4.1 Process and General Comments

Comment 4.1-1 (Ivanda Beck, Public Hearing Transcript, 2/6/07): And one more point, the SEIS keeps pointing that the town gave its approval for the Project, and consequently, the Project should be grandfathered. However, when it is a matter of new information, increased protection of public health, grandfathering does not apply. Not to mention one fact, which many of you probably don't know, the Town of Kent actually disapproved this Project. It didn't approve it until the then-time developer brought $23 million slap suits against the board members, who had voted to disapprove, and a $64 million slap suit against (inaudible), and only because of that were the approvals given. No one here believes that they were legitimate approvals.

So, in conclusion, in my opinion, the DEP as lead agency, as well as the ultimate authority in regard to protecting the drinking waters of New York City, much of Westchester County, and Putnam County, should not reverse its opinions of 1987, and should be equally stringent now as then, this Project should never be approved.

> ***Response 4.1-1:*** *The 1990 approvals and SEQRA review by the Town were challenged and upheld in two Article 78 proceedings. Subsequently, the Planning Board and the other parties to the litigation entered into a court-ordered Stipulation of Settlement under which, among other things, the property owner was permitted to construct the Project, and a wastewater treatment plant, based on the submission and Town approval of revised subdivision and site plans. On October 14, 2005, the terms of that Stipulation of Settlement were upheld in Supreme Court, Putnam County. Justice Andrew P. O'Rourke, in a Decision and Order dated October 14, 2005, found that Kent Manor is "entitled to the issuance of building permits upon compliance with the terms of the 1990 approvals, or as modified to comply with any subsequent enacted Federal, State, or County regulations or law." This determination was based on the issuance of the original Town approvals and the subsequent improvements made to the property. See also Responses 4.1-8, 4.1-18, 4.2-17 and 4.2-18.*

Comment 4.1-2 (County Legislator Vinny Tamagna, Public Hearing Transcript, 2/6/07): A current review should be followed using the guidelines established and used, that are used in so many projects in the New York City watershed, including a coordinated complete review by city, state, and local agencies, and the -- that have the authority and oversight.

Most importantly, public comment and opinion are of extreme importance. Partners must work together for the benefit of all. Putnam County and the New York City DEP have had an excellent 20-year working relationship. They must continue to be fair and considerate, that is the city, in determining the long-term environmental and economical impact and approval of our last wastewater treatment plant.

> ***Response 4.1-2:*** *This Project is being reviewed by NYCDEP and all involved agencies consistent with all applicable regulations and guidelines. Pursuant to the Decision and Order of the Honorable Andrew P. O'Rourke dated October 14, 2005, the Project is "entitled to the issuance of building permits upon compliance with the terms of the 1990 approvals [issued by the Town Planning Board], or as modified to comply with any subsequent enacted Federal, State, or County regulations or law.". See Response 4.1-1.*
>
> *The Stormwater Pollution Prevention Plan and the construction of impervious surfaces on the site, have been granted a Noncomplying Regulated Activity status by NYCDEP,*

and as such, are not subject to the stormwater and impervious surface provisions of Section 18-39 of the Watershed Regulations.

Comment 4.1-3 (Letter 1 and 4, Carl Steike): We find it offensive that NYCDEP extended the timeframe for inclusion in NY City's phosphorous offset program for this one Project only. Eligibility should have ended and this Project should have been a dead issue. Instead it appears NY City has opened a discriminatory loophole for this Project, giving it more time to qualify for the phosphorous offset program. What's more, our understanding is that the developer proposes to take offset action two towns away from us. Meanwhile the developer's sewage plant will hasten the transformation of our lake, Lake Palmer, into a swamp. NY City may think the tradeoff is okay on a net-net basis for them, but it shows no concern for the people who will be most affected! Why did NY City Change the rules for this one Project for inclusion in the phosphorus offset program?

Response 4.1-3: *The POPP had an original five-year term, subject to extension for an additional five years at NYCDEP's option. In 2002, NYCDEP concluded that the POPP should be extended for the additional five-year period in accordance with section 18-84(a)(2) of NYCDEP's Watershed Regulations.*

No additional time was afforded Kent Manor to qualify for the POPP. Indeed, the Kent Manor applicant was required to follow an expedited schedule by which their offset was required to be installed and monitored prior to operation of the WWTP.

As established by NYCDEP regulations, the POPP requirement for phosphorous offset pertains to the particular reservoir basin in which the WWTP discharge is located, which in the case of Kent Manor is the Croton Falls reservoir basin. The Kent Manor Offset Program will achieve actual reductions in the amount of existing phosphorous in the Croton Falls Reservoir by treating stormwater at different locations in the reservoir's watershed, including on the Project site. Accordingly, the proposed offsite location for offset devices for Kent Manor satisfies the POPP requirements.

Comment 4.1-4 (Letter 2, Unsigned): I am writing to ask that both the public hearing date and the comment period be extended for one month, reflecting the lateness of the submission of the SEIS by the developer. **Letter 3, Paul Spiegel:** The residents need to be given ample time to be thorough and accurate. **Letter 4, Carl Steike:** The comment period is far too short. The public needs time to digest the information and give their feedback and the time allowed is far shorter than what should be provided. Is this the result of coercion by the developer in an effort to keep "on schedule?" **Letter 6, Ann Glickman:** This inadequate notice of publication of the SEIS (which is one month late and still not available for public review), of the public hearing comment period is simply the latest in a string of circumstances. These circumstances leave us with the unfortunate impression that the playing field is not level, and that, at best, the agencies and officials that work for us and represent us are not being diligent to act in our best interests. I am writing to ask that both the public hearing date and the comment period be extended for one month, reflecting the lateness of the submission of the SEIS by the developer. Why should the town and state be agreeing to speed up the process at the behest of the developer? **Letter 8, Maureen Fleming:** Requests the public hearing be delayed until a later date in addition to extending the comment period. **Letter 9, John Magee:** Request the comment period be extended by two weeks. **Letter 10, Michael Tierney:** Voiced displeasure with the time frame of the public hearing. Not enough time for the community to gather their facts to counter the environmental impact repercussions. Hearing should be held in same Town as the Project.

> ***Response 4.1-4:*** *The public comment period was extended to 50 days (January 5 to February 24, 2007), with a public hearing held on February 6, 2007. This comment period exceeds the minimum time requirements of SEQRA for public review of a Draft EIS (6 NYCRR §617.9(a)(4)(iii)). See also Response 4.1-5.*

Comment 4.1-5 (Letter 14, Bruce & Patricia Bothwell, 2/4/07): We are dismayed to learn that NYCDEP would consider approving the 273-unit condominium Kent Manor Project! It appears that DEP is trying to rush the approval through. We are troubled that politics seems to be involved and it would be unfortunate if NYCDEP were influenced by anything other than true concern for the welfare of local residents and the local environment. It seems strange that, with all the available locations in the Town of Kent, you would hold your public hearing on this Project in Carmel rather than in Kent where the Project is planned. How, in good conscience could such a huge development be allowed to be built in an area that has so many wetlands and lakes.? We have always understood that NYCDEP was purchasing lands in the Town of Kent in order to protect its water supply, NOT permitting large development which will harm, and reduce, its water supply. You talk about constructing a wastewater treatment plant to service that development, but a WWTP has its drawbacks over a period of time and, worst of all, should not be allowed in a residential area.

> ***Response 4.1-5:*** *The public hearing was held at a large publicly accessible meeting room less than five miles from the Project site. It was properly noticed, well attended and its location was convenient to anyone living near the site or in Putnam County.*
>
> *NYCDEP does not have approval authority over the subdivision or site plan for the Project. Approvals of the subdivision and site plan have already been granted by the Town of Kent and sustained by the Supreme Court, Putnam County. NYCDEP has approval authority over the WWTP and, by extension, participation in the POPP, as well as the WWTP collection system. NYCDEP's issuance of any approvals for the Project will be based on compliance with SEQRA and the standards set forth in the City's Watershed Regulations. NYCDEP has determined that the stormwater discharges and construction of impervious surfaces related to the Project are Noncomplying Regulated Activities under Section 18-27 of the Watershed Regulations and, as such, are not regulated by NYCDEP. The Project will adhere to the applicable current State regulations for stormwater discharges.*
>
> *The development is on a site that has one NYSDEC regulated wetland and several others that may come under the jurisdiction of the United States Army Corps of Engineers. It is similar to many other locations that have been developed in Putnam County.*
>
> *Although NYCDEP has a land acquisition program in the Croton Watershed, it is not focusing on lands in the Croton Falls reservoir basin. Use of a WWTP for this residential subdivision was required as an environmental mitigation measure by the Planning Board of the Town of Kent as part of its 1988 SEQRA findings for the Project. The WWTP was approved by NYSDEC and construction of the plant began in 1990. Utilization of the WWTP was consistent with the 1989 Comprehensive Development Plan for the Town of Kent, which encouraged the use of WWTPs due to the porous soil conditions throughout the Town of Kent.*
>
> *The WWTP now proposed by the applicant for this development and proposed for inclusion in the POPP provides wastewater treatment superior to that proposed for the WWTP originally required by the Planning Board. The Planning Board first required a*

WWTP with an effluent limitation on phosphorous content of 1.0 mg/l. Subsequently, in a Stipulation of Settlement so ordered by the Supreme Court, Putnam County, the Planning Board required the developer to upgrade the plant so as to achieve a phosphorous effluent content limited to 0.5 mg/l.

