



300 State Street, Suite 502  
Rochester, New York 14614  
585.434.0790 *phone*  
585.563.7432 *fax*  
www.zoglaw.com

**VIA E-MAIL ([japmac@aol.com](mailto:japmac@aol.com)) AND HAND DELIVERY**

May 25, 2022

Mr. Joe McIlroy, Chairman  
Town of York Planning Board  
PO Box 187  
York, New York 14592

**RE: PROPOSED YORK TRAVEL CENTER APPLICATIONS FOR SPECIAL USE PERMIT AND SITE PLAN APPROVAL, 0 MAIN STREET, TOWN OF YORK**

Dear Chairman McIlroy and honorable Planning Board members:

I write to you on behalf of my clients, Davies and Heather Nagel, the adjacent property owners to York Travel Center, LLC's ("the Applicant") proposed York Travel Center, currently before this board for a Special Use Permit and Site Plan Approval. We urge this board to make a positive declaration of environmental significance for this project.

**THE PLANNING BOARD MUST MAKE A  
POSITIVE DECLARATION OF ENVIRONMENTAL SIGNIFICANCE**

For Type I and Unlisted actions, the Lead Agency is responsible for making a written determination of significance. 6 NYCRR 617.7(a).

The Court of Appeals has routinely held that unless a hard look is taken at the environmental factors found in the EAF before a finding of nonsignificance is made, there is a danger that the subsequent finding, made after the EAF is reviewed, would merely be a 'rubber stamp' or afterthought. *E.F.S. Ventures Corp. v. Foster*, 71 N.Y.2d 359, 371 (1988).

The Lead Agency may issue one of three determinations: a positive declaration ("Pos Dec") requiring preparation of an Environmental Impact Statement ("EIS"), indicating that the action may include the potential for at least one significant effect on the environment; a negative declaration ("Neg Dec"), indicating that the action will have no adverse environmental impact; or a conditioned negative declaration ("CND"), indicating that the action as initially

proposed may have a significant effect on the environment but that mitigation measures identified and required by the lead agency will eliminate the significant effect on the environment.<sup>1</sup> 6 NYCRR 617.7(a); 6 NYCRR 617.7(d).

The basic steps for making a determination of environmental significance are set forth in 6 NYCRR 617.7(b):

For all Type I and Unlisted actions the lead agency making a determination of significance must:

- (1) consider the action as defined in sections 617.2(b) and 617.3(g) of this Part;
- (2) review the EAF, the criteria contained in subdivision (c) of this section and any other supporting information to identify the relevant areas of environmental concern;
- (3) thoroughly analyze the identified relevant areas of environmental concern to determine if the action may have a significant adverse impact on the environment; and
- (4) set forth its determination of significance in a written form containing a reasoned elaboration and providing reference to any supporting documentation.

The Lead Agency must issue a Pos Dec if it determines that the proposed action “may have a significant adverse impact on the environment.” 6 NYCRR 617.7(b)(3). “Because the operative word triggering the requirement of an EIS is ‘may,’ there is a relatively low threshold for the preparation of an EIS.” *Omni Partners, L.P. v. County of Nassau*, 237 A.D.2d 440, 442 (2d Dep’t 1997)(citations omitted). Type I actions carry a presumption that they are likely to have a significant adverse impact on the environment requiring preparation of an EIS. 6 NYCRR 617.4(a)(1). The EIS is the “heart of SEQRA” which should be viewed as “an environmental ‘alarm bell’” to “alert responsible public officials to environmental changes before they have reached ecological points of no return.” *Town of Henrietta v. Dep’t of Environmental Conservation of New York*, 76 A.D.2d 215, 220 (4th Dep’t 1980). To determine whether an action may have a significant adverse impact on the environment, the impacts that may be reasonably expected to result from the proposed action must be compared against the criteria found in 6 NYCRR 617.7(c). Included in these criteria are:

- a substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic or noise levels; a substantial increase in

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<sup>1</sup> A Lead Agency may not issue a CND for a Type I action.

solid waste production; a substantial increase in potential for erosion, flooding, leaching or drainage problems;

