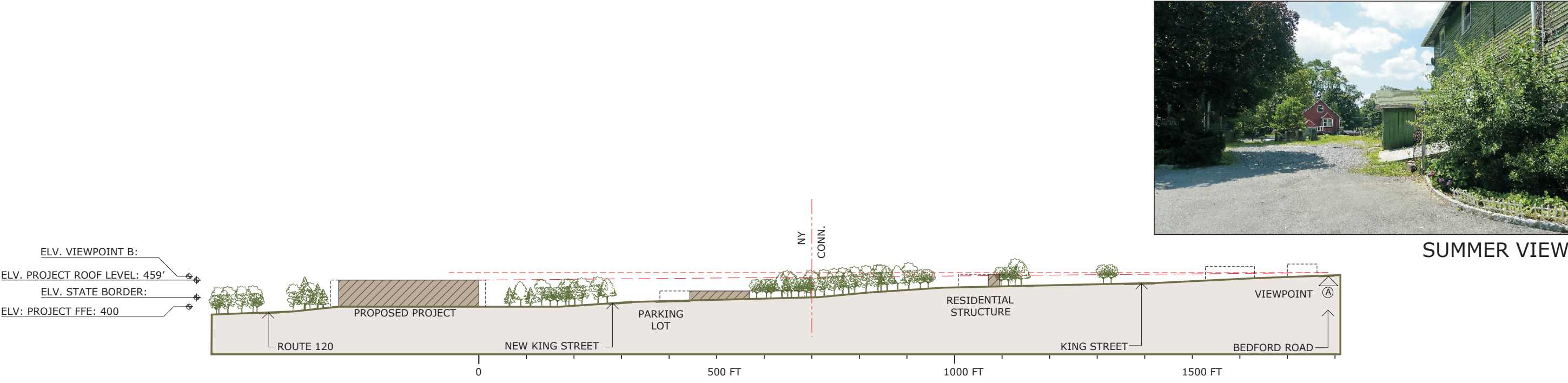
In the winter/leaves-off condition, the proposed project may be visible from a few vantage points on nearby residential properties located on the west side of King Street in Greenwich CT. However, the visibility would be minimal due to the varied topography and dense layers of deciduous tree branches as shown in the winter view photos from viewpoints B and C.

According to a program policy issued on July 31, 2000 by New York State Department of Environmental Conservation (NYSDEC) entitled “Assessing and Mitigating Visual Impacts” (DEP-00-2), visibility alone does not necessarily imply a significant adverse impact. This policy guidance was developed by NYSDEC to assist NYSDEC staff in assessing the significance of potential visual impacts from state-regulated facilities. While DEP-00-2 does not replace the local responsibility and discretion for determining significance under SEQRA, the policy is often used by those conducting environmental impact analyses because it provides useful guidelines—guidelines that are applicable to this application.

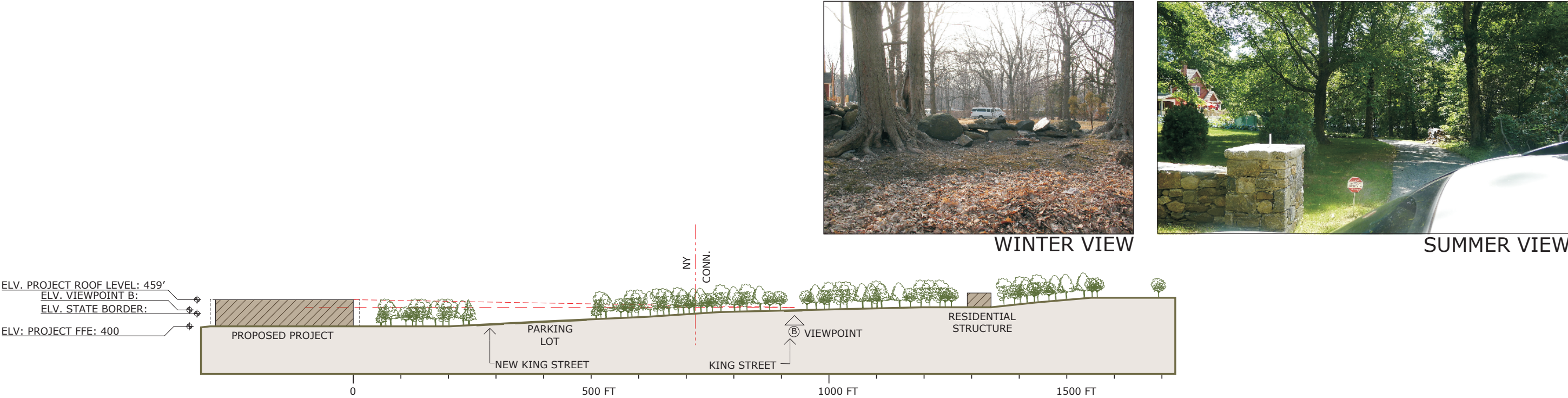








PROFILE AT VIEWPOINT A



PROFILE AT VIEWPOINT B

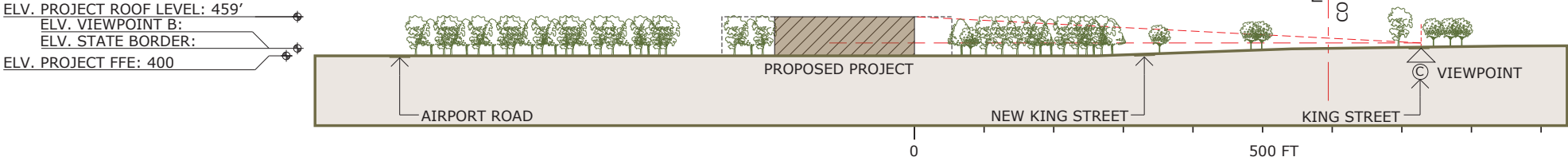




SUMMER VIEW



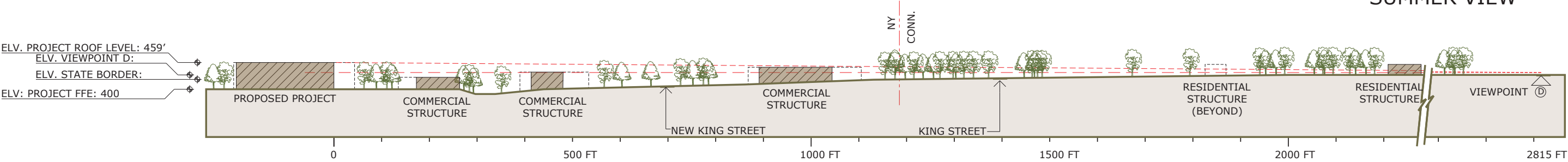
WINTER VIEW



PROFILE AT VIEWPOINT C



SUMMER VIEW



PROFILE AT VIEWPOINT D







The DEP-00-2 also provides guidance with respect to the definition of “visual impact” and “aesthetic impact.”

A “visual impact” occurs when “the mitigating effects of perspective do not reduce the visibility of an object to insignificant levels. Beauty plays no role in this concept.” (DEP-00-2, p. 10).

Aesthetic impact occurs when there is a detrimental effect on the perceived beauty of a place or structure. *Mere visibility, even startling visibility of a project proposal, should not be a threshold for decision making.* Instead a project, by virtue of its visibility, must clearly interfere with or reduce the public’s enjoyment and/or appreciation of the appearance of an inventoried resource. {Emphasis added}. (DEP-00-2, p. 9).

Even though the proposed parking facility may be visible from several residences on King Street, existing vegetation and topography would limit its visibility. Further, the proposed project would be in context with existing views from these residences which comprises largely of office buildings and associated parking areas. In the Applicant’s opinion, there are no significant scenic or visual resources that would suffer deterioration in value as a result of the proposed project.

## **D. CULTURAL RESOURCES**

The modifications to the proposed project will result in a smaller footprint and limit of disturbance area than what was presented in the DEIS. As the Phase 1 Archaeological Survey conducted for the project site determined, with OPRHP concurrence, that the proposed project would not adversely affect any significant historic, architectural, or archaeological resources, the modified proposed project would also have no significant adverse impact on any of these resources.

## **E. NATURAL RESOURCES**

The modifications to the proposed project would result in a smaller footprint and limit of disturbance area than what was presented in the DEIS. Therefore, the modified proposed project would require less removal of habitat and vegetation. The number of trees that would require removal has decreased from 122 trees to 115 trees. In addition, a significant motive for modifying the building footprint was to avoid disturbance of both the wetland delineated by the USACE and the wetland delineated by the Town’s wetland consultant. The reduced building footprint has resulted in the proposed structure being setback farther from and outside both of these wetlands.

As described in the DEIS, the project site does not harbor any sensitive or unique wildlife or vegetative habitats. The proposed landscape and stormwater management plans would improve faunal and floral diversity onsite by planting native species throughout and by selectively removing invasive plants on the overall parcel as described in the Wetland and Wetland Buffer Enhancement Plan discussed in Chapter 1, “Description of Modified Project,” and contained in **Appendix F**.

## **F. GEOLOGY, SOILS, TOPOGRAPHY AND SLOPES**

The final proposed modifications would not substantially alter the geology, soils, and topography of the project site from the conditions that were analyzed in the DEIS. However, the amount of material to be excavated has been reduced from 25,075 cubic yards to 19,949 cubic yards. The net excess material to be transported offsite has also been reduced from 24,675 cubic yards to 19,912 cubic yards. Approximately 37 cubic yards of excavated material would be re-used as fill.

## G. WATER RESOURCES

### GROUNDWATER RESOURCES

As discussed in the DEIS, the proposed project will not result in any adverse impacts related to groundwater. None of the changes associated with the modified proposed project will affect this conclusion. However, the previously proposed car wash service has been removed from the project, thereby reducing the project's estimated water usage and further minimizing any demands on groundwater resources. Total water usage for the modified proposed project will be 820 gallons per day (gpd), as compared to 1,345 gpd analyzed in the DEIS. This is also a reduction from the 970-gpd water usage estimated for the existing office building on the project site.

### SURFACE WATERS AND WETLANDS

The proposed project, that was previously presented in the DEIS, would have disturbed approximately 5,700 square feet of a Town-regulated wetland onsite. The proposed project that is the subject of this FEIS has been modified to avoid **any** disturbance to this area. The wetland disturbance was based on a preliminary site inspection performed by the Town's consultant in December 2010. Subsequent to the publication of the DEIS, the Town revisited the site during the spring of 2011 (i.e., the growing season) and confirmed its delineation. In order to respect this wetland boundary, the proposed project was modified with a reduced building footprint, thereby avoiding any disturbance to the Town-delineated wetland. Accordingly, the area of impervious surfaces within the Town-regulated 100-foot buffer area has also been reduced from 40,722 square feet to 36,514 square feet (a reduction of approximately 4,200 square feet). These 'impervious' surface calculations *include* approximately 5,800 square feet of pervious grass and stone pavers.

In addition to Town jurisdiction, the wetland onsite falls under the jurisdiction of the U.S. Army Corps of Engineers (USACE); however, the interpretation of the jurisdictional boundary differed. In June and October 2008, the Applicant's consultant delineated the onsite wetland pursuant to federal (i.e., USACE) and Town criteria. This boundary was subsequently expanded by the Town, as discussed above. The USACE conducted a site inspection on June 1, 2011 and agreed with the Applicant's federal wetland boundary, which was confirmed with receipt of the USACE's jurisdictional determination (JD) confirmation letter dated February 1, 2012 (see **Appendix D**). Nonetheless, the Applicant modified the proposed project to avoid disturbance to the more conservative Town wetland boundary.

The New York City Department of Environmental Protection (NYCDEP) regulates watercourses within its watershed pursuant to the NYC Watershed Rules and Regulations (WRR). In October 2008, NYCDEP visited the project site and at that time only flagged the perennial stream that wraps around (but is mostly outside) the project site. As a "perennial stream", the NYCDEP regulates the 100-foot "limiting distance" upslope from the stream's banks. Subsequent to publication of the DEIS, NYCDEP revisited the project site on December 16, 2011 and took jurisdiction of the lower reaches of the ephemeral drainageway running along the project site's southern boundary. As such, this segment of the drainageway is regulated as an "intermittent stream" and includes a 50-foot limiting distance.

To comply with Town Code requirements and to ensure vehicle safety, the driveway will need to be expanded from its current width which ranges from 20.7 to 24 feet wide, to a uniform 24 feet wide. As stated in the DEIS, this would require 1,737 square feet of new impervious surfaces



within the 100-foot limiting distance of the perennial stream. In addition, a small 2,570 square foot portion of the proposed parking garage would be located within the 50-foot limiting distance of the intermittent stream as shown in FEIS Figure 1-2. NYCDEP has discretionary approval for the variance required for these encroachments and the Applicant has and will continue to coordinate with NYCDEP to obtain the necessary variance.

Both of the NYCDEP-regulated watercourses onsite discharge to the Kensico Reservoir. As such, the lower reaches of these streams are considered “reservoir stems” in accordance with the NYC Watershed Rules and Regulations (WRR). A portion of the 300-foot limiting distance to these two reservoir stems occupies the project site as shown in Figures 1-1 and 1-2. However, the proposed parking structure and all impervious surfaces are located outside of the 300-foot limiting distance to both reservoir stems.

To mitigate disturbance within the Town-regulated wetland buffer area, a Wetland and Wetland Buffer Enhancement Plan has been further developed since the DEIS (see **Appendix F** and description in Chapter 1, “Description of Modified Project”). This plan will involve removal of invasive species and augmentation of native species on the site and within the existing wetland to enhance ecological diversity and functionality onsite. This enhancement plan will improve wetland functions and habitat diversity onsite, and include a long range management plan to monitor site conditions during operation of the project.

## **H. STORMWATER MANAGEMENT**

As described in Chapter 1, “Description of Modified Project,” the building footprint and impervious surface coverage of the modified proposed project would be approximately 6,000 square feet less for each than what was analyzed in the DEIS. As such, stormwater runoff volumes would be reduced (see **Tables 2-1, 2-2, and 2-3** below). In addition, consistent with the DEIS, the very nature of the automated parking facility would be beneficial in terms of minimizing potential adverse impacts related to stormwater. The automated facility would be an enclosed structure where any oil, hydrocarbons, and other typical vehicle pollutants would be contained and disposed through the sanitary collection system. Further, the site would comprise minimal surfaces requiring de-icing in the winter.

As proposed, the revised stormwater management plan would collect stormwater via overland flow and roof drains from the project site as well as a portion of the adjacent site (i.e., Lot 13A). The stormwater would then be conveyed to multiple treatment mechanisms in a series, including underground sand filters, pocket wetlands, sedimentation basins with deep sumps, and stormwater planters. Stormwater collected from the roof of the parking facility would be directed into stormwater planters and then conveyed into the stormwater facilities before discharging to the Kensico Reservoir. The green infrastructure practices that have been incorporated in the stormwater plan would function as belts-and-suspenders and would provide significant improvements to the quality of water entering into the reservoir as compared to existing conditions.

In light of reductions made to the building size and the reduction in overall impervious surfaces, the peak flow rates for each of the Design Analysis Points were revised (see **Table 2-1**).

**Table 2-1**  
**Revised Peak Flow**

		<b>Pre- Development</b>	<b>Post- Development</b>
<b>Design Point 1</b>			
1 – Year Storm	Flow (cfs)	4.72	4.17
	Volume ( cf )	22,583	20,356
2 – Year Storm	Flow (cfs)	6.09	5.41
	Volume ( cf )	28,501	25,835
10 – Year Storm	Flow (cfs)	11.38	10.22
	Volume ( cf )	51,461	47,234
25 – Year Storm	Flow (cfs)	17.51	15.83
	Volume (cf)	78,568	72,657
50 – Year Storm	Flow (cfs)	21.73	19.72
	Volume ( cf )	97,535	90,505
100 – Year Storm	Flow (cfs)	28.16	25.66
	Volume ( cf )	126,875	118,176
<b>Design Point 2</b>			
1 – Year Storm	Flow (cfs)	3.12	0.42
	Volume (cf)	11,431	21,495
2 – Year Storm	Flow (cfs)	3.78	0.52
	Volume (cf)	13,802	25,195
10 – Year Storm	Flow (cfs)	6.15	2.68
	Volume (cf)	22,548	38,641
25 – Year Storm	Flow (cfs)	8.74	6.24
	Volume (cf)	32,376	53,689
50 – Year Storm	Flow (cfs)	10.47	7.91
	Volume (cf)	39,079	63,945
100 – Year Storm	Flow (cfs)	13.06	9.87
	Volume (cf)	49,255	79,502
<b>Design Point 3</b>			
1 – Year Storm	Flow (cfs)	2.27	0.98
	Volume (cf)	7,925	4,029
2 – Year Storm	Flow (cfs)	2.76	1.22
	Volume (cf)	9,612	4,989
10 – Year Storm	Flow (cfs)	4.58	2.14
	Volume (cf)	15,864	8,631
25 – Year Storm	Flow (cfs)	6.56	3.17
	Volume (cf)	22,925	12,841
50 – Year Storm	Flow (cfs)	7.89	3.87
	Volume (cf)	27,753	15,753
100 – Year Storm	Flow (cfs)	9.87	4.93
	Volume (cf)	35,101	20,225
<b>Notes:</b> cfs= cubic feet per second cf= cubic feet			

In response to comments, and in an effort to clarify the relative impacts of the proposed design on stormwater runoff, supplementary stormwater analyses were conducted. **Table 2-2** illustrates runoff flow for the project site in the following three conditions:

- In a vegetated state with no impervious surface;
- In the existing/current condition; and
- With the proposed project/post construction conditions.

The table illustrates that the rate of runoff flow for each design point and for each design storm would be reduced under the ‘proposed project’ from both the ‘no impervious surface’ and ‘existing’ conditions. It should be noted that the ‘no impervious surface’ condition is not the same as undisturbed. For the purpose of this analysis, the runoff flow was calculated by substituting lawn or groundcover type vegetation for the existing impervious surfaces.

**Table 2-2**  
**Runoff Flow Analysis**

Design Point	Pre-Existing Conditions (cfs)	Existing Conditions (cfs)	Proposed Project (cfs)	Change in Flow Rate			
				Existing to Proposed		Pre-Existing to Proposed	
1-year storm							
DP1	4.42	4.72	4.17	-0.55	-12%	-0.25	-6%
DP2	1.90	3.12	0.42	-2.7	-87%	-1.48	-78%
DP3	1.55	2.27	0.98	-1.29	-57%	-0.57	-37%
10-year storm							
DP1	10.95	11.38	10.22	-1.16	-10%	-0.73	-7%
DP2	4.57	6.15	2.68	-3.47	-56%	-1.89	-41%
DP3	3.61	4.58	2.14	-2.44	-53%	-1.47	-41%
25-year storm							
DP1	17.01	17.51	15.83	-1.68	-10%	-1.18	-7%
DP2	7.02	8.74	6.24	-2.5	-29%	-0.78	-11%
DP3	5.49	6.56	3.17	-3.39	-52%	-2.32	-42%
100-year storm							
DP1	27.60	28.16	25.66	-2.5	-9%	-1.94	-7%
DP2	11.27	13.06	9.87	-3.19	-24%	-1.4	-12%
DP3	8.81	9.87	4.93	-4.94	-50%	-3.88	-44%

The green infrastructure practices that are being proposed exceed the runoff reduction requirements outlined in the New York State Storm Management Design Manual (NYSSMDM). The stormwater practices have been sized based on the water quality volume generated by the 1-year, 24-hour design storm for the proposed development watershed. **Table 2-3** below summarizes the different water quality volumes provided by each green infrastructure practice.

Summary **Tables 2-4 and 2-5** provide the drainage areas to each drainage design point for both existing and developed conditions.

The Stormwater Pollution Prevention Plan (SWPPP) narrative is contained in **Appendix G**. The full SWPPP, including flow calculations and drawings, is contained in the separate SWPPP Volume that accompanies this application.

**Table 2-3**  
**Stormwater Management Practices**

Water Quality Volume Required*			9,176 cf	
Standard Practices for Water Quality Treatment				
Practice	Contributing Drainage Area (sf)		Water Quality Volume Provided (cf)	
Surface Sand Filter**	86,352		12,775	
Pocket Wetland***	113,943		4,908	
Green Infrastructure for Water Quality Treatment				
Stormwater Planters	Contributing Roof Area (sf)	Stormwater Planter Size (sf)	Water Quality Volume Provided (cf)	Runoff Reduction Volume Provided (45%WQv) (cf)
North Planters	8,979	665	592	266
East Planters (A)	8,979	727	647	291
East Planters (B)	8,979	510	454	204
South Planters	8,979	1,849	1,646	741
West Planters	8,979	1,044	929	418
Total	44,895	4,795	4,268	1,920
Other Green Infrastructure				
Grass Pavers	Drainage Area (sf)	Surface Area (sf)		
Fire Truck Access Path	4,040	3,576		
Fire Truck Access Pull-Off	1,060	315		
Maintenance Path	8,000	4,306		
Total Green Infrastructure Area		11,427		
Total WQv Provided			21,951	
Notes:				
* Includes driveway, building, concrete pads				
** Includes Sedimentation Basin				
*** Includes extended detention				

**Table 2-4**  
**Pre-Development Drainage Area**

<b>Design Point</b>	<b>Subcatchment</b>	<b>Total Area (square feet)</b>
DP-1	PRE 1	261,194
DP-2	PRE 2	85,244
DP-3	PRE 3	61,828

**Table 2-5**  
**Post-Development Drainage Area**

Design Point	Subcatchment	Total Area (square feet)
DP-1	POST 1	248,549
DP-2	POST 2A	4,907
	POST 2B	14,630
	POST 2C	44,895
	POST 2D	8,410
	POST 2E	13,510
	POST 2F	4,258
	POST 2G	23,333
	POST 2H	14,691
DP-3	POST 3A	33,605
	POST 3B	5,082

## I. COMMUNITY FACILITIES AND SERVICES

The modified proposed project would not substantially alter potential impacts on community facilities and services from what was analyzed in the DEIS. The total number of vehicles that would be accommodated has been reduced from 1,450 vehicles to 1,380 vehicles. Since the municipal and emergency service providers would be expected to have adequate capacity to serve the 1,450-space alternative, these service providers would be able to accommodate the modified proposed project. Further, consistent with the DEIS, the modified proposed project would include fire suppression utilities such as an automated sprinkler system on every level. Four 25,000-gallon storage tanks on the lower level would provide adequate pressure and volume to meet all applicable fire safety and building codes.

## J. INFRASTRUCTURE AND UTILITIES

The projected demand on infrastructure and utilities for the modified proposed project would be substantially similar to what was analyzed in the DEIS. One notable change related to infrastructure is that the modified proposed project would include four 25,000-gallon water storage tanks (as opposed to two 20,000-gallon tanks, as described in the DEIS). These storage tanks would ensure adequate water volume and water pressure is available in compliance with all applicable fire safety and building codes. These tanks would require a one-time fill (until use is required) and would therefore not affect daily water demand.

Another change subsequent to publication of the DEIS is removal of the proposed car wash service. With this component removed from the project, daily water usage would be reduced from approximately 1,345 gpd to 820 gpd (a reduction of about 525 gpd). Daily water usage of 820 gpd would also be less than the 970 gpd estimated for the existing office building onsite. Water demand for the modified proposed project would be primarily limited to two single-occupancy toilet facilities. Sanitary flow would also be expected to be reduced from 1,345 gpd to about 820 gpd.

No substantial changes to estimates of solid waste generation provided in the DEIS would be expected to result from the modified proposed project.

The modified proposed project would include a hard-wired automated system, as compared to the system presented in the DEIS in which automated equipment would use rechargeable

batteries. Energy consumption for the new hard-wire automated system would be about twice as much as what was presented in the DEIS but would not have any additional impacts to the site. Similar to what was discussed in the DEIS, the proposed parking facility would need minimal interior lighting as required for technicians and emergencies. There would also be a series of rooftop skylight monitors along the central aisle which would naturally illuminate the storage area during daylight hours. The lighting for the waiting room, office and other enclosed building service spaces would be highly efficient, fluorescent fixtures connected to occupancy sensors. The transformer onsite would be upgraded to adequately accommodate the project and no offsite upgrades to electricity services are expected. In addition, the modified proposed project would include an onsite generator to provide at least 24-hour functionality following any outages, as was discussed in the DEIS.

## **K. ECONOMIC CONDITIONS**

The final proposed modifications would not substantially alter the impacts in terms of economic conditions from the conditions that were analyzed in the DEIS.

## **L. TRAFFIC AND TRANSPORTATION**

The proposed project would provide relief to the existing high demand for airport parking. Although the modifications to the proposed project would reduce the overall parking capacity of the parking structure from 1,450 spaces (as provided in the DEIS) to 1,380 spaces, it would still be sufficient to respond to existing parking demand (see the Demand Study provided in **Appendix E** of this FEIS).

As discussed in the DEIS, the greater availability of parking compared to existing conditions would give travelers who currently take taxis, car services, or are dropped off/picked up at the airport the option to drive themselves, thus reducing the number of trips to the airport. The additional capacity would also allow drivers to spend less time traveling between the various airport parking facilities looking for parking spaces. While the modified proposed project has resulted in a slight decrease in total parking spaces, it would still accommodate existing demand and have a beneficial effect in reducing overall traffic in the study area. Usage of the proposed project would also reduce the number of vehicle trips actually entering the airport terminal area as a limited number of shuttle buses would transport passengers from Park Place to the airport terminal. As demonstrated by the trip generation calculations, these factors would result in an overall reduction in the number of vehicle trips across the traffic network.

Because the proposed project would reduce traffic, there would be no adverse traffic impacts from the proposed project that would require mitigation, in the Applicant's opinion. However, the Town's traffic consultant examined a worst case scenario (i.e., assuming that construction of the proposed parking facility would make Westchester County Airport more attractive to travelers, thus potentially adding an overall increase to traffic in the area), which determined that the proposed parking facility could add approximately 220 vehicle trips during the weekday AM and PM peak hours on area roads, including 18 shuttle vans/buses traveling to and from the terminal, that would result in an impact on area roadways and would require mitigation. In response to the more conservative worst case analysis conducted by the Town's traffic consultant and the Town's opinion that construction of the proposed parking facility for use by airport travelers will increase traffic on area roads over a period of time, the Applicant has developed a mitigation plan to mitigate traffic flow at several area intersections, including:

- Airport Road at I-684 Northbound Entrance Ramp – install a traffic signal at this intersection and interconnect with the signal at Airport Road and NYS Route 120 by using a double cycle length. Channelize westbound right turn with striping and yield control.
- Airport Road at NYS Route 120 – coordinate with new signal at Airport Road/I-684, change cycle length from 120 to 100 seconds, and implement new phasing plan.
- Eastbound Airport Road receiving lanes– restripe departure to include two travel lanes
- I-684 SB Ramp to Airport Road – install “Force-Out” detector on Airport Road
- I-684 NB Exit Ramp to Airport Road – install “Force-Out” detector on I-684 ramp.

Although the proposed project would not significantly affect traffic conditions and would not result in adverse traffic impacts at these intersections, the mitigation measures listed above have been developed to improve overall traffic flow and mitigate traffic impacts that would occur under a worst case scenario. With these measures in place, traffic delays and levels of service (LOS) would improve to LOS C or better at these intersections (LOS D or better is typically considered acceptable in developed areas). See **Appendix H** for a detailed description of the mitigation plan. This mitigation plan has been developed in consultation with the New York State Department of Transportation (NYSDOT), the Westchester County Department of Public Works (DPW), and the Town’s traffic consultant to ensure it provides effective measures to improve traffic conditions. The Applicant would be responsible for implementing and funding the improvements shown in Figure 1 in **Appendix H** and obtaining permits from both NYSDOT and Westchester County DPW.

## **M. AIR QUALITY AND GREENHOUSE GAS EMISSIONS**

With the proposed project modifications presented in the FEIS, the overall reduction in the number of vehicle trips across the traffic network would be slightly less than with the proposed project as presented in the DEIS, but still providing an overall benefit by reducing the number of vehicle trips across the traffic network.

The modified proposed project would still reduce a significant number of drop-off and car service trips, which would result in a meaningful net reduction of GHG emissions albeit slightly less of a reduction due to the minor (6 percent) decrease in parking capacity.

## **N. NOISE**

The proposed project modifications would not substantially alter the noise conditions of the proposed project from the conditions that were analyzed in the DEIS.

## **O. HAZARDOUS MATERIALS**

The final proposed modifications would not substantially alter the hazardous materials conditions on the project site from the conditions that were analyzed in the DEIS.

## **P. CONSTRUCTION**

The proposed project modifications would not substantially alter the construction plans from the conditions that were analyzed in the DEIS. The limit of disturbance has been reduced from 122,038 square feet to 117,081 square feet, thereby reducing the amount of ground disturbance

required during construction. In addition, the amount of material to be excavated has been reduced from 25,075 cubic yards to 19,949 cubic yards. The net excess material to be transported offsite has also been reduced from 24,675 cubic yards to 19,912 cubic yards. Approximately 37 cubic yards of excavated material would be re-used as fill. However, the overall construction process, including approximate duration, implementation of erosion and sediment control measures, and procedural details would be the same as that presented in the DEIS.

Due to the limited space on site, excess material will be trucked away immediately during excavation work. The construction staging area would will be mobilized accordingly to accommodate the construction phases.

Construction-related vehicle trips would be comprised of auto and truck trips to and from the project site. Vehicles would access the site by the existing site driveway located on the west side of New King Street. Since the project site is close to the interstate highway system (I-684), it is anticipated that the majority of the trips would utilize NYS Route 120, Airport Road, and New King Street to access I-684 for trip arrivals and departures to and from the project site. No road closures are anticipated as part of construction activities.

Auto trips to and from the project site would be generated by workers at the site. Workers are anticipated to work single 8-hour shifts (7:00 AM to 4:00 PM), 5 days a week. An estimated total of 50 daily workers would be at that site. By applying the estimated auto occupancy of 1.2 persons to account for carpooling, the total worker peak hour trips would be 42 trips, with all trips entering the project site during the construction AM peak hour and departing during the construction PM peak hour (construction peak hours generally fall outside of the typical commuter peak hours). All autos would park on-site.

The estimated number of daily trucks required to transport the 19,949 c.y. of excavation material to be removed from the site would be 7 trucks. Each truck would generate 2 trips (1 entering, 1 departing). An estimated maximum of 2 trucks entering and 2 trucks departing could be processed during any given hour at the project site. The contractor would decide where the excavation material would be transported to once it is removed from the site.

## **Q. ALTERNATIVES**

The final proposed modifications would not substantially alter the alternatives from the conditions that were analyzed in the DEIS.

## **R. ADVERSE IMPACTS THAT CANNOT BE AVOIDED IF THE PROPOSED PROJECT IS IMPLEMENTED**

The modified proposed project would reduce the number and extent of several unavoidable impacts analyzed in the DEIS. As described above, the reduced building footprint would avoid any disturbance to Town- and USACE-regulated wetlands onsite, and would also reduce disturbance within Town- and NYDCEP-regulated wetland and/or watercourse buffer areas. The modified project would require a smaller limit of disturbance area, thereby decreasing the number of trees and other habitat to be removed. As a result, a greater area of existing vegetation would remain onsite providing additional natural screening of the project, particularly from NYS Route 120. In addition, the amount of earth material to be excavated would be reduced.



**S. IRREVERSIBLE AND IRRETRIEVABLE COMMITMENT OF RESOURCES**

The final proposed modifications would not substantially alter the irreversible and irretrievable commitment of resources from the conditions that were analyzed in the DEIS.

**T. IMPACTS ON THE USE AND CONSERVATION OF ENERGY**

The final proposed modifications would not substantially alter the use and conservation of energy from the conditions that were analyzed in the DEIS. Although the modified proposed project would result in electric energy demand than the project analyzed in the DEIS, the transformer onsite would be upgraded to accommodate this demand and no offsite service improvements are expected, as discussed above.

**U. GROWTH INDUCING ASPECTS OF THE PROPOSED PROJECT**

The final proposed modifications would not substantially alter the growth inducing aspects from the conditions that were analyzed in the DEIS. \*

## **Chapter 3: Comments and Responses**

**A. INTRODUCTION**

This Final Environmental Impact Statement (FEIS) addresses comments that were made on the Draft EIS (DEIS), either presented verbally at the Public Hearing held on May 2, 2011 or provided in writing through June 1, 2011. This includes all comments made by the public or their representatives, public officials, and interested and involved agencies.

The DEIS, prepared on behalf of 11 New King Street, LLC (the Applicant), analyzed the potential environmental impacts of the proposed project. This chapter summarizes the substantive verbal and written comments submitted on the DEIS. Similar comments in terms of subject or technical points are grouped together in correlation with the chapters of the DEIS and the commenters are noted in parentheses after the comment. Some comments have been paraphrased, with careful attention to ensure that the substance of the comment is preserved. Full transcripts of public testimony and complete correspondence from which these summaries are drawn can be found in **Appendix A**.

**B. COMMENTERS ON THE DEIS**

Below is a list of all persons or agencies who provided comments on the DEIS:

1. Ruth Pierpont, New York State Office of Parks, Recreation and Historic Preservation (OPRHP), letter dated 4/14/11
2. Claudine Jones Rafferty, New York State Department of Health (NYSDOH), letter dated 4/27/11
3. Michael B. Kaplowitz, Westchester County Board of Legislators, letter dated 4/28/11
4. Joseph M. Wilson (Safe Flight Instrument Corporation), letter dated 4/29/11
5. Peter Tesei (First Selectman, Town of Greenwich, CT), Public Hearing, 5/2/11
6. Kate Hudson (Riverkeeper), Public Hearing, 5/2/11
7. Michael Zarin (Zarin and Steinmetz Attorneys at Law), Public Hearing, 5/2/11
8. Greg Fleischer (Carpenter Environmental Associates), Public Hearing, 5/2/11
9. Bernard Adler, Public Hearing, 5/2/11
10. Tania Vernon, Public Hearing, 5/2/11
11. Julius Shultz (Sierra Club), 5/2/11
12. Peter Dermody (Dermody Consulting), Public Hearing, 5/2/11
13. Ed Glassman, Public Hearing, 5/2/11
14. Robert A. Porto, Public Hearing, 5/2/11
15. Karen Shultz (Sierra Club), Public Hearing, 5/2/11
16. Cynthia Garcia, New York City Department of Environmental Protection (NYCDEP), Public Hearing, 5/2/11
17. Doug Manconelli, Public Hearing, 5/2/11
18. Lucille Held, Public Hearing, 5/2/11
19. Ingrid McMenamin, Public Hearing, 5/2/11

20. Jeffrey S. Morgan (Morgan & Brother Manhattan Storage Co., Inc.), letter dated 5/2/11
21. Carol De Angelo (Sisters of Charity), letter dated 5/4/11
22. Steve Hopkins, letter dated 5/5/11
23. James W. Ford (BETA Group, Inc.), letter dated 5/10/11
24. James W. Ford (BETA Group, Inc.), letter dated 5/13/11
25. Thomas Felix, Federal Aviation Administration (FAA), letter dated 5/19/11
26. Peter J. Tesei (First Selectman, Town of Greenwich, CT), letter dated 5/23/11
27. New York City Department of Environmental Protection (NYCDEP), letter dated 5/23/11
28. Greg M. Fleischer (Carpenter Environmental Associates, Inc.), letter dated 5/24/11
29. Peter Dermody (Dermody Consulting), letter dated 5/27/11
30. Marian H. Rose, Croton Watershed Clean Water Coalition, Inc. (CWCWC), letter dated 5/31/11
31. Richard J. Lippes (Richard J. Lippes & Associates, on behalf of the Sierra Club), letter dated 5/31/11
32. Edward Burroughs, Westchester County Planning Board (WCPB), letter dated 5/31/11
33. Bernie Adler and Michael P. O'Rourke, Adler Consulting –Transportation Planning & Traffic Engineering, PLLC (on behalf of Westchester Airport Associates, L.P.), letter dated 5/31/11
34. Adam Kaufman, Town of North Castle Director of Planning, letter dated 6/1/11
35. Ryan Coyne and David Sessions, Kellard Sessions Consulting, P.C. (Kellard Sessions), Town of North Castle Engineering and Wetlands Consultants, letter dated 6/1/11
36. John F. Fava, Town of North Castle Conservation Board, letter dated 6/1/11
37. Eric A. Goldstein, Natural Resources Defense Council (NRDC), letter dated 6/1/11
38. Kate Hudson and William Wegner (Riverkeeper), letter dated 6/1/11
39. Michael D. Zarin and Daniel M. Richmond, Steinmetz and Steinmetz (on behalf of Westchester Airport Associates, L.P.), letter dated 6/1/11
40. Office of the Watershed Inspector General, letter dated 6/1/11
41. Peter Tesei (First Selectman, Town of Greenwich, CT), letter dated 5/31/11

## **C. RESPONSE TO COMMENTS**

### **3.1 EXECUTIVE SUMMARY**

NO COMMENTS RECEIVED

### **3.2 PROJECT DESCRIPTION (AND GENERAL COMMENTS)**

**Comment 2-1:** I am concerned about the potential exposure it provides to future opportunities for use by those who utilize the airport. And we know that the airport presently operates on a voluntary agreement on the cap of the number of passengers. And my concern is that this potentially could increase the potential for expansion of that going forward. Of course it is voluntary, as I said. And this agreement is contingent upon multi party cooperation. (Peter Tesei, 5/2/11)

**Response 2-1:** The proposed project would address an **existing** demand for parking as a result of an inadequate supply of parking, rather than induce additional

demand. As previously stated, the severe shortage in parking results in additional trips to the airport because customers— who are unsure whether parking will be available to them— are being dropped off **and** picked up, creating four trips instead of two. Once the proposed project is operational, a portion of the airport customers who are dropped off and picked up will be able to drive themselves to the airport—thus reducing the number of vehicle trips to the airport.

As noted by the commenter, regulations are already in place to restrict expansion potential of the airport. These regulations were enacted to protect the health and welfare of the public, protect the environment, and ensure safety and efficiency of airport operations. Westchester County has codified the “Airport Rules and Regulations” as part of its Terminal Capacity Agreement (Chapter 712. Article IV) and (see **Appendix I**), in which operating capacity of the airport is limited to 240 passengers per half hour and a mechanism for airlines seeking to operate at the Airport is established. This stipulation remains in effect to date and would not be affected in any way by this proposed project. Regarding parking, the Agreement indicated the need for secure overnight parking and cited the County’s commitment to secure an overnight parking facility as soon as possible, but specified that such a facility will not be adjacent to the Terminal. The Proposed Action’s parking garage is not located adjacent to the Terminal, and therefore would comply with the Terminal Capacity Agreement.

**Comment 2-2:** As you can see, we have several residents who live within close proximity who are concerned about the impact not only this proposal will have but what opportunities it would provide for greater expansion of the use of the airport and all of the ancillary impacts that that use would have on not only the Town but on the overall region. (Peter Tesei, 5/2/11)

**Response 2-2:** See Response 2-1.

**Comment 2-3:** So, I understand [the Planning Board has] a job to do. Certainly I respect it. It’s always been about balance and serving in these positions, and I know that you will favorably balance all of these competing interests in the interest of the greater good. Thank you. (Peter Tesei, 5/2/11)

**Response 2-3:** Comment noted.

**Comment 2-4:** I guess I would like to just give brief introduction with respect to, I’ve done enough of this, that I appreciate the complexities of this project and the position you’re all in, sitting where you are, trying to understand

and come to grips with -- with the impacts and a project that has been presented in detail, and quite competently, including a very competent consultant team on behalf of the applicant. And I don't want to seem overly critical or preachy, but Westchester Airport Associates does believe that expanding the airport beyond the boundaries at this location presents too many unmitigable adverse impacts that should give great pause to the Town before it approves this project. (Michael Zarin, 5/2/11)

**Response 2-4:** Comment noted. See Response 2-1. It should be clarified that the proposed project would be privately owned and operated, independent of Westchester County Airport. Therefore, the airport would not expand beyond its existing boundaries as a result of the proposed project.

**Comment 2-5:** It is our opinion that there will be significant environmental impact created by this proposed project. It will also encourage expansion of the Westchester County Airport because its purpose is to service a supposed need for overflow parking at the airport. (Julius Shultz, 5/2/11)

**Response 2-5:** See Response 2-1. As discussed above, Westchester County has in place restrictions that limit expansion of Westchester County Airport (see **Appendix I**). A survey of existing airport parking conditions revealed that the existing garage is often filled to capacity and those travelling out of Westchester County Airport do not want to risk not having a parking place, thus alternate transportation is used. The proposed parking facility would meet an existing and unmet demand for reliable parking proximate to Westchester County Airport. The proposed parking structure would also provide those travelling from the airport the opportunity to reserve a parking space in advance, thus giving certainty that parking would be available. Given the restrictions on Westchester County Airport expansion, the proposed project would neither provide overflow parking nor induce additional airport growth.

**Comment 2-6:** The Westchester County Airport is 250 yards from the Kensico Reservoir and Westchester County and New York State are aware that this poses threats to the drinking water of 9,000,000 New York residents. Westchester County passed a resolution for non expansion of the airport and no additional parking. Similar resolutions were enacted by the New York State Assembly and New York State Senate. (Julius Shultz, 5/2/11)

**Response 2-6:** See Response 2-1. Legislation from both the NYS Assembly and NYS Senate is in place to limit expansion of Westchester County Airport. The proposed project would not, nor has the intent to, increase flight activity at the airport.

**Comment 2-7:** In our opinion this project is wrong for the Town of North Castle, the airport and the Kensico Reservoir. (Julius Shultz, 5/2/11)

**Response 2-7:** Comment noted.

**Comment 2-8:** I'm a past president of the Northwest Greenwich Association. I served on the board for over 15 years. And we're all stewards of the land. And we're all here for a very short period of time. Even though Kensico Reservoir is manmade, we still have a stewardship to preserve the water for New York City and to preserve the land that's around it. (Ingrid McMenamin, 5/2/11)

**Response 2-8:** Comment noted. As discussed in the DEIS, and in Chapter 1 of this FEIS, stormwater runoff from the project site is currently untreated and flows into the Kensico Reservoir. Upon construction of the proposed project, stormwater from the project site and a portion of an adjacent developed site (currently untreated) would be collected and treated before entering the Kensico Reservoir. This would result in improved water quality for a portion of the runoff going into the Reservoir.

**Comment 2-9:** You are members of the planning and Zoning Board. You're only here for a short period of time. The citizens of your community have entrusted in you to preserve—to be the stewards. Planning means you look forward. And zoning means you have a compliance of mandate by your participation in these boards.

You also don't have to accept an application that comes before you. You have the right to review it. But our question, when we come to these meetings, is if we weren't here to safeguard what we feel is the precious reservoir and resource, would you have any incentive to look at these issues? (Ingrid McMenamin, 5/2/11)

**Response 2-9:** Comment noted. The Applicant respects the concerns of the public to preserve the water quality of Kensico Reservoir and has incorporated stormwater management practices and green infrastructure that would exceed that required by local and regional permitting agencies. The North Castle Planning and Zoning Boards are charged with protecting the Town's environmental resources and its character, as well as protecting the vested rights of property owners. The Town is evaluating the proposed project carefully throughout the design process to ensure that it will minimize adverse environmental impacts and will not compromise the Kensico Reservoir or any other water resources during construction and once the facility is operational.

Therefore, in response to comments and concerns raised regarding additional measures to protect the integrity of the reservoir, important

modifications are being made to the proposed Site Plan to allay these concerns. These modifications include a reduced building footprint, moving the building further away from the wetlands, and incorporating additional ‘green measures’ into the building design. A complete description and analysis of the proposed modifications are presented in Chapter 1 and illustrated in **Figures 1-2** through **1-5**. The Town, as well as other applicable regional, county, and state agencies will continue to evaluate the proposed project throughout the environmental and Site Plan approval process to ensure protection of sensitive environmental resources in the Town.

**Comment 2-10:** By today’s code that airport would never be there. By today’s codes that parking garage wouldn’t be there either. I do enjoy the services of Armonk. I do pay my taxes when I go there. I do pay my taxes when I go to the airport. I do not benefit from [the] water, even though my home is right around the corner. As much of Greenwich is in the northwest area, we do not benefit from the water that is there, but we do see the high volume of traffic. (Ingrid McMenamin, 5/2/11)

**Response 2-10:** Comment noted.

**Comment 2-11:** The concern that we have is that there is information that’s not included in the DEIS right now that should be made available to the public. In particular, the delineation of the wetland, which is still a discussion between the applicant and the Town. Depending on that delineation, that could expand the amount of impact.

In addition, there doesn’t seem to be a final description of what the on site or off site wetland mitigation plan would be. That seems also subject to discussion.

So, we would strongly recommend, whatever you decide to do with respect to closing the public hearing that you extend the comment period until that information has been made available. And your board does have the discretion to extend the comment period beyond the 15 minimum days required. (Kathy Hudson, 5/2/11)

**Response 2-11:** It should be noted that the public comment period was extended 30 days from the close of the public hearing.

As described in detail in Chapter 1, the U.S. Army Corps of Engineers (USACE) made a site visit on June 1, 2011 as part of their Jurisdictional Determination (JD) process. The USACE confirmed the wetland boundary as originally delineated by the Applicant (see **Appendix D** for the USACE JD). Nonetheless, in response to comments and concerns regarding the relationship of the proposed building and construction



disturbance area to the more restrictive Town wetland delineation, the Applicant has reduced the size and scale of the building, increased the distance of the building from both the wetland line delineated by the Town's wetland consultant as well as the USACE JD wetland such that no portion of the building or area to be disturbed during construction is included within either wetland boundary. Further, disturbance would be limited to the wetland buffer area—the majority of which was previously disturbed. A wetland and wetland buffer enhancement plan has been further developed for the proposed project, per the Town's Code, and is provided in **Appendix F** and summarized in Chapter 1 of this FEIS.

Permanent disturbance within the wetland buffer (recently revised to include areas of 25%+ slopes) is 36,514 square feet, a 10% reduction as compared to the Site Plan presented in the DEIS. It should be noted that the existing permanent disturbance in the buffer (existing impervious surface of the current building and parking lot onsite) is 11,578 square feet. Therefore, the proposed project would increase the amount of impervious surface within the wetland buffer by 24,936 square feet.

**Comment 2-12:**

I have become aware that the Board is considering a proposal for increased parking near Westchester County Airport. Apart from operating a business in Armonk, I am also a Greenwich resident and an airport user. This letter is in favor of approval of the new parking structure proposal.

I can think of no more worthwhile improvement for the area surrounding the airport. As recently as 45 days ago my wife and I were each relegated to the auxiliary lot (we were traveling to different destinations on the same day). When my wife returned at night the unmanned lot was frightening to her. When I got back on a different night the automated payment machine didn't work; again nobody around, and it was raining hard.

I suspect that even those who decry the airport's increased airplane traffic and resultant flight noise swallow their indignation when it comes time to plan air travel. We all use the airport when we can; it is just too convenient not to. Parking is the one significant drawback. I always approach the airport with some amount of trepidation about whether there will be space in the current parking structure. Clearly the proposed facility would alleviate these issues with the certainty of properly managed, safe parking.

Let's face it; the airport is a fact of life. We should have parking services befitting the terrific area where we live. I understand that the proposed facility will be such a place and do so without being an eyesore or

environmental liability. I hope you will approve the project. (Jeffrey S. Morgan, 5/2/11)

**Response 2-12:** Comment noted.

**Comment 2-13:** My other concerns mirror the myriad of problems identified by the various professionals representing Westchester County Airport Associates LLP. In my opinion, this project has so many serious flaws that it should not be approved by the Planning Board. (Steve Hopkins, 5/5/11)

**Response 2-13:** Comment noted.

**Comment 2-14:** Dermody Consulting has reviewed the Draft Environmental Impact Statement (DEIS) prepared by AKRF, Inc. dated March 28, 2011 regarding the above-referenced proposed project. Based on our review, it is our opinion that there are likely to be significant environmental impacts associated with this proposed project. (Peter Dermody, 5/27/11)

**Response 2-14:** Comment noted.

**Comment 2-15:** As set forth in the DEIS, the *raison d'être* for the construction of a parking garage in an area which is not zoned for such a structure is to accommodate vehicular traffic at the Westchester Airport. The Applicant thus seeks to justify all of the attendant negative environmental consequences that would result from such a project, including an increase in traffic, noise, air, and water pollution, in service of a goal that is diametrically opposed to a local policy against growth at the airport. As discussed below, the project cannot be so justified and, moreover, the DEIS is fatally inadequate in addressing environmental issues and in considering alternatives to the new construction proposed. (Richard J. Lippes, 5/31/11)

**Response 2-15:** See Response 2-1. Existing legislation enacted by Westchester County (see **Appendix I**) limit expansion of Westchester County Airport. The proposed project would alleviate an existing parking shortage at the airport. The DEIS provides a full analysis of all potential impacts related to the proposed project. Chapter 2, "Probable Impacts of the Modified Project," of this FEIS describes any potential impacts of the Modified Project as they may differ from what was analyzed in the DEIS. An analysis of alternatives, pursuant to the adopted scope for the project, was provided in Chapter 18, "Alternatives," of the DEIS.

**Comment 2-16:** Indeed, the DEIS is legally insufficient in several respects. It is inadequate to meet the hard look standard required under SEQRA, and

the potential significant adverse environmental impacts associated with the project cannot be mitigated sufficiently as proposed in the DEIS. The insufficiency of the DEIS has been confirmed by Peter Dermody, a principal hydrogeologist, who concluded based on his evaluation of the DEIS that the proposed parking garage ultimately would have a cumulative impact and cause further degradation of the water quality in the Kensico Watershed and therefore in the Kensico Reservoir. Therefore, the DEIS fails to satisfy the requirements of SEQRA. (Richard J. Lippes, 5/31/11)

**Response 2-16:**

In compliance with SEQRA, the DEIS evaluates all potential impacts from the proposed project and identifies those impacts that may be considered *significant*. As discussed further below, under Section 3-9, “Stormwater Management,” the proposed stormwater management practices and green infrastructure of the project would ensure that the water quality of Kensico Reservoir would not be diminished and would treat stormwater runoff that is currently untreated. See also responses to comments from Peter Dermody in 8-14, 8-34, 8-35, 8-53, 9-17 and 9-18.

**Comment 2-17:**

*The Town Planning Board Lacks Jurisdiction to Act as Lead Agency* – It is certainly no reflection on the quality and competency of the North Castle Town Planning Board, but in actuality the Planning Board is not the proper entity to conduct environmental review of this action because it is not an “involved agency” and, therefore, cannot be the “lead agency” under SEQRA.

Having the status of an “involved agency” is an indispensable qualification of being the “lead agency.” Here, however, as detailed below, the Planning Board is not an “involved agency” because it cannot be said that the Planning Board “will ultimately make a discretionary decision to fund, approve or undertake an action” in connection with the project. “Approval” is defined as “a discretionary decision by an agency to issue a permit, certificate, license, lease or other entitlement or to otherwise authorize a proposed project or activity.” 6 NYCRR 617.2(e).

As mentioned, since the lead agency must be an involved agency, this requirement is jurisdictional, and the consequences of proceeding without jurisdiction would be a total lack of legal effect of any decision made by the Planning Board. See, *Young v. Board of Trustees of the Village of Blasdell*, 221 A.D.2d 975, 634 N.Y.S.2d 605 (4th Dept. 1995). To avoid wasted effort and resources, a new lead agency should be designated. (Richard J. Lippes, 5/31/11) [NOTE: non-substantive parts of this letter were omitted]

**Response 2-17:** Pursuant to Section 213-34 of the Town Code, the Planning Board is the approving authority for Site Plan approval, and is therefore an involved agency. Further, as stated in the Town of North Castle Town Code §213-68.C, the Town Board is required to forward all zoning amendments to the Planning Board for its report and recommendation. See Response 2-19 for further discussion.

**Comment 2-18:** *The North Castle Town Board has Primary Approval Responsibility* – Even if the Town Planning Board were an “involved agency” for purposes of the proposed project, SEQRA and its regulations require that the agency having primary approval responsibility act as lead agency for purposes of conducting the environmental review. Here, given that the Applicant submitted a zoning petition seeking to amend the North Castle Zoning Code to allow the erection of a parking garage in an IND-AA area, the Town Code dictates that the Town Board has primary approval responsibility.

As recognized in section 213-68 of the Town Zoning Code, New York Town Law section 265 requires that changes or amendments to the town’s zoning code be made by the Town Board in accordance with the procedures set forth in section 265. The proposed project cannot proceed without an amendment of the Town Zoning Code. Should the Town Board amend the Zoning Code, the Planning Board would not be responsible for any discretionary decisions or approvals. The Amendment would make the Town Board the approval authority for the Special Permit Application and, pursuant to the Town Code, the Town Board’s Special Permit review would obviate the need for Site Plan review from the Planning Board. See, Town Code § 213-34.

Accordingly, under the present circumstances, and unless it develops at some point that another involved agency should be designated, the Town Board must assume lead agency status for purposes of SEQRA review, and the Board cannot delegate that responsibility to an agency that does not have primary approval authority. In that regard, the Practice Commentary accompanying ECL 8-0111 is particularly instructive: {see case studies in the original letter in **Appendix A**}. (Richard J. Lippes, 5/31/11)

**Response 2-18:** As identified in the full environmental assessment form (EAF), both the Planning Board and Town Board of the Town of North Castle are involved agencies under SEQRA. Pursuant to Section 213-34 of the Town Code, the Planning Board is an involved agency due to its discretionary approval authority over the proposed Site Plan, and the Town Board is an involved agency due to its discretionary approval over the proposed zoning amendment. SEQRA does not dictate which

involved agency should act as Lead Agency. Instead, §617.6(b) establishes a time frame during which the involved agencies must agree upon a Lead Agency. In this instance, during the initial review of the Proposed Action, the Planning Board classified the action as a Type I Action, circulated the full EAF, and declared its intent to be Lead Agency under SEQRA to all involved and interested agencies on June 26, 2009. As no objections were received within the 30 day time frame established by §617.6(b)(3), the Planning Board properly declared itself Lead Agency on August 3, 2009.

Furthermore, there is substantial precedent in New York State for a planning board to act as Lead Agency on significant land development projects, even when a zoning amendment is required. This is due to a number of reasons: (1) land development projects are typically first received by the planning board, as they are submitted to the planning board for Site Plan approval; (2) planning boards generally have more experience reviewing land development applications; and (3) planning boards are oftentimes more familiar with the zoning code than the Town Board. This is evidenced and supported by the Town of North Castle Town Code §213-68.C, which requires the Town Board to refer all zoning amendments to the Planning Board for their report and recommendation. As the principle agency in reviewing proposed development projects in the Town of North Castle, the Planning Board typically has greatest familiarity with development and growth patterns in the Town and what land uses may be appropriate for certain areas. For this application, the Town Board recognized the Planning Board as being the proper involved agency to become Lead Agency under SEQRA, and offered no objections. Pursuant to §617.6(b)(6)(i)(b), no evidence has been provided to establish the failure of the Lead Agency's basis of jurisdiction, therefore there is no legitimate reason under SEQRA to reestablish the Town Board as Lead Agency.

**Comment 2-19:** Additionally, it is noteworthy that the Town Board will be responsible for approvals with respect to matters involving the use of wetlands, whether under Freshwater Wetlands review or under other authority. See, M, Town Code section 205-5(C). The project also includes a request for a Tree Removal Permit, the authority over which lies with the Building Inspector (who has not been identified as an involved agency), not with the Planning Board. See, Town Code section 192-2. (Richard J. Lippes, 5/31/11)

**Response 2-19:** It should be noted that the Town Wetlands Law is Chapter 209 of the Town Code. As stated in Section 209-5(C) of the Wetlands Law, the Planning Board is the approving authority for wetland permit applications for projects that also involve Site Plan approval from the

Planning Board. In Town Code Section 192-2 of the Tree Preservation Law, the building inspector has approving authority except when a project requires Site Plan approval, in which case the Planning Board is granted the approving authority. Because the proposed project is subject to Site Plan approval, the Planning Board has approving authority for wetland and tree removal permit applications related to this project.

**Comment 2-20:** The proper designation of the Town Board as the Lead Agency for this proposed project is not only necessary, it is particularly significant because of the nature of the environmental impacts involved and the broad scope of Town planning policies and principles that must be considered. (Richard J. Lippes, 5/31/11)

**Response 2-20:** See Responses 2-18 and 2-19.

**Comment 2-21:** *Referral to Westchester County Planning Department* – It is worth noting at this phase of review that, at the appropriate time, when the lead agency has a “full record” (including all environmental review documents and an FEIS, a referral with respect to the proposed zoning amendment must be made to the Westchester County Planning Department, as required under General Municipal Law 239-m. The County may issue a recommendation, at which point the Town Board would need a majority-plus-one vote in order to pass the amendment. In the event the County does not issue a recommendation within 30 days, the Town could act on a majority vote. (Richard J. Lippes, 5/31/11)

**Response 2-21:** Comment noted. It should be noted that the proposed project, including the proposed zoning text amendment, was referred to the Westchester County Planning Department. The DEIS was sent to the Westchester County Planning Department for review. Comments were subsequently submitted by the Westchester County Planning Board to the Lead Agency, which are addressed herein.

**Comment 2-22:** *Title Report* – We bring to the Board’s attention that, while the DEIS attached a title report with respect to 11 New King Street, also identified as Section 3, Block 4, Lot 14 B, there is no title report for 7 New King Street, also known as Section 3, Block 4, Lot 13 A, which is actually part of the project site. This is a matter that should be addressed by the Applicant, since information about the second property may affect the analysis with regard to Open Area Development. The existence of an easement raises questions about the use of these properties for ingress and egress. (Richard J. Lippes, 5/31/11)

**Response 2-22:** Title reports for both Lots 14B and Lot 13A have been included in **Appendix C** of this FEIS.

**Comment 2-23:** *Information Identified as Missing From The DEIS Must Be Made Available for Public Review* – Although we anticipate that a DEIS will need to be re-submitted to the newly designated lead agency, we bring to the Board’s attention protocol in a situation as exists here, in which a significant amount of information is absent from the DEIS which is necessary for environmental review. Typically, this would call for the submission of a Supplemental EIS. See, e.g., Environmental Impact Review in New York § 3.09[4], at 3-160 (“If the lead agency learns of important new issues about significant adverse environmental effects regarding the proposed action in the course of receiving public comments [on a DEIS], the lead agency must require the preparation of a supplemental EIS in order to solicit additional public comments on the new issues.”).

Most importantly, the lead agency is required under SEQRA to provide an opportunity for further public review of the supplemental information. The omission of required information from a DEIS cannot be remedied by simply adding the information on at a later stage of the review process. See, Webster Assoc. v. Town of Webster, 59 N.Y.2d 220,228,464 N.Y.S.2d 431 (1983). (Richard J. Lippes, 5/31/11)

**Response 2-23:** The DEIS provided a comprehensive overview and analysis of all potential impacts, both negative and beneficial. The document was accepted as complete by the Lead Agency on March 28, 2011. Project modifications that have occurred thereafter would reduce potential negative impacts, such as avoiding disturbance to the Town-delineated wetland.

There is no new significant information related to the proposed project that would require a supplemental DEIS. However, several project updates have occurred. The USACE conducted a site visit on June 1, 2011 and confirmed the wetland delineation submitted by the Applicant. The USACE subsequently provided its jurisdictional determination (JD), provided in **Appendix D**. Nonetheless, the Applicant has reduced the footprint of the building and moved it away from the more conservative Town-delineated wetland so that both wetland delineations are respected in the revised Site Plan. In addition, the New York City Department of Environmental Protection (NYCDEP) conducted a site visit on 12/16/11 during which they designated the lower portion of Wetland A onsite as an “intermittent stream” under its jurisdiction, thereby establishing a 50-foot limiting distance.

**Comment 2-24:** In conclusion, on behalf of the Sierra Club, I urge you to address first and foremost the need for re-assignment of a lead agency to undertake the SEQRA review process. Now that the Board has received input from

various authoritative sources, it appears sensible to suggest that the Applicant revise the DEIS before submitting it to the lead agency. We hope that you find our comments useful, as we know you share our concerns for the protection of the Kensico Watershed and the Kensico Reservoir. Under all of the circumstances discussed above, we simply cannot give our support to the proposed project. We appreciate your attention to our concerns. (Richard J. Lippes, 5/31/11)

**Response 2-24:** Comment noted. See Responses 2-18 and 2-19.

**Comment 2-25:** At the outset, we note that this discussion is presented with the awareness of the nature of the growing criticism of the proposed project, as well as the authoritative bases and sources of opposition, with which the Sierra Club fundamentally agrees. The threat to the Kensico Watershed is too great. And notwithstanding the attempts by the drafters of the DEIS to persuade that this project will actually improve the environmental quality of the project area, there are simpler, more direct, and less risky means to accomplish that goal. As mentioned previously, we retained Dermody Consulting to conduct a review of the DEIS and have received the comments of Peter Dermody, a principal hydrogeologist, who has opined on the insufficiency of the DEIS. Ultimately he concludes that the proposed parking garage would have a cumulative impact and cause further degradation of the water quality in the Kensico Watershed and thus in the Kensico Reservoir. At our request, Mr. Dermody has sent his comments directly to the Board.

We also have obtained a copy of the comments sent to you by the NYC Department of Environmental Protection (“DEP”), in a letter dated May 23, 2011. DEP reviewed the Site Plan and the DEIS, as a result of which DEP expresses a wide range of “concerns about potential water quality impacts resulting from the project”: (Richard J. Lippes, 5/31/11)

**Response 2-25:** Comment noted.

**Comment 2-26:** *Potential environmental benefits do not outweigh safety concern* - The draft EIS claims several environmental benefits of the project which may or may not have merit. These benefits include: reduced traffic in the airport vicinity, improved air quality, lower greenhouse gas emissions and improved stormwater management over existing conditions. We recommend the Town consider the merit of these perceived benefits. It is our opinion that they do not outweigh the safety concerns regarding the RPZ or the potential negative impacts of the project on wetlands and water quality. (WCPB, 5/31/11)



- Response 2-26:** Comment noted. See Response 3-7 regarding the RPZ. In addition, to promoting the overall wetland functionality on the project site additional measures are proposed for some areas beyond the Modified Project's limits-of-disturbance. In the areas to the south of the proposed automated parking structure and to the south of the stormwater treatment area, the existing wetlands and wetlands buffer would be improved through a proscribed process of invasive species removal, introduction of appropriate native species, and long term maintenance and monitoring. These efforts have been designed to promote the long-term health and functionality of the existing wetlands. The objective of this plan would be to enhance and reinforce a productive ecosystem within the existing wetlands and wetlands buffer areas to support functionality both in terms of stormwater quality treatment and wild life habitat
- Comment 2-27:** The site plan should consider pedestrian access and safety with adequate space for pedestrians to wait for the proposed shuttle bus. (WCPB, 5/31/11)
- Response 2-27:** The Modified Project provides separate lanes for private vehicles and shuttle busses. There would be designated areas that would provide for passenger drop-off and pick-up from the private vehicle lanes. The designated bus lane and bus turn-around loop would lead to the bus drop-off/pick-up area within the structure.
- Comment 2-28:** The DEIS states that the Proposed Action would not result in an expansion of the airport due to the limits of the 1985 stipulation agreement. The Applicant should provide a copy of the stipulation agreement as an appendix to the EIS as well as provide a detailed summary of the stipulation. In addition, the Applicant should explain the process that would be required to amend the 1985 agreement. (Adam Kaufman, 6/1/11)
- Response 2-28:** In 2004, Westchester County codified the Terminal Capacity Agreement into a local law (Chapter 712, Article IV). A copy of the sections pertaining to Airport Rules and Regulations is provided in **Appendix I** of this FEIS. These regulations contain language which limits the operating capacity of the airport to 240 passengers per half hour and establishes a mechanism for airlines seeking to operate at the Airport. This stipulation remains in effect to-date and would not be affected in any way by this proposed project. Any amendments to the County Code would require approval by the County Legislature, which is not a request or an action of this project.

**Comment 2-29:** The proposal requires direct wetland disturbance and significant wetland buffer disturbance. The Applicant should explain why a plan cannot be prepared that removes the building from the wetlands, minimizes wetland buffer impacts and provides adequate screening from adjacent roadways. (Adam Kaufman, 6/1/11)

**Response 2-29:** As described in Chapter 1, in addition to avoiding the USACE-delineated wetland, the project has been further modified to avoid disturbing the Town-delineated wetland onsite. As such, the Modified Project will also reduce impervious surface in the Town wetland buffer by 4,208 square feet, as compared to the plan presented in the DEIS. As described in the DEIS, much of the Town wetland buffer is currently disturbed by existing impervious surfaces or maintained lawn area (approximately 31,000 square feet). Rather than placing the proposed garage structure in undeveloped, forested land, the proposed plan has located the building primarily in the footprint of the existing building and existing lawn areas. In this way, the proposed impervious surfaces in the wetland buffer at 29,245 square feet represent an increase over existing conditions, but would affect the least environmentally valuable lands onsite which offer little in the way of stormwater attenuation and infiltration. The project would improve upon the existing stormwater runoff flows and water quality measurably as discussed in the DEIS and this FEIS by proposing a comprehensive stormwater management system and green infrastructure.

As mitigation for disturbance in the existing wetlands buffer, a detailed Wetlands and Wetlands Buffer Enhancement Plan is presented in **Appendix F**. Specifically, in the areas to the south of the proposed automated parking structure and to the south of the stormwater treatment area, the existing wetlands and wetlands buffer would be improved through a proscribed process of invasive species removal, introduction of appropriate native species, and long term maintenance and monitoring. These efforts have been designed to promote the long-term health and functionality of the existing wetlands. The objective of this plan will be to enhance and reinforce a productive ecosystem within the existing wetlands and wetlands buffer areas to support functionality both in terms of stormwater quality treatment and wildlife habitat.

Second, additional screening has been added to screen the building from NYS Route 120. This screening includes evergreen trees located at the highest elevations and immediately adjacent to the structure to obscure views of the structure from distant viewpoints. Large canopy trees would be used throughout the site, wherever feasible, to provide additional visual contrast and screening during the spring, summer and fall seasons. In addition, *Greenscreen* trellises would attach to the

building's façade to support growth of vines to further soften the appearance of the proposed structure. Nonetheless, the Planning Board, as Lead Agency will pay particular attention to the appropriateness of the height of the proposed structure and proposed screening of the building.

**Comment 2-30:** Additional details should be provided describing the mechanisms used to prevent the public from entering the parking area. (Adam Kaufman, 6/1/11)

**Response 2-30:** The access points to enter the proposed building will be restricted to loading bays, as well as several locked service/emergency doors. When occupied by customers, the loading bays would be sealed enclosures with the only exit point being where the vehicles enter the bay during drop-off or where they exit the bay during pick-up. After all customers exit, the bay becomes sealed from the exterior while the interior opens up to allow the automated system to engage. Each loading bay would contain various mechanisms, including motion sensors, to ensure there is no one present in a loading bay before the system activates.

**Comment 2-31:** The DEIS indicates that solar may be used as part of this project. The FEIS should contain an update as to whether this technology will be used. (Adam Kaufman, 6/1/11)

**Response 2-31:** The Applicant is considering solar along with others green elements, as described further in Chapter 1 of the FEIS. One of the most significant green features of the proposed project would be the fact that it as an automated system, which reduces emissions by more than 85 percent as compared to a conventional garage (such as the one currently in operation at Westchester County Airport). Based on incorporating a range of green element impacts, the Applicant will seek LEED certification.

**Comment 2-32:** The Applicant should indicate the proposed hours of operation of the facility. (Adam Kaufman, 6/1/11)

**Response 2-32:** The project would service the airport on a 24-hour, 7-day basis consistent with the existing airport garage hours of operation.

**Comment 2-33:** Once all of the written comments have been submitted, responses to all substantive comments will need to be included in a Final Environmental Impact Statement (FEIS). This document is typically prepared by the Applicant and then submitted to the Planning Board, as the Lead Agency, for its review. Once accepted as complete, the Planning Board

will need to prepare a Notice of Completion, which will be filed and published together with the FEIS. After the FEIS is filed, public comments may be submitted to the Planning Board for consideration. Finally, the Planning Board will need to prepare a Findings Statement with respect to the proposed project, potential environmental impacts and proposed mitigation measures. This step must precede the Town Board's determination on the zoning changes and special use permit application, as well as any actions to be taken by the Planning Board on the environmental permits and site plan applications. (Adam Kaufman, 6/1/11)

**Response 2-33:** Comment noted.

**Comment 2-34:** The “project site” should be revised on the plans and throughout the document (plans, text and exhibits) to include, at a minimum, all areas of disturbance on the adjacent Lot 13A parcel. Impacts (text/discussion) throughout the document should be updated accordingly. (Kellard Sessions, 6/1/11)

**Response 2-34:** It should be noted that the limit of disturbance on both Lots 14B and 13A was described in relevant sections of the DEIS and was shown on all applicable figures, including Figures 6-1, 6-2, 7-5, 7-6, 8-4, 17-1 and 17-2. The exhibits in Chapter 1 of this FEIS show modifications to the limit of disturbance area. For simplicity, the ‘project site’ was defined in the DEIS as Lot 14B and the portion of the Lot 13A that will be used for a drainage easement. A small area of disturbance will extend outside this defined ‘project site’ on Lot 13A (along the project’s driveway), but was included in the total limit of disturbance area and included in all relevant analyses. As described in FEIS Chapter 1, in total, the project site is 3.34 acres. It comprises two contiguous parcels: 11 New King Street, designated on the official North Castle tax map as Section 3, Block 4, Lot 14B (referred herein as Lot 14B), and a portion of 7 New King Street, designated as Section 3, Block 4, Lot 13A (referred herein as Lot 13A). The proposed parking facility will be located on Lot 14B, a 2.47-acre lot. A 0.87-acre portion of Lot 13A will comprise a drainage easement for the proposed stormwater management system (see Figure 1-2, “Proposed Site Plan”).

**Comment 2-35:** The FEIS and plans should address pedestrian safety and plantings on the steep slopes adjacent to the Lot 13A parking lot. (Kellard Sessions, 6/1/11)

**Response 2-35:** The existing parking lot on Lot 13A will not be affected by the proposed project. A narrow area between the existing parking lot and the boundary of Lot 14B will be regraded for construction of the

proposed driveway and stormwater maintenance path on Lot 14B. There will be no pedestrian connection between these two parcels. As shown on Drawing C-8 that accompanied the DEIS, the landscaping plan will include a mix of deciduous and coniferous trees and shrubs along this area for both aesthetic and ground stabilization purposes. The Applicant is amenable to the provision of a row of coniferous trees at the top of the slope of the western edge of the adjacent parking lot to block the adjacent property's views towards the stormwater management facilities. Additional woody species and trees on this slope, aside from the row of coniferous trees at the top of slope, would conflict with the set-back requirements of the NYSDEC Stormwater Design Manual and NYS Standards and Specifications for Erosion and Sediment Control. These additional trees will be shown in detail on the revised Landscaping Plan that will be submitted as part of Site Plan Approval.

The existing parking area of the adjacent property is located at a higher elevation in relation to the proposed stormwater basins and currently has a fence along its perimeter. A guiderail is proposed along the property line for vehicular safety for the existing parking area on the adjacent property.

**Comment 2-36:**

It is obvious to anyone who has flown out of Westchester County Airport that additional parking is sorely needed, and there are doubtless many people in North Castle and nearby communities who would find additional parking at the proposed location a great convenience. However, the Town of North Castle must carefully weigh the potential negative consequences of allowing 1,450-space building with its 51,000-square foot footprint to be built. Foremost among the concerns of the North Castle Conservation Board are protection of water quality in the Rye Lake/Kensico Reservoir from degradation, loss of natural wetlands and open space due to construction, and the potential of demand for increased flights and resultant noise. (North Castle Conservation Board, 6/1/11)

**Response 2-36:**

Under existing conditions untreated stormwater flows directly into the wetland located to the west and discharged without treatment into the Kensico Reservoir. Similarly, untreated stormwater from the adjacent Lot 13A travels either overland from the parking area into the wetland along NYS Route 120. The stormwater treatment designed for the Modified Project would provide significant improvements to the quality of water entering into the reservoir as compared to existing conditions.

In response to comments the stormwater management plan has been re-examined and enhanced to incorporate additional green infrastructure practices. The revised stormwater management plan would collect

stormwater via overland flow and roof drains from the existing site as well as a portion of the adjacent site (i.e., Lot 13A). The stormwater would then be conveyed to multiple treatment mechanisms in a series, including underground sand filters, pocket wetlands, sedimentation basins with deep sumps, and stormwater planters. Stormwater collected from the roof of the parking facility would be directed into stormwater planters and then conveyed into the stormwater facilities before discharging to the Kensico Reservoir.

Additionally, the Modified Project has been reduced in size and has been moved further away from the wetlands (both USACE- and Town-designated wetlands). As modified, there will be no disturbance to wetlands on the project site, either during or after construction.

It should be noted that the site is not currently “open space” but is developed with a 10,000-square-foot office building with a broken up area of macadam that is used to park approximately 35 cars. In addition, beyond the existing building and parking area, the site has been previously disturbed by grading and fill (by others) as evidenced by several mounds of dirt. .

Finally, the number of flights to/from Westchester County Airport is constrained by regulations codified by Westchester County as the Terminal Capacity Agreement (Chapter 712. Article IV) (see Airport Rules and Regulations in **Appendix I**). The proposed project would in no way affect these regulations. See Response 2-1.

**Comment 2-37:** The existing property usage at 11 New King Street encroaches on land of the Westchester County as a maintained lawn area off the east corner of the existing building and is likely to be used during construction. Any use of this property should be by agreement by Westchester County. (North Castle Conservation Board, 6/1/11)

**Response 2-37:** Neither proposed construction activities nor post construction operation or uses will require use (or disturbance) of property owned by Westchester County. As shown on the figures in the DEIS, as well as the full-scale drawings that accompanied the DEIS, the limit-of-disturbance will not extend beyond the project site into adjacent County-owned land.

**Comment 2-38:** The magnitude of the proposed project at 11 New King Street has the potential of causing severe environmental and water quality problems with extensive site disturbance during construction, and maintenance of the storm-water facilities in years to come. A Town policy to protect the

long-term water quality related to the Rye Lake/Kensico Reservoir is of greatest concern.

The Conservation Board therefore recommends that the North Castle Town Board, Planning Board, and the NYCDEP exercise particular caution in regard to potential environmental effects of this project as well as the possible negative growth inducing long range impacts in the area. (North Castle Conservation Board, 6/1/11)

**Response 2-38:**

Comment noted.

**Comment 2-39:**

The importance of the Kensico Reservoir to the environmental and economic health of New York cannot be over-stated. The Kensico plays a central role in delivering clean, unfiltered drinking water to nine million downstate residents. It is the last stop for more than one billion gallons of water that flows from New York's six giant West-of-Hudson Catskill and Delaware system reservoirs. These waters are usually held in Kensico for 15 to 25 days before heading to the much smaller Hillview Reservoir in Yonkers for distribution throughout New York City or to local water providers in Westchester County. This 15 to 25 day period provides a final opportunity for settling out impurities, including solids and microorganisms – a critical function in view of the facts that the Catskill and Delaware system reservoirs are unfiltered and that filtration facilities for these waters would cost more than 10 billion dollars, according to official estimates.

Despite its essential function in providing clean drinking water to half the state's population, the Kensico Reservoir and its 6,000 acre watershed have faced intensifying development pressures over the last several decades. Increased corporate, residential and commercial construction within the Kensico basin have created localized water quality problems. Threats to the reservoir include turbidity (a measure of cloudiness of water), fecal coliform bacteria (products of human and animal waste), as well as phosphorous and other nutrients and pesticides and other organic chemicals. These and other contaminants are all associated with stormwater runoff from encroaching development in the small Kensico watershed itself.

Nevertheless, as set forth in the DEIS, the 11 [New] King Street project sponsor proposes to construct a 1,450 car parking garage within a stone's throw of the region's single most important drinking water reservoir. The new parking structure would be 267,000 square feet in size. Its construction would destroy 5,700 square feet of wetlands, which currently serve as natural filters for rainwater and snow melt that flow directly into the Kensico. And among many other adverse impacts, the new construction would add 21,354 square feet of impervious

surfaces in the all important buffer areas. These and other earth-altering impacts of the proposed project make it hard to see how the 11 New King Street developers could have selected a more ill-advised spot for new construction anywhere in the entire Catskill Delaware watershed. (NRDC, 6/1/11)

**Response 2-39:**

The proposed parking facility will be located approximately 700 feet away from the edge of Rye Lake/Kensico Reservoir and will be separated by the existing NYS Route 120 and the 130-foot wide six-lane Interstate 684. For comparison purposes, the parking structure added to the MBIA complex approximately one mile north of the project site several years ago is of comparable size and proximity to the reservoir but is not separated by Interstate 684 or NYS Route 120. In addition, it was built prior to the latest NYSDEC Stormwater General Permit and Design Manual, so presumably lacks the latest treatment practices, including green infrastructure, that are proposed by the subject project. Further, unlike the proposed project which would be an enclosed automated facility, the MBIA parking structure is a traditional open-air self-park facility. The MBIA complex also includes outdoor parking areas, some of which are approximately 500 feet from the reservoir.

It should be noted that in response to comments, the modified plans for the proposed parking structure have moved the building further away from the Town-delineated wetland onsite and increased its distance from the USACE-delineated wetland such that there will be no disturbance to onsite wetlands. The building footprint has been reduced from about 51,000 square feet to approximately 45,000 square feet, thereby also reducing impervious surfaces within the buffer by approximately 4,200 square feet. A large portion of the proposed disturbance to buffer areas is a previously disturbed buffer area with a portion of the existing office building and parking area, as well as an area of existing fill material (a portion of which would be removed as part of this project). In their present condition, these buffers are providing marginal buffer functions. As stated above, and more fully described in Chapter 1, "Description of Modified Project," of this FEIS, the proposed project would provide water quality treatment to runoff from the project site and a portion of an adjacent site which is currently being discharged into Rye Lake/Kensico Reservoir without treatment.

**Comment 2-40:**

NRDC's review of the Draft Environmental Impact Statement has convinced us that the document has failed to comply with the requirements of the State Environmental Quality Review Act, set forth in sections 8-0101 et seq. of the State's Environmental Conservation Law. Among the numerous deficiencies in the DEIS are the following:



- failure to fully describe the adverse short- and long-term environmental impacts that would result from implementation of the project as proposed.
- failure to consider reasonable alternatives -- the DEIS does not examine alternative sites for construction that are located outside of the Kensico Reservoir watershed or comprehensive public transit enhancement measures to address airport parking needs, to cite just two examples of a reasonable alternatives that warrant full assessments.
- failure to adequately mitigate -- the DEIS fails to present a reasonable program for mitigating harm to wetlands and buffer lands that would be destroyed by the proposed construction.
- failure to demonstrate compliance with other environmental laws and rules, including the Town of North Castle's Freshwater Wetlands Law and the New York City Watershed Rules and Regulations. (NRDC, 6/1/11)

**Response 2-40:**

The DEIS provides a comprehensive overview and analysis of all potential impacts related to the proposed project, both negative and beneficial. The DEIS also evaluated seven project alternatives that aimed to reduce environmental impacts for comparison to the preferred project, but not all alternatives were found to meet the objectives of the Applicant or adequately alleviate the existing parking shortage at Westchester County Airport, as is the intent of the project. Off-site alternatives are not feasible or appropriate alternatives as the Applicant does not own any other properties outside of the watershed that would be in the vicinity of the airport. Public transit initiatives are outside the purview of the Applicant. Westchester County previously operated an airport shuttle bus, which was discontinued due to low ridership.

As described in Chapter 1 of this FEIS, a wetland and wetland buffer enhancement plan has been developed to further minimize impacts to existing wetland buffer areas. In addition, the proposed project has been modified to avoid any disturbance to the existing Town-delineated wetland onsite. As discussed above, much of the existing wetland buffer on-site has been previously disturbed and provides limited functionality. However, the proposed project will improve vegetative diversity on-site that would enhance water quality of stormwater runoff and improve wetland functionality.

As discussed in the DEIS, the Applicant will need to apply for a wetland permit from the Town of North Castle Planning Board, in compliance with the Town's Wetlands Law. No disturbance to any wetland area will occur without first obtaining a permit from the Town which will only be granted once adequate mitigation and wetland enhancement measures are in place.

**Comment 2-41:** In short, NRDC believes that the DEIS for the 11 New King Street project fails in these and other ways to meet the cornerstone requirements of state environmental law. This project is fatally flawed and should not in our view be constructed in its proposed location. We urge the Town to go back to the drawing boards and completely rethink this project. We stand ready to work with you on such an effort. (NRDC, 6/1/11)

**Response 2-41:** Comment noted.

**Comment 2-42:** Ultimately, the Project would constitute an expansion of the Airport beyond its present geographic confines, which is inconsistent with more rational efforts to modernize the Airport. The Airport can be renovated to meet the existing demands, including for parking, without causing unnecessary adverse impacts to sensitive receptors, including the Kensico Reservoir and the residential communities in Greenwich, Connecticut. The significant, unmitigatable, adverse impacts of concentrated off-site parking development in the IND-AA District can and must be avoided, both under SEQRA, as well as other applicable laws and regulations, including, the Town's Freshwater Wetlands Law and DEP's Watershed Regulations. (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 2-42:** The proposed parking facility will be a privately owned and operated facility and would operate independently of Westchester County Airport. The land holdings of the airport will not expand beyond its existing boundary as a result of the proposed project. Improvements on airport property are outside the purview of the Applicant. See Responses 2-8, 2-9, and 2-11.

**Comment 2-43:** As the Planning Board surely appreciates, the DEIS is only a "starting point" for the environmental review of this ambitious Project under the State Environmental Quality Review Act ("SEQRA"). The comments herein are offered in good faith to assist the Town of North Castle ("Town") in "filling in the gaps" in what is a complex proposal, with wide ranging implications: *(See reference to case study provided in original letter in Appendix A)* [NOTE: Omitted text from case study, Pg. 3] (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 2-43:** Comment noted.

**Comment 2-44:** It appears at first blush that the Town Board has improperly delegated its SEQRA review responsibilities to the Planning Board. SEQRA requires that decisions under it "must remain with the lead agency principally responsible for approving the project." Coca-Cola Bottling

Co. of New York, Inc. v. Bd. of Estimate of City of New York, 72 N.Y.2d 674,536 N.Y.S.2d 33, 37 (1988). The agency primarily responsible for approving the instant Project is the Town Board. In contrast, it is questionable whether the Planning Board has any approvals respecting the Project. (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 2-44:** See Responses 2-17, 2-18, and 2-19.

**Comment 2-45:** The heart of this Application is a zoning amendment. The amendment would create a new Special Use category for parking garages in the IND-AA District subject to Town Board approval (the “Amendment”). The Project is not possible without this substantial revision of the Town Zoning Code. The Amendment is, of course, a discretionary determination of the Town Board. If the Amendment were adopted, no discretionary decisions would be required from the Planning Board under the Amendment. (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 2-45:** See Responses 2-17, 2-18, and 2-19.

**Comment 2-46:** The Amendment would make the Town Board the approval authority for Special Permit Applications for garage proposals off-site from the County Airport. Pursuant to the Town Code, the Town Board’s Special Permit review would obviate the need for Site Plan review from the Planning Board. (See Town Code § 213-34 (establishing that “[n]o building permit shall be issued, and no structure or use shall be established or changed, *other than for one single-family dwelling or a special permit use approved in accordance with the procedures specified in Article VII of this chapter*, except in conformity with a site development plan approved and endorse by the Planning Board...” (emphasis added).) (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 2-46:** See Responses 2-17, 2-18, and 2-19. As stated in this comment, Site Plan review is under the jurisdiction of the Planning Board.

**Comment 2-47:** The Town Board would also assume Freshwater Wetlands review authority for the Project. (See Town Code § 205-5(C) (defining the Town Board to be the Approval Authority for wetland applications when neither the Planning Board nor the Town Engineer have that capacity).) The Planning Board would similarly lack review authority over the Project’s Tree Removal Permit. The Building Inspector would be the Approval Authority for the Tree Removal Permit. (See Town Code § 192-2 (Planning Board only the Approval Authority where there

is a pending Site Plan Application)). (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 2-47:** (It should be noted that the Town Wetlands Law is Chapter 209 of the Town Code.) See Response 2-19.

**Comment 2-48:** Accordingly, as the New York State Department of Environmental Conservation (“DEC”), the agency primarily responsible for SEQRA’s implementation, indicates in its official SEQRA guidance document, the SEQR Handbook, the Town Board is indisputably the agency “primarily responsible” for reviewing the Project:

“Which board is responsible for the conduct of SEQR when local zoning decisions are made?”

“The board with primary responsibility for making the zoning decision.....If the zoning decision is legislative (such as a rezoning decision), then the board with primary responsibility, depending on whether the municipality is a city, town or village, will be the city council, the town board, or the village board of trustees, respectively.”

SEQR Handbook at 181 (emphasis added). (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 2-48:** See Responses 2-17, 2-18, and 2-19.

**Comment 2-49:** Without denigrating the capability or integrity of the Planning Board, its improper assumption of Lead Agency status in this matter potentially renders these proceedings jurisdictionally defective. As the Board is aware, SEQRA mandates “strict compliance” with its environmental review procedures. *N.Y.C.C.E.L.P. v. Vallone*, 100 N.Y.2d 337, 763 N.Y.S.2d 530, 535 (2003). Strict compliance with SEQRA is particularly important where, as here, potable water may be impacted. See *Doremus v. Town of Oyster Bay*, 274 A.D.2d 390, 711 N.Y.S.2d 443 (2d Dept. 2000) (holding that local board violated SEQRA by failing to order a supplemental environmental review for a site located in an area designated for special groundwater protection); *Bryn Mawr Props., Inc. v. Fries*, 160 A.D.2d 1004, 554 N.Y.S.2d 721, 722-23 (2d Dept. 1990) (upholding requirement for supplemental environmental review under SEQRA, noting that “[i]t is of critical importance that the petitioner’s proposed development is situated on the shores of Pocantico Lake, a former reservoir which is still a potential source of potable water.”).

The Town Board’s duty to serve as Lead Agency is particularly important here because the Project places so many of the Town’s legislatively adopted planning principles and requirements in question.

Respectfully, the Planning Board should defer to the Town Board as the appropriate Lead Agency for the review of this Project. (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 2-49:** See Responses 2-17, 2-18, and 2-19.

**Comment 2-50:** Where, as here, significant new information is required subsequent to the filing of a DEIS, a supplemental environmental impact statement (“SEIS”) is required:

The law recognizes that in situations in which significantly new information has been discovered subsequent to the filing of a draft EIS, which new information is relevant to the environmental impact of the proposed action, a supplemental EIS containing this information should be circulated to the relevant agencies so as to insure that the decision making authorities are well informed.

Horn, 493 N.Y.S.2d at 192; see also Environmental Impact Review in New York § 3.09[4], at 3-160 (“If the lead agency learns of important new issues about significant adverse environmental effects regarding the proposed action in the course of receiving public comments [on a DEIS], the lead agency must require the preparation of a supplemental EIS in order to solicit additional public comments on the new issues.”).

Of particular relevance here, the Lead Agency must, as a matter of law, subject the required, previously unaddressed issues to further public review:

[C]ourts have cautioned that the omission of required information from a draft EIS cannot be cured by simply including the required data in the final EIS since the abbreviated comment period for the final EIS “is not a substitute for the extended period and comprehensive procedures for public and agency scrutiny of and comment on the draft EIS.”

Horn, 493 N.Y.S.2d at 192, quoting Webster Assoc. v. Town of Webster, 59 N.Y.2d 220, 228, 464 N.Y.S.2d 431 (1983). (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 2-50:** See Response 2-23.

**Comment 2-51:** Currently, the DEIS lacks information critical to conducting an informed review as required under the provisions of SEQRA. Some of this information is not included in the DEIS because it was unavailable at the time the DEIS was declared complete (delineation of boundary of Town wetlands onsite, determination of Army Corps regulatory jurisdiction, off-site wetland mitigation plan required by Town Law, water budget analysis). This information, once available, may lead to an

increase in the project's environmental impacts. The omission of other information (detailed construction plans, an application plan for pesticides, de-icing and other chemicals, a more detailed and expanded discussion of alternative) renders the DEIS in its current form deficient. In such a situation, it is critical that the lead agency require the preparation of a supplemental EIS which provides the new information relevant to the environmental impacts of a proposed project so that the public has an opportunity to comment on the new issues and decision-making agencies are fully informed. (Riverkeeper, Kate Hudson, 6.1.11)

**Response 2-51:** The information requested is provided in the FEIS, including clarification of the wetland/watercourse boundaries, use of pesticides/de-icing, and responses to specific comments on alternatives. See FEIS Chapters 1 and 2 and detailed responses by subject/chapter that follow.

**Comment 2-52:** The only thing we all know today and in 55 years we've progressed to DNAs and everything else, we know that one thing is very important, that our humanity is somewhere along the line disappearing. We can analyze today the oil that's coming off the roads. We can also analyze the fact that there is water not being absorbed. We are so mechanical and so well educated and so scientific. The thing we haven't spoken about today is the humanity of this. The fact that with all of the pressures, the unbelievable pressures that have come upon us with the condition of the world, where is our peace. When I lie in my bed with a gigantic window looking out over the land that I have, I see planes coming, almost looking as if they are coming into my house.

We are not stupid people, and we know that once you build a garage for more than you need, the need will become more than we need. No more planes, which we will have eventually. So, I beg of you, for the peace and quiet and few years that we can have peace and quiet, has been progressively losing it. I beg of you to remember that we want peace. We don't want the airport. We don't want the garages, because they will make more noise. And after all, New York City was once farmland. And let's keep Westchester in some sort of a situation where there is peace, so when we come home at night, we do not hear the drone of airports, et cetera, et cetera. Thank you. (Lucille Held, 5/2/11)

**Response 2-52:** Comment noted. As discussed in the FEIS Chapter 1 and Chapter 2, the project will not generate more flights and may even diminish, rather than worsen, traffic at the airport.

### 3.3 LAND USE, ZONING, AND PUBLIC POLICY

**Comment 3-1:** There is a question whether the Planning Board has improperly assumed lead agency with respect to this project, see *Coca-Cola Bottling vs. New York*. It appears that the proposed zoning amendment would create a new special use category for parking garages in this district and, in fact, require the Town Board to rule on this special permit.

Under the Town Code, Section 213-34, it would appear that a special permit review supersedes the need for site plan review. So, I defer to your experts, Mr. Baroni and Mr. Kaufman to unravel this issue, but I'm not sure the Planning Board would necessarily continue to have site plan review under the proposed zoning amendment, and as such also not have jurisdiction under the fresh water wetland under Section 205-5(c).

So, the question I guess would become whether the Planning Board has any jurisdiction over this application under the proposed zoning regulation. Therefore, it may be improper and in violation of a case that I'm sure counsel is well aware, *Coca-Cola Bottling v New York*, that the Town Board is improperly delegating its lead agency authority to the Planning Board in this case. (Michael Zarin, 5/2/11)

**Response 3-1:** As identified in the full environmental assessment form (EAF), both the Planning Board and Town Board of the Town of North Castle are involved agencies under SEQRA. The Planning Board is an involved agency due to its discretionary approval authority over the proposed Site Plan, and the Town Board is an involved agency due to its discretionary approval over the proposed zoning amendment. SEQRA does not dictate which involved agency should act as Lead Agency. Instead, §617.6(b) establishes a time frame during which the involved agencies must agree upon a Lead Agency. In this instance, during the initial review of the Proposed Action, the Planning Board classified the action as a Type I Action, circulated the full EAF, and declared its intent to be Lead Agency under SEQRA to all involved and interested agencies on June 26, 2009. As no objections were received within the 30 day time frame established by §617.6(b)(3), the Planning Board properly declared itself Lead Agency on August 3, 2009.

Furthermore, there is substantial precedent in New York State for a Planning Board to act as Lead Agency on significant land development projects, even when a zoning amendment is required. This is due to a number of reasons: (1) land development projects are typically first received by the Planning Board, as they are submitted to the Planning Board for Site Plan approval; (2) Planning Boards generally have more experience reviewing land development applications; and (3) Planning Boards are oftentimes more familiar with the zoning code than the

Town Board. This is evidenced and supported by the Town of North Castle Town Code §213-68.C, which requires the Town Board to refer all zoning amendments to the Planning Board for their report and recommendation. As the principle agency in reviewing proposed development projects in the Town of North Castle, the Planning Board typically has greatest familiarity with development and growth patterns in the Town and what land uses may be appropriate for certain areas. For this application, the Town Board recognized the Planning Board as being the proper involved agency to become Lead Agency under SEQRA, and offered no objections. Pursuant to §617.6(b)(6)(i)(b), no evidence has been provided to establish the failure of the Lead Agency's basis of jurisdiction, therefore there is no legitimate reason under SEQRA to reestablish the Town Board as Lead Agency.

**Comment 3-2:**

There is a reference in the Town's records to the King Street Corridor Management Plan which sets forth sound environmental practices for the corporations and the Town to manage their facilities in ways that prevent contamination of the Kensico Reservoir. And I guess this plan was completed in the fall of 2000 with quote "full support of the five corporations in the Town in this area". And the various corporations all pledged to minimize water quality threats by voluntarily implementing the pollution prevention mediation practices contained in the plan and periodically re-evaluating and updating the plan. Unless we missed it, I guess we didn't see any reference in the DEIS in this plan, which would seem to be a major relevant document in this particular area. (Michael Zarin, 5/2/11)

**Response 3-2:**

The King Street Corridor Management Plan , Portions of Routes 22 and 120 in the Town of North Castle, New York (the "Plan") was formulated by the Kensico Watershed Improvement Committee (KWIC) in 2000. The Plan recommends practices to prevent contaminants from entering the Kensico Reservoir and promotes sound stormwater management practices. The Plan discusses the environmental management practices of five large corporate facilities within the study area (i.e. IBM, Swiss Re, MBIA, Citigroup, and Greenwich American Center) and recommends that these corporations continue to be "good neighbors" and voluntarily implement a set of environmental management standards. Although Park Place was/is neither a member of KWIC, nor identified as part of the Corridor Plan, the property is within the Management Plan study area and the Applicant commits to voluntarily accept the management standards contained in the Plan as applicable and including all of the following:

- a. Turf and Landscape Management – use naturally vegetated areas; reduce mowed grass areas in favor of meadow or wildflower areas;



use integrated pest management techniques; ensure that private maintenance companies use environmentally sensitive approaches, use disease-resistant, lower water use, and indigenous plants. As discussed elsewhere in the DEIS/FEIS, the project uses native plantings and eliminates essentially all lawn areas in favor of landscaped areas.

- b. Stormwater Runoff – comply with NYSDEC General Permit and NYCDEP stormwater regulations; inspect and maintain stormwater management facilities, periodically reevaluate stormwater management systems and upgrade as warranted; educate and train staff involved with designing, inspecting, and maintain systems. As discussed in the DEIS/FEIS, the project conforms to all NYSDEC/NYCDEP stormwater guidance. And the project exceeds the runoff reduction requirements required by the NYSSMDM.
- c. Winter Road Maintenance – follow NYS Guidelines and comply with NYCDEP regulations; contain all stored and handled deicing materials within bounds; prevent seepage or runoff, protect piles from direct and blowing precipitation year round; use minimum amounts of deicing materials and abrasives; regularly calibrate all equipment; ensure equipment operations and supervisors are trained; education and train staff involved with designing, inspecting, and maintaining systems. De-icing practices will follow guidance established by the NYS Office of the Attorney General to minimize impacts by using de-icers that contain 50 parts per million total phosphorous or less.
- d. Waste Reduction/Minimization – improve operations, manufacturing process, and technologies to minimize material use and waste production; conduct rigorous self-audits and assessments.
- e. Hazardous Materials Storage and Use – comply with federal, state, local and NYCDEP regulations; minimize use of hazardous materials; contain all hazardous materials and prevent any discharge of hazardous materials or waste; periodically reevaluate emergency response plan and update as necessary.
- f. Waterfowl Management – minimize turf areas and maximize meadow and naturalized areas; identify appropriate waterfowl management options (if applicable); incorporate stormwater detention basin design adaptations, such as vegetated shallow areas, to discourage waterfowl attraction.
- g. Material Storage – comply with federal, state, local and NYCDEP regulations; contain all material storage areas and prevent

discharges to the environment; periodically reevaluate material storage facilities and needs, and update the facilities as necessary.

- h. Wastewater – periodically inspect sewer line for defects and potential sources of exfiltration; repair defects as needed.

**Comment 3-3:**

There are aspects of this application that really fall pretty close to the doctrine of spot zoning. And I won't get into the whole definition or legal authority on that. But the DEIS correctly asserts that this site would be the only parcel that potentially could benefit or would directly benefit from the proposed zoning change. Again, we think others may, through precedent or growth inducing impact, but this zoning was really tailored to meet this project and this application and this one parcel. And that really has many of the elements of spot zoning. (Michael Zarin, 5/2/11)

**Response 3-3:**

The proposed amendment to the Industrial ("IND")-AA zoning district regulations would allow parking facilities pursuant to a Special Permit. The proposed zoning amendment does not constitute improper spot zoning because it does not grant a unique benefit to only a single property. Also, parking facilities are not inconsistent with surrounding properties and uses in the IND-AA district.

Permitted uses in the IND-AA district include businesses and professional offices, light industrial uses, motels, and airport uses at Westchester County Airport. A vehicle parking structure is compatible with those surrounding uses and is not totally different from the permitted uses. See Citizens for Responsible Zoning v. Common Council of Albany, 56 A.D.3d 1060, 868 N.Y.S 8 (3d Dept. 2008).

The proposed zoning amendment is not tailored to benefit the project site uniquely, and the DEIS does not state that the zoning amendment is tailored to fit only the project site. The DEIS states only that the proposed zoning amendment is not expected to result in a "proliferation" of similar structures in the IND-AA district since the proposed Special Permit conditions limit the number of locations on which a parking structure could be located. There are other locations in the IND-AA district that could meet the conditions for a Special Permit for a parking facility.

**Comment 3-4:**

Contrary to the DEIS, this is inconsistent with the Town's comprehensive plan. And I think DEIS, again to its credit, recognizes this, that North Castle opposes any expansion of the airport. And the Town's Comprehensive Plan unequivocally states that quote "Any expansion of the airport is not recommended". Again, we would submit

that that's exactly what this application is for, is a de facto expansion of the airport and its facilities. (Michael Zarin, 5/2/11)

**Response 3-4:**

The purpose of the proposed project is to meet an existing and unmet demand for parking for travelers using Westchester County Airport (see demand study in **Appendix E**). It would not and could not expand airport operations due to a stipulation codified by Westchester County in its Terminal Capacity Agreement (Chapter 712, Article IV) (see Airport Rules and Regulations in **Appendix I** of this FEIS). The code limits the operating capacity of the airport to 240 passengers per half hour and establishes a mechanism for airlines seeking to operate at the airport. This stipulation remains in effect to date and would not be affected in any way by the proposed project.

**Comment 3-5:**

Does the Town Board have the authority to approve the project with respect to its limitations that the town code puts on flag lots? Section 213-21 of the town code establishes a 200 foot frontage requirement in this district. And I believe the Town Board lacks the authority under relevant law and the code to grant variances from the frontage requirement. Only your board has the authority to waive that. We think the authority for this application is going to be within the Town Board under its special permit, and it does not, we would submit, have that authority to grant variances for frontage requirements. Again, Mr. Adler will elaborate on this point, but I think it's – it's important enough for me to at least touch upon, because it does have some legal implication. That's with respect to traffic. (Michael Zarin, 5/2/11)

**Response 3-5:**

Although the parcel lacks 200 feet of frontage, it is a legal non-conforming property and will continue to be so with the proposed project. The project site abuts two streets: New King Street and NYS Route 120. Due to the site's flag lot shape, its frontage along New King Street is 50 feet. The site's frontage along NYS Route 120 is approximately 190 feet. As footnoted in the Schedule of Office and Industrial Regulations under Town Code §213-21, the frontage requirements in the IND-AA zoning district "may be varied or reduced in connection with approval of the Site Plan by the Planning Board, where the size and/or shape of existing lots may warrant or require it." Although the project site is a flag lot with limited frontage along New King Street, adjacent frontage is occupied by a sewer pump station, Westchester County Airport property, and an office use. Therefore, in the Applicant's opinion, New King Street will be an appropriate access point for the proposed parking facility.

**Comment 3-6:** With respect to the impact on Greenwich, we've been involved in a number of "intermunicipal issues" where SEQRA applications impact more than the host community. And clearly I think Greenwich is probably, the houses along King Street, at minimum are some of the most impacted --impacted homes. And we would submit that this facility is going to have a pretty significant impact on the community character. (Michael Zarin, 5/2/11)

**Response 3-6:** In response these comments, additional analyses of the visual and community character impacts to the homes in Greenwich, CT have been conducted. The findings of the Supplemental Visual Impact Analysis are provided in Chapter 2, "Probable Impacts of the Modified Project," of this FEIS. The analysis concludes that even though the proposed parking facility may be visible from several residences on King Street, existing vegetation and topography would limit its visibility. Further, the proposed project would be in context with existing views from these residences which comprises largely of office buildings and associated parking areas. In the Applicant's opinion, there are no significant scenic or visual resources that would suffer deterioration in value as a result of the proposed project.

**Comment 3-7:** According to the Airport Layout Plan (ALP) for Westchester County Airport, the proposed project site, 11 New King Street is located within the runway protection zone (RPZ) that ensures objects on the ground are compatible with normal airport operations. Based upon our review of the documentation we have the following comments:

It appears that the proposed location of the parking garage falls within the R W 16 RPZ. The purpose of the RPZ is to enhance the protection of people and property on the ground. For this reason we recommend that the county, as the airport sponsor, take action to the extent reasonable to discourage this development within the RPZ. (FAA, 5/19/11)

**Response 3-7:** The commenter accurately states that the project is located inside Runway 16 RPZ. However, it is outside of the central portion of the RPZ. According to AC 150-5300-13, uses such as automobile parking facilities are permitted outside of the central portion of the RPZ. Additionally, in the Applicant's opinion, there is a high degree of compatibility between the proposed use and normal airport operations. The property is zoned IND-AA and permits a variety of commercial and industrial uses, including parking garages as accessory uses to a principal use permitted in the IND-AA District (residential is not a permitted use). While the proposed garage would be a principal, rather than an accessory use, it would result in less population density (or

“gathering”) than would be expected from an office or warehouse use (with or without accessory parking garages). The proposed garage would provide a beneficial service to the public, meeting the existing demand for airport parking and poses no hazards to the normal airport operations.

It is important to note that the project has received a “No Hazard” determination from the FAA, pursuant to its FAA 7460-1 Form for Aeronautical Review—Aeronautical Study Number (ASN): 2011-AEA-2792-OE (see **Appendix J** and **Appendix K**).

**Comment 3-8:**

“Grant assurance 21, Compatible Land Use” identifies that the airport owner will take appropriate action, to the extent reasonable, to protect and restrict the land use within the RPZ. (FAA, 5/19/11)

**Response 3-8:**

Although the parcel is located within an RPZ, in the Applicant’s opinion, it is a ‘compatible land use’. According to FAA Compliance Manual 5190.B, Chapter 20 “Zoning and Land Use Planning,” a ‘compatible land use’ is one where the use of adjacent property neither adversely affects flight operations from the airport nor is itself adversely affected by such flight operations. In most cases, the adverse effect of flight operations on adjacent land results from exposure of noise sensitive development, such as residential areas, to aircraft noise and vibration. Land use that adversely affects flight operations is that which creates or contributes to a flight hazard. One that would attract birds would be considered an incompatible land use.

According to FAA Compliance Manual 5190.B Chapter 21 “Land Use Compliance Inspection”, an incompatible land use includes obstructions or residential construction built on airport property or in violation of conditions of released land or residential development within grant funded aircraft noise compatibility lands. Other incompatible uses would be towers or buildings that penetrate Part 77 surfaces or are located within a runway protection zone (RPZ), runway object free area (ROFA), obstacle free zone (OFZ), clearway or stopway.

The zoning for the subject site is and will remain IND-AA which excludes residential as a permitted use, but permits commercial and industrial uses which are not prohibited under the FAA guidelines. The proposed project would involve the expeditious transport of airport customers to and from the terminal, thereby eliminating possible gathering. As such, in the opinion of the Applicant, the proposed use is compatible with both the existing zoning and the FAA’s definition of Compatible Land Use.

**Comment 3-9:** There is insufficient information known to determine possible aeronautical impacts associated with this proposal. An FAA 7460-1 Form for aeronautical review must be submitted by the proponent for review by all FAA offices. The proposed structure and any temporary construction equipment need to be evaluated regarding whether it has potential to be a hazard to air navigation and what mitigation measures may be required. Given the proposed location off airport property, it should be filed as an Obstruction Evaluation case (OE), unless otherwise instructed. (FAA, 5/19/11)

**Response 3-9:** FAA Form 7460 was submitted to the FAA and assigned Aeronautical Study Number (ASN): 2011-AEA-2792-OE. On August 16, 2011, the FAA determined that the proposed project would pose “No Hazard” to airport activities (see **Appendix K**).

**Comment 3-10:** Our review has identified significant concerns about the compatibility of the proposed development with the need to protect people and property on the ground within certain zones around the airport. We consider it incumbent upon the Town of North Castle to place these concerns in the forefront when making decisions about what land uses should be permitted in runway protection zones. As the sole entity with land use authority at this location, it is the Town’s responsibility to ensure that its land use controls protect public safety. (WCPB, 5/31/11)

**Response 3-10:** Permitted land uses in the IND-AA zoning district include industrial, office and warehouse uses (and accessory parking structures). Residential uses are not a permitted use. The permitted uses in the IND-AA zoning district are considered Compatible Land Uses, as defined by the FAA, adjacent to normal airport operations. Moreover, the FAA has issued a “No Hazard” determination under Form 7460, discussed above (see **Appendix K**).

**Comment 3-11:** The County Planning Board’s review raises serious concerns about the wisdom of amending the Town Zoning Ordinance to allow the processing of the proposed development.

[The Westchester County Planning Board] recommend[s] that the Town not amend its zoning ordinance to permit the proposed use[.] (WCPB, 5/31/11)

**Response 3-11:** Comment noted. In the Applicant’s opinion, the proposed zoning amendment would not adversely affect land use conditions in the IND-AA zoning district. The proposed zoning amendment would be consistent with existing zoning regulations by allowing a use that is compatible and consistent with permitted office and industrial uses in

the IND-AA district. The IND-AA covers a small land area within the Town of North Castle and due to existing build-out of area parcels, a proliferation of parking structures would not be expected. Further, the enclosed and automated nature of the proposed parking facility promotes a number of green qualities that would drastically reduce the project's carbon footprint and impacts on the environment.

Regarding the question of whether a supermajority vote by the Town Board is required to countermand negative comments received from the Westchester County Planning Board pursuant to N.Y. General Municipal Law §239-m referral, the Applicant believes the answer is no. Pursuant to Westchester Administrative Code Section 277.61, a municipal agency may approve an application or rezoning that has received negative comments from the Westchester County Planning Board by simple resolution. §277.61(2) states that a municipal approving agency may not act contrary to the County Planning Board negative comments, except: "by the adoption of a resolution of such agency which action shall be subject to judicial review pursuant to the laws providing for the review of acts of such municipal agencies commenced within 30 days of its adoption." The conflict between GML §239-m(5), which requires a supermajority vote, and Westchester Admin. Code §277.61(2), which does not, has been reviewed by the court. The court held that because Westchester Admin. Code §277.61(2) was enacted subsequent to GML§239-m(5) as a "special law" it preempts GML §239-m(5). *See* 208 E. 30th St. Corp. v. Town of N. Salem, 88 A.D. 2d 281, 285-86, 452 N.Y. 2d, 904-05 (2d Dep't 1982).

**Comment 3-12:**

As noted in the letter to the County from the Federal Aviation Administration (FAA), the proposed location of the parking garage is within the runway protection zone (RPZ) for runway 16 at the County Airport. Because the County is responsible as a sponsor for grants received from the FAA, the FAA has recommended that the County "take action to the extent reasonable to discourage this development within the RPZ." Our conveyance of the FAA letter to you, with its strong recommendation against the change in North Castle zoning that would permit this development, is part of the County's obligation under the FAA grant requirements. (WCPB, 5/31/11)

**Response 3-12:**

Comment noted. The Applicant understands that, according to federal regulations, upon acceptance of federal assistance, an airport owner (in this case the County) becomes obligated to operate and maintain the airport to certain standards and requires airport owners to comply with assurances and obligations contained in the grant agreement. One of the assurances with which an airport owner must comply involves ensuring land uses proximate to the airport are 'compatible.' This assurance

requires the airport owner to take appropriate action, including the adoption of zoning laws to the extent reasonable, to restrict the use of land adjacent or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including the landing and take-off of aircraft. As such, Westchester County, as it states within its letter, is complying with its obligations under Grant Assurance 21, to protect and restrict [to the extent reasonable] the use of land adjacent to or in the immediate vicinity of the airport. Given the compliance information from the FAA, in the opinion of the Applicant, the project is a Compatible Land Use per FAA's definition.

It should be noted that the proposed project is not requesting a change of zoning—the IND-AA zoning district will remain—but is requesting that the IND-AA zoning district be amended to permit a parking garage as a principal use subject to the granting of a special permit.

**Comment 3-13:**

In light of all of the foregoing concerns identified with respect to the DEIS, we must oppose the Applicant's request for an amendment to the Town's Zoning Code to permit the construction of a parking garage in the IND-AA zoned area. Although we anticipate addressing our concerns to the Town Board, we take this opportunity to make our position clear. Obviously, the zoning amendment is indispensable for the proposed project to proceed. However, based on the information available to date, the DEIS provides neither sufficient analysis nor sufficient mitigation of adverse environmental impacts upon the Kensico Watershed to justify the threats posed by the project. (Richard J. Lippes, 5/31/11)

**Response 3-13:**

The Applicant has carefully considered the comments on potentially adverse environmental impacts to the Kensico Watershed and has made several substantive modifications to the Site Plan to further address these concerns. First, the building footprint as presented in the original DEIS did not impact any wetlands as delineated by the United States Army Corp of Engineers (USACE). Notwithstanding, the modified building footprint that is the subject of this FEIS has been reduced by approximately 6,000 square feet to avoid the wetland delineated by the Town's wetland consultant—a more restrictive boundary than the USACE boundary, and has been moved 7 to 30 feet (depending on location of measurement) farther away from the USACE-delineated wetlands (see USACE Jurisdictional Determination in **Appendix D**). As such, the building will not disturb **any** of the wetlands that were delineated by the Town's wetland consultant. Second, as discussed in Chapter 1, the Applicant is proposing to collect and treat stormwater from the project site and a portion of the adjacent site to the north—both currently without any stormwater treatment. Stormwater will be



collected via overland flow and roof drains and treated with multiple treatment mechanisms, including underground sand filters, pocket wetlands, sedimentation basins with deep sumps, and stormwater planters. Third, additional construction maneuvering area is being provided around the building to further minimize the potential site disturbance during construction to avoid adverse impacts related to stormwater runoff into the reservoir. In addition, the proposed project would incorporate a number of green design elements (discussed further in Chapter 1 of this FEIS), largely by virtue of its design as an enclosed automated parking facility, a significant environmental advantage over typical self-park garages. The proposed wetland enhancement program and landscape plan (both discussed in Chapter 1 of this FEIS) would further improve ecological diversity and functionality on the project site over existing conditions.

**Comment 3-14:** Any zoning change must be in accordance with a comprehensive plan (Town Law Section 263). The Town of North Castle Comprehensive Plan Update, adopted in 1996, states, in pertinent part, at page N-41:

Due to the importance of preserving the residential character of the Town and minimizing the impact of airport disturbance on neighboring residential communities, any expansion of the airport facilities and services leading to increased commercial flights and related noise is not recommended.

For reasons already stated, the proposed zoning amendment is inconsistent with the goals and objectives of the Town's Comprehensive Plan, as well as other regional laws and policies, including Resolution 245-2003 of the Westchester County Board of Legislators, N.Y.S. Assembly Resolution N. 1654, N.Y.S. Senate Resolution No. J5435m, which opposes any land use change which would tend to support an increase in the size of the Airport. (Richard J. Lippes, 5/31/11)

**Response 3-14:** As discussed above, the project site is not affiliated with the airport and the proposed parking facility will be privately owned and operated. Expansion of the airport is restricted by Westchester County's Terminal Capacity Agreement (see Airport Rules and Regulations in **Appendix I**) that limits the operating capacity of the airport to 240 passengers per half hour. The Applicant does not seek to void or revise this agreement. The proposed project would address an *existing* need for additional parking.

The proposed project will promote goals and objectives of the Town's Comprehensive Plan by developing in an existing office and industrial corridor in the Town, thereby preserving areas with a more dominant residential character, and incorporating numerous green features that

would minimize impacts to, and in various instances improve, environmental conditions (for example: traffic, emissions, and water quality). ‘Green’ or ‘sustainable’ design components of the proposed project are described in greater detail in Chapter 1 of this FEIS.

**Comment 3-15:**

*Spot Zoning* – Similarly, in an effort to downplay the growth-inducing impacts of the Amendment, the DEIS effectively concedes that the Applicant's goal is to engage in illegal “spot zoning.” As the Board knows, spot zoning is “the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area for the benefit of the owner of such property and to the detriment of other owners.” Yellow Lantern Kampground v. Town of Cortlandville, 279 A.D.2d 6,716 N.Y.S.2d 786, 788-89 (3d Dept. 2000), quoting Rodgers v. Village of Tarrytown, 302 N.Y. 115, 96 N.E.2d 731 (1951). The ultimate test is “whether the change is other than part of a well-considered and comprehensive plan calculated to serve the general welfare of the community.” Yellow Lantern, 716 N.Y.S.2d at 789 (citation omitted).

The DEIS essentially admits that the Applicant’s goal is to single out the Site. The DEIS asserts that the Site would be the only parcel that could benefit from the proposed zoning change. (See DEIS at 22-2.) Moreover, the proposed Zoning Amendment is inconsistent with the Town’s Comprehensive Plan. As the DEIS recognizes, “North Castle opposes any expansion of the airport.” (DEIS at 3-5.) The Town’s Comprehensive Plan unequivocally states that “any expansion” of the Airport is not recommended, stating at IV -41:

Due to the importance of preserving the residential character of the Town and minimizing the impact of airport disturbance on neighboring residential communities, any expansion of the airport facilities and services leading to increased flights and related noise is not recommended.

The Lead Agency should consider the propriety of the Applicant’s effort to single out its Site for special classification solely for its own benefit, and to the detriment of other owners. (Richard J. Lippes, 5/31/11)

**Response 3-15:**

As set forth above, the DEIS does not state that the project site is the only parcel that could benefit from the proposed zoning change. The DEIS expressly states that there are “existing parcels that meet these development criteria.” (See DEIS at 22-2).

It is the Applicant’s opinion that the proposed zoning amendment is not “inconsistent” with The Town’s Comprehensive Plan Update of 1996 (the “Plan”). The Plan stresses the importance of reducing traffic

congestion and improving traffic safety, which would be one of the results of the proposed parking facility. The Plan also recommends that office and industrial facilities should be located to take best advantage of North Castle's access to major highways and Westchester County Airport. By locating near I-684 and facilitating a reduction in traffic to and from the airport and relieving the over capacity parking demand at the airport, the proposed parking facility would help maintain the existing office and industrial tax base.

The proposed parking facility will not be an expansion of the airport. It will be a privately owned and operated facility, and will not be located on the airport property. Moreover, the parking facility will not cause any increase in the number of flights or an expansion of on-site airport services.

**Comment 3-16:**      *Segmentation* – Since a portion of 7 New King Street (Lot 13 A) owned by JAM Airport, LLC is being used for the project, in addition to a subdivision approval for Lot 13 A [discussed above], the DEIS should address what is contemplated for the balance of Lot 13 A and its subdivision. 6 N.Y.C.R.R. Sections 617.2 (ag) and 617.3 (g)(1). (Richard J. Lippes, 5/31/11)

**Response 3-16:**      There are no plans being contemplated for the balance of Lot 13A. To clarify, Lot 13A will not be subdivided. An easement on a portion of Lot 13A for purposes of stormwater management practices has been acquired and is filed with Westchester County(see **Appendix B**).

**Comment 3-17:**      *The Project Site* – There are two parcels which are in the application to achieve the 30% maximum coverage requirement: 11 King Street, Parcel 14B which is also known on the tax assessment map as Section 3 Block 14, lot 14B which appears to be owned by 11 New King Street, LLC, which is 2.47 acres; and, a 0.87 acre portion of 7 New King St., which is 2.47 acres; and, a 0.87 acre portion of 7 New King St., which is a 4.20 acre parcel owned by Jam Airport LLC known on the tax assessment map as section 3, Block 4, Lot 13A.

Since Lot 14B is within the 300 foot buffer from the Reservoir and another portion is in a Town regulated wetland as well as a Federal watercourse, and steep slope which only permits 25% of the land area in such regulated areas to be used for purposes of FAR it is apparent that 0.86 acre of Lot 13A owned by Jam Airport LLC was needed to achieve the combined land area of 3.34 to achieve the FAR of 267,000 square feet. (Richard J. Lippes, 5/31/11)

**Response 3-17:** It should be noted that the proposed zoning amendment would allow impervious surface coverage up to 60 percent. The impervious surface coverage and FAR of the proposed parking facility presented in the DEIS was calculated based solely on the 2.47-acre area of Lot 14B. As discussed in the DEIS, the proposed project would comply with this regulation. Since the building footprint of the Modified Project (discussed in Chapter 1 of this FEIS) has been reduced significantly, the proposed project would continue to comply with this regulation. Please note, section 213-33 (Article VII, “Special Permit Uses” does not specify FAR, rather it indicates: “(10) FAR is not applicable within the limitations set forth above.” Therefore, in the Applicant’s opinion, the proposed project fully complies with existing and proposed zoning with respect to FAR.

**Comment 3-18:** *“Open Area Development”* – Section 213.21 of the Town of North Castle Zoning Code requires 200 feet of street frontage on Old King Street. The Project Site has only 24 feet of frontage or 12% of the required frontage or an 88% reduction or variance from the requirement. Footnote “O” to the 200 frontage requirement states “These requirements may be varied or reduced in connection with the approval of the site plan by the Planning Board where the size and/or shape of existing lots may warrant or require it.” In addition to a potential invalid usurpation of powers of the zoning board, this lack of frontage nevertheless constitutes an “open area development” under NY Town Law section 280-a. (For a general discussion of Open Area Developments, see Albert J. Pirro, Jr., “The Open Development Area As A Planning and Zoning Device,” The Westchester County Bar Journal, Spring 1988). (Richard J. Lippes, 5/31/11)

**Response 3-18:** See Response 3-5 and 3-18.

According to the Town of North Castle’s definition of frontage, the project site has frontage on two streets. First, the 50-foot wide frontage on New King Street, and second, the approximately 190-foot frontage on NYS Route 120. The site is a legal non-conforming use. Therefore the frontage requirements listed in this comment are not applicable to this site. In addition, as stated by the commenter, the Town Code allows for flexibility in frontage requirements based on case-by-case site conditions whereby “these requirements may be varied or reduced in connection with the approval of the Site Plan by the Planning Board where the size and/or shape of existing lots may warrant or require it.”

**Comment 3-19:** NY Town Law section 280-a defines the word “access” to mean that the plot on which such structure is proposed to be erected directly abuts on

a street or highway and has sufficient frontage “to allow the ingress and egress of fire trucks, ambulances, police cars and other emergency vehicles, and, a frontage of fifteen feet shall presumptively be sufficient for that purpose.” Town Law section 280-a (5). Consequently, Town Law section 280-a mandates the provision of improved and adequate access as issuance of a building permit. The constitutionality of section 280-a was sustained in *Brons v. Smith* 304 NY 164, 169-170 (1952). (Richard J. Lippes, 5/31/11)

**Response 3-19:** The proposed ingress and egress of the project site has been designed in accordance with all applicable emergency access standards. The Applicant has consulted with the Town building inspector throughout the design process to ensure adequate emergency access would be provided. Even though the existing access drive would continue to be used for the proposed project, it would be improved and widened to accepted standards, where needed (see further discussion in Chapter 1 of this FEIS). The access drive would be 24 feet wide.

**Comment 3-20:** The issuance of a building permit has two prerequisites. First, the street or highway must meet the requirements of section 280-a(1); and second, must be suitably improved or such improvements must be bonded. NY Town Law section 280-a(1). The mandate that the street or highway be suitably improved must comply with standards or specifications of the Town Board. NY Town Law section 280-a(2). An appeal from a denial of the building permit may, pursuant to NY Town Law section 280-a(3) to the Zoning Board of Appeals which Board must use the same standards referred to in NY Town Law section 267-b(3), the “balancing of hardship” standard and criteria therein. (Richard J. Lippes, 5/31/11)

**Response 3-20:** Site access will be achieved via New King Street. As indicated in the Traffic Impact Study presented in Chapter 13, “Traffic and Transportation,” of the DEIS, New King Street would have adequate capacity to serve the proposed project and no queuing of private automobiles or shuttle buses would occur offsite. No offsite improvements along New King Street would be required. Further, site access has been designed in accordance with all applicable emergency access design standards (see Response 3-19).

**Comment 3-21:** An alternative to the access requirements of Town Law sections 280-a(1) and (2) exist where the Town Board has, by resolution created one or more “open development areas” pursuant to section 280-a(4). However, not only must the resolution include the subject property as an “open development area” but the resolution must first be referred to the Planning Board by the Town Board for a recommendation. Only after

this process is complete is the Planning Board authorized to provide special limitations prescribed by general or special rules of the Planning Board. *Worthington v. Planning Board of the Town of Carmel*, 131 A.D.2d 466,515 NYS2d 880 (2d Dep’t 1987). (Richard J. Lippes, 5/31/11)

**Response 3-21:** The project site has direct access to and from New King Street. Therefore, no open development areas or rights-of-way or easements would be required for site access. See Response 3-18.

**Comment 3-22:** “Flag Lot” Frontage on Old King Street – The Site Plan indicates that the Project Site is a “Flag Lot” (See DEIS Figure 2-3). While the Zoning Code of the Town of North Castle does not prohibit developments on “flag lots”, it remains that the IND-AA Zone requires 50 feet of frontage along Old King Street where the subject site only has 24 feet which is the only access point to the project designed to accommodate airport passenger vehicles entering and exiting the site as well as the projected 14 bus trips to and from the airport during am and pm peak hours. (Richard J. Lippes, 5/31/11)

**Response 3-22:** It should be noted that the project site has 50-foot frontage along New King Street and the proposed driveway will be 24 feet wide. See Response 3-18

**Comment 3-23:** Further, the 24 foot access frontage runs 240 feet to the majority of the project site where the 267,000 square foot parking structure with accommodation for 1,450 vehicles will be housed. Importantly, the access drive is over a regulated culvert which appears to be a protected watercourse. (Richard J. Lippes, 5/31/11)

**Response 3-23:** It should be noted that the project site has 50-foot frontage along New King Street and the proposed project would have a 24-foot-wide driveway. The Modified Project would have a reduced gross floor area and would accommodate slightly less vehicles than proposed in the DEIS. The proposed project would utilize the existing access drive which currently travels over a regulated watercourse. The proposed project would not require any modifications to the existing culvert and any improvements within the regulated watercourse would not proceed without receiving approval from applicable agencies, such as NYCDEP. Since 2010, the Applicant has been in communication with NYCDEP and requested their guidance on the site planning and design of the proposed project, with the objective of meeting the NYCDEP’s permit requirements. Although several pre-application meetings were held earlier in the design process, the Applicant intends to schedule an addition meeting with NYCDEP in October/November 2014 to re-

familiarize NYCDEP with the details of the proposed project, and review with the agency the modifications that were made in response to earlier comments.

The applicant acknowledges that the NYCDEP will require a variance from the watershed rules and regulations due the proposed additional impervious surfaces within the limiting distance of a NYCDEP-regulated watercourse and must also review the SWPPP in accordance with its regulatory program. As such, changes to the project and/or its stormwater management plan may be required to address NYCDEP's review.

**Comment 3-24:** While fifteen (15) feet has under NY Town Law section 280-a is presumptively adequate frontage for an "Open Development Area" there remains a need for approval by either the North Castle Town Board or the Zoning Board which sets forth approval standards for an "Open Development Area" in either instance. This is not discussed in the DEIS. (Richard J. Lippes, 5/31/11)

**Response 3-24:** See Response 3-21.

**Comment 3-25:** The Federal Aviation Administration and Westchester County has indicated that the proposed project is located within the Westchester County Airport Runway Protection Zone (RPZ) for Runway 16 and recommends that the Town not approve the requested zoning amendments to permit a parking garage at the subject location. The FEIS should provide a description and summary of the FAA RPZ regulations. (Adam Kaufman, 6/1/11)

**Response 3-25:** See Response 3-7. The RPZ is a ground-based (as opposed to airspace) regulated area that the FAA encourages to be kept clear of buildings in order to enhance the protection of people and property. The project site is within the RPZ for Runway 16, but is outside the central portion of the RPZ. As such, the proposed parking structure would not be considered an obstruction to this runway. See the Off Airport Parking Garage Height Limitation Study prepared by DY Consultants provided in **Appendix J** for further discussion. As stated above, the FAA issued a "No Hazard" determination for the proposed project (see **Appendix K**).

**Comment 3-26:** The proposed zoning changes would permit a 60-foot structure where the underlying IND-AA district permits a maximum height of 30 feet. Other zoning districts permit a maximum of 55 feet for structured parking. The Applicant should provide the rationale for permitting the proposed additional height in the IND-AA District. (Adam Kaufman, 6/1/11)

- Response 3-26:** In the Applicant's opinion, 60 feet is the height at which parking structures within the IND-AA zoning district would have minimal impacts on visual resources and community character. Because the IND-AA district is limited to a small area in the southern portion of the Town adjacent to Westchester County Airport and is characterized largely by small scale business and industrial uses, parking facilities up to 60 feet in height would be appropriate for this setting, in the Applicant's opinion. Nonetheless, the Planning Board, as Lead Agency, will closely review and evaluate the visual impacts associated with the height of the proposed structure and the compatibility of the structure with the surrounding neighborhood.
- Comment 3-27:** The applicant should address how the inclusion of the portion of 7 New King Street (Lot 13A) within the project site effects the future development potential of that lot. A zoning assessment of Lot 13A should be provided. (Kellard Sessions, 6/1/11)
- Response 3-27:** The portion of Lot 13A that would be included as part of the drainage easement for the proposed project is located entirely within the 300-foot reservoir stem limiting distance (aka buffer) setback. As such, its development potential is already limited under existing conditions. The proposed stormwater management facilities will also treat a portion of Lot 13A (existing roof runoff). If and when any such proposal is presented to the Town for redevelopment of Lot 13A, it will need to conform to any then-applicable regulations. Development on Lot 13A, if any, is not the subject of this Application. Therefore, any zoning assessment for future development of Lot 13A is not relevant to this review.
- Comment 3-28:** Any existing easements/covenants/restrictions on Lots 13A and 14 should be identified within the FEIS text and provided on the plans. (Kellard Sessions, 6/1/11)
- Response 3-28:** As discussed in Chapter 2, "Project Description," of the DEIS, Lot 14B is not subject to any easements/covenants/restrictions other than existing zoning regulations, the 300-foot reservoir stem setback on a portion of the site, and the easement from the Town of North Castle that allows the property owner to maintain site access through the Town's right-of-way along New King Street. Similarly, Lot 13A is subject to IND-AA zoning regulations, the 300-foot reservoir stem setback restrictions, and maintains site access to New King Street. Full title reports for each property are provided in **Appendix C**. The proposed drainage easement associated with the stormwater management system for the proposed project on Lot 13A is included in **Appendix B**. The easement between



the Applicant and the Town regarding access through the Town's right-of-way along New King Street is included in **Appendix N**. Regarding the potential loss of development potential on the adjacent parcel to be used for stormwater management, the use of this land for this purpose is the subject of a formal/legal agreement between two private parties who are knowingly entering the agreement. Due to existing constraints on this adjacent parcel – including the presence of the 300 foot offset from a NYSDEP reservoir stem, the perennial watercourse, and steep slopes – it is not expected that use of a portion of the adjacent lot will substantially reduce development potential on that lot that is not already constrained under existing conditions. These issues are discussed in two internal memos contained in **Appendix M** of this FEIS.

**Comment 3-29:** Similarly, the Project flatly contradicts the Town's Comprehensive Plan. The Town's Comprehensive Plan unequivocally establishes that “any expansion” of the Airport is not recommended. The proposed zoning amendment would violate established development parameters both within the IND-AA District, as well as the Town as a whole. This includes a maximum permissible height, as well as building coverage allowances, which would surpass the limitations applicable in any District in the Town. Respectfully, it would set a dangerous precedent, which the DEIS ignores. Similarly, the Project goes against the established policies of Westchester County, as well as the New York State Legislature, in opposition to any expansion of the Airport. (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 3-29:** See Responses 3-4, 3-14, and 3-26.

**Comment 3-30:** The proposed zoning amendments represent a dramatic departure from the existing requirements of the IND-AA zone. The amendments would:

- double the maximum allowable height, from 30 feet to 60 feet;
- double the maximum allowable building coverage, from 30% to 60%;
- eliminate the Floor Area Ratio (FAR) requirement; and
- reduce the side yard set back, from 50' to 10'.

The Lead Agency needs to consider not only other parcels that could be subject to the Amendment, but also the impacts that might result in other Districts throughout the Town from the precedent set by the adoption of the Amendment. (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 3-30:** The proposed zoning amendment would only apply to parking structures as a principal use with a special permit. As-of-right permitted

uses in the IND-AA district would continue to be subject to existing zoning regulations. The bulk and dimensional regulations for the IND-AA district would not be revised.

The proposed zoning text amendment was modeled after the text amendment that was adopted by the Town Board to enable the construction of a parking structure for MBIA.

Nonetheless, the Planning Board, as Lead Agency, will closely review and evaluate the visual impacts associated with the height of the proposed structure and the compatibility of the structure with the surrounding neighborhood.

**Comment 3-31:**

In an effort to downplay the growth inducing impacts of the Amendment, the DEIS effectively concedes that the Applicant's goal is to engage in illegal "spot zoning." (See DEIS at 22-2.) As the Board knows, spot zoning is "the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area for the benefit of the owner of such property and to the detriment of other owners." *Yellow Lantern Kampground v. Town of Cortlandville*, 279 A.D.2d 6, 716 N.Y.S.2d 786, 788-89 (3d Dept. 2000), quoting *Rodgers v. Village of Tarrytown*, 302 N.Y. 115, 96 N.E.2d 731 (1951). The ultimate test is "whether the change is other than part of a well-considered and comprehensive plan calculated to serve the general welfare of the community." *Yellow Lantern*, 716 N.Y.S.2d at 789 (citation omitted).

The DEIS essentially admits that the Applicant's goal is to single out the Site. The DEIS asserts that the Site would be the only parcel that could benefit from the proposed zoning change. (See DEIS at 22-2.) Moreover, the proposed Zoning Amendment is inconsistent with the Town's Comprehensive Plan. As the DEIS recognizes, "North Castle opposes any expansion of the airport." (DEIS at 3-5.) The Town's Comprehensive Plan unequivocally states that "any expansion" of the Airport is not recommended, stating:

Due to the importance of preserving the residential character of the Town and minimizing the impact of airport disturbance on neighboring residential communities, any expansion of the airport facilities and services leading to increased flights and related noise is not recommended.

(Comprehensive Plan at IV-41.) (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 3-31:**

See Responses 3-4, 3-14, and 3-15.

- Comment 3-32:** The Lead Agency should consider the propriety of the Applicant's effort to single out its Site for special classification solely for its own benefit, and to the detriment of other owners. (Michael D. Zarin and Daniel M. Richmond, 6/1/11)
- Response 3-32:** See Response 3-15.
- Comment 3-33:** The Town Board lacks authority to approve the Project at the instant flag lot Site. Section 213-21 of the Town Code ("Schedule of Office and industrial District Regulations") establishes that there is a 200 foot frontage requirement in the IND-AA District. The Town Board lacks the authority to grant a variance from the frontage requirements. While Section 213-21 purports to give the Planning Board authority to vary or reduce this requirement in connection with site plan review, again, under the proposed zoning, the Planning Board will not be conducting site plan review.
- The Town Board has no lawful ability to grant a variance from the frontage requirements. *Buckley v. Town of Wappinger*, 12 A.D.3d 597, 785 N.Y.S.2d 98, 99 (2d Dept 2004) (holding that Town Board illegally "usurped the jurisdiction of the local zoning authorities" when it entered into stipulation of settlement that effectively granted a zoning variance). (Michael D. Zarin and Daniel M. Richmond, 6/1/11)
- Response 3-33:** See Responses 3-1, 3-5, 3-18, 3-22, and 3-23.
- Comment 3-34:** The Town's Zoning Code does not permit parking structures within this district as either a principal or accessory use. Clearly this use was never contemplated when the zoning code was drafted and any amendment to add such a use should be carefully considered. A zoning change that will accommodate this request may have unanticipated consequences with regard to other submission in this zone that will contribute to growth that is not desirable or beneficial. (Peter J. Tesei, 5/31/11)
- Response 3-34:** The proposed project includes a proposal to amend the existing IND-AA zoning district regulations to allow parking facilities pursuant to a Special Permit. Permitted uses in the IND-AA district include businesses and professional offices, light industrial uses, motels, and airport uses at Westchester County Airport. It is the Applicant's opinion that a vehicle parking structure is compatible with those surrounding uses and is not totally different from existing and permitted uses. As a Special Permit within the IND-AA, the Planning Board would have the discretion to determine whether this use is desirable or beneficial to the community.

**Comment 3-35:** As this board knows, the proposed zoning rather radically departs from the existing requirements of the zone. It doubles the allowable height from 30 to 60 feet. It doubles the maximum allowable buildable coverage from 30 to 60 percent. Eliminates any FAR and reduces setback. And again the North Castle Environmental Quality Review Act Law, to its credit, specifically mandates the site. The EIS sets forth a description of all growth inducing assets of the proposed action where applicable and significant. Here we would submit that the precedent that would be created by the zoning amendment for additional intense development in this zone would be triggered. (Zarin, 5/2/11)

**Response 3-35:** The proposed zoning amendment would allow a parking structure in an existing Industrial District Among the types of uses permitted currently in the Industrial District are:

- *“Industrial uses using electric power and natural gas, and/or propane, subject to approval of a special use permit and in compliance with the conditions set forth in §§ 213-26 through 213-32 of this chapter, where the use is conducted within fully enclosed buildings and the nature of the use is such that normally it will not be dangerous to the comfort, peace, enjoyment, health or safety of the community and that it will be in harmony with the appropriate and orderly development of the district in which it is situated and adjacent district\*”*
- *“Warehouses, excluding truck storage or truck terminal facilities.*
- *“Taxi and limousine dispatch facilities pursuant to § 213-24J of the Town Code.”*

The above-quoted uses are permitted Industrial uses in accordance with the Zoning Ordinance and, in many ways, could result in greater impact to the area than an automated parking garage as a principal use.

While the dimensional constraints applicable to the proposed parking structure would increase the allowable height of this building, the Zoning Ordinance does not consider parking to be included in Floor Area Ratio, as noted below:

*FLOOR AREA RATIO*

*The gross floor area in square feet of all buildings on a lot divided by the area of such lot in square feet.*

*FLOOR AREA, GROSS*

*The sum of the horizontal areas of the several stories of the building or buildings, excluding any floor area used for off-street parking or loading purposes (except for one- and two-family residences), measured from the exterior walls or, in the case of a common wall separating two buildings, from the center line of such a common*

*wall, and including any two-story or any enclosed porch, or one having a roof and capable of being enclosed. See the definition of "basement" for exclusion of basement/mechanical areas in nonresidential buildings from "floor area, gross." For one- and two-family residences, any attic space with a floor to ceiling height of 7.5 feet or greater shall be included as part of gross floor area, as shall those portions of any basement with a floor to ceiling height of 7.5 feet or greater if the basement is considered a "story" in accordance with one of the following three alternative measurements:*

*[Amended 6-30-1998 by L.L. No. 10-1998; 6-30-2004 by L.L. No. 5-2004]*

- A. Where the finished surface of the floor above the basement is more than six feet above average grade.*
- B. Where the finished surface of the floor above the basement is more than six feet above the finished ground level for more than 50% of the total building perimeter.*
- C. Where the finished surface of the floor above the basement is more than 12 feet above the finished ground level at any point along the building perimeter.*

Therefore, since areas used for off-street parking does not constitute "Gross Floor Area", the Floor Area Ratio requirements do not apply to this use.

The Town previously amended its Zoning Ordinance to enable MBIA to construct a parking structure up to 60 feet in height, which is the proposed limit on this proposed text amendment to the Industrial District. Importantly, the Industrial District is adjacent to the airport for which this parking structure will provide needed parking space. Further, the Industrial District is not mapped in multiple locations in the Town. The other IND-A District is situated next to the North White Plains train station.

The Applicant believes that the development of a parking structure that itself does not generate any parking demand would not properly be characterized as an "intense development."

The Town Board will need to evaluate whether the proposed amendments are appropriate. The Planning Board has concern with the proposed zoning text amendment permitting a 60-foot parking garage within the IND-AA Zoning District.

### 3.4 VISUAL RESOURCES

**Comment 4-1:** We try to at least picture what the height and mass and density in a leaf off condition would be. I think there was one good photograph that really captured that. One of the winter photographs. It's a large, massive structure that's really going to be in the face of those -- those houses, and really changes the character of that neighborhood. And while they were, I think, representative and accurate photosimulations from Route 120 and from 684, it was really not the same type of treatment from those houses to really capture the character, the photosimulation, the type of work that your consultants and we all know how to perform. (Michael Zarin, 5/2/11)

**Response 4-1:** The nearest existing residences are approximately 600 feet away from the location of the proposed parking structure. Although the proposed structure would be 59 feet above average grade, the eastern elevation (along New King Street) would actually be slightly less at about 55 feet above grade. In the Applicant's opinion, the lower height from the eastern elevation and its distance from the nearest residences, combined with existing mature vegetation, would significantly limit the proposed project's visual impact on residential properties. It should be noted that there are existing office buildings and parking areas between the project site and existing residences. See the *Supplemental Visual Analysis* in Response 4-2 for further discussion on visual impacts from area residences. Nonetheless, the Planning Board, as Lead Agency, will closely review and evaluate the visual impacts associated with the height of the proposed structure and the compatibility of the structure with the surrounding neighborhood.

**Comment 4-2:** The visual impact of the 56-foot high structure was limited in the DEIS to ¼ mile. Because the structure will impact homes on Old King Street and in Greenwich, the DEIS provides insufficient analysis of the project's potential adverse visual impacts. (Richard J. Lippes, 5/31/11)

**Response 4-2:** As requested by the commenter, a Supplemental Visual Impact Analysis was conducted that expanded the ¼ mile study area radius to ½ mile to include in the study area the residences on Old King Street in Greenwich, CT.

This study analyzed the potential visibility of the proposed project from several vantage points (see **Figures 2-1** through **2-4**). The analysis used USGS topographic maps, aerial photographs, study area visits, and photographs taken during both leaves-on and leaves-off conditions.

Four locations were identified to illustrate the relationship of the project site to the public rights-of-way within the nearby residential neighborhoods. **Figure 2-1**, “Key Plan,” shows the four locations (A-D) along with the lines of the profiles illustrated in **Figures 2-2** and **2-3**. These locations were considered to be the most likely locations where the project could be viewed based on topography, existing vegetation and distance from the proposed project. In addition, photos E and F (**Figure 2-4**) are included to document the views from the relative topographic high points within the ½-mile study area.

As indicated by the profiles and photographs in **Figures 2-2** and **2-3**, during leaves-on conditions views of the proposed project would be imperceptible from the residential properties within ½ mile of the proposed project. Only one vantage point along the public right-of-way of King Street was identified where the uppermost points of the proposed project may be visible beyond the parking lot in the foreground and dense vegetation in the distance (Viewpoint C) in the leaves-on condition.

In the winter/leaves-off condition the proposed project may be visible from a few vantage points on nearby residential properties located on the west side of King Street in Greenwich, CT. However, the visibility would be minimal due to the varied topography and dense layers of deciduous tree branches as shown in the winter view photos from viewpoints B and C.

According to a program policy issued on July 31, 2000 by New York State Department of Environmental Conservation (NYSDEC) entitled “Assessing and Mitigating Visual Impacts” (DEP-00-2), visibility alone does not necessarily determine a significant adverse impact. This policy guidance was developed by NYSDEC to assist DEC staff in assessing the significance of potential visual impacts from state-regulated facilities. While DEP-00-2 does not replace the local responsibility and discretion for determining significance under SEQRA, the policy is often used by those conducting environmental impact analyses because it provides useful guidelines—guidelines that are applicable to this application.

DEP-00-2 also provides guidance with respect to the definition of “visual impact” and “aesthetic impact.”

A “visual impact” occurs when “the mitigating effects of perspective do not reduce the visibility of an object to insignificant levels. Beauty plays no role in this concept.” (DEP-00-2, p. 10).

“Aesthetic impact occurs when there is a detrimental effect on the perceived beauty of a place or structure. *Mere visibility, even startling*

*visibility of a project proposal, should not be a threshold for decision making.* Instead a project, by virtue of its visibility, must clearly interfere with or reduce the public's enjoyment and/or appreciation of the appearance of an inventoried resource." {Emphasis added}. (DEP-00-2, p. 9).

Nonetheless, the Planning Board, as Lead Agency, will closely review and evaluate the visual impacts associated with the height of the proposed structure and the compatibility of the structure with the surrounding neighborhood.

**Comment 4-3:**

The existing character of the immediate study area, which is dominated by office buildings and transportation uses (I-684 and Westchester County Airport), does not excuse the absence of a discussion in the DEIS of the visual impacts upon other zoned areas and potential from vantage points such as Greenwich, CT. The landscape plan along property boundaries does not shield the building at a height anything close to 56 feet. (Richard J. Lippes, 5/31/11)

**Response 4-3:**

As discussed above, in response comments, additional visual analyses were conducted, including enlarging the study area from ¼ mile to a ½ mile study area radius. See Chapter 2, "Probable Impacts of the Modified Project," for a detailed description and documentation of the Supplemental Visual Impact Analysis.

While the proposed landscaping plan cannot completely shield views of the proposed project to the full 59-foot height, the plan does maximize any and all opportunities to plant tall-growing deciduous and evergreen trees. Opportunities for planting large trees or significant berms are limited due to the decision by the Applicant to avoid disturbance of wetlands, the area needed to capture and treat stormwater runoff onsite, and the irregular shape of the project site. It should be recognized that existing vegetation of adjacent properties on either side of the entry drive would function as additional screening from New King Street. In addition, the proposed structure would be located over 200 feet away from the New King Street public right-of-way and over 60 feet from the NYS Route 120 right-of-way.

Nonetheless, the Planning Board, as Lead Agency, will closely review and evaluate the visual impacts associated with the height of the proposed structure and the compatibility of the structure with the surrounding neighborhood.



**Comment 4-4:** Visual impacts may form the basis of a denial for SEQRA review purposes. See, *Lane Construction Corp. v. Cahill*, 270 A.D.2d 609,704 N.Y.S.2d 687 (3d Dept. 2000). (Richard J. Lippes, 5/31/11)

**Response 4-4:** As stated above and in response to comments, a Supplemental Visual Impact Analysis was conducted. The details of the analysis are included in Chapter 2, “Probable Impacts of the Modified Project,” of this FEIS.

As stated in the NYSDEC guidelines “Assessing and Mitigating Visual Impacts” (DEP-00-2), “Mere visibility, even startling visibility of a project proposal, should not be a threshold for decision making.” As such, the study concluded that there would be minimal visibility of the proposed project from the public rights-of-way bordering the residential properties within a ½-mile study area and the proposed use would be compatible with its immediate context.

Nonetheless, the Planning Board, as Lead Agency, will closely review and evaluate the visual impacts associated with the height of the proposed structure and the compatibility of the structure with the surrounding neighborhood.

**Comment 4-5:** The DEC has clearly indicated that municipalities have the responsibility to consider impacts of a proposal, even if they fall outside their jurisdictional boundaries:

Does a municipal board have to consider extraterritorial environmental impacts, for example: impacts occurring in an adjoining municipality?”

Yes. For example, a planning board reviewing a cellular communications tower visible from a neighboring community should consider the aesthetic impact of the tower on the neighboring community....[Another] example would be a community reviewing a shopping plaza that generates traffic on an adjoining community’s roadway system. In that case, the host community’s review should consider the traffic on the adjoining community.

(SEQR Handbook at 177.) The DEIS, however, trivializes the visual and community character impacts the Project would have on the nearby residential community in Greenwich. (Richard J. Lippes, 5/31/11)

**Response 4-5:** In response to this and similar comments, an additional visual analysis has been conducted. See Chapter 1, “Description of Modified Project,” for description and documentation of the Supplemental Visual Impact Analysis.

**Comment 4-6:** The DEC has clearly indicated that municipalities have the responsibility to consider impacts of a proposal, even if they fall outside their jurisdictional boundaries:

Does a municipal board have to consider extraterritorial environmental impacts, for example: impacts occurring in an adjoining municipality?"

Yes. For example, a planning board reviewing a cellular communications tower visible from a neighboring community (SEQR Handbook at 177.) The DEIS, however, trivializes the visual and community character impacts the Project would have on the nearby residential community in Greenwich. (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 4-6:** See Responses 4-2 and 4-5.

**Comment 4-7:** The DEIS irrationally downplays, for example, the Project's visual impacts on the proximate residential community, stating that "[t]here are also some nearby residential uses, but these uses are typically found interspersed among dense vegetation that would screen views of the parking facility." (DEIS at 4-2). It similarly states that the homes on King Street "are generally surrounded by dense vegetation and allow for few if any views of the project site and existing buildings." (DEIS at 4-4.) The DEIS provides no analyses to support these statements. (Richard J. Lippes, 5/31/11)

**Response 4-7:** In response to this and similar comments, an additional visual analysis was conducted. The Supplemental Visual Impact Analysis (See Chapter 1, "Description of Modified Project,") provides the requested analysis. The analysis indicates that the existing vegetation does provide significant screening of the project site. While during the worst case winter/leaves-off condition the proposed project would be minimally visible. However, the muted tones of the proposed facility's façade would allow it to blend in with the dense branching of the exiting mature vegetation. During the leaves-on conditions, no portion of the building would be visible.

**Comment 4-8:** The DEIS irrationally downplays, for example, the Project's visual impacts on the proximate residential community, stating that "[t]here are also some nearby residential uses, but these uses are typically found interspersed among dense vegetation that would screen views of the parking facility." (DEIS at 4-2). It similarly states that the homes on King Street "are generally surrounded by dense vegetation and allow for few if any views of the project site and existing buildings." (DEIS at 4-

4.) The DEIS provides no analyses to support these statements. (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 4-8:** See Response 4-7.

**Comment 4-9:** The DEIS, for example, provides no photo-simulation to show how the Project would appear from King Street in Connecticut. It also does not consider conditions during winter/leaves off condition, when the vegetation that ostensibly provides screening is not there. (Richard J. Lippes, 5/31/11)

**Response 4-9:** In response to this comment, an additional visual analysis was conducted (see Chapter 1). **Figure 2-1** of the Supplemental Visual Impact Analysis shows the four locations (A-D) along with the lines of the profiles illustrated in **Figures 2-2** and **2-3**. These locations were considered to be the most likely locations where the project could be viewed based on topography, existing vegetation, and distance from the proposed project.

Profiles A, B, C and D illustrate that the proposed project would not rise above the canopies of the existing mature vegetation when viewed from the ground at eye level at each of the four locations. This is in part due to existing topography. During winter/leaves-off conditions the proposed project may be minimally visible from locations B and C but the muted tones of the building's façade would be camouflaged by the dense branching of the existing deciduous trees.

**Comment 4-10:** The DEIS, for example, provides no photo-simulation to show how the Project would appear from King Street in Connecticut. It also does not consider conditions during winter/leaves off condition, when the vegetation that ostensibly provides screening is not there. (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 4-10:** See Response 4-9.

**Comment 4-11:** The reality is that this nearly sixty foot (60') Project would loom over the residences on King Street in Greenwich year round. Obviously, this impact would be compounded if other projects seek to develop in the IND-AA District in line with the expanded bulk requirements under the proposed zoning amendment. (Richard J. Lippes, 5/31/11)

**Response 4-11:** The proposed structure will be approximately 600 feet away from the nearest residences and will not significantly affect the views from these residences. It should be noted that the bulk and dimensional requirements under the proposed zoning amendment would apply only to the development of a parking structure. Under the proposed zoning

amendment, the development of a parking garage could not occur as-of-right, but would require a special permit and would be required to go through the SEQRA process to assess significant adverse impacts. Assessment of impacts of any future projects would be addressed when a project is proposed and cannot be addressed at this time.

It should also be noted that the properties along New King Street are fully developed with limited potential for additional significant development. As described in the DEIS and this FEIS, the proposed parking structure responds to an existing need for parking at Westchester County Airport (See Chapter 1, "Description of Modified Project," of this FEIS). There is not expected to be any additional significant demands for parking in the study area that would result in a proliferation of parking structures. Most significant is the fact that, as described in the DEIS and Response 2-1 of this FEIS, there are multi-agency stipulations and agreements in effect that limit expansion of the airport.

Nonetheless, the Planning Board, as Lead Agency, will closely review and evaluate the visual impacts associated with the height of the proposed structure and the compatibility of the structure with the surrounding neighborhood.

**Comment 4-12:** The reality is that this nearly sixty foot (60') Project would loom over the residences on King Street in Greenwich year round. Obviously, this impact would be compounded if other projects seek to develop in the IND-AA District in line with the expanded bulk requirements under the proposed zoning amendment. (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 4-12:** See Response 4-11.

**Comment 4-13:** The DEIS also ignores the community character impacts the Project would have on the adjacent residential community in Greenwich. It incorrectly states, for example, that "[t]he area immediately surrounding the project site is dominated by transportation, business, and commercial land uses," completely ignoring area residents. (DEIS at 3-1.) In contrast, the DEIS is sensitive to North Castle's desire to protect its single family residential neighborhoods, noting that "the Town desires to protect the qualities of a rural community or 'quiet suburb', characterized largely by low- to medium-density single-family neighborhoods." (DEIS at 3-5.) It is unclear why the immediately proximate residential neighborhood in Greenwich does not deserve the same consideration. (Richard J. Lippes, 5/31/11)

**Response 4-13:**

This comment refers to the residential properties along King Street, none of which are immediately adjacent to the project site. These residential properties are however within or immediately adjacent to the study area. The statement cited above from DEIS page 3-5 was provided in the context of describing the Town's objection to expansion of the airport, and to indicate the necessity of directing growth in appropriate areas to preserve the rural and suburban qualities of the Town. The proposed parking facility would be within an industrial zoning district in an area characterized by office uses, heavily traveled highways, and a regional airport. Therefore, in the opinion of the Applicant this is an appropriate location for a parking facility.

It should be noted that Chapter 3, "Land Use, Zoning, and Public Policy," of the DEIS included a description of the land uses in the area referred to in this comment: "The northern and eastern periphery of the study area (i.e., the portion largely within Greenwich, CT) is predominantly characterized by rural and suburban land uses. The majority of this area comprises low- to medium-density single-family residential development. Other land uses include small agricultural uses such as nurseries and farm stands; a church; and undeveloped wooded areas. These land uses are located along King Street near the intersection of Bedford Road." (DEIS pg. 3-2)

Although it is difficult to apply a quantitative methodology to determine impact on community character, it is a relevant and important concern in an environmental review such as this. According to the SEQRA Handbook published by NYSDEC, "Courts have supported reliance upon a municipality's comprehensive plan and zoning as expressions of the community's desired future state or character. (See *Village of Chestnut Ridge v. Town of Ramapo*, 2007.) In addition, if other resource-focused plans such as Local Waterfront Revitalization Plans (LWRP), Greenway plans or Heritage Area plans have been adopted, those plans may further articulate desired future uses within the planning area."

The Connecticut General Statutes require that all municipalities amend and adopt a Plan of Conservation and Development at least once every ten years. The Town of Greenwich's most recently amended and adopted Plan of Conservation and Development (May 12, 2009), does not designate King Street as a Scenic Road nor does it indicate any significant scenic views within the ½-mile study area as defined in the Supplemental Visual Impact Analysis (see Chapter 1, "Description of Modified Project," of this FEIS).

Even though no scenic resources were identified, the design of the proposed project has taken into consideration potential views from

beyond the property boundary. To minimize visibility of the proposed parking structure, the site landscaping plan maximizes any and all opportunities to plant tall-growing deciduous and evergreen trees. In addition, the materials used for the façade of the structure would be muted tones to blend with the dense branching of canopy trees during winter/leaves-off conditions. Further, as shown on the profiles in **Figures 2-2** and **2-3**, the existing topography would also minimize visual impacts from residences along King Street. The proposed parking structure would be at a lower elevation than the existing residences, which would allow greater shielding by existing trees and other vegetation.

Nonetheless, the Planning Board, as Lead Agency, will closely review and evaluate the visual impacts associated with the height of the proposed structure and the compatibility of the structure with the surrounding neighborhood.

**Comment 4-14:** The DEIS also ignores the community character impacts the Project would have on the adjacent residential community in Greenwich. It incorrectly states, for example, that "[t]he area immediately surrounding the project site is dominated by transportation, business, and commercial land uses," completely ignoring area residents. (DEIS at 3-1.) In contrast, the DEIS is sensitive to North Castle's desire to protect its single family residential neighborhoods, noting that "the Town desires to protect the qualities of a rural community or 'quiet suburb', characterized largely by low- to medium-density single-family neighborhoods." (DEIS at 3-5.) It is unclear why the immediately proximate residential neighborhood in Greenwich does not deserve the same consideration. (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 4-14:** See Response 4-13.

**Comment 4-15:** Approximately 50 feet of the 60-90 foot buffer along NYS Route 120 is located within the Route 120 right-of-way. The preservation of this buffer is an integral part of the proposed screening plan. The Applicant should identify any current or proposed NYSDOT plans that would remove the buffer. In addition, the Applicant should explain the effectiveness of the screening plan should the NYSDOT buffer be removed. (Adam Kaufman, 6/1/11)

**Response 4-15:** There are no known NYSDOT plans to remove vegetation within the buffer along NYS Route 120 and the analysis of future traffic conditions do not indicate the need to widen this road. However, if the vegetation in the NYS Route 120 right-of-way were to be removed as part of a

hypothetical widening of NYS Route 120 in the area immediately to the south of the proposed structure, existing vegetation and the proposed landscaping on the project site would continue to provide a visual buffer of the proposed structure. It should be noted that in response to comments, the proposed Site Plan has been modified (i.e., the building footprint has been reduced) to avoid impacts to the Town-regulated wetland onsite and increase the distance of the building from the U.S. Army Corps of Engineers (USACE) wetland onsite, which in turn has pushed the proposed facility farther away from NYS Route 120. At its closest point, the proposed structure would be approximately 60 feet from the NYS Route 120 right-of-way. Approximately 50 feet of this area is existing forested wetland, which would not be disturbed by the proposed project. As such, there would be an approximately 50- to 60-foot vegetative buffer between the proposed structure and the property line that would remain even if the vegetation within the NYS Route 120 right-of-way was removed. If NYSDOT should remove vegetation in the future, it would reduce the vegetative buffer between NYS Route 120 and the proposed facility, potentially increasing visibility of the structure, but the existing vegetation in concert with the implementation of the proposed landscape plan would minimize significant adverse visual impacts, in the Applicant's opinion. Nonetheless, the Planning Board, as Lead Agency, will closely review and evaluate whether the proposed setbacks are adequately to sufficiently screen the structure.

**Comment 4-16:**

The proposed building is taller than 60 feet adjacent to NYS Route 120 and requires wetland and wetland buffer disturbance. In addition, due to the environmental sensitivity of the site, the Applicant has attempted to minimize wetland impacts by constructing vertically and not regrading (burying) the rear of the building (as regrading would impact the wetland). However, even with that goal in mind, the proposed footprint and stormwater mitigation area results in limited areas for screening. Additional grading and planting could potentially minimize visual impacts at the expense of additional wetland impacts. The Applicant should indicate whether a combination of the various alternatives (or new alternatives) would address the potential wetland and height impacts associated with this project. (Adam Kaufman, 6/1/11)

**Response 4-16:**

As discussed above, in response to comments, the proposed building footprint has been reduced, increasing the distance between the proposed structure and NYS Route 120. As a result, an approximately 50-foot wide buffer of existing vegetation within an existing forested wetland consisting largely of mature trees would remain, thereby providing natural shielding of the proposed parking facility.

Per the adopted Scope for the Park Place DEIS, seven alternatives were analyzed for reasonable comparison to the proposed project. Many alternatives looked at reducing the building footprint to minimize wetland impacts, as well as visual impacts. As evidenced by substantial comments from the public and involved agencies, greater disturbance to the wetland would be strongly opposed. Conversely, the modified Site Plan has decreased the building footprint in order to avoid disturbance to the Town-delineated wetland onsite, which would also reduce potential visual impacts.

These project alternatives and associated potential environmental impacts were analyzed in the DEIS to a level of detail sufficient to allow reasonable comparison with the proposed project. The location and design of the Modified Project reflects decisions made as a result of the alternatives analysis. Nonetheless, the proposed project has been reduced in size, moved farther away from NYS Route 120, and avoids disturbance of any wetland area.

Nonetheless, the Planning Board, as Lead Agency, will closely review and evaluate whether the proposed zoning amendments adequately mitigate all significant adverse impacts. Further, the Lead Agency will determine whether a reduction in height and increased setbacks may be required to adequately mitigate adverse impacts.

**Comment 4-17:** The adopted Scope for the Park Place DEIS requires consideration of seven alternatives for reasonable comparison to the proposed project, as identified below. Potential environmental impacts from each of these alternatives have been analyzed to a level of detail sufficient to allow reasonable comparison with the proposed project. Each of the subject areas analyzed in this DEIS have been analyzed for each of these alternatives. The Applicant should describe whether additional screening, using berms, could be created along the property line fronting Route 120. (Adam Kaufman, 6/1/11)

**Response 4-17:** While the use of berms for screening undesirable views may be effective in some situations, a berm in the location suggested which may be three to five feet in height, would not add significant screening of the proposed structure. In addition, creating a berm along the property line fronting NYS Route 120 would require disturbance to the Town-delineated wetlands.

**Comment 4-18:** The landscaping represented on the Perspective Views (T-I), Demolition Plan (C-3) and Landscape Plan (C-8) do not appear accurate and should be revised accordingly. Similarly, the landscaping shown on



the proposed condition Figure 48A does not appear consistent with that on Figure 48B. (Kellard Sessions, 6/1/11)

**Response 4-18:** It should be noted that the Demolition Plan (Drawing C-3) submitted with the DEIS shows existing conditions and therefore does not show the proposed landscape plan. Further, the perspective views on the Title Sheet (Drawing T-1) were provided more for illustrative purposes rather than detailed design purposes. In response to comments on the DEIS, the Site Plan has been modified, largely in order to avoid the Town-delineated wetland. As such, the proposed building has been moved farther away from NYS Route 120 and is now angled away from the roadway, thereby reducing its visibility. The modified proposed structure would be approximately 12 feet to over 50 feet farther from the NYS Route 120 right-of-way (depending on the location of the measurement) as compared to the structure presented in the DEIS. Existing mature trees and vegetation would also remain in this area, further shielding views of the proposed parking facility. In addition, the landscaping plan has been further developed subsequent to publication of the DEIS. See Chapter 1, "Description of Modified Project," and **Figure 1-4** for a detailed description of the revised project and landscaping plan.

### **3.5 CULTURAL RESOURCES**

**Comment 5-1:** Thank you for requesting the comments of the Office of Parks, Recreation and Historic Preservation (OPRHP) concerning your project's potential impact/effect upon historic and/or prehistoric cultural resources. Our staff has reviewed the documentation that you provided on your project. Preliminary comments and/or requests for additional information are noted on separate enclosures accompanying this letter. A determination of impact/effect will be provided only after ALL documentation requirements noted on any enclosures have been met. Any questions concerning our preliminary comments and/or requests for additional information should be directed to the appropriate staff person identified on each enclosure. (OPRHP, 4/14/11)

**Response 5-1:** It should be noted that on April 6, 2010, a Project Review Cover Form was submitted to OPRHP in compliance with Section 14.09 of the New York State Historic Preservation Act. This form included a project description and photographs of buildings on the project site and the vicinity. On April 22, 2010, a response was received from OPRHP stating that OPRHP had no concerns regarding historic architectural resources, however, a Phase 1 Archeological Study would be needed to determine the potential for the proposed project to impact archaeological resources. Subsequently, a Phase 1 Archaeological

Assessment was conducted and submitted to OPRHP on January 2011. The study concluded that no archaeological resources were evident, and recommended no further archeological testing. As described in Chapter 5, "Cultural Resources," of the DEIS, in a letter dated March 1, 2011, OPRHP concurred with the Phase 1 and stated that OPRHP had no archeological or architectural resources concerns related to the proposed project. All correspondence from the OPRHP is contained in FEIS **Appendix L.**

**Comment 5-2:** In cases where a state agency is involved in this undertaking, it is appropriate for that agency to determine whether consultation should take place with OPRHP under Section 14.09 of the New York State Parks, Recreation and Historic Preservation Law. In addition, if there is any federal agency involvement, Advisory Council on Historic Preservation's regulations, "Protection of Historic and Cultural Properties" 36 CFR 800 requires that agency to initiate section 106 consultation with the State Historic Preservation Officer (SHPO).

When responding, please be sure to refer to the OPRHP Project Review (PR) number noted above. (OPRHP, 4/14/11)

**Response 5-2:** See Response 5-1.

**Comment 5-3:** Based on reported resources, there is an archeological site in or adjacent to your project area. Therefore the Office of Parks, Recreation and Historic Preservation (OPRHP) recommends that a Phase 1 archeological survey is warranted for all portions of the project to involve ground disturbance, unless substantial prior ground disturbance can be documented. If you consider the project area to be disturbed, documentation of the disturbance will need to be reviewed by OPRHP. Examples of disturbance include mining activities and multiple episodes of building construction and demolition. (OPRHP, 4/14/11)

**Response 5-3:** See Response 5-1.

**Comment 5-4:** A Phase 1 survey is designed to determine the presence or absence of archeological sites or other cultural resources in the project's area of potential effect. The OPRHP can provide standards for conducting cultural resource investigations upon request. Cultural resource surveys and survey reports that meet these standards will be accepted and approved by the OPRHP.

Our office does not conduct cultural resources surveys. A 36 CFR 61 qualified archeologist should be retained to conduct the Phase 1 survey. Many archeological consulting firms advertise their availability in the

yellow pages. The services of qualified archeologists can also be obtained by contacting local, regional, or statewide professional archeological organizations. Phase 1 surveys can be expected to vary in cost per mile of right-of-way or by the number of acres impacted. We encourage you to contact a number of consulting firms and compare examples of each firm's work to obtain the best product.

Documentation of ground disturbance should include a description of the disturbance with confirming evidence. Confirmation can include current photographs and/or older photographs of the project area which illustrate the disturbance (approximately keyed to a project area map), past maps or site plans that accurately record previous disturbances, or current soil borings that verify past disruptions to the land. Agricultural activity is not considered to be substantial ground disturbance and many sites have been identified in previously cultivated land. (OPRHP, 4/14/11)

**Response 5-4:** See Response 5-1.

**Comment 5-5:** Please also be aware that a Section 233 permit from the New York State Education Department (SED) may be necessary before any archeological survey activities are conducted on State-owned land. If any portion of the project includes the lands of New York State you should contact the SED before initiating survey activities. Section 233 permits are not required for projects on private lands. (OPRHP, 4/14/11)

**Response 5-5:** The proposed project is located on privately-owned land.

**Comment 5-6:** The status of the Office of Parks Recreation and Historic Preservation (OPRHP) Phase I Archaeological Survey review should be updated and the document updated as necessary. (Kellard Sessions, 6/1/11)

**Response 5-6:** See Response 5-1. All Response letters received from OPRHP are contained in FEIS **Appendix L**.

### 3.6 NATURAL RESOURCES

**Comment 6-1:** With regard to Threatened and Endangered Species, Indiana Bat: A survey of potential nursery trees would likely be required before the conclusion that there is no habitat can be made. The list of trees occurring on site includes Shagbark Hickory which is a preferred species for the Indiana Bat. Bog Turtle: A phase 1 bog turtle assessment would likely be required by the New York State Department of Environmental Conservation (NYSDEC) or United States Fish and

Wildlife Service (USFWS) to support this conclusion that there is no suitable habitat present at the site. (NYCDEP, 5/23/11)

**Response 6-1:** Comment noted. As discussed in Chapter 6, the Indiana bat was not identified as a species known to frequent the project site by NYSDEC and was not included in correspondence from that agency (NYNHP 4/30/2010). To minimize the potential for an incidental take of summer roosting habitat, trees that are potential summer roost sites for Indiana Bats can be cut in winter months (November 1st to March 31st) when the bats are absent. Similarly, NYSDEC did not identify bog turtle as a potentially occurring species onsite. This species requires wet meadows and shrub/scrub habitats with mucky soil. No such habitat occurs onsite or on adjacent properties. Therefore, the potential presence of this species is very low. Wetland ecologists for the project sponsor, who have conducted previous site inspections for bog turtle habitat and are familiar with the Phase 1 Habitat Assessment methodology, have inspected the project site and come to this conclusion. The results of a full Phase 1 Habitat Assessment for this species would come to the same conclusion – the onsite habitat is not suitable.

**Comment 6-2:** Mitigation Measures and Vegetation discussed on page 6-21 do not include a planting plan nor is a planting list included on Sheet No. C-8. This information is necessary and should be provided for review to allow for an assessment of the proposed landscaping and planting plan. While the principal goal as stated is admirable, without a planting plan it cannot be determined whether it is likely that the goal can be achieved. (NYCDEP, 5/23/11)

**Response 6-2:** A planting list has been provided in Chapter 1, “Project Description,” of this FEIS. In addition, the Landscape Plan (Figure 1-5) has been further developed and incorporates upland, wetland, and buffer planting of native trees, shrubs, and herbaceous vegetation. The Landscaping Plan may be further refined during Site Plan Application. The Planning Board, as Lead Agency, will require that an adequate mitigation and screening plan be prepared for the project. Figure 1-5 and Drawing Sheet C-9 present the proposed Wetland and Wetland Buffer Enhancement treatment areas. The list of plants to be used for these areas, which will be based on site conditions where non-native/invasive plants are removed only, is presented in FEIS **Appendix F**. No specific planting plan is provided for the Wetland and Wetland Buffer Enhancement areas as it is intended to be an Adaptive Management program that provides in-fill planting where necessary to fill the growing space left upon invasive species removal. Detailed revisions of the Landscaping Plan and/or Wetland and Wetland Buffer Enhancement Plan may be provided as part of Site Plan Review.

- Comment 6-3:** The Black-hooded Parakeet, listed in Table 6-2, is not a species expected to be on the project area. (NYCDEP, 5/23/11)
- Response 6-3:** Comment noted. The black-hooded parakeet was observed in the census block during the 1980-85 BBA Project survey period. As indicated in Table 6-2, it was not observed by project ecologists onsite during site investigations. This is a non-native bird species and not expected to utilize the project site.
- Comment 6-4:** If the project is constructed, the applicant should ensure the proposed automated garage design is secure with regards to wild animals that could potentially enter the structure. In particular, the draft EIS notes that mice, skunks, raccoons, opossum and deer are of a concern in the immediate area, all of which are also common species adept at using human-altered environments. (WCPB, 5/31/11)
- Response 6-4:** The proposed parking facility would be an entirely enclosed structure. Several emergency and exit doors would be located around the periphery of the building, but would remain closed and locked when not in use. Vents would be located around the exterior of the building for required ventilation, but would be designed to current and accepted standards to prevent entry of wildlife. Vehicle loading bays would be sealed except when in use. The presence of humans when vehicles are being dropped off or picked up in loadings bays would be expected to deter wildlife. A number of mechanisms, including heat and motion sensors, would be installed within the loading bays to ensure they are vacated before the automated parking system is engaged. These sensors would also detect any wildlife. With frequent activity onsite and the other design features described above put in place, wildlife within the structure would not be a significant concern.
- Comment 6-5:** The FEIS should identify tree removal within the regulated wetland/wetland buffer area and overall tree removal. (Kellard Sessions, 6/1/11)
- Response 6-5:** As described further in Chapter 1 of this FEIS, the proposed Site Plan has been modified to avoid any disturbance within the Town-regulated wetland onsite and has increased the distance between the proposed structure and the U.S. Army Corps of Engineers (USACE) regulated wetland onsite. The Modified Project would result in the removal of 115 trees (as compared to 122 trees presented in the DEIS), 101 of which would be within the Town-regulated wetland buffer area.

- Comment 6-6:** A conceptual plant list should be provided for each zone illustrated on Figure 6-2 and the landscape plans. Figure 6-2 appears to have planting zones conflicting with Sheet C-8. (Kellard Sessions, 6/1/11)
- Response 6-6:** The Landscaping planting list is provided in Chapter 1 of this FEIS and has been included on Drawing C-8. The planting list to be used in areas of invasive species removal within existing wetland and wetland buffer to be preserved, is provided in the Wetland and Wetland Buffer Enhancement Plan, found in **Appendix F**.
- Comment 6-7:** The DEIS text and Sheet C-3 are inconsistent and should indicate significant tree removal. A summary of significant tree removal should be provided on Sheet C-3. All trees on Sheet C-3 should be labeled. The text and plans should be expanded to describe mitigation for tree removal. (Kellard Sessions, 6/1/11)
- Response 6-7:** Drawing C-4, “Demolition Plan,” submitted with the DEIS, shows and labels all existing trees onsite, and highlights those that would be removed by the proposed project with an “X.” Tree names are abbreviated on the drawing with full names indicated in the legend. A summary table of all trees has been provided in large scale and detailed plans as part of Site Plan Approval. It should be noted that in response to comments the building footprint has been significantly decreased subsequent to submission of the DEIS. The total number of “significant trees” (i.e., trees with a diameter at breast height of 24 inches or greater as defined in Chapter 192 of the Town Code) to be removed under the Modified Project would be 23 trees (as compared to 25 trees under the original proposed project). The Modified Project would result in the removal of 115 trees (as compared to 122 trees presented in the DEIS), 101 of which would be within the Town-regulated wetland buffer area. The project will conform to the requirements of Town Code §192-6, principally with the revegetation of the undeveloped portions of the site that remain after development with native vegetation – including trees, shrubs and herbaceous plants. In the Applicant’s opinion, there are no practical alternatives that would achieve the project goals while further minimize tree removal onsite. The Applicant intends to maintain a wooded buffer separating views of the proposed garage from Route 120 via the protection/preservation of all trees within the existing wetlands and by the use of “green wall” or similar planting mechanism that will cover the exposed walls of the garage with living vines/herbaceous plants. Both of these measures will minimize visual impacts of tree removal. Loss of tree habitat and evapotranspiration ecosystem services will be minimized by the construction of the onsite stormwater management facilities, which will be landscaped as shown in the Landscaping Plan (Sheet C-9), and via the removal of invasive species

and supplemental planting of native species within the wetland and wetland buffer.

### 3.7 GEOLOGY, SOILS, TOPOGRAPHY AND SLOPES

**Comment 7-1:** The topographical map provided indicates that grading will occur on slopes in excess of 25%. While the use of erosion matting is proposed for stabilization, it is unclear whether or not the matting as proposed will be sufficient to avoid impacts of erosion. Either additional information demonstrating the effectiveness of the proposal or additional measures to control erosion should be considered and provided. (NYCDEP, 5/23/11)

**Response 7-1:** The erosion control matting or blanket that is proposed to be used is the *American Excelsior Company Premier Coconut* rolled erosion control blanket. This blanket is designed to be used in slopes less than or equal to 1H:1V. Refer to website below for more product information: <http://www.americanexcelsior.com/erosioncontrol/products/coconut.php>

**Comment 7-2:** The landscape plan should indicate that native vegetation, including seed mixes containing native warm-season grasses, will be used to the greatest extent possible. While not always necessary in areas maintained as mowed lawn, native grass and meadow mixes provide optimal stabilization, wildlife habitat, and can even enhance aesthetic appeal in areas that will not be maintained on a regular basis over the long term. (NYCDEP, 5/23/11)

**Response 7-2:** The landscaping plan has been revised consistent with proposed plan revisions. The landscape notes have also been updated to indicate the use of native vegetation, including seed mixes containing native warm-season grasses to be used to the greatest extent possible. The seed mix for the proposed stormwater management seeding area will be "ERNMX-183: Native Detention Area Mix", or approved equivalent. This is a native seed mix containing Switchgrass (*Panicum virgatum*) Redtop Panic grass (*Panicum rigidulum*), Virginia Wildrye (*Elymus virginicus*), Green Bulrush (*Scirpus atrovirens*), Autumn Bentgrass (*Agrostis perennans*), Soft Rush (*Juncus effusus*), Ticklegrass (*Agrostis scabra*) and Path Rush (*Juncus tenuis*). This specification will be added to the plans that will be submitted as part of Site Plan review. Please refer to Chapter 1, Drawing C-9, and **Appendix F** of this FEIS for more detailed information on the specific native vegetation and seed mixes. Details on native seed mixes will be added to the Landscape Plan (Drawing C-9) during Site Plan Review.

**Comment 7-3:** It is stated that petroleum contamination was identified in the fill material located on-site. While the site is zoned industrial, based on the understanding that the site is designated a “reservoir stem” to the New York City (NYC) watershed, soil sampling should be conducted to verify that the soil remaining after the excavation work will not be a source of contamination that could potentially contaminate the watershed. For example, the New York State Department of Environmental Conservation (NYSDEC) 6 NYCRR Part 375 Soil Cleanup Objectives for Protection of Groundwater may be applicable in this situation. (NYSDOH, 4/27/11)

**Response 7-3:** During an October 2008 geotechnical investigation at the project Site, Melick-Tully and Associates, PC (MTA) reported that fill material was encountered in three soil borings (TB-4, TB-5, and TB-6) to depths of approximately 6 to 9 feet below grade. MTA also noted petroleum-like odors in soil samples collected from 1 to 7 feet below grade at boring TB-4. Laboratory analysis of two soil samples collected from TB-4 (at 2 to 4 and 5 to 7 feet below grade) did not detect volatile organic compounds (VOCs) or semivolatile organic compounds (SVOCs) in the samples. The applicant proposes to perform additional Phase 2 soil testing during site plan review. The Planning Board will determine whether this time line is acceptable.

As part of Phase 2 soil testing, the fill area identified during the geotechnical investigation will be further delineated and characterized prior to excavation for the new structure, and managed in accordance with NYSDEC Part 360 Solid Waste Regulations during construction. The Phase II subsurface investigation will include laboratory analysis of soil samples to fully characterize the fill area. The results of the investigation will be used to prepare a Remedial Action Work Plan (RAWP), which will identify soil/fill handling and disposal requirements, and include contingency plans to address any unexpectedly encountered areas of fill or contamination. The anticipated excavation plan requires that the majority of the on-site fill material will be removed from the site as part of site redevelopment. Any fill material identified outside of the proposed excavation areas that exceeds Commercial or Groundwater Protection Soil Cleanup Objectives (SCOs) as defined by NYSDEC Part 375-6, or that meets the definition of grossly contaminated media as defined in NYSDEC DER-10, will also be removed. In addition, any remaining fill material will be isolated beneath a ground surface composition consisting of a cover of soil and landscaping. The final surface composition will prevent exposure to and migration of the isolated fill material.



- Comment 7-4:** Table 7-5 totals should be revised to coordinate with text total disturbance (122,078 vs. 120,846). The area of 35% disturbance should be corrected. (Kellard Sessions, 6/1/11)
- Response 7-4:** In response to comments on the DEIS, modifications have been made to the site plan to further avoid potentially adverse environmental impacts. These modifications are presented in detail in Chapter 1, "Description of Modified Project," of this FEIS. The limit of disturbance area for the Modified Project will be 110,703 square feet. Of that, disturbance to areas of slopes between 25 and 35 percent will be 6,613 square feet and disturbance to areas greater than 35 percent will be 3,344 square feet. The areas of steep slopes that will be disturbed by the Modified Project will be substantially similar to that shown on Figure 7-6 in the DEIS.
- Comment 7-5:** The DEIS reports that 93.7% of the project site has slopes from 0-25%. However, the applicant does not discuss how much of the site has 0% slopes versus how much of the site has slopes closer to 25%. The configuration and density of the topographic contour lines in Figure 7-1, Existing Slopes and Topography, indicate that except for the area of the proposed footprint of the parking structure, the majority of the project site has slopes closer to 25% than 0%. Although the project proposes disturbance of 112,865 square feet of slopes 0-25%, the DEIS should include additional information regarding the amount of disturbance proposed on slopes from 15-25%. (Riverkeeper, Kate Hudson, 6.1.11)
- Response 7-5:** The Town of North Castle Code §213-17 defines steep slopes as 25% or greater. Therefore, the Applicant performed the site's steep slope analysis to conform to the Town's law. Although there may be lesser slopes in the 15-25% category, as shown in DEIS Figures 7-1 and 7-6, the principle areas of steep slope disturbance are in areas of man-made slope that were graded to support the existing building and the adjacent overflow parking area. The slope of the existing building area is largely level (< 5% slope) and the undeveloped forested area which descends to the west towards Route 120 ranges from 7-13% slopes. Therefore, the vast majority of the site is not steeply sloped under any definition. Use of erosion control measures will prevent the migration of sediment offsite during construction.
- Comment 7-6:** Compounding the potential impacts of extensive slope disturbance is the proposed excavation of 25,075 cubic yards of poorly and excessively drained soils. The three identified project site soil types are Woodbridge loam (limited for dwellings with basements due to wetness); Udorthents (moderately to excessively well drained); and Ridgebury loam (poorly drained, high water table).' According to the project site plan,

construction of the access roads and stormwater management areas will require considerable flattening of the project site, as supported by the DEIS proposal to retain only 400 cubic yards of excavated soil to be used for fill and to export 24,675 cubic yards off-site. (Riverkeeper, Kate Hudson, 6.1.11)

**Response 7-6:**

Areas of excavation are limited primarily to the moderately well drained Woodbridge loam (WdB) and moderately to excessively well drained Udorthents (Ub). Management of the erosion potential or groundwater discharge potential of these soils is not inherently difficult and can be undertaken with standard construction practices. If groundwater conditions warrant, as discussed in the DEIS, the building foundation will be constructed with foundation drains or a floor slab designed to withstand hydrostatic pressures. The site will not be “flattened” but rather the 8 levels of parking of the revised garage will require excavation to keep the overall structure within the 60 foot building height required by the proposed zoning amendment.

**Comment 7-7:**

The proposed action further requires disturbance of 4,566 square feet of slopes 25-35% and 3,415 square feet of slopes greater than 35%. The proposed extent of soil and steep slope disturbance on a small site poses adverse impacts to water quality not only during the construction phase, but also under post-development conditions after existing soil profiles and drainage patterns have been artificially reconfigured. The Town of North Castle should require the applicant to scale back the proposed action to conform with the intent of the Town's amendment to Chapter 213-17 Zoning of the Code of the Town of North Castle, which sets forth the Town's findings that such regulations:

“...prevent, to the maximum degree reasonable feasible, future development upon steep slopes, hilltops and ridgelines in all zoning districts, thereby: (1) minimizing erosion and sedimentation, including the loss of topsoil; (2) preventing habitat disturbance; (3) protecting against possible slope failure and landslides; (4) minimizing stormwater runoff and flooding; (5) providing safe and stable building sites; (6) protecting the quantity and quality of the Town's surface and groundwater resources; (7) protecting important scenic vistas, rock outcroppings and mature vegetation; (8) preserving the Town's attractive semi-rural character and property values; and (9) otherwise protecting the public health, safety, and general welfare of the Town of North Castle and its residents.”

(regarding preventing, to the maximum degree reasonably feasible, future development upon steep slopes, hilltops and ridgelines in all zoning districts). [NOTE: the comment incorrectly cites the Town Code

chapter as "13" - the excerpt is from §213-17. ] (Riverkeeper, Kate Hudson, 6.1.11)

**Response 7-7:** Upon project completion, the proposed building will eliminate the existing steep slopes that were created by past construction. Rather than adding to the potential for impacts to water quality, the developed condition of the site will prevent the potential for movement of sediment offsite. The provision of stormwater management for the proposed project will prevent water quality impacts. As discussed in FEIS Chapter 1, a revised stormwater management system is proposed which exceeds the NYS Runoff Reduction Requirements and reduced peak flows for all storms as compared to the existing condition – including the 1 year storm. Surface parking of the existing site is will be eliminated, therefore the runoff pollutants of the proposed project will be reduced as compared to the existing condition. It is Applicant's opinion that the project fully conforms to Town Zoning with respect to steep slopes (§213-17), and it should be noted that the site contains no hilltops or ridgelines but only slopes (>25%) that are a result of the grading due to the site's past development.

**Comment 7-8:** While the Town "may permit such disturbance, provided that the nature and extent of the disturbance is limited to the minimum amount practicable, consistent with the legislative intent of this section," the amendment prohibits disturbance of slopes greater than 25% in any zoning district unless a disturbance permit is obtained from the Building Department. The DEIS does not include a disturbance permit among the list of required Town permits in Table 1-1. (Riverkeeper, Kate Hudson, 6.1.11)

**Response 7-8:** As indicated in Chapter 7 of the DEIS, the proposed project will require steep slopes approval in accordance with the Town's Zoning Ordinance §213-17, which indicates the Applicant must submit steep slopes information for the Town's review as part of Site Plan Approval. Site Plan Approval is listed as a necessary permit in Table 1-1.

**Comment 7-9:** Excavation of a large volume of poorly drained soils likely will result in groundwater expressions wherever those soils types occur. Cutting over 25,000 cubic yards on a 3.34-acre site with steep slopes will require intense construction activity in a confined work area with little if any remaining area for staging, equipment storage, stockpiling and disposal. The intensity of construction activity in the limited space available increases the potential for erosion and sediment transport to the Kensico Reservoir. Compressing the construction sequencing into a single phase as proposed in the DEIS, heightens the risk that surface water quality in

the Kensico Basin will be adversely impacted as a result of construction activities on this confined site. (Riverkeeper, Kate Hudson, 6.1.11)

**Response 7-9:**

As discussed in the DEIS, groundwater from dewatering during foundation excavation will be conveyed to two onsite temporary sedimentation basins to prevent discharge of sediment-laden waters offsite. A sediment tank may also be used to settle/filter dewatering effluent prior to discharge from the site. Regarding construction phasing, sequencing of activities and frequent site inspections throughout will prevent the discharge of polluted runoff from the project site. The sequencing of demolition, clearing and construction activities is described in detail in Chapter 7: Geology, Chapter 9: Stormwater, and Chapter 17: Construction. The Stormwater Pollution Prevention Plan (SWPPP) submitted to the Town shows in detail the means/methods of handling runoff during and after construction. See also Responses 17-2 and 17-4.

### 3.8 WATER RESOURCES

**Comment 8-1:**

This project would consist of a 267,000 square foot, 5-level, approximately 56 foot parking garage (for 1,450 vehicles) to be located outside of the Airport property at 11 New King Street – a location which abuts wetlands that protect the Kensico. Further, the site contains a stream, which feeds directly into the Kensico.

The Kensico Reservoir supplies safe drinking water to almost nine million people in both Westchester County and New York City. That is why in 2003, this Honorable Board passed a Resolution (No. 245-2003) preventing any further expansion at the airport in order to protect this vital regional asset.

Resolution No. 245-2003 specifically states *“the policy of the Westchester County Board of Legislators is and continues to be one of supporting no increase in the total capacity of the Airport’s runways, taxiways, ramps, gates, hangars, terminal, **motor vehicle parking areas**, or access roads, in order that we may protect our fragile environment, including the drinking water for a/most nine million people ...”*.

This project would pose the very impacts that prompted the passage of Resolution No. 245-2003, such as expansion, increased traffic and air pollution, which would clearly result in adverse impacts on our drinking water.

Please note that as a Legislative Body, our efforts to prevent expansion of the Airport have always been prompted by our desire to protect nearby residential communities. However as the Chairman of the

Legislature's Environment & Energy Committee, my purpose here is to defend the environmental integrity of these communities and to protect the drinking water for nine million people.

Therefore, I respectfully request that this project be prevented from moving forward. (Michael B. Kaplowitz, 4/28/11)

**Response 8-1:**

Comment noted. It should be noted that the proposed project would include a stormwater management system that would incorporate a number of green infrastructure practices in order to ensure stormwater runoff would not compromise the water quality of Kensico Reservoir (see Chapter 1 of this FEIS). In addition, the stormwater management system would treat stormwater runoff from a portion of an adjacent property, which currently enters the watershed untreated. See Response 2-9 for further details. Traffic in the study area would not increase as a result of the proposed project, as detailed in the DEIS and in Responses 13-1 and 13-2 of this FEIS.

**Comment 8-2:**

The scale and proximity of the proposed Park Place project adjacent to Rye Lake, which is an arm of the Kensico Reservoir, raises several significant issues for Riverkeeper, including impacts to wetland and wetland buffer areas and to water quality as a result of storm water runoff. The Kensico is the terminal reservoir for the Catskill Watershed, which typically provides 40 percent of the unfiltered drinking water supply to 9,000,000 New York City and upstate consumers. According to the Park Place DEIS, the project would be sited only 600 feet from Rye Lake and proposes disturbance of on-site town regulated wetlands and buffers, and the buffer of a New York City DEP regulated watercourse. (Kathy Hudson, 5/2/11)

**Response 8-2:**

In response to comments, the following substantive modifications have been made to the proposed project to address potentially adverse environmental impacts. First, subsequent to the U.S. Army Corps of Engineers (USACE) Jurisdictional Determination (JD) site inspection (see approved JD in **Appendix D**) that validated the wetland delineation presented in the DEIS by the Applicant, the Applicant respectfully decreased the proposed building footprint in order to avoid disturbance to the Town-delineated wetland. As such, the proposed building would not disturb any wetlands or protected streams on the site. Second, the reduced footprint has resulted in additional area between the proposed building and the edge of both the USACE delineated wetland and the more restrictive Town-designated wetland to further separate temporary construction activities from the wetlands, drainage course, and streams. Within this area would be installed additional erosion control barriers—above and beyond best practices—to create an impenetrable barrier

between temporary construction activities and the project site's watercourse/drainage areas/wetlands that are hydrologically connected to the reservoir. Third, in addition to capturing and treating stormwater from the project site and a portion of the adjacent site, which is currently untreated, the stormwater management system has been designed to exceed the requirements of NYSDEC and NYCDEP. See FEIS Chapter 1, Table 1-6 for a summary of the WQv provided by the proposed stormwater management system.

The details of the modified Site Plan are fully illustrated, described, and analyzed in Chapter 1, "Project Description," of this FEIS.

**Comment 8-3:**

First, of particular concern to Riverkeeper is the applicant's plan to use proposed storm water management areas to serve as mitigation for the disturbance and for the permanent adverse impacts to on-site wetlands and buffers. While the applicant has expressed willingness to work with the lead agency to identify and develop an offsite wetland mitigation plan, neither that plan nor the final on site wetland mitigation plan are presented in the DEIS for public review and comment pursuant to the requirements of SEQRA. Moreover, the delineation of the wetland boundaries is still under discussion between the applicant and the Town, with the potential for increasing the impacts to wetland and wetland buffer areas beyond those currently identified in the DEIS. These uncertainties render informed review of the proposed project and current DEIS extremely difficult, if not impossible. (Kathy Hudson, 5/2/11)

**Response 8-3:**

As discussed in Chapter 1, "Project Description," of this FEIS, the USACE conducted a site inspection as part of its JD on June 1, 2011 and validated the wetland boundaries delineated by the Applicant in June and October of 2008. (The USACE's JD confirmation letter is contained in **Appendix D**). The USACE JD differed from the delineation made by the Town's wetland consultant. Nonetheless, the Applicant has modified the proposed Site Plan to respect the more restrictive Town-delineated wetland, which in turn has increased the distance between the proposed structure and the USACE wetland boundary so that the proposed project will not disturb either wetland on the project site. Further, the proposed structure has been moved even further away from the wetland boundary to afford additional area between the building and the wetland/stream so that additional protection measures during construction can be established to ensure that adequate erosion and sedimentation controls are in place to avoid construction-related runoff into the reservoir. It should be noted that the Planning Board, as Lead Agency, typically does not permit stormwater

treatment practices to be used as Town-regulated wetland or wetland buffer mitigation.

**Comment 8-4:** We will be submitting detailed written comments by the close of the comment period, which we would ask be extended by this board to permit consideration of and comments on the additional, hopefully forthcoming information regarding wetland delineation and mitigation. We feel that the public should have an opportunity to comment on both of those issues. And obviously those are not included in the current DEIS. Our comments will discuss these and other water quality issues which have the potential to impact the New York City reservoir system's capacity to continue to provide unfiltered drinking water to half the population of New York State. Thank you for the opportunity to appear here this evening and provide comments on the proposed project. (Kathy Hudson, 5/2/11)

**Response 8-4:** Comment noted. As discussed above, the USACE conducted a site visit on the project site on June 1, 2011. The USACE determined that the delineation conducted by the Applicant's wetland consultant accurately reflected the wetland per USACE standards. However, the Site Plan has been modified to respect and avoid disturbance to the more restrictive Town-delineated wetland.

**Comment 8-5:** With respect to the many wetland issues, again there is -- we have experts who can elaborate on those as well as I assume DEP and Corps of Engineers and others will make their concerns known and have an opportunity to be on the site and delineate and provide their input. But as this Board I think realized in its issuance of the positive declaration, the proposed construction is to put a hole within the Kensico River Watershed, and is one of the primary potential adverse impacts in this project. (Michael Zarin, 5/2/11)

**Response 8-5:** See Responses 8-2 and 8-3. Also, see Chapter 1, "Project Description," of this FEIS and Responses 9-7, 9-9, and 9-13 for a detailed description of the proposed stormwater management practices that would be in place to preserve the water quality of area water resources.

It should be noted that the proposed project would comprise a 3.34-acre site within the 6,300 acre Kensico Reservoir watershed. Within that site, only approximately 1.44 acres would comprise impervious surface coverage (which includes 0.19 acres of pervious pavers). While even a small area can have detrimental impacts on regional water quality, the stormwater management system that would be implemented with the proposed project would ensure that the quality of drinking water supply would not be compromised.

**Comment 8-6:** We're also very aware of your own fresh water wetlands and drainage law, which is a particularly strong amendment in relation to other municipalities. In fact, mandates that the approval authority shall deny a wetland permit if the proposed activity may threaten public health and safety, can cause nuance, nuisances, impair public rights, enjoyment of public waters or violate other federal, state or local laws and regulations or it finds that the detriment to the public good by the fact it's listed in this section would occur and the issuance of the permit outweigh the nonmonetary public benefits associated with the activity. (Michael Zarin, 5/2/11)

**Response 8-6:** The Town will only issue a wetlands permit if it is confident that the project sponsor has developed a stormwater management system that would uphold the high water quality standards of the Kensico Reservoir watershed. As such, the Applicant will continue to work with the Town to refine the proposed stormwater management system to ensure it meets all the stringent requirements of the Town as well as the New York City Department of Environmental Protection (NYCDEP).

The following is taken from Town Code Chapter 209-8 and lists the means by which the proposed project conforms with the Town's wetlands ordinance:

*"Permit Criteria:*

*In this determination, the approval authority shall consider the following factors and shall issue written findings with respect to:*

*(1) The impact of the proposed activity and existing and reasonably anticipated similar activities upon neighboring land uses and wetland functions as set forth in § 209-1, including but not limited to the:*

*(a) Infilling of a wetland or other modification of natural topographic contours.*

No direct wetland disturbance is proposed. Regrading of buffer area will be mitigated with replanting of native facultative wetland plant species which will replace the preponderance (estimated at 50% based on site inspection) of non-native species, including oriental bittersweet, porcelainberry, phragmites, multiflora rose, garlic mustard, and others.

*(b) Disturbance or destruction of natural flora and fauna.*

Native plants will be displaced within those portions of the wetland buffer disturbed by the proposed project. However, remaining areas of buffer and wetland will be enhanced by removal of non-native species (estimated at 50% of the current plant cover) and supplemental planting with native species (See **Appendix F**).



*(c) Influx of sediments or other materials causing increased water turbidity or substrate aggradation.*

Use of NYSDEC/NYCDEP-approved erosion control measures and an extensive stormwater management system which will realize a net reduction in runoff flow rates and volumes post-construction will avoid increases in turbidity or sedimentation to receiving waters.

*(d) Removal or disturbance of wetland soils.*

Hydric soils will not be disturbed by the proposed project.

*(e) Reductions in wetland water supply.*

As discussed in the DEIS, regarding the potential impacts of redirecting surface runoff from the proposed development area away from Wetland “A” into the stormwater basins, the existing wetland has a small drainage area-to-wetland area ratio (5:1), which suggests that maintenance of wetland conditions is primarily reliant on groundwater inputs (i.e., surface water inputs are relatively minor). Also, because the wetland is drained at its lower end by a culvert the invert of which is essentially flush with the bottom elevation of the wetland, most of the surface flow delivered to the wetland is quickly conveyed through and out of the complex with very little residence time. These two factors (small drainage area-to-wetland area ratio and low residence time) suggest that surface water inputs delivered via stormwater runoff are unlikely to play a significant role in maintaining wetland hydrology.

*(f) Interference with wetland water circulation.*

As discussed above, the wetland will not realize a detrimental reduction in hydrologic inputs.

*(g) Reduction or increases in wetland nutrients.*

The wetland may realize a reduction in nutrient pollution due to the new implementation of stormwater management facilities which will serve to remove pollutants prior to discharge to receiving waters. Considering the preponderance of impervious surfaces in the surrounding developed areas on King Street, the provision of stormwater management facilities where none exist at present is expected to be a net benefit to the water quality and the wetland nutrient balance.

*(h) Influx of toxic chemicals or heavy metals.*

The provision of stormwater management is expected to reduce the input of toxic/heavy metals as compared to the current condition.

*(i) Temperature changes in the wetland water supply.*

The incremental increase in impervious surfaces is expected to have a minimal effect on temperatures. In addition, none of the three stormwater management cells (sediment basin, infiltration basin, and pocket wetland) would have a sizable permanent pool which could have the potential to retain water and result in detriment increases in water temperatures.

*(j) Changes affecting natural aesthetic values.*

The onsite wetland is a landscape feature that has developed in part due to the construction of Route 120 and the development of New King Street. It contains a relatively narrow band of forested habitat separating the existing structure from Route 120. In the future with the proposed project, the amount of forest will be reduced a small amount. However, there will still be a forested buffer adequate to screen the site from the highway, as discussed and demonstrated in the figures contained in DEIS Chapter 4 and FEIS Chapter 2.

*(2) Any existing wetland impacts and the cumulative effect of reasonably anticipated future wetland activities in the wetland subject to the application.*

No further impacts to the wetland would occur in the future as it is located predominately onsite. Those portions of the onsite wetland on adjacent parcels are minimal. To the north, use of a sizable portion of tax lot 118.02-2-3 (Section 3, Block 4, Lot 13A) for the proposed stormwater management facility will consequently limit the ability to expand impervious surfaces on that lot, thereby preventing additional cumulative wetland or wetland buffer impacts. To the south, adjacent tax lot 119.03-1-6 is owned by Westchester County Airport [VERIFY] and not subject to any current development proposals. Therefore, no further impacts to this wetland or its buffer are expected to occur.

*(3) The impact of the proposed activity and reasonably anticipated similar activities upon flood flows, flood storage and water quality.*

As discussed in DEIS Chapter 9 and FEIS Chapter 1, the proposed stormwater management components of the proposed project will reduce runoff flows as compared to existing conditions and as compared to a no-impervious condition. The green infrastructure practices that are being proposed exceed the runoff reduction requirements outlined in the New York State Storm Management Design Manual (NYSSMDM). Therefore, impacts up flood flows, flood storage and water equality will not be significant.

*(4) The safety of the proposed activity from flooding, erosion, hurricane winds, soil limitations and other hazards and possible losses to the Applicant and subsequent purchasers of the land.*

Onsite soils around the proposed building foundation and regraded areas including the detention basin will be graded, stabilized and planted such that there will be no increased risk of erosion, wind damage, and flooding to onsite or receiving wetlands/waters.

*(5) The adequacy of water supply and waste disposal for the proposed use.*

An onsite well will be provided for the small quantity of water demand projected for the site, as discussed water demand for the proposed project is expected to be comparable to the existing office building onsite. As there have been no reported problems regarding groundwater capacity or availability at the site or in the surrounding area under existing conditions, no significant adverse impacts related to hydrology of the site or any hydrological connectivity with area resources are expected. A pump test will be conducted prior to site development to confirm groundwater conditions and capacity at the project site.

*(6) Consistency with all applicable statutes or regulations of comprehensive land use plans.*

As discussed in DEIS Chapter 3, it is the Applicant's opinion that the project is compatible with the Town Comprehensive Plan and other regional land use plans including Patterns for Westchester, the Hudson River Valley Greenway Compact, and FAA guidelines.

*(7) The availability of preferable alternative locations on the subject parcel.*

No other locations are available on the site for the proposed parking garage which would avoid wetlands – the project makes use of the central, previously-developed portion of the property to the maximum extent practicable.

*(8) The adequacy of the proposed mitigation plan in minimizing the potential impacts of the activity.*

The wetland and wetland buffer enhancement plan contained in FEIS **Appendix F** will mitigate wetland buffer impacts by removing invasive species and replanting with native, wetland-appropriate plant species to be monitored for a 5-year period.

Town Code Chapter 209-9 provides the following criteria for the provision of mitigation to offset wetland impacts. The means by which the proposed project addresses these criteria is explained:

*The mitigation plan shall also compensate for unavoidable wetland buffer losses at a ratio of two for one, unless the approval authority determines that such mitigation is not feasible.*

*For disturbance in a wetland buffer:*

*[1] Implementation of preventative practices to protect the natural condition and functions of the wetland; and/or*

By avoiding direct wetland impacts, a stormwater management plan to improve water quality and a wetland and wetland buffer enhancement plan to remove invasive species and improve vegetative diversity, in the Applicant's opinion the proposal project protects and preserves the functions of the onsite wetland.

*[2] Restoration or enhancement (e.g., improving the density and diversity of native plant species) of remaining or other upland buffer to offset the impacts to the original buffer.*

As discussed in the FEIS **Appendix F**, a wetland and wetland buffer enhancement plan is proposed in conformance with this provision of the Town Code which, in the Applicant's opinion, offsets impacts to the original wetland buffer.

Town Code Chapter 209-12 provides the following requirement for mitigation monitoring:

*Monitoring of mitigation plans shall be, at a minimum, five years after completion of all construction activity on site.*

The proposed project agrees and does provide a five-year monitoring plan, as outlined in **Appendix F**, wetland and wetland buffer enhancement plan.

**Comment 8-7:**

Again, we would submit that under the conditions of this site and the encroachment in very sensitive wetlands, that the reviewing board, whether it's the Town Board in this case or the Planning Board, maintains its jurisdiction, would not be able to find that. If so, it's not even discretionary but mandatory that the permit be denied. I think when --as Carpenter Environmental Associates will elaborate, the proposal almost eliminates the entire storm water catchment area. It's three times more impervious surfaces in the buffer areas than currently under the existing and would eliminate significant percentages of the on-site wetland buffers. (Michael Zarin, 5/2/11)

**Response 8-7:**

As discussed further in Responses 8-2 and 8-3, the USACE confirmed the wetland boundary delineated by the Applicant's consultant and issued a Jurisdictional Determination letter on February 2, 2012 which is valid for a period of 5 years. However, the Applicant has modified the proposed Site Plan to respect the more restrictive Town-delineated wetland. No disturbance to any regulated wetlands would result from the proposed project. To mitigate for disturbance to wetland buffer

areas, an extensive wetland mitigation plan (wetland and wetland buffer enhancement plan) would be implemented that, in the Applicant's opinion, would improve wetland functionality onsite as well as floristic and faunal diversity onsite. See Chapter 1, "Project Description," for a detailed description of the wetland mitigation plan. See also Response 8-6.

**Comment 8-8:**

There are, we would submit, two watercourses on this site. There is the wetland, I believe it's wetland B, and then there is another area that's called the ephemeral drainage channel, which I guess submitted, it falls outside of DEP's jurisdiction. We would submit, and I guess when DEP has a chance to make its own determination, that this would be classified as an intermittent stream under DEP's regulations. If so, then the almost half of the entire facility is within the hundred foot buffer of that DEP wetland. And we would respectfully submit that the DEP could not issue a variance based on their criteria. We also believe that it would not meet any of the exceptions under DEP regulations for an existing commercial facility in light of that, the existing facility as being abandoned or the impervious threshold conditions, which is also another exception. (Michael Zarin, 5/2/11)

**Response 8-8:**

It should be clarified that NYCDEP only regulates NYS-mapped wetlands, and there are no NYS wetlands onsite. NYCDEP visited the project site in October 2008 and conducted a demarcation of streams/waters regulated by its own regulations. Only the perennial stream (the Class "A" stream that wraps around the project site is almost entirely offsite) was flagged by NYCDEP. A subsequent site inspection by NYCDEP conducted on December 16, 2011 resulted in the DEP taking jurisdiction of a short segment of the lower reaches of the ephemeral drainageway running along the project site's southern boundary. This stream segment was classified as an "intermittent stream" and therefore has a NYCDEP-regulated 50-foot "limiting distance" (buffer). In addition, this intermittent stream segment has a 300-foot limiting distance to the NYCDEP-regulated reservoir stem. The proposed parking structure and all impervious surfaces are located outside of this 300-foot limiting distance. The boundaries of all NYCDEP-regulated limiting distances and stream segments are presented in Chapter 1, 'Description of Modified Project' and Chapter 2, 'Probably Impacts of Modified Project.'

Further, it should be noted that the USACE conducted a site inspection on June 1, 2011 to determine wetlands within its jurisdiction and during this site visit, the ephemeral drainage channel referenced above was determined to be a non-RPW (non-relatively permanent water) because it is seasonal and not "relatively permanent." Nevertheless, it is

regulated by the USACE because it drains indirectly (through a wetland and culvert) to an RPW (i.e., Rye Lake and the Class “A” stream). Thus, this ephemeral drainage channel is regulated by the USACE and the Town, as discussed in the DEIS and FEIS. The approved JD Letter received from the USACE on February 1, 2012 confirms the jurisdictional limits of federal wetlands/waters on the project site.

**Comment 8-9:**

We believe the DEIS also inaccurately states that the project obtained a nationwide permit from the U.S. Army Corps of Engineers. Again, the Army Corps still needs to, I suspect, to get out to the site and go through its own delineation, perform its own delineation. The DEIS posits that it would be eligible for Nationwide Permit 39, which stands for commercial and institutional developments involving less than half an acre of disturbance. However, general condition 19 of this nationwide permit disallows specifically certain nationwide permits, including Nationwide Permit 39, in what’s titled “Designated Critical Resource Waters”. The east of Hudson watershed, excuse me, including the Kensico Reservoir watershed, has been designated as a critical resource watershed, and therefore would require an individualized Army Corps permit. And again we would respect fully submit that it could not meet the conditions, the very onerous conditions of a public interest review under the Army Corps of Engineer regs as well as not meet the DEC’s individualized water quality certification determination, which is triggered by the Army Corps individual permit. (Michael Zarin, 5/2/11)

**Response 8-9:**

The DEIS listed a USACE nationwide permit as a potential permit, pending USACE’s confirmation of the wetland delineation. The USACE performed a site inspection on June 1, 2011 and agreed with the wetland delineation conducted by the Applicant’s consultant in June and October of 2008, as was presented in the DEIS. No disturbance to this wetland would occur from the proposed project; therefore, a wetland permit from the USACE would not be required. The approved JD Letter received from the USACE on February 1, 2012 confirms the jurisdictional limits of federal wetlands/waters on the project site. The project would result in no disturbance to Federally-regulated waters/wetlands and therefore requires no Nationwide Permits (NWP) from the Corps.

**Comment 8-10:**

I would like to elaborate a little more of what Mr. Zarin spoken about with regard to wetland. I’ll get right into it. There are a lot of impacts to wetlands and watercourses associated with this site. And I think it’s important to understand the number of watercourses and the amount of impacts and how they are going to affect the very nearby Kensico watershed.

So, what I have in front of me here is figure eight one, and this is a map of the reservoir and the central watercourses that are mapped by the national wetland inventory and are present in and around the site. Okay. And what you know and what was brought about in the DEIS was that we have a linear wetland that runs into a perennial watercourse, which traverses the eastern portion of the site. It runs along the north of the site, and empties into a perennial watercourse, which drains into the Kensico Reservoir.

In addition, you have another perennial wetland located along the south of the site. This is where you have discussion, and I know you're in the process of providing or doing some more detailed work with regard to wetland delineation. This ephemeral watercourse that the DEIS recognizes. This watercourse drains into an NWI mapped intermittent watercourse. This is something the DEIS doesn't really give a lot of attention to, and I think it's important that the board makes note of this.

This particular linear wetland was not really discussed in terms of DEP regulation. This would, in our opinion, qualify as a reservoir stem, as it is directly contributory to the Kensico Reservoir. I think this is important, because you would have a 500 foot extension out, for jurisdiction out from the reservoir. And then from there, once you determine the status of that technically ephemeral watercourse, you could have a potential to have 100 foot limiting distance off of that particular watercourse, which extends the southern boundary of the site. I think that again would certainly increase the buffer area that's already present on the site. And that is currently regulated both by the Town and by the DEP. (Greg Fleischer, 5/2/11)

**Response 8-10:** See Response 8-8. Also, see Response 8-3 in regard to confirmation of wetland delineations.

**Comment 8-11:** I would like to draw your attention to their existing conditions map. What you're looking at is your delineation, which is in yellow, which is the town delineated wetlands. It's important to really realize all the interconnectivity that exists in and around the site, okay. Again, you have your perennial watercourse, its associated wetland, which drains through this portion of the perennial watercourse, which is a Class A DEC regulated watercourse, and then again through a 60 inch culvert and down into the reservoir.

On the southern portion, this is an illustration of the ephemeral watercourse and its connectivity to wetland A. Wetland A is the bridge between this ephemeral watercourse and this ephemeral watercourse that you have on the southern boundary of the site. I think it's important to understand, because of the hydro connection of the different water

courses and the wetland and the potential impact that could result from development.

You can see in the current conditions that there is a large area of undeveloped forested buffer area, and that is within the 100 foot town regulated area. And this provides, along with the grass areas that are present on the site, a significant amount of buffer. And I think that is counter to the DEIS, which states that currently most of the storm water just runs off the site untreated. And I think when you're looking, when you take a hard look at this particular image, you're going to see that you have well over 100 feet in both instances for trees, for the shrubs, for the grass. It all filters out, that water. That water falls on the site. It goes through the grass. It gets deposited. The rest of the water runs through the underbrush and down to the wetland, where it's stored and it's filtered and goes to groundwater recharged. That's a really significant buffer. It's the reason that the Town has regulations for buffers. It's a reason for it to be maintained. (Greg Fleischer, 5/2/11)

**Response 8-11:**

Wetland A and the ephemeral drainageway that extends upslope along the property's southern boundary (also mapped as part of Wetland A) are not connected to the perennial watercourse by any stream or intermittent channel. During periods of heavy rainfall, the northwestern portion of Wetland A that runs along the NYS Route 120 highway berm may contribute overland flow to the perennial stream. However, under most conditions it flows under NYS Route 120 in a separate culvert.

Regarding the function of the wetland buffer, at present, stormwater runs off the existing drives and buildings and flows into the onsite streams and wetlands. In so doing, it crosses through wetland buffer areas (some in good vegetated condition, some not) as overland flow or channelized/concentrated flow prior to entering the onsite wetlands.

The proposed project would have stormwater management facilities—basins, pocket wetlands, stormwater planters, and a sand filter—all of which would provide greater residence time and greater infiltration than are capable via the lawn and poorly vegetated portions of the existing buffer. Although stormwater volume would increase post-construction due to the increased impervious surface, the stormwater management system comprised of these linked components would reduce runoff volumes and improve water quality to a greater degree than the current condition as quantified and presented in the DEIS.

The proposed project will require 29,271 square feet of unavoidable increase in impervious surfaces in the wetland buffer. Most of this is lawn offers few wetland buffer functions. While it is understood that the Town typically does not allow stormwater management facilities in the wetland buffer, it is the Applicant's opinion that the stormwater



improvement functions of the wetland buffer will be reclaimed/recreated by the proposed stormwater plan, landscaping plan, and wetland buffer mitigation plan (discussed further in Chapter 1).

The FEIS presents a new “wetland buffer enhancement planting plan” for the remainder of the wetland buffer where no land disturbance is proposed. Under this plan, non-native invasive species will be removed and the area replanted with native, facultative wetland plants appropriate for the wetland buffer. These will be monitored for five years to ensure proper survival. This enhancement planting effort will improve upon floral diversity, habitat value, and buffer functions.

As proposed, the Wetland and Wetland Buffer Enhancement Plan, will provide 28,000 SF of mitigation (approx. 1:1 ratio). The Applicant is willing to consider additional offsite wetland buffer mitigation options at the Town’s direction to increase the quantity of wetland buffer mitigation to a ratio of 2:1.

**Comment 8-12:**

The bigger issue which I hope you do not lose sight of, namely 9,000,000 New Yorkers. That is the number of people that rely on the Kensico watershed for their drinking water.

Your decision as to whether this project is permitted to move forward or not is a referendum. In the interest of economic gains for very few. This decision has everything to do with what we value. Do we value ensuring safe drinking water? Further expanding the parking capacity to the airport will no doubt lead to expansion of the level of activity of this airport in terms of the number of flights coming into and out of the airport. This will significantly raise the level of noise and air pollution beyond the existing levels. Again, I ask you, what do we value and what are we willing to sacrifice?

The ramifications of your decision will impact people living in North Castle, Westchester, and New York City for generations to come. It is time for you to be bold and make a stand. Stand for your children, for your children’s children. Stand for your neighbors. Stand for those people who are not aware of what harm can come to them and their families who will be effected if the Kensico where no longer a viable source of drinking water.

The time to draw a line in the sand is now. Do not allow this proposal to move forward. You may feel that the potential risks to our water and the environment associated with this project is acceptable. If you do feel this way, I remind you again 9,000,000 people would be effected.

If we allow this project to proceed and something harmful, God forbid, were to happen, then we as a group need to bear some responsibility.

Sometimes progress is not measured by what we do but what we do not do.

Do you realize that what we are doing here is to promote urbanization? And that is a big question. Is that what we want? (Tania Vernon, 5/2/11)

**Response 8-12:**

Comment noted. See Response 8-1 regarding water quality. Also, see Response 2-1 which discusses the existing multi-agency agreement that limits expansion of Westchester County Airport. The proposed parking facility would address an *existing* need for additional parking and would not increase flights or capacity at the airport. Regarding the potential for noise and air quality impacts, as described in DEIS Chapters 14: Air Quality and Chapter 15: Noise, the proposed project would reduce vehicle trips overall and would therefore reduce mobile emissions. The project will redistribute traffic at certain intersections, but these constitute less than one percent change, which will translate into less than a 0.1 dBA increase in noise levels. Such a noise level increase will be imperceptible, and according to NYSDEC criteria, being less than 3 dBA, will have no appreciable effect on receptors and would not be considered an impact. Further, the proposed parking facility would not be a significant noise generator itself, as it will be an enclosed vehicle storage facility and will have minimal exterior HVAC equipment.

**Comment 8-13:**

The project calls for the construction of an automated 1,450 vehicle parking garage and car wash. It is to be built within a three acre property, designated by several government agencies as environmentally sensitive. If constructed it will destroy 5,700 square feet of Town of North Castle wetlands. Disturb 80,000 square feet of the 100 feet wetlands area. Encroach on the 300 feet protection zone around the Kensico Reservoir. Threaten New York State DEC Class A streams. Violate environmental laws of North Castle, the Army Corps of Engineers, the NYCDEP and New York State DEC. It requires a zoning change from the Town of North Castle. (Julius Shultz, 5/2/11)

**Response 8-13:**

As discussed above, the Site Plan has been modified to avoid disturbance to the Town-delineated wetland, which is more restrictive than the USACE-delineated wetland onsite. As such, the proposed project would not result in any direct wetland disturbance. No new impervious surfaces would be constructed within the 300-foot reservoir stem setbacks. All sensitive water resources would be fully protected in compliance with applicable agency regulations through the stormwater management system described in Chapter 1, "Project Description," of this FEIS as well as Response 9-9. In addition, total wetland buffer disturbance has been reduced. Proposed disturbance within the 100-foot wetland buffer area is described below (NOTE: the USACE does not

regulate a buffer area, but disturbance within 100 feet of the USACE-regulated wetland is provided for comparison):

- Town-delineated wetland buffer disturbance: **77,930 square feet**
  - 42,197 square feet of impervious surfaces (including 5,683 square feet of pervious grass and turfstone pavers)
  - 2,826 square feet of maintained lawn areas
- USACE [unregulated] buffer disturbance: **77,147 square feet**
  - 39,626 square feet of impervious surfaces (including 5,851 square feet of pervious grass and turfstone pavers)
  - 3,696 square feet of maintained lawn areas

**Comment 8-14:**

We've all talked about the destruction of the wetlands, the wetland buffer areas, the encroachment on the reservoir system and the proximity of Class A streams in the vicinity of the site. Those destruction of the areas and encroachment on those areas is going to require permits or variances from New York State Department of Environmental Conservation, DEP, Army Corps of Engineers and Town of North Castle. So, there are several layers of environmental regulations that are put in place specifically for the purpose of protecting areas such as this that need to be pierced or circumvented in order to construct this project. We think there is no more important water body to protect than the Kensico Reservoir. (Peter Dermody, 5/2/11)

**Response 8-14:**

Comment noted. The Applicant is and will continue to actively engage the review of all involved agencies (including the Town, NYCDEP, NYSDEC, USACE, etc.) to ensure all required permits and approvals are granted prior to any site development. It should be noted that the NYCDEP will not provide final, detailed review the Applicant's SWPPP until SEQRA Findings are completed. However, they have reviewed the DEIS, Site Plans, and provided generic comments on the stormwater chapter and plan that are addressed in this FEIS. A formal review of the SWPPP still needs to be undertaken by NYCDEP. The Applicant has communicated with the NYCDEP on September 18, 2014 and plans to schedule a second pre-application meeting to get further feedback on the project's SWPPP. (An initial pre-application meeting was held between the Applicant and NYCDEP in 2011.) The Applicant will keep the Town and its consultants up-to-date on all meetings with NYCDEP and all comments/recommendations it receives. Please see also Response 3-23.

**Comment 8-15:**

Do any of you use the water from the Kensico up here? It's a hundred percent for us. This is the issue. It is about water. You know, we live on that water. I washed my face with that water this morning. It's not filtered. The garage is probably one of the last buildings you want near the water. I mean, that is a sensitive area. These people are smart. They study water. It's all going right into the reservoir.

Do you know why Caribbean water is clean when you go to St. John? Because it's filtered. It doesn't runoff. It's filtered through the earth, in the sand in particular. And I 100 percent believe that it will entice more people to use the airport even with the TCA in place. There is room in the transportation agreement to add more flights my understanding. Yes, it is.

Both will quantitatively increase the pollution of the water that 900 people live with. Do you believe the garage won't impact the water supply? Somebody even said oh, look at the site and, you know, there is some speculation that the building would actually improve it. It won't, let me tell you. It's a parking garage in the wrong place.

You know, I was going to bring three bottles of water, one of them from the Kensico before the airport, one from today and one from the Kensico garage area. I don't think anybody would pick that last bottle, you know. It would, at least today, be better than the garage. Think about it. I hope you agree with that, because that's the last place I want a garage.

So, the question for me is, how do I close the gap and make you honorable board members and Town board members directly accountable to the Westchester and New York City residents that use the water? ...I mean you have 9,000,000 people. I mean, why would you step into this? You know, don't implicate yourself. I know it's big money. You know, as Connie might have said, it's big money but it's not going to be worth it. I'll just keep on it. Once it's done, it's going to be hard to go back, and I'm going to make it –you know, I'll fight for my family and just verbally within the law and I feel like I can make a difference. And please don't get into this. There is other ways to make money. Thank you. (Robert A. Porto, 5/2/11)

**Response 8-15:**

Comment noted. See Chapter 1, "Project Description," for a full description of the stormwater management system and associated green infrastructure practices, as well as a description of the proposed wetland mitigation plan, all of which would maintain high water quality standards from the site. In addition, the stormwater management system would treat stormwater runoff from an adjacent site that is currently untreated, thereby improving stormwater quality.

It should be noted that the proposed parking facility would be an enclosed structure; therefore, driving or parking surfaces, other than the access drive, would not be exposed to stormwater, which would otherwise have the potential to collect and transport vehicle-related pollutants. Any contaminants or vehicle fluids collected within the parking structure would be conveyed to and treated in the sanitary sewer system. It should be noted that the Town's Building Department will need to evaluate the appropriateness of connecting the floor drain to the sanitary sewer.

**Comment 8-16:** Protection of the City of New York's watershed and reservoirs is one of DEP's primary responsibilities. DEP has regulatory review and approval authority pursuant to the rules and regulations for the protection from contamination, degradation and pollution of the New York City water supply and its sources, known as the Watershed Regulations, for certain activities located in the watershed, including the proposed Park Place multilevel parking facility. This project is located in very close proximity to the Kensico Reservoir. You all heard that. In fact, the western boundary is only about 1,000 feet from the shoreline of the reservoir. Kensico provides one of the last impoundments of water from the City's Catskill and Delaware reservoir systems prior to entering the City's water distribution system. On average, 90 percent of the water supply for 8,000,000 New York City residents passes through Kensico each day. In addition, many communities in Westchester County are served by the Westchester Joint Water Works intake located in Kensico, approximately 5,000 feet from the proposed project site. The communities served by this intake include Harrison, West Harrison, Mamaroneck, Rye and Larchmont. DEP has prioritized watershed protection in the Kensico basin to ensure the continued success of DEP's efforts to reduce non-point source pollution, including soil erosion that causes turbidity and degrades water quality, and to preserve existing natural features that contribute to water quality protection. (Cynthia Garcia, 5/2/11)

**Response 8-16:** Comment noted.

**Comment 8-17:** DEP intends to fully participate in the SEQRA process for this action. Our detailed written comments on the project's draft DEIS will be submitted to this board as lead agency in the SEQRA review. DEP expects this board to take the requisite hard look at the entire DEIS and project proposal as required by the SEQRA environmental review procedures. In particular, this board must identify any potential significant adverse impacts to the Kensico Reservoir and the New York City water supply. If any such potential impacts are identified, the board

(and other involved agencies, including DEP) may issue findings to approve the project as proposed only if the environmental review provides for sufficient mitigation to avoid or minimize such impacts to the maximum extent practicable. DEP, as an involved agency, and this board, as lead agency, should continue to have an ongoing dialogue during the entire SEQRA review and DEP is prepared to offer its assistance. (Cynthia Garcia, 5/2/11)

**Response 8-17:** Comment noted.

**Comment 8-18:** There are several areas of environmental concern that will be identified in DEP's written comments regarding the project's DEIS. These include the extent of new impervious surfaces near watercourses, proposed vegetation removal and soil disturbance within the 300 foot buffer of Kensico Reservoir stem, adequate erosion and sediment control during the project's construction phase, post construction storm water practices, and other potential impacts on long-term water quality in the Kensico basin. (Cynthia Garcia, 5/2/11)

**Response 8-18:** Comment noted.

**Comment 8-19:** After SEQRA is completed, the project, as proposed, will require DEP's regulatory review and discretionary approval of a storm water pollution prevention plan and a sewer connection plan to the sanitary sewer system. Further, the project may not comply with the watershed regulations regarding the amount and location of certain impervious surfaces. In that case, a variance from the watershed regulations would be required in order for the project to proceed as planned. A DEP variance, which is also a discretionary approval, requires a showing of hardship and sufficient mitigation measures which are at least as protective of the water supply as standards in the watershed regulations. (Cynthia Garcia, 5/2/11)

**Response 8-19:** Comment noted.

**Comment 8-20:** I am writing to let you know that I oppose the construction of a parking structure (in the town of North Castle) that is to be built for the purpose of providing more parking for Westchester County Airport.

