

FINAL ENVIRONMENTAL IMPACT STATEMENT (FEIS)

For the Rezoning and Development of 218 & 330 Maple Road Town of Amherst, Erie County, New York

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DATE OF ACCEPTANCE BY LEAD AGENCY: December 17, 2007

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APPENDIX A: STORMWATER

- 1) Stormwater Management Report for Site

APPENDIX B: SOILS & GEOTECHNICAL STUDIES

- 1) Subsurface Exploration & Geotechnical Engineering Report

APPENDIX C: ARCHAEOLOGICAL RESOURCES

- 1) Phase 1 Cultural Resource Investigation for the Site
- 2) Phase 1B Addendum

APPENDIX D: TRAFFIC REPORT

- 1) Traffic Impact Study
- 2) Accident Analysis 1/25/07
- 3) Response Letter 5/7/07
- 4) Amherst Town Center Figures 5/7/07
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Appendix E: ENVIRONMENTAL ASSESSMENT

- 1) DEC Brownfield Clean Up Program, Related to Lead Abatement
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1.0 DESCRIPTION OF THE PROPOSED ACTION

1.1 FEIS Overview

This Final Environmental Impact Statement (FEIS) has been prepared in compliance with requirements of the State Environmental Quality Review Act (SEQR) for the proposed rezoning and development of property located at 218 & 330 Maple Road, Town of Amherst, Erie County, New York. The FEIS includes by reference the Draft Environmental Impact Statement (DEIS).

The following steps in the SEQR process have been taken for this action:

- A Draft Environmental Impact Statement (DEIS) was submitted by the applicant along with the application for rezoning on February 2, 2007.
- The Amherst Town Board accepted the DEIS as complete for review on June 4, 2007.
- The Amherst Planning Board held a public hearing on the action and the DEIS on June 28, 2007.
- The Town Board held a public hearing on the action and DEIS on September 4, 2007.
- The Town Board accepted the FEIS on December 17, 2007.

Transcripts of the public hearing sessions were prepared by a court reporter engaged by the Town of Amherst. The substantive comments received at the public hearings, together with the substantive written and verbal comments received during the comment period, have been summarized in this FEIS document. The public comment period was held open through August 17, 2007.

The comments and responses in this FEIS are grouped and presented by category. Individual comments have been summarized, with reference to the source of the comment, and are listed under the following headings:

- Project Purpose, Need and Benefit
- Location and Setting
- Zoning
- Design and Layout
- Signage and Lighting
- Compatibility with Comprehensive Plan
- Environmental Setting
- Drainage and Stormwater Management
- Site Topography
- Wetlands
- Cultural Resources
- Vehicular Circulation

- On-site Parking
- Soils and Environmental Issues
- Economic Issues
- Alternatives to the Proposed Action
- Miscellaneous

1.2 Project Description

Benderson Development Company, LLC, has submitted to the Town a request to rezone 33.326± acres of land located at 218 and 330 Maple Road in the Town of Amherst from Community Facilities (CF) and Single-Family Residential District – Three (R-3) to General Business (GB) and Multi-Family Residential District – Six (MFR-6). The rezoning is requested to permit construction of a mixed-use development at this location. The proposed development will consist of 225,000± sq. ft. of specialty retail use, 35,000± sq. ft. of restaurant use, 12,000± sq. ft. of office use, a 4,000± sq. ft. community theater, a 125-room hotel, and 75± condominium units.

The parcel at 218 Maple Road measures 1.7± acres and contains a single-family residence. It is currently zoned Single-Family Residential District – Three (R-3), and is proposed for rezoning to Multi-Family Residential District – Six (MFR-6). This parcel will be the location of the proposed residential units.

The 330 Maple Road parcel consists of 31.5± acres and is the site of the former Buffalo Shooting Club. This site is zoned Community Facilities (CF) and is proposed for General Business (GB) zoning to accommodate the proposed retail, restaurant, office, theater and hotel uses. With its use as a gun club over several decades, the soils on this property are contaminated by lead, resulting in its classification as a ‘brownfield’ site. The proposed project will remediate the contamination to levels acceptable to the NYS Department of Environmental Conservation.

As proposed, the project will have vehicular access to Maple Road via four (4) driveways, two (2) of which will have traffic signals. The project includes the redesign of the Maple Road right-of-way through reduction in the overall roadway pavement and construction of a central raised landscaped median, lighting, street trees and related sidewalks. The project is also intended to integrate the surrounding uses including the University of Buffalo campus, the Pepsi Center and surrounding recreational uses through extension of the Town trail system.

2.0 RESPONSES TO SUBSTANTIVE COMMENTS ON THE DRAFT EIS

2.1 Project Purpose, Need and Benefit

Comment 1: Changing the neighborhood from a pleasant residential community into a highly commercial, traffic-clogged strip will negatively impact the quality of life in this section of Amherst.

Morton & Arlene Merowitz, 71 North Maplemere Road
(6/27/07 e-mail and 9/4/07 public hearing transcript, pgs. 80-81)

Response 1: The project is designed to include residential, office, restaurant and community components in addition to the retail uses, making it more of a mixed-use development rather than a traditional shopping plaza or strip mall. The existing character of this segment of Maple Road between Millersport Highway and North Forest Road already includes a mix of land uses and building scales -- a large university campus with football field visible from the road, Town golf facility and Recreation Department building, restaurants, offices and retail uses at the intersections of Maple Road with Millersport Highway and North Forest Road, in addition to residential uses. When considering the present mixed use nature of this block, including the former shooting club before its closure, this area is perhaps better characterized as more 'community' than 'neighborhood' in its makeup.

Comment 2: (T)he developer testified at the Town Planning Board public hearings regarding the desire to bring unique high-end retailers to the region. This may be a worthy goal elsewhere in Amherst, but that goal speaks to the creation of a regional retail magnet, not a traditional neighborhood type development.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 2: As proposed, the project has been designed to include features that can be found in typical neighborhood shopping centers, such as shops, community gathering places in the form of public plazas, a community center, and restaurants. Although some "high-end retailers" may be found in larger, regional retail developments, they do not belong exclusively in that setting. It is important to note that the Town does not have the authority to regulate prospective tenants for proposed projects. See also response to Comment 1.

2.2 Location and Setting

Comment 3: No plans for the actual connections to area bikepaths and connections to the University at Buffalo were submitted with the DEIS. The plan later shown to the Town Board at their meeting of September 4, 2007 did not indicate which portions of the 'trails' exist currently and which would be added as part of the proposed development. Also, there were no distances given for routes along the 'trails' to area destinations (i.e. UB housing, UB classrooms, the Pepsi Center, the UB and Ellicott Creek bikepaths, etc.) from the proposed development.

Mary Shapiro, 16 Royalwoods Ct. (letter dated May 2007, Accepted for comment 6/4/2007)

Comment 4: (N)o mention was made of the owner of these 'trails' or if the petitioner has permission to create these trails if they do not own the properties. Who would be responsible for the maintenance and security on these trails and for road crossings or bridges?

Mary Shapiro, 16 Royalwoods Ct. (letter dated May 2007, Accepted for comment 6/4/2007)

Comment 5: No analysis has been done to show that those who live 3-4 miles from the proposed development (i.e. UB housed students, neighborhoods near the bikepaths) would regularly use these trails to use the proposed development via walking or biking.

Mary Shapiro, 16 Royalwoods Ct. (letter dated May 2007, Accepted for comment 6/4/2007)

Comment 6: Pedestrian walkways are referenced to the UB campus and to Ellicott Creek trails, but these are not shown or described.

Eric W. Gillert, AICP, Planning Director, Town of Amherst (6/21/07 memorandum)

Comment 7: There should be bicycle lanes all along Maple Road and pedestrian routes to the University and the Ellicott Creek bike path.

Robert J. Collins, 4812 Harlem Road (9/4/07 public hearing transcript, pg. 97)

Response 3-7: A public trail system currently exists along Ellicott Creek which connects to the University of Buffalo campus and is used by members of the adjacent neighborhoods as well as the UB community for walking and biking. The distance from the trail to the project site is approximately 0.25 miles along Maple Road or roughly a 10-minute walk. Future connections, subject to Town approval, could include:

- Extension to the proposed mixed-use center, potentially via a sidewalk on the north side of Maple Road. This walkway, while currently existing in the public right-of-way, would be improved for the entire length of the subject Maple Road parcel.
- Extension of a second trail “link” across the Pepsi Center site. This trail link would allow a shorter route from the site to the University of Buffalo. This distance is also approximately 0.25 miles or a 10-minute walk. This would provide a more direct means to residential halls/housing in the southeast area of campus.

The location of specific connections could be shown on future site plans submitted for development of the subject property if it is rezoned.

It is anticipated that construction of direct trail connections to the subject property would be the responsibility of the developer, with any connections to Town facilities (i.e. Pepsi Center) the responsibility of the Town. Maintenance and security costs are important issues that have not been determined at the rezoning stage but would be finalized during the site plan review process. The trail segments on Town property would likely be the Town’s responsibility, with other sections perhaps under maintenance agreement by the property owner with the Town.

While no survey of possible users of the trails has been developed for a 3-4 mile radius, it is assumed that use of the trail may be seasonal (less use during the winter months) and primarily used during daylight hours. It is expected that current users of the Ellicott Creek trail would continue to be walkers and bikers. An undetermined number of additional trail users attracted to the services and amenities of the site may live either off-site or within the residential component on site.

Comment 8: We have reviewed the DEIS on the proposed mixed use center and conclude that the proposed development project would be both compatible and assistive to campus programs and activities. The University appreciates the willingness of the Benderson Corporation to consider, and ultimately agree to, modifications to the original development proposal at the request of the University and the Town. We feel that the good faith effort on the part of the developer to adapt the project to better fit in with the community should serve as a model for future development review processes. We concur that the

project, as modified, creates a well-balanced, multi-use community at the edge of the UB campus.

Sean P. Sullivan, Associate Vice President, University at Buffalo (4/11/07 letter)

Response 8: Town of Amherst
So noted.

Comment 9: This development plan should be a long range phased plan, so this area is not saddled with more than is justifiable should the University not grow as expected.

Maryann Hochberg, representing North Forest Residents (9/14/07 e-mail)

Response 9: The project sponsor has responded that the phasing for this project is proposed in order to provide the shortest possible disruption to abutting land owners from ongoing construction activities. Although this project will benefit from its proximity to the University, its feasibility has not been tied to the University's projected growth.

2.3 Zoning

Comment 10: Rezoning to include GB designations and high density commercial uses in this area will change the character of this neighborhood drastically and induce additional commercial uses to this area of Maple Road. The negative impacts of commercialization on the residential neighborhoods in this area of central Amherst have not been adequately addressed in the DEIS.

Mary Shapiro, 16 Royalwoods Court
(letter dated May 2007, Accepted for comment 6/4/2007)

Response 10: See responses to Comments 1 and 2.

2.4 Design & Layout (Recreation /Open Space/Bike Paths)

Comment 11: The concept plan indicates very little green space and 'pedestrian amenities' other than sidewalks and seasonally available attractions, such as fountains.

Mary Shapiro, 16 Royalwoods Ct (letter dated May 2007,
Accepted for comment 6/4/2007)

Response 11: The total amount of greenspace shown on the project concept plan is 10.6%. The project sponsor responds that the project is intended to have several large gathering spaces that are linked by green belts and smaller gathering spaces. The green space will be fashioned as gathering space to encourage interaction by offering areas for passive recreation, outdoor seating areas, game board areas, fireplaces and fountains. The project sponsor also intends to improve sidewalks with plantings in pots and beds, outdoor living room areas, large chess boards placed in the paving pattern, trellis and shade awnings or a hidden outdoor fireplace.

Comment 12: This is not a pedestrian friendly development as represented and will entice vehicular traffic from a wide area, not just UB and the adjacent proposed residential development (which is not integrated into the proposed development, but stands alone.)

Mary Shapiro, 16 Royalwoods Ct (letter dated May 2007,
Accepted for comment 6/4/2007)

Response 12: The concept plan shows an overall development of a scale that would be walkable for most individuals. The concept plan shows buildings connected via a system of sidewalks, which would link the public gathering areas and also connect to sidewalks on Maple Road. The project could also offer connections to the existing Town trail system and connect to the University and other features in this section of Amherst.

The specific site plan features of the development (building layout, parking lot location, etc.) will be determined at the site plan stage if the property is rezoned.

Comment 13: There should be bike racks within the development (to) encourage people to come by bike, especially if they live only a mile or two away.

Robert J. Collins, 4812 Harlem Road (email dated 9/15/2007)

Response 13: The project sponsor has indicated that bike racks will be provided throughout the site.

Comment 14: The narrow sidewalks on the south side of Maple Road should be improved.

Robert J. Collins, 4812 Harlem Road (9/15/07 e-mail)

Response 14: In the Town of Amherst, the installation of sidewalks is the responsibility of the adjacent property owner. For the south side of Maple Road, the project sponsor could be asked to finance or contribute to the cost of a new sidewalk to facilitate pedestrian access to the new development by area residents.

Comment 15: There is no discussion in the DEIS related to the size and scale of the proposed development, including a five-story hotel in an area of single homes.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane (8/26/07 letter)

Response 15: Although the hotel is not specifically listed among the visual impacts to be mitigated, the DEIS states that the proposed landscape treatment for Maple Road should partially mitigate views from the residential community to the south. The plans submitted with the DEIS show the proposed hotel as a 5-story, 125-room facility, set back approximately 475 feet from Maple Road, with a total size of 19,808± sq. ft. The hotel's height would be far less than the height of the existing UB stadium lighting.

Comment 16: The size of the commercial development is described in various places as between 225,000 and 275,000 sq. ft. As a matter of perspective this square footage is larger than a Wal-Mart superstore. The estimated 12,000 square feet of office space is merely a token amount.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane (8/26/07 letter)

Response 16: The comparison with a Wal-Mart store, which provides a single "big box" facility with accompanying parking lot, is misleading. The proposed project is intended to offer a variety of smaller retail buildings, mixed in with offices, a community theater, and a residential component, connected by sidewalks. The typical big box store offers few or none of these features.

Comment 17: The developer emphasizes the walkable nature of the proposed project. But the enormous size of the project belies this assertion... A *Neighborhood Retail Center* is defined as less than 100,000 sq.ft of retail space and less than 10 acres in size. That would be considered a walkable environment.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane (8/26/07 letter)

Response 17: See response to Comments 2 and 12.

Comment 18: The developer at Town Planning Board hearings emphasized the walkable nature of the project to the State University at Buffalo north campus. However, the Audubon Golf Course is located between the proposed project site and campus. Walking between the project site and the campus would not be feasible at any time of year.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 18: A pedestrian connection to the UB Campus can be made along the Pepsi Center site with new sidewalks and landscaping. The project could be linked with the Ellicott Creek trail along Maple Road. This well-established trail directly links to the University of Buffalo Campus.

Comment 19: The proposed project is not pedestrian oriented and it is not a neighborhood project. The scale of the development and the vast majority of land area devoted to parking belie the notion of neighborhood or even community development.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 19: See response to Comments 2, 11 and 12.

Comment 20: It should be noted that the architectural design as it appears in the report are visual simulations of a concept. They are not architectural renderings.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 20: Since the request before the Town is the rezoning of the subject property, the project has not been designed beyond the conceptual stage. The project sponsor has included in the DEIS images from buildings similar to those envisioned for the site to provide a general idea of the built development. If the property is rezoned, the project architects will develop the design of the buildings based on the images included in the DEIS.

Comment 21: Concerned with loss of green space

John Allein (8/07 petition)

Response 21: Although the former use of the subject property as the Buffalo Shooting Club did maintain the land as technically open and undeveloped, it was not enjoyed as “greenspace” in the same sense as if it was a public park or recreational

area. The Amherst Conservation Advisory Council, in conjunction with the Planning Department, is in the process of updating the Town's open space index to catalogue all open space land within the Town. The original index, prepared in the late 1980s as a basis for the Open Space Acquisition Plan, did not include the shooting club site as an open space parcel. See also response to Comment 11.

Comment 22: The number of buildings to be devoted to restaurant and office use should be noted.

Eric W. Gillert, AICP, Planning Director, Town of Amherst
(6/21/07 memorandum)

Response 22: While the total square footage breakdown of uses has been presented in the DEIS, the project sponsor has not determined the specific number of times that each use (office, retail, restaurant) will occur on the site. The DEIS states that the development will include 250,000± sq. ft. of retail, 35,000± sq. ft. of restaurants, 12,000± sq. ft. of offices, 4,000± sq. ft. community theater, a 125-room hotel and 75± condominium units. Because of all the variables (site layout, etc.) that may occur at the site plan stage, it is too preliminary to determine the specific type of tenant for each building.

Comment 23: Some of the photo simulations are misleading because their location is not identified on the subject site. For example, photos of 2-story retail buildings are shown but these are not proposed in the subject concept plan.

Eric W. Gillert, AICP, Planning Director, Town of Amherst
(6/21/07 memorandum)

Response 23: The majority of the photo simulations include captions that note the general location and cardinal direction of the view shown. Most of these simulations are noted to be along Maple Road. The DEIS states that "Along Maple Road the retail/restaurant buildings are proposed as one and two story masonry and wood clapboard buildings...", yet the site plan submitted with the rezoning application only shows one story buildings near Maple Road. The specific site plan features of the development will be finalized during site plan review if the property is rezoned. See also response to Comment 20.

Comment 24: Pedestrian access should be provided from the subject site to the south side of Maple Road.

Eric W. Gillert, AICP, Planning Director, Town of Amherst
(6/21/07 memorandum)

Response 24: The project sponsor is proposing pedestrian access across Maple Road at each of the two proposed traffic signal locations where pedestrian

signal equipment and crosswalks will be provided. As a common and typical design at numerous similar intersections throughout Amherst and Western New York, pedestrians will receive right-of-way over any right or left turning vehicles along their path.

Comment 25: Description of the proposed community theater does not acknowledge the close proximity to UB's Center for the Arts.

Eric W. Gillert, AICP, Planning Director, Town of Amherst
(6/21/07 memorandum)

Response 25: The project sponsor intends for the community theater in the mixed use development to be utilized as multi-purpose space for public/private use and for smaller scale, community organization events, whereas UB's Center for the Arts is used for larger scale UB functions. The proposed community theater is not intended to compete in any way with the Center for the Arts.

Comment 26: We support the walkable community concept and the energy conservation measures expressed in this project as well as the intent to provide pedestrian walk/bikeways between the project site and UB North Campus. We would, however, like to review and comment on plans regarding the placement of these connections to the campus as there were no drawings found in the proposal documents we received. We ask that the walk/bike paths be clearly incorporated in the construction drawings prior to final site plan approval and completed prior to occupancy. In addition, we hope that these pathways will include a legal mechanism to guarantee public access in perpetuity.

Sean P. Sullivan, Associate Vice President, University at Buffalo (4/11/07 letter)

Response 26: If the subject property is rezoned, the proposed development will be required to obtain site plan approval before any construction takes place. At that stage, detailed plans will be submitted and reviewed by Town departments, outside agencies and the public to determine the specific designs of the project. The University would also be able to review plans and provide input regarding the location and design of pedestrian and bike paths connecting to the campus. It is anticipated that new extensions to the Town's existing trail system would also be public in nature and remain public in perpetuity.

2.5 Signage/Lighting

Comment 27: If buildings are to be built up to the Maple Road right-of-way, how will a row of deciduous trees and plantings on a median

in the center of Maple Road mitigate the negative visual, noise, light and traffic impacts? It has not been demonstrated how the proposed median will act as a year round buffer to this development.

Mary Shapiro, 16 Royalwoods Court (letter received 9/13/07)

Response 27: The proposed median will not be the only location for landscaping for the development. Given the proximity of the subject site to residential uses on the south side of Maple Road, the developer will be required to install a High Impact landscape screen along the Maple Road frontage in accordance with the Town Zoning Ordinance. At the site plan stage, the specific location, type and size of landscaping will be thoroughly reviewed by the Town Planning Department to ensure maximum buffering of the proposed uses from existing residents.

In addition, all proposed lighting for the site must conform to the Town Zoning Ordinance for height and type of lighting fixtures. A lighting plan will be required prior to site plan approval, which, according to the Ordinance must show light impacts not exceeding 0.2 foot candles adjacent to residential use and 0.5 foot candles adjacent to commercial use. Appendix I of the DEIS includes information on site lighting.

Comment 28: An explanation of how lighting will be shielded from adjacent residential areas to the south is needed.

Eric W. Gillert, AICP, Planning Director, Town of Amherst
(6/21/07 memorandum)

Response 28: See response to Comment 27.

