

III.3 Land Use and Zoning

Comment No. 3-1 [Rezoning from RC to OP-3]

As part of the proposed project, the Applicant proposes to rezone approximately 39 acres of the site from RC to OP-3. The Applicant proposes to maintain a buffer of RC between the proposed project and NYS Route 312. AKRF supports the retention of a buffer of RC zoning along NYS Route 312.

(B-1, AKRF)

I'm also interested to understand what other RC properties would fall under the changing of this zoning. So I think the gentleman mentioned that this is the only RC that would fall under this zoning change, or are we going to have other properties that will change?

(B-3, PH #2, Ms. Jacobs)

Importantly, the new Rural Commercial (RC) zones reduced the potential of intense development that would exacerbate traffic congestion:

The Comprehensive Plan includes recommendations to adjust permitted uses within the commercial zoning districts to reflect community character and water quality objectives. ... Certain of the Office Park (OP) zoning districts would be rezoned to a new "Rural Commercial" zoning districts to encourage less intense, but certainly of equal or high value, commercial uses such as corporate retreats, bed & breakfast or inn, or horse farms. These uses would be more consistent with the community's rural character, especially at these important gateway locations. From an environmental impact perspective, less intense commercial uses would likely result in fewer impacts from traffic and greater protection of water quality as impervious surface areas would be minimized.

The Town then rezoned most of the project site to RC.

In 2014, the Town updated its CP. Resident responses to surveys and CP committee members recommended maintaining the RC zones. The 2014 CP states:

The intent of this [RC] rezoning should be maintained, in that the Zoning Map and Code should encourage uses that would maintain and enhance the parcels' scenic qualities and rural character.

2014 CP at 7-3.

(B-163, James Bacon, Esq., P.C.)

Response No. 3-1

Since the Preferred Alternative is located entirely within the Town's OP-3 District, where it is an established permitted use, the Applicant's Preferred Alternative does not contemplate the rezoning of any portion of the site that is in the Town's RC District (Figure I-2A). All currently zoned RC property will remain zoned RC. The stormwater retention and septic facilities that would be located in the RC District in connection with Building A (and sized specifically for Building A) are permitted within all zoning Districts in the Town.

Building A, which is closest to Route 312, will be approximately 2,150 feet from Route 312. Intervening topography would also make Building A virtually invisible from Route 312. Route 312 is at an elevation of 550 feet at its nearest point, while Building A (with a finished floor elevation of 645 feet) will be below and behind the ridgeline (with a top elevation of 672 feet) which is located between Building A and Route 312. In summary, distance, topography and dense undisturbed vegetation obscures Building A's visibility from Route 312. (DEIS at III.C-11 & C-13), and Figure III.5-9).

The 2014 Comprehensive Plan Update (CPU) also identifies this site as being within a potential commercial activity area. (See CPU, at Figure 7-1, Area #2.) The CPU recommends that this area is a "node of commercial activity" such that future potential

development for commercial purposes is compatible with that vision. The Applicant submits that locating the proposed distribution center on OP-3 zoned property preserves Route 312's rural character, meets this vision and the intent of the Town's RC zoning. The parcel's scenic qualities and rural character as they are experienced by neighbors and passersby are buffered by the RC zoned parcels and quarter mile set back buffers.

Comment No. 3-2 [Allowable Uses in OP-3]

One point of clarification, which I think our town planner can answer, I heard that warehouses are in the OP-3 Code.

(B-3, PH #2, Ms. Eckhardt)

I firmly believe that all property owners, when they're doing a development, should follow existing zoning and existing comprehensive plan. OP-3 did not allow warehouses. OP-1 and OP-2 allowed warehouses. I know that you want to get a change for a logistic center. And you have your definition for it, but I believe it's a warehouse. And, of course, you're going to have to address that to the town board. But if we are not going to be able to make certain corrections to this project on the traffic, I would not be in favor of allowing warehouses to go up.

I'd say put up 150 homes.

(B-145, Hearing No. 3 (Mr. Gress))

In terms of the zoning, I was very disappointed when reading the DEIS, because it does quote in here that in addition to the traditional warehouses and light manufacturing functions that are permitted – and to Jack's point – he and I compared notes. There is not – warehouses are not permitted, and it's misleading.

(B-145, Hearing No. 3 (Mr. Larca))

The developer states in the Full Environmental Assessment Form (see below text) that land zoned OP-3 includes Warehouse use. The town's Commercial Zoning Schedule, 12-01-2015

does NOT show Warehouse as a Permitted Principal Use; Permitted Accessory Use; Special Permit Use; or Conditional Use. Does Warehouse need to be a permitted use in OP-3, before adding Logistic Centers to our Zoning Code?

(B-155, Cathy Croft)

A zoning text amendment is proposed to permit a new "logistics center" conditional use within the OP-3 district, which district already includes a warehouse use.

(B-155, Cathy Croft)

Please remove the following comment and any similar comments from the DEIS completely. "In addition to the traditional warehouse and light manufacturing functions that are already permitted under the Town's Zoning Code" This is completely false as warehouses are not listed in the OP3 district.

(B-158, Eric Larca)

As discussed below, the project does not conform with the Town's zoning code as warehouses are not permitted in the RC or OP-3 zones.

(B-163, James Bacon, Esq., P.C.)

Response No. 3-2

The Preferred Alternative qualifies as a "Light Manufacturing" use under the Town Code, and, accordingly, is a use specifically allowable by Special Permit in the OP-3 District. (See Commercial Zoning Schedule, Attachment 5 to Town Code Chapter 138.) The plain language used in the Town's official planning documents establishes that "Light Manufacturing" includes "warehousing and distribution facilities." (See Commercial Zoning Schedule, Attachment 5 to Town Code Chapter 138; CPU at 5-2.)

The Town's 2014 Comprehensive Plan Update specifically and unambiguously states that uses categorized as either "Industrial or Light Industrial" "include traditional industrial uses as well as warehousing and distribution facilities." (CPU at 5-2 (emphasis added).)

The Town's 2014 Comprehensive Plan Update further sets forth the Town's intent to allow warehouse/distribution facilities at so much of the site as is in the OP-3 District, showing that the Town plans to rezone that part of the site to specifically allow "Warehouse" uses (as well as the overarching "Light Manufacturing" category) by conditional use permit as part of a new OP-MU District. (See CPU at Table 5-3 at 5-22 & Figure 5-5.) This is consistent with the 2014 Comprehensive Plan Update's declaration that the area around the I-84/Route 312 Interchange, including the Property, is intended to be a "focal point of commercial development." (CPU at 8-4; see also id. at Figure 7-1 specifically identifying the subject site as being slated for commercial development.). As such, even if the Town Code did not already clearly establish that warehouse/distribution facilities are allowed at the Property, the Town's Zoning Code would still be required by law to be in accordance with the Town's duly adopted Comprehensive Plan. See N.Y. Town Law § 272-a(11).

