FINAL ENVIRONMENTAL IMPACT STATEMENT
EAST GREENBUSH MARINA

Riverside Avenue Extension
24.95 Acre Parcel Situate on East Bank of Hudson River
Rensselaer County Tax Map No. 154-2-20
Town of East Greenbush
Rensselaer County, New York 12144

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August 6, 2009

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1. Comment Letter from the Chazen Companies dated October 22, 200

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3. Minutes of the Public Hearing held by the Town Board on October 8, 2008

4. Public Notice Number: NAN-2006-00394-WFI dated October 30, 2008 issued by the US Army Corps of Engineers, New York District, soliciting public comment through 12/1/08

5. Letter of IOTA Construction Corporation dated 11/26/08

6. Letter of United States Coast Guard, Lieutenant E.X. Munoz, received by the U.S. Army Corps of Engineers on November 28, 2008

7. Letter from New York State Office of Parks, Recreation and Historic Preservation, by Cynthia Blakemore, Historic Preservation Program Analyst dated December 10, 2008 to Heidi Firstencel, Army Corps of Engineers

8. Technical & Operational Guidance Series (TOGS) 5.1.9, issued by the New York State Department of Environmental Conservation, Division of Water, dated November 2004

9. Notice of Termination for Stormwater Discharge Authorized Under the SPDES General Permit For Construction

10. Building Permit Application to Construct marina dated 7/30/08

11. Letter of Joseph Cherubino dated August 7, 2008 denying building permit application

12. Application of East Greenbush Marina, LLC for a Variance to relieve Applicant from providing a Walkway along the shoreline, and for a Special Use Permit to authorize a Marina in a C-I District dated August 4, 2008

13. Notice of Public Hearing dated August 29, 2008 to Schedule Public Hearing on Variance and Special Use Permit Applications

14. Letter of Thomas Shepardson dated September 9, 2008

15. List of Permitted Uses in a C-I Zoning District

16. SPDES Permit Part III (B)(8) a through d

17. Archaeological Data Recovery Plan prepared by Edward V. Curtin, Ph.D July 2009

18. Letter from the United States Department of Commerce, National Oceanic and Atmospheric Administration, National Marine fisheries Service dated February 27, 2009

19. Letter dated January 7, 2009 from Sherry White, Tribal Historic Preservation Officer of the Stockbridge-Munsee Tribal Historic Preservation Office

EXECUTIVE SUMMARY

Based upon the comments received during the public review of the DEIS, Applicant has not made any changes to the Marina project plans. Negative comments were made by adjoining property owners, consisting of the owners and operators of bulk oil storage facilities and a scrap metal/junk yard. None of the comments made by these private entities identified any environmental impact, which had not already been fully identified and assessed in the DEIS. The New York State Office of Parks, Recreation and Historic Preservation (SHPO) also issued a negative comment that filling over the site without further studies would have an adverse effect on historic properties, citing the potential presence of Native American (Mahican) burial grounds. Applicant's consulting Archaeologist, Edward Curtin, has opined that in light of the absence of any burial ground evidence and the fact that Applicant's improvements will be constructed on fill, further archaeological exploration is not appropriate.

On February 26, 2009, Applicant met with representatives of SHPO, and Sherry White, Tribal Historic Preservation Officer for the Stockbridge-Munsee Band of the Mohican Indians to further discuss mitigation efforts to preserve the integrity of the site. Balancing all of the social, economic, and environmental factore, in order to mitigate any potential cultural resource impact to the fullest extent practicable, Archaeologist Curtin prepared an Archaeological Data Recovery Plan in July 2009 (see Appendix 17). Applicant will implement protocols consistent with the Data Recovery Plan during the course of project construction. Accordingly, to the fullest extent practicable, balancing the social, environmental and economic considerations of this project's development, the Data Recovery Plan addresses the project's potential impact on cultural resources, including any potential presence of Native American (Mahican) burial grounds. Moreover, before the applicant receives a section 401 Water Quality Certification permit from the State of New York Department of Environmental Conservation and a Section 10 Permit from the United States Army Corp of Engineers, those involved agencies are required to consult with SHPO relative to the Data Recovery Plan.

1.0 INTRODUCTION

This document is a Final Environmental Impact Statement (hereinafter referred to as the "FEIS") prepared in accord with the New York State Environmental Quality Review Act (hereinafter referred to as "SEQRA"), as set forth in Article 8 of the Environmental Conservation Law, and the regulations issued there under in 6 NYCRR Part 617.

Pursuant to 6 NYCRR 617.9 (b) (8), the Draft Environmental Impact Statement (hereinafter "DEIS") dated July 23, 2008, accepted by the Town Board, as Lead Agency, on September 13, 2008, is incorporated herein by reference.

Following acceptance of the DEIS, the Town Board held a public hearing on the DEIS on October 8, 2008 in accord with 6 NYCRR 617.9 (a) (4). The public comment period expired on October 22, 2008.

Comments were received at the public hearing and during the public comment period. As more fully set forth below, this FEIS includes all comments received, and the Applicant's responses thereto. As a result of the comments received and responses thereto, the Applicant has not changed the project, but has set forth more detailed plans for alternative uses of the site.

The project still consists of a full service marina facility, designed to provide recreational access to the Hudson River for all boaters who reside within the Town of East Greenbush, and the general public. The proposed Marina site is to be constructed on an unimproved 24.95-acre site (Rensselaer County Tax Map No. 154.02-20), located on the east bank of the Hudson River, Town of East Greenbush, County of Rensselaer, State of New York. On the east, the site has frontage along Riverside Avenue Extension, also known as American Oil Road. The Hess Oil Storage Facility, 367 American Oil Road, Rensselaer, New York 12144, is immediately adjacent to the south side of the site. The Sprague Oil Storage Facility, Riverside Avenue, is immediately adjacent to the north side of the site. An aerial photo depicting the site and its surrounding environs is attached as Appendix 1.

The site is located in a C-I Coastal Industrial Zone, as defined under Town of East Greenbush Zoning Ordinance Section 2.7.7, adopted June 11, 2008. A "Recreation; Marina" is authorized by Special Use Permit issued by the Zoning board of Appeals, in accord with Ordinance Sections 2.7.7 (C), 3.11 and 4.2.5. The only vehicular access to the site is via American Oil Road, also known as Riverside Avenue Extension. To the north, this road network leads to New York State Route 9J. To the south, this road is a dead end at the northerly most part of the Papscanee Preserve. This road is a two lane public roadway, with one lane for northbound traffic and one lane for southbound traffic.

This is a 24.95-acre site, with 7.77 acres under water, and 17.18 acres upland. There are 8.60 acres of meadow/brushland, with 3.33 acres to be disturbed, and 5.27 acres left intact. There are 8.19 acres of forested upland, with 6.13 acres to be removed, and 2.06 acres to remain intact. In undisturbed areas, natural vegetation will be retained.

Based upon the comments received during the DEIS public comment period, Applicant has not made any revisions to the proposed project plan.

2.0 PROJECT COMMENTS AND RESPONSES

As set forth below, Applicant has identified all of the comments received and has set forth its Responses thereto. The Comment Letter from the Town of East Greenbush's Consulting Engineer, The Chazen Companies, dated October 22, 2008 is annexed as Appendix 1. The specific comments made by Chazen companies, and the Applicant's Responses thereto, are set forth below as Comments 2.1 to 2.11. Comments from the Planning Board, and from third parties are set forth below in Comments 2.12 to 2.19.

2.1 Chazen Comment

DEIS List of Figures and Tables

Figure 2a is not included in this list, or mentioned in the text. This figure should either be removed or referenced.

RESPONSE

Figure 2(a) is the full build out layout plan prepared by Chas H. Sells dated January 1, 2007. It has been added to the List of Figures and Tables.

2.2 Chazen Comment

DEIS 1.0 EXECUTIVE SUMMARY

DEIS 1.4 Project Alternatives Considered

1. In general, the analysis of the alternatives (other than the No Action Alternative) does not include specific data regarding impacts so that a comparison can be made to the preferred plan. Rather, broad, conclusory statements are submitted for which no supporting evidence is offered nor is any statistical or site specific data provided.

2. It would be helpful to use the names of the alternatives in this section when each is mentioned "No Action Alternative," "Industrial Alternative," and "Alternative Site Plans."

3. An explanation the no action alternative should begin the first paragraph of section 4.1, for example: The "no action" alternative is the scenario that would occur if no development were to take place on the project site.

4. The purpose of each alternative is not entirely clear, a brief explanation of the scenario that would occur under both the Industrial Alternative and the Alternative Site Plans alternative should be included.

5. A depiction of significant impacts for each alternative should be mentioned, even if only qualitative: taxes, traffic, impervious area, jobs, etc.

RESPONSE

1. Applicant has prepared detailed site plans for Industrial Alternatives, and have included these plans as Figures 2 and 3.

2. As set forth in Figure 2, the name of the industrial alternatives is "Maximum Alternative Layout", and in Figure 3, the name of the industrial alternative is "Alternate Layout".

3. Applicant has revised the first paragraph of DEIS section 5.1, which now reads as follows:

No Action Alternative

DEIS Section 5.1 The "no action" alternative is the scenario that would occur if no development were to take place on the project site. The no action alternative would be inconsistent with the recognized need for a recreational marina along the Hudson River in the Town of East Greenbush, as well as the long recognized fact that this site provides the only viable access to the Hudson River, within the Town of East Greenbush. Accordingly, this alternative would deprive the Town and its residents of a recreational boating access to the Hudson River. Moreover, the No Action Alternative is inconsistent with the Town of East Greenbush's Comprehensive Plan, which recommends recreational access to the Hudson River within the C-I zone.

4. The purpose of each alternative is as follows. In Figure 2, the maximum generic industrial user is comprised of a singly building with 269,702 square foot of space, with an on-site parking lot with 82 spaces. Greenspace is 67 % of the site or 16.75 acres. No docks are proposed. In figure 3, a self-storage facility 8 6,800 SF buildings, for a total of 54,400 Square feet of building footprints, is proposed. This self-storage facility will have a 15 space parking Lot. Greenspace is 83 % of the site or 20.75 acres No docks are proposed.

5. The impacts of these industrial alternatives, is that it would create new business locations and new jobs for industrial users. Depending upon the actual square footage of the project build out, the assessed value of the site would increase, adding tax revenues to benefit the town and the school district, without adding any burden to the school district. Each use would add traffic to the area, consistent with the existing industrial traffic. Each use would utilize the same storm water treatment area as proposed for the subject use. Each use would allow for the preservation of the Forested Tidal Wetlands along the southwest shore of the site. Neither use would add any burden on water traffic along the Hudson River. Neither use would require any dredging of the Hudson River. Development of wither industrial use would preclude any future use of the site for access to the Hudson River for recreational boater use.

2.3 Chazen Comment

DEIS 2.0 PROJECT DESCRIPTION

DEIS 2.2. Site Use and Project History

Figure 1 should include:
North Arrow

Source Information including date of aerial photograph
Legend Depicting: site boundary, town boundary, and turning basin
Symbols for each attribute above should differ.

RESPONSE

DEIS Figure 1 has been amended to add all of the foregoing information, and is added to the FEIS as Figure 1.

2.4 Chazen Comment

DEIS 2.3. Description of Action

The project description, first paragraph of this section, should include the days and hours of operation of the proposed marina.

The caretaker apartment should be included as part of the description of the proposed action in the first paragraph, including where the building will be located.

RESPONSE

The days and hours of operation are 7 days a week, from 6 A.M. to 10 P.M.

A revised first paragraph of the project description is set forth as follows:

The action, named East Greenbush Marina, is to construct and operate a full service marina facility. It will include 3 floating docks possessing 84 boat slips, fuel pumps, parking spaces for 174 automobiles, and a boat launch ramp. Six (6) buildings will be constructed on site, including four (4) boat/RV storage buildings, one (1) building containing a repair shop, one quick launch facility [which includes storage racks for 96 boats], and one (1) building containing an office, ship store, laundry, and restroom and shower facilities for boaters. The project includes three docks: one haul out service dock at the lift wells, one dock with 20 slips at the launch ramp area and one main dock with 64 slips. A boat slip will be dedicated to Town of East Greenbush Police Department, for its use as a public service. The facility will provide a pump-out service for the boats' sanitary waste, which will be collected in a 1,500 gallon concrete storage tank that will be pumped out as necessary by an accredited sewage disposal company. The facility will also provide fuel for boaters, with the fuel tanks located on the upland in an approved containment tank, with pumping facilities on the service dock. A caretaker apartment will be constructed on the second floor of the building housing the club house/office, located immediately adjacent to the southeast corner of the main parking lot. A full set of the project plans, prepared by Chas H. Sells, last revised June 2008, are included in DEIS Appendix 9.19. The Site Plan, last revised 9/7/08, is also depicted in FEIS Figures 4 and 5, with the revisions merely being the highlight via color of various characteristics of the plan.

DEIS ZONING

The definition of "Recreation; Marina" should follow its initial mention in the Zoning section above, after the first paragraph.

RESPONSE

The first paragraph of DEIS section 2.3 following the Title Zoning (see DEIS p. 16) is amended to read as follows:

Zoning

The site is located in a C-I Coastal Industrial Zone, as defined under Town of East Greenbush Zoning Ordinance Section 2.7.7, adopted June 11, 2008. A "Recreation; Marina" is authorized by Special Use Permit issued by the Zoning board of Appeals, in accord with Ordinance Sections 2.7.7 (C), 3.11 and 4.2.5. Pursuant to Section 2.7.7 of the Zoning Ordinance, "Recreation: Marina" is authorized in a Coastal Industrial District (CI) pursuant to a Special use Permit issued by the Zoning Board of Appeals, as well as Site Plan review. Pursuant to Ordinance section 4.5, a "recreation: marina" is defined as "any premises containing one or more piers, wharves, docks, moorings, bulkheads, buildings, slips or basins and used primarily for the docking, mooring, storage and servicing of boats for compensation. Such premises may include associated clubhouse, offices and incidental sale of marine supplies and food". A list of the permitted uses in the C-I zoning district is annexed As Appendix 15 and a copy of the Zoning map is annexed as Figure 9.

DEIS ZONING

A list of permitted uses in the C-I zoning district should be included.

RESPONSE

A list of all permitted uses in a C-I Zone is annexed hereto as Appendix No. 15.

DEIS ZONING

It would be helpful to include a zoning map of the site, or refer to such map if it is located in another section.

RESPONSE

A copy of the Zoning map is annexed as Figure 9.

DEIS

Please provide the actual distances and building height in the "project" column of Table 1, "area and bulk requirements."

RESPONSE

A Revised Table 1 is set forth below:

TABLE 1: AREA AND BULK REQUIREMENTS

Dimensional Requirements	Ordinance	Project	Compliance
Area	10 acres	24.95	Yes
Width	500 feet	1,100' Shoreline	Yes
Front Yard	50	51'	Yes
Side Yard	25	48'	Yes
Rear Yard	25	350'	Yes

Max Bldg Coverage	35%	10%[1]	Yes
Max Bldg Height	50	49'	Yes

2.5 Chazen Comment

DEIS 2.4. Phasing, Construction, and Operation

1. A description of sediment classes should be included on page 21 in the paragraph describing the dewatering process.

RESPONSE

The third full paragraph on DEIS page 21 is amended as follows:

The DMPA will be utilized for gross dewatering of Class C and Class A sediments, and further solidification of Class C sediment. Class C materials are defined as those materials expected to be acutely toxic to aquatic biota, and contain more than 1 part per billion of PCB's. Class A materials are defined as those materials expected to have no toxicity to aquatic life, and contain less than .5 part per billion of PCB's. The DMPA will be separated into three separate containment areas using additional perimeter berms. One area will be isolated for Class C dewatering and solidification. The second area will be utilized for Class A dewatering and the third area will be utilized for water collection and transfer.

2.6 Chazen Comment

DEIS 3.0 POTENTIAL ENVIRONMENTAL IMPACTS

DEIS 3.1 Soils

1. What are the contamination levels of the fill material on the site from the previous dredging operation? Did the original dredging for the turning basin occur before the contamination in the 1940's? Where was the material placed and will it be excavated for this project?

RESPONSE

The dredging of the original basin was performed in 1932, in advance of the contamination of the Hudson River by PCB's. The dredged material was placed on the upland portion of the site, and it will not be excavated for this project. In view of the fact that the PCB contamination of the Hudson River took place after 1932, it may be reasonably assumed that the dredged materials on site are not contaminated with PCB's.

[1] 99,055 SF of building coverage or 2.273 acres as set forth on Project Plans (Appendix 9.12). This represents approximately 10% building coverage (2.273 acres / 24.95 acres = 9.114%).

2. Existing Conditions - A description of the soils classes should preclude the "Sediment Core Analytical Summary Table 1," including ranges of PCB levels for each class. Define what each classification means, and what agency issues the classification.

RESPONSE

DEIS part 3.1, page 24, is amended to add the following information at the beginning of the third paragraph:

Class C materials are defined as those materials expected to be acutely toxic to aquatic biota, and contain more than 1 part per billion of PCB's. Class A materials are defined as those materials expected to have no toxicity to aquatic life, and contain less than .5 part per billion of PCB's. The classification of soil classes is set forth in the Technical & Operational Guidance Series (TOGS) 5.1.9, issued by the New York State Department of Environmental Conservation, Division of Water, dated November 2004. These TOGS are included as Appendix 8.

3. Mitigation Measures - More explanation is needed regarding the ability to use an environmental bucket during dredging. What sediment density threshold must be exceeded to require the use of a standard digging bucket instead of the environmental bucket? Is it expected that a standard digging bucket will be needed to complete this job? What are the disadvantages of a standard digging bucket?

RESPONSE

There exists no recognized sediment density standard for the effective use of an environmental bucket. Usage is determined by field conditions. A standard digging bucket will only be utilized close to the shore line, where Class A materials will be encountered (see Figure 6 and 7). A standard digging bucket is not as effective as maintaining the dredge materials in the bucket as it is being lifted out of the water, and sediment can be dropped in the water, causing sediments to be dispersed. However, all dredging of Class A materials will be controlled through the use of a turbidity curtin, and will be conducted at low tide to minimize any potential impact.

4. Mitigation Measures - The text should explain how the water from the dewatering process will be managed. A description of sampling methods proposed for the water in the catch basin prior to its release should be included.

RESPONSE

In the dewatering process, the Applicant will utilize 5 micron bag filters to remove all sediments from the water before it is allowed to go back into the Hudson River. This filtering process eliminates the need for any further sampling.

2.7 Chazen Comment

DEIS 3.2 Water Resources

1. Existing Conditions - It is assumed that the "FEMA-delineated floodplain" is the 100-year floodplain, this information should be included.

RESPONSE

The FEMA-delineated Floodplain is the 100- year floodplain.

2. Mitigation Measures - The DEIS contains an Acknowledgement of Receipt of the Notice of Intent (NOI) dated July 3, 3007 which gave the project coverage under the NYSDEC General Permit GP-02-01 (amended to GP-0-08-001 in May 2008). It should be noted that the applicant was provided technical comments on the supporting SWPPP and NOI when this project was under site plan review on August 1, 2007. This technical review identified deficiencies within the SWPPP as well as the NOI (refer to DEIS Appendix 9.17P). The deficiencies were satisfactorily addressed, however by the dates of comments issued and the applicants receipt of permit coverage suggests that the permit application may have been prematurely submitted. The DEIS should identify if there in fact is an issue relative to the facts which the permit coverage was granted and/or if the applicant intends on re-applying for permit coverage based on the revised NOI contained with the SWPPP provided in Appendix 9.22 of the DEIS.

RESPONSE

Applicant has filed a Notice of Termination with the New York State Department of Environmental Conservation, and a copy is annexed as Appendix 9.

3. Mitigation Measures - The DEIS Appendix 9.13 provide the referenced Acknowledgement of Receipt associated with stormwater discharges, but provides the incorrect SPDES Application. The referenced application is for wastewater discharges and the correct SPDES Permit application (or NOI) should be provided.

RESPONSE

The SPDES application for waste water should be removed from this section of the DEIS.

4. Mitigation Measures - Appendix 9.22 of the DEIS contains the project SWPPP. Part III(A)(8) of the General Permit (GP-0-08-001) requires that the SWPPP contains documentation supporting the determination of permit eligibility with regard to Part I.D.10 (Historic Places). At a minimum the criteria outlined in Part III(B)(8) a through d of the General Permit must be documented within the SWPPP.

RESPONSE

SPDES Permit Part III (B)(8) a through d is attached as Appendix 16.

Construction will not affect SHPO sensitive areas, and thus the mitigation measures do not apply. While the property is noted to be a sensitive area for potential Native American burial grounds, archeological tests on-site have not shown evidence of such items. The Applicant's archeological consultant Ed Curtin strongly advises the utilization of fill on top of the existing ground (which in turn was filled in excess of 7' since 1930) to permanently preserve any potential remains or archeological findings that may be buried within the site. It is his recommendation that filling over the site is the best preservation method available.

Moreover, before the applicant receives a section 401 Water Quality Certification permit from the State of New York Department of Environmental Conservation and a Section 10 Permit from the United States Army Corp of Engineers, those involved agencies are required to consult with SHPO relative to the Data Recovery Plan.

2.8 Chazen Comment

DEIS 3.3 Vegetation and Wildlife (Terrestrial and Aquatic Ecology)

1. Existing Conditions – A discussion of the existing habitat/land cover should be included describing the types of vegetation currently on site.

RESPONSE

The second paragraph on page 31 of the DEIS, provides:

As more fully appears in the studies conducted by North County Ecological Services, Inc. (see Appendix 9.8), the majority of the site is comprised of forested upland, with approximately .10 acre area of an early successional upland field, a .386 acre forested tidal wetland area, and approximately 7.23 acres within the ordinary high-water elevation of the Hudson River. This 7.23 acre area consists of the previously excavated and dredged area which served as the former turning basin, used for large petroleum transportation vessels. The excavated and dredged materials were used to fill the site. In fine, this site had been previously disturbed.

Species observed/identified during the May 16, May 18, 2005, June 40, August 3, and September 16, 2006 site visits North Country consultant, visually or by vocalization are set forth below (see DEIS Appendix 9.8). Species denoted with ** indicates that this species were identified by tracks, scat, or physical remains confirmed during the field visit.

Flora

Trees:

Box Elder	Norway Maple	Red Maple	Silver Maple
Gray Birch	American Hornbeam	American Beech	White Ash
Green Ash	Hop Hornbeam	Eastern Sycamore	Wild Apple
Mulberry	Cottonwood	Quaking Aspen	Black Cherry
Black Locust	White Willow	American Basswood	American Elm

Shrubs:

Japanese Barberry	Silky Dogwood	Gray Dogwood	Witch Hazel
Honeysuckle	Common Buckthorn	Staghorn Sumac	Red Raspberry
Multiflora Rose	Blackberry	Pussy Willow	Black Willow
Nannyberry	Arrowwood	High bush Cranberry	

Vines:

Oriental Bittersweet	Virginia Creeper	Poison Ivy	Dewberry
Summer Grape	Riverbank Grape		

Herbaceous Plants:

Yarrow	Redtop	Garlic Mustard	Wild Onion
Ragweed	Little Bluestem	Rue Anemone	Tower Mustard
Common Milkweed	New York Aster	Beggars Tick	Field Mustard
Spotted Knapweed	Orchard Grass	Wild Carrot	Wood Fern
Trout Lily	Horsetail	Wild Strawberry	Catch weed Bedstraw
Wild Geranium	Ground Ivy	Jewelweed	Blueflag Iris
Moneywort	Birdsfoot Trefoil	Purple Loosestrife	Yellow Sweet Clover
Mint	Sensitive Fern	Cinnamon Fern	Deertongue
Phlox	Common Reed	Common Plantain	May Apple
Tall Buttercup	Black-eyed Susan	Canada Goldenrod	Dandelion
Red Clover	Cattails	Mullein	Cow Vetch
Northern Blue Violet	Common Blue Violet	Herbaceous Cinquefoil	

Fauna

(** indicates that species were identified by tracks, scat, or remains)

Mammals:

Eastern Coyote**	Striped Skunk**	White-tailed Deer**	Raccoon**
Eastern Gray Squirrel	Cottontail Rabbit	Eastern Chipmunk	Gray Fox**

Birds:

(** indicates that species were identified by vocalization)

Wood Duck	Mallard	Black Duck	Canada Geese
Northern Cardinal	American Finch	Veery**	Belted Kingfisher
Killdeer	Northern Flicker	American Crow	Blue Jay
Yellow Warbler	Gray Catbird	Dark-eyed Junco	Song Sparrow
Common Grackle	Eastern Phoebe	Ovenbird**	American Restart
Field Sparrow	European Starling	Brown Thrasher	Solitary Sandpiper
House Wren	American Robin	Mourning Dove	
White-breasted Nuthatch**		Double-crested Cormorant	
Common Yellowthroart**		Chestnut-sided Warbler**	
Red-winged Blackbird			

Amphibians/Reptiles:

Gray Tree Frog	Wood Frog	Garter Snake

2. Potential Impacts – This section states that "…there exists no endangered species, nor protected plant life on this previously disturbed site." This statement must be supported by information from USFWS and/or NYSDEC.

RESPONSE

Neither NYSDEC, nor USFWS, will affirmatively go to the site and confirm the findings of North Country Ecological Services, Inc. which are fully set forth in DEIS Appendix 9.8. DEIS Appendix 9.8 does include the August 17, 2006 Memo from USFWS as well as the March 6, 2006 letter from NYSDEC; both the USFWS and NYSDEC letters evidence that it is the burden of the applicant to do the on site investigation. The DEIS also includes the letter of Timothy Preddice, Biologist, NYSDEC dated June 19, 2006 (See DEIS Appendix 9.17 (b)), giving North Country Ecological Services, Inc. direction

on how to conduct the site review. Last, NYSDEC is an Involved Agency, and it has not filed any comments on the DEIS.

3. Potential Impacts – A brief summary of vegetation type and number of acres to be removed should be included.

RESPONSE

Approximately 12 acres of Forested Upland will be removed from the site during construction of the site improvements.

2.9 Chazen Comment

DEIS 3.4 Transportation

1. While the discussion of the "water" traffic and its impact is well presented, the conclusion of the DEIS in regard to "water" traffic, i.e. no mitigation is required, is best addressed by the appropriate regulatory agency(s).

RESPONSE

DEIS Appendix 9.17 (z) includes the letter of the United States Coast Guard, responding to objections filed against the project by Thomas Shepardson, attorney for Applicant's neighbors. The only cited comment relative to the project is that the marina should not extend beyond the property or pierhead line. As more fully appears in Figure 4, the dock improvements are well within the property and pierhead lines.

2.10 Chazen Comment

DEIS 3.5 Archaeological and Historic Resources

1. Potential Impacts – This section makes the general statement that the project may have the potential to cause adverse impacts on cultural resources that may be eligible for listing on the National Register of Historic Places, but does not describe what these potential impacts may be. The DEIS should describe the potential impacts the project may have on these resources. Further, considering that there appears a need to obtain regulatory opinions on the cultural resource impacts, the applicant should continue to coordinate and provide resolution on this matter with the regulatory agencies having jurisdiction.

RESPONSE

The potential impact is that the project is located in an area where there may be the presence of burial sites of the Mohicans and their ancestors. By letter dated December 10, 2008 (Appendix No. 9), the New York State Office of Parks, Recreation and Historic Preservation (hereinafter SHPO), SHPO by Cynthia Blakemore, states that it "concurs that filling over the site (s) without further studies, would have an adverse effect on historic properties". Applicant notes that by letter dated December 16, 2006

(included inb DEIS Appendix 9.3, Ms. Blakemore also wrote, "While there is no evidence to suggest burials exist in this project area, our office would recommend following the enclosed SHPO Human Remains Discovery Protocol if any were encountered" (emphasis added).

The westerly most 7 +/- acres of the site have already been dredged and the dredge materials placed on the balance of the upland site, when the existing basin was created in the 1930's. In fine, this is a previously disturbed and covered site.

Applicant's archaeological studies performed by Edward Curtin, including the geomorphological study (see Appendix 9.3) do not evidence the presence of burial grounds under this site. In his February 7, 2007 letter to the Army Corps, Mr. Curtin notes that he engaged in a Phase 1 and 2 Archaeological Survey of the site dated October 2006. These reports evidence that that from 7 to 14 feet of previously placed fill already existed on the western portion of the site. Mr. Curtin engaged in a series of back hoe cuts to gather site data. Next, during the Phase 1B field investigation included that gathering of site data from 150 shovel test pits, four 5-meter shovel test pit grids, and 12 machine trenches. In his February 7, 2007 letter, Curtin writes, "Although Native American Burials have not been found within the proposed project boundaries, the sensitivity arises from the previous discovery of Native Americans human remains at the Goldcrest site further south on Papscanee Island" (emphasis added). At page 30 of his Phase 2 report dated October 2006, Curtin concludes, "excavation at the present time could be productive, but would destroy part of the site that would otherwise be preserved. Moreover, human burials could exist here as at the nearby Goldcrest site, and may be disturbed needlessly if a data recovery investigation is undertaken".

In January 2007, Applicant met with SHPO, USACOE, Applicant's engineers and archaeologist to discuss the findings of the Phase 1 and 2 Archaeological surveys . In response to SHPO's request for more site data, Applicant did cause a Geomorphological Assessment to be performed by Op-Tech Environmental Services dated February 2007 (part of DEIS Appendix 9.3). To complete the geomorphological analysis, 8 soil borings throughout the site, up to a depth of 20 feet, were conducted on February 14, 2008. In his report entitled, "Synthesis of Information on Geomorphology and Archaeology, East Greenbush Marina and Goldkrest sites, Papscanee Island, East Greenbush, New York" dated March 2007, Edward Curtin analyzed the geomorpholical data (part of DEIS Appendix 9.3). In his March 16, 2007 letter to SHPO Attn: John Bonafide, Mr. Curtin submitted the foregoing reports and concluded "the East Greenbush Marina geomorphological analysis indicates that archaeological deposits younger about 3000 years before present (BP) are a reasonable expectation, but older evidence of human occupation is unlikely". Curtin notes, however, there may be archaeological deposits in deeper zones attributable to the Woodlands period, and concludes,

"…I continue to be cautious regarding the unnecessary disturbance of archaeological deposits or human remains (although I emphasize that no human remains have been discovered to date at the East Greenbush Marina Site). I continue to view further exploration with backhoes or similar excavation equipment as needlessly destructive, given that the proposed project will be built on fill" (emphasis added).

SHPO has requested "further studies" be done to determine whether this is a Native American burial ground site. It is noted that Native American burials are sacred. To date, however, extensive field work and analysis has failed to provide evidence that on-site burial grounds exist. Nevertheless, development of a mitigation plan is both reasonable and practical.

On February 26, 2009 Applicant met with representatives of SHPO, as well as Sherry White, Tribal Historic Preservation Officer for the Stockbridge-Munsee Band of the Mohican Indians, to further discuss the best way to preserve the integrity of the site. Following that meeting, Applicant retained Archaeologist Edward Curtin to prepare a mitigation plan, entitled Archaeological Data Recovery Plan (hereinafter the "DRP), annexed hereto as Appendix 17. In the DRP, Curtin notes that additional core sample will be taken in 8 locations, including the locations of the 6 proposed buildings, the driveway location, and the parking lot location adjacent to the existing basin. These samples will provide the basis for further geoarchaeological and environmental analyses to better understand the archaeological importance of Papscanee Island locality. Moreover, Curtin has provided that in the event human remains are identified, the appropriate protocol will be followed. If the remains are determined to be Native American, the recovery protocol will be consistent with the Native Americans Graves Protection and Repatriation Act (NAGPRA)

Applicant will implement protocols consistent with the Data Recovery Plan during the course of project construction. Accordingly, to the fullest extent practicable, balancing the social, environmental and economic considerations of this project's development, the DPR addresses the assessment of this project's potential impact on cultural resources, including any potential presence of Native American (Mahican) burial grounds. Moreover, before the applicant receives a section 401 Water Quality Certification permit from the State of New York Department of Environmental Conservation and a Section 10 Permit from the United States Army Corp of Engineers, those involved agencies are required to consult with SHPO relative to the Data Recovery Plan.

2.11 Chazen Comment

DEIS 3.6 Utilities – Water Supply and Wastewater Disposal

1. Mitigation Measures - It is proposed to the service the project via an on-site groundwater well, which is a variation from prior proposals that contemplated the extension of public water to the site. Based upon the proposed source, duration of operation and number of daily users, it is believed that this will then be classified as a Transient Non-community Water System in accordance with New York State Dept of Health standards. The DEIS should further discuss if the site can support such a system with engineering analysis provided and identify specific regulatory requirements associated with such a public water system.

RESPONSE

Yes the proposed on-site well, water source is indeed a transient non-community water system in accordance with New York State Department of Health standards. A *transient non-community* water system is a non-community water system that serves different people for more than six months out of the year. Rest stops, parks, convenience stores and restaurants with their own water supplies are examples of transient non-community water system. Applicant has determined that the approximate daily water usages is as follows:

Water Demand

25 gallons/slip	x	84 slips	= 2100 gallons/day

Wastewater Generated

20 gallons/slip/day	x	84 slips	= 1680 gallons/day
1 bedroom apt.	x	130 gallons/bedroom	= 130 gallons/day
25 trailer parking	x	10 gallons/spot	= 250 gallons/day
			2060 gallons / day generated

2060 gals/day x 0.9 (for 10% discount allowed by the pump out) = 1854 gals/day

The proposed well shall abide by the New York State Department of Health, 10 NYCRR, Appendix 5-B, Rural Water Supply standards. In view of the fact that the site is located along the Hudson River, and the site consists of sandy soils, it is reasonable to anticipate that the well will have a high yield of water sufficient to support the proposed project. The well yield will be tested in accord with DEC standards.

2. Mitigation Measures - With the project in close proximity to the Hudson River there is a need to discuss the potential of groundwater under the direct influence of surface water (GWUDI) for the proposed water source. The DEIS should discuss the potential for such a condition and present alternatives as to how the water source would have to be treated to address such conditions.

RESPONSE

The existing water is estimated to be located between 0 and 5' MSEL, as the elevation of the river fluctuates between these elevations. Because the river borders the property and the existing soils on-site are sand, it can safely be assumed that the groundwater table roughly reflects the surface elevation of the river. The well, located in the north western area of the site, will meet the water demands for the project.

It is indeed necessary to discuss the potential of groundwater under the direct influence of surface water (GWUDI) for the proposed well. Under the direct influence of surface water" means the groundwater source is located close enough to nearby surface water, such as a river or lake, to receive direct surface water recharge. Since a portion of the groundwater source's recharge is from surface water, the groundwater source is considered at risk of contamination from pathogens such as *Giardia lamblia* and viruses, which are not normally found in true groundwaters.

The federal Surface Water Treatment Rule applies to all Group A public water systems (community and non-community) that use:

- Surface water surfaces.
- Groundwater sources under the direct influence of surface water (GWI).

The rule requires both filtration and disinfection to control contamination.

Sources most likely to be under the direct influence of surface water are:

- Infiltration galleries and Ranney wells located near surface waters.
- Poorly constructed springs.
- Shallow wells located near surface waters.

However, in an attempt to prevent groundwater under the direct influence of surface water (GWUDI) complications and as a precautionary measure the well is to be constructed greater than 50 feet deep and located farther than 200 feet from surface water (Hudson River). The well to be drilled on

the proposed site is to be of a necessary depth in which to utilize the natural aquifer. Should these precautionary measures fail to yield sufficient quality of water, applicant will take steps to implement treatment measures to address the issue.

3. Mitigation Measures - Without public water made available or the installation of hydrants, how will adequate fire protection be provided to the site?

RESPONSE

Adequate fire protection will be provided for the proposed project through utilization of a dry hydrant. A dry hydrant is a non-pressurized pipe system permanently installed in existing lakes, ponds and streams, in this case Hudson River, that provides a suction supply of water to a fire department tank truck. Dry hydrants are often installed in rural areas, where a lack of water mains and pressurized fire hydrants is non existent or impractical. The dry hydrant will draw out of the lift wells to service the marina, and will draw from water that has a minimum depth of 8 feet; this will provide sufficient water volume, regardless of low tide conditions.

2.12 Chazen Comment

DEIS 3.7 Community Character (Land Use and Zoning) and Coastal Consistency

Potential Impacts

The statement that the project is a " . . less intense use than an industrial use" should be expanded upon using conceptual examples.

RESPONSE

Applicant contends that by virtue of the fact that it is not a bulk oil storage facility, it is not as intense of an industrial use as its neighbors, simply because it is not storing vast amounts of oil on site. Next, the adjoining properties have large Oil Tank Facilities on site, which is an adverse visual impact. This Marina use will not have an adverse visual impact, but rather will comport with the river environs.