- the removal or destruction of large quantities of vegetation or fauna; substantial interference with the movement of any resident or migratory fish or wildlife species; impacts on a significant habitat area; substantial adverse impacts on a threatened or endangered species of animal or plant, or the habitat of such a species; or other significant adverse impacts to natural resources;
- the creation of a material conflict with a community's current plans or goals as officially approved or adopted;
- a substantial change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing uses;
- the encouraging or attracting of a large number of people to a place or places for more than a few days, compared to the number of people who would come to such place absent the action;
- changes in two or more elements of the environment, no one of which has a significant impact on the environment, but when considered together result in a substantial adverse impact on the environment; or
- two or more related actions undertaken, funded or approved by an agency, none of which has or would have a significant impact on the environment, but when considered cumulatively would meet one or more of the criteria in this subdivision.

6 NYCRR 617.7(c)(1). The lead agency must also consider reasonably related long-term, short-term, direct, indirect and cumulative impacts, including other simultaneous or subsequent actions which are: (i) included in any long-range plan of which the action under consideration is a part; (ii) likely to be undertaken as a result thereof; or (iii) dependent thereon. 6 NYCRR 617.7 (c)(2). The significance of a likely consequence of the development should be addressed in connection with its: setting; probability of occurrence; duration; irreversibility; geographic scope; magnitude; and the number of people affected. 6 NYCRR 617.7(c)(3).

In the present application, the Applicant proposes to significantly increase the intensity of use at this property. As you know this property is in close proximity to a school. The addition of a travel station on this site is likely to pose a safety hazard to students and staff, not only in terms of traffic and pedestrian safety, but also in the forms of noise and air pollution from the tractor-trailers this project seeks to attract. Also of concern is the fact that this property has

poorly drained soils. The addition of several acres of impervious surfaces is likely to cause increased accumulation of surface water and run-off. These issues all constitute potentially significant environmental impacts requiring a positive declaration of environmental significance.

THE ACTION INCLUDES DIVERSION OF STORMWATER ONTO  
AN ADJACENT PROPERTY AND INTO A CLASS C WATERBODY

The Town Code provides that stormwater may only be directed and drained to an approved drainage system.<sup>2</sup> The Stormwater Plan, as proposed, shows runoff being directed to a retention pond of unknown capacity then to drainage ditches directing water both to the Nagel property and a stream.

Class C water bodies are those which allow for fishing and non-contact recreation activities. This implies there is already a high sediment load within the stream and the addition of commercial run-off possibly contaminated with sediments, road salt, petroleum and other compounds puts that water body at further risk of degradation. Similarly, allowing the Applicant to direct run-off to a property it doesn't own puts the adjacent property at risk of erosion and contamination.

Enclosed is a letter to the Nagels from Mary Steblein, PE, CPESC, at LaBella Associates. Ms. Steblein listed numerous issues with the Stormwater Pollution Prevention Plan (SWPPP). A summary of the issues identified by LaBella are described below:

- Stormwater runoff is likely to infiltrate in undeveloped portions of the site. Stormwater is proposed to travel through an 8-inch outlet pipe with end section and unspecified rip rap stone as an outlet. This would not re-establish sheet flow before the stormwater travels into an existing depression directly leading to the Nagel property. The modeling finds the peak flow rate is mitigated, but it changed from a non-point source (pre-construction) to a point source (post-construction) so it is not mitigated.
- There appears to be a gas utility and easement for this gas utility. While not directly a SWPPP item, this 8 inch main may cause issues with the development, and the Developer must coordinate with the owner of the gas utility.
- The Town is not designated as MS4 and references of this should be removed from the SWPPP.
- There are inconsistencies with the bioretention size and evaluation which must be updated in the SWPPP. Further, the Applicant needs to define "extremely unusual conditions" that would require the bioretention facility to provide Op ad

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<sup>2</sup> Zoning Code §519(G)(5)(b).

Cpy. Pretreatment for the bioretention system should also be identified.

