

Final Environmental Impact Statement

for

The Residences at West Lake Marine Club

Town of Canandaigua Ontario County New York

Dated: October 16, 2008

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RESIDENCES AT WEST LAKE MARINE CLUB FINAL ENVIRONMENTAL IMPACT STATEMENT

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1. INTRODUCTION

1.A Environmental Review Process

The Planning Board of the Town of Canandaigua, having determined that the Residences at West Lake Marine Club (the “Project”) was a Type I action under the State Environmental Quality Review Act (“SEQRA”) and made a positive declaration of potential environmental impact, has required the Project to complete an extensive and lengthy environmental review process.

Moreover, throughout the entire course of the extensive environmental review of the Project, this Planning Board has gone far beyond the normal SEQRA requirements to solicit and take into consideration the input of all interested and involved agencies, organizations, and individuals.

Nevertheless, this Planning Board has been mindful of SEQRA’s requirement that it shall carry out SEQRA's terms “with minimum procedural and administrative delay, shall avoid unnecessary duplication of reporting and review requirements by providing, where feasible, for combined or consolidated proceedings, and shall expedite all proceedings hereunder in the interests of prompt review.” Environmental Conservation Law §8-0107. A timeline illustrating the SEQRA process for the Project over the course of the past three years is set forth in Section 1.B, below.

Consistent with SEQRA’s requirement of a prompt review, this Planning Board has engaged in an environmental review process that has allowed the public, organizations, neighbors, other citizens, and all the other involved and interested agencies to fully participate in the process at every stage. That environmental review process now must be brought to a timely conclusion with the adoption of this Final Environmental Impact Statement (FEIS), and the prompt completion of the associated SEQRA Findings Statements.

1.A.1 The Scope

Scoping is an optional process which allows the public and involved and interested agencies to articulate the nature and extent of the matters and issues that should be addressed in the environmental impact statement. Based on extensive input from many citizens and involved or interested agencies, this Planning Board developed and approved a lengthy Scope for the EIS, a copy of which is included in Appendix J to the Draft Environmental Impact Statement (DEIS). Before this Planning Board finalized the Scope, input was solicited by circulation of a draft scope to the agencies and public, notice was given of a public comment period on the draft scope, and this Planning Board held a public meeting to solicit oral comments. Pursuant to the SEQRA regulations, this FEIS is limited to those matters and issues identified in the Scope.

1.A.2 The DEIS

The Applicant first submitted a proposed DEIS to this Planning Board on January 30, 2008. After extensive consultation among the members of this Planning Board, and upon the advice of this Board's consultants and the staff of the Town of Canandaigua who regularly engage in the planning, zoning, and building approval process, this Planning Board suggested to the Applicant that the proposed DEIS needed further work to adequately address a number of the matters and issues raised in the Scope.

The Applicant then responded to each of those matters and issues identified by this Planning Board and submitted a revised proposed DEIS on May 12, 2008. With the exception of a few minor points, this Planning Board determined that the revised proposed DEIS was of adequate content and scope to initiate a public comment period on the DEIS pursuant to SEQRA. So, on June 17, 2008, this Planning Board conditionally approved the revised proposed DEIS as adequate for the purpose of commencing public review of the Project, provided that the Applicant made a few minor revisions to the satisfaction of the Planning Board Chair. Those minor revisions were made and approved by the Chair on June 27, 2008.

1.A.3 The Public Comment Period/Public Hearing

The approved DEIS was then filed and circulated for public review in accordance with the SEQRA. A copy of the DEIS was distributed to all involved and interested agencies, and to each organization or individual that had requested a copy. Copies of the DEIS were also made available for public review at the Wood Library and the Town of Canandaigua Town Hall. Concurrently, an electronic copy of the DEIS was made available online through the Town website.

A notice of the availability of DEIS and the commencement of the public comment period on the DEIS, including the schedule for a public hearing, was also sent to the same parties, posted in the Town Hall, published in the Daily Messenger on July 3, 2008, and placed in the Environmental Notice Bulletin.

This Planning Board, then, held a combined public hearing on July 21, 2008 to receive oral and written comments on the DEIS, as well as on the Applicants' site plan, subdivision, and special use permit applications for the underlying Project. Three individuals provided this Planning Board with oral comments. This Planning Board also received written comments from two of those individuals, as well as written comments from the Zoning Board of Appeals and sixteen other organizations and individuals.

1.B Summary of Public Comment on DEIS

In addition to the three oral comments received at the public hearing, this Planning Board received a total of seventeen written comments, including one set of duplicates, for a total of sixteen non-duplicative written comments. A copy of each of those written comments and the minutes from the public hearing are included in Appendix S.

A broad range of comments were received which largely paralleled the potential environmental impacts identified in the Scope. The majority of comments focused on the environmental impacts and the variances that were being proposed to allow the construction of the Marine Club's clubhouse and pump house on the east (lake) side of West Lake Road.

There were other comments regarding the potential visual and noise impact of the Marine Club and proposed residences on the lake, the residents of East Lake Road, and the immediate neighbors. Comments were also submitted regarding the methods and phasing of construction and the need to manage stormwater runoff to protect the water quality of Canandaigua Lake. Last, there were a number of comments about the number of slips/boats being proposed for the Marine Club, and their impact on the ecology of the lake and other users of the lake.

A few of the comments pertained to matters outside the Scope for the EIS. For example, one comment stated that the DEIS should have evaluated an alternative that included the continuation of the pre-existing non-conforming use commercial marina except for the cessation of dry-dock boat storage in order to allow for three homes to be subdivided from the German Brothers Marina lot. As noted above, after public comment, this Board established the Scope for the DEIS, which included multiple reasonable alternatives to explore how environmental impacts might vary depending on feasible changes to the design of the Project.

The review of alternatives need not be exhaustive. The scoping process is intended not only to focus the EIS on potentially significant adverse impacts, but also "to eliminate consideration of those impacts that are irrelevant or nonsignificant" by requiring all relevant issues to be raised before issuance of the final scope. 6 NYCRR §617.8(a) and (g). Therefore, the Planning Board will not address in the FEIS additional issues or information outside of the Scope unless it determines that there is a reasonable basis for doing so based on the nature, importance, and relevance of the information or issue.

Several revisions to the project design were made in response to comments. The revisions were made to either reduce environmental impacts or more closely reflect the position of the community. Revisions made to the Project in response to comments received are identified in Section 2, Project Design.

1.C Format of FEIS

The FEIS is comprised of the DEIS (which is incorporated by reference), the written comments received and the minutes from the public hearing, this Response to Comments document, and the revisions and supplements to the pages, tables, figures, and drawings in the DEIS reflecting the modifications made to the Project in light of the comments received.

This Response to Comments document includes a review of the SEQRA process, a brief summary of the comments received, a discussion of the modifications made to the Project by

the Applicant, a compilation of the substantive comments received (and their source), this Planning Board's response to each of those substantive comments, a chart indicating which commentator made which substantive comment (which is included in Appendix S), and a copy of the written comments received and the minutes from the public hearing. Reviewers can use the chart included in Appendix S to identify where in this document each written and public hearing comment is addressed.

For ease of reference, the structure of the DEIS has been used in this document to organize the compiled substantive comments and this Planning Board's responses to those substantive comments. That is to say, this Response to Comments addresses herein the comments received by the subject matter that follows the outline of the DEIS. In many cases, similar comments were grouped and one response was provided to address all comments. In addition, revised and new Exhibits were prepared to reflect project modifications made by the Applicant in response to comments on the DEIS and/or to support or illustrate statements made in this FEIS. Several Exhibits were prepared to illustrate modifications made to the Project. This Planning Board will consider the environmental impact and merits of the alternative Project designs proposed by the Applicant, and make SEQRA Findings indicating which of these designs this Board finds will eliminate or mitigate to the maximum extent practicable the potential environmental effects of the Project. Except where otherwise noted in this Response to Comments, no revisions are being made to the plans submitted with the DEIS, and therefore, those unrevised plans are not being reissued as part of this FEIS.

Before this Planning Board or any other involved agency makes a final decision on whether to approve or disapprove any element of the Project, this FEIS must be filed and distributed so that all involved agencies, interested agencies, and the public have a reasonable time period of not less than ten calendar days to consider this FEIS.

Furthermore, prior to rendering a decision on the Project, this Planning Board, and each involved agency, must issue a Findings Statement that considers the relevant environmental impacts disclosed in the FEIS, weighs and balances relevant environmental impacts with social, economic, and other considerations, articulates the rationale for any decision of this Planning Board, explains how, consistent with social, economic, and other essential considerations, from among the reasonable alternatives available, the action is the one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and puts forward those mitigating measures that were identified as practicable to be incorporated as conditions to any decision.

Taken as a whole, this FEIS incorporates input from the community and from involved and interested agencies that has been offered upfront and throughout the environmental review process to date, so that this Planning Board and other involved agencies can proceed to the completion of their respective SEQRA Findings Statements and to a decision on the merits of the Project with minimal delay, confident that we have identified, taken a hard look at, and weighed and balanced every potential significant adverse environmental impact.

2. PROJECT DESIGN

The Applicant has modified the Project in response to the comments received on the DEIS. One of the primary modifications is to develop two design alternatives for the West Lake Marine Club. The first is a modified version of Alternative H from the DEIS, in which the clubhouse for the Marine Club is located on the west side of West Lake Road. The clubhouse for this alternative has been reduced to 2,960 square feet and the existing buildings on the lake side of West Lake Road would be replaced with one smaller multi-purpose building (Exhibits 38A–38E). The new multi-purpose building would be located in the same general location as the existing 40' x 40' boat repair shop, but would be significantly smaller (1,040 square feet vs. 1,600 square feet proposed in the DEIS). The second alternative is a modified version of the Project as proposed in the DEIS, which eliminates the proposed separate pump house and combines its functions into a smaller clubhouse (2,980 square feet) (Exhibits 39A–39D).

The Applicant would prefer to build the modified Project with the smaller clubhouse on the lake side of West Lake Road based on considerations of user safety. Nevertheless, the Applicant would be willing to build the modified Alternative H, with the clubhouse on the west side of West Lake Road, if, upon the completion of the SEQRA process, this Planning Board conditioned its approval of a special use permit for the proposed Marine Club on the clubhouse being constructed on the west side of West Lake Road and the Zoning Board of Appeals granted the requisite variances.

In response to concerns about how far the moorings extended into the lake and about the amount of wet storage provided at the Marine Club, the Applicant has modified the docks and moorings for the Project so that the new docks and moorings will end 100 feet closer to shore than the existing moorings do, and the number of boat spaces is decreased to 110. There would be 110 dock slips (including 7 for visiting boats already on the lake, and 103 for members) and no moorings, resulting in 15 fewer spaces than previously proposed. (See Exhibits 38A & 39A for the revised docking and mooring layout.) As shown on Exhibit 40, the outermost perimeter of the proposed docking facilities now comprises an area of 2.9 acres. The existing docking facilities cover an area of approximately 4 acres. Thus, the Project would reduce the total docking facility area by 1.1 acres (28%).

The Applicant has also stated that it would accept, as a condition of its special use permit, a requirement to build six moorings for residents of the Town (see Exhibits 38A & 39A). In addition, the Applicant would accept as a condition of its special use permit, a requirement to open the Marine Club's gas dock during the day to other boaters on the lake. If public fueling is to continue, fuel services will be provided through a third business entity, separate from the West Lake Marine Club and the Homeowners Association.

The Applicant has also modified the proposed height of the homes. To reduce the Project's visual impact and preserve sight lines from the Lakewood Meadows subdivision, the Applicant is no longer seeking to build 45-foot tall homes in the SCR-1 zoning district. The Applicant is now proposing that the maximum height of these homes be 35 feet tall, as

measured from average finished grade, which is the maximum height typically allowed in the SCR-1 Zoning District. Further, the Applicant is now proposing a maximum height of 25 feet from average finished grade, in conformance with the Zoning Code, for the homes to be built on Lots 1, 2, 3, 5, and 6 in the RLD zoning district. The Applicant is nevertheless still requesting a variance to allow a maximum height of 35 feet from average finished grade for the homes to be built on Lots 7-15, which are adjacent to or on the boundary between the RLD and SCR-1 zoning districts. This variance would allow those homes to be of a height consistent with the adjoining SCR-1 homes and would further allow for the preservation of the mature trees on the hillside in this location. (See Section 4.B.2 of this FEIS and Exhibits 41A-41C.)

The Applicant has also proposed several revisions to the subdivision layout to reduce potential wetland encroachment on Lots 26 and 27, to eliminate the need for a lot width variance for Lots 14 and 15, and to provide additional trail access for golf carts. The modified subdivision plan is shown in revised Exhibits 4A and 4B. Changes to Lots 26 and 27 and other wetland protection measures are discussed further in Section 4.F.2. The revised layout for Lots 14, 15, and 16 is described in Section 4.B.1 and illustrated on Exhibit 52. Changes to the Project's trail network are depicted on revised Exhibit 7 and are further discussed in Section 2.E.

All of these and other changes to the Marine Club facilities are intended to further reduce the potential for environmental impacts associated with the Project. Each of the modifications to the previously proposed project design, which have been made in response to the comments received, is discussed in sections 2.A through 2.H below.

2.A Site Layout

Section 2, above, describes modifications to the layout of the Marine Club's clubhouse, pump house, and docking and mooring facilities, relative to the layout described in the DEIS.

Comment: The graphic scale needs to be corrected on BME Drawings 2145-09, 10, 11, 13, and 26. (Herbik, 0017)

***Response:** The graphical scale shown on these drawings is correct. The majority of the plan sets distributed with the DEIS were half-size reproductions of the full size plans. Because the full size plans are 34" X 44", half-size plans were distributed for ease of use. On the half-size plans, the scale would be double that shown on the graphical scale.*

Comment: How will the lakeside portion of the Johnson property appear upon completion of the project? Will trees be removed? Will hardscape be included? How will the undertakings change elevation or the view shed from the lake and fit with Shoreline guidelines? (Herbik, 0042)

Comment: Will the Johnson lakefront remain as is and no trees will be cut? On Lots 5 and 6, will the trees in front of the homes on the bank remain in place? Hopefully so, these trees should be preserved. (Fuller, 0155)

Comment: An item that does not appear in the DEIS is the pristine condition of the natural shoreline of the Johnson parcel. This natural beach might be designated as a swimming area off limits to boats and available to the purchasers of homes in the development. (Lewandowski, 0180)

***Response:** As noted throughout the DEIS, the lakefront portion of the Johnson property will be included in the HOA open space lands and will remain in its current undeveloped state. All proposed docks are to be placed along the bulkhead on the German Brothers' parcel.*

Existing trees bordering West Lake Road on Lots 5 and 6 will be preserved.

The Project would not be developed with a designated swimming area. Fishing and swimming are possible recreational activities along portions of shoreline of the Johnson property, although no formal beach area exists.

Comment: BME Drawing 2145-09 identifies the SCR-1 zoning district as R-1-30 in the legend. This should be corrected. (Herbik, 0026)

***Response:** The drawing legend will be corrected for the revised preliminary plans to be issued after the Planning Board completes the SEQRA process and issues its Findings Statement for the Project.*

Comment: BME Drawing 2145-09. The subdivision notes indicate the maximum required lot coverage for SCR-1 is 20%, but the proposed lot coverage is 30%. Which lots are involved? (Herbik, 0028)

***Response:** The lot coverage requirements are waived where, as here, a clustered conservation subdivision layout is proposed in the SCR-1 portion of the Project. Town Zoning Code §105-518(C)(6)(a). The ultimate amount of building coverage on each lot will vary. Each home for the Project will be custom-built, and no two homes will be the same. However, all homes designed for the SCR-1 lots would be restricted to the proposed maximum 30% building coverage on the lot.*

Comment: BME Drawing 2415-09. Lot 2 in the RLD is noted as 26,116 S.F. How is this reduced by road, as the minimum required lot size in the RLD is 20,000 S.F.? (Herbik, 0022)

***Response:** The access driveway shown for Lots 1, 2, and 3 is considered a private access drive, not a dedicated roadway. Private driveways are not considered to*

reduce the size of a lot. Therefore, the 26,116 square feet shown for Lot 2 is the correct, final lot size.

Comment: Where are people going to swim? Will future residents be applying for variances to build 70 swimming pools on lots that are too small because the open space areas are backyards? (Fuller, 0169)

***Response:** The Project does not have a designated swimming area. Members of the West Lake Marine Club, like any other boater on the lake, may use their boats to access undeveloped portions of the lake to swim and fish. Because the shoreline along the Johnson parcel will be left as is, undeveloped, this may include the lake area off the Johnson property shoreline.*

As described in Section 6.D.2 of the DEIS, approximately 14.62 acres of land on individual lots would be restricted with a perpetual open space conservation easement. Residents are prohibited by the conservation easement from installing pools or any other structures in the portions of their yards that are reserved as open space. The conservation easement that preserves the open space will be permanent and run with the land and, therefore, cannot be voided by a variance issued by the Zoning Board of Appeals. This would not prohibit homeowners that may wish to do so from installing in-ground pools on the backyard portion of their lots that does not lie within the conservation easement. In order to improve the appearance of the residences among neighbors and as seen from the lake, above ground pools will not be allowed by HOA regulations. (DEIS Section 4.H.2 and Appendix R

2.B Site Drainage and Grading

Comment: Could we have an explanation of the Analysis Point I on Exhibit 5B? Where exactly is that? Is that the Morrell sewer structure? (Fuller, 0164)

***Response:** Analysis Point I corresponds to an existing 21-inch culvert located under West Lake Road that flows into the lake. It is located approximately 30 feet south of the Morrell sewer structure. Analysis Point I was evaluated for existing and proposed stormwater runoff conditions in the DEIS.*

2.C Architecture of Clubhouse and Marina Buildings

Specific comments regarding the proposed architecture of the Marine Club buildings were not received; however, modified Marine Club building designs are included as Exhibits 38C and 39C. Comments regarding the overall visual impact of the proposed Marine Club facilities are addressed in Section 4.H, Aesthetic Resources. The visual simulation exhibits reflect the modified design and locations of the clubhouse for the Project as proposed and the

alternative which places the clubhouse on the inland side of West Lake Road as described further in Section 4.H.

2.D Marine Club Facilities Layout

Although not addressed in any particular comment received on the DEIS, at this Planning Board's request, the Applicant has provided additional information on the proposed timing for the Marine Club development.

Following receipt of the necessary approvals, the Applicant will close on the purchase of the German Brothers Marina property and begin constructing the new boat slips. It is anticipated that this construction would begin in early 2009, prior to the start of the 2009 boating season. The existing German Brothers slips would be replaced and the existing moorings would be removed. German Brothers Marina would continue to operate as a tenant of the Applicant through the 2009 and 2010 boating seasons, with its customers using no more than the number of in-water boat spaces (68) currently provided by the German Brothers Marina. A gate would be placed to prevent German Brothers Marina customers from using additional docking slips located along the southernmost docking structures. At the end of the 2010 boating season (November 2010), German Brothers Marina would cease operations at the property. At that time, the Applicant would remove the existing 50'x27' building at the Marina and the contaminated soils beneath the building pursuant to a plan approved by the New York State Department of Environmental Conservation. It is anticipated that clean-up would be complete by December 2010.

Construction of the Marine Club buildings and associated parking would not begin until approximately half-way through the development of Phase 1 of the residential subdivision. Phase 1 consists of the construction of 25 homes.

2.D.1 Docking System Design

Correction: Although not addressed in any particular comment, Section 2.D of the DEIS incorrectly states that the proposed sundeck dock will extend lakeward from the clubhouse to the bulkhead, and then seamlessly join onto a cantilevered dock that will extend lakeward from the mean high water line. However, as specified in Section 4.B.2.a of the DEIS at Table 4-1, there will be no sundeck dock on the land side of the mean high water line. Rather, the pre-existing concrete walk will remain in place and adjacent to the proposed cantilevered sundeck dock. Moreover, the Project has been modified to decrease the width of the dock to approximately 5 feet. See Exhibit 38A & 39A.

Comment: The Applicant needs to detail the size, shape, and location of the proposed docking facility—including the number and type of structures composing the facility—so that the Planning Board can determine whether the proposed facility will be the "minimum necessary to accommodate" the number of wet spaces it ultimately approves. The Applicant devotes a single paragraph at the bottom of p.10 of the DEIS to the subject. The Applicant does not say what the square footage of the facility will be. It does not identify what

structures will be constructed below the mean high-water line. What should be measured is the "outermost perimeter" of "all related structures such as docks, bulkheads, breakwaters, pilings, piers, platforms, or moorings that function together to create a facility or area at which boats may be docked or moored." 9 NYCRR § 270-2.1(a)(16). The Applicant should then describe in detail each of the aforementioned structures lying within the perimeter. (Forsyth, 0117)

Comment: The Applicant needs to detail the size, shape, and location of the current docking facility. The Applicant should also compare the existing docking facility to the proposed docking facility, using common measures. The comparison should show the absolute change and the percentage of increase or decrease. (Forsyth, 0118)

Response: *As noted by the commenter, the size, shape, and location of the proposed docking facility was described in Section 2.D of the DEIS on p. 10. This section also provides general information on the types of structures to be located below water. In addition, the proposed docking facility is depicted in detail in BME Drawing 2145-10, the Site Plan for the Marine Club. The existing docking facilities at German Brothers Marina are partially detailed in BME Drawing 2145-29. Exhibit 40 provides an aerial photograph of the existing German Brothers Marina and a rendering of the proposed Marine Club for comparison. The existing marina includes 33 dock slips and 35 moorings.*

The general size, shape, and location of the modified docking facilities now proposed for the Project are shown on Exhibits 38A and 39A. The proposed dock dimensions are further detailed on Exhibit 54A and the proposed anchoring layout is shown on Exhibit 54B. These plans provide information on the number and type of structures composing the docking facility. As discussed at the beginning of Section 2, the Marine Club as currently proposed would include 110 dock slips and no moorings. Six moorings can be provided for Town residents if this Planning Board, after the completion of the SEQRA review process, approved the special use permit on that condition.

As shown on Exhibit 40, the outermost perimeter of the proposed docking facility comprises an area of 2.9 acres. The current docking facilities cover an area of 4 acres. The proposed project would reduce the total docking facility area by 1.1 acres (28%).

The modified configuration of the proposed slips would be very similar to that described in Section 2.D of the DEIS. The primary difference is that boat slips would be added to the southern three docks and to the dock along the northern edge of the Marine Club lot (see Exhibits 38A & 39A). As modified, there would be three docks containing a total of 88 boat slips along the shoreline south of the multi-purpose pump house building or combined clubhouse/pump house. Each main dock would consist of a 4'-11" wide walkway, with boat slips on one or both sides. The southernmost dock would have 19 slips on the north side; the center dock would have 19 slips on the south side and 18 slips on the north side; and the northernmost dock

(of the three southern docks) would have 19 slips on the south side and 13 slips on the north side. This arrangement is designed to limit disturbance to adjoining properties from boating activity along the shoreline. A fourth dock structure containing 15 boat slips will be located along the shoreline at the northern edge of the Marine Club lot. Four 6-foot-wide docks with a total of five slips are proposed to extend from the existing bulkhead to the north of the pump house and south of the northern dock. Two boat slips are also proposed in front of the pump house for loading and unloading activities and guests; these slips would not be assigned to any individual member.

In lieu of the 35 moorings proposed in the DEIS, the Project as modified would eliminate all of these moorings. A total of 110 boat docking slips are proposed for the West Lake Marine Club. Seven of the slips would provide temporary docking for boaters visiting from elsewhere on the lake. The two docks in front of the clubhouse would be included among the seven. Thus, the Project would only have 103 boat slips for non-visitors, which would equal the current 103 slips at the German Brothers marina (consisting of 33 dock slips, 35 moorings, and 35 dry slips).

At the option of this Planning Board, six moorings would be added to the docking facility and be permanently available for residents of the Town. The moorings are proposed to be placed in front of the location where the multi-purpose pump house building or combined clubhouse/pump house will be placed, between the northern and southern docks. The moorings would be spaced a minimum of 60 feet apart. See Exhibits 38A & 39A.

The floating docks structure will be constructed of a marine aluminum alloy floating on foam filled UV resistant polyethylene floats. The surface of the docks will be constructed using 5/4-inch x 6-inch composite decking and will be elevated approximately 18 inches above the water surface. The main docks will be 4'-11" or 6 feet wide as shown on the plans. The finger docks will be tapered from approximately 5 feet wide at the main dock to 2 feet wide at the end and will be constructed of the same materials as the main docks. The finger docks will be approximately 10' -9" apart or 15 feet apart and will extend approximately 24'-10" from the main dock. The wider docks will accommodate bigger boats. The location and number of wider docks may vary from that shown on the plans (Exhibits 54A and 54B). The main floating docks will be accessed from the bulkhead using 4' wide x 15' long marine aluminum alloy gangways with a composite surface and will be hinged at the bulkhead to account for varying water surface elevations. The floating docks will be anchored to the lakebed using 5'x5'x1' concrete blocks connected to the dock system using 5/8" long link black chain. The locations of the anchors and chain connections are shown on Exhibit 54B.

Comment: Exhibit 4D indicates the docks would extend 280' into the lake and the moorings would extend another 120' into the lake for a total of 400'. The no-wake zone is 200'. How will the no wake zone be honored? (Herbik, 0038)

Comment: The proposed docking system is much more massive and goes much farther out into the lake than does the existing system. (Kraus, 0091)

Comment: The docks are over 400' long. What do the NYS Navigational Laws state as to how far docks can extend into navigable waters? (Fuller, 0161)

***Response:** As described at the beginning of Section 2, the layout of the proposed docking and mooring facilities has been modified in response to comments. The number of moorings was reduced from 35 to 0 to reduce the overall intrusion of the berthing facilities into the lake. As currently proposed, the docks and moorings extend 304 feet into the lake beyond the easternmost bulkhead (see Exhibit 38A), which is 100 feet less than the existing moorings at 404 feet beyond the bulkhead. For comparison purposes, the moorings for the Canandaigua Yacht Club, located north of the Project site, extend 560 ft into the lake or 256 ft farther than the proposed moorings for the Marine Club.*

Moorings were removed and boat slips were added to reduce the extension of boat spaces. Lighting will be provided on the docks to identify the boat locations for the safety of nighttime boaters.

The New York State Navigation Law does not regulate how far docks can extend into the lake. Instead, the Navigation Law places the regulation of the construction and location of docks on Canandaigua Lake within 1,500 feet of shore in the hands of the Town of Canandaigua pursuant to Navigation Law §46-a(4). The only limitations are that the Town of Canandaigua enact, with the other six municipalities adjoining the lake, uniform standards, that those standards not be inconsistent with the laws of the United States, and that the NYS Commissioner of Parks, Recreation and Historic Preservation approve those uniform standards in writing. Navigation Law §46-a(4)(b). Those uniform standards are embodied in the Canandaigua Lake Uniform Docking and Mooring Law, Town Code Chapter 44 (“Dock Law”). The provisions of the Navigation Law regulating the mooring of vessels expressly do not apply to areas in which the local ordinances, like the Dock Law, have been duly approved by the NYS Commissioner of Parks, Recreation and Historic Preservation. Navigation Law §35-a(6).

In addition, the New York State Environmental Conservation Law (“ECL”) does not regulate how far docks can extend into the water. Upon obtaining a permit for the use of the State’s underwater lands from the New York State Office of General Services (“OGS”), ECL §15-0503(1)(b) expressly exempts the proposed Marine Club docks and moorings from having to obtain an NYSDEC permit. Nevertheless, pursuant to implementing regulations at 6 NYCRR §608.4(a), NYSDEC will review and consult with OGS during that permit process. There are no distance limitations set forth in 6 NYCRR §608.4.

The Dock Law also does not restrict how far docks can extend into the lake. Rather, the Dock Law requires that all docks be placed within the water rights lines of the West Lake Marine Club parcel. Water rights lines are delineated by the easterly extension of the north and south property lines of the individual lake front parcels and extend from the shoreline out over the water. Town Code §44-5(C). Water rights lines are required to extend a minimum of 200 feet into the lake, which indicates that berthing and mooring facilities are permitted to extend at least 200 feet into the lake. The docks are required to be set back at least 20 feet (parallel to the shoreline) from the water rights line (effectively a 20-foot side setback). Town Code §44-5(D). All docks require site plan approval from this Planning Board pursuant to the Dock Law. Town Code §§44-6(A)(2)(a)(2) and 44-7(G).

Comment: The construction of the proposed 1,500 s.f. deck/dock is another matter under review by the Appellate Court, because many citizens believe it requires a variance. Even though the judge found that the Zoning Board of Appeals didn't have standing to appeal the Zoning Officer's determination, he did note that the proposed 1,500 s.f. deck/dock was "prohibited" by the Docking and Mooring Law. So why do we continue to entertain this totally unacceptable concept? (Kraus, 0100)

Response: *Subsequent to Judge Kocher's decision dated June 15, 2007, the Project layout was revised to reduce to approximately 500 square feet the cantilevered sundeck dock to the east of the combined clubhouse/pump house (Exhibit 39A). The modified dock is proposed to be placed entirely on the lakeside of the mean high water line. No portion of the dock is proposed for the land side of the mean high water line. Rather, the preexisting concrete walk will remain in place and adjacent to the proposed cantilevered dock structure. (DEIS, Section 4.B.2.a at Table 4-1). The modified dock includes spaces for the temporary docking of up to two boats for drop off and pick up of passengers only. (DEIS Section 2.D) In addition, the modified Alternative H (Exhibit 38A), which places the clubhouse on the west side of West Lake Road, and re-locates the modified pump house at least 25' away from the lake in all directions, no longer has a dock (sundeck or otherwise) to the east of the building.*

In a Zoning Law Determination issued on April 28, 2006, the Town Zoning Officer ("ZO") determined that that the sundeck dock constitutes a dock that is permissible under the Dock Law. In a Memorandum and Decision issued November 14, 2006, the Town Zoning Board of Appeals reversed that determination. On appeal to the State Supreme Court, Justice Kocher annulled the Zoning Board of Appeals decision and restored the Zoning Officer's determination that the sundeck dock constitutes a dock that is permissible under the Dock Law, because the parties who appealed the Zoning Officer's determination ("Appellants") to the Zoning Board of Appeals did not have standing to appeal the ZO's interpretation of the Dock Law to the Zoning Board of Appeals.

Judge Kocher's decision has been affirmed by the Appellate Division, Fourth Judicial Department of the New York State Supreme Court. Because two justices dissented as

to whether the Appellants had standing, the Appellants have the option of furthering their appeal to New York's highest court, the Court of Appeals, if they continue to feel strongly about the 500 square foot dock now incorporated into the design alternative with the combined clubhouse/pump house on the lake side and the Planning Board selects this alternative at the end of the SEQRA and land use process.

Comment: The Applicant needs to explain how the homeowners association will accommodate residents who own jet skis that aren't stored in the wet spaces, but which owners want to launch them from the premises of the Project. Can jet skis be stored east of West Lake Road? Will residents be allowed to store them in free-standing hoists below the mean high water line? If so, these hoists would be part of the docking facility and would need to be approved by the Planning Board and the OGS. (Forsyth, 0119)

***Response:** All power boats, including jet skis, will be stored in the Project's proposed dock slips. Only one jet ski will be stored at a single dock slip. Daily launching and retrieval of jet skis will not be permitted. Jet skis will not be stored in the Marine Club buildings and will not be stored in free-standing hoists below the mean high-water line.*

Comment: The proposed docks and moorings have the potential for creating navigational hazards, especially at night. What are the requirements for such a proposal and who has oversight authority? Who assumes responsibility in the event of an incident? Is there a need for illumination or lighted buoys? (Herbik, 0039)

***Response:** The proposed docks and moorings are in approximately the same location as the existing docks and moorings and cover a smaller area (see Exhibit 40). Moreover, as noted at the beginning of Section 2, the revised layout proposed for the docking facilities ends approximately 100 feet closer to shore than the existing moorings do. The docking system would include lighting for nighttime navigational safety.*

Comment: Has the Town Engineer or other knowledgeable persons evaluated the design of the dock system, relative to anchorage and piles? What exactly does the system entail? What are the inboard or outboard pile guides, and round or square piles that are proposed? Are there measures to protect neighbors if the dock system breaks loose? (Herbik, 0040)

***Response:** See the second response in this section and Exhibits 54A and 54B for a description of the dock construction materials. The docks are floating docks anchored to the lakebed by concrete blocks. The dock system was designed by a professional docking design company and is designed to withstand the types of severe weather conditions expected for Canandaigua Lake. As noted in a letter from Technomarine Manufacturing, Inc. (included in Appendix Z), the proposed docking system has a wind load capacity of 75 mph at complete occupation and can resist*

occasional waves of up to 2 feet. The chain and deadman anchoring system proposed will allow for greater flexibility and ability to endure wave action. The system is designed to remain in place and withstand up to 4-foot-thick ice conditions without movement during the winter months. A real world example of this system has been in place at the Marina Real Bouvier in the City of Longueuil in Quebec, Canada since 2002. This marina accommodates over 400 slips.

Comment: Will the dock system remain in place over the winter? If so, will bubblers be used and what effect would this have on the lake and surrounding environment? (Herbik, 0041)

Response: *As noted in Section 2.D of the DEIS, the docks will be designed for year-round placement in the lake and will mitigate ice interference through the use of edge bubblers.*

Based on information compiled by the U.S. Army Corps of Engineers regarding the use of bubbler systems in the Great Lakes, these systems would not be expected to have an adverse effect on the lake environment during winter. Past studies show that fish movement appears to be unimpeded, no changes were observed in water quality variables, and sediment re-suspension would be extremely small (Wuebben, 1995, pp. 38-39).

Wuebben, James L., Ed. (1995) Winter Navigation on the Great Lakes: A Review of Environmental Studies. U.S. Army Corps of Engineers, Cold Regions Research & Engineering Laboratory, CRREL Report 95-10. "Bubbler Systems" chapter written by George D. Ashton, Deputy Director for Research and Engineering.

2.D.2 Number of Docking Spaces

Comment: Integral to the applicant's concept of the club is a docking facility consisting of 90 wet dock slips and 35 moorings. These spaces average 1.79 per residence (125 divided by 70, the number of proposed residences is 1.79, not 1.69 as stated many times by the applicant). (Forsyth, 0125)

Response: *The number of berthing spaces proposed for the Marine Club was determined by estimating the likely level of boat ownership for Marine Club members. As noted in the DEIS, it was estimated that two-thirds of the member families would have two boats and one-third would have one boat, resulting in 116 boats, or 1.7 boats per member family. An additional nine dock slips were proposed for boats visiting from elsewhere on the lake, resulting in the previously proposed 125 docks and moorings.*

As described at the beginning of Section 2, the Applicant has modified the proposed berthing facilities in response to comments received on the DEIS. The proposed Marine Club now includes 110 dock slips and no moorings, which is 15 fewer spaces

than previously proposed. Seven of the proposed slips would be for use by visitors from elsewhere on the lake, leaving 103 slips for Marine Club member use. These 103 slips would result in 1.5 boats per member family.

Note that the potential effects of this Planning Board granting site plan approval for the Marine Club as currently proposed were considered on October 8, 2008 by the Ontario County Planning Board, which includes multiple lakeside municipalities and takes a wider community view. The County Planning Board recommended approval of the site plan for the docking and mooring structures (see Appendix AA for County Planning Board recommendations).