Significantly, the Court of Appeals has held that "the 'comprehensive plan' protects the landowner from arbitrary restrictions on the use of his property which can result from the pressures which outraged voters can bring to bear on public officials." Udell v. Haas, 21 N.Y.2d 463, 469, 288 N.Y.S.2d 888, 894 (1968). "In exercising their zoning powers, the local authorities must act for the benefit of the community as a whole following a calm deliberate consideration of the alternatives, and not because of the whims of either an articulate minority or even a majority of the community." Id.

In any event, the Town Zoning Code's definition of "Light Manufacturing" tracks the language of the 2014 Comprehensive Plan Update, establishing that this term includes "[i]ndustrial uses such as manufacturing, processing and assemblage." (Town Code § 138-4.) Like the 2014 Comprehensive Plan Update, the Town Zoning Code's definition of "Light Manufacturing" makes clear that it includes "traditional" industrial uses, as well as facilities that may be used for processing and assemblage, such as warehouses and distribution facilities. Even if there were any ambiguity regarding the fact that warehouse/distribution facility uses are allowed in the OP-3 District, such ambiguity would have to be strictly construed against the Town and in favor of the private

property rights of the Property’s owner, Putnam Seabury Partners, L.P. (“Putnam, Seabury”). See Toys R Us v. Silva, 89 N.Y.2d 411, 420, 654 N.Y.S.2d 100, 105 (1996) (“Zoning restrictions, being in derogation of common-law property rights, should be strictly construed and any ambiguity resolved in favor of the property owner.”).

The Town Code’s definition of “Industrial Use” refers back to the definition of “Light Manufacturing.” (See Town Code § 138-4.) By law, the undefined terms “Light Manufacturing” and “Industrial” must be accorded their “plain or ordinary meaning.” See, e.g., Sullivan v. B.Z.A. of Albany, 144 A.D.3d 1480, 1482, 42 N.Y.S.3d 428, 430, (3d Dept. 2016), leave to appeal denied, 29 N.Y.3d 901, 57 N.Y.S.3d 704 (Table) (2017) (“If the law or ordinance at issue does not define a particular term, courts will afford such term its plain or ordinary meaning.”); N.Y. Statutes § 232 (“Words of ordinary import used in a statute are to be given their usual and commonly understood meaning, unless it is plain from the statute that a different meaning is intended.”).

The plain meaning of the word “industrial” broadly refers to anything relating to “productive or profit-making enterprises” that depend upon “systemic labor.” The word “industrial” simply means anything “of or relating to industry.” Merriam-Webster online dictionary, available at <https://www.merriam-webster.com/dictionary/industrial>, last checked Jan. 2, 2019. “Industry,” in turn, has a variety of meanings, including “manufacturing activity as a whole” but also including “a distinct group of productive or profit-making enterprises” and “systematic labor especially for some useful purpose or the creation of something of value.” See Merriam-Webster online dictionary, available at <https://www.merriam-webster.com/dictionary/industry>, last checked Jan. 2, 2019. As such, the phrase “industrial uses” must, by law, be broadly construed to encompass a wide variety of “profit-making enterprises” that are dependent on the use of systemic labor activities, including warehouses and distribution facilities.

The series of words used in the Town Zoning Code following the term “industrial uses” in the definition of “Light Manufacturing” show that: (i) “Light Manufacturing” is not limited to traditional “manufacturing,” and; (ii) the term encompasses uses that correlate

to warehouse/distribution facilities, including “assemblage.” The standard rule of statutory interpretation known as *ejusdem generis* establishes that the “words employed in a statute are construed in connection with, and their meaning is ascertained by reference to the words and phrases with which they are associated.” See N.Y. Statutes § 239. Here, the Town Code expands on the intended meaning of the phrase “[i]ndustrial uses” by stating that it includes, but is not limited to, uses “such as manufacturing, processing and assemblage.” (See Town Code § 138-4 (emphasis added).)

Accordingly, like the 2014 Comprehensive Plan Update, the Zoning Code’s definition of “Light Manufacturing” makes clear that it is not limited to “traditional” manufacturing. Rather, “manufacturing,” which is preceded by the phrase “such as,” is just one exemplar of the uses included within the “industrial uses” allowed as “Light Manufacturing.” Under the doctrine of *ejusdem generis*, the word “assemblage” must be construed as a distinct descriptor of the types of uses that can also qualify as “Light Manufacturing.” See Toys R Us, 89 N.Y.2d at 422, 654 N.Y.S.2d at 106 (reiterating axiom that “courts must, where possible, give meaning and effect to every word of a statute”). Again, this is consistent with the statement in the Town’s 2014 Comprehensive Plan Update that “Industrial or Light Industrial” uses “include traditional industrial uses as well as warehousing and distribution facilities.” (CPU at 5-2.)

“Assemblage,” in turn, correlates to the uses envisioned for the proposed warehouse/distribution facility. The plain meaning of assemblage most relevant to this discussion is “the act of assembling.” Merriam-Webster online dictionary, available at <https://www.merriam-webster.com/dictionary/assemblage>, last checked Jan. 2, 2019. The description of the intended use in the DEIS indicates that it will include multiple services that are forms of assemblage (as well as processing), including “handling, shipment, consolidation, repackaging, labeling, assembly, aggregation, transloading, refrigeration, [and] management.” (See DEIS at II-3.) Like assemblage (and processing), the activities that will take place in the proposed warehouse/distribution facility all involve aspects of assembling and processing goods and materials for redistribution.

It is well-settled that the designation in a municipal zoning code of a use as permitted by Special Permit is “tantamount to a legislative finding that the permitted use is in harmony with the general zoning plan and will not adversely affect the neighborhood,” subject to it meeting the established criteria for a Special Permit. Twin County Recycling Corp. v. Yevoli, 90 N.Y.2d 1000, 1002, 665 N.Y.S.2d 627, 628 (1997) (citation omitted).

Comment No. 3-3 [Rezoning]

Please keep the zoning as is - residential.

(B-58, Angela Cuomo)

Why do we have zoning laws if they can be broken?

(B-35, Christine Capuano)

My second objection is to the Re-Zoning and Zoning text modification requests.

(B-67, William Heath)

We would like the zoning laws currently on the books upheld in order to maintain the integrity of our neighborhood.

(B-104, Nathalie Del Vecchio and Roberto Molina)

If the zoning change is granted will it open the door for other developers to ask for zoning changes as well?

(B-118, Cherie Ingraham)

This land was zoned as it is now for a reason...it is not suited for such a radical change.

(B-131, Christine Capuano)

My last question is I am wondering why we even have zoning laws if they can be changed to suit any developer?

(B-140, Christine Capuano)

I am not in favor of zoning amendments.

(B-173, Beth Mazzei)

First of all why do we even have zoning laws if they can be changed with the stroke of a pen.