- The Applicant must use 2.5 feet of planting soil to meet the NYSDEC's treatment requirements for water quality.
- Applicant fails to indicate the depth of the water table at the location of the bioretention facility.
- The Applicant must explain why 100% of the water quality volume is not treated in a green infrastructure practice.
- The Applicant fails to explain why they are not meeting 100% of the runoff reduction requirement.
- There are inconsistencies in the SWPPP that do not meet the Design Manual.

Ms. Steblein also includes suggestions for the Applicant that they should follow to allow for a consistent SWPPP.

Accordingly, there is a potentially significant environmental impact to surface water necessitating preparation of an EIS.

#### THE ACTION IS INCONSISTENT WITH THE COMPREHENSIVE PLAN

The most recent comprehensive plan for the Town of York is from 2006. In the 2006 Plan, the Plan stated that access to commercial areas should be controlled along Route 63 due to the heavy truck traffic.<sup>3</sup> The proposed site plan includes points of access along Route 63.

The Property is specifically identified on the future land use plan as an area envisioned to be "forever wild" for monitored public use.<sup>4</sup> The 2006 Comprehensive Plan recommended exploring options to purchase the property and to create bicycle and/or foot paths linking the community.<sup>5</sup> Further, the Town, County and Genesee Transportation Council, as part of the Genesee-Finger Lakes Regional Trail Initiative, envisioned that the Little Italy connector trail would travel directly over this parcel to connect the Genesee Valley Greenway to the Groveland Extension Trail.<sup>6</sup>

The proposed site plan, while clearly not "forever wild", does not make adequate provisions for the anticipated Little Italy connector trail and is in contravention of the Town's vision for this property.

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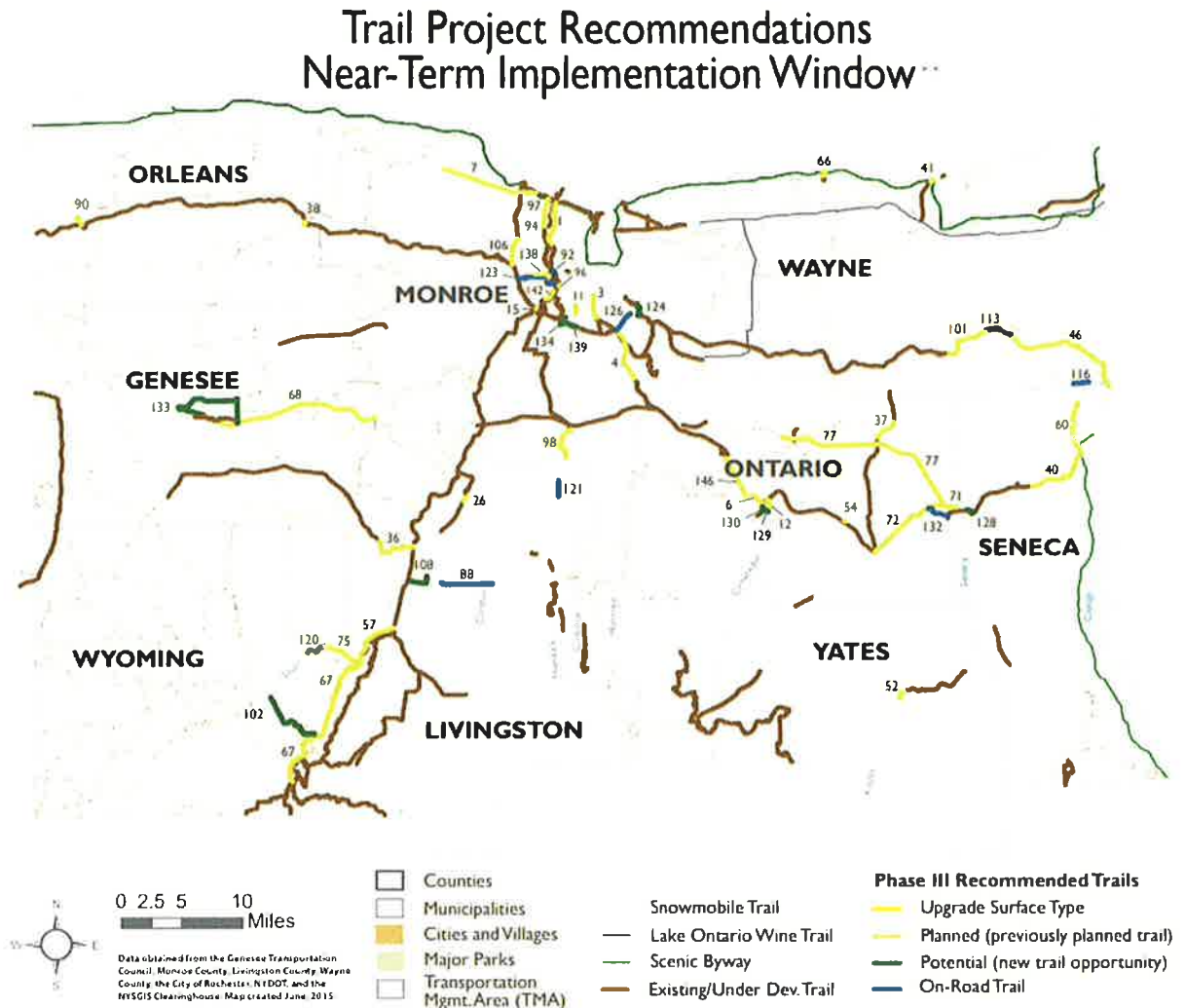
<sup>3</sup> Town of York 2006 Comprehensive Plan, p. 26.

