



ENVIRONMENTAL, LAND USE AND REAL ESTATE LAW

March 25, 2016

Via UPS Overnight Delivery and
E-mail to: planning@townofthompson.com

Ms. Patrice Chester, Chairwoman
and Members of the Town of Thompson Planning Board
Thompson Town Hall
4052 Route 42
Monticello, NY 12701

Re: Thompson Education Center

Subj: Applicant's EIS Preparation Work (Test Well Drilling and Road Construction)

Dear Ms. Chester and Members of the Planning Board:

We represent the Basha Kill Area Association (BKAA). This letter arises from BKAA's continuing concern about potential damage to the environment as a result of Thompson Education Center's (TEC) plan to construct a network of 2.75 miles of roadway (25 feet in width) for the drilling of seven (7) test wells, disturbing 8.36 acres of its 568 acre Town of Thompson parcel before obtaining mandatory permits from the New York State Department of Environmental Conservation (NYSDEC) and the Town. The BKAA has been at the forefront in raising concerns about TEC's plan, having first done so in March of 2015.

Part 1: Summary

This letter follows up the recent "Notice of Disapproval" dated March 4, 2016 issued by Logan Morey, Town of Thompson Code Enforcement Officer (CEO) to the attorney for TEC notifying him that the Town of Thompson denied several applications by TEC to the Town of Thompson for a permit to conduct the drilling of test wells on TEC's Thompson parcel. A copy of that Notice is attached as Exhibit A. BKAA applauds this important step taken by the Town of Thompson Building Department.

The Notice of Disapproval indicates that any subsequent applications by TEC for a permit to conduct test well drilling must come before the Town of Thompson Planning Board. We write to urge the Town of Thompson Planning Board, as Lead Agency for this project, to fulfill its role as a steward of the environment if, and when, any subsequent drilling permit applications from TEC come before the Board. For the reasons set forth in this letter, we believe that determinations made by CEO Morey in the Notice of Disapproval were correct. We urge this Board to follow through and continue to pursue the course set by the Town CEO and to require TEC to obtain a delineation of the wetlands on the TEC's Thompson parcel and to require that TEC comply with applicable NYSDEC regulations and Town regulations before any future disturbance of the Thompson parcel is allowed and before any local permits are issued.

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**Part 2:
Background, recent activity & issuance of the Notice of Disapproval**

Upon information and belief, TEC is presently building an access road on its Fallsburg parcel in order to reach its larger Thompson parcel for the purposes of drilling test wells. TEC asserted that these test wells will be used to develop information for an EIS they are preparing for their proposed project.

This plan first came to light in February of 2015 when you were contacted by TEC's attorney. However, little work has actually been done over the last year because the Town of Fallsburg stopped TEC from developing the access road on its property from Renner Road in Fallsburg.

Recently, Fallsburg lifted a Stop Work Order, and upon information and belief, TEC has since renewed its efforts to construct the access road. Significant tree cutting and site disturbance has already taken place. Below are two photographs taken recently which show the damage to TEC's Fallsburg parcel.



On March 4, 2016, Town of Thompson CEO Logan Morey issued a "Notice of Disapproval" to the attorney for TEC which denied all pending drilling permit applications by TEC for its Town of Thompson parcel (Tax Parcel No. 26.-1-6).

**Part 3:
The well drilling & road network construction is premature given the status of TEC's Application**

The BKAA has been concerned about the potential impacts of TEC's plan for more than a year. Attached as Exhibit B is a copy of my letter to you dated March 20, 2015. The concerns raised in that letter remain valid. In that letter I stated that:

- ❑ TEC's intended EIS prep work is premature. The scoping process is unfinished. It is premature for TEC to consider disturbing its Thompson parcel when important details about the project scope have yet to be determined.
- ❑ TEC's work is also premature because there are important questions about the completeness and accuracy of its pending application to the Planning Board. Primary among these questions is TEC's so far unstated plans to subdivide its Thompson parcel and the lack of an application to subdivide as part of the approvals sought for the project. This important question must be resolved by the Planning Board before review of this project can proceed, and certainly before TEC's Thompson parcel is disturbed for EIS prep work.

More detail about these arguments is set forth in my March 20, 2015 letter at Exhibit B.