Comment 29: It is not noted in the DEIS that the lights from UB's stadium are also visible at night.

Eric W. Gillert, AICP, Planning Director, Town of Amherst
(6/21/07 memorandum)

Response 29: The lights from the UB stadium are considered an existing background condition that the project sponsor is not responsible for mitigating. However, the proposed light mitigation measures for the project should also contribute to reducing the stadium light impacts for adjacent residences. See response to Comment 27.

2.6 Compatibility with Comprehensive Plan

Comment 30: As recreation parcels are included in the greenspace index, this land is part of the current greenspace index, and its loss must be factored and mitigated.

Maryann Hochberg (email dated 9/14/2007)

Comment 31: This proposal would take out a lot of greenspace in the area.

Hillel Magid, 19 Rockford Place (9/4/07 public hearing transcript, p. 86).

Comment 32: The Comprehensive Plan calls for doubling the amount of open space, and there is a resolution to acquire more open space. Here is a proposal to take the last known area of open space north of Maple Road and turn it into another development. That raises the fundamental question of the integrity and management of the Comprehensive Plan.

Jerry Schad, 199 Meadowview (9/4/07 public hearing transcript, pgs. 89-90)

Response 30-32: The Amherst Conservation Advisory Council, in conjunction with the Planning Department, is in the process of updating the Town's open space index to catalogue all open space land within the Town; this report has not yet been completed. The original index, prepared in the late 1980s as a basis for the Open Space Acquisition Plan, did not include the gun club site as an open space parcel. There are significant public open space/recreational uses located immediately adjacent to the site -- the Audubon Golf Course, Audubon Par 3 and the Pepsi Center -- totaling 262± acres in size, reducing the need to acquire additional land in this part of the Town.

Comment 33: An amendment to the comprehensive plan is necessary to rezone 218 and 330 Maple Road. The DEIS provides misleading statements taken out of the context of the comprehensive plan. This is not where the comprehensive plan calls for mixed use centers. In the comprehensive plan these are located in other areas of the periphery of the UB campus and should be better integrated with surrounding residential neighborhoods for pedestrian friendly development (these areas are identified on the focal area plan and land use plan of the comprehensive plan). Erroneously, the petitioner has included the proposed development on the land use map included in the DEIS as a mixed use town center incorporated into the

comprehensive plan. 218 and 330 Maple Road have not been identified as part of a mixed use 'town center' on the correct land use map in the comprehensive plan.

Mary Shapiro, 16 Royalwoods Ct. (letter dated May 2007, Accepted for comment 6/4/2007)

Response 33: In its Resolution to the Town Board dated June 28, 2007 recommending approval of the rezoning request, the Planning Board made the following findings that the proposed zoning was consistent with the Comprehensive Plan:

- a. The proposed development is consistent with the Plan's "key initiative" for Amherst to become a "knowledge-based community". The plan recommends that the Town "work with the University at Buffalo to create mixed use activity centers around the periphery of the campus", consistent with the proposed development (pg. 11).
- b. The site is located in the section of Maple Road that has proximity to the UB North Campus, an area identified in the Comprehensive Plan's University Focal Planning Area where re-use or redevelopment of properties is encouraged (p. 154).
- c. The proposed mixed-use development will be compatible with the existing mix of uses along Maple Road. The Comprehensive Plan recognizes the "concentration of commercial service located to the south [of the UB campus] along Maple Road" (p. 151).
- d. The project will be located on Maple Road, which classification as a major arterial road recognizes its function and capacity to serve as the site of the proposed project.
- e. The proposed project will provide an economic benefit to the Town.
- f. The subject site is inappropriate for a development consisting solely of residential uses due to its location on a major arterial road and its proximity to non-residential uses including the Pepsi Center and the UB stadium.
- g. The proposed development will serve as a buffer between the existing Pepsi Center and UB stadium and the existing residences on the south side of Maple Road.

Comment 34: The DEIS is incomplete: Nowhere in the DEIS are the effects of the rezoning addressed. Although some information is given for the proposed development (which has not been through site plan approval yet and may change dramatically), there is not indication of how the loss of CF zoned property and the

addition of GB zoned property centrally located on a major East West thoroughfare will affect the town's future outlook as outlined by the Comprehensive Plan.

Mary Shapiro, 16 Royalwoods Ct. (letter dated May 2007, Accepted for comment 6/4/2007)

Response 34: The DEIS adequately evaluates the potential significant environmental impacts of the proposed action, including impacts on traffic and the transportation network, visual impacts, economic impact on neighboring properties, impacts to drainage and stormwater management, wetlands, flooding, noise and lighting impacts, impacts related to the cleanup of the soils and lead abatement, land use, zoning and the relationship to the Comprehensive Plan. The Planning Board has determined that the proposed action achieves desired planning objectives recommended in the Plan (see response to Comment 33), and the Town Board on June 4, 2007 determined the DEIS to be complete.

Comment 35: The Petition also states, "The proposed mixed use development is in accord with the Town's recently adopted Comprehensive Plan. This property is part of one of the six 'focal planning areas' defined by the Plan." (Appendix H - Petition for Rezoning, Part XV(B)) These comments will attempt to conclusively show that the previous statement is misleading and inaccurate.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 35: See response to Comment 33.

Comment 36: The proposed project is not consistent with the Comprehensive Plan.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 36: See response to Comment 33.

Comment 37: The rezoning request also inaccurately states that R-3 and Community Facilities zoning is not compatible with the University. This is hard to justify given that the State University at Buffalo is itself a community facility.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 37: The Single-Family Residential District – Three (R-3) and Community Facilities (CF) zoning districts permit uses that may be consistent with the University; however, the proposed zoning achieves planning objectives for desired uses in close proximity to the University (see response to Comment 33). A vacant, developable 33+ acre parcel at this location relative to the University and the Pepsi Center (a 4 ice sheet regional athletic facility) is an opportunity that does not appear to be available at another location in the Town. The more intensive zoning is needed to take advantage of this opportunity to implement key objectives of the Comprehensive Plan.

Comment 38: The proposed project contravenes *all* the stated goals in the Master Plan. In fact, the proposed rezoning is diametrically opposite to everything expressed in the Comprehensive Plan including the means to promote economic development.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 38: See response to Comment 33.

Comment 39: The project, contrary to these stated objectives (p.2):

- Develops open space
- Relies heavily on automobile use
- Is located on an arterial roadway
- Does not reinvest in underutilized or obsolescent commercial properties
- Does not provide adequate open space as part of the development
- Is not consistent with surrounding land use
- Not in keeping with the neighborhood scale
- Creates numerous adverse environmental impacts

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 39: See responses to Comment 21 regarding open space and Comment 33 relative to the Comprehensive Plan.

The Town of Amherst is a typical suburban municipality in which development has historically been dependent on the automobile due to its physical layout of blocks and streets and the pattern of development that has already occurred. The project does, however, attempt to integrate commercial, office, retail, residential, restaurant and community uses on one site to maximize pedestrian and bicycle movement. A system of interconnections with other community facilities (UB, Pepsi Center) and existing residential neighborhoods is also proposed to be integrated into the project. The site's

location on an arterial roadway provides the width and configuration that can handle increased vehicular traffic and visibility as a destination mixed-use center.

The subject site includes more than 33 contiguous acres of land that is owned by the developer. To replicate such a plan at another location so as to utilize existing vacant buildings would require assembling smaller parcels together, which may not be possible or feasible in the denser sections of the Town such as Eggertsville or Snyder. As proposed, the project is intended to have several large gathering spaces that are linked by green pathways and smaller gathering places. See also response to Comment 11.

The scale of the surrounding land uses, which includes a large university campus, Town buildings, restaurants, offices and retail uses, is already mixed and not entirely characterized as “neighborhood” in scale. The project is an extension of the surrounding community and offers amenities for the surrounding community to encourage interaction.

The project will also remediate and utilize a brown field, thereby alleviating an existing adverse environmental impact.

Further, the parcel’s relationship to existing intensively-used Town facilities and the University indicates that more intensive use of this property is appropriate. The applicant has proposed buffering techniques, such as a landscaped center median on Maple Road, landscaping on the parcel, progressively scaled building massing from south to north, and locating proposed residential uses adjacent to existing residential use on the west parcel boundary to mitigate the proposed project’s impact on existing residential neighborhoods.

Comment 40: (T)he project is a mixed-use development in name only. The project consists of two separate developments that have been conjoined in order to disguise the fact that it is not truly mixed-use as defined by the Comprehensive Plan.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 40: The project is proposed as a mixed-use development which will provide retail along with dining, public plazas, a hotel, a community center, business and residential uses. The project sponsor has characterized it as a walkable development in which interaction between all the uses will be encouraged. Specific site designs will not be provided unless the requested rezoning is granted, at which time all plans will be reviewed by Town departments, outside agencies, and the public at subsequent site plan public hearings.

Comment 41: *Community Commercial Centers* are located within existing and proposed commercial nodes and Mixed-Use Activity

Centers located at intersections along suburban and commercial highways. A typical size for this type of a Community Commercial Center is 150,000 square feet on 10 to 25 acres. This project is significantly larger than a Community commercial center. The proposed project is much closer to a *Regional Commercial Center*.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 41: Although the proposed project may offer unique tenants that could appeal to residents outside the immediate neighborhood, its proposed scale and makeup do not place it in the category of a Regional Center as described in the Comprehensive Plan. The Plan characterizes land uses in Regional Centers as those offering “complete comparison shopping including full-line department stores...”, a description which is clearly meant to apply to shopping malls. The proposed project includes smaller, single-tenant buildings or multi-tenant buildings interspersed with offices, which does not reach the level of a regional shopping mall. The objectives of the proposed project as stated in the DEIS include creation of a mixed-use center made up of boutique and specialty retail shops, along with a few mid-sized retailers. See also response to Comments 1, 33 and 37.

Comment 42: This project is outside the designated commercial corridors and is not consistent with the established character of Maple Road in the area between North Maplemere and North Forest Roads.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 42: The existing character of this section of Maple Road can be characterized as two commercial/office intersections with residential, community facility (Town office and golf course) uses and a former shooting range in between. The gun club, present at this location for decades, was a use highly incompatible with nearby residential uses and with nearly every other land use in this portion of the community. See also response to Comments 1 and 37.

Comment 43: Seventeen activity centers are depicted on the Conceptual Land Use Plan as the primary locations for mixed uses in the Town... The applicant’s proposed rezoning site is not located within any one of these activity centers.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 43: See response to Comments 33 and 37.

Comment 44: The Comprehensive Plan recommends that “future new commercial development should be appropriately scaled... and retail nodes designated at key locations such as major intersections rather than being allowed to proliferate along arterial roadways” (Section 3.2, Policies 3-4). The proposed project directly contravenes this directive by locating this project on an arterial roadway.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 44: There are other factors, such as the site’s proximity to the UB campus and the Pepsi Center, which contribute to this property’s suitability for the proposed mixed-use development. See response to Comment 33 for the Planning Board’s justification for consistency with the Comprehensive Plan.

Comment 45: Expanding the commercial corridor east of Millersport Highway is clearly NOT in keeping with the Comprehensive Plan.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 45: See response to Comments 33 and 44.

Comment 46: The Town’s Comprehensive Plan elaborates that the project area in particular is not to be used for commercial development... the majority of the site is specifically designated as park green space and the remaining area designated to stabilize and maintain the existing residential fabric. The University Focal Plan encourages the reuse and redevelopment of the commercial center properties at the intersection of Maple and North Forest Roads. The Plan specifically discourages the development of open space. (p.4)

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 46: The project is an opportunity that is likely not available at another location to achieve planning objectives identified in the Comprehensive Plan. See also response to Comments 33 and 37.

Comment 47: The DEIS fails to mention the numerous ways in which the rezoning does not comply with the stated objectives of the Comprehensive Plan.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 48: The DEIS was prepared by the project sponsor as stipulated in the SEQRA regulations and therefore includes the author's rationale for the rezoning as compliant with the Comprehensive Plan. The Amherst Town Board on June 4, 2007 determined the DEIS to be complete. The Board's determination as to whether the rezoning meets objectives of the Plan will be made at the time of the upcoming rezoning vote. See also response to Comments 33 and 37.

Comment 48: The DEIS discusses the goal of Traditional Neighborhood Development (TND). (Section 1.7 – February Version) An attempt to rezone the property to this designation was rejected by the developer in favor of the highest possible density use of the property. TND requires significantly greater areas of land devoted to open space (that are not parking lots.) True TND is for the creation of a pedestrian oriented neighborhood. The DEIS asserts that the goals and purposes of the TND are met with the proposed project. However, the developer has taken the concept of highest density use in the TND and turned it on its head by eliminating green space and providing for a commercial retail magnet with extensive parking and lip service to pedestrian access. As the developer notes, hotel is not part of traditional neighborhood development.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 48: The TND district is not consistent with the density proposed for this project. The Town Zoning Code does not provide for a mixed use project of this type. The Town will consider amending the Code in the future to provide a higher intensity mixed use district. Presently, other districts available in the Code provide a legal framework to achieve planning and development objectives.

Comment 49: The Comprehensive Plan recommends *doubling* the amount of open space in Amherst... Yet, approval of this rezoning will serve as the worst example of the spot zoning, for which Amherst became known in the 1980's and 1990's. The Comprehensive Plan was adopted to curb the anarchy in zoning. Approval of this rezoning will call into question the Board's previous decisions to deny rezoning based upon the Master Plan (i.e., Wal-Mart) and will set a dangerous precedent for developers in Amherst. It will also increase the pressure to rezone residential properties in the vicinity of the project for commercial use.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 49: See response to Comments 30-32, 33 and 37. It should be noted that the sale of the subject site by the Buffalo Shooting Club to Benderson Development Company occurred independent of Town involvement. The property was not offered for sale to the Town; nonetheless, the cost of purchasing it, remediating the contaminated soils and maintaining it as public open space would be substantial. In addition, the recent public referendum to permit the Town to bond for open space purchases was defeated.

The land use pattern in this area has generally been determined by the land uses that already exist. The south side of Maple Road is generally residential with no privately held vacant parcels. The north side of Maple Road is a mix of land uses, including offices, a hotel, residential and Town recreation facilities. With development of the proposed project, the existing residential use on the north side of Maple Road would be adjacent to condominiums, decreasing the likelihood of any future pressure for redevelopment to commercial uses. The proposed raised median along Maple Road will serve to visually separate the existing residences on the south side the road from the development. It does not appear that the subject action, if approved, will result in a significant change to land uses on adjacent properties.

Comment 50: If in fact, as the developer maintains in the DEIS, “The Town’s Comprehensive Plan is intended as a working document to be used as a policy guide for day-to-day decision making...” (DEIS, Part 1.7, page 1.21, both versions) the Town Board must reject the rezoning application since the developer’s plan is in opposition to all the stated goals in the Comprehensive Plan.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 50: See response to Comment 33.

Comment 51: It is inconsistent to support the purchase of open space in one area of Amherst while at the time rezoning existing open space for unsuitable commercial development. This project will diminish the amount of open space in Amherst and it will be irretrievably lost.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 51: See response to Comments 30-32 and 49.

Comment 52: The vacant Shooting Club property should be made into a playground. The Town needs more parks.

Margaret Redinbaugh, 1679C Maple Road (8/18/07 letter)

Response 52: The Town's Recreation and Parks Master Plan updated in 2004 used market standards, population standards and resident surveys to gauge the need for additional recreational facilities throughout the Town. The section of Town that includes the Gun Club property was not determined to be deficient in neighborhood or community parkland. Nonetheless, the subject property, which measures 33+ acres and exceeds the typical size of playground sites, has already been sold by the Gun Club to Benderson Development Co., eliminating the Town's options regarding future recreational use.

Comment 53: Reference is made to the Maple Road/North Forest Road mixed-use location identified in the Comprehensive Plan as capturing the demand for commercial retail needs along Maple Road in the center of town. This reference contradicts the proposed new center at the Gun Club site

Eric W. Gillert, AICP, Planning Director, Town of Amherst (6/21/07 memorandum)

Response 53: See response to Comments 3 and 37.

Comment 54: This type of mixed-use development seems in-line with the Town's comprehensive plan in its density, usage, stability and character in addition to meeting the stated goal of "development should be focused in university-related mixed use activity centers strategically located around the periphery of the campus."

Sean P. Sullivan, Associate Vice President, University at Buffalo (4/11/07 letter)

Response 54: So noted.

2.7 Environmental Setting

Comment 55: Conflicting numbers are used for the students enrolled in the Sweet Home School District.

Eric W. Gillert, AICP, Planning Director, Town of Amherst (6/21/07 memorandum)

Response 55: The figures provided in the DEIS reflected 2006 enrollment. The Sweet Home School District has supplied the most recent September 2007 enrollment figures, which are as follows:

Elementary Buildings K-5 (Total 4):	1,517
Middle School 6-8:	846
<u>High School:</u>	<u>1,267</u>
Total K-12 Enrollment:	3,630

Comment 56: In general, this section incorporates mitigation and existing conditions rather than focusing on impacts.

Eric W. Gillert, AICP, Planning Director, Town of Amherst
(6/21/07 memorandum)

Response 56: The DEIS includes a discussion of potential environmental impacts pertaining to traffic and the transportation network, visual impacts, economic impact on neighboring properties, impacts to drainage and stormwater management, wetlands, flooding, noise and lighting impacts, and impacts related to the cleanup of the soils and lead abatement. The Town Board accepted the DEIS as adequate for public review on June 4, 2007.

2.8 Drainage/Stormwater Management

Comment 57: A list of water quality treatment system/outlet control structures contained within the NYSDEC Verified Proprietary Stormwater Management Practices list which meet all of the requirements for water quality, channel protection, overbank flooding protection and extreme storm protection is not provided in the DEIS. The water quality treatment system/outlet control structure is theoretical at best.

Mary Shapiro, 16 Royalwoods Ct
(letter dated May 2007, Accepted for comment 6/4/2007)

Comment 58: Engineering plans for the water quality treatment system/outlet control structure and the full description of the detention process and potential structures are not included in the DEIS. More details of the drainage route and method of detention are necessary to analyze the system's effectiveness against the stated requirements.

Mary Shapiro, 16 Royalwoods Ct
(letter dated May 2007, Accepted for comment 6/4/2007)

Comment 59: The DEIS does not investigate avoidance or alternatives and jumps to mitigation.

Mary Shapiro, 16 Royalwoods Ct
(letter dated May 2007, Accepted for comment 6/4/2007)

Comment 60: The DEIS does not provide a routine maintenance plan for the drainage system, specify who will be responsible for the drainage system, routine maintenance and associated costs, or how it will be connected to the existing system. Town fiscal responsibilities and economic benefit analysis cannot be estimated or assessed without this information.

Mary Shapiro, 16 Royalwoods Ct
(letter dated May 2007, Accepted for comment 6/4/2007)

Comment 61: If stormwater is to be detained in an underground system of pipes, how will this stormwater and runoff be channeled and collected? Will this apparently uncontrolled “positive drainage” be the method for collection? It is unsubstantiated that adjacent properties will not be affected (by) changes in topography.

Mary Shapiro, 16 Royalwoods Ct
(letter dated May 2007, Accepted for comment 6/4/2007)

Response 57-61: Carmina & Wood, P.C. assessed stormwater management for the project in an Engineer’s Report (Appendix A of the DEIS). It is the intent of the developer to use a NYSDEC approved proprietary storm water device to address the NYSDEC water quality requirements. The system’s internal flow control will be designed to restrict the storm water discharge to existing conditions, and the necessary volume storage will be provided in the upstream underground detention piping. The preliminary storm drainage plan does show a layout of the detention piping and the proposed connection point on Maple Road. It is the intent of this system to meet or exceed the NYSDEC’s and the Town of Amherst’s storm water requirements. After additional refinement of the plans at the site plan stage, further review by both agencies will take place. No final approvals will be granted until these requirements are met.

Comment 62: The existing sanitary sewer system in this area of Maple Road is inadequate... The DEIS discusses stormwater retention on the site; however, it does not discuss the cumulative impacts associated with an increased load of approximately 90,000 gallons per day of additional sanitary sewage into the overburdened Amherst sewer system. Sanitary and stormwater

system must be discussed in tandem because of the Town's combined sewer system.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 62: The Town Engineering Department has confirmed that the sanitary sewer into which the proposed project will tie does have sufficient capacity to handle the proposed development. According to the Engineer's Report prepared by the Carmina & Wood, P.C. (Appendix A of the DEIS), the developer is proposing to extend the 8" Town of Amherst sanitary sewer which currently terminates in front of the Town Recreation Department Building. This sewer will be extended west to the subject site, and the proposed pump station forcemain will discharge into the manhole installed at this point. This sewer flows east. Furthermore, the sewer system in Amherst is not a combined storm/sanitary system; there are separate systems for storm water and sanitary sewage.

