



**Hudson Valley Office**

21 Fox St., Poughkeepsie, NY 12601  
P: (845) 454-3980 F: (845) 454-4026  
[www.chazencompanies.com](http://www.chazencompanies.com)

Capital District Office (518) 273-0055  
North Country Office (518) 812-0513

November 18, 2011

Mr. Wayne Booth  
Supervisor  
Town of Newburgh  
1496 Route 300  
Newburgh, NY 12550

Mr. John P. Ewasutyn  
Chairman of Planning Board  
Town of Newburgh  
1496 Route 300  
Newburgh, NY 12550

*Re: Mid-Hudson Marina  
Proposed Townhome and Marina Development  
Oak Street, Town of Newburgh, NY  
Job # 80920.00*

Dear Supervisor Booth & Chairman Ewasutyn:

On behalf of our client, Mid-Hudson Marina, LLC, we would like to request a meeting to review the outlined application and requests included in this letter. We would then like to request to be placed on Town Board and Planning Board agendas to discuss and move forward with a request for SEQRA review including EIS analysis, zoning changes, and an Open Development Area as related to the parcels identified on the tax map as 121-2-1&2, located East of River Road/foot of Oak Road.

This project has been commonly referenced as The Mid-Hudson Marina Project located on Oak Street, in the Balmville section of the Town of Newburgh. We have provided a brief history of the project and a series of exhibits to assist you in the review of the project and our requests.

As you may recall in 2006, the Applicant proposed an amended project which is titled Anchorage at Balmville. The amended project consisted of 20 townhouse units, a 1,345 SF gatehouse, swimming pool, a 3,000 SF cabana, a river house, and a 110-slip marina. This amended project required approval of a new Marina Townhouse Overlay District by the Town Board to allow townhouses as an accessory use to a marina use. See Exhibit 'A' of this correspondence.

More recently, the Applicant has worked with the Planning Board on a modified conceptual site plan. These changes were brought before the Planning Board because the applicant is looking to build a more economically feasible project given the changed economic climate. With the input of the Planning Board, modifications to the plans were developed, these conceptual plans

were then approved in concept by the Planning Board. See attached Exhibit 'B' depicting the current conceptual plans.

The Applicant then requested and conducted a meeting with the Town Board regarding the proposed current project along with proposed modifications to the Overlay District zoning language. See attached Exhibit 'C' to view the letter outlining the original discussion topics. At this meeting, the Applicant and Town Board discussed site access, sequencing of construction, total number of accessory residential units, area zoning requirements, i.e., yard setbacks, and relief of the buffer distances from the primary marina use and the accessory residential use.

The Applicant was also asked to provide an analysis of project impacts under SEQRA comparing the approved 2006 plan to the current conceptual plan. This detailed comparison and history of the project is attached as Exhibit 'D'. The SEQRA Comparison is focused on the following topics: Transportation, Noise, Geology and Topography, Soils, Water Resources, Terrestrial Ecology, Aquatic Ecology, Wetlands, Threatened/Endangered Species, Significant Habitat, Site Plan, and Cultural and Visual Resources. The general conclusion of each topic item analyzed shows that the proposed changes will have similar or lesser impact in comparison to the 2006 project.

On September 13, 2011, Michael Donnelly of Dickover, Donnelly, Donovan & Biagi, LLP provided the Planning Board with a basic outline to be followed moving forward. See Exhibit 'E'. After further discussion with Michael Donnelly, we are suggesting a summary of an outline to be followed as we move forward. The outline is as follows;

1. Applicant to formerly submit this request and supporting documents.
2. Applicant to meet with Town to review/finalize a process to move forward as well as addressing any other topics the Town may want to discuss.
3. Planning Board to review the SEQRA Analysis/Comparison of EIS
4. Planning Board to determine if a supplemental EIS is or is NOT needed.
5. Town Board to review Zoning and Open Development requests from Applicant.
6. Town Board to refer both Zoning and Open Development requests to Planning Board for their review and comment.
7. Planning Board to review and comment back to Town Board regarding Zoning and Open Development requests
8. Assuming a supplemental EIS is not needed, the Town Board to take action of Applicant's requests.
9. Assuming Applicant's requests are granted from Town Board, Planning Board to review proposed project following traditional review procedures.

Although not necessarily required, we have provided a SEQRA Comparison allowing the Town Board to better evaluate potential environmental impacts the project may or may not have. Additionally, we have provided the requested zoning changes to the Planning Board. By no means is this to be interpreted as a circumvention of request(s) to be made either by the Town

Board or Planning Board. The sharing of these documents is to allow both Boards to have full access to all of the information available. We have also included for both the Planning Board and Town Board a hard copy and electronic copy of the 1996-DEIS, 1997-FEIS, 1997-FEIS Accepted By Planning Board, and the 2006-SEQRA Comparison.

The Applicant is anticipating to request, from the Town Board, an adoption of the requested zoning changes as outlined in Exhibit "F". The proposed amendment requests will allow for 24 townhouse units from the previous 20 unit accessory limit. Other amendment requests will modify setback, buffer distances, and the use of moorings as well as boat slips to allow the conceptual plan to comply with the Town Code. All of the requested zoning modifications are intended to provide an economically feasible marina project, which will enhance a resource of the community.

The applicant is also requesting the creation of an Open Development Area. New York State Town Law: Section 280-a requires that no building permits will be issued unless the street or highway giving access to the structure has been placed on the official map or plan. The proposed marina and accessory townhome conceptual plans are not intending to establish a street or highway due to the geographical constraints of the site and surrounding parcels. However, as described in subsection (4) of the Town Law, the Town Board, by resolution, can establish an Open Development Area that would allow access to the site to continue through the existing easements and River Road. The proposed project already has an established easement to the project site and would meet the requirements of the law.

The Applicant is excited to move forward with an economically feasible project that will help continue to improve and enhance the Newburgh waterfront. We thank both of you as well as the Town Board and Planning Board, in advance, for your time and consideration of our requests. We look forward to meeting with both Boards. Should you require any further information or I can be of any assistance before then, please contact me at 845-486-1569.

Sincerely,



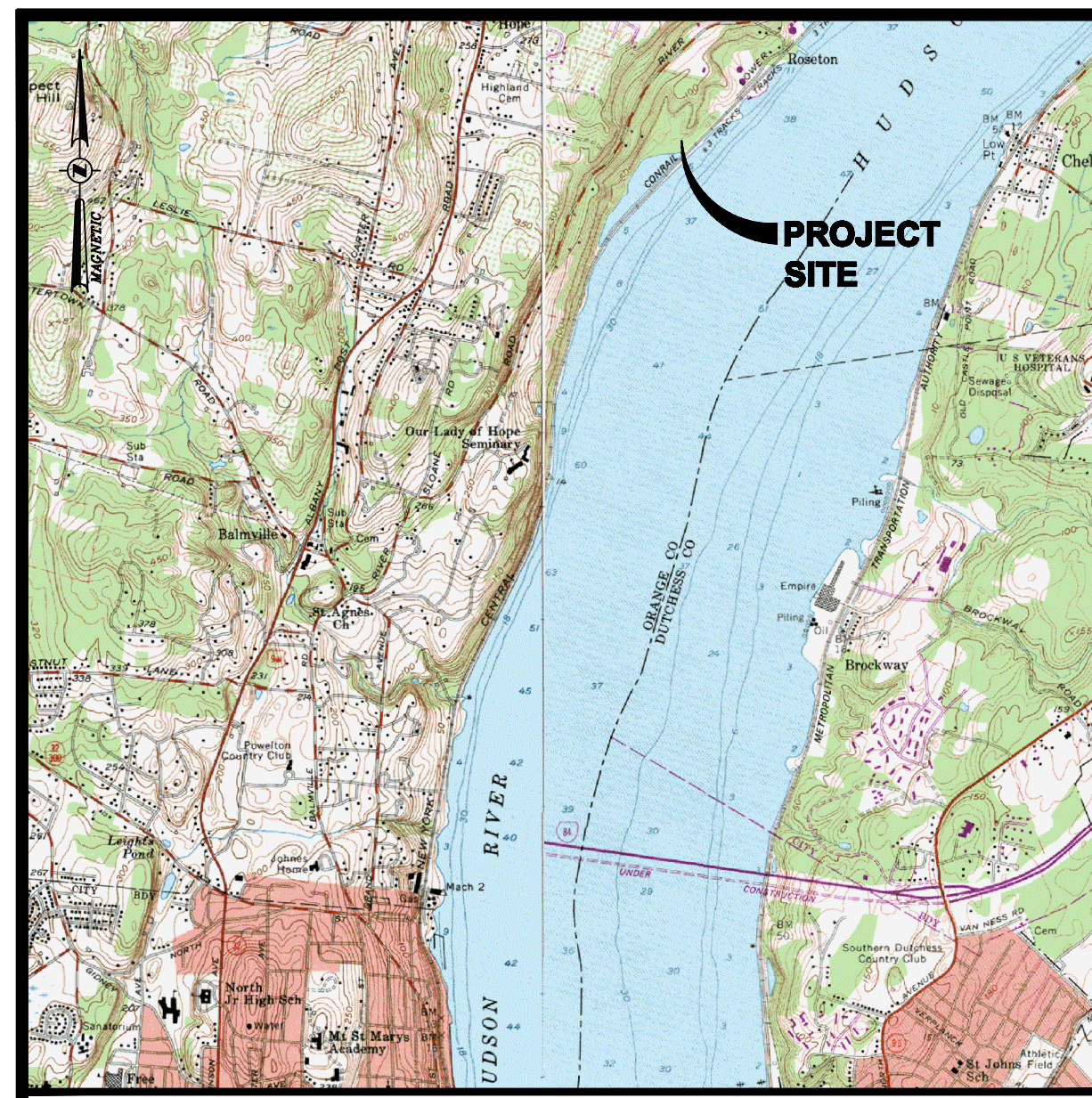
George Cronk, P.E.  
Project Manager

gc/encl. etc.

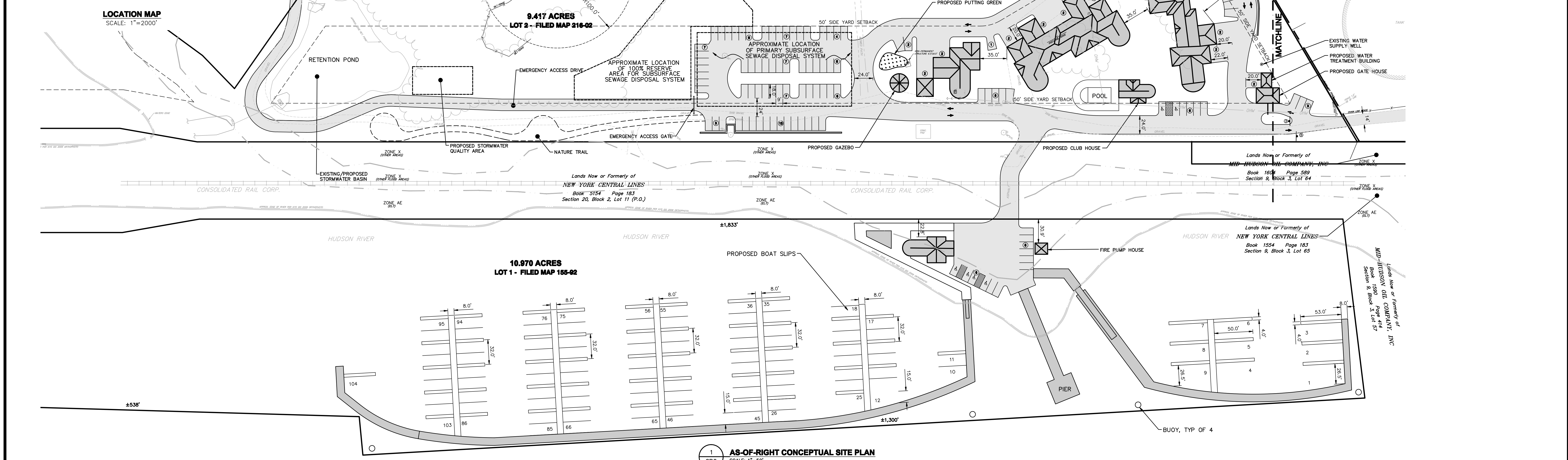
cc: Mark Taylor, Esq.  
Michael Donnelly, Esq.  
Nick Cardaropoli, Mid-Hudson Marina, LLC  
Joe Ronas, Esq., Project Attorney

# EXHIBIT A





**LOCATION MAP**  
SCALE: 1"=2000'



**1 AS-OF-RIGHT CONCEPTUAL SITE PLAN**  
SCALE: 1"=50'

MINIMUM BULK REQUIREMENTS :	REQUIRED	PROPOSED
LOT SIZE (TOTAL AREA)	5 AC.	20.4 AC.
LOT WIDTH	200 FT	>200 FT
LOT DEPTH	200 FT	>200 FT
FRONT YARD	50 FT	N/A
REAR YARD	0 FT (A)	N/A
	40 FT (B)	N/A
RESIDENTIAL BUFFER	40 FT (B)	40 FT
SIDE YARD MIN/TOTAL	50/100 FT	50/100 FT
MAX. BUILDING HEIGHT	40 FT	40 FT
MAX. LOT COVERAGE	40%	2.5%
MAX. LOT SURFACE COVERAGE	80%	<80%
MAX. TOWNHOME DENSITY	20 UNITS	20 UNITS
TOWNHOME SIZE	1,500 SF	21,500 SF
MAX. NUMBER OF SIGNS	1	1
MAX. SIGNAGE AREA	15 SF	115 SF
BOAT MOORINGS	100	104
DISTANCE BETWEEN PRINCIPAL BUILDINGS	35 FT	35 FT
MINIMUM INTERIOR PARKING LANDSCAPING	5%	25%

