

DESIGN REPORT

for
Proposed Access Road over Land Owned by New York State
Adjacent to Interstate Route 84
Orange County, Town of Newburgh NY

Prepared for:

New York State Department of Transportation
and
Federal Highway Administration

Prepared by:

Tim Miller Associates, Inc.
Cold Spring, NY 10516

June 18, 2009

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Prepared by:

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I. INTRODUCTION & BACKGROUND INFORMATION**a. Introduction**

This Design Report focuses on the environmental review of potential impacts associated with an access road being built over land owned by New York State that is adjacent to Interstate Route 84. This report has been prepared to assist the New York State Department of Transportation ("NYSDOT") and Federal Highway Administration ("FHWA") in making an environmental determination under the New York State Environmental Quality Review Act ("SEQRA") and the National Environmental Policy Act ("NEPA") with regard to the proposed conveyance of (i) a permanent easement across a portion of land owned by the State of New York for construction, use and maintenance of an access road and sanitary sewer, and (ii) fee title to a portion of said parcel for the construction of a stormwater management facility, to service the Marketplace at Newburgh development, a private project by W.B. Interchange Associates, the Applicant. These conveyances are referred to herein as the proposed "Action".

W.B. Interchange Associates ("WBIA") is the owner of an approximately 128-acre parcel of commercially zoned land located on the north side of Interstate Route 84 ("I-84") between Exits 7 and 8 in the Town of Newburgh, Orange County, New York. In 2004, WBIA made application to the Town of Newburgh Planning Board for the development of an 850,000 square foot retail facility on the WBIA property known as the Marketplace at Newburgh ("Marketplace"). In addition to its role as reviewing agency for site plans, the Town of Newburgh Planning Board was the Lead Agency pursuant to SEQRA and a complete Environmental Impact Statement ("EIS") was prepared in connection with the project approvals. On May 3, 2007, after a comprehensive, 2½-year review of the environmental aspects of the proposed project, and after several public hearings were held under SEQRA, the Final EIS was accepted and the Planning Board issued Findings, based on the site plan that relies on the approval of the subject land transfers by the State.

Following the completion of the environmental review process, WBIA received Final Site Plan Approval for the Marketplace on June 19, 2008, from the Town of Newburgh Planning Board, which site plan conformed to the Final EIS and Findings. (Refer to Appendices C and D for copies of the adopted SEQRA Findings Statement and Final Site Plan Approval, respectively.) Subsequent to the grant of the Final Site Plan Approval, which relies on the approval of the subject land transfers by the State, WBIA received permits (which also rely on the approval from the State) from the following Involved Agencies:

b. Permits, Approvals and Agency Coordination**NYS Department of Transportation**

- Construction access (from Route 300) permit granted January 18, 2008 (Highway Work Permit 08-07-0914)
- Construction permits for traffic signals and highway improvements (for 3 access points) granted March 13, 2008 (Highway Work Permit 08-07-1045)

US Army Corps of Engineers ("ACOE")

- Individual Wetlands Permit (Section 404 of Clean Water Act) granted October 21, 2008 (Permit No. NAN-2004-814)

NYS Department of Environmental Conservation ("NYSDEC")

- SPDES Permit GP-0-08-001 (Acknowledgment of Notice of Intent for Coverage Under SPDES General Permit for Storm Water Discharges from Construction Activity) granted August 26, 2008
- Water Quality Certification and Acceptance of the Stormwater Pollution Prevention Plan (SWPPP) granted August 1, 2008 (Permit ID 3-3346-00353/00001)

Orange County Department of Health

- Certificate of Approval for Plans for Public Water Supply Improvement granted June 25, 2008

Town of Newburgh Engineer

- Sewer main design plans
- Stormwater management and erosion control plan approval granted May 21, 2008

Town of Building Inspector

- Grading permit for construction work in the 100-year floodplain issued.

Pursuant to §16 of the Transportation Law and as per NYSDOT Official Order #1647 approved August 15, 2007, the Commissioner of Transportation created, within the NYSDOT, a Property Executive Review Group ("PERG") to review the possible disposition of the subject property currently owned by the Department and to make a final decision for the disposition of such property. Said decision will be made subsequent to the NEPA review for which this document has been prepared.

The Federal Highway Administration must verify the NEPA Determination for this action and approve the NYSDOT decision by PERG, including conditions that require the Applicant to provide conservation easements to the NYSDOT on adjacent WBIA property and to pay fair market value for the portions of the subject parcel to be granted by easement and conveyed in fee.

c. Background

The initial application for the Marketplace called for three points of access from the project site to local streets and State highways. The main access was and continues to be proposed on New York State ("NYS") Route 300. Two other points of access were proposed to NYS Route 52. All points of access in the original application involve land under the ownership of WBIA. These access points are shown in Figure 1A.

During the environmental review of the project, the location of the third access road leading from NYS Route 52 near Exit 8 on I-84 into the easterly end of the Marketplace property was critiqued and found to be sited at a location that would produce environmental impacts of concern to the community. A location further from the local neighborhood was suggested that would reduce wetland impacts, reduce stream disturbance, reduce noise and air impacts on nearby residences, potentially improve safety and create a much larger buffer between this access road and the residential neighborhood to the north.

The Planning Board directed WBIA to relocate this easterly access road (the "Access Road") as far south toward I-84 as possible. The Applicant presented an alternative location that required a portion of the Access Road to traverse lands owned by the NYSDOT. The Applicant consulted with the NYSDOT regarding this alternative location, and in a letter to the Applicant dated July 7, 2005 (included in Appendix B), the NYSDOT indicated that while approval of FHWA was required to dispose of the property, the alternative of the Access Road running through State property was acceptable to NYSDOT and that NYSDOT would approve the sale of the State property to WBIA subject to the completion of the SEQRA process and in accordance with the rules, regulations and procedures that govern the disposal of surplus State property by the Department of Transportation to adjacent landowners. Accordingly, the Access Road was redesigned to cross over an approximately 8.5-acre parcel of land adjacent to the I-84 corridor and owned by the State of New York (the "DOT Parcel"). The DOT Parcel location is shown in Figure 1.

The Applicant continued discussions with NYSDOT regarding use of the DOT Parcel following the completion of the SEQRA process. In September 2008, as part of the NYSDOT review process, the NYSDOT Property Executive Review Group ("PERG")¹ adopted a Resolution approving and directing the Director of Real Estate to (1) grant a permanent easement across the DOT Parcel for the construction and maintenance by WBIA of the Access Road across the DOT Parcel, including the construction of a sanitary sewer line, and (2) convey in fee to WBIA a portion of the DOT Parcel for the construction of a stormwater retention basin. The PERG Approval sets forth conditions including WBIA providing conservation easements to the NYSDOT on adjacent WBIA property.

Specifically, the PERG September 5, 2008, Resolution for Surplus Property Case #08-III-4043, which is included in Appendix B, sets forth the following determinations:

1. The property interests to be conveyed by NYSDOT are surplus to state transportation needs;
2. The manner of disposition is grant of a permanent easement and conveyance of a fee;
3. The proposed disposition is on terms beneficial to the State of New York;
4. Sets the current values of the permanent easement and fee; and,
5. The proposed disposal will be in accordance with applicable laws, rules, regulations and procedures.

¹ PERG is one of several participants within NYSDOT that review land disposal actions, in accordance with NYSDOT Administrative Procedure Code 7.8-5-1, Disposal of Surplus Real Estate, approved 7/1/07. PERG reviews and approves proposed sales, leases or disposals of department property or rights therein, and determines the final terms and conditions of such actions.

The Access Road and appurtenant facilities are shown on the site plans that were the subject of the SEQRA review process and the Final Site Plan Approval. Figure 1A is a reduced version of the grading and utilities plans as approved by the Town. Refer to the full size drawings included at the rear of this document showing the existing conditions and Alternative A and Alternative B grading and landscape plans.

II. THE ACTION

The DOT Parcel (and other land along the I-84 corridor) was purchased with money that included funds provided through the FHWA. Because of this, FHWA must approve the NYSDOT decision by PERG, including conditions that require the Applicant to provide conservation easements to the NYSDOT on adjacent WBIA property and to pay fair market value for the portions of the DOT Parcel to be granted by easement and conveyed in fee.

This Design Report has been prepared to identify the Action, existing conditions, alternatives and impacts of the action, for the NYSDOT, FHWA, and public as part of the NEPA and SEQRA review and environmental determination process. Attached as Appendix A is the NYSDOT's NEPA Assessment Checklist. In this Action, FHWA is the "Lead Agency" for the NEPA process; however all documentation submitted to FHWA in connection with this Action is being sent to and processed through NYSDOT Region 8.

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The subject action of this Design Report, (the proposed "Action") entails the following land transfers that would be necessary to implement the construction of the proposed Access Road on State land and are shown in Figure 2:

- 1) The conveyance by NYSDOT to WBIA of a permanent easement of approximately 4.62 acres for construction, use and maintenance of an access road and sanitary sewer;
- 2) The conveyance by NYSDOT to WBIA of fee title to approximately 1.48 acres of land on which WBIA will construct a stormwater management facility;
- 3) The conveyance by WBIA to NYSDOT of a permanent conservation easement of approximately 6.48 acres for the preservation of natural wetlands and viewshed on the WBIA land north of the DOT Parcel; and,
- 4) The conveyance by WBIA to NYSDOT of a permanent conservation easement of approximately 2.82 acres for viewshed preservation on the WBIA land west of the DOT Parcel.

a. Historic Background

The subject parcel of land was acquired by the State of New York in the late 1960's using Federal Highway funds authorized under the Federal Highway Beautification Act of 1965. The Highway Beautification Act generally provided for the acquisition of property adjacent to highways with the stated purpose to enhance and preserve the natural scenic beauty along the Federal Interstate Highway system, including I-84.² The Highway Beautification Act of 1965 and subsequent laws, amendments, policies and directives state that land acquired for scenic enhancement purposes are "...for acquisition of interests in and improvement of strips of land necessary for the restoration, preservation, and enhancement of scenic beauty adjacent to such highways." (Title 23, Section 319(a)) At the time of acquisition, the eastern portion of the DOT Parcel was densely wooded.

The DOT Parcel consists of approximately 8.5 acres of land abutting the Interstate Route 84 right-of-way. The parcel is located within a major transportation corridor in an area locally zoned for commercial development. The DOT Parcel is the only designated scenic resource in the Newburgh portion of the Interstate corridor.

In connection with the proposed Marketplace project, draft and final environmental impact statements were prepared and reviewed in accordance with SEQRA. The environmental documents were the subject of an extensive public review, however, the special conditions associated with the Highway Beautification Act purchase were not identified in the original EIS.

In the Draft Environmental Impact Statement, two road alignments were evaluated to provide easterly access to the Marketplace project from NYS Route 52, including an Easterly Access Road alignment that bisected the DOT Parcel. This location (referred to in this document as "Alternative A" and shown in Figure 3) placed the road further away from residential homes and crossed the Quassaic Creek at a point that necessitated less stream and wetland disturbances.

Another alignment (referred to in this document as "Alternative B" and shown in Figure 4) over lands of WBIA north of the DOT Parcel had a number of impacts that were of concern to the local community, the Town Planning Board, and some of the involved agencies.

In response to these concerns, the Alternative A alignment for the easterly Access Road across the DOT Parcel was pursued by the Applicant as a mitigation measure that would reduce environmental impacts associated with the access to Route 52. In particular, the original access traversing WBIA lands had some visual impacts and noise impacts on the adjoining residential neighborhoods.

Nearby residents, the Town of Newburgh Planning Board, and its advisors preferred the alternative road location on the DOT parcel and, at the conclusion of the environmental review process in May 2007, Alternative A was included in the project plans upon which SEQRA Findings were made and subsequent Preliminary and Final Site Plan approvals were granted by the Town. These plans subsequently were submitted to the NYSDOT for access permits, the ACOE for a Wetlands Permit and the NYSDEC for a Water Quality Certification and a SPDES Permit.

² Correspondence to BA Lefevre, NYS Department of Public Works, from JM Newton / JA Hanson, US Department of Commerce, Bureau of Public Roads, dated June 16, 1967, approving acquisition of properties that include the subject site.

The Town of Newburgh Planning Board granted the Marketplace application final site plan approval in June 2008, conditioned on the approval of the subject land transfers by the State. All required outside agency permits for the project have been granted as of the date hereof.