<sup>4</sup> Town of York 2006 Comprehensive Plan, p. 28.

<sup>5</sup> Town of York 2006 Comprehensive Plan, p. 28, 42.

<sup>6</sup> Town of York 2006 Comprehensive Plan, p. 28.

Below is a map from 2016<sup>7</sup> depicting a proposed trail over the property at segment 36:



Accordingly, the proposed project is inconsistent with the Town of York's comprehensive plan.

The proposed project is also inconsistent with the 2018 Greigsville Transportation Safety Plan. The 2018 plan contemplates five-foot tree lawns to separate pedestrians from traffic along Routes 63 and 36 as well as 5-7 foot wide sidewalk with ASA compliant curb ramps.<sup>8</sup> A diagram from the 2018 plan demonstrating the recommendations is below:

<sup>7</sup> Genesee-Finger Lakes Regional Trail Initiative Phase III, February 2016

<sup>8</sup> 2018 Hamlet of Greigsville Transportation Plan, p. 29-32.

Map 4 – Intersection of NYS Route 63 and NYS Route 36



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The proposed site plan is not consistent with the safety recommendations contained in Greigsville’s 2018 Transportation Safety Plan with regard to ingress and egress; pedestrian facilities; curbing; or tree lawns. Sidewalks which directly abut Route 63 and 36 are not in accordance with Greigsville’s plan for this intersection.

**THE ACTION WILL INCREASE TRAFFIC AND POSE A THREAT TO VEHICLE AND PEDESTRIAN SAFETY**

In 2018 the Hamlet of Greigsville, which centers around the intersections of Route 63 and Route 36, commissioned a transportation plan due to the existing traffic and safety concerns in this particular intersection.<sup>9</sup> Also located in this intersection is the York Central School District campus, which sees approximately 755 students per day during normal operations.<sup>10</sup> In 2020, a student was struck by a vehicle while crossing this intersection—even without a massive travel plaza meant to attract additional passenger vehicles and tractor trailers.

According to U.S. Department of Transportation, in 2018, 59% of all pedestrian deaths

<sup>9</sup> 2018 Hamlet of Greigsville Transportation Plan, p. 4.

