

3.5 NATURAL RESOURCES COMMENTS AND RESPONSES

Comment 3.5-1 (Ms. Lynn Eckhart, Public Hearing, July 14, 2008): Also...I think it is in the DEIS and I apologize for not having read it as carefully like I should, but the size of trees and shrubs. I would be curious to know...if the boards will show whether the size of the trees as they're going to be in five years, ten years, et cetera, et cetera. Also, a follow up on that, will there be a bond of some sort or something so that the landscaping is properly taken care of because we all know all the landscaping ends up looking.

Response 3.5-1: Trees and shrubs will be planted as noted on the Layout and Landscape Plans (Drawing Nos. SP-2.1 and SP-2.2) included with this FEIS. Sizes of trees and shrubs at the time of planting will be noted on the final plans. Typically, the project renderings depict the proposed trees and shrubs at the heights they would be between five and ten years after planting. Details of the procedures and requirements for planting trees and shrubs are documented on Drawing D-2 also included with this FEIS.

The 3-D simulations in Appendix C herein show the site as it will look once completed. Neither State nor local law nor the Scope adopted by the Lead Agency, after soliciting and considering comments from the public, require a photo simulation or rendering of the proposed project at a predetermined point in the future.

The Applicant is agreeable to providing a guarantee to the Town that any failed plantings will be replaced in kind.

Comment 3.5-2 (AKRF, Letter #4, September 29, 2008): The total man-hours spent conducting the ecological site assessment is provided on page 3.5-2 (19.5 man-hours). In combination with the wetland investigation work described on page 3.5-1, this level of effort is reasonable and adequate. The Planning Board should be aware that more time spent inspecting the site for plants and animals in all seasons is likely to add to the list of species present onsite.

Response 3.5-2: Comment noted. The DEIS presents not only those species observed on the project site but those that could reasonably be expected to utilize the project site. This approach acknowledges that, regardless of the amount of time spent on the project site identifying flora and fauna, there is always a possibility that other species will go unobserved. The approach taken in the DEIS results in an assessment of project related impacts to wildlife that is based on a broad list of species; those observed and those expected.

Comment 3.5-3 (AKRF, Letter #4, September 29, 2008): One correspondence from the USFWS (Niver 10.12.06) indicates their desire for a Federal review of the project in light of the potential for endangered species (presumably bog turtle and Indiana bat). Subsequent correspondence/findings from the Service would benefit the Town's review and should be included in the FEIS. Supplemental surveys for potentially present threatened or endangered species may be required under the direction of NYSDEC and USFWS and may focus on use of adjacent wetlands (immediately east of site) by bog turtle (*Clemmys muhlenbergii*) or spotted turtle (*Clemmys guttata*).

Response 3.5-3: *The letter referenced in the comment was a form letter from the U.S. Fish and Wildlife Service (USFWS) documenting their inability to respond in a timely manner to a request from Tim Miller Associates, Inc. (TMA) for information on federally protected species on or in the vicinity of the project site. TMA submitted the form letter requesting that, even with the noted delay of three to four months, a review of the agency's databases for records of protected species that could be effected by the proposed development was desired. The USFWS never responded to that request.*

*Another option to identify protected species is to use the USFWS website, which documents Federally-listed species "known or likely" to occur by County. In Putnam County, at the time of the writing of the DEIS, the list included three species: Bog turtle (*Clemmys muhlenbergii* - Threatened), Indiana bat (*Myotis sodalis* - Endangered), and the shortnose sturgeon (*Acipenser brevirostrum* - Endangered). The sturgeon is only present in the Hudson River.*

Habitat on the project site was assessed for its potential to support the bog turtle and Indiana bat. The latter is only present during summer months in Putnam County. As documented in the DEIS, habitat requirements are not met for the bog turtle and no corridor connections off-site to potential habitat elsewhere in the area exist. While some potential roosting habitat and foraging habitat does exist, the site may nevertheless have a low probability of supporting Indiana bats maternity colonies due to its location further eastward than any known roosting areas.

*Since the generation of the DEIS, the USFWS has added three species to the Putnam County list; bald eagle (*Haliaeetus leucocephalus*), Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) and New England cottontail (*Sylvilagus transitionalis*). Refer to Appendix E, Correspondence, for a copy of the list. None of the newly listed species are currently protected at the federal level under the Endangered Species Act (ESA).*

The USFWS has removed the bald eagle from the Federal list of threatened and endangered species due to a dramatic rebound in its breeding population while under protection of the ESA. It is estimated that the breeding population in the lower 48 states is over 9,700 nesting pairs of eagles, up from a low of 417 pairs documented in 1963. Removal from the Federal List of Endangered and Threatened Wildlife and Plants became effective August 8, 2007. While the eagle will continue to be protected under the Bald and Golden Eagle Protection Act and the Migratory Bird Act, and the USFWS generated the National Bald Eagle Management Guidelines (the Guidelines) dated May 2007 (copies available on the USFWS website), protection measures focus on nest trees. There are no eagle nest trees on the project site and none have been identified by the NYSDEC in the vicinity of the project.