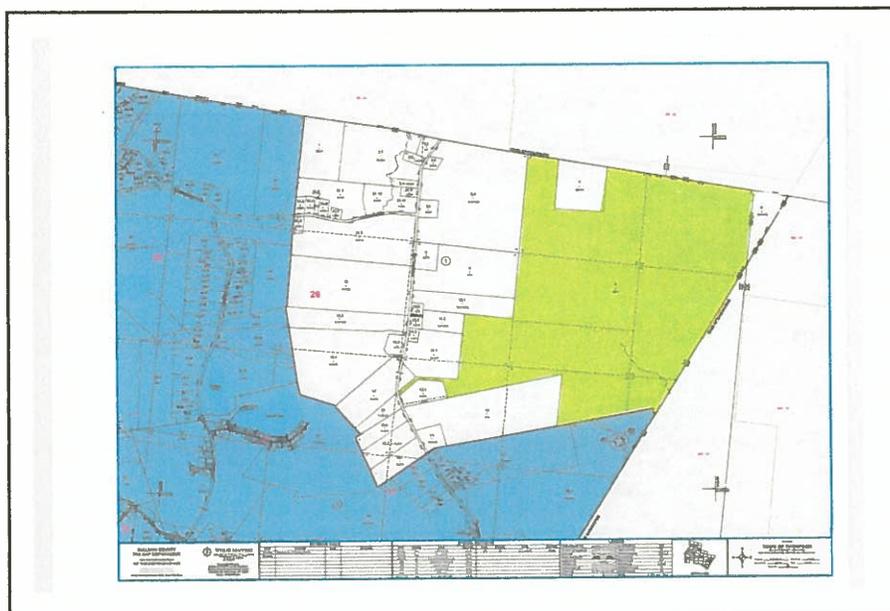
Part 4:

Before TEC's Thompson parcel is disturbed, the Lead Agency should insist on a delineation of the on-site wetlands, development of a SWPPP and acquisition of the necessary NYSDEC permits

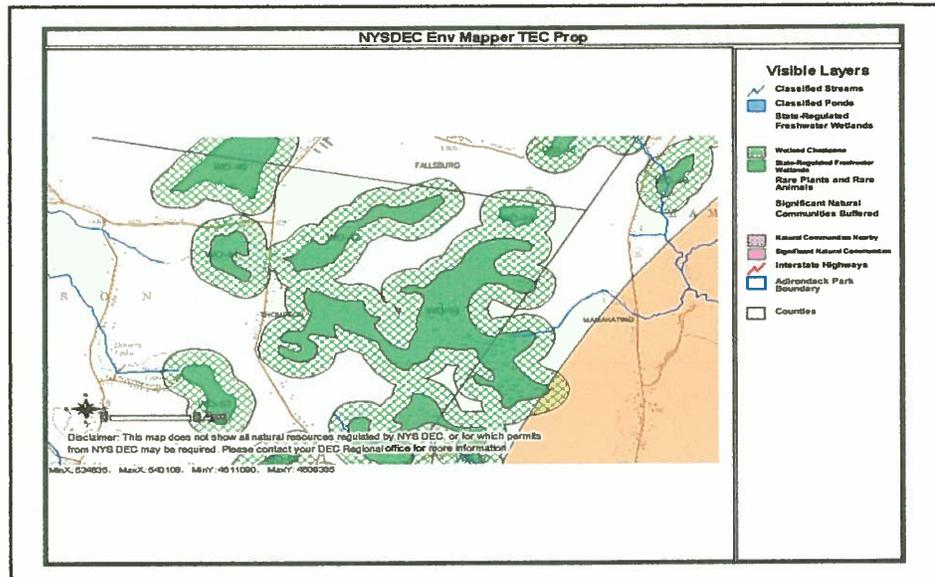
Our March 20, 2015 letter also urged the Planning Board, as the Lead Agency, to fulfill its responsibility to assure protection of the environment by insisting that TEC demonstrate that it has properly delineated the extensive wetlands on the site and obtained the necessary permits from the New York State Department of Environmental Conservation (NYSDEC). The Town's March 4, 2016 Notice of Disapproval confirmed that these actions should be required of TEC as a prerequisite to any local permits and before TEC's Thompson parcel is disturbed.

