II. COMMENTS AND RESPONSES

This FEIS includes responses to comments received on the Draft Environmental Impact Statement (DEIS) orally at the Public Hearing on the DEIS which was opened on September 28, 2004 and closed on October 29, 2004, and in writing by public officials, area residents, their representatives, and interested and involved agencies. All of the comments received can be found in their original form in the Appendices of the FEIS. The following section contains those comments categorized by type and followed by a response that addresses the concerns of the commenter.

The comments and responses have been divided into the following categories:

A. Stormwater Management
B. Soils and Geology
C. Conservation Easement
D. Flooding/Water
E. Wetlands
F. Vegetation
G. Lot Designation
H. Traffic and Transportation
I. Easements/Buffer
J. Future Homeowners
K. Permits
L. Miscellaneous
M. Zoning
N. Wildlife
O. Visual Resources
P. Hazardous Materials
Q. Construction Impacts
R. Site Plans
S. Sanitary Sewer

Each commenter and origination has been identified at the end of each comment.

A. STORMWATER MANAGEMENT

Comment A-1

"While the proposed action would not disturb the pond, it would involve loss of buffer area to impervious structures site features such as walkways, parking areas, and access drive that will require mitigation at the ratio of two to one. We recommend that the proposed action be scaled down and redesigned to limit the amount of disturbance and increase the area available for buffer enhancement and we recommend the placement of a conservation easement on all vegetated areas of wetland buffer."

(Statement at Public Hearing, Mayor Rand, dated September 28, 2004, see Appendix A)

Response A-1

The Applicant has scaled down and redesigned the proposed development to limit the amount of disturbance and increase the area available for buffer enhancement. The Mitigation Plan was prepared in response to comments received on the DEIS. The Applicant proposes to develop the Peninsula with ten (10) residential condominium units. The Applicant no longer proposes to develop a restaurant. The Applicant will place a permanent conservation easement on the Strip and on all vegetated areas of the wetlands buffer that it proposes to create.

Comment A-2

It appears that the intention of the Applicant's engineer is to adhere to the New York State Department of Environmental Conservation (NYSDEC) -Phase II regulations for stormwater. Water quality calculations are included and the narrative in Volume 3, page 7, discusses offsetting the "Cultec®" discharge pipe inverts to fully detain the calculated volume. However, the report also contains pollutant loading calculations and discussion on using Vortech® units. The latter seems to be a hold over from pre-Phase II design since

loading calculations are no longer required and Vortech® units do not meet the requirements of the NYSDEC-Phase II standards. Clarification is required.

(Memorandum from Mr. Dolph Rotfeld, P.E., Dolph Rotfeld Engineering, P.C., dated September 20, 2004, see Appendix B)

Response A-2

The Applicant acknowledges that the pollutant loading calculations are longer required, but nonetheless has provided them. Vortechnic units are still being used for pretreatment and rechargers are providing the water quality treatment in accordance with NYSDEC Phase II standards.

Comment A-3

The proposal claims that, "a stormwater management program is proposed which will reduce post-development peak runoff rates over the existing condition." This claim is not substantiated. Even were it accurate it would be insufficient. Given the flooding damage along Blind Brook in Rye Brook and Rye this year it is clear that both municipalities must work together to reduce the existing flood impacts and the public safety challenges they pose.

(Letter from Mr. O. Paul Shew, City of Rye Manager, dated November 30, 2004, see Appendix G)

Response A-3

The Applicant's studies have substantiated that the proposed stormwater management program will reduce post-development peak run off rates over the existing condition.

The increase in stormwater runoff and any impact on water quality will be mitigated through a comprehensive Stormwater Management and Stormwater Pollution Prevention Plan (Appendix Z of the DEIS). The plan will utilize a detention/recharge system for peak runoff attenuation and water quality management.

The Village of Rye Brook requires peak rate attenuation of runoff to ensure that following development, the peak rate of runoff discharged from the Property is no greater than the predevelopment condition. In addition, since the Property is located adjacent to Blind Brook, a major drainage basin within Westchester County, the hydrologic characteristics of Blind Brook were considered when designing the stormwater detention/recharge system.

All of the stormwater runoff from the Property is conveyed into Blind Brook. For the purposes of analysis, all of the drainage from the Peninsula, herein referred to as Drainage Area 'A' is considered to be discharged to both the Main Branch and the East Branch of Blind Brook. This was done since, under the developed condition, all the runoff from the Property is discharged at a single point.

Stormwater runoff from the impervious surfaces, including all parking areas, driveways, access roads, loading areas and building rooftops will be collected and conveyed via underground storm pipes to subsurface stormwater detention/recharge facilities. Three (3) underground facilities are proposed to attenuate the peak rate of runoff from the Property.

To collect stormwater runoff from the impervious surfaces in the drainage areas which convey runoff to the proposed detention/recharge facilities described above, a network

of subsurface drainage pipes will be installed to convey the stormwater runoff. Catch basins will be installed and the Property will be graded to direct runoff into these basins.

Each subsurface stormwater management system will utilize Cultec brand chambers manufactured by Cultec, Inc. of Brookfield, Connecticut. Each Cultec chamber is a "U" shaped polycarbonate chamber.

Table 6 in the DEIS, Sum of Peak Flows from Site, indicates that for the Property as a whole, if the existing condition peak rate of flow from each of the Property's drainage areas is added and compared to the sum of the future condition peak rates of flow, the proposed stormwater management plan offers a significant decrease in the peak rates of flow for all storms.

Analysis of the Flood Insurance Study prepared by the Federal Emergency Management Agency for Rye Brook indicates that the increase in the 100 year water surface elevation between cross sections D and E (immediately upstream and downstream of the Property) would be far less than 0.8 feet, the predicted increase in the 100 year water surface if that portion of the floodway fringe were completely filled. The analysis of the proposed Bowman Avenue Development's impact on the 100 year flood elevation concluded that upstream of the Property the impact would be very limited due to the proximity of the Rye City dam. The Rye City Dam causes a large increase in the elevation of the 100 year flood by over twenty-four (24') feet. The Flood Insurance Study also indicates that any such increase in water surface elevation of the 100 year flood due to filling on the Property within the East Branch of the Blind Brook would also be entirely dissipated immediately north of Bowman Avenue. It was demonstrated that the proposed filling within the floodplain of Blind Brook would have no significant impact on flooding either upstream or downstream of the Property.

The data contained in the Flood Insurance Study demonstrates that the minimal filling that has previously occurred on the Property prior to this application and the proposed

fill in the easterly parking area will have minimal and insignificant impacts on the 100 year water surface elevations and drainage patterns of the Blind Brook.

The Applicant's Stormwater Management and Stormwater Pollution Prevention Plan provides for water quality and stream channel protection in accordance with the NYSDEC SPDES General Permit for Stormwater Discharges from construction activity. The plan will also accomplish the goals of decreasing the potential of Blind Brook flooding, will meet the requirements of the NYSDEC General Permit, and conforms to all of the stormwater management objectives of the Village of Rye Brook.

In addition to the Applicant's Stormwater Management Plan, the Applicant's proposed Mitigation Plan addresses the issue raised by the City of Rye by eliminating all development on the Strip, thereby resulting in reduced runoff rates and assisting in addressing concerns about down stream flooding.

B. SOIL AND GEOLOGY

Comment B-1

The DEIS states that gasoline contaminated soil is present in the northern portion of the "Strip." We recommend review of the remediation process currently underway on the Strip. An update on the status of the remediation should be provided, including reports of monitoring and findings provided by NYSDEC.

The reasons for a proposed change in remediation from continuing the current NYSDEC approved remediation to removal of contaminated soil from the site prior to construction should be provided. The Applicant should clarify why ..... after discussions with Village Officials the Applicant has decided to remove the contaminated soil from the Strip prior to construction."

In addition, a complete NYSDEC-approved revised remediation plan regarding the removal of contaminated soil should be submitted along with NYSDEC comments on the revised remedial action plan.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response B-1

The NYSDEC has not prepared a report relative to monitoring the Strip.

The Applicant has decided to change the form of remediation from the current bio-vent system to removal of the soil from the Property because removal is a faster and more definite remediation process.

A revised remediation plan is not required by the NYSDEC to remove contaminated soil

from the Property. The Applicant will file all required documentation with the NYSDEC after removal in order to secure a no further action letter.

Comment B-2

If soils on the Strip or the Peninsula continue to contain detectable pollutants and the soils would be disturbed by excavation for construction or removal, discussion regarding potential impacts to human health, short-term and long-term, caused by the disturbance should be included in the FEIS. Discussion of the potential need for mitigation measures during and after construction should be provided.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response B-2

The Applicant's environmental testing has concluded that the Peninsula soils do not contain detectable pollutants. Detectable pollutants will no longer exist on the Strip after removal of the contaminated soil.

In response to comments received during the DEIS public hearing, the Applicant has prepared a Mitigation Plan which limits development to the Peninsula. The Strip will not be developed and a permanent conservation easement will be placed thereon.

There will be no short term or long term impacts to human health by removing the soil from the Strip. Removal of the soil will be achieved in accordance with all appropriate safety precautions implemented. The removal is not anticipated to last more than three (3) days. The Applicant's environmental consultant and the Village's environmental consultant agreed in the DEIS that there would be no impact to human health as a result of the existence of the contaminated soil on the Property after construction of the proposed residential condominiums.

The Applicant has prepared a Mitigation Plan which calls for no development on the Strip. Silt fences will be installed at the top of the bank and along the edge of the Blind Brook prior to removal of the soil.

Comment B-3

The Applicant notes that existing steep slopes will be impacted only during the creation of the proposed wetland habitat. However, the Slope Analysis Map clearly shows that areas of steep slopes will be disturbed by construction of the structures for the restaurant and condominiums and associated site features.

A discussion regarding the impacts to existing steep slopes associated with construction of proposed retaining walls and other site features should be included here. Discussion regarding impacts to existing steep slopes should be separated from discussion regarding the creation of new steep slopes both of which are regulated by Chapter 213 of the Village Code and therefore should be presented here. Methods of soil stabilization, planting, construction and erosion and sediment control should be described as well as how the site layout and engineering minimizes impacts to existing slopes and avoids the creation of new steep slopes as required by the steep slope regulations.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response B-3

The Applicant has proposed a Mitigation Plan in response to comments received during the DEIS public hearing. No construction will occur on the Strip. Retaining walls will not be constructed on the Strip or on the Peninsula. No new steep slopes will be created during construction. Existing steep slopes will only be impacted as a result of the creation of wetland buffers.

A comprehensive sediment and erosion control plan will be designed for the development which will include protection of activities on steep slopes, and will be included with the final site plans. The plan will include:

- ***Installation of a dual sediment trap consisting of a silt fence with haybales.***

- ***Haybale erosion checks at all proposed catch basins.***

- ***A stabilized construction entrance in order to limit the transport of sediment into the Blind Brook and onto Bowman Avenue.***

- ***A Turbidity Curtain will be installed around the perimeter of the construction area at the shoreline of the development.***

- ***Following construction, disturbed ground surfaces will either be stabilized with groundcover and/or trees and shrubs or will receive a permanent non-erosive surface such as asphalt or concrete.***

- ***Seeding of exposed ground surfaces is required within twenty-four (24) hours of the final grading.***

- ***Mulch or a geosynthetic erosion control netting shall be used to ensure the proper stabilization of the soils.***

The sediment and erosion control plans prepared by the Applicant's consultant provides a detailed description of the sequence of construction so as to coordinate the installation of the sediment and erosion control devices.

The sediment and erosion control plans also delineate the requirements for the contractor with respect to temporary and permanent seeding for those areas under construction.

Other measures to limit impacts to the Lower Blind Brook Pond and the Blind Brook include:

- ***Catch basins with sumps to trap sediment washed from parking lot surfaces.***

- ***A comprehensive clean-up of the loose fill, debris and trash on the Property which currently wash into the Blind Brook.***

- ***A detailed landscape plan to stabilize the ground surface, minimize the potential for erosion and sedimentation into downstream waters and improve the aesthetics of the Property (this plan will be included with the final site plans).***

Existing steep slopes are the result of the fill material which has been deposited on the site. This material (concrete, asphalt, etc.) will be removed during construction and replaced with retaining walls and planting materials (soil and mulch). Any remaining steep slopes will be temporarily stabilized using erosion control blankets.

Comment B-4

The Applicant should elaborate on how the mitigation planned will comply with the requirements of Chapter 213. Methods for soil stabilization and creation of a wetland habitat on steep slopes should be fully described.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response B-4

Chapter 213 "Steep Slope Protection" of the Code of the Village of Rye Brook defines steep slopes as "any geographical area, whether on a single lot or lots, or a portion of a lot having a topographical gradient of 15% or greater with a minimum area of 100 square feet." The Property has steep slopes along the shore line areas of the Peninsula and the Strip (see Figure 5).

Chapter 213 "Steep Slope Protection" of the Code of the Village of Rye Brook, regulates disturbances to steep slopes. Chapter 213 classifies three types of steep slopes; (1) "moderately steep slope" which is a slope equal to or greater than 15% but less than 25%, (2) "very steep slope", a slope equal to or greater than 25% but less than 35%," and (3) extremely steep slope," a slope equal to or greater than 35%.

"Allowable activities" to steep slopes, do not require a permit and include the following:

Normal ground maintenance which does not require disturbance of existing terrain, including mowing, trimming of vegetation and removal of dead or diseased vegetation, provided that such activity does not involve regrading, and further provided that such activity conforms with all other applicable laws and regulations;

The disturbance to steep slopes under temporary emergency conditions, as determined by the Village Engineer, or such disturbance as necessary to protect persons or property from present and imminent danger;

Repair of existing walkways and walls;

Public health activities and emergency uses pursuant to orders of the Westchester County Department of Health and/or the New York State Department of Health.

It is unlawful to create a new steep slope area or to create any disturbance, other than an allowable activity as defined above, on any existing or proposed steep slope in the absence of a steep slope work permit. The steep slopes along banks of the "peninsula" will not be impacted except to create the proposed wetland habitat. The proposed development will fully comply with Chapter 213 "Steep Slopes Protection" of the Code of the Village of Rye Brook. The proposed stabilization and creation of wetland habitat will improve the undesirable existing conditions.

The installation of a dual sediment trap consisting of a silt fence with haybales, haybale erosion checks, and a stabilized construction entrance in order to limit the transport of sediment during construction to the Blind Brook. An aquatic silt fence will also be installed around the perimeter of the construction area at the shoreline of the development. Following construction, disturbed ground surfaces will either be stabilized with ground cover and/or trees and shrubs or will receive a permanent non-erosive surface such as asphalt or concrete.

A narrow fringe of plantings will replace the current, largely unvegetated shoreline. The new shoreline will be terraced to accommodate the plantings.

Comment B-5

Although the New York State Department of Environmental Conservation has jurisdiction over the petroleum contamination, this Department recommends that endpoint samples be taken on the sides and bottom of the final excavation every 25 feet and the results be compared to TAGM guidelines and also that ground water sampling be conducted up and down gradient of the final excavation for four (4) consecutive quarters regardless of whether soil contamination remains to monitor the remnant groundwater contamination issues.

(Letter from Mr. Michael Sakala, P.E., Assistant Commissioner, Bureau of Environmental Quality, dated October 7, 2004, see Appendix C)

Response B-5

Remediation of the impacted soil will consist of removal of the top six feet of unimpacted soil from above the impacted area. Unimpacted soil will be stockpiled at the southern end of the Strip and covered with plastic sheeting to prevent runoff. Impacted soil will then be excavated and removed. Excavated soil will be sent for treatment and disposal.

In lieu of the current proposal, the NYSDEC will not require authorization prior to commencing this work. Once the soil is removed from the Strip a letter will be obtained from the NYSDEC stating no further action will be required.

Comment B-6

Page 7, Geology and Soils. Paragraph 2 mentions that "a full sediment and erosion control plan has been prepared by the project engineers." We have not received a copy of this plan with the FEIS. An erosion and sediment control plan for both the Proposed Action and the Mitigation Plan should be provided. The plan should provide adequate measures between the limits of disturbance on the peninsula and the edge of the pond. This would be important to prevent erosion on steep slopes located from the top of the edge peninsula and strip into the pond.

The Village Engineer or engineering consultants should review these plans to make sure they are acceptable.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response B-6

A "Sediment and Erosion Control Plan" has been prepared by the Applicant and is included as a figure in Section IV.12.M-6. In order to protect the slope areas of the property once vegetated, the plan has been amended to include a low chain link fence. This will prevent incursions into this area both during and after construction. Additionally, a Turbidity Curtain has been added to the Sediment and Erosion Control Plan and the Details. According to the New York Standards and Specifications for Erosion and Sediment Control," the purpose of this Turbidity Curtain is to prevent the migration of silt from a work site in a water environment into the larger body of water".

