

STATEMENT OF ENVIRONMENTAL FINDINGS

Issued By

**THE TOWN OF EAST GREENBUSH TOWN BOARD
PURSUANT TO
THE NEW YORK STATE ENVIRONMENTAL QUALITY REVIEW ACT
FOR THE PROJECT KNOWN AS**

The East Greenbush Marina

East Greenbush, New York

October 13, 2009

This Statement of Findings is issued by the Town of East Greenbush Town Board pursuant to the New York State Environmental Quality Review Act (Article 8 of the Environmental Conservation Law) and the regulations promulgated thereunder at 6 NYCRR Part 617 (collectively referenced herein as “SEQRA”) for the East Greenbush Marina.

Lead Agency: Town of East Greenbush Town Board
Town Hall
225 Columbia Turnpike
Rensselaer, New York 12144

Name of Action: East Greenbush Marina

Location of Action: The project site consists of Rensselaer County tax parcel 154.02-20 on Papscaene Island on the east bank of the Hudson River in the Town of East Greenbush. The project site has frontage on the east on Riverside Avenue Extension, also known as American Oil Road. A Hess bulk fuel storage facility borders the site to the south and a Sprague bulk fuel storage facility borders the site to the north. The project site consists of 24.95 acres. The site was formerly a turning basin for the Port of Albany. It is currently undeveloped.

Date Final Environmental Impact Statement (FEIS) filed: September 9, 2009

Lead Agency Adoption of This Statement of Findings: October 14, 2009

I. INTRODUCTION

This Findings Statement for the Project provides the Town Board’s rationale, as the SEQRA Lead Agency, for its decision to approve the Project, drawing upon information in the Draft Environmental Impact Statement (DEIS) prepared by Lynch & Hetman,

PLLC on behalf of East Greenbush Marina, LLC (the Applicant), dated July 23, 2008, as well as public comments received on the Project, and the Final Environmental Impact Statement (FEIS) dated **September 9, 2009**

This Findings Statement also certifies that the Town Board, as Lead Agency, has met the applicable requirements of SEQRA and its implementing regulations at 6 NYCRR Part 617 in assessing the potential environmental impacts of the Project, including but not limited to:

- Identifying all involved agencies and establishing the Town of East Greenbush Town Board as the Lead Agency;
- Issuing a Determination of Significance;
- Preparing a Scoping Document for the DEIS;
- Hiring expert consultants to review the DEIS for adequacy and completeness;
- Conducting its own pre-publication review of the DEIS and of its expert consultants' suggested changes to the DEIS;
- Accepting, issuing a Notice of Completion, and distributing the DEIS for public review and comment;
- Holding a duly noticed public hearing on the DEIS;
- Receiving public comments on the DEIS in accordance with the notice, within the prescribed period and after the close of the public hearing;
- Causing the preparation of, and conducting its own pre-publication review of, the FEIS;
- Reviewing the FEIS for adequacy and completeness; and
- Accepting the FEIS, issuing a notice of completion, and circulating the FEIS for public review.

The issuance of this Findings Statement is the final step in the SEQRA process for the Project.

A. PROJECT OVERVIEW

The Project consists of a full service marina facility designed to provide recreational access to the Hudson River for boaters who reside within the Town of East Greenbush as well as the general public. The marina will include three floating docks with 84 boat slips, fuel pumps, parking spaces for 174 automobiles and a boat launch ramp. Six buildings will be constructed on site, including four boat/RV storage buildings, one building containing a repair shop, one quick launch facility (which includes storage racks for 96 boats) and one building containing an office, ship store, laundry and restroom/shower facility for boaters. The three docks include a haul out service dock at the lift wells, one dock with 20 slips at the launch ramp area and one main dock with 64 slips. A boat slip will be dedicated to the Town of East Greenbush Police Department for its use as a public service. The facility will include a pump-out service for boat sanitary waste which will be stored in a 1,500 gallon tank for disposal. The facility will provide fuel for boaters. Water will be provided by a well developed on the site. Site-generated sanitary sewage will be disposed of in an in-ground system. Stormwater will be managed

on-site in accordance with DEC regulations. Parking for 174 vehicles will be provided, including five handicapped spaces, as well as 25 trailer spaces. In order to create sufficient water depth, dredging of the Hudson River will be required. Some of the dredged material is contaminated with PCBs in excess of Federal standards and will therefore be disposed of in accordance with federal regulations. Access will be from Riverside Avenue Extension. No off-site improvements are required to serve the project.

