

The Blanchard Law Group, PLLC
235 Mamaroneck Avenue, Suite 401
White Plains, New York 10605
mark@blanchardlawgrp.com

March 20, 2025

VIA ELECTRONIC AND HAND DELIVERY

Town of Marlborough Planning Board
Town Hall
21 Milton Turnpike
Milton, New York 12547
Attention: Ms. Jen Flynn, Planning Board Secretary

Re: Orchards on Hudson Site Plan Application

To Chairman Brand and Members of the Planning Board:

The undersigned represents the owner/ applicant ("Applicant") of the proposed residential project known as the Orchards on Hudson residential project ("Project") currently before the Town of Marlborough Planning Board ("Planning Board") with a pending site-plan application. It is worth noting that the Applicant sponsored a zoning map amendment that was adopted by the Town of Marlborough Town Board ("Town Board") in June of 2023 and a zoning text amendment that was adopted by the town Board in December of 2023. In conjunction thereto, the Applicant has also executed a sewer capacity reservation agreement to service the Project; significant payments have been remitted as per that agreement. Throughout the process of those condition precedent approvals, the scope and size of the Project has been made available to the public.

This letter is submitted in response to letters submitted to the Planning Board in response to the Project. The first is a letter signed by residents and dated December 9, 2024 (the "Residents' Letter") and the second is a letter sent by Scenic Hudson, Inc., and dated November 22, 2024, (the "Scenic Hudson Letter", and at times both letters referred to collectively as the "Comment Letters"). This correspondence, submitted simultaneously with supplemental responsive materials by the Project's Civil Engineers, VHB, shall serve as the Applicant's response to the Comment Letters¹. The Comment Letters have surfaced at a late hour in the approval process. Typically, the most common tactic of letters of this sort is to undermine proposed development by attacking the sufficiency of environmental review underway by the lead agency. In this instance, the Residents' Letter makes a claim that the Planning Board's review to date is lacking and an environmental impact statement ("EIS") is necessary. This objection is hollow and refuted below. Currently the Planning Board is overseeing an extensive environmental review based upon an expanded EAF².

¹ The Applicant reserves the right to supplement the response to the Comment Letters throughout the remainder of the review process and any relevant period thereafter.

² Based upon the timing of many hours of review given to the Project and the expertise of this Board and its consultants, greater familiarity with terminology under the State Environmental Quality Review Act ("SEQRA") is acknowledged.

Every concern and/ or environmental issue has been identified and an EIS would not add a single item to the list already being covered. Also, every item under review is being vetted meticulously and thoroughly, with all reports subject to review and comment on by the Planning Board and its consultants. There is nothing the EIS process does not expand or add to the thoroughness of the expert reports submitted to the Planning Board. And finally, since 1) the public hearing date has not yet been set- meaning the opportunity for the Planning Board to hear comments from the public is still pending, and 2, by the indisputable evidence of the submission of the very Comment Letter the undersigned is addressing, the concerned citizens and group have provided indisputable evidence that the Planning Board is fulfilling its notice requirements and the Project is subject to the public's review and comment. The EIS process does not make the lawful notice of a public hearing any more robust. Simply put, the public is on notice, it is engaged, and comments are being received by the lead agency. There is nothing the EIS process will add to make the project more visible than it already is. The review conducted with the expanded EAF and supplemental reports is fully sufficient for this review, and an EIS is not necessary.

The Standard of Environmental Review for Site Plan Applications

The Planning Board conducts review of the potential environmental impacts of the Project under the requirements the State Environmental Quality Review Act and its implementing regulations. Under SEQRA, the Planning Board has the status of the lead agency ("Lead Agency") and is the sole authority responsible for the Project's final approval. The Lead Agency's responsibility under SEQRA is that its review must take a "hard look" at the relevant environmental factors. As the State's highest court has explained, the lead agency must identify the relevant areas of environmental concern and take a "hard look" at them and demonstrate a reasoned elaboration of the basis for its determination. *See, Jackson v. New York State Urban Development Corporation*, 67 N.Y. 2d 400, 503 N.Y.S. 2d 298 (NY Ct of App 1986). The key factor in the Lead Agency's obligation is that it must show that it has identified the relevant areas of environmental concern and has taken the requisite "hard look" at each concern and then issued a reasoned elaboration upon which its decision rests.

An EIS is Not Required

In this instance, the breadth of topics reviewed under an EIS process would be the same as this board is procuring. An EIS would not expand the list of relevant environmental factors to be studied. An EIS does not require greater depth of detail within submitted reports. An EIS would not provide more robust public notice; clearly, the public is engaged and providing its comments.