Comment B-7

Page 28, Response to Comment B-1. Evidence from NYSDEC that confirms NYSDEC monitoring and findings regarding the current Remedial Action Plan should be provided as requested by the commenter. The response goes on to state that the Applicant decided "to change the form of remediation from the current biovent system to removal of the soil from the Property because removal is a faster and more definite remediation process. The Applicant was asked by a Board member to remove the soil and the Applicant agreed." We know of no decision by any Board in Rye Brook that directed the Applicant to change remediation methods. Therefore, reference to such direction should be eliminated from the response and generally from the FEIS unless the Applicant can produce evidence of a decision that directed removal.

If it is the Applicant's intention to remove the contaminated soil rather than continue the current remediation under the Proposed Action or the Mitigation Plan, then the response should provide evidence from NYSDEC that removal of impacted soil will not require approval or monitoring by NYSDEC or any other agency.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response B-7

Appendix P is included in this FEIS document which is a letter from Mr. Frank DiBartolo, the Applicant's environmental consultant which indicates that removal of contaminated material does not require a new remedial action plan approved by NYSDEC.

Comment B-8

Page 29, Response to Comment B-2. The Response should include discussion regarding details of the "appropriate safety precautions" that would be implemented during soil removal. The discussion should include potential impacts to air quality and the proximity of areas of public use such as the school, offices and shopping center surrounding the property.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response B-8

As referenced in the DEIS Appendix BB, Environmental Resources Management provides a detailed Soi1 Removal Plan. In summary, the selected remedial option is removal and offsite disposal of impacted soil. Petroleum impacts were detected from approximately 6 to 8 feet below land surface (BLS) to the top of the water table, approximately 11 feet BLS. Eight hundred forty five cubic yards of soil will therefore require excavation. Remediation will consist of removal of the top 6 feet of unimpacted soil from above the impacted area. Unimpacted soil will be stockpiled at the southern end of the property. The stockpiled soil will be covered with plastic sheeting to prevent runoff and impacted soil will than be excavated. Excavation will be carried out vertically to the top of the water table and horizontally until no visual indications of petroleum impacts are observed and photo ionization screening of removed soil yields background values. End point samples will be collected and this will ensure all impacted soil has been removed. The soil will be analyzed and compared to the New York State Department of Environmental Conservation (NYSDEC) technical and administrative memorandum recommending soil cleanup objectives. Excavated soil will be sent to Carteret Biorecycling in Carteret, NJ for treatment and/or reuse. Before soil excavation, sediment and erosion control measures will be implemented. Silt fence and/or haybales will be installed along the eastern shoreline of Blind Brook to minimize the potential for soil to migrate offsite to the Brook during storm events. All transport vehicles will be decontaminated before leaving the site and all trailer beds will be completely covered with canvas tarps following loading to prevent dust emissions during transport. Because of the small size of the site work will be staged to minimize the number of trucks present at the site. Trucks will not be permitted to access or leave the site during Port Chester Middle School access or departure times. If there is insufficient material to backfill the excavation, fill material will be brought in from an appropriate clean-fill facility.

Comment noted.

Comment B-9

Page 30, Response to Comment B-3. Statements in the response regarding an erosion and sediment control plan that would be developed conflict with statements elsewhere in the FEIS stating that such a plan has already been developed. We request that an erosion and sediment control plan be submitted for review by the Village engineering consultant.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response B-9

Comment noted. See Figures Section for Sediment and Erosion Control Plan.

Comment B-10

Page 32, Response to Comment B-4. The design of wetlands plantings to be installed along the watercourse edge and within the watercourse buffer should include a monitoring and maintenance plan to ensure that the plantings and stabilization of steep slopes in proximity to the watercourse are maintained in future to prevent erosion and loss of any habitat created. The Applicant should provide a monitoring and maintenance plan for review and evidence that the plan would be implemented by the Applicant or a home-owners association under either the DEIS or the FEIS development plan.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response B-10

According to the Applicant, a wetland scientist will be retained and will supervise all construction activities along the watercourse edge and within the watercourse buffer to monitor and provide reports to the Village according to the following schedule:

a. At a minimum on a bi-monthly basis during construction activities and
b. At the end of May, August and October for two years after the completion of all construction activities.

Said reports shall be provided to the Village within one month of each monitoring date, and will describe conditions along the watercourse edge and within the watercourse buffer and provide conclusions about the success of revegetation, substrate replacement, wildlife habitat and requirements for additional maintenance.

In the Buffer Zone reasonable efforts shall be made to keep all landscaped areas free of weeds and debris and all vegetation within said areas free of physical damage caused by chemicals, insects, diseases, lack of water or other causes. Damaged plants shall be replaced with the same or similar vegetation on an annual basis.

The proposed monitoring and maintenance proposal will be the same for both the action and the mitigation plan. The Homeowner's Association (HOA) will assume responsibility for all monitoring post construction.

C. CONSERVATION EASEMENT

Comment C-1

We also made suggestions, and one of those suggestions is that a conservation easement be placed on the property that will remain open and vegetated.

(Statement at Public Hearing, Ms. Timpone Mohamed, dated September 28, 2004, see Appendix A)

Response C-1

The Applicant's Mitigation Plan proposes a permanent conservation easement on the entire Strip.

Comment C-2

Page 35. We recommend that a 35-foot wide conservation easement running parallel to the front property line should be placed on the landscaped front yard to preserve the buffer created by the Mitigation Plan in addition to the one proposed for the Strip. With respect to the Proposed Action, we continue to recommend that a conservation easement should be placed on all vegetated areas of the Strip and the Peninsula that would be developed under that plan.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response C-2

Comment noted. The Applicant indicated that they would agree to a conservation easement along the frontage of the property. The landscaping which is proposed between the right of way along Bowman Avenue and the proposed residential construction will remain as private land with maintenance provided by the Homeowners Association for the project.

D. FLOODING/WATER

Comment D-1

The DEC situation has been discussed. It's been my understanding, to be solved after permits are given. This has been an ongoing situation. I don't think anything should be allowed until the DEC passes and okays it. In other words this situation should be solved, primarily before anything else is done.

(Statement at Public Hearing, Mr. Heller, dated September 28, 2004, see Appendix A)

Response D-1

The Applicant has decided to change the form of remediation from the current biovent system to removal of the soil from the Property because removal is a faster and more definite remediation process.

A revised remediation plan is not required by the NYSDEC to remove contaminated soil from the Property. The Applicant will file all required documentation with the NYSDEC after removal in order to secure a no further action letter.

Comment D-2

One of the biggest concerns is flooding and it's sort of appropriate, given the weather that we've had, not just tonight, but this whole summer and especially on September 8th, where we had in Indian Village and in other parts of Rye, worse flooding than we've had since the 1970s.

(Statement at Public Hearing, Mayor Otis, dated September 28, 2004, see Appendix A)

Response D-2

The Applicant has designed the development to comply with all applicable Village of Rye Brook requirements. The Village of Rye Brook's consulting engineer has reviewed the Applicant's Plans and Stormwater Management Report and has confirmed that the proposed development will not cause flooding downstream.

In response to comments received during the DEIS public hearing, the Applicant has prepared a Mitigation Plan which limits development to the Peninsula. The Strip will not be developed and a permanent conservation easement will be placed thereon.

All stormwater runoff from the 2.367 acres of the Property that is land is presently conveyed directly into the Blind Brook. Approximately 1.672 acres of the 4.039 acre Property is the Blind Brook and the Lower Blind Brook Pond.

The Blind Brook is a nine (9) mile long stream that is located in the southeastern portion of Westchester County with a drainage area of approximately ten (10) square miles, or six thousand four hundred (6,400) acres.

In 1979, a Flood Insurance Study for the Village of Rye Brook was completed in conformance with Federal Emergency Management Agency criteria. The study calculated water surface elevations for the 10, 50, 100 and 500 year floods. The water surface elevations were computed using United States Army Corps of Engineers methodology. A detailed flood analysis was performed for the main branch of Blind Brook from the City of Rye corporate limits to the Lincoln Avenue culvert at SUNY's Purchase Campus and for the East Branch of the Blind Brook from its confluence with the main branch to Rock Ridge Drive. The Property falls within the area of study.

For analysis purposes, the 100 year floodplain is divided by the Flood Insurance Agency into a "floodway" and a "floodway fringe". The floodway is the channel of the watercourse together with any adjacent floodplain that must be kept free of encroachment in order that the 100 year flood can be carried without substantial increases in flood height. Land that is located within the 100 year floodplain and

outside of the floodway is the floodway fringe. Minimum standards of the Flood Insurance Agency limit fill in the fringe such that the resultant increase in flood heights is limited to one (1') foot or less. The floodway fringe is thus that portion of the 100 year floodplain that could be completely obstructed by filling activity without increasing the water surface elevation of the 100 year flood by more than one (1') foot at any point. The Flood Insurance Study contains calculations of the predicted 100 year flood water surface elevations as well as projected increases in water surface elevations due to a completely obstructed (i.e. filled in) floodway fringe. The computations are performed at numerous cross-sections the entire length of the Blind Brook in order to determine precise water surface elevations. The Applicant's proposed development on Bowman Avenue is located between cross-sections D and E of the above noted Flood Insurance Study.

Figure 4, "Flood Map," of the Flood Insurance Study shows the 100 and 500 year flood boundaries for our site and surrounding area. The base flood water surface elevation for the 100 year flood is 36.9 feet. If the floodway fringe were completely obstructed the water surface elevation would rise by 0.8 feet to 37.7 feet.

Filling of the floodway fringe within the 100 year floodplain is permitted under the regulations of the Flood Insurance Agency. The Flood Insurance Agency limits increases in the water surface elevation of the 100 year flood due to filling of the floodway fringe to a maximum of one (1.0') foot.

Minimal filling of the floodway fringe previously occurred during prior ownership of the Property pursuant to Stream Control Permits issued by the County of Westchester. The majority of the floodway fringe is not obstructed. The Applicant does not propose to fill additional land located within the floodway. Only minor amounts of filling will take place within the floodway fringe, which, as noted above, is permitted under the regulations of the Flood Insurance Agency. Given this condition, the increase in the 100 year flood will be far less than 0.8 feet (the predicted increase if the entire floodway fringe were filled.

Figure 12 "Blind Brook Flood Profile and Floodway Map" in the DEIS document demonstrates that there is a sharp rise in the predicted water surface elevation from the 100 year flood due to the presence of the City of Rye dam, which is located approximately two hundred (200') feet west of the Property. Any increase in the water surface elevation of the 100 year flood due to the previous filling on the Property will be completely dissipated due to the location of the City of Rye dam and within (100') feet upstream. Accordingly, no flooding will occur on the property owned by the City of Rye, which is located upstream, adjacent to and west of the Property.

No historical data was available to verify that consistent flooding occurs within upstream or downstream properties other than the data contained in the 1979 report entitled Flood Insurance Study for the Village of Rye Brook, which was completed in conformance with Federal Emergency Management Agency criteria.

Discussions with the Village Engineer in early 2001 indicate that there is no more recent information regarding flooding events in relation to the Blind Brook. Also, information obtained from the City of Rye Engineer on 02/08/2001 supports that no data exists other than the 1979 Flood Insurance Studies. The City of Rye Engineer also indicated that flooding does occur on several properties on the south side of Route 287.

Comment D-3

One of the references to flooding events had basically stated that there was no more recent information regarding flooding events in relation to the Blind Brook.

(Statement at Public Hearing, Trustee Feinstein, dated September 28, 2004, see Appendix A)

Response D-3

As indicated in Response D-2, no historical data was available to verify that consistent flooding occurs within upstream or downstream properties other than the data contained in the 1979 report entitled Flood Insurance Study for the Village of Rye Brook, which was completed in conformance with Federal Emergency Management Agency criteria.

Discussions with the Village Engineer in early 2001 indicate that there is no more recent information regarding flooding events in relation to the Blind Brook. Also, information obtained from the City of Rye Engineer on 02/08/2001 supports that no data exists other than the 1979 Flood Insurance Studies. The City of Rye Engineer also indicated that flooding does occur on several properties on the south side of Route 287.

Comment D-4

Ken Heller, 22 Lincoln Avenue. As an old time, experienced Town of Rye resident, I've lived on the main branch of Rye Brook since 1947. It comes under the jurisdiction of U.S. Corp. of Army Engineers, and I would hope that they have been notified, because they are totally responsible for this brook, since the founders, two separate political entities, and they must be brought on board and informed. And also, according to the flood maps, I believe this property is in a flood plain, and this must also be taken into consideration.

(Statement at Public Hearing, Mr. Heller, dated October 26, 2004, see Appendix J)

Response D-4

The US Army Corp of Engineers does not have jurisdiction over work adjacent to the Blind Brook when thresholds are not exceeded. Neither the Proposed Action nor the Mitigation Plan exceed thresholds.

In 1979, a Flood Insurance Study for the Village of Rye Brook was completed in conformance with Federal Emergency Management Agency criteria. The study calculated water surface elevations for the 10, 50, 100 and 500 year floods. The water surface elevations were computed using United States Army Corps of Engineers methodology. A detailed flood analysis was performed for the main branch of Blind Brook from the City of Rye corporate limits to the Lincoln Avenue culvert at SUNY's Purchase Campus and for the East Branch of the Blind Brook from its confluence with the main branch to Rock Ridge Drive. The Property falls within the area of study and has been indicated as being within the floodway fringe..

Comment D-5

What impact will construction have on the drainage of the Blind Brook? Will Middle School property be adversely affected due to "downstream" flow restrictions?

(Letter from Mr. Charles Coletti, Ph.D., Superintendent of Schools, dated November 5, 2004, see Appendix D)

Response D-5

The Middle School property will not be adversely affected due to downstream flow restrictions.

On July 27, 1994, a cross-section of the East Branch of the Blind Brook was prepared by the Applicant's consultants approximately one hundred twenty (120') feet north of Bowman Avenue (see Figure 12, "Blind Brook Flood Profiles and Floodway Map" in the DEIS document). The cross-section demonstrates that the elevations of the top of the side slopes of the channel are 39.1 and 40.0 feet. A 100 year flood water surface elevation of 37.7 feet, as predicted by the Flood Study, will be completely contained within the channel and its wooded side slopes. The "roof" of the culvert under Bowman Avenue is at elevation 40.9 feet, well above the 100 year flood water surface elevation. The upstream property immediately north of the Property (the Port Chester

Middle School) will not flood as a result of the Applicant's proposed development of the Property. There will be no impacts on the Port Chester Middle School due to the development. The increase in 100 year flood water surface elevation will be entirely contained within the existing channel.

Comment D-6

The Bowman Avenue project will limit the ability to our two municipalities to reduce flooding based upon flood control infrastructure improvements. By building and paving in the riparian buffer the project violates a variety of planning initiatives which recommend against such actions within our watershed and waters leading to Long Island Sound.

The proposal violates agreed upon principles in the Watershed Advisory Committee 3 Management Plan report "Controlling Nonpoint Source Pollution in Long Island Sound". Most notably, a major principle of the WAC 3 management plan report and of nonpoint source pollution prevention guidelines is to avoid building in riparian buffer areas.

(Letter from Mr. O. Paul Shew, City of Rye Manager, dated November 30, 2004, see Appendix G)

Response D-6

The proposed development will not limit the ability of the City of Rye and the Village of Rye Brook to reduce flooding based upon flood control infrastructure improvements. (See Response D-2 for further information). The City of Rye has had numerous opportunities to use the Property for flood control.

The Applicant offered to sell the Property to the City of Rye and the City of Rye declined to acquire same.

The Applicant offered to exchange the Property with property owned by the City of Rye and the City of Rye declined.

The Applicant consented to a joint application for New York State funds to acquire the Property and the funds could not be secured.

The Applicant has proposed a Mitigation Plan which limits development to the Peninsula. The Strip will not be developed. The Applicant is willing to work with the City of Rye by allowing the Strip to be used for flood control purposes.

Development of the Property will not impact on ability of the City of Rye or the Village of Rye Brook to reduce flooding based upon potential future flood control infrastructure improvements. (See the Response D-2 for a detailed discussion of the basis for this conclusion).

A stormwater management and stormwater pollution prevention plan is proposed for the Bowman Avenue Development, and was submitted with the DEIS. The stormwater management and stormwater pollution prevention plan has been designed in accordance with the requirements of the Village of Rye Brook, New York and the NYSDEC SPDES General Permit No. GP-02-01 for Stormwater Discharges from Construction Activity. The Village requires a peak rate attenuation of stormwater runoff for the two (2) through one hundred (100) year storm recurrence intervals.

In April 1998 The Westchester County Department of Planning (WCDP) published a document titled "Controlling Nonpoint Source Pollution in Long Island Sound." April 1998. The document addressed the need for a Management Plan for communities contributing to the Long Island Sound. The WCDP's "Controlling Nonpoint Source Pollution in Long Island Sound" recommends that future development control the increased rates of runoff to eliminate impacts downstream. Also, the publication recommends water quality measures, such as infiltration, be implemented to treat stormwater runoff from development.