B. PROJECT PURPOSE, NEED, AND BENEFIT

Presently, no recreational boating access to the Hudson River exists within the Town of East Greenbush. The purpose of the project is to provide such access. The need for such access is recognized by the Town’s Local Waterfront Revitalization Plan, adopted in 1989, as well as its Comprehensive Plan adopted in 2006, both of which recommended that the Town develop public access to the Hudson River. The project will also provide a boat slip for use by the Town of East Greenbush Police Department, meeting the need for local public safety agency access to the Hudson River.

C. SUMMARY OF DISCRETIONARY APPROVALS AND INVOLVED AND INTERESTED AGENCIES

The following table identifies the involved agencies with discretionary authority over the project:

Table 1. Involved Agencies and Permitting Authority

Involved Agency	Permit or Approval Authority
East Greenbush Town Board	Site Plan Approval
East Greenbush Zoning Board of Appeals	Variance for pedestrian esplanade and Special Use Permit
Rensselaer County Health Department	Approval of on-site water supply and sewage disposal systems
New York State Department of Environmental Conservation	SPDES permit for wastewater discharge Section 10 permit for dredging and disturbance of the Hudson River Stormwater approvals
New York State Office of General Services	Permit for docks in the Hudson River
City of Rensselaer Common Council	Extension of water district (if on-site wells are not utilized)

In addition, although not an involved agency within the meaning of SEQRA, the United States Army Corps of Engineers (USACOE) has permitting authority over proposed dredging activities in the Hudson River. In reviewing permit applications for the project, the DEC and USACOE will consult with the New York State Office of Parks, Recreation

and Historic Preservation (SHPO) pursuant to Section 106 of the National Historic Preservation Act.

Although without formal permit or approval authority, the following agencies have been identified as responsible for reviewing and commenting on all or a portion of the proposed project and are therefore Interested Agencies within the meaning of SEQRA.

- Town of East Greenbush Planning Board
- New York State Department of State Division of Coastal Resources
- New York State Office of Parks, Recreation and Historic Preservation
- Clinton Heights Fire District #1
- Bruen Rescue Squad
- East Greenbush Department of Public Works
- Rensselaer County Legislature
- East Greenbush Traffic Safety Committee
- Rensselaer County Bureau of Planning
- Albany Port District Commission

D. PROJECT SCHEDULE

Development and construction of the facility is expected to take one year. Assuming approval by the Town in the fall of 2009, the facility would be operational in the fall of 2010.

E. PROCEDURAL HISTORY

In accordance with the 6 NYCRR Part 617, the following elements of the SEQRA process have been undertaken:

- 12/2/05 Applicant submits application and Long Form EAF to Town Board
- 12/5/05 Town Board accepts Applicant's sketch plan
- 12/15/05 Town Board votes to serve as Lead Agency for SEQRA and directs that a lead Agency coordination letter be sent to all involved agencies.
- 2/1/06 Town Board designates itself as Lead Agency
- 2/8/07 Applicant submits revised EAF and supporting documents
- 9/12/07 Town Board issues a Positive Declaration for SEQRA
- 3/5/08 Town Board holds a public scoping session
- 4/9/08 Town Board reissues Positive Declaration to correct a notification error in the previous filing

- 4/21/08 Town Board establishes a Scoping Comment period through 5/1/08
- 5/14/08 Town Board adopts Scoping Document
- 8/13/2008 Town Board accepts Draft Environmental Impact Statement (DEIS) as complete and establishes a comment period ending on 10/22/08.
- 10/8/08 Town Board holds public hearing on DEIS
- 9/ 9/09 Town Board issues Final Environmental Impact Statement