2.13 Chazen Comment

DEIS 3.8 Public Safety

1. Mitigation Measures - The DEIS provides alternate evacuation routes in case of catastrophic events in and round the facility. Routes 1, 4, 5, 6, and 7 appears reasonable, however Route 2 (Alternate Best Route) and 3 (Tellers Crossing) are dependent upon other parties being involved in order for them to be fully functional. Route 2 appears to require overland access easement through private lands and Route 3 will require cooperation from Amtrak. Therefore, there should be discussion with supporting correspondence from the other parties to ensure that the additional routes proposed actually can be utilized.

RESPONSE

The gates at Teller's Crossing are unlocked and accessible in an emergency scenario. Applicant has not been able to obtain written authorization from third party landowners. The foregoing

notwithstanding, the routes have been identified to account for the emergent conditions arising out of a catastrophic event.

2.14 Chazen Comment

DEIS 5.0 ALTERNATIVES

1. In general, the analysis of the alternatives (other than the No Action alternative) does not include specific data regarding impacts so that a comparison can be made to the preferred plan. Rather, broad, conclusory statements are submitted for which no supporting evidence is offered nor is any statistical or site specific data provided. The Scope requires an evaluation of reasonable and practical alternatives. It is not within the Applicant's purview to "choose not to prepare alternative plans." At least one reasonable alternative should be provided and addressed in sufficient detail to enable the comparison of associated impacts with the proposed plan.

RESPONSE

Applicant has proposed a maximum Industrial User Alternative and a Self-Storage Facility alternative, as depicted in Figures 2 and 3 Respectively.

2. Alternative 5.3 is not a viable alternative due to the siting of a structure within a protected wetland area. This alternative should be removed from the DEIS as it is not considered reasonable or practical.

RESPONSE

The cited Alternative in the DEIS is withdrawn. The Alternatives depicted in Figures 2 and 3 are identified above.

3. The purpose of each alternative is not entirely clear; an explanation of the scenario that would occur under each alternative should be included.

RESPONSE

In Figure 2, the maximum generic industrial user is comprised of a single building with 269,702 square foot of space, with an on-site parking lot with 82 spaces. Greenspace is 67 % of the site or 16.75 acres. No docks are proposed. In figure 3, a self-storage facility 8 6,800 SF buildings, for a total of 54,400 Square feet of building footprints, is proposed. This self-storage facility will have a 15 space parking Lot. Greenspace is 83 % of the site or 20.75 acres No docks are proposed. The impacts of these industrial alternatives, is that it would create new business locations and new jobs for industrial users. Depending upon the actual square footage of the project build out, the assessed value of the site would increase, adding tax revenues to benefit the town and the school district, without adding any burden to the school district. Each use would add traffic to the area, consistent with the existing industrial traffic. Each use would utilize the same storm water treatment area as proposed for the subject use. Each use would allow for the preservation of the Forested Tidal Wetlands along the southwest shore of the site. Neither use would add any burden on water traffic along the Hudson River. Neither use would require any dredging of the Hudson River. Development of wither industrial use would preclude any future use of the site for access to the Hudson River for recreational boater use.

2.15 Comments By Planning Board

EAST GREENBUSH PLANNING BOARD/MEETING MINUES/SEPTEMBER 3, 2008
Joel Bianchi of Chazen Engineering presented the review of the DEIS to the Board. Joel stated that the DEIS is still within the public comment period and that tonight that they will review the DEIS and he will collect any questions/comments and present them to the Town Board for their review. Below is a list of questions/comments that were raised by the Planning Board.

EAST GREENBUSH MARINA DEIS COMMENTS FROM THE PLANNING BOARD:

Sue Mangold: Is the boat launch going to be public?

RESPONSE: Yes, the boat ramps will be available for public use.

Bill Ritz: He stated he was lead to believe that the town residents would be able to use it?
The issue is it's unclear whether it will be free or if there will be a fee to use it.
Bottom line, there needs to be clarity whether it's paid or not.

RESPONSE: East Greenbush residents will be able to use the boat ramps for free to launch trailered boats, non-residents will pay a nominal fee for usage.

Bob Davey: Is the caretaker proposed as accessory or not? Joel stated that it is not part of the DEIS.

RESPONSE: Pursuant to Town of East Greenbush Zoning Ordinance section 2.7.7 (D), the caretaker's apartment is an accessory use to the proposed Marina. See Response to Chazen Comment 2.4 of FEIS.

Bill Ritz: At some point do we get to see approvals from other permitting agencies?
Isn't it part of the approval to see what permits have been obtained by other agencies?

RESPONSE: As lead agency, the Town's SEQRA determination will help to move the project forward but is not the final approval necessary. Should the Applicant receive the Town's approvals, the project must still fully satisfy both the DEC and USACOE requirements before any work can begin.

Bill Ritz: Aren't we basically telling them that their approved?
As far as public safety goes, how are they getting people out of there?

RESPONSE: As lead agency, the Town's SEQRA determination will help to move the project forward but is not the final approval necessary. Should the Applicant receive the Town's approvals, the project must still fully satisfy both the DEC and USACOE requirements before any work can begin. As far as public safety goes, a full emergency evacuation plan was prepared at the request of Mr. Ritz and was presented to the planning board with Mr. Ritz present.

Kurt Bergmann: Had a question about the measurement for PCB's. He wanted to know if the reference meant units. It lies in Class C, is that considered low?

See response below to Sue Mangold's question for additional details. In brief, the materials to be dredged at the East Greenbush Marina tested with low levels of PCBs ranging from zero PCBs to a maximum of less than 7 parts per billion.

Currently, Class A materials can contain concentrations ranging from zero parts per billion to no more than .5 parts per billion of PCBs. Class A materials can be used in all applications without restrictions. Class B materials are greater than .5 parts per billion to 1 part per billion and can be used in most applications, such as fill on a site, with some restrictions. Class C materials are greater than 1 part per billion to 50 parts per billion and can be disposed of in an approved landfill facility.

DEC recommended levels of PCBs to be considered Class C were lowered a few years ago from a then acceptable level of 10 parts per billion to the 1 part per billion accepted today. Only a few years ago, all of the East Greenbush materials would have been acceptable to use as fill on-site with a clean fill cap.

Rich Benko: Does DEC have oversight for dredging?

RESPONSE: The DEC and the USACOE will jointly monitor the dredging.

Bob Davey: What is the route that the trucks will take? How will they leave the town?

RESPONSE: Trucks can enter onto Route 9J and can go south or north. Going North, 9J intersects with NYS Route 9, for east west travel through Town. Going west, Trucks can access I-787 in Albany, for north, south, east, or west travel on I-90 or I-87. Going East, Trucks can proceed on Route 9 south, or 20 east. Going east on Route 9, trucks can access I-90 for east west travel. In fine, Trucks can reach the interstate highways via 9J and 9 within minutes of leaving the site.

Bill Ritz: They have to give us a route. The applicant should have to submit a dredging plan and report the amount of PCB's found. Bottom line, we want a complete dredging plan, transport route and how it will get disposed of.

RESPONSE: That dredging plan is already included in the DEIS (see DEIS sections 2.4 and 3.1).

Sue Mangold: How often do they test and who decides that it's fill? Do they sample piles after they sit? Before they use it for fill, is it tested? What is the protocol for sampling PCB's?

RESPONSE: Materials in the project area have been tested as a part of the due diligence phases in compiling a work plan under the supervision of the DEC and USACOE. After extensive testing, the DEC has determined that only the river bank sand above the low water line that showed zero concentrations of PCBs will be considered Class A materials and can used as fill on land. All other materials below the low water line will be treated as Class C materials and will be disposed of off-site at an approved landfill regardless of the fact that tests showed only trace to very low levels of PCBs. The materials below the low water line tested from no concentrations at all to less than 7 parts per billion. For comparative purposes, materials can be disposed of in approved landfills if they are under 50 parts per billion. Multiple test samples were collected by the environmental engineering company Op-Tech Environmental, Inc. under the supervision of DEC personnel and following DEC Technical Operation Guidelines and were analyzed by the laboratory Adirondack Environmental Services, Inc.

Rich Benko: How can the Marina support the amount of money that this project is going to cost?

RESPONSE: There is ongoing residential development along the Hudson River, which will created a demand for boat services and storage. Presently, Applicant's principals have already obtained approvals for the construction of 246 residential condominium units in Cohoes, within 10 miles of the site. It is the growing development of the Hudson River waterfront in nearby communities which creates the need for this Marina.

Bob Davey: Has there been an identification of how many jobs this will create? What is the employment impact of this project?

RESPONSE: This project will create approximately 30 jobs during construction. Once the marina is in operation, it will create a caretakers job, mechanic jobs, boat service jobs, and the like. It is estimated that the marina operation will create approximately 20 full time jobs.

Bill Ritz: As far as storm drainage goes, how are they going to handle it? Does it just go into the river?

RESPONSE: A complete plan is in place as mandated by the DEC. The NYSDEC's Stormwater Management Design Manual requires that the peak discharge rates of stormwater be controlled to the pre-development rate, creating a need for a large detention area to hold back the excess runoff created by the new development. Quality controls state that the stormwater must be treated to reduce suspended solids and pollutants by detaining the WQv, or Water Quality Volume to allow pollutants to settle out. All projects with runoff discharging directly into a fourth order stream or higher are exempt from the quantity control requirements. Stormwater runoff can be released to the Hudson River, eliminating the detention requirement. due to the direct discharge into tidal water. Therefore, retention facilities would not be required. However, the NYSDEC water quality requirements do apply, and the storm runoff would need to be captured and treated prior to discharge. Accordingly, the plan provides for a constructed wetland in the southwest corner of the site, adjacent to the tidal forested wetland. This facility will comply with DEC regulations.

Bob Davey: What is the range of acceptability from an economic standpoint? Is there a possibility that this project could damage the property for further uses? Is there a bond or something that exists to be economically safe guarded?

RESPONSE: From an economic standpoint, the use if this site as a marina will not foreclose the opportunity to construct a different use in the future. The applicant is acquiring and developing the site with private funds, not governmental monies. No bond is required.

Bill Ritz: Are they going to have to build to floodplain level? How about septic systems?

RESPONSE: All improvements will be constructed on fill and all necessary structures are placed at or above the 100yr floodplain, per the NYS Building Code. The septic system design has been designed to be located above the 10 year flood elevation as per the NYSDEC Design Standards for Wastewater Treatment Works (last revised 1988). The system has been designed in accordance with all applicable standards.

Bob Davey: The Beacon Harbor project, does it have an adverse impact on the Marina project? What do they envision as a potential impact?

RESPONSE: The Beacon Harbor project does not have an adverse impact on the Marina project. The Marina project stands on its own independently whether the Beacon Harbor project progresses or not.

Don Panton: Until they start dredging they won't know the concentration of PCB's right?

RESPONSE: As required by the DEC, the dredging area has been extensively tested and analyzed by the Applicant's professionals. See above response to Sue Mangold's question for more details. Note: should the Applicant receive the Town's approvals, the project must still fully satisfy both the DEC and USACOE requirements before any work can begin. As lead agency, the Town's SEQRA determination will help to move the project forward but is not the final approval necessary.

Kurt Bergmann: Is the treatment by SPDES means? Or by natural run off.

RESPONSE: Stormwater is to be collected through a closed pipe system to be treated by the stormwater wetland designed in accordance with the NYSDEC Stormwater Management Design Manual dated August 2003. The wetland treats the runoff as required, and discharges to the Hudson River.

Sue Mangold: When did they determine that there was no specific wildlife on site? What time of year?

RESPONSE: The site was extensively studied with multiple site visits from spring through late fall 2006.

Rich Benko: What is the status of the second access? The location south of Teller's Crossing?

RESPONSE: At the last report Applicant is aware of, DOT plans to construct a new access from Route 9J to Riverside Ave sometime in 2010. At that time, the Teller's Crossing access would be unnecessary and would likely be eliminated.

Bill Ritz: There is no way out, except over the high speed railroad, what is the status of DOT?

RESPONSE: At Mr. Ritz's suggestion, a complete emergency evacuation plan was completed and identified all possible avenues for evacuation depending on the specific nature and location of possible emergency events. The emergency evacuation plan is identified in DEIS section 3.8, and the map depicting the routes is in Appendix 9.10.

Bill Ritz: Is a well legal that close to the river? What about fire protection?

RESPONSE: Yes, a well is legal on this site. Adequate fire protection will be provided for the proposed project through utilization of a dry hydrant. A dry hydrant is a non-pressurized pipe system permanently installed in existing lakes, ponds and streams, in this case Hudson River, that provides a suction supply of water to a fire department tank truck. Dry hydrants are often installed in rural areas, where a lack of water mains and pressurized fire hydrants is non existent or impractical.

Bill Ritz: Does the applicant have legal right to access properties as part of their plan?

RESPONSE: Access via emergency is justification for any entry onto the lands of another and does not constitute an illegal trespass.

Sue Mangold: Will their be onsite staff?

RESPONSE: Yes, there will be onsite staff during all marina operational hours with a proposed on-site caretaker for after hours monitoring of the site.

Bill Ritz: How are kids going to be stopped when they ride their bikes on Riverside Avenue? There is no shoulder on the road. How is the project proposed to handle pedestrian traffic on Riverside Avenue?

RESPONSE: No significant increase to pedestrian traffic on Riverside Ave is anticipated as a result of this project. Riverside Avenue is a public way, and kids can ride their bikes at will. The type of traffic coming to this site is non-commercial in character, e.g. passenger vehicles towing a boat. This type of traffic can coincide with any bike riders.

2.16 Comment Letter from the United States Department of Homeland Security and the United States Coast Guard dated November 28, 2008 attached as Appendix "8"

The comments raised in that letter are responded to below.

RESPONSE

Project details will be submitted to the First Coast Guard District for publication in the Local Notice to Mariners as required. NOAA will be notified upon project completion as required. Outdoor lighting will be held well away from the Federal Channel and shielded as necessary so as not to be confused with aids to navigation. The Coast Guard staff will be contacted as required. No security requirements are anticipated as per previous Coast Guard contacts (see previous RESPONSE letter 2008-04-14 attached). The marina has been designed with the knowledge that the Coast Guard will not place special operational limitations on the vessels using the adjacent waterway. The ends of the docks facing the river channel are designed with extra-large size, widths and anchoring to accommodate anticipated wave action to enhance safety. The shoreline stabilization is designed with extensive natural stabilization which will help diffuse wave rebounding.

2.17 Comment Letter From Iota Construction

Submitted by Mr. William Ritz

This comment letter is annexed as Appendix "5". In a nutshell, Mr. Ritz questions whether or not the proposed dredging poses a health hazard, whether the project poses a National security risk, concerns about the septic system being constructed in a 100 year flood plain, and concerns about the adequacy of the emergency evacuation plans. Specifically, William Ritz makes the following comments:

1. He is concerned that the proposed dredging of the Hudson River will pose a safety and health risk to its employees located at 298 Riverside Avenue (across from the site) and the general public;

2. He is concerned that the dredged materials will be used as fill on sit;

3. He is concerned about national security, and location next to bulk oil facilities and shipping lanes;

4. He is concerned that the development is proposed in a FEMA 100 year flood plain, and that the wastewater treatment facility could potentially flood and contaminate surrounding areas with human waste;

5. He is concerned with the potential for a catastrophic event related to the existing bulk oil facilities adjacent to the site, and the need for an appropriate emergency action plan.

RESPONSE

As set forth in the DEIS and the Response set forth in 2.6 of this FEIS, the Applicant has identified the location and amounts of Class C materials. These materials will not be used on site, but will be transported off site to an appropriate facility. The dredging operation will not pose a health hazard. The project will not pose a security risk, as determined by the United States Coast Guard. The Septic System has been designed to account for its location in the 100 year flood plain. The emergency evacuation plan is adequate, for it provides multiple land and water routes.
The following responses correspond to the numbered comments made by Mr. Ritz:

1. The dredging plan is identified in the DEIS (see DEIS sections 2.4 and 3.1, and DEIS Appendix 9.19). The quantity (2,200 cubic yards) and location (see DEIS Appendix 9.19, sheet 8) of Class C materials potentially containing contaminants, have been identified in the DEIS. All Class C materials will be dewatered on site, removed from the site, and disposed of at an approved landfill facility. This plan addresses how the contaminated materials will be collected and disposed of in a lawful manner consistent with DEC guidelines in a safe manner;

2. Class C materials will not be used on site. Only Class A materials (i.e. noncontaminated) will be used on site.

3. The DEIS includes aerial photos of a number of Marina facilities which coincide with bulk oil facilities (See DEIS Appendix 9.20). The Marina Plan has been reviewed by the United States Coast Guard, and it does not pose a national security threat, nor a threat to the commercial shipping lanes of the Hudson River (see FEIS Appendix 6;

4. As mandated by design standards for wastewater treatment works, 1988 NYSDEC Division of water, pertaining to disposal systems within the 100 year flood plain in section entitled Flood Protection, the following is outlined: "no part of a subsurface treatment and disposal system should be located lower than the 10 year flood elevation". The on site disposal system shall be designed to meet this criteria.

5. A complete emergency evacuation plan was completed and identified all possible avenues for evacuation depending on the specific nature and location of possible emergency events. The emergency evacuation plan is identified in DEIS section 3.8, and the map depicting the routes is in DEIS Appendix 9.10.

2.18 Comment Letter From Shpo Dated 12/10/08 And Comment Letter From Sherry White Dated January 7, 2009 (Appendix 19)

By letter dated December 10, 2008 (Appendix No. 9), the New York State Office of Parks, Recreation and Historic Preservation (hereinafter SHPO), SHPO by Cynthia Blakemore, states that it "concurs that filling over the site (s) without further studies, would have an adverse effect on historic properties". By Letter dated January 7, 2009 from Sherry White, Tribal Historic Preservation Officer of the Stockbridge-Munsee Tribal Historic Preservation Office opined that more studies needed to be done to assure that Human Remains are not located within the proposed project area.

RESPONSE

By letter dated December 16, 2006 (included in DEIS Appendix 9.3, Ms. Blakemore also wrote, "While there is no evidence to suggest burials exist in this project area, our office would recommend following the enclosed SHPO Human Remains Discovery Protocol if any were encountered" (emphasis added).

The westerly most 7 +/- acres of the site have already been dredged and the dredge materials placed on the balance of the upland site, when the existing basin was created in the 1930's. In fine, this is a previously disturbed and covered site.

Applicant's archaeological studies performed by Edward Curtin, including the geomorphological study (see Appendix 9.3) do not evidence the presence of burial grounds under this site. In his February 7, 2007 letter to the Army Corps, Mr. Curtin notes that he engaged in a Phase 1 and 2 Archaeological Survey of the site dated October 2006. These reports evidence that from 7 to 14 feet of previously placed fill already existed on the western portion of the site, and engaged in a series of back hoe cuts to gather site data. Notably, the Phase 1B field investigation included that gathering of site data from 150 shovel test pits, four 5-meter shovel test pit grids, and 12 machine trenches. In his February 7, 2007 letter, Curtin writes, "Although Native American Burials have not been found within the proposed project boundaries, the sensitivity arises from the previous discovery of Native Americans human remains at the Goldcrest site further south on Papscanee Island" (emphasis added). At page 30 of his Phase 2 report dated October 2006, Curtin concludes, "excavation at the present time could be productive, but would destroy part of the site that would otherwise be preserved. Moreover, human burials could exist here as at the nearby Goldcrest site, and may be disturbed needlessly if a data recovery investigation is undertaken".

Following the preparation of the Phase 1 and 2 Archaeological surveys, and at SHPO's request as a result of a comphrensive meeting in January 2007 between SHPO, USACOE, Applicant, and Applicant's engineers and archaeologist, Applicant did cause a Geomorphological Assessment to be performed by Op-Tech Environmental Services dated February 2007 (part of DEIS Appendix 9.3). To complete the geomorphological analysis, 8 soil borings throughout the site, up to a depth of 20 feet, were conducted on February 14, 2008. In his report entitled, "Synthesis of Information on Geomorphology and Archaeology, East Greenbush Marina and Goldkrest sites, Papscanee Island, East Greenbush, New York" dated March 2007, Edward Curtin analyzed the geomorpholical data (part of DEIS Appendix 9.3). In his letter dated March 16, 2007 directed to SHPO Attn: John Bonafide, Mr. Curtin submitted the foregoing reports and concluded "the East Greenbush Marina geomorphological analysis indicates that archaeological deposits younger about 3000 years before present (BP) are a reasonable expectation, but older evidence of human occupation is unlikely". Curtin notes, however, there may be archaeological deposits in deeper zones attributable to the Woodlands period, and concludes,

"…I continue to be cautious regarding the unnecessary disturbance of archaeological deposits or human remains (although I emphasize that no human remains have been discovered to date at the East Greenbush Marina Site). I continue to view further exploration with backhoes or similar excavation equipment as needlessly destructive, given that the proposed project will be built on fill" (emphasis added).

SHPO has requested "further studies" be done to determine whether this is a Native American burial ground site. It is noted that Native American burials are sacred. To date, however, extensive field work and analysis has failed to provide evidence that on-site burial grounds exist. Nevertheless, development of a mitigation plan is both reasonable and practical.

On February 26, 2009 Applicant met with representatives of SHPO, as well as Sherry White, Tribal Historic Preservation Officer for the Stockbridge-Munsee Band of the Mohican Indians, to further discuss the best way to preserve the integrity of the site. Following that meeting, Applicant retained Archaeologist Edward Curtin to prepare a mitigation plan, entitled Archaeological Data Recovery Plan (hereinafter the "DRP), annexed hereto as Appendix 17. In the DRP, Curtin notes that additional core sample will be taken in 8 locations, including the locations of the 6 proposed buildings, the driveway location, and the parking lot location adjacent to the existing basin. These samples will provide the basis for further geoarchaeological and environmental analyses to better understand the archaeological importance of Papscanee Island locality. Moreover, Curtin has provided that in the event human remains are identified, the appropriate protocol will be followed. If the remains are determined to be Native American, the recovery protocol will be consistent with the Native Americans Graves Protection and Repatriation Act (NAGPRA).

Applicant will implement protocols consistent with the Data Recovery Plan during the course of project construction. Accordingly, to the fullest extent practicable, balancing the social, environmental and economic considerations of this project's development, the DPR addresses the assessment of this project's potential impact on cultural resources, including any potential presence of Native American (Mahican) burial grounds. Moreover, before the applicant receives a section 401 Water Quality Certification permit from the State of New York Department of Environmental Conservation and a Section 10 Permit from the United States Army Corp of Engineers, those involved agencies are required to consult with SHPO relative to the Data Recovery Plan.

2.19 Comments Made At Public Hearing Before Town Board October 8, 2008

Apart from the Applicant's presentation of the project features to the Town Board, two (2) members of the general public spoke at the October 8, 2008 public hearing to gain comments on the DEIS.

The first speaker was one Raymond Tommis. He identified himself as a Licensed Captain of the United States Coast Guard. He cited his familiarity with the site, and characterized the proposed marina as a "great asset". He identified the site as safe for a Marina. He supported the application.

RESPONSE

Acknowledged

The second speaker was one Jeff Smithson. He identified himself as a Town of East Greenbush resident, and an avid sportsman. He fully supports the project as an asset to the Town.

No persons spoke in opposition to the project as the public hearing.

RESPONSE
Acknowledged

2.20 NOAA Comments

On February 27, 2009, the United States Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service issued an opinion letter that the project will not have any adverse impact on any species under its jurisdiction (see Appendix 18).

RESPONSE
Acknowledged

3.0 PROCEEDINGS BEFORE THE TOWN OF EAST GREENBUSH ZONING BOARD OF APPEALS

As set forth in Appendix 10 to 13, Applicant has applied to the Zoning Board of appeals for a Special Use Permit to operate a Marina in the C-I zone, and a variance from the Zoning Ordinance requirement to provide a continuous pedestrian esplanade along the width of the property adjacent to the waterway in order to create a recreational trail. In lieu of the esplanade, applicant proposed a lookout area for pedestrian access (see Figure 8). The need for the Special Use Permit and Variance was fully identified in DEIS section 2.3, at pages 16-17. The Zoning Board of appeals did conduct a public hearing on the foregoing applications on September 9, 2008.

Thomas Shepardson, Esq. appeared at the September 9, 2008 hearing and submitted his letter of even date to the Board in opposition to the relief requested, on behalf of several adjoining property owners (see Appendix 14). In response, and as set forth in the Application (Appendix 12), applicant did set forth sufficient facts to sustain the grant of a Special Use Permit and a Variance.

To date, the Zoning Board has not made any determination on these applications, for it is awaiting the completion of the SEQRA review process by this Board.

Figure "1"

LEGEND

COUNTY LINE

TOWN BOUNDARY

PROPERTY LINE

TURNING BASIN AREA

IMAGE REFERENCE

NEW YORK SATE GIS DATA ORTHOIMAGERY
NEW YORK SATE DOP DIRECT DOWNLOAD

RENSSELAER COUNTY (2004), TOWN OF EAST GREENBUSH

DATE OF ACTUAL IMAGES: 2004
DATE OF DOWNLOAD: FEBRUARY 2007

NEW YORK STATE PLANE, EASTERN ZONE, NAD 83, US SURVEY FEET
ORTHOIMAGERY TYPE: 12 – INCH RESOLUTION NATURAL COLOR

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EAST GREENBUSH MARINA

AERIAL IMAGES

TOWN OF EAST GREENBUSH • RENSSELAER COUNTY • NEW YORK

Date: November 14, 2008 | Scale: N.T.S | Cadd: Figure 1 Orthio.dwg

Sheet: 1 of 1

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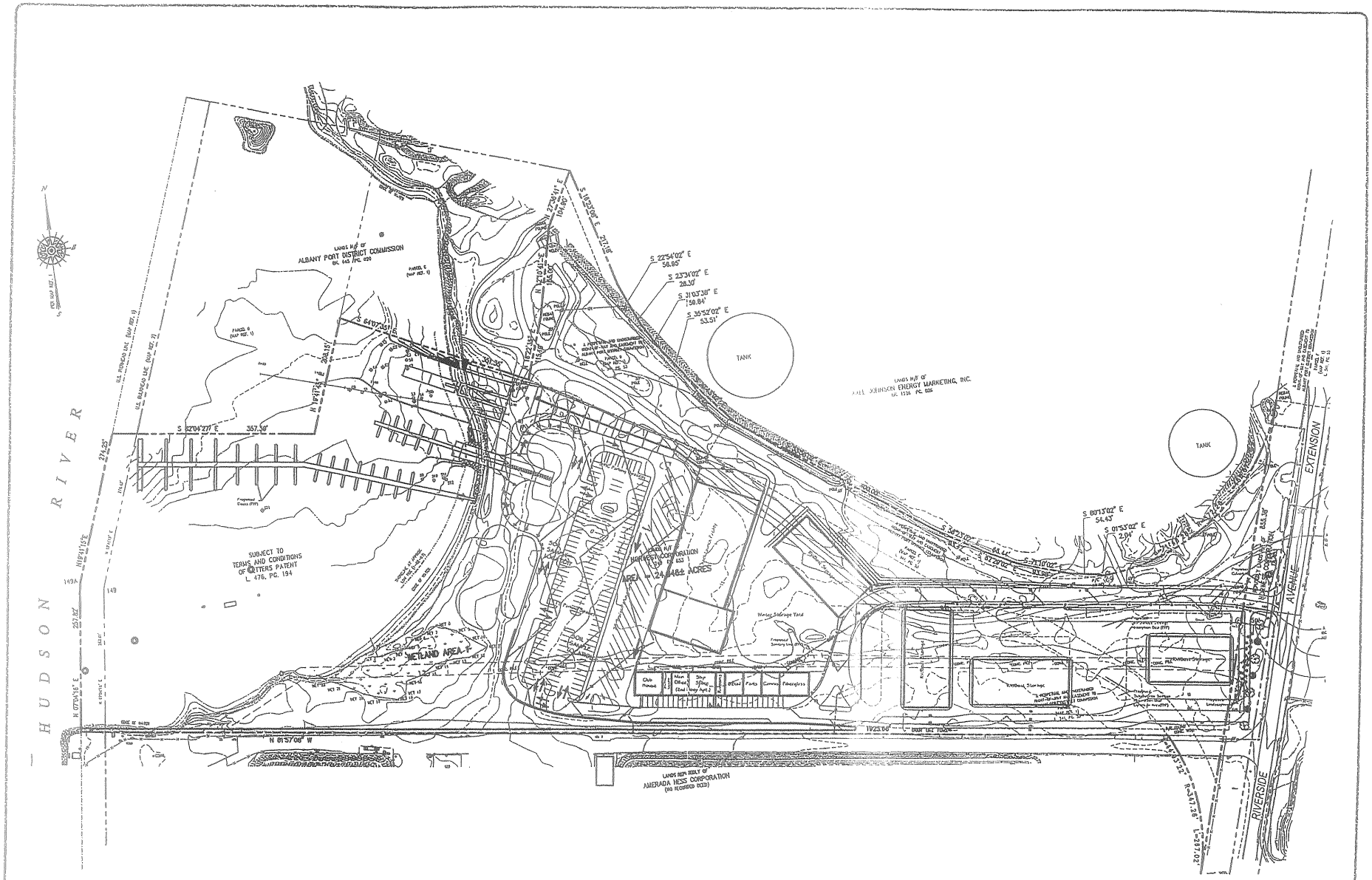
Figure "2"

Figure 2a



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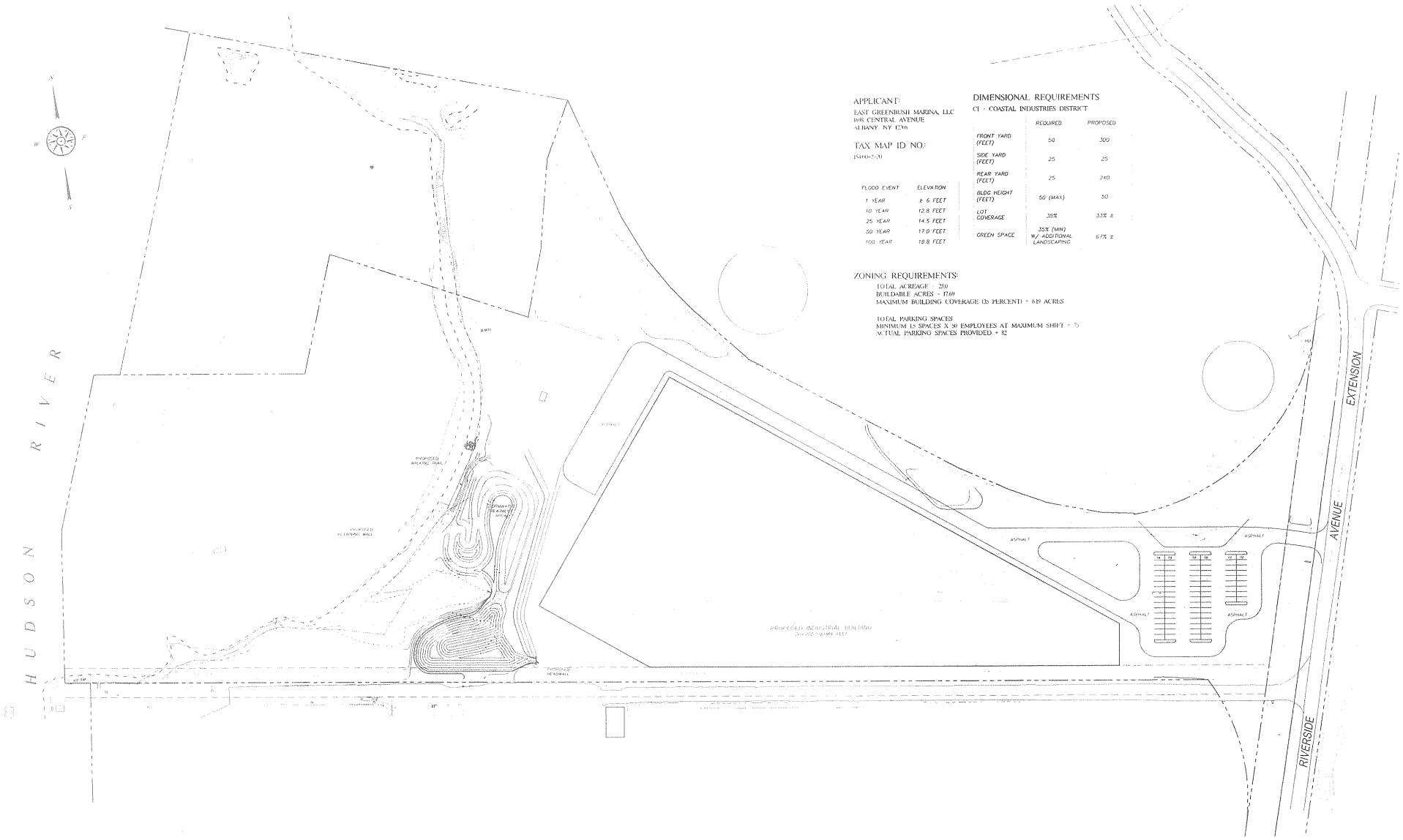
Percy B. Cotton, P.E. — N.Y.S. Lic. No. 48034

Michael L. Graff, P.L.S. — N.Y.S. Lic. No. 49,454

EAST GREENBUSH MARINA
FULL BUILDOUT LAYOUT
RIVERSIDE AVENUE EXTENSION
TOWN OF EAST GREENBUSH * RENSSELAER COUNTY

Date: JANUARY 7, 2007 | Scale: 1" = 50' | Code: XXXXXXX

Sheet 1 of XX



APPLICANT:

EAST GREENBUSH MARINA, LLC
1498 CENTRAL AVENUE
ALBANY, NY 12205

TAX MAP ID NO.:

154.00-2-30

FLOOD EVENT	ELEVATION
1 YEAR	± 6 FEET
10 YEAR	12.8 FEET
25 YEAR	14.5 FEET
50 YEAR	17.0 FEET
100 YEAR	18.8 FEET

DIMENSIONAL REQUIREMENTS

C1 - COASTAL INDUSTRIES DISTRICT

	REQUIRED	PROPOSED
FRONT YARD (FEET)	50	300
SIDE YARD (FEET)	25	25
REAR YARD (FEET)	25	240
BLDG HEIGHT (FEET)	50 (MAX)	50
LOT COVERAGE	35%	33% ±
GREEN SPACE	35% (MIN) W/ ADDITIONAL LANDSCAPING	67% ±

ZONING REQUIREMENTS:

TOTAL ACREAGE = 25.0
BUILDABLE ACRES = 17.69
MAXIMUM BUILDING COVERAGE (35 PERCENT) = 6.19 ACRES

TOTAL PARKING SPACES
MINIMUM (1) SPACES X 30 EMPLOYEES AT MAXIMUM SHIFT = 75
ACTUAL PARKING SPACES PROVIDED = 82

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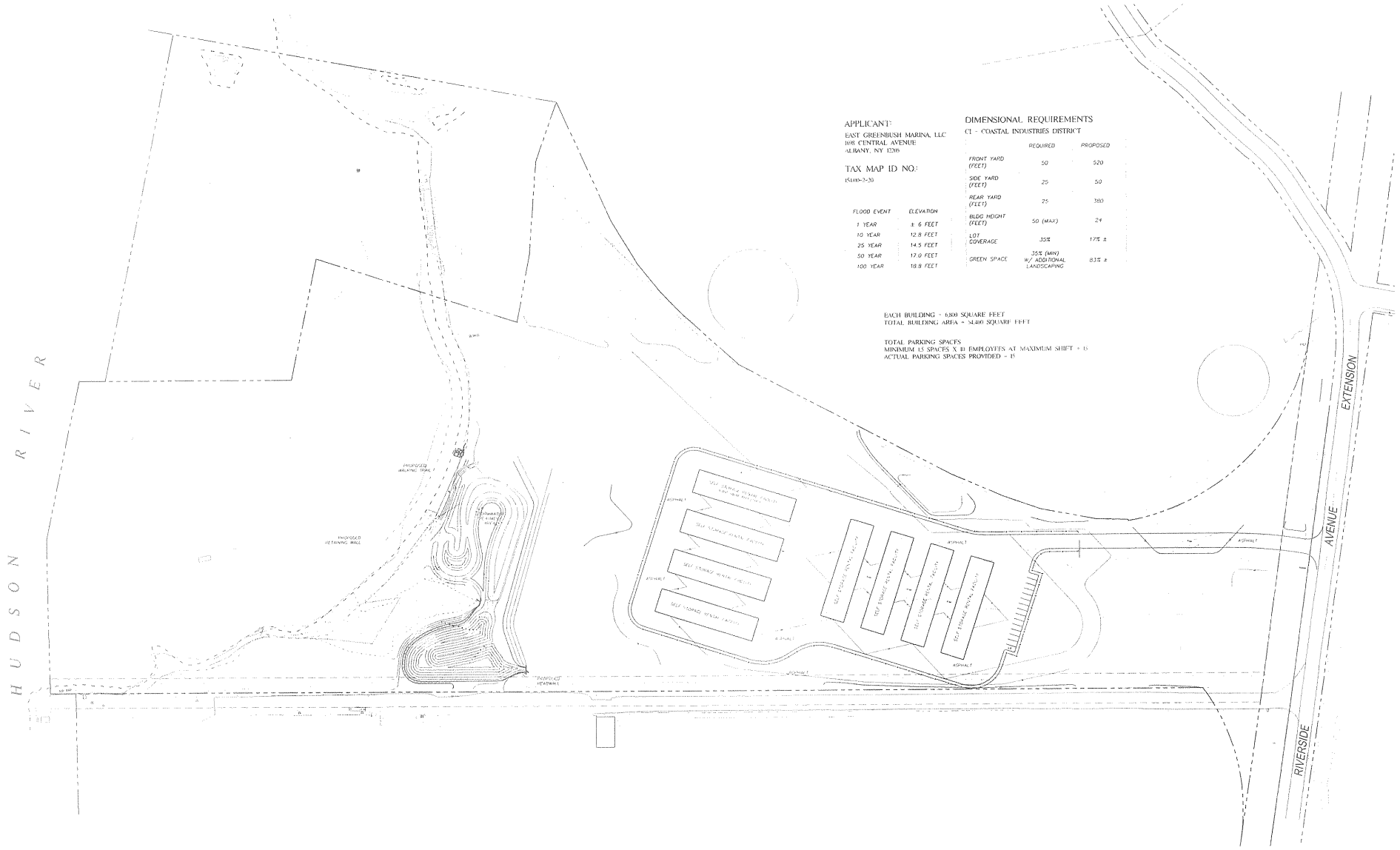
EAST GREENBUSH MARINA
MAXIMUM ALTERNATIVE LAYOUT

Date: Scale: Cadd: Maximum Alternative.dwg

Sheet: 1
1 OF 1

Figure "3"



APPLICANT:

EAST GREENBUSH MARINA, LLC
1698 CENTRAL AVENUE
ALBANY, NY 12206

TAX MAP ID NO:

154.00-2-20

FLOOD EVENT	ELEVATION
1 YEAR	± 6 FEET
10 YEAR	12.8 FEET
25 YEAR	14.5 FEET
50 YEAR	17.0 FEET
100 YEAR	18.8 FEET

DIMENSIONAL REQUIREMENTS

C1 - COASTAL INDUSTRIES DISTRICT

	REQUIRED	PROPOSED
FRONT YARD (FEET)	50	520
SIDE YARD (FEET)	25	50
REAR YARD (FEET)	25	380
BLDG HEIGHT (FEET)	50 (MAX)	24
LOT COVERAGE	35%	17% ±
GREEN SPACE	35% (MIN) W/ ADDITIONAL LANDSCAPING	83% ±

EACH BUILDING = 6,800 SQUARE FEET
TOTAL BUILDING AREA = 54,400 SQUARE FEET

TOTAL PARKING SPACES
MINIMUM 1.5 SPACES X 10 EMPLOYEES AT MAXIMUM SHIFT = 15
ACTUAL PARKING SPACES PROVIDED = 15

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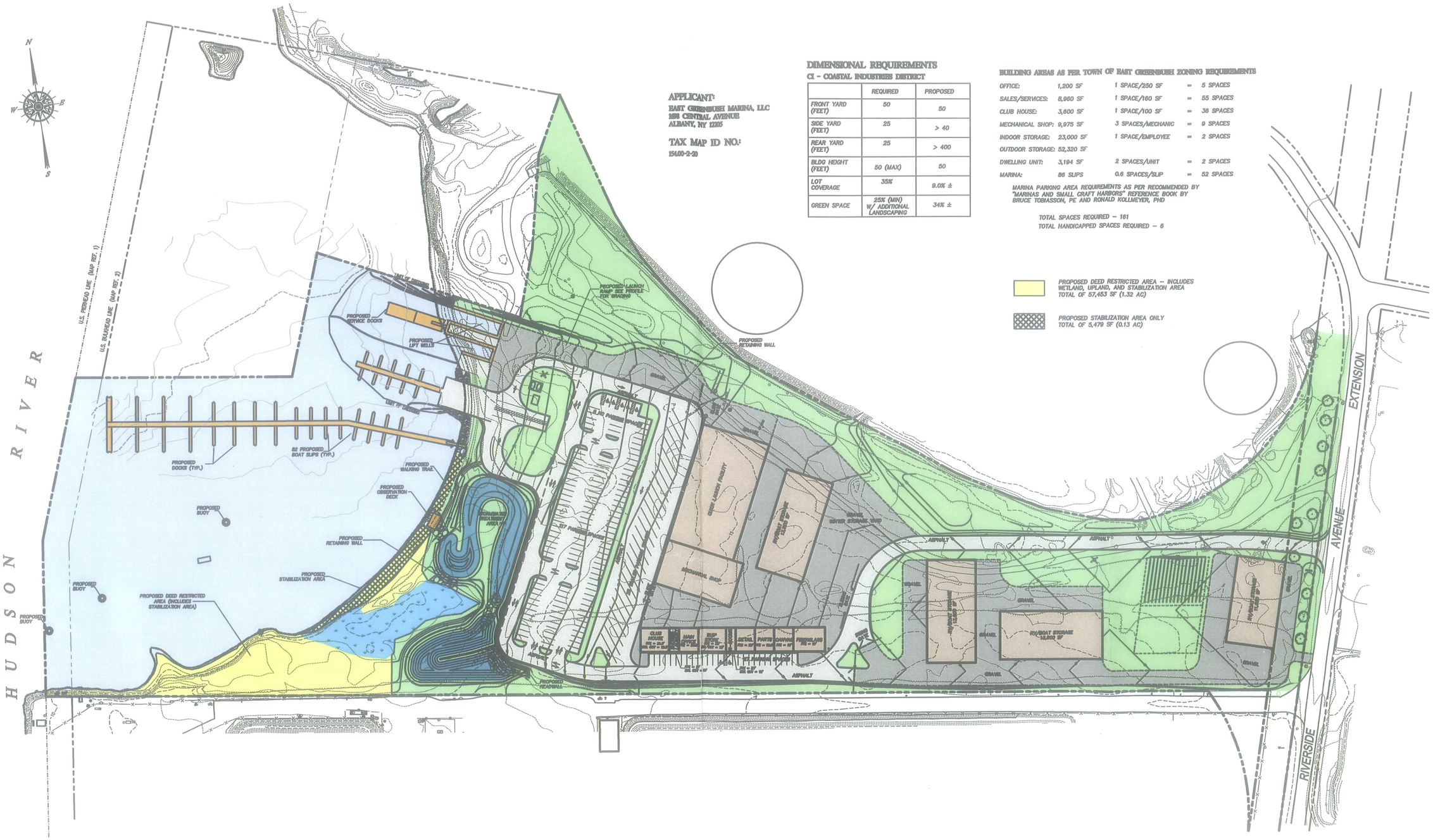
EAST GREENBUSH MARINA
ALTERNATIVE LAYOUT

Date: Scale: Cadd:

Sheet: 1
1 OF 1

Figure "4"



APPLICANT:
EAST GREENBUSH MARINA, LLC
1598 CENTRAL AVENUE
ALBANY, NY 12205

TAX MAP ID NO.:
154.00-2-20

DIMENSIONAL REQUIREMENTS
CI - COASTAL INDUSTRIES DISTRICT

	REQUIRED	PROPOSED
FRONT YARD (FEET)	50	50
SIDE YARD (FEET)	25	> 40
REAR YARD (FEET)	25	> 400
BLDG HEIGHT (FEET)	50 (MAX)	50
LOT COVERAGE	35%	9.0% ±
GREEN SPACE	25% (MIN) W/ ADDITIONAL LANDSCAPING	34% ±

BUILDING AREAS AS PER TOWN OF EAST GREENBUSH ZONING REQUIREMENTS

OFFICE:	1,200 SF	1 SPACE/250 SF	=	5 SPACES
SALES/SERVICES:	8,960 SF	1 SPACE/160 SF	=	55 SPACES
CLUB HOUSE:	3,600 SF	1 SPACE/100 SF	=	36 SPACES
MECHANICAL SHOP:	9,975 SF	3 SPACES/MECHANIC	=	9 SPACES
INDOOR STORAGE:	23,000 SF	1 SPACE/EMPLOYEE	=	2 SPACES
OUTDOOR STORAGE:	52,320 SF			
DWELLING UNIT:	3,194 SF	2 SPACES/UNIT	=	2 SPACES
MARINA:	86 SLIPS	0.6 SPACES/SLIP	=	52 SPACES

MARINA PARKING AREA REQUIREMENTS AS PER RECOMMENDED BY "MARINAS AND SMALL CRAFT HARBORS" REFERENCE BOOK BY BRUCE TOBIASSON, PE AND RONALD KOLLMEYER, PHD

TOTAL SPACES REQUIRED – 161
TOTAL HANDICAPPED SPACES REQUIRED – 6

PROPOSED DEED RESTRICTED AREA – INCLUDES WETLAND, UPLAND, AND STABILIZATION AREA
TOTAL OF 57,453 SF (1.32 AC)

PROPOSED STABILIZATION AREA ONLY
TOTAL OF 5,479 SF (0.13 AC)

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SITE LAYOUT PLAN
EAST GREENBUSH MARINA
TOWN OF EAST GREENBUSH * RENSSELAER COUNTY * NEW YORK

Date: 9/07/2008 | Scale: NTS | Cadd: render5.dwg

Sheet: 1
1 of 2

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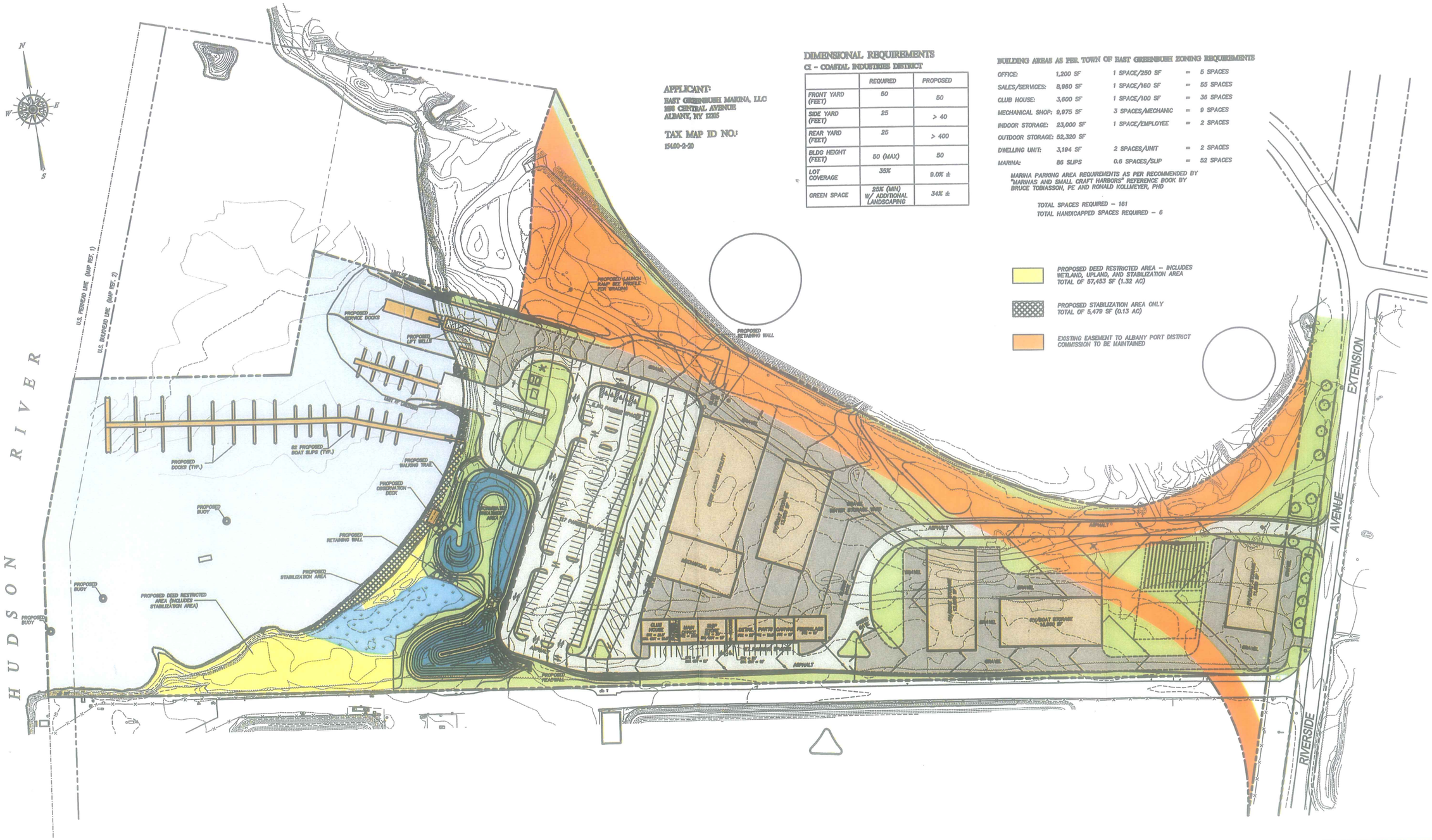
Figure "5"



APPLICANT:
EAST GREENBUSH MARINA, LLC
169 CENTRAL AVENUE
ALBANY, NY 12205

TAX MAP ID NO.:
154.00-2-20

DIMENSIONAL REQUIREMENTS
CI - COASTAL INDUSTRIES DISTRICT

	REQUIRED	PROPOSED
FRONT YARD (FEET)	50	50
SIDE YARD (FEET)	25	> 40
REAR YARD (FEET)	25	> 400
BLDG HEIGHT (FEET)	50 (MAX)	50
LOT COVERAGE	35%	9.0% ±
GREEN SPACE	25% (MIN) W/ ADDITIONAL LANDSCAPING	34% ±

BUILDING AREAS AS PER TOWN OF EAST GREENBUSH ZONING REQUIREMENTS

OFFICE:	1,200 SF	1 SPACE/250 SF	=	5 SPACES
SALES/SERVICES:	8,960 SF	1 SPACE/160 SF	=	55 SPACES
CLUB HOUSE:	3,600 SF	1 SPACE/100 SF	=	36 SPACES
MECHANICAL SHOP:	9,975 SF	3 SPACES/MECHANIC	=	9 SPACES
INDOOR STORAGE:	23,000 SF	1 SPACE/EMPLOYEE	=	2 SPACES
OUTDOOR STORAGE:	52,320 SF			
DWELLING UNIT:	3,194 SF	2 SPACES/UNIT	=	2 SPACES
MARINA:	86 SLIPS	0.6 SPACES/SLIP	=	52 SPACES

MARINA PARKING AREA REQUIREMENTS AS PER RECOMMENDED BY "MARINAS AND SMALL CRAFT HARBORS" REFERENCE BOOK BY BRUCE TOBIASSON, PE AND RONALD KOLLMEYER, PHD

TOTAL SPACES REQUIRED – 161
TOTAL HANDICAPPED SPACES REQUIRED – 6

PROPOSED DEED RESTRICTED AREA – INCLUDES WETLAND, UPLAND, AND STABILIZATION AREA TOTAL OF 57,453 SF (1.32 AC)

PROPOSED STABILIZATION AREA ONLY TOTAL OF 5,479 SF (0.13 AC)

EXISTING EASEMENT TO ALBANY PORT DISTRICT COMMISSION TO BE MAINTAINED

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EAST GREENBUSH MARINA
TOWN OF EAST GREENBUSH * RENSSELAER COUNTY * NEW YORK

Date: 9/07/2008 | Scale: NTS | Cadd: render5.dwg

Sheet: 1
1 of 2

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Figure "6"

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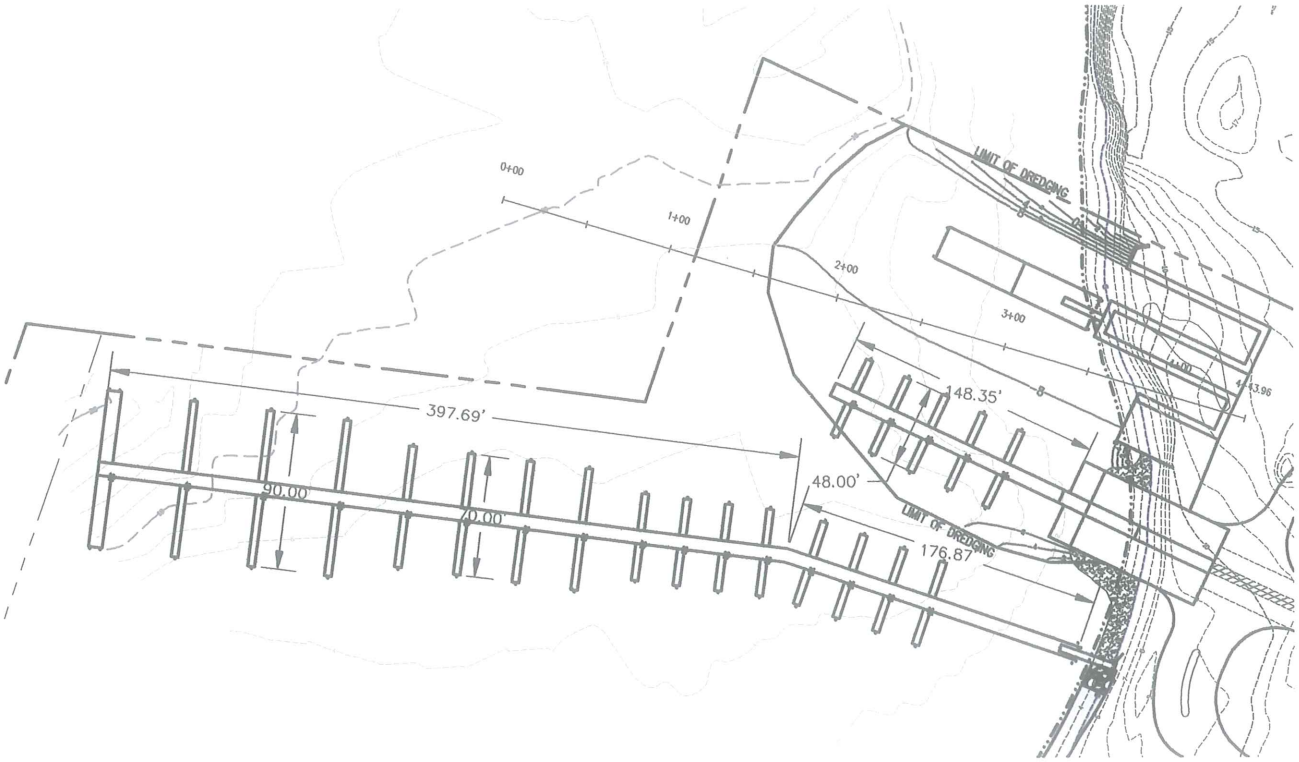
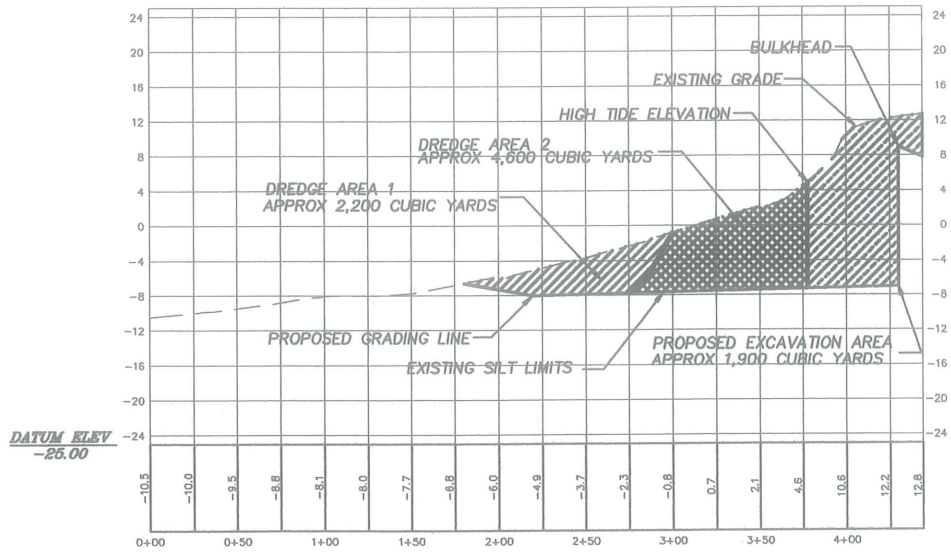
SITE LAYOUT PLAN–REVISED EAST GREENBUSH MARINA

TOWN OF EAST GREENBUSH * RENSSELAER COUNTY * NEW YORK

Date: SEPT 18, 2008 | Scale: 1" = 300' | CADD: publicnotice2

Figure "7"





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SITE LAYOUT PLAN–REVISED
EAST GREENBUSH MARINA

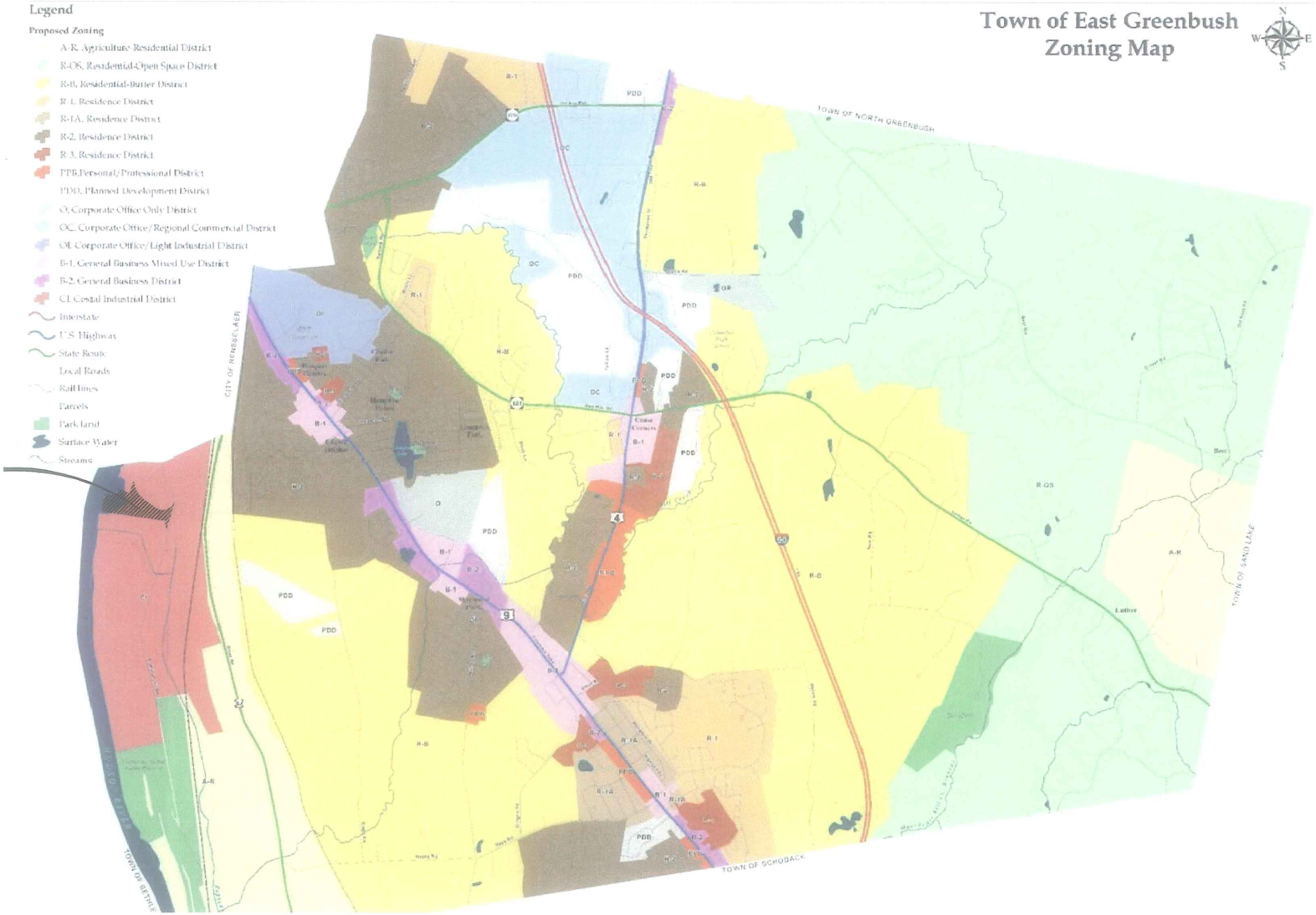
TOWN OF EAST GREENBUSH * RENSSELAER COUNTY * NEW YORK

Date: SEPT. 18, 2008 | Scale: 1" = 100' | Cadd: publicnotice2

Figure "8"

Figure "9"

Town of East Greenbush Zoning Map



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Appendix "1"

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Fax: (518) 273-8391
www.chazencompanies.com

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Planners
Environmental Scientists
Landscape Architects

Dutchess County Office: (845) 454-3980
Orange County Office: (845) 567-1133
North Country Office: (518) 812-0513
Connecticut Office: (860) 440-2690

October 22, 2008

Mr. James F. Moore, AIA
Director of Planning
Town of East Greenbush
225 Columbia Turnpike
Rensselaer, New York 12144

Re: East Greenbush Marina Draft Environmental Impact Statement
Technical Review
Riverside Avenue Extension
Town of East Greenbush, Rensselaer County, New York
Chazen Job #30604.03

Dear Mr. Moore:

The Chazen Companies (TCC) have completed the technical reviewed of the Draft Environmental Impact Statement (DEIS) for the proposed East Greenbush Marina, prepared by Lynch & Hetman, PLLC. Based on our review, we offer the following comments.

LIST OF FIGURES AND TABLES

Figure 2a is not included in this list, or mentioned in the text. This figure should either be removed or referenced.

1.0 EXECUTIVE SUMMARY

1.4 Project Alternatives Considered

1. In general, the analysis of the alternatives (other than the No Action alternative) does not include specific data regarding impacts so that a comparison can be made to the preferred plan. Rather, broad, conclusory statements are submitted for which no supporting evidence is offered nor is any statistical or site specific data provided.

2. It would be helpful to use the names of the alternatives in this section when each is mentioned "No Action Alternative," "Industrial Alternative," and "Alternative Site Plans."

3. An explanation the no action alternative should begin the first paragraph of section 4.1, for example: *The "no action" alternative is the scenario that would occur if no development were to take place on the project site.*

4. The purpose of each alternative is not entirely clear, a brief explanation of the scenario that would occur under both the Industrial Alternative and the Alternative Site Plans alternative should be included.

5. A depiction of significant impacts for each alternative should be mentioned, even if only qualitative: taxes, traffic, impervious area, jobs, etc.

2.0 PROJECT DESCRIPTION

2.2. Site Use and Project History

1. Figure 1 should include:
    - North Arrow
    - Source Information including date of aerial photograph
    - Legend Depicting: site boundary, town boundary, and turning basin
    - Symbols for each attribute above should differ.

2.3. Description of Action

1. The project description, first paragraph of this section, should include the days and hours of operation of the proposed marina.
2. The caretaker apartment should be included as part of the description of the proposed action in the first paragraph, including the building it will be located.
3. ZONING - The definition of "Recreation; Marina" should follow its initial mention in the Zoning section above, after the first paragraph.
4. ZONING - A list of permitted uses in the C-I zoning district should be included.
5. ZONING – It would be helpful to include a zoning map of the site, or refer to such map if it is located in another section.
6. Please provide the actual distances and building height in the "project" column of Table 1, "area and bulk requirements."

2.4. Phasing, Construction, and Operation

1. A description of sediment classes should be included on page 21 in the paragraph describing the dewatering process.

3.0 POTENTIAL ENVIRONMENTAL IMPACTS

3.1 Soils

1. What are the contamination levels of the fill material on the site from the previous dredging operation? Did the original dredging for the turning basin occur before the contamination in the 1940's? Where was the material placed and will it be excavated for this project?

1. Existing Conditions - A description of the soils classes should preclude the "Sediment Core Analytical Summary Table 1," including ranges of PCB levels for each class. Define what each classification means, and what agency issues the classification.

2. Mitigation Measures - More explanation is needed regarding the ability to use an environmental bucket during dredging. What sediment density threshold must be exceeded to require the use of a standard digging bucket instead of the environmental bucket? Is it expected that a standard digging bucket will be needed to complete this job? What are the disadvantages of a standard digging bucket?

3. Mitigation Measures - The text should explain how the water from the dewatering process will be managed. A description of sampling methods proposed for the water in the catch basin prior to its release should be included.

3.2 Water Resources

1. Existing Conditions – It is assumed that the "FEMA-delineated floodplain" is the 100-year floodplain, this information should be included.

2. Mitigation Measures - The DEIS contains an Acknowledgement of Receipt of the Notice of Intent (NOI) dated July 3, 3007 which gave the project coverage under the NYSDEC General Permit GP-02-01 (amended to GP-0-08-001 in May 2008). It should be noted that the applicant was provided technical comments on the supporting SWPPP and NOI when this project was under site plan review on August 1, 2007. This technical review identified deficiencies within the SWPPP as well as the NOI (refer to DEIS Appendix 9.17P). The deficiencies were satisfactorily addressed, however by the dates of comments issued and the applicants receipt of permit coverage suggests that the permit application may have been prematurely submitted. The DEIS should identify if there in fact is an issue relative to the facts which the permit coverage was granted and/or if the applicant intends on re-applying for permit coverage based on the revised NOI contained with the SWPPP provided in Appendix 9.22 of the DEIS.

3. Mitigation Measures - The DEIS Appendix 9.13 provide the referenced Acknowledgement of Receipt associated with stormwater discharges, but provides the incorrect SPDES Application. The referenced application is for wastewater discharges and the correct SPDES Permit application (or NOI) should be provided.

4. Mitigation Measures - Appendix 9.22 of the DEIS contains the project SWPPP. Part III(A)(8) of the General Permit (GP-0-08-001) requires that the SWPPP contains documentation supporting the determination of permit eligibility with regard to Part I.D.10 (Historic Places). At a minimum the criteria outlined in Part III(B)(8) a through d of the General Permit must be documented within the SWPPP.

3.3 Vegetation and Wildlife (Terrestrial and Aquatic Ecology)

1. Existing Conditions – A discussion of the existing habitat/land cover should be included describing the types of vegetation currently on site.

2. Potential Impacts – This section states that "...there exists no endangered species, nor protected plant life on this previously disturbed site." This statement must be supported by information from USFWS and/or NYSDEC.

3. Potential Impacts – A brief summary of vegetation type and number of acres to be removed should be included.

3.4 Transportation

1. While the discussion of the "water" traffic and its impact is well presented, the conclusion of the DEIS in regard to "water" traffic, i.e. no mitigation is required, is best addressed by the appropriate regulatory agency(s).

3.5 Archaeological and Historic Resources

1. Potential Impacts – This section makes the general statement that the project may have the potential to cause adverse impacts on cultural resources that may be eligible for listing on the National Register of Historic Places, but does not describe what these potential impacts may be. The DEIS should describe the potential impacts the project may have on these resources. Further, considering that there appears a need to obtain regulatory opinions on the cultural resource impacts, the applicant should continue to coordinate and provide resolution on this matter with the regulatory agencies having jurisdiction.

3.6 Utilities – Water Supply and Wastewater Disposal

1. Mitigation Measures - It is proposed to the service the project via an on-site groundwater well, which is a variation from prior proposals that contemplated the extension of public water to the site. Based upon the proposed source, duration of operation and number of daily users, it is believed that this will then be classified as a Transient Non-community Water System in accordance with New York State Dept of Health standards. The DEIS should further discuss if the site can support such a system with engineering analysis provided and identify specific regulatory requirements associated with such a public water system.

2. Mitigation Measures - With the project in close proximity to the Hudson River there is a need to discuss the potential of groundwater under the direct influence of surface water (GWUDI) for the proposed water source. The DEIS should discuss the potential for such a condition and present alternatives as to how the water source would have to be treated to address such conditions.

3. Mitigation Measures - Without public water made available or the installation of hydrants, how will adequate fire protection be provided to the site?

3.7 Community Character (Land Use and Zoning) and Coastal Consistency

1. Potential Impacts - The statement that the project is a " . . less intense use than an industrial use" should be expanded upon using conceptual examples.

3.8 Public Safety

1. Mitigation Measures: - The DEIS provides alternate evacuation routes in case of catastrophic events in and round the facility. Routes 1, 4, 5, 6, and 7 appears reasonable, however Route 2 (Alternate Best Route) and 3 (Tellers Crossing) are dependent upon other parties being involved in order for them to be fully functional. Route 2 appears to require overland access easement through private lands and Route 3 will require cooperation from Amtrack. Therefore, there should be discussion with

supporting correspondence from the other parties to ensure that the additional routes proposed actually can be utilized.

5.0 ALTERNATIVES

1. In general, the analysis of the alternatives (other than the No Action alternative) does not include specific data regarding impacts so that a comparison can be made to the preferred plan. Rather, broad, conclusory statements are submitted for which no supporting evidence is offered nor is any statistical or site specific data provided. The Scope requires an evaluation of reasonable and practical alternatives. It is not within the Applicant's purview to "choose not to prepare alternative plans." At least one reasonable alternative should be provided and addressed in sufficient detail to enable the comparison of associated impacts with the proposed plan.

2. Alternative 5.3 is not a viable alternative due to the siting of a structure within a protected wetland area. This alternative should be removed from the DEIS as it is not considered reasonable or practical.

3. The purpose of each alternative is not entirely clear; an explanation of the scenario that would occur under each alternative should be included.

6.0 IRREVERSIBLE AND IRRETRIEVABLE COMMITMENT OF RESOURCES

No Comments

7.0 GROWTH INDUCING IMPACTS

No Comments

8.0 EFFECTS ON THE USE AND CONSERVATION OF ENERGY RESOURCES

No Comments

In the even the Town has any questions or concerns, please do not hesitate to contact this office at (518) 273-0055.

Respectfully submitted,
The Chazen Companies,

Joel M. Bianchi, PE
Director of Municipal
Engineering

JMB/nv

cc: Rick McCabe, Town Supervisor
Richard Benko, Planning Board Chair
Peter Lynch, Esq Agent for Applicant
File

Appendix "2"

TOWN OF EAST GREENBUSH
PLANNING BOARD

TOWN HALL, 225 COLUMBIA TURNPIKE, RENSSELAER, NY 12144 (518) 477-2005 EXT. 226 FAX (518)477-2386

MEMORANDUM

EAST GREENBUSH PLANNING BOARD
MEETING MINUTES
SEPTEMBER 3, 2008

Members
Chairman Benko
Bill Ritz
Kurt Bergmann
Sue Mangold
Don Panton
Bob Davey

Also Present:
Jim Moore, Planning Director
Tim Nugent, Planning Board Attorney
Alison Lovely, Planning Board Secretary

Present for Public Hearings:
Donna Moran, Court Stenographer

CALL TO ORDER / DETERMINATION OF QUORUM

Chairman Benko called the meeting to order and determined a quorum of six (6) members were present. Introductions were made.

PUBLIC HEARINGS

CIPPERLEY(ABP BUILDERS) MINOR 3-LOT SUBDIVISION (06-40)

Kurt Bergmann read the legal notice:

The Town of East Greenbush Planning Board shall conduct a Public Hearing pursuant to Section 276 of the Town Law and the Town's Land Subdivision Regulations on the application of ABP Builders, LLC. for a Minor 2- Lot Subdivision called the "2 lot subdivision of lands of ABP Builders". Lot 1 consists of 2.00 +/- acres and has an existing house on it. Lot 2 consists of 108.37 +/- acres, the remaining lands. The property is located in the R-OS, Residential Open Space Zoning District, Tax Map # 145.-2-17.121. Said Public Hearing will be held on Wednesday, September 3, 2008 at 7:35 PM at the East Greenbush Town Hall, 225 Columbia Turnpike, East Greenbush, NY. At the above time and place, all interested parties will be given an opportunity to be heard.