4.1. Delineation of wetlands on the Thompson parcel is essential to avoiding disturbance of wetlands and buffers and to determine what NYSDEC permits will be required.

TEC's Thompson parcel hosts significant New York State (NYS) wetlands. Shown at the right is a tax map taken from Sullivan County Parcel Access and shows the location of TEC's Thompson parcel and its configuration (Tax Parcel No. 26.-1-6). The TEC Thompson parcel is indicated in yellow (added to original tax map for clarity).



At the right is a map which was created using the NYSDEC Environmental Mapper. The solid green shaded areas on that map indicates the presence of State-regulated wetlands (Wetlands WO-54, WO-43, and WO-42) on a significant area of the Thompson parcel.



Surrounding all of the green wetlands areas are areas depicted by a green crosshatching. These areas have been designated by the NYSDEC as a "Wetland Checkzone". About the "wetland checkzone" NYSDEC says:

New York's freshwater wetlands maps only show the approximate location of the actual wetland boundary. They are not precise, regardless of how closely you zoom in on the map. The "check zone" is an area around the mapped wetland in which the actual wetland may occur. If you are proposing a project that may encroach into this area, you should check with your regional DEC office to make sure where the actual wetland boundary is. If necessary, they may have a biologist come out and perform a field delineation for you to help you avoid impacts in the wetland or the regulated 100-foot buffer zone.¹ (emphasis added)

Taken together, actual wetlands and lands in the wetlands checkzone cover most of the TEC Thompson parcel.

Given the fact that wetland locations change over time, and given that much of TEC's Thompson parcel is a NYSDEC wetlands checkzone, it is of critical importance that the Thompson Planning Board, as Lead Agency, require that the TEC Thompson parcel wetlands be properly delineated before any disturbance of this site is allowed. Moreover, we urge that the Planning Board require that any delineation be field inspected and validated by the NYSDEC to assure that the delineation is complete and accurate. Indeed, this was already the advice given to the Planning Board in 2013 by Mr. Joseph Murray, an Environmental Analyst with the NYSDEC Division of Environmental Permits. In an October 25, 2013 letter to the Planning Board, he said:

A Freshwater Wetlands Permit pursuant to Article 24 of the New York State

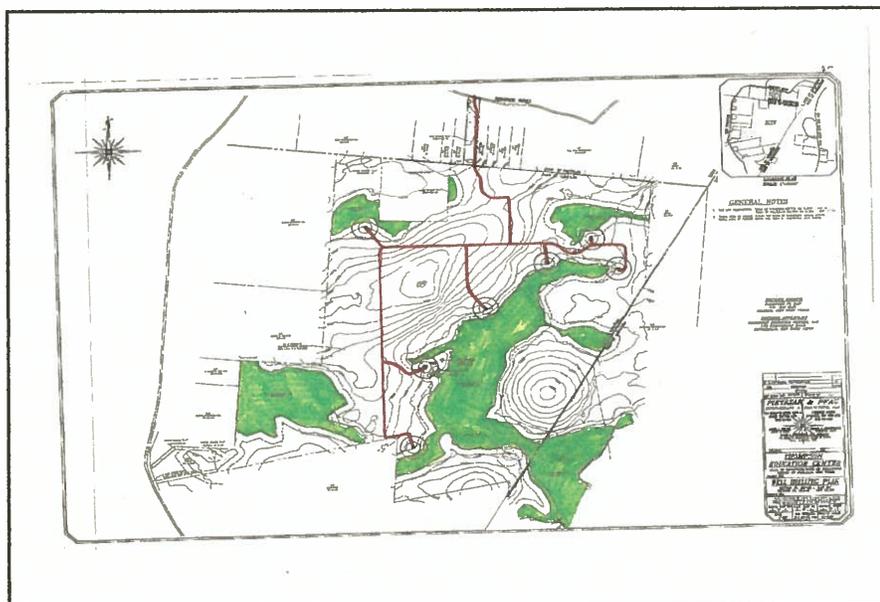
¹ <http://www.dec.ny.gov/imsmaps/ERM/checkZone.htm>

Environmental Conservation Law will be required by this office for any physical disturbance within the wetland boundary or within the 100 foot adjacent area. If the project sponsor has not already done so, they should contact the Department to have the wetland boundary field inspected and validated by DEC staff. (emphasis added).