(B-174 Christine Capuano)

Response No. 3-3

The Preferred Alternative does not call for any rezoning actions. Again, the Preferred Alternative is located in the Town's OP-3 District, where, as established by the Town's official planning documents – namely the 2014 Comprehensive Plan Update and the Zoning Code – it is allowed by Special Permit. Moreover, the Preferred Alternative is consistent with the vision and goals of the CPU of balancing a healthy economic environment with quality commercial character while protecting the integrity of the Town's natural resources and infrastructure. (See CPU, at 1-4.) The Preferred Alternative provides significant economic development for the Town in terms of direct, indirect, and induced jobs, as well as millions of dollars of direct, indirect and induced economic output during the construction phase and continuing annually during the operations phase.

The 2014 Comprehensive Plan Update also identifies this site as being within a potential commercial activity area. (See CPU, at Figure 7-1.) The CPU also recommends that this area is a “node of commercial activity” such that future potential development should be compatible with that vision. The Applicant submits that the proposed warehouse/distribution facility use, which preserves Route 312's rural character, meets this vision.

Comment No. 3-4 [Comprehensive Plan]

The last thing is: I have something to say about the comprehensive plan. And in in the comprehensive plan, it mentions the word balance. Now, when I think of balance, I think of harmony, of security. You know, pretty - - pretty - - homeostasis.

(B-2, PH #1, Ms. Fanizzi)

Now, when did that comprehensive plan come into effect?

It was adopted barely four years ago. Barely. So - - so now we have a developer who comes in and says, Oops, you forgot something. You need to include logistics centers in the conditional permit.

You don't need to do - - well, this planning board doesn't do it. I'll make that comment for the town board.

(B-2, PH #1, Ms. Fanizzi)

And the one thing that the applicant should know when you point to that is we purposely plucked out this - - the 312 corridor there, because Crossroads was in front of the board. We felt it would be very unfair to rezone anything there at the time, and I think it's important to know that we just didn't touch that whole area.

(B-2, PH #1, Ms. Eckhardt)

It seems to me that we have a Master Plan for the town that should serve as a guide to what we want our community to be and look like. I think we should adhere to the vision of our town as laid out in the Master Plan.

(B-67, William Heath)

The current zoning codes were established in our Comprehensive Plan for a reason-to maintain the semi-rural character of Southeast.

(B-70, Helen Dorkin)

In comments on varying aspects of the project, oral and written, the residents of the Town of Southeast have expressed the view that this project on all levels violates the spirit of the Comprehensive plan.

(B-117, Ann Fanizzi)

This project is not in alignment with the Town of Southeast Comprehensive Plan.

(B-118, Cherie Ingraham)

In closing I would like to mention that the Town of Southeast updated their Comprehensive Plan (<http://southeast-ny.gov/DocumentCenter/View/102/2014-Adopted-Comprehensive-Plan-PDF?bidId=>) in 2014. The following text is taken from Section 5: Land Use Community, Character, and Zoning: 5-6

FUTURE LAND USE

Figure 5-2 illustrates future land uses based on the existing Zoning Map and proposed changes to commercial development patterns (described below in “Zoning” and in Sections 6 and 7). The areas of particular interest to the Town with respect to future development are described below.

RURAL COMMERCIAL DISTRICTS

Following the adoption of the 2002 Comprehensive Plan, the Town implemented a new “Rural Commercial” (RC) Zoning District at key entry points into the Town and specific parcels of notable rural character. Uses to be permitted in this new district recognize the importance of visual character, and could be linked to Hudson Valley tourist-oriented development. To further the tourism oriented uses recommended in the 2002 Comprehensive Plan, this Comprehensive

Plan Update recommends revisiting the permitted principal and special permit uses in the RC Zoning District. Additional uses that could be considered are craft workshops, agricultural tourism based businesses, and performing arts or other arts based uses.

*Our town purchased 156.18 acres of land with our Open Space funding in 2007. This property is located next to the land zoned RC that the applicant would like to have changed to OP-3 Zoning. Changing the zoning to OP-3 would not be in the spirit of the Comprehensive Plan.
(B-155, Cathy Croft)*

*And, pursuant to the Comprehensive Plan (CP), the Town Board specifically adopted the RC zone to diminish traffic congestion because the bridge on Rt. 312 crossing Rt. 84 is inadequate to handle traffic volumes
(B-163, James Bacon, Esq., P.C.)*

As above, the Town rezoned the project site from OP to RC specifically to “permit commercial development that has a smaller impact on environmental systems and the traffic network.” (See updated CP adopted August 21, 2014, Section 5: Land Use, Community Character, and Zoning at page 5-21.

*However, the Applicant proposes just the opposite.
(B-163, James Bacon, Esq., P.C.)*

And, contrary to the Applicant’s statements in the DEIS, the updated CP singled out the project site stating the area’s RC zoning should remain:

Route 312 west of Pugsley Road contains parcels with significant visual appeal and the previous rezoning of this property should be maintained

*Emphasis added - Town of Southeast Comprehensive Plan, adopted August 21, 2014 at 7-4.
(B-163, James Bacon, Esq., P.C.)*

And, the updated CP directs the Town to:

Ensure that all local laws, including the zoning code and subdivision regulations, are consistent with the recommendations contained in this Comprehensive Plan and are adequately enforced.

Id. at 5-23, “Implementation Actions.”

Finally, if the Town were to amend the Code, the CP directs the Town to “put a greater emphasis on... mitigation of potential impact of a particular use (e.g. traffic).” CP 5-24.

(B-163, James Bacon, Esq., P.C.)

Response No. 3-4

The Town’s 2014 Comprehensive Plan Update establishes that the Preferred Alternative is a permitted use in the OP-3 District as a “Light Manufacturing” use. The Comprehensive Plan Update specifically and unambiguously states that uses categorized as either “Industrial or Light Industrial” “include traditional industrial uses as well as warehousing and distribution facilities.” (CPU at 5-2 (emphasis added)). The Town’s 2014 Comprehensive Plan Update further sets forth the Town’s intent to allow warehouse/distribution facilities for that portion of the site within the OP-3 District, showing that the Town plans to rezone that part of the site to specifically allow “Warehouse” uses (as well as the overarching “Light Manufacturing” category) by conditional use permit as part of a new OP-MU District. (See CPU at Table 5-3 at 5-22 & Figure 5-5.) This is consistent with the 2014 Comprehensive Plan Update’s declaration that the area around the I-84/Route 312 Interchange, including the Property, is intended to be a “focal point of commercial development.” (CPU at 8-4; see also id. at Figure 7-1 specifically identifying the subject site as being slated for commercial development.). As such, even if the Town Code did not already clearly establish that warehouse/distribution facilities are allowed at the Property, the Town’s Zoning Code would still be required by law to be in accordance with the Town’s duly adopted Comprehensive Plan. See N.Y. Town Law § 272-a(11).