Dick Tice of Brewer Engineering presented the project to the Board on behalf of ABP Builders and Mr. Cipperley. Mr. Tice stated that this is a 2 lot subdivision. A two acre lot with a house and outbuildings on it will be subdivided from a 110 acre parcel. Chairman Benko asked if anyone was present in favor of the minor 2-lot subdivision. Chairman Benko asked if anyone was present in opposition of the minor 2-lot subdivision. No one spoke in favor of or against the subdivision. Chairman Benko closed the public hearing at 7:43pm.

EAST GREENBUSH MARINA **(05-74)**

Joel Bianchi of Chazen Engineering presented the review of the DEIS to the Board. Joel stated that the DEIS is still within the public comment period and that tonight that they will review the DEIS and he will collect any questions/comments and present them to the Town Board for their review. Below is a list of questions/comments that were raised by the Planning Board.

EAST GREENBUSH MARINA DEIS COMMENTS FROM THE PLANNING BOARD:

Sue Mangold: Is the boat launch going to be public?

Bill Ritz: He stated he was lead to believe that the town residents would be able to use it?
The issue is it's unclear whether it will be free or if there will be a fee to use it.
Bottom line, there needs to be clarity whether it's paid or not.

Bob Davey: Is the caretaker proposed as accessory or not? Joel stated that it is not part of the DEIS.

Bill Ritz: At some point do we get to see approvals from other permitting agencies?
Isn't it part of the approval to see what permits have been obtained by other agencies?

Bill Ritz: Aren't we basically telling them that their approved?
As far as public safety goes, how are they getting people out of there?

Kurt Bergmann: Had a question about the measurement for PCB's. He wanted to know if the reference meant units. It lies in Class C, is that considered low?

Rich Benko: Does DEC have oversight for dredging?

Bob Davey: What is the route that the trucks will take? How will they leave the town?

Bill Ritz: They have to give us a route. The applicant should have to submit a dredging plan and report the amount of PCB's found. Bottom line, we want a complete dredging plan, transport route and how it will get disposed of.

Sue Mangold: How often do they test and who decides that it's fill? Do they sample piles after they sit? Before they use it for fill, is it tested? What is the protocol for sampling PCB's?

Rich Benko: How can the Marina support the amount of money that this project is going to cost?

Bob Davey: Has there been an identification of how many jobs this will create? What is the employment impact of this project?

Bill Ritz: As far as storm drainage goes, how are they going to handle it? Does it just go into the river?

Bob Davey: What is the range of acceptability from an economic standpoint? Is there a possibility that this project could damage the property for further uses? Is there a bond or something that exists to be economically safe guarded?

Bill Ritz: Are they going to have to build to floodplain level? How about septic systems?

Bob Davey: The Beacon Harbor project, does it have an adverse impact on the Marina project?
What do they envision as a potential impact?

EAST GREENBUSH MARINA CONT. **(05-74)**

Don Panton: Until they start dredging they won't know the concentration of PCB's right?

Kurt Bergmann: Is the treatment by SPDES means? Or by natural run off.

Sue Mangold: When did they determine that there was no specific wildlife on site? What time of year?

Rich Benko: What is the status of the second access? The location south of Teller's Crossing?

Bill Ritz: There is no way out, except over the high speed railroad, what is the status of DOT?

Bill Ritz: Is a well legal that close to the river? What about fire protection?

Bill Ritz: Does the applicant have legal right to access properties as part of their plan?

Sue Mangold: Will their be onsite staff?

Bill Ritz: How are kids going to be stopped when they ride their bikes on Riverside Avenue? There is no shoulder on the road. How is the project proposed to handle pedestrian traffic on Riverside Avenue?

NEW BUSINESS

FIACCO MAJOR SITE PLAN **(08-30)**

Steve Hart of Hart Engineering presented the project to the Board on behalf of Leon Fiacco. The property is located on Route 4 just north of Starbucks. The property consisted of a house and garage that were demolished. There is an existing 4,875 65'x75' building which is the Field of Teams store. There is a building in the rear of the site which is to be demolished. The new building will consist of 5,875 square feet with a total of 22 parking spaces, the requirement is 18. There are currently 8 parking spaces and there will be 14 new. There is a 2 bedroom apartment on top of the field of teams. There is existing water and sewer and the curb cut is to remain as it is. There will be a right in and right out only. The existing sign will be used for the new building.

MOTION: A motion was made by Chairman Benko as follows: **The Town of East Greenbush Planning Board hereby accepts the proposed sketch plan dated May 12, 2008, last revised September 3, 2008, prepared by Hart Engineering for the proposed site plan.**

Second by Kurt Bergmann & roll called as follows:

R. Benko - YES; K. Bergmann-YES; B. Ritz-YES; B. Davey-YES; D. Panton – YES; S. Mangold-Abstain

MOTION CARRIED BY A 5-0-1 VOTE

FIACCO MAJOR SITE PLAN CONT. **(08-30)**

MOTION: A motion was made by Chairman Benko as follows: **The Planning Board hereby recommends the Town of East Greenbush Town Board declare its intent to seek Lead Agency status in connection with a coordinated review and the determine the proposed project as an Unlisted Action under SEQRA.**

Second by Bill Ritz & roll called as follows:

R. Benko - YES; K. Bergmann-YES; B. Ritz-YES; B. Davey-YES; D. Panton – YES; S. Mangold-Abstain

MOTION CARRIED BY A 5-0-1 VOTE

REFERRALS-REPORTS & RECOMMENDATIONS:
ZBA Appeal #2008-13-EG Marina LLC.-Riverside Ave. Ext.-Special Use Permit & Area Variance-Report by Rich Benko & Kurt Bergmann was tabled as more information is being requested from the applicant before a recommendation is given to the Zoning Board of Appeals.

NEW ZBA REFERRALS
NONE

REVIEW AND APPROVAL OF MEETING MINUTES
Approval of the August 6, 2008 meeting minutes with corrections. Motion by Bob Davey. Seconded by Don Panton, with a 5-0-1 vote. Kurt Bergmann abstain.

Approval of the August 20, 2008 meeting minutes. Motion by Chairman Benko. Seconded by Bill Ritz, with a 5-0-1 vote. Bob Davey abstain.

ADJOURNMENT
There being no further business to come before the Board, the meeting was adjourned upon motion by Chairman Benko. Seconded by Don Panton. Motion was carried by a 6-0 vote.

Respectfully Submitted

Alison Lovely
A:\min9#3

Appendix "3"

Public Hearing Town of East Greenbush
State of New York, County of Rensselaer
held on Oct. 8, 2008 at 6:00pm
Town Hall, 225 Columbia Tpk, to hear
comments concerning the East Greenbush
Marina, Riverside Ave.

ROLL:	SUPERVISOR MCCABE	PRESENT
	COUNCILPERSON KENNEDY	ABSENT
	COUNCILPERSON DANAHER	PRESENT
	COUNCILPERSON CRISTO	PRESENT
	COUNCILPERSON MATTERS	PRESENT

The hearing was started with the pledge to the flag.

Supervisor McCabe asked Town Clerk, Linda Kennedy to read the legal notice.

NOTICE OF PUBLIC HEARING

Please take notice that the Town Board of the Town of East Greenbush County of Rensselaer, has scheduled a public hearing on October 8, 2008 at 6:00 pm at the Town Hall , 225 Columbia Turnpike, Rensselaer, nY This is a re-schedule of the SEQR hearing to consider comments concerning the (DEIS) Draft Environmental Impact Statement on the EAST GREENBUSH MARINA.

By orders of the Town Board,

Linda Kennedy, Town Clerk

Town Clerk, Linda Kennedy stated that the notice was published and posted.

Supervisor McCabe opened the floor for public comment.

1) Peter Lynch representing the Marina
Peter gave a descriptive presentation on the Marina including location, available features, ie: docks, storage, gas, and a mechanic station. The Marina will be located in the old turning basin by GoldBond on Riverside Ave. He stated that this project has gone before the zoning and planning boards and now needs a variance because ZLB states he needs a trail around the perimeter, which can't happen because of the wetlands and deed restrictions on parcel.

2) Raymond Tonnies, licensed Captain US Coast Guard, is in favor of the marina.
3) Jeff Smithson also spoke in favor.

Supervisor McCabe asked three times if anyone one wanted to speak against. no one answered. And public hearing was closed at 6:400 pm

Motion by Phil Danaher seconded by Richard McCabe

Respectfully submitted,

Linda Kennedy, Town Clerk

Appendix "4"

PUBLIC NOTICE

Copy

US Army Corps of Engineers
New York District
Upstate Regulatory Field Office
1 Buffington Street, Bldg. 10, 3rd Floor
Watervliet, New York 12189-4000

In replying refer to:
Public Notice Number: NAN-2006-00394-WFI
Issue Date: October 30, 2008
Expiration Date: December 1, 2008

To Whom It May Concern:

The New York District, Corps of Engineers has received an application for a Department of the Army permit pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S. C. 1344).

APPLICANT: East Greenbush Marina, LLC
1698 Central Ave.
Albany, New York 12205

ACTIVITY: Dredge with upland disposal and discharge fill material below the mean high water elevation of the Hudson River to facilitate the construction of a marina facility .

WATERWAY: Hudson River

LOCATION: Town of East Greenbush, Rensselaer County, New York

A detailed description and plans of the applicant's activity are enclosed to assist in your review.

The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people.

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

ALL COMMENTS REGARDING THE PERMIT APPLICATION MUST BE PREPARED IN WRITING AND MAILED TO THE ATTENTION OF HEIDI FIRSTENCEL AT THE ABOVE ADDRESS, OR SENT VIA ELECTRONIC MAIL TO heidi.x.firstencel@usace.army.mil TO REACH THIS OFFICE BY THE EXPIRATION DATE OF THIS NOTICE, OTHERWISE, IT WILL BE PRESUMED THAT THERE ARE NO OBJECTIONS TO THE ACTIVITY.

It is requested that you communicate the foregoing information concerning the activity to any persons known by you to be interested and who did not receive a copy of this notice. If you have any questions concerning this application, you may contact Heidi Firstencel of this office at (518) 266-6353.

For more information on New York District Corps of Engineers programs, visit our website at http://www.nan.usace.army.mil

for Christine Delan
Richard L. Tomer
Chief, Regulatory Branch

Enclosures

The Excavation Area shares the eastern edge of the northerly 90 feet of Dredge Area #2 and extends easterly beyond the current high water mark. The sheet pile bulkhead would be driven first to stabilize the shoreline and to create the area for two boat lift wells. Then, the material on the riverside of the bulkheads would be excavated to a depth of -8 feet to match the depth of Dredge Area #2. This excavation would generate approximately 1,900 cubic yards of material which would then be used on-site as fill.

The proposed marina facility would include two loading/lift bays with a 20 foot by 96-foot service dock; boat slips; two launch ramps for trailered boats for public use; 3 buoys; and two floating pier assemblies with a total of 84 boat slips. The northern pier would be approximately 148 feet in length and 8 feet wide, consisting of 10 finger piers, each 23 feet long by 8 feet wide. The longer southern pier would be approximately 575 feet in length and 8 feet wide, consisting of 32 finger piers, varying in lengths from 21, 31, and 41 feet. Sewage pump-out service would be provided. The westward end of the southern pier would be approximately 218 feet from the Federal Navigation Channel.

In addition, 130 linear feet of the shoreline would be rip-rapped with 15 cubic yards of material per linear foot discharged below mean high water, and 630 cubic yards of material would be discharged below mean high water to facilitate construction of the boat ramps. Additional bank stabilization would occur along two sections of the shoreline along a total of 445 linear feet where the applicant is proposing to install Coir Logs and vegetative plantings.

Activities occurring on the upland portion of the site would include a mechanical maintenance shop; parking; boat/rv storage; an observation deck; a clubhouse; a parts store; and other associated amenities, with parking for 149 vehicles.

The stated purpose of this project is to create a full-scale marina facility for use by recreational boaters.

Fig. 2 of 4

2006-00394 East Greenbush Marina

CHAS. H. SELLS, INC.
Consulting Engineers, Surveyors & Photogrammetrists
CIVIL, STRUCTURAL AND TRANSPORTATION ENGINEERING
7 WASHINGTON SQUARE
ALBANY, NEW YORK 12205
518-452-3545 FAX 518-452-3755

Unauthorized alteration or addition to this map is a violation of section 7209, sub-division 2 of the New York State Education Law. Only copies from the original of this map bearing an original signature and the embossed seal of the preparer shall be considered to be true and valid copies.

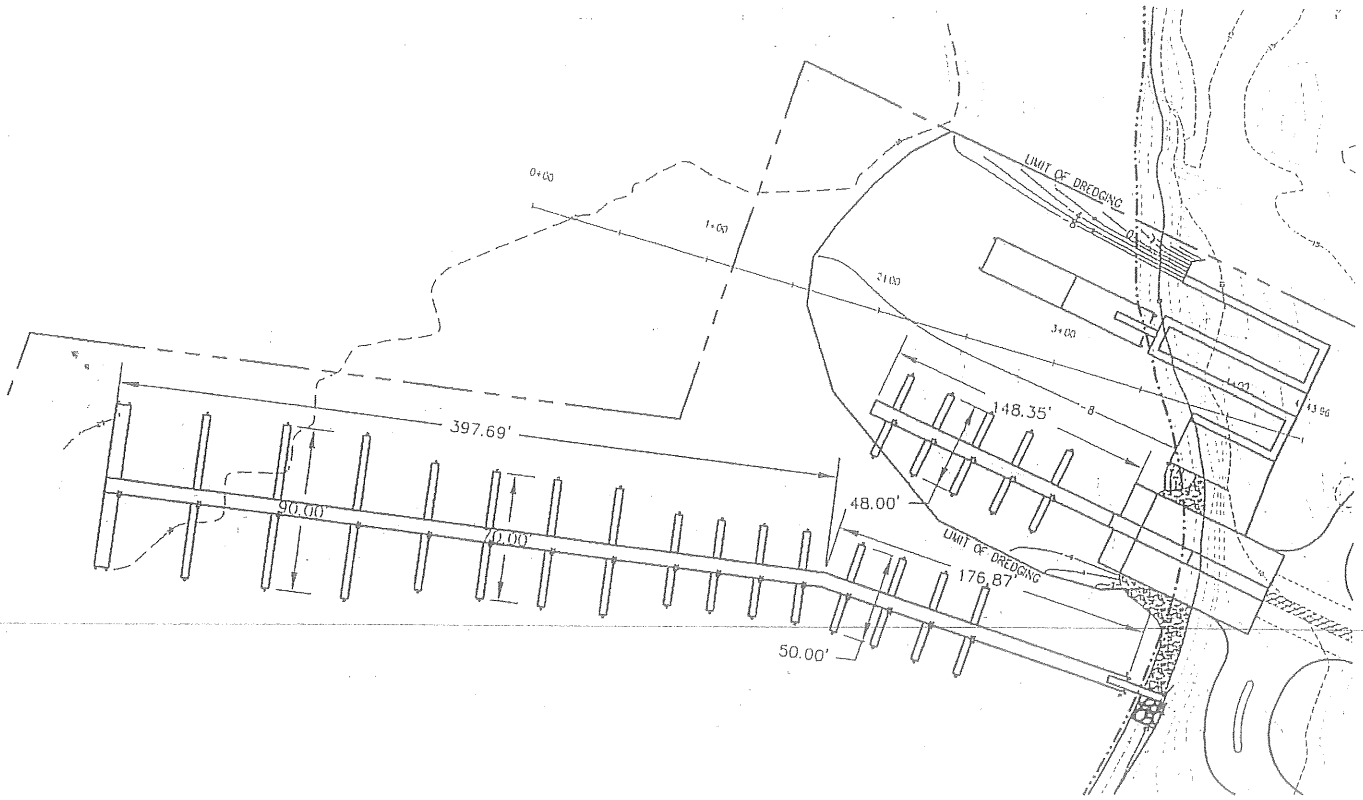
N.Y.S. Lic. No. 49,454

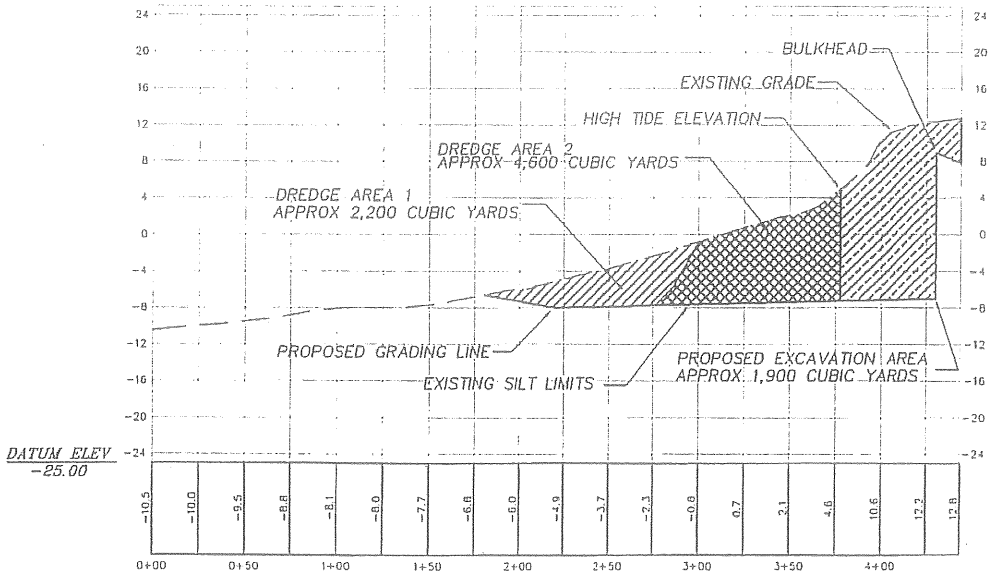
Michael I. Groff, P.L.S.

SITE LAYOUT PLAN – REV.2
EAST GREENBUSH MARINA

TOWN OF EAST GREENBUSH * RENSSELAER COUNTY * NEW YORK

Date: OCT. 22, 2008 | Scale: 1" = 300' | CADD: publicnotice2





2006-00394 East Greenbush Marina Fig 4. of 4

CHAS. H. SELLS, INC.
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N.Y.S. Lic. No. 49,454

Michael I. Groff, P.L.S.

SITE LAYOUT PLAN – REV.2
EAST GREENBUSH MARINA

TOWN OF EAST GREENBUSH • RENSSELAER COUNTY • NEW YORK

Date: OCT. 22, 2008 | Scale: 1" = 100' | Cadd: publicnotice2

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Appendix "5"

IOTA CONSTRUCTION CORPORATION

P.O. Box 370 (mailing) 298 Riverside Avenue (shipping) Rensselaer, New York 12144 Telephone (518) 434-0209 Fax (518) 432-3255

11/26/08

US Army Corps of Engineers
New York District
Upstate Regulatory Field Office
1 Buffington Street, Building 10, 3rd Floor
Watervliet, New York 12189-4000

DEC 2008

Attn: Heidi Firstencel

Re: Public Notice Number NAN-2006-00394-WFI

Ms. Firstencel,

I am writing to express my thoughts on the proposed project of dredging for the applicant East Greenbush Marina, LLC.

I am concerned with the safety and health of my employees, the general population of the area and visitors to the proposed marina. With the intention to dredge, no mention has been made of possible existing PCB contamination. Since a virtual "hot spot" of contamination has been identified at the Port of Albany which sits directly across the river at this point, it is within reason to expect the same conditions to exist on the East side of the river.

As stated in many public reports, PCB's do not lay concentrated in the surface of the bottom sediment, but rather high concentrations are found at about 1 to 3 feet in depth. This depth would be proposed for dredging on the plans. This is what was found in the Port of Albany. I use this example because of its close proximity to the proposed site. As a general contractor that has done work for and is familiar with the Port of Albany, I am aware of the problem they have had doing work and how they have taken care to not disturb the PCB contamination. Will these same considerations be given to the proposed marina? Who will monitor the work and assure the population that everything is being handled in a proper and legal fashion?

What about the dredged material the marina plans to use on the site? What about its contamination. Should that material be placed on the property, it could leach into the surrounding soils. The existing soil at my property, directly adjoining the proposed site is fine gravel and porous soil. If we excavate a test pit at our yard, we can see the results of high tide in the pit. That tells me the soils allow transmission of liquid and flowable items around the site and surrounding areas. As a health concern to all people and especially my employees, we do not need another contaminated site in our backyard. The State of New York has taken mass amounts of capital to find and approve remediation sites for dredged PCB laden material. Should any of the dredged material from this site be tested and found harmful, would the material be transported to another site for dewatering and remediation?

These are only the questions I have on the dredging. I have many concerns on the location of the proposed marina as relates to safety and national security. I find it highly unusual and particularly unsettling that a public marina could be placed in an area that due to its use as a fuel depot should be better protected. The high traffic of large vehicles, train traffic, lack of walkways for emergency use and secluded location should qualify this area as hazardous and protected. When you factor in the location to the Port of Albany, shipping lanes and fuel storage, you have the makings of serious potential terrorist targets. How anyone could allow a marina in the middle would seem downright foolish.

Additionally, I am concerned that the area for marina development is in the FEMA 100 year flood plain and being an adjacent land owner, I am well aware that this property does flood and has been under water within the past 10 years. This causes concern over the proposed use of the marina. According to plans, there will be a clubhouse and areas to pump out boats and RV's. Presumably the human waste pumped would be treated in the sites labeled "wastewater treatment". Should flooding occur, this treatment facility could become placed under water and severely contaminate the surrounding areas with serious health consequences.

Lastly, my concern for safety is renewed when no mention is made of any emergency egress plans from the site. Being a

IOTA CONSTRUCTION CORPORATION
P.O. Box 370 (mailing) 298 Riverside Avenue (shipping) Rensselaer, New York 12144 Telephone (518) 434-0209 Fax (518) 432-3255

business owner in the Port of Rensselaer, we are all concerned with the fuel storage and possible catastrophic consequences of a disaster. The Port of Rensselaer has restricted flow of traffic and a single egress point. I have seen no mention of emergency egress from the proposed marina nor the dangers posed if no such egress exists with the additional population trying to get out in an emergency.

I state that all of these problems must be addressed before approval for any such marina should be granted.

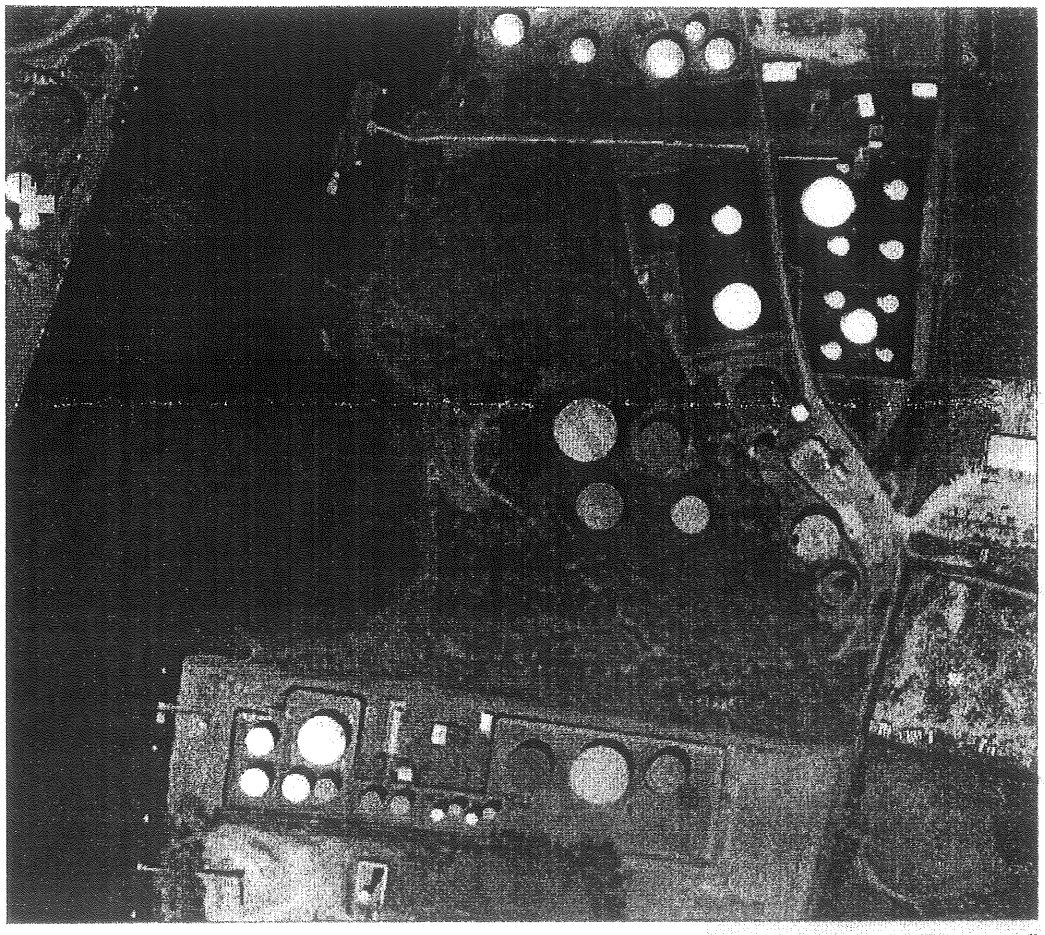
Thank you for the opportunity to express my views. I would appreciate a response to my concerns.

Sincerely,

William J. Ritz
President of Iota Construction Corporation

Google Maps

Results **1-10** of about **2,558** for **Port of** near **Albany, NY**



New York Post - NYPost.com/News/Port+Of+Albany - Sponsored Link

A. **Port** Terminal Ltd
130 S Port Rd, Albany, NY - (518) 432-9069

B. Albany **Port** Authority
106 Smith Blvd, Albany, NY - (518) 463-8763

C. **Port** Albany Ventures LLC
140 S Port Rd, Albany, NY - (518) 432-4276

D. Junior Shoe **Port**
1475 Western Ave, Albany, NY - (518) 438-7562

E. Albany **Port** RR Corporation
1 Church St, Albany, NY - (518) 463-8679

F. United States Government Customs Service: **Port** Directory
Albany, NY - (518) 431-0202

G. Albany **Port** District Commission: Maintenance Dept
Albany, NY - (518) 463-1568

H. Albany **Port** Employers Association Inc
Port of Albany, Albany, NY - (518) 462-0591

I. Albany **Port** District Commission: Transit Shed No 3
Albany, NY - (518) 463-2880

J. **Port** Welding Service Inc
198 S Port Rd, Albany, NY - (518) 463-6954

Displaying results: 21 - 30 Total results: 60

21. Mtg. May 9, 2001.2.doc
... It says there may be some grass swails which they do have some benefits but not for that much flow and catch basins. Now, sunken catch basins, there's not an adequate mitigation to storm water pollution. They get silted up, they iced over in the winter and then as all the silt and **sediment** enters in the winter, it just discharges directly into the stream and also an issue of flooding for the downstream. Not mitigating that flow will result in impacts for the downstream in our Town and into Albany as the Port. I think that that would be a responsibility of the developer to look at. Thank...
http://www.townofbethlehem.org/uploads/pub_155120010509.pdf

22. 1999-06-09.pdf
... asked about some of the work that has to be done to implement the mitigation, asking how long the hay bales and other things would be in place. Mr. Neibart said during the construction the hay bales have to be in place. He said the authorization has a number of conditions that are imposed for proper **sediment** control, monitoring, and maintenance of this area. Therefore, he said the guidelines have to be followed strictly. He said he does not know specifically how long the bales need to be there. Councilman Davis noted weather and all the factors are a part of it. Mr. Neibart said this was correct...
http://www.townofbethlehem.org/uploads/pub_152019990609.pdf

23. 1999-02-24.pdf
... Health Department? I can check but .. I believe that's what that is, yes. MR. DAVIES: Well, this is quite ... this is important because 1. this well is within the zone of influence of the Hudson River pcb superfund site; 2. there has been bottom **sediment** deposited on 102 Schermerhorn Island right above the aquifer. So, I think you would agree that a very careful study should be made of pcb's. MR. SWENSON: Pcb's have been looked at for the existing system and for this system and tested in the necessary manner to be evaluated for...
http://www.townofbethlehem.org/uploads/pub_052019990224.pdf

24. 1998-03-11.pdf
... analysis was not sufficient to determine the test compliance for the DEC. Now, just to pursue it a little further, we are speaking about dredging the Hudson River as we read in the paper about every week, the Hudson River is classified pcb superfund site. The pcbs are not on the surface of that bottom **sediment** in the Hudson River but down at some depth. The Port of Albany, it's about 1 to 3 feet in depth that you run into high concentrations of pcbs. That's true all the way down to Kingston and down to New York City. If we remove those bottom silts and remove...
http://www.townofbethlehem.org/uploads/pub_124419980311.pdf

25. 1994-03-23.pdf
... None. Absent: Mr. Webster. I The next item was a request from Michael Cirillo, Engineering Services Administrator, for approval of attendance at a seminar. The motion was made by Mr. Putney and seconded by Mr. Lenhardt to approve the attendance of John Fenzl, Senior Engineer, at the Erosion and **Sediment** Control Training Seminar to be held June 27, 1994 at Voorheesville, NY with expenses paid. The motion was passed by the following vote: Ayes: Mrs. Fuller, Mr. Putney, Mr. Lenhardt, Mrs. Davis. Noes: None. Absent: Mr. Webster. Seminar Erosion and Sedi...

Appendix "6"

U.S. Department of Homeland Security

United States Coast Guard

Commander
United States Coast Guard
Sector New York

212 Coast Guard Drive
Staten Island, NY 10305
Staff Symbol: (spw)
Phone: (718) 354-2353
Fax: (718) 354-4190

16670

28

U. S. Army Corps of Engineers
New York District
Jacob K. Javitz Federal Bldg
New York, NY 10278-0090
Attn: Regulatory Branch

Gentlemen:

We have reviewed Public Notice NAN-2006-00394-WFI regarding the dredging and construction of the East Greenbush Marina and offer the following comments:

We request that any permit you issue require the permittee to:

1. Submit the project details to the First Coast Guard District for publication in the Local Notice to Mariners. This information may be faxed to (617) 223.8073 or e-mailed to LNM@d1.uscg.mil.

2. Notify the National Oceanic and Atmospheric Administration of the project completion and specifications so they may initiate the appropriate chart corrections, this may be faxed to (301) 713-4516.

3. Ensure any current, or future, outdoor lighting is located or shielded so that it is not confused with any aids to navigation and does not interfere with navigation on the adjacent waterway.

4. Contact Coast Guard Sector New York's Maritime Transportation Security Act staff at (718) 354-4244 to determine if any security requirements are necessary for this facility.

5. The proposed marina is close to the Federal Channel making it susceptible to wake and/or surge damage. We recommend that the applicant construct the facility incorporating a wave attenuating design or install a device that will limit its susceptibility to wake and surge damage. This recommendation is made in an effort to enhance safety. The Coast Guard will not place any operational limitations on vessels using the adjacent waterway.

If you have any questions or comments regarding this matter, please contact Mr. Jeff Yunker at (718) 354-4195.

Sincerely,

E. X. MUNOZ
Lieutenant, U.S. Coast Guard
Chief, Waterways Management Division
By direction

Appendix "7"

New York State Office of Parks, Recreation and Historic Preservation
Historic Preservation Field Services Bureau • Peebles Island, PO Box 189, Waterford, New York 12188-0189
518-237-8643
www.nysparks.com

(05-74) F6 Morning

David A. Paterson
Governor

Carol Ash
Commissioner

December 10, 2008

Heidi Firstencel
Army Corps of Engineers
1 Buffington Street, Bldg 10
Watervliet, New York 12189

Re: CORPS PERMITS, SEQRA
East Greenbush Marina/New Construction
Riverside Ave Ext.
Town of East Greenbush, Rensselaer County
05PR06202

Dear Ms. Firstencel:

Thank you for requesting the comments of the State Historic Preservation Office (SHPO). We have reviewed the project in accordance with Section 106 of the National Historic Preservation Act of 1966.

The SHPO is providing comments for this project as it relates to our recent discussions. The *North Papscanee Island Prehistoric Archeological Site (A08303.000093)* was identified during the Phase I /II survey and tentatively dates to AD 1450-1680 during Mohican habitation of the island. Our comments were related to the potential for buried sites, since this is an alluvial setting. Subsequently, the geomorphology confirmed that there are well developed buried soil horizons and sediments that may date to c. 3000 BP, within the Woodland Period when burials are frequently associated with sites in the floodplain.

The occupation of Papscanee Island by the Mohican and their ancestors is well documented and the Stockbridge-Munsee Community Band of Mohicans continues to have a strong cultural affinity to the island and surrounding area. Numerous Native American burials have been found on the island and burials are considered to be sacred. The Advisory Council guidance notes; "The presence of human remains in an archeological site usually gives the site an added importance as a burial site or cemetery, and the values associated with burial sites need to be fully considered in the consultation process". While burials have not been encountered in the limited testing, the current NYSHPO/OPRHP Human Remains Protocol states that it is our preferred choice that burials be avoided. The Stockbridge-Munsee Community Band of Mohicans has also expressed this preference to the SHPO.

Based on our review of this project and discussions with the Corps and the Stockbridge-Munsee THPO, the SHPO concurs that filling over the site(s) without further studies, would have an adverse effect on historic properties. We ask that your agency, working with the applicant and

other consulting parties seek appropriate methods to avoid or minimize potential adverse effects to cultural resources as part of this undertaking. We look forward to continued consultation to resolve these issues under Section 106.

For further correspondence regarding this project, please be sure to refer to the OPRHP Project Review (PR) number noted above. If you have any questions, please call me at (518) 237-8643, extension 3288.

Sincerely,

Cynthia Blakemore

Cynthia Blakemore
Historic Preservation Program Analyst

cc. Terry Field, East Greenbush Marina, LLC
Ed Curtin, Archeological Consulting
Sherry White, THPO Stockbridge-Munsee Community Band of Mohican
James Moore, Director of Planning, Town of East Greenbush

Appendix "8"

New York State Department of Environmental Conservation
Division of Water
Bureau of Water Assessment & Management
625 Broadway, Albany, NY 12233-3502
Phone: (518) 402-8289 Fax: (518) 402-9029
Website: www.dec.state.ny.us/dow/bwam.html

Erin Crotty
Commissioner

Division of Water

Technical & Operational Guidance Series (TOGS) 5.1.9

In-Water and Riparian Management of Sediment and Dredged Material

November, 2004

III. EVALUATION OF RESULTS

After sediment sampling and analysis is complete, the proposed dredged material may be classified according to sediment type to allow the selection of an appropriate management option. This chapter provides the threshold values for in-water/riparian placement, in-water/riparian management options, and the methods employed for applying sampling results to the classification scheme. Chapters IV and V describe how sediment classification impacts dredging and in-water and riparian management of dredged material.

A. Sediment Quality Thresholds For In-water/Riparian Placement

The Divisions have carefully considered how sediment data should be structured and analyzed. This consideration has resulted in a classification system where sediment is placed in classes dependent upon its chemistry. The derivation of the sediment quality guidelines used in the classification system is consistent with the methodologies described in the Technical Guidance for Screening Contaminated Sediments (NYSDEC-DFWMR 1999). The Divisions have established three classes of sediment quality thresholds for dredged material proposed for in-water/riparian placement. Based on the concentration of contaminants identified during the chemical analyses, sediment to be dredged is classified as Class A, B or C (Table 2). Management options are identified in Table 3 for each class. This system differs from EPA's categorical system for in-water placement that is based on bioaccumulation and biotoxicity.

1. Class A - No Appreciable Contamination (No Toxicity to aquatic life).

If sediment chemistry is found to be at or below the chemical concentrations which define this class, dredging and in-water or riparian placement, at approved locations, can generally proceed.

2. Class B - Moderate Contamination (Chronic Toxicity to aquatic life).

Dredging and riparian placement may be conducted with several restrictions. These restrictions may be applied based upon site-specific concerns and knowledge coupled with sediment evaluation.

3. Class C - High Contamination (Acute Toxicity to aquatic life).

As defined in Table 2, Class C dredged material is expected to be acutely toxic to aquatic biota and therefore, dredging and disposal requirements may be stringent. When the contaminant levels exceed Class C, it is the responsibility of the applicant to ensure that the dredged material is not a regulated hazardous material as defined in 6NYCRR Part 371. This TOGS does not apply to dredged materials determined to be hazardous. Questions regarding hazardous waste, should be referred to the Department's Division of Environmental Remediation.