At its September 5, 2008, meeting, the NYSDOT's Property Executive Review Group approved the transfer of a permanent easement across the DOT Parcel for the proposed Access Road and subsurface sanitary sewer line. Also approved was the fee transfer of a portion of the DOT Parcel necessary to allow the installation of a stormwater retention basin. In consideration for such conveyances by the NYSDOT, aside from monetary compensation, it is required that WBIA grant to the NYSDOT a perpetual conservation easement for natural wetlands and viewshed preservation over WBIA-owned lands directly north of the DOT Parcel. Additionally, a conservation easement is required over a portion of the adjoining WBIA lands immediately west of the DOT Parcel. All plans and specifications for improvements of the access easement, sanitary sewer line installation, and any other improvements or construction on lands subject to the conservation easements are subject to the written approval by the NYSDOT prior to the start of any construction.

The locations of the subject DOT Parcel and WBIA property associated with the proposed Action are shown in Figure 2. To review the potential impacts of the proposed Access Road across the DOT Parcel, this Design Report addresses two alternative plans: a) Alternative A which shows the Access Road and attendant storm water management facilities on the DOT Parcel (Figure 3); and b) Alternative B which shows the Access Road and attendant stormwater management facilities on lands of WBIA (Figure 4). Alternative B is also the "No Action" plan for the purposes of this study.

b. Public Participation

The Draft Design Report along with a Notice of Public Informational Meeting / Notice of Availability of Draft Design Report was circulated to advisory agencies and made available for public review at the Newburgh Free Library, Town of Newburgh Town Hall and the NYSDOT Regional Office in Poughkeepsie. A news release was published in local newspapers and posted on the NYSDOT web site prior to the meeting. A Public Informational Meeting was held on May 28, 2009 at 7:30 PM at the Quality Inn in the Town of Newburgh. A project presentation was made and the public was afforded the opportunity to ask questions and make comments. A stenographer was present to record the proceedings at the meeting. Representatives from the NYSDOT were available before and after the presentation to answer questions from the public. A summary of the comments received is located in Chapter VI of this document. Copies of the Notice, news release, list of the agencies who received a Report, transcript of the meeting, and written comments received are included in Appendix G of this report.

III. PURPOSE AND NEED

Traffic studies were prepared during the SEQRA review of the Marketplace project that indicated that for an 850,000 s.f. retail facility, three means of ingress and egress needed to be provided. Notwithstanding the results of the traffic study, at the inception of the approval process in Newburgh, major concerns were voiced by members of the Town Board and Town Planning Board that while Route 300 would be the primary access into the Marketplace, providing two other access points to minimize the additional traffic on Route 300 was desirable. To accomplish this and to minimize traffic impacts on the road network, WBIA developed a plan that provided a second, northerly access from Route 52 and acquired seven parcels of land near the intersection of Route 52 and Exit 8 on I-84 to provide for a third, easterly access into the Marketplace.

As stated above, neighbors and Town officials voiced concerns early in the SEQRA process that using the WBIA acquired parcels would have greater impacts on wetlands, the Quassaic Creek and nearby residential neighborhoods than if the Access Road could be relocated approximately 350 feet south on the DOT Parcel. A road crossing of the Quassaic Creek and its associated wetlands and floodplain, necessary under either alignment, would result in less disturbance if aligned over the DOT Parcel. Thus it was at this time (June-July 2005) that WBIA entered into discussions with the NYSDOT to purchase the DOT Parcel.

Since this road would carry traffic to a large retail destination, the positioning of the road to a location further away from existing residences and at a position of lesser environmental impacts makes the greatest sense from a land use planning and environmental perspective, however the scenic preservation conditions on the scenic property require special consideration.

The WBIA property is zoned Interchange Business (IB) and retail facilities are a permitted use in the IB Zone. The Town of Newburgh has indicated its desire for the Applicant to proceed with development of a regional retail center for which an easterly access road to Route 52 is necessary. Final plan approval for the site development has recently been granted by the Town,³ as well as by a number of other permitting agencies (these are listed below).

Alternative A largely resulted from community input into the local environmental review process wherein concerns were raised with regard to the proximity of the Access Road to existing residential neighborhoods to the north. The resulting Alternative A plan includes the following beneficial components:

- Moving the Access Road 100 to 400 feet farther south than originally proposed on WBIA land (Alternative B) and within an easement to be established for that purpose (along with an appurtenant sewer line within its dedicated easement);
- Preserving established woodland on WBIA land as a buffer between the existing residential neighborhoods and I-84, and establishing a permanent conservation easement on that land;
- Reducing impacts to regulated wetlands by 0.24 acre;
- Reducing noise in the residential neighborhoods because of the greater distance to the proposed travelway and the preservation of a deeper wooded buffer;

³ Final site plan approval granted June 19, 2008, signed by Town Planning Board Chairman on September 9, 2008. See Appendix D.

- Reducing visual impacts of the proposed access to the residential neighborhoods because of the increased distance and deeper wooded buffer.

The need to preserve the scenic qualities (viewshed) of the DOT Parcel for traffic on I-84 is a primary concern for NYSDOT. To provide NYSDOT with the visual implications of construction and use of the Access Road on the DOT Parcel, a visual impact assessment was prepared according to NYSDOT protocol and is included in this document to demonstrate the effects of development of the proposed Access Road both on the DOT Parcel and on WBIA property relative to views from I-84.

Measures to minimize the adverse effects to the DOT Parcel and preserve the quality of the vegetative buffer along the Interstate, while mitigating the effects of the proposed road to the local neighborhood and the natural environment, are integral to the design plans for the proposed Access Road over State land.

The Applicant's plans include a proposed Landscape Design plan to enhance the visual buffer along I-84 and mitigate the expected changes in the highway views by: a) omitting street tree planting along the Access Road as it crosses the DOT Parcel; b) omitting any street lighting on the Access Road as it crosses the DOT Parcel; and, c) adding landscaping on the DOT Parcel that is consistent with existing vegetation on and adjacent to the DOT Parcel.

IV. ALTERNATIVES

A. ALTERNATIVES CONSIDERED

Two alternative road alignments were evaluated in the Draft EIS for the Marketplace. Either of these roadways, shown in Figures 3 and 4, would satisfy the need for access to the project from Route 52 in the vicinity of I-84 Exit 8.

To review the potential impacts of the proposed access, this Design Report addresses two alternative plans: a) Alternative A which shows the access road and a portion of the attendant stormwater management facilities on the DOT Parcel (Figure 3); and b) Alternative B which shows the access road and attendant stormwater management facilities on lands of WBIA (Figure 4). Alternative B is also the "No Action" plan for the purposes of this study, as this would be the road alignment if the DOT Parcel is not used.

Impacts of Alternatives A and B are compared by subject area in the summary narratives below; further descriptions follow in Section V of this Report. The "study area" referred to in this analysis consists of 22.8 acres of land in the immediate vicinity of the DOT Parcel (shown in Figure 1).

1. No Action Alternative

The No Action Alternative must evaluate the adverse or beneficial changes that are likely to occur in the reasonably foreseeable future in the absence of the proposed Action. In this instance, the No Action Alternative is the scenario that would occur if the land transfers between NYSDOT and the Applicant do not take place. This No Action alternative would entail no construction or other disturbance on the DOT Parcel, but construction of the subject road would occur through lands of WBIA between the DOT Parcel and the residential neighborhoods to the north. This alternative is evaluated herein as Alternative B.

2. Alternative A Alignment - Access Through the DOT Parcel

Alternative A presents a layout which would align the easterly Access Road across the DOT Parcel (Figure 3) and includes a stormwater management basin to be located north of the roadway (partially on the DOT Parcel). This road alignment was evaluated as an alternative in the Draft EIS for the Marketplace (Access Road Realignment Alternative) and further evaluated in the Final EIS. This plan includes a sewer line under the proposed road to connect to the existing municipal sewer trunk line and a stormwater management facility to be located north of the roadway (partially on the DOT Parcel).

As presented in the Final EIS, and as elaborated on in Section V.B. below, the Alternative A road alignment has mitigating effects as compared to the original plan, and was therefore considered the Preferred Alternative by the Town of Newburgh Planning Board. This is the alignment shown in the approved site plans.

3. Alternative B Alignment - Access Through WBIA Land

Alternative B alignment would be located over lands of WBIA immediately north of the DOT Parcel (Figure 4). This road alignment was evaluated as the proposed plan in the Draft EIS for the Marketplace. This plan includes a sewer connection to the existing trunk line and a

stormwater facility on WBIA land. For reasons mentioned herein, this road alignment was abandoned during the environmental review process, largely due to its impacts on the community, in favor of Alternative A. Alternative B also represents the No Action Alternative.

4. Alternative A Alignment Compared to Alternative B Alignment

The following summary of issues is based on information in the Draft and Final EISs. This analysis reflects the most recent project plans and includes some details which were previously unavailable. Impacts of Alternative A are compared to those of Alternative B / No Action by subject area below. A table at the end of this section presents quantitative information in a comparative format. Refer to the full size drawings included at the rear of this document showing the existing conditions and Alternative A and Alternative B grading and landscape plans.

Soils and Topography: Alternative A would result in a greater area of construction disturbance on the Marketplace site, approximately 4.72 acres, compared with the alignment for Alternative B over the lands of WBIA. Temporary disturbance associated with Alternative A would be some 11.55 acres within the study area, versus 6.83 acres for Alternative B. This greater disturbance would be due to the elimination of a large retaining wall (exceeding 70 feet high) that was shown in the Alternative B plan along the Access Road. Elimination of the wall would thus necessitate greater area for grading to achieve maximum 2:1 sloped embankments. The Town Planning Board, in reviewing the potential visual effects of a 70+ foot high wall viewed from I-84, requested that the Applicant pursue the Alternative A alignment, even in light of the increased land disturbance.

Wetlands: The Alternative A road alignment would result in reduced impacts to regulated wetlands compared to Alternative B since this alignment would cross Quassaic Creek in an area where the width of the on-site wetlands is less. Wetland disturbance would thus be reduced from 0.30 acre to 0.08 acre, a reduction of 0.22 acre. In addition, relocating the stream crossing to the DOT Parcel would provide some 0.21 acre of additional suitable areas along the stream for wetland creation.

Terrestrial and Aquatic Ecology: No protected terrestrial or aquatic species were identified to occur in the area of either of the proposed access road alternatives in the Marketplace EIS.

Water Resources: The larger area of site disturbance from construction of Alternative A, in combination with a reduction in impervious surfaces would be accommodated in the project stormwater management plan without any significant changes in runoff rates or stormwater quality. Alternative A would allow a shorter road with less impervious surface than Alternative B (1.72 acres impervious acres within the study area for the former and 2.38 acres for the latter). Under Alternative A, the disturbance to the 100-year flood plain would be approximately 0.5-acre less than the disturbance necessary to construct the Alternative B roadway since the flood plain is narrower on the DOT Parcel than on the WBIA land.

Land Use and Community Concerns: The DOT Parcel is a land use unlike other land in the surrounding area in that it was acquired by the State to provide road beautification of the I-84 corridor. The DOT Parcel is the only designated scenic land use in the local area, and is bounded by undeveloped wooded land to the north and west (lands of WBIA), the I-84 transportation corridor to the south and residential development to the east.

Either alternative access road alignment would cross land that currently is undeveloped and wooded, thereby permanently removing woodland and replacing it with a road corridor. Under Alternative A, a larger natural woods buffer would be preserved between the new road and existing homes on Wintergreen and Brookside avenues than in Alternative B. The community recognized this benefit and in reviewing the EIS, the Town Planning Board requested that the Applicant pursue the Alternative A alignment as previously discussed. However, Alternative A would necessitate use of a significant portion of designated scenic land next to I-84 for the Access Road, while Alternative B would preserve this use. Under Alternative B, less natural woods would be preserved between the new road and the existing homes, while preserving the wooded DOT Parcel for beautification of I-84.

Traffic: There would be no difference in the amount of traffic traveling between the Marketplace and Route 52 via the easterly Access Road in either road alignment. According to the EIS, the Access Road would have approximately 594 PM peak hour trips and 794 Saturday peak hour trips (29% of the Marketplace totals).

Noise: Due to the greater distance between the Alternative A road alignment and the residential dwellings on Wintergreen and Brookside avenues than in Alternative B, a moderate decrease (3 to 4 decibels) in noise levels for the closest receptors was projected in the noise study (further explained in Section V.B.g.). However, no exceedence of the NYSDOT Noise Threshold was projected for either alternative.

Air Quality: Ambient air quality impacts at three residential locations from traffic on the Alternative A road alignment were predicted to be equal to or less than the effects from the Alternative B alignment (further explained in Section V.B.g.). No exceedence of the NAAQS threshold was projected for either alternative.