The plant proposed for inclusion in the POPP will discharge effluent with a maximum concentration of phosphorous equal to 0.05 mg/l, an amount one-twentieth (1/20) of the limitation originally required by the Planning Board.

Comment 4.1-6 (Letter 15, Vincent Tamagna, Putnam County Legislator, 2/6/07): As part of the MOA, New York City awarded Putnam County three Waste Water Treatment Plants (WWTPs). Two WWTPs have been approved in Putnam County. It is our understanding that the final WWTP is being considered for approval for the Kent Manor residential project. That will mean that a worthy commercial project in our County will not have an opportunity to apply for a WWTP. Without it, commercial growth in the County will be stopped and our economic development will be greatly hampered. Without appropriate commercial growth, Putnam County residents will be severely penalized since commercial development is essential to our future tax base and for job growth. The lack of a WWTP for commercial purposes is a great detriment.

Response 4.1-6: *At the time that the Kent Manor application was made to NYCDEP, no commercial development had applied for the remaining allocation and as of the date of this FSEIS, no such application has been received by NYCDEP. As the POPP expires in May 2007, no commercial development project will be able to apply in the future.*

There are commercial sites in Putnam County that may be developed without benefit of a WWTP. Two of them are in the review process at the time of writing this FSEIS: one, a 400,000 square foot retail project is proposed in the Town of Patterson (Patterson Crossing); another, a 180,000 square foot retail project, is proposed in the Town of Southeast (Stateline Retail).

Comment 4.1-7 (Letter 24, Ivanka Roberts): There were many other objections DEP had at that time -- and all of them are still valid today. So the question is “Why is DEP even contemplating providing approvals now?” Especially since additional knowledge has been gained and additional protections have been implemented in the meantime. These include, but are not limited to, phosphorus and nitrogen limitations.

Response 4.1-7: *The POPP is a negotiated component of the Watershed MOA and NYCDEP’s Watershed Regulations. NYCDEP issues approvals for regulated activities in accordance with the standards established in the Watershed Regulations. The Kent Manor application was submitted and conceptually approved in accordance with those Watershed Regulations. The WWTP conceptually approved under the POPP will have a limitation on the amount of phosphorous in the effluent equal to 1/20 of the limitation applicable to the WWTP originally required as SEQRA mitigation by the Kent Planning Board. The required three to one phosphorous offset will also benefit the watershed. See also Response 4.1-5.*

Comment 4.1-8 (Letter 24, Ivanka Roberts): The SEIS keeps repeating that the Town gave its approval for the Project and consequently that the Project should be grandfathered. However, when it is a matter of new information and increased protection of public health, grandfathering does not apply. In addition, the Project cannot be grandfathered because the site plan has been significantly changed and thus needs to go through a new approval process.

Not to mention the fact that the Town of Kent initially disapproved the Project and only reversed its decision after the then-time developer brought $23 million SLAPP suits against each of the Planning Board members who had voted against the approval, and a $64 million SLAPP suit against PLAN-Kent, who brought an Article 78 suit for violation of the SEQRA process. At that time, there were no laws protection against SLAPP suits and the Town reversed its decision to disapprove under duress. In many people's minds, this was no a legitimate approval.

> ***Response 4.1-8:*** *See Responses 4.1-1, 4.1-18, 4.2-17 and 4.2-18. In 1988, the Planning Board of the Town of Kent originally approved a 318-unit project on this site (requiring use of a WWTP as an environmental mitigation measure). After that approval was challenged in court, the Planning Board approved a revised (303 unit) project pursuant to a stipulation of settlement that was ordered by the Supreme Court, Putnam County, in a Decision and Order dated October 14, 2005, found that Kent Manor is "entitled to the issuance of building permits upon compliance with the terms of the 1990 approvals, or as modified to comply with any subsequent enacted Federal, State, or County regulations or law." This determination was based on the issuance of the original Town approvals and the subsequent improvements made to the property.*

Comment 4.1-9 (Letter 40, Neil Wilson, 2/22/07): As noted below, our review indicates that the SDEIS is deficient with respect to analysis of potential impacts to neighborhood character, and does not provide any meaningful commitment to implement the mitigation measure required under the 1987 FEIS and the 1990 amended site plan approval. In addition, the authors of the SDEIS erroneously refer to the Town of Kent Planning Board as an interested agency with respect to this project. The Planning Board vigorously objects to this characterization since it is not up to the project applicant to declare the status of any agency involved in the SEQRA process -- only the agency itself can declare its status. In fact, the Planning Board was properly established as the Lead Agency with respect to the original DEIS and site plan and subdivision approvals and remains an involved agency until the conditions of the September 11, 1987 Finding Statement, together with the conditions of amended Site Plan and Subdivision approvals are satisfied. The peculiarity of this case is that the original Lead Agency is not the Lead Agency to conduct the review of a document that is labeled as "Supplemental" DEIS. Notwithstanding, the Town of Kent Planning Board is an involved agency.

> ***Response 4.1-9:*** *The SEQRA regulations define an involved agency as "an agency that has jurisdiction by law to fund, approve or directly undertake an action." 6 NYCRR § 617.2((s). They define an interested agency as "an agency that lacks the jurisdiction to fund, approve or directly undertake an action but wishes to participate in the review process…." 6 NYCRR § 617.2((t). In its 2005 decision, the Supreme Court, Putnam County concluded that the Town of Kent Planning Board had approved the Project as it is presently configured. NYCDEP acknowledges that there is a disagreement between the Town Planning Board and the applicant as to the Planning Board's status under SEQRA, and has therefore concluded that it should treat involved and interested agencies similarly in the environmental review of this Project, without taking any position on the Town Planning Board's status under SEQRA.*

Comment 4.1-10 (Letter 27, Gordon A. Moccio / Hill & Dale Property Owners, 2/20/07): Faulty Assertion #6: The option [for site access] that was approved by the Town of Kent... entails the construction of a new roadway alignment for the eastern end of Nichols Street that would traverse an easement created for this purpose on a vacant parcel of land south of the site (known as the Cardillo Subdivision) and intersect NYS Route 52 forming a "T" shaped intersection (3.9.2).

While it is true that the Kent Planning Board ultimately gave its approval for the Cardillo Subdivision and road access plan that approval only came after planning board members were sued individually by the developer. That lawsuit against individuals- a lawsuit no longer allowed under state law- caused the Planning Board to overturn a previous vote that would have killed this Project.

The Kent Planning Board vote on the new access road was necessary because the County Planning Department had already voiced its disapproval of the Nichols Street extension. So yes, the Project received approvals it needed, but those approvals hardly reflect real support for the proposal.

> ***Response 4.1-10:*** *Comment noted. See also Responses 4.1-1 and 4.1-8.*

Comment 4.1-11 (Letter 28, George Baum, Town CAC, 2/22/07): At one time, DEP was willing to invest over $100 million to divert treated waste water to Peekskill. Why not go ahead with the P offset plant now without additional loading from this project? Why has not the Carmel WWTP been upgraded to tertiary treatment level?

> ***Response 4.1-11:*** *The aforementioned projects are not connected with the decision to include Kent Manor in the POPP or any NYCDEP approval that may be issued for the proposed WWTP.*

Comment 4.1-12 (Letter 29, Vincent Tamagna, Putnam County Legislator, 2/20/07): I wish to give the NYCDEP notice that I wish to reserve comment with regard Kent Manor Project. Through the Watershed Memorandum of Agreement signed by New York City and Putnam County in 1997, it is my understanding that the NYCDEP will be preparing a Phosphorus Offset Program Analysis Report to evaluate the effectiveness of this Program. Per the MOA, this Report is due in the near future. While Public Comment for the Kent Manor Project comes to a close, I wish to underscore the importance of the information from this Report. After receipt of Report, I would like to make additional comments on the Kent Manor Project based on the NYSDEP's review of this program.

