



RIVERKEEPER.
NY's clean water advocate

December 18, 2014

VIA EMAIL

Hon. Tony Hay
Supervisor, Town of Southeast
1360 Route 22
Brewster, NY 10509

Re: Comments on Crossroads 312 Final Environmental Impact Statement

Dear Supervisor Hay and Members of the Town Board:

Riverkeeper, Inc. (Riverkeeper) submits the following comments on the Crossroads 312 Final Environmental Impact Statement (FEIS), dated December 1, 2014. The FEIS evaluates a proposal to construct 143,000 square feet of mixed commercial development, a 100 room hotel, and 721 parking spaces on a predominantly forested site.

Riverkeeper is a member-supported watchdog organization dedicated to defending the Hudson River and its tributaries and protecting the drinking water supply of nine million New York City and Hudson Valley residents. As a signatory to the New York City Watershed Agreement, we have a commitment to ensure that development projects in the watershed do not adversely impact the surface water resources that provide unfiltered drinking water to consumers. Accordingly, Riverkeeper is very concerned with any project in the New York City watershed that proposes potentially significant disturbance of streams, wetlands, or their buffers.

Last year, Riverkeeper reviewed and submitted detailed comments on the Draft Environmental Impact Statement (DEIS) for the Crossroads 312 project.¹ See attachment. We are pleased to see that there have been some positive changes to the project since the DEIS, including a reduction in overall project footprint, reduction in wetland buffer disturbance, and development of a stormwater infiltration system and preliminary Stormwater Pollution Prevention Plan (SWPPP), which was missing from the DEIS. However, there remain a number of issues of concern with the project as it is evaluated in the FEIS, discussed below, and we agree with the recommendation of the New York City Department of Environmental Protection² and

¹ Riverkeeper Comments on Crossroads 312 Draft Environmental Impact Statement (Nov. 12, 2013), incorporated fully by reference and attached.

² New York City Department of Environmental Conservation, Crossroads 312 – Draft FEIS (Dec. 10, 2014).

the Putnam County Coalition to Preserve Open Space³ that a supplemental or revised environmental impact statement is necessary in order to comply with the requirements of the State Environmental Quality Review Act (SEQRA).

First, the FEIS contains new information regarding stormwater controls, including a preliminary SWPPP, which has not previously been made available for public review and comment. This information was missing from the DEIS, and cannot simply be inserted into the FEIS. See *Webster Associates v. Town of Webster*, 451 N.E.2d 189, 192 (N.Y. 1983) (“the omission of a required item from a draft EIS cannot be cured simply by including the item in the final EIS”).

Second, a number of deficiencies identified by Riverkeeper in the DEIS have not been corrected. As discussed below, these include failure to evaluate and include mitigation for construction limitations associated with soil types on the project site, and failure to include the required analysis of a reasonable range of project alternatives.

Evaluation of Construction Limitations Associated with Soil Types on the Project Site

Construction impacts of erosion may be further exacerbated by the drainage characteristics of the project site’s soil types. DEIS Appendix N, *Soil Test Results*, provides a survey of soil boring logs and characterizes soils only in generic terms such as sand, gravel and topsoil. It does not identify onsite soil types by their series, morphology or limitations for building site development, as published by the USDA Soil Conservation Service (SCS).⁴ This soil type information “can be used to identify the potentials and limitations of each soil for specific land uses and to help prevent construction failures caused by unfavorable soil properties... The survey can help planners to maintain or create a land use pattern in harmony with the natural soil.”⁵

SCS identifies soil limitations that affect the construction of shallow excavations, commercial buildings, and local roads and streets, among others. These construction limitations are based on physical soil features such as wetness, shallow depth to bedrock, slope, weak structure, etc. that require special planning and design to avoid or minimize erosion and sedimentation during construction activities.

The limitations are considered *slight* if soil properties and site features are generally favorable for the indicated use and limitations are minor and easily overcome; *moderate* if soil properties or site features are not favorable for the indicated use and special planning, design, or maintenance is needed to overcome or minimize the limitations; and *severe* if soil properties or site features are so unfavorable or difficult to overcome that special design,

³ Putnam County Coalition to Preserve Open Space, Comments on Crossroads FEIS and Rezoning Petition of Crossroads 312, LLC (Dec. 15, 2014).

⁴ USDA Soil Conservation Service (SCS), “Soil Survey of Putnam and Westchester Counties, New York (1994) (hereinafter “SCS Soil Survey”) available at:

http://soils.usda.gov/survey/online_surveys/new_york/putnam_westchesterNY1994/putnam_westchester.pdf.