Comment: The DEIS states that members would be expected to have 116 boats, which is approximately 1.7 boats per member, on average, which is consistent with estimates of average docked boat ownership for lakeside residents on Canandaigua Lake. This statement is rather misleading because there is no "consistency" between the number of boats per linear foot in the developer's proposal compared to the number of boats per linear foot for lakeside residents with private lakeshore ownership. The proposed 125 spaces for 70 proposed upland dwellings along 587 linear feet of lake frontage would result in one in-water space for every 4'8" of lake frontage. (Kraus, 0087)

Comment: The suggestion that approximately 1.7 boats per member, on average, is consistent with estimates of average docked boat ownership for lakeside residents on Canandaigua Lake is faulty. A better comparison to existing conditions would be that the 587' of existing German Brothers property should be compared to the average amount of residential shoreline around the lake. The 125 boats for 587' would yield approximately one boat for every 4'8" of shoreline. (Brancato, 0134)

Response: *As a "private water oriented recreational facility, or social club," the West Lake Marine Club is a non-residential use that provides boating and other facilities for the enjoyment of its members. As a non-residential use, the Marine Club is permitted up to 110 dock slips and 85 moorings based on its 587 lineal feet of lake frontage. Rather than requesting the maximum number of spaces, the Applicant proposed that the Club include only the needed number of docking and mooring spaces, based on the anticipated level of boat ownership for its members. For the Project as proposed in the DEIS, the Applicant estimated that ownership levels would be 116 boats for 70 member families, or 1.7 boats per family.*

To demonstrate that the anticipated level of boat ownership for the Marine Club members was a reasonable estimate, the DEIS Lake Use Assessment report provides information on reported or estimated levels of boat ownership around the lake. Previous and current studies show that lakeside ownership rates range from approximately 1 to 2 docked boats per residence. This number reflects the average number of docked boats per residence and does not reflect the number of boats allowable at each per the Dock Law. The anticipated 1.7 boats per member family is consistent with a range of 1 to 2 boats per residence, and was therefore, considered

reasonable for purposes of determining the needed number of docking spaces. The currently proposed 1.5 boats per member family is also consistent with the range of ownership levels reported/estimated around the lake, including the 2001 Recreation Survey.

Comment: The Applicant states that based on the 2001 Recreation Survey, there are 1.53 power and sailboats per residence. Presumably, these types of boats would be stored at boat slips or moorings. However, this number includes 21 sailboards and 28 jet skis, which are typically stored on land, not in wet spaces. Removing these watercraft results in 1.25 boats of the type most likely stored in a wet space per residence, which is much lower than the 1.79 per residence provided by the project. (Forsyth, 0128)

Response: *Comment noted. The commenter correctly notes that for determining the average number of docked watercraft at each residence, it may be appropriate to discount jet skis and sailboards, as these types of watercraft are not typically docked. According to the 2001 Recreation Study, the resulting docked ownership rate would be 1.25 boats per residence.*

As stated in Section 2.D.1, for the Project, all power boats, including jet skis, will be stored in the water at the proposed berthing facilities. If only sailboards are discounted, and jet skis are included, the 2001 Recreation Study data results in a docked ownership rate of 1.41 boats per residence.

As noted on p. g of the DEIS, past and recent studies for Canandaigua Lake have applied average boat ownership rates of 2 boats per property. The previously anticipated 1.7 boats per member for the West Lake Marine Club (116 boats for 70 member families, which does not include the 9 visitor spaces provided for boats visiting from elsewhere on the lake) would be consistent with a range of 1.25 to 2 docked boats per residence.

Note that for the Lake Use Assessment, the 1.53 ratio was used to determine all power and sail boats that would potentially have access to the lake from lakeside residences, regardless of whether they are docked in a wet slip or not. For this calculation, it is appropriate to include both jet skis and sailboards.

2.D.3 Building Facilities

Comment: BME Drawing 2145-09 in the notes indicates that the clubhouse is 2,500 S.F. Everywhere else it says 4,000 S.F. Which is correct? (Herbik, 0021)

Response: *The clubhouse as proposed in the DEIS was 4,000 square feet. The notes on Drawing 2145-09 were incorrect.*

As described at the beginning of Section 2, the Applicant has modified the proposed Marine Club facilities in response to comments received on the DEIS. For one

design alternative, modified Alternative H, a 2,690-square-foot clubhouse would be located on the west side of West Lake Road, with a 1,040-square-foot multi-purpose pump house building located on the lake side. For a second design alternative, the clubhouse and pump house facilities have now been combined into a single 2,980-square-foot building.

Comment: Will the Marine Club be sprinklered? With a maximum occupancy of 385 persons, we feel that sprinklers are necessary. (Canandaigua Fire Rescue, 0182)

Response: *Yes, the Marine Club will be sprinklered.*

Comment: The pump house and fuel pumps must be designed to NYS Fire Code Chapter 22 specifications. (Canandaigua Fire Rescue, 0188)

Response: *The Marine Club buildings and the fuel pump will be designed to comply with all applicable building and fire code regulations.*

Comment: We would encourage the owners to purchase a "Knox Box" entry system for the Marine Club, Pump House, and any other shared community spaces to allow us rapid, non destructive access in the event of an alarm. We have the applications and order forms for this at the Fire Station. (Canandaigua Fire Rescue, 0191)

Response: *Comment noted. The Applicant will consider using a "Knox Box" entry system for the Marine Club buildings and other shared community spaces.*

Comment: Will the fire alarm system for the Marine Club and Pump House be remotely monitored? This would provide for quick notification to the appropriate response agency. (Canandaigua Fire Rescue, 0192)

Response: *Yes, the fire alarm system for the Marine Club will be remotely monitored.*

2.E Traffic, Parking, and Pedestrian Circulation

Comment: How will the trails be constructed? Will the open space in which they are located be clear-cut to install a road-like access trail, or will trails be carved around existing trees and vegetation? Will there be landscape, easement, or trail surfaces to minimize intrusion on privacy and enjoyment of adjoining neighbors? (L. Smith, 0061)

Comment: There does not appear to be a buffer between the proposed perimeter trails and adjacent properties. The impacts of these trails on adjacent property owners were not

assessed. More information on the nature and impact of the trail system is needed, including potential measures to protect the privacy and quiet enjoyment of adjoining neighbors. (L. Smith, 0060)

Response: *As noted in Sections 2.A and 2.E of the DEIS, the trail network would primarily be for pedestrian use. Segments of trail providing access to the Marine Club, generally the centralized interior trails (see the revised Exhibit 7 bound with the new exhibits developed for the FEIS), would be designed to also accommodate golf cart use. As described earlier, the trail network has been modified to allow for increased golf cart access in the upper portion of the subdivision. The addition of two north-south spurs near the upper stormwater management pond will allow for golf carts to more easily access the trail network without having to travel for extensive distances along loop Road "A." Golf carts would be prohibited from using the perimeter trails. Joy riding, ATV's, and other gas-powered vehicles will be prohibited on the trails by the homeowners association regulations.*

Those trails that are expected to be used primarily for pedestrian access will be constructed using a bark chip/lawn surface. The portions of the trail that may be subjected to more frequent golf cart use will be constructed of stone dust or paved as shown on Exhibit 7. The upper portions of the interior trails will be constructed with bark chips, but may be converted to stone dust, at least in areas where rutting or drainage problems occur.

The proposed trails will be staked out in the field to minimize the removal of trees and maintain the natural buffering as much as possible. The perimeter trails would be located in the 20-foot-wide strip of community conserved lands located along the site boundaries. Given that the trails are proposed to be approximately 5 feet wide, there would generally be sufficient room to lay out the trail in a way which minimizes disturbance of existing trees.

An evaluation of the impacts of the proposed trail system on adjacent property owners was not required by the adopted Scope for the EIS. However, given that the portions of the trail network closest to adjoining properties would primarily be limited to pedestrian use, and that buffering vegetation around the trails would be preserved to the extent possible, it is not anticipated that use of the trail network would interfere with the privacy or quiet enjoyment of neighbors. The Applicant will, as appropriate, install additional landscape screening along the trails to improve privacy in areas where existing vegetation is sparse and the trails are close to neighboring homes.

Comment: The alignment of the pedestrian trails is off on Exhibit 7. Please fix. (Fuller, 0165)

Response: *Comment noted. A revised Exhibit 7 is included with the new exhibits prepared for the FEIS.*

Comment: If the clubhouse is located on the east side of West Lake Road, the Planning Board should stipulate that no electric/gas carts are to be driven from the west side of the road to the east side. (Kraus, 0099)

Response: *The crossing of West Lake Road by electric vehicles/golf carts will be prohibited by the HOA rules. As shown in Appendix R of the DEIS, the draft HOA rules include a provision that states "No golf cart/electric vehicle may proceed onto or across West Lake Road, a county highway."*

Comment: It is unclear from the site plan who owns the right-of-way for the section of West Lake Road adjacent to the German Brothers Marina. (Brancato, 0140)

Response: *West Lake Road is a county road (County Road 16), and as such, the right-of-way for the road is owned by Ontario County.*

Comment: We strongly support a secondary emergency access point for the development via Lakewood Meadows. We urge the Canandaigua Planning Board to make this a requirement for both this project, and the Lakewood Meadows project. (Canandaigua Fire Rescue, 0184)

Response: *As discussed in Sections 2.E and 4.G.1 of the DEIS, the Applicant also supports a secondary emergency access point for the development via Lakewood Meadows subdivision. The Applicant has been unsuccessful to date in finding a willing party to voluntarily provide for such a secondary emergency access point, including the developer of Lakewood Meadows subdivision. Nevertheless, the Applicant will provide within the proposed Residences at West Lake Marine Club for an emergency access connection to the Lakewood Meadows subdivision. The private driveway serving Lots 33 –35 of the Project will extend to the boundary of an as-of-yet undeveloped phase of the Lakewood Meadows subdivision for this purpose. The Lakewood Meadows access way could also be used for the route preferred by the Town's Highway and Water Superintendent, Mr. James Hecker, for a proposed watermain connection to the Project. (DEIS Section 2.H) To date, the developer of Lakewood Meadows has also declined the Applicant's request for permission to build a cross-connection through the undeveloped phase of Lakewood Meadows for the Town's preferred watermain connection.*

The developer of Lakewood Meadows was granted preliminary subdivision plat approval by this Planning Board for the entire Lakewood Meadows development on July 13, 2004. Since that time, the developer of Lakewood Meadows has sequentially sought final subdivision plat approval from this Board for each subsequent phase of Lakewood Meadows. The developer of Lakewood Meadows does not yet have final

subdivision plat approval for the phase adjoining the Project, so it is still possible for the Planning Board to require this connection.

Like Canandaigua Fire Rescue, the Applicant has encouraged this Planning Board to require the developer of the Lakewood Meadows subdivision, when it requests final subdivision approval for its next phase, to extend an emergency access driveway through to the West Lake Marine Club driveway and allow the Town's preferred cross-connection to the Town watermain. This Planning Board recognizes that requiring the developer of the Lakewood Meadows subdivision to extend an secondary emergency access driveway through to the West Lake Marine Club driveway will provide additional safety to residents of both subdivisions, and requiring the developer of the Lakewood Meadows subdivision to allow a connection to the existing watermain will provide more efficient use of the Town's watermains.

Nevertheless, even without the preferred secondary emergency access and watermain connection, the Project is still adequately accessible and amply supplied with water. The Project will have 67 residential lots along proposed Road "A", with 49 of those homes on an internal loop. The internal loop provides two ways to access all 49 of the homes within the loop portion even if there is an accident along the loop. Because any accident on the loop will not impede access to those homes, the Project's road system is less susceptible to disruption than other approved subdivisions in the Town of Canandaigua, which have a much greater number of homes served by a single access. There has been no objective evidence provided to this Planning Board that a secondary access has an appreciable safety difference.

*However, under New York State law, before approving a subdivision, this Planning Board is mandated to make sure that there are "streets... suitably located to... facilitate fire protection, and to provide access of firefighting equipment to buildings" and that "all... water mains [and other utilities]... be installed all in accordance with standards, specifications and procedures acceptable to the appropriate town departments...." New York Town Law §277(2)(a) and (c). The Town subdivision regulations also encourage the provision of access between adjoining subdivisions. "Proposed street layouts shall generally provide for... access to adjoining properties unless the Planning Board finds such extension undesirable for specific reasons of topography or design." Town Code §90-19(D). Now that this Planning Board knows where the Project will be providing for an emergency secondary access to the Lakewood Meadows subdivision, this Board intends to condition its approval of a final subdivision plat for that phase of the Lakewood Meadows subdivision on its developer providing a matching secondary emergency access and watermain connection, since doing so would advance fire safety and provide better water service. This Board has the authority to require the access as an additional condition of approving the final subdivision plat if it deems the access necessary for public safety, including the safety of residents in adjoining areas. *International Innovative Technology Group Corp v. Planning Board of Town of Woodbury*, 20 A.D.3d 531, 533 (2d Dep't 2005).*

The Applicant understands that installing an emergency access connection to the Lakewood Meadows subdivision would provide some disruption to that project, however, the connection could be provided across open space properties that already exist without disrupting existing or future homeowners. It is noted that a watermain connection to Lakewood Meadows watermain would avoid having to install a booster pump (see Section 2.H of this FEIS) to supply water to the upper regions of the Project. A crushed stone emergency access drive along the watermain route could serve a dual purpose as a second emergency access drive and would also provide improved access to the watermain for maintenance. A potential route for the proposed waterline connection and access drive for watermain maintenance and emergency access is shown on Exhibit 55.

Comment: We would like the opportunity to review the emergency egress plans for the Marine Club as they are available. (Canandaigua Fire Rescue, 0193)

***Response:** Comment noted. Emergency egress plans for the Marine Club would typically be prepared later in the project development process and would be submitted for review at the time of application for a building permit.*

Comment: The clubhouse "private community center" would require even more parking than just that generated by the needs of boaters. (Brancato, 0139)

***Response:** Parking required for "community centers and similar places of public and quasi-public assembly not having fixed seating facilities" is 1 space per 150 S.F. of gross floor area. Per this standard, the 4,000-square-foot clubhouse proposed in the DEIS would require 27 spaces. The 2,960-square-foot clubhouse proposed for the modified Alternative H would require 20 parking spaces. Similarly, the 2,980-square-foot combined clubhouse/pump house alternative would require 20 parking spaces.*

The Marine Club includes 51 parking spaces, as well as 15 golf cart parking spaces, for a total of 66 spaces. It is also anticipated that many members would access the Marine Club on foot, via the trail network. The 66 spaces is nearly equal to the proposed 70 homes in the Project.

Comment: The designed widths of the roads within the development are acceptable. The widths of roads must be maintained at all times, including not allowing vegetation to reduce the widths. (Canandaigua Fire Rescue, 0185)

Comment: The turning radius required to allow access for all of our equipment is 43'. This radius should be designed in especially for the main access Road "A". (Canandaigua Fire Rescue, 0186)

Comment: The private drive “legs” off Road “A” have acceptable widths and lengths for access. (Canandaigua Fire Rescue, 0187)

Response: *Comments noted. The design of Road “A” would allow access for equipment with a 43-foot turning radius. Road “A” is proposed to be dedicated to the Town, which will be responsible for maintaining the right-of-way and keeping it clear of encroaching vegetation.*

2.F Lighting

Comment: Drawing 2145-12. It is hard to see on such a small scale where all the lighting will be placed. Could we have a more detailed indication? (Fuller, 0150)

Response: *The majority of the plan sets distributed with the DEIS were half-size reproductions of the full size plans. Because the full size plans are 34" X 44", half-size plans were distributed for ease of use. Full size versions of the plans are available for viewing at the Wood Library and the Town Hall. In addition, electronic versions of the plans are available for download from the Town’s website. Users can “zoom in” on these plans for a better view.*

Two new exhibits were also prepared for the FEIS to simplify the lighting plan and make the placement of proposed lighting fixtures clearer. See Exhibits 43A and 43B.

2.G Landscaping and Signage

No specific comments were received on the landscaping and signage for the proposed Project. Comments regarding buffering for the proposed trail network are addressed in Section 2.E and comments regarding the general effects of vegetative screening are addressed in Sections 4.B and 4.H.

2.H Utilities

Comment: We strongly support a second water main connection for this development via Lakewood Meadows. This would provide a looped system that is much more desirable over a dead end for both this project, and the Lakewood Meadows project. (Canandaigua Fire Rescue, 0189)

Response: *See response regarding second emergency access set forth in responses to comments in Section 2.E, above. Such a proposed watermain connection is also preferred by the Town’s Highway and Water Superintendent, Mr. James Hecker. (DEIS Section 2.H). As discussed in the DEIS (Sections 2.E, 2.H, and 4.G.1), It is noted that a looped water system is recommended by Canandaigua Fire Rescue and*

the Town's Highway and Water Superintendent, but so far the developer of Lakewood Meadows has not agreed to the necessary easement.

The watermain cross-connection and secondary emergency access extension were not provided for under the preliminary overall subdivision plat approval granted for the entire Lakewood Meadows development by this Planning Board on July 13, 2004, because there was not yet a concrete proposal for the adjoining Project site, so it was unknown where the connections should be.

The Town has always maintained a practice of requiring utility access to adjacent parcels. Such access, in this case, would provide a substantial benefit to the Project and to residents of West Lake Road, because the water connection at West Lake Road only has sufficient pressure to serve the lower portions of the property. If the Town does not require access to the Lakewood Meadows watermain then a booster pump system would be required to serve the Project, which would add an unnecessary maintenance burden for the water district. As suggested by the commenter, the watermain connection could also serve as an additional supply source to the existing West Lake Road properties that would not be available if the water booster pump system was required.

Under New York State law, before approving a subdivision, this Planning Board is mandated to make sure that there are "streets... suitably located to... facilitate fire protection, and to provide access of firefighting equipment to buildings" and that "all... water mains [and other utilities]... be installed all in accordance with standards, specifications and procedures acceptable to the appropriate town departments...." In addition, the Town subdivision regulations require that water supply systems "be designed to provide adequate domestic usage and fire protection. The water system shall generally be designed to provide adequate fire flow at the critical point in the development while satisfying the average daily domestic flow. Specific plans must be approved by the Town Engineer, the Water Superintendent having responsibility for the district providing service, the New York State Department of Health, and the Department of Environmental Conservation." Town Code §90-23(B). The regulations also give the Planning Board authority to require new public water lines to be looped with existing water lines. Town Code §90-23(D).

Although installing an additional connection to existing Lakewood Meadows would require some alteration to the design for that project, the alteration might not be substantial because the connection could be provided across open space in Lakewood Meadows that already exists on the approved preliminary subdivision plat without disrupting existing or future homeowners for construction and maintenance. The Applicant would have to pay for connecting with the watermain serving the adjacent Lakewood Meadow subdivision through the secondary emergency access connection that the Applicant will extend toward the Lakewood Meadows subdivision from the private driveway serving Lots 33–35 of the Project. If required by the Town, the Applicant could also provide a crushed stone maintenance drive along the offsite watermain route that could also serve as a secondary drive for emergency services

access. The Applicant will under any circumstance extend a private driveway to the boundary of that as-of-yet un-finalized phase of the Lakewood Meadows subdivision.

Now that this Planning Board knows where the Project will be providing for an emergency secondary access to the Lakewood Meadows subdivision, this Board intends to condition its approval of a final subdivision plat for that phase of the Lakewood Meadows subdivision on its developer providing a matching secondary emergency access and watermain connection, since doing so would advance fire safety and provide better water service. This Board has the authority to require the access as an additional condition of approving the final subdivision plat if it deems the access and connection a better way to assure area residents of an adequate water supply. International Innovative Technology Group Corp v. Planning Board of Town of Woodbury, 20 A.D.3d 531, 533 (2d Dep't 2005).

3. DESCRIPTION OF EXISTING CONDITIONS

Comment: The trees along the bank of West Lake Road and along the Johnson lakeshore have been left of Exhibit 3C, Areas of Tree Inventory. These are important resources. (Fuller, 0158)

***Response:** Exhibit 3C depicts the areas in which Terrestrial Environmental Specialists (TES) conducted a tree inventory for the proposed project. As described in their report in Appendix H of the DEIS, only those wooded areas with the potential to be disturbed were surveyed. As such, not all wooded areas present on the site are shown on the map.*

The trees along the Johnson lakeshore and along the banks of West Lake Road at the southern end of the site would not be disturbed by the proposed Project. Because they are not to be disturbed, these trees were not inventoried by TES, and therefore, do not appear on Exhibit 3C.

Comment: BME Drawing 2145-29 should show the existing docks and moorings at German Brothers Marina. (Herbik, 0018)

Comment: Could we have an overlay of what the present configuration is at German Brothers Marina (Exhibits 4C and 4D)? (Fuller, 0162)

***Response:** Exhibit 40 was prepared to provide a comparison of the existing marina with a rendering of the proposed Marine Club layout.*

Comment: How far do moored boats at German Brothers and Canandaigua Yacht Club extend into the lake (including swing path)? (Herbik, 0019)

Response: Moorings at the Yacht Club extend approximately 560 feet into the lake beyond the shoreline bulkhead. Moorings at German Brothers Marina extend approximately 434 feet beyond the shoreline bulkhead, assuming a 30' swing path. Moorings are often spaced a minimum of 55 to 60 feet apart to account for the swing path of moored boats; however, the swing path of the boats depends on the depth of the water and the size of the boats.

As described in Section 2, the Applicant has proposed several changes to the Project in response to the comments received on the DEIS. One of the changes is a revised configuration for the Marine Club docking facilities. For the new configuration, the moorings have been removed and the docking facilities end approximately 100 feet closer to shore than the existing moorings do.

Comment: Have the German Brothers purchased the right to the formerly underwater lands owned by the state, prior to their bulkhead being built out? (Herbik, 0032)

Response: Yes. The previous owner of the marina purchased the State's right in lands formerly under water in 1967 and conveyed those rights to German Brothers Marina as part of its sale of the marina property in 1977.

The underwater lands for Canandaigua Lake are owned by the State of New York because the lake is a navigable waters of the State of New York. This includes lands between the low and high water mark. *People v. Mauran*, 5 Denio 389 (1848). Underwater lands that were previously underwater, but which have been filled in, continue to belong to the State until such time as the State issues a patent to the adjacent upland owner. *Id.*; *Riviera Association, Inc. v. Town of North Hempstead*, (Sup Ct. Nassau Co. 1967).

A prior owner of the marina property, *The Stephen Marine Yard, Inc.*, purchased the formerly underwater lands from the State of New York on October 23, 1967. A copy of the Letters Patent from the People of the State of New York, recorded in the Ontario County Clerk's Office at Liber 687, Page 432, is attached in Appendix T. *German Brothers Marina, Inc.* received title to those underwater lands when it bought the marina property from *West Lake Marine, Inc.* on March 25, 1977. A copy of the Warranty Deed from the *West Lake Marine, Inc.*, recorded in the Ontario County Clerk's Office at Liber 763, Page 1091, is also attached in Appendix T.

Moreover, the Applicant would not be required to obtain a lease, easement, or deed to the filled lands, even if *German Brothers Marina* did not own it, because there is an exception for lands which were filled prior June 17, 1992. That exception is embodied in *Public Lands Law §75(c)* which reads in relevant part that

The requirements of obtaining a lease, easement, permit or other interest from the commissioner pursuant to the rules set forth in paragraph (f) of this subdivision shall not apply to the person or entity who was the upland owner

on June seventeenth, nineteen hundred ninety-two, of lands adjacent to filled state-owned lands underwater or formerly underwater, in respect of those filled lands, including accompanying seawalls . . . Upon any transfer of such lands, or at the request of the owner of the adjacent upland, the commissioner may convey such lesser interest as may be minimally required to allow a conveyance of marketable title by that owner of the adjacent land.

Comment: The OGS has issued German Brothers a license for the existing docking facility. The applicant should furnish a copy of this license, so that the Planning Board and the public can confirm it is good until 2015, as stated by the applicant. The license will contain conditions of which the Planning Board should be aware. The Board may want to incorporate the same conditions in its approval or negotiate with the OGS on their modification. (Forsyth, 0127)

***Response:** A copy of the Office of General Services license #LUW00296 for the State-owned lands under water adjoining the German Brothers parcel is included in Appendix U. That OGS permit runs from February 2, 2005 until February 1, 2015.*

OGS has participated in the environmental review of the Project as an involved agency under SEQRA. The DEIS and this FEIS will provide OGS with the environmental information and analysis it needs to support its evaluation of what special conditions will be required for the OGS permit for the West Lake Marine Club berthing and mooring facilities, if any. As an involved agency, OGS has been provided with documentation and notice of its right to participate in every stage of the environmental review process under SEQRA.

While this Planning Board does not have the jurisdiction or responsibility to anticipate or enforce conditions on the OGS license, this Planning Board has direct charge of the design, construction, and configuration of the berthing and mooring facilities under the Dock Law. In addition, this Planning Board may condition the special use permit for the West Lake Marine Club as it sees fit. This Planning Board is aware of the conditions on the OGS permit, and therefore, does not need to “negotiate with OGS.”

Moreover, the conditions on the existing OGS permit may not be applicable because the Project’s docking and mooring facilities will be different from those presently at the German Brothers Marina in several significant ways. Commercial daily launch services and dry-docking of boats will no longer take place. Commercial boat sales, rentals, and repairs will cease. The furthest moorings will no longer extend so far into the lake. The docks will now be oriented so as to only allow boats to access the facilities from deeper water and discourage near-shore traffic adjacent north and south of the Project.

Comment: What is the current width of the right-of-way on County Road 16? What is the width of the shoulders? Has the County Highway Department verified where the ROW is located? Is this a three or four "rod" road? (Herbik, 0020)

***Response:** The boundaries shown on the preliminary plans accurately depict the right-of-way boundaries for County Road 16. The right-of-way boundaries are based on an instrument survey conducted by a licensed land surveyor and records from the Ontario County Clerk's Office. The County Highway Department does not need to verify the right-of-way location.*

Because the width of the road is not constant in this location, the plans indicate that the right-of-way width varies. The specific width at a given location can be measured from the plans. Within the project vicinity, the right-of-way for County Road 16 varies from approximately 48 to 70 feet. The shoulders are generally 4 to 8 feet wide.

Comment: Does the entire project site fall within the Canandaigua Fire Department District or is there a portion that falls in the Cheshire Fire District? It appears from the provided drawings the entire project site lies within the Canandaigua Fire District, but this needs to be verified. This may affect response pre plans for the project site. (Canandaigua Fire Rescue, 0183)

***Response:** Yes, based on the maps at the Town of Canandaigua Town Hall, the entire Project site is within the Canandaigua Fire Department District.*

4. ANALYSIS OF PROJECT'S POTENTIALLY SIGNIFICANT ENVIRONMENTAL IMPACTS

4.A Need, Purpose, and Benefits of Project

4.A.1 General Opposition

Comment: This is not responsible development. The community loses if this project goes forward. (Beca, 0071)

Comment: The DEIS makes the case that providing boat access increases the value of the proposed homes, ultimately resulting in a large dollar return to the community from property taxes. I would much prefer to do without this tax "bonus," as it will cost us much more in the long run in terms of quality of life. Parcels near the lake without boating rights are already valuable enough—there is no need to compromise our hillsides and our lake just to increase the number of million dollar plus residences in the Town. (Hooker, 0116)

Comment: While buyers of these homes could potentially benefit our retail and service business, we feel the long-term negative impact to our economy and our environment is of greater importance. (Glatty, 0146)

Comment: We beg you to act in the interest of all and deny this project. (Glatty, 0148)

***Response:** Comments noted. The viewpoints expressed by interested citizens will be taken into consideration during this Planning Board's deliberations regarding whether or not to approve a subdivision, the site plan, and/or special use permit. However, this Board cannot base its decision-making on generalized community opposition. WEOK Broadcasting Corporation v. Planning Board of the Town of Lloyd, 79 N.Y.2d 373, 385 (1992). The FEIS identifies and evaluates the potential environmental impacts, fiscal impacts, purpose and benefits of the Project. For its SEQRA Findings, this Planning Board will consider all social, economic, and environmental factors, weighing and balancing relevant considerations, to identify the action which avoids or minimizes adverse environmental impacts to the maximum extent practicable.*

As part of the review process, this Planning Board will be considering the Applicant's requests for approval of site plan, subdivision plat, and special use permit in accordance with the criteria set forth in the Town Zoning Code and NYS Town Law. The Planning Board must apply these applicable legal standards, in light of the Applicant's property rights.

4.A.2 Approval Considerations

Comment: Close care should be given to balancing the lake's heritage with the needs of developers. (Bolton, 0050)

Comment: Warned that developers are prospering at the expense of the community. We need to assure that a balance is met between the needs of the community and the profits of the developer. (Dailey, 0053)

Comment: The developer's profit should not be of any concern to the Planning Board in their decision making process. (Kraus, 0075)

Comment: It is my hope that the Planning Board will take a hard look at this project and consider balancing the applicant's goals with the goals of the watershed community. (Olvany, 0199)

***Response:** Comments noted. Pursuant to the SEQRA requirements, this Planning Board will weigh and balance relevant environmental impacts with social, economic, and other considerations when making its Findings. The FEIS provides this Planning Board and other involved agencies with the information they need for conducting this balancing analysis. Further, the ultimate decisions must be made in accordance with*

applicable legal standards, which balance the Town's regulatory interests with the property rights of the Applicant.

It should be noted, however, that the project development process for the Project has been a collaborative effort involving this Planning Board, the involved agencies, the public, and the Applicant. In response to input received from neighbors shortly after making its initial application for the development of the Johnson property, the Applicant revised the Project to include the German Brothers Marina property and the conversion of the pre-existing non-conforming commercial marina property into the West Lake Marine Club. During the development of the DEIS, the Applicant further revised the Project to eliminate large scale kitchen facilities from the clubhouse and reconfigure the residences in the SCR-1 zone to save a 5-acre section of woods. Now, after receipt and review of the comments on the DEIS, the Applicant has further modified the Project as described at length in Section 2, above, to avoid or mitigate potential adverse impacts on the environment by, among other things, reducing the size of the clubhouse, reducing the number of berthing spaces requested, reducing the area of the lake occupied by the berthing facilities, abandoning its request for 45' homes in the SCR-1 zone, opening the gas dock to the public, and eliminating the flag lots.

Comment: Page 62 of the DEIS provides the factors that the Planning Board must consider when considering whether to grant the special use permit. The DEIS also states that "the Planning Board may place on a special use permit any additional conditions or restrictions that it deems necessary to protect public health and safety, the quality of the Town's natural resource base, and the value of the property." The current density in the northern third of the lake should be considered a potential safety issue. The Planning Board should seriously consider adding restrictions to a special use permit on the number and configuration of boat slips and moorings. (Olvany, 0197)

Response: *The conversion of the commercial marina to the Marine Club will not noticeably increase boating densities on the lake. As described in Section 4.B.2.b of the DEIS, even under a worst case scenario that assumes a peak use summer weekend period and that all displaced customers of the marina will continue to use the lake by locating their boats somewhere else on the lake, the Project would generate only 16 additional boats on the lake at any one time. This worst case would represent a 1% decrease in the number of acres available to each boat at peak traffic periods relative to projected future use without the Project (the 2016 No-Build scenario).*

Moreover, the Project has been modified in response to comments to reduce the total number of docks and moorings from 125 to 110, with the possible addition of 6 moorings for residents of the Town should this Board so desire. In addition, the Marine Club's berthing facilities will not extend as far into the lake as the present commercial marina's moorings. This will open up an additional 1.1 acres of lake surface for navigation to provide an additional buffer for the Marine Club traffic.

Also, the Applicant commissioned two flyovers of the lake to test the validity of the boat density and lake capacity estimates, as shown on Exhibit 45. One flyover occurred on the afternoon of Saturday, July 26, 2008. It found 129 of the 221 boats using the lake at that time were in the northern third of the lake. This total included 83 boats sitting still, 20 of which were anchored off Kershaw Park. Despite the best of intentions, this number may not reflect normal summer weekend use because it turns out that there was a boating advisory issued by Sheriff Povero for that weekend due to floating storm debris. The other flyover occurred on the afternoon of Labor Day, which approximates a worst-case situation. There were 716 boats on the lake on Labor Day afternoon, with 445 boats in the northern third of the lake. In this portion of the lake, 308 of the observed boats were sitting still, 168 of which were anchored off Kershaw Park and around Squaw Island.

The photos show that a significant percentage of the boats “actively” using the lake (i.e., not docked at slips or moorings) are actually sitting still. Most of these boats were located within or adjacent to the no wake zone, and would have less potential to create user conflicts with higher speed motor-boating activities that require a greater number of flat water acres for safe maneuvering. In the northern third of the lake, 38% of the boats observed on Labor Day (168 of 445 boats) were parked in a 79-acre area off Kershaw Park and around Squaw Island, leaving the remaining 3,931 useable acres in the northern third available for use by the other 277 boaters in this portion of the lake (65 of which were parked along the shoreline). In other words, given the observed patterns of lake usage, during peak use periods, a substantial portion of the lake’s surface area remains available for higher-speed motoring boating activities, even though gross boating density calculations may suggest otherwise. Although the gross boating density in the northern third of the lake on Labor Day was 9.0 acres per boat ($4,010 \div 445$), if the boats parked off Kershaw Park and Squaw Island (which were clearly not engaged in active motor boating) and the area they occupy are subtracted from the total boats and the total usable area—which is a reasonable approach given that these boats do not require substantial acreage for the activity in which they are engaged—actual boating density in the northern third of the lake would be 14.2 acres per boat ($3,931 \text{ acres} \div 277 \text{ boats}$). The boat density on the lake overall is much less intense—about 20.7 acres per boat ($5,601 \text{ acres} \div 271 \text{ boats}$) in the worst-case situation on Labor Day afternoon, for an average of 17.4 acres per boat on the entire lake (not including boats parked near Kershaw Park and Squaw Island).

Lower densities were observed on the afternoon of July 26, 2008. The gross boating density in the northern third of the lake was 31.1 acres per boat ($4,010 \div 129$), and if the boats parked off Kershaw Park and Squaw Island and the area they occupy are subtracted from the total boats and the total usable area, actual boating density in the northern third of the lake would be 36.1 acres per boat ($3,931 \text{ acres} \div 109 \text{ boats}$). The gross boat density on the entire lake at that time was 43.5 acres per boat ($9,611 \text{ acres} \div 221 \text{ boats}$). Although these numbers may reflect lower than average use due to the boating advisory for that weekend, even a doubling of the observed activity would still be well below predicted peak use.

There is inadequate support for this Planning Board to consider adding additional restrictions on the number and configuration of boat slips and moorings to the requested special use permit based upon potential safety issue due to the perceived overcrowding of the northern third of the lake.

Comment: The Planning Board has to approve the site plan for the docking facility. The Dock Law spells out 11 general conditions: parking, access, screening, landscaping, architectural features, location, dimensions of buildings, adjacent land uses, and physical features. (Forsyth, 0201)

Response: *Comment noted. All of these issues are addressed in the DEIS and will be taken into consideration when the Planning Board prepares its Findings Statement and makes its determination regarding site plan approval.*

4.A.3 Litigation

Comment: The DEIS may have to be substantially altered if the Supreme Court agrees with my position that this development should be adjudicated under the "Residential" portions of the Docking and Mooring Law. (Kraus, 0072)

Comment: I am concerned that actions are being taken to evaluate the requested variances and special permits even before litigation and the EIS are completed. I request that the Planning Board take no irreversible actions or make any final decisions regarding either the DEIS or the requested variances and special permits until this litigation is finalized. (Kraus, 0073)

Comment: The Zoning Board suggests that consideration is given to delaying the DEIS until the litigation regarding the PWORF and docking portion of the project is resolved. (Zoning Board of Appeals, 0106)

Response: *See response to comment in Section 2.D.1 above. In a decision dated June 15, 2007, Judge Kocher of the New York State Supreme Court affirmed the determinations of the Town Zoning Officer that the proposed Marine Club qualifies for consideration by this Planning Board for a special use permit for "private water oriented facilities, or social club" ("PWORF or SC") and that the allocation of docking and mooring spaces for such a use under the Dock Law should be based on the Dock Law's non-residential category for "marinas and yacht clubs."*

Judge Kocher's decision has been upheld by the Appellate Division, Fourth Department of the New York State Supreme Court. Although two justices dissented as to whether the Appellants had standing to appeal the Zoning Officer's Dock Law determinations to the Zoning Board of Appeals, those two dissenting justices explicitly concurred with the majority in finding that the proposed Marine Club qualifies for consideration by this Planning Board for a special use permit for PWORF or SC and that the allocation of docking and mooring spaces for such a use

under the Dock Law should be based on the Dock Law's non-residential category for "marinas and yacht clubs."