Comment 63: Sump pumps in the neighborhood often work continually... Sewage backup is often a problem for many in the neighborhood. It would seem that a project of the proposed magnitude would only exacerbate an already difficult situation.

Morton and Arlene Merowitz, 71 N. Maplemere
(6/27/2007 email)

Response 63: The sanitary sewer in question that may have capacity issues is not the sewer the proposed project will tie into. The project Engineer believes that the sewer referred to in this comment is the sewer into which the Donna Lea pump station discharges, located on the north side of Maple Road, then flowing west. The sanitary sewer this project is proposing to tie into is separate and flows east. See response to Comment 62.

Comment 64: It is the Department's understanding that Sewer Extension Approval will be required, as the property will be subdivided. Please be aware that the Erie County Health Department... will be the approving agency for the Sewer Extension Approval.

Steven J. Doleski, Regional Permit Administrator, NYSDEC
(3/28/2007 letter)

Comment 65: After review of the DEIS, it was noted that since there is possible subdivision of the site, a Downstream Sewer Capacity Analysis could be required. This Analysis should consider existing and future conditions.

Steven J. Doleski, Regional Permit Administrator, NYSDEC
(3/28/2007 letter)

Comment 66: The Final EIS should clarify that both a sewer extension and tap ins will be required for this project. This was unclear in the DEIS Infrastructure Information, Page 2.4, Sewer Sanitary section.

Steven J. Doleski, Regional Permit Administrator, NYSDEC
(3/28/2007 letter)

Comment 67: Since the project activities will involve land disturbance of over 1 acre, the project sponsor is required to obtain a State Pollutant Discharge Elimination System General Permit (GP-02-01) for Stormwater Discharge from Construction Activities. A Notice of Intent (NOI) is required to be sent to NYSDEC... and approved before construction commences.

Steven J. Doleski, Regional Permit Administrator, NYSDEC
(3/28/2007 letter)

Response 64-67: Carmina & Wood, P.C. responds that as part of this project the existing 8" Town of Amherst sanitary sewer which currently terminates in front of the Town Recreation Department Building will be extended west to service the subject property. It is understood that the Erie County Department of Health must review this extension, and a downstream capacity verification will be required. In addition, the developer acknowledges that a NYSDEC SPDES permit for Stormwater Discharges from Construction Activities will need to be applied for. These reviews will be done in conjunction with the site plan review process.

Comment 68: New intensive development should be limited until the Town develops an acceptable Stormwater Management Plan as described in the Master Plan, which develops a comprehensive program integrating measures to address current flooding and overflow problems.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Comment 69: There would be increased flooding with this project, because every time you take green space and put in concrete asphalt, you're removing areas where you could get drainage.

Hillel Magid, 19 Rockford Place (9/4/07 public hearing transcript, pgs. 86-87)

Response 68-69: The current guidelines for storm water design as put forward by the Town and NYSDEC will be followed as part of the final design of the project. These guidelines limit the discharge following development to pre-development conditions, therefore not contributing to any new or existing flooding problems.

Comment 70: Even if stormwater is retained onsite the creation of extensive impervious surfaces could create more flooding in the neighborhood.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 70: Carmina & Wood, P.C., project Engineers, respond that the grading of the project area is such that runoff from any new impervious area will be collected and will be conveyed to the storm water detention system and will not sheet drain off site. The design of the final system will follow current guidelines for storm water design as put forward by the Town and NYSDEC which limit the discharge following development to pre-development conditions, therefore not contributing to any new or existing flooding problems.

2.9 Site Topography

Comment 71: It is not substantiated that a berm and drainage toward the north can or did create low areas.

Mary Shapiro, 16 Royalwoods Ct
(letter dated May 2007, Accepted for comment 6/4/2007)

Response 71: Carmina & Wood, P.C., project Engineers, respond that the existing berm along the north property line did not create a new low area. The berm did create a barrier for water sheet draining to the north and therefore may have created an area for water to pond in the vicinity of the berm. Any ponding problems in this area will be addressed in the proposed grading scheme for the project which will be provided during the site plan stage.

Comment 72: There is no grading plan included with the DEIS.

Mary Shapiro, 16 Royalwoods Ct
(letter dated May 2007, Accepted for comment 6/4/2007)

Response 72: There is a preliminary grading plan that was prepared by Carmina & Wood, P.C. and is part of the plans submitted with the DEIS. This plan shows the proposed grades throughout the property and also indicates the location of the drainage inlets which will collect the storm water and convey it to the detention system via the proposed underground pipe network.

Comment 73: It is unsubstantiated that adjacent properties will not be affected (by) changes in topography.

Mary Shapiro, 16 Royalwoods Ct
(letter dated May 2007, Accepted for comment 6/4/2007)

Response 73: Carmina & Wood, P.C. responds that the adjacent properties will not be affected by changing the topography of the subject site. The site will be graded such that any runoff generated on site will be kept on site, and any water which currently sheet drains onto the site from adjacent properties will be allowed to continue to do so. The Engineer's Report is included in Appendix A of the DEIS.

2.10 Wetlands

Comment 74: A 'drain' identified during the supplemental environmental study for environmental contaminants may indicate that the wetland areas are drained to 'waters of the US' and thus fall under Army Corps of Engineers jurisdiction. This data point is not indicated on the map of sampled areas. Jurisdiction can only be determined after accurate wetland delineation and wetland boundary assessment are done during the normal growing season.

Mary Shapiro, 16 Royalwoods Ct
(letter dated May 2007, Accepted for comment 6/4/2007)

Response 74: Earth Dimensions, Inc. has provided the following response: The drain in question did not connect to the delineated wetlands at the site. A jurisdictional determination was conducted by the U.S. Army Corps of Engineers (USACE) using the guidance set forth in the memorandum entitled "Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in Rapanos v. United States & Carabell v. United States", dated June 5, 2007. In order to meet the qualifications to be considered Federally jurisdictional, the significant nexus test, as described in this memorandum, would have had to have been met. The USACE determined that the test was not met.

The wetland delineation (Appendix E of the DEIS) was conducted in compliance with the 1987 U.S. Army Corps of Engineers Wetland Delineation manual which has no requirement that wetland delineations be completed during the growing season. However, the jurisdictional determination and USACE site visit to confirm the wetland boundaries was completed on June 26, 2007, well within the documented growing season.

Comment 75: (If) wetlands on the property drain into waters of the US (i.e. Niagara River via Tonawanda Creek, via Ellicott Creek), it is even more vital to determine if groundwater and runoff is contaminated with lead or other potential contaminants of concern prior to development. Stormwater contamination would substantially change the requirements for the design of stormwater drainage and containment systems. These concerns have not been adequately investigated in the DEIS.

Mary Shapiro, 16 Royalwoods Ct
(letter dated May 2007, Accepted for comment 6/4/2007)

Response 75: According to Harter Secrest & Emery LLP and Benchmark Environmental Engineering and Science, TurnKey Environmental Restoration, LLC, it is not accurate to say any wetland area on the property has a hydrological, chemical, hydrogeologic, or surface connection to waters of the United States. This is confirmed by the U.S. Army Corps of Engineers.

All environmental investigations related to the property have also confirmed that any soluble lead in groundwater is below groundwater cleanup standards and, in any event, no one in the area uses groundwater for potable water. This issue will be reviewed and addressed by DEC in its final approval of the remedial action, but based upon the investigations to date, it is expected that no groundwater remediation or monitoring will be required once the contaminated soils are removed from the site.

There will be no impacts to stormwater once all contaminated soils are removed. Since the remediation at the site will be complete prior to installation and use of any stormwater improvements, any design to retard or contain speculative contamination will be unnecessary since it will have been fully removed.

Comment 76: More thorough wetland delineation is warranted in this case due to the submitted delineation being undertaken outside of the normal growing season after brush hogging had occurred. Both the USACE and NYSDEC regulatory analysis consider avoidance of wetlands to eliminate losses. In this regard, it is recommended that USACE determine wetland boundary confirmation. If this is the regard that the petitioner is taking, both the USACE and the NYSDEC should be allowed to investigate and determine the wetland boundaries.

Mary Shapiro, 16 Royalwoods Ct
(letter dated May 2007, Accepted for comment 6/4/2007)

Response 76: Earth Dimensions, Inc. has stated that the USACE has completed a site visit, wetland boundary confirmation and jurisdictional determination. The site visit was conducted on June 26, 2007. The USACE

concluded with the wetland boundaries, as delineated by Earth Dimensions, Inc. and determined that the on-site wetlands are isolated and non-jurisdictional as outlined in the letter dated September 13, 2007 from USACE. NYSDEC has no jurisdiction over any wetlands at the subject parcel but has, through the SEQR process, every opportunity to comment.

Comment 77: The Corps of Engineers has not made a determination regarding federally regulated wetlands on the site.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 77: See response to Comment 76.

Comment 78: The land in question is quite flat. Water ponds in various places on the site and in the neighborhood. In fact, it is our impression that a good part of the site in question has been designated as wetlands which attests to the fact that sump pumps in the neighborhood work constantly during rainy periods, all day long.

Morton and Arlene Merowitz, 71 N Maplemere
(6/27/2007 email and 9/4/07 public hearing transcript, pgs. 81-82)

Response 78: None of the property has been designated as jurisdictional wetlands, as outlined in a letter dated September 13, 2007 from the USACE and included in Appendix E of the DEIS.

Comment 79: We suggest that you contact the United States Department of the Army, Corps of Engineers' Buffalo District Office (COE) concerning the COE's regulatory jurisdiction to ensure that the project will not involve federally regulated wetlands or any other approval from that agency.

Steven J. Doleski, Regional Permit Administrator, NYSDEC
(3/28/2007 letter)

Response 79: See response to Comment 76.

Comment 80: We noted that 65% of the soils found on site could have hydric soil inclusions, which could indicate the possibility that federally regulated wetlands are part of the site.

Steven J. Doleski, Regional Permit Administrator, NYSDEC
(3/28/2007 letter)

Response 80: A wetland delineation was conducted by Earth Dimensions, Inc. in 2006 (Appendix E of the DEIS) which identified 1.17 acres of jurisdictional wetland. A subsequent site visit and jurisdictional determination on June 26, 2007 confirmed this wetland delineation and determined that the delineated wetlands were isolated and non-jurisdictional.

Comment 81: The site visit for delineation was performed on December 22, 2006 well outside the normal growing season for this area. Although hydrophytic vegetation was identified during the field investigation, all hydrophytic vegetation present during the growing season may not have been identified. Many plants of all types may not have been present at this time of year and the survey may not have adequately represented those plants which would normally be more or only apparent during the growing season, leading to under representation. More investigation is necessary to ascertain that wetland boundaries, as delineated, are appropriate and accurate.

Mary Shapiro, 16 Royalwoods Ct
(letter dated May 2007, Accepted for comment 6/4/2007)

Response 81: The wetland delineation (Appendix E of the DEIS) was conducted as outlined by the 1987 U.S. Army Corps of Engineers Wetland Delineation Manual, which does not require that wetland delineations be conducted during the growing season, but rather without snow cover and frozen ground. The site investigation by the USACE was conducted on June 26, 2007, well within the growing season. The wetland boundaries as mapped by Earth Dimensions, Inc. were confirmed.

Comment 82: It should be noted that winter wetland delineations are notoriously inaccurate.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 82: See response to Comment 81.

Comment 83: All of the pages after page 13 (an undetermined number) of the wetland delineation submitted by Earth Dimensions are missing from the public review copies of the DEIS (i.e. online copy as well as the copy in the Audubon branch of Amherst Public Library). A complete review could not be made of this document.

Mary Shapiro, 16 Royalwoods Ct
(letter dated May 2007, Accepted for comment 6/4/2007)

Response 83: According to Earth Dimensions, Inc., the wetland delineation report (minus attachments) only had pages numbered up to page 13.

Comment 84: If (the) jurisdictional determinations from these agencies (were) included in the DEIS, they were not included in the public review copies at the Amherst public library or on the town's website for public review and comment.

Mary Shapiro, 16 Royalwoods Ct
(letter dated May 2007, Accepted for comment 6/4/2007)

Response 84: The jurisdictional determination was not issued until September 13, 2007 and was, therefore, not available for inclusion in the DEIS.

Comment 85: The DEIS does not include the National Wetland Inventory map which indicates that there are mapped wetlands on the site.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 85: Earth Dimensions, Inc. responds that the published version of the National Wetlands Inventory Map does not indicate any wetlands within the project site. The on-line version (FWS Wetlands Mapper) does, in fact, indicate areas of potential wetland within the project site. A wetland delineation revealed the presence of 1.17 acres of wetland within the project site. These wetlands were later determined to be non-jurisdictional. See also response to Comment 77.

2.11 Cultural Resources (Archaeology)

Comment 86: We have reviewed the archaeological information contained in Appendix C; however, before any permits can be issued, a copy of a letter from the New York State Office of Parks, Recreation and Historic Preservation (NYS OPRHP) stating there is no further investigation necessary for this project to go forward.

Steven J. Doleski, Regional Permit Administrator, NYSDEC
(3/28/2007 letter)

Response 86: The Phase I Cultural Resources Investigation and Phase IB Addendum conducted for the project site by Panamerican Consultants, Inc. (Appendix C of the DEIS) conclude that the proposed project will have no effect on cultural resources listed, or eligible for listing, in the State or National Registers of Historic Places, and that no further cultural resource investigations are recommended. A copy of an OPRHP letter dated June 1, 2007 states that agency's concurrence with this finding.

2.12 Vehicular Circulation (Traffic / Transportation)

Comment 87: If the new Benderson development advances, besides 2 traffic lights, the speed limit should additionally be reduced on Maple Road. Traffic impact will be felt beyond Maple Road itself, and this is of concern.

Maryann Hochberg (email dated 9/14/2007)

Comment 88: It concerns me how any of us will get across Maple Road as pedestrians, and whether the speed limit will remain at forty-five.

Ann Eisenlord, 115 Ava Lane, Williamsville (9/4/07 public hearing transcript, pgs. 69-70)

Response 87-88: Speed limits are normally set according to the actual speeds measured by an engineering investigation. Since Maple Road is a County road, the determination of an appropriate speed limit falls under the jurisdiction of the Erie County Department of Public Works. The New York State Manual of Uniform Traffic Control Devices (MUTCD) states that "Experience has firmly established that posted speed limits have little effect on overall traffic speeds. Highway conditions themselves generally limit speed." Therefore, it is suggested that vehicle speeds along Maple Road be monitored as development progresses. A reduction in the posted speed limit should be considered if the actual vehicle speeds become lower. FRA Associates, traffic consultant for the project, states that the addition of a landscaped median and slightly narrower travel lanes will tend to reduce vehicle travel speeds. Furthermore, the proposed implementation of a coordinated traffic signal system along Maple Road may also help to enforce a desired travel speed by timing the green signal indications so as to favor motorists who travel at a lower speed.

The traffic impact that will be felt from the project on roads intersecting with Maple Road will be mitigated to the extent possible, as described in the original Traffic Impact Study included in Appendix D of the DEIS.

Comment 89: The (UB) north campus is too large to expect students to walk to this new center located at the former gun club. The solution will be to have university buses provide transportation to and from this area. The result will be an increase in commercial bus traffic on Maple Road. My suggestion is to require Benderson to modify the plans to include another entrance from Millersport Highway into the complex. This will eliminate the UB bus traffic from Maple Road as well as provide another entrance for customers and the commercial trucks (to) bring merchandise to this area.

B. Allyn Kain, 410 Sunrise Blvd (9/12/07 letter)

Response 89: The owner of the land proposed for development does not own or have access rights to land or rights- of-way to North Maplemere Road, which could provide access from the Pepsi Center and the UB Campus via Millersport Highway. The project sponsor is amenable to accommodating university bus routes on-site should the University of Buffalo desire to extend their transportation services to proposed Amherst Town Centre. The Niagara Frontier Transportation Authority (NFTA) is currently initiating a study to determine future public transit options in relation to the proposal to expand the University campus. The NFTA study will include consideration of public transit options between the University campus and the proposed Benderson site.

Comment 90: It appears to me that there are not enough parking places. I would suggest a bus loop into the development for the large number of service workers that will be required.

Robert J. Collins, 4812 Harlem Road (email dated 9/15/2007)

Comment 91: Bus lanes for safe loading and unloading on Maple Road have not been identified, although residential uses are proposed for this development.

Mary Shapiro, 16 Royalwoods Ct
(letter dated May 2007, Accepted for comment 6/4/2007)

Response 90-91: FRA representatives have spoken with Mr. Robert Gower of the NFTA regarding possible expansion plans for transit service into or near the proposed development. Mr. Gower said there are no definitive plans at this time to expand service, but they are open to providing new service where demand warrants. They are starting to coordinate with the University at Buffalo to explore transit options in response to the University's expansion plans. Beginning this year, the NFTA will also be sponsoring a transit restructuring study in coordination with Erie County to address transit needs over the next 5 to 10 year period. Currently, Maple Road from Alberta Drive to North Forest Road is currently not on an NFTA transit

route. Mr. Gower noted that the developer should ensure the roadways and turning radii are designed for Metro Buses to accommodate access to locations on the development parcel.

Comment 92: Besides construction and maintenance there will be a significant issue of winter snow plowing around the medians to allow homeowners on the south side of Maple Road to safely make turns around the median to travel west. This is not discussed in the DEIS.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Comment 93: In the winter the snow plowing is initially done one lane in each direction until the plows come down full force. How will plowing work with all the traffic this project will bring?

Ms. Aquilina, 215 Maple Road, also speaking for Mr. Allein,
225 Maple Road (9/4/07 public hearing transcript, pg. 78)

Response 92-93: According to FRA Associates, snow plowing on roads with medians requires slightly more precision than on an undivided roadway sections. However, the Erie County road maintenance crews are experienced in clearing snow out of both through travel lanes and turn lanes as needed. This condition is very common on other divided arterials in the surrounding area, including sections of Niagara Falls Boulevard, Sheridan Drive and Transit Road.

Comment 94: It has not been proposed where the proposed median would replace the turning lane, as it has not been shown where (it) “is not required for safe traffic maneuvers.” Residents living on the southern side of Maple Road will always have to get into and out of their driveways to travel in east and west directions. It has not been shown how this can be done safely without a turn-lane or with the proposed median.

Mary Shapiro, 16 Royalwoods Ct
(letter dated May 2007, Accepted for comment 6/4/2007)

Comment 95: Further details for the placement of the center raised highway median, signalized intersections, and traffic lanes will need to be finalized with this department prior to issuance of a Highway Work Permit.

Michael J. Asklar, P.E., Traffic Safety Engineer, County of Erie,
Department of Public Works (letter dated 8/31/07)

Comment 96: If medians are put in on Maple Road, there will not be access to private driveways. How can we have turn-arounds or U-turns in order to access people's driveways?

Marcia Gunther, 2 Auden Court (9/14/07 public hearing transcript, pg. 56)

Comment 97: In order to go westbound, the residents are going to have to go across two lanes of traffic to get into a third left turn lane, and then do a U-turn. During rush hour there's no way they're going to be able to do that. Also, when cars are westbound on Maple Road, how is anyone going to make a left turn into their driveway?

Ms. Aquilina, 215 Maple Road, also speaking for Mr. Allein, 225 Maple Road (9/4/07 public hearing transcript, pgs. 77-78)

Response 94-97: FRA Associates selected a conceptual location for the proposed raised median, so that it is generally centered on the existing center two-way left turn lane. Refinements beyond the conceptual level will be worked out with the Erie County Department of Public Works. The raised median would extend along Maple Road from the western end of the proposed development to the eastern end. Exclusive left turn lanes with provisions for U-turns would be built into the median at required locations in order to allow sufficient stacking space for vehicles seeking to make a U-turn or turn left into Donna Lea Boulevard or any of the proposed project driveways. The design details of the median and the turning lanes will be prepared as part of the project design process. The raised median will have a width of 20.5 feet, which will be more than sufficient to allow the construction of exclusive left turn lanes within the median zone. Where left turn lanes are to be provided, a raised median width of 8.5 feet will be available to allow for the planting of trees and vegetation.