⁵ *Id.*, at 81.

significant increases in construction costs, and possibly increased maintenance are required. Special feasibility studies may be required where the soil limitations are severe.⁶

(emphasis in original). DEIS Map 26, *Soil Map*, identifies the locations of eight soil types surveyed on the proposed project site, but does not quantify how each type is distributed. Using the Web Soil Survey provided by NRCS,⁷ the project site soil types are distributed approximately as follows:

Charlton loam	0.8%
Charlton-Chatfield complex	26.0%
Chatfield-Charlton complex	27.9%
Hollis-Rock outcrop complex	4.3%
Leicester loam	3.9%
Palms muck	1.0%
Paxton fine sandy loam, 2-8% slope	7.1%
Paxton fine sandy loam, 8-15% slope	27.8% ⁸

Soil limitations affecting the construction of commercial buildings on the Crossroads project site are considered *severe* for six of the eight soil types due to slope, depth to bedrock, wetness, ponding and low strength.⁹ Those six soil types comprise 91.7% of the site's soils. Limitations of the remaining 8.3% of onsite soils are considered moderate for construction of commercial buildings due to slope and wetness.¹⁰ In addition, the DEIS *Soil Map* indicates that Charlton-Chatfield and Chatfield-Charlton soils are "well drained" when the SCS Soil Survey characterizes those soils as "excessively drained,"¹¹ meaning they are more susceptible to erosion than well drained soils.

Construction activities on extensive and very steep slopes pose significant challenges to stormwater management that must be addressed by measures in an erosion and sedimentation control plan as part of the project's SWPPP. The severe soil limitations associated with over 90% of the Crossroads project site require "special design, significant increases in construction costs, and possibly increased maintenance."¹² Therefore, the Applicant's SWPPP must include a detailed Erosion and Sediment Control Plan (E&SC Plan) that provides for special design criteria to mitigate the stormwater impacts of construction activities on the steeply sloped project site with severe soil limitations.

⁶ *Id.*, at 89.

⁷ NRCS Web Soil Survey, available at <http://websoilsurvey.nrcs.usda.gov/app/>.

⁸ The NRCS Web Soil Survey also identified 0.7% water and 0.4% Udorthents soil, which is the result of transported cut and fill activities and extremely variable in its characteristics.

⁹ SCS Soil Survey, Table 12, Building Site Development, 163 *et seq.*

¹⁰ *Id.*

¹¹ *Id.*, at 29, 30.

¹² *Id.*, at 89.

While the FEIS includes a preliminary SWPPP, it does not include an E&SC Plan or propose special design elements associated with the on-site severe soil limitations. These are essential project elements, the omission of which precludes informed review of the proposed action, its potential impacts to water quality, and the adequacy and accuracy of the FEIS for which the lead agency is responsible. Preparation of a detailed E&SC Plan and the SWPPP in final form during the final site plan review process, as proposed in the FEIS,¹³ effectively shields those project elements from public scrutiny during the environmental review process.

Analysis of a Range of Alternatives

As noted by Riverkeeper in our previous comments, the DEIS failed to identify, detail, and fully evaluate a range of alternatives designed to avoid or minimize adverse environmental impacts likely to result from the project. This deficiency has not been corrected in the FEIS; rather the document merely insists that the project will be designed to meet regulatory requirements regarding stormwater and that additional alternatives need not be considered.¹⁴ Compliance with regulatory requirements does not necessarily constitute adequate mitigation, is not a substitute for failing to conduct the alternatives analysis required under SEQRA, and does not remedy the utter failure of the FEIS to consider a range of alternatives.

Pursuant to SEQRA, an environmental impact statement must include a “description and evaluation of the range of reasonable alternatives” to the proposed action, which “should be at a level of detail sufficient to permit a comparative assessment of the alternatives discussed.” N.Y. E.C.L. §§ 8-0109(2)(d),(4); 6 N.Y.C.R.R. § 617.9(b)(5)(v). The purpose of the alternatives analysis is to afford the lead agency and the public the opportunity to compare different project plans and identify the one that best avoids or minimizes adverse environmental impacts, which is especially important where, as here, the proposed action is likely to result in significant adverse impacts to sensitive resources.¹⁵

However, other than the No Action alternative, the DEIS only evaluated two alternative actions similar in size to the preferred project and likely to result in similar impacts to water quality.¹⁶ Both alternatives would disturb wetland buffer areas and result in a comparable total area of disturbance and impervious coverage in comparison with the preferred project. The two alternatives are not only similar in scale to the preferred project, but would result in similar adverse impacts to water quality. In order to satisfy SEQRA’s mandate to evaluate a range of reasonable alternatives, additional alternatives must be considered. The alternatives analysis in the FEIS must be expanded to include alternative actions that are smaller in scale and result in the creation of less overall site disturbance, reduced impervious coverage, and no wetland buffer disturbance compared to the preferred project.

¹³ Crossroads 312 Final Environmental Impact Statement (Dec. 1, 2014) (FEIS), Chapter 14, Erosion Control, at 3.

¹⁴ FEIS, Chapter 18, Alternatives, at 1 and 3-4.