Thus, while the appellants have the option of furthering their appeal to New York's highest court, the Court of Appeals, if they continue to feel strongly about the 500-square-foot dock now incorporated into the design alternative with the combined clubhouse/pump house on the lake side (Exhibit 39A), and this alternative is selected by the Planning Board at the end of the SEQRA and land use process, the clear weight of judicial opinion (one lower court judge and five appellate court justices) is that Marine Club qualifies for a special use permit for PWORF or SC and that the allocation of docking and mooring spaces for such a use under the Dock Law should be under the All Other Land Uses category.

The Applicant acknowledges, however, that it proceeds at its own risk because the Applicant will not be entitled to rely on any land use approval premised on an interpretation of applicable Zoning Code or Dock Law that is subsequently reversed or modified by the Court of Appeals, should the litigants seek to further appeal this matter.

Also, on August 13, 2008, the Ontario County Planning Board voted in favor of approval of the issuance of a special permit for a PWORF or SC use for the Project by this Board. On October 8, 2008, the Ontario County Planning Board voted to disapprove the site plan and variances for the lakeside clubhouse, but voted in favor of approval of the site plan and variances for the inland clubhouse for the Marine Club. The Ontario County Planning Board then voted in favor of approving the subdivision for the project, and the site plan and variances for the residential portion of the project. (See Appendix AA.) After completion of SEQRA, this Planning Board will consider that disapproval and those approvals by County Planning Board along with the decisions from the courts, the comments made during the public hearing on the application for the special use permit, and this Board's SEQRA Findings in determining whether to grant a special use permit and site plan approval for the West Lake Marine Club.

4.B Land Use, Zoning, and Planning

4.B.1 Code and Plan Compliance

Comment: The Applicant needs to address the eight factors that the Office of General Services (OGS) must examine by regulation before the OGS can issue a license for any docking facility. Addressing these factors now will make the later procedure before the OGS fairer and more streamlined (allowing the public more opportunity to review the applicant's case before they need to file any objections). The factors are: (1) environmental impact of the project; (2) values for natural resource management, public recreation, and commerce; (3) size, character, and effects of the project in relation to neighboring uses; (4) potential for interference with navigation; (5) water dependent nature of use; (6) adverse economic

impact; (7) effect on natural resources interests of the state in the lands; and (8) consistency with the public interest and the need of private owners to safeguard their property. 9 NYCRR § 270-3.2(a). The applicant cannot argue it is too early to address the eight factors, given that it has already laid out its case for the special use permit and the requested variances. (Forsyth, 0121)

Response: *The Office of General Services is an involved agency for the environmental review of the Project under SEQRA because it will be asked to issue a license or permit for the use of State-owned under water lands by the Marine Club's docking and mooring facilities. As an involved agency, the OGS has been provided with all the SEQRA documentation, including a copy of the DEIS, and notices of its right to participate in every stage of the environmental review process under SEQRA. In that regard, this Planning Board notes that the OGS has not submitted any comments objecting to the sufficiency of the DEIS or requesting further evaluation or analysis.*

In addition to the SEQRA process, as part of the application process, the OGS routinely consults with NYSDEC, New York State Department of State, and New York State Office of Parks, Recreation and Historic Preservation for input within each agency's area of expertise on the proposed permit's probable effect on the public interest in State-owned under water lands considering the eight factors described in the comment.

The FEIS specifically addresses the first of the eight factors, "environmental impact of the project," listed in 9 NYCRR § 270-3.2(a). That is all that the FEIS is required to address, and is the reason why the OGS engages in the subsequent consultation with the other three agencies. Nevertheless, even though FEIS is not required to evaluate the remaining seven factors, and even though the SEQRA process is no substitute for the consultation process required under the Public Lands Law, the DEIS provides substantial information and analysis for addressing each of the other seven factors. Environmental impacts of the Project are addressed in Chapter 4; open space and recreational opportunities are addressed in Sections 3.B and 4.C; consistency with adjacent uses is addressed in Sections 4.B.2.b, 4.H, and 4.I; effects on boat traffic are addressed in Sections 4.B.2, 4.C, 7.K, and the Lake Use Assessment Report in Appendix P; the water dependent nature of the use is discussed in Section 4.A and throughout; economic impacts are addressed in Sections 4.I and 7.L; natural resources are addressed in Sections 4.E, 4.F, 6.D, and 6.E, among others; and consistency with the public interest is discussed in Sections 4.B and 4.C. Further information on some of these topics is provided in this FEIS.

The DEIS does contain discussions relevant to the "values for natural resource management, public recreation, and commerce." Because the Project includes the berthing facilities at West Lake Marine Club, the Project will result in the 447 linear feet of the Johnson parcel shoreline remaining undeveloped, which thereby permanently preserves this natural resource. As illustrated in attached Exhibit 40, the modified berthing facilities at the Marine Club will occupy 1.1 acres less of the

lake surface than the existing docking and mooring facilities. The area which the Marine Club berthing facilities will occupy has already been the location of berthing facilities for decades, including the repair and daily launching of boats (which will be discontinued). Moreover, the docks for the Marine Club are configured to require entry from the deep water of the lake, thereby reducing wave action and impact on the adjacent shoreline. In contrast the existing marina's mooring facilities stretched between the deep water of the lake and the docks, gas dock, and repair operations, thereby encouraging boats to hug the shoreline.

While public access to the lake through the commercial marina will be foreclosed by the construction of the Marine Club, the members of the Marine Club (who are members of the public) will have access, as will a minimum of six other town residents provided this Planning Board decides to accept the Applicant's offer to provide those berths. Moreover, all of the berthing spaces will be available to the public until such time as the membership of the Marine Club requires the docks. In addition, seven docks and/or moorings will always remain available for visitors to use on a temporary basis, and those visitors are members of the public. The Applicant has also asked this Planning Board to consider requiring the gas dock to be left open to the public.

Moreover, the DEIS evaluated the Marine Club's consistency with Shoreline Design guidelines (Section 4.B.2.a), its potential impacts on the lake as a drinking water source (Section 4.F.3), its potential impacts on shoreline habitats (Sections 4.E.3 and 5), its potential impacts on lake's capacity for safe recreational boating (Section 4.B.2.b and Appendix P), its potential impacts on the availability of marina services for boaters (Sections 3.B.1 and 4.B.2.b), its potential impacts on water quality, including erosion control (Section 4.D.5), stormwater management (Section 2.B), removal of existing structure to complete remediation of historic petroleum spill in underlying soil (Section 6.I), and its potential impacts on lakeside viewshed (Section 4.H).

The DEIS and this FEIS also contain discussions relevant to the "size, character, and effects of the project in relation to neighboring uses." (DEIS Section 4.B.2.a) Moreover, the Applicant has modified the Marine Club facilities, whether on the lake side or inland side of West Lake Road to be smaller, and has eliminated between 9 and 15 berthing spaces, depending on whether or not this Planning Board decides to require six docks and moorings be made permanently available to residents of the Town. See Exhibits 38A, 38B, 38C, 38D, 39A, 39B, 39C, 39D, and 40. The modified Marine Club facilities have been evaluated in relation to neighboring uses as to lighting (see Exhibits 43A, 43B, 50A, 50B, 50C, 50D, and 50E), as to peak boat traffic on the lake (see Exhibit 45), from a bird's eye view (see Exhibit 46A and 47A), as viewed from the lake (see Exhibit 46B, 47B, 48A, 48B, 48C and 48D), and as viewed from the immediate shoreline (see Exhibit 49A and 49B).

The DEIS contains an evaluation of potential impacts on neighboring uses with regard to noise (Section 4.K), odors (Section 4.K), aesthetics (Section 4.H), and

traffic (Section 4.G), including the mitigative effect of proposed conditions to be placed on the special use permit and in the HOA rules (DEIS, App. R. HOA Rules) on the use and hours of operation of the clubhouse, docking and mooring facilities, parking and trails to prevent adverse impacts on neighboring uses. The DEIS also evaluated, as part of the evaluation of the special use and area variance criteria, whether the Marine Club will have an adverse effect or impact on the physical or environmental conditions or neighborhood character of the surrounding neighborhood or district (see DEIS Section 4.B.2.a).

With respect to “potential for interference with navigation,” Exhibit 40 illustrates the improvement to navigation being made by the modified berthing facilities which take up 1.1 acres less lake surface than the existing berthing facilities. Further, the modified facilities have changed the orientation of docks so as to direct dock and mooring users to access the facilities from deeper water and discourage near-shore traffic north and south of the Project.

The DEIS (Section 4.A) does contain discussions relevant to the “water dependent nature of the use,” to the extent that a Marine Club needs to be explained. The West Lake Marine Club will be a private water-oriented recreational and social club use that is essentially equivalent to a yacht club. The purpose and need for Project is to satisfy market demand for upscale residences in a beautiful lakeside setting with access to lakeside for enjoyment of boating, sunning, scenery, and other recreational and social activities that the West Lake Marine Club can provide (see DEIS, Introduction).

As explained at length in the DEIS at section 4.I.2, rather than having an adverse economic impact, the Project has a net favorable fiscal impact on community after considering Project’s demands for services.

The DEIS and this FEIS also contain discussions relevant to the Project’s “effect on natural resources interests of the state in the lands.” The DEIS evaluates, at Sections 4.B.2.b and 6.B.6, how the Project avoids and reduces existing adverse impacts on the water rights of neighbors by directing boat traffic away from neighboring near shore areas and, at Sections 4.F and 6.E, evaluates how the Project avoids and/or mitigates to the maximum extent practicable any potential impacts on lake as drinking water source, on shoreline habitats, and water quality, including erosion control and stormwater management. The DEIS also discusses how, during construction of the Marine Club facilities, the Applicant will remove soils from beneath the existing office building that are contaminated as the result of a historic petroleum spill, and dispose of those soils in an NYSDEC-permitted landfill. The Project will also have no significant impacts on lake’s capacity for safe recreational boating.

This FEIS touches on the Project’s “consistency with the public interest and the need of private owners to safeguard their property” when it notes that all berthing facilities will be at least 20 feet back from the water rights line. See Exhibits 38A and

39A. *This setback ensures that the neighboring property owners' access to navigable water is not impeded. Access to the lake for neighboring property owners will be enhanced because the modified configuration of the Marine Club's docks, with their internal boat slips, eliminates near shore cross traffic from the Marine Club. In addition, the navigability of the lake is promoted by the modified berthing facilities which occupy 1.1 acres less of the lake surface than the existing German Brothers Marina facilities. See Exhibit 40. Conditions which may be imposed by this Planning Board as part of the special use permit will also ensure consistency with the public interest (DEIS Sections 4.B.2.a and 6.B.6).*

Comment: The Project is required to comply with the clustered development rules in Chapter 90 that are more strict than the Section 105-518 "conservation subdivision" rules that apply to SCR-1 zoned land, because the stricter rules supersede Section 105-518. (Herbik, 0011)

Where any provision of these regulations imposes restrictions different than those imposed by any other provision or local ordinance, regulation or law, that provision which is more restrictive or imposes the higher standard shall control. Town Code §90-4(B)(1).

Response: *The Chapter 90 clustered subdivision rules of Town Code §90-29 do not apply to the Project because the presence of the SCR-1's clustering "Conservation Subdivision" rules found in new Zoning Code §105-518(C)(1) make it unnecessary for the Planning Board to modify the Zoning Code in order to allow the Applicant to develop a clustered subdivision in the SCR-1 portion of the site.*

Section 90-29(D) of the Town Code provides the Planning Board with the discretion and the authority "to modify applicable provisions of Chapter 105 of the Town Canandaigua Code . . . in accordance with the cluster development provisions set forth this Section." However, Chapter 90 does not require the Planning Board to exercise that authority, particularly where the provisions of Chapter 105 set out their own detailed rules for clustering as Zoning Code §105-518 does.

In fact, Chapter 90 acknowledges that clustered subdivisions may be accomplished via proposals submitted pursuant to Section 105-518 of the Zoning Code as an alternative to clustering pursuant to Town Code §90-29; i.e., that compliance with the clustered subdivision provisions of Section 90-29 is not mandatory in order for an applicant to cluster. Section 90-9(H) provides that:

The Planning Board may consider any proposal for a clustered project submitted by a subdivider pursuant to Sections 90-16 and 90-29 of this chapter, Section 105-518 of the Town Code and Town Law Section 278, as amended. [emphasis added]

Chapter 90 does not mandate compliance with Section 90-29 to develop a clustered subdivision in the SCR-1 zone. Therefore, Chapter 90 does not "impose restrictions different than those imposed in any other provision," and there is no conflict between Town Code §105-518 and Town Code §90-29.

This is confirmed by Town Code §90-29(E)(2), which states that it is only those subdivision plats which propose or require modification of Chapter 105 rules by means of Town Code §90-29(D) that must conform to the additional clustering rules of Chapter 90. Section 90-29(E)(2) reads:

All plats submitted which propose or require modification of zoning law provisions simultaneously with plat approval shall conform to the additional, requirements of this Section. [emphasis added]

Nothing further is needed than compliance with the mandatory conservation subdivision requirements for SCR-1 zoned land to develop a clustered subdivision for the Project. The Applicant is not requesting the Planning Board to simultaneously modify Town Code §105-518 along with plat approval. The Project will comply fully with Town Code §105-518, as varied by any area variance granted by the Zoning Board of Appeals.

Also, the Applicant is not proposing a clustered subdivision for the RLD portion of the Project site, and the ZO has indicated that clustering is not permitted in the RLD. See the first footnote to the “Base Density Calculation” for the SCR-1 zone, dated April 3, 2008, which is attached as Appendix W.

The Planning Board can only “require the subdivider to submit” a clustered subdivision application “if the Planning Board finds that doing so would serve the legislative authority and objectives” set forth in Section 90-29 of the Town’s Subdivision Code and in New York State Town Law §278. Town Code §90-29(E). Satisfying the Conservation Subdivision requirements of Zoning Code §105-518 meets those legislative objectives.

In fact, the DEIS evaluates how the Project’s proposed SCR-1 conservation subdivision and RLD conventional subdivision layout and design address each of the clustered subdivision objectives set forth in Section 90-29(C) of the Town Code and listed below.

1. The creative use of land so as to establish a more desirable living environment than would be possible through the strict application of Town zoning standards;

The Project is designed to satisfy the market demand for upscale residences in the desirable natural lakeside setting of the Project site, DEIS Section 4.A; maximizing the preservation of Conserved Land for wetlands, utility easements, the higher-quality portions of wooded and sloped lands, and a system of trails while still satisfying the target market’s interior living space expectations, DEIS Sections 4.B.2.c, 4.B.2.d, 6.A.1, and 6.D.1;

2. The preservation of environmentally sensitive areas such as, but not limited to, surface water, freshwater wetlands, ridgelines, stands of trees, outstanding natural topography, glaciated features and areas of archeological significance. Areas to be preserved also include environmentally sensitive areas;

The Project provides for soil and erosion control, stormwater management facilities, and preservation of wetlands to protect the lake and groundwater resources, DEIS Section 6.E; preservation of higher quality woodlands and steep slopes, DEIS Sections 2.G, 4.B.2.a,c, and d; consistency with ridgeline and shoreline guidelines, DEIS Section 3.A.1; and restoration and rehabilitation of Johnson homestead DEIS Section 4.J.

3. The prevention of soil erosion and avoidance of other negative environmental impacts;

Soil and sedimentation control and stormwater are adequately managed, DEIS Sections 6.C.3 and 6.E.

4. The prevention of imprudent development within delineated flood hazard areas;

The only delineated floodplain in the residential portion of the Project is located along Johnson property shore area, which will be preserved as HOA Conserved Land, DEIS Exhibits 3A and 3D;

5. The encouragement of innovative and flexible design and layout of residential housing subdivisions to preserve open space by permitting housing units to be clustered without increasing overall housing density;

The Project maximizes the preservation of Conserved Land for wetlands, utility easements, the higher-quality portions of wooded and sloped lands, and a system of trails while still satisfying the target market's interior living space expectations, DEIS Sections 4.B.2.c, 4.B.2.d, 6.A.1, and 6.D.1;

6. The design of developments that are in harmony with the character of the area and environmental sensitivities of a particular site;

The Project is compatible with neighborhood and environmental features of site, DEIS Sections 4.B.2.a,c and d; see also references to DEIS following Items 2, above.

7. The design of developments which otherwise further the legislative intent of [New York State] Town Law § 278, as amended," [which is "to enable and encourage flexibility of design and development of land in such a manner as to preserve the natural and scenic qualities of open lands." New York State Town Law §278(2)(b)].

The Project is designed, and will be screened to preserve scenic qualities of the site, DEIS Section 4.H; and is compatible with neighborhood and environmental features of site, DEIS Sections 4.B.2.a,c and d.

Because the legislative objectives of Chapter 90 have been met through the Project's adherence to the Conservation Subdivision requirements of Zoning Code §105-518, the Planning Board need not modify Zoning Code §105-518 to impose the clustered subdivision provisions of Section 90-29. Thus, Zoning Code §90-4(B)(1) simply does not come into play.

Comment: The placement of approximately 14.62 acres of conserved open space on residential lots is improper. Under the Chapter 90 clustered subdivision rules, the plat for a clustered subdivision “should clearly identify that the open space is permanently reserved for open space purposes and shall not be platted for building lots or other development.” Section 90-29(N)(2). (Herbik, 0012)

Response: *As discussed above, the Section 90-29(N)(2) rules do not apply because the Planning Board is not being asked to approve a clustered subdivision by modifying the Zoning Code pursuant to Section 90-29(D). The DEIS describes how the Applicant is proposing to restrict approximately 14.62 acres of the individual lots with a perpetual open space conservation easement. In the DEIS, this restricted land is designated as Resident Conserved Land.*

Revised Exhibit 4B illustrates which lots contain Residential Conserved Land. Most of the residential lots do. Only Lots 1-7 and Lot 58 do not contain any Resident Conserved Land.

The placement of some of the conserved land on the residential lots in this manner complies with the express provisions of the SCR-1 conservation subdivision requirements. Town Zoning Code §105-518(D)(2)(d) provides that

The conservation easement may allow dwellings to be constructed on portions of lots that include preserved open space land

In addition, approximately 17.07 acres of additional conserved land on the separate lot owned by the homeowners association will be identically restricted, although the homeowners association land will also have additional provisions for giving all Project residents access to its trail system. This land is designated in the DEIS as HOA Conserved Land. With one or two exceptions, the Resident Conserved Lands are located to the rear of the private lots that back onto HOA Conserved Land. Each lot that contains Resident Conserved Land will be subject to a conservation easement which will permanently preserve the open space by prohibiting the placement of structures or the alteration of the grading or vegetation of the conserved land except for the maintenance of yards and walking trails to access HOA Conserved Land or connect to perimeter trails. DEIS Sections 4.B.1.a and 6.D.2. The terms of that conservation easement must be approved by the Town as part of the subdivision process, and by the New York State Attorney Generals Office as part of the homeowners association offering process. Once approved by the Town and the State Attorney Generals Office, the Applicant will record the conservation easement in the land records of the Ontario County Clerk. Further, the Applicant will place a clear

reference to that conservation easement in the terms of the deed for each individual lot that contains Resident Conserved Land.

Moreover, even if Section 90-29(N)(2) rules did apply, the proposed Resident Conserved Land arrangement would be lawful because the proposed plat and accompanying conservation easement “permanently reserves” the designated conserved open space and delineates that space in such a way that it is clear that the space is not “platted for building lots or other development.”

Comment: The Planning Board must follow the more restrictive Chapter 90 in preserving additional wooded areas. (Fuller, 0159)

***Response:** The amended Chapter 90 woodland preservation rules do not apply to the Project because they were enacted after the Applicant’s subdivision application was already pending, and contain a “grandfathering” provision in Town Code §90-4(C) that states that the amended Chapter 90 rules “shall not be construed as abating any action ... pending under prior existing subdivision regulations.” See also DEIS Section 4.B.2.d.*

In addition, as discussed above, the Planning Board is not being asked to approve a clustered subdivision by modifying Zoning Code pursuant to Section 90-29 of the Town’s subdivision regulations. Therefore, Section 90-29 woodland preservation rules do not apply.

Nevertheless, as described in the DEIS, the Project would preserve woodlands in accord with the applicable SCR-1 conservation subdivision rules, and if a requested area variance is granted by the Zoning Board of Appeals, will trade off some lesser value SCR-1 open space for higher value woodlands in the adjoining RLD zone (see DEIS Section 4.B.2.d).

Comment: It is impermissible for the Applicant to seek variances for some “flag” lots from the area requirement for road frontage because Chapter 90 clustered developments only allow for exceptions to “minimum lot size required, the front, side and rear setbacks, the building height and lot coverage.” Town Code §90-29(J)(1). (Herbik, 0014)

Comment: On p. 82 of the DEIS the applicant states that Comprehensive Plan recommends well-designed flag lots as an alternative to frontage lot development. Since the proposed flag lots do not front a major road, the Zoning Board believes this is an erroneous interpretation of what the Comprehensive Plan encourages. The Zoning Board would suggest that all flag lots be reviewed for their need and designed accordingly. (Zoning Board of Appeals, 0111)

Comment: Does the Town zoning code allow flag lots in the RLD and, if so, what are the requirements? (Herbik, 0023)

Comment: How would smaller lot frontages be allowed for Lots 14 and 15, as the width at the front building line is not part of the criteria? (Herbik, 0025)

Response: *Town Code §90-29(J)(1) is inapplicable because it only applies to clustered subdivision lots for which the Applicant has proposed that the Planning Board use its authority pursuant to Section 90-29(D) to modify the Zoning Code to allow clustering. The Applicant was not seeking to create “flags” for Lots 14 and 15 via clustering. Instead, because the lots are located in the RLD zone, it was seeking to do so via the conventional subdivision method with area variances provided by the Zoning Board of Appeals. This flag lot method was intended to preserve more of the trees and other vegetation on the steeper sloped land to the east of the homes. DEIS Section 4.B.2.c.*

The Town Zoning Code does not specifically prohibit or encourage flag lots, but by requiring the lot width to be measured at the front lot line on the street for purposes of ascertaining compliance with the minimum lot width standard, the Zoning Code in effect requires issuance of an area variance for lots that would have a “flag pole” extending from the lot to the street. Use of the flag lot arrangement is in fact encouraged by the Comprehensive Plan, which recommends that the “Town should create additional mechanisms to minimize road frontage development” in the Southern Corridor and suggests as an example of such a mechanism that “the Town’s zoning and subdivision regulations should allow well-designed flag lots with shared driveways (and cross-easements), as an alternative to frontage lot development.” Comprehensive Plan page IV-2. Other than the recommendation of the Comprehensive Plan, there are no specific rules applicable to flag lots other than a showing that such design satisfies the criteria for an area variance. Compliance with those criteria was evaluated in Section 4.B.2.c of the DEIS.

Nonetheless, in response to this comment and other comments on the number of variances being sought, the Applicant has further considered the proposed lot width variance requests for the flag lots, Lots 14 and 15, and has modified the Project site plan to avoid the use of flag lots. Exhibit 52 compares the Project layout for Lots 14, 15, and 16 as originally proposed, which requires a lot width variance, with the modified layout that eliminates the need for the variance by moving Lot 16 adjacent to Lot 17 and reconfiguring Lots 13 and 14 such that each has a minimum lot width of 125 feet at the access Road “A” right-of-way. This modification also reduces the grading needed for Lot 16, saves an additional 0.38 acres of trees, allows for an increase in the conservation easement areas of 3,000 square feet, and improves the value of the conserved area.

The proposed private drive accessing lots 13, 14 and 15 and the location of the homes on lots 13, 14, and 15 allows them to be constructed with minimal earthwork, grading and tree removal. Moving the homes closer to the dedicated road right of way would require a substantial increase in earthwork, grading and tree removal. Leaving the homes in the same location but with separate driveways would require steep driveways and decreased sight distance making them less safe.

Comment: What are the bulk requirements being waived or varied as part of the conservation subdivision design? (Herbik, 0029)

Response: *None of the bulk requirements (area standards) are being “waived” as part of the conservation subdivision design because, under the Zoning Code’s SCR-1 conservation subdivision rules, none of the area standards apply to conservation subdivision. Town Zoning Code §105-518(C)(6)(a). DEIS Section 4.B.2.d.*

For the proposed conservation subdivision layout in the SCR-1 district, the Project varies from the following area standards, which would otherwise be applicable if the Applicant was not clustering under the conservation subdivision rules: minimum lot width, maximum building coverage on lot, and front and side setbacks. The Applicant has modified its Project to no longer vary from the 35-foot building height standard in the SCR-1 district.

Comment: Open space created by the use of cluster development shall be clearly labeled on the final plat as to its shape, use, ownership, management, method of preservation, and right to such land. All of the open space must have a perpetual conservation restriction placed upon it. (Herbik, 0015)

Response: *The conservation easements will be permanent, as described in the DEIS (Sections 4.B.1.a, and 6.D.2). The location of the conservation easements is shown on the subdivision plan as a plus symbol (BME Drawing 2145-09).*

Comment: The proposed development of the SCR-1 zone is not a true “Cluster Development” that is compliant with Town Code Chapter 90, section 90-29 because the proposed dwellings are scattered across the entire SCR-1 parcel and not clustered so as to preserve “larger areas of open space” as required by the Chapter 90 subdivision regulations, nor does the proposed plan provide “significant open space” as further described in the Town’s adopted Comprehensive Plan. (Herbik, 0016)

Comment: The proposed 70-lot subdivision is NOT a clustered Conservation Subdivision design. (Fuller, 0160)

Response: *Even though the clustering is proposed under the SCR-1 conservation subdivision requirements and, therefore, the Chapter 90 subdivision regulations do not apply, the preservation of more than 30 acres of conserved space is consistent with the Chapter 90 objective of preserving “larger areas of open space” than would be preserved under a conventional subdivision. There is nothing in Chapter 90 clustered subdivision rules or the SCR-1 conservation subdivision rules that requires residences to be clustered in one area, and that is not required under New York Town Law §278. Instead, both regulations emphasize preservation of lands of higher ecological or conservation value.*

The DEIS describes how the conservation subdivision proposed for the SCR-1 zone reduces conventional setback and minimum lot size standards, thereby clustering residences closer together in order to preserve existing wetlands, save larger areas of trees, and create common open spaces that include trails and active and passive recreation areas. In addition, large stretches of the conserved open space provide the dual benefit of buffering the residential portion of the Project from the neighboring residences, West Lake Road, the lake, and residences along the eastern shore of the lake.

The comparison in the DEIS of the proposed plan with the Yield Plan that respects conventional zoning illustrates the environmental values preserved by the proposed clustering. The tree/brush area preserved under the proposed plan is 50% greater than the amount preserved under the Yield Plan. DEIS Section 6.A.1. The Applicant proposes to set aside approximately 22.78 acres of Conserved Land in the SCR-1 zoned portion of the Project site, including all of the 1.96 acres of wetlands (and the spring), 0.64 acres of permanent utility easements, 9.48 acres of meadow and 10.82 acres of woods and brush. In addition, if the Zoning Board of Appeals grants the requested area variance to allow some of the higher quality lands in the adjoining RLD zone to be preserved in lieu of lesser quality SCR-1 land, an additional 7.79 acres of land will be conserved in the RLD, including 1.58 acres of the grove of large oaks and 6.21 acres of the woods and steeper sloped land behind the German Brothers property. DEIS Sections 4.B.2.d and 6.A.1.

The proposal also preserves significant open space consistent with the Town's Comprehensive Plan. The proposed shift to preserve more of the higher value woodlands in the RLD is more consistent with the Town's 2003 Comprehensive Plan's Farmland & Open Space Conservation Program Land Cover map, which delineates higher value woodlands in the RLD-zoned portion of the Project site. DEIS §4.B.2.d. The design and layout of the SCR-1 portion of the Project, including the proposed area variances, is consistent with the Comprehensive Plan's recommendations for the "Southern Corridor" portion of the Town (see pages IV-8 – IV-10), including "flexible subdivision design that conserves important natural...and open space resources"; reducing the density from the density prompted by minimum lots; promoting subdivisions with internal roads and/or shared access in order to limit the number of access points to lakeside roads; and creating a "significant network of open land" within the overall Project to enhance the value of the homes within the subdivision.

The residential density of this portion of the Project—55 single-family residential lots on 58.2 acres—will also be less than the one single-family dwelling unit per acre density recommended for this area in the Comprehensive Plan (p. IV-9). DEIS Section 4.B.2.d. The Project does preserve "larger areas of open space" than a conventional build-out. It sets aside 40% of the land for open space and conservation, in this case, after the variance, approximately 36% of the SCR-1 portion, and 42% of the combined SCR-1/RLD residential property.

Comment: According to Exhibit 4D, the finished grade of the Marine Club clubhouse will be 694'. BME Drawing 2145-29 indicates the existing building in this location has a finished grade of 691.79'. Is a change in elevation allowed in the RLD and, if not, will a variance be required? What entity oversees this elevation change? Will approvals from the state or any other agency be required to change the elevation above these underwater lands? (Herbik, 0031)

Response: *The finished grade elevation for the Marine Club clubhouse was noted incorrectly. The proposed Marine Club building would have approximately the same elevation as the existing 40' x 40' marina building. The finished grade elevations have been correctly noted on Exhibits 38D and 39D for modified Alternative H and for the modified Project as proposed.*

Note that, other than requiring this Planning Board's review and approval as part of the site plan and site development review process, the Zoning Code does not restrict the alteration of the finished grade of land. Therefore, no Zoning Code variance would be required for the finished grade of the clubhouse, if it were to be different than existing. As described elsewhere in this Response to Comments, the historical lands under water on the inland side of the present bulkhead were deeded to a preceding owner of the marina in 1967 by the State of New York, and passed by deed to German Brothers Marina, Inc. in 1977. Therefore, the State of New York does not own the land where the clubhouse will be placed and there is no requirement to obtain the prior approval OGS or any other State agency.

Comment: The maximum permissible density in the SCR-1 zone is one dwelling unit per acre of **unconstrained** land; not one dwelling unit per acre of land. The 40% open space requirement is in addition to the "constrained land" that must be subtracted out prior to calculating how many dwellings can be placed on the parcel. (Herbik, 0043)

Response: *Maximum permissible density may be based on either of two permissible methods. The Applicant has proposed a determination based on the Yield Plan method as described in the DEIS. If this Planning Board determines that the proposed Yield Plan is not realistic, then the calculation formula method will be utilized that bases the maximum density on a formula based on one dwelling unit per acre of unconstrained land. The maximum permissible density generated by that method, as calculated by the Town Zoning Officer, is 51 lots in the SCR-1 zone. Both the Yield Plan and the formula-based density calculation are described further in Section 4.B.4 of this FEIS.*

After the base density is calculated under either method, the amount of land to be set aside and preserved by the conservation easement is calculated pursuant to a separate provision of the Zoning Code (§105-518(C)(2)(e)). That section requires the Project to place all of the constrained land (7.6 acres) plus 40% of the unconstrained land (20.24 acres) under the permanent conservation easement. The calculation of

the acreage of land required to be conserved in an SCR-1 conservation subdivision does not affect the determination of maximum number of permissible lots.

Comment: Concern has been raised regarding the validity of a statement on p. 23 of the DEIS: "The continued operation of the Marina is nevertheless permissible as a 'non-conforming' use because the Marina use and buildings pre-existed the parcel's present zoning. The right to continue a non-conforming use and buildings, like other zoning rules, runs with the land and is not specific to the owner." If a marina did not exist on the German Brothers property prior to June 1961, then the current use would be illegal (because zoning that was put into place in 1961 did not allow for marina uses in the R-2 district). This would further bring into question whether the adjacent upland parcel is residential or commercial and whether the Docking and Mooring Law's "residential land use" or "all other land uses" guidelines apply. These questions need to be evaluated. (Herbik, 0045)

Response: *The German Brothers Marina property was used as a commercial marina prior to 1961. See Exhibit 1C-Historic Aerial Photograph Circa 1954. Moreover, German Brothers Marina, Inc. has stated that the "Project in question is a commercial operation in a residential district, but is permitted by virtue of its 13 years of existence prior to the adoption of a zoning ordinance by the Town in 1961." See, Short Environmental Assessment Form of German Brothers Marina, Inc. submitted in 1985 to the Army Corps of Engineers and NYS Department of Environmental Conservation in support of its application for a permit to restore its waterside bulkheads which is attached as Appendix V.*

In addition, in her Zoning Law Determinations for the Project issued on April 28, 2006, the Town Zoning Officer has already determined that the "existing marina structures on this [German Brothers Marina] site are non-conforming" but that the "zoning regulations relating to non-conforming structure" will no longer apply when the existing structures are removed. Although other determinations of the ZO issued on that date were appealed, no one objected to the ZO's non-conforming pre-existing use determination. The ZO's determination is, therefore, binding for the land use decisions for this Project because the 60-day deadline for appealing under New York State Town Law §267-a(5)(b) has long since passed.