The proposed raised median will require that all outbound residents on the south side of Maple Road travel easterly and then make a U-turn at the first median break in order to travel west. Similarly, motorists returning to their homes from the east will make a U-turn at the first available median break. These maneuvers, while involving slightly additional travel distances, will allow for a safer and more orderly operating environment than the current condition by eliminating hazardous left turns into and out of the driveways. Raised medians are extremely common on arterials in other parts of the country, and residents and business customers readily adapt to the changes that are entailed by the raised medians.

Comment 98: The need to maintain 5 lanes on Maple Road is a must. The proposed center islands will reduce and restrict movement to 4 lanes. This in turn will contribute to serious traffic problems. This will result from cars having to stop and wait for a light to

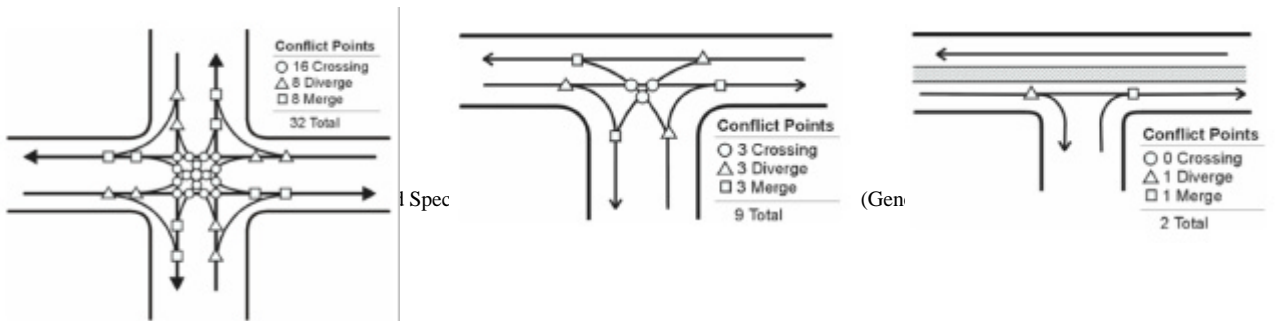
change so that they can enter the property (cars going west to east). The Planning Department must take into consideration a long term permanent plan, such as possibly adjusting the adjoining golf course and Town Recreation Department properties.

Roger W. LeGoff, 318 Hunters Lane
(letter received 9/14/2007)

Response 98: According to the project traffic engineer, FRA Associates, a divided roadway section is inherently a safer roadway cross section than an undivided roadway section based on national accident statistics. FRA Associates notes that it is common practice in many states including New York State to construct divided arterial highways as the norm rather than as the exception. With divided roadways, the number of conflict points that a driver has to face is greatly reduced, making every decision easier for the motorist. It is true that a raised median may require a driver to travel slightly further to make a u-turn, followed by a right turn instead of a direct left turn than could have been made on an undivided roadway. However, the safety benefits of a raised median that accrue to the driving population have been found to greatly outweigh the negative impacts of slightly longer travel distances.

As shown in Figure 1 below, at a standard 4-way intersection, a driver has a total of 32 possible decisions, or conflict points, that can occur with other vehicles. At a three-leg or “T” intersection, the conflicts are less with only 9 conflict points. One of the most simplistic forms of traffic access that occurs along a divided highway is a simple right-in/right out which has only two conflict points.

Figure 1 Conflict Point Summary



Source: Iowa Statewide Urban Design and Specifications Roadway Design Manual, Chapter 51 (General Access Management)

As the table below indicates, with the addition of the proposed median on Maple Road, the proposed development will reduce the number of conflict points in the development area from 153 to 91 conflict points, a 40 percent reduction. This represents a significant reduction which should make driver decision making easier

along this corridor. This will help to reduce the potential for traffic accidents along this segment of Maple Road over the long term.

Conflict Point Analysis

Existing Conditions	Conflict Points per location	Quantity	Total Conflict Points
16 driveways along south curb of Maple Road	9	16	144
Donna Lea	9	1	9
Total Existing Conditions			153
Proposed Conditions	Conflict Points per location	Quantity	Total Conflict Points
16 driveways along south curb of Maple Road	2	16	32
Donna Lea/West Signalized Drive	32	1	32
Service Drive	9	1	9
Western Unsignalized Drive	9	1	9
Eastern Signalized Drive	9	1	9
Total Existing Conditions			91

With a daily traffic volume in excess of 20,000 vehicles per day, Maple Road already carries enough traffic to justify conversion to a divided roadway. The Town has endorsed a raised median on Maple Road to the west of North Forest Road Corridor as part of the *Access Management Strategies for Major Corridors Study*.

The two proposed traffic signals at the project site driveways will provide a safe and efficient location from which to make both left turns and U-turns from Maple Road.

Comment 99: The petitioner proposes to replace the current center turn lane of Maple Road with a landscaped median to promote traffic calming measures. It has not been substantiated that the proposed median would act to calm traffic in this area and not cause a detriment to traffic levels of service and lead to driver confusion and accidents. (p.2) It has not been demonstrated how traffic would exit the proposed development to travel East on Maple Road, enter the proposed development traveling East on Maple Road, where the median/medians would start or stop and how residents on the south side of Maple Road would access their homes from either direction. The confusion over traffic flow may increase with vehicles making u-turns and

trying to exit the proposed development simultaneously, leading to increased numbers of accidents including those involving pedestrians.

Mary Shapiro, 16 Royalwoods Ct
(letter dated May 2007, Accepted for comment 6/4/2007)

Comment 100: With the proposed square footage of commercial space and restaurants and the proposed residential vehicles will come a lot of traffic going in and out of that little area. It's like creating a town within a town. The Environmental Impact Statement states there will be traffic calming issues on Maple Road.

Ms. Aquilina, 215 Maple Road, also speaking for Mr. Allein, 225 Maple Road (9/4/07 public hearing transcript, pgs. 76-77)

Response 99-100: FRA Associates responds that the divided roadway in a coordinated signal system is a safer, more orderly and more predictable form of traffic control. Pedestrian crossings will be controlled at more clearly-defined locations along Maple Road with pedestrian signals, clearly-marked crosswalks, and with the median to act as a pedestrian refuge for pedestrians who are unable to walk across Maple Road during one crossing phase. This is particularly important for older individuals or pedestrians with mobility impairments, as currently the center turn lane provides no refuge at all. With the median, a slower moving pedestrian could cross part way on one signal phase, wait in the median, and cross the rest of the way on the second signal phase.

The proposed median will help to calm traffic on Maple Road by narrowing the existing traffic lane widths from the current 14.5 and 12.5 feet per lane to 12 feet per lane, which per Erie County Desirable Geometric Design Highway Standards for Urban Erie County Highways is considered a desirable travel lane width for a principal arterial highway. Studies have shown that narrower traffic lanes tend to reduce vehicle speeds.

The Traffic Impact Study (Appendix D of the DEIS) prepared for this project has demonstrated that the traffic levels of service will be acceptable with the provision of the raised median on Maple Road. There may be an initial period of adjustment by motorists when the raised median initially replaces the existing two-way center lane. Once motorists adjust to the modifications, it is expected that the raised median with the two new traffic signals will provide a higher level of motorist comfort and a lower potential for vehicle conflicts and accidents. The Traffic Impact Study also explained how outbound motorists from the proposed project will be able to turn left from either of the two proposed traffic signals or from the two unsignalized driveways, where median breaks along Maple Road will be provided.

Potential conflicts between U-turns and outbound right turns can be minimized by installing a “No Turn on Red” sign for outbound right turns from the project driveway.

Comment 101: It is being touted that a decorative median is proposed for the center of Maple Road in that area. Erie County already has a Phase II plan for the roadway segments of Maple Road which keeps the curb-to-curb width of the roadway at 68 feet. No one is saying what the proposed curb-to-curb width of Maple Road segments will be following the addition of said medians, but I certainly oppose any number exceeding 68 feet.

Maryann Hochberg (email dated 9/14/2007)

Response 101: FRA Associates states that the project sponsor is proposing a curb-to-curb width of 68.5 feet. Details on the roadway cross section design will be worked out in detail with the Erie County Department of Public Works as the project progresses.

Comment 102: Please insist on the traffic signal/pedestrian crossing at Donna Lea. This will allow bike riders in my neighborhood to safely reach the bike path.

Robert J. Collins, 4812 Harlem Road (email dated 9/15/2007)

Response 102: A traffic signal with pedestrian crosswalks and pedestrians signals is proposed at the intersection of Maple Road with Donna Lea Boulevard.

Comment 103: We do not need any more lights on Maple Road nor any modifications to the road, which is constantly in disrepair. We don't need any more drivers making U-turns and causing more accidents on what is already becoming a very crowded road.

David J. Trask, Snyder, NY (email dated 9/12/2007)

Response 103: The Traffic Impact Study (Appendix D of the DEIS) determined that both of the two proposed traffic signals along Maple Road will be required in order to safely and efficiently accommodate the anticipated traffic from the proposed project. The two signals will be carefully coordinated with the existing signals along Maple Road in order to minimize vehicle stops and delays for through traffic.

Comment 104: The petitioner has failed to show how the proposed development will reduce vehicular trips to and within the site by encouraging walking and by including more pedestrian amenities.

Mary Shapiro, 16 Royalwoods Ct
(letter dated May 2007, Accepted for comment 6/4/2007)

Response 104: FRA Associates responds that in order to present a worst-case analysis of vehicle traffic impacts, the Traffic Impact Study did not assume any “trip credits” for pedestrian movement to and from the site. In the long run, pedestrian amenities on the site may help to mitigate vehicular traffic impacts.

Comment 105: Limiting westbound through-traffic to one lane will result in traffic gridlock at peak times and additional accidents as those stuck in the turn lane realize they have to move over to the other lane to go straight. ...One dedicated lane for through traffic for the northern portion of Maple Road has not been demonstrated to be adequate to maintain reasonable levels of service for all areas and intersections with Maple Road from North Forest to the entrance/exits of Millersport Hwy.

Mary Shapiro, 16 Royalwoods Ct
(letter dated May 2007, Accepted for comment 6/4/2007)

Response 105: There is no plan to reduce the number of through lanes from two to one at any location along the study corridor. Both westbound and eastbound traffic on Maple Road, as proposed, will have two through traffic lanes in each direction.

Comment 106: An additional stoplight at Donna Lea may increase commute times for those traveling cross-town and therefore lead to increased speeds and higher vehicle numbers in this area.

Mary Shapiro, 16 Royalwoods Ct
(letter dated May 2007, Accepted for comment 6/4/2007)

Comment 107: It is very difficult to exit our street left or right due to the already existing circumstances. In the winter, snow drifts across Maple Road at the Par 3 golf course at the bend in the road. It is also difficult all year long to see around the bend to the left. Summer time presents another challenge – the driveways to the Audubon Golf course. People exiting and entering that parking lot are often in competition with those trying to exit and enter Sandhurst Lane. We often find ourselves going bumper to bumper with other cars in the middle turn lane. There must be more than one exit/entrance to the proposed development and signal lights, with automatic stops, should be installed along the already busy Maple Road at appropriate intervals.

Geraldine C. Luhasa, 55 Sandhurst Lane (8/25/07 petition)

Response 106-107: FRA Associates: With the addition of the two proposed traffic signals and the raised median, this section of Maple Road is expected to flow more smoothly with fewer vehicle conflicts. Through traffic on Maple Road will be time-based coordinated more effectively than the existing condition by linking the two proposed traffic signals with the existing signals at Maplemere Road and North Forest Road. This will help to create more recognizable and established platoons of traffic, due to the extended distance between Maplemere Road and North Forest Road. Accordingly, more motorists traveling straight on Maple Road will receive a green light as they approach these intersections. This may result in reduced commuter times, in contrast to the concern expressed in the above comment. There is also no apparent basis to expect that motorists would increase their speeds.

The existing difficulty in exiting the side streets along Maple Road and the conflicts with the golf course traffic is acknowledged. However, it is expected that the installation of the two new traffic signals at the proposed project driveways will significantly help to platoon the traffic flows and create significant gaps in the Maple Road traffic that do not presently exist. The new gaps in the traffic stream will create additional opportunities to turn in and out of the side streets and the golf course, thereby reducing delays and vehicle conflicts as compared to the existing condition.

Comment 108: It has not been demonstrated that there will be no impacts on access to the Pepsi Center as levels of service at the intersection of Maple and Flint deteriorate. These effects have not been adequately investigated. Decreased levels of service at this intersection may effectively eliminate access to and from the Pepsi Center from the south, thus increasing traffic on Millersport Hwy and the Flint Road entrance/exit to and from the north. This would put additional vehicular traffic on the Maple Road on and off ramps to and from Millersport Hwy. Potential increases in vehicular traffic on Millersport Hwy from North Forest to Maple Road has not been adequately investigated as vehicular traffic from the eastern portion of Amherst may bypass the proposed development area to travel on Millersport Hwy to access Maple Road and points to the west.

Mary Shapiro, 16 Royalwoods Ct
(letter dated May 2007, Accepted for comment 6/4/2007)

Comment 109: Already parts of Amherst including further down at Maple and Flint are deadlocked at 5:00 in the afternoon, and at Maple and Bailey you don't want to go out at lunch hour because it's bumper-to-bumper.

Ann Eisenlord, 115 Ava Lane, Williamsville (9/4/07 public hearing transcript, pg. 70)

Response 108-109: FRA Associates: The intersection of Maple Road and Flint Road is currently programmed by the Erie County Department of Public Works for several improvements. These improvements include the provision of an exclusive right turn lane on the eastbound approach, the restriping of the northbound Flint Road approach, and the addition of green left turn phases on all four approaches to the intersection. With these improvements in place as a background condition, the Traffic Impact Study determined that the impact of the site-generated traffic can be mitigated by a minor adjustment to the traffic signal timings. The resulting Levels of Service will be very similar to those that would occur without the project traffic.

The intersection of Maple Road and Flint Road is only one of several alternative options for reaching the Pepsi Center. Much of the Pepsi Center traffic comes from the south on Millersport Highway and travels over Maple Road at the grade-separated interchange to reach the Pepsi Center entrance. There is the possibility that some traffic may be added to Millersport Highway between Maple Road and North Forest Road. However, this section of Millersport Highway has a high level of excess capacity with two through lanes in each direction and only one traffic signal located at the intersection with the University entrance and the Pepsi Center entrance. There should not be a significant impact on Millersport Highway along this corridor.

Furthermore, the highest levels of traffic for the Pepsi Center usually occur on weekday evenings, which do not coincide with the highest weekday periods of traffic on the adjacent street system.

Comment 110: The actual location of the proposed median has not been demonstrated.

Mary Shapiro, 16 Royalwoods Ct
(letter dated May 2007, Accepted for comment 6/4/2007)

Response 110: See response to Comments 94-97.

Comment 111: How will traffic flow into and out of the proposed development safely while allowing safe pedestrian crossings where necessitated as indicated on the pedestrian flow diagram..., safe vehicular entry and exit of residential driveways south of the proposed development, safe emergency and service vehicle access to the site and to residential areas of Maple Rd and side streets, safe pedestrian and bicycle crossings at all potential areas of Maple Road and at proposed vehicular entry and exit points, and safe pick up and drop off of students from school buses? How will reasonable levels of service be maintained for

all of the above flows? This has not been adequately demonstrated or investigated.

Mary Shapiro, 16 Royalwoods Ct
(letter dated May 2007, Accepted for comment 6/4/2007)

Comment 112: In case of an emergency, emergency vehicles will need to navigate around to homes causing potential hazards and a delay in response time.

Ms. Aquilina, 215 Maple Road, also speaking for Mr. Allein, 225 Maple Road (9/4/07 public hearing transcript, pg. 78)

Comment 113: Has the access for police and emergency response to this development been considered? The inconsistent design of the road for this project creates confusion and will delay any kind of emergency response.

Larry Hunter (9/4/07 public hearing transcript, pg. 94)

Response 111-113: The site will be designed with pedestrian amenities to include pedestrian crosswalks. Pedestrian access across Maple Road will be provided at each of the two proposed traffic signal locations where pedestrian signal equipment and pedestrian crosswalks will be provided. Pedestrians will receive right-of-way over any right or left turning vehicles along their path. This is a very common and typical design at numerous similar intersections throughout Amherst and Western New York.

Bicyclists are generally treated as motor vehicle operators according to the New York State Vehicle and Traffic Law and they are regulated by the same laws that apply to motor vehicles. All provisions that are made for motor vehicles would also be applicable to bicyclists. Bicyclists should be encouraged to ride in the same direction as adjacent motor traffic and, if their comfort level allows, they should also be encouraged to use the exclusive left turn lanes when executing a left turn. Bicyclists who are not comfortable with such movements may choose to function as pedestrians and use the crosswalks at the proposed traffic signals.

The proposed raised median will help to improve the safety and efficiency of through vehicle traffic on Maple Road. The movement of vehicles to and from the residential driveways along Maple Road will become safer due to the elimination of hazardous left turn movements to or from these driveways. Emergency and service vehicle traffic will have a high level of accessibility to the project site and to the residential area south of Maple Road due to the frequent median breaks that will be provided.

The project sponsor has submitted a Traffic Impact Study (Appendix D of the DEIS) that has been reviewed by the New York State Department of Transportation (NYSDOT) and Erie County officials. The NYSDOT and Erie County are the

agencies responsible for the maintenance, upkeep, and safe movement of traffic on the majority of the roads on which the site-generated traffic will travel. The NYSDOT provided one comment regarding mitigation which the project sponsor is willing to fund. This mitigation consists of a right turn lane on the northbound off-ramp from Millersport Highway to Maple Road. It has been determined that there is sufficient right-of-way to construct this lane. The Erie County Department of Public Works has also reviewed the Traffic Impact Study and has agreed with the proposed improvements as full mitigation of project-related impacts.

This rezoning request has been reviewed by the Getzville Fire Chief, who has commented in his review of February 24, 2007 on the “general logistical issues such as additional personnel and equipment which may be required” for the project, but has not raised any concerns related to the provision of emergency fire services. Likewise, the Amherst Police Chief, in a letter to the project’s economic consultant dated May 8, 2007, mentioned the expected increase in demand for police resources related to the project, but states there are no “exceptional implications that are cause for concern”.

Comment 114: The Amherst Traffic Safety Board would be willing to provide a list of concerns that should be addressed before any rezoning approval.

Amherst Traffic Safety Board (letter dated 9/11/07) and
Chris Schregel (email dated 9/6/07)

Comment 115: The Amherst Traffic Safety Board is not in favor of the rezoning based on the project proposal submitted in the Draft Environmental Impact Statement, for the rezoning of the Gun Club parcel, due to numerous traffic concerns on arterial and adjacent residential roadways. The Amherst Traffic Safety Board requests that this rezoning be held until an independent traffic study is conducted that can clearly demonstrate that any and all traffic concerns are mitigated as part of this project scope.

Amherst Traffic Safety Board (letter dated 9/11/07) and
Chris Schregel (email dated 9/06/07)

Response 114-115: On August 1, 2007, the Amherst Traffic Safety Board discussed the subject rezoning request with representatives of the project sponsor and their traffic engineer (FRA Engineering, PC.). The Traffic-Safety Board voted 5-1 in favor of recommending approval of rezoning; however, the vote was subsequently changed based on input from the Town Board.

On August 31, 2007, the County of Erie Division of Highways, which is the entity with sole jurisdiction of the traffic impacts to County Route 192 (Maple Road), issued

its official agency comment with respect any potential environmental concerns that may occur as a result of the completion of the proposed project. The County stated the following:

This department has completed our review of the traffic impact study and analysis and site plan for the subject property. The proposed traffic mitigation measures as proposed will be satisfactory to address the site generated traffic impacts, as well as impose a more orderly flow of traffic along this highway segment. The placement of traffic signals at the two central driveways, properly coordinated with the existing signals at Maplemere and North Forest, will help balance the vehicular movements to/from the complex as well as the residences located opposite the property.

This department has no objection to re-zoning the parcel for use as proposed, and does not recognize an adverse post-development impact to the highway system with the institution of the recommended traffic mitigation. Further details for the placement of the raised center median, signalized intersections, and traffic lanes will need to be finalized with this department prior to issuance of a Highway Work Permit.

The State Environmental Quality Review Act requires the identification and mitigation of potentially significant adverse impacts to the environment. Therefore, based upon the County's official agency comment, an independent traffic study is not necessary.

Comment 116: Since part of the proposed development affects the State & County Highway System, we [the Town of Amherst Traffic Safety Board] will defer to the State of New York DOT and Erie County should they require additional or less mitigation. After careful review of the proposed curb cuts, the Board would recommend that the developer reduce the number of curb cuts from four to two. The Board further recommends that the developer provide better internal circulation in order to provide improved access management along Maple Road. Should Erie County concur with the installation of the two traffic signals, the Board would prefer that the whole development have easy access to both traffic signals.