**RECORD OWNER:**  
MID HUDSON MARINA  
P.O. BOX 487  
CORNWALL-ON-HUDSON, NY 12520

**DEVELOPER / APPLICANT:**  
MID HUDSON MARINA  
P.O. BOX 487  
CORNWALL-ON-HUDSON, NY 12520

**SITE CIVIL ENGINEER:**  
CHAZEN ENGINEERING & LAND SURVEYING CO., P.C.  
21 FOX STREET, POUGHKEEPSIE, NY 12601  
PHONE: (845) 454-3980

**TAX MAP INFORMATION:**  
TOWN OF NEWBURGH, NEW YORK  
SECTION 121, BLOCK 2, LOT 1 &  
SECTION 121, BLOCK 2, LOT 2

**AREA:**  
TOTAL PROJECT ACREAGE : 20.387 ACRES

(A) NO SETBACK REQUIRED AT SHORELINE  
(B) ACCESSORY TOWNHOME ONLY

USE	REQUIRED PARKING COUNT <sup>(1)</sup>		
	REQUIRED	UNIT	PROVIDED SPACES
MULTIPLE DWELLING	2 SP/UNIT	20	40 (20 DRIVEWAY SPACES)
CLUB HOUSE	1 SP/150 SF	1,090 SF	7
GATE HOUSE	1 SP/150 SF	860 SF	6
MARINA SHOP	1 SP/150 SF	1,800 SF	12
BOAT SLIPS	.49 SP/BERTH	104	51
<b>TOTAL:</b>		<b>116</b>	<b>135</b>

(1) OFF STREET PARKING REQUIREMENTS PER TOWN OF NEWBURGH ZONING CODE, BUILDING USE PER "SCHEDULE OF OFF STREET PARKING REQUIREMENTS FOR NON RESIDENTIAL USES", MARINA USE PER "CHART 1 - PARKING GENERATION RATES"

**ZONING INFORMATION:**

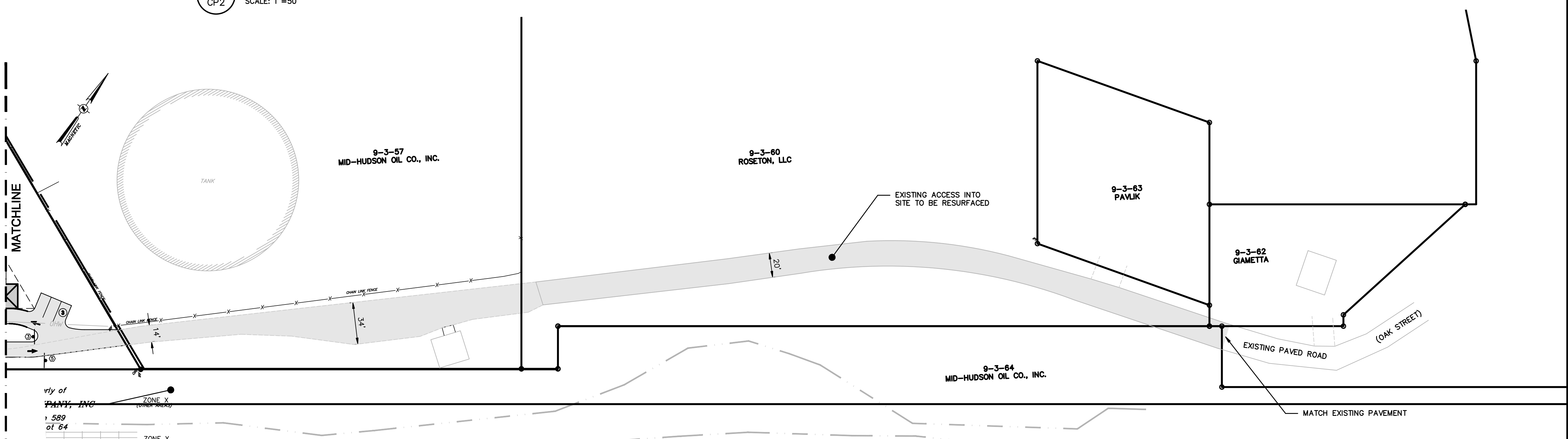
TAX LOT DATA : TOWN OF NEWBURGH, SECTION 121, BLOCK 2 LOTS 1&2  
TOTAL ACREAGE : 20.387 ACRES PROPOSED  
USE : MARINA WITH ACCESSORY RESIDENTIAL TOWNHOMES  
ZONE : I (INDUSTRIAL BUSINESS DISTRICT) WITH MARINA TOWNHOME OVERLAY DISTRICT (MT)

**GENERAL NOTES:**

1. PROPERTY SHOWN HEREON IS LOTS 1 & 2 OF FILED MAP 216-02 AS SHOWN ON A MAP ENTITLED, "LOT LINE CHANGE PLAN PREPARED FOR ANCHORAGE-ON-HUDSON", FILED IN THE ORANGE COUNTY CLERK'S OFFICE ON 10-17-02.

SIGN NO.	SIGN FACE	MUTCD NUMBER	MIN SIZE	BACK GRND	COLORS	LEGEND
1	RESERVED SIGNAGE	R7-8	12"x18"	WHITE/BLUE/WHITE	GREEN/WHITE	
2	NO PARKING ANY TIME	R7-8b	12"x6"	WHITE	BLUE	
3	NO PARKING ANY TIME	R7-1	12"x18"	WHITE	RED	
4	STOP	R4-7	18"x24"	WHITE	BLACK	
5	STOP	R1-1	24"x24"	RED	WHITE	
6	YIELD	R1-2	30"	WHITE/RED	RED	

NOTE: 1. ALL SIGNS SHALL CONFORM TO FHWA MUTCD ADOPTED DECEMBER, 2009 AND THE NY SUPPLEMENT, AND SECTION 619 OF THE STANDARD SPECIFICATIONS DATED MAY 1, 2008.



**2 OAK STREET ACCESS PLAN**  
SCALE: 1"=50'

**SITE LEGEND:**

---	PROPOSED SETBACK LINE
[Symbol]	PROPOSED BUILDING
[Symbol]	PROPOSED PAVEMENT
[Symbol]	PROPOSED ROAD CENTER LINE
[Symbol]	PROPOSED SIDEWALK
[Symbol]	PROPOSED CURB
[Symbol]	PROPOSED GUIDERAIL
[Symbol]	PROPOSED CHAIN LINK FENCE
[Symbol]	PROPOSED ROAD LINKING & STRIPING
[Symbol]	PROPOSED PARKING COUNT
[Symbol]	EXISTING SLOPES 15% - 20%
[Symbol]	EXISTING SLOPES 20% - 25%
[Symbol]	EXISTING SLOPES > 20%

**Dig Safely. New York.**  
Call Before You Dig  
Mark The Right Way  
Ensure Utility Response  
Respect The Marks  
Report The Marks  
800-362-7862  
www.digsafely.com

**THE CHAZEN COMPANIES**  
Engineers/Surveyors  
Planners  
Environmental Scientists  
Landscape Architects

**CHAZEN ENGINEERING, LAND SURVEYING & LANDSCAPE ARCHITECTURE CO., P.C.**  
Office Locations:  
Dutchess County Office: 21 Fox Street, Poughkeepsie, New York 12601, Phone: (845) 454-3980  
Capital District Office: 547 River Street, Troy, New York 12180, Phone: (518) 273-0055  
North Country Office: 100 Glen Street, Oneida, New York 13621, Phone: (518) 812-0513

**MID HUDSON MARINA**  
**AS-OF-RIGHT CONCEPTUAL SITE PLAN**  
TOWN OF NEWBURGH, ORANGE COUNTY, NEW YORK

REV.	DATE	DESCRIPTION

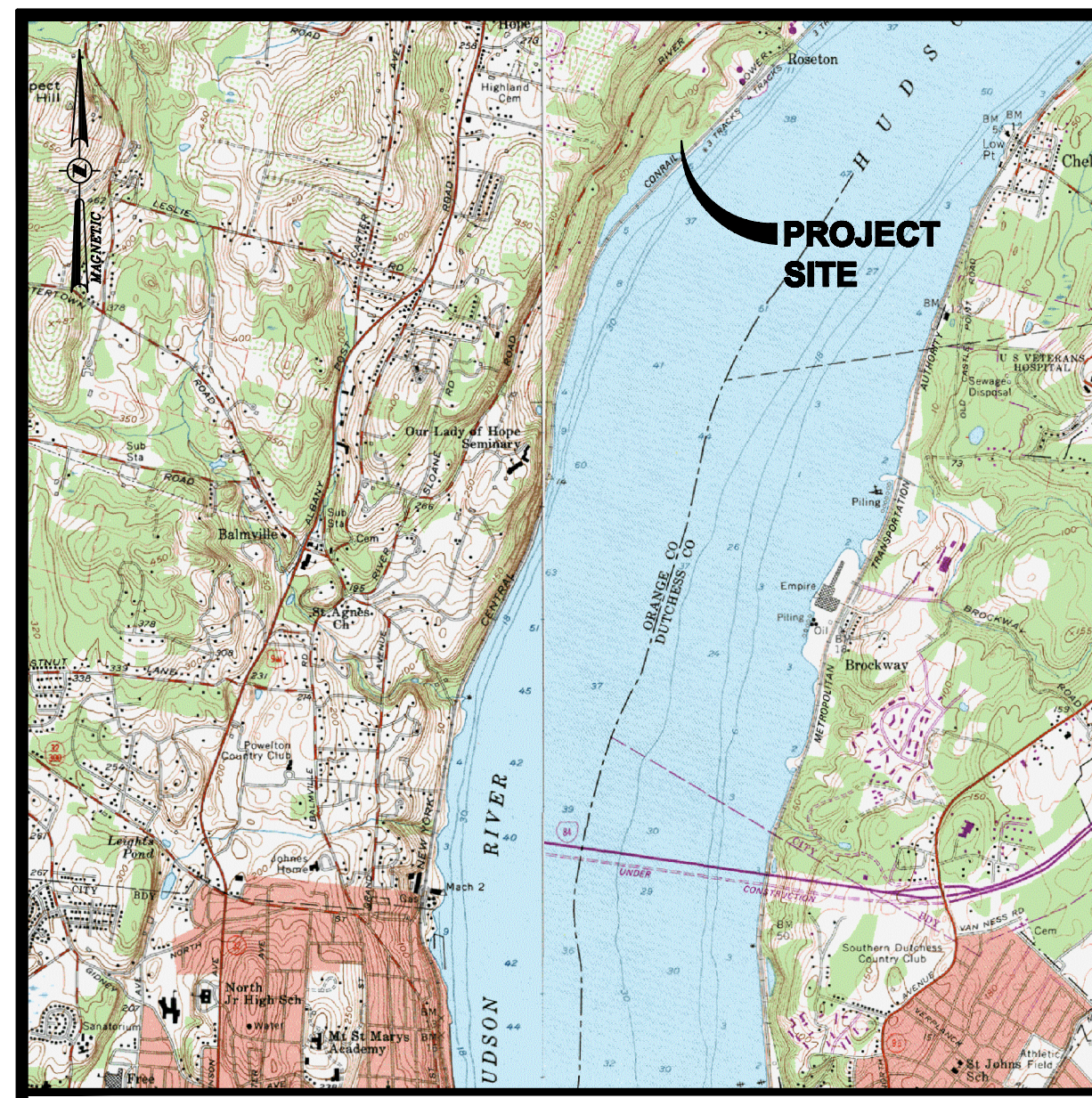
**MID HUDSON MARINA**  
**AS-OF-RIGHT CONCEPTUAL SITE PLAN**  
TOWN OF NEWBURGH, ORANGE COUNTY, NEW YORK

drawn: SMD, checked: CV  
date: 07/08/11, scale: 1"=50'  
project no.: 80920.00  
sheet no.: CP2 OF 1