We bring to your attention an important point raised by Mr. Murray of NYSDEC. The Town's March 4, 2016 Notice of Disapproval does not mention any requirement that a delineation of the wetlands be validated by the NYSDEC. We urge the Planning Board to require that any delineation be field inspected and validated by NYSDEC staff. The completeness and accuracy of any wetlands delineation on TEC's Thompson parcel will be a critical building block to determining what regulations apply to the plan to construct the roadway and drill the test wells.

4.2. Notice of Disapproval correctly asserts that wetlands or buffer disturbance require a NYSDEC permit

To the right is a copy of TEC's test well plan. This plan ranges across the entire site. The colors have been added to the map to enhance clarity. The green shading shows State wetlands as depicted on that map and the red lines show the roadway plan and test well sites. As is obvious, the test well sites and road are often in very tight proximity to the wetlands. But if you compare this plan to the NYSDEC



Environmental Mapper map, especially given the wetlands checkzone areas depicted on that map, the roads and test well sites in TEC's plan could easily be located in areas that may be either actual wetlands, wetlands checkzone areas or wetlands buffer areas.

This underscores the need for a NYSDEC-validated delineation of the wetlands on TEC's Thompson parcel so that the true impact of TEC's plan can be understood before there is any disturbance to the wetlands and wetland buffers.

Attached as Exhibit C is a copy of a letter dated April 14, 2015 sent to me by Daniel T. Whitehead, the Regional Permit Administrator for NYSDEC Region 3. In that letter, Mr.

Whitehead corroborates the assertion in the Town's Notice of Disapproval that a freshwater wetlands permit is required for any physical disturbance to any State-regulated wetland or the 100-foot adjacent buffer area.

As Lead Agency under SEQRA, after insisting upon delineation of on-site wetlands, the Planning Board must further require TEC to obtain a freshwater wetlands permit from the NYSDEC if any of the roadway construction or drilling will disturb wetlands or wetland buffers. The Town should require that TEC demonstrate such compliance as a precondition to any local approvals or permits which might allow the road construction and drilling activities to go forward.

4.3. The Notice of Disapproval correctly asserts that the area of proposed site disturbance requires SPDES Permit and need for approved SWPPP

Item 2 of the Town's Notice of Disapproval asserts that, in addition to a NYSDEC wetlands permit, the site disturbance activities proposed by TEC will also require a SWPPP. In his April 14, 2015 letter to me, Daniel Whitehead of NYSDEC agreed saying that any construction activity that will involve soil disturbance of one acre or more must obtain coverage under the SPDES General Permit for Stormwater Discharges from Construction Activity. Further, Mr. Whitehead said that a SWPPP would also be required. Mr. Whitehead said flatly: "[i]f TEC is proposing to disturb one or more acres, it must gain coverage under the General Permit (GP-0-15-002) and develop a SWPPP. See D. Whitehead letter at Exhibit C, p. 1.

In a letter sent on behalf of BKAA last year addressing this issue, Andrew Willingham, PE, a professional engineer, states that, after examining TEC's proposed well drilling plan, he concluded that the planned 2.75 miles of roadway and seven (7) test wells will disturb approximately 8.36 acres. The magnitude of this disturbance is eight (8) times in excess of the threshold for the requirement to obtain a SPDES permit and develop a SWPPP. This contradicts in objective terms, TEC's prior characterization of the work as a "minor disturbance". In his letter to this Board dated April 20, 2015, attached as Exhibit D, Mr. Willingham points out the importance of a SWPPP saying:

A properly prepared SWPPP would include detailed plans that indicate locations of land disturbance, erosion control measures and other mitigation measures to avoid impacts to wetlands and their adjacent areas. Exhibit D at p. 2.

Hence, it is very important for the Planning Board, as Lead Agency, to continue to insist that TEC develop a SWPPP and obtain SPDES permit coverage before any site disturbance is permitted.

Part 5:

Local approvals should be withheld until TEC achieves necessary compliance.