According to my information, the structure, if built, would rest on two wetland areas which are a buffer zone for the Kensico Reservoir. Construction of this parking structure would endanger Kensico Dam, the wetland areas and the drinking water of nine million New York residents.

I hear that the North Castle Planning Board has accepted the DEIS from the builder. It is imperative that you seriously consider the impact this proposed structure would have on the health and quality of life of humans. We are becoming increasingly aware that our health, wellbeing and existence depend on other communities of life and the environment as a whole. As you review this project, please remember to judge it from the long view and the quality of life for our children. Though the parking lot may show short term financial profit and other benefits this does not mean that this is the wisest decision. A wise economic approach incorporates into the decision making process a thorough study and clear understanding of future implications, especially if our water supply and other resources for life are put at risk.

Please protect and preserve the quality of our drinking water and those resources that keep our water supply clean and drinkable. Please work towards an economic framework that looks at true costs where we acknowledge that progress must be balanced by providing a sustainable quality of life that offers our children a future.

As you know resolutions of non-expansion were passed by the County, State Senate and State Assembly. The resolutions clearly state that there should be “no additional parking”. While the proposal is off the property of the airport, I believe it goes against the spirit and intent of the resolutions. (Carol De Angelo, 5/4/11)

**Response 8-20:**

Comment noted. As described in Chapter 1, “Project Description,” of this FEIS as well as Responses 9-7, 9-9, and 9-13, the proposed project would include an extensive stormwater management system that would ensure that the Kensico Reservoir water quality would not be diminished by the proposed project. The Applicant understands the community’s concerns of maintaining this valuable drinking water resource and will comply with all applicable regulations to avoid degradation of the reservoir’s water quality. The proposed project would provide supplemental parking to alleviate an *existing* shortage of parking at the airport. The proposed project would not induce growth of the airport, but would address an existing problem.

**Comment 8-21:**

As you are aware, the proposed project is located within the Kensico Reservoir drainage basin of the New York City (City) Water Supply Watershed. Kensico Reservoir is a terminal reservoir and provides one of the last impoundments of water from the City’s Catskill and Delaware reservoir systems prior to entering the City’s water distribution system. On average, 90% of the water supply for 8 million New York City consumers passes through Kensico Reservoir each day. In addition, several municipalities in Westchester County are served by

an intake located less than a mile away from the project site. (NYCDEP, 5/23/11)

**Response 8-21:** Comment noted.

**Comment 8-22:** The proposed pocket wetlands for stormwater control may not be claimed for mitigation as implied in this Section by either the Town or the Army Corp of Engineers (ACOE). Stormwater practices maximize only a limited subset of the range of functions provided by the lost wetland and cannot be considered true mitigation for the loss of the wetland's other functions. (NYCDEP, 5/23/11)

**Response 8-22:** See Chapter 1, "Project Description," of this FEIS and **Appendix F** for a full description of the proposed wetland and buffer mitigation plan. The proposed project, as revised and presented in this FEIS, would cause no direct wetland impacts. The footprint of disturbance has been modified to avoid all direct wetlands impacts. However, the project would cause permanent and temporary disturbance to the wetland buffer. As discussed above in Response 8-11, the proposed Landscaping Plan and Wetland Buffer Enhancement Planting Plan would improve upon the vegetative assemblage in the wetland buffer onsite. Although the buffer would be reduced in quantity, what remains would be substantially improved upon and monitored for five (5) years to ensure plant survival. A monitoring report would be prepared annually and provided to the Town. If necessary, replanting and modification to the Landscaping Plan and Wetland Buffer Enhancement Planting Plan would be made each year to provide for improved habitat, stormwater management, and overall wetland buffer functions. It should be noted that the Planning Board, as Lead Agency, concurs with the comments of NYCDEP that stormwater mitigation practices should not be considered wetland buffer impact mitigation.

**Comment 8-23:** In accordance with Section 18-23 (b) (5) and (6) of the *Rules and Regulations for the Protection from Contamination, Degradation, and Pollution of the New York City Water Supply and Its Sources* (Watershed Regulations), a property owner or applicant may request that DEP flag watercourses, reservoir stems, etc., on a property, if the property owner or applicant provides DEP with a surveyor's map which includes a representation of the flagged watercourses, reservoir stems, etc., DEP will confirm or annotate the findings on the map. Please note that mapping certification is optional, and not required under the Watershed Regulations. (NYCDEP, 5/23/11)

**Response 8-23:** Comment noted. The Lead Agency expects the Applicant to perform the stream mapping certification task with NYCDEP. The watercourse



delineation was finalized (revised) by NYCDEP on December 16, 2011. The Applicant has recently spoken with NYCDEP (September 18, 2014) and will be submitting the watercourse map for certification to NYCDEP on September 21, 2014..

**Comment 8-24:** DEP visited the site in 2008 to identify and flag watercourses; however, DEP has not received a surveyor's map to confirm or annotate. Note that the locations and associated limiting distances shown in the DEIS for both watercourses and reservoir stems may require modification during DEP's regulatory review process. (NYCDEP, 5/23/11)

**Response 8-24:** Comment noted. Please be aware that a preliminary watercourse delineation plan verifying the flagging of watercourse boundaries performed by NYCDEP staff was sent to NYCDEP on September 21, 2011. Subsequent to this initial watercourse plan submission, NYCDEP revisited the site on December 6, 201112/6/11 and took jurisdiction of the lower portion of the ephemeral stream. A revised plan of NYCDEP-regulated watercourses is being finalized and will be submitted to NYCDEP this month (September, 2014).

**Comment 8-25:** The lack of confirmed wetland and watercourse delineations by the Town, ACOE, and NYCDEP prevents a proper analysis of the environmental impacts of the development and associated increases in impervious surface on the regulated wetlands, wetland buffers and watercourses. (Greg M. Fleischer, 5/24/11)

**Response 8-25:** The USACE (aka ACOE) conducted a JD on the project site on June 1, 2011. The USACE approved the wetland boundary delineated by the Applicant's consultant, as described in the DEIS, and ultimately issued a JD confirmation letter dated February 1, 2012. As noted in the DEIS, this federally- approved line differed from the preliminary Town-delineated wetland boundary demarcated in December 2010. In the spring of 2011, the Town reaffirmed its original wetland delineation. As discussed in Chapter 1, "Project Description" of this FEIS, in response to comments, the Applicant has modified the proposed Site Plan to respect the more restrictive Town wetland boundary, which incidentally increases the separation distance to the USACE wetland. As a result, the proposed project would not disturb any wetland areas onsite. See Response 8-13, Table 1-2, and **Appendix F** of the FEIS for a description of proposed disturbance within the wetland buffer area from the Modified Project. The NYCDEP regulated watercourses and buffers have been updated as discussed in responses above and are shown in FEIS Figures 1-1 and 1-2.

**Comment 8-26:** The DEIS does not adequately describe the hydrological connections between wetlands “A” and “B” and watercourses both onsite and adjacent to the property which are all tributary to the Kensico Reservoir. The impacts to wetlands and watercourses from the proposed reductions and rerouting of surface water runoff, stream flow, and groundwater flow are not clear. A more detailed analysis and discussion of hydrology and the interconnectivity of water resources within and adjacent to the site is required to fully assess project impacts. (Greg M. Fleischer, 5/24/11)

**Response 8-26:** Wetland “A” is not directly connected to the Perennial Stream, but instead overflows to the stream during significant storm events at the property’s northwest corner, where Wetland “A” meets the perennial stream at the large culvert under NYS Route 120. The hydrology (surface and groundwater) that supplies Wetland “A” with the necessary moisture to sustain wetland plants does not come from the perennial stream. And most of the surface water that discharges from Wetland “A” does not enter the perennial stream but instead leaves the site from a separate, smaller culvert beneath NYS Route 120. Figure 1-1 and the large-scale plans that accompany the FEIS show this most clearly.

Regarding the potential impacts of redirecting surface runoff from the proposed development area away from Wetland “A” into the stormwater basins, the existing wetland has a small drainage area-to-wetland area ratio (5:1), which suggests that maintenance of wetland conditions is primarily reliant on groundwater inputs (i.e., surface water inputs are relatively minor). Also, because the wetland is drained at its lower end by a culvert the invert of which is essentially flush with the bottom elevation of the wetland, most of the surface flow delivered to the wetland is quickly conveyed through and out of the complex with very little residence time. These two factors (small drainage area-to-wetland area ratio and low residence time) suggest that surface water inputs delivered via stormwater runoff are unlikely to play a significant role in maintaining wetland hydrology. Consequently, we are of the opinion that the reduction in peak flows to the wetland associated with the proposed project would not pose an adverse impact to wetland hydrology or function. Conversely, the reduction in flows are likely to enhance wetland conditions by reducing the potential for scour and soil erosion within the existing wetland.

**Comment 8-27:** Wetland “A”, as acknowledged in the DEIS, meets federally regulated wetland criteria per ACOE guidance documents. Figures within the DEIS and associated narrative indicate that Wetland “A” is hydrologically connected to both the NWI mapped (PFO1A) perennial stream (regulated by NYSDEC-Class A, ACOE, NYCDEP & the Town

of North Castle), the NWI mapped linear wetland/watercourse on the southern boundary of the parcel (PFO1A), as well as the NWI mapped stream (R4SBF) located directly adjacent to the project site's southwestern boundary (connected via a 36" culvert) that is tributary to the Kensico Reservoir. (Greg M. Fleischer, 5/24/11)

**Response 8-27:** Comment noted.

**Comment 8-28:** The NWI mapped (R4SBF) stream directly adjacent to the site's southwestern boundary and connected via a culvert to Wetland "A" must be considered both a "Watercourse" and "Reservoir Stem" as defined by NYCDEP regulations as it is tributary to the Kensico Reservoir. This would then require a 300-foot offset from the 500-foot extent of the NYCDEP reservoir stem. Additionally, the NWI mapped (PFO1A) linear wetland associated with Wetland "A" (characterized as ephemeral by AKRF) would require a 100-foot limiting distance due to its connection with the NWI mapped (R4SBF) stream, by definition a NYCDEP watercourse. In their December 29, 2010 letter to the Planning Board the Town wetland consultants, Kellard Sessions Consulting, P.C., noted the following with regard to the regulated watercourse along the southern boundary of the subject property:

"Water was observed within the channel located to the south of the proposed parking garage (partially off-site) and therefore this channel will be considered a regulated watercourse. This determination is based, in part on the fact that water flow was present more than 48 hours after a rain event ..."

The DEIS must be revised to reflect the appropriate limiting distances from all relevant regulated watercourses including the NWI mapped (R4SBF) watercourse and its associated headwaters or potential source waters which include the NWI mapped (PFO1A) linear wetland/watercourse associated with Wetland "A" and identified by the Town wetland consultants as a regulated watercourse. (Greg M. Fleischer, 5/24/11)

**Response 8-28:** See Response 8-8.

**Comment 8-29:** Wetland "B", as acknowledged in the DEIS, meets federally regulated wetland criteria per ACOE guidance documents. It is acknowledged in the DEIS that Wetland "B" is hydrologically connected to both the NWI mapped (PFO1E) wetland to the south on Westchester County Airport property and the NWI Mapped (PFO1A) perennial stream (regulated by NYSDEC, ACOE, NYCDEP & the Town). However, *Figure 8-2 – Mapped Streams and Water Bodies*, depicts a connection between the

NWI mapped (PFO1A) watercourse associated with Wetland “B” and the NWI mapped (PFO1A) linear wetland/watercourse associated with wetland “A” (southern edge of property). Drawing No. C-2 – Existing Conditions depicts both the surveyed AKRF and Town wetland delineations as having no connection to the NWI mapped (PFO1A) linear wetland associated with Wetland “B”. This is a clear discrepancy that needs further onsite investigation to determine if there is indeed a hydrological connection between Wetlands “A” and “B” via the NWI mapped (PFO1A) linear wetland/watercourse (identified as regulated by the Town wetland consultants). The proximity of the watercourses to one another combined with the downward sloping site topography would indicate the potential for groundwater and/or surface water connectivity during the growing season. (Greg M. Fleischer, 5/24/11)

**Response 8-29:**

Regarding Figure 8-2, this is the raw Westchester County Planning Department data presented from GIS and is in error. Site inspection confirms that the perennial stream and ephemeral drainageway onsite do not have a surface connection as is suggested by Figure 8-2. The source of this error is the Westchester County Planning Department and it is AKRF’s practice to present GIS data unedited from the source and to cite the source on the graphic itself, which is done in Figure 8-2. The GIS data is then field-verified.

The NWI map presented in Figure 8-1 presents the correct arrangement of surface water features onsite and the USACE-confirmed wetland delineation supports this. The ephemeral drainageway running along the southern property boundary is part of Wetland “A” but is not connected at its headwaters (eastern end) to the perennial stream (Wetland “B”). It is separated from the perennial stream by upland habitat. The only “connection” between Wetland “A” and the perennial stream is an ephemeral one at the northwest corner of the project site where Wetland “A” discharges to the perennial stream during large storm events. This surface connection between Wetland “A” and the perennial stream was not seen in the field but is assumed by the presence of the narrow band of Wetland “A” that runs along the roadway berm of NYS Route 120 and comes up to the edge of the perennial stream at its point of discharge from the site by the large culvert that carries the perennial stream (Class A Stream) beneath NYS Route 120. It is therefore assumed based on topography that Wetland “A” discharges to the perennial stream during large storm events.

**Comment 8-30:**

The DEIS states that Wetlands “A” and “B” were delineated and described as per ACOE methodologies and Town definitions. Both wetlands have preliminary Town delineations until a final determination is made following re-inspection of the wetland lines during the 2011

growing season. However, a federal jurisdictional determination by the ACOE is required to confirm both wetland boundaries, identify the nature of the linear wetlands/watercourses, and to establish the hydrological interconnections with watercourses both onsite and on adjacent properties. (Greg M. Fleischer, 5/24/11)

**Response 8-30:**

The USACE (aka ACOE) performed a JD on the project site on June 1, 2011. The USACE confirmed the wetland boundary delineated by the wetland's Applicant, as presented in the DEIS. Prior to the USACE site inspection, the Town re-evaluated the project site in the spring of 2011 and upheld its initial wetland boundary delineation. As such, the federally- and Town-regulated wetland boundaries differ onsite, but the Applicant has modified the proposed Site Plan to respect the Town's more restrictive wetland delineation.

**Comment 8-31:**

The DEIS overlooks NYSDEC jurisdiction for Protection of Waters with regard to water quality certification as well as Critical Resource Water criteria set forth by the ACOE.

The DEIS states "While the New York State Department of Environmental Conservation (NYSDEC) also maintains regulatory authority over certain wetlands, the wetland resources on the project site do not meet the minimum requirements for regulation by the State." Although the onsite wetlands are not mapped by the NYSDEC, both Wetlands "A" and "B" would be regulated by the U.S. Army Corps of Engineers (ACOE). As such, filling a portion of Wetland "A" for development would require the applicant to obtain an ACOE Individual Permit (a federal Nationwide Permit (NWP) #39 for Commercial and Institutional Developments would not be authorized) and consequently NYSDEC Section 401 Water Quality Certification (WQC).

NYSDEC Section 401 Water Quality Certification would be required as per 6 NYCRR §608.9(a) which states:

*Water Quality Certifications* – "Water quality certifications required by Section 401 of the Federal water Pollution Control act, Title 33 United states Code 1341 (see subdivision (c) of this Section). Any applicant for a federal license or permit to conduct any activity, including but not limited to the construction or operation of facilities that may result in any discharge into navigable waters as defined in Section 502 of the Federal water Pollution Control Act (33 USC 1362), must apply for and obtain a water quality certification from the department ..."

The project as proposed will require the placing of fill material into waters of the United States and as such, the NYSDEC Section 401 Water Quality Certification for the U.S. Army Corps of Engineers

Nationwide Permits and the associated regional conditions are applicable. The document states:

*List 4 – Permits denied Section 401 Water Quality Certification* – “The Nationwide Permits listed below are hereby denied Section 401 Water Quality Certification in New York State. Any party conducting the activities authorized by these NWP’s must apply for and obtain a Section 401 Water Quality Certificate from the New York State Department of Environmental Conservation....NWP 39. Commercial and Institutional Developments.”

As referenced above, the applicant would be unable to obtain a NWP #39 that would be necessary for filling a portion of Wetland “A”, due to the required conformance with NWP General Condition #19 which puts forth additional restrictions for Critical Resource Waters. All wetlands and streams onsite are tributary to a Critical Resource Water, the Kensico Reservoir (Rye Lake), which is part of the East-of-Hudson portion of the New York City water supply watershed. NWP General Condition #19 states in both the U.S. ACOE regulations and ACOE NY District regional condition documents that discharges of dredged or fill material into Critical Resource Waters is not authorized by NWP #39. The NY District ACOE regional condition document states:

*Critical Resource Waters* – “In accordance with NWP General Condition #19, certain activities in Critical Resource Waters cannot be authorized under the NWP program or will have to meet additional conditions. Discharges of dredged or fill material into waters of the United States are not authorized by NWP’s 7,...39,.. for any activity within or directly affecting Critical Resource Waters, including wetlands adjacent to such waters.

1. State Waters with Environmental Significance: The New York District has designated the East-of-Hudson portion of the New York City water supply watershed as Critical Resource Waters. This area includes portions of Dutchess, Putnam, and Westchester Counties as delineated on the attached map.” (Greg M. Fleischer, 5/24/11)

**Response 8-31:** Comment noted. Please be aware that no direct wetland impacts are proposed by the project. The project footprint has been reduced to avoid any direct wetland impacts. Therefore, no Federal Nationwide Permits and no Section 401 Water Quality Certification would be required.

**Comment 8-32:** The DEIS and the wetland delineation report provided therein do not provide significant supporting information to adequately characterize on site and adjacent wetlands and watercourses that are direct tributaries to

the Critical Resource Waters of the Kensico Reservoir watershed. The DEIS needs to provide additional information describing in more detail the hydrological connections and flow patterns between wetlands and watercourses both on the proposed project site and adjacent properties in accordance with ACOE jurisdictional determination requirements to better assess the impacts of the proposed project:

*Checklist, 4. Delineation report, including the following supporting information:*

- Watershed size, drainage area size (for each stream reach), average annual rainfall/snowfall.
- Discussion of whether tributaries (streams) on the site are TNW's, perennial RPW's, seasonal RPW's, or non-RPW's. Include a description of general flow patterns, volume and frequency.
- Description of whether each wetland on the site either abuts or is adjacent to a tributary, identify which tributary (e.g. Wetland A directly abuts an unnamed tributary to Kayaderosseras Creek), and provide a justification for this determination.
- Description of tributary connections to a TNW for each aquatic resource on the site, including a discussion of wetland and/or other connections (e.g. Wetland B connects to Wetland A via a culvert under Elm St. Wetland B abuts an unnamed tributary to Kayaderosseras Creek, which is a TNW).
- Color photographs of all representative areas of the site (taken during the growing season), including any connections between tributaries and wetlands. (Greg M. Fleischer, 5/24/11)

**Response 8-32:**

The wetland delineation report (12/21/10) for the project site was provided in **Appendix A** of the DEIS. This report includes figures and discussion of the interconnectivity of onsite waters and wetlands, flow paths and directions, and color photographs. To reiterate, wetland A onsite abuts an RPW (the perennial stream) which flows to the Kensico Reservoir. The ephemeral stream within Wetland A is a non-RPW which flows through a separate culvert to the Kensico Reservoir. All information on the interconnectivity of onsite waters and wetlands was presented correctly in the DEIS and wetland report to the satisfaction of the USACE. Kayaderosseras Creek, mentioned above, is located in Saratoga Springs, NY and is not in the vicinity of the proposed project.

**Comment 8-33:**

The number of wetland and watercourse buffer reductions required due to development restrictions at the Federal, State, City, and Town levels should not be downplayed. There are currently a number of interconnected wetlands and watercourses on the proposed project site that work in concert to buffer and regulate water flowing to the Kensico Reservoir. The purpose of establishing onsite buffers within the

watershed is to protect land in its natural state and allow for natural communities to filter impurities from water that makes its way to the reservoir system. The limitations placed on development in such a critical area by the NYCDEP, ACOE, and the Town of North Castle are designed to maintain and preserve the value and integrity of the wetlands and associated buffers that serve both as protection and filtration for the New York City water supply. The DEIS must accurately reflect all applicable development restrictions, rationally assess the projects impacts, and provide real, substantiated measures to avoid or mitigate these impacts. (Greg M. Fleischer, 5/24/11)

**Response 8-33:**

As discussed above, the Site Plan has been modified to avoid disturbance to the USACE- and Town-regulated wetlands onsite. The proposed project would comply fully with all applicable NYCDEP, USACE, and Town of North Castle wetland and watercourse regulations. The wetland buffer enhancement plan, detailed in Chapter 1, "Project Description," of this FEIS, would replicate and improve the wetland and wetland buffer functions onsite to ensure continued high water quality standards. Although a portion of the wetland buffer would be built upon, the stormwater management plan and wetland buffer planting enhancement plan would ensure that no loss to wetland buffer functions nor diminishment in water quality would result, as is presented quantitatively for water quality and qualitatively for wetland functions in the DEIS.

**Comment 8-34:**

Building this structure at this location will require:

- The destruction of 5,700 square feet of Town of North Castle-designated and US Army Corps of Engineers-designated wetlands.
- 80,000 square feet of the 100-foot wetlands buffer area will also be disturbed [although a portion (44 percent) will be re-vegetated].
- The project requires encroachment within the 300-foot protection zone around a New York City Department of Environmental Protection (NYCDEP) Reservoir Stem (a reservoir stem is a stream or other water body that flows into, or is hydraulically connected to, a reservoir) and, therefore, requires a variance from NYCDEP to disturb and construct in this zone.
- The proposed project site potentially threatens the New York State Department of Environmental Conservation Class A streams that are present at the north, south, and west site boundaries. Class A streams are designated as streams used for drinking water supply. These streams discharge directly to the Kensico Reservoir, which is used to supply drinking water to nine million people. The Kensico Reservoir is approximately 600 feet from the proposed project property. (Peter Dermody, 5/27/11)



**Response 8-34:**

As discussed above, the modified Site Plan would avoid any disturbance to Town- and USACE-delineated wetlands onsite. The building footprint has been reduced, thereby reducing wetland buffer impacts as well. The area of disturbance within the 100-foot Town-regulated wetland buffer area would be 75,206 square feet. Approximately 40,000 square feet of this area would be revegetated and remain as pervious lawn area. An additional approximately 5,800 square feet would comprise pervious grass and turfstone pavers. A variance will be required from the NYCDEP watershed rules and regulations (WRR) for construction of some impervious surface located within the limiting distances of a NYCDEP-regulated watercourse. No impervious surface coverage would be developed within the 300-foot reservoir stem setback. Any disturbance in this area would be related to the stormwater management system and wetland mitigation plan. In addition, as discussed in the DEIS, no disturbance to the bed or banks of the NYSDEC-regulated watercourse (perennial stream) that travels along the edge of the project site would occur from the proposed project; therefore, it is not expected that an Article 15, Protection of Waters permit from NYSDEC would be required. However, if NYSDEC determines that a permit is necessary, the Applicant will comply with all applicable regulations.

With the proposed garage structure, the amount of impervious surface in the buffer increases from 11,578 square feet in the existing condition to 35,047 square feet (+ 5802 SF for porous pavers) with the proposed project, for a net increase of 29,271 SF. In the Applicant's opinion, the remainder of the proposed disturbance within the wetland buffer will be temporary in nature. This includes areas regraded and replanted for the land around the garage and for the stormwater management system (sedimentation basin, sand filter, and pocket wetland). At present much of the wetland buffer contains lawn and previously regraded areas now occupied by invasive species (principally vines) and consequently a depauperate understory. Landscaped (unforested) area within the wetland buffer increases from 19,458 SF (principally lawn) to 40,159 SF (principally stormwater management area) for a net increase of 20,701 SF with the proposed project. This increase is primarily for the stormwater management area which will be planted with a diverse assemblage of facultative wetland plants as shown on the Landscaping Plan C-9. Therefore, except for the net increase in impervious surface within the wetland buffer, in the Applicant's opinion all other project-related buffer disturbance will be temporary and once revegetated will improve upon the ecological and water filtration functions of the wetland buffer. However, it is acknowledged that the Town typically

discourages stormwater infrastructure within the Town-regulated wetland buffer.

Town Code Chapter 209-9 requires mitigation at a ratio of 2:1 for impacts to wetland buffer “unless the approval authority determines that such mitigation is not feasible.” For the proposed 29,271 SF unavoidable increase in impervious surfaces in the wetland buffer, this would require 58,542 SF of buffer mitigation. The project site contains a preponderance of non-native species which diminish the ecological value of the buffer and wetland and which lessen stormwater infiltration due to the heavy vine cover and consequent lack of ground cover in places. The wetland and buffer area west of the proposed parking garage is proposed to be enhanced through invasive species removal and supplemental planting of native obligate and facultative plant species. This is presented in the Wetland and Wetland Buffer Enhancement Plan – FEIS **Appendix F** – and includes 5-year monitoring/maintenance. This plan would conduct the wetland and buffer enhancement activity within approximately 20,000 SF of wetland and 8,000 SF of buffer, providing approximately a 1:1 mitigation ratio for the 29,271 SF of permanent loss of buffer onsite. Because the project site does not provide the area to meet the 2:1 mitigation guideline, the Applicant is willing and ready to provide additional wetland buffer mitigation at an offsite location of the Town’s choosing.

**Comment 8-35:** The Town of North Castle and the United States Army Corps of Engineers prohibit the disturbance of designated wetlands and wetlands buffer area. The NYCDEP prohibits disturbance to areas within 300 feet of a reservoir stem or a NYCDEP-designated watercourse. Therefore, the construction of this project will require permits and variances to allow the circumvention of these layers of environmental regulations that have been established for the protection of both the wetlands and the water quality within the reservoir. (Peter Dermody, 5/27/11)

**Response 8-35:** Table 1-1 of the DEIS acknowledges all required permits and approvals necessary for the proposed project. The Applicant will comply with all necessary regulations and permit requirements. As discussed in the DEIS, no impervious surfaces would be developed within the 300-foot reservoir stem setback, in compliance with NYCDEP regulations. However, approval from NYCDEP would be required for disturbance within the 100-foot limiting distance from a regulated watercourse. As discussed above and in Chapter 1, “Project Description,” of this FEIS, the Site Plan has been modified in response to comments to avoid disturbance to the Town-delineated wetland, even though this wetland delineation is more restrictive than the USACE-regulated wetland area. As such, no wetland disturbance would result from the proposed project.

However, the proposed project would require Town approval for disturbance within the 100-foot wetland buffer area, as acknowledged and discussed in the DEIS.

**Comment 8-36:** As the Town Board and the Planning Board are well aware, the location of the proposed project is the Kensico Watershed, which is adjacent to and connected to the Kensico Reservoir, an environmentally sensitive area. The Kensico Reservoir supplies more than 9,000,000 New Yorkers with safe, unfiltered drinking water. The importance of protecting this water supply has been acknowledged and supported by governmental and non-governmental entities at every level, from local to national, for more than a decade. The project under review presents an unacceptable threat to that water supply. (Richard J. Lippes, 5/31/11)

**Response 8-36:** See Response 8-1. Also, see Chapter 1, “Project Description,” of this FEIS for a detailed discussion of the proposed stormwater management system, associated green infrastructure practices, and proposed the wetland mitigation plan.

**Comment 8-37:** Putting aside for the moment certain critical procedural issues addressed below, most people would agree that the most significant threat of pollution to the Kensico Reservoir exists within the relatively small watershed (approximately 10 square miles) surrounding the reservoir, due to the residential, commercial, and industrial development that has occurred in the Kensico Watershed area. A number of protective measures have been introduced to address that concern, including (as relevant to the proposed project) policies designed to limit any further growth at the Westchester County Airport. (Richard J. Lippes, 5/31/11)

**Response 8-37:** Comment noted.

**Comment 8-38:** *The DEIS Omits Facts Regarding Wetlands Subject to Regulation* – The DEIS fails to acknowledge that there is a second stream located on the project site and thereby omits information that would bring parts of the project under the jurisdiction of the Department of Environmental Protection (“DEP”). The DEIS acknowledges the presence of “[t]wo streams [that] occur on the project site,” one of which it refers to as a “perennial stream,” the other of which it says is an “ephemeral drainage channel that is infrequently flooded.” Both of these streams are DEP watercourses. In figure 8-2 of the DEIS, it is evident that there are two streams designated by Westchester County that pass through the project site and flow to the Kensico Reservoir. DEIS Figure 8-1, the National Wetland Inventory mapped wetlands, also shows a second stream along the southern boundary of the Project Site.

Indeed, the Town's Wetland Consultant states that this second stream is "a regulated watercourse"; "Water was observed within the channel located to the south of the proposed parking garage (partially off-site) and therefore this channel will be considered a regulated watercourse. This determination is based, in part, on the fact that water flow was present more than 48 hours after a rain event." Memorandum to Planning Board from David J. Sessions, RLA, AICP, dated Dec. 29, 2010.

Contrary to the DEIS assertion that this "secondary drainage feature does not demonstrate perennial or intermittent flow," Mr. Sessions' observation that the stream exhibited water flow more than 48 hours after a rain event clearly demonstrates that the second watercourse at the southern portion of the site constitutes an Intermittent Stream under the DEP's Watershed Regulations (section 18-16(a)(63). Accordingly, the DEIS fails to properly acknowledge that the DEP has jurisdiction over the second stream. (Richard J. Lippes, 5/31/11)

**Response 8-38:** See Response 8-8. In addition, disturbance within the 100-foot buffer surrounding the ephemeral drainage area has been accounted for in the DEIS and the FEIS as this area has been classified as a wetland, which also has a 100-foot Town-regulated buffer area. The NYCDEP took jurisdiction of the lower portion of the ephemeral stream and as shown in Figure 1-1 of this FEIS it is regulated as an "intermittent stream" and is subject to the NYCDEP's 50-foot buffer.

**Comment 8-39:** The DEIS asserts further that the secondary stream "would not be directly affected by the development of the project." The DEIS neglects to mention, however, that the proposed parking garage would effectively eliminate the stream's protective buffer areas and probably disturb the stream directly, which is suggested by figure 8-4 in the DEIS. Indeed, the Town Wetland Consultant stated that, "given the proximity of the proposed improvements to the wetland boundary line, it does not appear feasible to construct the building without directly impacting/disturbing the wetland proper." Memorandum to the Planning Board from David J. Sessions, RLA, AICP, dated Dec. 10, 2010, at 10. (Richard J. Lippes, 5/31/11)

**Response 8-39:** See Response 8-8. Disturbance to the buffer area was discussed in Chapter 8 of the DEIS. Because the footprint of the proposed project has been modified, a revised discussion of buffer impacts is presented in Chapters 1 and 2 of this FEIS.

**Comment 8-40:** The approach taken by the Applicant in the DEIS is contrary to the Town's own Freshwater Wetlands Law, which expressly states that,

“[t]he establishment of regulatory and conservation practices for these [wetland] areas serves to protect the Town by insuring review and regulation of any activity near or on the wetlands that might adversely affect the public health, safety and welfare.” Town Code section 209-3(A)(3). The DEIS should not attempt to avoid the regulatory review applicable to wetlands, especially when those wetland areas are in close proximity to Kensico Reservoir. (Richard J. Lippes, 5/31/11)

**Response 8-40:** The Applicant will comply with all applicable regulations and pursue all applicable permits and approvals. The Applicant has distributed the DEIS to and been in communication with the Town and all involved agencies that enforce wetland regulations. Each of the permits and approvals related to the proposed project were discussed in the DEIS, including those pertaining to the Town, NYCDEP, NYSDEC, USACE, etc. There are no deliberate omissions of required permits and approvals in the DEIS.

**Comment 8-41:** *A Second Kensico Reservoir Stem* – The DEIS does not show the limiting distance from the second Reservoir Stem affecting the site. DEIS Figures 8-1 and 8-2 show two streams that exit the site and immediately enter the Kensico Reservoir. Section 18-16(a)(95) of the Watershed Regulations define a Reservoir Stem as “any watercourse segment which is tributary to a reservoir and lies within 500 feet or less of the reservoir.” The DEIS has erroneously omitted information demonstrating the location of the 300-foot buffer from the second Reservoir Stem in relation to the project site. This omission is likely due to the prohibition against the construction of impervious surfaces within 300 feet of a reservoir stem, as set forth in section 18-39(a)(1) of the Watershed Regulations. (Richard J. Lippes, 5/31/11)

**Response 8-41:** See Response 8-8.

**Comment 8-42:** The DEIS incorrectly asserts that there is a way around the required buffer area, relying on a limited exception for the expansion of impervious surfaces in buffer areas for existing commercial facilities, which is provided for by Watershed Regulation 18-39(a)(4)(iii). The exception does not apply to the proposed project because the exception applies only to “existing” facilities, not to new construction that takes the place of the existing use at the project site. Another reason why the exception does not apply is that the project would add impervious surfaces to the buffer areas in excess of 25% of the existing use.

Consequently, the Applicant would need to seek a variance from the DEP under Watershed Regulation 18-61. The DEIS is inadequate in that

regard, since it does not demonstrate factually that the proposed project could satisfy any of the requirements for a DEP variance, such as:

- [d]emonstrate that the variance requested is the minimum necessary to afford relief;
- [d]emonstrate that the activity as proposed includes adequate mitigation measures to avoid contamination to or degradation of the water supply which are at least as protective of the water supply as the standards for regulated activities set forth in [the Watershed Regulations]; [or]
- [d]emonstrate that . . . compliance [with the Watershed Regulations] would create a substantial hardship due to site conditions or limitations.

Watershed Regulations, 18-61(a)(I) (see DEP Comments, infra, at p. 13-15). (Richard J. Lippes, 5/31/11)

**Response 8-42:**

As discussed in the DEIS, a variance would be sought for improvements to the existing driveway that would continue to be used for the proposed project. The existing driveway is 20.7 feet wide at its narrowest point. In order to comply with Town Code requirements and ensure vehicle safety, the driveway would need to be expanded to 24 feet wide. As stated in the DEIS, this would require 1,737 square feet (0.04 acres) of new impervious surfaces within the 100-foot watercourse limiting distance. In addition, a small 2,570 square foot portion of the proposed parking garage would be located within the 50-foot buffer of the intermittent stream as shown in FEIS Figure 1-2. NYCDEP has discretionary approval for the variance for these encroachments and the Applicant has and will continue to coordinate with NYCDEP.

**Comment 8-43:**

As discussed substantively below, the DEIS fails to articulate mitigation measures with respect to wetlands impacts sufficient to demonstrate that such measures would “protect the watershed just as much as compliance with the regulation from which the applicant seeks a variance.” See, Nilsson v. D.E.P., 8 N.Y.3d 398, 834 N.Y.S.2d 688, 690 (2007) (“[B]efore it grants a variance, DEP must be persuaded that the applicant’s proposed mitigation measures will protect the watershed just as much as compliance with the regulation from which the applicant seeks a variance.” (Richard J. Lippes, 5/31/11))

**Response 8-43:**

See Responses 8-34 and 8-42. The Applicant proposes 28,000 SF of wetland and wetland buffer enhancement onsite, as detailed in **Appendix F** of the FEIS. This provides approximately 1:1 mitigation for permanent buffer loss (impervious surface) but falls short of the Town Code’s 2:1 mitigation requirement. The Applicant is ready and willing to provide additional offsite wetland buffer mitigation at an

offsite location of the Town's choosing. Please note however, that the Town Code §209-9 explicitly states that 2:1 buffer mitigation is required "unless the approval authority determines that such mitigation is not feasible." In this instance, with limited land onsite for wetland buffer mitigation, the Applicant may be found to have satisfied the Town's mitigation requirement with its proposed enhancement plan. The Town will review this plan and reserves the right to make a final ruling as to the adequacy of the Applicant's wetland buffer mitigation plan.

**Comment 8-44:** Nor would the Applicant qualify for a "hardship" variance. The DEIS shows one project alternative in which compliance with Watershed Regulations appears feasible. DEIS at 18-29 to 18-34 & fig. 18-5, Alternative "D," envisions a "no wetland impacts" Project, which apparently is considered to avoid both Town and DEP regulated buffers. If it is possible that the Applicant can comply with the Watershed Regulations, in order to obtain a "hardship" variance, it must be demonstrated that compliance would be "prohibitively expensive." See, Nilsson, 834 N.Y.S.2d at 691.

Here, however, the DEIS does not contend that Alternative "D" would be prohibitively expensive: "Alternative D would result in economic benefits during construction and during annual operations." Likewise, the DEIS does not contend that, in the absence of a variance from the DEP, compliance with the regulations would cause the Applicant "substantial hardship." (Richard J. Lippes, 5/31/11)

**Response 8-44:** Each of the alternatives would require a widening of the site driveway, and would therefore require a variance from NYCDEP. While the proposed structure under Alternative D would avoid disturbance within any wetland or watercourse buffer areas, it would not substantially meet project objectives nor would it effectively alleviate the existing parking shortage at Westchester County Airport, which would be its primary function. The minimal benefit that would result from this alternative, compared to the effort and cost that would be required for construction, would not render this a worthwhile or practical venture, in the Applicant's opinion. In the opinion of the Applicant, even though Alternative D would avoid buffer disturbance, the proposed project would implement an extensive wetland and buffer mitigation plan that would offset potential adverse impacts. It should be noted that the Planning Board, as Lead Agency, will require the implementation of a mitigation plan meeting the requirements of the Town Code or a wetland permit will not be issued.

**Comment 8-45:** The DEIS raises a question with respect to the need for review by the U.S. Army Corps of Engineers (“ACOE”) of potential environmental impacts of the project on federally protected wetlands. While the DEIS states that the Applicant may obtain a Nationwide Permit from the ACOE (DEIS at 1-2), it is likely that individualized review by the ACOE will be necessary and that such permit will be unavailable. (Richard J. Lippes, 5/31/11)

**Response 8-45:** See Responses 8-2 and 8-3. The proposed project would not affect any USACE-delineated or regulated wetlands.

**Comment 8-46:** The DEIS recognizes ACOE jurisdiction over wetlands at the site, including Wetlands “A” (“Forested wetlands, a perennial stream, and an additional drainage feature were found to constitute regulated surface water resources at the Town and Federal level”). However, the ACOE have not yet confirmed the boundaries of resources under its jurisdiction. (Richard J. Lippes, 5/31/11)

**Response 8-46:** See Responses 8-2 and 8-3. The proposed project would not affect any USACE-delineated or regulated wetlands.

**Comment 8-47:** The Project purportedly would impact approximately 0.13 acres of regulated wetlands, since a portion of the garage would be located in Wetland “A” (DEIS fig. 8-4). The DEIS incorrectly assumes the availability of Nationwide Permit 39 (for Commercial and Institutional Developments involving less than ½ acre of disturbance). General Condition 19 of the Nationwide Program disallows certain Nationwide Permits (including NWP 39) in Designated Critical Resources Waters “for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.” 72 Fed. Reg. 11 092, 11193 (March 12, 2007). The East of Hudson Watershed (including the Kensico Reservoir Watershed) has been designated as Critical Resource Waters (DEP, Wetlands in the Watersheds of the New York City Water Supply System, at 19), which means that “individual, project-specific permits are required for many activities.” (Richard J. Lippes, 5/31/11)

**Response 8-47:** See Responses 8-2 and 8-3. The Modified Project would not disturb any USACE- or Town-regulated wetlands.

**Comment 8-48:** Under the individualized “Public Interest Review” conducted by the ACOE, (33 CFR § 320.4(a)), “[t]he decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest.” The DEIS does not contain a basis for meeting the criteria for such a permit.



The ACOE regulations specifically apply to “[w]etlands [that are] considered to perform functions important to the public interest,” which include those at the project site: “Wetlands the destruction or alteration of which would affect detrimentally natural drainage characteristics, sedimentation patterns, salinity distribution, flushing characteristics, current patterns, or other environmental characteristics;” and “Wetlands which serve significant water purification functions.” 33 C.F.R. § 320.4(b)(2). (Richard J. Lippes, 5/31/11)

**Response 8-48:** See Responses 8-2 and 8-3. The proposed project would not affect any USACE-regulated wetlands.

**Comment 8-49:** Because the proposed project would have adverse impacts upon natural drainage characteristics, sedimentation patterns, and other environmental characteristics of wetlands connected to the Kensico Reservoir, the ACOE likely would be compelled to deny the permit request. (Richard J. Lippes, 5/31/11)

**Response 8-49:** See Responses 8-2 and 8-3. The USACE has confirmed that no federally-regulated wetlands would be affected by the proposed project.

**Comment 8-50:** Additionally, the DEC would need to make an individualized Water Quality Certification determination for purposes of an ACOE permit, pursuant to the federal Clean Water Act. As discussed in Keating v. F.E.R.C., 927 F.2d 616, 622 (D.C. Cir. 1991), “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 [citations omitted].” (Richard J. Lippes, 5/31/11)

**Response 8-50:** See Responses 8-2 and 8-3. The USACE has confirmed that no federally-regulated wetlands would be affected by the proposed project.

**Comment 8-51:** Since the DEC will afford a Water Quality Certification only if it can determine that the project will not violate relevant regulatory requirements intended to preserve water quality (6 NYCRR 608.9), the DEIS should contain a discussion of the proposed project’s ability to satisfy each of the listed criteria. (Richard J. Lippes, 5/31/11)

**Response 8-51:** No direct wetland impacts (fill) will occur with the revised project design. Therefore, no Water Quality Certification (CWA Section 401) will be required from the NYSDEC.

**Comment 8-52:** Without repeating all of the lengthy analysis set forth in its letter, we adopt DEP's comments and incorporate them herein as our own. That being said, and acknowledging that there will be some repetition at, we offer the following for the Board's consideration.

The Town Planning Board, the Town Board, and the Town Conservation Board obviously are well aware of the environmentally sensitive nature of the Kensico Watershed and the staggering importance of maintaining water quality in the Kensico Reservoir – the source of drinking water for millions of New Yorkers, including those within the local area. After all, one of the reasons the Planning Board issued a Positive Declaration requiring the EIS is that “[t]he proposed construction is to occur wholly within the Kensico Reservoir Watershed.”

Indeed, it may fairly be said that the Town's commitment to environmental protection is truly impressive. One example is the creation of the Kensico Watershed Improvement Committee (“KWIC”), in which the Town partnered with five major corporations on Route 120 for the express purpose of “protect[ing] the Kensico Reservoir from potential water quality threats associated with the corporate and roadway uses in the King Street Corridor” - the precise location of the proposed project. This committee authored the “King Street Corridor Management Plan” in 2001, in which it very pertinently states, “careful planning for new development [is one of two] extremely important components of the management plan.” As such, one would expect the project sponsors to be familiar with the Plan and to discuss the project's consistency with the Plan's objectives. Unfortunately, the DEIS contains no reference to the Committee or to the Plan. (Richard J. Lippes, 5/31/11)

**Response 8-52:** The proposed project will incorporate and satisfy the goals of the “King Street Corridor Management Plan.” See Responses 3-2 and 9-52 for further discussion.

**Comment 8-53:** Peter Dermody has advised the Sierra Club that, among other things, building the structure at the proposed location will require: [See Comment 8-34 which shows the list provided by Peter Dermody in his letter dated 5/27/11]

**Response 8-53:** See Response 8-34.

**Comment 8-54:** It is likely that the Town Board will deny a Wetlands Permit for the Project. In adopting North Castle's Freshwater Wetlands and Drainage Law, the Town Board stated that “[w]etland areas should be protected

from encroachment, spoiling, polluting, or obliteration stemming from...commercial development...and/or disregard for natural resources.” Town Code § 209-3(A)(I).

The Freshwater Wetlands Law (Town Code § 209-3(A)(1)) recognizes that wetlands provide multiple beneficial functions, including: “[p]roviding drainage, flood control, and natural storage for water;” “[p]rotecting and purifying surface and subsurface water resources by sediment trapping, nutrient removal and chemical and biological detoxification;” “[r]echarging, storing groundwater (including aquifers and surface waters,) and maintaining stream flow;” and “[m]itigating the effects of erosion by serving as natural sedimentation areas and filter basins.” The Freshwater Wetlands Law requires that the Town Board “*shall* deny the permit if”:

The proposed activity may threaten public health and safety...can cause nuisances, impair public rights to the enjoyment of public waters...or violate other federal, state or local laws and regulations [or] It finds that the detriment to the public good by the factors listed in this section would occur on the issuance of the permit outweighs the nonmonetary public benefits associated with the activity.

Town Code, § 209-7(B)(3). In the absence of much more developed mitigation measures, the proposed project clearly violates the threshold set in this section. Accordingly, the Board would be constrained to deny the issuance of a wetlands permit. (Richard J. Lippes, 5/31/11)

**Response 8-54:**

See Chapter 1, “Project Description,” of this FEIS for a detailed description of the proposed wetland mitigation plan. Through consultation with the Town, the Applicant has and will continue to refine the wetland mitigation plan so that it meets all of the stringent standards and objectives of the Town. See also response 8-34, outlining the amount of mitigation proposed with the project’s Wetland and Wetland Buffer Enhancement Plan. Approximately 1:1 mitigation is available to offset the new, permanent loss of wetland buffer. The Applicant is willing to provide additional offsite wetland buffer mitigation at a location of the Town’s choosing.

**Comment 8-55:**

The DEIS asserts that the project’s wetland buffer “disturbances are primarily for the proposed construction of the stormwater management basins.” In fact, more than half of the proposed parking facility would be located within the 100-foot buffer zone. The DEP already has articulated that the DEIS is inadequate in dealing with the functional value of the buffers that the project would eradicate. Contrary to the justification given in the DEIS, the Project would triple the amount of

impervious surfaces in the buffer area. There are presently 12,132 square feet of impervious surfaces in the buffer. The Project would add 21,354 square feet of impervious surfaces to the buffer area, for a total of 33,486 square feet.

As the Town Wetland Consultant has observed, “this section completely downplays the extent of improvements proposed within the wetland buffer, proximity of these improvements to the wetland boundary line and potential impacts.” (Memorandum to the Planning Board from David J. Sessions, RLA, AICP, dated Dec. 10, 2010, at 2.) (Richard J. Lippes, 5/31/11)

**Response 8-55:** To clarify, the excerpt referenced above refers to disturbance to within the perennial stream buffer, which would be primarily related to the stormwater management system. The DEIS is forthright in acknowledging total buffer disturbance, both from the stormwater management system as well as the proposed structure, as evidenced by the disturbance calculations provided in the above comment. The Applicant has developed an extensive wetland mitigation plan (see Chapter 1, “Project Description,” of this FEIS) and will work with the Town and NYCDEP to continue to refine this plan so that it meets sufficient environmental standards. It should be noted that this mitigation plan would improve wetland functionality onsite as well as increase floral and faunal diversity of the project site.

**Comment 8-56:** Moreover, the DEIS was accepted as complete without a final wetland analysis. In the absence of new information that will be obtained in the Spring of 2011, the public are denied the opportunity to comment or object to the new information. See, Citizens Against Retail Sprawl ex. rel. Ciancio v. Giza, 280 A.D.2d 234, 722 N.Y.S.2d 645 (4th Dep’t 2001). The boundaries of all streams and wetlands were field-delineated in the spring and fall of 2008. The Town inspected the wetland boundary in December 2010 and subsequently made preliminary modifications to the boundary. The wetland boundary is expected to be confirmed in the growing season (i.e., spring 2011). However, potential impacts were assessed based on the preliminary Town-delineated wetland boundary. (Richard J. Lippes, 5/31/11)

**Response 8-56:** See Responses 8-2 and 8-3. As discussed above, the USACE conducted a site inspection on June 1, 2011 and confirmed the wetland boundary delineated by the Applicant’s consultant as presented in the DEIS. The Town confirmed its wetland boundary that was preliminarily defined in December 2010. Therefore, the wetland boundaries discussed in the DEIS have not changed subsequent to distribution of the DEIS. However, the Site Plan has been modified to respect the more restrictive

Town-delineated wetland boundary, thereby avoiding any disturbance within wetlands onsite.

**Comment 8-57:** The draft EIS states that the development will disturb approximately 5,700 square feet of preliminary, Town-delineated wetland as well as 79,680 square feet of regulated buffer adjacent to wetlands. Much of the stormwater management infrastructure is proposed to be constructed within the regulated buffer. This approach conflicts with the provision of most wetland protection regulations which require avoidance of disturbance of regulated areas as the preferred course of action and require that alternatives be considered that achieve that objective. As the site is in close proximity to the Kensico Reservoir and in recognition of the proposed uses which include vehicle storage and car washing, it is particularly important that the natural drainage areas and filters not be disturbed. Because of these impacts, the site may not be appropriate for a large development. (WCPB, 5/31/11)

**Response 8-57:** See detailed Response at 8-6 above for a step-by-step response to Town Code §209, regarding wetland permit approval criteria and mitigation requirements and the project's conformity with same, and Response 8-34 regarding the provision of wetland buffer mitigation onsite. To avoid and minimize significant adverse impacts due to disturbance within wetland and watercourse buffer areas, the proposed project would incorporate a number of green elements, discussed further in Chapter 1, "Project Description," of this FEIS. In addition, the Applicant has developed an extensive wetland mitigation plan that would replicate and improve wetland functions onsite, as well as increase floral and faunal diversity. Further, the stormwater management system would treat runoff from two sites, both of which are currently untreated. By virtue of its design, the proposed parking facility would minimize impacts to water resources. The structure would be enclosed and vehicles would not be driven within the interior of the facility, only along the main access drive. Vehicles within the structure would be transported by automated equipment, thereby minimizing potential for drips and spills. Any fluids collected within the building would be treated and conveyed to the sanitary sewer system.

A number of project alternatives were evaluated in order to reduce the disturbance area, as described in the DEIS. Even though ground disturbance would be reduced, many of these alternatives would not meet the objectives of the Applicant, nor would they sufficiently respond to the existing parking shortage at Westchester County Airport, in the Applicant's opinion. However, in response to comments, the Site Plan has been modified to avoid any wetland disturbance and reduce

buffer disturbance. The building footprint was reduced from approximately 51,000 square feet to just under 45,000 square feet.

**Comment 8-58:** The NYCDEP has indicated that watercourse and reservoir stems have not yet been confirmed by NYCDEP. The Applicant should arrange for confirmation of the watercourse and reservoir stem locations at this time as the location of these features may have a significant impact on the Proposed Action. (Adam Kaufman, 6/1/11)

**Response 8-58:** See Responses 8-23 and 8-24. A preliminary watercourse delineation plan verifying the flagging of watercourse boundaries performed by NYCDEP staff was sent to NYCDEP on September 21, 2011. Subsequent to this initial watercourse plan submission, NYCDEP revisited the site on December 6, 2011 and took jurisdiction of the lower portion of the ephemeral stream. A revised plan of NYCDEP-regulated watercourses is being finalized and will be submitted to NYCDEP this month (September, 2014).

**Comment 8-59:** The wetland analysis treats permanent and temporary wetland and wetland buffer disturbance differently. The North Castle Town Code does not recognize such a distinction. The Applicant should indicate the total amount of Town-regulated wetland and wetland buffer disturbance including permanent and temporary impacts. (Adam Kaufman, 6/1/11)

**Response 8-59:** Table 8-1 of the DEIS indicates permanent and temporary buffer disturbance. The Probable Impacts section of Chapter 8 in the DEIS described total disturbance within the buffer areas as 1.83 acres, 0.93 acres of which would be temporary disturbance. It should be noted that total buffer disturbance from the Modified Project would be 1.72 acres, 0.92 acres of which would be revegetated or maintained as lawn. In addition, 0.13 acres of the total area to be disturbed would include pervious grass pavers that would allow infiltration of stormwater. The Modified Project will produce 36,514 square feet (0.84 acres) of new impervious and porous paver surfaces in the Town wetland buffer. (See FEIS Chapter 1, Table 1-1).

**Comment 8-60:** The Applicant is proposing direct disturbance to the wetlands and a significant amount of Town-regulated wetland buffer. The Applicant should include a functional analysis of the on-site wetlands using the wetland assessment model, "A Rapid Procedure for Assessing Wetland Capacity" by D. Magee and G. Hollands. (Adam Kaufman, 6/1/11)

**Response 8-60:** The DEIS presents a wetland functional assessment following wetland Hydrogeomorphic Classification and the Hollands and Magee method. It also presents a wetland buffer function assessment. (See DEIS p. 8-9)

to 8-11). Discussion of wetland impacts is presented quantitatively and qualitatively following the Hollands and Magee method at pages 8-12 to 8-16. As discussed in the DEIS, no substantial change to the primary wetland functions (Groundwater Recharge/Discharge, Stormwater Storage/Water Quality, and Diversity and Abundance of Flora and Fauna), are expected to occur with the proposed project. With regard to loss of wetland buffer, the Hollands and Magee method does not include marginal changes (increase/decrease) in wetland buffer size as a variable. Therefore, such changes have to be considered qualitatively based on best professional judgment. The uniqueness/rarity of the onsite Wetland "A" in the watershed and region is very low. Many maple/ash dominated wetlands occupied by invasive plants, located in a suburban setting, and sustained by a topographic position modified by man (i.e., NYS Route 120 berm) occur in Westchester County. A marginal quantitative reduction in wetland buffer accompanied by a marked increase in direct stormwater detention/management and supplemental native plantings is, in the judgment of the project sponsor's consulting ecologists, a balanced approach that would not result in the diminishment of wetland functions onsite nor to a reduction in water quality downstream.

**Comment 8-61:** The Applicant should indicate, point by point, how the project conforms to the requirements of Section 209-7 of the Town Code. (Adam Kaufman, 6/1/11)

**Response 8-61:** This section of the Town Code refers to the requirements placed on the approval authority for approving a wetlands permit. See detailed responses regarding conformity with the Town Code provided at 8-6, 8-34 and 8-54 above.

**Comment 8-62:** The Applicant should begin discussions with the Planning Board, the Conservation Board and the Town Board regarding identifying a suitable off-site wetland mitigation location in compliance with Chapter 209 of the Town Code. (Adam Kaufman, 6/1/11)

**Response 8-62:** Please see Responses 8-6 and 8-34 above for a detailed description of the proposed project's conformity with the Town Code wetland impact and mitigation requirements. See also Chapter 1, "Project Description," and **Appendix F** for a description of the proposed wetland enhancement and mitigation plan.

**Comment 8-63:** This office conducted a site visit on December 23, 2010 for the purposes of verifying the wetland boundary, as delineated by the applicant. At that time, and as outlined in our December 29, 2010

memorandum to the Board, this office questioned certain segments of the wetland boundary line. As the growing season had ended and the majority of the vegetation was not present during our December site visit, the wetland boundary could not be confirmed at that time. However, in an effort to allow the applicant to proceed through DEIS completeness, our office had provided a sketch illustrating the approximate location of the revised wetland boundary line.

Our office conducted a second site visit on May 24, 2011 and confirmed that the wetland boundary, as illustrated on our December 29, 2010 sketch, is accurately represented. All future submissions should illustrate the wetland boundary line, as depicted on our previously submitted sketch. In order to have the wetland boundary properly demarcated in the field, it is recommended that the applicant have the revised wetland boundary line survey-located and that fluorescent ribbon be hung along the revised wetland boundary line. The document (plans, text and exhibits) should be revised to reflect the local wetland boundary confirmation of May 24, 2011. Further impact analysis of the direct wetland disturbance and mitigation should be provided. (Kellard Sessions, 6/1/11)

**Response 8-63:** Comment noted. The USACE conducted a site inspection on June 1, 2011 and confirmed the wetland delineation performed by the Applicant's consultant pursuant to USACE standards. These boundaries were confirmed in an approved Jurisdictional Determination letter from the USACE dated February 1st, 2012. Nevertheless, as discussed above, the Site Plan has been modified to avoid any disturbance to the more restrictive Town-delineated wetland.

**Comment 8-64:** The need for an ACOE Nationwide Permit and/or Water Quality certification should be determined. The applicant should address whether the project location within Designated Critical Resource Waters would require an individual ACOE Permit. The extent of ACOE jurisdiction should be described in the text and identified on the plans and exhibits. (Kellard Sessions, 6/1/11)

**Response 8-64:** See Responses 8-2, 8-3, and 8-63. The Modified Project will not impact any wetland areas directly, either Town-regulated or Federally-regulated. As such, no permit is required from the USACE. Figure 1-1 clearly differentiates between Town-regulated wetland, USACE-regulated wetland, and NYCDEP-regulated watercourses/reservoir stems and their associated setbacks.

**Comment 8-65:** The mapping and jurisdiction of on and off-site wetlands and watercourses and related regulated areas should be confirmed by the



New York City Department of Environmental Protection (NYCDEP) and the plans and document updated accordingly. Based upon the NYCDEP's review memorandum dated May 23, 2011, it appears that their jurisdiction has not been fully confirmed. (Kellard Sessions, 6/1/11)

**Response 8-65:** Comment noted. This stream segment and its regulated 50-foot buffer is shown on the modified plans and Figure 1-1 that accompany this FEIS. A preliminary watercourse delineation plan verifying the flagging of watercourse boundaries performed by NYCDEP staff was sent to the NYCDEP on September 21, 2011. Subsequent to this initial watercourse plan submission, NYCDEP revisited the site on December 16, 2011 and took jurisdiction of the lower portion of the ephemeral stream. A revised plan of NYCDEP-regulated watercourses is being finalized and will be submitted to NYCDECP this month (September, 2014). See also Response 8-8.

**Comment 8-66:** An itemized list of activities proposed within each NYCDEP regulated area should be provided. The text should be revised to expand the discussion of proposed extent of new impervious surfaces within the NYCDEP regulated areas for reservoir stems. The extent of proposed disturbances/improvements (i.e., disturbance, tree removal, permanent improvements, impervious surface) within the regulated 300' reservoir stem area should be identified and quantified in the text. (Kellard Sessions, 6/1/11)

**Response 8-66:** The activities within the 300-foot reservoir stem offset would be limited to the stormwater management practices, including a pocket wetland, sand filter, and sedimentation basin. No impervious surfaces would be developed within this setback. The total area of disturbance within the 300-foot offset would be approximately 37,000 square feet, which would include approximately 2,500 square feet of pervious pavers associated with the stormwater maintenance path and removal of 73 trees.

**Comment 8-67:** On and/or off-site wetland mitigation plans in compliance with Chapter 209 of the Town Code should be provided at this time. As the proposed pocket wetlands for stormwater control are not an accepted practice for mitigation, the project should be revised to provide other alternatives for on-site mitigation. The document should be expanded to address the potential to modify the project site and/or revise the project to provide on-site mitigation. (Kellard Sessions, 6/1/11)

**Response 8-67:** See Response 8-34. The Applicant has proposed to remove specific invasive species found throughout the onsite wetlands and wetland

buffer as part of a comprehensive Wetland and Wetland Buffer Enhancement Plan. This effort will target certain non-native plants (oriental bittersweet, phragmites, porcelainberry, etc.) which are predominant onsite and diminish wetland vegetative diversity and limit groundwater infiltration and wildlife values, and replace them with native plants. The details of this plan are provided in FEIS **Appendix F**. See also Chapter 1, “Project Description,” of this FEIS for a detailed discussion of the wetland mitigation plan. This plan will conduct the wetland and buffer enhancement activity within approximately 20,000 SF of wetland and 8,000 SF of buffer, providing approximately a 1:1 mitigation ratio. The Applicant is willing to consider offsite wetland buffer mitigation to achieve the Town Code’s goal of providing 2:1 mitigation for wetland buffer impacts. The Applicant will continue to work with the Town and other involved agencies to refine the wetland mitigation plan to meet all acceptable standards.

**Comment 8-68:** The Final Environmental Impact Statement (FEIS) should discuss the potential impacts to Wetland A and associated wildlife, vegetation and habitat created by the proposed decreased flows to DP-1 in the post-development condition. (Kellard Sessions, 6/1/11)

**Response 8-68:** As discussed above under Response 8-26, the wetland’s small drainage area and the position of its outlet (no prolonged surface water detention) indicates that groundwater, not surface water, is the driving hydrologic force sustaining wetland conditions on the project site. No changes to the wetlands’ groundwater elevation, soil permeability, or topography/grading are proposed. As such, no changes to the hydrologic conditions of the project site’s wetland areas would occur with the proposed project despite some loss in the catchment area that drains via surface flow to Wetland “A”. The surrounding groundwater table would remain unaffected and would continue to sustain the existing wetland hydrology to Wetland “A”. The loss of forested wetland buffer habitat will remove some native overstory species (black birch, sugar maple, black cherry) but primarily would disturb non-native species (ailanthus, porcelainberry, oriental bittersweet, multiflora rose, wine raspberry, etc.). The project will diminish habitat onsite – resulting in a small reduction in the population of plants and animals that use the site, including migratory bird species and lead-back salamanders. However, as discussed in DEIS Chapter 6: Natural Resources the forested habitat onsite is of low value due to its small size and comparative isolation, wedged between the office uses on New King Street and Route 120. No NYS/Federally-listed plants or animals were identified or are expected to use the project site. Therefore, the permanent loss of approximately 29,000 SF of wetland buffer, which will be displaced by the new

building and impervious surfaces, is not expected to constitute a significant adverse impact.

**Comment 8-69:** The locally-regulated wetland buffer should be expanded to include slopes 25% or greater, as required by Section 209-5C of the Town Code. (Kellard Sessions, 6/1/11)

**Response 8-69:** The code provides a definition for Adjacent Area under Section 209-5C as “An area surrounding a wetland, watercourse or water body that extends 100 feet horizontally away from and paralleling the wetland, watercourse or water body boundary. Such an adjacent area is subject to the regulations for wetlands as defined in this article so as to provide protection to such area from human activity and other forms of encroachment. This area is also called a buffer area. If, within such adjacent area, there is an area of slope in excess of 25%, the adjacent area shall be expanded to include the lesser of either 150 feet or the entirety of the area of 25% or greater slope which drains down toward the wetland, water body or watercourse.”

The area of man-made steep slopes at the western-center of the site which were created to raise the foundation of the existing building has been added to the wetland buffer, in accordance with Town Code Section 209-5C, and is now reflected in the revised Figures which accompany FEIS Chapter 1.

**Comment 8-70:** The FEIS should discuss the engineering design measures implemented to substantiate the comment on Page 1-5 related to preserving groundwater quality and promoting sustainable groundwater. (Kellard Sessions, 6/1/11)

**Response 8-70:** The proposed project will tie into municipal sanitary infrastructure and would not require a septic system, thereby avoiding any potential contamination to groundwater resources. The stormwater management practices would also be designed per NYSDEC design standards to minimize effects on both surface and groundwater resources. In addition, petroleum storage tanks will be constructed of double-walled tanks and secondary containment structures.

**Comment 8-71:** Discuss the potential of de-icing practices and identify potential groundwater impacts. (Kellard Sessions, 6/1/11)

**Response 8-71:** It should be noted that the proposed project will reduce the total area of traveled surfaces as compared to the existing development on the site. Runoff from the existing site is currently untreated whereas the proposed project will include a stormwater management system that

will provide treatment in series. De-icing practices will follow guidance established by the NYS Office of the Attorney General to minimize impacts by using deicers that contain 50 parts per million total phosphorous or less.

**Comment 8-72:** Wetland-A. The proposed 1,450-car facility would encroach upon Wetland-A by approximately 40 feet, and the required construction access would entail a far greater intrusion. The project should be revised to and reduced to avoid this use of wetlands. (North Castle Conservation Board, 6/1/11)

**Response 8-72:** The project footprint has been revised/reduced to avoid any direct impacts to Wetland A. See Chapter 1, "Project Description," of this FEIS for further details on the Modified Project.

**Comment 8-73:** Wetland-B, which includes the main stream channel surrounding this site, would be impacted by widening of the entrance road to the facility, clearing of woodland vegetation for detention basins and the outlet pipe to the stream channel from the proposed W-4 (Wetland #4 pocket wetland). The proposed project eliminates nearly all existing vegetation and natural storm water control function. The Conservation Board recommends that these intrusions be greatly reduced or rejected and be scrutinized by the New York City Department of Environmental Protection (NYCDEP) for impacts to Rye Lake/Kensico Reservoir. (North Castle Conservation Board, 6/1/11)

**Response 8-73:** The proposed stormwater management system would attenuate runoff to pre-development conditions. In addition to treating stormwater runoff from the project site, stormwater from an adjacent site would also be treated. Both of these sites are currently developed and do not have stormwater treatment systems. The proposed stormwater management system would include a number of green infrastructure components that, in addition to attenuating stormwater, would treat stormwater using environmentally-conscious practices (see Chapter 1, "Project Description," for further details). As such, the proposed project would not have a significant adverse effect on the water quality of Kensico Reservoir or its tributaries.

**Comment 8-74:** In sum, the Project conflicts with multiple layers of established planning and regulatory principles in the Town of North Castle (the "Town"). In adopting the Town's Freshwater Wetlands and Drainage Law, for example, the Town Board expressly found that "[w]etland areas should be protected from encroachment, spoiling, polluting, or obliteration stemming from...commercial development." The DEIS does not discuss

the Project's noncompliance with this Town policy. The DEIS also does not discuss the fact that the Project clearly exceeds the low threshold mandating rejection of a wetland permit under the Town's Freshwater Wetlands Law. (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 8-74:** As discussed above, the proposed Site Plan has been modified to avoid disturbance to the Town-delineated wetland onsite. The proposed project is under review by the Town and a wetland permit will only be granted once potential adverse impacts are duly avoided or mitigated. The Applicant continues to work with the Town and other involved agencies to refine the wetland mitigation plan (see Chapter 1, "Project Description," of this FEIS).

**Comment 8-75:** Moreover, in the past, the Town has been proactive in protecting the wetlands immediately surrounding the Kensico Reservoir in recognition of their singular value in protecting the public potable water supply. The Town, for example, worked with the corporations specifically along King Street to create management guidelines, set forth in the King Street Corridor Management Plan, to ensure that wetlands on these properties were safeguarded, and to require "careful planning" for new development around the Kensico Reservoir. The DEIS does not mention the Plan or discuss its relationship to the Project. (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 8-75:** See Responses 3-2 and 9-52 for a discussion regarding the King Street Corridor Management Plan.

**Comment 8-76:** Perhaps most troublesome, the DEIS attempts to ignore a second stream on the Project site (the "Site"), even though the Town's Wetlands Consultant has specifically stated that it "will be considered a regulated watercourse." The Project would completely eliminate the buffer protecting this watercourse. This watercourse, and its attendant one-hundred foot (100') buffer, is likely subject to the jurisdiction of the New York City Department of Environmental Protection (the "DEP"). DEP would almost certainly deny a variance to allow the parking garage to be constructed in this sensitive buffer area. The DEIS also does not discuss a second Reservoir Stem potentially affecting the Property, even though it is clearly shown on Westchester County Maps included in the DEIS. The three hundred foot (300') buffer from this Reservoir Stem mandated by DEP's Watershed Regulations may also prohibit the development of the Project. (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 8-76:** See Response 8-8. It should be noted that a large portion of the buffer area for the ephemeral drainage channel discussed above is located offsite and will not be affected by the proposed project.

**Comment 8-77:** The DEIS dramatically understates the Project's potential adverse impacts on the relevant wetlands and watercourses.

One of the major impacts that the off-site expansion of the Airport poses is to the water quality of the Kensico Reservoir. The Kensico Reservoir, as the Board knows, is "the final reservoir in the Catskill/Delaware system before water enters the distribution network." It holds the drinking water for millions of New Yorkers. Indeed, one of the reasons the Planning Board issued a Positive Declaration, requiring the preparation of an EIS, was because "[t]he proposed construction is to occur wholly within the Kensico Reservoir Watershed." (Planning Board Positive Declaration, dated Sept. 30, 2009, at 2.) The Town Conservation Board has similarly expressed concerns regarding the Project's potential adverse impacts on the Kensico Reservoir. (See Memorandum on Comment-Draft Scoping Document, from John F. Fava, Chair, Conservation Board to Planning Board, dated Jan. 7, 2010 ("[I]t must be stated that the impacts of this project on the Kensico Reservoir, especially the local water supply intake from Rye Lake are of special concern."). (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 8-77:** See Responses 8-1, 8-2, 8-5, 8-6, 8-20, and 8-52.

**Comment 8-78:** The town has traditionally been a leader in efforts to protect the Kenisco Reservoir. The Town of North Castle established the Kenisco Watershed Improvement Committee ("KWIC") in conjunction with five major corporations on Route 120, specifically in order "to protect the Kenisco Reservoir from potential water quality threats associated with the corporate and roadway uses in the King Street Corridor," within which the Project site ("Site") is located. (See KWIC, King Street Corridor Management Plan, May 2001, at 1 & fig. 1). "[C]areful planning for new development [is one of two] extremely important components of the management plan" (Id. At 3.) Tellingly, the [King Street Corridor Management] Plan, once again, is not even mentioned in the DEIS. (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 8-78:** See Responses 3-2 and 9-52 for a discussion regarding the King Street Corridor Management Plan.

**Comment 8-79:** Consistent with both its legal obligations under North Castle's Freshwater Wetlands and Drainage Law, as well as the principles that prompted the Town to form the KWIC to protect the Kensico Reservoir,

the Town Board would almost certainly be compelled to deny a Wetlands Permit to the Project. In adopting North Castle's Freshwater Wetlands and Drainage Law, the Town Board expressly found that "[w]etland areas should be protected from encroachment, spoiling, polluting, or obliteration stemming from...commercial development...and/or disregard for natural resources." (Town Code § 209-3(A)(I).) The Town Freshwater Wetlands Law recognizes that "[w]etlands protection is a matter of concerns to the entire Town and surrounding region." (Town Code § 209-3(A)(4).)

'The Town Freshwater Wetlands Law recognizes that wetlands provide multiple beneficial functions, including, of relevance to this Application:

- "[p]roviding drainage, flood control, and natural storage for water;"
- "[p]rotecting and purifying surface and subsurface water resources by sediment trapping, nutrient removal and chemical and biological detoxification;"
- "[r]echarging, storing groundwater (including aquifers and surface waters,) and maintaining stream flow;" and
- "[m]itigating the effects of erosion by serving as natural sedimentation areas and filter basins."

(Town Code § 209-3(A)(1).) (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 8-79:** See Responses 8-6 and 8-54.

**Comment 8-80:** The Freshwater Wetlands Law sets a low threshold, which affirmatively mandates that the Town Board must deny Wetland Permit applications that have the potential to adversely impact the environment. The Law requires that the Approving Authority, here the Town Board, "*shall* deny the permit if:

"The proposed activity *may* threaten public health and safety...can cause nuisances, impair public rights to the enjoyment of public waters...or violate other federal, state or local laws and regulations" [or]

"It finds that the detriment to the public good by the factors listed in this section would occur on the issuance of the permit outweighs the nonmonetary public benefits associated with the activity."

(Town Code, § 209-7(B)(3) (emphasis added).) (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 8-80:** See Response 8-54.

**Comment 8-81:** It is well settled environmental law that the use of the word “may” establishes a low threshold. See, e.g., Silvercup Studios Inc. v. Power Auth. of N.Y., 285 A.D.2d 598, 729 N.Y.S.2d 47, 49 (2d Dept. 2001) (“Because the operative word triggering the requirement of an EIS is ‘may’, there is a relatively low threshold for the preparation of an EIS.” (citation omitted)). In conjunction with the Freshwater Wetlands Law’s use of the word “shall,” the Law mandates that the Approving Authority deny a Permit application, which, as here, has the potential to cause the listed adverse impacts. See N.Y. Statutes § 177(a) (“In the absence of anything to indicate a contrary intention, words of command in a statute are construed as peremptory, and words of discretion are treated as permissive.”). (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 8-81:** See Response 8-54.

**Comment 8-82:** In the first instance, it is unclear how the Town can rationally assess the Project’s wetland and wetland buffer impacts in the absence of confirmation of the Site’s wetland boundaries. (See DEIS at 8-7.) As the Planning Board’s Wetland Consultant previously advised, accurate confirmation is required to enable the Board to evaluate project impacts and consider appropriate mitigation measures. (See Memorandum to the Planning Board from David J. Sessions, RLA, AICP, re: Site Development Plan Review: David Zeng, dated May 21, 2010, at 2 (“The Board should request the verification of the extent and accuracy of the wetlands flagging by the Town Wetland Consultant. Upon confirmation of the extent of the resources and impacts, the Board may evaluate the project impacts, as well as the quality and quantity of the mitigation proposed.”).) Similarly, there has also been no pump test conducted yet, to determine, inter alia, whether the Project, which proposes intense water usage, including for car washing, would impact hydrology at the Site. (See DEIS at 8-3.) (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 8-82:** See Response 8-3 regarding wetland confirmations. As discussed in Chapter 11, “Infrastructure and Utilities,” of the DEIS, water demand for the proposed project is expected to be comparable to the existing office building onsite. As there have been no reported problems regarding groundwater capacity or availability at the site or in the surrounding area under existing conditions, no significant adverse impacts related to hydrology of the site or any hydrological connectivity with area resources are expected. A pump test will be conducted prior to site development to confirm groundwater conditions and capacity at the project site. It should be noted that in response to comments, the car washing component of the project (and associated water use) has been eliminated.



**Comment 8-83:** Nevertheless, based on this incomplete information, as set forth in greater detail in the annexed report from Carpenter Environmental Associates, it is clear that the Project poses substantial adverse impacts, which clearly have the potential to threaten public health and safety, impair public rights to the enjoyment of public waters, and otherwise violate other federal, state or local laws and regulations. (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 8-83:** See Response 8-54.

**Comment 8-84:** The Proposed Project would dramatically upset, for example, the hydrological balance to Wetland “A”. This wetland functions to collect, retain and distribute water from the Site to streams that flow directly into the Kensico Reservoir. A significant portion of the Project would be located in Wetland “A” and its protected buffer area. The Project would essentially eliminate the stormwater catchment area for Wetland “A,” and eliminate much of the buffers that protect this Wetland. (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 8-84:** As discussed above, the proposed Site Plan has been modified to avoid any direct disturbance to wetlands onsite. In addition, it should be noted that much of the buffer area for Wetland “A” is located offsite and would not be affected by the proposed project. However, to mitigate for any impacts to wetland buffer areas, extensive landscaping and wetland mitigation plans have been developed, which are described more fully in Chapter 1 of this FEIS.

Regarding the hydrologic balance to Wetland “A”, as discussed above in Responses 8-26 and 8-68, the wetland’s small drainage area and the position of its outlet indicates that groundwater, not surface water, is the driving hydrologic force sustaining wetland conditions on the project site. No changes to the wetlands’ groundwater elevation, soil permeability, or topography/grading are proposed. As such, no changes to the hydrologic conditions of the project site’s wetland areas would occur with the proposed project despite some loss in the catchment area that drains via surface flow to Wetland “A”.

**Comment 8-85:** The proposed Project is in stark contrast to the Town’s “usual practice” of eliminating new construction in wetland buffers, especially at the level proposed here. (See Memorandum from John F. Fava, Chair, Conservation Board to Planning Board, dated May 27, 2010, re: Wetland Permit Application for 46 North Greenwich Road, ¶ 4 (“It is the usual practice to eliminate construction for new building in a wetland buffer or in this case to keep intrusions to a minimum.”); see also Memorandum from John F. Fava, Chair, Conservation Board to

Planning Board, dated Nov. 19, 2009, re: Wetland Permit Application for Byram Ridge Road Subdivision (“To recommend intrusions or disturbances in the buffer that may increase the monetary return to the applicant should not be our focus.”).) (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 8-85:** While disturbing wetland buffer areas is not preferred, when it cannot be avoided, mitigation measures can be implemented to minimize adverse impacts. The Planning Board, as Lead Agency, will closely evaluate all proposed wetland and wetland buffer impacts and will continue to carefully evaluate the proposed project’s potential environmental impacts as well as its wetland mitigation plan to ensure the proposed project would not be a detriment to sensitive water resources.

**Comment 8-86:** Indeed, recently, the Planning Board, in consultation with the Town Conservation Board, would not approve a single-family home application that was initially proposed to be located 50% in wetland buffers until the house was relocated outside the buffer. (See Memorandum from John F. Fava, Chair, Conservation Board to Planning Board, dated Jan. 20, 2011, re: Wetland Permit Application for David Zeng, 46 North Greenwich Road (“The initial plan located about 50% of the proposed house within the wetland buffer which was not an acceptable arrangement on this lot. Subsequently the house was relocated outside the buffer, with substantial filling, grading and buffer disturbance greatly reduced”).) Notably, the Zeng proposal was classified as a SEQRA Type II Action - i.e., it presumptively posed no significant adverse environmental impacts. Moreover, the Zeng proposal was not in immediate proximity to the Kensico Reservoir. We trust that the instant Project, which has been classified as a SEQRA Type I Action - i.e., the presumption is that it will pose significant adverse environmental impacts – and which is in close proximity to the Kensico Reservoir, will be held to the same standard. (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 8-86:** See Response 8-85. Individual project parameters and site conditions vary widely. Although precedents and typical protocols are useful, site-specific evaluations are necessary to determine site-specific environmental impacts. Certain sites may have greater limitations in terms of project alternatives that could be pursued. As noted above, the Applicant has modified the proposed Site Plan in response to comments to further reduce environmental impacts.

**Comment 8-87:** The DEIS goes on to inaccurately state that the Project's wetland buffer "disturbances are primarily for the proposed construction of the storm water management basins." (DEIS at 8-10.) In reality, more than half of the proposed parking facility would be located within the 100 foot buffer zone, which is protected by the Town and DEP. (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 8-87:** See Response 8-55.

**Comment 8-88:** The DEIS also inaccurately trivializes the functional value of the buffers that would be eradicated in an effort to justify the Project's substantial buffer impacts. Under present conditions, stormwater runoff must, on average, traverse 100 feet of natural vegetation, consisting of native trees, shrubs, and ground cover, as well as some areas of lawn area, prior to reaching Wetland "A". While the DEIS insinuates that the Project would result in conditions "similar to" existing conditions at the Site, the Project would triple the amount of impervious surfaces in the buffer area. (See DEIS at 8-14 ("At the present time, the existing impervious surface and lawn in the wetland buffer is 35,269 square feet (12,132 square feet impervious + 23,137 square feet of lawn. This is similar to the impervious surface and porous pavers proposed in the wetland buffer which is 39,255 square feet." (emphasis added)).) Under existing conditions, there are 12,132 square feet of impervious surfaces in the buffer. The Project would add 21,354 square feet of impervious surfaces above existing conditions in the buffer area, resulting in a total of 33,486 square feet of impervious surfaces in the buffer area. (See DEIS at 8-14 to 8-15.) (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 8-88:** See Response 8-55.

**Comment 8-89:** The DEIS's effort to compare existing lawn area in the buffer to the impervious surfaces it would add is also misguided. (See DEIS at 8-14.) While lawn may not be the optimal buffer cover, it is pervious. It provides filtration value. The Project's conversion of turf areas to impervious surfaces contrasts sharply with the KWIC's goal of "convert[ing] turfed areas to meadows." (See King Street Corridor Management Plan, at 16.) (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 8-89:** See Chapter 1, "Project Description," of this FEIS for a full description of the wetland mitigation plan. Also, see Responses 3-2 and 9-52 for a discussion related to the King Street Corridor Management Plan.

**Comment 8-90:** Ultimately, as the Town Wetland Consultant noted in connection with the draft DEIS, “this section completely downplays the extent of improvements proposed within the wetland buffer, proximity of these improvements to the wetland boundary line and potential impacts.” (Memorandum to the Planning Board from David J. Sessions, RLA, AICP, dated Dec. 10, 2010, at 2.) The DEIS does not appear to have been substantially revised since the Town Wetland Consultant made this observation. (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 8-90:** The FEIS was expanded to provide a more detailed discussion of pre- and post-construction wetland buffer functions and mitigation efforts that would be implemented to reduce any adverse wetland impacts. See Chapter 1, “Description of Modified Project” of this FEIS for a more detailed and developed discussion of the proposed wetland mitigation plan. In the Applicant’s opinion, extensive efforts have been taken to develop a wetland mitigation plan and stormwater management system that will replicate and improve existing wetland buffer functions. The Planning Board, as Lead Agency, will continue to review the proposed wetland and wetland buffer disturbance as well as any mitigation plan proposed.

**Comment 8-91:** In light of the significant adverse impacts on wetlands and water quality posed by the Project, it is problematic that the DEIS lacks any real mitigation plans. The DEIS suggests that its stormwater management basins could provide mitigation even while acknowledging “that the Town does not typically accept required stormwater management areas to serve toward wetland mitigation.” (DEIS at 8-17.) The DEIS consequently represents that “off site wetland creation/enhancement... would be considered.” (Id.) Respectfully, it is unclear why the DEIS was deemed complete when this casual suggestion that wetland mitigation “would be considered” does not meet the Planning Board’s consultant’s statement that concrete mitigation measures should be proposed and discussed” in light of “the extent of improvements within the wetland and the wetland buffer area”:

As stormwater ponds have not been historically accepted as wetland mitigation, the applicant should provide alternative mitigation for the proposed wetland and wetland buffer disturbance. Given the extent of improvements proposed within the wetland and the wetland buffer on-site and potentially off-site mitigation should be proposed and discussed.

(Memorandum to the Planning Board from Ryan Coyne, P.E., Kellard Sessions Consulting, P.C., dated Feb. 25, 2011, at 2 (copy annexed hereto).) (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 8-91:** See Chapter 1, “Description of Modified Project,” of this FEIS for a detailed description of the proposed wetland mitigation plan which takes the form of a wetland and wetland buffer enhancement plan focused on establishment of native plants and removal of invasive species. Regarding the inclusion of a wetland mitigation plan as a component of the DEIS, the DEIS disclosed that a Town wetland permit is necessary due to development in the wetland buffer. The necessity of a mitigation plan for remediation of wetland impacts is acknowledged and discussed generically in the DEIS. In response to comment, a specific wetland mitigation plan has been developed and is presented in Chapter 1 and **Appendix F** of this FEIS. Because the project has been modified between DEIS and FEIS to eliminate any wetland disturbance, the new FEIS-specific wetland buffer enhancement plan is appropriately focused on the revised Site Plan. The Applicant has documented the relative functions/values of the onsite wetland and has put forth a mitigation plan (wetland buffer enhancement plan) that it feels fully mitigates wetland-related impacts. During Site Plan review, the wetland buffer enhancement plan can be further refined to meet the requirements of the Town Planning Board.

**Comment 8-92:** Indeed, Minutes of the Planning Board make clear that the Applicant has long been aware that its mitigation proposal was insufficient. (See Planning Board Minutes, Dec. 13, 2010, at 5 (“Mr. Delano inquired about the 2:1 mitigation which can’t be done on site. [Applicant’s Counsel] stated that he has not had a conversation with the Town Board on this matter and felt that the mitigation to the wetlands was an exchange for the 2: 1 mitigation. *The Planning Board noted that would not be acceptable mitigation.*” (emphasis added).) Clearly, the cursory suggestion in the DEIS that wetland mitigation “would be considered” is legally inadequate. (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 8-92:** See Chapter 1, “Project Description,” of this FEIS for a detailed description of the proposed wetland mitigation plan. The Applicant will continue to work with the Town to refine the wetland mitigation plan so that it meets the Town’s stringent mitigation standards.

**Comment 8-93:** The Applicant seeks to avoid several layers of regulatory review applicable to wetlands. Ironically, the Town Freshwater Wetlands Law declares that “[t]he establishment of regulatory and conservation practices for these [wetland] areas serves to protect the Town *by insuring review and regulation of any activity* near or on the wetlands that might adversely affect the public health, safety and welfare.” (Town Code § 209-3(A)(3) (emphasis added).) The DEIS, however, seeks to

evade multiple layers of agency review intended to ensure that impacts to wetlands, particularly those in close proximity to Kensico Reservoir, are carefully vetted. (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 8-93:** See Responses 8-35 and 8-40.

**Comment 8-94:** Of particular significance, the DEIS understates the geographic scope of DEP jurisdiction at the Site. While the DEIS recognizes that there is one DEP watercourse on the Site, there actually are two. The DEIS specifically recognizes that there are “[t]wo streams [that] occur on the project site,” one which it denominates a “perennial stream,” and the other a “ephemeral drainage channel that is infrequently flooded.” (DEIS at 8-5 (emphasis added).) Figure 8-2 in the DEIS, which reflects streams designated by Westchester County, clearly shows two streams that pass through the Site on their way to the Kensico Reservoir. Similarly, DEIS Figure 8-1, which shows the National Wetland Inventory mapped wetlands, also shows a second stream along the southern boundary of the Project Site. (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 8-94:** See Response 8-8. In addition, the Town’s Building Department will need to evaluate whether it is appropriate to connect the floor drain to the sanitary sewer.

**Comment 8-95:** Moreover, the Town’s own Wetland Consultant recognizes that this second stream is, in fact, “a regulated watercourse”:

Water was observed within the channel located to the south of the proposed parking garage (partially off-site) and therefore *this channel will be considered a regulated watercourse*. This determination is based, in part, on the fact that water flow was present more than 48 hours after a rain event.

(Memorandum to the Planning Board from David J. Sessions, RLA, AICP, dated Dec. 29, 2010, at 2 (emphasis added) (copy annexed hereto).) (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 8-95:** See Response 8-8. The ephemeral watercourse is part of the larger Wetland “A” which occurs mostly onsite but partly offsite. It has been included as part of the wetlands/waters delineated onsite in the DEIS and FEIS, and is regulated at the Town and Federal levels. The NYCDEP only took jurisdiction of the portion of this ephemeral drainage channel – the lower portion that evidenced some surface water/wetness at the time of their inspection. .

**Comment 8-96:** While the DEIS asserts that this “secondary drainage feature [] does not demonstrate perennial or intermittent flow” (DEIS at 8-6), the Town Wetlands Consultant has expressly stated that this stream had water flow more than 48 hours after a rain event. This finding establishes unequivocally that the second watercourse on the southern portion of the Site qualifies as an Intermittent Stream under the DEP’s Watershed Regulations. (See Watershed Regulations § 18-16(a)(63) (establishing that a surface feature will only not be considered an Intermittent Stream if it only “contains water only during and immediately after a rainstorm or a snow melt shall not be considered to be an intermittent stream”). Accordingly, DEP appears to have jurisdiction over this stream, which the Applicant must recognize in the EIS. (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 8-96:** See Response 8-8.

**Comment 8-97:** The DEIS goes on to claim this secondary stream “would not be directly affected by the development of the project.” (DEIS at 8-13.) The proposed parking facility, however, would essentially eliminate the stream’s protective buffer areas, and almost certainly directly disturb it. (See DEIS fig. 8-4.) As the Town Wetland Consultant has stated, “given the proximity of the proposed improvements to the wetland boundary line, it does not appear feasible to construct the building without directly impacting/disturbing the wetland proper.” (Memorandum to the Planning Board from David J. Sessions, RLA, AICP, dated Dec. 10, 2010, at 10.) (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 8-97:** See Responses 8-8, 8-39 and 8-76.

**Comment 8-98:** Additionally, the DEIS does not show the limiting distance from the second Reservoir Stem affecting the Site. DEIS Figures 8-1 and 8-2 both show two streams leaving the Site, and entering the Kensico Reservoir immediately thereafter. (See Watershed Regulations, § 18-16(a)(95) (defining a Reservoir Stem to be “any watercourse segment which is tributary to a reservoir and lies within 500 feet or less of the reservoir”).) The DEIS also indicates that wetland “A” “contains two outlets [including] the culvert beneath NYS Route 120.” (DEIS at 8-9.) The DEIS must show where the 300 foot buffer from this second Reservoir Stem lies in relation to the Project. (See Watershed Regulations § 18-39(a)(1) (prohibiting the construction of impervious surfaces within 300 feet of a reservoir stem).) (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 8-98:** See Response 8-8.

**Comment 8-99:** In light of the aforementioned conditions, it is unlikely that DEP could even grant a variance in connection with the Project. Initially, the DEIS mistakenly indicates that the Project could take advantage of the limited exception for the expansion of impervious surfaces in buffer areas for existing commercial facilities set forth in Watershed Regulation § 18-39(a)(4)(iii). (See DEIS at 8-14.) This exception only applies to “existing” facilities. This Project, which would supplant the existing use on the Site, cannot take advantage of this exception. The current facility on the Site would no longer “continue to be.” See Merriam-Webster Dictionary, at 171 (2005) (defining “exist” to mean “to have being” or “to continue to be”). Moreover, the Project is further excluded from this exception because it would add impervious surfaces to the buffer areas in excess of 25% of the existing condition. As such, the Applicant would be required to pursue the “traditional” DEP variance. (See Watershed Regulations § 18-61.) (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 8-99:** See Response 8-42.

**Comment 8-100:** The Project, however, cannot meet the basic criteria for a DEP variance. It cannot, for example:

"[d]emonstrate that the variance requested is the minimum necessary to afford relief;"

"[d]emonstrate that the activity as proposed includes adequate mitigation measures to avoid contamination to or degradation of the water supply which are at least as protective of the water supply as the standards for regulated activities set forth in [the Watershed Regulations]"; [or]

"[d]emonstrate that ... compliance [with the Watershed Regulations] would create a substantial hardship due to site conditions or limitations." (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 8-100:** See Response 8-42.

**Comment 8-101:** (See Watershed Regulations § 18-61(a)(1).) Here, the Applicant, which has not yet even formulated proposed mitigation plans for its wetland impacts, cannot show that such mitigation measures would “protect the watershed just as much as compliance with the regulation from which the applicant seeks a variance.” See *Nilsson v. D.E.P.*, 8 N.Y.3d 398, 834 N.Y.S.2d 688, 690 (2007) (“[B]efore it grants a variance, DEP must be persuaded that the applicant’s proposed mitigation measures will protect the watershed just as much as compliance with the regulation from which the applicant seeks a variance.”).



Nor would the Applicant be able to qualify for a DEP “hardship” variance. Where it is possible for a development project to comply with the Watershed Regulation, an applicant can only obtain a DEP variance if compliance would be “prohibitively expensive.” See Nilsson, 834 N.Y.S.2d at 691. Initially, the DEIS contains an alternative, which appears to show that compliance with the Watershed Regulations is possible. Alternative “D” in the DEIS envisions a “no wetland impacts” Project, which would appear to avoid both the Town and DEP regulated buffers areas (See DEIS at 18-29 to 18-34 & fig. 18-5.) (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 8-101:** See Responses 8-42 and 8-44. Also, see Chapter 1, “Project Description,” of this FEIS for a full description of the proposed wetland mitigation plan.

**Comment 8-102:** The DEIS also does not argue that Alternative D would be prohibitively expensive. To the contrary, it states “Alternative D would result in economic benefits during construction and during annual operations.” (DEIS at 18-33). Since the DEIS does not claim that a Project that complies with the Watershed Regulations is feasible, the Applicant cannot claim that a variance denial by DEP would cause a “substantial hardship.” (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 8-102:** See Response 8-44.

**Comment 8-103:** The DEIS also inaccurately states that the Project could obtain a Nationwide Permit from the U.S. Army Corps of Engineers (“ACOE”) in connection with its impacts on federally protected wetlands. (See DEIS at 1-2). In fact, the Project would be subject to individualized review by the ACOE, which would likely result in the denial of the permit request. (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 8-103:** See Responses 8-2, 8-3, 8-9.

**Comment 8-104:** While the DEIS assumes that the Project could avail itself of Nationwide Permit 39 (for Commercial and Institutional Developments involving less than ½ acre of disturbance), this Nationwide Permit is not available. (See DEIS at 2-14.) General Condition 19 of the Nationwide Program disallows certain Nationwide Permits (including NWP 39) in Designated Critical Resources Waters “for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.” 72 Fed. Reg. 11092, 11193 (March 12, 2007). The East of Hudson Watershed (including the Kensico Reservoir Watershed) has been designated as Critical Resource Waters. (See DEP, Wetlands in the Watersheds of the New York City Water Supply System, at 19 (“It

should be noted that all wetlands in the East of Hudson Watershed of the New York City Water Supply were designated as ‘Critical Resources Waters’ meaning that individual, project-specific permits are required for many activities.”.) (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 8-104:** See Responses 8-2, 8-3, 8-9.

**Comment 8-105:** The Project would likely fail the individualized “Public Interest Review” that ACOE would have to conduct. See 33 CFR § 320.4(a) (“The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest.”). The ACOE regulations specifically state that “[w]etlands [that are] considered to perform functions important to the public interest” include:

“Wetlands the destruction or alteration of which would affect detrimentally natural drainage characteristics, sedimentation patterns, salinity distribution, flushing characteristics, current patterns, or other environmental characteristics;” and

“Wetlands which serve significant water purification functions”

33 C.F.R. § 320.4(b)(2). Inasmuch as the Project would adversely impact natural drainage characteristics, sedimentation patterns, and other environmental characteristics of wetlands that serve important functions for the New York City watershed, ACOE would likely be compelled to deny the permit request. (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 8-105:** See Response 8-48.

**Comment 8-106:** In connection with the ACOE Permit, DEC would also need to make an individualized Water Quality Certification determination. Under the federal Clean Water Act, States are intended to be the “prime bulwark” against water pollution. Keating v. F.E.R.C., 927 F.2d 616,622 (D.C. Cir. 1991) (“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.” (citations omitted)). 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). “One 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. “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. (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 8-106:** See Responses 8-2 and 8-3. The USACE has confirmed that no federally-regulated wetlands would be affected by the proposed project.

**Comment 8-107:** As such, DEC can only provide Water Quality Certification if it can determine that the Project will not violate all relevant regulatory requirements intended to preserve water quality. See 6 N.Y.C.R.R. § 608.9. The DEIS should address the Project’s adherence to each of the listed criterion. (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 8-107:** See Response 8-51.

**Comment 8-108:** The Town consultant's finding indicates that the "drainage way" is in fact not only regulated but also a second reservoir stem that requires an additional 300-foot buffer from the point 500 feet upstream from where the stream enters the Rye Lake portion of the Kensico Reservoir. (Riverkeeper, Kate Hudson, 6.1.11)

**Response 8-108:** Chapter 1 and Figure 1-1 of this FEIS make clear that the secondary drainageway is regulated as Town/Federal wetland and that upon subsequent review by the NYCDEP it is now considered an intermittent stream. Both the perennial and the intermittent streams are therefore tributary to separate “reservoir stems” and the 300’ offsets from the NYCDEP reservoir stems are shown in this figure. See also Responses 8-8 and 8-24.

**Comment 8-109:** Regarding impacts to groundwater resources, the DEIS proposes drilling a new potable water well and that a "water budget analysis would be completed during the pumping test investigation, and the pumping test data would be used to determine that the estimated direct recharge to the bedrock aquifer during drought conditions would support the proposed potable water demands. It is unclear why the applicant failed to complete this analysis for public review prior to

issuance of the DEIS. This critical information, absent in the current DEIS, should be addressed in a supplemental DEIS. (Riverkeeper, Kate Hudson, 6.1.11)

**Response 8-109:** See Responses 8-82, 11-2 and 11-5.

**Comment 8-110:** The DEIS reports that two town-regulated wetlands cover 20% of the project site and proposes permanent disturbance of 0.13 acres of the existing 0.66 acres of onsite wetlands. However, the delineation of the onsite wetlands is in dispute and the Town has not made a final determination of the town-regulated wetland boundary. This critical information, absent in the current DEIS, should be addressed in a supplemental DEIS. (Riverkeeper, Kate Hudson, 6.1.11)

**Response 8-110:** The project has been revised to remove all wetland impacts and the delineation discrepancy has been resolved to include the larger, Town-marked boundary. See Responses 3-13, 8-2, and 8-3.

**Comment 8-111:** These wetland creation areas would be more accurately characterized as stormwater detention basins or bioretention practices because their primary function is to capture, retain, infiltrate and, to a nominal extent, treat stormwater runoff from the project site. These “stormwater cells would comprise the stormwater management system [and] would retain water and allow infiltration for a longer period than the swift runoff that occurs under current conditions.” However, these structural practices would not replicate all of the functions of a forested wetland, as evidenced by the applicant’s proposed planting of the stormwater management practices with facultative species rather than a mixture of facultative and obligate wetland vegetation. If these stormwater cells could truly function as wetlands, there would be no reason to exclude obligate species that rely on sustained wetland hydrology—an unlikely condition in a system that relies primarily on stormwater runoff to drive its hydrology.

In addition, the applicant acknowledges that “the Town does not typically accept required stormwater management areas to serve toward wetland mitigation.” In fact, neither does NYCDEP nor NYSDEC. The proposed action will require a SPDES General Permit GP-0-10-001. 1-2. Part III.A(2) requires the Stormwater Pollution Prevention Plan (SWPPP) to “describe the erosion and sediment control practices and where required, post-construction stormwater management practices that will be used and/or constructed to reduce the pollutants in stormwater discharges and to assure compliance with the terms and conditions of this permit” (emphasis added). Because NYSDEC does not approve SWPPPs that propose to use stormwater management

practices to serve as compensatory mitigation for wetland losses, the applicant's proposal to do so appears to be proscribed by three separate regulatory entities. (Riverkeeper, Kate Hudson, 6.1.11)

**Response 8-111:** The project no longer proposes any wetland disturbance. The buffer disturbance is proposed to be mitigated by the removal of invasive species in the remaining buffer and undisturbed wetland areas. See also Responses 8-11 and 8-91, FEIS Chapter 1, and FEIS **Appendix F** for more detail on the wetland buffer enhancement plan.

**Comment 8-112:** The DEIS identifies no off-site wetland mitigation areas and no final wetland mitigation plan has been developed and presented in the DEIS for public review and comment. This critical information, absent in the current DEIS, should be addressed in a supplemental DEIS. (Riverkeeper, Kate Hudson, 6.1.11)

**Response 8-112:** See Response 8-3. With project modifications, no wetland impacts will occur. A wetland and wetland buffer enhancement plan will remove invasive species onsite.

**Comment 8-113:** Under existing conditions, 35,269 square feet of the town-regulated wetland buffer is developed with impervious surface and lawn. Some of the proposed 79,680 square feet of buffer disturbance will be temporary, permanent buffer disturbance includes 33,500 square feet of impervious surfaces and 5,800 square feet of pervious pavers. Vegetated wetland buffers provide transitional areas that intercept stormwater from upland habitat before it reaches wetlands or other aquatic habitat. Buffers function to maintain or improve water quality by trapping and removing various nonpoint source pollutants. Other water quality benefits of buffer zones include reducing thermal impacts (shade), nutrient uptake, providing infiltration, reducing erosion, and restoring and maintaining the chemical, physical, and biological integrity of water resources. The disturbance of wetland buffers impairs their functions and therefore should be avoided.

The DEIS claims that “[f]orested portions of the 100-foot buffer do provide opportunities for wildlife foraging and nesting and some capacity to trap sediment and lessen the detrimental effects of stormwater runoff to the site’s wetlands,” but that “due to past disturbance and the presence of non-native plant species, the ability of the buffer to provide these functions is limited. Regardless of how limited the functions of Wetland A’s buffers are, they are not as limited as the water quality functions of the impervious parking structure proposed to displace the existing buffer. To the contrary, the parking structure in the buffer of Wetland A will eliminate infiltration beneath

its footprint and will increase stormwater runoff and velocity. The extent of proposed stream and wetland buffer disturbance under the preferred alternative is extremely ill-advised on a site that lies 600 feet from the terminal drinking water reservoir for nine million New Yorkers and should be scaled back to protect the existing buffer areas from the encroachment of impervious surfaces and other impacts during construction and under post-development conditions. This will be accomplished by selecting Alternative C (reduced wetland impacts) or D (no wetland impacts) as the preferred alternative. (Riverkeeper, Kate Hudson, 6.1.11)

**Response 8-113:** The revised Site Plan presented in the FEIS is in-line with the reduced wetland impact alternative as it has moved the entire building footprint out of the wetland boundary and now proposes less disturbance in the wetland buffer. The wetland and wetland buffer enhancement plan and the provision to plant the stormwater treatment wetland and basins with facultative wetland plants will further minimize the effects of the buffer disturbance required for construction of the stormwater basins. See also Responses 2-29, 2-39, 8-13, 8-22, 8-25, and the Wetland Buffer Enhancement Plan contained in **Appendix F**. The Lead Agency will need to evaluate the proposed amount of Town-regulated wetland buffer disturbance and determine if this buffer disturbance is acceptable.

**Comment 8-114:** Riverkeeper believes this project, as proposed poses the risk of undue impact to the New York City watershed. The nature of the site, scale of the development and the proximity of the proposed Park Place project to Rye Lake, an arm of the Kensico Reservoir, raises a number of significant issues for the Riverkeeper, in particular the potential for impacts to water quality as a result of contaminated stormwater runoff. The project entails a large amount of excavation, cut and fill and disturbance of onsite wetlands, stream courses and buffers in order to accommodate the scale of the parking facility on an unsuitable site. Runoff from all these sources has the potential to threaten the utility and viability of adjacent wetland areas and watercourses, and ultimately the Kensico Reservoir, the terminal reservoir for the Catskill Watershed which typically provides 40% of the unfiltered drinking water supply to nine million New York City and upstate consumers. (Riverkeeper, Kate Hudson, 6.1.11)

**Response 8-114:** In the Applicant's opinion, as shown by the provision of appropriate erosion and stormwater controls that meet or exceed the requirements of the New York State Storm Management Design Manual (NYSSMDM), the potential for water quality impacts to the Kensico Reservoir are avoided. The Lead Agency will need to evaluate the proposed amount

of Town-regulated wetland buffer disturbance and determine if this buffer disturbance is acceptable.

**Comment 8-115:** The DEIS notes that “the project site contains forested wetland habitat, a stream and a ‘drainageway.’” The stream traversing the site is a NYSDEC Class A stream and, due to its proximity to the Kensico Reservoir, a DEP-Regulated reservoir stem. This stream therefore requires a 300-foot buffer “from the point 500 feet upstream from where the stream enters the reservoir.” The DEIS claims that the secondary drainage feature is “likely not” a regulated watercourse based on the text, in part, of Chapter 209 of the Town Code: “A drainage ditch, swale, or surface feature that contains water only during and/or immediately after (usually up to 48 hours) a rainstorm or snowmelt shall not be considered a watercourse.” The DEIS further states that “since the Town regulated surface water features have not been confirmed by the Town’s representative, for the purposes of this DEIS, the drainage way and a 100 foot buffer are conservatively considered regulated under Chapter 209.”

This latter claim is refuted by a memorandum from the Town’s wetland consultants, Kellard Sessions, dated December 29, 2010, stating: “Water was observed within the channel located to the south of the proposed parking garage (partially off-site) and therefore this channel will be considered a watercourse. This determination is based, in part, on the fact that water flow was present more than 48 hours after a rain event.” (Riverkeeper, Kate Hudson, 6.1.11)

**Response 8-115:** Comment noted. The NYCDEP regulatory status of the perennial and intermittent streams and the 300-foot buffers for the two (2) reservoir stems have been clarified in the FEIS and are shown on the revised figures. See Chapter 1 and Chapter 2 of the FEIS. Lastly, the Town-consultant’s freshwater wetland and watercourse boundaries are confirmed and shown on project figures all with the appropriate 100-foot buffers. It is acknowledged and agreed that the existing building and parking surfaces and the proposed building and stormwater improvements are partially within the 100-foot Town and DEP wetland/watercourse boundaries.

**Comment 8-116:** The applicant claims that functions of Wetland A include seasonal groundwater recharge and limited stormwater storage and wildlife habitat; functions of Wetland B include groundwater discharge, low stormwater storage and wildlife habitat. These wetlands also benefit water quality by “by removing sediment, nutrients, and other pollutants from runoff prior to discharge to surface waters.” To mitigate for the

disturbance of 0.66 acres of onsite wetlands, the DEIS proposes construction of three “onsite wetland creation areas” at a ratio of 2.2:1. “The three stormwater management cells would be planted with facultative wetland vegetation,” and the DEIS claims that these cells will improve groundwater recharge, stormwater storage, and wetland wildlife habitat. (Riverkeeper, Kate Hudson, 6.1.11)

**Response 8-116:** No direct wetland disturbance is proposed. Although some buffer will be permanently disturbed by the proposed project, unlike the current condition in which all impervious surfaces from the existing building, drives and parking discharge runoff untreated to the onsite/offsite waters and wetlands, the proposed project will have a comprehensive stormwater management system that will provide a net-reduction in post-construction stormwater flow rates and has been designed according to the latest standards of the NYS Stormwater Management Design Manual. Included in this stormwater management system are the three cells that would be revegetated as described. The Lead Agency will need to evaluate the proposed amount of Town-regulated wetland buffer disturbance and determine if this buffer disturbance is acceptable.

**Comment 8-117:** WIG submits these comments because construction activities at the proposed Park Place project, as currently described, would threaten pollution of the Kensico Reservoir. WIG recognizes that the Project could have beneficial impacts on stormwater pollution after construction is complete, especially if significant improvements to the preliminary stormwater plans for the Project are implemented. WIG does not oppose development of Park Place, but seeks appropriate modifications of the Project to avoid construction in wetland and wetland buffer areas, to improve erosion and sediment controls to prevent pollution during construction, and to enhance post-construction stormwater practices. Such modifications are necessary to eliminate and mitigate potential adverse water pollution impacts from the project in accordance with the State Environmental Quality Review Act (“SEQRA”). (Office of the Watershed Inspector General, 6/1/11)

**Response 8-117:** The modifications to the proposed project, specifically to the Stormwater Management System, will be considered and implemented as part of Site Plan review. In the Applicant’s opinion, no changes to the impervious footprint or reduction in wetland buffer impacts are necessary to fully mitigate the potential stormwater runoff impacts (flow and water quality) from the proposed project. The Lead Agency will need to evaluate the proposed amount of Town-regulated wetland buffer disturbance and determine if this buffer disturbance is acceptable.



**Comment 8-118:** Development within the Kensico Reservoir Basin threatens the discharge of additional turbidity and pathogens, among other pollutants, to that waterbody. If the Kensico Reservoir fails to meet water quality standards, the City could be forced to construct a filtration plant for Kensico water, entailing capital expenditures of over \$10 billion and annual operation and maintenance costs exceeding \$100 million.

Given the sensitivity of the Kensico Reservoir as a terminal reservoir, new development is generally disfavored within the Kensico basin and any development that is approved must achieve compliance with strict and heightened pollutant control criteria. To address concerns arising from polluted runoff from existing development and impervious surfaces, extensive and very costly efforts have been undertaken by the NYCDEP and others to reduce pollutant loading from existing development into the Kensico Reservoir. (Office of the Watershed Inspector General, 6/1/11)

**Response 8-118:** Comment noted. With the implementation of the proposed stormwater management system designed in accordance with the NYSDEC's Stormwater Management Design Manual, and compliance with the NYCDEP Watershed Rules and Regulations, significant impacts to the water quality of the Kensico Reservoir will be avoided to the maximum extent practicable. The NYCDEP and NYSDEC will have the opportunity to review, comment and revise the stormwater management plan as necessary. This will occur during the Site Plan Review process. In the case of the NYCDEP, this agency will only review the details of the SWPPP after the adoption of SEQRA Findings by the Lead Agency. Implementation of the stormwater management requirements of the NYCDEP Watershed Rules and Regulations, in addition to the provision of limiting distances to reservoir stems, streams and wetlands, and the NYCDEP's land acquisition program, in tandem have been deemed protective of long-term watershed health. The Applicant has received comments from the NYCDEP on the SWPPP as part of DEIS review and will have approval authority (together with the Town and DEC) over the SWPPP. The Lead Agency will need to evaluate the proposed amount of Town-regulated wetland buffer disturbance and determine if this buffer disturbance is acceptable.

**Comment 8-119:** Post-construction stormwater discharges from developed areas are also a major source of pollution to waters of the United States. "Urbanization alters the natural infiltration capability of the land and generates a host of pollutants...thus causing an increase in storm water runoff volumes and pollutant loadings." Land development "can result in both short- and long-term adverse impacts to water quality in lakes, rivers and streams within the affected watershed by increasing the load of various

pollutants in receiving water bodies, including sediments, metals, organic compounds, pathogens, and nutrients.” Stormwater pollution to the Kensico Reservoir is of great concern because its drainage basin, including the Project Site, lies within the “sixty-day travel time” of the water which is supplied to consumers. Sixty days is generally viewed as the life span for many disease-causing microbes in fresh water, such as *Giardia lamblia* and *cryptosporidia*.

Preventing pathogens from contaminating the water is of particular concern for the City’s Watershed because of the risks pathogens pose to public health. Pathogens include viruses and bacteria, such as *Giardia lamblia*, *cryptosporidia*, and *E. coli* 0157:H7, which can cause serious illness or death, especially among the very young, old, and people with compromised immune systems. (Office of the Watershed Inspector General, 6/1/11)

**Response 8-119:** As discussed in the previous response (8-118), with the implementation of the proposed stormwater management system designed in accordance with the NYSDEC’s Stormwater Management Design Manual, and compliance with the NYCDEP Watershed Rules and Regulations, significant impacts to the water quality of the Kensico Reservoir will be avoided to the maximum extent practicable. This includes the discharge of disease-causing microbes which would not be expected from the proposed project due to the nature of the project (it will not attract nuisance wildlife, it does not consist of a food-processing, restaurant, farming or kennel use.

### **3.9 STORMWATER MANAGEMENT**

**Comment 9-1:** Secondly, although a portion of the project site has already been disturbed by pre-existing development, the removal of forests and the addition of 33,500 square feet of impervious surfaces in buffer areas is new development that will increase storm water volume and velocity flowing off site. The DEIS first claims that storm water control measures and water quality treatment features of the project would have a beneficial impact on the quality of water that drains into the Kensico Reservoir, and then, on the very same page, the DEIS states that the predevelopment flow conditions, which are described as uncontrolled and untreated, existing runoff, will be the same post development. It would appear from this language that negative existing runoff conditions, with the potential to adversely impacts Kensico Reservoir water quality, will continue after construction of this project. (Kathy Hudson, 5/2/11)

**Response 9-1:**

A revised table of peak flows is provided below and has been included in the revised SWPPP. The table below illustrates runoff flow for the project site in three different conditions: 1) in a vegetated state with no impervious surface, 2) in its existing/current conditions, 3) with the proposed project/post construction conditions. This table illustrates that the rate of runoff flow for each design point and for each design storm will be reduced under the “Proposed Project” from both the “No Impervious Surface” and “Existing” conditions. It should be noted that the ‘no impervious surface’ condition is not the same as undisturbed. For the purpose of this analysis the runoff flow was calculated by substituting lawn or groundcover type vegetation for the existing impervious surfaces.

This table also appears in Chapter 2 of the FEIS. All stormwater tables contained in the FEIS have been updated and reflect the modified Site Plan. These include minor changes as a result of basin reconfiguration to ensure no disturbance occurs within Town-regulated wetlands. The full SWPPP is provided as a separate volume accompanying the FEIS. The preliminary SWPPP has been submitted to the Town for review and will be further updated during the Site Plan Review process and as part of review by the NYCDEP. The narrative portion of the SWPPP is also included as **Appendix G**.

**Table 6-3**  
**Runoff Flow Analysis**

Design Point	Pre-Existing Conditions (cfs)	Existing Conditions (cfs)	Proposed Project (cfs)	Change in Flow Rate			
				Existing to Proposed		Pre-Existing to Proposed	
1-year storm							
DP1	4.42	4.72	4.17	-0.55	-12%	-0.25	-6%
DP2	1.90	3.12	0.42	-2.7	-87%	-1.48	-78%
DP3	1.55	2.27	0.98	-1.29	-57%	-0.57	-37%
10-year storm							
DP1	10.95	11.38	10.22	-1.16	-10%	-0.73	-7%
DP2	4.57	6.15	2.68	-3.47	-56%	-1.89	-41%
DP3	3.61	4.58	2.14	-2.44	-53%	-1.47	-41%
25-year storm							
DP1	17.01	17.51	15.83	-1.68	-10%	-1.18	-7%
DP2	7.02	8.74	6.24	-2.5	-29%	-0.78	-11%
DP3	5.49	6.56	3.17	-3.39	-52%	-2.32	-42%
100-year storm							
DP1	27.60	28.16	25.66	-2.5	-9%	-1.94	-7%
DP2	11.27	13.06	9.87	-3.19	-24%	-1.4	-12%
DP3	8.81	9.87	4.93	-4.94	-50%	-3.88	-44%

**Comment 9-2:** Now, in moving forward, I would like to discuss pretty much the way the post storm water and the pre storm water balances on the site effect the wetlands and the watercourses.

What you have here is a figure from the DEIS which explains or shows the site sectioned into three separate parcels. And this is where the storm water on the site currently falls and where it pretty much drains to, okay. So, you have here pre one (indicating), okay, which drains the eastern portion of the site out to the perennial watercourse. You have -- I'm sorry, that's pre three. You have pre two, which drains mainly the center of the site, out to the perennial watercourse and also to wetland A. And then you have pre one, which basically deals with the majority of this area on the south of the site, which is directly related to that ephemeral possibly intermittent watercourse. And these areas are very important. And what it is showing is that water is again falling on the site, going through the grass structure, going through the wooded structure, everything I said before, and going into the watercourse. There is plenty of natural treatment, natural filtering going on in the site. I don't think the DEIS should persuade you otherwise.

The trouble here is when you go to the post development storm water structures. This is the secondary map demonstrating how the storm water will be moved about on --on the site, okay, post development. The large pink object in the middle is your parking garage. As you can see, the parking garage has eliminated, okay, has literally eliminated everything that was in pre one in terms of the hydrological connection, okay. All that area that was collecting all of that storm water and bringing it near that ephemeral watercourse, down into wetland A, where it's being filtered, and through the culvert, okay, and out into the Kensico River, I'm sorry, Kensico Reservoir. So, you have a huge reduction, okay, post development in the amount of water that is physically reaching this portion of wetland A and that ephemeral watercourse.

Where pre two was, they now have a proposed basin, okay. So, what we've done here or what they have done is essentially eliminated that entire hundred foot buffer, okay. Going to be excavating out, removing that soil and going to be eliminating that entire natural filter. But the worst part of it is, is that this entire wetland A, over here (indicating), you're going to be cutting the hydrological flow of that wetland by more than half, okay. The same goes for the area that was designed as pre one. So, half of this water (indicating) is no longer reaching this wetland. So, the wetland doesn't serve to buffer. It doesn't serve to treat the water. It doesn't serve to distribute the water to either the perennial watercourse or intermittent watercourse, which drains to the Kensico Reservoir. It's providing a natural function in its natural state and it's being removed. That's important. (Greg Fleischer, 5/2/11)

**Response 9-2:**

We believe that the commenter is incorrect in suggesting that there would be substantial reduction in the amount of water reaching Wetland A and the ephemeral watercourse. The existing Wetland A has a small drainage area-to-area ratio (5:1), which suggests that maintenance of wetland conditions is primarily reliant on groundwater inputs (i.e. surface water inputs are relatively minor). Also, because the wetland is drained at its lower end by a culvert the invert of which is essentially flush with the bottom elevation of the wetland, most of the surface flow delivered to the wetland is quickly conveyed through and out of the complex with very little residence time. These two factors (small drainage area-to-area ratio and low residence time) suggest that surface water inputs delivered via stormwater runoff are unlikely to play a significant role in maintaining wetland hydrology. Consequently, we are of the opinion that the reduction in peak flows to the wetland associated with the proposed project will not pose an adverse impact to wetland hydrology or function. Conversely, the reduction in flows are likely to enhance wetland conditions by reducing the potential for scour and soil erosion within the existing wetland.

**Comment 9-3:**

Now discussing this further, another thing that should be noted is that you have the reduction in the area where we're getting hydraulics to the wetland and ephemeral watercourse. The remainder of the site, all of that water is now being concentrated. Okay. Everything that's in that water, every constituent, whether it's physical, whether it's chemical, whether it's a biological constituent, gets moved and transported to this series of basins, okay (indicating).

These basins, okay, are taking all this area that says post two E, G, goes to B, A, all of them goes to one discharge point, DP2. So, water that was being disbursed throughout the entire site is now concentrated into one spot at virtually one discharge point. Discharge point one, barely any water, at least half of what was there prior. Discharge point three, a huge reduction in the amount of water that is going to the perennial watercourse and existing wetland.

The impact to the buffer, the wetland, the watercourse all fall on this project. This project sits in the Kensico Reservoir watershed. As Mr. Zarin stated before, it's part of the Hudson watershed. All of these watercourses and wetlands work together. They interconnect to filter and process the water that falls on that site, and it then goes forth to the Kensico Reservoir.

I think it's important for the board to really consider the impacts of any disturbances to those buffers, be it your town buffer, the DEP hundred foot offset, or any of those other measures. Of course when Corps

comes out to look at the site, get some type of jurisdictional determination, some characterization of that ephemeral watercourse. So, it will make your decision easier as far as deciding what exactly exists on the site. Thank you for your time. (Greg Fleischer, 5/2/11)

**Response 9-3:** Comment noted. See Response 9-2.

**Comment 9-4:** The project proposes to convey storm water generated in the parking area to two detention basins to be created within the wetland buffer zone. It is an established fact that parking lot one runoff contains numerous petroleum constituents and toxic chemicals associated with antifreeze. Over time these constituents accumulate in the area where they are discharged and often they exceed the DEC soil cleanup objectives and remediation of the soil is then required. (Julius Shultz, 5/2/11)

**Response 9-4:** The proposed project is an *enclosed* parking structure with an automated system for internal movement of the vehicles. There is no parking area outside the structure itself. There will be minimal opportunity for cars to idle as the cars will stop within the structure. This will minimize the potential leaking of fluids on the surface drive area exposed to stormwater runoff. In addition, the proposed project will have less surface drive area (less asphalt pavement) than the existing site conditions.

In addition, the design of the proposed stormwater management system, in conformance with the New York State Department of Environmental Conservation (NYSDEC) and NYCDEP WRR, will provide pretreatment and treatment in series of on-site runoff before discharging to a surface existing water body. This is a major improvement over the existing conditions since currently there is no treatment of stormwater runoff.

Any surface spills including all fluids which drain inside the structure, which we anticipate will be minimal, would be collected and treated with spill kits and then discharged into the sanitary sewer system.

The Town Building Department will need to evaluate whether it is appropriate to connect the floor drain to the sanitary sewer.

**Comment 9-5:** Our second point is, is that a point that we think was absent from the DEIS was the issue of petroleum contamination. Any time there is a project that entails the construction of impermeable services over which automobiles is going to traffic, there is going to be leakage of automobile fluids onto those roadways and parking areas. And in this particular case the storm water that is generated from this project that

comes in contact with this material is going to pickup this petroleum contamination and convey it in this case to a couple of detention basins and then into a wetland area. The problem with this is that although parking lots across the country and roadways across the country are all used to having petroleum contamination, and we live with it, in this particular case since the depth to groundwater is so shallow, the contamination that is entrained in the storm water is going to get into these detention basins and wetland areas and be almost in direct contact with the groundwater and could contaminate the groundwater supply below the site. And all groundwater is moving in, in the direction of Kensico.

So, although we do tolerate parking lot runoff and the contamination that it generates in most areas, it should be a higher level of alarm in this particular area because of the presence of Kensico Reservoir, that it shouldn't be necessarily tolerated in this area, because there is going to be petroleum contamination accumulating in these basins over time, and that is going to generate groundwater contamination. (Peter Dermody, 5/2/11)

**Response 9-5:** See Response 9-4.

**Comment 9-6:** My primary concern is the high possibility of petroleum and antifreeze products will enter the surface drainage system and will eventually [find] the Kensico Reservoir. The situation is not easily remedied and presents a threat to the water supply for 9 million people. (Steve Hopkins, 5/5/11)

**Response 9-6:** See Response 9-4.

**Comment 9-7:** Based upon the review of the documents received, DEP has a number of concerns about potential water quality impacts resulting from the project. In particular, DEP is concerned about the project's potential for turbidity and increased pollutant loading, particularly phosphorous, into Kensico Reservoir, disturbance of steep slopes and wetland buffers, and the lack of "green infrastructure" practices. The location of certain stormwater management practices within wetland/watercourse buffer areas may degrade the buffer's beneficial water quality attributes. Further, there is a lack of information regarding mitigation of groundwater and stormwater impacts, construction sequencing and various other concerns detailed below. The comments are listed in accordance with the DEIS Chapters and are not listed in DEP's order of priority. DEP's priority concern remains the project's impact on water quality in the Kensico Reservoir basin. (NYCDEP, 5/23/11)

**Response 9-7:**

In response to comments received, the stormwater management plan has been reevaluated and additional measures have been implemented to address these concerns. The proposed building footprint has been reduced to 44,812 sf, this is a 12% less than the original proposal. Modifications to the stormwater system design include the addition of an underground sand filter, catch basins with deep sumps, stormwater planters, grass pavers, sedimentation basin and the above ground sand filter. These techniques provide water quality volume treatment in series and will provide significant water quality improvement as compared to the existing condition.

The following tables represent the revised peak flow for each of the Design Analysis Points based on the reduction of the building size and reduction in overall impervious surface in the revised proposed project.

This table also appears in Chapter 1 of the FEIS.

The NYCDEP has been contacted (September 2014) and a (second) pre-application meeting with NYCDEP is being scheduled to provide the NYCDEP with the updated SWPPP and apprise them of revisions made to the Site Plan in response to comments on the DEIS. Please note that although there were DEIS comments requesting a review of the SWPPP by NYCDEP, it is the policy of NYCDEP to review a project's SWPPP subsequent to the adoption of the SEQRA Findings by the Lead Agency.

See also response to Comment 3-23, which also addresses proposed coordination with the NYCDEP.



**Table 1-4**  
**Revised Peak Flow**

		Pre-Development	Post-Development
<b>Design Point 1</b>			
1 – Year Storm	Flow (cfs)	4.72	4.17
	Volume ( cf )	22,583	20,356
2 – Year Storm	Flow (cfs)	6.09	5.41
	Volume ( cf )	28,501	25,835
10 – Year Storm	Flow (cfs)	11.38	10.22
	Volume ( cf )	51,461	47,234
25 – Year Storm	Flow (cfs)	17.51	15.83
	Volume (cf)	78,568	72,657
50 – Year Storm	Flow (cfs)	21.73	19.72
	Volume ( cf )	97,535	90,505
100 – Year Storm	Flow (cfs)	28.16	25.66
	Volume ( cf )	126,875	118,176
<b>Design Point 2</b>			
1 – Year Storm	Flow (cfs)	3.12	0.42
	Volume (cf)	11,431	21,495
2 – Year Storm	Flow (cfs)	3.78	0.52
	Volume (cf)	13,802	25,195
10 – Year Storm	Flow (cfs)	6.15	2.68
	Volume (cf)	22,548	38,641
25 – Year Storm	Flow (cfs)	8.74	6.24
	Volume (cf)	32,376	53,689
50 – Year Storm	Flow (cfs)	10.47	7.91
	Volume (cf)	39,079	63,945
100 – Year Storm	Flow (cfs)	13.06	9.87
	Volume (cf)	49,255	79,502
<b>Design Point 3</b>			
1 – Year Storm	Flow (cfs)	2.27	0.98
	Volume (cf)	7,925	4,029
2 – Year Storm	Flow (cfs)	2.76	1.22
	Volume (cf)	9,612	4,989
10 – Year Storm	Flow (cfs)	4.58	2.14
	Volume (cf)	15,864	8,631
25 – Year Storm	Flow (cfs)	6.56	3.17
	Volume (cf)	22,925	12,841
50 – Year Storm	Flow (cfs)	7.89	3.87
	Volume (cf)	27,753	15,753
100 – Year Storm	Flow (cfs)	9.87	4.93
	Volume (cf)	35,101	20,225
<b>Notes:</b>			
cfs= cubic feet per second			
cf= cubic feet			

**Comment 9-8:**

The DEIS notes that the onsite stream is a NYC regulated reservoir stem located within 500 feet of Kensico Reservoir. Kensico Reservoir is a terminal reservoir in the NYC water supply system. Additionally, Westchester County Waterworks draws drinking water from this

reservoir. It is imperative that water quality impacts from turbid discharges and pollutant laden runoff be fully avoided or mitigated. (NYCDEP, 5/23/11)

**Response 9-8:** Comment Noted. The stormwater management plan during and post-construction is designed to prevent turbid discharges and prevent pollutants from being released to open water bodies. An erosion and sediment control plan has been prepared for the project in accordance with NYSDEC guidelines to address silt and sediment runoff during construction.

**Comment 9-9:** Although two stormwater practices are proposed in series, this approach to stormwater management provides no guarantee of removing dissolved phosphorus. The DEIS should include a discussion regarding dissolved phosphorous and how increases will be mitigated. (NYCDEP, 5/23/11)

**Response 9-9:** Please note that the revised proposed project includes the following proposed practices for water quality treatment, all of which are practices that are outlined in the New York State stormwater Management Design Manual which both NYSDEC and NYCDEP have acknowledged are proven to remove phosphorous.;

- Surface Sand Filter

The following parameters were used in designing and sizing the surface sand filter system:

- Off-Line System – Stormwater runoff is conveyed via a storm pipe network, therefore the Sand Filter is designed off-line. A flow-splitter diversion structure has been designed to divert the runoff from the 1-year, 24 hour storm.
- Overflow – An overflow structure has been provided to convey stormwater to Pocket Weland W-4. A stabilized rip-rap spillway has also been provided to convey stormwater from the larger storm events.
- Underdrain – A 6-inch diameter perforated pipe placed in a gravel layer, is proposed to collect stormwater that has filtered through the sand layer. Geotextile filter fabric will be placed between the gravel layer and sand layer.
- Groundwater Table – A 2-ft. separation between the filter bottom and the seasonal high groundwater table has been provided.
- Pretreatment (Sedimentation Basin) – A sedimentation basin will provide pretreatment at the inlet point. This will provide primary settling for the larger particulates. The sedimentation basin will be sized to contain 25% of the WQv. The depth of the sedimentation basin is four feet. The outfall from the inlet pipe will be stabilized

with rip rap to minimize erosion of the ponds' sideslopes. A fixed depth marker will be installed to assist in the long term inspection and maintenance plan. This will help determine the depth of sediment accumulation and when maintenance is required.

- Treatment Basin Sizing - The complete system, including sedimentation basin, is designed to hold and treat at least 75% of the water quality volume and will consist of a surface sand filter which will have a coefficient of permeability of 3.5 ft/day.
- Filter Media – The proposed filter media will consist of a medium sand meeting ASTM C-33 concrete sand.
- Side-Slopes - The side slopes for the sedimentation basin and the surface sand filter are 3:1(H:1).
- Vegetation – Landscape plans include various grass species for the sideslopes and bottom of the surface sand filter. The plant variety will provide treatment through filtering and nutrient uptake. See Landscape Plans.
- Geometry – Both pretreatment and the surface sand filter have been designed with a length to width ratio of 1.5:1 as required by NYSSMDM.
- Energy Dissipater - A rip rap velocity dissipater will be installed at the outlet that discharges into the sedimentation basin.
- Outlet control structure – The pre-cast concrete structure is designed with a low flow orifice that will detain the 1-year, 24-hour storm event.
- Maintenance – As specified in the Operation and Maintenance section of the Preliminary SWPPP a legally binding and enforceable maintenance agreement shall be executed with the Town and the applicant/operator.
- Pocket wetland

The following parameters were used in designing and sizing the pocket wetland (W-4):

- Water Quality Volume – The WQv is equivalent to the runoff from the 1-year, 24-hour storm event. A detention time of 33 hours has been provided.
- Wetland – The proposed pocket wetland is not located within NYSDEC jurisdictional waters, including wetlands.
- Pond Embankment – The proposed pocket wetland would not consist of a dam as it is excavated system below the existing grading.
- Forebay – A forebay is provided as the proposed pocket wetland to store a minimum of 10% of the WQv.

- Side-Slopes – The side slopes for the pocket wetland are 4:1(H:1) , therefore a pond safety bench is not required. However, an aquatic bench has been provided to help establish wetland vegetation.
- Micropool - A micropool will be provided at the outlet in order to protect the low flow pipe from clogging and prevent sediment resuspension. This area will range from four to six feet in depth and will be able to store a minimum of 10% of the WQv. The contributing drainage area from the proposed roof leader extension from the existing office building Lot 13B is less than 10% of the total design storm flow discharges directly to the micropool.
- Water Quality Volume – At a minimum 25% of the water quality volume will be in deepwater zones with a depth greater than four feet.
- Vegetation – Landscape plans include various grass species for the sideslopes and emergent wetland species. The plant variety will provide treatment through nutrient uptake. Minimum elements of a plan include: delineation of pondscaping zones, selection of corresponding plant species, planting plan, sequence for preparing the wetland bed and sources of plant material.
- Landscaping – Native plants that promote phosphorous and nitrogen uptake will be specified in the final landscaping plans.
- Permanent pool – 50% of the water quality volume will be provided in the permanent pool, as required for stormwater wetlands designed for extended detention. The seasonal groundwater table will be intercepted to provide a permanent pool.
- Geometry – The pocket wetland has been designed with a length to width ratio of 2:1 as required by NYSSMDM. A minimum Surface Area: Drainage Area of 1:100 has been provided.
- Pond Buffer – A pond buffer of at least 25 ft has been provided around the pond maximum water surface elevation.
- Energy Dissipater - A rip rap velocity dissipater will be installed at the inlet and outlet of the lower pond. The lower pond discharges to the existing NYCDEP delineated watercourse where the banks are in stable condition. This will eliminate the potential for erosion of the stream bed.
- Emergency overflow - Safe conveyance of the 100-year storm flow will be provided through a rip rap lined overflow spillway. The elevation is determined by the 100-yr flood elevation and located such that stormwater flows will not adversely impact surrounding properties.
- Maintenance access – A 10-foot minimum width access path will be provided for long term maintenance of the stormwater ponds. The path will be constructed of grasspavers in order to decrease impervious surface and increase infiltration.

- Outlet control structure – The pre-cast concrete structure is designed with a low flow orifice that will detain the 1-year, 24-hour storm event for a minimum of 24 hours, meeting the NYSDEC and NYCDEP requirements. The larger storm events will also be conveyed through an opening at the top of the outlet control structure designed to attenuate the larger storm events.
- The outlet control structure is located within the embankment, providing safe egress for maintenance.
- Freeboard – 1-ft of freeboard above the 100-year storm elevation.
- Pond Drain – A drain pipe would be part of the outlet control structure so that the pond could be completely drained for maintenance.
- Maintenance Agreement – An Operation and Maintenance Plan as outlined in the Preliminary SWPPP would be developed into a legally binding and enforceable agreement with Town as a condition of the site plan approval.

#### Stormwater planters

The proposed development will be designed to have stormwater planter systems along the perimeter of the parking structure. These stormwater planters will be designed to treat the stormwater runoff from the roof of the proposed structure. The roof leaders will be routed to these areas for water quality treatment and nutrient intake before releasing into the proposed stormwater conveyance system.

#### Permeable Pavers

As discussed earlier, in the areas where high traffic is not expected (i.e. fire access lane, maintenance path), permeable pavers will be installed in place of conventional paving. This will help to reduce stormwater runoff from these areas and improve water quality and quantity downstream. The use of permeable pavers will reduce the amount of stormwater runoff through promoting infiltration.

The proposed stormwater management practices have been designed based on the NYSDEC stormwater sizing criteria to treat the full water quality volume and are capable of 80% TSS removal and 40% TP removal. Stormwater facilities designed in series are effective for removing dissolved phosphorous. It should also be noted that the new development will contain less lawn area than the existing condition and will thus result in less potential for dissolved phosphorous production.

In addition the use of native plant species for revegetation on the project site will minimize or eliminate the use of fertilizers after an initial establishment period of approximately one growing season. Once established the majority of the project landscape will require no fertilizer and minimal maintenance.

**Comment 9-10:** Additional pollutants should be evaluated. For instance, total nitrogen, total suspended solids and biological oxygen demand (TN, TSS, BOD) are also considered as pollutants of concern and should be assessed. As Kensico Reservoir is a terminal reservoir basin, analysis of fecal coliform loading would also be appropriate. (NYCDEP, 5/23/11)

**Response 9-10:** The pollutant loading calculations that have been provided evaluate total nitrogen, total suspended solids and biological oxygen demand. There is insufficient data available for fecal coliform analysis; However, given the reduction in lawn areas and the proposed use is a commercial use, animal waste will likely decrease at the site. No additional pollutant loading calculations have been undertaken. Please note also, meeting the latest SPDES General Permit and designing stormwater management practices in strict adherence to the NYSDEC Stormwater Management Design Manual presumes meeting the pollutant removal capacities of these practices. The proposed project's practices meet and exceed the requirements of the latest NYSDEC guidance. The Applicant will continue this discussion in collaboration with the Town (as MS4 with permit authority) and NYCDEP.

**Comment 9-11:** Given the extent of site disturbance and the extent of new impervious surfaces proposed, DEP strongly recommends that the applicant submit full scale drawings depicting pre- and post- development drainage area maps for review. (NYCDEP, 5/23/11)

**Response 9-11:** Full scale drawings depicting pre- and post- development drainage area maps were provided with the DEIS and have been revised and included in the FEIS submission.

**Comment 9-12:** The details associated with the proposed drainage easement on the adjoining property should be provided so that the effectiveness of the stormwater management system, including the inspection and maintenance criteria can be evaluated. (NYCDEP, 5/23/11)

**Response 9-12:** This information will be provided to all agencies with SWPPP approval authority. The drainage easement agreement is provided in **Appendix B**.

**Comment 9-13:** The discussion of Mitigation Measures in Section G of Chapter 9 is somewhat misleading. It does not appear that undisturbed areas and buffers will be preserved or that clearing and grading has been reduced. Furthermore, very few green infrastructure techniques are actually proposed and some practices such as rain gardens, may not be appropriate for the proposed development. Alternatives that address

commercial development, such as the use of a green roof, should be considered. (NYCDEP, 5/23/11)

**Response 9-13:**

Various green infrastructure techniques were considered in the design of the stormwater management plan for the proposed project. A green roof is not a proven effective measure for stormwater quality as they typically require fertilizer, thus increasing pollutants. Additionally, they have been proven to often increase phosphorous and other nutrient loading and increase the temperature of stormwater runoff due to the heat island effect on the roof. Since Kensico Reservoir is often used for recreational fishing, the green roof is no longer being considered.

The rain garden has been removed from the proposed stormwater management system in order to conform to the NYSSMDM which prohibits the use of rain gardens for water quality treatment of paved driveway surfaces. Stormwater runoff from the impervious driveway surface will be collected and conveyed to a proposed underground sand filter instead. Stormwater planters, located along the building north, east and west face, are proposed to provide water quality treatment for stormwater roof runoff. An underdrain and overflow structure will be designed to convey higher storm volumes downstream to the sedimentation basin and pocket wetland for treatment and stormwater detention.

In response to comments, the revised proposed project in the FEIS has reduced the building footprint from the DEIS. The purpose for this reduction was to make it possible to eliminate any disturbance to existing wetland and minimize impacts to the wetland buffer during any point of the construction process.

**Comment 9-14:**

On page 9-2, the bullet referring to Section 18-39(a) (1) of the Watershed Regulations should be revised. Impervious surfaces are not only prohibited within 100 feet of a watercourse or wetland but are also prohibited within the limiting distance of 300 feet of a reservoir, reservoir stem, or controlled lake. The bullet referring to Section 18-39(b) (3) (iii) should also be revised. DEP's review and approval of a Stormwater Pollution Prevention Plan (SWPPP) is required for construction of a new commercial project resulting in the creation of impervious surfaces totaling over 40,000 square feet (not 50,00 square feet) in size. (NYCDEP, 5/23/11)

**Response 9-14:**

Comment noted. The project will require permit approval from the NYCDEP and review of the SWPPP due to the construction of an impervious surface within the 100' limiting distance of a DEP-regulated watercourse in accordance with WRR §18-39(a)(1)).

**Comment 9-15:** The section discussing the requirement for a variance from the Watershed Regulations should be clarified. As noted in the bullets on page 9-2, expansion of impervious surfaces up to 25% is allowed with an approved SWPPP if any part of the expansion is within limiting distances. It appears that the proposed action will result in an expansion of impervious surfaces in excess of 25% and therefore a variance will be required. The need for a variance can be avoided, although a SWPPP would still be required, if an alternative is selected that results in an expansion of impervious surfaces that is under 25%, even if some of the impervious surfaces are located within the limiting distance to the watercourse. (NYCDEP, 5/23/11)

**Response 9-15:** Comment Noted. The proposed building footprint has been reduced to 44,812 sf, therefore the proposed increase in impervious surface is now 39%.

**Comment 9-16:** The project will generate increases in both runoff quantity and pollutant loads. Stormwater management facilities are currently proposed to mitigate the post construction impacts to the quality and quantity of surface runoff in the vicinity. Additional information should be provided to demonstrate that impacts associated with increase in volume of stormwater releases over time can be mitigated. (NYCDEP, 5/23/11)

**Response 9-16:** The proposed stream impacts would be minimal, as there is only approximately 550 lf of stream between the proposed discharge point and the reservoir. Of that 550 lf, approximately 355 lf is piped or part of the NYSDOT drainage system. Therefore there is only a small portion of the stream that could potentially be affected; however, the decrease in peak flows and the rocky stream bed will minimize any potential affects.

**Comment 9-17:** The proposed project consists of the construction of a 1,450 vehicle parking garage and car wash within a 3.34-acre property. The garage will consist of a five-level parking structure with a structural footprint of 51,000 square feet. Stormwater collected from the garage area will be discharged to detention basins and finally to a small wetland that is proposed to be constructed. The car wash wastewater will reportedly be discharged to the municipal sewer system. (Peter Dermody, 5/27/11)

**Response 9-17:** The structural footprint of the proposed garage has been reduced to 44,812 sf, such that the building is situated 10 feet outside of the town delineated wetland boundary. Stormwater collected from the roof of the garage will be directed into stormwater planters and then conveyed into the stormwater facility consisting of a sedimentation basin, sand filter and pocket wetland before discharging to an open water body. Any



stormwater runoff collected beneath the building (main level concrete drop-off loop) will be discharge to the municipal sewer system. It should be noted that in response to comments, the car wash is no longer a part of the Proposed Action.

**Comment 9-18:** In addition, the project proposes to convey stormwater generated on the impervious parking areas to two stormwater basins that will be constructed. These basins will include a detention basin for the settling of suspended sediment and a sand filter basin. The stormwater will then be directed to a wetland that is to be constructed. It is a well established fact that parking lot stormwater runoff contains numerous petroleum constituents and hazardous substances associated with antifreeze. Over time, these contaminants accumulate in the area where they are discharged. The two detention basins and wetlands are proposed to be constructed in an area where the depth to groundwater appears to be less than three feet. Therefore, the contamination that will be directed to the detention basins and wetland has a high potential to percolate downward through the soil and impact the groundwater. Groundwater in this area will flow and discharge to the adjacent streams and Kensico Reservoir. This issue was not addressed in the DEIS. (Peter Dermody, 5/27/11)

**Response 9-18:** The proposed stormwater management plan will provide greater water quality volume than the existing condition by allowing stormwater runoff from the adjacent parking lot to collect into the proposed sedimentation basin, sand filter and pocket wetland. Under existing conditions stormwater runoff from the parking surfaces were conveyed directly into the wetland located to the west and no water quality is provided. The proposed stormwater facilities will provide a significant benefit to surface water quality and actually provided a reduced risk of impacting the groundwater than the existing condition. Please note that the idling cars on-site will be located within the enclosed parking facility and therefore potential pollutants associated with the vehicles would be conveyed to the sanitary system, ultimately being treated in the WWTP.

**Comment 9-19:** In our opinion, the proposed 1,450-vehicle garage, with car-wash facilities, in close proximity to Rye Lake, will pose an unacceptable threat to the integrity of NYC's drinking water. For example, there is no indication, no real proof that over the long term, the detention basin/artificial wetland system, created to prevent storm water discharge from entering the reservoir, would be effective. (CWCWC, 5/31/11)

**Response 9-19:** This design is in accordance with the NYSDEC stormwater regulations and provides a substantial improvement in stormwater management and

water quality treatment when compared with the existing condition. Please note that the idling cars will be located within the enclosed parking facility and therefore potential pollutants associated with the vehicles and the car wash would be conveyed to the sanitary system, ultimately being treated in the WWTP. It should be noted that in response to comments, the proposed car wash is no longer part of the Proposed Action.

**Comment 9-20:** It is of overriding importance that the Rye Lake/Kensico Reservoir system that acts as a settling reservoir for NYC water prior to its entry into the Hillview Reservoir, the drinking water source for 8 million people, not be the recipient of excessive particulate pollution that requires heavy alum treatment in order to settle it. The alum prevents particulates from accessing the Hillview, but too much alum has its own problems. As recently as February 2011, there was a problem with turbidity in the Kensico Reservoir. (CWCWC, 5/31/11)

**Response 9-20:** Comment noted. However, please note that the turbidity events are typically at the intake from the Catskill aqueduct as a result of the stormwater runoff from within the Catskill watershed and is not typically caused by runoff from the Kensico Watershed. Alum was applied at the Catskill intake.

**Comment 9-21:** Particulate pollution would negate the huge expenditures that have been lavished on the Hillview Reservoir in order to comply with the Administrative Order (AO) first issued in March 1996. The main requirement for compliance is the installation of a cover over the Hillview. The sum total of the various projects needed to comply with the AO exceeds \$1 billion.

It would be the height of folly to negate the hoped-for results of these major expenditures by allowing an industrial enterprise, such as the proposed garage, to be constructed in such close proximity to the Rye Lake/Kensico Reservoir. If one such industrial enterprise is permitted, why not others? (CWCWC, 5/31/11)

**Response 9-21:** The cover at Hillview is related to the high concentrations of Fecal Coliform. Please note that the cars are parked within an enclosed building where stormwater runoff would not be in contact with oils, hydrocarbons, and other potential pollutants. This project is similar to the MBIA parking garage which was constructed in closer proximity to Kensico Reservoir and was touted as a good example of site design and stormwater management by CWCWC and Riverkeeper. This project is an improvement of that design in that its stormwater treatment practices will be designed in series, green infrastructure practices will be

implemented as well, and the system will treat a portion of off-site areas.

**Comment 9-22:** DEP has spent considerable sums to build storm water devices in the Reservoir's watershed in order to diminish pollution. Their effectiveness would be curtailed by the proposed garage.

We urge the Armonk Planning Board to oppose this unneeded, destructive proposal. (CWCWC, 5/31/11)

**Response 9-22:** NYCDEP has not constructed any BMPs in this particular subwatershed. Therefore the proposed stormwater management system that addresses both stormwater quantity and stormwater quality concerns per the New York State Stormwater Management Design Manual, the WRR, and Town objectives.

**Comment 9-23:** Although the draft EIS identifies a few green building components that are proposed to be incorporated in the development, if the project is to be constructed, the applicant should consider a green roof over the garage to mitigate stormwater runoff impacts. (WCPB, 5/31/11)

**Response 9-23:** A green roof has been considered although stormwater quantity and quantity benefits, as stated in Response 9-13, are not proven.

**Comment 9-24:** The DEIS indicates that the preliminary Stormwater Pollution Prevention Plan (SPPP) minimizes peak flow, increases infiltration and reduces pollutants in stormwater runoff. The Applicant should indicate whether it has received any preliminary comments from the New York City Department of Environmental Protection (NYCDEP) regarding the proposed SPPP. (Adam Kaufman, 6/1/11)

**Response 9-24:** Yes, comments have been included in this list. SWPPP will be submitted to NYCDEP for review and approval after the adoption of the Statement of Findings by the Lead Agency. The Applicant intends to have a pre-application meeting with the NYCDEP in Sept/Oct. 2014 for the purpose of having the agency provide comment on the SWPPP, which will ultimately require approval by NYCDEP.

See also response to Comment 3-23, which also addresses coordination with NYCDEP.

**Comment 9-25:** The FEIS should provide the pre- and post-development acreages (drainage area) contributing to each drainage point. (Kellard Sessions, 6/1/11)

- Response 9-25:** Summary tables of the drainage areas to each drainage point for existing and developed conditions are provided in Chapter 1 and Chapter 2 of the FEIS and in the revised SWPPP the accompanies the FEIS.
- Comment 9-26:** Details of the 24' driveway expansion and its relationship to the existing stream and crossing should be provided on the plans and discussed in the main document, as well as the Stormwater Pollution Prevention Plan (SWPPP) text. (Kellard Sessions, 6/1/11)
- Response 9-26:** The profile of the stream crossing is shown on the detail sheets. In addition, the plan view of the driveway stream crossing highlights the area of new pavement (impervious surface). The design intent is to minimize the impacts of the stream crossing and provide vegetative stabilization on the steep slopes. To comply with Town Code requirements and to ensure vehicle safety, the driveway will need to be expanded from its current width which ranges from 20.7 to 24 feet wide, to a uniform 24 feet wide, a widening of 3.3 feet. No disturbance to the water course is proposed for this driveway expansion. Details of the driveway expansion and its relationship to the existing stream will be further developed in the Site Plan Application phase of design.
- Comment 9-27:** The FEIS should provide a discussion of mitigation practices which would address the current or future use of sand and salt de-icing practices and fertilizers, pesticides and chemicals on lawns, roadways and other impervious surfaces on Lot 13A. (Kellard Sessions, 6/1/11)
- Response 9-27:** The Applicant has secured a Drainage Easement and has the obligation to maintain the drainage improvements and landscaping on Lot 13A which is burdened by the Easement. As discussed in Chapter 1 of this FEIS, each stormwater management basin will be planted with indigenous wetlands plantings that both stabilize the basin construction, provide wildlife habitat and aesthetic beauty. All plant material throughout the site will be native, drought and pest resistant material and will minimize the need for long term maintenance, fertilizer, pesticides and irrigation. No sand/salt or other deicing measures would be necessary on the Drainage Easement of Lot 13A. The Applicant will commit to no use of road salt on the project site – seasonal use of salt-free deicers may be used. This can be memorialized in the Findings Statement. There will be no fertilizer, pesticides, herbicides, or fungicides and irrigation within 100-feet of a wetland and watercourse, with the exception of wetland mitigation and invasive species removal as permitted by the Town.

**Comment 9-28:** The FEIS and plans should address conveyance of water to temporary sediment basins and the protection of wetlands once the building is under construction. (Kellard Sessions, 6/1/11)

**Response 9-28:** The plans indicate temporary swales and sediment basins to be installed during construction in order to prevent sediment laden runoff from leaving the site. Orange construction fence will be installed prior to any land disturbance activities. Signs will be posted on the orange construction fence stating that 'IT IS A VIOLATION TO PROCEED BEYOND THE FENCE'. A detail of the orange construction fence will be added to the drawings for Site Plan approval. The construction sequence will be revised to indicate that the installation of the orange construction fencing will be performed prior to any site clearing.

**Comment 9-29:** The FEIS should discuss the potential freezing of the sand filterbed pipes and clogging in cold weather and related effectiveness and operation of the stormwater BMPs. (Kellard Sessions, 6/1/11)

**Response 9-29:** According to the NYSSMDM the sand filterbed has been designed to prevent against freezing by incorporating it after initial treatment measures including an underground sand filter and a sedimentation basin. Also, the underdrain in the sand filter will consist of an 8-inch pipe within a 1' gravel bed, which according to the NYSSMDM helps to make freezing less likely and provides a greater capacity to drain standing water from the filter.

**Comment 9-30:** The SWPPP and FEIS should identify potential pollutants (petroleum products and chemicals) [that] will be used and required to be stored at the site. (Kellard Sessions, 6/1/11)

**Response 9-30:** The only potential pollutants/chemicals which will be located outside of the building will be the fuel tank associated with the electrical generator. However, for added spill protection the fuel tank will be double walled to provide secondary containment. The fuel storage and delivery system will include spill prevention measures such as double walled tank design, spill containment and drainage control structures. In the unlikely event of a spill, emergency response procedures will be included in a facility operations plan that will be prepared prior to starting business operations. An operation and maintenance schedule will include a plan for periodic testing and inspections. The operation, maintenance, and equipment inspections will be completed in accordance with the manufacturer's recommendations and requirements. It is proposed that this facility operations plan be developed and reviewed by the Town during Site Plan review. With the appropriate maintenance and spill prevention measures in place, the

proposed project will not result in significant impacts associated with fuel storage and operation of the generator.

**Comment 9-31:** The Stormwater Pollution Prevention Plan (SWPPP) should provide documentation of compliance with the 5 step process outlined in Section 3.6 in the New York State Stormwater Management Design Manual (NYSSMDM). (Kellard Sessions, 6/1/11)

**Response 9-31:** The following description of the 5 Step Process is provided in the revised SWPPP:

**6.2** Five-step process for site planning and stormwater management practice (SMP) selection

**6.2.1** Step 1: Site Planning to preserve natural features and reduce impervious cover

The development of the stormwater management system for the proposed project site involves the use of green infrastructure practices, where feasible. The project area is 2.8 acres with approximately 33,447 square feet (sf) (0.77 acres) of existing impervious surface. The proposed automated parking garage design was a major factor in reducing the building footprint from the typical multi-level self-park system. The proposed project includes 55,924 sf (1.28 acres) of impervious surface, or 25,229 sf (0.64 acres) of new impervious surface. The proposed stormwater plan will also include approximately 10,786 (0.27 acre) of impervious surfaces from the existing office building roof runoff and associated parking area from adjacent Lot 13A.

The parking, drop-off, and traffic queuing areas are all located internal to the building. Therefore, runoff from the parking areas is not connected to the stormwater system and hence, decreasing the likelihood for oil and grease type pollutants to enter the storm system.

The following site planning practices were used to help determine the site plan and stormwater management system design.

*Planning Practice 1: Preservation of Undisturbed Areas*

The first approach to the overall design at Park Place is the preservation of undisturbed site area in order to maintain natural features and native vegetative areas. This technique coincides with Better Site Design (BSD) practice #1: preservation of undisturbed and BSD practice #3: reduction of clearing and grading. Both practices ensure that unnecessary earthwork is performed and instead help to limit overall site disturbance by

developing in areas where disturbance has already occurred. Where possible the project has been designed to re-use existing impervious areas (i.e., driveway entrance, driveway) and has eliminated any disturbance of the presently undisturbed wetlands along the south and west property lines.

*Planning Practice 2: Preservation of Buffers*

The project site is situated in an area where Town delineated wetlands and NYCDEP designated wetlands greatly minimize the developable area on site. Currently, stormwater runoff from impervious surfaces located within wetland and watercourse buffers discharge directly to the waterbodies without any treatment. The project has been designed such that all runoff on impervious surfaces is treated by a series of water quality treatment methods before discharging downstream.

*Planning Practice 3: Reduction of Clearing and Grading*

The proposed building and associated impervious surfaces have been situated on the project site such that there will be no disturbance to existing wetland areas and hence, no clearing or grading is expected within these areas. The building has also been designed as a tiered structure which will work most efficiently with the existing site topography and thus minimize clearing and grading areas to the greatest extent possible.

*Planning Practice 4: Locating Sites in Less Sensitive Areas*

By constructing the new development in an area already disturbed, the project has helped to maintain the site's natural character and existing habitat. Also, while the proposed project will increase impervious surface, the project will provide stormwater quality and quantity controls where there are presently none. By treating runoff through a series of stormwater treatment facilities the stormwater quality will be improved and will thus, improve the surrounding watercourse and wetland areas.

*Planning Practice 6: Soil Restoration*

Prior to final site stabilization the on-site soils will be modified or restored in order to reintroduce oxygen into compacted soils and improve the water storage within the soil. This process will subsequently help reduce runoff by allowing for a greater potential for infiltration and evapotranspiration.

*Planning Practice 8: Roadway Reduction*

The driveway travel lanes at the Park Place development have been designed to provide adequate safety and conveyance throughout the site. Originally four car exit lanes were designed to leave the building, however after evaluating the travel patterns the two lane exit was reduced to only one lane. Also, the fire access lane and maintenance path have both been designed to consist of permeable pavers in order to decrease impervious cover and increase site infiltration.

**6.2.2 Step 2: Determine Water Quality Treatment Volume**

Water quality volume has been calculated based upon the site layout and contributing drainage areas utilizing Chapter 9 – Redevelopment Project design criteria depicted in the NYSDEC Stormwater Management Design Manual. As the project is within the NYCDEP East of Hudson Watershed, the requirements and guidelines within the New York State Stormwater Management Design Manual Chapter 10 – Phosphorous Removal Enhancement was used to design the stormwater management system.

The project is located within the NYCDEP East of Hudson Watershed where the stormwater management design must also address specific NYCDEP requirements. The NYCDEP requirement for the treatment volume, also referred to as water quality volume (WQv), is to capture and treat the runoff generated from a 1-year, 24-hour storm event.

The calculated WQv required is derived from a summation of 100%WQv of the proposed impervious area from pervious area and 25%WQv of the proposed impervious area from existing impervious area. Appendix E provides the supporting calculations for WQv and RRv for the project.

**6.2.3 Step 3: Runoff Reduction by Applying Green Infrastructure Techniques and Standard SMPs with RRv Capacity**

In order to achieve the requirements for the Runoff Reduction Volume (RRv), the proposed project site must use green infrastructure techniques and practices to meet the required water quality volume (WQv) as determined in the NYSSMDM. The water quality volume required to be achieved for the Park Place development is 9,176 cubic feet (CF). By providing permeable pavement as an impervious area reduction practice, the project was able to reduce the required water quality



volume. By providing stormwater planter areas the project was able to treat 4,268 CF.

Green infrastructure practices or SMPs with runoff reduction capacity are required for the water quality volume associated with the new impervious area (pervious to impervious) of 6,391 CF. There are limiting site conditions that do not warrant the ability to reduce the runoff to pre-construction conditions, however the project has been designed to reduce a percentage of the runoff from impervious areas of the proposed development. Since this is not able to meet the required standard for RRv, the NYSSMDM allows for projects to reduce the required runoff reduction volume where additional efforts are not feasible. This reduction is based on a Hydrologic Soil Group(s) (HSG) of the site and is defined as the Specific Reduction Factor (S). The project site is located in HSG C soil, therefore the percent reduction factor is 0.30. The reduction factor for this site decreases the required RRv to 1,917 CF. According to the revised reduction factor the provided green infrastructure measures implemented on the site are sufficient to meet the allowable RRv. The comparison calculations for RRv and WQv can be found in Appendix E of this report.

Along with treating for water quality and quantity during the major storm events on the proposed project site, the NYSSMDM requires the applicant to achieve a runoff reduction volume. This volume is achieved through infiltration, groundwater recharge, reuse, recycle, evaporation/evapotranspiration of 100-percent of the post-development water quality volumes in order to replicate pre-development hydrology by maintaining pre-construction infiltration, peak runoff flow, discharge volume, as well as minimizing concentrated flow. This requirement can be accomplished by application of on-site green infrastructure techniques, standard stormwater management practices with runoff reduction capacity, and good operation and maintenance.

#### *Infrastructure Technique 9: Stormwater Planters*

The proposed development will be designed to have stormwater planter systems along the perimeter of the parking structure. These stormwater planters will be designed to treat the stormwater runoff from the roof of the proposed structure. The roof leaders will be routed to these areas for water quality treatment and nutrient intake before releasing into the proposed stormwater conveyance system.

*Infrastructure Technique 11: Permeable Pavement*

As discussed earlier, in the areas where high traffic is not expected (i.e. fire access lane, maintenance path), permeable pavers will be installed in place of conventional paving. This will help to reduce stormwater runoff from these areas and improve water quality and quantity downstream. The use of permeable pavers will reduce the amount of stormwater runoff through promoting infiltration.

*Non-structural Stormwater Best Management Practices*

Below is a list of nonstructural stormwater management practices that will be implemented throughout the project site:

- Long term soil stabilization through landscaping and maintenance in the developed areas. Prevention of soil loss, through establishment of vegetation and a landscape plan that will increase the amount of tree canopy and healthy ground cover. The landscape plan will also maximize the travel time of stormwater runoff and minimize concentrated flows.
- The grounds maintenance program limits the potential for excessive nutrient loading, specifically controlling the application of phosphate-based fertilizers.
- There is a potential for an increase in pollutants associated with open parking areas such as petroleum, antifreeze, and refuse. These pollutants are picked up through stormwater flows and carried downstream, thus increasing pollutant loading in the stream and reducing water quality. This project however, is designed to provide multiple levels of parking within the building. By doing so, the impervious cover or impervious footprint will be decreased from a development of equal parking volumes. It will also allow for the pollutants, associated with parking areas, to be collected internally and discharged to the sanitary system rather than into the watershed.
- For those driving surfaces located at the entrance to the proposed building, a high level of maintenance and good housekeeping practices will be implemented at the site.

Catch basins with deep sump and hood will be installed at the downstream end of all proposed catch basins. This will trap floatables and debris within the catch basin. The deep sumps will trap the petroleum and antifreeze attached to sediment particles. The accumulated material will be cleaned out of the catch basins in accordance with the long term inspection and maintenance plan.

**6.2.4 Step 4: Apply Standard Stormwater Management Practices to Address Remaining Water Quality Volume**

The remainder of the WQv is achieved by Surface Sand Filter and Pocket Wetland. Each of these practices has been designed in accordance with NYSDEC standards. The practices are proposed in a series to increase the runoff treatment.

*Proposed Surface Sand Filter (F-1 per the NYSSMDM)*

The following parameters were used in designing and sizing the surface sand filter system:

- Off-Line System – Stormwater runoff is conveyed via a storm pipe network, therefore the Sand Filter is designed off-line. A flow-splitter diversion structure has been designed to divert the runoff from the 1-year, 24 hour storm.
- Overflow – An overflow structure has been provided to convey stormwater to Pocket Wetland W-4. A stabilized rip-rap spillway has also been provided to convey stormwater from the larger storm events.
- Underdrain – A 6-inch diameter perforated pipe placed in a gravel layer, is proposed to collect stormwater that has filtered through the sand layer. Geotextile filter fabric will be placed between the gravel layer and sand layer.
- Groundwater Table – A 2-ft. separation between the filter bottom and the seasonal high groundwater table has been provided.
- Pretreatment (Sedimentation Basin) – A sedimentation basin will provide pretreatment at the inlet point. This will provide primary settling for the larger particulates. The sedimentation basin will be sized to contain 25% of the WQv. The depth of the sedimentation basin is four feet. The outfall from the inlet pipe will be stabilized with rip rap to minimize erosion of the ponds' sideslopes. A fixed depth marker will be installed to assist in the long term inspection and maintenance plan. This will help determine the depth of sediment accumulation and when maintenance is required.
- Treatment Basin Sizing - The complete system, including sedimentation basin, is designed to hold and treat at least 75% of the water quality volume and will consist of a surface sand filter which will have a coefficient of permeability of 3.5 ft/day.

- Filter Media – The proposed filter media will consist of a medium sand meeting ASTM C-33 concrete sand.
- Side-Slopes - The side slopes for the sedimentation basin and the surface sand filter are 3:1(H:1).
- Vegetation – Landscape plans include various grass species for the sideslopes and bottom of the surface sand filter. The plant variety will provide treatment through filtering and nutrient uptake. See Landscape Plans.
- Geometry – Both pretreatment and the surface sand filter have been designed with a length to width ratio of 1.5:1 as required by NYSSMDM.
- Energy Dissipater - A rip rap velocity dissipater will be installed at the outlet that discharges into the sedimentation basin.
- Outlet control structure – The pre-cast concrete structure is designed with a low flow orifice that will detain the 1-year, 24-hour storm event.
- Maintenance – As specified in the Operation and Maintenance section of the Preliminary SWPPP a legally binding and enforceable maintenance agreement shall be executed with the Town and the applicant/operator.

*Proposed Pocket Wetland (W-4 per the NYSSMDM)*

The following parameters were used in designing and sizing the pocket wetland (W-4):

- Water Quality Volume – The WQv is equivalent to the runoff from the 1-year, 24-hour storm event. A detention time of 33 hours has been provided.
- Wetland – The proposed pocket wetland is not located within NYSDEC jurisdictional waters, including wetlands.
- Pond Embankment – The proposed pocket wetland would not consist of a dam as it is excavated system below the existing grading.
- Forebay – A forebay is provided as the proposed pocket wetland to store a minimum of 10% of the WQv.
- Side-Slopes – The side slopes for the pocket wetland are 4:1(H:1) , therefore a pond safety bench is not required. However, an aquatic bench has been provided to help establish wetland vegetation.

- Micropool - A micropool will be provided at the outlet in order to protect the low flow pipe from clogging and prevent sediment resuspension. This area will range from four to six feet in depth and will be able to store a minimum of 10% of the WQv. The contributing drainage area from the proposed roof leader extension from the existing office building Lot 13B is less than 10% of the total design storm flow discharges directly to the micropool.
- Water Quality Volume – At a minimum 25% of the water quality volume will be in deepwater zones with a depth greater than four feet.
- Vegetation – Landscape plans include various grass species for the sideslopes and emergent wetland species. The plant variety will provide treatment through nutrient uptake. Minimum elements of a plan include: delineation of pondscaping zones, selection of corresponding plant species, planting plan, sequence for preparing the wetland bed and sources of plant material.
- Landscaping – Native plants that promote phosphorous and nitrogen uptake will be specified in the final landscaping plans.
- Permanent pool – 50% of the water quality volume will be provided in the permanent pool, as required for stormwater wetlands designed for extended detention. The seasonal groundwater table will be intercepted to provide a permanent pool.
- Geometry – The pocket wetland has been designed with a length to width ratio of 2:1 as required by NYSSMDM. A minimum Surface Area: Drainage Area of 1:100 has been provided.
- Pond Buffer – A pond buffer of at least 25 ft has been provided around the pond maximum water surface elevation.
- Energy Dissipater - A rip rap velocity dissipater will be installed at the inlet and outlet of the lower pond. The lower pond discharges to the existing NYCDEP delineated watercourse where the banks are in stable condition. This will eliminate the potential for erosion of the stream bed.
- Emergency overflow - Safe conveyance of the 100-year storm flow will be provided through a rip rap lined

overflow spillway. The elevation is determined by the 100-yr flood elevation and located such that stormwater flows will not adversely impact surrounding properties.

- Maintenance access – A 10-foot minimum width access path will be provided for long term maintenance of the stormwater ponds. The path will be constructed of grasspavers in order to decrease impervious surface and increase infiltration.
- Outlet control structure – The pre-cast concrete structure is designed with a low flow orifice that will detain the 1-year, 24-hour storm event for a minimum of 24 hours, meeting the NYSDEC and NYCDEP requirements. The larger storm events will also be conveyed through an opening at the top of the outlet control structure designed to attenuate the larger storm events.
- The outlet control structure is located within the embankment, providing safe egress for maintenance.
- Freeboard – 1-ft of freeboard above the 100-year storm elevation.
- Pond Drain – A drain pipe would be part of the outlet control structure so that the pond could be completely drained for maintenance.
- Maintenance Agreement – An Operation and Maintenance Plan as outlined in the Preliminary SWPPP would be developed into a legally binding and enforceable agreement with Town as a condition of the site plan approval.

**Table 6-1**  
**Stormwater Management Practices**

Water Quality Volume Required*			9,176 cf	
Standard Practices for Water Quality Treatment				
Practice	Contributing Drainage Area (sf)		Water Quality Volume Provided (cf)	
Surface Sand Filter**	86,352		12,775	
Pocket Wetland***	113,943		4,908	
Green Infrastructure for Water Quality Treatment				
Stormwater Planters	Contributing Roof Area (sf)	Stormwater Planter Size (sf)	Water Quality Volume Provided (cf)	Runoff Reduction Volume Provided (45%WQv) (cf)
North Planters	8,979	665	592	266
East Planters (A)	8,979	727	647	291
East Planters (B)	8,979	510	454	204
South Planters	8,979	1,849	1,646	741
West Planters	8,979	1,044	929	418
Total	44,895	4,795	4,268	1,920
Other Green Infrastructure				
Grass Pavers	Drainage Area (sf)	Surface Area (sf)		
Fire Truck Access Path	4,040	3,576		
Fire Truck Access Pull-Off	1,060	315		
Maintenance Path	8,000	4,306		
Total Green Infrastructure Area		11,427		
Total WQv Provided			21,951	
Notes:				
* Includes driveway, building, concrete pads				
** Includes Sedimentation Basin				
*** Includes extended detention				

### 6.2.5 Step 5: Apply Volume and Peak Rate Control Practices

The channel protection volume, overbank flood control and extreme flood control for the project have been satisfied via Surface Sand Filter and Pocket Wetland. The rainfall values in Table 6-2 have been utilized in the hydrologic analyses for the project. Summary Tables 6-3 provides a comparison of the peak flow rates that occur under existing and developed conditions.

**Table 6-2**  
**Rainfall Values**

<b>Rainfall Value (inches)</b>	<b>24-hour Storm Event (Year)</b>
3.2	1
3.6	2
5.0	10
6.5	25
7.5	50
9.0	100
<b>Source: Northeast Regional Climate Center</b>	

**Table 6-3**  
**Runoff Flow Analysis**

Design Point	Pre-Existing Conditions (cfs)	Existing Conditions (cfs)	Proposed Project (cfs)	Change in Flow Rate			
				Existing to Proposed		Pre-Existing to Proposed	
1-year storm							
DP1	4.42	4.72	4.17	-0.55	-12%	-0.25	-6%
DP2	1.90	3.12	0.42	-2.7	-87%	-1.48	-78%
DP3	1.55	2.27	0.98	-1.29	-57%	-0.57	-37%
10-year storm							
DP1	10.95	11.38	10.22	-1.16	-10%	-0.73	-7%
DP2	4.57	6.15	2.68	-3.47	-56%	-1.89	-41%
DP3	3.61	4.58	2.14	-2.44	-53%	-1.47	-41%
25-year storm							
DP1	17.01	17.51	15.83	-1.68	-10%	-1.18	-7%
DP2	7.02	8.74	6.24	-2.5	-29%	-0.78	-11%
DP3	5.49	6.56	3.17	-3.39	-52%	-2.32	-42%
100-year storm							
DP1	27.60	28.16	25.66	-2.5	-9%	-1.94	-7%
DP2	11.27	13.06	9.87	-3.19	-24%	-1.4	-12%
DP3	8.81	9.87	4.93	-4.94	-50%	-3.88	-44%

Tables 6-4 and 6-5 provide the drainage areas for each design point for pre-developed and post-developed conditions, respectively.

**Table 6-4**  
**Pre-Development Drainage Area**

Design Point	Subcatchment	Total Area (square feet)
DP-1	PRE 1	261,194
DP-2	PRE 2	85,244
DP-3	PRE 3	61,828

**Table 6-5**  
**Post-Development Drainage Area**

Design Point	Subcatchment	Total Area (square feet)
DP-1	POST 1	248,549
DP-2	POST 2A	4,907
	POST 2B	14,630
	POST 2C	44,895
	POST 2D	8,410
	POST 2E	13,510
	POST 2F	4,258
	POST 2G	23,333
	POST 2H	14,691
DP-3	POST 3A	33,605
	POST 3B	5,082



**6.2.5.1. Design Analysis**

In order to evaluate the pre- and post-development drainage conditions, the site has been delineated into three (3) discharge analysis points based on pre-development hydrology; Design Points 1, 2, & 3. These points were analyzed to evaluate the effects of the proposed development on surface stormwater runoff. The design points and their pre- and post-development contributing subcatchment areas are shown on Pre- and Post-Development Stormwater Maps, Sheet Nos. D-1 and D-2 found in Appendix B.

To analyze the peak flow in pre-and post-development conditions HydroCAD®, a computer aided design tool is used to evaluate and analyze the stormwater runoff from the site. The program also models the surface flow through the proposed stormwater practices determining the plug-flow and center-of-mass detention time within the ponds. A simultaneous routing process is used to evaluate the impacts associated with stormwater practices in series. The program is based on United State Department of Agriculture, Natural Resources Conservation Service (NRCS) Technical Releases TR20 and TR55. TR55 and TR20 are tools that were developed to calculate the volume and peak discharge rates of stormwater runoff generated in different rainfall events over a 24-hour period. Runoff volumes and rates are calculated by determining the curve numbers (CN) and calculating the time of concentration (Tc) for each subcatchment area depending on the given rainfall value. The CN values are based on the TR55 table and the hydrologic soil group, cover type, hydrologic condition and antecedent runoff condition. The Tc represents the time it takes for surface water to travel the hydraulically most distant point within the subcatchment area. The post-development hydrologic analysis can be found in Appendix F.

The following rainfall values for Westchester County, shown in Table 6-2, were used in the analysis. For the purposes of the hydrologic analysis the runoff was based on Type III rainfall distribution for the northeast region. The following rainfall values are based on the 24-hour storm event. These values represent the rainfall distribution for various 24-hour storm frequencies.

**6.2.5.2. Design Point 1**

The proposed development area contributing to Design Point 1 includes the following proposed surfaces: a portion of the fire

access lane, two concrete pads at building emergency access doors, landscaped areas, and wooded areas. Permeable pavers, such as Turfstone™ are proposed in the fire access lane.

The existing and proposed drainage areas do differ in size because of the location of the proposed building and required treatment. The roof leaders for the proposed structure will collect and convey stormwater runoff to the north side of the building and discharge ultimately to Design Point 2. For this reason, the proposed impervious surface within the Design Point 1 drainage area is decreased in proposed conditions and stormwater flows are reduced from existing conditions.

Therefore, a stormwater treatment practice is not proposed for this drainage area. The results of the pre- and post-development flows demonstrate that the impact of the proposed permeable pavers is minimal. The proposed condition will improve the stormwater quality and quantity at Design Point 1.

#### **6.2.5.3. Design Point 2**

The proposed development area contributing to Design Point 2 includes the following proposed surfaces: the proposed building, the driveway and associated drive lanes, the maintenance access path, the fire access lane, multiple concrete pads for utilities, new landscaped areas, and the existing building on the adjoining property to the north. The location of the new building is such that there will be an increase in impervious surface coverage, total drainage area, and post stormwater flows conveyed to Design Point 2.

Increases in impervious surfaces associated with the proposed project will also indirectly reduce groundwater recharge. This reduction in groundwater recharge may, in turn, result in lower rates of base flow, that portion of a stream's flow not directly associated with storm events, upstream of the proposed outfall location.

The contributing drainage area to the proposed stormwater facilities (approximately 2.7 acres), along with the high seasonal groundwater table makes the stormwater pocket wetland (W-4) the most suitable method for stormwater treatment. In accordance with Section 18-39(c)(6) of the Watershed Rules and Regulations, "If an activity requiring a stormwater pollution prevention plan will result in impervious surfaces covering twenty percent (20%) or more of the drainage area for which a stormwater management practice is designed, the stormwater pollution prevention plan shall provide for

stormwater runoff from that drainage area to be treated by two different types of stormwater management practices in series”. Therefore, to address the stormwater runoff from the proposed development, two stormwater facilities are proposed; a stormwater surface sand filter to treat the water quality volume and a stormwater wetland (W-4) which will treat water quality volume conveyed from the surface sand filter and attenuate the flows from the larger storm events. These stormwater facilities are designed in series to capture and treat the stormwater runoff from the 1-year, 24-hour storm event in accordance with NYSDEC and NYCDEP requirements for treatment of phosphorous pollutants. These stormwater ponds also provide attenuation of peak flows from the larger storm events.

Due to the associated drive and building layout, and the existing topography, two stormwater ponds could not be placed on the project site; therefore the stormwater facilities were located on the adjoining property to the north. The ponds are referred to as Ponds W-4, and F-1 in the HydroCAD® analysis.

The stormwater ponds have been designed to capture and treat the stormwater runoff associated with the 1-year, 24-hour storm event and to meet the required elements of the NYSSMDM design criteria for stormwater ponds, specifically for surface sand filter design (F-1) and pocket wetland (W-4).

The stormwater runoff from post-development contributing drainage areas 2A, 2B, and 2C, a total of 1.5 acres, will collect and convey stormwater through a conventional stormwater collection system (i.e., pipes, manholes, catch basins) to a flow diversion structure (Structure # 6, see Sheet No. C-5 in Appendix C). The stormwater volume of a 1-year storm event will be diverted into a surface sand filter for water quality treatment of the stormwater runoff. Per the requirements of the NYSSMDM, the flow diversion structure is designed as an off-line device which will direct the water quality volume into the surface sand filter system.

The proposed project would disturb a portion of the steep slopes (>25%) on the western and northern sides of the project site. A majority of the existing steep slopes were created by soil filling during previous site development and do not include appropriate measures to minimize erosion and environmental impacts. The proposed development plan includes removal of the fill material comprising the steep slopes, and engineering

measures to construct a new slope network that will minimize project-related and future environmental impacts.

The stormwater flows leaving the surface sand filter will then get discharged to the larger pocket wetland located slightly down gradient. Stormwater runoff volumes larger than the 1-year storm will by-pass the sedimentation basin and discharge directly into the pocket wetland. The post-development contributing drainage areas 2D and 2E, a total of 0.5 acres, will provide additional overland flows to the sedimentation basin and surface sand filter during all rain events. Also, post-development contributing drainage areas 2F and 2G, a total of 0.6 acres will provide additional stormwater runoff directly to the pocket wetland via piped roof leaders (from drainage area 2F) and overland flow (from drainage area 2G). The pocket wetland will serve as the second level of water quality and water quantity control before stormwater is discharged off-site and into the existing watercourse to the north.

#### **6.2.5.4. Design Point 3**

The proposed design area contributing to Design Point 3 will result in a reduction of the drainage area as well as eliminate the impervious surface runoff to this design point. The proposed condition will redirect the stormwater flows from the impervious surfaces into a conventional collection system and treat the runoff in the series of ponds discussed in Section 6.3.2. Therefore, a stormwater treatment practice is not proposed for this drainage area. The results of the pre- and post-development flows demonstrate that the impact of the proposed condition will improve the stormwater quality and quantity at Design Point 3.

**Comment 9-32:** The FEIS should identify potential methods to treat presently untreated stormwater on Lot 13A. (Kellard Sessions, 6/1/11)

**Response 9-32:** Under existing conditions stormwater runoff from Lot 13A travels either overland from the paved surfaces (parking area) into the existing wetland area along Route 120 or overland into the existing stream located to the north and west of the development. Under proposed conditions stormwater is designed to be conveyed via overland flow or roof drains to the stormwater facilities located within the drainage easement. This will provide treatment for previously untreated stormwater runoff.

**Comment 9-33:** As no stormwater treatment practice is proposed for post-development DP-1, the SWPPP and FEIS should discuss how “the proposed

condition” will improve stormwater quality and quantity at DP-1. (Kellard Sessions, 6/1/11)

**Response 9-33:** Under proposed conditions Design Point 1 will not be collecting runoff from impervious surfaces as previously done under existing conditions. Runoff to this design point will be contributing from new and existing grass and forested areas which will reduce the chance of pollutants and provide the opportunity for natural filtration and infiltration. This will help to improve water quality and decrease water quantity.

**Comment 9-34:** It is unclear from the information provided that the project meets the Runoff Reduction and water quality volume requirements set forth in the NYSSMDM. Summary tables should be provided detailing the following information: the required Water Quality Volume (WQv), the minimum Runoff Reduction Volume (RRv) required, volume provided in each green practice, WQv's provided in each standard Stormwater Management Practice (SMP), acreage contributing to each green practice and SMP, impervious area contributing to each Green Practice and SMP, Green Practices being utilized for Runoff Reduction, and Water Quality Volume Adjustment (reduction) based on the Green Practices. The Green Practices should be sized based on the Water Quality Volume generated by the 1-year, 24-hour design storm over the post-development watershed. (Kellard Sessions, 6/1/11)

**Response 9-34:** Summary tables showing the required and provided water quality and runoff reduction volumes have been added to the FEIS and SWPPP. Supporting calculations and drainage area maps for the stormwater management practices are provided in the SWPPP.

**Comment 9-35:** The FEIS should investigate the incorporation of additional Green Practices in an effort to meet the reduction of the entire WQv. It would appear that additional practices, such as green roofs, rain barrels and/or larger Stormwater Planters, could meet the entire WQv requirement, which would reduce the size of, or obviate the need for, the sand filter or pocket wetland. Any reduction in size of these practices would decrease the intrusion into the wetland buffer, reducing the overall impacts, required wetland mitigation, etc. (Kellard Sessions, 6/1/11)

**Response 9-35:** The proposed green infrastructure practices have been added to meet the minimum required runoff reduction volume. Additional green infrastructure practices such as green roofs and rain barrels have been considered. However, the implementation of a green roof is no longer considered because of its unproven water quality benefits and the need for fertilizers which would only increase the phosphorous levels in an already phosphorous sensitive area. The need for rainwater re-use/rain

barrel may be possible for water re-use at the car wash bay. Currently, the calculations do not include this re-use potential because the plan currently exceeds the requirements therefore maintaining a conservative estimate of stormwater runoff.

**Comment 9-36:** Based on the requirements set forth in the NYSSMDM, it appears that the entire WQv is not being treated with Green Infrastructure Practices. As stated in the Manual, the project should be designed to achieve 100% reduction of runoff within Green Practices or Standard SMP's with RRv capacity. If 100% reduction of runoff cannot be achieved and upon proper justification, the minimum RRv must be achieved. A table should be provided detailing the proper justifications that the reduction of the entire WQv is infeasible. Additional Green Practices designed in compliance with the NYSSMDM should be considered. Tables should be provided to show sizing of Green Practices and how the Green Practices meet the RRv requirements set forth in the NYSSMDM. (Kellard Sessions, 6/1/11)

**Response 9-36:** Response to this comment is the same as PFEIS Response 9-31.

**Comment 9-37:** It appears that the project does not meet the proper justification to eliminate the requirement to provide Runoff Reduction practices for the Redevelopment portion of the project. As outlined in the criteria in Section 9.3.1 of the NYSSMDM, a project must clearly identify and document inadequate space to treat and control the stormwater runoff from the reconstructed areas and there should be physical restraints that will prohibit the project from meeting the required elements of the standard practices. The Green Practices and standard SMP's should be sized to accommodate the redeveloped portions of the project, or proper justification provided. (Kellard Sessions, 6/1/11)

**Response 9-37:** Based on interpretation from NYSDEC representatives and Chapter 4 of the NYSSMDM, existing impervious surfaces (or redevelopment areas) are not required to be included in the RRv calculations for green infrastructure. There are physical constraints for the project site development which include existing steep slopes, shallow depth to groundwater table, soil permeability, and wetland and watercourse buffers. The proposed stormwater management system for the project site improves the quality of stormwater runoff through the multiple treatment mechanisms including the stormwater planters for roof runoff, pervious pavers for access drives, underground sand filter, surface sand filter, and created wetland pond reduces the stormwater runoff quantity from the existing condition of the project site.

- Comment 9-38:** The design limitations of a Rain Garden are outlined in the NYSSMDM. The NYSSMDM states that a Rain Garden should be designed to receive a maximum contributing drainage area of 1,000 s.f. and shall not be used to treat parking lot or roadway runoff. An alternative practice, such as Bioretention, should be considered. A table should be provided detailing the contributing area, WQv, volume treated in the practice, and the design elements of the practice. (Kellard Sessions, 6/1/11)
- Response 9-38:** The rain garden has been removed from the proposed stormwater management system. Stormwater runoff from the impervious driveway surface will be collected and conveyed to a proposed underground sand filter instead.
- Comment 9-39:** It appears the Stormwater Planters have been designed to treat runoff from the roof of the proposed structure. As stated in the NYSSMDM, a Stormwater Planter shall not be designed to receive drainage from impervious areas greater than 15,000 s.f. The drainage areas contributing to the Stormwater Planters and the Rain Gardens should be depicted on the stormwater maps. A Roof Plan (Sheet A-2.4) is included in the plan set indicating the locations of the roof drains, but does not show where each drainage discharge point occurs. A table should be provided detailing the contributing drainage area, size of the Stormwater Planter, WQv, volume treated in the practice, required elements and the design elements. The Stormwater Planters should be sized based on the WQv generated by the 1-year, 24-hour design storm over the post-development watershed. (Kellard Sessions, 6/1/11)
- Response 9-39:** Each of the contributing drainage areas for the stormwater planters shall not exceed 15,000 sf of impervious area per NYSDEC guidelines. A drainage area map of the breakdown of the roof drainage areas to the stormwater planters will be included in the SWPPP for Town review during site plan approval process. Detail of the proposed roof plan is not available at time to provide a breakdown of the roof drainage areas. The stormwater planters have been revised to indicate that the accounted runoff reduction volume is 45% of the water quality volume provided. The proposed building roof will be designed to pitch in a fashion to segment the roof areas accordingly to these stormwater planters. This detailed information will be provided during Site Plan approval review.
- Comment 9-40:** The Stormwater Planter sizing calculation utilizes leaf compost as the hydraulic conductivity for the soil media. According to the NYSSMDM, leaf compost has a hydraulic conductivity of more than double that of loosely packed soil (typically used). In turn, this reduces

the size of planter by more than half that typically seen. Specifications for the leaf compost should be provided on the detail sheet. (Kellard Sessions, 6/1/11)

**Response 9-40:** More detailed specifications related to the leaf compost will be provided as the plans advance to construction level design. The leaf compost used will match the specified infiltration rates used in the design and described in the NYSSMDM.

**Comment 9-41:** It is unclear [if] the permanent pool for the Pocket Wetland has been adequately sized. A table of the Water Quality Volume Calculation should be provided for the drainage area contributing to the Pocket Wetland to verify that a minimum of 50% of the Water Quality Volume has been provided within the permanent pool. The Water Quality Volume Calculations should be based on the resulting 1-year, 24-hour design storm over the post-development watershed contributing to the Pocket Wetland. (Kellard Sessions, 6/1/11)

**Response 9-41:** The Pocket Wetland has been designed per the NYSSMDM. Design calculations for the Pocket Wetland pond, surface sand filter and sedimentation basin have been added to the SWPPP. Grading of the Pocket Wetland has been added to the site plans and is consistent with the design calculations provided in the SWPPP.

**Comment 9-42:** It is unclear if the Pocket Wetland has been designed to meet the required elements, as outlined in Section 6.2.3 of the NYSSMDM. A table should be provided in the SWPPP to verify the Pocket Wetland has been designed to meet the required elements in Section 6.2.3. (Kellard Sessions, 6/1/11)

**Response 9-42:** See Response 9-41.

**Comment 9-43:** Pursuant to the NYSSMDM, the plans should be revised to provide 25' minimum wetland plant buffer from maximum water elevation. (Kellard Sessions, 6/1/11)

**Response 9-43:** The area within 25' of the maximum water elevation is a wetland plant buffer with the exception of areas beyond the limit of disturbance line. Beyond the limit of disturbance will be included in the area designated as Wetland Buffer Enhancement Area (see **Appendix F**). The areas shown in Drawing C-9 as "proposed wetland perennials" will be planted with plants considered Zone 2, 3, and 4 plants in **Appendix H** of the NYSSMDM. The areas shown as "proposed groundcover" will be planted with vegetation that would be considered Zone 5 and 6 plants.



The planting plan will be further refined during the construction documentation phase.

**Comment 9-44:** The Post-Construction Operation and Maintenance in the SWPPP should be revised to reference the Pocket Wetland. (Kellard Sessions, 6/1/11)

**Response 9-44:** The Post-Construction O&M does include reference to the pocket wetland also known as wet pond (W-4). The Operation & Maintenance Procedures in the SWPPP referencing “Wet Pond” will be revised to indicate “Pocket Wetland.”

**Comment 9-45:** It is unclear if the Sedimentation Basin and Sand Filter have been designed to provide the required surface areas, as required in the required elements, and as outlined in Section 6.4.3 and the design guidance in section: 6.4.4 of the NYSSMDM. A table should be provided to verify the surface area requirements have been achieved for the Sedimentation Basin and Sand Filter. The sizing calculations should utilize the Water Quality Volume resulting from the 1-year, 24-hour design storm over the post-development watershed. (Kellard Sessions, 6/1/11)

**Response 9-45:** The Sedimentation Basin and Sand Filter have been designed to meet or exceed the requirements of the NYSSMDM. The hydrologic analysis has been revised to indicate the sediment basin and surface sand filter as separate practices. Supporting calculations are provided in the SWPPP.

**Comment 9-46:** Sizing calculations for the rip-rap outlet protection should be provided to verify the rip-rap sizes indicated on detail. The numbering for the end sections discharging to the rip-rap outlet protections should be reviewed for consistency between the detail and Sheet C-5. (Kellard Sessions, 6/1/11)

**Response 9-46:** The detail has been revised. Supporting sizing calculations will be provided during Site Plan approval.

**Comment 9-47:** The rim for the Flow Splitter should be reviewed for consistency between the plan and the Storm Drainage Schedule. The Flow Splitter location, as shown on the plan, will not provide adequate cover from the rim of the structure to the invert of the inlet and outlet drainage pipes. (Kellard Sessions, 6/1/11)

**Response 9-47:** The Paving, Grading and Drainage Plan and “Storm Drainage Schedule”, indicating inverts and rims, has been updated. The proposed flow splitter will be revised accordingly during Site Plan approval.

- Comment 9-48:** The maintenance path access should be extended to provide access to the outlet structure of the Pocket Wetland. Similar access should be provided to the structures in the Sedimentation Basin and Sand Filter. (Kellard Sessions, 6/1/11)
- Response 9-48:** Comment noted. Fine grading for basin access will be finalized in the final Construction Documents and SWPPP. The berm for the Pocket Wetland will be revised to provide a 10-foot wide berm and will be reflected on the plans during Site Plan approval.
- Comment 9-49:** The text and plans should be revised to address whether the proposed outfall location disturbs the beds or banks of the watercourse and the potential for erosion. Alternate locations should be proposed to reduce potential impacts, if appropriate. (Kellard Sessions, 6/1/11)
- Response 9-49:** Detail design of the proposed outfall for the Pocket Wetland will be provided during site plan review to ensure that there will be no disturbance to the watercourse. The invert of the proposed outfall for the Pocket Wetland has been raised to ensure that there will be no disturbance to the watercourse.
- Comment 9-50:** Removal of substantial vegetation from the site and resultant soil disturbance would lead to erosion and sedimentation to Rye Lake/Kensico Reservoir unless properly controlled. Experience has shown that such control is typically problematic and 100% control of related pollution is unattainable.
- The applicant proposes sophisticated measures to control pollution from the finished structure. But, if built, can the Town be sure that they can and will be properly maintained? What backup measures does the Applicant propose in case of failure? (North Castle Conservation Board, 6/1/11)
- Response 9-50:** The Erosion Control Plan highlights the different control measures to be implemented on-site during construction. These measures are designed to minimize erosion and reduce disturbance to adjacent properties and natural resources. The design will utilize sediment ponds in series, silt fence, diversion channels and rolled erosion control product all designed to provide several layers of erosion protection for those areas adjacent to the limit of disturbance.
- Comment 9-51:** While there is great concern with protection of water quality in the entire Kensico Reservoir system, an especially critical concern is the constricted Rye Lake area where the dilution of contaminants by inflow from the Delaware Aqueduct is reduced. It should be noted that the

intake for the water supply of the Town of Harrison and other municipalities is located about 4000-feet from the project site where sediment and pollutants from construction and the finished structure would drain into Rye Lake. What would these pollutants from vehicles and the operation itself be? (North Castle Conservation Board, 6/1/11)

**Response 9-51:** Refer to Response 9-50 for information related to erosion and pollutant control during construction. Site construction will inevitably produce pollutants from the vehicles used and for this reason the erosion and sediment control plan has been designed to address these potential pollutants with the use of silt fence, soil stabilizer, temporary seeding, sedimentation basins, a portable sediment tank, diversion swales and silt fence. By implementing these multiple layers of erosion and sediment control practices in series, pollutants will not progress through these barriers.

**Comment 9-52:** The Town of North Castle established the Kensico Watershed Improvement Committee (KWIC) to develop a plan to protect the Kensico Reservoir from operations at the corporate and municipal facilities in the Kensico watershed. The King Street Management Plan for portions of Routes 22 and 120 in the Town of North Castle was prepared and released in 2001. At the time it included five major corporations, however the southern limits of the King Street Corridor is the common municipal boundary with the Town of Harrison located about 3000 feet south of this project site. The report includes recommendations for Turf & Landscape Management, Storm-water, Waste Reduction, Hazardous Materials & Waste, Waterfowl Management, Material Storage, and Wastewater among other items. This report should be identified and included in the FEIS. (North Castle Conservation Board, 6/1/11)

**Response 9-52:** See Response 3-2 detailing the KWIC King Street Corridor Management Plan. As discussed at Response 3-2, and other sections of the DEIS/FEIS, applicable recommendations of the Plan will be incorporated onsite.

**Comment 9-53:** The DEIS underestimates the functions of the existing wetland and watercourse buffers. The DEIS states, "Currently, the storm water runoff from impervious surfaces located within wetland and watercourse buffers discharge directly to the waterbodies without treatment."

The stormwater runoff must traverse, on average, over 100 feet of natural vegetation and lawn area prior to reaching Wetland "A". The pre-development buffer for Wetland "A" currently consists of a mix of

native tree, shrub, and groundcover species with some areas of maintained lawn. The extent of the buffer currently ranges from 50-100 feet. There is virtually no impervious surface currently existing within the 100-foot buffer of Wetland “A” in the “Pre 2” drainage area. Half of the existing roof area of the structure on Lot 14B (~4,600 square feet) is the only impervious structure within the “Pre 1” drainage area along the buffer of the NWI mapped (PF01A) linear wetland/watercourse, part of Wetland “A”, along the southern portion of the property. This roof area is 50 feet away from the wetland at its closest point. The existing buffer serves to provide natural filtration of the stormwater flowing from the site before it enters Wetland “A”, its associated watercourses, and ultimately Kensico Reservoir.

The existing buffer of tree, shrub, and herbaceous vegetation for Wetland “A” and the NWI mapped (PFOIA) linear wetland/watercourse will be almost entirely removed as part of the development. In its place will be the proposed parking garage and a stormwater management system consisting of graded, wet basins that create an additional 33,486 square feet of impervious surface within the buffer area. In addition to eliminating the buffer, the proposed stormwater management basins and parking garage will not balance the pre-construction stormwater flow to Wetland “A” and one of its downstream tributaries. (Greg M. Fleischer, 5/24/11)

**Response 9-53:** See Response 9-54

**Comment 9-54:** The proposed project does not maintain the hydrological balance to Wetland “A” and the associated NWI Mapped PFO1A linear wetland/watercourse.

The pre- and post stormwater flow to Wetland “A” will not be maintained. The wetland and its associated NWI mapped (PFO1A) linear wetland/watercourse currently functions to collect, retain, and distribute water from the site to two different perennial streams (NWI mapped PFOIA & R4SBF) that drain to the Kensico Reservoir via a 60” and 36” culverts. Eliminating the hydrology to Wetland “A” and the NWI mapped (PFO1A) linear wetland/watercourse will disrupt the natural flow of the site stormwater within the network of onsite and adjacent streams that feed the Kensico Reservoir. The hydrology for the Town regulated Wetland “A” and NWI mapped (PFO1A) wetland/watercourse in the southwestern portion of the site is almost completely eliminated in the post-development design. Hydrological flow of stormwater from the project site to Design Point 1, and subsequently to Kensico Reservoir, will be almost completely eliminated. (Greg M. Fleischer, 5/24/11)

**Response 9-54:** The existing wetland has a small drainage area-to-area ratio (5:1), which suggests that maintenance of wetland conditions is primarily reliant on groundwater inputs (i.e. surface water inputs are relatively minor). Also, because the wetland is drained at its lower end by a culvert the invert of which is essentially flush with the bottom elevation of the wetland, most of the surface flow delivered to the wetland is quickly conveyed through and out of the complex with very little residence time. These two factors (small drainage area-to-area ratio and low residence time) suggest that surface water inputs delivered via stormwater runoff are unlikely to play a significant role in maintaining wetland hydrology. Consequently, the reduction in peak flows to the wetland associated with the proposed project will not pose an adverse impact to wetland hydrology or function. Conversely, the reduction in flows are likely to enhance wetland conditions by reducing the potential for scour and soil erosion within the existing wetland.

**Comment 9-55:** The applicant is proposing a series of basins to concentrate and filter storm water flow to a central discharge point. The proposed stormwater management system will concentrate site stormwater to one central area for discharge at a single point (Design Point 2) along only one regulated watercourse (NWI mapped PFO1A on the northwestern corner of the property). The post-development stormwater plan does not account for the water currently flowing to Wetland "A", the linear PFO1A wetland/watercourse, nor to the adjacent perennial stream (R4SBF) that receives their naturally filtered drainage via a 36" culvert prior to discharge to the reservoir (Design Point 1). (Greg M. Fleischer, 5/24/11)

**Response 9-55:** See Response 9-54

**Comment 9-56:** Based on the information provided in Appendix H – Preliminary Stormwater Pollution Prevention Plan (SWPPP), the DEIS does not provide an adequate analysis of the impacts that the overall reduction in hydrology via runoff will have on Wetland "A". Based on the analysis shown there is an approximately 50% reduction in both volume and flow to Wetland "A" which would irreversibly impact the functions, values and benefits provided by the wetland system. The DEIS must provide a more detailed hydrological analysis, inclusive of a relevant site precipitation analysis, to better identify the total annual reduction of flow to Wetland "A", the NWI mapped (PFO1A) wetland/watercourse and subsequently the NWI mapped R4SBF watercourse that contributes flow to the Kensico Reservoir. (Greg M. Fleischer, 5/24/11)

**Response 9-56:** See Response 9-54.

**Comment 9-57:** “The project, as proposed, includes the implementation of a stormwater treatment train that integrates green practices, such as stormwater planters and rain gardens, a surface sand filter and wet pond, to manage both existing and proposed stormwater runoff from the project site and the adjoining parcel to the north.” Treatment trains generally constitute stormwater Best Management Practices (BMPs); however, the applicant proposes siting these BMPs in regulated wetland and stream buffers and further proposes these BMPs to serve as compensatory wetland mitigation..., the involved regulatory agencies will not permit post-construction storm water practices to serve as mitigation for wetland disturbances and the DEIS presents no off-site wetland mitigation plan in the alternative. This critical information, absent in the current DEIS, should be addressed in a supplemental DEIS. (Riverkeeper, Kate Hudson, 6.1.11)

**Response 9-57:** As discussed in the FEIS, the project has been revised to eliminate all wetland disturbances. Disturbance in the wetland buffer will be mitigated onsite with the Wetland Buffer Enhancement Plan (**Appendix F**). In addition, the impact of placing the stormwater treatment facilities (sedimentation basin, sand filter and pocket wetland) in the wetland buffer is minimized by the proposed landscaping plan for these facilities, which includes the planting a diverse assemblage of facultative wetland shrubs and herbaceous plants. Although more of the buffer will contain impervious surfaces as compared to the existing condition, the project will significantly improve the vegetative structure and diversity of the buffer – much of which consists of the gravel/grass overflow parking area, regraded areas, and poorly vegetated/disturbed land. The Lead Agency does not typically permit stormwater treatment facilities in the Town-regulated wetland buffer. The Town will need to determine whether the proposed location of the stormwater infrastructure is acceptable.

**Comment 9-58:** The DEIS claims that the “existing runoff is currently uncontrolled and untreated from the project site...” and on the same page that “post-development stormwater flows have been attenuated to the pre-development flow conditions, which would help to decrease potential erosion and improve water quality.” How does attenuating stormwater flows to “uncontrolled and untreated” improve water quality? The New York State Stormwater Management Design Manual requires the applicant to achieve a runoff reduction volume “of 100 percent of the post-development water quality volumes to replicate pre-development hydrology.” However, the applicant will achieve a reduction only to the existing volume of the previously disturbed site, not to the volume under pre-development conditions prior to the existing disturbance, i.e.,

clearing, grading, and addition of impervious surfaces. The applicant is proposing new development and redevelopment on the same site, but proposes reducing stormwater runoff volume only to the level generated by the existing disturbance. The Town should require the applicant either to (1) reduce the stormwater volume discharging to the Kensico Reservoir system to the volume prior to the existing disturbance, or (2) restrict development to the previously developed areas of the project site. (Riverkeeper, Kate Hudson, 6.1.11)

**Response 9-58:**

In response to comments on the DEIS, Chapter 2 of the FEIS presents an additional analysis of the revised project's stormwater runoff comparing it both with existing conditions and with a hypothetical fully vegetated/no impervious surfaces scenario. The provision of the project's multiple stormwater management components results in a reduction in runoff rates for both scenarios – that is, even the no impervious surface scenario would produce higher runoff rates. This is because a result of the multiple and redundant treatment practices used and because the project has been designed to exceed the NYSDEC stormwater requirements with regard to runoff reduction. In addition, the proposed stormwater basins have been oversized to accommodate runoff from the proposed project site as well as a portion of the impervious area on the adjacent site (i.e., Lot 13A).

**Comment 9-59:**

The applicant proposes to achieve the required stormwater runoff reduction through use of rain gardens, stormwater planters, and porous pavement. The DEIS proposes several Better Site Design (BSD) practices as Stormwater Mitigation Measures in Section G of Chapter 9, but the application appears to be inconsistent with certain specifics of the proposed action:

- Preservation of undisturbed areas

Approximately 44% of the habitat area will be disturbed during construction (1-4) and nearly one-third of the undisturbed area of the site (0.78 acres) will be new impervious surface (9-10).

- Preservation of buffers

The DEIS proposes permanent buffer disturbance of 33,500 square ft of impervious surfaces and 5,800 square ft of pervious pavers (1-6)

- Reduction of clearing and grading

Clearing and grading is increased in stream and wetland buffers

- Locating sites in less sensitive areas

There are probably no sites in the New York City Watershed that are more sensitive than one located 600 feet from the Kensico Reservoir system,

- Soil restoration

The DEIS proposes restoration or modification of on-site soils prior to final stabilization, but does not discuss how the soils will be modified. The project calls for excavation of 25,075 cubic yards of onsite soils, using 400 cubic yards for fill and exporting 24,675 cubic yards off-site. How will the underlying soil types be modified or restored after such a large cut with minimal fill?

- Roadway reduction

The proposed action increases roadway—changing an earlier proposed design from a two-lane exit to one lane still adds one lane of roadway to the existing site. (Riverkeeper, Kate Hudson, 6.1.11)

**Response 9-59:**

The project has been reduced in size/footprint such that more undeveloped area is preserved and less impervious surface is proposed in wetland buffer. Of the 3.34 acre project site, less than ½ will be occupied by the new building and impervious surfaces. Although this is a net increase of impervious surface as compared to existing conditions, most of this increase is in areas of existing lawn and overall the project preserves a large percentage of the site in a vegetated condition (existing forest and scrub/shrub wetland buffer areas). Soil in areas that will be disturbed and regraded will be modified to reintroduce oxygen into compacted soils and improve infiltration. The provision of an automated garage significantly minimizes the amount of new roadway and surface parking required as compared to the existing condition or a traditional parking garage. For these reasons, it is the Applicant's position that goal of these green infrastructure practices have been met.

**Comment 9-60:**

The DEIS further proposes the "use of fertilizers, pesticides, herbicides, fungicides and/or other chemicals" but elsewhere claims that no herbicide or fungicide use is anticipated. The applicant should resolve this discrepancy. On any site in such close proximity to the Kensico Reservoir, the Town should require the applicant to employ alternative pest management practices such as species-specific bacteria, predator stocking and pheromone lures in lieu of chemical pesticides. (Riverkeeper, Kate Hudson, 6.1.11)

**Response 9-60:**

The FEIS makes clear that, except in areas undergoing invasive species removal as part of the wetland buffer enhancement plan, the use of pesticides would be minimized. All plant material throughout the site will be native, drought and pest resistant material that will minimize the need for long term maintenance, fertilizer, pesticides and irrigation. Should the Town require, the application can employ alternative pest management practices.



- Comment 9-61:** The applicant should avoid altogether the use of phosphorus fertilizers to avoid phosphorus loading of the Kensico Reservoir during stormwater discharges. (Riverkeeper, Kate Hudson, 6.1.11)
- Response 9-61:** The project will commit to no use of phosphorus fertilizer at any time during construction or use for the life of the project. See also Response 9-9.
- Comment 9-62:** More environmentally benign, salt-free deicers, such as potassium acetate (KA) and calcium magnesium acetate (CMA), should be applied in lieu of road salt in close proximity to the Kensico Reservoir...except for claiming that all landscaping and deicing chemicals will be properly stored and handled, and that road salt use would be "minimized," the DEIS provides no detailed application plan for any of these products. (Riverkeeper, Kate Hudson, 6.1.11)
- Response 9-62:** The Applicant will commit to no use of road salt on the project site – seasonal use of salt-free deicers may be used. This can be memorialized in the Findings Statement. See also Response 9-27.
- Comment 9-63:** The preliminary stormwater pollution prevention plan (PSWPPP) and associated site plans contain a number of errors and omissions that need to be corrected to properly evaluate the effectiveness of stormwater controls at the Site. To this end, these preliminary plans should be revised to develop a stormwater pollution prevention plan, set of associated site plans, and the stormwater section of the draft environmental impact statement (DEIS), and those documents should be made available for public comment prior to completion of a final EIS. (Office of the Watershed Inspector General, 6/1/11)
- Response 9-63:** The SWPPP will be revised and revisions/additions made to the construction drawings during the Site Plan Review period to address the technical specifications listed by the commenter. Where information is available at this time to address the specific comments – it is presented in the responses that follow.
- Comment 9-64:** Steep side slopes, 2:1, occur on the east side of the pocket wetland and sedimentation basin and are shown on the Paving, Grading, and Drainage Plan on Sheet C-5. They are too steep to maintain and should be seeded with a seed mix for critical areas (NYS Standards and Specifications for Erosion and Sediment Control, August 2005, page 3.5) or flattened in combination with construction of a structural retaining wall. (Office of the Watershed Inspector General, 6/1/11)

**Response 9-64:** Plans will be revised to modify the pocket wetland to include a seed mix for steep slopes and other critical areas as requested as part of Site Plan Review.

**Comment 9-65:** Due to the proposed project's proximity to the Kensico Reservoir, we recommend that disturbed site soils be stabilized within 7 days. In addition, the soil stabilization time limit note appearing on Sheet C-1 should be moved to the Erosion and Sediment Control Plan on Sheet C-7.

Permanent seeding specifications and a detailed planting schedule are not included on the construction drawings and should be added to the Landscape Plan on Sheet C-8 and to the Details on Sheet C-12.

On Sheet C-7, a proposed Perimeter Dike & Swale (#2) is shown discharging at the top of a 3:1 slope. Rock riprap needs to be installed to protect this outlet.

On Sheet C-7, the outlet for Perimeter Dike & Swale #1 joins the outlet for the storm drain system on the west side of the proposed project site and flows into Sediment Basin #2. This combined flow needs rock riprap protection down to elevation 377.

Also on Sheet C-7, the outlet from SedimentBasin #1 needs rock riprap protection all the way down to elevation 377, where it enters Sediment Basin #2.

To facilitate and clarify the erosion and sediment (E&S) control component of the PSWPPP, the E&S notes on Sheet C-1 should be relocated to the E&S Plan on Sheet C-7.

Stone check dam details are shown on Sheet C-10. However, these are not mentioned in the E&S notes on Sheet C-1 nor shown on the Erosion and Sediment Control Plan on Sheet C-7. These details should be removed. (Office of the Watershed Inspector General, 6/1/11)

**Response 9-65:** These changes will be made to the construction drawings and SWPPP during Site Plan Review.

**Comment 9-66:** Temporary conveyances to the sediment basins would be designed to transport a 100-year storm event. However, these calculations were not provided in the PSWPPP nor were specific dimensions for the perimeter Dike/Swale presented on Sheet C-10. (Office of the Watershed Inspector General, 6/1/11)

**Response 9-66:** This information will be provided in revised construction drawings and the final SWPPP prepared as part of Site Plan Review.

- Comment 9-67:** Considering the proposed size of disturbance and construction operations, a curve number of 98 is recommended to size the erosion and sediment controls for all areas. In addition, the construction condition hydrologic and hydraulic calculations must also be presented. (Office of the Watershed Inspector General, 6/1/11)
- Response 9-67:** This information will be provided in revised construction drawings and the final SWPPP prepared as part of Site Plan Review.
- Comment 9-68:** A detailed review of the pollutant loadings was conducted. Although some areas did not agree with the HydroCAD sub-area values, the pollutant loads, as calculated in accordance with the DEC 1992 Reducing The Impacts Of Stormwater Runoff From New Development manual, showed a phosphorus decrease after treatment. Our independent evaluation, based on more recent methods and pollutant load characteristics for the project and offsite area showed the following:
- Pre-Developed Load=4.67 lbs TP
  - Post-Developed Load=6.31 lbs TP
  - Post-Dev Load with Treatment\*=3.31 lbs TP
- These results indicate a 29% phosphorus reduction below the pre-developed load and a total phosphorus reduction of approximately 47.5% of the post-developed load. These values are significantly less than the 40% to 88% reduction shown in Table 6-7 on page 23 of the SWPPP. As a result, additional retrofits of impervious areas of Lot 13A should be required to increase phosphorus removal. (Office of the Watershed Inspector General, 6/1/11)
- Response 9-68:** Additional retrofits may be considered as part of the final SWPPP prepared as part of Site Plan Review.
- Comment 9-69:** In addition to the capture of rooftop runoff from the masonry building on Lot 13A, offsite, runoff from other offsite impervious surfaces on Lot 13A should be captured and treated. A useful aid to designing a retrofit program is available from the Center for Watershed Protection (CWP) which has developed a Watershed Treatment Model (WTM), that integrates the latest pollutant removal practices and calculation methodologies. (Office of the Watershed Inspector General, 6/1/11)
- Response 9-69:** Runoff from a portion of Lot 13A will be incorporated in the site's stormwater management system, as discussed in FEIS Chapter 1 and Chapter 2. The WTM will be used to the extent practicable to assess retrofit options in the final SWPPP.

- Comment 9-70:** Page 9-9 of the DEIS discusses mitigation measures and " ... site planning practices and that were used to help determine the site plan and stormwater management system design". The first four planning practices presented are: Preservation of Undistributed Areas; Preservation of Buffers; Reduction of Clearing and Grading; and Locating Sites in Less Sensitive Areas. Based on the proposed areas of wetland and wetland buffer destruction, none of these planning practices were implemented. They should be seriously considered in a revised DEIS. (Office of the Watershed Inspector General, 6/1/11)
- Response 9-70:** The modified project has eliminated wetland disturbance, reduced buffer disturbance, reduced impervious surface overall, and provided stormwater treatment practices in excess of those required by NYSDEC. See also the stormwater discussion presented in FEIS Chapters 1 and 2.
- Comment 9-71:** The DEIS does not provide a map depicting the stormwater sub-areas analyzed in Appendix E. As a result, the water quality volume (WQv) and runoff reduction volume (RRv) calculations provided in Appendix E of the PSWPPP are unsupported. Based on the site information provided on page 9-9 of the DEIS, our independent calculations indicate a site WQv equal to 10,819 cubic feet for the impervious area of Lot 14B, in the developed condition. This calculation is based on a 25% WQv capture for redevelopment runoff captured by a standard stormwater management practice (New York State Stormwater Management Design Manual, Chapter 9, 2010). This value exceeds the 4,144 cubic feet stated on page 9-11, Chapter 9, of the DEIS by over two and a half times. The DEIS needs to further document and clarify this issue. (Office of the Watershed Inspector General, 6/1/11)
- Response 9-71:** This information is provided in the preliminary SWPPP that accompanies the DEIS/FEIS application.
- Comment 9-72:** In accordance with the NYSSMDM, flow through the Stormwater Planters and Rain Gardens are not credited for 100% of their volume in the runoff RRv calculation. As such, the calculations should be revised to provide 45% of their respective volumes as RRv for stormwater planters and 40% for Rain Gardens.
- Response 9-72:** See Responses 9-31 and 9-34 regarding RRv and the green infrastructure practices provided with the revised Site Plan.
- Comment 9-73:** As discussed further below and in the attached Technical Appendix, the DEIS's evaluation of the Project's pollution impacts and plans for mitigation are flawed. Further environmental review under SEQRA and modifications to the Project are needed to correct these deficiencies and

mitigate potential adverse water quality impacts. Project modifications should include, among other elements: (1) scaling down the development footprint to reduce wetland and associated buffer area disturbance at the site; (2) maximizing the use of “green infrastructure” to reduce pollutant loadings and runoff volumes; (3) revising the preliminary stormwater pollution prevention plan to more effectively mitigate pollution impacts, and (4) implementing, or funding the implementation of, additional offsite mitigation projects to further reduce stormwater pollution. (Office of the Watershed Inspector General, 6/1/11)

**Response 9-73:**

- (1) As stated in FEIS Chapter 1: Description of Modified Project, the Applicant has modified the proposed project in response to comments. The most significant modification is that the footprint of the structure has been reduced 12 percent, from +/- 51,000 square feet to +/- 45,000 square feet. This has reduced the capacity of parking from 1,450 spaces to 1,380 spaces. The total area of site disturbance was reduced from 122,038 square feet to 117,081 square feet – a 4 percent reduction. The reduction in site disturbance is attributable to the smaller building footprint that avoids any disturbance to the U.S. Army Corps of Engineers (USACE) delineated wetland on the site, and the wetland that was delineated by the Town’s wetland consultant.<sup>1</sup>
- (2) The Applicant is designing a building capable of achieving LEED certification, and one that will include a variety of ‘green low-impact’ practices which will lengthen the building’s useful life and lessen its impact on the surrounding environment. As presented in Chapter 1: Description of Modified Project, ‘green infrastructure’ is being maximized from the demolition of the existing building, to improved stormwater management, to the use of state of the art engineering to provide a fully automated parking facility using “sustainable building technology” that reduces emissions and energy usage from that of a conventional garage. The green infrastructure practices that are being proposed exceed the runoff reduction requirements outlined in the New York State Storm Management Design Manual (NYSSMDM).
- (3) In response to comments, the footprint of the project has been reduced in size which has resulted in an overall reduction in site disturbance, and disturbance to wetlands and wetland buffers. In light of reductions made to the building size and the reduction in

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<sup>1</sup> A field survey was made by the USACE on June 1, 2011, and the wetland boundary was certified in a Jurisdictional Determination (JD) letter dated 2/1/12, included herein as **Appendix D**.

overall impervious surfaces, the peak flow rates for each of the Design Analysis Points were revised (see Tables 2-1, 2-2, and 2-3 in Chapter 2- Probable Impacts of the Modified Project). Thus, the revised stormwater management plan will collect stormwater via overland flow and roof drains from the project site as well as a portion of the adjacent site (i.e., Lot 13A). Stormwater will be conveyed to multiple treatment mechanisms in a series, including underground sand filters, pocket wetlands, sedimentation basins with deep sumps, and stormwater planter. Stormwater collected from the roof of the parking facility will be directed into stormwater planters and then conveyed into the stormwater facilities before discharging to the Kensico Reservoir. Green infrastructure practices have been incorporated into the stormwater plan will function as belts-and-suspenders and will provide significant improvements to the quality of water entering into the reservoir as compared to existing conditions.

**Comment 9-74:** The proposed Project has the potential for significant adverse impacts on the Kensico Reservoir and its tributaries. These include construction related erosion and sedimentation (e.g., siltation from excavation) and discharges of turbidity in runoff; increased stormwater flow from additional impervious surface, and polluted runoff (e.g., oil, grease, and automotive fluids from parking areas, soaps and detergents from a car wash, fertilizers and pesticides from lawns, and pathogens carried in stormwater in to the Reservoir from newly created impervious surfaces.) (Office of the Watershed Inspector General, 6/1/11)

**Response 9-74:** See Response 17-4. As a state-of-the-art building, customers will drop off their vehicles on a pallet in a loading bay, after which automated machinery will transport the vehicle to a storage space within the facility. Fluids from automobiles, e.g. rain water, etc, will be collected on the pallet and conveyed to the sanitary sewer system. Automobiles will not be in contact with oils, hydrocarbons, and other potential pollutants. It should be noted that the car wash has been eliminated as an amenity of the project.

**Comment 9-75:** Development adjacent to the Kensico Reservoir could increase discharges of stormwater polluted by turbidity, pathogens, and other contaminants. Turbidity not only facilitates the transportation of pollutants, but it can shelter pathogens from exposure to attack by chlorine, a disinfectant routinely used in the Kensico Reservoir to protect public health. In addition, the organic particles that contribute to turbidity can also combine with chlorine to create disinfection by-products which may increase the risk of cancer or early term

miscarriage for people drinking the water. (Office of the Watershed Inspector General, 6/1/11)

**Response 9-75:** As discussed in FEIS Chapter 1 and Chapter 2 and in the responses to Chapter 8 provided in Chapter 3, the stormwater management system has been designed to exceed the requirements of NYSDEC and NYCDEP. As such, the release of turbid runoff, pathogens, and other pollutants is expected to decrease as compared to the current condition.

**Comment 9-76:** The location of the parking facility and its associated stormwater management practices are being proposed in Town regulated wetlands and wetland buffer areas. The importance of wetlands to the protection of drinking water quality and maintenance of site hydrology is well accepted and understood. The proposed project should be redesigned so that wetlands and wetland buffers are left undisturbed. (Office of the Watershed Inspector General, 6/1/11)

**Response 9-76:** The project has been modified to eliminate all wetland disturbance and to reduce the amount of disturbance in the wetland buffer. The buffer disturbance is proposed to be mitigated by the removal of invasive species in the remaining buffer and undisturbed wetland areas. The Lead Agency does not typically permit stormwater treatment facilities in the Town-regulated wetland buffer. The Town will need to determine whether the proposed location of the stormwater infrastructure is acceptable. See also Responses 2-11, 2-29, 2-39, 8-11, 8-13, 8-22, 8-25, 8-91, FEIS Chapter 1 and the Wetland Buffer Enhancement Plan contained in **Appendix F**.

**Comment 9-77:** The proposed Park Place project should incorporate the following measures to mitigate increased water pollution that otherwise would be generated by the project. These measures may be accomplished in part by implementing additional “Green Infrastructure” practices. To the project sponsors’ credit, the capture and treatment of roof top runoff at the masonry building on Lot 13A, offsite, provide a water quality benefit. Runoff from other offsite impervious surfaces, such as the parking area, on Lot 13A also should be captured and treated. Options for this treatment include, but are not limited to: bioretention and modification to the parking areas; grass swales designed for low velocity; utilizing chambered water quality units on-line with the stormwater drainage system; porous pavement replacing impervious pavement in parking areas; pervious walkways; and disconnecting impervious areas to buffer areas.

A useful aid to designing a retrofit program is available from the Center for Watershed Protection which has developed a Watershed Treatment

Model, that integrates the latest pollutant removal practices and calculation methodologies. (Office of the Watershed Inspector General, 6/1/11)

**Response 9-77:** The project has maximized the use of green practices to treat stormwater such that it exceeds the requirements of NYSDEC. As proposed, the revised stormwater management plan will collect stormwater via overland flow and roof drains from the project site as well as a portion of the adjacent site (that is, Lot 13A). The stormwater will then be conveyed to multiple treatment mechanisms in a series, including catch basins with deep sumps, a sedimentation basin, a sand filter, and a pocket wetland. Stormwater collected from the roof of the parking facility will be directed into stormwater planters and then conveyed into the stormwater facilities before discharging to the Kensico Reservoir. The green infrastructure practices that have been added to the stormwater plan will function as belts-and-suspenders and will provide significant improvements to the quality of water entering the reservoir as compared to existing conditions. See also FEIS Chapters 1 and 2 which present the latest stormwater runoff tables and information.

**Comment 9-78:** The stormwater sections of the DEIS are deficient including construction details for erosion and sediment control and stormwater management., missing documentation for hydrology, water quality, and runoff reduction calculations. Some steep slopes are not adequately stabilized and there are no controls proposed for concrete truck wash out at the site. The design for pocket wetlands and for accepting roof runoff from an offsite building on Lot 13A are deficient.

These inadequacies and other identified in the Technical Appendix, need to be corrected. Because the SWPPP is only “preliminary,” a revised SWPPP containing these and other corrections should be included in a Supplemental DEIS, so that members of the public and interested public agencies will have an effective opportunity to comment on such matters. (Office of the Watershed Inspector General, 6/1/11)

**Response 9-78:** Such additional information will be provided in the Final SWPPP that will be prepared as part of Site Plan approval, and for submission to NYCDEP as part of the permit process.

**Comment 9-79:** The car wash will utilize a special treatment and filtering system to allow wastewater to be recycled for subsequent washes. A detailed description of this treatment and filtering system is not presented in the DEIS. (Office of the Watershed Inspector General, 6/1/11)



- Response 9-79:** The car wash has been eliminated as an amenity of this project.
- Comment 9-80:** According to pages 1-7 and 1-8 of the DEIS, a car wash will be operated at the proposed parking facility. (Office of the Watershed Inspector General, 6/1/11)
- Response 9-80:** The car wash has been eliminated as an amenity of this project.
- Comment 9-81:** What accounts for this discrepancy of 160 parking spaces and how will that affect the comparison results in the DEIS? (Office of the Watershed Inspector General, 6/1/11)
- Response 9-81:** As discussed in FEIS Chapter 1, the parking capacity of the project has been reduced from 1,450 spaces in the DEIS to 1,380 spaces in the FEIS.

### 3.10 COMMUNITY FACILITIES AND SERVICES

- Comment 10-1:** This project also requires a zoning amendment. Present zoning allows for private parking and local business use but not for a huge parking structure that affects traffic and needs more municipal services such as police, fire department, street cleaning, road repair, et cetera. (Julius Shultz, 5/2/11)
- Response 10-1:** As discussed in the DEIS, no significant adverse impacts to municipal services will result from the proposed project. In fact, due to projected fewer vehicle pick up and drop offs at Westchester County Airport, traffic will be re-distributed to turn left on New King Street and access the Park Place driveway entrance, thus reducing through traffic to the airport. This small re-distribution of traffic would neither increase street cleaning nor road repairs (see Ch 13, "Traffic and Transportation," of DEIS and Responses 13-1 and 13-2 of this FEIS for a discussion on post-development traffic conditions).
- It should be noted that existing IND-AA zoning permits parking structures accessory to permitted uses. With regards to emergency services, the proposed facility would be an enclosed structure with no public access to parking areas. Customers would leave their vehicles in loading bays after which an automated system would transport vehicles on palates to a parking position within the interior of the building. Further, the facility would be attended by parking staff 24-hours a day. Therefore, theft and other security concerns would be minimal. To address fire safety concerns, the proposed parking facility would be equipped with an automatic sprinkler system throughout the facility and as stated in Chapter 2, the Modified Project would contain four 25,000

gallon water storage tanks to supply adequate water volume and pressure requirements. These water tanks will likely be located underground, and will be shown on project drawings as part of Site Plan Review after consultation with the Town Engineer and Fire Dept. The proposed fire protection system would conform to all applicable fire and building codes as well as National Fire Protection Association (NFPA) standards. In addition, the Town of North Castle Building Inspector has been consulted throughout the project design process to ensure that the proposed project would incorporate sufficient emergency access and safety measures.