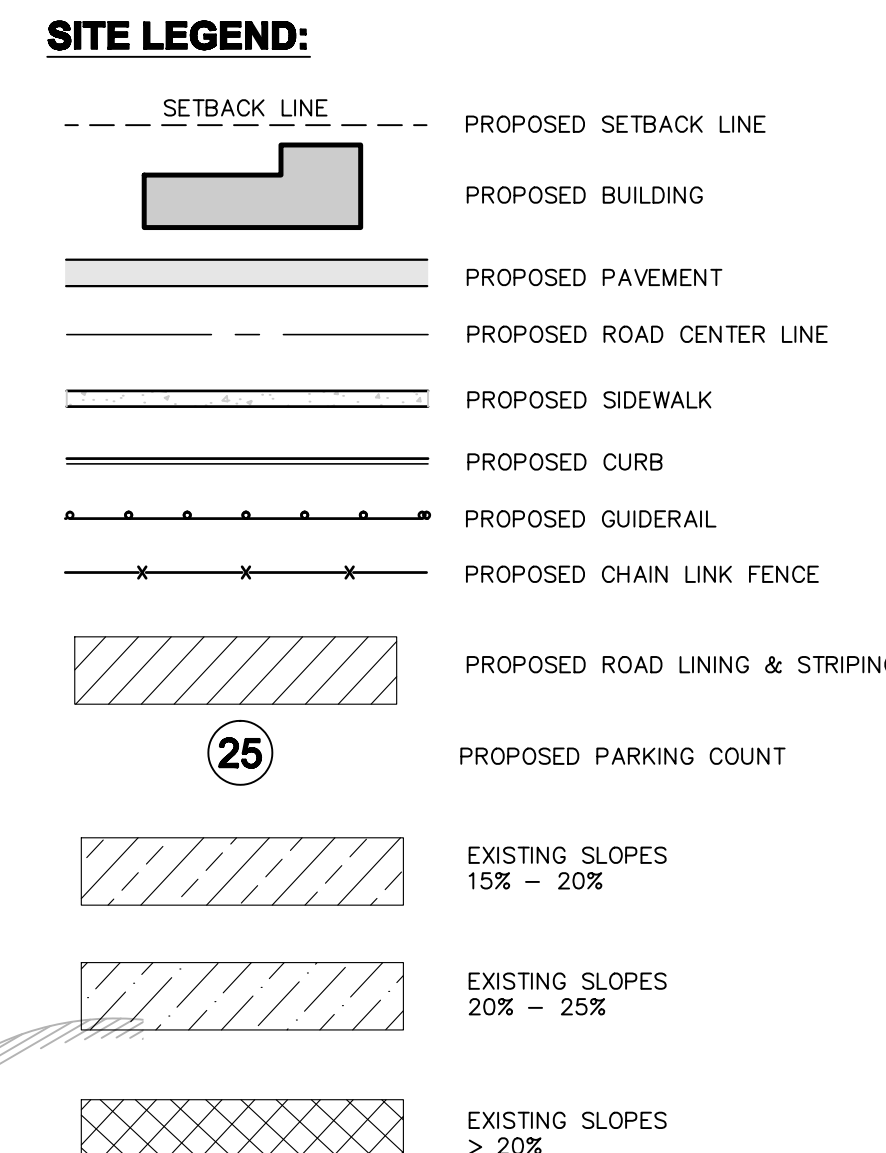
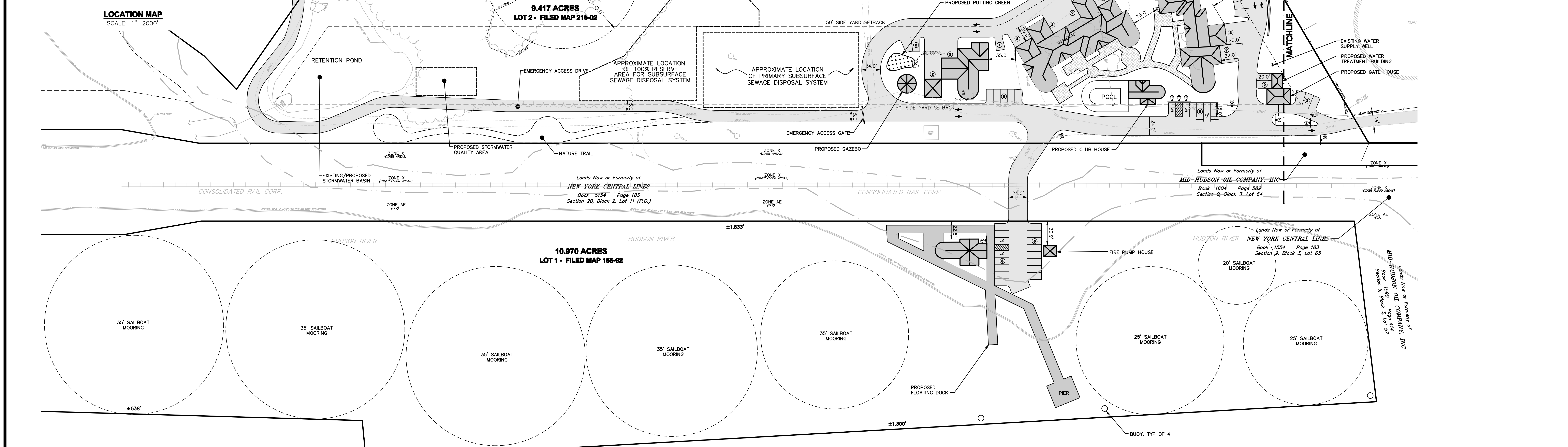


## EXHIBIT B





LOCATION MAP  
SCALE: 1"=2000'



1 PREFERRED CONCEPTUAL SITE PLAN  
SCALE: 1"=50'

MINIMUM BULK REQUIREMENTS :	REQUIRED	PROPOSED
LOT SIZE (TOTAL AREA)	5 AC.	20.4 AC.
LOT WIDTH	200 FT	>200 FT
LOT DEPTH	200 FT	>200 FT
FRONT YARD	50 FT	N/A
REAR YARD	0 FT (A)	N/A
	40 FT (B)	N/A
RESIDENTIAL BUFFER	40 FT (B)	40 FT
SIDE YARD MIN/TOTAL	50/100 FT	50/100 FT
MAX. BUILDING HEIGHT	40 FT	40 FT
MAX. LOT COVERAGE	40%	2.5%
MAX. LOT SURFACE COVERAGE	80%	<80%
MAX. TOWNHOME DENSITY	20 UNITS	20 UNITS
TOWNHOME SIZE	1,500 SF	21,500 SF
MAX. NUMBER OF SIGNS	1	1
MAX. SIGNAGE AREA	15 SF	15 SF
BOAT MOORINGS	100	35 FT
DISTANCE BETWEEN PRINCIPAL BUILDINGS	35 FT	35 FT
MINIMUM INTERIOR PARKING LANDSCAPING	5%	25%

**RECORD OWNER:**  
MID HUDSON MARINA  
P.O. BOX 487  
CORNWALL-ON-HUDSON, NY 12520

**DEVELOPER / APPLICANT:**  
MID HUDSON MARINA  
P.O. BOX 487  
CORNWALL-ON-HUDSON, NY 12520

**SITE CIVIL ENGINEER:**  
CHAZEN ENGINEERING & LAND SURVEYING CO., P.C.  
21 FOX STREET, POUGHKEEPSIE, NY 12601  
PHONE: (845) 454-3980

**TAX MAP INFORMATION:**  
TOWN OF NEWBURGH, NEW YORK  
SECTION 121, BLOCK 2, LOT 1 &  
SECTION 121, BLOCK 2, LOT 2

**AREA:**  
TOTAL PROJECT ACREAGE : 20.387 ACRES

**ZONING INFORMATION:**

TAX LOT DATA : TOWN OF NEWBURGH, SECTION 121, BLOCK 2 LOTS 1&2  
TOTAL ACREAGE : 20.387 ACRES PROPOSED  
USE : MARINA WITH ACCESSORY RESIDENTIAL TOWNHOMES  
ZONE : I (INDUSTRIAL BUSINESS DISTRICT) WITH MARINA TOWNHOME OVERLAY DISTRICT (MT)

**GENERAL NOTES:**

1. PROPERTY SHOWN HEREON IS LOTS 1 & 2 OF FILED MAP 216-02 AS SHOWN ON A MAP ENTITLED, "LOT LINE CHANGE PLAN PREPARED FOR ANCHORAGE-ON-HUDSON", FILED IN THE ORANGE COUNTY CLERK'S OFFICE ON 10-17-02.

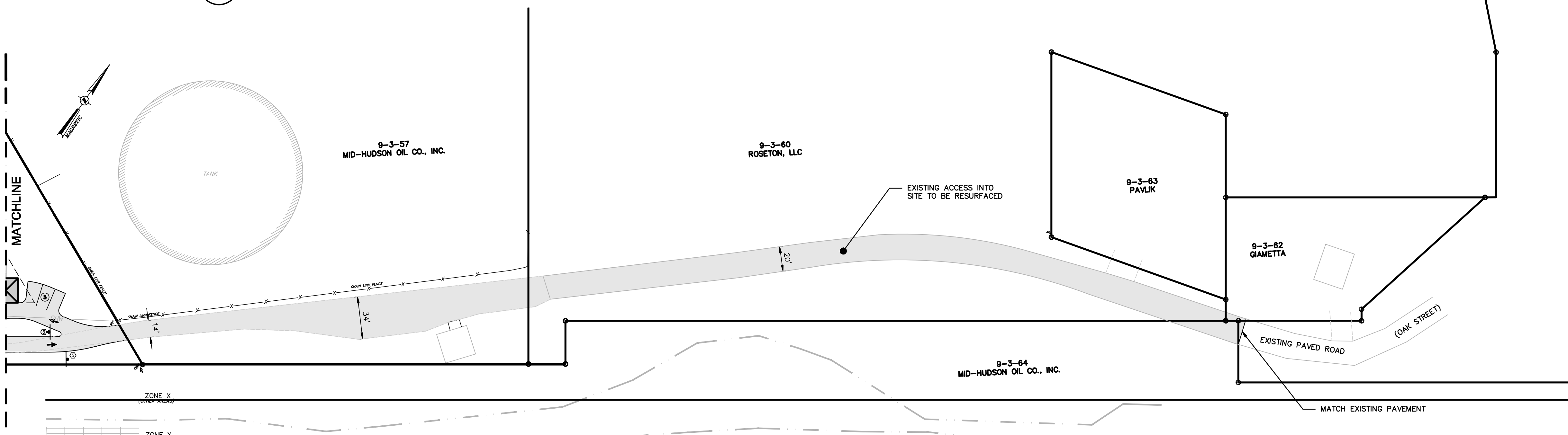
**SIGN LEGEND**

SIGN NO.	SIGN FACE	MUTCD NUMBER	MIN. SIZE	BACK GRND	COLORS	LEGEND
1	RESERVED	R7-8	12"x18"	WHITE/BLUE	GREEN/WHITE	
2	NO PARKING ANY TIME	R7-8b	12"x6"	WHITE	BLUE	
3	NO PARKING ANY TIME	R7-1	12"x18"	WHITE	RED	
4	STOP	R4-7	18"x24"	WHITE	BLACK	
5	STOP	R1-1	24"x24"	RED	WHITE	
6	YIELD	R1-2	30"	WHITE/RED	RED	

NOTE: 1. ALL SIGNS SHALL CONFORM TO FHWA MUTCD ADOPTED DECEMBER, 2009 AND THE NY SUPPLEMENT, AND SECTION 619 OF THE STANDARD SPECIFICATIONS DATED MAY 1, 2008.

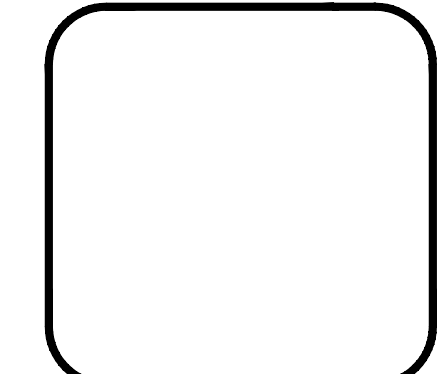
USE	REQUIRED PARKING COUNT <sup>(1)</sup>		
	REQUIRED	UNIT	PROVIDED SPACES
MULTIPLE DWELLING	2 SP/UNIT	20	40 (20 DRIVEWAY SPACES)
CLUB HOUSE	1 SP/150 SF	1,090 SF	7
GATE HOUSE	1 SP/150 SF	860 SF	6
MARINA SHOP	1 SP/150 SF	1,800 SF	12
BOAT SLIPS	.49 SP/BERTH	8	4
TOTAL:		69	69

(1) OFF STREET PARKING REQUIREMENTS PER TOWN OF NEWBURGH ZONING CODE, BUILDING USE PER "SCHEDULE OF OFF STREET PARKING REQUIREMENTS FOR NON RESIDENTIAL USES", MARINA USE PER "CHART 1 - PARKING GENERATION RATES"



2 OAK STREET ACCESS PLAN  
SCALE: 1"=50'

**Dig Safely. New York.**  
Dig Safely. New York. Dig Safely. New York. Dig Safely. New York.  
800-962-7962  
www.digsafely.com



ALL RIGHTS RESERVED. COPY OR REPRODUCTION OF THIS PLAN OR ANY PORTION THEREOF IS PROHIBITED WITHOUT THE WRITTEN PERMISSION OF THE DESIGN ENGINEER, SURVEYOR, OR ARCHITECT.  
ALTERATION OF THIS DRAWING, EXCEPT BY A LICENSED P.E. IS ILLEGAL. ANY ALTERATION BY A P.E. MUST BE INDICATED AND BEAR THE APPROPRIATE SEAL, SIGNATURE AND DATE OF ALTERATION.

**THE CHAZEN COMPANIES**  
Engineers/Surveyors  
Planners  
Environmental Scientists  
Landscape Architects

**CHAZEN ENGINEERING, LAND SURVEYING & LANDSCAPE ARCHITECTURE CO., P.C.**  
Office Locations:  
Dutchess County Office: 21 Fox Street, Poughkeepsie, New York 12601, Phone: (845) 454-3980  
Capital District Office: 547 River Street, Troy, New York 12180, Phone: (518) 273-0055  
North Country Office: 100 Glen Street, Oneida, New York 13621, Phone: (518) 812-0513

REV.	DATE	DESCRIPTION
2	07/28/11	REVISED PER CLIENT AND PLANNING BOARD COMMENTS
1	06/27/11	REVISED PER PLANNING BOARD COMMENTS

**MID HUDSON MARINA**  
**CONCEPTUAL SITE PLAN**  
TOWN OF NEWBURGH, ORANGE COUNTY, NEW YORK

drawn SMD checked CV  
date 07/23/10 scale 1"=50'  
project no. 80920.00  
sheet no. CP1  
1 OF 1



## EXHIBIT C





Engineers  
Environmental Professionals  
Land Surveyors  
Landscape Architects  
Planners

**Hudson Valley Office**

21 Fox St., Poughkeepsie, NY 12601  
P: (845) 454-3980 F: (845) 454-4026  
www.chazencompanies.com

Capital District Office (518) 273-0055  
North Country Office (518) 812-0513

December 20, 2010

Mr. Wayne Booth  
Supervisor  
Town of Newburgh  
1496 Route 300  
Newburgh, NY 12550

*Re: Mid-Hudson Marina  
Proposed Townhome and Marina Development  
Oak Street, Town of Newburgh, NY  
Job # 80920.00*

Dear Mr. Booth:

On behalf of our client, Mid-Hudson Marina, LLC, we would like to request to be placed on the next available Town Board agenda to discuss the status of the Mid-Hudson Marina project located on Oak Street in the Balmville section of the Town of Newburgh.