¹⁵ See New York State Department of Environmental Conservation, *The SEQRA Handbook: 3rd Edition* (2010), Chapter 5.A.

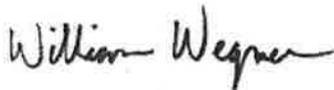
¹⁶ While we note that one of these alternatives has been slightly modified and is now the preferred project in the FEIS, the fact remains that the required range of alternatives has not been evaluated.

Ultimately, it is the responsibility of the Town Board, as lead agency, to ensure compliance with SEQRA. SEQRA charges the lead agency with the responsibility for the adequacy and accuracy of the FEIS regardless of who prepares it. 6 N.Y.C.R.R. § 617.9(8). In addition, the Town Board is responsible for certifying that the requirements of SEQRA have been met and that the significant adverse effects of the project will be minimized or avoided to the maximum extent practicable. See N.Y. E.C.L. § 8-0109(8); 6 N.Y.C.R.R. § 617.11. The information provided in the FEIS does not provide the Town Board with a sufficient basis to justify a certification that the significant adverse impacts associated with the Crossroads 312 project have been minimized to the maximum extent practicable and that the alternative selected is the one that best minimizes and/or avoids adverse environmental impacts.

Accordingly, the Town Board must prepare and circulate for public review and comment a supplemental or revised environmental impact statement before issuing a Findings Statement and making any decisions regarding approvals for the Crossroads 312 project.

Thank you for the opportunity to comment on these important issues.

Sincerely,



William Wegner
Staff Scientist



Misti Duvall
Staff Attorney

Attachment.



RIVERKEEPER.
NY's clean water advocate

November 12, 2013

VIA EMAIL

Hon. Tony Hay
Supervisor, Town of Southeast
1360 Route 22
Brewster, NY 10509

Re: Comments on Crossroads 312 Draft Environmental Impact Statement

Dear Supervisor Hay and Members of the Town Board:

Riverkeeper, Inc. (Riverkeeper) submits the following comments on the Crossroads 312 Draft Environmental Impact Statement (DEIS), which was made available for public review via notice in the Environmental Notice Bulletin on September 25, 2013.¹ The DEIS concerns a proposal to construct 186,000 square feet of mixed commercial development comprised of retail, bank, restaurant, and personal and professional services on a predominantly forested site.

Riverkeeper is a member-supported watchdog organization dedicated to defending the Hudson River and its tributaries and protecting the drinking water supply of nine million New York City and Hudson Valley residents. As a signatory to the New York City Watershed Agreement, we have a commitment to ensure that development projects in the watershed do not adversely impact the surface water resources that provide unfiltered drinking water to consumers. Accordingly, Riverkeeper is very concerned with any project in the New York City watershed that proposes potentially significant disturbance of streams, wetlands, or their buffers.

The DEIS was prepared to evaluate the environmental impacts of the Crossroads 312 Project (Proposed Project) and the zone change, site plan approval, and special permit sought from the Town of Southeast Town Board (Town Board) by Crossroads 312, LLC and JPH Development Corp. (Applicant). Pursuant to the State Environmental Quality Review Act (SEQRA), N.Y. E.C.L. §§ 8-0101, et seq., and its implementing regulations, 6 N.Y.C.R.R. Part 617, an Environmental Impact Statement (EIS) must include information sufficient to understand a proposed project's likely environmental impacts; mitigation measures proposed to minimize or avoid adverse environmental impacts; alternatives that might be undertaken to reduce or avoid those impacts; and growth-inducing aspects and cumulative impacts. N.Y. E.C.L. § 8-0109(2); 6 N.Y.C.R.R. § 617.9(b). The DEIS is fundamentally deficient because it fails to comply with these provisions, as it lacks critical information necessary to understand and evaluate several key

¹ Notice of Acceptance of Draft EIS and Public Hearing for Crossroads 312, Environmental Notice Bulletin (Sep. 25, 2013), available at: http://www.dec.ny.gov/enb/20130925_not3.html.

aspects of the Proposed Action. Specifically, the DEIS is missing a Stormwater Pollution Prevention Plan (SWPPP), including an Erosion and Sediment Control Plan and mitigation for stormwater impacts to wetland buffers; complete analysis of the range of alternatives; and detailed evaluation of growth-inducing aspects and cumulative impacts. As discussed below, without this information the Town Board cannot adequately evaluate the Proposed Project and its potential adverse environmental impacts, preventing the Board from being able to meet SEQRA's requirement to take a "hard look" at the "relevant areas of environmental concern." *Jackson v. New York State Urban Dev. Corp.*, 494 N.E.2d 429, 436 (N.Y. 1986).

As such, the Town Board must ensure that the missing information is submitted and made available for public review and comment before the DEIS is finalized. Riverkeeper urges the Town Board to extend the public comment period on the DEIS until at least 30 days after the missing information identified herein is submitted by the Applicant and made available for public review and comment pursuant to 6 N.Y.C.R.R. § 617.12.