As discussed in Chapter 12, "Economic Conditions," of the DEIS, the improvements on the project site would result in a substantial increase in tax revenue for the Town of North Castle, which would be expected to offset any additional costs incurred by municipal service providers. Annual Town tax revenue would increase from approximately \$7,300 to approximately \$39,100. Annual tax revenue for Fire District #2 would increase from approximately \$700 to \$3,900.

The applicant has provided drawings to the North Castle Fire Department (NCFD) and has received written comments from the Department requesting additional information about the entrances to the building, the emergency access drive, and building sprinklers. The Applicant is currently working directly with the NCFD to address their questions and concerns. Although the NCFD did not inquire about the location or adequacy of the four (4) 25,000 gallon water storage tanks, the applicant will raise this issue with the NCFD and resolve as necessary. The applicant will be in contact with the NCFD and will coordinate with the Town Planner and Lead Agency on these issues, to ensure that all fire safety concerns are addressed. The Building's structure has been designed in compliance with the Town/State Building Fire Code.

**Comment 10-2:** The proposed fire truck access path should be referred to the Fire Department for review and comment. It does not appear that a fire truck would be able to back out. (Kellard Sessions, 6/1/11)

**Response 10-2:** During preparation of the DEIS, the fire department was contacted for comment, but no response has been received to-date. A copy of the accepted DEIS was also sent to the fire department, but no comments were received. The Applicant has, however, consulted with the Town Building Inspector throughout the design process to obtain input on the Site Plan regarding emergency access. As a result, an emergency access path has been provided along the southern portion of the proposed parking facility, the most inaccessible portion of the site. This access

path has been designed taking into account fire truck dimensions and turning radii. A letter has been submitted to the Armonk Fire Department to review the emergency service access on September 18, 2014.

It should be noted that the Planning Board, as Lead Agency, will work with the Fire Department during Site Plan review to ensure all emergency services are adequately provided. Further, the Planning Department has noted that it is unlikely that the Planning Board will approve additional Town-regulated wetland or wetland buffer disturbance than that currently depicted.

Please see also response to Comment 10-1 above.

### **3.11 INFRASTRUCTURE AND UTILITIES**

**Comment 11-1:** The proposed parking structure will require DEP review and approval of a sewer connection for new onsite sewer lines and any modifications to the existing sewage pump stations in the NYC watershed. (NYCDEP, 5/23/11)

**Response 11-1:** Comment noted. However, since the sanitary flow from the proposed project will not result in an increase over existing conditions, there will not be any anticipated changes to the pump stations. With removal of the car wash, projected sanitary flows have been reduced from 970 gpd to 820 gpd – a net reduction over existing condition. As discussed in DEIS Chapter 11: Infrastructure and Utilities, no system upgrades or modifications would be required.

**Comment 11-2:** The Applicant should submit a pumping test program, which will include a water budget analysis and testing of the proposed water supply well, in order to determine the quantity of available water, the ability for the aquifer to satisfy the proposed water demand, the safe yield requirements for the proposed potable well, and the potential for impacts to adjacent groundwater resources. (Adam Kaufman, 6/1/11)

**Response 11-2:** A pumping test report will be submitted following completion of the 72-hour yield test on the proposed water-supply well; to be conducted after drilling the well. The yield test will include pumping of the proposed supply well at a yield adequate to meet the project water demand. Stabilized yield and water-level drawdown will be demonstrated during the final hours of the test, in accordance with regulatory requirements, to demonstrate the quantity of water available and the well yield.

No impact to adjacent groundwater resources is anticipated from use of the proposed supply well considering that no adverse impacts have been

documented from current groundwater withdrawals/use and the projected withdrawal/use would be similar to existing conditions. In addition, because the site is already developed, the groundwater recharge and water budget would not be significantly altered between existing and proposed conditions.

However, during the 72-hour pumping test on the new supply well, water-level measurements will be collected from the existing onsite bedrock well and from a piezometer installed in the closest surface water feature located within 200 feet of the well to monitor for potential impacts to groundwater resources.

The 72-hour pumping test will be conducted as part of Site Plan Review.

**Comment 11-3:** The DEIS indicates that the proposed HVAC equipment would have some amount of water demand. Given that the site does not have access to public water and water will be supplied by an aquifer supplied well, it is recommended that the building be designed to not utilize an HVAC system that requires any water demand. The Applicant should identify the type of system proposed and provide alternatives to a water using system. (Adam Kaufman, 6/1/11)

**Response 11-3:** As the proposed project has been further refined, the HVAC system would not require water. The HVAC system would use a split pipe direct expansion system and refrigerant for cooling purposes.

**Comment 11-4:** The Applicant should provide additional details regarding the car wash, including details of its operation, water use and recycling ability. (Adam Kaufman, 6/1/11)

**Response 11-4:** Please note that the car wash service has been removed from the Modified Project that is the subject of this FEIS.

**Comment 11-5:** When will pump test occur/water budget analysis to confirm adequate quantity of water/potential impacts to waterbodies adjacent properties occur? (Kellard Sessions, 6/1/11)

**Response 11-5:** The pumping test will occur following the drilling and construction of the proposed supply well. The submission of the well site permit application to the WCDOH is pending completion of modifications to the project lay-out plan. Drilling the well will proceed once approval of the well site has been received from the WCDOH.

**Comment 11-6:** The FEIS should discuss the trench drain connection to the sanitary sewer system depicted on Sheet C-6. (Kellard Sessions, 6/1/11)

**Response 11-6:** The trench drains have been removed from the plans and detail sheet.

### **3.12 ECONOMIC CONDITIONS**

NO COMMENTS RECEIVED

### **3.13 TRAFFIC AND TRANSPORTATION**

**Comment 13-1:** Safe Flight Instrument Corporation is submitting the following concerns in regards to the “Park Place” parking structure proposal. Safe Flight is opposed to this plan primarily due to the traffic congestion that will be added to New King Street.

Traffic is frequently backed up past our entrance, which is at 20 New King Street during the afternoon periods between 4:15 and 4:45 PM. Safe Flight already uses a staggered shift time in an attempt to mitigate congestion.

While we are not traffic engineers, we believe that should this plan go forward, an additional left turn lane would be required for the New King Street to Route 120 turn and a corresponding lane on Route 120 to the I-684 traffic light would be needed to more quickly move the traffic onto I-684. (Joseph M. Wilson, 4/29/11)

**Response 13-1:** The traffic study provided in the DEIS concluded that the proposed project will result in an overall reduction in the number of vehicle trips across the traffic network, an overall improvement in Level of Service (LOS), and would not result in impacts to the traffic network (see Tables 13-8 and 13-9 and Figures 13-9 and 13-10 of the DEIS). This holds true for the movements referenced above (left turn from New King Street to Route 120 and Route 120 to I-684) as both of these movements would experience a reduction in traffic (see Figures 13-9 and 13-10 of the DEIS).

The Applicant recognizes the congestion experienced on New King Street; however, the intersection of New King Street at Route 120 will result in a negligible change in traffic volume (less than two vehicles) with the proposed project in the 2012 PM Peak Hour. The findings of the study did identify an anticipate changes in travel preferences and circulation as (1) patrons that currently get dropped off at the Westchester County airport may choose to drive and park at Park Place in the future, and (2) patrons that previously parked at the airport garage may shift to the proposed Park Place.

**Comment 13-2:** Put aside the differences we have in some of the assumptions that are made with respect to the reduction in vehicle trips, but if you accept your own consultant's report that this may generate 200 new vehicle trips, plus 18 shuttle bus trips and 195 vehicle trips, plus 18, I'm sorry, plus 18 shuttle bus trips, this would significantly exacerbate as the DEIS elaborates or concedes existing F levels of service at three of the critical intersections, of which I travel down 684 every morning. Many of you probably do. Or even maybe you are even caught in those queues along the ramp. (Michael Zarin, 5/2/11, Adam Kaufman, 8/1/14)

**Response 13-2:** The study conducted by the Town's traffic consultant examined a worst case scenario (i.e., assuming that construction of the proposed parking facility would make Westchester County Airport more attractive to travelers, thus potentially adding an overall increase to traffic in the area), which determined that the proposed parking facility could add approximately 220 vehicle trips during the weekday AM and PM peak hours on area roads, including 18 shuttle vans/buses traveling to and from the terminal, that would result in an impact on area roadways and would require mitigation. It is the opinion of the Lead Agency that the Proposed Action will cause an increase in traffic over time and that mitigation should be provided to address this potential increase in traffic. In response to the more conservative worst case analysis conducted by the Town's traffic consultant and the opinion of the Lead Agency, the Applicant's traffic consultant in consultation with the traffic consultant for the Town of North Castle, the New York State Department of Transportation (NYSDOT), and the Westchester County Department of Public Works (DPW), developed an improvement plan for the intersections of Airport Road at Route 120 and the I-684 ramps. The proposed improvement plan and analysis was sent to NYSDOT for review. The Applicant's consultant team along with the Town of North Castle traffic consultant presented the plan to NYSDOT at a meeting on Friday, October 21, 2011. Subsequently, NYSDOT expressed their endorsement for the improvement plan. A copy of the analysis and correspondence is provided in the **Appendix H**. Figure 1 in **Appendix H** provides a summary of the traffic improvements, which include:

- Airport Road at I-684 Northbound Entrance Ramp – install a traffic signal at this intersection and interconnect with the signal at Airport Road and NYS Route 120 by using a double cycle length. Channelize westbound right turn with striping and yield control.
- Airport Road at NYS Route 120 – coordinate with new signal at Airport Road/I-684, change cycle length from 120 to 100 seconds, and implement new phasing plan.
- Eastbound Airport Road receiving lanes– restripe departure to include two travel lanes

- I-684 SB Ramp to Airport Road – install “Force-Out” detector on Airport Road
- I-684 NB Exit Ramp to Airport Road – install “Force-Out” detector on I-684 ramp.

The improvement measures listed above have been developed to improve overall traffic flow and mitigate traffic impacts that would occur under the worst case scenario. The Applicant will be responsible for implementing and funding the improvements shown in Figure 1 in **Appendix H** and obtaining permits from both NYSDOT and Westchester County DPW. See **Appendix H** for revised roadway improvements.

**Comment 13-3:**

We’re not sure where the DEIS is coming up with the conclusion that if a traffic -- if traffic conditions exacerbate an F, and it’s a very expensive mitigation, that the applicant is not required to mitigate those. The *CEQR Technical Manual*, which I’m sure Mr. Kaufman is aware of, is the preeminent CEQR, SEQRA technical manual that was in fact prepared, it’s an excellent document, by Nanette’s firm, AKRF, that is used throughout the state to provide some uniformity in doing technical analysis and SEQRA. And that establishes that a three second delay increase at an existing level of service F intersection poses a significant impact that must be mitigated. And when you go to the manual, and you can start at page 16-53 and work your way around the manual, the manual is pretty clear, as I have been at least in my practice over the years, where I probably most often sat in the applicant’s seat or as special counsel for --for municipalities, that if an applicant exacerbates an F condition, they have to at least bring that condition back to the existing F condition. The fact that it’s failing now and it’s significantly exacerbated is not a free pass of any kind. And the fact that the mitigation may be regional and expensive to mitigate is also --in my experience I’ve not seen it used as a means for classifying something as an unmitigable impact. (Michael Zarin, 5/2/11)

**Response 13-3:**

It should be noted that this project is not located within the five boroughs of New York City. Thus, the methodology noted by the commenter is not applicable for this project. Also, it's the consensus of the Town of North Castle and NYSDOT at the October 21, 2011 meeting that the terms and definitions of the *CEQR Technical Manual* are not applicable for this project.

**Comment 13-4:**

Finally, while there was some, and Bill referred to it, discussion of a rationale for the parking, I think everyone would concede that there is a need for additional parking with respect to the airport. I’m not sure there

was the appropriate market study or analysis justifying a 1,400 car garage. And that was - that would be something that I would respectfully submit should be of critical analysis for this board in determining the need and rationale for this proposal. (Michael Zarin, 5/2/11)

**Response 13-4:**

In response to comments regarding the need for additional parking, a parking demand study was conducted by Carl Walker, PC. For over 25 years, Carl Walker, PC. has a reputation as one of the top parking consulting firms. Carl Walker parking professionals have been responsible for thousands of successful parking and restoration projects throughout the country for hospitals and medical office buildings, universities, corporations, developers, airports, downtown associations, owners, government facilities and entertainment venues.

The Carl Walker, PC. report is titled “Estimate of Potential Parking Demand for Prospective New Garage to Serve: Westchester County Airport”, dated November 11, 2011. A copy of the study is included in **Appendix E**. A brief summary of the findings of the report includes:

- The SUNY lot has met some of the need for a lower cost parking alternative, but it is very inconvenient even for travelers who live on the east side of the Airport or come from that direction.
- A modeling method based on the results of the passenger survey, indicates that the New Garage, has the potential to draw just under 1,300 parking customers at the proposed daily rate of \$18.
- Overall the study identified a potential demand for the new garage of approximately 1,300 vehicles which includes 1,000 new parkers (converts from other modes of reaching the airport) and 300 current garage parkers who are anticipated the move to the new facility because of the lower rate.

The proposed garage will have a capacity for 1,380 vehicles which is slightly greater than the estimated demand of 1,300 vehicles. The additional spaces, approximately 5 percent of the estimated demand, will serve to accommodate the parking turnover activity.

**Comment 13-5:**

As Mr. Zarin had mentioned, it is not clear from the DEIS that there is a need for 1,450 spaces. There is no marked study. There is no pro forma. There is a number of inferences as to specifics regarding the number of spaces that are available, but the identity of 1,450 is really not clear. Maybe they need only 700 spaces for all I know. (Bernard Adler, 5/2/11)

**Response 13-5:**

See Response 13-4. The findings of the study indicated the potential demand for the new garage will consist of approximately 1,000 new parkers who would convert from other means of reaching the airport



and 300 current garage parkers who are anticipated to shift to the new facility because of the lower rate.

**Comment 13-6:** In addition, we've already in recent Journal News, there is an article about Purchase College providing shuttle services where they have approximately 500 spaces, where they will provide transportation, shuttle services from Purchase, Purchase College to the airport. Right now that's a nominal number, about \$5 a day. And that's going to go up in June to about \$15 a day. But the addition of 500 spaces off site may be another mitigating factor as to the need for this entire project. (Bernard Adler, 5/2/11)

**Response 13-6:** See Response 13-4. Also, as stated in the Parking Demand Study the SUNY lot has met some of the need for a lower cost alternative, but it's inconvenient even for travelers who live on the east side of the Airport or come from that direction.

**Comment 13-7:** The traffic study that was prepared by AKRF addresses the traffic issue in a rather simplistic mode in terms of eliminating a good majority of all the trips that are coming into the site or going out of the site and just subtracting them from the transportation system. It really does not justify the number or the percentages of how many cars should be dropped.

We recognize that four trips could become two trips, but how many of them are to be captured. How many of them are going to be -- How many people are going to eliminate the use of taxis, limos and private cars to provide transportation to the airport? That has not been identified. (Bernard Adler, 5/2/11)

**Response 13-7:** See Response 13-4. The findings of the study indicated the potential demand for the new garage will consist of approximately 1,000 new parkers who will convert from other means of reaching the airport and 300 current garage parkers who are anticipated to shift to the new facility because of the lower rate.

**Comment 13-8:** In his analysis, Mr. Galante found that there --there were three intersections, as Mr. Zarin noted, that are at failed commission. The first one is the intersection of Airport Road at Route 120. The second and the third are the north and southbound ramps of 684.

If you look at the southbound, the intersection of Airport Road and Route 120, as the traffic increases, the southbound movement becomes an F level of service with a delay of --an increase delay of 25 seconds to a failed condition of 92.8 seconds. But on the eastbound approach,

which is the approach from I-684 from Kensico, there is a calculated queue of 1,045 feet to get to Airport Road. And that's an increase of 380 vehicles in the morning peak. And in the evening peak it's 589 cars, which is an increase of 138 feet.

Now, the interesting part about it is there is only 100 feet between the southbound --the northbound ramps and Airport Road. Well, I'm not sure where those cars are going to be able to store except they are going to block the northbound ramps and the southbound ramps. And low and behold, that's exactly what they do. In fact, the northbound ramps on 684 are experiencing currently F levels of service. In the morning peak hour the ramp delays are increasing to 170 seconds, 169.5 seconds. That's an increase of 56.8 seconds. It's going from two minutes delay to three minutes delay. And that's just adding traffic to the stream. There is no identity of whether or not mitigation is done there. There is not hard look at that intersection as to whether the ramp has to be improved. It's just left there.

On the southbound ramps of 684 the delays are so large that they can't even calculate the queue. It's now measured in terms of what we call a V to C ratio, volume-to-capacity ratio. It is traditionally most one. So that the number of cars wanting to go through is equal to the capacity of the intersection. When you get more than one, then the demand is higher than capacity and the delays increase.

So, the level of congestion on the southbound ramps, the volume capacity ratio goes from 3.79 to 4.65. That's 3.8 times the capacity to four and a half times the capacity. And the increase is a 22 percent increase. Nothing is addressed there.

In the evening the delay goes from a volume-to-capacity ratio of 5.64 to 7.49. Five and a half times what the intersection will allow to seven and a half times. Those are monumental numbers. It's a 33 percent increase, and it is not addressed. This is the -- this 800 pound gorilla in the room that is just ignored. It just said this has to be addressed, but nobody is looking at it. The volumes are increasing. The delays are increasing. The levels of service are increasing. The intersection is not addressed. It's been ignored by the town's consultant and it's been ignored by the applicant. (Bernard Adler, 5/2/11)

**Response 13-8:** The proposed improvements to the intersections are summarized in Response 13-2.

**Comment 13-9:** The standard engineering practices would require that mitigation, as Mr. Zarin pointed out, mitigation should at least bring the levels of service

back to where they were in the no build condition. That is not there. It is not addressed. (Bernard Adler, 5/2/11)

**Response 13-9:** With the proposed improvements, the capacity analysis indicates operating conditions better than the No Build Condition, see Response 13-2.

**Comment 13-10:** The first thing that struck us, it talks about 99 cars coming in the morning and 84 cars coming in the afternoon. And there is storage for about 16 cars. Nowhere in the DEIS does it address how this automated system works. How the people who are getting out of their cars with luggage and with families are going to be able to be accommodated in the short time frame that they are projecting to be able to get out of the cars so that the cars don't spill back, not only spill back to the access point where the buses are going to come returning, but spilling back to New King Street. That's a major concern. (Bernard Adler, 5/2/11)

**Response 13-10:** The automated garage system works as follows:

A driver enters one of several queuing lanes where they are advised via an overhead LED, or as directed by a parking attendant, to proceed to the next available entry cabin. Once directed, the driver drives the vehicle into the entry cabin and positions the vehicle by following the directions and prompts. The driver exits the vehicle and proceeds to a ticketing machine/smartcard scanner station located immediately outside the entry cabin, where the driver collects a ticket or swipes a smartcard. Valets may be working in an "unloading area", whereby passengers and luggage will be unloaded from the vehicle and directly loaded into waiting shuttles. Basically, only the driver will be entering into the entry bay, thereby diminishing "dwell time" inside the cabin. The estimated time to process each arriving vehicle would be approximately 3 minutes or less. The total number of cars/customers than can be serviced (entering and existing) is approximately 250 cars/hour. Queuing of vehicles is not expected to block access to the garage at any time.

The storage and retrieval of a vehicle is accomplished with a Lift (a vertical conveyor) and Shuttle (automated horizontal trolley) working in conjunction with one another. The Lift retrieves a vehicle from the entry cabin by positioning itself in front of the entry cabin and sending a signal to the Parking Control System (PCS) that it is ready. The roll door between the Lift and entry cabin opens to allow the vehicle to be moved from the entry cabin to the Lift. The Lift ascends/descends to the computer assigned parking level while a Shuttle on the computer assigned parking level moves laterally to position itself in front of the Lift. The vehicle is transferred from the Lift to the Shuttle and the

Shuttle moves laterally to the computer assigned parking space and stores the vehicle into the parking space.

The separate lifts and shuttles design provides greater throughput and efficiency. For example, the multiple lifts and shuttle system means, the automated parking system can move numerous vehicles simultaneously and independently while other vehicles are being parked inside the entry cabins. However, in the unlikely event that the peak hour traffic is unusually heavy and the queue exceeds the design, a Traffic Management Plan will be in place that will direct Park Place staff what to do in high traffic situations to ensure that the on-site and off-site traffic conditions are addressed and to avoid spilling back to New King Street. It is proposed that this Traffic Management Plan be developed as part of Site Plan Review.

**Comment 13-11:** To retrieve a vehicle, a vehicle owner will swipe his parking ticket or smartcard at a card reader located on board the shuttle van and/or at the facility to activate the retrieval process. A Shuttle will retrieve the vehicle from its parking space, slide laterally and transfer the vehicle to a Lift. The Lift will ascend/descend to the ground floor and transfer the vehicle to the exit cabin. Once the vehicle is available, the driver is prompted to go to the appropriate exit cabin and retrieve his vehicle and exit the garage. In addition, the design is a little bit switched. Usually for a one way road we design the entrance before the exit so that there is no conflict. In this case the entrance is on the far side. The near side is the exit. So, therefore, the cars coming out are always in conflict with the cars that are coming in. It's – it's just the wrong way to do things. (Bernard Adler, 5/2/11)

**Response 13-11:** In response to this comment, the revised Site Plan presents a traditional driveway configuration.

**Comment 13-12:** There is a location within the site that has emerged of the shuttle buses in two lanes at the same time as the exit from all the cars that are coming out and all three lanes are coming into one lane, and it's almost an impossible access point. This is a dangerous conflict. (Bernard Adler, 5/2/11)

**Response 13-12:** In response to this comment, the Site Plan has been revised to reflect traffic control which designates clear right of way at the approach to the site exit.

**Comment 13-13:** The last area that we've addressed here has to do with a grass paver area, which provides access to some pocket wetland areas. This road, while I understand grass pavers, and grass pavers are a fine idea, does

not allow for cars to get in, turn around, come back. If they come back, how are they going to come back into the system, because they are now facing in the wrong direction of all the cars that are coming into the system. (Bernard Adler, 5/2/11)

**Response 13-13:** The access road will not be so heavily utilized where it will conflict with patrons of the garage. Access to the road can be scheduled to coincide for off peak periods at the garage. It is practical that a vehicle can utilize area outside of the ten foot roadway to make a five-point turn around, if needed.

**Comment 13-14:** The Westchester County Airport has a parking garage for 1,250 vehicles. The need for an additional 1,450 parking spaces has not been proved, and I don't think it can be proved. Based on our own observation at certain peak days and hours there is a need for additional parking spaces, but never more than 400. (Julius Shultz, 5/2/11)

**Response 13-14:** See Response 13-4. The findings of the study indicated the potential demand for the new garage would consist of approximately 1,000 new parkers who would convert from other means of reaching the airport and 300 current garage parkers who are anticipated to shift to the new facility because of the lower rate. Assuming that the airport's onsite garage reduces rates, the Walker report suggests a 1,000 space garage would be adequate. This may allow for a reduction in proposed building height or footprint.

**Comment 13-15:** The last point I would like to make is regarding the growth inducing impacts. First of all I want to say that the 1,450 parking space, vehicle parking spaces that are proposed for this project have not been adequately shown to be necessary based on our analysis. We see very little scientific information on which we could determine the validity of the need for 1,450 vehicles. In fact, we know that there are several other parties who are saying that the need for parking is 400 to 500 spaces. And we also know that there is the additional parking, sorry, as others have said, that the SUNY Purchase parking is going to contribute parking areas that may mitigate the need for having this parking lot. (Peter Dermody, 5/2/11)

**Response 13-15:** See Response 13-4. The findings of the study indicated the potential demand for the new garage would consist of approximately 1,000 new parkers who would convert from other means of reaching the airport and 300 current garage parkers who are anticipated to shift to the new facility because of the lower rate. Also, as stated in the Parking Demand Study the SUNY lot has met some of the need for a lower cost

alternative, but it's very inconvenient even for travelers who live on the east side of the Airport or come from that direction.

**Comment 13-16:**

I've been a resident of Armonk for the past 26 years. The gentleman who made the original presentation spoke very eloquently about adding roughly 1,400 spaces to the parking garage. Basically adding a parking garage for HPN. And those spaces would thereby decrease traffic to the area.

I would respectfully disagree with that, because I seriously feel that those people that are slated to be coming to the airport are really not using it right now. There is a lot of people who, like myself, opt to go to other places, such as LaGuardia or Newark or other airports other than using HPN.

The additional spaces would in essence increase commuter traffic to the area, and thereby increase the overall traffic to the airport, knowing that we will be increasing the size of the airport, which has been slowly occurring over the years. So, the biggest issue that we're facing right now is really the traffic to the airport, the spacing and the cars coming into the area are going to be an issue. The increase to the airport traffic is another issue. And that will net to larger noise pollution, water pollution, air pollution.

So, while I sincerely support the idea of increasing tax revenue to the area, I do not feel this is the best way to do it. So, I would strongly ask you to consider not approving this motion. So, thank you very much for your time. (Doug Manconelli, 5/2/11)

**Response 13-16:**

Comment noted.

**Comment 13-17:**

I've worked for the last ten years with New York State DOT to get this whole area of exit two reconfigured. It took ten years for both states to sign an agreement to remediate some of the traffic. But they did not look at the traffic impact of the volume of those exits. It's a dangerous human position, which this gentleman did mention before, level F or level seven, something like that. But we need to look at our community, working together for the quality of life for our residents. We all live here. More importantly, we need to leave a positive impact for our future generations, that we're bold leaders in a very troubled time to say that we need to preserve the resources that we have. Thank you very much. (Ingrid McMenamin, 5/2/11)

**Response 13-17:**

See Response 13-2.

- Comment 13-18:** [Page 13-1, Introduction.] The statement is made that the Garage and overflow lots are "at or near capacity" during Holiday periods. What is the customary occupancy profile for the Airport Garage and overflow parking? This data should be available for the facility. (James W. Ford, 5/10/11)
- Response 13-18:** See Response 13-4. A full copy of the parking study including customer profile information is provided in the **Appendix E**.
- Comment 13-19:** [Page 13-1, Background Growth.] The growth rate of 2.5% seems very conservative. Have historical counts showed this growth? Was that data reviewed in developing the study? (James W. Ford, 5/10/11)
- Response 13-19:** Conservative background growth rates are preferable for traffic studies as they help to present a worst-case scenario analysis. The scope of work for this traffic study required a 2.0 growth factor. Municipalities within and near the study area are typically contacted to obtain information regarding future development projects that may generate significant traffic in the study area. As some of these municipalities did not provide such information, an additional 0.5 percent was added to the growth factor to account for any future development projects in those municipalities.
- Comment 13-20:** [Page 13-2, Project Trip Generation.] The DEIS states that three airport parking facilities (Columbus, OH. Denver, CO, and Pittsburgh, PA) were used to validate the Park Place estimates. No relevant statistics about the airports or the location and usage of the facilities were provided other than computer entrance and exit data. We would suggest that to confirm relevance of the data the statistics on the three airports be presented in comparison to Westchester County to confirm. Such data as total parking, enplanements on daily and holiday periods would be suitable for this comparison. Similarly the location size and relationship to primary parking for each airport would be needed. If the sites are capacity constrained data on the frequency should be documented. (James W. Ford, 5/10/11)
- Response 13-20:** See Response 13-4. A full copy of the parking study including enplanement statistics is provided in the **Appendix E**.
- Comment 13-21:** [Page 13-2, Project Trip Generation.] What was the number of trips for Shuttle or pick up and drop off activity at the Westchester Terminal? This data is essential to confirm calculations on the transfer of trips. Also, comparison of the total number of these trips in relation to the adequately parked comparables stated would confirm that a higher number of pick up and drop off trips is occurring. This would support

the hypothesis that these trips would shift and in fact result in reduced area travel. We have not found such documentation in the material provided. (James W. Ford, 5/10/11)

**Response 13-21:** See Response 13-4. The findings of the study indicated the potential demand for the new garage would consist of approximately 1,000 new parkers who would convert from other means of reaching the airport and 300 current garage parkers who are anticipated to shift to the new facility because of the lower rate.

**Comment 13-22:** [Page 13-2, Project Trip Generation.] Detailed calculations should be submitted substantiating the trip reductions and shifts taken. We could not find this information in the material we received. Breakdown should be by private passenger, Limo. Shuttle and Bus. We are presuming that differentiation can be made between arrivals and enplaning passengers. This should be relatively easy for shuttles and transit. (James W. Ford, 5/10/11)

**Response 13-22:** See Response 13-4. The findings of the study indicated the potential demand for the new garage would consist of approximately 1,000 new parkers who would convert from other means of reaching the airport and 300 current garage parkers who are anticipated to shift to the new facility because of the lower rate.

**Comment 13-23:** [Page 13-2, Project Trip Generation.] Data on the logic and supporting calculations for assignment to the Park Place garage should be provided. (James W. Ford, 5/10/11)

**Response 13-23:** Existing travel patterns and traffic counts to and from the airport were determined as part of the study. The appropriate travel patterns were then rerouted to the new Park Place. New trips, such as shuttle bus trips, were also appropriately routed to the Park Place utilizing the most direct routes between the Park Place and the airport terminal. Table 13-8 provides a breakdown of these trips and Figures 13-9 and 13-10 depict the routing of these trips.

**Comment 13-24:** [Page 13-2, Project Trip Generation.] How was the number of shuttle bus trips to the new facility determined? (James W. Ford, 5/10/11)

**Response 13-24:** This number was based on information provided by the Applicant based on their experience operating parking facilities at other airports and the findings of the parking demand study.

**Comment 13-25:** [Page 13-2, Project Trip Generation.] While we can understand the logic proposed in reducing trips for the new facility it should be better



	documented. Little substantiation is provided in the material provided for review. (James W. Ford, 5/10/11)
<b>Response 13-25:</b>	See Response 13-4. A full copy of the parking study including trip projections is provided in the <b>Appendix E</b> .
<b>Comment 13-26:</b>	[Page 13-3, Project Vehicle Distribution.] The methodology of using existing travel patterns is acceptable. (James W. Ford, 5/10/11)
<b>Response 13-26:</b>	Comment noted.
<b>Comment 13-27:</b>	[Page 13-3, Project Vehicle Distribution.] Traffic Conditions Substantiation of these statements will be achieved when information noted on Parking Occupancy, arrival and discharge profiles and other data noted is clarified. (James W. Ford, 5/10/11)
<b>Response 13-27:</b>	Comment noted. See Response 13-4.
<b>Comment 13-28:</b>	[Page 13-3, Conclusion.] The provision of some 1,450 additional parking spaces will support airport operations. Depending on cost factors and convenience these spaces could replace some shuttle trips. More analysis detail is needed to confirm this conclusion. (James W. Ford, 5/10/11)
<b>Response 13-28:</b>	See Response 13-4. A full copy of the parking study is provided in the <b>Appendix E</b> .
<b>Comment 13-29:</b>	[B. Existing Conditions.] We concur that the intersections selected represent the appropriate analysis locations. (James W. Ford, 5/10/11)
<b>Response 13-29:</b>	Comment noted.
<b>Comment 13-30:</b>	[Page 13-5, Intersection Capacity analysis Methodology.] Synchro is an appropriate tool to analyze capacity and LOS as well as delays, queuing and other operations concerns. (James W. Ford, 5/10/11)
<b>Response 13-30:</b>	Comment noted.
<b>Comment 13-31:</b>	[Page 13-7, Traffic Conditions.] Comparison of ATR data and Manual Turning counts revealed some discrepancies on Rye Lake Road. Data in this area used in Synchro Models should be confirmed. (James W. Ford, 5/10/11)
<b>Response 13-31:</b>	ATR data and Manual Count data were examined jointly and the traffic network was balanced to ensure consistent traffic volumes between intersections where appropriate. Utilizing the ATR data, the Manual

Count data was balanced (volumes were increased where necessary) to provide for conservative traffic network volumes. Network traffic volumes at Rye Lake Road presented as shown in Figures 13-3 and 13-4 are representative of the ATR and Manual Count data. The Existing Condition volumes shown in Figures 13-3 and 13-4 are generally higher than the count data to present a conservative analysis.

**Comment 13-32:** [Figure 2008 Existing Traffic volumes.] Verify Rye Lake and King Street, Rye Lake and Airport Road. Figure and volumes for Roundabout appear incorrect. (James W. Ford, 5/10/11)

**Response 13-32:** Volumes at these locations are consistent between the figures in the EIS and the volumes in the corresponding Synchro files.

**Comment 13-33:** In examining the Synchro network for this project it appears that the operations at Rye Lake and King Street intersection may be assuming a free right turn on Rye Lake Ave. approaching King Street. We do not believe this is the case and analysis should be confirmed with the Town Signal Plan. (James W. Ford, 5/10/11)

**Response 13-33:** As the right turn in was not coded as an exclusive right turn lane, the free right turn designation has no impact on the analysis results. Signal timing plan was requested from Greenwich Department of Public Works, but no response was received (correspondence attached, to date the data has not been provided by Greenwich).

**Comment 13-34:** [Page 13-10, Parking Conditions.] Documentation on actual parking occupancy on time of day basis should be provided to substantiate analysis conclusions. Statements are subjective. Perhaps the County or airport has a study on this subject which could support the stated results. (James W. Ford, 5/10/11)

**Response 13-34:** Field observations were made on November 26 and December 4, 2008 at the existing airport garage. The data presented in the EIS represents the peak utilization of the day on the days of the surveys. This data was included in the DEIS.

**Comment 13-35:** [2012 No Build Traffic Volumes.] Projections appear correctly made. Resolution of count data with ATR may affect this analysis. (James W. Ford, 5/10/11)

**Response 13-35:** Comment noted. See comment 13-31 above.

- Comment 13-36:** [Page 13-14.] Accident analysis appears adequate and does not reveal any concerns in New York. Applicant should request similar data for intersection in Connecticut for consistency. (James W. Ford, 5/10/11)
- Response 13-36:** Comment noted. Accident data has been requested for the intersection in Connecticut and will be provided to the Town when available (to date the data has not been sent by the State of Connecticut).
- Comment 13-37:** [D. Probable Impacts of the Proposed Project.] More detail is necessary to substantiate the basis that is put forward in this DEIS. While, in fact, the conclusions indicate a net decrease in volume projected to the airport as a result of this parking facility, this goal will be dependent on many factors. Information on the Westchester County Airport Web Page indicates that some 1.9 million passengers are served annually on 32,000 commercial flights. In addition there are some 70, 000 corporate flights annually. We will not repeat the issues noted earlier but rather indicate that determining the probable traffic impact of the proposed Park Place Garage may justify additional actions. (James W. Ford, 5/10/11)
- Response 13-37:** Comment noted.
- Comment 13-38:** We consulted a report by the Eno Foundation entitled Parking. This report, developed by Robert Weant and Herbert Levinson of Connecticut in 1990, has long been considered a definitive source on parking. Concerning airports, the report indicates the ranges for required parking at public airports. Data is given for parking demand and mix of travel for several airports. Figure 6.9 of that report indicates the range of Public Parking Spaces required to service a range of originating passengers. The data noted on the Web for Westchester County Airport would indicate that parking would be needed to accommodate some 1.0 million originating passengers. Based on this number the expected spaces which would be necessary for the airport would be on the order of 1500. Obviously the business flight traffic would have impact on this number but at face value the airport provides approximately the number of spaces in the garage and overflow lot that would be expected. Parking demand at airports can vary widely and be especially restricted during holiday periods. While the ENO report is somewhat dated it does indicate that adding the Park Place Garage to the total would bring the airport at a level of parking approximately justifying some 2.0 million originating passengers. Data was also provided in the Eno report on the parking generation rates for enplaning passengers on a weekday and weekend. The Eno figures noted that on average Parking Generation was at the level of .44 spaces per enplaning passenger on a weekday and

.89 spaces per enplaning passenger on weekends. Another Parking Generation factor which was presented was the based on the number of Daily Airplane Movements. This figure indicated some 8.56 spaces per Daily Airplane Movement on a weekday and up to 14.83 spaces on the weekend. Assuming that there would be at least 150 commercial airplane movements a day (in or out) the parking demand of about 1300 vehicles would be indicated. This is consistent with the range noted in the initial analysis based on enplaning passengers.

The above paragraph seems to indicate that 1450 additional spaces will move the available parking at the airport beyond what is traditionally provided. That would indicate the new garage may have some additional capacity that will not be taken up by airport demand. This analysis is based on studies and generation factors that may not be totally similar to Westchester Airport. They do suggest that the New Garage facility may be able to support additional development in its vicinity should that occur. (James W. Ford, 5/10/11)

**Response 13-38:** See Response 13-4. A full copy of the parking study is provided in the **Appendix E**.

**Comment 13-39:** We recommend more definitive evaluation of the passenger demand and commercial operations at the main Terminal. Documentation of existing shuttle operations, Taxi and Limo services should be included to ascertain the potential for diversion of these passengers to park in the new facility.

The concepts presented in the DEIS could well be valid but need additional documentation to support the conclusions presented. (James W. Ford, 5/10/11)

**Response 13-39:** See Response 13-4. A full copy of the parking study is provided in the **Appendix E**.

**Comment 13-40:** Airport Parking Requirements and use of surplus parking:

In our initial memorandum the probable parking needs for the airport use were presented based on available reference material. That analysis indicates that the proposed action in the DEIS would, based on published norms for parking at similar sized airports, result in a significant number of excess spaces. While no specific data on parking occupancy and frequency of capacity constraints was presented it was noted that the Garage at the Airport filled frequently and the overflow parking lot was near capacity in such instances. It appears that parking is constrained but the degree to which this condition presents itself is not clear. Most airports have similar issues in holiday periods. That said,

it appears that Westchester County Airport with its total of 1100 garage spaces and 400 surface overflow spaces is provided with close to the number of parking spaces that would be expected at similar facilities.

The proposed action will add 1450 spaces to this number which will probably not all be utilized for Airport Parking a majority of the time. There could easily be 1000 vacant spaces in this garage most of the time if it were to rely on airport parking solely. In our earlier memo I indicated this excess could support additional development in the area. Looking at the surrounding land use this would likely be support uses for the airport. Office, light manufacturing or shipping uses come to mind. More detailed information on the available abutting land would be needed to estimate this potential, but 1000 spaces could support something on the order of 340,000 square feet of adjacent office development.

We would caution that this assessment of excess parking is based on available reference information. However no analysis in the DEIS Traffic Section was presented to establish Parking Demand. (James W. Ford, 5/13/11)

**Response 13-40:** See Response 13-4. A full copy of the parking study is provided in the **Appendix E**.

**Comment 13-41:** Potential for increased traffic on King Street and Gateway Lane in Greenwich:

The Traffic Section of the DEIS comes to the conclusion that the net traffic impact of this action would be a reduction in trips. Insufficient information was presented in the DEIS to enable us to confirm this analysis.

Examining the potential airport bound trips which would be occurring to the new garage location we note that it has its' only access on New King Street. This is a one-way road connecting with NYS Route 120.

According to the regional distribution of traffic in the DEIS some 45% of trips to the airport are assigned to King Street and Rye Lake Road in Greenwich. These trips turn left to Rye Lake from northbound King Street and travel around the roundabout at Airport Road to enter the parking at the terminal. Should a significant redistribution of trips be made to the new garage location the restricted travel patterns on New King Street (One Way) and congestion at Airport Road and I-684 ramps makes the use of Gateway Lane and King Street much more attractive.

In examining the SYNCHRO files which were provided by the Town we found that significant queuing occurred on I-684 exit Ramp and the

adjacent intersection. The LOS results presented in the DEIS may be not achievable due to queuing. Congestion in this area, should traffic be destined from the new facility, would most likely divert to access King Street from Gateway Lane.

This would not be an issue for the entering trips to the new garage but rather occur for the return trip. Even in off peak conditions it is likely that this effect will occur just from a travel time reduction basis. (James W. Ford, 5/13/11, Adam Kaufman, 8/1/14)

**Response 13-41:**

See Response 13-2. The Applicant's traffic study concludes that the proposed project would result in an overall reduction in the number of vehicle trips across the traffic network, an overall improvement in level of service (LOS), and would not result in impacts to the traffic network (see Tables 13-8 and 13-9 and Figures 13-9 and 13-10 of the study). Notably, this holds true for left turn movement from New King Street to Route 120 where there would be a reduction in traffic (see Figures 13-9 and 13-10). At the I-684 ramps and Airport Road intersections, congestion and queuing would occur under Existing and No Build conditions, but would experience a reduction in traffic under Build conditions (see Tables 13-8 and 13-9 and Figures 13-9 and 13-10 of the study). The study conducted by the Town's traffic consultant examined a worst case scenario (i.e., assuming that construction of the proposed parking facility would make Westchester County Airport more attractive to travelers, thus potentially adding an overall increase to traffic in the area), which determined that the proposed parking facility could add approximately 220 vehicle trips during the weekday AM and PM peak hours on area roads, including 18 shuttle vans/buses traveling to and from the terminal, that would result in an impact on area roadways and would require mitigation. It is the opinion of the Lead Agency that the Proposed Action may cause an increase in traffic over time and that mitigation should be provided to address this potential increase in traffic. In response to the more conservative worst case analysis conducted by the Town's traffic consultant and the opinion of the Lead Agency, the Applicant's traffic consultant in consultation with the traffic consultant for the Town of North Castle, NYSDOT, and the Westchester County DPW, developed an improvement plan for the intersections of Airport Road at Route 120 and the I-684 ramps (see Figure 1 of **Appendix H**) to improve overall traffic flow and mitigate traffic impacts that would occur under the worst case scenario.

**Comment 13-42:**

Has a study been completed to determine the need to double the parking for the airport? Is there a need for additional parking at the airport? (FAA, 5/19/11)

- Response 13-42:** See Response 13-4. The findings of the study indicated the potential demand for the new garage would consist of approximately 1,000 new parkers who would convert from other means of reaching the airport and 300 current garage parkers who are anticipated to shift to the new facility because of the lower rate.
- Comment 13-43:** The comments and questions from the Town of Greenwich are based on the Town's concerns of additional traffic on King Street in Greenwich, Gateway Lane and Rye Lake Road in Greenwich from people seeking access to the new 1450 parking space garage on New King Street. Our residents, particularly those within the Northwest Greenwich Association area, are concerned that there will be an increase in peak hour traffic on our roads due to this new parking garage at the same time as existing peak hour traffic exists for Brunswick School and Convent of the Sacred Heart school traffic, in addition to the public school bus traffic on King Street. (Peter J. Tesei, 5/23/11)
- Response 13-43:** For the study area intersection in Greenwich (Rye Lake Road and King Street), there would be an increase in traffic ranging between 3 and 20 vehicles at the intersection approaches. However, this increase in traffic would not result in any impacts requiring mitigation.
- Comment 13-44:** The need for this new parking garage is not well documented and there are several issues and questions that have been raised by our Traffic Engineering Consultant that Greenwich would like to see addressed. These concerns are noted in two reports found attached to this communication dated May 10, 2011 and May 13, 2011. (Peter J. Tesei, 5/23/11)
- Response 13-44:** See Response 13-4. A full copy of the parking study is provided in the **Appendix E**.
- Comment 13-45:** The consultant should explain the rationale for choosing Wednesday November 26, 2008 for traffic analysis. (NYCDEP, 5/23/11)
- Response 13-45:** November 26th, 2008 (the day before Thanksgiving) was selected as it is the most heavily traveled day with regards to airport travel and it would provide for a conservative analysis with regard to airport related vehicle trips and parking demand.
- Comment 13-46:** Based on our review, it is our opinion that there are likely to be significant environmental impacts associated with this proposed project. In addition, due to the recent addition of a new parking facility/shuttle,

the need for the proposed parking garage should now be questioned. (Peter Dermody, 5/27/11)

**Response 13-46:** See Response 13-4. A full copy of the parking study is provided in the **Appendix E**.

**Comment 13-47:** It is also important to note that the need for this proposed project is not adequately established in the DEIS. It is clear that a parking shortage exists, however, the need for the construction of a garage that will accommodate 1,450 vehicles has not been established. Based on the DEIS, the current parking garage at the airport has a capacity of 1,100 vehicles and an overflow parking area with a capacity of 400 vehicles. Therefore, the total parking capacity at present is 1,500 vehicles. The DEIS states that there is a need for 3,000 total spaces at the airport. However, there is essentially no scientific analysis and vague documentation to confirm this assertion. In addition, the traffic study performed for the airport during peak travel periods (the Thanksgiving holiday period) in 2008 and 2009 found that "the garage was at capacity and the overflow parking lot was at or near capacity during certain times of the day." This indicates that even during peak travel periods, there were only sporadic periods when the parking areas are at capacity and the traffic study did not estimate the capacity shortfall. Other evaluations (reported by the Sierra Club in a letter to Ms. Peg Michaelman of the North Castle Planning Board dated September 14, 2009, and from the current owner of the existing parking garage) suggest that the parking shortfall is 400 to 500 vehicle spaces. (Peter Dermody, 5/27/11)

**Response 13-47:** See Response 13-4. The findings of the study indicated the potential demand for the new garage would consist of approximately 1,000 new parkers who would convert from other means of reaching the airport and 300 current garage parkers who are anticipated to shift to the new facility because of the lower rate.

**Comment 13-48:** As of April 1, 2011, a new, additional parking facility/airport shuttle known as Purchase Park 2 Fly formally commenced operation. Based on information obtained from Mr. Shomari Williams, Operations Coordinator for Purchase Park 2 Fly, they currently provide parking for 350 vehicles and have significant capacity for expansion, if necessary. This information was not included in the DEIS.

Based on this information, the need for an additional parking garage to accommodate 1,450 vehicles has not been established. If the construction of the garage initially results in an excess that may be regularly well over 1,000 vehicle parking spaces, there is clearly a



significant growth-inducing impact. Continued growth would have a further and cumulative impact that would result in further degradation of the water quality of the Kensico Reservoir. This issue has not been addressed in the DEIS.

In summary, it can be concluded that the parking shortage will be reduced (and the parking shortage may even be eliminated) by the addition of a minimum of 350 vehicle spaces at the Purchase Park 2 Fly facility. This may remove the need to destroy wetlands, wetland buffer areas, encroach into reservoir stem zones, and potentially impact Class A streams to construct what may be a superfluous and growth-inducing parking garage. (Peter Dermody, 5/27/11)

**Response 13-48:** See Response 13-4. The findings of the study indicated the potential demand for the new garage would consist of approximately 1,000 new parkers who would convert from other means of reaching the airport and 300 current garage parkers who are anticipated to shift to the new facility because of the lower rate.

**Comment 13-49:** The need for a 1,450 space garage has not been proven. The Applicant has not provided any data documenting the need for a new parking facility. It is incumbent on the Applicant that a study should be prepared by a parking professional, since the lack of a study calls into serious question the need for constructing such a massive facility. Various numbers of parking deficiency have been claimed in the DEIS, but short of a valid quantitative assessment, the need for 1,450 spaces is, at best, questionable.

Further, the recent opening and operation of the 500-space parking lot on the nearby SUNY Purchase College campus also suggests that a 1,450 space facility is not needed. (Bernie Adler and Michael P. O'Rourke, 5/31/11)

**Response 13-49:** See Response 13-4. The findings of the study indicated the potential demand for the new garage would consist of approximately 1,000 new parkers who would convert from other means of reaching the airport and 300 current garage parkers who are anticipated to shift to the new facility because of the lower rate.

**Comment 13-50:** The Traffic Study contained in the DEIS simplistically suggests that the operation of the proposed facility would result in the elimination of a number of vehicle trips to and from the Airport on the roadway network. The study proposes that a good majority of taxis, limo and private cars will become parkers on the site resulting in very significant reductions of traffic on some intersection approaches. While some

individuals may be utilizing taxis or car services to avoid parking at the Airport, there is no evidence that this is the sole reason that airport passengers are using taxis. Accordingly, the DEIS projections are very likely inflated. On the other hand, the supplemental traffic study prepared by the Town's Traffic Consultant performs analysis with the addition of approximately 200 vehicle trips in the AM and PM peak hours to the roadway network due to the proposed facility. The supplemental study appears to be more reasonable and appropriate. (Bernie Adler and Michael P. O'Rourke, 5/31/11, Adam Kaufman, 8/1/14)

**Response 13-50:** See Response 13-2 and Response 13-4. The Frederick P. Clark analysis conservatively analyzed the addition of 200 vehicle trips to the traffic network and concluded that the traffic generated by the proposed garage could result in an impact on area roadways and would require mitigation. It is the opinion of the Lead Agency that the Proposed Action could increase traffic over time and that mitigation should be provided to address this potential increase in traffic. In response to the more conservative analysis conducted by the Town's traffic consultant and the opinion of the Lead Agency, the Applicant's traffic consultant in consultation with the traffic consultant for the Town of North Castle, NYSDOT, and the Westchester DPW developed an improvement plan for the intersections of Airport Road at Route 120 and the I-684 ramps (see Figure 1 of **Appendix H**) to improve overall traffic flow and mitigate traffic impacts that would occur under the more conservative scenario.

**Comment 13-51:** Standard engineering practice dictates that the traffic impacts including increased delays or greater volume-to-capacity (v/c) ratios due to a development, shall be mitigated, even if the operating conditions remain at Level-of-Service "F" when comparing the No-Build and the Build scenarios. As an example, the 2010 New York City Environmental Quality Review (CEQR) Manual states that where a lane group is expected to operate at Level-of-Service "F" in the No-Build condition, an increase in the projected delay of three (3.0) seconds for the Build condition should be considered significant and, therefore, require mitigation.

The capacity analysis performed by the Town's Traffic Consultant indicates that existing Level-of-Service "F" conditions, that is failure conditions, would be significantly exacerbated at the following intersections: NY Route 120 with Airport Road; the I-684 northbound ramps with Airport Road; and, the I-684 southbound ramps with Airport Road, during the AM and PM Peak Hours. (Bernie Adler and Michael P. O'Rourke, 5/31/11)

- Response 13-51:** See Response 13-3. As this project is not located within the five boroughs of New York City, the analysis for this project is not subject to CEQR Manual impact criteria. Also, it's the consensus of the Town of North Castle and NYSDOT at the October 21, 2011 meeting that the terms and definitions of the *CEQR Technical Manual* are not applicable for this project.
- Comment 13-52:** For the intersection of NYS Route 120 with Airport Road, the capacity analysis indicated that Level-of-Service "F" conditions will be expected on the southbound through movement during the morning peak hour in the Build condition. According to the Town's Consultant, vehicle delay is expected to increase by approximately 25 seconds above the No-Build conditions to 92.8 seconds. In addition, the eastbound left/through/right movement is expected to experience a significant increase in the number of vehicles queued on the roadway with a calculated queue of approximately 1,045 feet in the morning peak hour, an increase in vehicle queue of approximately 380 feet. In the PM Peak Hour, the capacity analysis performed by the Town's Consultant indicates that a vehicle queue of approximately 589 feet is anticipated, an increase in queue length of 138 feet from the No-Build condition. It is important to note that the approximate storage length to accommodate these anticipated vehicle queues is only 100 feet. The vehicle queues would be expected to "spill-back" and negatively impact the intersections of Airport Road with the entrance and exit ramps for I-684. (Bernie Adler and Michael P. O'Rourke, 5/31/11)
- Response 13-52:** The proposed improvements to NYS Route 120 and Airport Road are summarized in Response 13-2.
- Comment 13-53:** For the intersection of Airport Road with the northbound ramps of I-684, the capacity analysis indicated that the northbound approach is expected to experience Level-of-Service "F" conditions during the AM Peak Hour in the No-Build and Build conditions. For the AM Peak Hour in the Build condition, the vehicle delay is expected to be 169.5 seconds, an increase of approximately 56.8 seconds from the anticipated No-Build conditions. The vehicle queue on the approach is expected to be approximately 598 feet, which is an increase of approximately 137 feet over the vehicle queue anticipated for the No-Build condition. (Bernie Adler and Michael P. O'Rourke, 5/31/11)
- Response 13-53:** The proposed improvements to NYS Route 120 and Airport Road are summarized in Response 13-2.

**Comment 13-54:** Level-of Service “F” conditions are expected on the southbound exit ramp from I-684 at the intersection with Airport Road during the AM and PM peak Hours for both the No-Build and Build conditions. The level of congestion is so intense that the capacity modeling used cannot calculate the expected vehicle delays nor can the expected vehicle queues be calculated. (Bernie Adler and Michael P. O’Rourke, 5/31/11)

**Response 13-54:** The proposed improvements to NYS Route 120 and Airport Road are summarized in Response 13-2.

**Comment 13-55:** Another measure used by traffic engineers to measure the impact of traffic on a roadway is the v/c ratio, which compares the rate of vehicle flow in an hour with the capacity of the approach to accommodate the vehicle flow. A v/c ratio approaching 1.00 is considered to be a serious condition and generally warrants close surveillance. A v/c ratio greater than 1.00 indicates that more vehicles are trying to get through an intersection than can actually be accommodated and that mitigation is needed. The analysis by the Town’s Consultant also indicates that the Project would severely exacerbate the v/c ratios at the I-684 interchange. For the No-Build condition, the anticipated v/c ratio for the southbound I-684 ramp at Airport Road is 3.79. For the PM Peak Hour, the v/c ratio is calculated to be 5.64. The capacity analysis for the Build conditions indicates that the additional garage traffic greatly exacerbates these congested conditions. In the Build condition, a v/c ratio of 4.65 is expected in the AM Peak Hour, an increase of 0.86. In the PM Peak Hour, the v/c ratio is expected to reach approximately 7.49, a 33 percent increase without any proposed mitigation. (Bernie Adler and Michael P. O’Rourke, 5/31/11)

**Response 13-55:** The proposed improvements to NYS Route 120 and Airport Road are summarized in Response 13-2.

**Comment 13-56:** These poor operating conditions on both exit ramps of I-684 at Exit 2 seem to be ignored by both the Applicant and the Town’s Consultant. The anticipated volume on the I-684 southbound ramp is seven and one-half times the number of vehicles that can actually be processed and accommodated in one hour.

The Applicant should be required to identify potential measures that can be implemented at the affected local intersections and on the highway ramps that provide direct access to and from the Airport property to mitigate the anticipated impacts of the proposed garage. (Bernie Adler and Michael P. O’Rourke, 5/31/11, Adam Kaufman 8/1/14)

**Response 13-56:** The proposed improvements to NYS Route 120 and Airport Road are summarized in Response 13-2. The Applicant's traffic study concluded that the proposed project could result in an overall reduction in the number of vehicle trips across the traffic network, an overall improvement in Level of Service (LOS), and would not result in impacts to the traffic network. The study conducted by the Town's traffic consultant examined a worst case scenario (i.e., assuming that construction of the proposed parking facility would make Westchester County Airport more attractive to travelers, thus potentially adding an overall increase to traffic in the area), which determined that the proposed parking facility could add approximately 220 vehicle trips during the weekday AM and PM peak hours on area roads, including 18 shuttle vans/buses traveling to and from the terminal, that would result in an impact on area roadways and would require mitigation. It is the opinion of the Lead Agency that the Proposed Action will cause an increase in traffic over time and that mitigation should be provided to address this potential increase in traffic. In response to the more conservative worst case analysis conducted by the Town's traffic consultant and the opinion of the Lead Agency, the Applicant's traffic consultant in consultation with the traffic consultant for the Town of North Castle, NYSDOT, and the Westchester County DPW developed an improvement plan for the intersections of Airport Road at Route 120 and the I-684 ramps (see Figure 1 of **Appendix H**) to improve overall traffic flow and mitigate traffic impacts that would occur under the worst case scenario.

**Comment 13-57:** With regard to safety implications, no statistical accident analysis has been performed. There is merely a summary of the accidents that had occurred over a three-year period. It is recommended that a complete, statistical accident analysis be performed by the Applicant to determine the potential safety impacts of increased traffic volumes on the airport roads. The accident analysis will identify the accident rates at intersections and roadway segments. Further, these rates should then be compared with state-wide average rates for similar roadway operating conditions. Moreover, mitigation measures should be implemented where there is a causal relationship between the roadway and/or traffic control devices and the accident history. (Bernie Adler and Michael P. O'Rourke, 5/31/11)

**Response 13-57:** A detailed review of accident history was conducted at 11 locations within the study area. Accident data was summarized by location, date, day, time, type of accident, number of injuries, contributing factors, and road surface conditions. No locations were identified as high accident locations warranting a formal accident rate analysis and comparison

with New York state-wide averages. All locations experienced less than four accidents over a one-year period. The Highway Capacity Manual and ITE Traffic Engineering Handbook define an accident problem when five or more accidents are experienced.

**Comment 13-58:**      Processing Time. The DEIS anticipates that there will be approximately 99 cars entering the facility in the AM Peak Hour and approximately 86 cars in the PM Peak Hour. The Applicant should provide documentation concerning the processing rate for arriving vehicles to ensure that the arriving vehicle queues do not extend beyond the entrance area and interfere with the circulating shuttle buses and vehicles leaving the garage facility or create spill back problems on New King Street, which could affect Airport Road. (Bernie Adler and Michael P. O'Rourke, 5/31/11)

**Response 13-58:**      See Response 13-10 for a description of the automated parking system.

**Comment 13-59:**      Poor Driveway Design. It is a common traffic engineering practice on one-way streets to design the circulation pattern to allow a more safe driving environment without conflicts. A more appropriate design should have reversed the directional flows of the access driveway to permit left-turns into the site without "crossing" in front of exiting traffic. (Bernie Adler and Michael P. O'Rourke, 5/31/11)

**Response 13-59:**      In response to this comment, the revised Site Plan presents a traditional driveway configuration.

**Comment 13-60:**      Unsafe Merging. The Site Plan indicates that shuttle bus traffic is expected to merge from two lanes of traffic into one lane of traffic (left side) simultaneous with the merge of the departing automobile traffic (right side). This is a potentially dangerous conflict and should be revised with proper spacing between the two merge points to avoid this condition. (Bernie Adler and Michael P. O'Rourke, 5/31/11)

**Response 13-60:**      In response to this comment, the Site Plan has been revised to reflect traffic control which designates clear right of way at the approach to the site exit.

**Comment 13-61:**      Access to Pocket Wetlands. The proposed 10-foot wide 'grass paver area' proposed to access the pocket wetland area is very narrow for vehicle access. In addition, there does not appear to be an area designated to permit a vehicle to turn around leaving the wetland area and proceeding towards the garage facility. Finally, vehicles returning to the garage facility from the wetland area would be traveling in the

wrong direction and facing incoming passenger car traffic. It is anticipated that vehicle maneuvers at this location would be extremely difficult if not impossible. Moreover, the area where the 'grass paver area' intersects with arriving traffic at the garage facility appears unsafe. (Bernie Adler and Michael P. O'Rourke, 5/31/11)

**Response 13-61:** The access road will not be so heavily utilized where it will conflict with patrons of the garage. Access to the road can be scheduled to coincide for off peak periods at the garage. It is practical that a vehicle can utilize area outside of the ten foot roadway to make a five-point turn around, if needed.

**Comment 13-62:** SUMMARY. There are fatal flaws with the DEIS, as follows:

- The quantified need for the proposed garage has not been justified;
- The analyses simplistically assume that traffic volumes will be reduced. This assumption is not valid; the increase in traffic volumes assumed by the Town's Traffic Consultant appears to be more reasonable and appropriate;
- The serious congestion currently experienced on the roadway system in the area would be significantly exacerbated with the operation of the garage and is neither addressed nor mitigated; and,
- There are several areas on the Site Plan that are deficient, including a potentially dangerous simultaneous merge from both sides of the exit roadway. (Bernie Adler and Michael P. O'Rourke, 5/31/11)

**Response 13-62:** Bullet 1 – See Response 13-4.

Bullet 2 – See Response 13-3.

The study by the Town's Traffic Consultant concluded that the traffic generated by the proposed parking garage will not significantly impact the overall study area operation.

Bullet 3 – See Response 13-3.

Bullet 4 – In response to this comment, the Site Plan has been revised to improve ingress and egress of cars using the facility and to reduce potentially hazardous merges.

**Comment 13-63:** Another significant omission from the DEIS is directly related to the reasons given for the construction of parking garage in the first instance. The DEIS should contain a discussion of a non-parking alternative for the site, because evidence suggests that airport parking is available at SUNY Purchase, which includes or would include a shuttle between the SUNY Purchase parking areas and the Westchester County Airport. Given the applicant's claim for the need for additional airport parking at

peak travel times, it is likely that parking availability on the SUNY Purchase campus would be sufficient to handle that need. (Richard J. Lippes, 5/31/11)

**Response 13-63:** See Response 13-4. The findings of the study indicated the potential demand for the new garage would consist of approximately 1,000 new parkers who would convert from other means of reaching the airport and 300 current garage parkers who are anticipated to shift to the new facility because of the lower rate. Also, as stated in the Parking Demand Study the SUNY lot has met some of the need for a lower cost alternative, but it's very inconvenient even for travelers who live on the east side of the Airport or come from that direction.

**Comment 13-64:** Based on the Town Consultant's projections, the Project would exacerbate existing "F" Level of Service (LOS) levels at three critical intersections: Airport Road and Route 120; Airport Road and the I-684 northbound ramps, and Airport Road and the I-684 southbound ramps. The Town's Comprehensive Plan already expresses concerns that the "Route 120 at Airport Access Road/I-684 Interchange 2" suffers from "[l]imited traffic capacity - high traffic volume." (Richard J. Lippes, 5/31/11, Adam Kaufman, 8/1/14)

**Response 13-64:** The proposed improvements to NYS Route 120 and Airport Road are summarized in Response 13-2. The Applicant's traffic study concluded that the proposed project could result in an overall reduction in the number of vehicle trips across the traffic network, an overall improvement in Level of Service (LOS), and would not result in impacts to the traffic network. The study conducted by the Town's traffic consultant examined a worst case scenario (i.e., assuming that construction of the proposed parking facility would make Westchester County Airport more attractive to travelers, thus potentially adding an overall increase to traffic in the area), which determined that the proposed parking facility could add approximately 220 vehicle trips during the weekday AM and PM peak hours on area roads, including 18 shuttle vans/buses traveling to and from the terminal, that would result in an impact on area roadways and would require mitigation. It is the opinion of the Lead Agency that the Proposed Action will cause an increase in traffic over time and that mitigation should be provided to address this potential increase in traffic. In response to the more conservative worst case analysis conducted by the Town's traffic consultant and the opinion of the Lead Agency, the Applicant's traffic consultant in consultation with the traffic consultant for the Town of North Castle, NYSDOT, and the Westchester County DPW developed an improvement plan for the intersections of Airport Road at Route 120 and the I-684 ramps (see Figure 1 of **Appendix H**) to improve overall



traffic flow and mitigate traffic impacts that would occur under the worst case scenario.

**Comment 13-65:** The New York City Environmental Quality Review (CEQR) Technical Manual establishes a standard for determining whether an intersection would be “significantly impacted” by traffic from a project and require mitigation. As the CEQR Manual notes, LOS F describes unacceptable, failing conditions: “LOS F typically describes ever increasing delays as queues begin to form. This is considered to be unacceptable to most drivers. This condition often occurs with oversaturation, i.e., when arrival flow rates exceed the capacity of the intersection.”

The CEOR Technical Manual establishes that a three (3) second delay increase at an existing LOS F intersection poses a significant impact that must be mitigated. (See *CEQR Technical Manual* at 16-53 (stating that at signalized intersections, “[f]or a lane group with LOS F under the No-Action condition, an increase in projected delay of 3.0 or more seconds should be considered significant...For unsignalized intersections the same criteria as for signalized intersections would apply.”)

The requisite mitigation would, at a minimum, compel the Applicant to bring conditions at the three LOS F intersections to within 3 seconds of the No-Build condition. The CEOR Manual establishes that appropriate mitigation requires that “Action-with-Mitigation” condition produces insignificant LOS degradation as compared to the “No-Action” condition. A 3 second delay at an LOS F intersection is deemed significant. Thus, mitigation must make the “build” condition have an insignificant impact (i.e., less than 3 seconds). (Richard J. Lippes, 5/31/11)

**Response 13-65:** See Response 13-3. It should be noted that this project is not located within the five boroughs of New York City. Thus, the methodology noted by the commenter is not applicable for this project.

**Comment 13-66:** The DEIS simply fails to analyze or propose adequate mitigation of these conditions and is therefore deficient. These omissions make it impossible for SEQRA review under the hard look standard. The project's significant adverse traffic impacts are a critical defect. SEQRA requires that the DEIS explore all means necessary to mitigate a project's significant adverse impacts to the maximum extent practicable. See 6 NYCRR 617.11(d). (Richard J. Lippes, 5/31/11)

**Response 13-66:** See Response 13-2.

- Comment 13-67:** The Applicant should provide a description of the newly operating SUNY Purchase Park and Fly facility. The Applicant should also describe the total number of cars that are served by the Purchase Park and Fly facility. In addition, the Applicant should indicate how the operation of the Purchase Park and Fly would or would not impact the demand for Park Place. It is recommended that the Planning Board require the preparation of a parking demand study that includes the existing on-site airport parking, the Purchase Park and Fly facility and the proposed Park Place project (also recommended by the FAA). (Adam Kaufman, 6/1/11)
- Response 13-67:** See Response 13-4. A full copy of the parking study is provided in the **Appendix E**.
- Comment 13-68:** The document should inventory and discuss the impact of other parking and shuttle services (i.e., SUNY Purchase) which presently supplement on-site parking demand at the airport. (Kellard Sessions, 6/1/11)
- Response 13-68:** See Response 13-4. A full copy of the parking study is provided in the **Appendix E**.
- Comment 13-69:** The existing parking structure at Westchester County Airport provides 1,200 parking spaces. An estimated 200 additional vehicles may be parked elsewhere on airport property, and an additional 500 parking spaces are available at nearby SUNY/Purchase University, with shuttle-bus service. Considering these facts, we question the need for such a large parking project as the Applicant's propose. The Conservation Board suggests that the need for such a large facility should be substantiated prior to any consideration for the project. (North Castle Conservation Board, 6/1/11)
- Response 13-69:** See Response 13-4. A full copy of the parking study is provided in the **Appendix E**.
- Comment 13-70:** The DEIS also irrationally asserts that the Project would actually result in a reduction of vehicle trips to and from the airport. As the Town Traffic Consultant's analysis recognizes, however, the Project would actually exacerbate existing "F" Levels of Service ("LOS") at three critical intersections, with potential adverse impacts spilling onto I-684. No mitigation is discussed for these impacts. (Michael D. Zarin and Daniel M. Richmond, 6/1/11)
- Response 13-70:** The DEIS concluded that the project would result in an overall reduction in the number of vehicle trips across the traffic network and that there would be no traffic impacts that would require mitigation. The

Town Traffic Consultant's analysis, which is more conservative than the DEIS analysis by adding 200 vehicle trips to the traffic network, concludes that the traffic generated by the proposed parking garage will not significantly impact the overall study area traffic operations.

**Comment 13-71:** The DEIS Fails To Substantiate The Need for 1,450 More Parking Spaces.

SEQRA's implementing regulations require that the lead agency take a hard look at "the proposed action, its purpose [and] public need and benefits, including social and economic considerations." 6 N.Y.C.R.R. § 617.9[b][5][i]. Economic need and adverse environmental impacts." See e.g., In the Matter of the Application of Al Turi Landfill, Inc., DEC Application No. 3-3330-0002-21, 1998 WL 1670484, (Administrative Law Judge Ruling on Party Status/Issues, June 19, 1998) (Stating that "'need' is typically considered to be a SEQRA issue, to be weighed against unavoidable or unmitigatable adverse environmental impacts...[but may also be considered] outside the SEQRA context, in relation to a policy judgement by DEC); In the Matter of the Preble Aggregate, INC., DEC Project No. 7-1136-0007/00001, 1995 WL 582480, (Comm. Interim Decision, Sept. 7, 1995) (upholding ALJ's ruling in mined land reclamation permit proceeding, that the "loss of prime agricultural land versus the need for gravel" is a valid issue for adjudication, and directing ALJ to develop record on same.) The relevancy of making a showing of a project's fulfillment of public need increases proportionate to the degree of adverse environmental impacts involved in the proposed action.

Since this Project has the potential for significant, irreversible adverse impacts, including to the Kensico Reservoir, particularly careful scrutiny must be afforded to the Applicant's unsubstantiated claim that 1,450 more parking spaces are needed to meet existing Airport demand. The Applicant, at a minimum, should be compelled to produce market studies supporting its contention that 1,450 additional parking spaces are needed for Westchester Airport. Moreover, the DEIS must factor in the approximately 500 parking spaces that have recently become available at the State University of New York at Purchase. (Michael D. Zarin and Michael M. Richmond, 6/1/11)

**Response 13-71:** See Response 13-4. A full copy of the parking study is provided in the **Appendix E**.

**Comment 13-72:** A major flaw in the DEIS, and with the proposed Project in general, is the DEIS's assertion that the Project would actually result in a reduction of vehicle trips to and from the airport. (DEIS at 13-3.) The Town

Traffic Consultant does not accept this contention. The Town Traffic Consultant appropriately notes that "the proposed Garage may increase demand and result in travelers now having the option of driving to the Airport for flights." (Letter to Adam Kaufman, Town Planner, from Michael A. Galante, Frederick P. Clarke Assocs., dated Dec. 9, 2010 at 8 (copy of letter included within DEIS Appendix C).) The Town's traffic consultant thus concludes that "the proposed facility could generate 200 new vehicle trips, plus 18 shuttle bus trip ends and 195 vehicle trip ends plus 18 shuttle bus trip ends during weekday morning and afternoon peak hours, respectively." (Id.) (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 13-72:** See Response 13-70.

**Comment 13-73:** Based on the Town Consultant's projections, the Project would exacerbate existing "F" LOS levels at three critical intersections:

- Airport Road and Route 120;
- Airport Road and the 1-684 northbound ramps, and
- Airport Road and the 1-684 southbound ramps.

This is consistent with the Town's Comprehensive Plan, which states that the "Route 120 at Airport Access Road/1-684 Interchange 2" suffers from "[l]imited traffic capacity - high traffic volume." (Comprehensive Plan at III-76.) (Michael D. Zarin and Daniel M. Richmond, 6/1/11, Adam Kaufman, 8/1/14)

**Response 13-73:** The proposed improvements to NYS Route 120 and Airport Road are summarized in Response 13-2. The Applicant's traffic study concluded that the proposed project would result in an overall reduction in the number of vehicle trips across the traffic network, an overall improvement in Level of Service (LOS), and would not result in impacts to the traffic network. The study conducted by the Town's traffic consultant examined a worst case scenario (i.e., assuming that construction of the proposed parking facility could make Westchester County Airport more attractive to travelers, thus potentially adding an overall increase to traffic in the area), which determined that the proposed parking facility could add approximately 220 vehicle trips during the weekday AM and PM peak hours on area roads, including 18 shuttle vans/buses traveling to and from the terminal, that would result in an impact on area roadways and would require mitigation. It is the opinion of the Lead Agency that the Proposed Action will cause an increase in traffic over time and that mitigation should be provided to address this potential increase in traffic. In response to the more conservative worst case analysis conducted by the Town's traffic

consultant and the opinion of the Lead Agency, the Applicant's traffic consultant in consultation with the traffic consultant for the Town of North Castle, NYSDOT, and the Westchester County DPW developed an improvement plan for the intersections of Airport Road at Route 120 and the I-684 ramps (see Figure 1 of **Appendix H**) to improve overall traffic flow and mitigate traffic impacts that would occur under the worst case scenario.

**Comment 13-74:** The New York City Environmental Quality Review (CEQR) Technical Manual (May 2010) (the "CEQR Manual") provides the established standard for determining whether an intersection would be "significantly impacted" by traffic from a project, and hence require mitigation. 1o As the CEQR Manual notes, LOS F describes unacceptable, failing conditions. (See CEQR Manual, at 16-28 ("LOS F typically describes ever increasing delays as queues begin to form. This is considered to be unacceptable to most drivers. This condition often occurs with oversaturation, i.e., when arrival flow rates exceed the capacity of the intersection.").)

The CEQR Manual is intended to apply to the wide range of planning environments in New York City, ranging from the urban in Manhattan to the suburban in the outer Boroughs. As such, its guidance is clearly relevant to the traffic conditions around the Airport. (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 13-74:** See Response 13-3. It should be noted that this project is not located within the five boroughs of New York City. Consequently, the analysis for this project is not subject to CEQR Manual impact criteria.

**Comment 13-75:** The CEQR Manual establishes that a three (3) second delay increase at an existing LOS F intersection poses a significant impact that must be mitigated. (See *CEQR Technical Manual* at 16-53 (stating that at signalized intersections, "[f]or a lane group with LOS F under the No-Action condition, an increase in projected delay of 3.0 or more seconds should be considered significant. ... For unsignalized intersections the same criteria as for signalized intersections would apply."))

The requisite mitigation would, at a minimum, compel the Applicant to bring conditions with its Project at the three LOS F intersections to within 3 seconds of the No-Build condition. The CEQR Manual establishes that appropriate mitigation requires that "Action-with-Mitigation" condition produces in insignificant LOS degradation as compared to the "No-Action" condition. (See CEQR Manual at 16-66 ("When considering traffic mitigation, the impact is considered fully mitigated when the resulting LOS degradation under the Action-with-

Mitigation condition compared to the No-Action condition is no longer deemed significant following the impact criteria as described in Section 420."). Again, a 3 second delay at an LOS F intersection is deemed significant. Accordingly, mitigation must reduce the impact of the build condition to less than an additional 3 second delay. (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 13-75:** See Response 13-3. It should be noted that this project is not located within the five boroughs of New York City. Consequently, the analysis for this project is not subject to CEQR Manual impact criteria.

**Comment 13-76:** The DEIS's failure to rationally address, let alone mitigate, the Project's significant adverse traffic impacts is, respectfully, a critical defect. See *Chatam Towers, Inc. v. Bloomberg*, 6 Misc.3d 814, 793 N.Y.S.2d 670, 679 (Sup. Ct. N.Y. Co. 2004) (overturning, for lack of the requisite "hard look," SEQRA determination that "fail[ed] to address the potential traffic impacts on the streets most affected by" the proposed action, noting that "[t]he result, is an arguably flawed study, as the areas most impacted by the closures, appear to have never been reviewed"); *Board of Cooperative Educ. Servs. v. Town of Colonie*, 268 A.D.2d 838, 702 N.Y.S.2d 219, 222-23 (3d Dept. 2000) (overturning SEQRA analysis that "baldly assert[ ed]" that project would have no environmental impacts without addressing concerns that increased use of access road for project would create traffic problems and associated threat to public safety). (Michael D. Zarin and Daniel M. Richmond, 6/1/11, Adam Kaufman, 8/1/14)

**Response 13-76:** See Response 13-2. The DEIS concluded that the project would result in an overall reduction in the number of vehicle trips across the traffic network and that there would be no traffic impacts that would require mitigation. The Town Traffic Consultant's analysis, which is more conservative than the DEIS analysis by adding 200 vehicle trips to the traffic network, concludes that the traffic generated by the proposed parking garage would result in an impact on area roadways and would require mitigation. It is the opinion of the Lead Agency that the Proposed Action will cause an increase in traffic over time and that mitigation should be provided to address this potential increase in traffic. In response to the more conservative analysis conducted by the Town's traffic consultant and the opinion of the Lead Agency, the Applicant's traffic consultant in consultation with the traffic consultant for the Town of North Castle, NYSDOT, and the Westchester DPW developed an improvement plan for the intersections of Airport Road at Route 120 and the I-684 ramps (see Figure 1 of **Appendix H**) to improve overall traffic flow and mitigate traffic impacts that would occur under the more conservative scenario.

**Comment 13-77:** To the extent the Applicant would contend that it has no obligation to address its Project's adverse impacts on the I-684 Interchange with Airport Road because this is a regional problem and/or mitigation would be costly, we are aware of no support for such a proposition. To the contrary, the essential thrust of SEQRA's EIS requirement is that Agencies explore all means necessary to mitigate a Project's significant adverse impacts to the maximum extent practicable. See 6 N.Y.C.R.R. § 617.11 (d). (Michael D. Zarin and Daniel M. Richmond, 6/1/11, Adam Kaufman)

**Response 13-77:** See Response 13-2. The DEIS concluded that the project would result in an overall reduction in the number of vehicle trips across the traffic network and that there would be no traffic impacts that would require mitigation. The Town Traffic Consultant's analysis, which is more conservative than the DEIS analysis by adding 200 vehicle trips to the traffic network, concludes that the traffic generated by the proposed parking garage would result in an impact on area roadways and would require mitigation. It is the opinion of the Lead Agency that the Proposed Action will cause an increase in traffic over time and that mitigation should be provided to address this potential increase in traffic. In response to the more conservative analysis conducted by the Town's traffic consultant and the opinion of the Lead Agency, the Applicant's traffic consultant in consultation with the traffic consultant for the Town of North Castle, NYSDOT, and the Westchester DPW developed an improvement plan for the intersections of Airport Road at Route 120 and the I-684 ramps (see Figure 1 of **Appendix H**) to improve overall traffic flow and mitigate traffic impacts that would occur under the more conservative scenario.

**Comment 13-78:** Related to this, given that the Project would exacerbate queuing problems onto I-684, the Lead Agency should contact the State Department of Transportation to ascertain its insight on the Project's potential impacts prior to closing the SEQRA process. The DEIS also does not consider whether the Project would cause a spillback from the facility itself onto New King Street, which could also impact traffic on Airport Road. There is no analysis of how fast the proposed automated parking facility could process cars, particularly with multiple passengers and baggage. There is, thus, no analysis of whether this automated facility could timely process incoming traffic during peak hours. (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 13-78:** The proposed improvements to NYS Route 120 and Airport Road are summarized in Response 13-2. The vehicle processing times of the automated parking facility are summarized in response 13-10.

**Comment 13-79:** The traffic patterns and volumes in the vicinity of the facility will be permanently changed with its construction. While the impact on Greenwich appears not to be significant, we are concerned that it may cause future traffic volume to grow as individuals use King Street to access the proposed parking facility via Rye Lake Ave. and Gateway Lane. We believe this change in habits is likely and should be given consideration in your review of this structure. (Peter J. Tesei, 5/31/11)

**Response 13-79:** See Response 13-2. The traffic study provided in the DEIS concluded that the proposed project would result in an overall reduction in the number of vehicle trips across the traffic network, an overall improvement in Level of Service (LOS), and would not result in adverse impacts to the traffic network.

**Comment 13-80:** The noise from the site during construction and once it is in operation will be significant. Residences within Greenwich will of course be impacted by both of these periods. The background ambient noise caused by cars going to and from the facility and the vans used to shuttle people to and from the airport will be a new unpleasant reality for those individuals who are unfortunate enough to live in the vicinity. While the FEIS cites the maximum decibel levels can be expected as 69 dB for nearby residents in Greenwich, the ongoing drone of vehicle traffic will degrade the quality of life for numerous residents to this already busy and noisy area. (Peter J. Tesei, 5/31/11)

**Response 13-80:** See Response 13-2. The traffic study provided in the DEIS concluded that the proposed project will result in an overall reduction in the number of vehicle trips across the traffic network, an overall improvement in Level of Service (LOS), and would not result in adverse impacts to the traffic network.

**Comment 13-81:** However, the supplemental transportation study, which was done by the Town's traffic consultant, looked at a case where 200 cars could be added to the airport, which is a function of growth, increase demand, and we agree that that should be the level that should be analyzed. (Adler, 5/2/11, Adam Kaufman, 8/1/14)

**Response 13-81:** See Response 13-2. As concluded in the Town's consultant's study, the traffic generated by the proposed parking garage could result in an impact on area roadways and would require mitigation. It is the opinion of the Lead Agency that the Proposed Action could cause an increase in traffic over time and that mitigation should be provided to address this potential increase in traffic. In response to the more conservative analysis conducted by the Town's traffic consultant and the opinion of the Lead Agency, the Applicant's traffic consultant in consultation with



the traffic consultant for the Town of North Castle, NYSDOT, and the Westchester DPW developed an improvement plan for the intersections of Airport Road at Route 120 and the I-684 ramps (see Figure 1 of **Appendix H**) to improve overall traffic flow and mitigate traffic impacts that would occur under the more conservative scenario.

### **3.14 AIR QUALITY AND GREENHOUSE GAS EMISSIONS**

NO COMMENTS RECEIVED

### **3.15 NOISE**

NO COMMENTS RECEIVED

### **3.16 HAZARDOUS MATERIALS**

**Comment 16-1:** While it is noted that the current electrical transformer located on the north side of the building was installed in 1997 and does not contain PCBs, the previous transformer(s) may have contained PCBs. Soils near the transformer should be characterized for proper reuse and/or off-site disposal. (NYSDOH, 4/27/11)

**Response 16-1:** Prior to site development, a Phase II subsurface investigation will be completed and will include laboratory analysis of soil samples to fully characterize soils on the sites, including soils near the former transformer(s). (See also Response 7-3). The assessment will include a review of the history and use of transformers at the site. Any use scenario with a potential for PCB contamination would be identified as an area of concern. Identified areas of concern will be addressed prior to construction and, if necessary, the collection and analysis of soil and/or groundwater samples would be completed to fulfill the due diligence requirements. The results of the investigation will be used to prepare a Remedial Action Work Plan (RAWP), which will identify soil/fill handling and disposal requirements, and include contingency plans to address any unexpectedly encountered areas of fill or contamination. Based on the anticipated excavation plan, the majority of the on-site fill material will be removed from the site as part of site redevelopment. Any fill material identified outside of the proposed excavation areas that exceeds Commercial or Groundwater Protection Soil Cleanup Objectives (SCOs) as defined by NYSDEC Part 375-6, or that meets the definition of grossly contaminated media as defined in NYSDEC DER-10, will also be removed. In addition, any remaining fill material will be isolated beneath a ground surface composition consisting of a cover of soil and landscaping. The final surface composition will prevent exposure to and migration of the isolated fill material.

See also Response 16-4 (below) regarding the planned actions to characterize the fill area(s) and prepare a plan to address any contamination areas if present. At this time, based on preliminary soil testing conducted by MTA in 2008, no areas of contamination are known. The applicant proposes to perform additional Phase 2 soil testing during site plan review. The Planning Board will determine whether this time line is acceptable.

**Comment 16-2:** Appendix K – Phase 1 Environmental Site Assessment, Section 4.1.2. While it is noted that an identified Voluntary Cleanup Program (VCP) site (V004993) exists at the proposed project location, the report incorrectly states that there are no NYSDEC Inactive Hazardous Waste Disposal sites located within a mile of the site. In fact, NYSDEC Inactive Hazardous Waste Registry Site #360037 (Former Texaco Hangar) is located on the Westchester Airport property and the report should be revised to reflect this information. Additionally, a second VCP site also exists on the Airport property, VCP #V006113 (Hangar B), and this information should also be reflected in the report. (NYSDOH, 4/27/11)

**Response 16-2:** An updated Phase I ESA is scheduled to be completed prior to the start of construction and will include all database listings and search radii in accordance with ASTM E1527-13.

**Comment 16-3:** Soil surrounding the 1,000 gallon underground storage tank (UST) should be tested since a stockpile sample was collected not a post excavation/documentation sample when the former 1,500 gallon UST was removed. (NYSDOH, 4/27/11)

**Response 16-3:** The Demolition Plan (Drawing C-3) includes removal of all existing USTs, which would be completed in accordance with all local, state, and federal regulations, including the collection and analysis of post-excavation endpoint closure samples.

**Comment 16-4:** The FEIS should address why all contaminated soils would not be removed from the site. A discussion of the potential impacts of contaminated soils remaining should be provided. The FEIS and exhibits should be revised to indicate areas where contaminated fill would be expected to remain. (Kellard Sessions, 6/1/11)

**Response 16-4:** During an October 2008 geotechnical investigation at the project Site, Melick-Tully and Associates, PC (MTA) reported that fill material was encountered in three soil borings (TB-4, TB-5, and TB-6) to depths of approximately 6 to 9 feet below grade. MTA also noted petroleum-like odors in soil samples collected from 1 to 7 feet below grade at boring

TB-4. Laboratory analysis of two soil samples collected from TB-4 (at 2 to 4 and 5 to 7 feet below grade) did not detect volatile organic compounds (VOCs) or semivolatile organic compounds (SVOCs) in the samples. The applicant proposes to perform additional Phase 2 soil testing during site plan review. The Planning Board will determine whether this time line is acceptable.

As part of Phase 2 soil testing, the fill area identified during the geotechnical investigation will be further delineated and characterized prior to excavation for the new structure, and managed in accordance with NYSDEC Part 360 Solid Waste Regulations during construction. The Phase II subsurface investigation will include laboratory analysis of soil samples to fully characterize the fill area. The results of the investigation will be used to prepare a Remedial Action Work Plan (RAWP), which will identify soil/fill handling and disposal requirements, and include contingency plans to address any unexpectedly encountered areas of fill or contamination. The anticipated excavation plan requires that the majority of the on-site fill material will be removed from the site as part of site redevelopment. Any fill material identified outside of the proposed excavation areas that exceeds Commercial or Groundwater Protection Soil Cleanup Objectives (SCOs) as defined by NYSDEC Part 375-6, or that meets the definition of grossly contaminated media as defined in NYSDEC DER-10, will also be removed. In addition, any remaining fill material will be isolated beneath a ground surface composition consisting of a cover of soil and landscaping. The final surface composition will prevent exposure to and migration of the isolated fill material.

**Comment 16-5:** The FEIS should discuss the potential for contaminated fill extending beyond area shown, as well as potential project impacts associated with such condition. (Kellard Sessions, 6/1/11)

**Response 16-5:** Fill material would have the potential to migrate beyond the identified area during the excavation phase of the project. However, the Erosion and Sediment Control Plan includes measures to prevent the fill material from migrating from the identified areas. The measures include silt fencing, perimeter dykes and swales, and wetting of soil to minimize dust. These measures are discussed in detail in DEIS Chapter 7, "Geography, Soils, Topography, and Slopes," and Chapter 8, "Stormwater Management." See Comment 16-4 for measures to address any unknown fill area encountered during the excavation work.

**Comment 16-6:** FEIS figures should identify the location of borings with contaminants. (Kellard Sessions, 6/1/11)

**Response 16-6:** See Response 16-4. Chemical testing was not completed during the geotechnical investigation and soil quality, from a contamination perspective, is not known at this time. Soil characterization sampling would be completed prior to site development to determine if contamination exists, and the appropriate soil handling requirements.

**Comment 16-7:** Locations for contaminated fill stock piles should be provided on the plans. Contaminated fill removal should not be limited to petroleum contaminated but all contaminated soils. The FEIS should provide a discussion of mitigation for exposed contaminated soils. Describe potential impacts of exposed contaminated soils to vegetation, habitat, wetlands and watercourses. The plans and text should be expanded to address the storage of exposed contaminated soils in a location outside the buffer. (Kellard Sessions, 6/1/11)

**Response 16-7:** See Response 16-4 above. The Erosion and Sediment Control Plan (Drawing C-8) includes the temporary soil stockpile location. All excavated soil would be stockpiled in the identified area and the proposed erosion and sediment control measures would be utilized to minimize migration of stockpiled material. As shown on Drawing C-8, the temporary stockpile area would be located outside any wetland and watercourse buffer areas. Stockpiles within the temporary stockpile location would be separated and classified based on the use objective (e.g. off-site disposal, on-site reuse). See Responses 17-4, 17-5, and 17-6.

**Comment 16-8:** Identify the type and location of fuel associated with the proposed emergency generator. Describe the potential impacts and mitigation associated with the proposed fuel storage in regulated area. (Kellard Sessions, 6/1/11)

**Response 16-8:** The make and model of the generator is not known at this time. It is anticipated that the generator would use diesel fuel. Fuel for the generator would be stored in an aboveground sub-base storage tank (AST) located under the generator. The fuel storage and delivery system would include spill prevention measures such as double walled tank design, spill containment and drainage control structures. In the unlikely event of a spill, emergency response procedures will be included in a facility operations plan that will be prepared prior to starting business operations. An operation and maintenance schedule would include a plan for periodic testing and inspections. The operation, maintenance, and equipment inspections will be completed in accordance with the manufacturer's recommendations and requirements. With the appropriate maintenance and spill prevention measures in place, the

proposed project would not result in significant impacts associated with fuel storage and operation of the generator. See also response to Comment 9-30, which addresses the O&M plan and fuel storage/spill prevention.

### **3.17 CONSTRUCTION**

**Comment 17-1:** The site plan shows that stormwater management practices are proposed within 100 feet of a Town-regulated wetland buffer. This is a practice that DEP consistently discourages, as construction in the buffer may impact the natural water quality benefit of the buffer. It is recommended that the applicant choose an alternative that avoids all impacts to the wetland and wetland buffer. If not, guidelines for construction activity in the buffer should be developed to minimize impacts. Similarly, significant changes in landscape are proposed within 300 feet of the NYC designated reservoir stem to construct stormwater management practices. While this is allowed under Watershed Regulations, the impacts to the reservoir stem associated with disturbance of this buffer and installation of stormwater management practices should be evaluated. (NYCDEP, 5/23/11)

**Response 17-1:** It should be noted that the building footprint of the proposed facility has been reduced from approximately 51,000 square feet to 44,812 square feet in order to avoid disturbance within the Town-delineated wetland, which also results in an increased separation distance to the USACE-regulated wetland. A 10-foot buffer from the wetland boundary is provided as well. Additional alternatives with little or no impacts to the wetland buffer are analyzed in Chapter 18 of the DEIS. While some of these alternatives reduced environmental impacts, they also reduced benefits of the proposed project to a level that would render these alternatives impractical, in the Applicant's opinion.

In order to develop adequate stormwater management practices that would treat runoff from both the project site as well as an adjacent site (both of which are currently developed and untreated), earthwork would be required within the 300-foot NYCDEP-regulated reservoir stem setback and within the 100-foot Town regulated wetland/watercourse buffer. Although vegetation and habitat would be removed, as discussed in the DEIS, the affected area does not exhibit any unique or sensitive floral or faunal characteristics. Any disturbed area would be revegetated pursuant to an extensive landscape plan that would enhance floral and faunal diversity onsite, which would help to improve ecological functions onsite and enhance water quality. There would also be regrading within the 300-foot NYSDEC setback and 100-foot Town wetland/watercourse buffer to construct the stormwater management

system; however, the majority of the proposed grading would be in areas that are currently lawn or have been previously disturbed for development.

The sequence of construction and erosion and sediment control practices are designed to prevent and avoid impacts to the reservoir and its contributory watercourses. The Town of North Castle, as Lead Agency, typically discourages stormwater infrastructure within the Town-regulated wetland buffer.

**Comment 17-2:** The proposed action is taking place in soils where seasonal wetness and high groundwater are a great concern (i.e. Ridgebury and Woodbridge loams). Although erosion and sedimentation measures are shown on the plans, there does not appear to be sufficient information to verify that potential impacts can be avoided. For example, it is unclear whether or not seasonal ground water will be intersected while excavating for the parking garage on the southwest side. A detailed dewatering procedure should be included. Impacts of dewatering excavations or groundwater leaching from cut sections, construction during freeze/thaw conditions, etc., should be fully addressed in the DEIS. (NYCDEP, 5/23/11)

**Response 17-2:** Groundwater would likely be encountered during the excavation on the eastern portion of the proposed building. The proposed bottom elevation at the western portion would meet the existing grades. Therefore a significant amount of cut is not anticipated at the western portion of the site. Dewatering procedures would include the installation of a sump pit. Groundwater would then be conveyed to the portable sediment tank and filtering system ultimately discharging into one of the temporary sediment basins. The installation of two temporary sediment basins within the drainage easement is sufficient to deal with both stormwater runoff from site development as well as the temporary storage and sedimentation of dewatering water. These details will be coordinated with the geotechnical engineer as the building plan is finalized, to be developed and provided during Site Plan Review.

**Comment 17-3:** It should be noted that the NYSDEC General Permit covers discharges associated with construction activities that result in disturbance equal to or greater than 5000 sq. ft. of land. The statement on page 17-3 should be corrected. (NYCDEP, 5/23/11)

**Response 17-3:** Comment noted.

**Comment 17-4:** Although general sequencing has been included, a more detailed sequencing plan is critical to effective mitigation of potential water quality impacts resulting from the proposed construction. Given the

importance of construction sequencing to the effectiveness of the erosion and sediment control plan, additional details should be provided within the context of SEQRA in order to evaluate if potential water quality impacts will be adequately mitigated. (NYCDEP, 5/23/11)

**Response 17-4:**

A revised construction sequence is provided below:

1. A pre-construction meeting shall be held with representatives of NYCDEP, certified professional trained contractor, the town, the resident engineer, and the contractor prior to any site disturbance.
2. Prior to clearing and grubbing activities the contractor shall install stabilized construction entrance/exit and construction access area as shown on the plan.
3. Orange construction fence shall be installed along the limit of disturbance line. A sign will be posted along the fence indicating that it would be a violation to proceed beyond the limits of construction.
4. Install silt fence as indicated on the erosion and sediment control plan.
5. The existing subsurface septic system shall be removed in accordance with WCDOH and NYSDEC requirements.
6. The existing well will be capped and decommissioned in accordance with the WCDOH and NYSDOH procedures.
7. Removal of all existing underground storage tanks (USTs) would be completed in accordance with all local, state, and federal regulations, including the collection and analysis of post-excavation endpoint closure samples.
8. Disconnect all utility connections to existing one story building and remove building and associated appurtenances in accordance with demolition plan. Pavement demolition shall not be performed until Temporary Sediment Basins are installed. If dewatering is necessary for pond construction, Contractor to implement dewatering in accordance with the Contract Specifications.
9. Clear and grub in area of proposed temporary sediment basins. Any topsoil shall be stockpiled on-site as shown on drawing.
10. Soil stockpile should be located on grassy areas in accordance with detail. Apply seed and NYSDOT approved Type C soil Stabilizer.
11. Rough grade proposed temporary sediment basin and associated stormwater structures, including outlet pipe and end section. Install 6" of topsoil, seed, and stabilize with NYSDOT approved Type B or C soil stabilizer.
12. Install perimeter dike/swale 1 and 2 starting at the temporary sediment basins as shown on plan. These swales should be

stabilized with RECP. Runoff from the proposed work area should be conveyed to the Temporary Sediment Basins.

13. Begin clearing and grubbing in the area of the proposed building footprint. Stockpile topsoil material in designated area as shown on plan. All other material should be removed from the site as soon as practicable. Install silt fence around the stockpile. Apply seed and NYSDOT approved Type C soil stabilizer.
14. Begin excavation for the lower level and building foundation.
15. Start building construction and associated driveway and stormwater infrastructure, including catch basins, manholes, and flow splitter/diversion structure.
16. Install all necessary utility connections including water service, sanitary force main, electric and telecommunications.
17. Install inlet protection at all catch basins and inlet structures.
18. Once building and paved surfaces are complete, complete final grading in adjacent areas. The Contractor should implement the Soil Restoration in accordance with the NYSDEC requirements and Contract Specifications. Once Soil Restoration is completed, stabilize with NYSDOT approved Type B or C Soil Stabilizer.
19. Install a plug in the outlet to the sedimentation basin. Complete final grading and retrofit the outlet control structures within the sedimentation basin and the surface sand filter so that all of the inlets and outlets are in accordance with the details. Install vegetation in accordance with landscape plan.
20. Once the surface sand filter is stabilized (greater than 80 percent growth) the plug should be removed so that stormwater flow can be directed to the basin.
21. Stormwater runoff will be temporarily bypassed around Pond W-4 so that final grading and planting can be completed within the pond.
22. Once final grade is achieved in proposed landscaped areas temporary seeding and mulching shall be done immediately.
23. The construction trail and any other related equipment shall be removed from the site.

**Comment 17-5:**

The overall cut and fill estimates for the project are provided in the DEIS; however, no interim cut and fill balances are provided. In addition, limited stockpile areas are shown on the plan. The intensity of construction proposed within the site will limit area available for stockpiling, staging, etc. In order to avoid impacts, more detail must be provided on how excavation, testing for hazardous content, and stockpiling can be accommodated within the limited space available. (NYCDEP, 5/23/11)



- Response 17-5:** The proposed project would result in an excess of excavated material which would be disposed off-site, due to the limited size of the project parcel and available room for stockpiling. A temporary stockpile, as shown on the Erosion and Sediment Control Plan (Drawing C-8), would be set up until transported off-site. Off-site disposal would be completed in conjunction with the excavation work to allow for proper management of the stockpiled soil. Testing for hazardous content would be conducted during a subsurface investigation that is planned to be completed prior to site development. This testing would indicate the proper handling requirements. Any contaminated materials would be disposed in accordance with all applicable local, state, and federal regulations.
- Comment 17-6:** The on-site areas available for staging material storage appear limited. The Sediment and Erosion Plan should be expanded to identify the features, as well as expand the detail of construction sequencing, soil testing and stock pile locations. Will the adjacent property be used for staging/access of material storage or parking? (Kellard Sessions, 6/1/11)
- Response 17-6:** See Responses 17-4 and 17-5. No adjacent properties or offsite locations will be used for stockpiling material. Due to the limited space on site, the excess material will be trucked away immediately during excavation work. The construction staging area will have to be mobilized accordingly to accommodate the construction phases. Such construction phase will require detailed coordination with other parties involved and should be deferred to Site Plan approval review. The FEIS has been expanded to include off-site disposal of excess material, including soil manifest reports, proposed disposal routes, hours of operation and expected trip generation.
- Comment 17-7:** The text and construction sequencing should be expanded to address the removal of the existing oil tanks. (Kellard Sessions, 6/1/11)
- Response 17-7:** The Demolition Plan (Drawing C-3) includes removal of all existing underground storage tanks (USTs), which would be completed in accordance with all local, state, and federal regulations, including the collection and analysis of post-excavation endpoint closure samples. A note will be included on the construction drawings.
- Comment 17-8:** As the existing well will be abandoned, the water source to be utilized during construction to minimize dust should be identified. (Kellard Sessions, 6/1/11)
- Response 17-8:** The new well would be installed prior to decommissioning the existing well to maintain a constant water supply. Alternatively, dust palliatives

could be utilized in accordance with the NYSDOT list of approved manufacturers.<sup>1</sup> Water for dust control will be transported to the site.

**Comment 17-9:** The document should be revised to incorporate installation and abandonment of all utilities into the construction sequence. (Kellard Sessions, 6/1/11)

**Response 17-9:** See Response 17-4.

**Comment 17-10:** The FEIS should address construction of new utilities proposed within existing driveway. The discussion should include the rationale and impacts of milling rather than completely remove the existing pavement. (Kellard Sessions, 6/1/11)

**Response 17-10:** The proposed work would call for only two utility trenches; one for the proposed sanitary force main and the other for the electrical and telecommunication equipment. Providing only trench disturbance would help to minimize disturbance within the watercourse and buffer areas as well as reduce disturbance to the existing culvert which crosses beneath the existing driveway. The existing pavement will be removed instead of milling and resurfacing. See also response to Comment 9-26, which addresses the removal of existing pavement.

**Comment 17-11:** The FEIS and plans (Sheet C-1, Note 22A) should address the procedure and timing for testing for chemicals pursuant to New York State Department of Environmental Conservation (NYSDEC) requirements. (Kellard Sessions, 6/1/11)

**Response 17-11:** The approach for completing the characterization of fill materials is summarized in Chapter 16, "Hazardous Materials," of the DEIS as well as responses in Section 16 of this Chapter of this FEIS. These procedures will be further detailed in a site investigation work plan that will be prepared prior to conducting the investigation, which would occur prior to construction. The investigation scope would be based on the procedures established under NYSDEC DER-10. The specific timing is dependent on site approvals and will be fine-tuned as Site Plan review and the design phase progress. See also responses to Comments 16-1 and 16-4 regarding the proposed characterization of fill material..

**Comment 17-12:** The FEIS should address the sequencing of the removal of the trailer and abandonment of the well & SSDS. (Kellard Sessions, 6/1/11)

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<sup>1</sup> NYSDOT-approved dust palliatives can be found at <https://www.nysdot.gov/divisions/engineering/technical-services/technical-services-repository/alme/lan.html>

- Response 17-12:** See Response 17-4.
- Comment 17-13:** Given the proximity of the building to the wetlands, the document and plans should address construction practices which avoid additional wetland impact associated with machinery/access, etc. (Kellard Sessions, 6/1/11)
- Response 17-13:** As described in Chapter 1 of this FEIS, the footprint of the proposed building has been reduced in size and has been located such that there is a minimum of ten feet of separation between the building wall and the existing Town-delineated wetland. As noted in Chapter 1, the USACE conducted a site inspection on June 1, 2011 as part of its jurisdictional determination (JD) and confirmed the wetland boundary previously delineated by the Applicant's representative, which was presented in the DEIS. However, the proposed project has been modified to respect the more restrictive Town-delineated wetland. Ten feet of clear space would provide sufficient space for access around the building during construction. It should be noted that a construction fence would be located at the edge of the limit of disturbance in order to clearly define the available work zone. The orange construction fence will be installed and will coincide with the limit of disturbance indicated on the Site Plans.
- Comment 17-14:** Where will construction-related employee parking occur? (Kellard Sessions, 6/1/11)
- Response 17-14:** Construction-related employee parking would occur offsite. The specific location has not yet been identified but would be determined as construction plans are finalized. Neighboring properties will likely be approached to provide a method of construction vehicle parking to avoid parking on New King Street. As these details develop, they would be provided to the Town.
- Comment 17-15:** Wash water from concrete trucks should be contained and not allowed to enter and adversely impact the environment. A concrete truck washout facility should be constructed on site, away from environmentally sensitive resources, such as water courses, wetlands, and wetland buffer areas. (Office of the Watershed Inspector General, 6/1/11)
- Response 17-15:** A facility to prevent concrete truck wash water from exiting the site will be provided.

**Comment 17-16:** The proposed construction footprint is probably undersized. A foundation grading plan is not included in the set of construction drawings C-1 through C-12. This drawing should be added to assure that the construction footprint stays within the proposed area of disturbance. (Office of the Watershed Inspector General, 6/1/11).

**Response 17-16:** The building footprint has been moved further from the limit-of-disturbance with the reduction in building size presented in the FEIS. A foundation grading plan will be provided in final construction documents presented during Site Plan Review.

**Comment 17-17:** Construction on this site will have an immense impact on the immediate area. The number of cars, trucks and large tractor trailer size vehicles will be significant. In addition to the normal level of contractor traffic that will be required, the removal of 25,000 cubic yards of soil and the delivery of an unknown quantity of concrete will make travel on New King Street an unpleasant experience for many months. (Peter J. Tesei, 5/31/11)

**Response 17-17:** See Response 17-4 and 17-5.

**Comment 17-18:** Air quality will be degraded during construction and will likely be poor or the foreseeable future due to the proposed use. Particulate matter from the necessary cut and fill on the site, the removal of 25,000 cubic yards of soil and the vehicle traffic to and from will result in poor air quality for a large area within this section of North Castle and a portion of Northeast Greenwich. Homes on King Street will be negatively impacted and matter will be blown into the nearby Kensico Reservoir. Once construction is complete the volume of traffic that a 1,450 parking structure represents will result in new particulate matter and exhaust from these vehicles replacing construction debris. This will be an ongoing, never ending, degradation to the quality of life to all homes in Greenwich near the site and is very troublesome. New King Street, parts of Route 102, and the nearby Kensico Reservoir will also be affected and this impact is not mitigated by any measures proposed by the developers. (P. Tesei, 5/31/11)

**Response 17-18:** Regarding air quality during construction, see Response 17-4. With regards to traffic impacts once construction is complete, as stated in Chapter 2, the DEIS concluded that the project could result in an overall reduction in the number of vehicle trips across the traffic network and that there would be no traffic impacts that would require mitigation. The Town Traffic Consultant's analysis, which is more conservative than the DEIS analysis by adding 200 vehicle trips to the traffic network, concluded that the traffic generated by the proposed parking garage

would not significantly impact the overall study area traffic operations, as mitigated.

**Comment 17-19:** Finally, during construction the site will of necessity disturb wetlands and the nearby water course. Drainage patterns will be altered due to the extensive cut and fill operations that are proposed. It should be expected that given the time period that will be required to build this facility that erosion and silting will occur. (Peter J. Tesei, 5/31/11)

**Response 17-19:** As previously noted, the Applicant has modified the proposed project in response to comments. The most significant modification is that the footprint of the structure has been reduced 12 percent, from +/- 51,000 square feet to +/- 45,000 square feet. This has reduced the capacity of parking from 1,450 spaces to 1,380 spaces. The total area of site disturbance was reduced from 122,038 square feet to 117,081 square feet – a 4 percent reduction. The reduction in site disturbance is attributable to the smaller building footprint that avoids any disturbance to the U.S. Army Corps of Engineers (USACE) delineated wetland on the site, and the wetland that was delineated by the Town's wetland consultant.<sup>1</sup> Consequently, there will be no disturbance to either the ACOE wetland, or the wetland under the jurisdiction of the Town.

### **3.18 ALTERNATIVES**

**Comment 18-1:** Finally, I think there is an alternative here also that needs to be studied. Under ordinary conditions, possibly no, but under the conditions here. And that's – that's the alternative for what would be the -- what would be the impact of an alternative for additional parking at Westchester Airport, you know, within the boundaries of the airport itself. Obviously my client has an interest, vested interest in that. But putting that aside, you know, in full disclosure, but putting that aside that is a possible, reasonable alternative. And the SEQRA handbook is very clear that typically you cannot make a private applicant, I would believe the first one to scream, you can't make me study land I don't control or land that is not consistent with my objective. But the DEC SEQRA handbook does state that where you have a discussion of alternative site for proposed action would be reasonable and circumstances, including any case where the suitability of the site for the type of action proposed is a critical issue, in which case a conceptual discussion of other siting should be required. And I think the issue of the impact of expanding beyond the airport boundaries, which I don't need to tell this board or

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<sup>1</sup> A field survey was made by the USACE on June 1, 2011, and the wetland boundary was certified in a Jurisdictional Determination (JD) letter dated 2/1/12, included herein as **Appendix D**.

this town, has been one of having a long history of discussion and a long history of controversy and analysis is a critical issue. Certainly one of the alternatives is --is maintaining and expanding parking on site. And that probably would be studied as an alternative. (Michael Zarin, 5/2/11)

**Response 18-1:** Analyzing expansion of parking at Westchester County Airport on County-owned land is outside the purview and responsibility of the Applicant. The Applicant can only propose development on land which it owns or has rights to. The project site is the only parcel within the vicinity of the airport to which the Applicant has any proprietorship and would be the only practical location for the Applicant to develop supplemental parking to support existing demand at the airport. As stated in SEQRA §617.9(b)(5)(v)(‘g’), “Site alternatives may be limited to parcels owned by, or under option to, a private project sponsor.” The SEQRA Handbook (pg. 6) reiterates this statement, saying, “For private Applicants, site alternatives should be limited to parcels owned by, or under option to, a private Applicant. To demand otherwise would place an unreasonable burden on most Applicants to commit to the control of sites which they do not otherwise have under option or ownership.”

**Comment 18-2:** The DEIS should include the comparison of the pre, and post-development pollutant loading rates from the different alternatives suggested. The peak discharge rates for the various design storms and their significance at the various discharge points for each of the alternatives should also be included. Changes in volume of stormwater runoff for each of the alternatives should be included along with impacts to the downstream hydrology. These factors must be evaluated in sufficient detail for the various alternatives in order to make a reasonable judgment. (NYCDEP, 5/23/11)

**Response 18-2:** Analysis of the alternatives in the DEIS concluded that these alternatives would not sufficiently meet project objectives or provide the same level of benefits to the community. As such, a qualitative analysis of stormwater runoff for the alternatives was provided. As disclosed in the DEIS, each of the alternatives would result in less impervious surface coverage than the proposed project (with the exception of Alternative B, which would have approximately the same impervious surface coverage). As such, these alternatives would result in less stormwater runoff (volume) but each would have required the implementation of NYS-approved stormwater management measures such that post-construction runoff rates do not increase and water quality impacts are not significant. Therefore, incremental differences in the size of the alternatives would have no substantial difference on water quality or flooding impacts. Please note, the Modified Project

(described in Chapter 1 of this FEIS) has reduced the footprint of the parking structure resulting in a decrease in impervious surfaces as compared to the Applicant's initial plan presented in the DEIS. As a result, stormwater runoff has been reduced and the stormwater calculations and analysis have been revised accordingly. The Planning Board, as Lead Agency, will evaluate all alternatives and their anticipated impacts and proposed mitigation measures. Based upon a review of all relevant information, the Lead Agency will then make appropriate findings.

**Comment 18-3:** Erosion control plans for the proposed alternatives were not included in the DEIS. These plans are necessary to demonstrate that impacts due to erosion and sedimentation during construction for each alternative can be fully avoided or mitigated. (NYCDEP, 5/23/11)

**Response 18-3:** As discussed above, the alternatives analyzed in the DEIS would primarily have smaller footprints and smaller areas of disturbance than the proposed project. As such, it would be expected that the extent of erosion control measures designed and then employed during construction could have been somewhat less extensive (for example a smaller area of sedimentation basins, less silt fencing, etc.) for the alternatives. However, each alternative would require erosion control measures. The careful design and monitoring of erosion control measures during construction is of greater relevance to potential impacts than are small increases or decreases in a project's footprint. Therefore, fully developed erosion and sediment control plans for each alternative are not warranted, in the Applicant's opinion.

**Comment 18-4:** Alternatives that minimize impervious surfaces, as well as impacts to wetlands, the reservoir stem and all buffers, such as Alternative D, should be explored in greater detail. (NYCDEP, 5/23/11)

**Response 18-4:** Although Alternative D would avoid disturbance to wetlands, wetland buffer areas, and areas within the 300-foot reservoir stem setback, it would only feasibly provide a little over 200 parking spaces. Without disturbing any portion of the setback and buffer areas, the remaining buildable area onsite would be limited and increasing building height would be restricted by zoning regulations. In the Applicant's opinion, this alternative would not sufficiently address the existing parking demand at Westchester County Airport, which is the primary objective of the project. In addition, unlike the proposed project, this alternative would lose the opportunity to treat stormwater runoff from an adjacent property which is currently untreated. Further, in the Applicant's opinion, the cost and effort required to construct the parking facility

under this alternative would not be a worthwhile venture if it would only offer this minimal benefit to the community, and if it would not yield an acceptable return on investment.

It should be noted that the proposed project has been modified in response to comments to avoid any disturbance to the Town-delineated wetland onsite (the modified project footprint is discussed further in Chapter 1, “Project Description”). It should be further noted that the USACE conducted a site inspection on June 1, 2011 to make a jurisdictional determination (JD) of wetlands on the project site. As discussed in Chapter 1, the USACE-regulated wetland boundary is less conservative than the Town-delineated wetland boundary; therefore, the Modified Project would further increase the distance between the parking structure and the federally-regulated wetland.

See also Response 18-2.

**Comment 18-5:** DEP also urges the Lead Agency to consider alternatives that provide opportunities to treat runoff from developed areas that are currently untreated. For instance, the stormwater management practices for the preferred alternative will be located on an adjoining parcel. Perhaps the development on that parcel can also be treated in the proposed practices. This would provide a more regional approach to stormwater management relative to this project. (NYCDEP, 5/23/11)

**Response 18-5:** As discussed in Chapter 9, “Stormwater Management,” of the DEIS, a significant benefit of the proposed project would be that stormwater runoff from proposed development and the adjacent property—the property on which the stormwater management facilities would be located—would be treated by the proposed project. Stormwater runoff from both the project site the adjacent property is currently untreated. In response to comments, the stormwater management system has been modified and enhanced further from what was presented in the DEIS. See Chapter 1, “Project Description,” of the FEIS for an expanded discussion on the modified stormwater management system and any green infrastructure practices that would be included. The Planning Board, as Lead Agency, will explore with the Applicant whether additional opportunities for stormwater mitigation exist to treat additional areas off the site.

**Comment 18-6:** At this stage of the SEQRA review, an opportunity still exists to amend the preferred alternative to reduce proposed impervious surfaces to adequately mitigate post-construction impacts, which will maintain current groundwater recharge capacity, reduce the level of impervious surfaces proposed and avoid earthwork on slopes in excess of 20%.



From a purely water quality standpoint, of the alternatives presented in the DEIS, Alternatives C, D, or E would best reduce many of these impacts as compared to the preferred alternative. (NYCDEP, 5/23/11)

**Response 18-6:**

As with Alternative D, as described in Response 18-4, the parameters established for Alternative C limit the developable area of the project site considerably. The feasible number of vehicles that could be accommodated under Alternatives C and D are 350 cars and 215 cars, respectively. While these alternatives would reduce impacts to environmental resources onsite, in the Applicant's opinion, these alternatives would not sufficiently address the existing issue of inadequate parking at Westchester County Airport. However, in response to comments, the proposed project has been modified to avoid disturbance to the Town-delineated wetland (a more restrictive delineation than the USACE's) and reduce wetland buffer impacts (see Chapter 1, "Project Description," of this FEIS for a more detailed description of the revised Site Plan). Alternative E evaluates potential build-out of the project site pursuant to existing zoning regulations with expansion of the existing office use of the site. While this alternative evaluates potential future use of the site without the proposed project, it would not meet the primary goals and objectives of the proposed project, which aims to alleviate an existing parking shortage at Westchester County Airport by developing a sustainable building solution. The Planning Board, as Lead Agency, will explore opportunities to further reduce impervious surfaces.

**Comment 18-7:**

Section 617.9 of the SEQRA regulations promulgated by the DEC, entitled "Preparation and Content of Environmental Impact Statements," provides detailed instructions and guidelines for the EIS process. Particularly for projects like the one proposed, which involve highly sensitive environmental areas, it is essential that, in the first instance, the contents of the EIS comply with 6 NYCRR 617.9(b)(5)(iii), which requires that all draft EISs include: "a statement and evaluation of the potential significant adverse environmental impacts at a level of detail that reflects the severity of the impacts and the reasonable likelihood of their occurrence." (Richard J. Lippes, 5/31/11)

**Response 18-7:**

The DEIS provided a detailed evaluation of all potential impacts relating to environmental resources, traffic, socioeconomic conditions, visual resources, etc. In addition to discussing specific impacts related to each subject area throughout the DEIS, each applicable topic outlined in NYCRR 617.9(b)(5)(iii) was discussed in the DEIS, including growth-inducing impacts (Chapter 22), irreversible and irretrievable commitment of resources (Chapter 20), unavoidable adverse impacts (Chapter 19), energy impacts (Chapter 21), and solid waste impacts

(Chapter 11). Where appropriate within these analyses, a discussion of cumulative impacts associated with no-build projects (i.e., development that would occur independent of the proposed project) was provided. While some negative impacts may result from the proposed project, as acknowledged in the DEIS, a description of proposed measures to mitigate those impacts was provided. Equally as important, the DEIS also acknowledged a number of beneficial impacts that would be associated with the proposed project, such as providing treatment to stormwater runoff from an adjacent developed site which is currently untreated; providing a substantial increase in tax revenue to the Town of North Castle; reducing traffic volume in the study area; and alleviating the existing parking shortage at Westchester County Airport.

**Comment 18-8:**

As the Planning Board and Town Board have already seen, the proposed “Park Place at Westchester Airport” project continues to garner widespread criticism for the failure of the DEIS to comply with section 617.9(b)(5)(iii). The Sierra Club must join in that criticism. The substantive issues in that regard are discussed below. Without a complete and accurate “evaluation of the potential significant adverse environmental impacts” of the project, the foundation for SEQRA review is jeopardized. One consequence of this inadequacy of the DEIS is the obfuscation of another indispensable component of compliance with the SEQRA review process - the consideration of project alternatives.

Section 617.9(b)(5)(v) of DEC regulations requires that the DEIS include:

a description and evaluation of the range of reasonable alternatives to the action that are feasible, considering the objectives and capabilities of the project sponsor. The description and evaluation of each alternative should be at a level of detail sufficient to permit a comparative assessment of the alternatives discussed. The range of alternatives must include the no action alternative. The no action alternative discussion should evaluate the adverse or beneficial site changes that are likely to occur in the reasonably foreseeable future, in the absence of the proposed action. 6 NYCRR 617.9(b)(5)(v).

As expressed in the “2010 SEQRA Handbook” (3rd Edition 2010), published by the DEC Division of Environmental Permits, the purpose of this regulation is to evoke an investigation into “means to avoid or reduce one or more identified potentially adverse environmental impacts” – “The greater the impacts, the greater the need to discuss alternatives.” (Richard J. Lippes, 5/31/11)

**Response 18-8:**

See Response 18-7 regarding compliance with Section 617.9(b)(5)(iii). Additionally, in accordance with requirements of SEQRA, Chapter 18, “Alternatives,” of the DEIS provided a detailed analysis of seven alternatives to the proposed (preferred) project. Included was a discussion of the No Action Alternative. Each of the subject areas evaluated throughout the DEIS for the proposed project were evaluated for each alternative at a level of detail sufficient to allow reasonable comparison with the proposed project. Further, Table 18-1 in the DEIS provided a detailed comparison of potential impacts from each alternative and the proposed project.

As discussed in Chapter 18 of the DEIS, the primary aim of the project alternatives was to reduce potential environmental impacts by reducing the building footprint and thereby reducing wetland disturbance, wetland buffer disturbance, tree removal, ground disturbance, etc. Subsequent to the DEIS, it was determined by the USACE that no permanent wetland disturbance will result. Moreover, the Site Plan has been amended to increase the distance between the building and any recognized wetland. An alternative use to the proposed project (i.e., office building rather than a parking facility) was evaluated as Alternative E. Although some alternatives would reduce environmental impacts, they would forfeit the primary purpose of the proposed project which is to alleviate an existing parking shortage at Westchester County Airport. As described in the Demand Study prepared by Carl Walker, Inc. (see Chapter 1 of the FEIS and **Appendix E**), the proposed project will address an existing demand for parking, rather than induce additional demand. Therefore, in the Applicant’s opinion, the parking provisions under each alternative will not adequately address the existing parking shortage. The Lead Agency will need to discuss whether any of the alternatives are reasonable and viable. The 1,000-space automated garage may be a viable alternative that is still economically feasible. The Lead Agency will need to determine whether this alternative should be further explored.

**Comment 18-9:**

Apart from a “no action alternative,” the DEIS reviews only alternative size parking facilities. There is no discussion of alternative uses presently permitted in accordance with the principal uses in the IND-AA Zoning District. This is a critical omission.

Since the regulations state that the EIS should “evaluate all reasonable Alternatives,” the applicant should evaluate alternatives consistent with the current permitted use – even if the alternative use is different in nature from the project proposed. As indicated in the 2010 SEQR Handbook, “[c]onsideration of an entirely different use or action may be reasonable ... [when] the proposed action does not conform to the

current zoning of the site, in which case comparison to the use allowed under the existing zoning may be informative.” (Richard J. Lippes, 5/31/11)

**Response 18-9:** An alternative use alternative was presented as Alternative E in Chapter 18 of the DEIS. This alternative evaluated potential build-out of the project site under existing zoning regulations for the Industrial (IND-AA) zoning district, in which the project site is located. As such, an expansion of the existing office building onsite within the confines of existing bulk and dimensional regulations was analyzed. Office uses are currently permitted uses within the IND-AA zoning district.

**Comment 18-10:** Of particular importance in consideration of alternatives to the proposed project is the application of the Freshwater Wetlands Act, ECL Article 24. Given the critical nature of the potential impacts upon wetlands, steep slopes, water courses, wetland buffers, the Kensico Watershed, and ultimately the Kensico Reservoir, the DEIS must take into consideration that, under ECL Article 24, certain freshwater permits may be granted only if the proposed action is “the only practical alternative that could accomplish the applicant’s objective and [there is] no practical alternative on a site that is not a freshwater wetland or adjacent area.” See, 6 NYCRR 663.5(e)(2), 662.6(b)( 4); and see, 6 NYCRR 63.5(f)(2) (defining “practical alternative”). (Richard J. Lippes, 5/31/11)

**Response 18-10:** As discussed above (see Response 18-4) an extensive evaluation of seven project alternatives was conducted in preparation of the DEIS. One of the main common objectives of these alternatives was to reduce impacts to wetlands and wetland buffer areas. However, in so doing, the feasibility of achieving the Applicant’s primary objective of providing sufficient supplemental parking for Westchester County Airport within the restrictions of the proposed zoning amendment was limited. Careful evaluation of environmental resources balanced with the project goals has been conducted to compare the proposed project with each of these alternatives in order to work toward a final project design. While some alternatives would reduce wetland and other environmental impacts, in the Applicant’s opinion, they would not result in a meaningful benefit to the community in terms of adequate parking provisions, substantial tax revenue increases, or reductions in overall traffic volume in the study area, nor would they provide a reasonable return on investment for the Applicant.

It should be noted that it was determined, subsequent to the DEIS, that there will be no disturbance to the USACE delineated wetland. In addition, the reduction of the size of the building footprint presented in

the FEIS makes it possible to avoid any disturbance to the Town-delineated wetland onsite and reduce wetland buffer impacts. The modified project is discussed in further detail in Chapter 1, "Project Description," of the FEIS.

**Comment 18-11:** The omission of the alternatives mentioned above is a sufficient basis for rejecting the DEIS in this instance. (Richard J. Lippes, 5/31/11)

**Response 18-11:** See Responses 18-8, 18-9, and 18-10.

**Comment 18-12:** The Applicant should prepare a revised Alternative A2 that utilizes automated parking. This revised alternative may very well reduce wetland and wetland buffer impacts and reduce the height of the building by permitting some amount of regrading at the rear (and additional screening opportunities). It would appear that this smaller garage may meet all, or most, of the Applicant's objectives while minimizing potential impacts. (Adam Kaufman, 6/1/11)

**Response 18-12:** In response to comments, a revised Site Plan has been developed that would reduce the building footprint of the proposed parking facility such that it would be comparable to the building footprint under Alternative A2. The revised Site Plan would eliminate impacts to the Town-regulated wetland onsite, increase the distance between the proposed structure and the federally-regulated wetland onsite (as discussed further in Chapter 1 of this FEIS), and would reduce impacts to wetland buffers. The building height under the Modified Project would be approximately 59 feet, as compared to 65 feet under Alternative A2. Therefore, the Modified Project would provide many of the advantages of Alternative A2 while maintaining adequate parking provisions to address existing parking deficiencies at Westchester County Airport. In addition, the Planning Board, as Lead Agency, may further investigate this alternative as a way of adequately mitigating a potential wetland, wetland buffer and building height issues. See also Response 18-4.

**Comment 18-13:** Finally, the DEIS completely fails to consider as an alternative to the Project the provision of additional parking for Westchester Airport at the Airport itself. This alternative would pose substantially fewer environmental impacts, and would alleviate concerns about the geographic expansion of the Airport. The search for possible alternatives to a proposed action has "been characterized as the 'heart of the SEQRA process.'" *Shawangunk Mountain Env'tl. Ass'n v. Planning Bd. of Town of Gardiner*, 157 A.D.2d 273, 557 N.Y.S.2d 495, 497 (3d Dept. 1990) (citation omitted); see also *Dubois v. U.S. Dept. of Agric.*,

102 F.3d 1273,1287 (1st Cir. 1996) (“The ‘existence of a viable but unexamined alternative renders an environmental impact statement inadequate’.”). (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 18-13:** See Response 18-1.

**Comment 18-14:** While ordinarily a private applicant should not be compelled to consider alternative locations, where, as here, the suitability of the project site goes to the heart of environmental concerns, it should. The DEC’s SEQR Handbook states that “a discussion of alternative sites for a proposed action would be reasonable” in circumstances including “[a]ny case where the suitability of the site for the type of action proposed is a critical issue, in which case a conceptual discussion of siting should be required.” (SEQR Handbook at 123 (emphasis added).) Caselaw confirms that a private applicant may be compelled to consider alternative sites for the proposal in circumstances such as here:

In certain cases involving proposed development by a private entity an in-depth analysis and discussion of alternate sites for the project may be appropriate and necessary. For example, where two or more competing private entities are striving to obtain approval from a municipality for a particular type of proposed development (such as a shopping mall) on different sites, such discussion and analyses of the different sites, in terms of environmental impact, would certainly be appropriate.

Horn v. Int’l Bus. Machines Corp., 110 A.D.2d 87, 493 N.Y.S.2d 184, 192 (2d Dept. 1985), appeal denied, 67 N.Y.2d 602, 499 N.Y.S.2d 1027 (1986). Thus, consistent with Horn, the Lead Agency should consider alternative locations on which additional parking could be provided. (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 18-14:** See Response 18-1.

**Comment 18-15:** Analysis of such alternative site will enable the Lead Agency to determine whether it should issue positive or negative Findings at the end of the SEQRA process. As the Board knows, ultimately, Findings must be issued certifying whether “from among the reasonable alternatives available,” the action is the one that avoids or minimizes adverse environmental impacts to the maximum extent practicable.” 6 N.Y.C.R.R. § 617.11(d)(5); see also SEQR Handbook at 151 (“An agency must not undertake, approve or fund any part of an action, if it cannot support positive findings and demonstrate, consistent with social, economic and other essential considerations from among the reasonable alternatives, that the action: minimizes or avoids adverse environmental impacts to the maximum extent practicable, and, incorporates into the

decision those mitigation measures identified in the SEQR process as practicable.”). (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 18-15:** See Response 18-1. As described in Chapter 1, “Project Description,” of the FEIS, the proposed Site Plan has been modified to further reduce the proposed structure’s footprint and minimize disturbance to existing environmental resources.

**Comment 18-16:** Where, as here, the suitability of this Site for an Airport related use goes to the heart of the concerns here, the Lead Agency should consider as an alternative the provision of additional parking at the Airport itself. (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 18-16:** See Responses 18-1. Consistent with existing land use compatibility standards established by the FAA, a parking facility would be an appropriate land use adjacent and within proximity to an airport. This guideline is established in 14 CFR 150 and provides the basis for the Westchester County Airport Ldn 60 Noise Contour critical environmental area (CEA) which also discusses land use compatibility within proximity to an airport as it relates to aircraft noise. Examples of incompatible land uses would include residential neighborhoods whereby aircraft noise would be considered a disturbance to the community. Further, the parking facility has been granted a “No Hazard” designation by the FAA in terms of building height (see **Appendix K**). Also, see the “Off Airport Parking Garage Height Limitation Study” provided in **Appendix J** for further discussion.

**Comment 18-17:** The discussion of alternatives in the DEIS fails to provide sufficient information regarding the alternatives, in comparison to the proposed project, in particular the comparative analysis of potential impacts, to allow clear and meaningful choices for informed public comment and agency decision-making. The applicant should be required to offer a more detailed analysis of the full range of alternatives and the reduction in potential environmental impacts associated with them, including an alternative location. (Riverkeeper, Kate Hudson, 6.1.11)

**Response 18-17:** See Response 18-1.

**Comment 18-18:** New York courts have held that property owners are required to prove that they are unable to realize a reasonable return from certain alternatives. Without such proof, the lead agency could insist upon requiring a significantly reduced density alternative as compared with the Applicant's preferred alternative. (Riverkeeper, Kate Hudson, 6.1.11)

- Response 18-18:** As discussed in detail in Chapter 18 of the DEIS, several alternatives do not provide a sufficient return on investment in the Applicant's opinion. In addition, the economic benefits to the Town would be significantly reduced in A1, A2, B, C, D, E, and F.
- Comment 18-19:** The applicant has failed to provide sufficient information to be able to compare the reduction in environmental impacts associated with the reduced scale alternatives, in particular C and D, with the impacts likely to result from the proposed project. The use of non-numerical descriptors like "Lesser Impact" and "Slightly Lesser Impact" to not permit an informed evaluation of the environmental benefits of those alternatives. (Riverkeeper, Kate Hudson, 6.1.11)
- Response 18-19:** Factors such as proposed building size, impervious surface, and others are sufficient to measure differences in environmental impacts – including tax revenue, stormwater and wetland impacts. Such qualitative assessments of impacts are sufficient for the Lead Agency to measure the comparative benefits or detriments of each alternative. Although some of the alternatives considered would reduce environmental impacts, they would forfeit the primary purpose of the proposed project which is to alleviate an existing parking shortage at Westchester County Airport. While some alternatives would reduce wetland and other environmental impacts, in the Applicant's opinion, they would not result in a meaningful benefit to the community in terms of adequate parking provisions, substantial tax revenue increases, or reductions in overall traffic volume in the study area. See also Response 18-10.
- Comment 18-20:** In spite of the lack of quantitative information provided by the evaluation of alternatives in the DEIS, it is clear that alternatives C (limits development of the project site to areas that are currently developed, thereby eliminating any new disturbance to on-site wetlands and wetland buffers) and D (avoids development within Town-regulated wetlands and wetland buffer areas and locates all stormwater facilities on the main parcel). Both alternatives clearly avoid a substantial amount of the post construction increases in both runoff quantity and pollutant loads associated with the proposed project. (Riverkeeper, Kate Hudson, 6.1.11)
- Response 18-20:** See Responses 18-2, 18-4, and 18-5.
- Comment 18-21:** Because it is critical that impacts from the proposed project to the water quality of the NYC water supply system from turbid discharges and pollutant laden runoff be fully avoided or mitigated, Riverkeeper joins



the DEP in urging the Planning Board to amend the selection of the preferred alternative in the DEIS to an alternative such as C or D which reduce or avoid the significant potential for impacts to water quality presented by the proposed project. In addition, given the unsuitability of the project site for the proposed and the inevitable connection between site choice and the significant environmental concerns raised by the project, Riverkeeper strongly recommends that the Planning Board require the DEIS to evaluate alternative locations on which the applicant's project could be constructed. DEC's SEQR Handbook supports a discussion of alternative sites, where, as here, "the suitability of the site for the type of action proposed is a critical issue." Such an evaluation will provide the Lead Agency with the information necessary for it to ultimately certify, in its findings, that the action selected is the one that avoids or minimizes adverse environmental impacts to the maximum extent practicable. (Riverkeeper, Kate Hudson, 6.1.11)

**Response 18-21:** See Response 18-1.

**Comment 18-22:** Chapter 18 of the DEIS evaluates the proposed project and compares it to six other development alternatives as well as to the no build alternative. No explanation was provided justifying why: all the other analyzed alternatives are "self-park;" the automated alternative was set at 1,450 cars; Alternative C was not analyzed for the automated system which reduces the impervious surface foot print, saves some wetland buffer, and reduces further the pollutant load. In addition, analysis of the social and economic need for additional parking was inadequate and should include consideration of the availability of other emerging parking services for the Airport, such as Purchase Park2 Fly, the new parking service being provided by Purchase College. (Office of the Watershed Inspector General, 6/1/11)

**Response 18-22:** The project alternatives considered in DEIS Chapter 18: Alternatives, were listed in the approved Scope of Work for the DEIS. The primary aim of the project alternatives was to reduce potential environmental impacts by reducing the building footprint and thereby reducing wetland disturbance, wetland buffer disturbance, tree removal, ground disturbance, etc. The need for parking is addressed in the Demand Study prepared by Carl Walker, Inc. (see Chapter 1 of the FEIS and **Appendix E**).

**Comment 18-23:** The DEIS states that the proposed project alternative will provide 1,450 parking spaces. Based on the numbers provided on the DEIS Architectural Drawings (A.21, A2.2, and A2.3) 1,290 parking spaces

are shown. This 160 parking space discrepancy needs to be explained. (Office of the Watershed Inspector General, 6/1/11)

**Response 18-23:** The parking capacity of the project has been reduced from 1,450 spaces in the DEIS to 1,380 spaces in the FEIS. These modifications have enabled the total amount of impervious areas to be reduced from 68,579 square feet as presented in the DEIS, to 62,767 square feet as presented in this FEIS. In addition, no wetland disturbance is required with the modified project.

**Comment 18-24:** In addition to the effects of the project on topography, drainage, vegetation and critical wetland and stream buffers, the consideration of alternatives in the DEIS is limited by insufficient information and a failure to seriously consider reduced scale or off-site alternatives. Riverkeeper respectfully requests the Planning Board to direct the applicant to prepare a Supplement to the DEIS to address the DEIS deficiencies outlined below. In the alternative, we urge the Planning Board to reject the application in its current form. (Riverkeeper, Kate Hudson, 6.1.11)

**Response 18-24:** See Responses 18-1 and 18-2. A qualitative analysis of stormwater runoff for the alternatives was provided. Each of the alternatives would result in less impervious surface coverage than the proposed project (with the exception of Alternative B, which would have approximately the same impervious surface coverage). As such, these alternatives would result in less stormwater runoff (volume) but each would have required the implementation of NYS-approved stormwater management measures such that post-construction runoff rates do not increase and water quality impacts are not significant. Therefore, incremental differences in the size of the alternatives would have not substantial difference on water quality or flooding impacts.

### **3.19 ADVERSE IMPACTS THAT CANNOT BE AVOIDED IF THE PROPOSED PROJECT IS IMPLEMENTED**

NO COMMENTS RECEIVED

### **3.20 IRREVERSIBLE AND IRRETRIEVABLE COMMITMENT OF RESOURCES**

NO COMMENTS RECEIVED

### **3.21 IMPACTS ON THE USE AND CONSERVATION OF ENERGY**

NO COMMENTS RECEIVED

### 3.22 GROWTH INDUCING ASPECTS OF THE PROPOSED PROJECT

**Comment 22-1:** We submit that there really is somewhat lacking analysis of the cumulative impacts of the proposed zoning and the impact that --the growth inducing impacts that could be caused in other parcels within the IND-AA zone. While there is existing development and existing disturbance on various of those lots, they could easily, just like in this proposal, either be assembled or abandoned, and there could be, I don't want to use the word proliferation, because it's a limited site, but there could be additional large garages or other structures, setting a precedent that could be built on this site, and would be an expansion, an improper expansion of airport facilities outside its borders. (Michael Zarin, 5/2/11)

**Response 22-1:** The IND-AA covers a small land area within the Town of North Castle and due to existing build-out of area parcels, a proliferation of parking structures would not be expected for four reasons. One, there are a limited number of parcels available in the IND-AA zoning district. Two, the proposed zoning amendment would require a special permit for parking structures, which has stringent performance requirements. Third, any further application for a parking structure would be subject to SEQRA and the environmental review process. Finally, as mentioned in the DEIS and this FEIS, the proposed project would be built to meet current demand for airport parking and would go a long way toward satisfying that demand. Therefore, there will likely be less economic motivation for the construction of another parking structure to serve the airport.

**Comment 22-2:** So, therefore, we would like to see a much more thorough analysis of where that number came from and why we need 1,450 spaces, because as we all know, if there are additional parking spaces, which in this it could easily generate 1,000 additional parking spaces, there is certainly going to be growth inducing impacts. And it's going to create --The thing that is limiting growth right now is the fact that there is limited parking. If that is alleviated and there is 1,000 parking spaces that are sitting around for a few years, certainly that's going to be very attractive for other businesses and entities to move into this area. Thanks a lot. (Peter Dermody, 5/2/11)

**Response 22-2:** In response to this and other comments concerning the need for the proposed project, the Applicant commissioned a study to estimate the level of unmet parking demand that could support a proposed private parking structure to serve the Westchester County Airport. The study, "Estimate of Potential Parking Demand for Prospective New Garage to

Serve: Westchester County Airport,” (“Demand Study”) prepared by Carl Walker Associates, is included with this FEIS (see **Appendix E**) and summarized in Chapter 1, “Description of Modified Project,” of the FEIS.

The use of the proposed project would be limited to Westchester Airport customers. Therefore, it is unlikely that the construction of the project would induce other businesses and entities to move into the area.

In addition, the limiting factor for the growth of the airport is not the lack of parking, but the 1985 Stipulation Agreement which Westchester County entered into with the Federal Aviation Administration (FAA) and the U.S. Attorney. This agreement contained language which limits the operating capacity of the airport to 240 passengers per half hour and established a mechanism for airlines seeking to operate at the Airport. This stipulation remains in effect to date and would not be affected in any way by this proposed project

In 2004, the County codified the Terminal Capacity Agreement into a local law (Chapter 712. Article IV). A copy of the sections pertaining to Airport Rules and Regulations is located in **Appendix I** of the FEIS.

**Comment 22-3:**

Good evening. I'm not from an architectural group, an environmental group, but somebody that lives in the area and has used the airport for many years. But I can't help but observe, we're talking about the construction of a structure in a fairly fragile ecosystem and one that seems fraught with a variety of issues. And I'm sure that there is lots of good guidance about how you as a group are supposed to interpret these applications. But I also would hope that you use this opportunity to step back for a moment and think about the responsibility of the Planning Board in giving guidance to the overall town. Because the fundamental issue here is a lot less about parking garage and much more about the growth of the Westchester County Airport. And that seems to me to be the real issue that will be really fantastic for the Planning Board to provide some guidance on.

So, if we have these voluntary constraints that are being adhered to by the airport, why not use this as an opportunity to go back to them and say, given the idea that you need more parking, how about going to fix constraints rather than voluntary constraints and really putting some planning in place for the future growth of the airport. You know, you'll decide as you will about what to do about this parking structure, but I think a more significant threat to our community is the growth of that airport.

I have to say that I use that airport. I use that airport regularly. So, I certainly wouldn't say gee, we shouldn't have an airport here. I also don't aspire to see it become an airport of much bigger size and much more frequent usage, with a lot more flights going over our community. I would ask that the board use this opportunity to use its power and influence in guidance for the Town Board on what should be done about a very large potential problem, which is the continued growth of Westchester County Airport. Thank you. (Ed Glassman, 5/2/11)

**Response 22-3:** The limiting factor for the growth of the airport is not the lack of parking, but the 1985 Stipulation Agreement which Westchester County entered into with the Federal Aviation Administration (FAA) and the U.S. Attorney. See Response 22-2.

**Comment 22-4:** First of all, thank you very much for your time in allowing me to speak. I want to inspire everybody to read a book which inspired me in 1997 from Riverkeeper actually. It was called "The Culture of Mismanagement" by Robert Kennedy, 1997. This book inspired me to drop my life, which I loved by the way, to get involved in this issue. In this book Bobby Kennedy called it, placement of the Westchester County Airport a historical disaster. And I have copies of this. Someone wants the page that it comes from, you can ask me.

I want to say as a grandmother and as a former member of a board, CWC's board and a long time member of Sierra Club, how can you let a historical disaster grow? It doesn't make sense. So I'm here today to remind everybody about the placement of this airport, as many people have said, 250 yards from a water supply. It's 85 percent of Westchester's water and 90 percent of New York City's water. So, I ask you to protect that.

Now I also want to tell you my husband mentioned the resolutions that were passed, historically admitting that this airport was --is in the wrong place. These resolutions, again passed by the County Board of Legislatures, by the State Senate, nonpartisan, by the State Assembly, also nonpartisan, were passed historically admitting that the airport should never grow. And the definition of no growth included, and we took the definition that it should not grow in footprint or capacity in quoting no additional parking, flights, hangers or heavier planes. And I have before -- I have a letter from the DEP which is also historic. It was the first time that they really gave us a fabulous letter. Their letter was stronger than Sierra's Club letter, which is amazing, asking for the same thing, no additional parking. Because every increase in this airport is going to increase the danger and likelihood of accidents to a reservoir that cannot be replaced.

I would like to pass these handouts out to the board, so you might have the benefit of reading some of these, the wise letters in here. This packet includes also a letter from the EPA, Environmental Protection Agency, which says hey, we agree with everything in the DEP letter. So, we not only have a letter from the DEP, but we have a letter from the EPA. I want to remind you that because of the law, FAA does not even have to report their air emissions. So, as this airport increases, and we hope it doesn't, if we increase the parking, we know there will be more planes. As this increases, it's also very detrimental to the health of our citizens, especially since all the environmental law is based on the average size now. It doesn't take into consideration women, pregnant women, seniors or especially children. So that by increasing air emissions over this county, it's going to be very, very difficult for babies in Armonk as well as the rest of the area to --to avoid increased health costs.

In this packet I have the three resolutions from the county, the state and the state assembly and the state senate. And I know that Armonk is suppose to be independent, but we're asking you to think how important is it to have a sustainable environment. And we really think that one town should join with all of us in protecting the drinking water supply.

We also want to remind you that Kensico is --was trying to avoid filtration. In 1997 Bobby Kennedy had said that the cost of filtration was billions. I'm sure it's increased since, his numbers. And there will be millions in costs to maintain this system every year. So, when we think of the negative, possible negative economic impacts to the citizens of Westchester and New York City, and all of our towns that are using this water, let's consider that. Because in California, when you have an institution like an airport, I've been told by an environmental lawyer, you not only have to do the economic benefits of the institution, like the airport, but you have to also consider the negative impacts to the environment. And that I don't think we've done.

So, I want you to please, please help us. Keep these resolutions so that we can keep the pledge and the promise of our county and our state. Please help join with us to make sure this airport does not expand. I thank you very much for your time. (Karen Shultz, 5/2/11)

**Response 22-4:** The Proposed Project is not an expansion of the airport, and its purpose is to meet existing demand, not to induce future growth. See Response 22-2.

**Comment 22-5:** *DEIS Failure to Fully Address the Effect of a Zoning Amendment and Growth-Inducing Aspects of the Proposed Project* – The DEIS fails to give proper consideration to the wide range of potential effects that would result from the granting of the Applicant's petition for an

amendment of the Town's Zoning Code. Such an amendment would open up the area to additional uses and would have growth-inducing impacts beyond the immediate effect upon activity at the Westchester Airport.

The law is settled that, "[t]o comply with SEQRA, the Town Board must consider the environmental concerns that are reasonably likely to result from, or are dependent on, [proposed zoning] amendments." Eggert v Town Bd. of Town of Westfield, 217 A.D.2d 975, 630 N.Y.S.2d 179, 181 (4th Dept. 1995); accord, Fisher v. Giuliani, 280 A.D.2d 13, 720 N.Y.S.2d 50 (1st Dept. 2001); Brew v Hess, 124 A.D.2d 962, 508 N.Y.S.2d 712 (3d Dept. 1986). "[T]he decision to amend [a] zoning ordinance commit[s] the Town Board to a definite course of future conduct by permitting previously prohibited uses subject to obtaining a special use permit." Eggert, 630 N.Y.S.2d at 181. Accordingly, "[t]o comply with SEQRA, the Town Board [is] required to address the potential environmental effects of the amendments, at least on a conceptual basis." Id. at 181. "A municipality should consider the most intensive uses allowable under the proposed zoning to judge potential impacts." "SEQRA Handbook," at 182. (Richard J. Lippes, 5/31/11)

**Response 22-5:** See Response 22-1.

**Comment 22-6:** The DEIS contains only one rather sparse paragraph addressed to these issues (DEIS, at 22-2), in which it states: "[s]ince adjacent existing parcels that meet the [prescribed] development criteria are substantially developed, no significant growth-inducing aspects are anticipated from the proposed zoning amendment." Without more, the DEIS is woefully insufficient to meet the "hard look" standard for review of potential environmental impacts. (Richard J. Lippes, 5/31/11)

**Response 22-6:** See Response 22-1.

**Comment 22-7:** It is not mere speculation to anticipate the precedential effect of a zoning amendment. The effect also reaches beyond the immediate area, since an amendment may impact other zoning districts within the Town. For example, since the requested amendment would establish a maximum height and coverage allowance beyond what is permissible in any district in the town, future development likely will expect equivalent allowances for their projects. The DEIS is silent regarding these concerns. (Richard J. Lippes, 5/31/11)

**Response 22-7:** The modifications to the IND-AA zoning regulations would only affect parking structures allowed by special permit. Other uses permitted in

the IND-AA zoning district would continue to be subject to existing standards. No changes are being proposed that would affect existing permitted uses or any other zoning district.

**Comment 22-8:** A[s] previously indicated, the project is conceptually incompatible with the policy against growth or expansion of the Westchester Airport. The DEIS contends that the project would result in a reduction of vehicle trips to and from the airport. The Town's traffic consultant rejected this contention, noting that "the proposed Garage may increase demand and result in travelers now having the option of driving to the Airport for flights." (F.P. Clarke Letter at 8.) Mr. Clarke concludes that "the proposed facility could generate 200 new vehicle trips, plus 18 shuttle bus trip ends and 195 vehicle trip ends plus 18 shuttle bus trip ends during weekday morning and afternoon peak hours, respectively." (Richard J. Lippes)

**Response 22-8:** See Response 22-2.

**Comment 22-9:** The DEIS also fails to consider the potential effects of the proposed Amendment, particularly as it may apply to other properties and the growth inducing impacts of the precedent it would establish. It is axiomatic that "[t]o comply with SEQRA, the Town Board must consider the environmental concerns that are reasonably likely to result from, or are dependent on, [proposed zoning] amendments." Eggert v. Town Bd. of Westfield, 217 AD.2d 975, 630 N.Y.S.2d 179, 181 (4th Dept 1995); see also Fisher v. Giuliani, 280 AD.2d 13, 720 N.Y.S.2d 50, 56 (1st Dept 2001); Brew v Hess, 124 AD.2d 962, 508 N.Y.S.2d 712, 715 (3d Dept 1986). "[T]he decision to amend [ a] zoning ordinance commit[ s] the Town Board to a definite course of future conduct by permitting previously prohibited uses subject to obtaining a special use permit." Eggert, 630 N.Y.S.2d at 181. As such, "[t]o comply with SEQRA, the Town Board [is] required to address the potential environmental effects of the amendments, at least on a conceptual basis." Id.; see also SEQR Handbook at 182 ("A municipality should consider the most intensive uses allowable under the proposed zoning to judge potential impacts.") (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 22-9:** See Response 22-1.

**Comment 22-10:** The DEIS only contains one paragraph, which addresses the growth inducing aspects of the zoning amendment. (See DEIS at 22-2.) It narrowly states that "[s]ince adjacent existing parcels that meet the[ proscribed] development criteria are substantially developed, no



significant growth-inducing aspects are anticipated from the proposed zoning amendment." (DEIS at 22-2.) It fails to consider at all the precedential impacts of the Amendment.

The Amendment would set the stage for potential additional Airport related development on the other properties along New King Street, as well as other areas within the Town. Having allowed development of up to sixty feet (60'), with sixty percent (60%) coverage, and no FAR restriction for a Parking Garage in the IND-AA Zone, for example, the Town Board would be hard pressed not to allow similar development parameters for other Projects on New King Street. (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 22-10:** See Response 22-1.

**Comment 22-11:** Moreover, the DEIS does not consider the pressures the Amendment would create throughout the Town for more intense development parameters. The Amendment, for example, would establish a maximum height and a coverage allowance, which would surpass that allowable in *any* District in the Town. Clearly, other developers would desire the same development allowances on their properties. Again, if the Town ignores established development parameters for the proposed parking garage, it would be difficult for it to maintain those restrictions for other commercial development in the King Street area, or the Town as a whole. (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 22-11:** See Response 22-7.

**Comment 22-12:** Similarly, the Project also goes against the established planning policies of Westchester County, as well as the New York State Legislature. The Westchester County Board of Legislators, the New York Assembly and the New York State Senate each adopted Resolutions establishing formal policies against expansion of Westchester Airport. Of special relevance here, their goal in opposing expansion of the Airport is to "protect our fragile environment, including the drinking water for almost nine million people, from the noise, air and water pollution any such expansion would generate." (Resolution 245-2003 of the Westchester County Board of Legislators, dated Oct. 7, 2003; see also Assembly Resolution No. 1654, adopted April 26, 2004; Senate Resolution No. 5435, adopted June 22, 2004.) (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 22-12:** See Response 22-2.

**Comment 22-13:** The North Castle Environmental Quality Review law mandates specifically that EIS's set forth "[a] description of any growth-inducing aspects of the proposed actions, where applicable and significant." (Town Code § 99-12(H).) As DEC's SEQR Handbook similarly states:

Keep in mind that rezoning itself may be more significant from the standpoint of SEQR than the individual permitting of projects since a zoning change triggers a change in the allowable use of land and *ostensibly individual projects consistent with that change will be considered in the future in the rezoned area.*"

SEQR Handbook at 182 (emphasis added). (Michael D. Zarin and Daniel M. Richmond, 6/1/11)

**Response 22-13:** See Response 22-1.

### 3.D DRAWINGS

Please note that all comments on drawings have been taken into consideration and addressed, as appropriate. The revised drawing set will be submitted as part of the Site Plan application package. Responses to comments related to drawings are provided below.

**Comment D-1:** The turning radius for the proposed fire truck access should be indicated on the plan. (Kellard Sessions, 6/1/11)

**Response D-1:** The turning movements for a garbage truck and a fire truck backing out from the access road have been added to the site plans.

**Comment D-2:** The existing and proposed well locations should be provided on the plans. (Kellard Sessions, 6/1/11)

**Response D-2:** The existing well location is shown on Drawing C-2, "Existing Conditions Plan," within the existing patio area. The proposed well location will be shown on Drawing C-5, "Site Plan," (formerly Drawing C-4) and Drawing C-7, "Composite Utility Plan," (formerly Drawing C-6). The stormwater planters are a flow-through practice instead of infiltration; therefore there are no increased setbacks to the proposed well. However, the location of the proposed well with respect to the Stormwater Planters will be consulted with the Westchester County Health Department.

**Comment D-3:** The plans should be revised to identify the location of the existing culvert, as well as provide new details of the stream crossing, driveway expansion and installation of proposed guide rail. (Kellard Sessions, 6/1/11)

**Response D-3:** All the above information has been included within the plan set.

- Comment D-4:** Existing conditions/survey, notes and data on Sheet C-2 should be revised to include survey information for Lot 13A and all portions of that lot included within the project site. (Kellard Sessions, 6/1/11)
- Response D-4:** Drawing C-2, “Existing Conditions Plan,” has been updated per comment.
- Comment D-5:** Sheet C-2 should be revised to identify lands with slopes >25% and >35%. (Kellard Sessions, 6/1/11)
- Response D-5:** The revised plan set will include a new Drawing C-3, “Existing Steep Slope Analysis,” that indicates areas of slopes greater than 25 percent and greater than 35 percent within the potential limit of disturbance area.
- Comment D-6:** Sheet C-2 identifies two SB-6 and two TP-1 test locations. Testing locations on the plans and document should be updated for consistency. (Kellard Sessions, 6/1/11)
- Response D-6:** Drawing C-2, “Existing Conditions Plan,” has been updated per comment. The geotechnical report did not include an electronic copy of the soil boring location with coordinates. Any discrepancies are associated with manual inclusion into the updated plan
- Comment D-7:** Sheet C-2 legend should be updated to include the date of delineation of wetlands by NYCDEP. (Kellard Sessions, 6/1/11)
- Response D-7:** It should be noted that NYCDEP does not regulate wetlands. However, NYCDEP conducted a watercourse delineation on the project site in October 2008 and revisited the site on December 16, 2011 to determine the extent of regulated water bodies under its purview. This note has been added to Drawing C-2, “Existing Conditions Plan.”
- Comment D-8:** Sheet C-2 legend should be updated to identify ACOE Wetlands. (Kellard Sessions, 6/1/11)
- Response D-8:** The plan has been revised per comment.
- Comment D-9:** Sheet C-3 should be revised to clearly indicate the location and extent of the utility and stone wall removal. (Kellard Sessions, 6/1/11)
- Response D-9:** The plans have been revised per comment.
- Comment D-10:** Sheet C-4 should be revised to show the limits of disturbance and project site boundaries. (Kellard Sessions, 6/1/11)

## **Park Place at Westchester Airport FEIS**

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- Response D-10:** The plans have been revised per comment. Note that former Drawing C-4, “Site Plan,” is now Drawing C-5.
- Comment D-11:** Typical plant lists for all proposed landscaping should be provided on Sheet C-8. (Kellard Sessions, 6/1/11)
- Response D-11:** A plant list will be provided on Drawing C-9, “Landscape Plan” (formerly Drawing C-8) and is also included in Chapter 1, “Description of Modified Project,” of this FEIS.
- Comment D-12:** Identify location of proposed “Portable Sediment Tank” detailed on Sheet C-9. (Kellard Sessions, 6/1/11)
- Response D-12:** The plans have been revised per comment.
- Comment D-13:** The landscaping on Sheet A-3.1 does not appear consistent with Sheet C-8. (Kellard Sessions, 6/1/11)
- Response D-13:** Landscaping details on the architectural plans will be updated per comment during the Site Plan Approval process.
- Comment D-14:** The turfstone detail should be revised to identify the turfstone unit on Sheet C-11. (Kellard Sessions, 6/1/11)
- Response D-14:** The plans have been revised per comment.
- Comment D-15:** The wash bay locations on Sheets A-4.1 and A-2.2 are inconsistent. (Kellard Sessions, 6/1/11)
- Response D-15:** The car wash project component has been removed. Therefore, this comment is no longer applicable.
- Comment D-16:** The text indicates that a non-community public water supply will be installed on the site. The supply will include a well, storage tank, and applicable treatment devices. The location of the tank and treatment system do not appear on the site plans. Additionally, the FEIS and plans should discuss and indicate the required controlling distance around the public well. (Kellard Sessions, 6/1/11)
- Response D-16:** The proposed well location will be shown on Drawing C-5, “Site Plan” (formerly Drawing C-4) as well as Drawing C-7, “Composite Utility Plan” (formerly Drawing C-6). The tank size and treatment requirements will be determined after the well has been drilled when yield is known and water-quality has been tested. The location of the

tank/treatment in the building will be determined as the project progresses and will be finalized during Site Plan review.

The presumed controlling distances referenced in the above comment are the 100-foot ownership radius and the 200-foot sanitary radius. Both have been added to Drawing C-7. As shown on the drawing, the Applicant does not own all property within a 100-foot radius from the proposed well; however, use of the well location may be allowed by the Westchester County Department of Health (WCDOH) or local Health Department as long as additional measures as needed to prevent contamination of the water well and/or to provide potable water are met. Such additional measures may include the evaluation of local hydrogeology, in order to confirm water and soil quality information and water quality trends. There are no septic systems within the 200-foot sanitary radius of the proposed well. This area is served by municipal sanitary sewer services. As confirmed through a FOIL request submitted to WCDOH, any previous septic systems in the vicinity of the project site have been abandoned in favor of the municipal services that are now provided.

**Comment D-17:** The Rain Garden location should be clearly identified on Sheets C-5 and C-6. The landscape plan appears to indicate 3 rain garden locations and should be reviewed for consistency with other DEIS documents. (Kellard Sessions, 6/1/11)

**Response D-17:** It should be noted that the rain garden has been removed from the drawings.

**Comment D-18:** The invert of the underdrain in the Stormwater Planter located on the northwest side of the proposed building structure should be a minimum of 2.5 feet below grade, as shown on the Stormwater Planter Detail on Sheet C-10. The underdrain for the Stormwater Planter is shown to be installed at a 0.00% slope throughout the Stormwater Planter. Given the slope of the land where the planter is shown, the location and invert elevations of the underdrains should be included on the plans. (Kellard Sessions, 6/1/11)

**Response D-18:** The details have been revised per comment. Note that former Drawing C-10, "Standard Details II," is now Drawing C-11. The proposed Stormwater Planter will be terraced intermittently to accommodate the change in grade. Cross sections and details will be provided during Site Plan approval process.

**Comment D-19:** The Flow Splitter detail and plan view should be detailed to depict the elevations of the proposed weir, inlet and outlet pipes and the rim. The

detail should be revised to show the outlet pipe from the Flow Splitter to the Sedimentation Basin prior to the weir wall. (Kellard Sessions, 6/1/11)

**Response D-19:** The detail has been revised per comment.

**Comment D-20:** The outlet structures rims and inverts for the Sedimentation Basin, Sand Filter and the Pocket Wetland should be consistent between the Storm Drainage Schedule on Sheet C-5, the detail sheets and the SWPPP. The weir, emergency spillway, orifice and underdrain elevations for the Sedimentation Basin, Sand Filter and Pocket Wetland should be provided on the plans and details. (Kellard Sessions, 6/1/11)

**Response D-20:** The outlet structures rims and inverts for the Sedimentation Basin, Sand Filter and Pocket Wetland will be revised to be consistent with the Storm Drainage Schedule on Sheet C-5, the details sheet and the SWPPP during Site Plans approval. The weir, emergency spillway, orifice and underdrain elevations for the Sedimentation Basin, Sand Filter and Pocket Wetland will also be added to the Site Plans.

**Comment D-21:** The North Castle Wetlands and Drainage Law, Paragraph 209-5c, amended in 2006, requires a 150-ft. setback for slopes over 25%. This additional setback as it concerns Wetland-A is not indicated on the Applicant's plan. The plan and calculations should be revised for accuracy. (North Castle Conservation Board, 6/1/11)

**Response D-21:** For the submission of Site Plan application drawings, the Applicant can modify the wetland buffer as desired by the Town Planning Board and Planning Department to conform which definition the Town feels is applicable. All figures in the FEIS have been updated with the accurate Town-regulated wetland buffer which now includes areas of steep slopes. Buffer impacts calculations have also been updated and are contained in FEIS Chapter 1.

**Comment D-22:** There are drain pipes from Wetlands A & B that flow under Rte. 120 and Rte. I-684 to Louden's Cove. The plan in the DEIS shows only one drain from Wetland-B. The drain from Wetland-A located in the south corner of the property at 11 [New] King Street should be clearly shown on the plan. In addition, the intake pipe location for the Harrison Water Supply should also be shown on the Project Site (Figure #1) map. (North Castle Conservation Board, 6/1/11)

**Response D-22:** A 36" diameter reinforced concrete pipe conveys the stream (including Wetland B) under the existing driveway. There are no other 'drains' associated with Wetland B on the project site. The drain located within

Wetland A is delineated on Drawing C-2, "Existing Conditions Plan." The intake is located more than 3,000 feet south of the project site. All plan sheets will be updated to indicate the existing 36-inch diameter RCP crossing Route 120 as part of Site Plan Review.

It should be noted that the figure referenced in the above comment was provided as part of the Phase 1 Archaeological Assessment (Appendix F of the DEIS) and is not from the main body of the DEIS. This figure is based on the local USGS map and was provided to show the Area of Potential Effect (APE) and surrounding environs. Therefore, the intake pipe does not have any relevance to this figure.

**Comment D-23:** The structural details for three outlet structures within the Stormwater Control System are absent and should be provided. Validation of the post-developed design HydroCAD routings cannot be made without these details. A table of dimensions and elevations needs to be provided on Sheet C-10. (Office of the Watershed Inspector General, 6/1/11)

**Response D-23:** This information will be provided in revised construction drawings and the final SWPPP prepared as part of Site Plan Review.

**Comment D-24:** The flow splitter detail on Sheet C-10 of the construction drawings is incorrect, since it shows two outlets on the same side of a splitter wall and at the same invert elevations. Also the flow splitter detail does not match the HydroCAD routings, which show a 2' x 0.5' orifice below the 24" diameter overflow pipe. This error needs to be corrected. (Office of the Watershed Inspector General, 6/1/11)

**Response D-24:** This information will be provided in revised construction drawings and the final SWPPP prepared as part of Site Plan Review.

**Comment D-25:** Specific dimensions and elevations should be added to the Stormwater Planter Detail on Sheet C-10, and to all the details, as appropriate, on Sheets C-9 through C-12. (Office of the Watershed Inspector General, 6/1/11)

**Response D-25:** This information will be provided in revised construction drawings and the final SWPPP prepared as part of Site Plan Review.

**Comment D-26:** The profile of the outlet structure for the pocket wetland shown on Sheet C-12 is incorrect. The bottom of the outlet control structure should be raised to elevation 374.0 and the pipe outlet invert elevation raised to elevation 370.0 to agree with the elevations show in the table on Sheet C-5 and also to correct the HydroCAD routing, which shows the pipe invert at 372.0. In addition, the W-4 wet pond label on Sheet C-

- 12 needs to be edited to W-4 pocket wetland. (Office of the Watershed Inspector General, 6/1/11)
- Response D-26:** This information will be provided in revised construction drawings and the final SWPPP prepared as part of Site Plan Review.
- Comment D-27:** The runoff reduction volume (RRv) calculations performed and included as Appendix E of the PSWPPP .... should be validated and the details on the construction drawing C-10 for the stormwater planter should match those used in the design calculations presented in the SWPPP Appendix E. For example, the soil depth shown on Sheet C-10 is 18", whereas the soil depth presented in the design calculations in the PSWPPP is 24". These inconsistencies need to be corrected. (Office of the Watershed Inspector General, 6/1/11)
- Response D-27:** This information will be provided in revised construction drawings and the final SWPPP prepared as part of Site Plan Review.
- Comment D-28:** The Tc flow path to the design point DP-2 does not appear to accurately represent the entire PRE-2 drainage area. The same is true for the Tc flow path for PRE-3. Corrected Tc flow paths should be used or the drainage areas should be further subdivided to more accurately represent the design points. (Office of the Watershed Inspector General, 6/1/11)
- Response D-28:** This information will be provided in revised construction drawings and the final SWPPP prepared as part of Site Plan Review.
- Comment D-29:** It appears that lower mannings coefficients for sheet flow were used while higher Kv values were used for shallow concentrated flow, both resulting in higher pre-developed peak discharges. These calculations need to be re-evaluated. (Office of the Watershed Inspector General, 6/1/11)
- Response D-29:** This information will be provided in revised construction drawings and the final SWPPP prepared as part of Site Plan Review.
- Comment D-30:** The sedimentation basin used as pre-treatment for sand filters should be sized to: 1) contain 25% of the sand filter water quality volume; and 2) to dewater over a twenty-four hour period, to effectively retain fines and prevent clogging. These details are needed to validate its intended operation. (Office of the Watershed Inspector General, 6/1/11)
- Response D-30:** This information will be provided in revised construction drawings and the final SWPPP prepared as part of Site Plan Review.



- Comment D-31:** The contributing areas assigned in the pollutant loading calculations do not agree with the drainage areas utilized in the HydroCAD model. These should be reconciled. (Office of the Watershed Inspector General, 6/1/11)
- Response D-31:** This information will be provided in revised construction drawings and the final SWPPP prepared as part of Site Plan Review.
- Comment D-32:** Page 35 of the PSWPPP refers to a wet pond (W-4) instead of to a pocket wetland. This should be corrected here and wherever else it occurs in the document. (Office of the Watershed Inspector General, 6/1/11)
- Response D-32:** This information will be provided in revised construction drawings and the final SWPPP prepared as part of Site Plan Review.
- Comment D-33:** Roof runoff from the offsite building on Lot 13A is flowing into the proposed onsite pocket wetland for treatment. However, no pre-treatment for the roof runoff is shown on the drawing nor described in the DEIS, as required in the New York State Stormwater Management Design Manual, Chapter 6, 2010. In addition, the outlet location entering the pocket wetland, as designed on Sheet C-5, should be re-configured to increase flow and modified to incorporate a serpentine flow path to the outlet structure to prevent short circuiting through the stormwater treatment system as shown on Figure 6-10 of the New York State Stormwater Management Design Manual, March 2010, page 6-26. (Office of the Watershed Inspector General, 6/1/11)
- Response D-33:** This information will be provided in revised construction drawings and the final SWPPP prepared as part of Site Plan Review.
- Comment D-34:** According to page 16 of the PSWPPP, all deep sump catch basins will be installed with a "hood" at their outlet. However, the hood details are missing from the catch basin details shown on Sheet C-10 and need to be added. (Office of the Watershed Inspector General, 6/1/11)
- Response D-34:** This information will be provided in revised construction drawings and the final SWPPP prepared as part of Site Plan Review.
- Comment D-35:** "Turfstone" permeable paver units are described in the SWPPP on page 15 and are shown in detail on Sheets C-5 and C-11. The detail on Sheet C-11 shows the permeable paver incorrectly depicted on a slope instead of on level ground to the south side of the facility. As such, this detail is incorrectly labeled. In addition, the depth dimensions associated with determining the amount of water that can be stored beneath the

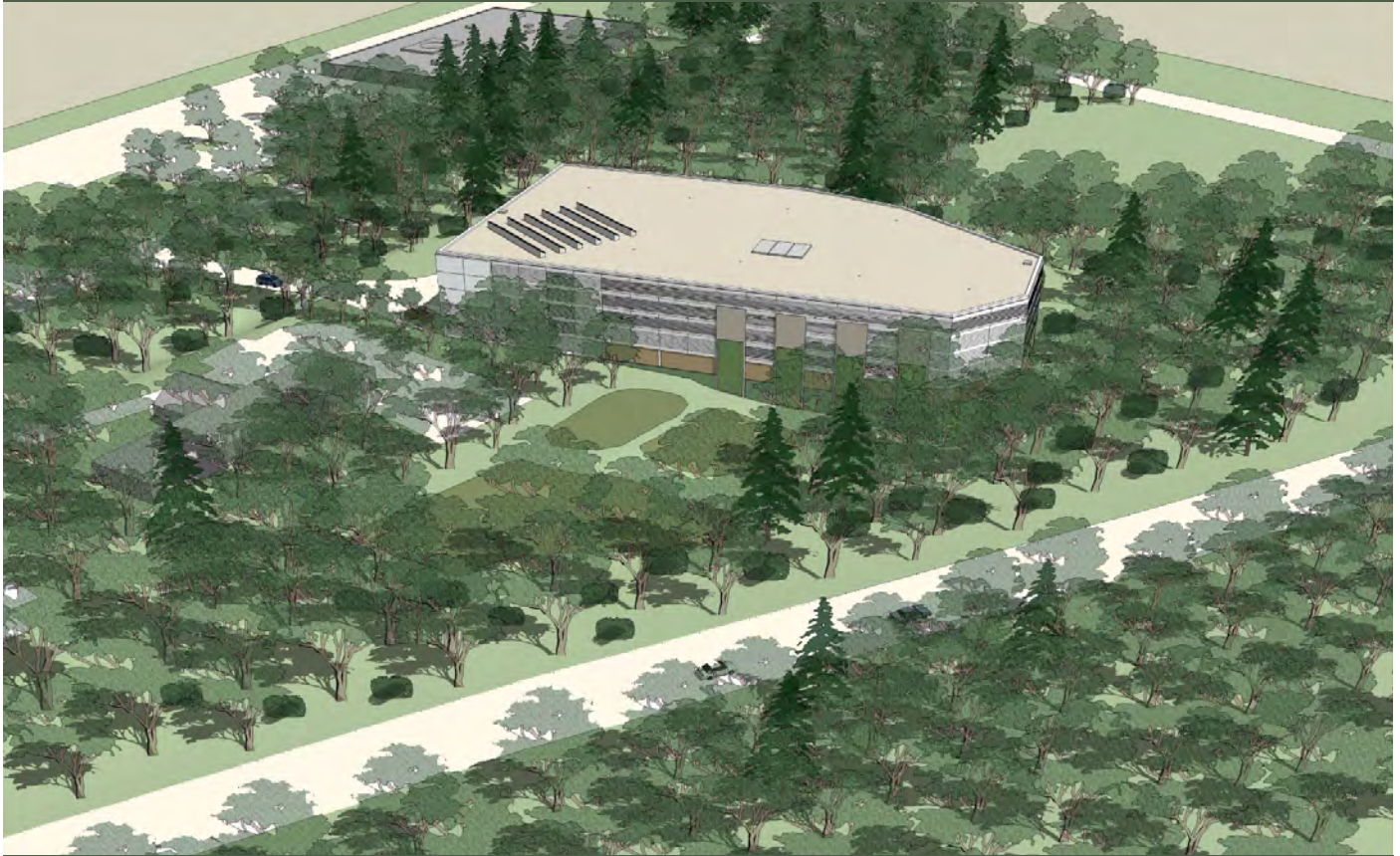
permeable pavers is missing. Finally an underdrain should also be provided in low permeable soil, such as the Ridgebury loam on site. (Office of the Watershed Inspector General, 6/1/11)

**Response D-35:** This information will be provided in revised construction drawings and the final SWPPP prepared as part of Site Plan Review.

✱

# PARK PLACE AT WESTCHESTER AIRPORT

11 New King Street  
Town of North Castle, New York



## Final Environmental Impact Statement APPENDICES

Prepared by:



Project Sponsor:

**11 New King Street, LLC**

Lead Agency:

**Town of North Castle Planning Board  
17 Bedford Road  
Armonk, NY 10504**

January 2015

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**Appendix A:**  
Written Comment Letters and Full  
Public Hearing Transcript

## **A. COMMENTERS ON THE DEIS**

Below is a list of all persons or agencies who provided comments on the DEIS:

### **Designated Comment/Response numbers shown in Red:**

1. Ruth Pierpont, New York State Office of Parks, Recreation and Historic Preservation (OPRHP), letter dated 4/14/11

5-1 to 5-5

2. Claudine Jones Rafferty, New York State Department of Health (NYSDOH), letter dated 4/27/11

7-3, 16-1 to 16-3

3. Michael B. Kaplowitz, Westchester County Board of Legislators, letter dated 4/28/11

8-1

4. Joseph M. Wilson (Safe Flight Instrument Corporation), letter dated 4/29/11

13-1

5. Peter Tesei (First Selectman, Town of Greenwich, CT), Public Hearing, 5/2/11

2-1 to 2-3

6. Kate Hudson (Riverkeeper), Public Hearing, 5/2/11

2-11, 8-2 to 8-4, 9-1

7. Michael Zarin (Zarin and Steinmetz Attorneys at Law), Public Hearing, 5/2/11

2-4, 3-1 to 3-6, 4-1, 8-5 to 8-9, 13-2 to 13-4, 18-1, 22-1

8. Greg Fleischer (Carpenter Environmental Associates), Public Hearing, 5/2/11

8-10, 8-11, 9-2, 9-3

9. Bernard Adler, Public Hearing, 5/2/11

13-5 to 13-13, 13-81

10. Tania Vernon, Public Hearing, 5/2/11

8-12

11. Julius Shultz (Sierra Club), 5/2/11

2-5 to 2-7, 8-13, 9-4, 10-1, 13-14

12. Peter Dermody (Dermody Consulting), Public Hearing, 5/2/11

8-14, 9-5, 13-15, 22-2

13. Ed Glassman, Public Hearing, 5/2/11

22-3

14. Robert A. Porto, Public Hearing, 5/2/11

8-15

15. Karen Shultz (Sierra Club), Public Hearing, 5/2/11

22-4

16. Cynthia Garcia, New York City Department of Environmental Protection (NYCDEP), Public Hearing, 5/2/11

8-16 to 8-19

17. Doug Manconelli, Public Hearing, 5/2/11

13-16

18. Lucille Held, Public Hearing, 5/2/11

2-52, P. 47-48 of Public Hearing Transcript – comments not directly applicable to the proposed project. No Response Required.

19. Ingrid McMenamin, Public Hearing, 5/2/11

2-8 to 2-10, 13-17

20. Jeffrey S. Morgan (Morgan & Brother Manhattan Storage Co., Inc.), letter dated 5/2/11

2-12

21. Carol De Angelo (Sisters of Charity), letter dated 5/4/11

8-20

22. Steve Hopkins, letter dated 5/5/11

2-13, 9-6

23. James W. Ford (BETA Group, Inc.), letter dated 5/10/11

13-18 to 13-39

24. James W. Ford (BETA Group, Inc.), letter dated 5/13/11

13-40, 13-41

25. Thomas Felix, Federal Aviation Administration (FAA), letter dated 5/19/11

3-7 to 3-9, 13-42

26. Peter J. Tesei (First Selectman, Town of Greenwich, CT), letter dated 5/23/11

13-43, 13-44

27. New York City Department of Environmental Protection (NYCDEP), letter dated 5/23/11

6-1 to 6-3, 7-1, 7-2, 8-21 to 8-24, 9-7 to 9-16, 11-1, 13-45, 17-1 to 17-5, 18-2 to 18-6

28. Greg M. Fleischer (Carpenter Environmental Associates, Inc.), letter dated 5/24/11

8-25 to 8-33, 9-53 to 9-56

29. Peter Dermody (Dermody Consulting), letter dated 5/27/11

2-14, 8-34, 8-35, 8-53, 9-17, 9-18, 13-46 to 13-48

30. Marian H. Rose, Croton Watershed Clean Water Coalition, Inc. (CWCWC), letter dated 5/31/11

9-19 to 9-22

31. Richard J. Lippes (Richard J. Lippes & Associates, on behalf of the Sierra Club), letter dated 5/31/11

2-15 to 2-25, 3-13 to 3-24, 4-2 to 4-7, 4-9, 4-11, 4-13, 8-36 to 8-52, 8-54 to 8-56, 13-63 to 13-66, 18-7 to 18-11, 22-5 to 22-8

32. Edward Buroughs, Westchester County Planning Board (WCPB), letter dated 5/31/11

2-26, 2-27, 3-10 to 3-12, 6-4, 8-57, 9-23

33. Bernie Adler and Michael P. O'Rourke, Adler Consulting –Transportation Planning & Traffic Engineering, PLLC (on behalf of Westchester Airport Associates, L.P.), letter dated 5/31/11

13-49 to 13-62

34. Adam Kaufman, Town of North Castle Director of Planning, letter dated 6/1/11

2-28 to 2-33, 3-25, 3-26, 4-15 to 4-17, 8-58 to 8-62, 9-24, 11-2 to 11-4, 13-67, 18-12

35. Ryan Coyne and David Sessions, Kellard Sessions Consulting, P.C. (Kellard Sessions), Town of North Castle Engineering and Wetlands Consultants, letter dated 6/1/11



2-34, 2-35, 3-27, 3-28, 4-18, 5-6, 6-5 to 6-7, 7-4, 8-63 to 8-71, 9-25 to 9-49, 10-2, 11-5, 11-6, 13-68, 16-4 to 16-8, 17-6 to 17-14, D-1 to D-20

36. John F. Fava, Town of North Castle Conservation Board, letter dated 6/1/11

2-36 to 2-38, 8-72, 8-73, 9-50 to 9-52, 13-69, D-21, D-22

37. Eric A. Goldstein, Natural Resources Defense Council (NRDC), letter dated 6/1/11

2-39 to 2-41

38. Kate Hudson and William Wegner (Riverkeeper), letter dated 6/1/11

2-51, 7-5, 7-6, 7-7, 7-8, 7-9, 8-108, 8-109, 8-110, 8-111, 8-112, 8-113, 8-114, 8-115, 8-116, 9-57, 9-58, 9-59, 9-60, 9-61, 9-62, 18-17, 18-18, 18-19, 18-20, 18-21, 18-24

39. Michael D. Zarin and Daniel M. Richmond, Steinmetz and Steinmetz (on behalf of Westchester Airport Associates, L.P.), letter dated 6/1/11

2-42 to 2-50, 3-29 to 3-33, 4-6, 4-8, 4-10, 4-12, 4-14, 8-74 to 8-107, 13-70 to 13-78, 18-13 to 18-16, 22-9 to 22-13

40. NYS Office of Watershed Inspector General (WIG), letter dated 6/1/11

8-117, 8-118, 8-119, 9-63, 9-64, 9-65, 9-66, 9-67, 9-68, 9-69, 9-70, 9-71, 9-73, 9-74, 9-75, 9-76, 9-77, 9-78, 9-79, 9-80, 9-81, 17-15, 17-16, 18-22, 18-23, D-23, D-24, D-25, D-26, D-27, D-28, D-29, D-30, D-31, D-32, D-33, D-34, D-35

41. Peter J. Tesei (First Selectman, Town of Greenwich, CT), letter dated 5/31/11

3-33, 13-79, 17-17, 17-18, 17-19, 13-80



**New York State Office of Parks,  
Recreation and Historic Preservation**

Historic Preservation Field Services Bureau • Peebles Island, PO Box 189, Waterford, New York 12188-0189

518-237-8643

www.nysparks.com

**Andrew M. Cuomo**  
Governor

**Rose Harvey**  
Commissioner

April 14, 2011

Adam R. Kaufman  
Town of North Castle  
17 Bedford Rd  
Armonk, New York 10504

APR 25 2011

Re: FAA  
11 King Street, Parking Structure at Westchester  
Co Airport  
11 New King Street/NORTH CASTLE,  
Westchester County  
11PR02501

Dear Mr. Kaufman:

Thank you for requesting the comments of the Office of Parks, Recreation and Historic Preservation (OPRHP) concerning your project's potential impact/effect upon historic and/or prehistoric cultural resources. Our staff has reviewed the documentation that you provided on your project. Preliminary comments and/or requests for additional information are noted on separate enclosures accompanying this letter. A determination of impact/effect will be provided only after ALL documentation requirements noted on any enclosures have been met. Any questions concerning our preliminary comments and/or requests for additional information should be directed to the appropriate staff person identified on each enclosure.

In cases where a state agency is involved in this undertaking, it is appropriate for that agency to determine whether consultation should take place with OPRHP under Section 14.09 of the New York State Parks, Recreation and Historic Preservation Law. In addition, if there is any federal agency involvement, Advisory Council on Historic Preservation's regulations, "Protection of Historic and Cultural Properties" 36 CFR 800 requires that agency to initiate Section 106 consultation with the State Historic Preservation Officer (SHPO).

When responding, please be sure to refer to the OPRHP Project Review (PR) number noted above.

Sincerely,

Ruth L. Pierpont  
Acting Deputy Commissioner for Historic Preservation

Enclosure

**ARCHEOLOGY COMMENTS**  
**11PR02501**

Based on reported resources, there is an archeological site in or adjacent to your project area. Therefore the Office of Parks, Recreation and Historic Preservation (OPRHP) recommends that a Phase 1 archeological survey is warranted for all portions of the project to involve ground disturbance, unless substantial prior ground disturbance can be documented. If you consider the project area to be disturbed, documentation of the disturbance will need to be reviewed by OPRHP. Examples of disturbance include mining activities and multiple episodes of building construction and demolition.

A Phase 1 survey is designed to determine the presence or absence of archeological sites or other cultural resources in the project's area of potential effect. The OPRHP can provide standards for conducting cultural resource investigations upon request. Cultural resource surveys and survey reports that meet these standards will be accepted and approved by the OPRHP.

Our office does not conduct cultural resources surveys. A 36 CFR 61 qualified archeologist should be retained to conduct the Phase 1 survey. Many archeological consulting firms advertise their availability in the yellow pages. The services of qualified archeologists can also be obtained by contacting local, regional, or statewide professional archeological organizations. Phase 1 surveys can be expected to vary in cost per mile of right-of-way or by the number of acres impacted. We encourage you to contact a number of consulting firms and compare examples of each firm's work to obtain the best product.

Documentation of ground disturbance should include a description of the disturbance with confirming evidence. Confirmation can include current photographs and/or older photographs of the project area which illustrate the disturbance (approximately keyed to a project area map), past maps or site plans that accurately record previous disturbances, or current soil borings that verify past disruptions to the land. Agricultural activity is not considered to be substantial ground disturbance and many sites have been identified in previously cultivated land.

Please also be aware that a Section 233 permit from the New York State Education Department (SED) may be necessary before any archeological survey activities are conducted on State-owned land. If any portion of the project includes the lands of New York State you should contact the SED before initiating survey activities. The SED contact is Christina B. Rieth and she can be reached at (518) 402-5975. Section 233 permits are not required for projects on private lands.

If you have any questions concerning archeology, please contact Daniel A. Bagrow at 518-237-8643. ext 3254

APR 25 2011

## Technical Appendix:

Park Place at Westchester Airport  
Town of North Castle  
Westchester County, New York

Prepared by Donald W. Lake Jr., P.E., CPESC, CPSWQ

### **I. Need for Revision of Preliminary Stormwater Plans**

The preliminary stormwater pollution prevention plan (PSWPPP) and associated site plans contain a number of errors and omissions that need to be corrected to properly evaluate the effectiveness of stormwater controls at the Site. To this end, these preliminary plans should be revised to develop a stormwater pollution prevention plan, set of associated site plans, and the stormwater section of the draft environmental impact statement (DEIS), and those documents should be made available for public comment prior to completion of a final EIS.

### **II. Erosion and Sediment Control**

1. According to page 17-2 of the PSWPPP, 1,200 cubic yards of concrete will be poured for the foundation and another 2,250 cubic yards will be poured for the concrete slabs. As a result, approximately 430 truck loads of concrete will be required. Concrete is alkaline or has a high pH, so wash water from concrete trucks should be contained and not allowed to enter and adversely impact the environment. To address this issue, a concrete truck washout facility should be constructed on site, away from environmentally sensitive resources, such as water courses, wetlands, and wetland buffer areas. The details for this structure should be added to Sheet C-9 and a note should be added to the Erosion and Sediment Control Plan shown on Sheet C-7.

2. All plan views show the finished parking facility extending to and possibly encroaching beyond the proposed limit of clearing and grubbing. As a result, the proposed construction footprint is probably undersized. A foundation grading plan is not included in the set of construction drawings C-1 through C-12. This drawing should be added to assure that the construction footprint stays within the proposed area of disturbance.

3. Steep side slopes, 2:1, occur on the east side of the pocket wetland and sedimentation basin and are shown on the Paving, Grading, and Drainage Plan on Sheet C-5. They are too steep to maintain and should be seeded with a seed mix for critical areas (NYS Standards and Specifications for Erosion and Sediment Control, August 2005, page 3.5) or flattened in combination with construction of a structural retaining wall.

4. According to the first bullet on page 7-10 of the DEIS and Erosion and Sediment Control note 8 on Sheet C-1, disturbed site soils need to be stabilized in seven days.

However, the third bullet on page 7-10 states that disturbed site soils need to be stabilized within 14 days. Due to the proposed project's proximity to the Kensico Reservoir, we recommend that disturbed site soils be stabilized within 7 days. In addition, the soil stabilization time limit note appearing on Sheet C-1 should be moved to the Erosion and Sediment Control Plan on Sheet C-7.

5. Permanent seeding specifications and a detailed planting schedule are not included on the construction drawings and should be added to the Landscape Plan on Sheet C-8 and to the Details on Sheet C-12.

6. On Sheet C-7, a proposed Perimeter Dike & Swale (#2) is shown discharging at the top of a 3:1 slope. Rock riprap needs to be installed to protect this outlet.

7. On Sheet C-7, the outlet for Perimeter Dike & Swale #1 joins the outlet for the storm drain system on the west side of the proposed project site and flows into Sediment Basin #2. This combined flow needs rock riprap protection down to elevation 377.

8. Also on Sheet C-7, the outlet from Sediment Basin #1 needs rock riprap protection all the way down to elevation 377, where it enters Sediment Basin #2.

9. To facilitate and clarify the erosion and sediment (E&S) control component of the PSWPPP, the E&S notes on Sheet C-1 should be relocated to the E&S Plan on Sheet C-7.

10. Stone check dam details are shown on Sheet C-10. However, these are not mentioned in the E&S notes on Sheet C-1 nor shown on the Erosion and Sediment Control Plan on Sheet C-7. These details should be removed.

### **III. Stormwater Management**

11. According to the second paragraph on page 7-11 of the DEIS, temporary conveyances to the sediment basins would be designed to transport a 100-year storm event. However, these calculations were not provided in the PSWPPP nor were specific dimensions for the perimeter Dike/Swale presented on Sheet C-10. This deficiency needs to be addressed to validate the capacity of the temporary conveyances.

12. The PSWPPP is deficient in that the hydrologic and hydraulic calculations for the construction condition are absent. Considering the proposed size of disturbance and construction operations, a curve number of 98 is recommended to size the erosion and sediment controls for all areas. In addition, the construction condition hydrologic and hydraulic calculations must also be presented.

13. The structural details for three outlet structures within the Stormwater Control System are absent and should be provided. Validation of the post-developed design HydroCAD routings cannot be made without these details. A table of dimensions and elevations needs to be provided on Sheet C-10.

14. The flow splitter detail on Sheet C-10 of the construction drawings is incorrect, since it shows two outlets on the same side of a splitter wall and at the same invert elevations. Also the flow splitter detail does not match the HydroCAD routings, which show a 2' x 0.5' orifice below the 24" diameter overflow pipe. This error needs to be corrected.

15. Specific dimensions and elevations should be added to the Stormwater Planter Detail on Sheet C-10, and to all the details, as appropriate, on Sheets C-9 through C-12.

16. The profile of the outlet structure for the pocket wetland shown on Sheet C-12 is incorrect. The bottom of the outlet control structure should be raised to elevation 374.0 and the pipe outlet invert elevation raised to elevation 370.0 to agree with the elevations show in the table on Sheet C-5 and also to correct the HydroCAD routing, which shows the pipe invert at 372.0. In addition, the W-4 wet pond label on Sheet C-12 needs to be edited to W-4 pocket wetland.

17. The runoff reduction volume (RRv) calculations performed and included as Appendix E of the PSWPPP were never signed by the designer nor signed as checked. These calculations also include the water quality volume (WQv) for sizing the rain garden and stormwater planter. These calculations should be validated and the details on the construction drawing C-10 for the stormwater planter should match those used in the design calculations presented in the SWPPP Appendix E. For example, the soil depth shown on Sheet C-10 is 18", whereas the soil depth presented in the design calculations in the PSWPPP is 24". These inconsistencies need to be corrected.

18. The time of concentration ( $T_c$ ) is defined as the time required for a drop of water to travel from the most hydrologically distant point in a subcatchment to the outlet. Sheet D-1 of the PSWPPP Appendix B presents the drainage area shown as PRE-2. However, the  $T_c$  flow path to the design point DP-2 does not appear to accurately represent the entire PRE-2 drainage area. The same is true for the  $T_c$  flow path for PRE-3. As a result, the analysis for the existing condition discharges at design points 2 and 3 appear to be erroneous. Corrected  $T_c$  flow paths should be used or the drainage areas should be further subdivided to more accurately represent the design points.

19. Mannings coefficients ( $n$ ) are used to calculate sheet flow travel time while  $K_v$  coefficients are a component used to calculate shallow concentrated flow velocity. Based on aerial photos and existing site descriptions, it appears that lower mannings coefficients for sheet flow were used while higher  $K_v$  values were used for shallow concentrated flow, both resulting in higher pre-developed peak discharges. These calculations need to be re-evaluated.

20. The sedimentation basin used as pre-treatment for sand filters should be sized to: 1) contain 25% of the sand filter water quality volume; and 2) to dewater over a twenty-four hour period, to effectively retain fines and prevent clogging. The DEIS does not provide structural details nor drawdown calculations for the sedimentation basin outlet structure. These details are needed to validate its intended operation.

21. The contributing areas assigned in the pollutant loading calculations do not agree with the drainage areas utilized in the HydroCAD model. These should be reconciled.

22. Page 35 of the PSWPPP refers to a wet pond (W-4) instead of to a pocket wetland. This should be corrected here and wherever else it occurs in the document.

23. Roof runoff from the offsite building on Lot 13A is flowing into the proposed onsite pocket wetland for treatment. However, no pre-treatment for the roof runoff is shown on the drawing nor described in the DEIS, as required in the New York State Stormwater Management Design Manual, Chapter 6, 2010. In addition, the outlet location entering the pocket wetland, as designed on Sheet C-5, should be re-configured to increase flow and modified to incorporate a serpentine flow path to the outlet structure to prevent short circuiting through the stormwater treatment system as shown on Figure 6-10 of the New York State Stormwater Management Design Manual, March 2010, page 6-26.

24. A detailed review of the pollutant loadings was conducted. Although some areas did not agree with the HydroCAD sub-area values, the pollutant loads, as calculated in accordance with the DEC 1992 Reducing The Impacts Of Stormwater Runoff From New Development manual, showed a phosphorus decrease after treatment. Our independent evaluation, based on more recent methods and pollutant load characteristics for the project and offsite area, showed the following:

Pre-Developed Load = 4.67 lbs TP  
Post-Developed Load = 6.31 lbs TP  
Post-Dev Load with Treatment\* = 3.31 lbs TP

\* Using the efficiency methodology of sites in series in Appendix 1, New York State Stormwater Management Design Manual, 2003.

### Pollutant Loading Calculations

Simple Method Calculations (New York State Stormwater Design Manual August 2003)

$$L = \frac{P \cdot P_j \cdot R_v \cdot C \cdot A \cdot (2.72)}{12}$$

L = Pollutant Load in Pounds (a loading rate is the total amount of pollutants entering the system from one or multiple sources. It estimates pollutant discharge with different land use categories and is often expressed as pounds per acre per year in a watershed.)

P = 48.2 inches (annual rainfall)

P<sub>j</sub> = 0.9 (constant for fraction of annual rainfall events that produce runoff)

R<sub>v</sub> = 0.05 + 0.009 • I (I = % Impervious)

0.068 existing condition for woods and 2% I

0.59 existing condition for commercial and 60% I

C = Constant Pollutant Concentration (Terrene Institute 1996)  
0.11 total phosphorus (TP) in mg/l or ppm (for forest)  
0.33 TP (for commercial [comm])  
0.08 TP (for water/wetlands)

A = Source Area (the adjusted areas as shown on the HydroCad routings for Pre- and Post-Development)  
1.9225 acres of forest for existing condition  
1.1995 acres of forest for developed condition  
2.3606 acres of commercial for existing condition  
3.2441 acres of commercial for developed condition

12 & 2.72 are Constants for Units (converts variables into pounds)

### 1. Existing Condition - Total Phosphorus

Woods - L =  $\frac{48.2 \cdot 0.9 \cdot .068}{12} \cdot 0.11 \cdot 1.9225 \text{ Acre} \cdot (2.72) = 0.14 \text{ pounds}$   
= 0.14 pounds of total phosphorus

Commercial - L =  $\frac{48.2 \cdot 0.9 \cdot .59}{12} \cdot 0.33 \cdot 2.3606 \text{ Acre} \cdot (2.72) = 4.52 \text{ pounds}$   
= 4.52 pounds of total phosphorus

Existing Total Phosphorus Total = 0.14 + 4.52 = 4.66 pounds

### 2. Future Condition - Total Phosphorus

Woods - L =  $\frac{48.2 \cdot 0.9 \cdot .068}{12} \cdot 0.11 \cdot 1.1995 \text{ Acre} \cdot (2.72)$   
= 0.09 pounds of total phosphorus

Commercial - L =  $\frac{48.2 \cdot 0.9 \cdot .59}{12} \cdot 0.33 \cdot 3.2441 \text{ Acre} \cdot (2.72)$   
= 6.21 pounds of total phosphorus

Future Total Phosphorus Total = 0.09 + 6.21 = 6.30 pounds

### Future Condition With Treatment

Average pollutant removal efficiency of a sand filter for total phosphorus = 40%  
Average pollutant removal efficiency of a pocket wetland for total phosphorus = 46%  
(American Society of Civil Engineers [ASCE] Pollutant Removal Database 2009)



As the second treatment practice in series: the efficiency (E) for  $E_2 = (1-E_1) \cdot E_2$   
 $E_2 = (1-0.4) (46) = 27.6$ , so use 28%

Since only design point (DP)-2 is treated = 2.7524 acres (total commercial area)

$$\begin{aligned} \text{Its load (Developed)} &= \frac{48.2 \cdot 0.9 \cdot .59}{12} \cdot 0.33 \cdot 2.7524 \text{ acres} \cdot (2.72) \\ &= 5.27 \text{ pounds of total phosphorus (TP)} \end{aligned}$$

Removal = 5.27 pounds  $\cdot$  0.4 = 2.11 pounds of TP removed by the sand filter  
 5.27 pounds - 2.11 pounds = 3.16 pounds of TP that flow into the pocket wetland  
 3.16 pounds  $\cdot$  (0.28) = 0.88 pounds of TP removed by the pocket wetland  
 3.16 pounds - 0.88 pounds = 2.28 pounds of TP remaining after the pocket wetland  
 2.28 pounds + 1.03 pounds (from untreated Drainage Area's 1 & 3) = 3.31 pounds  
 of total phosphorus

Total Phosphorus Leaving the Site After Treatment = 3.31 pounds.

This results indicate a 29% phosphorus reduction below the pre-developed load and a total phosphorus reduction of approximately 47.5% of the post-developed load. These values are significantly less than the 40% to 88% reduction shown in Table 6-7 on page 23 of the SWPPP. As a result, additional retrofits of impervious areas of Lot 13A should be required to increase phosphorus removal.

25. The Town of North Castle is a municipal separate storm sewer system (MS4) in the New York City Watershed. In accordance with the NYSDEC General Permit for MS4's, the town needs to reduce the amount of phosphorus entering its waters. Municipalities must also estimate how many pounds of phosphorus have not entered reservoirs and other water bodies due to this program. One way to achieve this goal is by implementing a retrofit program which constructs, or directs the construction of, stormwater management practices designed to reduce phosphorous loads to receiving waters. In addition to the capture of rooftop runoff from the masonry building on Lot 13A, offsite, runoff from other offsite impervious surfaces on Lot 13A should be captured and treated. Options for this treatment include but are not limited to: bioretention modification to the parking areas; grass swales designed for low velocity; utilizing chambered water quality units on-line with the stormwater drainage system; porous pavement replacing impervious pavement in parking areas; pervious walkways; and disconnecting impervious areas to buffer areas.

A useful aid to designing a retrofit program is available from the Center for Watershed Protection (CWP) which has developed a Watershed Treatment Model (WTM), that integrates the latest pollutant removal practices and calculation methodologies. The WTM is acknowledged by NYSDEC as meeting this MS4 requirement and this type of model should be used on all projects within the New York City Watershed.

26. Chapter 18 of the DEIS evaluates the proposed project and compares it to six other development alternatives as well as to the no build alternative. No explanation was provided justifying why: all the other analyzed alternatives are "self-park;" the automated alternative was set at 1,450 cars; Alternative C was not analyzed for the automated system which reduces the impervious surface foot print, saves some wetland buffer, and reduces further the pollutant load. In addition, analysis of the social and economic need for additional parking was inadequate and should include consideration of the availability of other emerging parking services for the Airport, such as Purchase Park2 Fly, the new parking service being provided by Purchase College.

27. The DEIS states that the proposed project alternative will provide 1,450 parking spaces. Based on the numbers provided on the DEIS Architectural Drawings (A.21, A2.2, and A2.3) 1,290 parking spaces are shown. This 160 parking space discrepancy needs to be explained.

28. Page 9-9 of the DEIS discusses mitigation measures and " ... site planning practices and that were used to help determine the site plan and stormwater management system design". The first four planning practices presented are: Preservation of Undistributed Areas; Preservation of Buffers; Reduction of Clearing and Grading; and Locating Sites in Less Sensitive Areas. Based on the proposed areas of wetland and wetland buffer destruction, none of these planning practices were implemented. They should be seriously considered in a revised DEIS which should be made available for public comment prior to issuance of a final EIS.

29. According to pages 1-7 and 1-8 of the DEIS, a car wash will be operated at the proposed parking facility. The car wash will utilize a special treatment and filtering system to allow wastewater to be recycled for subsequent washes. This system is also equipped with an oil/grit separator. Once the oil and unrecoverable wastewater have been segregated for disposal, it will drain to the sewage ejector pit and be conveyed to the municipal sewer. It is also expected that any automobile fluids leaking out onto the garage floor would be washed into this ejector unit and conveyed to the sewer. No specific details of this proposed system were included in the DEIS documents other than a schematic shown on Sheet MEP-1. This information must be provided for a full review.

30. According to page 16 of the PSWPPP, all deep sump catch basins will be installed with a "hood" at their outlet. However, the hood details are missing from the catch basin details shown on Sheet C-10 and need to be added.

31. "Turfstone" permeable paver units are described in the SWPPP on page 15 and are shown in detail on Sheets C-5 and C-11. The detail on Sheet C-11 shows the permeable paver incorrectly depicted on a slope instead of on level ground to the south side of the facility. As such, this detail is incorrectly labeled. In addition, the depth dimensions associated with determining the amount of water that can be stored beneath the permeable pavers is missing. Finally an underdrain should also be provided in low permeable soil, such as the Ridgebury loam on site.

32. The DEIS in many locations notes that the proposed project will provide 1,450 parking spaces and this is compared to alternatives A1 and A2 shown in Chapter 18 of the DEIS whose parking spaces number 500 and 1,000 respectively. Based on the numbers provided on the Architectural Drawings A2.1, A2.2, and A2.3, there are only 1,290 parking spaces shown. What accounts for this discrepancy of 160 parking spaces and how will that affect the comparison results in the DEIS?

33. The DEIS does not provide a map depicting the stormwater sub-areas analyzed in Appendix E. As a result, the water quality volume (WQv) and runoff reduction volume (RRv) calculations provided in Appendix E of the PSWPPP are unsupported. Based on the site information provided on page 9-9 of the DEIS, our independent calculations indicate a site WQv equal to 10,819 cubic feet for the impervious area of Lot 14B, in the developed condition. This calculation is based on a 25% WQv capture for re-development runoff captured by a standard stormwater management practice (New York State Stormwater Management Design Manual, Chapter 9, 2010). This value exceeds the 4,144 cubic feet stated on page 9-11, Chapter 9, of the DEIS by over two and a half times. The DEIS needs to further document and clarify this issue.

# Comments of the Office of the Watershed Inspector General

## Draft Environmental Impact Statement Park Place at Westchester Airport Town of North Castle Westchester County, New York

June 1, 2011

The Office of the Watershed Inspector General (“WIG” or “WIG Office”)<sup>1</sup> respectfully submits these comments on the draft environmental impact statement (“DEIS”) concerning the proposed Park Place at Westchester Airport project located in the Town of North Castle, Westchester County (“Park Place” or “the Project”). Park Place is an automated parking facility that would be located only six hundred feet from the Kensico Reservoir. As a terminal reservoir, water from the Kensico is drawn directly into New York City’s drinking water distribution system following chlorination. The Kensico Reservoir typically provides unfiltered drinking water to approximately eight million New Yorkers each day.

WIG submits these comments because construction activities at the proposed Park Place project, as currently described, would threaten pollution of the Kensico Reservoir. WIG recognizes that the Project could have beneficial impacts on stormwater pollution after construction is complete, especially if significant improvements to the preliminary stormwater plans for the Project are implemented. WIG does not oppose development of Park Place, but seeks appropriate modifications of the Project to avoid construction in wetland and wetland buffer areas, to improve erosion and sediment controls to prevent pollution during construction, and to enhance post-construction stormwater practices. Such modifications are necessary to eliminate and mitigate potential adverse water pollution impacts from the project in accordance with the State Environmental Quality Review Act (“SEQRA”).

### **I. Summary**

The project site includes two contiguous map parcels adjacent to each other north of Westchester County Airport in the Town of North Castle, one at 11 New King Street (Lot 14B) and the other located at 7 New King Street (Lot 13A). The 2.47-acre parcel at 11 New King Street currently supports a 9,700-square-foot one-story office building built in the 1960s and a 35-space parking area. The total extent of impervious area at the

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<sup>1</sup> The position of WIG was established by Governor Pataki in Executive Order No. 86 on August 19, 1998, and continued in orders by successive governors. See 9 NYCRR § 5.86. The WIG’s purpose is “to enhance current efforts to protect the New York City drinking water supply from activities that have the potential to adversely affect the New York City Watershed reservoirs and tributaries.” See id., § 5.86. The WIG is a joint appointee of the Attorney General and the Governor within the employ of the Attorney General. The comments herein express the views of the WIG and not necessarily those of any State agency that may now or later be represented by the Attorney General in this matter or in any related matter.

existing project site is approximately 32,000 square feet or nearly three quarters of an acre. Approximately 0.87 acres of the 4.20-acre parcel at Lot 13A is included within the project site. This portion of the project site is undeveloped and primarily wooded.

The proposed project would involve construction of an approximately 267,000-square-foot five-and-a-half-level enclosed automated parking structure with a building footprint of approximately 51,000 square feet (~1.2 acres). The parking facility is designed to accommodate 1,450 vehicles. The upper levels and partial lower level would be used primarily for vehicle storage. The main level would contain a variety of areas intended for: vehicle and equipment storage, an office, a shuttle bus pick up/drop off waiting area, vehicle loading bays for vehicle drop off and automated parking, and a car wash bay. Water from the automated car wash will be filtered, treated, and recycled. Wastewater that is not recycled will be sent to the municipal sewer. The total extent of impervious area at the proposed parking facility would be approximately 60,200 square feet (1.38 acres), or almost twice as much as currently exists on site.

With the exception of the northern corner of the site, watercourses and Town wetlands surround much of the property. The watercourses include a perennial New York State Department of Environmental Conservation designated Class A stream and an ephemeral drainage channel. When leaving the site, the stream flows to the west under NYS Route 120 and into the Rye Lake portion of the Kensico Reservoir. Due to its connection to the Kensico Reservoir, the stream is considered a "reservoir stem" by the New York City Department of Environmental Protection ("NYCDEP"), defined by that agency as any watercourse segment which is tributary to a reservoir and lies within 500 feet or less of the reservoir. A reservoir stem designation includes a 300-foot buffer that extends in a circular configuration beyond the 500 foot upstream point from where the stream enters the reservoir. The western boundary of the Park Place site is located approximately 600 feet from the reservoir. As such, part of the property is located within the reservoir stem buffer area. No activities regulated by NYCDEP, such as constructing new impervious surfaces, are being proposed within the reservoir stem buffer area.

Town of North Castle wetlands have been identified and tentatively delineated on site. The tentative wetland boundaries are subject to confirmation by the Town this Spring. Town delineated wetlands are protected by a 100 foot buffer area. Construction of an impervious surface within 100 feet of a watercourse or wetland without a permit or variance is prohibited by the Town. Using the preliminary unconfirmed wetland delineation, approximately 0.13 acres of wetlands are to be destroyed at the site. Mitigation for this loss consists of creating new onsite wetland areas. In addition, 0.49 acres of wetland buffer would be destroyed. Mitigation proposed for this loss is wetland vegetation planting, primarily within the proposed stormwater management system, within the remaining buffer area.

As discussed further below and in the attached Technical Appendix, the DEIS's evaluation of the Project's pollution impacts and plans for mitigation are flawed. Further environmental review under SEQRA and modifications to the Project are needed to correct these deficiencies and mitigate potential adverse water quality impacts. Project

modifications should include, among other elements: (1) scaling down the development footprint to reduce wetland and associated buffer area disturbance at the site; (2) maximizing the use of “green infrastructure” to reduce pollutant loadings and runoff volumes; (3) revising the preliminary stormwater pollution prevention plan to more effectively mitigate pollution impacts; and (4) implementing, or funding the implementation of, additional offsite mitigation projects to further reduce stormwater pollution.

## **II. The Kensico Reservoir**

The proposed Project is located adjacent to the Kensico Reservoir in suburban central Westchester County. The Kensico Reservoir holds 30.6 billion gallons at full capacity and is located approximately 15 miles north of New York City. The Reservoir’s drainage basin is highly developed, and includes portions of the Towns of Harrison, Mount Pleasant, North Castle, New Castle, and Greenwich, Connecticut.

The Kensico Reservoir receives most of its water from two aqueducts that transport water from the city’s six West-of-Hudson reservoirs in the Catskill and Delaware portions of the New York City Watershed (“Watershed”). As the terminal reservoir for the Catskill and Delaware system waters, the Kensico Reservoir is ordinarily the last stop before its unfiltered drinking water empties into the distribution system for New York City. Water is usually detained in the Kensico Reservoir for 15 to 25 days before entering the distribution system. The Westchester Joint Water Works also draws unfiltered drinking water for areas of Harrison, Port Chester, Rye, and Rye Brook, directly from the western “Rye Lake” section of the Kensico.

The proposed Project has the clear potential for significant adverse impacts on the Kensico Reservoir and its tributaries. These include construction related erosion and sedimentation (e.g., siltation from excavation) and discharges of turbidity in runoff; increased stormwater flow from additional impervious surfaces; and polluted runoff (e.g., oil, grease, and automotive fluids from parking areas, soaps and detergents from a car wash, fertilizers and pesticides from lawns, and pathogens carried in stormwater into the Reservoir from newly created impervious surfaces). In the event these pollutants enter the Kensico Reservoir from adjacent developments, they will not receive treatment other than the limited but important protections afforded by disinfection with chlorine implemented by NYCDEP.

During normal operations, the Kensico Reservoir provides unfiltered drinking water to roughly 90% of the people who consume New York City water. As a result, the Kensico Reservoir is a critical component of New York City’s drinking water supply system and is subject to strict water quality standards as a Class “AA” water body.

A Class AA water body is of sufficient quality when adequately disinfected to serve as a source of safe and satisfactory drinking water that will meet New York State Department of Health drinking water standards. 6 NYCRR §701.5. The best usages of Class AA waters are: a source of water supply for drinking, culinary or food processing

purposes; primary and secondary contact recreation; and fishing. Class AA waters shall be suitable for fish, shellfish, and wildlife propagation and survival. Id.

The Kensico Reservoir is also regulated by the federal Safe Drinking Water Act, 42 U.S.C. § 300f et seq. (“SDWA”). Under the SDWA, EPA promulgated the Surface Water Treatment Rule, which requires that a public drinking-water system supplied by surface waters satisfy water quality standards, either by installing a filtration system or by meeting criteria, including a “watershed control program,” to protect the quality of the water in the absence of filtration. See 40 C.F.R. §§ 141.70, 141.71. Under EPA regulations, the City has avoided filtration of Kensico Reservoir water pursuant to several filtration avoidance determinations issued by that agency since the 1990s.

Under the SDWA, Kensico water must comply with water quality standards for turbidity and pathogens. EPA prohibits raw water turbidity measurements in unfiltered drinking water, such as the Kensico Reservoir, at the intake to the distribution system in excess of 5 nephelometric turbidity units. See 40 CFR § 141.71(a)(2). Violations of this turbidity standard could provide grounds for the New York State Department of Health (“NYSDOH”), which now holds primacy in enforcing filtration avoidance regulations under the SDWA, to require that the City filter Kensico water. In the 2007 Filtration Avoidance Determination, EPA found that “significant improvement to the City's ability to prevent, manage, and control turbidity in the Catskill System [which supplies almost half of the water in Kensico Reservoir] is required in order to maintain filtration avoidance for the long-term.”<sup>2</sup> In addition, because of the health risks associated with pathogens in a drinking water supply, EPA requires that each unfiltered water system meet strict requirements “ensuring that the system is not a source of a waterborne disease outbreak.” 40 C.F.R. § 141.71.

Development within the Kensico Reservoir Basin threatens the discharge of additional turbidity and pathogens, among other pollutants, to that waterbody. If the Kensico Reservoir fails to meet water quality standards, the City could be forced to construct a filtration plant for Kensico water, entailing capital expenditures of over \$10 billion and annual operation and maintenance costs exceeding \$100 million.

Given the sensitivity of the Kensico Reservoir as a terminal reservoir, new development is generally disfavored within the Kensico basin and any development that is approved must achieve compliance with strict and heightened pollutant control criteria. To address concerns arising from polluted runoff from existing development and impervious surfaces, extensive and very costly efforts have been undertaken by the NYCDEP and others to reduce pollutant loading from existing development into the Kensico Reservoir.

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<sup>2</sup> 2007 FAD, pp. 13-14.

### **III. Stormwater Pollution Associated with Construction and Development of Land**

“Stormwater pollution is one of the most significant sources of water pollution in the nation.” Environmental Def. Ctr., Inc. v. EPA, 344 F.3d 832, 840 (9th Cir. 2003). According to EPA, “[u]ncontrolled storm water discharges from areas of urban development and construction activity negatively impact receiving waters by changing the physical, biological, and chemical composition of the water, resulting in an unhealthy environment for aquatic organisms, wildlife and humans,” and can “severely compromise” water quality.<sup>3</sup>

The construction and development of land, is a major source of pollutants discharged to surface waterbodies, such as rivers and reservoirs, in stormwater runoff. Discharges of stormwater from construction sites include sediment which, when suspended in water contributes to turbidity (murkiness) in the water and serves as a carrier of other pollutants, such as phosphorus, metals, organic compounds, and pathogens. “It is generally acknowledged that erosion rates from construction sites are much greater than from almost any other land use.”<sup>4</sup> Sediment loads in stormwater discharges from construction sites are typically 1,000 to 2,000 times the sediment loads in discharges from undeveloped forested land.<sup>5</sup>

Development adjacent to the Kensico Reservoir could increase discharges of stormwater polluted by turbidity, pathogens, and other contaminants. Turbidity not only facilitates the transportation of pollutants, but it can shelter pathogens from exposure to attack by chlorine, a disinfectant routinely used in the Kensico Reservoir to protect public health. In addition, the organic particles that contribute to turbidity can also combine with chlorine to create disinfection by-products which may increase the risk of cancer or early term miscarriage for people drinking the water.<sup>6</sup>

Post-construction stormwater discharges from developed areas are also a major source of pollution to the waters of the United States. “Urbanization alters the natural infiltration capability of the land and generates a host of pollutants . . . thus causing an increase in storm water runoff volumes and pollutant loadings.”<sup>7</sup> Land development “can

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<sup>3</sup> “National Pollutant Discharge Elimination System – Regulations for Revision of the Water Pollution Control Program Addressing Stormwater Discharges; Final Rule,” 64 Fed. Reg. 68722, 68724, 68728. (Dec. 8, 1999) (hereinafter, 1999 Preamble & Rule).

<sup>4</sup> “National Pollutant Discharge Elimination System – Regulations for Revision of the Water Pollution Control Program Addressing Stormwater Discharges; Final Rule,” 64 Fed. Reg. 68722, 68724, 68728. (Dec. 8, 1999).

<sup>5</sup> EPA, “Storm Water Phase II Final Rule: Small Construction Program Overview (Fact Sheet 3.0),” EPA 833-F-00-013 (Jan. 2000), available at <http://www.epa.gov/npdes/pubs/fact3-0.pdf>.

<sup>6</sup> See National Research Council, “Watershed Management for Potable Water Supply: Assessing the New York City Strategy” (2000) at 2, 5-6, 102-05, 109.

<sup>7</sup> 1999 Preamble & Rule, 64 Fed. Reg. at 68725.



result in both short- and long-term adverse impacts to water quality in lakes, rivers and streams within the affected watershed by increasing the load of various pollutants in receiving water bodies, including sediments, metals, organic compounds, pathogens, and nutrients.”<sup>8</sup> Stormwater pollution to the Kensico Reservoir is of great concern because its drainage basin, including the Project Site, lies within the “sixty-day travel time” of the water which is supplied to consumers. Sixty days is generally viewed as the life span for many disease-causing microbes in fresh water, such as *Giardia lamblia* and *cryptosporidia*.

Preventing pathogens from contaminating the water is of particular concern for the City's Watershed because of the risks pathogens pose to public health. Pathogens include viruses and bacteria, such as *Giardia lamblia*, *cryptosporidia*, and *E. coli* O157:H7, which can cause serious illness or death, especially among very young, old and people with compromised immune systems.<sup>9</sup>

#### **IV. SEQRA**

Under SEQRA, the lead agency “having principal responsibility for carrying out or approving” an action regulated by SEQRA must determine if the action “may have a significant effect on the environment.” ECL § 8-0111(6). If the lead agency determines that the action may have such effect, the agency issues a “positive declaration” and a draft environmental impact statement is prepared and made available for public review and comment before being finalized as a final environmental impact statement (“FEIS”). ECL § 8-0109(5); 6 N.Y.C.R.R. § 617.7(a)(1).

Environmental review under SEQRA must be comprehensive; it must cover all “relevant areas of environmental concern.” Har Enterprises v. Town of Brookhaven, 74 N.Y.2d 524, 529 (1989). An environmental impact statement must evaluate alternatives to a proposed project; any project approval must avoid or minimize adverse environmental impacts “to the maximum extent possible.” ECL §§ 8-0109(2), (8); 6 N.Y.C.R.R. § 617.11.<sup>10</sup> Because SEQRA requires consideration of alternatives and mitigation of environmental impacts, it “is not merely a disclosure statute; it imposes far more action-forcing or substantive requirements on state and local decision makers than [the National Environmental Policy Act] imposes on their federal counterparts.” Matter

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<sup>8</sup> EPA, Draft Proposed Rule for Effluent Limitations Guidelines and New Source Performance Standards for the Construction and Development Category, Docket No. 01644, at 49-50. February 12, 2002.

<sup>9</sup> In August 1999, the largest outbreak of waterborne *E. coli* O157:H7 illness in United States history occurred at the Washington County Fair in New York, when a drinking water supply well became contaminated with that pathogen, infecting 781 people, and resulting in the hospitalization of 71 people and two deaths.

<sup>10</sup> Alternatively, the agency can disapprove the action based on adverse environmental effects disclosed during SEQRA review or on other grounds. See, e.g., Matter of Fawn Builders, Inc. v. Planning Bd., 223 A.D.2d 996 (3d Dep’t 1996).

of Jackson v. N.Y. State Urban Dev. Corp., 67 N.Y.2d. 400, 415 (1986) (internal quotations omitted).

## **V. WIG's Concerns Regarding the DEIS for Park Place**

### **A. Wetlands and Wetland Buffers**

Wetlands provide flood control, wildlife habitat, and improve drinking water quality by accumulating and retaining nutrients, trapping sediments, removing and transforming human and animal wastes, and degrading certain pollutants. Any disturbance to wetlands or their adjacent areas within the Watershed is highly disfavored. The restoration or re-creation of wetlands that have been disturbed is often far less successful than anticipated. In short, development should be re-directed away from wetlands and their buffer areas.

The location of the parking facility and its associated stormwater management practices are being proposed in Town regulated wetlands and wetland buffer areas. The importance of wetlands to the protection of drinking water quality and maintenance of site hydrology is well accepted and understood. The proposed project should be redesigned so that wetlands and wetland buffers are left undisturbed.

### **B. Proposed Project Modifications**

The proposed Park Place project should incorporate the following measures to mitigate increased water pollution that otherwise would be generated by the project. These measures may be accomplished in part by implementing additional "Green Infrastructure" practices. To the project sponsors' credit, the capture and treatment of roof top runoff at the masonry building on Lot 13A, offsite, provide a water quality benefit. Runoff from other offsite impervious surfaces, such as the parking area, on Lot 13A also should be captured and treated. Options for this treatment include, but are not limited to: bioretention modification to the parking areas; grass swales designed for low velocity; utilizing chambered water quality units on-line with the stormwater drainage system; porous pavement replacing impervious pavement in parking areas; pervious walkways; and disconnecting impervious areas to buffer areas.

A useful aid to designing a retrofit program is available from the Center for Watershed Protection which has developed a Watershed Treatment Model, that integrates the latest pollutant removal practices and calculation methodologies. See Technical Appendix, comment 25.

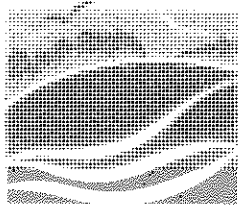
**C.     The Preliminary Stormwater Pollution Prevention Plan is Deficient**

The stormwater sections of the DEIS are deficient in various respects, as described in detail in the Technical Appendix. Inadequacies include, construction details that are incomplete and at times inaccurate for erosion and sediment control and stormwater management. Proper and complete documentation is missing for hydrology, water quality, and runoff reduction calculations. Some steep slopes are not adequately stabilized and there are no controls proposed for concrete truck wash outs at the site. The design for the pocket wetland and for accepting roof runoff from an offsite building on Lot 13A are deficient.

These inadequacies and others identified in the Technical Appendix, need to be corrected. Because the SWPPP is only “preliminary,” a revised SWPPP containing these and other corrections should be included in a Supplemental DEIS, so that members of the public and interested public agencies will have an effective opportunity to comment on such matters.

**D.     The DEIS Does Not Adequately Address Car Wash  
and Automotive Fluid Wastewater Treatment**

According to the DEIS, a car wash will be operated at the proposed parking facility. The car wash will utilize a special treatment and filtering system to allow wastewater to be recycled for subsequent washes. A detailed description of this treatment and filtering system is not presented in the DEIS. This system is also equipped with an oil/grit separator. Once the oil and unrecoverable wastewater have been segregated for disposal, it will drain to the sewage ejector pit and be conveyed into the municipal sewer. It is also expected that any automobile fluids leaking out onto the garage floor would be washed into this ejector unit and conveyed into the sewer. No specific details for the internal drainage system nor for the car wash system were included in the DEIS documents other than a schematic shown on Sheet MEP-1. This information must be provided and made available for public comment.



TOWN OF  
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JUN 01 2011

TOWN OF NORTH CASTLE  
PLANNING BOARD

June 1, 2011

Mr. John Delano, Chairman  
And Planning Board Members  
Town of North Castle  
17 Bedford Road  
Armonk, NY 10504

Attention: Adam Kaufman  
Planning Director

RE: Comment on Draft EIS  
Proposed Parking Structure  
11 New King Street, LLC

It is obvious to anyone who has flown out of Westchester County Airport that additional parking is sorely needed, and there are doubtless many people in North Castle and nearby communities who would find additional parking at the proposed location a great convenience. However, the Town of North Castle must carefully weigh the potential negative consequences of allowing 1,450-space building with its 51,000-square foot footprint to be built. Foremost among the concerns of the North Castle Conservation Board are protection of water quality in the Rye Lake/Kensico Reservoir from degradation, loss of natural wetlands and open space due to construction, and the potential of demand for increased flights and resultant noise.

DETERMINE NEED

The existing parking structure at Westchester County Airport provides 1,200 parking spaces. An estimated 200 additional vehicles may be parked elsewhere on airport property, and an additional 500 parking spaces are available at nearby SUNY/Purchase University, with shuttle-bus service. Considering these facts, we question the need for such a large

parking project as the Applicant's propose. The Conservation Board suggests that the need for such a large facility should be substantiated prior to any consideration for the project.

#### WETLANDS

Wetland-A. The proposed 1,450-car facility would encroach upon Wetland-A by approximately 40 feet, and the required construction access would entail a far greater intrusion. The project should be revised to and reduced to avoid this use of wetlands.

Wetland-B, which includes the main stream channel surrounding this site, would be impacted by widening of the entrance road to the facility, clearing of woodland vegetation for detention basins and the outlet pipe to the stream channel from the proposed W-4 (Wetland #4 pocket wetland). The proposed project eliminates nearly all existing vegetation and natural storm water control function. The Conservation Board recommends that these intrusions be greatly reduced or rejected and be scrutinized by the New York City Department of Environmental Protection (NYCDEP) for impacts to Rye Lake/Kensico Reservoir.

#### STEEP SLOPE SETBACK

The North Castle Wetlands and Drainage Law, Paragraph 209-5c, amended in 2006, requires a 150-ft. setback for slopes over 25%. This additional setback as it concerns Wetland-A is not indicated on the Applicant's plan. The plan and calculations should be revised for accuracy.

#### SEDIMENT & EROSION CONTROL

Removal of substantial vegetation from the site and resultant soil disturbance would lead to erosion and sedimentation to Rye Lake/Kensico Reservoir unless properly controlled. Experience has shown that such control is typically problematic and 100% control of related pollution is unattainable.

The applicant proposes sophisticated measures to control pollution from the finished structure. But, if built, can the Town be sure that they can and will be properly maintained? What backup measures does the Applicant propose in case of failure?

#### ENCROACHMENT

The existing property usage at 11 New King Street encroaches on land of the Westchester County as a maintained lawn area off the east corner of the existing building and is likely to be used during construction. Any use of this property should be by agreement by Westchester County.

#### RYE LAKE WATER SUPPLY

While there is great concern with protection of water quality in the entire Kensico Reservoir system, an especially critical concern is the constricted Rye Lake area where the dilution of contaminants by inflow from the Delaware Aqueduct is reduced. It should be noted that the intake for the water supply of the Town of Harrison and other municipalities is located about 4000-feet from the project site where sediment and pollutants from construction and the finished structure would drain into Rye Lake. What would these pollutants from vehicles and the operation itself be?

There are drain pipes from Wetlands A & B that flow under Rte. 120 and Rte. I-684 to Louden's Cove. The plan in the DEIS shows only one drain from Wetland-B. The drain from Wetland-A located in the south corner of the property at 11King Street should be clearly shown on the plan. In addition, the intake pipe location for the Harrison Water Supply should also be shown on the Project Site (Figure #1) map.