Stated another way, the EIS would not provide more topics, it would not provide greater detail, and it would not engage more members of the public. An EIS is neither required nor necessary for this board to take the required hard-look at the Project.

The depth and sufficiency of the detail in the reports provided by the Applicant is, at all times, determined by the board and its consultants. There is no recognizable difference between reports produced under an EAF and those produced under an EIS. The detail in a report provided to a lead agency is not limited by an EAF and expanded under an EIS.

Submitted simultaneously with this letter are materials specifically responsive to the Comment Letters (the “VHB Response”). The VHB Response refutes each concern raised and shows to this board that the record before it addresses every concern raised in the Comment Letters.

For example, the VHB Response demonstrates that the relevant areas of environmental concern listed below have received substantial attention:

- A full Review and Study of the Project’s consistency with the town’s existing Hamlet Plan and Comprehensive Plan,
- A full review and mitigation plan showing that there will not be any potential adverse impact on the Visual Impact,
- Evidence showing that there is no adverse impact resulting from the removal of vegetation,
- A soundly engineered stormwater management plan,
- A traffic analysis showing improvement to existing condition on Route 9N and no further adverse impact to existing traffic and service levels,
- A fiscal analysis showing that there are no adverse impacts related to school-aged children; analysis demonstrates a fiscal benefit to the School District and Town,
- No adverse impact to general environmental conditions, ,
- No adverse impacts to community character,
- A report showing no adverse impact to the groundwater table and no impact upon the availability of freshwater, and,
- No potential adverse impact regarding the Project’s proximity to the existing STP.

In addition to the above, the Applicant has submitted analysis showing the beneficial impacts of the reclamation of the landscape scarred by the former quarry and mining activities. The Applicant has received preliminary DOT approval on designed improvements to the roadway and turning lanes directly in front of the Project. Indeed, a member of this board commented at a public meeting that the Applicant’s roadway design is improved to the greatest extent it can be.

The Planning Board has a strong record before it showing that any potential environmental impacts can be mitigated. Under the SEQRA process, the lead agency must make a “Determination of Significance”. *See, 6 NYCRR § 617.7 (2025)*. If the lead agency finds a significant adverse environmental impact, only then shall the lead agency require the preparation of an Environmental Impact Statement. The regulations provide examples of what are considered indicators of significant adverse impacts on the environment, and a few are listed as follows:

- A substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic or noise levels; a substantial increase in solid waste production; a substantial increase in potential for erosion, flooding, leaching or drainage problems;
- The creation of a hazard to human health;
- A substantial change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing uses.

See, 6 NYCRR § 617.7(c)(1)(i-xii)(2025).

Here, there is no evidence presented that triggers a significant adverse environmental impact. Therefore, there is nothing before the Planning Board that does not cross the threshold of requiring the preparation of an EIS.

Impermissible Segmentation Has Not Occurred

It is well settled that impermissible segmentation of a project occurs when projects that are part of integrated components of a larger plan and dependent upon one another and sharing a common purpose are broken down into smaller pieces to avoid the detailed review required under SEQRA. *See, Matter of Evans v. City of Saratoga Springs*, 202 A.D.3d 1318, 164 N.Y.S.3d 227 (3rd Dep't 2022). In the matter before this Board, there is no retail component that is dependent upon the Project, that is sharing a common purpose, and that is a component of a larger plan. There is an adjacent parcel, in common ownership, that has potential to be developed as a stand-alone retail concept, fully independent of the Project and its current design. If and when a retail concept might be brought forward, this Board shall not have been precluded in any way from a thorough study of all aspects of pertinent matters requiring review. When the environmental review process of two projects taken separately is no less protective of the environment, then there is no evidence of impermissible segmentation. *Id.*, at 232. Here, there are no facts to show that a potential conceptual retail project that has not yet even been subject to a conceptual site plan drawing is in some way dependent upon the Project.

The Proximity to the STP is Not a Significant Adverse Impact

The VHB Response letters details how the Project's proximity Sewage Treatment Plant ("STP") has been identified as a relevant matter to study and multiple mitigation factors demonstrate that the distance in question is not a significant adverse impact. The Project can show how an existing vegetation break, a proposed increase the vegetation buffering, the natural topography and prevailing winds, explain why there are no known complaints about the STP. There are numerous houses, local restaurants with outdoor seating, gas stations, the marina, and even the school, and none of those uses have generated a complaint regarding the STP.

Conclusion

When the project record demonstrates that there are no significant adverse environmental impacts, it has shown that the preparation of an EIS is unnecessary. This Project has demonstrated that it does not trigger the EIS and that the Planning Board is empowered to make a reasoned elaboration supporting the issuance of a negative declaration under SEQRA.

Very truly yours,



Mark W. Blanchard
Attorney for the Project