> ***Response 4.1-12:*** *NYCDEP welcomes any comments the Putnam County Legislators may have on the Phosphorus Offset Program Analysis Report. However, the comment period on the Kent Manor DSEIS was formally closed on February 24, 2007. NYCDEP will attempt to consider any further timely comments it receives as it makes its Findings under SEQRA.*

Comment 4.1-13 (Letter 30, Ann Fanizzi, Chair, Putnam County Coalition/ Preserve Open Space, 2/23/07): Kent Manor has been "conceptually approved" by the DEP to become part of the phosphorus offset program allocated to Putnam County by the Memorandum of Agreement of 1997. However, as of 2007, the only other fully operational phosphorus offset program at Brewster Highlands, has not been evaluated for efficacy and effectiveness. It is our view that prior to any final decision as to the allocation of the third phosphorus offset to Kent Manor; the Department of Environmental Protection should initiate a thorough review of the seven-year record for the Brewster Highlands plant.

> ***Response 4.1-13****: Comment noted. NYCDEP evaluates applications for inclusion in the POPP in accordance with the Watershed Regulations. The Watershed Regulations do not contemplate the procedure requested by the commenter. See Response 4.3.1-13.*

Comment 4.1-14 (Letter 30, Ann Fanizzi, Chair, Putnam County Coalition to Preserve Open Space, 2/23/07): The Town of Kent has under appeal the decision by Judge O'Rourke re: Kent Manor and yet the Department of Environmental Protection has gone forward with reviews and approvals without adjudication of the case which may substantially impact on actions by the agency. In our view, prudence would dictate inaction rather than action, given the contentious issues involved, the nature of the development and its impact on the community.

> ***Response 4.1-14:*** *Comment noted. On November 4, 2005, the Town of Kent Supervisor issued a letter consenting to the Project's participation in the POPP. On November 27, 2006, pursuant to the Watershed Regulations, NYCDEP issued a conceptual determination approving participation of the Project in the POPP. The Town of Kent appealed the Supreme Court, Putnam County decision requiring issuance of such a letter on November 10, 2005. No statutory stay was invoked by the Town; nor was any stay or restraining order subsequently requested by the Town notwithstanding the issuance of such letter. Because the Supreme Court's decision has been neither stayed nor reversed, there exists no basis under the Watershed Regulations to suspend or delay the application process.*

Comment 4.1-15 (Letter 30, Ann Fanizzi, Chair, Putnam County Coalition to Preserve Open Space, 02/23/07): Although Mr. Charles Martabano, a Mt. Kisco attorney, has been a spokesman for "a group of investors" under the name of RFB, LLC, we have been unable to determine who legally are the owners of this proposed development and property. Therefore, we cannot determine if they meet the legal statutes for incorporation in New York State and cannot hold them to account. Transparency is certainly lacking and we are requesting the DEP, as lead agency, to make their identity known.

> ***Response 4.1-15:*** *The property is owned by Kent Acres Development Company, Ltd. RFB, LLC is the contract vendee.*

Comment 4.1-16 (Letter 31, Arthur Singer, Chair., Town of Kent Planning Board, 2/23/07): Under the Memorandum of Understanding (MOA) the NYCDEP is required to submit to the Watershed Partnership Protection Council (WPPC) a report of the determination of the effectiveness of the Phosphorus Offset Program. I understand that this report will be submitted to the WPPC sometime in the next two weeks and on behalf of the Town of Kent Planning Board, I respectfully request that the NYCDEP allow additional comment on the Draft Supplemental Environmental Impact Statement for the Kent Manor Project until the WPPC has had an opportunity to review and evaluate the report on the Phosphorus Offset Program, and provided additional opportunity for the public to consider the report with respect to the Kent Manor Project.

> ***Response 4.1-16:*** *Comment noted. The comment period for the DSEIS was closed on February 24, 2007 consistent with public notice, with respect to the admission of the Project into the POPP, see Response 4.1-3.*

Comment 4.1-17 (Letter 32, Ingrid Burkhard, 2/21/07): The DEP denied us the right to build on a "grandfathered" property. 1 small house (over the local approval), land on which we have paid school and property taxes for 40 years, for fear of endangering the NYC Watershed. So how can they give a pass on 273 units?

> ***Response 4.1-17:*** *This comment is not addressed to the subject Project or DSEIS.*

Comment 4.1-18 (Letter 34, John E. Neuser, 2/07): This menace has the capability of destroying the lake and the community we love and the life we enjoyed for over 30 years. It has the potential to drain our wells, overwhelm us with additional traffic on Route 52 and push the limits of our already overburdened school systems. All because a developer with a decades old approval wants to build 273, 2 bedroom condos on a site ill suited for that purpose because of it's proximity to our sensitive water systems. If the DEP is the body responsible for protection of the environment in cases like this, I do not understand how this project could be allowed to go forward. If ever there was a sensitive environmental issue, Palmer Lake and its surrounding areas certainly qualify as environmentally sensitive. How can I be notified by the DEP to "protect" my little wetlands of a couple hundred square feet against any alteration while the DEP allows Palmer Lake to be put at risk by a developer's old plan?

> ***Response 4.1-18:*** *See Responses 4.1-1, 4.1-8, 4.2-17 and 4.2-18. The applicant will construct a WWTP and implement a State Stormwater Management Plan consistent with current applicable rules and regulations. In order to meet these requirements, the Project has been modified from that approved by the Town in 1990. Specifically, the Project density has been reduced by 30 units since the time the project received the necessary approvals, the area of impervious surfaces has been reduced, the stormwater quality treatment has been enhanced and the WWTP effluent quality enhanced. These improvements significantly reduce the risk to all downstream systems. Palmer Lake is discussed in greater detail in Chapter 3.1, Surface Water Resources, of the FSEIS.*

Comment 4.1-19 (Letter 36, James Mulvena, 2/23/07): The Kent Manor developer plans to construct 273 housing units at Kent Manor. What is the applicant's history of building projects that contain 250 or more housing units? How many years has the Kent Manor developer been in business of constructing multi-housing units? The previous Kent Manor developer was unable to finish construction in 1993 because funding dried up. What is the source and amounts financing that the current Kent Manor developer has available?

> ***Response 4.1-19:*** *The principals of RFB, LLC are developers, not builders. At the conclusion of the regulatory permitting process, they expect to enter into an agreement for construction of the Project with an established, reputable builder – one with the financial capabilities and experience to complete a project of this magnitude. No such agreement has been established to date in connection with Kent Manor.*

Comment 4.1-20 (Letter 36, James Mulvena, 2/23/07): The Kent Manor DSEIS applicant, RFB LLC, is a foreign LLC and unlicensed by the NYS Department of State. Why is a NYC government department dealing with an unlicensed LLC?

> ***Response 4.1-20:*** *RFB, LLC is a Connecticut business and may file a certificate to become licensed in the State of New York at any time. To date RFB has earned no income in the State of New York and therefore is not required to be so licensed. There is no legal prohibition against NYCDEP dealing with an out-of-state applicant for regulatory approvals under the Watershed Regulations.*

Comment 4.1-21 (Letter 36, James Mulvena, 2/23/07) (Letter 39, Maureen Fleming, 2/23/07): The Kent developer has hired Tim Miller Associates to work with NYC DEP on this DSEIS. Tim Miller Associates has hired James D. Benson to work on this DSEIS. James D. Benson was a former NYC DEP employee who has worked on the Kent Manor for NYC DEP. Has James D. Benson received an opinion from the NYC conflict of Interest Board that allows

him to work on this project? If not, why is James D. Benson working for Tim Miller Associates on this project?

> ***Response 4.1-21:*** *Tim Miller Associates is a privately owned, 25 person planning firm involved with projects throughout the NY Metropolitan area. In any given year TMA initiates 125 to 200 new projects along with projects that are carried over from prior years. James Benson was hired to work on a multitude of projects.*
>
> *In at least one instance, early on in the SEQRA process for the SEIS, Mr. Benson contacted NYCDEP staff regarding the Project. As a result, NYCDEP requested that Mr. Benson engage in no further contact with NYCDEP on the Project and have no substantive involvement in the Project on behalf of the Applicant. Mr. Benson has not represented the Applicant on this Project before NYCDEP and has had no substantive role in the Project since joining Tim Miller Associates. No opinion letter was subsequently requested from the NYC Conflict of Interest Board.*

Comment 4.1-22 (Letter 36, James Mulvena, 2/23/07): The Kent Manor developer claims to have had the offset devices operational at the Lake Plaza Shopping Center on April 26, 2006. Who from NYC DEP verified this installation and what is the date of that verification?

