

**SEQRA CONSISTENCY DETERMINATION  
TOWN OF NEWBURGH PLANNING BOARD**

**MID-HUDSON MARINA**

Determination: Please take notice that, according to the provisions of 6NYCRR, Part 617.7, the Town of Newburgh Planning Board, as lead agency, having reviewed and considered an environmental assessment form and plans for the proposed uses, has determined that the actions as cited and described below will not have an adverse impact on the environment and the Planning Board has, therefore, adopted a resolution to this effect.

**Lead Agency:** Town of Newburgh Planning Board

**Contact Person:** Mr. John P. Ewasutyn, Chairman  
Town of Newburgh Planning Board  
308 Gardnertown Road  
Newburgh, New York 12550  
(845) 564-7804

**SEQRA Status:** Type I, Original Findings Statement issued June 5, 1997, SEQRA Comparison Documents submitted to the Town of Newburgh Town Board in May 2006

**Location:** River Road near Oak Street, on Hudson River

**Tax Map Parcel:** 121-2-1.0 and 121-2-2.0

**Action:** 20 Townhouse Units and 24 boat slips with clubhouse (20.38 ac)

## **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.

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., applied and received a building permit for construction of the restaurant and marina.

In 2006, the AOH project was purchased by the previous applicant and that owner pursued an amendment to the Town Zoning Ordinance from the Town Board for the former marina/restaurant portion of the project. The former 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 FEIS and a new site plan approval from the Planning Board.

The Town 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, which is now called the Mid-Hudson Marina (MHM), is similar to that proposed in 2006, with 24 boat slips to be constructed in the first phase and final potential boat slip count of 104 slips. This will be a slight reduction from 110 boat slips in 2006, to 104 boat slips. The truck/trailer parking area has been eliminated and the use of the existing boat ramp will be restricted to emergency personnel and the launching of small non-motorized watercraft. The residential component will consist of 20 townhouse units. The layout of the townhouses has been revised to provide a landscaped buffer along the northern property line. The buildings are two stories and a walk out basement, staying in conformance with the Town's 35 foot height limitation.

The gatehouse that was proposed in the 2006 plan has been eliminated from the MHM plan. The pool and pool house will remain part of the site plan. The marina will continue to use a small support building for 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 first phase of the marina will consist of 24 boat slips, with the potential for up to 104 future boat slips, similar to 2006 plan. A pier will also continue to be provided, similar to the 2006 plan.

## SEORA

In 2006, Clough Harbour & Associates LLP prepared a SEQR 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 AOH project. The following analysis compares the impacts of the originally approved AOH project, the 2006 proposed AAB project, and the currently proposed Mid-Hudson Marina project.

### 1.0 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 Mid-Hudson Marina Project**

#### Potential Impacts

The currently proposed project includes a slight reduction in the number of slips from 110 to 104. The truck/trailer parking area has been eliminated and the use of the existing boat ramp will be restricted to emergency personnel and the launching of small non-motorized watercraft, resulting in further reduction in traffic and the elimination of 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.

#### Mitigation Measures

The currently proposed project is expected to result in fewer impacts than the 2006 AAB project due to the slight reduction in the number of boat slips, the elimination of the truck/trailer parking area and the restrictions on the use of the existing boat ramp. 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 the restrictions on the use of the existing boat ramp and the elimination of the 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 Mid-Hudson Marina 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 restrictions on the use of the boat ramp and elimination of the truck/trailer parking area, impacts associated with noise from the marina are expected to be insignificant.

### Mitigation Measures

The currently proposed project includes the restriction of the use of the existing boat ramp to emergency personnel and the launching of small non-motorized watercraft and the elimination of the truck/trailer parking area, which will greatly reduce potential noise generated by the marina. The number of slips at full buildout of the marina has been slightly reduced to 104 slips; therefore, noise resulting from power boats will be reduced. Any mitigation measures approved for the original AOH project and the 2006 AAB 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 110 to 104 slips, the restricted use of the existing boat ramp and the elimination of the 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 Mid-Hudson Marina Project**

### Potential Impacts

The currently proposed Mid-Hudson Marina 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 Mid-Hudson Marina 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 Mid-Hudson Marina 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 designed in accordance with these standards which will provide greater mitigation than was previously proposed for the originally approved AOH.

## **Currently Proposed Mid-Hudson Marina 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, effective January 29, 2011) 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 the Mid-Hudson Marina 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 Mid-Hudson Marina 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 Mid-Hudson Marina 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, since the number of residential townhouse units



did not change, and the number of boat slips was reduced just slightly from 110 to 104 at full buildout.