I. Project Site Description

The Applicant proposes 186,000 square feet of mixed use commercial and retail development on a 51.88-acre site in the Town of Southeast. The entire project site lies within the phosphorus-restricted Diverting Reservoir Basin of the New York City drinking water supply watershed.² The DEIS describes the project site as predominantly forested and "sloped in all directions" from the northwest portion of the site.³ DEIS Chapter 8, *Geology*, expresses onsite slopes in terms of ratios rather than percentages: "Existing grades range from fairly steep (1.2 horizontal to 1.0 vertical [1.2H:1V] at the higher elevations) to moderately steep (6H:1V lower on the site), except at the small wetland area where grades are flat."⁴ When converted into the more common slope metric of percent (%), the "moderately steep" slopes are 16% and the "fairly steep" slopes are 83%.

The DEIS identifies three small onsite wetlands, two of which are town-regulated and one of which is State-regulated due to its hydrological connection to an offsite, 165-acre New York State Department of Environmental Conservation (DEC) wetland. The buffer of an additional offsite town-regulated wetland extends onto the subject property. There are no other watercourses on the project site.

II. The Applicant Must Submit a Stormwater Pollution Prevention Plan (SWPPP) for Public Review and Comment.

In order to comply with SEQRA, an EIS must include information sufficient to understand a proposed project's likely environmental impacts and identify mitigation measures

² The Diverting Reservoir is classified as an impaired waterbody subject to a Total Maximum Daily Load for phosphorus by the New York State Department of Environmental Conservation (DEC), and therefore is subject to that agency's heightened protection criteria to limit sources of phosphorous loading, such as fertilizers, from further impairing water quality. See DEC, Phase II Phosphorous Total Maximum Daily Loads for Reservoirs in the New York City Water Supply Watershed (2000), at 28, available at: http://www.dec.ny.gov/docs/water_pdf/nycjune2000.pdf.

³ Crossroads 312 Draft Environmental Impact Statement (DEIS) at ES-3.

⁴ *Id.* at 8-2.

to minimize or avoid those impacts. N.Y. E.C.L. § 8-0109(2); 6 N.Y.C.R.R. § 617.9(b). A SWPPP is essential to allow the public, involved agencies and the Town Board a meaningful opportunity to evaluate and comment on the project's potential to cause significant adverse impacts to water quality in the New York City Watershed. The Applicant proposes construction activities on steep slopes and the disturbance of wetland buffers; however, the DEIS lacks critical information regarding these activities, including an evaluation of construction limitations associated with soil types on the project site and detailed stormwater management practices. For these reasons, in advance of the applicant's preparation of the Final Environmental Impact Statement (FEIS), the Town Board must require the applicant to submit a SWPPP that provides the missing information so that the lead agency can determine the adequacy and accuracy of the DEIS and the public will be able to evaluate the project's identified impacts and the sufficiency of planned mitigation. Specific deficiencies are outlined below.

A. The SWPPP Must Provide Detail Regarding Mitigation for the Proposed Construction Activities on Very Steep Slopes

The vast majority of the Crossroads project site has steeply sloped areas in excess of 25%.⁵ The DEIS states that by “[f]ollowing the Stormwater Pollution Prevention Plan [SWPPP] guidelines... environmental impacts will be minimized during construction....”⁶ Notwithstanding the fact that the DEIS provides no SWPPP for review, construction activities on a project site that is “sloped in all directions” will increase the potential for erosion and sedimentation. The fact that the slopes are very steep further increases the site's susceptibility to erosion.

Although the applicant classifies onsite slopes of 83% as “fairly steep,” the term is misleading in its characterization and is not a term recognized by the Natural Resources Conservation Service (NRCS), which classifies any slope greater than 45% as “very steep.”⁷ A slope of 83% has a 40° angle, which cannot reasonably be considered only “fairly” steep. The applicant proposes a total disturbance of 31 acres.⁸ The proposed project will require significant grading and blasting on very steep slopes to create level building pads. In addition, the project will require 200,000 cubic yards of soil cut and 200,000 cubic yards of bedrock cut, both of which will be used for fill.⁹ The applicant proposes a total disturbance of 31 acres. Some of the disturbance will exceed 5 acres at one time. Impervious surface on the site, post development, will be increased by 16 acres.

The extent of sloped areas on the project site (nearly 100%), the steepness of the site's slopes (up to 83%), and the enormous amount of cut and fill required (400,000 cubic yards) will require considerable Best Management Practices (BMPs) to mitigate the likely impacts of erosion on the site during construction. These BMPs must be incorporated in the project's SWPPP and submitted for public review. Without these BMPs identified in a SWPPP that is

⁵ *Id.*, Map 26, Soil map.

⁶ *Id.*, at 8-6.

⁷ U.S. Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS), Soil Survey Manual, Examination and Description of Soils, available at: <http://soils.usda.gov/technical/manual/contents/chapter3.html>.