> ***Response 4.1-22:*** *The offset was installed in April 2006 and was overseen by Malcolm Pirnie, an engineering firm under contract to the applicant. Records were provided to NYCDEP setting forth all activities carried out and the completion of the installation.*

Comment 4.1-23 (Letter 36, James Mulvena, 2/23/07): In a November 27, 2006 letter from Dr. Kane, NYC DEP, to the Kent Manor developer, the developer was to provide a preliminary report on the monitoring of the off-site offset starting in the spring of 2006. Where is that report and why was it not provided as part of this DSEIS?

> ***Response 4.1-23:*** *The report was submitted by the applicant to NYCDEP as required as part of the POPP and is in Appendix K of this document.*

Comment 4.1-24 (Letter 36, James Mulvena, 2/23/07): RFB LLC, a foreign and unlicensed by the NYS Department of State, submitted an application to the NYC DEP for participation in the POPP. Why is a NYC government department accepting applications for the POPP from an unlicensed LLC?

> ***Response 4.1-24:*** *See Response 4.1-20*

Comment 4.1-25 (Letter 36, James Mulvena, 2/23/07): The Kent Acres Development Corp. LTD is currently in arrears for real estate and school taxes in excess of $3.8 million dollars. Why are the property owners not current on their taxes? Would the NYC DEP accept and process applications for development of NYC real property if the property owner was in arrears to NYC DOF?

> ***Response 4.1-25:*** *See Response 4.3.8-8 and letter from Charles Martabano to Kent Town Board member Pat Madigan (Appendix B). The tax dispute between the Kent Acres Development Corp. and local taxing authorities is outside the purview of NYCDEP. NYCDEP has no authority relative to property tax status in the watershed.*

Comment 4.1-26 (Letter 36, James Mulvena, 2/23/07): What definitive long term results has the Kent Manor developers phosphorous off-set mechanism at the K-mart shopping center proven that the off-set meets the TMDL goals? Provide those results.

> ***Response 4.1-26:*** *The POPP does not require pre-construction demonstration of the effectiveness of offset measures when standard best management practices are applied. However, the Applicant is required to demonstrate through post-construction monitoring that the required 3:1 offset is being met. If the offset is not met, a previously approved contingency plan to reduce phosphorus releases must be put in place. Since the POPP requires a 3:1 offset overall it is consistent with the Croton Falls TMDL goal to reduce phosphorus loads to the reservoir.*

Comment 4.1-27 (Letter 37, Amy Magee, 2/24/07): The effects of this project will have on Palmer Lake have been completely ignored. The residential growth of this area including Sparrow Ridge town homes and Centennial Ridge Luxury homes, as well as many others in the surrounding areas has also been omitted.

At the public hearing held by the DEP on Feb. 6, 2006, many residents of Hill and Dale stood before you to tell you they were against this project. They told you of their concerns for their lake, their wells and their property values. Residents of the Town of Kent, including the Town Board and Planning Board told you they are against this project. They told you that our roads, schools and emergency services can not support a project of this magnitude. Our already tax burdened citizens cannot bear the load! Putnam County officials stood before you and told you they are against this project. It makes no sense to allow residential construction to use the last spot in the pilot offset program in an area that is desperately in need of commercial revenue.

The complete impact of a development of this magnitude needs to be responsibly evaluated. Palmer Lake needs to be addressed and properly evaluated.

> ***Response 4.1-27:*** *Comments noted. Sparrow Ridge and Fairways are not in the 484 acre watershed of Palmer Lake. See Responses 4.1-18, 4.3.1-1, 4.3.1-4, and 4.3.1-18 (re: Palmer Lake); Responses in Chapter 4.3.7 (re: socioeconomics); 4.3.9 (re: traffic, services, etc.); and Response 4.1-6 (re: commercial development and the POPP).*

Comment 4.1-28 (Letter 38, Michael A. Tierney, 2/22/07): The SEIS fails to mention the Town of Kent has instituted a temporary building moratorium. The Town of Kent's Planner has recommended that the property be changed to R-40 "to match the existing neighborhood character" (pending the outcome of the current litigation). It fails to mention that the Town of Kent is currently updating its Master Plan for Eastern Kent.

> ***Response 4.1-28:*** *Comment noted.*
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> *As a prior approved site plan, by the terms of the now expired moratorium legislation and as verified by the Town of Kent's litigation counsel upon its adoption and the new moratorium legislation adopted on April 9, 2007 (see Appendix B), the Project was exempted from the purview of the building moratorium. The Town of Kent, through its Town Planner Neil Wilson, has advised RFB's attorney that the Town will not attempt to rezone the Kent Manor property and the current Town rezoning proposal verifies this (see Appendix B).*

Comment 4.1-29 (Letter 38, Michael A. Tierney, 2/22/07): Does the applicant have an approved site plan and or subdivision from the Town of Kent and Putnam County showing the many new changes? Both of the old plans state any changes and/or variations voids both documents (note that covenant was signed by the property owner in 1988, copies are available at the County Clerks Office). Explain how the applicant can pick and choose which covenants are grandfathered and which are not. The entire existing infrastructure, foundations must be removed therefore nullifying their so called vested rights.

> ***Response 4.1-29:*** *See Responses 4.1-1, 4.1-8, 4.2-17 and 4.2-18.*

Comment 4.1-30 (Letter 39, Maureen Fleming, 2/23/07): Who is RFB, LLC? The SDEIS relies upon testing and the FEIS completed in the 1980's. RFB, LLC was not even in existence at that time. The reason this project is still an issue for the Town of Kent and the community in general is because the original developer went bankrupt and could not complete the project in the 1980's. RFB, LLC came into existence in 2004, seemingly for the purpose of applying to participate in the POPP. The DSEIS does not reference any projects of this magnitude completed by this foreign LLC in Connecticut, New York, or anywhere else. In fact, it does not reference any projects at all completed by RFB, LLC. What is RFB, LLC's experience and expertise in the construction of large scale housing developments? Does it have the wherewithal financially to complete a project of this magnitude and indemnify local homeowners for any and all remediation that will be warranted by this project during the construction and post-construction phases?

> ***Response 4.1-30:*** *See Responses 4.1-19 and 4.1-20. RFB, LLC has paid all expenses relative to the litigation, the POPP application, the offset devices and many other expenses relating to the property.*

Comment 4.1-31 (Letter 39, Maureen Fleming, 2/23/07): Tim Miller Associates, the planner for this project, lists James D. Benson, AICP, PWS, CPESC/CPSWQ on its letterhead. This is the same James D. Benson who held title of Supervisor, Engineering Section, Bureau Water Supply, Quality and Protection for the DEP. Is this not problematic that a former DEP employee who was involved in the Kent Manor Project now is an employee of the Planner for that same project? Does this not create a conflict of interest? Was Mr. Benson required to get a waiver from the DEP to work for Mr. Miller, specifically in regards to this project? If so, did Mr. Benson do so?

> ***Response 4.1-31:*** *See Response 4.1-21.*

Comment 4.1-32 (Letter 39, Maureen Fleming, 2/23/07): The Town of Kent was ordered to submit a letter giving permission for the Kent Manor Development to enter the POPP by Judge O'Rourke in October of 2005, a judgment the Town is in the process of appealing.

The only parties that benefit from this project are the RFB, LLC and perhaps the DEP. They are also the only parties that seemingly support it. At the Public Hearing held on February 6, 2007 at the Knights of Columbus Hall in Carmel, New York, Council People from the Town of Kent, Legislators from Putnam County Legislature, residents of the Town of Kent, and neighboring towns of Patterson, Carmel and Southeast, and representatives of environmental groups such as Riverkeeper, Croton Watershed Clean Water Coalition and the Coalition to Preserve Open Space all came forward to voice their objections to the project. During the entire Public Hearing, which lasted over three hours, not one person stepped forward in support of the project. Everyone who spoke spoke against the project. Every aspect of the SDEIS was questioned

and/or rebutted. If the DEP allows this project to go forward by granting it the final spot in the POPP, the environment as well as the homeowners, residents, and school children in the Town of Kent and beyond will suffer the consequences, while the developer reaps its profits on their backs.