Town of Amherst Traffic-Safety Board (3/31/07 letter)

Response 116: FRA Associates: The Erie County Department of Public Works (ECDPW) completed their review of the Traffic Impact Study (Appendix D of the DEIS), stating that “the placement of traffic signals at the two central driveways, properly coordinated with the existing signals at Maplemere and North Forest, will help balance the vehicular movements to/from the complex as well as the residences located opposite the property.” The ECDPW did not request any further traffic

mitigation in relation to this project. The New York State Department of Transportation (NYSDOT) completed their review of the proposed project, and they required that the project sponsor would be responsible to construct a right turn lane on the Millersport Highway northbound off ramp to Maple Road unless a highway plan is submitted that shows that it would not fit within the right-of-way.

The State and County engineers who review the Traffic Impact Study assessed the technical details of the traffic impact analysis to ensure safe and efficient movement of traffic along the State and County highway system. Accordingly, their overall concurrence with the Traffic Impact Study is indicative that the impacts on the State and County Highway System have been satisfactorily addressed by the project sponsor.

Four driveways is an appropriate number of access points for a project of this magnitude. The driveways will be placed a sufficient distance apart from one another, with a minimum of 500 feet between adjacent driveways. The westernmost driveway is intended exclusively for the residential section of the project. The easternmost driveway is required for service vehicles to adequately access the rear of the grocery store and reach other businesses in the development without interfering with passenger car traffic. Elimination of the easternmost or westernmost driveways would result in excessive conflicts between passenger cars and trucks. The two proposed traffic signals at the central site driveways will give outbound motorists the option of using a signalized exit if they choose to do so based on convenience, delay, or perceived safety reasons.

To address concerns of the Traffic Safety Board and the Town Supervisor about the number of proposed driveways on Maple Road, FRA re-evaluated an alternative access scenario assuming only one signalized site driveway (versus two), and found that the resulting roadway improvements and traffic backups were totally out of scale with the roadway environment and the land available for development. With only one driveway, dual left-turn lanes would be needed on Maple Road which would require a drastic alignment shift on Maple Road, and the traffic backups in the site would require a driveway throat stretching $\frac{3}{4}$ of the way through the development. With two traffic signals and a median, there will be a consistent roadway cross section on Maple Road, and a safer road as a result.

The proposed curb cuts could be phased and installed when needed. As an alternative to the proposed curb cut for the residential component of the project, the developer could explore vehicular connections to North Maplemere/Amherst Manor Drive.

Comment 117: The Traffic-Safety Board wishes to know who will have maintenance jurisdiction of the proposed landscape beds being proposed for the highway median?

Town of Amherst Traffic-Safety Board (3/31/07 letter)

Response 117: Benderson Development has stated they will have the responsibility for maintenance of landscaping and maintenance of the raised roadway median. This arrangement will need to be formalized through an agreement with Erie County and subject to Town of Amherst concurrence prior to the granting of any final site plan approvals, with the objective of ensuring continued maintenance of the median and its landscaping should the property be sold in the future.

Comment 118: Since the proposed Traffic Impact Study did not indicate phase construction for the full build out of 2012, the Board recommends that all roadway mitigation be performed prior to the issuing of a certificate of occupancy of the first structure. It is recommended that all signal work should be done in advance as well. However, the Board recognizes that traffic signal timing adjustments may have to wait till such time as Level of Service problems are detected.

Town of Amherst Traffic-Safety Board (3/31/07 letter)

Response 118: Traffic signals can be turned on and put into operation only when traffic signal warrants are met for actual traffic conditions. The two signals should be installed at the beginning of the project, with signals made operational when approved by the County. Should the County be amenable to the installation of the two traffic signals with the possibility of operating one of these signals in flashing operation during the early stages of developments (if signal warrants are not met at both signals), both signals can be installed at the same time.

Comment 119: The Board questions if there is sufficient highway ROW and roadway width to construct a raised median as outlined in the Traffic Impact Study. It is the Board's understanding that the 14.5-foot curb lane width includes a standard 2-foot curb off set required for a curb-to-curb highway section. Should the County agree to a substandard pavement width and as long as the Town is still within the Town codes, the Board has no objections to a raised center median. However, the Board would like to review any future plans showing the planting beds to insure they do not incorporate any deadly fixed objects that create a safety concern for the Town in the future.

Town of Amherst Traffic-Safety Board (3/31/07 letter)

Response 119: FRA Associates: The proposed cross-section is identical to the current cross-section. Therefore, sufficient right-of-way is available for the proposed cross-section. The project sponsor is also concerned about vehicle safety and would be pleased to review any future median plans with the Traffic Safety Board to ensure that deadly fixed objects do not create a safety concern. It is also believed that the construction of a median with designated left-turn lanes minimizes

the decision-making uncertainty that occurs in a center-turn lane when opposing vehicles potentially can share the same space, reducing the potential for head-on collisions.

Comment 120: The Board will comment on the driveways as the Traffic Impact Study is written. However, the Board recommends only two access points be given. The Board concurs with the recommendation to provide breaks in the median for the driveway access points.

Town of Amherst Traffic-Safety Board (3/31/07 letter)

Response 120: See response to Comment 116. FRA Associates adds that the four driveways will be placed a sufficient distance apart from one another, with a minimum of 500 feet between adjacent driveways. The westernmost driveway will be intended exclusively for the residential section of the project. The easternmost driveway will be required for service vehicles to adequately access the rear of the grocery store and reach other businesses in the development without interfering with passenger car traffic. Elimination of the easternmost and westernmost driveways would result in excessive conflicts between passenger cars and trucks.

Comment 121: Concerning mitigation at intersections of Maple Road at Millersport Hwy on and off ramps and Maple Road at North Forest Road: We disagree that it is not practical to fully mitigate LOS for individual movements as stated in the TIS. If the developer conducted analysis to indicate that there were no other feasible mitigation option available then the developer should include them for review or mitigate the change in LOS for the failing movements.

Town of Amherst Traffic-Safety Board (3/31/07 letter)

Response 121: In their 6/27/07 review of the DEIS, NYSDOT stated specifically for the Millersport northbound off-ramp at Maple Road that the project sponsor would be responsible to construct a right turn lane on the Millersport northbound off-ramp to Maple Road unless a highway plan is submitted that shows it would not fit within the right-of-way. No other mitigation was required at the northbound off or on ramp intersections. For the intersection of Maple Road with North Forest Road, FRA obtained highway plans from the Erie County Department of Public Works to determine whether there is available right-of-way to implement roadway improvements within the existing right-of-way. After reviewing these plans, it was determined that the right-of-way was extremely tight at this intersection, and the project sponsor does not own or is not in control of any property on any of the four property corners. Consequently, right-of-way expansion is not possible at this time.

During the course of the Traffic Impact Study included in Appendix D of the DEIS, FRA conducted a thorough Level of Service analysis with a range of alternative lane configurations and signal phasing modifications in an attempt to mitigate the LOS reductions. It was determined that it was technically not possible to mitigate all of the LOS reductions at these intersections due to a lack of available right-of-way.

Comment 122: The Board will defer to the County to approve the installation of a traffic signal. Should the County approve the signals, we concur with the proposed phasing and layout.

Town of Amherst Traffic-Safety Board (3/31/07 letter)

Response 122: See Comment 123.

Comment 123: The proposed traffic mitigation measures as proposed will be satisfactory to address the site generated traffic impacts, as well as impose a more orderly flow of traffic along this highway segment. The placement of traffic signals at the two central driveways, properly coordinated with the existing signals at Maplemere and North Forest, will help balance the vehicular movements to/from the complex as well as the residences located opposite the property. This department has no objection to re-zoning the parcel for use as proposed, and does not recognize an adverse post-development impact to the highway system with the institution of the recommended traffic mitigation.

Michael J. Asklar, P.E., Traffic Safety Engineer, County of Erie, Department of Public Works (letter dated 8/31/07)

Response 123: So noted.

Comment 124: There is no commitment from Erie County regarding the proposed traffic median, a central issue in the applicant's claim of traffic mitigation.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 124: Erie County provided endorsement of the proposed traffic mitigation measures in a letter from Michael J. Asklar, dated 8/31/07. See Comment 120.

Comment 125: A project of this size will generate additional calls that may require additional personnel and equipment.

Chris Isenberg, Chief, Getzville Fire Company, Inc.
(2/24/07 review)

Response 125: Comment noted. This issue would inevitably occur for any major development project in any location. A major project such as the one proposed will involve some increase in demand for public resources such as fire department services. The tax revenues generated from the new development will likely cover the cost of additional services required for the development.

Comment 126: The Amherst Chief of Police in a letter dated May 8, 2007 wrote, "I can state with confidence that there will be a significant demand for police resources. The project that you describe will certainly result in an increase in parking problems, motor vehicle accidents and traffic congestion in general. We can expect to see an increase in crimes that are consistent with the nature of the project." While the Amherst Police Chief believes the Town police force can handle the problems associated with the increase in crime, it seems that the neighbors in the vicinity will be the most directly affected by the significant demand for police resources.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 126: See response to Comment 125. Regarding the perceived increase in parking problems, the project sponsor proposes to construct a sufficient number of on-site parking spaces that meets Town of Amherst Zoning Code. It is therefore not expected that a significant problem with parking will occur. Regarding motor vehicle accidents, the proposed raised median and new traffic signals will be expected to help reduce the vehicle accident rates along Maple Road. There will obviously be an increase in traffic volume along the Maple Road corridor. However, the impact of that additional traffic will be mitigated with the improvements described in the Traffic Impact Study, included in Appendix D of the DEIS.

While acknowledging the future demand for police services that will be generated by the proposed project, the Police Chief's letter cited above also states, "In short, this project does not appear to have any exceptional implications that are cause for concern...".

Comment 127: The proposed location of the entrance into the gun club complex from Maple Road is a concern. Benderson said it would be directly across from Donna Lea and with a traffic signal. I would suggest the entrance not be directly across from Donna Lea but off set a short distance. This would be to discourage drivers exiting the complex from using the neighborhood streets, Fairways and Sunrise, as a short cut to

Sheridan Drive and the I-290. As a homeowner, I believe this is important since Maplemere Elementary School is located adjacent to Sunrise Blvd. Also numerous neighbors walk and exercise on the streets in addition to the many children living in the neighborhood.

Allyn Kain, 410 Sunrise Blvd. (9/12/07 letter)

Comment 127: The DEIS does not evaluate or recognize the problem associated with the impact of increased traffic on the Donna Lea Boulevard neighborhood. It is inevitable that traffic from the proposed development will use Donna Lea and Fairways as a “cut-through” between Maple and Sheridan. A traffic light at that corner will encourage traffic to experiment with that route... Over time the volume of traffic will increase as more and more people discover this “shortcut.” To dismiss this, as the DEIS does, as inconsequential or not anticipated, is unrealistic and irresponsible. The applicant must prepare a detailed evaluation (of) the adverse impact on the neighborhood.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Comment 128: Concerned with more traffic problems.
John Allein (8/07 petition)

Comment 129: A major concern is the access out to Maple Road from Donna Lea. How are you going to restrict traffic going down that residential road with lots of kids and parking on both sides of the road, and how are you going to make that safe?

Marcia Gunther, 2 Auden Court (9/14/07 public hearing transcript, pg.54)

Comment 130: Won't large delivery vehicles exacerbate the already busy traffic and the condition of Maple Road, or will these vehicles use shortcuts through Fairlane, Donna Lea and Sunrise?

Ms. Merowitz, 71 North Maplemere (9/4/07 public hearing transcript, pgs. 82-83)

Response 127-130: The proposed positioning of the signalized project entrance directly opposite Donna Lea Boulevard is intended to minimize vehicle conflicts and maximize traffic efficiency by allowing site-generated traffic and Donna Lea Boulevard traffic to simultaneously take advantage of the same traffic signal. Any

shifting of the proposed traffic signal away from Donna Lea Boulevard would introduce potentially hazardous traffic conflicts.

The concern about the possibility of traffic from the proposed project using local residential streets to travel between Maple Road and Sheridan Drive is understood. FRA Associates has assessed this issue by conducting a series of travel time runs between the project site and the Sheridan Drive/North Forest Road intersection during the weekday morning and afternoon peak traffic hours using several alternative routes. These travel time runs indicated that usage of the local streets, including Fairways Boulevard and Frankhauser Road, results in at most a slight savings in travel time. However, any savings in travel time is greatly offset by motorists' desire to remain on familiar arterials with higher travel speeds, adequate roadway lighting, and fewer conflicts produced by children and vehicles backing out of numerous residential driveways.

Motorists approaching the project site from the intersection of Sheridan Drive and North Forest Road would be most enticed to take the route formed by Sheridan Drive westerly to the I-290 entrance, then the I-290 and Millersport Highway northerly to Maple Road. This route involves nearly all free-flowing movements and right turns without any significant delay points. Accordingly, the Sheridan/I-290/Millersport route offers the attraction of an unimpeded travel route without the likelihood of delay or obstructions that could occur on local side streets. Motorists leaving the project site with destinations to the south and east would most likely take Maple Road easterly to North Forest Road, which involves a nearly free-flowing route except for a relatively low-delay right turn from Maple Road onto North Forest Road. Motorists generally tend to prefer routes that offer predictable and continuous movement, rather than routes that might create obstructions such as school bus pick-ups or drop-offs, vehicles making parking maneuvers, or children playing in the street. Therefore, it is not expected that a significant number of motorists will elect to take the local streets between Maple Road and Sheridan Drive.

If cut-through traffic does become a problem after the proposed project is completed, then various traffic calming options could be considered to discourage it. These measures could include additional stop signs and commercial vehicle traffic restrictions. Such measures would not be considered until they are proven to be necessary because they could impose significant inconvenience to the local residents who live in the neighborhood. These mitigation measures will be included in the Findings Statement for the project to establish thresholds that would trigger implementation of the measures.

Comment 131: The cut-through traffic from Sheridan Drive up Frankhauser to Fairways to Lynn Lea to Donna Lea to Maple Road is unreal, and the reverse is true also. Maple Road too can not handle any more traffic. Benderson Development doesn't belong on

Maple Road with trees down the center of Maple Road. Look at Sweet Home Rd, with trees 15 feet apart, not watered and site trees dying. I hope the speeds slow down; there are no stop signs from Sheridan to Maple and vice versa. This is a residential neighborhood with young children and the cut through both ways is serious.

Robert & Donna Schintzius, 70 Lynn Lea (5 petitions, 8/07)

Response 131: FRA Associates: See response to Comments 127-130 as to why the Frankhauser/Fairways corridor will not be attractive to many motorists. This comment implies that cut-through traffic is already a significant problem today; however, our traffic counts do not suggest that this is the case. The traffic volume count during the highest hour (4:30 PM to 5:30 PM on weekdays) indicated that Donna Lea Boulevard presently carries 75 inbound vehicles and 49 outbound vehicles. These numbers do not appear unusually high for a subdivision of this size.

The trees on Sweet Home Road are maintained by the Town with in-ground irrigation, and their sustainability cannot be judged yet as they have not been in place for a full year.

The speeds along the local side streets tend to be self-regulating due to the presence of many frictional effects such as vehicles backing out of driveways, children playing in the street, school buses stopping to pick up or discharge students, and limited roadway lighting with very few pavement markings on the roadways.

Comment 132: The proposed “mixed usage” facility would only add to traffic congestion and contribute to more wear and tear on existing town and private properties - not to mention the very real possibility of increased traffic-related accidents.

Morton and Arlene Merowitz, 71 N. Maplemere
(6/27/2007 email)

Comment 133: There will be an increasing number of people going through the area, and this will create a great traffic hazard. With the amount of development proposed, this area will become another Transit Road where traffic moves at a crawl.

Hillel Magid, 19 Rockford Place (9/4/07 public hearing transcript, p. 88)

Response 132-133: Maple Road is a four-lane divided arterial that is suitable for the type of development being proposed. Proposed mitigation, including the raised landscaped median on Maple Road, should minimize the traffic and noise impacts of the project. Residents of the neighborhood to the south of Maple Road are not

expected to experience a significant traffic, noise or lighting impact from the proposed project once all mitigation measures are in place.

The Erie County Department of Public Works and the New York State Department of Transportation have reviewed the project sponsor's mitigation proposals and agree that the proposed mitigation measures will mitigate traffic to the extent practicable. In addition, the potential for accidents along Maple Road may actually decrease due to the proposed raised median and the related elimination of left turns along Maple Road. The two proposed traffic signals will provide a safe means of egress from the proposed project as well as egress from Donna Lea Boulevard.

Comment 134: The traffic analyses are based on 2012 build-out, not on 2011.

Eric W. Gillert, AICP, Planning Director, Town of Amherst
(6/21/07 memorandum)

Response 134: So noted.

Comment 135: Potential increases in vehicular traffic on Millersport Highway and from North Forest Road to Maple Road has not been adequately investigated, as vehicular traffic from the eastern portion of Amherst may bypass the proposed development area to travel on Millersport Highway to access Maple Road and points to the west.

Mary Shapiro, 16 Royalwoods Ct.
(letter dated May 2007, Accepted for comment 6/4/2007)

Response 135: In the Traffic Impact Study, the proposed median, traffic signals and signal coordination have been demonstrated to improve overall traffic flow and provide a positive improvement to overall corridor safety. See also response to Comments 127-130.

Comment 136: Distances between the center lines of adjacent site driveways...have not been demonstrated when considering the vehicular and pedestrian flows.

Mary Shapiro, 16 Royalwoods Ct .
(letter dated May 2007, Accepted for comment 6/4/2007)

Response 136: FRA Associates: Distance between driveways is but one measure used in the field of access management to measure the effectiveness of roadway improvement measures. The layout of the proposed development and location of the access points on Maple Road was considered in the context of the adjacent street system. The reduction in vehicular conflict points with the

construction of the raised median will significantly simplify driver decision making and help make this section of Maple Road safer for pedestrians.

Comment 137: Two proposed signalized intersections may be excessive. One signalized intersection with full median along Maple across the remaining driveways should be explored.

Eric W. Gillert, AICP, Planning Director, Town of Amherst
(6/21/07 memorandum)

Comment 138: A signal is proposed at Donna Lea, or two signals on Maple Road. I think that they would be too close to the existing signal at Maplemere, unless they were extremely well synchronized.

Marcia Gunther, 2 Auden Court (9/14/07 public hearing transcript, pgs. 54-55)

Response 137-138: See response to Comment 116.

Comment 139: Existing traffic volumes should be recorded for the Maple/Flint intersection.

Eric W. Gillert, AICP, Planning Director, Town of Amherst
(6/21/07 memorandum)

Response 139: Intersection peak period turning movement counts were conducted by FRA Associates at the intersection of Maple and Flint Roads on May 1, 2 and 5, 2007 for the weekday morning peak hour, weekday evening peak hour, and the Saturday midday peak hour. This analysis was presented in the DEIS as a supplemental analysis to the initial Traffic Impact Study found in Appendix D.

Comment 140: The traffic impacts are not fully discussed – degradation of Level of Service at Flint/Sandhurst/Foxcroft or traffic increase on Maple Road.

Eric W. Gillert, AICP, Planning Director, Town of Amherst
(6/21/07 memorandum)

Response 140: Additional analyses were provided to supplement the Traffic Impact Study submitted as Appendix D of the DEIS, including a May 7, 2007 letter.

Comment 141: The proposed median breaks are not in conformance with the recommended distances found in the Town's *Access Management Strategies for Major Corridors*.

Eric W. Gillert, AICP, Planning Director, Town of Amherst
(6/21/07 memorandum)

Response 141: FRA Associates: The median spacing is less than the spacing standards recommended in the Town's guidelines; however the resulting roadway cross section is likely to be a safer example of access management by reducing conflict points on the roadway and making driver decision making easier. The location of the traffic signals was driven by the internal site layout needs and the limited site frontage of the proposed development, the location of street connections, such as Donna Lea Boulevard, and connections to upstream and downstream signals, such as Maplemere Road.

See also response to Comment 116. The median is a much more restrictive access control measure than is typically required and, as demonstrated in the response to Comment 97, will result in a 40 % reduction in conflict points which should result in a corresponding reduction in accident rates for the Maple Road corridor.

Comment 142: There should be a discussion of internal circulation connections in the Vehicular Circulation section of the DEIS.