Table 2 Sediment Quality Threshold Values for Dredging, Riparian or In-water Placement

Threshold values are based on known and presumed impacts on aquatic organisms/ecosystem. Where fresh water and marine threshold values differ sufficiently, the marine value is presented in parentheses. All concentrations are in mg/kg dry weight.

Compound	Class A	Class B	Class C	Derivation Code
Metals (mg/kg)				
Arsenic	< 14 (8.2)	(8.2) 14 - 53	> 53	1
Cadmium	< 1.2	1.2 - 9.5	> 9.5	1
Copper*	< 33	33 - 207 (270)	> 207 (270)	1
Lead	< 33 (47)	33 (47) - 166 (218)	> 166 (218)	1
Mercury+	< 0.17	0.17 - 1.6 (1.0)	> 1.6 (1.0)	1
PAHs and Petroleum-Related Compounds (mg/kg)				
Benzene	< 0.59	0.59 - 2.16	> 2.16	2
Total BTEX*	< 0.96	0.96 - 5.9	> 5.9	2
Total PAH[1]	< 4	4 - 35 (45)	> 35 (45)	1
Pesticides (mg/kg)				
Sum of DDT+DDD+DDE+	< 0.003	0.003 - 0.03	> 0.03	2
Mirex*+	< 0.0014	0.0014 - 0.014	> 0.014	2
Chlordane*+	< 0.003	0.003 - 0.036	> 0.036	1
Dieldrin	< 0.11	0.11 -0. 48	> 0.48	2
Chlorinated Hydrocarbons (mg/kg)				
PCBs (sum of aroclors)[2]	< 0.1	0.1 - 1	> 1	3
2,3,7,8-TCDD*[3] (sum of toxic equivalency)	< 0.0000045	0.0000045 - 0.00005	> 0.00005	4

+ Threshold values lower than the Method Detection Limit are superseded by the Method Detection Limit. (See Table 1)
* Indicates case-specific parameter (see Chapter II, Section A) .
[1]For Sum of PAH, see Appendix E
[2]For the sum of the 22 PCB congeners required by the USACE NYD or EPA Region 2, the sum must be multiplied by two to determine the total PCB concentration.
[3]TEQ calculation as per the NATO - 1988 method (see Appendix D)

Note: The proposed list of analytes can be augmented with additional site specific parameters of concern. Any additional analytes suggested will require Division approved sediment quality threshold values for the A, B and C classifications.

Table 2.1 Derivation Codes for Chemical Threshold Values

Derivation Code	Explanation
1	Values are the geometric mean (GM) between Long & Morgan (1990) and Persaud (1992). Class A values are the GM of ER-L[1] and Lowest Effect Level. Class C values are the GM of the ER-M[1] and Severe Effect Levels. The resulting GMs were compared to marine water ER-L and ER-M values published by Long & Morgan (1992). When compared, the lowest of the two corresponding values was selected. When there was a large difference between a freshwater (Long & Morgan (1990) or Persuad (1992) GM) and a saltwater (Long & Morgan 1992) value, the marine value was recorded in parentheses, and is applicable to marine water dredging and management only. For total PAHs, Persaud (1992) had no toxicity values so only those of Long and Morgan (1990) were used. This approach is consistent with that described in the Technical Guidance for Screening Contaminated Sediments Document (DFW/DMR 1999). The Chlordane values were developed by NYSDEC generally following the Long and Morgan method.
2	NYSDEC water quality standards were used in conjunction with the U.S. EPA equilibrium partitioning methodology (see DFW/DMR 1993, pages 5-11) to calculate sediment quality threshold values for organic compounds assuming 2% organic carbon and equating K_{ow} to K_{OC}, consistent with the reality of contaminant uptake in biological organisms (Kenaga and Goring, 1980). Class A value is for the protection of benthic life from chronic toxicity. The Class C value is for the protection of benthic life from acute toxicity. If aquatic life standards were not available from 6NYCRR Part 703.5 to generate the sediment screening criterion, a guidance value was derived in accordance with 6 NYCRR Part 706.1. For total BTEX, the A and C values are the geometric means of the A and C values for benzene, xylene, ethylbenzene, and toluene. For DDT (sum of DDT, DDD, & DDE), the A value was based upon the 6 NYCRR 703.5 standard for the protection of wildlife. Because this value (0.00022 mg/l) was below the limit of analytical detection, the analytical detection limit of 0.003 mg/l was selected as a default value. The C value was the level at which significant mortality to *daphnia magna* has been documented (Long & Morgan, 1990). This approach is consistent with that described in the Technical Guidance for Screening Contaminated Sediments Document (DFW/DMR 1999).
3	Synthesis of Consensus Based Sediment Quality Assessment Values (D.D. MacDonald, et, al., Jan 2000), Marine and Estuarine Sediment Quality Values (E.R. Long, et. al., Nov 1993), PCB soil cleanup levels in NYSDEC Division of Environmental Remediation TAGM HWR-92-4046 and of sediment quality values from NYSDEC Division of Fish, Wildlife and Marine Resources Technical Guidance for Screening Contaminated Sediments, 1998.
4	A mean of the NYSDEC Fish and Wildlife bioaccumulation number, of the USEPA's low risk to mammals, the disposal of paper sludge in pasture land and the bioaccumulation protection of fish values, was calculated and rounded down to the nearest 0.5 ppt. This value is 0.0000045 ppm or 4.5 ppt. Additionally, the soil/sediment action level for 2,3,7,8 TCDD in the RCRA hazardous waste program (TAGM DHSR 3028, 1992) is 4.5 ppt. The on-land application limit of 50 ppt is used as the contaminated level from the USEPA - Paper Industry Agreement from Environment Reporter, 29 April 1994, pages 2222-3.

[1] **Error! Main Document Only.** The ER-L values are the concentrations equivalent to the lower 10 percentile of the screened available data and indicated the low end of the range of concentrations in which effects were observed or predicted (concentrations above which adverse effects may begin). The ER-M values were the concentrations equivalent to the 50 percentile point in the screened available data (concentrations above which effects were frequently observed or predicted).

Table 3 RIPARIAN/IN-WATER Management Options

Activity	Class A	Class B	Class C
Dredging	Any means meeting generally accepted and approved practices	Closed bucket suggested or any means meeting environmental objectives	Closed bucket or other method minimizing loss of resuspended sediment ordinarily required
Riparian Placement	Any means meeting generally accepted and approved practices	Placement at riparian sites already containing more contaminated material. New riparian sites should be covered with Class A sediments to insure isolation of the dredged material. The depth of the cap will be determined on a site specific basis.	Riparian sites should be lined and capped with clay or other impermeable material and covered with Class A sediments to ensure long-term isolation of the dredged material from the environment. The depth of the cover material will be determined on a site specific basis.
In-water Placement	Any means meeting generally accepted and approved practices	In water placement discouraged. When applicable, sites should be capped with Class A sediment to insure isolation of the dredged material	In-water disposal ordinarily precluded.
Barge Overflow	Barge overflow may be allowed (site specific)	Usually, no barge overflow. May be allowed on site specific basis	No barge overflow
Post dredging Monitoring	May be required	See Chapter V	See Chapter V

NOTES:

1. Environmental Objectives for Dredging, Chapter IV, Section A applies to all classes.
2. Environmental Objectives for Dredged Material Management Placement at Riparian and/or In-water Sites, Chapter IV, Section B applies to all classes.
3. Riparian sites are adjacent to or within the 100-year flood plain of the surface waters in which dredging is proposed. These sites are typically diked with controlled outlets for retention of sediment and are typically regulated under Section 401 of the CWA. They do not constitute "on-land" placement.
4. Due to site specific circumstances, an applicant has full responsibility to justify all operations, including both those described above and any other selected alternatives.
5. Depending on conditions, hydraulic dredging to a confined disposal facility or excavation in the dry is the recommended method for PCB concentrations of greater than 10 ppm. Dredged material should be disposed of directly at final disposal sites. An applicant may justify another method of dredging and disposing of this material, as long as no net dumping of contaminated dredged material is proposed. If concentrations approach 50 ppm, Division of Environmental Remediation should be consulted.

B. Application of Sampling Results

1. Because these dredge and placement or disposal levels are based upon a limited number of screening parameters, one or more exceedances of a threshold in any level may be considered presumptive evidence that dredged material management should meet the restrictions of the more stringent level. However, judgment should be applied in interpreting the results. For example, failure of only one sample may be an analytical or sampling anomaly. Failure of two or three samples within a reasonable range of statistical, analytical variability may also not warrant special treatment. Biological testing may be used as an additional tool to evaluate the level of classification of the dredged material (See Section B.4). Consult with Division of Water and the Division of Fish, Wildlife, and Marine Resources staff in these cases before classifying material.

2. If one or more samples exceed Class C (high contamination, acute toxicity) thresholds for sediment quality, in-water disposal will likely be precluded. For riparian placement, the Division of Solid & Hazardous Materials staff and if necessary the Division of Environmental Remediation staff should be consulted to determine further site characterization needs and to assess dredging and disposal requirements (i.e., Part 373 site or other facility).

3. In the event that dredging may expose more highly contaminated sediments, as evidenced by the analysis of a sample segment representing the top six inches of the sediment to be exposed after dredging, prevent or limit exposure by one of the following options:

- dredge to a shallower depth than originally proposed;
- dredge to a greater depth until cleaner sediments are exposed; or
- dredge to a greater depth and then cap with available cleaner material.

4. Biological Testing of Dredged Material for Management Options.

Although the Divisions do not routinely require biological testing, the Army Corps of Engineers (USACE) may require applicants to conduct a suite of biological tests to support their federal dredging permit application. If such test results are available and considered sufficient to characterize the material to be dredged, and especially if open water placement is planned, the Divisions may elect to use this information in lieu of or in addition to whole sediment chemistry test results to make permit decisions for dredging and management of dredged material. When sediment contamination (Class B or C) is expected at the dredge site, the Divisions may still require whole sediment chemistry analysis in order to determine the appropriate best management practices to be implemented during dredging or placement operations.

Biological testing conducted to satisfy federal regulations and guidance usually consists of:

! 24-96 hour elutriate (suspended particulate and water) dilution series assays
! 10 day solid phase acute toxicity assays

! 28 day solid phase bioaccumulation assays.

If toxicity and bioaccumulation testing indicates a lower level of concern for acute and chronic effects than the corresponding sediment chemical results, then the Divisions, after evaluating project specifics (such as proximity of sensitive habitats and water use areas, the volume of material, the duration and seasonal window of the dredging, or the characteristics of the contaminant(s) of concern) would have the option of approving the management of the material at a lower classification level.

For more information on biological testing and the application of test results, see Appendix F.

Appendix "9"

New York State Department of Environmental Conservation
Division of Water
625 Broadway, 4th Floor
Albany, New York 12233-3505

NOTICE OF TERMINATION for Storm Water Discharges Authorized under the SPDES General Permit for Construction Activity

Please indicate your permit identification number: NYR 1 0 N 1 0 2

I. Owner or Operator Information

1. Owner/Operator Name: East Greenbush Marina, LLC

2. Street Address: 1698 Central Ave

3. City/State/Zip: Albany/New York/12205

4. Contact Person: Victor Gush | 4a.Telephone: (518)-452-2567

II. Project Site Information

5. Project/Site Name: East Greenbush Marina

6. Street Address: Riverside Ave Extension, 300 ft South of Sun Oil Rd.

7. City/Zip: East Greenbush/12144

8. County: Rensselaer

III. Reason for Termination

9a. ☐ All disturbed areas have achieved final stabilization in accordance with the general permit and SWPPP.
Date final stabilization completed (month/year): _____

9b. ☐ Permit coverage has been transferred to new owner/operator. Indicate new owner/operator's permit identification number: NYR ___ ___ ___ ___ ___ ___
(Note: Permit coverage can not be terminated by owner identified in I.1. above until new owner/operator obtains coverage under GP-0-08-001)

9c. ☒ Other (Explain on Page 2)

IV. Final Site Information:

10a. Did this construction activity require the development of a SWPPP that includes post-construction stormwater management practices? ☐ yes ☒ no (If no, go to question 10f.)

10b. Have all post-construction stormwater management practices included in the final SWPPP been constructed? ☐ yes ☒ no (If no, explain on Page 2)

10c. Identify the entity responsible for long-term operation and maintenance of practice(s)?

N/A

NOTICE OF TERMINATION for Storm Water Discharges Authorized under the SPDES General Permit for Construction Activity - continued

10d. Has the entity responsible for long-term operation and maintenance been given a copy of the operation and maintenance plan required by the general permit? ☐ yes ☒ no

10e. Indicate the method used to ensure long-term operation and maintenance of the post-construction stormwater management practice(s):

- ☐ Post-construction stormwater management practice(s) and any right-of-way(s) needed to maintain practice(s) have been deeded to the municipality.
- ☐ Executed maintenance agreement is in place with the municipality that will maintain the post-construction stormwater management practice(s).
- ☐ For post-construction stormwater management practices that are privately owned, a deed restriction is in place that requires operation and maintenance of the practice(s) in accordance with the operation and maintenance plan.
- ☐ For post-construction stormwater management practices that are owned by a public or private institution (e.g. school, college, university), or government agency or authority, policy and procedures are in place that ensures operation and maintenance of the practice(s) in accordance with the operation and maintenance plan.

10f. Provide the total area of impervious surface (i.e. roof, pavement, concrete, gravel, etc.) constructed within the disturbance area? N/A (acres)

V. Additional Information/Explanation:
(Use this section to answer questions 9c. and 10b., if applicable)

9a. Construction of site will not begin until 2010.

NOTICE OF TERMINATION for Storm Water Discharges Authorized under the SPDES General Permit for Construction Activity - continued

VI. Qualified Inspector Certification - Final Stabilization:	
I hereby certify that all disturbed areas have achieved final stabilization as defined in GP-0-08-001, and that all temporary, structural erosion and sediment control measures have been removed. Furthermore, I understand that certifying false, incorrect or inaccurate information is a violation of the referenced permit and the laws of the State of New York and could subject me to criminal, civil and/or administrative proceedings.	
Printed Name: N/A	
Title/Position:	
Signature:	Date:
VII. Qualified Inspector Certification - Post-construction Stormwater Management Practice(s):	
I hereby certify that all post-construction stormwater management practices have been constructed in conformance with the SWPPP. Furthermore, I understand that certifying false, incorrect or inaccurate information is a violation of the referenced permit and the laws of the State of New York and could subject me to criminal, civil and/or administrative proceedings.	
Printed Name: N/A	
Title/Position:	
Signature:	Date:
VIII. Owner or Operator Certification	
I hereby certify that this document was prepared by me or under my direction or supervision. My determination, based upon my inquiry of the person(s) who managed the construction activity, or those persons directly responsible for gathering the information, is that the information provided in this document is true, accurate and complete. Furthermore, I understand that certifying false, incorrect or inaccurate information is a violation of the referenced permit and the laws of the State of New York and could subject me to criminal, civil and/or administrative proceedings.	
Printed Name: N/A	
Title/Position:	
Signature:	Date:

(NYS DEC Notice of Termination - 4/10/08)

Appendix "10"

TOWN OF EAST GREENBUSH

RENSSELAER COUNTY, NEW YORK

APPLICATION FOR BUILDING AND ZONING PERMIT

HOURS — 8:30 A.M. - 4:30 P.M. (MON.-FRI.)

24 HR. NOTICE FOR INSPECTIONS

477-6225

(Space inside block to be filled in by Building Inspector)

Application No. .....

Permit Issued ..... 20 .....

Permit Expires ..... 20 .....

Zoning District .....

Value of Work $ .....

Approved by .....

Remarks .....

A PERMIT MUST BE OBTAINED BEFORE BEGINNING WORK
AND INSPECTIONS MUST BE CALLED IN BEFORE AND DURING CONSTRUCTION

All submittals with this application need to be in DUPLICATE. ANSWER ALL OF THE FOLLOWING.
The undersigned hereby applies for a permit to do the following work which will be done in accordance with the description, plans, and specifications submitted, and such special conditions as may be indicated on the permit.

The owner of this property is: Norwest Corporation Attn: Joe VanDeLoo Phone # (518) 421-0104

Property Location: Riverside Avenue Extension

Name of Person/Business/Responsible for work: East Greenbush Marina, LLC - Victor Gush, Member

Lot Number N/A Unit ..... Tax Map No. : 154-2-20

Estimated amount of work: $ .....

NATURE OF PROPOSED WORK

- [X] Construction of a new building(s)
- [ ] Addition to a building. (Describe) .....
- [ ] Alteration to a building. (Describe) .....
- [ ] Demolition of a building.
- [ ] Installation of an oil/gas heating unit
- [ ] Installation of plumbing. (Describe) .....
- [ ] Fence—4' high [ ] 6' high [ ]
- [ ] Swimming Pool—Above Ground [ ] Inground [ ]
  Size ___ x ___ Depth_____
- [ ] Driveways—New [ ] Resurfacing [ ] Expansions [ ]
- [ ] Shed—Size _____ x _____
- [ ] Roof—New [ ] Re-roof [ ] Repair [ ]
- [X] Other work. (Describe):
  Construction of marina as per plans prepared by Chas H. Sells submitted herewith, subject to municipal approval.

REQUIRED UPON COMPLETION
CERTIFICATE OF COMPLIANCE
ALTERATIONS & ADDITIONS
CERTIFICATE OF OCCUPANCY
FOR NEW BUILDINGS
UNDERWRITER APPROVAL
FOR ALL ELECTRICAL WORK

Dig Safely. New York
800-962-7962
www.digsafelynewyork.com

EXISTING OCCUPANCY

Main Building

- One-family dwelling [ ]
- Two-family dwelling [ ]
- -family apartment house [ ]
- Store building [ ]
- -car garage [ ]
- Other: .....

Accessory Building

- One-car detached garage [ ]
- Two-car detached garage [ ]
- Private storage building [ ]
- Other: .....

ZONING SPECIFICATIONS. Fill in for new building, or addition to existing building, or a change of occupancy.
Indicate on the plot plan street names, the location and size of the property, the location, size and setbacks of proposed buildings, and the location of all existing buildings. Show proposed building(s) in dotted line and existing building(s) in solid line.

Size of property 24.946 +/- acres x ..... ft.

Size and use of existing buildings, if any None (vacant land)

Size of proposed building 102,000 SF ft. x ..... ft.

Height (from grade to ridge) 50 +/- ft.

Front yard setback 50 + ft.

Side yards setback 25 + ft. and ..... ft.

Rear yard setback 50 ft.

If on corner, setback from side street N/A ft.

Note: All distances are net, as measured from property line to the nearest point of building.

SIGNATURE Victor Gush Date 7/30/08

SPECIAL CONDITIONS OF THE PERMIT: .....

By .....

Issuance of a Building Permit *DOES NOT* release the applicant from verifying whether or not said building lot is in a flood zone or a wetland's area.

Appendix "11"

The Town of East Greenbush

TOWN HALL - 225 Columbia Turnpike, Rensselaer, N.Y. 12144. 477-6225
ZONING, BUILDING & FIRE INSPECTOR

August 7, 2008

East Greenbush Marina, LLC
1698 Central Avenue
Colonie, New York 12198

RE: PERMIT APPLICATION
Tax Map #: 154-2-20

Dear Mr. Gush,

On **August 4, 2008**, you made an application for work at the above property involving: **The operation of a Marina in the CI zoning district, and relief of the Water Front Access Paths regulations.**

The property is located in an area, which is zoned: **C-I**

This application has been examined for compliance with the applicable provisions of the Zoning Laws and the Town Code of the Town of East Greenbush.

The review of the proposed work will **not comply** with the following provisions of the Zoning Law of the Town of East Greenbush: **Section 2.7.7 {C} and Section 2.7.7 {F} 03**

Therefore, your application of, **August 4, 2008** is hereby **DENIED.**

This objection may be addressed by filing revised plans reflecting conditions, which comply with the requirements of the Town Code and Zoning Laws. In the alternative, this denial may be appealed to the Zoning Board of Appeals on forms available from the Planning and Zoning Office, 225 Columbia Turnpike. (518) 694-4011, 8:30 – 4:30

Sincerely,

Joseph A. Cherubino
Building Inspector

Cc: Zoning Board of Appeals

Appendix "12"

Zoning Board of Appeals
Town of East Greenbush
225 Columbia Turnpike
Rensselaer, New York 12144

All applications must be submitted with:
1) Filing Fee (determined at application review by Board of Appeals Chairman)
2) Determination by Zoning Enforcement Officer (given to applicant by Building Department) and
3) Survey Map or Plot Plan, Site Plan, Sketch, and/or Other Descriptive Detail.

The applicant or representative must complete **Sections A, B, and C.**

A. Applicant Data **Please print or type neatly.**

1. Name: East Greenbush Marina, LLC
   Attn: Victor Gush and Terry Field
2. Address: 1698 Central Avenue
2. City: Colonie State: NY Zip: 12198
3. Telephone Number: (518) 452-2567
4. Location of Property: Riverside Avenue Extension
   (Tax Map # 154-2-20)
8. Owner of Property: Norwest Corporation
9. Representative: Lynch & Hetman, PLLC
   (If other than applicant) Attn: Peter A. Lynch, Esq.

10. Tax Map No. 154-2-20
(Can be obtained from the Assessors Office)

D. For Official Use

Appeal Number:
Tax Map Number:
Zoning District:
Appeal Type:
Fee(s):
Received:
Hearing Date:

B. Application for (Check as appropriate)
Variance(s) (X) Special Permit (X) Interpretation ( ) Other ( )

Reason for Appeal (Please include brief but detailed description of the proposed action which requires a variance(s) or special permit. Attach additional pages as necessary).

See Attached Narrative In Support of Application

C. Signature of Applicant: [signature]
Date: 8/4/08

Town of East Greenbush
PLANNING BOARD

Town Hall • 225 Columbia Turnpike • Rensselaer, NY 12144
Tel. (518) 694-4011 • Fax (518) 477-2386
www.eastgreenbush.org

AUTHORIZATION FORM

To the Town of East Greenbush

(x) Zoning Board of Appeals;
( ) Planning Board;

I, Norwest Corporation John VanDeloo (*Property Owner*) give permission to East Greenbush Marina, LLC (*Applicant*)

For representing me for my application before the Town of East Greenbush Zoning Board of Appeals and/or Planning Board, as indicated above, in applying for (a)

( ) Use Variance
(x) Area Variance - Marina Waterfront Walkway
(x) Special Use Permit - Marina
( ) Site Plan Review
( ) Subdivision Review
( ) Lot Line Adjustment

for the property located at Riverside Avenue Extension (Tax Map # 154-2-20) (*Property Address*).

Norwest Corporation

Property Owner's Signature: By: John VanDeloo, Pres
John VanDeloo

Date: July 30, 2008

TOWN OF EAST GREENBUSH
STATE OF NEW YORK ZONING BOARD OF APPEALS

In the Matter of the Application Of East Greenbush Marina, LLC,	:	
For A Special Use Permit and Area Variance For a "Marina" at Riverside Avenue Extension	:	Narrative In Support of Application for Special Use Permit and Area Variance

INTRODUCTION

The project consists of a full service marina facility, designed to provide recreational access to the Hudson River for all boaters who reside within the Town of East Greenbush, and the general public. The proposed Marina site is to be constructed on an unimproved 24.95-acre site (Rensselaer County Tax Map No. 154-2-20), located on the east bank of the Hudson River, Town of East Greenbush, County of Rensselaer, State of New York. On the east, the site has frontage along Riverside Avenue Extension, also known as American Oil Road. The Hess Oil Storage Facility, 367 American Oil Road, Rensselaer, New York 12144, is immediately adjacent to the south side of the site. The Sprague Oil Storage Facility, Riverside Avenue, is immediately adjacent to the north side of the site.

The site is located in a C-I Coastal Industrial Zone, as defined under Town of East Greenbush Zoning Ordinance Section 2.7.7, adopted June 11, 2008. A "Recreation; Marina" is authorized by Special Use Permit issued by the Zoning board of Appeals, in accord with Ordinance Sections 2.7.7 (C), 3.11 and 4.2.5.

Ordinance section 2.7.7 (F) (03) requires a continuous pedestrian esplanade along the width of the property. This walking area is not included in the plans due to the fact that the boat launch on the north end of the shoreline is necessary for the marina, and the forested tidal wetlands on the southern side need to remain undisturbed. Applicant does propose, however, to have a walkway from the drop-off area for the docks, leading to a lookout point over the water

near the approximate center of the site shoreline. Moreover, there are industrial users on the north and south side of the subject, precluding the viability of a pedestrian waterfront walkway. Applicant seeks an area variance from the Zoning Board of Appeals from strict imposition of the Ordinance requirement for a continuous pedestrian esplanade along the width of the property.

On August 4, 2008, Applicant applied for a building permit to the Marina use. The Building Department denied the application on the grounds, that the proposed use requires a Special Use Permit and Area variance.

Applicant is aggrieved for purposes of appealing to this Board for a Special Use Permit and Area Variance in accord with Ordinance §3.11.1 and 4.2.4, respectively.

THE MARINA

The action, named East Greenbush Marina, is to construct and operate a full service marina facility, all as set forth on the proposed Site Plan prepared by Chas H. Sells annexed hereto as Exhibit "1". It will include 3 floating docks possessing 84 boat slips, fuel pumps, parking spaces for 174 automobiles, and a boat launch ramp. Six (6) buildings will be constructed on site, including four (4) boat/RV storage buildings, one (1) building containing a repair shop, one quick launch facility [which includes storage racks for 96 boats], and one (1) building containing an office, ship store, laundry, and restroom and shower facilities for boaters.

The project includes three (3) floating pier assemblies, one for service of the lift well area, one with 64 slips, and another with 20 slips, each with corresponding walk ramps to transition from shore to dock. The Service Dock (northern pier) is approximately 96 feet long and 20 feet wide with no finger piers. The Launch Ramp Dock (middle pier) is approximately 148 feet long, and 8 feet wide and includes 10 finger piers. The Main Dock (southern pier) is approximately 575 feet long, and 8 feet wide and includes 23 finger piers. The longest dock is the southern pier and its westward end is approximately 218 feet away from the Federal Navigation Channel in this portion of the Hudson

River. All docks are within the property line and within U.S. Pierhead and Bulkhead lines; the dock locations comply with recommendations made by the United States Coast Guard.

The facility will provide a pump-out service for the boats' sanitary waste, which will be collected in a 1,500 gallon concrete storage tank that will be pumped out as necessary by an accredited sewage disposal company. The facility will also provide fuel for boaters, with the fuel tanks located on the upland in an approved containment tank, with pumping facilities on the service dock.

This is a 24.95-acre site, with 7.77 acres under water, and 17.18 acres upland. There are 8.60 acres of meadow/brushland, with 3.33 acres to be disturbed, and 5.27 acres left intact. There are 8.19 acres of forested upland, with 6.13 acres to be removed, and 2.06 acres to remain intact. In undisturbed areas, natural vegetation will be retained.

Special Use Permit

Ordinance §3.11.1 (A) (01) to (07) requires this board to consider the public health, safety, and general welfare of the community, the comfort and convenience of the community, and the residents in the immediate neighborhood in particular, when reviewing a Special Use Permit Application. In so doing, the Board must consider the following factors, to wit:

01. Location, Size of Use, Nature and Intensity of Use, Existing Streets

It is manifest that this waterfront site is ideal for a Marina facility. The proposed marina is wholly compatible with the Town's Comprehensive Plan. In section 1.1.1 (G) of the Comprehensive Plan, one of the goals listed is "to utilize more fully the Hudson river for recreational and industrial purposes"; as aforementioned, Marina was added to the CI zone as a Special Use. Here, the proposed marina meets both goals, by providing boating recreation opportunities to the public, and by providing repair and storage facilities for the boats.

Historically, the Town of East Greenbush caused the Local Waterfront

Revitalization Program (hereinafter the LWRP) to be prepared as of September 30, 1989. On page 23, "Conclusions" point #2, it is stated: "the former turning basin [the same property in this application] is an underutilized resource with high development potential and should be used in a more productive manner." On point #4 on the same page it states: "Opportunity and facilities for public recreation on and along the Hudson River do not exist and should be provided." On point #7 of page #12, heading "Recreational and Public Access" it states: "The Hudson River must be considered the prime recreational focus. However, there currently exists no public access to the river within the study area…there is similarly no public boating access in East Greenbush…there is a need for public recreation facilities on the Hudson River, which should include public access to the water within the Town of East Greenbush." On page 76, heading "B. Projects," sub-heading "1. Boat Launch/Park" it states: "Assessment of currently available public boat launches along this stretch of the Hudson reveals that such a facility would find considerable use. In addition, such a park would provide East Greenbush with its only 'window on the river.'" The Town has long considered the former turning basis as ideal for a marina facility.

Here, it is clear that the marina is not an intensive industrial use, like its immediate neighbors, which consist of bulk oil storage facilities. Accordingly, the character of the marina is different from the immediate community character. Being different, however, is not an adverse impact on community character. Rather, applicant submits that the marina will have a positive impact on community character, by presenting a compatible, but less intensive use of the site, than that of its neighbors.

The only vehicular access to the site is via American Oil Road, also known as Riverside Avenue Extension. To the north, this road network leads to New York State Route 9J. To the south, this road is a dead end at the northerly most part of the Papscanee Preserve. This road is a two lane public roadway,

with one lane for northbound traffic and one lane for southbound traffic.

02. Location, Buildings, Nature and Intensity of Use, Not to Discourage Adjacent development of Impair value thereof

As aforementioned, this site is located between two existing industrial bulk storage facilities on the north and south. This use is a soft use compared to Industrial uses. It will not impair development of other adjacent lands to the east. Moreover, it will not impair the value of the adjacent properties.

03. Traffic

Presently, the only vehicular access to the site is via American Oil Road, also known as Riverside Avenue Extension. To the north, this road network leads to New York State Route 9J. To the south, this road is a dead end at the northerly most part of the Papscanee Preserve. This road is a two lane public roadway, with one lane for northbound traffic and one lane for southbound traffic. The road presently accommodates heavy truck traffic associated with the neighboring industrial properties. American Oil Road is a local low-volume road providing north-south access from the intersection of Riverside Avenue and Sun Oil Company Road to its dead end in the south. Land use along American Oil Road is industrial providing service to several oil properties.

Intersection turning movement counts were conducted at the study area intersection of American Oil Road/Riverside Avenue/Sun Oil Company Road intersection on Saturday, January 20, 2007 from 8:00 to 10:00 a.m. and on Sunday, January 21, 2007 from 6:00 to 8:00 p.m. These time periods represent the typical peak periods associated with the proposed marina. The peak hour traffic volume data indicates that during the Saturday peak hour from 8:30 to 9:30 a.m., approximately 22 vehicles travel past the site on American Oil Road.

During the Sunday peak hour from 6:00 to 7:00 p.m. approximately 10 vehicles travel past the site on American Oil Road. This equates to approximately one vehicle every three minutes or more on American Oil Road during the peak hours. No vehicles were observed entering or exiting Sun Oil Company Road during the data collection.

Applicant's traffic consultant, CME, placed an automatic traffic recorder (ATR) on American Oil Road in the vicinity of the proposed site access driveway to record hourly traffic volumes and vehicle speeds for the period from Sunday, January 21, 2007 through Thursday, January 25, 2007. Based on the collected data, the average weekday traffic volumes on American Oil Road are approximately 60 vehicles during the typical AM peak commuter hour and 35 vehicles during the typical PM peak commuter hour. This equates to one vehicle per minute or less traveling on the roadway during the peak hours. The weekday peak hour volumes represent the traffic generated by the existing industrial facilities surrounding the site. The ATR data indicated that the 85th percentile speed adjacent to the site is approximately 38-mph.

No mitigation is required for the ground traffic, for the existing roadways are adequate to service the site. As set forth in the Traffic Study (see DEIS Appendix 9.11), and DOT's letter dated June 4, 2008 (DEIS Appendix 9.17 (aa)), the Marina will generate 23 vehicular trips during the Saturday A.M. peak hour, and 26 vehicular trips during the Sunday P.M. peak your. Based on the existing low volumes of vehicular traffic on Riverside Avenue Extension, the Marina traffic will not impact the roadway operation, for the roadway has ample capacity to handle this traffic.

04. <u>Parking</u>

The project plan provides 174 parking spaces, including 5 handicap spaces, as well as 25 trailer parking spaces. The project plan provides 122 parking spaces, including 5 handicap spaces, in the main parking lot situate along the west side of the site, together with 25 trailer parking spaces. There are an

additional 27 parking spaces along the south side of the retail and office building. Ordinance sections 2.7.7 (F) (02) (e) and 3.1, Table III-A provides that a Marina shall have "0.60 spaces/slip + 1 for every employee at maximum shift". Here, the 84 boat slips would require 50 parking spaces. The marina will employ approximately 25 persons at maximum shift, and will therefore require at least 75 parking spaces, in order to provide ample parking for the boaters, and Marina employees. By definition, the Marina includes storage and service areas; as such, Applicant has not added any additional parking spaces for the storage buildings of the marine repair shop. A Marina "may" also include associated clubhouses, offices and retail sales of marine products and food, as well as an accessory caretaker residence. Accordingly, Applicant has considered the requisite parking for the Marina, and for the incidental uses, all as set forth below, as follows:

OFF-STREET PARKING REQUIREMENTS

Use Component	Ordinance	Required	Proposed	Compliance
Marina[5]	"0.60 spaces/slip + 1 for every employee at maximum shift"	75	132	Yes
Office (1,200 SF)	1 space / 250 SF	4.8	5	Yes
Retail (8,960 SF)	2.6 / 1,000 SF Min 4 / 1,000 SF Max	23	25	Yes
Clubhouse (3,600 SF)	2.6 / 1,000 SF Min 4 / 1,000 SF Max	9	10	Yes
Caretaker Apartment	1.5 / Attached Unit	1.5	2	
TOTAL		113	174	Yes

Applicant contends that three is ample parking in compliance with the Ordinance requirements.

05. ADEQUATE LANDSCAPING AND SCREENING FROM ADJACENT RESIDENTIAL PROPERTIES

This site is located in a Coastal Industrial Zone, and there are no adjacent residential lots. The site will, however, be adequately screened from its industrial neighbors.

06. BUILDINGS IN CHARACTER, AND NOT MORE OBJECTIONABLE

As a full service Marina, Applicant will be constructing single story buildings of Metal construction; a typical example of the type of building to be constructed on site is annexed hereto as Exhibit "2". The project will not create noise, fumes, vibration, or lighting impact than would arise from a permitted industrial use, and will not adversely impact the general welfare of the inhabitants of the Town of East Greenbush.

07. ACCESSIBILITY FOR FIRE AND POLICE PROTECTION

All buildings are full accessible for fire protection. A boat slip will be dedicated to Town of East Greenbush Police Department, for its use as a public service.

AREA VARIANCE

As aforementioned, Applicant seeks variance relief from the strict imposition of the Ordinance requirement that there be a pedestrian walkway running the entire length of the shoreline along the Hudson River pursuant to Ordinance Section 4.2.4, in accord with the criteria set forth in subparagraph (A) (03), to wit:

(a) There are special circumstances arising out of the physical conditions of the site, as distinguished from the land in the neighborhood, which creates a practical difficulty in complying with the strict provision of the Ordinance. In fine, the southerly shoreline of the site consists of

a forested tidal wetland, which Applicant cannot disturb.

(b) In view of the fact that the Applicant does propose to construct a pedestrian walkway to a lookout point on the shoreline in the middle of the site in order to comply with the spirit of the Ordinance to the fullest extent practicable. As such, this is the minimum variance necessary to achieve a reasonable use of the property. Applicant notes that the project otherwise complies with the bulk and area requirements of the Ordinance.

(c) The adjacent sites to the north and south along the Hudson River shoreline consist of secure bulk oil storage facilities, which do not have pedestrian walkways open to the public along the shoreline. As such, the granting of the variance will be in harmony with the general purpose and intent of the subject Ordinance provision, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

SEQRA

This action is subject to the Draft Environmental Impact statement dated July 23, 2008 prepared by the Applicant, pursuant to a coordinated SEQRA review conducted by the Town of East Greenbush Town Board, as Lead Agency. Accordingly, this action is not subject to a separate SEQRA review in accord with 6 NYCRR 617.6 (b)(3)(iii).