> ***Response 4.1-32:*** *Kent Manor satisfies the requirements for participation in the POPP, as set forth in Section 18-82 of the Watershed Regulations and in the NYCDEP Applicant's Guide to the Phosphorous Offset Pilot Program. NYCDEP bases its decisions on whether a project can be included in the POPP on compliance with the applicable regulations. See also Responses 4.1-7 and 4.1-13.*

Comment 4.1-33 (Letter 50, Mary Ellen Odell & Terry Intrry, Putnam County Legislators, 2/507): As the Putnam County Legislators that represent the Town of Kent, we wish to go on the record that we oppose the current scope of the Kent Manor project. We concur with Legislator Tamagna that the approval of the final Waste Water Treatment Plant for residential development is a great disservice to our community. Commercial development, which is so vital to our economic growth and tax relief, will be greatly curtailed without a WWTP. Without increasing our tax base with responsible commercial development, our seniors and our children will find it increasingly difficult, if not impossible, to reside in Putnam County.

> ***Response 4.1-33:*** *See Response 4.1-6.*

Comment 4.1-34 (Letter 20, Carl Steike, 2/15/07): Kent Manor should be denied inclusion in the New York City Phosphorus offset Pilot Program (NYC POPP). The project's inclusion would be in conflict with the intent of existing legislation and agreements and it would violate the rights of other homeowners. It could potentially result in risks to their water supply and health and cause significant reductions in the property values of those homeowners due to numerous negative impacts it will have on both the community and entire town. In the process, it will also destroy Palmer Lake. Were it not for the loophole known as the NYC POPP, none of us would be here today facing the significant impacts this project will have on us our town, because without admission to that program, no new Waste Water Treatment Plants (WWTP) can built in the Croton Watershed.

> ***Response 4.1-34:*** *See Response to Comment 4.1-18. The terms of the POPP were agreed to by the signatories to the Watershed MOA, including Putnam County, the Putnam County watershed towns and the City of New York. It is a program established by the Watershed Regulations and the Project has complied with all applicable requirements for its inclusion. The Watershed Regulations do not prohibit new WWTPs in the Croton Watershed, but only WWTPs with surface discharges in phosphorous restricted reservoir basins in the watershed. Also see Responses 4.1-7, 4.1-13, 4.1-32.*

Comment 4.1-35 (Letter 20, Carl Steike, 2/15/07): Based on the inequities created by admitting the applicant into the POPP, in favor of NY city, at the expense of Hill and Dale, we argue that perhaps NYC DEP has a conflict of interest in this matter and if they cannot be objective, they should be removed as the lead agency on this application and replaced by another party that does not have a vested interest on the outcome of this decision.

> ***Response 4.1-35:*** *NYCDEP has no interest in whether the Project is approved or disapproved. Its decisions are based on whether the Project complies with all applicable requirements.*

Comment 4.1-36 (Letter 20, Carl Steike, 2/15/07): Still, for purpose of this reply, we understand that you are the lead agency. We ask that you abide by the spirit and intent of the Memorandum of Agreement (MOA) entered into by numerous parties in 1997, including NYS DEC, NYC DEP, the EPA and Putnam and Westchester Counties. That agreement provided, among other things, that there would be no further WWTPs in the Croton Watershed. The goal of that agreement was to protect and improve the quality of the NY City watershed and to stop pollution, including phosphorus, nitrates and other substances that could damage their water supply. All we ask is that you accord us the same protection that you requested for NY City. Given our proximity to the project, our water's safety and health are at even greater risk than NY City reservoirs. Environmental law should protect everyone.

> ***Response 4.1-36:*** *See Response 4.1-34. The POPP was provided for in the Watershed MOA. By requiring the removal of three kilograms of phosphorous from the Croton Falls reservoir basin for every kilogram discharged from the Project, NYCDEP is advancing the goals of the MOA.*

Comment 4.1-37 (Letter 20, Carl Steike, 2/15/07): Admission to the Pilot Program should be denied because the project cannot contribute information which the program was designed for before the project terminates in May. Since there is an absolute prohibition on WWTPs in the Croton Watershed, except for those in the pilot program, this project should not be allowed to proceed under any circumstances. We would also like to note that information generated by other WWTPs admitted to the program to date is insufficient to provide any conclusive data either. Additionally, we note that the MOA and the NYC WWT POPP had reporting deadlines that were required to be met for eligibility for inclusion in the program. We request that NYC DEP advise whether any deadlines passed without the developer having met the requirement. If the developer did not meet all reporting deadlines, without exception, we believe the project must be excluded from the NYC POPP. If NYC DEP made any exceptions for this one project, it would represent special treatment or a discriminatory loophole for one party that was prejudicial to rights of others.

> ***Response 4.1-37:*** *See Responses 4.1-3, 4.1-7, 4.1-13, and 4.1-32.*

Comment 4.1-38 (Letter 20, Carl Steike, 2/15/07): We question why NYC DEP should have the right , under the NYC WWT POPP, to allow a private developer to dump sewage effluent and storm water into a privately owned lake, just because he takes phosphorus offset measures at another location. Why should NY City have a right to cause harm to the property and potentially the health of private land owners, while conferring a benefit on NYC's water system at another location? Offset measures taken miles away provide no benefit to and are not equitable to the local community that will be most affected. This should not be just about NYC overall reservoir system. It should also consider the impact on the local wetlands and our lake.

> ***Response 4.1-38:*** *See Responses 4.1-3, 4.1-7, 4.1-13, 4.1-32, 4.1-34, and 4.1-35. The applicant is being required to adhere to all applicable regulatory programs with respect to the development of the Project site.*

Comment 4.1-39 (Letter 20, Carl Steike, 2/15/07): Furthermore NYCDEP must take into account that if Kent Manor and the Nichols Street extension are built, the property on one side of that new road is zoned as commercial. That could lead to additional development, with the commercial property even looking to possibly connect into Kent Manor WWTP at some point in the future. There could also be additional residential development along the new road if it is

open. NYC DEP must consider the cumulative potential impact of the possible subsequent development when considering the impact of Kent Manor.

> ***Response 4.1-39:*** *The property referred to by the commenter is zoned commercial and could be used for commercial development whether Kent Manor is built or not, as the property enjoys frontage on a public road. The WWTP will be permitted at 70,000 gallons per day and its entire permitted capacity will be used by Kent Manor. Additional flow beyond that approved as part of the Project's offset program is not permitted under the POPP.*

Comment 4.1-40 (Letter 27, Gordon A. Moccio / Hill & Dale Property Owners, 2/20/07): Faulty Assertion #6: The option [for site access] that was approved by the Town of Kent... entails the construction of a new roadway alignment for the eastern end of Nichols Street that would traverse an easement created for this purpose on a vacant parcel of land south of the site (known as the Cardillo Subdivision) and intersect NYS Route 52 forming a "T" shaped intersection (3.9.2).

While it is true that the Kent Planning Board ultimately gave it's approval for the Cardillo Subdivision and road access plan, that approval only came after planning board members were sued individually by the developer. That lawsuit against individuals- a lawsuit no longer allowed under state law- caused the Planning Board to overturn a previous vote that would have killed this project.

The Kent Planning Board vote on the new access road was necessary because the County Planning Department had already voiced its disapproval of the Nichols Street extension. So yes, the project received approvals it needed, but those approvals hardly reflect real support for the proposal.

> ***Response 4.1-40****: Comment noted. The Planning Board approved the Project and building permits were issued in 1990. In 2005, the Supreme Court, Putnam County found that that approval remained valid. See Responses 4.1-1 and 4.1-8.*

Comment 4.1-41 (Letter 28, George Baum, Kent CAC, 2/22/07): At one time, DEP was willing to invest over $100 million to divert treated waste water to Peekskill. Why not go ahead with the P off-set plant now without additional loading from this project? Why has not the Carmel WWTP been upgraded to tertiary treatment level?

> ***Response 4.1-41:*** *This Project has met the requirements to be included in the POPP. See Responses 4.1-7, 4.1-32, and 4.1-34. Decisions and policies with respect to other WWTP's are beyond the purview of this FSEIS.*

Comment 4.1-42 (Letter 36, James Mulvena, 2/23/07): Has the Kent Manor developer provided any public official of the Town of Kent with any gifts or gratuities?

> ***Response 4.1-42:*** *No.*

Comment 4.1-43 (Letter 41, Michael W. Soyka, PE, 2/22/07): The filed map referenced in the DSEIS was not found on the CD, my only source of information.

> ***Response 4.1-43:*** *The filed map is available at Town Hall as was a hard copy of the DSEIS with the filed map included therein. The document is also available at the*

NYCDEP website identified on the Notice circulated with the DSEIS: http://www.nyc.gov/html/dep/html/kentmanor.html.