The remaining two species have been added to the list as a "candidate" species. Per the USFWS website, "[c]andidate species are plants and animals for which the U.S. Fish and Wildlife Service (FWS) has sufficient information on their biological status and threats to propose them as endangered or threatened under the Endangered Species Act (ESA), but for which development of a proposed listing regulation is precluded by other higher priority listing activities."

The Atlantic sturgeon, similar to the shortnose, occurs primarily in the Hudson River; no sturgeon habitat exists on or near the project site.

The USFWS identifies New England cottontail habitat as "... early successional forests, often called thickets, with thick and tangled vegetation. These young forests are generally less than 25 years old. Once large trees grow in a stand, the shrub layer tends to thin, creating habitat that the New England cottontail no longer finds suitable." The site is covered by either mown grass fields or second growth forest. While shrubs can be found in the ecotones between these habitat types, it does not represent the late successional field or early successional forest habitat preferred by this species.

Comment 3.5-4 (AKRF, Letter #4, September 29, 2008): The potential for grassland passerines (species such as meadowlark, bluebird) and other locally less common species should be discussed in the FEIS. Preservation of portions of the site (as is proposed in the SSTS area) in infrequently-mowed grasslands is an appropriate impact minimization measure.

Response 3.5-4: *According to the Massachusetts Audubon Society, "In the early 20th century, changes in agricultural technology, movement of farms to the west, and an increase in human population in the Northeast caused a decline in the quantity and quality of grasslands for wildlife. Populations of grassland birds adapted to agricultural landscapes are now diminishing as farmlands are left idle, revert to forests, or are replaced by housing and business developments...Because farmland has become fragmented, most remaining grasslands have become smaller and isolated and are no longer suitable for many species requiring large tracts of grassland...Bobolinks, eastern meadowlarks, and Savannah sparrows are reliant on the remaining hayfields and pastures for their survival."*¹

The three species noted in the previous paragraph and the eastern bluebird could use the open field habitats present on the project site although the fields are somewhat small for bobolink nesting. However, the value of the habitat for even these species has been and continues to be diminished or even eliminated because the fields are mown a few times a year. This disrupts or preclude efforts by these species to use the areas as nesting habitat. Other grassland passerines, including the vesper sparrow, grasshopper sparrow, and upland sandpiper, generally require larger open habitats than are available on the subject property.

As noted in the comment, the fields located outside of the development envelope (the SSTS area and the field in the northeastern most corner of the property) would continue to provide habitat similar to that currently present for those species that may utilize the area in the future.

Comment 3.5-5 (AKRF, Letter #4, September 29, 2008): Of the amphibians seen onsite (p. 3.5-9), the pickerel frog (*Rana palustris*) and four-toed salamander (*Hemidactylium scutatum*) are more sensitive to development than the others. The location of their occurrence onsite should be indicated with some specificity. The same is true for the NYS-listed "exploitably vulnerable" plants identified onsite (bloodroot, great blue lobelia, white turtlehead, red trillium). Measures to protect these resources may be appropriate.

Response 3.5-5: *The pickerel frog, an unprotected species at both the Federal and State levels, was observed within the western wetland in October of 2006. No mitigation*

¹ The Massachusetts Audubon Society website, http://www.massaudubon.org/Birds_and_Birding/grassland

measures to offset loss of the upland portion of this frog's on-site habitat (the wetland area will remain in its current state) is proposed.

The four-toed salamander, also unprotected by the Federal and State governments, was not observed on the project site; the asterisk next to this species name in the DEIS list indicating it was observed at the site was placed in error.

The bloodroot was observed in the woods located in southwest corner of the project site. While this area will be disturbed under the Proposed Action, similar habitat will continue to exist both on- and off-site.

Wetland A, located in the eastern end of the project site, is the location where the great blue lobelia, and the red trillium were observed. This habitat will remain undisturbed under the current development plan.

Finally, the white turtlehead was noted in Wetland B, which is located along the north western portion of the parcel. As with the habitat for the previous two herbaceous species, this habitat will remain undisturbed.

It is important to note that plant species designated as "exploitably vulnerable" are protected under 6NYCRR New Part 193, Protected Native Plants, and are defined in the state listing as, "...native plants likely to become threatened in the near future throughout all or a significant portion of their ranges within the state if casual factors continue unchecked [e.g. all orchids, most ferns]." New York State law protects state-listed plants existing on public lands. Right of protection of exploitably vulnerable species are conveyed by the State to the private land owner on which the species are present. With the consent of the land owner, it is not a violation "for any person, anywhere in the state, to pick, pluck, sever, remove, damage by the application of herbicides or defoliants, or carry away...any protected plant."

Comment 3.5-6 (AKRF, Letter #4, September 29, 2008): Table 3.5-7 and Drawings SP-2.1/2.2 are conceptual landscape plans only - however, the general mix of species listed on SP-2.1/2.2 is appropriate. Greater effort should be made to provide larger clusters of landscaped vegetation (tree/shrub) at 2 or 3 select locations interior to the site to provide a mix of planting densities. Also, the use of planted bio-retention cells in depressed islands in the interior of the parking areas is encouraged.

Response 3.5-6: *Larger clusters of landscaping have been incorporated in the plans within interior of site. In addition, planted bio-retention cells are incorporated in the proposed depressed parking islands. Refer to the plan set attached to this FEIS.*