#### KING STREET CORRIDOR

The Town of North Castle established the Kensico Watershed Improvement Committee (KWIC) to develop a plan to protect the Kensico Reservoir from operations at the corporate and municipal facilities in the Kensico watershed. The King Street Management Plan for portions of Routes 22 and 120 in the Town of North Castle was prepared and released in 2001. At the time it included five major corporations, however the southern limits of the King Street Corridor is the common municipal boundary with the Town of Harrison located about 3000 feet south of this project site. The report includes recommendations for Turf & Landscape Management, Storm-water, Waste Reduction, Hazardous Materials & Waste, Waterfowl Management, Material Storage, and Wastewater among other items. This report should be identified and included in the FEIS.

CONCLUSION

The magnitude of the proposed project at 11 New King Street has the potential of causing severe environmental and water quality problems with extensive site disturbance during construction, and maintenance of the storm-water facilities in years to come. A Town policy to protect the long-term water quality related to the Rye Lake/Kensico Reservoir is of greatest concern.

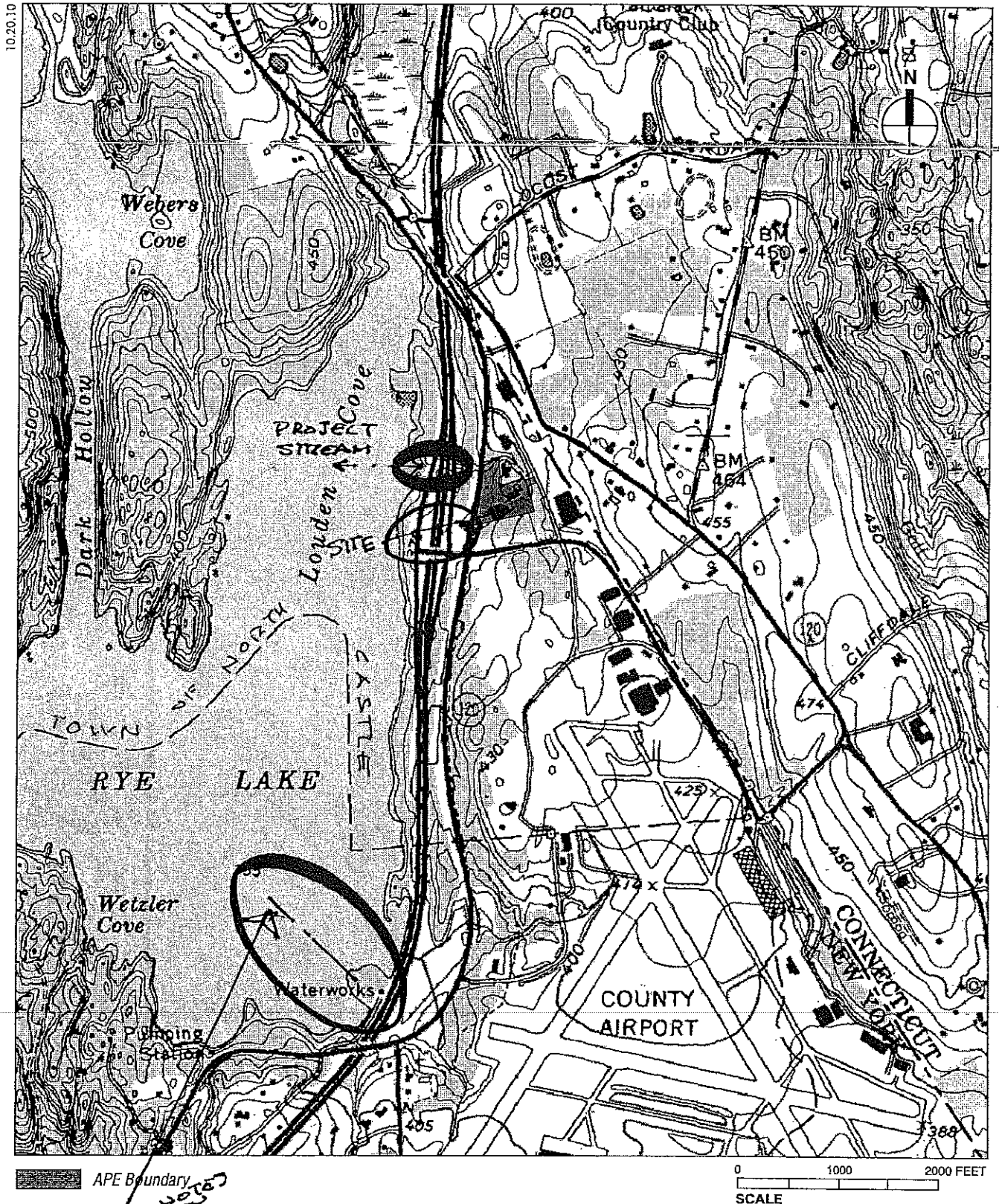
The Conservation Board therefore recommends that the North Castle Town Board, Planning Board, and the NYCDEP exercise particular caution in regard to potential environmental effects of this project as well as the possible negative growth inducing long range impacts in the area.

A handwritten signature in black ink, appearing to read "John F. Fava", written in a cursive style.

John F. Fava, Chairman  
Conservation Board

Cc: Cynthia Garcia, NYCDEP  
Conservation Board

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PARK PLACE at Westchester Airport

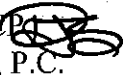
Project Site  
Figure 1



**MEMORANDUM**

TO: North Castle Planning Board

FROM: Ryan Coyne, P.E.   
Kellard Sessions Consulting, P.C.  
Consulting Town Engineers

David J. Sessions, RLA, AICP   
Kellard Sessions Consulting, P.C.  
Town Wetland Consultant

DATE: June 1, 2011

RE: Draft Environmental Impact Statement (DEIS) Review  
11 New King Street, LLC  
11 New King Street  
Block 4, Lot 14B & 13A

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As requested, Kellard Sessions Consulting, P.C. has reviewed the March 28, 2011 Draft Environmental Impact Statement (DEIS) and associated site plans submitted in conjunction with the above-referenced application. The applicant is proposing to construct an approximately 267,000 s.f. multi-story parking garage with the capacity for 1,450 cars. In order to construct the new garage facility, the existing 9,700 s.f. structure and on-grade parking area will be razed.

**Comments**

1. This office conducted a site visit on December 23, 2010 for the purposes of verifying the wetland boundary, as delineated by the applicant. At that time, and as outlined in our December 29, 2010 memorandum to the Board, this office questioned certain segments of the wetland boundary line. As the growing season had ended and the majority of the vegetation was not present during our December site visit, the wetland boundary could not be confirmed at that time. However, in an effort to allow the applicant to proceed through DEIS completeness, our office had provided a sketch illustrating the approximate location of the revised wetland boundary line.

Our office conducted a second site visit on May 24, 2011 and confirmed that the wetland boundary, as illustrated on our December 29, 2010 sketch, is accurately represented. All future submissions should illustrate the wetland boundary line, as depicted on our previously submitted sketch. In order to have the wetland boundary properly demarcated in the field, it is recommended that the applicant have the revised wetland boundary line survey-located and that fluorescent ribbon be hung along the revised wetland boundary line. The document (plans, text and exhibits) should be revised to reflect the local wetland boundary confirmation of May 24, 2011. Further impact analysis of the direct wetland disturbance and mitigation should be provided.

2. The "project site" should be revised on the plans and throughout the document (plans, text and exhibits) to include, at a minimum, all areas of disturbance on the adjacent Lot 13A parcel. Impacts (text/discussion) throughout the document should be updated accordingly.
3. The status of the Office of Parks Recreation and Historic Preservation (OPRHP) Phase I Archaeological Survey review should be updated and the document updated as necessary.
4. The need for an ACOE Nationwide Permit and/or Water Quality certification should be determined. The applicant should address whether the project location within Designated Critical Resource Waters would require an individual ACOE Permit. The extent of ACOE jurisdiction should be described in the text and identified on the plans and exhibits.
5. The mapping and jurisdiction of on and off-site wetlands and watercourses and related regulated areas should be confirmed by the New York City Department of Environmental Protection (NYCDEP) and the plans and document updated accordingly. Based upon the NYCDEP's review memorandum dated May 23, 2011, it appears that their jurisdiction has not been fully confirmed.
6. An itemized list of activities proposed within each NYCDEP regulated area should be provided. The text should be revised to expand the discussion of proposed extent of new impervious surfaces within the NYCDEP regulated areas for reservoir stems. The extent of proposed disturbances/improvements (i.e., disturbance, tree removal, permanent improvements, impervious surface) within the regulated 300' reservoir stem area should be identified and quantified in the text.
7. On and/or off-site wetland mitigation plans in compliance with Chapter 209 of the Town Code should be provided at this time. As the proposed pocket wetlands for stormwater control are

not an accepted practice for mitigation, the project should be revised to provide other alternatives for on-site mitigation. The document should be expanded to address the potential to modify the project site and/or revise the project to provide on-site mitigation.

8. The Final Environmental Impact Statement (FEIS) should discuss the potential impacts to Wetland A and associated wildlife, vegetation and habitat created by the proposed decreased flows to DP-1 in the post-development condition.
9. The locally-regulated wetland buffer should be expanded to include slopes 25% or greater, as required by Section 209-5C of the Town Code.
10. The FEIS should discuss the engineering design measures implemented to substantiate the comment on Page 1-5 related to preserving groundwater quality and promoting sustainable groundwater.
11. The FEIS should provide the pre- and post-development acreages (drainage area) contributing to each drainage point.
12. Details of the 24' driveway expansion and its relationship to the existing stream and crossing should be provided on the plans and discussed in the main document, as well as the Stormwater Pollution Prevention Plan (SWPPP) text.
13. The FEIS should provide a discussion of mitigation practices which would address the current or future use of sand and salt de-icing practices and fertilizers, pesticides and chemicals on lawns, roadways and other impervious surfaces on Lot 13A.
14. The FEIS should identify tree removal within the regulated wetland/wetland buffer area and overall tree removal.
15. A conceptual plant list should be provided for each zone illustrated on Figure 6-2 and the landscape plans. Figure 6-2 appears to have planting zones conflicting with Sheet C-8.
16. The DEIS text and Sheet C-3 are inconsistent and should indicate significant tree removal. A summary of significant tree removal should be provided on Sheet C-3. All trees on Sheet C-3 should be labeled. The text and plans should be expanded to describe mitigation for tree removal.

17. The landscaping represented on the Perspective Views (T-1), Demolition Plan (C-3) and Landscape Plan (C-8) do not appear accurate and should be revised accordingly. Similarly, the landscaping shown on the proposed condition Figure 48A does not appear consistent with that on Figure 48B.
18. Table 7-5 totals should be revised to coordinate with text total disturbance (122,078 vs. 120,846). The area of 35% disturbance should be corrected.
19. The on-site areas available for staging material storage appear limited. The Sediment and Erosion Plan should be expanded to identify the features, as well as expand the detail of construction sequencing, soil testing and stock pile locations. Will the adjacent property be used for staging/access of material storage or parking?
20. When will pump test occur/water budget analysis to confirm adequate quantity of water/potential impacts to waterbodies adjacent properties occur?
21. Discuss the potential of de-icing practices and identify potential groundwater impacts.
22. The FEIS should address why all contaminated soils would not be removed from the site. A discussion of the potential impacts of contaminated soils remaining should be provided. The FEIS and exhibits should be revised to indicate areas where contaminated fill would be expected to remain.
23. The FEIS should discuss the potential for contaminated fill extending beyond area shown, as well as potential project impacts associated with such condition.
24. FEIS figures should identify the location of borings with contaminants.
25. Locations for contaminated fill stock piles should be provided on the plans. Contaminated fill removal should not be limited to petroleum contaminated but all contaminated soils. The FEIS should provide a discussion of mitigation for exposed contaminated soils. Describe potential impacts of exposed contaminated soils to vegetation, habitat, wetlands and watercourses. The plans and text should be expanded to address the storage of exposed contaminated soils in a location outside the buffer.
26. The applicant should address how the inclusion of the portion of 7 New King Street (Lot 13A) within the project site effects the future development potential of that lot. A zoning assessment of Lot 13A should be provided.

27. Any existing easements/covenants/restrictions on Lots 13A and 14 should be identified within the FEIS text and provided on the plans.
28. The text and construction sequencing should be expanded to address the removal of the existing oil tanks.
29. As the existing well will be abandoned, the water source to be utilized during construction to minimize dust should be identified.
30. The document should be revised to incorporate installation and abandonment of all utilities into the construction sequence.
31. The FEIS should address construction of new utilities proposed within existing driveway. The discussion should include the rationale and impacts of milling rather than completely remove the existing pavement.
32. The FEIS and plans (Sheet C-1, Note 22A) should address the procedure and timing for testing for chemicals pursuant to New York State Department of Environmental Conservation (NYSDEC) requirements.
33. The FEIS should address the sequencing of the removal of the trailer and abandonment of the well & SSDS.
34. The proposed fire truck access path should be referred to the Fire Department for review and comment. It does not appear that a fire truck would be able to back out.
35. The turning radius for the proposed fire truck access should be indicated on the plan.
36. The existing and proposed well locations should be provided on the plans.
37. The FEIS and plans should address pedestrian safety and plantings on the steep slopes adjacent to the Lot 13A parking lot.
38. The plans should be revised to identify the location of the existing culvert, as well as provide new details of the stream crossing, driveway expansion and installation of proposed guide rail.

39. Identify the type and location of fuel associated with the proposed emergency generator. Describe the potential impacts and mitigation associated with the proposed fuel storage in regulated area.
40. The FEIS should discuss the trench drain connection to the sanitary sewer system depicted on Sheet C-6.
41. The FEIS and plans should address conveyance of water to temporary sediment basins and the protection of wetlands once the building is under construction.
42. Given the proximity of the building to the wetlands, the document and plans should address construction practices which avoid additional wetland impact associated with machinery/access, etc.
43. Where will construction-related employee parking occur?
44. The FEIS should discuss the potential freezing of the sand filterbed pipes and clogging in cold weather and related effectiveness and operation of the stormwater BMP's.
45. The SWPPP and FEIS should identify potential pollutants (petroleum products and chemicals) will be used and required to be stored at the site.
46. The document should inventory and discuss the impact of other parking and shuttle services (i.e., SUNY Purchase) which presently supplement on-site parking demand at the airport.
47. Existing conditions/survey, notes and data on Sheet C-2 should be revised to include survey information for Lot 13A and all portions of that lot included within the project site.
48. Sheet C-2 should be revised to identify lands with slopes >25% and >35%.
49. Sheet C-2 identifies two SB-6 and two TP-1 test locations. Testing locations on the plans and document should be updated for consistency.
50. Sheet C-2 legend should be updated to include the date of delineation of wetlands by NYCDEP.
51. Sheet C-2 legend should be updated to identify ACOE Wetlands.

52. Sheet C-3 should be revised to clearly indicate the location and extent of the utility and stone wall removal.
53. Sheet C-4 should be revised to show the limits of disturbance and project site boundaries.
54. Typical plant lists for all proposed landscaping should be provided on Sheet C-8.
55. Identify location of proposed "Portable Sediment Tank" detailed on Sheet C-9.
56. The landscaping on Sheet A-3.1 does not appear consistent with Sheet C-8.
57. The turfstone detail should be revised to identify the turfstone unit on Sheet C-11.
58. The wash bay locations on Sheets A-4.1 and A-2.2 are inconsistent.
59. The text indicates that a non-community public water supply will be installed on the site. The supply will include a well, storage tank, and applicable treatment devices. The location of the tank and treatment system do not appear on the site plans. Additionally, the FEIS and plans should discuss and indicate the required controlling distance around the public well.
60. The Stormwater Pollution Prevention Plan (SWPPP) should provide documentation of compliance with the 5 step process outlined in Section 3.6 in the New York State Stormwater Management Design Manual (NYSSMDM).
61. The FEIS should identify potential methods to treat presently untreated stormwater on Lot 13A.
62. As no stormwater treatment practice is proposed for post-development DP-1, the SWPPP and FEIS should discuss how "the proposed condition" will improve stormwater quality and quantity at DP-1.
63. It is unclear from the information provided that the project meets the Runoff Reduction and water quality volume requirements set forth in the NYSSMDM. Summary tables should be provided detailing the following information: the required Water Quality Volume (WQv), the minimum Runoff Reduction Volume (RRv) required, volume provided in each green practice, WQv's provided in each standard Stormwater Management Practice (SMP), acreage contributing to each green practice and SMP, impervious area contributing to each Green

Practice and SMP, Green Practices being utilized for Runoff Reduction, and Water Quality Volume Adjustment (reduction) based on the Green Practices. The Green Practices should be sized based on the Water Quality Volume generated by the 1-year, 24-hour design storm over the post-development watershed.

64. The FEIS should investigate the incorporation of additional Green Practices in an effort to meet the reduction of the entire WQv. It would appear that additional practices, such as green roofs, rain barrels and/or larger Stormwater Planters, could meet the entire WQv requirement, which would reduce the size of, or obviate the need for, the sand filter or pocket wetland. Any reduction in size of these practices would decrease the intrusion into the wetland buffer, reducing the overall impacts, required wetland mitigation, etc.
65. Based on the requirements set forth in the NYSSMDM, it appears that the entire WQv is not being treated with Green Infrastructure Practices. As stated in the Manual, the project should be designed to achieve 100% reduction of runoff within Green Practices or Standard SMP's with RRV capacity. If 100% reduction of runoff cannot be achieved and upon proper justification, the minimum RRV must be achieved. A table should be provided detailing the proper justifications that the reduction of the entire WQv is infeasible. Additional Green Practices designed in compliance with the NYSSMDM should be considered. Tables should be provided to show sizing of Green Practices and how the Green Practices meet the RRV requirements set forth in the NYSSMDM.
66. It appears that the project does not meet the proper justification to eliminate the requirement to provide Runoff Reduction practices for the Redevelopment portion of the project. As outlined in the criteria in Section 9.3.1 of the NYSSMDM, a project must clearly identify and document inadequate space to treat and control the stormwater runoff from the reconstructed areas and there should be physical restraints that will prohibit the project from meeting the required elements of the standard practices. The Green Practices and standard SMP's should be sized to accommodate the redeveloped portions of the project, or proper justification provided.
67. The design limitations of a Rain Garden are outlined in the NYSSMDM. The NYSSMDM states that a Rain Garden should be designed to receive a maximum contributing drainage area of 1,000 s.f. and shall not be used to treat parking lot or roadway runoff. An alternative practice, such as Bioretention, should be considered. A table should be provided detailing the contributing area, WQv, volume treated in the practice, and the design elements of the practice.



68. The Rain Garden location should be clearly identified on Sheets C-5 and C-6. The landscape plan appears to indicate 3 rain garden locations and should be reviewed for consistency with other DEIS documents.
69. It appears the Stormwater Planters have been designed to treat runoff from the roof of the proposed structure. As stated in the NYSSMDM, a Stormwater Planter shall not be designed to receive drainage from impervious areas greater than 15,000 s.f. The drainage areas contributing to the Stormwater Planters and the Rain Gardens should be depicted on the stormwater maps. A Roof Plan (Sheet A-2.4) is included in the plan set indicating the locations of the roof drains, but does not show where each drainage discharge point occurs. A table should be provided detailing the contributing drainage area, size of the Stormwater Planter, WQv, volume treated in the practice, required elements and the design elements. The Stormwater Planters should be sized based on the WQv generated by the 1-year, 24-hour design storm over the post-development watershed.
70. The Stormwater Planter sizing calculation utilizes leaf compost as the hydraulic conductivity for the soil media. According to the NYSSMDM, leaf compost has a hydraulic conductivity of more than double that of loosely packed soil (typically used). In turn, this reduces the size of planter by more than half that typically seen. Specifications for the leaf compost should be provided on the detail sheet.
71. In accordance with the NYSSMDM, flow through the Stormwater Planters and Rain Gardens are not credited for 100% of their volume in the runoff RRV calculation. As such, the calculations should be revised to provide 45% of their respective volumes as RRV for Stormwater Planters and 40% for Rain Gardens.
72. It is unclear if the permanent pool for the Pocket Wetland has been adequately sized. A table of the Water Quality Volume Calculation should be provided for the drainage area contributing to the Pocket Wetland to verify that a minimum of 50% of the Water Quality Volume has been provided within the permanent pool. The Water Quality Volume Calculations should be based on the resulting 1-year, 24-hour design storm over the post-development watershed contributing to the Pocket Wetland.
73. It is unclear if the Pocket Wetland has been designed to meet the required elements, as outlined in Section 6.2.3 of the NYSSMDM. A table should be provided in the SWPPP to verify the Pocket Wetland has been designed to meet the required elements in Section 6.2.3.

74. Pursuant to the NYSSMDM, the plans should be revised to provide 25' minimum wetland plant buffer from maximum water elevation.
75. The Post-Construction Operation and Maintenance in the SWPPP should be revised to reference the Pocket Wetland.
76. It is unclear if the Sedimentation Basin and Sand Filter have been designed to provide the required surface areas, as required in the required elements, and as outlined in Section 6.4.3 and the design guidance in section 6.4.4 of the NYSSMDM. A table should be provided to verify the surface area requirements have been achieved for the Sedimentation Basin and Sand Filter. The sizing calculations should utilize the Water Quality Volume resulting from the 1-year, 24-hour design storm over the post-development watershed.
77. The invert of the underdrain in the Stormwater Planter located on the northwest side of the proposed building structure should be a minimum of 2.5 feet below grade, as shown on the Stormwater Planter Detail on Sheet C-10. The underdrain for the Stormwater Planter is shown to be installed at a 0.00% slope throughout the Stormwater Planter. Given the slope of the land where the planter is shown, the location and invert elevations of the underdrains should be included on the plans.
78. Sizing calculations for the rip-rap outlet protection should be provided to verify the rip-rap sizes indicated on detail. The numbering for the end sections discharging to the rip-rap outlet protections should be reviewed for consistency between the detail and Sheet C-5.
79. The rim for the Flow Splitter should be reviewed for consistency between the plan and the Storm Drainage Schedule. The Flow Splitter location, as shown on the plan, will not provide adequate cover from the rim of the structure to the invert of the inlet and outlet drainage pipes.
80. The Flow Splitter detail and plan view should be detailed to depict the elevations of the proposed weir, inlet and outlet pipes and the rim. The detail should be revised to show the outlet pipe from the Flow Splitter to the Sedimentation Basin prior to the weir wall.
81. The outlet structures rims and inverts for the Sedimentation Basin, Sand Filter and the Pocket Wetland should be consistent between the Storm Drainage Schedule on Sheet C-5, the detail sheets and the SWPPP. The weir, emergency spillway, orifice and underdrain elevations for the Sedimentation Basin, Sand Filter and Pocket Wetland should be provided on the plans and details.

82. The maintenance path access should be extended to provide access to the outlet structure of the Pocket Wetland. Similar access should be provided to the structures in the Sedimentation Basin and Sand Filter.
83. The text and plans should be revised to address whether the proposed outfall location disturbs the beds or banks of the watercourse and the potential for erosion. Alternate locations should be proposed to reduce potential impacts, if appropriate.

**Plans Reviewed, prepared by AKRF Engineering, P.C. and dated (last revised) March 28, 2011:**

- Cover Sheet (T-1)
- Notes Plan (C-1)
- Existing Conditions Plan (C-2)
- Demolition Plan (C-3)
- Site Plan (C-4)
- Paving, Grading and Drainage Plan (C-5)
- Composite Utility Plan (C-6)
- Erosion and Sediment Control Plan (C-7)
- Landscape Plan (C-8)
- Standard Details I (C-9)
- Standard Details II (C-10)
- Standard Details III (C-11)
- Standard Details IV (C-12)
- Lower Level Plan (A-2.1)
- Main Level Plan (A-2.2)
- Typical Level Plan (A-2.3)
- Roof Plan (A-2.4)
- Elevations (A-3.1)
- Photometric Lighting Plan (A-4.1)
- Lower Level Plan (MEP-1)
- Main Level Plan (MEP-2)
- Typical Level Plan (MEP-3)
- Electrical & Fire Alarm Riser Diagrams (MEP-4)
- Fire Protection Lower Level Plan (FP-001)
- Fire Protection Main Level Plan (FP-002)
- Fire Protection Typical Level Plan (FP-003)

North Castle Planning Board  
June 1, 2011  
Page 12

**Document Reviewed, prepared by AKRF Engineering, P.C. and dated (last revised) March 28, 2011:**

- Draft Environmental Impact Statement

We will continue our review as additional information becomes available.

RC/DJS/dc

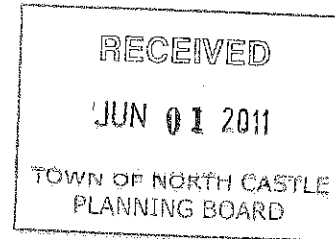
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**TOWN OF NORTH CASTLE**  
**WESTCHESTER COUNTY**  
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**PLANNING BOARD**  
John Delano, Chair



To: North Castle Planning Board

Date: June 1, 2011

Subject: **Park Place at Westchester Airport – Substantive Review of Draft Environmental Impact Statement (DEIS)**

As requested, we have completed our substantive review of the Draft Environmental Impact Statement (DEIS) for the above-captioned project, which was accepted by the Planning Board on March 28, 2011. Based upon our review of this document and associated plans, we offer the following comments for your consideration:

1. The Applicant should provide a description of the newly operating SUNY Purchase Park and Fly facility. The Applicant should also describe the total number of cars that are served by the Purchase Park and Fly facility. In addition, the Applicant should indicate how the operation of the Purchase Park and Fly would or would not impact the demand for Park Place. It is recommended that the Planning Board require the preparation of a parking demand study that includes the existing on-site airport parking, the Purchase Park and Fly facility and the proposed Park Place project (also recommended by the FAA).
2. The Federal Aviation Administration and Westchester County has indicated that the proposed project is located within the Westchester County Airport Runway Protection Zone (RPZ) for Runway 16 and recommends that the Town not approve the requested zoning amendments to permit a parking garage at the subject location. The FEIS should provide a description and summary of the FAA RPZ regulations.
3. The NYCDEP has indicated that watercourse and reservoir stems have not yet been confirmed by NYCDEP. The Applicant should arrange for confirmation of the watercourse and reservoir stem locations at this time as the location of these features may have a significant impact on the Proposed Action.
4. The DEIS states that the Proposed Action would not result in an expansion of the airport due to the limits of the 1985 stipulation agreement. The Applicant should provide a copy of the stipulation agreement as an appendix to the EIS as well as provide a detailed summary of the stipulation. In addition, the Applicant should explain the process that would be required to amend the 1985 agreement.

5. Approximately 50 feet of the 60-90 foot buffer along NYS Route 120 is located within the Route 120 right-of-way. The preservation of this buffer is an integral part of the proposed screening plan. The Applicant should identify any current or proposed NYSDOT plans that would remove the buffer. In addition, the Applicant should explain the effectiveness of the screening plan should the NYSDOT buffer be removed.
6. The proposed zoning changes would permit a 60-foot structure where the underlying IND-AA district permits a maximum height of 30 feet. Other zoning districts permit a maximum of 55 feet for structured parking. The Applicant should provide the rationale for permitting the proposed additional height in the IND-AA District.
7. The proposal requires direct wetland disturbance and significant wetland buffer disturbance. The Applicant should explain why a plan cannot be prepared that removes the building from the wetlands, minimizes wetland buffer impacts and provides adequate screening from adjacent roadways.
8. The wetland analysis treats permanent and temporary wetland and wetland buffer disturbance differently. The North Castle Town Code does not recognize such a distinction. The Applicant should indicate the total amount of Town-regulated wetland and wetland buffer disturbance including permanent and temporary impacts.
9. The Applicant is proposing direct disturbance to the wetlands and a significant amount of Town-regulated wetland buffer. The Applicant should include a functional analysis of the on-site wetlands using the wetland assessment model, "A Rapid Procedure for Assessing Wetland Capacity" by D. Magee and G. Hollands."
10. The Applicant should indicate, point by point, how the project conforms to the requirements of Section 209-7 of the Town Code.
11. The Applicant should begin discussions with the Planning Board, the Conservation Board and the Town Board regarding identifying a suitable off-site wetland mitigation location in compliance with Chapter 209 of the Town Code.

12. The proposed building is taller than 60 feet adjacent to NYS Route 120 and requires wetland and wetland buffer disturbance. In addition, due to the environmental sensitivity of the site, the Applicant has attempted to minimize wetland impacts by constructing vertically and not regrading (burying) the rear of the building (as regrading would impact the wetland). However, even with that goal in mind, the proposed footprint and stormwater mitigation area results in limited areas for screening. Additional grading and planting could potentially minimize visual impacts at the expense of additional wetland impacts. The Applicant should indicate whether a combination of the various alternatives (or new alternatives) would address the potential wetland and height impacts associated with this project.
13. The Applicant should prepare a revised Alternative A2 that utilizes automated parking. This revised alternative may very well reduce wetland and wetland buffer impacts and reduce the height of the building by permitting some amount of regrading at the rear (and additional screening opportunities). It would appear that this smaller garage may meet all, or most, of the Applicant's objectives while minimizing potential impacts.
14. The Applicant should submit a pumping test program, which will include a water budget analysis and testing of the proposed water supply well, in order to determine the quantity of available water, the ability for the aquifer to satisfy the proposed water demand, the safe yield requirements for the proposed potable well, and the potential for impacts to adjacent groundwater resources.
15. The DEIS indicates that the proposed HVAC equipment would have some amount of water demand. Given that the site does not have access to public water and water will be supplied by an aquifer supplied well, it is recommended that the building be designed to not utilize an HVAC system that requires any water demand. The Applicant should identify the type of system proposed and provide alternatives to a water using system.
16. The Applicant should provide additional details regarding the car wash, including details of its operation, water use and recycling ability.
17. Additional details should be provided describing the mechanisms used to prevent the public from entering the parking area.

18. The Applicant should describe whether additional screening, using berms, could be created along the property line fronting Route 120.
19. The DEIS indicates that solar may be used as part of this project. The FEIS should contain an update as to whether this technology will be used.
20. The DEIS indicates that the preliminary Stormwater Pollution Prevention Plan (SPPP) minimizes peak flow, increases infiltration and reduces pollutants in stormwater runoff. The Applicant should indicate whether it has received any preliminary comments from the New York City Department of Environmental Protection (NYCDEP) regarding the proposed SPPP.
21. The Applicant should indicate the proposed hours of operation of the facility.

\* \* \* \* \*

Once all of the written comments have been submitted, responses to all substantive comments will need to be included in a Final Environmental Impact Statement (FEIS). This document is typically prepared by the Applicant and then submitted to the Planning Board, as the Lead Agency, for its review. Once accepted as complete, the Planning Board will need to prepare a Notice of Completion, which will be filed and published together with the FEIS. After the FEIS is filed, public comments may be submitted to the Planning Board for consideration. Finally, the Planning Board will need to prepare a Findings Statement with respect to the proposed project, potential environmental impacts and proposed mitigation measures. This step must precede the Town Board's determination on the zoning changes and special use permit application, as well as any actions to be taken by the Planning Board on the environmental permits and site plan applications.

Adam R. Kaufman, AICP  
Director of Planning





Robert P. Astorino  
County Executive

County Planning Board

May 31, 2011

Adam R. Kaufman, AICP  
Director of Planning  
Town of North Castle  
17 Bedford Road  
Armonk, NY 10504-1898

Subject: **Referral File No. NOC 11-002 — Park Place at Westchester Airport  
Draft Environmental Impact Statement  
Zoning Text Amendments, Site Plan & Special Permit**

Dear Mr. Kaufman:

The Westchester County Planning Board has received a draft environmental impact statement (EIS) (dated accepted March 28, 2011) prepared pursuant to the NYS Environmental Quality Review Act (SEQR) for the above referenced actions. The Board has reviewed the draft EIS under the provisions of Section 239 L, M and N of the General Municipal Law and Section 277.61 of the County Administrative Code. Through coordination with the County Department of Public Works and Transportation, we have also consulted with staff of the County Airport and the Federal Aviation Administration.

Our review has identified significant concerns about the compatibility of the proposed development with the need to protect people and property on the ground within certain zones around the airport. We consider it incumbent upon the Town of North Castle to place these concerns in the forefront when making decisions about what land uses should be permitted in runway protection zones. As the sole entity with land use authority at this location, it is the Town's responsibility to ensure that its land use controls protect public safety.

The proposed development involves the construction of a privately-owned automated parking garage for 1,450 vehicles on a 3.3-acre site located at 11 New King Street, to the north of the Westchester County Airport. This site contains one tax lot (2.47 acres) located at 11 New King Street and a 0.87-acre portion of an adjacent lot, subject to an agreement to allow the construction of stormwater management infrastructure. The site currently contains a 9,700 square foot office building which would be demolished. The site is encumbered with a significant amount of wetlands, as well as a watercourse which drains to the Kensico Reservoir through the rear of the site.

By using an automated system, the garage could accommodate 1,450 vehicles using five levels (60 feet of building height) with 267,000 square feet of floor area. An automated car wash facility is also

proposed for the garage. The garage is intended to serve as off-site airport parking, with access to/from the terminal provided by a shuttle bus. This parking is intended by the applicant to alleviate what is described by the applicant as an existing parking shortage at the airport and, according to the draft EIS, will not encourage the growth of airport customers.

The applicant is petitioning the Town for an amendment to the text of the Zoning Ordinance to allow parking structures in the Industrial AA (IND-AA) zoning district as a special permit use. If the zoning amendment is approved, the applicant would then proceed with site plan and special permit applications.

The County Planning Board's review raises serious concerns about the wisdom of amending the Town Zoning Ordinance to allow the processing of the proposed development. The analysis that brought us to this conclusion is presented in the comments below:

**1. Location within runway protection zone for Westchester County Airport.** As noted in the attached letter to the County from the Federal Aviation Administration (FAA), the proposed location of the parking garage is within the runway protection zone (RPZ) for runway 16 at the County Airport. Because the County is responsible as a sponsor for grants received from the FAA, the FAA has recommended that the County "take action to the extent reasonable to discourage this development within the RPZ." Our conveyance of the FAA letter to you, with its strong recommendation against the change in North Castle zoning that would permit this development, is part of the County's obligation under the FAA grant requirements.

**2. Wetland, stormwater and water quality impacts.** The draft EIS states that the development will disturb approximately 5,700 square feet of preliminary, Town-delineated wetland as well as 79,680 square feet of regulated buffer adjacent to wetlands. Much of the stormwater management infrastructure is proposed to be constructed within the regulated buffer. This approach conflicts with the provision of most wetland protection regulations which require avoidance of disturbance of regulated areas as the preferred course of action and require that alternatives be considered that achieve that objective. As the site is in close proximity to the Kensico Reservoir and in recognition of the proposed uses which include vehicle storage and car washing, it is particularly important that the natural drainage areas and filters not be disturbed. Because of these impacts, the site may not be appropriate for a large development.

**3. Potential environmental benefits do not outweigh safety concerns.** The draft EIS claims several environmental benefits of the project which may or may not have merit. These benefits include: reduced traffic in the airport vicinity, improved air quality, lower greenhouse gas emissions and improved stormwater management over existing conditions. We recommend the Town consider the merit of these perceived benefits. It is our opinion that they do not outweigh the safety concerns regarding the RPZ or the potential negative impacts of the project on wetlands and water quality.

**Additional comments on site plan.** Because we recommend that the Town not amend its zoning ordinance to permit the proposed use, specific site plan issues need not be addressed. However, in

**Referral File No. NOC 11-002 — Park Place at Westchester Airport**  
**Draft Environmental Impact Statement**

May 31, 2011

Page 3

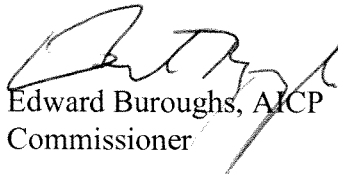
accordance with our practice of commenting on all relevant data presented in an EIS, we offer the following observations:

- Although the draft EIS identifies a few green building components that are proposed to be incorporated in the development, if the project is to be constructed, the applicant should consider a green roof over the garage to mitigate stormwater runoff impacts.
- If the project is constructed, the applicant should ensure the proposed automated garage design is secure with regards to wild animals that could potentially enter the structure. In particular, the draft EIS notes that mice, skunks, raccoons, opossum and deer are of a concern in the immediate area, all of which are also common species adept at using human-altered environments.
- The site plan should consider pedestrian access and safety with adequate space for pedestrians to wait for the proposed shuttle bus.

Thank you for calling this matter to our attention.

Respectfully,  
WESTCHESTER COUNTY PLANNING BOARD

By:

  
Edward Buroughs, AICP  
Commissioner

EEB/LH

cc: Patty Chemka, Deputy Commissioner, County Department of Public Works and Transportation  
Peter Scherrer, Manager, Westchester County Airport  
Thomas Felix, Manager, Planning and Programming Branch, Federal Aviation Administration





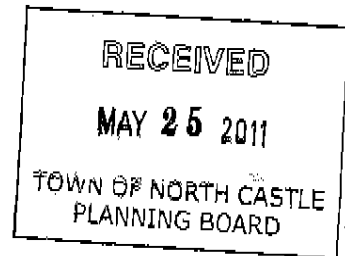
**Caswell F. Holloway**  
*Commissioner*

**Paul V. Rush, P.E.**  
Deputy Commissioner  
Bureau of Water Supply  
prush@dep.nyc.gov

465 Columbus Avenue  
Valhalla, NY 10595-1336  
T: (845) 340-7800  
F: (845) 334-7175

May 23, 2011

Mr. Adam Kaufman, Director of Planning  
Town of North Castle  
17 Bedford Road  
Armonk, NY 10504-1898



**Re: Park Place at Westchester Airport DEIS**  
**11 New King Street**  
**Town of North Castle, Westchester County**  
**Tax map#: 119.-03-1-1 & 118.02-2-3**  
**DEP Log #:2008-KE-2045-SQ.1**

Dear Mr. Kaufman and Members of the Planning Board:

The New York City Department of Environmental Protection (DEP) has received from AKRF, Inc. the Draft Environmental Impact Statement (DEIS) for the above-referenced project, dated March 28, 2011.

As you are aware, the proposed project is located within the Kensico Reservoir drainage basin of the New York City (City) Water Supply Watershed. Kensico Reservoir is a terminal reservoir and provides one of the last impoundments of water from the City's Catskill and Delaware reservoir systems prior to entering the City's water distribution system. On average, 90% of the water supply for 8 million New York City consumers passes through Kensico Reservoir each day. In addition, several municipalities in Westchester County are served by an intake located less than a mile away from the project site.

DEP has reviewed the following documents for the above captioned project: 1) DEIS, dated and accepted March 28, 2011 and 2) site plans prepared by AKRF, Inc., last revised January 24, 2011.

Based upon the review of the documents received, DEP has a number of concerns about potential water quality impacts resulting from the project. In particular, DEP is concerned about the project's potential for turbidity and increased pollutant loading, particularly phosphorous, into Kensico Reservoir, disturbance of steep slopes and wetland buffers, and the lack of "green infrastructure" practices. The location of certain stormwater management practices within wetland/watercourse buffer areas may degrade the buffer's beneficial water quality attributes. Further, there is a lack of information regarding mitigation of groundwater and stormwater impacts, construction sequencing and various other concerns detailed below. The comments are listed in accordance with the DEIS Chapters and are not listed in DEP's order of priority. DEP's priority concern remains the project's impact on water quality in the Kensico Reservoir basin.

DEP respectfully submits the following for your consideration:

## Chapter 6: Natural Resources

1. With regard to Threatened and Endangered Species, Indiana Bat: A survey of potential nursery trees would likely be required before the conclusion that there is no habitat can be made. The list of trees occurring on site includes Shagbark Hickory which is a preferred species for the Indiana Bat. Bog Turtle: A phase 1 bog turtle assessment would likely be required by the New York State Department of Environmental Conservation (NYSDEC) or United States Fish and Wildlife Service (USFWS) to support this conclusion that there is no suitable habitat present at the site.
2. Mitigation Measures and Vegetation discussed on page 6-21 do not include a planting plan nor is a planting list included on Sheet No. C-8. This information is necessary and should be provided for review to allow for an assessment of the proposed landscaping and planting plan. While the principal goal as stated is admirable, without a planting plan it cannot be determined whether it is likely that the goal can be achieved.
3. The Black-hooded Parakeet, listed in Table 6-2, is not a species expected to be on the project area.

## Chapter 7: Geology, Soils, Topography and Slopes

1. The topographical map provided indicates that grading will occur on slopes in excess of 25%. While the use of erosion matting is proposed for stabilization, it is unclear whether or not the matting as proposed will be sufficient to avoid impacts of erosion. Either additional information demonstrating the effectiveness of the proposal or additional measures to control erosion should be considered and provided.
2. The landscape plan should indicate that native vegetation, including seed mixes containing native warm-season grasses, will be used to the greatest extent possible. While not always necessary in areas maintained as mowed lawn, native grass and meadow mixes provide optimal stabilization, wildlife habitat, and can even enhance aesthetic appeal in areas that will not be maintained on a regular basis over the long term.

## Chapter 8: Water Resources

1. The proposed pocket wetlands for stormwater control may not be claimed for mitigation as implied in this Section by either the Town or the Army Corp of Engineers (ACOE). Stormwater practices maximize only a limited subset of the range of functions provided by the lost wetland and cannot be considered true mitigation for the loss of the wetland's other functions.

2. In accordance with Section 18-23 (b) (5) and (6) of the *Rules and Regulations for the Protection from Contamination, Degradation, and Pollution of the New York City Water Supply and Its Sources* (Watershed Regulations), a property owner or applicant may request that DEP flag watercourses, reservoir stems, etc., on a property. If the property owner or applicant provides DEP with a surveyor's map which includes a representation of the flagged watercourses, reservoir stems, etc., DEP will confirm or annotate the findings on the map. Please note that mapping certification is optional, and not required under the Watershed Regulations.
3. DEP visited the site in 2008 to identify and flag watercourses; however, DEP has not received a surveyor's map to confirm or annotate. Note that the locations and associated limiting distances shown in the DEIS for both watercourses and reservoir stems may require modification during DEP's regulatory review process.

#### Chapter 9: Stormwater Management

1. The DEIS notes that the onsite stream is a NYC regulated reservoir stem located within 500 feet of Kensico Reservoir. Kensico Reservoir is a terminal reservoir in the NYC water supply system. Additionally, Westchester County Waterworks draws drinking water from this reservoir. It is imperative that water quality impacts from turbid discharges and pollutant laden runoff be fully avoided or mitigated.
2. Although two stormwater practices are proposed in series, this approach to stormwater management provides no guarantee of removing dissolved phosphorus. The DEIS should include a discussion regarding dissolved phosphorous and how increases will be mitigated.
3. Additional pollutants should be evaluated. For instance, total nitrogen, total suspended solids and biological oxygen demand (TN, TSS, BOD) are also considered as pollutants of concern and should be assessed. As Kensico Reservoir is a terminal reservoir basin, analysis of fecal coliform loading would also be appropriate.
4. Given the extent of site disturbance and the extent of new impervious surfaces proposed, DEP strongly recommends that the applicant submit full scale drawings depicting pre- and post- development drainage area maps for review.
5. The details associated with the proposed drainage easement on the adjoining property should be provided so that the effectiveness of the stormwater management system, including the inspection and maintenance criteria can be evaluated.
6. The discussion of Mitigation Measures in Section G of Chapter 9 is somewhat misleading. It does not appear that undisturbed areas and buffers will be preserved or that clearing and grading has been reduced. Furthermore, very few green infrastructure techniques are actually proposed and some practices such as rain gardens, may not be appropriate for the proposed development. Alternatives that

address commercial development, such as the use of a green roof, should be considered.

7. On page 9-2, the bullet referring to Section 18-39(a) (1) of the Watershed Regulations should be revised. Impervious surfaces are not only prohibited within 100 feet of a watercourse or wetland but are also prohibited within the limiting distance of 300 feet of a reservoir, reservoir stem, or controlled lake. The bullet referring to Section 18-39(b) (3) (iii) should also be revised. DEP's review and approval of a Stormwater Pollution Prevention Plan (SWPPP) is required for construction of a new commercial project resulting in the creation of impervious surfaces totaling over 40,000 square feet (not 50,00 square feet) in size.
8. The section discussing the requirement for a variance from the Watershed Regulations should be clarified. As noted in the bullets on page 9-2, expansion of impervious surfaces up to 25% is allowed with an approved SWPPP if any part of the expansion is within limiting distances. It appears that the proposed action will result in an expansion of impervious surfaces in excess of 25% and therefore a variance will be required. The need for a variance can be avoided, although a SWPP would still be required, if an alternative is selected that results in an expansion of impervious surfaces that is under 25%, even if some of the impervious surfaces are located within the limiting distance to the watercourse.
9. The project will generate increases in both runoff quantity and pollutant loads. Stormwater management facilities are currently proposed to mitigate the post construction impacts to the quality and quantity of surface runoff in the vicinity. Additional information should be provided to demonstrate that impacts associated with increase in volume of stormwater releases over time can be mitigated.

#### Chapter 11: Infrastructure

1. The proposed parking structure will require DEP review and approval of a sewer connection for new onsite sewer lines and any modifications to the existing sewage pump stations in the NYC watershed.

#### Chapter 13: Traffic and Transportation

1. The consultant should explain the rationale for choosing Wednesday November 26, 2008 for traffic analysis.

#### Chapter 17: Construction

1. The site plan shows that stormwater management practices are proposed within 100 feet of a Town-regulated wetland buffer. This is a practice that DEP consistently discourages, as construction in the buffer may impact the natural water quality benefit of the buffer. It is recommended that the applicant choose an alternative that avoids all impacts to the wetland and wetland buffer. If not, guidelines for construction



activity in the buffer should be developed to minimize impacts. Similarly, significant changes in landscape are proposed within 300 feet of the NYC designated reservoir stem to construct stormwater management practices. While this is allowed under Watershed Regulations, the impacts to the reservoir stem associated with disturbance of this buffer and installation of stormwater management practices should be evaluated.

2. The proposed action is taking place in soils where seasonal wetness and high groundwater are a great concern (i.e. Ridgebury and Woodbridge loams). Although erosion and sedimentation measures are shown on the plans, there does not appear to be sufficient information to verify that potential impacts can be avoided. For example, it is unclear whether or not seasonal ground water will be intersected while excavating for the parking garage on the southwest side. A detailed dewatering procedure should be included. Impacts of dewatering excavations or groundwater leaching from cut sections, construction during freeze/thaw conditions, etc., should be fully addressed in the DEIS.
3. It should be noted that the NYSDEC General Permit covers discharges associated with construction activities that result in disturbance equal to or greater than 5000 sq. ft. of land. The statement on page 17-3 should be corrected.
4. Although general sequencing has been included, a more detailed sequencing plan is critical to effective mitigation of potential water quality impacts resulting from the proposed construction. Given the importance of construction sequencing to the effectiveness of the erosion and sediment control plan, additional details should be provided within the context of SEQRA in order to evaluate if potential water quality impacts will be adequately mitigated.
5. The overall cut and fill estimates for the project are provided in the DEIS; however, no interim cut and fill balances are provided. In addition, limited stockpile areas are shown on the plan. The intensity of construction proposed within the site will limit area available for stockpiling, staging, etc. In order to avoid impacts, more detail must be provided on how excavation, testing for hazardous content, and stockpiling can be accommodated within the limited space available.

#### Chapter 18: Alternatives

1. The DEIS should include the comparison of the pre- and post- development pollutant loading rates from the different alternatives suggested. The peak discharge rates for the various design storms and their significance at the various discharge points for each of the alternatives should also be included. Changes in volume of stormwater runoff for each of the alternatives should be included along with impacts to the downstream hydrology. These factors must be evaluated in sufficient detail for the various alternatives in order to make a reasonable judgment.

2. Erosion control plans for the proposed alternatives were not included in the DEIS. These plans are necessary to demonstrate that impacts due to erosion and sedimentation during construction for each alternative can be fully avoided or mitigated.
3. Alternatives that minimize impervious surfaces, as well as impacts to wetlands, the reservoir stem and all buffers, such as Alternative D, should be explored in greater detail. DEP also urges the Lead Agency to consider alternatives that provide opportunities to treat runoff from developed areas that are currently untreated. For instance, the stormwater management practices for the preferred alternative will be located on an adjoining parcel. Perhaps the development on that parcel can also be treated in the proposed practices. This would provide a more regional approach to stormwater management relative to this project.
4. At this stage of the SEQRA review, an opportunity still exists to amend the preferred alternative to reduce proposed impervious surfaces to adequately mitigate post-construction impacts, which will maintain current groundwater recharge capacity, reduce the level of impervious surfaces proposed and avoid earthwork on slopes in excess of 20%. From a purely water quality standpoint, of the alternatives presented in the DEIS, Alternatives C, D, or E would best reduce many of these impacts as compared to the preferred alternative.

Thank you for the opportunity to provide comments. You may reach me at [cgarcia@dep.nyc.gov](mailto:cgarcia@dep.nyc.gov) or (914) 773-4455 with any questions or if you care to discuss the matter further.

Sincerely,



Cynthia Garcia  
SEQRA Coordination Section

- C: SEQRA Unit, ACOE  
W. Janeway, NYSDEC  
E. Burroughs, WCDP  
S. Gates, AKRF Engineering, P.C.  
D. Warne, Assistant Commissioner DEP



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

Eastern Region, Airports Division

1 Aviation Plaza  
Jamaica, NY 11434-4809

May 19, 2011

Ms. Patricia Chemka-Speranza  
Westchester County  
148 Martine Ave  
White Plains, NY 10601

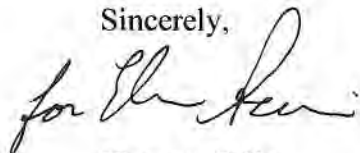
The Federal Aviation Administration (FAA) has received a draft Environmental Impact Statement under the State Environmental Quality Review Act (SEQRA) for a parking garage to support Westchester County Airport. The proposed project called Park Place at Westchester Airport is a multi-level automated parking structure at 11 New King Street in the Town of North Castle in Westchester, New York. The parking garage is proposed to be approximately 267,000 square-foot five level structure that would provide 1,450 spaces.

According to the Airport Layout Plan (ALP) for Westchester County Airport, the proposed project site, 11 New King Street is located within the runway protection zone (RPZ) that ensures objects on the ground are compatible with normal airport operations. Based upon our review of the documentation we have the following comments:

1. It appears that the proposed location of the parking garage falls within the RW 16 RPZ. The purpose of the RPZ is to enhance the protection of people and property on the ground. For this reason we recommend that the county, as the airport sponsor, take action to the extent reasonable to discourage this development within the RPZ.
2. Grant assurance 21, Compatible Land Use. Identifies that the airport owner will take appropriate action, to the extent reasonable, to protect and restrict the land use within the RPZ.
3. There is insufficient information known to determine possible aeronautical impacts associated with this proposal. An FAA 7460-1 Form for aeronautical review must be submitted by the proponent for review by all FAA offices. The proposed structure and any temporary construction equipment needs to be evaluated regarding whether it has potential to be a hazard to air navigation and what mitigation measures may be required. Given the proposed location off airport property, it should be filed as an Obstruction Evaluation case (OE), unless otherwise instructed.
4. Has a study been completed to determine the need to double the parking for the airport? Is there a need for additional parking at the airport?

Please contact me at (718) 553-3335 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "for Thomas Felix". The signature is written in a cursive, flowing style.

Thomas Felix  
Manager, Planning and Programming Branch

cc. Adam Kaufman, AICP, Town of North Castle  
John Dermody, NYADO  
Jose Moreno, NY ADO



# WESTCHESTER COUNTY BOARD OF LEGISLATORS

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**MICHAEL B. KAPLOWITZ, J.D., CFP**  
*Legislator, 4<sup>th</sup> District*  
26 Lalli Drive  
Katonah, New York 10536

**Chairman**  
Environment & Energy Committee  
**Member**  
Government Reform,  
Efficiency & Savings Committee

April 28, 2011

Caswell F. Holloway  
Commissioner  
Department of Environmental Protection  
City of New York  
59-17 Junction Boulevard, 13th Floor  
Flushing, NY 11373

Re: Draft Environmental Impact Statement ("DEIS") for the  
Park Place at Westchester Airport ("Project")

Dear Commissioner Holloway:

I am writing to express my concern regarding the above-referenced proposed project, for the construction of an additional parking facility at the Westchester County Airport.

This project would consist of a 267,000 square foot, 5-level, approximately 56 foot parking garage (for 1,450 vehicles) to be located outside of the Airport property at 11 New King Street – a location which abuts wetlands that protect the Kensico. Further, the site contains a stream, which feeds directly into the Kensico.

The Kensico Reservoir supplies safe drinking water to almost nine million people in both Westchester County and New York City. That is why in 2003, this Honorable Board passed a Resolution (No. 245-2003) preventing any further expansion at the airport in order to protect this vital regional asset.

Resolution No. 245-2003 specifically states *"the policy of the Westchester County Board of Legislators is and continues to be one of supporting no increase in the total capacity of the Airport's runways, taxiways, ramps, gates, hangars, terminal, **motor vehicle parking areas**, or access roads, in order that we may protect our fragile environment, including the drinking water for almost nine million people..."*.

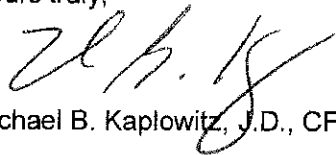
This project would pose the very impacts that prompted the passage of Resolution No. 245-2003, such as expansion, increased traffic and air pollution, which would clearly result in adverse impacts on our drinking water.

Please note that as a Legislative Body, our efforts to prevent expansion of the Airport have always been prompted by our desire to protect nearby residential communities. However as the Chairman of the Legislature's Environment & Energy Committee, my purpose here is to defend the environmental integrity of these communities and to protect the drinking water for nine million people.

Therefore, I respectfully request that this project be prevented from moving forward.

Should you have any questions or comments, please do not hesitate to contact my office. Thank you.

Yours truly,

A handwritten signature in black ink, appearing to read "M. B. Kaplowitz", written over the printed name.

Michael B. Kaplowitz, J.D., CFP

**NEW YORK**  
*state department of*  
**HEALTH**

Nirav R. Shah, M.D., M.P.H.  
Commissioner

Sue Kelly  
Executive Deputy Commissioner

April 27, 2011

Mr. Adam R. Kaufman, Director of Planning  
Town of North Castle  
Town Hall Annex Building  
17 Bedford Road  
Armonk, NY 10504

MAY 02 2011

RE: Notice of Completion of Draft Environmental Impact Statement (EIS) and  
Notice of SEQRA Hearing – Type I Action:  
Park Place at Westchester Airport, Town of North Castle, Westchester County

Dear Mr. Kaufman:

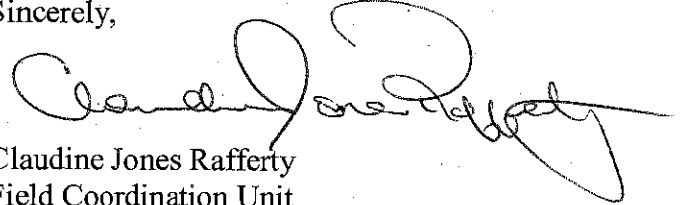
The New York State Department of Health (DOH) received the Notice of Completion of the Draft Environmental Impact Statement (EIS) for the proposed Type I Action known as Park Place at Westchester Airport at 11 New King Street, in the Town of North Castle, Westchester County. Representatives from our Central and Metropolitan Area Regional Office reviewed the Draft EIS for this proposed project and we offer the following comments for your consideration:

- Chapter 7 - Soils. It is stated that petroleum contamination was identified in the fill material located on-site. While the site is zoned industrial, based on the understanding that the site is designated a "reservoir stem" to the New York City (NYC) watershed, soil sampling should be conducted to verify that the soil remaining after the excavation work will not be a source of contamination that could potentially contaminate the watershed. For example, the New York State Department of Environmental Conservation (NYSDEC) 6 NYCRR Part 375 Soil Cleanup Objectives for Protection of Groundwater may be applicable in this situation.
- Chapter 16 - Hazardous Waste. While it is noted that the current electrical transformer located on the north side of the building was installed in 1997 and does not contain PCBs, the previous transformer(s) may have contained PCBs. Soils near the transformer should be characterized for proper reuse and/or off-site disposal.
- Appendix K - Phase 1 Environmental Site Assessment, Section 4.1.2. While it is noted that an identified Voluntary Cleanup Program (VCP) site (V004993) exists at the proposed project location, the report incorrectly states that there are no NYSDEC Inactive Hazardous Waste Disposal sites located within a mile of the site. In fact, NYSDEC Inactive Hazardous Waste Registry Site # 360037 (Former Texaco Hangar) is located on the Westchester Airport property and the report should be revised to reflect this information. Additionally, a second VCP site also exists on the Airport property, VCP #V006113 (Hangar B), and this information should also be reflected in the report.

- Soil surrounding the 1,000 gallon underground storage tank (UST) should be tested since a stockpile sample was collected not a post excavation/documentation sample when the former 1,500 gallon UST was removed.

Should you have any questions regarding these comments or require further clarification, please contact Mr. Stephen Bates or Ms. Krista Anders at 518-402-7850.

Sincerely,



Claudine Jones Rafferty  
Field Coordination Unit  
Division of Environmental Health Protection

cc: V. Pisani  
A. Salame-Alfie, DEHI  
S. Bates/K. Anders/C. Bethoney/N. Waltz, BEEI  
R. Sokol/P. Young, BWSP  
B. Devine, MARO  
R. Morrissey, Westchester County Health Department

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MAY 02 2011



Safe Flight Instrument Corporation  
20 New King Street  
White Plains, NY 10604-1206

Telephone: 914-946-9500  
Telefax: 914-946-7882

**SAFE FLIGHT**  
INSTRUMENT CORPORATION

April 29, 2011

Adam R. Kaufman  
AICP, Director of Planning  
Town of North Castle, Annex Building  
17 Bedford Road  
Armonk, New York 10504

MAY 02 2011

Subject: Park Place at 11 New King Street

Dear Mr. Kaufman:

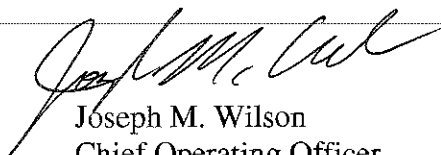
Safe Flight Instrument Corporation is submitting the following concerns in regards to the "Park Place" parking structure proposal. Safe Flight is opposed to this plan primarily due to the traffic congestion that will be added to New King Street.

Traffic is frequently backed up past our entrance, which is at 20 New King Street during the afternoon periods between 4:15 and 4:45 PM. Safe Flight already uses a staggered shift time in an attempt to mitigate congestion.

While we are not traffic engineers, we believe that should this plan go forward, an additional left turn lane would be required for the New King Street to Route 120 turn and a corresponding lane on route 120 to the I 684 traffic light would be needed to more quickly move the traffic onto I684.

If you have any questions, please don't hesitate to contact me.

Sincerely,



Joseph M. Wilson  
Chief Operating Officer

JMW/CYA



**MORGAN & Brother**  
**MANHATTAN**  
Storage Co., Inc.

16 BRUCE PARK AVENUE  
Greenwich, CT 06830-6388

203-869-8700  
FAX 203-869-0991

May 2, 2011

North Castle Planning Board  
17 Bedford Road  
Armonk, NY 10504

Re: Proposed Airport Parking Structure

To Whom it May Concern,

I have become aware that the Board is considering a proposal for increased parking near Westchester County Airport. Apart from operating a business in Armonk, I am also a Greenwich resident and an airport user. This letter is in favor of approval of the new parking structure proposal.

I can think of no more worthwhile improvement for the area surrounding the airport. As recently as 45 days ago my wife and I were each relegated to the auxiliary lot (we were traveling to different destinations on the same day). When my wife returned at night the unmanned lot was frightening to her. When I got back on a different night the automated payment machine didn't work; again nobody around, and it was raining hard.

I suspect that even those who decry the airport's increased airplane traffic and resultant flight noise swallow their indignation when it comes time to plan air travel. We all use the airport when we can; it is just too convenient not to. Parking is the one significant drawback. I always approach the airport with some amount of trepidation about whether there will be space in the current parking structure. Clearly the proposed facility would alleviate these issues with the certainty of properly managed, safe parking.

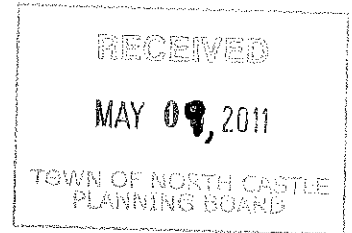
Let's face it; the airport is a fact of life. We should have parking services befitting the terrific area where we live. I understand that the proposed facility will be such a place and do so without being an eyesore or environmental liability. I hope you will approve the project.

Sincerely,

Jeffrey S. Morgan  
President

**Carol De Angelo, SC  
Sisters of Charity  
535 Ashford Avenue  
Ardsley, NY 10502**

Mr. Adam Kaufman  
Town of North Castle Planning Board  
Town Hall  
17 Bedford Road  
Armonk, NY 10504



May 4, 2011

Dear Mr. Kaufman,

I am writing to let you know that I oppose the construction of a parking structure (in the town of North Castle) that is to be built for the purpose of providing more parking for Westchester County Airport.

According to my information, the structure, if built, would rest on two wetland areas which are a buffer zone for the Kensico Reservoir. Construction of this parking structure would endanger Kensico Dam, the wetland areas and the drinking water of nine million New York residents.


I hear that the North Castle Planning Board has accepted the DEIS from the builder. It is imperative that you seriously consider the impact this proposed structure would have on the health and quality of life of humans. We are becoming increasingly aware that our health, well being and existence depend on other communities of life and the environment as a whole. As you review this project, please remember to judge it from the long view and the quality of life for our children. Though the parking lot may show short term financial profit and other benefits this does not mean that this is the wisest decision. A wise economic approach incorporates into the decision making process a thorough study and clear understanding of future implications, especially if our water supply and other resources for life are put at risk.

Please protect and preserve the quality of our drinking water and those resources that keep our water supply clean and drinkable. Please work towards an economic framework that looks at true costs – where we acknowledge that progress must be balanced by providing a sustainable quality of life that offers our children a future.

As you know resolutions of non-expansion were passed by the County, State Senate and State Assembly. The resolutions clearly state that there should be "no additional parking". While the proposal is off the property of the airport, I believe it goes against the spirit and intent of the resolutions.

Thank you for listening. My prayers as you and the Town Board consider the proposal. May God bless you in your important ministry of serving the people of North Castle.

Sincerely,

  
Carol De Angelo, SC

70 Locust Ave B-602  
New Rochelle NY  
10801

MAY 09 2011

5/5/11

Dear Mr Kaufman:

My comments on the proposed 10 King Street parking garage are as follow:

My primary concern is the high possibility of petroleum and antifreeze products will enter the surface drainage system and will eventually foul the Kensico Reservoir. This situation is not easily remedied and presents a threat to the water supply for 9 million people.

My other concerns mirror the myriad of problems identified by the various professionals representing Westchester County Airport Associates LLP.

In my opinion, this project has so many serious flaws that it should not be approved by the Planning Board

Sincerely: Steve Hopkins

70 Locust Ave B-602  
New Rochelle NY  
10801

05 MAY 2011 PM 2 L



North Castle Planning Board  
11

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\* ALSO ADMITTED IN D.C.  
° ALSO ADMITTED IN CT  
△ ALSO ADMITTED IN NJ

June 1, 2011

**By Hand Delivery**

Chairman John Delano and the Members of the  
Town of North Castle Planning Board  
Town of North Castle  
17 Bedford Road  
Armonk, NY 10504

**Re:    Proposed Park Place at Westchester Airport;  
Comments on Draft Environmental Impact Statement**

Dear Chairman Delano and Members of the North Castle Planning Board:

The following comments on the Draft Environmental Impact Statement ("DEIS") prepared by 11 New King Street, LLC (the "Applicant") in connection with its proposed Park Place Project (the "Project") are submitted on behalf of Westchester Airport Associates, L.P., the owner of the existing garage at the Airport. These comments supplement our oral testimony at the May 2, 2011 Public Hearing. Incorporated herein in their entirety, and also an integral part of our client's comments on the DEIS, are the written comments of Carpenter Environmental Associates and Adler Consulting, which are annexed hereto.

In sum, the Project conflicts with multiple layers of established planning and regulatory principles in the Town of North Castle (the "Town"). In adopting the Town's Freshwater Wetlands and Drainage Law, for example, the Town Board expressly found that "[w]etland areas should be protected from encroachment, spoiling, polluting, or obliteration stemming from . . . commercial development." The DEIS does not discuss the Project's noncompliance with this Town policy. The DEIS also does not discuss the fact that the Project clearly exceeds the low threshold mandating rejection of a wetland permit under the Town's Freshwater Wetlands Law.

Moreover, in the past, the Town has been proactive in protecting the wetlands immediately surrounding the Kensico Reservoir in recognition of their singular value in protecting the public potable water supply. The Town, for example, worked

with the corporations specifically along King Street to create management guidelines, set forth in the King Street Corridor Management Plan, to ensure that wetlands on these properties were safeguarded, and to require “careful planning” for new development around the Kensico Reservoir. The DEIS does not mention the Plan or discuss its relationship to the Project.

Perhaps most troublesome, the DEIS attempts to ignore a second stream on the Project site (the “Site”), even though the Town’s Wetlands Consultant has specifically stated that it “will be considered a regulated watercourse.” The Project would completely eliminate the buffer protecting this watercourse. This watercourse, and its attendant one-hundred foot (100’) buffer, is likely subject to the jurisdiction of the New York City Department of Environmental Protection (the “DEP”). DEP would almost certainly deny a variance to allow the parking garage to be constructed in this sensitive buffer area. The DEIS also does not discuss a second Reservoir Stem potentially affecting the Property, even though it is clearly shown on Westchester County Maps included in the DEIS. The three hundred foot (300’) buffer from this Reservoir Stem mandated by DEP’s Watershed Regulations may also prohibit the development of the Project.

Similarly, the Project flatly contradicts the Town’s Comprehensive Plan. The Town’s Comprehensive Plan unequivocally establishes that “any expansion” of the Airport is *not* recommended. The proposed zoning amendment would violate established development parameters both within the IND-AA District, as well as the Town as a whole. This includes a maximum permissible height, as well as building coverage allowances, which would surpass the limitations applicable in *any* District in the Town. Respectfully, it would set a dangerous precedent, which the DEIS ignores. Similarly, the Project goes against the established policies of Westchester County, as well as the New York State Legislature, in opposition to any expansion of the Airport.

The DEIS also irrationally asserts that the Project would actually result in a reduction of vehicle trips to and from the airport. As the Town Traffic Consultant’s analysis recognizes, however, the Project would actually exacerbate existing “F” Levels of Service (“LOS”) at three critical intersections, with potential adverse impacts spilling onto I-684. No mitigation is discussed for these impacts.

Ultimately, the Project would constitute an expansion of the Airport beyond its present geographic confines, which is inconsistent with more rational efforts to modernize the Airport. The Airport can be renovated to meet the existing demands, including for parking, without causing unnecessary adverse impacts to sensitive receptors, including the Kensico Reservoir and the residential communities in Greenwich, Connecticut. The significant, unmitigatable, adverse impacts of concentrated off-site parking development in the IND-AA District can and must be avoided, both under SEQRA, as well as other applicable laws and regulations, including, the Town’s Freshwater Wetlands Law and DEP’s Watershed Regulations.

As the Planning Board surely appreciates, the DEIS is only a “starting point” for the environmental review of this ambitious Project under the State Environmental Quality Review Act (“SEQRA”). The comments herein are offered in good faith to assist the Town of North Castle (“Town”) in “filling in the gaps” in what is a complex proposal, with wide ranging implications:

The DEIS is a starting point. It is a document which should analyze the significant environmental effects of a proposed action and identify how those effects can be avoided or minimized. When a DEIS is accepted as complete, it is complete for the purposes of commencing formal review of the proposal. *The opportunities for public comment, formal review and public hearings are all part of the SEQRA process established to fill in gaps and to provide updated information and analysis in the DEIS in order that an informed decision may ultimately be made regarding the proposal.*

In re Amenias Sand & Gravel, 1997 WL 1879249, at \*8 (N.Y. D.E.C. June 16, 1997) (Rulings of the Administrative Law Judge on Party Status and Issues), appeal denied, 1997 WL 628371 (N.Y. D.E.C. Aug. 27, 1997) (Interim Decision of Deputy Commissioner); see also N.Y. Env'tl. Conserv. Law § 8-105(8) (defining a DEIS to be “a preliminary statement prepared pursuant to [SEQRA]” (emphasis added)).

In that spirit, we submit the following comments.

**A. Town Board Cannot Delegate Its SEQRA Review Responsibilities To The Planning Board**

It appears at first blush that the Town Board has improperly delegated its SEQRA review responsibilities to the Planning Board. SEQRA requires that decisions under it “must remain with the lead agency *principally responsible for approving the project.*” Coca-Cola Bottling Co. of New York, Inc. v. Bd. of Estimate of City of New York, 72 N.Y.2d 674, 536 N.Y.S.2d 33, 37 (1988). The agency primarily responsible for approving the instant Project is the Town Board. In contrast, it is questionable whether the Planning Board has any approvals respecting the Project.

The heart of this Application is a zoning amendment. The amendment would create a new Special Use category for parking garages in the IND-AA District subject to Town Board approval (the “Amendment”). The Project is not possible without this substantial revision of the Town Zoning Code. The Amendment is, of course, a discretionary determination of the Town Board. If the Amendment were adopted, no discretionary decisions would be required from the Planning Board under the Amendment.

The Amendment would make the Town Board the approval authority for Special Permit Applications for garage proposals off-site from the County Airport. Pursuant to the Town Code, the Town Board's Special Permit review would obviate the need for Site Plan review from the Planning Board. (See Town Code § 213-34 (establishing that "[n]o building permit shall be issued, and no structure or use shall be established or changed, *other than for one single-family dwelling or a special permit use approved in accordance with the procedures specified in Article VII of this chapter*, except in conformity with a site development plan approved and endorse by the Planning Board . . . ." (emphasis added).)

The Town Board would also assume Freshwater Wetlands review authority for the Project. (See Town Code § 205-5(C) (defining the Town Board to be the Approval Authority for wetland applications when neither the Planning Board nor the Town Engineer have that capacity).) The Planning Board would similarly lack review authority over the Project's Tree Removal Permit. The Building Inspector would be the Approval Authority for the Tree Removal Permit. (See Town Code § 192-2 (Planning Board only the Approval Authority where there is a pending Site Plan Application)).<sup>1</sup>

Accordingly, as the New York State Department of Environmental Conservation ("DEC"), the agency primarily responsible for SEQRA's implementation, indicates in its official SEQRA guidance document, the SEQR Handbook, the Town Board is indisputably the agency "primarily responsible" for reviewing the Project:

"Which board is responsible for the conduct of SEQR when local zoning decisions are made?"

"The board with primary responsibility for making the zoning decision. . . . *If the zoning decision is legislative (such as a rezoning decision), then the board with primary responsibility*, depending on whether the municipality is a city, town or village, will be the city council, *the town board*, or the village board of trustees, respectively."

SEQR Handbook at 181 (emphasis added).

Without denigrating the capability or integrity of the Planning Board, its improper assumption of Lead Agency status in this matter potentially renders these proceedings jurisdictionally defective. As the Board is aware, SEQRA mandates "strict compliance" with its environmental review procedures. N.Y.C.C.E.L.P. v. Vallone, 100 N.Y.2d 337, 763 N.Y.S.2d 530, 535 (2003). Strict compliance with SEQRA is particularly important where, as here, potable water may be impacted. See Doremus v. Town of Oyster Bay, 274 A.D.2d 390, 711 N.Y.S.2d 443 (2d Dept. 2000) (holding that local board violated SEQRA by failing to order a supplemental environmental review for

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<sup>1</sup> It is notable that the Building Inspector has not been included as an Involved Agency, notwithstanding the fact that he will have jurisdiction over this significant discretionary determination.



a site located in an area designated for special groundwater protection); Bryn Mawr Props., Inc. v. Fries, 160 A.D.2d 1004, 554 N.Y.S.2d 721, 722-23 (2d Dept. 1990) (upholding requirement for supplemental environmental review under SEQRA, noting that “[i]t is of critical importance that the petitioner’s proposed development is situated on the shores of Pocantico Lake, a former reservoir which is still a potential source of potable water.”).

The Town Board’s duty to serve as Lead Agency is particularly important here because the Project places so many of the Town’s legislatively adopted planning principles and requirements in question. Respectfully, the Planning Board should defer to the Town Board as the appropriate Lead Agency for the review of this Project.

**B. The DEIS Fails To Substantiate The Need for 1,450 More Parking Spaces**

SEQRA’s implementing regulations require that the lead agency take a hard look at “the proposed action, its purpose [and] public need and benefits, including social and economic considerations.” 6 N.Y.C.R.R. § 617.9[b][5][i]. Economic need and other essential considerations must be taken into account and “balanced with [a project’s] adverse environmental impacts.” See, e.g., In the Matter of the Application of Al Turi Landfill, Inc., DEC Application No. 3-3330-0002-21, 1998 WL 1670484, (Administrative Law Judge Ruling on Party Status/Issues, June 19, 1998) (stating that “‘need’ is typically considered to be a SEQRA issue, to be weighed against unavoidable or unmitigatable adverse environmental impacts . . . [but may also be considered] outside the SEQRA context, in relation to a policy judgment by DEC); In the Matter of the Preble Aggregate, Inc., DEC Project No. 7-1136-0007/00001, 1995 WL 582480, (Comm. Interim Decision, Sept. 7, 1995) (upholding ALJ’s ruling in mined land reclamation permit proceeding, that the “loss of prime agricultural land versus the need for gravel” is a valid issue for adjudication, and directing ALJ to develop record on same.) The relevancy of making a showing of a project’s fulfillment of public need increases proportionate to the degree of adverse environmental impacts involved in the proposed action.

Since this Project has the potential for significant, irreversible adverse impacts, including to the Kensico Reservoir, particularly careful scrutiny must be afforded to the Applicant’s unsubstantiated claim that 1,450 more parking spaces are needed to meet existing Airport demand. The Applicant, at a minimum, should be compelled to produce market studies supporting its contention that 1,450 additional parking spaces are needed for Westchester Airport. Moreover, the DEIS must factor in the approximately 500 parking spaces that have recently become available at the State University of New York at Purchase.

**C. DEIS Ignores The Project's Significant Adverse Impacts On Wetlands And The Region's Potable Water Supply**

The DEIS dramatically understates the Project's potential adverse impacts on the relevant wetlands and watercourses.

One of the major impacts that the off-site expansion of the Airport poses is to the water quality of the Kensico Reservoir. The Kensico Reservoir, as the Board knows, is "the final reservoir in the Catskill/Delaware system before water enters the distribution network."<sup>2</sup> It holds the drinking water for millions of New Yorkers. Indeed, one of the reasons the Planning Board issued a Positive Declaration, requiring the preparation of an EIS, was because "[t]he proposed construction is to occur wholly within the Kensico Reservoir Watershed." (Planning Board Positive Declaration, dated Sept. 30, 2009, at 2.) The Town Conservation Board has similarly expressed concerns regarding the Project's potential adverse impacts on the Kensico Reservoir. (See Memorandum on Comment-Draft Scoping Document, from John F. Fava, Chair, Conservation Board to Planning Board, dated Jan. 7, 2010 ("[I]t must be stated that the impacts of this project on the Kensico Reservoir, especially the local water supply intake from Rye Lake are of special concern.")).

The Town has traditionally been a leader in efforts to protect the Kensico Reservoir. The Town of North Castle established the Kensico Watershed Improvement Committee ("KWIC") in conjunction with five major corporations on Route 120, specifically in order "to protect the Kensico Reservoir from potential water quality threats associated with the corporate and roadway uses in the King Street Corridor," within which the Project site ("Site") is located. (See KWIC, King Street Corridor Management Plan, May 2001, at 1 & fig. 1). "[C]areful planning for new development [is one of two] extremely important components of the management plan" (*Id.* at 3.) Tellingly, the Plan, once again, is not even mentioned in the DEIS.<sup>3</sup>

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<sup>2</sup> See [http://www.nyc.gov/html/dep/html/watershed\\_protection/kensico.shtml](http://www.nyc.gov/html/dep/html/watershed_protection/kensico.shtml).

<sup>3</sup> Similarly, in its official planning document, Westchester 2025, the Westchester County Planning Board established that protecting water quality must be "at the forefront of government action:"

The protection and enhancement of water quality must continue to be at the forefront of government action, not simply because of standards and regulations originating at the state and federal levels but because water quality shapes quality of life. Efforts must be directed at protecting drinking water supplies, improving surface water quality and protecting underground water supplies.

Westchester 2025 at 3. The DEIS is silent on the policy set forth in this document.

1. **Project Cannot Be Approved  
Under The Town's Freshwater Wetlands Law**

Consistent with both its legal obligations under North Castle's Freshwater Wetlands and Drainage Law, as well as the principles that prompted the Town to form the KWIC to protect the Kensico Reservoir, the Town Board would almost certainly be compelled to deny a Wetlands Permit to the Project. In adopting North Castle's Freshwater Wetlands and Drainage Law, the Town Board expressly found that "[w]etland areas should be protected from encroachment, spoiling, polluting, or obliteration stemming from . . . commercial development . . . and/or disregard for natural resources." (Town Code § 209-3(A)(1).) The Town Freshwater Wetlands Law recognizes that "[w]etlands protection is a matter of concerns to the entire Town and surrounding region." (Town Code § 209-3(A)(4).)

The Town Freshwater Wetlands Law recognizes that wetlands provide multiple beneficial functions, including, of relevance to this Application:

- "[p]roviding drainage, flood control, and natural storage for water;"
- "[p]rotecting and purifying surface and subsurface water resources by sediment trapping, nutrient removal and chemical and biological detoxification;"
- "[r]echarging, storing groundwater (including aquifers and surface waters,) and maintaining stream flow;" and
- "[m]itigating the effects of erosion by serving as natural sedimentation areas and filter basins."

(Town Code § 209-3(A)(1).)

The Freshwater Wetlands Law sets a low threshold, which affirmatively *mandates* that the Town Board *must* deny Wetland Permit applications that have the potential to adversely impact the environment. The Law requires that the Approving Authority, here the Town Board, "***shall*** deny the permit if"

"The proposed activity *may* threaten public health and safety . . . can cause nuisances, impair public rights to the enjoyment of public waters . . . or violate other federal, state or local laws and regulations" [or]

"It finds that the detriment to the public good by the factors listed in this section would occur on the issuance of the permit outweighs the nonmonetary public benefits associated with the activity."

(Town Code, § 209-7(B)(3) (emphasis added).)

It is well settled environmental law that the use of the word “may” establishes a low threshold. See, e.g., Silvercup Studios Inc. v. Power Auth. of N.Y., 285 A.D.2d 598, 729 N.Y.S.2d 47, 49 (2d Dept. 2001) (“Because the operative word triggering the requirement of an EIS is ‘may’, there is a relatively low threshold for the preparation of an EIS.” (citation omitted)). In conjunction with the Freshwater Wetlands Law’s use of the word “shall,” the Law mandates that the Approving Authority deny a Permit application, which, as here, has the potential to cause the listed adverse impacts. See N.Y. Statutes § 177(a) (“In the absence of anything to indicate a contrary intention, words of command in a statute are construed as peremptory, and words of discretion are treated as permissive.”).

In the first instance, it is unclear how the Town can rationally assess the Project’s wetland and wetland buffer impacts in the absence of confirmation of the Site’s wetland boundaries. (See DEIS at 8-7.) As the Planning Board’s Wetland Consultant previously advised, accurate confirmation is required to enable the Board to evaluate project impacts and consider appropriate mitigation measures. (See Memorandum to the Planning Board from David J. Sessions, RLA, AICP, re: Site Development Plan Review: David Zeng, dated May 21, 2010, at 2 (“The Board should request the verification of the extent and accuracy of the wetlands flagging by the Town Wetland Consultant. Upon confirmation of the extent of the resources and impacts, the Board may evaluate the project impacts, as well as the quality and quantity of the mitigation proposed.”).) Similarly, there has also been no pump test conducted yet, to determine, inter alia, whether the Project, which proposes intense water usage, including for car washing, would impact hydrology at the Site. (See DEIS at 8-3.)

Nevertheless, based on this incomplete information, as set forth in greater detail in the annexed report from Carpenter Environmental Associates, it is clear that the Project poses substantial adverse impacts, which clearly have the potential to threaten public health and safety, impair public rights to the enjoyment of public waters, and otherwise violate other federal, state or local laws and regulations.

The Proposed Project would dramatically upset, for example, the hydrological balance to Wetland “A”. This wetland functions to collect, retain and distribute water from the Site to streams that flow directly into the Kensico Reservoir. A significant portion of the Project would be located in Wetland “A” and its protected buffer area. The Project would essentially eliminate the stormwater catchment area for Wetland “A,” and eliminate much of the buffers that protect this Wetland.

The proposed Project is in stark contrast to the Town’s “usual practice” of eliminating new construction in wetland buffers, especially at the level proposed here. (See Memorandum from John F. Fava, Chair, Conservation Board to Planning Board, dated May 27, 2010, re: Wetland Permit Application for 46 North Greenwich Road, ¶ 4 (“It is the usual practice to eliminate construction for new building in a wetland buffer or in this case to keep intrusions to a minimum.”); see also Memorandum from John F.

Fava, Chair, Conservation Board to Planning Board, dated Nov. 19, 2009, re: Wetland Permit Application for Byram Ridge Road Subdivision (“To recommend intrusions or disturbances in the buffer that may increase the monetary return to the applicant should not be our focus.”).)

Indeed, recently, the Planning Board, in consultation with the Town Conservation Board, would not approve a single-family home application that was initially proposed to be located 50% in wetland buffers until the house was relocated outside the buffer. (See Memorandum from John F. Fava, Chair, Conservation Board to Planning Board, dated Jan. 20, 2011, re: Wetland Permit Application for David Zeng, 46 North Greenwich Road (“The initial plan located about 50% of the proposed house within the wetland buffer which was not an acceptable arrangement on this lot. Subsequently the house was relocated outside the buffer, with substantial filling, grading and buffer disturbance greatly reduced”).) Notably, the Zeng proposal was classified as a SEQRA Type II Action – *i.e.*, it presumptively posed no significant adverse environmental impacts. Moreover, the Zeng proposal was not in immediate proximity to the Kensico Reservoir. We trust that the instant Project, which has been classified as a SEQRA Type I Action – *i.e.*, the presumption is that it will pose significant adverse environmental impacts – and which is in close proximity to the Kensico Reservoir, will be held to the same standard.

The DEIS goes on to inaccurately state that the Project’s wetland buffer “disturbances are primarily for the proposed construction of the stormwater management basins.” (DEIS at 8-10.) In reality, more than half of the proposed parking facility would be located within the 100 foot buffer zone, which is protected by the Town and DEP.

The DEIS also inaccurately trivializes the functional value of the buffers that would be eradicated in an effort to justify the Project’s substantial buffer impacts. Under present conditions, stormwater runoff must, on average, traverse 100 feet of natural vegetation, consisting of native trees, shrubs, and groundcover, as well as some areas of lawn area, prior to reaching Wetland “A”. While the DEIS insinuates that the Project would result in conditions “similar to” existing conditions at the Site, the Project would triple the amount of impervious surfaces in the buffer area. (See DEIS at 8-14 (“At the present time, the existing impervious surface and lawn in the wetland buffer is 35,269 square feet (12,132 square feet impervious + 23,137 square feet of lawn. This is *similar to* the impervious surface and porous pavers proposed in the wetland buffer which is 39,255 square feet.” (emphasis added))).) Under existing conditions, there are 12,132 square feet of impervious surfaces in the buffer. The Project would add 21,354 square feet of impervious surfaces above existing conditions in the buffer area, resulting in a total of 33,486 square feet of impervious surfaces in the buffer area. (See DEIS at 8-14 to 8-15.)

The DEIS’s effort to compare existing lawn area in the buffer to the impervious surfaces it would add is also misguided. (See DEIS at 8-14.) While lawn may not be the optimal buffer cover, it is pervious. It provides filtration value. The Project’s conversion of turf areas to impervious surfaces contrasts sharply with the KWIC’s goal of

“convert[ing] turfed areas to meadows.” (See King Street Corridor Management Plan, at 16.)

Ultimately, as the Town Wetland Consultant noted in connection with the draft DEIS, “this section completely downplays the extent of improvements proposed within the wetland buffer, proximity of these improvements to the wetland boundary line and potential impacts.” (Memorandum to the Planning Board from David J. Sessions, RLA, AICP, dated Dec. 10, 2010, at 2.) The DEIS does not appear to have been substantially revised since the Town Wetland Consultant made this observation.

In light of the significant adverse impacts on wetlands and water quality posed by the Project, it is problematic that the DEIS lacks any real mitigation plans. The DEIS suggests that its stormwater management basins could provide mitigation even while acknowledging “that the Town does not typically accept required stormwater management areas to serve toward wetland mitigation.” (DEIS at 8-17.) The DEIS consequently represents that “offsite wetland creation/enhancement . . . would be considered.” (*Id.*) Respectfully, it is unclear why the DEIS was deemed complete when this casual suggestion that wetland mitigation “would be considered” does not meet the Planning Board’s consultant’s statement that concrete mitigation measures “should be proposed and discussed” in light of “the extent of improvements within the wetland and the wetland buffer area”:

As stormwater ponds have not been historically accepted as wetland mitigation, the applicant should provide alternative mitigation for the proposed wetland and wetland buffer disturbance. Given the extent of improvements proposed within the wetland and the wetland buffer on-site and potentially off-site mitigation should be proposed and discussed.

(Memorandum to the Planning Board from Ryan Coyne, P.E., Kellard Sessions Consulting, P.C., dated Feb. 25, 2011, at 2 (copy annexed hereto).)<sup>4</sup>

Indeed, Minutes of the Planning Board make clear that the Applicant has long been aware that its mitigation proposal was insufficient. (See Planning Board Minutes, Dec. 13, 2010, at 5 (“Mr. Delano inquired about the 2:1 mitigation which can’t be done on site. [Applicant’s Counsel] stated that he has not had a conversation with the Town Board on this matter and felt that the mitigation to the wetlands was an exchange for the 2:1 mitigation. *The Planning Board noted that would not be acceptable*

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<sup>4</sup> The Town’s disinclination to count stormwater basins as mitigation is well established. (See, e.g., Memorandum to the Planning Board from Adam R. Kaufman, AICP, Director of Planning, re Zeng, dated Jan. 14, 2011, at 2 (“It is noted, however, that a portion of the mitigation area is comprised of the proposed stormwater basin; typically, stormwater mitigation elements are not counted for wetland buffer mitigation purposes.”).)

*mitigation.*” (emphasis added).) Clearly, the cursory suggestion in the DEIS that wetland mitigation “would be considered” is legally inadequate.<sup>5</sup>

## **2. DEIS Ignores Multiple Additional Layers of Regulatory Control**

The Applicant seeks to avoid several layers of regulatory review applicable to wetlands. Ironically, the Town Freshwater Wetlands Law declares that “[t]he establishment of regulatory and conservation practices for these [wetland] areas serves to protect the Town *by insuring review and regulation of any activity* near or on the wetlands that might adversely affect the public health, safety and welfare.” (Town Code § 209-3(A)(3) (emphasis added).) The DEIS, however, seeks to evade multiple layers of agency review intended to ensure that impacts to wetlands, particularly those in close proximity to Kensico Reservoir, are carefully vetted.

### **a. Second Stream on the Site is Subject To DEP Jurisdiction**

Of particular significance, the DEIS understates the geographic scope of DEP jurisdiction at the Site. While the DEIS recognizes that there is one DEP watercourse on the Site, there actually are two. The DEIS specifically recognizes that there are “[t]wo streams [that] occur on the project site,” one which it denominates a “perennial stream,” and the other a “ephemeral drainage channel that is infrequently flooded.” (DEIS at 8-5 (emphasis added).) Figure 8-2 in the DEIS, which reflects streams designated by Westchester County, clearly shows two streams that pass through the Site on their way to the Kensico Reservoir. Similarly, DEIS Figure 8-1, which shows the National Wetland Inventory mapped wetlands, also shows a second stream along the southern boundary of the Project Site.

Moreover, the Town’s own Wetland Consultant recognizes that this second stream is, in fact, “a regulated watercourse”:

Water was observed within the channel located to the south of the proposed parking garage (partially off-site) and therefore *this channel will be considered a regulated watercourse*. This determination is based, in part, on the fact that water flow was present more than 48 hours after a rain event.

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<sup>5</sup> Moreover, the DEIS fails to substantiate that the Applicant even has the right to use the property upon which it proposes to locate the stormwater management basins. The DEIS indicates that the stormwater management basins would be located on Lot 13A. (See DEIS at 2-5.) The DEIS, however, fails to provide any indicia that the Applicant has the right to use Lot 13A for the Project. The DEIS also lacks a title report for Lot 13A, which would indicate if there are any private restrictions affecting the proposed use of Lot 13 A for the Project.

(Memorandum to the Planning Board from David J. Sessions, RLA, AICP, dated Dec. 29, 2010, at 2 (emphasis added) (copy annexed hereto).)

While the DEIS asserts that this “secondary drainage feature [] does not demonstrate perennial or intermittent flow” (DEIS at 8-6), the Town Wetlands Consultant has expressly stated that this stream had water flow more than 48 hours after a rain event. This finding establishes unequivocally that the second watercourse on the southern portion of the Site qualifies as an Intermittent Stream under the DEP’s Watershed Regulations. (See Watershed Regulations § 18-16(a)(63) (establishing that a surface feature will only not be considered an Intermittent Stream if it only “contains water only during and immediately after a rainstorm or a snow melt shall not be considered to be an intermittent stream”). Accordingly, DEP appears to have jurisdiction over this stream, which the Applicant must recognize in the EIS.

The DEIS goes on to claim this secondary stream “would not be directly affected by the development of the project.” (DEIS at 8-13.) The proposed parking facility, however, would essentially eliminate the stream’s protective buffer areas, and almost certainly directly disturb it. (See DEIS fig. 8-4.) As the Town Wetland Consultant has stated, “given the proximity of the proposed improvements to the wetland boundary line, it does not appear feasible to construct the building without directly impacting/disturbing the wetland proper.” (Memorandum to the Planning Board from David J. Sessions, RLA, AICP, dated Dec. 10, 2010, at 10.)

Additionally, the DEIS does not show the limiting distance from the second Reservoir Stem affecting the Site. DEIS Figures 8-1 and 8-2 both show two streams leaving the Site, and entering the Kensico Reservoir immediately thereafter. (See Watershed Regulations, § 18-16(a)(95) (defining a Reservoir Stem to be “any watercourse segment which is tributary to a reservoir and lies within 500 feet or less of the reservoir”).) The DEIS also indicates that wetland “A” “contains two outlets [including] the culvert beneath NYS Route 120.” (DEIS at 8-9.) The DEIS must show where the 300 foot buffer from this second Reservoir Stem lies in relation to the Project. (See Watershed Regulations § 18-39(a)(1) (prohibiting the construction of impervious surfaces within 300 feet of a reservoir stem).)

In light of the aforementioned conditions, it is unlikely that DEP could even grant a variance in connection with the Project. Initially, the DEIS mistakenly indicates that the Project could take advantage of the limited exception for the expansion of impervious surfaces in buffer areas for existing commercial facilities set forth in Watershed Regulation § 18-39(a)(4)(iii). (See DEIS at 8-14.) This exception only applies to “existing” facilities. This Project, which would supplant the existing use on the Site, cannot take advantage of this exception. The current facility on the Site would no longer “continue to be.” See Merriam-Webster Dictionary, at 171 (2005) (defining “exist” to mean “to have being” or “to continue to be”). Moreover, the Project is further excluded from this exception because it would add impervious surfaces to the buffer areas in excess of 25% of the existing condition. As such, the Applicant would be required to pursue the “traditional” DEP variance. (See Watershed Regulations § 18-61.)



The Project, however, cannot meet the basic criteria for a DEP variance. It cannot, for example:

“[d]emonstrate that the variance requested is the minimum necessary to afford relief;”

“[d]emonstrate that the activity as proposed includes adequate mitigation measures to avoid contamination to or degradation of the water supply which are at least as protective of the water supply as the standards for regulated activities set forth in [the Watershed Regulations]”; [or]

“[d]emonstrate that . . . compliance [with the Watershed Regulations] would create a substantial hardship due to site conditions or limitations.”

(See Watershed Regulations § 18-61(a)(1).) Here, the Applicant, which has not yet even formulated proposed mitigation plans for its wetland impacts, cannot show that such mitigation measures would “protect the watershed just as much as compliance with the regulation from which the applicant seeks a variance.” See Nilsson v. D.E.P., 8 N.Y.3d 398, 834 N.Y.S.2d 688, 690 (2007) (“[B]efore it grants a variance, DEP must be persuaded that the applicant’s proposed mitigation measures will protect the watershed just as much as compliance with the regulation from which the applicant seeks a variance.”).

Nor would the Applicant be able to qualify for a DEP “hardship” variance. Where it is possible for a development project to comply with the Watershed Regulation, an applicant can only obtain a DEP variance if compliance would be “prohibitively expensive.” See Nilsson, 834 N.Y.S.2d at 691. Initially, the DEIS contains an alternative, which appears to show that compliance with the Watershed Regulations is possible. Alternative “D” in the DEIS envisions a “no wetland impacts” Project, which would appear to avoid both the Town and DEP regulated buffers areas (See DEIS at 18-29 to 18-34 & fig. 18-5.)

The DEIS also does not argue that Alternative D would be prohibitively expensive. To the contrary, it states “Alternative D would result in economic benefits during construction and during annual operations.” (DEIS at 18-33.)<sup>6</sup> Since the DEIS does not claim that a Project that complies with the Watershed Regulations is feasible, the Applicant cannot claim that a variance denial by DEP would cause a “substantial hardship.”

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<sup>6</sup> The only apparent objection to this Alternative is that “[i]n the applicant’s opinion, this alternative would not adequately respond to existing parking demand at Westchester County Airport.” (DEIS at 18-29.)

**b.      Project Requires Individualized  
Review From The Army Corps**

The DEIS also inaccurately states that the Project could obtain a Nationwide Permit from the U.S. Army Corps of Engineers (“ACOE”) in connection with its impacts on federally protected wetlands. (See DEIS at 1-2). In fact, the Project would be subject to individualized review by the ACOE, which would likely result in the denial of the permit request.<sup>7</sup>

While the DEIS assumes that the Project could avail itself of Nationwide Permit 39 (for Commercial and Institutional Developments involving less than ½ acre of disturbance), this Nationwide Permit is not available. (See DEIS at 2-14.) General Condition 19 of the Nationwide Program disallows certain Nationwide Permits (including NWP 39) in Designated Critical Resources Waters “for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.” 72 Fed. Reg. 11092, 11193 (March 12, 2007). The East of Hudson Watershed (including the Kensico Reservoir Watershed) has been designated as Critical Resource Waters. (See DEP, Wetlands in the Watersheds of the New York City Water Supply System, at 19 (“It should be noted that all wetlands in the East of Hudson Watershed of the New York City Water Supply were designated as ‘Critical Resources Waters’ meaning that individual, project-specific permits are required for many activities.”).)

The Project would likely fail the individualized “Public Interest Review” that ACOE would have to conduct. See 33 CFR § 320.4(a) (“The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest.”). The ACOE regulations specifically state that “[w]etlands [that are] considered to perform functions important to the public interest” include:

“Wetlands the destruction or alteration of which would affect detrimentally natural drainage characteristics, sedimentation patterns, salinity distribution, flushing characteristics, current patterns, or other environmental characteristics;” and

“Wetlands which serve significant water purification functions”

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<sup>7</sup> While the DEIS recognizes ACOE jurisdiction over wetlands at the Site, including Wetlands “A,” (see DEIS at 8-7 (“Forested wetlands, a perennial stream, and an additional drainage feature were found to constitute regulated surface water resources at the Town and Federal level.”), ACOE still needs to confirm boundaries of its regulated resources. (DEIS at 8-6.) In any event, it appears that the Project would impact approximately 0.13 acres of wetlands subject to ACOE jurisdiction. (See DEIS at 8-13.) These impacts result from the fact that a portion of the garage would be located in Wetland “A.” (See DEIS fig. 8-4.)

33 C.F.R. § 320.4(b)(2). Inasmuch as the Project would adversely impact natural drainage characteristics, sedimentation patterns, and other environmental characteristics of wetlands that serve important functions for the New York City watershed, ACOE would likely be compelled to deny the permit request.<sup>8</sup>

In connection with the ACOE Permit, DEC would also need to make an individualized Water Quality Certification determination. Under the federal Clean Water Act, States are intended to be the “prime bulwark” against water pollution. Keating v. F.E.R.C., 927 F.2d 616, 622 (D.C. Cir. 1991) (“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.” (citations omitted)). 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). “One 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. “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.

As such, DEC can only provide Water Quality Certification if it can determine that the Project will not violate all relevant regulatory requirements intended to preserve water quality. See 6 N.Y.C.R.R. § 608.9. The DEIS should address the Project’s adherence to each of the listed criterion.

#### **D. DEIS Fails To Take A “Hard Look” At The Impacts Of The Proposed Zoning Amendment**

The DEIS also fails to consider the potential effects of the proposed Amendment, particularly as it may apply to other properties and the growth inducing impacts of the precedent it would establish. It is axiomatic that “[t]o comply with SEQRA, the Town Board must consider the environmental concerns that are reasonably likely to result from, or are dependent on, [proposed zoning] amendments.” Eggert v.

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<sup>8</sup> The Project’s ACOE application would be subject to review under the National Environmental Policy Act (“NEPA”).

Town Bd. of Westfield, 217 A.D.2d 975, 630 N.Y.S.2d 179, 181 (4th Dept 1995); see also Fisher v. Giuliani, 280 A.D.2d 13, 720 N.Y.S.2d 50, 56 (1st Dept 2001); Brew v Hess, 124 A.D.2d 962, 508 N.Y.S.2d 712, 715 (3d Dept 1986). “[T]he decision to amend [a] zoning ordinance commit[s] the Town Board to a definite course of future conduct by permitting previously prohibited uses subject to obtaining a special use permit.” Eggert, 630 N.Y.S.2d at 181. As such, “[t]o comply with SEQRA, the Town Board [is] required to address the potential environmental effects of the amendments, at least on a conceptual basis.” Id.; see also SEQR Handbook at 182 (“A municipality should consider the most intensive uses allowable under the proposed zoning to judge potential impacts.”)

The proposed zoning amendments represent a dramatic departure from the existing requirements of the IND-AA zone. The amendments would:

- double the maximum allowable height, from 30 feet to 60 feet;
- double the maximum allowable building coverage, from 30% to 60%;
- eliminate the Floor Area Ratio (FAR) requirement; and
- reduce the side yard set back, from 50’ to 10’.

The Lead Agency needs to consider not only other parcels that could be subject to the Amendment, but also the impacts that might result in other Districts throughout the Town from the precedent set by the adoption of the Amendment.

The North Castle Environmental Quality Review law mandates specifically that EIS’s set forth “[a] description of any growth-inducing aspects of the proposed actions, where applicable and significant.” (Town Code § 99-12(H).) As DEC’s SEQR Handbook similarly states:

Keep in mind that rezoning itself may be more significant from the standpoint of SEQR than the individual permitting of projects since a zoning change triggers a change in the allowable use of land and *ostensibly individual projects consistent with that change will be considered in the future in the rezoned area.*”

SEQR Handbook at 182 (emphasis added).

The DEIS only contains one paragraph, which addresses the growth-inducing aspects of the zoning amendment. (See DEIS at 22-2.) It narrowly states that “[s]ince adjacent existing parcels that meet the[ proscribed] development criteria are substantially developed, no significant growth-inducing aspects are anticipated from the proposed zoning amendment.” (DEIS at 22-2.) It fails to consider at all the precedential impacts of the Amendment.

The Amendment would set the stage for potential additional Airport related development on the other properties along New King Street, as well as other areas

within the Town. Having allowed development of up to sixty feet (60'), with sixty percent (60%) coverage, and no FAR restriction for a Parking Garage in the IND-AA Zone, for example, the Town Board would be hard pressed not to allow similar development parameters for other Projects on New King Street.

Moreover, the DEIS does not consider the pressures the Amendment would create throughout the Town for more intense development parameters. The Amendment, for example, would establish a maximum height and a coverage allowance, which would surpass that allowable in *any* District in the Town. Clearly, other developers would desire the same development allowances on their properties. Again, if the Town ignores established development parameters for the proposed parking garage, it would be difficult for it to maintain those restrictions for other commercial development in the King Street area, or the Town as a whole.

#### **E. DEIS Advocates Illegal Spot Zoning**

In an effort to downplay the growth inducing impacts of the Amendment, the DEIS effectively concedes that the Applicant's goal is to engage in illegal "spot zoning." (See DEIS at 22-2.) As the Board knows, spot zoning is "the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area for the benefit of the owner of such property and to the detriment of other owners." Yellow Lantern Kampground v. Town of Cortlandville, 279 A.D.2d 6, 716 N.Y.S.2d 786, 788-89 (3d Dept. 2000), quoting Rodgers v. Village of Tarrytown, 302 N.Y. 115, 96 N.E.2d 731 (1951). The ultimate test is "whether the change is other than part of a well-considered and comprehensive plan calculated to serve the general welfare of the community." Yellow Lantern, 716 N.Y.S.2d at 789 (citation omitted).

The DEIS essentially admits that the Applicant's goal is to single out the Site. The DEIS asserts that the Site would be the only parcel that could benefit from the proposed zoning change. (See DEIS at 22-2.) Moreover, the proposed Zoning Amendment is inconsistent with the Town's Comprehensive Plan. As the DEIS recognizes, "North Castle opposes any expansion of the airport." (DEIS at 3-5.) The Town's Comprehensive Plan unequivocally states that "any expansion" of the Airport is *not* recommended, stating:

Due to the importance of preserving the residential character of the Town and minimizing the impact of airport disturbance on neighboring residential communities, any expansion of the airport facilities and services leading to increased flights and related noise is not recommended.

(Comprehensive Plan at IV-41.)

The Lead Agency should consider the propriety of the Applicant's effort to single out its Site for special classification solely for its own benefit, and to the detriment of other owners.

Similarly, the Project also goes against the established planning policies of Westchester County, as well as the New York State Legislature. The Westchester County Board of Legislators, the New York Assembly and the New York State Senate each adopted Resolutions establishing formal policies against expansion of Westchester Airport. Of special relevance here, their goal in opposing expansion of the Airport is to “protect our fragile environment, including the drinking water for almost nine million people, from the noise, air and water pollution any such expansion would generate.” (Resolution 245-2003 of the Westchester County Board of Legislators, dated Oct. 7, 2003; see also Assembly Resolution No. 1654, adopted April 26, 2004; Senate Resolution No. 5435, adopted June 22, 2004.)

**F. Town Board Lacks Authority To Grant A  
Special Permit For The Parking Garage Project**

The Town Board lacks authority to approve the Project at the instant flag lot Site. Section 213-21 of the Town Code (“Schedule of Office and industrial District Regulations”) establishes that there is a 200 foot frontage requirement in the IND-AA District. The Town Board lacks the authority to grant a variance from the frontage requirements. While Section 213-21 purports to give the Planning Board authority to vary or reduce this requirement in connection with site plan review, again, under the proposed zoning, the Planning Board will not be conducting site plan review.

The Town Board has no lawful ability to grant a variance from the frontage requirements. Buckley v. Town of Wappinger, 12 A.D.3d 597, 785 N.Y.S.2d 98, 99 (2d Dept 2004) (holding that Town Board illegally “usurped the jurisdiction of the local zoning authorities” when it entered into stipulation of settlement that effectively granted a zoning variance).<sup>9</sup>

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<sup>9</sup> The DEIS does not suggest that the Applicant would seek a variance from the frontage requirement from the Town’s duly constituted Zoning Board of Appeals (“ZBA”). The ZBA is not an Involved Agency in this SEQRA review, and does not appear to be engaged in these proceedings. In any event, the Project would likely fail the statutory balancing analysis the ZBA would undertake, including, because such a variance would:

- produce adverse impacts in the character of the neighborhood [and] a detriment to nearby properties;
- the requested area variance is substantial;
- the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and;
- the alleged difficulty was self-created.

(See N.Y. Town Law § 267-b(3)(b).)

**G. Project Presents Significant,  
Unmitigated, Adverse Traffic Impacts**

A major flaw in the DEIS, and with the proposed Project in general, is the DEIS's assertion that the Project would actually result in a reduction of vehicle trips to and from the airport. (DEIS at 13-3.) The Town Traffic Consultant does not accept this contention. The Town Traffic Consultant appropriately notes that "the proposed Garage may increase demand and result in travelers now having the option of driving to the Airport for flights." (Letter to Adam Kaufman, Town Planner, from Michael A. Galante, Frederick P. Clarke Assocs., dated Dec. 9, 2010 at 8 (copy of letter included within DEIS Appendix J).) The Town's traffic consultant thus concludes that "the proposed facility could generate 200 new vehicle trips, plus 18 shuttle bus trip ends and 195 vehicle trip ends plus 18 shuttle bus trip ends during weekday morning and afternoon peak hours, respectively." (Id.)

Based on the Town Consultant's projections, the Project would exacerbate existing "F" LOS levels at three critical intersections:

- Airport Road and Route 120;
- Airport Road and the I-684 northbound ramps, and
- Airport Road and the I-684 southbound ramps.

This is consistent with the Town's Comprehensive Plan, which states that the "Route 120 at Airport Access Road/I-684 Interchange 2" suffers from "[l]imited traffic capacity – high traffic volume." (Comprehensive Plan at III-76.)

The New York City City Environmental Quality Review (CEQR) Technical Manual (May 2010) (the "CEQR Manual") provides the established standard for determining whether an intersection would be "significantly impacted" by traffic from a project, and hence require mitigation.<sup>10</sup> As the CEQR Manual notes, LOS F describes unacceptable, failing conditions. (See CEQR Manual, at 16-28 ("LOS F typically describes ever increasing delays as queues begin to form. This is considered to be unacceptable to most drivers. This condition often occurs with oversaturation, i.e., when arrival flow rates exceed the capacity of the intersection.").)

The CEQR Manual is intended to apply to the wide range of planning environments in New York City, ranging from the urban in Manhattan to the suburban in the outer Boroughs. As such, its guidance is clearly relevant to the traffic conditions around the Airport.

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<sup>10</sup> Notably, AKRF, the firm retained by the Applicant to prepare the DEIS, served as the primary consultant for the preparation of the CEQR Manual.

The CEQR Manual establishes that a three (3) second delay increase at an existing LOS F intersection poses a significant impact that must be mitigated. (See CEQR Technical Manual at 16-53 (stating that at signalized intersections, “[f]or a lane group with LOS F under the No-Action condition, an increase in projected delay of 3.0 or more seconds should be considered significant. . . . For unsignalized intersections the same criteria as for signalized intersections would apply.”))

The requisite mitigation would, at a minimum, compel the Applicant to bring conditions with its Project at the three LOS F intersections to within 3 seconds of the No-Build condition. The CEQR Manual establishes that appropriate mitigation requires that “Action-with-Mitigation” condition produces in insignificant LOS degradation as compared to the “No-Action” condition. (See CEQR Manual at 16-66 (“When considering traffic mitigation, the impact is considered fully mitigated when the resulting LOS degradation under the Action-with-Mitigation condition compared to the No-Action condition is no longer deemed significant following the impact criteria as described in Section 420.”). Again, a 3 second delay at an LOS F intersection is deemed significant. Accordingly, mitigation must reduce the impact of the build condition to less than an additional 3 second delay.

The DEIS’s failure to rationally address, let alone mitigate, the Project’s significant adverse traffic impacts is, respectfully, a critical defect. See Chatam Towers, Inc. v. Bloomberg, 6 Misc.3d 814, 793 N.Y.S.2d 670, 679 (Sup. Ct. N.Y. Co. 2004) (overturning, for lack of the requisite “hard look,” SEQRA determination that “fail[ed] to address the potential traffic impacts on the streets most affected by” the proposed action, noting that “[t]he result, is an arguably flawed study, as the areas most impacted by the closures, appear to have never been reviewed”); Board of Cooperative Educ. Servs. v. Town of Colonie, 268 A.D.2d 838, 702 N.Y.S.2d 219, 222-23 (3d Dept. 2000) (overturning SEQRA analysis that “baldly assert[ed]” that project would have no environmental impacts without addressing concerns that increased use of access road for project would create traffic problems and associated threat to public safety).

To the extent the Applicant would contend that it has no obligation to address its Project’s adverse impacts on the I-684 Interchange with Airport Road because this is a regional problem and/or mitigation would be costly, we are aware of no support for such a proposition. To the contrary, the essential thrust of SEQRA’s EIS requirement is that Agencies explore all means necessary to mitigate a Project’s significant adverse impacts to the maximum extent practicable. See 6 N.Y.C.R.R. § 617.11(d).

Related to this, given that the Project would exacerbate queuing problems onto I-684, the Lead Agency should contact the State Department of Transportation to ascertain its insight on the Project’s potential impacts prior to closing the SEQRA process. The DEIS also does not consider whether the Project would cause a spillback from the facility itself onto New King Street, which could also impact traffic on Airport Road. There is no analysis of how fast the proposed automated parking facility could process cars, particularly with multiple passengers and baggage. There is, thus, no



analysis of whether this automated facility could timely process incoming traffic during peak hours.

**H. DEIS Ignores the Project's Significant  
Adverse Impacts on Greenwich**

The DEC has clearly indicated that municipalities have the responsibility to consider impacts of a proposal, even if they fall outside their jurisdictional boundaries:

Does a municipal board have to consider extraterritorial environmental impacts, for example: impacts occurring in an adjoining municipality?"

Yes. For example, a planning board reviewing a cellular communications tower visible from a neighboring community should consider the aesthetic impact of the tower on the neighboring community. . . . [Another] example would be a community reviewing a shopping plaza that generates traffic on an adjoining community's roadway system. In that case, the host community's review should consider the traffic on the adjoining community.

(SEQR Handbook at 177.) The DEIS, however, trivializes the visual and community character impacts the Project would have on the nearby residential community in Greenwich.

The DEIS irrationally downplays, for example, the Project's visual impacts on the proximate residential community, stating that "[t]here are also some nearby residential uses, but these uses are typically found interspersed among dense vegetation that would screen views of the parking facility." (DEIS at 4-2). It similarly states that the homes on King Street "are generally surrounded by dense vegetation and allow for few if any views of the project site and existing buildings." (DEIS at 4-4.) The DEIS provides no analyses to support these statements.

The DEIS, for example, provides no photo-simulation to show how the Project would appear from King Street in Connecticut. It also does not consider conditions during winter/leaves off condition, when the vegetation that ostensibly provides screening is not there.

The reality is that this nearly sixty foot (60') Project would loom over the residences on King Street in Greenwich year round. Obviously, this impact would be compounded if other projects seek to develop in the IND-AA District in line with the expanded bulk requirements under the proposed zoning amendment.

The DEIS also ignores the community character impacts the Project would have on the adjacent residential community in Greenwich. It incorrectly states, for

example, that “[t]he area immediately surrounding the project site is dominated by transportation, business, and commercial land uses,” completely ignoring area residents. (DEIS at 3-1.) In contrast, the DEIS is sensitive to North Castle’s desire to protect its single family residential neighborhoods, noting that “the Town desires to protect the qualities of a rural community or ‘quiet suburb’, characterized largely by low- to medium-density single-family neighborhoods.” (DEIS at 3-5.) It is unclear why the immediately proximate residential neighborhood in Greenwich does not deserve the same consideration.

**I. DEIS Fails to Consider as an Alternative  
The Provision of Parking at the Airport**

Finally, the DEIS completely fails to consider as an alternative to the Project the provision of additional parking for Westchester Airport at the Airport itself. This alternative would pose substantially fewer environmental impacts, and would alleviate concerns about the geographic expansion of the Airport. The search for possible alternatives to a proposed action has “been characterized as the ‘heart of the SEQRA process.’” Shawangunk Mountain Env’tl. Ass’n v. Planning Bd. of Town of Gardiner, 157 A.D.2d 273, 557 N.Y.S.2d 495, 497 (3d Dept. 1990) (citation omitted); see also Dubois v. U.S. Dept. of Agric., 102 F.3d 1273, 1287 (1<sup>st</sup> Cir. 1996) (“The ‘existence of a viable but unexamined alternative renders an environmental impact statement inadequate’.”).

While ordinarily a private applicant should not be compelled to consider alternative locations, where, as here, the suitability of the project site goes to the heart of environmental concerns, it should. The DEC’s SEQR Handbook states that “a discussion of alternative sites for a proposed action would be reasonable” in circumstances including “[a]ny case *where the suitability of the site for the type of action proposed is a critical issue*, in which case a conceptual discussion of siting *should be required*.” (SEQR Handbook at 123 (emphasis added).) Caselaw confirms that a private applicant may be compelled to consider alternative sites for the proposal in circumstances such as here:

In certain cases involving proposed development by a private entity an in-depth analysis and discussion of alternate sites for the project may be appropriate and necessary. For example, where two or more competing private entities are striving to obtain approval from a municipality for a particular type of proposed development (such as a shopping mall) on different sites, such discussion and analyses of the different sites, in terms of environmental impact, would certainly be appropriate.

Horn v. Int’l Bus. Machines Corp., 110 A.D.2d 87, 493 N.Y.S.2d 184, 192 (2d Dept. 1985), appeal denied, 67 N.Y.2d 602, 499 N.Y.S.2d 1027 (1986). Thus, consistent with Horn, the Lead Agency should consider alternative locations on which additional parking could be provided.

Analysis of such alternative site will enable the Lead Agency to determine whether it should issue positive or negative Findings at the end of the SEQRA process. As the Board knows, ultimately, Findings must be issued certifying whether “from among the reasonable alternatives available,” the action is the one that avoids or minimizes adverse environmental impacts to the maximum extent practicable.” 6 N.Y.C.R.R. § 617.11(d)(5); see also SEQR Handbook at 151 ( “An agency must not undertake, approve or fund any part of an action, if it cannot support positive findings and demonstrate, consistent with social, economic and other essential considerations from among the reasonable alternatives, that the action: minimizes or avoids adverse environmental impacts to the maximum extent practicable, and, incorporates into the decision those mitigation measures identified in the SEQR process as practicable.”).

Where, as here, the suitability of this Site for an Airport related use goes to the heart of the concerns here, the Lead Agency should consider as an alternative the provision of additional parking at the Airport itself.<sup>11</sup>

**J. Substantial Missing Information Must Be Subject To Public Review**

Where, as here, significant new information is required subsequent to the filing of a DEIS, a supplemental environmental impact statement (“SEIS”) is required:

The law recognizes that in situations in which significantly new information has been discovered subsequent to the filing of a draft EIS, which new information is relevant to the environmental impact of the proposed action, a supplemental EIS containing this information should be circulated to the relevant agencies so as to insure that the decision making authorities are well informed.

Horn, 493 N.Y.S.2d at 192; see also Environmental Impact Review in New York § 3.09[4], at 3-160 (“If the lead agency learns of important new issues about significant adverse environmental effects regarding the proposed action in the course of receiving public comments [on a DEIS], the lead agency must require the preparation of a supplemental EIS in order to solicit additional public comments on the new issues.”) .

Of particular relevance here, the Lead Agency must, as a matter of law, subject the required, previously unaddressed issues to further public review:

[C]ourts have cautioned that the omission of required information from a draft EIS cannot be cured by simply including the required data in the final EIS since the

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<sup>11</sup> Notably, the ACOE must also consider of alternative locations. See 33 C.F.R. § 320.4 (establishing among the criteria that will be considered “[w]here there are unresolved conflicts as to resource use, the practicability of using reasonable alternative locations and methods to accomplish the objective of the proposed structure or work.”).

abbreviated comment period for the final EIS "is not a substitute for the extended period and comprehensive procedures for public and agency scrutiny of and comment on the draft EIS."

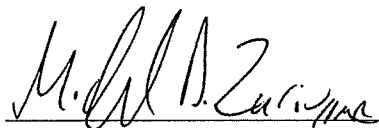
Horn, 493 N.Y.S.2d at 192, quoting Webster Assoc. v. Town of Webster, 59 N.Y.2d 220, 228, 464 N.Y.S.2d 431 (1983).

### CONCLUSION

We look forward to working with the Town in its continuing review of the Project. Please do not hesitate to contact us should you have any questions or comments, or would like for us to expand on any of the areas discussed in this submission.

Respectfully,

ZARIN & STEINMETZ

By:   
Michael D. Zarin  
Daniel M. Richmond

MDZ/mth

encs.

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Town Board of the Town of North Castle  
New York City Department of Environmental Protection  
Selectmen of the Town of Greenwich, Connecticut  
Army Corps of Engineers

## **Kallard Sessions 12/29/10**

MEMORANDUM

TO: North Castle Planning Board

CC: Adam Kaufman, AICP  
John Fava, Conservation Board Chairman  
Kristina Burbank, AICP  
William S. Null, Cuddy & Feder, LLP  
Jannine McColgan, P.E., AKRF, Inc.  
Erik Kaeyer, R.A., KG & D Architects  
11 New King Street, LLC

FROM: David J. Sessions, RLA, AICP *DJS/PG*  
Town Wetland Consultants

DATE: December 29, 2010

RE: Wetland Boundary Verification  
11 New King Street, LLC  
11 New King Street  
Block 4, Lot 14B & 13A

DEC 31 2010

Kellard Sessions Consulting, P.C. conducted a site visit on December 23, 2010 for the purposes of verifying the wetland boundary line as shown on the "Existing Conditions Plan" (Sheet C-2), prepared by AKRF Engineering, P.C., dated (last revised) October 26, 2010.

At our (DEIS completeness) staff meeting with the applicant's consultants on December 16, 2010, our office agreed to conduct a preliminary wetland verification with the understanding that we would finalize the verification in the spring, when hydrophytic vegetation is abundant and more easily identified. The applicant's consultants agreed at the December 16, 2010 meeting to have the project surveyor re-set the wetland flags in the field so that our office could make a preliminary verification of the wetland boundary prior to the spring growing season.

Based on field observations of hydrophytic vegetation (where visible), hydric soils, and wetland hydrological indicators, our office questions certain segments of the wetland boundary line established in the field and as illustrated on the above-referenced plan. Specifically, the delineation

North Castle Planning Board

December 29, 2010

Page 2

along the edge of the stream (between DEP Flag #8 to the culvert and from the culvert to DEP Flag #2) and between Wetland Flag #'s A-26 and A-43.

We also note that in certain areas of the site, the topography illustrated on the plans did not correspond with the flags hung in the field. For instance, Wetland Flag #A-39 is shown in close proximity to the guide rail located along NYS Route 120, while this particular flag is located in the field  $\pm 25$  feet down slope.

Water was observed within the channel located to the south of the proposed parking garage (partially off-site) and therefore this channel will be considered a regulated watercourse. This determination is based, in part, on the fact that water flow was present more than 48 hours after a rain event.

The attached sketch illustrates the approximate wetland/watercourse boundary line based on our field observations and soil borings during the non-growing season. Please note that the amended wetland boundary line places a portion of the proposed parking garage within the wetland proper. Should the applicant wish to proceed with DEIS completeness prior to our final wetland verification in the spring, all future submissions of the DEIS and plans will need to be revised accordingly illustrating both the new wetland line and the 100' regulated buffer.

Prior to our final verification of the wetland boundary, the applicant should delineate both sides of all applicable wetlands and watercourses (in some cases, only the development side has been delineated).

Should you have any questions, please contact me at your convenience.

DS/pg

Enclosure






## **Kallard Sessions 2/25/11**

MEMORANDUM

TO: North Castle Planning Board

CC: Adam Kaufman, AICP  
John Fava, Conservation Board Chairman  
David J. Sessions, RLA, AICP  
Kristina Burbank, AICP  
William S. Null, Cuddy & Feder, LLP  
Jannine McColgan, AKRF, Inc.  
Erik Kaeyer, KG & D Architects  
11 New King Street, LLC

FROM: Ryan Coyne, P.E.   
Kellard Sessions Consulting, P.C.  
Consulting Town Engineers

DATE: February 25, 2011

RE: Site Development Plan &  
Preliminary Draft Environmental Impact Statement (DEIS) Review  
11 New King Street, LLC  
11 New King Street  
Block 4, Lot 14B & 13A

FEB 28 2011

As requested, Kellard Sessions Consulting, P.C. has reviewed the January 2011 revised Site Plans and the Preliminary Draft Environmental Impact Statement (DEIS) submitted in conjunction with the above-referenced application. The applicant is proposing to construct an approximately 52,000 s.f. multi-story parking garage with the capacity for 1,450 cars. In order to construct the new garage facility, the existing 9,700 s.f. structure and on-grade parking area will be razed.

We have reviewed sections of the DEIS pertaining to engineering, wetlands and construction methods for completeness and consistency with the Adopted Scope (Chapter 6, Chapter 7, Chapter 8, Chapter 9, Chapter 11, Chapter 17, Chapter 18, Appendix B, Appendix G and Appendix H).

Our comments are outlined below.

### **General Comments**

1. As stated in the December 29, 2010 memorandum from the Town's Wetland Consultant, a preliminary wetland verification was conducted and resulted in a modification to the wetland boundary line which has been reflected in the current submission. As shown, a portion of the proposed building is now within the Town-regulated wetland proper. A final wetland boundary verification will be conducted by the Wetland Consultant in the spring.

### **Chapter 1 - Executive Summary**

2. The potential jurisdiction of the ACOE should be addressed; the involved agency list in Table 1-1 should be updated if appropriate.
3. The potential for a NYSDEC Article 15 Permit should be investigated for the work on and adjacent to the Class A watercourse. Table 1-1 should be updated, as appropriate.

### **Chapter 6 - Natural Resources**

#### **Text Comments**

4. As required by the Scope Section D(1)(c), the location and description (species, size and health condition) of trees greater than 24" diameter breast height located along roadways providing construction access should be provided on a map.
5. As the project now contains direct impacts to wetland areas, the DEIS should be revised to provide a specific wetland impact section and reference to other relevant sections of the DEIS. This section should quantify the wetland and wetland buffer disturbance areas.
6. Pursuant to the Scope Section E(3)(g), the text should be revised to discuss alternative stormwater engineering that would result in the protection of wildlife from the effects of stormwater management features.

### **Chapter 7 - Geology, Soils Topography and Slopes**

#### **Text Comments**

7. DEIS Figure 7-2 should be revised to include the location of TP-4.

8. The applicant's response to Comment #61 regarding the use of retaining walls should be included as text in the DEIS, as required by the Scope.

## **Chapter 8 - Groundwater Resources**

### **General Comments**

9. The DEIS text, the applicant's response to comments and the stormwater management design appear to conflict with regard to the presence and function existing culvert crossing under Route 120 near the southern boundary of the site. The DEIS text states that the culvert does not function due to overgrowth of vegetation, the responses indicate that the culvert does not exist, and the stormwater management design includes the culvert as a Design Point. This discrepancy should be resolved.

### **Text Comments**

10. 8-4 The text should be revised to provide reference to the Field Wetland Delineation Report, DEIS - Appendix B.
11. 8-7 The text should be revised to include the date, contact and NYCDEP-approved mapping of the referenced NYCDEP stream corridor site inspection.
12. 8-10 As stormwater ponds have not been historically accepted as wetland mitigation, the applicant should provide alternative mitigation for the proposed wetland and wetland buffer disturbance. Given the extent of the improvements proposed within the wetland and the wetland buffer on-site and potentially off-site wetland mitigation should be proposed and discussed.
13. 8-16 Table 8-1 should be revised to indicate existing wetland and wetland buffer resources.

## **Chapter 11 - Infrastructure and Utilities**

### **Text Comments - Section A. Water Supply**

14. The original submission of the DEIS stated that a potable well will be drilled and designed to "private well standards". As you are aware, the proposed facility includes a waiting room, office and associated bathrooms. We previously requested confirmation from the Westchester

County Department of Health (WCHD) that it would be acceptable that the well be designed as a private well, as this was contrary to our interpretation of the Code given the size of the proposed facility. The applicant has revised the DEIS to state that the proposed bathrooms will only be used by employees, leaving no facilities for the patrons; thereby limiting the usage and avoiding the "public water supply" issue.

As previously discussed with the applicant, this concept is not practical given the proposed usage. The intention of the full service facility is to have patrons wait for shuttle service to the airport. The previous floor plan even included a coffee station which has subsequently been removed in this submission.

15. In addition to the impracticality of the proposal, a review of the NYS Building Code indicates that public restroom facilities are required. Therefore, the DEIS text should be revised to state that the facilities will be open for use by the public. If this requires that a water system be designed to "public water supply" standards, the text should also be revised to so state. If the applicant contends that the water system will continue to be designed as a private system even with the public use of the facilities, a letter indicating such should be required by the WCHD prior to a determination of completeness being issued.

#### **Text Comments - Section C. Water Supply**

16. 11-3 The text should be modified to represent projected sewage demand of public restroom facilities.

#### **Text Comments - Section C. Sanitary Sewer**

17. 11-4 The text should be modified to represent projected water demand of public restroom facilities.

#### **Appendix H - Stormwater Pollution Prevention Plan**

##### **General Comments**

18. In general, the applicant has revised the plans and reports to provide a stormwater management design in general compliance with the NYSDEC GP 0-10-001. Some of the previous comments have not been addressed and this office will make additional technical comments on the design throughout the process.

North Castle Planning Board

February 25, 2011

Page 5

19. The applicant indicates that a forebay is not required in the pocket wetland. It is this office's understanding and opinion that pretreatment will be required in the final design.
20. Additional tables summarizing the design compliance of the various stormwater structures will need to be incorporated in the final design.

As additional information becomes available, we will continue our review.

RC/dc

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## **CEA Letter**

Sender's Phone: 845-781-4844 EXT 323  
Sender's Email: [g.fleischer@cea-enviro.com](mailto:g.fleischer@cea-enviro.com)

Phone: 845-781-4844  
Fax: 845-782-5591

May 24, 2011

Planning Board  
Town of North Castle  
17 Bedford Road  
Armonk, NY 10504

Re: Review of Draft Environmental Impact Statement  
Park Place at Westchester Airport

CEA No. 21112

Dear Chairperson Delano and Members of the Board:

Carpenter Environmental Associates, Inc. (CEA) has reviewed the Draft Environmental Impact Statement (DEIS) for Park Place at Westchester Airport prepared by AKRF, Inc. dated March 28, 2011. CEA offers the following comments and attachment with respect to the freshwater wetlands, watercourses, and their associated buffers identified within the project area and adjacent parcels.

1. The lack of confirmed wetland and watercourse delineations by the Town, ACOE, and NYCDEP prevents a proper analysis of the environmental impacts of the development and associated increases in impervious surface on the regulated wetlands, wetland buffers and watercourses.

2. The DEIS does not adequately describe the hydrological connections between wetlands "A" and "B" and watercourses both onsite and adjacent to the property which are all tributary to the Kensico Reservoir. The impacts to wetlands and watercourses from the proposed reductions and rerouting of surface water runoff, stream flow, and groundwater flow are not clear. A more detailed analysis and discussion of hydrology and the interconnectivity of water resources within and adjacent to the site is required to fully assess project impacts.

- Wetland "A", as acknowledged in the DEIS, meets federally regulated wetland criteria per ACOE guidance documents.<sup>1</sup> Figures within the DEIS and associated narrative indicate that Wetland "A" is hydrologically connected to both the NWI mapped (PFO1A) perennial stream (regulated by NYSDEC-Class A, ACOE, NYCDEP & the Town of North Castle), the NWI mapped linear wetland/watercourse on the southern boundary of the parcel (PFO1A), as well as the NWI mapped stream (R4SBF) located directly adjacent to the project site's

<sup>1</sup> DEIS - *Onsite Wetlands and Surface Waters Delineation*; Pg 8-7 and associated footnote.



southwestern boundary (connected via a 36" culvert) that is tributary to the Kensico Reservoir.<sup>2,3,4,5,6,7,8,9</sup>

- The NWI mapped (R4SBF) stream directly adjacent to the site's southwestern boundary and connected via a culvert to Wetland "A" must be considered both a "Watercourse" and "Reservoir Stem" as defined by NYC DEP regulations as it is tributary to the Kensico Reservoir.<sup>10,11</sup> This would then require a 300-foot offset from the 500-foot extent of the NYCDEP reservoir stem. Additionally, the NWI mapped (PFO1A) linear wetland associated with Wetland "A" (characterized as ephemeral by AKRF) would require a 100-foot limiting distance due to its connection with the NWI mapped (R4SBF) stream, by definition a NYCDEP watercourse<sup>12</sup>. In their December 29, 2010 letter to the Planning Board the Town wetland consultants, Kellard Sessions Consulting, P.C., noted the following with regard to the regulated watercourse along the southern boundary of the subject property:<sup>13</sup>

"Water was observed within the channel located to the south of the proposed parking garage (partially off-site) and therefore this channel will be considered a regulated watercourse. This determination is based, in part on the fact that water flow was present more than 48 hours after a rain event..."

The DEIS must be revised to reflect the appropriate limiting distances from all relevant regulated watercourses including the NWI mapped (R4SBF) watercourse and its associated headwaters or potential source waters which include the NWI mapped (PFO1A) linear wetland/ watercourse associated with Wetland "A" and identified by the Town wetland consultants as a regulated watercourse.

- Wetland "B", as acknowledged in the DEIS, meets federally regulated wetland criteria per ACOE guidance documents.<sup>14</sup> It is acknowledged in the DEIS that

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<sup>2</sup> DEIS - *Onsite Mapped Wetlands*; pg. 8-5

<sup>3</sup> DEIS - *Streams*; pg. 8-5

<sup>4</sup> DEIS - *Onsite Wetlands and Surface Waters Delineation*; Pg 8-7; "This wetland is hydrologically connected to the stream that runs under the access road and across the northern limit of the stormwater easement at a point just to the east of the culvert which conveys its flow under NYS Route 120."

<sup>5</sup> DEIS - *Wetland Functions*; pg. 8-9; "*Stormwater Storage/Water Quality* - However, the onsite wetland "A" ....Because it contains two outlets (the culvert beneath NYS Route 120 and the surface connection to the perennial stream)..."

<sup>6</sup> DEIS - Figure 3

<sup>7</sup> DEIS - Figure 8-1

<sup>8</sup> DEIS - Figure 8-2

<sup>9</sup> DEIS - *Town of North Castle*; pg. 9-2 - Describes location of 36" culvert conveying water to Kensico Reservoir.

<sup>10</sup> IBID

<sup>11</sup> Rules and Regulations for the Protection from Contamination, Degradation and Pollution of the New York City Water Supply and Its Sources; Chapter 18 - Rules of New York City; Subchapter A § 18-16(a)(95)(128) Definitions.

<sup>12</sup> IBID

<sup>13</sup> Memorandum - Wetland Boundary Verification; December 29, 2010; Kellard Sessions Consulting, P.C.

<sup>14</sup> DEIS - *Onsite Wetlands and Surface Waters Delineation*; Pg 8-7 and associated footnote.

Wetland “B” is hydrologically connected to both the NWI mapped (PFO1E) wetland to the south on Westchester County Airport property and the NWI Mapped (PFO1A) perennial stream (regulated by NYSDEC, ACOE, NYCDEP & the Town).<sup>15,16,17</sup> However, *Figure 8-2 - Mapped Streams and Water Bodies*, depicts a connection between the NWI mapped (PFO1A) watercourse associated with Wetland “B” and the NWI mapped (PFO1A) linear wetland/watercourse associated with wetland “A” (southern edge of property). Drawing No. C-2 – Existing Conditions depicts both the surveyed AKRF and Town wetland delineations as having no connection to the NWI mapped (PFO1A) linear wetland associated with Wetland “B”. This is a clear discrepancy that needs further onsite investigation to determine if there is indeed a hydrological connection between Wetlands “A” and “B” via the NWI mapped (PFO1A) linear wetland/watercourse (identified as regulated by the Town wetland consultants).<sup>18</sup> The proximity of the watercourses to one another combined with the downward sloping site topography would indicate the potential for groundwater and/or surface water connectivity during the growing season.

- The DEIS states that Wetlands “A” and “B” were delineated and described as per ACOE methodologies and Town definitions.<sup>19</sup> Both wetlands have preliminary Town delineations until a final determination is made following re-inspection of the wetland lines during the 2011 growing season. However, a federal jurisdictional determination by the ACOE is required to confirm both wetland boundaries, identify the nature of the linear wetlands/watercourses, and to establish the hydrological interconnections with watercourses both onsite and on adjacent properties.

3. The DEIS overlooks NYSDEC jurisdiction for Protection of Waters with regard to water quality certification as well as Critical Resource Water criteria set forth by the ACOE.

- The DEIS states “While the New York State Department of Environmental Conservation (NYSDEC) also maintains regulatory authority over certain wetlands, the wetland resources on the project site do not meet the minimum requirements for regulation by the State.” Although the onsite wetlands are not mapped by the NYSDEC, both Wetlands “A” and “B” would be regulated by the U.S. Army Corps of Engineers (ACOE). As such, filling a portion of Wetland “A” for development would require the applicant to obtain an ACOE Individual Permit (a federal Nationwide Permit (NWP) #39 for Commercial and Institutional Developments would not be authorized) and consequently NYSDEC Section 401 Water Quality Certification (WQC).

<sup>15</sup> DEIS – *Upstream Mapped wetlands – Offsite*; Pg. 8-5.

<sup>16</sup> DEIS - *Onsite Wetlands and Surface Waters Delineation*; Pg 8-8.

<sup>17</sup> DEIS – *Wetland B Functions*; Pg. 8-10.

<sup>18</sup> Memorandum – Wetland Boundary Verification; December 29, 2010; Kellard Sessions Consulting, P.C.

<sup>19</sup> DEIS – Appendix B

NYSDEC Section 401 Water Quality Certification would be required as per 6 NYCRR §608.9(a) which states:

*Water Quality Certifications* - "Water quality certifications required by Section 401 of the Federal water Pollution Control act, Title 33 United states Code 1341 (see subdivision (c) of this Section). Any applicant for a federal license or permit to conduct any activity, including but not limited to the construction or operation of facilities that may result in any discharge into navigable waters as defined in Section 502 of the Federal water Pollution Control Act (33 USC 1362), must apply for and obtain a water quality certification from the department..."

The project as proposed will require the placing of fill material into waters of the United States and as such, the NYSDEC Section 401 Water Quality Certification for the U.S. Army Corps of Engineers Nationwide Permits and the associated regional conditions are applicable.<sup>20</sup> The document states:

*List 4 – Permits denied Section 401 Water Quality Certification* – "The Nationwide Permits listed below are hereby denied Section 401 Water Quality Certification in New York State. Any party conducting the activities authorized by these NWP must apply for and obtain a Section 401 Water Quality Certificate from the New York State Department of Environmental Conservation....NWP 39. Commercial and Institutional Developments."

As referenced above, the applicant would be unable to obtain a NWP #39 that would be necessary for filling a portion of Wetland "A", due to the required conformance with NWP General Condition #19 which puts forth additional restrictions for Critical Resource Waters.<sup>21,22</sup> All wetlands and streams onsite are tributary to a Critical Resource Water, the Kensico Reservoir (Rye Lake), which is part of the East-of-Hudson portion of the New York City water supply watershed.<sup>23</sup> NWP General Condition #19 states in both the U.S. ACOE regulations and ACOE NY District regional condition documents that discharges of dredged or fill material into Critical Resource Waters is not authorized by NWP #39.<sup>24,25</sup> The NY District ACOE regional condition document states:

*Critical Resource Waters* – "In accordance with NWP General Condition #19, certain activities in Critical Resource Waters cannot be authorized under the NWP program or will have to meet additional conditions. Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7,..39, ..for any activity within or directly affecting Critical Resource Waters, including wetlands adjacent to such waters.

1. State Waters with Environmental Significance: The New York District has designated the East-of-Hudson portion of the New York City water supply watershed as Critical

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<sup>20</sup> New York State Department of Environmental Conservation; May 11, 2007 Section 401 Water Quality Certification for U.S. Army Corps of Engineers March, 2007 Nationwide Permits.

<sup>21</sup> Department of the Army, Corps of Engineers; Reissuance of Nationwide Permits; Federal Register/ Vol. 72, No.47/ Monday, March 12, 2007/Notices.

<sup>22</sup> U.S. Army Corps of Engineers; New York District Nationwide Permit Regional Conditions.

<sup>23</sup> DEIS - *Downstream Mapped Wetlands – offsite*; pg. 8-5

<sup>24</sup> Department of the Army, Corps of Engineers; Reissuance of Nationwide Permits; Federal Register/ Vol. 72, No.47/ Monday, March 12, 2007/Notices.

<sup>25</sup> U.S. Army Corps of Engineers; New York District Nationwide Permit Regional Conditions.

Resource Waters. This area includes portions of Dutchess, Putnam, and Westchester Counties as delineated on the attached map.”

4. The DEIS and the wetland delineation report provided therein do not provide significant supporting information to adequately characterize onsite and adjacent wetlands and watercourses that are direct tributaries to the Critical Resource Waters of the Kensico Reservoir watershed. The DEIS needs to provide additional information describing in more detail the hydrological connections and flow patterns between wetlands and watercourses both on the proposed project site and adjacent properties in accordance with ACOE jurisdictional determination requirements to better assess the impacts of the proposed project<sup>26</sup>:

*Checklist, 4. Delineation report, including the following supporting information:*

- Watershed size, drainage area size (for each stream reach), average annual rainfall/snowfall.
- Discussion of whether tributaries (streams) on the site are TNW's, perennial RPW's, seasonal RPW's, or non-RPW's. Include a description of general flow patterns, volume and frequency.
- Description of whether each wetland on the site either abuts or is adjacent to a tributary, identify which tributary (e.g. Wetland A directly abuts an unnamed tributary to Kayaderosseras Creek), and provide a justification for this determination.
- Description of tributary connections to a TNW for each aquatic resource on the site, including a discussion of wetland and/or other connections (e.g. Wetland B connects to Wetland A via a culvert under Elm St. Wetland B abuts an unnamed tributary to Kayaderosseras Creek, which is a TNW).
- Color photographs of all representative areas of the site (taken during the growing season), including any connections between tributaries and wetlands.

5. The DEIS underestimates the functions of the existing wetland and watercourse buffers. The DEIS states, “Currently, the stormwater runoff from impervious surfaces located within wetland and watercourse buffers discharge directly to the waterbodies without treatment.”

- The stormwater runoff must traverse, on average, over 100 feet of natural vegetation and lawn area prior to reaching Wetland “A”.<sup>27</sup> The pre-development buffer for Wetland “A” currently consists of a mix of native tree, shrub, and groundcover species with some areas of maintained lawn. The extent of the buffer currently ranges from 50-100 feet. There is virtually no impervious surface currently existing within the 100-foot buffer of Wetland “A” in the “Pre 2” drainage area.<sup>28,29</sup> Half of the existing roof area of the structure on Lot 14B (≈ 4,600 square feet) is the only impervious structure within the “Pre 1” drainage area along the buffer of the NWI mapped (PFO1A) linear wetland/watercourse, part of Wetland “A”, along the southern portion of the property.<sup>30,31</sup> This roof area

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<sup>26</sup> United States Army Corps of Engineers. 2007. *U.S. Army Corps of Engineers Jurisdictional Determination Form Instructional Guidebook*. Appendix B – Checklist of Information Included with Requests for Jurisdictional Determinations.

<sup>27</sup> DEIS – Sheet No. C-2 – Existing Conditions Plan

<sup>28</sup> IBID

<sup>29</sup> DEIS – Figure 9-1 – Pre-Development Stormwater Map

<sup>30</sup> DEIS – Sheet No. C-2 – Existing Conditions Plan

<sup>31</sup> DEIS – Figure 9-1 – Pre-Development Stormwater Map

is 50 feet away from the wetland at its closest point. The existing buffer serves to provide natural filtration of the stormwater flowing from the site before it enters Wetland “A”, its associated watercourses, and ultimately Kensico Reservoir.

The existing buffer of tree, shrub, and herbaceous vegetation for Wetland “A” and the NWI mapped (PFO1A) linear wetland/watercourse will be almost entirely removed as part of the development. In its place will be the proposed parking garage and a stormwater management system consisting of graded, wet basins that create an additional 33,486 square feet of impervious surface within the buffer area.<sup>32</sup> In addition to eliminating the buffer, the proposed stormwater management basins and parking garage will not balance the pre-construction stormwater flow to Wetland “A” and one of its downstream tributaries.

6. The proposed project does not maintain the hydrological balance to Wetland “A” and the associated NWI Mapped PFO1A linear wetland/watercourse.

- The pre- and post stormwater flow to Wetland “A” will not be maintained. The wetland and its associated NWI mapped (PFO1A) linear wetland/watercourse currently functions to collect, retain, and distribute water from the site to two different perennial streams (NWI mapped PFO1A & R4SBF) that drain to the Kensico Reservoir via a 60” and 36” culverts. Eliminating the hydrology to Wetland “A” and the NWI mapped (PFO1A) linear wetland/watercourse will disrupt the natural flow of the site stormwater within the network of onsite and adjacent streams that feed the Kensico Reservoir. The hydrology for the Town regulated Wetland “A” and NWI mapped (PFO1A) wetland/watercourse in the southwestern portion of the site is almost completely eliminated in the post-development design.<sup>33</sup> Hydrological flow of stormwater from the project site to Design Point 1, and subsequently to Kensico Reservoir, will be almost completely eliminated.<sup>34</sup>
- The applicant is proposing a series of basins to concentrate and filter stormwater flow to a central discharge point. The proposed stormwater management system will concentrate site stormwater to one central area for discharge at a single point (Design Point 2) along only one regulated watercourse (NWI mapped PFO1A on the northwestern corner of the property). The post-development stormwater plan does not account for the water currently flowing to Wetland “A”, the linear PFO1A wetland/watercourse, nor to the adjacent perennial stream (R4SBF) that receives their naturally filtered drainage via a 36” culvert prior to discharge to the reservoir (Design Point 1).<sup>35,36</sup>

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<sup>32</sup> DEIS – *Wetland and Watercourse Impacts*; Pg. 8-14.

<sup>33</sup> DEIS – Figure 9-1 & 9-2

<sup>34</sup> DEIS – *Design Point 1*; pg. 9-11.

<sup>35</sup> DEIS – *Design Analysis* – pgs. 9-11 & 9-12

<sup>36</sup> DEIS - *Town of North Castle*; pg. 9-2 – Describes location of 36” culvert conveying water to Kensico Reservoir.

- Based on the information provided in Appendix H – Preliminary Stormwater Pollution Prevention Plan (SWPPP), the DEIS does not provide an adequate analysis of the impacts that the overall reduction in hydrology via runoff will have on Wetland “A”. Based on the analysis shown there is an approximately 50% reduction in both volume and flow to Wetland “A” which would irreversibly impact the functions, values and benefits provided by the wetland system.<sup>37</sup> The DEIS must provide a more detailed hydrological analysis, inclusive of a relevant site precipitation analysis, to better identify the total annual reduction of flow to Wetland “A”, the NWI mapped (PFO1A) wetland/watercourse and subsequently the NWI mapped R4SBF watercourse that contributes flow to the Kensico Reservoir.

7. The number of wetland and watercourse buffer reductions required due to development restrictions at the Federal, State, City, and Town levels should not be downplayed. There are currently a number of interconnected wetlands and watercourses on the proposed project site that work in concert to buffer and regulate water flowing to the Kensico Reservoir. The purpose of establishing onsite buffers within the watershed is to protect land in its natural state and allow for natural communities to filter impurities from water that makes its way to the reservoir system. The limitations placed on development in such a critical area by the NYCDEP, ACOE, and the Town of North Castle are designed to maintain and preserve the value and integrity of the wetlands and associated buffers that serve both as protection and filtration for the New York City water supply. The DEIS must accurately reflect all applicable development restrictions, rationally assess the projects impacts, and provide real, substantiated measures to avoid or mitigate these impacts.

Sincerely,

Carpenter Environmental  
Associates, Inc.



Greg M. Fleischer, PWS  
Senior Scientist

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<sup>37</sup> DEIS - Appendix H – Preliminary Stormwater Pollution Prevention Plan; Table 6-3, pg. 17; Tables 6-4 & 6-5, pg. 22.

## ATTACHMENT 1



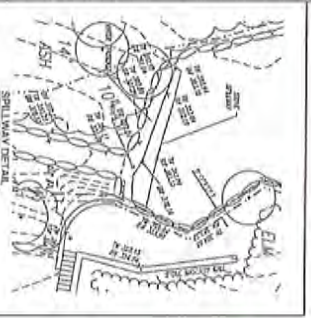
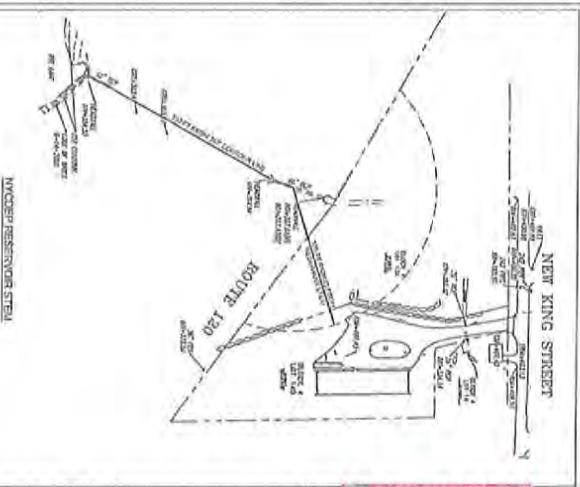
# ATTACHMENT 1

## CONTRACT 1.0000

1. The Contractor shall provide all labor, materials, and equipment necessary to complete the work shown on the plans and specified in the specifications.
2. The Contractor shall be responsible for obtaining all necessary permits and licenses from the appropriate authorities.
3. The Contractor shall maintain access to all existing utilities and structures at all times during the construction process.
4. The Contractor shall be responsible for the safety of all workers and the public during the construction process.
5. The Contractor shall maintain the site in a clean and safe condition at all times during the construction process.
6. The Contractor shall be responsible for the removal and disposal of all debris and waste materials from the site.
7. The Contractor shall be responsible for the protection and preservation of all existing trees and vegetation on the site.
8. The Contractor shall be responsible for the installation and maintenance of all erosion control measures during the construction process.
9. The Contractor shall be responsible for the installation and maintenance of all stormwater management measures during the construction process.
10. The Contractor shall be responsible for the installation and maintenance of all fire protection measures during the construction process.
11. The Contractor shall be responsible for the installation and maintenance of all security measures during the construction process.
12. The Contractor shall be responsible for the installation and maintenance of all communication measures during the construction process.
13. The Contractor shall be responsible for the installation and maintenance of all monitoring measures during the construction process.
14. The Contractor shall be responsible for the installation and maintenance of all record keeping measures during the construction process.
15. The Contractor shall be responsible for the installation and maintenance of all reporting measures during the construction process.
16. The Contractor shall be responsible for the installation and maintenance of all other measures necessary to complete the work shown on the plans and specified in the specifications.

## CONTRACT 1.0000

1. The Contractor shall provide all labor, materials, and equipment necessary to complete the work shown on the plans and specified in the specifications.
2. The Contractor shall be responsible for obtaining all necessary permits and licenses from the appropriate authorities.
3. The Contractor shall maintain access to all existing utilities and structures at all times during the construction process.
4. The Contractor shall be responsible for the safety of all workers and the public during the construction process.
5. The Contractor shall maintain the site in a clean and safe condition at all times during the construction process.
6. The Contractor shall be responsible for the removal and disposal of all debris and waste materials from the site.
7. The Contractor shall be responsible for the protection and preservation of all existing trees and vegetation on the site.
8. The Contractor shall be responsible for the installation and maintenance of all erosion control measures during the construction process.
9. The Contractor shall be responsible for the installation and maintenance of all stormwater management measures during the construction process.
10. The Contractor shall be responsible for the installation and maintenance of all fire protection measures during the construction process.
11. The Contractor shall be responsible for the installation and maintenance of all security measures during the construction process.
12. The Contractor shall be responsible for the installation and maintenance of all communication measures during the construction process.
13. The Contractor shall be responsible for the installation and maintenance of all monitoring measures during the construction process.
14. The Contractor shall be responsible for the installation and maintenance of all record keeping measures during the construction process.
15. The Contractor shall be responsible for the installation and maintenance of all reporting measures during the construction process.
16. The Contractor shall be responsible for the installation and maintenance of all other measures necessary to complete the work shown on the plans and specified in the specifications.



**60" Culvert Location -**  
Hydrologically  
Connects to NWI  
Mapped PSSIE  
Wetland/Watercourse  
and Kensico  
Reservoir.



**36" Culvert Location -**  
Hydrologically  
Connects  
Wetland "A" and PFO1A NWI  
Mapped Linear Wetland/  
Watercourse to R4SBF NWI  
Mapped Watercourse &  
Kensico Reservoir.

**Town Delineated  
Wetland Line  
(Kellard and  
Sessions).**

**PFO1A - NWI  
Mapped Linear  
Wetland/Watercourse**

**Potential hydrological  
connectivity (surface  
water or ground water)  
between Wetland "G" &  
NWI mapped PFO1A  
linear wetland/  
watercourse.**

**EXISTING  
CONDITIONS  
PLAN**

**C-2**

**PARK  
PLACE**

11 New King Street  
Town of Poughkeepsie, New York

11 New King Street LLC  
11 New King Street  
WINDHAM, NY  
10664

**QAKRF**  
QAKRF LLC  
400 N. Main Street  
Poughkeepsie, NY  
12601-1000

**DESIGN SUBMISSION**



## **Adler Letter**

**Adler Consulting,**

235 Main Street  
White Plains, NY 10601-2401

Transportation Planning & Traffic Engineering, PLLC

Tel # (914) 997-8510  
Fax # (914) 997-7140

May 31, 2011

John Delano, Chairman  
Members of the Planning Board  
Town of North Castle  
17 Bedford Road  
Armonk, NY 10504

Subject: Review of Park Place at Westchester Airport  
New King Street  
North Castle, New York

Dear Chairman Delano and Members of the Board:

**Adler Consulting** has been retained by Westchester Airport Associates L.P., to review the Traffic and Transportation Section of the Draft Environmental Impact Statement (DEIS), for the proposed Park Place at Westchester Airport. The proposal would consist of construction and operation of a parking facility with approximately 1,450 spaces and would include access from New King Street in the Town of North Castle. In addition, **Adler Consulting** reviewed the supplemental traffic study prepared by the Town of North Castle's Traffic Consultant, as well as the Site Plan submitted by the Applicant.

#### A. NEED

The need for a 1,450 space garage has not been proven. The Applicant has not provided any data documenting the need for a new parking facility. It is incumbent on the Applicant that a study should be prepared by a parking professional, since the lack of a study calls into serious question the need for constructing such a massive facility. Various numbers of parking deficiency have been claimed in the DEIS, but short of a valid quantitative assessment, the need for 1,450 spaces is, at best, questionable.

John Delano, Chairman  
May 31, 2011  
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Further, the recent opening and operation of the 500-space parking lot on the nearby SUNY Purchase College campus also suggests that a 1,450 space facility is not needed.

## **B. TRAFFIC ISSUES**

The Traffic Study contained in the DEIS simplistically suggests that the operation of the proposed facility would result in the elimination of a number of vehicle trips to and from the Airport on the roadway network. The study proposes that a good majority of taxis, limo and private cars will become parkers on the site resulting in very significant reductions of traffic on some intersection approaches. While some individuals may be utilizing taxis or car services to avoid parking at the Airport, there is no evidence that this is the sole reason that airport passengers are using taxis. Accordingly, the DEIS projections are very likely inflated. On the other hand, the supplemental traffic study prepared by the Town's Traffic Consultant performs analysis with the addition of approximately 200 vehicle trips in the AM and PM peak hours to the roadway network due to the proposed facility. The supplemental study appears to be more reasonable and appropriate.

Standard engineering practice dictates that the traffic impacts including increased delays or greater volume-to-capacity (v/c) ratios due to a development, shall be mitigated, even if the operating conditions remain at Level-of-Service "F" when comparing the No-Build and the Build scenarios. As an example, the 2010 New York City Environmental Quality Review (CEQR) Manual states that where a lane group is expected to operate at Level-of-Service "F" in the No-Build condition, an increase in the projected delay of three (3.0) seconds for the Build condition should be considered significant and, therefore, require mitigation.

The capacity analysis performed by the Town's Traffic Consultant indicates that existing Level-of-Service "F" conditions, that is failure conditions, would be significantly exacerbated at the following intersections: NY Route 120 with Airport Road; the I-684 northbound ramps with Airport Road; and, the I-684 southbound ramps with Airport Road, during the AM and PM Peak Hours.

For the intersection of NYS Route 120 with Airport Road, the capacity analysis indicated that Level-of-Service "F" conditions will be expected on the southbound through movement during the morning peak hour in the Build condition. According

to the Town's Consultant, vehicle delay is expected to increase by approximately 25 seconds above the No-Build conditions to 92.8 seconds. In addition, the eastbound left/through/right movement is expected to experience a significant increase in the number of vehicles queued on the roadway with a calculated queue of approximately 1,045 feet in the morning peak hour, an increase in vehicle queue of approximately 380 feet. In the PM Peak Hour, the capacity analysis performed by the Town's Consultant indicates that a vehicle queue of approximately 589 feet is anticipated, an increase in queue length of 138 feet from the No-Build condition. **It is important to note that the approximate storage length to accommodate these anticipated vehicle queues is only 100 feet. The vehicle queues would be expected to "spill-back" and negatively impact the intersections of Airport Road with the entrance and exit ramps for I-684.**

For the intersection of Airport Road with the northbound ramps of I-684, the capacity analysis indicated that the northbound approach is expected to experience Level-of-Service "F" conditions during the AM Peak Hour in the No-Build and Build conditions. For the AM Peak Hour in the Build condition, the vehicle delay is expected to be 169.5 seconds, an increase of approximately 56.8 seconds from the anticipated No-Build conditions. The vehicle queue on the approach is expected to be approximately 598 feet, which is an increase of approximately 137 feet over the vehicle queue anticipated for the No-Build condition.

Level-of Service "F" conditions are expected on the southbound exit ramp from I-684 at the intersection with Airport Road during the AM and PM peak Hours for both the No-Build and Build conditions. The level of congestion is so intense that the capacity modeling used can not calculate the expected vehicle delays nor can the expected vehicle queues be calculated.

Another measure used by traffic engineers to measure the impact of traffic on a roadway is the v/c ratio, which compares the rate of vehicle flow in an hour with the capacity of the approach to accommodate the vehicle flow. A v/c ratio approaching 1.00 is considered to be a serious condition and generally warrants close surveillance. A v/c ratio greater than 1.00 indicates that more vehicles are trying to get through an intersection than can actually be accommodated and that mitigation is needed. The analysis by the Town's Consultant also indicates that the Project would severely exacerbate the v/c ratios at the I-684 interchange. For the No-Build condition, the anticipated v/c ratio for the southbound I-684 ramp at Airport Road is 3.79. For the PM Peak Hour, the v/c ratio is calculated to be 5.64. The capacity analysis for the

John Delano, Chairman  
May 31, 2011  
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Build conditions indicates that the additional garage traffic greatly exacerbates these congested conditions. In the Build condition, a v/c ratio of 4.65 is expected in the AM Peak Hour, an increase of 0.86. In the PM Peak Hour, the v/c ratio is expected to reach approximately 7.49, a 33 percent increase without any proposed mitigation.

**These poor operating conditions on both exit ramps of I-684 at Exit 2 seem to be ignored by both the Applicant and the Town's Consultant. The anticipated volume on the I-684 southbound ramp is seven and one-half times the number of vehicles that can actually be processed and accommodated in one hour.**

The Applicant should be required to identify potential measures that can be implemented at the affected local intersections and on the highway ramps that provide direct access to and from the Airport property to mitigate the anticipated impacts of the proposed garage.

With regard to safety implications, no statistical accident analysis has been performed. There is merely a summary of the accidents that had occurred over a three-year period. It is recommended that a complete, statistical accident analysis be performed by the Applicant to determine the potential safety impacts of increased traffic volumes on the airport roads. The accident analysis will identify the accident rates at intersections and roadway segments. Further, these rates should then be compared with state-wide average rates for similar roadway operating conditions. Moreover, mitigation measures should be implemented where there is a causal relationship between the roadway and/or traffic control devices and the accident history.

## **C. SITE PLAN ISSUES**

### **1. Processing Time.**

The DEIS anticipates that there will be approximately 99 cars entering the facility in the AM Peak Hour and approximately 86 cars in the PM Peak Hour. The Applicant should provide documentation concerning the processing rate for arriving vehicles to ensure that the arriving vehicle queues do not extend beyond the entrance area and interfere with the circulating shuttle buses and vehicles leaving the garage facility or create spill back problems on New King Street, which could affect Airport Road.

## 2. Poor Driveway Design.

It is a common traffic engineering practice on one-way streets to design the circulation pattern to allow a more safe driving environment without conflicts. A more appropriate design should have reversed the directional flows of the access driveway to permit left-turns into the site without "crossing" in front of exiting traffic.

## 3. Unsafe Merging.

The Site Plan indicates that shuttle bus traffic is expected to merge from two lanes of traffic into one lane of traffic (left side) simultaneous with the merge of the departing automobile traffic (right side). This is a potentially dangerous conflict and should be revised with proper spacing between the two merge points to avoid this condition.

## 4. Access to Pocket Wetlands

The proposed 10-foot wide 'grass paver area' proposed to access the pocket wetland areas is very narrow for vehicle access. In addition, there does not appear to be an area designated to permit a vehicle to turn around leaving the wetland area and proceeding towards the garage facility. Finally, vehicles returning to the garage facility from the wetland area would be traveling in the wrong direction and facing incoming passenger car traffic. It is anticipated that vehicle maneuvers at this location would be extremely difficult if not impossible. Moreover, the area where the 'grass paver area' intersects with arriving traffic at the garage facility appears unsafe.

## D. SUMMARY

There are fatal flaws with the DEIS, as follows:

- The quantified need for the proposed garage has not been justified;
- The analyses simplistically assume that traffic volumes will be reduced. This assumption is not valid; the increase in traffic volumes assumed by the Town's Traffic Consultant appears to be more reasonable and appropriate;
- The serious congestion currently experienced on the roadway system in the area would be significantly exacerbated with the operation of the garage and is neither addressed nor mitigated; and,

John Delano, Chairman

May 31, 2011

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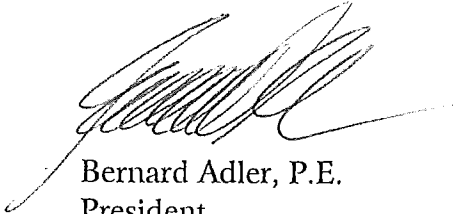
- There are several areas on the Site Plan that are deficient, including a potentially dangerous simultaneous merge from both sides of the exit roadway.

We trust that this information will assist you with your continued review of this project. Should you have any questions, please do not hesitate to contact us.

Sincerely,

**Adler Consulting,**

**Transportation Planning & Traffic Engineering, PLLC**



Bernard Adler, P.E.

President

NY Professional Engineer No. 48373

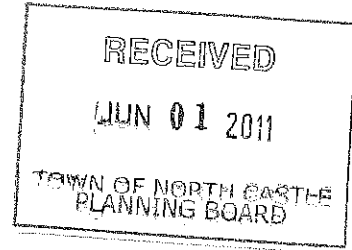


Michael P. O'Rourke, P.E., PTOE

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June 1, 2011

**By Hand Delivery**

Chairman John Delano and the Members of the  
Town of North Castle Planning Board  
Town of North Castle  
17 Bedford Road  
Armonk, NY 10504

**Re: Proposed Park Place at Westchester Airport;  
Comments on Draft Environmental Impact Statement**

Dear Chairman Delano and Members of the North Castle Planning Board:

The following comments on the Draft Environmental Impact Statement ("DEIS") prepared by 11 New King Street, LLC (the "Applicant") in connection with its proposed Park Place Project (the "Project") are submitted on behalf of Westchester Airport Associates, L.P., the owner of the existing garage at the Airport. These comments supplement our oral testimony at the May 2, 2011 Public Hearing. Incorporated herein in their entirety, and also an integral part of our client's comments on the DEIS, are the written comments of Carpenter Environmental Associates and Adler Consulting, which are annexed hereto.

In sum, the Project conflicts with multiple layers of established planning and regulatory principles in the Town of North Castle (the "Town"). In adopting the Town's Freshwater Wetlands and Drainage Law, for example, the Town Board expressly found that "[w]etland areas should be protected from encroachment, spoiling, polluting, or obliteration stemming from . . . commercial development." The DEIS does not discuss the Project's noncompliance with this Town policy. The DEIS also does not discuss the fact that the Project clearly exceeds the low threshold mandating rejection of a wetland permit under the Town's Freshwater Wetlands Law.

Moreover, in the past, the Town has been proactive in protecting the wetlands immediately surrounding the Kensico Reservoir in recognition of their singular value in protecting the public potable water supply. The Town, for example, worked



with the corporations specifically along King Street to create management guidelines, set forth in the King Street Corridor Management Plan, to ensure that wetlands on these properties were safeguarded, and to require “careful planning” for new development around the Kensico Reservoir. The DEIS does not mention the Plan or discuss its relationship to the Project.

Perhaps most troublesome, the DEIS attempts to ignore a second stream on the Project site (the “Site”), even though the Town’s Wetlands Consultant has specifically stated that it “will be considered a regulated watercourse.” The Project would completely eliminate the buffer protecting this watercourse. This watercourse, and its attendant one-hundred foot (100’) buffer, is likely subject to the jurisdiction of the New York City Department of Environmental Protection (the “DEP”). DEP would almost certainly deny a variance to allow the parking garage to be constructed in this sensitive buffer area. The DEIS also does not discuss a second Reservoir Stem potentially affecting the Property, even though it is clearly shown on Westchester County Maps included in the DEIS. The three hundred foot (300’) buffer from this Reservoir Stem mandated by DEP’s Watershed Regulations may also prohibit the development of the Project.

Similarly, the Project flatly contradicts the Town’s Comprehensive Plan. The Town’s Comprehensive Plan unequivocally establishes that “any expansion” of the Airport is *not* recommended. The proposed zoning amendment would violate established development parameters both within the IND-AA District, as well as the Town as a whole. This includes a maximum permissible height, as well as building coverage allowances, which would surpass the limitations applicable in *any* District in the Town. Respectfully, it would set a dangerous precedent, which the DEIS ignores. Similarly, the Project goes against the established policies of Westchester County, as well as the New York State Legislature, in opposition to any expansion of the Airport.

The DEIS also irrationally asserts that the Project would actually result in a reduction of vehicle trips to and from the airport. As the Town Traffic Consultant’s analysis recognizes, however, the Project would actually exacerbate existing “F” Levels of Service (“LOS”) at three critical intersections, with potential adverse impacts spilling onto I-684. No mitigation is discussed for these impacts.

Ultimately, the Project would constitute an expansion of the Airport beyond its present geographic confines, which is inconsistent with more rational efforts to modernize the Airport. The Airport can be renovated to meet the existing demands, including for parking, without causing unnecessary adverse impacts to sensitive receptors, including the Kensico Reservoir and the residential communities in Greenwich, Connecticut. The significant, unmitigatable, adverse impacts of concentrated off-site parking development in the IND-AA District can and must be avoided, both under SEQRA, as well as other applicable laws and regulations, including, the Town’s Freshwater Wetlands Law and DEP’s Watershed Regulations.

As the Planning Board surely appreciates, the DEIS is only a “starting point” for the environmental review of this ambitious Project under the State Environmental Quality Review Act (“SEQRA”). The comments herein are offered in good faith to assist the Town of North Castle (“Town”) in “filling in the gaps” in what is a complex proposal, with wide ranging implications:

The DEIS is a starting point. It is a document which should analyze the significant environmental effects of a proposed action and identify how those effects can be avoided or minimized. When a DEIS is accepted as complete, it is complete for the purposes of commencing formal review of the proposal. *The opportunities for public comment, formal review and public hearings are all part of the SEQRA process established to fill in gaps and to provide updated information and analysis in the DEIS in order that an informed decision may ultimately be made regarding the proposal.*

In re Amenia Sand & Gravel, 1997 WL 1879249, at \*8 (N.Y. D.E.C. June 16, 1997) (Rulings of the Administrative Law Judge on Party Status and Issues), appeal denied, 1997 WL 628371 (N.Y. D.E.C. Aug. 27, 1997) (Interim Decision of Deputy Commissioner); see also N.Y. Env'tl. Conserv. Law § 8-105(8) (defining a DEIS to be “a preliminary statement prepared pursuant to [SEQRA]” (emphasis added)).

In that spirit, we submit the following comments.

**A. Town Board Cannot Delegate Its SEQRA Review Responsibilities To The Planning Board**

It appears at first blush that the Town Board has improperly delegated its SEQRA review responsibilities to the Planning Board. SEQRA requires that decisions under it “must remain with the lead agency *principally responsible for approving the project.*” Coca-Cola Bottling Co. of New York, Inc. v. Bd. of Estimate of City of New York, 72 N.Y.2d 674, 536 N.Y.S.2d 33, 37 (1988). The agency primarily responsible for approving the instant Project is the Town Board. In contrast, it is questionable whether the Planning Board has any approvals respecting the Project.

The heart of this Application is a zoning amendment. The amendment would create a new Special Use category for parking garages in the IND-AA District subject to Town Board approval (the “Amendment”). The Project is not possible without this substantial revision of the Town Zoning Code. The Amendment is, of course, a discretionary determination of the Town Board. If the Amendment were adopted, no discretionary decisions would be required from the Planning Board under the Amendment.

The Amendment would make the Town Board the approval authority for Special Permit Applications for garage proposals off-site from the County Airport. Pursuant to the Town Code, the Town Board's Special Permit review would obviate the need for Site Plan review from the Planning Board. (See Town Code § 213-34 (establishing that "[n]o building permit shall be issued, and no structure or use shall be established or changed, *other than for one single-family dwelling or a special permit use approved in accordance with the procedures specified in Article VII of this chapter*, except in conformity with a site development plan approved and endorse by the Planning Board . . . ." (emphasis added).)

The Town Board would also assume Freshwater Wetlands review authority for the Project. (See Town Code § 205-5(C) (defining the Town Board to be the Approval Authority for wetland applications when neither the Planning Board nor the Town Engineer have that capacity).) The Planning Board would similarly lack review authority over the Project's Tree Removal Permit. The Building Inspector would be the Approval Authority for the Tree Removal Permit. (See Town Code § 192-2 (Planning Board only the Approval Authority where there is a pending Site Plan Application)).<sup>1</sup>

Accordingly, as the New York State Department of Environmental Conservation ("DEC"), the agency primarily responsible for SEQRA's implementation, indicates in its official SEQRA guidance document, the SEQR Handbook, the Town Board is indisputably the agency "primarily responsible" for reviewing the Project:

"Which board is responsible for the conduct of SEQR when local zoning decisions are made?"

"The board with primary responsibility for making the zoning decision. . . . *If the zoning decision is legislative (such as a rezoning decision), then the board with primary responsibility, depending on whether the municipality is a city, town or village, will be the city council, the town board, or the village board of trustees, respectively.*"

SEQR Handbook at 181 (emphasis added).

Without denigrating the capability or integrity of the Planning Board, its improper assumption of Lead Agency status in this matter potentially renders these proceedings jurisdictionally defective. As the Board is aware, SEQRA mandates "strict compliance" with its environmental review procedures. N.Y.C.C.E.L.P. v. Vallone, 100 N.Y.2d 337, 763 N.Y.S.2d 530, 535 (2003). Strict compliance with SEQRA is particularly important where, as here, potable water may be impacted. See Doremus v. Town of Oyster Bay, 274 A.D.2d 390, 711 N.Y.S.2d 443 (2d Dept. 2000) (holding that local board violated SEQRA by failing to order a supplemental environmental review for

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<sup>1</sup> It is notable that the Building Inspector has not been included as an Involved Agency, notwithstanding the fact that he will have jurisdiction over this significant discretionary determination.

a site located in an area designated for special groundwater protection); Bryn Mawr Props., Inc. v. Fries, 160 A.D.2d 1004, 554 N.Y.S.2d 721, 722-23 (2d Dept. 1990) (upholding requirement for supplemental environmental review under SEQRA, noting that “[i]t is of critical importance that the petitioner’s proposed development is situated on the shores of Pocantico Lake, a former reservoir which is still a potential source of potable water.”).

The Town Board’s duty to serve as Lead Agency is particularly important here because the Project places so many of the Town’s legislatively adopted planning principles and requirements in question. Respectfully, the Planning Board should defer to the Town Board as the appropriate Lead Agency for the review of this Project.

**B. The DEIS Fails To Substantiate The Need for 1,450 More Parking Spaces**

SEQRA’s implementing regulations require that the lead agency take a hard look at “the proposed action, its purpose [and] public need and benefits, including social and economic considerations.” 6 N.Y.C.R.R. § 617.9[b][5][i]. Economic need and other essential considerations must be taken into account and “balanced with [a project’s] adverse environmental impacts.” See, e.g., In the Matter of the Application of Al Turi Landfill, Inc., DEC Application No. 3-3330-0002-21, 1998 WL 1670484, (Administrative Law Judge Ruling on Party Status/Issues, June 19, 1998) (stating that “‘need’ is typically considered to be a SEQRA issue, to be weighed against unavoidable or unmitigatable adverse environmental impacts . . . [but may also be considered] outside the SEQRA context, in relation to a policy judgment by DEC); In the Matter of the Preble Aggregate, Inc., DEC Project No. 7-1136-0007/00001, 1995 WL 582480, (Comm. Interim Decision, Sept. 7, 1995) (upholding ALJ’s ruling in mined land reclamation permit proceeding, that the “loss of prime agricultural land versus the need for gravel” is a valid issue for adjudication, and directing ALJ to develop record on same.) The relevancy of making a showing of a project’s fulfillment of public need increases proportionate to the degree of adverse environmental impacts involved in the proposed action.

Since this Project has the potential for significant, irreversible adverse impacts, including to the Kensico Reservoir, particularly careful scrutiny must be afforded to the Applicant’s unsubstantiated claim that 1,450 more parking spaces are needed to meet existing Airport demand. The Applicant, at a minimum, should be compelled to produce market studies supporting its contention that 1,450 additional parking spaces are needed for Westchester Airport. Moreover, the DEIS must factor in the approximately 500 parking spaces that have recently become available at the State University of New York at Purchase.

**C. DEIS Ignores The Project's Significant Adverse Impacts  
On Wetlands And The Region's Potable Water Supply**

The DEIS dramatically understates the Project's potential adverse impacts on the relevant wetlands and watercourses.

One of the major impacts that the off-site expansion of the Airport poses is to the water quality of the Kensico Reservoir. The Kensico Reservoir, as the Board knows, is "the final reservoir in the Catskill/Delaware system before water enters the distribution network."<sup>2</sup> It holds the drinking water for millions of New Yorkers. Indeed, one of the reasons the Planning Board issued a Positive Declaration, requiring the preparation of an EIS, was because "[t]he proposed construction is to occur wholly within the Kensico Reservoir Watershed." (Planning Board Positive Declaration, dated Sept. 30, 2009, at 2.) The Town Conservation Board has similarly expressed concerns regarding the Project's potential adverse impacts on the Kensico Reservoir. (See Memorandum on Comment-Draft Scoping Document, from John F. Fava, Chair, Conservation Board to Planning Board, dated Jan. 7, 2010 ("[I]t must be stated that the impacts of this project on the Kensico Reservoir, especially the local water supply intake from Rye Lake are of special concern.")).

The Town has traditionally been a leader in efforts to protect the Kensico Reservoir. The Town of North Castle established the Kensico Watershed Improvement Committee ("KWIC") in conjunction with five major corporations on Route 120, specifically in order "to protect the Kensico Reservoir from potential water quality threats associated with the corporate and roadway uses in the King Street Corridor," within which the Project site ("Site") is located. (See KWIC, King Street Corridor Management Plan, May 2001, at 1 & fig. 1). "[C]areful planning for new development [is one of two] extremely important components of the management plan" (Id. at 3.) Tellingly, the Plan, once again, is not even mentioned in the DEIS.<sup>3</sup>

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<sup>2</sup> See [http://www.nyc.gov/html/dep/html/watershed\\_protection/kensico.shtml](http://www.nyc.gov/html/dep/html/watershed_protection/kensico.shtml).

<sup>3</sup> Similarly, in its official planning document, Westchester 2025, the Westchester County Planning Board established that protecting water quality must be "at the forefront of government action:"

The protection and enhancement of water quality must continue to be at the forefront of government action, not simply because of standards and regulations originating at the state and federal levels but because water quality shapes quality of life. Efforts must be directed at protecting drinking water supplies, improving surface water quality and protecting underground water supplies.

Westchester 2025 at 3. The DEIS is silent on the policy set forth in this document.

1. **Project Cannot Be Approved  
Under The Town's Freshwater Wetlands Law**

Consistent with both its legal obligations under North Castle's Freshwater Wetlands and Drainage Law, as well as the principles that prompted the Town to form the KWIC to protect the Kensico Reservoir, the Town Board would almost certainly be compelled to deny a Wetlands Permit to the Project. In adopting North Castle's Freshwater Wetlands and Drainage Law, the Town Board expressly found that "[w]etland areas should be protected from encroachment, spoiling, polluting, or obliteration stemming from . . . commercial development . . . and/or disregard for natural resources." (Town Code § 209-3(A)(1).) The Town Freshwater Wetlands Law recognizes that "[w]etlands protection is a matter of concerns to the entire Town and surrounding region." (Town Code § 209-3(A)(4).)

The Town Freshwater Wetlands Law recognizes that wetlands provide multiple beneficial functions, including, of relevance to this Application:

- "[p]roviding drainage, flood control, and natural storage for water;"
- "[p]rotecting and purifying surface and subsurface water resources by sediment trapping, nutrient removal and chemical and biological detoxification;"
- "[r]echarging, storing groundwater (including aquifers and surface waters,) and maintaining stream flow;" and
- "[m]itigating the effects of erosion by serving as natural sedimentation areas and filter basins."

(Town Code § 209-3(A)(1).)

The Freshwater Wetlands Law sets a low threshold, which affirmatively *mandates* that the Town Board *must* deny Wetland Permit applications that have the potential to adversely impact the environment. The Law requires that the Approving Authority, here the Town Board, "*shall* deny the permit if"

"The proposed activity *may* threaten public health and safety . . . can cause nuisances, impair public rights to the enjoyment of public waters . . . or violate other federal, state or local laws and regulations" [or]

"It finds that the detriment to the public good by the factors listed in this section would occur on the issuance of the permit outweighs the nonmonetary public benefits associated with the activity."

(Town Code, § 209-7(B)(3) (emphasis added).)

It is well settled environmental law that the use of the word “may” establishes a low threshold. See, e.g., Silvercup Studios Inc. v. Power Auth. of N.Y., 285 A.D.2d 598, 729 N.Y.S.2d 47, 49 (2d Dept. 2001) (“Because the operative word triggering the requirement of an EIS is ‘may’, there is a relatively low threshold for the preparation of an EIS.” (citation omitted)). In conjunction with the Freshwater Wetlands Law’s use of the word “shall,” the Law mandates that the Approving Authority deny a Permit application, which, as here, has the potential to cause the listed adverse impacts. See N.Y. Statutes § 177(a) (“In the absence of anything to indicate a contrary intention, words of command in a statute are construed as peremptory, and words of discretion are treated as permissive.”).

In the first instance, it is unclear how the Town can rationally assess the Project’s wetland and wetland buffer impacts in the absence of confirmation of the Site’s wetland boundaries. (See DEIS at 8-7.) As the Planning Board’s Wetland Consultant previously advised, accurate confirmation is required to enable the Board to evaluate project impacts and consider appropriate mitigation measures. (See Memorandum to the Planning Board from David J. Sessions, RLA, AICP, re: Site Development Plan Review: David Zeng, dated May 21, 2010, at 2 (“The Board should request the verification of the extent and accuracy of the wetlands flagging by the Town Wetland Consultant. Upon confirmation of the extent of the resources and impacts, the Board may evaluate the project impacts, as well as the quality and quantity of the mitigation proposed.”).) Similarly, there has also been no pump test conducted yet, to determine, inter alia, whether the Project, which proposes intense water usage, including for car washing, would impact hydrology at the Site. (See DEIS at 8-3.)

Nevertheless, based on this incomplete information, as set forth in greater detail in the annexed report from Carpenter Environmental Associates, it is clear that the Project poses substantial adverse impacts, which clearly have the potential to threaten public health and safety, impair public rights to the enjoyment of public waters, and otherwise violate other federal, state or local laws and regulations.

The Proposed Project would dramatically upset, for example, the hydrological balance to Wetland “A”. This wetland functions to collect, retain and distribute water from the Site to streams that flow directly into the Kensico Reservoir. A significant portion of the Project would be located in Wetland “A” and its protected buffer area. The Project would essentially eliminate the stormwater catchment area for Wetland “A,” and eliminate much of the buffers that protect this Wetland.

The proposed Project is in stark contrast to the Town’s “usual practice” of eliminating new construction in wetland buffers, especially at the level proposed here. (See Memorandum from John F. Fava, Chair, Conservation Board to Planning Board, dated May 27, 2010, re: Wetland Permit Application for 46 North Greenwich Road, ¶ 4 (“It is the usual practice to eliminate construction for new building in a wetland buffer or in this case to keep intrusions to a minimum.”); see also Memorandum from John F.

Fava, Chair, Conservation Board to Planning Board, dated Nov. 19, 2009, re: Wetland Permit Application for Byram Ridge Road Subdivision (“To recommend intrusions or disturbances in the buffer that may increase the monetary return to the applicant should not be our focus.”).)

Indeed, recently, the Planning Board, in consultation with the Town Conservation Board, would not approve a single-family home application that was initially proposed to be located 50% in wetland buffers until the house was relocated outside the buffer. (See Memorandum from John F. Fava, Chair, Conservation Board to Planning Board, dated Jan. 20, 2011, re: Wetland Permit Application for David Zeng, 46 North Greenwich Road (“The initial plan located about 50% of the proposed house within the wetland buffer which was not an acceptable arrangement on this lot. Subsequently the house was relocated outside the buffer, with substantial filling, grading and buffer disturbance greatly reduced”).) Notably, the Zeng proposal was classified as a SEQRA Type II Action – *i.e.*, it presumptively posed no significant adverse environmental impacts. Moreover, the Zeng proposal was not in immediate proximity to the Kensico Reservoir. We trust that the instant Project, which has been classified as a SEQRA Type I Action – *i.e.*, the presumption is that it will pose significant adverse environmental impacts – and which is in close proximity to the Kensico Reservoir, will be held to the same standard.

The DEIS goes on to inaccurately state that the Project’s wetland buffer “disturbances are primarily for the proposed construction of the stormwater management basins.” (DEIS at 8-10.) In reality, more than half of the proposed parking facility would be located within the 100 foot buffer zone, which is protected by the Town and DEP.

The DEIS also inaccurately trivializes the functional value of the buffers that would be eradicated in an effort to justify the Project’s substantial buffer impacts. Under present conditions, stormwater runoff must, on average, traverse 100 feet of natural vegetation, consisting of native trees, shrubs, and groundcover, as well as some areas of lawn area, prior to reaching Wetland “A”. While the DEIS insinuates that the Project would result in conditions “similar to” existing conditions at the Site, the Project would triple the amount of impervious surfaces in the buffer area. (See DEIS at 8-14 (“At the present time, the existing impervious surface and lawn in the wetland buffer is 35,269 square feet (12,132 square feet impervious + 23,137 square feet of lawn. This is *similar to* the impervious surface and porous pavers proposed in the wetland buffer which is 39,255 square feet.” (emphasis added)).) Under existing conditions, there are 12,132 square feet of impervious surfaces in the buffer. The Project would add 21,354 square feet of impervious surfaces above existing conditions in the buffer area, resulting in a total of 33,486 square feet of impervious surfaces in the buffer area. (See DEIS at 8-14 to 8-15.)

The DEIS’s effort to compare existing lawn area in the buffer to the impervious surfaces it would add is also misguided. (See DEIS at 8-14.) While lawn may not be the optimal buffer cover, it is pervious. It provides filtration value. The Project’s conversion of turf areas to impervious surfaces contrasts sharply with the KWIC’s goal of



“convert[ing] turfed areas to meadows.” (See King Street Corridor Management Plan, at 16.)

Ultimately, as the Town Wetland Consultant noted in connection with the draft DEIS, “this section completely downplays the extent of improvements proposed within the wetland buffer, proximity of these improvements to the wetland boundary line and potential impacts.” (Memorandum to the Planning Board from David J. Sessions, RLA, AICP, dated Dec. 10, 2010, at 2.) The DEIS does not appear to have been substantially revised since the Town Wetland Consultant made this observation.

In light of the significant adverse impacts on wetlands and water quality posed by the Project, it is problematic that the DEIS lacks any real mitigation plans. The DEIS suggests that its stormwater management basins could provide mitigation even while acknowledging “that the Town does not typically accept required stormwater management areas to serve toward wetland mitigation.” (DEIS at 8-17.) The DEIS consequently represents that “offsite wetland creation/enhancement . . . would be considered.” (*Id.*) Respectfully, it is unclear why the DEIS was deemed complete when this casual suggestion that wetland mitigation “would be considered” does not meet the Planning Board’s consultant’s statement that concrete mitigation measures “should be proposed and discussed” in light of “the extent of improvements within the wetland and the wetland buffer area”:

As stormwater ponds have not been historically accepted as wetland mitigation, the applicant should provide alternative mitigation for the proposed wetland and wetland buffer disturbance. Given the extent of improvements proposed within the wetland and the wetland buffer on-site and potentially off-site mitigation should be proposed and discussed.

(Memorandum to the Planning Board from Ryan Coyne, P.E., Kellard Sessions Consulting, P.C., dated Feb. 25, 2011, at 2 (copy annexed hereto).)<sup>4</sup>

Indeed, Minutes of the Planning Board make clear that the Applicant has long been aware that its mitigation proposal was insufficient. (See Planning Board Minutes, Dec. 13, 2010, at 5 (“Mr. Delano inquired about the 2:1 mitigation which can’t be done on site. [Applicant’s Counsel] stated that he has not had a conversation with the Town Board on this matter and felt that the mitigation to the wetlands was an exchange for the 2:1 mitigation. *The Planning Board noted that would not be acceptable*

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<sup>4</sup> The Town’s disinclination to count stormwater basins as mitigation is well established. (See, e.g., Memorandum to the Planning Board from Adam R. Kaufman, AICP, Director of Planning, re Zeng, dated Jan. 14, 2011, at 2 (“It is noted, however, that a portion of the mitigation area is comprised of the proposed stormwater basin; typically, stormwater mitigation elements are not counted for wetland buffer mitigation purposes.”).)

mitigation.” (emphasis added).) Clearly, the cursory suggestion in the DEIS that wetland mitigation “would be considered” is legally inadequate.<sup>5</sup>

2. **DEIS Ignores Multiple Additional Layers of Regulatory Control**

The Applicant seeks to avoid several layers of regulatory review applicable to wetlands. Ironically, the Town Freshwater Wetlands Law declares that “[t]he establishment of regulatory and conservation practices for these [wetland] areas serves to protect the Town *by insuring review and regulation of any activity* near or on the wetlands that might adversely affect the public health, safety and welfare.” (Town Code § 209-3(A)(3) (emphasis added).) The DEIS, however, seeks to evade multiple layers of agency review intended to ensure that impacts to wetlands, particularly those in close proximity to Kensico Reservoir, are carefully vetted.

a. **Second Stream on the Site is Subject To DEP Jurisdiction**

Of particular significance, the DEIS understates the geographic scope of DEP jurisdiction at the Site. While the DEIS recognizes that there is one DEP watercourse on the Site, there actually are two. The DEIS specifically recognizes that there are “[t]wo streams [that] occur on the project site,” one which it denominates a “perennial stream,” and the other a “ephemeral drainage channel that is infrequently flooded.” (DEIS at 8-5 (emphasis added).) Figure 8-2 in the DEIS, which reflects streams designated by Westchester County, clearly shows two streams that pass through the Site on their way to the Kensico Reservoir. Similarly, DEIS Figure 8-1, which shows the National Wetland Inventory mapped wetlands, also shows a second stream along the southern boundary of the Project Site.

Moreover, the Town’s own Wetland Consultant recognizes that this second stream is, in fact, “a regulated watercourse”:

Water was observed within the channel located to the south of the proposed parking garage (partially off-site) and therefore *this channel will be considered a regulated watercourse*. This determination is based, in part, on the fact that water flow was present more than 48 hours after a rain event.

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<sup>5</sup> Moreover, the DEIS fails to substantiate that the Applicant even has the right to use the property upon which it proposes to locate the stormwater management basins. The DEIS indicates that the stormwater management basins would be located on Lot 13A. (See DEIS at 2-5.) The DEIS, however, fails to provide any indicia that the Applicant has the right to use Lot 13A for the Project. The DEIS also lacks a title report for Lot 13A, which would indicate if there are any private restrictions affecting the proposed use of Lot 13 A for the Project.

(Memorandum to the Planning Board from David J. Sessions, RLA, AICP, dated Dec. 29, 2010, at 2 (emphasis added) (copy annexed hereto).)

While the DEIS asserts that this “secondary drainage feature [] does not demonstrate perennial or intermittent flow” (DEIS at 8-6), the Town Wetlands Consultant has expressly stated that this stream had water flow more than 48 hours after a rain event. This finding establishes unequivocally that the second watercourse on the southern portion of the Site qualifies as an Intermittent Stream under the DEP’s Watershed Regulations. (See Watershed Regulations § 18-16(a)(63) (establishing that a surface feature will only not be considered an Intermittent Stream if it only “contains water only during and immediately after a rainstorm or a snow melt shall not be considered to be an intermittent stream”). Accordingly, DEP appears to have jurisdiction over this stream, which the Applicant must recognize in the EIS.

The DEIS goes on to claim this secondary stream “would not be directly affected by the development of the project.” (DEIS at 8-13.) The proposed parking facility, however, would essentially eliminate the stream’s protective buffer areas, and almost certainly directly disturb it. (See DEIS fig. 8-4.) As the Town Wetland Consultant has stated, “given the proximity of the proposed improvements to the wetland boundary line, it does not appear feasible to construct the building without directly impacting/disturbing the wetland proper.” (Memorandum to the Planning Board from David J. Sessions, RLA, AICP, dated Dec. 10, 2010, at 10.)

Additionally, the DEIS does not show the limiting distance from the second Reservoir Stem affecting the Site. DEIS Figures 8-1 and 8-2 both show two streams leaving the Site, and entering the Kensico Reservoir immediately thereafter. (See Watershed Regulations, § 18-16(a)(95) (defining a Reservoir Stem to be “any watercourse segment which is tributary to a reservoir and lies within 500 feet or less of the reservoir”).) The DEIS also indicates that wetland “A” “contains two outlets [including] the culvert beneath NYS Route 120.” (DEIS at 8-9.) The DEIS must show where the 300 foot buffer from this second Reservoir Stem lies in relation to the Project. (See Watershed Regulations § 18-39(a)(1) (prohibiting the construction of impervious surfaces within 300 feet of a reservoir stem).)

In light of the aforementioned conditions, it is unlikely that DEP could even grant a variance in connection with the Project. Initially, the DEIS mistakenly indicates that the Project could take advantage of the limited exception for the expansion of impervious surfaces in buffer areas for existing commercial facilities set forth in Watershed Regulation § 18-39(a)(4)(iii). (See DEIS at 8-14.) This exception only applies to “existing” facilities. This Project, which would supplant the existing use on the Site, cannot take advantage of this exception. The current facility on the Site would no longer “continue to be.” See Merriam-Webster Dictionary, at 171 (2005) (defining “exist” to mean “to have being” or “to continue to be”). Moreover, the Project is further excluded from this exception because it would add impervious surfaces to the buffer areas in excess of 25% of the existing condition. As such, the Applicant would be required to pursue the “traditional” DEP variance. (See Watershed Regulations § 18-61.)

The Project, however, cannot meet the basic criteria for a DEP variance. It cannot, for example:

“[d]emonstrate that the variance requested is the minimum necessary to afford relief;”

“[d]emonstrate that the activity as proposed includes adequate mitigation measures to avoid contamination to or degradation of the water supply which are at least as protective of the water supply as the standards for regulated activities set forth in [the Watershed Regulations]”; [or]

“[d]emonstrate that . . . compliance [with the Watershed Regulations] would create a substantial hardship due to site conditions or limitations.”

(See Watershed Regulations § 18-61(a)(1).) Here, the Applicant, which has not yet even formulated proposed mitigation plans for its wetland impacts, cannot show that such mitigation measures would “protect the watershed just as much as compliance with the regulation from which the applicant seeks a variance.” See *Nilsson v. D.E.P.*, 8 N.Y.3d 398, 834 N.Y.S.2d 688, 690 (2007) (“[B]efore it grants a variance, DEP must be persuaded that the applicant’s proposed mitigation measures will protect the watershed just as much as compliance with the regulation from which the applicant seeks a variance.”).

Nor would the Applicant be able to qualify for a DEP “hardship” variance. Where it is possible for a development project to comply with the Watershed Regulation, an applicant can only obtain a DEP variance if compliance would be “prohibitively expensive.” See *Nilsson*, 834 N.Y.S.2d at 691. Initially, the DEIS contains an alternative, which appears to show that compliance with the Watershed Regulations is possible. Alternative “D” in the DEIS envisions a “no wetland impacts” Project, which would appear to avoid both the Town and DEP regulated buffers areas (See DEIS at 18-29 to 18-34 & fig. 18-5.)

The DEIS also does not argue that Alternative D would be prohibitively expensive. To the contrary, it states “Alternative D would result in economic benefits during construction and during annual operations.” (DEIS at 18-33.)<sup>6</sup> Since the DEIS does not claim that a Project that complies with the Watershed Regulations is feasible, the Applicant cannot claim that a variance denial by DEP would cause a “substantial hardship.”

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<sup>6</sup> The only apparent objection to this Alternative is that “[i]n the applicant’s opinion, this alternative would not adequately respond to existing parking demand at Westchester County Airport.” (DEIS at 18-29.)

**b.      Project Requires Individualized  
Review From The Army Corps**

The DEIS also inaccurately states that the Project could obtain a Nationwide Permit from the U.S. Army Corps of Engineers (“ACOE”) in connection with its impacts on federally protected wetlands. (See DEIS at 1-2). In fact, the Project would be subject to individualized review by the ACOE, which would likely result in the denial of the permit request.<sup>7</sup>

While the DEIS assumes that the Project could avail itself of Nationwide Permit 39 (for Commercial and Institutional Developments involving less than ½ acre of disturbance), this Nationwide Permit is not available. (See DEIS at 2-14.) General Condition 19 of the Nationwide Program disallows certain Nationwide Permits (including NWP 39) in Designated Critical Resources Waters “for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.” 72 Fed. Reg. 11092, 11193 (March 12, 2007). The East of Hudson Watershed (including the Kensico Reservoir Watershed) has been designated as Critical Resource Waters. (See DEP, Wetlands in the Watersheds of the New York City Water Supply System, at 19 (“It should be noted that all wetlands in the East of Hudson Watershed of the New York City Water Supply were designated as ‘Critical Resources Waters’ meaning that individual, project-specific permits are required for many activities.”).)

The Project would likely fail the individualized “Public Interest Review” that ACOE would have to conduct. See 33 CFR § 320.4(a) (“The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest.”). The ACOE regulations specifically state that “[w]etlands [that are] considered to perform functions important to the public interest” include:

“Wetlands the destruction or alteration of which would affect detrimentally natural drainage characteristics, sedimentation patterns, salinity distribution, flushing characteristics, current patterns, or other environmental characteristics;” and

“Wetlands which serve significant water purification functions”

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<sup>7</sup> While the DEIS recognizes ACOE jurisdiction over wetlands at the Site, including Wetlands “A,” (see DEIS at 8-7 (“Forested wetlands, a perennial stream, and an additional drainage feature were found to constitute regulated surface water resources at the Town and Federal level.”), ACOE still needs to confirm boundaries of its regulated resources. (DEIS at 8-6.) In any event, it appears that the Project would impact approximately 0.13 acres of wetlands subject to ACOE jurisdiction. (See DEIS at 8-13.) These impacts result from the fact that a portion of the garage would be located in Wetland “A.” (See DEIS fig. 8-4.)

33 C.F.R. § 320.4(b)(2). Inasmuch as the Project would adversely impact natural drainage characteristics, sedimentation patterns, and other environmental characteristics of wetlands that serve important functions for the New York City watershed, ACOE would likely be compelled to deny the permit request.<sup>8</sup>

In connection with the ACOE Permit, DEC would also need to make an individualized Water Quality Certification determination. Under the federal Clean Water Act, States are intended to be the “prime bulwark” against water pollution. Keating v. F.E.R.C., 927 F.2d 616, 622 (D.C. Cir. 1991) (“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.” (citations omitted)). 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). “One 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. “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.

As such, DEC can only provide Water Quality Certification if it can determine that the Project will not violate all relevant regulatory requirements intended to preserve water quality. See 6 N.Y.C.R.R. § 608.9. The DEIS should address the Project’s adherence to each of the listed criterion.

**D. DEIS Fails To Take A “Hard Look” At The  
Impacts Of The Proposed Zoning Amendment**

The DEIS also fails to consider the potential effects of the proposed Amendment, particularly as it may apply to other properties and the growth inducing impacts of the precedent it would establish. It is axiomatic that “[t]o comply with SEQRA, the Town Board must consider the environmental concerns that are reasonably likely to result from, or are dependent on, [proposed zoning] amendments.” Eggert v.

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<sup>8</sup> The Project’s ACOE application would be subject to review under the National Environmental Policy Act (“NEPA”).

Town Bd. of Westfield, 217 A.D.2d 975, 630 N.Y.S.2d 179, 181 (4th Dept 1995); see also Fisher v. Giuliani, 280 A.D.2d 13, 720 N.Y.S.2d 50, 56 (1st Dept 2001); Brew v Hess, 124 A.D.2d 962, 508 N.Y.S.2d 712, 715 (3d Dept 1986). “[T]he decision to amend [a] zoning ordinance commit[s] the Town Board to a definite course of future conduct by permitting previously prohibited uses subject to obtaining a special use permit.” Eggert, 630 N.Y.S.2d at 181. As such, “[t]o comply with SEQRA, the Town Board [is] required to address the potential environmental effects of the amendments, at least on a conceptual basis.” Id.; see also SEQR Handbook at 182 (“A municipality should consider the most intensive uses allowable under the proposed zoning to judge potential impacts.”)

The proposed zoning amendments represent a dramatic departure from the existing requirements of the IND-AA zone. The amendments would:

- double the maximum allowable height, from 30 feet to 60 feet;
- double the maximum allowable building coverage, from 30% to 60%;
- eliminate the Floor Area Ratio (FAR) requirement; and
- reduce the side yard set back, from 50’ to 10’.

The Lead Agency needs to consider not only other parcels that could be subject to the Amendment, but also the impacts that might result in other Districts throughout the Town from the precedent set by the adoption of the Amendment.

The North Castle Environmental Quality Review law mandates specifically that EIS’s set forth “[a] description of any growth-inducing aspects of the proposed actions, where applicable and significant.” (Town Code § 99-12(H).) As DEC’s SEQR Handbook similarly states:

Keep in mind that rezoning itself may be more significant from the standpoint of SEQR than the individual permitting of projects since a zoning change triggers a change in the allowable use of land and *ostensibly individual projects consistent with that change will be considered in the future in the rezoned area.*”

SEQR Handbook at 182 (emphasis added).

The DEIS only contains one paragraph, which addresses the growth-inducing aspects of the zoning amendment. (See DEIS at 22-2.) It narrowly states that “[s]ince adjacent existing parcels that meet the[ proscribed] development criteria are substantially developed, no significant growth-inducing aspects are anticipated from the proposed zoning amendment.” (DEIS at 22-2.) It fails to consider at all the precedential impacts of the Amendment.

The Amendment would set the stage for potential additional Airport related development on the other properties along New King Street, as well as other areas

within the Town. Having allowed development of up to sixty feet (60'), with sixty percent (60%) coverage, and no FAR restriction for a Parking Garage in the IND-AA Zone, for example, the Town Board would be hard pressed not to allow similar development parameters for other Projects on New King Street.

Moreover, the DEIS does not consider the pressures the Amendment would create throughout the Town for more intense development parameters. The Amendment, for example, would establish a maximum height and a coverage allowance, which would surpass that allowable in *any* District in the Town. Clearly, other developers would desire the same development allowances on their properties. Again, if the Town ignores established development parameters for the proposed parking garage, it would be difficult for it to maintain those restrictions for other commercial development in the King Street area, or the Town as a whole.

**E. DEIS Advocates Illegal Spot Zoning**

In an effort to downplay the growth inducing impacts of the Amendment, the DEIS effectively concedes that the Applicant's goal is to engage in illegal "spot zoning." (See DEIS at 22-2.) As the Board knows, spot zoning is "the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area for the benefit of the owner of such property and to the detriment of other owners." Yellow Lantern Kampground v. Town of Cortlandville, 279 A.D.2d 6, 716 N.Y.S.2d 786, 788-89 (3d Dept. 2000), quoting Rodgers v. Village of Tarrytown, 302 N.Y. 115, 96 N.E.2d 731 (1951). The ultimate test is "whether the change is other than part of a well-considered and comprehensive plan calculated to serve the general welfare of the community." Yellow Lantern, 716 N.Y.S.2d at 789 (citation omitted).

The DEIS essentially admits that the Applicant's goal is to single out the Site. The DEIS asserts that the Site would be the only parcel that could benefit from the proposed zoning change. (See DEIS at 22-2.) Moreover, the proposed Zoning Amendment is inconsistent with the Town's Comprehensive Plan. As the DEIS recognizes, "North Castle opposes any expansion of the airport." (DEIS at 3-5.) The Town's Comprehensive Plan unequivocally states that "any expansion" of the Airport is *not* recommended, stating:

Due to the importance of preserving the residential character of the Town and minimizing the impact of airport disturbance on neighboring residential communities, any expansion of the airport facilities and services leading to increased flights and related noise is not recommended.

(Comprehensive Plan at IV-41.)

The Lead Agency should consider the propriety of the Applicant's effort to single out its Site for special classification solely for its own benefit, and to the detriment of other owners.



Similarly, the Project also goes against the established planning policies of Westchester County, as well as the New York State Legislature. The Westchester County Board of Legislators, the New York Assembly and the New York State Senate each adopted Resolutions establishing formal policies against expansion of Westchester Airport. Of special relevance here, their goal in opposing expansion of the Airport is to “protect our fragile environment, including the drinking water for almost nine million people, from the noise, air and water pollution any such expansion would generate.” (Resolution 245-2003 of the Westchester County Board of Legislators, dated Oct. 7, 2003; see also Assembly Resolution No. 1654, adopted April 26, 2004; Senate Resolution No. 5435, adopted June 22, 2004.)

**F. Town Board Lacks Authority To Grant A  
Special Permit For The Parking Garage Project**

The Town Board lacks authority to approve the Project at the instant flag lot Site. Section 213-21 of the Town Code (“Schedule of Office and industrial District Regulations”) establishes that there is a 200 foot frontage requirement in the IND-AA District. The Town Board lacks the authority to grant a variance from the frontage requirements. While Section 213-21 purports to give the Planning Board authority to vary or reduce this requirement in connection with site plan review, again, under the proposed zoning, the Planning Board will not be conducting site plan review.

The Town Board has no lawful ability to grant a variance from the frontage requirements. Buckley v. Town of Wappinger, 12 A.D.3d 597, 785 N.Y.S.2d 98, 99 (2d Dept 2004) (holding that Town Board illegally “usurped the jurisdiction of the local zoning authorities” when it entered into stipulation of settlement that effectively granted a zoning variance).<sup>9</sup>

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<sup>9</sup> The DEIS does not suggest that the Applicant would seek a variance from the frontage requirement from the Town’s duly constituted Zoning Board of Appeals (“ZBA”). The ZBA is not an Involved Agency in this SEQRA review, and does not appear to be engaged in these proceedings. In any event, the Project would likely fail the statutory balancing analysis the ZBA would undertake, including, because such a variance would:

- produce adverse impacts in the character of the neighborhood [and] a detriment to nearby properties;
- the requested area variance is substantial;
- the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and;
- the alleged difficulty was self-created.

(See N.Y. Town Law § 267-b(3)(b).)

**G. Project Presents Significant,  
Unmitigated, Adverse Traffic Impacts**

A major flaw in the DEIS, and with the proposed Project in general, is the DEIS's assertion that the Project would actually result in a reduction of vehicle trips to and from the airport. (DEIS at 13-3.) The Town Traffic Consultant does not accept this contention. The Town Traffic Consultant appropriately notes that "the proposed Garage may increase demand and result in travelers now having the option of driving to the Airport for flights." (Letter to Adam Kaufman, Town Planner, from Michael A. Galante, Frederick P. Clarke Assocs., dated Dec. 9, 2010 at 8 (copy of letter included within DEIS Appendix J).) The Town's traffic consultant thus concludes that "the proposed facility could generate 200 new vehicle trips, plus 18 shuttle bus trip ends and 195 vehicle trip ends plus 18 shuttle bus trip ends during weekday morning and afternoon peak hours, respectively." (*Id.*)

Based on the Town Consultant's projections, the Project would exacerbate existing "F" LOS levels at three critical intersections:

- Airport Road and Route 120;
- Airport Road and the I-684 northbound ramps, and
- Airport Road and the I-684 southbound ramps.

This is consistent with the Town's Comprehensive Plan, which states that the "Route 120 at Airport Access Road/I-684 Interchange 2" suffers from "[l]imited traffic capacity – high traffic volume." (Comprehensive Plan at III-76.)

The New York City City Environmental Quality Review (CEQR) Technical Manual (May 2010) (the "CEQR Manual") provides the established standard for determining whether an intersection would be "significantly impacted" by traffic from a project, and hence require mitigation.<sup>10</sup> As the CEQR Manual notes, LOS F describes unacceptable, failing conditions. (See CEQR Manual, at 16-28 ("LOS F typically describes ever increasing delays as queues begin to form. This is considered to be unacceptable to most drivers. This condition often occurs with oversaturation, i.e., when arrival flow rates exceed the capacity of the intersection.").)

The CEQR Manual is intended to apply to the wide range of planning environments in New York City, ranging from the urban in Manhattan to the suburban in the outer Boroughs. As such, its guidance is clearly relevant to the traffic conditions around the Airport.

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<sup>10</sup> Notably, AKRF, the firm retained by the Applicant to prepare the DEIS, served as the primary consultant for the preparation of the CEQR Manual.

The CEQR Manual establishes that a three (3) second delay increase at an existing LOS F intersection poses a significant impact that must be mitigated. (See CEQR Technical Manual at 16-53 (stating that at signalized intersections, “[f]or a lane group with LOS F under the No-Action condition, an increase in projected delay of 3.0 or more seconds should be considered significant. . . . For unsignalized intersections the same criteria as for signalized intersections would apply.”))

The requisite mitigation would, at a minimum, compel the Applicant to bring conditions with its Project at the three LOS F intersections to within 3 seconds of the No-Build condition. The CEQR Manual establishes that appropriate mitigation requires that “Action-with-Mitigation” condition produces in insignificant LOS degradation as compared to the “No-Action” condition. (See CEQR Manual at 16-66 (“When considering traffic mitigation, the impact is considered fully mitigated when the resulting LOS degradation under the Action-with-Mitigation condition compared to the No-Action condition is no longer deemed significant following the impact criteria as described in Section 420.”). Again, a 3 second delay at an LOS F intersection is deemed significant. Accordingly, mitigation must reduce the impact of the build condition to less than an additional 3 second delay.

The DEIS’s failure to rationally address, let alone mitigate, the Project’s significant adverse traffic impacts is, respectfully, a critical defect. See Chatam Towers, Inc. v. Bloomberg, 6 Misc.3d 814, 793 N.Y.S.2d 670, 679 (Sup. Ct. N.Y. Co. 2004) (overturning, for lack of the requisite “hard look,” SEQRA determination that “fail[ed] to address the potential traffic impacts on the streets most affected by” the proposed action, noting that “[t]he result, is an arguably flawed study, as the areas most impacted by the closures, appear to have never been reviewed”); Board of Cooperative Educ. Servs. v. Town of Colonie, 268 A.D.2d 838, 702 N.Y.S.2d 219, 222-23 (3d Dept. 2000) (overturning SEQRA analysis that “baldly assert[ed]” that project would have no environmental impacts without addressing concerns that increased use of access road for project would create traffic problems and associated threat to public safety).

To the extent the Applicant would contend that it has no obligation to address its Project’s adverse impacts on the I-684 Interchange with Airport Road because this is a regional problem and/or mitigation would be costly, we are aware of no support for such a proposition. To the contrary, the essential thrust of SEQRA’s EIS requirement is that Agencies explore all means necessary to mitigate a Project’s significant adverse impacts to the maximum extent practicable. See 6 N.Y.C.R.R. § 617.11(d).

Related to this, given that the Project would exacerbate queuing problems onto I-684, the Lead Agency should contact the State Department of Transportation to ascertain its insight on the Project’s potential impacts prior to closing the SEQRA process. The DEIS also does not consider whether the Project would cause a spillback from the facility itself onto New King Street, which could also impact traffic on Airport Road. There is no analysis of how fast the proposed automated parking facility could process cars, particularly with multiple passengers and baggage. There is, thus, no

analysis of whether this automated facility could timely process incoming traffic during peak hours.

**H. DEIS Ignores the Project's Significant  
Adverse Impacts on Greenwich**

The DEC has clearly indicated that municipalities have the responsibility to consider impacts of a proposal, even if they fall outside their jurisdictional boundaries:

Does a municipal board have to consider extraterritorial environmental impacts, for example: impacts occurring in an adjoining municipality?"

Yes. For example, a planning board reviewing a cellular communications tower visible from a neighboring community should consider the aesthetic impact of the tower on the neighboring community. . . . [Another] example would be a community reviewing a shopping plaza that generates traffic on an adjoining community's roadway system. In that case, the host community's review should consider the traffic on the adjoining community.

(SEQR Handbook at 177.) The DEIS, however, trivializes the visual and community character impacts the Project would have on the nearby residential community in Greenwich.

The DEIS irrationally downplays, for example, the Project's visual impacts on the proximate residential community, stating that "[t]here are also some nearby residential uses, but these uses are typically found interspersed among dense vegetation that would screen views of the parking facility." (DEIS at 4-2). It similarly states that the homes on King Street "are generally surrounded by dense vegetation and allow for few if any views of the project site and existing buildings." (DEIS at 4-4.) The DEIS provides no analyses to support these statements.

The DEIS, for example, provides no photo-simulation to show how the Project would appear from King Street in Connecticut. It also does not consider conditions during winter/leaves off condition, when the vegetation that ostensibly provides screening is not there.

The reality is that this nearly sixty foot (60') Project would loom over the residences on King Street in Greenwich year round. Obviously, this impact would be compounded if other projects seek to develop in the IND-AA District in line with the expanded bulk requirements under the proposed zoning amendment.

The DEIS also ignores the community character impacts the Project would have on the adjacent residential community in Greenwich. It incorrectly states, for

example, that “[t]he area immediately surrounding the project site is dominated by transportation, business, and commercial land uses,” completely ignoring area residents. (DEIS at 3-1.) In contrast, the DEIS is sensitive to North Castle’s desire to protect its single family residential neighborhoods, noting that “the Town desires to protect the qualities of a rural community or ‘quiet suburb’, characterized largely by low- to medium-density single-family neighborhoods.” (DEIS at 3-5.) It is unclear why the immediately proximate residential neighborhood in Greenwich does not deserve the same consideration.

**I. DEIS Fails to Consider as an Alternative  
The Provision of Parking at the Airport**

Finally, the DEIS completely fails to consider as an alternative to the Project the provision of additional parking for Westchester Airport at the Airport itself. This alternative would pose substantially fewer environmental impacts, and would alleviate concerns about the geographic expansion of the Airport. The search for possible alternatives to a proposed action has “been characterized as the ‘heart of the SEQRA process.’” Shawangunk Mountain Envtl. Ass’n v. Planning Bd. of Town of Gardiner, 157 A.D.2d 273, 557 N.Y.S.2d 495, 497 (3d Dept. 1990) (citation omitted); see also Dubois v. U.S. Dept. of Agric., 102 F.3d 1273, 1287 (1<sup>st</sup> Cir. 1996) (“The ‘existence of a viable but unexamined alternative renders an environmental impact statement inadequate’.”).

While ordinarily a private applicant should not be compelled to consider alternative locations, where, as here, the suitability of the project site goes to the heart of environmental concerns, it should. The DEC’s SEQR Handbook states that “a discussion of alternative sites for a proposed action would be reasonable” in circumstances including “[a]ny case *where the suitability of the site for the type of action proposed is a critical issue*, in which case a conceptual discussion of siting *should be required*.” (SEQR Handbook at 123 (emphasis added).) Caselaw confirms that a private applicant may be compelled to consider alternative sites for the proposal in circumstances such as here:

In certain cases involving proposed development by a private entity an in-depth analysis and discussion of alternate sites for the project may be appropriate and necessary. For example, where two or more competing private entities are striving to obtain approval from a municipality for a particular type of proposed development (such as a shopping mall) on different sites, such discussion and analyses of the different sites, in terms of environmental impact, would certainly be appropriate.

Horn v. Int’l Bus. Machines Corp., 110 A.D.2d 87, 493 N.Y.S.2d 184, 192 (2d Dept. 1985), appeal denied, 67 N.Y.2d 602, 499 N.Y.S.2d 1027 (1986). Thus, consistent with Horn, the Lead Agency should consider alternative locations on which additional parking could be provided.

Analysis of such alternative site will enable the Lead Agency to determine whether it should issue positive or negative Findings at the end of the SEQRA process. As the Board knows, ultimately, Findings must be issued certifying whether “from among the reasonable alternatives available,” the action is the one that avoids or minimizes adverse environmental impacts to the maximum extent practicable.” 6 N.Y.C.R.R. § 617.11(d)(5); see also SEQR Handbook at 151 ( “An agency must not undertake, approve or fund any part of an action, if it cannot support positive findings and demonstrate, consistent with social, economic and other essential considerations from among the reasonable alternatives, that the action: minimizes or avoids adverse environmental impacts to the maximum extent practicable, and, incorporates into the decision those mitigation measures identified in the SEQR process as practicable.”).

Where, as here, the suitability of this Site for an Airport related use goes to the heart of the concerns here, the Lead Agency should consider as an alternative the provision of additional parking at the Airport itself.<sup>11</sup>

**J. Substantial Missing Information Must Be Subject To Public Review**

Where, as here, significant new information is required subsequent to the filing of a DEIS, a supplemental environmental impact statement (“SEIS”) is required:

The law recognizes that in situations in which significantly new information has been discovered subsequent to the filing of a draft EIS, which new information is relevant to the environmental impact of the proposed action, a supplemental EIS containing this information should be circulated to the relevant agencies so as to insure that the decision making authorities are well informed.

Horn, 493 N.Y.S.2d at 192; see also Environmental Impact Review in New York § 3.09[4], at 3-160 (“If the lead agency learns of important new issues about significant adverse environmental effects regarding the proposed action in the course of receiving public comments [on a DEIS], the lead agency must require the preparation of a supplemental EIS in order to solicit additional public comments on the new issues.”) .

Of particular relevance here, the Lead Agency must, as a matter of law, subject the required, previously unaddressed issues to further public review:

[C]ourts have cautioned that the omission of required information from a draft EIS cannot be cured by simply including the required data in the final EIS since the

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<sup>11</sup> Notably, the ACOE must also consider of alternative locations. See 33 C.F.R. § 320.4 (establishing among the criteria that will be considered “[w]here there are unresolved conflicts as to resource use, the practicability of using reasonable alternative locations and methods to accomplish the objective of the proposed structure or work.”).

abbreviated comment period for the final EIS "is not a substitute for the extended period and comprehensive procedures for public and agency scrutiny of and comment on the draft EIS."

Horn, 493 N.Y.S.2d at 192, quoting Webster Assoc. v. Town of Webster, 59 N.Y.2d 220, 228, 464 N.Y.S.2d 431 (1983).

### **CONCLUSION**

We look forward to working with the Town in its continuing review of the Project. Please do not hesitate to contact us should you have any questions or comments, or would like for us to expand on any of the areas discussed in this submission.

Respectfully,

ZARIN & STEINMETZ

By:



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Daniel M. Richmond

MDZ/mth  
encs.

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Town Board of the Town of North Castle  
New York City Department of Environmental Protection  
Selectmen of the Town of Greenwich, Connecticut  
Army Corps of Engineers



Via Email & U.S. Mail

June 1, 2011

Chairman John Delano and Members of  
The Town of North Castle Planning Board  
Town of North Castle  
17 Bedford Road  
Armonk, NY 10504

**Re: Park Place at Westchester Airport DEIS**

Dear Chairman Delano and Members of the Planning Board:

Riverkeeper is a member-supported watchdog organization dedicated to defending the Hudson River and its tributaries and protecting the unfiltered drinking water supply of nine million New York City and Hudson Valley residents. As a signatory to the 1997 Watershed Memorandum of Agreement, Riverkeeper has a demonstrated interest in proposed development projects that may impact water quality in the New York City watershed. As you know, we have a specific interest in the Park Place at Westchester Airport development proposal and welcome the opportunity to provide comments on the Draft Environmental Impact Statement (DEIS).

Riverkeeper believes this project, as proposed, poses the risk of undue impact to the New York City watershed. The nature of the site, scale of the development and the proximity of the proposed Park Place project to Rye Lake, an arm of the Kensico Reservoir, raises a number of significant issues for Riverkeeper, in particular the potential for impacts to water quality as a result of contaminated stormwater runoff. The project entails a large amount of excavation, cut and fill and disturbance of onsite wetlands, stream courses and buffers in order to accommodate the scale of the parking facility on an unsuitable site. Runoff from all these sources has the potential to threaten the utility and viability of adjacent wetland areas and watercourses, and ultimately the Kensico Reservoir, the terminal reservoir for the Catskill Watershed which typically provides 40% of the unfiltered drinking water supply to nine million New York City and upstate consumers.

In addition to the effects of the project on topography, drainage, vegetation and critical wetland and stream buffers, the consideration of alternatives in the DEIS is limited by insufficient information and a failure to seriously consider reduced scale or off-site alternatives. Riverkeeper respectfully requests the Planning Board to direct the applicant to prepare a Supplement to the DEIS to address the DEIS deficiencies outlined below. In the alternative, we urge the Planning Board to reject the application in its current form.



## I. Project Description

The proposed action requires construction of a 1,450-space parking garage and the addition of 0.78 acre of new impervious surface on a two tax parcels totaling 3.34 acres in the Town of North Castle.<sup>1</sup> The proposed garage would be a 267,000-square-foot, five-level parking structure with a 51,000-square-foot footprint.<sup>2</sup> A total of 2.8 acres of land or about 84% of the entire project site would be disturbed during the construction of the proposed facility.<sup>3</sup> The project site lies within 600-700 feet of the Kensico Reservoir and contains a forested wetland, a stream and "drainage way,"<sup>4</sup> which are regulated by the Town, the New York City Department of Environmental Protection (NYCDEP), and potentially, the US Army Corps of Engineers. Due to the proximity of the project site to the Kensico Reservoir, site characteristics such as steep slopes and high groundwater table in areas proposed to be excavated, and the proposed disturbance of onsite wetlands, wetland buffers and stream buffers, Riverkeeper has grave concerns with the project as proposed and urges consideration of another preferred alternative, for the reasons outlined below.

## II. Geology, Soils, Topography and Slopes

The DEIS reports that 93.7% of the project site has slopes from 0-25%.<sup>5</sup> However, the applicant does not discuss how much of the site has 0% slopes versus how much of the site has slopes closer to 25%. The configuration and density of the topographic contour lines in Figure 7-1, *Existing Slopes and Topography*, indicate that except for the area of the proposed footprint of the parking structure, the majority of the project site has slopes closer to 25% than 0%. Although the project proposes disturbance of 112,865 square feet of slopes 0-25%, the DEIS should include additional information regarding the amount of disturbance proposed on slopes from 15-25%.

Compounding the potential impacts of extensive slope disturbance is the proposed excavation of 25,075 cubic yards of poorly and excessively drained soils.<sup>6</sup> The three identified project site soil types are Woodbridge loam (limited for dwellings with basements due to wetness); Udorthents (moderately to excessively well drained); and Ridgebury loam (poorly drained, high water table).<sup>7</sup> According to the project site plan, construction of the access roads and stormwater management areas will require considerable flattening of the project site, as supported by the DEIS proposal to retain only 400 cubic yards of excavated soil to be used for fill and to export 24,675 cubic yards off-site.<sup>8</sup>

The proposed action further requires disturbance of 4,566 square feet of slopes 25-35% and 3,415 square feet of slopes greater than 35%.<sup>9</sup> The proposed extent of soil and steep slope

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<sup>1</sup> DEIS, at 9-10, 2-1.

<sup>2</sup> See *id.*, at 1-1.

<sup>3</sup> See *id.*, at 2-9.

<sup>4</sup> See *id.*, at 1-3.

<sup>5</sup> See *id.*, at 7-1.

<sup>6</sup> See *id.*, at 7-8.

<sup>7</sup> See *id.*, at 7-5.

<sup>8</sup> See *id.*, at 7-8.

<sup>9</sup> See *id.*, at 7-7.

disturbance on a small site poses adverse impacts to water quality not only during the construction phase, but also under post-development conditions after existing soil profiles and drainage patterns have been artificially reconfigured. The Town of North Castle should require the applicant to scale back the proposed action to conform with the intent of the Town's amendment to Chapter 13, *Zoning, of the Code of the Town of North Castle*, which sets forth the Town's findings that such regulations:

... prevent, to the maximum degree reasonably feasible, future development upon steep slopes, hilltops and ridgelines in all zoning districts, thereby: (1) minimizing erosion and sedimentation, including the loss of topsoil; (2) preventing habitat disturbance; (3) protecting against possible slope failure and landslides; (4) minimizing stormwater runoff and flooding; (5) providing safe and stable building sites; (6) protecting the quantity and quality of the Town's surface and groundwater resources; (7) protecting important scenic vistas, rock outcroppings and mature vegetation; (8) preserving the Town's attractive semi-rural character and property values; and (9) otherwise protecting the public health, safety and general welfare of the Town of North Castle and its residents.<sup>10</sup>

While the Town "may permit such disturbance, provided that the nature and extent of the disturbance is limited to the minimum amount practicable, consistent with the legislative intent of this section,"<sup>11</sup> the amendment prohibits disturbance of slopes greater than 25% in any zoning district unless a disturbance permit is obtained from the Building Department. The DEIS does not include a disturbance permit among the list of required Town permits in Table 1-1. The Town therefore should require the applicant to apply for a steep slope disturbance permit.

#### *Construction Impacts*

The above impacts to soils, slopes and topography pose significant challenges to the proposed construction activities on the project site. Excavation of a large volume of poorly drained soils likely will result in groundwater expressions wherever those soils types occur. Cutting over 25,000 cubic yards on a 3.34-acre site with steep slopes will require intense construction activity in a confined work area with little if any remaining area for staging, equipment storage, stockpiling and disposal. The intensity of construction activity in the limited space available increases the potential for erosion and sediment transport to the Kensico Reservoir. Compressing the construction sequencing into a single phase as proposed in the DEIS,<sup>12</sup> heightens the risk that surface water quality in the Kensico Basin will be adversely impacted as a result of construction activities on this confined site.