Eric W. Gillert, AICP, Planning Director, Town of Amherst
(6/21/07 memorandum)

Response 142: The westernmost driveway is intended exclusively for the residential section of the project. Drivers in the residential section can also easily circulate to the east to use one of the signalized driveways as well. The two proposed traffic signals at the central site driveways will give outbound motorists the option of using a signalized exit if they choose to do so based on convenience, delay, or perceived safety reasons. The easternmost driveway is required for service vehicles to adequately access the rear of the grocery stores and reach other businesses in the development without interfering with passenger car traffic. See also response to Comment 116.

Comment 143: The traffic projections and mitigation do not take into account the planned 10,000+ students and faculty expected at UB over the next 10 years.

Eric W. Gillert, AICP, Planning Director, Town of Amherst
(6/21/07 memorandum)

Response 143: The growth of UB was considered when forecasting future traffic; however, it must also be considered that the future traffic forecast for the subject project was only taken to the year 2012, that area of study for this project was limited in scope, and that currently the UB campus has a parking shortage that is likely to limit the growth in auto trips to the UB campus.

Comment 144: Is any mitigation offered for the Level of Service E expected for Maple/Flint Roads during the Saturday midday peak hour?

Eric W. Gillert, AICP, Planning Director, Town of Amherst
(6/21/07 memorandum)

Response 144: The mitigation offered in the Traffic Impact Study (Appendix D of the DEIS) was accepted by both Erie County and NYSDOT. With signal timing changes, the overall intersection was found able to provide an overall Level of Service C during the Saturday midday peak hour. A complete traffic analysis was prepared and submitted in the DEIS for the Maple and Flint intersection. The mitigation proposed for the project will bring back similar Levels of Service.

Comment 145: The proposed pedestrian crossing at the proposed signalized driveway east of Donna Lea Boulevard would not be allowed in mid-block.

Eric W. Gillert, AICP, Planning Director, Town of Amherst
(6/21/07 memorandum)

Response 145: Per FRA Associates, if the location being referred to is the eastern proposed signalized intersection on Maple Road, by definition this would not be a mid-block crossing if it is a signalized intersection; rather, it would be an intersection pedestrian crossing.

Comment 146: "Pedestrian amenities for crossing Maple Road" are not defined.

Eric W. Gillert, AICP, Planning Director, Town of Amherst
(6/21/07 memorandum)

Response 146: See response to Comments 111-113.

Comment 147: Bicycle lanes along Maple Road have not been identified although it is proposed that there would be connections to area bike paths.

Mary Shapiro, 16 Royalwoods Ct.
(letter dated May 2007, Accepted for comment 6/4/2007)

Response 147: Bicycle riders can travel both on the local street system and on multi-use trails, and as identified in the proposed development plan, the path system is proposed to provide a connection to area bike paths. Bicycle riders desiring to ride on Maple Road will also be able to make this connection as well, although with the high volume of traffic on this road and the current cross section, some riders may not

choose to do so unless Erie County widens Maple Road to accommodate bicycle lanes. See also response to Comments 3-7.

Comment 148: NFTA bus service is contemplated for the development but has not been assured. This request should be made up front so appropriate design can be made to accommodate both NFTA and UB buses.

Eric W. Gillert, AICP, Planning Director, Town of Amherst
(6/21/07 memorandum)

Comment 149: We have no bus route access down Maple Road, and if we're going to have a proposal like this, why isn't that included?

Marcia Gunther, 2 Auden Court (9/14/07 public hearing transcript, pg. 55)

Response 148-149: See response to Comments 89 and 90-91.

Comment 150: To prevent traffic problems, the Town should consider a long term permanent plan, such as possibly adjusting the adjoining golf course and Recreation Department properties.

Roger W. LeGoff, 318 Hunters Lane,
(letter received 9/14/07)

Response 150: Erie County has jurisdiction over Maple Road and monitors traffic conditions along the corridor. Improvements and adjustments to Maple Road could be made in the future as traffic conditions change, or improvements are warranted.

Comment 151: There is a basic contradiction in the DEIS calling the proposed project a local destination that will not exacerbate traffic and at public hearings discussing the unique character of the development unlike anything in Western New York and therefore presumably a regional destination.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 151: The project is likely to attract both local and regional interest. The project sponsor is proposing to mitigate traffic impacts that are generated by the project, as detailed in the Traffic Impact Study found in Appendix D of the DEIS.

Comment 152: It appears that several proposed mitigation measures have been chosen not to minimize anticipated impacts but rather to simply benefit the project.

Eric W. Gillert, AICP, Planning Director, Town of Amherst
(6/21/07 memorandum)

Response 152: The proposed mitigation measures, including the median on Maple Road, the two traffic signals, and the coordination of these signals with Maplemere Road and North Forest Road, will benefit the project but will also provide a safer roadway by reducing conflict points on the roadway and making driver decision making easier. Coordinated traffic signals will help drivers along Maple Road to more readily find gaps in traffic from the numerous side streets, including the Sandhurst and Foxcroft neighborhoods.

Comment 153: The developer is accepting maintenance responsibility for the proposed Maple Road median; if the development is sold, this could be problematic.

Eric W. Gillert, AICP, Planning Director, Town of Amherst
(6/21/07 memorandum)

Response 153: See response to Comment 117.

2.13 On-Site Parking

Comment 154: The concept plan also includes 1000+ parking spaces and routes pedestrian traffic across busy entrance and interior roadways in over 9 key areas and in parking areas according to the submitted pedestrian flow diagram. Truck and service traffic turnarounds will also mix with pedestrians in parking lots.

Mary Shapiro, 16 Royalwoods Ct.
(letter dated May 2007, Accepted for comment 6/4/2007)

Response 154: The project sponsor submitted a conceptual plan along with the rezoning petition to provide a general idea of the future development. If the rezoning is approved, this conceptual plan is not approved along with it; rather, site plan approvals will be sought separately and must be obtained prior to any actual construction taking place. During site plan review, details of the site layout including on-site circulation for passenger vehicles and delivery trucks will be finalized. All site plans will be reviewed by Town departments (including the Traffic-Safety Board), outside agencies, and the public during the site plan review process.

Comment 155: Mixed-use development generally locates parking areas around the periphery of the development to encourage internal pedestrian traffic. This has not been considered as an alternative to the petitioner's complex and confusing internal vehicular and pedestrian traffic flow.

Mary Shapiro, 16 Royalwoods Ct.
(letter dated May 2007, Accepted for comment 6/4/2007)

Response 155: See response to Comment 154. The mixed-use development is intended to offer the user a multitude of options for parking. Compartmentalization of parking areas with landscaped islands and pedestrians walks will reinforce the overall site plan, whereas parking at the periphery only would impact abutting neighbors. A balance of internal parking with clear pedestrian walkways is proposed.

Comment 156: Consideration should be given to an Alternative Parking Plan as a way to reduce overall number of parking spaces.

Eric W. Gillert, AICP, Planning Director, Town of Amherst
(6/21/2007 letter)

Response 156: When site details are being finalized, the project sponsor will be able to consider specific parking layouts that meet the Town Zoning Code requirements. An Alternative Parking Plan, as described in the Code, will be considered if feasible.

2.14 Soils and Environmental Issues (Soils/lead contamination/soil stability issues)

Comment 157: If a top layer of soil is removed, where will it safely be transported to and who will be impacted by its disposal?

Maryann Hochberg, representing North Forest Residents
(9/14/07 e-mail)

Comment 158: Lead should be removed from the site before any construction can begin.

Robert J. Collins, 4812 Harlem Road (9/15/07 e-mail)

Comment 159: The DEIS does not address the issue of disposal of contaminated soil removed from the site.

George Richmond, representing Amherst Conservation
Advisory Council (4/5/07 e-mail)

Response 157-159: All contaminated soils in excess of cleanup guidance will be disposed of off-site at a permitted facility at the developer's expense. The exact disposal facility has not yet been selected.

Comment 160: In the Phase II environmental assessment submitted as part of the Brownfield Cleanup application, sections 4.2 - 6.0 state recommended clean-up goals for lead and dust based upon non-residential commercial/industrial standards. If these are the standards to which the petitioner intends to clean up the brownfield, it greatly limits the integration of residential uses within the development and forces residences to the easternmost section of the site. It is a misrepresentation to say that residences might be above any of the retail sections of the development, as brownfield remediation will only occur to commercial/industrial reuse standards and not to residential reuse standards.

Mary Shapiro, 16 Royalwoods Court (9/14/07 e-mail)

Comment 161: Several semi-volatile organic compounds (SVOCs) have been demonstrated to be in the soil in amounts which exceed the recommended cleanup objectives, however, no mention is made of what the clean-up objective will be for these contaminants and if remediation will meet residential or commercial/industrial standards.

Mary Shapiro, 16 Royalwoods Court (9/14/07 e-mail)

Comment 162: I'm concerned as to whether remediation from lead contamination can really be done so that there are not long term and future problems.

Ann Eisenlord, 115 Ava Lane, Williamsville (9/4/07 public hearing transcript, pg. 68)

Response 160-162: The following response has been provided by Harter Secret & Emery LLP and Benchmark Environmental Engineering and Science, TurnKey Environmental Restoration, LLC.

6 NYCRR Part 375 does provide for cleanup objectives which differ depending on the final or end use of the property: unrestricted use, residential, commercial, or industrial. However, no remedy has been definitely selected for the site, so which Track or Cleanup objections are to be utilized has not yet been determined. The project sponsor may propose to cleanup to different soil cleanup objectives (SCOs) in different areas of the site based on end use, so one area of the

site could be cleaned up to commercial SCOs, while the area of residential use could utilize restricted-residential, residential, or unrestricted SCOs, if economically favorable. The SCOs would be specified for distinct areas of concern in the Alternatives Analysis Report (AAR).

The project sponsor is expected to propose an excavation-and-landfill disposal remedy for the site so that all contaminants are removed consonant with the cleanup standard. To the extent it is technically and economically feasible, cleanup to residential standard will be completed since the BCP provides additional tax credits for doing so. This determination will not be made, however, until after the Remedial Investigation and Feasibility Study has been completed and then approved by DEC.

If there will be above-grade condos as part of the project, it will have to be determined if they are considered residential, restricted-residential or commercial. If there will be no common areas (lawns, gardens, etc.,) commercial SCOs may apply for residential units above commercial facilities.

Comment 163: If the project sponsor does not clean up to residential standards, residences in the easternmost section above retail sections of the development would not be allowed.

Mary Shapiro, 16 Royalwoods Court (9/14/07 e-mail)

Response 163: According to Harter Secrest & Emery LLP and Benchmark Environmental Engineering and Science, TurnKey Environmental Restoration, LLC, this is incorrect. Environmental Conservation Law Section 27-1415(6) simply provides that all contamination in excess of residential criteria needs to be excavated to a two-foot depth. While residences in this area will be above ground surface, the project sponsor will take the added precaution of removing all soil below the retail area either until residential cleanup levels are met or a two foot depth is achieved.

Furthermore, the analysis conducted for this project has characterized the vertical and arial extent of lead impact across the entire site (compared to commercial SCOs and unrestricted SCOs). Based on the RI findings, there was only one sample grid with lead impacted soils in the 1-2 feet below ground surface interval above unrestricted SCO in the eastern portion of the property (there were only two sample grids on the entire site with lead concentrations above unrestricted SCOs beyond 2 feet below ground surface).

Comment 164: Was the source of the semi-volatile organic compounds from fill deposited at the gun club or from another internal or external source?

Mary Shapiro, 16 Royalwoods Court (9/14/07 e-mail)

Comment 165: The actual source of the SVOCs in soil has not been identified; they could be associated with lubricants or diesel products.

Mary Shapiro, 16 Royalwoods Court (9/14/07 e-mail)

Response 164-165: Response from Harter Secrest & Emery LLP and Benchmark Environmental Engineering and Science, TurnKey Environmental Restoration, LLC:

There is no historic documentation which would indicate any potential source of lubricants or diesel on the property and there is no known record of a petroleum spill having occurred. Further, the lack of field observations which would normally be associated with a petroleum or lubricant spill (odor, product, sheen, elevated PID) was not present in any of the many soil borings taken at the site. None of the laboratory analytical testing for any of these soils samples indicated or implied a petroleum signature or origin. The SVOCs are associated with the clay targets historically used during gun club activities and have been found, as expected, in the near surface soils. As a result, cleanup of the elevated lead found in near surface soils will concomitantly result in the remediation of SVOCs in near surface soils.

The SVOCs (specifically PAHs) are also associated with the gun powder related to shooting activities (i.e., combustion byproducts). Based on the findings, the distribution of the PAH-impact (i.e., generally in near surface soils in the area of the shooting lanes) is consistent with gun-powder as the source. PAHs are also ubiquitous in nature and tend to be present in near surface soils due to incomplete combustion of fossil fuels, etc. However, the concentrations noted on-site are higher than typical background levels and are reasonably attributed to the gun powder source.

Comment 166: All of the above SVOCs have been demonstrated to be in the soil in amounts which exceed the recommended soil cleanup objectives, however no mention is made of what the clean-up objective will be for these contaminants.

Mary Shapiro, 16 Royalwoods Court (9/14/07 e-mail)

Response 166: Harter Secrest & Emery LLP and Benchmark Environmental Engineering and Science, TurnKey Environmental Restoration, LLC: All near surface soils with elevated lead and SVOC levels will be removed from the site to meet soil cleanup objectives. SCOs for the site have not been approved yet by DEC, but will be consistent with planned end use of the site or that area of the site. See response to Comments 160-162.

Comment 167: Are federal dollars available for clean-up of such a contaminated site as a matter of public safety?

Maryann Hochberg (email dated 9/14/2007)

Response 167: Certain federal grants are available, in limited circumstances, for the investigation and/or remediation of contaminated sites. The project sponsor will not be seeking any federal grant monies for these purposes; the cleanup will be completed with 100% private monies.

Comment 168: Who is going to pay for the hazardous waste abatement that will be required before anything can be done with this property?

David J. Trask, Snyder, NY (email dated 9/12/2007)

Response 168: The project sponsor will be responsible for paying all costs associated with the environmental investigation and remediation of the site.

Comment 169: Has anyone checked for possible lead contamination of the Audubon Golf Course? If the wind was right, lead pellets would carry past the end of the shooting range and rain down on the fairway.

John Thompson (9/5/07 e-mail)

Comment 170: Have the Town of Amherst, Benderson, and/or the governmental agencies (EPA, DEC) known about the instances when lead pellets carried beyond the shooting range's property? Has anyone checked for possible lead contamination of the Audubon Golf Course? If the wind was right, lead pellets would carry past the end of the shooting range and rain down on the fairway. Has anything been done to investigate the level of contamination in the surrounding soil and/or groundwater?

John Thompson (9/5/07 e-mail)

Comment 171: Regarding the health aspects of this site, it's contaminated by lead, and lead can be spread by wind. Lead is in the soil and the grass, and I suspect no one has invested in any of the downwind properties from the gun club in many years. It would not surprise me if there was lead contamination downwind from the site. Allowing this site to be remediated without costing us dollars would be in the best interest of this community.

Barry Weinstein, Culpepper Road (9/4/07 public hearing transcript, pgs. 114-115)

Response 169-171: Two surface locations off-site appeared to be impacted with visible lead shot. Sampling of these areas indicated that concentrations were below cleanup standards. There was no other evidence of impacts of area(s) off-site by visible lead shot. A groundwater investigation has been undertaken and confirms that any soluble lead in groundwater is below groundwater cleanup standards. There is no known instance where lead pellets were carried by environmental or climatological forces to any other location off-site. Due to the nature of the lead pellets, it is believed exceptionally unlikely for such an event to occur or to have occurred.

Comment 172: Although the site does have lead contamination in some areas, the DEIS reports that the lead shot was found in near surface soils less than six inches below ground level. These areas can be easily remediated and do not affect the open space nature of the site. The brownfield designation is merely a method of qualifying for New York State tax credits, in order to finance the project.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 172: The project sponsor will be remediating all lead contamination found on site in excess of DEC-established clean-up levels. This is not, however, either an easy or inexpensive proposition. It is inappropriate to say that the Brownfield Cleanup Program is simply a method to qualify for tax credits. As stated in the legislation itself, the BCA is intended to "enhance health, safety, and welfare of the state" and improve "overall economic and social well being". To accomplish those goals, the legislation states that the intent of the Program is to "encourage people to voluntarily remediate Brownfield sites for reuse and redevelopment...". ECL Section 27-1403. The project sponsor states this project will fulfill the environmental goals of the Program and State.

Comment 173: The lead abatement issue that is referenced in the Appendix E: Environmental Assessment Section of the DEIS, is unresolved. The Division of Hazardous Waste is awaiting the results of a second round of sampling. Please contact Mr. Michael Hinton of that Division for any information on the lead abatement.

Steven J. Doleski, Regional Permit Administrator, NYSDEC
(3/28/2007 letter)

Response 173: DEC notes that the lead abatement issue is "unresolved." The project sponsor believes that is a reference to the fact that, although the project sponsor signed a DEC Brownfield Cleanup Agreement to fully investigate and then remediate the site on September 22, 2006, that process is not yet complete. Nor has a

remedy been chosen for the site, although it is expected that with DEC approval, the remedy will consist of the complete removal and off-site landfill disposal of all soils having contaminants in excess of DEC cleanup criteria. The project sponsor intends to complete that investigation and remediation, with DEC's approval, as required under the signed Agreement and the Brownfield Cleanup Program.

Comment 174: Wetlands were investigated outside the growing season at the end of December. Although vegetation was noted during the site visit, I wonder if all the high vegetation which might grow during the growing season was represented. A more vigorous investigation may be warranted to ensure that the wetlands are preserved. December in Erie County is not the most opportune time to do soil borings and to assess groundwater due to prevailing climatic conditions. Barron's report states: "...an adequate amount of time for the groundwater level to recharge to static conditions was probably not allowed. Fluctuations in the groundwater level may occur due to other factors than those present during field operations." Panamerican Consultants reported that: "Soils encountered during the shovel tests were typically moist to saturated...". Groundwater levels, wetland boundaries and potential contamination and risk of potentially contaminated groundwater migration have not been adequately evaluated in the DEIS.

Mary Shapiro, 16 Royalwoods Ct. (letter dated May 2007, Accepted for comment 6/4/2007 and 9/4/07 public hearing transcript, p. 103)

Response 174: Hydric soil is only one indication of potentially regulated wetlands. State and Federal Wetland maps do not indicate the presence of mapped wetlands at the site. The 4 wetland areas totaling approximately 1 acre which were identified by Earth Dimensions, Inc. were determined to be isolated by the US Army Corps of Engineers and did not meet the interpretation of Federal Wetlands.

See also response to Comments 74 and 81.

Comment 175: The Draft Remedial Investigative Work Plan submitted to the NYSDEC for evaluation outlines use of permanent monitoring wells for groundwater contamination.

Mary Shapiro, 16 Royalwoods Ct
(letter dated May 2007, Accepted for comment 6/4/2007)

Response 175: Harter Secrest & Emery LLP and Benchmark Environmental Engineering and Science, TurnKey Environmental Restoration, LLC respond that

certain groundwater wells are installed as "permanent" to denote that well development with integral monitoring well equipment has been installed (as contrasted to a temporary well which is generally an end point grab of a water sample which has less reliability and integrity from an analysis perspective). Once the remediation is complete, these monitoring wells will be removed (with DEC permission).

Comment 176: Until the final Remedial Investigative Work Plan is accepted by the NYSDEC and implemented by the petitioner, levels of groundwater contamination and migration will be unknown and potential negative impacts of proposed development cannot be adequately evaluated. This is true for all of the potential contaminants which may be found in the soil, ground water and surface water at the proposed development site.

Mary Shapiro, 16 Royalwoods Ct
(letter dated May 2007, Accepted for comment 6/4/2007)

Comment 177: Groundwater investigation for contaminants is outlined in the Remedial Investigation Work Plan, but has not yet been approved by the NYSDEC and the investigation has not yet been undertaken. The public comment period for this RIWP only ended on Aug 25, 2007 and has not yet received approval by the NYSDEC. (p.4)

Mary Shapiro, 16 Royalwoods Ct.
(letter dated May 2007, Accepted for comment 6/4/2007)

Comment 178: Groundwater analysis for contamination by lead or other pollutants of concern has not been done although recommended in the Phase 1, Phase 2, and supplemental environmental analysis statements.

Mary Shapiro, 16 Royalwoods Ct.
(letter dated May 2007, Accepted for comment 6/4/2007)

Response 176-178: The project sponsor responds that groundwater sampling and analysis, in accordance with the Remedial Investigation Work Plan, is now complete. The Remedial Investigation Report reporting and discussion of the groundwater (and other media) sampling results have been submitted to DEC, and comments or approval by that agency are forthcoming.