II. ENVIRONMENTAL IMPACTS OF THE PROJECT

A. LAND USE, ZONING AND COMMUNITY CHARACTER

The Project is located within the C-I Coastal Industrial District of the Town of East Greenbush Zoning Ordinance. The project is an allowed use pursuant to issuance of a Special Use Permit issued by the Zoning Board of Appeals. In addition, site plan review by the East Greenbush Town Board is also required. The project is in compliance with the area, bulk and other requirements of the zoning ordinance with one exception. Zoning Ordinance Section 2.7.7 (F) (3) requires a continuous pedestrian esplanade along the width of the property. This esplanade is not practical to construct because the boat launch on the north end of the shoreline is necessary for the marina and the forested tidal wetlands on the southern side need to remain undisturbed. An area variance from the Zoning Board of Appeals will therefore be required. The project does propose to have a walkway from the drop-off area for the docks leading to a lookout point over the water near the approximate center of the shoreline.

The Town's Local Waterfront Revitalization Plan and Comprehensive Plan both recommend that boater access to the Hudson River be developed in the Town. The project is consistent with these policies.

Adjoining uses to the north and south consist of bulk fuel storage facilities. These facilities are serviced by barge from the Hudson River. The Town Board has carefully examined claims that the project may interfere with the use of these facilities and/or may constitute a safety or navigation hazard. The Town Board finds as follows:

- a. Recreational boaters currently exist in large numbers on the Hudson River without conflict with bulk fuel storage facilities or the barges that serve them.
- b. Other recreational boating facilities are located on the Hudson River in close proximity to bulk fuel storage facilities without adverse impact. An example is Whites Marina in New Hamburg, New York. Other recreational marinas are located in proximity to bulk fuel storage facilities in Portland, Maine, Baltimore, Maryland and San Francisco, California.

- c. Both the marina and the harbor basins of the storage facilities are outside of the river navigation channel, which is 400' wide at this point. This leaves an approximate 400' wide channel with a depth of 15 to 30 feet for pleasure boats to maneuver. Pleasure boats require an average water depth of eight feet. Moreover, the entrance to the marina has an excellent view of the river and boats will be easily able to navigate to and from the main channel.
- d. All vessels which operate on navigable waterways within the State of New York, including the Hudson River, are regulated, and no preferential or exclusive rights are granted to commercial vessels (see New York Navigation Law Section 2).
- e. The project is in compliance with the recommendations of the United States Coast Guard as presented in a letter dated April 9, 2008.
- f. The Coast Guard in its letter of April 9, 2008 recommends that the adjoining bulk fuel storage facilities update their Facilities Security Plans in accordance with 33 CFT Subchapter H – Maritime Security to account for the addition of the subject marina to the community. The responsibility for updating such plans lies with the bulk fuel storage facilities, not the applicant.

The Town Board finds that the proposed project is consistent with the Zoning Ordinance, Local Waterfront Revitalization Plan and Comprehensive Plan and will not adversely impact, nor be adversely impacted by adjoining and nearby land uses.

B. SOILS, TOPOGRAPHY, GRADING AND DREDGING

The site is relatively flat, with slopes less than 10% throughout. The site contains well drained soils, most of which consist of fill material (udorthents). The site is within the 100-year floodplain of the Hudson River. The westerly seven acres of the site have been dredged to create a former turning basin, now filled in, and the upland was filled with dredge materials to a depth of 4 to 5 feet. The shoreline is composed of sand and gravel extending from the water to an undercut steep bank, 5 to 6 feet in most areas.

The project will require the dredging of approximately 6,800 cubic yards of sediment in order to provide sufficient depth of water for navigation. Approximately 2,200 cubic yards contain PCBs in excess of regulatory levels and therefore require special handling and disposal. These are classified as Class C materials. Approximately 4,600 cubic yards of sediment does not contain PCBs in excess of regulatory standards and are classified as Class A materials that may be re-used on the site.

The EIS contains detailed mitigation measures for conducting dredging activities, including the method of dredging, dewatering, storage, disposal, riverbank stabilization and restoration. Dredging activities will be subject to a permit from the US Army Corps of Engineers. The mitigation measures identified in the EIS are hereby made a part and requirement of these Findings.

Soils on the project site contain materials which were dredged from the Hudson River in the 1930's, prior to the advent of the use of PCBs. Such materials are therefore not contaminated by PCBs.