<sup>10</sup> 2018 Hamlet of Greigsville Transportation Plan, p. 5.



occurred on arterial roadways.<sup>11</sup> Route 63 is a major arterial with one lane in each direction, four-foot shoulder, and no sidewalks. The shoulder operates as a de facto turning lane at the intersection with Route 36. Route 36 is classified as a minor arterial with a posted speed limit of 40 MPH which is often exceeded.<sup>12</sup> Crashes at this intersection involving trucks and rear-end crashes occur more often than the statewide average for similar locations.<sup>13</sup> In 2016, the Livingston County Sheriff's Office stated that "for many years we have attempted to address the [safety] issues, to no avail. We are all aware of the great risk the traffic on both Routes 63 and 36 poses to the school and the students and the buses entering the school grounds. The high volume of traffic is compounded by the large volume of truck traffic that uses both highways on a 24 hour / 7 day per week basis."<sup>14</sup>

A lack of sidewalks along routes 63 and 36 pose a safety risk to students walking and biking to or from York Central School.<sup>15</sup> Heavy truck traffic presents an additional visual hazard as on-coming cars may not see students trying to cross the intersection due to the presence of high profile vehicles. Further, the proposed curb cuts for this project are less than the recommended 350 feet from the intersection and likely to add to visual and physical obstruction of the roadway.

The proposed plan does not sufficiently provide for pedestrian access. Even if this was a prudent location for this project—it's not—there are insufficient sidewalks, no cross-walks, and no tree lawns to provide an additional buffer between pedestrians and vehicles. Students are known to access the existing convenience store on the same side of Route 63<sup>16</sup>, which is set to be decommissioned if this project is built. None of this is adequately addressed in the Applicant's supplied Traffic Impact Study.

The combination of documented existing conditions in the vicinity of this property and likelihood for increased interactions between vehicles, pedestrians, and bicyclists is a potentially significant environmental impact requiring a positive declaration of environmental significance and preparation of an EIS.

#### THE ACTION MAY IMPACT THREATENED, ENDANGERED, AND SPECIES OF CONCERN

The Property is located within a known birding hotspot known as the Restof Area. This area is known for regular sightings for listed endangered short-eared owl, threatened northern

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<sup>11</sup> U.S. DOT, Fatality Analysis Reporting System 2018 Annual Report File; USDOT Pedestrian Safety Action Plan (2021)

<sup>12</sup> 2018 Hamlet of Greigsville Transportation Plan, p. 23.

<sup>13</sup> 2018 Hamlet of Greigsville Transportation Plan, p. 23.

<sup>14</sup> 2016 Livingston County- Greigsville Transportation Safety & Access Improvement Plan, p. 28.

<sup>15</sup> 2016 Livingston County- Greigsville Transportation Safety & Access Improvement Plan, p. 28.

<sup>16</sup> 2016 Livingston County- Greigsville Transportation Safety & Access Improvement Plan, p. 28.



harrier and grasshopper sparrow, and species of concern eastern meadowlark.<sup>17</sup> These species may frequent the property as it is currently undeveloped. A winter bird study must be performed to properly evaluate impacts of the proposed project on these species.

Accordingly, there is a potentially significant environmental impact to threatened and endangered species and species of special concern known to be present in the vicinity of the property, necessitating preparation of an EIS.

#### THE ACTION WILL INCREASE NOISE AND DECREASE AIR QUALITY FOR SURROUNDING USES

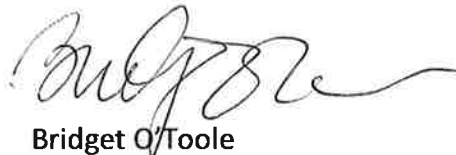
It cannot be disputed that transformation of vacant land into a 24/7 travel center intended to attract tractor-trailers will increase noise and air emissions from vehicle exhaust in the area. This is concerning not only for the surrounding residential uses, which are adjacent to this property, but the school across the street.

Accordingly, there is a potentially significant environmental impact to human health and community character resulting from increased noise and air emissions, necessitating preparation of an EIS.

#### **CONCLUSION**

For the forgoing reasons, we request that the Planning Board: make a positive declaration of environmental significance and require preparation of an Environmental Impact Statement.