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### **III. Water Resources**

#### *Surface Water and Groundwater Impacts*

The DEIS notes that "the project site contains forested wetland habitat, a stream and a 'drainage way.'" The stream traversing the site is a NYSDEC Class A stream<sup>13</sup> and, due to its

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<sup>10</sup> Town of North Castle, Local Law No. 27 Section 2.A (2006)

<sup>11</sup> See *id.*, Section 2B.

<sup>12</sup> DEIS, at 2-13.

<sup>13</sup> DEIS, at 8-6.

proximity to the Kensico Reservoir, a DEP-regulated reservoir stem. This stream therefore requires a 300-foot buffer “from the point 500 feet upstream from where the stream enters the reservoir.”<sup>14</sup> The DEIS claims that the secondary drainage feature is “likely not” a regulated watercourse based on the text, in part, of Chapter 209 of the Town Code: “A drainage ditch, swale, or surface feature that contains water only during and/or immediately after (usually up to 48 hours) a rainstorm or snowmelt shall not be considered a watercourse.”<sup>15</sup> The DEIS further states that “since the Town regulated surface water features have not been confirmed by the Town’s representative, for the purposes of this DEIS, the drainage way and a 100 foot buffer are conservatively considered regulated under Chapter 209.”<sup>16</sup>

This latter claim is refuted by a memorandum from the Town’s wetland consultants, Kellard Sessions, dated December 29, 2010, stating: “Water was observed within the channel located to the south of the proposed parking garage (partially off-site) and therefore this channel will be considered a regulated watercourse. This determination is based, in part, on the fact that water flow was present more than 48 hours after a rain event.” The Town consultant’s finding indicates that the “drainage way” is in fact not only regulated but also a second reservoir stem that requires an additional 300-foot buffer from the point 500 feet upstream from where the stream enters the Rye Lake portion of the Kensico Reservoir.

Regarding impacts to groundwater resources, the DEIS proposes drilling a new potable water well and that a “water budget analysis would be completed during the pumping test investigation, and the pumping test data would be used to determine that the estimated direct recharge to the bedrock aquifer during drought conditions would support the proposed potable water demands.”<sup>17</sup> It is unclear why the applicant failed to complete this analysis for public review prior to issuance of the DEIS. This critical information, absent in the current DEIS, should be addressed in a supplemental DEIS.

### *Wetland Impacts*

The DEIS reports that two town-regulated wetlands cover 20% of the project site<sup>18</sup> and proposes permanent disturbance of 0.13 acres of the existing 0.66 acres of onsite wetlands.<sup>19</sup> However, the delineation of the onsite wetlands is in dispute and the Town has not made a final determination of the town-regulated wetland boundary.<sup>20</sup> This critical information, absent in the current DEIS, should be addressed in a supplemental DEIS.

The applicant claims that functions of Wetland A include seasonal groundwater recharge and limited stormwater storage and wildlife habitat; functions of Wetland B include groundwater discharge, low stormwater storage and wildlife habitat.<sup>21</sup> These wetlands also benefit water quality by “by removing sediment, nutrients, and other pollutants from runoff prior to discharge

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<sup>14</sup> See *id.*, at 8-7.

<sup>15</sup> See *id.*, at 8-6.

<sup>16</sup> See *id.*

<sup>17</sup> See *id.*, at 8-2.

<sup>18</sup> See *id.*, at 8-7.

<sup>19</sup> See *id.*, at 1-4, 8-5, 8-13.

<sup>20</sup> See *id.*, at 8-7.

<sup>21</sup> See *id.*, at 8-9, 8-10.

to surface waters.”<sup>22</sup> To mitigate for the disturbance of 0.66 acres of onsite wetlands, the DEIS proposes construction of three “onsite wetland creation areas” at a ratio of 2.2:1.<sup>23</sup> “The three stormwater management cells would be planted with facultative wetland vegetation,” and the DEIS claims that these cells will improve groundwater recharge, stormwater storage, and wetland wildlife habitat.<sup>24</sup>

These wetland creation areas would be more accurately characterized as stormwater detention basins or bioretention practices because their primary function is to capture, retain, infiltrate and, to a nominal extent, treat stormwater runoff from the project site. These “stormwater cells would comprise the stormwater management system [and] would retain water and allow infiltration for a longer period than the swift runoff that occurs under current conditions.”<sup>25</sup> However, these structural practices would not replicate all of the functions of a forested wetland, as evidenced by the applicant’s proposed planting of the stormwater management practices with facultative species rather than a mixture of facultative and obligate wetland vegetation. If these stormwater cells could truly function as wetlands, there would be no reason to exclude obligate species that rely on sustained wetland hydrology—an unlikely condition in a system that relies primarily on stormwater runoff to drive its hydrology.

In addition, the applicant acknowledges that “the Town does not typically accept required stormwater management areas to serve toward wetland mitigation.”<sup>26</sup> In fact, neither does NYCDEP nor NYSDEC. The proposed action will require a SPDES General Permit GP-0-10-001. 1-2. Part III.A(2) requires the Stormwater Pollution Prevention Plan (SWPPP) to “describe the erosion and sediment control practices and where required, *post-construction stormwater management practices* that will be used and/or constructed to reduce the pollutants in stormwater discharges and to assure compliance with the terms and conditions of this permit” (emphasis added). Because NYSDEC does not approve SWPPPs that propose to use stormwater management practices to serve as compensatory mitigation for wetland losses, the applicant’s proposal to do so appears to be proscribed by three separate regulatory entities.

In the alternative, the DEIS proposes that “an area of off-site wetland creation/enhancement in compliance with Chapter 209 of the Town Code would be considered. If necessary, the applicant is fully committed to working with the Town to identify and develop an offsite wetland mitigation plan within an area of wetland or upland located in the same watershed or in a nearby portion of the Town that would benefit from wetland creation or enhancement.”<sup>27</sup> However, the DEIS identifies no off-site wetland mitigation areas and no final wetland mitigation plan has been developed and presented in the DEIS for public review and comment. This critical information, absent in the current DEIS, should be addressed in a supplemental DEIS.

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<sup>22</sup> See *id.*, at 6-6.

<sup>23</sup> See *id.*, at 8-17.

<sup>24</sup> See *id.*, at 8-18.

<sup>25</sup> See *id.*, at 8-15.

<sup>26</sup> See *id.*, at 1-6.

<sup>27</sup> See *id.*

### *Buffer Impacts*

The DEIS proposes disturbance of a town-regulated wetland buffer and a NYCDEP-regulated stream buffer.<sup>28</sup> The applicant will seek a variance from the Watershed Rules and Regulations for disturbance of 0.40 acres of the NYCDEP-regulated buffer to widen the access road.<sup>29</sup> This disturbance will include 1,737 square feet (0.04 acre) of new impervious surface, 2,255 square feet (0.05 acre) of full depth asphalt replacement of existing asphalt surface, and 3,115 square feet (0.07 acre) of mill and repave existing asphalt surface.<sup>30</sup> In reference to the discussion above, the applicant will also require a variance from NYCDEP for disturbance of the second onsite regulated watercourse, which the DEIS erroneously characterizes as a “drainage way.”

Under existing conditions, 35,269 square feet of the town-regulated wetland buffer is developed with impervious surface and lawn.<sup>31</sup> Some of the proposed 79,680 square feet of buffer disturbance will be temporary; permanent buffer disturbance includes 33,500 square feet of impervious surfaces and 5,800 square feet of pervious pavers.<sup>32</sup> Vegetated wetland buffers provide transitional areas that intercept stormwater from upland habitat before it reaches wetlands or other aquatic habitat. Buffers function to maintain or improve water quality by trapping and removing various nonpoint source pollutants. Other water quality benefits of buffer zones include reducing thermal impacts (shade), nutrient uptake, providing infiltration, reducing erosion, and restoring and maintaining the chemical, physical and biological integrity of water resources. The disturbance of wetland buffers impairs their functions and therefore should be avoided.

The DEIS claims that “[f]orested portions of the 100-foot buffer do provide opportunities for wildlife foraging and nesting and some capacity to trap sediment and lessen the detrimental effects of stormwater runoff to the site’s wetlands,” but that “due to past disturbance and the presence of non-native plant species, the ability of the buffer to provide these functions is limited.”<sup>33</sup> Regardless of how limited the functions of Wetland A’s buffer are, they are not as limited as the water quality functions of the impervious parking structure proposed to displace the existing buffer. To the contrary, the parking structure in the buffer of Wetland A will eliminate infiltration beneath its footprint and will increase stormwater runoff volume and velocity. The extent of proposed stream and wetland buffer disturbance under the preferred alternative is extremely ill-advised on a site that lies 600 feet from the terminal drinking water reservoir for nine million New Yorkers and should be scaled back to protect the existing buffer areas from the encroachment of impervious surfaces and other impacts during construction and under post-development conditions. This would be accomplished by selecting Alternative C (reduced wetland impacts) or D (no wetland impacts) as the preferred alternative.

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<sup>28</sup> See *id.*, at 8-12.

<sup>29</sup> See *id.*, at 8-14, 9-18.

<sup>30</sup> See *id.*, at 9-19.

<sup>31</sup> See *id.*, at 8-11.

<sup>32</sup> See *id.*, at 1-6.

<sup>33</sup> See *id.*, at 8-11.

#### IV. Stormwater Impacts

“The project, as proposed, includes the implementation of a stormwater treatment train that integrates green practices, such as stormwater planters and rain gardens, a surface sand filter and wet pond, to manage both existing and proposed stormwater runoff from the project site and the adjoining parcel to the north.”<sup>34</sup> Treatment trains generally constitute stormwater Best Management Practices (BMPs); however, the applicant proposes siting these BMPs in regulated wetland and stream buffers and further proposes these BMPs to serve as compensatory wetland mitigation.

The applicant acknowledges that “a SWPPP should address potential pollutants in the design of structural and non-structural post-construction stormwater treatment practices.”<sup>35</sup> As discussed above, however, the involved regulatory agencies will not permit post-construction stormwater practices to serve as mitigation for wetland disturbances and the DEIS presents no off-site wetland mitigation plan in the alternative. This critical information, absent in the current DEIS, should be addressed in a supplemental DEIS.

The DEIS claims that the “existing runoff is currently uncontrolled and untreated from the project site...” and on the same page that “post-development stormwater flows have been attenuated to the pre-development flow conditions, which would help to decrease potential erosion and improve water quality.”<sup>36</sup> How does attenuating stormwater flows to “uncontrolled and untreated” improve water quality? The New York State Stormwater Management Design Manual requires the applicant to achieve a runoff reduction volume “of 100 percent of the post-development water quality volumes to replicate pre-development hydrology.”<sup>37</sup> However, the applicant will achieve a reduction only to the *existing* volume of the previously disturbed site, not to the volume under pre-development conditions *prior* to the existing disturbance, i.e., clearing, grading, and addition of impervious surfaces. The applicant is proposing new development and redevelopment on the same site, but proposes reducing stormwater runoff volume only to the level generated by the existing disturbance. The Town should require the applicant either to (1) reduce the stormwater volume discharging to the Kensico Reservoir system to the volume prior to the existing disturbance, or (2) restrict development to the previously developed areas of the project site.

The applicant proposes to achieve the required stormwater runoff reduction through use of rain gardens, stormwater planters, and porous pavement.<sup>38</sup> The DEIS proposes several Better Site Design (BSD) practices as Stormwater Mitigation Measures in Section G of Chapter 9,<sup>39</sup> but their application appears to be inconsistent with certain specifics of the proposed action:

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<sup>34</sup> See *id.*, at 9-7.

<sup>35</sup> See *id.*, at 9-8.

<sup>36</sup> See *id.*, at 1-6.

<sup>37</sup> See *id.*, at 9-10.

<sup>38</sup> See *id.*

<sup>39</sup> See *id.*, at 9-9, 9-10.

- Preservation of undisturbed areas  
*Approximately 44% of the habitat area will be disturbed during construction (1-4) and nearly one-third of the undisturbed area of the site (0.78 acres) will be new impervious surface (9-10).*
- Preservation of buffers  
*The DEIS proposes permanent buffer disturbance of 33,500 square ft of impervious surfaces and 5,800 square ft of pervious pavers (1-6)*
- Reduction of clearing and grading  
*Clearing and grading is increased in stream and wetland buffers*
- Locating sites in less sensitive areas  
*There are probably no sites in the New York City Watershed that are more sensitive than one located 600 feet from the Kensico Reservoir system.*
- Soil restoration  
*The DEIS proposes restoration or modification of on-site soils prior to final stabilization, but does not discuss how the soils will be modified.<sup>40</sup> The project calls for excavation of 25,075 cubic yards of onsite soils, using 400 cubic yards for fill and exporting 24,675 cubic yards off-site.<sup>41</sup> How will the underlying soil types be modified or restored after such a large cut with minimal fill?*
- Roadway reduction  
*The proposed action increases roadway—changing an earlier proposed design from a two-lane exit to one lane still adds one lane of roadway to the existing site.*

The DEIS further proposes the “use of fertilizers, pesticides, herbicides, fungicides and/or other chemicals”<sup>42</sup> but elsewhere claims that no herbicide or fungicide use is anticipated.<sup>43</sup> The applicant should resolve this discrepancy. Although the DEIS acknowledges that “short-term and long-term impacts of runoff carrying fertilizers, pesticides, and other chemicals from lawns, roadways and other impervious surfaces and sedimentation is [sic] that it can be toxic to plants and animals,”<sup>44</sup> the DEIS nevertheless proposes their application on the project site. On any site in such close proximity to the Kensico Reservoir, the Town should require the applicant to employ alternative pest management practices such as species-specific bacteria, predator stocking and pheromone lures in lieu of chemical pesticides.

While pesticides are toxic to flora and fauna, fertilizers contain phosphorus, which promotes eutrophication in freshwater ecosystems. The applicant should note that as of January 1, 2011, Section 1, Article XXVI of Chapter 863 of the Laws of Westchester County restricts the use of phosphorus fertilizers within the County unless soil tests confirm the need for additional phosphorus application. Because the proposed stormwater management areas provide no treatment of phosphorus in stormwater other than nominal nutrient uptake by facultative wetland vegetation, the applicant should avoid altogether the use of phosphorus fertilizers to avoid phosphorus loading of the Kensico Reservoir during stormwater discharges.

<sup>40</sup> See *id.*, at 9-10.

<sup>41</sup> See *id.*, at 7-8.

<sup>42</sup> See *id.*, at 8-3.

<sup>43</sup> See *id.*, at 9-18.

<sup>44</sup> See *id.*, at 9-6.

The DEIS also notes that most East-of Hudson “reservoirs have displayed steady increases in conductivity since the early 1990s, most likely associated with development pressure in the watershed (e.g., increased use of road salt).”<sup>45</sup> In fact, according to one USGS study, deicing salts applied to roads during winter are the primary source of solutes to groundwater in the Croton Watershed, where chloride concentrations in baseflow of sampled streams ranged from 18-280 mg/L.<sup>46</sup> Impacts of road salt to soils, vegetation, wildlife, aquatic biota, human health, and infrastructure are well documented. Exposure to chloride salts inhibits some soil bacteria at low concentrations, which ultimately compromises soil structure and inhibits erosion control. Elevated sodium and chloride levels in soils also create osmotic imbalances in plants, which inhibits water absorption and reduces root growth. Damage to vegetation degrades wildlife habitat by destroying food resources, habitat corridors, shelter and breeding or nesting sites. In freshwater ecosystems, salinity stresses the periphyton communities upon which benthic grazers forage and inhibits microbial processing of leaf litter. For all of these reasons, more environmentally benign, salt-free deicers, such as potassium acetate (KA) and calcium magnesium acetate (CMA), should be applied in lieu of road salt in close proximity to the Kensico Reservoir.

Finally, except for claiming that all landscaping and deicing chemicals will be properly stored and handled, and that road salt use would be “minimized,”<sup>47</sup> the DEIS provides no detailed application plan for any of these products. This critical information, absent in the current DEIS, should be addressed in a supplemental DEIS.

## V. Alternatives

Given the unsuitability of the site for the scale of the project which has been proposed, catalogued above, a serious consideration of all reasonable alternatives is critical to the sufficiency of this DEIS. As noted by the First Circuit in Dubois v. U.S. Dept. of Agriculture, 102 F.3d 1273, 1287 (1st Cir. 1996), “the existence of a viable but unexamined alternative renders an environmental impact statement inadequate.” SEQRA mandates that agencies shall “choose alternatives which, consistent with social, economic and other essential considerations, to the maximum extent practicable, minimize or avoid adverse environmental effects, including effects revealed in the environmental impact process.” ECL § 8-0109(1). The statute requires that an EIS include a “detailed statement” to “describe the proposed action and reasonable alternatives to the action” to aid in making the “decision whether or not to undertake or approve ... action.” *Id.* § 8-0109(2), (4).

As presented, the discussion of alternatives in the DEIS fails to provide sufficient information regarding the alternatives, in comparison to the proposed project, in particular the comparative analysis of potential impacts, to allow clear and meaningful choices for informed

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<sup>45</sup> See *id.*, at 9-22.

<sup>46</sup> HEISIG, P.M. EFFECTS OF RESIDENTIAL AND AGRICULTURAL LANDUSES ON THE CHEMICAL QUALITY OF BASEFLOW OF SMALL STREAMS IN THE CROTON WATERSHED, SOUTHEASTERN NEW YORK, U.S. Geological Survey (USGS) Water-Resources Investigations Report 99-4173. March 2000, Available at <http://ny.water.usgs.gov/pubs/wri/wri994173/>.

<sup>47</sup> See *id.*, at 9-22.



public comment and agency decision-making.<sup>48</sup> The applicant should be required to offer a more detailed analysis of the full range of alternatives and the reduction in potential environmental impacts associated with them, including an alternative location.

### *Alternative Scale or Magnitude*

The DEIS notes that the scoping document required seven alternatives, five of which were an alternative scale or magnitude to the proposed project. Clearly the objective of such a requirement was to allow the lead agency to assess the relative impacts of such alternatives with the proffered purpose and need of the proposed project and the goals of the applicant. Notably, the applicant chose to design Alternatives C (reduced wetland impact) and D (no wetland impact) as self park rather than automated parking facilities, thereby resulting in significantly fewer parking spaces, because “although an automated facility and a valet operation would be able to accommodate more spaces within the parking structure due to lower space requirements (as shown in Table 18-1), in the applicant’s opinion, neither would yield an acceptable return on investment.”

“The objectives of the sponsor in seeking to undertake the proposed action are an important but not always conclusive factor for determining the alternatives that must be considered in an EIS.” Gerrard, Environmental Impact Review in New York, §5.14[2][e]. According to DEC, a reduced scale alternative may be reasonable “if the proposed alternative meets the minimum functional size of the project.” NYSDEC, *SEQRA Handbook* at B-36. Consequently, New York courts have held that property owners are required to prove that they are unable to realize a reasonable return from certain alternatives. Without such proof, the lead agency could insist upon requiring a significantly reduced density alternative as compared with the Applicant’s preferred alternative. See, e.g., *Save the Pine Bush, Inc. v. Zoning Bd. of Guilderland*, No. 01-95-ST5464 (Sup. Ct. Albany Co. June 26, 1995). Here, the applicant has made no showing that alternatives C and D would not result in a reasonable return on the property.

More significantly, the applicant has failed to provide sufficient information to be able to compare the reduction in environmental impacts associated with the reduced scale alternatives, in particular C and D, with the impacts likely to result from the proposed project. The use of non-numerical descriptors like “Lesser Impact” and “Slightly Lesser Impact” to not permit an informed evaluation of the environmental benefits of those alternatives, either by the public or the lead agency. Additional detail is also required with respect to pre- and post-development pollutant loading rates and volume of stormwater runoff along with impacts to downstream hydrology to allow an informed judgment to be made between the proposed project and reduced scale alternatives.

In spite of the lack of quantitative information provided by the evaluation of alternatives in the DEIS, it is clear that alternatives C (limits development of the project site to areas that are currently developed, thereby eliminating any new disturbance to on-site wetlands and wetland buffers) and D (avoids development within Town-regulated wetlands and wetland buffer areas and locates all stormwater facilities on the main parcel) reduce impervious surface coverage on

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<sup>48</sup> See *id.*, at 18-23 and 18-29.

the main parcel from 56% to 29% and 21% respectively, eliminate all wetland disturbance, and reduce or eliminate disturbance of and impervious surface coverage within wetland and watercourse buffer areas. The reduced footprint of both Alternatives C and D will significantly reduce the total amount of site disturbance, both during and after construction, limit the disturbance of steep slopes and minimize the amount of excavated material. Both alternatives clearly avoid a substantial amount of the post construction increases in both runoff quantity and pollutant loads associated with the proposed project. A substantial risk exists that those increases will result in impacts to the quantity and quality of surface runoff to the onsite stream, a regulated reservoir stem 600 feet away from the Kensico Reservoir, a risk that the project's proposed mitigation measures do not appear to significantly reduce.<sup>49</sup>

Because it is critical that impacts from the proposed project to the water quality of the NYC water supply system from turbid discharges and pollutant laden runoff be fully avoided or mitigated, Riverkeeper joins the DEP in urging the Planning Board to amend the selection of the preferred alternative in the DEIS to an alternative such as C or D which reduce or avoid the significant potential for impacts to water quality presented by the proposed project. In addition, given the unsuitability of the project site for the project proposed and the inevitable connection between site choice and the significant environmental concerns raised by the project, Riverkeeper strongly recommends that the Planning Board require the DEIS to evaluate alternative locations on which the applicant's project could be constructed. DEC's SEQR Handbook supports a discussion of alternative sites where, as here, "the suitability of the site for the type of action proposed is a critical issue."<sup>50</sup> Such an evaluation will provide the Lead Agency with the information necessary for it to ultimately certify, in its findings, that the action selected is the one that avoids or minimizes adverse environmental impacts to the maximum extent practicable.

## **VI. Conclusions**

Currently, the DEIS lacks information critical to conducting an informed review as required under the provisions of SEQRA. Some of this information is not included in the DEIS because it was unavailable at the time the DEIS was declared complete (delineation of boundary of Town wetlands onsite, determination of Army Corps regulatory jurisdiction, off-site wetland mitigation plan required by Town Law, water budget analysis). This information, once available, may lead to an increase in the project's environmental impacts. The omission of other information (detailed construction plans, an application plan for pesticides, de-icing and other chemicals, a more detailed and expanded discussion of alternatives) renders the DEIS in its current form deficient. In such a situation, it is critical that the lead agency require the preparation of a supplemental EIS which provides the new information relevant to the environmental impacts of a proposed project so that the public has an opportunity to comment on the new issues and decision-making agencies are fully informed.<sup>51</sup>

The adverse environmental impacts associated with the proposed action as presented in the DEIS have the potential to degrade water quality in the unfiltered drinking water supply of

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<sup>49</sup> See discussion of BSD practices on p. 7 above.

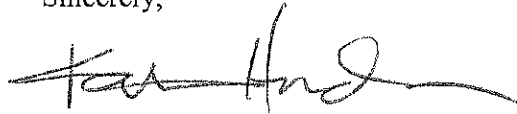
<sup>50</sup> SEQR Handbook at 123.

<sup>51</sup> Gerrard at 3-160.

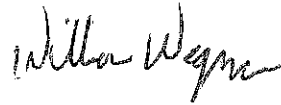
nine million New Yorkers. For these reasons, the Planning Board should require the applicant to prepare a supplemental DEIS and cure the deficiencies in the current DEIS. In addition, we strongly recommend that the Planning Board consider selection of another preferred alternative which will be more protective of water quality and thus New York's drinking water supply. In the alternative, we urge the Planning Board to reject the application in its current form.

Thank you for the opportunity to comment on these important issues. If we may provide any clarification regarding the above comments, or any additional information, please contact us at (914) 422-4410.

Sincerely,

A handwritten signature in black ink, appearing to read "Kate Hudson", with a long horizontal flourish extending to the right.

Kate Hudson  
Watershed Program Director

A handwritten signature in black ink, appearing to read "William Wegner", with a stylized, cursive script.

William Wegner  
Staff Scientist



June 1, 2011

Town of North Castle Planning Board

Town of North Castle

17 Bedford Road

Sent via e-mail and U.S. Mail

Armonk, New York 10504

Dear Town of North Castle Planning Board:

The Natural Resources Defense Council ("NRDC") is a national, non-profit legal and scientific organization active on a wide range of public health and natural resource issues, including drinking water protection. In New York State, where we have more than 48,000 members and contributors, we have taken a particular interest over the years in the protection of the Catskill and Delaware water system, which provides drinking water for 9 million residents of New York City and Westchester County. Among other things, we have previously engaged in efforts to safeguard the Kensico Reservoir and to that end have participated in legal and administrative proceedings associated with proposals for highway expansion along Route 22/120, for re-construction of MBIA's corporate headquarters and for enlarging facilities at Westchester County Airport.

We submit these comments in response to the Draft Environmental Impact Statement ("DEIS") dated March 28, 2011 and prepared by 11 New King Street LLC.

The importance of the Kensico Reservoir to the environmental and economic health of New York cannot be over-stated. The Kensico plays a central role in delivering clean, unfiltered drinking water to nine million downstate residents. It is the last stop for more than one billion gallons of water that flows from New York's six giant West-of-Hudson Catskill and Delaware system reservoirs. These waters are usually held in Kensico for 15 to 25 days before heading to the much smaller Hillview Reservoir in Yonkers for distribution throughout New York City or to local water providers in Westchester Country. This 15 to 25 day period provides a final opportunity for settling out impurities, including solids and microorganisms – a critical function in view of the facts that the Catskill and Delaware system reservoirs are unfiltered and that filtration facilities for these waters would cost more than 10 billion dollars, according to official estimates.

Despite its essential function in providing clean drinking water to half the state's population, the Kensico Reservoir and its 6,000 acre watershed have faced intensifying development pressures over the last several decades. Increased corporate, residential and commercial construction within the Kensico basin have created localized water quality problems.

Threats to the reservoir include turbidity (a measure of cloudiness of water), fecal coliform bacteria (products of human and animal waste), as well as phosphorous and other nutrients and pesticides and other organic chemicals. These and other contaminants are all associated with stormwater and runoff from encroaching development in the small Kensico watershed itself.

Nevertheless, as set forth in the DEIS, the 11 King Street project sponsor proposes to construct a 1,450 car parking garage within a stone's throw of the region's single most important drinking water reservoir. The new parking structure would be 267,000 square feet in size. Its construction would destroy 5,700 square feet of wetlands, which currently serve as natural filters for rainwater and snow melt that flow directly into the Kensico. And among many other adverse impacts, the new construction would add 21,354 square feet of impervious surfaces in the all-important buffer areas. These and other earth-altering impacts of the proposed project make it hard to see how the 11 New King Street developers could have selected a more ill-advised spot for new construction anywhere in the entire Catskill/Delaware watershed.

NRDC's review of the Draft Environmental Impact Statement has convinced us that the document has failed to comply with the requirements of the State Environmental Quality Review Act, set forth in sections 8-0101 et seq. of the State's Environmental Conservation Law. Among the numerous deficiencies in the DEIS are the following:

- (1) failure to fully describe the adverse short- and long-term environmental impacts that would result from implementation of the project as proposed;
- (2) failure to consider reasonable alternatives -- the DEIS does not examine alternative sites for construction that are located outside of the Kensico Reservoir watershed or comprehensive public transit enhancement measures to address airport parking needs, to cite just two examples of a reasonable alternatives that warrant full assessments;
- (3) failure to adequately mitigate -- the DEIS fails to present a reasonable program for mitigating harm to wetlands and buffer lands that would be destroyed by the proposed construction; and
- (4) failure to demonstrate compliance with other environmental laws and rules, including the Town of North Castle's Freshwater Wetlands Law and the New York City Watershed Rules and Regulations.

In short, NRDC believes that the DEIS for the 11 New King Street project fails in these and other ways to meet the cornerstone requirements of state environmental law. This project is fatally flawed and should not in our view be constructed in its proposed location. We urge the Town to go back to the drawing boards and completely rethink this project. We stand ready to work with you on such an effort.

Very truly yours,

Eric A. Goldstein, Esq.

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## TOWN OF **GREENWICH**

Office of First Selectman (203) 622-7710 Fax (203) 622-3793

Town Hall- 101 Field Point Road - Greenwich, CT 06830

E-Mail: [ptesei@greenwichct.org](mailto:ptesei@greenwichct.org)

[www.twitter.com/GreenwichFirst](http://www.twitter.com/GreenwichFirst)

Peter J. Tesei  
*First Selectman*

May 31, 2011

Town of North Castle Planning Board  
17 Bedford Road  
Armonk, NY 10504  
[akaufman@northcastleny.com](mailto:akaufman@northcastleny.com)

SENT VIA EMAIL

Re: 11 New King Street Parking Garage

Dear Sirs:

In supplement to my comments on this topic that were transmitted on May 23, 2011, I would like to submit the following on behalf of the Town of Greenwich and the many surrounding neighborhoods that are located near the proposed parking garage at 11 New King Street. Greenwich is a member of the Greenwich-Westchester Task Force and this proposal was discussed at a recent meeting of that group. During the last few weeks many of the individual neighbors of this site have also spoken to me and have expressed a number of concerns that I feel a responsibility to share with you. Greenwich supports environmentally sensitive planning and development and appreciates this opportunity to expand upon the comments I made on May 2 during the public hearing on the DEIS.

The proposal before you is for a five story, 267,000 square foot structure that will cover over an acre of land and accommodate 1,450 vehicles. The site is within 400 feet of the Town of Greenwich and will impact a number of residential homes. The site is also within 600 feet of the Kensico Reservoir, one of the main components of the New York City water system. This structure will require that over 2.80 acres of land (84% of the site) be disturbed and ultimately 1.58 acres of the site will permanently lose vegetative cover. The proposal will cause the loss of 122 trees in excess of 8" in diameter. The Town of North Castle has also noted that of these trees, 25 are considered as being "Significant". The site is within a Town wetland and will disturb a New York City Watercourse that runs into the Kensico Reservoir. The onsite wetlands will be lost for future use although the developer does propose some remediation with a sedimentation basin and a pocket wetland. Extensive cut and fill will be required to make the site useable for a parking structure. Over 25,000 cubic yards of material will be excavated with over 98% of this material being transported offsite. In short, this is a major development that will have a significant impact on the site, the surrounding properties and the environment.

Greenwich has a number of concerns that we present here for your consideration. These include the following:

- The Town's Zoning Code does not permit parking structures within this district as either a principal or accessory use. Clearly this use was never contemplated when the zoning code was drafted and any amendment to add such a use should be carefully considered. A zoning change that will accommodate this request may have unanticipated consequences with regard to other submissions in this zone that will contribute to growth that is not desirable or beneficial.
- The traffic patterns and volumes in the vicinity of the facility will be permanently changed with its construction. While the impact on Greenwich appears not to be significant, we are concerned that it may cause future traffic volume to grow as individuals use King Street to access the proposed parking facility via Rye Lake Ave. and Gateway Lane. We believe this change in habits is likely and should be given consideration in your review of this structure.
- Construction on this site will have an immense impact on the immediate area. The number of cars, trucks and large tractor trailer size vehicles will be significant. In addition to the normal level of contractor traffic that will be required, the removal of 25,000 cubic yards of soil and the delivery of an unknown quantity of concrete will make travel on New King Street an unpleasant experience for many months.
- Air quality will be degraded during construction and will likely be poor for the foreseeable future due to the proposed use. Particulate matter from the necessary cut and fill on the site, the removal of 25,000 cubic yards of soil, and the vehicle traffic to and from will result in poor air quality for a large area within this section of North Castle and a portion of Northeast Greenwich. Homes on King Street will be negatively impacted and matter will be blown into the nearby Kensico Reservoir. Once construction is complete the volume of traffic that a 1,450 parking structure represents will result in new particulate matter and exhaust from these vehicles replacing construction debris. This will be an ongoing, never ending, degradation to the quality of life to all homes in Greenwich near this site and is very troublesome. New King Street, parts of Route 120, and the nearby Kensico Reservoir will also be affected and this impact is not mitigated by any measures proposed by the developers.
- The noise from the site during construction and once it is in operation will be significant. Residences within Greenwich will of course be impacted by both of these periods. The background ambient noise caused by cars going to and from the facility and the vans used to shuttle people to and from the airport will be a new and unpleasant reality for those individuals who are unfortunate enough to live in the vicinity. While the DEIS cites the maximum decibel levels that can be expected as 69 dB for nearby residents in Greenwich, the ongoing drone of vehicle traffic will degrade the quality of life for numerous residents to this already busy and noisy area.
- Finally, during construction the site will of necessity disturb wetlands and the nearby water course. Drainage patterns will be altered due to the extensive cut and fill operations that are proposed. It should be expected that given the time period that will be required to build this facility that erosion and silting will



The Town of Greenwich supports projects that are well thought out and planned. In our opinion this proposal has numerous unanswered questions and unresolved issues that bring into question its merits. I urge you to expand upon the issues that we have raised and work to insure that the necessary mitigation measures are taken to assure that the project, in what ever form it eventually takes, will protect the interests of all surrounding neighbors. Thank you for giving me the opportunity to bring these concerns to your attention on behalf of the Town of Greenwich and many of the neighboring residents.

Sincerely,

A handwritten signature in black ink, reading "Peter J. Tesei". The signature is written in a cursive, flowing style with a large initial "P" and "T".

Peter J. Tesei  
First Selectman

**RICHARD J. LIPPES & ASSOCIATES**

ATTORNEYS AT LAW  
1109 Delaware Avenue  
Buffalo, New York 14209-1601  
Telephone: (716) 884-4800  
Fax No.: (716) 884-6117

**RICHARD J. LIPPES, ESQ.**

RLIPPES@CONCENTRIC.NET

May 31, 2011



Mr. Adam Kaufman, AICP  
Director of Planning  
Town of North Castle  
17 Bedford Road  
Armonk, New York 10504-1898

**Re: Park Place at Westchester Airport  
11 New King Street  
North Castle, New York**

Dear Mr. Kaufman:

These comments are submitted on behalf of the Sierra Club. The Sierra Club, founded in 1895, is the oldest continuing Environmental origination in the Country. It has extensive membership throughout the Country, including in New York State, Westchester County and the Town of North Castle.

**INTRODUCTION**

On March 28, 2011, the Town of North Castle Planning Board, ostensibly as Lead Agency for the proposed action pursuant to the New York State Environmental Quality Review Act ("SEQRA"), issued a Notice of Completion with respect to a Draft Environmental Impact Statement ("DEIS") submitted by 11 New King Street, LLC ("Applicant"). The DEIS was submitted for a proposed project denominated "Park Place at Westchester Airport," essentially for the construction of a parking garage.

The project, as proposed, would consist of an approximately 267,000 sq. ft., five-level, enclosed parking garage. The structure would have a building footprint of approximately 51,000 sq. ft. and would accommodate 1,450 vehicles. The Applicant submitted a site plan application and a zoning petition seeking to amend the North Castle Zoning Code to allow the erection of a parking garage in an area zoned Industrial AA ("IND-AA"), which would require a special permit.

The Planning Board held a public hearing on May 2, 2011.

## SUMMARY OF COMMENTS

As the Town Board and the Planning Board are well aware, the location of the proposed project is the Kensico Watershed, which is adjacent to and connected to the Kensico Reservoir, an environmentally sensitive area. The Kensico Reservoir supplies more than 9,000,000 New Yorkers with safe, unfiltered drinking water. The importance of protecting this water supply has been acknowledged and supported by governmental and non-governmental entities at every level, from local to national, for more than a decade. The project under review presents an unacceptable threat to that water supply.

Putting aside for the moment certain critical procedural issues addressed below, most people would agree that the most significant threat of pollution to the Kensico Reservoir exists within the relatively small watershed (approximately 10 square miles) surrounding the reservoir, due to the residential, commercial, and industrial development that has occurred in the Kensico Watershed area. A number of protective measures have been introduced to address that concern, including (as relevant to the proposed project) policies designed to limit any further growth at the Westchester County Airport.

As set forth in the DEIS, the *raison d'être* for the construction of a parking garage in an area which is not zoned for such a structure is to accommodate vehicular traffic at the Westchester Airport. The Applicant thus seeks to justify all of the attendant negative environmental consequences that would result from such a project, including an increase in traffic, noise, air, and water pollution, in service of a goal that is diametrically opposed to a local policy against growth at the airport. As discussed below, the project cannot be so justified and, moreover, the DEIS is fatally inadequate in addressing environmental issues and in considering alternatives to the new construction proposed.

Indeed, the DEIS is legally insufficient in several respects. It is inadequate to meet the hard look standard required under SEQRA, and the potential significant adverse environmental impacts associated with the project cannot be mitigated sufficiently as proposed in the DEIS. The insufficiency of the DEIS has been confirmed by Peter Dermody, a principal hydrogeologist, who concluded based on his evaluation of the DEIS that the proposed parking garage ultimately would have a cumulative impact and cause further degradation of the water quality in the Kensico Watershed and therefore in the Kensico Reservoir. Therefore, the DEIS fails to satisfy the requirements of SEQRA.

### POINT I

#### PROCEDURAL ISSUES

##### *The Town Planning Board Lacks Jurisdiction to Act as Lead Agency*

It is certainly no reflection on the quality and competency of the North Castle Town Planning Board, but in actuality the Planning Board is not the proper entity to conduct environmental review of this action because it is not an "involved agency" and, therefore, cannot be the "lead agency" under SEQRA.

SEQRA regulations define “Lead Agency” as “an *involved* agency principally responsible for undertaking, funding or *approving* an action, and therefore responsible for determining whether an environmental impact statement is required in connection with the action, and for the preparation and filing of the statement if one is required.” 6 NYCRR 617.2(u) (emphasis added).

An “involved agency” is also a term defined by SEQRA regulations: “‘Involved agency’ means an agency that has jurisdiction by law to fund, approve or directly undertake an action. If an agency will ultimately make a discretionary decision to fund, approve or undertake an action, then it is an ‘involved agency’....” 6 NYCRR 617.2(s).

In the first instance, having the status of an “involved agency” is an indispensable qualification of being the “lead agency.” Here, however, as detailed below, the Planning Board is not an “involved agency” because it cannot be said that the Planning Board “will ultimately make a discretionary decision to fund, *approve* or undertake an action” in connection with the project. “Approval” is defined as “a discretionary decision by an agency to issue a permit, certificate, license, lease or other entitlement or to otherwise authorize a proposed project or activity.” 6 NYCRR 617.2(e).

As mentioned, since the lead agency must be an involved agency, this requirement is jurisdictional, and the consequences of proceeding without jurisdiction would be a total lack of legal effect of any decision made by the Planning Board. See, Young v. Board of Trustees of the Village of Blasdell, 221 A.D.2d 975, 634 N.Y.S.2d 605 (4<sup>th</sup> Dept. 1995). To avoid wasted effort and resources, a new lead agency should be designated.

SEQRA directs that the lead agency be re-established either by agreement among involved agencies or by requesting that the DEC Commissioner designate the lead agency. See, ECL 8-0111(6) (“In the event that there is a question as to which is the lead agency, any agency may submit the question to the commissioner and the commissioner shall designate the lead agency, giving due consideration to the capacity of such agency to fulfill adequately the requirements of this article”); 6 NYCRR 617.6(b)(6).

### ***The North Castle Town Board has Primary Approval Responsibility***

Even if the Town Planning Board were an “involved agency” for purposes of the proposed project, SEQRA and its regulations require that the agency having primary approval responsibility act as lead agency for purposes of conducting the environmental review. Here, given that the Applicant submitted a zoning petition seeking to amend the North Castle Zoning Code to allow the erection of a parking garage in an IND-AA area, the Town Code dictates that the Town Board has primary approval responsibility.

As recognized in section 213-68 of the Town Zoning Code, New York Town Law section 265 requires that changes or amendments to the town’s zoning code be made by the Town Board in accordance with the procedures set forth in section 265. The proposed project cannot proceed without an amendment of the Town Zoning Code. Should the Town Board amend the Zoning Code, the Planning Board would not be

responsible for any discretionary decisions or approvals. The Amendment would make the Town Board the approval authority for the Special Permit Application and, pursuant to the Town Code, the Town Board's Special Permit review would obviate the need for Site Plan review from the Planning Board. See, Town Code § 213-34.

Accordingly, under the present circumstances, and unless it develops at some point that another involved agency should be designated, the Town Board must assume lead agency status for purposes of SEQRA review, and the Board cannot delegate that responsibility to an agency that does not have primary approval authority. In that regard, the Practice Commentary accompanying ECL 8-0111 is particularly instructive:

In DEC Declaratory Ruling 8-01 (Martin S. Baker, *et al.*) (1984), the Department ruled that a municipality may not delegate to an agency without decision-making power the role of permanent lead agency. This ruling follows the decisions in *Glen Head-Glenwood Landing Civic Council, Inc. v. Town of Oyster Bay*, 88 A.D.2d 484, 453 N.Y.S.2d 732 (2<sup>nd</sup> Dept. 1982) and *Save the Pine Bush, Inc. v. Planning Bd. of City of Albany*, 96 A.D.2d 986, 466 N.Y.S.2d 828 (3<sup>rd</sup> Dept.), appeal dismissed 61 N.Y.2d 668, 472 N.Y.S.2d 89, 460 N.E.2d 230, leave to appeal denied 61 N.Y.2d 602, 472 N.Y.S.2d 1025, 460 N.E.2d 231 (1983). In both those cases a municipality sloughed off on its environmental advisory board the function of preparing EISs, although that agency lacked the authority to render land-use decisions. The courts held SEQRA responsibility must remain where decision-making power rests. To hold otherwise would surely subvert a chief purpose of SEQRA -- to ensure that those making decisions with environmental consequences themselves weigh those consequences. Municipal officials may not do the bureaucratic equivalent of Groucho Marx telling his butler, "Go run around the park; I need the exercise."

Those who fail to learn from history are, says the adage, doomed to repeat it, and the City of New York, having not learned the lesson of *Glen Head* and *Save the Pine Bush*, paid the price in *Coca-Cola Bottling Co. of New York v. Board of Estimate of City of New York*, 72 N.Y.2d 674, 536 N.Y.S.2d 33, 532 N.E.2d 1261 (1988). The Court of Appeals there invalidated the City's practice of shunting environmental review to its departments of environmental protection and city planning in a case where the relevant decision, authorizing the sale of city-owned land, was to be made by the former Board of Estimate. Neither of the two agencies that performed the environmental review was the responsible decision-making agency, the court noted. The Court roundly criticized the City for "transgress[ing] SEQRA's spirit, as well as its form," by "allow[ing] the Board of Estimate -- the governmental entity responsible for the final policy decision to proceed with a project --

to be insulated from consideration of environmental factors.” 72 N.Y.2d at 681-82.

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As in the *Coca-Cola* case, the court condemned the practice of foisting environmental quality review onto an agency which lacks decision-making power in *Martin v. Koppelman*, 124 A.D.2d 24, 510 N.Y.S.2d 881 (2<sup>nd</sup> Dept. 1987). The Appellate Division there annulled resolutions of the Suffolk County Legislature that were based on negative declarations adopted by the county's Council on Environmental Quality. The resolutions authorized appropriating funds to expand parking facilities at several railroad stations as part of an electrification project. The court held that, just as in the *Glen Head* case, the county legislature had improperly delegated SEQRA authority to an agency without the power to make the actual decisions on the land use in question. The county's attempt to fund parking areas along the electrified railroad line without proper environmental review was unplugged.

The appellate division reminded us once again that a lead agency must itself weigh a project's environmental impacts. In *Penfield Panorama Area Community, Inc. v. Town of Penfield Planning Bd.*, 253 A.D.2d 342, 688 N.Y.S.2d 848 (4<sup>th</sup> Dept. 1999), the planning board approved a subdivision including two apartment houses on condition that the developer obtain a site remediation plan that met the approval of DEC and the county health department. But the board's EIS, though it acknowledged that hazardous waste deposited on the site was one of the board's “primary areas of concern,” failed to further concern itself with the issue. As the court held, a lead agency may not blithely identify, then waltz away from, a serious environmental impact. The town was obliged to genuinely consider the presence of the hazardous waste before authorizing residential construction on the site, and to minimize its impacts (see ECL § 8-0109[1], [8] and the Commentary at C8-0109:2). Simply advising the developer to seek some answers from other agencies, while allowing the development to proceed, vitiates both the letter and spirit of SEQRA.

Additionally, it is noteworthy that the Town Board will be responsible for approvals with respect to matters involving the use of wetlands, whether under Freshwater Wetlands review or under other authority. See, e.g., Town Code section 205-5(C). The project also includes a request for a Tree Removal Permit, the authority over which lies with the Building Inspector (who has not been identified as an involved agency), not with the Planning Board. See, Town Code section 192-2.

The proper designation of the Town Board as the Lead Agency for this proposed project is not only necessary, it is particularly significant because of the nature of the environmental impacts involved and the broad scope of Town planning policies and principles that must be considered.

### ***Referral to Westchester County Planning Department***

It is worth noting at this phase of review that, at the appropriate time, when the lead agency has a "full record" (including all environmental review documents and an FEIS), a referral with respect to the proposed zoning amendment must be made to the Westchester County Planning Department, as required under General Municipal Law 239-m. The County may issue a recommendation, at which point the Town Board would need a majority-plus-one vote in order to pass the amendment. In the event the County does not issue a recommendation within 30 days, the Town could act on a majority vote.

### ***The DEIS Omits Facts Regarding Wetlands Subject to Regulation***

The DEIS fails to acknowledge that there is a second stream located on the project site and thereby omits information that would bring parts of the project under the jurisdiction of the Department of Environmental Protection ("DEP"). The DEIS acknowledges the presence of "[t]wo streams [that] occur on the project site," one of which it refers to as a "perennial stream," the other of which it says is an "ephemeral drainage channel that is infrequently flooded." Both of these streams are DEP watercourses. In figure 8-2 of the DEIS, it is evident that there are two streams designated by Westchester County that pass through the project site and flow to the Kensico Reservoir. DEIS Figure 8-1, the National Wetland Inventory mapped wetlands, also shows a second stream along the southern boundary of the Project Site.

Indeed, the Town's Wetland Consultant states that this second stream is "a regulated watercourse": "Water was observed within the channel located to the south of the proposed parking garage (partially off-site) and therefore this channel will be considered a regulated watercourse. This determination is based, in part, on the fact that water flow was present more than 48 hours after a rain event." Memorandum to Planning Board from David J. Sessions, RLA, AICP, dated Dec. 29, 2010.

Contrary to the DEIS assertion that this "secondary drainage feature does not demonstrate perennial or intermittent flow," Mr. Sessions' observation that the stream exhibited water flow more than 48 hours after a rain event clearly demonstrates that the second watercourse at the southern portion of the site constitutes an Intermittent Stream under the DEP's Watershed Regulations (section 18-16(a)(63)). Accordingly, the DEIS fails to properly acknowledge that the DEP has jurisdiction over the second stream.

The DEIS asserts further that the secondary stream "would not be directly affected by the development of the project." The DEIS neglects to mention, however, that the proposed parking garage would effectively eliminate the stream's protective buffer areas and probably disturb the stream directly, which is suggested by figure 8-4 in the DEIS. Indeed, the Town Wetland Consultant stated that, "given the proximity of the proposed improvements to the wetland boundary line, it does not appear feasible to

construct the building without directly impacting/disturbing the wetland proper.” Memorandum to the Planning Board from David J. Sessions, RLA, AICP, dated Dec. 10, 2010, at 10.

The approach taken by the Applicant in the DEIS is contrary to the Town’s own Freshwater Wetlands Law, which expressly states that, “[t]he establishment of regulatory and conservation practices for these [wetland] areas serves to protect the Town by insuring review and regulation of any activity near or on the wetlands that might adversely affect the public health, safety and welfare.” Town Code section 209-3(A)(3). The DEIS should not attempt to avoid the regulatory review applicable to wetlands, especially when those wetland areas are in close proximity to Kensico Reservoir.

### *A Second Kensico Reservoir Stem*

The DEIS does not show the limiting distance from the second Reservoir Stem affecting the site. DEIS Figures 8-1 and 8-2 show two streams that exit the site and immediately enter the Kensico Reservoir. Section 18-16(a)(95) of the Watershed Regulations define a Reservoir Stem as “any watercourse segment which is tributary to a reservoir and lies within 500 feet or less of the reservoir.” The DEIS has erroneously omitted information demonstrating the location of the 300-foot buffer from the second Reservoir Stem in relation to the project site. This omission is likely due to the prohibition against the construction of impervious surfaces within 300 feet of a reservoir stem, as set forth in section 18-39(a)(1) of the Watershed Regulations.

The DEIS incorrectly asserts that there is a way around the required buffer area, relying on a limited exception for the expansion of impervious surfaces in buffer areas for existing commercial facilities, which is provided for by Watershed Regulation 18-39(a)(4)(iii). The exception does not apply to the proposed project because the exception applies only to “existing” facilities, not to new construction that takes the place of the existing use at the project site. Another reason why the exception does not apply is that the project would add impervious surfaces to the buffer areas in excess of 25% of the existing use.

Consequently, the Applicant would need to seek a variance from the DEP under Watershed Regulation 18-61. The DEIS is inadequate in that regard, since it does not demonstrate factually that the proposed project could satisfy any of the requirements for a DEP variance, such as:

[d]emonstrate that the variance requested is the minimum necessary to afford relief;

[d]emonstrate that the activity as proposed includes adequate mitigation measures to avoid contamination to or degradation of the water supply which are at least as protective of the water supply as the standards for regulated activities set forth in [the Watershed Regulations]; [or]



[d]emonstrate that . . . compliance [with the Watershed Regulations] would create a substantial hardship due to site conditions or limitations.

Watershed Regulations, 18-61(a)(1) (see DEP Comments, *infra*, at p. 13-15).

As discussed substantively below, the DEIS fails to articulate mitigation measures with respect to wetlands impacts sufficient to demonstrate that such measures would “protect the watershed just as much as compliance with the regulation from which the applicant seeks a variance.” See, *Nilsson v. D.E.P.*, 8 N.Y.3d 398, 834 N.Y.S.2d 688, 690 (2007) (“[B]efore it grants a variance, DEP must be persuaded that the applicant’s proposed mitigation measures will protect the watershed just as much as compliance with the regulation from which the applicant seeks a variance.”

Nor would the Applicant qualify for a “hardship” variance. The DEIS shows one project alternative in which compliance with Watershed Regulations appears feasible. DEIS at 18-29 to 18-34 & fig. 18-5, Alternative “D,” envisions a “no wetland impacts” Project, which apparently is considered to avoid both Town and DEP regulated buffers. If it is possible that the Applicant can comply with the Watershed Regulations, in order to obtain a “hardship” variance, it must be demonstrated that compliance would be “prohibitively expensive.” See, *Nilsson*, 834 N.Y.S.2d at 691.

Here, however, the DEIS does not contend that Alternative “D” would be prohibitively expensive: “Alternative D would result in economic benefits during construction and during annual operations.” Likewise, the DEIS does not contend that, in the absence of a variance from the DEP, compliance with the regulations would cause the Applicant “substantial hardship.”

### ***Inadequacy of Project Alternatives***

Section 617.9 of the SEQRA regulations promulgated by the DEC, entitled “Preparation and Content of Environmental Impact Statements,” provides detailed instructions and guidelines for the EIS process. Particularly for projects like the one proposed, which involve highly sensitive environmental areas, it is essential that, in the first instance, the contents of the EIS comply with 6 NYCRR 617.9(b)(5)(iii), which requires that all draft EISs include: “a statement and evaluation of the potential significant adverse environmental impacts at a level of detail that reflects the severity of the impacts and the reasonable likelihood of their occurrence.”<sup>1</sup>

<sup>1</sup> The subsection continues, in pertinent part: “The draft EIS should identify and discuss the following only where applicable and significant: ([a]) reasonably related short-term and long-term impacts, cumulative impacts and other associated environmental impacts; ([b]) those adverse environmental impacts that cannot be avoided or adequately mitigated if the proposed action is implemented; ([c]) any irreversible and irretrievable commitments of environmental resources that would be associated with the proposed action should it be implemented; ([d]) any growth-inducing aspects of the proposed action; ([e]) impacts of the proposed action on the use and conservation of energy (for an electric generating facility, the statement must include a demonstration that the facility will satisfy electric generating capacity needs or other electric systems needs in a manner reasonably consistent with the most recent state energy plan); ([f]) impacts of

As the Planning Board and Town Board have already seen, the proposed “Park Place at Westchester Airport” project continues to garner widespread criticism for the failure of the DEIS to comply with section 617.9(b)(5)(iii). The Sierra Club must join in that criticism. The substantive issues in that regard are discussed below. Without a complete and accurate “evaluation of the potential significant adverse environmental impacts” of the project, the foundation for SEQRA review is jeopardized. One consequence of this inadequacy of the DEIS is the obfuscation of another indispensable component of compliance with the SEQRA review process – the consideration of project alternatives.

Section 617.9(b)(5)(v) of DEC regulations requires that the DEIS include:

a description and evaluation of the range of reasonable alternatives to the action that are feasible, considering the objectives and capabilities of the project sponsor. The description and evaluation of each alternative should be at a level of detail sufficient to permit a comparative assessment of the alternatives discussed. The range of alternatives must include the no action alternative. The no action alternative discussion should evaluate the adverse or beneficial site changes that are likely to occur in the reasonably foreseeable future, in the absence of the proposed action. 6 NYCRR 617.9(b)(5)(v).

As expressed in the “2010 SEQRA Handbook” (3<sup>rd</sup> Edition 2010), published by the DEC Division of Environmental Permits, the purpose of this regulation is to evoke an investigation into “means to avoid or reduce one or more identified potentially adverse environmental impacts” – “The greater the impacts, the greater the need to discuss alternatives.”

Apart from a “no action alternative,” the DEIS reviews only alternative size parking facilities. There is no discussion of alternative uses presently permitted in accordance with the principal uses in the IND-AA Zoning District. This is a critical omission.

Since the regulations state that the EIS should “evaluate all reasonable alternatives,” the applicant should evaluate alternatives consistent with the current permitted use – even if the alternative use is different in nature from the project proposed. As indicated in the 2010 SEQR Handbook, “[c]onsideration of an entirely different use or action may be reasonable ... [when] the proposed action does not conform to the current zoning of the site, in which case comparison to the use allowed under the existing zoning may be informative.”

Of particular importance in consideration of alternatives to the proposed project is the application of the Freshwater Wetlands Act, ECL Article 24. Given the critical nature

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the proposed action on solid waste management and its consistency with the state or locally adopted solid waste management plan; ...”

of the potential impacts upon wetlands, steep slopes, water courses, wetland buffers, the Kensico Watershed, and ultimately the Kensico Reservoir, the DEIS must take into consideration that, under ECL Article 24, certain freshwater permits may be granted only if the proposed action is “the only practical alternative that could accomplish the applicant’s objective and [there is] no practical alternative on a site that is not a freshwater wetland or adjacent area.” See, 6 NYCRR 663.5(e)(2), 662.6(b)(4); and see, 6 NYCRR 63.5(f)(2) (defining “practical alternative”).

Another significant omission from the DEIS is directly related to the reasons given for the construction of parking garage in the first instance. The DEIS should contain a discussion of a non-parking alternative for the site, because evidence suggests that airport parking is available at SUNY Purchase, which includes or would include a shuttle between the SUNY Purchase parking areas and the Westchester County Airport. Given the applicant’s claim for the need for additional airport parking at peak travel times, it is likely that parking availability on the SUNY Purchase campus would be sufficient to handle that need.

The omission of the alternatives mentioned above is a sufficient basis for rejecting the DEIS in this instance.

***DEIS Failure to Fully Address the Effect of a Zoning  
Amendment and Growth-Inducing Aspects of the Proposed Project***

The DEIS fails to give proper consideration to the wide range of potential effects that would result from the granting of the Applicant’s petition for an amendment of the Town’s Zoning Code. Such an amendment would open up the area to additional uses and would have growth-inducing impacts beyond the immediate effect upon activity at the Westchester Airport.<sup>2</sup>

The law is settled that, “[t]o comply with SEQRA, the Town Board must consider the environmental concerns that are reasonably likely to result from, or are dependent on, [proposed zoning] amendments.” Eggert v Town Bd. of Town of Westfield, 217 A.D.2d 975, 630 N.Y.S.2d 179, 181 (4th Dept. 1995); accord, Fisher v. Giuliani, 280 A.D.2d 13, 720 N.Y.S.2d 50 (1st Dept. 2001); Brew v Hess, 124 A.D.2d 962, 508 N.Y.S.2d 712 (3d Dept. 1986). “[T]he decision to amend [a] zoning ordinance commit[s] the Town Board to a definite course of future conduct by permitting previously prohibited uses subject to obtaining a special use permit.” Eggert, 630 N.Y.S.2d at 181. Accordingly, “[t]o comply with SEQRA, the Town Board [is] required to address the potential environmental effects of the amendments, at least on a conceptual basis.” Id., at 181. “A municipality should

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<sup>2</sup> The proposed zoning amendment would alter dramatically the nature of the existing IND-AA zoned area. For example, accommodating the proposed project would: double the maximum allowable height, from 30 feet to 60 feet; double the maximum allowable building coverage, from 30% to 60%; eliminate the Floor Area Ratio (FAR) requirement; and reduce the side yard set back, from 50’ to 10’.

consider the most intensive uses allowable under the proposed zoning to judge potential impacts.” “SEQRA Handbook,” at 182.<sup>3</sup>

The DEIS contains only one rather sparse paragraph addressed to these issues (DEIS, at 22-2), in which it states: “[s]ince adjacent existing parcels that meet the [prescribed] development criteria are substantially developed, no significant growth-inducing aspects are anticipated from the proposed zoning amendment.” Without more, the DEIS is woefully insufficient to meet the “hard look” standard for review of potential environmental impacts.

It is not mere speculation to anticipate the precedential effect of a zoning amendment. The effect also reaches beyond the immediate area, since an amendment may impact other zoning districts within the Town. For example, since the requested amendment would establish a maximum height and coverage allowance beyond what is permissible in any district in the town, future development likely will expect equivalent allowances for their projects. The DEIS is silent regarding these concerns.

### *U.S. Army Corps of Engineers Review*

The DEIS raises a question with respect to the need for review by the U.S. Army Corps of Engineers (“ACOE”) of potential environmental impacts of the project on federally protected wetlands. While the DEIS states that the Applicant may obtain a Nationwide Permit from the ACOE (DEIS at 1-2), it is likely that individualized review by the ACOE will be necessary and that such permit will be unavailable.

The DEIS recognizes ACOE jurisdiction over wetlands at the site, including Wetlands “A” (“Forested wetlands, a perennial stream, and an additional drainage feature were found to constitute regulated surface water resources at the Town and Federal level”). However, the ACOE have not yet confirmed the boundaries of resources under its jurisdiction.

The Project purportedly would impact approximately 0.13 acres of regulated wetlands, since a portion of the garage would be located in Wetland “A” (DEIS fig. 8-4). The DEIS incorrectly assumes the availability of Nationwide Permit 39 (for Commercial and Institutional Developments involving less than ½ acre of disturbance). General Condition 19 of the Nationwide Program disallows certain Nationwide Permits (including NWP 39) in Designated Critical Resources Waters “for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.” 72 Fed. Reg. 11092, 11193 (March 12, 2007). The East of Hudson Watershed (including the Kensico Reservoir Watershed) has been designated as Critical Resource Waters (DEP,

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<sup>3</sup> The regulation quoted above (footnote 1) expressly directs consideration of any “growth-inducing aspects of the proposed project” associated with potential adverse environmental impacts, but a zoning change adds another dimension to this concern, since it sets a precedent. As observed in the DEC SEQRA Handbook: “Keep in mind that rezoning itself may be more significant from the standpoint of SEQR than the individual permitting of projects since a zoning change triggers a change in the allowable use of land and ostensibly individual projects consistent with that change will be considered in the future in the rezoned area.”

Wetlands in the Watersheds of the New York City Water Supply System, at 19), which means that “individual, project-specific permits are required for many activities.”

Under the individualized “Public Interest Review” conducted by the ACOE, (33 CFR § 320.4(a)), “[t]he decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest.” The DEIS does not contain a basis for meeting the criteria for such a permit.

The ACOE regulations specifically apply to “[w]etlands [that are] considered to perform functions important to the public interest,” which include those at the project site: “Wetlands the destruction or alteration of which would affect detrimentally natural drainage characteristics, sedimentation patterns, salinity distribution, flushing characteristics, current patterns, or other environmental characteristics;” and “Wetlands which serve significant water purification functions.” 33 C.F.R. § 320.4(b)(2).

Because the proposed project would have adverse impacts upon natural drainage characteristics, sedimentation patterns, and other environmental characteristics of wetlands connected to the Kensico Reservoir, the ACOE likely would be compelled to deny the permit request.<sup>4</sup>

Additionally, the DEC would need to make an individualized Water Quality Certification determination for purposes of an ACOE permit, pursuant to the federal Clean Water Act. As discussed in Keating v. F.E.R.C., 927 F.2d 616, 622 (D.C. Cir. 1991), “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 [citations omitted].”

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). As noted in Keating, “One 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.” 927 F.2d at 622.

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<sup>4</sup> The Project’s ACOE application would be subject to review under the National Environmental Policy Act (“NEPA”).

Since the DEC will afford a Water Quality Certification only if it can determine that the project will not violate relevant regulatory requirements intended to preserve water quality (6 NYCRR 608.9), the DEIS should contain a discussion of the proposed project's ability to satisfy each of the listed criteria.

## POINT II

### SUBSTANTIVE ISSUES

#### *The DEIS Understates the Project's Most Significant Adverse Impacts on Wetlands and the Region's Potable Water Supply*

At the outset, we note that this discussion is presented with the awareness of the nature of the growing criticism of the proposed project, as well as the authoritative bases and sources of opposition, with which the Sierra Club fundamentally agrees. The threat to the Kensico Watershed is too great. And notwithstanding the attempts by the drafters of the DEIS to persuade that this project will actually improve the environmental quality of the project area, there are simpler, more direct, and less risky means to accomplish that goal.

As mentioned previously, we retained Dermody Consulting to conduct a review of the DEIS and have received the comments of Peter Dermody, a principal hydrogeologist, who has opined on the insufficiency of the DEIS. Ultimately, he concludes that the proposed parking garage would have a cumulative impact and cause further degradation of the water quality in the Kensico Watershed and thus in the Kensico Reservoir. At our request, Mr. Dermody has sent his comments directly to the Board.

We also have obtained a copy of the comments sent to you by the NYC Department of Environmental Protection ("DEP"), in a letter dated May 23, 2011. DEP reviewed the site plan and the DEIS, as a result of which DEP expresses a wide range of "concerns about potential water quality impacts resulting from the project":

In particular, DEP is concerned about the project's potential for turbidity and increased pollutant loading, particularly phosphorus, in to the Kensico reservoir, disturbance of steep slopes and wetland buffers, and the lack of "green infrastructure" practices. The location of certain stormwater management practices within wetland/watercourse areas may degrade the buffer's beneficial water quality attributes. Further, there is a lack of information regarding mitigation of groundwater and stormwater impacts, construction and sequencing and various other concerns detailed below.

Without repeating all of the lengthy analysis set forth in its letter, we adopt DEP's comments and incorporate them herein as our own. That being said, and acknowledging that there will be some repetition at, we offer the following for the Board's consideration.

The Town Planning Board, the Town Board, and the Town Conservation Board obviously are well aware of the environmentally sensitive nature of the Kensico Watershed and the staggering importance of maintaining water quality in the Kensico Reservoir – the source of drinking water for millions of New Yorkers, including those within the local area. After all, one of the reasons the Planning Board issued a Positive Declaration requiring the EIS is that “[t]he proposed construction is to occur wholly within the Kensico Reservoir Watershed.”

Indeed, it may fairly be said that the Town’s commitment to environmental protection is truly impressive. One example is the creation of the Kensico Watershed Improvement Committee (“KWIC”), in which the Town partnered with five major corporations on Route 120 for the express purpose of “protect[ing] the Kensico Reservoir from potential water quality threats associated with the corporate and roadway uses in the King Street Corridor” – the precise location of the proposed project. This committee authored the “King Street Corridor Management Plan” in 2001, in which it very pertinently states, “careful planning for new development [is one of two] extremely important components of the management plan.” As such, one would expect the project sponsors to be familiar with the Plan and to discuss the project’s consistency with the Plan’s objectives. Unfortunately, the DEIS contains no reference to the Committee or to the Plan.

### *The Impacts on Natural Resources*

Peter Dermody has advised the Sierra Club that, among other things, building the structure at the proposed location will require:

- the destruction of 5,700 square feet of wetlands as so designated by the Town and by the USCOA;
- the disturbance of 80,000 square feet of the 100-foot wetlands buffer area, less than half of which the project proposes to re-vegetate;
- encroachment within the 300-foot protection zone around a NYSDEP-regulated Reservoir Stem – a stream or other water body that discharges into the Kensico Reservoir;
- construction on land located within approximately 600 feet of the Kensico Reservoir;
- a potential threat to DEC Class A streams present at the north, south, and west boundaries of the project site;
- the erection of two stormwater basins and a wetland area into which the basins will drain in an area in which the depth to groundwater appears to be less than three feet, thereby creating circumstances under which stormwater contaminated with numerous petroleum constituents and hazardous substances associated with anti-freeze have a high potential for percolating downward and contaminating groundwater that flows into streams connected to the Kensico Reservoir.

The DEP, in its letter, states that the proposed stormwater control measures will not mitigate the project's effect on groundwater because those measures ameliorate "only a limited subset of the range of functions provided by the lost wetland and cannot be considered true mitigation for the loss of the wetland's other functions." Other inadequacies of the DEIS mentioned by the DEP include: the absence of a discussion of how stormwater control measures will mitigate increases of dissolved phosphorus; the failure to address additional pollutants, such as nitrogen, suspended solids, "biological oxygen demand," and "fecal coliform loading;" and pre- and post-development drainage area maps for analysis of the significant quantity of new impervious surfaces.

The DEP goes even further in stating "DEP consistently discourages" stormwater management practices within 100 feet of a wetland buffer and, therefore, "it is recommended that the applicant choose an alternative that avoids all impacts to the wetland and wetland buffer." The DEP notes a significant omission from the DEIS, which overlooks the fact that "DEP's review and approval of a Stormwater Pollution Plan (SWPP) is required for construction of a new commercial project resulting in a creation of impervious surfaces totaling 40,000 square feet (not 50,000 square feet) in size." Watershed regulations will also require a variance to accommodate the proposed projects "expansion of impervious surfaces in excess of 25 percent." Consequently, the DEP recommends that project alternatives should be explored in greater detail "that minimize impervious surfaces, as well as in fact wetlands, the reservoirs stem and all buffers."

### *Application of The Town's Freshwater Wetlands Law*

It is likely that the Town Board will deny a Wetlands Permit for the Project. In adopting North Castle's Freshwater Wetlands and Drainage Law, the Town Board stated that "[w]etland areas should be protected from encroachment, spoiling, polluting, or obliteration stemming from . . . commercial development . . . and/or disregard for natural resources." Town Code § 209-3(A)(1).

The Freshwater Wetlands Law (Town Code § 209-3(A)(1)) recognizes that wetlands provide multiple beneficial functions, including: "[p]roviding drainage, flood control, and natural storage for water;" "[p]rotecting and purifying surface and subsurface water resources by sediment trapping, nutrient removal and chemical and biological detoxification;" "[r]echarging, storing groundwater (including aquifers and surface waters,) and maintaining stream flow;" and "[m]itigating the effects of erosion by serving as natural sedimentation areas and filter basins." The Freshwater Wetlands Law requires that the Town Board "*shall* deny the permit if":

The proposed activity *may* threaten public health and safety . . . can cause nuisances, impair public rights to the enjoyment of public waters . . . or violate other federal, state or local laws and regulations [or] It finds that the detriment to the public good by the factors listed in this section would occur on the issuance of the permit outweighs the nonmonetary public benefits associated with the activity.



Town Code, § 209-7(B)(3). In the absence of much more developed mitigation measures, the proposed project clearly violates the threshold set in this section. Accordingly, the Board would be constrained to deny the issuance of a wetlands permit.

The DEIS asserts that the project's wetland buffer "disturbances are primarily for the proposed construction of the stormwater management basins." In fact, more than half of the proposed parking facility would be located within the 100-foot buffer zone. The DEP already has articulated that the DEIS is inadequate in dealing with the functional value of the buffers that the project would eradicate. Contrary to the justification given in the DEIS,<sup>5</sup> the Project would triple the amount of impervious surfaces in the buffer area. There are presently 12,132 square feet of impervious surfaces in the buffer. The Project would add 21,354 square feet of impervious surfaces to the buffer area, for a total of 33,486 square feet.

As the Town Wetland Consultant has observed, "this section completely downplays the extent of improvements proposed within the wetland buffer, proximity of these improvements to the wetland boundary line and potential impacts." (Memorandum to the Planning Board from David J. Sessions, RLA, AICP, dated Dec. 10, 2010, at 2.)

Moreover, the DEIS was accepted as complete without a final wetland analysis. In the absence of new information that will be obtained in the Spring of 2011, the public are denied the opportunity to comment or object to the new information. *See, Citizens Against Retail Sprawl ex. rel. Ciancio v. Giza*, 280 A.D.2d 234, 722 N.Y.S.2d 645 (4<sup>th</sup> Dep't 2001). The boundaries of all streams and wetlands were field-delineated in the spring and fall of 2008. The Town inspected the wetland boundary in December 2010 and subsequently made preliminary modifications to the boundary. The wetland boundary is expected to be confirmed in the growing season (i.e., spring 2011). However, potential impacts were assessed based on the preliminary Town-delineated wetland boundary.

### **Significant Potential Adverse Traffic Impacts**

The DEIS includes a Traffic Impact Study (TIS), which evaluates the Existing Conditions, No Build Conditions, and Build Conditions of the proposed project. The TIS considers trip generation, project generated distribution patterns, parking, and site circulation characteristics associated with the construction of a proposed 1,450 space park-and-fly parking structure on New King Street. Traffic counts were conducted at the airport during the 2008 and 2009 Thanksgiving Holidays (peak travel periods). It is claimed that the parking demand at the airport during peak travel periods currently exceeds its parking capacity.

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<sup>5</sup> (See DEIS at 8-14 "At the present time, the existing impervious surface and lawn in the wetland buffer is 35,269 square feet (12,132 square feet impervious + 23,137 square feet of lawn. This is *similar to* the impervious surface and porous pavers proposed in the wetland buffer which is 39,255 square feet." (emphasis added).)

The TIS found that the construction of the Park Place garage would provide relief to the existing high demand for airport parking by providing an additional 1,450 parking spaces. The greater availability of parking would encourage many travelers who currently take taxis, limousines, or are dropped off/picked up at the airport to drive themselves to the airport, thus reducing the number of trips to the airport. The DEIS submits that drivers would also spend less time traveling between the various airport parking facilities looking for parking spaces. It is further claimed that the usage of the Park Place garage would also reduce the number of vehicle trips actually entering the airport terminal area as a limited number of shuttle buses would transport passengers from the Park Place garage to the airport terminal. As demonstrated by the trip generation calculations included in Chapter 13, "Traffic and Transportation," the DEIS states that the result will be an overall reduction in the number of vehicle trips across the traffic network. Therefore it is claimed that there are no adverse traffic impacts that would require mitigation.

The Town's traffic consultants, Frederick P. Clark Associates, Inc. (FP Clark), conducted a supplemental traffic analysis to confirm the results of the TIS. The supplemental analysis considered a worst-case scenario whereby the proposed project would attract new travelers to Westchester County Airport, potentially increasing traffic in the study area. The FP Clark study concluded that even with this conservative analysis (i.e., a net increase in traffic), the proposed project would not result in significant adverse traffic impacts (see Appendix J for the TIS and supplemental analysis).

A previously indicated, the project is conceptually incompatible with the policy against growth or expansion of the Westchester Airport. The DEIS contends that the project would result in a reduction of vehicle trips to and from the airport. The Town's traffic consultant rejected this contention, noting that "the proposed Garage may increase demand and result in travelers now having the option of driving to the Airport for flights." (F.P. Clarke Letter at 8.) Mr. Clarke concludes that "the proposed facility could generate 200 new vehicle trips, plus 18 shuttle bus trip ends and 195 vehicle trip ends plus 18 shuttle bus trip ends during weekday morning and afternoon peak hours, respectively."

Based on the Town Consultant's projections, the Project would exacerbate existing "F" Level of Service (LOS) levels at three critical intersections: Airport Road and Route 120; Airport Road and the I-684 northbound ramps, and Airport Road and the I-684 southbound ramps. The Town's Comprehensive Plan already expresses concerns that the "Route 120 at Airport Access Road/I-684 Interchange 2" suffers from "[l]imited traffic capacity – high traffic volume."

The New York City Environmental Quality Review (CEQR) Technical Manual establishes a standard for determining whether an intersection would be "significantly impacted" by traffic from a project and require mitigation. As the CEQR Manual notes, LOS F describes unacceptable, failing conditions: "LOS F typically describes ever increasing delays as queues begin to form. This is considered to be unacceptable to most drivers. This condition often occurs with oversaturation, i.e., when arrival flow rates exceed the capacity of the intersection."

The CEQR Technical Manual establishes that a three (3) second delay increase at an existing LOS F intersection poses a significant impact that must be mitigated. (See CEQR Technical Manual at 16-53 (stating that at signalized intersections, “[f]or a lane group with LOS F under the No-Action condition, an increase in projected delay of 3.0 or more seconds should be considered significant. . . . For unsignalized intersections the same criteria as for signalized intersections would apply.”))

The requisite mitigation would, at a minimum, compel the Applicant to bring conditions at the three LOS F intersections to within 3 seconds of the No-Build condition. The CEQR Manual establishes that appropriate mitigation requires that “Action-with-Mitigation” condition produces insignificant LOS degradation as compared to the “No-Action” condition. A 3 second delay at an LOS F intersection is deemed significant. Thus, mitigation must make the “build” condition have an insignificant impact (i.e., less than 3 seconds).

The DEIS simply fails to analyze or propose adequate mitigation of these conditions and is therefore deficient. These omissions make it impossible for SEQRA review under the hard look standard. The project’s significant adverse traffic impacts are a critical defect. SEQRA requires that the DEIS explore all means necessary to mitigate a project’s significant adverse impacts to the maximum extent practicable. See 6 NYCRR 617.11(d).

### **POINT III**

#### **ZONING AND LAND USE ISSUES**

In light of all of the foregoing concerns identified with respect to the DEIS, we must oppose the Applicant’s request for an amendment to the Town’s Zoning Code to permit the construction of a parking garage in the IND-AA zoned area. Although we anticipate addressing our concerns to the Town Board, we take this opportunity to make our position clear. Obviously, the zoning amendment is indispensable for the proposed project to proceed. However, based on the information available to date, the DEIS provides neither sufficient analysis nor sufficient mitigation of adverse environmental impacts upon the Kensico Watershed to justify the threats posed by the project.

#### ***The Town of North Castle Comprehensive Plan***

Any zoning change must be in accordance with a comprehensive plan (Town Law Section 263). The Town of North Castle Comprehensive Plan Update, adopted in 1996, states, in pertinent part, at page IV-41:

Due to the importance of preserving the residential character of the Town and minimizing the impact of airport disturbance on neighboring residential communities, any expansion of the airport facilities and services leading to increased commercial flights and related noise is not recommended.

For reasons already stated, the proposed zoning amendment is inconsistent with the goals and objectives of the Town's Comprehensive Plan, as well as other regional laws and policies, including Resolution 245-2003 of the Westchester County Board of Legislators, N.Y.S. Assembly Resolution N. 1654, N.Y.S. Senate Resolution No. J5435m, which opposes any land use change which would tend to support an increase in the size of the Airport.

### ***Spot Zoning***

Similarly, in an effort to downplay the growth-inducing impacts of the Amendment, the DEIS effectively concedes that the Applicant's goal is to engage in illegal "spot zoning." As the Board knows, spot zoning is "the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area for the benefit of the owner of such property and to the detriment of other owners." Yellow Lantern Kampground v. Town of Cortlandville, 279 A.D.2d 6, 716 N.Y.S.2d 786, 788-89 (3d Dept. 2000), quoting Rodgers v. Village of Tarrytown, 302 N.Y. 115, 96 N.E.2d 731 (1951). The ultimate test is "whether the change is other than part of a well-considered and comprehensive plan calculated to serve the general welfare of the community." Yellow Lantern, 716 N.Y.S.2d at 789 (citation omitted).

The DEIS essentially admits that the Applicant's goal is to single out the Site. The DEIS asserts that the Site would be the only parcel that could benefit from the proposed zoning change. (See DEIS at 22-2.) Moreover, the proposed Zoning Amendment is inconsistent with the Town's Comprehensive Plan. As the DEIS recognizes, "North Castle opposes any expansion of the airport." (DEIS at 3-5.) The Town's Comprehensive Plan unequivocally states that "any expansion" of the Airport is *not* recommended, stating at IV-41:

Due to the importance of preserving the residential character of the Town and minimizing the impact of airport disturbance on neighboring residential communities, any expansion of the airport facilities and services leading to increased flights and related noise is not recommended.

The Lead Agency should consider the propriety of the Applicant's effort to single out its Site for special classification solely for its own benefit, and to the detriment of other owners.

### ***Segmentation***

Since a portion of 7 New King Street (Lot 13 A) owned by JAM Airport, LLC is being used for the project, in addition to a subdivision approval for Lot 13 A [discussed above], the DEIS should address what is contemplated for the balance of Lot 13 A and its subdivision. 6 N.Y.C.R.R. Sections 617.2 (ag) and 617.3 (g)(1).

### ***The Project Site***

There are two parcels which are in the application to achieve the 30% maximum coverage requirement: 11 King Street, Parcel 14 B which is also known on the tax assessment map as Section 3 Block 14, lot 14 B which appears to be owned by 11 New King Street, LLC, which is 2.47 acres; and, a 0.87 acre portion of 7 New King St., which is 2.47 acres; and, a 0.87 acre portion of 7 New King St., which is a 4.20 acre parcel owned by Jam Airport LLC known on the tax assessment map as section 3, Block 4, Lot 13 A.

Since Lot 14 B is within the 300 foot buffer from the Reservoir and another portion is in a Town regulated wetland as well as a Federal watercourse, and steep slope which only permits 25% of the land area in such regulated areas to be used for purposes of FAR it is apparent that 0.86 acre of Lot 13 A owned by Jam Airport LLC was needed to achieve the combined land area of 3.34 to achieve the FAR of 267,000 square feet.

### ***“Open Area Development”***

Section 213.21 of the Town of North Castle Zoning Code requires 200 feet of street frontage on Old King Street. The Project Site has only 24 feet of frontage or 12% of the required frontage or an 88% reduction or variance from the requirement. Footnote “O” to the 200 frontage requirement states “These requirements may be varied or reduced in connection with the approval of the site plan by the Planning Board where the size and/or shape of existing lots may warrant or require it.” In addition to a potential invalid usurpation of powers of the zoning board, this lack of frontage nevertheless constitutes an “open area development” under NY Town Law section 280-a. (For a general discussion of Open Area Developments, see Albert J. Pirro, Jr., “The Open Development Area As A Planning and Zoning Device,” *The Westchester County Bar Journal*, Spring 1988).

NY Town Law section 280-a defines the word “access” to mean that the plot on which such structure is proposed to be erected directly abuts on a street or highway and has sufficient frontage “to allow the ingress and egress of fire trucks, ambulances, police cars and other emergency vehicles, and, a frontage of fifteen feet shall presumptively be sufficient for that purpose.” Town Law section 280-a (5). Consequently, Town Law section 280-a mandates the provision of improved and adequate access as issuance of a building permit. The constitutionality of section 280-a was sustained in *Brons v. Smith* 304 NY 164, 169-170 (1952).

The issuance of a building permit has two prerequisites. First, the street or highway must meet the requirements of section 280-a(1); and second, must be suitably improved or such improvements must be bonded. NY Town Law section 280-a(1). The mandate that the street or highway be suitably improved must comply with standards or specifications of the Town Board. NY Town Law section 280-a(2). An appeal from a denial of the building permit may, pursuant to NY Town Law section 280-a(3) to the Zoning Board of Appeals which Board must use the same standards referred to in NY Town Law section 267-b(3), the “balancing of hardship” standard and criteria therein.

An alternative to the access requirements of Town Law sections 280-a(1) and (2) exist where the Town Board has, by resolution created one or more “open development

areas” pursuant to section 280-a(4). However, not only must the resolution include the subject property as an “open development area” but the resolution must first be referred to the Planning Board by the Town Board for a recommendation. Only after this process is complete is the Planning Board authorized to provide special limitations prescribed by general or special rules of the Planning Board. *Worthington v. Planning Board of the Town of Carmel*, 131 A.D.2d 466, 515 NYS2d 880 (2d Dep’t 1987).

### ***“Flag Lot” Frontage on Old King Street***

The Site Plan indicates that the Project Site is a “Flag Lot” (See DEIS Figure 2-3). While the Zoning Code of the Town of North Castle does not prohibit developments on “flag lots”, it remains that the IND-AA Zone requires 50 feet of frontage along Old King Street where the subject site only has 24 feet which is the only access point to the project designed to accommodate airport passenger vehicles entering and exiting the site as well as the projected 14 bus trips to and from the airport during am and pm peak hours.

Further, the 24 foot access frontage runs 240 feet to the majority of the project site where the 267,000 square foot parking structure with accommodation for 1,450 vehicles will be housed. Importantly, the access drive is over a regulated culvert which appears to be a protected watercourse.

While fifteen (15) feet has under NY Town Law section 280-a is presumptively adequate frontage for an “Open Development Area” there remains a need for approval by either the North Castle Town Board or the Zoning Board which sets forth approval standards for an “Open Development Area” in either instance. This is not discussed in the DEIS.

### ***Inadequate Aesthetic or Visual Analysis***

As indicated above, the visual impact of the 56-foot high structure was limited in the DEIS to ¼ mile. Because the structure will impact homes on Old King Street and in Greenwich, the DEIS provides insufficient analysis of the project’s potential adverse visual impacts. All visual impacts – the change in physical appearance of the project site, the height of the proposed structure, and the proposed screening – are lawful concerns that the DEIS should address.

The existing character of the immediate study area, which is dominated by office buildings and transportation uses (I-684 and Westchester County Airport), does not excuse the absence of a discussion in the DEIS of the visual impacts upon other zoned areas and potential from vantage points such as Greenwich, CT. The landscape plan along property boundaries does not shield the building at a height anything close to 56 feet.

Finally, it should be noted that visual impacts may form the basis of a denial for SEQRA review purposes. See, *Lane Construction Corp. v. Cahill*, 270 A.D.2d 609, 704 N.Y.S.2d 687 (3d Dept. 2000).

### *Adverse Impacts on Greenwich*

The DEC has clearly indicated that municipalities have the responsibility to consider impacts of a proposal, even if they fall outside their jurisdictional boundaries:

Does a municipal board have to consider extraterritorial environmental impacts, for example: impacts occurring in an adjoining municipality?"

Yes. For example, a planning board reviewing a cellular communications tower visible from a neighboring community should consider the aesthetic impact of the tower on the neighboring community. . . . [Another] example would be a community reviewing a shopping plaza that generates traffic on an adjoining community's roadway system. In that case, the host community's review should consider the traffic on the adjoining community.

(SEQR Handbook at 177.) The DEIS, however, trivializes the visual and community character impacts the Project would have on the nearby residential community in Greenwich.

The DEIS irrationally downplays, for example, the Project's visual impacts on the proximate residential community, stating that "[t]here are also some nearby residential uses, but these uses are typically found interspersed among dense vegetation that would screen views of the parking facility." (DEIS at 4-2). It similarly states that the homes on King Street "are generally surrounded by dense vegetation and allow for few if any views of the project site and existing buildings." (DEIS at 4-4.) The DEIS provides no analyses to support these statements.

The DEIS, for example, provides no photo-simulation to show how the Project would appear from King Street in Connecticut. It also does not consider conditions during winter/leaves off condition, when the vegetation that ostensibly provides screening is not there.

The reality is that this nearly sixty foot (60') Project would loom over the residences on King Street in Greenwich year round. Obviously, this impact would be compounded if other projects seek to develop in the IND-AA District in line with the expanded bulk requirements under the proposed zoning amendment.

The DEIS also ignores the community character impacts the Project would have on the adjacent residential community in Greenwich. It incorrectly states, for example, that "[t]he area immediately surrounding the project site is dominated by transportation, business, and commercial land uses," completely ignoring area residents. (DEIS at 3-1.) In contrast, the DEIS is sensitive to North Castle's desire to protect its single family residential neighborhoods, noting that "the Town desires to protect the qualities of a rural community or 'quiet suburb', characterized largely by low- to medium-density single –

family neighborhoods.” (DEIS at 3-5.) It is unclear why the immediately proximate residential neighborhood in Greenwich does not deserve the same consideration.

#### **POINT IV**

#### **MISCELLANEOUS ISSUES**

##### ***Title Report***

We bring to the Board’s attention that, while the DEIS attached a title report with respect to 11 New King Street, also identified as Section 3, Block 4, Lot 14 B, there is no title report for 7 New King Street, also known as Section 3, Block 4, Lot 13 A, which is actually part of the project site. This is a matter that should be addressed by the Applicant, since information about the second property may affect the analysis with regard to Open Area Development. The existence of an easement raises questions about the use of these properties for ingress and egress.

##### ***Information Identified as Missing From The DEIS Must Be Made Available for Public Review***

Although we anticipate that a DEIS will need to be re-submitted to the newly designated lead agency, we bring to the Board’s attention protocol in a situation as exists here, in which a significant amount of information is absent from the DEIS which is necessary for environmental review. Typically, this would call for the the submission of a Supplemental EIS. See, e.g., Environmental Impact Review in New York § 3.09[4], at 3-160 (“If the lead agency learns of important new issues about significant adverse environmental effects regarding the proposed action in the course of receiving public comments [on a DEIS], the lead agency must require the preparation of a supplemental EIS in order to solicit additional public comments on the new issues.”).

Most importantly, the lead agency is required under SEQRA to provide an opportunity for further public review of the supplemental information. The omission of required information from a DEIS cannot be remedied by simply adding the information on at a later stage of the review process. See, Webster Assoc. v. Town of Webster, 59 N.Y.2d 220, 228, 464 N.Y.S.2d 431 (1983).



In conclusion, on behalf of the Sierra Club, I urge you to address first and foremost the need for re-assignment of a lead agency to undertake the SEQRA review process. Now that the Board has received input from various authoritative sources, it appears sensible to suggest that the Applicant revise the DEIS before submitting it to the lead agency. We hope that you find our comments useful, as we know you share our concerns for the protection of the Kensico Watershed and the Kensico Reservoir. Under all of the circumstances discussed above, we simply cannot give our support to the proposed project. We appreciate your attention to our concerns.

Very truly yours,

**RICHARD J. LIPPES & ASSOCIATES**

A handwritten signature in dark ink, appearing to read 'R. Lippes', with a long horizontal flourish extending to the right.

RICHARD J. LIPPES

RJL/mtp



CROTON WATERSHED  
CLEAN WATER COALITION, INC.

9 Old Corner Road, Bedford, NY 10506  
Ph: 914-234-3179 Fax: 914-234-6139 [crotonwshed@aol.com](mailto:crotonwshed@aol.com), [www.newyorkwater.org](http://www.newyorkwater.org)

May 31st, 2011

Adam Kaufman AICP, Director of Planning  
Town of North Castle, Annex Building  
17 Bedford Road  
Armonk, NY 10504



Re: Armonk Airport Garage

Dear Mr. Kaufman,

The Croton Watershed Clean Water Coalition, Inc. (CWCWC) is a not-for-profit coalition of over 50 groups - environmental, religious, housing and community - throughout NYC, Westchester and Putnam Counties. Our primary purpose is the protection of NYC's high quality of its drinking water by protecting the watersheds that are responsible for this unsurpassed water quality. More recently, we have extended our activities to other parts of NYS whose water resources are threatened by high-volume, horizontal hydrofracturing in the Marcellus Shale play.

In our opinion, the proposed 1,450-vehicle garage, with car-wash facilities, in close proximity to Rye Lake, will pose an unacceptable threat to the integrity of NYC's drinking water. For example, there is no indication, no real proof that over the long term, the detention basin/artificial wetland system, created to prevent storm water discharge from entering the reservoir, would be effective.

It is of overriding importance that the Rye Lake/Kensico Reservoir system that acts as a settling reservoir for NYC water prior to its entry into the Hillview Reservoir, the drinking water source for 8 million people, not be the recipient of excessive particulate pollution that requires heavy alum treatment in order to settle it. The alum prevents particulates from accessing the Hillview, but too much alum has its own problems. As recently as February 2011, there was a problem with turbidity in the Kensico Reservoir.

Particulate pollution would negate the huge expenditures that have been lavished on the Hillview Reservoir in order to comply with the Administrative Order (AO) first issued in March 1996. The main requirement for compliance is the installation of a cover over the

Coalition members: ADK Mohican \* Audubon Society: Bedford, Bronx River/Sound Shore, Central Westchester, Hudson River, Saw Mill River groups \* Bedford Barrow Commerce Block Association \* Bedford Garden Club \* Bronx Greens \* Catskill Heritage Alliance \* Church of Holy Apostles \* Citizens for Equal Environmental Protection (CEEP) \* Clean Water for the Bronx \* Coalition for the Preservation of Rolling Greens \* Concerned Citizens for Open Space \* Concerned Residents of Carmel-Mahopac \* Concerned Residents of Kent \* Concerned Residents of Southeast \* Council of Chelsea Block Associations \* Croton Heights Community Association \* Dickerson Mountain Preservation Association \* Diocesan Missionary & Church Extension Society \* Episcopal Diocese of New York \* Federated Conservationists of Westchester County (FCWC) \* Friends of the Great Swamp (FrOGS) \* Friends of Hudson River Sloop Clearwater \* Friends of Hudson River Sloop Clearwater - NYC \* George Nikitovich, *et al* \* Goldens Bridge Community Association \* Grassroots \* Hands Across the Border (HAB) \* Housing Development Fund Cooperative Council (HDFC) \* Hudson River Sloop Clearwater \* Huntersville Association \* INTERLOC \* Jay Heritage Center \* Junior League of Westchester-on-Hudson \* Lake Dutchess Association, Inc. \* Metropolitan Council on Housing \* Putnam County Coalition to Preserve Open Space \* Queens Civic Congress \* Regional Review League - Bedford \* Rusticus Garden Club \* Sierra Club: Atlantic Chapter, Lower Hudson, NYC, Ramapo-Catskill Groups \* Regional Review League - Bedford \* Rusticus Garden Club \* Shorewalkers, Inc. \* Southern Yorktown Homeowners' Association \* Teatown Lake Reservation, Inc. \* Trout Unlimited: Croton Watershed and NYC Chapters \* Westchester Land Trust \* Yorktown Land Trust

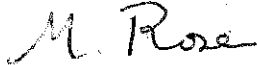
Hillview. The sum total of the various projects needed to comply with the AO exceeds \$1 billion.

It would be the height of folly to negate the hoped-for results of these major expenditures by allowing an industrial enterprise, such as the proposed garage, to be constructed in such close proximity to the Rye Lake/Kensico Reservoir. If one such industrial enterprise is permitted, why not others?

DEP has spent considerable sums to build storm water devices in the Reservoir's watershed in order to diminish pollution. Their effectiveness would be curtailed by the proposed garage.

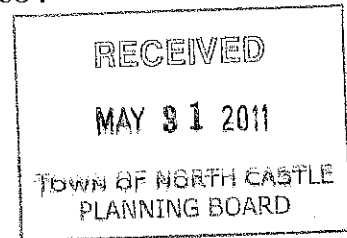
We urge the Armonk Planning Board to oppose this unneeded, destructive proposal.

Sincerely,

A handwritten signature in cursive script, appearing to read "M. Rose".

Marian H. Rose, Ph.D.  
Director

**Dermody Consulting**  
**Geologists and Environmental Scientists**  
32 Chichester Avenue, Center Moriches, NY 11934  
Tel 631.878.3510 Fax 631.878.3560



May 27, 2011

Mr. Adam Kaufman, AICP  
Director of Planning  
Town of North Castle  
17 Bedford Road  
Armonk, New York 10504-1898

Re: **Park Place at Westchester Airport**  
**11 New King Street**  
**North Castle, New York**

Dear Mr. Kaufman:

Dermody Consulting has reviewed the Draft Environmental Impact Statement (DEIS) prepared by AKRF, Inc. dated March 28, 2011 regarding the above-referenced proposed project. Based on our review, it is our opinion that there are likely to be significant environmental impacts associated with this proposed project. In addition, due to the recent addition of a new parking facility/shuttle, the need for the proposed parking garage should now be questioned.

The proposed project consists of the construction of a 1,450 vehicle parking garage and car wash within a 3.34-acre property. The garage will consist of a five-level parking structure with a structural footprint of 51,000 square feet. Stormwater collected from the garage area will be discharged to detention basins and finally to a small wetland that is proposed to be constructed. The car wash wastewater will reportedly be discharged to the municipal sewer system.

Building this structure at this location will require:

- The destruction of 5,700 square feet of Town of North Castle-designated and US Army Corps of Engineers-designated wetlands.
- 80,000 square feet of the 100-foot wetlands buffer area will also be disturbed [although a portion (44 percent) will be re-vegetated].

- The project requires encroachment within the 300-foot protection zone around a New York City Department of Environmental Protection (NYCDEP) Reservoir Stem (a reservoir stem is a stream or other water body that flows into, or is hydraulically connected to, a reservoir) and, therefore, requires a variance from NYSDEP to disturb and construct in this zone.
- The proposed project site potentially threatens the New York State Department of Environmental Conservation Class A streams that are present at the north, south, and west site boundaries. Class A streams are designated as streams used for drinking water supply. These streams discharge directly to the Kensico Reservoir, which is used to supply drinking water to nine million people. The Kensico Reservoir is approximately 600 feet from the proposed project property.

The Town of North Castle and the United States Army Corps of Engineers prohibit the disturbance of designated wetlands and wetlands buffer area. The NYCDEP prohibits disturbance to areas within 300 feet of a reservoir stem or a NYCDEP-designated watercourse. Therefore, the construction of this project will require permits and variances to allow the circumvention of these layers of environmental regulations that have been established for the protection of both the wetlands and the water quality within the reservoir.

In addition, the project proposes to convey stormwater generated on the impervious parking areas to two stormwater basins that will be constructed. These basins will include a detention basin for the settling of suspended sediment and a sand filter basin. The stormwater will then be directed to a wetland that is to be constructed. It is a well established fact that parking lot stormwater runoff contains numerous petroleum constituents and hazardous substances associated with antifreeze. Over time, these contaminants accumulate in the area where they are discharged. The two detention basins and wetlands are proposed to be constructed in an area where the depth to groundwater appears to be less than three feet. Therefore, the contamination that will be directed to the detention basins and wetland has a high potential to percolate downward through the soil and impact the groundwater. Groundwater in this area will flow and discharge to the adjacent streams and Kensico Reservoir. This issue was not addressed in the DEIS.

It is also important to note that the need for this proposed project is not adequately established in the DEIS. It is clear that a parking shortage exists, however, the need for the construction of a garage that will accommodate 1,450 vehicles has not been established. Based on the DEIS, the current parking garage at the airport has a capacity of 1,100 vehicles and an overflow parking area with a capacity of 400 vehicles. Therefore, the total parking capacity at present is 1,500 vehicles. The DEIS states that there is a need for 3,000 total spaces at the airport. However, there is essentially no scientific analysis and vague documentation to confirm this assertion. In addition, the traffic study performed for the airport during peak travel periods (the Thanksgiving holiday period) in 2008 and 2009 found that "the garage was at capacity and the overflow

parking lot was at or near capacity during certain times of the day.” This indicates that even during peak travel periods, there were only sporadic periods when the parking areas are at capacity and the traffic study did not estimate the capacity shortfall. Other evaluations (reported by the Sierra Club in a letter to Ms. Peg Michaelman of the North Castle Planning Board dated September 14, 2009, and from the current owner of the existing parking garage) suggest that the parking shortfall is 400 to 500 vehicle spaces.

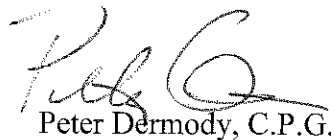
As of April 1, 2011, a new, additional parking facility/airport shuttle known as Purchase Park 2 Fly formally commenced operation. Based on information obtained from Mr. Shomari Williams, Operations Coordinator for Purchase Park 2 Fly, they currently provide parking for 350 vehicles and have significant capacity for expansion, if necessary. This information was not included in the DEIS.

Based on this information, the need for an additional parking garage to accommodate 1,450 vehicles has not been established. If the construction of the garage initially results in an excess that may be regularly well over 1,000 vehicle parking spaces, there is clearly a significant growth-inducing impact. Continued growth would have a further and cumulative impact that would result in further degradation of the water quality of the Kensico Reservoir. This issue has not been addressed in the DEIS.

In summary, it can be concluded that the parking shortage will be reduced (and the parking shortage may even be eliminated) by the addition of a minimum of 350 vehicle spaces at the Purchase Park 2 Fly facility. This may remove the need to destroy wetlands, wetland buffer areas, encroach into reservoir stem zones, and potentially impact Class A streams to construct what may be a superfluous and growth-inducing parking garage.

Thank you for your consideration of these issues.

Very truly yours,



Peter Dermody, C.P.G.

Principal Hydrogeologist



## TOWN OF **GREENWICH**

Office of First Selectman (203) 622-7710 Fax (203) 622-3793

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Peter J. Tesei  
*First Selectman*

May 23, 2011

Adam R. Kaufman, AICP  
Director of Planning  
Town of North Castle  
17 Bedford Road  
Armonk, NY 10504  
[akaufman@northcastleny.com](mailto:akaufman@northcastleny.com)

SENT VIA EMAIL

Dear Mr. Kaufman

The Town of Greenwich wishes to have this letter incorporated into the public hearing on the DEIS of the New King Street Parking Garage.

Having attended the public meeting on Monday May 9 I understand that all written comments must be submitted by the end of the day, Wednesday June 1, 2011.

The comments and questions from the Town of Greenwich are based on the Town's concerns of additional traffic on King Street in Greenwich, Gateway Lane and Rye Lake Road in Greenwich from people seeking access to the new 1450 parking space garage on New King Street. Our residents, particularly those within the Northwest Greenwich Association area, are concerned that there will be an increase in peak hour traffic on our roads due to this new parking garage at the same time as existing peak hour traffic exists for Brunswick School and Convent of the Sacred Heart school traffic, in addition to the public school bus traffic on King Street.

The need for this new parking garage is not well documented and there are several issues and questions that have been raised by our Traffic Engineering Consultant that Greenwich would like to see addressed. These concerns are noted in two reports found attached to this communication dated May 10, 2011 and May 13, 2011.

Best Regards,

Peter J. Tesei  
First Selectman

CC: Diane Fox, Greenwich Town Planner  
Erica Purnell

PJT:dca

# Memorandum



Date: May 13, 2011

To: Diane Fox

From: James W. Ford, PE

BETA Project #: 3908

Subject: Supplemental Report Parking Garage

---

In response to your phone call of May 12, 2011 We have reviewed the two issues you noted and offer the following supplemental information.

1. Airport Parking Requirements and use of surplus parking.

In our initial memorandum the probable parking needs for the airport use were presented based on available reference material. That analysis indicates that the proposed action in the DEIS would, based on published norms for parking at similar sized airports, result in a significant number of excess spaces. While no specific data on parking occupancy and frequency of capacity constraints was presented it was noted that the Garage at the Airport filled frequently and the overflow parking lot was near capacity in such instances. It appears that parking is constrained but the degree to which this condition presents itself is not clear. Most airports have similar issues in holiday periods. That said, it appears that Westchester County Airport with its total of 1100 garage spaces and 400 surface overflow spaces is provided with close to the number of parking spaces that would be expected at similar facilities.

The proposed action will add 1450 spaces to this number which will probably not all be utilized for Airport Parking a majority of the time. There could easily be 1000 vacant spaces in this garage most of the time if it were to rely on airport parking solely. In our earlier memo I indicated this excess could support additional development in the area. Looking at the surrounding land use this would likely be support uses for the airport. Office, light manufacturing or shipping uses come to mind. More detailed information on the available abutting land would be needed to estimate this potential, but 1000 spaces could support something on the order of 340,000 square feet of adjacent office development.

We would caution that this assessment of excess parking is based on available reference information. However no analysis in the DEIS Traffic Section was presented to establish Parking Demand.

2. Potential for increased traffic on King Street and Gateway Lane in Greenwich.

The Traffic Section of the DEIS comes to the conclusion that the net traffic impact of this action would be a reduction in trips. Insufficient information was presented in the DEIS to enable us to confirm this analysis.

Examining the potential airport bound trips which would be occurring to the new garage location we note that it has its' only access on New King Street. This is a one-way road connecting with NYS Route 120.

According to the regional distribution of traffic in the DEIS some 45% of trips to the airport are assigned to King Street and Rye Lake Road in Greenwich. These trips turn left to Rye Lake from northbound King Street and travel around the roundabout at Airport Road to enter the parking at the terminal. Should a significant redistribution of trips be made to the new garage location the restricted travel patterns on New King Street (One Way) and congestion at Airport Road and I-684 ramps makes the use of Gateway Lane and King Street much more attractive.



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In examining the SYNCHRO files which were provided by the Town we found that significant queuing occurred on I-684 exit Ramp and the adjacent intersection. The LOS results presented in the DEIS may be not achievable due to queuing. Congestion in this area, should traffic be destined from the new facility, would most likely divert to access King Street from Gateway Lane.

This would not be an issue for the entering trips to the new garage but rather occur for the return trip. Even in off peak conditions it is likely that this effect will occur just from a travel time reduction basis.

We trust this information further clarifies our report and would be pleased to provide additional comment on any remaining questions you may have.

# Memorandum



Date: May 10, 2011

To: Diane Fox

From: James W. Topp *James W Topp* BETA Project #: 3908

Subject: Parking Garage Proposal Westchester

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We have completed our review of the data and reports prepared by AKRF relative to the Westchester County Airport and the proposed 1450 space parking garage development.

In undertaking this study we have reviewed the DEIS and supplemental data provided to the Town of Greenwich under an FOI request. We obtained and reviewed the Frederick Clark memo dated 2/23/2011 and responses of AKRF.

These reviews have led to some additional areas of inquiry which we believe would be beneficial in understanding the Traffic impacts of this proposal.

This memo presents a series of questions. Many may be already answered but we were not able to document the information in the material which we were provided.

We are focusing our questions to the relative sections of the Traffic Chapter (13) of the DEIS.

Page 13-1

Introduction.

The statement is made that the Garage and overflow lots are "at or near capacity" during Holiday periods. What is the customary occupancy profile for the Airport Garage and overflow parking? This data should be available for the facility. ✓

Background Growth.

The growth rate of 2.5% seems very conservative. Have historical counts showed this growth? Was that data reviewed in developing the study?

Page 13-2

Project Trip Generation.

The DEIS states that three airport parking facilities (Columbus, OH, Denver, CO, and Pittsburgh, PA) were used to validate the Park Place estimates. No relevant statistics about the airports or the location and usage of the facilities were provided other than computer entrance and exit data. We would suggest that to confirm relevance of the data the statistics on the three airports be presented in comparison to Westchester County to confirm. Such data as total parking, enplanements on daily and holiday periods would be suitable for this comparison. Similarly the location size and relationship to primary parking for each airport would be needed. If the sites are capacity constrained data on the frequency should be documented ]

What was the number of trips for Shuttle or pick up and drop off activity at the Westchester Terminal? This data is essential to confirm calculations on the transfer of trips. Also, comparison of the total number of these trips in ✓

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relation to the adequately parked comparables stated would confirm that a higher number of pick up and drop off trips is occurring. This would support the hypothesis that these trips would shift and in fact result in reduced area travel. We have not found such documentation in the material provided.

Detailed calculations should be submitted substantiating the trip reductions and shifts taken. We could not find this information in the material we received. Breakdown should be by private passenger, Limo, Shuttle and Bus. We are presuming that differentiation can be made between arrivals and enplaning passengers. This should be relatively easy for shuttles and transit.

Data on the logic and supporting calculations for assignment to the Park Place garage should be provided.

How was the number of shuttle bus trips to the new facility determined?

While we can understand the logic proposed in reducing trips for the new facility it should be better documented. Little substantiation is provided in the material provided for review.

Page 13-3

## Project Vehicle Distribution

The methodology of using existing travel patterns is acceptable.

## Traffic Conditions

Substantiation of these statements will be achieved when information noted on Parking Occupancy, arrival and discharge profiles and other data noted is clarified.

## Conclusion

The provision of some 1450 additional parking spaces will support airport operations. Depending on cost factors and convenience these spaces could replace some shuttle trips. More analysis detail is needed to confirm this conclusion.

## B. Existing Conditions

We concur that the intersections selected represent the appropriate analysis locations.

Page 13-5

## Intersection Capacity analysis Methodology

Synchro is an appropriate tool to analyze capacity and LOS as well as delays, queuing and other operations concerns.

Page 13-7 Traffic Conditions

Comparison of ATR data and Manual Turning counts revealed some discrepancies on Rye Lake Road. Data in this area used in Synchro Models should be confirmed.

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Figure 2008 Existing Traffic volumes

Verify Rye Lake and King Street, Rye Lake and Airport Road. Figure and volumes for Roundabout appear incorrect.

In examining the Synchro network for this project it appears that the operations at Rye Lake and King Street intersection may be assuming a free right turn on Rye Lake Ave. approaching King street. We do not believe this is the case and analysis should be confirmed with the Town Signal Plan.

Page 13-10 Parking Conditions.

Documentation on actual parking occupancy on time of day basis should be provided to substantiate analysis conclusions. Statements are subjective. Perhaps the County or airport has a study on this subject which could support the stated results.

2012 No Build Traffic Volumes.

Projections appear correctly made. Resolution of count data with ATR may affect this analysis.

Page 13-14 Accident analysis appears adequate and does not reveal any concerns in New York.

Applicant should request similar data for intersection in Connecticut for consistency.

## D. Probable Impacts of the Proposed Project.

More detail is necessary to substantiate the basis that is put forward in this DEIS. While, in fact, the conclusions indicate a net decrease in volume projected to the airport as a result of this parking facility, this goal will be dependant on many factors. Information on the Westchester County Airport Web Page indicates that some 1.9 million passengers are served annually on 32,000 commercial flights. In addition there are some 70, 000 corporate flights annually. We will not repeat the issues noted earlier but rather indicate that determining the probable traffic impact of the proposed Park Place Garage may justify additional actions.

We consulted a report by the Eno Foundation entitled *Parking*. This report, developed by Robert Weant and Herbert Levinson of Connecticut in 1990, has long been considered a definitive source on parking. Concerning airports, the report indicates the ranges for required parking at public airports. Data is given for parking demand and mix of travel for several airports. Figure 6.9 of that report indicates the range of Public Parking Spaces required to service a range of originating passengers. The data noted on the Web for Westchester County Airport would indicate that parking would be needed to accommodate some 1.0 million originating passengers. Based on this number the expected spaces which would be necessary for the airport would be on the order of 1500. Obviously the business flight traffic would have impact on this number but at face value the airport provides approximately the number of spaces in the garage and overflow lot that would be expected. Parking demand at airports can vary widely and be especially restricted during holiday periods. While the ENO report is somewhat dated it does indicate that adding the Park Place Garage to the total would bring the airport at a level of parking approximately justifying some 2.0 million originating passengers. Data was also provided in the Eno report on the parking generation rates for enplaning passengers on a weekday and weekend. The Eno figures noted that on average Parking Generation was at the level of .44 spaces per enplaning passenger on a weekday and .89 spaces per enplaning passenger on weekends. Another Parking Generation factor which was presented was the based on the number of Daily Airplane Movements. This figure indicated some 8.56 spaces per Daily Airplane Movement on a weekday and up to 14.83 spaces on the weekend. Assuming that there would be at least 150 commercial airplane

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movements a day (in or out) the parking demand of about 1300 vehicles would be indicated. This is consistent with the range noted in the initial analysis based on enplaning passengers.

The above paragraph seems to indicate that 1450 additional spaces will move the available parking at the airport beyond what is traditionally provided. That would indicate the new garage may have some additional capacity that will not be taken up by airport demand. This analysis is based on studies and generation factors that may not be totally similar to Westchester Airport. They do suggest that the New Garage facility may be able to support additional development in its vicinity should that occur.

We recommend more definitive evaluation of the passenger demand and commercial operations at the main Terminal. Documentation of existing shuttle operations, Taxi and Limo services should be included to ascertain the potential for diversion of these passengers to park in the new facility.

The concepts presented in the DEIS could well be valid but need additional documentation to support the conclusions presented.

Please contact our office if you have further questions.

STATE OF NEW YORK  
TOWN OF NORTH CASTLE

X-----X

Public Hearing Before The Planning Board  
of North Castle, New York, in Connection  
with an Application in Relation to Park  
Place at Westchester Airport.

X-----X

May 2, 2011  
7:00 p.m.

H.C. Crittenden  
Middle School  
10 MacDonald Avenue  
Armonk, New York

BOARD MEMBERS:

John Delano, Chairman  
Steve Sauro  
Jane Black  
Beata Tatka  
Guy Mezzancello

STAFF MEMBERS:

Adam Kaufman  
Town Planner

Roland Baroni, Esq.  
Town Counsel

Valerie Desimone  
Planning Board Secretary

REPORTED BY: Lori Ann Sacco  
Official Court Reporter

CHAIRMAN DELANO: Good evening. Welcome to the May 2nd meeting of the Planning Board of the Town of North Castle. We're holding a public hearing this evening. I'll read the public notice. Bear with me.

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 [State Environmental Quality Review Act] of the Environmental Conservation Law.

A Draft Environmental Impact Statement has been completed and accepted by the Town of North Castle Planning Board, acting as lead agency for the proposed action described below. Comments on the DEIS are requested and will be accepted by the contact person identified below. It will be Mr. Kaufman, I believe. It will be accepted until 15 days after the close of the SEQRA hearing or such later date as may be announced this evening by the Planning Board. A public hearing on the DEIS is scheduled to begin this evening at 7:00 o'clock or soon thereafter at this building, at H.C. Crittenden Middle School, 10 MacDonald Avenue, Armonk, New York.

The name of the action is Park Place at Westchester Airport.

Planning Board has determined this to be a Type I Action under SEQRA.

Description of the action is identified as 11 New King Street, LLC proposes to construct a multilevel automated parking structure at 11 New King Street in the Town of North Castle, Westchester County to alleviate an existing parking shortage at Westchester County Airport.

The proposed parking facility would be called Park Place at Westchester Airport. In conjunction with the site plan application, the applicant has submitted a zoning petition to amend the Town of North

Castle zoning code to allow parking structures in the Industrial AA zoning district with a special permit.

The project site comprises two tax map parcels that are located in the southern portion of the Town of North Castle adjacent to Westchester County Airport near the Connecticut state line. The proposed project would involve construction of an approximately 267,000 square foot five level enclosed automated parking structure with a building footprint of approximately 51,000 square feet. The parking facility would provide space to accommodate 1,450 vehicles.

UNIDENTIFIED SPEAKER: Make it bigger.

CHAIRMAN DELANO: Please. A few comments on the conduct of our hearing tonight. Comments received at tonight's SEQRA hearing will become part of the official record. All comments made tonight will be responded to by the lead agency in the final EIS, and thus may affect agency findings and decisions on the project. Since we have a stenographic record, we have a stenographer here with us this evening, it will also become part of the, your comments will also become part of the official record on the EIS and the transcript as well will become part of the record.

If you wish to speak and you haven't signed up with Valerie here, the lady in red, in the front row, please come up and sign up with Valerie.

Just some general ground rules before we get started. We ask that everyone treat each other with mutual respect, courtesy and be patient as the hearing moves forward. Please help maintain an atmosphere where everyone feels comfortable and welcome, regardless of his or her position on the project. Do not interrupt others while they are speaking.



Please remain quiet so the stenographer can hear. Please leave the room for any sidebar discussions. Please refrain from addressing the audience or asking for audience participation. And as well turn off your cell phones. Set them to vibrate.

Another matter of housekeeping, I guess, the emergency exits are at the rear and over here (indicating). With that, I don't know that we can get a recap. Maybe Mr. Null can give us a recap as to how we got here and why they're here.

MR. NULL: Good evening, Mr. Chairman, members of the Planning Board. Thank you very much for opening the hearing tonight. My name is William Null. I'm a member of the firm of Cuddy and Feder. I'm here tonight on behalf of 11 New King Street, LLC. With me is Nanette Bourne with AKRF, who prepared the Draft Environmental Impact Statement. That Draft Environmental Impact Statement was submitted and reviewed by this Board and accepted as complete. It's been posted on the website. It's been available for public review.

We did, as you noted, send out, publish the requisite notice for this hearing. And the opportunity now is for the public to be able to comment on that DEIS and submit comments for a period of time after the close of the public hearing, whenever that may be, subject to this Board's determination.

We did submit initially a petition to the Board of Trustees requesting amendment to the industrial district, in which this property is situated, to create a special permit to allow for commercial parking garages to be constructed. The size and scale of the parking garage as you described is about 55,000 square feet, five levels, and it is proposed to contain about 1,450 vehicles.

There is an existing parking

shortage at Westchester County Airport. The proximity of this site to the airport is intended to address that existing need. There have been studies completed that are part of the DEIS that indicate both the rationale behind this and the projected impacts, traffic wise as well as any effect on the site itself, tree removal, adjacency to wetlands effects on storm water management issues, et cetera. There is a considerable amount of detail in that DEIS. As I said, it's available for public review. Many of you may have reviewed it.

There are two sites involved in this application at 11 New King Street. Lot 14B is 2.47 acres. These slides indicate what the SEQRA process is about. What the next steps are. Just so I can go through it somewhat. As I said, we published the Draft Environmental Impact Statement. Written comments are received until at least 15 days following the close of the public hearing subject to this Board's determination of that timing.

The Town Board, by the way, when it received the petition, did refer it to the Planning Board for recommendation. Town Board has not acted upon it. The Town Board cannot act upon it until this Board reaches environmental determination under SEQRA, and thereafter the Town Board can act one way or another as it chooses. And the application itself for the -- for the parking facility will be subject to site plan review. And presumptively, if the Town Board adopts the zoning amendment, to a special permit as well. Those standards are set forth in the DEIS. We've attached the petition. We've attached site plans that indicate the design and nature of the improvements and as well as descriptions of the potential impacts.

This slide just shows generally SEQRA status. Once the comments made tonight in the format here -- Roland, correct me, Mr. Chairman, the purpose of this hearing is to get public comment. We

will not respond to those comments or questions tonight with answers. The format for that is for a Final Environmental Impact Statement to be prepared, which again will be a document to be reviewed by the Planning Board, its consultants and then determined whether or not it's complete. If something more needs to be done to address to its satisfaction, the Final Environmental Impact Statement responds to questions that have been raised here. That will then be published and circulated before the Planning Board can take any action under SEQRA.

And as I said, once the Planning Board goes through the SEQRA process, it would then be able to act on the substantive application of the site plan, and the Town Board will be able to act on the zoning but not before.

The purpose here is to record comments, which is why we have a stenographer. To have people -- To give people the opportunity to speak. But the fact that you've spoken doesn't stop you from being able to submit something in writing afterwards or for those people who are not able to attend, to submit written comments.

As I said, the purpose of this building is to provide parking in a situation where, among other things, Westchester County is, on its own website for the airport, is noting the insufficiency of the parking and just trying to discourage people from parking there. As a result of that, many people take car services or have people drive them to the airport. Take taxis, limousines, et cetera. So when that happens, the vehicle comes, drops them off and leaves and then comes back to pick them up and leaves. That's four trips. If those same people drove themselves and were able to park conveniently, it would be reduced to two trips. So, there is a detailed traffic study in the Environmental Impact

Statement.

The way this site would operate is for people being able to drop their cars at the site. Have a van bring them to the airport terminal. Drop them off. When people arrive, there would be -- we would know when they were arriving. We would be able to have a van go and pick them up. People would call us when they arrive at the airport. They would be met and brought back to the facility.

The contemplated operation of the garage is through an automated system. It would mean that the cars are not being self parked. They are not being driven in, circulating around, looking for available spaces. Instead what happens is they are being dropped off. Cars are then shut off. They are being shuttled to spaces internal to the parking facility. And it can hold 1,450 vehicles.

In that way the cars are secure. They're off. We don't have the fumes, exhaust that would typically be experienced by vehicles driving around and looking for parking spaces. And the analysis of the impacts, as I said, are in the Draft Environmental Impact Statement.

On this site currently is a 9,700 square foot office building. As I said, this is in an industrial district. The use of a commercial parking garage we believe is consistent with the Comprehensive Plan for the Town of North Castle. Of course it's not my role to reach that determination. It's for the Town to do so. But in our review, in an industrial district, is a consistent issue here.

We would be applying for a wetland permit for effecting the buffer area and some wetland area. There is a range. We've delineated a smaller amount than the Town's consultants. That's going to be verified and validated once the

vegetation presents itself sufficiently in the next few weeks, and that report will come back to the Planning Board.

New York City DEP is also involved because they are the lead agency in the watercourse. There are significant storm water management improvements being proposed on the adjacent 1.20 acre parcel. That's Lot 13A, which is immediately to the north of this site. And it will -- it will address both storm water management, quality and quantity, not just for this site, but for one of the buildings and parking areas that's not currently remediate.

As I said, 51,000 square foot footprint. 267,000 square foot floor area overall. Fifty-six to 60 feet tall. Talked about the shuttle bus. We intend to have a clean fuel vehicle that shuttles passengers back and forth as needed.

Based on the analysis in the Draft Environmental Impact Statement, we believe there will be reduced traffic and exhaust emissions. There will be some wetland impact and wetland enhancement. There is already a disturbed area of the site, the 9,700 foot square office building as well as the adjacent parking area. And there is fill on the site. It also extends beyond that parking area that is part of the disturbance in the site. Mitigation measures are detailed in the DEIS. There are some potential visual impacts. Simulated renderings in the DEIS as well for people to review and evaluate.

I apologize we don't have the larger screen and have the smaller screen, but there are -- these visuals that I'm showing you right now, the renderings, this shows from the north looking towards the site. The airport would be behind, effectively behind, the south of this site. And there is a landscape buffer, existing trees between the site and Route 120 as well as between the site and King Street.

These are simulated images of summer and winter visibility. If you were, you know, at a height, you could actually see these. The hard part about doing the visuals is you're not necessarily ever in a position where you would see these renderings exactly as it is. What we wanted to do was give a worst case scenario. Again, summer and winter. This is from King Street.

This slide just goes through the various issues that are addressed in the DEIS. Land use, zoning and public policy, visual resources, cultural resources, natural resources, geology, soils, topography and slopes, water resources, community facilities and services, infrastructure and utilities, economic conditions, traffic and transportation, air quality and greenhouse gas emissions, noise, hazardous materials, alternatives. There are several alternatives. Basically different size parking facilities on the site. And then a section addresses unavoidable adverse impacts as well as irreversible and irretrievable commitment of resources, impacts on use and conservation of energy and growth-inducing aspects.

There will be enhanced tax revenues to the Town should this be built as compared to the 9,700 square foot office building that's there. That's detailed in the report as well. Unlike many buildings, this does not generate school children. This does not generate significant traffic on its own. It's taking traffic that is going to the airport, and that's detailed in the analysis.

There would be written comments, if the hearing were to be closed tonight, would be due by May 17th, and the information would be sent to Adam Kaufman. Mr. Kaufman is the Director of Planning for the Town of North Castle, Town Hall, 17 Bedford Road, Armonk, New York, 10504.

We are not going to go through a more detailed presentation, since the real purpose of tonight's meeting is to provide the public with an opportunity to speak and to comment. I turn it back to you, Mr. Chairman, unless you have questions of me. And I thank you for the opportunity to be able to have this time. Thank you.

CHAIRMAN DELANO: Thank you, Mr. Null. Anyone on the Board have any questions for Mr. Null?

(No response.)

CHAIRMAN DELANO: No questions. We'll open it up for public comment. I apologize in advance for all of the mispronunciations I will make this evening. Some of you may have mispronounced my name as Delano. It's actually Delano.

First on the list is Peter Tesei, First Selectman, Town Hall, Town of Greenwich. Good evening. How are you doing?

MR. TESEI: Good, thanks.

CHAIRMAN DELANO: If that works, let's try it.

MR. TESEI: Good evening.

CHAIRMAN DELANO: Good evening.

MR. TESEI: Thank you for the opportunity to attend. My name is Peter Tesei. I am the First Selectmen for the Town of Greenwich. It has been a pleasure to work with many of you and your representatives over the course of the past several years and addressing concerns of mutual interests to our communities.

I'm here tonight primarily to first learn more about the proposed

development. I've only been aware of it for the past week. So, I want to gain more knowledge about it. But in understanding the initial elements of the proposal, on behalf of our residents, I am concerned about the potential exposure it provides to future opportunities for use by those who utilize the airport. And we know that the airport presently operates on a voluntary agreement on the cap of the number of passengers. And my concern is that this potentially could increase the potential for expansion of that going forward. Of course it is voluntary, as I said. And this agreement is contingent upon multi party cooperation.

In terms of our residents, I would just say if there are those from Greenwich here, would you please stand so the folks who are in the room can see.

As you can see, we have several residents who live within close proximity who are concerned about the impact not only this proposal will have but what opportunities it would provide for greater expansion of the use of the airport and all of the ancillary impacts that that use would have on not only the Town but on the overall region.

So, I understand you have a job to do. Certainly I respect it. It's always been about balance and serving in these positions, and I know that you will favorably balance all of these competing interests in the interest of the greater good. Thank you.

CHAIRMAN DELANO: Thank you. Next from Hollywood, Kate Hudson, or is she from the Riverkeeper? Good evening.

MS. HUDSON: Good evening, Mr. Chairman and members of the Planning Board. My name is Kathy Hudson, and I am the Watershed Program Director for Riverkeeper. We are a member supported watchdog organization dedicated to



defending the Hudson River and its tributaries and protecting the unfiltered drinking water supply of 9,000,000 New York City residents and Hudson Valley residents.

The scale and proximity of the proposed Park Place project adjacent to Rye Lake, which is an arm of the Kensico Reservoir, raises several significant issues for Riverkeeper, including impacts to wetland and wetland buffer areas and to water quality as a result of storm water runoff. The Kensico is the terminal reservoir for the Catskill Watershed, which typically provides 40 percent of the unfiltered drinking water supply to 9,000,000 New York City and upstate consumers. According to the Park Place DEIS, the project would be sited only 600 feet from Rye Lake and proposes disturbance of on-site town regulated wetlands and buffers, and the buffer of a New York City DEP regulated watercourse.

First, of particular concern to Riverkeeper is the applicant's plan to use proposed storm water management areas to serve as mitigation for the disturbance and for the permanent adverse impacts to on-site wetlands and buffers. While the applicant has expressed willingness to work with the lead agency to identify and develop an offsite wetland mitigation plan, neither that plan nor the final on site wetland mitigation plan are presented in the DEIS for public review and comment pursuant to the requirements of SEQRA. Moreover, the delineation of the wetland boundaries is still under discussion between the applicant and the Town, with the potential for increasing the impacts to wetland and wetland buffer areas beyond those currently identified in the DEIS. These uncertainties render informed review of the proposed project and current DEIS extremely difficult, if not impossible.

Secondly, although a portion of the project site has already been disturbed by pre-existing development, the

removal of forests and the addition of 33,500 square feet of impervious surfaces in buffer areas is new development that will increase storm water volume and velocity flowing off site. The DEIS first claims that storm water control measures and water quality treatment features of the project would have a beneficial impact on the quality of water that drains into the Kensico Reservoir, and then, on the very same page, the DEIS states that the predevelopment flow conditions, which are described as uncontrolled and untreated, existing runoff, will be the same post development. It would appear from this language that negative existing runoff conditions, with the potential to adversely impacts Kensico Reservoir water quality, will continue after construction of this project.

These are just some of our major concerns with the Park Place DEIS. We will be submitting detailed written comments by the close of the comment period, which we would ask be extended by this board to permit consideration of and comments on the additional, hopefully forthcoming information regarding wetland delineation and mitigation. We feel that the public should have an opportunity to comment on both of those issues. And obviously those are not included in the current DEIS. Our comments will discuss these and other water quality issues which have the potential to impact the New York City reservoir system's capacity to continue to provide unfiltered drinking water to half the population of New York State. Thank you for the opportunity to appear here this evening and provide comments on the proposed project.

CHAIRMAN DELANO: Thank you, Ms. Hudson. Next up is Michael Zarin, Zarin and Steinmetz.

MR. ZARIN: Good evening. My name is Michael Zarin with the law firm of Zarin and Steinmetz, and I represent

Westchester Airport Associates, L.P.

I guess I would like to just give brief introduction with respect to, I've done enough of this, that I appreciate the complexities of this project and the position you're all in, sitting where you are, trying to understand and come to grips with -- with the impacts and a project that has been presented in detail, and quite competently, including a very competent consultant team on behalf of the applicant. And I don't want to seem overly critical or preachy, but Westchester Airport Associates does believe that expanding the airport beyond the boundaries at this location presents too many unmitigable adverse impacts that should give great pause to the Town before it approves this project.

I would like to beg your indulgence with respect to the length of my presentation. We did a very lengthy review of the DEIS. Again it was done by consultants, who we have high respect for, and we spent a great deal of time and would like to touch on very briefly a plethora of issues in relation to that.

I also have with me this evening Greg Fleischer from Carpenter Environmental Associates, who will elaborate on the wetland impact, and Bernie Adler from Adler Associates, who will elaborate on potential traffic impacts.

I guess as an initial issue and one that is somewhat interesting is I guess there is a question whether the Planning Board has improperly assumed lead agency with respect to this project. It appears that the proposed zoning amendment would create a new special use category for parking garages in this district and, in fact, require the Town Board to rule on this special permit.

Under the Town Code, Section 213-34, it would appear that a special permit review supersedes the need for site

plan review. So, again I would defer to -- to -- you know, your experts in unraveling, Mr. Baroni and Mr. Kaufman unraveling this issue, but I'm not sure the Planning Board would necessarily continue to have site plan review under the proposed zoning amendment, and as such also not have -- not have jurisdiction under the fresh water wetland under Section 205-5(c).

So, the question I guess would become whether the Planning Board has any jurisdiction over this application under the proposed zoning regulation. Therefore, it may be improper and in violation of a case that I'm sure counsel is well aware, Coca-Cola Bottling v. New York, that the Town Board is improperly delegating its lead agency authority to the Planning Board in this case.

With respect to the many wetland issues, again there is -- we have experts who can elaborate on those as well as I assume DEP and Corps of Engineers and others will make their concerns known and have an opportunity to be on the site and delineate and provide their input. But as this Board I think realized in its issuance of the positive declaration, the proposed construction is to put a hole within the Kensico River Watershed, and is one of the primary potential adverse impacts in this project.

I guess initially when we were going through some of the relevant material, we came upon reference in the Town's records to the King Street corridor management plan. References which sets forth sound environmental practices for the corporations and the Town to manage their facilities in ways that prevent contamination of the Kensico Reservoir. And I guess this plan was completed in the fall of 2000 with quote "full support of the five corporations in the Town in this area". And the various corporations all pledged to minimize water quality threats by voluntarily implementing the pollution prevention mediation practices contained in

the plan and periodically re-evaluating and updating the plan. Unless we missed it, I guess we didn't see any reference in the DEIS in this plan, which would seem to be a major relevant document in this particular area.

We're also very aware of your own fresh water wetlands and drainage law, which is a particularly strong amendment in relation to other municipalities. In fact, mandates that the approval authority shall deny a wetland permit if the proposed activity may threaten public health and safety, can cause nuance, nuisances, impair public rights, enjoyment of public waters or violate other federal, state or local laws and regulations or it finds that the detriment to the public good by the fact it's listed in this section would occur and the issuance of the permit outweigh the nonmonetary public benefits associated with the activity.

Again, we would submit that under the conditions of this site and the encroachment in very sensitive wetlands, that the reviewing board, whether it's the Town Board in this case or the Planning Board, maintains its jurisdiction, would not be able to find that. If so, it's not even discretionary but mandatory that the permit be denied. I think when -- as Carpenter Environmental Associates will elaborate, the proposal almost eliminates the entire storm water catchment area. It's three times more impervious surfaces in the buffer areas than currently under the existing and would eliminate significant percentages of the on-site wetland buffers.

There is also a premise in the DEIS that really has a fundamental impact on an assumption on the impact of this project. There is, we would submit, two watercourses on this site. There is the wetland, I believe it's wetland B, and then there is another area that's called the ephemeral drainage channel, which I guess

submitted, it falls outside of DEP's jurisdiction. We would submit, and I guess when DEP has a chance to make its own determination, that this would be classified as an intermittent stream under DEP's regulations. If so, then the almost half of the entire facility is within the hundred foot buffer of that DEP wetland. And we would respectfully submit that the DEP could not issue a variance based on their criteria. We also believe that it would not meet any of the exceptions under DEP regulations for an existing commercial facility in light of that, the existing facility as being abandoned or the impervious threshold conditions, which is also another exception.

We believe the DEIS also inaccurately states that the project obtained a nationwide permit from the U.S. Army Corps of Engineers. Again, the Army Corps still needs to, I suspect, to get out to the site and go through its own delineation, perform its own delineation. The DEIS posits that it would be eligible for Nationwide Permit 39, which stands for commercial and institutional developments involving less than half an acre of disturbance. However, general condition 19 of this nationwide permit disallows specifically certain nationwide permits, including Nationwide Permit 39, in what's titled "Designated Critical Resource Waters". The east of Hudson watershed, excuse me, including the Kensico Reservoir watershed, has been designated as a critical resource watershed, and therefore would require an individualized Army Corps permit. And again we would respectfully submit that it could not meet the conditions, the very onerous conditions of a public interest review under the Army Corps of Engineer regs as well as not meet the DEC's individualized water quality certification determination, which is triggered by the Army Corps individual permit.

We also -- Switching a little

bit with respect to SEQRA and the zoning. We would again respectfully submit that there really is somewhat lacking analysis of the cumulative impacts of the proposed zoning and the impact that -- the growth inducing impacts that could be caused in other parcels within the IND-AA zone. Concededly while there is existing development and existing disturbance on various of those lots, they could easily, just like in this proposal, either be assembled or abandoned, and there could be, I don't want to use the word proliferation, because it's a limited site, but there could be additional large garages or other structures, setting a precedent that could be built on this site, and would be an expansion, an improper expansion of airport facilities outside its borders.

As this board knows, the proposed zoning rather radically departs from the existing requirements of the zone. It doubles the allowable height from 30 to 60 feet. It doubles the maximum allowable buildable coverage from 30 to 60 percent. Eliminates any FAR and reduces setback. And again the North Castle Environmental Quality Review Act Law, to its credit, specifically mandates the site. The EIS sets forth a description of all growth inducing assets of the proposed action where applicable and significant. Here we would submit that the precedent that would be created by the zoning amendment for additional intense development in this zone would be triggered.

We also believe that there is many aspects of this application that really fall pretty close to the doctrine of spot zoning. And I won't get into the whole definition or legal authority on that. But the DEIS correctly asserts that this site would be the only parcel that potentially could benefit or would directly benefit from the proposed zoning change. Again, we think others may, through precedent or growth inducing impact, but again this -- if you -- and I don't need to

to lay this out or lecture this board, because you're more familiar with this proposal than I am, but this zoning was really tailored to meet this project and this application and this one parcel. And that really has many of the elements of spot zoning.

It's also, we would submit, contrary to the DEIS, inconsistent with the Town's comprehensive plan. And I think DEIS, again to its credit, recognizes this, that North Castle opposes any expansion of the airport. And the Town's Comprehensive Plan unequivocally states that quote "Any expansion of the airport is not recommended". Again, we would submit that that's exactly what this application is for, is a de facto expansion of the airport and its facilities.

Also we question whether the Town Board would even have the authority to approve the project with respect to its limitations that the town code puts on, excuse me, flag lots, flag sites. Section 213-21 of the town code establishes a 200 foot frontage requirement in this district. And I believe the Town Board lacks the authority under relevant law and the code to grant variances from the frontage requirement. Only your board has the authority to waive that. We think the authority for this application is going to be within the Town Board under its special permit, and it does not, we would submit, have that authority to grant variances for frontage requirements. Again, Mr. Adler will elaborate on this point, but I think it's -- it's important enough for me to at least touch upon, because it does have some legal implication. That's with respect to traffic.

Put aside the differences we have in some of the assumptions that are made with respect to the reduction in vehicle trips, but if you accept your own consultant's report that this may generate 200 new vehicle trips, plus 18 shuttle bus



trips and 195 vehicle trips, plus 18, I'm sorry, plus 18 shuttle bus trips, this would significantly exacerbate as the DEIS elaborates or concedes existing F levels of service at three of the critical intersections, of which I travel down 684 every morning. Many of you probably do. Or maybe you are even caught in those queues along the ramp.

We're not sure where the DEIS is coming up with the conclusion that if a traffic -- if traffic conditions exacerbate an F, and it's a very expensive mitigation, that the applicant is not required to mitigate those. The CEQR technical manual, which I'm sure Mr. Kaufman is aware of, is the preeminent CEQR, SEQRA technical manual that was in fact prepared, it's an excellent document, by Nanette's firm, AKRF, that is used throughout the state to provide some uniformity in doing technical analysis and SEQRA. And that establishes that a three second delay increase at an existing level of service F intersection poses a significant impact that must be mitigated. And when you go to the manual, and you can start at page 16-53 and work your way around the manual, the manual is pretty clear, as I have been at least in my practice over the years, where I probably most often sat in the applicant's seat or as special counsel for -- for municipalities, that if an applicant exacerbates an F condition, they have to at least bring that condition back to the existing F condition. The fact that it's failing now and it's significantly exacerbated is not a free pass of any kind. And the fact that the mitigation may be regional and expensive to mitigate is also -- in my experience I've not seen it used as a means for classifying something as an unmitigable impact.

With respect to the impact on Greenwich, we've been involved in a number, over the years, quote, unquote "intermunicipal issues" with SEQRA where SEQRA applications impact more than the

host community. And clearly I think Greenwich is probably, the houses along King Street, at minimum are some of the most impacted -- impacted homes. And we would submit that this facility is going to have a pretty significant impact on the community character.

We try to at least picture what the height and mass and density in a leave off condition would be. I think there was one good photograph that really captured that. One of the winter photographs. It's a large, massive structure that's really going to be in the face of those -- those houses, and really changes the character of that neighborhood. And while they were, I think, representative and accurate photo simulations from Route 120 and from 684, it was really not the same type of treatment from those houses to really capture the character, the photo simulation, the type of work that your consultants and we all know how to perform.

Finally, I think there is an alternative here also that needs to be studied. Under ordinary conditions, possibly no, but under the conditions here. And that's -- that's the alternative for what would be the -- what would be the impact of an alternative for additional parking at Westchester Airport, you know, within the boundaries of the airport itself. Obviously my client has an interest, vested interest in that. But putting that aside, you know, in full disclosure, but putting that aside that is a possible, reasonable alternative. And the SEQRA handbook is very clear that typically you cannot make a private applicant, I would believe the first one to scream, you can't make me study land I don't control or land that is not consistent with my objective. But the DEC SEQRA handbook does state that where you have a discussion of alternative site for proposed action would be reasonable and circumstances, including any case where the

suitability of the site for the type of action proposed is a critical issue, in which case a conceptual discussion of other siting should be required. And I think the issue of the impact of expanding beyond the airport boundaries, which I don't need to tell this board or this town, has been one of having a long history of discussion and a long history of controversy and analysis is a critical issue. Certainly one of the alternatives is -- is maintaining and expanding parking on site. And that probably would be studied as an alternative.

Finally, while there was some, and Bill referred to it, discussion of a rationale for the parking, I think everyone would concede that there is a need for additional parking with respect to the airport. I'm not sure there was the appropriate market study or analysis justifying a 1,400 car garage. And that was -- that would be something that I would respectfully submit should be of critical analysis for this board in determining the need and rationale for this proposal.

So, with that said, we will provide my comments in written format and do thank you for your patience today and my long-windedness. And I commend you on the work you have done and the work you have ahead. Thank you very much.

CHAIRMAN DELANO: Thank you, Mr. Zarin. Next is Greg Fleischer, Carpenter Environmental.

MR. FLEISCHER: Good evening. My name is Greg Fleischer. I'm with Carpenter Environmental Associates. I'm a professional scientist.

CHAIRMAN DELANO: Could you go closer to the mike.

MR. FLEISCHER: I'm here on behalf of Westchester Associates. What I'm here to discuss tonight -- I would like to

thank you for the opportunity to speak tonight, Mr. Chairman and members of the board.

I would like to elaborate a little more of what Mr. Zarin spoken about with regard to wetland. I'll get right into it. There are a lot of impacts to wetlands and watercourses associated with this site. And I think it's important to understand the number of watercourses and the amount of impacts and how they are going to effect the very nearby Kensico watershed.

So, what I have in front of me here is figure eight one, and this is a map of the reservoir and the central watercourses that are mapped by the national wetland inventory and are present in and around the site. Okay. And what you know and what was brought about in the DEIS was that we have a linear wetland that runs into a perennial watercourse, which traverses the eastern portion of the site. It runs along the north of the site, and empties into a perennial watercourse, which drains into the Kensico Reservoir.

In addition, you have another perennial wetland located along the south of the site. This is where you have discussion, and I know you're in the process of providing or doing some more detailed work with regard to wetland delineation. This the ephemeral watercourse that the DEIS recognizes. This watercourse drains into an NWI mapped intermittent watercourse. This is something the DEIS doesn't really give a lot of attention to, and I think it's important that the board makes note of this.

This particular linear wetland was not really discussed in terms of DEP regulation. This would, in our opinion, qualify as a reservoir send, as it is directly contributory to the Kensico Reservoir. I think this is important,

because you would have a 500 foot extension out, for jurisdiction out from the reservoir. And then from there, once you determine the status of that technically ephemeral watercourse, you could have a potential to have 100 foot limiting distance off of that particular watercourse, which extends the southern boundary of the site. I think that again would certainly increase the buffer area that's already present on the site. And that is currently regulated both by the Town and by the DEP.

Going further, I would like to draw your attention to their existing conditions map. I'm sorry if you can't all see this on the other side there, but this is about as big as I can make it. What you're looking at is your delineation, which is in yellow, which is the town delineated wetlands, okay. It's important to really realize all the interconnectivity that exists in and around the site, okay. Again, you have your perennial watercourse, its associated wetland, okay, which drains through this portion of the perennial watercourse, which is a Class A DEC regulated watercourse, and then again through a 60 inch culvert and down into the reservoir.

On the southern portion, this is an illustration of the ephemeral watercourse and its connectivity to wetland A. Wetland A is the bridge between this ephemeral watercourse and this ephemeral watercourse that you have on the southern boundary of the site. I think it's important to understand, because of the hydro connection of the different watercourses and wetland and the potential impact that could result from the development.

Now, when looking at this wetland, you can see in the current conditions, although you can't see too well, is that there is a large area (pointing) of undeveloped forested buffer

area, and that is within the 100 foot town regulated area, okay. And this provides, along with the grass areas that are present on the site, a significant amount of buffer. And I think that is counter to the DEIS, which states that currently most of the storm water just runs off the site untreated. And I think when you're looking, when you take a hard look at this particular image, you're going to see that you have well over 100 feet in both instances for trees, for the shrubs, for the grass. It all filters out, that water. That water falls on the site. It goes through the grass. It gets deposited. Okay. The rest of the water runs through the underbrush and down to the wetland, where it's stored and it's filtered and goes to groundwater recharged. That's a really significant buffer. It's the reason that the Town has regulations for buffers. It's a reason for it to be maintained.

Now, in moving forward, I would like to discuss pretty much the way the post storm water and the pre storm water balances on the site effect the wetlands and the watercourses.

What you have here is a figure from the DEIS which explains or shows the site sectioned into three separate parcels. And this is where the storm water on the site currently falls and where it pretty much drains to, okay. So, you have here pre one (indicating), okay, which drains the eastern portion of the site out to the perennial watercourse. You have -- I'm sorry, that's pre three. You have pre two, which drains mainly the center of the site, out to the perennial watercourse and also to wetland A. And then you have pre one, which basically deals with the majority of this area on the south of the site, which is directly related to that ephemeral possibly intermittent watercourse. And these areas are very important. And what it is showing is that water is again falling on the site, going through the grass structure, going through the wooded

structure, everything I said before, and going into the watercourse. There is plenty of natural treatment, natural filtering going on in the site. I don't think the DEIS should persuade you otherwise.

The trouble here is when you go to the post development storm water structures. This is the secondary map demonstrating how the storm water will be moved about on -- on the site, okay, post development. The large pink object in the middle is your parking garage. As you can see, the parking garage has eliminated, okay, has literally eliminated everything that was in pre one in terms of the hydrological connection, okay. All that area that was collecting all of that storm water and bringing it near that ephemeral watercourse, down into wetland A, where it's being filtered, and through the culvert, okay, and out into the Kensico River, I'm sorry, Kensico Reservoir. So, you have a huge reduction, okay, post development in the amount of water that is physically reaching this portion of wetland A and that ephemeral watercourse.

Where pre two was, they now have a proposed basin, okay. So, what we've done here or what they have done is essentially eliminated that entire hundred foot buffer, okay. Going to be excavating out, removing that soil and going to be eliminating that entire natural filter. But the worst part of it is, is that this entire wetland A, over here (indicating), you're going to be cutting the hydrological flow of that wetland by more than half, okay. The same goes for the area that was designed as pre one. So, half of this water (indicating) is no longer reaching this wetland. So, the wetland doesn't serve to buffer. It doesn't serve to treat the water. It doesn't serve to distribute the water to either the perennial watercourse or intermittent watercourse, which drains to the Kensico Reservoir. It's providing a natural function in its

natural state and it's being removed.  
That's important.

Now discussing this further, another thing that should be noted is that you have the reduction in the area where we're getting hydraulics to the wetland and ephemeral watercourse. The remainder of the site, all of that water is now being concentrated. Okay. Everything that's in that water, every constituent, whether it's physical, whether it's chemical, whether it's a biological constituent, gets moved and transported to this series of basins, okay (indicating).

These basins, okay, are taking all this area that says post two E, G, goes to B, A, all of them goes to one discharge point, DP2. So, water that was being disbursed throughout the entire site is now concentrated into one spot at virtually one discharge point. Discharge point one, barely any water, at least half of what was there prior. Discharge point three, a huge reduction in the amount of water that is going to the perennial watercourse and existing wetland.

The impact to the buffer, the wetland, the watercourse all fall on this project. This project sits in the Kensico Reservoir watershed. As Mr. Zarin stated before, it's part of the Hudson watershed. All of these watercourses and wetlands work together. They interconnect to filter and process the water that falls on that site, and it then goes forth to the Kensico Reservoir.

I think it's important for the board to really consider the impacts of any disturbances to those buffers, be it your town buffer, the DEP hundred foot offset, or any of those other measures. Of course when Corps comes out to look at the site, get some type of jurisdictional determination, some characterization of that ephemeral watercourse. So, it will make your decision easier as far as



deciding what exactly exists on the site.  
Thank you for your time.

CHAIRMAN DELANO: Thank you,  
Mr. Fleischer. Next is Bernard Adler,  
Adler traffic consultant.

MR. ADLER: Good evening.  
For the record, my name is Bernard Adler.  
I'm a licensed professional engineer in the  
State of New York along with New Jersey and  
Connecticut. I'm the past Commissioner of  
Traffic for the City of White Plains. Past  
president of the metropolitan section of  
the Institute of Transportation Engineers,  
which is the professional society of the  
transportation professional. I also sat on  
the International Board of Directors of  
ITE. And I have been a past adjunct  
professor of civil engineering at Manhattan  
College, where I focused on transportation,  
planning and traffic engineering.

I'm going to focus on traffic.  
I've been doing this for about almost 50  
years. So, my focus is only going to be on  
traffic. I'm going to talk about three  
areas. First one is need. The second one  
is traffic issues. And the third is site  
issues.

As Mr. Zarin had mentioned, it  
is not clear from the DEIS that there is a  
need for 1,450 spaces. There is no marked  
study. There is no pro forma. There is a  
number of inferences as to specifics  
regarding the number of spaces that are  
available, but the identity of 1,450 is  
really not clear. Maybe they need only 700  
spaces for all I know.

In addition, we've already in  
recent Journal News, there is an article  
about Purchase College providing shuttle  
services where they have approximately 500  
spaces, where they will provide  
transportation, shuttle services from  
Purchase, Purchase College to the airport.  
Right now that's a nominal number, about \$5  
a day. And that's going to go up in June

to about \$15 a day. But the addition of 500 spaces off site may be another mitigating factor as to the need for this entire project.

The traffic study that was prepared by AKRF addresses the traffic issue in a rather simplistic mode in terms of eliminating a good majority of all the trips that are coming into the site or going out of the site and just subtracting them from the transportation system. It really does not justify the number or the percentages of how many cars should be dropped.

We recognize that four trips could become two trips, but how many of them are to be captured. How many of them are going to be -- How many people are going to eliminate the use of taxis, limos and private cars to provide transportation to the airport? That has not been identified.

However, the supplemental transportation study, which was done by the Town's traffic consultant, looked at a case where 200 cars could be added to the airport, which is a function of growth, increase demand, and we agree that that should be the level that should be analyzed.

In his analysis, Mr. Galante found that there -- there were three intersections, as Mr. Zarin noted, that are at failed commission. The first one is the intersection of Airport Road at Route 120. The second and the third are the north and southbound ramps of 684.

If you look at the southbound, the intersection of Airport Road and Route 120, as the traffic increases, the southbound movement becomes an F level of service with a delay of -- an increase delay of 25 seconds to a failed condition of 92.8 seconds. But on the eastbound approach, which is the approach from 684

from Kensico, there is a calculated queue of 1,045 feet to get to Airport Road. And that's an increase of 380 vehicles in the morning peak. And in the evening peak it's 589 cars, which is an increase of 138 feet.

Now, the interesting part about it is there is only 100 feet between the southbound -- the northbound ramps and Airport Road. Well, I'm not sure where those cars are going to be able to store except they are going to block the northbound ramps and the southbound ramps. And low and behold, that's exactly what they do. In fact, the northbound ramps on 684 are experiencing currently F levels of service. In the morning peak hour the ramp delays are increasing to 170 seconds, 169.5 seconds. That's an increase of 56.8 seconds. It's going from two minutes delay to three minutes delay. And that's just adding traffic to the stream. There is no identity of whether or not mitigation is done there. There is no hard look at that intersection as to whether the ramp has to be improved. It's just left there.

On the southbound ramps of 684 the delays are so large that they can't even calculate the queue. It's now measured in terms of what we call a V to C ratio, volume-to-capacity ratio. It is traditionally most one. So that the number of cars wanting to go through is equal to the capacity of the intersection. When you get more than one, then the demand is higher than capacity and the delays increase.

So, the level of congestion on the southbound ramps, the volume capacity ratio goes from 3.79 to 4.65. That's 3.8 times the capacity to four and a half times the capacity. And the increase is a 22 percent increase. Nothing is addressed there.

In the evening the delay goes from a volume-to-capacity ratio of 5.64 to 7.49. Five and a half times what the

intersection will allow to seven and a half times. Those are monumental numbers. It's a 33 percent increase, and it is not addressed. This is the -- this 800 pound gorilla in the room that is just ignored. It just said this has to be addressed, but nobody is looking at it. The volumes are increasing. The delays are increasing. The levels of service are increasing. The intersection is not addressed. It's been ignored by the town's consultant and it's been ignored by the applicant.

The standard engineering practices would require that mitigation, as Mr. Zarin pointed out, mitigation should at least bring the levels of service back to where they were in the no build condition. That is not there. It is not addressed.

The last issue that I would like to address, and I didn't want to get into all the details, which we will put into our correspondence, relates to site plan issues. In this case I really didn't want to get into the improper signage, the wrong letter size of signs. It has to do with how the sign works. For example, the first thing the DEIS -- the first thing that struck us, it talks about 99 cars coming in the morning and 84 cars coming in the afternoon. And there is storage for about 16 cars. Nowhere in the DEIS does it address how this automated system works. How the people who are getting out of their cars with luggage and with families are going to be able to be accommodated in the short time frame that they are projecting to be able to get out of the cars so that the cars don't spill back, not only spill back to the access point where the buses are going to come returning, but spilling back to New King Street. That's a major concern.

In addition, the design is a little bit switched. Usually for a one way road we design the entrance before the exit so that there is no conflict. In this case the entrance is on the far side. The near

side is the exit. So, therefore, the cars coming out are always in conflict with the cars that are coming in. It's -- it's just the wrong way to do things.

There is a location within the site that has emerged of the shuttle buses in two lanes at the same time as the exit from all the cars that are coming out and all three lanes are coming into one lane, and it's almost an impossible access point. This is a dangerous conflict.

The last area that we've addressed here has to do with a grass paver area, which provides access to some pocket wetland areas. This road, while I understand grass pavers, and grass pavers are a fine idea, does not allow for cars to get in, turn around, come back. If they come back, how are they going to come back into the system, because they are now facing in the wrong direction of all the cars that are coming into the system.

These are just some of the points that we will address. Some of the major concerns that we have with respect to the need, the traffic issues and the site plan. Thank you.

CHAIRMAN DELANO: Thank you.  
Next speaker is Tania Vernon.

MS. VERNON: Members of the board, thank you for permitting me to speak on such an important issue. There is a bigger issue being confronted tonight aside -- aside from whether or not to green light the parking structure, which would benefit the property owner and to some extent provide some modest tax receipts to the Town of North Castle, the bigger issue which I hope you do not lose sight of, namely 9,000,000 New Yorkers. That is the number of people that rely on the Kensico watershed for their drinking water.

Your decision as to whether this project is permitted to move forward

or not is a referendum. In the interest of economic gains for very few. This decision has everything to do with what we value. Do we value ensuring safe drinking water? Further expanding the parking capacity to the airport will no doubt lead to expansion of the level of activity of this airport in terms of the number of flights coming into and out of the airport. This will significantly raise the level of noise and air pollution beyond the existing levels. Again, I ask you, what do we value and what are we willing to sacrifice?

The ramifications of your decision will impact people living in North Castle, Westchester and New York City for generations to come. It is time for you to be bold and make a stand. Stand for your children, for your children's children. Stand for your neighbors. Stand for those people who are not aware of what harm can come to them and their families who will be effected if the Kensico were no longer a viable source of drinking water.

The time to draw a line in the sand is now. Do not allow this proposal to move forward. You may feel that the potential risks to our water and the environment associated with this project is acceptable. If you do feel this way, I remind you again 9,000,000 people would be effected.

If we allow this project to proceed and something harmful, God forbid, were to happen, then we as a group need to bear some responsibility. Sometimes progress is not measured by what we do but what we do not do.

Do you realize that what we are doing here is to promote urbanization? And that is a big question. Is that what we want? Thank you.

CHAIRMAN DELANO: Thank you, Ms. Vernon. Next is Julius Shultz from Sierra Club.

MR. SHULTZ: My name is Julius Shultz. I live on Old Orchard Street, across from our neighbors of North Castle. I represent the Sierra Club, both the Atlantic chapter, which comprises New York State and the lower Hudson group, which comprises Westchester, Putnam and Rockland counties.

It is our opinion that there will be significant environmental impact created by this proposed project. It will also encourage expansion of the Westchester County Airport because its purpose is to service a supposed need for overflow parking at the airport.

The project calls for the construction of an automated 1,450 vehicle parking garage and car wash. It is to be built within a three acre property, designated by several government agencies as environmentally sensitive. If constructed it will destroy 5,700 square feet of Town of North Castle wetlands. Disturb 80,000 square feet of the 100 feet wetlands area. Encroach on the 300 feet protection zone around the Kensico Reservoir. Threaten New York State DEC Class A streams. Violate environmental laws of North Castle, the Army Corps of Engineers, the NYCDEP and New York State DEC. It requires a zoning change from the Town of North Castle.

The Westchester County Airport has a parking garage for 1,250 vehicles. The need for an additional 1,450 parking spaces has not been proved, and I don't think it can be proved. Based on our own observation at certain peak days and hours there is a need for additional parking spaces, but never more than 400.

The Westchester County Airport is 250 yards from the Kensico Reservoir and Westchester County and New York State are aware that this poses threats to the drinking water of 9,000,000 New York residents. Westchester County passed a

resolution for non expansion of the airport and no additional parking. Similar resolutions were enacted by the New York State Assembly and New York State Senate.

The project proposes to convey storm water generated in the parking area to two detention basins to be created within the wetland buffer zone. It is an established fact that parking lot one runoff contains numerous petroleum constituents and toxic chemicals associated with antifreeze. Over time these constituents accumulate in the area where they are discharged and often they exceed the DEC soil cleanup objectives and remediation of the soil is then required.

This project also requires a zoning amendment. Present zoning allows for private parking and local business use but not for a huge parking structure that affects traffic and needs more municipal services such as police, fire department, street cleaning, road repair, et cetera.

In our opinion this project is wrong for the Town of North Castle, the airport and the Kensico Reservoir.

Further comments will be made from my associates today and in writing before May 17th. I thank you very much.

CHAIRMAN DELANO: Thank you, Mr. Shultz. Next is Pete Dermody, Dermody Consulting.

MR. DERMODY: Good evening. My name is Peter Dermody. I'm a principal hydrogeologist with Dermody Consulting. I have a bachelor degree from Hofstra University and master's from Adelphi University, and I have 24 years experience as a hydrogeologist.

I would like to make three comments. The first comment is that we've all talked about the destruction of the wetlands, the wetland buffer areas, the



encroachment on the reservoir system and the proximity of Class A streams in the vicinity of the site. Those destruction of the areas and encroachment on those areas is going to require permits or variances from New York State Department of Environmental Conservation, DEP, Army Corps of Engineers and Town of North Castle. So, there are several layers of environmental regulations that are put in place specifically for the purpose of protecting areas such as this that need to be pierced or circumvented in order to construct this project. We think there is no more important water body to protect than the Kensico Reservoir.

Our second point is, is that a point that we think was absent from the DEIS was the issue of petroleum contamination. Any time there is a project that entails the construction of impermeable services over which automobiles is going to traffic, there is going to be leakage of automobile fluids onto those roadways and parking areas. And in this particular case the storm water that is generated from this project that comes in contact with this material is going to pick up this petroleum contamination and convey it in this case to a couple of detention basins and then into a wetland area. The problem with this is that although parking lots across the country and roadways across the country are all used to having petroleum contamination, and we live with it, in this particular case since the depth to groundwater is so shallow, the contamination that is entrained in the storm water is going to get into these detention basins and wetland areas and be almost in direct contact with the groundwater and could contaminate the groundwater supply below the site. And all groundwater is moving in, in the direction of Kensico.

So, although we do tolerate parking lot runoff and the contamination that it generates in most areas, it should

be a higher level of alarm in this particular area because of the presence of Kensico Reservoir, that it shouldn't be necessarily tolerated in this area, because there is going to be petroleum contamination accumulating in these basins over time, and that is going to generate groundwater contamination.

The last point I would like to make is regarding the growth inducing impacts. First of all I want to say that the 1,450 parking space, vehicle parking spaces that are proposed for this project have not been adequately shown to be necessary based on our analysis. We see very little scientific information on which we could determine the validity of the need for 1,450 vehicles. In fact, we know that there are several other parties who are saying that the need for parking is 400 to 500 spaces. And we also know that there is the additional parking, sorry, as others have said, that the SUNY Purchase parking is going to contribute parking areas that may mitigate the need for having this parking lot.

So, therefore, we would like to see a much more thorough analysis of where that number came from and why we need 1,450 spaces, because as we all know, if there are additional parking spaces, which in this it could easily generate 1,000 additional parking spaces, there is certainly going to be growth inducing impacts. And it's going to create -- The thing that is limiting growth right now is the fact that there is limited parking. If that is alleviated and there is 1,000 parking spaces that are sitting around for a few years, certainly that's going to be very attractive for other businesses and entities to move into this area. Thanks a lot.

CHAIRMAN DELANO: Thank you Mr. Dermody. Next up is Ed Glassman.

MR. GLASSMAN: Good evening.

I'm not from an architectural group, an environmental group, but somebody that lives in the area and has used the airport for many years. But I can't help but observe, we're talking about the construction of a structure in a fairly fragile ecosystem and one that seems fraught with a variety of issues. And I'm sure that there is lots of good guidance about how you as a group are suppose to interpret these applications. But I also would hope that you use this opportunity to step back for a moment and think about the responsibility of the Planning Board in giving guidance to the overall town. Because the fundamental issue here is a lot less about parking garage and much more about the growth of the Westchester County Airport. And that seems to me to be the real issue that will be really fantastic for the Planning Board to provide some guidance on.

So, if we have these voluntary constraints that are being adhered to by the airport, why not use this as an opportunity to go back to them and say, given the idea that you need more parking, how about going to fix constraints rather than voluntary constraints and really putting some planning in place for the future growth of the airport. You know, you'll decide as you will about what to do about this parking structure, but I think a more significant threat to our community is the growth of that airport.

I have to say that I use that airport. I use that airport regularly. So, I certainly wouldn't say gee, we shouldn't have an airport here. I also don't aspire to see it become an airport of much bigger size and much more frequent usage, with a lot more flights going over our community. I would ask that the board use this opportunity to use its power and influence in guidance for the Town Board on what should be done about a very large potential problem, which is the continued growth of Westchester County Airport.

Thank you.

CHAIRMAN DELANO: Thank you, Mr. Glassman. Next, Robert Porto.

MR. PORTO: Thank you. I'm not even a good speaker. That was great. Thank you. My name is Robert A. Porto. I'm here on behalf of my family and neighbors in Harrison, New York. Do any of you use the water from the Kensico up here? Does Armonk?

CHAIRMAN DELANO: I do.

MR. PORTO: You do.

CHAIRMAN DELANO: I live in North White Plains.

MR. PORTO: I don't know if that's a hundred percent, but it's a hundred percent for us. This is the issue (indicating). It is about water. You know, we live on that water. I washed my face with that water this morning. It's not filtered. That is the problem. You can make money by taxing the heck out of parking. I know you can add lots of sales tax. You can get really up there.

We use the water. And I'm sure some residents of Armonk, who perhaps even moved here because of the airport, might use the garage. You know, I realize that. The problem is that the garage is probably one of the last buildings you want near the water. I mean, that is a sensitive area. These people are smart. They study water. It's all going right into the reservoir.

Do you know why Caribbean water is clean when you go to St. John? Because it's filtered. It doesn't runoff. It's filtered through the earth, in the sand in particular. And I 100 percent believe that it will entice more people to use the airport even with the TCA in place. There is room in the transportation

agreement to add more flights my understanding. Yes, it is.

Both will quantitatively increase the pollution of the water that 900 people live with. Do you believe the garage won't impact the water supply? Somebody even said oh, look at the site and, you know, there is some speculation that the building would actually improve it. It won't, let me tell you. It's a parking garage in the wrong place.

You know, I was going to bring three bottles of water, one of them from the Kensico before the airport, one from today and one from the Kensico garage area. I don't think anybody would pick that last bottle, you know. It would, at least today, be better than the garage. Think about it. I hope you agree with that, because that's the last place I want a garage.

So, the question for me is, how do I close the gap and make you honorable board members and Town Board members directly accountable to Westchester and New York City residents that use the water? I'm a little guy. I'm a programmer. Do I understand -- Do I stand outside of Grand Central Station with petitions to stop Armonk, Bedford and New Castle from allowing this? Maybe. Do I put the board members' pictures and names on the web, mass e-mails, get to the top of Google, so when they Google your name, this comes up? I mean, I don't want to do this. I don't even want to be here tonight in a sense. I want to be on my couch. Anyway, or do I fall shame on you and give the facts. I mean, I don't know. I mean, I'm -- unfortunately I'm going to have to put it on you folks. I'll go with you, Mr. Kaufman. We'll put seven.

You know, I'm going to -- you're the 15 people who are the Planning Board, the Town Board and Planning Board. I can sense you are good people, the way

Armonk works and stuff like that. You seem to be way ahead of Harrison in my opinion. I'm going to have to -- You know, I'm a little guy. So, all I can do, I will. People that know me unfortunately will know that I can do it. So, please, do the right thing.

I mean, you have 9,000,000 people. I mean, why would you step into this? You know, don't implicate yourself. I know it's big money. You know, as Connie might have said, it's maybe big money, but it's not going to be worth it. I'll just keep on it. Once it's done, it's going to be hard to go back. And I'm going to make it -- You know, I'll fight for my family and just verbally within the law, but I feel like I can make a difference. And please don't get into this. There is other ways to make money. Thank you.

CHAIRMAN DELANO: Next is Karen Shultz, Sierra Club.

MS. SHULTZ: First of all, thank you very much for your time in allowing me to speak. I want to inspire everybody to read a book which inspired me in 1997 from Riverkeeper actually. It was called "The Culture of Mismanagement" by Robert Kennedy, 1997. This book inspired me to drop my life, which I loved by the way, to get involved in this issue. In this book Bobby Kennedy called it, placement of the Westchester County Airport a historical disaster. And I have copies of this. Someone wants the page that it comes from, you can ask me.

I want to say as a grandmother and as a former member of a board, CWC's board and a long time member of Sierra Club, how can you let a historical disaster grow? It doesn't make sense. So I'm here today to remind everybody about the placement of this airport, as many people have said, 250 yards from a water supply. It's 85 percent of Westchester's water and 90 percent of New York City's water. So, I

ask you to protect that.

Now I also want to tell you my husband mentioned the resolutions that were passed, historically admitting that this airport was -- is in the wrong place. These resolutions, again passed by the County Board of Legislatures, by the State Senate, non partisan, by the State Assembly, also non partisan, were passed historically admitting that the airport should never grow. And the definition of no growth included, and we took the definition that it should not grow in footprint or capacity in quoting no additional parking, flights, hangers or heavier planes. And I have before -- I have a letter from the DEP which is also historic. It was the first time that they really gave us a fabulous letter. Their letter was stronger than Sierra's Club letter, which is amazing, asking for the same thing, no additional parking. Because every increase in this airport is going to increase the danger and likelihood of accidents to a reservoir that cannot be replaced.

I would like to pass these handouts out to the board, so you might have the benefit of reading some of these, the wise letters in here. This packet includes also a letter from the EPA, Environmental Protection Agency, which says hey, we agree with everything in the DEP letter. So, we not only have a letter from the DEP, but we have a letter from the EPA. I want to remind you that because of the law, FAA does not even have to report their air emissions. So, as this airport increases, and we hope it doesn't, if we increase the parking, we know there will be more planes. As this increases, it's also very detrimental to the health of our citizens, especially since all the environmental law is based on the average size now. It doesn't take into consideration women, pregnant women, seniors or especially children. So that by increasing air emissions over this county,

it's going to be very, very difficult for babies in Armonk as well as the rest of the area to -- to avoid increased health costs.

In this packet I have the three resolutions from the county, the state and the state assembly and the state senate. And I know that Armonk is suppose to be independent, but we're asking you to think how important is it to have a sustainable environment. And we really think that one town should join with all of us in protecting the drinking water supply.

We also want to remind you that Kensico is -- was trying to avoid filtration. In 1997 Bobby Kennedy had said that the cost of filtration was billions. I'm sure it's increased since, his numbers. And there will be millions in costs to maintain this system every year. So, when we think of the negative, possible negative economic impacts to the citizens of Westchester and New York City, and all of our towns that are using this water, let's consider that. Because in California, when you have an institution like an airport, I've been told by an environmental lawyer, you not only have to do the economic benefits of the institution, like the airport, but you have to also consider the negative impacts to the environment. And that I don't think we've done.

So, I want you to please, please help us. Keep these resolutions so that we can keep the pledge and the promise of our county and our state. Please help join with us to make sure this airport does not expand. I thank you very much for your time. And, Adam, may I please ask you if I could pass these out to you.

MR. KAUFMAN: Sure.

MS. SHULTZ: Thank you.

CHAIRMAN DELANO: Thank you,  
Ms. Shultz. Next speaker is Cynthia Garcia.



MS. GARCIA: My name is Cynthia Garcia. I'm a project manager with the New York City Department of Environmental Protection, Bureau of Water Supply. I am here this evening to inform the board that DEP has a number of concerns on the DEIS for the 11 Park Place multilevel parking facility project that is proposed for development wholly within the City of New York's Kensico Reservoir watershed.

Protection of the City of New York's watershed and reservoirs is one of DEP's primary responsibilities. DEP has regulatory review and approval authority pursuant to the rules and regulations for the protection from contamination, degradation and pollution of the New York City water supply and its sources, known as the Watershed Regulations, for certain activities located in the watershed, including the proposed Park Place multilevel parking facility. This project is located in very close proximity to the Kensico Reservoir. You all heard that. In fact, the western boundary is only about 1,000 feet from the shoreline of the reservoir. Kensico provides one of the last impoundments of water from the City's Catskill and Delaware reservoir systems prior to entering the City's water distribution system. On average, 90 percent of the water supply for 8,000,000 New York City residents passes through Kensico each day. In addition, many communities in Westchester County are served by the Westchester Joint Water Works intake located in Kensico, approximately 5,000 feet from the proposed project site. The communities served by this intake include Harrison, West Harrison, Mamaroneck, Rye and Larchmont. DEP has prioritized watershed protection in the Kensico basin to ensure the continued success of DEP's efforts to reduce non-point source pollution, including soil erosion that causes turbidity and degrades water quality, and to preserve existing natural features that contribute to water

quality protection.

DEP intends to fully participate in the SEQRA process for this action. Our detailed written comments on the project's draft DEIS will be submitted to this board as lead agency in the SEQRA review. DEP expects this board to take the requisite hard look at the entire DEIS and project proposal as required by the SEQRA environmental review procedures. In particular, this board must identify any potential significant adverse impacts to the Kensico Reservoir and the New York City water supply. If any such potential impacts are identified, the board (and other involved agencies, including DEP) may issue findings to approve the project as proposed only if the environmental review provides for sufficient mitigation to avoid or minimize such impacts to the maximum extent practicable. DEP, as an involved agency, and this board, as lead agency, should continue to have an ongoing dialogue during the entire SEQRA review and DEP is prepared to offer its assistance.

There are several areas of environmental concern that will be identified in DEP's written comments regarding the project's DEIS. These include the extent of new impervious surfaces near watercourses, proposed vegetation removal and soil disturbance within the 300 foot buffer of Kensico Reservoir stem, adequate erosion and sediment control during the project's construction phase, post construction storm water practices, and other project -- excuse me -- other potential impacts on long-term water quality in the Kensico basin.

After SEQRA is completed, the project, as proposed, will require DEP's regulatory review and discretionary approval of a storm water pollution prevention plan and a sewer connection plan to the sanitary sewer system. Further, the project may not comply with the watershed

regulations regarding the amount and location of certain impervious surfaces. In that case, a variance from the watershed regulations would be required in order for the project to proceed as planned. A DEP variance, which is also a discretionary approval, requires a showing of hardship and sufficient mitigation measures which are at least as protective of the water supply as standards in the watershed regulations.

DEP thanks the Planning Board for this opportunity to provide public comment, and we look forward to working with you in the future.

CHAIRMAN DELANO: Mr. Richard Finamore.

MR. FINAMORE: Thank you. I'm going to pass.

CHAIRMAN DELANO: Thank you, Mr. Finamore. Eleanor Herman. She's gone. Eleanor, she's not with us.

Doug Manconelli.

MR. MANCONELLI: Thank you for the opportunity to let me speak tonight. My name is Doug Manconelli. I've been a resident of Armonk for the past 26 years. The gentleman who made the original presentation spoke very eloquently about adding roughly 1,400 spaces to the parking garage. Basically adding a parking garage for HPN. And those spaces would thereby decrease traffic to the area.

I would respectfully disagree with that, because I seriously feel that those people that are slated to be coming to the airport are really not using it right now. There is a lot of people who, like myself, opt to go to other places, such as LaGuardia or Newark or other airports other than using HPN.

The additional spaces would in

essence increase commuter traffic to the area, and thereby increase the overall traffic to the airport, knowing that we will be increasing the size of the airport, which has been slowly occurring over the years. So, the biggest issue that we're facing right now is really the traffic to the airport, the spacing and the cars coming into the area are going to be an issue. The increase to the airport traffic is another issue. And that will net to larger noise pollution, water pollution, air pollution.

So, while I sincerely support the idea of increasing tax revenue to the area, I do not feel this is the best way to do it. So, I would strongly ask you to consider not approving this motion. So, thank you very much for your time.

CHAIRMAN DELANO: Is there anyone else who would care to speak? Please come up to the microphone. Identify yourself for the record.

MR. PORTO: Her eyes. Smart as a whip but her eyes.

MS. HELD: Thirteen years ago, when I moved to Harrison --

CHAIRMAN DELANO: Excuse me, ma'am. Your name.

MS. HELD: Lucille Held. I lived in Harrison 15 years ago. Fifty-five years ago, when I moved here, and then I went to Rhode Island with a job. I went by plane via the Westchester Airport. I had to go -- come off the plane, step on a lane, because it was such a little airport, with such little planes.

The only thing that we all know today and in 55 years we've progressed to DNAs and everything else, we know one thing that is very important, that our humanity is somewhere along the line disappearing. We can analyze today the oil

that's coming off the roads. We can also analyze the fact that there is water not being absorbed. We are so mechanical and so well educated and so scientific.

The thing we haven't spoken about today is the humanity of this. The fact that with all of the pressures, the unbelievable pressures that have come upon us with the condition of the world, where is our peace. When I lie in my bed with a gigantic window looking out over the land that I have, I see planes coming, almost looking as if they are coming into my house.

We are not stupid people, and we know that once you build a garage for more than you need, the need will become more than we need. No more planes, which we will have eventually. So, I beg of you, for the peace and quiet and few years that we can have peace and quiet, has been progressively losing it, I beg of you to remember that we want peace. We don't want the airport. We don't want the garages, because they will make more noise. And after all, New York City was once farmland. And let's keep Westchester in some sort of a situation where there is peace, so when we come home at night, we do not hear the drone of airports, et cetera, et cetera. Thank you.

CHAIRMAN DELANO: Thank you. Anyone else care to participate?

MS. MC MENAMIN: Thank you for the opportunity to speak this evening. My name is Ingrid McMenamin. I'm a past president of the Northwest Greenwich Association. I served on the board for over 15 years. And we're all stewards of the land. And we're all here for a very short period of time. Even though Kensico Reservoir is manmade, we still have a stewardship to preserve the water for New York City and to preserve the land that's around it.

You are members of the planning and Zoning Board. You're only here for a short period of time. The citizens of your community have entrusted in you to preserve -- to be the stewards. Planning means you look forward. And zoning means you have a compliance of mandate by your participation in these boards.

You also don't have to accept an application that comes before you. You have the right to review it. But our question, when we come to these meetings, is if we weren't here to safeguard what we feel is the precious reservoir and resource, would you have any incentive to look at these issues?

By today's code that airport would never be there. By today's codes that parking garage wouldn't be there either. I do enjoy the services of Armonk. I do pay my taxes when I go there. I do pay my taxes when I go to the airport. I do not benefit from water, even though my home is right around the corner. As much of Greenwich is in the northwest area, we do not benefit from the water that is there, but we do see the high volume of traffic.

I've worked for the last ten years with New York State DOT to get this whole area of exit two reconfigured. It took ten years for both states to sign an agreement to remediate some of the traffic. But they did not look at the traffic impact of the volume of those exits. It's a dangerous human position, which this gentleman did mention before, level F or level seven, something like that. But we need to look at our community, working together for the quality of life for our residents. We all live here. More importantly, we need to leave a positive impact for our future generations, that we're bold leaders in a very troubled time to say that we need to preserve the resources that we have. Thank you very

much.

CHAIRMAN DELANO: Thank you.  
Whose next?

(No response.)

CHAIRMAN DELANO: Anybody?  
Going once. Twice. Sold. Thank you one  
and all for attending this evening's  
session.

What's the pleasure of the  
board; to keep the hearing open? Would  
anyone care to opine. Jane?

MS. BLACK: It appears that  
there is nobody else in the audience who  
wants to add more comments. I suggest we  
close the public hearing.

CHAIRMAN DELANO: Steve?

MR. SAURO: Just for --

MR. BARONI: You would be  
extending the comment period.

MS. BLACK: What about  
extending?

CHAIRMAN DELANO: The comment  
period will be, it's going to be 15 days  
past whenever we close the hearing, whether  
it be tonight or continue the hearing.

Steve, any particular feelings  
on that.

MR. SAURO: I heard a few  
people -- a few people had mentioned that  
they had concerns or additional concerns or  
comments. As long as they have an  
opportunity to give us those comments for  
another 15 days, I would accept them for  
the 15 days. If that requires us closing  
it now, let's close it now, as long as they  
have the opportunity to comment.

CHAIRMAN DELANO: Beata

Tatka?

MS. TATKA: I agree.

CHAIRMAN DELANO: Guy?

MR. MEZZANCELLO: I agree.

CHAIRMAN DELANO: The consensus of the board seems to entertain a motion to close the public hearing. Anyone want to make that motion?

MS. BLACK: I will.

CHAIRMAN DELANO: Could we get a second on the motion?

MS. TATKA: Second on the motion.

CHAIRMAN DELANO: Question by the audience. Could you come up to the microphone, please.

MS. DESIMONE: All in favor.

CHAIRMAN DELANO: We're going to take the question here.

MS. HUDSON: The concern that we have is that there is information that's not included in the DEIS right now that should be made available to the public. In particular, the delineation of the wetland, which is still a discussion between the applicant and the Town. Depending on that delineation, that could expand the amount of impact.

In addition, there doesn't seem to be a final description of what the on site or off site wetland mitigation plan would be. That seems also subject to discussion.

So, we would strongly recommend, whatever you decide to do with respect to closing the public hearing, that you extend the comment period until that



information has been made available. And your board does have the discretion to extend the comment period beyond the 15 minimum days required.

MR. BARONI: You've already determined DEIS complete. There won't be any additional information before the comment period ends. You can make those comments. They will be addressed in the FEIS. There won't be any additional information coming in on the DEIS.

MS. HUDSON: When the delineation of the wetland occurs, is that information outside the DEIS?

MR. BARONI: That will be made part of the FEIS.

MS. HUDSON: There is no opportunity for the public to comment on that?

MR. BARONI: You can comment on it, absolutely.

CHAIRMAN DELANO: There is a comment period on the FEIS under SEQRA.

MS. HUDSON: I thought the FEIS was the final?

CHAIRMAN DELANO: There is public comment period on the FEIS under SEQRA.

MR. BARONI: Of course there will be the site plan application as well and the sub special permit application.

MS. HUDSON: My understanding is the final will be accompanied by findings. Is that not the case?

MR. BARONI: Findings will occur after the FEIS.

MS. HUDSON: All right.

CHAIRMAN DELANO: Anyone else? All in favor of the motion to -- to close the public hearing?

MR. SAURO: Aye.

MS. BLACK: Aye.

MR. MEZZANCELLO: Aye.

MS. TATKA: Aye.

CHAIRMAN DELANO: Aye.  
Motion carries. Thank you.

Comment period, board, what's your pleasure on the comment period? Currently it's advertised 15 days. The minimum of 15 days. In light of some of the comments that were raised this evening, I don't know if the board wants to extend that a little bit. Give us a number.

MR. SAURO: I wouldn't mind extending it either.

CHAIRMAN DELANO: I'm hearing 30.

MS. BLACK: Thirty.

MR. MEZZANCELLO: Thirty days.

CHAIRMAN DELANO: Someone make that motion.

MS. BLACK: I'll make that motion.

CHAIRMAN DELANO: Second?

MS. TATKA: Second.

CHAIRMAN DELANO: All in favor? Aye.

MR. SAURO: Aye.

MS. BLACK: Aye.

MR. MEZZANCELLO: Aye.

MS. TATKA: Aye.

CHAIRMAN DELANO: Any  
opposed?

(No response.)

CHAIRMAN DELANO: Motion  
carries. Thirty days on the comment  
period.

MR. NULL: Thank you very  
much.

CHAIRMAN DELANO: Thank you.  
There being no other business in front of  
the board this evening, I would like to  
entertain a motion to adjourn.

MS. BLACK: I will make that  
motion.

CHAIRMAN DELANO: The motion  
is made. Seconded. And we're adjourned.

(Time concluded: 9:05 p.m.)

ooOoo

Certified to be a true and  
accurate transcript of the above-captioned  
stenographic minutes.

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Lori Ann Sacco  
Official Court Reporter

**Appendix B:**  
Drainage Easement Agreement

The Office of the Westchester County Clerk: This page is part of the instrument; the County Clerk will rely on the information provided on this page for purposes of indexing this instrument. To the best of submitter's knowledge, the information contained on this Recording and Endorsement Cover Page is consistent with the information contained in the attached document.



\*520453330EAS003P\*

## Westchester County Recording & Endorsement Page

### Submitter Information

Name: Cuddy & Feder LLP Phone: 914-761-1300  
Address 1: 445 Hamilton Avenue Fax: 914-761-5372  
Address 2: 14th Floor Email: pcuddihy@cuddyfeder.com  
City/State/Zip: White Plains NY 10601 Reference for Submitter: JAM Airport Declaration of Easement

### Document Details

Control Number: **520453330** Document Type: **Easement (EAS)**  
Package ID: 2012021400143001001 Document Page Count: **13** Total Page Count: **15**

### Parties

☐ Additional Parties on Continuation page

#### 1st PARTY

#### 2nd PARTY

1: JAM AIRPORT LLC - Other 1: 11 NEW KING STREET LLC - Other  
2: BENEROFE MITCHELL I - Individual 2:

### Property

☒ Additional Properties on Continuation page

Street Address: 7 NEW KING ST Tax Designation: 3/04/13.A  
City/Town: NORTH CASTLE Village:

### Cross-References

☐ Additional Cross-Refs on Continuation page

1: 2: 3: 4:

### Supporting Documents

1: TP-584

### Recording Fees

Statutory Recording Fee: \$40.00  
Page Fee: \$70.00  
Cross-Reference Fee: \$0.00  
Mortgage Affidavit Filing Fee: \$0.00  
RP-5217 Filing Fee: \$0.00  
TP-584 Filing Fee: \$5.00  
Total Recording Fees Paid: **\$115.00**

### Transfer Taxes

Consideration: \$0.00  
Transfer Tax: \$0.00  
Mansion Tax: \$0.00  
Transfer Tax Number: 20082

### Mortgage Taxes

Document Date:  
Mortgage Amount:  
  
Basic: \$0.00  
Westchester: \$0.00  
Additional: \$0.00  
MTA: \$0.00  
Special: \$0.00  
Yonkers: \$0.00  
Total Mortgage Tax: **\$0.00**

Dwelling Type: Exempt: ☐  
Serial #:

RECORDED IN THE OFFICE OF THE WESTCHESTER COUNTY CLERK



Recorded: 05/03/2013 at 03:13 PM  
Control Number: **520453330**  
Witness my hand and official seal

*Timothy C. Idoni*

Timothy C. Idoni  
Westchester County Clerk

### Record and Return To

☐ Pick-up at County Clerk's office

CUDDY & FEDER LLP  
445 HAMILTON AVENUE  
14TH FLOOR  
WHITE PLAINS, NY 10601  
Attn: WILLIAM S. NULL, ESQ.

The Office of the Westchester County Clerk: This page is part of the instrument; the County Clerk will rely on the information provided on this page for purposes of indexing this instrument. To the best of submitter's knowledge, the information contained on this Recording and Endorsement Cover Page is consistent with the information contained in the attached document.

\*520453330EAS003P\*

### Westchester County Recording & Endorsement Page

#### Document Details

Control Number: **520453330**

Document Type: **Easement (EAS)**

Package ID: 2012021400143001001

Document Page Count: 13

Total Page Count: 15

#### Properties Addendum

11 NEW KING ST 10604

NORTH CASTLE

3/04/14.B

RECORD AND RETURN TO:  
CUDDY & FEDER LLP  
445 Hamilton Avenue, 14th Floor  
White Plains, New York 10601  
ATT: William S. Null, Esq.

**DRAINAGE EASEMENT AGREEMENT**  
**BY AND BETWEEN JAM AIRPORT, LLC, as Grantor,**  
**AND 11 NEW KING STREET LLC, as Grantee**

This **DRAINAGE EASEMENT AGREEMENT** (this "Agreement") is made as of this 21<sup>st</sup> day of March, 2012, by and between **JAM AIRPORT, LLC**, a limited liability company organized and existing under the laws of the State of New York, with offices located at 4 New King Street, P.O. Box 339, Purchase, New York 10577 (hereinafter the "Grantor"), and **11 NEW KING STREET LLC**, a New York limited liability company, with offices at 11 New King Street, White Plains, New York 10604 (the "Grantee").

**WITNESSETH:**

**WHEREAS**, the Grantor is the owner in fee of certain real property located in the Town of North Castle, Westchester County, New York with frontage both on New King Street and New York State Route 120, as shown on the survey annexed as Schedule A and made a part hereof (the "Property"), designated on the Town of North Castle Assessor's tax map as Section 3, Block 4, Lot 13A; and

**WHEREAS**, the Grantee is the owner in fee of certain real property that is situated southerly of the Property and is commonly known as 11 New King Street, Armonk, New York, is located in the Town of North Castle, Westchester County, New York and has frontage on New King Street and New York State Route 120, as shown on the survey annexed as Schedule B and made a part hereof (the "Adjacent Property"), designated on the Town of North Castle Assessor's tax map as Section 3, Block 4, Lot 14B; and

**WHEREAS**, the Grantee proposes to improve a portion of the Property with certain stormwater drainage facilities, including but not limited to detention ponds (the "Ponds") and certain pipes, lines and conduits (collectively, the "Lines" and, together with the Ponds and other appurtenant improvements, if any, the Lines and Ponds hereafter collectively are referred to as the "Drainage Improvements"), substantially as shown on the plan entitled "Drainage Easement" (Sheet No. C-1) dated March 12, 2010, last revised August 4, 2011, prepared by AKRF Engineering, P.C. (the "Drainage Easement Plan", a copy of which is annexed hereto as Schedule D and made a part hereof); and

**WHEREAS**, the Drainage Easement Plan substantially shows, among other things, the locations on the properties and the types of improvements proposed to be constructed in furtherance of this Easement, including: (a) stormwater drainage improvements to be constructed within and from the Property and Adjacent Property connecting to the Grantee's stormwater drainage lines; and (b) the proposed ten (10) foot wide maintenance path along a portion of the Property and within the Adjacent Property (the "Maintenance Path") to provide Grantee with access to the Drainage Improvements for maintenance thereof; and

**WHEREAS**, Grantor shall convey to Grantee the following two (2) easements on, over, under, across and through the Property, which easements shall benefit the Adjacent Property and shall run with the land in perpetuity: (a) to construct, install, maintain, repair, replace and reconstruct the Drainage Improvements (the "Drainage Easement"), substantially within the area of the Property as shown on the

---

This Declaration shall be recorded in the Westchester County Clerk's Office, Division of Land Records, and shall be indexed against the real property designated on the Tax Map of the Town of North Castle as Section 3, Block 4, Lots 13A and 14B.

Improvements (the "Drainage Easement"), substantially within the area of the Property as shown on the Drainage Easement Plan (as defined below); and (b) for access to the Drainage Improvements for the installation, construction, use, maintenance, repair, replacement, and reconstruction thereof, an access easement both along that portion of the Maintenance Path within the Property, and within that portion of the Property extending thirty (30) feet from the edge of the Ponds and five (5) feet on either side of the Maintenance Path (collectively the "Access Easement"), all as substantially shown on the Drainage Easement Plan.

NOW, THEREFORE, in consideration of TEN (\$10.00) DOLLARS and other good and valuable consideration paid to Grantor, receipt of which is hereby acknowledged, it is agreed by and between the parties as follows:

1. **Incorporation of Preamble into Agreement:** The terms of this Agreement hereby incorporate the "WHEREAS" provisions recited above, as if they were repeated and set forth at length herein.
2. **Declaration of Easement/Grant.** The Grantor hereby grants to the Grantee the following two easements on, over, under, across and through the Property within the areas specified below, which easements shall benefit the Adjacent Property and shall run with the land in perpetuity:
  - a. A Drainage Easement to construct, install, maintain, repair, replace and reconstruct the Drainage Improvements to be substantially situated within the area of the Property as shown on the Drainage Easement Map, as more particularly described by metes & bounds in Schedule C (the "Drainage Easement Area") and substantially as shown on the Drainage Easement Plans annexed as Schedule D, both of which Schedules are attached hereto and made a part hereof. In connection therewith, the Grantee hereby affirmatively covenants to maintain the Drainage Easement and Drainage Improvements at its sole cost and expense, including but not limited to the following:
    - i. Coincident with the time of the initial creation of the Drainage Improvements, Grantee shall landscape an approximately one-half (1/2) acre portion of the Property to be designated by Grantor, by cleaning-up and removing litter, grass cutting, weeding, clearing, grubbing and mulching such designated area in a manner consistent with, among other things, the wetland plantings proposed for the Ponds plantings substantially as shown on the Drainage Easement Plans; and
    - ii. It shall be Grantee's continuing obligation to landscape the Drainage Easement Area, including clean-up and removal of litter, grass cutting, weeding and other active maintenance consistent with facilitating the drainage purposes for which the property is being used; and
    - iii. To the extent that the Ponds may contain standing water from time-to-time, if necessary, environmentally appropriate controls shall be implemented to minimize the risk of the Ponds becoming a location for mosquitoes to breed, or other potentially harmful insects or wildlife to reside.
  - b. An Access Easement over the Property extending thirty (30) feet from the edge of the Ponds and over the ten (10) foot wide Maintenance Path, as well as five (5) feet on either side of the Maintenance Path (except where it may be situated close to the boundary with the Adjacent Property in which case the width of such easement shall extend the lesser of five (5) feet on such side, or to the Property line) for the purpose of providing the Grantee, as owner of the Adjacent Property, its successors and/or assigns, access to, and for the installation, construction, use, maintenance, repair, replacement and reconstruction of, the Drainage



Improvements to be substantially situated within the area of the Property as shown on the Drainage Easement Plan and substantially as described in Schedule D attached hereto.

- c. The installation, construction, use, maintenance, repair, replacement and reconstruction of any and all Drainage Improvements (the "Drainage Improvement Work") shall be performed at Grantee's and/or its successors' and/or assigns' sole cost and expense, and they hereby assume any and all responsibility for:
    - i. Such Drainage Improvement Work, including but not limited to liability for any damage caused by reason of such Drainage Improvement Work to the Property and/or any buildings or improvements situated thereon; and
    - ii. Any liability arising in connection with access to the Property pursuant to either the Drainage Easement and/or the Access Easement; and
    - iii. Following completion of the Drainage Improvement Work, Grantee shall post in escrow with Grantor, the sum of Twenty-five Thousand (\$25,000) Dollars (the "Security Deposit"), which shall stand as security for Grantee's performance pursuant to this paragraph 2.c and shall be available to Grantor to draw upon only in the event that Grantee fails to properly maintain the Drainage Improvements. Grantor shall account annually to Grantee regarding the status of the Security Deposit, confirming the amount held and designated account at the specified financial institution (including any interest earned thereon). Said Security Deposit shall be "evergreen" and shall be replenished by Grantee to Twenty-five Thousand (\$25,000) Dollars within fifteen (15) days of written Notice that a specified portion of the Security Deposit is needed to be paid by Grantor to maintain the Drainage Improvements. If Grantee does not timely replenish the Security Deposit to Twenty-five Thousand (\$25,000) Dollars by posting the requisite sum with Grantor, then any sum paid by Grantor to maintain the Drainage Improvements as set forth in such Notice shall constitute a lien on the Adjacent Property dischargeable as a mechanic's lien thereon.
  - d. Grantee acknowledges and agrees that the Drainage Improvements shall be designed to accommodate the storm water drainage from the Adjacent Property and a portion of the Property currently improved with buildings and parking.
  - e. Within a reasonable time following Grantee's completion of the Drainage Improvement Work, at its sole cost and expense, Grantee shall have prepared an as-built survey of the improvements within the Drainage Easement, including metes and bounds delineation of the Maintenance Path therein, and two (2) certified copies thereof shall be delivered to Grantor.
3. **Access; Restoration.** The Grantee, by its acceptance of the easements herein granted, hereby agrees in the event that such Drainage Improvement Work damages any of Grantor's property or improvements Grantee shall substantially restore same to the condition that it was in immediately prior to such Drainage Improvement Work to the extent reasonably practicable and to the reasonable satisfaction of the Grantor. The costs and expenses of any Drainage Improvement Work incurred pursuant to this paragraph shall be Grantee's sole responsibility. During the course of the Drainage Improvement Work, Grantee shall cause metal plates, or such other material as appropriate, to be placed on the Property so that the business operations at the Property are not interrupted. If there is any damage caused to the existing structures on the Property by reason of the Drainage Improvement Work, Grantee shall repair same at its sole cost and expense.
  4. **Removal of Rubbish.** The Grantee, its agents, employees, and/or contractor shall at all times during the performance of Drainage Improvement Work within the Drainage Easement Area, keep the work site clean from accumulation of waste material and rubbish and at the completion of the Drainage Improvement Work shall remove from the Drainage Easement Area all rubbish, tools, equipment, machinery, scaffolding, and surplus materials and leave the Drainage Easement Area clear thereof.

5. **Insurance & Indemnification.** Prior to the commencement of any work on such Drainage Improvements and/or any Drainage Improvement Work, Grantee shall deliver to Grantor documents confirming that Grantee, each of its agents, employees, and/or contractors hold a Certificate of Insurance naming Grantor, and the holder of any mortgage affecting the Property, each as an insured pursuant to Grantee's liability and property damage insurance, with minimum coverage of \$3,000,000. The Certificate of Insurance shall be updated and the Grantor promptly shall be provided with proof of insurance as set forth herein from year-to-year on a continuing basis so that there shall not be any lapse in coverage. The minimum insurance coverage requirement set forth herein may be modified by the Grantor, once every two (2) years, provided that such changes shall not exceed reasonable increases generally experienced in the commercial market. Grantee hereby indemnifies and holds Grantor, and the holder of any mortgage affecting the Property, harmless from and against any and all claims, losses, damages or liability, arising out of, or in connection with the Drainage Easement and Access Easement, excluding only any claims arising out of the negligence or willful misconduct of Grantor or its contractors, agents, employees, licensees and/or invitees.
6. **Mechanic's and Other Liens.** Grantee shall keep the Property, the Drainage Easement Area and the Drainage Improvements thereon at all times free of mechanics and materialmen's liens and other liens of like nature, other than liens created and claimed by reason of any work done by or at the instance of Grantor, and at all times shall fully protect and indemnify Grantor against all such liens or claims and against all reasonable attorneys' fees and other reasonable costs and expenses growing out of, or incurred by reason, or on account of, any such liens or claims. Grantor shall notify Grantee in writing of the filing of any such liens or claims and shall provide Grantee with thirty (30) days to address same, either by discharging them, or by commencing an action or other proceeding in connection therewith. If Grantee shall not otherwise discharge such liens or claims within thirty (30) days, then Grantee shall post a bond in the amount of such liens or claims, to protect Grantor's interest in the Property from any adverse action by reason of such liens or claims, and Grantee promptly shall advise Grantor of the action to be taken by Grantee in connection with such liens or claims. Should Grantee fail to bond, or otherwise to fully discharge any such lien or claim within sixty (60) days of such notice having been sent to Grantee, Grantor, at its option, may pay the same or any part thereof, and Grantor shall be the sole judge of the validity of such lien or claim. All amounts so paid by Grantor, together with interest thereon at the maximum legal rate from the time of payment by Grantor until repayment by Grantee, shall be paid by Grantee upon demand, and if not so paid, shall continue to bear interest at the aforesaid rate, interest payable monthly.
7. **Compliance with Statutes, Laws, Rules, etc.**
- a. The Grantee, its agents, employees, and/or contractors shall comply with all public laws, statutes, ordinances, rules, and regulations respecting the Drainage Easement Area and Access Easement, including but not limited to the Drainage Improvement Work.
  - b. Grantee shall obtain at its own expense and provide to Grantor all required beginning, completion and all other permits, certificates, manifests and licenses, and comply with the regulations of any insurance company which issues a policy on any part of the Drainage Improvement Work, the Access Easement and/or the Drainage Easement Area.
  - c. To the extent that a licensed contractor is required to perform any or all of the Drainage Improvement Work, Grantee shall have such Drainage Improvement Work performed by such a contractor duly licensed by the County of Westchester.
  - d. The Grantee, its agents, employees, and/or contractor shall acquaint itself with the limits of the Property or right-of-way of the Grantor and shall not trespass on other property.

- e. The Grantee, its agents, employees, and/or contractors shall familiarize themselves and comply with all posted rules, which shall not unreasonably interfere with, or diminish Grantee's rights herein with regard to the Drainage Easement Area, Access Easement and Drainage Improvements.
8. **Duration**. The Easement created by this Agreement shall run with the land in perpetuity and shall bind the parties hereto and their respective successors, heirs, executors, administrators, personal representatives and assigns. In the event that the use of this Easement by Grantee ceases for any reason then upon sixty (60) days written Notice to Grantee, if Grantee confirms that such use has ceased, at its sole cost and expense, Grantee shall comply with any and all applicable governmental regulations and, if permitted, remove said Drainage Facilities and restore the Property substantially similar to its condition prior to the granting of this Easement.
9. **Amendment**. This Agreement may not be modified without the written consent of the parties hereto, their successors, heirs, executors, administrators, personal representatives and/or assigns, as may be relevant, which consent shall be evidenced by signatures set forth in a document to be designated as an "Amended Drainage Easement Agreement," which in order to be effective shall be filed with the Westchester County Clerk's Office, Division of Land Records and indexed against both the Property and Adjacent Property.
10. **Severability**. Invalidation of any one of the provisions of this Agreement by judgment or court order shall not affect the validity of any other provision which shall remain in full force and effect.
11. **Singular and Plural Forms**. Whenever the sense of this Agreement may make it necessary or appropriate, any singular word or term used herein shall include the plural and any masculine word or term shall include the feminine and neuter genders, and vice versa.
12. **Notices**. All notices provided for herein shall be sent to the party entitled to receive same at its address above given or at the last address appearing in the records of the Receiver of Taxes of the Town of North Castle.

IN WITNESS WHEREOF, the Grantor and the Grantee have executed this Agreement as of the date first above mentioned, intending that the same be recorded in the Office of the Clerk of the County of Westchester.

JAM AIRPORT LLC, BY:  
PROBAR INVESTMENT COMPANY

By: [Signature]  
Name: MITCHELL E. BENEROFFE  
Title: GENERAL PARTNER

11 NEW KING STREET LLC

By: [Signature]  
Name: JEFFREY M. BROWN  
Title: OWNER

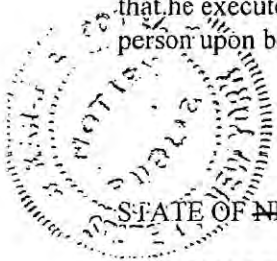
THIS AGREEMENT IS HEREBY ACKNOWLEDGED,  
CONSENTED AND AGREED TO:  
PROVIDENT BANK

By: [Signature]  
Name: GRACE SABINO  
Title: VP - MANAGING DIRECTOR

**ACKNOWLEDGMENTS**

STATE OF NEW YORK )  
 )ss.:  
COUNTY OF WESTCHESTER )

On February 23, 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared NITCHELL I. BENEROFFE, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

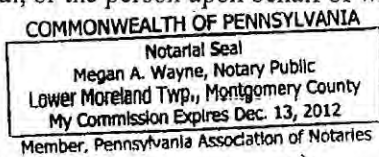


Karen E. Gomez  
Notary Public

KAREN E. GOMEZ  
Notary Public, State of New York  
No. 01GO6016636  
Qualified in Westchester County  
Commission Expires November 23, 2014

STATE OF NEW YORK PA )  
 )ss.:  
COUNTY OF WESTCHESTER )

On February 16, 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared Jeffrey Brown, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Megan A. Wayne  
Notary Public

STATE OF )  
 )ss.:  
COUNTY OF )

On March 21, 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared Bruce Sobino, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

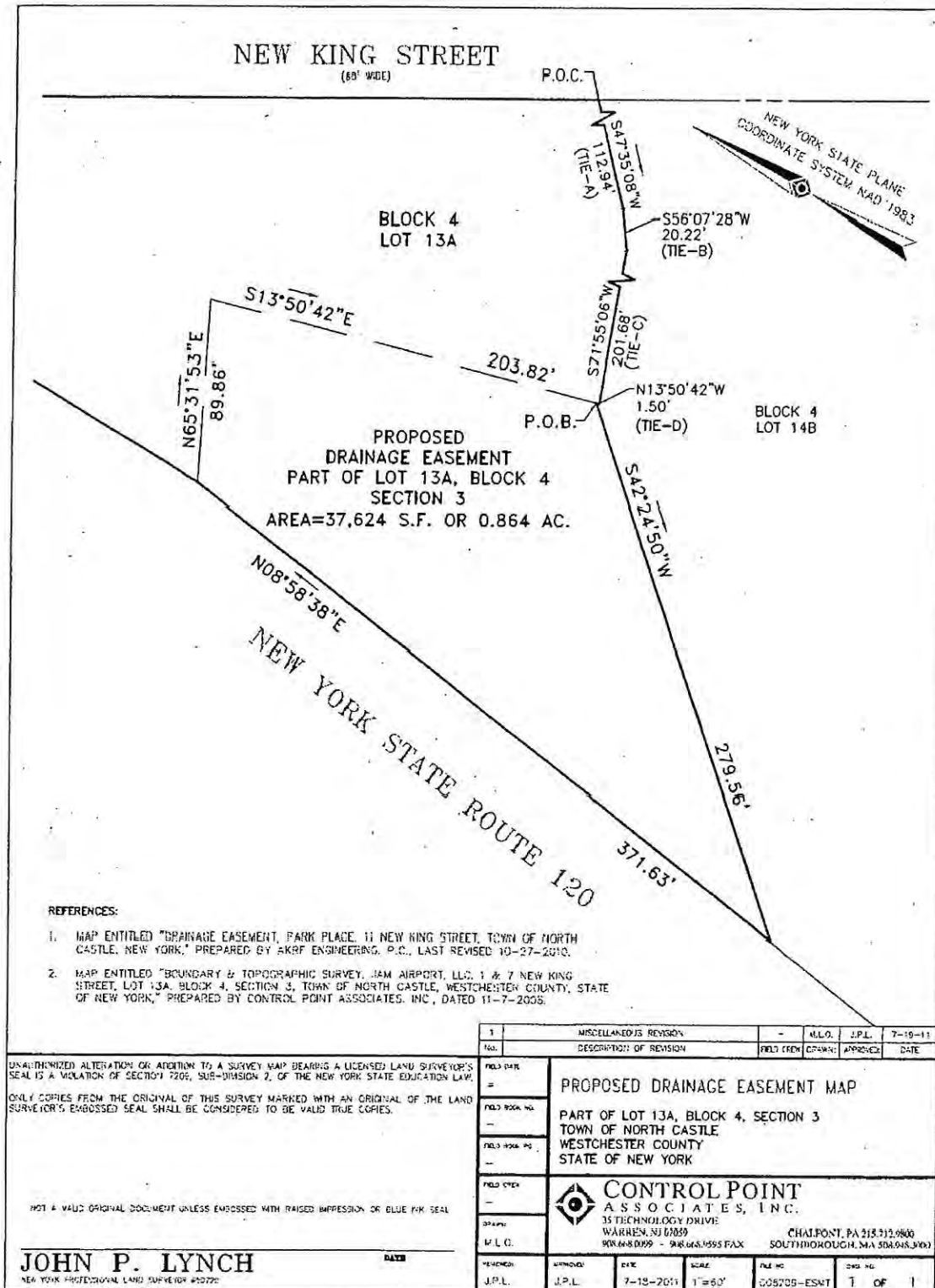
Betzalda Mendez  
Notary Public

Betzalda Mendez  
Notary Public, State of New York  
#01ME8028385  
Qualified in Westchester County  
Commission Expires August 2, 2013

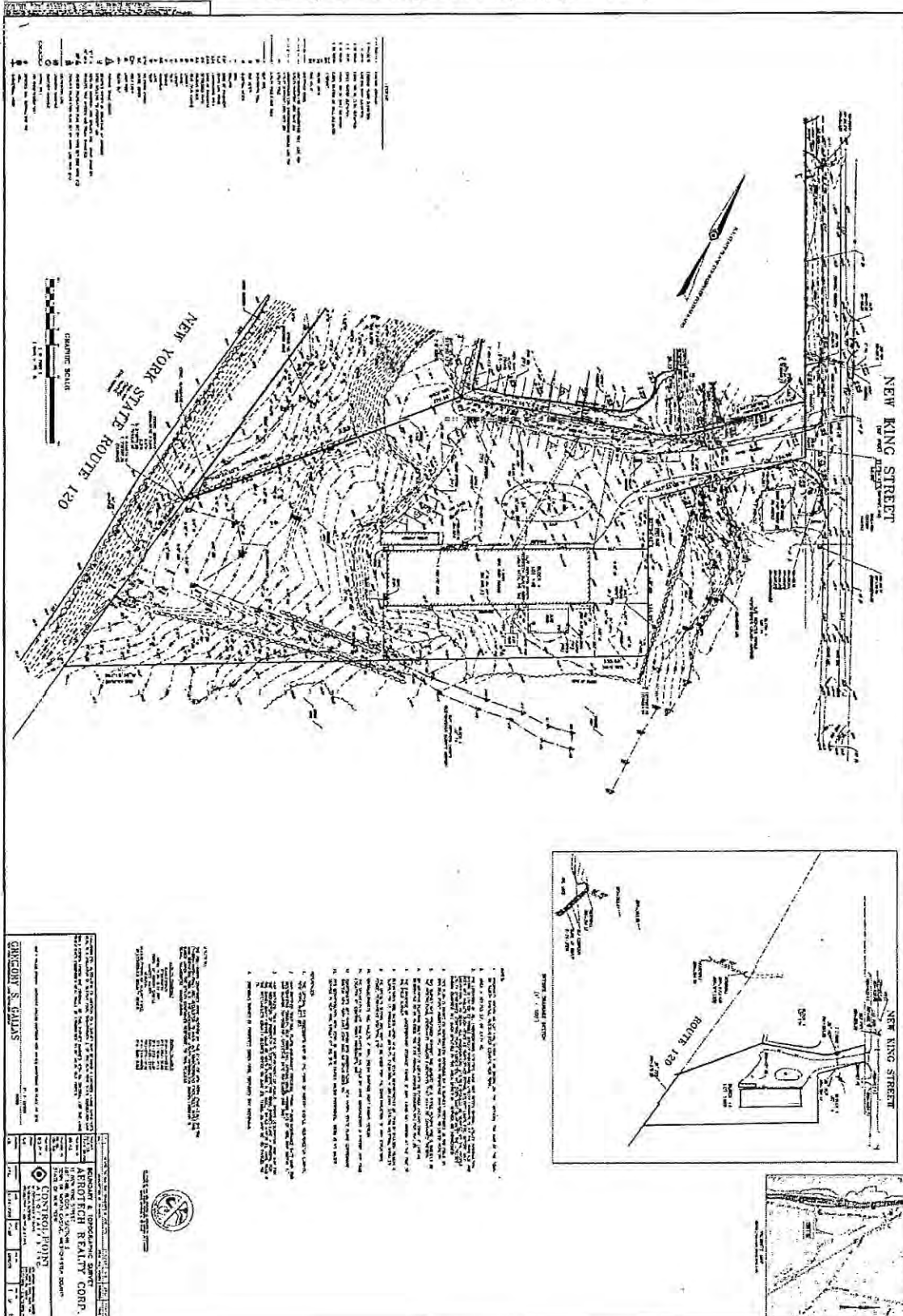


# **SCHEDULE A TO DRAINAGE EASEMENT AGREEMENT**

Survey of the Drainage Easement on the Property (Part of Lot 13A)



**SCHEDULE B**  
**TO**  
**DRAINAGE EASEMENT AGREEMENT**  
 Survey of the Adjacent Property (Lot 14B)



SCHEDULE C  
TO  
DRAINAGE EASEMENT AGREEMENT

Metes & Bounds Description of the Drainage Easement Area



**CONTROL POINT**  
ASSOCIATES, INC.  
traditional methods | modern approaches

35 Technology Drive  
Warren NJ, 07059  
Tel. 908.668.0099  
Fax. 908.668.9595  
www.cpasurvey.com

JULY 18, 2011  
C08209

METES AND BOUNDS DESCRIPTION  
PROPOSED DRAINAGE EASEMENT  
PART OF LOT 13A, BLOCK 4, SECTION 3  
TOWN OF NORTH CASTLE  
WESTCHESTER COUNTY, NEW YORK

BEGINNING AT A POINT AT THE EASTERLY MOST CORNER OF THE HEREIN DESCRIBED EASEMENT, SAID POINT BEING DISTANT THE FOLLOWING FOUR (4) COURSES FROM A POINT FORMED BY THE INTERSECTION OF THE SOUTHWESTERLY LINE OF NEW KING STREET (60 FOOT WIDE) WITH THE DIVIDING LINE BETWEEN LOT 13A AND LOT 14B (N/F REPUTED OWNER AEROTECH REALTY CORP.), BLOCK 4, SECTION 3:

- A. SOUTH 47 DEGREES - 35 MINUTES - 08 SECONDS WEST, A DISTANCE OF 112.94 FEET TO A POINT, THENCE;
- B. SOUTH 56 DEGREES - 07 MINUTES - 28 SECONDS WEST, A DISTANCE OF 20.22 FEET TO A POINT, THENCE;
- C. SOUTH 71 DEGREES - 55 MINUTES - 06 SECONDS WEST, A DISTANCE OF 201.68 FEET TO A POINT, THENCE;
- D. NORTH 13 DEGREES - 50 MINUTES - 42 SECONDS WEST, A DISTANCE OF 1.50 FEET TO A POINT, AND FROM SAID POINT OF BEGINNING RUNNING THENCE;
- 1. CONTINUING ALONG THE DIVIDING LINE BETWEEN LOT 13A AND LOT 14B, BLOCK 4, SECTION 3, SOUTH 42 DEGREES - 24 MINUTES - 50 SECONDS WEST, A DISTANCE OF 279.56 FEET TO A POINT ON THE EASTERLY LINE OF NEW YORK STATE HIGHWAY ROUTE 120; THENCE;
- 2. ALONG SAID EASTERLY LINE, NORTH 08 DEGREES - 58 MINUTES - 38 SECONDS EAST, A DISTANCE OF 371.63 FEET TO A POINT, THENCE; PROCEEDING THROUGH THE INTERIOR OF LOT 13A, BLOCK 4, SECTION 3, THE FOLLOWING TWO (2) COURSES:
- 3. NORTH 65 DEGREES - 31 MINUTES - 53 SECONDS EAST, A DISTANCE OF 89.86 FEET TO A POINT, THENCE;
- 4. SOUTH 13 DEGREES - 50 MINUTES - 42 SECONDS EAST, A DISTANCE OF 203.82 FEET TO THE POINT AND PLACE OF BEGINNING.

CONTAINING 37,624 SQUARE FEET OR 0.864 ACRE

THIS DESCRIPTION MAY BE SUBJECT TO RESTRICTIONS, COVENANTS AND/OR EASEMENTS EITHER WRITTEN OR IMPLIED.

Professional Land Surveying and Consulting Services




**CONTROL POINT**  
ASSOCIATES, INC.  
traditional methods | modern approaches

JULY 18, 2011  
C08209  
PAGE 2

THIS DESCRIPTION IS PREPARED WITH REFERENCE TO A MAP ENTITLED "PROPOSED DRAINAGE EASEMENT SKETCH, PART OF LOT 13A, BLOCK 4, SECTION 3, TOWN OF NORTH CASTLE, WESTCHESTER COUNTY, STATE OF NEW YORK", PREPARED BY CONTROL POINT ASSOCIATES, INC., DATED JULY 18, 2011.

CONTROL POINT ASSOCIATES, INC.

 7/18/2011  
\_\_\_\_\_  
JOHN P. LYNCH DATE  
STATE OF NEW YORK  
PROFESSIONAL LAND SURVEYOR #50720

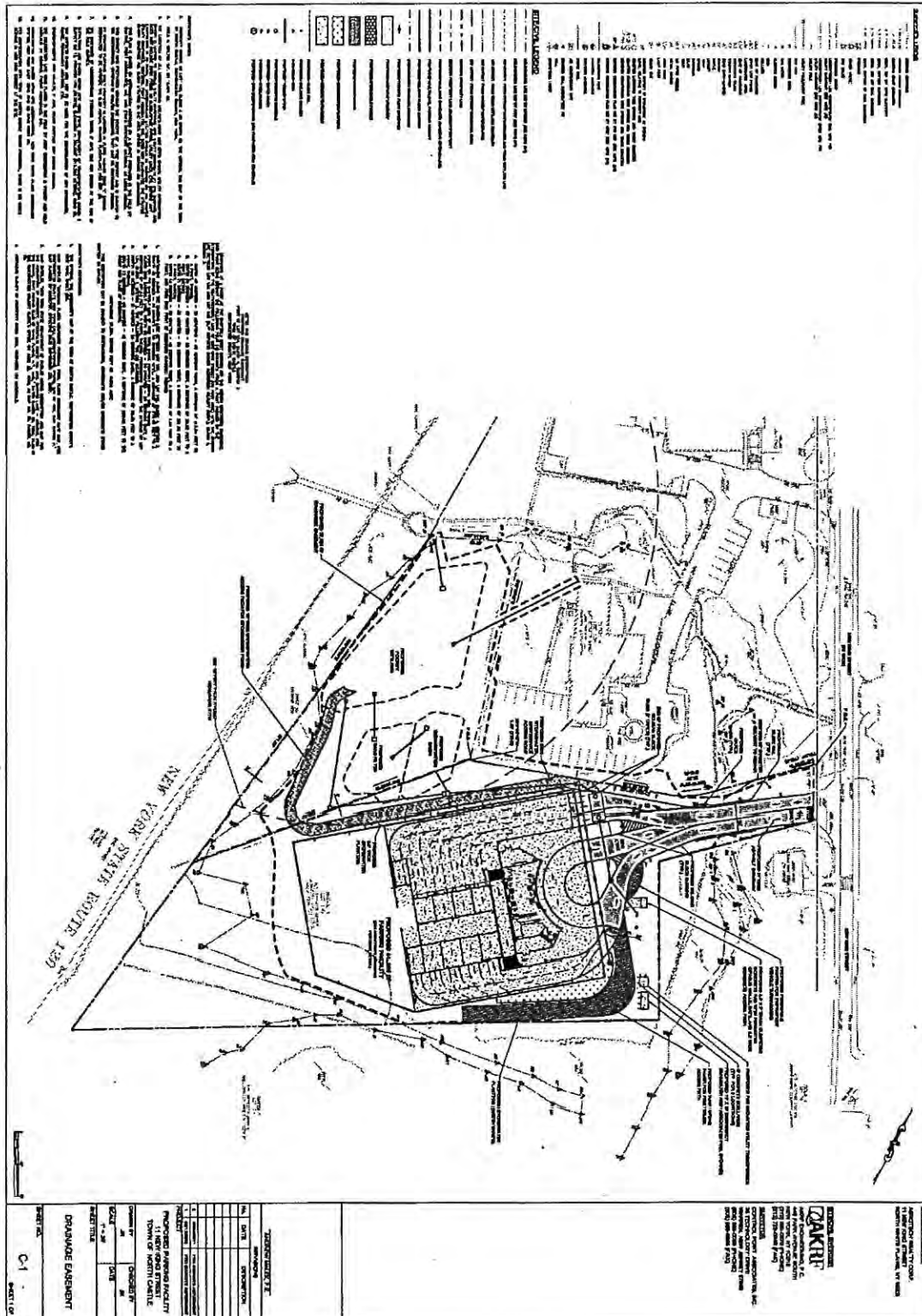
MOL/la P:\surveys\2008\C08209\M4B\M4B - PROPOSED DRAINAGE EASEMENT - 7-18-11.doc

Prepared By: MLO  
Reviewed By: JPL



# **SCHEDULE D TO DRAINAGE EASEMENT AGREEMENT**

Drainage Easement Plans  
(collectively including Plans C-1, C-6 and C-9)



# PARK PLACE

11 New King Street  
 11 New King Street LLC  
 White Plains, NY  
 10624



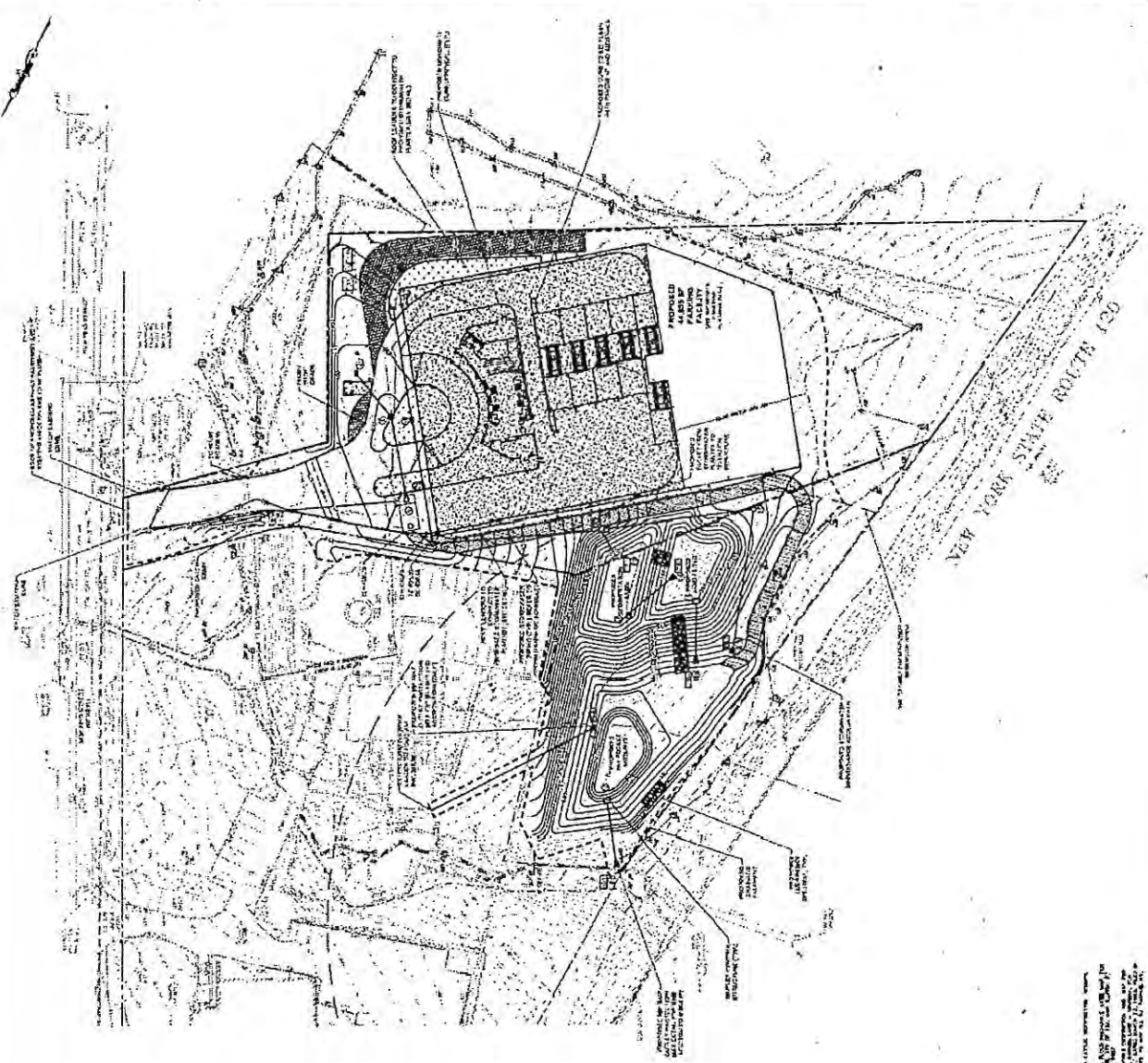
FEE SUBMISSION



NO.	DATE	DESCRIPTION
1	10-11-11	PRELIMINARY
2	10-11-11	REVISION
3	10-11-11	REVISION
4	10-11-11	REVISION
5	10-11-11	REVISION
6	10-11-11	REVISION
7	10-11-11	REVISION
8	10-11-11	REVISION
9	10-11-11	REVISION
10	10-11-11	REVISION

PAVING, GRADING,  
 AND DRAINAGE  
 PLAN

C-6



**NOTES:**

1. THE PAVING, GRADING, AND DRAINAGE PLAN IS BASED ON THE SURVEY DATA AND THE PROPOSED LAYOUT OF THE PROJECT.
2. THE PAVING, GRADING, AND DRAINAGE PLAN IS BASED ON THE SURVEY DATA AND THE PROPOSED LAYOUT OF THE PROJECT.
3. THE PAVING, GRADING, AND DRAINAGE PLAN IS BASED ON THE SURVEY DATA AND THE PROPOSED LAYOUT OF THE PROJECT.
4. THE PAVING, GRADING, AND DRAINAGE PLAN IS BASED ON THE SURVEY DATA AND THE PROPOSED LAYOUT OF THE PROJECT.
5. THE PAVING, GRADING, AND DRAINAGE PLAN IS BASED ON THE SURVEY DATA AND THE PROPOSED LAYOUT OF THE PROJECT.
6. THE PAVING, GRADING, AND DRAINAGE PLAN IS BASED ON THE SURVEY DATA AND THE PROPOSED LAYOUT OF THE PROJECT.
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8. THE PAVING, GRADING, AND DRAINAGE PLAN IS BASED ON THE SURVEY DATA AND THE PROPOSED LAYOUT OF THE PROJECT.
9. THE PAVING, GRADING, AND DRAINAGE PLAN IS BASED ON THE SURVEY DATA AND THE PROPOSED LAYOUT OF THE PROJECT.
10. THE PAVING, GRADING, AND DRAINAGE PLAN IS BASED ON THE SURVEY DATA AND THE PROPOSED LAYOUT OF THE PROJECT.

**LEGEND:**

- 1. PAVING
- 2. GRADING
- 3. DRAINAGE
- 4. EROSION CONTROL
- 5. LANDSCAPE
- 6. UTILITIES
- 7. FENCE
- 8. SIGNAGE
- 9. LIGHTING
- 10. OTHER

[illegible]

1. **What is the purpose of the study?**  
 The purpose of the study is to determine the effect of the use of a computer-based learning system on the learning outcomes of students in the field of computer science.

2. **What is the research question?**  
 The research question is: "What is the effect of the use of a computer-based learning system on the learning outcomes of students in the field of computer science?"

3. **What is the hypothesis?**  
 The hypothesis is: "The use of a computer-based learning system will have a positive effect on the learning outcomes of students in the field of computer science."

4. **What is the methodology?**  
 The methodology used in this study is a quantitative approach, specifically a quasi-experimental design. The study involves two groups of students: an experimental group that uses the computer-based learning system and a control group that does not. The learning outcomes are measured using a standardized test.

5. **What are the results?**  
 The results of the study show that the experimental group, which used the computer-based learning system, achieved significantly higher learning outcomes than the control group, which did not use the system.

6. **What are the conclusions?**  
 The conclusion of the study is that the use of a computer-based learning system has a positive effect on the learning outcomes of students in the field of computer science.