The 2014 Comprehensive Plan Update further establishes that the proximate I-84/Route 312 interchange is envisioned as “a node of commercial activity. Continued development within the Terravest Corporate Park, the Highlands Center, and any potential development in the “Campus at Fields Corner” along Pugsley Road would be compatible with this vision.” (See CPU, at 7-4.) The Preferred Alternative is within the spirit of the CPU and aligns with its vision.

Finally, the Preferred Alternative is consistent with the vision and goals of the CPU to balance a healthy economic environment with quality commercial character while protecting the integrity of the Town’s natural resources and infrastructure. (See CPU, at 1-4.) The proposed project provides significant economic development for the Town in terms of direct, indirect, and induced jobs, as well as millions of dollars of direct, indirect and induced economic output during the construction phase and continuing annually during the operations phase.

The Preferred Alternative protects the Town’s natural resources, by proposing that the site retain significant open space, adhering to the Town’s ridgeline protection measures, providing of a substantial natural buffer from roadways and residential properties, and other measures to protect the area’s rural community character.

Comment No. 3-5 [Community Character]

I don't see one positive coming from this proposal. This is a place that should be built in a commercial area where it does not disturb our idyllic community.

(B-8, Amanda DeHaan)

Slowly as we remove all our green land, we will become an overbuilt town and nothing special about living here.

(B-41, Gina Occhigrossi)

Response No. 3-5

The 2014 Comprehensive Plan Update identifies the site of the Preferred Alternative as being within a “Potential Commercial Activity” area, which is intended to be a “focal point of commercial development.” (See CPU, at Figure 7-1 & 8-4; see also CPU at 7-1.) The CPU specifically states that “any potential development in the “Campus at Fields Corner” along Pugsley Road would be compatible with this vision.” (See CPU, at 7-4.) Again, the Preferred Alternative is also consistent with the vision and goals of the CPU of balancing a healthy economic environment with quality commercial character while protecting the integrity of the Town’s natural resources and infrastructure. (See CPU, at 1-4.)

Comment No. 3-6 [Ridgelines]

My question is about the ridgelines. The buildings – when we were in the field, you talked about it, and you said you were going to be excavating quite a bit of the ridgeline on the buildings to bring them down. Is there any restriction on even being in - - building in the ridgeline?

(B-3, PH #2, Mr. Armstrong)

The ridge lines should be protected from development.

(B-24, Paul Hondorf)

Vistas that Southeast residents have appreciated and loved for hundreds of years will no longer remain pristine and, in fact will be lowered by 17 feet. Our ridgeline protection plan was put into place to protect our views, not to literally diminish them.

(B-44, John Riley)

Views: *NIL is requesting the Southeast Planning Board to dismantle our Ridgeline Protection Policy.*

(B-64, Samantha Jacobs)

Changing the ridgeline protection policy leaves the door open for other developers to request the same modifications.

(B-64, Samantha Jacobs)

Violating town provisions protecting treasured ridgelines with impunity.

(B-117, Ann Fanizzi)

I strongly disagree with zoning changes that were put in place to protect our ridgelines for this proposal or any proposal that impedes on this hereafter.

(B-134, Jon Scalzitt)

Response No. 3-6

The Applicant's proposal to build within the ridgeline is not only permitted under the Town Code, but is, in fact, consistent with the goals of the Town Code's ridgeline protection provisions, which are aimed at minimizing off-site visual impacts to the maximum extent practicable.

Both the Town's CPU and Town Code Section 138-12.1 establish that development is permitted within ridgelines so long as it is "adequately protecting viewsheds." The CPU states that future development should be regulated "to ensure that it is adequately protecting viewsheds, while allowing for reasonable development of a site." (CPU, at 5-12.) The CPU recommends specific provisions to implement this goal, which the proposed project is implementing, including siting buildings to minimize intrusions into viewsheds by taking advantage of topographic changes and existing vegetation, placing buildings to maintain harmony between the built and natural environment, avoiding "excessive clearing" (i.e., the removal of more than 10 trees per quarter acre of disturbed land), and "dark sky" compliant lighting. (See CPU, at 5-12.)

Consistent with the CPU's intent of minimizing offsite visual impacts while allowing reasonable development, the Town Code establishes that buildings and structures within any area defined as ridgeline are not, "to the maximum extent practicable, [to be] visible above the top of the ridgeline, or above the top of vegetation located within the ridgeline area, from surrounding property or public rights-of-way in adjoining lowlands or adjoining ridgelines." (See Town Code § 138-12(l).) As such, the Town Code specifically allows development along the top of ridgelines and/or regrading portions of the ridgeline, so long as the buildings or structures developed through such construction activities are not, to the maximum extent practicable, visible from surrounding properties, public rights-of-way, or adjoining ridgelines.

The project conforms to this goal. The Applicant proposes to construct Building A below the top of the ridgeline, which is proposed to remain, and Building B is to be constructed at the top of the ridgeline, but below the existing grades. This reduces the buildings' visibility along the ridgeline, and, as a result, the project is minimally visible off-site. (See DEIS Volume I, I-9 to I-10.)

The project also complies with the Town Code's prohibition against "excessive clearing" on ridgelines. (See Town Code § 138-12(l).) The second part of the ridgeline protection statute prohibits excessive clearing of any ridgeline area to be permitted for the purpose of site access, site landscaping, installation of subsurface sewage disposal systems, or any other modification to the natural land. Accordingly, the Code provides criteria relative to the number of trees that can be removed without "excessive clearing." The term "excessive clearing," pursuant to the Town Code, means the removal of more than 10 trees, eight inches or more in diameter at breast height, per quarter acre of land disturbed. The Applicant submits that it will be preserving existing trees within the ridgeline and adjacent areas where practicable. The Applicant will be removing trees at a ratio substantially below the maximum number of trees permitted to be removed by the Town Code. (See DEIS Volume I, I-10.)

Comment No. 3-7 [Grading and Slopes]

Based on the proposed contours and elevations shown of the Grading Plans, there are several areas within the project where it appears that manufactured slopes and/or retaining walls exceed the height requirements of §138-15.1 of the Zoning Regulations.

(B-4, Jacobson Engineering, Joseph M. Dillon, P.E.)

Response No. 3-7

The Preferred Alternative will not exceed the height requirements of Section 138-15.1 of the Town Code or require any other variances from the Town Code.

Comment No. 3-8 [Storage of Hazardous Materials]

What kind of goods and merchandise products, will be stored in these warehouses? Do we have hazardous materials? Do we have to be concerned that there could be some environmental issues with the goods that go into these warehouses?

(B-2, PH #1, Mr. Gosselink)

And I think on the non-hazardous materials, which I did read, obviously, in the DEIS, I think it would be helpful to make sure that doesn't include - - that does include fertilizers. There are things that seem non-hazardous, but they can be. And so I think a better definition - - I know, being on the town board, I think a better definition, a very clear definition of what's considered non-hazardous might be helpful, because it can vary.