In choosing to become the Lead Agency for the environmental review of this project, you have assumed the responsibility for being the steward of the environment as it is affected by this project. Hence, it is your responsibility to see that unnecessary and unreasonable environmental damage is not done to TEC's Thompson parcel during the course of your

environmental review. We applaud the Code Enforcement Officer's action in denying TEC's drilling permit applications. Looking ahead to the possibility of a renewed application by TEC, we urge the Planning Board to continue to pursue the course set by the Town Building Department and the Town Engineer and insist that TEC refrain from any disturbance of the Thompson parcel until wetlands delineations have been completed and validated by the NYSDEC and that all necessary NYSDEC and permits have been secured.

In addition, all necessary local permits should also be withheld until TEC complies with the Town's applicable regulations.

5.1. Drilling

Drilling and blasting are regulated in the Town of Thompson pursuant to Chapter 120 of the Town of Thompson Code. Section 120-2 of the Code says that no drilling or blasting shall be permitted in the Town of Thompson unless a permit therefor shall be issued by the Town Clerk. The Town has thus far denied TEC's drilling permit applications. For the reasons we have stated herein, and for the reasons set forth in the March 4th Notice of Disapproval, we believe that the applications were properly denied. We ask that the same standards as those referenced in the Notice of Disapproval be applied to any future applications by TEC for a drilling permit before any disturbance to the site is allowed.

5.2. Stripping of land

In addition to a drilling permit, it appears that a permit for "Stripping of Land" may also be required. Section 250-29(A)(1) of the Thompson Code states that "[l]and may not be stripped for any purpose without a permit" (emphasis added). Code Section 250-2 entitled "Definitions", defines "stripping of land" as "excavation to any depth and for any purpose, of any area over 1,000 square feet (SF), not including trenches for installation or maintenance or public utilities" (emphasis added).

Section 250-29(A)(3) requires that applications for a permit be made to the Planning Board. Subsection (A)(7) requires that all applications be accompanied by a site plan.

We ask that the Town Building Department look into the issue of whether this permit is also required before any site disturbance is allowed.

Section 250-29(A)(2) also provides that "stripping of land shall only be allowed by authorization of the Planning Board and any other governmental agency having jurisdiction." We respectfully submit that, in this instance, the NYSDEC would constitute another governmental agency having jurisdiction. Hence, the Planning Board should collaborate with the NYSDEC and ensure that the NYSDEC properly participates in the review of this project.

**Part 6:
Conclusion**

While information gathering activities on the Thompson parcel are permitted, the general rule against any physical alteration makes clear that the spirit of SEQRA demands that the

environmental resources on the site not be destroyed by the information gathering activity taking place to facilitate the SEQRA review.

The BKAA thanks the Town of Thompson Building Department for its action in denying TEC's drilling permit applications. At the same time, because of the history of this project, the BKAA is aware that continued vigilance is required. Since the Notice of Disapproval indicates that any subsequent applications by TEC for a permit to conduct test well drilling must come before the Town of Thompson Planning Board, we urge this Board to follow through on the start provided by the Notice of Disapproval and to continue to pursue the course set by the Town Building Department. We ask this Board to assure that no disturbance takes place on the TEC Thompson parcel unless and until TEC complies accurately and fully with all of the requirements set forth in the March 4, 2016 Notice of Disapproval.

Thank you for your time and consideration.

Very truly yours,

Grant & Lyons, LLP

John F. Lyons

c: Paula Elaine Kay, Esq., Attorney to the Town of Thompson Planning Board
Richard Sush, Deputy Supervisor, Town of Thompson
James Carnell, Jr., Director - Building, Planning & Zoning, Town of Thompson
Logan Morey, Code Enforcement Officer, Town of Thompson
Richard D. McGoey, PE, Town Engineer, Town of Thompson
Steven Vegliante, Town Supervisor, Town of Fallsburg
Mollie Messinger, Code Enforcement Officer, Town of Fallsburg
Will Illing, PE, Town Engineer, Town of Fallsburg
Bill Herrmann, Supervisor, Town of Mamakating
Daniel T. Whitehead, Regional Permit Administrator, NYSDEC Region 3
Joseph R. Murray, Environmental Analyst, NYSDEC Region 3
Freda Eisenberg, AICP, Commissioner, Sullivan County Div of Planning & Env Mgmt
Paula Medley, Basha Kill Area Association
Laura Coruzzi, Yankee Lake Preservation Association
Toby Boritz, Rock Hill Neighborhood Association
Andrew Willingham, PE, Willingham Engineering
Katherine Beinkafner, Mid-Hudson Geosciences