Comment 179: A thorough analysis of the stormwater drainage system cannot be done until it is known whether specialized water quality, retention, containment or treatment requirements will apply to

assure that contaminants do not exit the proposed development via stormwater drainage.

Mary Shapiro, 16 Royalwoods Ct
(letter dated May 2007, Accepted for comment 6/4/2007)

Response 179: See response to Comments 75 and 176-178.

Comment 180: It is unknown if a detention system would be appropriate without additional information regarding the levels of contaminates contained in groundwater and runoff.

Mary Shapiro, 16 Royalwoods Ct
(letter dated May 2007, Accepted for comment 6/4/2007)

Response 180: See response to Comment 75.

Comment 181: I am in favor of the proposed redevelopment of the former Buffalo Gun Club for the following reasons: 1) Benderson proposes to privately clean up the lead filled hazardous site and properly dispose of the waste...

Howard Block, 30 Park Drive, Williamsville (9/12/07 letter)

Response 181: So noted.

Comment 182: Would remediation of lead and other contaminates provide for installation of these (pedestrian/bike) 'trails?'

Mary Shapiro, 16 Royalwoods Ct
(letter dated May 2007, Accepted for comment 6/4/2007)

Response 182: Pedestrian or bike trail(s) would be permitted after remediation of the area, but are not presently part of the site development plan. The specific features of the site will be formalized during the site plan review stage.

Comment 183: It seems that rezoning this property will continue the crisis of homes built on unsuitable soils.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 183: The geotechnical investigation conducted confirms that the property soils are appropriate for the project and will comply with all state and local standards, regulations, and requirements.

2.15 Economic Issues

Comment 184: There is no investigation of expenses for the Town of Amherst, the County of Erie or the State of New York which would have to be subtracted from any taxes received resulting from this proposed project. These would include, but are not limited to, expenses from: increased need for road improvements or repairs, additional public safety as a result of increased crime and traffic, bicycle and pedestrian incidents, additional improvements and maintenance of water, stormwater and sanitary sewer public facilities, additional improvements and maintenance of utility facilities, additional services for new residents of the town, additional maintenance of the proposed median, etc. An accurate economic analysis must include potential expenses of the Town, County and State as well as potential tax revenues to create a realistic picture of the impacts of this proposed rezone and development.

Mary Shapiro, 16 Royalwoods Ct
(letter dated May 2007, Accepted for comment 6/4/2007)

Response 184: As with all development – residential and non-residential – the Town incurs the cost of maintaining public infrastructure and providing services to the public via facilities such as those mentioned above. All infrastructure required to support the development of the project site will be installed at the developer's expense, while the yearly taxes imposed on the property are designed to compensate, at least in part, for the ongoing maintenance cost.

With regard to the provision of government services, the cost of servicing non-residential uses has been found to be much less than that of residential land. According to the "Cost of Servicing/Revenues Generated Land Use Study" in December 2006 commissioned by the Amherst Industrial Development Agency, for every \$1.00 attributed to residential use, \$1.11 is expended in providing government services, while just \$0.48 is expended for commercial use and \$0.60 is expended for open land.

Comment 185: The 'economic analysis' does not investigate negative impacts on existing businesses. No assessment of the potential for lost business for Maple Road merchants west of the proposed development, occurring when potential traffic impacts discourage shoppers, etc. from the eastern half of Amherst, has been done.

Mary Shapiro, 16 Royalwoods Ct
(letter dated May 2007, Accepted for comment 6/4/2007)

Response 185: In the section of the Economic Analysis (Appendix F of the DEIS) entitled “Summary of Supply and Demand” (pages 21-33), a review of comparable and/or competitive retail centers along Maple Road, both east and west of the subject, has been completed. The retail marketplace appears stable, with limited vacancies overall. The Analysis concluded that the proposed project will be a complement to the existing retail options in Amherst, providing an upscale mix of boutique and specialty retail shops, along with a few mid-sized retailers, that will serve to enhance the retail character of the Maple Road corridor

Comment 186: Would traffic impacts encourage residents in East Amherst to shop more on Transit Road at retail areas in Clarence? Loss of tax revenues for those who cannot compete for customers and other negative impacts are not considered.

Mary Shapiro, 16 Royalwoods Ct
(letter dated May 2007, Accepted for comment 6/4/2007)

Response 186: Section 2.2 of the Economic Analysis (Appendix F of the DEIS) entitled Transportation and Accessibility (page 16) states that the subject location is considered excellent for the type and size of the proposed Maple Road mixed-use development. This is due to its accessibility to the I-290, connection to the I-990 and the NYS Thruway which provides convenient access to the Downtown Business District as well as other areas throughout northern Erie and Niagara counties. The proximity to the University of Buffalo campus allows it to utilize the extensive access routes developed around the University.

The Economic Analysis concludes that accessibility is sufficient to support the retail volume anticipated at the subject site, without encouraging residents in East Amherst to shop more on Transit Road. It is further concluded that the unique offerings of the proposed development will encourage residents to travel to the subject site.

Comment 187: Market analysis for this proposed rezoning and development has not been done. Investigations of the necessity for additional GB zoned development in this area have not been done. It has not been demonstrated that more General Business zoning is needed at the expense of Community Facilities zoning. The Comprehensive Plan calls for CF at this location. This is an area in the center of Amherst which is surrounded by other Community Facilities (the Pepsi Center, golf courses and the University at Buffalo). It has not been demonstrated that there is a shortage of community entities which might want to locate their facilities here. Also the property owners were well aware of the comprehensive plan and that this property was zoned CF when purchasing this land.

Mary Shapiro, 16 Royalwoods Ct
(letter dated May 2007, Accepted for comment 6/4/07)

Response 187: A market analysis for the proposed rezoning and development has been done and has concluded that the subject site, and the overall marketplace in general, are able to support the proposed project. The proposed development encompasses 33± acres of land, with approximately 2,220 feet of frontage along Maple Road. The site offers size, accessibility, visibility, demographics, and proximity to the University of Buffalo campus, all of which are attractive features to most developers. Although there may be other GB zoned vacant land parcels in Amherst, there may be no others that satisfy the physical, locational and demographic requirements of a mixed-use development such as the one proposed.

Accordingly, there is no requirement in the SEQR regulations, NYS Town Law, or the Amherst Town Code that requires an applicant to prove a that more GB land is needed, or that there is a shortage of community facilities users for this property.

Comment 188: Rezoning to include GB designations and high density commercial uses in this area will change the character of this neighborhood drastically and induce additional commercial uses to this area of Maple Road. The negative impacts of commercialization on the residential neighborhoods in this area of central Amherst have not been adequately addressed in the DEIS.

Mary Shapiro, 16 Royalwoods Ct
(letter dated May 2007, Accepted for comment 6/4/2007)

Response 188: See response to Comment 1.

Comment 189: The negative impacts of commercialization on the residential neighborhoods in this area of central Amherst have not been adequately addressed in this DEIS.

Mary Shapiro, 16 Royalwoods Ct.
(letter dated May 2007, Accepted for comment 6/4/2007)

Comment 190: The study states the project will have no negative impact on marketability or values in nearby homes. But sellers have to keep reducing prices now because the word's out, so nobody is going to be able to sell their home.

Ms. Aquilina, 215 Maple Road, also speaking for Mr. Allein,
225 Maple Road (9/4/07 public hearing transcript, pg. 70)

Response 189-190: The Economic Analysis conducted by Real Property Services, LLC (Appendix F of the DEIS) concludes that there will be no negative impact on the marketability or value of nearby existing housing, due to the style, quality, character and layout of the proposed development and the attractiveness of the proposed condominiums. In addition, the surrounding residential development will be buffered from the subject site by golf course/Town land to north and east, the project's condos along the west, and Maple Road to the south). The Analysis also points out that neighbors will be able to walk or have a short ride to the subject site, not having to travel to major retail nodes for shopping and dining.

It is expected that condominiums within the project will sell for 2 to 5 times the existing residential sales prices in the area.

A market example found along Maple Road where residential actually abuts retail with no buffer, is the Boardwalk Boutiques plaza. This is the most recent multi-tenant retail development along Maple Road, constructed in 1987. A review of the sales prices of homes in close proximity to the plaza found no quantifiable evidence of any negative impact on property values. Six years after Boardwalk Boutiques was constructed, Steinway Court, a high-end residential street, was developed directly across Maple Road. A review of these sales prices indicates that they are at market level and have appreciated over time, with no negative valuation impact from its proximity to retail.

Comment 191: Retail, restaurant, hotel, office and theatre establishments to the west and east of the proposed development were ignored completely although they represent competition for the proposed development. There was no assessment of current restaurants, specialty retail, hotel or theatre facilities available to the market.

Mary Shapiro, 16 Royalwoods Ct
(letter dated May 2007, Accepted for comment 6/4/2007)

Response 191: Section 4 of the Economic Analysis prepared by Real Property Services, LLC (Summary of Supply and Demand) addresses the competitive environment of the subject marketplace. The report specifically lists and describes seven (7) competing retail developments along Maple Road, ten (10) existing hotels, office development along Maple Road, and fifteen (15) restaurants along Maple Road. The Analysis concludes that the subject development will offer a unique community environment of specialty retailers and restaurants within a walkable setting that will complement existing retail options in Amherst. The Analysis is included in Appendix F of the DEIS)

Comment 192: It is difficult to support such a development when we are still looking at the empty Benderson lot at the former VIX Store at Maple and North Forest in the University focal area – empty

and decaying for many, many years. Also wondering about the need for restaurants there, when the former Bennigans on Maple Road not far from the University sits empty next to 2 new restaurants, one of which is also now empty. Hooters too for that matter. What other buildings, restaurants and otherwise, will be left behind empty in Amherst and the region as this Maple Road Centre development fills?

Maryann Hochberg (email dated 9/14/2007)

Comment 193: How much developed but empty property already exists? How many more empty buildings do we need? Let the developers re-develop what they already have sitting empty on Niagara Falls Boulevard, Sheridan Drive and Maple Road. The alleged tax benefits that would be derived could be more than offset by redevelopment of the existing properties that now sit empty.

David J. Trask, Snyder, NY (email dated 9/12/07)

Comment 194: There are numerous vacant commercial properties that need redevelopment.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Comment 195: There are many areas already given over to shops, stores, etc., but many of them are now forgotten, empty places and becoming eyesores.

Margaret Redinbaugh, 1679C Maple Road (8/18/07 letter)

Comment 196: The intersection of North Forest Road and Maple Road has been ignored by this project.

Larry Hunter (9/4/07 public hearing transcript, pg. 95)

Comment 197: I look around and see many stores which have not been rented, like the old Vix Plaza. It's been there a long time and the developer would make some money if they rented it.

Hillel Magid, 19 Rockford Place (9/4/07 public hearing transcript, pg. 87)

Comment 198: The developer should give us a plan to see what we can put in the vacant plaza at Maple and North Forest. To say that you can't find the right tenant is not a good enough answer.

Shelly Schratz, Amherst Town Board Member (9/4/07 public hearing transcript, pg. 125)

Response 192-198: Real Property Services, LLC, economic consultant for the project sponsor, responds as follows:

The proposed development encompasses 33.33± acres of land, with approximately 2,220 front feet along Maple Road in the Town of Amherst. This is a prime, unique development site due to its size, accessibility, visibility, demographics, and proximity to the University of Buffalo. Although there may be vacant retail stores sporadically located in the market area, as well as retail sites available for development/redevelopment, none of these properties comes close to satisfying the physical, locational, and demographic requirements of a mixed-use, walkable community center the size and scope of the subject project.

It is the opinion of Real Property Services that any “empty properties”, redevelopment sites, or “forgotten” development areas in the Town of Amherst would not be suitable for the subject project as proposed. Further, there is not an excessive amount of vacant retail space in the marketplace, and what is there reflects the normal and typical ebb and flow of the marketplace.

Comment 199: We certainly don't need any more restaurants, shops or hotel space. We have more than enough already.

David J. Trask, Snyder, NY (email dated 9/12/2007)

Comment 200: Amherst has enough restaurants and stores.

John Allein (8/07 petition)

Comment 201: There are four major commercial retail development areas in the Town, Niagara Falls Boulevard, Transit Road, Main Street and Sheridan Drive. The only east-west major highway left without commercial development on the entire stretch is Maple Road, and this development would end that completely. There is nothing that this development can offer that this town does not already have.

Larry Hunter (9/4/07 public hearing transcript, pgs. 92-93)

Response 199-201: According to Real Property Services, LLC, the proposed development will be differentiated from, and a complement to, the existing restaurants in the marketplace due to its character as a mixed-use, walkable community setting. Restaurants within the proposed development should expand dining options in the area. The immediately surrounding neighborhood, including the

75± on-site town homes as well as the University of Buffalo population, will have walkable access to these restaurant options.

Comment 202: Why should the taxpayers pay for the service (road, water, sewer, etc.) for yet another development?

David J. Trask, Snyder, NY (email dated 9/12/2007)

Response 202: The project sponsor has confirmed that the proposed development will be privately financed, with no subsidies, abatements, PILOTS, or public monies. All infrastructure costs (road, water, sewer, etc.) will be paid for by the developer. When completed, the development is expected to add approximately \$44,000,000 to the assessment base of the Town of Amherst, generating tax revenues of over \$1,600,000 per year. The site currently generates less than \$17,000 in tax revenue per year.

Comment 203: This plan that sounds like a super idea should be taken to areas in Amherst that need help, such as the Bailey Avenue and Sheridan Drive area.

Margaret Redinbaugh, 1679C Maple Road (8/18/07 letter)

Response 203: The concept plan submitted with the rezoning request for this project shows a fully developed site that includes more than 33 contiguous acres of land that is owned by the developer. To replicate such a plan at another location such as the Bailey/Sheridan area would require assembling smaller parcels together, which may not be possible or feasible.

Comment 204: I am in favor of the proposed redevelopment of the former Buffalo Gun Club because Benderson is not seeking public funds and is taking the risk of development itself, and upon its completion, the development shall generate much needed tax dollars for Erie County and the Sweet Home School District.

Howard Block, 30 Park Drive, Williamsville (9/12/07 letter)

Response 204: So noted.

Comment 205: This project contravenes all the stated goals of the Master Plan including the mechanism for economic development. It should be noted in reference to economic development that the Town policy specifically notes the bullet point “Preventing adverse commercial development on *community character and quality of life*” (emphasis in the plan).

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 205: See response to Comments 1 and 42.

Comment 206: The Comprehensive Plan also emphasizes reinvestment rather than new greenfield development. The Town's professional planning staff apparently recognized this. They recommended rejecting the rezoning application. The Town Board should reject the applicant's request for rezoning as being inconsistent with the goals and objectives of the Amherst Bicentennial Comprehensive Plan

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 206: See response to Comment 33.

Comment 207: The DEIS does not discuss the impacts associated with the development as a regionally unique commercial development as described at the Town Planning Board meeting.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 207: The Economic Analysis in Appendix F of the DEIS prepared by Real Property Services, LLC specifically addresses the impacts associated with the development of the proposed project as a unique commercial development, including: impacts of Supply and Demand factors, competitive properties, surrounding property values, neighborhood character, and tax revenues to the Town, County and the school district.

All relevant impacts have been addressed and analyzed within the Economic Analysis, and have been found to positively impact the market area.

Comment 208: Service costs to the Town incurred for the proposed development should be included.

Eric W. Gillert, AICP, Planning Director, Town of Amherst
(6/21/07 memorandum)

Response 208: The conclusions of the Economic Analysis found in Appendix F of the DEIS generally convey that positive impacts will result to the Town, Sweet Home School District, the surrounding neighborhood and the business community from the proposed project. The Analysis also concludes that the proposed

development will have no negative impact on the marketability or values of nearby existing housing.

Nonetheless, it is expected that a project of this size will also generate costs to the community. Typical costs could be in the form of higher demands for police, fire and emergency services, increased maintenance of utility and road infrastructure, the cost of educating additional students, and greater demand for social services. These additional costs will be partially offset by the increased taxes generated for the development. Compared to the current property tax revenue of \$17,000 per year, the site can be expected to generate approximately \$1,600,000 per year when developed as planned. Tax revenue is used by the Town and County governments to cover the costs of infrastructure maintenance associated with increased usage and the increased demand for police, fire and emergency services. With the proposed residential component of 75 condominium units, the social service and school impacts would be minimal.

Comment 209: No discussion of the conclusions found in Appendix F (Economic Analysis) are included in the section relating to potential significant impacts.

Eric W. Gillert, AICP, Planning Director, Town of Amherst
(6/21/07 memorandum)

Response 209: See response to Comment 208.

Comment 210: The discussion of hazardous materials does not state any limitations on use of the property that will impact its marketability or value. Is this statement true for all possible uses, including residential?

Eric W. Gillert, AICP, Planning Director, Town of Amherst
(6/21/07 memorandum)

Response 210: See response to Comments 160-162. The Economic Analysis included as Appendix F of the DEIS was based on discussions with the developer that environmental remediation of the subject site will leave it with no limitations relating to possible uses.

Comment 211: The table on page 23 misclassifies the Linens and Things/DSW Plaza (#6) as a neighborhood shopping center. It has a single tenant that is larger than 25,000 sq. ft. in size, making it a community center per the criteria stated on page 40 of the Comprehensive Plan. Given its context, it functions as an extension of the regional shopping area anchored by Boulevard Mall. The same argument can be made for Maple Ridge Plaza

(#7). The table should include and also consider retail nodes at Sheridan/Harlem, Millersport/Campbell, and Hopkins/Klein.

Eric W. Gillert, AICP, Planning Director, Town of Amherst
(6/21/07 memorandum)

Response 211: Page 23 of the Economic Analysis, in fact, classifies both Linens and Things/DSW Plaza and Maple Ridge Plaza as community retail centers. There was a typographical error on line 4 of the central paragraph whereby “centers #7 and #8” should read “centers #6 and #7.

A review of the additional retail nodes mentioned has been submitted.

Comment 212: The marketability of the proposed plaza appears to be predicated on tenants unique to the market and the aesthetics of the plaza design. The market analysis admits that the types of tenants discussed in the analysis are hypothetical and no specific retailers have committed to the project... There is no guarantee that the proposed unique retailers, particularly the “specialty grocery store”, will materialize.

Eric W. Gillert, AICP, Planning Director, Town of Amherst
(6/21/07 memorandum)

Response 212: According to Real Property Services, LLC, the economic consultant for the proposed project, the marketability of the proposed plaza will be maximized by attracting tenants unique to the market along with construction quality and aesthetics that are above current market standards. The developer has identified a market niche that is under-serviced in the marketplace.

Comment 213: Greater detail about the three alternative site layouts should be provided.

Eric W. Gillert, AICP, Planning Director, Town of Amherst
(6/21/07 memorandum)

Response 213: See response to Comment 220.

Comment 214: What assurance does the Town have that the GB zoned portion of the site will not be developed as a more typical community level shopping center?

Eric W. Gillert, AICP, Planning Director, Town of Amherst
(6/21/07 memorandum)

Response 214: It is the stated objective of the project sponsor to provide the Town of Amherst with a development that is unique to the marketplace that will be attractive to shoppers and retailers not currently servicing Western New York. Beyond that, the Town will be adopting a Findings Statement in accordance with the provisions of SEQRA that determines specific development and design thresholds with which the project will be required to comply. These can limit the project's uses, scale, size and relationship among uses, thereby ensuring it does not become a 'typical' shopping plaza.

Comment 215: What impact would the proposed mixed-use center have on comparable neighboring centers if developed as a more typical shopping center?

Eric W. Gillert, AICP, Planning Director, Town of Amherst
(6/21/07 memorandum)

Comment 216: Who determines the retail market saturation in the area, and haven't we reached that already? How will this development affect all those older shopping centers that we currently have?

Marie Goodloe, 66 Sandhurst (9/4/07 public hearing transcript, pgs. 96-97)

Response 215-216: See response to Comment 214. If developed as a more typical shopping center, Real Property Services, LLC predicts that lease-up would be more difficult due to the existing competition in the marketplace. However, the locational attributes of the subject site as well as projected growth in the marketplace (due to U.B., for example) should provide adequate absorption potential. The impact on comparable neighboring centers would be more direct than if the development were completed as proposed, however there appears to be sufficient "room" in the marketplace for additional retail (i.e., it is not at saturation).

Comment 217: Section 4.3, Summary of Supply and Demand (Grocery Stores) (p.27), characterizes the market niches of nearby competitors but does not offer any conclusions on the impact of adding additional grocery stores to the market.