The document recommends peak runoff alternatives, water quality controls, and wetland restoration practices for areas contributing to the Long Island Sound.

Recommended "Best Management Practices" to reduce non point source pollution include infiltration practices.

The stormwater management plan for the Bowman Avenue Development complies with the recommendations set forth in the WCDP's "Controlling Nonpoint Source Pollution in Long Island Sound," as well as the NYSDEC SPDES General Permit No. GP-02-01 for Stormwater Discharges from Construction Activity. The proposed subsurface recharge facilities have been designed to detain stormwater runoff so that its peak rate does not exceed that which presently exists. The recharge facilities also provide water quality control, as recommended in the WCDP document, to reduce nonpoint source pollution. The development also proposes to provide local wetland plantings within the wetland areas and buffers for restoration and stabilization purposes.

The Bowman Avenue development incorporates the use of infiltrators as water quality management devices to trap the first flush of stormwater runoff. The effectiveness of these recharge devices is described in the DEIS document.

The stormwater management and stormwater pollution prevention plan involves conveyance of the stormwater runoff from the impervious and graded surfaces within the Property to a subsurface stormwater detention/recharge system and a stormwater infiltration system. After construction of the Bowman Avenue Development, the peak rate of runoff from the Property will be less than under the existing conditions.

In this instance the proposed activity in the regulated wetland buffer will have no significant impact. In most cases, the buffers control erosion by blocking the flow of sediment and debris, by stabilizing the stream bank and wetland edges, and by promoting infiltration. The buffer forms a physical barrier that slows surface flow rates and mechanically traps sediment and debris. Wetlands usually absorb stormwater and serve as a vegetated filter strip. The pond on this particular property does not absorb stormwater and flood waters pass through. Riparian areas are extremely limited on the Property and are being enhanced. The development of the Property will result in the removal of the existing secondary growth species along the Property shoreline and

interior and their replacement with a mix of wetland grasses and shrub species adapted to the edge of the Lower Blind Brook Pond, as well as other landscape materials. The shrubs and ground covers selected will have value in providing wildlife nesting locations for existing species. The presence of water will remain and continue to be attractive to wildlife.

See Response A-1 for an additional discussion of why the proposed activity in the buffer will have no significant environmental impact.

Comment D-7

Given the fact that the proposal paves practically the entire site (building, parking, and roadway areas) and leaves inadequate buffer areas to protect against flooding and environmental impacts moving forward on this application would not be appropriate.

(Letter from Mr. O. Paul Shew, City of Rye Manager, dated November 30, 2004, see Appendix G)

Response D-7

The Applicant has proposed a Mitigation Plan which limits development to the Peninsula. The Strip will not be developed. Most of the Property will not be paved. Adequate buffers are proposed in the Applicant's Mitigation Plan to protect against flooding and environmental impacts. (Also see Response to D-6).

The Applicant has scaled down and redesigned the proposed development to limit the amount of disturbance and increase the area available for buffer enhancement. The Mitigation Plan was prepared in response to comments received on the DEIS. The Applicant proposes to develop the Peninsula with ten (10) residential condominium units. The Applicant no longer proposes to develop a restaurant. The Applicant will place a permanent conservation easement on the Strip and on all vegetated areas of the wetlands buffer that it proposes to create. See response to D-6.

Comment D-8

Page 8. Line 3 of the first paragraph states that groundwater occurs at a depth of eight (8') to ten (10') feet below grade and flows towards the East Branch of the Blind Brook. According to the Preliminary Grading Plan (Mitigation Plan) MP-2, dated 5/23/2005, the difference between the elevation of the top of the peninsula and the edge of the pond ranges from approximately 15 to 24 feet. The difference between groundwater and surface water levels should be explained.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response D-8

Comment noted. See Section I.F.1.

Comment D-9

Page 8, Surface and Groundwater. The second paragraph of the section states that the proposed Mitigation Plan will result in an increase of 0.14 acres of impervious surface coverage on the property. A comparison of the total amount of impervious surface coverage that would result from the Proposed Action and the Mitigation Plan should be provided.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response D-9

Comment noted. See Section I.F.2.

E. WETLANDS

Comment E-1

Section 250-6 A.(4)(b)[1] of the Village Code requires that no more than 25% of the minimum lot area of a zoning lot may be satisfied by land that is either underwater, is within a Federal Emergency Management Agency (FEMA) flood hazard area, is defined as wetlands by the village wetland law or is otherwise subject to flooding. Section 250-6 A.(4)(b)112] requires that no more than 25% of the minimum lot area of a zoning lot may be satisfied by land that is defined as steep slopes by the village steep slopes law.

Discussion regarding the extent of steep slopes and wetlands on the property and whether the lot (or lots) proposed to be developed comply with Section 250-6 A.(4)(b)[l] and Section 250-6 A.(4)(b)[2] should be provided. Calculation of the size of areas defined as steep slopes by Chapter 213 of the Village Code should be added to the zoning calculations on Sheet CS of the plans that accompany the DEIS and be included in the narrative.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response E-1

In compliance with Article IV, Section 250-6A.(4)(b)[1] and Section 250-6A.(4)(b)[2], no more than 25% of the minimum lot area is either underwater or defined as steep slopes. The Flood Hazard Area has a net value of 2.56 acres of the total site gross area of 4.04 acres.

The land outside the Flood Hazard Area is therefore 37% of the site.
The property which is not a Flood Hazard Area, wetlands, or steep slopes has been calculated and is 0.48 acres. This is in excess of the minimum lot area of 0.30 acres which is 12% of the site.

The applicant is in compliance with the steep slopes definitions in Article I, Section 213-2.Definitions. A table has been created which includes the areas defined as steep slopes (see Table B).

Comment E-2

We note that the wetlands were delineated in accordance with Village wetland regulations in December 1994 and were verified by site inspection in August 1999 and September 2003. December is not considered the growing season in New York State and, therefore, is not considered an appropriate time of the year for wetlands delineation.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response E-2

The original wetland delineation was done during an unusually warm period in the late fall. The wetlands on the Property well defined (clear wetland boundary), and have been reconfirmed during the growing season. In addition, the wetlands boundary has been confirmed by two different individuals from F.P. Clark Associates, the Village's planning and wetland consultants.

Comment E-3

The paragraph states that, "the Property will be unable to completely mitigate wetland or buffer losses because of the limited size of the Property."

Village has amended its wetland regulations to include a requirement for a mitigation plan when development would unavoidably disturb wetlands or wetland buffers. Mitigation could include replacement, enhancement, or restoration of an existing wetland or buffer area.

While the proposed action would not disturb the pond, it would involve loss of buffer area to the impervious surfaces of structures and site features such as walkways, parking areas and access drives that will require mitigation at the ratio of 2:1.

We recommend that the proposed action should be scaled down and re-designed to limit the amount of disturbance and increase the area available for buffer enhancement. We also recommend placement of a conservation easement on all vegetated areas of wetland buffer that remain open after development.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response E-3

The Applicant has scaled down and redesigned the proposed development to limit the amount of disturbance and increase the area available for buffer enhancement. The Mitigation Plan was prepared in response to comments received on the DEIS. The Applicant proposes to develop the Peninsula with ten (10) residential condominium units. The Applicant no longer proposes to develop a restaurant. The Applicant will place a permanent conservation easement on the Strip and on all vegetated areas of the wetlands buffer that it proposes to create.

Comment E-4

It has been revisited by the delineation, the people who did the delineation, Evans Associates, and they have confirmed several, I think at least twice, if I'm correct, three times, they have re-reviewed what was there.

(Statement at Public Hearing, Ms. Timpone Mohamed, dated September 28, 2004, see Appendix A)

Response E-4

The wetland boundary has been reconfirmed two times since the original delineation in 1994, most recently in 2003.

F. VEGETATION

Comment F-1

Applicant should provide substantiation for the last sentence of the paragraph that states that most of the trees on the property are "diseased and decayed." A tree survey performed by a certified arborist should be conducted and a tree preservation map listing the condition of the trees surveyed should be provided as required by Chapter 235, Trees of the Village Code. Existing trees that will remain will require protection during construction. A tree protection plan locating trees to be protected and specifying methods of protection should be included in the set of plans accompanying the DEIS and in the DEIS narrative.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response F-1

The Applicant was advised by its tree consultant that many of the trees on the Strip were diseased or decayed. The Applicant has not conducted a tree survey, and therefore cannot substantiate the statement regarding the number of diseased or decayed trees on the Property. However, the Village of Rye Brook permitted the Applicant in early Spring 2005 to remove all diseased or decayed trees along Bowman Avenue on the Peninsula. Since the Applicant is proposing a Conservation Easement on the Strip, all the trees will remain. Existing healthy trees located on the peninsula will be protected during construction. The property does not contain any regulated trees. Therefore, no tree protection measures are necessary.

Comment F-2

The first sentence of the paragraph states that "The Westchester County Soil and Water Conservation District" has suggested a wide vegetative buffer be used to minimize the transport of sediment to the Blind Brook. The statement should be substantiated by inclusion in the appendix of correspondence by which the suggestion was transmitted to the Applicant and a reference to that correspondence here.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response F-2

The Applicant has searched their records and found no correspondence from the Westchester County Soil and Water Conservation District.

Comment F-3

The landscaping plans, Sheets SP-5 and SP-6, should include a greater variety of native wetland and upland plant species to improve and enhance the pond banks and the edge of the pond. In our opinion, the use of retaining walls at the pond edge should be avoided, if possible, because retaining walls do not function as vegetation would for restoration of the natural features and habitat of the buffer and pond edge.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response F-3

A greater variety of native wetland and upland plant species to improve the pond banks and the edge of the ponds will be included in the proposed development plan.

The Applicant's proposed Mitigation Plan proposes development only on the Peninsula. No retaining walls are proposed.

Comment F-4

The original environmental site assessment and impact analysis conducted by Evans Associates in September of 1999 included in the DEIS as Appendix 0 should be referenced here in addition to the 2003 site inspection already referenced.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response F-4

Evans Associates has provided the following reference material:

Environmental Site Assessment and Impact Analysis prepared by Evans Associates, dated September 1999.

Letter from Evans Associates regarding site inspection to verify existing conditions relative to vegetation and wildlife on the Bowman Avenue Property, dated September 17, 2003.

Letter from Evans Associates regarding site inspection to verify existing conditions relative to wetland on the Bowman Avenue Property, dated September 17, 2003.

Comment F-5

The paragraph states that the average size of trees on the property is 18 inches in caliper. Therefore certain trees would be regulated by the Rye Brook tree ordinance. A discussion of the requirements of Chapter 235, Trees, should be added as an additional item in the section. Tree preservation and protection methods to be employed for trees to remain should be discussed along with compliance with the Village tree regulations.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response F-5

Any trees on the Property with calipers of 18 inches or greater are located on the Strip. The Applicant has prepared a Mitigation Plan which calls for no development on the Strip. No specimen trees will be impacted by development of the Property.

Comment F-6

An elaborated discussion of the specific species chosen for planting and why they were chosen should be included here. As all new and existing plantings are or will be within the wetland buffer, we recommend that only native species should be planted. Mitigation measures should include removal of exotic or invasive species throughout the property and the enhancement of vegetation within areas of the property where existing plants are to remain. Crown vetch (Coronilla varia) an exotic invasive species should be removed from the proposed landscape plan plant schedule.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response F-6

Native species have been used in all areas close to the water. Some ornamental varieties are proposed for the street-scape and near the buildings to add diversity and visual interest.

In accordance with the Village's request, Euonymous (burning bush), Reed Canary Grass and Crown vetch (Coronilla varia) will be removed from the plant list and will not be part of the final site plan.

Comment F-7

Page 10, Vegetation. The last paragraph, discusses two landscape "types" to be developed on the property. Discussion regarding landscape associated with usable open space required for residential development by the district zoning regulations (200 square feet per unit) should be added here for both the Proposed Action and the Mitigation Plan.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response F-7

Comment noted. See Section I.F.4.

Comment F-8

Page 50, Response F-1. The response should state whether or not the property contains any regulated trees. If regulated trees are present on the site then trees to remain should be provided with tree protection measures in both the Proposed Action and for the Mitigation Plan. A tree preservation and protection plan locating trees to be protected and those to be removed and specifying details for methods of protection should be provided for both the Proposed Action and the Mitigation Plan.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response F-8

Comment noted. See Section II.Comment F-1.

Comment F-9

Page 50, Response F-2. The Applicant should provide information regarding the circumstances under which the Westchester County Soil and Water Conservation District suggested a wide vegetated buffer should be used to minimize transport of sediment to the Blind Brook. If the suggestion was prompted by a review of the proposed action by the District then the Applicant should resubmit the both the proposed action and the Mitigation Plan to the District for review and comment.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response F-9

Comment noted. During the course of early review of the subject property in 1994/1995, referrals were made directly to the Westchester County Soil and Water Conservation District. This particular procedure is not common practice today. Issues related to buffers and sediment and erosion control are addressed through the village's consultants. As a result of the referral dating back ten years, the original comments and responses, in their original context, are no longer available.

Comment F-10

Page 53, Response F-6. A Landscape Plan for the Mitigation Plan has not been provided so it is our understanding that the response refers to the landscape plan for the Proposed Action. We continue to request that Crown Vetch be removed from any plant list associated with the Proposed Action or the Mitigation Plan. While it is true that Crown Vetch has been used extensively in the north eastern United States along road and stream banks, it is also true that it has been observed to escape readily from cultivation and to be invasive, moving into open fields, woodland edges and the banks and gravel bars of streams.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response F-10

Comment noted. See Figures Section for Landscape Plan and Section II.Response F-6. Crown Vetch has been removed from the Applicant's Landscape Plan.

G. LOT DESIGNATION

Comment G-1

The Applicant states that the Property is made up of two lots designated as 2B and 2B2 in Section 1, Block 22 of the Town of Rye Tax Assessment Map. All plans included with the DEIS identify Lot 2B as the Property. No other documents in the DEIS refer to or substantiate the existence or creation of a second lot as part of the property. The Applicant should provide a history of the creation Lot 2B2 and proof of its existence. In addition, the Applicant should clarify whether application to the Village of Rye Brook will be made to subdivide the property into two zoning lots and whether the two lots would comply with the minimum lot size requirements of Section 219-33 F. and Section 250-6 A.(4)(b) of the Village Code.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Originally this property was single lot and now the DEIS describes it as two lots. There is a question as to how that happened and whether they are in fact two separate lots, or two tax lots, so we're asking for more information, and if it is two lots, whether or not those two separate lots are going to become zoning lots. Because right now they are not separate zoning lots, and if they do become separate zoning lots, whether those lots would, because there is so much open water and steep slopes on those lots, whether they would have the minimum size required for the development.

(Statement at Public Hearing, Ms. Timpone Mohamed, dated September 28, 2004, see Appendix A)

Response G-1

Three years ago, the former Town of Rye Tax Assessor created two (2) tax lots and assigned separate tax identification numbers for financing purposes only. The Property was never subdivided into two (2) zoning lots. It will remain as one (1) zoning lot.

Comment G-2

Page 84, Response N-2. The response states that no amphibians were observed during numerous site visits to the property by the environmental consultants. The applicant should verify that there are no local reports or NYSDEC reports that might indicate anticipated or probable species on the site.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response G-2

Comment noted. As indicated in the DEIS, the applicant has prepared a detailed analysis of the flora and fauna on site. Work was done by qualified individuals with the firm of Evans Associates who determined that no protected of endangered species are present at the subject property. In September of 1999, during the field investigations made by Evans Associates, no direct evidence of rare or endangered species was found and no unique or significant habitat types were identified. The NYSDEC Wildlife Resources Center did not have any records of potential impacts to rare and endangered wildlife or plants in its New York Heritage Program files. As the comment recommends, a letter has been sent to NYSDEC requesting that they review their files and records regarding the presence of endangered species on site. A response was received from the NYSDEC on 06/28/2006, stating that the NYSDEC has no records of known occurrences of rare or endangered wildlife or plants or significant habitat types (see Appendix S).