Visual Resources: The Alternative A road alignment would be located 100 to 380 feet farther away from the residential development to the north than the Alternative B alignment (depending on where the distance is measured). A greater natural, wooded buffer between homes on Wintergreen and Brookside avenues and the Access Road would be preserved with the Alternative A plan than in Alternative B. Visibility of the Access Road from adjoining residential properties was evaluated during the SEQRA review, and the benefit of this buffering was considered to be substantial mitigation for potential impacts on the nearby residences resulting in the selection of the Alternative A alignment by the Town Planning Board.

The need to preserve the scenic qualities (viewshed) of the DOT Parcel for traffic on I-84 is also a primary concern for NYSDOT. To evaluate the visual implications of development of the Access Road either on the DOT Parcel or on WBIA lands, a Visual Impact Assessment ("VIA") was prepared according to FHWA and NYSDOT protocols and is included in this document as Appendix F. Cross-sections and pre- and post-development photo-simulations are included in the VIA. The photo-simulations clearly depict the immediate visual impact of the access road alternatives to travelers on I-84 east and west bound during seasons when leaves are off the trees. There would be a visual change in the I-84 viewshed associated with the Access Road whether it is built on the DOT Parcel or WBIA lands.

As compared to Alternative B, the Alternative A plan includes landscape planting designed to enhance the visual buffer along I-84 and mitigate the expected changes in the highway views by: a) omitting street tree planting along the Access Road as it crosses the DOT Parcel; b)

omitting any street lighting on the Access Road as it crosses the DOT Parcel; and, c) adding landscaping that will naturalize to be consistent with the existing vegetation on and adjacent to the DOT Parcel. As previously described, the proposed Action also includes the dedication of two areas of land to conservation easements to prevent further development-related changes within the immediate I-84 viewshed.

The visibility of either alternative road alignment from I-84 cannot be avoided due to the existing topography and vegetative cover and visibility of the Alternative A alignment from I-84 would be greater than Alternative B. However, the prior SEQR review process disclosed that use of the DOT Parcel for the Access Road would minimize potential effects relating to the visual, noise and air quality impacts to the nearby residential neighborhoods.

Historical/Cultural Resources: No cultural resources were identified to occur in the area of either of the proposed access road alignments.

Construction Impacts: The area of soil disturbance would be greater for Alternative A than for Alternative B (11.55 acres versus 6.83 acres), as well as total volume of earthwork (approximately 150,000 cubic yards ("CY") versus 96,000 CY), while either plan would necessitate erosion control measures designed for the specific conditions of the respective plan and implemented in accordance with State permit requirements. These effects are further described in Section V.B.j. Construction impacts associated with construction traffic on local roads would be similar for either alternative access road plan, as evaluated in the EIS. As previously mentioned relating to operations after construction, noise and air quality effects from earthmoving and equipment during the construction period would be the same or greater for sensitive receptors in the nearby residential neighborhoods for Alternative B than for Alternative A.

Indirect / Secondary / Cumulative Impacts: As presented in the Marketplace EIS, overall indirect/secondary and cumulative effects relative to traffic, economic benefits, soil erosion and sedimentation, surface drainage patterns, wetland species and habitat, air quality, noise, and induced growth of retail development in the local area would essentially be the same for either alternative road alignment.

**Table IV-1
Alternative Impact Comparisons**

<i>Impact Areas</i> ¹	<i>Alternative A Road over DOT Parcel</i>	<i>Alternative B Road over WBIA Land (No Action)</i>	<i>Difference between Alternatives</i>
Temporary Land Disturbance (construction period)	11.55 ac	6.83 ac	4.72 ac. greater with Alt. A
Permanent Land Disturbance (area not revegetated in woodland cover) ²	3.78 ac	3.72 ac	0.06 ac. greater with Alt. A
Steep Slope Disturbance (>15%)	7.37 ac	4.02 ac	3.35 ac. greater with Alt. A
Approximate Earthwork	Cut to Fill 55,000 cy import Fill 95,000 cy	Cut to Fill 33,000 cy export Cut 63,000 cy	54,000 cy greater with Alt. A
Wetland Disturbance	0.08 ac	0.30 ac	0.22 ac. less with Alt. A
New Impervious Surface	1.72 ac	2.38 ac	0.66 ac. less with Alt. A
100-Year Floodplain Displacement	0.13 ac	0.64 ac	0.5 ac. less with Alt. A
Peak Traffic on Access Road (trips/hour) (29% of Marketplace totals)	594 PM Peak 794 Sat. Peak	594 PM Peak 794 Sat. Peak	No difference
Noise at Closest Sensitive Receptors (Modeled Sites N2 and N3)	53 to 58 decibels	56 to 62 decibels	3-4 decibels less noise with Alt. A. No exceedence of NYSDOT threshold with either Alternative
Elevation change on south side of Quassaic Creek crossing facing I-84	32' at Sta. 45+00	24' at Sta. 47+70	8' greater with Alt. A

Note: Numbers are approximate. ¹ Impacts measured within the 22.8-acre study area. ² Permanent disturbance = impervious road surface, managed grass shoulder and stormwater basins.

V. ENVIRONMENTAL TOPICS

A. NEPA Assessment Checklist

NYS DOT uses a NEPA Assessment Checklist to assist in the review of projects that require FHWA approval. The Checklist form was approved by the FHWA. The Checklist completed for this Action is included herein, in Appendix A.

B. Environmental Consequences

All property encompassed by the proposed Action is addressed in this Design Report. For purposes of the Report, the subject site is the 8.5-acre DOT Parcel and "study area" includes an area of approximately 22.8 acres generally encompassing the DOT Parcel and nearby land to the north and west owned by WBIA that is subject to grading and construction for an access road and associated infrastructure for the Marketplace development and/or conservation easements as previously described. This study area is limited for the purposes of this report due to the fact that the proposed action is a small but integral part of a larger development project on some 128 acres of land owned by WBIA which has been evaluated extensively in prior SEQR documents. Figure 1 depicts these areas.

This section of the Design Report provides narrative descriptions of relevant environmental areas of concern that relate to the construction of the proposed Access Road as facilitated by the proposed Action and the No Action access road over lands of WBIA. Most of the information provided in this section was included in the Draft EIS and/or Final EIS prepared for the Marketplace project and was reviewed and commented on by various Involved Agencies and the Public in a long and thorough environmental review process. Additional information provided herein was included in the Town Planning Board's SEQRA Findings or Site Plan Approval. The Findings and Site Plan Approval are included herein in Appendices C and D, respectively. The EIS's and Findings for the Marketplace development can be found online at:

<http://www.timmillerassociates.com/publicreview/marketplace/index.html>

A table at the end of Section IV presents quantitative information in a comparative format. The following descriptions, which highlight the environmental aspects related to the construction of the easterly access road, have been compiled from information previously filed and reviewed as part of the aforementioned Draft and Final EIS's prepared for the Marketplace project, and other referenced sources. Elaboration on topics presented herein can be found in those documents, as well as in the supplemental information appended to or referenced in this Report.

a. Land Resources - Soils and Topography

Existing Conditions

Topography

As described in the referenced EISs, the topography on the DOT Parcel is varied (see Figure 5, Existing Topography). The Quassaic Creek flows through the center from north to south in a deep gorge. At the center of the Parcel frontage along I-84, the Creek is situated 38 feet below the elevation of the highway. Proceeding east from the proposed Creek crossing, the topography rises from the creek to approximately 20 feet above the elevation of the I-84 roadbed in the vicinity of the westbound entrance ramp from Route 52. West of the creek, the land rises sharply reaching an elevation about 11 feet below the grade of I-84 at its frontage and

rising another 40 feet to the northwestern corner of the DOT Parcel. A man-made fill spoil pile is located toward the eastern end of the DOT Parcel, visible on the aerial photograph in Figures 3 and 4.

As described in the referenced EISs, slopes on the site range from nearly level to over 25 percent. Slope categories on the property are summarized in the table below, based on Soil Conservation Service soil types. Approximately 4.02 acres of the DOT Parcel contain slopes greater than 15 percent. Slopes are shown in the topographic map in Figure 6.

Table V-1 Existing Slopes	
Slope Category	Approximate Acres Existing Slopes
0% to 8%	2.9
8% to 15%	1.4
>15%	4.2
Approximate Total Site Acreage	8.5
Source: Tim Miller Associates, 2008	

Soils

Soils in Orange County have been mapped and described by the USDA Soil Conservation Service (SCS) in the *Soil Survey of Orange County, New York* (Atlas Sheet 20), issued in 1981. This information has been digitized more recently by the USDA Natural Resources Conservation Service (NRCS). Mapped soils on the DOT Parcel consist of Mardin gravelly silt loam (MdC), Pittsfield gravelly loam (PtB), Rock outcrop-Farmington complex (RMD), and Udorthents, smoothed (UH). The soil mapping units found on the site, using the soil classifications and descriptions of the *Soil Survey*, are summarized below and are depicted in Figure 7.

- Mardin gravelly silt loam (MdC). This soil unit consists of deep, moderately well drained, gently sloping soil formed in glacial till deposits derived from sandstone, shale, and slate. It is typically found on broad hilltops and ridges and is an upland soil. MdC soils are mapped on 8 to 15 percent slopes. A dense fragipan is typically found at 20 to 60 inches in depth. The water table is perched above this fragipan early in the spring and during other wet periods. Permeability is moderate in the surface layer and is slow or very slow in the fragipan and substratum. The available water capacity is moderate to low and runoff is slow to medium. These soils are found in the western portion of the site. This soil unit comprises approximately 1.4 acres or 16 percent of the site.
- Pittsfield gravelly loam (PtB). This soil unit is deep, well drained, gently sloping soil formed in glacial till deposits and is found on hilltops, ridges, and knolls in uplands. The slope range for this unit is 3 to 8 percent. The depth to bedrock is greater than 60 inches. The water table is usually found more than 6 feet below the ground surface. The permeability is moderately rapid in the surface and subsoil layer and is moderately rapid in the substratum. The available water capacity is moderate to high and runoff is slow to medium. The soil is mapped in

the eastern half of the site, east of Quassaic Creek and comprises approximately 2.9 acres or 35 percent of the site.

- Rock outcrop-Farmington complex (RMD). This soil complex is somewhat excessively drained to well drained Farmington soil found on hillsides, ridges, and mountainsides in uplands. The slope ranges from 15 to 35 percent but is typically 15 to 25 percent. This soil complex is composed of 60 percent rock outcrop, 30 percent Farmington silt loam, loam, or fine sandy loam, and 10 percent other soils. Bedrock can be found at the surface and at depths of up to 40 inches below the ground surface. The available water capacity is typically very low and the soil has moderate permeability and relatively rapid runoff. This soil is mapped in areas adjacent to Quassaic Creek in the central portion of the site and comprises approximately 1.5 acres or 17 percent of the site.
- Udorthents, smoothed (UH). This soil is formed in manmade cut and fill areas, typically near development or construction sites. It consists of excavated earth material that has been stockpiled or used as fill or soils left in areas that have been excavated or cut. This soil unit is dominantly observed to be nearly level or sloping. This unit is excessively drained to moderately well drained and is an upland soil. Specific characteristics such as texture, stone content, soil pH, and depth to bedrock are not consistent throughout the unit due to the extent of past disturbance. Depth to the seasonal high water table and permeability also vary depending on the topography, degree of compaction, and soil texture. This soil is mapped in an area along the southern boundary of the site adjacent to Interstate 84 and in the western portion of the site, and comprises approximately 2.7 acres or 32 percent of the site.

Soil Suitability

The Marketplace EIS provides information found in the *Soil Survey* and NRCS website regarding soil characteristics as they relate to drainage, erosion potential, and flooding. Soil characteristics relating to the general suitability for construction are provided in the table below. The limitations of these soils for construction of a roadway and stormwater management basin such as is proposed on the DOT Parcel relate most directly to the soil properties that affect the ease of excavation and grading. The properties that would affect this construction are primarily the shallow depth to saturated zone and slope. The limiting characteristics of these soils require thoughtful project planning, design and management of construction. Design recommendations to respond to these conditions have been addressed in this report.

**Table V-2
Soil Characteristics**

Soil Series	Hydrologic Group ¹	Drainage Class	Slopes	Erosion Factor (Whole Soil) (K)	Flooding Frequency
Mardin gravelly silt loam (MdC)	C	Moderately well drained	8-15% (avg. 12%)	0.24	None
Pittsfield gravelly loam (PtB)	B	Well drained	3-8% (avg 6%)	0.20	None
Rock outcrop-Farmington (RMD)	D	Somewhat excessively to well drained	15-35% (avg 20%)	0.32-0.28	None
Udorthents (UH)	A/D	Somewhat excessively drained	Varies (avg 4%)	0.20	None

¹ Hydrologic groups are used to estimate runoff from precipitation; they range from high infiltration (A) to low infiltration (D).