Sincerely,



Bridget O'Toole

Encl: LaBella Letter from Mary Steblein, PE, CPESC  
cc: Mr. and Mrs. Davies Nagel (via e-mail only)  
York Town Clerk (yorkclrk@rochester.rr.com)  
Lance Brabant (via e-mail only Lance.Brabant@mrbgroup.com)  
James W. Campbell, Jr., Esq. (via e-mail only jim@krukandcampbell.com)  
Sean Hopkins, Esq. (via e-mail only shopkins@hsr-legal.com)

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<sup>17</sup> See, <https://rochesterbirding.org/hotspots/retsof-area/?fbclid=IwAR13vkykDwEI4XKqvy8nxzw67NAEFBPhF66c6t4IQx9rupe3gQktgKBERnw;https://ebird.org/hotspot/L810218?yr=all&m=&rank=mrec>



April 11, 2022

Mr. Davies Nagel and Mrs. Heather Nagel  
3585 Main Street  
Piffard, New York 14533

**RE: York Travel Center – SWPPP Review and Impact on Tax Parcel 61.-1-53.1**

Dear Heather and Dave:

LaBella has reviewed the Stormwater Pollution Prevention Plan for Construction Activity (SWPPP) at York Travel Center, prepared by Carmina Wood Morris, DPC, dated May 2021 and portions of the plan set, with the latest update March 18, 2022.

The SWPPP must follow the requirements of New York State Department of Environmental Conservation's State Pollutant Discharge Elimination System General Permit for Stormwater Discharges from Construction Activity (GP-0-20-001). Briefly, DEC requires all projects subject to the permit to provide adequate Erosion and Sediment Control Measures, Soil Stabilization, and the appropriate sizing of Post-construction Stormwater Management Practices (including runoff reduction, water quality, channel protection volume, overbank flood control, and extreme flood control).

1. Although not entirely a SWPPP-related item, we suggest that coordination with the Owner of the gas utility (we believe this is Rochester Gas and Electric Corporation's 8-inch main) be completed by the Developer, *prior* to the Town's approval of the plans, as the utility may have concerns with this proposed development within their existing easement associated with this gas main.
2. Currently, stormwater runoff at the parcel would be characterized as sheet flow, likely with capacity for infiltration in the undeveloped portions of the site. The proposed stormwater management facility includes an 8-inch diameter outlet pipe with end section and unspecified rip rap stone as an outlet, which does not re-establish sheet flow before entering into an existing depression that leads directly onto your property. While the modeling indicates the peak flow rate is mitigated at the analysis point, it changes from a non-point source (pre-construction) to a point source (post-construction).
3. References within the SWPPP to review and approval from a regulated, traditional land use control Multiple Separate Storm Sewer System (MS4) should be reviewed and removed, as the Town is not a designated MS4.
4. Drawing C-001 functions as both a Demolition & Erosion Control Plan. We suggest that more than one iteration of the Erosion Control Plan, based on phase of construction, would be more helpful to demonstrate timing. Consider showing the erosion control in conjunction with the existing and proposed grading. Locations of stockpiles should be shown.
5. The bioretention facility is listed with an area of 12,250 square feet (SF) with top elevation 740 and bottom elevation 739.50 on Drawing C-200. Drawing C-300 indicates the



bioretention facility has an area of 6,750 SF with top elevation 745.50 and bottom elevation 745.00.