⁸ DEIS, at 9-19.

⁹ *Id.*, at 8-5.

submitted with the DEIS, the DEIS fails to comply with SEQRA's requirement to propose mitigation measures for the likely severe environmental impacts that will result from project construction. The DEIS must also identify the impacts and planned mitigation for its ill-advised proposal to disturb more than five acres at one time on such a steeply and extensively sloped site.

B. The SWPPP Must Evaluate the Construction Limitations Associated with Soil Types on the Project Site

Construction impacts of erosion may be further exacerbated by the drainage characteristics of the project site's soil types. DEIS Appendix N, *Soil Test Results*, provides a survey of soil boring logs and characterizes soils only in generic terms such as sand, gravel and topsoil. It does not identify onsite soil types by their series, morphology or limitations for building site development as published by the USDA Soil Conservation Service (SCS).¹⁰ This soil type information "can be used to identify the potentials and limitations of each soil for specific land uses and to help prevent construction failures caused by unfavorable soil properties... The survey can help planners to maintain or create a land use pattern in harmony with the natural soil."¹¹

SCS identifies soil limitations that affect construction of shallow excavations, commercial buildings, and local roads and streets, among others. These construction limitations are based on physical soil features such as wetness, shallow depth to bedrock, slope, weak structure, etc. that require special planning and design to avoid or minimize erosion and sedimentation during construction activities.

The limitations are considered *slight* if soil properties and site features are generally favorable for the indicated use and limitations are minor and easily overcome; *moderate* if soil properties or site features are not favorable for the indicated use and special planning, design, or maintenance is needed to overcome or minimize the limitations; and *severe* if soil properties or site features are so unfavorable or difficult to overcome that special design, significant increases in construction costs, and possibly increased maintenance are required. Special feasibility studies may be required where the soil limitations are severe.¹²

(emphasis in original). DEIS Map 26, *Soil Map*, identifies the locations of eight soil types surveyed on the proposed project site, but does not quantify how each type is distributed. Using the Web Soil Survey provided by NRCS,¹³ the project site soil types are distributed approximately as follows:

Charlton loam	0.8%
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¹⁰ USDA Soil Conservation Service (SCS), "Soil Survey of Putnam and Westchester Counties, New York (1994) (hereinafter "SCS Soil Survey") available at:

http://soils.usda.gov/survey/online_surveys/new_york/putnam_westchesterNY1994/putnam_westchester.pdf.

¹¹ *Id.*, at 81.

¹² *Id.*, at 89.

¹³ NRCS Web Soil Survey, available at <http://websoilsurvey.nrcs.usda.gov/app/>.

Charlton-Chatfield complex	26.0%
Chatfield-Charlton complex	27.9%
Hollis-Rock outcrop complex	4.3%
Leicester loam	3.9%
Palms muck	1.0%
Paxton fine sandy loam, 2-8% slope	7.1%
Paxton fine sandy loam, 8-15% slope	27.8% ¹⁴

Soil limitations affecting the construction of commercial buildings on the Crossroads project site are considered *severe* for six of the eight soil types due to slope, depth to bedrock, wetness, ponding and low strength.¹⁵ Those six soil types comprise 91.7% of the site's soils. Limitations of the remaining 8.3% of onsite soils are considered moderate for construction of commercial buildings due to slope and wetness.¹⁶ In addition, the DEIS *Soil Map* indicates that Charlton-Chatfield and Chatfield-Charlton soils are "well drained" when the SCS Soil Survey characterizes those soils as "excessively drained,"¹⁷ meaning they are more susceptible to erosion than well drained soils.

Construction activities on extensive and very steep slopes pose significant challenges to stormwater management that must be addressed by measures in an erosion and sedimentation control plan as part of the Proposed Project's SWPPP. The severe soil limitations associated with over 90% of the Crossroads project site require "special design, significant increases in construction costs, and possibly increased maintenance."¹⁸ Therefore, the Applicant's SWPPP must include a detailed Erosion and Sediment Control Plan that provides for special design criteria to mitigate the stormwater impacts of construction activities on the steeply sloped project site with severe soil limitations. These are essential project elements, the omission of which precludes informed review of the proposed action, its potential impacts to water quality, and the adequacy and accuracy of the DEIS for which the lead agency is responsible.

C. The SWPPP Must Identify and Propose Mitigation for Stormwater Impacts To Wetland Buffers

The Applicant proposes to mitigate stormwater impacts to water quality by employing management practices that include filters, swales and ponds, but the DEIS lacks detail on these practices. Although no direct disturbance of wetlands is proposed, disturbance of town-regulated wetland buffers will be required to site some of the proposed drainage swales. The DEIS provides no information regarding the number, size

¹⁴ The NRCS Web Soil Survey also identified 0.7% water and 0.4% Udorthents soil, which is the result of transported cut and fill activities and extremely variable in its characteristics.