² Erosion Factor K indicates susceptibility to sheet and rill erosion by water measured in tons/acre/year. K values range from 0.6 to 6.0. Higher values indicate greater susceptibility.

NR = not rated by NRCS.

Source: *Soil Survey of Orange County, New York*, USDA SCS; websoilsurvey.nrcs.usda.gov, USDA NRCS.

Potential Impacts

Based on published information in the Marketplace EIS, grading would be required to build the proposed Access Road and stormwater management facilities on the DOT Parcel, which would entail disturbing approximately 5.3 acres of the 8.5 acre site. Approximately 3.2 acres of the DOT Parcel would remain undisturbed and wooded. Proposed grading is shown in Figure 3.

Based on more recent subsurface investigations by the Applicant, blasting is not anticipated for construction of the proposed Access Road and stormwater basin on the DOT Parcel. Excavation to approximately 20 feet in depth would be required at the stormwater basin and approximately 20 feet of fill would be required at the northwest corner of the DOT Parcel for the proposed Access Road.

The proposed construction would result in disturbance to approximately 1.9 acres of slopes 15 percent or greater on the DOT Parcel. Soil erosion and sediment control measures would be necessary during construction to minimize downstream impacts, in particular to prevent uncontrolled stormwater runoff in the vicinity of Quassaic Creek and the wetlands. Designs of site specific erosion control measures specified for this site and the SWPPP were prepared by a professional engineer and reviewed and approved by the NYSDEC as well as reviewed by the Town Planning Board engineer and Town Planning Board in connection with the site plan and SEQRA review of the Marketplace project. A study of the specific site conditions relative to soil composition and depths was conducted and concluded that proper sedimentation control can be obtained by the proper implementation of NYS standard erosion control measures.¹ Installation

¹ Tectonic Engineering, "Results of Sedimentation Study", Letter report to Wilder Balter Partners, November 14, 2006. [As submitted to NYSDEC.]

and maintenance of specified soil erosion control measures would minimize potential erosion and sedimentation impacts.

Alternative B Impacts

Alternative B would result in approximately 4.72 acres less construction disturbance than Alternative A due to the construction of a large retaining wall (up to 74 feet high) along the Access Road. Construction of the wall would reduce land disturbance as it would avoid the grading otherwise needed to achieve maximum 2:1 embankments at the edge of the Marketplace building pad area. The construction of Alternative B would result in disturbance to approximately 4.02 acres of slopes 15 percent or greater in the study area. An undetermined amount of rock removal by blasting would be required. Earth and rock excavation to approximately 30 feet in depth would be required for the road construction and over 40 feet of excavation would be required for the stormwater management facilities.

Mitigation Measures

Alternative A would result in some 4.72 acres greater construction disturbance within the study area, compared with the alignment for Alternative B over the lands of WBIA. (Figure 3 shows the area of grading disturbance in this area for Alternative A and Figure 4 shows the area of grading disturbance for Alternative B.) This disturbance would be due to the elimination of a large retaining wall along the Access Road, which would thereby necessitate greater area for grading. However, the Town Planning Board, in reviewing the potential visual effects of a 74-foot high wall viewed from I-84, requested that the Applicant pursue the Alternative A alignment.

A Stormwater Pollution Prevention Plan (SWPPP) has been prepared for the Marketplace in accordance with the requirements of the NY State Pollutant Discharge Elimination System (SPDES) General Permit (GP) for Stormwater Discharges from Construction Activity and it includes the subject site and the proposed Access Road construction. The plan includes specific erosion prevention measures required by the applicable NYSDEC guidelines, inspection and monitoring schedules, and temporary and permanent erosion control measures and is consistent with the NYSDOT protocol. This SWPPP and the site specific Soil Erosion and Sediment Control Plan were reviewed by the Town Planning Board and the Town Planning Board Engineer during the SEQRA process for the Marketplace project.

The proposed plan minimizes the area of soil exposed at any one time to the greatest extent practicable in accordance with the conditions of the SPDES General Permit.

The NYSDEC has reviewed the project's site-specific stormwater management and erosion control plans included in the SWPPP, and authorized the construction as proposed. As part of the requirements of the General Permit, construction monitoring and maintenance by the applicant's qualified erosion control representative would be required.

b. Wetlands

Existing Conditions

As described in the Marketplace Draft EIS, a detailed wetland delineation was conducted in April and May, 2004, on the project site in accordance with the three parameter approach described in the US Army Corps of Engineers *Wetland Delineation Manual*.²

The project site is mostly upland areas, but there are wetland areas associated with the Quassaic Creek. There are two wetlands on the DOT Parcel as shown in Figure 8. Wetland D comprises 0.06 acres and is located to the west of the Quassaic Creek with a portion on the DOT Parcel, and Wetland E comprises 1.47 acres along the Quassaic Creek, with a portion on the DOT Parcel. Neither of these is a State regulated wetland, as shown on NYSDEC Freshwater Wetlands Map #23 for Orange County. Activities within Wetland E would be regulated by the United States Army Corps of Engineers (ACOE). The Town of Newburgh identifies "protected" wetlands as those under state or federal jurisdiction and does not otherwise regulate wetlands.

Wetland D appears to be associated with a small area of groundwater discharge. Overflow from this seepage point flows to Quassaic Creek just north of the culverts under Route 84. Vegetation is a mix of emergent herbaceous species (soft rush, fringed sedge) and occasional shrubs (dogwood species).

Wetland E is a connected series of smaller riparian wetlands identified along the Quassaic Creek. These areas function as flood plain during storm events, and are sufficiently saturated to support a dominance of hydrophytic vegetation including red maple, American elm, skunk cabbage, and sensitive fern. The Quassaic Creek and this wetland are regulated by the ACOE.

The wetland areas located on site were reviewed with regard to specific functions and benefits. Neither has open water or open-canopied areas which would provide nesting or feeding habitat for migratory waterfowl.

Wetland D is little more than a seepage point for groundwater discharge that provides seasonal modification of stream flow by adding base flow to the Quassaic Creek. It is likely that this discharge point was created when road work associated with Route 84 occurred, and there has not been sufficient time for this area to develop as a more mature wetland with well developed hydric soils. Due to its small size, exposure and close proximity to the highway, it does not provide significant wildlife habitat or benefits.

Wetland E provides storage for stream bank overflow. The creek itself supports some aquatic species.

An assessment of the functions and benefits provided by the on-site wetlands was included in the Marketplace Draft EIS, using the criteria set forth in Article 24 of the NYS Environmental Conservation Law, and is provided in the table below.

² U.S. Army Corps of Engineers, *Wetlands Delineation Manual*, Technical Report Y-87-1, 1987.

Table V-3 Assessment of Freshwater Wetland Benefits		
Potential Wildlife Benefit	Wetland D	Wetland E (Quassaic Creek)
(a) Flood and storm control by the hydrologic absorption and storage capacity of freshwater wetlands.	Low	High
(b) Wildlife habitat by providing breeding, nesting and feeding grounds and cover for many forms of wildlife, wildfowl and shorebirds, including migratory wildfowl and rare species such as the bald eagle and osprey.	Low	Medium
(c) Protection of subsurface water resources and provision for valuable watersheds and recharging groundwater supplies.	Low	Low
(d) recreation by providing areas for hunting, fishing, boating, hiking, bird watching, photography, camping and other uses:	N/A*	N/A*
(e) Pollution treatment by serving as biological and chemical oxidation basins.	Low	Low
(f) erosion control by serving as sedimentation areas and filtering basins, absorbing silt and organic matter and protecting channels and harbors.	Low	Low
(g) education and scientific research by providing readily accessible outdoor bio-physical laboratories, living classrooms and vast training and education resources.	N/A*	N/A*
(h) open space and aesthetic appreciation by providing often the only remaining open areas along crowded riverfronts and coastal Great Lakes regions.	N/A*	N/A*
(i) Sources of nutrients in the freshwater food cycles and nursery grounds and sanctuaries for freshwater fish.	Low	Low
* This site is not accessible to the public, and thus does not provide these functions to any significant degree. Sources: NYS Environmental Conservation Law, Article 24, Title 1, Section 24-0105(7) and Tim Miller Associates, Inc., 2005.		

Potential Impacts

Construction of the proposed road crossing over the Quassaic Creek on the DOT Parcel would disturb 0.06 acres of federally-regulated Wetland E and 0.02 acres of Wetland D. Wetland disturbances would be required to construct footings for the proposed arched concrete culvert and fill embankments for the Access Road, which would be revegetated following construction. Since the function of Wetland E is primarily to convey Quassaic Creek stream flow and occasional overflow from storm events, maintenance of this function has been considered in the mitigation plan presented below. Figures 9A and 10 show the areas of wetland disturbances and the proposed culvert stream crossing, respectively.

Alternative B Impacts

Construction of the Alternative B road crossing over the Quassaic Creek would disturb 0.30 acres of federally-regulated Wetland E (refer to Figure 9B). Wetland disturbances would be required to construct footings for the proposed culvert and fill embankments for the access road, which would be revegetated following construction. An arched concrete culvert structure would be used to maintain the primary function of Wetland E to convey stream flow in Quassaic Creek.

Mitigation Measures

As set forth in the EIS for the Marketplace project, should the Access Road be located exclusively on the WBIA property immediately north of the DOT Parcel, and given the shape and topography of that property in the vicinity of the Quassaic Creek crossing, the impacts to wetlands along the creek would be greater by 0.22 acres. Comparing Alternative A to Alternative B, the extent of wetland disturbance would represent an impact reduction of 73% for the road alignment over the DOT Parcel. Comments made by ACOE during the review of the original site plan³ pointed out this fact and the applicant revised the plan for the Access Road to cross the Quassaic Creek in a location (i.e. the DOT Parcel) that would reduce wetland and potential stream disturbance impacts.

To mitigate the potential impact to wetlands and wetland habitat associated with the proposed road crossing of the Quassaic Creek, the approved site plan includes installation of a single arched culvert approximately 40 feet in diameter to span the creek, thereby preserving significant portions of the wetland along the stream banks and the stream bed, and allowing fish and other aquatic species to pass unimpeded under the arch (Figure 10).

To mitigate for the loss of the portions of wetlands on the Marketplace project site, including at the road over the DOT Parcel, the plans specify wetland creation, including one located immediately north of the DOT Parcel. The wetland mitigation areas associated with Wetland E would be graded in a manner that is consistent with the existing wetland and re-planted with wetland trees, shrubs and herbaceous vegetation that are indigenous to the site. Only native species would be utilized, and a maintenance and monitoring program would be undertaken in accordance with the ACOE wetland permit.

In addition to the ACOE Wetland Mitigation Plans, the SWPPP and ESC plan address the potential impacts to the wetlands on the site due to the disturbance of soils and runoff from increased impervious surfaces.

c. Ecological Resources

Existing Conditions

Two primary plant communities, successional northern hardwood forest and red maple hardwood swamp, were identified on the subject property. As described in the Marketplace Draft EIS, these habitat types are not unique to the area or the region. Within these ecotypes, smaller units of more diverse habitats were observed. The successional hardwood community is a hardwood or mixed forest that occurs on sites that had been cleared for farming, logging or otherwise disturbed in the past. This ecosystem type is recognized as being globally and locally secure.

The overstory community in the upland areas of the site is composed primarily of oaks and hickories, with some beeches, cottonwood, and maples. The majority of the trees are in the 8-16 inch diameter class (approximately 30 - 50 years old). Old field stone walls, and occasional large trees occur on the property. The man-made fill spoil pile located toward the eastern end of the DOT Parcel is covered in lawn grasses.

³ Pre-application meeting between Brian Orzell and George Nieves of ACOE, Robert Wilder, and Steve Marino, August 10, 2006.

The overstory community in the wetlands is composed of red maple and other successional hardwood species. The shrubs in the understory are primarily Tartarian honeysuckle and multiflora rose. Many of the shrub and herb species present indicate recent disturbance and the beginning of succession to a more mature forest. A 1963 aerial photograph (Figure 3.3-2 of the Draft EIS for the Marketplace) shows that the western end of the DOT Parcel was, in fact, clearcut during the construction of I-84, possibly for a staging area.

The Quassaic Creek corridor was found to support a moderate diversity of amphibians and reptiles and habitat for larger mammals and song bird species. Based on continuing discussions with the Town and its consultants and public comments received, the Applicant continued to make site observations of site vegetation and wildlife during the SEQR review process, following specific protocols for species of special concern. The various on-site surveys conducted by the Applicant's consultants over three years (and most recently by the Town's consultants) and documented in the Draft and Final EISs characterize the site as primarily comprised of species typically encountered in the suburban woodlands, fields and forested wetlands of Orange County. During repeated site visits no threatened, endangered or rare species were observed on the project site.