(B-2, PH #1, Ms. Eckhardt)

What are non-hazardous goods? So is that potentially food products or not? Because how much garbage is this going to be generating, and is it going to be stinky garbage? So I'm curious about that.

(B-3, PH #2, Ms. Jacobs)

Non-hazardous, is that a permanent thing, or can they, at some point, bring in hazardous materials? I mean, all of this seems to me that it could be changed.

(B-3, PH #2, Ms. Aurello)

Movement of dangerous materials.

(B-9, James Scomillio)

No hazardous materials can ever be stored at the site.

(B-107, Twin Brooks Homeowners Association, Inc.)

Next one was on HazMat. So we've had some - - you know, there's a lot of comments about hazardous materials - - (Indiscernible) - - I think you guys said that you wouldn't store hazardous materials.

(B-145, Hearing No. 3 (Mr. Cyprus))

Hazardous materials or HazMat covers a lot of stuff, even things that I don't think any of us would consider hazardous. Amazon, for example, considers things like perfume and lithium batteries hazardous. And I would imagine - - (Indiscernible.) I would think at some point we should articulate exactly what - - (Indiscernible) - - codes, you know, are allowed and aren't and what you'll be having, just so we don't end up in the future, you know, something that you're thinking hazardous is one thing and the public's thinking it's something else.

(B-145, Hearing No. 3 (Mr. Cyprus))

HAZARDOUS MATERIALS:

1) There should be a list of materials that are too hazardous to store.

2) Will fertilizer be considered a 'hazardous material'?

(B-147, Lynne Eckardt)

Do we know exactly what would be stored in the warehouses? I understand nothing hazardous however I read in one of the documents submitted that there will be the use of refrigerators. What will be stored in the warehouse? Will there be food on this site for sale? I would imagine this will attract many wild life to the facility. What steps will be taken to ensure any endangered animals or any animal are not harmed by the attraction? What steps are being taken to ensure any endangered animal is not harmed?

(B-156, Patricia Ann Yara)

Response No. 3-8

The Applicant would be willing to accept a condition to its requested Special Permit that would establish that the Preferred Alternative shall not handle or store hazardous substances that are subject to regulation by the New York State Department of Environmental Conservation (NYSDEC) pursuant to 6 N.Y.C.R.R. Part 596. The NYSDEC is the State agency primarily responsible for the handling and storage of hazardous substances. NYSDEC has declared its intention to preempt the field in regulating the handling and storage of hazardous substances, declaring that its regulations preempt unauthorized and inconsistent local laws or ordinances. See 6 N.Y.C.R.R. § 598.2.

Accordingly, as a condition to any Special Permit for the Preferred Alternative, the Town Board can establish that “hazardous substances,” as that term is defined in the NYSDEC’s regulations and which are subject to regulation by NYSDEC pursuant to 6 N.Y.C.R.R. Part 596, shall not be handled or stored at the Preferred Alternative. The Preferred Alternative is not intended to handle or store hazardous materials in the magnitude or means subject to regulation by the NYSDEC. Rather, it will be handling and storing ordinary consumer goods that may contain trace elements of substances that are considered hazardous, such as nail polish, televisions, and computers.

Comment No. 3-9 [Outside Storage]

As part of the proposed project, the Applicant proposes to add "Logistics Center" as a conditional use permit use in the OP-3 Zoning District. The DEIS includes proposed conditional use permit criteria. The following are comments related to the proposed criteria:

a. Notwithstanding the existing regulations regarding "outside storage," in the Town Code, the proposed conditional use permit criteria should differentiate between short-term truck parking; long-term truck parking, trailer storage, and shipping container storage; and any other outside storage. Given the nature and size of the proposed use, the Town may consider limiting any outside storage to trucks and trailers, and prohibiting the outside storage of goods and materials.

(B-1, AKRF)

b. The site plans should be required to indicate the type, use, screening, and method of delineating the outside storage areas. Methods of delineation can include fencing, pavement marking and other physical barriers.

(B-1, AKRF)

Response No. 3-9

Since the Preferred Alternative is already a permitted use within the OP-3 District in which it will be located, no zoning text amendments are proposed in connection with it.

In any event, distribution facilities generally may have very limited needs for small outdoor storage areas. For instance, some facilities may require a temporary area for empty pallet and trailer storage. Consumer goods are rarely, if ever, stored outside long-term, although there may be a need to temporarily stage them outside. At this

time, there are no permanent outside storage areas proposed as part of the Applicant's project.

Comment No. 3-10 [24-hour Operation]

- c. *As the proposed facility would be open 24-hours, the zoning should consider whether or not any truck driver services would be permissible on site as an accessory use to the Logistics Center (i.e. overnight parking and rest facilities).*

(B-1, AKRF)

They get there as fast as they can. If you cannot offload them, they are going to sit in their truck. If the facility is closed at some point at all, they're going to sleep in their truck overnight.
(B-2, PH #1, Ms. Gallo)

Response No. 3-10

While the goal at every warehouse/distribution facility is to get truckers in and out of the site as quickly as possible, it is standard practice for a tenant to provide a basic lounge for truck drivers to use while their trucks are being unloaded and reloaded. These typically consist of a small trucking lounge with chairs, a vending machine and a small bathroom. As a matter of practice, warehouse/distribution facilities do not provide an overnight facility, and truck drivers are not permitted to sleep overnight in their trucks at warehouse/distribution facilities. The Applicant is willing to consent to the imposition, as a condition of Special Permit approval, of restrictions against overnight facilities or overnight sleeping at the Preferred Alternative.

Comment No. 3-11

- d. *The Applicant should consider the length of time trucks and trailers will be located on site, and whether or not proposed condition "D" should include 138.13.C. Alternatively, the*

conditional use permit criteria should specifically address the length of time trucks, trailers, and shipping containers may be stored on site.

(B-1, AKRF)

Response No. 3-11

Please see Response 3-9.

Comment No. 3-12 [High-Cube Facility]

Is it considered a high-cube facility? Okay. Because my question would be then: What kind of high-cube facility would it be? Because doing a little bit of research, there's a fulfillment center, a parcel hub, cold storage, transload facility, and short-term storage, and they all have different traffic flow, and they have a different amount of trucks and cars associated with each facility. So it would help tremendously in knowing what we are going to be dealing with and understanding that.

(B-2, PH #1, Ms. Woodgate)

Response No. 3-12

At this time, the Applicant has not identified the tenant(s) or occupants of the facility. Accordingly, to be conservative, the traffic analysis for the warehouse/distribution facility has been based on a typical warehouse use, and, in addition, the traffic analysis in this FEIS incorporates data from warehouse/distribution facility uses in the I-84 corridor.

Comment No. 3-13 [Barrett Road]

The applicant has stated that Barrett Road is a dead end road and is looking to have the road privatized.