Comment 4.1-44 (Letter 41, Michael W. Soyka, PE, 2/22/07): There will be disturbances within the controlled area of Town regulated wetlands. A Town of Kent Freshwater Wetlands Permit will be required. Work is proposed on steep slopes. A Steep Slope and Erosion Control Permit will be required. The proposed grading does not comply with Chapter 66, Steep Slope and Erosion Control law of the Town of Kent. The grading plans show all new grading to be 2:1. The Town of Kent's Local Law requires a grade of at least 3:1 where slopes are 15% or greater. The site has not been graded to this standard.

Response 4.1-44: *With regard to the applicability of Town of Kent Local Law to the Project, see Responses 4.1-1, 4.1-2, 4.1-8, 4.1-18, 4.2-17 and 4.2-18.*

Comment 4.1-45 (Letter 33, Fay C. Muir / CWCWC, 2/23/07): We must examine the records for the phosphorus offset provided to the Brewster Highlands to determine whether their offset program is effective. In addition to examining whether their correct phosphorus export coefficients were implemented, we need to know if the Brewster Highlands development is in compliance with the regulations. The public should be updated as to who is monitoring this program and how successful it has been. This important information must be determined in order to see whether another offset should be allowed. There should be no further steps forward in the Kent Manor development plans without a definitive report on the success of the phosphorus offset program at Brewster Highlands.

Response 4.1-45: *See Response 4.1-13.*

Comment 4.1-46 (Letter 33, Fay C. Muir / CWCWC, 2/23/07): The phosphorus offsets allowed under the 1997 Watershed Memorandum of Agreement (MOA) was slated to expire after five years. If an extension was assigned by DEP and other MOA signatories, the public records need to be updated in this regard.

Response 4.1-46: *See Response 4.1-3.*

Comment 4.1-47 (Letter 33, Fay C. Muir / CWCWC, 2/23/07): Kent Manor is a Town site plan with major changes, therefore town and DEP are permitting agencies under SEQRA. Should DEP have assumed Lead Agency status for this development?

Response 4.1-47: *NYCDEP is an approving agency by virtue of the Watershed Regulations and has approval authority over the Kent Manor WWTP and by extension the POPP, as well as the wastewater collection system. For these reasons NYCDEP established itself as lead agency for the purpose of the supplemental environmental review as provided for under SEQRA 6 NYCRR §617.6(b)(6). The Town of Kent consented to NYCDEP's lead agency status. See also Responses 4.1-1 and 4.1-8.*

Comment 4.1-48 (Letter 33, Fay C. Muir / CWCWC, 2/23/07): The other concern of note is that under the MOA, Sewage Treatment Plants (STP)s can only be brought into the Phosphorus Offset Pilot Program (POPP) after the town has instituted the Croton Plan. The Town of Kent has not been approved by DEP for the Croton Plan and so is ineligible to be awarded a STP offset.

Response 4.1-48: *The Town of Kent has agreed in writing to participate in development of the Croton Plan, as required by Section 18-82(g) of the Watershed Regulations for participation in the POPP. The regulations do not require institution or adoption of a Croton Plan because the Croton planning process and POPP were occurring simultaneously.*

Comment 4.1-49 (Letter 33, Fay C. Muir / CWCWC, 2/23/07): Further, Kent Manor, 70,000 gpd is an unrealistic underestimate which, together with the 12,000 gpd awarded Brewster Highlands and the 30,000 gpd for Campus at Fields Corner, would likely exceed the 150,000 gpd maximum of the MOA for STP effluent.

Response 4.1-49: *As a requirement of participation in the POPP, the Kent Manor WWTP must be limited to 70,000 gpd by both NYCDEP's approval and the SPDES permit issued by NYSDEC. The total volume of effluent from the three WWTPs that have been accepted into the POPP does not exceed 150,000 gpd. See Response 4.1-58.*

Comment 4.1-50 (Letter 34, John E. Neuser, 2/07): This menace has the capability of destroying the lake and the community we love and the life we enjoyed for over 30 years. It has the potential to drain our wells, overwhelm us with additional traffic on Route 52 and push the limits of our already overburdened school systems. All because a developer with a decades old approval wants to build 273, 2 bedroom condos on a site ill suited for that purpose because of it's proximity to our sensitive water systems. If the DEP is the body responsible for protection of the environment in cases like this, I do not understand how this project could be allowed to go forward. If ever there was a sensitive environmental issue, Palmer Lake and its surrounding areas certainly qualify as environmentally sensitive. How can I be notified by the DEP to "protect" my little wetlands of a couple hundred square feet against any alteration while the DEP allows Palmer Lake to be put at risk by a developer's old plan?

Response 4.1-50: *See Responses 4.1-5 and 4.1-18.*

Comment 4.1-51 (Letter 44, Bruce Barber, PWS, CPESC, 2/7/07): Since the 1987 Town of Kent approval of the subject property, the Town of Kent has adopted the following ordinances which are now included in the Town Code:

1988: Chapter 39A - Freshwater Wetlands
1992: Chapter 64 - Erosion Control
1993: Chapter 66 - Steep Slope Protection

In addition, the Town of Kent was required, under NYSDEC Phase II stormwater requirements to submit an NOI and obtain coverage for stormwater. As per the above referenced DSEIS, the Town of Kent ordinances are not considered in this study due to a court decision. The Phase II position of the Town of Kent is not discussed in the study.

Response 4.1-51: *The Project was not approved in 1987. A 318 unit project was approved in 1988 and a revised 303 unit project was approved by Planning Board resolution in 1989 and the subdivision plat was signed and filed with Putnam County in 1990. With regard to the specific Town ordinances cited see Responses 4.1-1, 4.1-8, 4.1-18, 4.2-17 and 4.2-18. Since the Project is grandfathered for purposes of NYSDEC's Phase II stormwater requirements, any additional stormwater regulations adopted by the Town of Kent under this program would not be applicable.*

Comment 4.1-52 (Letter 45, James Bacon, Esq., 2/23/07): We find that the DSEIS is deficient in failing to include sufficient information necessary to assess the project's environmental impacts, especially with regard to stormwater on-site conditions and rare and endangered species. Therefore, a Supplemental Environmental Impact Statement (SEIS) is necessary and required under the State Environmental Quality Review Act (SEQRA)... Indeed, if the lead agency learns of important new issues about significant adverse environmental effects regarding the proposed action in the course of receiving public comments or issues that were omitted or not adequately addressed in the DEIS, the lead agency must require the preparation of the SEIS in order to solicit additional public comment on the new issues.

> ***Response 4.1-52:*** *NYCDEP required a Draft Supplemental Environmental Impact Statement (SEIS) to update the 1987 EIS for the Project to consider changed conditions and any applicable new legal requirements. Under SEQRA procedures, if someone believes the Draft SEIS is deficient, the appropriate procedure is for that person to identify those deficiencies in comments and for the lead agency to consider the comments and respond to them in a Final SEIS.*

Comment 4.1-53 (Letter 45 James Bacon, Esq., 2/23/07): However, it appears this would violate NYC's Watershed Rules and Regulations (WR&R) in a number of respects. First the WR&R require that the municipality adopt a Croton Plan prior to setting any new wastewater treatment plants. (Id. at 18-82 (d)(3)). Kent has not adopted such a plan and neither has the County. The Applicant has failed to meet further requisites of the WR&R as it has not demonstrated that:

- Site constraints prevent the proposed new wastewater treatment plant from discharging subsurface. (Id. at (e)(l)):
- The municipal government and the County in which the wastewater treatment plant would be sited, confirms in writing that the proposed new wastewater treatment plant...
- is consistent with the Croton Plan (Id. at (2));

"The Department [DEP], in consultation with the New York State Department of Health, determines that the proposed new wastewater treatment plant or expansion of an existing wastewater treatment plant is consistent with the water quality objectives of the Croton Plan" (Id. at 3); and indeed, the WR&R specifically prohibit this project from being considered as part of the POPP as: "The provisions of subdivision (e) above shall not apply in any County or municipality which fails to participate in the preparation of the Croton Plan, fails to cooperate with the Department in the manner described in paragraph (f)(l) above in preparing the Croton Plan; fails or ceases to implement any water quality protection measures which such County or municipality has committed to implement as part of the final Croton Plan agreed upon by the County, municipality and the Department, or where a previously agreed upon Croton Plan is no longer valid and effective."