Comment: A Realty Subdivision approval is required from the NYS Department of Health prior to offering any lots for sale. (NYSDOH, 0065)

Response: *Comment noted. The NYSDOH has been included as an involved agency throughout the SEQRA review process for just this reason. All necessary agency approvals will be obtained by the Applicant prior to offering lots for sale.*

Comment: The developer is trying to establish a "keyhole/funnel development," which is not consistent with local laws or the Town's Comprehensive Plan. (Kraus, 0076)

Comment: We have enormous concerns about the RSM project because it's a "keyhole" development, a residentially dense upland parcel, connected by a sliver of land to a relatively small (587 ft) shoreline, demanding more than its legal share of boat rights. (Brancato, 0131)

***Response:** The Dock Law does not prohibit so-called "funnel" or "keyhole" development. When adopted in 1992, the final Dock Law omitted provisions of an earlier draft that would have expressly defined and prohibited "keyhole developments." Rather, the Dock Law bases allocation of docking and mooring spaces on lineal feet of shoreline and the actual use of land on the shoreline.*

***In any event,** the West Lake Marine Club does not constitute a "keyhole" or "funnel" development because it involves the conversion of a pre-existing non-conforming rectangular-shaped commercial marina into another water-oriented recreational use focused on boating. In contrast to the type of funnel and/or keyhole developments alluded to in the comments, the boating access provided through the private West Lake Marine Club does not represent a significant increase in the boating access already provided by the commercial marina at this location. Moreover, the Marine Club fronts on a long segment of shoreline, not a "sliver." German Brothers Marina currently provides access for 103 boats (33 slips, 35 moorings, and 35 dry dock spaces). The docking facilities now proposed for the Marine Club will include 103 berthing spaces for members (and seven more for visitors). Although the Marine Club will include seven additional slips for visitors, these slips would not provide new access to the lake. Rather the visitor slips would provide temporary docking for boaters from somewhere else already on the lake, functioning in a manner similar to dock slips at a lakefront restaurant. At the option of this Planning Board, the Applicant could also provide up to six moorings for use by Town residents.*

Comment: The laws were established for good reason and they should be followed unless there is an extremely good reason for not doing so. Furthermore, the Planning Board should not just pass alternatives to the Zoning Board that for the most part "are not" in keeping with local laws/codes. (Kraus, 0078)

***Response:** DEIS Sections 4.B.2.a, b, c, and d evaluate in depth how the Project complies with the rules and criteria for issuance of the requested special use permit, site plan, and subdivision plat approvals. Moreover, the Project has been modified as discussed above to require far fewer variances, particularly with respect to the alternative which locates the clubhouse for West Lake Marine Club on the west side of West Lake Road. Those variances that are still being sought are designed to increase the safety of the members and guests of the West Lake Marine Club as they access their boats, and to increase the buffering of the bulk of the residences from the lake and West Lake Road by preserving more large oaks and dense forest than would otherwise occur. If the latter set of variances are not granted, then those large oaks and dense forest behind German Brothers will have to be taken down as a result of*

the arbitrary decision to draw the boundary between the SCR-1 zone and the RLD zone 500' off West Lake Road. The DEIS, as supplemented by this FEIS document, also evaluates in depth how the Project is designed to comply with the criteria necessary for granting those remaining area variances. In deciding whether to grant an area variance, the Zoning Board of Appeals will take into consideration the benefit to the Applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community. In making such determination the ZBA will consider:

- 1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;*
- 2. Whether the benefit sought by the Applicant can be achieved by some method, feasible for the Applicant to pursue, other than an area variance;*
- 3. Whether the requested area variance is substantial;*
- 4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and*
- 5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the ZBA, but shall not necessarily preclude the granting of the area variance.*

Comment: As the future owner of "the land adjacent to the land" under the docking facility, the homeowners association may only be entitled to 35 to 50 wet storage spaces. Public Lands Law § 75(7)(a) limits grants of licenses to "adjacent" owners. The owners of the residences in the Project may be members of the homeowners association and have rights of access to the lake through the association; however, their properties are not adjacent to the land under the docking facility and their membership in the association does not make them owners of the clubhouse land that is adjacent. This statutory limitation further justifies reducing the number of boat slips and moorings to 35 to 50. (Forsyth, 0129)

Response: *As discussed above, the Applicant will be conveyed title to the formerly underwater lands along with the rest of the property of German Brothers Marina, Inc., whose predecessor received title to those underwater lands from the State of New York on October 23, 1967. A copy of the Letters Patent from the People of the State of New York, recorded in the Ontario County Clerks Office at Liber 687, Page 432, is attached in Appendix T. After subdividing off the residential lots, Applicant will convey title to the remainder of the property of German Brothers Marina, Inc., including the former underwater lands, to the homeowners association (HOA).*

The Commissioner of Parks, Recreation and Historic Preservation requires any upland owner who is not otherwise exempt, including the HOA, to apply to the Office

of General Services (OGS) for a lease or permit for the use of the State-owned land for the docks and moorings. See Public Lands Law §75(7)(f); 9 NYCRR §270-7.3. Upon receipt of a permit for the docks and moorings, the HOA will lease the entire remainder of the German Brothers Marina property and the docks and moorings to the not-for-profit West Lake Marine Club, Inc., who will operate all of the Marine Club facilities. As indicated in section 44-6(b) of the Dock Law, how the legal or beneficial interest of the upland parcel in any existing or proposed berthing and mooring facility is held is irrelevant.

There is a space on the application to the OGS for the HOA to identify West Lake Marine Club, Inc. as the “agent” who will operate the docks. In turn, West Lake Marine Club, Inc. will allow its membership use of the docks and moorings. The members of the HOA, or for that matter, the members of West Lake Marine Club, Inc. do not own the upland adjoining Canandaigua Lake, and therefore, cannot apply in their own names to the OGS for a lease or permit for the docks and moorings. The HOA will own the upland. If, for some reason, HOA ownership of the West Lake Marine Club parcel will not be effective for obtaining an Office of General Services permit for the docks and moorings, the Applicant will transfer the entire remainder of the German Brothers Marina property to West Lake Marine Club, Inc. or another corporate entity to allow the permit to be obtained.

Should this Planning Board require the Applicant, as a condition of its special use permit, to install six moorings for the use of Town residents, then the West Lake Marine Club, Inc. will accept those residents as members of the Marine Club on an annual basis which will thereby entitle them to use of a dock in return for a membership fee.

Comment: Does the entrance design, signage, and lighting adhere to code or will variances be needed? (Fuller, 0166)

Response: *At this time, final design of the entrance signage has not been finalized. The design of the entry features will be reviewed and approved through the subdivision approval process administered through this Planning Board. The developer will design the entrance features in compliance with the Town Code to the greatest extent possible. Any variances deemed necessary will be requested through the Zoning Board of Appeals.*

4.B.2 Variances

Modification: The list of variances set forth in Table 4-3 of the DEIS has been modified as set forth in the tables below to reflect newly identified variances and variances no longer needed because of modifications to the design of the Project made in response to comments received on the DEIS.

**TABLE 4-1: LIST OF REQUESTED VARIANCES
TO PROTECT NATURAL RESOURCES**

Standard	Applicable Area Requirement (and reference to Zoning Code)	Proposed
<i>Variations for RLD District Standards (Lots 1-15)</i>		
Min. front setback	60' (Schedule I, RLD, single family dwelling)	30' to Road 'A' ROW (Lots 7-13)
Max. height	25' from average finished grade (Schedule I, RLD, single family dwelling)	35' from average finished grade (Lots 7-15)
<i>Variations for SCR-1 District Standards (Lots 16-70)</i>		
Max. density of conservation subdivision	Calculate maximum density OR develop realistic Yield Plan method and apply to all lots proposed for location within SCR-1 (§105-518(C)(1)(a) & (b))	Lots 7-15 located primarily in RLD zone shifted inland to be located partially in SCR-1 zone without counting toward maximum density for SCR-1 zone
Min. conserved land	27.84 acres in SCR-1 zone (§105-518(C)(2)(e))	23.18 acres in SCR-1 (plus credit of 7.79 acres of conserved land in RLD towards 30.97-acre standard to conserve higher value woodlands)

TABLE 4-2: LIST OF REQUESTED VARIANCES FOR LAKESIDE CLUBHOUSE

Standard	Applicable Area Requirement (and reference to Zoning Code)	Proposed
Location of off-street parking in relation to Clubhouse	The 20 required off-street parking spaces shall not be separated by public highway (§105-801(A)(5))	Only 6 spaces (rather than the 20 needed) are located on lakeside of lot next to the clubhouse, another 45 spaces are across West Lake Road
Location of off-street parking in a residential zone	Parking for non-residential uses or parking areas of 5 or more cars for residential use may not be placed any front or side yard. (§105-804(D)(15)(B))	All 51 spaces for West Lake Marine Club are located in the front or side yard.
Min. front setback for Clubhouse	60' (Schedule I, RLD, private water oriented recreation (grandfathered))	38' to West Lake Rd ROW (48' to edge of pavement)
Min. rear setback for Clubhouse	40' to mean high water line (MHW) (Schedule I, RLD, private water oriented recreation (grandfathered))	4' to Lake MHW (deck/dock projects up to 5' over Lake)

Standard	Applicable Area Requirement (and reference to Zoning Code)	Proposed
Clubhouse distance from lake	No Structure within 25' of MHW per §105-301(A)	4' to Lake MHW (deck/dock projects up to 5' over Lake)
Structure Height in RLD for accessory flag pole	Maximum height is 25' ((§105-506(D))(Schedule 1 – RLD)	35' flag pole with spreaders at less than 25'. (The Applicant does not believe the flag pole is subject to this requirement.)

TABLE 4-3: LIST OF REQUESTED VARIANCES FOR CLUBHOUSE ON WEST SIDE OF ROAD

Standard	Applicable Area Requirement (and reference to Zoning Code)	Proposed
Location of off-street parking in a residential zone	Parking for non-residential uses or parking areas of 5 or more cars for residential use may not be placed any front or side yard. (§105-804(D)(15)(B))	All 51 spaces for West Lake Marine Club are located in the front or side yard.
Accessory building dimensions of multi-purpose Pump House	Accessory building shall not exceed 100 square feet in total area and 10' in height (§105-506(C)(2))	Pump House is 1,040 square feet in total area and 16' in height. (The Applicant does not believe the Pump House in an accessory building.)
Accessory building utilities in multi-purpose Pump House	Accessory building may have electricity but no other utilities (§45-4 "Accessory Building or Structure")	Pump House utilities will include electric, telephone, sewer, and water for restrooms and gas dock attendant office. (The Applicant does not believe the Pump House is an accessory building.)
Structure Height in RLD for accessory flag pole	Maximum height is 25' ((§105-506(D))(Schedule 1 – RLD)	35' flag pole with spreaders at less than 25'. (The Applicant does not believe the flag pole is subject to this requirement.)

Note that the potential effects of the Zoning Board of Appeals granting the requested variances shown in Tables 4-1 through 4-3 were considered on October 8, 2008 by the Ontario County Planning Board, which includes multiple lakeside municipalities and takes a wider community view. The County Planning Board recommended approval of the requested variances for protecting natural resources (Table 4-1) and for locating the Marine Club clubhouse on the west side of West Lake Road (Table 4-3). The Board recommended

denial of the requested variances for the lakeside clubhouse (Table 4-2). (See Appendix AA for County Planning Board recommendations.)

As shown on the architectural exhibit for the multi-purpose clubhouse, the Applicant is proposing a nautically-themed cupola. The Applicant also may decide to add a cupola to the marine club building. In answer to a question proposed by the Board – As described in Section 105-1201(B) and 105-1201(D) “church spires, belfries, cupolas, domes, silos and other buildings not used for human occupancy” of less than 5’ in height are not subject to height limitations.

Comment: The applicant's proposal to preserve the grove of oaks and the woods behind the German Brothers property is an excellent one. The Zoning Board would like to see more facts and information on the means and methods of preserving the oaks and woods. Granting variances cannot be the only means available to retain this excellent proposal. (Zoning Board of Appeals, 0108)

Comment: On p. 81 of the DEIS, the Applicant states that denial of the variances will require removal of more trees in the RLD and that the net result would be that the proposed Project would become significantly more visible from West Lake Road and the lake. The Zoning Board would like to see more facts and information on this statement. The Zoning Board believes this statement cannot be taken at face value. A more in-depth review of this statement is needed. Again, granting variances cannot be the only means to obtain less visibility of the development from West Lake Road and the lake. (Zoning Board of Appeals, 0110)

Response: *DEIS Section 4.B.2.c contains the initial analysis regarding whether there are other practicable means, other than the requested variances, to preserve more of the oaks behind the Johnson homestead and the woods behind the German Brothers property. FEIS Exhibits 41A, 41B and 41C, and 42 illustrate a more detailed analysis. Both analyses find that it is impossible to preserve more of the oaks behind the Johnson homestead and the woods behind the German Brothers without a shift of Lots 7-15 and exchange of conserved land along the border of the SCR-1 and RLD zoned land because the zoning boundary between the RLD and SCR-1 zone was arbitrarily drawn 500’ from West Lake Road without regard for the topography of the Project site.*

Two alternatives to save more of the large oak trees behind the Johnson homestead were reviewed in the alternatives section of the DEIS. They included providing alternate road access routes through the German Brothers property (Exhibits 11A and 11B) and through the existing historically significant Johnson Homestead (Exhibits 12A and 12B). Although both alternatives would save more of the oak trees and other buffer trees, they would have greater environmental impacts, significantly increasing the grading/erosion and visual impacts or require removing a historic structure, respectively (see Section 5.E/F of the DEIS).

The variances requested to move the RLD lots further uphill away from the trees and to shorten the front setback to 30', by far represents the simplest, most effective, and natural way to save more trees. Exhibits 41A and 41B prepared for the FEIS show the positive effect of granting the variances with respect to saving trees and reducing earthwork. The advantages of granting the variances are further exemplified by comparing Exhibit 27A with Exhibit 27B of the DEIS. Exhibit 27A shows less trees removed for the Project as Proposed, with the requested variances, and Exhibit 27B shows that if the variances to shift the homes into the SCR-1 portion of the lot are not granted more trees would need to be removed to construct the homes in the RLD portion of the lots. Additional benefits of granting the variances include moving the homes further from the lake and further from the steep slope adjacent to the lake.

The only other option to save more trees (if the zoning variance is not granted) would be to construct retaining walls to lessen the amount and width of fill needed behind the houses to reduce the encroachment into the trees as shown on Exhibit 41B. However, this would save fewer trees than would be saved by granting the variances. For the retaining wall example shown on Exhibit 41B, the trees saved would be about one-third the width saved if the variances are granted (28' vs. 42' – Exhibit 41A vs. Exhibit 41B). Therefore, the proposed variances provide the greatest benefit for saving trees and providing vegetative screening. Also, using retaining walls for this purpose would require more disturbance, and would be less natural looking and more costly.

Note that the potential effects of the Zoning Board of Appeals granting the requested variances shown in Table 4-1 were considered by the Ontario County Planning Board—which includes multiple lakeside municipalities and takes a wider community view—and the County Planning Board recommended approval of the requested variances. (See Appendix AA for County Planning Board recommendations.)

Comment: How can Lots 7-15 be shifted to be partially in the SCR-1 zone without counting towards the maximum density for the SCR-1 zone? They are different districts. (Herbik, 0027)

Response: *Lots 7-15 cannot be shifted to be partially in the SCR-1 zone without counting towards the maximum density for the SCR-1 zone unless the Zoning Board of Appeals grants variances. As currently proposed, Lots 7-15 are indeed split between the SCR-1 and RLD zoning districts. The boundary line between the SCR-1 and RLD zoning districts appears to have been arbitrarily drawn to be 500' off West Lake Road, rather than to follow the topography. As a result, if the Applicant were to build fully conforming lots within the RLD, a great deal of vegetation will be lost. If the Zoning Board of Appeals grants the variances, then a number of large oak trees and forest behind German Brothers Marina can be saved. Even if the variances are granted, the larger portion of each lot will still be located within the RLD zoning district and that portion of the lot will be of equal or greater size to a full RLD lot.*

Section 4.B.2.c of the DEIS also describes how approximately 7.79 acres of land with high conservation value due to the presence of the grove of large oaks behind the Johnson homestead, the woods behind the German Brothers property, slopes, and other ecological features, could be permanently conserved via a conservation easement if the Zoning Board of Appeals grants the Applicant the area variances to shift the dwellings on Lots 7-15 uphill across the RLD's boundary into the SCR-1 zone without counting them toward the maximum density for the SCR-1 zone, and allows the Applicant to offset the lost open space within the SCR-1 zone with a conservation easement over these environmentally more significant acres within the RLD. Although the dwellings in Lots 7-15 would be placed just over or straddling the boundary, a fully compliant lot (and the majority of the square footage of each lot) will remain in the RLD.

The Zoning Board of Appeals can opt to grant this variance by weighing the benefit to the Applicant if the variance is granted, against the detriment to the health, safety, and welfare of the neighborhood or community. In making such determination the ZBA will consider:

- 1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;*
- 2. Whether the benefit sought by the Applicant can be achieved by some method, feasible for the Applicant to pursue, other than an area variance;*
- 3. Whether the requested area variance is substantial;*
- 4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and*
- 5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the ZBA, but shall not necessarily preclude the granting of the area variance.*

These factors are based on the legal standard set forth in Section 267-B of the NYS Town Law and are evaluated in Section 4.B.2.c of the DEIS.

Comment: The applicant is requesting that conserved land in the RLD district be counted towards the conserved land requirement in the SCR-1 district. How can the requirements for one zoning district be met by another zoning district? (Herbik, 0030)

Response: *The conserved land requirement of the SCR-1 cannot be met with land from the RLD, without a variance. That is why the variance from the full 40% requirement has to be granted upon the condition that the Applicant will place the specified additional 7.79 acres in the RLD into a conservation easement. Lots 7-15,*

as currently proposed, are split between two zoning districts: SCR-1 and RLD. The larger portion of each lot is located within the RLD zoning district; therefore, overall these are considered lots within the RLD. Section 4.B.2.c of the DEIS describes how approximately 7.79 acres of land with high conservation value due to the presence of the grove of large oaks behind the Johnson homestead, the woods behind the German Brothers property, slopes, and other ecological features, could be conserved via a conservation easement if the Zoning Board of Appeals grants the Applicant the area variances to shift the dwellings on Lots 7-15 uphill across the RLD's boundary into the SCR-1 zone and allowing the Applicant to offset the lost open space within the SCR-1 zone with a conservation easement over these environmentally more significant acres within the RLD. The Zoning Board of Appeals can opt to grant this variance by weighing the benefit to the Applicant if the variance is granted, against the detriment to the health, safety, and welfare of the neighborhood or community. In making such determination the ZBA will consider:

- 1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;*
- 2. Whether the benefit sought by the Applicant can be achieved by some method, feasible for the Applicant to pursue, other than an area variance;*
- 3. Whether the requested area variance is substantial;*
- 4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and*
- 5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the ZBA, but shall not necessarily preclude the granting of the area variance.*

These factors are based on the legal standard set forth in Section 267-B of the NYS Town Law and are evaluated in Section 4.B.2.c of the DEIS.

Comment: If homes were restricted to a maximum height of 35' (the standard for SCR-1), then I believe views would not be obstructed. The Planning Board should require the maximum height of homes in the SCR-1 district to be 35'. (L. Smith, 0059)

Comment: The Zoning Board encourages the Planning Board not to grant bulk building heights of 45' in the SCR-1 portion of this project. Current zoning allows 35' building heights in the SCR-1. Current zoning allows 25' building heights in the RLD. Again, the Applicant should be encouraged to have this project conform to existing zoning laws. Allowing substantial height variances for additional development only adds to the visual damage being done incrementally year after year. (Zoning Board of Appeals, 0109)

Comment: The proposed building heights are too high. We have building code heights and I would hope the Zoning Board of Appeals sticks to them. (Fuller, 0176)

Response: *As described at the beginning of Section 2, in response to comments received on the DEIS, the Applicant has dropped its requested height variances for all but Lots 7 to 15. The Applicant is still requesting a variance to allow a maximum of 35' from average finished grade for the homes to be built on Lots 7 to 15, which straddle the boundary between the RLD and SCR-1 zoning districts (building heights are measured from average finished grade per Town Code). This variance would allow those homes to be of a height consistent with the adjoining SCR-1 homes and would further allow for the preservation of the mature trees on the hillside in this location.*

As described in Section 4.B.2.c. of the DEIS, the greater height allows the homes to satisfy interior living space square footage expectations while minimizing the footprint of the homes, thereby leaving more outdoor areas and vegetation for preservation, particularly the steeply sloped woodlands behind the German Brothers property. The increased heights of these nine residences will be mitigated by the screening of the now preserved mature woodlands (see Exhibits 41A, 41B, 41C and 42).

Comment: Table 4-3 in the DEIS indicates the maximum height proposed in the RLD is 35', but p.4 states a maximum height of 45' is proposed. Which is correct? (Herbik, 0024)

Response: *The 45' stated on p.4 of the DEIS for the RLD homes was in error. It should have stated 35'. However, in response to comments, the Applicant has since revised the proposed maximum heights for the Project. Lots 1, 2, 3, 5, and 6 in the RLD are now proposed to have homes with a maximum height of 25' consistent with Town Code. The Applicant is going to request a variance to allow a maximum height of 35' for the homes on Lots 7 to 15, which straddle the boundary between the RLD and SCR-1, as part of its proposal to preserve the trees on the hillside at this location, increase buffering, and minimize disturbance to the slope (see Exhibits 41A, 41B, 41C and 42). The request for a maximum height of 35' for the homes on these lots would be consistent with the adjoining SCR-1 homes (for which the Applicant is no longer requesting a height of 45').*

Comment: Table 4-3 in the DEIS is incomplete. The variance to allow a 45' maximum height in the SCR-1 District is not included in the table. It should also be made clear in the table what course of action the developer plans to take if any of the requested variances or special use permits are denied. (Kraus, 0080)

Response: *Because the Project is proposed as a conservation subdivision in the SCR-1 zone, a variance is not required to waive the maximum height requirements for homes in the SCR-1. However, note that the Applicant is no longer requesting a*

maximum height of 45' and is instead proposing maximum heights of 35' from average finished grade, consistent with the standard set forth in the Town Code.

In response to an earlier comment in Section 4.B.2 of this document, above, three new tables have been prepared to reflect the list of requested variances for the Project as currently proposed (see Tables 4-1 to 4-3 at the beginning of this section). The tables also include additional variances identified as a result of comments received on the DEIS, and distinguishes between the variances which would be required for the modified Project as proposed, and the modified Alternative H with a 2,960-square-foot clubhouse on the west side of West Lake Road. If the requested variances are denied, the Applicant will either adhere to the "applicable area requirements" shown in the tables, or simply continue to operate the German Brothers Marina as is.

Comment: A separate table should be prepared to show the variances required for each alternative identified in Section 5. (Kraus, 0081)

***Response:** A table was prepared for the FEIS to show which of the variances requested for the Project as proposed in the DEIS would also be required for the alternatives presented in Section 5 of the DEIS. This table is included as Exhibit 53.*

Comment: BME Drawing 2145-10 indicates in the Site Notes that the parking required is 0.6 spaces per boat slip, which amounts to 75 spaces for marina use on this site. The project only provides 51 spaces. Is a variance being requested for this discrepancy? (Herbik, 0033)

Comment: Town Law 105-614 requires 30 double-long car trailer spaces and 10 single parking spaces for each boat ramp. As these are not being provided, variances would be required. (Herbik, 0036)

***Response:** No variance is required. The parking requirements for marina use were noted on the plans in error. The Applicant is seeking a "private water-oriented recreational facilities, or social clubs" special use permit for the Marine Club, not a "marinas, boat launches, special anchorage areas and associated boating facilities and structures" special use permit. Only boat ramps located at facilities permitted under the latter special use category are subject to the requirement of 10 single and 30 car-trailer spaces. Given the proximity of its members and the proposed condition on the special use permit that would allow only seasonal launching and retrieval of boats, and which would prohibit daily launching and retrievals, the parking requirements for a commercial-style marina operation would not be appropriate or applicable for determining the off-street parking needs for the proposed Marine Club. Rather, as specified by the Zoning Officer in her Zoning Law Determinations dated April 28, 2006, the standards for "community centers and similar places of public and quasi-public assembly not having fixed seating facilities" apply.*

The parking requirements for the Marine Club are 1 space per 150 square feet of gross floor area. Per this standard, the required parking for the 2,960-square-foot inland clubhouse for modified Alternative H would be 20 spaces. Similarly, the requirement for the 2,980-square-foot combined clubhouse/pump house would be 20 spaces.

The Marine Club includes 51 parking spaces, as well as 15 golf cart parking spaces, for a total of 66 spaces. It is anticipated that many of the members of the Marine Club would also access the boating facilities on foot, via the trail network. If the parking requirements for marina use were applied to the currently proposed docking configuration (104 dock slips, 6 moorings) then 66 parking spaces would be required (110×0.6). Even if this requirement applied, it would not make sense in this situation, since so many residents would not be driving to the Marine Club.

As described in Section 4.G.4 of the DEIS, the rules for the Marine Club will establish a mandatory system for coordinating the scheduling of the seasonal launching and retrieval of members' watercraft to and from the lake in order to prevent conflicts that could create traffic congestion. Only those boat owners having a prescheduled launch date and time will be allowed to temporarily stage their boat and/or trailer within the Marine Club parking areas, reducing the need for trailer parking. After launch or retrieval of the watercraft, the boat and trailer will be required to be removed from the Marine Club lot promptly for transport to off-site storage. Therefore, 10 single and 30 double-long parking spaces for boat trailers are not needed for the Marine Club's seasonal boat launch ramp.

Comment: The parking areas proposed for the Marine Club, on both sides of County Road 16, are in front yards. As this is a non-residential use in the RLD, off-street parking regulations would apply and two variances would be needed. (Herbik, 0034)

Response: *This Planning Board agrees that Zoning Code §105-804(D)(15)(a)(2) prohibits the parking of cars in the front or side yard of the West Lake Marine Club lot. The Town Zoning Officer has also made the same determination on August 13, 2008 that the Applicant must apply for an area variance from the prohibition in Zoning Code §105-804 (D)(15)(b) on locating parking for a non-residential use in a front or side yard of a residential zoned lot for the parking areas proposed for the Marine Club. The Applicant must seek variances to allow the parking to occur as presently depicted on the site plan for the modified Alternative H with the clubhouse on the west side of West Lake Road, as well as for the modified Project as proposed in the DEIS.*

In either configuration, West Lake Road bisects the Marine Club lot, causing most of the Marine Club's lot to become by definition front and side yards on both sides of the road. So, both the Marine Club's parking lot on the lake side and its larger lot on the west side of West lake Road have to be located within a front or side yard. The

Applicant is amending its area variance application to the Zoning Board of Appeals accordingly.

As described in the DEIS (Sections 2.E and 4.B.2.a), dedicated parking areas for up to 51 vehicles are proposed to be placed adjacent to and across the street from the clubhouse (6 spaces on the lakeside of West lake Road and 45 spaces on the west side of the road, refer to Exhibit 4C), which would eliminate the present parking along the road and improve safety and visibility. Unlike the current commercial marina, access to the parking and drop off areas from West Lake Road will be limited to the locations with the safest sight lines down West Lake Road and will eliminate the present marina's use of the shoulders along both sides of West Lake Road for its customers and their dry docked boats. The parking areas will be landscaped and buffered from adjoining residential lots and West Lake Road to improve the appearance of the neighborhood.

Comment: Variances are also needed for the less than adequate screening and buffer provided between the specially permitted use and land in the residential district. Town Code §105-804 requires a 50' landscaped buffer between uses. (Herbik, 0035)

Response: *In the Zoning Law Determination issued August 13, 2008, discussed immediately above, the Town Zoning Officer determined that the Applicant does not need to apply to the Zoning Board of Appeals for a variance from the requirement in Section 105-804(D)(1) that a parking lot have at least 50 feet landscaped buffer from the property lines abutting adjoining residences. Rather, this Planning Board is authorized to determine how to apply landscaping standards as part of the special use permit and site plan review process pursuant to Section 105-804(B) of the Zoning Code.*

The Applicant has modified the proposed Project to shift the 45-space parking lot on the west side of West Lake Road further away from the northern property line. A densely landscaped minimum buffer of 30' is now provided between the northern property line and the internal driveway for the parking lot, with more than 50' between the property line and the parking spaces. Section 4.B.2.a of the DEIS describes how proposed landscaped buffers of less than 50' are designed to provide adequate screening so that this Planning Board can exercise its discretion to waive the 50' standard based upon a showing that "existing topography and/or landscaping provides adequate screening" under Town Code §105-804(D)(12). The revised parking lot now conforms with the 50' buffer requirement since no parking spaces are within the 50' buffer zone. Only the access drive between the upper and lower parking areas is located within the 50' buffer zone. As the Code allows for access drives to be located within the buffer, a waiver is no longer required.

The Applicant has also modified the parking lot so that 13 spaces in the upper portion of the parking area would be designed as a reinforced earth and grass overflow parking area. This change would provide for the sufficient parking during peak use

times at the Marine Club, but decrease the amount of impervious surface developed as part of the Project.

Comment: The pump house will require a variance because it exceeds the 100 s.f. total area requirements found in Town Law 105-506(C)(2). (Herbik, 0037)

Comment: Placing the pump house/ storage structure on the east side of the road will require a variance to construct a 750 s.f. accessory structure versus a 100 s.f. accessory structure as allowed in the RLD. (Kraus, 0095)

***Response:** In response to comments, the Applicant is now proposing one design alternative in which the pump house has been eliminated from the Project. Rather, the proposed clubhouse and pump house functions have been combined into one smaller multi-purpose building of 2,980 square feet, as described in Section 2, above. (See Exhibits 39A–39D). For this design alternative, there no longer is an issue of whether the pump house constitutes an accessory use requiring separate area variances for its size, height, and location. Therefore, if this Planning Board approves the site plan for the modified Project as proposed, the Applicant will not have to pursue that part of its variance application that addresses the accessory use issues.*

Nevertheless, a modified pump house has been included in the modified Alternative H, which places a 2,960-square-foot clubhouse on the west side of West Lake Road, and a larger multi-purpose pump house structure of 1,040 square feet on the lake side of West Lake Road (see Exhibits 38A–38E). This modified pump house will contain the office for the gas dock attendant, men’s and women’s restrooms, men’s and women’s lockers, equipment storage, and a general purpose room.

Since the issuance of the DEIS, because of a statement made by the Zoning Officer that in her opinion a variance might be required, the Applicant has already included in its area variance applications to the Zoning Board of Appeals an application for a variance to increase the height and size of the pump house. If this Planning Board selects the modified Alternative H as the site plan for the Project, then the Applicant will have to further amend its variance applications to request a variance to allow the modified pump house to be 1,040 square feet in size, 16’ in height, with electric, telephone, sewer, and water utilities.

Comment: The large number of variances requested (33) is substantial and every effort should be made to limit the number of requested variances. Variances should be the exception rather than the rule. Zoning by variance is an unacceptable scenario. The applicant has a "blank canvas" of over 75 acres and should be able to reduce the size and number of variances needed. (Zoning Board of Appeals, 0105)

Response: *Given that the Project will include 70 lots, a request for 33 variances is less than one variance for every two lots, which is not large. Further, many of the variances are repetitive, and are basically one variance that falls across several lots. Breaking out the variances for each individual lot makes the total seem much larger.*

Nonetheless, the Applicant has modified both the Project as proposed, and Alternative H, to lower substantially the number of variances requested. As described above, the Project has been modified to eliminate the request for height variances for Lots 1-6, eliminate the flag lot variances, and reduce the number of variances for the Marine Club (for both alternative layouts of the clubhouse).

As to the impact of requesting several variances, the granting of multiple variances are regarded as improper rezoning by variance only if the variances “alter in any fundamental respect the zoning scheme” or are “destructive of the purpose to be achieved by the zoning ordinance.” Salkin, New York Zoning Law and Practice (4th ed.), §29:51, at p. 29-75.

The DEIS (Sections 4.B.2.a and c) analyzes in depth whether the requested variances fundamentally alter the zoning scheme by looking at factors such as: whether they would prompt an undesirable change in the character of the neighborhood or be a detriment to nearby properties; whether they are substantial quantitatively or qualitatively; whether they will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Issues considered in the DEIS include whether and how variances are consistent with the Town’s Comprehensive Plan and whether they increase or decrease potential adverse impacts on the environment and the special aesthetic and ecological features associated with the Project’s desirable lakeside sloped and wooded lakeside setting.

*Contrary to the circumstances addressed in court decisions that have found a set of variances impacting a substantial amount of land to constitute improper re-zoning, the area variances requested for the Project would not, either individually or in the aggregate: (i) change the type of use otherwise permitted under the Zoning Code (see *In re Northampton Colony, Inc.*, 16 A.D.2d 830 (2d Dep’t 1962)); (ii) change the permissible residential density of the Project site (see *Van Deusen v. Jackson*, 28 N.Y.2d 608 (1971)), or (iii) create a conflict with the character of the surrounding neighborhood (see *Beach Haven Jewish Center v. Foley*, 13 N.Y.2d 973(1963)(shopping center in residential zone)).*

The variances which will be requested either advance purposes set forth in the Comprehensive Plan and SCR-1 conservation subdivision regulations by increasing the quantity and quality of conserved land and foliage and/or de-intensify the use of existing marina parcel. DEIS Section 4.B.2.c.

Note that the potential effects of the Zoning Board of Appeals granting the requested variances shown in Tables 4-1 through 4-3 were considered by the Ontario County Planning Board—which includes multiple lakeside municipalities and takes a wider

community view—and the County Planning Board recommended approval of the requested variances for protecting natural resources (Table 4-1) and for the design alternative that locates the clubhouse on the west side of West Lake Road (Table 4-3). The Board recommended denial of the requested variances for the design alternative that locates a combined clubhouse/pump house on the lake side (Table 4-2). (See Appendix AA for County Planning Board recommendations.)

4.B.3 Non-Conforming Use

Comment: The existing marina buildings are not required to remain in place if the clubhouse buildings are located on the inland side of West Lake Road (contrary to statement on DEIS, p. 63). Once the use has changed, the buildings would be removed, per the Zoning Officer's 12/17/07 determination. (Herbik, 0002)

***Response:** The 3rd paragraph on p.63 of the DEIS noted that moving the clubhouse to the inland side of West Lake Road "would require" that the existing marina buildings remain in place. This statement was not meant to imply any legal requirement that the buildings remain in place. Rather, the Applicant was proposing to leave the existing marina buildings in place to accommodate the fuel pump attendant and provide storage facilities for the Marine Club, in lieu of developing a new pump house to serve these functions. In this case, the use of the existing buildings would not change, and, therefore, the non-conforming use could continue.*

As described at the beginning of Section 2, the Applicant is now proposing a modified version of Alternative H, in which the clubhouse is located on the west side of West Lake Road, that would include replacing the existing lakeside marina buildings with a new, architecturally improved, and smaller multi-purpose pump house building on the east side of the road.

Comment: To allow the developer to replace one "non-conforming" facility with an even larger "non-conforming" facility, which is much more intrusive on the lake, is totally incomprehensible and makes a mockery of our zoning/planning system. (Kraus, 0086)

***Response:** Now that the Applicant is no longer proposing to keep the existing buildings as part of Alternative H, under any circumstances, the Applicant will not be replacing the pre-existing non-conforming commercial marina with another non-conforming use if this Planning Board approves a special use permit for the Marine Club. Rather, the Project as proposed replaces the non-conforming use with a special use that is permitted under the Zoning Code. It is well-settled law that the "inclusion of the permitted use in the ordinance is tantamount to a legislative finding that the permitted use is in harmony with the general zoning plan and will not adversely affect the neighborhood." *North Shore Steak House v Board of Appeals of Thomaston*, 30 N.Y.2d 238, 243 [1972].*

If this Planning Board finds that the Marine Club satisfies the Zoning Code's criteria for special uses, which criteria are evaluated in depth in the DEIS at section 4.B.2.a, then the Marine Club as proposed will be confirmed to conform with and be in harmony with the Town's zoning plan.

This is preferable to the continuation of the pre-existing non-conforming use, which, due to fairness and constitutional concerns, is given only "grudging tolerance" by courts and municipalities. "[T]he overriding public policy of zoning in New York State and elsewhere is aimed at ...reasonable restriction and eventual elimination" of non-conforming uses. Toys "R" Us v. Silva, 89 N.Y.2d 411, 417 (1996) (cites omitted). The Applicant will be helping to bring the use of the German Brothers parcel within the Town Zoning Code.

The FEIS describes how, in a number of respects, the proposed Marine Club would be smaller and less intrusive on the lake than the present marina. For modified Alternative H, at 1,040 square feet, the multi-purpose pump house building on the lakeside would be smaller than the existing buildings. For the modified version of the Project as proposed in the DEIS, the size of the lakeside structure would be reduced to 2,980 square feet, which is approximately equal to the combined square footage of the two existing buildings at 2,950 square feet. For both design alternatives, the proposal will eliminate the noise of the commercial marina's loudspeaker system, as well as abate boat and car traffic associated with the commercial boat repair, rentals, put-in, daily launches, and dry-dock storage. On the lakeside of the lot, the Marine Club will replace the existing older tired marina structures with a nautically-themed, architecturally detailed structure and replace a substantial area of paved surface north of the clubhouse with lawn and landscaping of native vegetative materials. (DEIS Section 4.B.2.a). The docking and mooring facilities will be reconfigured to reduce how far the furthest moorings extend into the lake, to occupy 1.1 acres less lake surface and to direct dock and mooring users to access the facilities from deeper water and discourage near-shore traffic adjacent north and south of the Project.

