



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.¹ The proposed garage would be a 267,000-square-foot, five-level parking structure with a 51,000-square-foot footprint.² 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.³ The project site lies within 600-700 feet of the Kensico Reservoir and contains a forested wetland, a stream and “drainage way,”⁴ 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%.⁵ 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.⁶ 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).⁷ 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.⁸

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%.⁹ The proposed extent of soil and steep slope

¹ DEIS, at 9-10, 2-1.

² *See id.*, at 1-1.

³ *See id.*, at 2-9.

⁴ *See id.*, at 1-3.

⁵ *See id.*, at 7-1.

⁶ *See id.*, at 7-8.

⁷ *See id.*, at 7-5.

⁸ *See id.*, at 7-8.

⁹ *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.¹⁰

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,"¹¹ 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,¹² 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.

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 stream¹³ and, due to its

¹⁰ Town of North Castle, Local Law No. 27 Section 2.A (2006)

¹¹ *See id.*, Section 2B.

¹² DEIS, at 2-13.

¹³ 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.”¹⁴ 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.”¹⁵ 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.”¹⁶

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.”¹⁷ 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 site¹⁸ and proposes permanent disturbance of 0.13 acres of the existing 0.66 acres of onsite wetlands.¹⁹ 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.²⁰ 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.²¹ These wetlands also benefit water quality by “by removing sediment, nutrients, and other pollutants from runoff prior to discharge

¹⁴ See *id.*, at 8-7.

¹⁵ See *id.*, at 8-6.

¹⁶ See *id.*

¹⁷ See *id.*, at 8-2.

¹⁸ See *id.*, at 8-7.

¹⁹ See *id.*, at 1-4, 8-5, 8-13.

²⁰ See *id.*, at 8-7.

²¹ See *id.*, at 8-9, 8-10.

to surface waters.”²² 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 2.2:1.²³ “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.²⁴

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.”²⁵ 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.”²⁶ 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.”²⁷ 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.

²² See *id.*, at 6-6.

²³ See *id.*, at 8-17.

²⁴ See *id.*, at 8-18.

²⁵ See *id.*, at 8-15.

²⁶ See *id.*, at 1-6.

²⁷ See *id.*

Buffer Impacts

The DEIS proposes disturbance of a town-regulated wetland buffer and a NYCDEP-regulated stream buffer.²⁸ 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.²⁹ 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.³⁰ 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.³¹ 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.³² 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.”³³ 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.

²⁸ *See id.*, at 8-12.

²⁹ *See id.*, at 8-14, 9-18.

³⁰ *See id.*, at 9-19.

³¹ *See id.*, at 8-11.

³² *See id.*, at 1-6.

³³ *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.”³⁴ 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.”³⁵ 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.”³⁶ 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.”³⁷ 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.³⁸ The DEIS proposes several Better Site Design (BSD) practices as Stormwater Mitigation Measures in Section G of Chapter 9,³⁹ but their application appears to be inconsistent with certain specifics of the proposed action:

³⁴ See *id.*, at 9-7.

³⁵ See *id.*, at 9-8.

³⁶ See *id.*, at 1-6.

³⁷ See *id.*, at 9-10.

³⁸ See *id.*

³⁹ 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.⁴⁰ 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.⁴¹ 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”⁴² but elsewhere claims that no herbicide or fungicide use is anticipated.⁴³ 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,”⁴⁴ 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.

⁴⁰ See *id.*, at 9-10.

⁴¹ See *id.*, at 7-8.

⁴² See *id.*, at 8-3.

⁴³ See *id.*, at 9-18.

⁴⁴ 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).”⁴⁵ 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.⁴⁶ 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,”⁴⁷ 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

⁴⁵ See *id.*, at 9-22.

⁴⁶ 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/>.

⁴⁷ See *id.*, at 9-22.

public comment and agency decision-making.⁴⁸ 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

⁴⁸ *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.⁴⁹

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."⁵⁰ 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.⁵¹

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

⁴⁹ See discussion of BSD practices on p. 7 above.

⁵⁰ SEQR Handbook at 123.

⁵¹ 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 long horizontal flourish extending to the right.

William Wegner
Staff Scientist