> ***Response 4.1-53:*** *The Project meets all the requirements for participation in the POPP, including the requirements relating to the preparation of a Croton Plan. See Response 4.1-48. A conceptual determination approving participation of the Project in the POPP was issued on November 27, 2006 and a copy of that determination is provided in Appendix B.*

Comment 4.1-54 (Letter 45, James Bacon, Esq., PC, 2/23/07): Further, the POPP program has expired (Id. at (g). Specifically: In Putnam County, provided that Putnam County has committed in writing to participate in the development of the Croton Plan pursuant to subdivision

(d) above, the Department shall allow for a pilot program to evaluate the effectiveness of phosphorus offsets as a potential basis for allowing construction of new wastewater treatment plants within phosphorus restricted basins in the Croton system. Such pilot program shall be limited to a term of five (5) years, commencing on the effective date of these rules and regulations and expiring on the fifth anniversary thereof. During the term of the pilot program, the Department may approve within a Putnam County municipality which has committed in writing to participate in development of the Croton Plan, the construction of a new wastewater treatment plant with a surface discharge with a phosphorus restricted basin in the Croton system provided that the following conditions are met:

The applicant proposing a new wastewater treatment plant demonstrates that the County or municipality agrees to the plant's inclusion in the pilot program;

The applicant demonstrates and commits to take action to issue, that for every one (1) kilogram of projected increase in the phosphorous load resulting from the new wastewater treatment plant and accompanying non-point course runoff, there will be an offset which achieves at least three (3) kilograms of reduction in phosphorus within the basin in which new wastewater treatment is located, whether the source of the offset is in the same basin or within an upstream hydrologically connected phosphorus restricted basin....

No more than three (3) wastewater treatment plants with surface discharges may be located in the Croton system in Putnam County pursuant to this pilot program. The total capacity, as constricted, for the three (3) proposed wastewater treatment plants shall not exceed a maximum of 150,000 gpd aggregate surface discharge....

Nothing in this section or in the Croton Plan is intended to constrain or limit the authority of local governments under State law to make local land use and zoning decisions, and nothing in this section of Croton Plan should be construed to have the effect of transferring such local land use and zoning authority from the participating local governments to the Department or any other entity.

Concerning the above, the POPP expired in 2002. How could DEP unilaterally extend that time without agreement by other MOA signatories or additional rulemaking?

> ***Response 4.1-54:*** *See Response 4.1-3.*

Comment 4.1-55 (Letter 45, James Bacon, Esq., PC, 2/23/07): Second, neither Putnam County nor the Town of Kent has agreed for Kent Manor to participate in the POPP. (The Town Board did not authorize the Kent Supervisor's letter indicating consent.) Further, the decision by Judge O'Rourke cannot force a project to proceed where no Croton Plan has been adopted.

> ***Response 4.1-55:*** *Section 18-82(g)(1) of the Watershed Regulations requires that the applicant proposing a new WWTP demonstrate that the County or municipality in which the plant is to be located agrees to the plant's inclusion in the POPP. An official of the Town, the Town of Kent Supervisor, executed a letter that consented to the Project's participation in the POPP. See Response 4.1-14.*

Comment 4.1-56 (Letter 45, James Bacon, Esq., PC, 2/23/07): Third, the DSEIS does not demonstrate that the pilot program had been effective for the Highlands project. Indeed, records with DEC and DEP's own "2006 Watershed Protection Program Summary and Assessment" indicates Highlands has not complied with the POPP offset requirements. (Id. at pg. 154 to 157).

DEP should discuss why this was the case and why Kent Manor might succeed in the face of prior failure, i.e. "phosphorus load calculations from 2002 through 2005 will be recalculated using a consistent, DEP-approved method" citing two "compliance conferences" with Highlands in 2005 (Id. at 156).

> ***Response 4.1-56:*** *The Watershed MOA and Watershed Regulations do not allow for the inclusion of a new participant to be conditioned on the performance of any of the other pilot participants. See Response 4.1-13*

Comment 4.1-57 (Letter 45, James Bacon, Esq., PC, 2/23/07): What is the 'DEP-approved method'? Will that be employed in Kent Manor? Why or why not?

> ***Response 4.1-57:*** *The POPP phosphorus calculations for Kent Manor used the Simple Method. The POPP Guidance Document (1997) lists different acceptable methods for calculating pre- and post-development phosphorus loads and the Simple Method is one of the commonly used methods. The Simple Method was also used by the other two POPP participants.*

Comment 4.1-58 (Letter 45, James Bacon, Esq., PC, 2/23/07): Fourth, how is the POPP cap of 150,000 gpd being maintained? What are the capacities of the Highlands and Campus at Fields Corners WWTPs?

> ***Response 4.1-58:*** *The total flow for the POPP participants, as well as individual WWTPs, is enforced through both the terms of NYCDEP's approvals and through the SPDES permits for the plants. The flow to the EmGee Highlands plant is a 36,000 gpd, but because the facility recycles greywater the actual allowed discharge under the SPDES permit is 12,000 gpd and is the total flow allotted under the POPP. The Campus at Field Corners WWTP has a POPP allocation and a SPDES permitted discharge of 68,000 gpd.*

Comment 4.1-59 (Letter 45, James Bacon, Esq., PC, 2/23/07): CWCWC's engineer, David Clouser, P.E., commented at the public hearing that the stormwater technical appendices were not included in the CD-ROM sent to him nor were they available on the DEP's web site. The failure of this information to be available on the DEP's web site violates NY State's requirement that EISs be available online. DEP committed a procedural violation of SEQRA by failing to post 1,600 pgs. of stormwater appendices on its web site and thereby preventing timely access to the information.

> ***Response 4.1-59:*** *As provided under State law (ECL §8-0113.2.(f)), NYCDEP concluded that posting the Technical Appendices on its website would be "impracticable" due to the number and size of the files. This was acknowledged on its website by the offer to provide these files on CD-ROM freely upon request. The missing information was provided to Mr. Clouser immediately upon ascertaining that it was missing from the materials he had in-hand and was available to him well before the close of comments.*

Comment 4.1-60 (Letter 45, James Bacon, Esq., PC, 2/23/07): Federal courts have made clear that agencies have a duty not to define a project's purpose and need in such narrow terms that only one alternative can fulfill the project's goals. Here, the scope has been narrowed to such a degree that reasonable alternatives have not been considered. What are the potential impacts posed by conventional subdivision design and how do those impacts compare to the proposed project?

> ***Response 4.1-60:*** *Pursuant to 6 NYCRR § 617.9(b)(7), the Draft SEIS was required in order to address specific significant adverse environmental impacts not addressed or inadequately addressed in the EIS that arose from changes proposed for the Project, newly discovered information, or changes in circumstances related to the Project. In accordance with this limited scope, and given that the additional review demonstrates that any significant adverse environmental impacts will be mitigated to the extent practicable, consideration of alternatives to the Project, such as conventional subdivision, was not appropriate. See also Responses 4.1-1, 4.1-8, 4.1-18, 4.2-17 and 4.2-18.*

Comment 4.1-61 (Letter 46, William Wegner & Leila Goldmark / Riverkeeper, 2/23/07): The applicant contends that surface discharge is the only means of wastewater disposal possible for the proposed project, thus the project's inclusion in the POPP is crucial. When the Town of Kent refused to recommend the project to DEP for inclusion in the POPP, the applicant again commenced litigation. In 2005, Justice O'Rourke issued a Decision and Order directing the Town to "execute a letter of consent for [the applicant] to participate in the POPP." This issue has been appealed and remains undecided. Riverkeeper urges DEP as lead agency to hold the public comment period on the Kent Manor DSEIS until this crucial question is fully resolved. If the Supreme Court's Order directing the Town of Kent to recommend the project for inclusion in the POPP program is overturned and DEP must reconsider its November 2006 acceptance of the project into the POPP, the project may have to be significantly revised to propose another legal means of wastewater disposal.

> ***Response 4.1-61:*** *The inability of the property to support subsurface sewage disposal from the Project has been documented, as required for inclusion in the POPP, by onsite soil testing. The property owner completed thirty deep-hole and the thirty percolation tests at the property, all of which failed to meet NYCDEP standards for subsurface sewage disposal. With regard to the effect of the ongoing appeal of Justice O'Rourke's October 14, 2005 Decision and Order on the SEQRA review of this Project, see Response 4.1-14.*

Comment 4.1-62 (Letter 46, William Wegner & Leila Goldmark / Riverkeeper, 2/23/07): In addition, while the applicant claims that it has vested rights regarding the project, the Decision and Order also clearly states that the applicant "is entitled to issuance of building permits upon compliance with the terms of the 1990 approvals, or as modified to comply with any subsequent enacted Federal, State or County regulations or laws." Riverkeeper interprets this to mean that while the lead agency cannot deny outright the project that was approved in the 1989 Stipulation, it can require compliance with current environmental law and regulations. Thus, while Riverkeeper acknowledges the current proposed revisions to the original 1980s proposal, our comments reflect what we believe is required under current laws and regulations and is most protective of the environment. We cannot pick and choose which items may or may not be grandfathered by past (questionable) court decision. It is our mission and duty to the public to advocate for mitigation of adverse environmental impacts that could affect water quality in the NYC watershed.