Species of Concern

The Draft EIS for the Marketplace documents that the NYSDEC Natural Heritage Program and the United States Fish and Wildlife Service (USFWS) have no known records of any protected species or resources on the site or in the site vicinity. Site observations of vegetation and wildlife were completed in accordance with specific protocols for species of special concern; breeding bird surveys, surveys for pool breeding amphibians and site habitat evaluations for plants and animals of concern were conducted.

Onsite searches were conducted for two rare plant species known to occur in downstream sections of the Quassaic Creek corridor: beaked agrimony (*Agrimonia rostellata*) and narrow-leaved sedge (*Carex amphibola*). Specimens of agrimony and sedge were located and identified in several locations west of the DOT Parcel, however none were identified to be consistent with botanical characteristics of either *Agrimonia rostellata* or *Carex amphibola*.

The surveys identified the presence of three state-listed species of special concern: box turtle, wood turtle and sharp-shinned hawk. None of these species is afforded specific legal protection under NYS or Federal environmental law. William Schuster Ph.D. of Cornwall NY was retained as an environmental consultant by the Town to make observations of wildlife habitat, wildlife inhabitants, forest structure, tree age and vegetative communities on the project site. Some samples of vegetation collected by Dr. Schuster were sent to Gerry Moore at the Brooklyn Botanical Garden for expert identification. Dr. Schuster concluded in his memo to the Town Engineer dated October 3, 2007, that there is no evidence of the occurrence on the site of either of the rare plants in question, nor evidence that endangered amphibian or reptile species exist on the site. These studies are described in the Final EIS for the Marketplace.

Since the endangered Indiana bat (*Myotis sodalis*) is known to be seasonally present within this vicinity in Orange County, investigations for the Indiana bat were conducted on the site by Bat Conservation and Management Inc. of Carlisle PA. No threatened or endangered species of bats were found on the site, nor evidence of use of the site by the Indiana bat.

Potential Impacts and Mitigation

As indicated in the Marketplace EIS, there would be a loss of woodland habitat on the DOT Parcel due to the construction of the proposed road and stormwater basin in the Alternative A plan. The proposed construction would impact approximately 5.3 acres of vegetation on the DOT Parcel (11.6 acres in the study area). Approximately 3.2 acres of the DOT Parcel would remain undisturbed and the Applicant has agreed to place conservation easements on the land which abuts the DOT Parcel on the north, and the steeply sloped land abutting the DOT Parcel on the west, as shown in Figure 2. The narrow Quassaic Creek corridor would be largely unaffected by the proposed road and stormwater basin construction on the DOT Parcel.

Alternative B Impacts

As described in the Draft EIS, should the Access Road be located on WBIA property north of the DOT Parcel, the construction would impact no vegetation on the DOT Parcel but approximately 6.8 acres in the study area. The direct impact to wetland habitat would total 0.30 acres versus 0.08 acres to create the proposed road crossing on the DOT Parcel. Alternative A alignment is proposed by the applicant to mitigate the greater wetland impact of Alternative B. This reduced loss would be further mitigated with the creation of 0.39 acres of additional wetland habitat in the area immediately north of the DOT Parcel. The current Wetland Mitigation Plans propose compensatory wetland creation to offset the reduced area of disturbance to wetlands.

d. Water Resources

Existing Conditions

Drainage Areas

The project site is located within the Quassaic Creek watershed, which ultimately drains to the Hudson River. The creek originates north of the site, flowing over a spillway at Winona Lake nearby to the north of the DOT Parcel, flows through the DOT Parcel and discharges to the south via a large box culvert under Interstate 84. Runoff from the site drains directly to the creek.

Existing Stormwater Quantity

The Draft EIS for the Marketplace describes that under existing conditions, there are no impervious areas on the DOT Parcel or WBIA land in the vicinity of the DOT Parcel; the site is undeveloped and predominantly wooded. Estimates of the existing runoff conditions for storm events up to and including the 100-year storm event were calculated for the Marketplace project. Runoff quantities from the DOT Parcel were integral to the overall project calculations. The project engineer's *Storm Water Management Report*⁴ identifies Design Point C adjacent to the DOT Parcel and evaluates runoff from the DOT Parcel along with that from additional lands within the subbasin identified as D.A. area C. The procedures used for estimating peak discharge rates conform with the USDA SCS TR-55 method⁵ for a Type III Storm Distribution. This criterion governed the data input into the Haestad Methods PondPack computer program.

⁴ *The Marketplace at Newburgh Storm Water Management Report*, Divney Tung Schwalbe, LLP, April 2007. [Included in SWPPP as submitted to NYSDEC.]

⁵ *Urban Hydrology for Small Watersheds*, Technical Release No. 55, U.S. Department of Agriculture Soil Conservation Service Engineering Division, June 1986.

Existing Stormwater Quality

The EIS for the Marketplace indicates there is no available data regarding the current quality of stormwater flowing over land in the vicinity of the DOT Parcel or of water quality in the Quassaic Creek where it flows through the subject parcel. It is expected that water quality is generally good but with elevated levels of nutrients and metals, owing to the proximity of the nearby upstream crossing with NYS Route 52 and to a relatively dense developed area nearby within the creek's watershed. New York State has classified Quassaic Creek (NYSDEC Water Index Number H-94) as a Class D stream at the project site. According to NYS Water Classifications:

The best usage of Class D waters is fishing. Due to such natural conditions as intermittency of flow, water conditions not conducive to propagation of game fishery, or stream bed conditions, the waters will not support fish propagation. These waters shall be suitable for fish survival. The water quality shall be suitable for primary and secondary contact recreation, although other factors may limit the use for these purposes.⁶

On-site areas that drain to the Quassaic Creek are predominantly wooded with some herbaceous ground cover and thick leaf litter, resulting generally in clean runoff flowing to the creek from the project site. Suspended sediments within the stream are not expected to be high considering the opportunity for deposition of these materials in the upper reaches of the creek, which includes three waterbodies. The stream's temperature is likely elevated somewhat as flow passes through Lower Winona Lake prior to discharge into the site. Stream temperature is expected to be moderated by the existing tree cover in the stream corridor as it flows through the site.

Potential Impacts and Mitigation

Disturbance of vegetated land on the DOT Parcel, as previously identified, would result from the proposed roadway and stormwater basin construction shown in Alternative A. The proposed action would result in the introduction of new impervious surfaces, thereby increasing stormwater runoff. To mitigate the increase in peak rates of runoff, and pollutant loads in it, as a result of developing the Access Road, stormwater detention facilities have been designed to reduce the post-development peak rates of runoff to levels below existing rates, in accordance with the specifications set forth in the NYSDEC *Stormwater Management Design Manual*. The project engineer's SWPPP for the Marketplace (entitled *Storm Water Management Report*) has been prepared in accordance with NYSDEC requirements and addresses the design requirements of the project for mitigating the effects of post-development changes in stormwater runoff in accordance with the Clean Water Act.

The stormwater basin is proposed to be constructed to the north of the proposed Access Road. The runoff from the roadway would flow to the basin, and post-development peak flow rates would be reduced to levels at or below existing rates.

The project design plans depict the FEMA 100-year floodplain boundary in the vicinity of the Quassaic Creek. No proposed buildings or stormwater basins would be located within the flood boundary. The proposed Access Road would cross the creek and its floodplain utilizing a large culvert, shown in Figure 10, that would not impede the existing channel flow, and that is sized to convey the flows from a 100-year storm.

⁶ Environmental Conservation Law, NYCRR Title 6, Chapter X.

The SWPPP identifies the mitigation measures proposed to address potential impacts to surface water quality and downstream water resources and wetlands. The plan includes specific erosion prevention measures required by the applicable NYSDEC guidelines, inspection and monitoring schedules, and temporary and permanent erosion control measures. The stormwater management practices proposed are based on the NYSDEC standard methods of design for compliance with Clean Water Act regulations for water quality and quantity, as specified in its *Design Manual*. Treated water at the design discharge points would meet or exceed the most stringent standards of the *Design Manual* and comply with the NYSDEC requirement that 90% of the average stormwater runoff be captured and treated (the "water quality volume"). The proposed stormwater plan complies with the SPDES General Permit for stormwater discharges, as well as Chapter 157, Stormwater Management, of the Town of Newburgh Code.

Alternative B Impacts

Like Alternative A, disturbance of vegetated land on the WBIA property would result from the proposed roadway and stormwater basin construction shown in Alternative B. The access road construction would result in the introduction of new impervious surfaces, thereby increasing stormwater runoff. And like Alternative A, stormwater detention facilities would need to be designed to reduce the post-development peak rates of runoff to levels below existing rates, and limit pollutant loads in it, in accordance with the requirements of NYSDEC and for compliance with the Clean Water Act.

Both alternatives must mitigate the changes in water quality and quantity to meet SWPPP acceptance standards. The Alternative B stormwater basin would be constructed to the south of the access road to capture runoff from the pavement surfaces. No structures or stormwater basins would be located within the FEMA 100-year floodplain boundary.

e. Land Use and Community Concerns

Existing Land Use

The State of New York acquired the subject parcel in the late 1960s under the Highway Beautification Act of 1965 (Section 319 of Title 23 of the United States Code). Also known as Public Law 89-285, dated October 22, 1965, the Act contained legislation for the control of outdoor advertising, control of junkyards, and landscaping and scenic enhancement. Specifically, the 89th Congress entitled the law "An Act to provide for scenic development and road beautification of the Federal highway systems." Section 319, Landscaping and scenic enhancement, stated:

The Secretary may approve as a part of the construction of Federal-aid highways the costs of landscape and roadside development, including acquisition and development of publicly owned and controlled rest and recreation areas and sanitary and other facilities reasonably necessary to accommodate the traveling public. [23 USC 319(a)]

A later amendment to 23 USC 319(a) added the phrase:

...for acquisition of interests in and improvement of strips of land necessary for the restoration, preservation, and enhancement of scenic beauty adjacent to such highways.

Title 23 of the United States Code and 23 CFR Part 710 delegates to a state transportation department the authority to determine when real property acquired with Federal-aid highway

funds is no longer needed by the state, as well as the authority to dispose of such real property determined to be no longer needed.

While the history of the subject acquisition is sparsely documented, correspondence to the NYS Department of Public Works from the US Department of Commerce, Bureau of Public Roads, dated June 16, 1967, approved the acquisition of several properties along the I-84 corridor including the subject site.⁷

This project consists of acquisition of property ... to enhance and preserve scenic beauty off the existing right-of-way ... along Interstate Route 84. ... to accomplish the purposes of the Highway Beautification Act of 1965.

Other correspondence and an aerial photograph from that time period indicate that the portion of the DOT Parcel east of the Creek was dense woods⁸ and the western portion was cleared as part of the construction operations for I-84.⁹ The DOT Parcel is not connected to or near any other designated open space or scenic land. It is situated within a regional transportation corridor characterized locally in the Newburgh area by suburban commercial and residential development and wooded open space (private undeveloped land). Further to the west (two miles or greater), the Interstate corridor provides views to rural, undeveloped, and agricultural landscapes.

The DOT Parcel is located in the IB (Interchange Business) zoning district designated by the Town of Newburgh (Draft EIS, Figure 3.5-2, Zoning Map). Land use surrounding the parcel consists of undeveloped wooded land adjacent to the north and west (lands of WBIA), and transportation use adjacent to the south and east (I-84). Further to the north and northeast is residential and scattered commercial development; further to the south is residential, commercial and industrial development. The vacant property further to the west has been approved by the Town of Newburgh for the regional destination consisting of retail stores and service-oriented businesses in the Marketplace project consistent with the IB District zoning.

Community Concerns

During the course of the SEQRA review, in discussions with the Town Planning Board, its consultants, and adjacent property owners, concerns were raised regarding the access from Route 52 at Fifth Avenue as originally proposed (as the Draft EIS action) on lands owned or controlled by the Applicant. While feasible, the Planning Board concluded that that alignment would result in potential impacts which would necessitate additional mitigation measures and/or consideration of alternative designs to alleviate community concerns. These potential impacts included larger wetland and watercourse crossings (noted by ACOE), an increase in noise and decrease in air quality due to the proximity of the Access Road to nearby residences, and tree clearing and grading in proximity to nearby residences. (Refer to Table IV-1 for quantitative impact comparisons.) In order to reduce these potential adverse impacts, an alternative was presented in the Draft EIS, and further refined in the Final EIS, that relocated a major portion of this Access Road onto adjacent lands controlled by the NYSDOT (the DOT Parcel).