Conclusion

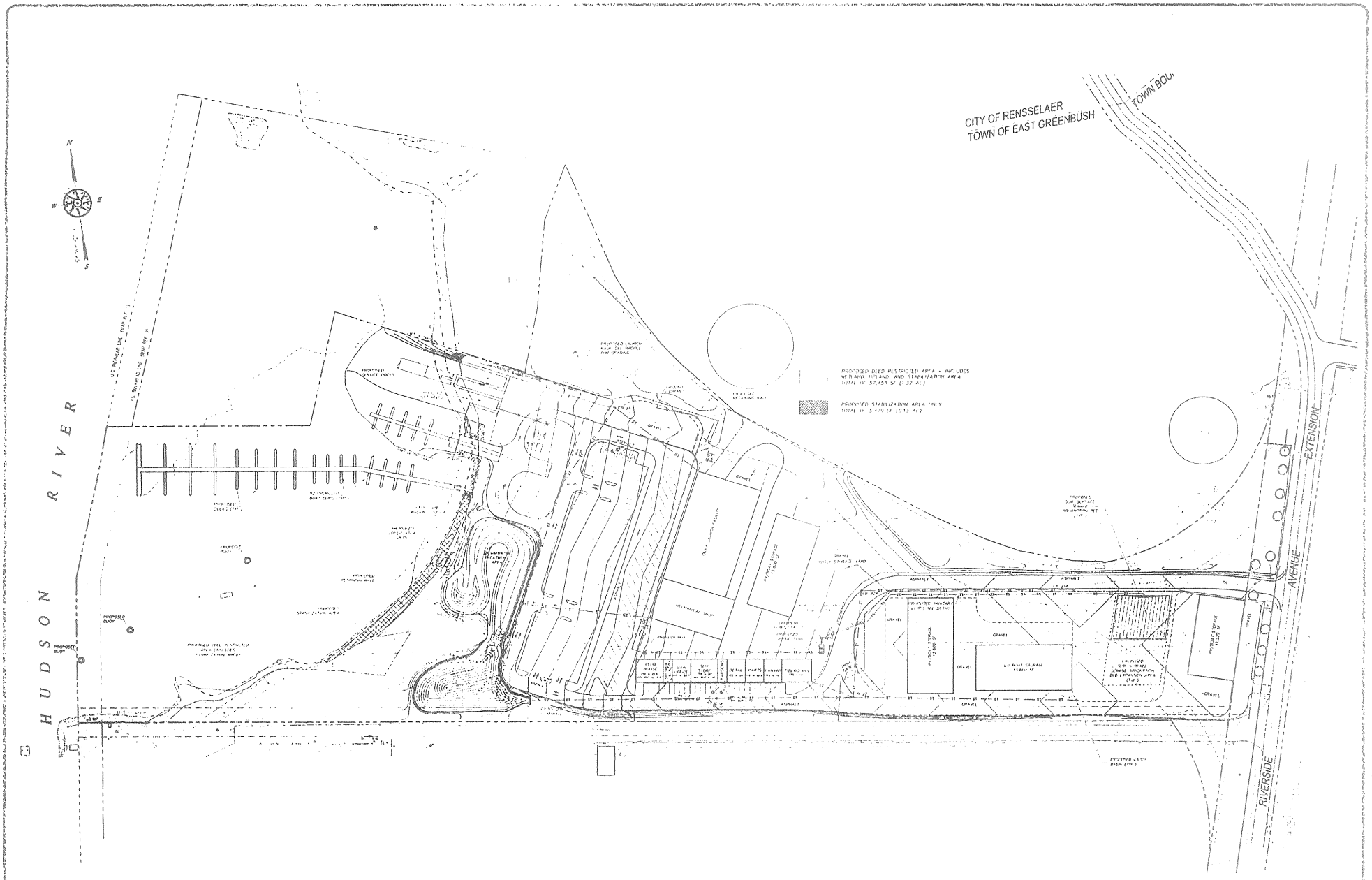
The application should be granted in all respects, for it is wholly compatible with the existing industrial environment, but will provide a needed "Marina" for the recreational use and access to the Hudson River, a benefit to all of the residents of the Town of East Greenbush. Further, the variance should be granted, for the Applicant is providing a walkway to the waterfront, and the practical difficulties of the site preclude the construction of a walkway along the entire waterfront.

Date: August 4, 2008

YOURS ETC.,

Peter A. Lynch, Esq.
LYNCH & HETMAN, PLLC
Attorneys for Applicant
Office and P.O. Address
111 State Street
Albany, New York 12207
Tel. No. (518) 463-1252

EXHIBIT "1"



REVISIONS	

CHAS. H. SELLS, INC.
Consulting Engineers, Surveyors & Photogrammetrists
CIVIL, STRUCTURAL AND TRANSPORTATION ENGINEERING
1 COLUMBIA CIRCLE
ALBANY, NEW YORK 12205
518-452-3345 FAX 518-452-3785

EAST GREENBUSH MARINA
GRADING AND UTILITIES PLAN
RIVERSIDE AVENUE EXTENSION
TOWN OF EAST GREENBUSH - RENSSELAER COUNTY

Date MARCH 2007

Sheet 4
4 OF 16

EXHIBIT "2"

TOWN OF EAST GREENBUSH
STATE OF NEW YORK ZONING BOARD OF APPEALS

In the Matter of the Application :
Of East Greenbush Marina, LLC, :

:

For A Special Use Permit and Area
Variance For a "Marina" at Riverside
Avenue Extension :
:

SUPPLEMENTAL NARRATIVE IN SUPPORT OF APPLICATION FOR
A SPECIAL USE PERMIT AND AN AREA VARIANCE

Date: August 5, 2008

Respectfully Submitted,

Peter A. Lynch, Esq.
LYNCH & HETMAN, PLLC
Attorneys for Applicant
Office and P.O. Address
111 State Street
Albany, New York 12207
Tel. No. (518) 463-1252

617.20

Appendix C
State Environmental Quality Review
SHORT ENVIRONMENTAL ASSESSMENT FORM
For UNLISTED ACTIONS Only

PART I - PROJECT INFORMATION (To be completed by Applicant or Project Sponsor)

1. APPLICANT/SPONSOR
East Greenbush Marina, LLC

2. PROJECT NAME
East Greenbush Marina

3. PROJECT LOCATION:
Municipality Town of East Greenbush County Rensselaer

4. PRECISE LOCATION (Street address and road intersections, prominent landmarks, etc., or provide map)
Riverside Avenue Extension (Tax Map #154-2-20)

5. PROPOSED ACTION IS:
[X] New [ ] Expansion [ ] Modification/alteration

6. DESCRIBE PROJECT BRIEFLY: Construction of a Full service Marina Facility with 84 boat slips, fuel service, repair shop, storage facility, and parking Lots, all as set forth in the attached Narrative to the accompanying Special Use Permit/Area Variance Application

7. AMOUNT OF LAND AFFECTED
Initially 24.95 acres Ultimately 24.95 acres

8. WILL PROPOSED ACTION COMPLY WITH EXISTING ZONING OR OTHER EXISTING LAND USE RESTRICTIONS?
[ ] Yes [X] No If No, describe briefly While a Marina is authorized in the Coastal Industrial Zone by Special Use Permit, an area variance is needed to relieve Applicant from Ordinance requirement of a walkway along the length of the shoreline.

9. WHAT IS PRESENT LAND USE IN VICINITY OF PROJECT?
[ ] Residential [X] Industrial [ ] Commercial [ ] Agriculture [ ] Park/Forest/Open Space [ ] Other
Describe: The site is bordered on the north and south with Bulk OilStorage Facilities.

10. DOES ACTION INVOLVE A PERMIT APPROVAL, OR FUNDING, NOW OR ULTIMATELY FROM ANY OTHER GOVERNMENTAL AGENCY (FEDERAL, STATE OR LOCAL)?
[X] Yes [ ] No If Yes, list agency(s) name and permit/approvals: See Attached List.

11. DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL?
[ ] Yes [X] No If Yes, list agency(s) name and permit/approvals:

12. AS A RESULT OF PROPOSED ACTION WILL EXISTING PERMIT/APPROVAL REQUIRE MODIFICATION?
[ ] Yes [X] No

I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE

Applicant/sponsor name: East Greenbush Marina, LLC Date: 8/4/08
By: Peter A. Lynch, Esq. Sponsor's Attorney
Signature: [signature]

If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment

OVER

Reset

1.1 List of Required Approvals

A number of approvals and permits are required for the project, including federal, state, and local agency permits and local board actions. The following approvals and permits are anticipated:

- Site Plan Approval – Town of East Greenbush Town Board
- Site Plan Recommendation – East Greenbush Planning Board
- Variance and Special Use Permit – Town of East Greenbush Zoning Board of Appeals – a Marina is authorized by special Use Permit in accord with Section 2.7.7 (C) in the Coastal Industrial District (CI). The following area variances will be required, as follows: (1) Section 2.7.7 (F) (03) requires a continuous pedestrian esplanade along the width of the property adjacent to the Hudson River, and Applicant cannot comply with this Ordinance requirement due to the existence of a federally protected wetland situate along the southwest portion of the site, and due to the operation of the proposed docks and ramps
- Building Permit - Town of East Greenbush
- Onsite Well and Septic System Approval – Rensselaer County Department of Health, Town of East Greenbush Department of Public Works, and NYS DEC SPDES Permit for Wastewater Discharge
- Joint Permit Application to US Army Corps of Engineers – Individual Permit Application (Section 10) and New York State Department of Environmental Conservation Article Protection of Waters Permit
- Storm water Approvals including Phase 2 SPDES – NYS DEC
- Coastal Management Zone Consistency Review – New York State Department of State
- Floodplain Permit – FEMA
- Dock Permit – NYS Office of General Services

Appendix "13"

NOTICE

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the Town of East Greenbush will hold public hearings on September 9, 2008 at the Town Hall, 225 Columbia Turnpike, Rensselaer, New York beginning at 7:30 P.M. to consider the following application:

Appeal number #2008-13 the appeal of East Greenbush Marina, LLC. of 1698 Central Avenue, Colonie, NY 12198 appealing the decision of the Building Inspector: The above applicant is proposing the operation of a Marina in the Coastal Industrial zoning district, and relief of the Water Front Access Paths regulations. The proposal does not comply with the following provisions of the Zoning Law of the Town of East Greenbush: **Section 2.7.7 (C) and Section 2.7.7 (F) 03.** Therefore, the applicant is requesting a Special Use Permit and Area Variance on the property located on Riverside Avenue Extension, East Greenbush, NY. Tax Map # 154-2-20

Any interested party may comment in person at the hearing. Written comment may be submitted to the Zoning Board of Appeals, Town of East Greenbush, 225 Columbia Turnpike, Rensselaer, New York 12144 at any time prior to the hearing.

BY ORDER OF THE ZONING BOARD OF APPEALS
DATED AUGUST 25, 2008
JUDITH CONDO, CHAIRPERSON
ZONING BOARD OF APPEALS
TOWN OF EAST GREENBUSH
FOR ADDITIONAL INFORMATION REGARDING THIS ACTION CALL THE EAST GREENBUSH ZONING DEPARTMENT AT

694-4011

Appendix "14"

WHITEMAN
OSTERMAN
& HANNA LLP

Attorneys at Law
www.woh.com

One Commerce Plaza
Albany, New York 12260
518.487.7600 phone
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Thomas A. Shepardson
Partner
518.487.7663 phone
tshepardson@woh.com

September 9, 2008

Town of East Greenbush
Zoning Board of Appeals
225 Columbia Turnpike
Rensselaer, New York 12144

Re: East Greenbush Marina Project; Riverside Avenue Extension
Application for a Special Use Permit and Area Variance

Dear Honorable Members of the Zoning Board of Appeals:

This firm represents Hess Corporation ("Hess"), National Gypsum Company ("National Gypsum") and Getty Petroleum Marketing, Inc. ("Getty") adjacent property owners and property owners in the immediate vicinity of the proposed East Greenbush Marina project (the "Project") on Riverside Avenue Extension (tax map no. 154.00-2-20) (the "Site").

We recently became aware of the subject application and promptly requested a copy of the application from the Town. Despite the fact that our clients' property directly abuts the subject Site, and obviously very concerned about this application, we were advised that we could not review the application without first submitting a request pursuant to the Freedom of Information Law. We submitted such a request on September 3rd. On Friday, September 5, 2008, we received a letter from the Town Clerk that we would be able to review the application materials on October 1, 2008. We subsequently learned that the materials would be made available on Friday afternoon. Given the significance of this application, and since we were only very recently received the information, we request that the ZBA not take any action until we have had a fair opportunity to review the application and provide additional comments. Even given our cursory review of the application we note several serious deficiencies.

1. <u>SEQRA</u>

The Zoning Board should also not take any action on this application because, as a SEQRA involved agency, it is required to wait until the Town Board, as Lead Agency, has completed the environmental review. See, 6 NYCRR 617.11.

The application materials contain a SEQRA short environmental assessment form. However, the Applicant has already filed a long environmental assessment form with the Town Board and Planning Board, a revised long environmental assessment form and, after issuance of a positive declaration of environmental significance by the Town Board, a Draft Environmental Impact Statement. The Applicant affirmatively stated in the application "This action is subject to

the Draft Environmental Impact Statement dated July 23, 2008 prepared by the Applicant, pursuant to a coordinated SEQRA review conducted by the ... Town Board, as Lead Agency. Accordingly, this action is not subject to a separate SEQRA review in accord with 6 NYCRR 617.6(b)(3)(iii)." Therefore, the filing of a new short environmental assessment form appears to completely confuse the status of the environmental review of the Project. The Zoning Board, therefore, must await the completion of the SEQRA process before taking any action on this application

2. The Zoning Board has No Authority to Grant a Variance to Eliminate the Pedestrian Esplanade Requirement

First and foremost, the Zoning Board lacks authority to grant any variance to relieve the Applicant from construction of a pedestrian esplanade, in particular by an area variance. As this Board is aware, an area variance is a procedure that provides relief to property owners from the strict application of area and bulk (i.e. dimensional requirements) of the Zoning Law. See, e.g. 2.7.7 (E). It is our position that an area variance is not appropriate and the Zoning Board incapable of approving such a request. The Applicant is simply not seeking relief from an area and bulk requirement of the Zoning Law.

The recent adoption of a new Zoning Law by the Town Board imposed a requirement on new development along the waterfront "to promote and protect publicly available access to the riverfront". This has nothing to do with area and bulk requirements. Thus, the Town Board required that "all new development with water frontage along the Hudson River must provide a continuous pedestrian esplanade along the width of the property adjacent to the waterway as a recreational trail. This esplanade must link to any esplanade(s) on adjacent properties, and must be linked to a public right-of-way by a waterfront access path". (Emphasis added). Where is the access path from the right of way? This is a substantive requirement for development of a marina and clearly not an area or bulk requirement.

There are no area or bulk requirements implicated with this new provision of the Zoning Law. The applicant's excuse to justify its noncompliance is that "this walking area is not included in the plans due to the fact the boat launch on the north end of the shoreline is necessary for the marina, and the forested tidal wetlands on the southern side need to remain undisturbed". In other words, because the Applicant has designed the Project to not accommodate the pedestrian esplanade, they do not want to change their plans to include it. The Applicant has stated several times that this Site is the only location in the Town for a marina. Therefore, when the Town Board imposed this pedestrian esplanade requirement, the Town Board knew what it was requiring at this Site.

The Applicant should present a proper site plan that includes the required pedestrian esplanade or be required to seek legislative relief from the Town Board to change this newly adopted zoning requirement. Failure to comply with pedestrian esplanade requirement will completely frustrate the intent, purpose and community goals and objectives of the new legislation just adopted by the Town Board. Therefore, if approved, the Project will be inconsistent with the new legislation and comprehensive plan.

3. The Application does not meet the Test for an Area Variance.

Initially, while we object to the utilization of the area variance process for this application, assuming arguendo (but not conceding) that the Zoning Board has authority to consider this application, pursuant to the Town Law and Zoning Law §4.2.4, the burden is on the Applicant to establish compliance with the statutory test for issuance of an area variance. The Applicant failed to do so which requires that the application be denied. The Applicant completely ignored the statutory criteria for an area variance.

A. Balancing Test: Benefits/Detriments

In making its determination with respect to the requested area variance, the Zoning Board must take into consideration the benefit to applicant if the area and bulk variance, is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community by granting this variance. If this variance is granted, it will completely frustrate the requirements of §2.7.7(F)(03) which is intended "to promote and protect publicly available access to the riverfront". There are numerous other conditions envisioned by the Town Board and enacted in the new legislation that also will not be realized if this application is approved. Such requirements include:

a) The waterfront access paths to and from the public way may be provided through the ground floor interior of a building on the site and be restricted during business closing hours.

b) Waterfront access paths should be identified as a throughway to and from the water with a Town approved sign and provide a view of the water from the public way.

c) Waterfront access paths may be provided along a side property line so that it is a shared access arrangement with the neighboring property. Such paths would meet the waterfront access requirements of both properties simultaneously.

d) At least one public bench and trash receptacle should be provided no less than every 200 feet along a waterfront access path or pedestrian esplanade.

e) Waterfront access paths and pedestrian esplanades should be illuminated with Town-approved lamps at least once every 50 feet.

f) These pedestrian access ways must meet all requirements of the Americans with Disabilities Act, including the transitions from one property to another.

If there is no pedestrian esplanade, then none of these other public benefits will be achieved as well.

B. Criteria

When making a benefits/detriments analysis, the Town Law and Zoning Law require the Zoning Board to consider the following five criteria. It should be remembered that the application does not address these required points.

(1) *Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.*

The Project will be extremely detrimental to the nearby properties. A "full service" marina, with docks and boat slips extending to within a few hundred feet of the large shipping tanker vessels docking and unloading at the immediately adjacent property will be disruptive to such operations. As you know, our client operates a significant industrial facility adjacent to the Project on the Hudson River where shipments of fuel from large tankers are a daily occurrence. From a practical standpoint the location of a marina, with its multiple dock/boat slips within a few hundred feet from Hess' facilities, will disrupt Hess' everyday operations. The Applicant is also proposing a second marina across the Hudson River which will draw boaters to this marina facility for fueling, repairs and/or storage. The Applicant also has proposed a residential development south of the Site and Hess' facilities. It is our understanding the "master plan" also proposes a residential development that will have ownership rights at the proposed marina. Thus, significant additional boat traffic from these developments will significantly increase and cause disruption of our clients' operations. See attached "Master Plan" Figure 3 to the Draft EIS submitted by the Applicant to the Town Board.

From a national security perspective, operation of a marina in such close proximity to our clients' facilities constitutes an unwarranted risk in this post-9/11 world. As identified in the Maritime Transportation Security Act of 2002, a basic threat scenario involves a "boat loaded with explosives exploding alongside a docked tank vessel". Here we will have that potential scenario everyday with marina boats docked in very close proximity to tankers if this Project is approved. The Applicant's suggestion that a 1989 study by the Town is still relevant in this post-9/11 world is specious.

(2) *Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance*

The Applicant is not seeking a benefit; The Applicant is seeking to avoid providing the required public benefit.

The purposes of the new requirement is "to promote and protect publicly available access to the riverfront" by creation of a continuous pedestrian esplanade along the property adjacent to the waterway. The Applicant has offered no potential alternatives or demonstrated that the pedestrian esplanade can not be constructed. Why can't a pedestrian esplanade be designed to

avoid the boat launch and traverse around the identified wetland area? The Applicant's refusal to comply is no excuse to grant an area variance.

Accordingly, there are viable alternatives for Applicant to pursue, other than obtaining the granting of the area variance, the effect of which will eliminate the intended public benefit.

(3) *Whether the requested area variance is substantial.*

The variance is extremely substantial. A pedestrian esplanade is required, including all its ancillary improvements. The Applicant seeks to eliminate this requirement and public benefit imposed by the Town Board on such development. This application can only be seen as substantial. Thus, a common sense leads to the conclusion that the variance is substantial.

(4) *Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.*

A pedestrian esplanade along the waterway could easily be designed around the federal wetland. The Town Board has already issued a positive declaration of environmental significance and the EIS process has not been completed. Therefore, it has been determined the Project may have an adverse effect on the physical and environmental conditions on the Site or of the neighborhood. The DEIS contains numerous examples of potential significant adverse impacts of this project – for instance, dredging contaminated materials from the Hudson River, negative impacts on cultural resources and septic issues to name a few.

(5) *Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.*

The area variance request is completely self-created. The Applicant simply refuses to design the site plan with the required pedestrian esplanade. This is entirely within their ability to design a project in conformity with the Zoning regulations.

(6) *Minimum Variance?*

Since the Applicant has refused to construct the pedestrian esplanade, the Zoning Board must deny the application because it has no evidence that this might be minimum variance requested. The complete elimination of the pedestrian esplanade is not the minimum necessary to preserve and protect the character of the neighborhood and the health, safety and welfare of the community. It will have the opposite effect. In fact, it appears by eliminating the required esplanade, the only result is a financial gain to the Applicant which is not a basis to grant the variance. See § 4.2.4(b)(04).

4. <u>The Application does not meet the Test for a Special Use Permit</u>.

Pursuant to the Zoning Law, the Applicant is obligated to provide proof that it meets the requirements set forth for issuance of a Special Use Permit. Specifically, 3.11.1(A) provides:

A. General Standards. In authorizing any special permit use, the Board of Appeals shall take into consideration the public health safety, and general welfare, the comfort and convenience of the public in general and that of the residents of the immediate neighborhood in particular. In addition to any specific requirements of this code, the Board of Appeals shall also take into account the following general objectives for any use requiring Board of Appeals authorization:

01. The location and size of the use, the nature and intensity of the operations involved, the size of the site in relation to the use, and the location of the site with respect to the existing of future streets providing access, shall be in harmony with the orderly development of the district.

02. The location, nature, and height of the buildings, walls and fences, and the nature and intensity of intended operations, will not discourage the appropriate development and use of adjacent land and buildings or impair the value thereof.

03. All proposed traffic access ways shall be adequate but not excessive in number; adequate in width, grade, alignment and visibility; be located not less than twenty-five (25) feet from street corners or other places of public assembly; and meet similar safety considerations.

04. Adequate provision for safe and accessible off-street parking and loading spaces shall be made.

05. All parking and service areas shall be screened at all seasons of the year from the view of adjacent residential lots and streets and the general landscaping of the site shall be in character with that generally prevailing in the neighborhood. Such landscaping shall include the preservation of existing trees over eight (8) inches in diameter to the maximum extend possible.

06. The character and appearance of the proposed use, buildings, structures, and/or outdoor signs shall be in general harmony with the character and appearance of the surrounding neighborhood, shall not be more objectionable to nearby properties by reasons of noise, fumes, vibration, or principal lights, than would be the operations of any permitted use and shall not adversely affect the general welfare of the inhabitants of the Town of East Greenbush.

07. All proposed buildings, structures, equipment and/or material shall be readily accessible for fire and police protection.

For the following reasons, the application fails to meet the requirements for issuance of a Special Use Permit and the application should be denied.

1. The location and size of the use, the nature and intensity of the operations involved, the size of the site in relation to the use, and the location of the site with respect to the existing of future streets providing access, shall be in harmony with the orderly development of the district.

The location of this highly intensive use adjacent to significant large scale industrial uses is completely inappropriate. The application proposes docks and boat slips in an extremely close proximity to these operations. As noted above, a "full service" marina, with docks and boat slips extending to within a few hundred feet of the large shipping tanker vessels docking and unloading at the immediately adjacent property will be disruptive to such operations and a clear security risk. As you know, our client operates a significant industrial facility adjacent to the Project on the Hudson River where shipments of fuel from large tankers are a daily occurrence. From a practical standpoint the location of a marina, with its multiple dock/boat slips within a few hundred feet from Hess' facilities, will disrupt Hess' everyday operations. Cumulatively, with the above referenced second proposed marina and future plans for a residential project, will clearly exacerbate an untenable situation.

From a national security perspective, operation of a marina in such close proximity to our clients' facilities constitutes an unwarranted risk in this post-9/11 world. As identified in the Maritime Transportation Security Act of 2002, a basic threat scenario involves a "boat loaded with explosives exploding alongside a docked tank vessel". Here we will have that potential scenario everyday with marina boats docked in very close proximity to tankers if this Project is approved. The Applicant's suggestion that a 1989 study by the Town is still relevant in this post-9/11 world is specious.

A requirement of the SEQRA process obligates the Applicant to examine alternatives to the Project. There was no evaluation of a less than "full service" marina with much fewer docks and boat slips located farther away from the adjacent properties. Fueling facilities will attract even more boats to the immediate area which is another potential adverse impact.

The Applicant proposes to truck in 45,000 cubic yards of fill material. There has been no evaluation of this potential impact on traffic, as well as the impact of heavy loaded trucks on the actual street surfaces.

2. The location, nature, and height of the buildings, walls and fences, and the nature and intensity of intended operations, will not discourage the appropriate development and use of adjacent land and buildings or impair the value thereof.

For the reasons stated in #1 above, the location and nature (there are no building elevations provided so we do not know the height of the buildings), and the nature and intensity of intended operations, will be inappropriate and disruptive to the use of our client's adjacent land, buildings and use

3. All proposed traffic access ways shall be adequate but not excessive in number; adequate in width, grade, alignment and visibility; be located not less than twenty-five (25) feet from street corners or other places of public assembly; and meet similar safety considerations.

The Town's independent designated engineer, Chazen Engineering and Land Surveying Co., P.C., issued a letter dated June 1, 2007 which states: "The site is proposed to have a single entrance. This should be reviewed by the responding emergency service agency to confirm that suitable access is provided. There may be a need for a second emergency access to the site". Consequently, it appears that access is inadequate and not addressed by the Applicant. Moreover, the Site does not have direct frontage onto Riverside Avenue Extension due to an intervening strip of land. Without frontage there is no direct access to the Site. Riverside Avenue Extension is a narrow winding road and conflicts (i.e. accidents) with existing truck traffic is an inevitable consequence.

4. Adequate provision for safe and accessible off-street parking and loading spaces shall be made.

The parking facilities are inconsistent with the requirements of the Zoning Law. The proposed parking facilities do not meet the requirements of §3.1.9 of the Zoning Law [perimeter landscape buffer and internal landscaping (5% of the parking area)]. See also, §3.2.2, Table III-A perimeter landscaping schedule and requirements. There has been no demonstration of compliance with these provisions. The Applicant also appears to use a strip of land outside the boundary of the Site along the highway right-of-way in an attempt to comply with the greenspace requirements. The Zoning Law does not however allow an applicant to use off-site land to satisfy zoning requirements.

5. All parking and service areas shall be screened at all seasons of the year from the view of adjacent residential lots and streets and the general landscaping of the site shall be in character with that generally prevailing in the neighborhood. Such landscaping shall include the preservation of existing trees over eight (8) inches in diameter to the maximum extend possible.

While there are no adjacent residential lots, the general landscaping of the Site is required to be in character with that generally prevailing in the neighborhood. The application does not include proper calculations exhibiting compliance with general landscaping requirements. A minimum of 25% of the "developable area" shall remain as greenspace and greenspace is defined as "areas free from built structures, parking lots, loading areas, covered by vegetation meeting the landscape requirements set out in this section. See, 3.2.1 (A)(04). Thus, the required parking lot landscaping may not be used as part of this separate greenspace calculation. The Applicant also appears to use a strip of land outside the boundary of the Site along the highway right-of-way in an attempt to comply with the greenspace requirements. The Zoning Law does not however allow an applicant to use off-site land to satisfy zoning requirements. In addition, the applicant takes credit for wetlands as enhanced greenspace, however, that is "left to the discretion of the Planning Board" and may not be so credited.

6. The character and appearance of the proposed use, buildings, structures, and/or outdoor signs shall be in general harmony with the character and appearance of the surrounding neighborhood, shall not be more objectionable to nearby properties by reasons of noise, fumes, vibration, or principal lights, than would be the operations of any permitted use and shall not adversely affect the general welfare of the inhabitants of the Town of East Greenbush.

The character of the proposed use, a "full service" marina, will not be in general harmony with the character and appearance of the wholly industrial area. The Applicant readily admits this, stating in the application: "Here, it is clear that the marina is not an intensive industrial use, like its immediate neighbors, which consist of bulk oil storage facilities. Accordingly, the character of the marina is different from the immediate community character". As noted above, a "full service" marina, with docks and boat slips extending to within a few hundred feet of the large shipping tanker vessels docking and unloading at the immediately adjacent property will be disruptive to such operations. Our client's significant industrial facilities and operations adjacent to the Project where shipments of fuel from large tankers are a daily occurrence will be disrupted. From a practical standpoint the location of a marina, with its multiple dock/boat slips within a few hundred feet from Hess' facilities, will disrupt Hess' everyday operations.

7. All proposed buildings, structures, equipment and/or material shall be readily accessible for fire and police protection.

The applicantion states that "All buildings are full (SIC) accessible for fire protection". This simplistic statement, however, is no proof that there is sufficient water supply and pressure at this Site or in its immediate vicinity to protect any buildings in the event of a fire emergency. According to the Applicant, a well will be constructed for the supply of water to the Site. How does anyone know if this single well will provide sufficient water not only for the Project, but also for fire emergencies? We are aware of a fire training incident where the local fire company noted weak fire flows in this area and were unable to contain a controlled fire without the assistance of Hess' facilities. Is there sufficient room for a fire truck to navigate around the buildings along the southern property boundary? What happens when the fueling facility erupts? Will there be sufficient water for the Fire Company to respond and extinguish a fire quickly?

Therefore, we respectfully request that the Zoning Board deny the area variance and Special Use Permit.

Very truly yours,

Thomas A. Shepardson

Enclosure

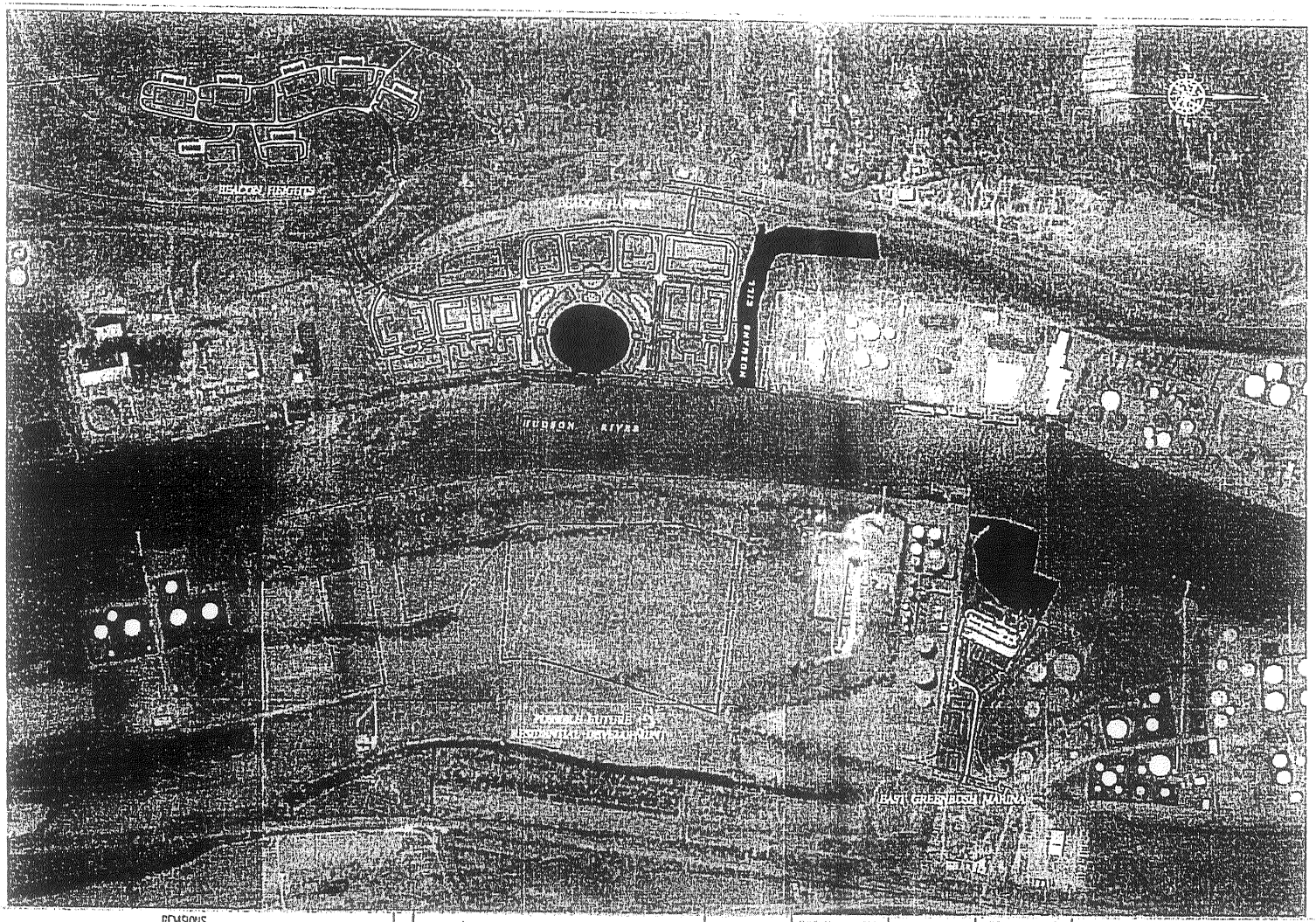

Figure 3

REVISIONS

CHAS. H. SELLS, INC.
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Michael L. Croft, P.L.S.

MASTER PLAN

TOWN OF EAST GREENBUSH-
TOWN OF BETHLEHEM

Date: January 31, 2006 | Scale: NTS | Case: ortho layout

Sheet 1 of 1

Appendix "15"

Section 2.7.7 Coastal Industrial District (CI)

A – Intent: The CI District is intended to permit and encourage the development of light manufacturing and warehousing uses appropriate along the waterfront which require access to the river, rail line or require large quantities of water.

B Permitted Uses:

Adult establishment
Agriculture; horticulture and farming, general
Agriculture; livestock or dairy
Agriculture; farm stand or market
Industry; light, general non-nuisance
Industry; light, printing and publishing
Industry; light, assembly and fabrication
Industry; research and development lab
Recreation; public, outdoor park or campground
Parking; off street or garage
Parking; off street or garage; commercial vehicles
Transport; bus, railroad, truck, ship repair/storage
Storage; self storage rental facility

C Special Permit Uses:

Automotive; service, wash or storage
Industry; extractive operations or soil mining
Industry; recycling and materials reuse
Industry; machinery repair or storage garage
Recreation; Marina
Storage; wholesale/distribution center 3+ truck bays
Storage; wholesaling / warehousing, off site
Storage; fuel or other hazardous materials
Transport; public transport passenger station

D Accessory Uses:

Accessory; dwelling unit (SP) as per Section 3.7.10
Accessory; retail or service
Animal; boarding, private stables
Parking; off street or garage
Structure; commercial garage or shed
Structure; customary farm building
Structure; customary garage, shed or greenhouse
Storage; indoors, merchandise in stock
Storage; outdoors, merchandise in stock

(SP) By Special Permit

E Area and Bulk Schedule

Minimum Lot Dimensions	
Area (sq. ft)	10 acres
Width (feet)	500
Minimum Yard Dimensions	
Front (feet)	50
Side (feet)	25
Rear (feet)	25
Maximum building coverage	35%
Density (Dwelling units per acre)	N/A
Maximum building height (feet)	50

F Specific District Standards

01. Specific Use Regulations

a) **Restaurant** - Restaurants with both indoor or outdoor seating are permitted as accessory and secondary to a permitted marina.

02. Site Plans - All new uses and structures, and all changes of use, shall require site plan review and approval in accordance with the procedures and requirements stated within Section 4.3.1 of this Local Law.

a) Designs which integrate and protect existing wetland and river shoreline areas into the landscape design without disturbing them are encouraged through the use of trails, public access and or recreation areas.

b) Development plans shall be designed to minimize any conflict with existing adjacent agricultural operations. A minimum building setback of 100 feet is required from an adjacent existing agricultural operation.

c) Development plans shall address streetscape aesthetics so that as development occurs, an attractive streetscape will be ensured along the major roads.

d) Curb cuts must be minimized and adjacent uses may be required to combine accesses.

e) **Parking** - All parking lots must be in accordance with Section 3.1 Parking.

f) **Landscaping** - All landscaping must be in accordance with Section 3.2 Landscaping.

g) **Signs** - All signs must be in accordance with Section 3.3 Signs.