4.B.4 Density Calculation

Comment: It is too late for the Applicant to submit an alternative base density Yield Plan for the SCR-1 zoned portion of the Project site because the Yield Plan must be presented as a sketch plan, submittal of a sketch plan is a pre-application procedure, and the Applicant had already "made a formal application for Preliminary Site Plan Approval on 9/10/2005." The Town Zoning Code requires the Yield Plan to "be prepared as a sketch plan in accordance with the standards of the Subdivision Regulations contained in Chapter 90 of the Town Code" (§105-518(C)(1)(b)(i)), and Section 105-518(E)(1)(a) of the Town Zoning Code provides that the submission of a sketch plan is a pre-application procedure. (Herbik, 0008)

Response: *The Zoning Board of Appeals determined on April 8, 2008 that the Yield Plan was timely submitted. That ruling by the Zoning Board of Appeals upheld a prior determination of the Zoning Officer that the Yield Plan had been submitted*

timely. The Yield Plan was submitted as a means of calculating the maximum permissible density for the SCR-1 zoned portion of the Project site. The Applicant, however, has not proposed building as many dwellings as the Yield Plan would allow.

Under Section 105-518(C)(b) of the Zoning Code, a Yield Plan may be submitted “as an alternative to the formula based approach” for calculating “the maximum number of residential units allowed on a site (base density)” in an SCR-1 conservation subdivision. The Yield Plan must “be prepared” with a degree of detail that is like that of a pre-application sketch plan. Town Zoning Code §105-518(C)(1)(b)(i). The Zoning Code states that the Yield Plan may be submitted as part of the formal application for approval of the Preliminary Plat. Zoning Code §105-518(E)(2)(a)(i).

Moreover, the process for reviewing the Yield Plan is not like that of the optional sketch plan that an applicant may submit for a “sketch plan discussion with the Planning Board prior to the applicant making any formal subdivision submission.” Zoning Code §105-518(E)(1). Instead, the conservation subdivision Yield Plan is a “density calculation” that must be submitted as part of the formal two-part subdivision application process, which starts with the Preliminary Plat application. Zoning Code §105-518(E)(2)(a)(i).

The Town’s Zoning Officer concluded, in her Zoning Law Determination dated February 7, 2008, that “it is within the preliminary subdivision application that the applicant submits the base density or the yield plan calculation.” The Zoning Officer went on to state that, “therefore it is not past the time of which the applicant can submit a yield plan.” In a Zoning Law Determination Appeal Memorandum dated March 24, 2008, the Zoning Officer explains that, although the Yield Plan must be presented to the Planning Board as a sketch plan, the Conservation Subdivision Procedures set forth in section 105-518(E) govern the process for the Yield Plan. Therefore, the Yield Plan was properly submitted as part of the formal application for approval of a preliminary subdivision plat. The Zoning Board of Appeals, in its decision of April 8, 2008, agreed.

Comment: The Revised Scope for the DEIS requires an “evaluation of how Project design is consistent with Clustered subdivision, including density yield (Code §90-29(d)(2) and description of conservation benefits envisioned by use of clustered subdivision in lieu of conventional subdivision.” (Herbik, 0200)

Comment: The clustered lay-out proposed for the SCR-1 zoned portion of the site is not in compliance with the Town’s Chapter 90 subdivision regulations. Under the cluster subdivision regulations set forth in Chapter 90, the Applicant is not allowed to use of the Yield Plan to calculate maximum permissible density and the calculation method set forth therein would allow for fewer than 50 dwellings to be placed in the SCR-1 zone, not the maximum of 58 lots calculated in the Yield Plan or the 55 lots proposed. (Herbik, 0013)

Response: *When the Revised Scope was issued, the portion the Project site that is now zoned SCR-1 was zoned R-1-30, and former Zoning Code §90-29(D)(2) was the applicable rule which described how project density was to be calculated if the Planning Board were to exercise its discretion under former Zoning Code §90-29(C) to modify the underlying zoning to allow a clustered subdivision.*

However, since the issuance of the Revised Scope, the Zoning Code and map were amended in three significant ways. First, the SCR-1 zone was created with its own rules for clustering in a “Conservation Subdivision.” Second, the approximately 58.2-acre inland portion of the Project site, to which this scoping requirement applied, was rezoned from R-1-30 to SCR-1. Third, former Town Code §90-29 was amended (twice). Because the SCR-1 zone contains its own Conservation Subdivision rules which allow clustering, there is no need for Section 105-518 to be modified to allow clustering. In turn, amended Town Code §90-29(D) only applies where the Planning Board exercises its discretion to modify the otherwise applicable code to allow clustering. Thus, the method for calculating base density for current SCR-1 zoned portion of the Project site is set forth in the “Conservation Subdivision” found in new Section 105-518(C)(1) of the Town Zoning Code, and not in Town Code §90-29(D)(2). The DEIS evaluates the consistency of the Applicant’s proposed (clustered) residential conservation subdivision with the clustered subdivision rules that now apply to the site, i.e., the “Conservation Subdivision” rules of Town Zoning Code §105-518(C)(1).

Town Zoning Code §105-518(C)(1)(b) allows Applicant to offer the Planning Board a Yield Plan from which base density is determined. If the Planning Board agrees that the proffered Yield Plan is realistic, then the number of dwellings shown on the Yield Plan becomes the base density for the Project. The Applicant has proposed a Yield Plan that has 58 dwelling units on a comparable number of residential lots in the SCR-1 zoned portion of the Project site. If the Planning Board accepts the Yield Plan, then the base density for the SCR-1 portion of the Project would be 58 dwelling units. The Applicant, however, is not proposing 58 dwelling units for the SCR-1 zone; the Applicant is proposing 55 dwelling units.

If the Planning Board does not determine that the proffered Yield Plan is realistic and does not accept the Yield Plan, then base density is calculated according to the formula found in Town Zoning Code §105-518(C)(1)(b). As detailed in the table set forth below, that calculation method generates a base density of 51 dwelling units.

TABLE 4-4: BASE DENSITY CALCULATION

	Acres
Total Acreage in SCR-1	58.2
Total Constrained Land	7.60
<i>Existing Areas within 100-Year Floodplains</i>	0.0
<i>Existing Watercourses</i>	0.0
<i>Existing Steep Slopes (> 20% – §90-29(F)(2)(b)) (all slopes >20% are in the RLD – 6.17 acres)</i>	0.0
<i>Existing Woodlands > 1 Acre (approx 7.5 acres)</i>	5.0
<i>Existing Wetlands (Wetland A – 0.69 acres and Wetland B – 1.27 acres)</i>	1.96
<i>Existing Public Utility, Structures, Improvements (S & J Morrell permanent sewer easement 30' x 1245' – 744 ft or 0.51 acres in SCR-1 and 501 ft or 0.35 acres in RLD)</i>	0.64
<i>Existing Drainage Control Areas/Right-of-Way</i>	0.0
Total Unconstrained Land (58.2 acres – 7.6 acres)	50.60
Required Open Space – 40% of Usable Land (§518(C)(2)(e)(ii)) (0.40 x 50.60 acres)	20.24
Land in SCR-1 Required to be Conserved By Conservation Easement (Constrained Land + Required Open Space) (7.6 acres + 20.24 acres)	27.84
Usable Land for Development	50.60
Base Density (Useable Land x 1 Dwelling Unit Per Acre – §518(C)(1)(ii)) (50.60 rounded up to 51 acres x 1)	51 Dwellings

Attached as Exhibit 44 is map illustrating how the lots for those 51 dwelling units might be located within the SCR-1 zoned portion of the site. Four lots were removed along the western property line and the remaining lots in that location were made wider. The environmental impacts associated with this revised plan would be similar to the Project as proposed.

As discussed in the DEIS (Sections 4.B.2.c and 4.B.2.d), the Applicant’s actual proposal is for 55 lots in the SCR-1 zoned portion of the site with partial overlaps from 9 lots in the adjoining RLD zone. The overlap, which will be made only if the Zoning Board of Appeals grants the applicable variances, furthers the objectives of the conservation subdivision rules by conserving the higher-quality portions of wooded and sloped lands in the RLD portion of the Project site, in addition to the

wetlands, utility easements, and +5 acres of woods in the SCR-1 zone. The net result would be to preserve permanently a total 30.87 acres of conserved land subject to a conservation subdivision in favor of the Town (consisting of approximately 23.01 in the SCR-1 zone and 7.79 acres in the RLD zone), rather than 27.84 acres in the SCR-1 portion of the site.

The DEIS does not evaluate the application of the clustered subdivision requirements of Town Zoning Code §90-29 to the RLD zoned portion of the site, because the Applicant is not proposing a clustered subdivision for that portion of the Project site, and because the Zoning Officer has indicated that clustering is not permitted in the RLD. See the first footnote to the “Base Density Calculation” for the SCR-1 zone, dated April 3, 2008, attached in Appendix W. The Applicant proposes to achieve these objectives for the RLD zoned portion of the site by means of a conventional subdivision layout with area variances to be issued by the Zoning Board of Appeals, instead of via a clustered subdivision.

So, the DEIS evaluates the conservation benefits, which might otherwise have been accrued in the RLD zone had clustering been proposed and available, and how those benefits can be achieved via several area variances during the conventional subdivision process. Section 4.B.2.c of the DEIS describes how approximately 7.79 acres of land with high conservation value—due to the presence of the grove of large oaks behind the Johnson homestead, the woods behind the German Brothers property, slopes, and other ecological features—could be conserved via a conservation easement if the Zoning Board of Appeals grants the Applicant the area variances to shift the dwellings on Lots 7-15 uphill across the RLD’s boundary into the SCR-1 zone without counting them toward the maximum density for the SCR-1 zone, and allows the Applicant to offset the lost open space within the SCR-1 zone with a conservation easement over these more environmentally significant acres within the RLD. Although the dwellings in Lots 7-15 would be placed just over or straddling the boundary, a fully compliant lot (and the majority of the square footage of each lot) will remain in the RLD. Section 4.B.2.c of the DEIS also describes how this non-clustered layout, as facilitated by the requested area variances, is consistent with the Town’s Comprehensive Plan, Shoreline Development Guidelines, and Limited Development Overlay district standards.

Comment: The Planning Board has to decide if the submitted "yield plan" is realistic and reflects a pattern of development that could reasonably be expected to be implemented. (Herbik, 0009)

Response: *The commenter is correct in stating that this Planning Board will be determining whether the Yield Plan is realistic. If this Planning Board does not determine it is realistic, then it cannot be used to determine base density. As acknowledged in the DEIS (Section 4.B.2.d), this Planning Board, “at its sole discretion, must determine whether the layout shown on the Yield Plan is realistic, reflecting a development pattern that could reasonably be expected to be*

implemented under conventional subdivision review.” Town Zoning Code §105-518(C)(1)(b)(ii).

It is, nevertheless, Applicant’s “right” to select at its discretion the yield plan methodology for determining base density according to Town Zoning Code §105-518(C)(1)(b), which states that

[a]s an alternative to the formula based approach described..., the maximum number of residential units allowed on a site (base density) may be calculated using a Yield Plan. The applicant may choose to utilize this alternative, rather than the formula based approach described in a above, at their discretion.
[emphasis added]

The yield plan methodology is then used to determine base density, unless this Planning Board subsequently determines that the plan offered by the Applicant was not realistic. Section 4.B.2.d of the DEIS evaluates whether the Yield Plan shows a realistic development pattern for 58 dwelling units in the SCR-1 zone that preserves woodlands, wetlands, and easements that could reasonably be expected to be implemented under conventional subdivision review.

Comment: The use of the term “As-of-Right” in the title of the Yield Plan drawing implies that the plan complies with all applicable zoning regulations, which it does not, and would allow completion of the Project as drawn without further scrutiny, discretionary action, or the required finding by the Planning Board. The Planning Board first has to make a finding that the plan is realistic, so it is not “as-of-right,” and therefore the “As-of-Right” term must be removed from the DEIS text and all maps/drawings/exhibits. (Herbik, 0010)

Comment: "As-of-Right." Others have spoken in depth against this and I concur with them. (Fuller, 0170)

Response: *Since it is up to the Applicant to choose the method that it proposes for determining the base density (maximum number of units on a portion of the site), the Yield Plan can properly be termed an “As of Right.” However, in order to eliminate the potential for a mistaken impression that the proposed Yield Plan has already been determined by the Planning Board to be realistic, “As-of-Right” will be omitted from the title of the Yield Plan that is attached to the Final Environmental Impact Statement (Exhibit 19A).*

4.B.5 Special Use Permit

Comment: The project does not meet three of the four factors the Planning Board must consider for approval of a special use permit. It would not meet the goals/objectives/policies of the Town’s Comprehensive Plan or the purposes of the Zoning Law. The location, size, use, and operation are not consistent with the orderly development in the zoning district. The project would also be more objectionable than normally permitted neighboring uses. (Herbik, 0003)

Response: *The DEIS (Section 4.B.2.a) analyzes in depth how the Marine Club is designed for consistency with the objectives and policies of the Comprehensive Plan, the purposes of the Zoning Code, and the orderly development of the zoning district, and therefore, is no more objectionable than any normally permitted use to neighboring uses in terms of air emissions, odors, water pollution, unsightliness or other nuisance conditions. Moreover, the Marine Club will clearly be a less intense use than the pre-existing non-conforming commercial marina because it will eliminate the noise of the commercial marina's loudspeaker system, as well as abate boat and car traffic associated with the commercial boat repair, rentals, put-in, daily launches and dry-dock storage. On the lakeside of the lot, the Marine Club will replace the existing older tired marina structures with a nautically-themed, architecturally detailed structure and replace a substantial area of paved surface north of the clubhouse with lawn and landscaping of native vegetative materials. (DEIS Section 4.B.2.a). It will also result in more complete remediation of the existing petroleum contamination.*

Further, in response to the comments, the proposal has been modified to include two design alternatives that reduce the size of the facilities proposed for the Marine Club. A modified version of Alternative H from the DEIS would place a smaller, 2,960-square-foot clubhouse on the west side of West Lake Road with a 1,040-square-foot multi-purpose pump house building on the lakeside. A modified version of the Project as proposed in the DEIS would combine the proposed clubhouse and pump house buildings (a total size of 4,750 square feet) into one multi-use building with 2,980 square feet, which is comparable to the 2,950 square feet aggregate area of the two existing commercial marina buildings presently on the site. For both alternatives, the docking and mooring facilities will be reconfigured to reduce how far the furthest moorings extend into the lake, to occupy 1.1 acres less lake surface, and to direct dock and mooring users to access the facilities from deeper water and discourage near-shore traffic adjacent north and south of the Project.

Factors cited in the DEIS bearing on the three factors include: replacement of a non-conforming commercial marina with a special use specifically provided for under the Zoning Code; elimination of the noise and traffic impacts associated with commercial boating sales, rentals, and repairs, and the launching and retrieval of dry docked boats by transient boaters; replacement of the marina's commercial/industrial style sheet metal sheds with nautically-themed and architecturally detailed clubhouse or pump house designed to be consistent with the Comprehensive Plan's Shoreline Development Guidelines; replacing the storage of approximately 35 boats across West Lake Road with three residences and appropriately landscaped and buffered off-street parking; replacement of some paved area with landscaping and installation of stormwater management facilities that will improve the quality of runoff from the site; and strict operational rules regulating hours and activities at the Marine Club to prevent disturbing neighbors.

Comment: It is debatable whether the Special Use Permit for the clubhouse extends to an accessory marina. (Herbik, 0006)

Response: *An accessory marina is not being proposed. The docks and moorings are integral part of the Marine Club, not a separate or accessory use. Instead, as described in Section 4.A of the DEIS, the Applicant is proposing the Marine Club in order to provide private club access to lakeside amenities for the members and their guests to enjoy boating, sunning, scenic views, and other recreational and social activities that take advantage of a lakeside location. Therefore, like a yacht club, docks, moorings, fuel dock, boat ramp, parking, and the clubhouse and/or pump house are integral parts of the same use.*

See response to comment in Sections 2.D.1 and 4.A.3 above. In a decision dated June 15, 2007, Judge Kocher of the New York State Supreme Court affirmed the determinations of the Town Zoning Officer that the proposed Marine Club qualifies for consideration by this Planning Board for a special use permit for “private water oriented facilities, or social club” (“PWORF or SC”) and that the allocation of docking and mooring spaces for such a use under the Dock Law should be based on the Dock Law’s non-residential category for “marinas and yacht clubs.”

Judge Kocher’s decision has been upheld by a decision of the Appellate Division, Fourth Department of the New York State Supreme Court, entered October 3, 2008. Although two justices dissented as to whether the Appellants had standing to appeal the Zoning Officer’s Dock Law determinations to the Zoning Board of Appeals, those two dissenting justices explicitly concurred with the majority in finding that the proposed Marine Club qualifies for consideration by this Planning Board for a special use permit for PWORF or SC and that the allocation of docking and mooring spaces for such a use under the Dock Law should be based on the Dock Law’s non-residential category for “marinas and yacht clubs.”

Thus, while the appellants have the option of furthering their appeal to New York’s highest court, the Court of Appeals, if they continue to feel strongly about the 500-square-foot dock now incorporated into the design alternative with the combined clubhouse/pump house on the lake side (Exhibit 39A), and this alternative is selected by the Planning Board at the end of the SEQRA and land use process, the clear weight of judicial opinion (one lower court judge and all five appellate court justices) is that Marine Club qualifies for a special use permit for PWORF or SC and that the allocation of docking and mooring spaces for such a use under the Dock Law should be under the All Other Land Uses category.

The Applicant acknowledges, however, that it proceeds in part at its own risk because the Applicant will not be entitled to rely on any land use approval premised on an interpretation of applicable Zoning Code or Dock Law that is subsequently reversed or modified by the Court of Appeals, should the litigants seek to further appeal this matter.

Also, on August 13, 2008, the Ontario County Planning Board voted in favor of approval of the issuance of a special permit for a PWORF or SC use for the Project by this Board. On October 8, 2008, the Ontario County Planning Board voted to disapprove the site plan and variances for the lakeside clubhouse, but voted in favor of approval of the site plan and variances for the inland clubhouse for the Marine Club. The Ontario County Planning Board then voted in favor of approving the subdivision for the project, and the site plan and variances for the residential portion of the project. (See Appendix AA.) After completion of SEQRA, this Planning Board will consider that disapproval and those approvals by County Planning Board along with the decisions from the courts, the comments made during the public hearing on the application for the special use permit, and this Board's SEQRA Findings in determining whether to grant a special use permit for the West Lake Marine Club.

Comment: There should be a minimum lake frontage for each single family dwelling. What if every homeowner on the lake forms a "club" and moored member boats? (Beca, 0070)

Response: *Under the Dock Law, a lakeshore resident could not increase her allocation of docking and mooring spaces by renaming her property as a "club" and allowing "members" to store their boats on her property, because the Dock Law will continue to allocate water slips under the residential category based on the use of the resident's use of her land for a "dwelling." Dock Law §44-5(A).*

The Marine Club and its docks and moorings will be owned by the homeowners association which is a not-for-profit corporation, and leased to and operated by another not-for-profit corporation, the West Lake Marine Club, Inc., for the benefit of its members and their guests. If this Planning Board selects a site plan with six moorings for Town residents, then the Marine Club membership will not be identical to the owners of the residences of the Project.

The West Lake Marine Club is a private, water-oriented recreational facility or social club and, therefore, under the Dock Law, is allocated docking and mooring spaces based on the Marine Club's lineal feet of shoreline under the non-residential category applicable to marinas and yacht clubs. See DEIS Section 4.B.2.b. The Project does not consist of any residential dwelling lots on the lakeshore, so there is no basis under the Dock Law for allocating docking and mooring spaces on the basis of individual dwellings.

The set of conditions surrounding this development proposal are not likely to exist at another site in the Town of Canandaigua. Additional docks are available for the Project's West Lake Marine Club only because the pre-existing non-conforming German Brothers Marina is proposed to be replaced with a "private water oriented recreational facility and social club" (PWORF or SC). Thus, the present and future land uses of the German Brothers Marina parcel are not "normally classified as a place of dwelling." Dock Law §44-4. In addition, the PWORF or SC special use permit as well as the marina special permit have been discontinued and are no longer

available for any future developer in the RLD. Moreover, other large, undeveloped lakeside parcels with significant frontage on Canandaigua Lake do not exist, let alone parcels that adjoin another lakeside parcel that is zoned RLD and contains a large pre-existing commercial marina. There simply are no other large undeveloped residential parcels adjacent to an existing marina in the Town of Canandaigua.

Comment: If the special use permit is denied then ownership of the German Brothers Marina will be transferred to the developer, and it will continue to operate as a public marina. However, residents of this development will have first priority on the docking and mooring spaces, and over time the end result will be a "de facto" private marina, even though no special use permit was ever issued. The Planning Board needs to take these facts into consideration and/or establish some special conditions/restrictions regarding these matters. (Kraus, 0084)

Response: *Nothing in the rules on non-conforming uses contained in the Town Zoning Code Chapter XIII or in the Dock Law deems a change in clientele to be an abandonment or discontinuation of the non-conforming use. See Town Zoning Code §105-1303; Dock Law §44-9. Absent a modification that significantly enlarges, extends or expands the nonconforming use or buildings, a mere change in clientele does not constitute a change that will trigger loss of a property's nonconforming use status. Rosbar Co. v. Bd. of Appeals of the City of Long Beach, 67 A.D.2d 709; 412 N.Y.S.2d 641 (2d Dep't 1979).*

With the recent amendment to the Zoning Code in 2007 which eliminates marinas as one of the special permitted uses in the RLD zone, the only way to bring the German Brothers Marina into conformity with the Zoning Code is by granting the Applicant's requested special use permit. As discussed in Section 4.B.3 of the FEIS, the Project as proposed replaces the non-conforming use with a special use that is permitted under the Zoning Code, and would therefore be in conformance with the Town's zoning plan.

Comment: The developer made some effort to address the standards for issuing special use permits in the DEIS, but in a disingenuous fashion that make it come out the way they want it to, primarily as it concerns developing a clubhouse and 125 in-water space private marina on the east side of West Lake Road. (Kraus, 0088)

Response: *As described above and in the DEIS Section 4.B.2.b, the Marine Club is to be operated under a special use permit as a private water oriented recreational facility or social club, and not a marina. DEIS Section 4.B.2.a analyzes in depth how the Marine Club is designed to satisfy the standards for issuing special use permits.*

The Applicant has also modified the Project in response to the comments received on the DEIS. One of the primary modifications is to develop two design alternatives for the Marine Club. The first alternative would locate the clubhouse for the Marine

Club on the west side of West Lake Road to reduce the size of the clubhouse and replace the existing buildings on the lake side of West Lake Road with one smaller multi-purpose pump house building. The new multi-purpose building would be located in the same general location as the existing 40' x 40' boat repair shop, but will be significantly smaller, serve as a pump house, and provide storage and restroom facilities. The second alternative would eliminate the proposed separate pump house and combine its functions into a resized (smaller) combined clubhouse/pump house located on the lake side of West Lake Road.

Although the Applicant would prefer to build the modified Project with the smaller combined clubhouse/pump house on the lake side of West Lake Road based on considerations of user safety, the Applicant has indicated that it would build the modified alternative with the clubhouse on the west side of West Lake Road if that alternative were selected by this Planning Board and granted the requisite variances by the Zoning Board of Appeals.

In addition, in response to the comments received on the DEIS about how far the moorings extended into the lake and about the amount of wet storage provided, the Applicant has modified the docks and moorings for the Project so that the new docks and moorings will end closer to shore than the existing moorings, occupy 1.1 acres less lake surface, and decrease the number of boat spaces to 110 dock slips, which is 15 fewer spaces than previously proposed. Seven of the proposed slips would be reserved for visitors.

The Applicant has also stated that, at the option of this Planning Board, it would accept as a condition of its special permit a requirement to build six moorings for residents of the Town. In addition, at the option of this Planning Board, the Applicant would accept as a condition of its special use permit, a requirement to open the Marine Club's gas dock during the day to other boaters on the lake. To accomplish this, the gas fueling operations would be operated by a separate business entity, not the West Lake Marine Club or the Homeowners Association.

4.B.6 Docking and Mooring Law

Comment: The proposal is not in compliance with Town Zoning Law 105-601 because it includes 81 boat slips and 33 moorings when the as-of-right residential zoning would only allow for 12 total docking and mooring spaces for 587 feet of lakeshore. (Herbik, 0007)

Comment: Canandaigua Lake Association, Inc. continues to hold the position that this project should be bound by the same docking and mooring law that applies to every other residence on the lake. (Brancato, 0132)

Response: *The Project is bound by the Dock Law. The Marine Club lot that will adjoin the docking and mooring facilities has been the site of a commercial marina for decades and has not been the site of a residential dwelling during that time. The Applicant proposes to place a private water-oriented recreational facility or social*

club on the Marine Club lot and no residence. Under the Dock Law, an allocation of 12 docking and mooring slips would apply only if the Marine Club lot were normally used as a place of dwelling. Dock Law §44-4 (defining “Residential Land Use Category”). Thus the Town Zoning Officer has determined that the Marine Club is entitled to a non-residential allocation of docking and mooring spaces under the Dock Law’s category for marinas and yacht club. After appeal to the State Supreme Court from the ZBA ruling that reversed this determination, the court affirmed the ZO’s determination in this regard and, as described in Section 4.A.3, the court’s ruling has likewise been upheld by the Appellate Division.

Judge Kocher’s decision has been upheld by a decision of the Appellate Division, Fourth Department of the New York State Supreme Court, entered October 3, 2008. Although two justices dissented as to whether the Appellants had standing to appeal the Zoning Officer’s Dock Law determinations to the Zoning Board of Appeals, those two dissenting justices explicitly concurred with the majority in finding that the allocation of docking and mooring spaces for the proposed Marine Club under the Dock Law should be based on the Dock Law’s non-residential category for “marinas and yacht clubs.”

Thus, while the appellants have the option of furthering their appeal to New York’s highest court, the Court of Appeals, if they continue to feel strongly about the 500-square-foot dock now incorporated into the design alternative with the combined clubhouse/pump house on the lake side (Exhibit 39A), and this alternative is selected by the Planning Board at the end of the SEQRA and land use process, the clear weight of judicial opinion (one lower court judge and all five appellate court justices) is that Marine Club qualifies for a special use permit for PWORF or SC and that the allocation of docking and mooring spaces for such a use under the Dock Law should be under the All Other Land Uses category.

Also, on August 13, 2008, the Ontario County Planning Board voted in favor of approval of the issuance of a special permit for a PWORF or SC use for the Project by this Board. On October 8, 2008, the Ontario County Planning Board voted in favor of approval of the site plan and variances for the inland clubhouse for the Marine Club. The Ontario County Planning Board then voted in favor of approving the subdivision for the project, and the site plan and variances for the residential portion of the project. (See Appendix AA.) After completion of SEQRA, this Planning Board will consider that disapproval and those approvals by County Planning Board along with the decisions from the courts, the comments made during the public hearing on the application for the special use permit, and this Board’s SEQRA Findings in determining whether to grant a special use permit for the West Lake Marine Club.

Comment: This development does not qualify for apportionment of docking and mooring spaces under the "All Other Land Uses" category of the Dock Law. The overriding consideration in this particular situation is that German Brothers Marina is a "pre-existing

non-conforming facility" in the Residential Lake District. According to Chapter 105-1300 of the Zoning Code, once a use and structures for that use are designated as "pre-existing non-conforming" it shall not be enlarged, extended, reconstructed, substituted, or structurally altered except when required to do so by law. Thus, if the non-conforming public marina is allowed to be converted to a non-conforming private marina, the developer should not be allowed to exceed the existing docking and mooring spaces. (Kraus, 0085)

***Response:** Rather than seeking to continue the operation of the pre-existing non-conforming marina, the Applicant is seeking to establish the Marine Club under a special use permit for private water oriented recreational facilities or social clubs. The Zoning Code provisions that the commenter cites apply to the continuation of a pre-existing non-conforming use. They do not apply to the Project as proposed.*

4.C Open Space and Recreational Opportunities

4.C.1 Boating Access

Comment: The DEIS does not state how the elimination of the German Brothers Marina as a publicly accessible boat launch will affect compliance with the State Comprehensive Outdoor Recreation Plan standards. This is an important issue to the community, and needs to be addressed fully. (Herbik, 0044)

***Response:** As noted on p. 26 of the DEIS, the State Comprehensive Outdoor Recreation Plan (SCORP) standard for boating access referenced in the Town's new Parks and Recreation Master Plan is one launching ramp per 2,500 population. This facility development standard was from the 1994 SCORP. For the 2003 edition of the SCORP, a boating access standard was not presented in the facility development standards.*

For a combined City/Town population of approximately 20,000, a standard of one ramp per 2,500 persons would yield 8 boat ramps. The Town and City currently have 9 to 10 publicly accessible ramps, including the one at German Brothers Marina. The proposed project would convert this ramp to private use, leaving 8 to 9 publicly accessible ramps, which meets the 1994 SCORP standard.

Comment: I keep my boat at German Brothers Marina and may be one of the displaced boat owners. There is no space available in other marinas. If you reduce the supply of publicly available spaces, local boat owners will pay the price in higher storage, dock, and maintenance fees. (Beca, 0068)

Comment: Why are approximately 109 of us being squeezed out of lake access for about 70 multimillionaires? Where does this Town want us to go for boating access? If it's the goal of the Town to restrict lake access, then the new residents should not have access either. RSM

should be required to provide boating access for at least the existing 109 German Brothers customers, plus 70 for their new proposed residents. (Kellogg, 0101)

Comment: Taking away public lake access is not recommended at a time when the public wants more lake access. (Fuller, 0171)

***Response:** German Brothers Marina presently provides access for 103 boats (33 dock slips, 35 moorings, and 35 dry dock spaces). As noted in Section 5.J.2 of the DEIS, a November 2007 inquiry into the number of nearby residents using the existing marina showed that only two users live within a half-mile radius of the marina. At the option of this Planning Board, the Applicant would provide up to 6 moorings for use by Town residents.*

Per the Lake Use Assessment conducted for the Project (DEIS Appendix P), the German Brothers Marina currently provides 9% of total public access to the lake (103 spaces out of 1,127). This estimate includes access from commercial marinas, private clubs with membership available to the general public, and from state boat launches. Approximately, 1,024 publicly accessible spaces would remain once German Brothers Marina is converted into the West Lake Marine Club. If overall demand for public spaces remains the same or increases after German Brothers is converted into the Marine Club, then, as stated in the comments, costs for the remaining spaces may increase accordingly.

As noted in the DEIS, the displaced customers of German Brothers Marina may continue to have lake access by relocating to available spaces at other area marinas or by using the public launches. Displaced users may also shift to using the lake at off-peak times. At the option of the Planning Board, a number of slips could be made available to the public during the transition from commercial marina to full Marine Club.

Comment: The report appeared to argue that the project would have minimal effect on boat traffic because the new boat slips and moorings would be largely offset by the loss of the German Brothers slips and moorings. This assumes that the boat owners who now make use of German Brothers to store and launch their boats would simply disappear, or go to another lake. I find this hard to believe. These owners are not likely to leave Canandaigua Lake because German Brothers closes—they will instead seek other marina accommodations and increase pressure for the construction of a new marina somewhere else on the lake. I believe the net increase in boat traffic resulting from the project will be significantly larger than projected in the report. (Hooker, 0114)

Comment: RSM proposes 125 dock slips and moorings, intended to accommodate nearly three times the number of boat slips currently at the marina, in addition to the boats already at the marina. We emphasize this because early indications suggest that if the boats at German Brothers are displaced, those displaced boats will be relocated to other parts of the lake,

rather than disappearing from the lake altogether, as was stated by the RSM representative at the public meeting. (Brancato, 0133)

Response: *The Applicant has revised the proposed docking facilities for the Project in response to comments received on the DEIS. The currently proposed facilities provide 110 slips and no moorings. Seven of the slips are proposed for visiting boats and the remaining 103 spaces are proposed for the use of members. These 103 spaces are equivalent to the existing level of access at German Brothers Marina.*

As described throughout the DEIS, the Lake Use Assessment conducted for the Project assumed that the German Brothers customers would continue to have lake access through new or expanded marina facilities. For this worst case scenario, the Project as previously proposed would only contribute 16 boats to lake traffic during peak periods. This scenario is unlikely to occur during peak use periods because existing marinas have limited ability to expand due to the constraints of the Dock Law, and there is limited land available around the lake that would be suitable for or zoned for development of new marinas. Lack of available space at the public launches during peak use times would limit the ability of displaced boaters to access the lake at these times without the development of new marina space. Therefore, if 103 new spaces are not developed, the Project as previously proposed would result in no net change in boat traffic at peak use times.

As described in the previous response, if new marina space is not developed, German Brothers customers would still have access to the lake through existing marina space or use of the public launches. Although existing marina space is limited, the public launches would be available at off-peak times. Based on recent aerial surveys, the actual level of lake traffic on a typical weekend is well below predicted peak use levels, and would provide ample opportunity for continued access.

4.C.2 Lake Use and Traffic

Comment: The developer does not point out the Marine Club is to be developed at the north end of the lake, which is by far the most congested portion of the lake. (Kraus, 0092)

Response: *The commenter is correct that the Project is located along the northern third of the lake. Section 3.B.2 of the DEIS discusses the higher level of use in the northern end of the lake, but does not define the boundaries of the northern end. The recently released draft “Draft Canandaigua Lake Boat Use Study and Carrying Capacity Analysis” by the Canandaigua Lake Watershed Council identifies the northern third of the lake as the most congested portion and defines this area as the portion of the lake located north of Menteth Point. See Exhibit 45 of this FEIS for a depiction of the northern, central, and southern thirds of the lake. This exhibit identifies the Project site location, and shows that the Project is in the northern third of the lake.*

Comment: The Applicant needs to focus its discussion of the boating impacts on the northern third of the lake. The Applicant uses the acreage of the entire lake to deduce that the lake currently has plenty of excess boating capacity and that the Project will at worst cause a slight increase in congestion. This assumes a boat taking off from the docking facility will spend one-third of its time in the northern third of the lake, one-third of its time in the middle third of the lake, and one-third of its time in the southern third. (Forsyth, 0122)

Response: *The adopted Scope for the EIS did not require an analysis that focused on the northern third of the lake. The Scope required that the Applicant evaluate the Project's potential to increase boat traffic on the lake at peak use times.*

The Lake Use Assessment conducted for the Project and included as Appendix P of the DEIS, shows that the Project's previously proposed 125 boat slips would, at worst, increase the number of boats on the lake at peak by 16 boats. This worst case assumes that the 9 slips proposed for visitors would provide new access to the lake, which they would not. As it is unlikely the existing German Brothers customers will all remain on the lake, West Lake Marine Club boaters would, in effect, replace many of the German Brothers boaters at peak times, resulting in little to no net change in boat traffic. Therefore, regardless of which portion of the lake the Project's boaters spend their time in, they would not affect the overall amount of traffic on the lake.

In addition, as described in the response below, two recent flyovers during a typical summer weekend and on Labor Day found the boating density in the northern third of the lake for the peak day to be at least 14.2 acres per boat, well in excess of the 6-8 acre per power or sail boat standard used by the State of New York and as a basis for the development of the Dock Law.