> ***Response 4.1-62:*** *The Project is being reviewed for SEQRA purposes by NYCDEP in light of all applicable current laws and regulations. The meaning of "applicable" in this context being determined by among other things, The Supreme Court's, Putnam County 2005 decision and any grandfathering determinations made by NYCDEP, NYSDEC, and any other regulatory agencies. See Responses 4.1-2 and 4.1-14.*

Comment 4.1-63 (Letter 46, William Wegner & Leila Goldmark / Riverkeeper, 2/23/07): Riverkeeper believes that continuation of NCRA status is inappropriate. As DEP noted in it's April 26, 2006 letter to the applicant's attorney, "[i]t appears that none of these project components have yet been completed and that construction had ceased at least a decade ago, resulting in varying degrees of dilapidation." These noncompliant components are partially built, and due to their dilapidated state will have to be removed or replaced for the project to proceed. This is not routine maintenance to existing noncompliant development. In essence, this entails the construction of an entirely new development. The Rules and Regs. state that, "[i]n the event that any noncomplying regulated activity is discontinued for a period of one year or more, it shall permanently desist," and further states that if the activities "cause contamination to or degradation of the water supply, such that the activity is a threat to the life health, or safety of water supply users, the Commissioner may order that such noncomplying regulated activity conform…" Riverkeeper strongly urges DEP to require compliance, and to prohibit placement of structural features in wetlands and buffers.

> ***Response 4.1-63:*** *The Watershed Regulations define a noncomplying regulated activity as "any regulated activity or existing activity which does not conform to the standards set forth in the rules and regulations, but has obtained all discretionary approvals necessary for construction and operation, prior to the effective date of the rules and regulations". NYCDEP granted this Project NCRA status with respect to the Stormwater Pollution Prevention Plans and Impervious Surfaces provisions of the regulations because the Project had the necessary discretionary approvals related to these activities at the time the Watershed Regulations were promulgated (May 1, 1997) and the property owner and developer made a continuous and concerted effort to recommence construction, obtain NYCDEP's approval for the Project, and to sell the property from the mid-1990's to the present day. The delay resulting from the ultimately unsuccessful efforts of the parties to settle the litigation among them also weighed in the determination of NYCDEP to accord the property owner NCRA status consistent with applicable regulations.*

Comment 4.1-64 (Letter 46, William Wegner & Leila Goldmark / Riverkeeper, 2/23/07): To ensure the project sponsor's compliance with the above regulation, the DSEIS must demonstrate that the phosphorus offset mechanism is removing three times the phosphorus that will be discharged by the plant in addition to the accompanying non-point source runoff. Although the projected WWTP effluent concentration of phosphorus is low (0.05 mg/l), conversion from metric to U.S. standards requires removal of 32 lbs of phosphorus per year from the offsite practice, if the WWTP operates at its 70,000 gpd design capacity, plus 61.23 lbs for non-point sources, for a total of 93.23 lbs per year. The DSEIS does not include any information on the performance of the offset practice, and the applicant claims that results of ongoing monitoring of the offset practice are pending. This critical information must be included in the DSIES and the public comment period should remain open until this it is available for public review.

> ***Response 4.1-64:*** *The POPP requires an offset plan be developed utilizing one of several commonly accepted methods for calculating phosphorus loads as well as estimated BMP removal rates. Individual performance data are not required. The offset mechanisms are later monitored for compliance with the POPP as one of the SPDES permit conditions. If the offset does not perform as expected so that the three for one offset requirement is not being achieved, the applicant, or homeowner association as appropriate, will be required to implement additional offset mechanisms that are part of a*

previously approved contingency plan in order to ensure that the offset is achieved. DEP has also requested pre-development monitoring, whenever possible, to help evaluate the phosphorus load estimates from the planning-level models. However, several years of data are typically needed to estimate nonpoint source loading rates and therefore this dataset is not appropriate to compare to estimated site loads yet. For these reasons, specific performance data are not needed to assess the potential impacts of the Project.

Comment 4.1-65 (Letter 46, William Wegner & Leila Goldmark / Riverkeeper, 2/23/07): Furthermore, monitoring results of the offset mechanism may be pending in perpetuity. In September 2002, DEP released its *Draft Methodology for Evaluating the Pilot Phosphorus Offset Program* (Draft Methodology), which was essentially a two- page document noting the shortcomings of the proposed methodology. In the Draft Methodology, DEP conceded that non-point loadings in the offset calculations are problematic, and modeling cannot "generate precise, reliable phosphorus concentrations in pre-or post-construction stormwater runoff." Perhaps the most salient point of the Draft Methodology was DEP's own assertion that "there is no methodology to reconcile the results of the modeling used to predict the pre-and post-phosphorus discharges from a site with the results of the monitoring conducted to determine the actual post construction amounts of phosphorus discharging from a site." Even the criteria on which DEP proposed to approve offset applications, including phosphorus monitoring, "cannot verify that the amount of phosphorus removed by the offset is three times the amount of the increase in phosphorus from the project."

Riverkeeper is unaware of any subsequent POPP evaluation methodology that reconciles the fatal flaws discussed in the 2002 Draft Methodology. Whether or not such a document exists, DEP should require the applicant to demonstrate conclusively that the offset mechanism is in compliance with the Rules and Regs before permitting the Kent Manor project to proceed.

Response 4.1-65: *NYCDEP is unaware of any methodology that can predict actual nonpoint source loadings with high precision. There are, however, useful planning tools available that are suitable for comparison purposes between different projects or pre- and post-development for a single project. The POPP is collecting data to see how closely the planning tools estimate actual loadings. Additionally, through post-construction monitoring the Applicant will demonstrate that the required 3:1 offset is being met, as will be required by the SPDES permit. If the offset is not met, a previously approved contingency plan to reduce phosphorus releases will be required to be put in place.*

Comment 4.1-66 (Letter 46, William Wegner & Leila Goldmark / Riverkeeper, 2/23/07): Under provisions of NYSDOH Appendix 75-A, residential units with new standard fixtures are required to have design sewage flows of 130 gpd per bedroom. Units with water-saving toilets can use 90 gpd per bedroom. The 273 Kent Manor units will be two-bedroom townhouses. The DSEIS indicates that the project will include "low volume toilets." Without water-saving toilets, the WWTP would require a design capacity of 70,980 gpd, in which case the plant's design capacity would be undersized by nearly 1,000 gpd. With water-saving toilets, the WWTP will require a design capacity of 49,140 gpd, which means the plant will have an excess design capacity of more than 20,000 gpd. This excess design capacity is not growth-neutral and will encourage future onsite and/or offsite growth. The sole identified purpose of the WWTP is "to service the [Kent Manor] residential project." It is therefore inappropriate for the applicant to propose any mechanism that has potential to induce sprawl in Putnam County. The lead agency should condition any project approval on the applicant permanently limiting future development on the site, either by placing the remaining open space in a conservation easement or via some other form of legally binding contract.

Response 4.1-66: *The total wastewater flow was calculated assuming 120 gpd/bedroom, and a total of 546 bedrooms, which yields 65,520 gpd. The remaining 4,480 gpd is reserved for the pool and tennis house. The applicant will file a covenant on the open space portion of the property, which will limit future development thereon and a covenant on the total maximum number of bedrooms for the site.*

Comment 4.1-67 (Letter 51, Senator Vincent L. Leibell, 40th Senate District, 3/5/07: I am in receipt of several letters from my constituents regarding their concerns of the Draft Supplemental Environmental Impact Statement (DSEIS), for the Kent Manor Project being reviewed by your office. As I am aware that you office has been contacted directly by my constituents, I would greatly appreciate your attention to this matter in addressing their concerns.

Response 4.1-67: *Comment noted.*

Comment 4.1-68 (Letter 20, Carl Steike, 2/15/07): Kent Manor should be denied inclusion in the New York City Phosphorus offset Pilot Program (NYC POPP). The Project's inclusion would be in conflict with the intent of existing legislation and agreements and it would violate the rights of other homeowners. It could potentially result in risks to their water supply and health and cause significant reductions in the property values of those homeowners due to numerous negative impacts it will have on both the community and entire town. In the process, it will also destroy Palmer Lake. Were it not for the loophole known as the NYC POPP, none of us would be here today facing the significant impacts this Project will have on us our town, because without admission to that program, no new Waste Water Treatment Plants (WWTP) can built in the Croton Watershed.

Response 4.1-68: *See Response 4.1-3 and 4.1-18.*