H. TRAFFIC AND TRANSPORTATION

Comment H-1

Two parking standards apply to restaurants, one based on square feet and the other based on number of seats and employees. A restaurant must abide by the more restrictive of the two standards. The Applicant has used the standard based on square feet (1 parking space per 75 square feet of floor area), which yields a parking requirement of 54 spaces. The Parking and Loading Requirement table should be revised to demonstrate that the parking standard based on square feet is the more restrictive of the two parking standards. With 54 parking spaces, based on the alternative parking standard of one space for every three seats plus one space for each employee, with a hypothetical maximum work shift of 12 employees the restaurant could contain a maximum of 150 seats. If more than 150 seats are proposed, or the maximum work shift exceeds the 12 employees assumed above, then more parking spaces would be needed.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response H-1

The parking and loading requirement table has been revised to eliminate the parking required for the restaurant under the Mitigation Plan, which is no longer proposed. Instead, ten (10) residential units only are proposed, and this is reflected in the parking table. The Mitigation Plan proposes 45 total parking spaces. Parking consists of two (2) garage spaces and one (1) parking space at grade per unit. Visitor spaces are 1.5 per unit. This includes one (1) space at grade and the additional .5 space in the proposed guest parking area. The parking complies with the more restrictive parking standard. Only 30 spaces are required; 20 spaces for the residents and 10 for the visitors.

Comment H-2

The Applicant should describe the rationale used to determine the parking standard used to calculate parking requirements. It appears that the parking standard for the PUD/cluster single family/two family developments. Section 250-6 G.(l)(c)[2], was used rather than the apartment or multifamily standard of subsection 1311. It is our opinion that the latter standard would apply if the RA-1 zoning regulations have been used to permit the proposed trio of three-unit residential structures.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response H-2

The parking standards for the PUD/Cluster single family/Two family developments was used to calculate parking requirements. In compliance with Article IV, Section 250-6G (1)(c)[2], each single-family dwelling or two-family dwelling developed under the cluster provision or PUD District shall be provided with two (2) parking spaces for each dwelling unit, plus one (1) parking space per dwelling unit which may be provided in common with neighborhood clustered or PUD single-family dwelling units. The mitigation plan proposed for this property complies with applicable parking requirements. The Mitigation Plan proposes 45 total parking spaces. Parking consists of two (2) garage spaces and one (1) parking space at grade per unit. Visitor spaces are 1.5 per unit. This includes one (1) space at grade and the additional .5 space in the proposed guest parking area. The parking complies with the more restrictive parking standard. Only 30 spaces are required; 20 spaces for the residents and 10 for the visitors.

Comment H-3

An error was made in the production of Volume 2. The Traffic Impact Study was placed in front of Environmental Site Assessment Report and behind the Appendix 0 cover page. The Traffic Study should have been placed in Appendix H with the capacity worksheets.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response H-3

Comment noted.

Comment H-4

The revised Traffic Impact Study was completed October 2, 2003. The analysis may not include the most recent versions of the Highway Capacity Software and does not include information from the latest Institute of Transportation Engineer's (ITE) "Trip Generation" report. In regard to the Highway Capacity Software, page *5* of the study states that the capacity analysis is based on methodologies presented in the 1997 Highway Capacity Manual but the capacity worksheets indicate the 2000 Highway Capacity Software, version 4.lc.

The most recent version of the ITE "Trip Generation" report is the 7th Edition published in 2003. The traffic study references the 6th Edition, published in 1997.

Although the latest revision to the ITE "Trip Generation" report may not have a significant impact to the projected volume of site-generated traffic, clarification should be provided regarding which version of the capacity software used.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response H-4

The text incorrectly stated that the 1997 version of HCS Software was used. In fact, the 2000 version of HCS Software Version 4.1C was used.

Comment H-5

Manual traffic counts were conducted on Thursday, September 23 and Saturday, September 25, 1999. We request a copy of this field data in order to determine the peak hour period and verify the peak hour factors used in the capacity analysis.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response H-5

This issue was reviewed and addressed with F.P. Clark during review process. According to the NYSDOT, a diligent search of their files failed to disclose the existence of hourly traffic volume data from 2003 back to 1998 for the subject location. According to the Westchester County DPW, the only hourly counts performed on Bowman Avenue were done in 2004 between the Harrison Town Line and the Port Chester Village line where the Automatic Traffic Recorder (ATR) was placed at the intersection of Bowman Avenue and North Street. While this data is not in the exact area of the EIS study, the data provides an approximate peak hour volume of 853 at a

peak hour of 4:00 PM. The peak hour volume was approximately 9% of the daily traffic for this particular location. (See Appendix L for count data).

Comment H-6

Additional "spot counts" were conducted on May 14, 2003. The Applicant states that the spot counts were 17 percent lower than the manual counts conducted in 1999. We would like to see the May 14, 2003 count data to verify this. We are also interested to know how the manual counts compare to hourly traffic counts conducted along Ridge Street by Westchester County and along Westchester Avenue by NYSDOT. We request that the data be submitted by the Applicant, if available.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response H-6

The requested May 14, 2003 count data was presented to and reviewed by the Village's Planning Consultant in 2003.

As indicated in Response 5 above, according to the Westchester County DPW, the only hourly counts performed on Bowman Avenue were done in 2004 between the Harrison Town Line and the Port Chester Village line where the Automatic Traffic Recorder (ATR) was placed at the intersection of Bowman Avenue and North Street. While this data is not in the exact area of the EIS study, the data provides an approximate peak hour volume of 853 at a peak hour of 4:00 PM. The peak hour volume was approximately 9% of the daily traffic for this particular location. (See Appendix L for count data).

Comment H-7

Accident data was provided for years 1997, 1998, and 1999 at the intersection of Bowman Avenue and South Ridge Street. The number of incidents has increased for each year reported; 3 accidents in 1997, 6 in 1992 and 9 in 1999. Typically, a potential accident problem is indicated when five or more accidents are reported over a 12-month period. We are interested to know how the accident rate for the intersection compares with the statewide average as determined by the procedures outlined in the NYSDOT Highway Design Manual. We request that the Applicant submit accident data from the most recent three-year period.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response H-7

The Applicant requested case abstracts of all reportable accidents that occurred at the intersection in the study area from 1999 to 2002 from the New York State Department of Transportation (NYSDOT). According to the NYSDOT, their current data is available through May of 2002. There were only reportable accidents at the intersection of Westchester Avenue and Ridge Street. John Meyer Consulting then obtained copies of the Police Accident Reports for 2002, 2003 and 2004 at the intersection of Bowman Avenue and South Ridge Street from the Village of Rye Brook Police Department. A summary of the accidents is presented on Table 1. The number of incidents for each year is as follows: 13 accidents in 2002 and 2003 and 8 in 2004. It should be noted that 9 additional accidents occurred involving vehicles entering or exiting the gas stations on the corners of the intersection. They were exempt from the table but are as follows: 2 accidents in 2002 and 2004 and 5 in 2003. The intersection accident rate is 0.66 (accidents/million entering vehicles). We compared the calculated accident rate to the statewide average accident rate. Based on recent study, accidents were slightly above the statewide average of 0.60.

TABLE 1

ACCIDENT REPORT SUMMARY

Accident Location: Bowman Avenue and South Ridge Street

Accident #	Year	No. of Vehicles
13	2002	26
13	2003	28
8	2004	14

Comment H-8

We were interested to learn, on page 7 of the traffic study, that the intersection of Bowman Avenue and South Ridge Street experiences "relative[ly] low volumes of pedestrians and minimal utilization of the pedestrian push buttons," Due to the intersections proximity to the Rye Ridge Shopping Center and the Port Chester Middle School (which includes a crossing guard during the afternoon dismissal time period), we anticipated increased Levels of pedestrian activity. We request that the Applicant submit the pedestrian field data.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response H-8

The intersection of Bowman Avenue and South Ridge Street experiences relatively low volumes of pedestrian and minimal utilization of the pedestrian push button. Out of 30 traffic signal observed cycles, the pedestrian phase was only utilized 4 times based on our recent observations, which corroborates the data analysis. An exclusive pedestrian phase is available if the pedestrian push button is actuated. (See Appendix M for count data).

We note that typically the peak highway hours that were analyzed do not correspond to peak shopping center or school dismissal hours, when pedestrian activity may be more intensive. The peak periods of activity at Port Chester Middle School are at 8:10 AM (arrival time) and 2:49 PM (dismissal time) (see Appendix N for Port Chester Middle School Traffic Schedule). The peak periods of traffic activity of South Ridge Street do not coincide with the adjacent streets peak PM hour of operation. Therefore, the school volumes do not combine with traffic on the roads (see Traffic Impact Study in Appendix H of the DEIS).

Comment H-9

A review of the site plan indicates that the proposed layout may not provide sufficient turning radii for emergency response vehicles to circulate the site. This concern is applicable to ingress and egress at both the restaurant site and the proposed housing units. We recommend that a layout plan indicating turning radii should be submitted. The plan should provide sufficient details to identify how an emergency response vehicle would enter and depart both portions of the site. The site plans should be reviewed and approved by the fire and police departments and their reviews and approvals should be included in the EIS.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response H-9

The proposed layout does provide sufficient turning radii for emergency response vehicles to circulate the Property. A Fire Truck Turning plan has been provided with the FEIS (see Figures 6 & 7) which indicates turning radii for the DEIS plan and the Mitigation Plan layout. It should be noted that all proposed structures within the property will be fully sprinklered. Revised site plans will be submitted to the fire and police departments for review and approval prior to receiving final site plan approval.

Comment H-10

A traffic study was done in peak p.m. rush hour, as I recall, and not a.m., which I certainly could understand some of the reasons why. You might say, well, it's only nine units, but still any impact, because it is very congested in the morning and I can attest to that as I go south on Ridge Street over Westchester Avenue. So I want more information about the impact there.

(Statement at Public Hearing, Trustee Feinstein, dated September 28, 2004, see Appendix A)

Response H-10

Based on Trip Generation, nine (9) units from the original plan will generate approximately eight (8) vehicle trips during the weekday morning hour and eight (8) vehicle trips during the afternoon peak hour. From the Proposed Mitigation Plan, ten (10) units will generate approximately eight (8) vehicle trips during the weekday morning hour and nine (9) vehicle trips during the afternoon peak hour. It is the professional opinion of John Meyer Consulting that the proposed development will not significantly impact traffic conditions in the study area.

Comment H-11

What impact will traffic to and from the K&M site have during school entry and dismissal at the Middle School?

(Letter from Mr. Charles Coletti, Ph.D., Superintendent of Schools, dated November 5, 2004, see Appendix D)

Response H-11

Based on Trip Generation, nine (9) units from the original plan will generate approximately eight (8) vehicle trips during the weekday morning hour and eight (8) vehicle trips during the afternoon peak hour. From the Proposed Mitigation Plan, ten (10) units will generate approximately eight (8) vehicle trips during the weekday morning hour and nine (9) vehicle trips during the afternoon peak hour. It is the professional opinion of John Meyer Consulting that the proposed development will not significantly impact traffic conditions in the study area.

The peak PM hour of traffic is between 4:45-5:45. During dismissal at the Middle School at approximately 2:45 PM, there will be minimal number of trips generated from the Property. The Mitigation Plan further reduces the impact of traffic to and from the Property by eliminating the proposed restaurant use.

Comment H-12

Page 13, Traffic and Transportation. This section should include a statement addressing the anticipated impacts of the project and proposed mitigation measures, if needed.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response H-12

Comment noted. See Section I.F.6. The Applicant has conducted a full Traffic Impact Study to identify the potential impacts created by the proposed development on the local roadways within the Study Area. The findings of the Study indicate that the additional traffic generated by the proposed development will not create a significant impact on the local roadways. According to ITE "Trip Generation" 7th edition, the proposed development of ten townhouse units will generate a total of approximately 8 vehicle trips during the weekday morning peak hour and 9 vehicle trips during the afternoon peak hour. In addition, the sight distances at the proposed site driveway will satisfy the minimum design criteria as established by the New York State Department of Transportation.

Comment H-13

Page 55, Response to Comment H-1. The Response should state the number of parking spaces proposed as part of the Mitigation Plan and address the issue of compliance with the more restrictive parking standard.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response H-13

Comment noted. See Response H-1.

Comment H-14

Page 56, Response to Comment H-2. The Response should state the number of parking spaces proposed as part of the Mitigation Plan and address the issue of compliance with the more restrictive parking standard.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response H-14

Comment noted. See response H-2.

Comment H-15

Page 58, Response to Comment H-5. All field data sheets should be included in the Appendix to the document and the appendix item should be referenced in the response.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response H-15

Comment noted. See Appendix L for count data from Westchester County DPW. All available data has been provided. The applicant has searched its files and has indicated that it has not retained the individual count sheets from Thursday, September 23 and Saturday, September 25, 1999.

Comment H-16

Page 59, Response to Comment H-6. All field data sheets should be included in the Appendix to the document and the appendix item should be referenced in the response.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response H-16

Comment noted. See Appendix L for count data from Westchester County DPW. All data has been provided as available. The applicant has searched its files and has indicated that it has not retained the individual "spot counts" conducted on May 14, 2003.

Comment H-17

Page 61, Response Comment H-8. The Response should verify that copies of all pedestrian count data have been submitted for review by the Village. The information should be included in the Appendix of the document. The Applicant should expand the response to identify the peak periods of activity at the Port Chester Middle School (arrival times arid dismissal times) and the peak periods of traffic activity on South Ridge Street.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response H-17

Comment noted. See Appendix M for pedestrian count data conducted on April 13, 2005 and Response H-8. All available data has been provided. The applicant has indicated that they have searched their files and have no longer have retained the field data sheets from previous pedestrian counts.

The peak periods of activity at the Port Chester Middle School are at 8:10 AM (school starts) and 2:49 PM (school ends). Arrival time ranges between 7:30 and 8:30 am and dismissal time ranges between 2:00 and 3:10 PM. The peak period of traffic activity on South Ridge Street ranges between the peak PM hours of 4:45 and 5:45.

Comment H-18

Page 62, Response to Comment H-9. The Response should verify that the revised site plan has been submitted to the fire and police departments for their review and approval. This correspondence should be included in the Appendix of the document.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response H-18

Comment noted. See Response H-9. The applicant has indicated that plans have been submitted to Mr. Victor Carosi, the Village Planning Engineer, for his distribution to the fire and police departments for their review and approval. The results will be considered in ongoing the site plan approval review phase of the project.

I. EASEMENTS/BUFFER

Comment I-1

The Board should consider placing a public access easement on, particularly, the peninsula.

(Statement at Public Hearing, Ms. Timpone Mohamed, dated September 28, 2004, see Appendix A)

Response I-1

The Applicant indicated willingness to work with the Village on providing a public access and/or conservation easement on the undeveloped portions of the Property.

Comment I-2

We are very concerned about the building on the riparian buffer which really goes against all of the environmental policies that really are generally accepted these days through -- throughout the county that you don't build on riparian buffers, that riparian buffers store water, clean waters that go to the brook and to the sound.

(Statement at Public Hearing, Mayor Otis, dated September 28, 2004, see Appendix A)

Response I-2

Development of the Property will not impact on ability of the City of Rye or the Village of Rye Brook to reduce flooding based upon potential future flood control infrastructure improvements. See the Response D-2 for a detailed discussion of the basis for this conclusion.

A stormwater management and stormwater pollution prevention plan is proposed for the Bowman Avenue Development, and was submitted with the DEIS. The stormwater management and stormwater pollution prevention plan has been designed in accordance with the requirements of the Village of Rye Brook, New York and the NYSDEC SPDES General Permit No. GP-02-01 for Stormwater Discharges from Construction Activity. The Village requires a peak rate attenuation of stormwater runoff for the two (2) through one hundred (100) year storm recurrence intervals.

In April 1998 The Westchester County Department of Planning (WCDP) published a document titled "Controlling Nonpoint Source Pollution in Long Island Sound." April 1998. The document addressed the need for a Management Plan for communities contributing to the Long Island Sound. The WCDP's "Controlling Nonpoint Source Pollution in Long Island Sound" recommends that future development control the increased rates of runoff to eliminate impacts downstream. Also, the publication recommends water quality measures, such as infiltration, be implemented to treat stormwater runoff from development.

The document recommends peak runoff alternatives, water quality controls, and wetland restoration practices for areas contributing to the Long Island Sound. Recommended "Best Management Practices" to reduce non point source pollution include infiltration practices.

The stormwater management plan for the Bowman Avenue Development complies with the recommendations set forth in the WCDP's "Controlling Nonpoint Source Pollution in Long Island Sound," as well as the NYSDEC SPDES General Permit No. GP-02-01 for Stormwater Discharges from Construction Activity. The proposed subsurface recharge facilities have been designed to detain stormwater runoff so that its peak rate does not exceed that which presently exists. The recharge facilities also provide water quality control, as recommended in the WCDP document, to reduce nonpoint source pollution. The development also proposes to provide local wetland plantings within the wetland areas and buffers for restoration and stabilization purposes.

The Bowman Avenue development incorporates the use of infiltrators as water quality management devices to trap the first flush of stormwater runoff. The effectiveness of these recharge devices is described in the DEIS document.

The stormwater management and stormwater pollution prevention plan involves conveyance of the stormwater runoff from the impervious and graded surfaces within the Property to a subsurface stormwater detention/recharge system and a stormwater infiltration system. After construction of the Bowman Avenue Development, the peak rate of runoff from the Property will be less than under the existing conditions.