As you may recall in 2006, the Applicant proposed an amended project which was called Anchorage at Balmville. The amended project consisted of 20 townhouse units, a 1,345 SF gatehouse, swimming pool, a 3,000 SF cabana, a river house, and a 110-slip marina. This amended project required approval of a new Marina Townhouse Overlay District by the Town Board to allow townhouses as an accessory use to a marina use.

Because of economic changes in the market the Applicant we would like to discuss and present potential new amendments to the zoning code for the Board's consideration:

*Section 185-34(A)(3)(a) – Street access to the site shall be adequate for the intended level of use and shall not involve traffic of a type or intensity that would cause a detrimental effect of the character of the area.*

**Amendment Request:** We would like to amend this section of the code and add the following: "Access to the property is to be by an existing state, county or Town highway or by right of way or easement as approved by the Town Board."



*Section 185-34(B)(3) – Townhomes are permitted as an accessory use to a marina subject to the following conditions:*

**Amendment Request:** We would like to amend this section of the code and add the following: “The primary use must start construction within five years of site plan approval whether granted with or without conditions. Accessory uses may be constructed in advance of the primary use as a condition of site plan approval provided adequate securities are put in place with the Town to ensure that the primary use can be completed as approved by the Planning Board. Security can take the form of a letter of credit, security bond or other agreed upon measures between the applicant and Planning Board.”

*Section 185-34(B)(3)(a) – The marina must contain at least 100 boat slips and no more than 150 boat slips;*

**Amendment Request:** We would like to amend this section of the code and add the following: “boat slips may be built in phases as deemed appropriate by the Planning Board. The Planning Board has the right to waive the required amount of boat slips at anytime during the review process.”

*Section 185-34(B)(3)(c) – No more than 20 townhome units shall be permitted and shall be subject to site plan approval by the Planning Board together with the marina to which they are accessory;*

**Amendment Request:** We would like to amend this section of the code and replace “20 townhome units” to “24 townhome units” due to economic conditions to offset the development costs.

*Section 185-34(B)(3)(e) – Townhomes accessory to a principal marina use shall be subject to the same bulk requirements as those specified for marinas as set forth in the Table of Use and Bulk Requirements, R-1 District – Schedule 3 and the Table of Use and Bulk Requirements, I District – Schedule 9, as the case may be, for the underlying district;*

**Amendment Request:** We would like to amend this section of the code to add the following statement: “The Planning Board has discretion to waive or amend yard requirements, such as setbacks, as the Board deems appropriate for the overall project development.”

*Section 185-34(B)(3)(g) – Notwithstanding any greater minimum buffer requirement imposed by this chapter between uses in the I District and residential districts, the minimum buffer requirement between townhomes accessory to marinas in the I and MT Districts and adjacent residential uses and districts shall be 40 feet, and no buffer shall be required between the marina use and the accessory townhomes on the site;*

**Amendment Request:** We would like to amend this section of the code to add the following statement: “The Planning Board has discretion to waive or amend buffer requirements, as the Board deems appropriate for the overall project development.”



We look forward to meeting with the Board, should you require any further information or I can be of any assistance please before then, please do not hesitate to contact me at 845-486-1571.

Sincerely,

A handwritten signature in black ink, appearing to read "CV We".

Chris Viebrock, PE  
Project Manager

CV/encl. etc.

cc: Nick Cardaropoli, Mid-Hudson Marina, LLC  
Joe Rones, Project Attorney



## EXHIBIT D

# THE ANCHORAGE AT BALMVILLE

## SEQRA Comparison

### INTRODUCTION

The Town of Newburgh Planning Board adopted a Findings Statement pursuant to SEQRA for a project known as Anchorage on the Hudson (AOH) on June 5, 1997. The proposal consisted of the construction of 21 single family residences, a marina with 263 slips/moorings, 217 parking spaces for marina users, a 5,500 SF restaurant, a boat sales building and pedestrian access to the Hudson River along 2,013 linear feet of boardwalk in addition to other various site amenities. The total site acreage was 50.52 acres.

Subsequently, the project was approved as two separate actions. The single family residential subdivision was approved on 32.5 acres and has been filed in the County Clerk's office. The subdivision roads and related infrastructure have been completed and homes are presently under construction. The marina/restaurant portion of the project on 18 acres also received approval on October 18, 2001, but was never constructed. Subsequently, Hillside Homes, Inc., took out a building permit for construction of the restaurant and marina.

In 2006, the AAB project was purchased by Mid Hudson Marine Corporation and the owner pursued an amendment to the Town Zoning Ordinance from the Town Board for the former marina/restaurant portion of the project. The Applicant proposed an amended project which was called Anchorage at Balmville (AAB). The amended project consisted of 20 townhouse units, a 1,345 SF gatehouse, swimming pool, a 3,000 SF cabana, a river house, and a 110-slip marina. This amended project required approval by the Town Board to apply a Marina Townhouse Overlay district to the project area to allow townhouses as an accessory use to a marina use. The owner also pursued an amendment to the Findings Statement for the original DEIS and a new site plan approval from the Planning Board.

The Town Board granted this approval in 2006. Based on a SEQR comparison prepared by Clough Harbour Associates, LLP, for this project dated May 2006, the impacts associated with the 2006 AAB project were approximately 50% of those of the originally approved AOH project. Due to the reduction in the number of boat slips, in comparison with the originally approved plan, the 2006 AAB project resulted in a reduction of 1,100 pilings in the river for docks. The docks proposed in 2006 were to be comprised of underwater wave attenuating baffles beneath the docks and walkways anchored by helix screws. The number of boat slips was reduced from 263 to 110 slips for the 2006 AAB project, thereby allowing for a reduction in the linear feet (LF) of dock to be constructed from 9,673 LF to 4,635 LF. The restaurant was eliminated from the project and the number of parking spaces reduced from 208 to 100 for the overall site plan. A right-of-way for a public pedestrian walkway and future connection with the Greenway Riverwalk was included in the 2006 proposed site plan. The boat sales building was replaced by the riverhouse, and the marina parking lot surface was to be constructed of gravel in lieu of impervious asphalt. The boat travel-lift was eliminated.



The currently proposed project is similar to that proposed in 2006, with a further reduction in the number of proposed boat slips from 110 to only 7 sailboat mooring locations, which greatly reduces the number of floating docks required, and requires 50 feet of floating dock and only a total of 11± pilings. Additionally, the boat ramp and the truck/trailer parking area have been eliminated, resulting in more green space and less impervious surface, and reducing the potential impacts related to truck/boat trailer traffic and power boats. The layout of the townhouses has been revised to provide a 40 foot landscaped buffer along the northern property line. The townhouses are located within three buildings which will be designed to resemble turn-of-the-century shingle style homes or historic inns rather than a typical row of townhouse units. The buildings are two stories in conformance with the Town's 35 foot height limitation, and each will have dormers and other architectural elements to break up the scale of the building. Each unit will be provided with two parking spaces and at least one garage space.

As in the 2006 plan, the gatehouse will be located at the entrance to the townhouse units and the marina, and will have a sales office and small marine supply shop on the first floor and a year round apartment on the second floor for the on-site caretaker. The pool cabana/clubhouse will be used from Memorial Day through Labor Day for residents only. It will have an outdoor swimming pool and patio, a community room for small gatherings, a cabana area and restrooms as well as a storage area for the pool heater and related amenities. The riverhouse will be located on the river side of the railroad tracks for use by the marina patrons as in the 2006 plan, and will include amenities such as showers, restrooms and lockers for boat slip owners, in addition to an ice machine, sink, refrigerator, and picnic area with outdoor grill. The marina will have 7 mooring locations to accommodate sailboats between 20 and 35 feet long. The sailboats will be launched and removed at other facilities located on the river. The marina will be open from Memorial Day through November. A pier will also be provided for public day use, similar to the 2006 plan.

## **SEQRA**

In 2006, Clough Harbour & Associates LLP, prepared a SEQRA comparison of the potential environmental impacts associated with the 2006 AAB project and the original Findings Statement adopted for the AOH project. The 2006 comparison demonstrated that the impacts associated with AOH were expected to be about 50% less than those associated with the original AAB project. The following analysis compares the impacts of the originally approved AOH project, the 2006 proposed AAB project, and the currently proposed AAB project.

## **TRANSPORTATION**

### **Original AOH Project**

The traffic study prepared for the originally approved AOH project and reviewed by the Town's consulting traffic engineer adequately evaluated the relevant traffic issues and concerns that were originally identified by the Town in the scoping process as well as concerns identified by the public and involved agencies. In particular, the traffic study addressed six specific areas identified during the public participation process:

- Discussion of River Road update/clarification on traffic volume database
- Accident history of the River Road corridor
- Consideration of the Beaux Rivage restaurant traffic
- Consideration of alternate access configuration
- Consideration of existing rail grade crossing
- Proposed mitigation measures

### Potential Impacts

Potential areas of concern included the impact of additional traffic associated with marina operations and the marina restaurant, especially towed boat trailers, on the roads and intersections serving the adjacent residential area, including River Road, Balmville Road, Balmville Circle, and Upper Oak Street. Other potential impacts identified include the cumulative impact of project traffic and traffic from the recently approved Beaux Rivage restaurant, the adequacy of access to the site for emergency services, the increased potential for accidents due to trailer traffic, areas of existing roadway that require improved marking or pavement conditions, parking for uses on the marina parcel and access to Route 9W, a State highway, from the project.

The traffic study, which considered the cumulative traffic resulting from the nearby Beaux Rivage restaurant, indicated that minor impacts on the traffic levels at the intersections near the site would be expected to occur with the originally approved project. The study also included a review of the accident history along River Road and other roads in the immediate vicinity. The accident history provides no indication that accidents were associated with specific infrastructure deficiencies, or that increased levels of traffic associated with the project are likely to cause an increase in the number of accidents.

The EIS also considered the impacts of project traffic on the existing and proposed means of access to the project site. Access to the residential subdivision is provided by a town road that was constructed by the applicant from River Road and two cul-de-sacs constructed from the project road to serve the individual lots. The access to the marina parcel was provided by improvement of the existing marina entranceway from Lower Oak Street. An emergency access road for use by emergency services was proposed to be constructed to allow access in emergency situations via the new subdivision road. Access was to be controlled by a locked crash gate.

### Mitigation Measures

A number of mitigation measures were identified in the EIS (Appendix A of the FEIS narrative) that would mitigate potential traffic impacts on the surrounding area resulting from the proposed project. The Board's approval was conditional upon adoption, implementation and construction of those mitigation measures required by the project which measures will be funded by the applicant. The updated traffic study identified a comprehensive listing of recommended traffic mitigation measures that will be employed during the construction and



operational phases of the project to minimize or eliminate potential traffic impacts generated by the project.

Provision was made for a gated emergency access connection between the marina site and the roadway serving the residential subdivision for emergency fire protection access. Adequate parking was provided on the marina site plan for the proposed uses and sufficient parking would be implemented in phases coordinated with the phased development plan for the marina to ensure that adequate parking is available in each phase.

Boat trailer and restaurant traffic from the marina was to be directed by signage to use Route 9W via northern River Road and Marlboro Turnpike. In addition, the frequency of boat trailer traffic was reduced as a result of the applicant's agreement to put restrictions in the slip agreements that will limit marina tenants to launch and remove their boats once during the boating season with limited exceptions for purposes of repair or similar activities, and directing all traffic to access the site to and from the north on River Road. Implementation of these mitigation measures would reduce as well as direct boat trailer traffic from the marina and restaurant traffic away from the residential community on River Road between Balmville Circle and Oak Street. In addition, the availability of onsite winter boat storage and limitations on boat launching and removal would further minimize boat trailer traffic on River Road to and from the site.

The updated traffic study also analyzed general traffic conditions along roads and intersections in excess of two miles away from the project site, in light of public concern and comments about traffic. The Town Engineer and the Town Highway Superintendent advised the Planning Board that many of these suggestions have been or will be incorporated into the Town's routine road maintenance programs. While these measures might help resolve some of the transportation-related issues expressed during the public participation process, the Town Engineer, Town Highway Superintendent and the Planning Board's traffic consultant concluded these items were not needed to mitigate highway impacts generated by the proposed project.

The Planning Board determined that the mitigation measures for the project, which are summarized below and discussed in greater detail in the DEIS and in the traffic related responses throughout the FEIS, would be effective to minimize or avoid traffic impact from the proposed project and will be incorporated as a condition of any site plan or subdivision approval issued by the Planning Board.

The Planning Board noted that certain of the proposed traffic mitigation measures associated with the marina operations involves installation of signage on roads or other work within the right-of-way that will require approval by the Town of Newburgh, Town Board and the New York State Department of Transportation (NYSDOT) prior to their adoption of construction.

As a condition of site plan approval, the Planning Board required that the applicant enter into an acceptable memorandum of understanding with those agencies to coordinate approvals, establish time frames for installation of improvements and allocate responsibilities for installation and costs of the traffic mitigation measures that were identified in the FEIS as required as a result of the implementation of the AOH project.

Traffic mitigation measures required as a condition of approval of the original AOH proposal were as follows:

At the intersection of Route 9W and Cedar Hill Road, traffic signal warrants are projected to be met under the no-build condition and with the proposed project under the future build condition. In order to mitigate the applicant's traffic impact on the Route 9W-Cedar Hill Road intersection, the applicant was required to:

- Monitor the intersection to determine if traffic signal warrants have been met. Such monitoring shall be conducted at the following intervals:
  - Upon opening of the restaurant at the marina.
  - Upon rental of 90% of the slips in Phases I and II of the marina.
  - Upon rental of 90% of all slips in Phases I, II and III of the marina site.
- Complete a design for a traffic signal installation at the Route 9W- Cedar Hill Road intersection.
- Contribute its pro-rata projected share of the cost of the traffic signal installation by the payment of the sum of \$9,600 which sum shall be in addition to completing the traffic monitoring studies and the traffic signal design as provided for above.