c via email: Paula Elaine Kay, Esq., at peklaw@hvc.rr.com
Richard Sush at rsush@townofthompson.com
James Carnell, Jr. at jcarnell@townofthompson.com
Logan Morey at lmorey@townofthompson.com
Richard D. McGoey, PE, at rdm@mhepc.com
Steven Vegliante at svegliante@fallsburgny.com
William Illing, PE, at willing@fallsburgny.com



Mollie Messinger at mmessenger@fallsburgny.com
Bill Herrmann at supervisor@mamakating.org
Daniel Whitehead at daniel.whitehead@dec.ny.gov
Joseph R. Murray at joseph.murray@dec.ny.gov
Freda Eisenberg, AICP, at planning@co.sullivan.ny.us

Exhibit A

to

Letter from Grant & Lyons, LLP dated March 25, 2016
to Patrice Chester, Chairwoman, and members of the Town of Thompson Planning Board

Exhibit:

Notice of Disapproval, dated March 4, 2016

Town of Thompson

Building Department
4052 Route 42
Monticello, New York 12701-8221
Phone: (845) 794-2500
Fax: (845) 794-8600
Web site: www.townofthompson.com

Notice of Disapproval

March 4, 2016

McNamee, Lochner, Titus & Williams, P.C.
Attn: John J. Privitera
677 Broadway
Albany, NY 12207

RE: 26.-1-6. Thompson Education Center

Mr. Privitera:

Attached please find all drilling permit applications submitted to date along with all fees and bonds, which are being returned due to the following:

1. Town of Thompson Planning Board indicated the need for wetland delineation (both in the field and as part of the required documentation), which to date has not been received.
2. Town of Thompson Planning Board, Town of Thompson Building Department, and consulting engineer Richard McGoey all discussed with your client the need for additional oversight and review by the New York State Department of Environmental Conservation (NYSDEC), due to the total disturbance area for all proposed roadwork. The returned drilling permit applications include a disturbance area in excess of one acre, which requires a freshwater wetland permit and a State Pollutant Discharge Elimination System permit (SPDES) from the NYSDEC. Said permits would all be obtained through the NYSDEC after the submission of a Stormwater Pollution Prevention Plan (SWPPP). As of the date of this letter none of these documents have been received; see attached NYSDEC letter dated October 25, 2013, which clearly outlines the need for a Freshwater Wetlands Permit.
3. Town of Fallsburg violations regarding disturbance area and the appropriate bonding of roadways remains unresolved.

Furthermore, once all of the above mentioned items are addressed by the submission of all pertinent documentation, your client must reappear in front of the Town of Thompson Planning Board to proceed. If you have any questions please do not hesitate to contact James Carnell, Director of Building, Planning and Zoning

Sincerely,

Logan Morey
Code Enforcement Officer

Exhibit B

to

Letter from Grant & Lyons, LLP dated March 25, 2016
to Patrice Chester, Chairwoman, and members of the Town of Thompson Planning Board

Exhibit:

Grant & Lyons letter to the Town of Thompson Planning Board, dated March 20, 2015



ENVIRONMENTAL, LAND USE AND REAL ESTATE LAW

March 20, 2015

Via UPS Overnight Delivery and
E-mail to: peklaw@hvc.rr.com

Paula Kay, Esq.
Deputy Town Attorney for the Town of Thompson
Thompson Town Hall
4052 Route 42
Monticello, NY 12701

Re: Thompson Education Center : Applicant's EIS Preparation Work (Test Well Drilling and Road Construction)

Dear Ms. Kay:

We represent the Basha Kill Area Association (BKAA). I recently became aware of a letter dated February 18, 2015 sent to you by John J. Privitera, Esq., the attorney for the Thompson Education Center (TEC). For your convenience, a copy of that letter is attached as Exhibit A. It is apparent from the first line of Mr. Privitera's letter that you had raised some concerns about the permissibility of water well testing to be conducted on the site by the Applicant in connection with the preparation of an Environmental Impact Statement (EIS). We agree. The Applicant's plan raises concerns for the BKAA as well. Those concerns are identified and discussed below.