- We note that Section 112.4 of the SWPPP refers to elevations of 740.72 for channel protection, 741.71 for overbank flooding and 743.31 for extreme storm volumes.
  - HydroCAD calculations indicate elevations from 740 to 745.
  - Drawing C-300 refers to CB rim elevations within the bioretention facility of elevation 740. This does not make sense with a bioretention bottom elevation of 745.0 shown on the same drawing
  - GI worksheets show a filter area of 12,250 SF, which matches C-200..
  - **Provide drawing updates as necessary to show the consistent and appropriate bioretention size and elevation.**
6. The SWPPP refers to the stormwater management practice as a “proposed dry detention/ bioretention area”. Section 6.4 of the Design Manual indicates “*Treatment Suitability: Filtering systems should not be designed to provide stormwater detention (Qp) or channel protection (Cpv) except under extremely unusual conditions. Filtering practices shall generally be combined with a separate facility to provide those controls.*” The Applicant should explain the “extremely unusual conditions” that would require the bioretention facility to provide Qp and Cpv.
  7. Section 6.4 of the Design Manual indicates: “*Adequate pretreatment for bioretention systems should incorporate all of the following: (a) grass filter strip below a level spreader or grass channel, (b) gravel diaphragm and (c) a mulch layer.*” The Applicant should address pretreatment for the bioretention system.
  8. We note that the SWPPP indicates that an archeological survey is being completed. The site must be cleared by SHPO in order to be eligible for coverage under GP-0-20-001. From the CRIS website this consultation appears to be closed. If a No Impact letter is available, it should be included with the SWPPP.
  9. Section 112.4 of the SWPPP indicates “The bioretention area will consist of 8” perforated HDPE underdrains in 12” of drainage gravel, followed by filter fabric and 18” minimum of planting soil.” This appears to match the Bioretention Area detail on C-301 The Design Manual **requires** between 2.5 feet (30 inches) and 4.0 feet (48 inches) of planting soil. Anything less than 2.5 feet of planting soil cannot meet the NYSDEC’s treatment requirements for water quality.
  10. The Applicant should indicate the depth to the water table at the location of the bioretention facility. Per Table 7.2 of the Design Manual, there must be a minimum of two feet of separation between the water table and the bottom of bioretention facility.
  11. We note that the project anticipates disturbing greater than five acres at any one time (6.5 acres), therefore, review will be required by NYS DEC Region 8 to obtain a five-acre waiver..
  12. Within the Notice of Intent (NOI), we suggest that question 26 include topsoil and rock outlet protection. We also suggest that Question 39 includes a quick justification explaining why 100% of the water quality volume is not treated in a green infrastructure practice.
  13. The SWPPP should include justification for not meeting 100% of the runoff reduction requirement per the Design Manual Section 4.3, “*Projects that cannot meet 100% of runoff reduction requirement due to site limitations that prevent the use of an infiltration technique*”



and/or infiltration of the total WQv shall identify the specific site limitations in the SWPPP. Typical site limitations include: seasonal high groundwater, shallow depth to bedrock, and soils with an infiltration rate less than 0.5 inches/hr.”

14. The Existing catchment lists 3.5 acres of “Woods, Fair”. For reference, the breakdown of “Woods” shown in the Part 630 National Engineering Handbook is as follows:
- Poor: Forest litter, small trees, and brush are destroyed by heavy grazing or regular burning.
  - Fair: Woods are grazed, but not burned, and some forest litter covers the soil.
  - Good: Woods are protected from grazing, and litter and brush adequately cover the soil.

We suggest that the woods are better characterized as “Good”, rather than “Fair.” This would reduce the CN from 79 to 77.

15. The Existing catchment lists 2.9 acres of 50-75% Grass cover, Fair, HSG D. For this category, “Open space (lawns, parks, golf courses, cemeteries, etc.)” the options are:
- Poor condition (grass cover < 50%)
  - Fair condition (grass cover 50% to 75%)
  - Good condition (grass cover > 75%)

We suggest that the grass cover appears to be better characterized as >75% based on street view of the site. This would reduce the CN from 84 to 80.

16. Per Section 4.5 of the Design Manual, “*The length of overland flow used in  $t_c$  calculations is limited to no more than 150 feet for predevelopment conditions and 100 feet for post development conditions. On areas of extremely flat terrain (<1% average slope), this maximum distance is extended to 250 feet for predevelopment conditions and 150 feet for post development conditions.*”
- Subcatchment 1S: Existing calculations in the HydroCAD output indicate a length of 225 feet of sheet flow, with a slope of 3%. This does not meet the Design Manual.
  - Subcatchment 1S: Proposed calculations in the HydroCAD output indicate a length of 112 feet of sheet flow. This does not meet the Design Manual.

17. The Proposed Runoff figure should show the flow path through and out of the bioretention facility, to the outfall of the pipe, not the outlet control structure

18. The mechanism to ensure long-term operation and maintenance of the stormwater management facility should be identified.

Respectfully submitted,

**LaBella Associates**

Mary Barker Steblein, PE, CPESC  
Senior Civil Engineer