The Planning Board estimated, at that time, that the cost for the monitoring, design and contribution towards the installation of the traffic signal by the applicant would be \$22,000 and constituted a reasonable contribution by the applicant to mitigate the traffic impacts of the proposed project on the Route 9W-Cedar Hill Road intersection.

- "Stop" signs and pavement striping would be installed at the intersection of Oak Street.
- A traffic control sign would be installed directing exiting motorists from Lower River Road to make a right turn north to access Route 9W.
- The section of Lower River Road between the two existing Hess oil storage tanks and the marina entrance would be resurfaced by the applicant.
- The existing railroad crossing would be upgraded by the applicant according to the design criteria approved with Conrail.
- Signing would be installed by the applicant along Route 9W directing traffic to access the Anchorage on Hudson restaurant and marina via Cedar hill Road (with NYSDOT approval).
- As part of the applicant's lease conditions for marina slips, all boat trailer traffic to and from the site would be directed to utilize Route 9W and Cedar Hill Road to access the facility.
- At the intersection of the residential access road with River Road, the existing vegetation would be cleared, and grading completed and slopes stabilized by the applicant to provide adequate site distance for traffic entering and exiting the residential portion of the site.



- An emergency access connection with a locked crash gate would be provided by the applicant between the residential and restaurant/marina portions of the project. Pavement markings and signage will prohibit parking in the vicinity of the access to the commercial portion of the project. Maintenance of this access point would be provided by the marina owner.
- On Oak Street (east leg) a drainage swale would be defined along the edge of the pavement and centerline striping will be installed. Pavement repair including resurfacing of Oak Street at its intersection with River Road with a high friction asphalt surface would be completed by the applicant. Some additional widening of lower Oak Street would also be undertaken where possible by the applicant.

## **2006 AAB Project**

### Potential Impacts

A Traffic Impact Study was completed by Clough Harbour & Associates, dated April 16, 2006, which evaluated the impacts of the 2006 proposed development on the surrounding road network and also compares the proposed development to the originally proposed restaurant/marina development. The 2006 concept was expected to generate approximately 50% less traffic than the originally approved site plan.

### Mitigation Measures

The 2006 development concept was not expected to have a significant impact on the operations of the adjacent roadway system. At the intersection of US Route 9W and Cedar Hill Road, the existing and projected operations of the intersection were evaluated and a traffic signal was not recommended as a result of the 2006 Anchorage at Balmville project.

The following improvements were recommended:

- River Road, Oak Street & Lower River Road Intersection-Install "Stop" signs and pavement markings.
- Lower River Road-Provide pavement repair, resurfacing, drainage improvements, minor widening and pavement markings between River Road and the site.
- Railroad crossing-If any alterations are proposed, the existing at-grade rail crossing will require improvements as determined by CSX and as per the New York State Manual of Uniform Traffic Control Devices.
- Emergency access gate – installation of the emergency access connection is recommended.

## **Currently Proposed AAB Project**

### Potential Impacts

The currently proposed project includes a reduction in the number of slips from 104 to 7 sailboat mooring locations, and the boat ramp and truck/trailer parking area have been eliminated, resulting in further reduction in traffic, and elimination of any impacts related to truck/boat trailer traffic. Chazen has reviewed the current project and the Traffic Impact Study by Clough Harbour & Associates dated April 16, 2006, and concludes that the proposed project changes will result in a reduction in traffic generated by the site (see Attachment A).

### Mitigation Measures

The currently proposed project is expected to result in less impacts than the 2006 AAB project due to the reduction in the number of boat slips and the elimination of the boat ramp and truck/trailer parking area. All mitigation measures required for the original approval that are applicable to the currently proposed project will be utilized.

## **Conclusion**

With regard to traffic, it was anticipated that the 2006 proposed AAB project would result in fewer impacts than those resulting from the originally approved AOH due to the elimination of the restaurant and a reduction in the number of boat slips. The amount of traffic was expected to be reduced by approximately 50%. The currently proposed project is expected to reduce the impacts further due to further reduction in the number of boat slips and elimination of the boat ramp, which eliminates the concern regarding truck/boat trailer traffic. Use of the boat slips will be restricted to residents of the townhomes.

## **NOISE**

### **Original AOH Project**

#### Potential Impacts

Concern was expressed about the impact of noise levels associated with the operation of the marina on adjoining residences, particularly power boat traffic and amplified sound associated with parties and events during evening hours. Another area of concern was the level of noise that could be generated during project construction activities, particularly pile driving activities associated with the proposed marina expansion.

The EIS incorporated a noise impact analysis conducted by John Collins Engineer (Appendix G of the DEIS). That analysis evaluated the existing noise levels and those expected during and after construction of the originally approved AOH project.

The study identified the potential for temporary impacts associated with increased noise levels during certain periods of heavy construction, primarily as the result of pile driving activities



associated with the expansion of the dock areas at the marina. However, the study noted that the construction activities will occur at significant distance from the adjoining residential properties (the nearest residence is approximately 1,200 feet from the marina area) and temporary construction impacts would be reduced due to the attenuation of distance and intervening mutual vegetated buffers.

The study also noted that a significant factor affecting noise levels in the site area is noise associated with trains using the Conrail line which cause recurrent peak noise levels approximately 20dB, higher than typical ambient levels. The transient peaks from train traffic last 5 minutes and occur 20 times per day. The frequency and level of these existing peak events will attenuate the saliency of noise impacts associated with marina activities. The noise study concluded that noise levels will be similar in both the build and no-build conditions and within recommended guidelines for residential areas.

In response to comments made during the public hearing on the DEIS with respect to potential noise impacts from increasing existing marina operations on adjacent residences, the applicant agreed to incorporate the following restrictions on outdoor noise sources at the marina to minimize any potential impact on residences: no diners will be seated outdoors after 10:00 pm, excluding public address systems from any part of the marina site, forbidding outdoor music at the marina, restrictions on certain boat operations and forbidding launching and mooring of jet skis. The relocation of the restaurant towards the northern part of the marina site increased separation distances from the majority of existing residences abutting the property and further reduced related potential noise impacts for the same.

### Mitigation Measures

Subject to incorporation of the following mitigation measures, which the Planning Board will require as a condition of site plan approval, the Planning Board finds and determines that the proposed site plan meets the requirements of the Town of Newburgh Town Code with respect to noise levels:

- The applicant agreed, and the Board required, that no public address system, amplified music or outdoor concerts be allowed in the marina site plan portion of the project (marina and restaurant).
- The Board required the applicant provide appropriate assurance that on-site management and security staff responsible for marina and restaurant operations will enforce compliance.
- The Board required that the applicant utilize a slip lease agreement that incorporates the mitigation measures identified. The basic boat slip lease agreement was included in the FEIS as Appendix D. That agreement contains language regarding operational practices to eliminate or reduce noise generated by marina users and operations, such as minimized engine idling, enforcing speed limits on boats as they transit marina facilities, prohibition on playing of radios/stereos and parties on-board moored boats, that will be enforced by the on- site marina management and security staff.

- The Board required that the applicant prohibit jet skis and similar personal watercraft from being rented, serviced, moored or launched at the Anchorage on the Hudson marina in accordance with and as proposed by the applicant in the FEIS.
- As a condition of site plan approval, the Planning Board limited construction activities to daylight hours between 7:00 am and 5:30 pm Monday through Saturday for the marina project and daylight hours between 7:00 am and 7:00 pm Monday through Saturday for the subdivision project.
- The Planning Board determined that more than half of the site will remain wooded to help reduce any noise prior to reaching adjoining residential areas.

## **2006 AAB Project**

### Potential Impacts

The potential impacts related to noise for the 2006 AAB project are expected to be primarily short term impacts related to the construction of the townhouses and related structures. Additionally, noise related to activities at the marina could occur during seasonal operations between Memorial Day and Labor Day.

### Mitigation Measures

With the 2006 AAB project, the marina docks were to be floating docks tethered to helix screws embedded in the river bottom. The floating docks were to be removed and stored on-site during winter months. The boardwalk and boat slips were to be anchored into place and removed seasonally, with a minimum number of pilings installed. The existing concrete boat ramp was to remain for the launching of small boats; however, no travel lift for the placement of large boats in and out of the river was proposed. The site amenities were to be for the use of the residents and boat slip lessees only, not accessible to the general public.

## **Currently Proposed AAB Project**

### Potential Impacts

The potential impacts related to noise for the currently proposed project are expected to be primarily short term impacts related to the construction of the townhouses and related structures. Although noise related to activities at the marina could occur during seasonal operations between Memorial Day and Labor Day, with the further reduction in the number of boat slips and the elimination of the boat ramp and associated truck/trailer parking area, impacts associated with noise from the marina are expected to be insignificant.

### Mitigation Measures

The currently proposed project includes elimination of the boat ramp and truck/trailer parking area, which will greatly reduce potential noise generated by the marina. Additionally, the number of slips has been reduced to 7 sailboat mooring locations; therefore, noise resulting

from power boats will be minimal, and most of the floating docks have been eliminated, reducing noise from pile driving activities during construction. Any mitigation measures approved for the original AOH project and the 2006 project that are still applicable for the currently proposed project will be implemented.

## **Conclusion**

With regard to noise, it was determined that the 2006 AAB project would have less impacts than those of the originally approved AOH due to the elimination of the restaurant and a reduction in the number of boat slips. The current proposal further reduces noise impacts due to a further reduction in the number of boat slips from 104 slips to only 7 sailboat mooring locations, and elimination of the boat ramp and truck/trailer parking area, which will greatly reduce noise generated by the marina to that of an insignificant level. Any mitigation measures approved for the originally approved AOH project that are still applicable will be utilized for the current project.

## **GEOLOGY AND TOPOGRAPHY**

### **Original AOH Project**

#### Potential Impacts

Concern was expressed as to the suitability of portions of the site for development, due to steep grades, the potential for erosion, and the impact of construction on the site's natural vegetation.

#### Mitigation Measures

The Planning Board required the following mitigation measures:

- The subdivision was to be sequenced with respect to the grading plan so that side slopes for lots adjoining the road would be graded and stabilized at the same time as the road; additional grading on residential lots would not take place until individual building lot plans were known.
- The Board required that the subdivision plan and site plan incorporate the proposed alignment of the roadways. The proposed roadways were revised and designed by the applicant to follow the natural topography reducing the required earthwork involved in the project to the greatest extent possible and in compliance with the town road requirements.
- The applicant agreed that the lot plans for residences would be designed with appropriate consideration for the grade change within the building envelope, i.e. split level home design will be encouraged to limit the earthwork involved, dependent on lot topography, so as to minimize soil disturbance and grading within the building envelope to the maximum extent practicable.



- The applicant was to provide stepped landscape walls, similar to a keystone wall, in those instances where it is necessary to make grade changes between the level areas that surround the proposed residences and the natural topography.
- Compliance with all conditions of approval, including subdivision plan notes, covenants and restrictions, and mitigation measures, was required as a condition of issuance of building permits and certificates of occupancy for residences on the subdivision lots.

## **2006 AAB Project**

### Potential Impacts

The 2006 AAB project is generally located on the flattest portion of the original AOH site at the base of the residential subdivision where the steepest slopes exist. Impacts from slope failure at the adjacent subdivision could be a potential concern. One townhouse unit is proposed to be constructed along the northern property line near the Hess tanks, which will require significant grading to accommodate the steep slopes in this area.

### Mitigation Measures

The 2006 AAB project development was designed to follow the natural topography to the greatest extent practicable. As proposed for the 2006 AAB project, the applicant will provide stepped landscape walls as necessary and consistent with mitigation measure D above. A grading plan will be submitted for review and approval by the Planning Board during the site plan review process.

## **Currently Proposed AAB Project**

### Potential Impacts

The currently proposed AAB project development is located in the same area of the site as the 2006 AAB project, and was also designed to follow the natural topography to the greatest extent practicable. The layout has been revised to provide a 40 foot landscaped buffer along the northern portion of the site, resulting in a greater setback from the property line. Impacts from slope failure at the adjacent subdivision could be a potential concern as with the 2006 plan.

### Mitigation Measures

The currently proposed AAB project development is designed to follow the natural topography to the greatest extent practicable. As proposed for the 2006 AAB project, the applicant will provide stepped landscape walls as necessary and consistent with any applicable mitigation measures listed above. A grading plan will be submitted for review and approval by the Planning Board during the site plan review process.

## **Conclusion**

With regard to geology and topography, it is anticipated that, similar to the 2006 AAB project, the currently proposed project will result in less impacts than those of the originally approved AOH since development is generally located on the flattest portion of the overall site adjacent to the river. Slopes along the northern property line will be mitigated through the construction of retaining walls. Impacts resulting from the currently proposed project are expected to be less than with the 2006 project since a 40 foot landscaped buffer is now provided along the northern property line, north of the proposed townhomes.

## **SOILS**

### **Original AOH Project**

#### Potential Impacts

Concern was expressed about the potential impact of development on steep grades characterizing a portion of the site, and the potential for erosion and sedimentation problems to occur. All necessary grading of roadways and necessary grading of side slopes on the adjoining lots were shown on the detailed grading plans, and any grading necessary for approval of septic facilities on the individual lots was to be done by the applicant as part of the initial grading work, ensuring coordinated grading of the subdivision and effective implementation of the erosion and sedimentation control plan measures identified in the EIS.

The applicant will coordinate cuts and fills to avoid or minimize the need to remove materials from the site. Further mitigation is provided by the applicant's proposed sequencing plan, which will defer construction of the majority of lots that require waiver of the slope grading requirement until Phase II, although erosion control measures will be installed in Phase I.