⁷ Correspondence to BA Lefevre, NYS Department of Public Works, from JM Newton / JA Hanson, US Department of Commerce, Bureau of Public Roads, dated June 16, 1967. Refer to Appendix B.

⁸ Correspondence to File / JA Hanson [US Department of Commerce, Bureau of Public Roads], from RL Flemming, dated June 8, 1967. Refer to Appendix B.

⁹ Draft EIS for The Marketplace at Newburgh, April 4, 2006: Figure 3.3-2, 1963 Aerial of Project Site.

In weighing the concerns of the local community and the benefits of reduced environmental impacts with the alternative road alignment over the DOT Parcel, and in light of the July 7, 2005, letter from NYSDOT Region 8 (Appendix B) supporting the location of the Access Road over the DOT Parcel, the Town Planning Board focused its review on the Access Road alignment across the DOT Parcel.

Potential Impacts and Proposed Mitigation

Conformance with Adopted Public Policy Documents

The use of either Alternative A or Alternative B alignment for access and stormwater basin associated with the Marketplace commercial development would fully conform to the Zoning Code of the Town of Newburgh. Both the Marketplace property and the DOT parcel are located in an OB-1 zone permitting, among other things, retail development. In fact, the entire Marketplace project was approved for 850,000 square feet without requiring any variances from the Town of Newburgh Zoning Code. Moreover, the project was found to conform to the Town of Newburgh Comprehensive Plan (October 2005 Update) and the Orange County Comprehensive Plan (2003) both of which recommend more intensive land use in the areas that can support higher density, where transportation corridors and public utilities are available (particularly in proximity to the I-84/I-87 interchange), thereby allowing for the protection and enhancement of the existing community character and open space in more rural and environmentally sensitive areas. In fact, the Town's SEQRA Findings at the time of adoption of the Updated Town Comprehensive Plan cite that the proposed use would be consistent with the land use objectives of the Orange County Comprehensive Plan for a "Priority Growth Area" and "Interchange" area for the same reasons.

The Planning Board's SEQRA Findings on the Marketplace project cite that the proposed project (referring to the plan utilizing the proposed Access Road on the DOT Parcel) is not expected to threaten the public health, safety or general welfare, nor the general comfort and convenience of the public and surrounding neighborhoods. It can be expected that the plan utilizing the access road on lands of WBIA would also not threaten the public health, safety or general welfare, nor the convenience of the public and surrounding neighborhoods. As described in Section g. below, the general comfort of the public in the nearby neighborhoods would be affected by the Alternative B plan.

Use of either of the two alternative access alignments available to the Applicant would not induce growth of the Marketplace development.

Mitigation of Community Concerns

As described above, access from Route 52 as originally proposed on lands owned or controlled by the Applicant was determined by the Town of Newburgh to have greater potential impacts on the community (particularly relating to traffic noise, air quality, tree clearing and visual impacts on nearby residences) than the alternative road alignment across the DOT Parcel. As a mitigation measure to reduce these potential adverse impacts, the alternative presented in the Draft EIS and further refined in the Final EIS that relocated a major portion of the Access Road onto the adjacent DOT Parcel is proposed.

A matter of concern to the community during the environmental review process was the minimization of visual exposure of the project as seen from I-84 and Route 52. Development of the Access Road alternative utilizing the DOT Parcel was recognized as having greater benefits

to the community's visual environment because the original easterly access road configuration called for more visible slope treatment (a retaining wall exceeding 70 feet in height and rip-rap stabilized slopes) along the I-84 viewshed. The Town recognized that siting the Access Road over the DOT Parcel has visual benefits to the local residential community in approving the site plan that avoided the high wall and rip-rap slopes. The matter of visual exposure is evaluated in further detail in a visual analysis described later in this report (and the Visual Impact Assessment is included in its entirety herein as Appendix F).

The objective of the Town to preserve the character of the nearby residential community is further reinforced in communications between the Applicant, NYSDOT and FHWA, whereby the subject Action (that is, utilizing the Alternative A alignment) will be conditioned on provisions for permanent conservation easements on lands between I-84 and the existing neighborhoods.

f. Travel Patterns

Existing Conditions

A *Traffic Impact Study* for the Marketplace project was conducted that assessed the traffic effects associated with the development of this project along with the effects of background traffic increases. To account for other potential background developments in the area, the 2004 existing traffic volumes were increased by a factor of 1.5 percent per year to project traffic volumes to 2008. In addition, peak hour traffic volumes from twelve proposed development projects were included in the projected traffic volumes.

Supplemental analyses of various technical comments were conducted including a sensitivity analysis relative to the pass-by traffic expected at the site. Additionally, a SYNCHRO/SIM traffic analysis was prepared for the area roadway networks.

Potential Impacts

The Marketplace EIS described how three interconnected and coordinated signalized access points would service the development, sufficient to accommodate up to 850,000 square feet of development without adverse impacts to the local traffic network. The easterly access route (whether through the DOT Parcel or over lands of WBIA) would provide project access from NYS Route 52 at 5th Avenue. Of the total number of trips projected to be generated by the Marketplace (2,047 PM peak hour trips and 2,738 Saturday peak hour trips), the analysis projected approximately 29 percent of this traffic would occur at the Route 52 entrance through the DOT Parcel. Overall, neither access road alignment would change the travel patterns on the local road to which it would connect (Route 52) -- either would provide easterly access to the Marketplace development.

Proposed Mitigation

The traffic analysis concluded that, with three separate access points into the Marketplace, acceptable levels of service would be obtained without significant adverse impact on traffic operations in the area. In addition to traffic flow, the provision of three access points to the Marketplace would facilitate better emergency access to the site. Certain off-site improvements would be made to accommodate traffic flow in the area. Approval for all traffic improvements to the surrounding State roads would come from the NYSDOT and/or the New York State Thruway Authority, as needed under their respective jurisdictions.

Relative to the easterly access, the new Access Road would be constructed opposite 5th Avenue, a traffic signal installed, and Route 52 widened at the new intersection on Route 52 whether the Access Road traverses land of WBIA or the DOT Parcel. Signal timings at this intersection would be subject to NYSDOT approval and may be subject to peak period restrictions, resulting in the metering of traffic exiting the site in favor of through traffic flow on Route 52.

With completion of improvements proposed for the Marketplace with either easterly access road alignment, potential traffic impacts will have been mitigated to the maximum extent practicable.

g. Noise and Air Quality

Existing Conditions - Noise

Introduction

Existing and future noise levels at and in the vicinity of the Marketplace project site were examined in the Draft EIS to assess the potential noise effects that would be introduced by the project. Relating to the development of the Access Road across the DOT Parcel, noise associated with project-generated traffic was evaluated as well as the possibility of increased noise exposure from existing highway activity at certain locations due to the clearing and grading of the site.

The Draft EIS noise analysis indicated that the residences along Brookside Avenue (immediately northeast of the DOT Parcel) are within the 65 dBA contour lines of Stewart International Airport and are also the locations closest to highway noise generated by I-84.¹⁰

NYSDEC guidelines consider a 6 dBA increase in noise levels as an impact. NYSDOT defines an area impacted if the noise level is approaching or greater than 66 dBA, or if the noise level under the Build Condition results in a 6 dBA or greater increase in ambient noise level as a result of the project. The Town of Newburgh does not directly address traffic noise limits. Chapter 125, Noise and Illumination Control, of the Town Code sets a daytime limit of 65 dBA (8 AM to 10 PM). However, the section specifically exempts noise from motor vehicles on public or private roads.

Existing Ambient Noise

Noise monitoring locations were chosen in consultation with the engineering consultants to the Town of Newburgh Planning Board to coincide with areas most likely to be affected by the Marketplace project. Existing noise levels were collected at eight locations in the site vicinity. Monitoring locations relevant to the DOT Parcel were:

- Site 1: 100 feet north of I-84, centrally located along Route 84 frontage
- Site 2: Brookside Avenue cul-de-sac
- Site 6: Brookside Avenue, 400 feet north of I-84

Figure 11 shows these receptor locations, identified respectively as D1, D2 and D6.

¹⁰Noise Data Resource Book for Stewart Air National Guard Base. New York Air National Guard. March 2005.

To accurately predict the effects on ambient noise levels throughout the day, two separate noise analysis periods were chosen. Noise data was collected for the first analysis period when background noise levels are highest, and therefore the cumulative noise levels after completion of the project could be expected to be at a maximum. The second analysis period was chosen to measure background noise when it is low, and therefore the net effects of the proposed project (i.e., the noise increment over the no build condition) could be expected to be greatest – this would also correspond to the period when the Town's noise performance standards are most stringent.

The weekday PM peak hour between 4:00 and 6:00 was chosen to represent the first analysis period. The second analysis period was on a weekday between the hours of 9:00 PM and 12:00 Midnight.

Table V-4 Existing Ambient Noise Levels (dBA) - Peak Period (4 - 6 pm)						
Location	L_{eq}	L_{max}	L_{min}	L₅	L₁₀	L₅₀
Site 1: I-84 (D1)	66.5	76.6	55.2	72.8	71.0	62.5
Site 2: Brookside #1 (D2)	56.2	62.2	49.7	61.	59.9	54.1
Site 6: Brookside #2 (D6)	52.9	64.8	45.6	59.6	56.4	47.8
Existing Ambient Noise Levels (dBA) - Overnight Period (9 pm - 12 midnight)						
Site 1: I-84 (D1)	63.1	75.4	54.2	71.4	69.3	60.5
Site 2: Brookside #1 (D2)	52.2	59.2	47.2	58.6	57.5	52.0
Site 6: Brookside #2 (D6)	49.9	61.9	42.0	56.0	53.8	44.5
Source: Draft EIS for The Marketplace at Newburgh, April 4, 2006. Tables 3.8-4a and 3.8-4b.						

On Brookside Avenue, at a location 200 feet from I-84 (Site D2), the L_{eq} levels were 56.2 dBA (daytime). At a location 400 feet from I-84 (Site D6), levels were 52.9 dBA. These values compare to the L_{eq} of 66.5 at Site D1, just 100 feet from I-84. Based on these measurements, the highway noise levels drop off as the distance increases from the highway at a rate of approximately 3.3 dBA when doubling the distance from 200 feet to 400 feet. This measured result corresponds to what would be expected, as discussed above.

Potential Impacts - Noise

Traffic noise is a relatively constant noise source and is primarily determined by the volume of traffic, the types of vehicles, and the speed at which these vehicles are traveling. Since it is a relatively constant and not a sporadic noise, the best noise descriptor is the average noise level, or L_{eq}.

A noise assessment was conducted and presented in the Draft EIS for the Marketplace, which evaluated the potential for traffic noise impacts on the existing roadways based on the projected increase in traffic between the No Build and the Build conditions. The study concluded that no significant adverse noise impacts would result for the projected increases in traffic on the existing roadway network. In addition, the study explained that changes in tree cover resulting from clearing for development would have negligible effect on ambient noise levels.

Additional analysis was conducted to quantify the noise levels expected on the new site access roadways. Relative to the DOT Parcel, the new Access Road from NYS Route 52 would carry vehicles where none currently exist and close to existing residences near the end of Brookside Avenue. A number of factors were considered which could effect future noise levels -- the number of cars and trucks, the speed of these vehicles, the distance to the nearest sensitive receptor, and any physical barriers between the new roads and the sensitive receptors.

As shown in the traffic study, the worst-case period for traffic is the Saturday peak hour, when approximately 800 new vehicles would be accessing the site to and from Route 52 via the proposed Access Road. The noise study identified that potential noise effects would be concentrated at the residences along Brookside Avenue represented by monitoring Site D6. (It was noted that the other location along Brookside (Site D2) would become part of the project and therefore would have no sensitive receptor in the future.

The noise study in the Draft EIS also evaluated potential noise from truck traffic on the proposed Access Road and demonstrated that the project-generated peak traffic volume would constitute the worst case condition with regard to vehicle noise on the new Access Road. The noise study projected that the changes in noise level within 50 feet of the new Access Road would be negligible, and within the Town noise standards. The nearest residences are influenced by highway noise from I-84 (L_{eq} levels at 56.2 dBA measured at Site D2). At the worst-case locations immediately adjacent to the new Access Road there would be noise levels of approximately 58.5 dBA, a 2.3 dBA increase which is barely perceptible. Because the Brookside residences represent the worst-case location for the Access Road, the study also concluded that there would be no significant noise impacts at the residences along Wintergreen Avenue, or the other nearby roadways.