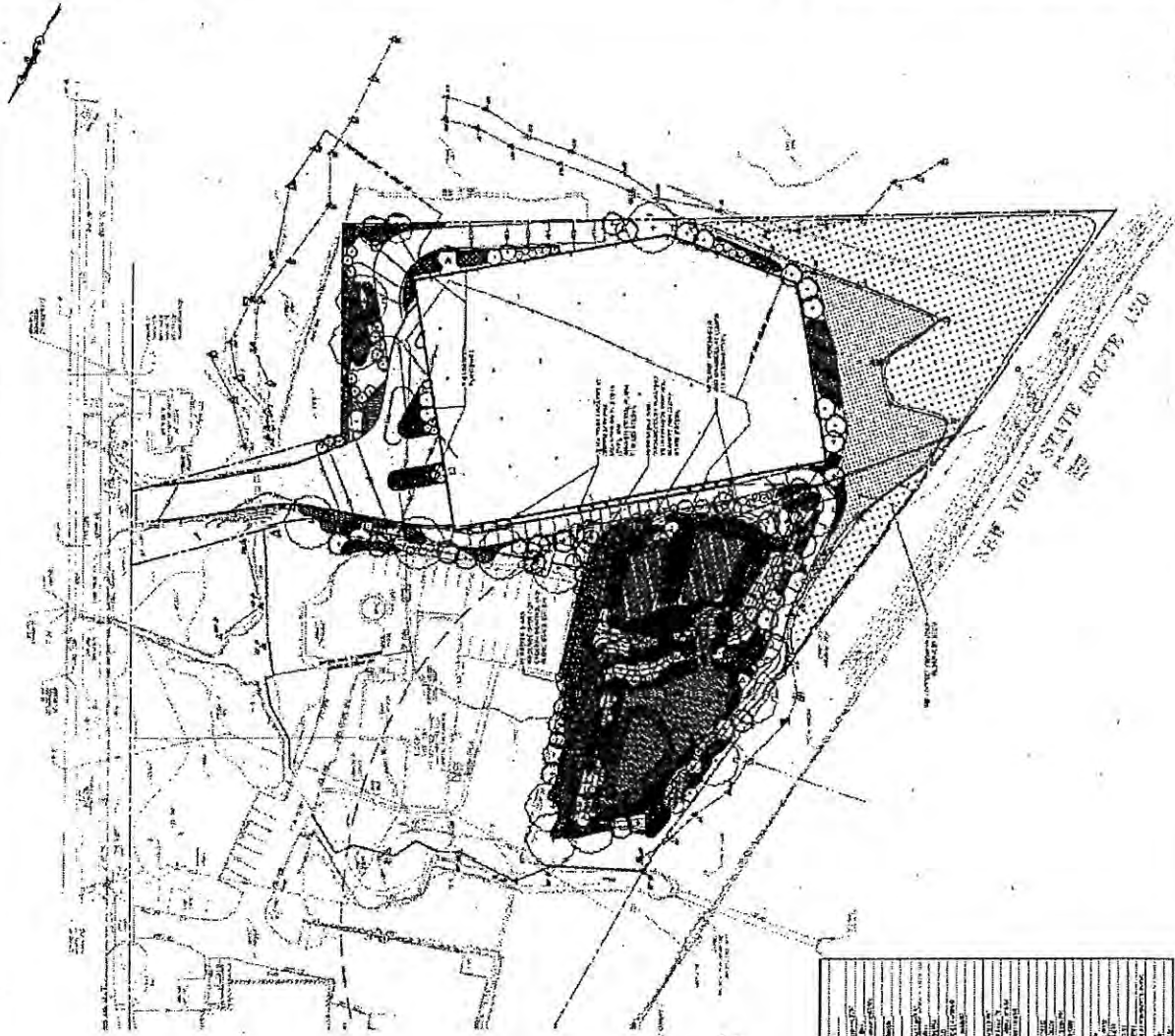
7. **What are the implications for practice?**  
 The implications for practice are that educators should consider using computer-based learning systems to improve the learning outcomes of their students in the field of computer science.

8. **What are the limitations of the study?**  
 The limitations of the study include the fact that the study was conducted in a single institution and with a specific group of students, which may limit the generalizability of the findings.

9. **What are the future research directions?**  
 Future research directions include conducting a larger-scale study with a more diverse sample of students and institutions to further explore the effects of computer-based learning systems on learning outcomes.

The diagram illustrates the four stages of the cell cycle:

- Prophase:** The chromosomes are condensing and the nuclear envelope is breaking down.
- Metaphase:** The chromosomes are aligned in the center of the cell (the metaphase plate).
- Anaphase:** The sister chromatids are separating and moving toward opposite poles of the cell.
- Telophase and Cytokinesis:** The nuclear envelope is reforming around the two sets of chromosomes, and the cell is beginning to divide.

[illegible]

6-9

**Appendix C:**  
Title Reports for Lot 14B and Lot 13A



***First American Title Insurance Company of New York  
1 Water Street, 2nd Floor, White Plains, NY 10601  
(914)428-3433 - Fax (914)428-0159***

August 13th, 2008

Cuddy & Feder, LLP  
445 Hamilton Avenue, 14th Floor  
White Plains, NY 10601  
Attn: Eon Nichols

RE: Title No.: 3004-244305  
Premises: 11 New King Street,  
White Plains, New York  
Owners:  
Purchaser(s): 11 New King Street LLC

Dear Eon Nichols:

With reference to the above mentioned title report, enclosed please find the following:

Amended Schedule "A"

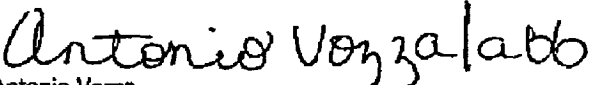
Amended Exception No. 3 on Schedule B-II

Added Exception No. 8 to Schedule B-II

Survey Reading

Kindly attach this letter and the enclosure(s) to the report in your possession and consider same a part thereof.

Very truly yours,

  
Antonio Vozza  
VP & Counsel

AV/abb

Enclosures

LIBER 8042 PAGE 186

TO HAVE AND TO HOLD said premises herein granted unto the Grantee, the heirs or successors and assigns of the Grantee forever;

Subject to:

1. Building restrictions, zoning regulations, covenants, restrictions of record, and easements affecting the premises.
2. The trust fund provisions of Section 13 of the Lien Law.
3. The rights of tenants and other persons in possession, if any.
4. An easement held by the City of New York and the New York State Department of Transportation ("NYSDOT") over the following described premises, which is designated as New York State Drainage Easement Parcel No. 101 on Map No. 63 R-1 of the New York State Department of Public Works Maps for the construction of Interstate Route 502:

BEGINNING at a point on the westerly line of the premises herein conveyed which is a distance of 371.62 feet from the southwesterly corner of said premises along a course of North 9 degrees 38 minutes 26 seconds east; Running thence north 3 degrees 05 minutes 17 seconds east, 23.03 feet to a point on said westerly line of the premises herein conveyed; Thence north 63 degrees 21 minutes 34 seconds east, 84.19 feet to a point on the westerly line of the land of Aerotech Holding Co., Inc.; Thence south 13 degrees 11 minutes 00 seconds east, along said land of Aerotech Holding Co., Inc., 20.57 feet to a point; Thence south 63 degrees 21 minutes 34 seconds west, 90.82 feet to the point or place of beginning on the westerly line of the premises herein conveyed.

Said premises herein conveyed and said easement being as shown on a certain Map entitled "Survey of Property to be conveyed to Aerotech Holding Co., Inc., Town of North Castle, West. Co., N.Y." prepared by Ralph L. MacDonald and dated January 27, 1983, Rev. 10-26-83, which Map is to be filed in the Westchester County Clerk's Office, Division of Land Records, simultaneously with the recording of this deed, and also being as shown on a certain Map entitled, "City of New York Department of Environmental Protection, Bureau of Water Supply, Parcel 902A and 903A Southern Aqueduct Department, Town of North Castle, County of Westchester, designated as Map 45310-2, completed by Ralph L. MacDonald on January 27, 1983 and bearing Certificate of Release dated 4-25-83, which Map is also to be filed in the Westchester County Clerk's Office, Division of Land Records, simultaneously with the recording of this deed.

21850 21851

UNDER 8042 PAGE 187

) the Grantor covenants that the Grantor has not done or suffered anything whereby the said premises have been incumbered in any way whatever.

Grantee, its successors and assigns, covenants and agrees to the reservation by the City of New York to receive all and any awards resulting from the appropriation of the aforementioned permanent drainage easement by NYSDOT, including severance damages, if any. Such easement prohibits the erection by Grantee, its successors or assigns of any structure on the portion of the premises through which the easement runs.

Grantee agrees to use the premises for a period of five years from the date hereof in connection with its non-residential business operations and corporate purposes, and for no other purposes, except with the written approval of Grantor.

Grantee agrees not to convey the premises for a period of five years from the date hereof, except with the written approval of Grantor; provided, however, the restriction upon Grantee's right to convey the premises set forth in this paragraph shall not apply to a single conveyance of the premises by Grantee to (a) a trust under which the sole beneficiary or beneficiaries are limited to persons who are shareholders of Grantee on the date hereof, and any of their issues, including Bergthor F. Endresen, Rosilla Endresen, Jan R. Endresen and Christopher Berg Andrasen (the "Immediate Family") (b) a general or limited partnership of which the general partner or general partners are limited to parties consisting of Grantee and any parties who are shareholders of Grantee on the date hereof, and any of their issues, including the Immediate Family (c) a corporation, all of the capital stock of which is owned by a party or parties consisting of Grantee and/or any parties who are shareholders of the Grantee on the date hereof and any of their issues, including the Immediate Family, provided all such capital stock is retained solely by these parties until five years from the date hereof, unless Grantor approves the transfer of the premises prior to such time, or (d) an individual or individuals who are shareholders of Grantee, on the date hereof, and any of their issue, including the Immediate Family. Except as otherwise provided or with the written approval of Grantor, no issued or outstanding capital stock of Grantee may be sold, assigned or otherwise transferred except as among the members of the Immediate Family, nor may any additional stock in Grantee be issued for a period of five years from the date hereof. Any corporation, trust, partnership or individual party or parties obtaining a conveyance of the premises as permitted by this paragraph shall not be permitted to convey the premises for five years from the date hereof, except with the written approval of Grantor.

LIBER 8042 PAGE 188

This covenant not to convey the premises for five years shall not prohibit, or apply to, a foreclosure sale or a transfer in lieu of a foreclosure under a mortgage held by an institutional lender securing financing with regard to the purchase of the premises by Grantee or construction financing with regard to construction on the premises or a permanent "take out" loan with regard to such construction financing nor to any sale or other transfer subsequent to such a foreclosure or transfer in lieu of foreclosure. A leasing of the commercial office space erected on the premises shall not be deemed to constitute a conveyance for purposes of this restriction. Furthermore, the use restriction contained herein shall not apply to the premises after a foreclosure sale or a transfer in lieu of foreclosure under a mortgage held by an institutional lender securing financing with regard to the purchase of the premises by Grantee or construction financing with regard to construction on the premises or a permanent "take-out" loan with regard to such construction financing.

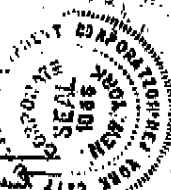
X The premises shall at all times be used by Grantee, its successors or assigns, in a manner consistent with the public health laws of the State of New York, and the sanitary rules of the Department of Environmental Protection (Bureau of Water Supply) of the City. Grantee shall use the premises in a manner which will not endanger, injure or pollute the water supply of the City. No sewage effluent from any source whatsoever may be discharged into the stream crossing the premises. This covenant shall run with the land. X

X Grantee, its successors or assigns covenant that they will not commence any construction on the premises until all of their plans and specifications have been approved in writing by the Commissioner of the New York City Department of Environmental Protection. This covenant shall run with the land. X

IN WITNESS WHEREOF, the Grantor and Grantee have caused their corporate seals to be hereunto affixed and have executed this Deed by having it signed by their respective duly authorized officers the day and year first above written.

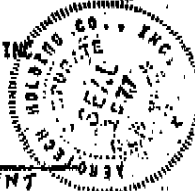
NEW YORK CITY PUBLIC  
DEVELOPMENT CORPORATION

By   
Executive Vice-President



AEROTECH HOLDING CO., INC.

By   
VICE PRESIDENT



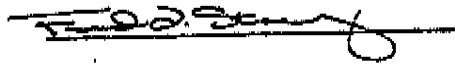


NOTARY

UBER 8042 PAGE 189


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

On this 15<sup>th</sup> day of NOV , 1984, before me personally came  
Gary Kerner , to me known, who, being by me duly sworn, did depose  
and say that he resides at 171-19 45<sup>th</sup> Ave., Auburndale, NY  
; that he is the Executive Vice Pres.  
of NEW YORK CITY PUBLIC DEVELOPMENT CORPORATION, the corporation described in  
and which executed the foregoing instrument; that he knows the seal of said  
corporation; that the seal affixed to said instrument is such corporate seal;  
that it was so affixed by order of the Board of Directors of said corporation,  
and that he signed his name thereto by like order.

  
FRED J. STACY  
Notary Public, State of New York  
No. 31-4778797  
Qualified in New York County  
Commission Expires March 30, 1985

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

On this 15<sup>th</sup> day of NOVEMBER , 1984, before me personally came  
JAN R. ENDRSEN , to me known, who, being by me duly sworn, did depose and  
say that he resides at GRISWOLD ROAD, RYE, NEW YORK  
; that he is the VICE PRESIDENT  
of AEROTECH HOLDING CO., INC. ; the corporation described in and which  
executed the foregoing instrument; that he knows the seal of said corporation;  
that the seal affixed to said instrument is such corporate seal; that it was so  
affixed by order of the Board of Directors of said corporation, and that he  
signed his name thereto by like order.

  
FRED J. STACY  
Notary Public, State of New York  
No. 31-4778797  
Qualified in New York County  
Commission Expires March 30, 1985

UEN 8042 PAGE 190

This instrument is being filed  
 recording fee  
 County Attorney

*[Signature]*

INDEXED 12/21/2011

NEW YORK CITY PUBLIC  
 DEVELOPMENT CORPORATION

to

AMERICAN HOLDING CO.  
 RECEIVED BY  
 LTIC ASSCO., INC.  
 32 EAST 59TH STREET  
 NEW YORK, N.Y. 10016  
 699-2170  
 D E D

The land affected by the  
 within instrument lies in  
 section: 3  
 Block: 4  
 p/o Lot 2  
 Town of North Castle,  
 County of Westchester

Record & Return:

FORWARD: NICKY,  
 ALEXANDERSON, NYDE  
 & MCGANN  
 100 PARK AVENUE  
 NEW YORK, N.Y. 10017

5100-10406



## WESTCHESTER COUNTY CLERK

LAND RECORDS DIVISION  
RECORDING PAGE

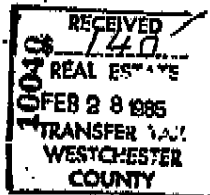
LIBER 8042 PAGE 191

RECEIVED  
WESTCHESTER COUNTY CLERK  
1000 FEB 23 10 11 AM '01

Reserve This Space For Use of Recording Office

Type of Instrument <u>DEED</u>	Date _____	02 BEDFORD
Statutory Charge <u>5</u>	Mortgage Amount _____	06 CORTLANDT
Recording Charge <u>18</u>	Exempt Yes <input type="checkbox"/> No <input type="checkbox"/>	09 EASTCHESTER
Filing Charge <u>1</u>	Rec'd. Tax on Above Mortgage	11 GREENBURGH
Cross Reference _____	Basic \$ _____	12 HARRISON
Cert./Receipt _____	Additional \$ _____	16 LEWISBORO
TOTAL <u>24</u>	Subtotal \$ _____	17 MANARONCK
EXMD. <u>C</u>	Special \$ _____	19 MT. KISCO
Transfer Tax Stamps Attached	Total \$ _____	20 MT. PLEASANT
AMT. \$ <u>140</u>	Serial No. _____	21 MT. VERNON
DATE <u>2-28-05</u>	Andrew J. Spano Westchester County Clerk	22 NEW CASTLE
<u>35,000</u>		23 NEW ROCHELLE
		24 NORTH CASTLE
		26 NORTH SALEM
		28 OSSINING
		30 PEEKSKILL
		31 PELHAM
		33 POUND RIDGE
		36 RYE CITY
		37 RYE TOWN
		38 SCARSDALE
		39 SOMERS
		42 WHITE PLAINS
		43 YONKERS
		44 YORKTOWN

Terminal No. 850597009 Trans. Fees No 10152 Date Ret'd. \_\_\_\_\_



Record and Return to:



15098001 12/20/05CPA 24.00

The foregoing instrument was endorsed for the record as follows:

The property affected by this instrument is situate in the ☒ town ☐ city  
of NORTH CASTLE, County of Westchester, N.Y. A true copy of the  
original DEED recorded in the Division of Land Records of the  
County Clerk's Office of Westchester County on FEB. 28, 1905 at

11:01 A.M. in Liber 8042 Page 185 in the book of DEEDS  
Witness my hand and Official Seal:

*Andrew J. Spano*  
Andrew J. Spano  
County Clerk

100-000



\*00889073\*

9475 PAGE 59

DECLARATION

THIS DECLARATION, made this 14<sup>th</sup> day of February, 1989, by NEW YORK CITY PUBLIC DEVELOPMENT CORPORATION, a Not-for-Profit corporation organized under the laws of the State of New York with its principal place of business at 161 William Street, New York, New York (hereinafter designated as the "Grantor") to AEROTECH HOLDING CO., INC., a New York State corporation, having its principal place of business at New King Street, North Castle, New York (hereinafter designated as the "Grantee").

WHEREAS, by Indenture made the 15th day of November, 1984, and recorded on February 28, 1985, in Liber 8042 of Deeds at Page 185 in the office of the Clerk of Westchester County, Division of Land Records (hereinafter called the "PDC Indenture"), the Grantor conveyed to the Grantee a certain plot, piece or parcel of land, situate, lying and being in the Town of North Castle, County of Westchester, State of New York (hereinafter called the "premises") described in Schedule A annexed hereto and made a part hereof; and

WHEREAS, Grantee desires to grant to National Westminster Bank USA, a national banking association organized and existing under the laws of the United States, its successors and assigns, (hereinafter called "Nat West") a first mortgage lien on the premises as partial security for a loan to be made by Nat West to the Grantee to be applied partially by the Grantee to the repayment

12/14/2011

16:10

9147371041

LEVINE & MONTANA

PAGE

08/15

of existing indebtedness of the Grantee to a mortgage of other lands of the Grantee abutting the premises; and

WHEREAS, under the terms of the PDC Indenture, the Grantee agreed, with certain exceptions inapplicable to the proposed grant of a mortgage lien to Nat West, that it would not convey the premises for a period of five years from the date of the PDC Indenture, except with the written approval of the Grantor; and

WHEREAS, the Grantor has no objection to the proposed mortgage to be granted by the Grantee to Nat West, and all necessary corporate authority having been obtained;

NOW, THEREFORE, WITNESSETH: That, in accordance with the terms of the PDC Indenture, the Grantor hereby grants and certifies its approval of a mortgage of the premises by the Grantee to Nat West and of any foreclosure sale of the premises or transfer of the premises in lieu of foreclosure under said mortgage and of any sale or other transfer of the premises subsequent to any such foreclosure or transfer in lieu of foreclosure; and the Grantor further confirms and certifies that the Grantee's agreement under the PDC Indenture to use the premises for a period of five years from the date thereof in connection with its non-residential business operations and corporate purposes, and for no other purposes, shall cease to have any force and effect and shall not apply to the premises after a foreclosure sale or a transfer in

COVER 9475 PAGE 61

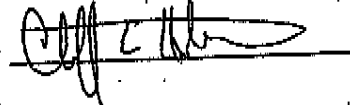
lien of foreclosure under the aforesaid mortgage of the premises by the Grantee to Nat West.

Nothing contained herein shall be deemed to affect any covenants or restrictions relating to the use of the premises which are contained in the PDC Indenture except as hereinabove provided.

IN WITNESS WHEREOF, the Grantor has executed this Declaration by having it signed by its duly authorized officer the day and year first above written.

NEW YORK CITY PUBLIC  
DEVELOPMENT CORPORATION

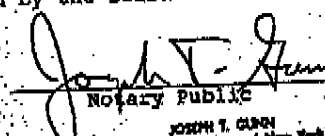
Witness:



By  President

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

On the 14<sup>th</sup> day of February, 1989, before me personally came James F. Schuster, to me known, who, being by me duly sworn, did depose and say that he resides at 42 161 William St. New York, N.Y. 10038, that he is ~~President~~ President of New York City Public Development Corporation, the corporation described in and which executed the foregoing instrument, and that he signed his name thereto as authorized by the Board of Directors of the corporation.

  
Notary Public

JOSEPH T. GUNN  
Notary Public, State of New York  
No. 41-4922758  
Qualified in Queens County  
Commission Expires February 12, 1990

12/14/2011

16:10

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LEVINE & MONTANA

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LIBER 9475 PAGE 62

SCHEDULE ADescription of Premises

ALL that certain plot, piece or parcel of land, situate, lying and being in the Town of North Castle, County of Westchester, State of New York, bounded and described as follows:

BEGINNING at a monument set at the northwesterly corner of land of Aerotech Holding Co., Inc., as described in a deed recorded in the Westchester County Clerk's Office, Division of Land Records, in Liber 7386 of Deeds, Page 691; Running thence south 2 degrees 03 minutes 00 seconds east along the dividing line between the premises herein conveyed and the land of Aerotech Holding Co., Inc., 76.32 feet to a point; thence south 13 degrees 11 minutes 00 seconds east, still along the land of Aerotech Holding Co., Inc. 412.57 feet to a point; Thence south 43 degrees 04 minutes 40 seconds west, still along the land of Aerotech Holding Co., Inc. 279.56 feet to a point on the easterly side of New York State Route 120, as the same is shown on New York State Department of Public Works Maps for the construction of Interstate Route 502, Map No. 63 R-1, Parcel No. 86, which point is the southwesterly corner of the premises herein conveyed; Thence along the easterly side of New York State Route 120, north 9 degrees 38 minutes 26 seconds east, 371.62 feet to a point; Thence still along the easterly side of New York State Route 120, north 3 degrees 05 minutes 17 seconds east, 481.93 feet to a point on the westerly line of land of Asa Electric, Inc.; Thence along the said westerly line of land of Asa Electric, Inc. south 2 degrees 03 minutes 00 seconds east, 165.53 feet to the point and place of BEGINNING. Containing within the aforesaid bounds 1.195 acres, more or less.

Said premises are designated as part of Section 3, Block 4, Lot 13A on the Tax Map of the Town of North Castle, County of Westchester.

12/14/2011

16:10

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LEVINE & MONTANA

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11-11-11

LTW 89-5012  
LIBER 9475 PAGE 63

## DECLARATION

TITLE NO.: LTW89-5012  
PREMISES: New King Street  
North Castle  
Westchester County, N.Y.

## TAX DESIGNATION:

Town of North Castle  
County: Westchester

Section: 3  
Block: 4  
Lot: 13A

NEW YORK CITY  
PUBLIC DEVELOPMENT CORPORATION

to

AEROTECH HOLDING CO., INC.

## RECORD AND RETURN BY MAIL TO:

WORMSER, KIRLY, ALESSANDRONI, HYDE & McCANN  
100 Park Avenue  
New York, New York 10017  
Attn: John V. McCann, Esq.

LIBER 9475 PAGE 64



WESTCHESTER COUNTY RECORDING AND ENDORSEMENT PAGE  
(THIS PAGE FORMS PART OF THE INSTRUMENT)

THE FOREGOING INSTRUMENT WAS ENDORSED FOR THE RECORD AS FOLLOWS:

TYPE OF INSTRUMENT NR

(SEE CODES FOR DEFINITIONS)

THE PROPERTY IS SITUATED IN  
WESTCHESTER COUNTY, N.Y. IN  
THE

- 02 TOWN OF BEDFORD
- 06 TOWN OF CORTLANDT
- 09 TOWN OF EASTCHESTER
- 11 TOWN OF GREENBURGH
- 12 TOWN OF HARRISON
- 16 TOWN OF LEWISBORO
- 17 TOWN OF MAMARONECK
- 19 TOWN OF MT. KISCO
- 20 TOWN OF MT. PLEASANT
- 21 CITY OF MT. VERNON
- 22 TOWN OF NEW CASTLE
- 23 CITY OF NEW ROCHELLE
- 24 TOWN OF NORTH CASTLE
- 26 TOWN OF NORTH SALEM
- 28 TOWN OF OSSINING
- 30 CITY OF PEEKSKILL
- 31 TOWN OF PELHAM
- 35 TOWN OF POUND RIDGE
- 36 CITY OF RYE
- 37 TOWN OF RYE
- 38 TOWN OF SCARSDALE
- 39 TOWN OF SOMERS
- 42 CITY OF WHITE PLAINS
- 43 CITY OF YONKERS
- 44 TOWN OF YORKTOWN

LIBER

PAGE

STAT'Y CHARGE 5

REC'ING CHARGE 15

FILING CHARGE

CROSS REFERENCE

CRRT/RECEIPT

TOTAL

20

\$ \_\_\_\_\_  
CONSIDERATION

RECEIVED

\$ \_\_\_\_\_

REAL ESTATE  
TRANSFER TAX  
WESTCHESTER COUNTY

MORTGAGE DATE

MORTGAGE AMOUNT

EXEMPT YES NO  
REC'D TAX ON ABOVE MTGE:

BASIC \$

ADDTL \$

SUBTOTAL \$

SPECIAL \$

TOTAL \$

SERIAL No.

DWELLING:

☐ 1-5 UNITS  
☐ OVER 5 UNITS

ANDREW J. SPANO  
WESTCHESTER COUNTY CLERK

ADDITIONAL COMMENTS

TERMINAL No.

DATE RETURNED

890732008

EXAMINED BY  
WITNESS MY HAND AND OFFICIAL SEAL

ANDREW J. SPANO  
WESTCHESTER COUNTY CLERK

THE RECORDING DATE OF THIS INSTRUMENT AS INDICATED BELOW IS THE OFFICIAL DATE ON WHICH  
THE WESTCHESTER COUNTY CLERK RECEIVED THIS INSTRUMENT.  
QUESTIONS REGARDING DELAYS PRIOR TO THIS DATE SHOULD BE ADDRESSED TO YOUR  
REPRESENTATIVE OR ATTORNEY.

0001078000 03/14/89CPA/DE 20.00  
11:49

RECEIVED

89MAR 14 AM 11:45

ANDREW J. SPANO  
WESTCHESTER COUNTY CLERK

RECORD AND RETURN



***First American Title Insurance Company of New York***

Title No. 3004-244305  
AMENDED 08/13/2008 {abb}

**SCHEDULE "A"**

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE, LYING AND BEING IN THE TOWN OF NORTH CASTLE, COUNTY OF WESTCHESTER AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WESTERLY SIDE OF NEW KING STREET WHERE IT IS INTERSECTED BY THE DIVISION LINE BETWEEN THE PREMISES HEREIN DESCRIBED AND LANDS NOW OR FORMERLY OF MEEHANITE METAL CORP., FORMERLY OF EDWARD WOLFE;

THENCE ALONG THE WESTERLY SIDE OF NEW KING STREET, SOUTH 27° 15' 00" EAST 50.00 FEET TO THE DIVISION LINE BETWEEN THE PREMISES HEREIN DESCRIBED AND LANDS NOW OR FORMERLY OF NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY;

THENCE ALONG SAID DIVISION LINE AND THE DIVISION LINE BETWEEN THE PREMISES HEREIN DESCRIBED AND LANDS NOW OR FORMERLY OF NEW YORK, WESTCHESTER AND BOSTON RAILWAY CO., THE FOLLOWING COURSES AND DISTANCES:

SOUTH 48° 14' 50" WEST 154.96 FEET;  
SOUTH 27° 15' 00" EAST 144.89 FEET; AND  
SOUTH 61° 58' 18" WEST 555.43 FEET TO THE DIVISION LINE BETWEEN THE PREMISES HEREIN DESCRIBED AND LANDS OF THE INTER-STATE ROUTE 502 AS SHOWN ON MAP FILED IN THE WESTCHESTER COUNTY CLERK'S OFFICE, DIVISION OF LAND RECORDS, AS MAP NO. 14457;

THENCE ALONG SAID LAND NORTH 9° 35' 30" EAST 190.72 FEET TO THE DIVISION LINE BETWEEN THE PREMISES HEREIN DESCRIBED AND LAND OF THE CITY OF NEW YORK;

THENCE ALONG THE SAME, NORTH 43° 04' 40" EAST 279.32 FEET (DEED) 279.56 FEET (SURVEY) TO LANDS NOW OR FORMERLY OF MEEHANITE METAL CORP., FORMERLY OF EDWARD WOLFE;

THENCE ALONG THE WESTERLY AND SOUTHERLY LINES OF THE LAST MENTIONED LANDS AND ALONG THE CENTER OF AN OLD STONE WALL THE FOLLOWING COURSES AND DISTANCES:

SOUTH 13° 11' 00" EAST 1.38 FEET (DEED) 1.50 FEET (SURVEY);  
NORTH 72° 34' 50" EAST 201.87 FEET (DEED) 201.68 (SURVEY);  
NORTH 56° 47' 10" EAST 20.22 FEET; AND  
NORTH 48° 14' 50" EAST 112.94 FEET TO THE WESTERLY SIDE OF NEW KING STREET AT THE POINT OR PLACE OF BEGINNING.

THE policy to be issued under this report will insure the title to such buildings and improvements erected on the premises, which by law constitute real property.

**FOR CONVEYANCING ONLY: TOGETHER** with all the right, title and interest of the party of the first part, of in and to the land lying in the street in front of and adjoining said premises.



***First American Title Insurance Company of New York***

**Title No. 3004-244305  
AMENDED 08/13/2008 (abb)**

**SCHEDULE "B-II"  
(EXCEPTIONS)**

**THE POLICY WILL INCLUDE AS EXCEPTIONS TO TITLE THE FOLLOWING MATTERS UNLESS THEY ARE  
DISPOSED OF TO THE SATISFACTION OF THE COMPANY:**

1. Rights of tenants or persons in possession, if any.
2. Taxes, tax liens, tax sales, water rates, sewer rents and assessments set forth herein.
3. **AMENDED 08/13/2008 (abb)** Survey reading herein.
4. There are three open mortgages of record. (See Mortgage Schedule herein)
5. Assignment of leases and rents recorded 5/22/2003 in Document Control #431280919.
6. The following Financing Statement(s) (UCC-1) must be disposed of:

Debtor:	Aerotech Realty, Inc.
Secured Party:	Hudson United Bank
File No.:	46009-6003
Filed:	1/9/2006
Covers:	Fixtures and Equipment
Land (Block & Lot):	Section 3 Block 4 Lot 14B
7. Easement agreement recorded 3/23/2005 in Document Control #443410941 (see post).
8. **ADDED 08/13/2008 (abb)** Policy excepts the rights of others in and to the natural and unobstructed flow of the brook and stream crossing the premises described in Schedule A herein.



***First American Title Insurance Company of New York***

Title No. 3004-244305  
AMENDED 08/13/2008 (abb)

**SURVEY READING**

Survey made by Ralph L. MacDonald Co., Engineers & Land Surveyors dated 6/11/2002;

Shows the following:

(a) Macadam driveway extends onto New King Street. FOR MORTGAGE POLICY ONLY: Policy insures against monetary loss by reason of the enforced removal thereof.

(b) Brook and stream cross subject premises at northeast and southwest portions.

(c) Stone wall lies an undisclosed distance East of the southeasterly record line.

(d) Stone walls on subject premises extend an undisclosed distance onto premises adjoining to the South.

(e) Variation between the location of stone wall and the northwesterly record line. FOR MORTGAGE POLICY ONLY: Policy insures against monetary loss by reason of the enforced removal thereof.

(f) Center line of stone wall lies generally along northerly record line, said stone wall extends an undisclosed distance onto premises adjoining to the North.

(g) Stone wall on northeasterly record line lies partially on subject premises and partially on premises adjoining to the North.

(h) Center line of stone wall is as much as 3.5 feet South of the northeasterly record line.

NOTE: Projections over and encroachments onto interior lines are not made a part of this survey reading.

NOTE: Subject to any state of facts that an accurate survey would disclose since 6/11/2002.



# **First American Title Insurance Company of New York**

**1 Water Street, 2nd Floor  
White Plains, New York 10601**

**Phone: (914)428-3433**

**Fax: (914)428-0159**

**TITLE NUMBER:** 3004-244305

**SUBMITTED BY:** Wayne R. Baird

**APPLICATION DATE:**

**REPORT DATE:** 07/31/2008

**TYPED BY:** Stephanie Smith

07/25/2008

**AMENDED DATE:** 07/31/2008

**APPLICANT:**

Eon Nichols  
Cuddy & Feder, LLP  
445 Hamilton Avenue, 14th Floor  
White Plains, NY 10601  
Phone #(914)761-1300  
Fax #(914)761-5372  
Email:

**BANK ATTORNEY:**

Will Advise

**SELLER'S ATTORNEY:**

Will Advise

**REF:**

**ADDITIONAL COPIES:**

**TRANSACTION TYPE:**

Sale w/Mortgage

**AMOUNT OF INSURANCE:**

**FEE:** \$ 0.00

**MTGE:** \$ 0.00

**INSURED MORTGAGEE:**

Will Advise,

**INSURED FEE:**

To Be Determined

**RECORD OWNER:**

AEROTECH REALTY INC.

**PREMISES:**

11 New King Street,  
White Plains, New York

**DISTRICT:**

**SECTION:**

3

**BLOCK:**

4

**LOTS:**

14B

**COUNTY OF:**

Westchester

**TOWN:**

**Subdivision/Condo Name/Filed Map:**

**APP DESC:**

**UNIT #:**

**SURVEY INSTRUCTIONS:** Will Advise

**Order Confirmation**







# ***First American Title Insurance Company of New York***

*1 Water Street, 2nd Floor*

*White Plains, New York 10601*

*Phone: (914)428-3433 - Fax: (914)428-0159*

## ***CERTIFICATE OF TITLE***

### ***First American Title Insurance Company of New York***

Title No. 3004-244305

***First American Title Insurance Company of New York*** ("the Company") certifies to the "proposed insured(s)" listed herein that an examination of title to the premises described in Schedule A has been made in accordance with its usual procedure and agrees to issue its standard form of title insurance policy authorized by the Insurance Department of the State of New York, in the amount set forth herein, insuring the interest set forth herein, and the marketability thereof, in the premises described in Schedule A, after the closing of the transaction in conformance with the requirements and procedures approved by the Company and after the payment of the premium and fees associated herewith excepting (a) all loss or damage by reason of the estates, interests, defects, objections, liens, encumbrances and other matters set forth herein that are not disposed of to the satisfaction of the Company prior to such closing or issuance of the policy (b) any question or objection coming to the attention of the Company before the date of closing, or if there be no closing, before the issuance of the policy.

This Agreement to insure shall terminate (1) if the prospective insured, his or her attorney or agent makes any untrue statement with respect to any material fact or suppresses or fails to disclose any material fact or if any untrue answers are given to material inquiries by or on behalf of the Company; or (2) upon the issuance of title insurance in accordance herewith. In the event that this Certificate is endorsed and redated by an authorized representative of the Company after the closing of the transaction and payment of the premium and fees associated herewith, such "redated" Certificate shall serve as evidence of the title insurance issued until such time as a policy of title insurance is delivered to the insured. Any claim made under the redated Certificate shall be restricted to the conditions, stipulations and exclusions from coverage of the standard form of title insurance policy issued by the Company.

**Countersigned**

**First American Title Insurance Company of New York**

By:

Gail P. Benkwitt, Secretary

By:

Steven M. Napolitano, President



## ***First American Title Insurance Company of New York***

### **CLOSING REQUIREMENTS**

1. **CLOSING DATE:** In order to facilitate the closing of title, please notify the closing department at least 48 hours prior to the closing, of the date and place of closing, so that searches may be continued.
2. **PROOF OF IDENTITY:** Identity of all persons executing the papers delivered on the closing must be established to the satisfaction of the Company.
3. **POWER OF ATTORNEY:** If any of the closing instruments are to be executed pursuant to a Power of Attorney, a copy of such Power should be submitted to the Company prior to closing. THE IDENTITY OF THE PRINCIPAL EXECUTING THE POWER AND THE CONTINUED EFFECTIVENESS OF THE POWER MUST BE ESTABLISHED TO THE SATISFACTION OF THE COMPANY. The Power must be in recordable form.
4. **CLOSING INSTRUMENTS:** If any of the closing instruments will be other than commonly used forms or contain unusual provisions, the closing can be simplified and expedited by furnishing the Company with copies of the proposed documents in advance of closing.
5. **LIEN LAW CLAUSE:** Deeds and mortgages must contain the covenant required by Section 13 of the Lien Law. The covenant is not required in deeds from referees or other persons appointed by a court for the sole purpose of selling property.
6. **REFERENCE TO SURVEYS AND MAPS:** Closing instruments should make no reference to surveys or maps unless such surveys or maps are on file.
7. **INTERMEDIARY DEEDS:** In the event an intermediary will come into title at closing, other than the ultimate insured, the name of such party must be furnished to the Company in advance of closing so that appropriate searches can be made and relevant exceptions considered.

### **MISCELLANEOUS PROVISIONS**

1. THIS CERTIFICATE IS INTENDED FOR LAWYERS ONLY. YOUR LAWYER SHOULD BE CONSULTED BEFORE TAKING ANY ACTION BASED UPON THE CONTENTS HEREOF.
2. THE COMPANY'S CLOSER MAY NOT ACT AS LEGAL ADVISOR FOR ANY OF THE PARTIES OR DRAW LEGAL INSTRUMENTS FOR THEM. THE CLOSER IS PERMITTED TO BE OF ASSISTANCE ONLY TO AN ATTORNEY.
3. If the insured contemplates making improvements to the property costing more than twenty per centum of the amount of insurance to be issued hereunder, we suggest that the amount of insurance be increased to cover the cost thereof; otherwise, in certain cases the insured will become a co-insurer.
4. Our policy will except from coverage any state of facts which an accurate survey might show, unless survey coverage is ordered. When such coverage is ordered, this certificate will set forth the specific survey exceptions which we will include in our policy. Whenever the word "trim" is used in any survey exceptions from coverage, it shall be deemed to include, roof cornices, mouldings, belt courses, water tables, keystones, pilasters, portico, balcony all of which project beyond the street line.
5. Our examination of the title includes a search for any unexpired financing statements which affect fixtures and which have been properly filed and indexed pursuant to the Uniform Commercial Code in the office of the recording officer of the county in which the real property lies. No search has been made for other financing statements because we do not insure title to personal property. We will on request, in connection with the issuance of a title insurance policy, prepare such search for an additional charge. Our liability in connection with such search is limited to \$1,000.00.
6. This company must be notified immediately of the recording or the filing, after the date of this certificate, of any instrument and of the discharge or other disposition of any mortgage, judgment, lien or any other matter set forth in this certificate and of any change in the transaction to be insured or the parties thereto. The continuation will not otherwise disclose the disposition of any lien.
7. If affirmative insurance is desired regarding any of the restrictive covenants with respect to new construction or alterations, please request such insurance in advance of closing as this request should not be considered at closing.
8. If it is discovered that there is additional property or an appurtenant easement for which insurance is desired, please contact the Company in advance of closing so that an appropriate title search may be made. In some cases, our rate manual provides for an additional charge for such insurance.



***First American Title Insurance Company of New York***

Proposed Insured  
Purchaser: To Be Determined  
Mortgagee: Will Advise

Title No.: 3004-244305  
Effective Date: 06/30/2008  
Redated:

Amount of Insurance:  
Fee: \$0.00  
Mortgage: \$0.00

THIS COMPANY CERTIFIES that a good and marketable title to the premises described in Schedule "A", subject to the liens, encumbrances and other matters, if any, set forth in this certificate may be conveyed and or mortgaged by:

**AEROTECH REALTY INC.**

Who acquired title by deed from Aerotech World Trade Corp. dated 12/31/1986 recorded 3/26/1987 in Liber 8776 Cp 302.

Premises described in Schedule "A" are known as:

Address: 11 New King Street,  
White Plains, New York  
County: Westchester

City: White Plains

Section: 3  
Block: 4  
Lot: 14B

**For any Title Clearance Questions  
on this Report please call  
ANTONIO VOZZA  
VICE PRESIDENT AND COUNSEL  
(914) 286-6426**

RJW/slp



***First American Title Insurance Company of New York***

**\*NOTICE\***

First American will collect fees to enable the recording of documents for this transaction. If it is thereafter determined that a Lender paid all or a portion of those recording fees, First American will promptly refund the amount paid by the Lender to the party from whom it was collected.



***First American Title Insurance Company of New York***

**Title No. 3004-244305**

**SCHEDULE "A"**

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, SITUATE, LYING AND BEING IN THE TOWN OF NORTH CASTLE, COUNTY OF WESTCHESTER AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WESTERLY SIDE OF NEW KING STREET WHERE IT IS INTERSECTED BY THE DIVISION LINE BETWEEN THE PREMISES HEREIN DESCRIBED AND LANDS NOW OR FORMERLY OF MEEHANITE METAL CORP., FORMERLY OF EDWARD WOLFE;

THENCE ALONG THE WESTERLY SIDE OF NEW KING STREET, SOUTH 27° 15' 00" EAST 50.00 FEET TO THE DIVISION LINE BETWEEN THE PREMISES HEREIN DESCRIBED AND LANDS NOW OR FORMERLY OF NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY;

THENCE ALONG SAID DIVISION LINE AND THE DIVISION LINE BETWEEN THE PREMISES HEREIN DESCRIBED AND LANDS NOW OR FORMERLY OF NEW YORK, WESTCHESTER AND BOSTON RAILWAY CO., THE FOLLOWING COURSES AND DISTANCES:

SOUTH 48° 14' 50" WEST 154.96 FEET;  
SOUTH 27° 15' 00" EAST 144.89 FEET; AND  
SOUTH 61° 58' 18" WEST 555.43 FEET TO THE DIVISION LINE BETWEEN THE PREMISES HEREIN DESCRIBED AND LANDS OF THE INTER-STATE ROUTE 502 AS SHOWN ON MAP FILED IN THE WESTCHESTER COUNTY CLERK'S OFFICE, DIVISION OF LAND RECORDS, AS MAP NO. 14457;

THENCE ALONG SAID LAND NORTH 9° 35' 30" EAST 190.72 FEET TO THE DIVISION LINE BETWEEN THE PREMISES HEREIN DESCRIBED AND LAND OF THE CITY OF NEW YORK;

THENCE ALONG THE SAME, NORTH 43° 04' 40" EAST 279.32 FEET TO LANDS NOW OR FORMERLY OF MEEHANITE METAL CORP., FORMERLY OF EDWARD WOLFE;

THENCE ALONG THE WESTERLY AND SOUTHERLY LINES OF THE LAST MENTIONED LANDS AND ALONG THE CENTER OF AN OLD STONE WALL THE FOLLOWING COURSES AND DISTANCES:

SOUTH 13° 11' 00" EAST 1.38 FEET;  
NORTH 72° 34' 50" EAST 201.87 FEET;  
NORTH 56° 47' 10" EAST 20.22 FEET; AND  
NORTH 48° 14' 50" EAST 112.94 FEET TO THE WESTERLY SIDE OF NEW KING STREET AT THE POINT OR PLACE OF BEGINNING.

**THE** policy to be issued under this report will insure the title to such buildings and improvements erected on the premises, which by law constitute real property.

**FOR CONVEYANCING ONLY: TOGETHER** with all the right, title and interest of the party of the first part, of in and to the land lying in the street in front of and adjoining said premises.



***First American Title Insurance Company of New York***

**Title No. 3004-244305**

**SCHEDULE "B-I"  
(REQUIREMENTS)**

**THE FOLLOWING ARE REQUIREMENTS TO BE COMPLIED WITH FOR A TITLE POLICY TO ISSUE:**

1. A copy of the Contract of Sale must be submitted for consideration prior to closing.

NOTE: When applicable, a copy of the Contract of Sale must be submitted with the New York City Real Property Transfer Tax Return (RPT) when the consideration is \$400,000.00 or more.

2. Closing mortgage/deed must contain the following recital: Being the same premises conveyed to the parties of the first part herein by deed recorded on 3/26/1987 in(as) Liber 8776 Cp 302.
3. Searches, including judgments, federal tax liens and bankruptcies have been run against AEROTECH REALTY INC., the certified owner(s) herein and the following must be disposed of: NO RETURNS
4. If the present transaction consists in whole or in part of a conveyance or lease by a corporate grantor or lessor, there must be compliance with Sections 615 and 909 of the Business Corporation Law.

The vote of shareholders holding two - thirds of the outstanding shares of the stock of the corporation entitled to be voted is required at a meeting duly called to approve the sale or lease of all or substantially all of the assets of a corporation not made in the usual course of business; provided, however, that a majority vote of the shares outstanding and entitled to be voted is required for a corporation formed after February 22, 1998 and for a corporation formed prior thereto, the certificates of incorporation of which provides for a majority vote.

Approval of such a sale or lease may be obtained without a meeting on the written consent of the holders of all outstanding shares entitled to be voted or, if the certificate of incorporation so permits, on the written consent of the holders of outstanding shares of no less than the minimum number of votes required by the certificate of incorporation to authorize an action at a meeting at which all shares entitled to vote were present and voted.

Proofs showing the authority upon which the conveyance or lease is to be made should be submitted to counsel for the Company in advance of closing. The instrument on closing should recite the authority for the conveyance or lease.

5. The name of the proposed mortgagor must be disclosed to the Company in advance of closing so that the appropriate bankruptcy and lien searches can be run.
6. If the proposed mortgagor is an entity, the Certificate (Articles) and Agreements relating to its formation and operation and any amendments thereto and proof of its good standing and authority to acquire or lease and mortgage under the laws of the state (country) of its formation must be furnished the Company in advance of the closing.
7. NOTE: Westchester County has imposed a mortgage recording tax of .0025 (1/4%) of the principal amount of the mortgage, in addition to the New York State portion of the tax, for an aggregate mortgage recording tax in Westchester County (outside of the City of Yonkers) of 1.30 %.
8. To verify at closing the identity of the persons who are executing closing documents, two forms of identification, at least one of which is to contain a photograph, is required to be presented.



***First American Title Insurance Company of New York***

**Title No. 3004-244305**

**SCHEDULE "B-I" Continued**  
**(REQUIREMENTS)**

**THE FOLLOWING ARE REQUIREMENTS TO BE COMPLIED WITH FOR A TITLE POLICY TO ISSUE:**

9. FOR INFORMATION ONLY:

RE: Real Property Tax Payments

NOTE: The recording of documents has been significantly delayed by many county recording offices in New York State. When real estate tax payments become due prior to the recording of a deed, the local tax assessor may not have sufficient information as to where tax bills are to be sent. Where this is an issue, it may be advisable to contact the office of your local tax assessor with a copy of the closing deed. First American is not responsible for the failure to receive real estate tax bills or for any additional charges that may result from the failure to timely pay such amounts. The prompt payment of real estate taxes is the responsibility of the property owner and its mortgage lender.





***First American Title Insurance Company of New York***

**Title No. 3004-244305**

**SCHEDULE "B-II"**  
**(EXCEPTIONS)**

**THE POLICY WILL INCLUDE AS EXCEPTIONS TO TITLE THE FOLLOWING MATTERS UNLESS THEY ARE DISPOSED OF TO THE SATISFACTION OF THE COMPANY:**

1. Rights of tenants or persons in possession, if any.
2. Taxes, tax liens, tax sales, water rates, sewer rents and assessments set forth herein.
3. Any state of facts which a guaranteed survey of current date would disclose.
4. There are three open mortgages of record. (See Mortgage Schedule herein)
5. Assignment of leases and rents recorded 5/22/2003 in Document Control #431280919.
6. The following Financing Statement(s) (UCC-1) must be disposed of:

Debtor:	Aerotech Realty, Inc.
Secured Party:	Hudson United Bank
File No.:	46009-6003
Filed:	1/9/2006
Covers:	Fixtures and Equipment
Land (Block & Lot):	Section 3 Block 4 Lot 14B
7. Easement agreement recorded 3/23/2005 in Document Control #443410941 (see post).



*First American Title Insurance Company of New York*

**Title No. 3004-244305**

**SURVEY READING**



***First American Title Insurance Company of New York***

**Title No. 3004-244305**

**MORTGAGE SCHEDULE**

**MORTGAGE 'A'**

**MORTGAGE** made by AEROTECH WORLD TRADE CORP. to CONNECTICUT NATIONAL BANK in the amount of \_\_\_\_\_ dated 8/20/1986, recorded 8/25/1986 in (as) Liber 10199 Mp 218. (Mortgage Tax Paid: \_\_\_\_\_)

**ASSIGNMENT OF MORTGAGE** made by FLEET BANK, AS SUCCESSOR BY MERGER TO CONNECTICUT NATIONAL BANK to PURCHASE ACQUISITION COMPANY, LLC dated 9/11/1998, recorded 12/31/1998 in (as) Liber 24972 Mp 44. Assigns Mortgage(s) 'A'.

**ASSIGNMENT OF MORTGAGE** made by PURCHASE ACQUISITION COMPANY, LLC to METROPOLITAN BANK AND TRUST COMPANY dated 10/9/1998, recorded 1/4/1999 in (as) Liber 24982 Mp 256. Assigns Mortgage(s) 'A'.

**ASSIGNMENT OF MORTGAGE** made by METROPOLITAN BANK AND TRUST COMPANY to HUDSON UNITED BANK dated 6/19/2002, recorded 5/22/2003 in (as) Document Control #431280906. Assigns Mortgage(s) 'A'.

**FOR CONSOLIDATION SEE MORTGAGE 'B'**

**MORTGAGE 'B'**

**GAP MORTGAGE** made by AEROTECH REALTY, INC. to HUDSON UNITED BANK in the amount of \_\_\_\_\_ dated 6/21/2002, recorded 5/22/2003 in (as) Document Control #431280907. (Mortgage Tax Paid: \_\_\_\_\_)

**CONSOLIDATION, EXTENSION AND MODIFICATION AGREEMENT** made by and between AEROTECH REALTY, INC. and HUDSON UNITED BANK dated 6/21/2002, recorded 5/22/2003 in (as) Document Control #431280910. Consolidates Mortgages 'A' and 'B' to form a single lien in the amount of \_\_\_\_\_ and interest.

**FOR CONSOLIDATION SEE MORTGAGE 'C'**

**MORTGAGE 'C'**

**MORTGAGE** made by AEROTECH REALTY, INC. to HUDSON UNITED BANK in the amount of \_\_\_\_\_ dated 12/23/2005, recorded 3/17/2006 in (as) Document Control #460720238. (Mortgage Tax Paid: \_\_\_\_\_)

**CONSOLIDATION, EXTENSION AND MODIFICATION AGREEMENT** made by and between AEROTECH REALTY, INC. and HUDSON UNITED BANK dated 12/23/2005, recorded 3/17/2006 in (as) Document Control #460720245. Consolidates Mortgages 'A' through 'C' to form a single lien in the amount of \_\_\_\_\_ and interest.

**Mortgages 'A' through 'C', as consolidated, may be assigned and/or satisfied by:**

**HUDSON UNITED BANK**

This title report does not show all the terms and provisions of the mortgage(s) set forth herein. Interested parties should contact the holder(s) thereof to ascertain the terms, covenants and conditions contained therein, and to determine if there are any unrecorded amendments or modifications thereto.





\*443410941EASV\*

Control Number  
443410941

W.ID Number  
2004341-000379

Instrument Type  
EAS



WESTCHESTER COUNTY RECORDING AND ENDORSEMENT PAGE  
(THIS PAGE FORMS PART OF THE INSTRUMENT)  
\*\*\* DO NOT REMOVE \*\*\*

THE FOLLOWING INSTRUMENT WAS ENDORSED FOR THE RECORD AS FOLLOWS:

TYPE OF INSTRUMENT EAS - EASEMENT

FEE PAGES 6

TOTAL PAGES 6

RECORDING FEES

STATUTORY CHARGE	\$6.00
RECORDING CHARGE	\$18.00
RECORD MGT. FUND	\$19.00
RP 5217	\$0.00
TP-584	\$5.00
CROSS REFERENCE	\$0.00
MISCELLANEOUS	\$0.00
<b>TOTAL FEES PAID</b>	<b>\$48.00</b>

TRANSFER TAXES

CONSIDERATION	\$0.00
TAX PAID	\$0.00
TRANSFER TAX #	11002

RECORDING DATE 03/23/2005  
TIME 16:19:00

MORTGAGE TAXES

MORTGAGE DATE	
MORTGAGE AMOUNT	\$0.00
EXEMPT	
COUNTY TAX	\$0.00
YONKERS	\$0.00
BASIC	\$0.00
ADDITIONAL	\$0.00
SUBTOTAL	\$0.00
MTA	\$0.00
SPECIAL	\$0.00
<b>TOTAL PAID</b>	<b>\$0.00</b>

SERIAL NUMBER  
DWELLING

THE PROPERTY IS SITUATED IN  
WESTCHESTER COUNTY, NEW YORK IN THE:  
TOWN OF NORTH CASTLE

WITNESS MY HAND AND OFFICIAL SEAL

LEONARD N. SPANO  
WESTCHESTER COUNTY CLERK

Record & Return to:  
ROLAND A BARONI ESQ  
175 MAIN ST  
SUITE 800  
WHITE PLAINS, NY 10601

FAB  
SP  
NAC

#941

Record and Return to:  
Roland A. Baroni, Esq.  
Stephens, Baroni, Reilly & Lewis, LLP  
175 Main Street, Suite 800  
White Plains, New York 10601

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("Easement Agreement"), made as of the 28<sup>th</sup> day of October, 2004, by and between the Town of North Castle, a municipal corporation with an address at 15 Bedford Road, Armonk, New York 10504 (hereinafter the "Grantor") Aerotech Realty Incorporated, a New York general partnership, having its principal place of business at 4 New King Street, P.O. Box 339, Purchase, New York 10577 (hereinafter the "Grantee").

WITNESSETH:

WHEREAS, Grantee owns real property lying and being in the Town of North Castle, County of Westchester, State of New York known as 11 New King Street, more particularly described on Schedule A annexed hereto and made a part hereof, and designated on the Town of North Castle Assessor's tax map as Section 3, Block 4, Lot 14B; and

WHEREAS, the Grantor is the owner of the public street known as New King Street (the "Right-of-Way") and designated on the Town of North Castle Assessor's tax map as Section 3, Block 4, Lot RD1; and

WHEREAS, the Grantee is proposing to install vegetation, perform and maintain landscaping, landscape lighting, and other improvements, conduct tree removal, and perform and maintain certain other work within the New King Street Right-of-Way (the "Work") within the area more particularly described on Schedule B annexed hereto and made a part hereof; and

WHEREAS, Grantor desires to grant to Grantee and Grantee desires to accept from Grantor, a permanent non-exclusive easement

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over the Right of Way to perform the Work under certain conditions (the "Easement");

NOW, THEREFORE, in consideration of the premises and of the mutual covenants made herein, and the sum of one dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor does hereby give, grant, and convey unto Grantee, its successors and assigns, the Easement, subject to the following terms and conditions:

1. Grantor hereby grants and conveys to Grantee, its successors and assigns, a perpetual, permanent and non-exclusive Easement (except for the reservations set forth, and subject to the conditions herein set forth) to perform the Work within the Right-of-Way.

2. Grantee shall have and exercise the right of reasonable ingress and egress in, to, through, over, under and across the Right of Way and from any roads, highways, streets, alleys, or any other point to the Easement in order to perform maintenance, repair and upkeep of the Work, including, without limitation, the right to cut, trim, control and remove trees, brush and other obstructions which injure or interfere with Grantee's use, occupation and enjoyment of the Easement.

3. Grantor warrants that it has full right and lawful authority to make this grant contained herein.

4. Grantor shall not interfere, now or in the future, with any rights provided to Grantee under this Easement Agreement, including, but not limited to, Grantee's rights of maintenance and reasonable access.

5. The Easement herein granted across the Right-of-Way shall be exercised and used in such a manner so as to not cause any damage or destruction of any nature whatsoever to, or interruption of, the use of the Right-of-Way.

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6. Any debris left in the Right-of Way as a result of Grantee's Work shall be promptly removed by the Grantee, its personal representatives, successors and assigns.

7. Grantor shall have the right to grant other non-exclusive easements over, along or upon the Right-of-Way, provided however, that any such easements shall be subject to the Easement hereby granted.

8. The Grantee, for itself and its representatives, successors and assigns, does hereby agree to hold the Grantor harmless and agree to indemnify the Grantor from any and all liability resulting from the rights granted herein. By the granting of the Easement, the Grantee and its representatives, successors and assigns, further agree that maintenance of the Easement shall be the responsibility of the Grantee and its representatives, successors and assigns, and any disturbance of said Easement by the Grantee shall be the responsibility of the Grantee, and its representatives, successors and assigns. Grantee assumes no responsibility to maintain the easement area beyond the duties associated with the Work.

9. Grantee shall obtain an insurance policy for liability coverage of at least One Million Dollars that names the Town of North Castle as an additional insured with regard to the Work, which shall contain a notification of cancellation provision for the benefit of the Town of North Castle, and which policy shall remain in force and effect so long as the Work shall stand.

10. Grantor shall have no responsibility to perform or maintain the Work.

11. This Easement Agreement may not be modified, amended or terminated without the prior written consent of the Grantor and Grantee.

12. The covenants set forth herein shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective heirs, representatives, successors and assigns.



13. This Easement agreement shall be recorded at the  
Westchester County Clerk's Office, Division of Land Records.

14. Grantee hereby acknowledges and agrees that in the event  
that Grantor determines that the Work interferes with proposed  
roadway improvements, then and in this event, Grantee agrees to  
remove all Work it has created within the easement area at its cost  
and expense and to reasonably restore the easement area to its  
original condition and that this Easement shall then be terminated  
and be of no further force and effect.

In witness whereof, the parties have executed this agreement as  
of the date first above written.

Aerotech Realty Incorporated

By: J. R. E.

Jan Andresen

Title: Partner

TOWN OF NORTH CASTLE

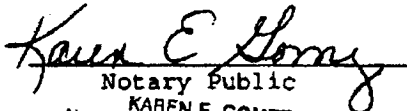
By: John A. Lombardi

Name: John A. Lombardi

Title: Supervisor

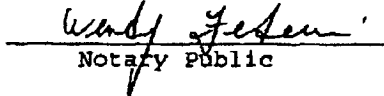
STATE OF NEW YORK       )  
COUNTY OF WESTCHESTER) ss.:

On the 22 day of November, in the year 2004, before me, the undersigned, a Notary Public in and for said state, personally appeared Jan Andreser, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

  
Notary Public  
KAREN E. GOMEZ  
Notary Public, State of New York  
No. 01GO8018638  
Qualified in Westchester County  
Commission Expires November 23, 2006

STATE OF NEW YORK       )  
COUNTY OF WESTCHESTER) ss.:

On the 29 day of November, in the year 2004, before me, the undersigned, a Notary Public in and for said state, personally appeared John A. Lombardi, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

  
Notary Public

WENDY FEDERICI  
Notary Public, State Of New York  
No. 4866147  
Qualified in Westchester County  
Commission Expires July 28, 2006



# Title Support Services

140 Littner Road - Rensselaerville, NY 12147 - (518) 797-3169/797-3683 Fax: (518) 797-3210 email: spicone@titlesupport.net

## TAX SEARCH FOR COUNTY OF WESTCHESTER

<b>Title Number:</b>	3004244305	<b>Date:</b>	7/29/08
<b>Assessed Valuation:</b>		<b>Tax Map Designation:</b>	
<b>Land:</b>	\$ 24,800	<b>Section:</b>	3
<b>Total:</b>	\$ 46,200	<b>Sheet:</b>	
		<b>Block:</b>	4
		<b>Lot:</b>	14B
<b>Property Size:</b>	2.48	<b>Property Class:</b>	464
<b>Assessed To:</b>	Aerotech Realty Inc.		
<b>Street Address:</b>	11 New King Street		
<b>County of:</b>	Westchester	<b>Town:</b>	North Castle
<b>School District:</b>	Byram Hills		
<b>Account #:</b>			

## RECEIVER OF TAXES

2008 Town Tax	\$ 20,692.59 paid	Year: 1/1-12/31
		Lien: 4/1
		Due: 4/1
2007/2008 School Tax	\$ 30,875.84 paid	Year: 7/1-6/30
		Lien: 9/1
		Due: 9/1,1/1

Water Account: Private

All water accounts require a final reading. The owner must request this from the town water department.

Closers note: If premises are being improved from vacant land or by addition, the following year's taxes will increase. Our policy does not insure such items which have not become a lien up to the date of closing, or installmens due after such date. Neither our tax search nor our policy cover any part of streets on which the premises to be insured abut.

NO SEARCHES ARE MADE FOR REFUSE COLLECTION CHARGES.

If the above mentioned tax lot(s) cover more or less than that of the premises under examination, this fact will be noted herein. In such case, the interested parties should take the necessary steps to make the tax map conform to the description to be insured.

RYE LAKE

ROUTE 684

WESTCHESTER  
COUNTY  
AIRPORT

BYRAM HILLS CENTRAL  
HARRISBORO N CENTRAL  
SCH

4

14

6

3

TOWN OF GREENWICH

STATE OF CONNECTICUT

KING STREET

LIGHT DISTRICT # 3

LIGHT DISTRICT # 5

E 216,350  
N 250,100



NEW 456.44

14B 2.479AC

13A 4.2AC

1A 2.61AC

2A 4.697AC

1B 2.068AC

1 2.334AC

442.77

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***First American Title Insurance Company of New York  
1 Water Street, 2nd Floor, White Plains, NY 10601  
(914)428-3433 - Fax (914)428-0159***

July 31, 2008

Cuddy & Feder, LLP  
445 Hamilton Avenue, 14th Floor  
White Plains, NY 10601

Attn: Eon Nichols

**RE:** Title No.: 3004-244305  
Premises: 11 New King Street  
White Plains, NY  
Record Owner: AEROTECH REALTY INC.  
Purchaser(s): To Be Determined

Dear Mr. Nichols,

As you requested, enclosed please find the following municipal searches:

Certificate of Occupancy  
Fire Search  
Housing and Building  
Street Report

Any searches or returns reported herein are furnished FOR INFORMATION ONLY. The Company assumes no liability for these searches or for the accuracy thereof. They are not part of the aforementioned title report and, therefore, will not be continued to the date of closing.

Very truly yours,

Antonio Voza  
Vice President and Counsel

AV/slp





# *Title Support Services*

140 Littner Road ~ Rensselaerville, NY 12147 ~ (518) 797-3169/797-3683 Fax: (518) 797-3210 email: spicone@titlesupport.net

---

## **MUNICIPAL INFORMATION SEARCH**

---

**Title Number:** 3004244305

**Tax Designation:**

**New:**      **Section:** 3              **Sheet:**              **Block:** 4              **Lot:** 14B  
**Old:**

**Street Address:** 11 New King Street

**County of:** Westchester              **Town:** North Castle

---

No fire violations found.

No building violations found.

Copy of C. of O. herewith for:

- Showroom
- Warehouse
- Addition

New King Street is a public street.

Nothing further found.

7/29/08

cc50

---

Any searches or returns reported herein are furnished FOR INFORMATION ONLY. They will not be insured and the company assumes no liability for the accuracy thereof. They will not be CONTINUED to the date of closing.

FEE: \$.....2 00.....

Nº 2246

# Certificate of Occupancy

DEPARTMENT OF ZONING AND BUILDING  
TOWN OF NORTH CASTLE  
WESTCHESTER COUNTY, NEW YORK

Issued .....4/2/67.....19.....

TO: .....D. Corcoran, Inc.....

ADDRESS .....7 West 30th Street.....

.....New York, N.Y.....

Premises located at: .....New King Street - Armonk, N.Y.....

In zone area: Ind. A-1 Type or Use Showroom & Warehouse with Business Office

Tax map designation: Section 3 Block 4 Lot 1421, 1422, 1423

This certifies that the aforementioned structure and/or premise conforms with the application, use and plans on file in the building department office of the Town of North Castle;

that said structure or use is in conformity with the Zoning Ordinance, Building Code and other applicable requirements of the Town of North Castle;

that permission is hereby granted for the use and/or occupancy as set forth herein;

that this Certificate of Occupancy is subject to revocation for non-compliance of any of the laws or ordinances applicable thereto;

that this certificate is further subject to compliance to any other governmental agencies having jurisdiction thereof;

that this certificate is issued subject to the following conditions:

Building Permit Number 2622 and date issued 10/7/66.....19.....

Approved by: Ray Johnson  
Building Inspector

FEE: \$.....2.00.....

No 3270

# Certificate of Occupancy

DEPARTMENT OF ZONING AND BUILDING  
TOWN OF NORTH CASTLE  
WESTCHESTER COUNTY, NEW YORK

Issued Jan 7 1978

TO: D. Stanley Corcoran, Inc.

ADDRESS New King Street

White Plains, N.Y. 10604

Premises located at: Above

In zone area: Ind. AA Type or Use Warehouse addition

Tax map designation: Section 3 Block 4 Lot 14A1, A2, 14B

This certifies that the aforementioned structure and/or premise conforms with the application, use and plans on file in the building department office of the Town of North Castle;

that said structure or use is in conformity with the Zoning Ordinance, Building Code and other applicable requirements of the Town of North Castle;

that permission is hereby granted for the use and/or occupancy as set forth herein;

that this Certificate of Occupancy is subject to revocation for non-compliance of any of the laws or ordinances applicable thereto;

that this certificate is further subject to compliance to any other governmental agencies having jurisdiction thereof;

that this certificate is issued subject to the following conditions:

Building Permit Number 3881 and date issued 5/20/78 19.....

Approved by:

Ray Johnson  
Building Inspector

**New York Title Agency, Inc.**

180 East Post Road, White Plains, New York 10601

(914) 686-5600 (212) 579-1944 FAX (914) 686-1440 FAX (212) 579-4611

February 3, 2004

Lewis Montana, Esq.  
Levine & Montana, Esqs.  
1019 Park Street - P.O. Box 668  
Peekskill, NY 10566

Re: Title No: ANY2004-1500  
Premises: 1 & 3 New King Street  
Owner: JAM Airport, LLC (Guarantors: Jan R.  
Endresen, Andrew R. Benerofe, James C.  
Benerofe and Mitchell I. Benerofe)  
Lender: Provident Bank,

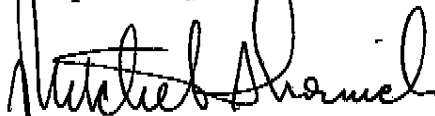
Dear Mr. Montana:

Enclosed please find our title report in this matter as per your request. Please note that the report is complete except for the following open items:

- ☒ Commercial Property-Surveyor's Inspection  
☐  
☐ Other \_\_\_\_\_

Any open items will follow as soon as possible.

Very truly yours,



Mitchel J. Shornick

enc(s)

cc: Marianna R. Kennedy, Esq.

Number **ANY2004-1500****Certificate for Title Insurance****Chicago Title Insurance Company**

Issued by

**ALL NEW YORK TITLE AGENCY, INC.****180 East Post Road****White Plains, New York 10601****(914) 686-5600 (212) 579-1944 FAX (914) 686-1440 FAX (212) 579-4611**

Chicago Title Insurance Corporation, a Missouri Corporation, certifies to the Applicant named on the following page that an examination of title to the premises described in Schedule A has been made in accordance with its usual procedure and agrees to issue the ALTA (10-17-92) Owner's or Lender's form of insurance policy as modified by the New York Coverage Endorsements in the amount and for the transaction set forth herein and subject to the exclusions from coverage and the conditions and stipulations therein contained.

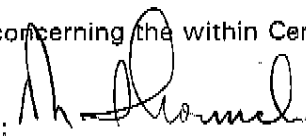
After the closing of the transaction, in conformance with the requirements and procedures of the Company, the Company will issue the policy and except (i) all loss or damage by reason of the estates, interests, defects, objections, liens, encumbrances and other matters set forth in Schedule B herein that are not disposed of to the satisfaction of the Company prior to such closing or issuance of the policy (ii) any questions or objection coming to the attention of the Company before the date of closing, or if there be no closing, before the issuance of the policy.

IN WITNESS WHEREOF, Chicago Title Insurance Company has caused this Certificate to be signed and dated as set forth on Schedule A.

Questions concerning the within Certificate should be directed to:

Dated:

Certified by:

  
Authorized Signature

Redated:

by:

\_\_\_\_\_  
Authorized Signature

This certificate is intended for lawyers only. Such exceptions as may be set forth herein may affect marketability of title. Your lawyer should be consulted before taking any action based upon the contents of this certificate. The Company's representative at the closing hereunder may not act as legal advisor to any or the parties or draw legal instruments for them. Such representative is permitted to be of assistance only to an attorney. It is advisable to have your attorney present at the closing.

## CONDITIONS AND STIPULATIONS

1. This Certificate shall be null and void:

(A) if the fees therefore are not paid;

(B) if the prospective insured, his attorney or agent makes any untrue statement with respect to any material fact, or if any untrue answers are given to material inquiries by or on behalf of the Company;

(C) when the policy shall issue or nine months after the effective date hereof, whichever first occurs, provided that the failure to issue such policy is not the fault of the Company.

(D) until the amount of the policy or policies requested is inserted in Schedule A hereof by the Company, either at the time of the issuance of this Certificate or by subsequent endorsement.

2. If the title, interest or lien to be insured was acquired by the prospective insured prior to delivery hereof, the Company assumes no liability except under its policy when issued.
3. The liability of this Company under this Certificate shall not exceed the amount stated in Schedule A hereof and such liability is subject to the insuring provisions, the Exclusions from Coverage and the Conditions and Stipulations of the form of policy or policies shown in Schedule A hereof in favor of the proposed insured which are hereby incorporated by reference and are made a part of this Certificate except as expressly modified herein.

## All New York Title Agency, Inc.

AMENDED

02-02-2004

Application Date: January 21, 2004

Report Mailing Date: February 4, 2004

Reissue No. ANY2001-7408

Title No. ANY2004-1500

<b>APPLICANT:</b>		<b>AMOUNT OF INSURANCE:</b>	
Lewis Montana, Esq. Levine & Montana, Esqs. 1019 Park Street - P.O. Box 668 Peekskill, NY 10566  914-737-3515 FAX: 914-737-1041		FEE: \$ MORTGAGE: \$ 2,310,000.00	
		<b>INSURED MORTGAGE:</b>	
		Provident Bank, its successors and/or assigns	
<b>BANK ATTORNEY:</b>		<b>PURCHASER:</b>	
Marianna R. Kennedy, Esq. Drake, Sommers, Tarsis & Catania, LLP 1 Corwin Court Newburgh, NY 12550 824-565-1100 FAX 845-565-1999			
<b>SELLER'S ATTY:</b>		<b>RECORD OWNER:</b>	
		JAM Airport, LLC (Guarantors: Jan R. Endresen, Andrew R. Benerofe, James C. Benerofe and Mitchell I. Benerofe)	
		<b>SURVEY INSTRUCTIONS:</b>	
		Commercial Property-Surveyor's Inspection	
		IF THIS IS A REFINANCE WITHIN TEN YEARS, YOU MAY BE ENTITLED TO A REDUCED PREMIUM. CONTACT THIS COMPANY IMMEDIATELY FOR DETAILS.	
		<b>COMPANY CHARGES:</b>	<b>BUYER</b>
		Mortgage Premium (Refinance)	
		Survey Inspection	
		Bankruptcy Search(es)	
		Municipal Departmental Searches	
		Standard N.Y. Endorsement - Loan	
		UCC Search	
		Additional Searches	
		Town-Imposed Copy Fee	
		Sub-Total	
		<b>RECORDING CHARGES</b>	
		Mortgage Tax	
		Estimated Recording Charges	
		<b>TOTAL CHARGES</b>	
<b>PREMISES:</b>			
1 & 3 New King Street, Purchase, New York Town of North Castle County of Westchester  Sect: 3 Block: 4 Lot: 13A			
<b>SPECIAL INSTRUCTIONS:</b>			

### CLOSING INFORMATION

1. To facilitate a smooth closing, we recommend that closings be scheduled at least 48 hours in advance.
2. When calling in closings, please have the following information handy:
  - a) Title Number
  - b) Date, Time and Place of closing
  - c) Bank requirements concerning ALTA Policies (if any)
3. To avoid possible adjournment fees, adjournment of closings should be called in 24 hours in advance.
4. In cases where Real Estate taxes are to be collected at closing, we require that checks be drawn from the mortgage proceeds. In the cases where no mortgage is to be taken, we require that checks be certified.
5. For closings on New York City property checks for the Real Property Transfer Tax(RPT) **MUST** be certified or drawn on an attorney's Trust Account payable to the "New York City Department of Finance" and the New York State Transfer Tax (Deed Stamps) also to New York City Department of Finance.
6. Please be advised that personal checks in excess of \$1,000.00 will not be accepted by this company.
7. If the transaction is a sale or transfer the Combined Real Estate Transfer Tax Return and Credit Line Mortgage Affidavit (TP-584) is to signed by ALL PARTIES.
8. Tax block and lot are to appear in the body of all closing instruments.
9. To avoid delays and adjournments at closing we require advance notice of the following situations:
  - a) The closing deed and/or accompanying documents are executed prior to closing.
  - b) The closing deed and/or accompanying documents are executed by a power-of-attorney at or prior to closing.

The documents to be used in the above cited situations must be examined by this Company prior to closing.



**ALL NEW YORK TITLE AGENCY, INC.****Proposed Insured:****Title No.** ANY2004-1500**Effective Date:** August 28, 2003*Re-Insured: February 18, 2004***Mortgagee:**Provident Bank,  
its successors and/or assigns*Insure***Amount of Insurance**Fee  
Mortgage

**THIS COMPANY CERTIFIES** that a good and marketable title to premises described in Schedule A, subject to the liens, encumbrances and other matters, if any, set forth in this certificate may be conveyed and/or mortgaged by:

**JAM AIRPORT, LLC, A NEW YORK LIMITED LIABILITY COMPANY**

Title acquired by deed from AEROTECH HOLDING CO., INC., A NEW YORK CORPORATION dated 5-24-2000 recorded 8-3-2000 in Document No. 401890059.

**Premises described in Schedule "A" are known as:**

**Address:** 1 & 3 New King Street  
Purchase, New York

**County:** Westchester **City:**

**District:** ---- **Town:** North Castle

**Section:** 3

**Block:** 4

**Lot:** 13A

**FOR ANY TITLE CLEARANCE QUESTIONS ON THIS REPORT, PLEASE CALL:**

**(914) 686-5600**



**ALL NEW YORK TITLE AGENCY, INC.****Title No. ANY2004-1500****SCHEDULE A**

ALL that certain plot, piece or parcel of land situate, lying and being in the Town of North Castle, County of Westchester and State of New York, bounded and described as follows:

BEGINNING at a point on the southwesterly side of New King Street where the same is intersected by the division line between the premises now or formerly of Aerotech World Trade Corp. (Liber 8534 page 45) and the premises herein described;

RUNNING thence along said division line, the following courses and distances:

South 48 degrees 14' 50" West 112.94 feet,

South 56 degrees 47' 10" West 20.22 feet,

South 72 degrees 34' 50" West 201.68 feet,

North 13 degrees 11' 00" West 1.50 feet,

South 43 degrees 04' 40" West 279.56 feet;

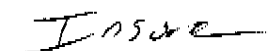
THENCE along the easterly side of New York State Route 120, North 9 degrees 38' 26" East 371.62 feet;

THENCE along the same, North 3 degrees 05' 17" East 481.93 feet;

THENCE South 2 degrees 03' 00" East 165.53 feet;

THENCE North 67 degrees 32' 00" East 195.72 feet to a point on the westerly side of New King Street;

THENCE continuing along the easterly side of New King Street, South 27 degrees 15' 00" East 458.44 feet to the point or place of BEGINNING.



The policy to be issued under this report will insure the title to such buildings and improvements erected on the premises which by law constitute real property.

TOGETHER with all the right, title and interest of the party of the first part, of, in and to the land lying in the street in front of and adjoining said premises.

**FOR  
CONVEYANCING  
ONLY**



**ALL NEW YORK TITLE AGENCY, INC.**

**Title No. ANY2004-1500**

**SCHEDULE B**

Amended 02-11-2004

**Hereinafter set forth are additional matters which will appear in our policy as exceptions from coverage unless disposed of to our satisfaction prior to the closing or delivery of policy.**

**DISPOSITION**

- see within* {
1. Rights of tenants or persons in possession, if any.
  2. Taxes, tax liens, tax sales, water charges, sewer rents, and assessments as set forth herein.
  3. Mortgages returned and set forth herein (1 as consolidated).
  4. With respect to JAM AIRPORT, LLC, the following proofs and documents must be submitted to this Company:
    - a. Proof that the LLC remains in existence. This may be established by an affidavit from a member, manager or attorney representing the LLC with knowledge of the facts and should include the submission to this Company of a status letter or other evidence from the Secretary of State to the effect that the LLC remains in existence.
    - b. Resolution of the LLC executed by a duly authorized member or manager approving the subject transaction, which resolution identifies the person(s) authorized and directed to act for said LLC together with proof that the resolution was adopted in accordance with the Operating Agreement and the Articles of Organization. If the subject transaction involves the sale, exchange, lease or mortgage of all or substantially all of the assets of said LLC, then, absent provisions to the contrary in the Operating Agreement, such resolution must also be adopted by the vote of at least two-thirds in interest of the members entitled to vote thereon.
- except* {
5. Assignment of Leases and Rents dated 6-21-2001 between JAM AIRPORT, LLC, assignor, and PROVIDENT BANK, assignee, recorded 9-6-2001 as Document No. 412340281.
  6. Premises to be released from the following UCC-1:

OMIT

## ALL NEW YORK TITLE AGENCY, INC.

Title No. ANY2004-1500

### SCHEDULE B (continued)

#### DISPOSITION

a) UCC-1 #41180-0066, Filed: 6-29-2001 in the Westchester County Clerk's Office, Debtor: JAM Airport, LLC, Secured Party: Provident Bank.

7. Premises to be released from the following UCC-1:

a) UCC-1 #900252, Filed: 6-29-2001 in the Office of the Secretary of State, Debtor: JAM Airport, LLC, Secured Party: Provident Bank.

8. Drainage Easement recited in deed recorded in Liber 8042 cp 185 and as shown on Map No. 21850.

9. Notes, Conditions and Easement on Map No. 21850.

10. Covenants, still in effect, contained in the deed recorded in Liber 8042 cp 185, as amended by Declaration recorded in Liber 9475 cp 59.

11. FOR INFORMATION ONLY: We have searched the names of JAN R. ENDRESEN, ANDREW R. BENEROFE, JAMES C. BENEROFE and MITCHELL I. BENEROFE in the Offices of the Westchester County Clerk and the Secretary of State for judgments, liens and U.C.C. Financing Statements filed against said names and find the following of record:

(Searches ordered from Secretary of State show No Returns).

a. JAN R. ENDRESEN: Nothing found of record.

b. ANDREW R. BENEROFE: 1. UCC No. 91-01216, Filed: 2-7-91 in the Office of Westchester County Clerk, Debtor: Andrew R. Benerofe, Secured Party: The Bank of New York, covers personalty, as continued by UCC-3, No. 96-00738, filed 1-26-96 and by UCC-3 No. 40277-0326, filed 10-3-2000.

c. JAMES C. BENEROFE: 1. UCC No. 91-01218, Filed: 2-7-91 in the Office of the Westchester County Clerk, Debtor: James Benerofe, Secured Party: The Bank of New York, covers personalty, as continued by UCC-3 No. 96-00736, filed 1-26-96 and by UCC-3 No. 40277-0426, filed 10-3-2000.

**ALL NEW YORK TITLE AGENCY, INC.**

Title No. ANY2004-1500

**SCHEDULE B (continued)**

**DISPOSITION**

d. MITCHELL I. BENEROFE: Nothing found of record.

12. NOTE: If the tax search contained herein reflects open taxes, proof of payment is to be displayed at or prior to closing.

13. NOTE: All Municipal, Departmental and Street Reports are **FOR INFORMATION ONLY**. They are not insured and this Company assumes no liability for the accuracy thereof. They will not be continued to the date of closing.

14. NOTE: If an assignment of mortgage is to be recorded there must be set forth in the assignment document or attached thereto and recorded as part thereof a statement under oath signed by the mortgagee or any other party to the transaction having knowledge of the facts (provided s/he asserts such knowledge), that the assignee is not acting as a nominee of the mortgagor and that the mortgage continues to secure a bona fide obligation.

15. Searches have been run in the Office of the County Clerk/Register for UCC(s), judgments and liens versus the name(s) JAM AIRPORT, LLC disclosing **NO ADDITIONAL RETURNS**.

16. NOTE: All parties will be required to provide photo-identification and social security and/or federal tax i.d. numbers to the Company's representatives at closing.

except - 17. Survey Reading - see within.

**ALL NEW YORK TITLE AGENCY, INC.**

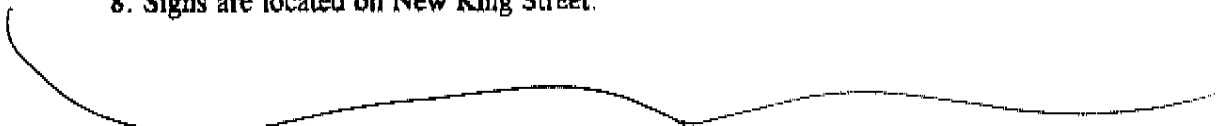
Title No. ANY2004-1500

**SURVEY READING**

Amended 02-11-2004

Survey made by Roland K. Link, P.L.L.C., Land Surveyors, dated March 30, 2000 and last redated February 10, 2004 shows structures erected thereon, and the following:

1. Drive and curb extend an undetermined distances onto New King Street.
2. Service wires enter premises from New King Street. Utility poles and guy wires stand in various portions of premises. Policy excepts the rights of utility companies and others to enter the premises described in Schedule A herein, in order to maintain same.
3. Water courses cross southerly portion of premises. Except the rights and easements of others to drain through or otherwise use the water courses abutting or running through the premises herein but policy does not insure that the owner of the premises herein has any right to drain through or otherwise use said water courses across adjacent land. Policy excepts the rights of others in and to the natural and unobstructed flow of said water courses.
4. Wall along southerly boundary lies up to 2.4 feet south of southerly record line.
5. Gravel parking area from premises to the south encroaches undetermined distances onto premises. Policy excepts the rights of owners of the premises to the south to use and maintain that portion of said parking area lying on the premises described in Schedule A herein and insures that such encroachment will not result in a forfeiture.
6. Railroad tie curbing extends an undetermined distance onto lands to the south.
7. Wall extends an undetermined distance onto Route 120.
8. Signs are located on New King Street.



except





**ALL NEW YORK TITLE AGENCY, INC.**

Title No. ANY2004-1500

**M O R T G A G E S**

(A)

Mortgagor: D. Stanley Corcoran, Inc.

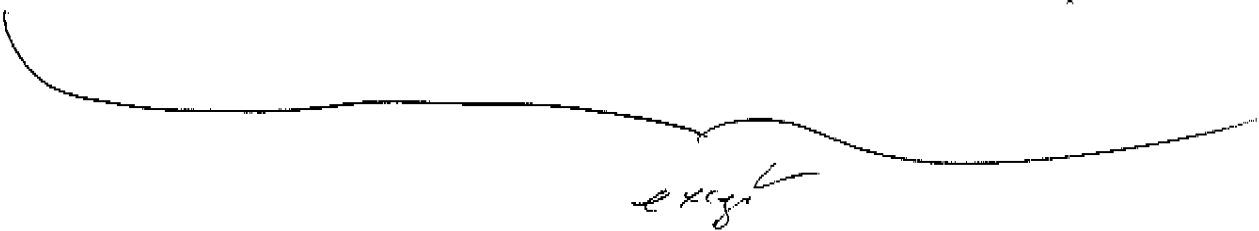
Amount:

Dated: November 15, 1966

Recorded: November 17, 1966

Mortgagee: The County Trust Company

Liber: 7044 mp 26

  
*except*

**This title report does not show all the terms and provisions of the mortgage(s) set forth herein. Interested parties should contact the holder(s) thereof to ascertain the terms, covenants and conditions contained therein, and to determine if there are any unrecorded amendments or modifications thereto.**

**ALL NEW YORK TITLE AGENCY, INC.**

Title No. ANY2004-1500

**MORTGAGES (continued)****(B)****Mortgagor:** D. Stanley Corcoran, Inc.**Amount:** **Dated:** June 13, 1973**Recorded:** June 15, 1973**Mortgagee:** The County Trust Company**Liber:** 7521 mp 500**CONSOLIDATION AGREEMENT**

D. Stanley Corcoran, Inc.

**Dated:** January 31, 1974**Recorded:** February 4, 1974**Liber:** 7576 mp 144

The County Trust Company

**Consolidates Mortgages A and B into a single lien in the amount of \$275,00.00.****ASSIGNMENT OF MORTGAGE****Assignor:** The Bank of New York, Successor  
by merger to The County Trust  
Company**Dated:** August 5, 1980**Recorded:** August 15, 1980**Liber:** 8175 Page 175**Assignee:** The United States Life Insurance  
Company**Assigns Mortgages A and B as consolidated.**

*Excerpt*

This title report does not show all the terms and provisions of the mortgage(s) set forth herein. Interested parties should contact the holder(s) thereof to ascertain the terms, covenants and conditions contained therein, and to determine if there are any unrecorded amendments or modifications thereto.

**ALL NEW YORK TITLE AGENCY, INC.**

Title No. ANY2004-1500

**MORTGAGES (continued)**

(C)

Mortgagor: Aerotech Holding Co., Inc.

Amount: [REDACTED]

Dated: April 15, 1977

Recorded: April 18, 1977

Mortgagee: National Bank of Westchester

Liber: 7811 mp 460

*ex-18*

This title report does not show all the terms and provisions of the mortgage(s) set forth herein. Interested parties should contact the holder(s) thereof to ascertain the terms, covenants and conditions contained therein, and to determine if there are any unrecorded amendments or modifications thereto.

**ALL NEW YORK TITLE AGENCY, INC.**

Title No. ANY2004-1500

**M O R T G A G E S (continued)****(D)****Mortgagor:** Aerotech Holding Co., Inc.**Amount:** [REDACTED]**Dated:** September 7, 1978**Recorded:** September 13, 1978**Mortgagee:** National Bank of Westchester**Liber:** 7958 mp 675**CONSOLIDATION AGREEMENT**

Aerotech Holding Co., Inc.

**Dated:** September 7, 1978**Recorded:** September 13, 1978


National Bank of Westchester

**Liber:** 7958 mp 661**Consolidates Mortgages C and D to form a single lien in the amount of \$520,000.00.****MODIFICATION & EXTENSION AGREEMENT**

Aerotech Holding Co., Inc.

**Dated:** September 7, 1978**Recorded:** February 2, 1979

National Bank of Westchester

**Liber:** 8013 mp 282  
- continued on next page -

**This title report does not show all the terms and provisions of the mortgage(s) set forth herein. Interested parties should contact the holder(s) thereof to ascertain the terms, covenants and conditions contained therein, and to determine if there are any unrecorded amendments or modifications thereto.**

**ALL NEW YORK TITLE AGENCY, INC.**

Title No. ANY2004-1500

**M O R T G A G E S (continued)****ASSIGNMENT OF MORTGAGE**

Assignor: Lincoln First Bank, NA, Successor  
in Interest to National Bank of  
Westchester

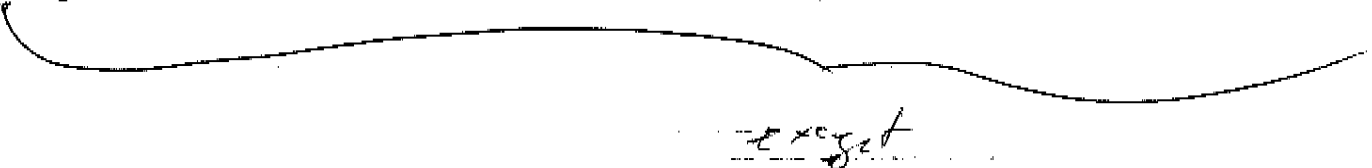
Dated: August 5, 1980

Recorded: August 15, 1980

Liber: 8175 Page 173

Assignee: The United States Life Insurance  
Company

Assigns Mortgages C and D as consolidated.



This title report does not show all the terms and provisions of the mortgage(s) set forth herein. Interested parties should contact the holder(s) thereof to ascertain the terms, covenants and conditions contained therein, and to determine if there are any unrecorded amendments or modifications thereto.

**ALL NEW YORK TITLE AGENCY, INC.**

Title No. ANY2004-1500

**MORTGAGES (continued)****(E)****Mortgagor:** Aerotech Holding Co., Inc.**Amount:** [REDACTED]**Dated:** August 13, 1980**Recorded:** August 15, 1980**Mortgagee:** The United States Life Insurance Company**Liber:** 8175 mp 177

**This mortgage is consolidated by its terms with Mortgages A, B, C and D to form a single lien in the amount of \$1,800,000.00.**

**ASSIGNMENT OF MORTGAGE****Assignor:** The United States Life Insurance Company**Dated:** February 21, 1989**Recorded:** March 14, 1989**Assignee:** National Westminster Bank, USA**Liber:** 13012 Page 122

**Assigns Mortgages A, B, C, D and E, as consolidated.**



**This title report does not show all the terms and provisions of the mortgage(s) set forth herein. Interested parties should contact the holder(s) thereof to ascertain the terms, covenants and conditions contained therein, and to determine if there are any unrecorded amendments or modifications thereto.**

**ALL NEW YORK TITLE AGENCY, INC.**

Title No. ANY2004-1500

**MORTGAGES (continued)****(F)**

Mortgagor: Aerotech Holding Co., Inc.

Amount: [REDACTED]

Dated: February 24, 1989

Recorded: March 14, 1989

Mortgagee: National Westminster Bank, USA

Liber: 13012 mp 37

**This is a Supplemental Mortgage and Consolidation Agreement. Mortgages A, B, C, D, E and F are consolidated to form a single lien in the amount of \$1,800,000.00.**

**MODIFICATION AGREEMENT**

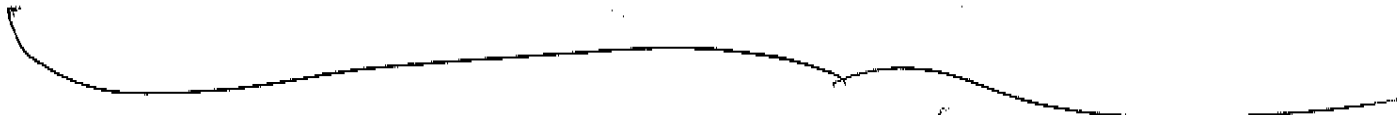
Aerotech Holding Co., Inc.

Dated: December 7, 1994

Recorded: January 4, 1995

Liber: 20226 mp 291

National Westminster Bank, USA

  
*ex-12*

- continued on next page -

**This title report does not show all the terms and provisions of the mortgage(s) set forth herein. Interested parties should contact the holder(s) thereof to ascertain the terms, covenants and conditions contained therein, and to determine if there are any unrecorded amendments or modifications thereto.**



**ALL NEW YORK TITLE AGENCY, INC.**

Title No. ANY2004-1500

**M O R T G A G E S (continued)****ASSIGNMENT OF MORTGAGE**

**Assignor:** Fleet Bank, N.A., Successor by  
merger to National Westminster  
Bank, USA

**Dated:** May 17, 2000

**Recorded:** August 30, 2000

**Document** #401890076

**Assignee:** The Bank of New York

**Assigns Mortgages A - F, inclusive, as consolidated.**



This title report does not show all the terms and provisions of the mortgage(s) set forth herein. Interested parties should contact the holder(s) thereof to ascertain the terms, covenants and conditions contained therein, and to determine if there are any unrecorded amendments or modifications thereto.

**ALL NEW YORK TITLE AGENCY, INC.**

Title No. ANY2004-1500

**M O R T G A G E S (continued)****(G)****Mortgagor:** JAM Airport, LLC**Amount:** [REDACTED]**Dated:** June 21, 2000**Recorded:** August 3, 2000**Mortgagee:** The Bank of New York**Document** #401890092**CONSOLIDATION & MODIFICATION AGREEMENT****JAM Airport, LLC****Dated:** June 21, 2000**Recorded:** August 3, 2000**Document** #401890101**The Bank of New York****Consolidates Mortgages A - G, inclusive, to form a single lien in the amount of \$1,500,000.00.****ASSIGNMENT OF MORTGAGE****Assignor:** The Bank of New York**Dated:** June 15, 2001**Recorded:** September 6, 2001**Document** #412340233**Assignee:** Provident Bank**Assigns Mortgages A through G, inclusive, as previously consolidated.**

*except*

**This title report does not show all the terms and provisions of the mortgage(s) set forth herein. Interested parties should contact the holder(s) thereof to ascertain the terms, covenants and conditions contained therein, and to determine if there are any unrecorded amendments or modifications thereto.**

**ALL NEW YORK TITLE AGENCY, INC.**

Title No. ANY2004-1500

**M O R T G A G E S (continued)****(H)****Mortgagor:** JAM Airport, LLC**Amount:** [REDACTED]**Dated:** June 21, 2001**Recorded:** September 6, 2001**Mortgagee:** Provident Bank**Document** NO. 412340261**CONSOLIDATION, MODIFICATION & EXTENSION AGREEMENT****JAM Airport, LLC****Dated:** June 21, 2001**Recorded:** September 6, 2001**Document** NO. 412340266**Provident Bank**

**Consolidates Mortgage H with Mortgage A through G, as previously consolidated, to form a single lien in the amount of \$2,100,000.00.**

*except  
as  
Consolidated*

**This title report does not show all the terms and provisions of the mortgage(s) set forth herein. Interested parties should contact the holder(s) thereof to ascertain the terms, covenants and conditions contained therein, and to determine if there are any unrecorded amendments or modifications thereto.**



TITLE NO. 0103-ANY20041500 TX

**ABSTRACTERS' INFORMATION SERVICE, INC.**138-72 QUEENS BOULEVARD BRIARWOOD, N.Y. 11435  
(718) 291-5900 (516) 742-2290 (914) 761-4451 FAX (718) 291-6681**WESTCHESTER COUNTY TAX SEARCH**

DATE: 1/23/2004

PREMISES: 7 NEW KING STREET, NORTH CASTLE

TOWN OF NORTH CASTLE

ASSESSED OWNER: JAM AIRPORT LLC

ASSESSED VALUE: TOWN

42000/127975

TAX CLASSIFICATION: 464

SD: NORTH CASTLE SECTION: 3 BLOCK: 4 LOT: 13A**RETURNS**

SEC: 3 BLOCK: 4 LOT: 13A

2003 TOWN/COUNTY TAX PERIOD 1/1-12/31  
FULL TAX \$32,895.63 PAID DUE 4/1

omit { 2003/2004 SCHOOL TAX PERIOD 7/1-6/30

1 1/2 TAX \$25,585.91 PAID DUE 9/1

2 1/2 TAX \$25,585.91 ~~OPEN DUE~~ 1/1 paid

WATER - PRIVATE

SUBJECT TO CONTINUATION PRIOR TO CLOSING

AFFIDAVIT SHOULD BE TAKEN AT CLOSING THAT OWNER HAS NOT RECEIVED NOTICE OF SPECIAL ASSESSMENTS (I.E., SIDEWALK REPAIRS, LOT CLEARANCE, OR EMERGENCY REPAIRS). TAX SEARCH DOES NOT GUARANTEE AGAINST EXISTENCE OF SUCH NOTICES. TAX DUE DATES MAY VARY ANNUALLY. PLEASE CONFIRM DUE DATES WITH THE APPROPRIATE MUNICIPALITY.

SEARCH DOES NOT GUARANTEE AGAINST ITEMS NOT A LIEN UP TO THE DATE SHOWN. SOME OF THE ITEMS RETURNED MAY HAVE BEEN PAID BUT NOT OFFICIALLY POSTED. RECEIPTS FOR SUCH ITEMS SHOULD BE PRODUCED AT CLOSING. SEARCH DOES NOT GUARANTEE AGAINST CLAIMS RESULTING FROM LEVIES OF RESTORED TAXES. SEARCH DOES NOT GUARANTEE FOR ARREARS FILED AGAINST ANY NAME OTHER THAN THE ASSESSED OWNER AS SHOWN ABOVE. THIS SEARCH IS PREPARED EXCLUSIVELY FOR ALL NEW YORK TITLE AGENCY on 1/23/2004. 0103-ANY20041500



**ALL NEW YORK TITLE AGENCY, INC.****Title No. ANY2004-1500****DEPARTMENTAL SEARCHES**

Any searches or returns reported herein are furnished FOR INFORMATION ONLY. They will not be insured and the Company assumes no liability for the accuracy thereof. They will not be continued to the date of closing.

<b>Certificate of Occupancy</b>	<b>REPORT ATTACHED</b>
<b>Housing &amp; Building</b>	<b>REPORT ATTACHED</b>
<b>Fire Dept. Search</b>	<b>REPORT ATTACHED</b>
<b>Street Report</b>	<b>REPORT ATTACHED</b>
<b>Emergency Repairs</b>	<b>NONE REQUESTED</b>
<b>Department of Highways</b>	<b>NONE REQUESTED</b>
<b>Air Resources</b>	<b>NONE REQUESTED</b>
<b>Fuel Oil Burner</b>	<b>NONE REQUESTED</b>
<b>Vault Search</b>	<b>NONE REQUESTED</b>
<b>Landmark Search</b>	<b>NONE REQUESTED</b>
<b>Flood Search</b>	<b>NONE REQUESTED</b>
<b>Bankruptcy Search(es)</b>	<b>REPORT ATTACHED</b>
<b>Extended Municipal Search</b>	<b>NONE REQUESTED</b>
<b>Health Search</b>	<b>NONE REQUESTED</b>
<b>Patriot Act Search</b>	<b>NONE REQUESTED</b>

NOTE: in New York City, if there is a STREET VAULT, it is suggested that applicant investigate possible unpaid license fees by the City of New York for the use of such vault, because the right to maintain IS NOT INSURED, nor does the Company insure that the vault charges have been paid.

TITLE NO. 0103 -ANY20041500 CO

**ABSTRACTERS' INFORMATION SERVICE, INC.**138-72 QUEENS BOULEVARD BRIARWOOD, N.Y. 11435  
(718) 291-5900 (516) 742-2290 (914) 761-4451 FAX (718) 291-6681**CERTIFICATE OF OCCUPANCY REPORT**

DATE: 1/23/2004

PREMISES: 7 NEW KING STREET, NORTH CASTLE

TOWN OF NORTH CASTLE

COUNTY: WESTCHESTER

SECTION: 3 BLOCK: 4 LOT: 13A

SEC: 3 BLOCK: 4 LOT: 13A

A SEARCH OF THE RECORDS CONDUCTED BY THE DEPARTMENT OF BUILDINGS REVEALS  
THE FOLLOWING INFORMATION:C/O# 207  
DATED 05/09/34  
ORIGINAL STRUCTUREC/O# 1592  
DATED 04/17/63  
PERMIT# 2188  
LABORATORY, WAREHOUSE AND OFFICEC/O# 515  
DATED 12/19/50  
PERMIT# 1697  
GARAGEC/O# 1800  
DATED 03/26/64  
PERMIT# 2372  
SHEDC/O# 4181  
DATED 06/19/80  
PERMIT# 4886  
ADDITION(OFFICE)**IMPORTANT NOTICE ABOUT SEARCH INFORMATION ABOVE**ABSTRACTERS' INFORMATION SERVICE INC. DOES HEREBY CERTIFY THAT RECORDS OF THE ABOVE MENTIONED  
MUNICIPALITY HAVE BEEN EXAMINED AND THAT THE INFORMATION RECORDED ABOVE IS A TRUE AND  
ACCURATE ABSTRACTION OF THE INFORMATION CONTAINED THEREIN. THIS REPORT IS SUBMITTED FOR  
INFORMATIONAL PURPOSES ONLY. LIABILITY IS LIMITED TO THE COST OF THE SEARCH. THIS SEARCH IS  
PREPARED EXCLUSIVELY FOR ALL NEW YORK TITLE AGENCY on 1/23/2004. 0103-ANY20041500



Title Number : 0103-ANY20041500

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C/O# 4501  
DATED 10/22/82  
PERMIT# 5470  
ALTERATION(OFFICE SPACE)

C/O# 4331  
DATED 08/05/80  
PITNEY BOWES

C/O# 4332  
DATED 08/05/80  
SELLON ASSOCIATES

C/O# 1772  
DATED 12/30/63  
PERMIT# 2344  
STORAGE

C/O# 2275  
DATED 01/10/67  
PERMIT# 2852  
ADDITION/ALTERATION

C/O# 2766  
DATED 11/15/69  
PERMIT# 3373  
ADDITION

C/O# 3847  
DATED 06/19/80  
PERMIT# 4510  
ALTERATION(OFFICE)

### IMPORTANT NOTICE ABOUT SEARCH INFORMATION ABOVE

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152

Richard P. Remberg  
Superior

No. 207

Fee \$5.00 Date May 2/34

Issued to Stanley Belman

For Dwelling

To cost \$5000

Street King Street

Sec. 3 Block 4 Lot 13A

Owner's Address  
115 Central Park West N. Y. C.

Builder's Address  
John J. Ravello Co.  
1025 Morris Park Ave. N. Y. City

10



## TOWN OF NORTH CASTLE

Amnook, New York

## Application for a Building Permit

MCKINLEY BATTISTELLI, BUILDING INSPECTOR

6 Smallwood Place, White Plains, N. Y.

Tel. White Plains 8-7924

Fees: Less than \$200.00 ..... \$2.00  
 \$200 or over and does not exceed the sum of \$500.00.. \$3.00  
 \$501 or over and does not exceed the sum of \$1,000.00 \$4.00  
 In excess of \$1,000.00 an additional fee of \$3.00  
 per \$1,000.00 or fraction thereof of such excess  
 cost, will be made and required.

Permit Number 2188  
 Issued 4-17 1963  
 Building Permit Fee ..... 4.82  
 Certificate of Occupancy ..... \$ 2.00  
 Total \$484.00

I hereby make application to the Building Inspector of the Town of North Castle for the approval of the plans and specifications herewith submitted, and for a permit to erect a building in accordance therewith. It is understood and agreed that any permit issued pursuant hereto is on the express condition that all provisions of the Building Code and Zoning Ordinance of the Town, and amendments thereto, shall apply and be complied with whether specified herein or not.

Mail Building Permit to -

NAME FEIZER-ATWATER CORP.  
 STREET 15 Barker Ave.  
 TOWN & STATE White Plains, N.Y.  
 TELEPHONE (Important) WH 8-3707

Location of Property—Street and Number New King Street Route No. 120  
 Nearest Cross-Street King Street  
 Tax Map Location—Section 3 Block BLK 4 Lot Number 13A Zone Area  
 Owner of Land Mechanite Metal Corp.  
 Owner's Address 714 North Avenue New Rochelle, New York  
 Owner of the Proposed Building same  
 Proposed Owner's Address same  
 Name of Architect William Whitehill  
 Address of Architect 277 North Avenue New Rochelle, New York  
 Name of Contractor FEIZER-ATWATER CORP. White Plains, New York  
 Address of Contractor 15 Barker Avenue White Plains, New York  
 Size of Lot 33 acres Fronting on New King Street  
 Square Foot Floor Area of Proposed Building 6,7200 plus 4000 total 11,900 square feet  
 Square Foot Floor Area of Living Space — Less Boiler or Utility Rooms, Breezeway, Open Porches or Garage SAME  
 Value of Proposed Building or Improvement 160,000 plus site and mesh work  
 Number of Feet Front of Building 123 Number of Feet Deep 73'  
 Distance of Building from Front Street or Lot Line 50' feet  
 Distance of Proposed Building from Rear Lot Line 120' feet  
 Distance from Side Lot Lines 50' feet  
 Height of Building 26 feet; Number of Stories 2 in lab. area  
 Number of Stores — Number of Families — Number of Rooms —  
 Classification of Use and Purpose Laboratory, warehouse and office  
 Type of Construction — ☒ Frame ☒ Brick ☒ Concrete block ☐ Stone ☐ Veneer  
 Whether Roof will be Flat, Pitch, Mansard or Hip flat on warehouse pitch on office  
 Material of Roofing asphalt shingles and built up roofing  
 Exterior Walls to be finished with concrete block and sheetrock

(OVER)

1-A-1M-9-39

## CERTIFICATE OF OCCUPANCY

DEPARTMENT OF ZONING AND BUILDING

TOWN OF NORTH CASTLE, N. Y.

No 1800

To MEEHANITE METAL CORP. OwnerAddress NEW KING ST. ARMONK Date MARCH 26, 1964This is to certify that the SHED building located at NEW KING ST.  
(Type of construction)Town of North Castle, N. Y., Section 3 Block 4 Lot 13A  
conforms to the requirements of the Zoning ordinance and Building Code. The building is to be usedand occupied as DRUM STORAGE in a  
district under the zoning ordinance subject to all the privileges, requirements, limitations and conditions prescribed by law.

This certificate does not in any way relieve the owners or any other person or persons in possession or control of the building or any part thereof, from obtaining such other permits or licenses as may be prescribed by law for the uses or purposes for which the building is designed or intended; nor from complying with any lawful order issued with the object of maintaining the building in a safe or lawful condition.

Permit No. 2372Approved Ray Johnson  
Building Inspector

1-A-1M-9-39

## CERTIFICATE OF OCCUPANCY

DEPARTMENT OF ZONING AND BUILDING

TOWN OF NORTH CASTLE, N. Y.

No 1772

To MEEHANITE REALTY CO. OwnerAddress NEW KING ST. WHITE PLAINS 12-30-52This is to certify that the EDUCATION building located at NEW KING ST  
(Type of construction)COMPLETE CON PART OF 12-30-52Town of North Castle, N. Y., Section 2 Block 8 Lot 50-7-70  
conforms to the requirements of the Zoning ordinance and Building Code. The building is to be usedand occupied as STORAGE in a BUS  
district under the zoning ordinance subject to all the privileges, requirements, limitations and conditions prescribed by law.

This certificate does not in any way relieve the owners or any other person or persons in possession or control of the building or any part thereof, from obtaining such other permits or licenses as may be prescribed by law for the uses or purposes for which the building is designed or intended; nor from complying with any lawful order issued with the object of maintaining the building in a safe or lawful condition.

Permit No. 2344Approved W. Kinley Battelle  
Building Inspector

12

FEE: \$.....2.00.....

Nº 2271

# Certificate of Occupancy

DEPARTMENT OF ZONING AND BUILDING  
TOWN OF NORTH CASTLE  
WESTCHESTER COUNTY, NEW YORK

Issued .....19.....

TO: .....Meehanite Realty Co., Inc.....

ADDRESS .....9909 Clayton Blvd.....

.....St. Louis, Mo.....63124.....

Premises located at: .....New King Street - White Plains, N.Y.....

In zone area: .....Ind. A..... Type or Use .....Sign.....

Tax map designation: Section .....3..... Block .....4..... Lot.....13-4.....

This certifies that the aforementioned structure and/or premise conforms with the application, use and plans on file in the building department office of the Town of North Castle;

that said structure or use is in conformity with the Zoning Ordinance, Building Code and other applicable requirements of the Town of North Castle;

that permission is hereby granted for the use and/or occupancy as set forth herein;

that this Certificate of Occupancy is subject to revocation for non-compliance of any of the laws or ordinances applicable thereto;

that this certificate is further subject to compliance to any other governmental agencies having jurisdiction thereof;

that this certificate is issued subject to the following conditions:

Building Permit Number .....2852..... and date issued .....1/10/67.....19.....

Approved by: *Ray Johnson*  
Building Inspector

FEE: \$.....2.00.....

Nº 2766

# Certificate of Occupancy

DEPARTMENT OF ZONING AND BUILDING  
TOWN OF NORTH CASTLE  
WESTCHESTER COUNTY, NEW YORK

Issued ..... Nov. 15 ..... 19. 69TO: ..... Meehanite Metal Corp. .....ADDRESS ..... New King Street .......... White Plains, N.Y. .....Premises located at: ..... Above .....In zone area: ..... Ind-AA ..... Type or Use ..... Storage addition .....Tax map designation: Section ..... 3 ..... Block ..... 4 ..... Lot ..... 13A .....

This certifies that the aforementioned structure and/or premise conforms with the application, use and plans on file in the building department office of the Town of North Castle;

that said structure or use is in conformity with the Zoning Ordinance, Building Code and other applicable requirements of the Town of North Castle;

that permission is hereby granted for the use and/or occupancy as set forth herein;

that this Certificate of Occupancy is subject to revocation for non-compliance of any of the laws or ordinances applicable thereto;

that this certificate is further subject to compliance to any other governmental agencies having jurisdiction thereof;

that this certificate is issued subject to the following conditions:

Building Permit Number ..... 3373 ..... and date issued ..... 8/12/69 ..... 19.....Approved by: ..... Ray Johnson .....  
Building Inspector

FEB 4

N° 3847

# Certificate of Occupancy

DEPARTMENT OF ZONING AND BUILDING

TOWN OF NORTH CASTLE

WESTCHESTER COUNTY, NEW YORK

Issued JUNE 19 1980

6-19-80

TO: nerobech Holding CoADDRESS New King StreetWhite Plains, N.Y. 10609Premises located at: AboveIn zone area SAC AA Type or Use of a alterations

AA

Tax map designation: Section 3 Block 4 Lot 13B

This certifies that the aforementioned structure and/or premise conforms with the application, use and plans on file in the building department office of the Town of North Castle;

that said structure or use is in conformity with the Zoning Ordinance, Building Code and other applicable requirements of the Town of North Castle;

that permission is hereby granted for the use and/or occupancy as set forth herein;

that this Certificate of Occupancy is subject to revocation for non-compliance of any of the laws or ordinances applicable thereto;

that this certificate is further subject to compliance to any other governmental agencies having jurisdiction thereof;

that this certificate is issued subject to the following conditions:

4510

Building Permit Number 4510 and date issued 7/29/77 1980Approved by: [Signature]

Building Inspector

16



FEE: \$.....2.00.....

Nº 4831

# Certificate of Occupancy

DEPARTMENT OF ZONING AND BUILDING

TOWN OF NORTH CASTLE

WESTCHESTER COUNTY, NEW YORK

Issued August 5, 1980

TO: Aerotech Holding Co.

ADDRESS New King Street

Armonk, New York

Premises located at: ABOVE

In zone area: IND AA Type or Use Pitney Bowes

Tax map designation: Section 3 Block 4 Lot 13A

This certifies that the aforementioned structure and/or premise conforms with the application, use and plans on file in the building department office of the Town of North Castle;

that said structure or use is in conformity with the Zoning Ordinance, Building Code and other applicable requirements of the Town of North Castle;

that permission is hereby granted for the use and/or occupancy as set forth herein;

that this Certificate of Occupancy is subject to revocation for non-compliance of any of the laws or ordinances applicable thereto;

that this certificate is further subject to compliance to any other governmental agencies having jurisdiction thereof;

that this certificate is issued subject to the following conditions:

NOTE: MAINTAIN PREMISES IN COMPLAINE WITH FIRE CODE

STANDARDS PERTAINING TO:

1. OCCUPANCY LIMIT
2. REQUIRED EXITS

Building Permit Number XXX and date issued XXX 13

Approved by



Building Inspector

FEE: \$ 2.00

No 4932

# Certificate of Occupancy

DEPARTMENT OF ZONING AND BUILDING  
TOWN OF NORTH CASTLE  
WESTCHESTER COUNTY, NEW YORK

Issued August 5, 1980

TO: Aerotech Holding Co.

ADDRESS New King Street

Armonk, New York

Premises located at: ABOVE

In zone area: IND AA Type or Use Sellon Associates

Tax map designation: Section 3 Block 4 Lot 13A

This certifies that the aforementioned structure and/or premise conforms with the application, use and plans on file in the building department office of the Town of North Castle;

that said structure or use is in conformity with the Zoning Ordinance, Building Code and other applicable requirements of the Town of North Castle;

that permission is hereby granted for the use and/or occupancy as set forth herein;

that this Certificate of Occupancy is subject to revocation for non-compliance of any of the laws or ordinances applicable thereto;

that this certificate is further subject to compliance to any other governmental agencies having jurisdiction thereof;

that this certificate is issued subject to the following conditions:

NOTE: MAINTAIN PREMISES IN COMPLIANCE WITH FIRE CODE  
STANDARDS PERTAINING TO:

1. OCCUPANCY LIMIT
2. REQUIRED EXITS

Building Permit Number XXX and date issued XXX 19

Approved by

*J. Michael C. C. C.*  
Building Inspector

18

*fitney*

FEE: \$.....2.00...paid

Nº 4181

# Certificate of Occupancy

6251

DEPARTMENT OF ZONING AND BUILDING

TOWN OF NORTH CASTLE

WESTCHESTER COUNTY, NEW YORK

Issued 6/19 1980

TO: Aerotech Holding Company

ADDRESS Box 218

Purchase, New York

Premises located at: New King Street

In zone area: Type or Use Addition - Office

Tax map designation: Section 3 Block 4 Lot 12A

This certifies that the aforementioned structure and/or premise conforms with the application, use and plans on file in the building department office of the Town of North Castle;

that said structure or use is in conformity with the Zoning Ordinance, Building Code and other applicable requirements of the Town of North Castle;

that permission is hereby granted for the use and/or occupancy as set forth herein;

that this Certificate of Occupancy is subject to revocation for non-compliance of any of the laws or ordinances applicable thereto;

that this certificate is further subject to compliance to any other governmental agencies having jurisdiction thereof;

that this certificate is issued subject to the following conditions:

*Amended*

Building Permit Number 4886 and date issued August 23, 1979

Approved by \_\_\_\_\_

*Building Inspector*

19

FEE: \$ 2,000.00

No 4501

# Certificate of Occupancy

DEPARTMENT OF ZONING AND BUILDING  
TOWN OF NORTH CASTLE  
WESTCHESTER COUNTY, NEW YORK

Issued October 22, 1982

TO: Aerotech Holding Co.  
ADDRESS New King St. P.O. Box 218  
Purchase, NY 10577  
Premises located at: New King Street

In zone area: Ind AA Type or Use alteration of office space  
Tax map designation: Section 3 Block 4 Lot 13A & 14B

This certifies that the aforementioned structure and/or premise conforms with the application, use and plans on file in the building department office of the Town of North Castle;

that said structure or use is in conformity with the Zoning Ordinance, Building Code and other applicable requirements of the Town of North Castle;

that permission is hereby granted for the use and/or occupancy as set forth herein;

that this Certificate of Occupancy is subject to revocation for non-compliance of any of the laws or ordinances applicable thereto;

that this certificate is further subject to compliance to any other governmental agencies having jurisdiction thereof;

that this certificate is issued subject to the following conditions:

Building Permit Number 5470 and date issued July 1, 1982

Approved by

Building Inspector

20

TITLE NO. 0103 -ANY20041500 BV

**ABSTRACTERS' INFORMATION SERVICE, INC.**

138-72 QUEENS BOULEVARD BRIARWOOD, N.Y. 1435  
(718) 291-5900 (516) 742-2290 (914) 761-4451 FAX (718) 291-6681

**BUILDING VIOLATION SEARCH**

DATE: 1/23/2004

PREMISES: 7 NEW KING STREET, NORTH CASTLE

TOWN OF NORTH CASTLE

COUNTY: WESTCHESTER

SECTION: 3 BLOCK: 4 LOT: 13A

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**DEPARTMENT OF BUILDINGS**

A search of Building Department records indicate the following:

☒ There were no pending violations found on file as per search  
dated: 01/23/04

☐ for pending violations found on file as per search  
dated:

**IMPORTANT NOTICE ABOUT SEARCH INFORMATION ABOVE**

ABSTRACTERS' INFORMATION SERVICE INC. DOES HEREBY CERTIFY THAT THE RECORDS OF THE ABOVE MENTIONED GOVERNMENTAL AGENCY HAVE BEEN EXAMINED AND THAT THE INFORMATION RECORDED ABOVE IS A TRUE AND ACCURATE ABSTRACTION OF THE INFORMATION FURNISHED BY THE AGENCY.

THIS REPORT IS SUBMITTED FOR INFORMATIONAL PURPOSES ONLY. LIABILITY IS LIMITED TO THE COST OF THE SEARCH.

THIS SEARCH DOES NOT INCLUDE OTHER AGENCY VIOLATIONS, NOR DOES IT INCLUDE OPEN PERMIT INFORMATION, REFER TO CERTIFICATE OF OCCUPANCY REPORT.

TITLE NO. 0103 -ANY20041500 FV

**ABSTRACTERS' INFORMATION SERVICE, INC.**

138-72 QUEENS BOULEVARD BRIARWOOD, N.Y. 1435  
(718) 291-5900 (516) 742-2290 (914) 761-4451 FAX (718) 291-6681

**FIRE VIOLATION SEARCH**

DATE: 1/23/2004

PREMISES: 7 NEW KING STREET, NORTH CASTLE

TOWN OF NORTH CASTLE

COUNTY: WESTCHESTER

SECTION: 3 BLOCK: 4 LOT: 13A

CLASSIFICATION: 464

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**DEPARTMENT OF FIRE PREVENTION**

A search of Fire Department records indicate the following:

☒ There were no pending violations found on file as per search  
dated: 01/23/04

☐ for pending violations found on file as per search  
dated:

**IMPORTANT NOTICE ABOUT SEARCH INFORMATION ABOVE**

ABSTRACTERS' INFORMATION SERVICE INC. DOES HEREBY CERTIFY THAT THE RECORDS OF THE ABOVE MENTIONED GOVERNMENTAL AGENCY HAVE BEEN EXAMINED AND THAT THE INFORMATION RECORDED ABOVE IS A TRUE AND ACCURATE ABSTRACTION OF THE INFORMATION CONTAINED THEREIN.

THIS REPORT IS SUBMITTED FOR INFORMATIONAL PURPOSES ONLY. LIABILITY IS LIMITED TO THE COST OF THE SEARCH.

THIS SEARCH DOES NOT INCLUDE OTHER AGENCY VIOLATIONS.

TITLE NO. 0103 -ANY20041500 SR

**ABSTRACTERS' INFORMATION SERVICE, INC.**

138-72 QUEENS BOULEVARD BRIARWOOD, N.Y. 1435  
(718) 291-5900 (516) 742-2290 (914) 761-4451 FAX (718) 291-6681

**STREET MAINTENANCE REPORT**

DATE: 1/23/2004

PREMISES: 7 NEW KING STREET, NORTH CASTLE

TOWN OF NORTH CASTLE

COUNTY: WESTCHESTER

SECTION: 3 BLOCK: 4 LOT: 13A

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**DEPARTMENT OF HIGHWAYS**

Please be advised that the street in front of the above-mentioned  
Premises is:

- ☒ Maintained by the above municipality.
- ☐ Dedicated to the above municipality.
- ☐ Maintained by the above County.
- ☐ Maintained by the State of New York.
- ☐ Pending Sub-Division.
- ☐ A Private Road.

**IMPORTANT NOTICE ABOUT SEARCH INFORMATION ABOVE**

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THIS REPORT IS SUBMITTED FOR INFORMATIONAL PURPOSES ONLY. LIABILITY IS LIMITED TO THE COST OF THE SEARCH.

TITLE NO. 0103-ANY20041500\_JAMAIRPORTLLC BK

**ABSTRACTERS' INFORMATION SERVICE, INC.**138-72 QUEENS BOULEVARD BRIARWOOD, N.Y. 11435  
(718) 291-5900 (516) 742-2290 (914) 761-4451 FAX (718) 291-6681**BANKRUPTCY SEARCH**Company ALL NEW YORK TITLE AGENCYTITLE NO. 0103-ANY20041500Date: 01/23/04

Corporation Name:

JAM AIRPORT LLC

Last Known Residence or Business Address:

Premises: \_\_\_\_\_

County: WESTCHESTER

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The result of the investigation as per last posted date: 01/05/04

☒ There is no record of a Bankruptcy Filing for the above mentioned individual or company. The following Bankruptcy Clerks office(s) have been checked:

U.S. BANKRUPTCY COURT  
101 EAST POST ROAD  
WHITE PLAINS, N.Y. 10601

☐ The following information is on file:

**IMPORTANT NOTICE ABOUT SEARCH INFORMATION ABOVE**

Abstracters' Information Service Inc. does hereby certify that the records of the above governmental agency was examined and that the information recorded above is a true and accurate abstraction of the information contained therein. This search was conducted for a period of five years.

This report is submitted for information purposes only. Liability is limited to errors and omissions of information properly indexed, filed and recorded with the above governmental agency. The liability under this search shall not exceed \$1,000 and shall be confined to the applicant for whom the search was made.

This search does not include filings in areas other than the Microfiche or Index Sections of the United States Bankruptcy Clerk's office. This search is exclusively for ALL NEW YORK TITLE AGENCY on 01/23/04. 0103-ANY20041500



TITLE NO. 0103-ANY20041500\_JANRENDRESEN BK

**ABSTRACTERS' INFORMATION SERVICE, INC.**138-72 QUEENS BOULEVARD BRIARWOOD, N.Y. 11435  
(718) 291-5900 (516) 742-2290 (914) 761-4451 FAX (718) 291-6681**BANKRUPTCY SEARCH**Company ALL NEW YORK TITLE AGENCYTITLE NO. 0103-ANY20041500Date: 01/27/04

Individual Name:

JAN R. ENDRESEN

Last Known Residence or Business Address:

Premises: \_\_\_\_\_

County: WESTCHESTER

The result of the investigation as per last posted date: 01/05/04

☒ There is no record of a Bankruptcy Filing for the above mentioned individual or company. The following Bankruptcy Clerks office(s) have been checked:U.S. BANKRUPTCY COURT  
101 EAST POST ROAD  
WHITE PLAINS, N.Y. 10601☐ The following information is on file:**IMPORTANT NOTICE ABOUT SEARCH INFORMATION ABOVE**

Abstracters' Information Service Inc. does hereby certify that the records of the above governmental agency was examined and that the information recorded above is a true and accurate abstraction of the information contained therein. This search was conducted for a period of five years.

This report is submitted for information purposes only. Liability is limited to errors and omissions of information properly indexed, filed and recorded with the above governmental agency. The liability under this search shall not exceed \$1,000 and shall be confined to the applicant for whom the search was made.

This search does not include filings in areas other than the Microfiche or Index Sections of the United States Bankruptcy Clerk's office. This search is exclusively for ALL NEW YORK TITLE AGENCY on 01/27/04. 0103-ANY20041500

TITLE NO. 0103-ANY20041500 ANDREWRBENEROFE BK

**ABSTRACTERS' INFORMATION SERVICE, INC.**138-72 QUEENS BOULEVARD BRIARWOOD, N.Y. 11435  
(718) 291-5900 (516) 742-2290 (914) 761-4451 FAX (718) 291-6681**BANKRUPTCY SEARCH**Company ALL NEW YORK TITLE AGENCYTITLE NO. 0103-ANY20041500Date: 01/27/04

Individual Name:

ANDREW R. BENEROFE

Last Known Residence or Business Address:

Premises: \_\_\_\_\_

County: WESTCHESTER

---

---

The result of the investigation as per last posted date: 01/05/04☒ There is no record of a Bankruptcy Filing for the above mentioned individual or company. The following Bankruptcy Clerks office(s) have been checked:U.S. BANKRUPTCY COURT  
101 EAST POST ROAD  
WHITE PLAINS, N.Y. 10601☐ The following information is on file:**IMPORTANT NOTICE ABOUT SEARCH INFORMATION ABOVE**

Abstracters' Information Service Inc. does hereby certify that the records of the above governmental agency was examined and that the information recorded above is a true and accurate abstraction of the information contained therein. This search was conducted for a period of five years.

This report is submitted for information purposes only. Liability is limited to errors and omissions of information properly indexed, filed and recorded with the above governmental agency. The liability under this search shall not exceed \$1,000 and shall be confined to the applicant for whom the search was made.

This search does not include filings in areas other than the Microfiche or Index Sections of the United States Bankruptcy Clerk's office. This search is exclusively for ALL NEW YORK TITLE AGENCY on 01/27/04. 0103-ANY20041500

TITLE NO. 0103-ANY20041500\_JAMESCBENEROFE BK

**ABSTRACTERS' INFORMATION SERVICE, INC.**138-72 QUEENS BOULEVARD BRIARWOOD, N.Y. 11435  
(718) 291-5900 (516) 742-2290 (914) 761-4451 FAX (718) 291-6681**BANKRUPTCY SEARCH**Company ALL NEW YORK TITLE AGENCYTITLE NO. 0103-ANY20041500Date: 01/27/04

Individual Name:

JAMES C. BENEROFE

Last Known Residence or Business Address:

Premises: \_\_\_\_\_

County: WESTCHESTER

The result of the investigation as per last posted date: 01/05/04

☒ There is no record of a Bankruptcy Filing for the above mentioned individual or company. The following Bankruptcy Clerks office(s) have been checked:U.S. BANKRUPTCY COURT  
101 EAST POST ROAD  
WHITE PLAINS, N.Y. 10601☐ The following information is on file:**IMPORTANT NOTICE ABOUT SEARCH INFORMATION ABOVE**

Abstracters' Information Service Inc. does hereby certify that the records of the above governmental agency was examined and that the information recorded above is a true and accurate abstraction of the information contained therein. This search was conducted for a period of five years.

This report is submitted for information purposes only. Liability is limited to errors and omissions of information properly indexed, filed and recorded with the above governmental agency. The liability under this search shall not exceed \$1,000 and shall be confined to the applicant for whom the search was made.

This search does not include filings in areas other than the Microfiche or Index Sections of the United States Bankruptcy Clerk's office. This search is exclusively for ALL NEW YORK TITLE AGENCY on 01/27/04. 0103-ANY20041500

TITLE NO. 0103-ANY20041500\_MITCHELLIBENERO BK

**ABSTRACTERS' INFORMATION SERVICE, INC.**138-72 QUEENS BOULEVARD BRIARWOOD, N.Y. 11435  
(718) 291-5900 (516) 742-2290 (914) 761-4451 FAX (718) 291-6681**BANKRUPTCY SEARCH**Company ALL NEW YORK TITLE AGENCYTITLE NO. 0103-ANY20041500Date: 01/27/04

Individual Name:

MITCHELL I. BENEROFE

Last Known Residence or Business Address:

Premises: \_\_\_\_\_

County: WESTCHESTER

---

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The result of the investigation as per last posted date: 01/05/04☒

There is no record of a Bankruptcy Filing for the above mentioned individual or company. The following Bankruptcy Clerks office(s) have been checked:

U.S. BANKRUPTCY COURT  
101 EAST POST ROAD  
WHITE PLAINS, N.Y. 10601☐

The following information is on file:

**IMPORTANT NOTICE ABOUT SEARCH INFORMATION ABOVE**

Abstracters' Information Service Inc. does hereby certify that the records of the above governmental agency was examined and that the information recorded above is a true and accurate abstraction of the information contained therein. This search was conducted for a period of five years.

This report is submitted for information purposes only. Liability is limited to errors and omissions of information properly indexed, filed and recorded with the above governmental agency. The liability under this search shall not exceed \$1,000 and shall be confined to the applicant for whom the search was made.

This search does not include filings in areas other than the Microfiche or Index Sections of the United States Bankruptcy Clerk's office. This search is exclusively for ALL NEW YORK TITLE AGENCY on 01/27/04. 0103-ANY20041500





STATE OF NEW YORK  
DEPARTMENT OF STATE  
41 STATE STREET  
ALBANY, NY 12231-0001

GEORGE E. PATAKI  
GOVERNOR

RANDY A. DANIELS  
SECRETARY OF STATE

**INFORMATION REQUEST RESPONSE**

January 30, 2004

**RETURN TO CUSTOMER SERVICE COUNTER**

*Customer Reference Number: ANY2004150*

NATIONWIDE INFORMATION SERVICES, INC.  
PO BOX 679  
ALBANY NY 12201-0000

Name of Individual Searched:  
IAN R. ENDRESEN

The undersigned hereby certifies that there are no Financing Statements nor any Federal Tax Liens, which have not lapsed, which name the above debtor and which are on file as of 1/26/2004, 11:59 PM.

Please note that the Uniform Commercial Code Filing Database, including images of filings may be searched for variations of the Debtor's name and copies of records may be downloaded at the Department's website [www.dos.state.ny.us](http://www.dos.state.ny.us).

Our Customer Service Representatives may be reached at (518) 474-4763.

Sincerely,

Randy A. Daniels  
Secretary of State

Ref #: 504806



STATE OF NEW YORK  
DEPARTMENT OF STATE  
41 STATE STREET  
ALBANY, NY 12231-0001

GEORGE E. PATAKI  
GOVERNOR

RANDY A. DANIELS  
SECRETARY OF STATE

**INFORMATION REQUEST RESPONSE**  
January 30, 2004

**RETURN TO CUSTOMER SERVICE COUNTER**

*Customer Reference Number: ANY2004150*

NATIONWIDE INFORMATION SERVICES, INC.  
PO BOX 679  
ALBANY NY 12201-0000

Name of Individual Searched:  
ANDREW R. BENOROFÉ

The undersigned hereby certifies that there are no Financing Statements nor any Federal Tax Liens, which have not lapsed, which name the above debtor and which are on file as of 1/26/2004, 11:59 PM.

Please note that the Uniform Commercial Code Filing Database, including images of filings may be searched for variations of the Debtor's name and copies of records may be downloaded at the Department's website [www.dos.state.ny.us](http://www.dos.state.ny.us).

Our Customer Service Representatives may be reached at (518) 474-4763.

Sincerely,

Randy A. Daniels  
Secretary of State

Ref #: 504807



STATE OF NEW YORK  
DEPARTMENT OF STATE  
41 STATE STREET  
ALBANY, NY 12231-0001

GEORGE E. PATAKI  
GOVERNOR

RANDY A. DANIELS  
SECRETARY OF STATE

**INFORMATION REQUEST RESPONSE**

January 30, 2004

**RETURN TO CUSTOMER SERVICE COUNTER**

*Customer Reference Number: NAY2004150*

NATIONWIDE INFORMATION SERVICES, INC.  
PO BOX 679  
ALBANY NY 12201-0000

Name of Individual Searched:  
JAMES C. BENOROFÉ

The undersigned hereby certifies that there are no Financing Statements nor any Federal Tax Liens, which have not lapsed, which name the above debtor and which are on file as of 1/26/2004, 11:59 PM.

Please note that the Uniform Commercial Code Filing Database, including images of filings may be searched for variations of the Debtor's name and copies of records may be downloaded at the Department's website [www.dos.state.ny.us](http://www.dos.state.ny.us).

Our Customer Service Representatives may be reached at (518) 474-4763.

Sincerely,

Randy A. Daniels  
Secretary of State

Ref #: 504808





STATE OF NEW YORK  
DEPARTMENT OF STATE  
41 STATE STREET  
ALBANY, NY 12231-0001

GEORGE E. PATAKI  
GOVERNOR

RANDY A. DANIELS  
SECRETARY OF STATE

## INFORMATION REQUEST RESPONSE

January 30, 2004

### RETURN TO CUSTOMER SERVICE COUNTER

*Customer Reference Number: ANY2004150*

NATIONWIDE INFORMATION SERVICES, INC.  
PO BOX 679  
ALBANY NY 12201-0000

Name of Individual Searched:  
MITCHELL I. BENOROFÉ

The undersigned hereby certifies that there are no Financing Statements nor any Federal Tax Liens, which have not lapsed, which name the above debtor and which are on file as of 1/26/2004, 11:59 PM.

Please note that the Uniform Commercial Code Filing Database, including images of filings may be searched for variations of the Debtor's name and copies of records may be downloaded at the Department's website [www.dos.state.ny.us](http://www.dos.state.ny.us).

Our Customer Service Representatives may be reached at (518) 474-4763.

Sincerely,

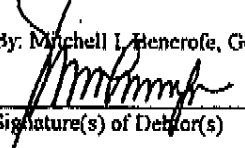
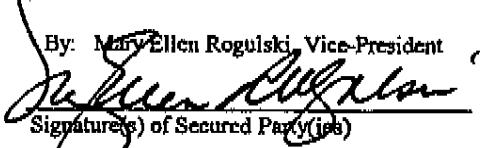
Randy A. Daniels  
Secretary of State

Ref #: 504809

ORIGINAL

**Uniform Commercial Code - FINANCING STATEMENT - Form UCC - 1**  
**IMPORTANT - Read instructions before filling out form.**

12.75

This Financing Statement is presented to a Filing Officer for filing pursuant to the Uniform Commercial Code.		No. of Additional Sheets Presented: 2	3. <input type="checkbox"/> The debtor is a transmitting utility.
1. Debtor(s) (Last Name First) and Address(es):  JAM AIRPORT, LLC 4 New King Street Purchase, New York 10577	2. Secured Party(ies) Name(s) and Address(es):  PROVIDENT BANK 400 Rella Boulevard Montebello, New York 10901		4. For Filing Office  41180-6066
5. This Financing Statement covers the following types (or items) of property:  All fixtures now owned or hereafter affixed to, or used in connection with the premises described on attached Schedule "A" and any and all replacements thereof and additions thereto and in all rents, issues and profits therefrom and in all rents, issues and profits in connection with a certain assignment of all leases for property located at 1&3 King Street, Purchase, New York 10577.  <input checked="" type="checkbox"/> Products of the Collateral are also covered.		6. Assignee(s) of Secured Party and Address(es):  LEONARD H. SPANGLER WESTCHESTER COUNTY 2001 JUN 29 A 4131 FILED	
7. <input type="checkbox"/> The described crops are growing or to be grown on: * <input checked="" type="checkbox"/> The described goods are or are to be affixed to: * <input type="checkbox"/> The lumber to be cut or minerals or the like (including oil and gas) in:  * (Describe Real Estate Below)		9. Name of Record Owner:  JAM AIRPORT, LLC	
8. Describe Real Estate Here. <span style="float: right;"><input checked="" type="checkbox"/> This statement is to be indexed in the Real Estate Records</span>  1 & 3 New King Street    North Castle    Westchester  No. & Street                      Town or City                      County                      Section 3    Block 4    Lot 13A			
10. This statement is filed without the debtor's signature to perfect a security interest in collateral (check appropriate box) <input type="checkbox"/> under a security agreement signed by debtor authorizing secured party to file this statement, or <input type="checkbox"/> which is proceeds of the original collateral described above in which a security interest was perfected, or <input type="checkbox"/> acquired after a change of name, identity or corporate structure of the debtor, or <span style="float: right;"><input type="checkbox"/> as to which the filing has lapsed,</span> or already subject to a security interest in another jurisdiction: <input type="checkbox"/> when the collateral was brought into the state, or <span style="float: right;"><input type="checkbox"/> when the debtor's location was changed to this state.</span>			
JAM AIRPORT, LLC By: FROBAR INVESTMENT COMPANY, its Managing Member  By: Mitchell L. Benenofe, General Partner   Signature(s) of Debtor(s)		PROVIDENT BANK  By: Mary Ellen Rogulski, Vice-President   Signature(s) of Secured Party(ies)	

STANDARD FORM - FORM UCC-1 - Approved by Secretary of State of New York

4/30/97

ALL that certain plot, piece or parcel of land situate, lying and being in the Town of North Castle, County of Westchester and State of New York, bounded and described as follows:

BEGINNING at a point on the southwesterly side of New King Street where the same is intersected by the division line between the premises now or formerly of Aerotech World Trade Corp. (Liber 8534 page 45) and the premises herein described;

RUNNING thence along said division line, the following courses and distances:

South 48 degrees 14' 50" West 112.94 feet,

South 56 degrees 47' 10" West 20.22 feet,

South 72 degrees 34' 50" West 201.68 feet,

North 13 degrees 11' 00" West 1.50 feet,

South 43 degrees 04' 40" West 279.56 feet;

THENCE along the easterly side of New York State Route 120, North 9 degrees 38' 26" East 371.62 feet;

THENCE along the same, North 3 degrees 05' 17" East 481.93 feet;

THENCE South 2 degrees 03' 00" East 165.53 feet;

THENCE North 67 degrees 32' 00" East 195.72 feet to a point on the westerly side of New King Street;

THENCE continuing along the easterly side of New King Street, South 27 degrees 15' 00" East 458.44 feet to the point or place of BEGINNING.

#### SCHEDULE "A"

ORIGINAL

Uniform Commercial Code - FINANCING STATEMENT - Form UCC - 1  
IMPORTANT - Read instructions before filling out form.

This Financing Statement is presented to a Filing Officer for filing pursuant to the Uniform Commercial Code.		No. of Additional Sheets Presented: 2	3. <input type="checkbox"/> The debtor is a transmitting utility.
1. Debtor(s) (Last Name First) and Address(es):  JAM AIRPORT, LLC 4 New King Street Purchase, New York 10577	2. Secured Party(ies) Name(s) and Address(es):  PROVIDENT BANK 400 Rella Boulevard Montebello, New York 10901	4. For Filing Office	
5. This Financing Statement covers the following types (or items) of property:  All fixtures now owned or hereafter affixed to, or used in connection with the premises described on attached Schedule "A" and any and all replacements thereof and additions thereto and in all rents, issues and profits therefrom and in all rents, issues and profits in connection with a certain assignment of all leases for property located at 1&3 King Street, Purchase, New York 10577.  <input checked="" type="checkbox"/> Products of the Collateral are also covered.		6. Assignee(s) of Secured Party and Address(es):  2001 JUN 29 AM 10:13	
7. <input type="checkbox"/> The described crops are growing or to be grown on: * <input checked="" type="checkbox"/> The described goods are or are to be affixed to: * <input type="checkbox"/> The lumber to be cut or minerals or the like (including oil and gas) is on: *  * (Describe Real Estate Below)		9. Name of Record Owner:  JAM AIRPORT, LLC	
8. Describe Real Estate Here.  1 & 3 New King Street North Castle Westchester  No. & Street Town or City County Section 3 Block 4 Lot 13A		<input checked="" type="checkbox"/> This statement is to be indexed in the Real Estate Records	
10. This statement is filed without the debtor's signature to perfect a security interest in collateral (check appropriate box) <input type="checkbox"/> under a security agreement signed by debtor authorizing secured party to file this statement, or <input type="checkbox"/> which is proceeds of the original collateral described above in which a security interest was perfected, or <input type="checkbox"/> acquired after a change of name, identity or corporate structure of the debtor, or <input type="checkbox"/> as to which the filing has lapsed, or already subject to a security interest in another jurisdiction: <input type="checkbox"/> when the collateral was brought into the state, or <input type="checkbox"/> when the debtor's location was changed to this state.			
JAM AIRPORT, LLC By: PROBAR INVESTMENT COMPANY, its Managing Member  By: Mitchell L. Benenofe, General Partner  Signature(s) of Debtor(s)		PROVIDENT BANK  By: Mary Ellen Rogulski, Vice-President  Signature(s) of Secured Party(ies)	

STANDARD FORM - FORM UCC-1 - Approved by Secretary of State of New York

4/30/97

FILING NUMBER: 900252 FILING DATE: 06/29/2001

12/14/2011

15:52

9147371041

LEVINE & MONTANA

PAGE

59/70

The STATEMENT is presented to a filing officer for filing pursuant to the Uniform Commercial Code:		3. Maturity date (if any)
1. Debtor(s) (Last Name First) and address(es) BENEROFE, ANDREW R 4 NEW KING STREET PURCHASE, NY 10577	2. Secured Party(ies) and address(es) THE BANK OF NEW YORK 280 BROADWAY NEWBURGH, NY 12250	For Filing Officer (Date, Time and Filing Office) 96-00738
91-01216		40277-0326
4. This statement refers to original Financing Statement bearing File No. _____ NY, WESTCHESTER Date Filed 02/07/1991 19		
5. <input checked="" type="checkbox"/> Continuation. The original financing statement between the foregoing Debtor and Secured Party, bearing file number shown above, is still effective. 6. <input type="checkbox"/> Termination. Secured party no longer claims a security interest under the financing statement bearing file number shown above. 7. <input type="checkbox"/> Assignment. The secured party's right under the financing statement bearing file number shown above to the property described in Item 10 have been assigned to the assignee whose name and address appears in Item 10. 8. <input type="checkbox"/> Amendment. Financing Statement bearing file number shown above is amended as set forth in Item 10. 9. <input type="checkbox"/> Release. Secured Party releases the collateral described in Item 10 from the financing statement bearing file number shown above. 10.		
Return To: Intercounty Clearance Corp. 111 Washington Avenue, Albany, NY 12210 0491746645/VONFORDASSOC//3800530/463/422/09/29/00 65788001 30294 No. of additional Sheets Presented: 3		
By: _____ Signature(s) of Debtor(s) (necessary only if Item 8 is applicable).		THE BANK OF NEW YORK JNDY LEICHENAUER, ATTORNEY IN FACT By: <i>[Signature]</i> Signature(s) of Secured Party(ies)
STANDARD FORM - FORM UCC-3		
(1) FILING OFFICER COPY ALPHABETICAL		

FILED  
00 OCT -3 AM 11:38  
LEVINSON SPA  
WESTCHESTER COUNTY CLERK

12/14/2011

15:52

9147371041

LEVINE & MONTANA

PAGE 61/70

This STATEMENT is presented to a filing of filing pursuant to the Uniform Commercial C.		No. of additional Sheets Presented:	<input type="checkbox"/> The Debtor is a transmitting utility.
1. Debtor(s) (Last Name First) and Address(es): <b>Andrew R. Benerofe 4 New King Street Purchase, NY 10577</b>	2. Secured Party(ies) Name(s) and Address(es): <b>The Bank of New York 280 Broadway Newburgh, NY 12250</b>	4. For Filing Officer: Date, Time, No. Filing Office <b>9/12/16 96-00738</b>	

5. This statement refers to original Financing Statement No. **91-01216** filed (date) **2/7/91** with **Westchester**

6. ☒ A. Continuation The original Financing Statement bearing the above file number is still effective.  
☐ B. Termination The Secured Party of record no longer claims a security interest under the Financing Statement bearing the above file number.  
☐ C. Release From the Collateral described in the Financing Statement bearing the above file number, the Secured Party of record releases the Collateral.  
☐ D. Assignment The Secured Party of record has assigned the Secured Party's rights in the property described below under the Financing Statement bearing the above file number to the Assignee whose name and address are shown below:  
☐ E. Amendment The Financing Statement bearing the above file number is amended as set forth below; (Signature of Debtor and Secured Party is required)

☐ This statement is to be indexed in the Real Estate Records

Section

Block

The Bank of New York

By \_\_\_\_\_  
Signature(s) of Debtor(s) (only on amendment)

By *Elizabeth Felix*  
Signature(s) of Secured Party(ies)

(1) FILING OFFICER COPY-NUMERICAL

(5/82)

STANDARD FORM - FORM UCC-3 - Approved by the Secretary of State of New York, Pennsylvania & Texas

FILED  
96 JAN 26 PM 12:13  
CLERK  
WESTCHESTER COUNTY  
NEW YORK



This FINANCING STATEMENT is presented to a Filing Officer for filing pursuant to the Uniform Commercial Code.

1. Debtor(s) (Last Name First) and Address(es):  
**ANDREW R. BENEROFFE**  
 4 New King Street  
 Purchase, N.Y. 10577

2. Secured Party(ies) Name(s) and Address(es):  
**THE BANK OF NEW YORK**  
 280 Broadway  
 Newburgh, N.Y. 12250

3. No. of Additional Sheets Presented: **1**

4. For Filing, Office, Date, Fee, Filing Office: **WESTCHESTER COUNTY CLERK**

5. This Financing Statement covers the following types (or items) of property:  
**ALL STOCK, BONDS AND MARKETABLE SECURITIES  
 CONTAINED IN CUSTODY ACCOUNT NO.023866  
 HELD BY THE SECURED PARTY.**

6. Assignee(s) of Secured Party and Address(es):

7. ☐ The described crops are growing or to be grown on:  
☐ The described goods are or are to be affixed to:  
☐ The timber to be cut or minerals or the like

8. Describe Real Estate Here: ☐ This statement is to be indexed in the Real Estate Records:

9. Name of a Record Owner: **ANDREW R. BENEROFFE**

10. This statement is filed without the debtor's signature to perfect a security interest in collateral (check appropriate box)  
☐ under a security agreement signed by debtor authorizing secured party to file this statement, or  
☐ which is proceeds of the original collateral described above in which a security interest was perfected, or  
☐ acquired after a change of name, identity or corporate structure of the debtor, or ☐ as to which the filing has lapsed, or  
☐ already subject to a security interest in another jurisdiction:  
☐ when the collateral was brought into the state, or ☐ when the debtor's location was changed to this state.

By ANDREW R. BENEROFFE Signature(s) of Debtor(s)

By THE BANK OF NEW YORK Signature(s) of Secured Party(ies)

(1) Filing Officer Copy-Numerical  
 (5/82) STANDARD FORM - FORM UCC-1 - Approved by Secretary of State of New York

This STATEMENT is presented to a filing officer for filing pursuant to the Uniform Commercial Code:		3. Maturity date (if any): For Filing Officer (Date, Time and Filing Office): <div style="text-align: center; font-size: 1.2em;">96-00736</div>
1. Debtor(s) (Last Name First) and address(es): BENEROFE, JAMES 4 NEW KING STREET PURCHASE, NY 10577	2. Secured Party(ies) and address(es): THE BANK OF NEW YORK COMMERCIAL LOAN SERVICING 280 BROADWAY NEWBURGH, NY 12550	<div style="text-align: center; font-size: 1.5em;">40277-0426</div>
4. This statement refers to original Financing Statement bearing File No. <u>91-01218</u> Filed with <u>NY, WESTCHESTER</u> Date Filed <u>02/07/1991</u> 19 <u>91</u>		
5. <input checked="" type="checkbox"/> Continuation. The original financing statement between the foregoing Debtor and Secured Party, bearing file number shown above, is still effective. 6. <input type="checkbox"/> Termination. Secured party no longer claims a security interest under the financing statement bearing file number shown above. 7. <input type="checkbox"/> Assignment. The secured party's right under the financing statement bearing file number shown above to the property described in Item 10 have been assigned to the assignee whose name and address appears in Item 10. 8. <input type="checkbox"/> Amendment. Financing Statement bearing file number shown above is amended as set forth in Item 10. 9. <input type="checkbox"/> Release. Secured Party releases the collateral described in Item 10 from the financing statement bearing file number shown above. 10.		
Return To: Intercounty Clearance Corp. 111 Washington Avenue, Albany, NY 12210 0491946645/VONFORDASSOC//3800530/489/430/09/29/00 65787601 30294 No. of additional Sheets presented: <u>0</u>		
By: _____ Signature(s) of Debtor(s) (necessary only if Item 8 is applicable).		THE BANK OF NEW YORK JUD LEICHENAUER, ATTORNEY IN FACT By: <i>J Leich</i> Signature(s) of Secured Party(ies)
STANDARD FORM - FORM UCC-3		
(1) FILING OFFICER COPY ALPHABETICAL		

 FILED  
 00 OCT -3 AM 11:33  
 LEVINE & MONTANA  
 WESTCHESTER COUNTY CLERK

12/14/2011

15:52

9147371041

LEVINE & MONTANA

PAGE 65/70

This STATEMENT is presented to a filing office  
filing pursuant to the Uniform Commercial Code.

No. of additional  
Sheets Presented:

3. The Debtor is a transmitting utility.

1. Debtor(s) (Last Name First) and Address(es):

James Benerofe  
4 New King Street  
Purchase, NY 10577

2. Secured Party(ies) Name(s) and Address(es):

The Bank of New York  
280 Broadway  
Newburgh, NY 12550

4. For Filing Officer: Date, Time, No. Filing Office

91218  
96-00736

5. This statement refers to original Financing Statement No. 91-01218 filed (date) 2/7/91 with Westchester

6. ☒ A. Continuation

The original Financing Statement bearing the above file number is still effective.

☐ B. Termination

The Secured Party of record no longer claims a security interest under the Financing Statement bearing the above file number.

☐ C. Release

From the Collateral described in the Financing Statement bearing the above file number, the Secured Party of record releases the following:

☐ D. Assignment

The Secured Party of record has assigned the Secured Party's rights in the property described below under the Financing Statement bearing the above file number (s):

Assignee whose name and address are shown below:

☐ E. Amendment

The Financing Statement bearing the above file number is amended as set forth below: (Signature of Debtor and Secured Party is Required)

☐ This statement is to be indexed in the Real Estate Records

Section

Block

The Bank of New York

By \_\_\_\_\_  
Signature(s) of Debtor(s) (only on amendment)

By Edward N. Spaulding  
Signature(s) of Secured Party(ies)

(1) FILING OFFICER COPY-NUMERICAL

(5/82)

STANDARD FORM - FORM UCC-3 - Approved by the Secretary of State of New York, Pennsylvania & Texas

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EDWARD N. SPAULDING  
WESTCHESTER COUNTY CLERK

960064071

12/14/2011

15:52

9147371041

LEVINE & MONTANA

PAGE 67/70

This FINANCING STATEMENT is presented to a Filing Officer for filing pursuant to the Uniform Commercial Code.

No. of Additional Sheets Presented:

1. Debtor(s) (Last Name First and Address(es))

JAMES BENEROFE  
4 New King Street  
Purchase, N.Y. 10577

2. Secured Party(ies) Name(s) and Address(es)

THE BANK OF NEW YORK  
280 Broadway  
Newburgh, N.Y. 12550

3. ☒ The Debtor is a partnership, limited liability company, or other entity.

4. For Filing Officer: Date, Time, No. Filing Office

91 FEB -7 AM 11:12

ALAN J. STANO  
WESTCHESTER COUNTY CLERK

5. This Financing Statement covers the following types (or items) of property:

ALL STOCK, BONDS AND MARKETABLE SECURITIES  
CONTAINED IN CUSTODY ACCOUNT NO. 023876  
HELD BY THE SECURED PARTY.

6. Assignee(s) of Secured Party and Address(es)

☐ Products of the Collateral are also covered.

8. Describe Real Estate Here:

☐ This statement is to be indexed in the Real Estate Records:

9. Name of a Record Owner

JAMES BENEROFE

No. & Street Town or City County Section Block Lot

10. This statement is filed without the debtor's signature to perfect a security interest in collateral (check appropriate box)

- ☐ under a security agreement signed by debtor authorizing secured party to file this statement, or  
☐ which is proceeds of the original collateral described above in which a security interest was perfected, or  
☐ acquired after a change of name, identity or corporate structure of the debtor, or ☐ as to which the filing has lapsed, or already subject to a security interest in another jurisdiction:  
☐ when the collateral was brought into the state, or ☐ when the debtor's location was changed to this state.

JAMES BENEROFE

THE BANK OF NEW YORK

By

Signature(s) of Debtor(s)

By

Signature(s) of Secured Party(ies)

(1) Filing Officer Copy-Numerical

(5/82)

STANDARD FORM - FORM UCC-1 - Approved by Secretary of State of New York

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LEVINE & MONTANA

PAGE 69/70

SST  
1/40

THIS INDENTURE, made this 15<sup>th</sup> day of November, 1984, in the year one thousand nine hundred eighty-four, between NEW YORK CITY PUBLIC DEVELOPMENT CORPORATION, a Not-for-Profit corporation with its principal place of business at 161 William Street, New York, New York, hereinafter designated as the Grantor, and AEROTECH HOLDING CO., INC., a New York State corporation, having its principal place of business at New King Street, North Castle, New York, hereinafter designated as the Grantee.

WHEREAS, the Board of Estimate of the City of New York, by Resolution adopted on the 12th day of April, 1984 (Cal. No. 9 ) and after due appraisal under the direction of said Board, duly ordered and directed the sale of the premises therein and hereinafter described by the City of New York to the Grantor.

NOW, THEREFORE, WITNESSETH: That the Grantor, in consideration of the sum of THIRTY-FIVE THOUSAND AND 00/100 (\$35,000.00) DOLLARS, lawful money of the United States and other valuable consideration paid by the Grantee, does hereby grant and release unto the Grantee, its successors and assigns forever:

ALL that certain plot, piece or parcel of land, situate, lying and being in the Town of North Castle, County of Westchester, State of New York, bounded and described as follows:

BEGINNING at a monument set at the northwesterly corner of land of Aerotech Holding Co., Inc., as described in a deed recorded in the Westchester County Clerk's Office, Division of Land Records, in Liber 7386 of Deeds, Page 691; Running thence south 2 degrees 03 minutes 00 seconds east along the dividing line between the premises herein conveyed and the land of Aerotech Holding Co., Inc., 76.32 feet to a point; thence south 13 degrees 11 minutes 00 seconds east, still along the land of Aerotech Holding Co., Inc. 412.57 feet to a point; Thence south 43 degrees 04 minutes 40 seconds west, still along the land of Aerotech Holding Co., Inc. 279.56 feet to a point on the easterly side of New York State Route 120, as the same is shown on New York State Department of Public Works Maps for the construction of Interstate Route 502, Map No. 63 R-1, Parcel No. 86, which point is the southwesterly corner of the premises herein conveyed; Thence along the easterly side of New York State Route 120, north 9 degrees 38 minutes 26 seconds east, 371.62 feet to a point; Thence still along the easterly side of New York State Route 120, north 3 degrees 05 minutes 17 seconds east, 481.93 feet to a point on the westerly line of land of Asea Electric, Inc.; Thence along the said westerly line of land of Asea Electric, Inc. south 2 degrees 03 minutes 00 seconds east, 165.53 feet to the point and place of BEGINNING. Containing within the aforesaid bounds 1.195 acres, more or less.



**Appendix D:**  
U.S. Army Corps of Engineers Jurisdictional Determination



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

FEB 01 2012

REPLY TO  
ATTENTION OF

Regulatory Branch

SUBJECT: Permit Application Number NAN-2011-00486-ESO  
by AKRF Environmental and Planning Consultants as agent  
for 11 New King Street, LLC.

James Nash  
AKRF Environmental and Planning Consultants  
34 South Broadway  
Suite 401  
White Plains, NY 10601

Dear Mr. Nash:

On April 25, 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 AKRF, as consultant for 11 New King Street, LLC. The site consists of approximately 3.34 acres, in the Croton watershed, in the Town of North Castle, Westchester County, New York. The proposed project would involve construction of parking lot structure.

In the letter received on April 25, 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 representatives of this office on June 1, 2011, in which it was agreed that changes would be made to the delineation and that the modified delineation would be submitted to this office. On June 17, 2011, this office received the modified delineation.

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 gage 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.

These jurisdictional waters of the United States are shown on the drawing entitled "USACE Jurisdictional Determination", prepared by AKRF, dated June 1, 2011. This drawing indicates that there is one (1) principal wetland area that is considered to be waters of the United States. The wetland (Wetland A) is approximately 0.54-acre within the project boundary.

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/index.php?jurisdet>.

This written Corps jurisdictional determination has been conducted to identify whether a wetland and/or waterbody is subject to regulatory jurisdiction under Section 404 of the Clean Water Act (33 U.S.C. 1344) and/or under Section 9 or 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 et seq.). 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, Regulatory 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 APR 01 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.

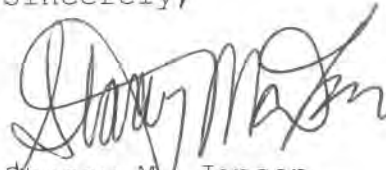
This delineation/determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local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

In order for us to better serve you, please complete our Customer Service Survey located at:  
<http://www.nan.usace.army.mil/business/buslinks/regulat/index.php?survey>.

If any questions should arise concerning this matter, please contact Ahmed Soliman, of my staff, at (917) 790-8518.

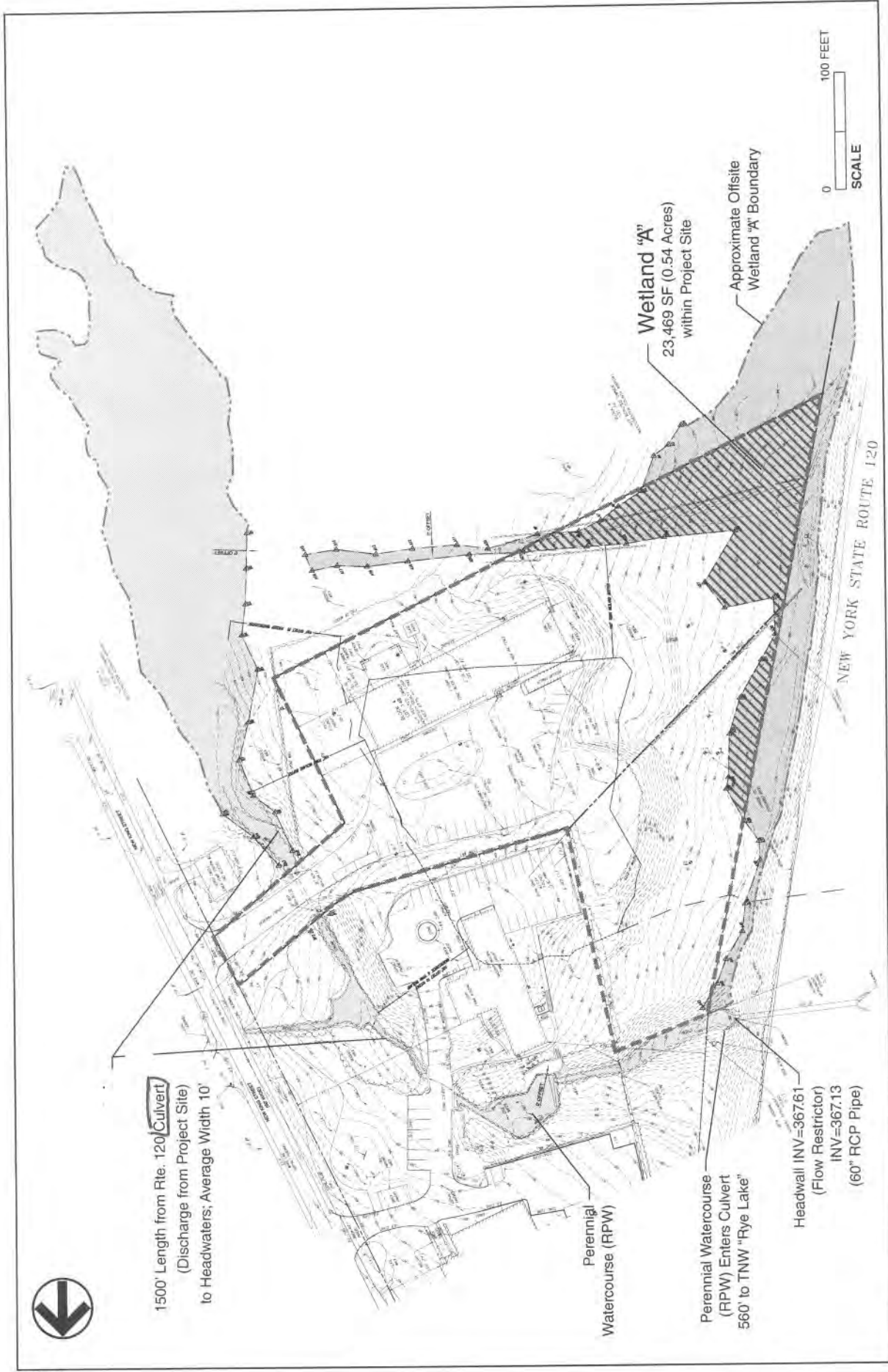
Sincerely,

A handwritten signature in black ink, appearing to read "Stacey M. Jensen". The signature is stylized with a large, looped "S" and a long, sweeping "J".

Stacey M. Jensen  
Chief Eastern Permits Section

Enclosures

FEB 01 2012



USACE Jurisdictional Determination  
Field Visit June 1, 2011 - A. Soliman  
NAN-2011-00486  
Page 1 of 1

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

**FEB 01 2012**

**SECTION I: BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD):** 01-Feb-2012

**B. DISTRICT OFFICE, FILE NAME, AND NUMBER:** New York District, NAN-2011-00486-JD1

**C. PROJECT LOCATION AND BACKGROUND INFORMATION:**

State :	NY - New York
County/parish/borough:	Westchester
City:	West Harrison
Lat:	41.08207
Long:	-73.714
Universal Transverse Mercator	<u>Folder UTM List</u> <i>UTM list determined by folder location</i> • NAD83 / UTM zone 18N <u>Waters UTM List</u> <i>UTM list determined by waters location</i> • NAD83 / UTM zone 18N

**Name of nearest waterbody:**

**Name of nearest Traditional Navigable Water (TNW):**

**Name of watershed or Hydrologic Unit Code (HUC):**

☒ 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:

Field Determination Date(s): 01-Jun-2011

**SECTION II: SUMMARY OF FINDINGS**

**A. RHA SECTION 10 DETERMINATION OF JURISDICTION**

There <sup>are no</sup> 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 <sup>are</sup> 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:** <sup>1</sup>

Water Name	Water Type(s) Present
NAN-2011-00486-ESO (11 New King Street, LLC) Wetland A	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: 2185.3 (m<sup>2</sup>)

Linear: (m)

c. Limits (boundaries) of jurisdiction:

based on: 1987 Delineation Manual

OHWM Elevation: (if known)

2. Non-regulated waters/wetlands:<sup>3</sup>

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain:

### 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:<sup>5</sup>

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:**

Wetland Name	Size (Acres)	Wetland Type	Wetland Quality	Cross or Serve as State Boundaries. Explain
NAN-2011-00486-ESO (11 New King Street, LLC) Wetland A	.54	Forested	Good	No

**(b) General Flow Relationship with Non-TNW:****Flow is:**

Wetland Name	Flow	Explain
NAN-2011-00486-ESO (11 New King Street, LLC) Wetland A	Perennial flow.	-



**Surface flow is:**

Wetland Name	Flow	Characteristics
NAN-2011-00486-ESO (11 New King Street, LLC) Wetland A	Overland sheetflow	-

**Subsurface flow:**

Wetland Name	Subsurface Flow	Explain Findings	Dye (or other) Test
NAN-2011-00486-ESO (11 New King Street, LLC) Wetland A	Unknown	-	-

**(c) Wetland Adjacency Determination with Non-TNW:**

Wetland Name	Directly Abutting	Discrete Wetland Hydrologic Connection	Ecological Connection	Separated by Berm/Barrier
NAN-2011-00486-ESO (11 New King Street, LLC) Wetland A	Yes	-	-	-

**(d) Proximity (Relationship) to TNW:**

Wetland Name	River Miles From TNW	Aerial Miles From TNW	Flow Direction	Within Floodplain
NAN-2011-00486-ESO (11 New King Street, LLC) Wetland A	1-2	1-2	Wetland to/from navigable waters	10 + 20-year

**(ii) 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
NAN-2011-00486-ESO (11 New King Street, LLC) Wetland A	-	-

**(iii) Biological Characteristics. Wetland supports:**

Wetland Name	Riparian Buffer	Characteristics	Vegetation	Explain
NAN-2011-00486-ESO (11 New King Street, LLC) Wetland A	-	-	-	-

**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:<sup>8</sup>**

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
NAN-2011-00486-ESO (11 New King Street, LLC) Wetland A	PERENNIAL	sheet and discrete flow to/from RPW

Provide acreage estimates for jurisdictional wetlands in the review area:

Wetland Name	Type	Size (Linear) (m)	Size (Area) (m <sup>2</sup> )
NAN-2011-00486-ESO (11 New King Street, LLC) Wetland A	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs	0	2185.30224
<b>Total:</b>		<b>0</b>	<b>2185.30224</b>

**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:<sup>9</sup>**

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:<sup>10</sup>**

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 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:**

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**

(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.

<sup>1</sup>-Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup>-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).

<sup>3</sup>-Supporting documentation is presented in Section III.F.

<sup>4</sup>-Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

<sup>5</sup>-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.

<sup>6</sup>-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.

<sup>7</sup>-Ibid.

<sup>8</sup>-See Footnote #3.

<sup>9</sup>-To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

<sup>10</sup>-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.

**Appendix E:**

“Estimate of Potential Parking Demand for Prospective  
New Garage to Serve: Westchester County Airport”,  
prepared by Carl Walker, Inc.



Estimate of Potential Parking Demand  
for Prospective New Garage to Serve:

**WESTCHESTER COUNTY AIRPORT**



**November 11, 2011**



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## PROJECT BACKGROUND

*Carl Walker, Inc.* has been engaged to develop an estimate of the level of unmet parking demand that might support a proposed private parking structure that will be developed to serve the Westchester County Airport.

The proposed 1,450 space parking structure will be a private development located just off of Airport property, near the Airport's primary entrance. The expectation is that this new facility, priced below the existing garage, will attract customers who now arrange to be dropped at the airport or take commercial transportation rather than pay the high rate to use the Airport's facilities or risk arriving at the airport to find all parking full. It is also expected to attract a significant number of travelers who currently park in the Airport facilities.

## RECENT AIRPORT HISTORY - OVERVIEW

It is recognized by Airport staff and by the community that conditions inside the terminal at Westchester County Airport are overcrowded, with insufficient screening capacity and insufficient capacity in the gate area beyond the security checkpoint. At the time that the existing terminal was built a larger terminal was proposed. Resistance to airport growth from local area residents resulted in approval of a terminal building that is approximately 50% of what was proposed in the initial plan. That is the principal cause of general overload of the terminal facilities under the current passenger volume. The existing parking garage was sized according to the reduced terminal plan and that is obviously the underlying cause of the current parking shortage at the airport.

The Airport operates under an imposed ceiling of 240 passengers per half hour and often reaches that pace at the current level of enplanements. The consolidated gate seating area is undersized for the actual current passenger load and the Airport exercises strict controls on the number of passengers that can enter that area during peak periods. The control point is the TSA security checkpoint. A flight information display identifies which flights are open for passengers to pass through the screening point. Other passengers must wait until the display shows that they can board. This limits the number of people in the gate area when it is at its capacity.

The Airport is in a difficult situation in that it cannot meet current parking demand generated by airport travelers. The 1,051 space parking structure located across from the terminal is full or considered full much of the time at mid-week. There is an active and widely recognized campaign to discourage travelers from bringing their cars to the airport because there is not sufficient capacity to accommodate them. Mass transit is encouraged, but has not been particularly successful. Based on a passenger survey conducted as part of this analysis, most travelers who do not park on-site are dropped off by family or business associates. A smaller number use commercial transportation. The Airport is served by taxicabs, but most commercial vehicles operating at curbside are "black car" limousines.

The current all-day parking rate for the garage is \$27.45 and that rate applies to all portions of the garage. There is no separate Short-Term parking area. That rate also applies to the uncovered overflow surface parking areas.





### Growth in Passenger Volume

Total passengers (inbound and outbound) for 2010 exceeded 1,900,000, an increase of approximately 100,000 passengers over the previous year (+5.6%). The 999,752 enplanements (outbound) in 2010 per published FAA figures is more than 60% higher than the 619,300 that was forecast for 2010 in the "FAA Regional Air Service Study" conducted in 2007. This growth is largely the result of the increases related to the entry of low cost carriers Jet Blue and AirTran Airlines. The 2010 level of total passengers (outbound and inbound) is more than double the 900,000 passengers handled in 2005 when average airfares at HPN were 44% higher according to a recent article at LoHud.com. That same article indicated that the drop in fares at this airport was significantly higher than the 6.7% drop at LaGuardia and the 18% drop at JFK during the same period. Fares at Newark-Liberty did not change appreciably.

### **CURRENT PARKING CONDITIONS AT THE AIRPORT**

The Airport is currently served by a parking structure, an ad hoc overflow area and a competing off-airport parking operation on the SUNY Purchase campus.

#### **Parking Garage**

The 3-level, 1,051 space (per FAA report) parking structure is located across the curbside roadway from the terminal building. All of that structure is used for public parking. The structure was developed in 1993 as a public-private partnership between the Airport and the garage developer/operator. The terms of the agreement stipulate a 5% increase in parking rates each year and has pushed those rates to the point that Long-Term parking is priced at the same level as Short-Term parking at other airports with much higher passenger volume. For regional comparison, the current daily maximum rate for the Short-Term parking areas at Kennedy, LaGuardia, and Newark airports is \$33. Only LaGuardia prices its Long-Term parking at the same daily rate (\$33) as its Short-Term area. Short-Term parking at Stewart International Airport is priced at \$30, but it provides Long-Term parking at \$10 per day.

### Garage Access

Garage parkers enter through a single two-lane entry point controlled by parking gates and ticket dispensers. Once through the gate, they can access any of the three levels via a comfortable external ramping system built on grade and taking advantage of the topography. The garage has an internal ramping system with a typical and uncomplicated circulation pattern. However, it lacks the level of floor and area/row identification graphics or signage normally provided in airport parking facilities. Overall, using the garage is fairly comfortable, with reasonable stall widths, wide drive aisles, good turning radii and good lighting. An elevator, located at the center point of the structure, provides access to all three levels. Levels 2 and 3 are connected to the terminal by a well-appointed pedestrian bridge. Access to the pedestrian bridge is through automatic doors, allowing travelers to pass easily with bags in tow. Other than periodic "full" conditions, there is nothing about the parking structure itself that would discourage its use in any meaningful way. Passengers interviewed during surveys conducted for this study also volunteered that snow and the apparent lack of effective snow removal affect the use of the 448 space top deck of the parking structure during winter months. During poor weather,



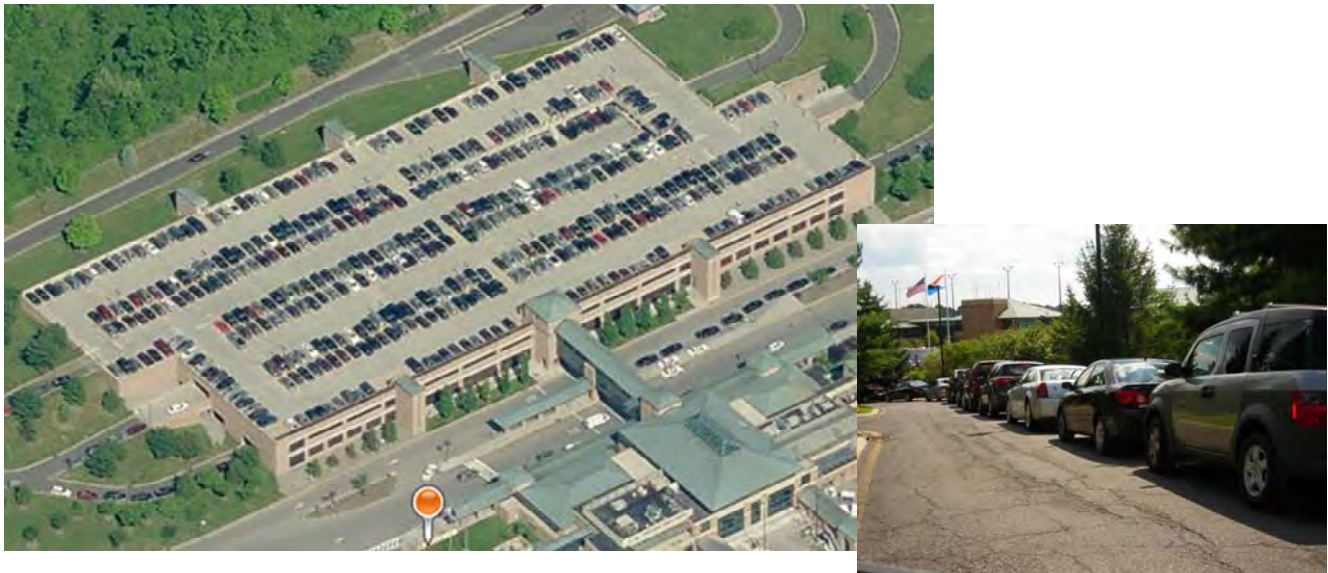


particularly snow conditions, the consistent availability of covered parking in the proposed garage represents a significant marketing advantage over the existing garage.

#### "Full" Conditions & Parking on the Ramps

At the time of our mid-week on-site visit, the Airport's parking structure was not full. At 8:30 P.M. on Tuesday 8/9/11, the garage was filled to **96%** of its capacity, with 39 open regular spaces and 7 open handicapped spaces. Nearly all of the empty spaces were concentrated on the top level. By Wednesday at noon, occupancy had decreased to **90%** with 104 regular and 5 handicapped spaces empty and available.

Based on conversations with various people at the airport, parking demand on the days of our observations was lower than normal because of end-of-summer vacations despite the fact that enplanement data indicates that August is a peak volume month at HPN. The aerial from Bing.com shown below attests to the fact that the top level of the garage does fill, with vehicles overflowing onto the inbound ramps.



On Tuesday afternoon the Garage Manager was seen directing arriving vehicles into place along the upper ramp, despite the fact that there were more than 100 empty spaces in the garage. We found that this procedure continued until 25 vehicles were parked on the side of the inbound ramps by that evening. Apparently, this routine is carried out in anticipation of a full garage - to help ensure that cars on the ramps park uniformly to leave a sufficient drive path. This would allow the Garage Manager to simply close the entry point when the facility is full and not be involved at the same time in trying to control drivers parking on the ramps.

This practice gives the illusion of a full garage when space is still available. Perhaps that is part of the intention, but it results in lost revenue to the airport. It also visually compounds the problem of parking insufficiency that is a negative factor for travelers using this airport.

According to an October, 2010 news article from *The Journal News*, the Airport has considered a vertical expansion to the garage. The specifics of those changes are not clear and, based on the lack of further media coverage, there is no indication at present that expansion plans for the garage are moving forward. The fact that at least one level of the garage would have to be closed during construction of an additional level is a logical deterrent under present circumstances. Closure of just the top level would temporarily remove approximately 448 spaces from the Airport's parking inventory, compounding the Airport's current parking shortage for months.

As part of a \$53 Million improvement program, the Airport plans to relocate its TSA baggage screening machines into a new building and construction of a de-icing fluid collection facility that requires relocation of rental car facilities to an existing employee lot (LoHud.com article 5/28/11). This loss of existing parking/rental spaces will increase competition for the remaining parking that is located on Airport property.

### **Overflow Parking**

An on-airport surface parking area of approximately 186 spaces (inside the gated area) is used for overflow parking when the parking structure is full. Shuttle transport is provided to and from the terminal when that parking area is in operation. The overflow area was not in operation at the time of our on-site visit.







### Cell Phone Lot

The Airport provides a short-term waiting area for those picking up passengers at curbside. The lot is located conveniently on the inbound roadway near the entry point to the overflow parking area. It is equipped with an electronic flight status display that provides real time information about flight arrivals, allowing drivers to wait until flights are at the gate before proceeding to the curbside pick-up area. In reality, the flight status display is useful primarily in keeping waiting drivers abreast of flight status, but drivers generally do not proceed to the pick-up area until they receive a cell phone call from the traveler that they are ready for pick-up. The lot has approximately 50 spaces.



### "Don't Bring Your Car" Campaign

The County and Airport have been engaged in a campaign to discourage travelers from bringing their cars to the airport because of the ongoing parking capacity problem. The first sentence about airport parking that appears on their webpage is:

"At times, it is not possible to meet all parking demand and airport users are encouraged to make advance arrangements to be dropped-off and picked-up".

Variable message signs at the entry point to the curbside area and near the exit point from that area advise travelers to use other forms of transportation to reach the airport, or arrange for drop-off.





## Parking Rates

Current parking rates for both the garage and overflow area are:

- \$ 3.30 per ½ hour
- \$ 6.60 per hour
- \$27.45 per day (maximum per 24 hour period)

A daily maximum rate of \$27.45 is very common today for Short-Term parking areas intended for parkers staying for less than 4 hours. That rate level is not common as the rate for the only long-term parking available at the airport.

Based on comments volunteered by travelers interviewed during our survey, that high daily rate is a key factor in their planning for getting to the airport. A number of those interviewed were very much aware of the relative cost of parking in the garage vs. taking a black car or taxicab - choosing to park for short trips and take another form of transportation for longer trips that pushed the cost of parking in the garage past the breakeven point vs. the available alternatives.

The following summary of parking rates at other airports in the region is provided for comparison:

Distance from HPN	AIRPORT	Short-Term	Daily or Long-Term	Remote Lot or Economy
30	<b>Kennedy International Airport</b>	33.00		18.00
22	<b>LaGuardia Airport</b>	33.00	33.00	
	After 2nd Day:		18.00	
36	<b>Newark Liberty</b>	33.00	24.00	18.00
36	<b>Stewart International Airport</b>	30.00	10.00	
	Weekly Rate:		60.00	
37	<b>MacArthur - Islip, NY</b>	25.00	14.00	12.50
43	<b>Tweed New Haven Int'l Airport</b>	10.50	7.50	
	Weekly Rate:	52.00	37.50	
80	<b>Bradley Int'l Airport - Hartford, CT</b>	26.00	22.00	
	Weekly Rate:		75.00	
95	<b>Lehigh Valley - Allentown, PA</b>	22.00	14.00	9.00
	Weekly Rate:		79.00	54.00

Based on the Expedia.com list of nearby airports, this includes all commercial service airports within 100 miles of HPN (no General Aviation airports included).





## ACCESS BY PUBLIC TRANSPORTATION

### Bee Line

The County's Bee Line bus system provides a connection between the transit center in White Plains and the terminal (Bus Route 12). Travelers can park at the Transit Center for \$9.75 per day and pay \$2.25 each way for bus transport between the terminal and the airport.

The bus delivers passengers to the airport with reasonable frequency during the early morning hours at:

6:53 A.M.  
 8:11 A.M.  
 8:46 A.M.  
 9:16 A.M.

The route changes to an hourly basis starting with the 10:08 northbound stop at the airport.

Mid-day route times, according to the published schedule, are as short as 38 minutes from the Transit Center to the Terminal. However, stops in Purchase and on the Purchase College campus that are included in the early morning routes increases that transit time to 45 minutes during that critical air traveler period.

The last bus departure FROM the airport is 6:49 P.M., which is much too early to provide adequate service to the full span of active airport hours.

An express service between the Transit Center and terminal was added at one point and then discontinued due to lack of ridership.

Based on the results of the passenger surveys conducted as part of our on-site work, the Bee Line is not a significant factor at this time. None of the 879 passengers included in the survey arrived via the Bee Line. If there is ridership coming to the airport, we expect that it is made up primarily of airport employees or area visitors returning to the airport to fly out.



	White Pl. Transit Center		Manhattanville College	SUNY	HPN AIRPORT	
	6:20		6:39		6:53	
7:16	7:20					8:02
7:16	7:25	7:48		7:57	8:11	8:30
7:55	8:05	8:28			8:46	9:05
8:29	8:35	8:58			9:16	9:35
9:21	9:30		9:49	9:56	10:08	10:20
10:19	10:30		10:49	10:56	11:08	11:20
11:19	11:30		11:49	11:56	12:08	12:20
12:19	12:30		12:49	12:56	1:08	1:20
1:19	1:30		1:49	1:56	2:08	2:20
2:19	2:30		2:49	2:56	3:08	3:20
3:19	3:30		3:49	3:56	4:08	4:20
4:18	4:30		4:49	4:56	5:08	5:20
5:04		5:10	5:29	5:36	5:48	6:00
6:05		6:10	6:29	6:36	6:47	6:59



### Limousine (Black Car)

Based on our passenger surveys, **11%** of the passengers departing over the two survey mornings arrived by limousine. Based on our general observations at other airports the level of limousine activity at HPN is significantly higher. This is likely due to the number of high income communities in the market area and the shortage of on-site parking at the airport.



Based on the published fares for limousine service, rates range from a low of \$4.30 per mile for a trip of 20 miles to a high of \$7.00 for a trip of only 4 miles.

### LIMOUSINE FARES - Westchester County Airport 8/11

<u>Point of Origination</u>	<u>One-Way Fare</u>	<u>Round Trip</u>	<u>Direct Line Miles</u>	<u>Equivalent Cost in Days of Parking</u>	
				<u>\$ Per Mile</u>	
BALDWIN PLACE	\$ 86.00	\$ <b>172.00</b>	20	\$ 4.30	6.3
CROTON FALLS	\$ 86.00	\$ <b>172.00</b>	19.4	\$ 4.43	6.3
BUCHANAN	\$ 81.00	\$ <b>162.00</b>	18	\$ 4.50	5.9
CORTLANDT	\$ 86.00	\$ <b>172.00</b>	17	\$ 5.06	6.3
GRANITE SPRINGS	\$ 86.00	\$ <b>172.00</b>	17	\$ 5.06	6.3
GOLDENS BRIDGE	\$ 57.00	\$ <b>114.00</b>	15.6	\$ 3.65	4.2
CROSS RIVER	\$ 66.00	\$ <b>132.00</b>	14	\$ 4.71	4.8
CROTON - ON- HUDSON	\$ 62.00	\$ <b>124.00</b>	13.8	\$ 4.49	4.5
CROTONVILLE	\$ 53.00	\$ <b>106.00</b>	12	\$ 4.42	3.9
BRONXVILLE	\$ 51.00	\$ <b>102.00</b>	11	\$ 4.64	3.7
BEDFORD	\$ 51.00	\$ <b>102.00</b>	10	\$ 5.10	3.7
CRESTWOOD	\$ 46.00	\$ <b>92.00</b>	9.7	\$ 4.74	3.4
DOBBSFERRY	\$ 51.00	\$ <b>102.00</b>	9.4	\$ 5.43	3.7
EASTCHESTER	\$ 47.00	\$ <b>94.00</b>	9.3	\$ 5.05	3.4
EDGEMONT	\$ 47.00	\$ <b>94.00</b>	7	\$ 6.71	3.4
CHAPPAQUA	\$ 39.00	\$ <b>78.00</b>	7	\$ 5.57	2.8
EASTVIEW	\$ 41.00	\$ <b>82.00</b>	6.6	\$ 6.21	3.0
ELMSFORD	\$ 33.00	\$ <b>66.00</b>	6.2	\$ 5.32	2.4
BANKSVILLE	\$ 39.00	\$ <b>78.00</b>	6	\$ 6.50	2.8
ARMONK (NORTH CASTLE)	\$ 28.00	\$ <b>56.00</b>	4	\$ 7.00	2.0
WHITE PLAINS	\$ 24.00	\$ <b>48.00</b>	4	\$ 6.00	1.7
ARMONK	\$ 22.00	\$ <b>44.00</b>	4	\$ 5.50	1.6



The current \$27.45 daily rate at the airport would put the breakeven distance from the point of origin to the airport at approximately 6-7 miles, with a round trip fare of \$82 that equates to 3 days of parking. Points of origin above 20 miles from the airport would require a 6 day trip to reach the breakeven point. Consequently, travelers taking a 3-day trip and living within 6-7 miles of the airport can take a limousine for the same cost as parking at the Airport. The cost of limousine transport for travelers living 20 miles from the Airport would equal the cost of parking at the Airport for trips of 6-days or more.

Although these distances (as shown in the table) are straight line point-to-point distances from the community of origin to the airport, the fares listed are the actual published fares to these locations and not affected by the fact that measured road route distances would be greater.

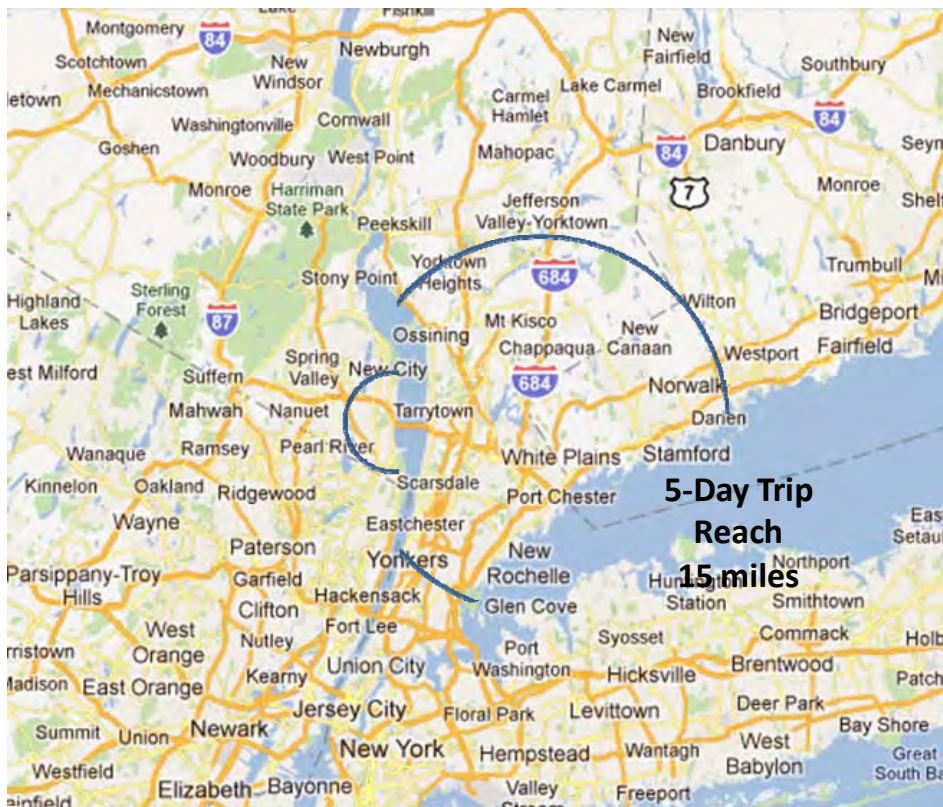
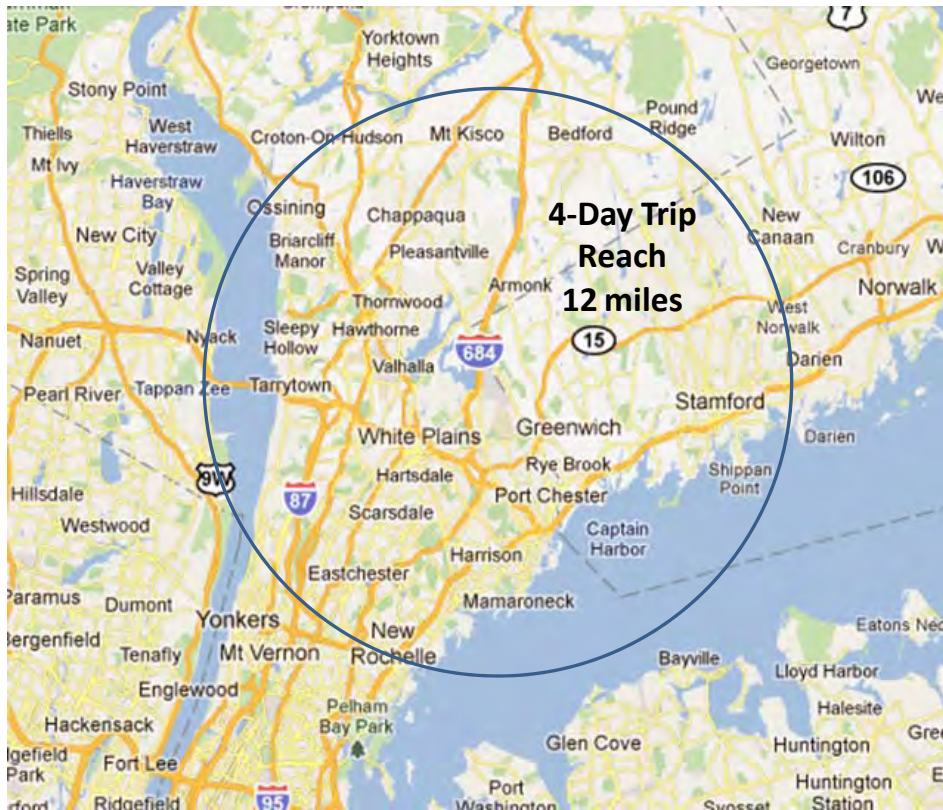
From our conversations with passengers, this financial evaluation is a common part of the decision making process for travelers familiar with the airport and its parking rates.

Based on the passenger survey that was part of the 2007 FAA Regional Air Service Demand Study, 85% of the passengers using HPN originated from Westchester and Fairfield counties. Because of the drop in airfares at HPN, it would be expected that the percentage of travelers coming from a further distance would increase. Nevertheless, the limo "breakeven" distance of 20 miles for a 6-day trip covers all of Westchester County and the most populous areas of Fairfield County. It also extends to the north portions of Manhattan.

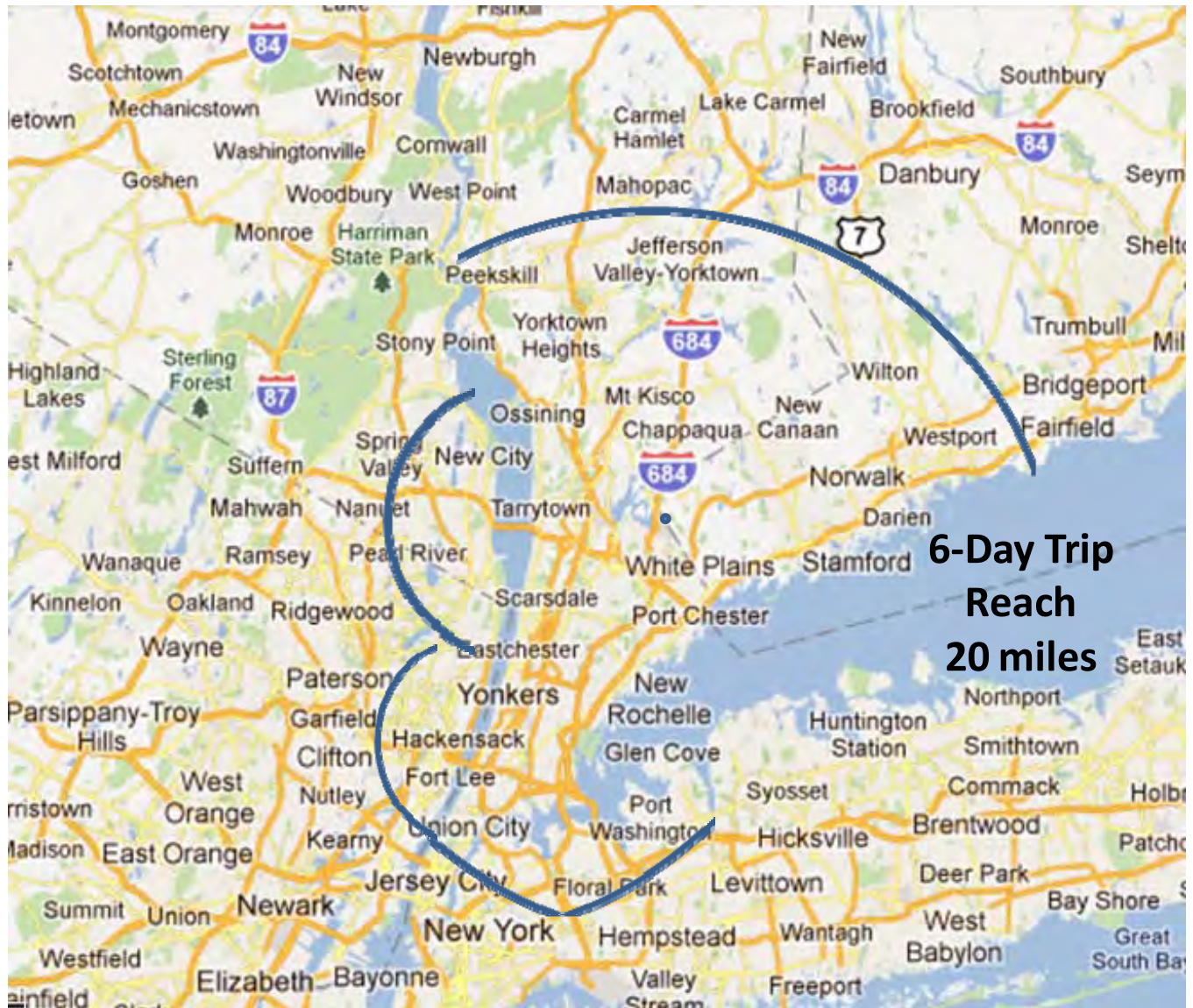
The conclusion is that the Limousine option is viable from an economic standpoint for a large percentage of passengers using Westchester County Airport, those traveling for 6 days or less. Some travelers probably choose to arrive by limousine because it saves time over any available parking option. That will not change when the proposed garage opens. Limousine will still be the fastest way to access the airport. However, it is apparent that a significant number of passengers choose the limousine option based on economic decisions. **That represents a real opportunity for a lower cost parking option that also offers convenience – the new automated garage.**

The series of maps provided here illustrate the estimated geographic range to the breakeven point for limousine service based on trip length.









**Note** that the 20-mile reach to the south may not extend as far as shown on the map above because of the practical impact of density, traffic and congestion south of Yonkers. We would expect limousine rates to be higher than the 6-day trip distance measurement would indicate.



## OFF-AIRPORT COMPETITION

### Purchase College, SUNY

Additional off-airport parking is available 4.9 miles from the terminal on the campus of Purchase College, State University of New York. Shuttle transport is provided from that location. The parking area is much larger than the normal 100-200 spaces needed to accommodate airport travelers. We were told by one of the SUNY bus drivers that they had intended to raise the parking rate from \$10 to \$15 but had decided to hold at **\$10 for now**. The driver had \$5 coupons in the bus to discount the rate to \$10.



### La Quinta Inn, Armonk

The hotel charges **\$10 per day** for non-hotel guests to park and a shuttle is provided to the airport. Travelers call the hotel for pick-up when they return and a shuttle is dispatched. Travel time for the 4.6 mile route is approximately 10 minutes according to comments from customers on various travel advisory websites checked for this study. Comments on one website related to staying at that hotel complained that it was difficult to find a parking space because the hotel used their lot for airport parking. There was little indication that there is any significant "Sleep and Fly" activity as offered by some hotels - just parking.





### Strength of Existing Competition

Off-airport parking competition is driven by two primary factors, with service level following behind them. The most important is proximity and ease of access. The second is cost. The importance of cost increases, logically, as differences in proximity and access are diminished.

Neither of the facilities identified as current off-airport competition compare favorably to the proposed garage. Their current level of activity is clearly the result of an unusual combination of lack of on-site parking at the airport and the unusually high parking rates.

Typically, location, proximity and access are extremely important factors in the success of an off-airport facility that is competing with either the on-airport facilities or other off-airport operations. A left-hand turn into one facility vs. a right-hand turn into another can make a significant difference in competitive position. Delay at a traffic signal that delays entry into one facility vs. another can be a significant factor that the weaker competitor must overcome with lower rates, better service, loyalty programs or other amenities. A facility that is located beyond the entry point to the airport, from the predominant direction of arriving traffic, is at a great disadvantage against a facility located prior to the airport entrance because time is so much more important on the departure leg than it is on the return. Travelers do not like to drive any additional distance (beyond the normal route to the terminal) to access an off-airport parking facility. They have to be provided an incentive to do so.

The long, indirect route from the **Purchase College (SUNY)** parking lot is considered very much out of the way and non-competitive under normal circumstances. Potential traffic delays along the route, which includes access to several schools adds an unwelcome level of uncertainty for business travelers trying to make a flight. The recent decision NOT to go forward with a rate increase from \$10 to \$15 is an indication of their weak position, particularly for travelers originating north or west of the airport. Travelers living in the general vicinity of Purchase College may continue to use that location after construction of the proposed garage, but it is likely, if they continue the service, that volume will fall significantly. Some leisure travelers who are price sensitive, will be traveling for several days, and who are not pressed for time may continue to park there as long as they maintain a significant rate differential.

The **La Quinta Inn** in Armonk does not appear to have an excess amount of parking relative to the size of the hotel. It may continue to provide low cost parking to leisure travelers who are coming from north of the airport, but it will have to do so with discount pricing as it does now. It is an older property and, from internet reviews, is in need of renovation. If that takes place and guest volume increases, the La Quinta may not be in a position to offer much long-term competition because of simple limitation of parking capacity. The fact that they are 10 minutes away and returning travelers have to call for pick-up is a negative. Hotels normally operate only one shuttle and the normal 10 minute route time may be closer to 15-20 if the shuttle has just departed for the hotel. Again, this service is better suited for leisure travelers who do not use it often and can afford the additional time.





## ASSESSMENT OF THE PROSPECTIVE GARAGE SITE & SITE ACCESS

The planned location of the new garage is a very positive factor. It would be considered highly convenient and “promotable” for several reasons:

- It is in very close proximity to the Airport entrance with access from New King Street.



- Because of its proximity, travelers, once exposed, are likely to consider it a virtual extension of the Airport facilities. A similarly situated private garage adjacent to Tulsa International Airport has taken on that role in the eyes of Tulsa residents because of its close proximity to the Airport entrance and visibility from Airport roadways. Although customers must drive a short distance away from the direction of the terminal to reach the garage, that seems to have little or no impact.





- The new garage will be visible to some degree from Airport Road or the other approach roads prior to the key driver decision point to turn left on New King Street. Greater visibility will improve its market position.
- New King Street is the primary exit route from the Airport, which will expose every departing driver and passenger to the new garage. This repeated exposure is invaluable and likely to have as much effect in attracting new parkers to the garage as most proactive marketing efforts that might be employed.
- The distance from the turn onto New King Street to the turn into the entry drive of the proposed garage is just over 200 yards, a relatively short distance. The principle of resistance to driving “away” from the terminal to reach a parking location should not have a significant effect as long as the route to the new garage is clearly marked.
- Based on the turning movement data presented in the AKRF traffic study, 430 vehicles approached the traffic circle at Rye Lake Avenue on Airport Road from the direction of the Airport’s main entrance and I-684 during the peak hour of morning arrival traffic. During that hour only 165 vehicles approached the traffic circle from Rye Lake Avenue. Of those 165 vehicles, 80 turned right on Airport Road, headed away from the terminal. The report did not clearly indicate whether the remaining 85 vehicles continued around the circle toward the terminal or continued straight ahead into the airport support and General Aviation area. **It is clear, however, that the bulk of arriving traffic accesses the Airport through its main entry point at Airport Road and Purchase Street.** This is logical considering access to I-684.
- Any change in the intersection with Airport Road and New King Street that would negatively affect the ability to turn left onto New King Street would necessarily have a negative impact on access to the proposed garage. Considering the significant investment that has been made recently to establish the current street alignments and traffic patterns, it appears unlikely that the responsible governmental authorities will make such a change. If, for some unforeseeable reason, the one-way segment of Airport Road reverted to two-way operation in the future, the presence and customer base of the new garage would have been well-established, limiting the impact of the change.
- The route to the garage entrance is very pleasant although the width of the roadway may give unfamiliar drivers pause. It does not give the appearance of being a major roadway that is a primary parking access route. Once parkers are introduced to the new garage location, that effect should be mitigated, but it will have to be overcome initially for travelers who are new to HPN or not already aware of the new garage location.
- The fact that New King Street is a one-way street has benefits and drawbacks. It means that customers leaving the new garage will not have to wait for any southbound traffic to clear before turning left (north) onto New King Street. However, the fact that New King Street is a single lane roadway means that there is a greater likelihood that a steady stream of northbound traffic could inhibit drivers trying to enter New King Street from the garage property.



## ESTIMATE OF PROBABLE DEMAND FOR THE NEW GARAGE

The conditions described earlier provide clear evidence that there is a considerable amount of unmet parking demand being generated by the Airport. There are several key questions that need to be answered relate to the volume of prospective parkers that are likely to be drawn to the proposed facility, under the planned program and rate structure. Most relate to the expansion of parking volume when demand is no longer constrained by insufficient parking capacity. One relates to the impact of rates in the proposed parking facility that are lower than those currently charged for parking on Airport property.

1. **What percentage of current drop-off travelers will begin driving and park in the new garage?**
2. **What percentage of current limousine customers will convert to the new garage?**
3. **What percentage of current garage parkers, using the on-airport parking facilities are likely to be drawn to the proposed garage?**
4. **What other prospective parking customers can be drawn to the new garage?**
5. **How do these prospective changes translate into required capacity for the proposed garage?**

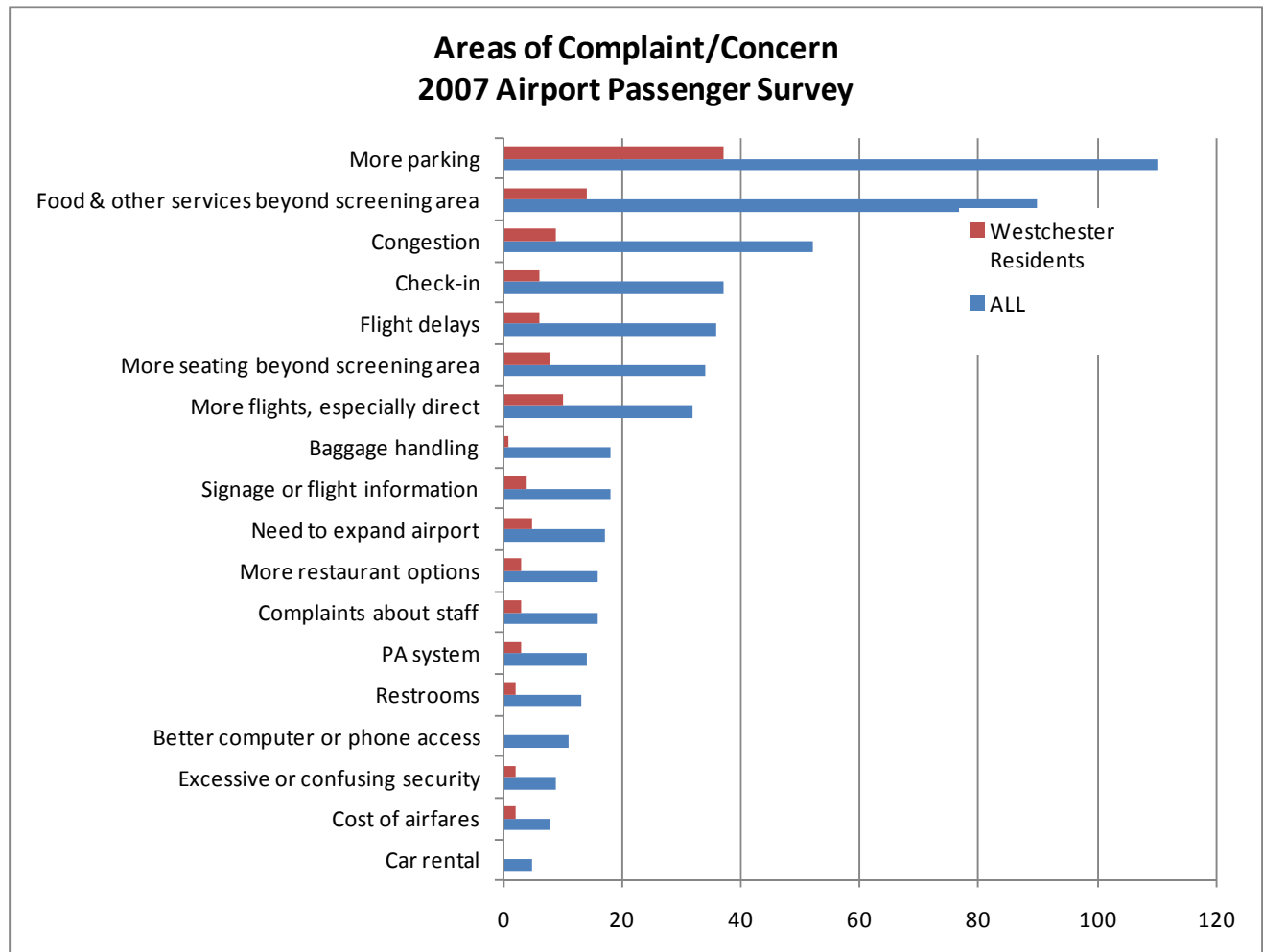
The estimate of probable demand involved application of travel mode split information gained from the passenger surveys conducted for the study along with comparative information related to parking demand and passenger volume obtained from other airports. Those airports generally have high Origination and Destination percentages as does HPN. It also involved judgments about the nature of existing travel patterns and the likelihood that some of those patterns will change when the proposed garage is added to the mix of alternatives at the airport. Finally, those anticipated changes were translated into parking volume that is likely to be accommodated in the new parking facility.

### Summary of Factors and Opinion of General Impacts:

- In a passenger survey conducted by the Airport in 2007, BEFORE enplanements and parking demand approached current levels, a lack of parking scored highest as an issue of concern for both Westchester County residents and non-residents using the airport. (Specific survey results are shown in the chart that follows.)
- According to that passenger survey, the lack of adequate parking capacity to serve the Airport was an obvious point of frustration for the wider community that chooses to travel through this Airport. It seems to be an even larger issue than the lack of adequate space within the terminal to handle current passenger volume. It is recognized as an inadequate level of service in a community that clearly expects more. *(The results of the survey are shown on the next page.)*
- The campaign to discourage travelers from bringing their cars to parking in the Airport facilities is widely known. It has clearly affected behavior in terms of choices of how to travel to the Airport.



- With new parking capacity added to the market there is no question that some of the existing drop-off and limousine volume will convert to parking. The question is how firmly current habits have been established and how many potential new parkers will keep those habits once the new garage is open.
- A daily rate in the area of \$18, as currently planned for the proposed garage, is certain to draw existing parking customers because it is significantly lower than the rate for parking on airport property and more in line with what is charged for covered long-term parking at other airports in the region – and across the country. It is a mid-point between an exceptionally high rate for what will continue to be the most convenient parking available (covered levels in the Airport garage), and the rather inconvenient existing surface parking options at the Airport and SUNY.





### Current Travel Mode Split (*Carl Walker Passenger Survey Results*)

The **Carl Walker** study team personally interviewed parties representing a total of 999 passengers on Thursday morning 8/11 (8:30 A.M. – 12 Noon) and Tuesday morning 8/16 (8:30 – 12 Noon). It is estimated that more than 95% of the passengers entering the TSA checkpoint during those hours were interviewed and willingly provided the requested information. Although the survey is subject to some level of error based on how well the sample of surveyed passengers represents the actual cross section of passengers on an annual basis, it is very accurate in terms of making a direct connection between the number of passengers and their travel mode choice. This is far superior to data collected from curbside observations because it is more difficult to relate those observations to the actual number of travelers they represent. Tuesday and Thursday mornings were selected for the surveys as heavy departure periods that were most likely to include a representative cross section of travelers, avoiding the concentration of departing business travelers on Sunday evening or Monday morning that would skew the results toward that traveler group.

- Of the 1,344 passengers included in the survey, 879 were residents of the local area which, for our purposes included residents of nearby states. The remaining 465 passengers were flying out after visiting the area.
- Based on the results of the survey process on Thursday, additional information was included in the questions asked in the subsequent Tuesday survey:
  - Nature of travel: Business or Leisure
  - Anticipated length of stay (or actual length stay being completed by visitors)
- The table below shows the distribution of both “groups” and passengers by their mode of travel to the airport. A “group” is defined as one person traveling alone or several people traveling together. This table includes only passengers who are **LOCAL AREA RESIDENTS** since they are the only potential source of parking demand for the new facility.

*The results for area VISITORS is included for information at the end of this report, but is not relevant to the demand analysis.*

LOCAL AREA RESIDENTS ONLY (Excludes travelers returning to their point of origin.)												
	PARK		Drop	Black	Taxi	RAC	Hotel	PAX	Bus.	Leisure	Total	Avg. Trip Length
	Airport	SUNY		Car			Shuttle					
TOTAL GROUPS:	98	16	283	46	25	1	3	472	472			
	20.8%	3.4%	60.0%	9.7%	5.3%	0.2%	0.6%					
TOTAL PASSENGERS:	186	35	504	97	49	2	6	879				
	21.2%	4.0%	57.3%	11.0%	5.6%	0.2%	0.7%					
Passengers per Group:	1.90	2.19	1.78	2.11	1.96	2.00	2.00	1.86				



- The table below shows the breakdown for each of the two survey days. Between the two days, the Tuesday morning results are considered to be more representative of the normal business and leisure mix. More business travelers would typically fly out on Tuesday than on Thursday because it would allow for a trip length of 1 to 4 weekdays vs. only 2 days for a Thursday departure.

Questions about trip purpose, business vs. leisure, and trip length were added to the 8/16 survey because of the interest and enthusiasm of passengers interviewed on the first survey day.

This table includes only LOCAL AREA RESIDENTS.

LOCAL AREA RESIDENTS ONLY (Excludes travelers returning to their point of origin.)												
	PARK		Drop	Black			Hotel					Avg. Trip Length
	Airport	SUNY		Car			Taxi					
TUESDAY 8/16/11:												
Groups:	64 26%	10 4%	129 53%	25 10%	13 5%	1 0.4%	3 1%	455	78 32%	167 68%	245	11.2
Passengers:	124 27%	24 5%	224 49%	54 12%	21 5%	2 0.4%	6 1%		92 20%	363 80%	455	
Passengers per Group:	1.9	2.4	1.7	2.2	1.6	2.0	2.0		1.2	2.2	1.9	
THURSDAY 8/11/11:												
Groups:	34 15%	6 3%	154 68%	21 9%	12 5%			424			227	
Passengers:	62 15%	11 3%	280 66%	43 10%	28 7%							
Passengers per Group:	1.8	1.8	1.8	2.0	2.3							
TOTAL GROUPS:	98 20.8%	16 3.4%	283 60.0%	46 9.7%	25 5.3%	1 0.2%	3 0.6%	472			472	
TOTAL PASSENGERS:	186 21.2%	35 4.0%	504 57.3%	97 11.0%	49 5.6%	2 0.2%	6 0.7%	879				
Passengers per Group:	1.90	2.19	1.78	2.11	1.96	2.00	2.00	1.86				



### Estimate of Normalized HPN Parking Demand

A basic question of the analysis is what the total "normal" parking demand should be for the number of passengers served by Westchester County Airport. "Normalized" or "unconstrained" demand is defined for this analysis as the level of parking demand that would be generated by the airport if parking was not constrained by high cost and limited capacity. The best way to get a sense of that demand is to compare the unconstrained demand at other airports with minimal connecting traffic.

Data related to the percentage of parked vehicles vs. passengers was compiled from several airports where we were able to obtain statistics for both annual enplanements and annual parking volume. Most of these airports are Carl Walker clients. The information from New Orleans is rather old, but information from the others is from within the past 10 years, including current information provided by several of our clients in response to our request made during this analysis.

#### PERCENTAGE OF PASSENGERS PARKING AT THE AIRPORT

	Enplanements	Transactions	% Parking
2001-02 Austin-Bergstrom	3,426,846	2,129,532	62.1%
1986 New Orleans	758,148	466,509	61.5%
2007 Oklahoma City	1,859,935	892,822	48.0%
2010-11 Port Columbus	3,181,792	1,344,000	42.2%
2010-11 Clearwater-St. Pete	385,000	151,586	39.4%
2011 Louisville	1,694,800	649,400	38.3%
2011 Long Beach (13 mos.)	1,634,658	475,826	29.1%
	<b>AVERAGE:</b>		<b>45.8%</b>

The percentage ranges from a low of 29% at Long Beach International Airport to a high of 62% at Austin-Bergstrom International Airport in Austin, Texas.

The numbers for Port Columbus International airport include a small number of enplanements and parking transactions from Rickenbacker International Airport which is operated by the Columbus Port Authority but involves only charter activity. We also adjusted the number of parking transactions upward to reflect two active off-airport parking facilities that handle some of the Columbus parking volume.

Before using this difference in drive rates to estimate unconstrained parking demand at HPN, additional research was done on the surveyed airports to assess the potential impact of two other factors.

- Percentage of Originating Passengers (excludes passengers connecting through the airport)
- Presence and market share of low-cost carriers

The table that follows provides current (2010) information on current enplanement volume, presence of low-cost carriers and percentage of originating passengers at the airports surveyed for comparative drive rates, which is the key comparison used to project potential parking demand at HPN.



Comparison of HPN to Surveyed Airports

	(a)	(b)	(c)	(d)
	Low-Cost Carriers	Low-Cost Carriers % of Market	2010 Enplanements	Originating Passengers
Austin-Bergstrom International Airport - Austin, TX	Southwest Jet Blue	43%	4,424,000	79.5%
New Orleans International Airport - LA	Southwest	32%	4,193,000	83.6%
Will Rogers World Airport - Oklahoma City, OK	Southwest	37%	1,702,000	74.5%
Port Columbus International Airport - Columbus, OH	Southwest	28%	3,130,000	79.6%
St. Petersburg - Clearwater International Airport - FL	Allegiant	92%	381,000	85.0%
Louisville International Airport - KY	Southwest	32%	1,651,000	76.1%
Long Beach International Airport - CA	JetBlue Allegiant	82%	1,476,000	85.0%
<b>Westchester County Airport</b>	<b>JetBlue AirTran</b>	<b>57%</b>	<b>999,836</b>	<b>95.0%</b>

Data Sources:

- (a) U.S. Research and Innovative Technology Administration (RITA) - transtats.bts.gov
- (b) U.S. Research and Innovative Technology Administration (RITA) - transtats.bts.gov
- (c) U.S. Research and Innovative Technology Administration (RITA) - transtats.bts.gov
- (d) Skyscraperpage.com (and others) compiled from U.S. Office of Aviation Analysis at [http://ostpxweb.dot.gov/aviation/X-50%20Role\\_files/consumerairfarereport.htm](http://ostpxweb.dot.gov/aviation/X-50%20Role_files/consumerairfarereport.htm)

Note:

"Originating Passengers" excludes passengers connecting through the airport and continuing on to another airport.

According to Airport officials, originating passengers make up at least 95% of the volume flying out of HPN. There is little or no reason for someone to fly into HPN in order to connect to another airport to complete a trip. The actual percentage may be closer to 100%. The average percentage of originating passengers at the other surveyed airports is 80%, with a range of 74.5% to 85%. The significance of the higher rate at HPN is that parking demand is generated by originating passengers, not by connecting passengers. All other factors being equal, a higher rate of originating passengers at HPN would necessarily translate into higher parking demand than at the other surveyed airports. Numerically, the difference would range from 12% to 27% compared to the surveyed airports. None of this impact has been factored into the demand projections of this analysis.

Although market shares vary across the set of surveyed airports, all of them have a significant low-cost carrier presence, which helps sustain ongoing originating traffic, particularly leisure traffic.



### Impact of Business/Leisure Split

An analysis of data from the passenger survey at HPN was used to determine if the specific split between business and leisure traffic at HPN would have an impact on estimated parking demand. The result of the analysis indicates that a difference between the business-leisure split at HPN and the other surveyed airports would not impact the parking demand estimate. The longer stays typical of leisure travel were offset by the fact that leisure travelers generate fewer vehicles per passenger (multiple travelers per car).

Trip purpose and anticipated length of stay were included on the second day of the passenger survey, Tuesday 8/15. They were added because the level of traveler interest and cooperation during the first day's survey allowed for the addition of these questions on the subsequent survey day.

A simple model was developed to show the potential parking demand that would be generated by a group of 100 leisure travelers compared to the same number of business travelers, assuming for the model that everyone drove a personal vehicle to the airport and parked. As shown in the summary below, the higher number of enplaned passengers per vehicle associated with the groups of leisure travelers offset the impact of the longer stays typical of leisure travelers. The offset is virtually 100%. The model projects a parking demand of 250 "car days" for each group.

The conclusion is that a higher percentage of leisure travelers at HPN has no appreciable effect on the parking demand estimate compared to the other surveyed airports.

<b><u>Leisure Traveler Group</u></b>			
Passengers:	311	5.6	
Groups:	138	days	
<b>Passengers per Group:</b>	<b>2.25</b>	<b>Avg. Stay</b>	
<b><u>Business Traveler Group</u></b>			
Passengers:	88	2.9	
Groups:	75	days	
<b>Passengers per Group:</b>	<b>1.17</b>	<b>Avg. Stay</b>	
<b><u>SUMMARY MODEL:</u></b>			
	<u>Business</u>	<u>Leisure</u>	
Passengers Assumed in Model	100	100	
Passengers per Group (car)	÷ 1.17	2.25	
Computed Number of Cars	= 85	44	
Avg. Length of Stay (days)	X 2.9	5.6	
Generated Demand (Car Days)	= 250.0	249.5	



### Application of Differences in Drive Rates to the Parking Demand Estimate

The results of our 2-day passenger survey conducted on 8/11 and 8/15/11 indicates a current drive rate at HPN of only 25% compared to the average of 45.8% average at the other airports surveyed. Twenty five percent (25%) of the passengers interviewed during our surveys arrived by automobile and parked in either the Airport's facilities or at the SUNY facility. Approximately 21% stated that they parked at the Airport and 4% stated that they parked at the SUNY facility. **Based on the other airports surveyed, this would indicate that the "normalized" or unconstructed drive/park rate at HPN would approximately double the level that is currently being satisfied in parking facilities serving the Airport.**

This is confirmed by a Statistics Duration Summary report produced by the parking and revenue control system used to manage parking and report activity in the Airport's garage. The reports are from October and November 2008, showing a total of 15,619 garage transactions in October and 15,289 transactions in November. This level of transaction volume represents a computed drive rate (parking transactions vs. enplanements) of 23% in October and 22% in November, which is close to the 21% found during our passenger survey. Consequently, we are assuming that our passenger survey conducted for this analysis reasonably represents the actual, current drive rate.

There is no reason to believe that the relationship between occupied capacity and total parking transaction volume would change significantly if conditions at HPN were normalized and all current parking demand was captured in parking facilities serving the airport.

Under the assumption that the current 25% parking "rate" at HPN would rise to a higher "normalized" level if sufficient capacity and reasonable pricing is available, we can estimate the resulting capacity that would be required to accommodate that normalized demand. Using the 46% average from the surveyed airports to represent "normalized" conditions, we computed **total capacity requirements to serve HPN at 2,300 spaces as shown in the computation detail below**. HOWEVER, there is another factor related to "established habits" that must still be considered before accepting this as the "normalized" capacity requirement. That will be addressed at the end of this section.

Information obtained during the on-site fieldwork indicates that the Airport's overflow parking areas have not been utilized during normal, non-holiday peak periods since the facility opened at SUNY. Data indicating routine use of Airport overflow areas did not take into account the fact that significant portions of the parking garage were not in use because of snow accumulation and removal efforts. Data indicating routine use of the overflow areas covered only the months of January through March when snow was a factor on the top level of the garage (448 spaces).

Based on this information, it appears that "typical" peak parking accumulation over the past several months has been closer to 1,250 vehicles, assuming that the garage reaches 100% occupancy and, during those times, the SUNY facility accumulates an estimated 150 vehicles. It is possible that some space remained in the garage even during normal peaks but, in measuring total vehicle accumulation this is probably offset by more cars at the SUNY facility during those peaks than the 150 that we observed when on-site. 1,250 vehicles is a reasonable assumption of "typical" recurring peak vehicle accumulation under current conditions.



Capacity of Existing Airport Garage	1,050
Current Overflow Utilization (not routinely used after opening of SUNY facility)	0
Typical SUNY occupancy	<u>150</u>
<b>Total Current "Typical" Peak Occupancy</b>	<b>1,200</b>
Estimated HPN parking rate	25%
Average airport parking rate per survey	46%
<b>Computed Adjustment Factor (46% / 25% = 1.84)</b>	<b>X 1.84</b>
Estimated HPN parking demand (1.84 X 1,250)	2,208
Less current capacity of:	<u>-1,200</u>
<b>Estimated Recurring Excess Demand</b>	<b>1,008</b>

Excess Demand represents the latent or unmet demand that is one of two sources of customers for the prospective new garage. This is the estimate of capacity that would be needed if all of the unmet demand is captured by the new garage but **BEFORE any consideration of current Airport garage parkers who may move to the new garage because of the lower rate, weather protection and the consistency of parking availability.**

Using this same computation method, the range of probable excess demand, based on the range of relationships between parking volume and enplaned passengers at the surveyed airports is very wide at between 192 and 1,776 spaces.

	<u>Drive&amp; Park %</u>	<u>Estimated Excess (Unmet) Demand</u>
Low	29%	192
Average	46%	1,008
High	62%	1,776

#### Impact of Lower Parking Rates at the New Garage

A significant number of parkers currently using the Airport's facilities are certain to become customers for the new garage under the planned rate of \$18 and the weather protection provided to their vehicles. Assumptions about those capture rates are included in the demand estimate models.