In this instance the proposed activity in the regulated wetland buffer will have no significant impact. In most cases, the buffers control erosion by blocking the flow of sediment and debris, by stabilizing the stream bank and wetland edges, and by promoting infiltration. The buffer forms a physical barrier that slows surface flow rates and mechanically traps sediment and debris. Wetlands usually absorb stormwater and serve as a vegetated filter strip. The pond on this particular property does not absorb stormwater and flood waters pass through. Riparian areas are extremely limited on the Property and are being enhanced. The development of the Property will result in the removal of the existing secondary growth species along the Property shoreline and interior and their replacement with a mix of wetland grasses and shrub species adapted to the edge of the Lower Blind Brook Pond, as well as other landscape materials. The shrubs and ground covers selected will have value in providing wildlife nesting locations for existing species. The presence of water will remain and continue to be attractive to wildlife.

See Response A-1 for an additional discussion of why the proposed activity in the buffer will have no significant environmental impact.

The Applicant is proposing to create riparian areas which will create a permanent buffer which does not currently exist.

The Proposed Mitigation Plan consists of ten (10) dwelling units only on the Peninsula portion of the Property with the Strip remaining undeveloped. The Peninsula is approximately twelve (12) feet above the water line.

The Strip portion of the Property will serve as a nesting or spawning habitat with limited vegetation and limited function as a riparian buffer.

J. FUTURE HOMEOWNERS

Comment J-1

They're worried about the reactions of future homeowners to various activities that have for many years been the "norm" at Rye Ridge (Shopping Center).

(Statement at Public Hearing, Trustee Harris, dated October 26, 2004, see Appendix J)

Response J-1

It is the Applicant's opinion that, future homeowners will not be affected by activities at the Rye Ridge Shopping Center because the current Mitigation Plan does not propose development on the Strip which is closer to the Rye Ridge Shopping Center. The Mitigation Plan proposes a reduction in the size of the Project. The residential units have been moved approximately 146 feet away from the Property line which is closest to the Rye Ridge Shopping Center.
Vehicular traffic from patrons, workers and delivery trucks entering and leaving the office building and shopping center will not have a significant noise impact on the residences on the peninsula. This is also a result of the increased distance and the fact that there is minimal loading occurring on the westernmost side of the Shopping Center. Security will also be improved as the residences will no longer be adjacent to the parking area and exhaust from vehicles will not be as close in proximity. Under the proposed development, noise air pollution in the form of exhaust and security are more of an issue because the residential would be adjacent to the west parking area of the medical office building.

The proposed development complies with the current zoning, therefore, building is permitted near the Rye Ridge Shopping Center. Proximity of housing to the Shopping Center enables people to walk from their homes to the shopping areas. This "Smart Growth" initiative is encouraged in most communities as it creates less vehicular traffic

to and from the Shopping Center. In addition, Rye Ridge Shopping Center is going through renovations including a proposed sidewalk. The sidewalk from the Bowman Avenue Development will connect to the proposed sidewalk of the Rye Ridge Shopping Center.

Comment J-2

Win Ridge Realty, as agent, owns the adjacent complex known as the Rye Ridge Shopping Center. As owners of the Rye Ridge Center, we are very concerned with how the potential residents of the adjacent homes may react to living in such close proximity to the Rye Ridge Center and its ongoing commercial activity. While we are not opposed to residential development, we question how the developer will control the reaction of these future residents to the various activities that have, for many years, been the "norm" at Rye Ridge. When the proposed homes have been sold and the developer is long gone, who will be left to handle the objections and complaints of the homeowners, other than the Village Officials and ourselves?

(Letter from Mr. Jonathan Kallman, Manager, Win Ridge Realty, LLC, dated October 25, 2004, see Appendix E)

Response J-2

As noted in Response J-1 above, the proposed development complies with the current zoning, therefore, building is permitted near the Rye Ridge Shopping Center. Proximity of housing to the Shopping Center enables people to walk from their homes to the shopping areas. This smart growth initiative is encouraged in most communities as it creates less vehicular traffic to and from the Shopping Center.

Vehicular traffic from patrons, workers and delivery trucks entering and leaving the office building and shopping center will not have a significant noise impact on the residences on the peninsula. This is also a result of the increased distance. Security will also be improved as the residences will no longer be adjacent to the parking area

and exhaust from vehicles will not be as close in proximity. Under the proposed development, noise air pollution in the form of exhaust and security are more of an issue because the residential would be adjacent to the west parking area of the medical office building. In addition, Rye Ridge Shopping Center is going through renovations including a proposed sidewalk. The sidewalk from the Bowman Avenue Development will connect to the proposed sidewalk of the Rye Ridge Shopping Center.

Comment J-3

Page 68, Response to Comments J-1 and J-2. The FEIS states that future homeowners will not be affected by activities at the Rye Ridge Shopping Center because the Mitigation Plan (new development proposal) does not propose development on the Strip as in the Proposed Action. The FEIS discusses proximity of the housing to the Shopping Center that would enable people to walk from their homes to the shopping area - a welcome Smart Growth approach to development.

We note that the residential development component of the Proposed Action would be approximately 55 feet away from the west parking area of the medical office building and the shopping center. The Mitigation Plan moves residential development to the peninsula where the residential units would be located approximately 165 feet away from the west parking lot and shopping center. The FEIS should provide a detailed discussion regarding how all impacts from the shopping center would be reduced by moving the residential units to the peninsula. The FEIS should quantify potential impacts of the shopping center to the Proposed Action as well as the Mitigation Plan, so that the amount of reduction of impacts can be determined and presented.

Response J-3

Comment noted. See responses J-1 and J-2.

K. PERMITS

Comment K-1

The Applicant should clarify by systematically describing the rationale used to arrive at the conclusion that permits the proposed trio of three-unit residential structures. We note that the C1 zoning district permits all the uses in the C1-P district and that the C1-P zoning district permits "all uses in the R districts as permitted therein."

As noted above, the C1-P district lists, as a permitted principal use, "all uses in the R Districts as permitted (herein [emphasis added]." Therefore, it appears that the residential uses proposed must adhere to the standards of the R zoning district in which it is permitted. The Applicant should specify which specific residential zoning district standards apply to the proposed use.

The proposed action would locate two uses on a single zoning lot. The principal use and accessory use should be identified and compliance with zoning district requirements regarding allowable principal and accessory uses should be described.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response K-1

The three proposed residential structures constitute a permitted use in the C1 Zoning District. Section 250-32A of the Zoning Ordinance lists the permitted principal uses in the C1 Zone as follows: "Permitted principal uses: all uses permitted in the C1-P District as permitted therein..." In substantially similar language, Section 250-31A includes as principal uses in the C1-P Zone all uses permitted in the "R Districts." Among the permitted uses in the "R Districts" is "multifamily dwelling", which is allowed in the RA-1 Zone. Based on the language of the cited provisions, the

multifamily use permitted in the RA-1 Zone, is incorporated by reference as a permitted use in the C1-P District, which, in turn, is incorporated by reference as a permitted use in the C1 District. As the Zoning Ordinance defines a "multifamily dwelling" as "[a] building or portion thereof with three or more dwelling units," each of the three proposed residential buildings, which contain at least three units, constitute a multifamily dwelling allowed in the C1 District.

As a restaurant is specifically listed as a permitted principal use in the C1-P zoning regulations (See Zoning Ordinance §250-31A(4)), it is also permitted in the C1 Zone, although this use is no longer proposed.

The Commentor's implication that the bulk standards applicable to multifamily dwellings in residential districts may apply to multifamily dwellings in the C1 Zone is incorrect. While the C1 zoning explicitly incorporates by reference uses allowed in other zones as permitted uses, it does not automatically (or expressly) incorporate the dimensional requirements applicable in those zones. Nothing in the text states that the bulk standards applicable to a multifamily dwelling in other zones apply to such a use in the C1 Zone. On the contrary, the zoning regulations set forth explicit C1 Zone bulk requirements for parameters such as floor area ratio, lot size, horizontal circle diameter, frontage, and yard depth. See Zoning Ordinance §§ 250-32 D, E, F, G, and U. The inclusion in the Zoning Ordinance of such express dimensional requirements for the C1 district would have been unnecessary if the bulk requirements applicable in C1-P or RA-1 districts tacitly control in the C1 District.

Indeed, in some instances the C1 regulations explicitly incorporate by reference the dimensional requirements of other zones. For example, with respect to the required side yard, maximum building height and minimum useable open space, the regulations for the C1 District expressly state that such requirements are the same as those in the C1-P Zone. See Zoning Ordinance §§ 250-32 F(2), G and H. Again, such provisions would be superfluous if the standards applicable in other zones governed in the C1 Zone by implication. Had the Village intended to make the bulk standards of the C1-P or the R Districts apply in to with respect to uses incorporated by reference in the C1 Zone, it

could have done so in unequivocal language, as it did with respect to a number of the C1-P dimensional requirements. It did not do so, but selectively specified which dimensional standards of the C1-P Zone govern.

Finally, the Commenter correctly notes that the action will locate more than one structure and more than one use on a single zoning lot. While the restaurant and the three residential structures of the DEIS Proposed Action constitute permitted principal uses in four separate buildings, all of them may be located together on a single lot. Section 250-4B of the Zoning Ordinance reads as follows:

Every building hereafter erected shall be located on a lot, as herein defined. There shall not be more than one main building and its accessory buildings on one lot, except for nonresidential buildings and multifamily dwellings in districts where such uses are permitted.

The multifamily dwellings, which constitute the Mitigation Plan, are permitted in the C-1 District, under Section 250-4B they fall within the exception to the prohibition against erecting more than one principal and one accessory building on each lot.

L. MISCELLANEOUS

Comment L-1

The discussion of neighborhood character should be expanded to include a description of the natural areas, such as Blind Brook, the pond, open space such as the ball field, the school across the street and undeveloped areas, such as the lot adjacent to the west property line of the site.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response L-1

Figure 1 "Aerial Photograph", demonstrates the location of the Property and the surrounding natural areas including Blind Brook, the pond, the ball field, the school, across the street and any undeveloped areas. Blind Brook is a nine mile long stream located in the southeastern portion of Westchester County and has a drainage area of approximately 10 square miles. The property lies adjacent to the Blind Brook and incorporates a portion of the East Branch of the Blind Brook and the Lower Blind Brook Pond within the boundary of the property.

The property located immediately north of the property is utilized by the Village of Port Chester Board of Education as Middle School athletic fields. The area closest to Bowman Avenue has bleachers and has a baseball field with a dirt infield. The rest of the area is open grass field with trees on both sides.

The property northeast of the site is utilized as the Port Chester Middle School containing buildings and a parking lot.

The property is also adjacent to the Rye Ridge Shopping Center and a medical office building which contains mostly buildings, parking and some lawn/landscaping.

Comment L-2

The property is located within the recently adopted Scenic Roads Overlay District (SROD) of Bowman Avenue and, as such, is subject to the special requirements of the overlay district, above and beyond those required by the C1 district. The plans and the DEIS should be revised to cite and demonstrate compliance with the applicable regulations of the SROD. Specifically, the table should be revised to cite the increased setback requirement, which would be 45 feet (1.5 times the Cl setback), the required 35-foot vegetated buffer, and the plans should be revised to comply with the increased setback. Parking areas are not permitted within the 35-foot buffer. The table should cite this requirement and the plans should be revised accordingly.

Due to the nature and intensity of the proposed development on a site that is on a scenic road and almost entirely within the watercourse buffer of the Blind Brook, we recommend placement of a conservation easement on the 35-foot vegetated buffer along the Bowman Avenue right-of-way required by the Scenic Roads Overlay District regulations. We further recommend that a pedestrian access easement should be placed on the property so as to allow location of a public walkway providing access from Bowman Avenue around the peninsula.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response L-2

The proposed Mitigation Plan complies with the Scenic Roads Overlay District recommendations. The Applicant proposes a 35 foot wide landscaped area running parallel to the front property line.

Comment L-3

The Applicant should provide a history of the creation Lot 2B2 and proof of its existence. In addition, the Applicant should clarify whether application to the Village of Rye Brook will be made to subdivide the property into two zoning lots and whether the two lots would comply with the minimum lot size requirements of Section 219-33F and Section 250-6A.(4)(b) of the Village Code.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response L-3

Three years ago, the former Town of Rye Tax Assessor created two (2) tax lots and assigned separate tax identification numbers for financing purposes only. The Property was never subdivided into two (2) zoning lots. It will remain as one (1) zoning lot.

Comment L-4

What abatement plan has been developed to address noise and dust pollution during the construction phase? Will air quality testing data be shared with school officials?

(Letter from Mr. Charles Coletti, Ph.D., Superintendent of Schools, dated November 5, 2004, see Appendix D)

Response L-4

In accordance with the Westchester County Best Management Practices, a full detailed Sediment and Erosion Control Plan will be provided, which includes dust control measures. It should also be noted that the school is located northeast of the Property and prevailing winds come from the North and West. Even so, some airborne dust may be detectable but it will be temporary in nature and will not be at perceptible levels

during the entire construction time. Throughout all operations, the Contractor shall provide all necessary measures to control dust through the use of water, calcium chloride or other material in accordance with the directions of the Owner's Field Representative, at such locations and during such periods as he may direct, or as may be required by local ordinance or Authorities. Best Construction Management techniques will be employed to mitigate dust generations to the maximum extent practicable.

The following control measures will additionally help mitigate noise and air quality impacts:

- ***All equipment that arrives on site will be inspected for proper mufflers and corrected if necessary.***
- ***A water truck will be available as needed to effectively control the dust.***
- ***A construction stabilized entrance will limit dirt off the site.***
- ***The road will be swept by a mechanical sweeper when necessary.***
- ***Operating engineers and laborers will wear ear and eye protection when necessary.***
- ***Trucks will not be permitted to idle on-site for more than five minutes.***

Comment L-5

Will K&M Realty provide the school district with the services of a planning consultant or company to address the concerns and other unstated concerns, which may be inherent in this project?

(Letter from Mr. Charles Coletti, Ph.D., Superintendent of Schools, dated November 5, 2004, see Appendix D)

Response L-5

K & M Realty's position is that there is no need for Planning Consultant. Frederick P. Clark, the Village's consultant, provides the service of discussing impacts and issues of the project.

Comment L-6

How will the developers and then the owners address security at the site during and after the construction period?

(Email from Mr. Charles Coletti, Ph.D., Superintendent of Schools, dated November 8, 2004, see Appendix F)

Response L-6

The Applicant has proposed to fence the Property during construction activities to provide safety for those on and off site. Security will be arranged privately by the homeowners if warranted, but that is not expected.

Comment L-7

Required permits. Bowman Avenue in the vicinity of the proposed action is a County road. The site plan in the draft EIS indicates that two driveway curb cuts are proposed on Bowman Avenue. Approval for this work from the Westchester County Department of Public Works under Section 239 F of the General Municipal Law is required. The driveways must also be designed in accordance with current County, State and AASHTO standards.

(Letter from Mr. Edward Buroughs, AICP, Deputy Commissioner, dated November 30, 2004, see Appendix H)

Response L-7

Only one (1) curb cut is proposed on Bowman Avenue pursuant to the Proposed Mitigation Plan. The Applicant is aware of requirements for permits issued by the Westchester County Department of Public Works under Section 239 F of the General Municipal Law. The Applicant will comply with all applicable requirements related to Westchester County DPW permits including AASHTO standards.

Comment L-8

Possible need for Stream Control Permit. Blind Brook and East Blind Brook are County drainage channels. A County Stream Control Permit may be required from the Westchester County Department of Public Works as part of the approval process for this project. We recommend that the Village Board require the applicant to contact the County Department of Public Works to verify the relationship of this project to the drainage channel and the need for a permit(s).

(Letter from Mr. Edward Buroughs, AICP, Deputy Commissioner, dated November 30, 2004, see Appendix H)

Response L-8

The DEIS notes that a Westchester County Stream Control Permit will be required for the project. The Applicant will contact the County Department of Public Works to verify applicable standards which must be met. Preliminary contact with the Department of Public Works, indicates that they require a permit to do work within channel lines or within one hundred (100') feet therefrom. The applicant will submit application for stream control permit to be executed in triplicate under Chapter 241, Article III of the Westchester County Administrative Code. Refer to "Application for Permit To Do Work Within Channel Lines or Within 100 Feet Therefrom" included as Appendix Q.

Comment L-9

Page 3, the Proposed Mitigation Plan. The FEIS states numerous times in the narrative sections and in the comment and response sections that the Mitigation Plan does not include development on the strip portion of the property and a conservation easement would be placed on the strip. While no buildings are proposed to be located on the strip, soil removal and replanting activities would be performed there. In addition, it appears that it may be necessary to locate some of the open space for each residential unit required by district regulations on the strip. Making the strip accessible and usable would require construction on the strip that has not been shown on plans or described in the FEIS. Therefore, the FEIS narrative and responses should be revised to add discussion regarding compliance of the Mitigation Plan with open space requirements, remove statements that the strip would not be developed and add discussion regarding use of the strip as open space for residents, if necessary, and the impacts of its development and use. The plans should be revised to show any development planned for the strip.