#### Mitigation Measures

The Planning Board determined that the impact on soils would be minimized or avoided to the maximum extent practicable by the following mitigation measures:

- A detailed erosion and sedimentation control plan developed by the applicant to minimize any stormwater related impacts of the project on the Hudson River was incorporated into the subdivision plan and the site plan.
- Compliance with that plan, which includes the installation and maintenance of a stormwater extended detention basin, catch basins, and riprap protection for discharge outlets, was to be required during both the construction and the operational phases of the project.
- The Board required the construction phasing plan proposed by the applicant in connection with the residential portion of the project to be implemented so as to minimize the amount of clearing and grading in progress at any given time. Phased implementation would also enhance the effective operation of the erosion and sedimentation control features.

- The extended detention pond was designed to provide for the treatment of the "first flush" to provide water quality benefits. The first flush is discharged over a 24 hour period.

## **2006 AAB Project &**

### Potential Impacts

Potential impacts related to soils are not generally an issue for the 2006 AAB project given the general flatness of this portion of the site. The one area of concern could be the northern portion of the site near the Hess tanks where existing steep slopes would be regraded to accommodate one of the townhouse units.

### Mitigation Measures

Since original AOH project was approved, the regulations regarding erosion and sedimentation control in New York State have become more stringent. Any development which disturbs more than one acre would require compliance with the State Pollution Discharge Elimination System (SPDES) General Permit Program effective at that time and the "New York Standards and Specifications for Erosion and Sediment Control" published by the Empire State Chapter of the Soil and Water Conservation Society. The 2006 site plan for AAB was be designed in accordance with these standards which will provide greater mitigation than was previously proposed for the originally approved AOH.

## **Currently Proposed AAB Project**

### Potential Impacts

Potential impacts related to soils are not generally an issue for the currently proposed project given the general flatness of this portion of the site, and the redesigned layout that provides a 40 foot landscaped buffer along the northern property line.

### Mitigation Measures

Since original AOH project was approved, the regulations regarding erosion and sedimentation control in New York State have become more stringent. Any development which disturbs more than one acre would require compliance with the State Pollution Discharge Elimination System (SPDES) General Permit Program (Permit No. GP-0-10-001) and the "New York Standards and Specifications for Erosion and Sediment Control" published by the Empire State Chapter of the Soil and Water Conservation Society. The currently proposed site plan for AAB will be designed in accordance with these standards which will provide greater mitigation than was previously proposed for the originally approved AOH and the 2006 proposed project.



## **Conclusion**

With regard to soils, it is anticipated that both the 2006 AAB project and the currently proposed AAB project would have less impacts than those of the originally approved AOH project due to new regulations established by New York State for erosion and sedimentation control.

## **WATER RESOURCES**

### **Original AOH Project**

#### Potential Impacts

Individual wells will be developed in order to utilize groundwater resources on the site as sources for water supply to the residences, restaurant and marina. The water resources on-site appear to be adequate as to quantity and quality based on the on-site well test performed by the applicant.

Surface water quality may be affected by runoff from the site and temporary alterations in quality associated with construction or marina operations. Other potential impacts identified in the EIS were associated with the provision of fueling facilities and sewage discharges from boats, but these have been completely mitigated as described below.

The applicant conducted percolation tests and prepared adequate plans for septic treatment of sewage generated by the proposed residences and marina in conformance with Department of Health standards. Prior to final subdivision approval, the Department of Health reviewed and approved specific design criteria for individual septic systems, ensuring that there will be adequate treatment by each system and that there would not be any significant harmful impact on groundwater resources. The applicant must comply with all Department of Health standards for potable water supplies.

#### Mitigation Measures

The Planning Board determined that the impact on water resources would be minimized or avoided to the maximum extent practicable by the following mitigation measures:

- The proposed project would be served by individual wells and septic systems. The project thus will not place any demand on municipal water and sewage systems.
- As a condition of site plan approval, the Planning Board required that the applicant provide the proposed sanitary pump-out facility for the use of marina renters and other recreational boaters, and that the operator of the marina would incorporate a condition in all slip rental agreements that requires tenants of the marina to use the pump out facility for disposal of sanitary waste.
- As a condition of site plan approval, the Planning Board required that the marina boat repair facility conduct all boat repairs on impervious surfaces connected to a sump, that the sump be periodically pumped out and disposed of by a licensed hauler, and that all slip rental agreements include a condition prohibiting pollution

of waters by on board repairs, painting and any other on board activities of the lessee. The staff of the marina would be responsible for enforcing these conditions. No refueling services would be permitted on the site and are not incorporated in the plans or permitted by the Planning Board.

- As a condition of subdivision and site plan approval, the Planning Board required that the applicant implement the proposed stormwater management program in accordance with Town of Newburgh and NYSDEC regulations, so as to effectively avoid or mitigate any impacts associated with erosion and runoff associated with the project. A stormwater management basin was to be installed and maintained during both the construction and operational phases of the project as incorporated into the project plans.
- As a condition of site plan approval, the Planning Board required that the applicant provide all treatment determined by the Health Department to be necessary to ensure that any public water supplies shown on the marina site plan comply with applicable standards and requirements for public water supplies.

## **2006 AAB Project**

### Potential Impacts

The original EIS proposed to serve the restaurant (3,920 gpd), marina ancillary buildings (1,825 gpd), and marina hose bibs (9,468 gpd) (average 36 gpd x 263 boat slips) with an existing well located at the marina site which produced 40 gpm. The total projected usage was 15,213 gpd. This well was tested in August 1990 and the findings stated that the water sample tested positive for the presence of total coliform bacteria but tested negative for fecal coliform bacteria. The results were discussed with the Orange County Department of Health (OCDOH) and it was determined that the owner would install and maintain a disinfection system (softener and chlorinator) for the restaurant/marina portion of the project. The final approved site plans for the original AOH project contained a water treatment building with storage tank, booster pumps, sodium hypochlorite solution tank and brine tank to address these concerns.

The intent for the 2006 AAB project was to redevelop the previously tested well, if possible. Otherwise new wells will be developed and tested to utilize groundwater resources on the site as sources for water supply to the townhouses and other amenities. The water supply system must be approved by OCDOH during site plan approval. The amount of water usage associated with the 2006 project, including a 20% reduction for water saving fixtures, was as follows: 14 two bedroom units and 1 two bedroom gatehouse- 3,600 gpd; 6 three bedroom units- 1,920 gpd; cabana- 1,280 gpd; river house-2,200 gpd; folly- 320 gpd; and 110 boat slips at 36 gpd (less 20%) - 3,168 gpd, for a total water usage of 12,488 gpd.

### Mitigation Measures

It was anticipated that the originally designed storage tank system or similar design would be used for this project since the amount of water usage proposed is less than with the originally approved AOH. The applicant would comply with all Department of Health standards for

potable water supplies. Establishment of a transportation corporation may be required to supply water to the townhouse owners as well as the other AAB users.

Prior to site plan approval, the Department of Health will review and approve specific design criteria for the septic system to ensure there will be adequate treatment and no significant impact on groundwater resources.

The applicant would comply with the mitigation measures above that are still applicable, except that a boat repair facility was no longer proposed. The stormwater management basin described above has been completed as part of the subdivision. The new site plan stormwater management design will be completed in accordance with the NYS Stormwater Management Design Manual and the SPDES (State Pollutant Discharge Elimination System) General Permit for Stormwater Discharges from Construction Activities in effect at that time. The report will assess the drainage conditions on site and in the surrounding areas in both the pre- and post-construction states. Measures taken during all phases of construction would be documented in a Stormwater Pollution Prevention Plan (SWPPP).

### **Currently Proposed AAB Project**

#### Potential Impacts

Potential impacts resulting from the currently proposed project are expected to be similar to those anticipated for the 2006 proposed AAB project, except that the amount of water usage is expected to be less due to the reduction in the number of boat slips.

#### Mitigation Measures

As with the 2006 AAB project, the applicant will comply with the mitigation measures above that are still applicable. The new site plan stormwater management design will be completed in accordance with the NYS Stormwater Management Design Manual and the SPDES (State Pollutant Discharge Elimination System) General Permit for Stormwater Discharges from Construction Activities GP-0-10-001. The report will assess the drainage conditions on site and in the surrounding areas in both the pre- and post-construction states. Measures taken during all phases of construction will be documented in a Stormwater Pollution Prevention Plan (SWPPP).

### **Conclusion**

With regard to water resources, it is anticipated that both the 2006 AAB project and currently proposed AAB project would have similar impacts as those contemplated during the review of the originally approved AOH with regard to water supply, septic system design and stormwater management. The amount of water and sanitary waste generated will be less than the originally proposed uses and the stormwater management area must conform to new design standards currently in effect since the original site plan was approved.

## **TERRESTRIAL ECOLOGY**

### **Original AOH Project**

#### Potential Impacts

The EIS describes temporary impacts to vegetation that may result from construction activities, and a permanent loss of some vegetation as the result of grading and clearing of roadways and house locations.

#### Mitigation

The Planning Board determined that the impact on terrestrial ecology will be minimized or avoided to the greatest extent practicable by the following mitigation measures:

- The Planning Board required that the applicant impose restrictions proposed in the EIS as notes on the subdivision in order to minimize the extent and location of clearing on the residential lots and maintain existing vegetative buffers.
- As a condition of subdivision and site plan approval and in consideration of the slope waivers, the Planning Board required that open space areas on the residential portion of the property be landscaped with indigenous vegetation species appropriate to both the soils and the bioclimatic and groundwater conditions of the site.
- As a condition of site plan approval, the Planning Board required the applicant to limit and restrict, to the greatest extent possible, clearing and construction of roads so as to avoid the breeding season for bird species likely to be breeding on the project site.

### **2006 AAB Project**

#### Potential Impacts

Temporary impacts may occur to vegetation during grading for the construction of the townhouse units; however, most of the site is generally open and sparsely vegetated.

#### Mitigation Measures

The development area for the 2006 AAB project is generally open and void of substantive vegetation except along the northern property line. The applicant will, to the greatest extent practicable, retain existing vegetative buffers and limit clearing and grading to avoid breeding season for bird species likely to be breeding on the project site. Additionally, a landscaping plan will be prepared for the townhouse site plan which utilizes landscape materials indigenous to the area to support native birds and wildlife. A planted buffer will be installed consisting of native evergreen and deciduous trees and shrubs along the north and east property line. The developer is also investigating establishing buffer easements on adjacent properties to the



north of the site which would be planted and remain undisturbed by establishing a permanent buffer easement.

## **Currently Proposed AAB Project**

### Potential Impacts

Potential impacts associated with the currently proposed AAB project are significantly less than those resulting from the 2006 proposed AAB project. Temporary impacts may occur to vegetation during grading for the construction of the townhouse units; however, most of the site is generally open and sparsely vegetated. The currently proposed project include elimination of the boat ramp and truck/trailer parking area as well as a revised layout to provide a 40 foot landscape buffer along the northern property line, resulting in more green space.

### Mitigation Measures

The development area for the currently proposed AAB project is the same as for the 2006 proposed project, and is generally open and void of substantive vegetation except along the northern property line. As with the 2006 AAB project, the applicant will, to the greatest extent practicable, retain existing vegetative buffers and limit clearing and grading to avoid breeding season for bird species likely to be breeding on the project site. The layout for the townhomes has been revised to provide a 40 foot buffer along the northern property line. A landscaping plan will be prepared for the townhouse site plan which utilizes landscape materials indigenous to the area to support native birds and wildlife. A planted buffer will be installed consisting of native evergreen and deciduous trees and shrubs along the north and east property line. The developer is also investigating establishing buffer easements on adjacent properties to the north of the site which would be planted and remain undisturbed by establishing a permanent buffer easement. The layout of the currently proposed project includes elimination of the boat ramp and the truck/trailer parking area, in addition to the 40 foot landscaped buffer along the northern property line, resulting in a significant reduction in proposed impervious surface and increased amount of green space.

## **Conclusion**

With regard to terrestrial ecology, it was anticipated that the 2006 AAB project would have less impact than those associated with the originally approved AOH since this portion of the site is mostly sparsely vegetated, and at project completion, the site will be landscaped with indigenous plant materials. The currently proposed project contains significantly less impervious surface than the 2006 project, and a 40 foot buffer is now proposed along the northern property line. Thus, impacts associated with the currently proposed project will be significantly less than those associated with the 2006 AAB project.

## **AQUATIC ECOLOGY**

### **Original AOH Project**

#### Potential Impacts

The DEIS discussed the aquatic ecology of the river in the vicinity of the marina, analyzing both expected effects that would result from near field changes at the project site as well as far-field cumulative effects associated with other marinas in the Hudson River. The document analyzed near-field effects both during construction of the marina, as well as long term during proposed site operation, in order to consider effects that might not take place except over many years. This includes the effects of physical construction disturbance due to pile driving, as well as loss of benthic habitat and creation of encrusting habitat on the piles, and the biological effects of the altered current regime, any changes to sedimentation patterns, and effects of platform shading on aquatic life. There will be a small but permanent loss of existing benthic habitat due to the placement of piles, but the amount of encrusting habitat will increase, which may result in a net increase in organic production and food organisms for fish and waterfowl compared to existing conditions, as well as increasing attached algae production to offset the effects of shading on phytoplankton.

The project was designed so that no increase in sedimentation would occur, so that no appreciable changes to the bottom type or topography were predicted to occur. Also, no changes in the current patterns that would be harmful to the fish species collected in the near-shore areas is expected to occur. The marina was designed to minimize the amount of permanent decking and boardwalk over the river, and was designed to ensure that the structures that must be located over the water will be constructed in a manner that maximizes incident solar radiation and reduces darkness for benthic habitats. The project was modified to move the restaurant from a location over the river to an inland area.

Marina operations were to be conducted in a manner that ensures potential sources of pollution from boats or marina repair and maintenance operations are strictly controlled, as set forth in this findings statement. Marina plans will contain no refueling provisions and a pump-out facility will be provided and addressed in lease provisions, so as to reduce the possibility of unauthorized seepage releases.