Impacts of Alternative Access Road Alignments

In response to public concerns raised about the potential increased noise from the easterly access road presented in the Draft EIS, the Applicant modified the project proposal to relocate the Access Road onto the DOT Parcel in the Final EIS. A supplemental noise analysis was conducted subsequent to the SEQRA review to provide quantitative data for the noise levels generated by traffic on the road alignment in the Draft EIS versus the road alignment in the Final EIS. The supplemental report is provided in Appendix E, wherein the modeled roadway segment on WBIA land is identified as Road A and the segment on the DOT Parcel is identified as Road B.

The noise analysis assessed the relative differences in noise contributions of the two road alignments to the ambient noise environment at three sensitive receptor locations north of the DOT Parcel (essentially in the backyards of two houses on Brookside Avenue and one house on Wintergreen Avenue). Figure 11 shows the residential receptor locations, identified as N1, N2 and N3. The noise levels were assessed using the FHWA and NYSDOT-approved Traffic Noise Model methodology. Traffic data from the Marketplace Final EIS, supplemented with NYSDOT traffic data for Orange County, were used to predict the traffic noise contribution at the three prediction sites.

The noise contribution from traffic on the two road alignments varied depending on the prediction location as can be seen in the table below. The traffic noise contribution without the project (No Build) has been included for reference.

Table V-5 Traffic Noise Contribution (dBA)			
Location	No Build	Road on DOT Parcel	Road on WBIA Lands
N1	50	50	51
N2	52	53	56
N3	57	58	62

Source: Project Memorandum: "Supplemental Air Quality and Noise Analyses Marketplace at Newburgh", by Kenneth J. Skipka, CCM, RTP Environmental Associates, Inc., Westbury, NY. December 14, 2007.

Location N1 is furthest from either proposed Access Road. Consequently, differences experienced at this location in traffic noise from either road alignment are minimal and easily overshadowed by traffic noise from I-84. Location N3 has the highest noise level as well as the greatest difference (4 dBA) between the Access Road alternatives. Traffic noise dominates the noise environment at this location. (Location N3 is in the vicinity of noise monitoring Site D2 from the Marketplace EIS, where a noise measurement of 56.2 was recorded. The predicted No Build differed by 1 dBA from the measured noise level and is considered in excellent agreement.)

Neither of the alternative road alignments would result in noise levels approaching the NYSDOT design noise level of 66 dBA, nor would result in an increase in ambient noise levels of 6 dBA or greater (NYSDEC threshold). In conclusion, neither of the proposed access roadways is expected to result in a noise impact. The supplemental analysis concluded, however, that the road noise from the Access Road over the DOT Parcel is expected to be lower than from the alignment closer to the residences by 1 dBA to 4 dBA at the nearest residential receptors.

Proposed Mitigation - Noise

As described above, relocation of the Access Road to the DOT Parcel was in part a response to a significant level of concern about potential noise impacts of the initially proposed alignment on WBIA land, raised by residents of the adjacent neighborhoods. While the predicted noise levels after development of the proposed road would fall below the NYSDOT design noise level of 66 dBA and below the Town of Newburgh daytime noise level limits of 65 dBA, the Applicant proposes to construct a solid fence along a section of the Access Road between Route 52 and a point 100 feet west of Brookside Avenue (east of the DOT Parcel) to further reduce noise to the adjacent neighborhood.

The analysis demonstrates that Alternative A has slightly less noise impacts than Alternative B. As the future noise levels are not projected to significantly increase from existing conditions given the anticipated mitigation measures inherent in the project as proposed, no further noise mitigation is proposed.

Existing Conditions - Air Quality

Existing and projected air quality levels at and in the vicinity of the Marketplace project site were examined in the Draft EIS to assess the potential air quality effects that would be introduced by the project, including the development of the Access Road across the DOT Parcel. The EIS summarized the available 2004 data for New York State Air Quality Control Region 3 from air quality monitoring stations located closest to the project site. Based upon the published data, all

criteria contaminants achieve acceptable levels in Orange County. Ozone concentrations in the project area were determined in the air quality analysis to not be meaningfully affected by the proposed project. All the intersections in the traffic study were screened for carbon monoxide (CO). Three worst case intersections were evaluated for microscale CO air quality levels, using the NYSDOT air quality evaluation methodology, including NYS Route 300 and NYS Route 52 intersection. All of the measured CO concentrations were found to be well within the National Ambient Air Quality Standards thresholds that have been adopted by New York State.

Air quality dispersion modeling was performed for mobile sources of fine particulate matter (PM₁₀ and PM_{2.5}) for receptors located at the NYS Route 300/NYS Route 52 intersection. Vehicular emission rates of particulate were obtained from the EPA's MOBILE6.2 model. The emission factors were input to the EPA CAL3QHCR dispersion model in order to predict concentrations of PM₁₀ and PM_{2.5} at downwind receptors. Traffic information required for the model was obtained from the Marketplace traffic study. The results of the dispersion modeling for each of the modeled locations indicate that the predicted concentrations are well below the NAAQS for both PM₁₀ and PM_{2.5}.

Potential Impacts - Air Quality

Air quality impacts associated with the proposed project were assessed to determine whether the project would have an adverse effect on the surrounding environs. The air quality analysis in the Draft EIS concluded that the growth in traffic due to the proposed project would not significantly affect ambient CO levels nor increase airborne particulate matter. Based on the EIS analysis, there is no significant impact to air quality anticipated as a result of the project.

A supplemental air quality analysis was conducted subsequent to the SEQRA review to provide quantitative data for the air quality levels generated by traffic on the easterly access road to Route 52 relative to the most sensitive receptors in the area. The study analyzed effects of the residences to the north of the project site (on the south side of Brookside Avenue and on the south side of Wintergreen Avenue), comparing Road A on lands of WBIA to Road B on the DOT Parcel. The following summarizes that analysis.

A microscale air dispersion modeling analysis was conducted to compare ambient air CO and both PM₁₀ and PM_{2.5} impacts from the two alternative alignments for Road A and Road B at three nearby locations using CAL3QHC and MOBILE 6.2. The impact locations are depicted in Figure 11, identified as N1, N2 and N3. Modeled impacts at the three locations are presented in Appendix E, following the modeling procedures and methodology presented in the EIS.

The modeling analysis provides quantitative results indicating that ambient air quality impacts from access Road B (on the DOT Parcel) would be equal to or less than the ambient air quality impacts from Road A at the three residential locations where ambient air quality was predicted.

**Table V-6
Predicted 1-Hour and 8-Hour Carbon Monoxide Concentrations (ppm)
at NYS Route 52 / Fifth Avenue Access Road**

Receptor Location	Maximum 1-Hour CO Impacts			1-Hour NAAQS Standard
	1	2	3	
Road A on Lands of WBIA	0.1	0.3	0.9	35
Road B on DOT Parcel	0.1	0.1	0.7	35
				8-Hour NAAQS Standard
Road A on Lands of WBIA	0.07	0.21	0.63	9
Road B on DOT Parcel	0.07	0.07	0.49	9

Source: Project Memorandum: "Supplemental Air Quality and Noise Analyses Marketplace at Newburgh", by Kenneth J. Skipka, CCM, RTP Environmental Associates, Inc., Westbury, NY. December 14, 2007.

Notes: All values are in parts per million (ppm).

- Impacts represent Build scenario (2008).
- Background CO values were not included in the analysis. NYSDOT Environmental Procedures Manual 1-hr background value is 2.2 ppm.
- 8-hour maximum impact was computed by multiplying the 1-hour impact by 0.7 (NYSDOT Environmental Procedures Manual).
- NAAQS - National Ambient Air Quality Standards.
- See Figure 11 for receptor location details

**Table V-7
Predicted 24-Hour and Annual Particulate Matter Concentrations
at NYS Route 52 / Fifth Avenue Access Road**

Receptor Location	Project 24-Hour PM ₁₀ Maximum Impact			Project Annual PM ₁₀ Maximum Impact			Project 24-Hour PM ₁₀ N/SAAQS Standard	Project Annual PM ₁₀ N/SAAQS Standard
	1	2	3	1	2	3		
Road A on Lands of WBIA	0.4	0.04	0.8	0.08	0.08	0.16	150	50
Road B on DOT Parcel	0	0	0.4	0	0	0.08	150	50
Receptor Location	Project 24-Hour PM _{2.5} Maximum Impact			Project Annual PM _{2.5} Maximum Impact			Project 24-Hour PM _{2.5} N/SAAQS Standard*	Project Annual PM _{2.5} N/SAAQS Standard
	1	2	3	1	2	3		
Road A on Lands of WBIA	0	0.4	0.4	0	0.08	0.08	35	15
Road B on DOT Parcel	0	0	0	0	0	0	35	15

Source: Project Memorandum: "Supplemental Air Quality and Noise Analyses Marketplace at Newburgh", by Kenneth J. Skipka, CCM, RTP Environmental Associates, Inc., Westbury, NY. December 14, 2007.

Notes:

- All values are in micrograms per cubic meter.
- Impacts represent Build scenario (2008).
- 1-hour modeled impacts were multiplied by persistence factors to calculate the 24-hour and annual PM10 and PM2.5 impacts. A value of 0.4 was used for the 24-hour persistence factor and a value of 0.08 was used for the annual persistence factor. Persistence values obtained from "New York State Department of Transportation Project Level Particulate Matter Analysis, Final Policy" dated September 2004.
- N/SAAQS - National and State Ambient Air Quality Standards.
- See Figure 11 for receptor location details.
- * The 24-hour PM2.5 NAAQS was reduced by the USEPA to 35 micrograms per cubic meter (December 2006).
- ** Due to a lack of evidence linking health problems to long-term exposure to coarse particulate matter pollution, EPA revoked the annual PM10 standard (effective December 2006), however the NYSDEC has not yet revoked this standard.

Proposed Mitigation - Air Quality

The analysis demonstrates that Alternative A has slightly less air quality impacts than Alternative B. As the future air quality is not projected to significantly diminish from existing conditions given the anticipated mitigation measures inherent in the project as proposed, no further air quality mitigation is proposed.

h. Visual Resources

Existing Conditions and Potential Impacts

While the Marketplace SEQRA review required that the Applicant identify existing conditions relative to visual resources and address the potential visual impacts of the entire Marketplace project, the NYSDOT requested that an assessment be prepared to address only the visual impacts relating to the proposed Access Road over the DOT Parcel compared to the road built over lands of WBIA. Accordingly, a Visual Impact Assessment (VIA) was prepared and is included herein as Appendix F evaluating existing conditions of the DOT Parcel and its vicinity and presenting an analysis of post-development views of the project site for the two alignment

alternatives. The VIA demonstrates that the visibility of portions of either alternative road alignment from I-84 cannot be avoided due to the existing topography and nature of the vegetative cover. However, the VIA demonstrates that the Alternative B roadway would be less visible from I-84 than Alternative A when leaves are off the trees, while use of the DOT Parcel for the Access Road would avoid the necessity of constructing a 70+ foot high retaining wall to the west of the DOT Parcel. Studies in the VIA (cross section C-C in drawing 2B and Photosim 8B) show that a portion of the upper part of this wall at its tallest point would potentially be visible year around from I-84 westbound.

Cross-sections and comparison of pre- and post-development photo-simulations included in the VIA demonstrate that construction of either access alternative would result in a change in the viewshed of I-84 associated with tree clearing, grading and construction of the roadway approximately parallel to the highway. The change in the view would be immediate, gradually diminishing over several years as the newly planted vegetation establishes and grows. The VIA shows comparative post-development photo-simulations of building the Access Road on the DOT Parcel versus building the road on the Applicant's land. Refer to Appendix F for additional descriptions and the illustrations.

Proposed Mitigation

Mitigation measures incorporated into the Alternative A plan preferred by the Town of Newburgh include naturalizing landscaping that would provide for a blending of the new Access Road embankment into the natural environment and exclusion of street lighting on the portion of the road within the DOT Parcel.

The Landscape Design plan for Alternative A initially submitted to the NYSDOT with the VIA in July 2008 has been updated to include additional planting along the south side of the proposed Access Road in response to comments received from FHWA and NYSDOT. A suggestion to add planting on the northerly embankment of I-84, within the highway right-of-way, was evaluated including a site visit. As shown in the photographs in Figure 12, the existing edge of right-of-way has considerable slope (2:1). Tree planting in this area would not be feasible. While shrubs could be planted along the bank in an attempt to provide additional screening, the Applicant believes such planting would not be effective for two reasons: first, as shown, the embankment is periodically mowed from top to bottom and as a result, any plantings in this area would be cut during maintenance operations; and second, planting shrubs even as close as 10 feet from the edge of the paved shoulder and guiderail would place the plant far below eye level of vehicle occupants given the slope of the embankment. Therefore, additional naturalizing plants have been added to the proposed plan near the Access Road.