Response L-9

Comment noted. See Section I.C. Plans have been prepared by the Applicant that indicate that the peninsula will accommodate the required 2,000 square feet open space requirement (200 s.f. x 10 dwelling units =2,000 s.f.). All of the open space would be useable by residents. No development will occur on the strip portion of the property.

Comment L-10

Page 4, Paragraph 1. The last sentence should be revised to state it is the Applicant's opinion that the Mitigation Plan would have the same or fewer impacts than the Proposed Action.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response L-10

Comment noted. See Section I.C.

Comment L-11

Page 18, Paragraph 2. The last sentence of the paragraph should be identified as the Applicant's opinion.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response L-11

Comment noted. See Section I.F.9.

Comment L-12

Page 19. The last sentence of the first paragraph should be identified as the opinion of the Applicant. Similarly, the second sentence of the discussion in Section 10, Proposed Development, should also be identified as opinion.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response L-12

Comment noted. See Sections I.F.9 and I.F.10.

Comment L-13

Page 73, Response to Comment L-1. The FEIS states that Figure 1, Aerial Photography, demonstrates the location of the property and the surrounding natural areas including Blind Brook, the pond, ball field, school and undeveloped areas across the street and elsewhere. We note that an aerial photograph is provided in the FEIS.

However, the comment requested an expanded discussion of neighborhood character that should include descriptions of the natural areas referenced in the FEIS as noted above.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response L-13

Comment noted. See Response L-1.

Comment L-14

Page 73, Response to Comment L-2. The response states that the Mitigation Plan complies with the Scenic Road Overlay District (SROD) regulations. We note that the Mitigation Plan includes a 35-foot landscaped front yard on the peninsula portion of the property. We recommend that a 35-foot wide conservation easement running parallel to the front property line should be placed on the landscaped front yard to preserve the buffer created by the Mitigation Plan.

In addition, the response should discuss compliance of the Proposed Action with SROD regulations.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response L-14

Comment noted. See Response C-2 and Table C for SROD Regulations. The current site plans reflect a fully compliant site plan indicating a front yard setback of 45 feet. Parking areas are no longer within the required 45-foot front yard. A 35-foot wide conservation easement running parallel to the front property line is indicated to preserve the buffer created by the Mitigation Plan.

Comment L-15

Page 75, Response to Comment L-4. The FEIS states that, in accordance with Westchester County Best Management Practices, a fully detailed Sediment and Erosion Control Plan that includes dust control measures will be provided. However, the request for a discussion of noise impacts that may occur during construction has not been addressed. The response should be revised to discuss noise and air quality impacts and the mitigations proposed for both the Proposed Action and the Mitigation Plan. An erosion and sediment control plan should be provided for both the Proposed Action and the Mitigation Plan.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response L-15

Comment noted. See Figures Section for Sediment and Erosion Control Plan and Response L-4.

Comment L-16

Page 77, Response to Comment L-7. Here the FEIS discusses only the Mitigation Plan. The Proposed Action should also be discussed to present any change in the impacts commented upon.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response L-16

It is the Applicant's opinion that the Mitigation Plan will reduce nearly all impacts associated with development of the subject property. The attached table entitled "Comparison of the Mitigation Plan Alternative to the Proposed Action" is intended to compare relative impacts. See Section VII. Table D.

Comment L-17

Page 77, Response to Comment L-8. The FEIS acknowledges that a Westchester County Stream Control Permit from the County Department of Public Works will be required along with a permit to construct within channel lines or within hundred feet of a channel line. The applicable standards required by the Department of Public Works to obtain a permit should be included in the response along with a discussion of how the Proposed Action and the Mitigation Plan would comply with the standards.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response L-17

Comment noted. The applicant will submit application for stream control permit to be executed in triplicate under Chapter 241, Article III of the Westchester County Administrative Code. Refer to "Application for Permit To Do Work Within Channel Lines or Within 100 Feet Therefrom" included as Appendix Q.

M. ZONING

Comment M-1

The OB-S and R-10 zoning districts should be included in the list in Item (1) and should be added to the descriptions of zoning classifications and uses adjacent to the property following Item (1).

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response M-1

The comment is so noted. The OB-S and R-10 zoning districts are indicated on Figure 2 entitled "Zoning Map" as an attachment to this FEIS document.

Comment M-2

The paragraph should be revised to more explicitly state how the Village Code permits the uses, particularly multifamily residential. It is not entirely clear that multifamily uses are permitted in the C1 zone.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response M-2

The three proposed residential structures constitute a permitted use in the C1 Zoning District. Section 250-32A of the Zoning Ordinance lists the permitted principal uses in the C1 Zone as follows: "Permitted principal uses: all uses permitted in the C1-P District as permitted therein..." In substantially similar language, Section 250-31A includes as principal uses in the C1-P Zone all uses permitted in the "R Districts." Among the permitted uses in the "R Districts" is "multifamily dwelling", which is allowed in the RA-1 Zone. Based on the language of the cited provisions, the multifamily use permitted in the RA-1 Zone, is incorporated by reference as a permitted use in the C1-P District, which, in turn, is incorporated by reference as a permitted use in the C1 District. As the Zoning Ordinance defines a "multifamily dwelling" as "[a] building or portion thereof with three or more dwelling units," each of the three proposed residential buildings, which contain at least three units, constitute a multifamily dwelling allowed in the C1 District.

That such residential use is allowed in the C1 Zone is also confirmed by the treatment of the minimum usable open space requirements by the salient provisions of the Zoning Ordinance. The C1-P regulations state that no minimum usable open space is required, except that dwelling units must meet the usable open space requirements of the RA-1 District - - 200 square feet per unit. See Zoning Ordinance § 250-31H. Section 250-32H of the Zoning Ordinance adopts that standard as a requirement in the C-1 District, a standard which would be meaningless if dwelling units are not permitted in the district. Notably the 200 square foot per unit standard is applicable to multifamily dwellings in the RA-1 District, whereas single family dwellings in the other R zones require 1,200 square feet of usable open space per unit. Clearly, the imposition of an open space requirement for residential uses in the C1 Zone that equates to that utilized for multifamily (but not single family) dwellings in other zones, is another compelling indication that multifamily development is a permitted use in the C1 District.

Comment M-3

Block 22 of the Town of Rye Tax Assessment Map. All plans included with the DEIS identify Lot 2B as the property. No other documents in the DEIS refer to or substantiate the existence or creation of a second lot as part of the property. The Applicant should provide a history of the creation Lot 2B2 and proof of its existence. In addition, the Applicant should clarify whether application to the Village of Rye Brook will be made to subdivide the property into two zoning lots and whether the two lots would comply with the minimum lot size requirements of Section 219-33 F. and Section 250-6 A.(4)(b) of the Village Code.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response M-3

Three years ago, the former Town of Rye Tax Assessor created two (2) tax lots and assigned separate tax identification numbers for financing purposes only. The Property was never subdivided into two (2) zoning lots. It will remain as one (1) zoning lot.

Comment M-4

The discussion of the impacts to Land Use should be confined to factual description of the potential impacts, both positive and adverse. Applicant opinion should be identified as such. The proposed action will do more than remove "unsightly debris" and accomplish a "general clean up." It is the Applicant's opinion that a building will improve the aesthetics of the property. The subject paragraph should be rewritten or eliminated.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response M-4

The proposed development (Mitigation Plan) of the Property will result in the removal of the unsightly debris and a general cleaning up of the entire Property. It is the Applicant's opinion that the proposed development is environmentally sensitive and will improve the aesthetics of the Property considerably while being compatible in size, bulk and scale with the surrounding development. The development will permit public access and enjoyment of the Property which includes a portion of the Lower Blind Brook Pond and a portion of the East Branch of the Blind Brook. The Applicant is proposing to place a conservation easement on the "Strip" portion of the Property.

Comment M-5

The table should include required and proposed usable open space for the residential units;. In addition, required building height should be corrected to reflect the requirements of Section 250-31G. Regarding allowable heights of buildings for fire-proof and semi-fire-proof construction. Either two-story, 30-foot high non-fire-proof buildings are permitted or three-story, 40-foot high fire-proof or semi fire-proof buildings are permitted. The table should specify which permitted height is listed in the table.

In addition, the Applicant should verify the proposed height of the residential building to be three stories or 30 feet.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response M-5

The revised Table of Land Use is contained as a separate section of this FEIS. It includes required and proposed usable open space and also specifies the permitted height listed in the table. Heights of the proposed dwelling units will be approximately 35 feet (3 stories) which is permitted with fire proof and semi-fire proof construction.

Comment M-6

The paragraph describes topographic conditions that should be confirmed by analysis. Graphic sections through the neighboring property and the subject property or another type of visual representation should be provided and referenced here.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response M-6

It is the Applicant's opinion that there will be no significant impact on the closest residential dwellings to the Property due to topographic conditions and distance from the development (see Figures 1 and 3). Figure 1 provides an aerial photograph of the proposed site in relation to residential dwellings and other developments. Figure 3 provides a cross section of the site in reference to its surrounding environment. It is the Applicant's opinion that the neighboring property will not be significantly impacted by the development.

The proposed Mitigation Plan provides ten (10) residential condominium dwelling units on the Peninsula. No development is proposed on the Strip, therefore the current vegetation will remain as a buffer and help to screen and mitigate views of the residences on the Peninsula. The views of the Strip will remain the same as existing conditions. In addition, distance from the proposed residential condominiums on the Peninsula to the existing single family residential homes is approximately 837 feet.

Comment M-7

The paragraph lists reasons why the subject site is suitable for development. The public transportation facilities mentioned in Item (4) should be named and fully described.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response M-7

The Bee-line bus system provides Route 13 bus service at the intersection of Westchester Avenue and South Ridge Street which is approximately a block away from the Property and provides service between Ossining and the Port Chester Train Station. Public transportation is also available at the Port Chester train station located at 2 Broad Street between 186 Westchester Avenue and Irving Avenue.

Comment M-8

Page 80, Response to Comment M-4. The Response provides discussion regarding the negative and positive impacts of proposed development without identifying which plan (the Proposed Action or the Mitigation Plan) is the subject of the discussion. It appears, from the last sentence that discusses a proposed conservation easement on the Strip that the response provided refers to the Mitigation Plan. Both the Proposed Action and the Mitigation Plan should be discussed and responses should clearly differentiate issues relevant to the Proposed Action from those relevant to the Mitigation Plan.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response M-8

Comment noted. See Response M-4.

Comment M-9

Page 82, Response to Comment M-6. Both the Mitigation Plan and the Proposed Action should be discussed here.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response M-9

Comment noted. See Section VII Table D for the table entitled "Comparison of the Mitigation Plan Alternative to the Proposed Action."

Comment M-10

Page 82, Response to Comment M-7. The response states that the Bee-Line bus system is available at the corner of Westchester Avenue and South Ridge Street, a block away from the property and that public transportation is available at the Port Chester train station at 2 Broad Street. The relationship between the train station and the property should be discussed in more detail and information regarding a public transit means of access to this train station from the property should be provided.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response M-10

Comment noted. See Response M-7.

N. WILDLIFE

Comment N-1

The original environmental site assessment and impact analysis conducted by Evans Associates in September of 1999, Appendix 0, should be referenced along with the site inspection report of 2003 so the reader may review the study to determine how the findings and conclusions were reached.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response N-1

The comment is so noted. The Evans Associates Environmental Site Assessment and Impact Analysis, dated September 1999 and the subsequent inspection report, dated September 17, 2003 are included in the DEIS document and are therefore incorporated into this FEIS document by reference.

Comment N-2

The paragraph states that transitional vegetation will allow for increased nesting potential for birds and amphibians. Yet, not one amphibian is noted in Appendix B of the report as a potential resident species, common or uncommon. A list of birds observed on the property during the wildlife study is not included. In addition, lists of potential "common" and 'uncommon' bird species that might be expected after the site is improved are not included.

We recommend that the study should be updated to include the missing items.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response N-2

No amphibians were observed during the numerous site visits to the property by the environmental consultants. No amphibians are expected to utilize the Property after development.

Birds using the Property include the species common to urbanized areas in southern Westchester County. The trees and shrubs proposed to be planted on the Property will provide some nesting habitat as well as resting cover. Inkberry, dogwood, holly, viburnum, blueberry and pine shrubs will provide some food for songbirds, as will some of the flowering trees proposed.

Comment N-3

The paragraph states, in part, that human activity will cause "nuisance species" such as rats and raccoons to vacate the property. In fact, human activity usually increases the potential for regular activity by nuisance species that come to an area to exploit human refuse and the leavings of human activity. This discussion should be revised accurate and consistent in its view of "nuisance species."

We note that this paragraph states that "nuisance species" will remain on site as a result of human activity.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response N-3

The Applicant agrees that "nuisance species" will tend to not leave the Property but are not expected to have a significant impact. However, measures such as covered trash enclosures will help to control their population.

O. VISUAL RESOURCES

Comment O-1

A complete and accurate description of viewpoints into the site from surrounding properties should be substituted for the existing paragraph, which is a paragraph repeated from another section of the DEIS. The discussions in subsequent items in the section regarding views from various viewpoints should include a description of summer and winter views, which can be very different as evidenced by the photos included in Section XI of the DEIS. Statements regarding topography and existing features that affect views to the property should be substantiated by graphic viewshed illustrations showing both existing views and views after development.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response O-1

The Applicant has acknowledged that the aesthetic qualities of the Property and the proposed development are subjective. Photographs are now included herein to give the reviewer various potential visual perspectives from adjacent properties (see Section V. Photographs). The views of the Strip will remain the same as existing because no development of the Strip is proposed in the Mitigation Plan.

Comment O-2

The Last sentence of the paragraph states the Applicant's opinion regarding the aesthetic quality of the proposed development. The sentence should be identified as the Applicant's opinion or it should be eliminated. Comments in this section should be substantiated by graphic illustration of the views described. The illustrations should be a combination of

view shed diagrams and renderings or photo montages of views to the proposed development from the various viewpoints.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response O-2

The Applicant has acknowledged that the aesthetic qualities of the Property and the proposed development are subjective. Photographs are now provided herein to give the reviewer various potential visual perspectives from adjacent properties. See Section VII. Photographs.

Comment O-3

Page 14, Visual Resources. The first paragraph discusses tree preservation and removal. A tree survey and tree preservation and protection plan should be provided for all trees regulated by chapter 235 of the Village Code to be preserved and protected or removed during construction of both the Proposed Action and the Mitigation Plan. Discussion regarding tree preservation and protection and removal should be added to Section 4, Vegetation.

The second paragraph discusses a landscape plan for the property. The DEIS included a landscape plan for the Proposed Action. A landscape plan for the Mitigation Plan should be provided and the paragraph should include discussion regarding the differences between the two landscape plans.

Any landscape plan for development of the property should be designed to minimize the use of fertilizers, pesticides and irrigation that could impact the water quality of the watercourse. We recommend implementation of an integrated Pest Management (IPM) Plan for the property that includes selection of appropriate locations for specific plant species and use of species that conform to the IPM Plan goals. Vegetated areas should be

zoned to facilitate adjustment of maintenance practices to the specific requirements of each zone to minimize use of chemical and irrigation.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O).

Response O-3

Comment noted. See Figures Section for Landscaping Plan and Section I.F.4. In addition, the certified wetlands consultant will be on site periodically during construction phases. The consultant's primary work will be during initial clearing as well as during stabilization and planting on slope areas. Sediment and Erosion Control measures will be in place. All topsoil seeding and planting will be by hand or utilize hydroseeding and hydromulching methods.

Great care will be taken post construction while maintaining the grounds. According to the Applicant, a certified wetland consultant will be retained and will supervise all construction activities along the watercourse edge and within the watercourse buffer to monitor and provide reports to the Village according to the following schedule:

a. At a minimum on a bi-monthly basis during construction activities and
b. At the end of May, August and October for two years after the completion of all construction activities.

Said reports shall be provided to the Village within one month of each monitoring date, and will describe conditions along the watercourse edge and within the watercourse buffer and provide conclusions about the success of revegetation, substrate replacement, wildlife habitat and requirements for additional maintenance.

In the Buffer Zone reasonable efforts shall be made to keep all landscaped areas free of weeds and debris and all vegetation within said areas free of physical damage caused by chemicals, insects, diseases, lack of water or other causes. Damaged plants shall be

replaced with the same or similar vegetation on an annual basis.

The proposed monitoring and maintenance proposal will be the same for both the action and the mitigation plan. The Homeowner's Association (HOA) will assume responsibility for all post construction monitoring and maintenance.