#### Mitigation Measures

The Planning Board determined that the impact on aquatic ecology would be minimized or avoided to the greatest extent practicable by the following mitigation measures:

- As a condition of site plan approval, the applicant was required to construct the permanent decking and boardwalk (approximately 79% of the over water structures) for the marina so as to ensure that the portions of those structures above the water surface will be sufficiently high (11 feet above mean low water) to maximize incidental solar radiation and reduce darkness for benthic habitats.

- As a condition of site plan approval, the applicant was required to schedule in-water construction to take place during times scheduled by DEC and other state and federal agencies with jurisdiction over Hudson River waters so as to avoid impacts on fish spawning and early life stages. The applicant was to utilize pile driving and bulkhead installation methods that will reduce sedimentation and noise to the maximum extent practicable per request of the Planning Board as set forth in the FEIS.

## **2006 AAB Project**

### Potential Impacts

The project has been designed so that no increase in sedimentation will occur and there will be no appreciable changes to the bottom type or topography. With the 2006 AAB proposed project, the marina was reduced in size from 263 boat slips to 110 boat slips.

### Mitigation Measures

As identified in the original DEIS, the marina operations will be conducted in a manner which ensures that potential sources of pollution from boats are strictly controlled. Marina plans will contain no refueling provisions and a pump-out facility will be provided and addressed in lease provisions to reduce the possibility of unauthorized seepage releases. With the 2006 AAB project, the linear footage of dock area was been reduced by more than 50% from the original proposal, which reduced the impacts from darkness for the benthic habitats and maximize the incidental solar radiation. The dock system was to be constructed of helix screw anchors embedded in the river bottom and tethered to the floating docks, in lieu of timber pilings as originally approved. As with the previous proposal, the applicant will schedule in-water construction to take place in accordance with NYS DEC and other state and federal agencies with jurisdiction over Hudson River waters so as to avoid impacts on fish spawning and early life stages. Floating docks will be removed in the winter.

## **Currently Proposed AAB Project**

### Potential Impacts

As in previous proposals, the project has been designed so that no increase in sedimentation will occur and there will be no appreciable changes to the bottom type or topography. With the 2006 AAB proposed project, the marina was reduced in size from 263 boat slips to 110 boat slips. The currently proposed AAB project includes only 7 sailboat mooring locations, reducing the linear feet of floating dock to only 50 feet, and there will be no permanent decking or boardwalk constructed. The currently proposed project also includes elimination of the boat ramp and truck/trailer parking area, which minimizes the amount of motor boat activity at the marina.

## Mitigation Measures

As with the previous proposals, marina operations will be conducted in a manner which ensures that potential sources of pollution from boats are strictly controlled. Marina plans will contain no refueling provisions and a pump-out facility will be provided and addressed in lease provisions to reduce the possibility of unauthorized seepage releases. The currently proposed project is expected to result in reduced impacts than the 2006 project, since the number of boat slips has been reduced to 7 sailboat mooring locations, eliminating all but one of the floating docks and minimizing motor boat activity in the area of the marina. As with the previous proposals, the applicant will schedule in-water construction to take place in accordance with NYS DEC and other state and federal agencies with jurisdiction over Hudson River waters so as to avoid impacts on fish spawning and early life stages. The floating dock will be removed in the winter.

## **Conclusion**

With regard to aquatic ecology, it is anticipated that the currently proposed project will have significantly less impacts on aquatic ecology than the previously proposed projects since the number of boat slips has been reduced to 7 sailboat mooring locations, and all but one of the floating docks have been eliminated.

## **WETLANDS, THREATENED/ENDANGERED SPECIES, SIGNIFICANT HABITAT**

### **Original AOH Project**

#### Potential Impacts

Due to the project site frontage on and near the Hudson River, a potential area of concern included impact on coastal wetlands, significant aquatic and terrestrial habitats, and rare or endangered species. The DEIS identified a portion of the cove along the shoreline as a coastal wetland not subject to DEC jurisdiction. Portions of two housing lots border the cove and discharge of stormwater would occur. Construction activities on the residential lots potentially could affect the wetland area and associated habitats for waterfowl.

No indication of any rare or endangered plant or animal species was found on the site itself, either on any terrestrial or wetland portion of the site, nor in the area proposed for marina construction. The DEIS notes that the shortnosed sturgeon, which is a state and federally listed endangered species, uses the deeper channel areas of the river, including Newburgh Bay, although it is reported to be more common upriver, and its spawning areas are located upriver. The bald eagle uses the Hudson River as a wintering area, but the bulk of eagle activity occurs south of the Anchorage Marina site in Cornwall Bay and Lana Island, with activity peaking in January and February. Osprey, a threatened species, is a seasonal migrant along the river.

The DEIS demonstrated that no significant habitats were identified on the site. With respect to potential impacts on the endangered short-nosed sturgeon, the section on aquatic ecology demonstrates that the project would not be expected to result in any harmful impacts. The



marina portion of the project would not be operating in winter during peak bald eagle use of the river.

### Mitigation Measures

The Planning Board determined that the impacts on wetlands and habitats would be minimized or avoided to the greatest extent practicable by the following mitigation measures:

- In order to ensure that the site plan for the marina minimizes the potential for adverse impacts on the wetland cove and the associated water fowl habitats, the Board required the implementation of the erosion control and stormwater discharge plan incorporated in the site plan and subdivision plan.
- Impacts on aquatic and terrestrial habitats will also be avoided by the mitigation measures discussed in the respective ecological sections of the DEIS.

## **2006 AAB Project**

### Potential Impacts

As identified in the original DEIS, the project site fronts on and near the Hudson River, a potential area of concern which includes potential impact on coastal wetlands, significant aquatic and terrestrial habitats, and rare or endangered species.

### Mitigation Measures

A field investigation was conducted by Clough Harbor & Associates, LLP, on April 6, 2006, to determine the presence of federal wetlands on the site in accordance with procedures provided in the US Army Corps of Engineers (USACOE) Wetlands Delineation Manual (1987). It was determined that there are no federal wetlands on the site. Clough Harbor & Associates also requested information from the NYSDEC Natural Heritage Program and the US Fish and Wildlife Service regarding the presence of any threatened or endangered plant or animal species on or adjacent to the site. Correspondence from NYSDEC dated May 5, 2006, indicated that the Hudson River is a known habitat for the short nose sturgeon, a state and federal endangered species.

Consistent with the original findings statement, the applicant agreed to prepare and implement an erosion and sedimentation control plan and stormwater discharge plan for the new site plan. Also, in accordance with the original DEIS, impacts to aquatic and terrestrial habitats will be avoided by the following previously approved mitigation measures:

- No dredging that would disrupt benthos and cause extensive turbidity;
- Stormwater management and erosion control to reduce runoff effects and improve the existing situation;
- Provision of pump-out facilities for marina residents and other recreational boaters to reduce unauthorized septage releases;

- All work within the marina will be performed from shore and/or construction barges;
- The floating docks will be assembled off site and installed by cranes; the pump-out storage tank will be installed on shore; and construction will be scheduled to comply with any restrictions required under NYSDEC and USACOE permits.

## **Currently Proposed AAB Project**

### Potential Impacts

As identified in the original DEIS, the project site fronts on and near the Hudson River, a potential area of concern which includes potential impact on coastal wetlands, significant aquatic and terrestrial habitats, and rare or endangered species.

### Mitigation Measures

As with the 2006 AAB project and consistent with the original findings statement, the applicant will prepare and implement an erosion and sedimentation control plan and stormwater discharge plan for the new site plan. Also as with the 2006 AAB project and in accordance with the original DEIS, impacts to aquatic and terrestrial habitats will be avoided by the following previously approved mitigation measures:

- No dredging that would disrupt benthos and cause extensive turbidity;
- Stormwater management and erosion control to reduce runoff effects and improve the existing situation;
- Provision of pump-out facilities for marina residents and other recreational boaters to reduce unauthorized septage releases;
- All work within the marina will be performed from shore and/or construction barges;
- The floating docks will be assembled off site and installed by cranes; the pump-out storage tank will be installed on shore; and construction will be scheduled to comply with any restrictions required under NYSDEC and USACOE permits.

## **Conclusion**

With regard to wetlands, threatened/endangered species and significant habitats it is anticipated that the 2006 AAB project would have less impact than those contemplated during the review of the originally approved AOH since the length of dock and boardwalk is reduced by approximately 50% from what was originally proposed, and there are no federal wetlands or threatened or endangered species on the site. Impacts resulting from the currently proposed project are expected to be considerably less than the 2006 AAB project, since the number of boat slips has been reduced to 7 sailboat mooring locations, eliminating all but one of the floating docks, and elimination of the boat ramp and truck/trailer parking area.

## **SITE PLAN**

### **Original AOH Project**

#### Potential Impacts

The appropriateness of including a restaurant as part of the marina site plan was identified as a concern during scoping due to the residential zoning of the property and the potential impact on the character of the community. The applicant was also asked to address the feasibility of water dependent uses as an alternative use to the proposed action, and to consider alternative sized restaurant uses. Public access to the river was identified as a potential mitigation measure to be considered.

The proposed project was to comply with the requirements of the Town's Zoning Law and Subdivision Regulations. Following initial discussions with the Town in 1992, the applicant revised the proposed project to reduce its scope and modified other significant aspects of the project, such as the number of lots and location of the restaurant, to further minimize or avoid impacts.

The applicant then prepared and submitted the revised DEIS and FEIS and revised preliminary subdivision and site plan maps that form the basis for the findings statement. In order to comply with the requirements of SEQRA, various alternative land use configurations and uses were considered in the EIS, and those alternatives, as well as the proposed project plan were reviewed by the Planning Board and its consultants.

The AOH project elements complied with the Town of Newburgh zoning code in all respects. The requested waivers of subdivision regulations in lot grading standards for those specific lots previously enumerated and the maximum cul de sac length requirements for roadway "B" were specifically considered by the Planning Board. The Board determined these waivers to be consistent with the objectives of the respective sections of the Town code and to be further warranted in so far as these measures achieved the objective of reducing the visual impacts of the project, allowing appropriate development of those portions of the site best suited for development, and ensuring that the approved project will avoid or minimize the impacts of development on soil and erosion concerns identified and discussed in the EIS.

With respect to the project's conformance with the Town's zoning law, the zoning law specifically allowed marinas within the R-1 District as a use subject to site plan review. Concerns about the restaurant becoming an alcohol-oriented entertainment establishment were addressed not only through the facility's plans, but also through the Town of Newburgh Zoning Law, which defines a restaurant as "an eating establishment". Also, the Zoning Law's definition of a restaurant excludes "an establishment that primarily dispenses alcoholic beverages or a fast food establishment". The Zoning Law permits restaurants as accessory services to a marina. Further, the residential subdivision, as proposed, provides development at a density lower than permitted in the R-1 District. Both aspects of the project were therefore consistent with the provisions of the Town of Newburgh Zoning Law.

Based on the requirements of the Zoning Law, and based on the information provided in the proposed marina plans and the DEIS and FEIS, the Planning Board determined that the site was suitable for the proposed phased marina expansion, considering that the marina site terrain can be developed without extensive earthmoving and filling, and that the proposed use can be developed in accordance with the proposed plans without extensive disruption of aquatic and benthic habitats. The Planning Board further determined that the proposed marina expansion and the general character thereof as set forth in the plans and further described in the DEIS and FEIS, is compatible with its immediate surroundings, because the site is currently a marina and the proposed plans involve an expansion that would be compatible in character with, if not an improvement to the character, of the existing site use. With respect to the mix of adjoining land uses, the marina as expanded would continue to act as a transitional use on the river front between the power plant and oil terminal and the existing residences on River Road; and coupled with the design and operational measures enumerated previously to mitigate visual, noise and other concerns, and coupled with the vegetation, topographic and distance separations between the marina and existing and proposed residences, would be compatible. Based on the traffic studies reported in the DEIS and FEIS, and based on the implementation of the recommendations therein set forth in the Transportation section of this document, the Planning Board determined that street access to the site would be adequate for the intended level of use and would not involve traffic of a type or intensity that would cause a detrimental effect on the character of the area. With respect to accessory uses, fuel supply storage and sales are not permitted, but boat repair and sales, boat storage, and a restaurant were permitted and proposed. The site plan for the marina and its accessories fulfills the requirements of the Zoning Law.

The Planning Board noted additionally that the marina site plan requires approval from other agencies including, but not necessarily limited to, U.S. Army Corps of Engineers, New York State Department of Environmental Conservation, New York State Department of State, and Orange County Department of Health. Permits from these agencies cannot be issued until and unless the SEQR review process is completed. Any specific conditions which Involved Agencies may impose with respect to matters including but not limited to wastewater disposal, marina construction, shoreline protection, and other matters will be incorporated by the Lead Agency in any final land use approval it may grant. Further, all permits from these involved agencies must be obtained prior to site plan approval being granted for the marina portion of the project.

### Mitigation Measures

The Planning Board determined that the impact on planning and zoning issues and community character will be minimized or avoided to the greatest extent practicable by the following mitigation measures:

- With respect to the marina restaurant, the applicant represented that the restaurant would be managed as a quality steak and lobster type establishment and provided a conceptual floor plan. Therefore, as a condition of issuance of a certificate of occupancy for the proposed use, the operator of the restaurant would be required to provide a floor plan to the building inspector that substantially

adheres to the same ratio of dining room to bar area as discussed in the FEIS. As mentioned above, the Town Zoning Law definition of restaurant protects against a primarily alcohol-oriented use of said facility.