I believe that Barrett Road does not dead end at the end of the applicant's property but continues to be a Town of Southeast right of way all the way to Simpson Road.

To be certain of the status of the road I respectfully request that the applicant arrange for a Title Search.

(B-162, John Lord)

Response No. 3-13

The County's GIS shows Barrett Road ending at the Applicant's property, rather than running through other properties to John Simpson Road. (See attached Figure III.3-1). Title searches were run on the following surrounding properties: 44.-1-24 (N/F Christy Farms SewageWks Corp), 44.-1-25.1 (N/F Cary L. Newburger), 45.-1-6.2 (N/F Taj Mahal Development Corp.), and 45.-1-7.1 (N/F Tenth Jam Upstate LLC).

Barrett Road did not appear as an exception burdening any of the above-listed properties' title reports. This strongly indicates that, to the extent Barrett Road was ever intended to serve as a through road to John Simpson Road, the Road after the end of the Applicant's property no longer exists. Moreover, each of the title reports refer to different filed maps showing Barrett Road in different locations, with no metes and bounds description. For instance, the title report for Taj Mahal Development Corp. and Tenth Jam Upstate LLC references a map in which Barrett Road is located on the Cary L. Newburger land, while the title report for Cary L. Newburger references a map that makes no reference to the road being on that property, but instead references a map in which Barrett Road is located on the Taj Mahal Development Corp. and Tenth Jam Upstate LLC properties. Furthermore, none of the maps, or any of the title reports, contain a specific location, description or metes and bounds description of this elusive, so-called road at this location.

The only legal conclusion that can be drawn from the title information is that Barrett Road does not definitively exist past the Applicant's property, and, as such, is not a

legitimate road beyond that point. People attempting to cross Barrett Road after it is shown to dead end on the Applicant's property are crossing private property, which potentially constitutes trespass. If any member of the Town Board believes that the Town has a right and interest to connect Barrett Road to John Simpson Road, he or she should advise the respective property owners so that they can contact their title companies to raise a title claim or defense.

Comment No. 3-14 [Previous Approval]

Is whether those approvals are actually still valid or whether they've expired, because most approvals do not stay good indefinitely.

(B-3, PH #2, Ms. Watkins)

I had one question. The approvals that are now in place for the 143 homes of commercial, that's up until 2020; correct?

(B-3, PH #2, Mr. Lord)

Okay. The other thing I didn't get a clear understanding on was -- this was stated in the public, that this is -- the applicant is under a court-ordered stipulation under agreement with the Town, and I'd like it understand what the end game is on that if this -- you don't perform by the end date of 2020. All right. You don't have to answer that, but I need to understand what that means. Okay.

(B-145, Hearing No. 3 (Mr. LaPerch))

Response No. 3-14

Pursuant to a Stipulation of Settlement between the Applicant and the Town of Southeast, which was So-Ordered on December 21, 2010 by the Honorable Joan Lefkowitz of the Supreme Court of the State of New York, the Town recognized that the Applicant has vested rights in the approvals for the 143-unit Campus at Field Corners Subdivision Project until December 31, 2020. The Stipulation entitles the

Applicant to implement, construct and otherwise effectuate the Campus Project as previously approved up until this time.

As a condition precedent to Plat Approval for the underlying Campus Project, the Applicant filed an \$855,000 in inspection fees. Pursuant to the Stipulation, the Applicant may exercise the right to abandon, vacate and/or terminate the Campus Project at any time before December 31, 2020. If the Applicant does so, the Town will be required, pursuant to the Stipulation, to return the inspection fees to the Applicant. A copy of the Stipulation is included in Appendix 3-1.

Comment No. 3-15 [Policing and Enforcement]

Most of the assurances in the developer's presentations rely on the good faith actions of truck drivers, construction companies, and then those who are leasing the site. Who is policing any of these activities, and what recourse do we have as a community if any of these promises are violated?

(B-3, PH #2, Ms. Fay)

While the construction of the logistics centers is the primary purpose of the meetings, I am to understand there might not be a tenant yet. How will all the concerns being raised by residents be enforced? If and after the planning board and the town agrees, what measures will be taken to make sure everything discussed – the tenant now and in the future agree to follow?

(B-156, Patricia Ann Yara)

Who will be responsible for enforcing regulations regarding idling trucks and lighting? Our Town of Southeast enforcement officers are already stretched thin. Lighting at the Highlands has gotten worse. (Some downward directed fixtures now are directed straight out.) Who will show up at night in the heat of summer or in the dead of winter to see if trucks are idling to run AC or heat? And will a fine actually deter this problem? We already have too many air quality alert days, and light pollution impacts thousands of residents as well as wildlife.

(B-157, Robert Zubrycki)

Response No. 3-15

Each individual tenant at a warehouse/distribution facility typically has full-time shipping and receiving supervision during trucking operations. The supervision is charged with assuring that trucks enter and exit the site as quickly as possible, at the scheduled times, and can also be designated to monitor and enforce any policies or procedures of the facility. Most warehouse/distribution facilities have strict anti-idling policies, which the occupants or tenants are charged with enforcing. The Applicant is willing to consent to the imposition, as a condition of Special Permit approval for its Preferred Alternative, that each tenant or occupant assign and delegate specific responsibility to enforce restrictions, such as an anti-idling prohibition.

With respect to lighting, the Applicant proposes dark sky compliant lighting, and all lighting would be shielded so that there is no light spillage beyond the site's property line. Furthermore, there would be no lighting for general illumination mounted on the side of the buildings facing the residential properties, and the proposed lights on poles would be reduced from 30 to 20 feet. All of these factors ensure that the exterior lighting will not have a significant impact on the surrounding residential neighborhoods.

Comment No. 3-16 [Legal Issues]

We note that the Town Planner, Ashley Leigh has emailed the WIG for clarification and apparently has agreed to extend the comment period on a forthcoming FEIS to 45 days.

*This would be a blatant violation of the State Environmental Quality Review Act (SEQRA).
(B-163, James Bacon, Esq., P.C.)*

SEQRA is clear that where a DEIS is determined to be seriously deficient in scope, that the cure is a Supplemental EIS, not simply extending a comment period on a FEIS.

Indeed, the critical comment opportunity for the public is on the draft environmental impact statement. For that reason, it is illegitimate to include an initial analysis on issues previously identified in the Scope. As the Court of Appeals has made clear, the opportunity to comment on an FEIS cannot fulfill the pivotal role of the comment period on a DEIS or SEIS.

(B-163, James Bacon, Esq., P.C.)

The Board allowing the Applicant to include entirely new information in a FEIS purporting to mitigate significant adverse impacts is a SEQRA violation which subverts the public review and comment process.

It is apparent from the WIG and DEP comments that the project will need to be redesigned due to the site's development limitations.

(B-163, James Bacon, Esq., P.C.)