Along the edge of the wetland, WG serves as an indication for wetland grasses and is called out on the landscaping plan. The specific grasses used are indicated on the plant schedule under grasses (WG) found on the landscaping plan.

P. HAZARDOUS MATERIALS

Comment P-1

This section should be updated to include discussion regarding the necessity for and details of the revised remedial action plan. An update on the status of the current remedial action plan should be provided, including reports of monitoring and findings by NYSDEC.

The reasons for a proposed change in remediation from continuing the current NYSDEC approved remediation to removal of contaminated soil from the site prior to construction should be provided.

In addition, a complete NYSDEC-approved revised remedial action plan regarding the removal of contaminated soil should be submitted along with NYSDEC comments on the revised plan.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response P-1

Due to the existence of gasoline contaminated soil present on the northern portion of the Strip, a remediation plan was commenced. The Applicant constructed a biovent remediation system in the impacted area and same has been operating since April 1996. The biovent remediation system is set forth in a Remedial Action Plan, dated November 1995, which was approved by the NYSDEC. The NYSDEC is monitoring the remediation of the Strip.

Remediation of the impacted area is continuing to date and has improved the soil conditions. The NYSDEC continues to monitor the remediation of the impacted area.

Since the existing contamination has not completely dissipated at this time, the Applicant proposes removal of the contaminated soil.

The Applicant has decided to change the form of remediation from the current bio-vent system to removal of the soil from the Property because removal is a faster and more definite remediation process.

According to the Applicant's environmental consultant, Envirostar Corporation, remediation of the impacted soil will consist of removal of the top six feet of unimpacted soil from above the impacted area. Unimpacted soil will be stockpiled at the southern end of the property and covered with plastic sheeting to prevent runoff. Impacted soil will then be excavated and removed. Excavated soil will be sent for treatment and disposal. If necessary, new soil will be brought on-site to fill in the excavated area.

According to a letter from the Applicant's consultant Mr. Frank DiBartolo, President/Owner of Envirostar Corporation to Kip Konigsberg, Esq. dated April 10, 2006, the applicant believes that NYSDEC will not require a revised remedial action plan prior to commencing this work. Once the soil is removed from the Property a letter will be obtained from the NYSDEC stating no further action will be required.

Additionally, under the Mitigation Development Plan, blasting is not anticipated. With regards to stockpiling, there will be temporary stockpiling on the strip. Stockpiled material will be reused. There will potentially be temporary stockpiling on the peninsula and the material will not be reused. This material will be removed from the site during foundation construction.

Comment P-2

Page 87, Response to Comment P-I. We note that the response provides an update on the Status of the current remedial action plan. The response states that the biovent remediation system implemented in 1996 continues to operate and that remediation continues to be monitored by NYSDEC. It further states that remediation has improved soil conditions.

Evidence from NYSDEC that Confirms NYSDEC monitoring and findings regarding the current Remedial Action Plan should be provided as requested by the commenter.

The response goes on to state that the Applicant decided "to change the form of remediation from the current biovent system to removal of the soil from the Property because removal is a faster and more definite remediation process. The Applicant was asked by a Board member to remove the soil and the Applicant agreed." We know of no decision by any Board in Rye Brook that directed the Applicant to change remediation methods. Therefore, reference to such direction should be eliminated from the response and generally from the FEIS unless the Applicant can produce evidence of a decision that directed removal.

If it is the Applicant's intention to remove the contaminated soil rather than continue the current remediation under the Proposed Action or the Mitigation Plan, then the response should provide evidence from NYSDEC that removal of impacted soil will not require approval or monitoring by NYSDEC or any other agency.

The response should also provide information as to whether or not blasting would be anticipated under either development plan.

According to other statements in the response, unimpacted soil, removed from the strip to allow access to impacted soil, would be stockpiled at the south end of the property and would be covered with plastic sheeting to prevent runoff. Additional information should be provided including but not limited to how long unimpacted soil would be stockpiled, how much soil may be stockpiled, whether it will be reused, bow it will be used, or if it will be removed from the site. If it becomes necessary to bring new soil to the site to replace impacted soil that cannot be decontaminated, then a discussion of how much new soil will be required should be provided.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response P-2

Comment noted. See Response P-1. The applicant has provided a current letter from a qualified Environmental Consultant which reiterates that the Remedial Action Plan (RAP) was previously approved by NYSDEC. After contacting Mr. John O'Dee of the NYSDEC, the applicant was advised that the RAP would not need to be revised if it desired to remove any remaining contaminated soils from the property. Should the applicant proceed with the removal of impacted soils from the property, then the environmental consultant would follow all NYSDEC requirements and obtain a "No Further Action" letter from NYSDEC (See Appendix R for letter from Envirostar).

Q. CONSTRUCTION IMPACTS

Comment Q-1

A subsection containing narrative, drawings and details describing a proposed construction plan that includes phasing, if any, a time and task schedule, hours of operation, projected truck trips, locations for stockpiles, temporary access points, soil removal and fill operations, an erosion and sediment control plan, monitoring and any other information necessary to understand the construction process for the project, should be added here.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response Q-1

Proposed construction activity on the Peninsula (the only portion of the Property proposed to be developed) can be divided into five (5) basic Phases. Construction activities will be limited to weekdays between the hours of 7:00 AM and 4:00 PM.

i. Ground Clearing which consists of removal of unwanted vegetation, earth and debris piles will take approximately 5 days to complete. Two large trucks making a total of 4 trips and 3 pick-up size vehicles will be used during this phase. Typically, bulldozers, dump trucks, chainsaws and front end loaders are used during this phase of the work. A laborer and a machine operator would drive over from White Plains and access the site via Bowman Avenue at 7:00 AM and depart from the site at 4:00 PM. Sediment and erosion(S&E) control measures will be installed at the beginning of this phase of work. Monitoring, by the site engineer, is begun at the time of S&E installation. Minimal stockpiling of soil will be required since no topsoil presently exists in the development area.

The selected remedial option is removal and offsite disposal of impacted soil. Unimpacted soil will be stockpiled at the southern end of the property. Silt fence and/or haybales will be installed along the eastern shoreline of Blind Brook to minimize the potential for soil to migrate offsite to the Brook during storm events. All transport vehicles will be decontaminated before leaving the site and all trailer beds will be completely covered with canvas tarps following loading to prevent dust emissions during transport. Because of the small size of the site work will be staged to minimize the number of trucks present at the site. Two large trucks making a total of 4 vehicular trips per day and 1 pick-up size vehicle making 2 vehicular trips will be used during this phase. Trucks will not be permitted to access or leave the site during Port Chester Middle School access or departure times. If there is insufficient material to backfill the excavation, fill material will be brought in from an appropriate clean-fill facility.

ii. ***<u>Earthwork and Excavation</u> which consists of the modification of the existing topography to the desired sub base elevations needed to support the development. This phase will take approximately 10 to 20 days. Two large trucks making a total of 2 to 4 vehicular trips and 3 pick-up size vehicles will be used during this phase. Equipment typically involved in this phase includes bulldozers, graders, scrapers and backhoes. Similar to the previous phase, a laborer and a machine operator would drive over from White Plains and access the site via Bowman Avenue at 7:00 AM and depart from the site at 4:00 PM. It is estimated that approximately 1,500 cubic yards of material will be imported to the Property.***

iii. ***<u>Paving, Utility and Building Foundation</u> construction which consists of the installation of utility systems, including storm drainage, sanitary sewer, water, electricity, gas, telephone and cable television on the Property. This phase will take approximately 20 days. Three large trucks making a total of 6 vehicular trips and 4 pick-up size vehicles making a total of 8 to 10 vehicular trips will be used during this phase. An excavator and a laborer would drive over from Elmsford and access the site via Bowman Avenue at 7:00 AM and depart from the site at 4:00 PM. All other utility companies including plumbing, gas and***

electric would work on-site and only leave if necessary to retrieve supplies not on-site. Following installation of utilities, the pavement sub base and bituminous concrete courses are placed. Concurrently with the utility construction, the building foundations will be constructed, including piling and/or concrete slabs. During this phase of the work, dump trucks, asphalt pavers, backhoes, concrete trucks and steamrollers are used.

iv. ***<u>Building Construction</u> - This phase primarily involves the use of small cranes of various sizes, construction of scaffolding, use of power tools and hands tools to construct the building interior and its facade. This phase will take approximately 90 days. Four large vehicles making a total of 8 vehicular trips and 6 pick-up size vehicles making a total of 12 vehicular trips will be used during this phase on a daily basis. Four masons/laborers would drive over and access the site via Bowman Avenue at 7:00 AM and depart from the site at 4:00 PM. The buildings are modular therefore one crane operator and set crew would be on-site during this phase. Approximately ten people would be on-site during this construction phase.***

v. ***<u>Project Finishings and Landscaping</u> initially includes landscaping by utilizing hydromulching and hydroseeding methods. This phase also consists of basic job cleanup including the existing pavement, adjustment of utilities structures to proper grade to accommodate asphalt top and examining pavement for any settlement, breakup and general deterioration. This phase will take approximately 20 days. Four large vehicles making 8 vehicular trips and 6 pick-up size vehicles making a total of 12 vehicular trips will be used during this phase on a daily basis. Four to five people working on the landscaping would be bring in the plant material, plant and leave the site when completed between the hours of 7:00 AM and 4:00 PM.***

Also refer to the response to comment Q-3 for additional information. Construction access to the site will be via the permanent access drive to the site. There will likely be temporary stockpiling on the peninsula. Stockpiling will occur on the strip in

conjunction with environmental remediation activities. The stockpile will be on-site for a duration of one to two weeks.

Comment Q-2

The Applicant should provide a sound level propagation model or illustration to facilitate understanding of noise levels that would effect nearby residences, other notable developments and the middle school.

An explanation of "peak sound levels" should be included here. In addition, the paragraph contains statements that seem to be confusing or conflicting. For example, the paragraph states that the decibel level at the school, which is 1,000 feet away from the site, will be approximately 60 dBA. The following paragraph states that the peak noise level at the closest residence, which is 270 feet away will be 58 dBA. Suggesting that the noise levels will be lower at a point closer to the site. If the statements are correct, it is not obvious why. Further explanation or correction of the statements should be provided.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response Q-2

Short term increases in noise levels are anticipated due to construction activity on the Property. This anticipated short term impact is anticipated to raise noise levels in the vicinity of the Property during those hours when there is construction activity.

Construction equipment noise is regulated by Environmental Protection Agency noise emission standards. These requirements mandate most construction equipment and motor vehicles meet specified noise emission standards, and that except under exceptional circumstances, construction activities be limited to weekdays between the hours of 7:00 AM and 4:00 PM. In addition, construction materials must be handled in transfer in such a manner as not to create unnecessary noise.

The Applicant has provided a Noise Proximity Map (DEIS Plan) & Noise Proximity Map (Mitigation Plan) (see figures 10 & 11) which facilitates an understanding of noise levels and its effects on nearby developments and residences. Specifically, the distances from the proposed development (DEIS Plan) to nearby developments and residences are as follows:

- ***Residential properties: approximately 265 feet.***
- ***Offices: approximately 115 feet.***
- ***Theatre in Rye Ridge Shopping Center: approximately 540 feet.***
- ***Port Chester Middle School: approximately 875 feet.***
- ***Ballfield: approximately 122 feet.***

The distances from the proposed development (Mitigation Plan) to nearby developments and residences are greater, as follows:

- ***Residential properties: approximately 837 feet.***
- ***Offices: approximately 399 feet.***
- ***Theatre in Rye Ridge Shopping Center: approximately 741 feet.***
- ***Port Chester Middle School: approximately 1,052 feet.***
- ***Ballfield: approximately 193 feet.***

It is the Applicant's opinion that construction noise will be temporary in nature and will not have a long term effect on the surrounding residences and development.

The development proposed as the "Mitigation Plan" is to be compromised of ten (10) residential condominium dwelling units on the Peninsula portion of the Property. The Strip portion of the Property is proposed to be in permanent conservation easement and remain undeveloped. Therefore, it is the Applicant's opinion that construction noise will have a lesser impact than the original proposed action.

All impacts from the Rye Ridge Shopping Center would be reduced by moving the residential units to the peninsula. Vehicular traffic from patrons, workers and delivery trucks entering and leaving the office building and shopping center will not have a significant noise impact on the residences on the peninsula. This is a result of them being further away. Security will also be improved as the residences will no longer be adjacent to the parking area and exhaust from vehicles will not be as close in proximity. Under the proposed development, noise air pollution in the form of exhaust and security are more of an issue because the residential would be adjacent to the west parking area of the medical office building.

Comment Q-3

Discussion of the type of "best construction management techniques" and how they would be employed to mitigate dust generation should be added here. The explanation should include monitoring during each construction phase that would be used to ensure dust management techniques are successfully controlling airborne dust levels.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response Q-3

The Project is anticipated to be a single phased construction with earthwork occurring only during the first six (6) months of construction activities. Dust from construction of the project will be mitigated by typical construction site dust preventative methods, including:

Creating crushed stone track pads at the site's entries. These pads cause dust and dirt to fall from truck and vehicle tires prior to the vehicles exiting the existing roads.
The developer will use watering trucks daily when temperatures are above freezing to wet down traveled surfaces and minimize dust generated.

Seed exposed areas with quick germinating "contractor's mixes" and provide appropriate mulching of these areas to provide plant cover to retain soil and minimize dust.

Truck movements would be spread throughout the day and would generally occur between the hours of 7:00 AM and 4:00 PM, depending on the period of construction. The applicant has committed to fully coordinating its construction schedule with Port Chester Middle School to avoid conflicts which may occur during school arrival and dismissal times. According to school district officials, the Port Chester Middle School begins its school day at 8:10 AM and ends at 2:50 PM. Arrival times range from 7:30 to 8:30 AM and dismissal times range from 2:00 to 3:10 PM. The applicant has indicated that heavy construction traffic will be avoided during these times. If unavoidable, the applicant proposes to use flagmen to facilitate traffic flow. Construction workers typically arrive at the job site between 7:00 and 7:30 AM and depart between 3:30 and 4:00 PM. Therefore the additional vehicles generated by the construction will generally not coincide with the roadway peak hours.

Comment Q-4

The paragraph states that the number of construction vehicles and delivery vehicles destined travel to and from site during construction is relatively small. The Applicant should provide an explanation of the number of vehicles expected to travel to and from the site during each phase of construction.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response Q-4

Maintenance and protection of traffic will be provided during the on-site construction to minimize disruption to the motoring public. Heavy vehicles associated with the construction itself will be brought onto the site and remain on-site rather than travel to and from the site each day. Construction workers typically arrive at the job site between

7:00 and 7:30 AM and depart between 3:30 and 4:00 PM. Therefore the additional vehicles generated by the construction will generally not coincide with the roadway peak hours.

The routes of the construction traffic will be along Bowman Avenue and primarily to and from the west towards Interstate 287. The quantity of construction vehicles will vary depending on the stages of construction. (See Section I, Part F for construction impacts and proposed mitigation measures). It is expected that the earthwork cuts and fills will be relatively minor, which will minimize the need to bring material to and from the site.

Construction vehicles generally arrive prior to the arrival of students and staff at Port Chester Middle School (see Appendix N for Port Chester Middle School Traffic Schedule).

Comment Q-5

An explanation of how construction traffic would be controlled and scheduled so as not to affect the arrival and departure of students at the middle school should be added. The explanation should include a description of the school schedule and the proposed construction traffic schedule.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response Q-5

It is the Applicant's position that overall traffic related impacts related to the proposed development are minor and will not impact or be impacted by the adjacent school district property. However, if construction related impacts are determined by the Village to be a hindrance to school operations, flagmen will be utilized to facilitate traffic.

Comment Q-6

Page 17, Construction Impacts. The last paragraph discusses noise buffers for the property. We note, for the record, that vegetation can provide visual buffering but generally does a poor job regarding attenuation of noise. The vegetation located on and around the site would not provide buffering for construction noise. Statements to that effect should be removed the FEIS.

In additional, since noise generally follows a line-of sight path to an area impacted by the noise, statements suggesting the office building adjacent to the site and Rye Ridge Shopping Center would serve as buffers for noise reaching the Middle School is misleading and should be removed from the FEIS.

Response Q-6

Comment noted. See Section I.f.9. The applicant has committed to fully coordinating its construction schedule with Port Chester Middle School to avoid conflicts which may occur during school arrival and dismissal times. According to school district officials, the Port Chester Middle School begins its school day at 8:10 AM and ends at 2:50 PM. Arrival times range from 7:30 to 8:30 AM and dismissal times range from 2:00 to 3:10 PM. The applicant has indicated that heavy construction traffic will be avoided during these times. If unavoidable, the applicant proposes to use flagmen to facilitate traffic flow.