The Town Board finds that with implementation of the mitigation measures for dredging and earthwork the project will not have an adverse impact on soil resources.

C. WATER RESOURCES AND STORMWATER MANAGEMENT

The entire site is located within the FEMA designated 100-year floodplain of the Hudson River. The upland portion of the site does not contain any water bodies but the westerly 7 +/- acres are underwater, comprising the former turning basin of the Port of Albany. The upland does, however, contain a .386-acre forested tidal wetland situated along the south westerly portion of the site, immediately adjacent to the east bank of the Hudson River. There are no impervious surfaces presently on the site.

The wetland on the site will not be disturbed by the project.

Stormwater will be managed by a stormwater management plan to include the development of a stormwater treatment area (a constructed wetland) adjacent to the tidal wetland area. The stormwater management plan has been designed in accordance with New York State requirements. The stormwater management plan is intended to mitigate runoff quantity and to treat stormwater quality. A Notice of Intent (NOI) has been submitted to the New York State DEC.

In order to mitigate potential impacts from septic discharge from boats, a pump-out facility will be provided. Septage will be pumped to a 1,500 gallon storage tank and periodically hauled to a disposal facility by an approved hauler.

In order to mitigate potential impacts from fuel spillage, the fuel storage tanks will be located on the upland portion of the project site and will be on top of a concrete base designed to contain any overflow. The dispensing point will be along the service dock. The marina will be equipped with repair facilities to help minimize leakage from boat waste holding systems.

A Phase 1 Environmental Assessment prepared by the Tyree Company included in the DEIS found no evidence of environmental contamination likely to impact soil or water quality. There are existing ground water monitoring wells on the site. Water samples from these wells find no evidence of groundwater contamination.

The Town Board finds that with implementation of the mitigation measures identified in the DEIS the project will not have an adverse impact on water resources.

D. ECOLOGY

The majority of the upland portion of the project site is comprised of forested upland, with approximately .10 acres of early successional upland field and .386 acres of tidal wetland. Approximately 7.23 acres are within the Hudson River. The site has been identified by the New York Natural Heritage Program as being located adjacent to a designated Significant Coastal Fish and Wildlife Habitat. The US Fish and Wildlife Service also identified the potential for presence of endangered species. The DEC further identified the potential for a number of rare, threatened or endangered species to be impacted by the project.

Based on this input, North Country Ecological Services conducted a detailed site investigation to search for rare, threatened or endangered plant and animal species. No such species were found to be present on the site.

Ichthyological Associates, Inc. conducted an assessment of the aquatic habitat on the project site. The assessment concluded that there is no Essential Fish Habitat (EFH), submerged aquatic beds or freshwater mussels or shells on the project site and that there will be no significant impacts from the project.

The cumulative impacts of the project with the proposed Beacon Harbor project on the opposite side of the Hudson were considered in a report prepared by HDR/LMS. This report found that no significant cumulative impacts from the projects are likely to occur.

The Town Board finds that no significant impacts to rare, endangered or threatened species will occur from the project since neither such species nor their habitat are found on or adjacent to the project site.

E. TRANSPORTATION

Access to the site is presently provided via Riverside Avenue Extension, also known as American Oil Road. This road is a two lane public road which currently accommodates heavy truck traffic to the neighboring bulk fuel storage facilities.

Creighton Manning Associates, LLC conducted a traffic study of Riverside Avenue extension, including an analysis of the intersections servicing the adjoining bulk fuel storage facilities. The analysis concluded that Riverside Avenue Extension has adequate capacity to accommodate additional traffic from the project and that the adjoining uses will not be significantly impacted. Site distances at the site access road meet appropriate AASHTO engineering standards.

The Town Board finds that no significant impacts to transportation resources will occur from the project and that no mitigation is required.

F. ARCHAEOLOGICAL AND HISTORIC RESOURCES

The project site is located on Papscanee Island. The island has been the subject of previous cultural resource surveys and pre-historic cultural resources have been found on

the island. Consequently, it is considered to have a high sensitivity for the presence of such resources.

Phase 1 and 2 Cultural Resource Surveys were completed for the project by Curtin and Farry. A Geomorphological Assessment Report was prepared by Op-Tech Environmental Services. No cultural resources were found as a result of these surveys.