- With respect to the marina restaurant, as a condition of site plan approval the applicant was required to provide a copy of relevant lease provisions substantially implementing the representations made in the EIS to the building inspector at the time of application for a certificate of occupancy for the restaurant, and a note regarding the same provisions was to be added to the final site plan for the marina project.
- With respect to the marina restaurant and the other commercial building on the marina site, the applicant was required to provide an adequate water supply for building sprinklers and hydrants for fire-fighting purposes, which may be a main yard pump with standby power to supply water from the river or a storage tank supplied by the marina well with sufficient fire pumping capability.
- With respect to the marina parcel, the applicant included an emergency connection between the marina and the residential subdivision into the site plan and subdivision plan in order to provide secondary access for emergency vehicles.

## **2006 AAB Project**

### Potential Impacts

The 2006 AAB site plan no longer included the construction of a restaurant, and the total number of boat slips was reduced from 263 to 110. However, between the time of the original site plan approval in 2001 and present, the zoning of the site was changed from R-1 district to I district. Residential uses were not permitted in an I district. Marinas were a permitted use in the I District, subject to site plan approval by the Planning Board.

### Mitigation

A zoning amendment was adopted by the Town Board which created a Marina Overlay District which could be applied to certain properties along the River with Town Board approval. The Marina Overlay District includes townhouses as a permitted accessory use to a marina use. Any mitigation measures required for the original approval that are still applicable would be implemented for the 2006 proposed project.

## **Currently Proposed AAB Project**

### Potential Impacts

The currently proposed project does not meet some of the requirements of the Marina Overlay District and the applicant has requested amendments to the Overlay District to address the required requirements.



## Mitigation

The Applicant has appeared before the Town Board with proposed amendments to various parts of Section 185-34. The amendments allow for a smaller project and thus generally reduce the potential impacts that could result from a project in the Marina Overlay District. Any mitigation measures required for the original approval that remain applicable will be implemented for the currently proposed AAB project.

## **Conclusion**

Impacts associated with the currently proposed projects are expected to be significantly less than those associated with the 2006 proposed AAB project due to the significant reduction in impervious surface, reduced number of boat slips and provision of a 40 foot landscaped buffer along the north property line, resulting in more green space. The project is consistent with the spirit of the Town's Code and Comprehensive Plan since a waterfront property is proposed for recreational use with reduced impacts to the environment over previously approved site plans. Any mitigation measures required for the original approval that remain applicable will be implemented for the currently proposed AAB project.

## **CULTURAL AND VISUAL RESOURCES**

### **Original AOH Project**

#### Potential Impacts

Among the areas of potential environmental concern were the visual impact of the proposed project on adjoining properties and the view from the Hudson River, the consistency of the proposed plan with the State Coastal Zone Management Policies, and the possibility that historically significant resources might be affected by the project.

Consistency with the Coastal Zone Management Plan objectives was addressed in Section 2.5.2 of the DEIS. In addition to providing public access to the water front, the replacement, renovation and enhancement of existing marina facilities and provision of pump out facilities would provide and enhance water-dependent recreational facilities. The project was to be constructed to minimize impact on natural resources from erosion and construction in the shoreline environment, and thus would have an overall beneficial impact on the project site and its environs consistent with the objectives of the Coastal Zone Management Plan.

The EIS discussed visual impacts on the viewshed from the river as a result of the development of the residences and the marina expansion. The EIS included a detailed visual assessment which noted that, from viewing locations that are unobstructed by intervening landforms or vegetation, some components of the proposed projects would be visible; however, no portion of the project would impinge upon the horizon line of the ridge top west of River Road and east of Route 9W.

Upon the completion of the project, site clearing would open to view more than half of the 21 single family dwellings and may expose limited areas of cut and fill required for roads and related grading, and septic field construction. This exposure would result in a textural change when viewed in contrast to the wooded hillsides to the north, but will be consistent with the pattern to the west and south. As proposed by the applicant, the area of clearing on the residential lots was limited by notes on the subdivision maps and covenants to an area only within a "building envelope" in each lot; outside of this area, clearing would only be allowed for a driveway and installation and maintenance of a septic system, well and utilities, such that existing retained vegetation would help to reduce potential visual impacts of the houses. Because only the clearing for the road and related grading would take place initially, any additional clearing for septic systems, driveways, houses and utilities would take place as individual lots were under construction. Additional limits to potential visual impacts were created by virtue of other map notes and covenants limiting color of residences to natural colors and by other design restrictions on roof and roof slopes, and on the extent of eave lines in relation to total wall length.

The visual impact analysis provided a pictorial representation of the site from several different vantage points, both before and after development as proposed. It is clear that the site development would result in some change to the local landscape. However, the question of whether that change is a harmful one is somewhat subjective, and must also be considered in the context of the zoning and the surrounding land uses. Just north of the site, the riverscape is dominated by the Hess bulk storage tanks and the Roseton and Danskammer electrical generating plants, and the site acts as a transition between these highly visible heavy industrial facilities and the residences to the south. Given that a marina already exists on the site, and taking into consideration that the zoning permits a marina in the R-1 zone, the Planning Board did not consider the visual impacts that would be created by the facility to be significantly harmful.

The EIS also identified a potential impact on historic resources located on Lot 13 that may result from development. Stage IA and IB cultural resource surveys were completed and submitted to New York State Office of Parks, Recreation and Historic Preservation (NYSOPRHP) for comment and recommendation. The response from NYSOPRHP indicates that data recovery excavations were to take place on Lot 13 if construction related disturbance of the portion of that site with potential historic significance cannot be avoided.

### Mitigation Measures

As a condition of site plan approval, the Planning Board required the applicant to delineate on the final subdivision plan the portion of Lot 13 that was identified as an area of potential historic significance, as recommended by NYSOPRHP, and provide a map note that development should be avoided. In the event that avoidance proves to be infeasible, the Board required that the lot owner consult with OPRHP with regard to recovery efforts prior to development of Lot 13 and advise the Planning Board of any proposed modification of the development plan for Lot 13 prior to issuance of a building permit or certificate of occupancy. As a condition of final approval of the subdivision plan, the Planning Board required that notes be added to the subdivision map regarding restrictions substantially in the form

presented in Appendix J of the DEIS, including limits on lot clearing, house size, color and exterior materials for homes, and prohibitions on noxious or nuisance activities, in order to maintain vegetative buffers, reduce and minimize visual impacts from the Hudson River and east shore, and ensure privacy and well-being of residents and adjoining property owners.

## **2006 AAB Project**

### Potential Impacts

The 2006 AAB project development results in a contrast from what presently exists on the site, which is a relatively open area with an older building and several small outbuildings.

### Mitigation

According to the original DEIS, no areas of archeological significance were discovered during the completion of the Stage 1A and 1B cultural resources survey in the area of the marina and proposed townhomes. The proposed residential structures were to be designed to resemble turn of the century shingle style homes or historic inns, rather than a typical row of townhouse units. The buildings were to be two stories in height and would not exceed the Town's 35 foot height limitation. Dormers and other architectural elements were to be utilized to break up the scale of the houses. The project would provide a visual transition from the residential development to the south and west and the bulk storage tanks, which are visually dominant immediately to the north. The 2006 project would blend in visually with the single family portion of Anchorage and was not expected to have a significant visual impact.

## **Currently Proposed AAB Project**

### Potential Impacts

As with the 2006 proposed AAB project, the currently proposed AAB project development results in a contrast from what presently exists on the site, which is a relatively open area with an older building and several small outbuildings.

### Mitigation

According to the original DEIS, no areas of archeological significance were discovered during the completion of the Stage 1A and 1B cultural resources survey in the area of the marina and proposed townhomes. As with the 2006 AAB project, the proposed residential structures will be designed to resemble turn of the century shingle style homes or historic inns, rather than a typical row of townhouse units. The buildings will be two stories in height and will not exceed the Town's 35 foot height limitation. Dormers and other architectural elements will be utilized to break up the scale of the houses. The project will provide a visual transition from the residential development to the south and west and the bulk storage tanks, which are visually dominant immediately to the north. It was anticipated that the 2006 project would blend in visually with the single family portion of Anchorage and would not have a significant visual impact. The currently proposed project further reduces the visual impacts due to further

reduction in the number of boat slips and elimination of the boat ramp. Additionally, the layout has been modified to provide a 40 foot buffer along the northern property line, and the parking area previously proposed to accommodate trucks and boat trailers has been eliminated, resulting in more green space.

### **Conclusion**

With regard to cultural and visual resources it was determined that the 2006 AAB project would have less impact than those of the originally approved AOH since the proposed use was changed to a residential design at a residential scale and character. The development of this area into townhouses will provide a transition from the residential development to the south and west to the industrial use to the north. The currently proposed project with less boat slips and the elimination of the boat ramp and truck/trailer parking area will further reduce these impacts by reducing impervious surface and providing more vegetative buffer and green space.

# EXHIBIT E



***Dickover, Donnelly, Donovan & Biagi, LLP***  
**Attorneys and Counselors at Law**

**James B. Biagi**  
**David A. Donovan**  
**Michael H. Donnelly**  
**Robert J. Dickover**

28 Bruen Place  
P.O. Box 610  
Goshen, NY 10924  
Phone (845) 294-9447  
*mail@ddbblaw.com*  
Fax (845) 294-6553  
*(Not for Service of Process)*

Successor Law Firm To:  
Alexander Appelbaum, P.C., Florida, N.Y. (1915-1988)  
Ludmerer & Vurno, Esqs., Warwick, N.Y.

September 13, 2011

Town of Newburgh Planning Board  
308 Gardnertown Road  
Newburgh, NY 12550

RE: Mid-Hudson Marina (10.19)

---

Members of the Board:

When the above referenced applicant last appeared before you in July with a revised plan, the issue of how to coordinate SEQRA review for the site plan application, the zone change application and the open development area application came up. Since that time, I have spoken to Mark Taylor as well as to the applicant's representative and now offer a suggested procedural outline.

When this application was reviewed in the past, the planning board was the lead agency and full environmental review was carried out. The applicant will endeavor to locate the EIS and SEQRA Findings Statement and will prepare a summary of the impacts from this modified project against the backdrop of that earlier environmental review. You, as lead agency, will then be in a position to determine whether a supplemental EIS is required for the amendments now proposed. At the same time, the applicant will formally petition the town board for approval of the proposed zone change (thus far discussed at an informal level only) and for creation of an open development area pursuant to Town Law Section 280-a. In due course, the town board will refer those two matters to you for your required reports. The SEQRA review you conduct will include addressing the potential environmental impacts that flow from those two aspects of the total application for this development.

If you need to discuss this in further detail, please let me know.

Very truly yours,

A handwritten signature in black ink, appearing to read "MHD". The signature is stylized with a large, looping flourish at the end.

MICHAEL H. DONNELLY

MHD/lrm

Cc: Town of Newburgh Planning Board Consultants  
Mark Taylor, Esq.  
Chris Viebrock

## EXHIBIT F

*EXHIBIT 'F'*

*LIST OF REQUESTED TOWN OF NEWBURGH CODE MODIFICATIONS*

**Amendment Request 1:**

*Section 185-34(A)(3)(a) – Street access to the site shall be adequate for the intended level of use and shall not involve traffic of a type or intensity that would cause a detrimental effect of the character of the area.*

Add the following:

“Access to the property is to be by an existing State, County or Town highway or with approval of the Town Board, by right of way or easement.”

**Amendment Request 2:**

*Section 185-34(B)(3)(a) – The marina must contain at least 100 boat slips and no more than 150 boat slips;*

Modify the following;

“The marina may contain 100 boat slips/ moorings and no more than 150 boat slips/moorings.”

Add the following:

“Boat slips and/or moorings may be built in phases, as approved by the Planning Board. The Planning Board has the right to waive the required amount of boat slips/moorings at anytime during the review process.”

**Amendment Request 3:**

*Section 185-34(B)(3)(c) – No more than 20 townhome units shall be permitted and shall be subject to site plan approval by the Planning Board together with the marina to which they are accessory;*

Modify the following:

“20 townhome units” to be replaced with “24 townhome units”

**Amendment Request 4:**

*Section 185-34(B)(3)(e) – Townhomes accessory to a principal marina use shall be subject to the same bulk requirements as those specified for marinas as set forth in the Table of Use and Bulk Requirements, R-1 District – Schedule 3 and the Table of Use and Bulk Requirements, I District – Schedule 9, as the case may be, for the underlying district;*

Add the following:

“The Planning Board has discretion to waive or amend yard requirements”

**Amendment Request 5:**

*Section 185-34(B)(3)(g) – Notwithstanding any greater minimum buffer requirement imposed by this chapter between uses in the I District and residential districts, the minimum buffer requirement between townhomes accessory to marinas in the I and MT Districts and adjacent residential uses and districts shall be 40 feet, and no buffer shall be required between the marina use and the accessory townhomes on the site;*

Add the following:

“The Planning Board has the discretion to eliminate or reduce buffer requirements.

**Amendment Request 6:**

Add the following:

*Section 185-34(D) “The primary use must start construction within five years of final site plan approval whether granted with or without conditions. Accessory uses may be constructed in advance of the primary use as a condition of site plan approval, provided adequate securities are put in place with the Town to ensure that the primary use can be completed as approved by the Planning Board. Security can take the form of a letter of credit, security bond or other agreed upon measures between the applicant and Planning Board.”*

**Amendment Request 7:**

*Section 185-25(C)(3) – The distance between the rear of a principal building and any other principal building shall not be less than 75 feet nor less than twice the height of the taller building.*

*Add the following:*

*“For Townhomes accessory to a principal marina use, the distance between the rear of a principal building use and any other building shall not be less than 25 feet. The distance between any accessory building use and any other building shall not be less than 25 feet”.*

**Amendment Request 8:**

*Section 185-25(C)(4)* - The distance between the side of a principal building and the side of any other principal building shall be not less than the height of the taller of the two buildings.

*Add the following:*

*“For Townhomes accessory to a principal marina use, the distance between the side of a principal use or accessory use building and the side of any other building shall not be less than 20 feet.”*