Comment Q-7

Page 19. Construction Impacts. This section states "the number of vehicles, both construction and delivery, destined to and from the property during construction is relatively small." The Applicant should address, in greater detail, the anticipated impacts of construction-related traffic activity. The Applicant should provide details to quantify the projected number and type of construction-related vehicles and time periods of travel to and from the site during each phase of the construction process. This comment was originally submitted as part of our review memorandum dated September 23, 2004.

Typically, this effort would include the preparation of a Gantt style chart and narrative presenting the following information: the construction schedule, stages and timeline; the identification of the number of construction workers and support staff at significant stages; number and type of construction-related vehicles, arrival and departure patterns, and peak hour volumes; and a supporting narrative detailing the construction process and the proposed construction management plan that will identify site access usage and the potential impacts to the local roadways and Port Chester Middle School.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response Q-7

Comment noted. See Figures Section for Sediment and Erosion Control Plan for sequence of construction information. See Response Q-1.

Comment Q-8

Page 89, Response to Comment Q-1. The response includes information regarding construction phasing, a time and task schedule, hours of operation and projected truck trips. Information regarding temporary access points and location of stockpiles should be provided, as requested. It is our opinion that information of sufficient detail regarding construction traffic, needed to determine the impacts of construction-related traffic, has not been provided. See Traffic and Transportation comments, Section II.H.

The response states that monitoring will be provided by the site engineer at the time sediment and erosion control measures are installed. The response should provide detailed information regarding a monitoring plan for all phases of construction. It should include the statement that "monitoring will continue throughout the construction process?"

According to the response, proposed construction activity on the Peninsula can be divided into four basic phases. If these construction phases do not differ appreciably from those anticipated for the Proposed Action, it should be so stated. If there would be differences between the Proposed Action and the Mitigation Plan regarding construction impacts, the differences should be discussed in detail. Since soil removal activities would require construction on the Strip for both development plans, a discussion of construction on the Strip should be part of the construction plans for both.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response Q-8

Comment noted. See Response Q-1.

Comment Q-9

Page 91, Response to Comment Q-2. We note the possibility that the Mitigation Plan may have fewer short-term noise impacts due to construction compared to the Proposed Action. However, the response provided does not substantiate the Applicant's opinion that the impacts would be fewer or less if the Mitigation Plan is implemented. The response should be revised to specifically address the concerns of the commenter regarding both development plans, to clarify specific information in the DEIS and/or provide substantiation for the opinion that impacts would be reduced by the Mitigation Plan. We note that vegetation can provide visual buffering but generally does a poor job regarding attenuation of noise. The vegetation located on and around the site would not provide buffering for construction noise. Statements to that effect should be removed from the response and the FEIS generally.

In addition, since noise generally follows a line-of sight path to an area impacted by the noise, statements suggesting the office building adjacent to the site and Rye Ridge Shopping Center would serve as buffers for noise reaching the Middle School is misleading and should be removed from the FEIS.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response Q-9

Comment noted. See Response Q-2.

Comment Q-10

Page 94, Response to Comment Q-4. The Response does not address the comment. The comment requested the Applicant to provide an explanation of the number of vehicles expected to travel to and from the site during each phase of construction. The Applicant should reference the information provided in the revised construction impacts section in Section 1, Part F, Impacts and Proposed Mitigation Measures.

The response states that "construction workers would typically arrive at the job site 8:00 AM - 8:30 am and depart 3:30 pm - 4:00 pm. Therefore, the additional vehicles generated by construction will generally not coincide with the roadway peak hours." However, the arrival and departure of construction vehicles and workers seems to coincide with traffic associated with a nearby school, shopping center and office buildings and other traffic conflicts might develop as well. The school schedule and information regarding traffic at the school, shopping center and office building should be provided. The response should be revised to discuss and quantify this traffic and relate it to traffic that would be generated by construction on the site for both the Proposed Action and the Mitigation Plan.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response Q-10

Comment noted. See Response Q-4.

Comment Q-11

Page 94, Response to Comment Q-5. The Response should provide an explanation of how construction traffic would be controlled and state that construction-related traffic activity would be scheduled, when possible, to avoid the peak periods of activity on campus at the Port Chester Middle School and the peak periods of roadway activity along area roadways. The Applicant should reference the information provided in the revised construction impacts section in Section 1, Part F, Impacts and proposed Mitigation Measures.

The Applicant states that overall traffic impacts related to the proposed development are minor and will not impact or be impacted by the adjacent school. The response further states that if construction impacts are determined by the Village to be a hindrance to school operations, flagmen will be utilized to facilitate traffic. However, a school schedule and proposed construction traffic schedule have not been provided so that the nature of traffic impacts can be determined. Although the response states that heavy vehicles will be brought to the site and remain on site during the construction, it is our understanding that other truck and traffic movements associated with construction, soil removal and delivery of fill and other materials may be expected. Therefore, the school schedule and a detailed construction traffic schedule should be provided and the response revised to quantify and compare traffic impacts related to both development plans - the Proposed Action arid the Mitigation Plan.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response Q-11

Comment noted. See Appendix N which indicates the adjacent school schedule. The Application has indicated that construction will be coordinated to avoid conflicts between school activities and significant construction trucking activities.

R. SITE PLANS

Comment R-1

The 100-foot watercourse buffer should be indicated on all site plans.
The setbacks and buffers of the district should he indicated on all site plans.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response R-1

As requested, Site Plan drawings will reflect the regulatory 100 foot watercourse buffer. All other regulatory buffers are indicated on the project Site Plans.

Comment R-2

Site sections showing existing conditions and proposed development should be provided.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response R-2

A Site Section has been provided. Please refer to Figure 4.

Comment R-3

Sheet SP-2 shows grading activity *on* adjacent properties. The grading plan should be corrected.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response R-3

All grading activities in connection with the proposed action will be limited to the subject Property. Final site plans will reflect this.

Comment R-4

Complete floor plans and full sets of elevations for the restaurant and the residential buildings depicting how the buildings would actually appear should be provided. Rendered elevations showing architectural details, materials and colors of the buildings should be included with the drawing sets.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated September 23, 2004, see Appendix I)

Response R-4

The Applicant has previously submitted Photographs in the DEIS showing both the rear and front view of the proposed restaurant along with a figure showing residential elevations. The Applicant has included the above referenced items herein. See Figure 9 and Photograph P-8. The restaurant was part of the original layout plan which is not the Mitigation Plan. The development proposed as the "Mitigation Plan" proposes ten

(10) condominium units only on the Peninsula portion of the Property. Therefore, the view of the restaurant is no longer relevant.

Comment R-5

Page 95, Response to Comment R-1. The Mitigation Plan drawings do not show the 100-foot watercourse buffer as requested. The watercourse buffer, the 35-foot buffer required by the SROD regulations and all easements proposed should be shown on all site plans for both the Proposed Action and the Mitigation Site Plan for reference during the review process.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response R-5

Comment noted. See Figures Section for Site Plans. (See site plans for 100' watercourse/wetland buffer and 35' vegetative buffer required by the SROD).

Comment R-6

Page 95, Response to Comment R-2. The site section provided in Figure 4 shows existing conditions. Site sections showing development proposed by the Proposed Action and the Mitigation Site Plan should be provided as requested.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response R-6

Comment noted. As section drawing of the Mitigation Plan has been provided as requested, see Section IV Figure 13.

Comment R-7

Page 96, Response to Comment R-4. We continue to request floor plans for all development proposed in the Proposed Action and the Mitigation Site Plan.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response R-7

Comment noted. Floor plans of final design of any authorized building will be provided to the Village Building Department as part of the Building Permit process. A narrative has been prepared at this time describing the typical floor plans of the proposed buildings and must be approved by the Architectural Review Board.

Ten units are proposed to be constructed on the Peninsula. Units 1 through 4 and 8 through 10 will be the same size. The footprint of each of these units is approximately 27 feet wide and 40 feet deep. Units 5 through 7 will be the same size. The footprint of each of these units is approximately 30 feet wide and 35 feet deep. All ten units will have three levels.

The ground level will be on grade and will have a two car 400 square foot garage (one 16 foot garage door). The HVAC system will be located on the bottom level. At the present time, access to the rear of the units from this level is proposed. The ground level will be unfinished space. A purchaser can have the space finished as an option. There will be an interior stair case from the ground level to the first floor level.

The first floor level will have 9 foot ceilings. The main entrance to the unit will be located on this level. An exterior stairway will lead from the driveway area to the front door. The first floor will have an eat-in kitchen, a family room with fireplace, a half bathroom, coat closet, and a dining room. There will be a stairway leading down to the ground level and a stairway leading to the second floor. A deck will be located off the family room.

The second level will have 9 foot ceilings. The master bedroom will have at least one walk in closet and a private bathroom. Two additional bedrooms will be located on this level. These two bedrooms will share a full bathroom. There is a space for a laundry room on this level. A purchaser may have the option to convert the space to a master bedroom closet and/or linen closets and place the laundry room on the ground level.

The proposed exterior is clapboard cedar siding which may change to brick. The roof will be dark asphalt shingle Timberline roof. Decks will be constructed from pressure treated materials. All driveways and roadways will be asphalt.

Comment R-8

Page 98, Site Plan. A complete set of development plans should be provided for the Mitigation Site Plan so sufficient information regarding its impacts is available for review. It appears, from the plans provided that there may be insufficient space on the Peninsula to locate 10 units of housing there. Sensitive environmental areas on the peninsula, such as steep slopes and wetland restoration areas adjacent to the watercourse would be less than ten feet from some of the dwelling units. Such areas would require limitation of human access and traffic to stabilize and survive. It is doubtful that these areas could be protected when they are part of the rear yards of residential units.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response R-8

Comment noted. See Figures Section for Site Plans. A post and rail fence has been provided on the site plans as an aesthetic fence/barrier between the top of the slope and the water. This will allow limitation of human access and traffic to these sensitive environmental areas. This fence will be 3' to 4' high and will have openings/doors for maintenance purposes only.

Comment R-9

Page 99, Table 11, Parking Requirements. The minimum parking requirement for C1 District is 2 parking spaces per unit plus one space per unit for visitors. Therefore, the total number of required parking spaces for the 10-unit Mitigation Plan is 30 spaces. However, the Mitigation Plan proposes 45 parking spaces - 40 for residents and 5 for visitors. We recommend that the number of parking spaces should be reduced to 2 spaces for each unit and that one space per unit for visitors should be provided, as required. This would be 20 spaces for residents at their units and 10 spaces for visitors located elsewhere on the site.

Decreasing the number of parking spaces to the number required would help reduce the amount of impervious surface proposed in the Mitigation Plan and provide more open space on the peninsula. The Applicant should consider providing units with a one car garage and a second parking space on the driveway in addition to a common parking with 10 spaces for visitors.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response R-9

Comment noted. See Figures Section for Site Plans. The Applicant has provided parking beyond the Village requirement which, in their opinion, meets the development objective. Parking spaces include two garage spaces and one driveway space. Visitor spaces are proposed at a ratio of 1.5 per unit. An additional 10 visitor spaces are located in the driveway and the remaining five are located in the interior of the site. In order to decrease the amount of impervious surfaces proposed, the driveways have been narrowed to the maximum extent practicable and are now 18' wide.

Comment R-10

Page 101, Planning and Zoning Issues. Pursuant to Section 250-32.H of the Rye Brook Code, the minimum amount of usable open space required for residential development on a lot in the C1 Zone should be "the same as in the C1-P District." Section 250-31.H states requirements shall be the same as in the RA-l District for any dwellings. Therefore, Section 250-26.H determines the minimum required usable open space to be 200 square feet for each dwelling unit or 2,000 square feet for a 10-unit residential development. The FEIS should discuss the amount and location of required and provided open space for both the Proposed Action and the Mitigation Plan. The site plans should be revised to demonstrate compliance with the requirements.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response R-10

Comment noted. See Section III.A.3. Plans have been prepared by the Applicant that indicate that the peninsula will accommodate the required 2,000 square feet open space requirement (200 s.f. x 10 dwelling units =2,000 s.f.). All of the open space would be useable by residents. No development will occur on the strip portion of the property.

Comment R-11

Page 102, Last Paragraph. The last paragraph states that the dwelling closest to the site is located approximately 270 feet from the southeast corner of the property. However, the first bullet on Page 17 indicates that other residential properties are 265 feet from development proposed by the Proposed Action and the sixth bullet on the same page indicates that other residential properties are 837 feet way from development proposed by the Mitigation Plan. The Response to Comment M-6 on Page 82 states "the distance from the proposed residential condominiums on the Peninsula to the existing single family residential homes is approximately 733 feet." When discussing construction related noise impacts, the first bullet on Page 92 states that residential properties are located approximately 837 feet from development proposed by the Mitigation Plan. The Applicant should revise the responses to clarify or correct distance(s) at which the closest residences are located and use the distance(s) consistently throughout the document.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response R-11

Comment noted. Section III.A.3. The residential properties are 265 feet from development proposed by the proposed Action. The residential properties are 837 feet away from development proposed by the Mitigation Plan.

Comment R-12

Table of Land Use. The table should be revised to include the requirements of the Bowman Avenue Scenic Roads Overlay District and compliance of both development plans with the overlay district regulations.

(Memorandum from Ms. Marilyn Timpone Mohamed, ASLA, AICP, Senior Associate/Planning/Environment, dated January 5, 2005, see Appendix O)

Response R-12

Comment noted. See Table C for SROD requirements.

Comment R-13

What is the static pressure and hydrant flow capacity and residual pressure nearest the project? Locate this hydrant and pipe size coming to the site.

(Memorandum from Mr. Dolph Rotfeld, P.E., Dolph Rotfeld Engineering, P.C., dated 05/23/2006)

Response R-13

The proposed water distribution system will consist of a series of six (6") inch diameter and eight (8") inch diameter water mains which will extend from the existing twelve (12") inch diameter water main located at the Bowman Avenue/South Ridge Street intersection. The service mains will provide domestic service for each building, fire service for building sprinkler systems, and fire hydrant service for fire protection services. Fire hydrants will be located at strategic locations at the entrance to the proposed development and within the central portion of the site (see large scale drawing SP-3 "Utilities and Lighting Plan"). Currently, there are no fire hydrants located along Bowman Avenue with the exception of those at the intersection of North Ridge Street.

However, several hydrants exist within the Rye Ridge Shopping Center immediately adjacent to this project site.

The proposed distribution system will meet the requirements of the Aquarion Water Company, Westchester County Department of Health and the New York State Department of Health. Aquarion Water Company has indicated that adequate flows and pressures exist to serve the project site. Information has been requested related to specific flow and pressure information and will be provided to the Village upon receipt.

S. SANITARY SEWER

Comment S-1

It is proposed to serve the residential units with a 4" private sanitary sewer. This sanitary sewer must be a minimum of 8" diameter and be owned by the Village. The proposed sanitary sewer parallels an existing village-owned sewer. Consideration should be given to tying each residential unit directly to this existing sewer.

(Memorandum from Mr. Michael Sakala, P.E., Assistant Commissioner, Bureau of Environmental Quality, dated October 7, 2004, see Appendix C)

Response S-1

In accordance with the Westchester County Department of Health requirements, any sewer which serves more than one (1) residential unit will be required to become part of the municipal sewer system and therefore will be a minimum of eight (8") inches. The Village will thereafter own and maintain this system.

Comment S-2

Identify the slope and size of the existing off-site sanitary sewer line for the next four panels past point of connection. Have the lines been checked for capacity and surcharge?

(Memorandum from Mr. Dolph Rotfeld, P.E., Dolph Rotfeld Engineering, P.C., dated 05/23/2006)

Response S-2

Wastewater that is generated from the development will be conveyed by four (4") inch diameter sewer pipes into the existing sanitary sewer systems adjacent to the Property. From the connection points the wastewater will be conveyed via the existing collection system into the Blind Brook Wastewater Treatment Facility. No pumping facilities will be required to service the proposed development.

All new sewer lines will be constructed in accordance with the requirements of the Village of Rye Brook, Westchester County Department of Health and the New York State Department of Health. The design and construction of the system would comply with all applicable codes and regulations. Plans and specifications of the proposed sewer system would meet or exceed the requirements of the Village of Rye Brook. Existing sewerage infrastructure is depicted on the project site plans. A connection will be made to the Westchester County Trunk line which crosses the frontage of the property.

According to the New York State Department of Environmental Conservation, the proposed development will utilize approximately 3,000 gpd (refer to Table 8 located in the DEIS document). The projected sewer flows have been calculated with respect to the associated buildings and the use of water saving plumbing devices. The director of the Westchester County Department of Environmental Facilities indicates that the wastewater treatment plant has sufficient capacity to handle the additional flows anticipated from the project. Also, the WCDEF has verified that the existing sewer system, at the proposed connection points, has sufficient capacity to accommodate the development (refer to Appendix P, Correspondence of the DEIS document).