In exercising their zoning powers, the local authorities must act for the benefit of the community as a whole following a calm and deliberate consideration of the alternatives, and not because of the whims of either an articulate minority or even majority of the community.

Exercise of the legislative power to zone should be governed by rules and standards as clearly defined as possible, so that it cannot operate in an arbitrary and discriminatory fashion, and will actually be directed to the health, safety, welfare and morals of the community. The more clarity and specificity required in the articulation of the premises upon which a particular zoning regulation is based, the more effectively will courts be able to review the regulation, declaring it ultra vires if it is not in reality "in accordance with a comprehensive plan."

(B-163, James Bacon, Esq., P.C.)

Response No. 3-16

SEQRA jurisprudence makes clear that the improvement of an action through the SEQRA process, including project changes from a DEIS to the FEIS, is not considered a SEQRA flaw, but rather, is, in fact, evidence of a functioning SEQRA process and that

the reviewing agency is taking the requisite “hard look.” See, e.g., Coalition for Responsible Planning, Inc. v. Koch, 148 A.D.2d 230, 236, 543 N.Y.S.2d 653, 657 (1st Dept. 1989), (“Indeed, what better example of the requisite ‘hard look’ is there than the incorporation in the FEIS and adoption by the Board of Estimate of alternatives developed as a direct result of the review process?”), leave to appeal denied, 75 N.Y.2d 704, 552 N.Y.S.2d 927 (Table) (1990). In fact, the purpose of the DEIS is to provide the public with an opportunity to comment upon a project, and the FEIS serves to respond to substantive comments on the DEIS, including by providing additional information, clarifications or project modifications suggested by particular commenters. This is precisely the process that has occurred here, which has resulted in the Preferred Alternative.

SEQRA jurisprudence also makes clear that, even if, unlike here, information were completely omitted from a DEIS, SEQRA is being complied with so long as the information is subject to public scrutiny and discussion during the SEQRA proceeding. See, e.g., Horn v. International Business Machines Corp., 110 A.D.2d 87, 97, 493 N.Y.S.2d 184, 192 (2d Dept. 1985), leave to appeal denied, 67 N.Y.2d 602, 499 N.Y.S.2d 1027 (1986). In fact, in the case the commenter cites to for its contention that “the omission of a required item from a draft EIS cannot be cured simply by including the item in the final EIS,” the Court of Appeals rejected a challenge to the SEQRA process because “both the general public and the relevant public officials were thoroughly familiar” with the purportedly missing information and it was “the subject of extensive publicity and debate by public officials and the general public.” See Webster Assocs. v. Town of Webster, 59 N.Y.2d 220, 228-229, 464 N.Y.S.2d 431, 433-434 (1983). Here, as the commenter recognizes, the Town Planning Board proposes to conduct an unprecedented Public Hearing on the FEIS, which will ensure the public’s continuing ability to review and comment upon the project. Moreover, by virtue of the multiple Hearings held to date and the Hearings that are contemplated going forward, the public is and will remain very familiar with the project, and, again, have the opportunity to comment on it.

Finally, to be clear, while the Town Planner agreed to extend the comment period for the FEIS, neither the Town Planner, the Lead Agency, nor any other Involved Agencies have deemed the DEIS to be “seriously deficient in scope.” Rather, the Planning Board as Lead Agency deemed the DEIS complete, and the public was given far more than the minimum thirty (30) days required by SEQRA to comment upon it.

Again, during the FEIS process, in response to comments received during the DEIS comment period, the Applicant is modifying its project as contemplated and encouraged by SEQRA. The Applicant’s modifications respond to specific comments elicited by the SEQRA process. The information in the FEIS is not completely new, but rather a progression, or iteration, of previously conducted studies and analyses to address specific comments and concerns raised during the DEIS comment period. Again, this is how the SEQRA process is supposed to work.

Comment No. 3-17 [Process]

Finally, we note the comments of Planning Board member Jack Gress on August 27, 2018 stating, “I’m in favor of the project.” While statements for and against a project are typical in the public domain, a different standard applies for Planning Board members.

(B-163, James Bacon, Esq., P.C.)

What bothers me most is that this project has proceeded so far in apparent secret, without input from Town residents, particularly those of us from Hunter's Glenn and others who will be negatively impacted by this project should it become a reality.

(B-168, Christine Caso)

Mr. LaPerch explained to us in attendance that the role of the Planning Board was simply to see that protocols were followed correctly. Public opinion was solicited, however, and I would like to know how much weight this actually carries when it comes to actual recommendations and decisions. Members of the Planning Board are appointed rather than elected and it would seem they are not obliged to represent us in terms of the majority opinion. I would like to

believe that public sentiment and opinion play a major role, if not THE major role in these situations.

Would someone please explain to me how this really works in practice with the Planning and Town Boards and in their interrelationship.

(B-172, David Buckner)

Response No. 3-17

Under SEQRA, public opinion is given substantial weight in the progression of the project. All comments have been reviewed and received, and have led to more in-depth studies that are helping to evolve this into a better project, as reflected in the Preferred Alternative. The Applicant remains committed to meeting with individual community members and/or concerned citizen groups that would like to engage in constructive conversations to make this a better project. The Applicant, for example, has already met with the Hunters Glen Homeowner's Association to discuss and address that group's specific concerns.

The Applicant has been and will continue to be transparent about its proposed development for the site. One commenter's suggestion that a Planning Board Member may have a conflict is scandalous and unconstructive. As a case cited by that commenter makes clear, Article 18 of the New York State General Municipal Law, which governs purported conflicts of interest of municipal officials, applies to pecuniary and material interests, and not expressions of personal opinion. See Webster Associates v. Town of Webster, 59 N.Y.2d 220, 227, 464 N.Y.S.2d 431, 433 (1983). The commenter does not and cannot suggest that the Planning Board Member it has singled out has any pecuniary or material interest in the Project. As more recent caselaw notes, disqualifying residents from serving or acting on municipal boards because of their personal opinions "would effectively make all but a handful of citizens ineligible to sit on the Board." Troy Sand & Gravel Co., Inc. v. Fleming, 156 A.D.3d 1295, 1304, 68 N.Y.S.3d 540, 549 (3d Dept. 2017), leave to appeal denied, 31 N.Y.3d 913, 81 N.Y.S.3d 373 (Table) (2018). In any

event, the comments made by the Planning Board Member singled out by the commenter make clear that he made sincere and constructive comments about the action, which are addressed elsewhere in this FEIS.

Procedurally, the Planning Board and Town Board have different roles in the various approvals that would be required for the subject actions. While the Planning Board is acting as Lead Agency under SEQRA for the actions, the Town Board will be the reviewing authority for the Special Permit requested for the Preferred Alternative. If the Town Board approves the Special Permit, the Planning Board would then serve as the reviewing authority for the Site Plan for the Preferred Alternative.