Comment: Given that the owners of the 125 boats will live in very close proximity to their boats, I find it very hard to believe that on weekends and holidays only 13 percent of them will be using their boats out on the lake. (Kraus, 0093)

Response: *First, the Applicant has modified the Project in response to the comments to request 103 slips and moorings for the members of the Marine Club, rather than the 125 cited in the comment. Second, peak use rates vary for different areas and different types of access. Average use rates reported in other studies for boats moored along the lakeshore range from 10 to 15 percent during the peak (i.e., 10 to 15 percent of the total boats berthed on the lake—including those at residences and marinas—are likely to be actively using the lake during the peak). In many cases, boat owners who can access the lake from their homes will not use their boats during the highest use periods. Because they have easier access, they can more easily use the lake during less busy periods. As a result, the percent of all boaters with this type of access who are on the water during peak periods tends to be lower than commonly perceived. So, there could be both more or less than the 16 estimated additional boats on the lake. Just as most of us park our cars more than we drive them, it is not surprising that the boat traffic is only a small fraction of the number of boats with*

access to the lake. Further, the actual data obtained by aerial photography show boat traffic as being much lower than predicted.

Comment: The Applicant needs to explain why the Planning Board and the OGS should not in general reduce the number of wet storage spaces at the project to lessen boating density on the lake. According to Table 27 in Appendix P, Lake Use Assessment, the current and projected boat densities on the lake are all less than the optimum densities shown in Table 25. If this is accurate, then the lake has reached and exceeded its carrying capacity for boats. Even if it hasn't already, the lake will reach capacity soon. The Applicant needs to explain why freeing up capacity is not in the best interests of the Town and not "consistent with the public interest in the use" of waters of the lake for "navigation, commerce, fishing, bathing, and recreation"? Public Lands Law § 75. Replacing the German Brothers 68 in-water spaces with a docking facility having as few as 35 to 50 slips and moorings would have many benefits, including less traffic, less noise, and improvements to the water quality. (Forsyth, 0124)

Response: *The Project as proposed in the DEIS would have little to no effect on the level of boat traffic on the lake, and therefore would not change boating density. See DEIS Section 4.B.2.b and the Lake Use Assessment report in DEIS Appendix P. In a worst case scenario, that includes assumptions about future access by current users of the commercial marina which are not realistic, the Project would increase the number of boats on the lake by 16, resulting in a 1% decrease in boating density (the amount of space available for each boat). This decrease would be virtually unnoticeable to boaters. As the Project is not expected to contribute to the perceived problem, the Applicant is not required to provide mitigation.*

Nonetheless, in response to concerns regarding the size of the berthing facilities, the Applicant has modified the number of wet storage spaces. The Project now includes 103 slips for West Lake Marine Club members and 7 slips for visitors, decreasing the number of spaces requested from 125 to 110. The number of spaces for members is equal to the access currently provided at German Brothers Marina. The additional 7 slips would accommodate boats visiting from elsewhere on the lake and would not provide new access to the lake.

In addition, as described in the next response below, two recent flyovers conducted during a typical summer weekend and on Labor Day found the actual boating density for boats underway in the northern third of the lake on the peak day (Labor Day) to be at least 14.2 acres per boat, which is well in excess of the 6-8 acre per power or sail boat standard used by the State of New York and as a basis for the development of the Dock Law.

Furthermore, the flyovers indicate that the number of boats projected in Table 4-2 of the DEIS to be on the lake at peak use in 2008 (859 to 947 boats) is 20–32% higher than the number observed on Labor Day (716 boats). This data supports the validity of the worst case projections in the DEIS and allows this Planning Board to evaluate

the Project's potential impact. The flyover data provides empirical support for the conclusion in the DEIS that the boats at West Lake Marine Club will not generate a significant increase in existing peak use boating densities on the lake now, or at full build out.

There is, therefore, inadequate support for this Planning Board to consider adding restrictions on the number and configuration of boat slips and moorings to the requested special use permit based upon potential safety issue due to the perceived overcrowding of the northern third of the lake.

*Even if there were an overcrowding problem, it would be improper to impose on the Applicant the obligation to remedy a regional problem in this manner. The lake is adjoined by hundreds of parcels of land that are located in several municipalities. It is an improper use of the SEQRA process to force an individual applicant to evaluate and mitigate an existing problem posed by region-wide demand on an ecological resource. See *Jamil v. Village of Scarsdale Planning Bd.*, 24 A.D.3d 552 (2d Dep't 2005) where the developer of proposed nursing home could not be required to mitigate traffic impacts when its traffic study indicated its nursing home would add no more than 1% additional vehicles to area road network.*

The Dock Law was enacted to address the allocation of docking and mooring spaces consistent with preservation of the lake as a recreational and environmental resource. A SEQRA review was conducted on the impacts of the boat density when the Dock Law was enacted, and assessed those impacts. The Dock Law simply does not authorize or require municipalities to impose a moratorium on adding new slips nor to impose on landowners the obligation to reduce the number of slips adjacent to their properties to restore the lake to the "optimum densities" cited by the commenter. Absent the legal authority, doing so by this Planning Board would be akin to taking away private rights without compensation.

*Similarly, the New York State Public Lands Law §75 does not provide an independent basis for this Planning Board to impose on the Applicant the obligation to remedy a regional problem through the elimination of some of the 103 boat spaces that are presently at German Brothers Marina. Public Lands Law §75 provides the Office of General Services with its authority to lease or permit the underwater lands of the State. However, the State Legislature placed primary responsibility for the regulation of the construction and location of docks on Canandaigua Lake within 1,500 feet of shore in the hands of the Town of Canandaigua, and not the Office of General Services, when it passed Navigation Law §46-a(4). The only limitations on the Navigation Law §46-a(4) grant of authority are that: (a) the Town of Canandaigua enact, with the other six municipalities adjoining the lake, the uniform standards, (b) that those standards not be inconsistent with the laws of the United States, and (c) that the New York State Commissioner of Parks, Recreation and Historic Preservation approve those uniform standards in writing. Navigation Law §46-a(4)(b). Those uniform standards are embodied in the Dock Law. See *Canandaigua Lake Uniform Docking and Mooring law, Town Code Chapter 44.**

This grant of authority to the Town of Canandaigua under Navigation Law §46-a(4) is broader authority than granted other local legislative bodies seeking to regulate the construction and location of docks and moorings in their local waters, because the ordinances of those other municipalities must also be “not inconsistent with the laws of this State.” Navigation Law §46-a(2). Therefore, the Dock Law is not required to be consistent with Public Lands Law §75, and it would be inappropriate for this Planning Board to look somewhere other than SEQRA and the Dock Law to guide its environmental review of the Project’s impact on the navigational capacity of the lake.

Comment: The DEIS fail to address the entire boat density issue. Based on the Canandaigua Lake Watershed Council’s Boat Use Inventory and Capacity Analysis, the lake only has 10 to 11 acres of water to support each boat, far less than the 15 to 22 acres per boat recommended for safety for lakes in the U.S. In the northern third of the lake (approximately 5 miles, which includes the RSM project), the boat density is 4.8 to 6.2 acres per boat at peak times. The minimum density required is 6 to 8 acres for all boats and 15 acres for each power boat. If RSM is not required to adhere to the Dock Law, the results will further reduce the number of acres per boat and further threaten safety. (Brancato, 0135)

Comment: Table 25 and Table 27 in Appendix P "Lake Use Assessment" of the DEIS are critical in determining the impact of this proposed development on the lake. Table 25 documents the potential range of optimum densities (carrying capacity) on the lake is between 12.6 and 16.8 acres/boat. Table 27 documents that the current peak use density on the lake is between 10.2 to 11.2 acres/boat. (Boat use densities are counterintuitive in that the lower the acres/boat the more boats are on the lake.) Therefore, using RSM’s own carrying capacity analysis and boat use inventory, the lake is already completely exceeding its carrying capacity range during peak use times and will be even worse after full build out of this project in 2016. The question the Planning Board needs to answer is whether or not it should approve a special use permit for a project that will negatively exacerbate the current situation. (Olvany, 0194)

Comment: The "Draft Canandaigua Lake Boat Use Study and Carrying Capacity Analysis" report recommends a carrying capacity range of 15 to 20 acres/boat. Additionally, the report also documents that the boat use density of the northern third of the lake is between 4.8 to 6.2 acres/boat. The northern third current boat use densities greatly exceed the RSM range of optimum densities. This density is in exceedence of any minimum standard for recreational boat density. The West Lake Marine Club is well within the northern third of the lake and would contribute to current density issues. (Olvany, 0196)

Response: *The Applicant’s proposed Project does adhere to the Dock Law. As a “private water-oriented recreational facility, or social club,” the West Lake Marine Club is not a place of dwelling and its allowable docking and mooring spaces are determined according to the “All Other Land Uses” category of the Dock Law. For the Marine Club’s ± 587 lineal feet of lakeshore, 110 dock slips and 85 moorings would be allowed. The Applicant was previously proposing 90 dock slips and 35*

moorings, well below the allowable spaces. The Applicant has subsequently modified its proposal in response to comments received on the DEIS, and is now proposing 110 dock slips and no moorings, which is even farther below the total allowable spaces. Six moorings would be added if, after completing the SEQRA process, this Planning Board was to decide to approve the special use permit for the Marine Club and to condition that special permit on the Marine Club providing boat spaces for Town residents.

The DEIS addresses boating density in Sections 3.B.2.b, 4.B.2.b, and 9.E, as well as in the Lake Use Assessment presented in Appendix P. As noted in Section 4.B.2.b and in the previous response, the previously proposed Project would have little to no effect on the level of boat traffic on the lake, and therefore would not change boating density. In a worst case scenario, that includes assumptions about future access by current users of the commercial marina which are not realistic, the Project would increase the number of boats on the lake by 16, resulting in a 1% decrease in boating density. This would be an insignificant decrease and would be virtually unnoticeable to boaters.

It should be emphasized that both the Lake Use Assessment in Appendix P of the DEIS and the “Draft Canandaigua Lake Boat Use Study and Carrying Capacity Analysis” prepared by the Canandaigua Lake Watershed Council reflect calculated peak use and density, based on projections from historic data and assumptions regarding the number of plots of land providing access to the lake, assumptions regarding the number of boats per landholder, and assumptions about the rate of use during peak periods. The calculations were based on sound methodologies and the best data available, but they were a “best guess” regarding current conditions on the lake which may not reflect reality.

Moreover, the studies focus on peak use, the one or two days a year when the maximum number of boats are expected to be actively using the lake. Thus, by definition, this theoretical peak is not a common occurrence. The peak may only occur a few times a season, such as on holiday weekends. For the rest of the boating season, lake use can be significantly lower than the projected peak level of use.

In response to comments received on the DEIS and to develop a better understanding actual lake use at present, the Applicant conducted two aerial surveys of Canandaigua Lake. The first was performed on Saturday, July 26, 2008 around 2:00 p.m. The weather was mostly sunny and in the lower 80s. This day was intended to represent a typical weekend day during the boating season. However, despite the best of intentions, this number may not reflect normal summer weekend use because it turns out that there was a boating advisory issued by Sheriff Povero for that weekend due to floating storm debris. The second survey was performed on Monday, September, 1, 2008 (Labor Day) around 2:00 p.m. That afternoon was sunny and in the 80s. This day is likely representative of peak use on the lake.

Exhibit 45 presents the results of the aerial surveys. Based on the photographs taken, for the typical weekend day, 221 power/sail boats were actively using the lake, 8 of which appeared to be water skiing or tubing. Approximately 129 of these total boats (and 6 water skiers/tubers) were in the northern third of the lake. This total includes 83 boats sitting still, 20 of which were parked off Kershaw Park. On Labor Day, 716 power/sail boats were actively using the lake, 7 of which appeared to be water skiing or tubing. Approximately, 445 boats were in the northern third of the lake, and of these, 308 boats were sitting still, 168 of which were parked off Kershaw Park or Squaw Island and 65 of which were parked within the no-wake zone.

The photos show that a significant percentage of the boats “actively” using the lake (i.e., not docked at slips or moorings) are actually sitting still. On Labor Day, 62% of the boats on the lake were sitting still at the time the aerial photos were taken (448 of 716 boats). For Saturday July 26th, 38% of the boats on the lake were sitting still (83 of 221 boats). Most of these boats were located within or adjacent to the no-wake zone, and would have less potential to create user conflicts with higher speed motor-boating activities that require a greater number of flat water acres for safe maneuvering. In the northern third of the lake, which is more heavily used, a substantial percentage of boats observed on Labor Day were parked in a 79-acre area off Kershaw Park and around Squaw Island. Approximately 38% of the boats observed in the northern third of the lake (168 of 445 boats) were located in this relatively small area, leaving the remaining 3,900 useable acres in the northern third available for use by the other 277 boaters in this portion of the lake (65 of which were also parked along the shoreline). In other words, given the observed patterns of lake usage, during peak use periods, a substantial portion of the lake’s surface area remains available for higher-speed motoring boating activities, although average boating density calculations may suggest otherwise.

For the peak day, gross boating density for the lake as a whole would be 13.4 acres per boat (9,611 acres ÷ 716 boats). However, if the boats parked off Kershaw Park and Squaw Island (which are clearly not engaged in active motor boating) are subtracted from the total boats, and the area they occupy is subtracted from the total usable area—which is a reasonable approach given that these boats do not require substantial acreage for the activity in which they are engaged—actual boating density for the lake as a whole would be 17.4 acres per boat (9,532 acres ÷ 548 boats). In the northern third of the lake (4,010 useable acres), gross boating density on the peak day was 9.0 acres per boat (4,010 acres ÷ 445 boats) and actual boating density was 14.2 acres per boat (3931 acres ÷ 277 boats) (including boats parked in the no-wake zone). Gross peak densities in the middle and southern thirds of the lake were 23.1 and 18.6 acres per boat, respectively, which is a conservative estimate that includes boats that appear to be sitting still near the shoreline (2,867 acres ÷ 124 boats, and 2,734 acres ÷ 147 boats). (Acreages were measured using AutoCAD and geo-referenced shape files for the lake.)

These results demonstrate that use on Labor Day (716 boats) was less than the theoretical peaks projected in the DEIS (859 to 947 boats) and the Watershed

Council's Boat Use Study (882 to 1,027 boats). Further, they show that gross boating densities are well within an acceptable range under the Dock Law and the actual boating densities are consistent with the 15 to 20 acres per boat recommended by the Watershed Council. Moreover, the results for July 26th demonstrate that the level of lake use on a typical weekend day is likely lower than the level of peak use. Even if a typical weekend day experiences twice the lake traffic observed on July 26th, the results (442 boats) would still be well below the observed and theoretical peaks.

Comment: The Applicant states that of the 125 boat slips the project will add 16 boats in use on the lake during peak use times. Based on various usage rates this number could be as high as 24 boats. This amount may seem small when comparing to the approximately 900 to 1,000 boats on the lake during peak use times. However, the previous question is still relevant. Does the Planning Board want to add to a situation that based on RSM's numbers already exceeds the lake's carrying capacity? Lake and watershed management impacts are usually from cumulative sources that result from large projects such as RSM and small projects that when combined have substantial long term negative impacts. (Olvany, 0195)

Response: *The DEIS and the Lake Use Assessment report included as Appendix P to the DEIS did account for cumulative effects of future build-out on the lake by developing a projected peak use scenario that assumes additional development around the lake through the year 2016. Under that worst-case scenario, the DEIS calculated that the Project would add only 1.5% additional boat traffic and the resulting density would still be consistent with state recreation standards.*

As described in the previous response, recent aerial surveys demonstrate that actual lake use and actual boat density during peak times is well below the theoretical peaks projected in the Lake Use Assessment in the DEIS and the Watershed Council's Boat Use Study. Current densities on the portions of the lake being used by boats underway are also well within the recommended range of 15 to 20 acres per boat. The aerial surveys also demonstrate that lake use on typical weekend days is likely much lower than that on a peak day. The peak days may only occur a few times a season, like Labor Day weekend.

In addition, in response to the comments received—including the comment above to the effect that a review of the various usage rates could mean that “as many as 24 boats” from the Marine Club might be on the lake at peak use—the Project has been modified to reduce the number of boat spaces requested to only 103 berthing spaces for members of the West Lake Marine Club. As it is unlikely that all 103 existing German Brothers customers will actually continue to have access to the lake during peak times, the West Lake Marine Club would result in little to no net change in boat traffic.

Even if there were an overcrowding problem, it would be improper to impose on the Applicant the obligation to remedy a regional problem in this manner. The lake is

adjoined by hundreds of parcels of land that are located in several municipalities. It is an improper use of the SEQRA process to force an individual applicant to evaluate and mitigate an existing problem posed by region-wide demand on an ecological resource. See Jamil v. Village of Scarsdale Planning Bd., 24 A.D.3d 552 (2d Dep't 2005) where the developer of proposed nursing home could not be required to mitigate traffic impacts when its traffic study indicated its nursing home would add no more than 1% additional vehicles to area road network.

Comment: We urge the Planning Board to avail itself of the "Canandaigua Lake Boat Inventory and Carrying Capacity Analysis" now available in draft form from the Canandaigua Lake Watershed Council for a fuller discussion of the current and future recreational use of the lake by motorized boats. The analysis indicates that expansions of use should be matters of concern. (Lewandowski, 0177)

***Response:** This Planning Board has a copy of the referenced report, as well as comments from the Canandaigua Lake Watershed Council made during the public comment period for the DEIS. Expansions of use are matters of concern to this Planning Board, and thus, the Project's potential to increase lake traffic has been thoroughly explored in this environmental review process. There are also mechanisms to guard against a future increase in the number of berthing spaces at the Marine Club. For example, should this Planning Board decide to grant a special use permit, this Planning Board may include a condition that no future expansion of berthing space occur*

Comment: Little attention has been paid to the actual "mix" of watercraft that will be moored there and the safety issues that will ensue: motorboats and jet skis will jockey with sailboats, canoes, kayaks. (Brancato, 0136)

***Response:** It is anticipated that primarily power boats and sail boats will be moored at the Marine Club. Jet skis are considered power boats and would be required to be stored at a slip. Members will also be able to launch land-based, non-powered watercraft, such as canoes, kayaks, etc., from the Marine Club.*

As described in Section 6.B.6 of the DEIS, speed limit restrictions will be set up within the area to require a no-wake zone when entering or exiting the Marine Club facility. This restriction will help to minimize the potential for conflicts between powered and non-powered watercraft. In addition, the Marine Club management will regulate the docking of boats to allow for increased mobility within the complex and lessen the chance for watercraft accidents. Larger boats will be docked furthest from the shore and smaller, more agile watercraft will be docked closer to shore. Additionally, the Marine Club will require that no boats are allowed to enter the facility from the north or south. Boaters will be required to enter directly from the east of the facility.

Comment: The Applicant needs to explain the impact of jet skis not stored in one of the wet spaces on lake traffic. The Applicant does not address the impact that land-based jet skis or those stored in free-standing hoists will have on boating density. Based on the 2001 Recreation Survey, 16% of the 70 households may be expected to own a jet ski. What will be done to mitigate or avoid impacts associated with jet skis? One alternative that should be addressed is an outright ban on jet skis at the project. (Forsyth, 0120)

***Response:** As noted in Section 2.D.2, all power boats, including jet skis, will be stored in the Project's proposed dock slips. Daily launching and retrieval of jet skis will not be permitted, and as such jet skis will not be stored at the Marine Club buildings and will not be stored in free-standing hoists below the mean high-water line.*

One jet ski will be permitted to be stored at a single dock slip. Therefore, jet ski use at the Marine Club would not have impacts beyond those identified for use of other boats. As currently proposed, the Project includes 110 dock slips for member use. If the seven visitor slips are treated as though they would provide new access to the lake (which they would not), the total amount of watercraft provided access to the lake from the Marine Club would be 110 boats. During the peak, the Marine Club would be expected to contribute up to 14 boats to lake traffic, two boats less than estimated for German Brothers Marina (because a larger percentage of boats stored at commercial marinas are likely to be in use during peak periods than boats stored in close proximity to the members' residences).

To further mitigate potential water quality impacts from jet ski use, the rules of the homeowners association will require that only personal watercraft with 4-stroke engines will be permitted at the Marine Club.

4.D Land

4.D.1 Steep Slopes

Comment: The DEIS should reference the "Local Law Project" report issued by the Genesee/Finger Lakes Regional Planning Council and the Canandaigua Lake Watershed Council in 2007. It has some valuable information about the importance of steep slope management and includes some recommended protection measures. (Bolton, 0049)

***Response:** The Canandaigua Lake Watershed Land Use Law Project, also known as the "Local Laws Project" (May 2007), includes guidance for municipalities on establishing local laws to protect environmentally sensitive areas in the lake watershed. As noted, the importance of steep slope management is addressed, and recommendations include putting into place overlay districts or adopting steep slope overlay zones. Districts are suggested as the easier approach for protecting slopes*

because they work in concert with existing zoning and do not require the adoption of entirely new zoning.

As discussed in the DEIS, the Town of Canandaigua currently has a “Limited Development Overlay” (LDO) District in place, which addresses and protects areas with steep slopes (as well as other environmentally sensitive resources). Portions of this Project are covered by an LDO district and are subject to the LDO requirements. The ways in which the Project meets the LDO requirements are addressed in Sections 4.B.2.a, 4.B.2.c, and 4.B.2.d of the DEIS. These measures include reducing stormwater runoff to existing conditions, improving water quality of site runoff, and implementing an extensive erosion control plan in compliance with the New York State Stormwater Management Design Manual and the New York Standards and Specifications for Erosion and Sediment Control. These measures will prevent the erosion of steep slopes during and after construction of the Project.

In addition, through clustered conservation subdivision and area variances, the Project would permanently preserve through conservation easements 15.75 acres of land with slopes of 10% or more.

Comment: We feel it would be foolish to approve the ruination of fragile hillside. How will future generations consider our legacy of stewardship? (Glatty, 0147)

Response: *The proposed Project would not result in the ruination of the fragile hillside. Most of the proposed homes are located away from the most steeply sloped areas of the site, and the requested variances will allow the Applicant to preserve a large number of existing trees on the sloped areas (see Exhibits 27A–27C in the DEIS and Exhibits 41A–41C in the FEIS).*

In addition, as discussed in the DEIS, several options were considered for providing access to the upland areas of the site. Only one option resulted in less disturbance to the hillside than the currently proposed configuration for Road “A”, and that option required the demolition of the historic Johnson homestead.

Several measures are proposed to minimize and mitigate potential impacts on the hillside, including extensive erosion control, re-vegetating disturbed areas with native species, and, as noted above, positioning the homes on the lots to require the least disturbance to the topography and existing vegetation. As can be seen from the new visual effects exhibits (especially Exhibits 48A–48D), the hill will not appear denuded and a significant amount of existing vegetation will be retained in the foreground, maintaining a significant vegetation presence on the hillside.

4.D.2 Erosion Control

Comment: Drawing 2145-17 shows 9.9 acres of disturbance for Phase 1 construction. This may be correct for the Phase 1 area, but how many additional acres of land need to be

disturbed for a road built from the West Lake Road entrance to the Phase 1 site? That should be added to the plans. (Fuller, 0153)

Comment: The Canandaigua Lake Watershed Alliance continues to be concerned about the project's erosion control plan. We do not find an erosion control plan specific to the development of the access road that would precede the project's five earthwork phases. Traffic over this route during Phases 1 through 4 by vehicles and machinery may destroy the natural vegetation and stable conditions that the developer seems to be relying on for erosion control. We ask that further attention be given to controlling erosion in this area prior to Phase 1. (Lewandowski, 0178)

Comment: I am extremely concerned about the cuts along the steep sloped areas and especially the entrance. These disturbed areas will be exposed to the elements for a longer period of time and considering the history of other developments, not one engineer can guarantee that there won't be mud flowing into the lake. (Fuller, 0173)

***Response:** The proposed Road "A" will not be constructed until the end of the earthwork activities. The intent is to have all areas stabilized and re-vegetated prior to installing utilities and the roadways. As described in Section 6.C.3 of the DEIS, construction access for the initial phases of earthwork will be provided via the existing paved driveway for the Johnson homestead and existing farm drive routes. A stabilized construction entrance will be placed at the end of the driveway (Dwg. 2145-17). The stabilized construction entrance and farm roads will be re-stabilized as needed by adding additional stone in areas prone to erosion.*

Earthwork for construction of Road "A" along the steep slope would be completed in several sub-phases, starting from the top of the slope and continuing downward to West Lake Road. Each phase will be limited to approximately 1.3 acres or less of disturbance, and upland phases of construction will be stabilized prior to beginning work on subsequent phases. (Dwg. 2145-21) Drainage patterns will be established to direct runoff to stabilized areas downhill. Erosion control devices—including filtration through existing vegetation, stone-lined swales, stone check dams, desiltation basins, stormwater management basins, drainage weeps, and silt fences—will be used throughout steep slope construction, and CDS stormwater quality units will be used as a final point of treatment before discharging water to Canandaigua Lake. The CDS units meet the NYSDEC water quality requirement of 80% total suspended solids removal.

Comment: What are the erosion control measures and how will they affect adjacent properties? In particular, what measures are proposed around Lots 5 and 6 and the Fuller property to the south? Please take into account the existing problems with runoff (see photos). (Fuller, 0154)

***Response:** See the previous response for a listing of proposed erosion control measures. The current drainage area flowing to the southeast corner of the Project*

site is 5.7 acres. After construction, the drainage area flowing to that same point will be less than 1 acre. This change should decrease runoff near the Fuller property.

As shown in Table 6-4 of the DEIS, flows to the runoff at this point would be reduced for each design storm by 10 to 67 percent, with the greatest reductions occurring for the more severe storms (Analysis Points D & I).

4.E Natural Resources

Comment: Deer are already a nuisance for Lakewood Meadows residents. I believe the proposed RSM project will force the deer to forage more frequently and more vigorously within the Lakewood Meadows subdivision and other adjoining properties. Section 4.E.3 of the DEIS implies as much, but no mitigation for the inevitable increase in property damage is proposed. The Town should address the question of preventing or mitigating damages caused by the displaced deer population. (L. Smith, 0062)

***Response:** As with any development on a semi-agrarian property there are bound to be a number of native animal species that will be displaced. The development of this Project will not disproportionately increase the number of deer within the general geographical area, but may induce them to travel into more populated areas within the region. Neighboring properties would likely be no more or less attractive to browsing deer than the proposed Project.*

According to a number of different online sources including the NYSDEC and Ontario County, deer have been a nuisance issue in the central New York region for many years. This is not a localized problem to Lakewood Meadows, the Project, and adjoining properties, but a recognized problem within New York State and the greater northeastern United States.

Based upon recent online investigation there are a number of ways to help deter deer damage caused by feeding and browsing on developed properties, including reducing food sources and removing preferred food materials. Hunting, trapping, and fertility control are also under investigation by state and county agencies. Although these agencies have been investigating methods for dealing with deer populations in developed areas, it is not the responsibility of developers or municipalities to address the prevention or mitigation of real or perceived damages caused by browsing of deer.

4.F Water Resources

4.F.1 Drainage

Comment: Exhibit 3B shows three drainage areas. A fourth drainage area should be added to account for the triangular shaped Fuller parcel to the south of the Johnson property.

Runoff drains all along the bank into the ditch, flowing south and into the culvert that runs under West Lake Road into a drywell on the Fuller lakeside property, then underground and into the lake. Prior to the construction of Lakewood Meadows, we did not have problems with runoff. Since the Morrell sewer line went in, the drainage patterns have changed and we now have standing water in the ditch and washouts of our side yard during storms, with mud flowing into the lake. RSM's drainage plan at the south corner of the property should account for this issue. (Fuller, 0157)

Response: *As noted in an earlier response, the current drainage area flowing to the southeast corner of the Project site is 5.7 acres. After construction, the drainage area flowing to that same point will be less than 1 acre. This should decrease runoff near the Fuller property.*

As shown in Table 6-4 of the DEIS, flows to the runoff at this point would be reduced for each design storm by 10 to 67 percent, with the greatest reductions occurring for the more severe storms (Analysis Points D & I).

The commenter is indicating that the flows to the culvert have increased to the extent that they can no longer pass through the culvert causing flooding situations to occur and the resultant increases in flow velocities are causing washouts. The flows will be reduced to a level to ensure that the ditch and culvert capacities will not be exceeded. In addition, a small pocket pond is proposed just upstream of the receiving culvert. The pond will slow the velocity of runoff discharged to the ditch and culvert. The swale will be cleaned and regraded and the culvert will be flushed out to restore its capacity. This action, coupled with the installation of rip rap in the ditch, will prevent ditch erosion from occurring. All of these measures combined should eliminate the problems noted by the commenter.

4.F.2 Wetlands

Modification: Although not addressed in any particular comment received on the DEIS, at this Planning Board's request, the Applicant has modified the layout of the proposed subdivision to further minimize the potential for encroachment on federal wetlands. On the plan submitted with the DEIS, Lots 26 and 27 were located north and south of the wetland in the northwest portion of the property. To minimize potential impacts on this wetland, former Lot 27 has been eliminated and an additional lot placed at a location inside of the loop road in the area formerly occupied by Lot 59 (see revised Exhibits 4A & 4B). After removing old Lot 27, the remaining lots were renumbered. The new lot inserted (next to Lot 59) is designated Lot 58. Eliminating former Lot 27 increases the useable area of Lot 26 thereby reducing the potential for encroachment into the wetland.

In addition, in order to eliminate the potential for Project-generated stormwater to negatively effect the wetland, a storm sewer has been extended to pick up all hard surface drainage from Lots 24, 25, and 26. This storm sewer will convey the hard surface drainage from these lots to the stormwater management ponds rather than allowing it to discharge over land into the northwest wetland.

Likewise, the Board was concerned that the wetland on Lots 35 and 36 was too close to the proposed homesites, therefore encroachment into them would be difficult to prevent. The Applicant is allowed to fill 0.1 acres of wetland without mitigation, therefore as shown on Exhibit 4B, the Applicant intends to fill up to 0.10 acres of wetland on these lots to increase the usable area and decrease the potential of encroachment into the remaining wetland.

4.F.3 Water Quality

Comment: Questioned the claim that there will be minimal impact on water quality. Was concerned at the developer's saying it "appears" to be minimal. What is the truth? Will it be alright or won't it? (Dailey, 0056)

***Response:** As described in Section 4.F.3 of the DEIS, the use of boats at the West Lake Marine Club is not anticipated to have long-term impacts on the lake's drinking water quality. Under a worst case scenario, the Marine Club would only be expected to generate a minor increase in the number of boats in use during peak periods, and would not significantly increase the level of motor-boating activity on the lake (refer to Section 4.B.2.b). Moreover, any contaminants associated with motor-boating activity on the lake would likely only affect surface water quality. The public water supply is drawn from a depth of 45 feet to 55 feet, whereas gasoline pollutant levels tend to be highest near the lake surface.*

Potential effects on surface water quality will be linked to the potential for gasoline contamination from boating activities and fuel dispensing activities. As documented in the DEIS, the Project is expected to result in little to no change in the overall level of boating activity on the lake, and therefore, it would not be expected to contribute to surface water quality impacts.

The potential for contamination from gasoline dispensing will be minimized for the Project as currently proposed because it would eliminate public refueling. The potential for spills will be further reduced through the implementation of procedures to minimize the potential for accidental release of petroleum products into Canandaigua Lake, such as pressure-sensitive hose fittings and restricting the pumping of fuel to a trained dock attendant or service employee. If the Planning Board elects to require that public refueling continue as a condition of the special use permit, then the fuel dispensing procedures would still reduce the potential for spills, but the benefits gained from an overall reduction in refueling activities would not be realized.

Extensive erosion control measures are proposed to prevent discharges of silt, and extensive measures are proposed to reduce phosphorus including banning use of phosphorus in fertilizers.

All of these measures combined will prevent a reduction in the water quality of Canandaigua Lake.

Comment: The developer has avoided identifying the many negative factors associated with switching from 68 in-water spaces to 125 in-water spaces at the marina. The increase in boats stored in the water would result in increased biological impacts. Most residents with lake frontage store their powerboats on boat hoists, not in the water. The negative biological impacts of boats stored in the water is generally much greater than those associated with boats stored on hoists. Although it is difficult to quantify biological effects, more boats would equal more pollution. (Kraus, 0090)

Response: *Although the Project would increase the number of watercraft stored in the water, the potential for increased biological effects would be minimal.*

The potential for biological impacts associated with motorized watercraft is primarily linked to boats in motion, as opposed to boats in storage. Biological effects on fish, plant life, and other aquatic biota can stem from changes in water clarity, water quality, and from disturbance to their environment. Boats can affect these environmental features through pollutant emissions, propeller contact, turbulence from the propulsion system, noise, and waves produced by movement. With the exception of potential pollutant emissions, all of these effects are associated with boat movement and would not be a concern for boats stored along the shoreline. The potential for accidental release of pollutants would also be low for docked boats, as the primary way in which boats release gasoline contaminants into the water is through the combustion process.

Asplund, Timothy R. (2000) "The Effects of Motorized Watercraft on Aquatic Ecosystems." Wisconsin Department of Natural Resources, PUBL-SS-948-00.

Comment: Mr. Hall [in the Messenger Post] sums up the concerns we have had for many years. "This is one of the most potentially harmful projects in recent history." "The potential damage to the lake is too great." "The upcoming decisions on RSM are crucial to the quality of the lake. The decisions may also become precedents for future projects." (Glatty, 0149)

Response: *The Project as proposed will not result in damage to the lake, nor is it a precedent for additional developments in the Town which will cause damage to the lake. Even prior to the modifications made in response to comments, the Project would result in little to no change in-peak boating traffic. As described in Section 4.B.2.b of the DEIS and in the Lake Use Assessment report that is included in the DEIS as Appendix P, even under a worst case scenario that looked at a peak use summer weekend period and assumed that all displaced customers of the existing commercial marina will continue to use the lake by locating their boats somewhere else on the lake, the Project would generate only an additional 16 boats on the lake. Under this worst case analysis, the Project would at worst represent a 1% decrease in the number of acres available to each boat at peak traffic periods relative to projected future use of the lake without the Project (the 2016 No-Build scenario).*

In addition, two recent flyovers during a typical summer weekend and on Labor Day found that actual lake use and boating densities are much lower than the theoretical peaks projected in the Lake Use Assessment. On Saturday, July 26th at 2:00 p.m. there were only 221 boats on the lake (which may not reflect normal summer weekend use as a result of a boating advisory issued by Sheriff Povero for that weekend due to floating storm debris) and on Labor Day at 2:00 p.m. there were 716 boats on the lake. These flyovers indicate that the number of boats projected in Table 4-2 of the DEIS to be on the lake at peak use (859 boats) is 20% higher than the number observed on Labor Day (716 boats). This data supports the analysis in the DEIS, including the worst case projection. Thus, there is empirical support for the analysis in the DEIS that the boats at West Lake Marine Club will not generate a significant increase in peak use boating densities on the lake now, or at full build-out.

This potential minimal impact, however, has been further reduced due to the modifications that the Applicant has made to the Project in response to the comments received, including the one set forth above. The Applicant has reduced the total number of docking and mooring slips sought for the members of West Lake Marine Club from 116 to 103, and has reduced the total number of berthing spaces sought, including visitor slips, from 125 to 110. In the interest of full disclosure, there also remains the possible addition of 6 moorings to be permanently available for Town residents if this Planning Board decides to issue a special permit and so condition the special use permit.

This boating activity would not affect drinking water quality, and would not significantly affect surface water quality beyond what would be expected if the Project were not built. Drainage and erosion control systems will be implemented as part of the Project, and will minimize the potential for harmful discharges to the lake. In addition, the Project will improve the quality of water running off the German Brothers parcel and facilitate the removal of the petroleum contaminated soils presently located beneath the commercial marina's office building.