03. Required Waterfront Access – In order to promote and protect publicly available access to the riverfront, all new development with water frontage along the Hudson River must provide a continuous pedestrian esplanade along the width of the property adjacent to the waterway as a recreational trail. This esplanade must link to any esplanade(s) on adjacent properties, and must also be linked to a public right-of-way by a waterfront access path.

a) The waterfront access paths to and from the public way may be provided through the ground floor interior of a building on the site and be restricted during business closing hours.

b) Waterfront access paths should be identified as a throughway to and from the water with a Town-approved sign and provide a view of the water from the public way.

c) Waterfront access paths may be provided along a side property line so that it is a shared access arrangement with the neighboring property. Such paths would meet the waterfront access requirements of both properties simultaneously.

d) At least one public bench and trash receptacle should be provided no less than every 200 feet along a waterfront access path or pedestrian esplanade.

e) Waterfront access paths and pedestrian esplanades should be illuminated with Town-approved lamps at least once every 50 feet.

f) These pedestrian access ways must meet all requirements of the Americans with Disabilities Act, including the transitions from one property to another.

Appendix "16"

8. The SWPPP must include documentation supporting the determination of permit eligibility with regard to Part I.D.10. (Historic Places). At a minimum, the supporting documentation shall include the following:

a. Information on whether the stormwater discharge or *construction activities* would have an effect on a property that is listed or eligible for listing on the State or National Register of Historic Places;

b. Results of historic places screening determinations conducted. Information regarding the location of places listed, or eligible for listing, on the State or National Register of Historic Places should be obtained by consulting with the New York State Historic Preservation Office, NYS Office of Parks, Recreation and Historic Preservation (OPRHP), Peebles Island Resources Center, P.O. Box 189, Waterford, NY 12188-0189, phone: (518) 237-8643, or using the GIS online resources available at: http://nysparks.state.ny.us/shpo/ ;

c. A description of measures necessary to avoid or minimize adverse impacts on places listed, or eligible for listing, on the State or National Register of Historic Places. If the *owner or operator* fails to describe and implement such measures, the stormwater discharge is ineligible for coverage under this permit; and

d. Where effects may occur, any written agreements that the *owner or operator* has made with the OPRHP or other governmental agency to mitigate those effects, or local land use approvals evidencing the same.

B. Required SWPPP Contents

1. Erosion and sediment control component - All SWPPPs prepared pursuant to this general permit shall include erosion and sediment control practices designed in conformance with the most current version of the technical standard, New York Standards and Specifications for Erosion and Sediment Control. Where erosion and sediment control practices are not designed in conformance with this technical standard, the *owner or operator* must demonstrate equivalence to the technical standard. At a minimum, the erosion and sediment control component of the SWPPP shall include the following:

a. Background information about the scope of the project, including the location, type and size of project;

Appendix "17"

ARCHAEOLOGICAL DATA RECOVERY PLAN
PROPOSED EAST GREENBUSH MARINA
TOWN OF EAST GREENBUSH, RENSSELAER COUNTY, NEW YORK

Prepared by Edward V. Curtin, Ph. D.
Curtin Archaeological Consulting, Inc.
61 Rowland Street, Ballston Spa, New York

INTRODUCTION

The proposed East Greenbush Marina will construct buildings, parking areas and related marina facilities on fill within the northern section of Papscanee Island, Town of East Greenbush, New York. Several feet of fill already occupy the project site, but additional fill will be put in place to elevate the proposed marina above the floodplain. Because of deep, extensive, existing and proposed fill, the construction of the project will not disrupt archaeological resources known to occur below the fill. Rather the potential for an adverse effect lies in a decreased accessibility of the archaeological resource for future archaeological investigation. The decreased accessibility itself is conditioned by the locations of the slab floors or other obstruction to future archaeological sampling.

The archaeological resources in questions have been identified as Loci 1, 2, and 3 of the North Papscanee Island Prehistoric Archaeological Site (Curtin and Farry 2006).

Obstruction of access to the archaeological resource would not be complete, since there will be spaces accessible for sampling between or adjacent to buildings or possibly through parking lots (depending upon the nature of the sampling). It is noted that access to the archaeological site is already obstructed by deep fill, and by thick deposits of river sediments, which cover 2 apparent former ground surfaces located below the upper buried ground surface. The deep fill and the deep stratigraphy make conventional archaeological investigation difficult, dangerous, and expensive; however geoarchaeological and environmental archaeology are possible through soil coring approaches.

The proposed project is locally important and will relieve pressure for marina service related to the closing of the Van Schaick Island Marina. The selected site already has a boat basin constructed in filled land along the Hudson shore during the early 20th century. Moreover, there are limited sites available for a marina in this region.

Although the proposed project will partially cover an archaeological site, in so doing, it will protect the archaeological over a long period of time. The project site has been the subject of numerous industrial-use proposals in the past. Alternative development of this property cannot be expected to avoid impact to the archaeological, since most proposals are likely to involve excavation below the fill.

The present data Recovery Plan (DRP) is proposed to mitigate potential adverse effects by providing geoarchaeological and environmental analyses that will increase understanding of the archaeological important Papscanee Island locality. At the same time, it is recognized that the construction of the East Greenbush Marina project by itself will mitigate greater potential adverse effects that could be created by alternative uses; and that areas for sampling using geoarchaeological coring approaches will still be accessible to further investigation of the site's history after the marina is constructed.

ARCHAEOLOGICAL MITIGATION STRATEGY

Archaeological data recovery and analysis will be employed to mitigate the effect of construction of the East Greenbush Marina. Data recovery plans are typically produced by a professional archaeologist, and reviewed by the State Historic Preservation Office (SHPO). The review typically involves a consultation process between appropriate governmental agencies. Depending upon the agencies and the

project, consultation may involve meetings and exchanges of information and opinions, or may be as simple as the transmittal of a review letter from the SHPO.

The data recovery program will be employed to provide new kinds of information and analyses of the archaeological site and its geological and environmental context within the property to be developed. This Phase 3 archaeological DRP has been prepared by Curtin Archaeological Consulting, Inc. in order to guide the collection of important information. Moreover, the DRP has been developed in recognition that the archaeological site will be sampled in order to recover this important information. The DRP does not propose complete hand or machine excavation of the area of potential effect since a sampling approach is sufficient to address important archaeological issues concerning this site. The approach taken recognizes that the extant archaeological site will not be disturbed by the East Greenbush marina project, and will remain partially available for additional geoarchaeological and environmental archaeological research in the future. .

SUMMARY OF GEOMORPHOLOGY

The initial geomorphological analysis in relation to archaeology on Papscanee Island was conducted south of the East Greenbush Marina project area by Schuldenrein (1997). Schuldenrein's (1997) investigation was put into broader perspective by Funk (1997) and Lavin (1997). Philip Holloway (2007), then of Op-Tech Environmental Services, provided a geomorphological study of the East Greenbush Marina Site. Holloway's (2007) study was based upon 8 soil cores and review of the stratigraphic information, profile drawings, and photos included in Curtin and Farry (2006). Curtin (2007) offered a synthesis comparing the findings of the Goldkrest Site and East Greenbush Marina analyses. Currently, geoarchaeologist Dell Gould is collaborating with archaeologist Joe Sopko of the New York State Museum for highway construction planned by the New York State Department of Transportation on Papscanee Island (Dell Gould, personal communication, April 2009). Discussion has been initiated with New York State Museum geoarchaeologist Julieann Van Nest regarding the work proposed later in the present document.

Holloway's (2007) study identified the largest stratigraphic record and is considered here first. Papscanee Island is an alluvial formation within the Hudson River, a region once covered by glacial ice, and subsequently, a pro-glacial lake, Lake Albany. The retreat of the glacial ice front occurred about 14,500 years ago (Ridge 2003); its retreat left Lake Albany to its south. Lake Albany (which existed in several stages) had drained before 12,400 years ago, based upon the occurrence of fluted projectile points of that estimated age within the Hudson-Mohawk Lowland Physiographic Province (Ritchie 1957; see Bradley et al 2008 for current, regional fluted point age estimates). Holloway (2007:5) infers that the proposed East Greenbush Marina location was covered by at least 100 feet of lake sediments and kame delta deposits before the early Holocene down-cutting of the Hudson River. The Hudson River sits in a trough cut down through glacial lake sediments and earlier outwash and till deposits since the end of the Pleistocene.

Holloway's (2007) soil cores recorded both glacial and Holocene alluvial soils. The soil sequence overlies Normanskill shale that was not reached by the soil cores due to its great depth. This shale, however, is known to underlie the Hudson River, and emerges at higher elevation to the east and west. It is estimated to be 30-60 feet below the project site. Above the shale, Holloway (2007) identifies 5 geomorphological units. The deepest, Unit V, is the bedrock, and was not encountered in the coring. Unit IV is glacial till, encountered at 18.5 feet deep in the two easternmost soil cores, SB-7 and SB-8. Unit III is glacial outwash composed of gray laminated sand and fine gravel. It was positively identified in all of the soil cores except the 2 westernmost, which were placed in deep fill overlying the former river channel. The top of Unit III is uniformly depicted as about 15-16 feet below the ground surface. Unit III apparently was deposited after the draining of Lake Albany, based upon analysis of the sequence of rounding and sorting of gravel within the unit. Unit II is laminated, sand and silt alluvium of relatively recent Holocene age. It is about 9 feet thick and contains 3 well developed buried soil horizons with "distinct gradation of A to B(C) horizons." Each of these buried A-B soil sequences occupies about 2-3 feet of Unit II stratigraphy.

The base of Unit II is an orange red sand that grades to coarse gravel and back again. The orange red sand underlies the entire site and has a sharp and abrupt contact with the gray outwash deposits (Unit III). The orange-red sand is seen as indicative of the mid-Holocene warm, dry period (the Hypsithermal or "Climatic Optimum"), 4,000-8,000 years ago when sea-level was lowered slightly. During this period, freshwater sources of the Hudson slowed, temporarily interrupting sediment accumulation. In the Hudson estuary, at the time located south of Papscanee Island, sea-water advanced up-river due to reduced flow from the north. The orange-red sand thus marks a long period without significant floodplain aggradation. The implication for the archaeology of the East Greenbush Marina site is that archaeological components post-date the onset of cooler, wetter conditions 3,000-4,000 years ago.

The buried A-horizons within Unit 2 occur at approximately 6 feet, 8 feet, and 13 feet below the ground surface. The archaeological investigation (Curtin and Farry 2006) took place largely within the uppermost A zone and the underlying B zone, with a likely encounter of the middle A-horizon, as discussed in the next section.

Unit I is described as overburden derived from sand and gravel dredge spoil deposition. This spoil is recorded as generally about 6 feet deep, although in the western section of the project area, it was recorded to as much as 14 feet deep where it overlays the former Hudson River channel.

Other geomorphological information on Papscanee Island has been provided by Schuldenrein's (1997) work at the Goldkrest site. The Goldkrest site is located approximately ¾ mile south of the East Greenbush Marina project site. The Goldkrest site was actually on Cuyper Island, a small island that once adjoined Papscanee Island on the west (Huey 1996; Lavin et al 1996). Schuldenrein's investigation and the related archaeological work was based upon backhoe trenches rather than soil cores, and mainly characterizes the upper 1.7 meters (ca 5 feet) of soil stratigraphy. The end of one trench was extended to a depth of 3.3 meters (ca. 10 feet). Thus, in correspondence to Holloway's study, the Goldkrest site geomorphological investigation occurred within Holloway's Unit 2. The Golkrest site soil strata are referred to in a site-specific numbering system and include Unit I: Plowzone, from the surface to 20-30 cm below surface, containing mainly historic and recent artifacts; Unit II, 20 or 30 to 30 or 40 cm below surface, light grey fine sand with silt and clay; Unit III, Buried A-horizon, from about 30-70 cm below surface, containing the Late Woodland and contact period components; Zone IV from about 70-180 cm below surface, containing reddish brown to tan sand and sparse traces of a Middle Woodland component; Zone V, from about 180-260 cm below surface, tan to light brown sand without artifacts or archaeological features; Unit Va, 260-330 cm below surface, dark gray to gray organic silt with macro-plant fossils such as twigs, but without artifacts or cultural features; and Unit VI, more than 330-340 cm below surface, fluvial sand (tan very coarse sand and fine gravel) without artifacts or cultural features.

Schuldenrein (1997:7) relates that this sequence of soil deposits began with channel infilling or point bar deposition represented by Unit VI, followed by infilling above the fluvial sand and rapid development of the floodplain from about 2,500-1,800 years before present (BP), based upon radiocarbon dating. Periodic flooding formed Stratum IV, which is radiocarbon dated 1,590 +/- 70 BP (ca. A.D. 360); a levee began to develop in these flood deposits.

Following a period of floodplain dynamism, Schuldenrein (1997) sees increasing stabilization of the site environment after 1,800 BP. A braided channel system had shifted to a single, west-migrating channel. Dineen (1996) estimates that earlier, about 4,000 years ago, the Hudson River estuary overflowed the falls or rapids that formerly existed at Castleton, Town of Schodack. This event may have slowed floodplain dynamics somewhat later at Papscanee Island , and is consistent with Holloway's (2007) observation that the volume of water in the river increased after 4,000 BP. Rising mid-Holocene sea-level and increased water flowing from tributaries are both effects of increased rainfall after the dry Hypsithermal climate (4,000-8,000 BP).

Unit III is the stratigraphic situation in which human occupation intensified, where numerous archaeological features including seasonal shelters or houses were constructed. Unit III is radiocarbon-dated to about 300-1000 years ago. Geochemical analysis indicates that phosphorous does not increase in

relation to these archaeological components, suggesting short term or seasonal occupation. Organic matter increases with the Late Woodland component, an indication of the stabilization of the land surface, making this site more available for human use. Iron and manganese increases indicate the increased weathering of this stabilized surface. Increases in calcium carbonate and magnesium suggest the infusion of the soil with shell, perhaps as the result of human uses. Schuldenrein (1997:10) views the geochemical data as reflecting "anthropogenic 'prints'" within a naturally weathered alluvial sediment.

Above Zone III the alluvial deposits are the result of increased sediment load in the Hudson related to colonial era and later deforestation, agriculture, and erosion in the upper Hudson drainage basin. That is, after the contact period, the floodplain became less stable due to wide-spread land clearing, increased flooding, and deposition of eroded sediments from upstream.

Schuldenrein (1997) has been clear in indicating that land surfaces were not available for human occupation at the Goldkrest site until after ca. 1,800-2,500 BP. Funk (1997) suggested that the floodplain to the east may have provided earlier stable situations. More recently, Gould (personal communication, April 2009) has indicated that environments suitable for human habitation on the floodplain east of the Goldkrest site did not develop until after about 3000 BP. Schuldenrein (1997) has proposed a model for changes in the river and floodplain that illustrate the development of suitable human habitat. Starting at a time less than 2,500 years ago, Papscanee Island was represented by unstable point bars and islands forming and disappearing in a braided Hudson River system. By about 1,500 years ago, the Hudson channel had migrated to the west; an oxbow lake had formed near the eastern valley wall; and over-the-bank flooding had deposited soil over the sand and gravel bars. At this time, the floodplain was aggrading and surfaces were available for Middle Woodland period human occupation. Floodplain aggradation on both banks of the river led to an increased build up of floodplain deposits by Late Woodland times (ca. 800 years BP) as the Hudson remained confined to its banks. The floodplain then built eastward toward the oxbow lake, which shrank, and slope wash began to accumulate on the eastern valley margin. During historic and recent times, accelerated erosion and re-deposition of soils during floods has leveled the floodplain, obscuring the ridge and swale topography that prevailed during the Late Woodland and contact periods.

SUMMARY OF ARCHAEOLOGICAL INVESTIGATIONS OF THE EAST GREENBUSH MARINA SITE

The model of floodplain development at Papscanee-Cuyper Islands provided by Schuldenrein (1997) is supported by Holloway's (2007) coring and the recent observations by Gould (personal communication, April 2009). That is, the archaeological site can be expected to have developed during the Woodland period. Holloway's work indicates that it is the East Greenbush Marina Unit II deposits that may contain archaeological components, and that Unit II developed after 3000-4000 years ago. The relationship between the buried ground surfaces noted at about 6, 8 and 13 feet below the modern ground surface in Holloway's (2007) and the Goldkrest Site stratigraphy is unclear, although the lowest (13 ft) ground surface probably did not occur at Goldkrest, or was compressed into another soil stratum, such as Goldkrest site Unit III. As a working hypothesis, the upper and middle (6 ft and 8 ft) buried ground surfaces at the East Greenbush Marina site may correspond to Goldkrest site Units I and III; or Goldkrest Units I and III may be compressed into the upper buried ground surface at East Greenbush Marina (as they were compressed into the plowzone in the west end of Goldkrest site backhoe trench 3; Lavin [1997]; Lavin et al [1996]; Schuldenrein [1997]). In the latter case, both the 8 ft and 13 ft buried ground surfaces at East Greenbush Marina would not be represented at the Goldkrest site. The pertinent cultural sequence divulged at Goldkrest involved the sequence of a Middle Woodland period component in stratigraphic Unit IV, and Late Woodland and Contact period components in stratigraphic Unit III.

The Phase 1 and 2 surveys of the East Greenbush Marina project site have employed a battery of techniques and methodologies designed to look comprehensively at the project area while addressing the issue posed by the existing deep fill. These surveys:

- compiled the documentary and map information pertinent to the project area;

- consulted with Mark Peckham of SHPO concerning the potential for submerged archaeological resources in the boat turning basin immediately off-shore;
- reviewed 3 soil borings performed by Dente Associates (2001);
- excavated 128 shovel test pits in areas where the possibility existed that deep shovel tests would penetrate the overlying fill;
- excavated 22 backhoe trenches to remove fill and explore the soil below in order to record stratigraphy and test for the presence or absence of undisturbed artifacts or archaeological features;
- dug 22 additional shovel test pits below the fill into significantly deeper stratigraphic levels in these backhoe trenches;
- excavated 9 1x1 meter units after backhoe removal of fill in 9 additional locations;
- placed 9 more shovel test pits at the bottoms of the 1x1 meter test units in order to reach depths often exceeding 3 meters (10 feet) below the modern ground surface; and
- obtained 8 deep soil cores (by Holloway 2007) to develop a more thorough understanding of the site geomorphology.

The geomorphology investigation results have been discussed in the previous section of this plan. The archaeological survey results provide information on several subjects of importance, including the depth of fill deposits; the depth of the deepest hand-excavated tests; the sporadic occurrence of prehistoric or contact period artifacts and archaeological features; the types of artifacts identified; the differential density of artifacts found; the depths at which artifacts or features were found, and the contexts in which artifacts or features occur.

Depth of Fill

The depth of fill was recorded as 5-6 feet by Dente Associates (2001), usually about 6-8 feet by Holloway (2007), but 11-14.5 feet by Holloway (2007) in the western side of the project area, where built land had been created over the former Hudson River bottom. Curtin and Farry's (2006) backhoe trenches most often found depths of fill between 3.0-6.5 feet. It is noted that the record of 1.5 feet of fill at Trench 8 is now considered an erroneous recording. Also, Trench 10 was placed over suspected Hudson River bottom to confirm deeper fill in this area. Fill was found to 7+ feet at Trench 10, which was discontinued due to the collapse of unconsolidated fill.

The different studies are consistent in finding a range to the depth of fill between 3-8 feet (except for over the river bottom), with most measurements in the range of 4-6 feet. It is noted that most of Holloway's soil cores showing relatively deep fill (6+ ft) were retrieved in a line following an existing road on the north side of the project area, while Curtin and Farry's (2006) trenches tended to show a differential of about 1.5 feet in the depth of fill between the north and south sides of the project area, with the fill most often being deeper on the north side. Thus, there is a strong degree of correspondence between the different measurements of fill depth, and a tendency for fill to thin slightly (or the underlying surface to rise slightly) to the south. The excavation units with prehistoric or contact period material in Locus 1 were covered by 2.7-4.8 feet of fill.

Ultimate Depth of Manual Testing

The deepest hand excavated tests are shovel test pits excavated below the Phase 1B backhoe tests and the Phase 2 1x1 meter units. The 22 Phase 1B shovel tests from the bottom levels of the backhoe trenches routinely reached to 2.0-3.5 meters (6.6-11.5 feet) below the ground surface. Based upon their origin on the floors of the deeper steps of the backhoe trenches, about half of these Phase 1B shovel tests

reached about 3.5m (11.5 feet) below surface. The 9 Phase 2 shovel tests excavated below the floors of the 1x1 meter units reached depths of 2.4-3.4 meters (7.9-11.2 ft) below ground surface. Thus, there are 31 shovel tests pits that reached depths of 2.0-3.5 meters (6.6-11.5 feet) below ground surface. All of these are in the range to encounter the buried ground surface horizon recorded at 6 feet by Holloway (2007), many (approximately 20) are within the range to intersect the buried ground surface horizon at 8 feet identified by Holloway (2007), although none are deep enough to reach the buried ground surface identified at 13 feet. Most artifacts recovered were within the depth range of the upper buried surface, which was distinguishable as a dark loamy soil; or in the old subsoil below this horizon. However, 2 FCR and a dark soil lens at the bottom of the shovel test below Unit C (at 7.9 feet below current ground surface) may be associated with the second (8ft) buried ground surface. It is noted that 95% of shovel tests that were dug to this depth (7.9 ft) or deeper did not encounter artifacts.

Occurrence of Prehistoric or Contact Period Artifacts and Features

Prehistoric or contact period artifacts were found in 7 of the 30 locations where backhoe trenches, shovel test pits, or 1x1 meter excavation units were placed below fill. A possible eighth instance involves the discovery of a 17th-18th century English-manufactured ceramic sherd at Trench 2. It is possible, although not demonstrable, that this ceramic was associated with a contact period Native American occupation. However, the slip-decorated, buff earthenware ceramic may more likely post-date than pre-date the Dutch purchase of Papscanee Island from the Mohicans in the 1637, or the purchase of nearby Cuyper's Island in 1661 (cf. Huey 1996).

Seven locations contained chert flakes, fire cracked rock, or pottery. These have been grouped into 3 locations referred to as Loci 1, 2, and 3. Locus 1 represents prehistoric artifact occurrences in Trench 3 as well as Excavation Units B, C, and D. A burned patch of earth, possibly a hearth, was found in the subsoil below both fill and the upper buried ground surface at Trench 3. This feature was associated with a Late Woodland, ceramic sherd bearing a chevron-pattern cordmarked decoration. The contexts of the finds for these locations vary. Some co-occur with 19th-20th century historic period artifact, or occur above 19th-20th century artifacts, suggesting disturbance or secondary deposition. However, other prehistoric artifacts in Locus 1 were found well below historic artifacts. Locus 2 is defined at Unit I, where two flakes and 1 fire cracked rock were found in 2 different stratigraphic levels in association with 19th-20th century artifacts. Locus 3 includes the find of a chert flake in the side wall of Trench 21, the recovery of four chert flakes in two soil strata in Unit G, and the thin occurrence of charcoal at the interface between these two strata of Unit G. Three of the flakes were found with small numbers of 19th-20th century artifacts, while the fourth occurred in the stratum immediately below without historic period artifacts.

The term "sporadic" has been used to describe these finds because the 3 loci are dispersed in different sections of the project site, and because testing of various sorts was performed in other locations within the project area without recovering prehistoric or contact period artifacts. For example, 22 shovel test pits were placed in stepped levels within backhoe trenches without finding chert flakes or other prehistoric artifacts, and 4 of the 9 1x1 meter excavation units did not find prehistoric artifacts. These tests that did not find prehistoric or contact period artifacts help to delimit the archaeological resources to the vicinities of the identified loci.

Types of Prehistoric or Contact Period Artifacts Identified

The majority of prehistoric or contact period artifacts recovered are chert flakes (N=32), followed by fire cracked rocks (N=4), and pottery (N=4 sherds). Half of these 40 artifacts were found in Unit D (Locus 1). Another 20% were found in Unit B. Two of the potsherds are small crumbs that may have broken off of an associated larger sherd in Unit D. All of the pottery and most of the fire cracked rocks and flakes were found in Locus 1. The pottery found at Trench 3 is decorated with cord-impressions made in a chevron design; this probably predates the early contact period, Garoga phase occupation that Bradley (2007) notes for the Goldkrest site. This kind of pottery is most typical of the late Owasco, Oak Hill phase (cf. Bradley 1987; Lenig 1965), although it may occur in small amounts during later periods (cf. discussion of cordmarked and incised and notched collar ceramics in Lavin et al [1996]). The identifiable surface treatment on the pottery found in Unit D is a cord-marked exterior with smooth interior. This kind of

pottery was common during the later part of the Middle Woodland period (Four Mile or Kipp Island and Hunters Home phases) and first half of the Late Woodland period (i.e., Owasco culture).

Differential Artifact Density

Prehistoric or contact period artifact density per 1x1 meter unit varied from 3-20 artifacts. Based upon comparison with relatively permanent or sedentary occupations, these are considered low densities, possibly indicative of short-term camps or outlying activity areas. The highest artifact densities (8-20 artifacts per square meter) occurred in Locus 1 at Units B and D. Both of these higher density occurrences included flakes and fire cracked rock, and Unit D contained pottery. Backhoe trenching and the other observation methods did not find concentrations of prehistoric or contact period artifacts, shell deposits, or substantial features. Backhoe trenches and excavation units encountered 2 ephemeral burned areas that may represent hearths.

Feature and Artifact Depths

The burned soil and potsherd found in Trench 3 occurred at 2 meters (6.5 ft) below ground surface. They were located within the subsoil about 40 cm (1.3 ft) below the upper buried ground surface.

At Trench 21, the chert flake in the side wall was in the A horizon associated with the buried ground surface horizon immediately below the fill, at a depth of 1.2 m (4 ft) below the current ground surface. The context of the flake would seem to be the upper buried surface horizon identified by Holloway (2007).

At Unit B, the 7 flakes and one fire cracked rock occurred 158-193 cm (5.2-6.3 ft) below the current ground surface in a buried A horizon below the fill, and immediately below two thin clay and loam strata that may represent ponding due to 19th-20th century flooding (cf. Holloway 2007). The prehistoric artifacts co-occurred with 19th-20 century artifacts, and also above 19th-20th century artifacts.

At Unit C, the flake was found mixed with 19th-20th century artifacts at 90-120 cm (3-4 feet) below surface. The fire cracked rocks were found well below historic period artifacts at about 240 cm (ca. 7.9 feet).

At Unit D, the prehistoric artifacts were found at 172-202 cm (5.6-6.6 feet) below surface, and well below 19th-20th century artifacts.

At Unit G, 3 flakes were found at 135-155 cm (4.5-5.1 ft) below ground surface, the charcoal concentration was found at about 155 cm (5.1 ft), and one flake was found at 155-165 cm (5.1-5.4 ft) below surface. The upper context contained 19th-20th century artifacts, the lower one contained the flake only.

At Unit I, a chert flake and a fire cracked rock occurred at 130-150 cm (4.3-4.8 ft), and another chert flake was found at 170-180 cm (5.6-5.8 ft). Both occurrences were associated with historic period artifacts.

Contexts of Prehistoric or Contact Period Artifact Finds

Several kinds of context in which prehistoric or historic period artifacts occur may be distinguished. One of these involves contexts relatively high in the soil stratigraphy in which flakes or fire cracked rocks co-occur with 19th-20th century artifacts, or where 19th-20th century artifacts occur below flakes or fire cracked rocks. This situation characterizes Unit B, at 158-193 cm, the occurrence of a flake at 90-120 cm in Unit C, the occurrence of 3 flakes at 135-155 cm at Unit G, and the finds in Unit I.

Another kind of context is one in which prehistoric artifacts occur below contexts containing 19th-20th century artifacts. This situation is found at Trench 3, where a Late Woodland potsherd and burned soil feature occurred at about 2 meters (6.5 feet) below the current ground surface, at Unit C where fire cracked rocks were found in association with a dark soil lens at about 240 cm (7.9 ft), Unit D where all of the prehistoric artifacts, including pottery, occurred well below 19th-20th century artifacts at 172-202 cm (5.6-

6.6 ft) below the current ground surface, and at Unit G where a charcoal concentration occurred at 155 cm and a flake was found 155-165 cm (4.5-5.1 ft) below surface.

The occurrences of prehistoric or contact period artifacts without 19th-20th century artifacts tend to be at depths of approximately 2 meters or approaching 2 meters (6.5 feet) below the current ground surface. This includes the finds at Trench 3 and Unit D, both of which occurred in brown (10YR4/3) subsoil. The 1 flake below historic period artifacts in Unit G occurred in slightly more yellow (10YR3/4) subsoil. However, this also occurred at a shallower depth, 155-165 cm (5.1-5.4 ft), although the stratigraphic context is probably more important to consider in this case than the absolute depth. It is important to contemplate, however, that both stratigraphic context and absolute depth differ in the case of the fire cracked rocks from Unit C. This depth (at 240 cm or 7.9 feet) is more than a foot deeper than other relatively deep finds (ca. 200 cm or 6.5 feet), and is associated with a thin, dark brown (10YR3/3) silty loam.

The contextual information indicates that some of the prehistoric or contact period artifacts may be in disturbed or secondary contexts (in some cases, perhaps, washed in by flooding). Other prehistoric or contact period artifacts and burned areas appear to be in undisturbed, primary contexts. These tend to occur in B or subsoil contexts. One implication of the contextual information is that the site occupations occurred while the floodplain was building rapidly, and thus may not always be associated with stable, former ground surface soil horizons. The finds at about 6.5 feet deep are deeper in terms of stratigraphy, and slightly deeper in terms of absolute depth than the upper stable ground surface identified by Holloway (2007). If this stable ground surface rises to the south, as suggested by shallower fill deposits, these contexts may be well below the upper stable horizon identified by Hollowell (2007). All of the pottery found occurred in this context of apparently rapid floodplain development. In addition, the most deeply recorded archaeological context appears to be an undisturbed context, and may be associated with the middle buried surface context identified by Holloway (2007).

DATA RECOVERY PLAN (DRP)

The DRP has been developed in consideration of the geomorphological and archaeological information just discussed, as well as consideration of geophysical detection techniques and soil coring. These methodologies are discussed in more detail in Appendix 1 (The literature referred to here and in Appendix 1 is cited in Appendix 2).

Research Questions

The following research questions have been developed for the East Greenbush Marina DRP:

(1) Can the chronology of the archaeological site or the inferred stable ground surfaces by refined?

(2) Will the recovery of plant macrofossils or pollen assist characterization of the site's past environment?

(3) Will macro or micro artifact samples indicate variation in occupational intensity or activity diversity?

Geophysical Approaches (Not Recommended)

The geophysical detection methods such as soil resistivity, conductivity, magnetometry, and ground-penetrating radar seek to provide signals or images of one sort or the other of objects or features occurring below the ground surface. Soil resistivity, conductivity and magnetometry, referred to as "near-surface techniques," are not recommended for this study because the archaeologically sensitive soil stratum, Unit II, is buried too deeply for these techniques to work effectively. Also, the archaeological literature is full of questions about the effectiveness of these techniques, recommending experimentation

with regard to effectiveness under specific conditions (although GIS applications may significantly "clean-up" raw data collected from near-surface contexts if there is a strongly patterned underlying image; see Kvamme 2003). Ground penetrating radar is not recommended for the East Greenbush Marina project site because the thick forest covering the project site will not permit proper use of the equipment, which requires moving a sled or "buggy" over the ground surface in straight lines at close intervals. There also are questions regarding the effectiveness of ground-penetrating radar with regard to small or low density features, including graves. All of the geophysical detection techniques require additional archaeological excavation in most cases to determine the nature of the anomalies identified, or to relate them to geomorphological and spatial contexts for interpretation of site type.

Soil Cores (Recommended)

Soil coring with specific analyses of recovered soil is recommended because soil coring can document a continuous record of soil strata to relatively great depth, generally deeper and more safely than backhoe trenching (Stafford 1995). The soil cores can be studied for soil grain size variation and chemical constituents. The results of these analyses can be used to infer stable and unstable episodes in floodplain formation, as well as "signatures" that can be associated with human occupation or activity (Dincauze 2000; Schuldenrein 1996, 1997, 2007). For example, increases in organic matter (such as charcoal) tend to indicate increased ground surface stability, while increases of iron and manganese may indicate the weathering of soil after stable ground surfaces have been established. An increase in phosphorous (phosphates) is expected with substantial, prolonged human occupation. This change is noted for Archaic period occupation at the Sandt's Eddy site on the Delaware River (Schuldenrein 2007), and the Late Woodland-Contact period occupation of the Goldkrest site (Schuldenrein 2007). An increase in calcium carbonate may be regarded as an indication of increased dissolved shell in the soil, a likely signature of human occupation (as at the Goldkrest site, [Schuldenrein 1997]).

Micro-Signatures

Other materials also can be retrieved from soil cores. Macro-botanical remains can be recovered and assist in identifying the local environment. The botanical material usually recovered is wood, but may include large numbers of nut fragments in archaeological sites (Stafford 1995). Weed and cultigen seeds or fragments may have implications for whether the land had been cleared, and whether human subsistence items are preserved in the soil. Artifacts may also be recovered from core samples. While the recovery of artifacts is limited by the size of the corer (usually 1 to 4 inches in diameter), large numbers of very small items such as microdebitage, tiny pottery fragments, and bits of burned earth can be found (Stafford 1995). These small items typically are not recovered in the ¼ inch screens used as a standard in most archaeological surveys, but may be recovered with 1-2 mm and 2-4 mm screens (1/4 in = approximately 6 mm). Using 1/8 inch screen may provide a reasonable approach to retrieving this material, as may examining the light fraction of flotation samples, or a combination of the light fraction and a sample of screened fine flotation residue.

Analytical Standards

Some of the analyses, such as soil particle size and some of the geochemistry, will identify characteristics of floodplain stability and instability, but not necessarily indications of human occupation. However, the identification of rapid floodplain-building in contexts where archaeological components are identified will imply brief and insubstantial occupation, as has been inferred under these conditions in stratigraphic Unit IV at the Goldkrest site.

The lack of significant increases in such chemical elements or compounds as phosphorous and calcium carbonate will indicate a lack of chemical evidence for intensified human occupation. Increases in these chemical signatures are assumed to be associated with human use of the site, although these increases do not provide clear indications of the kind of human occupation. For example, although phosphorous and calcium carbonate increased in association with the Late Woodland-Contact period (Unit III) at the Goldkrest site, other evidence indicates that this site was probably a seasonal site associated with fishing (Lavin et al 1996).

The recovery of faunal remains, particularly fish scale and fish bone, may have implications for whether a seasonal fishing site or other subsistence focus is present at the East Greenbush Marina site. However, this analysis will probably be biased against larger faunal remains such as large bones of deer, elk, and bear due to the limited diameter of the core sampler. Still, it is important to know whether subsistence evidence is abundant or not, since the low incidence of faunal remains may imply very short term occupation or the occurrence of work locations rather than habitation sites.

The nature of floral remains may have similar implications, as the relevant amounts of food-stuffs such as nut shells or cultigens such as corn, beans or squash in relation to the amount wood charcoal may help to understand whether there may be a substantial settlement, or a series of short term camps or work locations.

Much of the ability to infer that an archaeological site is not a substantial settlement has to do with what is not found. This is true of artifacts as well as the other material and chemical signatures of human presence just discussed. Thus, the lack of large amounts of micro-debitage and small sherdlets may imply that substantial settlements were not present. At the same time, it is difficult to know how much in the way of micro-artifacts is a lot or a little, since this area of research is undeveloped in Hudson valley archaeology. Thus, the frequency of these items may be seen to increase at specific stratigraphic levels, but the meaning of the increase will be difficult to interpret. At the same time, the lack of these items, or low variation of these items between stratigraphic levels, at best will indicate ephemeral evidence of human occupation.

Fieldwork and Analysis Strategies

The additional fieldwork will involve taking continuous core samples in 8 locations. These locations include the 6 proposed buildings or complexes of buildings, as well as a section of proposed driveway, and the proposed large, asphalt paved-parking lot adjacent to the existing boat basin. The selected locations will provide information on the locations where future access to archaeological resources would be most restricted by the proposed project. They also provide an opportunity to revisit the 3 loci where prehistoric or contact period artifacts and archaeological features have been identified previously. These include Locus 1, where two RV/Boat Storage buildings will be constructed; Locus 2, where another RV/Boat Storage building would be constructed; and Locus 3, which is within the southern part of the large parking lot. With regard to these archaeological site loci, Locus 1, the largest of the loci, will receive 3 cores: 1 at each of the two buildings, and the third in the proposed driveway near previously excavated Trench 3 and Unit D. Loci 2 and 3 will receive 1 core each. In addition to the 5 cores that will coincide with archaeological loci and major elements of the construction plan, 3 cores will be placed in locations where buildings will be constructed, but archaeological resources have not been found previously. This will allow examination of the working concept that these locations do not contain archaeological sites. These three locations include the RV/Boat Storage building at the east end of the project area, the Mechanical Shop/Quick Launch Facility complex in the western part of the project area, and the row of small shops or offices near the southern property line, also toward the western end of the project. This fieldwork strategy meets concerns that the additional sampling be focused on the areas of greater potential impact, that it should be spatially dispersed, and that it should draw data from areas of known prehistoric or contact period activity.