¹⁵ SCS Soil Survey, Table 12, Building Site Development, 163 *et seq.*

¹⁶ *Id.*

¹⁷ *Id.*, at 29, 30.

¹⁸ *Id.*, at 89.

or location of the swales, which are proposed to drain to the on- and off-site wetlands, nor does it identify which wetland buffers will be impacted.¹⁹ This information must be provided in the DEIS and the impacts addressed by a detailed SWPPP.

1. Impacts to Buffers

The establishment and maintenance of buffer areas is critical to the protection of wetlands from construction activities and post-development stormwater runoff. Wetland buffers provide important water quality functions that include nutrient uptake, infiltration, reducing erosion, and restoring and maintaining the chemical, physical and biological integrity of water resources.²⁰ Siting stormwater management practices within buffers can impair buffer function by clearing trees, altering existing wetland hydrology, and increasing thermal impacts.²¹ For these reasons, the disturbance of buffers to site the proposed drainage swales should be avoided.

The applicant attempts to diminish the value of onsite buffers by claiming that “wetland buffers on the property do not provide a great amount of protection for these wetlands from the surface water runoff because the flow is channelized and cuts through the uplands and the wetland buffers at a relatively steep gradient.”²² However, under post-development conditions stormwater flows will be captured in detention ponds and not channelized through the uplands and buffers. Under these conditions the wetland buffers will not be impacted by erosion and sedimentation and will therefore function to provide greater protection to the wetlands. This increase in function will increase the value of the wetland buffers, which should be afforded protection from construction activities and the siting of drainage swales.

2. Discrepancies in Proposed Stormwater Management Practices

The applicant also proposes to employ Low Impact Design (LID) practices, as required by DEC regulations.²³ The DEIS asserts that the proposed project will “promote infiltration through porous pavement, porous pavers, vegetated swales, possibly rain gardens, and other green features,”²⁴ but then states that “infiltration may be considered in the design if opportunities arise but is not included at this time.”²⁵ This discrepancy must be resolved and any proposed LID practices must be clearly identified and detailed in a SWPPP.

The DEIS states that the proposed stormwater “ponds will mitigate the impacts of the proposed development by capturing and treating all the stormwater flows,”²⁶ but also claims that the ponds will capture runoff from only a portion of the site while the “remaining 25.9 acres +/-

¹⁹ Disturbance to town-regulated wetland buffers for placement of stormwater management practices constitutes wetland buffer disturbance, which will require a permit pursuant to Town Code Chapter 78.

²⁰ U.S. Environmental Protection Agency (USEPA), Model Ordinances to Protect Local Resources, *see* <http://www.epa.gov/owow/nps/ordinance/>

²¹ Fischer, R., and J. Fischenich, Design Recommendations for Riparian Corridors and Vegetated Buffer Strips, US Army Engineer Research and Development Center (2000), 6.

²² DEIS at 9-14.

²³ *Id.*, at 9-20.

²⁴ *Id.*, at 10B-10.

²⁵ *Id.*, at 10B-11.

²⁶ *Id.*, at 10B-16.

of the site will drain overland directly to the design points as it does presently.”²⁷ The proposed ponds cannot capture and treat *all* stormwater flows if they are allowing 25.9 acres to drain without being captured. This discrepancy must be resolved.

D. The SWPPP Must Provide Critical Information that is Missing from the DEIS

Contrary to the requirements of SEQRA, the DEIS proposes to defer some of the critical design details necessary to evaluate the efficacy of proposed mitigation of stormwater impacts until after the environmental review process has concluded.²⁸ For example, the addition of 16 acres of impervious cover (30% of the project site), along with the extensive grading, cutting and filling proposed, will significantly alter the site’s surface hydrology and drainage patterns to and from the SMPs, yet the applicant proposes to rely on “*additional geotechnical and hydrogeologic engineering*” not now, but “*as the project progresses through the detailed design phase.*”²⁹ Similarly, hydraulic calculations for the stormwater management basins “*will be developed later.*”³⁰

In addition, the DEIS proposes LID procedures to “*be employed in the final project design*”³¹ and identifies green features that are “*yet to be designed.*”³² Stormwater control basins “*will be created to meet all regulatory requirements,*”³³ yet regarding design specifications of stormwater control basins, states that “*pipng layout and hydraulic calculations will be developed later in the design process.*”³⁴

The applicant claims that the Crossroads SWPPP and Sediment and Erosion Control Plan will provide protection from potential indirect impacts, flooding, and will prevent the degradation and pollution of waters.³⁵ The DEIS provides no basis to assert the effectiveness of a plan that has not yet been developed to adequately mitigate the water quality impacts of stormwater runoff. Deferring critical information until the environmental review process has concluded effectively thwarts any informed review of the proposed action and its potential adverse impacts to surface waters by both the public and the lead agency. Consequently, this information must be made available *before* the review process has concluded, as required under SEQRA. Otherwise the DEIS fails to fulfill SEQRA’s mandate to identify significant adverse environmental impacts and mitigation measures to address those impacts. This is especially critical when the applicant proposes extensive disturbance of a problematic project site located in a phosphorus-impaired reservoir basin that is part of the New York City Watershed. For these reasons, as lead agency the Town Board must require the applicant to submit a detailed SWPPP

²⁷ *Id.*, at 10B-12.