As discussed in DEIS Sections 4.1.3 and 9.D, and in Section 4.1.2 of this FEIS, below, the Project would not establish a precedent for future projects in the Town that collectively will damage the lake because (1) it is converting an existing non-conforming commercial marina, and there are no other marinas in the Town, and (2) the private water-oriented recreational facility and social club special use permit as well as the marina special permit have been discontinued and are no longer available for any future developer.

The potential effects of this Planning Board granting the special use permit were considered by the Ontario County Planning Board—which includes multiple lakeside municipalities and takes a wider community view—and the County Planning Board recommended approval of the special use permit for the West Lake Marine Club.

4.G Traffic and Access

Comment: The proposed 70 homes will result in increased trips and congestion on West Lake Road. (Beca, 0069)

***Response:** The proposed homes will result in increased trips, but these trips are not expected to increase congestion. Per the traffic study conducted for the Project (see Section 2.E and Appendix C of the DEIS), West Lake Road currently experiences light traffic volumes and little to no delays during peak periods. The proposed Project will result in very minor increases in delay and would not deteriorate the overall performance of area intersections.*

Comment: There is not enough usable land on the lakeside portion of the German Brothers property for the clubhouse; it would be too close to the water and the road. At this location, a substantial number of pedestrians, including children, will have no choice but to frequently navigate an already congested West Lake Road to access parking and upland homes. This situation has not been adequately addressed. (Brancato, 0138)

***Response:** As noted in the response above, the traffic analysis performed for the proposed Project demonstrated that West Lake Road currently experiences light traffic volumes and little to no delays during peak periods (which include the Friday p.m. and Saturday a.m. periods associated with lake-generated traffic).*

However, in response to comments received on the DEIS, like the one above, the Applicant has proposed a design alternative for the Project in which the clubhouse would be located on the west side of West Lake Road (Exhibits 38A–38D). Although the Applicant believes that this location would result in an increased number of pedestrian crossings of West Lake Road and a greater safety hazard during the boating season, the clubhouse will be available year-round, and an inland location would eliminate the need for crossings during the non-boating season, thus improving safety throughout much of the year. In addition, the inland location for the clubhouse would increase the distance between the primary public gathering facility and the fuel dispensing operations, further enhancing safety for Marine Club members.

4.H Aesthetic Resources

Comment: Expressed concern at the deterioration of the west side of the lake. Pristine, beautiful views have disappeared as hillsides are defoliated and rooftops pop up. It is disappointing to have this happen. (Dailey, 0052)

***Response:** The Planning Board understands that longtime residents initially drawn to the lake for its relatively undisturbed, natural qualities would be disappointed that others have found the lake equally appealing and sought to make it their home as well, thereby causing development to occur. The Town's Comprehensive Plan and*

Zoning Code, and SEQRA, are the tools this Planning Board has to balance competing demands. The Applicant is exercising the property rights conferred by the Town under the Zoning Code and the municipalities surrounding the lake under the Dock Law. This Planning Board is requiring the Applicant to go through an extensive SEQRA review process, including requirements to articulate the consistency of the Project with the Comprehensive Plan and Town guidelines.

In fact, recent amendments to the Town Zoning Code affecting the Project site have further protected the scenic quality of the lakeside land by reducing housing densities, requiring a clustered conservation subdivision design in the SCR-1 zoning district, and imposing the Limited Development Overlay district for steep slopes and other ecological features. In addition, the Town has developed Shoreline and Ridgeline development guidelines. The DEIS addresses in depth how the Project has been designed to be in accord with these enhanced protections. There is no obligation under statute or under the Town's Comprehensive Plan, however, that requires a single applicant for an individual project within the Town to refrain from otherwise permissible development or to take on other obligations to prevent or ameliorate the impacts of others' long-term development around the lake. Imposing such an obligation would amount to an unconstitutional taking of private property (even for a public good) without just compensation.

SEQRA also does not prohibit development in or near a regional environmental resource. See Long Island Pine Barrens Society, Inc. v. Planning Board of the Town of Brookhaven, 80 N.Y.2d 500 (1992) where the developers of new projects within the 100,000 acres Long Island Pine Barrens were not required to conduct a study of the cumulative impacts of their project on Long Island's sole drinking water aquifer despite the development's location over it; and Saratoga Lake Prot. & Improvement Dist. v. Dep't of Pub. Works, 46 A.D.3d 979, 986 (3d Dep't 2007) where a water utility proposing to tap Saratoga Lake could not be required to review in its DEIS the possible impacts on water quality posed by all other pending and future developments within the Saratoga Lake watershed.

Further, the Applicant is seeking to avoid defoliating the Project site and to minimize views of rooftops from across the lake to the maximum extent practicable. In response to this comment and others like it, the Applicant has modified the Project to withdraw the request for permission to build the 55 homes in the upper (SCR-1) portion of the Project site to a height of 45 feet. This modification alone will substantially decrease the visibility of the rooftops of those 55 homes from across the lake. The Applicant also continues to seek a series of variances from the Zoning Board of Appeals that will allow more of the large oak trees behind the Johnson homestead and the dense forest behind the German Brothers Marina to be preserved and provide a dense natural (foliated) buffer. While this Planning Board can recommend the granting of those variances, ultimately, it is for the Zoning Board of Appeals to decide whether to grant the variances to save that foliage and increase the buffering of the rooftops or to strictly enforce the Zoning Code.

Comment: The 3-D computer simulations should include the docks and moorings. (Fuller, 0174)

***Response:** As noted in the beginning of Section 2, the Applicant has revised the design of the Project in response to comments received on the DEIS. One design alternative places the clubhouse on the west side of West Lake Road with a new multi-purpose pump house building replacing the existing marina buildings on the lakeside. A second alternative combines the clubhouse and pump house into a single, smaller building on the east side of West Lake Road. New 3-D computer simulations prepared for these alternatives include currently proposed docking facilities (Exhibits 46A, 46B, 47A, and 47B). The 3-D computer simulations exhibits prepared for the DEIS were not revised.*

Comment: The clubhouse would be more visible on the lakeside parcel of land, than on the inland side of West Lake Road. On the inland side of the road, the clubhouse could be visually softened by trees and landscaping. (Herbik, 0001)

Comment: On p. 63 of the DEIS the developer indicates that moving the clubhouse to the west side of West Lake Road would make the clubhouse much more visible from the lake and West Lake Road. This statement is totally without merit. The clubhouse would be more visible from the lake if constructed 4' from the mean high water point than it would be if set at least 60' back from West Lake Road (on the west side) and masked with a suitable variety of plants/trees. (Kraus, 0089)

***Response:** As shown in Exhibits 48A through 48D, the clubhouse in the modified version of Alternative H, on the west of West Lake Road, is much more visible and noticeable when viewed from the lake or the east side of the lake than the combined clubhouse/pump house structure located on the lakeshore, even though they are approximately the same size. Although it may seem counterintuitive, an object or building located right at a natural boundary line, such as where the lake surface meets the land, will appear to blend in much better due to all of the “activity” that occurs at this natural boundary line, including boats on the lake, boats on docks, sail masts, boat lifts, cars on the road, and the road itself. An object or building on the hillside, on the other hand, with lots of green space in front of and behind it, may appear to be “floating in space” and will seem much more visible.*

Although placing the clubhouse on the west side of the West Lake Road does result in additional space in front of the building in which landscaping treatments could be provided to “soften” the visual appearance of the building, there is no existing vegetation at this location to provide screening. Moreover, the Applicant would be reluctant to install significant screening vegetation at this location as it would block views of the lake from the clubhouse. While the Applicant is making every effort to use “native vegetative buffers to preserve existing shoreline views and screen

development along the lake” [emphasis added] in accordance with the Town’s Shoreline Development Guidelines, there is no requirement that significant screening vegetation be installed to take away existing unobstructed views. As shown on the exhibits, many existing homes have unobstructed views of the lake.

Although the exhibits demonstrate that the clubhouse is more visible on the west side of West Lake Road, they also show that the overall visual impact for modified Alternative H is reduced at this location, because the clubhouse would likely be smaller than the home that would be located on this lot for the modified Project as proposed. In addition, replacing the existing marina buildings with a multi-purpose pump house building that has 26’ of frontage along the shoreline (as opposed to 73’ for the combined clubhouse/pump house) would open up the view of the lake from West Lake Road (see Exhibits 49C–49E, which show the view of the lake from the west side clubhouse location).

Comment: On p. 63 of the DEIS the applicant states "Although the West Lake Marine Club would not meet the setback requirements for the RLD zoning district, it would still be consistent with the intent of the setback recommendations in the Shoreline Development Guidelines." The Zoning Board believes this is not a correct interpretation of the Shoreline Development Guidelines. The Zoning Board believes that a reasonable interpretation of the Guidelines would suggest larger rather than smaller setbacks. (Zoning Board of Appeals, 0107)

Response: *As noted on p. 63 of the DEIS, the Shoreline Development Guidelines state that “building setbacks are an effective way to protect sensitive shoreline resources and minimize visual impact.” They further note that the setback distance should allow natural topography and vegetation to screen structures from the lake.*

As discussed above, and demonstrated in Exhibits 48A through 48D, setbacks may not always have the desired effect of reducing the visual impact of a building. An object or building located right at a natural boundary line, such as where the lake surface meets the land, will appear to blend in much better; whereas an object or building set back further and higher on the hillside will appear as an object in space and be much more visible. This can be seen Exhibits 48A through 48D, not only for the proposed Project, but for examples in the adjacent existing development.

For the proposed West Lake Marine Club, meeting the setback requirements would require placing the clubhouse on the west side of West Lake Road, at a higher elevation (40’ difference between finished grade). There is no existing vegetation on this portion of the hill and the topography does not lend itself to natural screening at this location. The end result is that the clubhouse on the west side of the road appears much more visible than a similarly sized structure located right at the lakeshore.

Overall, the visual evidence supports the assertion in the DEIS that a reasonable interpretation of the Shoreline Development Guidelines is that they are intended to minimize the visual impacts of shoreline development and create a pleasing visual appearance. The setback recommendations are one method proposed for reducing visual impacts, to lessen runoff from impervious areas, and to reduce the potential for erosion. Further, it is reasonable to state that Project as proposed meets this intent, particularly given that, as stated on p. 63 of the DEIS, “the setbacks are not necessary to protect sensitive shoreline resources, because 1) the shoreline in this area is already disturbed, and 2) the Project includes several stormwater management and erosion control features that would minimize the potential for erosion and would improve the quality of stormwater runoff from the German Brothers property (refer to Sections 6.C and 6.E for detailed descriptions of these features).”

It is important to emphasize that many of the specific measures identified in the guidelines are aimed at preserving existing views of natural, undisturbed areas along the lakeshore. They do not require that previously disturbed areas be returned to a natural state. The proposed Marine Club would be located in an area that is already disturbed. Placing the proposed clubhouse/pump house building along the lakeshore would not ruin a natural, undisturbed landscape, even though it does not meet setback requirements, and overall it would result in an improved visual appearance relative the existing utilitarian marina buildings and the hillside of dry-docked boats.

Comment: Exhibits 14 through 15D are totally ineffective. We need an exact three dimensional model of the current and proposed development, including areas to the north and south. You cannot just stop at the RSM boundaries. The residents and neighbors, outside the sphere of the RSM/German Brothers Marina boundaries, are not being given consideration in this DEIS. An accurate model including the surrounding neighborhood is essential to gauge the impact of the proposed project. The Planning Board should insist upon encompassing a larger area of environmental impacts, outside the sphere of the RSM/German Brothers Marina borders to get an accurate visual assessment. (Fuller, 0167)

Response: *Creating an exact 3-D model that encompasses areas beyond the Project site would be labor-intensive and would not likely reveal impacts beyond those that can be demonstrated through other approaches. Moreover, the potential areas of impact identified within the Scope for the EIS would not be better gauged through such a comprehensive model than they can be with the visual models and simulations already prepared.*

To address the commenter’s concerns, the Applicant combined the 3-D simulation for the Project with photographs of the existing conditions in the surrounding areas. The resulting Exhibits (48A through 48D) show the proposed Project and the modified version of Alternative H in relation to adjacent areas to the north and south of the Project site.

Comment: What will the proposed configuration of docks and moorings look like from properties located to the north and south? The one dimensional drawing (Exhibit 4C) does not show the real impact on viewsheds from these properties. There is no basis to compare the present with the proposed. (Fuller, 0163)

***Response:** To address the commenter's concerns, the Applicant prepared new exhibits to provide a photo simulation of the views of the Project from the north and south (see Exhibits 49A and 49B). Photo simulations of the lake view from the proposed clubhouse for modified Alternative H were also prepared (see Exhibits 49C–49E).*

Comment: The Applicant's assessment of the potential visual impacts is biased. Substantiation by a third party evaluation or community response polling is needed. Given the significance of this project and the lake, the DEC policy "Assessing and Mitigating Visual Impacts" should be applied. Canandaigua Lake is identified in NYS Executive Law as having Statewide Significance. (Bolton, 0048)

***Response:** The NYS Executive Law does not specifically designate Canandaigua Lake as being a visual resource of statewide significance. Nevertheless, as explained in the DEIS and in accord with the Scope, the visual impacts of the Project on the lake are evaluated in depth. See DEIS Sections 4.C.2 and 4.H.*

The Scope for the EIS did not require the use of the referenced policy for assessing visual impacts. The NYSDEC policy provides guidance for NYSDEC staff in assessing the visual and aesthetic impacts of proposed facilities. Basic steps include identifying aesthetic resources, conducting a visual assessment using simple graphical tools or more sophisticated visual simulations and viewshed analysis, determining the significance of impacts, and evaluation of proposed mitigation. The policy draws a distinction between visual and aesthetic impacts, noting that mere visibility does not necessarily constitute an aesthetic impact. Rather, the visibility of a proposed project or facility must clearly have a detrimental effect on the perceived beauty of a resource to be considered an aesthetic impact.

Overall, the DEIS follows the basic steps of NYSDEC policy guidance in developing the visual assessment for this Project. Aesthetic resources and views were identified, a visual assessment was conducted using a variety of advanced tools such as creation of a scale model and development of photo and computer simulations to demonstrate the likely visual appearance and impacts of the project. The potential impacts and their significance were assessed, and mitigation measures (such as landscaping to screen some views of houses and the requested variance to shift nine homes inland to preserve a significant area of buffering trees) were incorporated into the design.

To respond to comments received on the DEIS, the Applicant has prepared a number of additional visual exhibits to provide further information on the Project's potential

visual and aesthetic impacts. See Exhibits 38C, 38E, 39C, 42, 46A, 46B, 47A, 47B, 48A, 48B, 48C, 48D, 49A, 49B, 49C, 49D, 49E, 50A, 50B, 50C, 50D, 50E, and 50F. This Planning Board, other involved and interested agencies, and the public will use all of these exhibits and those appended to the DEIS to assess the Project's visual impacts.

Third party substantiation of the potential impacts revealed by the Project's visual assessment is unnecessary, as the Planning Board is more than capable of determining potential visual impacts as a citizen board. Further, note that the Ontario County Planning Board—another citizen board with an interest in the wider lake community—found in its October 8, 2008 review of the Project that “the residential development does not have an unduly negative impact on the existing landscape.” (See Appendix AA for County Planning Board recommendations.)

Comment: Does the architectural design complement the site? Or will there be further deterioration of the lakeside? Does the community really benefit from this project? (Dailey, 0054)

Response: *As described throughout the DEIS, the architectural design for the Marine Club uses natural materials in earth tones to better blend into the natural landscape, in accordance with the recommendations of the Shoreline Development Guidelines. The proposed homes will also use natural, earth toned materials. The Marine Club design has a nautical theme, which is appropriate to the lakeside setting and proposed use. (See Exhibits 38C and 39C for renderings of the two clubhouse options, and Exhibit 38E for a rendering of the multi-purpose pump house building.)*

As demonstrated in Exhibits 48A to 48D, the overall visual impact is not substantial and the appearance of the proposed development is consistent with surrounding development. In fact, if the requested variances to preserve the trees in front of Lots 7 to 15 are granted, the proposed Project would be better screened than smaller subdivisions under development to the south of the Project (see Exhibit 50B). Overall, views would be screened from the most significant and likely angles, although when viewed from a variety of angles (particularly from the south), the homes near the top of the hill would likely be more visible than when viewed head on.

Comment: Expressed concern regarding the statement by the developer that the view of the rooftops will be mitigated for those traveling on West Lake Road. What about the view from other roads? What about the view from the east side of the lake? He asked the Board to factor this in as they view the project. (Dailey, 0057)

Comment: The visual impact as viewed by the general population from the east side of the lake is likely to be enormous. Current visuals (Exhibits 28A - 33B) do not seem to accurately depict the vehicles (and headlights) that would be present, as well as the boats, docks, and moorings. (Brancato, 0143)

Response: Additional visual exhibits have been prepared for the FEIS, including several that show views of the proposed Project and adjacent areas from the east side of the lake (see Exhibits 46A, 47A, 48A–48D, and 50A–50F). Exhibits 50A–50F include existing and proposed views from East Lake Road.

As noted above, these exhibits demonstrate that while the Project is visible, the overall visual impact in relation to the surrounding development is not substantial. If the requested variances to preserve the trees in front of Lots 7 to 15 are granted, the proposed Project would be better screened than some of the smaller subdivisions under development to the south of the Project (see Exhibit 50B).

Note that the proposed level of development on the site is consistent with what is allowed for a parcel of this size. By virtue of its zoning designation, this type and level of development has been determined to be consistent with community plans and goals, and its effects have been anticipated and deemed acceptable. The Applicant has worked diligently with this Planning Board and Town staff and consultants to design a development that minimizes potential impacts to the extent practicable. Moreover, as noted at the beginning in Section 2, the Applicant has modified the proposed heights of the homes to further reduce visual impacts, limiting most of the homes in the project to the 35-foot maximum height specified for the SCR-1 zone and the 25-foot maximum height specified for the RLD zone. Exhibit 42 demonstrates the effect of this proposed design change relative to a 3-D simulation of the Project previously developed for the DEIS.

Comment: If the maximum height of the proposed SCR-1 houses is 45', then views for the Lakewood Meadows, Section 6 houses would be obstructed, contrary to statements in Section 8.E of the DEIS that the Project should not affect views from adjoining properties. (L. Smith, 0058)

Response: As noted above, the Applicant has modified the proposed heights for the homes in the Project. The homes in the SCR-1 would now have a maximum height of 35 feet from average finished grade. Given the elevation difference between finished grade for the Lakewood Meadows homes and the proposed finished grade for the homes in the Project, at this maximum height, the homes in the Project would not block views from adjoining properties.

Comment: Consult an expert on light pollution to gain a more thorough understanding of what would be entailed over the next decade or so of construction plus the long term impact. Study projects that have already been developed on the lake. (Brancato, 0144)

Comment: The concern of "lighting up the neighborhood and the lake" is a real one. Currently lighting is at a minimum. What is being proposed seems extreme for a residential neighborhood: lighting on the docks, on the walkways, in the parking lot, on the site, at the

homes, on the roads, at entrances, etc. Even dark-sky compliance will not mitigate the problem. (Fuller, 0151)

Response: *Dark sky compliance will mitigate the problem of nighttime visibility, although it would not address all effects.*

Construction activities would not typically be conducted during nighttime hours, and as such would not be expected to result in visual impacts associated with equipment and site lighting. To minimize the potential for construction impacts, construction activities will be limited to the hours 7:00 a.m. and 6:00 p.m., Monday through Saturday, with no work allowed on Sundays or holidays.

The proposed Project lighting is appropriate to the type of development proposed and would not be extreme for a residential subdivision. The proposed Marine Club would replace the existing German Brothers Marina; the amount of lighting provided along docks, at parking facilities, and at buildings would be reduced and the type of lighting at the Marine Club will be more modern and have dramatically less associated light pollution (see Exhibits 50C–50E).

The proposed lighting on the site, including both the residential component and the Marine Club, has been designed to minimize, to the greatest extent possible, the light levels on the property. There are only two street light fixtures being proposed on the residential portion of the site: one fixture to be located at the intersection of Road “A” and West Lake Road; and one fixture at the internal intersection of the Road “A” loop. These fixtures are the current approved Town of Canandaigua street lights. No other lighting is currently proposed within the residential portion of the site. Although the Project as proposed in the DEIS included individual, residential-style post-top luminaires at each home site, the Applicant has removed these lights to address concerns regarding dark sky compliance.

Lighting at the Marine Club has been proposed for safety and security of individuals and private property. All existing high mast “cobra” head style lighting fixtures are to be removed from the site. The proposed fixtures are cut-off, 12’ high, 150 watt high pressure sodium fixtures that will immediately decrease the amount of light spillage from the site as currently exists. The bollards are low wattage, 50 watt, 36” high luminaires, designed to provide lighting on the ground and not upward into the sky. These fixtures will provide resident boaters with ample lighting on the dock structures and walkways without any unnecessary illumination of surrounding areas or properties. Security and safety lighting for the docks will be provided with the use of low intensity, low voltage, 24 volt or less, down lights to illuminate the dock surfaces for safe passage when navigating at night. The amount of light generated by these fixtures will be minimal and not be a nuisance to surrounding property owners. It is very likely that the bollard and low voltage security lighting will not be visible from more than 100 feet away. The lighting is designed to illuminate surfaces without being able to see the point source of light. The proposed lighting of the

Marine Club area will enhance the safety and security of users of the area and will eliminate a majority of unnecessary illumination that currently exists on the site.

For the FEIS, landscape architects at BME prepared a series of exhibits to demonstrate the current and anticipated lighting conditions in the Project vicinity (Exhibits 50A to 50E). As shown in Exhibit 50A, in the existing condition, the most intense source of light (along a significant portion of the western shoreline) is German Brothers Marina.

Exhibit 50B provides day and night conditions for similar subdivisions located approximately 1 mile south of the Project. These examples were used to develop a simulation of night conditions for the proposed Project.

Exhibit 50C provides additional information on light sources for the Project, the types of fixtures proposed, and the differences between the existing light sources at the marina and the proposed light sources for the Marine Club.

Exhibits 50D and 50E provide night simulations for the modified Alternative H, with the clubhouse located on the west side of West Lake Road, and for the modified Project as proposed, with the clubhouse/pump house functions combined into a single, smaller building. These simulations represent a worst case condition in which every residence in the Project has at least one light on. There is not a significantly noticeable difference between night conditions for modified Alternative H and for the Project as proposed. However, both exhibits clearly demonstrate that the proposed Marine Club would have substantially less lighting impact than the existing Marina. This is attributable to the difference in proposed light fixtures, which for the Project are downward directional and cutoff style. Moreover, both demonstrate that while the lighting associated with the 70 residences would certainly be noticeable as compared with the non-existent lighting in the current condition, it would not look atypical as compared to other areas along the lake or “light up” the night sky.

As noted in other responses, it is important to keep in mind that the proposed level of development on the site is consistent with what is allowed for a parcel of this size. By virtue of its zoning designation, this type and level of development has been determined to be consistent with community plans and goals, and its effects have been anticipated and deemed acceptable. The Applicant has been working diligently with the Town to ensure that the proposed development minimizes potential impacts to the extent possible.

Comment: What will be the impact on the Moore property from lighting and vehicle lights from the two driveways and marina lights? (Fuller, 0202)

Response: *See the previous response for a discussion of the anticipated reduction in light pollution associated with the Marine Club, which would be adjacent to the Moore property.*

Given the location of the Moore property in relation to Road “A” and the proposed access driveway for Lots 1 to 3, an increase in lighting impacts from vehicle headlights would be expected, especially as (1) vehicles turn left from Road “A” onto West Lake Road to head north, and (2) vehicles turn right from the access driveway onto West Lake Road to head south.

As documented in the traffic study in Appendix C of the DEIS, the largest number of left-turning vehicles exiting the development via Road “A” would be expected in the a.m. peak hour (34 vehicles). Based on traffic counts performed near the intersection of West Lake Road and Wyffels Road, the a.m. peak hour was identified as 8:00 – 9:00 a.m. By this time of morning, headlights would generally be unnecessary and would not be expected to have a substantial impact on the Moore residence. As the access driveway only serves 3 properties, the number of vehicles turning south from the driveway would be negligible and would not be expected to affect the Moore property.

The relatively minor increases in pass-by traffic on West Lake Road would not be expected to have as great an impact on the Moore property as the turning vehicles, particularly if the main “activity” rooms in the Moore home are oriented towards the lake views as opposed to road views.

4.1 Growth and Character of the Neighborhood

4.1.1 Consistency with Community Character

Comment: The proposed Marine Club is not consistent in size with the Johnson homestead, the Moore residence, or other existing residences in the neighborhood. It is not appropriate to compare the size of the Marine Club buildings with the proposed residences to determine consistency with the location and size of adjoining development, as these residences are not yet in existence. (Herbik, 0004)

Comment: The proposed Marine Club use is not consistent with surrounding uses, which are residential. (Herbik, 0005)

Comment: The proposed project design is not in keeping with the present residential neighborhood as is evident in the site location aerial photo (Exhibit 1A). The Marine Club and the homes on Lots 1 through 3 are not comparable in size to the homes in the immediate residential neighborhood. Most homes are less than 2,000 s.f. The proposed homes and Marine Club are much larger, will stand out as huge structures, and would not be compatible with the character of the neighborhood. While the Marine Club would be more architecturally pleasing than the existing buildings, it will be a solid wall, impeding the view of the lake. (Fuller, 0156)

Response: *The Planning Board must consider whether the special permit use is compatible, not just with immediately adjacent houses, but with the overall orderly development of the district. Other principally permitted uses in the RLD are public facilities, parks, and recreational facilities. Although proposed as a private, rather than public use, the Marine Club would be similar in character and use to a public recreational facility, and could, therefore, be considered compatible with the orderly development of the zoning district. As it borders the lake, the RLD also includes many water-oriented recreational structures, which would be compatible in nature with the docks and moorings proposed for the Marine Club.*

As noted in Section 2, the Applicant has modified the Project design in response to comments received on the DEIS. For one design alternative, a modification of Alternative H in the DEIS, an approximately 2,960-square-foot clubhouse would be located on the inland side of West Lake Road, due south of the proposed Marine Club parking facilities (see Exhibits 38A–38D). The clubhouse would include office space, meeting space, a small utility kitchen, restrooms, a general sitting area, and a viewing deck facing the lake. The clubhouse would also include a lower-level “walkout” basement and storage space.

This design alternative would also include a multi-purpose pump house structure on the east side of West Lake Road, because the docking and fueling facilities will still require a building for the pump attendant, storage, and restroom facilities. The existing marina buildings would be removed. The pump house for this option would be approximately 1,040 square feet with a length of 26’ along the lakefront. It would be located due south of the existing 40’ x 40’ boat repair shop. This multi-purpose pump house is larger than the 750 S.F. building previously proposed, because it includes locker and restroom facilities that were previously housed in the 4,000-square-foot clubhouse.

A second design alternative modifies the Project as proposed in the DEIS, combining the separate clubhouse and pump house structures into a single, smaller building located on the east side of West Lake Road in the approximate location of the existing 40’ x 40’ boat repair shop (see Exhibits 39A–39D). The new building would be approximately 2,980 square feet, with a length of approximately 73’ along the lakefront. This building would be smaller than the 4,000-square-foot clubhouse previously proposed, and would be roughly equal in size to the combined square footage of the existing Marina buildings.

Exhibit 51 depicts the livable space reported on the October 2007 Ontario County tax rolls for homes within the vicinity of the Project site. Livable space does not include garages or other unfinished spaces such as basements or attics. As shown in the exhibit, although many homes near the project and bordering the lake have less than 2,000 square feet of livable space, there are also many homes within 1/2-mile of the Project site that range from 2,000 to 3,999 square feet of livable space, and several larger than 4,000 square feet of livable space.

At approximately 3,000 square feet, the inland clubhouse for modified Alternative H and the combined clubhouse/pump house for the other alternative would be compatible with the sizes of existing homes throughout the RLD and in the vicinity of the project. Likewise, at approximately 3,500 to 4,000 square feet of livable space, the proposed homes for the Project would be compatible with the size of homes in the vicinity of the project, including homes in the Lakewood Meadows subdivision, which are not shown on Exhibit 51.

Comment: The proposed homes are overly large structures that are not appropriate for small clustered lots, and would be difficult to screen. They are totally out of context with the local lake area. (Fuller, 0175)

***Response:** As discussed above, the proposed homes are not overly large structures that are out of context with the local lake area. Some portions of the Project site would be difficult to effectively screen, due to the lack of existing vegetation on the upper portion of the site. The residences in the upland portions of the SCR-1, on the southern end of the site would be more visible than homes in other portions of the site (see Exhibits 48A–48D). From more southerly viewing angles, these homes may appear more prominent. However, as demonstrated in the Exhibits 48A–48D, the overall Project would be well buffered and the visual impact would be relatively minor for a 70-lot subdivision (especially when compared to some smaller subdivisions to the south of the Project site that have very little vegetation to buffer the homes (see Exhibit 50B)). Furthermore, Exhibit 51 shows that the proposed homes are not out of context with many of the existing homes in the community.*

4.1.2 Precedent for Future Development

Comment: This project could open the flood gates for development all along Canandaigua Lake. (Bolton, 0051)

Comment: In my view providing boat access to the lake linked to the property ownership for these 70 homeowners through the creation of the proposed Marine Club would be a serious mistake. It would set a precedent under which any developer of land near the lake could buy a small lakefront parcel and offer similar remote boating rights to homeowners lacking lake frontage. (Hooker, 0115)

Comment: This kind of "special uses" logic would set a dangerous precedent for other lakeshore landowners, who could form similar "keyhole" developments by joining their land, adding upland areas to it, then petitioning for "special uses" status to allow them to erect large, private clubhouses, and anchor hundreds of boats, instead of the few they are allowed currently under the law. (Brancato, 0137)

Comment: The proposed RSM development will be detrimental to the health and beauty of the lake, and further a destructive precedent. (Glatty, 0145)

Response: *As discussed at length in the DEIS, the Project would not establish a precedent (destructive or otherwise) for comparable future projects (i.e., consisting of a lakeside private marine club to replace an pre-existing non-conforming commercial marina). As discussed in DEIS Sections 4.I.3 and 9.D, the Project would not establish a precedent because there is no other pre-existing non-conforming commercial marina in the Town. The docks and moorings are available for the Project's Marine Club under the All Other Land Uses category of the Dock Law only because there is no place of dwelling on the German Brothers lot and there will not be a place of dwelling in the future. In addition, even if there were other pre-existing non-conforming commercial marinas in the Town, there will be no other developments like the Project going forward because the private water-oriented recreational facility or social club special use permit as well as the marina special permit have been discontinued and are no longer available for any future developer.*

Moreover, the potential effects of granting the special use permit were considered by the Ontario County Planning Board—which is charged with analyzing the potential county-wide and regional effects of projects, including impacts on multiple lakeside municipalities—and the County Planning Board recommended approval of the special use permit for the Marine Club.

Comment: Each time this developer is given a variance, we are moving even closer toward seriously damaging the lake and its environs. This is particularly true when you consider that in the future other developers will try to follow the precedents set by this project. (Kraus, 0077)

Response: *See the previous responses for a discussion of why the proposed Marine Club will not establish a precedent in the Town for other developers, and how the modifications to the Project have reduced the number of variances requested both for the Marine Club and elsewhere. See Exhibits 38A, 38B, 38C, 38D, 38E, 39A, 39B, 39C, and 39D.*

The granting of a variance does not equate to damaging the lake and its environs. The variances requested for the Marine Club, if granted by the Zoning Board of Appeals, will actually de-intensify the use of the German Brothers property, improve traffic safety, allow the installation of stormwater management structures, discontinue boat repair operations, end use of the loudspeaker system, and allow the removal of the petroleum contaminated soils from beneath the existing office building. Large stretches along the shore will be re-vegetated, particularly to the north of the Marine Club building. The primary parking lot will be located behind a dense buffer, and have a regulated access drive with good sight lines along West Lake Road.

As discussed throughout this FEIS, the variances requested to allow a Marine Club building that is smaller or equal in size to the two existing buildings to be located on the lakeside of West Lake Road will minimize foot traffic across West Lake Road and

thus enhance the safety of the members and their guests. The new building will be located near the location of the existing 40' x 40' building in an already disturbed area. As shown in several exhibits prepared for the FEIS (see Exhibits 48A–48D), locating the Marine Club building along the lakeshore will have minimal visual impact, and if anything, will be an improvement over the existing tired utilitarian buildings at the German Brothers Marina.

The Marine Club would result in little to no change in projected peak boating traffic. This boating activity would not affect drinking water quality, and would not affect surface water quality beyond what would be expected if the Project were not built. Drainage and erosion control systems to be implemented as part of the Project would minimize the potential for harmful discharges to the lake, and would improve the quality of water running off the German Brothers parcel.

With respect to the variances requested in order to preserve more of the large oak trees behind the Johnson homestead and mature woods behind the German Brothers parcel, the requested variances would allow 9 homes located on lots straddling the RLD and SCR-1 zoning boundary to be shifted inland away from the lake and West Lake Road without counting toward the SCR-1 density limitations and to be allowed a maximum height commensurate with homes on adjoining properties. In addition, 7.79 acres of land in the RLD zone with these high ecological values will be permanently preserved via a conservation easement in lieu of 4.66 acres of low value open space in the SCR-1 zone. Preserving these woodlands has the added benefit of providing screening for much of the Project. If this Planning Board decides to endorse these variances and if the Zoning Board of Appeals decides to grant them, they would be a positive precedent encouraging other developers to save more trees and create greater vegetative buffers between their new developments and the lake

4.J Historic/Archaeological Resources

Comment: The DEIS described the history of the Johnson property in some detail, but it was unclear whether the Johnson home and the home immediately to the north of it were considered by the State Historic Preservation Office to have historical significance. The original DEIS stated in one place that they did not, but included correspondence from the SHPO which contradicted that. (Hooker, 0113)

Response: *The Project includes the rehabilitation and sale of the Johnson homestead as a single family residence. The reports from a cultural resources investigation that was conducted as part of the DEIS were included as Appendices M and N of the DEIS. Those reports indicate that no structures located within or adjacent to the Project site are listed on the State Register of Historic Places (“SRHP”) or the National Register of Historic Places (“NRHP”). This covers both the Johnson homestead and the home immediately to the north of it. The reports further note that the Johnson homestead is not eligible for the SRHP or the NRHP.*

Those reports were submitted to the New York State Office of Parks, Recreation and Historic Preservation (“OPRHP”) as part of a request for comments regarding the proposed Project’s potential for effects on historic and archaeological resources. In a letter dated February 11, 2005, the OPRHP indicated it had no archaeological concerns for the Project. However, a resource evaluation form enclosed with the letter dated February 11, 2005 from OPRHP indicated that OPRHP felt that the Johnson homestead would meet the eligibility criteria for inclusion on the National Register under Criterion C, stating the home “appears to be architecturally significant as an intact, representative example of late Federal/early Greek Revival style domestic architecture in the Town of Canandaigua.” This correspondence was inadvertently omitted from the DEIS, and is included in the FEIS as Appendix X.

Subsequent correspondence from OPRHP, dated April 26, 2006, indicated that a final determination of effect for the Project on the Johnson homestead would be provided only after receipt of requested additional information. This information included a further project description, the area of potential effect, and photographs of structures 50 years or older and of the Project site surroundings. As of yet, the requested information has not been submitted and a final determination of effect has not been made. In the meantime, the Planning Board copied OPRHP in on the DEIS and invited OPRHP to offer input on that document during the comment period as one of the interested and involved agencies in the SEQRA process. OPRHP did not submit a comment on the DEIS.

Nothing in the OPRHP letter has changed the Applicant’s determination to restore and preserve the Johnson homestead in order to retain the character of this section of West Lake Road. Thus, the requested information along with a formal plan for restoration/preservation of the Johnson homestead (and its associated outbuildings) will be provided to OPRHP prior to the Applicant seeking final approvals for the phase of development involving the Johnson homestead.