#### Impact of Established Habits

The Airport and County have implemented one of the most aggressive campaigns to discourage parkers that we have seen in our work with airports. This campaign, reinforced by actual or perceived parking shortages, has caused travelers to find ways to access the airport without having to drive and park on-site. There is an unusually high level of decision making by HPN travelers about mode of travel to the airport that is based on the cost of limousine transportation vs. the parking fee associated with trip duration. We believe that it would not be prudent to assume that the "normalized" drive rate would immediately, or even eventually, rise to the average level at other airports. People become very accustomed to established habits and continue to take advantage of creative arrangements for



access to the Airport that they have been forced to discover because of conditions that have existed at the Airport for more than two years. Drop-offs that may have been considered an unacceptable inconvenience three years ago have likely become very acceptable and that habit may persist, even when a less expensive parking alternative becomes available. Changes in work schedules or other logistical factors may have been changed as a result of working around the airport parking challenge and those factors may continue to impact the number of travelers that park at the Airport.

### **Opinion of Estimated Parking Demand for the New Garage**

The estimate of probable demand for the new garage is a combination of reasonable assumptions about how existing travelers will respond to this option, at its planned price point, when it is added to the mix. This includes (1) travelers who are not currently parking and (2) those who are currently parking in either the Airport or SUNY facilities. The actual potential for the garage is, of course, higher than the "Excess Demand" number computed earlier because the new garage will be in a position to attract current parkers from the existing Airport garage. Those converts were not considered in the previous computations. It is very difficult to anticipate the actual number of Airport garage parkers who will move to the new garage because of the pricing advantage or because of better weather protection but we have assumed a 30% conversion in our base model.

#### Base Model Assumptions

In addition to the 30% of existing Airport garage parkers we would expect to move to the new garage, we also assumed that 30% of current drop-off passengers will begin parking at the new garage. The number of drop-offs that convert to parkers may actually be higher, but as space is created in the existing garage by parkers moving to the new garage, some drop-off traffic may end up in the existing garage by choice or because of time constraints (late for flight). The same 30% conversion has been assumed for passengers currently arriving by limousine, but a lower 15% conversion has been assumed for current taxi volume because we believe fewer of those travelers may be "regulars" who will respond to changes in parking options.

We believe that the percentage of SUNY parkers that will come to the new garage will be only 20% because a higher percentage of those parkers are making the choice to park at the SUNY lot because it is only \$10 per day. Some will be drawn to the new garage at \$18, but it will be a smaller percentage than will convert from the Airport's on-site garage where the move will actually save them money.

The tables on the following pages reflect our best estimates of expected demand for the New Garage based on our on-site observations, investigation, interviews and competitive market analysis. All but one of the estimates assume that there are no significant or lingering operational problems with the new garage and that rates at the Airport's garage and at the SUNY facility remain unchanged.

Under this set of assumptions, the model estimates a demand for the new garage of **1,300 spaces** (actually 1,299) made up of current parkers who will move to the new facility and travelers who will begin driving and parking rather than getting to the airport some other way. This model result is fairly





consistent with the previous estimate of excess demand of 1,008 spaces plus 323 existing parkers expected to move to the new garage.

Again, this estimate assumes that business for the new garage operation has stabilized at its normal operating maximum after a reasonable "ramp up" period.





Scenarios

<b>Scenario #1 (Base Case)</b>	<p>Scenario #1 is the base demand and capture estimate based on the "Base Model Assumptions".</p> <p><b>1,299 spaces</b></p>
<b>Scenario #2</b>	<p>Scenario #2 is computed to show the minimum level of capture of the estimated potential parking demand that would be necessary in order to reach the planned 1,400 garage capacity. The initial capture/conversion percentages for each traveler category were adjusted upward until the demand estimate reached 1,400 spaces.</p> <p><b>1,400 spaces</b></p>
<b>Scenario #3</b>	<p>Scenario #3 reduces the estimated capture/conversion percentages to reflect the effect of rates being lowered in the existing Airport garage in response to the arrival of the new, lower cost competition. Because lower rates in the existing garage would have the effect of not only retaining existing customers but also capturing some travelers currently accessing the airport via other modes, the capture percentages were adjusted downward for those other travel mode categories as well. The number of parkers drawn from the SUNY lot would also be reduced because some would choose to park next to the terminal if the price difference is not significant.</p> <p><b>1,005 spaces</b></p>
<b>Scenario #4</b>	<p>Scenario #4 shows the estimated result of the Airport garage reducing rates to a point that maintains full occupancy in that garage. There is no theoretical impact on parkers converted from other modes of travel because, if the existing Airport garage remains full after lowering its rates, there will be no room in that garage during peak periods for additional parkers.</p> <p><b>999 spaces</b></p>



# ESTIMATED DEMAND FOR THE PROPOSED GARAGE

(@ Full Stabilization of Operation)

## SCENARIO 1 - Base Assumptions

	Travel Mode Split from PAX Survey				Related <b>PEAK</b> Parking Demand	Related <b>Potential</b> Additional Demand	Estimated Capture Factor	(New) Estimated Capture	Estimated Conversion Factor	Current Parking Demand	(New) Estimated Demand Capture	Parking Distribution
	Groups	PAX	Veh./PAX	% of PAX								
Drive & Park @ Airport	98	186	0.527	21.2%	(a) 1,000	(b)			30%	(a) 1,000	300	700 Airport Garage
Drive & Park @ SUNY	16	35	0.457	4.0%	150				15%	150	23	128 SUNY
Drop Off	283	504	0.562	57.3%		2,623	30%	787				1,299 New Garage
Limousine	46	97	0.474	11.0%		505	30%	151				0 Overflow
Taxi	25	49		5.6%		255	15%	38				
RAC	1	2		0.2%								
Hotel Shuttle	3	6		0.7%								
	472	879	0.537		1150	3,382		976		1,150	323	

Additional Demand Before Capture of Current Airport Parkers: **976**

Assumed Capture of Current Airport & SUNY Parkers: **323**

**ESTIMATED TOTAL DEMAND FOR NEW GARAGE UNDER STATED ASSUMPTIONS: 1,299**

(a) Current Airport Garage demand reduced to 1,000 to reflect the actual capacity of 1,051 and some use of the garage for short-term parking that would not represent likely parking customers for the proposed Garage.

(a) These numbers are a computational component of the model ONLY. They represent the total number of potential cars if EVERYONE drove and parked. That is an impossible scenario.



**ESTIMATED DEMAND FOR THE PROPOSED GARAGE**  
 (@ Full Stabilization of Operation)

**SCENARIO 2 - Conversion/Capture Required to Meet 1,400 Vehicle Expectation**

	Travel Mode Split from PAX Survey				Related <b>PEAK</b> Parking Demand	Related <b>Potential</b> Additional Demand	Estimated Capture Factor	(New) Estimated Capture	Estimated Conversion Factor	Current Parking Demand	(New) Estimated Demand Capture	Parking Distribution
	Groups	PAX	Veh./PAX	% of PAX								
Drive & Park @ Airport	98	186	0.527	21.2%	(a) 1,000				32%	(a) 1,000	323	677 Airport Garage
Drive & Park @ SUNY	16	35	0.457	4.0%	150				16%	150	24	126 SUNY
Drop Off	283	504	0.562	57.3%		2,623	32%	848				1,400 New Garage
Limousine	46	97	0.474	11.0%		505	32%	163				- Overflow
Taxi	25	49		5.6%		255	16%	41				
RAC	1	2		0.2%								
Hotel Shuttle	3	6		0.7%								
	472	879	0.537		1150	3,382		1,052		1,150	348	

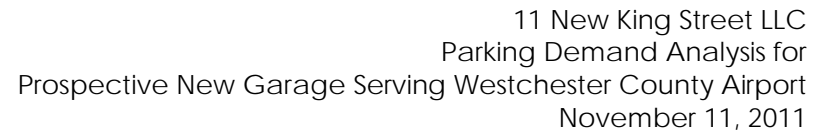
Additional Demand Before Capture of Current Airport Parkers: **1,052**  
 Assumed Capture of Current Airport & SUNY Parkers: **348**

**ESTIMATED TOTAL DEMAND FOR NEW GARAGE UNDER STATED ASSUMPTIONS: 1,400**

(a) Current Airport Garage demand reduced to 1,000 to reflect the actual capacity of 1,051 and some use of the garage for short-term parking that would not represent likely parking customers for the proposed Garage.

(a) These numbers are a computational component of the model ONLY. They represent the total number of potential cars if EVERYONE drove and parked. That is an impossible scenario.

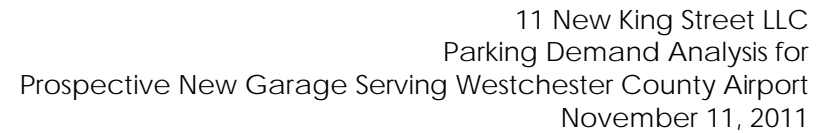
Note: The total demand shown under the "Distribution" column is higher than in the other scenarios because this scenario forces an adjustment in conversion/capture to reach the 1,400 demand target for the New Garage.



### SCENARIO 3 - Airport Garage Lowers Rates

**ESTIMATED TOTAL DEMAND FOR NEW GARAGE UNDER STATED ASSUMPTIONS: 1,005**

(c) By reducing its rates the Airport Garage has attracted some of the conversions (194) from other travel modes.



Travel Mode Split from PAX Survey				Related <b>PEAK</b> Parking Demand	Related <b>Potential</b> Additional Demand	Estimated Capture Factor	(New) Estimated Capture	Estimated Conversion Factor	Current Parking Demand	(New) Estimated Demand Capture	Parking Distribution	
Groups	PAX	Veh./PAX	% of PAX									
Drive & Park @ Airport	98	186	0.527	21.2%	(a) 1,000			0%	(a) 1,000	0	(c) 1,000	Airport Garage
Drive & Park @ SUNY	16	35	0.457	4.0%	150			15%	150	22.5	128	SUNY
Drop Off	283	504	0.562	57.3%		2,623	30%	787			999	New Garage
Limousine	46	97	0.474	11.0%		505	30%	151			-	Overflow
Taxi	25	49		5.6%		255	15%	38				
RAC	1	2		0.2%								
Hotel Shuttle	3	6		0.7%								
	472	879	0.537		1150	3,382		976	1,150	23		
Additional Demand Before Capture of Current Airport Parkers:										976		
Assumed Capture of Current Airport & SUNY Parkers:										23		

(a) Current Airport Garage demand reduced to 1,000 to reflect the actual capacity of 1,051 and some use of the garage for short-term parking that would not represent likely parking customers for the proposed Garage.

(b) These numbers are a computational component of the model ONLY. They represent the total number of potential cars if EVERYONE drove and parked. That is an impossible scenario.

(c) The New Garage captures all converting drop-off, Limo and taxi passengers because the Airport Garage is full. Capture rates are the same as in Scenario #1.



### Future Growth in Enplanements

Actual growth in enplanements over the past three years has dramatically outpaced FAA projections because of the introduction of low cost carriers AirTran and Jet Blue. With the acquisition of AirTran by Southwest Airlines, there is likely to be another uptick in passenger volume because of the extended route network that the combination of Southwest and AirTran will provide. Actual enplanement growth is speculative, but there is no indication in any of the FAA projections that enplanement volume will fall.

The Airport is operating under an agreed limit of 240 passengers per half hour. It is not clear whether that is a maximum per half hour during peak periods or the average for the 18 hour daily operating period. If it calculated from peak hour activity, the airport is already at that threshold. However, if it is calculated as an average throughout the operating day, that operating day would allow for more annual passenger volume and generate additional parking demand.

The tables on the following pages are provided as an aid in assessing the effect of growth in originating passenger volume under three of the four scenarios just described - Scenarios #1, #3 and #4..

Note that total estimated parking demand of 2,126 vehicles/spaces for the base year does not match the 2,208 demand estimate computed earlier in this report by comparing the 25% drive rate at HPN to the average 46% drive rate at other surveyed airports. Although the estimates derived from these two methodologies have a common base, each methodology comes at the question from a different direction. The model for Scenarios 1-4 applies logical assumptions about conversion and capture rates to the travel mode split found in our passenger survey. The drive rate comparison to other airports is intended as a "reasonableness" test against the outcome of the model. The model results for the base year are 96% of the estimate derived from the simpler comparison. This would appear to confirm the methodology and assumptions made in the base model.

In **Scenario #1**, with a 1,299 space demand in the New Garage the first year, the 1,400 space capacity of the garage is reached very quickly even under projections of LOW enplanement growth.

In **Scenario #2**, it is assumed that rates in the Airport Garage are lowered in response to the lower rates in the New Garage. As a result, a smaller number of current parkers (200) move from that facility to the New Garage but most of that vacated space is filled right away with a portion of the new parkers converted from the non-parker groups. As a result, all of the increases in parking demand from enplanement growth are captured by the New Garage and the SUNY Lot. The Airport Garage is again full and cannot accommodate any of that growth.

**Scenario #3** is not meaningful in terms of future projections because it portrays "full" conditions in the New Garage from the outset.

**Scenario #4** assumes a competitive rate drop in the existing Airport Garage sufficient to maintain parking volume at its current level in that garage. The result is similar to Scenario #3 in that all new demand from enplanement growth is captured in the New Garage until it reaches capacity.



**ESTIMATED IMPACT OF ENPLANEMENT GROWTH RATES ON PARKING**

**SCENARIO #1 - BASE ESTIMATE**

	Base YR 2012	2% 2013	2% 2014	2% 2015	2% 2016	2% 2017	2% 2018	2% 2019	2% 2020	2% 2021
Total Demand	2,126	2,169	2,212	2,256	2,301	2,347	2,394	2,442	2,491	2,541
NEW GARAGE:	1,299	1,325	1,351	1,379	1,400	1,400	1,400	1,400	1,400	1,400

	Base YR 2012	3% 2013	3% 2014	3% 2015	3% 2016	3% 2017	3% 2018	3% 2019	3% 2020	3% 2021
Total Demand	2,126	2,190	2,255	2,323	2,393	2,465	2,539	2,615	2,693	2,774
NEW GARAGE:	1,299	1,338	1,378	1,400	1,400	1,400	1,400	1,400	1,400	1,400

	Base YR 2012	4% 2013	4% 2014	4% 2015	4% 2016	4% 2017	4% 2018	4% 2019	4% 2020	4% 2021
Total Demand	2,126	2,211	2,299	2,391	2,487	2,587	2,690	2,798	2,910	3,026
NEW GARAGE:	1,299	1,351	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400

	Base YR 2012	5% 2013	5% 2014	5% 2015	5% 2016	5% 2017	5% 2018	5% 2019	5% 2020	5% 2021
Total Demand	2,126	2,232	2,344	2,461	2,584	2,713	2,849	2,991	3,141	3,298
NEW GARAGE:	1,299	1,364	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400

	Base YR 2012	7% 2013	7% 2014	7% 2015	7% 2016	7% 2017	7% 2018	7% 2019	7% 2020	7% 2021
Total Demand	2,126	2,275	2,434	2,604	2,787	2,982	3,191	3,414	3,653	3,909
NEW GARAGE:	1,299	1,390	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400

	Base YR 2012	8% 2013	8% 2014	8% 2015	8% 2016	8% 2017	8% 2018	8% 2019	8% 2020	8% 2021
Total Demand	2,126	2,296	2,480	2,678	2,892	3,124	3,374	3,644	3,935	4,250
NEW GARAGE:	1,299	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400	1,400

### ESTIMATED IMPACT OF ENPLANEMENT GROWTH RATES ON PARKING

### SCENARIO #3 - Airport Garage Lowers Rates to Reduce Loss to New Garage

Some vacant space still remains initially but quickly filled by "non-parkers" converting to "parkers" because of lower rates.

	Base YR 2012	2% 2013	2% 2014	2% 2015	2% 2016	2% 2017	2% 2018	2% 2019	2% 2020	2% 2021
<b>TOTAL Demand:</b>	<b>2,126</b>	<b>2,169</b>	<b>2,212</b>	<b>2,256</b>	<b>2,301</b>	<b>2,347</b>	<b>2,394</b>	<b>2,442</b>	<b>2,491</b>	<b>2,541</b>
<b>Existing Airport Garage:</b>	994	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
<b>SUNY:</b>	128	131	133	136	139	141	144	147	150	153
<b>NEW GARAGE:</b>	<b>1,004</b>	<b>1,038</b>	<b>1,079</b>	<b>1,120</b>	<b>1,163</b>	<b>1,206</b>	<b>1,250</b>	<b>1,295</b>	<b>1,341</b>	<b>1,388</b>

	Base YR	3%	3%	3%	3%	3%	3%	3%	3%	3%
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
<b>TOTAL Demand:</b>	<b>2,126</b>	<b>2,190</b>	<b>2,255</b>	<b>2,323</b>	<b>2,393</b>	<b>2,465</b>	<b>2,539</b>	<b>2,615</b>	<b>2,693</b>	<b>2,774</b>
<b>Existing Airport Garage:</b>	994	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
<b>SUNY:</b>	128	132	136	140	144	148	153	157	162	167
<b>NEW GARAGE:</b>	<b>1,004</b>	<b>1,058</b>	<b>1,120</b>	<b>1,183</b>	<b>1,249</b>	<b>1,316</b>	<b>1,386</b>	<b>1,400</b>	<b>1,400</b>	<b>1,400</b>

	Base YR	4%	4%	4%	4%	4%	4%	4%	4%	4%
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
<b>TOTAL Demand:</b>	<b>2,126</b>	<b>2,211</b>	<b>2,299</b>	<b>2,391</b>	<b>2,487</b>	<b>2,587</b>	<b>2,690</b>	<b>2,798</b>	<b>2,910</b>	<b>3,026</b>
<b>Existing Airport Garage:</b>	994	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
<b>SUNY:</b>	128	133	138	144	150	156	162	168	175	182
<b>NEW GARAGE:</b>	<b>1,004</b>	<b>1,078</b>	<b>1,161</b>	<b>1,247</b>	<b>1,337</b>	<b>1,400</b>	<b>1,400</b>	<b>1,400</b>	<b>1,400</b>	<b>1,400</b>

	Base YR	5%	5%	5%	5%	5%	5%	5%	5%	5%
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
TOTAL Demand:	2,126	2,232	2,344	2,461	2,584	2,713	2,849	2,991	3,141	3,298
Existing Airport Garage:	994	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
SUNY:	128	134	141	148	156	163	172	180	189	199
NEW GARAGE:	1,004	1,098	1,203	1,313	1,400	1,400	1,400	1,400	1,400	1,400

	Base YR	6%	6%	6%	6%	6%	6%	6%	6%	6%
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
TOTAL Demand:	2,126	2,254	2,389	2,532	2,684	2,845	3,016	3,197	3,389	3,592
Existing Airport Garage:	994	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
SUNY:	128	136	144	152	162	171	182	192	204	216
NEW GARAGE:	1,004	1,118	1,245	1,380	1,400	1,400	1,400	1,400	1,400	1,400

	Base YR	7%	7%	7%	7%	7%	7%	7%	7%	7%
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
TOTAL Demand:	2,126	2,275	2,434	2,604	2,787	2,982	3,191	3,414	3,653	3,909
Existing Airport Garage:	994	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
SUNY:	128	137	147	157	168	180	192	206	220	235
NEW GARAGE:	1,004	1,138	1,288	1,400	1,400	1,400	1,400	1,400	1,400	1,400

	Base YR	8%	8%	8%	8%	8%	8%	8%	8%	8%
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
TOTAL Demand:	2,126	2,296	2,480	2,678	2,892	3,124	3,374	3,644	3,935	4,250
Existing Airport Garage:	994	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
SUNY:	128	138	149	161	174	188	203	219	237	256
NEW GARAGE:	1,004	1,158	1,330	1,400	1,400	1,400	1,400	1,400	1,400	1,400

[illegible]





**ESTIMATED IMPACT OF ENPLANEMENT GROWTH RATES ON PARKING**

**SCENARIO #4 - Airport Garage Lowers Rates to REMAIN FULL**

**New Garage & SUNY Lot capture all growth.**

**No movement to Overflow Until New Garage is Full**

	Base YR 2012	2%	2%	2%	2%	2%	2%	2%	2%	2%
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
TOTAL Demand:	2,126	2,169	2,212	2,256	2,301	2,347	2,394	2,442	2,491	2,541
Existing Airport Garage:	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
SUNY:	128	131	133	136	139	141	144	147	150	153
NEW GARAGE:	999	1,038	1,079	1,120	1,163	1,206	1,250	1,295	1,341	1,388

	Base YR 2012	3%	3%	3%	3%	3%	3%	3%	3%	3%
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
TOTAL Demand:	2,126	2,190	2,255	2,323	2,393	2,465	2,539	2,615	2,693	2,774
Existing Airport Garage:	994	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
SUNY:	128	132	136	140	144	148	153	157	162	167
NEW GARAGE:	999	1,058	1,120	1,183	1,249	1,316	1,386	1,400	1,400	1,400

	Base YR 2012	4%	4%	4%	4%	4%	4%	4%	4%	4%
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
TOTAL Demand:	2,126	2,211	2,299	2,391	2,487	2,587	2,690	2,798	2,910	3,026
Existing Airport Garage:	994	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
SUNY:	128	133	138	144	150	156	162	168	175	182
NEW GARAGE:	999	1,078	1,161	1,247	1,337	1,400	1,400	1,400	1,400	1,400

	Base YR 2012	5%	5%	5%	5%	5%	5%	5%	5%	5%
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
TOTAL Demand:	2,126	2,232	2,344	2,461	2,584	2,713	2,849	2,991	3,141	3,298
Existing Airport Garage:	994	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
SUNY:	128	134	141	148	156	163	172	180	189	199
NEW GARAGE:	999	1,098	1,203	1,313	1,400	1,400	1,400	1,400	1,400	1,400

	Base YR 2012	6%	6%	6%	6%	6%	6%	6%	6%	6%
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
TOTAL Demand:	2,126	2,254	2,389	2,532	2,684	2,845	3,016	3,197	3,389	3,592
Existing Airport Garage:	994	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
SUNY:	128	136	144	152	162	171	182	192	204	216
NEW GARAGE:	999	1,118	1,245	1,380	1,400	1,400	1,400	1,400	1,400	1,400

	Base YR 2012	7%	7%	7%	7%	7%	7%	7%	7%	7%
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
TOTAL Demand:	2,126	2,275	2,434	2,604	2,787	2,982	3,191	3,414	3,653	3,909
Existing Airport Garage:	994	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
SUNY:	128	137	147	157	168	180	192	206	220	235
NEW GARAGE:	999	1,138	1,288	1,400	1,400	1,400	1,400	1,400	1,400	1,400

	Base YR 2012	8%	8%	8%	8%	8%	8%	8%	8%	8%
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
TOTAL Demand:	2,126	2,296	2,480	2,678	2,892	3,124	3,374	3,644	3,935	4,250
Existing Airport Garage:	994	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
SUNY:	128	138	149	161	174	188	203	219	237	256
NEW GARAGE:	999	1,158	1,330	1,400	1,400	1,400	1,400	1,400	1,400	1,400

	Base YR 2012	9%	9%	9%	9%	9%	9%	9%	9%	9%
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
TOTAL Demand:	2,126	2,317	2,526	2,753	3,001	3,271	3,566	3,886	4,236	4,617
Existing Airport Garage:	994	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000
SUNY:	128	140	152	166	181	197	215	234	255	278
NEW GARAGE:	999	1,178	1,374	1,400	1,400	1,400	1,400	1,400	1,400	1,400



## **SUMMARY CONCLUSIONS**

- Prospects for continued growth in originating passenger volume is favorable in light of the acquisition of AirTran by Southwest Airlines. The combined routes of the two carriers will significantly expand the effective reach of the Airport. However, growth will be guided by the stipulation agreement.
- Even though the study team found more than 100 empty spaces in the Airport Garage at mid-week, it is clear from information obtained on-site and the history of the airport that there is a shortage of parking and a widespread perception that there is insufficient parking. The management practice of loading the garage entry ramps appears to have reinforced and perpetuated the perception of a parking shortage even when space has been available. There is some concern in the analysis that open space was observed during what is documented as a peak travel month, but on-site comments indicated that activity appeared lower than normal that week because of "last chance" vacation time. Even though there may be available space more often than the public realizes, it appears that a significant number of people in the community believe that they may not find space when they come to the airport or are unwilling to pay the high rates. This represents unmet parking demand.
- Parking demand at the airport is clearly suppressed to some extent by the very high parking rates for parking in the garage or in the overflow areas (at the same \$27.45 per day rate).
- The SUNY lot has met some of the need for a lower cost alternative, but it is very inconvenient even for travelers who live on the east side of the Airport or come from that direction.
- There is no indication of development of new off-airport competition and the barrier created by the reservoir limits such opportunities now and in the future.
- There appears to be a significant need for a convenient and moderately priced parking option at the Airport, a need that the proposed garage would meet if priced at a differential similar to the difference between short-term and long-term parking rates offered at other airports in the region.
- The location of the proposed garage is in close proximity to airport property and very near the primary Airport entrance and the arrival route for most traffic. Drivers arriving from the west side of the Airport would have quick and easy access to the proposed garage. Drivers arriving from



the west via Rye Lake Road would have to drive .75 miles away from the Airport to reach the garage, but that route is unobstructed and there are no signalized intersections to create delay.

- Drivers exiting the Airport onto Purchase Street and access to I-684 will pass by the entrance to the proposed garage, providing it with invaluable repeat exposure.
- An effective throughput rate for the garage that will allow it to handle traffic quickly and efficiently during peak arrival periods without interruptions will be critical to the success of the garage. A "slow" start may actually be to the owner's advantage in terms of long-term acceptance and success.
- Based on the passenger surveys conducted from 8:30 – Noon on two weekdays, only 25% of passengers arrive by a car that is parked either in the Airport's facilities or at the SUNY location. By contrast, a survey of 6 other airports where both passenger volume and parking transaction data was available showed a range in the drive/park rate of 29% to 62%, with an average of 46%. This would indicate that the unconstrained drive rate for HPN travelers may be in the area of 84% greater than the number of travelers than currently park. The resulting estimate of unconstrained parking demand is 2,208 vehicles.
- A modeling method, based on the results of the passenger survey, indicates that the New Garage, has the **potential to draw just under 1,300 parking customers at the proposed daily rate of \$18**. The model applies reasonable assumptions about the number of travelers currently dropped-off or using commercial transportation to reach the airport who will change their habits and become customers of the new garage. It also assumes that a percentage of parkers using the existing Airport Garage will move to the new facility.
- There is a distinct level of uncertainty in the analysis related to whether, or how quickly, local travelers will abandoned the habits that they have developed over the past three years in terms of how they access the Airport. Although we believe that our assumptions about the number of travelers who will become new parkers is very reasonable, there is no way to determine the actual impact of those entrenched habits, particularly in difficult economic times.
- The model assumes that potential demand for the new garage consists of approximately 1,000 new parkers (converted from other means of reaching the airport) and 300 current garage parkers who are expected to move to the new facility because of the lower rate. If the Airport Garage lowers its rates in response to the new, lower cost competition, we believe that it will



allow that garage to retain some of its existing parkers but is likely to increase overall parking demand by encouraging more conversions from non-parker to parker.

- A phased construction approach, with an initial phase followed by an expansion of capacity as warranted by actual demand, might be the most prudent approach to this project but, based client analysis, that approach is not feasible with the planned system.
- The potential for a vertical expansion of the existing Airport parking deck, a possibility that has been publicized in the media, would have a major impact on the prospective garage but that impact would be mitigated if the operator of the Airport Garage continues to charge the current parking fees.
- A benefit of a construction project to expand the existing garage is the fact that the Airport would be required to close at least one level, and perhaps more, in order to add a third level. That would disrupt parking patterns and send a mass of parkers to the proposed new garage if it is in place before construction on the expansion starts. This may introduce people to the new garage who may have been loyal parkers in the Airport garage. Once introduced, they may choose to continue using that alternative after the expansion of the Airport garage is complete. One of the strategies used by off-airport parking companies is to time openings or expansions to correspond with temporary losses of on-airport parking caused by construction.

*The details of our process and rationale are provided in this report to allow the client to make a reasonable judgment as to whether the conclusions are consistent with their own due diligence research and analysis. We have provided the benefit of our knowledge of the parking industry, airport parking operations, consumer behavior, and the dynamics of the airport parking market. The estimates of parking demand are necessarily subject to market conditions that may not be predictable, particularly in the current state of the national economy. The estimate of potential parking demand and the amount of that demand that will be captured by the new garage is affected by successful operating methods and reputation of the new garage, Airport policies, control of airport roadways and access, changes in airlines and market shared, changes in airline policies, changes in enplanement volume, unforeseen new off-airport competition, changes in the operation or pricing of the existing Airport garage, expansion or improvement of other on-airport parking areas for public use, reduced pricing for less convenient on-airport options, reduced pricing for commercial transportation options, changes in the roadway system, and other factors related to airport activity and the general economy.*

**Appendix F:**  
Wetland and Wetland Buffer Enhancement Plan

## WETLAND AND WETLAND BUFFER ENHANCEMENT PLAN

### *Introduction*

Due to the construction of the proposed automated parking facility and the requirements of stormwater management, much of the project site at 11 New King Street would be disturbed, cleared of existing vegetation and regraded. Much of the undisturbed area is wetland and wetland buffer. Based on site inspection invasive plant cover in these undisturbed areas on the project site is close to 50%.

Invasive species are typically non-native plants which disrupt the natural balance of an ecosystem by outcompeting with native plants for nutrients, water or sunlight. These plant species, which are foreign to the region, may have been imported from other countries for ornamental gardening or agricultural purposes. Having escaped from cultivation and with no natural predators these species have become naturalized in the region. The lack of natural controls allows these species to become dominant, reducing biodiversity and thereby degrading habitats. Controlling invasive plant populations is important to regain ecological stability, maintain habitat for native wildlife and reduce negative impacts on the nearby resources.

the applicant is planning measures intended to improve the quality of the natural resources remaining on the project site as mitigation for disturbance within the wetlands buffer area. The information and guidelines in this document outline invasive removal activity and native plant augmentation to be conducted as part of the proposed project. These guidelines would be used in the field by the project ecologist who would supervise all activity beyond the project's limit-of-disturbance line and within enhancement areas (see Figure 1-4).

The goal of this enhancement plan is to reverse the degradation of the wetland ecology typical of disturbed land. The intent is to increase the ecological function of the existing wetland through intervention. The plan's objective is to eliminate, or significantly reduce, the *target species*- the non-native, invasive species currently found on the project site- and to reintroduce appropriate native plant species. The augmentation of the native species population, in conjunction with removal of invasive species and up to 5 years of monitoring, will provide an advantage to the native species types to regain dominance.

Clearing of invasive species and replanting with native plants is to take place only where necessary. All existing native plants and non-target species vegetation in the undisturbed portions of the project site will be protected during the enhancement activities. The activities described in this enhancement plan are in addition to the proposed project. As part of the proposed project construction (separate from the Wetland and Wetland Buffer Enhancement Plan activities) all unpaved but regraded areas of site will be planted, using exclusively native plant species, to address a variety of site design goal including aesthetic concerns, wetland functionality and erosion control. The plantings specified for the area within the project limit-of-disturbance is shown in drawing C-9: Landscape Plan.

### *Discussion of use of Herbicides*

Non-chemical means of control are generally preferred, but in some cases the use of chemical controls will be necessary to significantly reduce or eliminate invasive species from the designated areas. An herbicide-based approach may be required to control an infestation that has become well established or widespread. Glyphosate or triclopyr may be used for the control of some of the target species. Glyphosate has low oral toxicity (acute or chronic) to humans or other animals but some formulations are irritating to skin or eyes. Glyphosate does not persist or

bioaccumulate in the environment. The oral toxicity of triclopyr is fairly low relative to other pesticides, but not as low as that of glyphosate. Amine-based triclopyr formulations are corrosive and damaging to eyes and skin. Toxicity to birds and fish is relatively low, although ester formulations are more toxic to fish than amine formulations or the parent acid of triclopyr. Both Glyphosate and triclopyr are approved by the United States Environmental Protection Agency (EPA) for use in aquatic/wetlands systems.

#### *Extent of Enhancement Activities*

As shown in Drawing C-9 and Figure 1-4, the enhancement plan would apply to undisturbed areas of the site - i.e. those areas not cleared and regraded for the proposed project. The area shown for proposed wetland enhancement is approximately 20,000 SF and the area shown for proposed wetland buffer enhancement is approximately 8,000 SF. The exact location and extent of wetland and wetland buffer enhancement activities would be as directed by the project ecologist based on field conditions.

#### *Invasive Plant Removal*

The invasive plants will be removed by hand with cutting tools and digging to remove root mass. As discussed in detail below, several of these plants must be disposed of offsite to prevent spread of remnant seed and vegetative re-growth of rhizomes. Limited use of herbicide may be required for plant species that are less likely to be successfully eradicated by hand-removal alone. The determination as to whether and when to use herbicide and its application in the field would be made by the project ecologist in consultation with the licensed landscape professional who would conduct the application. The landscape professional must be licensed in the application of all herbicides used.

The predominant non-native, invasive plants found onsite and to be removed during the wetland and wetland buffer enhancement activities are listed below. For each target species a brief description is provided along with details on preferred removal techniques, alternative removal techniques, and a recommended schedule of removal activities.

#### *TARGET SPECIES: HERBACEOUS PLANTS*

##### ***Common Reed (Phragmites australis)***

**Description:** *Phragmites* is a perennial grass that can grow to 14 feet in height. It is capable of vigorous vegetative reproduction and often forms dense, virtually monospecific stands. *Phragmites* is most commonly found in freshwater wetlands but it readily invades salt marshes that have been degraded by some type of flow restriction.

##### **Preferred Removal Strategy: Cutting and Pulling**

Hand-pulling, though labor intensive, is an effective technique for controlling *Phragmites* in small areas with sandy soils. When cutting, *Phragmites* stems should be cut below the lowest leaf, leaving a 6" or shorter stump. Hand-held cutters and gas-powered hedge trimmers work well. String Trimmers with a circular blade have been found to be particularly efficient but may cause physical injuries to equipment operators. Cut or pulled material should be removed from the site and composted or allowed to decay on the upland. Some patches may be too large to cut by hand, but repeated cutting of the perimeter of a stand can prevent vegetative expansion.

Cutting or pulling treatments need to be repeated annually. The best time to cut *Phragmites* is at the end of July. Cutting at other times may increase stand density.

### **Alternate Removal Strategy: Herbicides**

Glyphosate should be sprayed in September or October just before the plants begin to senesce (i.e. consolidate above-ground water and nutrients from the stems to the rhizome complex). It is recommended to use glyphosate with a surfactant to better penetrate the leaf coating. Repeated treatments will likely be necessary. If the plants are too tall to spray, cut back in mid summer and apply glyphosate when regrowth reaches 2 to 3 ft tall. Choose Rodeo formulation for applications in standing water or along a shoreline (a permit from New York State Department of Environmental Protection (DEP) is required for any pesticide application to a body of water). After 2 or 3 weeks following application of glyphosate, cut or mow down the stalks to stimulate the emergence and growth of other plants previously suppressed.

RODEO [glyphosate (53.8%)]: 2 fl. oz./gal]

### ***Garlic Mustard (Alliaria officinalis)***

**Description:** naturalized European biennial herb that typically invades partially shaded forested and roadside areas. It is capable of dominating the ground layer and excluding other herbaceous species. Plants die after producing seeds, which typically mature and disperse in August. Normally its seeds are dormant for 20 months and germinate the second spring after being formed. Seeds remain viable for up to 5 years.

### **Preferred Removal Strategy: Cutting and Pulling**

Hand pulling is an effective method for removing small populations of garlic mustard, since plants pull up easily in most forested habitats. Plants can be pulled during most of the year. However, if plants have capsules present, they should be bagged and disposed of to prevent seed dispersal. Care should be taken to minimize soil disturbance but to remove all root tissues. Soil disturbance can bring garlic mustard seeds to the surface, thus creating a favorable environment for their germination. To avoid this, soil should be tamped down firmly after removing the plant. Re-sprouting is uncommon but may occur from mature plants not entirely removed.

Cutting is effective for medium- to large-sized populations depending on available time and labor resources. Cut stems when in flower (late spring/early summer) at ground level either manually (with clippers or a scythe) or with a motorized string trimmer. This technique will result in almost total mortality of existing plants and will minimize re-sprouting. Dormant seeds in the soil are unaffected by this technique due to minimal disturbance of the soil. However, as viable seeds may be produced from cut stems, they should be removed from the site when possible. Cuttings should be conducted annually until the seed bank is depleted.

### **Alternate Removal Strategy: Herbicides**

Garlic mustard is a biennial that spreads only by seed. The post-emergence herbicides listed below should be applied after seedlings have emerged, but prior to flowering of second-year plants. None of these herbicides will affect subsequent seedling emergence of garlic mustard or other plants.

SAFER Superfast Weed & Grass Killer [potassium salts of fatty acids]: Ready-to-use spray

FINALE [glufosinate-ammonium (11.33%)]: 3 fl. oz./gal



***Japanese Knotweed (Polygonum cuspidatum)***

**Description:** an herbaceous perennial which forms dense clumps 1-3 meters (3-10 feet) high. Knotweed reproduces via seed and by vegetative growth through stout, aggressive rhizomes. It spreads rapidly to form dense thickets that can alter natural ecosystems. Japanese knotweed can tolerate a variety of adverse conditions including full shade, high temperatures, high salinity, and drought. It is found near water sources, in low-lying areas, waste places, and utility rights of way. It poses a significant threat to riparian areas, where it can survive severe floods.

**Preferred Removal Strategy: Cutting and Pulling**

Grubbing is appropriate for very small populations or in environmentally sensitive areas where herbicides cannot be used. Typically, the entire plant, including roots and runners, is removed with an appropriate digging tool. Care must be taken not to spread rhizome fragments. Juvenile plants can be hand-pulled depending on soil conditions and root development. Any portions of the root system not removed will potentially re-sprout. All plant parts, including mature fruit, should be bagged and disposed of in the trash to prevent reestablishment.

Repeated cutting may be effective in eliminating Japanese knotweed, but this strategy must be carried out for several years to obtain success. Generally, knotweed is cut close to the ground at least three times a year to effect control. Cutting stems over time results in a significant reduction of rhizomatous reserves. Manual control is labor intensive, but where populations are small and isolated or in environmentally sensitive areas, it may be a good option.

**Alternate Removal Strategy: Herbicides**

Triclopyr will kill the top growth within a few days, but Japanese knotweed may re-sprout following treatment. Residual effects on emergence and growth the following year are variable.

Glyphosate applied in spring or early summer may stunt or yellow growth, but knotweed will generally recover and continue growing. Glyphosate treatments in late summer or early fall are much more effective in preventing re-growth of Japanese knotweed the following year.

Late June – Cut or mow down stalks.

Allow knotweed to regrow.

After August 1, spray knotweed with RODEO [glyphosate (53.8%)]: 2 fl. oz./gal]

Established stands of Japanese knotweed are difficult to eradicate even with repeated glyphosate treatments. Adequate control is usually not possible unless the entire stand of knotweed is treated (otherwise, it will re-invade via creeping rootstocks from untreated areas). However, glyphosate treatments will greatly weaken the plant and prevent it from dominating a site.

Both mechanical and herbicidal control methods require continued treatment to prevent reestablishment of knotweed. Reintroducing native plants as competitors may be an alternative to continued treatment. However, more research needs to be done on which native species might be effective competitors and how they should be reintroduced.

Target Species: Invasive Woody Plant Species

**Japanese Honeysuckle (*Lonicera japonica*)**

**Description:** commonly found along roadsides, forest edges, and in abandoned fields as it quickly invades natural areas after disturbances. Japanese honeysuckle spreads by seeds, rhizomes, and runners. It can quickly cover small trees, either stunting their growth or killing them completely. Dense growth of the species will also reduce light available to other species, deplete soil moisture nutrients, and may cause trees to topple due to the weight of its vines.

**Preferred Removal Strategy: Hand-pulling**

For small patches, repeated pulling of entire vines and root systems may be effective. Seedlings and young plants can be hand pulled when the soil is moist by holding low on the stem to remove the whole plant along with its roots. Frequently monitoring is necessary to identify and remove any new plants. Twining vines should be cut and removed to prevent them from girdling and killing shrubs and other plants. An effective method for removal of patches of honeysuckle covering the ground is to lift up and hold a portion of the vine mass with a rake and have a chain saw operator cut the stems low to the ground. Plants can also be grubbed out using a digging tool, taking care to remove all roots and runners.

**Alternate Removal Strategy: Herbicides**

Japanese honeysuckle leaves continue to photosynthesize long after most other plants have lost their leaves. This allows for application of herbicides when many native species are dormant. For effective control with herbicides, healthy green leaves must be present at application time and temperatures must be sufficient for plant activity. Several systemic herbicides (e.g., glyphosate and triclopyr) move through the plant to the roots when applied to the leaves or stems and have been used effectively on Japanese honeysuckle. A 2.5% rate of glyphosate mixed with water and an appropriate surfactant should be applied to foliage from spring through fall. Alternatively, a 2% concentration of triclopyr plus water can be applied to foliage by thoroughly wetting the leaves but not to the point of drip-off. A coarse, low-pressure spray should be used. Repeat applications may be needed. Treatment in the fall, when many non-target plants are going dormant, is best. Also, a 25% glyphosate or triclopyr solution mixed with water can be applied to cut stem surfaces any time of year as long as the ground is not frozen.

Foliar sprays:

RODEO [glyphosate (53.8%)]: 2 fl. oz./gal

BRUSH-B-GON [triclopyr (8%)]: 4 fl. oz./gal

**Japanese Barberry (*Berberis thunbergii*)**

**Description:** a multi-branched dense shrub that can grow to 2.5 m (8 ft) in height. Shiny green to burgundy leaves are alternate along its thorny stems. Solitary yellow flowers bloom from March to April, and the fruit is a round or elliptical red berry. Japanese barberry is a popular landscape shrub that has escaped into many natural areas, and can grow in dense thickets in the understory of woods and forests. It is a prolific seed producer, and numerous birds eat and subsequently disperse the seeds.

**Preferred Removal Strategy: Pulling by hand or weed wrench, or mowing/cutting**

Hand pulling can effectively control small populations of Japanese barberry, since it can be done during most of the year and plants pull up easily in most forested habitats. To avoid injury from the sharp spines, heavy gloves and long-sleeved shirt are recommended. Barberry breaks bud early in the spring, thus it is easy to see in springtime before other deciduous plants leaf out. If plants have fruit present, they should be bagged and disposed of to prevent seed dispersal. Care should be taken to minimize soil disturbance. If lacking berries, uprooted shrubs can be piled and left as cover for small animals. For larger shrubs, a weed wrench provides the necessary leverage to pull up the plant by its roots and also minimizes contact with the thorny stems.

Repeated mowing or cutting will control the spread of Japanese barberry but will not eradicate it. Stems should be cut at least once per growing season as close to ground level as possible. Hand cutting of established clumps is difficult and time consuming due to the prolific thorns.

**Alternate Removal Strategy: Herbicides**

Japanese barberry breaks bud earlier in the spring than most woody species. Thus, it is possible to selectively spray its young leaves before other woody species have produced leaves. For such early season treatments, triclopyr is usually more effective than glyphosate. Wait until significant leaf expansion to ensure sufficient absorption of triclopyr. From mid summer to fall, both glyphosate and triclopyr are effective when applied as foliar sprays or as cut stump treatments.

Foliar spray:

BRUSH-B-GON [triclopyr (8%)]:

4 fl. oz./gal

Cut-stump treatment: Undiluted

***Multiflora Rose (Rosa multiflora)***

Description: a large, dense shrub that has escaped from ornamental and conservation plantings to become a serious invasive plant problem across the eastern half of the U.S. It invades natural areas, pastures, and light gaps in forests. Multiflora rose spreads quickly and may grow 1 to 2 feet per week to form impenetrable thickets of thorny stems.

**Preferred Removal Strategy: Cutting or grubbing**

Cutting method is appropriate for small initial populations and for environmentally sensitive areas where herbicides cannot be used. Repeated cutting will control the spread of multiflora rose, but will not eradicate it. Stems should be cut at least once per growing season as close to ground level as possible. Hand cutting of established clumps is difficult and time consuming due to the long arching stems and prolific thorns.

Pulling, grubbing, or removing individual plants is effective when plants are small. Use a digging tool to remove the entire plant. Special care should be taken to ensure that all roots are removed to prevent their resprouting. If plants develop from severed roots these should be removed as well.

**Alternate Removal Strategy: Herbicides**

Multiflora rose is susceptible to both glyphosate and triclopyr. Triclopyr can be applied starting in spring before or during flowering. Glyphosate is most effective when applied after flowering

(early summer) until early fall. Cut-stump treatments with both herbicides also provide control, but cutting stumps in established thickets is very difficult because of the numerous thorny branches.

BRUSH-B-GON [triclopyr (8%)]:

Foliar spray: 4 fl. oz./gal

Cut-stump treatment: Undiluted

### ***Oriental Bittersweet (Celastrus orbiculatus)***

Description: a deciduous woody vine that can reach 19 m (60 ft) in height, and can grow to 10 cm (4 in) in diameter. It is a serious threat to plant communities due to its high reproductive rate, long-range dispersal, ability to root sucker, and rapid growth rate. Climbing vines severely damage or kill trees and shrubs by constricting and girdling stems, and by blocking sunlight. Oriental bittersweet has a wide range of habitat preferences including roadsides, thickets, young forests and dunes. It is shade tolerant, readily germinating and growing under a closed forest canopy. Seeds are dispersed readily by birds and small mammals.

### **Preferred Removal Strategy: Cutting or Grubbing**

Cut climbing or trailing vines as close to the root collar as possible. Cutting will reduce seed production and strangulation of surrounding woody vegetation. Oriental bittersweet will re-sprout unless cut so frequently that its root stock is exhausted. Treatment should begin early in the growing season and be repeated at 2-week intervals until autumn.

Grubbing is carried out by using a "pulaski" or similar digging tool to remove the entire plant, including all roots and runners. Juvenile plants can be hand pulled depending on soil conditions and root development. Any portions of the root system not removed will potentially re-sprout.

All plant parts, including mature fruit, should be bagged and disposed of in a trash dumpster to prevent reestablishment.

### **Alternate Removal Strategy: Herbicides**

Young vines or low-growing patches can be sprayed with triclopyr any time during active growth. Larger vines or vines that have climbed high into trees should be cut or girdled just above ground level in summer or early fall. Paint undiluted triclopyr into the freshly cut surfaces of the stump. Repeated applications may be necessary to eliminate re-sprouting.

BRUSH-B-GON [triclopyr (8%)]: Foliar spray: 4 fl. oz./gal.

Cut-stump treatment: Undiluted

### ***Porcelainberry (Ampelopsis brevipedunculata)***

Description: a deciduous, woody vine. It twines with the help of non-adhesive tendrils and closely resembles native grapes. Porcelain-berry spreads by seed and through vegetative means. The colorful fruits, each with two to four seeds, attract birds and other small animals that eat the berries and disperse the seeds in their droppings. The seeds of porcelainberry germinate readily to start new infestations. Porcelainberry is often found growing in riparian areas downstream from established patches, suggesting they may be dispersed by water also. The taproot of

porcelain-berry is large and vigorous. Resprouting will occur in response to cutting of above-ground portions.

**Preferred Removal Strategy: Hand Pulling**

Hand pulling of vines in the fall or spring will prevent flower buds from forming the following season. Where feasible, plants should be pulled up by hand before fruiting to prevent the production and dispersal of seeds. If the plants are pulled while in fruit, the fruits should be bagged and disposed of. For vines too large to pull out, cut them near the ground and repeat cutting of regrowth as necessary. Because the roots of porcelain-berry plants often merge with shrubs or other desirable vegetation, this type of manual removal is difficult in well established patches without damaging the desirable vegetation as well.

**Alternate Removal Strategy: Herbicides**

From summer to fall, apply a water-based solution of 2.5% Garlon® 3A (triclopyr amine) to foliage or cut plants first, allow time for regrowth and then reapply the mixture. Smaller infestations can be controlled to some extent with spot applications of glyphosate to leaves, used sparingly to avoid contact of desirable plants with spray. Cut the vines back during the summer and allow to re-sprout before applying herbicide, or apply glyphosate to leaves in early autumn.

To control climbing vines, cut large stems close to ground level and immediately treat the stump tops with Garlon 3A or a glyphosate herbicide with a 25-percent solution (3 quarts per 3-gallon mix). ORTHO Brush-B-Gon, Enforcer Brush Killer, and Vine-X are effective undiluted for treating cut-stumps and available in retail garden stores (safe to surrounding plants). For large vines, make stem injections using Arsenal AC\*, Garlon 3A, or a glyphosate herbicide.

Herbicide treatment is most effective when applied toward the end of the growing season when plants are actively transporting nutrients from stems and leaves to the root system. Follow-up treatments may be needed in subsequent years to remove plants which have sprouted from seeds remaining in the soil.

**Additional Removal Information**

Because porcelainberry vines can grow up to 15 ft. in a single growing season, especially when rainfall is abundant, and seed may be viable in the soil for several years, effective control requires dedicated follow-up. Treatment measures often must be repeated during the growing season and for several years afterwards to fully eradicate the plant. Prevention of flowering, fruiting and production of mature seeds will help reduce its spread. Chemical control in combination with manual and mechanical methods is effective and likely to be necessary for large infestations.

***Wineberry or Wine Raspberry (Rubus phoenicolasius)***

Description: a perennial shrub with long, arching canes up to 9 feet long. It produces a large number of fruits that are readily eaten and dispersed by birds to form dense, impenetrable thickets, crowding out native vegetation. It also spreads when tips of the canes touch the soil and take root. It can thrive in disturbed areas, wetlands, forest edges, floodplains, open canopy woodlands and roadsides. It can rapidly form dense monotypic thickets that crowd out native vegetation. Since the fruits are tasty, it is often not recognized as a problem. Copious fruit production and subsequent bird-dispersal contribute to its spread across the landscape.

**Preferred Removal Strategy: Hand Pulling**

No tools are necessary for hand removal of wineberry other than gloves to protect from thorns. The easiest time to remove this plant is in the fall or winter after a rain when the soil is moist. The stem should be grasped near the base to remove the entire root system. Broken roots left in place will likely re-grow. It is recommended to pull in series of tugs rather than one strong pull to achieve greater root removal.

**Alternate Removal Strategy: Herbicide**

A cut stump application of glyphosate or triclopyr in the fall is recommended when necessary

**HABITAT ENHANCEMENT / AUGMENTATION OF NATIVE SPECIES**

The primary objective of the revegetation effort will be to create a foundation for long term stability of a productive wetland ecology. The initial planting must address erosion control issues while providing an environment which gives an advantage to the establishment of native species.

Based on site inspection, the cover of invasive plants in portions of the site's buffer and wetland areas approaches 50%. Clearing of invasive species and replanting with native plants is proposed only where necessary. This is a conservative estimate used to approximate plant cover/density and costs required to implement the initial replanting of the site after selective removal of invasive species has occurred. As shown in Sheet C-9, this amounts to approximately 4000 square feet of invasive plant removal in the wetlands buffer and 10,000 square feet of invasive plant removal in the wetland. These areas will be re-vegetated with native plant seedlings and plant-plugs soon after removals are complete for erosion control and habitat restoration.

Both woody plants and herbaceous species appropriate for the site conditions will be specified. There is an opportunity to collect desirable species from areas of the project which will be excavated and /or regraded prior to site demolition. The project ecologist will be on site to direct collection activities. All collected plant material must be replanted immediately or stored in appropriate conditions to maintain its viability.

Additional plant material will be required to supplement the collected material and to introduce natives species not currently found on the project site. Herbaceous plant material will be specified in a variety of sizes for each species; in small containers and plugs. Depending on the species, the vegetation will be planted at 6" to 2'-0" on-center to provide uniform cover of the enhancement area within the first year of growth. Woody plant materials will be specified in a variety of types and sizes; containerized plant and live stakes. Planting of all herbaceous materials will take place in the spring. Containerized trees and shrubs will take place either spring or fall. Live stakes of shrubs will be planted during the shrub's dormant season.

A list of appropriate plants to be used during the enhancement effort is provided below.

**Wetland Enhancement Plant List:**

Tussock Sedge (*Carex stricta*)

Fox Sedge (*Carex vulpinoides*)

Soft Rush (*Juncus effusus*)

Woolgrass (*Scirpus cyperinus*)

## **Park Place at Westchester Airport FEIS**

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Swamp Milkweed (*Asclepias incarnata*)  
Pale False Mannagrass (*Glyceria pallida*)  
Three Square (*Scirpus americanus*)  
Sensitive Fern (*Onoclea sensibilis*) FACW  
Smooth Alder (*Alnus serrulata*)  
Redosier Dogwood (*Cornus stolonifera*) FACW+  
Winterberry (*Ilex verticillata*) FACW+  
Swamp Azalea (*Rhododendron viscosum*) FACW+  
Swamp White Oak (*Quercus bicolor*) FACW+

### **Wetland Buffer Enhancement Plant List:**

Red Chokeberry (*Aronia arbutifolia*) FACW  
Sweet Pepperbush (*Clethra alnifolia*) FAC+  
Silky Dogwood (*Cornus amomum*) FACW  
Spicebush (*Lindera benzoin*) FACW-  
Arrowwood (*Viburnum dentatum*) FAC  
Elderberry (*Sambucus canadensis*) FACW-  
Highbush blueberry (*Vaccinium corymbosom*) FACW-  
Red Maple (*Acer rubrum*) FAC  
Green Ash (*Fraxinus pennsylvanica*) FACW  
Sweetgum (*Liquidambar styraciflua*) FAC  
Nannyberry (*Viburnum lentago*) FAC  
Pin Oak (*Quercus palustris*) FACW  
Bayberry (*Myrica pensylvanica*) FAC  
New York Fern (*Thelypteris noveboracensis*) FAC  
Lance leaved goldenrod (*Euthamia graminifolia*) FAC  
giant goldenrod (*Solidago gigantea*) FACW  
Switchgrass (*Panicum virgatum*) FAC  
Yellow birch (*Betula alleghaniensis*) FAC

### **Topsoil**

Any existing topsoil which exhibits the presence of invasive species should not be reused within the enhancement area. If additional topsoil is required will be brought in from an approved source and free of any undesirable materials. Topsoil placed in the wetland enhancement areas

should not be rolled or compacted. If the topsoil is rolled or compacted with smooth-wheeled equipment that results in a smooth, planar surface for the topsoil, the surface must then be scarified prior to planting.

### **Watering**

Newly planted vegetation in the enhancement areas should be monitored for up to 5 years. Irrigation is important during the first growing season for plant establishment. During the first 3 to 5 years trees and shrubs should be irrigated during the dry periods and mulchs to retain moisture. Native grasses and wildflowers need no supplemental irrigation.

### **Pest control**

Generally, native plants do not require the use of insecticides or fungicides. However, if pesticides are required, pesticides labeled for aquatic use will be used. Label directions for application, usage and disposal will be followed. Fencing and or bird mesh will be installed and maintained for a minimum of five years to deter grazing by wildlife.

### **Fertilizing**

In general, fertilizers are not needed or recommended for herbaceous wetland vegetation projects. Depending on site condition and performance of the installed vegetation, native trees and shrubs may benefit from a twice yearly application of a slow release or organic fertilizer for two years after planting.

### **Maintenance Practices**

The pruning of native trees and shrubs is not required. Native grasses will benefit from a once yearly high mowing or string line trimming. Consistent and on-going monitoring and maintenance will be critical to identify and mitigate problems in the post-construction period. A five year monitoring period will be required to ensure the success of the initial enhancement plantings in taking hold and occupying the growing space. During this period subsequent invasive plant removal will likely occur.

Successful “filling” of the growing space by the enhancement plant can itself help prevent re-colonization by invasive plant species. Annual monitoring and all subsequent removal activities will be overseen by the project ecologist on all occasions. The techniques employed to remove invasive plants, and the decision to use herbicide, will be re-evaluated annually. Based on annual monitoring and an assessment of invasive plant presence, the techniques will be adjusted as necessary to maximize invasive plant removal while minimizing negative effects to the site’s wetlands and existing native flora/fauna. The project ecologist will provide a letter report to the Town Planning Department documenting the monitoring and maintenance activities that occur each year. This report will provide photographs of the enhancement areas, details on plant survival, and cover estimates for any re-colonization of invasive plants.



**Appendix G:**  
Stormwater Pollution Prevention Plan (SWPPP) Summary

# **Park Place at Westchester Airport**

**TOWN OF NORTH CASTLE**

**WESTCHESTER COUNTY, NEW YORK**

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## **Stormwater Pollution Prevention Plan**

**AKRF Project Number: 80202**

**Prepared for:**

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11 New King Street  
White Plains, NY 10604

**Prepared by:**



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## **FIGURES**

FIGURE 5-1: Site Location Map

## **APPENDICES**

APPENDIX A: Certifications

APPENDIX B: Pre- and Post- Development Stormwater Maps & WQv & RRv Drainage Area Maps

APPENDIX C: Drawings

APPENDIX D: Pre-Existing and Existing Hydrologic Routing Calculations

APPENDIX E: Stormwater Calculations

APPENDIX F: Post-Development Hydrologic Routing Calculations

APPENDIX G: Erosion and Sediment Control Inspection Report

APPENDIX H: Inspection and Maintenance Forms for Post-Construction Practices

## **1.0 OBJECTIVE**

AKRF Engineering, P.C. (AKRF) prepared this Stormwater Pollution Prevention Plan (SWPPP) in accordance with the following applicable rules, regulations and guidance documents:

- New York State Department of Environmental Conservation (NYSDEC) Stormwater Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activities Permit No. GP-0-10-001 (SPDES GP-0-10-001);
- New York State Stormwater Management Design Manual, dated August 2010 produced by the NYSDEC;
- New York State Standards and Specifications for Erosion and Sediment Control, dated August 2005 produced by NYSDEC;
- City of New York, Watershed Rules and Regulations for the Protection from Contamination, Degradation and Pollution of the New York City Water Supply and its Sources;
- Town of North Castle, Stormwater, Soil Erosion and Sediment Control (Town Code Chapter 173) Management Code

The objectives of this SWPPP are to:

1. Outline Owner and Contractor responsibilities to maintain compliance with SPDES GP-0-10-001, including required inspections, maintenance, forms, and certifications.
2. Outline measures to install, inspect, and maintain erosion and sediment control measures for the proposed project. The objective of these measures is to eliminate or significantly minimize pollutant discharges to the adjacent surface water bodies during construction activities.
3. Demonstrate that the post construction water quality treatment practices as proposed are designed to capture and treat the stormwater runoff from the proposed project.
4. Specify post construction stormwater management structures on-site such that the proposed peak flows do not exceed the pre-development peak flows, thus providing channel protection, overbank flood control, and control of the peak discharge control from the extreme storm event.
5. Incorporate green infrastructure techniques in order to replicate pre-development hydrology by maintaining pre-construction infiltration, peak runoff flow and discharge volume.
6. Provide a long term inspection and maintenance plan that will ensure the long term operation of the proposed practices.

## **2.0 OWNER/APPLICANT'S RESPONSIBILITIES**

11 New King Street, LLC, the "Owner/Applicant", is responsible to ensure that the Contractor installs and maintains the erosion and sediment control measures in accordance with this SWPPP. The Owner/Applicant is also responsible to ensure that the appropriate forms and certifications contained herein are completed prior to and throughout the duration of demolition and construction activities. The Owner/Applicant shall keep a copy of this document, associated attachments, and any inspection reports generated on-site for the duration of the project and for a minimum of 5 years from the date that the site achieves final stabilization. During this time period it is the Owner/Applicant's responsibility to conform to any changes or updates to the current regulations as they apply to the project.

The Owner/Applicant should ensure that the provisions of the SWPPP are implemented from the commencement of construction activity until all areas of disturbance have achieved final stabilization and the Notice of Termination (NOT) has been submitted to the appropriate NYSDEC office.

The Owner/Applicant should maintain a copy of the General Permit (SPDES GP-0-10-001), Notice of Intent (NOI), NOI acknowledgement letter, SWPPP, MS4, and SWPPP Acceptance Form and Inspection Reports at the construction site until all disturbed areas have achieved final stabilization and the Notice of Termination has been submitted to the NYSDEC. The documents must be maintained in a secure location, such as a project trailer, on-site construction office, or mailbox with lock; that is accessible during normal working hours to an individual performing a compliance inspection.

### **3.0 CONTRACTOR'S RESPONSIBILITIES**

The Contractor is responsible for implementing this SWPPP and related project specifications and reviewing all forms, certifications, and contract drawings, in order to become familiar with all aspects related to the SPDES GP-0-10-001. The Contractor shall retain a signed copy of this SWPPP and all associated attachments on-site from the initiation of demolition and proposed construction activities to the date of final stabilization. The Contractor is responsible for completing the certification contained herein Appendix A, prior to the commencement of demolition and proposed construction activities. Each of the Subcontractors involved in the implementation of erosion and sediment control measures must also complete a certification. The Contractor is responsible for each of the Subcontractors employed by the Contractor that are involved in the implementation of erosion and sediment controls or earthwork.

It is the duty of the Contractor to properly install and maintain all erosion and sediment control measures on the site as per this SWPPP. The Contractor shall also be responsible for the inspection of all erosion and sediment control measures for the proposed project by a "Trained Contractor" as per this SWPPP. Should the Owner, an owner's representative, or any local authority having jurisdiction deem that the SWPPP or the Contractor's implementation of the SWPPP proves to be ineffective in eliminating or significantly minimizing the pollutants or achieving the goals of the SPDES GP-0-10-001, the Contractor shall take any necessary action to conform to the objectives of the permit at no additional cost to the Owner.

It is the duty of the Contractor to properly inspect and maintain all erosion and sediment control measures installed on the site as per this SWPPP. Any revision to the SWPPP in design, demolition and construction activities, inspection, or maintenance shall be reflected by the Contractor in the on-site copy of the SWPPP in a timely manner. At the beginning of this work, the Contractor must designate a qualified inspector. The Contractor shall coordinate with the Resident Engineer to ensure that all of the inspection requirements are in conformance with this SWPPP and the requirements of the SPDES GP-0-10-001. On a monthly basis, copies of all inspection forms and maintenance records shall be organized and filed accordingly by the Contractor.

### **4.0 PRE-DEVELOPMENT CONDITIONS**

The proposed project site is located at 11 New King Street in the Town of North Castle, New York. The site is situated to the east of New York State Route 120, north of Airport Road and to the west of New King Street. Further west of Route 120 is U.S. Highway 684 and Rye Lake. Rye Lake is part of Kensico Reservoir which is part of the New York City Department of Environmental Protection (NYCDEP) East

of Hudson (EOH) watershed. The NYCDEP water supply system provides drinking water to 9 million people within New York City and other municipalities.

The phosphorous load to the reservoirs from the contributing drainage basins results in exceedances of the phosphorous water quality values established by the NYSDEC and set forth in its Technical and Operational Guidance Series (TOGS) as determined by the NYCDEP. Therefore NYSDEC and NYCDEP have identified phosphorous as a pollutant of concern within the EOH watershed and have established specific design criteria as outlined in the NYSSDM “Enhanced Phosphorous Removal” standards.

The project development comprises of two tax map parcels within the Industrial AA (IND-AA) zoning district. The existing flag lot, designated as Block 4, Lot 14B, is approximately 2.47 acres and is currently developed with a one-story office building, associated parking area, and a two-way driveway which provides access from New King Street. The existing lot contains minimal slopes stretching from New King Street to the edge of the existing development but has moderate to steep slopes (15% or greater) beyond and extending to the western property line. A NYCDEP delineated watercourse traverses the eastern portion of the site through an existing 36-in. diameter culvert. This culvert is located beneath the existing driveway which connects the parking area to New King Street. A wetland, delineated by AKRF staff and to be confirmed by Town staff, also traverses the site along the southern and western boundary lines.

The proposed project will also involve the use of a portion of the adjoining property, designated as Block 4, Lot 13A, located to the northwest of Lot 14B. The portion of this property which is planned for drainage use is currently undeveloped and consists of trees and low-lying brush located within moderately to steep slopes. This area is bound by Town delineated wetlands to the west and a parking area to the east.

#### **4.1 Existing Soil Conditions**

The following soils are found on the property and adjacent sites based on the United States Department of Agriculture (USDA) Natural Resource Conservation Service Soil Survey of Putnam and Westchester Counties, New York.

##### **4.1.1 USDA Soil Description**

Below is a list of on-site soil types and associated descriptions as determined by United States Department of Agriculture “Soil Survey of Putnam and Westchester Counties, New York”. (See Sheet No. D-1 Pre-Development Stormwater Map in Appendix B)

###### *Woodbridge Loam (WdB)*

This soil is gently sloping, very deep, and moderately well drained. It formed in compact glacial till derived from schist, gneiss, and granite and is located on the lower parts of hillsides in the uplands. Slope of the Woodbridge Loam soil ranges from 3 to 8 percent slope. The water table of this soil mapping unit is between 1.5 to 2.5 feet below the surface from November to May. Bedrock is at a depth of more than 60 inches. Included with this soil mapping are small areas of the poorly drained and very poorly drained Sun soils, areas of well drained Paxton soils, the somewhat poorly drained Ridgebury soils, bouldery or very stony areas, and areas of soils with a friable substratum.

###### *Ridgebury Loam (RdB)*

Ridgebury loam consists of gently sloping, very deep soil that is poorly drained to somewhat poorly drained. Slope of the Ridgebury loam ranges on the project site from 3 to 8 percent slope. The water table is perched from November to May and is located at a depth of 0 to 1.5 feet. Permeability is moderate or moderately rapid in the surface layer



and subsoil and slow or very slow in the substratum. Bedrock is at a depth of more than 60 inches. Ridgebury loam is present on along both the east and west boundary line.

Udorthents, Smoothed (Ub)

Udorthents, smoothed consists of very deep soil that is excessively drained to moderately well-drained. Slope of the Udorthents soil ranges from 0 to 25 percent slope. Many characteristics cannot be defined for this soil because there is a high variable composition. Fill material can be present at depths greater than 20 inches over the original soil. The Udorthents soil comprises the majority of the total soil on the site.

**Table 4-1**  
**Project Site Soil Types**

Symbol	Soil Series Name	Hydrologic Soil Group	Drainage Characteristics
WdB	Woodbridge loam 2 to 8 percent slopes	C	Moderately well drained. Permeability is moderate in the surface layer and subsoil and slow or very slow in the substratum. Erosion hazard is moderate, surface runoff medium, and water capacity moderate. "K" Factor: 0.24 to 0.32.
RdB	Ridgebury loam, 3 to 8 percent slopes	C	Gently sloping, very deep and poorly drained soil located on lower parts of hillsides and along small drainage ways. Permeability is moderate or moderately rapid in the surface layer and subsoil and slow or very slow in the substratum. Erosion factor is slight, surface runoff medium and water capacity moderate. K factor: 0.24 to 0.32.
Ub	Udorthents, smoothed		Very deep, excessively drained to moderately well-drained soil located near urban areas, highways, and borrow areas. It is comprised of alternating layers of material ranging from sand to silt loam. Properties are extremely variable and merit onsite investigation to determine properties for given site.

**Source:** Soil Survey of Putnam and Westchester Counties, New York, USDA Soil Conservation Service.

**Note:** "K" Factor given indicates the erosion potential of each soil type. This indicates the susceptibility of a soil to sheet and rill erosion by water. Values of "K" range from 0.05 to 0.69. The higher the value the more susceptible the soil to erosion

#### 4.1.2 Geotechnical Results

Test pits and soil borings were performed throughout the proposed development areas to help determine the feasibility of certain types of stormwater treatment practices and those that will offer the best performance, see Table 4-2 and 4-3. Test pits locations were survey located and can be found on the Pre-Development Drainage Map (Appendix B). NYCDEP and AKRF staff was present to witness the soil testing.

Deep test holes were performed in the northwest area of the project and generally indicated seasonal high groundwater varying from 3-foot 6 inches below grade to 8 feet below grade. Therefore, percolation testing was not performed in these areas. Borings were performed throughout the site, to provide information for the building foundation and pavement design. However, the information was also used to evaluate the potential for green infrastructure design.

**Table 4-2**  
**Project Site Deep Test Results**

Deep Test Hole Number	Description
1	10' Total Depth, 6' Groundwater Seepage
2	8' Total Depth, 6' Groundwater Seepage, 3'-6" Mottling Observed
3	11' Total Depth, 7' Groundwater Seepage
4	9' Total Depth, 8' Groundwater Seepage

**Table 4-3**  
**Project Site Boring Results**

Boring Number	Description
1	44' Total Depth, 25'-6" Groundwater Seepage
2	51' Total Depth, 10.5' Groundwater Seepage
3	36' Total Depth, 16' Groundwater Seepage
4	45'-2" Total Depth, 26'-6" Groundwater Seepage
5	30'-4" Total Depth, Water level not recorded
6	31' Total Depth, 18' Groundwater Seepage

#### 4.2 Existing Natural Resources

Located within the project site are a Town designated wetland and a class "A" watercourse, as designated by NYSDEC. Approximately 18,680 square feet (sf) (0.428 acres) of the wetland is on Lot 14B, and approximately 3,200 sf (0.073 acres) of the wetland is on Lot 13A. The town designated wetland was delineated by a field survey conducted by AKRF. The wetland was found to be present within the undeveloped southern portion of the project site and outside the western borders of the property along Route 120. A wetland is mapped along the unnamed stream outside the eastern project boundary near New King Street. These designated wetland areas are protected

by town defined wetland setbacks. A reservoir stem is located at the outlet of the existing 60-in. diameter culvert on the west side of NYS Route 120. NYCDEP requires a 300 foot boundary line setback from a reservoir stem.

#### **4.2.1 Watercourses**

All state waters are assigned a class and standard designation based on existing or expected best usage. Streams that are designated as C(t) or higher (i.e., C(ts), B, or A) are collectively referred to as protected streams and are subject to the stream protection provisions of the Protection of Waters regulations.

The primary stream that traverses across the eastern portion of the project site flows through an existing 36-in. diameter culvert beneath the existing driveway. This perennial stream is listed as Class A by the NYSDEC and is therefore subject to the provisions of the Protection of Waters Program (6 NYCRR Part 608). The classification AA or A is assigned to waters used as a source of drinking water. The stream's proximity to the Kensico Reservoir, which is part of the NYCDEP water supply system, accounts for this designation. This stream is also subject to the Town of North Castle Code which regulates watercourses and disturbance activities within 100 feet of watercourses.

The secondary on-site drainage feature is identified as the Town designated wetland portion which stretches along the southern property line from east to west. This secondary drainage feature does not demonstrate perennial or intermittent flow and is more accurately termed an ephemeral drainageway, conveying surface runoff during or immediately following a rain event only. It is not mapped by NYSDEC and is therefore not regulated at the state level pursuant to the Protection of Waters Program.

Section 18-39(c)(6) of the Watershed Rules and Regulations prohibits impervious surfaces within 100 feet of a watercourse. NYCDEP staff members were present at the project site during the delineation of the watercourse. This information is shown on Sheet No. C-2 - Existing Conditions, see Appendix C.

#### **4.2.2 Reservoir Stem**

The NYCDEP regulates activities within a 300-foot radius of a reservoir stem. This setback helps to limit activities to areas within close proximity to downstream water supply reservoirs. The reservoir stem associated with this project is located to the northwest of the project site at the discharge point of the watercourse into Rye Lake, part of the Kensico Reservoir. The reservoir stem was determined using the elevation of the Kensico Dam, as provided by NYCDEP, and survey locating the elevation along the reservoir edge within the proximity of the tributary stream. The surveyor then delineated a 500-foot segment of the tributary stream. A 300-foot radius from the 500-foot segment was then drawn on the plans to show the reservoir stem setback. The project site is located within this reservoir stem setback however, the building and associated impervious surfaces has been situated outside of this required setback zone.

#### **4.2.3 Wetlands**

The project site contains wetlands located along the east, west, and south property lines. These two wetland areas were delineated by the Town of North Castle and survey located. The wetland area to the east of the property follows the delineation of the NYCDEP defined watercourse and stretches through the adjacent property to the north

until it reaches an existing 60-in. diameter culvert located to the northwest of the site. This culvert conveys water beneath New York State Route 120 and towards Rye Lake.

The town delineated wetland area located along the south and west property lines conveys water to an existing 36-in. diameter culvert located off-site. This culvert conveys water beneath New York State Route 120 and towards Rye Lake

Wetlands are defined at the Federal level as “those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.” Wetlands generally include “swamps, marshes, bogs, and similar areas” (Federal Register, 1982). Wetlands are regulated at the Federal level by the Army Corps of Engineers (ACOE) pursuant to Section 404 of the Clean Water Act and its implementing regulations. Wetlands are also regulated at the local level by the Town of North Castle, Town Code §209. The Town also regulates disturbance activities within a 100-foot buffer surrounding wetlands to protect their function and values.

#### **4.3 Existing Utilities**

Based on discussions with the Town of North Castle personnel there is no existing water service from New King Street, Route 120, or Airport Road. The project site is currently located outside of any existing water districts. An existing well is located on the slate patio in the rear of the existing building which currently provides potable water to the office building.

Sanitary sewage is discharged through a 3” PVC force main that runs under the driveway to the sanitary manhole located approximately 14 feet from the eastern most property line. At this point the sanitary flows are connected to the municipal sanitary system which runs beneath New King Street to the south.

There is an existing 1,000-gallon underground storage tank located along the southeast corner of the existing building. This fuel tank is used to provide heat and hot water to the existing facility.

#### **4.4 Existing Stormwater**

There are no existing stormwater management systems on-site and therefore, no existing treatment practices. The existing subwatersheds have been delineated in order to understand existing stormwater runoff flow conditions (See Sheet No. D-1 in Appendix B). Pre-development hydrologic routing calculations can be found in Appendix D of this report.

Therefore the majority of stormwater runoff is conveyed via overland flow from paved surfaces. Stormwater flows from rooftops, over paved areas and bare soil, and through sloped lawns collecting and transporting soil, animal waste, salt, pesticides, fertilizers, oil and grease, debris and other potential pollutants.

##### *Potential Sources of Water Pollution*

The existing subsurface sewage treatment systems are no longer functional and have been abandoned for several years and therefore are not a contributing source of pollution runoff. Roof leaders convey stormwater runoff from the office buildings to the lawn areas, where flow is spread out. Potential pollution sources within the watersheds include sand and salt from roadway and parking lot runoff, pesticide and fertilizers, and grass clippings.

Sand and salt is typically used for de-icing on the project site and adjacent paved surfaces. Since there is no existing stormwater management system, accumulated sediment could potentially be transported to the adjacent waterbodies.

Many of the NYC Water Supply streams, lakes and reservoirs are impacted from intensifying land use. In addition to increased levels of phosphorous, chloride concentrations due to de-icing operations are increasingly found at higher levels in surface waters. Not only is chloride conveyed via surface water runoff, but it also infiltrates through the soil and intercepts the groundwater table, which is the contributing base flow of streams. In its annual report, New York City DEP has reported steady increases in conductivity of most reservoirs in the Croton Watershed since the early 1990s, most likely a result of increased development and associated pollutants (e.g., increased use of road salt).

Potential short-term and long-term impacts of runoff carrying fertilizers, pesticides, and other chemicals from lawns, roadways and other impervious surfaces and sedimentation is that it can be toxic to plants and animals.

### **Design Point 1**

Design Point 1 is located along New York State Route 120 at the inlet of an existing 36-in. diameter culvert which is located within an existing stormwater wetland just beyond the southwest property line. This existing 36-in. diameter culvert conveys stormwater from a portion of the project site and the adjoining Westchester Airport property (located to the south) beneath NYS Route 120 towards Rye Lake which is part of the Kensico Reservoir. Stormwater flow across the south end of the property and a portion of the roof of the existing office building (Pre1) drains to the town designated wetland located along the western property line. From here, stormwater runoff is conveyed off-site to an existing 36-in. diameter culvert which directs stormwater under New York State Route 120.

The contributing drainage area consists of land use types varying from wooded areas, landscaped areas, and impervious surfaces from the existing buildings, surface drive and walkway areas. Currently stormwater runoff is conveyed via overland flow to this design point and at no point is runoff collected into on-site existing stormwater structures.

### **Design Point 2**

Design Point 2 is located along New York State Route 120 at the inlet of an existing 60-in. diameter culvert which is located within an existing town designated wetland and NYCDEP designated watercourse. This existing 60-inch (in.) diameter culvert is located northwest of the property line just west of lot 13A.

The existing watercourse which traverses south to north at the existing driveway entrance for 11 New King Street is conveyed under the drive, via a 38 linear foot, 36-in. diameter culvert. This watercourse traverses through the adjoining property, crossing beneath the existing driveway through a stone culvert and over a concrete spillway, before eventually leading to a 60-in. diameter culvert downstream. This existing 60-in. diameter culvert conveys stormwater, from a portion of the project site and the adjoining properties to the north, beneath NYS Route 120 towards Rye Lake, a portion of the Kensico Reservoir.

The contributing drainage area consists of land use types varying from wooded areas, landscaped areas, and impervious surfaces from the existing buildings, surface drive and walkway areas. The stormwater flows contributing from the associated parking area and a portion of the existing building (Pre2), are directed northwest, overland towards the town designated wetland. A portion of the stormwater runoff is conveyed via overland sheet flow, before discharging into the watercourse at the stream edge, while the majority of the overland flow collects into a town designated wetland located to the west of Lot 13A. After ponding in this area, stormwater runoff

is conveyed to the north and discharges into the watercourse in the area of the existing 60-in. diameter culvert.

The existing watercourse appears to be in stable condition with minimal erosion issues, as a majority of the stream banks are rock-lined. In many cases the degree of stream movement is limited by these rock-lined banks allowing little opportunity to meander. These attributes are suggestive of a stream system with relatively low sensitivity to hydrologic changes.

### **Design Point 3**

Design Point 3 is located in the eastern portion of the site adjacent to the watercourse. In the pre-development condition, this drainage area consists of a portion of the existing one-story building, a portion of the associated parking area and driveway, and wooded/landscaped areas.

Stormwater runoff from the eastern portion of the project site, including the eastern portion of the associated parking and driveway leading towards New King Street (Pre3), is conveyed via overland flow to the NYCDEP watercourse located off-site. Runoff then flows within the watercourse through the existing 36-in. diameter culvert, beneath the existing driveway, and eventually to the existing 60-in. diameter culvert which conveys water under New York State Route 120. In the pre-development condition, stormwater runoff from the impervious surface is not collected or treated within a stormwater facility.

## **5.0 PROPOSED PROJECT DESCRIPTION**

11 New King Street, LLC (the Applicant) proposes to construct a parking structure (proposed project) at 11 New King Street (project site) in the Town of North Castle, Westchester County to alleviate an existing parking shortage at Westchester County Airport.

The project site is located in the southern portion of the Town of North Castle, near the Connecticut state line and Westchester County Airport. (see Figure 5-1, Site Location Map). The proposed project would involve the construction of a multi-level parking structure with a building footprint of approximately 51,000 square feet. This project would also involve the construction of associated paved areas for on-site drive lanes and site access from New King Street. The site is currently developed with an approximately 9,700-square-foot one-story office building, an associated parking area, and a driveway which provides access from New King Street.

### **5.1 Anticipated Permits**

The following is a list of anticipated permits for the construction activities associated with the proposed project.

#### **5.1.1 New York State Department of Environmental Conservation**

The project work will result in more than 5,000 square feet of disturbance within the New York City East of Hudson Watershed. This will require coverage under the SPDES General Permit for New Construction GP-0-10-001. This SWPPP is being prepared in compliance with the requirements of the New York State Stormwater Management Design Manual (NYSSMDM).

### **5.1.2 Westchester County Department of Health**

The existing well is located within the footprint of the proposed building therefore a new well will be located on-site. Westchester County Department of Health approval will be required for the new on-site well.

### **5.1.3 New York City Department of Environmental Protection**

In conformance with Section 18-37(d) of the Watershed Rules and Regulations (WRR), the applicant will be required to notify the Department of the modification to the existing sanitary sewer connection and submit associated engineering drawings. The proposed building will require a pump chamber and associated force main to pump sewage from the new building to the municipal sewer system located along New King Street. This connection will be made at an existing manhole located along the edge of the existing driveway, at the southeastern most property line.

NYCDEP review and approval of the SWPPP is required according to Section 18-39(b)(3)(iii) of the Watershed Rules and Regulations.

A variance will be necessary from Section 18-39(a)(4)(iii) of the Watershed Rules and Regulations. The proposed impervious surface will be increased within the limiting distance of 100 feet of a watercourse or wetland to meet the town requirements of driveway width of 24 ft. The 24 foot wide driveway is also necessary to address safety concerns.

### **5.1.4 Town of North Castle**

The town is considered a regulated, land use control under the Municipal Separate Storm Sewer System (MS4) program and therefore the review and approval of the SWPPP is required prior to submission to NYSDEC.

The following table is a complete list of all permits required for the proposed project.

**Table 5-1**  
**Required Permits, Approvals and Involved Agencies**

<b>Approval/Permit/Review</b>	<b>Involved Agency</b>
<b>Town of North Castle</b>	
Site Plan Approval	Planning Board
Wetland Permit	Planning Board
Tree Removal Permit	Planning Board
Zoning Text Amendment	Town Board
Sanitary Sewer Connection	Building Department
<b>Westchester County</b>	
Sanitary Sewer Connection	Department of Health (WCDOH)
Water Supply Well	WCDOH
Roadway/Signal Improvements	Department of Public Works (WCDPW)
<b>New York City</b>	
SWPPP	Department of Environmental Protection (NYCDEP)
Sanitary Sewer Connection	NYCDEP
Limiting Distance Disturbance	NYCDEP
<b>New York State</b>	
Roadway/Signal Improvements (NYS Route 120)	Department of Transportation (NYSDOT)
SPDES Permit (GP-0-10-001)	Department of Environmental Conservation (NYSDEC)
<b>Federal</b>	
Height Limitation	Federal Aviation Administration (FAA)
Notice of Proposed Construction or Alteration	FAA
Nationwide Permit, if applicable	U.S. Army Corps of Engineers (USACE)

## **6.0 POST-CONSTRUCTION STORMWATER PRACTICES**

Post-construction stormwater practices that provide water quality and quantity control are required to meet pollutant removal goals, reduce runoff volume, reduce channel erosion, prevent overbank flooding, and control extreme floods. These controls help mitigate the effects of development by controlling suspended solids content and peak flows of runoff from developed sites. The NYSDEC has developed unified sizing criteria to size stormwater management measures. However, as previously mentioned, the project is located within the NYCDEP East of Hudson Watershed where the stormwater management design must also address specific NYCDEP requirements. The NYCDEP requirement for the treatment volume, also referred to as water quality volume (WQv), is to capture and treat the runoff generated from a 1-year, 24-hour storm event. The NYSDEC requirements for overbank flood and extreme storm are the same as NYCDEP requirements for attenuating the larger storm events.



The NYSDEC requirement for Water Quality Volume (WQv) for enhanced phosphorous removal is to capture the calculated runoff from the 1-year, 24-hour design storm. The method for calculating the runoff volume is based on the USDA NRCS Technical Release 20 and Technical Release 55. The stormwater treatment practices have been designed to meet the current WRR, including the requirement that the stormwater ponds be designed to capture and treat the runoff generated from the 1-year, 24-hour storm event from new impervious surfaces based on the requirements of Chapter 10 – Enhanced Phosphorous Removal Standards outlined in the NYSSMDM.

## **6.1 Regulations**

### **6.1.1 NYSDEC Sizing Criteria**

The following table is representative of the storm design criteria required within the New York State Stormwater Management Design Manual.

**Table 6-1**  
**NYSDEC Uniform Sizing Criteria**

Water Quality Volume (WQv)	WQv = Detention of the 1 year storm event
Runoff Reduction Volume (RRv)	RRv = Reduction of the total WQv by application of green infrastructure techniques and SMPs to replicate pre-development hydrology.
Channel Protection (Cpv)	Cpv = 24 hour extended detention of post-developed 1-year, 24-hour storm event.
Overbank Flood (Qp)	Control the peak discharge from the 10-year storm to 10-year predevelopment rates.
Extreme Storm (Qf)	Control the peak discharge from the 100-year storm to 100-year predevelopment rates.  Safely pass the 100-year storm event.

As the project is within the NYCDEP East of Hudson Watershed, the requirements and guidelines within the New York State Stormwater Management Design Manual Chapter 10 – Phosphorous Removal Enhancement was used to design the stormwater management system.

### **6.1.2 New York City Department of Environmental Protection Requirements**

The project is located within the Kensico Reservoir watershed, which is part of New York City's surface water drinking water supply. NYCDEP is currently operating under a Memorandum of Agreement with the United States Environmental Protection Agency for filtration avoidance. Under this agreement certain provisions regarding impervious surface and stormwater runoff were incorporated within the City of New York, Rules and Regulations for the Protection from Contamination, Degradation and Pollution of the New York City Water Supply and its Sources (WRR) promulgated in 1997 and revised most recently in April 2010. The stormwater design criteria of the NYSSMDM are now referenced in the WRR. The WRR has additional criteria, such as the stormwater treatment practices must be designed to be in series. However, generally, the sizing and design criteria follow the state requirements.

### 6.1.3 Town

The Town of North Castle is a regulated, traditional land use control MS4, therefore the review and acknowledgement of the SWPPP is required.

## 6.2 Five-step process for site planning and stormwater management practice (SMP) selection

### 6.2.1 Step 1: Site Planning to preserve natural features and reduce impervious cover

The development of the stormwater management system for the proposed project site involves the use of green infrastructure practices, where feasible. The project area is 2.8 acres with approximately 33,447 square feet (sf) (0.77 acres) of existing impervious surface. The proposed automated parking garage design was a major factor in reducing the building footprint from the typical multi-level self-park system. The proposed project includes 55,924 sf (1.28 acres) of impervious surface, or 25,229 sf (0.64 acres) of new impervious surface. The proposed stormwater plan will also include approximately 10,786 (0.27 acre) of impervious surfaces from the existing office building roof runoff and associated parking area from adjacent Lot 13A.

The parking, drop-off, and traffic queuing areas are all located internal to the building. Therefore, runoff from the parking areas is not connected to the stormwater system and hence, decreasing the likelihood for oil and grease type pollutants to enter the storm system.

The following site planning practices were used to help determine the site plan and stormwater management system design.

#### Planning Practice 1: Preservation of Undisturbed Areas

The first approach to the overall design at Park Place is the preservation of undisturbed site area in order to maintain natural features and native vegetative areas. This technique coincides with Better Site Design (BSD) practice #1: preservation of undisturbed and BSD practice #3: reduction of clearing and grading. Both practices ensure that unnecessary earthwork is performed and instead help to limit overall site disturbance by developing in areas where disturbance has already occurred. Where possible the project has been designed to re-use existing impervious areas (i.e., driveway entrance, driveway) and has eliminated any disturbance of the presently undisturbed wetlands along the south and west property lines.

#### Planning Practice 2: Preservation of Buffers

The project site is situated in an area where Town delineated wetlands and NYCDEP designated wetlands greatly minimize the developable area on site. Currently, stormwater runoff from impervious surfaces located within wetland and watercourse buffers discharge directly to the waterbodies without any treatment. The project has been designed such that all runoff on impervious surfaces is treated by a series of water quality treatment methods before discharging downstream.

#### Planning Practice 3: Reduction of Clearing and Grading

The proposed building and associated impervious surfaces have been situated on the project site such that there will be no disturbance to existing wetland areas and hence, no clearing or grading is expected within these areas. The building has also been designed as

a tiered structure which will work most efficiently with the existing site topography and thus minimize clearing and grading areas to the greatest extent possible.

Planning Practice 4: Locating Sites in Less Sensitive Areas

By constructing the new development in an area already disturbed, the project has helped to maintain the site's natural character and existing habitat. Also, while the proposed project will increase impervious surface, the project will provide stormwater quality and quantity controls where there are presently none. By treating runoff through a series of stormwater treatment facilities the stormwater quality will be improved and will thus, improve the surrounding watercourse and wetland areas.

Planning Practice 6: Soil Restoration

Prior to final site stabilization the on-site soils will be modified or restored in order to reintroduce oxygen into compacted soils and improve the water storage within the soil. This process will subsequently help reduce runoff by allowing for a greater potential for infiltration and evapotranspiration.

Planning Practice 8: Roadway Reduction

The driveway travel lanes at the Park Place development have been designed to provide adequate safety and conveyance throughout the site. Originally four car exit lanes were designed to leave the building, however after evaluating the travel patterns the two lane exit was reduced to only one lane. Also, the fire access lane and maintenance path have both been designed to consist of permeable pavers in order to decrease impervious cover and increase site infiltration.

## **6.2.2 Step 2: Determine Water Quality Treatment Volume**

Water quality volume has been calculated based upon the site layout and contributing drainage areas utilizing Chapter 9 – Redevelopment Project design criteria depicted in the NYSDEC Stormwater Management Design Manual. As the project is within the NYCDEP East of Hudson Watershed, the requirements and guidelines within the New York State Stormwater Management Design Manual Chapter 10 – Phosphorous Removal Enhancement was used to design the stormwater management system.

The project is located within the NYCDEP East of Hudson Watershed where the stormwater management design must also address specific NYCDEP requirements. The NYCDEP requirement for the treatment volume, also referred to as water quality volume (WQv), is to capture and treat the runoff generated from a 1-year, 24-hour storm event.

The calculated WQv required is derived from a summation of 100%WQv of the proposed impervious area from pervious area and 25%WQv of the proposed impervious area from existing impervious area. Appendix E provides the supporting calculations for WQv and RRv for the project.

## **6.2.3 Step 3: Runoff Reduction by Applying Green Infrastructure Techniques and Standard SMPs with RRv Capacity**

In order to achieve the requirements for the Runoff Reduction Volume (RRv), the proposed project site must use green infrastructure techniques and practices to meet the required water quality volume (WQv) as determined in the NYSSMDM. The water quality volume required to be achieved for the Park Place development is 9,176 cubic feet (CF). By providing permeable pavement as an impervious area reduction practice,

the project was able to reduce the required water quality volume. By providing stormwater planter areas the project was able to treat 4,268 CF.

Green infrastructure practices or SMPs with runoff reduction capacity are required for the water quality volume associated with the new impervious area (pervious to impervious) of 6,391 CF. There are limiting site conditions that do not warrant the ability to reduce the runoff to pre-construction conditions, however the project has been designed to reduce a percentage of the runoff from impervious areas of the proposed development. Since this is not able to meet the required standard for RRv, the NYSSMDM allows for projects to reduce the required runoff reduction volume where additional efforts are not feasible. This reduction is based on a Hydrologic Soil Group(s) (HSG) of the site and is defined as the Specific Reduction Factor (S). The project site is located in HSG C soil, therefore the percent reduction factor is 0.30. The reduction factor for this site decreases the required RRv to 1,917 CF. According to the revised reduction factor the provided green infrastructure measures implemented on the site are sufficient to meet the allowable RRv. The comparison calculations for RRv and WQv can be found in Appendix E of this report.

Along with treating for water quality and quantity during the major storm events on the proposed project site, the NYSSMDM requires the applicant to achieve a runoff reduction volume. This volume is achieved through infiltration, groundwater recharge, reuse, recycle, evaporation/evapotranspiration of 100-percent of the post-development water quality volumes in order to replicate pre-development hydrology by maintaining pre-construction infiltration, peak runoff flow, discharge volume, as well as minimizing concentrated flow. This requirement can be accomplished by application of on-site green infrastructure techniques, standard stormwater management practices with runoff reduction capacity, and good operation and maintenance.

#### *Infrastructure Technique 9: Stormwater Planters*

The proposed development will be designed to have stormwater planter systems along the perimeter of the parking structure. These stormwater planters will be designed to treat the stormwater runoff from the roof of the proposed structure. The roof leaders will be routed to these areas for water quality treatment and nutrient intake before releasing into the proposed stormwater conveyance system.

#### *Infrastructure Technique 11: Permeable Pavement*

As discussed earlier, in the areas where high traffic is not expected (i.e. fire access lane, maintenance path), permeable pavers will be installed in place of conventional paving. This will help to reduce stormwater runoff from these areas and improve water quality and quantity downstream. The use of permeable pavers will reduce the amount of stormwater runoff through promoting infiltration.

#### *Non-structural Stormwater Best Management Practices*

Below is a list of nonstructural stormwater management practices that will be implemented throughout the project site:

- Long term soil stabilization through landscaping and maintenance in the developed areas. Prevention of soil loss, through establishment of vegetation and a landscape plan that will increase the amount of tree canopy and healthy ground cover. The

landscape plan will also maximize the travel time of stormwater runoff and minimize concentrated flows.

- The grounds maintenance program limits the potential for excessive nutrient loading, specifically controlling the application of phosphate-based fertilizers.
- There is a potential for an increase in pollutants associated with open parking areas such as petroleum, antifreeze, and refuse. These pollutants are picked up through stormwater flows and carried downstream, thus increasing pollutant loading in the stream and reducing water quality. This project however, is designed to provide multiple levels of parking within the building. By doing so, the impervious cover or impervious footprint will be decreased from a development of equal parking volumes. It will also allow for the pollutants, associated with parking areas, to be collected internally and discharged to the sanitary system rather than into the watershed.
- For those driving surfaces located at the entrance to the proposed building, a high level of maintenance and good housekeeping practices will be implemented at the site.

Catch basins with deep sump and hood will be installed at the downstream end of all proposed catch basins. This will trap floatables and debris within the catch basin. The deep sumps will trap the petroleum and antifreeze attached to sediment particles. The accumulated material will be cleaned out of the catch basins in accordance with the long term inspection and maintenance plan.

#### **6.2.4 Step 4: Apply Standard Stormwater Management Practices to Address Remaining Water Quality Volume**

The remainder of the WQv is achieved by Surface Sand Filter and Pocket Wetland. Each of these practices has been designed in accordance with NYSDEC standards. The practices are proposed in a series to increase the runoff treatment.

##### *Proposed Surface Sand Filter (F-1 per the NYSSMDM)*

The following parameters were used in designing and sizing the surface sand filter system:

- Off-Line System – Stormwater runoff is conveyed via a storm pipe network, therefore the Sand Filter is designed off-line. A flow-splitter diversion structure has been designed to divert the runoff from the 1-year, 24 hour storm.
- Overflow – An overflow structure has been provided to convey stormwater to Pocket Wetland W-4. A stabilized rip-rap spillway has also been provided to convey stormwater from the larger storm events.
- Underdrain – A 6-inch diameter perforated pipe placed in a gravel layer, is proposed to collect stormwater that has filtered through the sand layer. Geotextile filter fabric will be placed between the gravel layer and sand layer.
- Groundwater Table – A 2-ft. separation between the filter bottom and the seasonal high groundwater table has been provided.
- Pretreatment (Sedimentation Basin) – A sedimentation basin will provide pretreatment at the inlet point. This will provide primary settling for the larger

particulates. The sedimentation basin will be sized to contain 25% of the WQv. The depth of the sedimentation basin is four feet. The outfall from the inlet pipe will be stabilized with rip rap to minimize erosion of the ponds' sideslopes. A fixed depth marker will be installed to assist in the long term inspection and maintenance plan. This will help determine the depth of sediment accumulation and when maintenance is required.

- Treatment Basin Sizing - The complete system, including sedimentation basin, is designed to hold and treat at least 75% of the water quality volume and will consist of a surface sand filter which will have a coefficient of permeability of 3.5 ft/day.
- Filter Media – The proposed filter media will consist of a medium sand meeting ASTM C-33 concrete sand.
- Side-Slopes - The side slopes for the sedimentation basin and the surface sand filter are 3:1(H:1).
- Vegetation – Landscape plans include various grass species for the sideslopes and bottom of the surface sand filter. The plant variety will provide treatment through filtering and nutrient uptake. See Landscape Plans.
- Geometry – Both pretreatment and the surface sand filter have been designed with a length to width ratio of 1.5:1 as required by NYSSMDM.
- Energy Dissipater - A rip rap velocity dissipater will be installed at the outlet that discharges into the sedimentation basin.
- Outlet control structure – The pre-cast concrete structure is designed with a low flow orifice that will detain the 1-year, 24-hour storm event.
- Maintenance – As specified in the Operation and Maintenance section of the SWPPP a legally binding and enforceable maintenance agreement shall be executed with the Town and the applicant/operator.

*Proposed Pocket Wetland (W-4 per the NYSSMDM)*

The following parameters were used in designing and sizing the pocket wetland (W-4):

- Water Quality Volume – The WQv is equivalent to the runoff from the 1-year, 24-hour storm event. A detention time of 33 hours has been provided.
- Wetland – The proposed pocket wetland is not located within NYSDEC jurisdictional waters, including wetlands.
- Pond Embankment – The proposed pocket wetland would not consist of a dam as it is excavated system below the existing grading.
- Forebay – A forebay is provided as the proposed pocket wetland to store a minimum of 10% of the WQv.
- Side-Slopes – The side slopes for the pocket wetland are 4:1(H:1) , therefore a pond safety bench is not required. However, an aquatic bench has been provided to help establish wetland vegetation.
- Micropool - A micropool will be provided at the outlet in order to protect the low flow pipe from clogging and prevent sediment resuspension. This area will range from four to six feet in depth and will be able to store a minimum of 10% of the

WQv. The contributing drainage area from the proposed roof leader extension from the existing office building Lot 13B is less than 10% of the total design storm flow discharges directly to the micropool.

- Water Quality Volume – At a minimum 25% of the water quality volume will be in deepwater zones with a depth greater than four feet.
- Vegetation – Landscape plans include various grass species for the sideslopes and emergent wetland species. The plant variety will provide treatment through nutrient uptake. Minimum elements of a plan include: delineation of pondscaping zones, selection of corresponding plant species, planting plan, sequence for preparing the wetland bed and sources of plant material.
- Landscaping – Native plants that promote phosphorous and nitrogen uptake will be specified in the final landscaping plans.
- Permanent pool – 50% of the water quality volume will be provided in the permanent pool, as required for stormwater wetlands designed for extended detention. The seasonal groundwater table will be intercepted to provide a permanent pool.
- Geometry – The pocket wetland has been designed with a length to width ratio of 2:1 as required by NYSSMDM. A minimum Surface Area: Drainage Area of 1:100 has been provided.
- Pond Buffer – A pond buffer of at least 25 ft has been provided around the pond maximum water surface elevation.
- Energy Dissipater - A rip rap velocity dissipater will be installed at the inlet and outlet of the lower pond. The lower pond discharges to the existing NYCDEP delineated watercourse where the banks are in stable condition. This will eliminate the potential for erosion of the stream bed.
- Emergency overflow - Safe conveyance of the 100-year storm flow will be provided through a rip rap lined overflow spillway. The elevation is determined by the 100-yr flood elevation and located such that stormwater flows will not adversely impact surrounding properties.
- Maintenance access – A 10-foot minimum width access path will be provided for long term maintenance of the stormwater ponds. The path will be constructed of grasspavers in order to decrease impervious surface and increase infiltration.
- Outlet control structure – The pre-cast concrete structure is designed with a low flow orifice that will detain the 1-year, 24-hour storm event for a minimum of 24 hours, meeting the NYSDEC and NYCDEP requirements. The larger storm events will also be conveyed through an opening at the top of the outlet control structure designed to attenuate the larger storm events.
- The outlet control structure is located within the embankment, providing safe egress for maintenance.
- Freeboard – 1-ft of freeboard above the 100-year storm elevation.
- Pond Drain – A drain pipe would be part of the outlet control structure so that the pond could be completely drained for maintenance.

- Maintenance Agreement – An Operation and Maintenance Plan as outlined in the SWPPP would be developed into a legally binding and enforceable agreement with Town as a condition of the site plan approval.

**Table 6-1**  
**Stormwater Management Practices**

<u>Water Quality Volume Required*</u>		<u>9,176 cf</u>		
<u>Standard Practices for Water Quality Treatment</u>				
<u>Practice</u>	<u>Contributing Drainage Area (sf)</u>	<u>Water Quality Volume Provided (cf)</u>		
<u>Surface Sand Filter**</u>	<u>86,352</u>	<u>12,775</u>		
<u>Pocket Wetland***</u>	<u>113,943</u>	<u>4,908</u>		
<u>Green Infrastructure for Water Quality Treatment</u>				
<u>Stormwater Planters</u>	<u>Contributing Roof Area (sf)</u>	<u>Stormwater Planter Size (sf)</u>	<u>Water Quality Volume Provided (cf)</u>	<u>Runoff Reduction Volume Provided (45%WQv) (cf)</u>
<u>North Planters</u>	<u>8,979</u>	<u>665</u>	<u>592</u>	<u>266</u>
<u>East Planters (A)</u>	<u>8,979</u>	<u>727</u>	<u>647</u>	<u>291</u>
<u>East Planters (B)</u>	<u>8,979</u>	<u>510</u>	<u>454</u>	<u>204</u>
<u>South Planters</u>	<u>8,979</u>	<u>1,849</u>	<u>1,646</u>	<u>741</u>
<u>West Planters</u>	<u>8,979</u>	<u>1,044</u>	<u>929</u>	<u>418</u>
<u>Total</u>	<u>44,895</u>	<u>4,795</u>	<u>4,268</u>	<u>1,920</u>
<u>Other Green Infrastructure</u>				
<u>Grass Pavers</u>	<u>Drainage Area (sf)</u>	<u>Surface Area (sf)</u>		
<u>Fire Truck Access Path</u>	<u>4,040</u>	<u>3,576</u>		
<u>Fire Truck Access Pull-Off</u>	<u>1,060</u>	<u>315</u>		
<u>Maintenance Path</u>	<u>8,000</u>	<u>4,306</u>		
<u>Total Green Infrastructure Area</u>		<u>11,427</u>		
<u>Total WQv Provided</u>			<u>21,951</u>	
<u>Notes:</u>				
<u>* Includes driveway, building, concrete pads</u>				
<u>** Includes Sedimentation Basin</u>				
<u>*** Includes extended detention</u>				

#### 6.2.5 Step 5: Apply Volume and Peak Rate Control Practices

The channel protection volume, overbank flood control and extreme flood control for the project have been satisfied via Surface Sand Filter and Pocket Wetland. The rainfall values in Table 6-2 have been utilized in the hydrologic analyses for the project. Summary Tables 6-3 provides a comparison of the peak flow rates that occur under existing and developed conditions.



**Table 6-2  
Rainfall Values**

Rainfall Value (inches)	24-hour Storm Event (Year)
3.2	1
3.6	2
5.0	10
6.5	25
7.5	50
9.0	100
<b>Source:</b> Northeast Regional Climate Center	

**Table 6-3  
Runoff Flow Analysis**

Design Point	Pre-Existing Conditions (cfs)	Existing Conditions (cfs)	Proposed Project (cfs)	Change in Flow Rate			
				Existing to Proposed		Pre-Existing to Proposed	
1-year storm							
DP1	4.42	4.72	4.17	-0.55	-12%	-0.25	-6%
DP2	1.90	3.12	0.42	-2.7	-87%	-1.48	-78%
DP3	1.55	2.27	0.98	-1.29	-57%	-0.57	-37%
10-year storm							
DP1	10.95	11.38	10.22	-1.16	-10%	-0.73	-7%
DP2	4.57	6.15	2.68	-3.47	-56%	-1.89	-41%
DP3	3.61	4.58	2.14	-2.44	-53%	-1.47	-41%
25-year storm							
DP1	17.01	17.51	15.83	-1.68	-10%	-1.18	-7%
DP2	7.02	8.74	6.24	-2.5	-29%	-0.78	-11%
DP3	5.49	6.56	3.17	-3.39	-52%	-2.32	-42%
100-year storm							
DP1	27.60	28.16	25.66	-2.5	-9%	-1.94	-7%
DP2	11.27	13.06	9.87	-3.19	-24%	-1.4	-12%
DP3	8.81	9.87	4.93	-4.94	-50%	-3.88	-44%

Tables 6-4 and 6-5 provide the drainage areas for each design point for pre-developed and post-developed conditions, respectively.

**Table 6-4**  
**Pre-Development Drainage Area**

Design Point	Subcatchment	Total Area (square feet)
DP-1	PRE 1	261,194
DP-2	PRE 2	85,244
DP-3	PRE 3	61,828

**Table 6-5**  
**Post-Development Drainage Area**

Design Point	Subcatchment	Total Area (square feet)
DP-1	POST 1	248,549
DP-2	POST 2A	4,907
	POST 2B	14,630
	POST 2C	44,895
	POST 2D	8,410
	POST 2E	13,510
	POST 2F	4,258
	POST 2G	23,333
	POST 2H	14,691
DP-3	POST 3A	33,605
	POST 3B	5,082

#### 6.2.5.1. Design Analysis

In order to evaluate the pre- and post-development drainage conditions, the site has been delineated into three (3) discharge analysis points based on pre-development hydrology; Design Points 1, 2, & 3. These points were analyzed to evaluate the effects of the proposed development on surface stormwater runoff. The design points and their pre- and post-development contributing subcatchment areas are shown on Pre- and Post-Development Stormwater Maps, Sheet Nos. D-1 and D-2 found in Appendix B.

To analyze the peak flow in pre-and post-development conditions HydroCAD®, a computer aided design tool is used to evaluate and analyze the stormwater runoff from the site. The program also models the surface flow through the proposed stormwater practices determining the plug-flow and center-of-mass detention time within the ponds. A simultaneous routing process is used to evaluate the impacts associated with stormwater practices in series. The program is based on United State Department of Agriculture, Natural Resources Conservation Service (NRCS) Technical Releases TR20 and TR55. TR55 and TR20 are tools that were developed to calculate the volume and peak discharge rates of stormwater runoff generated in different rainfall events over a 24-hour period. Runoff volumes and rates are calculated by determining the curve numbers (CN) and calculating the time of concentration (Tc) for each subcatchment area depending on the given rainfall value. The CN values are based on the TR55 table and the hydrologic soil group, cover type, hydrologic condition and antecedent runoff condition. The Tc represents the time it takes for surface water to travel the hydraulically most distant point within the subcatchment area. The post-development hydrologic analysis can be found in Appendix F.

The following rainfall values for Westchester County, shown in Table 6-2, were used in the analysis. For the purposes of the hydrologic analysis the runoff was based on Type III rainfall distribution for the northeast region. The following rainfall values are based on the 24-hour storm event. These values represent the rainfall distribution for various 24-hour storm frequencies.

#### **6.2.5.2. Design Point 1**

The proposed development area contributing to Design Point 1 includes the following proposed surfaces: a portion of the fire access lane, two concrete pads at building emergency access doors, landscaped areas, and wooded areas. Permeable pavers, such as Turfstone™ are proposed in the fire access lane.

The existing and proposed drainage areas do differ in size because of the location of the proposed building and required treatment. The roof leaders for the proposed structure will collect and convey stormwater runoff to the north side of the building and discharge ultimately to Design Point 2. For this reason, the proposed impervious surface within the Design Point 1 drainage area is decreased in proposed conditions and stormwater flows are reduced from existing conditions.

Therefore, a stormwater treatment practice is not proposed for this drainage area. The results of the pre- and post-development flows demonstrate that the impact of the proposed permeable pavers is minimal. The proposed condition will improve the stormwater quality and quantity at Design Point 1.

#### **6.2.5.3. Design Point 2**

The proposed development area contributing to Design Point 2 includes the following proposed surfaces: the proposed building, the driveway and associated drive lanes, the maintenance access path, the fire access lane, multiple concrete pads for utilities, new landscaped areas, and the existing building on the adjoining property to the north. The location of the new building is such that there will be an increase in impervious surface coverage, total drainage area, and post stormwater flows conveyed to Design Point 2.

Increases in impervious surfaces associated with the proposed project will also indirectly reduce groundwater recharge. This reduction in groundwater recharge may, in turn, result in lower rates of base flow, that portion of a stream's flow not directly associated with storm events, upstream of the proposed outfall location.

The contributing drainage area to the proposed stormwater facilities (approximately 2.7 acres), along with the high seasonal groundwater table makes the stormwater pocket wetland (W-4) the most suitable method for stormwater treatment. In accordance with Section 18-39(c)(6) of the Watershed Rules and Regulations, "If an activity requiring a stormwater pollution prevention plan will result in impervious surfaces covering twenty percent (20%) or more of the drainage area for which a stormwater management practice is designed, the stormwater pollution prevention plan shall provide for stormwater runoff from that drainage area to be treated by two different types of stormwater management practices in series". Therefore, to address the stormwater runoff from the proposed development, two stormwater facilities are proposed; a stormwater surface sand filter to treat the water quality volume and a stormwater wetland (W-4) which will treat water quality volume conveyed from the

surface sand filter and attenuate the flows from the larger storm events. These stormwater facilities are designed in series to capture and treat the stormwater runoff from the 1-year, 24-hour storm event in accordance with NYSDEC and NYCDEP requirements for treatment of phosphorous pollutants. These stormwater ponds also provide attenuation of peak flows from the larger storm events.

Due to the associated drive and building layout, and the existing topography, two stormwater ponds could not be placed on the project site; therefore the stormwater facilities were located on the adjoining property to the north. The ponds are referred to as Ponds W-4, and F-1 in the HydroCAD® analysis.

The stormwater ponds have been designed to capture and treat the stormwater runoff associated with the 1-year, 24-hour storm event and to meet the required elements of the NYSSMDM design criteria for stormwater ponds, specifically for surface sand filter design (F-1) and pocket wetland (W-4).

The stormwater runoff from post-development contributing drainage areas 2A, 2B, and 2C, a total of 1.5 acres, will collect and convey stormwater through a conventional stormwater collection system (i.e., pipes, manholes, catch basins) to a flow diversion structure (Structure # 6, see Sheet No. C-5 in Appendix C). The stormwater volume of a 1-year storm event will be diverted into a surface sand filter for water quality treatment of the stormwater runoff. Per the requirements of the NYSSMDM, the flow diversion structure is designed as an off-line device which will direct the water quality volume into the surface sand filter system.

The proposed project would disturb a portion of the steep slopes (>25%) on the western and northern sides of the project site. A majority of the existing steep slopes were created by soil filling during previous site development and do not include appropriate measures to minimize erosion and environmental impacts. The proposed development plan includes removal of the fill material comprising the steep slopes, and engineering measures to construct a new slope network that will minimize project-related and future environmental impacts.

The stormwater flows leaving the surface sand filter will then get discharged to the larger pocket wetland located slightly down gradient. Stormwater runoff volumes larger than the 1-year storm will by-pass the sedimentation basin and discharge directly into the pocket wetland. The post-development contributing drainage areas 2D and 2E, a total of 0.5 acres, will provide additional overland flows to the sedimentation basin and surface sand filter during all rain events. Also, post-development contributing drainage areas 2F and 2G, a total of 0.6 acres will provide additional stormwater runoff directly to the pocket wetland via piped roof leaders (from drainage area 2F) and overland flow (from drainage area 2G). The pocket wetland will serve as the second level of water quality and water quantity control before stormwater is discharged off-site and into the existing watercourse to the north.

#### **6.2.5.4. Design Point 3**

The proposed design area contributing to Design Point 3 will result in a reduction of the drainage area as well as eliminate the impervious surface runoff to this design point. The proposed condition will redirect the stormwater flows from the impervious surfaces into a conventional collection system and treat the runoff in the series of ponds discussed in Section 6.3.2. Therefore, a stormwater treatment practice is not proposed

for this drainage area. The results of the pre- and post-development flows demonstrate that the impact of the proposed condition will improve the stormwater quality and quantity at Design Point 3.

### 6.3 Pollutant Loading Analysis

The proposed stormwater management practices have been designed based on the NYSDEC stormwater sizing criteria to treat the full water quality volume and are capable of 80% TSS removal and 40% TP removal.

### 6.4 Potential Pollutants

#### De-icing Materials

There is a reduction of paved asphalt area from existing conditions therefore there would be a decrease in potential pollutant loading due to the reduce application area. The following guidance, based on guidance from the NYS Office of the Attorney General, would be observed with the primary duty to protect human life and safety.

#### 1. Total Phosphorus Guidance:

##### *Winter Road Maintenance Deicers:*

- Endorsed – Deicer products that contain 50 parts per million total phosphorus (ppm) or less.
- Discouraged – Deicer products that contain more than 100 ppm total phosphorus.
- Avoid – Any deicer that contains greater than 250 ppm total phosphorus should not be used or applied.

#### 2. Reducing the use of sand as a treatment material should be a primary goal of environmentally responsible road maintenance because sand usage is responsible for much of the phosphorus introduced into the reservoirs from winter road maintenance. The use of sand also degrades aquatic habitat in streams, wetlands and rivers.

#### Herbicide, Pesticide, Fertilizer, and Fungicide

Fertilizer and pesticide application will be performed in accordance with NYSDEC application rates and be applied by a certified company. Fertilizer will be applied so that the vegetation can be quickly established; however, repeat use is not anticipated once vegetation has been sufficiently established. A more detailed plan for fertilization and pesticide application will be presented with the final landscaping plan. Fungicide and herbicides use are not anticipated. Manual weeding will be performed to avoid the use of chemicals that can potentially be harmful to water quality.

The proposed stormwater management system and non-structural practices will provide adequate mitigation of potential impacts including potential secondary impacts to the Kensico Reservoir and the reservoir stem.

### 6.5 Summary

The proposed stormwater management system has been designed to treat the Water Quality Volume (WQv) and attenuate the larger storm events to pre-development conditions. The project is designed based on Chapter 10 of the NYSSMDM.

The proposed project incorporates stormwater management practices as well as green infrastructure techniques that will treat runoff from the proposed project. These practices, designed in accordance with the regulations established by NYSDEC and NYCDEP, will include water quality treatment, peak flow attenuation, and temporary and permanent erosion and sediment control measures. The proposed facilities will be sufficient to mitigate the potential impacts of the proposed project related to the quantity and quality of stormwater runoff.

## **6.6 Variance**

A variance from Section 28-39(a)(4)(iii) of the WRR is required for this project. The existing paved driveway is approximately 20 feet wide in the area of the existing 36 inch diameter culvert. However, to comply with the Town Code, the minimum width of an access driveway to a site with more than 21 parking spaces shall be 24 feet.

Article IX §213-44G of the Town Code states that access drives for ingress and egress to and from the parking areas for sites located in commercial districts shall be designed in conformance with the width standards, as well as the grade and surface standards provided in § 213-47. The driveway width requirement for a parking area with more than 21 parking spaces is 24 feet. The driveway surface shall be improved and suitably maintained to the extent deemed necessary by the Town Engineer to avoid nuisances of dust, erosion or excessive water flow across public ways or adjacent lands.

Therefore the applicant is requesting a variance so that the driveway will meet the Town Code and provide safe travel conditions for vehicular traffic. Shuttle busses will be used to transport passengers to and from Westchester County Airport. Various driveway alternatives were reviewed, including keeping the existing driveway width of 20.7 feet, however, 24 feet, or two 12-foot travel lanes, would meet the Town Code and provide a safe buffer width for passing vehicles. The 3.3-foot additional impervious surface is the minimum necessary to afford relief from the Town Code. There will be no disturbance to the water course or to the existing culvert for the proposed driveway widening.

Stormwater runoff currently flows across the asphalt driveway and directly discharges to the watercourse and wetland areas. With the proposed driveway widening, stormwater runoff would be directed to catch basins with deep sumps, rain garden, surface sand filter and a pocket wetland. The practices have been designed to treat 100% of the water quality volume from the entire existing and proposed asphalt pavement within the contributing drainage area. However, only 25% of the WQv from the existing impervious surfaces would be required. In addition to treating the larger WQv, the stormwater management system is designed to capture existing impervious surfaces from the adjacent Lot 13A. Stormwater runoff from the roof and paved surfaces currently flow overland towards the watercourse, causing erosive conditions in some areas of the lawn. Stormwater treatment practices do not exist at the site, therefore this would be a significant improvement over existing conditions and would go beyond the design requirements.

## **7.0 TEMPORARY EROSION AND SEDIMENT CONTROLS**

The proposed new building will be arranged on the project site to maximize the use of the existing site topography and in order to utilize previously disturbed (cleared/regraded) areas for the new building and the proposed circulation network. The proposed 'Site Plan' and 'Paving, Grading and Drainage Plan' are shown on the large-scale plans (Sheet No. C-4 and C-5 in Appendix C).

The majority of the proposed development will be located within the existing developed area, which has moderate slopes of 25% or less. Disturbance to slopes greater than 25 percent would be minimized, totaling approximately 0.21 acres.

Table 7-1 indicates the acreage of disturbance by slope category.

**Table 7-1**  
**Slope Disturbance**

<b>Slope Category</b>	<b>Acreage of Disturbance</b>
0-25 percent	2.55 acres
25-35 percent	0.14 acres
35 percent or greater	0.07 acres

The proposed project will require excavation of soil and the grading of topography, which will result in the exposure of soil to natural forces. Several soil types located on the project site have moderate erosion potential, including the Charlton and Ridgebury loam. If not properly managed, the temporary exposure of bare soil accelerates the potential for erosion. This acceleration in soil erosion could potentially lead to siltation of the on- and off-site wetlands, ponds, and off-site watercourses. This may cause a reduction in surface water quality. Measures to avoid impacts from the proposed project are discussed below.

Section 213-17 (Hilltops, ridgelines and steep slopes) of the Town of North Castle Code requires that a building permit be attained prior to disturbing a slope category (25% or greater). The appropriate plans and permits will be submitted to the Town of North Castle for approval prior to initiating site development. The current engineering design plans include measures to minimize erosion and sedimentation, protect against possible slope failure and landslides, minimize stormwater runoff and flooding, and meet or exceed all applicable regulations for slope disturbance.

The proposed site plan for the Park Place project would result in the alteration of the geology, soils, and topography of a portion of the property. Specifically, the proposed area of disturbance will occur on approximately 120,846 square feet (2.77 acres), of which approximately 86,767 square feet (1.99 acres) of the approximately 2.74 acres of land owned by the applicant.

The proposed project will require the excavation of approximately 25,475 cubic yards of earth material. Of the total excavated material, only 400 cubic yards will be used as fill in the regrading of the construction area. The net excess material of 25,076 cubic yards is to be disposed off-site.

## **7.1 Erosion and Sediment Control Practices**

The following are specific erosion control measures as identified in the large scale drawings prepared for this project. Please refer to the large scale Erosion and Sediment Control drawing in Appendix C.

### **7.1.1 Stabilized Construction Entrance / Exit (SCE)**

The construction entrance/exit shall have a stabilized aggregate pad underlain with filter cloth to prevent construction vehicles from tracking sediment off-site. Stabilized construction entrances are located at specific transition areas between concrete/asphalt to exposed earth.

### **7.1.2 Silt Fence**

Silt fence shall be installed on the down gradient edge of disturbed areas parallel to existing or proposed contours or along the property line as perimeter control. Silt fence are to be used where stakes can be properly driven into the ground as per the Silt Fence detail in the New York State Standards and Specifications for Erosion and Sediment Control and as shown on the drawings (See large scale drawings Appendix C).

Silt fence controls sediment runoff where the soil has been disturbed by slowing the flow of water and encouraging the deposition of sediment before the water passes through the straw bale or silt fence. Built-up sediment shall be removed from silt fences when it has reached one-third the height of the bale/fence and properly disposed.

### **7.1.3 Storm Drain Inlet Protection**

Inlet protection shall be installed at all inlets where the surrounding area has been disturbed. The inlet protection shall be constructed in accordance with NYSDEC Standards and Specifications for Erosion and Sediment Control. Typically they should be constructed to pass stormwater through, but prevent silt and sediment from entering the drainage system.

### **7.1.4 Stockpile Detail**

Stockpiled soil is to be protected, stabilized, and sited in accordance with the Soil Stockpile Detail, as shown on the detail sheets in Appendix C. Soil stockpiles and exposed soil shall be stabilized by seed, mulch, or other appropriate measures, when activities temporarily cease during construction for 7 days or more in accordance with NYSDEC requirements.

### **7.1.5 Dust Control**

During the demolition and construction process, debris and any disturbed earth shall be wet down with water, if necessary to control dust. After demolition and construction activities, all disturbed areas shall be covered and/or vegetated to provide for dust control on the site.

### **7.1.6 Temporary Seeding and Stabilization**

In areas where demolition and construction activities, clearing, and grubbing have ceased, temporary seeding or permanent landscaping shall be performed to control sediment laden runoff and provide stabilization to control erosion during storm events. This temporary seeding/stabilization or permanent landscaping shall be in place no later than 14 days after demolition and construction activity has ceased.

### **7.1.7 Sump Pit**

A temporary pit is constructed to trap and filter water for pumping to a suitable discharge area. The purpose is to remove excessive water from excavations. Sump pits are constructed when water collects during the excavation phase of construction.

### **7.1.8 Dewatering**

Due to the depth of excavation for the building foundation and proximity to on-site watercourses and wetland areas, there may be areas of construction where the groundwater table will be intercepted and dewatering activities will take place. Site-



specific practices and appropriate filtering devices should be employed by the contractor so as to avoid discharging turbid water to the surface waters of the State of New York.

A sediment tank may be used in conjunction with other practices that will settle and filter the sediment from the stormwater runoff. The sediment tank is a compartmented tank container to which sediment laden water is pumped to trap and retain the sediment. The purpose of the tank is to trap and retain sediment prior to pumping the water to drainage ways, adjoining properties, and rights-of-way below the sediment tank site. In conjunction with the portable sediment tank, the mechanical filtering devices may be necessary to filter out the finer particulates. A permit may be required for such activities, therefore the contractor must coordinate with the resident engineer.

#### **7.1.9 Perimeter Dike/Swale**

The purpose of a perimeter dike/swale is to prevent off-site storm runoff from entering a disturbed area and to prevent sediment laden storm runoff from leaving the construction site or disturbed area. It can be used to convey stormwater runoff from the work area to a proposed sediment basin.

#### **7.1.10 Temporary Sediment Basin**

The purpose of a sediment basin is to intercept sediment-laden runoff and filter the sediment laden stormwater runoff leaving the disturbed area in order to protect drainage ways, properties, and rights-of-way below the sediment basin. The basin will be installed down gradient of construction operations which expose critical areas to soil erosion. The basin shall be maintained until the disturbed area is protected against erosion by permanent stabilization.

#### **7.1.11 Materials Handling**

The Contractor must store construction and waste materials as far as practical from any environmentally sensitive areas. Where possible, materials shall be stored in a covered area to minimize any potential runoff. The Contractor shall incorporate storage practices to minimize exposure of the materials to stormwater, and spill prevention and response where practicable. Prior to commencing any construction activities the contractor shall obtain all necessary permits or verify that all permits have been obtained.

### **7.2 Sequence of Construction**

The phasing of the project is important for the construction of the proposed development. The protection of the natural resources, specifically the watercourse and wetland areas, have also been carefully factored into the development of the sequence of construction.

A pre-construction meeting shall be held with representatives of the Town, NYCDEP, the Resident Engineer, and the Contractor prior to any site disturbance. Any potential changes to the Erosion and Sediment Control Plan should be discussed at this time.

#### **Sequence of Construction Activities**

1. A pre-construction meeting shall be held with representatives of NYCDEP, certified professional trained contractor, the town, the resident engineer, and the contractor prior to any site disturbance.
2. Prior to clearing and grubbing activities the contractor shall install stabilized construction entrance/exit and construction access area as shown on the plan.

3. Install silt fence as indicated on the erosion and sediment control plan.
4. Disconnect all utility connections to existing one story building and remove building and associated appurtenances in accordance with demolition plan. Pavement demolition shall not be performed until Temporary Sediment Basin is installed.
5. Clear and grub in area of proposed temporary sediment basins. Any topsoil shall be stockpiled on-site as shown on drawing.
6. Rough grade proposed temporary sediment basin and associated stormwater structures. Install 6" of topsoil, seed, and stabilize with rolled erosion control product (RECP).
7. Soil stockpile should be located on grassy areas in accordance with detail.
8. Install perimeter dike/swale 1 and 2 starting at the temporary sediment basins as shown on plan.
9. Begin clearing and grubbing in the area of the proposed building footprint. Stockpile fill material in designated area as shown on plan.
10. Begin construction of building and associated driveway and stormwater infrastructure.
11. Install inlet protection.
12. Once building and paved surfaces are complete, complete final grading in adjacent areas. Stabilize with rolled erosion control product.
13. Complete final grading in basins and install vegetation in accordance with landscape plan.
14. Once final grade is achieved in proposed landscaped areas temporary seeding and mulching shall be done immediately.

## **8.0 INSPECTION AND MAINTENANCE**

### **8.1 Inspections and Record Keeping During Construction**

Once the contract has been let, the name, address, and phone number of responsible parties for maintenance will be provided to the NYSDEC. The following is a description of the maintenance and inspection practices that will be implemented as part of the project. Maintenance and inspection is important to ensure that the stabilization and structural practices that are part of the SWPPP continue to be effective in preventing sediment and other pollutants from entering the stormwater system. It is the responsibility of the owner or operator to ensure that inspections are completed in accordance with NYSDEC regulations.

#### **8.1.1 Erosion and Sediment Control Inspection Report**

As a part of the SWPPP inspection and maintenance activities during construction, the Erosion and Sediment Control Inspection Report shall be updated and kept on-site. A sample Erosion and Sediment Control Inspection Report is provided in Appendix H of this report.

Inspections would be conducted by the qualified inspector periodically according to the schedule required by the SPDES GP-0-10-001. During each inspection, the qualified inspector would record the areas of disturbance, deficiencies in erosion and sediment control practices, required maintenance, and areas of temporary or permanent

stabilization. The need for modifications to the Erosion and Sediment Control Plan should be identified and implemented immediately.

The Erosion and Sediment Control Inspection Report will be completed by a qualified inspector to fully document each inspection. A qualified inspector is a person knowledgeable in the principles and practices of erosion and sediment control, such as a licensed Professional Engineer, Certified Professional in Erosion and Sediment Control (CPESC), licensed Landscape Architect, or other NYSDEC endorsed individual(s). It also means someone working under the direct supervision of the licensed Professional Engineer or licensed Landscape Architect, provided the person has training in the principles and practices of erosion and sediment control. Training in the principles and practices of erosion and sediment control means that an individual performing the site inspection has received four hours of training, which has been endorsed by the NYSDEC, from a Soil and Water Conservation District, CPESC, Inc., or other NYSDEC endorsed entity, in proper erosion and sediment control principles no later than two years from the date SPDES GP-0-10-001 is issued. After receiving the initial training, an individual working under the direct supervision of the licensed Professional Engineer or licensed Landscape Architect shall receive four hours of training every three years.

#### **8.1.2 Inspections**

Inspections shall be conducted by the qualified inspector periodically according to the following schedule:

1. When construction activities are ongoing, the qualified inspector shall conduct a site inspection at least once every seven (7) calendar days.
2. When construction activities are ongoing and the owner or operator has received authorization in accordance with Part II.C.3 of GP-0-10-001 to disturb greater than five acres of soil at any one time, the qualified inspector shall conduct at least two site inspections every seven calendar days. When performing two inspections every seven calendar days, the inspections shall be separated by a minimum of two full calendar days.
3. If soil disturbance activities have been temporarily suspended (e.g. winter shutdown) and temporary stabilization measures have been applied to all disturbed areas, the qualified inspector shall conduct a site inspection at least once every thirty (30) calendar days. The owner or operator shall notify the Regional Office stormwater contact person in writing prior to reducing the frequency of inspections.
4. If soil disturbance activities have been shut down with partial project completion, the qualified inspector can stop conducting inspections if all areas disturbed as of the project shutdown date have achieved final stabilization and all post-construction stormwater management practices required for the completed portion of the project have been constructed in conformance with the SWPPP and are operational. The owner or operator shall notify the Regional Office stormwater contact person in writing prior to the shutdown. If soil disturbance activities have not resumed within 2 years from the date of shutdown, the owner or operator shall have the qualified inspector(s) perform a final inspection and certify that all disturbed areas have achieved final stabilization, and all temporary, structural erosion and sediment control measures have been removed, and that all post-construction stormwater management practices have been constructed in conformance with the SWPPP by

signing the “Final Stabilization” and “Post-Construction Stormwater Management Practice” certification statements on the Notice of Termination (NOT). The owner or operator shall then submit the completed NOT form in accordance with NYSDEC regulations.

During each inspection, the qualified inspector should fill out the Erosion and Sediment Control Inspection Report as directed below:

On the Erosion and Sediment Control Inspection Report site map show the following:

- Disturbed site areas and drainage pathways.
- Site areas that are expected to undergo initial disturbance or significant site work within the next 14-day period.
- Site areas that have undergone temporary or permanent stabilization.
- In areas where soil disturbance activity has been temporarily or permanently ceased, temporary and/or permanent soil stabilization measures shall be installed and/or implemented within seven (7) days from the date the soil disturbance activity ceased. The soil stabilization measures selected shall be in conformance with the most current version of the technical standard, New York State Standards and Specifications for Erosion and Sediment Control.
- Photographs, including date stamp, of any deficiencies and recommendations.
- As deficiencies are fixed by the contractor, a photograph, include date stamp, should be included in the report.
- Photograph of each outfall during a rain event.

Record the following information on the Erosion and Sediment Control Inspection Report:

- For each structural measure, circle YES, NO, or N/A (not applicable) to indicate if the pollutant control measure is in conformance with specifications.
- For each structural measure, circle YES, NO, or N/A to indicate whether the structural measure is performing effectively in minimizing stormwater pollution.
- Inspect all sediment control practices and record the approximate degree of sediment accumulation as a percentage of the sediment storage volume in the allocated location on the Inspection Form Chart (i.e., 10 percent, 20 percent, and 50 percent).
- A description of the condition of the runoff at all points of discharge from the construction site. This shall include identification of any discharges of sediment from the construction site. Include discharges from conveyance systems (i.e. pipes, culverts, ditches, etc.) and overland flow;
- A description of the condition of all natural surface waterbodies located within, or immediately adjacent to, the property boundaries of the construction site which receive runoff from disturbed areas. This shall include identification of any discharges of sediment to the surface waterbody;

The qualified inspector will give a brief explanation for all locations where he/she has noted that the structural practice was either not in conformance with specifications or in need of repair. This should be noted in the Erosion and Sediment Control Inspection

Report. The qualified inspector will then give a brief recommendation for soil erosion and sediment control practices that were not installed properly or are not functioning as designed and need to be reinstalled or replaced.

#### **8.1.3 Erosion And Sediment Control Maintenance Measures**

All maintenance described below shall be completed in accordance with the New York State Standards and Specifications for Erosion and Sediment Control. Any material removed from erosion and sediment control measure shall be properly disposed.

All measures will be maintained in good working order; if repairs are found to be necessary, the qualified inspector shall notify the owner or operator and appropriate contractor (and subcontractor) of any corrective actions needed within one business day. The contractor (or subcontractor) shall begin implementing the corrective actions within one business day of this notification and shall complete the corrective actions in a reasonable time frame.

A maintenance inspection report, titled "Erosion and Sediment Control Inspection Report," will be made after each inspection conducted by a qualified inspector.

Disturbed areas and materials storage areas will be inspected for evidence of potential pollutants entering stormwater systems. Within one business day of the completion of the inspection, the qualified inspector shall notify the owner or operator and the appropriate contractor (or subcontractor) of any corrective actions that need to be taken. The contractor (or subcontractor) shall begin implementing the corrective actions within one business day of this notification and shall complete the corrective actions in a reasonable time frame.

A Monthly Summary of Site Inspection Activities will be prepared and kept on file with completed Erosion and Sediment Control Inspection Report. A Record of Stabilization and Construction Activities will be prepared and kept on file with the completed Construction Duration Inspection Forms.

The following are the maintenance requirements for each practice that will be implemented at the site.

#### **8.1.4 Stabilized Construction Entrance/Exit**

The stabilized construction entrance/exit shall be maintained in a condition that will prevent the tracking or flow of sediment onto public rights-of-way. All sediment spilled, dropped, washed or tracked onto public rights-of-way must be removed immediately; streets shall be swept as needed. The gravel pad shall be replaced as necessary. Sediment tracked onto public streets should be removed or cleaned on a daily basis.

#### **8.1.5 Silt Fence**

Maintenance of all silt fence shall be performed as needed. If a silt fence is knocked down, it shall be replaced immediately. When a silt fence appears deteriorated or ineffective and/or built up sediment reaches one-third the height of the bale or fence, the silt fence shall be replaced and/or cleaned accordingly. When "bulges" of material develop on the fence, they shall be removed.

Silt fence controls sediment runoff where the soil has been disturbed by slowing the flow of water and encouraging the deposition of sediment before the water passes through the

silt fence. Built-up sediment shall be removed from silt fences when it has reached one-third the height of the fence and properly disposed.

#### **8.1.6 Sump Pit**

The sump pit will be inspected for proper control of runoff and sediment materials. Clean water should be pumped to a grassy area. If the contractor notices any visible contrast in the water, proper filtration shall be provided to release off site.

#### **8.1.7 Soil Stockpile Detail**

The silt fencing should be inspected for bulges and proper installation. The soil stockpile should be stabilized with grass or rolled erosion control blanket.

#### **8.1.8 Storm Drain Inlet Protection**

Maintenance and inspection of the filter fabric cloth beneath inlet grates in paved areas or the filter fabric drop inlet protection around the drop inlet shall be conducted. The filter fabric cloth shall be cleaned to allow water to pass and prevent clogging the drainage structure. The drainage inlet protection should be inspected for integrity and visible sediment buildup. Collected sediment should be removed from the drainage inlet protection and shall be disposed of properly in accordance with all applicable local, state, and federal requirements.

#### **8.1.9 Dust Control**

Maintain all dust control measures through dry weather periods until all disturbed areas are stabilized.

#### **8.1.10 Soil Stabilization**

To ensure that the site is properly seeded and stabilized, the Contractor must initiate stabilization measures as soon as practicable in areas of the site where construction activities have permanently ceased and in no case more than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased. The Contractor will be responsible for the maintenance of the vegetated cover for the duration of construction activities. The areas shall be monitored to ensure that vegetation achieves good coverage over the entire disturbed section. Additional seeding shall be completed as needed. Watering shall be provided as needed.

In areas where soil disturbance activity has been temporarily or permanently ceased, temporary and/or permanent soil stabilization measures shall be installed and/or implemented within seven days from the date the soil disturbance activity ceased. The soil stabilization measures selected shall be in conformance with the most current version of the technical standard, New York State Standards and Specifications for Erosion and Sediment Control.

#### **8.1.11 Perimeter Dike/Swale**

The dike/swale should be properly stabilized with rolled erosion control blanket or other stabilization measures. Any rilling or areas of cutting should be immediately stabilized. Further investigation as to the cause should also be performed to determine if other upstream erosion and sediment control measures are needed. When accumulated sediment reached a depth of 1/3 of the total depth of the swale, this material shall be removed and properly disposed.

### 8.1.12 Temporary Sediment Basin

Any rilling and erosion of the basin sideslopes should be evaluated and adequate stabilization should be provided. Rolled erosion control blankets or other stabilization practices should be installed on the sideslopes. The outlet structure should be inspected for damages, accumulation of sediment, trash and debris, and overall performance. If sediment-laden stormwater is leaving the basin then additional erosion and sediment control practices may be required.

## 8.2 Post-Construction Operation and Maintenance

Following completion of construction, a long term inspection and maintenance program will be implemented to ensure the proper function of the stormwater management system. The program will be carried out by the facilities manager. A detailed checklist of pond inspection and maintenance is included in the Appendix I.

The stormwater conveyance system maintenance program will include the following:

- Litter and debris will be removed from catch basins, vegetated swales, ponds, and the outlet control structures.
- The stormwater management system should be inspected after each major storm event (greater than 1-year, 24-hour storm) to ensure the small orifices and inlets remain open.
- Silt will be cleaned from catch basins and other drainage structures when the depth exceeds half of the depth of the sump.
- Use of road salt for maintenance of driveway areas will be minimized.

In addition to inspection and maintenance of the stormwater management system, inspection of the overall site for areas of potential contamination will also be noted. Maintenance of existing landscaped areas is performed consistently throughout the year. Pest control would follow an Integrated Pest Management program in conjunction with guidance from the Cornell Cooperative Extension Agency, applicable regulations, and best practices. All potential pollutants, such as petroleum products, chemicals, etc, will be properly stored in designated areas that will minimize contact with precipitation.

### Post-Construction Operation and Maintenance

Following completion of construction, a long term inspection and maintenance program would be implemented to ensure the proper function of the stormwater management system. The program would be carried out by the facilities manager. A detailed checklist of pond inspection and maintenance is included in Appendix I of the SWPPP.

Below is a breakdown of the maintenance programs designed for the different proposed stormwater facilities:

#### *Surface Sand Filter (F-1)*

#### *Sedimentation Basin (Pretreatment)*

- A fixed vertical sediment depth marker would be installed in the forebay to measure sediment deposition over time.

#### *Surface Sand Filter*

- Maintenance responsibility for the filtering system would be vested with a responsible authority by means of a legally binding and enforceable instrument that is executed as a condition of plan approval. A legally binding and enforceable maintenance agreement shall be executed between the facility owner and the local review authority to ensure the following:
  - a. Sediment shall be cleaned out of the sedimentation chamber when it accumulates to a depth of more than six inches. Vegetation within the sedimentation chamber shall be limited to a height of 18 inches. The sediment chamber outlet devices shall be cleaned/repared when drawdown times exceed 36 hours. Trash and debris shall be removed as necessary.
  - b. Silt/sediment shall be removed from the filter bed when the accumulation exceeds one inch. When the filtering capacity of the filter diminishes substantially (i.e., when water ponds on the surface of the filter bed for more than 48 hours), the top few inches of discolored material shall be removed and shall be replaced with fresh material. The removed sediments shall be disposed in an acceptable manner (i.e., landfill).
- Surface sand filters that have a grass cover should be mowed a minimum of three times per growing season to maintain maximum grass heights less than 12 inches.
- Remove sediment/gross solids from sedimentation chamber and filter surface annually or when depth exceeds 3 inches.
- Sediment will be removed from stormwater ponds as needed, but at a minimum of every five years. A backhoe or excavator will be used to remove sediment accumulation from the bottom of the detention pond. However, vehicles shall be prevented from traversing the sideslopes to the extent possible to avoid damaging established vegetation. Repairs to the embankment should be done with hand tools to the extent practical.
- Provide stone drop (at least 6 inches) at the inlet.
- Eroded areas and gullies will be restored and re-seeded as soon as possible.

***Pocket Wetland Pond (W-4)***

- Maintenance responsibility for a pond and its buffer shall be vested with a responsible authority by means of a legally binding and enforceable maintenance agreement that is executed as a condition of plan approval.
- The principal spillway shall be equipped with a removable trash rack, and generally accessible from dry land.
- If a minimum coverage of 50% is not achieved in the planted wetland zones after the second growing season, a reinforcement planting is required. Eroded areas and gullies will be restored and re-seeded as soon as possible.
- Sediment removal at the inlets shall occur every 3 years or after 30% of pipe end section stone has been filled.
- Sediment removal from the main basin every 5 years or when the minimum water depth approaches 3 feet. More regular maintenance will help ensure that the system is achieving the highest removal of phosphorus. A backhoe or excavator will be used to remove sediment accumulation from the bottom of the detention pond. However, vehicles shall be prevented from traversing the sideslopes to the extent possible to avoid damaging established vegetation. Repairs to the embankment should be done with hand tools to the extent practical.



- The side slopes of the pond will be mowed at a minimum twice a year. If necessary, invasive woody vegetation around and in the pond will be removed to prevent it from becoming established within the pond.

### ***Stormwater Planters***

A regular and thorough inspection regime is vital to the proper and efficient function of stormwater planters. The following operation and maintenance program would be implemented:

- Debris and trash removal should be conducted on a weekly or monthly basis, depending on likelihood of accumulation.
- Following construction, planters should be inspected after each storm event greater than 0.5 inches, and at least twice in the first six months. Subsequently, inspections should be conducted seasonally and after storm events equal to or greater than the 1-year storm event.
- Routine maintenance activities include pruning and replacing dead or dying vegetation, plant thinning, and erosion repair.
- The soil surface should be inspected for evidence of sediment build-up from the connected impervious surface and for surface ponding. Attention should be paid to additional seasonal maintenance needs as well as the first growing season.

### ***Permeable Pavers***

- Permeable pavements are highly susceptible to clogging and subject to owner neglect. Individual owners need to be educated to ensure that proper maintenance and winter operation activities will allow the system to function properly.
- The type of permeable paving and the location of the site dictate the required maintenance level and failure rate. Concrete grid pavers and plastic modular blocks require less maintenance because they are not clogged by sediment as easily as porous asphalt and concrete. Typical maintenance activities for permeable paving are summarized below.

<b>Activity</b>	<b>Schedule</b>
Ensure that paving area is clean of debris	Monthly
Ensure that paving dewater between storms	Monthly and after storms >0.5 in.
Ensure that the area is clean of sediments	Monthly
Mow upland and adjacent areas, and seed bare areas	As needed
Vacuum sweep frequently to keep surface free of sediments	Typically 3 to 4 times a year
Inspect the surface for deterioration or spalling	Annual

When maintenance of permeable paving areas is required, the cause of the maintenance should be understood prior to commencing repairs so unnecessary difficulties and recurring costs can be avoided (Ferguson, 2005). Generally, routine vacuum sweeping and high-pressure washing (with proper disposal of removed material and washwater) can maintain infiltration rates when clogged or crusted material is removed. Signs can also be posted visibly within a permeable paving area to prevent such activities as resurfacing, the use of abrasives, and to restrict truck parking.

### ***Rain Garden***

Rain gardens are intended to be relatively low maintenance. However, these practices may be subject to sedimentation and invasive plant species which could create maintenance problems. If the recharge ability is lost by accumulation of fine sediment, mosquito breeding may occur. Adequate arrangements for long-term maintenance of these systems and updated inventories of their location are essential for the long-term performance of these practices. Rain gardens should be treated as a component of the landscaping, with routine maintenance specified through a legally binding maintenance agreement.

- Routine maintenance would include the occasional replacement of plants, mulching, weeding and thinning to maintain the desired appearance. Weeding and watering are essential the first year, and would be minimized with the use of a weed-free mulch layer.
- The landscapers would be educated regarding the purpose and maintenance requirements of the rain garden, so the desirable aspects of ponded water are recognized and maintained.
- Keeping the garden weeded is one of the most important tasks, especially in the first couple of years while the native plants are establishing their root systems. Once the rain garden has matured, the garden area should be free of bare areas except where outlet structure is located. Keep plants pruned if they start to get “leggy” and floppy. Cut off old flower heads after a plant is done blooming.
- Inspect for sediment accumulations or heavy organic matter where runoff enters the garden and remove as necessary. The top few inches of planting soil should be removed and replaced when water ponds for more than 48 hours. Blockages may cause diversion of flow around the garden. Make sure all appropriate elevations have been maintained, no settlement has occurred and no low spots have been created.

### **WEST NILE VIRUS**

Recent field observations conclude that constructed wetlands and stormwater management ponds actually pose a low risk in spreading the West Nile Virus since the mosquito species that are found in wetlands and stormwater management ponds tend not to be the variety that are known to carry the West Nile Virus. Within a healthy aquatic ecosystem, other aquatic invertebrates (dragonfly larvae and other species) prey on mosquito larvae thereby reducing mosquito populations. The SWPPP submitted to the NYSDEC and NYCDEP will include a regular maintenance schedule to be implemented at the completion of construction. This may include the stocking of the ponds with species to feed on potential mosquito larvae, and possible aeration systems to be exercised during periods of minimal flow through the ponds.

**Appendix H:**  
Traffic Improvement Measures and Correspondence

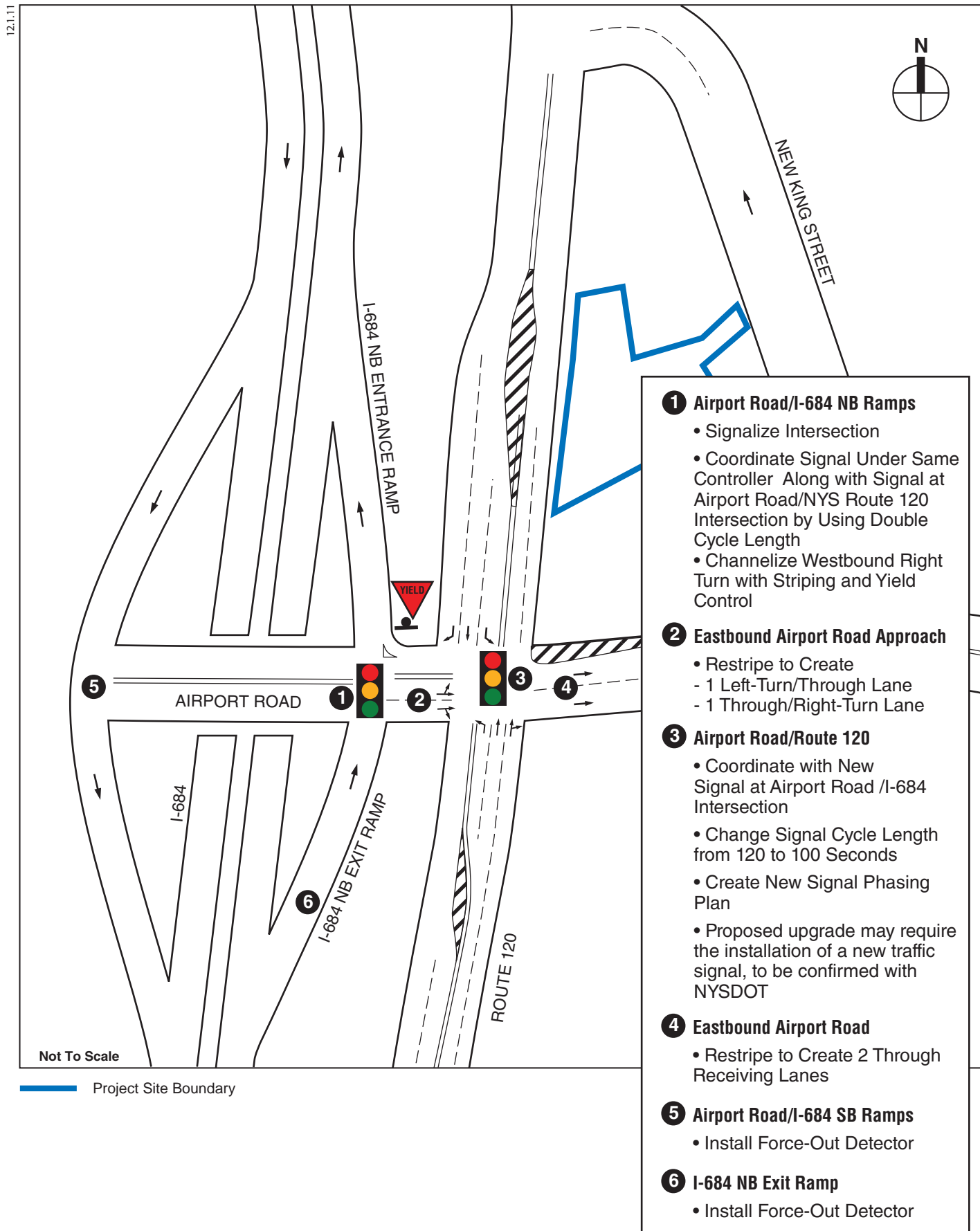


Figure 1  
**Proposed Improvement Measures**  
 Airport Road/I-684 Ramps/NYS Route 120 Corridor



**FREDERICK P. CLARK ASSOCIATES, INC.**

PLANNING, TRANSPORTATION, ENVIRONMENT AND DEVELOPMENT  
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November 11, 2011

Mr. Kevin Roseman  
Assistant Engineer  
Westchester County Department of Public Works  
148 Martine Avenue  
White Plains, New York 10601

Subject **Off-Site Traffic Mitigation – Proposed Park Place at  
Westchester Airport (Parking Garage), North Castle, New  
York**

Dear Kevin:

As the Town's Traffic Consultant we have continues to review the off-site traffic conditions at Interchange 2 of Interstate 684 and at the New York Route 120/Airport Road signalized intersection. We have met with the New York State Department of Transportation (NYSDOT) and with Applicant's Traffic Consultant, AKRF Inc., to discuss traffic impacts, current and future traffic conditions and possible mitigation to improve the overall operational characteristics of both the Interchange ramps and the signalized intersection noted above.

Enclosed please find the summary of our meeting with the NYSDOT, a draft memorandum prepared by AKRF describing the intersection improvements and a CD, which provides the SYNCHRO analysis for the intersections.

Based on our recent discussions with the NYSDOT it was recommended that we meet with you to discuss these issues and the proposed mitigation.

**FREDERICK P. CLARK ASSOCIATES, INC.**

PLANNING, TRANSPORTATION, ENVIRONMENT AND DEVELOPMENT  
RYE, NEW YORK FAIRFIELD, CONNECTICUT

Mr. Kevin Roseman

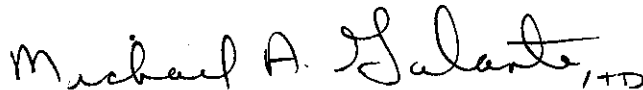
Page 2

November 11, 2011

This traffic analysis will be included in the Applicant's Draft Final Environmental Impact Statement (DFEIS), which will be submitted to the Town in the near future.

We would like to set up a meeting with you as soon as possible. It is my understanding you will be contacted by Don Tone of AKRF to schedule this meeting.

Sincerely,

A handwritten signature in black ink that reads "Michael A. Galante" with a stylized flourish at the end.

Michael A. Galante  
Executive Vice President

Enclosure

cc: Adam R. Kaufman, AICP, w/enclosure, via email  
Anthony Russo, w/enclosure, via email  
Donald R. Tone, Jr., P.E., w/enclosure, via email  
Richard Dillmann, P.E., w/enclosure, via email  
Mohamed El Saadani, w/enclosure, via email



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## **DRAFT Memorandum**

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**To:** Michael Galante and Mohamed El-Saadani, Frederick P. Clark Associates  
**From:** Alex Auld, Donald Tone  
**Cc:** Anthony Russo  
**Date:** September 9, 2011  
**Re:** Park Place – Proposed Improvement Measures

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### **Introduction**

This memorandum presents the potential improvement measures developed in response to the recommendations and findings described in the supplemental Park Place traffic analysis, which was performed by Frederick P. Clark Associates, dated December 9, 2010, as a supplement to the EIS traffic analysis performed by AKRF. This analysis concentrated specifically on creating improvements for the segment of Airport Road between the I-684 Ramps and NYS Route 120. This segment consists of three intersections; NYS Route 120 at Airport Road (signalized), Airport Road at I-684 Northbound Ramps (unsignalized), and Airport Road at I-684 Southbound Ramps (unsignalized).

Table 1 presents a summary of the No-Build, Build, and Build with Improvement conditions for the 2012 design year. As presented in the table, the Build condition with the proposed improvement measures in place will result in operating conditions better than No-Build conditions.

### **Proposed Improvement Measures**

In order to improve traffic operations along the aforementioned segment of Airport Road, the following improvement measures were developed and analyzed under the Synchro traffic network for both the weekday morning and weekday evening peak hours.

#### ***NYS Route 120 at Airport Road***

The intersection of NYS Route 120 at Airport Road is currently signalized. The proposed improvement measures are as follows:

- Coordinating the traffic signal at this intersection with a new signal proposed for the intersection of Airport Road and the I-684 Northbound Ramps.
- The proposed new traffic signal controller would operate with a “Force-Out” detector on eastbound Airport Road at the I-684 Southbound Ramp. The “Force-Out” would be triggered when eastbound queue lengths extended to a point where the Airport Road/I-684

Southbound Ramps intersection is blocked. The “Force-Out” would recognize the condition and alert the traffic signal to clear out this queue.

- Changing the signal cycle length from 120 to 100 seconds.
- Creation of a new signal phasing/timing plan (see attached Synchro files for timing plan detail)
- Restriping the eastbound Airport Road approach to designate a shared left-turn/through lane and a shared through/right-turn lane.
- Restriping eastbound Airport Road (east of NYS Route 120) to provide two lanes – a shared left/through lane and through/right turn lane.

#### ***Airport Road at I-684 Northbound Ramps***

The intersection of Airport Road at I-684 Northbound Ramps is currently unsignalized. The proposed improvement measures are as follows:

- Signalizing the intersection
- Coordinating the new signal to the traffic signal at the intersection of NYS Route 120 at Airport Road. The proposed traffic signal would operate with two phases and a double 50-second cycle. Drivers traveling westbound on Airport Road would be provided with a steady green signal (see attached Synchro files for signal timing plan detail).
- Channelizing the westbound Airport Road right-turn movement with pavement striping and placing this right-turn movement under yield control.
- The proposed new traffic signal controller would operate with a “Force-Out” detector on eastbound Airport Road at the I-684 Southbound Ramp. The “Force-Out” would be triggered when eastbound queue lengths extended to a point where the Airport Road/I-684 Southbound Ramps intersection is blocked. The “Force-Out” would recognize the condition and override the traffic signal to clear out this queue.

#### ***Airport Road at I-684 Southbound Ramps***

The intersection of Airport Road at I-684 Southbound Ramps is currently unsignalized. No specific improvement measures are proposed for this intersection (except for the “Force-Out” detector); however, the proposed improvements at the other two locations as described would improve overall operations and would likely provide a benefit to this location as well.

A summary of the analysis results and improvement measures are presented in Table 1. A graphical depiction of the improvement measures is provided in Figure 1.

#### **Improvement Measures –Results of Capacity Analysis**

By applying the improvement measures described above, the following notable improvements in Level of Service and vehicular delay will be experienced under the Build condition with improvements as compared to the Build condition without improvements:

#### ***Airport Road at NYS Route 120***

##### Weekday Morning Peak Hour

- The eastbound Airport Road approach would improve from LOS D (delay 39.7 seconds) to LOS B (delay 10.2 seconds).
- The northbound NYS Route 120 left-turn movement would improve from LOS E (delay 71.5 seconds) to LOS D (47.5 seconds).



- The southbound NYS Route 120 left-turn movement would improve from LOS D (delay 50.8 seconds) to LOS D (delay 35.6 seconds).
- The southbound NYS Route 120 through movement would improve from LOS F (delay 99.5 seconds) to LOS D (delay 52.9 seconds).
- The overall intersection would improve from LOS D (delay 35.1 seconds) to LOS B (delay 15.8 seconds).

#### Weekday Evening Peak Hour

- The eastbound Airport Road approach would improve from LOS D (delay 38.7 seconds) to LOS B (delay 17.2 seconds)

### ***Airport Road at I-684 Northbound Ramps***

#### Weekday Morning Peak Hour

- The northbound I-684 ramp right-turn movement would improve from LOS F (delay 169.5 seconds) to LOS C (34.6 seconds).

#### Weekday Evening Peak Hour

- The northbound I-684 ramp right-turn movement would improve from LOS D (delay 29.1 seconds) to LOS B (13.2 seconds).

### ***Airport Road at I-684 Southbound Ramps***

The benefits of the improvements made to the two nearby intersections to the intersection of Airport Road at I-684 Southbound Ramps can not be quantitatively identified without conducting a more intensive micro-simulation modeling effort; however, it is anticipated that the other operational improvements and “Force-Out” control will provide a benefit at this location.

Queuing at these intersections would also generally improve, as presented in Table 1 with the implementation of these improvement measures. At most approaches, average queues length would be reduced to less than the No Build condition. The two exceptions are the northbound left turn and the southbound through movement at NYS Route 120 and Airport Road. The average queue length for northbound left turn movement would increase by 39 feet, from 154 feet to 193 feet. For the southbound movement, average queue length would increase by 25 feet, from 135 feet to 160 feet. The 95th percentile queue data was not considered due to the close proximity and anticipated metering effect of the intersections. It is important to note that the increase in queue length at the eastbound approach of the Airport Road at I-684 Northbound Ramps intersection is primarily due to the signalization of the intersection, thereby removing the free flow conditions that existed previously at that approach as an unsignalized intersection.

### **Conclusions**

The proposed improvements along the Airport Road corridor would generally improve overall intersection LOS and reduce delays to LOS C or better (LOS D or better are generally regarding as acceptable operating conditions for developed areas) for both the NYS Route 120 at Airport Road and Airport Road at I-684 Northbound Ramps intersections, as shown in Table 1. All movements/lane groups at these intersections would operate at LOS D or better with the proposed improvement measures in place.

Queuing at these intersections would also generally improve, as shown in Table 1. At most approaches, the average queue length would be reduced to less than the No Build condition.

The benefits of these improvements to the intersection of Airport Road at I-684 Southbound Ramps are not quantitatively identified; however, it is anticipated that the operational improvements at the other nearby intersections will provide a benefit at this location.

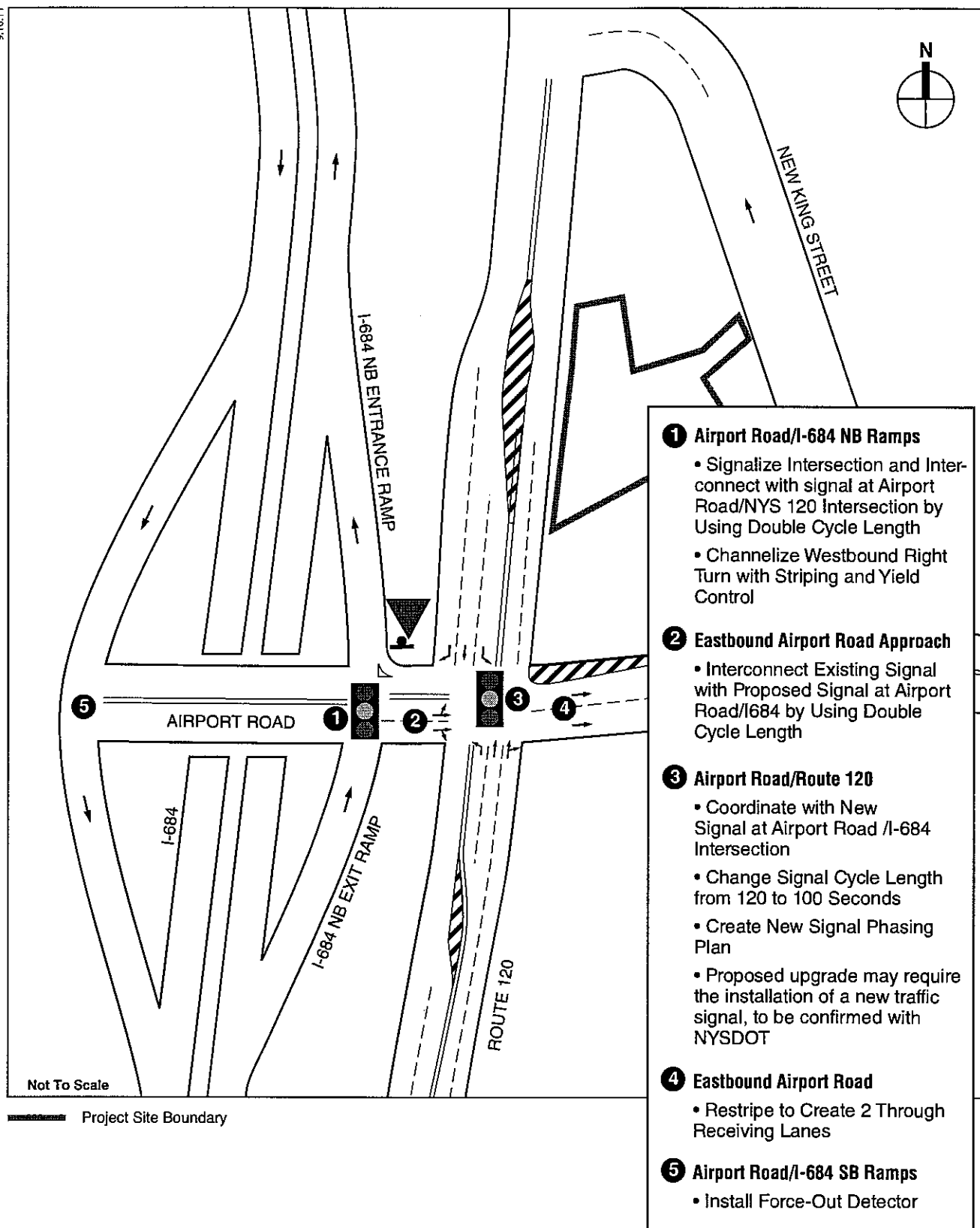


Table 1  
2012 FUTURE CONDITIONS – MEASURE OF EFFECTIVENESS AND PROPOSED IMPROVEMENT ASSESSMENT – PEAK HOURS  
AIRPORT ROAD CORRIDOR BETWEEN I-684 RAMPS AND NYS ROUTE 120  
Park Place at Westchester Airport  
North Castle, New York

INTERSECTION	CONTROL TYPE	STORAGE/ LINK LENGTH	PHYSICAL UNITS	2012 NO-BUILD CONDITIONS						2012 BUILD CONDITIONS						2012 BUILD CONDITION WITH IMPROVEMENTS									
				Weekday Morning			Weekday Evening			Weekday Morning			Weekday Evening			Weekday Morning			Weekday Evening						
				LOS/ Delay	V/C Ratio	50% Queue (feet)	LOS/ Delay	V/C Ratio	50% Queue (feet)	LOS/ Delay	V/C Ratio	50% Queue (feet)	LOS/ Delay	V/C Ratio	50% Queue (feet)	LOS/ Delay	V/C Ratio	50% Queue (feet)	LOS/ Delay	V/C Ratio	50% Queue (feet)	LOS/ Delay	V/C Ratio	50% Queue (feet)	IMPROVEMENT MEASURES (Morning and Evening)
3-NYS Route 120 at Airport Road	Traffic Signal	435	EB L	A/6.5	0.18	48	B/19.4	0.32	89	A/6.2	0.17	48	B/19.8	0.32	91	EB L	-/-	-/-	-	-	143	B/17.2	0.49	154	-Interconnect existing signal with new signal at Airport Rd/NB I-684
		100	LTR	C/27.3	0.91	524	C/31.8	0.98	269	D/39.7	0.98	745	D/38.7	0.87	331	LTR	B/10.2	D/47.5	0.69	98	D/50.9	0.92	193	Ramps by using Double	
		425	NB L	E/57.9	0.69	129	D/40.1	0.79	154	E/71.5	0.80	129	D/42.8	0.81	154	NB L	B/15.8	B/15.2	0.40	24	B/15.2	0.27	44	Cycle Length.	
		4,165	TR	C/22.6	0.43	32	C/32.5	0.62	58	C/26.0	0.62	32	C/30.3	0.64	54	TR	D/35.6	C/22.6	0.44	95	C/22.6	0.34	41	-Change cycle length from	
		200	SB L	D/44.4	0.34	59	B/14.6	0.12	25	D/50.8	0.45	77	B/15.4	0.16	33	SB L	D/52.9	D/52.9	0.64	95	D/52.9	0.76	160	120 to 100 seconds.	
		1,400	T	E/73.6	0.74	107	D/44.5	0.69	135	F/99.5	0.90	122	D/45.9	0.72	146	T	A/1.7	B/10.4	0.36	26	B/10.4	0.75	210	-Create new signal	
		600	R	A/1.5	0.31	18	B/13.5	0.75	231	A/1.9	0.37	29	B/17.2	0.83	299	R	B/15.8	-	-	-	-	-	-	-	-Restripe existing phasing/timing plan.
--	Overall	C/26.6	--	--	--	C/27.0	--	--	D/35.1	--	--	C/29.8	--	--	Overall									-Restripe Eastbound Airport Road approach to provide 1 left-turn/through lane and 1 through/right turn lane.	
4-Airport Road at I-684 Northbound Ramps	TWSC	300	EB LT	A/0.2	0.02	--	A/1.0	0.07	--	A/0.3	0.02	--	A/1.1	0.07	--	EB LT	C/26.0	B/13.1	0.80	179	B/13.1	0.44	65	-Signalize intersection and interconnect with signal at Airport Road/Route 120 by using Double Cycle Length.	
		100		F/112.7	1.13	--	C/22.2	0.75	--	F/169.5	1.28	--	D/29.1	0.83	--	WB TR	A/0.7	A/1.4	0.38	2	A/1.4	0.68	5	-Channelize Westbound Airport Road right turn with striping and yield control.	
		1,250	NB R													NB R	C/34.6	B/13.2	0.88	108	B/13.2	0.78	48	-Force-Out detection	
																Overall	B/19.3	A/6.4	--	--	A/6.4	--	--	--	
5- Airport Road at I-684 Southbound Ramps	TWSC	300	WB L	A/8.2	0.30	--	A/9.4	0.50	--	A/8.4	0.33	--	A/9.6	0.52	--	WB L	A/8.4								
		1,350	SB L	F/1--	3.79	--	F/1--	5.64	--	F/1--	4.65	--	F/1--	7.49	--	SB L	F/1--								
		1,350	T	F/1--	3.79	--	F/1--	5.64	--	F/1--	4.65	--	F/1--	7.49	--	T	F/1--								

Notes:

- Synchro 7.0 is used for capacity analysis. Level of Service determining parameter is called the service measure.
- For Signalized Intersections: Level of Service/Average Total delay per vehicle (seconds/vehicle).
- For Unsignalized Intersections: Level of Service/Average Control delay per vehicle (seconds/vehicle).
- ITE publication for Traffic Access and impact studies for site development. "A Recommended Practice" indicated that overall Level of Service ratings of A to D are normally considered acceptable for signalized intersections (Level C or better are considered desirable). Levels of Service E and F are normally undesirable.
- V/C ratio indicates the amount of congestion for each Lane Group or Movement. Any V/C ratio greater than or equal to one indicates that the Lane Group or Movement is operating at above capacity.
- The Queue Length rows show the 50<sup>th</sup> percentile queue length in feet.
- The Queue Length is for each lane. The total queue length is divided by the number of lanes and the lane utilization factor.
- Bolded 50<sup>th</sup> percentile queue exceeds the storage available.
- Physical Units consist of the following:
  - Lane Group and Intersection Overall for Traffic Signal Controlled Intersections; and
  - Movement for TWSC Intersections.
- Abbreviations: NB = Northbound, EB = Eastbound, SB = Southbound, WB = Westbound, L = Left Turn, T = Through, R = Right Turn, N/A = Not Available, TWSC = Two-Way STOP control



**FREDERICK P. CLARK ASSOCIATES, INC.**

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**VIA EMAIL AND U.S. MAIL**

October 31, 2011

Mr. Richard Dillmann, P.E.  
Regional Traffic Engineer  
New York State Department of Transportation  
4 Burnett Boulevard  
Poughkeepsie, New York 12603-2594

Subject **Meeting Summary and Minutes – Park Place at  
Westchester Airport (Parking Garage); North Castle, New  
York**

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Dear Mr. Dillmann:

The following is a summary of our discussions at a meeting held with the Applicant's Traffic Consultant, our office representing the Town and NYSDOT on Friday, October 21, 2011.

The following were present at this meeting:

Richard Dillmann, New York State Department of Transportation  
Anthony Russo, AKRF, Inc.  
Donald Tone, AKRF, Inc.  
Mohamed El Saadani, Frederick P. Clark Associates, Inc.  
Michael A. Galante, Frederick P. Clark Associates, Inc.

The purpose of the meeting was to discuss a proposed mitigation plan for the intersections of New York State Route 120/Airport Road (Entrance Road) and the Interstate 684 ramps at Interchange 2.

Over the last few months Frederick P. Clark Associates, Inc. and AKRF have discussed and analyzed current and projected traffic operations of the intersections. Capacity analyses prepared by the Applicant's Traffic Consultant found that motorists currently experience traffic congestion during peak periods.

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October 31, 2011

As part of these modifications the Airport Road lane configuration would be converted to a two-lane configuration to accept traffic from two lanes for the connecting road to the immediate west of the New York State Route 120 intersection. This can be accomplished

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Mr. Richard Dillmann, P.E.

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by modifying the existing pavement markings since there is more than sufficient pavement area to accommodate two travel lanes.

It was noted by NYSDOT that the A.M. and P.M. signal timing and phasing plans could be different to address different traffic patterns and volumes. This has already been incorporated into the analyses and recommendations.

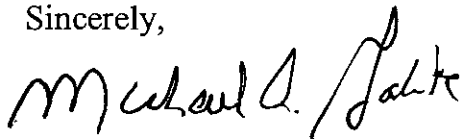
The NYSDOT agreed to review the Conceptual Plan, traffic volumes and capacity analyses provided by the Applicant in conjunction with Frederick P. Clark Associates, Inc. representing the Town.

The Applicant requested a Conceptual Approval of the plan and analyses.

It is important to note that all this information will be included in the Final Environmental Impact Statement, which is currently being prepared by the Applicant and will be submitted to the Town within the next several weeks.

If you have any questions, please do not hesitate to call.

Sincerely,



Michael A. Galante  
Executive Vice President

cc: Adam R. Kaufman, via email  
Anthony Russo, via email

**Appendix I:**  
Airport Rules and Regulations –  
Laws of Westchester County

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**Airport Rules & Regulations -- Laws of Westchester County**

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**Sec. 712.391. Purpose.** [Act No. 74-1967, § 321, eff. 1-2-1968; amended by Act No. 58-1979, Act No. 89-2007, § 2]

1. The County of Westchester is the owner and sponsor of the Westchester County --Airport.
2. The County of Westchester recognizes that enforceable rules and regulations must exist for the orderly management and operation of the Westchester County Airport to protect the health and welfare of the public, provide for economic efficiency and accountability, to limit impacts on the environment and to meet the safety and security needs of the users of the airport, the residents of the County and the communities in close proximity to the airport. It is the purpose of this Article to create such rules and regulations.
3. The Westchester County Commissioner of Transportation will designate a person to be the Airport Manager who will be responsible for the administration of these rules and regulations. That person may be an agent or employee of an agent authorized by written contract to manage the operations of the airport.
4. The Westchester County Department of Public Safety will have the duty to exercise such law enforcement power as necessary to enforce these rules and regulations and to enforce all other applicable laws and regulations at the airport.

**Cross reference--**Westchester County Airport Advisory Board, Ch. 277, Art. IX.

**Sec. 712.401. Definitions.** [Act No. 74-1967, § 322, eff. 1-2-1968; amended by Act No. 58-1979, Act No. 89-2007, § 3]

The following terms as used in this title shall have the following meanings:

1. *Aircraft* shall mean and include any and all contrivances now or hereafter used for the navigation of or flight in air or space, including but not limited to airplanes, lighter-than-air craft, helicopters, gliders, amphibians, sport category aircraft and other aircraft identified by the Manager.
2. *Airport* shall mean Westchester County Airport.
3. *Airport rules and regulations* shall mean these rules and regulations.
4. *Charter flights* shall mean those flights other than regular scheduled airline service on which cargo and passengers are carried for hire.
5. *Firearm or similar weapon* means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; or (C) any firearm muffler or firearm silencer.
6. *Fixed base operation* includes any of the following services: storage and/or tie-down of aircraft, repair and/or maintenance of aircraft, the sale of new and/or used aircraft, the repair, sale and/or maintenance of aircraft radios, instruments and/or electronic equipment, rental and/or lease, and the sale of aviation fuels and other petroleum products.
7. *Flying club* shall mean a not-for-profit membership corporation organized and/or operating



for the purposes of providing flight instruction for its members only and/or providing aircraft for use by its members only.

8. *Fixed base operators* shall mean those persons authorized to provide fixed base operations to the public.
9. *Fuel handling* shall mean the transporting, delivering, fueling and/or drainage of fuel or fuel waste products.
10. *Fuel storage area* shall mean and include those portions of the airport designated temporarily or permanently by the Manager as areas in which gasoline, jet fuel, or any other type of fuel may be stored, including but not limited to gasoline tank farms.
11. *Manager* shall mean the person designated by the Westchester County Commissioner of Transportation to be the Airport Manager, or, in his absence, the person acting as Airport Manager.
12. *Operational Area* shall mean any portion of the airport designated by the Manager on or from which aircraft may be directly accessed, including but not limited to runways, taxiways, ramps, aprons, parking areas, paved and unpaved areas and hangars.
13. *Operator* shall mean any person in legal or actual control of an aircraft on, or in the vicinity of Westchester County Airport.
14. *Permission* shall mean permission granted by the Manager or his designated representative.
15. *Person* shall mean any individual, firm, copartnership, corporation, association or company (including any assignee, receiver, trustee or similar representative thereof) or the United States of America or any foreign government or any state or political subdivision thereof.
16. *Public aircraft parking and storage areas* shall mean and include those portions of the airport designated and made available temporarily or permanently by the manager to the public for the parking or storage of aircraft.
17. *Public landing area* shall mean and include those portions of the airport including runways and taxiways designated and made available by the Manager to the public for the landing and taking off of aircraft and other areas between and adjacent to said runways and taxiways.
18. *Public ramp and apron area* shall mean and include those portions of the airport designated and made available by the Manager to the public for loading or unloading of passengers and/or cargo on and from aircraft.
19. *Public vehicular parking area* shall mean and include those portions of the airport designated and made available by the Manager to the public for the parking of vehicles.
20. *Restricted area* shall mean any area of the airport posted to prohibit entry to or to limit entry or access to specifically authorized persons.
21. *Vehicle* shall mean and include automobiles, trucks, buses, motorcycles, horsedrawn vehicles, bicycles, pushcarts and any other device in or upon which any person or property is or may be transported, carried or drawn upon land, except aircraft.

**Sec. 712.411. General provisions. [Act No. 74-1967, § 323, eff. 1-2-1968; amended by Act No. 58-1979, Act No. 89-2007, § 4]**

1. Any entry upon or use of the airport or any part thereof, whether with express permission or without, is conditioned upon compliance with the airport rules and regulations; and entry upon or into the airport by any person shall be deemed to constitute an agreement by such person to comply with said rules and regulations.
2. No person shall conduct any commercial activity on the airport without a permit issued by the Manager.

3. No commercial photography shall be permitted on the airport except with the permission of the Manager.
4. Unless otherwise provided in a written agreement with the County, no person shall use any area of the airport for storage of cargo or other property without permission of the Manager. In the event of a violation of this provision, the Manager shall have authority to order the cargo or other property removed or to cause the same to be removed and stored at the expense of the owner or consignee thereof, without liability for damage thereto arising from or out of such removal or storage on the part of the County of Westchester, or its operating agent or their agents or employees.
5. Unless otherwise provided in an agreement with the County, no person shall use any area of the airport other than the public aircraft parking and storage areas for parking and storage of aircraft without permission of the Manager. In the event of a violation of this provision, the Manager shall have the authority to order the aircraft removed or to cause the same to be removed and stored at the expense of the owner thereof, without liability for damage thereto arising from or out of such removal or storage.
6. No person shall use or occupy an Operational Area for any purpose whatsoever except a purpose pertaining to the servicing of tenants, concessionaires, airlines, activities associated with airlines, or governmental agencies or a purpose connected with the maintenance and operation of the airport.
7. No person shall land or take off an aircraft on or from the airport, except upon the payment of such fees and charges as may from time to time be prescribed by the County.
8. No person, except in an emergency, shall descend by parachute and land or light within or upon the airport without permission of the Manager.
9. No person, except agents of an authorized federal, state or local governmental agency while acting pursuant to their official investigatory and/or public safety duties, shall disturb, move or remove any aircraft parts or other equipment found on the airport or as a result of an aircraft accident or incident unless authorized by the Manager.
10. No person shall operate, rent or provide aircraft for hire or for a revenue producing purpose at the airport without a permit issued by the Manager.
11. No person, except a fixed base operator, or except as otherwise required by federal aviation regulations, will conduct fixed base operations at the airport.
12. No services shall be offered to the public in the terminal except from a counter, office or other facility suitable to the purpose. Such facilities may not be erected except pursuant to a written agreement with the County through its operating agent.
13. No flying club shall be conducted on the airport without the written consent of the Manager.
14.
  - (a) No person will enter into the Operational Area unless he or she displays a currently valid identification badge issued to that person by the Manager or his/her designee, or unless he or she is escorted by a person displaying such badge.
  - (b) No vehicle will be operated in the Operational Area unless it has been issued a permit by the Manager or is escorted by a person displaying a currently valid identification badge issued to that person by the Manager.
  - (c) No person will, knowingly or negligently, by act of commission or omission, permit any unauthorized or unescorted person or vehicle to enter the Operational Area.
  - (d) No person will, knowingly or negligently, by act of commission or omission, create or maintain a condition that would permit any unauthorized or unescorted person or vehicle

- to enter the Operational Area.
- (e) A person and/or vehicle is deemed to be "escorted" pursuant to this subdivision when said person and/or vehicle is accompanied by, remains within the line of sight of and in close proximity to an authorized person displaying a currently valid identification badge issued to that person by the Manager and the authorized person is able to observe and influence the activity of the person and/or vehicle escorted.
  - (f) Nothing in this section shall be construed to preclude:
    - (1) the otherwise lawful entry of federal, state or county emergency services personnel, vehicles and equipment, or additional emergency services personnel, vehicles and equipment authorized by the Manager, into the Operational Area in the performance of official duty in response to an emergency condition when aeronautical operations have been suspended, or
    - (2) the otherwise lawful entry by law enforcement officers authorized by the Westchester County Department of Public Safety into the Operational Area or into any Restricted Area of the Terminal at any time in the regular performance of their duties or in pursuit of any person suspected of violating any federal, state or county law.
15. No person will operate or attempt to operate, move, enter, affix anything to or remove anything from any aircraft at the airport without the permission of the owner or operator thereof or the authorization of the Manager.

**Sec. 712.421. Provisions in regard to aircraft. [Act No. 74-1967, § 324, eff. 1-2-1968; amended by Act No. 58-1979, Act No. 54-1981, Act No. 89-2007, § 5]**

1. The Manager may prohibit aircraft landing, except for emergency landing, and aircraft taking off at any time he or she deems such landings and takeoffs likely to endanger persons or property.
2. No person shall navigate any aircraft, land aircraft upon, fly aircraft from, or conduct any aircraft operations on or from the airport otherwise than in conformity with the then current federal rules and regulations pertaining thereto and applicable local noise abatement regulations.
3. No aircraft shall be operated on any surface of the airport (a) in a careless or negligent manner or in disregard of the rights and safety of others, or without due caution and circumspection; or (b) at a speed or in a manner which endangers, or is likely to endanger person or property; or (c) while the operator is under the influence of liquor, or any narcotic derivative, hallucinogenic or habit-forming drug; (d) when such aircraft is so constructed, equipped or loaded to endanger persons or property; or (e) in violation of federal aviation regulations.
4. Any person operating or controlling an aircraft on or at the airport shall at all times comply with the instructions, signals or directions of the County and the Manager, by whatever means communicated.
5. No aircraft may land or take off at the airport unless it is equipped with brakes and a functioning radio capable of direct two-way communication with the control tower, except in the case of an emergency or by special permission of the Manager.
6. No motorless aircraft may land or take off at the airport without permission of the Manager.
7. No aircraft with a certified maximum gross weight in excess of 120,000 pounds shall land or take off at the airport without prior permission of the Manager.

8. No engine shall be started while the aircraft is parked on the airport or aircraft taxied at the airport where the exhaust or propeller blast may cause injury to persons or do damage to property. If it is impossible to taxi such aircraft without compliance with the above, then the engine must be shut down and the aircraft towed to desired destination. Aircraft shall not be positioned or taxied so that propeller slipstream or jet engine exhaust is directed at spectators, personnel, hangars, shops or other buildings in such a manner as might cause personal injury, property damage or the activation of sprinkler systems or fire detection systems.
9. Aircraft engines shall be started and warmed up on the airport only in places designated for such purposes by the Manager. No aircraft engine shall be run up without the permission of the Manager or his designee, and then in areas authorized for that purpose by the Manager.
10. No aircraft shall use any part of the public landing areas considered by the Manager temporarily unsafe for landing or taking off, or which is not available for any cause; the boundaries of such areas will be marked with safety cones or barricades by day and red flashing lights by night, and notice thereof will be given to the control tower by the Manager.
11. Aircraft landing at the airport shall make the landing runway available to others by clearing the runway as promptly as possible. All aircraft shall hold their position and/or clear the runways during an emergency unless otherwise directed by the control tower.
12. Except for authorized procedure(s) approved by the Manager, no aircraft engine shall be started or run at the airport unless a pilot certificated to operate that particular type of aircraft or a certified Federal Aviation Administration ("FAA") airframe and/or power plant mechanic qualified to start and operate the engines of that particular type of aircraft shall be attending the controls. The brakes of all aircraft shall be on and set before the engine or engines are started.
13. Except for authorized procedure(s) approved by the Manager, no aircraft shall be taxied at the airport unless a pilot certificated to operate that particular type of aircraft or a certified FAA airframe and/or power plant mechanic properly qualified to taxi that particular type of aircraft shall be attending the controls.
14. All aircraft which are being taxied, towed or otherwise moved at the airport shall be under full control and shall move or be moved at a reasonable speed. Whenever any aircraft is being taxied, towed or otherwise moved on the public landing or public ramp and apron area, there shall be a person attending the controls of the aircraft who shall monitor by radio the transmitting frequency in use by the control tower or who, if necessary, shall cause that frequency to be monitored by another person in the aircraft at that time. In the event the aircraft is not equipped with radio or the radio is inoperative, the aircraft shall be moved only when accompanied by an escort vehicle, equipped with an operating radio.
15. With respect to safety, no person shall park an aircraft or leave the same standing on a public landing area, public ramp and apron area, public parking and storage area or Operational Area at the airport except at such places as may be prescribed or designated by the Manager for such use. When in such area, every aircraft shall be firmly tied to the ground by ropes and stakes, or otherwise properly secured or attended. The main or nose landing wheels of every aircraft not so tied down shall be chocked with wheel chocks. Helicopters shall have braking devices and/or rotor mooring devices applied to the rotor blades.
16. The Manager may move, at the owner's expense, any aircraft parked or stored at the airport or direct the person having control of such aircraft to move said aircraft from the place where it is parked or stored to any other designated place without liability to the County of Westchester or the operating agent for damage which may result in the course of such

moving.

17. Aircraft fuel dump valves shall be tested only with the permission of the Manager.
18. No aircraft shall be taxied into or out of a hangar under its own power.
19. Every aircraft parked on a public ramp and apron area, with its engine(s) running or preparing to start engine(s), shall have its rotating beacon lighted.
20. All aircraft being taxied or towed or otherwise moved at the airport shall proceed with running lights on from one-half hour before sunset until one-half hour after sunrise.
21. The operator of any aircraft involved in any accident causing personal injury or property damage at the airport shall make a prompt and full report of said accident to the Manager and will comply with federal accident reporting requirements.
22. Unless the provisions of section 712.411(9), hereof apply, the operator and owner of aircraft wrecked or disabled at the airport shall be responsible for the prompt removal of such aircraft and parts thereof as directed by the Manager. In the event of failure to comply with such direction, such wrecked or disabled aircraft and parts may be removed by the Manager at the owner's or operator's expense and without liability to the County of Westchester or the operating agent for damage or loss which may result in the course of such removal.
23. All charges due to the airport for the use of the airport shall be payable in cash unless credit arrangements satisfactory to the Manager have been made in advance or the Manager approves payment by check.
24. The Manager shall have the authority to detain any aircraft for nonpayment of any charges relating to said aircraft properly due to the County.
25. The Manager shall have the authority to deny the use of the airport to any owner or operator violating any airport or federal regulation or any violation of the then current noise abatement procedure.
26. The operator of any transient aircraft shall report to the airport operations office or a fixed base operator upon landing to register his aircraft for the payment of fees.
27. All persons operating aircraft in and out of Westchester County Airport will follow the flight patterns established by the Federal Aviation Administration.

**Sec. 712.431. Provisions in regard to safety. [Act No. 74-1967, § 325, eff. 1-2-1968; amended by Act No. 58-1979, Act No. 89-2007, § 6]**

1. No person in or upon the airport shall do or omit to do any act if the doing or omission thereof endangers or is likely to endanger persons or property.
2. No person shall smoke or carry lighted cigars, cigarettes, pipes, matches or any naked flame in or upon any fuel storage area, public landing area, public ramp or apron area, or public aircraft parking and storage area, on any open deck, gallery or balcony contiguous to and overlooking any such area, or in any other place where smoking is specifically prohibited by signs, or upon any open space within 50 feet of any fuel carrier which is not in motion.
3. No person shall start any open fires of any type, including flare pots, torches or fires in containers formerly used for oil, paint and similar materials, on any part of the airport without permission of the Manager.
4. No person shall store, keep, handle, use, dispense or transport at, in or upon the airport any Division 1.1, Division 1.2, Division 1.3, or Division 1.4 explosives or Class A poison, as defined by the Hazardous Material Regulation of the Department of Transportation: (a) dynamite, nitroglycerine, black powder propellants, fireworks, blasting caps, cordeauxdetonant or other explosives; (b) gasoline, alcohol, ether, liquid shellac, lacquer,

lacquer thinner, kerosene, turpentine, solvent or other flammable or combustible liquids; (c) ammonium nitrate, sodium chlorate, wet hemp, powdered magnesium, nitrocellulose, peroxides or other readily flammable solids or oxidizing materials; (d) hydrochloric acid, sulphuric acid or other corrosive liquids; (e) hydrogen, acetylene, liquefied petroleum gas, nitrogen, helium, argon, liquid or gaseous oxygen, chlorine, ammonia or other compressed flammable or nonflammable gasses, prussic acid, phosgene, arsenic, carbolic acid, potassium cyanide, tear gas, lewisite or any other poisonous substances, liquid or gaseous; or (f) any radioactive article, substance or material; without the permission of the Manager. Persons with the permission of the Manager will store, keep, handle, use, dispense or transport such items at such time or place or in such manner or condition as may be imposed by the Manager so as to ensure the safety of persons or property.

5. No person shall, at any time, possess, store, keep, handle, use or transport at, in or upon the airport any conventional weapon or chemical, biological, radiological, nuclear explosive (CBRNE) weapon or incendiary weapon, other than in accordance with subdivision 8 of Section 712.461.
6. No person shall, without prior permission of the Manager, store, keep, handle, use or transport at, in or upon the airport the following radioactive material;
  - a. Source material.
  - b. Special nuclear material (as defined in Standard for Protection Against Radiation promulgated by the Nuclear Regulatory Commission, Title 10, Code of Federal Regulation, Part 20) including, but not limited to plutonium, uranium enriched in the isotope 233, or in the isotope 235 or any material artificially enriched by any of the foregoing.
  - c. Nuclear reactor fuel elements that are partially expanded or irradiated.
  - d. New nuclear reactor fuel elements.
  - e. Radioactive waste material.
  - f. Any radioactive material moving under an Interstate Commerce Commission special permit or Nuclear Regulatory Commission permit and escort.

Advance notice of at least 24 hours shall be given the Manager to permit full investigation and clearance for any operation requiring permission under this rule. The permission of the Manager may be given to movements of radioactive materials only when such materials are packed, marked, labeled and limited as required by federal regulations applying to transportation of explosives and other dangerous articles and do not create any hazard to life or property at the airport.

7. No person shall tamper with any fire extinguisher equipment at the airport or use the same for any purpose other than fire fighting or fire prevention. All such equipment shall be inspected in conformity with the National Fire Protection Association regulations. Tags showing the date of the last such inspection shall be left attached to each unit.
8. No person shall tamper with any heater valve, sprinkler valve or device, blower motor or any other airport machinery or equipment. No person other than an authorized airport employee shall turn on or off heaters in public areas or operate any other airport equipment except as covered by specific written agreement.
9. No person shall block or modify any selfclosing fire door or do anything which would interfere or prevent its closing in the event of fire.

**Sec. 712.441. Provisions in regard to fuel handling. [Act No. 74-1967, § 326, eff. 1-2-1968; amended by Act No. 58-1979, Act No. 89-2007, § 7]**

1. All aircraft fueling operations shall be in accordance with federal and state spill prevention counter measure and control requirements.
2. All aircraft fuel servicing vehicles shall be designed, constructed and equipped in compliance with National Fire Protection Association standards and Title 14 Code of Federal Regulations Part 139, including any subsequent amendments made thereto for vehicles servicing aircraft with standard grades of aviation fuel.
3. Aircraft shall not be fueled or drained of fuel within a hangar or other enclosure and shall require no less than one 20-pound or larger dry chemical fire extinguisher to be available for use in connection therewith.
4. The product resulting from degassing or draining of fuel shall be placed in gasoline drums or special gasoline containers approved for this purpose by the Manager. Before reuse, such product shall be checked for identification and compliance with supplier's quality standards. Other disposition shall be in accordance with procedures approved by the Manager.
5. Aircraft fuel handling at the airport shall be conducted at least 50 feet away from any hangar or other building.
6. During fuel handling in connection with any aircraft, no person shall operate any radio transmitter or receiver in such aircraft or switch electrical appliances on or off in such aircraft, nor shall any person do any act or use any material which is likely to cause a spark within 50 feet of such aircraft.
7. No airborne radar equipment shall be operated or ground tested on a public passenger ramp and apron area or any area wherein the directional beam of high intensity radar is within 300 feet or the low intensity beam [less than 50 kilowatts' output] is within 100 feet of another aircraft, an aircraft refueling operation, an aircraft refueling truck or aircraft fuel or flammable liquid storage facility.
8. During fuel handling in connection with any aircraft, no passenger or passengers shall be permitted to remain in such aircraft unless a cabin attendant is at the door and a passenger ramp is in position if the same is required for the safe and rapid debarkation of passengers. Smoking is prohibited in or about such aircraft during fuel handling. Only personnel engaged in the fuel handling or in the maintenance and operation of the aircraft being fueled shall be permitted within 50 feet of the fuel tanks of such aircraft during the fuel handling operations.
9. Persons engaged in aircraft fuel handling shall exercise care to prevent overflow or spillage of fuel or oil. In the event of spillage of fuel or oil, the vendor or tenant responsible for the fuel spillage shall immediately report the spill to the airport operations duty supervisor and clean the spilled fuel or oil with a dry absorbent cleaning agent and dispose of the agent in a manner in compliance with all federal, state and county laws and regulations and airport environmental management system procedures and requirements. In no case shall spilled fuels be allowed to enter the airport drainage system.
10. No person shall start the engine or engines of any aircraft when there is gasoline or any type of fuel on the ground underneath the aircraft. In the event of spillage of gasoline or any type of fuel, no person shall start an aircraft engine in the area in which the spillage occurred, even though the spillage may have been cleaned, until permission has been granted by the Manager or his authorized representative for the starting of engines in the area.
11. Automotive and ramp equipment shall be refueled at refueling stations and from dispensing devices approved by the Manager.

**Sec. 712.451. Provisions in regard to vehicles. [Act No. 74-1967, § 327, eff. 1-2-1968; amended by Act No. 58-1979, Act No. 89-2007, § 8]**

1. All persons operating vehicles on airport property must at all times comply with any signal, direction or lawful order of the Manager or any member of the Westchester County Department of Public Safety. When traffic is controlled by traffic lights, signs, mechanical or electrical signals, or pavement markings, all vehicles will obey such lights, signs, signals and marking, unless a law enforcement officer from the Westchester County Department of Public Safety directs otherwise.
2. No person operating a vehicle on airport property shall operate such vehicle in a careless or negligent manner or in disregard to the rights and safety of others, or without due caution or circumspection or at a speed or in a manner which endangers or is likely to endanger persons or property or while the driver thereof is under the influence of intoxicating liquor or any narcotic, narcotic derivative, hallucinogenic or habit-forming drug. No person may operate any vehicle which is so constructed, equipped or loaded as to endanger or be likely to endanger persons or property is prohibited.
3. No vehicle shall be operated in or upon any Operational Area, fuel storage area, public landing area, public ramp and apron area, or public aircraft parking and storage area unless: (a) the driver thereof is duly authorized to operate such vehicle on the highways of the State of New York; and (b) such vehicle is registered in accordance with the provisions of the law of the State of New York and approved for usage by the Manager and/or his or her designee.
4. No vehicle shall be operated in or upon an Operational Area, fuel storage area, public landing area, public ramp and apron area, or upon public aircraft parking and storage area unless it is in sound mechanical order, and has adequate lights, horns and brakes and clear vision from the driver's seat.
5. All vehicles, except emergency equipment responding to an alarm, shall yield the right-of-way to any and all aircraft in motion.
6. All vehicles operating in or on the Operational Area shall be equipped with a two-way radio receiver and transmitter operational at all times, unless otherwise authorized by the Manager. If the vehicles are operating between one-half hour before sunrise and one-half hour after sunset or when the visibility is limited, then they shall be additionally equipped with a functional rotating beacon in operation. No vehicle shall enter a public landing area without first obtaining clearance from the traffic control tower.
7. No vehicle shall be driven on the public ramp and apron area between an aircraft and its loading gate except for emergency vehicles.
8. No vehicle for hire shall load or unload passengers at the airport at any place other than that designated by the Manager.
9. No person shall park a vehicle or permit the same to remain halted on a public vehicular parking area, Operational Area, fuel storage area, public landing area, public ramp and apron area, or public aircraft parking and storage area, except at such places and for such periods of time as may be prescribed or permitted by the Manager. No aircraft refueling vehicle shall be parked within 50 feet of a building or hangar other than refueling service shop or within 15 feet of any other aircraft refueling vehicle.
10. No person shall stop or park a vehicle:
  - a. In front of a driveway or airport access gate;
  - b. Within a bus stop safety zone or taxicab zone, except vehicles authorized to use such areas;



- c. In other than leased or authorized areas for the purpose of washing, greasing or repairing a vehicle, except repairs necessitated by an emergency;
  - d. On the roadway side of any stopped or parked vehicle;
  - e. Within 15 feet of a fire hydrant;
  - f. Other than in accordance with restrictions posted on authorized signs.
11. The Manager may remove, or cause to be removed, from any area of the airport any vehicle which is disabled, abandoned, parked in violation of these rules and regulations or which presents an operational problem to any other area at the airport, at the operator's expense and without liability to the County of Westchester or its operating agent for any damage which may result in the course of such moving.
12. In accordance with New York State law, the driver of any vehicle involved in an accident on the airport which results in injury or death to any person or damage to any property will immediately stop such vehicle at the scene of the accident and give his name, address and operator's license and registration number, insurance carrier and insurance identification information, including but not limited to the number and effective dates of said driver's insurance policy, to any law enforcement officer from the Westchester County Department of Public Safety. If practical, the driver will also give such information to the person(s) injured and/or the person(s) sustaining the damage, or witness of the injury/damage, and report said accident to the Manager forthwith.
13. No person shall park a vehicle within any public vehicular parking area except upon the payment of such parking fees and charges as may from time to time be prescribed by the County.
14. The Manager shall have authority to detain vehicles parked in air terminal vehicular parking areas for nonpayment of parking charges.
15. Operations of fuel trucks on the airport will be in accordance with instructions issued by the Manager. All fuel trucks on the airport will operate with a rotating red beacon. The beacon will be in operation at all times while the fuel truck is in use between one-half hour before sunset and one-half hour after sunrise.

**Sec. 712.461. Miscellaneous provisions. [Act No. 74-1967, § 328, eff. 1-2-1968; amended by Act No. 58-1979, Act No. 89-2007, § 9]**

- 1. No person or vehicle shall travel on any portion of the airport except upon the roads, walks or places provided for the particular class of traffic; nor occupy the roads or walks in such manner as to hinder or obstruct their proper use.
- 2. No person shall enter any restricted area of the airport posted as being closed to the public without permission of the Manager.
- 3. No person shall enter upon the Operational Area of the airport without permission of the Manager or his designated representative.
- 4. No person shall:
  - a. Post, distribute or display signs, advertisements, circulars, printed or written matter at the airport without permission of the Manager;
  - b. Engage in a demonstration at the airport without having first obtained a permit from the Commissioner of Transportation of Westchester County.
- 5. No person shall solicit funds, free rides or any other service for any purpose at the airport without permission of the Manager.
- 6. No person, unless duly authorized by the Manager, shall, in or upon any area, platform,

stairway, waiting room, building or any other appurtenance of the airport:

- a. Sell or offer for sale any article of merchandise;
  - b. Solicit any business or trade, including the carrying of baggage for hire; the shining of shoes or bootblacking;
  - c. Entertain any persons by singing, dancing or playing any musical instrument;
  - d. Solicit alms.
7. No person shall loiter in and about any toilet area, platform, waiting room, building or any other appurtenance of the airport for purposes of violating any provision of this article or otherwise engaging in unlawful activity.
8. Possession and use of any weapons, explosives or incendiaries in the airport will be in compliance with all applicable laws and regulatory measures, including, but not limited to, the regulations of the Transportation Security Administration regarding the transport, possession and carriage of weapons in airports and on aircraft, and is further proscribed as follows:
- a. No person, except an authorized federal, state or local law enforcement officer, authorized air carrier employee designated as a federal flight deck officer, authorized airport security employee, security officer authorized to carry a firearm under Title 49 of the Code of Federal Regulations § 1562.29, or authorized member of an armed force of the United States, on official duty, will carry or transport any firearm or similar weapon in the Operational Area or Restricted Areas, unless said person has the permission of the Manager to do so and said firearm or similar weapon is unloaded and secured within a locked, hard-sided safe storage depository, as that term is defined in Section 527.11(d) of the Laws of Westchester County.
  - b. No person, except an authorized federal, state or local law enforcement officer, authorized air carrier employee designated as a federal flight deck officer, authorized airport security employee, security officer authorized to carry a firearm under Title 49 of the Code of Federal Regulations § 1562.29, or authorized member of an armed force of the United States, on official duty, will carry or transport any firearm or similar weapon in areas open to the public for general use, unless said person is otherwise specifically authorized under applicable law to carry such firearm or similar weapon and it is unloaded and secured within a locked, hard-sided safe storage depository, as that term is defined in Section 527.11(d) of the Laws of Westchester County, and is brought for the purpose of transport and declared to the aircraft operator in accordance with Title 49 of the Code of Federal Regulations § 1540.111(c). All unauthorized persons will surrender all such firearms or similar weapons in their possession to any law enforcement officer of the Westchester County Department of Public Safety.
  - c. No person, except an authorized federal, state or local law enforcement officer, authorized air carrier employee designated as a federal flight deck officer, authorized airport security employee, security officer authorized to carry a firearm under Title 49 of the Code of Federal Regulations § 1562.29, or authorized member of an armed force of the United States in the course of official duties and otherwise in accordance with federal, state and local law, will discharge any firearm or similar weapon on the airport.
9. No person shall interfere or tamper with any aircraft at the airport or start the engine of such aircraft without the consent of the operator or owner.
10. Any person finding any lost article at the airport shall deliver it to the office of the Manager and/or any law enforcement officer of the Department of Public Safety. An article unclaimed

by the owner will be disposed of pursuant to law.

11. Cleaning of or otherwise maintaining aircraft shall be accomplished only in the areas designated for that purpose by the Manager.
12. No person shall place, discharge or deposit in any manner, offal, garbage or any refuse in or upon any airport highway, Operational Area, fuel storage area, public vehicular parking area, public landing area, public ramp and apron area, or public aircraft parking and storage area, except at such places designated and marked for such purpose and under such conditions as the Manager may from time to time prescribe.
13. No person shall enter any public building, arcade, observation platform, public landing area or public ramp and apron area of the airport with any animal except a Seeing Eye dog or one properly confined for shipment. Animals may be permitted in other areas of the airport if on a leash or confined in such manner as to be under control.
14. Notwithstanding any other provision of law to the contrary, the Manager has the authority to remove any person from the airport that the Manager determines to be acting in a disorderly, unruly, or disruptive manner. In addition, the Manager has the authority to remove any property from the airport that the Manager determines is necessary for the security of the airport and/or the safety the property.

**Sec. 712.462. Westchester County Airport Terminal Use Procedures. [L.L. No. 2-2004; § 1; amended by L.L. No. 7-2005]**

1. Applicability. This Section shall apply to all use of the passenger terminal ("terminal") and the terminal ramp at the Westchester County Airport ("Airport") by Airlines providing Passenger Service, as that term is defined herein. The terminal ramp shall be for the exclusive use of Airlines providing Passenger Service. This Section does not apply to any activities by Airport users not providing Passenger Service. All Passenger Service provided at the Airport shall be provided at the Terminal.
2. Definitions. The following terms as used in this Section shall have the following meanings:
  - a. "Airline" shall mean any person providing Passenger Service in aircraft designed for more than (9) passenger seats, including but not limited to, any air carrier or other operator certificated to provide Passenger Service under Parts 119, 121 or 135 of the Federal Aviation Regulations, Title 14, Code of Federal Regulations. For purposes of this Section, "person" shall mean any individual, firm, company, association, society, corporation, partnership, copartnership, joint-stock company, trust, estate, governmental entity or any other legal entity or legal representatives, agents or assigns thereof. The masculine gender shall include the feminine, and the singular shall include the plural, where indicated by context.
  - b. "Commissioner" shall mean the Commissioner of Transportation of Westchester County or his or her designee, which designee may include the Airport Manager of the Westchester County Airport.
  - c. "Ground Handling Services" shall include, at a minimum, ramp services, aircraft arrival and departure marshalling, aircraft parking and push-back, external engine starting, gate access coordination, aircraft deicing/anti-icing. Americans with Disability Act compliance on the Terminal Ramp, and any other services needed in the ordinary course by Airlines using the Terminal Ramp.
  - d. An "Incumbent Passenger Allocation" shall mean a Passenger Allocation that was in use by a Qualified Airline on November 30, 2004, pursuant to the provisions of Westchester

- County Board of Legislators Resolutions 59-1985 and 266-1985, and the 1994 Terminal Capacity Affirmation and Extension Agreement.
- e. An "Incumbent Ramp Allocation" shall mean a Ramp Allocation that was in use by a Qualified Airline on November 30, 2004, pursuant to the provisions of Westchester County Board of Legislators Resolutions 59-1985 and 266-1985, and the 1994 Terminal Capacity Affirmation and Extension Agreement.
  - f. "Limited Qualified Airline" shall mean any Airline that: (1) holds a valid operating certificate from the Federal Aviation Administration for the type of service it provides or seeks to provide at the Airport; (2) has, or has immediate and demonstrable, access to the aircraft and operating personnel to provide the service it provides or seeks to provide; (3) has a valid Limited Terminal Use Agreement with the County in effect; (4) furnishes proof of requisite insurance pursuant to the terms of the then-current Limited Terminal Use Agreement; (5) has designated a representative for purposes of this Section; (6) is current on its financial obligations with the County; and (7) has conducted no more than four (4) operations constituting Passenger Service at the Airport within the previous 90 days.
  - g. "Limited Terminal Use Agreement" shall mean that agreement that Airlines must execute with the County in order to satisfy in part the requirements of Subsection 2(f) above.
  - h. "Passenger" shall mean any person enplaned or deplaned at the Terminal. Federal employees who are actually on official duty and Airline employees shall not be deemed to be Passengers.
  - i. "Passenger Allocation" shall mean the authorization to schedule the enplanement or deplanement of one passenger onto or from an aircraft that has a Ramp Allocation.
  - j. "Passenger Service" shall mean any air service to or from the Airport for which seats are individually offered or sold to the public or a segment of the public, regardless of whether such individual seats are offered or sold directly by the aircraft operator, a charterer, another Airline, or any other entity.
  - k. A "Qualified Airline" shall mean any Airline that: (1) holds a valid operating certificate from the Federal Aviation Administration for the type of service it provides or seeks to provide at the Airport; (2) has, or has immediate and demonstrable access to, sufficient aircraft and operating personnel to provide the service it provides or seeks to provide; (3) has a valid Terminal Use Agreement with the County in effect; (4) furnishes proof of requisite insurance pursuant to the terms of the then-current Terminal Use Agreement; (5) has designated a representative for purposes of this Section; and (6) is current on its financial obligations with the County.
  - l. "Ramp Allocation" shall mean the authorization to schedule an Airline aircraft operation on the Terminal Ramp during a designated half hour each day, or for a single designated half hour in the case of a Limited Qualified Airline operating pursuant to Subsection 7 hereof. An operation shall consist of an arrival or a departure.
  - m. "Technical Specifications and Procedural Requirements" shall mean any applicable and lawful technical, engineering, and mechanical specifications for the Airport, including but not limited to the Terminal Ramp, that are issued from time to time by the Commissioner, based upon Federal Aviation Administration guidelines and regulations, and upon the safety, efficiency and physical limitations of the Airport, including the Terminal and Terminal Ramp. The Technical Specifications and Procedural

- Requirements shall at least address maximum aircraft length, maximum wingspan, and maximum weight for aircraft using the Terminal Ramp.
- n. "Terminal Ramp" shall refer to that portion of the apron at the Airport that is immediately adjacent to the Terminal building and which is available for scheduled Airline operations.
  - o. "Terminal Use Agreement" shall mean that agreement that Airlines must execute with the County in order to satisfy in part the requirements of Subsection 2(j)<sup>iEN</sup> above.
3. Terminal Ramp Use and Capacity.
- a. Terminal Ramp Capacity. A maximum of four aircraft may be scheduled to use the Terminal Ramp at any time. It is the responsibility of each Airline to schedule arrivals and departures of its aircraft so as to avoid the need to wait elsewhere on the Airport for access to the Terminal Ramp. Allocation of the Terminal Ramp capacity shall be governed by Subsection 5 below.
  - b. Use of Terminal Ramp. An Airline must hold a Ramp Allocation for each aircraft operation scheduled to use the Terminal Ramp. The Commissioner may deny access to the Terminal Ramp to any aircraft without a current Ramp Allocation. Subject to availability and subject to other Ramp Allocations, the County will endeavor to accommodate any aircraft arriving outside of the half-hour slot of its Ramp Allocation for such arrival or departure if caused by weather, airspace delays, mechanical difficulties, or other factors.
  - c. Parking on the Terminal Ramp. Subject to the use of the Terminal Ramp by Qualified Airlines that have valid Ramp Allocations, and subject to the efficient management of limited space on the Terminal Ramp and security considerations, the County will attempt to accommodate Qualified Airlines (1) who wish to park aircraft overnight on the Terminal Ramp after the last scheduled Ramp Allocation for the day or (2) when a Qualified Airline has nonsequential arrival and departure Ramp Allocations for the same aircraft. Any actions by the County allowing use of the Terminal Ramp for such parking pursuant to this provision shall not entitle an Airline to any changes in its Ramp Allocations. An Airline is not entitled to occupy a parking position during any half hour for which it has no Ramp Allocation and must vacate the Terminal Ramp when directed by Airport staff.
  - d. Technical Specifications. All Airlines shall comply with the Technical Specifications and Procedural Requirements as issued by the Commissioner from time to time.
  - e. Ground Handling Services. Ground Handling Services for all Airline operations shall be provided by the County or its contractors. An Airline must be a Qualified Airline or Limited Qualified Airline to receive Ground Handling Services.
4. Passenger Capacity of the Terminal. In the interest of passenger safety, security, public health, and comfort, the Terminal was designed for a capacity of 240 passengers per half hour, without consideration of whether such passengers are enplaning or deplaning. Allocation of this capacity shall be governed by the provisions of Subsection 5.
5. Allocation of Terminal Ramp and Terminal Capacity. In order reasonably and equitably to allocate the available Terminal building and Terminal Ramp capacity, to ensure competition, and to promote orderly and efficient Airport operations, the County shall allocate available Terminal Ramp and Terminal building capacity by means of a lottery as set forth in this Subsection.
- a. Incumbent Allocations: A Qualified Airline that has Incumbent Ramp Allocations or

Incumbent Passenger Allocations may continue to operate pursuant to such Allocations under this Section after November 30, 2004, so long as (1) this Section is in effect; and (2) the Airline complies with applicable County ordinances, laws, rules and regulations governing the Airport, including this Section. After December 31, 2004, Incumbent Ramp Allocations and Incumbent Passenger Allocations shall be treated identically to later-acquired Ramp Allocations and Passenger Allocations for purposes of compliance with this Section, including the provisions of Subsections (5)(d)-(m).

- b. Future Quarterly Allocations:
  - i. By the last business day of December 2004, the Commissioner shall publish a report ("Terminal Capacity Allocation Report") identifying all Incumbent Ramp Allocations and Incumbent Passenger Allocations as of November 30, 2004. The Terminal Capacity Allocation Report shall list (1) the time slots for, and names of, Qualified Airlines using each Incumbent Ramp Allocation and Incumbent Passenger Allocation; and (2) available Ramp Allocations and Passenger Allocations, on a half-hourly basis.
  - ii. By the last business day of every third month after November 30, 2004, the Commissioner shall make a preliminary determination of the then-available Terminal and Terminal Ramp capacity by subtracting all Ramp and Passenger Allocations from total Passenger and Ramp capacity and shall make a report of such available capacity ("Quarterly Available Capacity Report") available in a convenient form for Qualified Airlines and all other interested persons.
  - iii. The allocation of available capacity shall be by means of a Quarterly Lottery. The Quarterly Lottery may be conducted through representatives of the County and Qualified Airlines or may be conducted electronically, as the Commissioner shall determine from time to time.
  - iv. No later than December 15, 2004, and by the 15th day of each third month thereafter, any Qualified Airline seeking an Allocation of any available capacity by means of the Quarterly Lottery shall submit a request to the Commissioner in the manner specified by the Commissioner. The request shall, at a minimum, identify the Airline's designated representative for the forthcoming Quarterly Lottery and the aircraft with which the Qualified Airline proposes to provide service for any Ramp Allocation.
  - v. On January 4, 2005, and on the first Tuesday of each third month thereafter, the County shall conduct the Quarterly Lottery to allocate capacity for the half hourly periods for which there is available capacity. The Commissioner may designate alternative dates for the Quarterly Lottery upon 14-days notice to the designated representative of each Qualified Airline.
  - vi. At the commencement of the Quarterly Lottery, the Commissioner will provide a report of then-available Passenger and Ramp Allocations. All Qualified Airlines who submitted a request pursuant to Subsection (5)(b)(iv) shall be randomly assigned numbers to establish their order of selection in the first round of the Quarterly Lottery. Each Qualified Airline, in its order of selection, may draw Ramp Allocations and Passenger Allocations for up to a total of four (4) operations to take place in four half-hourly periods, up to the available Passenger and Ramp capacity identified in Subsections 3 and 4, whichever may first be reached. An operation shall be either an arrival or a departure. Draws may include increases in Passenger

- Allocations (so long as the total of Passenger Allocations for all Qualified Airlines during the half-hour period does not exceed 240 passengers) for operations for which the Qualified Airline has a Ramp Allocation.
- vii. At the conclusion of the first round of the Quarterly Lottery, should any Passenger or Ramp capacity remain, the process shall be repeated, with the same order of selection, for such number of additional rounds as may be necessary until no Qualified Airline that submitted a request pursuant to Subsection (5)(b)(iv) seeks Allocations.
  - c. Other Matters. Routes, rates, selection of aircraft and other matters not addressed by this Section, other County law or regulation, the Airport's Technical Specifications and Procedural Requirements, or Terminal Use Agreement shall be determined by the Qualified Airline or the Federal Aviation Administration pursuant to federal law.
  - d. Compliance with Applicable Requirements. All Airlines operating at the Airport shall at all times be in compliance with all applicable and lawful Airport rules and regulations. County ordinances and laws, including all Airport Technical Specifications and Procedural Requirements that may be issued from time-to-time. Any Airline violating or causing the violation of such rules, regulations, ordinances, laws, agreements or technical specifications shall cure such violation within fifteen (15) days of being so notified by the County. Failure to so cure shall result in the cancellation by the Commissioner of the Ramp Allocations and Passenger Allocations connected with such violations.
  - e. Calculation of Allocation Usage for Purposes of Determining Compliance. For purposes of determining whether an Airline is exceeding its Passenger Allocations for any half-hour period under Subsection (5)(h), the County shall employ a calendar month average. For the purposes of determining whether an Airline should have its Passenger Allocations adjusted for under-use pursuant to Subsection (5)(g), the County shall employ a three-calendar-month average based on the data reported pursuant to Subsection (5)(f). In calculating such averages, the denominator shall be the number of aircraft operations actually flown during the period pursuant to a particular Ramp Allocation and the numerator shall be the number of passengers actually enplaned and deplaned on all such operations. For purposes of using averages: (1) any average that is not a whole number shall be rounded down to the next lowest whole number if the fraction greater than the next lowest whole number is lower than five tenths; and (2) any average that is not a whole number shall be rounded up to the next highest whole number if the fraction greater than the next lowest whole number is equal to or greater than five tenths. In calculating such averages, the County shall not include, either in the numerator or the denominator, data concerning operations during the following holiday periods:
    - i. Christmas/New Year from December 20 through January 5.
    - ii. The Presidents' Day holiday from three (3) days before Presidents' Day through three (3) days following Presidents' Day.
    - iii. Easter from five (5) days prior to Easter through the fifth day following Easter.
    - iv. Memorial Day from three (3) days before Memorial Day through three (3) days after Memorial Day.
    - v. July 4, from July 1 through July 7.
    - vi. Labor Day, from three (3) days prior to Labor Day through three (3) days after Labor

- Day.
- vii. Thanksgiving from five (5) days prior to Thanksgiving through five (5) days after Thanksgiving.
- f. Reporting.
- i. Airlines operating at the Airport shall certify actual passenger loads, on a per flight, per day, enplaned, deplaned, basis to the County twice monthly in the form designated by the Commissioner by no later than five business days from (1) the 15th of each month and (2) the last day of each month.
  - ii. Each Airline shall designate at the time of any application under Subsection (5)(b)(iv). Quarterly Lottery draw under Subsection (5)(b)(vii), or transfer under Subsection (5)(k), the type of aircraft to be used for each Ramp Allocation time slot. Such designation shall be in the form established for this purpose by the Commissioner. Further, any Airline seeking to change the type of aircraft using a Ramp Allocation shall provide notice to the County, in the form designated by the Commissioner, at least seven days prior to such change. Any designation or change in aircraft type shall comply with the Technical Specifications and Procedural Requirements.
  - iii. The County may, at any time, audit passenger ticket lifts and/or other appropriate passenger statistics of any Airline to determine actual passenger enplanements or deplanements.
  - iv. Failure to comply with any of the reporting or audit requirements contained in this Subsection (5)(f) within five days of an Airline's receipt of notice of noncompliance by the Commissioner shall result in immediate termination of the Ramp Allocation(s) and Passenger Allocations of the Airline. Further, any intentional misstatement of information required in this Section, as determined by the Commissioner, shall result in the immediate termination of the Ramp Allocation(s) or Passenger Allocations of the Airline.
- g. Failure to Use Allocations. If for any three-calendar-month period, an Airline's actual average passenger load for any half-hour for which it has Passenger Allocations should be less than 85 percent of the total of its Passenger Allocations, then the Commissioner shall reduce its Passenger Allocation for the subsequent quarter to 115 percent of such reported three calendar-month-average passenger loads for that half-hour period. The review and reduction made pursuant to this Subsection shall be made for successive, and not for overlapping, three-month periods. The County shall waive the application of this Subsection for any period in which the Commissioner has determined that total passenger enplanements at the Airport have been significantly adversely affected by war, national emergency or extraordinary terrorist threat, labor action, or force majeure.
- h. Exceedance of Passenger Allocations. If for any calendar month, an Airline's average passenger load during any half-hour period should exceed its Passenger Allocations for that period, then such Airline's Passenger Allocations shall be adjusted to such average load figure or such portion thereof as the available capacity of the Terminal shall accommodate ("Adjusted Passenger Allocations"). If two or more Qualified Airlines' average passenger loads for a calendar month in a particular half-hour time period exceed their Passenger Allocations and there is insufficient Passenger Capacity to accommodate all of these exceedances, the Commissioner shall assign Adjusted Passenger Allocations proportionally to the Qualified Airlines' shares of Passenger



Allocations for that half-hour period. If there is insufficient available Terminal capacity to accommodate all of the exceedances of Passenger Allocations by an Airline, then the Commissioner shall issue a written Notice of Violation to such Airline, and the Airline shall, within fifteen (15) days from such notice, reduce its average passenger load to the Adjusted Passenger Allocations level. For the purposes of determining compliance with such mandated reduction, the average passenger load will be calculated for the period from 15 days prior to the Notice of Violation to 15 days after the Notice of Violation ("Compliance Test Period"). In lieu of such mandated reduction, a Qualified Airline may obtain sufficient Passenger Allocations from another Airline pursuant to Subsection 5(k) to accommodate its average usage during the Compliance Test Period. Should any Airline fail to reduce its average passenger load during the Compliance Test Period then:

- i. On the sixteenth day following the Notice of Violation, such Airline's Passenger Allocations for the applicable half-hour period shall be reduced by the amount by which that the Airline's average loads exceeded the Airline's Passenger Allocations as set forth in the Notice of Violation. The Airline shall thereupon be required to comply immediately with such reduced Passenger Allocations.
  - ii. The Airline shall lose the privilege of participating in the next subsequent Quarterly Lottery for either Passenger Allocations or Ramp Allocations.
  - iii. Should such Airline's average passenger load during the calendar month following the reduction in its Passenger Allocation under Section 5(h)(i) not comply with such reduced Passenger Allocation, then the Commissioner may terminate, upon twenty days' written notice, such Airline's Ramp Allocation and Passenger Allocations for the subject half-hour period.
- i. Use of Ramp Allocations.
- i. Any Airline obtaining a Ramp Allocation must initiate service within 60 days from the date it obtains such Allocation and must provide such service on at least a five-day-per-week basis, with aircraft capable of using the Passenger Allocations corresponding to the particular Ramp Allocation. Should any Airline fail to initiate service within such 60-day period, such Airline shall, on the 61st day, lose such Ramp Allocation and Passenger Allocations. Such Airline shall also lose the privilege of participating in the next Quarterly Lottery. Notwithstanding the foregoing, any Airline may, within ten days of any Quarterly Lottery, surrender to the County without penalty any Passenger Allocations or Ramp Allocation or portions thereof obtained in such Quarterly Lottery. Any surrendered Allocations will become available capacity in the next Quarterly Lottery.
  - ii. Any Airline with a Ramp Allocation must schedule use of such Allocation on at least a five-day-per-week basis, with aircraft capable of using the Passenger Allocations corresponding to the particular Ramp Allocation, or transfer the Allocation to another Airline or Airlines (pursuant to Subsection k) which together would provide service that schedules use of such Passenger Allocations, on at least a five-day-per-week basis.
    - (a) Failure to schedule use of a Ramp Allocation on at least a five-day-per-week basis shall result in a notice of violation from the Commissioner. If the Airline fails to schedule use of its Ramp Allocation on at least a five-day-per-week basis within 15 days of the notice of violation from the Commissioner, the Commissioner shall immediately cancel such Airline's Ramp Allocation and

associated Passenger Allocations. If an Airline fails to schedule use of its Ramp Allocation on at least a five-day-per-week basis for a second time within a one-year period, the Commissioner shall immediately cancel the Airline's Ramp Allocation and associated Passenger Allocations upon one-day notice. The County shall waive the application of this Subsection for any period in which the Commissioner has determined that total operations at the Airport have been significantly adversely affected by war, national emergency or extraordinary terrorist threat, labor action, or force majeure.