The analytical strategies will include:

- Stratigraphic analysis to be developed by a consulting geomorphologist or geoarchaeologist: the goal of the geomorphological analysis will be to reach conclusion regarding the pattern and process of floodplain development within the proposed project site, so that the potential for stable ground surfaces, or the lack of stable ground surfaces can be assessed in relation to geochemical, radiocarbon, and archaeological information;

- Chemical characterization of soil strata including phosphorous, potassium, magnesium, calcium, iron and manganese, or other elements or materials identified in consultation with a consulting geomorphologist or geoarchaeologist;

- Radiocarbon dating of contexts selected based upon association with archaeological or geomorphological events or trends (it is likely that accelerator dates will be used due to the small size of dateable objects recovered from soil cores);

- Identification and quantification, if present, of artifactual, ecofactual, or archaeological feature information such as macro-scale (>/=4 mm) or micro-scale (<4 mm) chert flakes, potsherds, burned earth, shell and animal bone fragments, fish scales, floral remains, or other materials. These materials will be quantified according to content within standard sized samples drawn from the soil strata represented within the cores.

QUALIFICATIONS AND CONDITIONS

This research will be performed by appropriate technicians and specialists under the overall direction of Edward V. Curtin, Ph.D., a 36 CFR 61 qualified archaeologist with suitable expertise in prehistoric archaeology. Specialists will be needed in obtaining the cores and analyzing the data for geoarchaeological,/geomorphological information, soil chemistry, archaeobotany, zooarchaeology, and radiocarbon dating. In-house staff will provide analysis of core samples for micro-artifacts. Dr. Curtin will coordinate the research, supervise in-house analysis, and synthesize the specialist information for the final report, which will be produced by Curtin Archaeological Consulting, Inc. It is anticipated that specialist analyses will be provided by Dr. Julieann Van Nest (geoarchaeology/geomorphology), Beta-Analytic, Inc. (radiocarbon dating), Justine W. McKnight (archaeobotany), and Marie-Loraine Pipes (zooarchaeology).

CURATION

An estimate of curation costs will be provided in the project budget. Since the samples to be curated will inform a wide of range of sciences, and may have varied requirements for care, management, and future use, a natural history museum will provide the most appropriate repository. Accordingly, a request for curation of the core samples and their various contents and associated records will be made to New York State Museum.

UNFORESEEN DISCOVERY OF HUMAN REMAINS

If human remains are encountered during construction or archaeological investigation, the current protocol typically followed in New York State will be followed in this instance. This protocol states:

At all times human remains must be treated with the utmost dignity and respect. Should human remains be encountered, work in the general area of the discovery will stop immediately and the location will be immediately secured and protected from damage and disturbance.

Human remains or associated artifacts will be left in place and not disturbed. No skeletal remains or materials associated with the remains will be collected or removed until appropriate consultation has taken place and a plan of action has been developed.

The county coroner and local law enforcement, as well as the State Historic Preservation Office (SHPO) and the involved agency will be notified immediately. The coroner and local law enforcement will make the official ruling on .he nature of the remains, being either forensic or archaeological.

If the human remains are determined to be Native American, the remains will be left in place and protected from further disturbance, until a plan for their avoidance or removal can be generated. The involved agency will consult SHPO and appropriate Native American groups to develop a plan of action that is consistent with the Native Americans Graves Protection and Repatriation Act (NAGPRA) guidance.

If the human remains are determined to be other than Native American, the remains will be left in place and protected from further disturbance until a plan for their avoidance or removal can be generated. Consultation with the SHPO and other appropriate parties will be required to determine a plan of action.

OTHER UNFORESEEN DISCOVERY

If previously unidentified archaeological resources are discovered under construction, construction will be halted in the area of discovery and the SHPO will be consulted. A 36 CFR 61-qualified archaeologist will determine the extent of the unforeseen resource and consult with the SHPO on its possible significance. If previously undiscovered archaeological resources of an unusual nature are discovered during the Phase 3 data recovery fieldwork, the archaeological consultant will notify the project sponsor and the SHPO. Should the SHPO determine that the archaeological discovery is significant, an avoidance plan or an additional data recovery plan will be submitted to SHPO for review, approval, and implementation.

END-OF-FIELDWORK LETTER

Following the completion of fieldwork, an end-of-fieldwork letter stating the completion of fieldwork and briefly summarizing the major, identified findings of the fieldwork will be submitted to the SHPO. Construction may proceed upon filing of the above-referenced end-of-field letter with SHPO.

REPORT AND DISSEMINATION OF INFORMATION

A final report of the East Greenbush Marina data recovery project will be prepared within one year of filing the above-referenced end-of-fieldwork letter with SHPO. The SHPO will receive five paper copies of the report and a CD copy in PDF format. The Tribal Historic Preservation Office (THPO) of the Stockbridge-Munsee Band Community of Mohicans will receive one paper copy and one CD copy in PDF format.

In addition, data recovery plans typically provide for the broader dissemination of information to the public and the archaeological profession. Such dissemination may involve presentations to local historical or community groups; site visits by the public or local historical organizations; press coverage; presentations at professional meetings of archaeologists, anthropologists or historians; a brief popular report or brochure; or information posted in an appropriate manner on a website operated by the consultant, developer, municipality, or a local or county historical organization, or other interested organization. For the results of this data recovery plan, a paper will be presented at a meeting or conference of archaeologists such as the New York State Archeological Association, the Northeastern Anthropological Association, New York Archaeological Council, Eastern States Archeological Federation, or a colloquium of the New York State Museum.

APPENDIX A: METHODOLOGICAL OVERVIEW

In contemplating the further recovery of archaeological information from the North Papscanee Island Prehistoric Archaeological Site, and excluding the approach of more extensive clearing of fill or testing with a backhoe or excavator, two approaches are available: remote sensing and soil coring. Both are considered here. For reasons outlined below, soil coring is the recommended approach.

Methods and Applications of Archaeological Remote Sensing

Renfrew and Bahn (1996) provide an overview of remote sensing in archaeology. In addition, Dincauze (2000) describes remote sensing in application to geomorphological investigation. Some applications of remote sensing, such as the analysis of aerial photographs and LANDSAT imagery are generally not relevant to issues involving deeply buried archaeological resources at the North Papscanee Island Prehistoric Archaeological Site, except that aerial photograph orthoimagery can be integrated with historic and modern maps for Geographic Information System (GIS) analysis that locates the former Hudson River shoreline and the now-buried north section of the Papscanee Creek channel (this has been included in Curtin and Farry 2006).

Other remote sensing technology attempts to identify buried objects, features, or former ground surfaces by sending and receiving various kinds of signals through soil or fill matrices. Electrical resistivity (and the related process of soil conductivity) involves passing a current through the ground to note variation in resistivity or conductivity in relation to the moisture content of the soil. Traditional technology for this uses four sets of electrodes and recording instrumentation. Variation is created by different degrees of soil moisture. For example, the soil in a buried pit, ditch or trench tends to be more damp than the surrounding soil, so there is less resistance to the electrical current. A stone wall on the other hand, will be drier and create more resistance. Renfrew and Bahn (1996) note that compared to other methods, resistivity testing is slow because the four electrodes need to be constantly set up, moved and reset by hand. Some soil conductivity instrumentation may be more efficient, but reportedly may not identify small archaeological features. Also, the degree of contrast varies depending upon how much moisture is in the ground, which fluctuates seasonally. Renfrew and Bahn (1996:94) foresee possible limitations based upon the targeted type of feature and soil conditions, noting that "The technique works particularly well for ditches and pits in chalk and gravel, and masonry in clay." These combinations of features and soil conditions poorly match conditions at the East Greenbush Marina site. Another drawback not mentioned by Renfrew and Bahn (1996) includes the advisability of a process of trial and error or experimentation in determining testing interval and instrument response in relation to types of features/soil anomalies (cf. Martin, Bruseth and Huggins 1991)

Magnetometer surveys are based upon the detection of magnetized objects or features, especially hearths or other concentrations of burned clay or soil which have burned at a sufficiently high temperature (700 degree C. or 1292 degrees F.) to align randomly oriented iron grains to the earth's magnetic field at the time of burning. Without obstruction (such as the deep fill and forest cover In the East Greenbush Marina project area), a magnetometer survey could be effective in finding hearths, fire cracked rock concentrations, or possibly areas associated with burned houses, if such exist. However, the ability of proton magnetometers to do this is affected by nearby power sources such as electrical lines, as well as metal objects such as buckles, watches, keys, or other personal items that may be near the machine. Wire fences and corrugated metal construction also have this effect on the magnetometer. Proton magnetometer readings are usually made on a 1 to 3 meter grid, which poses an efficiency problem for studying large areas. Magnetic surveys can also be performed with a fluxgate gradiometer, which is not affected by the proximity of power sources or above-ground metal objects. The presence of metal in the ground, particularly in the built land, dredge spoil, and historic flood deposits at the North Papscanee Island Prehistoric Archaeological Site may pose a problem for magnetic surveys, as may the depth of the fill.

Ground penetrating radar sends radio pulses down into the ground and receives messages indicating changed soil conditions encountered. These are graphed in diagrams that show continuous profiles that can be compared for different transects set at the desired interval. The recording equipment is

in a small trolley or "moon-buggy" that traverses the ground emitting radio signals. According to Renfrew and Bahn (1996), ground penetrating radar has an effective range of up to 3 meters (10 feet), which is approximately the same range as the backhoe trenches and excavation units that reached below fill at the East Greenbush Marina project area. While ground-penetrating radar may record numerous kinds of soil anomalies well, experience indicates it does not distinguish between natural and cultural features, it simply indicates an anomaly. This can perhaps be interpreted more effectively by comparing adjacent transects to analyze size, shape, and orientation. There also is a sense that small or low density features or objects may not be discovered effectively. The thick forest cover at East Greenbush Marina poses a significant obstacle to the use of ground penetrating radar. Also, some of the potential archaeological components may be buried deeper than ground penetrating radar can reach.

As Dincauze (2000:215) observes "Regardless of their sophistication, imaging techniques are inadequate for interpretation." This statement essentially notes that remote sensing is primarily a prospecting technique, and other investigations involving the excavation or sampling of soil need to be performed in order to analyze the remote sensing results. Archaeologists generally regard this as a process of learning what precisely the remote sensing identified in the case of specific anomalies, or "ground-truthing" hypothesized patterns such as the existence of suspected pits or graves observed as clustered anomalies; or a line of hearths, perhaps indicating the center of a longhouse. An experimental program on an actual archaeological site involving tests with two kinds magnetometer and soil conductivity equipment, off-site feature replication, survey and excavation, and on-site excavation of archaeological anomalies has been reported (Martin, Bruseth, and Huggins 1991). This study relied on ground-truth excavations to evaluate potential archaeological features, but also recommended a comparative, off-site survey of similar soil conditions to help distinguish between natural and cultural anomalies.

One of the most significant issues pertaining to the use of remote sensing at the East Greenbush Marina project area involves the depth of the buried deposits, which may interfere with the effectiveness of remote sensing techniques; CAST (n.d.) emphasizes that "Ground-based remote sensing relies on near-surface geophysical remote-sensing methods…". "Near-surface" is a relative term, but Renfrew and Bahn (1996:90, 98-99) note cases in which resistivity and magnetometer surveys were ineffective due to the depth of fill deposits. Ground penetrating radar was used instead and was able to identify large stone foundations at a depth of 20 m (66ft). However, at East Greenbush Marina, thick forest severely limits the utility of ground penetrating radar, while the target features such as archaeological hearths or small pits may be too small or insubstantial to identify accurately or with reasonable regularity. Other issues include the size of the project area, which would tend to make slow techniques ineffective; the potential for background noise interference, such as buried metal in recent or historic deposits (especially affecting proton magnetometer survey); and the need for further excavation to discover the nature of the anomalies identified.

At the Goldkrest site on Papscanee Island, a magnetometer survey was conducted on the buried surface that was exposed after the recent (19th-20th century) alluvium had been removed by power equipment. This survey-after-soil stripping sequence was followed because of the likelihood that small hearths would be missed by the magnetometer due to the thickness of the recent alluvium. Then, "Seemingly promising anomalies were tested with a small diameter soil coring device" (Lavin et al 1996:117-118). Hand excavated units were positioned over the anomalies that produced reddened soil or carbonized material in the core. This process illustrates (1) the problem of deeply buried deposits, (2) the issue that not all remotely-sensed soil anomalies are archaeological features, and (3) the importance of ground-truthing to interpreting the imaging results.

Soil Coring, Geomorphology, and Archaeological Applications

Soil coring has been used systematically since the 1930s to provide information on buried archaeological sites and their environmental and geological contexts (Stein 1986). Various applications of soil coring and soil augering were integrated into field methods during the early era of cultural resource management in the 1970s both because of the utility of the techniques and because the use of these techniques was expanding among American archaeologists (Schuldenrein 1991; Stein 1986, 1991). Stein's

(1986) discussion of the history and methodology of soil coring in archaeology remains the authoritative source on this subject.

The subject of soil coring is narrowly missed by Renfrew and Bahn (1996:85-88), who refer instead to probing with metal rods to strike solids or hollows, and augering with large corkscrews to "bring samples of soil to the surface, clinging to the screw." Holliday (2004) and Schuldenrein (2006, 2007) have discussed geomorphological applications in archaeology in general, with considerations of coring equipment, methods and applications. While describing the utility of both manual and mechanical soil coring, Schuldenrein (2006:14) shows a predilection for exposed soil profiles, and notes that "backhoe-based techniques" have been preferred in the eastern United States (in the western U.S., natural exposures in arroyos and cienagas have often been used). Elsewhere, Schuldenrein (1991) recommends use of bucket-augers, which Stein (1986, 1991) finds to be imprecise due to mixing of soils and artifacts from different contexts. Mixing is due to the cutting edge and rotary motion of the bucket auger; this problem effects interpretations of screw-augered samples as well. While field and observational situations vary, the contrast between augering and coring may be considered as one in which augering may be effective for the discovery of artifacts and major soil units, while coring is predictably effective for analyzing stratigraphic relationships and recovering samples in well-defined contexts.

Much of the following discussion is based upon Stein (1986). Originally, archaeological soil cores were obtained manually with a metal sampling tube mounted on a solid metal rod, which could be extended for greater depth by the addition of more metal rods. This technology is still current, and typically uses a sampling tube with an open side for cleaning and observing a depth-specific section of a mini soil profile. The operator end of the sampler has a t-bar that is used to push the sampler into the ground and retrieve the sample. There may be an issue with soil compaction within the sampling tube, which can affect the recording of sample depth; however, the extension tubes can be marked to record depth, and careful operation and recording greatly reduces the potential for depth-measurement error. Sampling tubes, often called Oakfield soil samplers, vary in length and diameter. Stein (1986) mentions sample tube diameters of ¾ inch and 1 inch, with 11-18 inch lengths. Schuldenrein (2006) mentions a 2-inch diameter Oakfield sampler. One of the reasons that sampler diameter matters is because larger diameter samplers are more likely to recover relatively large particles or objects, such as chert flakes or pottery fragments. Another is that if the sample is to be used for a chemical analysis or radiocarbon dating, material from the interior of the core will be sought in order to avoid contamination. Stein (1986) recommends slicing away the exterior of the core before selecting soil or objects for these kinds of analyses.

The use of manually operated soil corers is affected adversely by heavy clay soil, soil that is mostly sand, large, gravel-sized objects, and extremely dry soil (Stein 1986:514-515). Most of these conditions prevent the operator from pushing the corer into or through the soil deposit; extremely sandy soil, however, will collapse into the core-hole. Bucket-augers provide a similar technology to deal with problems of soil that is too compact or contains large particles; however, bucket-augers subject the sample to mixing, as already noted.

In addition to manually-operated sampling tubes, mechanical samplers such as the truck-mounted, hydraulically activated Giddings rig are now widely available for geoarchaeological and geomorphological investigation. Mechanical coring equipment recovers continuous cores in "48 to 60 inch depth intervals" (Stein 1986:515). The continuous cores from the mechanical sampler can be extruded in stratigraphic order for description of content and stratigraphy, and the samples can be preserved in this form for future study. The core diameter of hydraulically driven cores-- typically 2.5-3.5 inches-- is larger than hand-pushed core samplers, and thus more likely to recover representative samples of artifacts and other items (Stafford 1995).

This is the basic technology that was used by Philip Holloway, then of Op-Tech Environmental Services, to provide the existing geomorphological study of the East Greenbush Marina Site (Holloway 2007). However, Holloway specifically used a Geoprobe macro-core sampler driven by a pneumatic hammer mounted on a "heavy-duty trac machine" (Holloway 2007:2). Schuldenrein (2006:14) refers to

the Geoprobe as "the future for rapid subsurface soundings". At the East Greenbush Marina project area, the 2-inch diameter macro-core sampler was lined with acetate sleeves that were "replaced after each sample interval". After each sample retrieval, the acetate sleeve was opened and the sample characterized (Holloway 2007:2-3).

Although soil coring may be seen primarily as a geomorphological tool, it has a variety of applications specifically useful to archaeologists. A wide sampling of soil coring and augering studies highlights the diversity of applications:

- In Berkeley, California, William Self Associates, Inc. (2008) has recently conducted a geoarchaeological investigation using soil cores at the site of the proposed Student Athlete High Performance Center (SAHPC). The SAHPC project site was occupied by deep fill associated with the massive construction of California Memorial Stadium on the site in 1923. The research design of the soil coring study specified that buried, stable soil horizons (A horizons) may be present below the fill. The examination of the soil cores did not find prehistoric artifacts, but did identify the presence of A horizons in several cores. This finding led to the recommendation of monitoring during construction by "a qualified archaeologist and a Native American experienced with archaeological monitoring" (William Self Associates, Inc. 2008:76).

- In New York State, URS Corporation has developed a plan to inspect cores obtained by others doing chemical analyses of Hudson River sediments for the presence of artifacts (URS Corporation 2003). This plan was developed as part of a work plan for the Hudson River PCBs Superfund Site. As noted in the 2003 work plan, the ongoing inspection of these cores had already identified numerous cultural items, primarily wood objects, but also slag, coal, concrete, brick, glass, ceramic and iron items. No prehistoric artifacts had been found, but this is likely the result of sampling relatively recent river-bottom sediments for chemical traces.

- In Albany, New York, coring performed by geoarchaeologist Julieann Van Nest for Curtin Archaeological Consulting, Inc. (Farry et al. 2009) has led to the identification of Late Archaic-age ground surfaces and vegetation near the west bank of the Hudson River. This work has implications for environmental reconstruction and associated soil development processes relevant to the Archaic and Woodland periods.

- A two-inch manual corer with a slide-hammer drive assembly has been used recently in the New Philadelphia (Illinois) archaeological project to systematically sample soil anomalies for stratigraphic data, evidence of previous ground disturbances, and historic period artifact information (Fennell 2009). This work was performed in targeted areas to examine soil anomalies identified by geophysical testing and low altitude aerial imagery.

- C. Russell Stafford (1995) has obtained samples of micro-artifacts (i.e., artifacts smaller than 4 mm) from buried soil contexts within the Ohio River floodplain in southeastern Indiana, using 4-inch diameter bucket augers. This technique samples identified stable surfaces for artifacts and material such as burned earth and floral and faunal remains. However, it is also useful for detecting ephemeral surfaces once occupied by people, but for which there are no other geological indicators. These ephemeral surfaces are identified by recovering samples of micro-artifacts and other small items. The micro-artifact occurrences may form distinct horizons in the absence of other information such as soil color or texture changes. The strategy of micro-artifact recovery is transferable to continuous core samples, since core samples are like auger samples, but without the churned stratigraphic boundaries or intrusive artifacts. For representative artifact recovery per core sample, the hydraulically driven, 2.5-3.5 inch or larger diameter cores obtained by Giddings or Geoprobe samplers are preferable to the small diameter, ¾-1 inch, hand-pushed Oakfield corers (Stafford 1995:86-87); but even

with 3.5 inch hydraulic cores, the sample target population needs to be micro-artifacts, as macro-artifacts may be recovered only occasionally in soil cores at many sites.

- Gerald Kelso (1994) has generated a transect of manually-pushed core samples that intersects a series of micro-environments. The core samples were deployed in consideration of eye-witness evidence contained in historic documents in order to collect stratified soil samples for pollen analysis. The pollen analysis was used to reconstruct the local environment at the time of the 18th century occupation of George Washington's French and Indian War Fort Necessity, Pennsylvania, as well as post-abandonment environmental changes. This information was provided to assist the National Park Service's interpretation and re-creation of the environment surrounding the fort site.

- Working at the Carlston Annis Archaic period shell mound site in western Kentucky, Stein (1986) used a systematically located deployment of soil cores to map the extent of the shell mound, recording the contact between the shell bearing soil and the underlying former ground surface in all directions from the apex of the mound.

- At a Mississippian age platform mound in Trempealeau , Wisconsin, Green and Rodell (1994) were able to use the soil types and sequence recorded by bucket-augering to compare the mound fill deposits to the soil associated with an on-site topographic depression in order to infer that the depression was probably a borrow pit for mound construction.

- At the Mississippian Cahokia, Illinois site, Collins and Chalfant (1993) used soil coring in conjunction with hand excavation to examine the construction sequence of Monk's Mound. From this study, they were able to gain support for the idea that the monumental earthwork was constructed early in the development of the complex society of Cahokia. In addition to Collins and Chalfant's (1993) research application, the coring study helped to collect information needed to stabilize the slumping west face of Monk's Mound.

- At the Midland, Texas, Paleoindian site, Holliday and Meltzer (1996) used a combination of coring, augering, and trenching to re-examine the stratigraphic context of a reputed pre-Clovis find. The use of coring and augering allowed this work to proceed with a minimum of trench excavation. The identified soil stratigraphic relationships showed the archaeological components did not pre-date the Clovis-era.

The variety of these studies and others cited in this report (such as the coring of magnetometer anomalies to identify hearths at the Goldkrest site) indicates the breadth of coring applications, including:

- the reconstruction of stratigraphic sequences,

- tracing the boundaries or extent of targeted soil horizons or archaeological features,

- examining the nature of contact between soil horizons,

- collecting environmental and chronometric information (such as soil chemistry, pollen, floral samples, and radiocarbon samples), and

- identifying the presence, absence, or density of small artifacts.

Geomorphological reconstruction of the nature and rate of soil formation based upon soil particle size or relative amounts of medium-coarse sand, fine sand, silt, clay or gravel may indicate the likelihood that a soil zone provided a possible living surface for humans. Macrobotanical samples may indicate the presence of terrestrial or aqueous environments. Soil chemistry, especially increases in phosphorous within a stratigraphic column, may signify substantial anthropogenic effects associated with human occupation (cf. Renfrew and Bahn 1996:96-97; Schuldenrein 1997, 2007), or environmental and site formation

variables (such as climate changes and the formation of stable land surfaces) not necessarily caused by humans, but non-causally correlated with human occupation or the intensification of human settlement (cf. Schuldenrein [1996]).

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Appendix "18"

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
55 Great Republic Drive
Gloucester, MA 01930-2276

FEB 27 2009

Christopher S. Mallery, Acting Chief
Western Permits Section
Department of the Army
New York District, Corps of Engineers
Jacob K. Javits Federal Building
New York, NY 10278-0090

Re: NAN-2006-00394-WFI

Dear Mr. Mallery,

This is in response to your letter dated October 29, 2008 requesting consultation pursuant to Section 7 of the Endangered Species Act (ESA) of 1973, as amended, for a project proposed by East Greenbush Marina, LLC to undertake a project related to the construction of a full-service marina facility along the Hudson River in East Greenbush, Rensselaer County, New York. Additional project information was provided in January 2009. The Army Corps of Engineers (ACOE) has determined that this project is not likely to adversely affect any listed species under the jurisdiction of NOAA's National Marine Fisheries Service (NMFS) and has requested that NMFS concur with this determination.

Proposed Action

The proposed project will result in the construction of a full-scale marina facility along the shore of the Hudson River. The project will involve the following activities:

- Dredge a total of 6,800 cubic yards of material from a 0.578-acre area by means of a closed clamshell bucket to a maximum depth of 8 feet below mean low water;
- Install a 436-foot long sheet pile wall along the shoreline;
- Construct a temporary offloading causeway along the sheet pile wall;
- Construction of a marina facility including two loading/lift bays with a 20 foot by 96 foot service dock; two launch ramps for trailered boats for public use; 3 marker buoys; and two floating pier assemblies with a total of 84 boat slips; and,

- Installation of rip-rap along 130 linear feet of the shoreline with additional bank stabilization along a total of 445 linear feet where the applicant is proposing to install Coir Logs and vegetative plantings.

The ACOE has indicated that any permit issued for this project will include a special condition prohibiting in-water work between April 1 and June 30 of any year. All dredged material will be disposed of at an upland location. In addition to the in-water work mentioned above, activities occurring on the upland portion of the site would include a mechanical maintenance shop, parking, boat/RV storage, an observation deck, clubhouse, a parts store, and other associated amenities as well as parking for 149 vehicles.

NMFS Listed Species in the Action Area

The proposed project is located at two sites in the Hudson River, located at approximately river kilometer 227, approximately 16 km downstream from the Troy Dam. The action area is defined as "all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action" (50CFR§402.02). For this project, the action area includes the project footprint as well as the underwater area where effects of dredging (i.e., increase in suspended sediment) will be experienced. Based on analysis of other closed clamshell bucket dredge activities (ACOE 2007), increased sediment levels are likely to be present for no more than 300 meters downstream of the dredge area. As such, the action area is considered to be that area within the Hudson River located within a 300-meter radius from the area to be dredged. This area is expected to encompass all of the effects of the proposed project.

A population of the federally endangered shortnose sturgeon (*Acipenser brevirostrum*) occurs in the Hudson River. Shortnose sturgeon have been documented in the Hudson River from New York Harbor (rkm -5.6) to the Troy Dam (rkm 243). From late fall to early spring, adult shortnose sturgeon concentrate in a few overwintering areas. Spawning adults concentrate near Kingston (rkm 152) while one group of non-spawning adults concentrates near Kingston and the other near Haverstraw Bay (rkm 54-61). When water temperatures reach 8°C, typically in mid-April, reproductively active adults begin their migration upstream to the spawning grounds that extend from below the Federal Dam at Troy to about Coxsackie (rkm 239-190). Spawning typically occurs until water temperatures reach 15°C (generally from late April through May) after which adults disperse quickly down river into their summer range. The broad summer range occupied by adult shortnose sturgeon extends from approximately rkm 38 to rkm 177. Similar to non-spawning adults, most juveniles occupy the broad region of Haverstraw Bay (rkm 55-63) by late fall and early winter. Juveniles are distributed throughout the mid-river region during the summer (rkm 38-152) and move back into the Haverstraw Bay region during the late fall. In recent years (since 2000), shortnose sturgeon have been documented below the Tappan Zee Bridge from July through December. Since 2003, shortnose sturgeon have been caught in the Manhattan area during an annual striped bass survey (Dynegy 2003, 2005, 2006). There is currently not enough information to determine whether these fish are transient or are overwintering in this area of the river.

As noted above, the project site is located at approximately rkm 227. The best available information suggests that this region of the river is within the range used by spawning shortnose sturgeon. Adult shortnose sturgeon are not known to be present in this reach of the river outside of the spawning season. As noted above, shortnose sturgeon typically spawn when water temperatures are between 8 and 15°C. Based on water temperature data from the USGS gage at Albany, suitable spawning temperatures are experienced for a three to five week period between early April and late May each year. Based on this information, adult shortnose sturgeon are likely present in the action area during April and May each year. However, based on site-specific conditions (i.e., depth, velocity and substrate type), shortnose sturgeon are not likely to spawn within the area to be dredged. As shortnose sturgeon eggs are demersal and are concentrated at the spawning grounds, no eggs are expected to occur in the dredging area.

Shortnose sturgeon eggs generally hatch after approximately 9-12 days (Buckley and Kynard 1981). Shortnose sturgeon larvae are typically found in the channel and this life stage may enter the tidal river and swim or drift past the action area. Larvae are expected to begin swimming downstream at 9-14 days old (Richmond and Kynard 1995). This initial downstream migration generally lasts two to three days (Richmond and Kynard 1995). Studies (Kynard and Horgan 2002) suggest that larvae move approximately 7.5km/day during this initial 2 to 3 day migration. Based on this information, shortnose sturgeon early life stages (i.e., eggs and/or larvae) may be present in the action area up to 26 days after spawning; based on water temperature information, this time period would range from May through the end of June. Based on the information outlined above, shortnose sturgeon of any life stage are only likely to occur in the action area between April and June each year.

Effects of the Action

Dredging – Impingement and Entrainment
Adult shortnose sturgeon have been killed during bucket dredging operations. Additionally, dredging when eggs and/or larvae are present could cause adverse effects to these life stages through burial or smothering. However, as noted above, no shortnose sturgeon are likely to occur in the action area during the time of year when dredging is allowed. As such, no direct effects (i.e., injury or mortality) to shortnose sturgeon are likely to result from the proposed dredging.

Dredging – Water Quality Effects
Dredging operations cause sediment to be suspended in the water column. This results in a sediment plume extending from the dredge site, typically present from the dredge site and decreasing in concentration as sediment falls out of the water column as distance increases from the dredge site. The life stages of shortnose sturgeon most vulnerable to increased sediment are eggs and larvae which are subject to burial and suffocation. As noted above, no shortnose sturgeon will be present in the action area during dredging operations and no shortnose sturgeon will be exposed to effects of suspended sediment.

Dredging – Effects to Benthic Resources
Shortnose sturgeon are not known to forage while on the spawning grounds. Consequently, the dredging of this area is not expected to affect the prey base of shortnose sturgeon. In addition, project activities are not likely to alter the habitat in any way that prevents shortnose sturgeon from using the surrounding waters as a migratory pathway. As such, the effects of the project on foraging or migrating shortnose sturgeon will be discountable.

Little information, other than general location, on the spawning grounds of shortnose sturgeon in the Hudson River is available. In other northern river systems, shortnose sturgeon spawning has been documented in water depths of 3 to 34 feet and typically occurs in the channel (NMFS 1998, Kieffer and Kynard in press). Characteristic channel spawning habitats vary slightly among rivers and the predominant habitat type is gravel/rubble/cobble/boulder (NMFS 1998). While the area to be dredged is of suitable depth for shortnose sturgeon spawning (i.e., 8 feet), it is located away from the channel and the substrate is sandy silt. Due to the distance from the channel and the substrate type, it is not likely to be preferred shortnose sturgeon spawning or nursery habitat. In addition, the dredging is not expected to alter the substrate type in this area. Based on this information, any impact on shortnose sturgeon spawning habitat is expected to be insignificant.

Construction and Operation of the Marina
The proposed project will involve the installation of sheet piling, the discharge of riprap and the installation of docks and floats. As all in-water work associated with these activities will occur outside of the time of year when shortnose sturgeon are present in the action area, no shortnose sturgeon will be exposed to effects related to the construction of the marina facility.

The construction of the facility will include several slips for the in-water storage of boats as well as two boat launching ramps. While this may increase the amount of vessel traffic in the action area, shortnose sturgeon are not known to be vulnerable to interactions with recreational vessels. As such, no effects to shortnose sturgeon are likely to result from the use of the marina by recreational vessels.

Conclusion
Based on the analysis that all effects of the proposed project will be insignificant or discountable, NMFS is able to concur with the determination that the authorization by the ACOE of the project proposed by East Greenbush Marina is not likely to adversely affect any listed species under NMFS jurisdiction. Therefore, no further consultation pursuant to section 7 of the ESA is required. Reinitiation of consultation is required and shall be requested by the Federal agency or by NMFS, where discretionary Federal involvement or control over the action has been retained or is authorized by law and: (a) If new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered in the consultation; (b) If the identified action is subsequently modified in a manner that causes an

effect to the listed species or critical habitat that was not considered in the consultation; or (c) If a new species is listed or critical habitat designated that may be affected by the identified action. Should you have any questions about this correspondence please contact Julie Crocker at (978) 282-8480.

Sincerely,

for Patricia A. Kurkul
Regional Administrator

EC: Crocker, F/NER4
Rusanowsky, F/NER3
Delorier, Firstencel – ACOE NY

File Code: Sec 7 ACOE NY East Greenbush Marina (Hudson)
PCTS I/NER/2008/08695

Appendix "19"

Stockbridge-Munsee Tribal Historic Preservation Office

Sherry White - Tribal Historic Preservation Officer
W13447 Camp 14 Road
P.O. Box 70
Bowler, WI 54416

RECEIVED
JAN 2009

January 7, 2009

Heidi Firstencel
Army Corps of Engineers
1 Buffington Street, BLDG 10
Watervliet, New York 12189

Re: CORPS PERMITS
East Greenbush Marina
Riverside Ave. Ext
Town of East Greenbush, Rensselaer County

Dear Ms. Firstencel:

This is a follow-up letter to our meeting held at the New York State Historic Preservation Office in Dec of 2008, in which we discussed the East Greenbush Marina Project.

Papscanee Island is a very sacred location for the Stockbridge-Munsee Tribe. This was the home of one of our sachems, also used as a fishing camp. Native American burials remain on Papscanee Island today.

Approximately ¾ mile from the proposed marina is the Goldkrest archaeological site, which contains Native American burials. Burials are very sacred to the Mohican people. We do not wish to have burials disturbed, removed, studied, or have parking lots, building, or other type of objects placed over, or near the burial site.

The Mohican Tribe has a resolution which states: an area of 50 feet surrounding any known burial site (a circumference of 100 feet) may not be disturbed by any phase of a project or development, nor may any part of the grounds within the defined area be disturbed in any way after completion of the project. (Resolution attached).

(715) 793-3970 *Email: sherry.white@mohican-nsn.gov*

Also, the Advisory Council guidance notes: "The presence of human remains in an archeological site usually gives the site an added importance as a burial site or cemetery, and the values associated with burial sites need to be fully considered in the consultation process".

After reviewing the Phase 1A/1B and Phase 2 Archaeological Survey for the proposed East Greenbush Marina, I do not feel enough studies have been done to assure Human Remains are not located within the proposed project area.

The Stockbridge-Munsee would like to be part of the consultation process for the East Greenbush Marina. As stated above, the project is an area that holds sacred resources to our tribe.

Please contact me to set up a consultation meeting.

Sincerely,

Sherry White

Sherry White
Tribal Historic Preservation Officer

Cc: Cynthia Blakemore
Nancy Herter

Stockbridge-Munsee Community

BAND OF THE MOHICAN INDIANS

TRIBAL COUNCIL OFFICES

RESOLUTION

Date: September 17, 2002

Number: 052-02

Whereas, the Stockbridge-Munsee Community, Band of Mohican Indians, is a federally recognized Indian Tribe organized under a Constitution and By-laws approved on November 18, 1937; and

Whereas, the Tribe's duly elected governing body, the Stockbridge-Munsee Tribal Council, is empowered under the Constitution to make and enforce laws and otherwise exercise its powers consistent with the Constitution; and

Whereas, the National Historic Preservation Act, Section 106 (16 USC 470F) applies to projects and developments within the Stockbridge-Munsee Reservation and its ancestral lands, if there is any federal monies being used for the project, if project is on tribal land, if any federal permits are needed, or if on land affiliated with a federally recognized tribe, and

Whereas, known burials have been discovered within the Stockbridge-Munsee Reservation, and it is known that Section 106 applies to these burials; and

Whereas, the Repatriation Committee recommends the following: that an area of 50 feet surrounding any known burial site (a circumference of 100 feet) may not be disturbed by any phase of a project or development, nor may any part of the grounds within the defined area be disturbed in any way after completion of the project; now

Therefore Be It Resolved, that the Stockbridge-Munsee Tribal Council hereby accepts the recommendation of the Committee and adopts this resolution for the protection of burial sites now and in the future.

CERTIFICATION

I, the undersigned, as Secretary of the Stockbridge-Munsee Tribal Council, hereby certify that the Tribal Council is composed of 7 members of whom 4, constituting a quorum, were present at a meeting duly called, noticed and convened on September 17, 2002 and that the foregoing resolution was adopted by a vote of 3 for, 0 members against, and 0 members abstaining and that said resolution was not rescinded or amended in any way.

Gregory E. Miller, Vice-Chairman
Stockbridge-Munsee Tribal Council

Diane D. Mattingly, Acting Secretary
Stockbridge-Munsee Tribal Council