The Alternative A plan includes landscaping that would provide revegetation of the disturbed areas and roadway embankments within the DOT Parcel immediately after construction and eventually restore the natural environment. The Alternative B plan shows conventional street tree planting that would also provide revegetation of the disturbed areas and roadway embankments with lawn grass immediately after construction and eventually a conventional streetscape environment. The Alternative B plan, which is the plan from the DEIS, was designed with a typical street tree planting style. This is the style of planting preferred by the applicant for an access road into the Marketplace, as it matches the planting within the commercial portion of the project. By contrast, a naturalistic approach was developed for Alternative A specifically as a visual mitigation measure.

The Landscape Design plans for both Alternative A and Alternative B accompany this document in the rear pocket.

i. Historical / Cultural Resources

A Phase 1 cultural resources investigation of the Marketplace site was conducted in accordance with the NYS Office of Parks, Recreation and Historic Preservation (OPRHP) guidelines and was included in the Final EIS for the Marketplace.

The Phase 1A site assessment evaluated the potential of the study area for containing Native and/or European American era cultural remains based on known settlement patterns, documented cultural resources in the immediate vicinity of the project, and a reconnaissance of the property to identify areas of greater and lesser archaeological sensitivity. The Phase 1A study also evaluated standing structures in the project area with regard to eligibility for inclusion on the State or National Registers of Historic Places, and no such structures were identified.

Additionally, a Phase 1B identification survey was carried out to determine whether buried cultural remains could be found in the area of potential impact. The survey investigated the study areas by means of screening hand-dug shovel tests. No evidence of Native American activity was encountered in the 1179 shovel tests executed. No European American era items were encountered in the area surrounding the DOT Parcel.

Based on these investigations, a Phase I report was completed and included in the Final EIS, and was forwarded to the OPRHP for review. On November 13, 2006, the Applicant received a determination from OPRHP that the proposed project would have no impact on cultural resources.

Subsequent to the initial Phase 1 cultural resources assessments of the Marketplace site, the Applicant commissioned further archaeological investigation specifically of the DOT Parcel, and an archaeologist's report was prepared and submitted to OPRHP. On September 21, 2007, OPRHP issued its determination that the proposed Access Road development on the DOT Parcel would have no impact on cultural resources. This letter is included in Appendix B.

j. Construction Impacts

The Draft EIS for the Marketplace project addressed the primary potential short-term impacts associated with construction of the project. Specifically, such impacts relate to erosion and sedimentation during earthmoving operations, construction traffic on local roads, and noise and air quality effects from earthmoving and construction equipment. (Refer to Table IV-1 for quantitative impact comparisons.)

Erosion and Sedimentation Control

As previously described, an approved erosion and sediment control plan must be implemented for either access road alignment to minimize the potential for on-site and off-site soil erosion/sedimentation impacts during construction. While the area of soil disturbance would be greater for Alternative A than for Alternative B (11.55 acres versus 6.83 acres), as well as total volume of earthwork (approximately 150,000 cubic yards ("CY") versus 96,000 CY), either plan would necessitate erosion control measures designed for the specific conditions of the respective plan and implemented in accordance with State permit requirements. The plan would include site specific control measures for protection of resources on and in the vicinity of the

DOT Parcel, including the Quassaic Creek corridor. Erosion control devices would need to be installed prior to any site disturbance and maintained for the duration of the construction period until exposed soils are stabilized either by pavement or by vegetative controls. The erosion control plan would specify control measures required by New York State guidelines, including inspection and monitoring schedules, construction staging, stabilization within specified time periods, and temporary erosion and sedimentation control measures.

Construction Traffic

The Draft EIS identified primary routes for construction truck traffic to be Route 300 and Route 52, with the Route 300 construction access used most. Construction vehicles and materials deliveries would periodically enter and exit the property via the subject easterly access road, as well as the other project construction access roads.

Larger construction vehicles would arrive at the beginning of the construction period, including trucks carrying and delivering equipment and supplies. The heaviest volume of construction traffic is expected to occur at the beginning of the construction as site clearing and grading operations are conducted, and when paving and building materials are transported to the site.

Daily trips of construction workers would also occur in passenger or small truck vehicles. Construction workers would typically arrive and depart the site prior to the peak hours of commuter traffic in the area. Trucks delivering construction supplies would also generally arrive and leave the site at off-peak times during the day. Also, construction would occur in sequential phases to avoid conflicts with traffic on the local network. Overall, construction traffic would have temporary minor effects on traffic on the local network.

Construction Noise

The Draft EIS indicates that ambient daytime noise levels would increase in the immediate vicinity of the site during project construction. Neighboring residential properties would be subjected to short-term increases in noise during construction. The EIS identifies various measures that are intended to assure that all construction related noise is avoided or minimized to the maximum extent practicable in accordance with the applicable Town of Newburgh regulations.

Temporary increases in area noise would result from earth moving equipment used to excavate and transport earth material for construction of the Access Road and stormwater basins in the study area for either alternative road alignment. Alternative A would necessitate excavation of an estimated 55,000 cubic yards ("CY") of earth material primarily associated with construction of the proposed stormwater management basins on the west side of Quassaic Creek (on and off the DOT Parcel). Assuming excavation work would occur simultaneously with filling operations, some 95,000 CY of fill material would also be imported to this area via truck loads from other areas of the Marketplace site to build the road. In comparison, an estimated 96,000 CY of earth material would be excavated west of the Creek for construction of the Alternative B stormwater management basins, access road and associated retaining wall (off the DOT Parcel) and some 63,000 CY of that material exported via truck loads to other areas of the Marketplace site. Utilizing these earthwork numbers to relate to the duration of construction noise associated with access road building in the study area, there would be no significant difference in the duration of the highest levels of construction noise between either alternative (95,000 CY versus 96,000 CY). Alternative B, however, would require somewhat longer (undetermined) construction time to build the large retaining wall along the roadway (estimated 50,000 square foot face) and the

greater paved surface (0.66 acre). As demonstrated by the noise analysis presented earlier, noise levels perceived at the nearest sensitive receptors (the residential neighborhoods to the north) would be noticeably greater for construction of Alternative B than for Alternative A due to the proximity of the construction activity to the existing homes.

Air Quality During Construction

As described in the Draft EIS, construction activities associated with the proposed Access Road may have a short-term impact on local air quality through generation of fugitive or airborne dust. Fugitive dust is generated during ground clearing and excavation activities, and generally when soils are exposed during dry periods. Throughout the construction period, passage of delivery trucks and other vehicles over temporary dirt roads and other exposed soil surfaces would generate fugitive dust. Residences closest to the proposed areas of grading would have the greatest potential to be impacted by dust, although this impact would be ameliorated by the intervening wooded buffer created by locating the Access Road on the DOT Parcel rather than WBIA land.

Construction related air emissions would also affect local air quality resulting from the use of diesel fuel in construction vehicles and equipment. Diesel engines that are properly maintained are more fuel efficient than gasoline engines, however, they are a source of some air pollutants.

Construction related impacts would vary with the proximity of specific activities to the local receptors, the phase of construction underway, and the type and amount of construction equipment being used. To address potential air quality impacts from construction related activities, mitigation measures are proposed in the EIS for specific construction activities to minimize the overall effects on the air quality. In particular, the EIS identifies dust control measures to be implemented during project construction.

C. Indirect / Secondary / Cumulative Impacts

Either alignment of the access road will facilitate full use of the Marketplace project as a regional retail destination. The various cumulative aspects of this Action, therefore, have been encompassed in the EIS impact evaluations prepared and reviewed during the SEQRA review process. In particular, the Access Road over either the DOT Parcel or lands of WBIA would facilitate new traffic flow to and from Route 52 in the vicinity of I-84 Exit 8. As previously discussed, the effects of this traffic have been thoroughly evaluated and mitigation measures have been proposed and approved to avoid significant adverse impacts on traffic and transportation in the local area. The Marketplace EIS also identifies and addresses indirect / secondary impacts relative to economic benefits, soil erosion and sedimentation, surface drainage patterns, wetland species and habitat, air quality, noise, and induced growth of retail development in the local area. No significant, unmitigated, adverse, cumulative impact has been identified that would be attributed to the proposed Action.

VI . PUBLIC INVOLVEMENT

A public comment period was held relating to the Proposed Action. Summaries of comments and responses to the public comments received during the comment period are provided below.

A. Record of Public Involvement

Report Circulation - The Draft Design Report along with a Notice of Public Informational Meeting / Notice of Availability of Draft Design Report were circulated to advisory agencies and made available for public review at the Newburgh Free Library, Town of Newburgh Town Hall and the NYSDOT Regional Office in Poughkeepsie. A list of the agencies who received a report is included in Appendix G of this report. A news release was published in the *Mid Hudson News* and the *Sentinel* on May 11, 2009, in *The Photo News* on May 21, and posted on the NYSDOT web site on May 11. The release is also included in Appendix G.

Public Information Meeting - A Public Informational Meeting was held on May 28, 2009 at 7:30 PM at the Quality Inn in the Town of Newburgh. A project presentation was made and the public was afforded the opportunity to ask questions and make comments. A stenographer was present at the meeting and the transcript of the meeting is in Appendix G of this report. Representatives from the NYSDOT were available before and after the presentation to answer questions from the public.

Summary and Analysis of Comments Received - The distribution of the Design Report and the Public Informational Meeting did not elicit many responses. NYSDOT received two written comment letters and the Public Meeting was only attended by five members of the public. These letters are included in Appendix G.

Summary of the written comments:

- New York State Police - The proposal over State Lands would have little to no impact on State Police patrols or operations. - No response from NYSDOT required.
- Mr. John Gebhards - The use proposed is counter to the intent of the Highway Beautification Act. Prefers the property remain in its natural state. - Comment acknowledged.

Summary of the Public Meeting Comments:

- Ms. Eleanor Doderer - Questions about the easement and Fee ownership of the different pieces of property and size of the retaining wall. - Questions were answered at the Informational Meeting. No response from NYSDOT required.
- Mr. John Gebhards - Questions about the conservation easements, future water trail along the Quassiac Creek and impact to the viewshed from I-84. - NYSDOT responded that there has not been a determination on who would hold the potential conservation easements and acknowledged his comments on the trail and viewshed.

VII. REFERENCES

In addition to the materials referenced in footnotes herein, the following materials were referenced for this document.

Divney Tung Schwalbe LLP, "Storm Water Management Report, The Marketplace at Newburgh" [part of the SWPPP], last revised April 2007.

-----, "Stormwater Pollution Prevention Plan, The Marketplace at Newburgh," last revised March 2008.

-----, "Erosion Control Report, The Marketplace at Newburgh" [part of the SWPPP], last revised March 2008.

New York State Coastal Management Program, Coastal Area Map Number 34, January 1981.

New York State Department of Environmental Conservation, Adopted Findings Statement, State Environmental Quality Review, The Marketplace at Newburgh, adopted August 1, 2008.

Tectonic Engineering & Surveying Consultants PC, "Results of Sedimentation Study," Letter report to Wilder Balter Partners, Inc., November 14, 2006.

Tim Miller Associates, Inc., Phase 1 Environmental Site Assessment, Market Place Property, [proprietary study for Wilder Balter Partners, Inc.], May 26, 2005.

-----, Draft Environmental Impact Statement, The Marketplace at Newburgh, April 4, 2006. [accessible at: <http://www.timmillerassociates.com/publicreview/marketplace/index.html>]

-----, Final Environmental Impact Statement, The Marketplace at Newburgh, March 15, 2007. [accessible at: <http://www.timmillerassociates.com/publicreview/marketplace/index.html>]

-----, Visual Impact Assessment for Proposed Easterly Access Road over Land Owned by New York State Associated with The Marketplace at Newburgh, March 16, 2009.

Town of Newburgh Planning Board, Amended Findings Statement, State Environmental Quality Review Act, The Marketplace at Newburgh, March 6, 2008.

-----, Findings Statement, State Environmental Quality Review Act, The Marketplace at Newburgh, adopted May 3, 2007. [accessible at: <http://www.timmillerassociates.com/publicreview/marketplace/index.html>]

-----, Resolution of Approval Final Site Plan ARB for Wilder Balter Partners, Inc. and WB Interchange Associates, LLC [The Marketplace], June 19, 2008.

-----, Second Amended Findings Statement, State Environmental Quality Review Act, The Marketplace at Newburgh, date of Second Amendment to Findings by Town of Newburgh Planning Board, June 19, 2008.