The New York State SHPO issued a letter stating that the project would have an adverse impact on historic properties, citing the potential presence of Native American (Mahican) burial grounds. The Applicant's consulting archaeologist, Edward Curtin, has opined that in light of the absence of any burial ground evidence and the fact that the Applicants improvements will be constructed on fill, further archaeological exploration is not appropriate.

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

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

G. UTILITIES – WATER SUPPLY AND WASTEWATER

The project site is not currently serviced by public water service. In order to provide such service a district extension from the City of Rensselaer water system would be required. Due to the cost of extending service, the Applicant proposes to develop a potable water supply well on the project site. Such a well is likely to provide ample supply because of

its location on the Hudson River. An on-site well would be subject to the rules and permit authority of the Rensselaer County Department of Health.

Wastewater from boats will be stored in a collection tank and disposed of in an approved facility. Sanitary sewage generated on the project site will be disposed of in an in-ground wastewater disposal system. Test pits and percolation tests were conducted on the site in May, 2007 and witnessed by representatives of the Rensselaer County Health Department. The site was found to have suitable soils for an in-ground sanitary waste disposal system. The system will be designed in accordance with DEC standards, including flood protection provisions.

The Town Board finds that suitable provisions have been made for water supply and sanitary waste disposal and that no adverse impact will occur.

H. PUBLIC SAFETY

The site is presently unused and poses no public safety issues. As discussed, in Finding II.A, the project does not pose a threat to adjoining land uses.

The project site will have an on-site manager 24 hours a day, seven days a week who will be responsible for on-site security. As a benefit to the Town of East Greenbush, the Applicant proposes to dedicate a boat slip to the Town of East Greenbush Police Department so that the department may maintain a boat on the site with ready access to the river. The DEIS contains an Emergency Action Plan to be implemented in the event of an emergency, which includes evacuation routes. The project also complies with the Coast Guard recommendation that “any moored/anchored vessels should not extend beyond the property boundary or pierhead line.”

The Town Board therefore finds that the project will not present a threat to public safety.

I. CUMULATIVE IMPACTS

The EIS considered cumulative impacts, where appropriate, between the proposed project and the proposed Beacon Harbor Marina located directly across the Hudson River. No significant cumulative impacts were found to result from the projects.

III. ALTERNATIVES CONSIDERED

In addition to the Project, several alternatives were described, analyzed, and assessed in the DEIS and FEIS. The Town Board has reviewed the alternatives as presented in the DEIS and FEIS.

A. NO ACTION ALTERNATIVE

The Town Board has considered the “No Action” Alternative, which would not result in any development on the Project site. The Town Board finds that this alternative is not

preferred since it would not advance the Town's goal of developing recreation access to the Hudson River.

B. INDUSTRIAL ALTERNATIVE

Other uses allowed in the C-I district in which the project is located include a variety of industrial uses as well as adult uses. However, none of these uses would further the project sponsor's objective of developing a marina. Moreover, it is likely that many if not most such uses would have greater traffic impacts, generate more sanitary wastewater, require more water and have the same amount of site disturbance. Moreover, such uses would not meet the Town's goal of developing recreation access to the Hudson River.

C. ALTERNATIVE SITE PLANS

Alternative site plans are feasible and were considered early in the planning process. However, the proposed plan is the most appropriate and efficient plan for site development, given the constraints provided by the tidal wetland and an easement which traverses the site in favor of the Port of Albany.

IV. CERTIFICATION OF FINDINGS TO APPROVE

The Town Board has considered the relevant environmental impacts, facts and conclusions disclosed in the DEIS and FEIS and has weighed and balanced relevant environmental impacts with social, economic and other essential considerations.

Having considered the DEIS and FEIS and the above written facts and conclusions relied upon to meet the requirements of 6 NYCRR § 617.11, the East Greenbush Town Board certifies that (1) the requirements of 6 NYCRR Part 617 have been met; and (2) consistent with social, economic, and other essential considerations, from among the reasonable alternatives available, the project is the one that avoids or minimizes adverse environmental effects to the maximum extent practicable by incorporating as conditions to this decision those mitigation measures that were identified as practicable.