### 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 Mid-Hudson Marina 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 Mid-Hudson Marina Project**

### Potential Impacts

Potential impacts associated with the currently proposed Mid-Hudson Marina project are expected to be 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 includes the restriction of the use of the existing boat ramp to emergency personnel and the launching of small non-motorized watercraft, and the elimination of the 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 Mid-Hudson Marina project is the same as that of 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 that may breed 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 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 Mid-Hudson Marina 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 Mid-Hudson Marina 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 Mid-Hudson Marina project includes a further reduction in the number of boat slips from 110 to 104 at full buildout, with 24 slips in the first phase. The currently proposed project also includes restrictions on the use of the existing boat ramp for emergency personnel and the launching of small non-motorized watercraft, and elimination of the truck/trailer parking area, which reduces 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 use of the existing boat ramp will be restricted and the truck/trailer parking has been eliminated from the project, which reduces potential 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 NYSDEC 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 docks will be removed in the winter.

### **Conclusion**

With regard to aquatic ecology, it is anticipated that the currently proposed Mid-Hudson Marina project will have less impacts on aquatic ecology than the previously proposed projects since the number of boat slips slightly reduced from 110 to 104 at full buildout. The restrictions on the use of the existing boat ramp and the elimination of the truck/trailer parking will limit the potential motor boat traffic to residents of the townhomes.

## **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 Mid-Hudson Marina 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 slightly reduced from 110 to 104, the use of the existing boat ramp will be restricted to emergency personnel and the launching of small non-motorized watercraft, and the truck/trailer parking has been eliminated.

## **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 Mid-Hudson Marina 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 a proposed amendment to Section 185-34(B)(3)(a) of the Town of Newburgh Zoning Code which relates to the Marina Overlay District. The proposed amendment allows for the construction of the marina in phases, allowing for the proposed construction of only 24 boat slips in Phase 1. Any mitigation measures required for the original approval that remain applicable will be implemented for the currently proposed Mid-Hudson Marina project.

### **Conclusion**

Impacts associated with the currently proposed Mid-Hudson Marina project is expected to be significantly less than those associated with the 2006 proposed AAB project due to the significant reduction in impervious surface, slight reduction in the number of boat slips as well as the provision of a landscaped buffer along the north property line and elimination of the truck/trailer parking area, 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 Mid-Hudson Marina 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 Mid-Hudson Marina Project**

#### Potential Impacts

As with the 2006 proposed AAB project, the currently proposed Mid-Hudson Marina 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 step with the elevation, to diffuse the appearance of row style homes. Additionally, 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 to 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 from 110 to 104 and the elimination of the truck/trailer parking area. The provision of a buffer along the northern property line and the elimination of the truck/trailer parking area results in more green space on the site.

### **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 Mid-Hudson Marina project with slightly less boat slips at full buildout, the restrictions on the use of the existing boat ramp, and the elimination of the truck/trailer parking area will further reduce these impacts by reducing impervious surface and providing more vegetative buffer and green space.

**Involved Agencies:**

Town of Newburgh Planning Board  
308 Gardnertown Road  
Newburgh, New York 12550

Town of Newburgh Town Board  
1496 Route 300  
Newburgh, New York 12550

City of Newburgh City Manager  
123 Grand Street  
Newburgh, New York 12550  
Att: Sewers Department

Orange County Health Department  
124 Main Street  
Goshen, New York 10924

New York State Department of Environmental Conservation  
21 South Putt Corners Road  
New Paltz, New York 12561

United States Army Corps of Engineers  
New York District-Regulatory Branch  
J. Javits Federal Building, 26 Federal Plaza  
New York, New York 10278-00090

Town of Newburgh Zoning Board  
308 Gardnertown Road  
Newburgh, New York 12550

Town of Newburgh Highway Department  
90 Gardnertown Road  
Newburgh, New York 12550

**Interested Agencies/Parties:**

Michael Donnelly, Esquire  
PO Box 610  
Goshen, New York 10924

James Osborne, P.E.  
Town of Newburgh  
308 Gardnertown Road  
Newburgh, New York 12550

Orange County Planning Department  
124 Main Street  
Goshen, New York 10924

Town of Newburgh Volunteer Ambulance Corps  
Attn: Sue Ostrander, President  
97 South Plank Road  
Newburgh, New York 12550

Middlehope Fire Department  
11 Lattintown Road  
Newburgh, New York 12550