As previously stated, the Planning Board has declared itself Lead Agency pursuant to SEQRA to study the project. The first step in the SEQRA process was for the Applicant to submit a DEIS and the Planning Board to deem the DEIS complete. The Planning Board did this. The next step in the SEQRA process is for the Applicant to submit an FEIS and the Planning Board to review the FEIS for completeness. This document is the FEIS. Once the FEIS is deemed complete by the Planning Board, it will issue a Findings Statement. Should the Planning Board issue a Findings Statement declaring that the proposed actions avoid or minimize the actions' potential significant adverse environmental impacts to the maximum extent practicable, the Applicant will then have to ensure that its application to the Town Board for a Special Permit conforms to any conditions required by the Planning Board's SEQRA Findings. The Town Board's Special Permit review will include a public hearing. If the Town Board approves the Special Permit for the Preferred Alternative, the Applicant would then return to the Planning Board for Site Plan review.

Comment No. 3-18

What is positive about the logistic center as opposed to family housing? The “no school children” selling point? I do understand about the extra needs and costs for municipalities, however, most

desirable towns want to strengthen the family aspect in a community. Why not raise our standard to be a better community, not a warehouse haven in the future.

(B-29, Gina Occhigrossi)

Response No. 3-18

Many municipalities recognize that “strengthening the family aspect in a community” involves providing jobs that support families and improving the quality of schools. Similarly, many municipalities view favorably projects, like the proposed warehouse/distribution facility, that provide substantial revenue to the school district without adding children that would use public schools.

Comment No. 3-19

How does permission for a small commercial property turn into 4 mega warehouses on a footprint three times the size of the area Home Depot is located on?

(B-76, Jackie Kaddatz)

Response No. 3-19

The 229.0 acres that the Applicant owns in the OP-3 District cannot reasonably be called small. Similarly, the Town has not granted permission for the Applicant to construct a building for “small commercial” on this property. Rather, previously, the Town has approved the property to be used for a large-scale, 143 unit residential development, with associated commercial uses contemplated.

The Home Depot is an approximately 116,593 square foot building on an approximately 489,179 square foot lot. Building coverage at the Home Depot site is therefore 23.8%. The Applicant proposes two separate buildings at its site totaling approximately 933,100 square feet, on an approximately 14,288,987 square foot lot. Building coverage of the proposed development is therefore only 6.5%.

Comment No. 3-20

Proposed Text Amendment: Simply put the proposed conditional use criteria are too vague and insufficient for such a large scale development. Moreover, the permitted waiver provision essentially strips any criteria from the conditional use requirements. We believe before acceptance of the FEIS the Planning Board and Town should engage in a significant re-write of the proposed text amendment after a thorough review of similar code provisions throughout the region. In particular greater setbacks, height, and other bulk requirements are necessary. The elimination of the 2% retail space, limits on refrigeration, limits on development uses unrelated to a logistic center, and a full list of operating restrictions and requirements to ensure compliance are necessary. No outdoor storage should be permitted, on-site rest facilities should be provided for drivers, a strict no idling requirement should be implemented, and no truck parking or use should be allowed to the west of the proposed buildings. Significant landscaping buffer requirements should be detailed. Moreover, there should be specific design requirements for the buildings, particularly any building wall or rooftop that faces a residential zone. No fueling should be permitted on site. All mechanical equipment and generators should be baffled so that there is no increase in noise at the property line. No further subdivisions should be permitted.

(B-98, Snyder & Snyder)

Response No. 3-20

Again, the Preferred Alternative does not require any amendments to, or variances from, the Town's Zoning Code. The Preferred Alternative is a permitted use in the OP-3 District, in which it will be located, and complies with all applicable zoning bulk requirements. The Preferred Alternative, in fact, proposes setback buffers that are exponentially greater than those required by the Town Code. Whereas, by way of example, the Town Code only requires a fifty-foot (50') setback for the project from its property boundary with the Hunters Glen, the project, will be approximately fourteen-hundred feet (1,400') from the nearest Hunters Glen building. It would be setback

approximately twelve-hundred feet (1,200') from the nearest Twin Brooks building. Notwithstanding this substantial setback, the Applicant is still proposing landscaping improvements for the area between the project and Hunters Glen and Twin Brooks, which are set forth in the Landscaping Plan, and as discussed in Response 5-27 in the Visual Analysis section.

The Preferred Alternative does not propose any retail space. As discussed above in Response 3-10, it is standard practice for a tenant to provide a basic lounge for truck drivers to use while their trucks are being unloaded and reloaded. As discussed in Response No. 3-15, each individual tenant at a warehouse/distribution facility typically has full-time shipping and receiving supervision, which would include ensuring compliance with applicable anti-idling policies, which the supervision is charged with enforcing.

Comment No. 3-21

The water tower, which I know has been brought up, in reading the DEIS, I noticed it's 270,000 gallons proposed. I did a simple Google search for water towers, and the 250,000-gallon is 48 feet tall. And I was wondering if that's what you're proposing, because I think you may need a variance for that. And I was curious to see if you would be applying for that.

(B-145, Hearing No. 3 (Mr. Larca))

Response No. 3-21

The proposed water storage tank will be no higher than 40 feet tall, which is zoning compliant and will not require an area variance.

Comment No. 3-22

In summary, the current proposed Center is much too large. It should be scaled back to no more than 15% of land use. And much lower numbers of trucks should be allowed to use our roads.

(B-151, Miriam Yekutiel)

Response No. 3-22

The Preferred Alternative would have impervious surfaces comprising just 14.8% of the overall 328.1 acre site, down from 17.4% for the DEIS plan. Impervious surfaces include all buildings, roads and parking structures. The Town Code currently permits development of this site up to 55%. The Applicant submits that its proposed development is a reasonable, conservative use of the land.

As discussed in greater detail in the Traffic Section of this FEIS, while the conservative analyses in the DEIS assumed that there will be 510 truck trips per day (which equates to about 255 trucks entering/exiting the site each day), counts from similar uses in the area indicate that the project will generate a much lower number of truck trips. Based on the counts conducted at the Gap Distribution Center in Fishkill and Matrix Business Park in Newburgh, the Preferred Alternative Plan will generate 130 truck trips per day (or about 65 truck entering and exiting the site daily).

Comment No. 3-23

New York State requires all sex offenders to be 1,000 feet from any school. While the logistics center's property is just outside that limit and the logistics centers are not residential houses, how are we ensuring that the employees selected to drive the trucks and to work the facilities are not sex offenders? As soon to be mother, this terrifies me.

(B-156, Patricia Ann Yara)

Response No. 3-23

NYS law requires sex offenders to annually report (i.e. register) where they live, and provide updates within 10 days of moving. Furthermore, Level 2 and 3 sex offenders must provide (i.e. register) the address of their employer. The project site is located approximately 2,000 feet from the closest school, which is George Fischer Middle School.

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BARRETT ROAD RIGHT-OF-WAY



FIGURE: III. 3 - 1