The potential for the Johnson homestead to be included on the NRHP, nevertheless, provides further weight to the conclusion of the DEIS rejecting Alternate Road Access F which would have run the access road through the Johnson homestead solely in order to avoid the removal of some of the large oak trees behind the farmhouse and incur less earthwork. See DEIS Section 5.E/F.17.

4.K Noise

Comment: Noise is a serious concern for this project, especially construction noise, and a quantitative analysis should be performed using the DEC guidance. The analysis should establish the prevailing ambient noise levels at different times of the year, and consider the effects of year-round construction and year-round home occupation. The impacts associated with removing natural barriers, with motorboats and jet skis, and with sound traveling across the water should be assessed. (Bolton, 0046)

Comment: The lake surface and steep hillsides will tend to increase noise impacts. (Bolton, 0047)

Comment: The noise discussion in the DEIS is seriously defective. A careful analysis of noise pollution potential should be included in the DEIS, prepared by a competent noise consultant. The current discussion consists only of generalizations and vague conclusions about the noise propagation impacts associated with construction and occupation. (Ebbing, 0066)

Comment: Given the rural mixed woods and fields setting and surrounding land use, I expect the L90 noise levels to be in the range of 20 dBA except in the recreational months where there will be sporadic increases such as weekends and holidays in particular. It is expected that noise levels will rise significantly in the surrounding area several miles from the project during construction and perhaps after completion. (Ebbing, 0067)

Comment: The Environmental Compliance Alliance asked me to evaluate the noise pollution potential for the proposed project. I have strong concerns about the intrusive noise potential for this project based on its location and setting. It is my opinion that there will likely be a significant impairment to the existing ambient noise, in excess of the 6 dBA threshold used by the NYSDEC Noise Policy, and other state agencies around the U.S. Proper evaluation of the current and proposed conditions may show that this area includes receptors of the most sensitive category. If that is the case, then even an increase of 3 to 6 dBA would be excessive. (James, 0102)

Comment: Who made the noise calculations, assessments, and predictions, and what are their qualifications to do so? Proper noise measurement requires skills in acoustics, community noise assessment, and instrumentation. Noise prediction is even more specialized, and experienced acoustical consultants may not have the necessary skills to do it properly. (James, 0103)

Comment: The analysis provided in the DEIS is entirely inadequate. Why were no ambient noise measurements made? In order to properly assess the reasonable noise impact of the project it is generally necessary to make a series of background noise measurements. These are taken at different times of the year, for several hours at different days of the week. Measurements should be taken on both the east and west sides of the lake at several locations north and south of the project area. To predict noise impacts, the selection of computer model and conditions must be made very carefully since the environmental setting here is very unusual and seldom studied. (James, 0104)

Comment: The noise associated with nearly a decade of construction has not been adequately addressed. Logic tells us that when many buildings, additional roadway, and boat traffic are added, noise levels, particularly at peak times, are bound to increase. How will the noise levels be in keeping with the characteristics of a residential neighborhood? (Brancato, 0142)

Response: *A detailed noise study based on actual measurements was not required or suggested by the Scope for the EIS, so one was not initially prepared. In developing the Scope, this Planning Board recognized that the proposed residential use and size of development is consistent with the Town Code and the adjacent community uses. By virtue of its residential zoning designation, the noise typically associated with the permitted uses in the RLD and SCR-1 zones has been determined to be consistent with community plans and goals, and its effects, including noise from construction activities, have been anticipated and deemed acceptable. Likewise, the proposed Marine Club is located in an area already occupied by a pre-existing commercial marina, so noise typically associated boating operations already exists in the community. As noted in earlier responses, the proposed level of development on the Project site is consistent with what is allowed for a parcel of this size. As such, a detailed noise analysis was not required.*

As described in Section 4.K.2 of the DEIS, construction of the Project is projected to occur over approximately 7 years. Initial construction will include completion of earthwork for the entire property over approximately 6-9 months. Therefore, the heaviest concentration of construction noise will occur over the first, relatively short phase, which will also include construction of the access drive and utilities along West Lake Road. The remaining phases—including the shorter duration construction of the clubhouse and other West Lake Marine Club facilities near West Lake Road, the environmental remediation, and the infrastructure construction for residential phases located away from West Lake Road—will generate construction noise over approximately six-month timeframes for each phase. Construction noise from house construction will be more continuous but less intense, although some of the house construction activities may also be heard at neighboring properties from time to time. To minimize the potential for construction noise impacts, construction activities will be limited to the hours 7:00 a.m. and 6:00 p.m., Monday through Saturday, with no work allowed on Sundays or holidays.

Although detailed noise studies are not typically required when the proposed use and development density is consistent with the Town Code and the uses are consistent with the existing neighborhood, the Applicant commissioned the study included in Appendix Y, prepared by Angevine Acoustical Consultants, Inc. This firm has considerable experience and expertise in completing noise assessments. A copy of their Firm Qualifications is included with the noise report in Appendix Y.

The noise study included the following:

- *Conducted a number of noise level surveys at and around the Project site to determine and measure noise sources and to establish the existing background noise level environment. Background noise level measurements were taken at five locations on Wednesday, September 10, 2008 and Saturday, September 13, 2008. Selected locations were 5020 Wyffels Road and 3844 West Lake Road north of the Project site; 3935 West Lake Road on the east side of West Lake Road across from the site; 4952 Hillcrest Drive south of the site and*

3900 Shore Haven Road across the lake opposite from the Project site. All sound level measurements were made with a Larson Davis Model 831 sound level analyzer, which meets or exceeds ANSI requirements associated with a type 1 (precision) sound level instrument.

- *Modeled noise levels for existing and proposed conditions to estimate what changes in noise levels could be expected after the Project was developed as compared to existing conditions. Noise modeling was performed using CADNA/A v3.7, an internationally accepted environmental noise modeling program based on international environmental noise standard ISO-9613-2.*
- *Prepared a report documenting their procedures and the results of their study (see Appendix Y).*

The conclusions included in the report are as follows:

1. *Background noise levels in the community surrounding the planned Project are characterized by sounds of traffic on West Lake Road, insects, birds, airplanes, and local street traffic. Boating sounds can also be perceived and are a factor at many of the locations adjacent to the site. Noise on the east side of the lake opposite the Project are characterized by traffic on East Lake Road. Daytime weekday and weekend noise levels were found to be similar. Background noise levels in evening hours prior to 11:00 pm were found to be several decibels lower than daytime levels, due to reduced area traffic and an absence of boating sounds.*
2. *Sources at the planned Marine Club should generate noise levels that are the same or not appreciably different from existing marina operation. This will meet requirements of the Town of Canandaigua that the special use be no more objectionable with respect to noise.*
3. *The maximum noise level increase generated at the nearest residence in one modeling scenario of multiple sources was 4 dBA from the combination of two idling boats and a tractor boat launch. This complies with noise assessment policies of NYSDEC that seek to limit noise increases to 6 dBA.*
4. *The predicted future noise levels for each of the various scenarios do not exceed a daytime noise limit of 65 dBA at residential boundaries (City of Canandaigua). (The Town of Canandaigua does not define specific acceptable noise limits.)*
5. *The measured noise levels from stationary boats at the existing marina as well as those measured during boat passes to and from the marina and along the lake meet New York State Navigation Law Section 44(2)(a) requirements for shoreline measurements. These noise levels are not expected to change.*

6. *The noise predictions for the Marine Club are conservative. The predictions are based on the maximum measured source noise levels, which may occur only briefly, rather than the average noise levels that are more typically representative. The predictions are further based on boating source levels that match New York State Navigation Law Section 44(2)(b) maximum stationary noise limits rather than levels actually measured.*
7. *Outdoor paging loudspeakers will be eliminated, which will eliminate associated paging noise impacts.*
8. *Frequent daily boat launchings will be eliminated in favor of seasonal boat launchings. This will largely reduce noise from boat launchings at the shoreline as well as transfer activities in current storage yards on the hill east of the present marina using tractors.*
9. *Noise received at receptors from boats operating on the lake will not be different due to differences in building configurations affecting reflections and shielding.*
10. *In contrast to noise levels generated at receptors from boats operating closely along the shoreline, noise levels would be reduced should boats approach and depart from the Marine Club perpendicular to the center of the lake.*
11. *Noise levels generated by vehicles operating on the streets of the planned residential are predicted to not exceed the measured L_{eq} average background noise levels and not be objectionable or perceptible.*
12. *Although noise from residential and Marine Club construction may be perceived at certain locations in the daytime, such events may be unrestricted in the local area. Construction is generally understood to be temporary, and is commonly allowable under noise codes of comparable communities, which at most may regulate noise events by limiting activities to daytime hours.*
13. *Boats accessing the Marine Club by means of an east-west path instead of a path close to the lakeshore may reduce the levels of received noise at the closest residences.*

4.L Utilities

Comment: The project as presented will require an approval of the public watermain extension by the NYS Department of Health prior to construction. A Water Supply Application permit for an extension to the Water District must be obtained from the Department of Environmental Conservation. The sewer main extension will also require approval from the DEC. (NYSDOH, 0063)

Response: *Comment noted. All necessary agency approvals will be sought and obtained by the Applicant prior to construction.*

Comment: Who will be responsible for maintenance of the roads and the proposed stormwater drainage structures? Will the Town create a Drainage District? Homeowner's Associations are often not as reliable or enforceable in maintaining the structures and the Town becomes ultimately liable. (NYSDOH, 0064)

Response: *The main access road, Road "A," will be dedicated to the Town, so the Town will be responsible for maintenance. The private access driveways will be maintained by the homeowners.*

The stormwater management facilities (ponds, CDS units, and storm sewer) are also proposed for dedication to the Town. Easements will be provided for access so that maintenance can be performed by the Town. As described in Section 6.E.14 of the DEIS, the Town will recover the costs of this maintenance by creating a drainage district for the proposed subdivision and assessing a fee to each homeowner. An application will be submitted to the Canandaigua Town Board, before commencing construction, to create the district.

In lieu of dedication to the Town, the stormwater ponds and CDS units could be maintained by the Homeowners Association (HOA). In this case, the CDS units would likely be maintained via a long-term maintenance agreement with the manufacturer or his representative.

Comment: Please give detailed information on what will happen to the present Morrell sewer line and the 50' swath of land that was stripped of trees after the sewer is redirected onto the RSM property. After which phases will that transpire? (Fuller, 0152)

Response: *The sanitary sewer line servicing the Morrell property will be connected into the sanitary sewer proposed for the Project when the sewer line along Road "A" is installed. This utility will be installed during the first site work construction phase, which would occur after the completion of the earthwork.*

Once the Morrell sanitary sewer line is connected to the sewer proposed for the Project, the segment of existing sewer line east of the connection point will be abandoned. This segment will likely be left in place, because it would be disruptive to the steep hillside to remove it. Excavating the abandoned segment would also require removal of additional trees along West Lake Road. In lieu of removing it, the abandoned portion of the sewer will be filled with flowable fill, which is a concrete mix that will prevent water from using the abandoned sewer as a preferential flow path. Otherwise, such infiltration, if left unchecked, could over time potentially cause stormwater runoff and erosion problems at West Lake Road.

The land that was stripped to place the Morrell sewer line would be left in its existing stable, re-vegetated condition.

Comment: The number of and placement of hydrants as designed is good. We would like to see hydraulic calculations that show that there will be adequate water supply for all of the hydrants to have acceptable flow rates. The hydrants installed should meet current Town of Canandaigua standards. (Canandaigua Fire Rescue, 0190)

***Response:** Water calculations are presented in the Engineer's Report, included as Appendix C of the DEIS. Calculations show a minimum maintained pressure greater than 20 psi while providing 1,000 gallons per minute at a hydrant. A hydrant detail is provided on the detail sheet included with the Preliminary Plans (BME Drawing 2145-25), which has been reviewed by the Town of Canandaigua.*

5. ALTERNATIVES CONSIDERED

5.A Clubhouse Location

Comment: Based on information in the DEIS, it would seem that if the clubhouse is placed on the west side of the road, or omitted entirely, that all they need on the east side of the road is 750 s.f. of space to support the pump station and provide room for storage. Consequently, the Planning Board should require the developer to consider an alternative in which either the existing 1,600 s.f. or 1,350 s.f. building be removed. The building that remains should be modified externally to fit in with the architectural styles used throughout the remainder of the project. Another option would be to remove both existing buildings and replace them with a new 750 s.f. pump house/ storage structure. (Kraus, 0094)

Comment: All alternatives which include a clubhouse and 750 s.f. pump house/storage structure on the east side of West Lake Road are unacceptable and far too intrusive. The clubhouse should be placed on the west side of West Lake Road. This would substantially reduce the number of required variances and would reduce the negative environmental impacts. The developer dismisses this alternative largely because he thinks it "compromises the project's purpose and goals" and increases safety hazards. What about the laws, codes, and goals of the Town of Canandaigua and the people who live in this area? (Kraus, 0096)

Comment: Putting the clubhouse on the west side of West Lake Road would be more in keeping with the character of the lake and this area. It would follow the same model as the Yacht Club, which is located just a short distance north of German Brothers Marina. Having the Yacht Club clubhouse located on the west side of West Lake Road has been a very satisfactory arrangement, both in terms of enjoyments and safety of the members. (Kraus, 0097)

Comment: If the clubhouse is located on the west side of the road, members wanting to come down just to use the clubhouse would not even have to cross the road. This would enhance the safety along West Lake Road, especially during periods of the year when no boats are in the water, but members still want to come down to use the clubhouse for special events. (Kraus, 0098)

Response: *As part of the design modifications proposed in response to comments received on the DEIS, the Applicant has developed a modified version of Alternative H from the DEIS, the alternative in which the clubhouse was located on the west side of West Lake Road.*

For the modified Alternative H, an approximately 2,960-square-foot clubhouse would be located on the inland side of West Lake Road, due south of the proposed Marine Club parking facilities (see Exhibits 39A–39D). The clubhouse would include office space, meeting space, a small utility kitchen, restrooms, a general sitting area, and a viewing deck facing the lake. The clubhouse would also include a lower-level “walkout” basement and storage space.

The modified alternative would also include a multi-purpose pump house structure on the east side of West Lake Road, because the docking and fueling facilities will still require a building for the pump attendant, storage, and restroom facilities. The existing marina buildings would be removed. The pump house for this option would be approximately 1,040 square feet with a length of 26’ along the lakefront. It would be located due south of the existing 40’ x 40’ boat repair shop. This pump house is larger than the 750-square-foot building previously proposed, because it includes restroom facilities that were previously housed in the 4,000-square-foot clubhouse.

For this modified alternative, the environmental impacts would be similar to those noted in the DEIS for Alternative H. Primary differences are related to contaminated soils and visual effects.

- *Removal of the existing marina buildings would allow for excavation of the petroleum contaminated soil, as would be done for the Project as Proposed. Alternative H would have required in situ treatment of the contamination.*
- *The visual impacts for modified Alternative H would be less than those described for Alternative H in the DEIS because the existing buildings on the lakeshore would be removed and replaced with landscaping and a smaller structure with a shorter length along the shoreline. Views of the lake from West Lake Road would improve.*

Relative to the second design alternative proposed for the Project, the modified Alternative H would have a somewhat lower overall visual impact, would slightly decrease traffic impacts, and would decrease pedestrian safety during the boating

season. Impervious surface coverage would be approximately 0.03 acres greater for modified Alternative H.

- *The overall visual impact of the modified Alternative H as viewed from the lake is demonstrated in Exhibits 46A through 50F. As discussed in Section 4.H of this FEIS, the clubhouse on the west side of the road is much more visible and noticeable when viewed from the lake or the east side of the lake than the combined clubhouse/pump house structure located on the lakeshore, even though they are approximately the same size (see Exhibits 48A–48D). Although it may seem counter intuitive, an object or building located right at a natural boundary line, such as where the lake surface meets the land, will appear to blend in much better due to all of the “activity” that occurs at this boundary line, including boats on the lake, boats on docks, sail masts, boat lifts, cars on the road, and the road itself. An object or building on the hillside, on the other hand, with lots of green space in front of and behind it, may appear to be “floating in space” and will seem much more visible.*

Although placing the clubhouse on the west side of the West Lake Road does result in additional space in front of the building in which landscaping treatments could be provided to “soften” the visual appearance of the building, there is no existing vegetation at this location to provide screening. The Applicant would be reluctant to install significant screening vegetation at this location, as it would block views of the lake from the clubhouse. While the Applicant is making every effort to use “native vegetative buffers to preserve existing shoreline views and screen development along the lake” [emphasis added] in accordance with the Town’s Shoreline Development Guidelines, there is no requirement that significant screening vegetation be installed to take away existing unobstructed views. As shown on the exhibits, many existing homes have unobstructed views of the lake.

Note that although the clubhouse is more visible on the west side of West Lake Road, the overall visual impact for modified Alternative H is reduced at this location, because the clubhouse would likely be smaller than the home that would be located on this lot for the modified Project as proposed. In addition, replacing the existing marina buildings with a multi-purpose pump house building that has 26’ of frontage along the shoreline (as opposed to 73’ for the combined clubhouse/pump house) would open up the view of the lake from West Lake Road.

- *The modified Alternative H would reduce the Project by one lot, and would result a very minor decrease in traffic.*
- *The comments are correct that locating the clubhouse on the west side of the road would reduce the need for road crossings during the non-boating season. However, during the boating season it is anticipated that a significant number of trips will occur between the shoreline/dock/boating areas of the Marine*

Club and the clubhouse, which would be the primary socializing and lake viewing area. These facilities are inextricably linked in terms of short bursts of repeated pedestrian traffic, since they function as both the loading point from the lake to the shore and the staging point for all activities related to the lake and those at the shoreline. As such, locating the clubhouse on the west side of West Lake Road would increase the overall number of pedestrian crossings of the road during the boating season, resulting in an increased safety hazard for pedestrians.

- *The Applicant would prefer to build the modified Project with the smaller clubhouse on the lake side of West Lake Road based on considerations of user safety. Nevertheless, the Applicant has indicated that it would build the modified Alternative H, with the clubhouse on the west side of West Lake Road, if, after the completion of the SEQRA process, this Planning Board were to condition its approval of a special use permit for the proposed Marine Club on the clubhouse being constructed on the west side of West Lake Road and the Zoning Board of Appeals were to grant the requisite variances.*

Comment: The clubhouse should be located uphill, in a central location among the residences. The building can then be tucked among existing trees and landscaped appropriately. (Brancato, 0141)

Response: *As noted in the response above, the boating facilities and the clubhouse are inextricably linked, and a significant number of trips between the two areas are anticipated. As such, the clubhouse should be located in reasonable proximity to the proposed docking facilities. A central, uphill location would not meet this requirement.*

As noted in Section 1.B, after public comment, the Planning Board established the Scope for the DEIS, which included multiple reasonable alternatives to explore how environmental impacts might vary depending on feasible changes to the design of the Project. The suggested alternative was not among those selected by this Planning Board in the Scope, and will not be considered further.

Comment: The Planning Board should also seriously consider the location of the clubhouse. The town's shoreline guidelines, comprehensive plan, and watershed plan all espouse integrating natural shoreline features with new development. This project is considered new development. Significant variances would be required to locate the clubhouse on the shoreline, therefore, the Planning Board should mandate that the clubhouse be placed on the upland side of County Road 16. If properly landscaped, the clubhouse could blend into the hillside in similar fashion to the Yacht Club. This would reduce the amount of impervious surface in close proximity to the lake. Impervious cover is a substantial contributor to pollution entering the lake. (Olvany, 0198)

Response: *The plans noted by the commenter do recommend integrating natural shoreline features with new development, but they do not require that previously disturbed areas be returned to a natural state. The proposed Marine Club would be located in an area that is already disturbed. Although it would not meet the setback requirements for the RLD, placing the proposed clubhouse/pump house building along the lakeshore would not ruin a natural, undisturbed landscape, and overall it would result in an improved visual appearance along the shoreline relative to the existing utilitarian marina buildings and the hillside of dry-docked boats.*

Although placing the clubhouse on the west side of the West Lake Road does result in additional space in front of the building in which landscaping treatments could be provided to “soften” the visual appearance of the building, there is no existing vegetation on this portion of the hill and the topography does not lend itself to natural screening. As a result, the clubhouse on the west side of the road appears much more visible than a similarly sized structure located right at the lakeshore (see Exhibits 48A–48D and earlier responses).

The Applicant would be reluctant to install significant screening vegetation at this location as it would block views of the lake from the clubhouse. While the Applicant is making every effort to use “native vegetative buffers to preserve existing shoreline views and screen development along the lake” [emphasis added] in accordance with the Town’s Shoreline Development Guidelines, there is no requirement that significant screening vegetation be installed to take away existing unobstructed views. As shown on the exhibits, many existing homes have unobstructed views of the lake.

Relocating the clubhouse to the west side of West Lake Road would also not reduce impervious cover. Both modified Alternative H and the Project as proposed would re-vegetate and landscape the area in which the existing 50’ x 27’ building at the north end of the site are located. The multi-purpose pump house building for modified Alternative H would cover less area than the combined clubhouse/pump house, but would include additional sidewalk on the lakeside and additional pavement for access driveways to the clubhouse. Overall the modified Alternative H would increase impervious cover by 0.03 acres relative to the Project as currently proposed.

As stated throughout the DEIS, the Project includes several stormwater management and erosion control features that would minimize the potential for erosion and would improve the quality of stormwater runoff from the German Brothers property.

5.B Other

Comment: Most of the alternatives proposed require a large number of variances and a special use permit for development of a private marina in an area that is zoned Residential Lake District. The developer should offer some "viable" alternatives that do not require such

a large number of variances and/or special permits. If alternatives are not considered economical, the developer should prove it with actual numbers. If an alternative truly is not economical, it should not be included in the EIS. (Kraus, 0074)

Comment: The Planning Board should ask the developer to further explore Alternative B (35 Homes in SCR-1, with Closed Marina) to see if there is any way to make it economically feasible. For example, slightly increase the number of homes and construct a moderate Marine Club on the west side of West Lake Road. (Kraus, 0083)

Comment: Alternative B (35 Homes in SCR-1, with Closed Marina) is more in keeping with a Conservation Subdivision. It protects the steep slopes, has clustered homes, provides large swaths of open space, preserves more woods, less acreage would be disturbed, less impervious surface, less docks and moorings, less impact on lake quality, less parking lots, preserves more natural trees along the bank of the lake, is in keeping with the character of the residential neighborhood, etc. (Fuller, 0168)

***Response:** Although the number of variances appears large in number they are all proposed to either reduce environmental impacts or to upgrade the pre-existing non-conforming marina site. The variances to shift the homes on lots split between the RLD and SCR-1 zoning districts into the SCR-1 portion of the lot and to reduce the setbacks are proposed to save more trees, increase the visual buffer, and move homes farther away from the lake and the top of the steep slope. The variance to request a 35-foot building height instead of 25 feet for Lots 7-15 within the RLD Zoning District allows for construction of two-story homes with walkout basements instead of one-story homes on those lots. Construction of one-story homes of the same square footage requires a larger footprint, which would affect more trees as shown on Exhibit 41C. The setback variances requested for the proposed Marine Club buildings simply allow for construction of new facilities to improve their appearance and lessen their visual impact. The request to construct some of the parking in the front yard is proposed to consolidate the parking to a smaller area than currently exists where it can be effectively screened rather than stretched out along the hillside as occurs with the existing Marina.*

Alternatives that reduce the number of homes far below the number allowed by code are not viable (see DEIS Sections 5.B/C.15). The Town has consistently approved similar developments at or near the maximum density allowed by the Zoning Code. Requesting that the Applicant develop fewer homes than allowed by zoning, such as the 35-lot alternative, would result in the land, infrastructure, and soft costs being spread over a smaller number of lots. This change would increase the per lot costs and put the developer at a disadvantage relative to developments allowed to develop at the Code allowed density. The 35-lot alternative was identified by the Town in the Scope as an alternative that should be examined. Further, as described in the DEIS, the alternative is not economically viable.

The portion of the Project in the SCR-1 zone is a Conservation Subdivision and is consistent with the goals of this type of development. The homes in the SCR-1 are

clustered on lot sizes of less than 1/2 acre, which is less than half the size of the one acre/lot size used to determine density within the SCR-1 zoning district. The amount of open space proposed within the SCR-1 portion of the Project is less than required by the Zoning Code, but only because the Applicant proposes to conserve additional, higher value land in the RLD portion of the Project, including environmentally important buffer trees and steep slope areas. If the variance to shift the homes on the split-zoning lots into the SCR-1 portion of the lots is approved, the Applicant would provide 3 acres more of conserved lands than required by code, and would in effect cluster more of the homes in the SCR-1 zoning district to protect the more environmentally sensitive lands, which happen to exist in the RLD zoning district on this property.

Comment: The developer has not considered an alternative that includes a viable development only on the Johnson property with docking along the Johnson waterfront that complies with the Docking and Mooring Law. The Planning Board should request that the developer consider such an alternative, especially since the Johnson property only scenario would no longer have RSM buying German Brothers Marina. (Kraus, 0082)

***Response:** Constructing a project without a Marine Club is not consistent with the goals and objectives of the Applicant, who bought the property and latter placed the German Brothers Marina under contract for the purpose of developing a marine club that includes boating. Moreover, this comment suggests an undertaking outside the adopted Scope for the EIS. As noted above, after public comment, this Planning Board established the Scope for the DEIS, which included multiple reasonable alternatives to explore how environmental impacts might vary depending on feasible changes to the design of the Project. The Scope did not require the evaluation of an alternative that includes the continuation of the pre-existing non-conforming use commercial marina and a Project only on the Johnson property.*

The review of alternatives need not be exhaustive. The scoping process is intended not only to focus the EIS on potentially significant adverse impacts, but also “to eliminate consideration of those impacts that are irrelevant or nonsignificant” by requiring all relevant issues to be raised before issuance of the final scope. 6 NYCRR §§617.8(a) and (g). Since this suggested alternative was not among those selected by this Board in the Scope, it will not be covered further in this FEIS.

Comment: The Zoning Board would like to see more detail and concerted review of Alternatives C, D, and E, as set forth in Section 5 of the DEIS. It is suggested that as much time, review, and energy should be afforded to these alternatives as is given to the proposal currently before the Planning Board. (Zoning Board of Appeals, 0112)

***Response:** Section 5 of the DEIS includes an assessment of 18 criteria and environmental impacts for each alternative. A summary of the conclusions and a comparison of the impacts was included as Appendix D of the DEIS. These areas of*

assessment are the same areas of assessment that were reviewed for the Project as proposed. The Planning Board determined that the level of review completed was appropriate and meets the requirements of the Project scope. This FEIS includes additional evaluation of some of the alternatives based on specific comments regarding specific alternatives.

Comment: The applicant needs to explain why one boat slip or mooring dedicated to each residence is not a viable alternative to the 1.79 wet storage spaces proposed. A docking facility that provides 70 slips and moorings was not explored. The State's Public Lands Law only allows a docking facility "necessary" "for the beneficial enjoyment" of the lake by "the owner of the land adjacent" to the land under the docking facility. How many dock slips and moorings are "necessary" for the proposed residents to enjoy the lake? I submit one per residence, which would be consistent with wet storage provided at similar communities around the lake (Rosepark, Yacht Club Cove, Holiday Harbor, Town Harbor Island, and Bristol Harbor). These communities appeal to the same high-end customer and appear to be very successful. (Forsyth, 0123)

Response: *As discussed in responses in Section 2.D.2 of this FEIS, the Applicant determined the amount of proposed docking by estimating the anticipated level of boat ownership for the Marine Club's members based on trends elsewhere on the lake. The members will be the owners of the homes proposed for the Project, which are anticipated to have very high assessed values. Given the relative affluence of the members, it is reasonable to assume that some member families would have more than one boat, which is consistent the level of ownership for other lakeside owners. The Applicant estimate that two-thirds of the member families would have two boats and one-third of the member families would have one boat, which would result in 116 boats or 1.7 boats per member family. As shown in the DEIS and discussed in earlier responses, this level of boat ownership is consistent with reported or estimated ownership levels around the lake. The docking facilities as proposed in the DEIS included 116 spaces for members and 9 spaces for boats visiting from elsewhere on the lake.*

In response to comments regarding the size of the docking facilities, the Applicant has modified the Project to include fewer wet storage spaces. The docking facilities now proposed include 103 spaces for members and 7 spaces for visiting boats, 15 fewer spaces than previously proposed. The proposed spaces for members are now equivalent to the total amount of access currently provided at the German Brothers Marina (33 slips, 35 moorings, 35 dry dock spaces).

The potential effects of this Planning Board granting site plan approval for the Marine Club as currently proposed were considered by the Ontario County Planning Board—which includes multiple lakeside municipalities and takes a wider community view—and the County Planning Board recommended approval for the site plan for the docking and mooring structures. (See Appendix AA for County Planning Board recommendations.)

Comment: Alternative J (Additional Docks for Displaced Boaters) is not desirable. The proposed project already has too many docks and moorings. (Fuller, 0172)

***Response:** This Planning Board will assess the benefits to the community of having additional slips for other members of the community against the potential for additional impacts on the lake. This Board's evaluation will be described in the Findings Statement that will be prepared for the Project.*

6. MITIGATION

Comment: We are pleased to note the developer's stated commitment to cleaning up the petroleum contamination discovered at German Brothers Marina. (Lewandowski, 0179)

***Response:** Comment noted. The Applicant anticipates that removal of the contaminated soil would commence at the end of the 2010 boating season, and would likely be complete by December 2010.*

7. UNAVOIDABLE ADVERSE ENVIRONMENTAL IMPACTS THAT CANNOT BE MITIGATED

Comment: Listed some unavoidable impacts of this development including (1) loss of vegetation, including large trees which take a long time to replace; (2) loss of potential open space which we want for our community and to pass on to future generations; and (3) loss of German Brothers Marina's launching, repairing, and fueling services to the public. (Dailey, 0055)

***Response:** The loss of some vegetation and open space, and the loss of publicly available launching and repairing services at German Brothers Marina are unavoidable impacts of the Project, as acknowledged in the DEIS. However, the proposed design of the Project limits the loss of trees to the extent possible, preserving a large area of higher value woodlands on the steep sloped areas. The Project also preserves more than 30 acres of open space through conservation easements.*

This Planning Board will assess the benefit to the community of requiring the West Lake Marine Club's gas dock to be open to the public during the day. This Board's evaluation will be described in the Findings Statement that will be prepared for the Project.

8. IRREVERSIBLE AND IRRETRIEVABLE COMMITMENTS OF ENVIRONMENTAL RESOURCES

No comments were received specifically regarding the irreversible and irretrievable commitment of environmental resources. Comments regarding loss of habitat and potential open space are addressed in Sections 4.E and 7.

9. CUMULATIVE IMPACTS AND GROWTH-INDUCING ASPECTS

Comments regarding potential cumulative and growth-inducing aspects of the proposed Project are addressed in other sections. Potential noise impacts are addressed in Section 4.K; the potential for precedent-setting is addressed in Section 4.I.2; and potential impacts on lake use and water quality are addressed in Sections 4.C.2 and 4.F.2.

10. COORDINATION AND PUBLIC OUTREACH

10.A Agency Coordination

Comment: The Planning Board, the OGS, and the DEC need to coordinate their review of the proposed docking facility. The three agencies should consult and preliminarily agree on the size, shape, and location of the docking facility, the number and type of structures composing the facility, and the conditions on its use. One agency cannot defer to the other agencies and still fulfill its mandate. (Forsyth, 0126)

Response: This Planning Board is coordinating with the OGS and NYSDEC. Both agencies were identified as involved agencies in the SEQRA review process, and this Planning Board solicited their input on during coordinated review of the proposed Project under SEQRA. Further, copies of the DEIS document were distributed to both agencies and each was given the opportunity to provide comments. Comments were not received from these agencies.

Comment: If the NYSDEC determines in its separate review that "the environment or natural resource cannot be protected," the OGS must deny the application to build the docking facility. (Forsyth, 0130)

Response: *Comment noted. The proposed docking facilities at the Marine Club will be designed and constructed in accordance with all state and local regulations and, as detailed in the DEIS, is not expected to result in significant impacts to the lake.*

Comment: During our meeting on Wednesday, August 6th, you asked whether County Planning staff could submit comments on the DEIS that has been prepared by the applicant on the project. We must decline. The project has already been referred to the County Planning Board for action. Any comments prepared by this office will be used in that review. (Ontario County Planning, 0181)

Response: *Comment noted.*

10.B Community Involvement

Comment: Many citizens in this community are getting very discouraged because they keep going to meetings and saying that they would welcome a nice development in this area if the developer followed local laws/codes; however, they never see any concrete changes in the documents that are being submitted and reviewed. The developer is just trying to "wear down" our resistance. (Kraus, 0079)

Response: *The Applicant has been working diligently with Town staff and the Planning Board to develop a project that meets the needs of the Project's target customers, the Applicant, and the community. The Applicant has also met with project neighbors on multiple occasions to get their input and address their questions. Based on these collaborations, during development of the DEIS the Applicant revised the proposed layout of the docking and mooring facilities to minimize the effects of near shore boating traffic on adjacent properties, and to leave the Johnson lakeshore parcel undisturbed.*

Based on comments received on the DEIS, the Applicant is now proposing further modifications to the configuration of the Marine Club facilities and to the proposed maximum heights for the residences.

As described in Section 2, one of the primary modifications is to develop two design alternatives for the proposed Marine Club facilities. For one alternative, the Applicant has modified Alternative H from the DEIS, which located the clubhouse for the Marine Club on the west side of West Lake Road. This option reduces the size of the clubhouse and replaces the existing buildings on the lake side of West Lake Road with one smaller multi-purpose building (Exhibits 38A–38E). For the second alternative, the Applicant modified the Project as proposed in the DEIS to eliminate the proposed separate pump house and combine its functions into a resized (smaller) clubhouse (Exhibits 39A–39D).

In response to concerns about how far the moorings extended into the lake and about the amount of wet storage provided at the Marine Club, the Applicant has modified the docks and moorings for the Project so that the new docks and moorings will end 100 feet closer to shore than the existing moorings do, and to decrease the number of boat spaces to 110, resulting in 15 fewer spaces than previously proposed. (See Exhibits 38A and 38B for the revised docking and mooring layout.) As shown on Exhibit 40, the outermost perimeter of the proposed docking facilities now comprises an area of 2.9 acres. The existing docking facilities cover an area of approximately 4 acres. Thus, the proposed Project would reduce the total docking facility area by 1.1 acres (28%).

The Applicant has also stated that, at the option of this Planning Board, it would accept as a condition of its special use permit, a requirement to build another six dock slips for residents of the Town (see Exhibits 38A, 38B). In addition, at the option of this Planning Board, the Applicant would accept as a condition of its special use permit, a requirement to open the Marine Club's gas dock during the day to other boaters on the lake.

The Applicant has also modified the proposed heights of the homes to reduce the Project's visual impact. The Applicant is no longer seeking to build 45-foot tall homes in the SCR-1 zoning district, but rather is proposing that the maximum height of these homes be 35 feet, which is the maximum height typically allowed in the SCR-1 zoning district. Further, the Applicant is now proposing a maximum height of 25 feet, in conformance with the Zoning Code, for the homes to be built on Lots 1, 2, 3, 5, and 6 in the RLD zoning district.

The Applicant has also modified the layout for Lots 14, 15, and 16 to eliminate the need for a lot width variance, as described in Section 4.B.2 of this FEIS and illustrated on Exhibit 52.

These changes are further detailed, above, in this Response to Comments document.