²⁸ The purpose of an EIS is to “provide detailed information about the effect which a proposed action is likely to have on the environment, [and] to list ways in which any adverse effects of such an action might be minimized ... so as to form a basis for a decision whether or not to undertake or approve such action.” N.Y. E.C.L. § 8-0109(2). Proposed mitigation measures intended to minimize adverse environmental impacts must be included in an EIS. *Id.*, § 8-0109(2)(f); 6 N.Y.C.R.R. § 617.9(b)(5)(iv).

²⁹ DEIS, at 8-4.

³⁰ *Id.*, at 10B-10.

³¹ *Id.*, at 9-20.

³² *Id.*, at 10B-10.

³³ *Id.*, at ES-13.

³⁴ *Id.*, at 10B-11.

³⁵ *Id.*, at 9-18.

and Erosion and Sediment Control Plan for public review prior to preparing an FEIS for the proposed Crossroads 312 Project.

III. The DEIS Must Include an Analysis of a Range of Alternatives to the Proposed Project.

The DEIS must identify, detail, and fully evaluate a range of alternatives designed to avoid or minimize adverse environmental impacts likely to result from the Proposed Project. Pursuant to SEQRA, an EIS must include a “description and evaluation of the range of reasonable alternatives” to the proposed action, which “should be at a level of detail sufficient to permit a comparative assessment of the alternatives discussed.” N.Y. E.C.L. §§ 8-0109(2)(d),(4); 6 N.Y.C.R.R. § 617.9(b)(5)(v). The purpose of the alternatives analysis is to afford the lead agency and the public the opportunity to compare different project plans and identify the one that best avoids or minimizes adverse environmental impacts, which is especially important where, as here, the proposed action is likely to result in significant adverse impacts to sensitive resources.³⁶

However, other than the No Action alternative, the DEIS only evaluates alternative actions similar in size to the Proposed Project and likely to result in similar impacts to water quality. Both the RC Alternative and HC-1 with Hotel Alternative would disturb wetland buffer areas (though the amount of disturbance is not quantified), result in a total area of disturbance of approximately 31 acres, and create approximately 30% impervious coverage, the same as the Proposed Project.³⁷ Therefore, the two alternatives are not only similar in scale to the Proposed Project, but would similarly adversely impact water quality.

In order to satisfy SEQRA’s mandate to evaluate a range of reasonable alternatives, additional alternatives must be considered. The alternatives analysis in the DEIS must be expanded to include alternative actions that are smaller in scale and result in the creation of less overall site disturbance, reduced impervious coverage, and no wetland buffer disturbance compared to the proposed action.

IV. The DEIS Must Include a Detailed Evaluation of Growth-Inducing Aspects and Cumulative Impacts.

The DEIS fails to include the detailed evaluation of growth-inducing aspects and cumulative impacts required by SEQRA, N.Y.E.C.L § 8-1019(2)(g); 6 N.Y.C.R.R. §§ 617.9(b)(5)(iii)(a), (d), instead combining both issues into a little more than one page recitation of unsupported and contradictory assertions.³⁸ SEQRA requires more than a mere recitation; it requires “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.” *Id.* § 617.9(b)(5)(iii).

³⁶ See DEC, *The SEQRA Handbook: 3rd Edition* (2010), Chapter 5.A.

³⁷ DEIS, at 16-13.

³⁸ *Id.*, Chapter Twenty, *Growth Inducing Aspects and Cumulative Impacts*.

Growth-Inducing Aspects

The DEIS contains contradictory assertions that call into question its conclusion that the Proposed Project is not likely to induce additional commercial and/or retail development.³⁹ The Applicant begins by asserting that the Proposed Project will increase demand for goods and services and that “it is possible” that additional stores or personal services may open, but then claims that the increase in income will instead stabilize the market rather than enable its growth.⁴⁰ None of these assertions are supported with any kind of factual data. In addition, the DEIS briefly lists a number of potential development projects that may be undertaken nearby, including “vacant lots in Terravest Corporate Park,” “upgrades to existing buildings,” and the former Putnam Seabury site, but provides no evaluation of whether or not these projects may be induced by the Proposed Project.⁴¹

Further, the DEIS falls far short of the requisite level of detail necessary to evaluate the growth-inducing aspects of the Proposed Project and the significant environmental impacts likely to result. For example, the DEIS concludes that there is a sufficient unemployed population in the area to absorb the additional jobs created by the Proposed Project, presumably as evidence that the project will not induce population growth, but fails to support that conclusion. Instead, the applicant merely lists the unemployment rate in the area, but does not provide information regarding how many of those individuals are able to work and have the skills to match the employment opportunities that will be created.⁴²