Eric W. Gillert, AICP, Planning Director, Town of Amherst
(6/21/07 memorandum)

Response 217: Real Property Services, LLC responds that based upon the success and growth of a niche grocery operation such as Dash's at Hopkins/Klein Plaza, if the proposed subject development incorporates a larger scale specialty grocery store, it is concluded that it would be welcomed by the marketplace. The projected growth of the University, with its diverse population, will serve to strengthen overall demand. Since the specialty grocery niche of the marketplace is

growing, the addition of such a store within the subject development should not have a significant negative impact on the existing competitive marketplace.

Comment 218: The “Conclusions” section does not include any mention of the market analysis of the various proposed uses and the potential impact on community character from adding additional retail space.

Eric W. Gillert, AICP, Planning Director, Town of Amherst
(6/21/07 memorandum)

Response 218: See response to Comments 189-190 and 191.

2.16 Alternatives to the Proposed Action

Comment 219: The DEIS states “The construction of a larger project would require variances.” This project as designed already maximizes the intensity of the land use.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 219: Given the conceptual nature of the project provided with the rezoning application, it cannot be determined at this time whether the project will or will not require variances. If the property is rezoned, site plans will need to be submitted for individual buildings, at which time the Building Department will determine if variances are required.

Comment 220: A smaller scale development in keeping with the community character or as described in Section 1.7 a designation of Traditional Neighborhood Development which would allow the use of only 55% of the land area was not considered “financially feasible” by the developer, because that would not maximize profits. It is submitted that the developer’s profit margin is not a factor to be considered in considering alternatives to the project.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 220: The SEQRA regulations state that a DEIS must include an evaluation of “reasonable alternatives to the action that are feasible, considering the objectives and capabilities of the project sponsor” [Part 617.9(b)(5)(v)]. The project sponsor evaluated several alternatives in Chapter 3 of the DEIS including a larger project, a smaller project, alternative site layout, multi-family residential only, a

regional recreation option, alternative sites, and the No Action alternative. As stated in the DEIS, the project sponsor determined that those options did not meet some of the basic project spatial or financial objectives of creating a multi-use, walkable community offering a mix of retail, office, restaurants, hotel, performing arts center, and condominiums.

Comment 221: It is submitted that MFR-6 is an inappropriate zoning for the site as it permits structures of 65 ft., whereas the MFR-5 zoning classification permits only 35 ft. for the height of structures.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 221: The residential (MFR-6) portion of the proposed project will feature predominately two-story, townhouse style condominium units with garages. A small portion of the residential development will involve single-floor units in three-story buildings. None of the proposed structures will exceed 35 feet in height. The MFR-6 zoning designation is required for allowable density and the inclusion of a hotel, not for allowable height. The project sponsor has stated that developing the project to the maximum height would be inconsistent with the desired character to be achieved with this development. Thresholds pertaining to the size and scale of the maximum project build-out will be established in the Findings Statement which the Town Board as SEQR Lead Agency will adopt prior to rezoning the property.

Comment 222: MFR-6 zoning is described in the Zoning Ordinance as “*high-density development*” (§3-12). In the surrounding neighborhood of single-family homes and some two-family homes, the insertion of “high-density development” is inappropriate. More compatible to the existing housing patterns would be MFR-5 zoning, which is “for medium-density multifamily development” (§3-11).

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 222: See response to Comment 221. The proposed residential component of the project for which the MFR-6 zoning is requested will comprise only about 20% of the total project land area and is proposed for 75± condominium units, most of which will be attached townhouse-style units, with some single-floor units in three-story buildings. Regarding allowable density, the MFR-5 zoning district allows 10 two-bedroom attached units per acre, whereas the MFR-6 district allows 15 two-bedroom attached units per acre.

Comment 223: The principal adverse impact of the project [other than the loss of greatly needed open space] is the insertion of a large scale

commercial district in the midst of a residential area, with its attendant commercialization, traffic, sewage demands and pollution. All of these adverse impacts would be substantially mitigated by an all-residential project.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 223: An all-residential project would generate its own set of adverse environmental impacts which could equal or exceed those of the proposed mixed-use project in terms of traffic, pollution (associated with increased traffic) and utility (water, sewer) demands. Regarding allowable density, the MFR-5 zoning district allows 10 two-bedroom attached units per acre, whereas the MFR-6 district allows 15 two-bedroom attached units per acre. There would be significant amounts of traffic from an all-residential development, as well as a more significant demand on the school system and potentially police and fire services.

The proposed project site is not located in the midst of a residential area. While there is certainly a residential component to the surrounding neighborhood, the entire neighborhood is comprised of a mixture of many other uses. In fact, the northern portion of Maple Road, near the proposed project site, is substantially not residential.

Additionally, the author of the comment references, in numerous other comments, the importance of the Comprehensive Plan. However, there is no support in the Comprehensive Plan to justify the subject property as being used for strictly residential purposes. Therefore, a comparison of the proposed mixed-use development and an all-residential development is not warranted.

The County has determined that the subject project would not have a significant adverse impact to the existing traffic patterns.

Comment 224: SEQRA requires that the Town, as lead agency, assure that adverse environmental impacts of the project are mitigated.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 224: The Town classified the subject project as a Type I action under SEQRA, acknowledging that there could be potentially significant environmental impacts associated with it. The Town Board as Lead Agency issued a Positive Declaration on June 4, 2007, requiring the preparation of an Environmental Impact Statement. The project and DEIS have been reviewed and commented on by Town departments, outside agencies and the public. All substantive comments received are being addressed in this FEIS. The Findings Statement that the Lead Agency must adopt as a final SEQR action for the rezoning request will include mitigation measures that the developer will need to comply with to ensure that the

environmental impacts associated with the subject project that have been identified by Town departments, outside agencies and the public are adequately minimized.

Comment 225: The request for rezoning of 30 acres of the site to General Business is inappropriate and must be denied. We have previously stated that such rezoning is inconsistent with the Town's Comprehensive Plan.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Comment 226: This development is not what the Comprehensive Plan calls for. It is not a location for a mixed-use center. The addition of GB property centrally located in the Town of Amherst on a major thoroughfare will affect the Town's future outlook as outlined in the Plan.

Mary Shapiro, 16 Royalwoods Court (9/4/07 public hearing transcript, pgs. 101-102)

Response 225-226: See response to Comment 33.

Comment 227: The DEIS fails to adequately explore alternatives to the proposed project, including no rezoning. Its treatment of alternatives is cursory and non-serious.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 227: See response to Comments 47 and 220.

Comment 228: The proposed project is nothing more than an attempt to insert a commercial development in one of Amherst's last open spaces. If the developer were truly interested in mixed use development within the character of the existing community, it would have sought a more appropriate zoning classification.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 228: See response to Comments 1, 48 and 221

Comment 229: The General Business zoning, as the Town well knows, is the zoning category used to permit strip malls, shopping plazas and the most neighborhood-unfriendly development possible.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 229: The project sponsor has explained that the General Business zoning was sought to accommodate the proposed hotel, which is not permitted in either the Neighborhood Business (NB) or the Traditional Neighborhood (TND) zoning districts. The Town will be adopting a Findings Statement in accordance with the provisions of SEQRA that determines specific development and design thresholds with which the project will be required to comply. These can limit the project's uses, scale, size and relationship among uses, thereby ensuring it does not become a 'typical' shopping plaza.

Comment 230: Is it the intent of the developer to destroy the existing residential community?

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 230: According to the economic consultant for the project sponsor, Real Property Services, LLC, one of the objectives of the project is to complement the adjacent residential neighborhoods near the development site. As an indication that the project will not destroy the residential community, the proposed project contains a residential component of its own, with 75 condominium units planned in the western portion of the site. The mix of units is expected to include mostly two-bedroom condominiums, with some one- and three-bedrooms as well. The preliminary projected sales price range is from \$250,000 to \$500,000, with a projected average price of \$350,000.

A review of comparable condominium development in the Town of Amherst indicates that demand is very strong and stable. Discussions with three active condominium developers in Amherst indicated overall positive forecasts for the development of condominiums at the subject site. The builders commented as to the lack of suitably zoned land, the limited supply of attractive sites, and the difficult process in getting projects approved. Based upon these factors, supply has not kept up with market demand. Each builder felt that the subject's location on Maple Road near the University was an excellent area for this type of product.

A review of the most recent condominium developments in Amherst, along North Forest, Hopkins, Renaissance and Brompton Roads, indicate strong selling prices and good absorption.

The proposed condominium development is anticipated to have a very successful sell-off based on its location near the University which can cater to faculty and administrators, pent-up demand in Amherst, a relatively private setting for most of the units, nearby amenities not enjoyed by other condominium developments, and location within 1± mile of the 290 Expressway for commuters.

Comment 231: No consideration is given in the DEIS to the consequences to the human environment that would flow from the project contemplated.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 231: From both a residential and retail perspective, the character of the area will be enhanced by this development. The project is expected to enhance the character of the neighborhood by bringing to the area new retail opportunities, places to dine, and places of employment. Improvements will be made to facilitate residential neighbors' ability to walk to the development, which will include condominiums valued above the surrounding residential market. No negative impact on the marketability or value of nearby existing housing is expected based on the Economic Analysis conducted by Real Property Services, LLC (Appendix F of the DEIS).

The subject will provide significant and quantifiable economic benefits to the Town, County and Sweet Home School District, with minimal impact on services compared to tax dollars generated.

Comment 232: One result would be certain, if the Town were to rezone the subject site to General Business, the developer would be free to abandon any mixed use plans, however dense, and would be legally permitted to build as it pleases.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 232: The Economic Analysis (Appendix F of the DEIS) concludes that the marketability of the proposed project will be maximized by attracting tenants unique to the market, along with providing construction quality and aesthetics that are above current market standards. The developer has identified a market niche that is under-serviced in the marketplace, and has designed the project accordingly. Varying from the proposed development plan would not be justified by the marketplace. See also response to Comment 229.

Comment 233: More information is needed to assess the alternatives of a larger and smaller project.

Eric W. Gillert, AICP, Planning Director, Town of Amherst
(6/21/07 memorandum)

Response 233: See response to Comments 220 and 244.

Comment 234: An alternative showing a more integrated mixed-use center (including, for example, upper-story residential use) could be included, as well as a lower-density Multi-Family district.

Eric W. Gillert, AICP, Planning Director, Town of Amherst
(6/21/07 memorandum)

Response 234: The actual square footage mix of proposed retail, office and residential uses could be altered from that shown on the concept plan submitted with the rezoning application. The inclusion of upper-story residential uses, or the reduction in the density of housing units shown, could be integrated into the development at the site plan stage.

Comment 235: Include an alternative of rezoning to Traditional Neighborhood District (TND).

Eric W. Gillert, AICP, Planning Director, Town of Amherst
(6/21/07 memorandum)

Response 235: The project sponsor has indicated in Section 1.7 of the DEIS that an alternative rezoning to Traditional Neighborhood District (TND) was considered but rejected for several reasons. The minimum acreage for a TND is 40 acres, whereas the subject site measures just 33± acres. The maximum building coverage in a TND is 55% which was not determined to be practical or feasible. Further, the TND would not permit a hotel use, which is a desired feature of the subject proposal.

2.17 Miscellaneous

Comment 236: I favor the Town Center that I think of as a college town similar but better than what they have at other large universities.

Robert J. Collins, 4812 Harlem Road, Snyder, NY
(email dated 9/15/2007)

Response 236: So noted.

Comment 237: This (Community Neighborhood Meeting) summary is not supported by attendance records found in Appendix G. Only 12 of 88 homes, where notification was sent, were in attendance, approximately 13.6% of those contacted. Twenty nine (29) potentially negative impacts were recorded. Twelve (12) positive comments were recorded, many of which were not relevant to environmental review (ex. "Anything is better

than the gun club” or “When can it get started”). One (1) comment was mixed.

Mary Shapiro, 16 Royalwoods Ct
(letter dated May 2007, Accepted for comment 6/4/2007)

Response 237: Benderson Development sponsored a community meeting at the Pepsi Center on January 3, 2007, for the purpose of educating the neighboring property owners with respect to the proposed project. They report that while only 12 residents signed in, the actual attendance was far greater over the course of the three hour event.

Twenty-seven "concerns/questions" were identified by the residents in attendance, but they were not all with regard to "potentially negative impacts," as the comment alleges. For instance, one question was "Does the project require approval by the Town?" Another question was "Will it be student housing?" Of the 27 "concerns/questions," very few related to any potential significant adverse impacts to the environment.

Thirteen positive comments were recorded. However, the comment "anything is better than the gun club" was qualified by the following parenthetical "said on numerous occasions". Therefore, the total number of positive comments is actually greater than the attendance records indicate.

Comment 238: Brownfield cleanup of this site is not adequate justification to rezone this proposed development site. The petitioner has been accepted into the NYS Brownfield Cleanup Program and has obligations under that agreement which are separate from land use changes approved by the Town of Amherst (i.e. rezoning). This should be expected from anyone who wanted to develop this brownfield and should be separate from land use decisions.

Mary Shapiro, 16 Royalwoods Ct
(letter dated May 2007, Accepted for comment 6/4/2007)

Response 238: This is correct. While end use and land use are considerations in the Brownfield Cleanup Program process, zoning, zoning changes, or land use issues are determined by the local municipality.

Comment 239: There may be some discussion about the significance of the environmental impacts, but to state that there will be “no negative impact” is absolutely false.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 239: The Town has acknowledged in the Positive Declaration issued by the Town Board on June 4, 2007 the potentially significant environmental impacts of the proposed project, including impacts to traffic, drainage, soils, visual resources and community character. The purpose of SEQRA is to review whether a proposed project may cause significant impacts to the environment and then, in the FEIS and Findings, to weigh and balance those impacts against the social, economic and other factors related to the project (6 NYCRR section 617.6). The potential significant environmental impacts, as required by SEQRA, have been fully identified, set out, discussed, and analyzed in the DEIS. This FEIS has addressed all substantive comments received from the Town departments, outside agencies and the public regarding those impacts.

Comment 240: The Town's Notice of Hearing also presents inaccurate square footage for the project by a factor of ten.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 240: So noted.

Comment 241: There is no discussion of air quality issues associated with a regional project.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 241: The project sponsor was not specifically requested to supply air quality information or perform air quality testing for the subject project. Potential impacts to air quality resulting from fugitive dust generated during construction activities can be minimized by seeding or mulching exposed soils, grading and covering roadways with gravel, and wetting down temporary roads as needed during the course of construction. These mitigation measures can be included in the Findings Statement for the project.

Comment 242: We urge the Board to reject the proposed request for rezoning, and to conduct serious discussions with the developer about potential development within the clear meaning of the Comprehensive Plan, development which would be in keeping with the character of the existing neighborhood residential community.

Richard G. & Isabell S. Berger, 77 Foxcroft Lane
(8/26/07 letter)

Response 242: So noted.

Comment 243: I find it highly irregular that any vote should be taken on this matter until after the Final Environmental Impact Statement is issued and approved as adequate by the Town, and after members of the Board have had ample opportunity to study the findings of the EIS.

Richard & Isabell Berger, 77 Foxcroft Lane (8/5/07 letter)

Response 243: The vote taken by the Amherst Planning Board at its meeting of January 5, 2005 is advisory only to the Town Board as Lead Agency for the rezoning action. According to SEQRA regulations, the Town Board must still accept the FEIS and issue a Findings Statement before it votes to approve or deny the rezoning.

Comment 244: The DEIS in this matter is seriously deficient in many respects and needs to be substantially revised before it will be accepted as an adequate Statement. It ignores and diminishes serious environmental concerns, it fails to adequately consider alternatives to the proposed action, and it fails to take steps to mitigate the adverse consequences that the DEIS in fact acknowledges.

Richard & Isabell Berger, 77 Foxcroft Lane (8/5/07 letter)

Response 244: SEQRA requires that a lead agency demonstrate that it made a thorough investigation of the environmental effects associated with the project, identified relevant areas of environmental concern, took the required "hard look" at those concerns and made a reasonable elaboration of the basis for its findings. *H.O.M.E.S. v. NYSUDC*, 69 A.D.2d 222 (4th Dept., 1979). SEQRA does not require the reviewing agency to identify and address every conceivable environmental impact, mitigating measure, or alternative of a project to satisfy the substantive requirements of SEQRA, only those reasonably related to the project or potential environmental impacts. *Id.* and *Akpan v. Koch*, 152 A.D.2d 113 (1st Dept., 1989), *aff'd*, 75 N.Y.2d 561 (1990). The Town Board accepted the DEIS as adequate for public review on June 4, 2007, initiating the public comment period for the rezoning action. The Findings Statement prepared by the Lead Agency will certify that "consistent with social, economic, and other essential considerations..., the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable". Section 617.11 (d)(5).

Comment 245: (T)he regulations of the Department of Environmental Conservation which implement SEQRA prohibit an agency from rendering any decision until at least ten days after the publication of the Final EIS.

Richard & Isabell Berger, 77 Foxcroft Lane (8/5/07 letter)

Response 245: The Town is aware of the SEQR regulations and will adhere to the requirements for publication and decision making. 6 NYCRR section 617.11(a) provides that a lead agency's decision on an action which has been subject of a final EIS must provide involved agencies and the public a reasonable time (no less than 10 calendar days) to review and consider the final EIS before the lead agency issues its written Findings Statement. Once that time period has elapsed, the lead agency may issue its findings and its decision to approve or disapprove the action simultaneously (Section 617.11(c)).

Comment 246: As thirty-year residents and owners of a duplex on North Maplemere, we feel obligated to express our very strong and serious concerns about the proposed rezoning request for the property located at 218 and 330 Maple Road... We would like to voice strong opposition to that plan.

Morton and Arlene Merowitz, 73 N Maplemere
(6/27/2007 email)

Response 246: So noted.

Comment 247: The distribution list for the DEIS should include the University of Buffalo as an interested agency.

Eric W. Gillert, AICP, Planning Director, Town of Amherst
(6/21/07 memorandum)

Response 247: The University of Buffalo was added to the list of interested agencies for this project.

Comment 248: We concur that the Town of Amherst should act as SEQR Lead Agency, as the environmental impacts of the proposal are primarily of local significance.

Steven J. Doleski, Regional Permit Administrator, NYSDEC
(3/28/2007 letter)

Response 248: So noted.

Comment 249: The ACAC in its meeting on March 7th, 2007, agrees to the Town of Amherst assuming the role of Lead Agency for the processing of this rezoning.

Peter Warn, Chairman, Amherst Conservation Advisory
Council (3/09/2007 email)

- Response 249: So noted.
- Comment 250: I've been asking the Town for handicapped access along Maple Road from Maplemere to Hopkins. The curbs are currently four inches off the street level, and you cannot take a handicapped vehicle on those roads.
- Marcia Gunther, 2 Auden Court (9/14/07 public hearing transcript, pgs. 55-56)
- Response 250: A written request should be submitted to the Town Planning Department for installation of the drop curbs to accommodate handicapped vehicles. The Town uses federal Community Development Block Grant (CDBG) funds for such projects.
- Comment 251: I am not opposed to the new complex but I am concerned with quality of life issues and their impact on the neighborhood to the south.
- Allyn Kain, 410 Sunrise Blvd. (9/12/07 letter)
- Response 251: See response to Comments 27 and 132-133.
- Comment 252: The physical condition of Maple Road, with its cracks and bumps, is only going to get worse.
- Ms. Aquilina, 215 Maple Road, also speaking for Mr. Allein, 225 Maple Road (9/4/07 public hearing transcript, pgs. 78-79)
- Response 252: As a major County arterial road, Maple Road is designed to accommodate high amounts of traffic. Required maintenance is the responsibility of the County Department of Public Works.
- Comment 253: I am questioning the kind of garbage pickup the development will have, and fire access.
- Marcia Gunther, 2 Auden Court (9/14/07 public hearing transcript, pg. 56)
- Response 253: The project sponsor responds that all trash will be stored in enclosed dumpsters that will be properly located, screened and gated in accordance with Town requirements. As is done with other similar developments under their ownership, trash pick-up will be done at times acceptable to neighbors to prevent noise or disruption, most likely between the hours of 10:00 am and 2:00 p.m.

All site plans submitted for construction of the project will be reviewed by the Fire Chiefs' Association for compliance with NYS Fire Codes during the site plan review process.

Comment 254: This project might not work as well in Western New York where the winters are very cold.

Deborah Bruch Bucki, Town Board Member (9/4/07 public hearing transcript, pg. 129)

Response 254: There are projects similar to the proposed project in other colder climates throughout the country, where weather alone has not prevented the use or the success of the development.