- (b) The Commissioner may also terminate an Airline's Ramp Allocation and associated Passenger Allocations if he or she determines that an Airline's actual use of its Ramp Allocation is inconsistent with its published schedules for use of the Ramp Allocation, indicating an intent to hold a Ramp Allocation without making use of it on a five-day-per-week basis.
    - iii. Before initiating new or changed service, a Qualified Airline must have approval from the Commissioner regarding scheduled arrival and departure times pursuant to Subsection (5)(j).
  - j. Scheduled Departure and Arrival Times. The Commissioner shall approve changes in and new scheduled arrival or departure times. Any changes not disapproved within 10 days of receipt of notice of such changes shall be deemed approved. Approval or disapproval of any changes shall be based on the following criteria:
    - i. All arrival and departure times must be scheduled within the half hour for which the Qualified Airline holds a Ramp Allocation;
    - ii. The Qualified Airline must have adequate Passenger Allocations;
    - iii. The scheduled arrival and departure times must allow for the aircraft's passengers to be enplaned and/or deplaned within the half hour for which the Qualified Airline holds a Ramp Allocation and Passenger Allocations;
    - iv. Adequate ramp time outside of the half-hour period for which the Qualified Airline holds a Ramp Allocation is available, if necessary, to accommodate the proposed operation;
    - v. Scheduled times shall not interfere with efficient handling of other operations within the same half-hour period or in an adjacent period;
    - vi. Scheduled operations shall minimize the need for any arrival or departure holds on other Airport aprons;
    - vii. Operations shall maintain a reasonable balance of arrival and departure passengers in the Terminal;
    - viii. In no event shall the Commissioner's approval or disapproval of scheduled departure or arrival times deny a Qualified Airline the authority to use its Ramp Allocation and/or Passenger Allocation or affect Airline rates or routes.
  - k. Transfer of Allocations; Notice.
    - i. Qualified Airlines may, upon two (2) weeks prior written notice to the County, transfer:
      - (a) Ramp or Passenger Allocations to another Qualified Airline provided that the transferor has operated flight(s) under such Allocations, employing aircraft capable of using the entire Allocations, for 30 days on at least a five-day-per-week basis, or
      - (b) Ramp Allocations and Passenger Allocations from one time period into another

- time period as long as no such transferred Allocations would result in use of the Terminal or Terminal Ramp in excess of capacity for any half-hour time period.
- ii. The Commissioner may, in his sole discretion, waive either the notice period or the transferor's required use of the Allocation under this Section for short-term transfers but in no event shall waive the notice requirement.
  - iii. Notice to the County shall be in such electronic and/or other form designated by the Commissioner. Any notice of a transfer shall set forth (a) the names of the transferor and transferee; (b) the duration or any other conditions on the transfer, or whether the transfer is unconditional; and (c) whether the transfer is for all, or a portion (and if so, what portion) of the Allocation.
  - iv. The County's review of notices pursuant to this Subsection shall be limited to a determination that the proposed transaction (a) involves Qualified Airlines and (b) will not result in exceedance of the capacity limits set forth Subsections 3(a) or 4 of this Section.
- l. New Entrants. An Airline not currently providing service at the Airport can become a Qualified Airline and obtain Allocations through the Quarterly Lottery and/or transactions with other Airlines pursuant to Subsection (5)(k) if it demonstrates compliance with the criteria set forth in Subsection (2)(h).<sup>iiEN</sup>
- m. Disputes Regarding Allocations. To the extent that any Qualified Airline disputes the identity of the designated holder of Ramp Allocations and/or Passenger Allocations, such Qualified Airline shall seek to resolve its dispute informally among the affected Airlines. If such efforts should fail, any Qualified Airline may petition the Commissioner for resolution of the dispute. After providing all Qualified Airlines with notice of the dispute, an opportunity to provide supporting information, and an opportunity for a meeting with all affected Airlines, the Commissioner shall make one of three findings: (1) find that the Allocation is properly identified by the County in the reports required in Subsections (5)(b)(i), (5)(b)(ii) and/or (5)(b)(vi); (2) that another Qualified Airline is properly the holder of the relevant Allocation; or (3) that no Qualified Airline has a clear right to the allocation and that the Allocation is forfeited and available for reallocation pursuant to the provisions of Subsection (5). All determinations of the Commissioner shall be final.
6. Hearings; Enforcement of This Section.
- a. Request for Hearing and Reconsideration. Any Airline that disputes a decision by the Commissioner to terminate its Ramp Allocation(s) and/or Passenger Allocations is entitled to seek a hearing and reconsideration of the Commissioner's decision by submitting to the Commissioner a formal request within 10 days of such decision. Upon receipt of such request, the effectiveness of the Commissioner's decision to terminate an allocation shall be suspended until he or she renders a decision under Subsection (6)(c).
  - b. Process for Hearing.
    - i. Upon request for a hearing and reconsideration, the Commissioner shall cause to be held a hearing before a hearing officer selected by the County on the termination at issue.
    - ii. A formal hearing shall be on due and adequate notice to the party concerned and shall be set down for a day certain no less than 15 days and no more than 30 days from the Airline's request for hearing and reconsideration.
    - iii. A notice of hearing shall set forth:

- (a) The time and place of the hearing;
  - (b) The basis or bases for the Commissioner's decision to terminate Ramp Allocations and/or Passenger Allocations;
  - (c) The right to present evidence;
  - (d) The right to examine and cross-examine witnesses;
  - (e) The right to be represented by counsel; and
  - (f) That failure to appear shall constitute a default by the respondent, that the hearing may proceed in the respondent's absence and a determination made based upon evidence submitted by the Westchester County Department of Transportation.
- iv. The hearing officer may grant adjournments upon request of any party to the proceeding, provided that an adjournment shall not be for an indefinite period of time, but shall be set down for a day certain.
  - (a) If an adjournment is requested in advance of the hearing date, such request shall be presented to the hearing officer in writing, and shall specify the reason for such request.
  - (b) In considering an application for adjournment of a hearing, the hearing officer shall consider whether the purpose of the hearing will be affected or defeated by the granting of such adjournment.
- v. To aid in the administration of this Section, the Commissioner or any hearing officer designated by him or her in a particular proceeding, may issue subpoenas in the Commissioner's name requiring the attendance and giving of testimony by witnesses and the production of books, papers and other evidence for any hearing or proceeding conducted under this Section. Service of such subpoena(s), enforcement of obedience thereto, and punishment for disobedience thereof, shall be had as and in the manner provided by the Civil Practice Law and Rules relating to the enforcement of any subpoena. It shall be the responsibility of the party requesting the issuance of a subpoena to effect service thereof.
- vi. On the return day of the hearing, the hearing officer shall note the appearances of the persons attending the hearing. Witnesses shall be sworn and testimony shall be recorded either by a certain stenographer or by use of an electronic recording device.
- vii. Testimony shall be transcribed upon the request of any interested party. The party requesting the transcript shall pay the costs and expenses in connection therewith.
- viii. The hearing officer shall not be bound by the strict rules of evidence in the conduct of a hearing, but the determination shall be founded upon sufficient legal evidence to sustain it.
- ix. After the conclusion of a formal hearing, the hearing officer shall prepare and issue findings of fact, conclusions and recommendation(s) to the Commissioner.
- c. Decision by Commissioner.
  - i. Upon the conclusion of a formal hearing and after receipt of the hearing officer's report and recommendation(s), the Commissioner shall make a decision based on such findings, determinations and recommendations as he or she deems proper, and shall execute an order carrying such decision into effect.
  - ii. The Commissioner may direct a rehearing or require the taking of additional evidence and may rescind or affirm, in whole or in part, a prior determination after such hearing.

- iii. The Commissioner shall cause to be served upon the Airline, copies of findings of fact, conclusions and recommendations and orders made as a result of a formal hearing.
  - d. Service by County. Service of findings of fact, conclusions and recommendations, and orders, shall be made by hand or by overnight delivery to the designated representative of the Airline.
  - e. Hearing Cost. The cost of the hearing process (including but not limited to the fees for the hearing officer, transcription and other clerical costs, and the cost of providing witnesses but excluding any salaries of County employees) shall be borne equally by all Airlines who are parties to the hearing.
  - f. Injunctions. The County may maintain actions in any court of competent jurisdiction to restrain by injunction any attempted use of the Terminal or Terminal Ramp by any Airline without current, valid Ramp Allocations or Passenger Allocations or any attempted Passenger Service in violation of this Section.
7. Limited Qualified Airlines.
- a. Applicability. A Limited Qualified Airline may use the Terminal for an operation subject to the requirements of this Subsection.
  - b. Operations. The Commissioner shall approve each operation by a Limited Qualified Airline so long as he has determined that there is adequate Terminal and Terminal Ramp space available for such operation and either of the following conditions exists:
    - i. The Limited Qualified Airline has executed an agreement with a Qualified Airline for the use of the Qualified Airline's Ramp Allocation and the operation would not result in the use of the Terminal in excess of the limits set forth in Subsection 4 of this Section; or
    - ii. The Limited Qualified Airline provides the County with at least seven days' notice that it intends to conduct a single operation for which there is an available Ramp Allocation.

Limited Qualified Airlines shall comply with the applicable provisions of Subsections 3, 4, and 5(d) of this Section. Each approval by the Commissioner under this Subsection 7 shall constitute a one-time Ramp Allocation for purposes of Subsections 3(b) and 3(c) of this Section.

- c. Reporting. An Airline shall provide the Commissioner with a report, on a form provided by the Commissioner, regarding any Passenger Service operation authorized pursuant to Subsection 7(b). The County may, at any time, audit passenger ticket lifts and/or other appropriate passenger documents of any Airline to determine actual passenger enplanements or deplanements.
- d. Effect of Noncompliance. The Commissioner may terminate any Airline's authority to use the Terminal and to receive Ground Handling services for 90 days upon a finding that the Airline has failed to comply with the requirements of this Subsection 7.
- e. Hearings. Any Airline that disputes a decision by the Commissioner pursuant to Subsection 7(d) is entitled to seek a hearing and reconsideration of the Commissioner's decision. Such hearing and reconsideration shall substantially follow the process outlined in Subsection 6.
- f. <sup>iii</sup>ENEffect on Qualified Airline Reporting. Use of Ramp Allocations by a Limited Qualified Airline pursuant to this Subsection shall not affect the calculations under

Subsections 5(g) or 5(h).

**Sec. 712.463. Westchester County Airport Security. [Act No. 89-2007, § 10]**

1. No persons entering Westchester County Airport will violate any security measures imposed pursuant to the provisions of Title 49 of the Code of Federal Regulations, Chapter XII, entitled Transportation Security Administration, Department Of Homeland Security, and any amendments made thereto and/or any other applicable federal, state or local laws and rules and regulations of the Federal Aviation Administration and Transportation Security Administration.
2. No person shall fail to obey and comply with the provisions of any posted sign in the airport.
3. No person shall enter any restricted area unless authorized by the Manager and/or his or her designee.
4. The Commissioner of Transportation has authority under these rules to impose such additional requirements, restrictions, policies, and procedures regarding public areas and non-public areas in the airport as may be deemed necessary for the safety, security and protection of the general public and property. Such additional requirements, restrictions, policies, and procedures may be triggered by an increase in the threat to the airport, its passengers or aircraft, or the national airspace. More stringent security measures may be initiated by the Department of Homeland Security utilizing the Homeland Security Advisory System, or any other applicable law enforcement agency, including the Westchester County Department of Public Safety, based on heightened security concerns stemming from developing threats. No person will violate any rules and regulations as contained in this chapter and any additional requirements, restrictions, policies, procedures and/or more stringent security measures imposed or initiated pursuant to this subdivision.

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<sup>i</sup> Editor's Note--So in original; should refer to Subsection 2(k).

<sup>ii</sup> Editor's Note: So in original; should be Subsection (2)(k).

<sup>iii</sup> Editor's Note: So in original, should be Subsection f.

## WESTCHESTER COUNTY AIRPORT TERMINAL USE AGREEMENT

THIS AGREEMENT ("Agreement") made effective as of the \_\_\_\_ day of May 2004, by and among:

THE COUNTY OF WESTCHESTER, a municipal corporation existing by virtue of the law of the State of New York, having an office and principal place of business in the Michaelian Office Building, 148 Martine Avenue, White Plains, New York 10601

(hereinafter referred to as the "County")

and

\_\_\_\_\_, ("Permittee"), which has executed this Agreement by signing below.

### W I T N E S S E T H:

WHEREAS, in or about March 1985, the Westchester County entered into a Stipulation and Order of Partial Settlement and Dismissal (the "Stipulation") with various named airlines, the Federal Aviation Administration and the U.S. Attorney in connection with certain litigation entitled Midway Airlines, Inc., et al. v. County of Westchester, New York, et al., 84 Civ. 2229 (EW); and

WHEREAS, the Stipulation contained a plan for the allocation for the access to the Westchester County Airport (the "Airport" or "HPN") promulgated pursuant to an order dated April 19, 1984, of the Hon. Edward Weinfeld, U.S.D.J., S.D.N.Y., issued in connection with the above-referenced litigation; and

WHEREAS, the Stipulation provided, inter alia, that the normal operating capacity of the existing terminal was "240 passengers per half hour, assuming an almost even division between arriving (deplaning) and departing (enplaning) passengers and assuming an almost uniform distribution for all passengers throughout the period," and

WHEREAS, on June 6, 1984, in response to the aforesaid order, the County Board of Legislators adopted Resolution 95-1984 establishing and approving the allocation mechanism for all airlines seeking to conduct operations at the Airport as later incorporated into the Stipulation; and

WHEREAS, said Resolution 95-1984 set forth the County's Policy with respect to the future use and operation of the Westchester County Airport, set forth the County's Policy concerning access to the Airport by airlines, established the Airport terminal capacity to accommodate airlines and adopted a mechanism for allocating said capacity among airlines seeking access; and

WHEREAS, the Westchester County Board of Legislators has enacted subsequent Resolutions that have established, reaffirmed and modified County policy with respect to the Airport, including but not limited to Resolution 266-1985 on or about October 7, 1985 and Resolution 59-1985 on about February 28, 1985; and

WHEREAS, on or about April 5, 1987, the County and specified airlines conducting operations at the Airport entered into an instrument entitled “Terminal Building Westchester County Airport Statement of Facility Capacity” (the “Capacity Statement”) which reaffirmed the basic provisions of the Stipulation; modified the terminal capacity limit to 240 passengers per half hour “...without regard to whether the passengers are enplaning or deplaning”; committed the County to perform specified interim renovations to the existing terminal; proposed the construction of a new terminal by the County substantially in accordance with plans attached thereto; and established the terminal capacity limit for the proposed new terminal as 240 passengers per half hour without regard to whether the passengers are enplaning or deplaning; and

WHEREAS, a new terminal was in fact built which was designed to accommodate 240 passengers per half hour; and

WHEREAS, on or about July 7, 1994, the County and specified airlines conducting operations at the Airport entered into an instrument entitled “Westchester County Airport Terminal Capacity Affirmation and Extension Agreement” (“1994 Terminal Capacity Agreement”) which reaffirmed the basic provisions of the Stipulation and the Capacity Statement and the prior Board of Legislators Resolutions with regard to the capacity of the terminal and adjacent aircraft ramp space; and

WHEREAS, the 1994 Terminal Capacity Agreement expires by its terms on December 31, 2004; and

WHEREAS, on or about October 7, 2003, the Board of Legislators adopted Resolution 245-2003 which reaffirmed the County’s commitment to preserve current limitations on airport facilities; and

WHEREAS, the County and the Airlines desire to reaffirm and extend the terms and provisions contained in the Stipulation, Capacity Statement, and 1994 Terminal Capacity Agreement, in compliance with County policies and practices implemented as a result of and various Board of Legislators Resolutions and at the same time desire to modify certain operational matters at the Airport;

NOW, THEREFORE, the parties hereto agree as follows:

- 1. Term.** This Agreement shall be effective as of the effective date of Section 712.462 of the Laws of Westchester County (“Section 712.462”), substantially in the form contained in Exhibit 1 to this Agreement, and shall expire on December 31, 2014, unless earlier extended for up to two



additional five (5)-year periods at the County's option, subject to all necessary legal approvals. Upon the effective date of Section 712.462, the County shall substitute for the draft version of Section 712.462 in Exhibit 1 the version of Section 712.462 as enacted by the Board of Legislators.

**2. Definitions.**

- a. Airport. "Airport" shall mean the Westchester County Airport.
- b. Affiliate Group. "Affiliate Group" shall mean one or more Qualified Airlines whose operations at the Airport are reported under a single airline code in the Official Airline Guide ("OAG").
- c. Commissioner. "Commissioner" shall mean the Commissioner of Transportation of Westchester County or his or her designee, which designee may include the Airport Manager of the Westchester County Airport.
- d. Qualified Airline. A "Qualified Airline" shall mean any airline that: (1) holds a valid operating certificate from the Federal Aviation Administration for the type of service it provides or seeks to provide; (2) has, or has immediate and demonstrable access to, sufficient aircraft and operating personnel to provide the service it provides or seeks to provide; (3) has executed this Agreement; (4) furnishes proof of insurance pursuant to the terms of Paragraph 40 of this Agreement; (5) has designated a representative for purposes of Section 712.462; and (6) is current on its financial obligations to the County.
- e. Terminal Ramp. "Terminal Ramp" shall refer to that portion of the apron at the Airport which is immediately adjacent to the Terminal building and which is available for scheduled Airline operations.

- 3. Terminal Capacity.** The parties expressly agree that the design capacity of the Airport Terminal safely and comfortably to accommodate passengers is 240 passengers per half hour regardless of whether such passengers are enplaning or deplaning. The parties commit and agree to abide by the Terminal capacity limitation of 240 passengers per half hour throughout the term of this Agreement, based on the provisions contained in Section 712.462 as adopted and waive any right or privilege to request a reassessment of such Terminal capacity during the term of this Agreement.

- 4. Terminal Ramp Capacity.** The parties expressly agree that the Terminal Ramp can only safely and efficiently accommodate four scheduled aircraft at one time. The parties commit and agree to abide by the Terminal Ramp

limitation of four scheduled aircraft per half hour throughout the term of this Agreement and waive any right or privilege to request a reassessment of such Terminal Ramp capacity during the term of this Agreement.

5. **Airport Function.** The parties agree that the Airport is a public use airport serving general aviation and commercial service aviation needs within a service area comprised primarily of Westchester County and nearby adjoining areas. They further agree that the Airport's principal function at present and in the foreseeable future is one of accommodating general aviation with an emphasis on business use; by comparison, its commercial service function is relatively modest.
6. **Terminal Use.** The Permittee reaffirms, ratifies, commits and agrees to abide by and follow the Terminal Use Procedures set forth in Section 712.462, including without limitation, the measurement of actual Terminal usage, the enforcement of the capacity limits, and the regulation of airline access. Further, the Permittee agrees not to challenge the validity or legality of Section 712.462 in a court of law or administrative proceeding for the term of this Agreement.
7. **Lottery System; Recordkeeping.** The parties agree that the lottery system has been effective for nearly twenty years for allocating scarce Terminal and Terminal Ramp capacity. The parties recognize, however, that the current manual lottery system and recordkeeping mechanisms rely on outdated systems. The Permittee agrees to cooperate with the County in implementing improved technology for conducting the lottery and in implementing more efficient control and recordkeeping systems so long as the fundamental features of the lottery are preserved substantially in the form set forth in Section 712.462.
8. **Technical Specifications.** The Permittee agrees to abide by and not to challenge the Airport's Technical Specifications and Procedural Requirements (the currently effective version of which is attached and incorporated herein as Exhibit 2) in a court of law or administrative proceeding for the term of this Agreement except as provided in Paragraph 48 herein. Such Terminal Specifications and Procedural Requirements may be amended from time to time by the Airport Manager so long as the Commissioner has afforded Permittee 30 days notice of such amendment and an opportunity to comment prior to its effectiveness. Any such amendment shall comply with applicable federal law and regulations and orders of the Federal Aviation Administration governing airports that are eligible for receipt of federal grant funds.
9. **Permit.** The County hereby grants to the Permittee, and the Permittee hereby accepts from the County, for the term herein stated and subject to

all the terms and conditions herein contained, the following described Permit:

*A Permit to conduct scheduled commercial air service at the Airport at the times herein specified in Exhibit 16, annexed hereto and made a part hereof, and in the manner hereinafter specified, and the right to use certain space in the Terminal as specified in this Agreement.*

**10. Permitted Uses For Space in the Terminal.** For the performance of operations permitted herein, Permittee is hereby granted a permit to use and occupy certain space located in the Terminal building for the purposes set forth below. Permittee shall have the right to use and occupy said space as provided in this Subparagraph.

- a. Departure Lounge Facilities. In common with other Permittees, the Permittee may use the Departure Lounge for departure passenger processing and arriving passenger accommodation. The Departure Lounge counter positions will be allocated for a specific time known as the Allocation Period in the manner described in Exhibit 9, which is annexed hereto and made a part hereof. During this Allocation Period, the Permittee will have use of one position, including the associated flight information display device.
- b. Ticket Counter Positions. Ticket counter positions will be allocated in the manner described in Exhibit 8, which is annexed hereto and made a part hereof. The Permittee's allocated ticket counter position will include use of the luggage conveyor belt and associated flight information display device. The Permittee shall conduct all ticket counter operations in a manner to be approved by the County that does not interfere with ticket counter use by adjoining users.
- c. Use of Counter Positions. The Permittee must use its counter position(s) in a manner that recognizes the proximity of other Permittees and does not interfere with their respective counter operations. All Permittees may have the use of the handicapped counter position on a first come, first served basis.
- d. Operations Office. Operations office positions will be allocated in the manner described in Exhibit 10, which is annexed hereto and made a part hereof.
- e. Training Room. The Permittee shall have the use of Room 271 for training purposes in conjunction with others. Use of this room will

be coordinated by the Commissioner, who shall have sole discretion in determining what is a proper use and in scheduling Permittee's use of this room.

- f. Locker Room. Lockers will be allocated by the Commissioner to employees of the County's ground handling provider and Qualified Airlines that have a demonstrated need for the locker accommodation to complete their tasks. Any of Permittee's employees who are assigned lockers shall have the right in common with other employees to utilize the kitchen, lounge, bath (including showers) and locker facilities. Employees are expected to keep the area clean and tidy. Proper behavior is expected. The County reserves the right to terminate the right of a Permittee's employee to utilize the locker room, if such employee engages in conduct that violates any of the above conditions.
- g. Office Space. Dedicated airline office space in the Terminal shall be allocated in the manner described in Exhibit 11, which is annexed hereto and made a part hereof.
- h. Compliance with Rules of Conduct. In consideration of the foregoing permit to use and occupy space within the Terminal area in common with, or in close proximity to others, Permittee hereby acknowledges and agrees to comply with all reasonable rules of conduct from time to time established by County for the creation of a safe, efficient, and professional work environment.

**11. Operations Protocols.** In order to ensure safe and efficient use and allocation of space in the Terminal, the Permittee acknowledges and agrees to the following operations protocols.

- a. Notice of Type of Aircraft. Permittee shall provide to the Commissioner advance written notice, in the form designated by the Commissioner, of type of aircraft to be used for Permittee's flight operations hereunder. Accordingly, Permittee represents that it shall use only such aircraft types for its regularly scheduled flights as authorized hereunder and as specified in Exhibit 16, which is annexed hereto and made a part hereof. In the event that Permittee desires to use a different type of aircraft for backup or any other purpose, Permittee shall provide reasonable advance notice to the Commissioner and to the County's ground handling agent. The use of such backup or substitute aircraft shall be subject to the approval of the Commissioner, which approval shall not be unreasonably withheld, provided that the use of the substitute aircraft is consistent with the Technical Specifications and Procedural Requirements, attached hereto as Exhibit 2.

- b. Changes to Exhibit 16. Permittee is required to advise the County of any changes to Exhibit 16, at least 15 days prior to the effective date of such change. All submitted changes to Exhibit 16 must be made in the form designated by the Commissioner.
  - c. Noise Standards. Permittee shall comply with the noise standards established under Part 36 of Title 14 of the Code of Federal Regulations, as amended, and with any future requirements that are imposed by the federal government in accordance with applicable federal law and regulation. The Permittee recognizes the noise sensitivity of the community in the vicinity of the Airport and, although compliance with the County's noise abatement procedures is voluntary, Permittee will make reasonable good faith efforts to adhere to the procedures when practical and safe.
- 12. Terminal Space and Service Status.** Recognizing the variability of space allocation and service options in the Terminal, the current space and service status of the Permittee will be as set forth in Exhibit 17, annexed hereto and made a part hereof. This status record will be maintained by the Commissioner, and be subject to all allocation and notification processes contained in this Agreement. To the extent that this Agreement provides for changes to such status during the term of this Agreement, any changes to the status record shall be acknowledged by the Permittee and annexed hereto as a revised Exhibit 17. The most recently dated such exhibit shall be the one currently in effect.
- 13. Secure Overnight Parking.** Both the Permittee and the County recognize that there is today insufficient secure parking near the Terminal for remain-overnight ("RON") parking and that there is a need, therefore, for improved RON parking. The County has commenced planning and commits to use its best efforts to develop a secure parking facility for Qualified Airline RON parking as soon as reasonably practical. Such facility will not be adjacent to the Terminal. The County will use its best efforts to secure federal grant funding, TSA funds or permission to use PFC revenue for such facility. The parties agree that any remaining unfunded costs for constructing such parking (amortized over the useful life of the facility) may be allocated to all Permittees pursuant to provisions contained in Exhibit 3, which is annexed hereto and made a part hereof.
- 14. Passenger and Baggage Screening Facilities.** The parties acknowledge that the current space requirements for passenger and baggage screening in the Terminal as a result of Transportation Security Administration guidelines have significantly intruded into the already constrained space available for passenger handling. The County agrees to use its best efforts

to modify the existing Terminal to provide permanent baggage screening facilities outside of public-use areas. The County also agrees to use its best efforts to (1) restore the amount of public accommodation space in the departure lounge and ticketing lobby to the amount of space that was available prior to September 11, 2001, and (2) secure federal grant funding for these security improvements. The County will use its best efforts to secure federal grant funding, TSA funds or permission to use PFC revenue for such facility. The parties agree that any remaining unfunded costs for constructing such facilities (amortized over the useful life of the facility) may be allocated to all Permittees pursuant to provisions contained in Exhibit 3, which is annexed hereto and made a part hereof. The parties agree that, because the purposes of these modifications are exclusively (1) to provide sufficient space for security purposes and (2) to return the Terminal to its pre-September 11, 2001, operational characteristics, any modifications undertaken by the County pursuant to this Paragraph shall not support or otherwise lead to any reassessment of the capacity of the Terminal to accommodate passenger operations, as provided in Paragraph 3 of this Agreement.

15. **Ticket Counter and Departure Lounge Counter Rehabilitation.** The County agrees to refurbish the counters in the ticket lobby and departure lounge and related facilities in consultation with the Qualified Airlines. The County agrees to use its best efforts to integrate passenger self-check terminals into the ticket lobby counters to the extent feasible. Provisions for the operation of these passenger self-check terminals are contained in Paragraph 26 of this Agreement.
16. **Jet Bridges.** If requested by Qualified Airlines holding a majority of Terminal Ramp Allocations and if such Qualified Airlines supply the County with supporting design, operational and cost information, the County will consider installing enclosed boarding positions (also known as “jet bridges” or “jet-ways”) for those gates without such boarding positions and/or modifying existing boarding positions to accommodate regional jets. If the County receives such a request, the County shall consult with all Qualified Airlines operating at the Terminal and will undertake construction of additional or modified enclosed boarding positions if the County determines that: (1) such enclosed boarding positions would improve the safety, comfort and efficiency of passenger operations; (2) such enclosed boarding positions are technically feasible and will not cause operational problems on the Terminal Ramp or interfere with any Qualified Airline’s ability to use its Terminal Ramp Allocations; (3) there will be no potentially significant environmental effects associated with the construction and operation of enclosed boarding positions, as determined under the New York State Environmental Quality Review Act; and (4) the County will recover its costs for construction and operation. If the County constructs additional enclosed boarding positions, the

County will use its best efforts to secure federal grant funding, TSA funds or permission to use PFC revenue for such facilities. The parties agree that any remaining unfunded costs for constructing such facilities (amortized over the useful life of the facility) may be allocated to all Permittees pursuant to provisions contained in Exhibits 3 and 4, which are annexed hereto and made a part hereof.

**17. Fees.**

- a. In consideration for the privilege of conducting operations at the Airport, the Permittee shall pay to the County, to the extent applicable, as set forth in the most recently dated and acknowledged status record (a sample copy of which is attached hereto and incorporated herein as Exhibit 17), the following fees:
  - i A monthly fee of Two Hundred Fifty Dollars (\$250.00) payable in advance on the first of each month;
  - ii A monthly fee for the use and occupancy of space allocated to Permittee in the Terminal as provided in Exhibit 3, annexed hereto and made a part hereof.
  - iii A monthly allocation of costs of operation and maintenance of the Terminal, as provided for in Exhibit 4, which is annexed hereto and made a part hereof. The County reserves the right to review and modify this list of eligible building maintenance and operating costs, upon thirty (30) days prior written notice to the Qualified Airlines.
  - iv A monthly fee for Ground Handling Services, as provided in Exhibit 7, annexed hereto and made a part hereof.
  - v Applicable published landing and aircraft parking fees;
  - vi The fuel flowage fee applicable at the Airport to all Airport users.
- b. All fees payable to the County hereunder shall be payable at the office of the Airport Manager of the Westchester County Airport, 240 Airport Road, White Plains, New York, or at such other office as the County may designate upon notice to the Permittee given in accordance with the terms of this Agreement. All fees payable to the County pursuant to this Paragraph shall be payable monthly within 30 days of receipt of the invoice.

- c. Except as provided in this Agreement and the Exhibits hereto or as may be permitted by any government agency (other than the County acting in its proprietary capacity), the County will not assess additional fees, rentals or charges against Permittee, its passengers, shippers and receivers of freight, suppliers of materials, its contractors or furnishers of services for the use of premises or facilities granted to Permittee herein.

**18. Suspension and Waiver of Fees.**

- a. Suspension. The fees set forth in Paragraph 17(a) above will be suspended for any Permittee who notifies the County, at least 30 days in advance, that it desires to suspend operations at the Airport, but remain a Permittee and a Qualified Airline. Such suspension shall (a) result in forfeiture of any allocations (including but not limited to ticket counter, office, passenger and ramp allocations); (b) be effective upon the date specified by the Permittee; and (c) continue until such Permittee notifies the County that it intends to resume operations at the Airport.
- b. Waiver. The fees set forth in Paragraph 17(a) above will be waived for any Permittee who (a) has executed this Agreement; (b) has not operated at the Airport; (c) has not marketed on a reservation system the availability of service from the Airport (through a code-share, alliance or other similar marketing arrangement); and (d) has no allocations (including but not limited to ticket counter, office, passenger and ramp allocations).
- c. Other Obligations. The suspension or waiver of fees pursuant to this Paragraph does not affect any other obligations that Permittee may have under this Agreement.

**19. Passenger Handling Functions/Airline Alliances.**

- a. Each Qualified Airline shall have the right to provide its own employees or employees of another Qualified Airline that currently holds Ramp Allocations pursuant to Section 712.462 as passenger representatives to perform Passenger Handling Functions. For the purposes of this Agreement, the term "Passenger Handling Functions" shall be construed to mean those customer contact services and limited baggage handling services described in Exhibit 5, which is attached hereto and made a part hereof. Both the airline that provides, and the airline that receives, Passenger Handling Functions service must be Qualified Airlines. Further, a Qualified Airline that proposes to provide passenger handling services for another Qualified Airline shall submit such



satisfactory documentation as the Commissioner shall require that demonstrates the existence of a current and valid contractual arrangement, code-share or similar alliance among the Qualified Airlines that governs the provision of Passenger Handling Functions at the Airport.

- b. Any airline for whom tickets are sold for service at the Airport that is not a Qualified Airline must secure an Alliance Airline Operating Permit and is subject to an Alliance Airline Operating Fee. The Alliance Airline Operating Fee shall be identical to the fee set forth in Paragraph 17(a), above, and shall be subject to suspension as provided in Paragraph 18, above. The Qualified Airline that sells the ticket or service on such airline will be responsible for payment of the Alliance Airline Operating Fee.
- c. Nothing herein or in Exhibit 5 shall be interpreted or construed as granting the Qualified Airlines the authority to provide any Ground Handling Services as defined in Exhibit 6 to this Agreement.
- d. Any Qualified Airline that chooses to provide its own employees or employees of another Qualified Airline for the purposes of providing Passenger Handling Functions during calendar year 2005, shall notify the County in writing by no later than January 2, 2005. Thereafter, Qualified Airlines shall have the option to elect once in any 6-month period to change from County-provided Passenger Handling Functions to Airline-provided Passenger Handling Functions or from Airline-provided Passenger Handling Functions to County-provided Passenger Handling Functions. A Qualified Airline that elects to make such a change shall provide written notice to the Commissioner of its intention to do so not less than 45 days prior to the effective date of the intended change (except that such notice requirement shall not apply to any Qualified Airline that is providing its own Passenger Handling Operations as of the effective date of this Agreement).

## **20. Ground Handling Services.**

- a. Ground Handling Services for all operations at the Terminal shall be provided by the County, its employees, contractors or agents. Ground Handling Services are defined in Exhibit 6, which is attached hereto and made a part hereof. The methodology for the determination of charges for such Ground Handling Services is set forth in Exhibit 7, which is attached hereto and made a part hereof. Fees for services not contemplated at this time or otherwise not set forth in Exhibit 7, but required to be performed by the County pursuant to applicable law, regulation, policy or practice or

otherwise offered by the County as an accommodation to Permittee, shall be implemented only after thirty (30) days prior written notice to the Permittee.

- b. In the interest of maintaining the quality of Ground Handling Services and to optimize on-time performance, the County shall engage a consultant to conduct an independent external review of the performance of Qualified Airlines and of the Ground Handling Services. The Commissioner will consult with the Qualified Airlines in the selection of such consultant.

- i The first such review shall be completed no later than June 30, 2005 and at least every three years thereafter.

- ii The external review shall (a) evaluate the quality of the services provided both by and to the Qualified Airlines, (b) determine the extent to which such services meet industry standards for such services at airports that are similar in size, facilities and services to the Airport; (c) assess the effectiveness of cooperation among the County, its ground handling agent, and the Qualified Airlines; (d) recommend whether any charges, discounts or additional fees should apply for substandard performance; and (e) set forth specific recommendations for improvements or enhancements in service and cooperation consistent with industry practices and standards for similar airports.

- iii The County will consult with the Qualified Airlines regarding the results of each external review and shall develop a plan for implementation of those recommendations that the Commissioner in his sole discretion determines to be practical to implement.

- iv The Commissioner shall report from time to time to the Qualified Airlines on the progress of the implementation plan.

## **21. Release, Risk of Operation, Compliance with Law.**

- a. The Permittee agrees that the County, in providing Ground Handling Services hereunder, does not undertake to insure Permittee's aircraft nor to guarantee that Airport conditions will always be such as to enable Permittee to comply with its schedule. Permittee releases the County, its elected officials, officers, employees and/or agents from any and all causes of action and claims, including claims for any special and/or consequential damages (not limited to claims for loss of revenue) arising from any delay of Permittee's aircraft.
- b. Permittee assumes all risks associated with its operations under this Agreement and shall comply with all federal, state and local

laws, rules, and regulations affecting Permittee's Airport operations including, but not limited to, the space assigned to the Permittee, especially with respect to matters involving the storage of combustible materials.

- c. Permittee, in connection with its performance pursuant to this Agreement, shall comply with all federal, state and local laws and rules, regulations, court orders and stipulations and agreements with the County which are in any way applicable to Permittee's operation at the Airport.
- d. In addition to the Permittee's compliance with all applicable federal, state and local laws, rules and regulations, the Permittee shall cooperate with the Airport's Environmental Management System established under the ISO 14001 standard.

- 22. **Records.** The parties recognize that, pursuant to Section 712.462, all Qualified Airlines operating at the Airport are required to certify to the County actual passenger loads, on a per-flight, per-day, enplaned, deplaned basis. Permittee agrees to comply with all reporting and audit requirements contained in Section 712.462.
- 23. **Audit Rights.** The County reserves the right at any time to audit passenger ticket lifts or appropriate passenger statistics of Permittee's operations at the Airport to determine actual passenger enplanements and deplanements.
- 24. **Service Complaints.** Should any party have a complaint about service levels or service quality provided by another party to this Agreement, it shall endeavor to follow the administrative complaint procedure as set forth in Exhibit 12, which is annexed hereto and made a part hereof.
- 25. **Common Use Computer Systems.** If Permittee wishes to use or install computerized equipment for passenger reservations or operations processing, it shall cooperate with all other Qualified Airlines in the installation and use of a single common use system procured through a single third-party source. Such common use system shall be used at all operating locations within the Terminal. Permittee may not use any other equipment or system within the Terminal, unless expressly authorized by the Commissioner. Notwithstanding the foregoing, Permittee may install its own dedicated proprietary systems at its own cost, but only in its own exclusive use office areas and only for administrative purposes.
- 26. **Passenger Self-Check Terminals.**

- a. Terminal First Floor. Upon integration of passenger self-check terminals into the ticket lobby counters pursuant to Paragraph 15, any and all passenger self-check computer terminals located on the first floor of the Terminal – including any stand-alone kiosks – shall consist of a single common-use system designated by the Qualified Airlines pursuant to Paragraph 25. The location and configuration of all such passenger self-check terminals on the first floor shall be subject to approval by the Commissioner. All Permittees that agree to pay their share of the cost of the common-use system shall be allowed access to the common-use passenger self-check terminals on an equitable basis. Should a compatible common-use system not be commercially available at the time that renovation of the ticket lobby counters is complete pursuant to Paragraph 15, the County will consult with the Qualified Airlines to develop a suitable interim solution for passenger self-check terminal access until such time as a compatible common-use system is available.
- b. Interim Installation of Terminals on First Floor. Until such time as the ticket lobby counter renovations pursuant to Paragraph 15 are completed, Permittee may install proprietary stand-alone passenger self-check terminal kiosks. All installation and operational costs are the responsibility of the Permittee. The Commissioner shall publish a list of permissible locations for such kiosks in consideration of passenger safety, convenience, traffic flow and other building constraints. Such locations will be available for use by any Qualified Airline on a first-come-first-served basis, except that Qualified Airlines that have proprietary passenger self-check terminal kiosks installed as of the effective date of this Agreement shall be permitted to retain two such kiosks at their present locations until completion of ticket lobby counter renovations. Space for additional kiosks will be allocated equitably by the Commissioner on either the first or second floor.
- c. Terminal Second and Third Floors. The Commissioner shall publish a map identifying designated locations for passenger self-check terminal kiosks on the second and third floors of the Terminal (“Kiosk Slots”). Qualified Airlines may install, fund and use proprietary passenger self-check terminal kiosks in these Kiosk Slots with the approval of the Commissioner. The Commissioner shall allocate these Kiosk Slots in accordance with the procedures contained in Exhibit 13, which is annexed hereto and made a part hereof.

- 27. Use of Terminal.** Notwithstanding Permittee’s rights granted under this Agreement, the Permittee recognizes that the County will operate the

Terminal in the best interests of the County and the traveling public. All parties recognize the potential for conflicts during periods of peak use of the Terminal facilities and agree to cooperate to the maximum extent possible in using such facilities. In the event of any disputes among the Qualified Airlines over use of particular Terminal facilities, it is recognized and agreed that the Commissioner shall have the right to impose a settlement to resolve such a dispute so long as reasonable prior notice is provided to the affected Qualified Airlines so as to maintain the safe and efficient operation of the Terminal.

**28. Required Approvals.** The Permittee, at its sole cost and expense, shall obtain and maintain in full force and effect for the term of this Agreement, all other permits, licenses, certificates and approvals from all governmental authorities as are, or may from time to time, be required for the Permittee to lawfully conduct business at the Airport or to carry out its obligations under this Agreement.

**29. Management, Personnel, Uniforms.**

- a. Permittee shall employ an on-site manager, agent or franchisee to supervise and manage its operations hereunder. The County and the Permittee shall employ a sufficient number of trained personnel on duty to provide for the safe, efficient and proper fulfillment of their respective rights and obligations under this Agreement.
- b. The operations of the Permittee, its employees, agents, invitees and those doing business with it shall be conducted in an orderly, safe and proper manner so as not to endanger the safety, annoy, disturb or be offensive to others at the Airport. Upon request of the Commissioner, the Permittee shall provide, and its employees shall wear or carry, badges or other suitable means of identification particularly as the Commissioner may deem necessary to ensure the security of the Airport facility. Uniforms, if requested, shall be subject to prior written approval of the Commissioner, provided, however, that Permittee's standard system-wide uniform, if any, shall be deemed approved. The Commissioner shall have the right to object to the Permittee regarding the demeanor, conduct and appearance of the employees, agents and invitees of the Permittee and of those doing business with it (except for the appearance of Permittee's customers), whereupon the Permittee shall take all steps necessary to remove the cause of the objection.

**30. Quality and Price.**

- a. Permittee warrants and agrees that all services and/or merchandise made available to the public pursuant to this Agreement shall be offered at competitive rates and/or prices.
- b. Permittee agrees that it will conduct a first-class operation and will furnish all fixtures, equipment, supplies, materials and other facilities and replacements necessary or proper therefor.

**31. Maintenance.**

- a. Permittee, at its sole cost and expense, shall maintain all areas of the Terminal exclusively assigned to Permittee (e.g., office space) for the conduct of Permittee's Airport operations hereunder, in a clean and neat condition and shall make all required non-structural repairs to such space caused by Permittee's employees and/or equipment. In the event that the Permittee fails to so maintain the space assigned to Permittee hereunder, the County, at its option and in addition to any other remedy available to it, may provide such maintenance services at the sole cost and expense of the Permittee.
- b. Permittee shall store all garbage, trash and refuse originating from its Airport operations in closed receptacles. Permittee shall cooperate with the County, its employees, agents and contractors, in reasonable requests regarding maintenance of the Terminal building.

**32. No Lease.** It is expressly understood and agreed that no building, structure, equipment or space is leased to the Permittee, and that Permittee's privilege to use, occupy and remain in possession of any space assigned to it for the operation of this Agreement shall continue only so long as Permittee shall faithfully and properly comply with each and every term and condition of this Agreement.

**33. Advertising.** The Permittee shall not erect, install, place or use at the Airport any advertising or promotional device designed to attract attention to the Permittee as a business entity without obtaining the prior express written approval of the Commissioner, which approval shall not be unreasonably withheld. Permittee further agrees that any advertising related to its permitted operations at the Airport in any print or electronic media shall conform to reasonable standards of good taste.

**34. Access and Inspection.** Permittee shall allow the County to enter any space assigned to the Permittee at all reasonable times during normal business hours (except in the case of an emergency, the existence of which shall be determined in the sole discretion of the Commissioner, in which

case the County shall be permitted to enter at any time) for the purpose of observing, monitoring, reviewing and/or inspecting any aspect of Permittee's operations hereunder for the purpose of ensuring compliance with this Agreement, County laws and federal laws and regulations.

**35. Airport Rules, Regulations, and Technical Specifications.**

- a. Permittee and all of its employees and designees will adhere to all applicable County laws, rules, regulations and the Technical Specifications and Procedural Requirements prescribed by the County for operations at the Airport, including without limitation those which are contained in Section 712.462, as may be in effect during the term of this Agreement, and to any and all amendments thereto as shall from time to time be made by the County. The Permittee acknowledges receipt of copies of all current published rules, regulations and technical specifications.
- b. In the event that the County proposes to change any law, rule, regulation or the Technical Specifications in a manner that could adversely affect Permittee, the County will afford Permittee an opportunity to comment on the proposed change prior to promulgation or adoption. The County shall notify Permittee of any comment period and deadline for comments (i) by posting a copy of the proposed change outside the office of the Airport Manager for a period of at least ten (10) days, and (ii) by providing notice as set forth in Paragraph 38.
- c. The County will furnish copies of such rules, regulations and technical specifications to Permittee following any change therein after the date hereof. However, failure of the County to furnish copies of such rules, regulations and technical specifications to Permittee shall not in any way relieve Permittee from its obligations hereunder, provided that the County has posted a copy of such revised rule, regulation or technical specification outside of the office of the Airport Manager for a period of ten (10) days after adoption of such revision. Violation by Permittee of any of the foregoing shall be deemed a material breach of this Agreement, and without limiting any right or remedy otherwise available to the County, shall entitle the County to seek any remedy set forth in Paragraph 36 below.
- d. Permittee shall comply at its own expense with the provisions of all applicable laws, rules and regulations, including but not limited to those which are applicable to it as an employer of labor or otherwise. Permittee shall further comply with all rules, regulations and licensing requirements pertaining to its

professional status, form of business, and to insure compliance with same by its employees, partners, associates, subcontractors and others employed to render the services which will be delivered on County property pursuant to the terms of this Agreement.

- e. Permittee expressly agrees that neither it nor any contractor, subcontractor, employee, or any other person acting on its behalf shall discriminate against or intimidate any employee or other individual on the basis of race, creed, religion, color, gender, age, national origin, ethnicity, alienage or citizenship status, disability, marital status, sexual orientation, familial status, genetic predisposition or carrier status during the term of or in connection with this Agreement, as those terms may be defined in Chapter 700 of the Laws of Westchester County. The Permittee acknowledges and understands that the County maintains a zero tolerance policy prohibiting all forms of harassment or discrimination against its employees by co-workers, supervisors, vendors, contractors, or others.
- f. Permittee acknowledges that the whole of the Airport is subject to the rules and regulations promulgated from time to time by the Federal Aviation Administration and to the supervision, inspection and regulations of its representatives. Permittee agrees to abide by and cause its officers, employees, servants, agents and designees to abide by all said rules and regulations and promptly to obey all orders in respect thereof. Without limiting the generality of the foregoing, Permittee and its designees will promptly comply with the following provisions:
  - i The Permittee, while conducting operations pursuant to this Agreement and otherwise in the use of the Airport, will not unjustly discriminate or permit discrimination against any person or class of persons by reason of race, color, creed, sex, religion, age or national origin in any manner prohibited by Part 15 of the Federal Aviation Regulations or Part 21 of the United States Department of Transportation regulations or any amendments thereto;
  - ii Permittee shall furnish its accommodations and/or services on a fair, equal and not unlawfully discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; provided that Permittee may be allowed to make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers so long as they are not otherwise prohibited by any law, rule or regulation;



iii Permittee shall make its accommodations and/or services available to the public on fair and reasonable terms without unjust discrimination on the basis of race, creed, sex, religion, age, color or national origin and shall not withhold its accommodations or services from any member of the public without just cause;

iv The Permittee assures that it will undertake an affirmative action program to the extent required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Permittee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Permittee assures that it will require that its covered sub-organizations provide assurances to the Permittee that they similarly will undertake affirmative action programs and that they will require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effect;

v Non-compliance with Subparagraphs (i), (ii), (iii) and (iv) above shall constitute a material breach hereof;

vi Permittee agrees that it shall insert the above five provisions in any subpermit, subconcession or other agreement by which Permittee grants a right or privilege to any designee to render accommodations and/or services to the public pursuant to this Agreement.

- g. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of the Federal Aviation Act or any other prohibition of applicable federal or state law.

### **36. Violations.**

- a. In the event that Permittee is in material default in the performance of any term, condition or covenant herein contained, the County, at its option and in addition to any other remedy it may have to seek damages, judicial enforcement or any other lawful remedy, may terminate this Agreement upon thirty (30) days' notice to the Permittee; provided, however, that the Permittee may defeat such notice by curing the default complained of within such notice period, or, if such default is not curable within such notice period,

by promptly commencing to cure the default and diligently pursuing all necessary and appropriate action to effect such cure. In the event that a material default occurs while a previous material default remains uncured or in the event of a second material default within any 12-month period regardless of cure, the County, at its option and in addition to any other remedy it may have to seek damages, judicial enforcement or any other lawful remedy, may terminate this Agreement upon written notice to the Permittee, such notice to be effective immediately upon delivery thereof.

- b. In the event that this Agreement is terminated pursuant to this Paragraph, the County may hold as security, any property of the Permittee (other than aircraft), which at the time of such termination is located at the Airport, in order to effectuate the purposes of this Agreement until such time as all indebtedness of the Permittee to the County hereunder shall be fully satisfied.

**37. No Agency or Joint Venture.** This Agreement shall not be construed to make either the County or the Permittee an agent of, or joint venturer with, the other. Each of the parties hereto expressly disclaims any intention to enter into such agency or joint venture and agrees that it shall so conduct itself as not to act or purport to act on behalf of the other.

**38. Notices.** All notices hereunder shall be in writing and shall be deemed given when delivered, or mailed, postage prepaid, certified mail, return receipt requested, addressed as follows. Any Permittee may change the address for purposes of this Paragraph by providing notice to the County pursuant to this Paragraph; the County may change the address for purposes of this Paragraph by providing notice to all Permittees pursuant to this Paragraph. Where practical, supplemental notice shall be provided by e-mail at the address or addresses set forth below:

To the County:

Commissioner of Transportation, c/o Airport Manager  
240 Airport Road  
Westchester County Airport  
White Plains, New York 10604

with a copy to:

County Attorney  
600 Michaelian Office Building  
148 Martine Avenue  
White Plains, New York 10601

With an email copy to:

Airport Manager: [jfr1@westchestergov.com](mailto:jfr1@westchestergov.com)

Commissioner of Transportation: [lcs1@westchestergov.com](mailto:lcs1@westchestergov.com)

To the Permittee: at the addresses indicated on the signature page of this Agreement

**39. Remedies Cumulative.** The failure of the County or the Permittee to insist, in any one or more instances, upon strict performance of any term or condition herein contained shall not be deemed a waiver or relinquishment for the future of such term or condition, but the same shall remain in full force and effect. Acceptance by the County of payment of any fee due hereunder with knowledge of a breach of any term or condition hereof, shall not be deemed a waiver of any such breach and no waiver by the County of any provision hereof shall be implied. Waiver of any rights may be accomplished only in accordance with the procedures set forth in Paragraph 56.

**40. Insurance and Indemnification.**

- a. Insurance. The Permittee, in its own name and naming the County, its officers, employees and/or agents as an additional insured to the extent of liability assumed by Permittee in this Paragraph, shall obtain and maintain in continuous effect for the term hereof, policies of insurance providing for coverages in the limits set forth in Exhibit 14, attached hereto and made a part hereof. The insurance specified in Exhibit 14 hereof is that to be procured by the Permittee at the commencement of the term and may be reviewed or modified by the County on a semi-annual basis as to amount and type of coverage to be obtained and maintained by the Permittee; provided, however, that such review and modification shall be based upon good faith application of generally accepted risk management principles.
- b. Indemnification. Permittee agrees to protect, defend, indemnify and hold the County of Westchester, its elected officials, officers, employees and/or agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character in connection with or arising directly or indirectly out of this Agreement and/or the Permittee's performance thereof. Without limiting the generality of the foregoing, any and all claims, etc. relating to bodily injury, death, damage to property, defects in materials or workmanship, actual or alleged infringement of any patent, trademark, copyright (or

application for any thereof), or of any other tangible or intangible personal or property right, or any actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or decree of any court, shall be included in the indemnity hereunder. This indemnification requirement is in addition to any indemnification required for any particular ground handling service, as set forth in this Agreement or in the exhibits hereto.

- c. Indemnification Exceptions. Notwithstanding the foregoing provisions concerning indemnification, the Permittee shall not be required to indemnify the County, its elected officials, officers, employees and/or agents for losses, penalties, damages, settlements, costs, charges, expenses, liabilities, liens, demands or claims arising out of death or bodily injury to persons or damage to aircraft or to property to the extent caused by or resulting from the gross negligence or willful misconduct of the County, its officers, employees or agents.
  - d. Notice. The County shall give the Permittee prompt written notice of the institution of any such suit, action or proceeding covered by the above indemnity, permit the Permittee to defend the same and give Permittee all available information, assistance and authority to do so. Permittee shall have full control of and responsibility for the defense of any such suit, action or proceeding, including the right to perfect appeals and to effect compromises or settlements. Permittee shall investigate, respond to and defend any such suit if the same is false, frivolous or fraudulent. The County may retain its own counsel to defend such suits, actions or proceedings and in such event Permittee shall have no obligation to pay the cost of any professional fees or expenses so incurred.
- 41. No Brokers.** The County and the Permittee each represent and warrant to the other that no broker or finder has been concerned or involved in the introduction of the parties or the negotiation of this Agreement and Permit, and that no broker or finder is, or may be entitled to any commissions relating to or in connection with this Agreement and Permit.
- 42. Bankruptcy.** If at any time during the term of this Agreement, any petition in bankruptcy shall be filed by or against the Permittee or if the Permittee shall be adjudicated a bankrupt; or if a receiver shall be appointed by any Court of competent jurisdiction to take possession of the Permittee's property; or if the Permittee shall make any assignment for the benefit of creditors, this Agreement shall, at the option of the County, immediately cease, terminate and expire; and the County shall have no liability to the Permittee whatsoever but shall not relieve the Permittee

from any liability incurred under this Agreement; and the Permittee covenants and agrees to yield and deliver peaceably to the County possession of any space occupied by the Permittee hereunder promptly and in good condition on the date of the cessation of this Agreement, whether such cessation be by termination, expiration or otherwise. In exercising its rights under this Paragraph, the County shall comply with federal bankruptcy law.

- 43. Condemnation.** In the event that the Airport or such a substantial portion thereof as to make the premises untenable, are condemned for any public use, then in such event and upon the vesting of title in the condemnor, this Agreement shall become null and void and neither party shall have any liability to the other on account of such termination.

**44. Destruction of the Premises.**

- a. Should any building or structure upon the Airport premises be damaged by fire, or any other cause whatsoever, so as to prevent the operation of this Agreement to the satisfaction of the County, then the County at its option may on notice in writing to Permittee, cancel and terminate this Agreement and the County shall have no liability to the Permittee hereunder.
- b. If any building or structure on the Airport premises be damaged in any way whatsoever by reason of any gross negligence or willful misconduct of Permittee or its employees, then this Agreement shall continue in full force and effect and Permittee shall repair, at its own cost and expense, the building or structure so damaged. Upon the failure of the Permittee to make such repairs the County may, as agent of Permittee, repair such damage at the cost and expense of Permittee.
- c. In the event that the Commissioner determines that any building or structure on the Airport premises is damaged such that Permittee cannot use such premises in a manner consistent with this Agreement or Section 712.462 of the Laws of Westchester County, and in the event that the County does not exercise its right under subparagraph (a) of this Paragraph, then all fees, charges or rents payable for use of such damaged facility shall be abated until such time as the facility is restored to usable condition.

- 45. Equipment/Improvements.** Permittee shall supply, repair and replace, at its sole cost and expense, all equipment necessary to provide the services contemplated by this Agreement. All such equipment shall comply with all applicable fire, electrical and safety codes and requirements. Permittee shall not install any fixtures or make any improvements or alterations to

the space assigned to Permittee hereunder without the prior consent of the Commissioner (which consent shall not be unreasonably withheld) and such fixtures, improvements or alterations shall, immediately upon installation, be deemed to be affixed to the realty and shall become the property of the County to the same extent as if installed prior to the commencement of this Agreement, except that this provision shall not apply to free-standing ticket kiosks or proprietary computer equipment.

- 46. Right to Modify.** The parties hereto covenant and agree that during the term hereof this Agreement may be unilaterally modified by the County upon the advice of the County Attorney in order to conform to judicial decisions or federal agency rulings whether or not such decisions or rulings are issued in proceedings brought by or against the parties hereto or either of them. This Paragraph shall not preclude the County or the Permittee from contesting any such decisions or rulings but the Permittee shall abide by the unilateral modifications imposed by the County pending the outcome of such appeal or objection; provided, however, that if any such modification would have a material adverse effect upon Permittee's operations at the Airport hereunder and if within ninety (90) days following the effective date of such modification, the parties shall not have negotiated an equitable adjustment to the Agreement, then the Permittee shall have the right at any time thereafter upon sixty (60) days prior written notice to the County to terminate this Agreement.
- 47. Force Majeure.** Neither the County nor Permittee shall be liable or responsible for any damages for non-compliance with the terms of this Agreement (not involving obligations to pay), in whole or in part (including non-performance of the services or flight operations) if such damages or non-compliance result from a failure to perform due to force majeure, which is hereby defined to include acts of God or the public enemy; compliance in good faith with any applicable governmental regulation, law or order whether or not it proves to be invalid; fires; riots; labor disputes; natural disasters; terrorists; war (declared or undeclared); civil disturbances or popular uprising; epidemics; unusually severe weather; or any other cause beyond the reasonable control of the excused party, provided that the excused party promptly notifies the other party of its noncompliance and the cause and estimated duration thereof and at all times uses its diligent efforts to remove or remedy the cause of such failure to perform. Performance under this Agreement in case of force majeure shall be suspended until cessation of the applicable cause, unless the circumstances otherwise permit without undue hazard in the reasonable opinion of the Commissioner.
- 48. Prohibition on Reduction in Capacity.** The County shall not take any action that reduces the capacity of the Airport in a manner that adversely affects the Permittee

- 49. Binding on Successors.** This Agreement shall bind and benefit the County and the Permittee and their respective successors-in-interest. Any change in the legal status of the Permittee must be reported to the County within 30 days.
- 50. Assignment.** This Agreement may not be assigned by the Permittee without the consent of the County, which consent shall not be unreasonably withheld in the event of an assignment to a Qualified Airline.
- 51. Counterparts.** This Agreement may be executed in counterparts each of which shall be deemed an original and which together shall constitute one and the same Agreement.
- 52. Severability.** Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provisions of this Agreement be for any reason unenforceable, the balance shall nonetheless remain in full force and effect provided, however, that if the provisions of Paragraph 3 and/or 4 of this Agreement are held or determined to be unenforceable or invalid by a court of competent jurisdiction or preempted or superceded by federal law or regulation, then, in that event, the County, at its option, shall have the right on thirty (30) days prior written notice to terminate this Agreement.
- 53. Governing Law.** This Agreement shall be governed by and construed in accordance with applicable federal law and the laws of the State of New York and the County of Westchester.
- 54. Effectiveness.** This Agreement shall become effective as to Permittee upon execution by Permittee and then the County. By execution of this Agreement, Permittee represents that it has the power and authority and is duly authorized to enter into this Agreement and that the person executing this Agreement on behalf of the Permittee is duly authorized to so execute.
- 55. Substantially Identical Treatment.** The County shall not enter into an agreement with any airline containing more favorable terms than this Agreement, or grant to any tenant engaged in commercial passenger service any privileges with respect to use of the Airport Terminal or Terminal Ramp that are not accorded Permittee hereunder, unless the same rights, terms, and privileges are concurrently made available to Permittee.
- 56. Entire Agreement/Status of Prior Agreements.**

- a. Entire Agreement. This Agreement and the attached exhibits constitute the entire Agreement between the County and the Permittee and supercede all prior and contemporaneous discussions, representations and understandings, if any, with respect to the subject matter hereof, except for the matters which are expressly incorporated herein by reference and made a part hereof. There have been no representations by any party to another and there are no conditions precedent to the effectiveness to this Agreement, unless expressly set forth in this Agreement. This Agreement supercedes any prior operating permits or agreements between the parties.
- b. Prior Agreements. Each Permittee, by executing this Agreement, acknowledges that the County is in compliance with and not in default of, and the County, by authorizing such Permittee to execute this Agreement, acknowledges that such Permittee is in compliance with and not in default of, any of the terms and conditions of the 1994 Westchester County Terminal Capacity Affirmation and Extension Agreement (“1994 TCA”), operating permit, 1995 Stipulation and Order of Partial Settlement and Dismissal (“Stipulation”) and the 1988 Terminal Building Westchester County Statement of Facility (“Capacity Statement”), and that the 1994 TCA and operating permit are in full force and effect as of the date hereinabove written. This Agreement will replace the 1994 TCA, operating permit, Stipulation and Capacity Statement upon the effectiveness of this Agreement as provided in Paragraph 1 of this Agreement. Any and all claims for default of the 1994 TCA, the operating permit, the Stipulation or the Capacity Statement are hereby deemed waived, unless the party alleging such default establishes that the facts underlying the claim for the default could not be ascertained by diligent investigation prior to the execution of this Agreement or were intentionally concealed by the party alleged to be in default.
- c. Allocations Under Prior Agreements. The parties recognize that the Permittee may have rights to certain Ramp Allocations and Passenger Allocations under prior agreements including without limitation the 1994 TCA. Within 30 days of the execution of this Agreement, Permittee shall provide the County with a list of those Ramp Allocations and Passenger Allocations to which it asserts rights. Such list shall indicate (a) the time slots and number of passengers to which Permittee asserts a right; (b) whether Permittee asserts rights to any Allocation which is, at the time of the submission, being used by another airline and, if so, the name of the other airline and the terms and conditions under which the Permittee has transferred rights to such Allocation; (c) the



expiration date, if applicable, for use by another airline of any Allocation to which Permittee asserts a right; and (d) the Allocations which Permittee uses pursuant to rights transferred from another airline. In the event of a dispute among airlines over rights to Allocations, the Commissioner shall resolve such dispute pursuant to the procedures set forth in proposed Section 712.462(5)(m) as set forth in Exhibit 1 to this Agreement.

- 57. Construction.** This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted. This Agreement may not be modified, changed, supplemented or terminated or any obligation hereunder be waived except by written instrument signed by the party to be charged or by its representative duly authorized in writing or as otherwise expressly permitted herein.
- 58. Captions.** The captions are inserted herein only as a matter of convenience and for reference and in no way define or limit the terms and provisions of this Agreement nor the intent of any provision thereof.
- 59. Applicability.** The parties understand and agree that this Agreement pertains solely and exclusively to the Westchester County Airport and shall not be deemed as having any applicability to any other airport or aviation circumstance. This Agreement is intended to reaffirm and define the terms and conditions for the use of the Airport that have been in effect, except as expressly modified herein. The parties acknowledge and agree that the terms of this Agreement do not affect aircraft safety or reduce or limit aircraft operations at the Airport beyond whatever restrictions were in effect as of October 1, 1990. The parties do not intend to confer any benefit hereunder or any person or corporation other than the parties hereto.

**IN WITNESS WHEREOF**, the parties hereto have executed this agreement effective on the day and year first above written.

**THE COUNTY OF WESTCHESTER**

By \_\_\_\_\_  
Lawrence C. Salley  
Commissioner of Transportation

**PERMITTEE**

By \_\_\_\_\_

(Name and Title)

Mail, Delivery and E-mail Address for Notices:

Authorized by the Board of Acquisition and Contract of the County of Westchester on the \_\_\_\_\_ day of \_\_\_\_\_, 2004.

Approved as to form and  
manner of execution:

\_\_\_\_\_  
Susan F. Gerry, Senior Assistant County Attorney  
County of Westchester

**PERMITTEE ACKNOWLEDGMENT**

**[Permittee may substitute own substantially similar acknowledgement]**

STATE OF \_\_\_\_\_ )  
 )ss  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_ in the year 200\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument; and, acknowledged if operating under any trade name, that the certificate required by the New York State General Business Law Section 130 has been filed as required therein.

\_\_\_\_\_  
Signature and Office of individual  
taking acknowledgement

**SAMPLE CERTIFICATE OF AUTHORITY**

**[Permittee may substitute own substantially similar certificate]**

I, \_\_\_\_\_,  
(Officer other than officer signing contract)

certify that I am the \_\_\_\_\_ of  
(Title)  
the \_\_\_\_\_  
(the "Corporation")

a corporation duly organized and in good standing under the (Law under which organized, e.g., the New York Business Corporation Law) named in the foregoing agreement; that

\_\_\_\_\_  
(Person executing agreement)

who signed said agreement on behalf of the Corporation was, at the time of execution

\_\_\_\_\_  
(Title of such person)

of the Permittee and that said agreement was duly signed for and on behalf of said Permittee by authority of its Board of Directors, thereunto duly authorized and that such authority is in full force and effect at the date hereof.

\_\_\_\_\_  
(Signature)

STATE OF NEW YORK                    )  
  )ss.:  
COUNTY OF WESTCHESTER        )

On the \_\_\_\_ day of \_\_\_\_\_ in the year 200\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument; and, acknowledged if operating under any trade name, that the certificate required by the New York State General Business Law Section 130 has been filed as required therein.

\_\_\_\_\_  
Signature and Office of individual  
taking acknowledgement

### **Terminal Use Agreement Exhibits**

- Exhibit 1: Section 712.462, Laws of Westchester County [Draft]
- Exhibit 2: Technical Specifications and Procedural Requirements [Current Version]
- Exhibit 3: Terminal Use Fees Methodology
- Exhibit 4: Terminal Use Operating Costs
- Exhibit 5: Passenger Handling Functions Definition
- Exhibit 6: Ground Handling Services Definition
- Exhibit 7: Ground Handling Services Charges
- Exhibit 8: Ticket Counter Position Allocation Methodology
- Exhibit 9: Departure Lounge Counter Position Allocation Procedure
- Exhibit 10: Operations Room Position Allocation Methodology
- Exhibit 11: Terminal Office Space Allocation
- Exhibit 12: Service Complaint Protocol
- Exhibit 13: Proprietary Self-Check Terminal Location Protocol
- Exhibit 14: Insurance Requirements
- Exhibit 15: Terms for Use of Handicapped Boarding Equipment
- Exhibit 16: Flight Schedule [EXAMPLE]
- Exhibit 17: Permittee Status Record [EXAMPLE]

## **EXHIBITS TO TERMINAL USE AGREEMENT**

- EXHIBIT 1----- Local Law No. \_\_\_\_-2004 (Section 712.462 of the Laws of Westchester County)
- EXHIBIT 2 ----- Technical Specifications and Procedural Requirements
- EXHIBIT 3 ----- Terminal Use Fees Methodology
- EXHIBIT 4 ----- Terminal Use Operating Costs
- EXHIBIT 5 ----- Passenger Handling Functions Definition
- EXHIBIT 6 ----- Ground Handling Services Definition
- EXHIBIT 7 ----- Ground Handling Services Fees
- EXHIBIT 8 ----- Ticket Counter Position Allocation Methodology
- EXHIBIT 9 ----- Departure Lounge Counter Position Allocation Procedure
- EXHIBIT 10----- Operations Room Position Allocation Methodology
- EXHIBIT 11 ----- Terminal Office Space Allocation
- EXHIBIT 12 ----- Administrative Complaint Procedure
- EXHIBIT 13 ----- Proprietary Self-Check Terminal Location Procedure
- EXHIBIT 14 ----- Insurance Requirements
- EXHIBIT 15 ----- Terms for Use of Handicapped Boarding Equipment
- EXHIBIT 16 ----- Permittee/Airline Flight Schedule [Example]
- EXHIBIT 17 ----- Permittee Status Record [Example]

## **LOCAL LAW NO. XXX-2004**

A LOCAL LAW to amend Chapter 712 of the Laws of Westchester County to add a new Section 712.462, in order to codify the Westchester County Terminal Use Procedures applicable to all Airlines providing passenger service at the Westchester County Airport

**BE IT ENACTED** by the County Board of Legislators of the County of Westchester as follows:

**Section 1.** Chapter 712 of the Laws of Westchester County is hereby amended to add a new Section 712.462 which shall read as follows:

### **Section 712.462 Westchester County Airport Terminal Use Procedures**

- 1. Applicability.** This Section shall apply to all use of the Passenger Terminal (“Terminal”) and the Terminal Ramp at the Westchester County Airport (“Airport”) by Airlines providing scheduled passenger service. The Terminal Ramp shall be for the exclusive use of Airlines providing scheduled passenger service. This Section does not apply to any activities by Airport users not providing passenger service or not using the Terminal building or Terminal Ramp.
- 2. Definitions.** The following terms as used in this Section shall have the following meanings:
  - a. “Airline” shall mean any person providing scheduled passenger air service, including but not limited to, any air carrier or other operator certificated to provide scheduled passenger service under Parts 119, 121 or 135 of the Federal Aviation Regulations, Title 14, Code of Federal Regulations. For purposes of this Section, “person” shall mean any individual, firm, company, association, society, corporation, partnership, co-partnership, joint-stock company, trust, estate, governmental entity or any other legal entity or legal representatives, agents or assigns thereof. The masculine gender shall include the feminine, and the singular shall include the plural, where indicated by context.
  - b. “Commissioner” shall mean the Commissioner of Transportation of Westchester County or his or her designee, which designee may include the Airport Manager of the Westchester County Airport.
  - c. “Ground Handling Services” shall include, at a minimum, ramp services, aircraft arrival and departure marshalling, aircraft parking

and push-back, external engine starting, gate access coordination, aircraft deicing/anti-icing, Americans with Disability Act compliance on the Terminal Ramp, and any other services needed in the ordinary course by Airlines using the Terminal Ramp.

- d. An “Incumbent Passenger Allocation” shall mean a Passenger Allocation that was in use by a Qualified Airline on November 30, 2004, pursuant to the provisions of Westchester County Board of Legislators Resolutions 59-1985 and 266-1985, and the 1994 Terminal Capacity Affirmation and Extension Agreement.
- e. An “Incumbent Ramp Allocation” shall mean a Ramp Allocation that was in use by a Qualified Airline on November 30, 2004, pursuant to the provisions of Westchester County Board of Legislators Resolutions 59-1985 and 266-1985, and the 1994 Terminal Capacity Affirmation and Extension Agreement.
- f. “Passenger” shall mean any person enplaned or deplaned at the Terminal. Federal employees who are actually on official duty and Airline employees shall not be deemed to be Passengers.
- g. “Passenger Allocation” shall mean the authorization to schedule the enplanement or deplanement of one passenger onto or from an aircraft that has a Ramp Allocation.
- h. A “Qualified Airline” shall mean any Airline that: (1) holds a valid operating certificate from the Federal Aviation Administration for the type of service it provides or seeks to provide at the Airport; (2) has, or has immediate and demonstrable access to, sufficient aircraft and operating personnel to provide the service it provides or seeks to provide; (3) has a valid Terminal Use Agreement with the County in effect; (4) furnishes proof of requisite insurance pursuant to the terms of the then-current Terminal Use Agreement; (5) has designated a representative for purposes of this Section; and (6) is current on its financial obligations with the County.
- i. “Ramp Allocation” shall mean the authorization to schedule an Airline aircraft operation on the Terminal Ramp during a designated half hour each day. An operation shall consist of an arrival and/or a departure.
- j. “Technical Specifications and Procedural Requirements,” shall mean any applicable and lawful technical, engineering, and mechanical specifications for the Airport, including but not limited to the Terminal Ramp, that are issued from time to time by the Commissioner, based upon Federal Aviation Administration



guidelines and regulations, and upon the safety, efficiency and physical limitations of the Airport, including the Terminal and Terminal Ramp. The Technical Specifications and Procedural Requirements shall at least address maximum aircraft length, maximum wingspan, and maximum weight for aircraft using the Terminal Ramp.

- k. “Terminal Ramp” shall refer to that portion of the apron at the Airport that is immediately adjacent to the Terminal building and which is available for scheduled Airline operations.
- l. “Terminal Use Agreement” shall mean that agreement that Airlines must execute with the County in order to satisfy in part the requirements of Subsection 2(h) above.

### **3. Terminal Ramp Use and Capacity.**

- a. Terminal Ramp Capacity. A maximum of four aircraft may be scheduled to use the Terminal Ramp at any time. It is the responsibility of each Airline to schedule arrivals and departures of its aircraft so as to avoid the need to wait elsewhere on the Airport for access to the Terminal Ramp. Allocation of the Terminal Ramp capacity shall be governed by Subsection 5 below.
- b. Use of Terminal Ramp. An Airline must hold a Ramp Allocation for each aircraft operation scheduled to use the Terminal Ramp. The Commissioner may deny access to the Terminal Ramp to any aircraft without a current Ramp Allocation. Subject to availability and subject to other Ramp Allocations, the County will endeavor to accommodate any aircraft arriving outside of the half-hour slot of its Ramp Allocation for such arrival or departure if caused by weather, airspace delays, mechanical difficulties, or other factors.
- c. Parking on the Terminal Ramp. Subject to the use of the Terminal Ramp by Qualified Airlines that have valid Ramp Allocations, and subject to the efficient management of limited space on the Terminal Ramp and security considerations, the County will attempt to accommodate Qualified Airlines (1) who wish to park aircraft overnight on the Terminal Ramp after the last scheduled Ramp Allocation for the day or (2) when a Qualified Airline has nonsequential arrival and departure Ramp Allocations for the same aircraft. Any actions by the County allowing use of the Terminal Ramp for such parking pursuant to this provision shall not entitle an Airline to any changes in its Ramp Allocations. An Airline is not entitled to occupy a parking position during any half hour for

which it has no Ramp Allocation and must vacate the Terminal Ramp when directed by Airport staff.

- d. Technical Specifications. All Airlines shall comply with the Technical Specifications and Procedural Requirements as issued by the Commissioner from time to time.
- e. Ground Handling Services. Ground Handling Services for all Airline operations shall be provided by the County or its contractors. An Airline must be a Qualified Airline to receive Ground Handling Services.

**4. Passenger Capacity of the Terminal.** In the interest of passenger safety, security, public health, and comfort, the Terminal was designed for a capacity of 240 passengers per half hour, without consideration of whether such passengers are enplaning or deplaning. Allocation of this capacity shall be governed by the provisions of Subsection 5.

**5. Allocation of Terminal Ramp and Terminal Capacity.** In order reasonably and equitably to allocate the available Terminal building and Terminal Ramp capacity, to ensure competition, and to promote orderly and efficient Airport operations, the County shall allocate available Terminal Ramp and Terminal building capacity by means of a lottery as set forth in this Subsection.

- a. Incumbent Allocations: A Qualified Airline that has Incumbent Ramp Allocations or Incumbent Passenger Allocations may continue to operate pursuant to such Allocations under this Section after November 30, 2004, so long as (1) this Section is in effect; and (2) the Airline complies with applicable County ordinances, laws, rules and regulations governing the Airport, including this Section. After December 31, 2004, Incumbent Ramp Allocations and Incumbent Passenger Allocations shall be treated identically to later-acquired Ramp Allocations and Passenger Allocations for purposes of compliance with this Section, including the provisions of Subsections (5)(d)-(m).

- b. Future Quarterly Allocations:

- i By the last business day of December 2004, the Commissioner shall publish a report ("Terminal Capacity Allocation Report") identifying all Incumbent Ramp Allocations and Incumbent Passenger Allocations as of November 30, 2004. The Terminal Capacity Allocation Report shall list (1) the time slots for, and names of, Qualified Airlines using each Incumbent Ramp Allocation and Incumbent Passenger Allocation; and (2)

available Ramp Allocations and Passenger Allocations, on a half-hourly basis.

ii By the last business day of every third month after November 30, 2004, the Commissioner shall make a preliminary determination of the then-available Terminal and Terminal Ramp capacity by subtracting all Ramp and Passenger Allocations from total Passenger and Ramp capacity and shall make a report of such available capacity ("Quarterly Available Capacity Report") available in a convenient form for Qualified Airlines and all other interested persons.

iii The allocation of available capacity shall be by means of a Quarterly Lottery. The Quarterly Lottery may be conducted through representatives of the County and Qualified Airlines or may be conducted electronically, as the Commissioner shall determine from time to time.

iv No later than December 15, 2004, and by the 15th day of each third month thereafter, any Qualified Airline seeking an Allocation of any available capacity by means of the Quarterly Lottery shall submit a request to the Commissioner in the manner specified by the Commissioner. The request shall, at a minimum, identify the Airline's designated representative for the forthcoming Quarterly Lottery and the aircraft with which the Qualified Airline proposes to provide service for any Ramp Allocation.

v On January 4, 2005, and on the first Tuesday of each third month thereafter, the County shall conduct the Quarterly Lottery to allocate capacity for the half hourly periods for which there is available capacity. The Commissioner may designate alternative dates for the Quarterly Lottery upon 14-days notice to the designated representative of each Qualified Airline.

vi At the commencement of the Quarterly Lottery, the Commissioner will provide a report of then-available Passenger and Ramp Allocations. All Qualified Airlines who submitted a request pursuant to Subsection (5)(b)(iv) shall be randomly assigned numbers to establish their order of selection in the first round of the Quarterly Lottery. Each Qualified Airline, in its order of selection, may draw Ramp Allocations and Passenger Allocations for up to a total of four (4) operations to take place in four half-hourly periods, up to the available Passenger and Ramp capacity identified in Subsections 3 and 4, whichever may first be reached. An operation shall be either an arrival or a departure. Draws may include increases in Passenger Allocations (so long as

the total of Passenger Allocations for all Qualified Airlines during the half-hour period does not exceed 240 passengers) for operations for which the Qualified Airline has a Ramp Allocation.

vii At the conclusion of the first round of the Quarterly Lottery, should any Passenger or Ramp capacity remain, the process shall be repeated, with the same order of selection, for such number of additional rounds as may be necessary until no Qualified Airline that submitted a request pursuant to Subsection (5)(b)(iv) seeks Allocations.

- c. Other Matters. Routes, rates, selection of aircraft and other matters not addressed by this Section, other County law or regulation, the Airport's Technical Specifications and Procedural Requirements, or Terminal Use Agreement shall be determined by the Qualified Airline or the Federal Aviation Administration pursuant to federal law.
- d. Compliance with Applicable Requirements. All Airlines operating at the Airport shall at all times be in compliance with all applicable and lawful Airport rules and regulations, County ordinances and laws, including all Airport Technical Specifications and Procedural Requirements that may be issued from time-to-time. Any Airline violating or causing the violation of such rules, regulations, ordinances, laws, agreements or technical specifications shall cure such violation within fifteen (15) days of being so notified by the County. Failure to so cure shall result in the cancellation by the Commissioner of the Ramp Allocations and Passenger Allocations connected with such violations.
- e. Calculation of Allocation Usage for Purposes of Determining Compliance. For purposes of determining whether an Airline is exceeding its Passenger Allocations for any half-hour period under Subsection (5)(h), the County shall employ a calendar month average. For the purposes of determining whether an Airline should have its Passenger Allocations adjusted for under-use pursuant to Subsection (5)(g), the County shall employ a three-calendar-month average based on the data reported pursuant to Subsection (5)(f). In calculating such averages, the denominator shall be the number of aircraft operations actually flown during the period pursuant to a particular Ramp Allocation and the numerator shall be the number of passengers actually enplaned and deplaned on all such operations. For purposes of using averages: (1) any average that is not a whole number shall be rounded down to the next lowest whole number if the fraction greater than the next lowest whole number is lower than five tenths; and (2) any average

that is not a whole number shall be rounded up to the next highest whole number if the fraction greater than the next lowest whole number is equal to or greater than five tenths. In calculating such averages, the County shall not include, either in the numerator or the denominator, data concerning operations during the following holiday periods:

i Christmas/New Year from December 20 through January 5.

ii The Presidents' Day holiday from three (3) days before Presidents' Day through three (3) days following Presidents' Day.

iii Easter from five (5) days prior to Easter through the fifth day following Easter.

iv Memorial Day from three (3) days before Memorial Day through three (3) days after Memorial Day.

v July 4, from July 1 through July 7.

vi Labor Day, from three (3) days prior to Labor Day through three (3) days after Labor Day.

vii Thanksgiving from five (5) days prior to Thanksgiving through five (5) days after Thanksgiving.

f. Reporting.

i Airlines operating at the Airport shall certify actual passenger loads, on a per flight, per day, enplaned, deplaned, basis to the County twice monthly in the form designated by the Commissioner by no later than five business days from (1) the 15th of each month and (2) the last day of each month.

ii Each Airline shall designate at the time of any application under Subsection (5)(b)(iv), Quarterly Lottery draw under Subsection (5)(b)(vii), or transfer under Subsection (5)(k), the type of aircraft to be used for each Ramp Allocation time slot. Such designation shall be in the form established for this purpose by the Commissioner. Further, any Airline seeking to change the type of aircraft using a Ramp Allocation shall provide notice to the County, in the form designated by the Commissioner, at least seven days prior to such change. Any designation or change in

aircraft type shall comply with the Technical Specifications and Procedural Requirements.

iii The County may, at any time, audit passenger ticket lifts and/or other appropriate passenger statistics of any Airline to determine actual passenger enplanements or deplanements.

iv Failure to comply with any of the reporting or audit requirements contained in this Subsection (5)(f) within five days of an Airline's receipt of notice of noncompliance by the Commissioner shall result in immediate termination of the Ramp Allocation(s) and Passenger Allocations of the Airline. Further, any intentional misstatement of information required in this Section, as determined by the Commissioner, shall result in the immediate termination of the Ramp Allocation(s) or Passenger Allocations of the Airline.

- g. Failure to Use Allocations. If for any three-calendar-month period, an Airline's actual average passenger load for any half-hour for which it has Passenger Allocations should be less than 85 percent of the total of its Passenger Allocations, then the Commissioner shall reduce its Passenger Allocation for the subsequent quarter to 115 percent of such reported three calendar-month-average passenger loads for that half-hour period. The review and reduction made pursuant to this Subsection shall be made for successive, and not for overlapping, three-month periods. The County shall waive the application of this Subsection for any period in which the Commissioner has determined that total passenger enplanements at the Airport have been significantly adversely affected by war, national emergency or extraordinary terrorist threat, labor action, or force majeure.
- h. Exceedance of Passenger Allocations. If for any calendar month, an Airline's average passenger load during any half-hour period should exceed its Passenger Allocations for that period, then such Airline's Passenger Allocations shall be adjusted to such average load figure or such portion thereof as the available capacity of the Terminal shall accommodate ("Adjusted Passenger Allocations"). If two or more Qualified Airlines' average passenger loads for a calendar month in a particular half-hour time period exceed their Passenger Allocations and there is insufficient Passenger Capacity to accommodate all of these exceedances, the Commissioner shall assign Adjusted Passenger Allocations proportionally to the Qualified Airlines' shares of Passenger Allocations for that half-hour period. If there is insufficient available Terminal capacity to accommodate all of the exceedances of Passenger Allocations by

an Airline, then the Commissioner shall issue a written Notice of Violation to such Airline, and the Airline shall, within fifteen (15) days from such notice, reduce its average passenger load to the Adjusted Passenger Allocations level. For the purposes of determining compliance with such mandated reduction, the average passenger load will be calculated for the period from 15 days prior to the Notice of Violation to 15 days after the Notice of Violation (“Compliance Test Period”). In lieu of such mandated reduction, a Qualified Airline may obtain sufficient Passenger Allocations from another Airline pursuant to Subsection 5(k) to accommodate its average usage during the Compliance Test Period. Should any Airline fail to reduce its average passenger load during the Compliance Test Period then:

i On the sixteenth day following the Notice of Violation, such Airline’s Passenger Allocations for the applicable half-hour period shall be reduced by the amount by which that the Airline’s average loads exceeded the Airline’s Passenger Allocations as set forth in the Notice of Violation. The Airline shall thereupon be required to comply immediately with such reduced Passenger Allocations.

ii The Airline shall lose the privilege of participating in the next subsequent Quarterly Lottery for either Passenger Allocations or Ramp Allocations.

iii Should such Airline’s average passenger load during the calendar month following the reduction in its Passenger Allocation under Section 5(h)(i) not comply with such reduced Passenger Allocation, then the Commissioner may terminate, upon twenty days’ written notice, such Airline’s Ramp Allocation and Passenger Allocations for the subject half-hour period.

i. Use of Ramp Allocations.

i Any Airline obtaining a Ramp Allocation must initiate service within 60 days from the date it obtains such Allocation and must provide such service on at least a five-day-per-week basis, with aircraft capable of using the Passenger Allocations corresponding to the particular Ramp Allocation. Should any Airline fail to initiate service within such 60-day period, such Airline shall, on the 61st day, lose such Ramp Allocation and Passenger Allocations. Such Airline shall also lose the privilege of participating in the next Quarterly Lottery. Notwithstanding the foregoing, any Airline may, within ten days of any Quarterly Lottery, surrender to the County without penalty any

Passenger Allocations or Ramp Allocation or portions thereof obtained in such Quarterly Lottery. Any surrendered Allocations will become available capacity in the next Quarterly Lottery.

ii Any Airline with a Ramp Allocation must schedule use of such Allocation on at least a five-day-per-week basis, with aircraft capable of using the Passenger Allocations corresponding to the particular Ramp Allocation, or transfer the Allocation to another Airline or Airlines (pursuant to Subsection k) which together would provide service that schedules use of such Passenger Allocations, on at least a five-day-per-week basis.

(a) Failure to schedule use of a Ramp Allocation on at least a five-day-per-week basis shall result in a notice of violation from the Commissioner. If the Airline fails to schedule use of its Ramp Allocation on at least a five-day-per-week basis within 15 days of the notice of violation from the Commissioner, the Commissioner shall immediately cancel such Airline's Ramp Allocation and associated Passenger Allocations. If an Airline fails to schedule use of its Ramp Allocation on at least a five-day-per-week basis for a second time within a one-year period, the Commissioner shall immediately cancel the Airline's Ramp Allocation and associated Passenger Allocations upon one-day notice. The County shall waive the application of this Subsection for any period in which the Commissioner has determined that total operations at the Airport have been significantly adversely affected by war, national emergency or extraordinary terrorist threat, labor action, or force majeure.

(b) The Commissioner may also terminate an Airline's Ramp Allocation and associated Passenger Allocations if he or she determines that an Airline's actual use of its Ramp Allocation is inconsistent with its published schedules for use of the Ramp Allocation, indicating an intent to hold a Ramp Allocation without making use of it on a five-day-per-week basis.

iii Before initiating new or changed service, a Qualified Airline must have approval from the Commissioner regarding scheduled arrival and departure times pursuant to Subsection (5)(j).



- j. Scheduled Departure and Arrival Times. The Commissioner shall approve changes in and new scheduled arrival or departure times. Any changes not disapproved within 10 days of receipt of notice of such changes shall be deemed approved. Approval or disapproval of any changes shall be based on the following criteria:
- i All arrival and departure times must be scheduled within the half hour for which the Qualified Airline holds a Ramp Allocation;
  - ii The Qualified Airline must have adequate Passenger Allocations;
  - iii The scheduled arrival and departure times must allow for the aircraft's passengers to be enplaned and/or deplaned within the half hour for which the Qualified Airline holds a Ramp Allocation and Passenger Allocations;
  - iv Adequate ramp time outside of the half-hour period for which the Qualified Airline holds a Ramp Allocation is available, if necessary, to accommodate the proposed operation;
  - v Scheduled times shall not interfere with efficient handling of other operations within the same half-hour period or in an adjacent period;
  - vi Scheduled operations shall minimize the need for any arrival or departure holds on other Airport aprons;
  - vii Operations shall maintain a reasonable balance of arrival and departure passengers in the Terminal;
  - viii In no event shall the Commissioner's approval or disapproval of scheduled departure or arrival times deny a Qualified Airline the authority to use its Ramp Allocation and/or Passenger Allocation or affect Airline rates or routes.
- k. Transfer of Allocations; Notice.
- i Qualified Airlines may, upon two (2) weeks prior written notice to the County, transfer:
    - (a) Ramp or Passenger Allocations to another Qualified Airline provided that the transferor has operated flight(s) under such Allocations, employing aircraft

capable of using the entire Allocations, for 30 days on at least a five-day-per-week basis, or

- (b) Ramp Allocations and Passenger Allocations from one time period into another time period as long as no such transferred Allocations would result in use of the Terminal or Terminal Ramp in excess of capacity for any half-hour time period.

- ii The Commissioner may, in his sole discretion, waive either the notice period or the transferor's required use of the Allocation under this Section for short-term transfers but in no event shall waive the notice requirement.

- iii Notice to the County shall be in such electronic and/or other form designated by the Commissioner. Any notice of a transfer shall set forth (a) the names of the transferor and transferee; (b) the duration or any other conditions on the transfer, or whether the transfer is unconditional; and (c) whether the transfer is for all, or a portion (and if so, what portion) of the Allocation.

- iv The County's review of notices pursuant to this Subsection shall be limited to a determination that the proposed transaction (a) involves Qualified Airlines and (b) will not result in exceedance of the capacity limits set forth Subsections 3(a) or 4 of this Section.

- 1. New Entrants. An Airline not currently providing service at the Airport can become a Qualified Airline and obtain Allocations through the Quarterly Lottery and/or transactions with other Airlines pursuant to Subsection (5)(k) if it demonstrates compliance with the criteria set forth in Subsection (2)(h).
- m. Disputes Regarding Allocations. To the extent that any Qualified Airline disputes the identity of the designated holder of Ramp Allocations and/or Passenger Allocations, such Qualified Airline shall seek to resolve its dispute informally among the affected Airlines. If such efforts should fail, any Qualified Airline may petition the Commissioner for resolution of the dispute. After providing all Qualified Airlines with notice of the dispute, an opportunity to provide supporting information, and an opportunity for a meeting with all affected Airlines, the Commissioner shall make one of three findings: (1) find that the Allocation is properly identified by the County in the reports required in Subsections (5)(b)(i), (5)(b)(ii) and/or (5)(b)(vi); (2) that another Qualified

Airline is properly the holder of the relevant Allocation; or (3) that no Qualified Airline has a clear right to the allocation and that the Allocation is forfeited and available for reallocation pursuant to the provisions of Subsection (5). All determinations of the Commissioner shall be final.

**6. Hearings; Enforcement of This Section.**

- a. Request for Hearing and Reconsideration. Any Airline that disputes a decision by the Commissioner to terminate its Ramp Allocation(s) and/or Passenger Allocations is entitled to seek a hearing and reconsideration of the Commissioner's decision by submitting to the Commissioner a formal request within 10 days of such decision. Upon receipt of such request, the effectiveness of the Commissioner's decision to terminate an allocation shall be suspended until he or she renders a decision under Subsection (6)(c).
- b. Process for Hearing.
  - i Upon request for a hearing and reconsideration, the Commissioner shall cause to be held a hearing before a hearing officer selected by the County on the termination at issue.
  - ii A formal hearing shall be on due and adequate notice to the party concerned and shall be set down for a day certain no less than 15 days and no more than 30 days from the Airline's request for hearing and reconsideration.
  - iii A notice of hearing shall set forth:
    - (a) The time and place of the hearing;
    - (b) The basis or bases for the Commissioner's decision to terminate Ramp Allocations and/or Passenger Allocations;
    - (c) The right to present evidence;
    - (d) The right to examine and cross-examine witnesses;
    - (e) The right to be represented by counsel; and
    - (f) That failure to appear shall constitute a default by the respondent, that the hearing may proceed in the respondent's absence and a determination made

based upon evidence submitted by the Westchester County Department of Transportation.

iv The hearing officer may grant adjournments upon request of any party to the proceeding, provided that an adjournment shall not be for an indefinite period of time, but shall be set down for a day certain.

- (a) If an adjournment is requested in advance of the hearing date, such request shall be presented to the hearing officer in writing, and shall specify the reason for such request.
- (b) In considering an application for adjournment of a hearing, the hearing officer shall consider whether the purpose of the hearing will be affected or defeated by the granting of such adjournment.

v To aid in the administration of this Section, the Commissioner or any hearing officer designated by him or her in a particular proceeding, may issue subpoenas in the Commissioner's name requiring the attendance and giving of testimony by witnesses and the production of books, papers and other evidence for any hearing or proceeding conducted under this Section. Service of such subpoena(s), enforcement of obedience thereto, and punishment for disobedience thereof, shall be had as and in the manner provided by the Civil Practice Law and Rules relating to the enforcement of any subpoena. It shall be the responsibility of the party requesting the issuance of a subpoena to effect service thereof.

vi On the return day of the hearing, the hearing officer shall note the appearances of the persons attending the hearing. Witnesses shall be sworn and testimony shall be recorded either by a certain stenographer or by use of an electronic recording device.

vii Testimony shall be transcribed upon the request of any interested party. The party requesting the transcript shall pay the costs and expenses in connection therewith.

viii The hearing officer shall not be bound by the strict rules of evidence in the conduct of a hearing, but the determination shall be founded upon sufficient legal evidence to sustain it.

ix After the conclusion of a formal hearing, the hearing officer shall prepare and issue findings of fact, conclusions and recommendation(s) to the Commissioner.

c. Decision by Commissioner

i Upon the conclusion of a formal hearing and after receipt of the hearing officer's report and recommendation(s), the Commissioner shall make a decision based on such findings, determinations and recommendations as he or she deems proper, and shall execute an order carrying such decision into effect.

ii The Commissioner may direct a rehearing or require the taking of additional evidence and may rescind or affirm, in whole or in part, a prior determination after such hearing.

iii The Commissioner shall cause to be served upon the Airline, copies of findings of fact, conclusions and recommendations and orders made as a result of a formal hearing.

d. Service by County. Service of findings of fact, conclusions and recommendations, and orders, shall be made by hand or by overnight delivery to the designated representative of the Airline.

e. Hearing Cost. The cost of the hearing process (including but not limited to the fees for the hearing officer, transcription and other clerical costs, and the cost of providing witnesses but excluding any salaries of County employees) shall be borne equally by all Airlines who are parties to the hearing.

f. Injunctions. The County may maintain actions in any court of competent jurisdiction to restrain by injunction any attempted use of the Terminal or Terminal Ramp by any Airline without current, valid Ramp Allocations or Passenger Allocations.

**Section 2.** This Local Law shall take effect on XXXX, 2004.

**RESOLUTION NO. XXX-2004**

**RESOLVED**, that this Board hold a public hearing pursuant to Section 209.141(4) of the Laws of Westchester County on Local Law No. XXX-2004 entitled “A LOCAL LAW to amend Chapter 712 of the Laws of Westchester County to add a new Section 712.462, in order to codify the Westchester County Terminal Use Procedures applicable to all Airlines providing passenger service at the Westchester County Airport.”

This public hearing will be held at X.m. on the XXX day of XXX, 2004, in the Chambers of the Board of Legislators, 8th Floor, Michaelian Office Building, White Plains, New York. The Clerk of the Board shall cause notice of the time and date of such hearing to be published at least once in one or more newspapers published in the County of Westchester and selected by the Clerk of the Board for that purpose in the manner and time required by law.

**TECHNICAL SPECIFICATIONS AND PROCEDURAL REQUIREMENTS**  
**WESTCHESTER COUNTY AIRPORT**

The following Technical Specifications and Procedural Requirements are issued pursuant to Section 712.421 of the Laws of Westchester County and supercede any prior technical specifications on the same subject issued pursuant to such authority.

**I. TERMINAL RAMP CAPACITY**

A maximum of four aircraft may be scheduled to use the Terminal Ramp at any given time. Two positions may be scheduled for aircraft with a maximum overall length of 107 feet or less and two positions may be scheduled for aircraft with a maximum overall length of 130 feet.

**II. MAXIMUM AIRCRAFT LENGTH**

The maximum overall length for any aircraft using the Terminal Ramp is 130 feet.

**III. MAXIMUM WINGSPAN**

The maximum wingspan for any aircraft using the Terminal Ramp is 115 feet.

**IV. MAXIMUM TAKE OFF WEIGHT**

No aircraft with a certificated maximum gross takeoff weight in excess of 120,000 pounds shall land, take off, or use the Airport without prior permission of the Airport Manager. The Airport Manager shall grant prospective permission for a designated number of daily operations by aircraft in excess of 120,000 pounds maximum gross takeoff weight if he or she finds on the basis of acceptable engineering data that such operations, along with all other permitted or anticipated operations, would not shorten the 20-year design life of any potentially affected airport pavement. Upon request, such prior permission may be granted prospectively to a Qualified Airline so long as its operations are consistent with its Ramp Allocations. In no event shall the Airport Manager grant permission for operation by any aircraft with a certificated maximum gross takeoff weight in excess of 180,000 pounds.

Issued on: **April \_\_, 2004**

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Joel Russell  
Airport Manager

**EXHIBIT 3**  
**TERMINAL USE FEES METHODOLOGY**

**I. TERMINAL USE FEE AND METHODOLOGY**

A. Scope

The Terminal Use Fee represents the cost for use and occupancy of all Terminal space used for Airline functions (including common space allocation), including:

Airline operations/dispatch/crew briefing  
Departure lounge  
GHE Training Room  
Bag Claim  
ARFF Building (50%)  
Bag Make-up  
Bag Display  
First floor GHE Building  
Offices 265 & 266 GHE Building

B. Formulation Through 2015

The amortization period for construction of the Terminal will end at the end of 2015. The monthly Terminal Use Fee through the year 2015 will be determined using the following formula:

Total Terminal Construction Cost		\$20,458,545
Total Terminal Finance Cost	+	<u>\$13,106,469</u>
Total Terminal Cost		<u>\$33,565,014</u>
Amortization Period		<u>20 years</u>
Total Annual Terminal Cost		<u>\$1,678,251</u>
Percent of Space (including common space) allocation used by Airlines	x	<u>63.6%</u>
Total Annual Airline Terminal Cost		<u>\$1,067,367</u>
Percent of Airline Utilized Space Co-utilized by all other Airlines and not accommodated in other fees	x	<u>(88.2%)</u>
Total Annual Airline Terminal Use Fee		<u>\$941,418</u>
One Year in months	÷	<u>12</u>
Total Monthly Airline Use Fee		<u>\$78,452</u>

Values at the time of the execution of this Agreement are included for illustrative purposes.



The Total Monthly Airline Use Fee shall be proportionally allocated to each Airline, based on share of passengers as follows:

- (1) The denominator for determining the proportional share shall be calculated by adding (1) the total reported passengers for all Airlines per Subsection (5)(f) of Section 712.462 of the Laws of Westchester County for the calendar month period two (2) months prior to date of invoicing; and (2) for new entrants within the first two months of their operations, the product of the Passenger Allocations they hold in the month of invoicing times the number of days in that month.
- (2) The numerator for determining the proportional share for an Airline that has operated at the Airport for more than two months prior to the invoicing shall be the total reported passengers for that Airline for the calendar month two (2) months prior to the date of invoicing.
- (3) The numerator for determining the proportional share for a new entrant within the first two months of its operation shall be the product of the Passenger Allocations that the Airline holds in the month of invoicing and the number of days in the month.

C. Additional Capital Costs

Any costs associated with the development of secure overnight parking pursuant to Paragraph 13 of the Agreement, screening-related facilities pursuant to Paragraph 14 of the Agreement, or other capital repairs or improvements to the Terminal or Terminal Ramp shall be addressed in a separate formulation and shall be allocated to the Airlines in the manner identified in Section I.B. of this Exhibit, except for the amortization period, which will be determined in accordance with Generally Accepted Accounting Principles.

D. Formulation After 2015

After December 31, 2015, the Total Monthly Airline Use Fee (excluding fees covering additional capital costs pursuant to Section I.C. with amortization periods past 2015) will be calculated in the following manner:

Total Terminal prevailing market rental rate	_____
Percentage of space utilized by airlines	x expected to 63.6%_____
Total Annual Airline Terminal Cost	_____
Percentage of Airline space Co-Utilized	x expected to be 88.2%_____
Total Annual Airline Terminal Use Fee	_____
One Year in Months	÷ 12
Total Monthly Airline Use Fee	_____

## **II. COUNTER POSITION USE FEE**

### **A. Scope**

This fee represents the cost for using Main Ticket Lobby counter space, including the associated flight information display and back wall.

### **B. Formulation**

Through 2015, the Counter Position Use Fee is a fixed flat fee of \$244.50 per counter position per month.

This fee can be adjusted after 2015.

## **III. LOCKER CHARGE**

### **A. Scope**

The Locker Charge represents the cost for using a locker on the second floor of the GHE Building.

### **B. Formulation**

Airlines who use lockers, if available, will be assessed a Locker Charge of \$155 per locker, per year.

This fee can be adjusted after 2015.

## **IV. JET BRIDGE USE**

### **A. Current Jet Bridges**

Jet Bridge use shall be charged at \$12 per use.

This fee can be adjusted after 2015.

For the purposes of this allocation, any time an aircraft disconnects and moves away from the bridge, the use event is completed.

For the purposes of this allocation, an overnight accommodation will be assessed as two jet bridge uses, regardless of aircraft movement, provided that the jet bridge was used for arrival and departure.

### **B. Additional or Modified Jet Bridges**

In the event that the County provides additional or modified jet bridges pursuant to Paragraph 16 of the Agreement, the construction, acquisition, installation and finance costs associated with the additional or modified jet bridges shall be allocated in a manner consistent with Section I.

**V. GENERAL PROVISIONS REGARDING FEES**

- A. The County will issue a monthly invoice for the fixed monthly fees identified in Sections II, III and IV, which invoice is payable in advance of the month covered by such fees.

**EXHIBIT 4**  
**TERMINAL USE OPERATING COSTS**

**I. TERMINAL OPERATING COST**

A. Scope

This cost represents the costs of operating the Terminal for an annual period.

B. Formulation

Total eligible Terminal Operating Costs shall be the sum of the following list:

<b>Annual Terminal Operating Cost</b>	
Heat, Light & Power	
HVAC Maintenance	
Elevator/Escalator Maintenance	
Cleaning/Janitorial	
Trash Removal	
Fire Protection Maintenance	
Generator Maintenance	
Window Cleaning	
Landscaping	
FID Maintenance	
Exterminator	
Insurance	
Security	
Access Controls Maintenance	
Electrical System Repair	
Door Maintenance	
Supplies	
Water	
Water System Repair	
Conveyor Maintenance	
Taxes	
Telephone Maintenance & Repair	
Building Improvements	
UPS Maintenance	
Plumbing Supplies & Repairs	
Sewers	
Painting	

Security Cameras	
Wireless Service	
Signage Repairs & Maintenance	
Building Management	
Airport Management	
Environmental Management	
Maintenance Cost Allocation	
<b>TOTAL TERMINAL OPERATING COST</b>	
Percent of total cost allocated to Airlines	
x	63.6%
<b>TOTAL AIRLINE ANNUAL TERMINAL OPERATING COST</b>	
One Year	
÷	12
<b>TOTAL AIRLINE MONTHLY TERMINAL OPERATING COST</b>	

(1) Terminal Use Operating Cost Allocation

Eighty-eight and two tenths percent (88.2%) of the Total Monthly Airline Terminal Operating Cost shall be allocated to Airlines based on their individual proportions of the total passenger count, using the same methodology provided in Exhibit 3, Section I.B.

(2) Counter Position Cost Allocation

Five percent (5%) of the Total Monthly Airline Terminal Operating Cost shall be allocated to Airlines that use counter positions on a flat fee per month.

(3) Airline Office

Four and one-tenth percent (4.1%) of the Total Monthly Airline Terminal Operating Cost shall be allocated to Airport office holders.

C. General

- (1) The Annual Terminal Operating Cost shall be calculated by the County using actual or best estimated costs for the services indicated. The completed Annual Terminal Operating Cost shall be transmitted to all Permittees by November 1 of the year preceding the year in which such costs will be used to set fees. All estimates shall be so noted.

- (2) The County will make an adjustment by May of the following year in which actual costs will be compared to the estimates. Adjustments will be made for each Permittee based on annualized indicators (passengers, locker utilization, counter position use).
- (3) If an Airline leaves the Airport, that County will seek to collect any remaining debits from such Airline. If, after 90 days, the County has not recovered past fees from the departing Airline, the Airline's past year credit or debit shall be proportionally allocated to the Qualified Airlines who are present at the time of the adjustment.

D. New Costs

Any operational or maintenance costs associated with new secure overnight parking provided pursuant to Paragraph 13 of this Agreement or screening-related facility improvements pursuant to Paragraph 14 of this Agreement shall be included in the allocable costs listed in Section I.B. of this Exhibit and the percentage(s) shall change accordingly.

**II. JET BRIDGE OPERATING COSTS**

A. Scope

This allocated cost represents the annual maintenance and electrical cost for jet bridge operation.

B. Formulation

- (1) The actual or best estimated cost for jet bridge operation shall be determined by the County. This cost shall be divided by 12 and allocated to Permittees based on the prior month's use as set forth in Exhibit 3, Section IV.A.
- (2) Permittees will be notified of the actual or estimated Jet Bridge Operating Cost by November 1 of the year preceding the year in which such costs will be used to set fees.
- (3) The County will make an adjustment by May of the following year in which actual costs will be compared to the estimate, adjustments will be made to each Permittee based on annualized indicators (jet bridge use).
- (4) If an Airline leaves the Airport, that County will seek to collect any remaining debits from such Airline. If, after 90 days, the

County has not recovered past fees from the departing Airline, the Airline's past year credit or debit shall be proportionally allocated to the Qualified Airlines who are present at the time of the adjustment.

C. Additional or Modified Jet Bridges

In the event that the County provides additional or modified jet bridges pursuant to Paragraph 16 of the Agreement, the operational and maintenance costs associated with the additional or modified jet bridges shall be added to the Total Jet Bridge Operation Cost and the use of the additional or modified jet bridges shall constitute use events for purposes of allocating costs in the methodology described above.

**EXHIBIT 5**  
**PASSENGER HANDLING FUNCTIONS DEFINITION**

**I. PASSENGER HANDLING FUNCTIONS DEFINITION:** Passenger Handling Functions shall include the following functions.

A. Passenger Service Representation

- (1) Inform Permittee's or its Affiliate Group passengers and/or public about time of arrival and/or departure of Permittee's aircraft and surface transport.
- (2) When advised and requested by Permittee, assist Permittee's or its Affiliate Group passengers requiring attention (including but not limited to disabled passengers and unaccompanied minors), provide or arrange for wheelchairs, special equipment and specially trained personnel for such assistance.
- (3) Take care of Permittee's or its Affiliate Group passengers when flights are interrupted, delayed or cancelled.
- (4) Issue tickets and account for funds.
- (5) On departure, check and ensure that the tickets are valid for the flight for which they are presented; make out excess baggage tickets, collect excess baggage charges and detach applicable excess baggage coupons; carry out seat allocation or selection system.

B. Departure Area Representation Carry out seat allocation or selection system; direct Permittee's or its Affiliate Group passengers through controls to the aircraft; handle denied boarding compensation cases.

C. Gate Arrival/Departure/Close-out Meet/board Permittee's or its Affiliate Group passengers at aircraft door; on arrival, direct Permittee's or its Affiliate Group passengers from aircraft to the Terminal landside area; coordinate cabin preparation with crew and resolve seat allocation conflicts; close-out flight and delivery flight documents to crew; perform limited operations as typically assigned to gate agents.

D. Baggage Service Representation Provide baggage service representation services to receive and process claims for lost, damaged or misplaced baggage.

**II. PROCEDURES:** Passenger Handling Functions shall be provided consistent with Permittee's written procedures for such functions.



**EXHIBIT 6**  
**GROUND HANDLING SERVICES DEFINITION**

I. **GENERAL** As handling agent for the Permittee, the County, through its agent, will act on behalf of the Permittee to perform the services herein. The Ground Handling Services outlined herein must be procured from the County, except for Passenger Handling Functions, as defined in Exhibit 5.

II. **BASIC SERVICES** For the arrival and subsequent departure of the same aircraft, the following Basic Services will be provided:

A. Arrival

(1) Marshalling

- (a) Receive aircraft, marshalling at arrival.
- (b) Park aircraft, provide and position wheelchocks and safety cones according to Permittee's instructions.
- (c) Position landing gear locks, engine blanking covers, pitot-covers, surface control locks, tail stand and/or aircraft tethering as requested.
- (d) Provide, position and operate suitable ground power unit for supply of necessary electrical power, if required.
- (e) Walk around the aircraft to identify and report any damage.

(2) Baggage Handling

- (a) Unload, deliver and display baggage in accordance with local procedures.
- (b) Report to the Permittee any irregularities discovered in baggage handling.

(3) Aircraft Servicing

- (a) Turn-Around – Remove trash, newspapers and other waste, if requested
- (b) Toilet Service – Provide, position and operate toilet servicing unit to empty, clean, flush toilets and replenish fluids in accordance with the Permittee's instructions, if requested.

- (c) Water Service – Provide, position and operate water servicing unit; replenish water tanks with drinking water, the standard of which is to meet the Permittee's requirements, if requested.
- (d) Overnight Accommodation on Public Ramps (subject to availability)
  - i. Clean and tidy flight deck according to the Permittee's instructions and, if specified, under the control of a person authorized by the Permittee, empty ashtrays, dispose of litter, clear waste from seat back stowage and racks, wipe crew tables, clean and tidy seats, mop floors, clean windscreen on inside, if requested.
  - ii. Clean cabin as appropriate by emptying ashtrays, disposing of litter, clearing waste from seats and passenger service units, wiping tables, cleaning and tidying seats and passenger service units, cleaning the floors (carpets and surrounds), wiping surfaces in pantries (sinks and working surfaces) and toilets (wash basin, bowls, seats, mirrors and surrounds), removing, as necessary, any contamination caused by air sickness, spilled food or drink and offensive stains, if requested.
  - iii. Toilet Service – Provide, position and operate toilet servicing unit to empty, clean, flush toilets and replenish fluids in accordance with the Permittee's instructions, if requested.
  - iv. Water Service – Provide, position and operate water servicing unit, replenish water tanks with drinking water, the standard of which is to meet the Permittee's requirements, if requested.
  - v. Position, install and commence operation, in accordance with Permittee's instructions, of such RON devices (e.g. engine covers, cabin heaters, etc.) as may be supplied by Permittee, provided, however, that this paragraph shall not be construed to include any responsibility to monitor the continued operation of such devices after the initial installation or commencement of operation.

- (e) Overnight Accommodation on Non-Public Ramps If requested by Permittee, County will provide services as specified in II. A.(3)(d) next above to aircraft parked on non-public areas of the Airport. In the event of limited resources or personnel, priority will be given to providing services specified in II. A.(3)(d)(iii) and (iv).

B. Departure

(1) Marshalling

- (a) Dispatch aircraft, marshalling at departure; remove wheelchocks according to Permittee's instructions.
- (b) Remove landing gear locks, engine blanking covers, pitot-covers, surface control locks, tail stand and/or aircraft tethering, if required.
- (c) Provide, position and operate suitable ground power unit for supply of necessary electrical power, if required.
- (d) Walk around the aircraft to identify and report any damage.

(2) Baggage Handling

- (a) Curb-side Baggage Check-In. Provide curb side baggage check-in services according to Permittee's flight schedule in common with other Permittees.
- (b) Baggage Loading.
  - i. Sort and document baggage in the sorting area; load baggage in accordance with Permittee's procedures.
  - ii. Report to the Permittee any irregularities discovered in baggage handling.
- (c) Starting
  - i. Provide, position and operate appropriate unit(s) for normal engine starting at departures, if required.
  - ii. Provide headsets and perform ramp to flight deck communication for starting engines and other purposes.

iii. Remove ground equipment.

(3) Safety Measures Report immediately to the Permittee's authorized representative and, if available, the aircraft crew all damage notices at or inside the aircraft, irrespective of cause or time of occurrence.

(4) Airport Coordination

- (a) Coordinate gate, counter and departure area access and use, including use of FIDS, and phone systems.
- (b) Coordinate access to/from parking and hangar space arranged by Permittee, if appropriate.

### **III. OPTIONAL SERVICES**

In addition to the Basic Services identified in Paragraph II above, the County, if requested, will perform the following optional services at the Terminal acting on behalf of Permittee, subject to the terms and conditions contained herein.

A. Full Service Ground Handling If requested by Permittee, County will provide full ground handling representation, including those functions specified in Paragraphs 3(B) through 3(D). Ground handling services will be performed on a per-flight basis for the arrival and subsequent departure of the same aircraft.

B. Customer Contact Services

(1) Passenger Service Representation

- (a) Inform passengers and/or public about time of arrival and/or departure of Permittee's or its Affiliate Group aircraft and surface transport.
- (b) When advised and requested by Permittee, assist Permittee's or its Affiliate Group passengers requiring attention (including but not limited to disabled passengers and unaccompanied minors), provide or arrange for wheelchairs, special equipment and specially trained personnel for such assistance.
- (c) Take care of passengers when flights are interrupted, delayed or cancelled, according to instruction given by the Permittee; if instructions do not exist, deal with such cases according to custom.

- (d) Issue tickets beginning one hour before scheduled departure of flights and account for and remit funds collected to Permittee.
  - (e) On departure, check and ensure that the tickets are valid for the flight for which they are presented, but not including fare verification; make out excess baggage tickets, collect excess baggage charges and detach applicable excess baggage coupons; carry out Permittee's seat allocation or selection system, in accordance with Permittee's procedure.
  - (f) Direct passengers through controls to the aircraft.
- (2) Departure Area Representation
- (a) Carry out Permittee's seat allocation or selection system, as mutually agreed.
  - (b) Direct passengers through controls to the aircraft.
  - (c) Handle denied boarding compensation cases, as agreed with the Permittee.
- (3) Gate Arrival/Departure/Close-out Meet or board passengers at aircraft door; on arrival, direct passengers from aircraft to the Terminal land side area; coordinate cabin preparation with crew and resolve seat allocation conflicts; close-out flight according to Permittee's instructions; deliver flight documents to crew.
- (4) Baggage Services Representation Provide Baggage Service representation services according to Permittee's flight schedule in common with other Permittees.

C. Flight Departure Coordination

- (1) Prepare, sign, distribute and file as appropriate, documents, balance charts, Captain's weight and balance manifests, as reasonably required by the Permittee.
- (2) Keep up-to-date all necessary manuals and instructions that the Permittee must provide and ensure that all prescribed forms are available.

- (3) Maintain a trip file collecting all documents specified by the Permittee, all messages received or originated in connection with each flight and dispose of this file as instructed by the Permittee.
  - (4) Distribute flight operation forms as specified by the Permittee and obtain signature of the pilot-in-command, where applicable.
  - (5) Take immediate and appropriate action in case of in-flight irregularity, according to the Permittee's instructions (written or verbal); log and notify as specified by the Permittee, any incident of an operational nature (delays, diversions, engine trouble, etc.)
  - (6) Coordinate fueling and/or defueling with fuel suppliers.
- D. Operations Coordination Receive and distribute as appropriate, documents, loading instructions, load sheets, Captain's load information and manifests, as reasonably required by the Permittee.
- E. Other Additional Services
- (1) Customer Service Agents for the Scheduling and Assignment of Permittee County will provide customer service agents for the scheduling and assignment of Permittee to perform customer service functions as directed by Permittee to include passenger processing, gate/boarding functions directly related to the performance of customer service functions for the Permittee's own flights. Agents will be provided for full or part-time schedules at Permittee's request.
  - (2) Operations Agents for the Scheduling and Assignment of Permittee County will provide operations agents for the scheduling and assignment of Permittee to perform station operations functions as directed by Permittee to include flight following, crew briefing, weight and balance, field condition reporting and crew accommodation coordination and other support functions directly related to the performance of the station operations function for Permittee.
  - (3) Additional Services Upon Agreement If requested, County may provide such additional services as may be agreed between County and Permittee. In the event that such other additional services are provided, additional charges may be imposed.
  - (4) Optional Towing and De-Icing Services. If requested by the Permittee the County will use reasonable efforts to (a) provide manpower, equipment and glycol as necessary to perform aircraft

de-icing; and (b) perform towing to reposition aircraft for the Permittee. The services set forth in this paragraph are provided subject to the following terms and conditions:

- (a) *Performance of services.*
  - i. If requested by Permittee and subject to availability of equipment, supplies and personnel, the County will use reasonable efforts to (a) provide manpower, equipment and glycol as necessary to perform aircraft de-icing; and (b) perform towing to reposition aircraft for the Permittee. All services hereunder shall be in accordance with the requirements contained in the Permittee's maintenance manuals. The Permittee shall, at its sole cost and expense, provide the County with pertinent maintenance manuals and work forms, and adequate training necessary for the County to perform the services provided herein.
  - ii. Without limiting the generality of the foregoing, training and qualification of handling personnel and any required certification of personnel or procedures shall be the responsibility of the Permittee.
- (b) *Standards of services.* All services to be rendered by the County through its agents, employees or otherwise hereunder shall conform to the requirements of the Federal Aviation Administration and be reciprocal to Permittee's obligations pursuant to the Agreement to conduct a first-class operation. No provision herein shall be construed to impose upon the County the obligation to add or retain manpower, equipment or supplies at any Airport location beyond that reasonably necessary to provide the services contemplated hereunder. The performance of any service shall be subject to applicable federal, state and local laws, statutes, ordinances, rules and regulations. This provision shall supercede any other provision of the Agreement or exhibits thereto regarding standards of service.
- (c) *Responsibility for airworthiness.* The Permittee shall at all times be responsible for the airworthiness of its aircraft in accordance with Federal Aviation Regulation 121.363.

- (d) *Warranties.* All parts, services or supplies furnished or sold to the Permittee pursuant to the Agreement will be furnished by the County without representation or warranty, express or implied, of any nature whatsoever, including any implied warranty of merchantability or fitness for a particular purpose.
- (e) *Performance excused.* It is understood and agreed that the County shall be excused from performing services hereunder and shall have no liability whatsoever to the Permittee for such non-performance should the County for any reason be unable to secure supplies or personnel adequate, in the County's reasonable judgment, to service Permittee's aircraft.
- (f) *Indemnity and Insurance.* Notwithstanding anything contained in the Agreement, the parties hereto shall be governed by the following liability and indemnity provisions with respect to services to be provided hereunder which provisions are in addition to not in lieu of other indemnity and insurance provisions in the Agreement or the exhibits thereto:
  - i. At all times that services are being furnished hereunder, an employee or agent of the Permittee shall be in charge, custody and control of aircraft of the Permittee being serviced by the County and at no time shall the County, its elected officials, officers, employees, agents or contractors be considered a bailee of or as having care, custody or control of such aircraft.
  - ii. The Permittee shall indemnify and hold harmless the County, its elected officials, officers, agents, contractors and employees from and against any and all costs and expenses incurred by the County as a result of any investigation commenced or threatened, or penalties or fines assessed or imposed by the Federal Aviation Administration or other government agency with respect to the airworthiness of the work performed hereunder except to the extent of the County's gross negligence or willful misconduct.
  - iii. The Permittee agrees to and shall indemnify, defend and hold harmless the County, its officers, agents,



contractors and employees from and against any and all losses, costs, damages and expenses, including, but not limited to, court costs and attorney's fees, for death of or injury to any person whomsoever (including County officers, employees or agents) for loss or destruction of or damage to property whatsoever (including County property) arising out of or in any way connected with the performance of services provided herein or the use or operation of Permittee's aircraft.

Notwithstanding the foregoing, the Permittee shall not be required to indemnify the County, its officers, employees or agents for losses, penalties, damages, settlements, costs, charges, expenses, liabilities, liens, demands or claims arising out of bodily injury to persons or damage to property caused by or resulting from the gross negligence of the County, its officers, employees or agents.

- iv. The County agrees to give the Permittee notice as soon as reasonably practicable after the County receives notice of any claim made or suit instituted which affects the Permittee, and the Permittee shall have the right to participate in the defense and settlement of the same to the extent of its own interests.
- v. The County shall not, in any event, be liable for consequential or incidental damages of any kind to the Permittee or any third party and the Permittee agrees to indemnify, defend and hold harmless the County, its officers, agents, contractors and employees from any such damages.
- vi. *Insurance.* Permittee shall also maintain and keep in full force and effect, at its sole cost and expense, policies of aircraft and comprehensive general liability insurance with respect to the Aircraft, its operation and maintenance, in amounts and under terms satisfactory to the County. Such policies shall be endorsed to cover the indemnity and hold harmless obligations of the Permittee to the County hereunder and shall be further endorsed to name the County and its Airport managing and ground handling agents as an additional insured. Such policies shall contain clauses providing thirty (30)

days prior written notice to the County of termination, cancellation or materially adverse modification of such policies. As used in the preceding sentence, the term materially adverse shall be deemed to include (i) any reduction in the monetary amount of the coverage; and (ii) deletion of any coverage provided under the policies maintained by Permittee pursuant to Exhibit 14 to the Agreement.

- vii. The Permittee shall also require its aircraft hull insurers to waive any rights of subrogation such insurers may or could have against the County, its elected officials, officers, agents, contractors or employees by virtue of such insurance contracts for any loss, damage or destruction of such aircraft occurring in connection with the performance of the County's obligations herein, provided, however, that neither said aircraft liability insurance nor said waivers of subrogation so provided by the Permittee shall apply to any injury, death or damage resulting from any independent act of gross negligence or willful misconduct on the part of the County, its elected officials, officers agents, contractors, or employees.
- viii. Prior to the commencement of work and the performance of services herein, the Permittee shall furnish to the County certificates evidencing insurance required hereunder. Prior to the effective date of any modification or replacement of any such insurance the Permittee shall furnish to the County certificates evidencing such modification or replacement.

**EXHIBIT 7**  
**GROUND HANDLING SERVICES FEES**

**I. FEE**

The fees for Ground Handling Services provided at the Terminal for calendar years 2004 and 2005 shall be as follows:

**A. Basic Services**

<b>Aircraft Type</b>	<b>Basic Rate</b>	<b>Pax Service</b>	<b>Opns Coord</b>	<b>Full Service</b>
B737-800*	746.44	821.08	79.12	1561.55
B737-700*	626.91	689.6	66.45	1311.49
B737-500*	529.34	582.28	56.11	1107.38
B737-300*	580.4	638.44	61.52	1214.19
B737-200*	514.65	566.11	54.55	1076.64
B717-200*	531.77	584.94	56.37	1112.45
B717-200HGW	548.43	603.27	58.13	1147.32
A319*	584.94	643.44	62	1223.7
A320*	680.69	748.76	72.15	1424
AVRO-RJ100	477.48	525.23	50.61	998.89
AVRO-RJ85	440.41	484.45	46.68	921.34
AVRO-RJ70	407.08	447.79	43.15	851.61
BAE-146-200	432.84	476.12	45.88	905.49
DC9-10	431.93	475.12	45.78	903.59
DC9-30	521.61	573.78	55.29	1091.22
DC9-40	552.37	607.61	58.55	1155.56
F-100	505.09	555.59	53.54	1056.64
F-28	342.15	376.36	36.27	715.77
CRJ-200	280.65	308.72	29.75	587.13
CRJ-200ER	286.03	314.64	30.32	598.38
CRJ-200LR	289.06	317.97	30.64	604.72
CRJ-701	377.92	415.71	40.06	790.6
CRJ-701ER	381.33	419.46	40.42	797.73
CRJ-705	414.81	456.29	43.97	867.78
CRJ-705ER	419.35	461.29	44.45	877.28
CRJ-900	432.99	476.29	45.9	905.81
CRJ-900ER	436.02	479.62	46.22	912.15
CRJ-900LR	439.05	482.95	46.54	918.49
ERJ-135ER	250.56	275.62	26.56	524.18

ERJ-135LR	253.9	279.29	26.91	531.16
ERJ-140LR	278.79	306.66	29.55	583.22
ERJ-145ER	293.02	322.33	31.06	613.01
ERJ-145LR	297.7	327.47	31.56	622.79
ERJ-145XR	304.71	335.18	32.3	637.46
ERJ-170	386.85	425.53	41.01	809.28
ERJ-170LR	390.89	429.98	41.43	817.74
F-27	281.79	309.97	29.87	589.51
ATR-42	250.43	275.47	26.55	523.9
ATR-72	321.94	354.13	34.13	673.49
D-7	268.91	295.8	28.5	562.56
D-8	224.67	247.14	23.82	470.02
D-8/300	277.62	305.39	29.43	580.79
D-8/400	379.13	417.04	40.19	793.14
SD-360	202.86	223.14	21.5	424.38
SF-34A	185.97	204.56	19.71	389.04
SF-34B	193.54	212.9	20.52	404.89
EMB-120	191.17	210.28	20.26	399.92
J-31	123.04	135.34	13.04	257.39
J-41	177.41	195.15	18.81	371.13
SD-330	178.01	195.81	18.87	372.4
D-38	201.11	221.22	21.32	420.71
B-1900C	141.5	155.65	15	296.02
B-1900D	142.29	156.52	15.08	297.67
B-99	124.68	137.15	13.22	260.84
Navajo	37.12	40.83	3.93	77.65

\*Subject to receipt of prior permission pursuant to the Technical Specifications and Procedural Requirements

- B. The fees for Ground Handling Services shall be payable monthly, in advance, based on anticipated levels of service at the Airport for the following month. Adjustments to amounts payable hereunder will be made each month to correct any overpayment or underpayment for the preceding month based on actual levels of service during such preceding month.
- C. The foregoing rates shall be subject to amendment or modification by the County at any time during the term of the Agreement, provided, however, that the County shall not increase the above stated rates before the end of

calendar year 2005 and further that the County shall not increase rates without 30 days' notice to the Airlines and more than once per year.

## **II. ADDITIONAL TERMS AND CONDITIONS**

The following additional terms and conditions shall apply to the computation of the Ground Handling Fee.

- A. For the purposes of this Exhibit, a single ground handling event shall consist of the arrival and the subsequent departure of the same aircraft.
- B. If a Permittee schedules and operates four or more flight departures per day during five days of each week, the above-stated fees shall be reduced by seven percent (7%). If a Permittee schedules and operates fifteen (15) or more flight departures per day during five days of each week, the above-stated fees shall be reduced by twelve percent (12%).
- C. For services not identified in Exhibit 6 including, but not limited to, special handling, etc., appropriate extra charges may apply.
- D. Fifty percent (50%) of the fee set forth in Section I above shall be rebated by the County for those scheduled flights which are cancelled, provided that the County has received at least forty-eight (48) hours prior notice in writing of such cancellation.
- E. The County shall not charge for scheduled flights which are cancelled provided that the County has been so notified in writing at least fifteen (15) days prior to the scheduled operation.
- F. In the event that a Permittee requests optional services as provided in Section 3.4.a, or 3.4.b of Exhibit 6, the following charges shall apply:
  - (1) Cost of Labor to include direct wages, taxes and benefits;
  - (2) An amount equal to twenty percent (20%) of item (1) next above.
- G. In the event that a Permittee requests aircraft towing and/or de-icing services, such services shall be charged at the following rates:
  - (1) De-icing Aircraft: Minimum charge of fifty and 76/100 dollars (\$50.76) inclusive of equipment (one unit) and labor (two persons) for the first fifteen (15) minutes. Charge for each additional fifteen (15) minute unit is fifty and 76/100 dollars (\$50.76).

- (2) De-icing Fluid: Charged at cost plus two hundred percent (200%) per gallon.
- (3) Towing: Minimum charge of fifty-three and 17/100 dollars (\$53.17) inclusive of equipment and labor (two persons) for the first thirty (30) minutes or fraction thereof. Charge for each additional fifteen (15) minutes is twenty-six and 59/100 dollars (\$26.59).

H. The fees described in A through G above can be adjusted annually by the County upon at least 30 days notice to the Airlines.

**EXHIBIT 8**  
**TICKET COUNTER POSITION ALLOCATION METHODOLOGY**

The Main Ticket Counter will be allocated to Qualified Airlines under the following protocol:

**I. AIRLINE RIGHTS –**

All Qualified Airlines holding Ramp Allocations and Passenger Allocations have the right to be accommodated at the Main Passenger Ticket Counter subject to the County's authority to coordinate all counter use. The location of all available ticket counter positions will be determined by the County.

**II. ALLOCATIONS –**

- A. Allocations will occur on the date of each lottery conducted pursuant to Section 712.462 of the Laws of Westchester County.
- B. An Airline is eligible to receive an Allocation if
  - (1) it is a Qualified Airline on the date of the lottery; and
  - (2) it has actively accommodated the public on at least a five-day-per-week basis during the entire month preceding the lottery.
- C. The Allocation will be based on the Passenger Allocation underutilization test averages as set forth in Subsections (5)(e) and (5)(g) of Section 712.462. An Airline's passenger average will be calculated as a percentage of total enplaned Passenger Allocations for the Airport.

The calculated percentages for each Airline will be combined for each Affiliate Group. Each total Affiliate Group percentage will then be multiplied by all available Main Passenger Ticket Counter Positions (currently 16). Unless there is a need and agreement between any two Affiliate Groups, the positions will be allocated in whole numbers.

### **III. NEW ENTRANTS**

- A. Non-incumbent Airlines that are or become a part of an Affiliate Group will use the existing counter allocation for the Affiliate Group of which it is a part.
- B. Non-incumbent Airlines or an Airline that is no longer part of an Affiliate Group operating at HPN will be accommodated through County coordination until the next counter allocation. In this coordination effort, the County may reduce or otherwise alter the existing counter allocation schedule. However, in no event shall be the County allocate more than one full counter position for the new entrant.

### **IV. NEW ENTRANTS BECAUSE OF RAMP ALLOCATION TRANSFERS**

The transferee of a Ramp Allocation shall receive the appropriate counter allocation attributable to the transferor as measured in the last Passenger Allocation underutilization/counter allocation test for the affected flights. Percentages below 1.0 will be rounded up to 1.0. Percentages above 1.0 will be rounded down below .5 and rounded up at or above .5.

### **V. ADDITIONAL TICKET COUNTER POSITION USE**

The County retains the right to allocate positions on a short-term basis for purposes of flexibility and efficiency. Such short-term allocation may include any allocated Main Passenger Ticket Counter Position of any Affiliate Group. The County will make a good faith attempt to minimize disruptions to Airlines. The County will attempt, to the extent possible, to coordinate with all involved parties. The County retains the right to make the final determination. In no event will short-term allocations be made in a manner that will cause any Affiliate Group to have less than one position per active flight (starting one hour before scheduled departure).

Counter Position Fees will not be affected by any additional position allocation action by the County.

### **VI. OTHER**

No counter positions in the Operations/Dispatch Offices or Departure Lounge are included in this allocation system.

Any new Main Passenger Terminal Counter Positions, if any will be allocated by this allocation system.



Pursuant to Paragraph 24 of the Agreement, all computer terminal equipment used by the Airlines at the ticket counters will be a common use terminal system.

**EXHIBIT 9**  
**DEPARTURE LOUNGE COUNTER POSITION ALLOCATION PROCEDURE**

- I. COUNTER POSITIONS IN THE DEPARTURE LOUNGE WILL BE ALLOCATED IN THE FOLLOWING MANNER:**
- A. One position will be allowed for each departure operation for which a Qualified Airline holds a Ramp Allocation. This position will be made available beginning 30 minutes before the half-hour period of the Ramp Allocation and ending upon the departure of the aircraft (“Allocation Period”).
  - B. The County will allocate any counter position not allocated by subparagraph (a) to an Airline based on operational needs.

**EXHIBIT 10**  
**OPERATIONS ROOM POSITION ALLOCATION METHODOLOGY**

- I. Positions in the Operations Room at the Terminal will be allocated in the following manner:
- A. Under the current configuration of the Operations Room, there are twelve positions. One position shall be available for each Affiliate Group at the Airport at the time that Section 712.462 of the Laws of Westchester County becomes effective.
  - B. For the purposes of this Exhibit only, each Airline can be a member of only one Affiliate Group. An Airline's Affiliate Group is limited for the purposes of this Exhibit only to the primary marketing name of the aircraft operator and not other affiliations or marketing names associated with the operator.
  - C. Actual assignment will be made by unanimous agreement among all incumbent Airlines. Should the incumbent Airlines be unable to reach unanimous agreement, the Commissioner shall determine, in his sole judgment, the assignment of positions in the most efficient and equitable manner.
  - D. Should any Operations Room positions be unassigned, any Qualified Airline may use such extra positions by agreement of all of the incumbent Airlines. Should the incumbent Airlines be unable to reach unanimous agreement, the Commissioner shall determine, in his sole judgment, how to allocate such unassigned extra positions in the most efficient and equitable manner.
  - E. Once Operations Room positions have been assigned, actual use of the Operations Room will be determined on a day-to-day basis by unanimous agreement of the incumbent Airlines. Should the incumbent Airlines be unable to reach unanimous agreement, the Commissioner shall determine, in his sole judgment, how to allocate actual usage in the most efficient and equitable manner.
  - F. Any new entrant which is not part of an incumbent Affiliate Group will be assigned one of the unused operations positions upon becoming a Qualified Airline. In the event that all Operations Room positions have been assigned at the time a new entrant becomes a Qualified Airline, then the last Airline or Affiliate Group to have received an extra Operations Room position shall forfeit such extra office in favor of the new Airline or Affiliate Group.

**EXHIBIT 11**  
**TERMINAL OFFICE SPACE ALLOCATION**

- I. Dedicated Airline office space in the Terminal shall be allocated in the manner set forth in this Exhibit.
- A. All Codes (defined to mean the same as “Affiliate Group”) that have an allocation of office space at the time that Section 712.462 of the Laws of Westchester County becomes effective, shall be permitted to retain one office per Code up to a maximum of ten offices. Each Code will name the individual Airline in whose name the office will be assigned.
  - B. Each Code permitted to operate at the Airport at the time that Section 712.462 of the Laws of Westchester County becomes effective may also retain any extra offices (defined as more than one office per Code) that it is allocated at the time Section 712.462 of the Laws of Westchester County becomes effective until and unless there are insufficient offices to accommodate all Airlines and Codes.
  - C. If there are any unused offices after offices are allocated pursuant Paragraphs 1 and 2, above, such offices will be made available to any Qualified Airline on a lottery basis.
  - D. In the event that a new Code initiates service at the Airport and no offices are available at the time for such new Code, then the last Airline to have received an extra office shall forfeit such extra office in favor of the new Code.

**EXHIBIT 12**  
**ADMINISTRATIVE COMPLAINT PROCEDURE**

- I.** The following procedures shall apply to complaints regarding ground handling performance.
- II.** Any Qualified Airline with an operational complaint shall submit its complaint in writing to the Commissioner or his designated representative. Unless otherwise specified by the Commissioner, the Airport Manager shall be the designated representative of the Commissioner for purposes of this procedure.
- III.** All complaints will be forwarded to the Commissioner, who shall have five business days to acknowledge and five additional business days to present final or preliminary comments/resolutions. Final comments or resolution shall be delivered in no more than four business days. In the event that the Commissioner finds that the complaint is warranted in whole or in part, such final resolution will set forth what action, if any, the County will take in response to the complaint.
- IV.** If the Qualified Airline is not satisfied with the Commissioner's final comments or resolution, the Qualified Airline may request reconsideration by submitting such additional documentation to the Commissioner as it believes appropriate. Upon receipt of a request for reconsideration, the Commissioner shall designate a person, other than the person who was originally responsible for the review of the complaint under paragraph III, above, to reconsider the complaint. Such designee shall have five additional business days to acknowledge and five additional business days to present final or preliminary comments. Final comments shall be delivered in no more than five business days. In the event that the Commissioner's designee finds that the complaint is warranted in whole or in part, such final resolution will set forth what action, if any, the County will take in response to the complaint.
- V.** Individual fee disputes shall be presented to the Ground Service Manager or Airport Manager as appropriate.
- VI.** The procedure set forth in this Exhibit is not a precondition to any Qualified Airline's exercise of any right under the Agreement.

**EXHIBIT 13**  
**PROPRIETARY SELF-CHECK TERMINAL LOCATION PROCEDURE**

- I. These provisions shall apply to the allocation of proprietary self-check terminal kiosk positions on the second and third floors of the Terminal pursuant to Paragraph 25(c) of the Agreement.
- II. Qualified Airlines may apply to the Commissioner for use of the locations designated by the Commissioner for self-check kiosks under Paragraph 26(c) (“Kiosk Positions”). The Commissioner shall allow use of these Kiosk Positions on a first come, first served basis unless and until there are insufficient Kiosk Positions available to accommodate pending requests for Kiosk Positions.
- III. Qualified Airlines may transfer Kiosk Positions to other Qualified Airlines, so long as they provide at least ten days’ notice to the Commissioner.
- IV. In the event that the Commissioner receives an application or applications for Kiosk Positions that exceed available Positions, the Commissioner shall implement the following allocation process:
  - A. Each Qualified Airline that has one or more kiosks on the second and/or third floors installed at the time that this allocation process becomes necessary shall be allowed to retain one of its Kiosk Positions of its choosing on the second or third floor of the Terminal.
  - B. All remaining Kiosk Positions will be subject to a lottery, such lottery to be held concurrently with Quarterly Lotteries of Terminal Capacity pursuant to Section 712.462 of the Laws of Westchester County. The Commissioner will randomly determine the order for Kiosk Position selection at each lottery. Qualified Airlines may, in the randomly determined order, select one kiosk location per turn, until no Kiosk Positions are left for selection or no Qualified Airline chooses remaining Kiosk Positions.
  - C. A lottery for Kiosk Positions shall be conducted each time the Commissioner receives an application or applications for Kiosk Positions that exceed available Positions, but in no event more often than once every six months.
  - D. Kiosk Positions that are not used for 30 consecutive days shall be forfeited and made available for reallocation at the next lottery.

**EXHIBIT 14**  
**INSURANCE REQUIREMENTS**

The Permittee, at its sole cost and expense, shall obtain and maintain in continuous effect during the term of this Agreement insurance policies issued by an insurance carrier licensed to do business in the State of New York providing for:

- I. Workers compensation – Statutory coverage or self-insured as permitted by New York State law.
- II. Comprehensive General Liability with a minimum single limit of \$1,000,000 per occurrence for bodily injury and property damage with the following coverages:
  - A. broad form contractual liability
  - B. operations
  - C. products liability
- III. Comprehensive Automobile Liability with a minimum single limit of \$1,000,000 per occurrence for bodily injury and property damage with coverage in the following areas:
  - A. owned vehicles
  - B. non-owned vehicles
  - C. hired vehicles
- IV. Comprehensive Airline Liability Insurance, with a combined single limit of \$200,000,000 per occurrence for bodily injury and property damage and passenger liability, owned and non-owned aircraft, operations, products and completed operation.
- V. All-risk hull insurance covering Permittee's aircraft to be serviced hereunder; provided that such policy shall contain a waiver of subrogation clause running to the County with respect to loss or damage resulting from services to be performed by the County hereunder to the extent of the liability assumed by Permittee; and the passenger liability, public liability or property damage insurance policies shall name the County, its officers, employees and agents as additional insured thereunder to the extent of the liability assumed by Permittee, shall contain appropriate cross-liability provisions, and each policy shall contain a 30-day advance written notice of cancellation clause and a "breach of warranty" clause whereby the insurers agree that a breach of the insurance conditions by the Carrier does not invalidate the coverage provided by the insurance as to the interest of the County.
- VI. The Permittee shall provide the County with a Certificate of Insurance indicating proof of the foregoing coverage. Such certificate shall provide that the carrier issuing the certificate shall notify the County thirty (30) days in advance of any cancellation or material change in the terms or coverage of such insurance policies. Any such notice shall be in writing and shall be served by certified mail, return receipt requested, on the Director of Risk Management, County of Westchester, County Office Building, 148

Martine Avenue, White Plains, New York 10601. The failure of the Permittee to obtain or maintain such insurance coverage shall not relieve the Permittee from any liability arising from this permit nor shall any such liability be limited to the liability insurance coverage provided for herein.



**EXHIBIT 15**  
**TERMS FOR USE OF HANDICAPPED BOARDING EQUIPMENT**

- I. **PURPOSE:** This exhibit outlines the responsibilities of the County and any Airline operating an aircraft with a capacity of more than 30 seats at Westchester County Airport in regard to boarding assistance for individuals with disabilities as prescribed in 49 CFR Part 382.40 and 14 CFR Part 27. This boarding assistance procedure is not required for aircraft with less than 30 seats, float planes or the Metro, Jetstream 31 and BE 1900 (C&D model) or any other aircraft determined by the DOT to be unsuitable. When boarding assistance is not required as outlined above or for reasons beyond the control of all parties (i.e. mechanical failure), the boarding assistance shall be provided by any means available to which the passenger consents, except hand carrying.
- II. **PERMITTEE RESPONSIBILITIES:** A Permittee's responsibilities include the following:
- A. to disseminate information concerning any limitation to the ability of the aircraft to accommodate qualified individuals with disabilities, including limitations on the availability of boarding assistance to the aircraft, with respect to the departure and destination points and any intermediate stops. The Permittee shall provide this information to any passenger who states that he or she uses a wheelchair for boarding, even if the passenger does not explicitly request the information;
  - B. to advise any passenger wishing to use a lifting device to check in one hour before scheduled departure. If the passenger checks in after this time, the Permittee shall nonetheless make a reasonable effort to request that the County use the boarding lift if it can do so without delaying the flight;
  - C. to request the use of the lifting device, and give the County notification of its need to use a passenger lift device as early as possible;
  - D. if the passenger has checked in after the one hour period, and the lift device is available, but the flight may be delayed to accommodate the passenger, the Permittee shall make the decision to accommodate the passenger or to not accommodate the passenger;
  - E. to provide all seat assignments or denial of seat assignments;
  - F. to notify the County concerning any aircraft which the Permittee uses at HPN, and which has been determined by DOT to be unsuitable for boarding assistance; and

- G. to provide to the County any Airline specific training concerning passenger handling or aircraft handling concerning the operation of a lifting device.

**III. COUNTY RESPONSIBILITIES:** The County's responsibilities include the following:

- A. to provide one lifting device;
- B. to operate the device;
- C. to provide all necessary maintenance for the device;
- D. to post the status of the lifting device in Airline Operations;
- E. to have the lift in position at the normally utilized gate within 30 minutes of notification; and
- F. to be responsible for all lift operation training. However, the County will receive any appropriate Airline-specific training concerning passenger handling or aircraft operation while utilizing the lifting device.

**IV. USE OF ALTERNATIVE LIFT DEVICE.** In lieu of using a County-provided passenger lift device, any Permittee may use an alternative lift device provided that the Permittee (a) owns, or has executed a Passenger Access Lift License Agreement with the owner of, such lift device; (b) that such Passenger Access Lift License Agreement does not purport to transfer any of Permittee's obligations under this exhibit; (c) that such lift device is owned by a Qualified Airline; (d) that use of such alternative passenger lift device does not contravene the purpose of this exhibit as set forth in paragraph I above; and (e) that the Permittee complies with paragraph II above in the use of such alternative passenger lift device.

**V. MUTUAL RESPONSIBILITIES:** The parties agree that they shall cooperate in escorting a passenger to any gate using the doors at Gate 3 or 4 or Door #16 for Gate 1 and #2 operation. Although the platform access at Gate 1B or 2B is available, the parties acknowledge that use of this access will necessitate additional time.

**VI. SEPARATE EXECUTION.** If requested by the Commissioner, Permittee will separately execute this Exhibit by signing below.

---

Permittee's Authorized Representative

**EXHIBIT 16**

**PERMITTEE/AIRLINE FLIGHT SCHEDULE [EXAMPLE]**

ARRIVE				DEPART			
<u>FLIGHT</u>	<u>FROM</u>	<u>HPN</u>	<u>FLIGHT</u>	<u>TO</u>	<u>HPN</u>	<u>FREQUENCY</u>	<u>EQUIPMENT</u>
1234	Anytown	08:29	5678	Anytown	08:55	x 6, 7	D-8
1236	Anytown	12:59	5670	Anytown	13:20	X 6, 7	D-8
1238	Anytown	17:00	5672	Anytown	17:29	Daily	D-8
1232	Anytown	20:59	5674	Anytown	05:59	X 7	D-8

The foregoing schedule is subject to adjustment and modification in accordance with the Airport Rules and Regulations and the Laws of Westchester County. All such adjustments and/or modification are further subject to the approval of the County Commissioner of Transportation.

**EXHIBIT 17**  
**PERMITTEE STATUS RECORD [EXAMPLE]**

**I. AIRLINE**

XYZ Airline, Inc.

**II. DATE OF RECORD**

December 31, 2004

**III. SPACE UTILIZATION**

A. Main Ticket Counter Position(s):

Assigned position 1 and share 1 with ABC Airlines

B. Office Space:

None Assigned, Utilize ABC Office

C. Operations Office Position Assigned:

Assigned Position A

D. Lockers Assigned:

None

**IV. SERVICES REQUESTED**

A. Ramp Services – Mandatory: Yes

B. Passenger Service: Yes

C. Operations Coordinator: Yes

D. Fuel Service:

E. Additional Service:

F. Towing: Yes

G. Deicing: Yes

H. Baggage: Yes

**V. RON, COUNTY PARKING:**

None

**Appendix J:**  
Off Airport Parking Garage Height Limitation Study



# Off Airport Parking Garage Height Limitation Study

July 2011

***Prepared by DY Consultants***

401 Franklin Avenue, Suite 318  
Garden City, NY 11530



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## 1. Introduction

This report documents the technical findings of a preliminary airspace analysis, conducted for a proposed parking structure being planned by 11 New King Street, LLC. It presents supporting information to determine if the proposed parking structure is within the maximum allowable height limitations based upon Federal Aviation Administration airspace requirements for any structure located within the vicinity of an airport. All Figures referred to in this report are presented at the end of the document.

## 2. Project Location

The proposed parking structure will be located on Lot 14B, block 4 east of Purchase Street, west of New King Street and north of Airport Road in the Town of North Castle, Westchester County, New York. The proposed site is located Approximately 2,242 feet northeast of the Runway 16 end at Westchester County Airport (HPN). Figure 1, Boundary Survey and Topographic Map illustrates the site boundaries as well as elevation contours. Figure 2, Site Location presents an aerial image that illustrates the proposed project site location and layout in reference to the surrounding area and Runway 16 at HPN.

## 3. Project Development

The general project description is an off-airport parking structure. Currently, HPN is experience a shortage of long term parking. Figure 3, Proposed Site Layout illustrates the conceptual view of the structure. The proposed parking structure has an existing ground elevation of 391.596 feet Above Mean Sea Level (AMSL) with a proposed total height of 455 feet AMSL and will have an area of 107,755 square feet (SF).

## 4. FAA Requirements

Proposed Structures around airports need to clear many hurdles before proceeding to construction. One of the most important milestones in any proposed construction around an airport is securing the determination from the Federal Aviation Administration (FAA) that the Proposed Structure does not adversely affect air traffic. The FAA requires that a Form 7460-1, Notice of Proposed Construction be filed for any object closer than 20,000 feet to a public-use airport with a runway more than 3,200 feet long.

The FAA has published several sets of criteria for identifying obstructions in order to insure the safety of navigable airspace in the vicinity of airports. DY Consultants was requested by a private development firm to determine the estimated maximum allowable height of an off-airport parking structure, based upon FAA airspace obstruction regulations and criteria, which is located in close proximity to Westchester County Airport (HPN), New York.

The proposed parking garage will be evaluated against a set of FAA obstruction criteria including:

- Title 14 Code of Federal Regulations (CFR) Part 77, *Objects Affecting Navigable Airspace*
- FAA Order 8260.3B Change 19, *United States Standards for Terminal Instrument Procedures (TERPS)*
- FAA AC/150-5300-13, *Airport Design, changes 1-16*



## 5. Parking Structure Elevation Technical Analysis

The proposed parking structure height of 455 feet AMSL was obtained from the survey information provided by Aerotech. The preliminary analysis uses a total set of 5 points at 455 feet AMSL representing the proposed parking structure corner elevations and coordinates. The most critical point for the proposed parking structure is point 2. Figure 4, Critical Surfaces illustrates the corner elevations in relation to the surfaces that will be discussed in subsequent sections.

The following preliminary technical analysis will estimate the maximum allowable height for the proposed parking structure by using FAA TERPS, FAR Part 77 and Runway End Siting Requirements, as described in FAA AC/150-5300-13 Airport Design.

### **TERPS**

The Federal Aviation Administration (FAA) follows the standards contained within the Terminal Instrument Procedures (TERPS) Order, FAA ORDER 8260.3B Change 19, for the design of instrument approach procedures at airports. TERPS provide the standards for maintaining clear and unobstructed approaches to runways. An airport must ensure that FAA approach procedure criteria are observed to preserve their existing procedures and the minimums associated with them. The TERPS requirements addressed by this study will include the standards for the visual segment of approach clearance standards and the W, X, and Y Surfaces.

TERPS Order identifies the criteria for the visual portion of an instrument approach procedure. The dimensions are dictated by whether the approach for a runway is Standard (Circling), Straight-In, or Offset (See Figure 5: Diagram of TERPS Visual Portion of the Final Approach Segment). For Westchester County Airport Runway 16, the Visual Portion of the Final Approach Segment (VPFAS) begins 200 feet from the Landing Threshold Point and slopes upward at 34:1

The TERPS W, X, and Y Surfaces are applied to the final approach segment of a precision approach. The W and X Obstacle Clearance Surfaces (OCS) are considered the primary area while the secondary area consists of the Y OCS. For Westchester County Airport, these areas originate 200 feet from the Landing Threshold Point (LTP). All three surfaces are centered on the runway centerline and slope upward and outward at 20:1, 4:1 and 7:1 respectively to the Precision Final Approach Fix (PFAF). The W OCS is the narrowest and is on the bottom followed by the slightly wider X OCS and then the even wider Y OCS (See Figure 6: TERPS W, Y, Z surfaces).

Table 1 presents the technical analysis of the parking structure elevation points in relation to the TERPS criteria only for Runway 16. The parking structure appears to be within the limits of TERPS surfaces.

**Table 1: HPN Runway 16 TERPS Analysis Results**

Proposed Garage Elevation Reference Point	VPFAS Maximum Allowable Garage Elevation (AMSL) 34:1	W Surface Maximum Allowable Garage Elevation (AMSL) 20:1	X Surface Maximum Allowable Garage Elevation (AMSL) 4:1	Y Surface Maximum Allowable Garage Elevation (AMSL) 7:1
1	N/A	N/A	941 ft	N/A
2 (critical point)	N/A	N/A	1686 ft	N/A
3	508 ft	508 ft	N/A	N/A
4	512 ft	512 ft	N/A	N/A
5	N/A	N/A	984 ft	N/A

**FAR Part 77 Objects Affecting Navigable Airspace**

FAR Part 77 establishes standards for determining obstructions in navigable airspace. It provides for aeronautical studies of obstructions to air navigation, to determine their effect on the safe and efficient use of airspace. The standards apply to existing and proposed manmade objects, objects of natural growth, and terrain.

Westchester County Airport is considered a civil airport under Part 77 regulations. An existing object, including mobile objects and potential and future objects are considered an obstruction to air navigation if it is penetrates any of the "Imaginary Surface" established under FAR Part Subpart C ( See Figure 7: Part 77 Surfaces).

The Part 77 Surfaces assessed in table 2 include:

- **Primary Surface**
- **Approach Surface**
- **Transitional Surface**
- **Horizontal Surface**
- **Conical Surface**

**Table 2: HPN Runway 16 Part 77 Surfaces Analysis Results**

Proposed Garage Elevation Reference Point	Primary Surface Maximum Allowable Garage Elevation (AMSL)	Approach Surface Maximum Allowable Garage Elevation (AMSL) 50:1	Transitional Surface Maximum Allowable Garage Elevation (AMSL) 7:1	Horizontal Surface Maximum Allowable Garage Elevation (AMSL)	Conical Surface Maximum Allowable Garage Elevation (AMSL)
1	N/A.	490 ft	N/A.	N/A.	N/A.
2 (critical point)	N/A.	489 ft	N/A.	N/A.	N/A.
3	N/A.	490 ft	N/A.	N/A.	N/A.
4	N/A.	493 ft	N/A.	N/A.	N/A.
5	N/A.	493 ft	N/A.	N/A.	N/A.

According to the results provided in Table 2 the proposed parking structure will not penetrate any of the Part 77 surfaces relative to Runway 16 at HPN.

#### **FAA AC/150-5300-13 Airport Design**

The Federal Aviation Administration (FAA) provides recommendations and practices for the design of airports in Advisory Circular 150/5300-13, Airport Design. The current version at the time of this study is Change 16. Airports, like Westchester County Airport, that are obligated under the Airport Improvement Program (AIP) are required to meet and maintain these airport design standards. Appendix 2 of the Advisory Circular contains criteria for Runway End Siting. Two surfaces assessed as part of this study include the Instrument Departure Surface, and One Engine Inoperative Obstacle Identification Surface (OEI/OIS).

#### ***One Engine Inoperative Obstacle Identification Surface***

The OEI/OIS applies only to airports supporting Air Carrier operations such as HPN. OEI/OIS at HPN begins at the elevation of the Departure End of Runway 16 and slopes upward at 62.5:1. Table 3 presents the findings of the critical elevation points of the proposed structure in relation to the OEI/OIS surface for departures off the Runway 16 end.

**Table 3: HPN OEI/OIS Results**

<b>Proposed Garage Elevation Reference Point</b>	<b>OEI/OIS Maximum Allowable Garage Elevation (AMSL) 62.5:1</b>
1	485 ft
2 (critical point)	485 ft
3	485 ft
4	487 ft
5	488 ft

The 62.5:1 surface results in a maximum height limitation of 485 feet. The proposed parking structure does not penetrate this surface.

#### ***Instrument Departure Surface***

The Instrument Departure Surface is a relatively new airport design surface which begins at the runway threshold (500 feet either side) and extends out along the extended runway centerline for 10,200 feet and has an outer width of 3,233 feet either side of centerline. The surface slowly rises at a 40:1 slope (1 foot vertical for every 40 feet horizontal).

The specific airspace clearance requirements associated with this surface are defined in FAA Ac 5300-13 as follows:

“No object should penetrate a surface beginning at the elevation of the runway at the Departure End of Runway (DER) or end of clearway, and slopes at 40:1. Penetrations by existing obstacles of 35 feet or less would not require Takeoff Distance Available (TODA) reduction or other mitigations found in paragraph 4; however, they may affect new or existing departure procedures.”<sup>1</sup>

<sup>1</sup> FAA Advisory Circular 150-5300-13, change 13, Appendix2, para.

5D(1)(a)

Table 4 presents the results of assessing the elevation points of the proposed structure against the Instrument Departure Surface.

**Table 4: HPN Runway 16 Instrument Departure Surface**

Proposed Garage Elevation Reference Point	Instrument Departure Surface Maximum Allowable Garage Elevation (AMSL) 40:1
1	505 ft
2 (critical point)	504 ft
3	505 ft
4	508 ft
5	509 ft

According to the results provided in Table 4 the proposed parking structure will not penetrate the Departure Surface relative to departures off the Runway 16 end at HPN.

## 6. Conclusion

Based on the results for Runway 16 TERPS Surfaces, Part 77 Approach Surface, Instrument Departure Surface, OEI/OIS and the critical point for the proposed parking structure, it is estimated that the proposed height of 455 feet AMSL is less than the maximum allowable parking structure height of 485 feet AMSL as defined by the OEI/OIS.

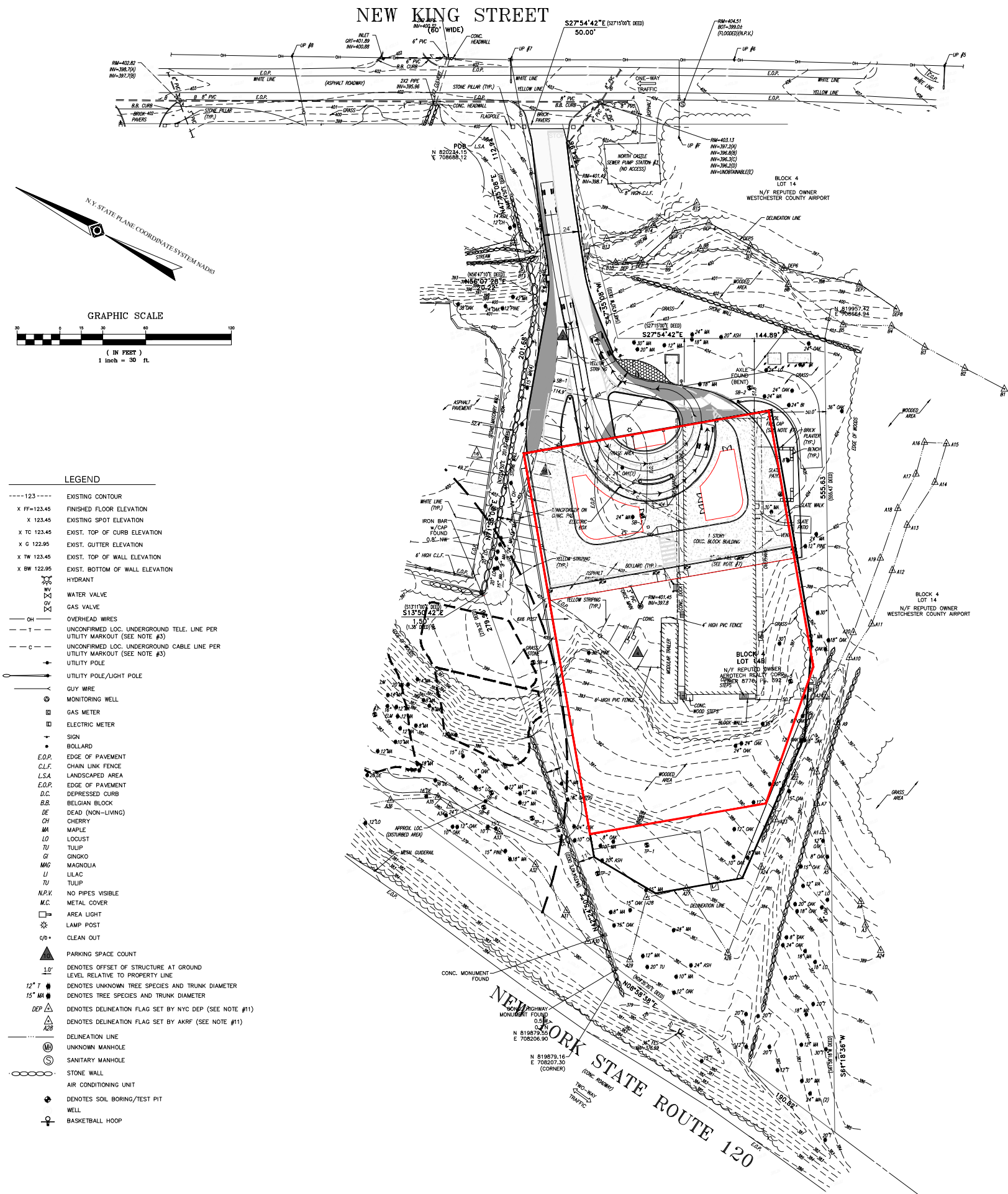
It is important to know that although this preliminary analysis reflects the overall findings and conclusions related to the estimated maximum parking structure height using the data provided, the FAA will independently analyze the Form 7460-1 and issue either a Determination of No Hazard to Air navigation (DNH) or a Notice of Presumed Hazard (NPH).

## 7. Other Considerations

During the assessment of the airspace surfaces, DY Consultants did take note that the proposed parking structure is located within a ground based area that the FAA encourages all airports to control and keep clear of buildings etc. It is called the Runway Protection Zone (RPZ). The RPZ is an airport design requirement and has the function of enhancing the protection of people and property on the ground. It is not an “airspace” requirement. Most airports achieve this through owning or control of the land lying within the limits of the RPZ.

The RPZ is trapezoidal in shape and begins at a ground level point 200 feet from the end of the runway and for Runway 16 has an inner width of 1,000 feet, outer width of 1,750 feet and length of 2,500 feet. The Proposed Parking Garage will be located inside Runway 16 RPZ however, some uses such as Automobile parking facilities may be permitted outside of the central portion of the RPZ (See Figure 8: Runway Protection Zone).

## FIGURES



NOTES:

- PROPERTY KNOWN AS LOT 14B, BLOCK 4 AS SHOWN ON THE OFFICIAL TAX MAP OF THE TOWN OF NORTH CASTLE, WESTCHESTER COUNTY, NEW YORK.
- AREA = 107,755 S.F. OR 2.474 AC.
- THE LOCATION OF ALL UNDERGROUND UTILITIES HAVE NOT BEEN SHOWN. UTILITY INFORMATION SHOWN IS LIMITED TO VISIBLE UTILITY HARDWARE AND UTILITY MARKOUTS AT THE SURFACE AND DOES NOT INCLUDE SUCH ITEMS AS SUBSURFACE PIPING, UTILITY LINES, ETC. BEFORE ANY EXCAVATION IS TO BEGIN, ALL UNDERGROUND UTILITIES SHOULD BE VERIFIED BY THE PROPER UTILITY COMPANIES. CONTROL POINT ASSOCIATES, INC. DOES NOT GUARANTEE THE UTILITIES SHOWN COMPRISE ALL SUCH UTILITIES IN THE AREA EITHER IN SERVICE OR ABANDONED.
- THIS PLAN IS BASED ON INFORMATION PROVIDED BY A SURVEY PREPARED IN THE FIELD BY CONTROL POINT ASSOCIATES, INC. AND OTHER REFERENCE MATERIAL AS LISTED HEREON.
- THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT AND IS SUBJECT TO THE RESTRICTIONS, COVENANTS AND/OR EASEMENTS THAT MAY BE CONTAINED THEREIN.
- BY GRAPHIC PLOTTING ONLY PROPERTY IS LOCATED IN FLOOD HAZARD ZONE "X" (AREAS DESIGNATED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN) PER REF. #2.
- THE EXISTENCE OF UNDERGROUND STORAGE TANKS, IF ANY, WAS NOT KNOWN AT THE TIME OF THE FIELD SURVEY.
- ELEVATIONS ARE BASED UPON NEW YORK STATE DEPARTMENT OF TRANSPORTATION REGION 8 SURVEY BM 13, PROJECT PIN #813675, ELEVATION = 391.596' (119.360 METERS), NGVD 29.
- THE OFFSETS SHOWN ARE NOT TO BE USED FOR THE CONSTRUCTION OF ANY STRUCTURE, FENCE, PERMANENT ADDITION, ETC.
- ENCROACHMENTS AND VAULTS, IF ANY, BELOW SURFACE NOT SHOWN HEREON.
- THE DELINEATION LINE WAS PLACED IN THE FIELD BY AKRF ENGINEERING & NYCDP AND FIELD LOCATED BY CONTROL POINT ASSOCIATES, INC..
- COORDINATES ARE BASED UPON GPS OBSERVATIONS. NEW YORK STATE PLANE COORDINATE SYSTEM, NEW YORK EAST ZONE NAD 83 OPUS CORRS 96.
- PER CONVERSATION WITH TOWN OF NORTH CASTLE WATER PERSONNEL, THERE IS NO WATER SERVICE IN NEW KING STREET AT THE SITE.

REFERENCES:

- THE OFFICIAL TAX ASSESSOR'S MAP OF THE TOWN OF NORTH CASTLE, WESTCHESTER COUNTY, NEW YORK, SHEET #25.
- MAP ENTITLED "NATIONAL FLOOD INSURANCE PROGRAM, FIRM, FLOOD INSURANCE RATE MAP, FOR WESTCHESTER COUNTY, NEW YORK (ALL JURISDICTIONS), PANEL 279 OF 426, MAP SUFFIX: F," MAP NUMBER 36119C0279F, EFFECTIVE DATE SEPTEMBER 28, 2007.
- MAP ENTITLED, "NEW YORK STATE DEPARTMENT OF PUBLIC WORKS DESCRIPTION AND MAP FOR THE ACQUISITION OF PROPERTY, INTERSTATE ROUTE NO. 502, BARNES LANE - ARMONK, FOR THE DANIEL GRAY FISHING CLUB OF WHITE PLAINS, N.Y., INC.," DATED MARCH 23, 1965, FILED IN THE WESTCHESTER COUNTY CLERK'S OFFICE ON JUNE 22, 1965, AS MAP NO. 60, PARCEL NO. 76.
- PREVIOUS SURVEY OF PROPERTY CIRCA 1986, PREPARED BY MCDONALD.

UTILITIES:

THE FOLLOWING COMPANIES WERE NOTIFIED BY THE STATE OF NEW YORK ONE-CALL SYSTEM (1-800-962-7962) AND REQUESTED TO MARK OUT UNDERGROUND FACILITIES AFFECTING AND SERVING THIS SITE. THE UNDERGROUND UTILITY INFORMATION SHOWN HEREON IS BASED UPON THE UTILITY COMPANIES RESPONSE TO THIS REQUEST. SERIAL NUMBER(S): 06108120048

UTILITY COMPANY	PHONE NUMBER
CABLEVISION	914-347-5833
CONEDISON	212-697-5588
NEW YORK CITY DEP	212-504-4115
TOWN OF NORTH CASTLE	914-273-3321
UNITED WATER	845-620-3320
VERIZON	800-256-4646
VILLAGE/TOWN OF MOUNT KISCO	914-241-0500
WESTCHESTER COUNTY SEWER	914-995-8353



THE STATE OF NEW YORK REQUIRES NOTIFICATION BY EXCAVATORS, DESIGNERS, OR ANY PERSON PREPARING TO DISTURB THE EARTH'S SURFACE ANYWHERE IN THE STATE.

INFORMATION TAKEN FROM OCTOBER 2008 SURVEY PLAN PROVIDED BY

BOUNDARY & TOPOGRAPHIC SURVEY  
**JAM AIRPORT, LLC**  
1 & 7 NEW KING STREET  
LOT 13A, BLOCK 4, SECTION 3  
TOWN OF NORTH CASTLE, WESTCHESTER COUNTY  
STATE OF NEW YORK

**CONTROL POINT ASSOCIATES, INC.**  
35 TECHNOLOGY DRIVE  
WALDEN, NY 10759  
908.668.0099 • 908.668.9595 FAX  
NEW BROWN CORPORATE CENTER  
1600 MONROE DRIVE, SUITE 120  
CHRYSLER PL 18th F  
215.712.9600 • 215.712.9602 FAX

FIGURE 1: BOUNDARY AND TOPOGRAPHIC MAP





N.T.S.



LEGEND	
PROPOSED SITE PROPERTY LINE	-----
AEROTECH PROPOSED PARKING GARAGE	■

FIGURE 2: SITE LOCATION





FIGURE 3: SITE ELEVATION



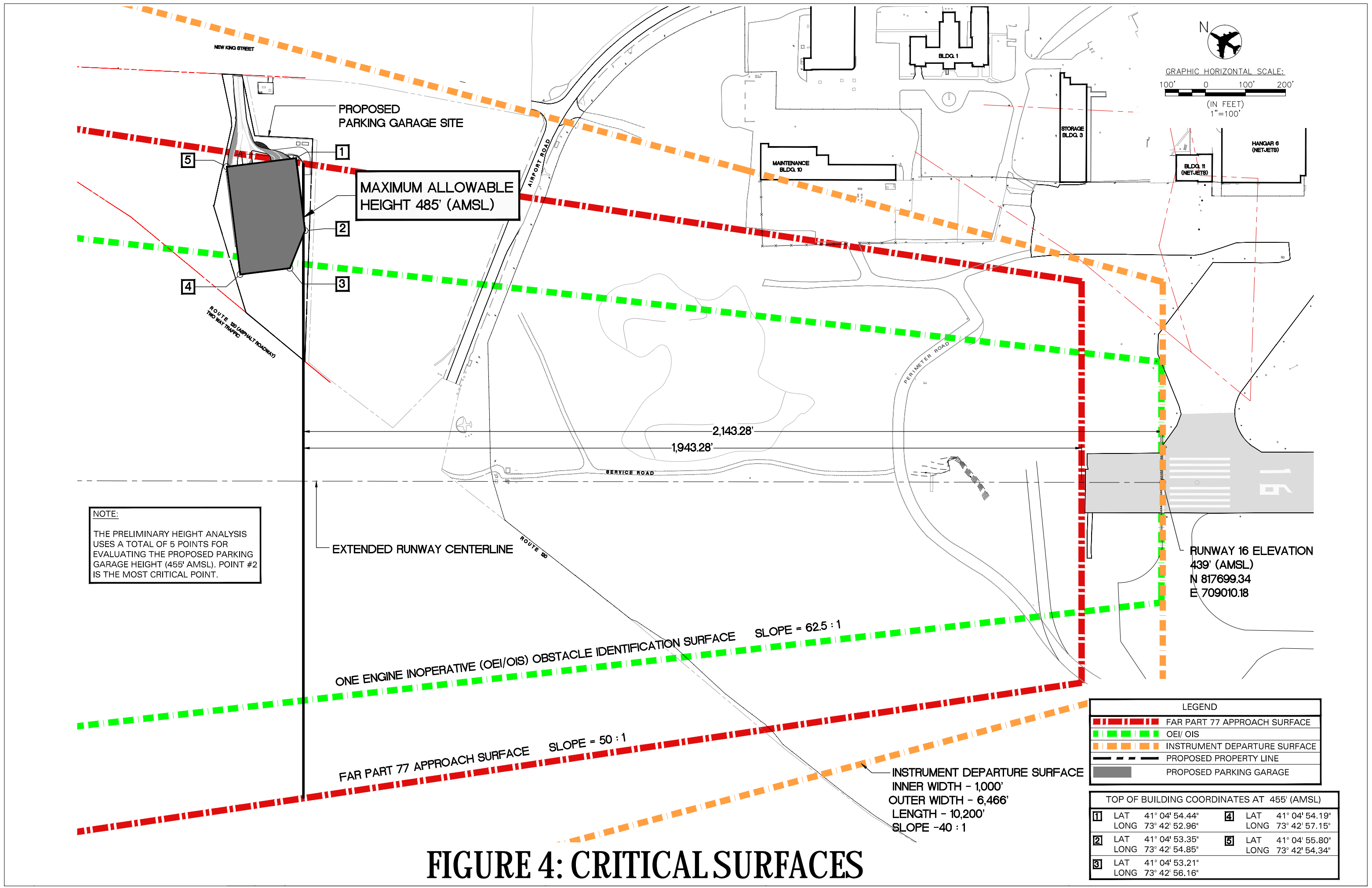
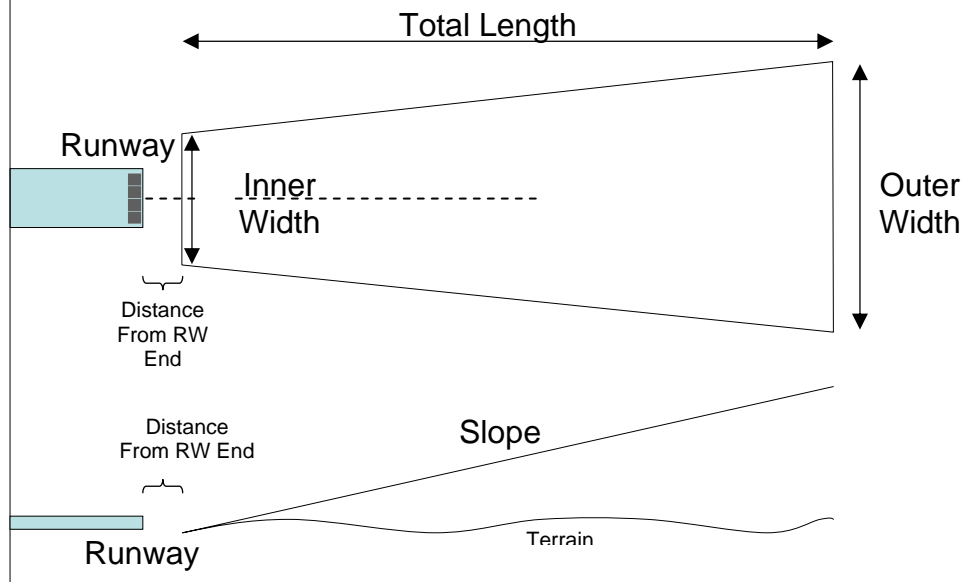
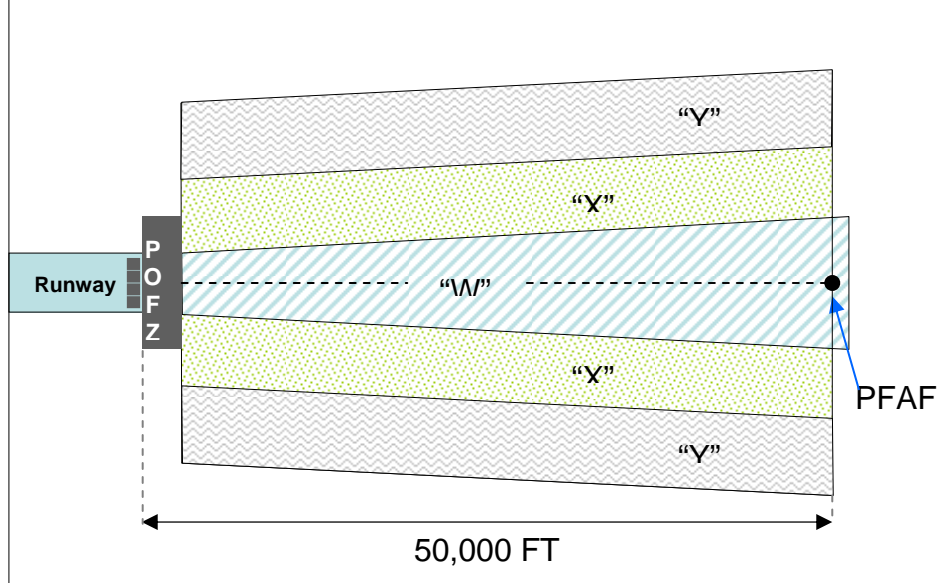


FIGURE 4: CRITICAL SURFACES

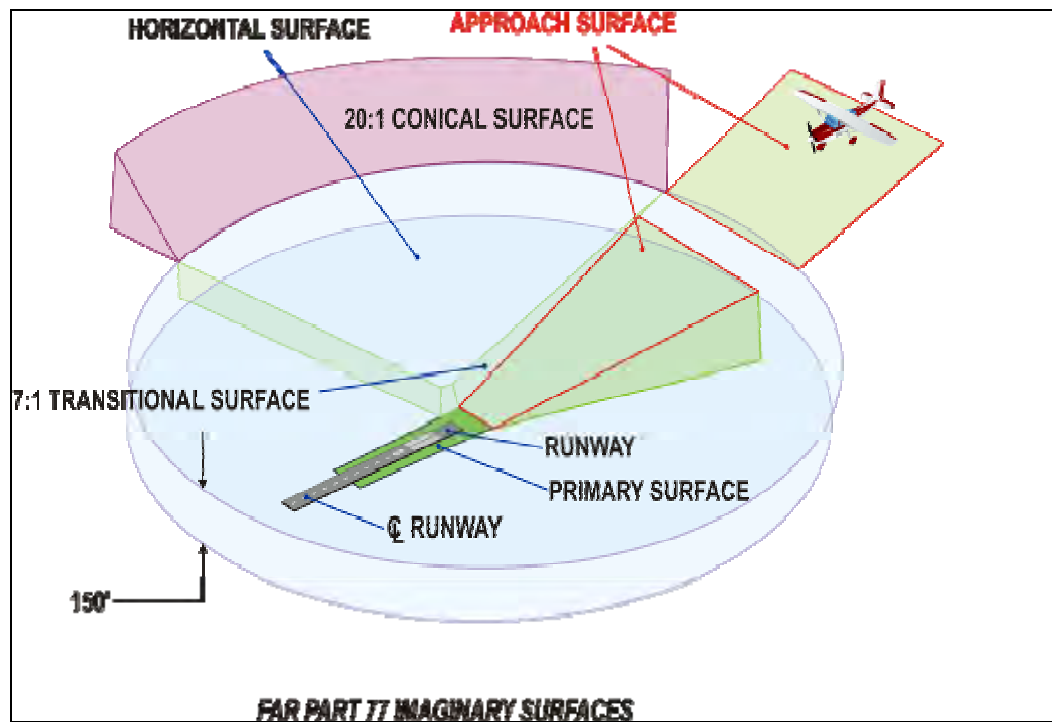
**Figure 5: TERPS Visual Portion of the Approach Segment**

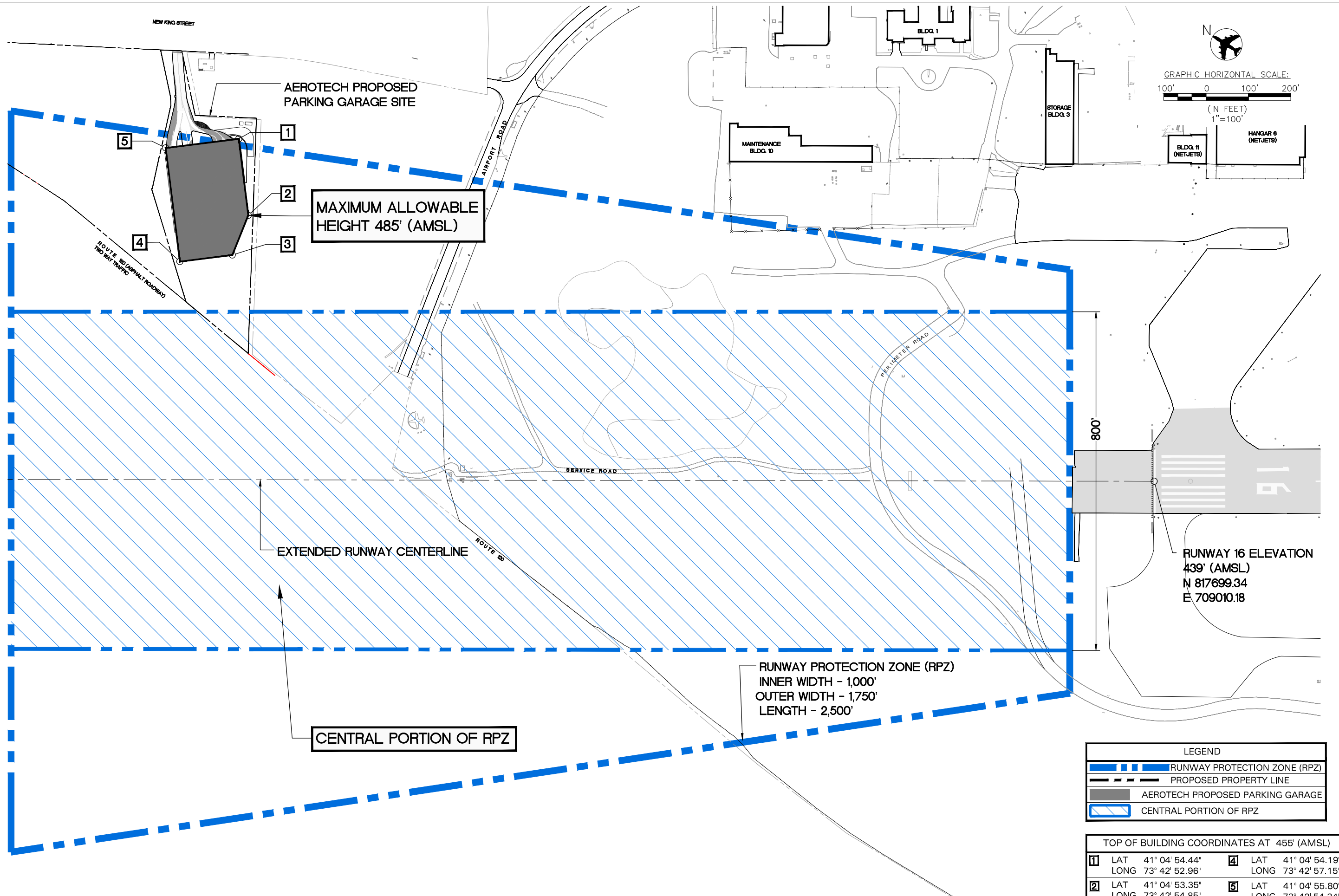


**Figure 6: TERPS (W, X, Y OCS)**



**Figure 7: Part 77 Surfaces**





**FIGURE 8: RUNWAY PROTECTION ZONE (RPZ)**

**Appendix K:**

FAA – Determination of No Hazard to  
Air Navigation Letter



Mail Processing Center  
Federal Aviation Administration  
Southwest Regional Office  
Obstruction Evaluation Group  
2601 Meacham Boulevard  
Fort Worth, TX 76137

Aeronautical Study No.  
2011-AEA-2803-OE

Issued Date: 08/16/2011

Kim Frank  
11 New King Street LLC  
2337 Philmont Avenue  
Huntingdon Valley, PA 19006

**\*\* DETERMINATION OF NO HAZARD TO AIR NAVIGATION \*\***

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure:	Building Parking garage (point 1)
Location:	North Castle, NY
Latitude:	41-04-54.44N NAD 83
Longitude:	73-42-52.96W
Heights:	63 feet above ground level (AGL) 455 feet above mean sea level (AMSL)

This aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation provided the following condition(s), if any, is(are) met:

It is required that FAA Form 7460-2, Notice of Actual Construction or Alteration, be completed and returned to this office any time the project is abandoned or:

\_\_\_\_ At least 10 days prior to start of construction (7460-2, Part I)  
  X   Within 5 days after the construction reaches its greatest height (7460-2, Part II)

Based on this evaluation, marking and lighting are not necessary for aviation safety. However, if marking/lighting are accomplished on a voluntary basis, we recommend it be installed and maintained in accordance with FAA Advisory circular 70/7460-1 K Change 2.

This determination expires on 02/16/2013 unless:

- (a) extended, revised or terminated by the issuing office.
- (b) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within 6 months of the date of this determination. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or the date the FCC denies the application.

NOTE: REQUEST FOR EXTENSION OF THE EFFECTIVE PERIOD OF THIS DETERMINATION MUST BE E-FILED AT LEAST 15 DAYS PRIOR TO THE EXPIRATION DATE. AFTER RE-EVALUATION OF CURRENT OPERATIONS IN THE AREA OF THE STRUCTURE TO DETERMINE THAT NO

**SIGNIFICANT AERONAUTICAL CHANGES HAVE OCCURRED, YOUR DETERMINATION MAY BE ELIGIBLE FOR ONE EXTENSION OF THE EFFECTIVE PERIOD.**

This determination is based, in part, on the foregoing description which includes specific coordinates , heights, frequency(ies) and power . Any changes in coordinates , heights, and frequencies or use of greater power will void this determination. Any future construction or alteration , including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

Any failure or malfunction that lasts more than thirty (30) minutes and affects a top light or flashing obstruction light, regardless of its position, should be reported immediately to (877) 487-6867 so a Notice to Airmen (NOTAM) can be issued. As soon as the normal operation is restored, notify the same number.

If we can be of further assistance, please contact our office at (718) 553-4546. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2011-AEA-2803-OE.

**Signature Control No: 146767944-147822533**

( DNE )

Robert Alexander  
Specialist



Mail Processing Center  
Federal Aviation Administration  
Southwest Regional Office  
Obstruction Evaluation Group  
2601 Meacham Boulevard  
Fort Worth, TX 76137

Aeronautical Study No.  
2011-AEA-2792-OE

Issued Date: 08/16/2011

Kim Frank  
11 New King Street LLC  
2337 Philmont Avenue  
Huntingdon Valley, PA 19006

**\*\* DETERMINATION OF NO HAZARD TO AIR NAVIGATION \*\***

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure:	Building Parking Garage (Point 2)
Location:	North Castle, NY
Latitude:	41-04-53.35N NAD 83
Longitude:	73-42-54.85W
Heights:	63 feet above ground level (AGL) 455 feet above mean sea level (AMSL)

This aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation provided the following condition(s), if any, is(are) met:

It is required that FAA Form 7460-2, Notice of Actual Construction or Alteration, be completed and returned to this office any time the project is abandoned or:

\_\_\_\_ At least 10 days prior to start of construction (7460-2, Part I)  
\_\_X\_\_ Within 5 days after the construction reaches its greatest height (7460-2, Part II)

Based on this evaluation, marking and lighting are not necessary for aviation safety. However, if marking/lighting are accomplished on a voluntary basis, we recommend it be installed and maintained in accordance with FAA Advisory circular 70/7460-1 K Change 2.

This determination expires on 02/16/2013 unless:

- (a) extended, revised or terminated by the issuing office.
- (b) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within 6 months of the date of this determination. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or the date the FCC denies the application.

NOTE: REQUEST FOR EXTENSION OF THE EFFECTIVE PERIOD OF THIS DETERMINATION MUST BE E-FILED AT LEAST 15 DAYS PRIOR TO THE EXPIRATION DATE. AFTER RE-EVALUATION OF CURRENT OPERATIONS IN THE AREA OF THE STRUCTURE TO DETERMINE THAT NO



**SIGNIFICANT AERONAUTICAL CHANGES HAVE OCCURRED, YOUR DETERMINATION MAY BE ELIGIBLE FOR ONE EXTENSION OF THE EFFECTIVE PERIOD.**

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This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

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If we can be of further assistance, please contact our office at (718) 553-4546. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2011-AEA-2792-OE.

**Signature Control No: 146685697-147822535**

( DNE )

Robert Alexander  
Specialist



Mail Processing Center  
Federal Aviation Administration  
Southwest Regional Office  
Obstruction Evaluation Group  
2601 Meacham Boulevard  
Fort Worth, TX 76137

Aeronautical Study No.  
2011-AEA-2804-OE

Issued Date: 08/16/2011

Kim Frank  
11 New King Street LLC  
2337 Philmont Avenue  
Huntingdon Valley, PA 19006

**\*\* DETERMINATION OF NO HAZARD TO AIR NAVIGATION \*\***

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure:	Building Parking garage (point 3)
Location:	North Castle, NY
Latitude:	41-04-53.21N NAD 83
Longitude:	73-42-56.16W
Heights:	63 feet above ground level (AGL) 455 feet above mean sea level (AMSL)

This aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation provided the following condition(s), if any, is(are) met:

It is required that FAA Form 7460-2, Notice of Actual Construction or Alteration, be completed and returned to this office any time the project is abandoned or:

\_\_\_\_ At least 10 days prior to start of construction (7460-2, Part I)  
  X   Within 5 days after the construction reaches its greatest height (7460-2, Part II)

Based on this evaluation, marking and lighting are not necessary for aviation safety. However, if marking/lighting are accomplished on a voluntary basis, we recommend it be installed and maintained in accordance with FAA Advisory circular 70/7460-1 K Change 2.

This determination expires on 02/16/2013 unless:

- (a) extended, revised or terminated by the issuing office.
- (b) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within 6 months of the date of this determination. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or the date the FCC denies the application.

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This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

Any failure or malfunction that lasts more than thirty (30) minutes and affects a top light or flashing obstruction light, regardless of its position, should be reported immediately to (877) 487-6867 so a Notice to Airmen (NOTAM) can be issued. As soon as the normal operation is restored, notify the same number.

If we can be of further assistance, please contact our office at (718) 553-4546. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2011-AEA-2804-OE.

**Signature Control No: 146767946-147822536**

( DNE )

Robert Alexander  
Specialist



Mail Processing Center  
Federal Aviation Administration  
Southwest Regional Office  
Obstruction Evaluation Group  
2601 Meacham Boulevard  
Fort Worth, TX 76137

Aeronautical Study No.  
2011-AEA-2805-OE

Issued Date: 08/16/2011

Kim Frank  
11 New King Street LLC  
2337 Philmont Avenue  
Huntingdon Valley, PA 19006

**\*\* DETERMINATION OF NO HAZARD TO AIR NAVIGATION \*\***

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure:	Building Parking garage (point 4)
Location:	North Castle, NY
Latitude:	41-04-54.19N NAD 83
Longitude:	73-42-57.15W
Heights:	63 feet above ground level (AGL) 455 feet above mean sea level (AMSL)

This aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation provided the following condition(s), if any, is(are) met:

It is required that FAA Form 7460-2, Notice of Actual Construction or Alteration, be completed and returned to this office any time the project is abandoned or:

\_\_\_\_ At least 10 days prior to start of construction (7460-2, Part I)  
  X   Within 5 days after the construction reaches its greatest height (7460-2, Part II)

Based on this evaluation, marking and lighting are not necessary for aviation safety. However, if marking/lighting are accomplished on a voluntary basis, we recommend it be installed and maintained in accordance with FAA Advisory circular 70/7460-1 K Change 2.

This determination expires on 02/16/2013 unless:

- (a) extended, revised or terminated by the issuing office.
- (b) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within 6 months of the date of this determination. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or the date the FCC denies the application.

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This determination is based, in part, on the foregoing description which includes specific coordinates , heights, frequency(ies) and power . Any changes in coordinates , heights, and frequencies or use of greater power will void this determination. Any future construction or alteration , including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA.

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If we can be of further assistance, please contact our office at (718) 553-4546. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2011-AEA-2805-OE.

**Signature Control No: 146767948-147822534**

( DNE )

Robert Alexander  
Specialist



Mail Processing Center  
Federal Aviation Administration  
Southwest Regional Office  
Obstruction Evaluation Group  
2601 Meacham Boulevard  
Fort Worth, TX 76137

Aeronautical Study No.  
2011-AEA-2806-OE

Issued Date: 08/16/2011

Kim Frank  
11 New King Street LLC  
2337 Philmont Avenue  
Huntingdon Valley, PA 19006

**\*\* DETERMINATION OF NO HAZARD TO AIR NAVIGATION \*\***

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure:	Building Parking garage (point 5)
Location:	North Castle, NY
Latitude:	41-04-55.80N NAD 83
Longitude:	73-42-54.34W
Heights:	63 feet above ground level (AGL) 455 feet above mean sea level (AMSL)

This aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation provided the following condition(s), if any, is(are) met:

It is required that FAA Form 7460-2, Notice of Actual Construction or Alteration, be completed and returned to this office any time the project is abandoned or:

\_\_\_\_ At least 10 days prior to start of construction (7460-2, Part I)  
  X   Within 5 days after the construction reaches its greatest height (7460-2, Part II)

Based on this evaluation, marking and lighting are not necessary for aviation safety. However, if marking/lighting are accomplished on a voluntary basis, we recommend it be installed and maintained in accordance with FAA Advisory circular 70/7460-1 K Change 2.

This determination expires on 02/16/2013 unless:

- (a) extended, revised or terminated by the issuing office.
- (b) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within 6 months of the date of this determination. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or the date the FCC denies the application.

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This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

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If we can be of further assistance, please contact our office at (718) 553-4546. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2011-AEA-2806-OE.

**Signature Control No: 146767950-147822537**

( DNE )

Robert Alexander  
Specialist

**Appendix L:**  
OPRHP Response Letters





## New York State Office of Parks, Recreation and Historic Preservation

Historic Preservation Field Services Bureau  
P.O. Box 189, Waterford, New York 12188-0189  
518-237-8643 Fax: 518-233-9049  
March 1, 2011

Andrew M. Cuomo  
Governor

Rose Harvey  
Acting Commissioner

Ms. Molly McDonald  
AKRF, Inc.  
440 Park Avenue South, 7th Floor  
New York, New York 10016

Re: FAA, SEQRA, DEC, DOT  
Parking Garage for Westchester County Airport  
11 New King Street/NORTH CASTLE, Westchester County  
10PR02122

Dear Ms. McDonald:

Thank you for requesting the comments of the State Historic Preservation Office (SHPO). We have reviewed the submitted report *Phase I Archaeological Assessment: Park Place at Westchester Airport, Town of North Castle, New York* completed by AKRF, Inc. and received by our office January 27, 2011. We have reviewed the project in accordance with Section 106 of the National Historic Preservation Act of 1966, *as amended*; and its implementing regulations 36 CFR Part 800: Protection of Historic Properties.

Results of the submitted survey indicate that a total of 38 shovel tests were excavated within the area of potential effects (APE) for the proposed project. A total of 25 artifacts were recovered during the field survey. In general, materials recovered from the western portion of the APE were recovered from disturbed soils and consisted primarily of modern debris. Soils in the eastern portion of the project area characterized as re-deposited fill layers. Cultural materials recovered consisted largely of modern refuse (e.g., plastic and Styrofoam). The few chert and quartzite fragments recovered were determined not to be cultural in origin. Additional historic artifacts recovered were determined not to constitute an archaeological site.

It is the determination of AKRF, Inc. that there are no properties listed, or eligible for listing, in the State or National Register of Historic Places within the APE of the proposed project. As such, there will be *no historic properties affected* [as per 36 CFR Part 800, § 800.4(d)(1)] as a result of the proposed project. Based on the information provided, our office concurs with this finding.

Should you have any questions, please feel free to contact me directly at (518) 237-8643, Extension 3288 or via electronic mail at [Brian.Yates@oprhp.state.ny.us](mailto:Brian.Yates@oprhp.state.ny.us). If further correspondence is required regarding this project, please be sure to refer to the OPRHP Project Review (PR) number noted above.

Sincerely,

Wm. Brian Yates  
Historic Preservation Specialist



## New York State Office of Parks, Recreation and Historic Preservation

Historic Preservation Field Services Bureau • Peebles Island, PO Box 189, Waterford, New York 12188-0189

518-237-8643

www.nysparks.com

David A. Paterson  
Governor

Carol Ash  
Commissioner

April 22, 2010

Molly McDonald  
AKRF  
440 Park Avenue South  
New York, New York 10016

Re: SEQRA  
Parking Garage for Westchester County Airport  
11 New King Street/NORTH CASTLE,  
Westchester County  
10PR02122

Dear Ms. McDonald:

Thank you for requesting the comments of the Office of Parks, Recreation and Historic Preservation (OPRHP) concerning your project's potential impact/effect upon historic and/or prehistoric cultural resources. Our staff has reviewed the documentation that you provided on your project. Preliminary comments and/or requests for additional information are noted on separate enclosures accompanying this letter. A determination of impact/effect will be provided only after ALL documentation requirements noted on any enclosures have been met. Any questions concerning our preliminary comments and/or requests for additional information should be directed to the appropriate staff person identified on each enclosure.

In cases where a state agency is involved in this undertaking, it is appropriate for that agency to determine whether consultation should take place with OPRHP under Section 14.09 of the New York State Parks, Recreation and Historic Preservation Law. In addition, if there is any federal agency involvement, Advisory Council on Historic Preservation's regulations, "Protection of Historic and Cultural Properties" 36 CFR 800 requires that agency to initiate Section 106 consultation with the State Historic Preservation Officer (SHPO).

When responding, please be sure to refer to the OPRHP Project Review (PR) number noted above.

Sincerely,

Ruth L. Pierpont  
Director

Enclosure

## **ARCHEOLOGY COMMENTS**

### **10PR02122**

Based on reported resources, there is an archeological site in or adjacent to your project area. Therefore the Office of Parks, Recreation and Historic Preservation (OPRHP) recommends that a Phase 1 archeological survey is warranted for all portions of the project to involve ground disturbance, unless substantial prior ground disturbance can be documented. If you consider the project area to be disturbed, documentation of the disturbance will need to be reviewed by OPRHP. Examples of disturbance include mining activities and multiple episodes of building construction and demolition.

A Phase 1 survey is designed to determine the presence or absence of archeological sites or other cultural resources in the project's area of potential effect. The OPRHP can provide standards for conducting cultural resource investigations upon request. Cultural resource surveys and survey reports that meet these standards will be accepted and approved by the OPRHP.

Our office does not conduct cultural resources surveys. A 36 CFR 61 qualified archeologist should be retained to conduct the Phase 1 survey. Many archeological consulting firms advertise their availability in the yellow pages. The services of qualified archeologists can also be obtained by contacting local, regional, or statewide professional archeological organizations. Phase 1 surveys can be expected to vary in cost per mile of right-of-way or by the number of acres impacted. We encourage you to contact a number of consulting firms and compare examples of each firm's work to obtain the best product.

Documentation of ground disturbance should include a description of the disturbance with confirming evidence. Confirmation can include current photographs and/or older photographs of the project area which illustrate the disturbance (approximately keyed to a project area map), past maps or site plans that accurately record previous disturbances, or current soil borings that verify past disruptions to the land. Agricultural activity is not considered to be substantial ground disturbance and many sites have been identified in previously cultivated land.

Please also be aware that a Section 233 permit from the New York State Education Department (SED) may be necessary before any archeological survey activities are conducted on State-owned land. If any portion of the project includes the lands of New York State you should contact the SED before initiating survey activities. The SED contact is Christina B. Rieth and she can be reached at (518) 402-5975. Section 233 permits are not required for projects on private lands.

If you have any questions concerning archeology, please contact Daniel A. Bagrow at 518-237-8643, ext 3254

**BUILDINGS/STRUCTURES/DISTRICTS  
EVALUATION COMMENTS**

**PROJECT NUMBER 10PR02122**

**( Parking Garage for Westchester County Airport/11 New King Street/T/NORTH  
CASTLE )**

- 
- ☒ Based upon a review of the information submitted and the scope of the project described, the NYS Office of Parks, Recreation and Historic Preservation has no concerns regarding historic buildings/structures/districts within your project area.
- ☐ The following State/National Registers of Historic Places listed/eligible property/district is located within or adjacent to your project area. However, given the scope of the project, the NYS Office of Parks, Recreation and Historic Preservation has no concerns regarding historic buildings/structures/districts within your project area.

\* Archaeology comments will be provided in a separate attachment.

---

If you have any questions concerning this information, please call Peter Shaver at 518-237-8643, ext 3264

**PLEASE BE SURE TO REFER TO THE PROJECT NUMBER NOTED ABOVE WHEN  
RESPONDING TO THIS REQUEST**



**New York State Office of Parks,  
Recreation and Historic Preservation**

Historic Preservation Field Services Bureau • Peebles Island, PO Box 189, Waterford, New York 12188-0189

518-237-8643

www.nysparks.com

**Andrew M. Cuomo**  
Governor

**Rose Harvey**  
Commissioner

April 14, 2011

Adam R. Kaufman  
Town of North Castle  
17 Bedford Rd  
Armonk, New York 10504

APR 25 2011

Re: FAA  
11 King Street, Parking Structure at Westchester  
Co Airport  
11 New King Street/NORTH CASTLE,  
Westchester County  
11PR02501

Dear Mr. Kaufman:

Thank you for requesting the comments of the Office of Parks, Recreation and Historic Preservation (OPRHP) concerning your project's potential impact/effect upon historic and/or prehistoric cultural resources. Our staff has reviewed the documentation that you provided on your project. Preliminary comments and/or requests for additional information are noted on separate enclosures accompanying this letter. A determination of impact/effect will be provided only after ALL documentation requirements noted on any enclosures have been met. Any questions concerning our preliminary comments and/or requests for additional information should be directed to the appropriate staff person identified on each enclosure.

In cases where a state agency is involved in this undertaking, it is appropriate for that agency to determine whether consultation should take place with OPRHP under Section 14.09 of the New York State Parks, Recreation and Historic Preservation Law. In addition, if there is any federal agency involvement, Advisory Council on Historic Preservation's regulations, "Protection of Historic and Cultural Properties" 36 CFR 800 requires that agency to initiate Section 106 consultation with the State Historic Preservation Officer (SHPO).

When responding, please be sure to refer to the OPRHP Project Review (PR) number noted above.

Sincerely,

Ruth L. Pierpont  
Acting Deputy Commissioner for Historic Preservation

Enclosure

**ARCHEOLOGY COMMENTS**  
**11PR02501**

Based on reported resources, there is an archeological site in or adjacent to your project area. Therefore the Office of Parks, Recreation and Historic Preservation (OPRHP) recommends that a Phase 1 archeological survey is warranted for all portions of the project to involve ground disturbance, unless substantial prior ground disturbance can be documented. If you consider the project area to be disturbed, documentation of the disturbance will need to be reviewed by OPRHP. Examples of disturbance include mining activities and multiple episodes of building construction and demolition.

A Phase 1 survey is designed to determine the presence or absence of archeological sites or other cultural resources in the project's area of potential effect. The OPRHP can provide standards for conducting cultural resource investigations upon request. Cultural resource surveys and survey reports that meet these standards will be accepted and approved by the OPRHP.

Our office does not conduct cultural resources surveys. A 36 CFR 61 qualified archeologist should be retained to conduct the Phase 1 survey. Many archeological consulting firms advertise their availability in the yellow pages. The services of qualified archeologists can also be obtained by contacting local, regional, or statewide professional archeological organizations. Phase 1 surveys can be expected to vary in cost per mile of right-of-way or by the number of acres impacted. We encourage you to contact a number of consulting firms and compare examples of each firm's work to obtain the best product.

Documentation of ground disturbance should include a description of the disturbance with confirming evidence. Confirmation can include current photographs and/or older photographs of the project area which illustrate the disturbance (approximately keyed to a project area map), past maps or site plans that accurately record previous disturbances, or current soil borings that verify past disruptions to the land. Agricultural activity is not considered to be substantial ground disturbance and many sites have been identified in previously cultivated land.

Please also be aware that a Section 233 permit from the New York State Education Department (SED) may be necessary before any archeological survey activities are conducted on State-owned land. If any portion of the project includes the lands of New York State you should contact the SED before initiating survey activities. The SED contact is Christina B. Rieth and she can be reached at (518) 402-5975. Section 233 permits are not required for projects on private lands.


If you have any questions concerning archeology, please contact Daniel A. Bagrow at 518-237-8643. ext 3254

APR 25 2011

**Appendix M:**  
Adjacent Easement Parcel Memoranda

**MEMORANDUM**

TO: Lewis Montana, Esq.

FROM: William S. Null, Esq. 

RE: 11 New King Street, LLC with JAM Airport LLC  
Creation of Drainage Ponds and Implications of the  
Town of North Castle Code – Development Regulations

DATE: November 22, 2011

---

**DISCUSSION**

In response to your client's request we have reviewed the Code of the Town of North Castle (the "Code") to evaluate whether the creation of drainage ponds on property owned by JAM Airport LLC (the "JAM Property") may affect the future development potential of that land. As noted in the accompanying Memorandum issued by Jim Nash of AKRF, Inc., dated November 14, 2011 (the "AKRF Memo"):

"It should also be noted that the adjacent parcel [i.e., the JAM Property] is currently constrained to a substantial degree by its own onsite wetlands (the perennial stream that transects the site), steep slopes (in the ravine of the onsite stream), and the NYCDEP 300 foot reservoir stem.

The existing constraints affecting the JAM Property as identified in the AKRF Memo and herein must be considered in determining what, if any, additional development potential the site may achieve under the existing regulatory scheme. The portion of the JAM Property situated outside of the NYCDEP 300 foot reservoir stem includes part of the existing building and parking lot, as shown on the annotated plan annexed hereto.

Further, the Code provides that development of the Industrial (IND-AA) District properties is limited to a density of 0.30 Floor Area Ratio ("FAR") and any such lot must comply with the following dimensional constraints: A minimum lot size of 2 acres; Frontage of 200 feet; Depth of 200 feet; and Minimum Front, Side and Rear Yards of fifty (50) feet each.

The Code contains provisions related to the placement of drainage ponds on the adjacent JAM Property. Under the Code's definition of "net lot area" areas of certain wetlands, water bodies, or watercourses or steep slopes are calculated and 75% of that area must be deducted from the lot area to factor the "maximum allowable density" calculation.

If the proposed ponds on the JAM Property qualify as one or more of the above-referenced wetlands, water bodies, or watercourses, they would cause a reduction in the development potential of the affected land only if that land otherwise could be developed. Thus, as an example, if the area in which the proposed ponds would be located is considered a "steep slope"



that otherwise would be deducted in arriving at a “net lot area” then the location of the ponds in such an area would not reduce the development potential of the JAM Property. Even so, the area of the JAM Property that results from the “net lot area” calculation would be able to be developed only at an FAR of 0.30, subject to all other regulatory requirements.

As noted in the AKRF Memo it seems pretty clear that the ponds would not be either wetlands or watercourses (as such definitions are set forth below), but a portion of one of them may constitute a water body. Based upon the AKRF Memo at least some of the area in which the ponds are proposed to be situated qualify as steep slopes of 25% or greater. Nevertheless, using the most conservative approach about 5592.82 square feet of one pond may be considered a water body. If that area is multiplied by 75%, the resulting area is 4,194.62 square feet. Without considering the 300 foot reservoir stem, at best that area could be developed at a FAR of 0.30 yielding 1,259 square feet of development potential.

### **CONCLUSION**

Based upon the accompanying documentation, it seems that the development of the ponds could reduce the maximum development potential of the JAM Property by 1,259 square feet, if we ignore the clear impacts of NYCDEP’s restrictions on the development within 300 feet of the reservoir stem and other regulatory restrictions applicable to the JAM Property whether or not any ponds are constructed thereon.

### **APPLICABLE PROVISIONS OF THE CODE:**

- Additional Office and Industrial Regulations are set forth in **Section 213-24.G.** of the Code that provides, as follows:

G. Development density. To further the achievement of the objectives of the State Freshwater Wetlands Act (Article 24 and Title 23 of Article 71 of the Environmental Conservation Law), the State Environmental Quality Review Act (Article 8 of the Environmental Conservation Law), the North Castle Town Wetlands and Drainage Law, Editor's Note: See Ch. 209, Wetlands and Drainage; the North Castle Town Environmental Quality Review Law, Editor's Note: See Ch. 99, Environmental Quality Review, the North Castle Town Development Plan and § 213-17 of this chapter, the lot area used in the calculation of maximum allowable density shall be “net lot area,” as defined herein.

- **Section 213-3** of the Code entitled “Definitions” states, as follows:

#### **LOT AREA, NET**

Lot area minus 75% of the area of any wetlands, water bodies, and watercourses but excluding any adjacent areas, all as defined in Chapter 209, Wetlands and Drainage, of the Town Code, and the area of any steep slopes, as defined herein, except that in the case of one-family lots, the deduction for steep slopes shall be only 50%. [Added 12-13-2006 by L.L. No. 30-2006]

#### **STEEP SLOPE**

A natural geographical area, whether on one or more lots, which has a ratio of vertical distance to horizontal distance of 25% or greater over a horizontal area

measuring at least 25 feet in all directions.[Added 12-13-2006 by L.L. No. 27-2006]

- **Section 209-5** of the Freshwater Wetlands and Drainage Law of the Town of North Castle contains the following “definitions”:

**WATER BODY or WATER BODIES**

Any natural or artificial, permanent or intermittent, public or private water segment such as ponds, lakes, and reservoirs. A water body is intermittently, seasonally, or permanently covered by water and contains a discernible shoreline.

**WATERCOURSE**

A watercourse includes rivulets, brooks, creeks, streams, rivers, and other waterways flowing in definite channels with bed and banks and usually in a specific direction. A drainage ditch, swale, or surface feature that contains water only during and/or immediately after (usually up to 48 hours) a rainstorm or snowmelt shall not be considered a watercourse.

**WETLAND/FRESHWATER WETLAND**

Those geographic areas that are covered with shallow and sometimes temporary or intermittent waters commonly referred to as "swamps," "marshes," "bogs," or "vernal pools." This also includes all areas that comprise hydric soils and/or are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of hydrophytic vegetation as defined by the Federal Manual for Identifying and Delineating Jurisdictional Wetlands (1989).

- **Section 206-3** of the Town Code contains the definition of a “watercourse”:

**WATERCOURSE**

Includes all streams, lakes, ponds, swamps, marshes and other bodies of water in the Town of North Castle.



**Environmental and Planning Consultants**

34 South Broadway  
Suite 401  
White Plains, NY 10601  
tel: 914 949-7336  
fax: 914 949-7559  
[www.akrf.com](http://www.akrf.com)

## Memorandum

---

**To:** William Null, Cuddy & Feder  
**From:** Jim Nash, AKRF  
**Date:** November 14, 2011  
**Re:** Drainage Easement Area – Slopes and Wetlands  
**cc:** N. Bourne; J. McColgan

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### SUMMARY:

AKRF has calculated the areas of environmentally constrained land (wetlands, waterbodies, and steep slopes) on that portion of the adjacent parcel proposed to be used for the Park Place stormwater management basins. As discussed below, the construction of these basins would increase the area of “water bodies” by 5,592 square feet but would reduce (by regrading/construction) the existing areas of “steep slopes” by 6,615 square feet. Therefore, the development potential of the adjacent parcel, specifically its “net lot area”, is not expected to be diminished as a result of the Park Place project’s use of the drainage easement area.

It should also be noted that the adjacent parcel is currently constrained to a substantial degree by its own onsite wetlands (the perennial stream that transects the site), steep slopes (in the ravine of the onsite stream), and the NYCDEP 300 foot reservoir stem.

### SITE DESCRIPTION

#### *DRAINAGE EASEMENT AREA (PORTION OF ADJACENT PARCEL):*

- SF total 37, 897 SF (0.87 ac)
- SF of delineated wetland - Town delineated – 5,950 SF (0.14 ac)
- SF of delineated wetland - USACE – 3212 SF (0.07 ac)
- SF of permanent pool – 5592.82 SF (0.13ac)
- SF of steep slopes in existing conditions (greater than 25%) – 6615.34 SF (0.15 ac)
- SF of steep slope in proposed conditions - 16,594 SF (0.38 ac)
- SF of land within 300 ft NYCDEP reservoir stem – 35,995 SF (0.83ac)

*ADJACENT PARCEL OVERALL:*

- Tax Parcel Identification Number 118.02-2-3
- SF total 168,653 SF (3.87 ac)
- Industrial AA(IND-AA) zoning district
- Maximum building coverage 30%
- FAR 0.3

**TOWN OF NORTH CASTLE CODE - CHAPTER 213: ZONING**

Section 213-24.G of the Town Code requires that development density be calculated based on the “net lot area”, which is the gross lot area minus 75% of wetlands, water bodies and steep slopes.

Please note - based on my experience (J. Nash) the general purpose of calculating “net lot area” when determining development density is not to penalize the property owner who may create embankments and ponds by necessity, but rather it is to reduce density in areas exhibiting *natural environmental features* that could be harmed (wetlands) or could cause harm (slopes) if development density is too high. So, the spirit of these regulations is not targeted at situations such as Park Place.

*a. Wetlands*

As discussed above, construction of the proposed detention basins would not change the area of wetlands on the adjacent parcel.

*b. Water Bodies*

The proposed detention basins would include a portion that is permanent pool (below the outfall elevation). The total area of this portion of the basin is 5,593 square feet. It is presumed that this permanently flooded portion of the basin would meet the Town’s definition of a “water body”, because the definition includes “any natural or artificial, permanent or intermittent, public or private water segment such as ponds, lakes, and reservoirs...” As such, this creation of new water body may be seen as reducing the net lot area by 4194 square feet (0.75 x 5593).

*c. Steep Slopes*

Steep slopes are defined as “a *natural* [emphasis mine] geographical area, whether on one or more lots, which has a ratio of vertical distance to horizontal distance of 25% or greater over a horizontal area measuring at least 25 feet in all directions.” The proposed project would thoroughly regrade the adjacent parcel drainage easement area, thereby eliminating all “natural” slopes. While it appears that some of the existing slopes are man-made, having been created during construction of the overflow parking area, if the property owner did not get a steep slopes permit at that time then they could be considered “natural”. In either case, creation of new steep slopes (in excess of 25%) to construct the berms of the proposed detention basins would not be regulated by the Town Code. Thus the project would either reduce the amount of steep slopes on the adjacent parcel by 6,615 square feet, or would have no effect.

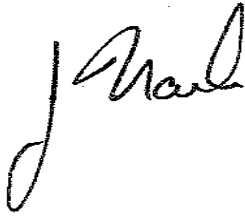
**TOWN OF NORTH CASTLE CODE - CHAPTER 209: WETLANDS AND DRAINAGE**

The area of existing wetlands within the adjacent parcel drainage easement area would remain unchanged – no wetland disturbance is proposed. As discussed above, because it includes a permanent pool, a portion of the proposed stormwater detention ponds would constitute “water body” as defined in the Town’s wetlands ordinance. However, this would not increase the regulatory applicability of the Town’s wetland ordinance to the adjacent parcel because the adjacent parcel is currently traversed by the perennial stream (Class A water body). As shown in the figures contained in DEIS Chapter 8: Water Resources, the vast

majority of the adjacent parcel is already comprised of wetland/watercourse buffer due to the location of this perennial stream. Any disturbance to land in wetland or watercourse buffer requires review and approval by the Town in accordance with Chapter 209.

**NYCDEP WATERSHED RULES AND REGULATIONS (CHAPTER 18: RULES OF THE CITY OF NEW YORK, AMENDED APRIL 4TH, 2010):**

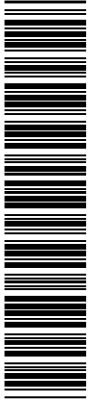
The entirety of the adjacent parcel is significantly constrained by NYCDEP Watershed Regulations to a higher degree than the Park Place site. The NYCDEP Watershed Rules and Regulations prohibit the construction of new impervious surfaces within the 100 foot buffer of the onsite perennial stream and within the 300 buffer to the onsite reservoir stem. As such, without a substantial waiver from these regulations, redevelopment of the adjacent parcel would be limited. By comparison, the Park Place project is proposing no new impervious surfaces within the 300 foot buffer of the reservoir stem and only a modest increase in impervious surfaces within the 100 foot stream buffer for widening the existing access drive to comply with requirements of the Town of North Castle Code.

A handwritten signature in black ink, appearing to read 'J Nash', is positioned above a horizontal line.

---

James Nash

**Appendix N:**  
Easement Town of North Castle ROW



\*443410941EASV\*

Control Number  
**443410941**

WIID Number  
**2004341-000379**

Instrument Type  
**EAS**



**WESTCHESTER COUNTY RECORDING AND ENDORSEMENT PAGE**  
**(THIS PAGE FORMS PART OF THE INSTRUMENT)**

\*\*\* DO NOT REMOVE \*\*\*

**THE FOLLOWING INSTRUMENT WAS ENDORSED FOR THE RECORD AS FOLLOWS:**

**TYPE OF INSTRUMENT** EAS - EASEMENT

**FEE PAGES** 6

**TOTAL PAGES** 6

**RECORDING FEES**

STATUTORY CHARGE	\$6.00
RECORDING CHARGE	\$18.00
RECORD MGT. FUND	\$19.00
RP 5217	\$0.00
TP-584	\$5.00
CROSS REFERENCE	\$0.00
MISCELLANEOUS	\$0.00
<b>TOTAL FEES PAID</b>	<b>\$48.00</b>

**MORTGAGE TAXES**

MORTGAGE DATE	
MORTGAGE AMOUNT	\$0.00
EXEMPT	
COUNTY TAX	\$0.00
YONKERS	\$0.00
BASIC	\$0.00
ADDITIONAL	\$0.00
SUBTOTAL	\$0.00
MTA	\$0.00
SPECIAL	\$0.00
<b>TOTAL PAID</b>	<b>\$0.00</b>

**TRANSFER TAXES**

CONSIDERATION	\$0.00
TAX PAID	\$0.00
TRANSFER TAX #	11002

**RECORDING DATE**  
**TIME**

**03/23/2005**  
**16:19:00**

**SERIAL NUMBER**  
**DWELLING**

**THE PROPERTY IS SITUATED IN**  
**WESTCHESTER COUNTY, NEW YORK IN THE:**

**TOWN OF NORTH CASTLE**

WITNESS MY HAND AND OFFICIAL SEAL

**LEONARD N. SPANO**  
**WESTCHESTER COUNTY CLERK**

Record & Return to:

**ROLAND A BARONI ESQ**  
**175 MAIN ST**  
**SUITE 800**  
**WHITE PLAINS, NY 10601**

#941  
Record and Return to:  
Roland A. Baroni, Esq.  
Stephens, Baroni, Reilly & Lewis, LLP  
175 Main Street, Suite 800  
White Plains, New York 10601

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("Easement Agreement"), made as of the 28<sup>th</sup> day of October, 2004, by and between the Town of North Castle, a municipal corporation with an address at 15 Bedford Road, Armonk, New York 10504 (hereinafter the "Grantor") Aerotech Realty Incorporated, a New York general partnership, having its principal place of business at 4 New King Street, P.O. Box 339, Purchase, New York 10577 (hereinafter the "Grantee").

WITNESSETH:

WHEREAS, Grantee owns real property lying and being in the Town of North Castle, County of Westchester, State of New York known as 11 New King Street, **more particularly described on Schedule A annexed hereto and made a part hereof**, and designated on the Town of North Castle Assessor's tax map as Section 3, Block 4, Lot 14B; and

WHEREAS, the Grantor is the owner of the public street known as New King Street (the "Right-of-Way") and designated on the Town of North Castle Assessor's tax map as Section 3, Block 4 Lot RD1 ; and

WHEREAS, the Grantee is proposing to install vegetation, perform and maintain landscaping, landscape lighting, and other improvements, conduct tree removal, and perform and maintain certain other work within the New King Street Right-of-Way (the "Work") **within the area more particularly described on Schedule B annexed hereto and made a part hereof; and**

WHEREAS, Grantor desires to grant to Grantee and Grantee desires to accept from Grantor, a permanent non-exclusive easement



over the Right of Way to perform the Work under certain conditions (the "Easement");

NOW, THEREFORE, in consideration of the premises and of the mutual covenants made herein, and the sum of one dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor does hereby give, grant, and convey unto Grantee, its successors and assigns, the Easement, subject to the following terms and conditions:

1. Grantor hereby grants and conveys to Grantee, its successors and assigns, a perpetual, permanent and non-exclusive Easement (except for the reservations set forth, and subject to the conditions herein set forth) to perform the Work within the Right-of-Way.

2. Grantee shall have and exercise the right of reasonable ingress and egress in, to, through, over, under and across the Right of Way and from any roads, highways, streets, alleys, or any other point to the Easement in order to perform maintenance, repair and upkeep of the Work, including, without limitation, the right to cut, trim, control and remove trees, brush and other obstructions which injure or interfere with Grantee's use, occupation and enjoyment of the Easement.

3. Grantor warrants that it has full right and lawful authority to make this grant contained herein.

4. Grantor shall not interfere, now or in the future, with any rights provided to Grantee under this Easement Agreement, including, but not limited to, Grantee's rights of maintenance and reasonable access.

5. The Easement herein granted across the Right-of-Way shall be exercised and used in such a manner so as to not cause any damage or destruction of any nature whatsoever to, or interruption of, the use of the Right-of-Way.

6. Any debris left in the Right-of Way as a result of Grantee's Work shall be promptly removed by the Grantee, it personal representatives, successors and assigns.

7. Grantor shall have the right to grant other non-exclusive easements over, along or upon the Right-of-Way, provided however, that any such easements shall be subject to the Easement hereby granted.

8. The Grantee, for itself and its representatives, successors and assigns, does hereby agree to hold the Grantor harmless and agree to indemnify the Grantor from any and all liability resulting from the rights granted herein. By the granting of the Easement, the Grantee and its representatives, successors and assigns, further agree that maintenance of the Easement shall be the responsibility of the Grantee and its representatives, successors and assigns, and any disturbance of said Easement by the Grantee shall be the responsibility of the Grantee, and its representatives, successors and assigns. Grantee assumes no responsibility to maintain the easement area beyond the duties associated with the Work.

9. Grantee shall obtain an insurance policy for liability coverage of at least One Million Dollars that names the Town of North Castle as an additional insured with regard to the Work, which shall contain a notification of cancellation provision for the benefit of the Town of North Castle, and which policy shall remain in force and effect so long as the Work shall stand.

10. Grantor shall have no responsibility to perform or maintain the Work.

11. This Easement Agreement may not be modified, amended or terminated without the prior written consent of the Grantor and Grantee.

12. The covenants set forth herein shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective heirs, representatives, successors and assigns.

13. This Easement agreement shall be recorded at the Westchester County Clerk's Office, Division of Land Records.

14. Grantee hereby acknowledges and agrees that in the event that Grantor determines that the Work interferes with proposed roadway improvements, then and in this event, Grantee agrees to remove all Work it has created within the easement area at its cost and expense and to reasonably restore the easement area to its original condition and that this Easement shall then be terminated and be of no further force and effect.

In witness whereof, the parties have executed this agreement as of the date first above written.

Aerotech Realty Incorporated

By:

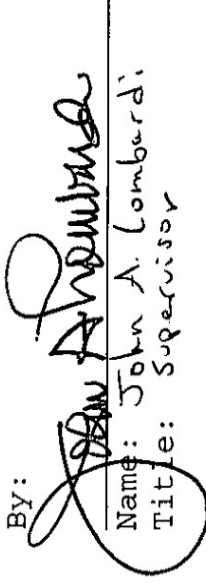


Jan Andresen

Title: Partner

TOWN OF NORTH CASTLE

By:




Name: John A. Lombardi

Title: Supervisor

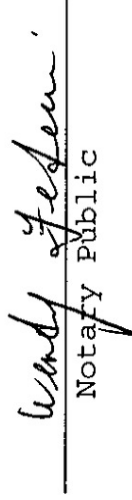
STATE OF NEW YORK                   )  
COUNTY OF WESTCHESTER) ss.:

On the 22 day of November, in the year 202004, before me, the undersigned, a Notary Public in and for said state, personally appeared Jan Andresen, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

  
Notary Public  
KAREN E. GOMEZ  
Notary Public, State of New York  
No. 01GO6016636  
Commission Expires November 23, 202006

STATE OF NEW YORK                   )  
COUNTY OF WESTCHESTER) ss.:

On the 29 day of November, in the year 2004, before me, the undersigned, a Notary Public in and for said state, personally appeared John A. Lombardi, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

  
Notary Public

WENDY FEDERICI  
Notary Public, State Of New York  
No. 4866147  
Qualified In Westchester County  
Commission Expires July 28, 2 006