The Town Board must require the Applicant to provide a detailed evaluation of the likely growth-inducing aspects of the project and associated environmental impacts. This must include an evaluation of all of the potential projects that may reasonably be expected to be undertaken in response to the Proposed Project, as well as factual support for the Applicant’s assertions. As discussed above, the Proposed Project is located in the environmentally-sensitive East of Hudson New York City watershed. Additional growth and development in the project area would likely increase impervious surfaces and the risk of carrying contaminated stormwater runoff offsite and into drinking water supplies. As a result, the growth-inducing aspects of the Proposed Project must be carefully and comprehensively evaluated in the DEIS.

Cumulative Impacts

The DEIS does not appear to contain any sort of analysis of cumulative impacts. Despite the title of Chapter Twenty, *Growth Inducing Aspects and Cumulative Impacts*, that section of the DEIS does not contain a discussion of cumulative impacts. The Applicant notes that the project area is “identified in the Town Comprehensive Plans as a node for economic activity,”⁴³ but – other than briefly mentioning and dismissing the Putnam Seabury site, vacant lots in Terravest Corporate park, and unnamed potential building upgrades – does not attempt to identify potential projects in that same area. Given that any development projects in the area are

³⁹ *Id.*, at 20-1.

⁴⁰ *Id.*

⁴¹ *Id.*, at 20-1-20-2.

⁴² *Id.*, at 20-1.

⁴³ *Id.*, at 1-2.

likely to increase impervious surfaces and thereby the risk of transporting pollutants into surface and drinking water resources via increased stormwater runoff, it is critical that the DEIS identify other planned and/or approved projects in the area and evaluate likely cumulative impacts.

V. The Town Board Has the Authority to Require the Applicant to Provide Missing Information Subject to Public Review Before Finalizing the EIS.

The Town Board has ample authority to require the Applicant to provide information missing in the DEIS and to make that information available for public review. Even after acceptance of the DEIS, the Town Board as lead agency retains authority to require the project applicant to provide supplemental information essential to review and evaluation of significant adverse environmental impacts. *Matter of Bronx Comm. for Toxic Free Schools v. New York City School Construction Authority*, 981 N.E.2d 766 (N.Y. 2012) (requiring agency to supplement an EIS to include information on methods for long-term maintenance and monitoring of mitigation controls); *see also Matter of Sour Mountain Realty, Inc. v. N.Y. State Dept. of Envtl. Conserv.*, 688 N.Y.S.2d 842 (N.Y. App. Div. 1999) (upholding agency requirement that the applicant prepare supplemental environmental review nearly two years after acceptance of the DEIS).

The Town Board also has authority to extend the timeframe for SEQRA review. The timeframe for finalizing an EIS may be extended by the lead agency “if it is determined that additional time is necessary to prepare the statement adequately.” 6 N.Y.C.R.R. § 617.9(a)(5)(ii). The lead agency should not place timeliness concerns over ensuring proper environmental review:

“[A]n important consideration, which bears repeated emphasis when discussing the issue of timeliness in completing the SEQRA process, is SEQRA's overriding requirement that agencies affirmatively consider environmental factors when undertaking or approving actions. Accordingly, agencies (and, of course, applicants) should be wary of ignoring a potentially significant environmental issue simply in order to meet a SEQRA time frame.”

Gerrard, *et al.*, *Environmental Impact Review in New York* (2012) § 3.13(3).

More importantly, the Town Board cannot satisfy SEQRA simply by including the missing information in the final EIS. *Webster Associates v. Town of Webster*, 451 N.E.2d 189, 192 (N.Y. 1983) (“the omission of a required item from a draft EIS cannot be cured simply by including the item in the final EIS”). In order to satisfy SEQRA, the Town Board must require the Applicant to submit the missing information for public review and comment before finalizing the DEIS.

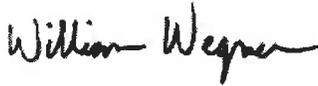
VI. Conclusion

Before the DEIS is finalized, the Town Board must require the Applicant to provide the missing information identified herein and make it available for public review and comment. Accordingly, Riverkeeper asks the Town Board to extend the public comment period until at

least 30 days after the following information is submitted and made available for public review and comment pursuant to 6 N.Y.C.R.R. § 617.12: 1) comprehensive SWPPP, including an Erosion and Sediment Control Plan and identification of and proposed mitigation for stormwater impacts to wetland buffers; 2) complete analysis of the range of alternatives; and 3) detailed evaluation of growth-inducing aspects and cumulative impacts.

Thank you for the opportunity to comment on these important issues.

Sincerely,



William Wegner
Staff Scientist



Misti Duvall
Staff Attorney