1. Applicant's Intended EIS Work is Premature

The water well testing work proposed by the Applicant is premature in two respects.

First, the process of scoping for this project has not yet been completed. Upon information and belief, this process was begun, but never completed, and no final written scope has been developed or issued by the Lead Agency. As stated in the NYSDEC's "*SEQR Handbook*":

A written scope of issues developed through a public scoping process benefits the lead agency and the sponsor by providing explicit guidance as to what criteria will be used to determine whether a submitted draft EIS is adequate. The written scope provides a means of ensuring that significant topics have not been missed and that the level of analysis in the EIS satisfies the standards established during the scoping process. NYSDEC, *SEQR Handbook*, 3rd Edition - 2010, Ch. 5 at P. 98.

It is premature for the Applicant to be disturbing the site in connection with EIS preparation work when important details about the scope of the EIS have yet to be determined.

This work is also premature because there are significant questions about whether the Applicant's application to the Planning Board is complete and accurate. The letter to the Thompson Planning Board from Toby Boritz dated March 6, 2015, identifies a number of questions about the accuracy of the information presented on the application and the

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Rhinecliff, New York 12574



March 20, 2015

Paula Kay, Esq., Deputy Town Attorney for the Town of Thompson

Re: Thompson Education Center : Applicant's EIS Preparation Work (Test Well Drilling and Road Construction)

accompanying Environmental Assessment Form. Primary among these questions is whether the Applicant has unstated plans to subdivide the land. As pointed out in Ms. Boritz's letter, the Applicant's mortgage appears to indicate that the Applicant anticipates subdividing the property into as many as 10 parcels. If this is true, the application before the Planning Board is not complete because, upon information and belief, the Applicant has not applied for subdivision approval as part of this project.¹ If subdivision is part of the plan for this project, an application for subdivision must be included in the SEQRA review of this project in order to avoid impermissible segmentation.

If a subdivision application needs to be part of this project, as Lead Agency, the Planning Board needs to clarify that fact before any further steps are taken in the SEQRA review. The Lead Agency should require the Applicant to fully disclose its plans. This is particularly so since a failure to disclose the true scope of plans has been an issue in the past with this project.

These issues must be addressed before the SEQRA review proceeds any further. The Applicant should not be out disturbing the site with preparation work for the EIS until the application has been made complete and accurate, and subsequent to that, the scoping process has been completed.²

2. The Lead Agency Must Take Steps to Minimize Damage to the Environment of the Site from Applicant's Investigation Work

BKAA is also concerned about the potential damage to the environment that may occur in connection with the Applicant's testing activities.

The test well plan appears to involve the construction of an access road into and around the site to the locations of the test wells. Upon information and belief, a copy of the Applicant's well drilling plan is attached as Exhibit B and shows the locations of the test wells and road way. Further upon information and belief, portions of this well drilling access road have already been constructed. In fact, the Applicant has already run afoul of the law in Fallsburgh for failure to obtain a disturbance permit in connection with the work on the Renner Road parcel.

This project site hosts significant New York State (NYS) wetlands. It appears as if this test well work will take place very close to the wetlands. This raises two serious concerns.

First, the boundaries of the wetlands as they exist today should be verified by the New York

¹ Ms. Boritz's letter raises a number of other questions about the accuracy and completeness of the application which the Planning Board should review as well.

² It should be noted in connection with scoping, given the extent of the changes which have taken place in connection with this project in the time since the last public hearing on scoping, the Planning Board should reopen the public hearing and receive additional comment prior to issuance of a formal scope.

March 20, 2015

Paula Kay, Esq., Deputy Town Attorney for the Town of Thompson

Re: Thompson Education Center : Applicant's EIS Preparation Work (Test Well Drilling and Road Construction)

State Department of Environmental Conservation (NYSDEC). In his letter to the Planning Board dated October 25, 2013, which was issued in response to the Planning Board Lead Agency circulation, Mr. Joseph Murray, an Environmental Analyst with the NYSDEC Division of Environmental Permits, stated:

A Freshwater Wetlands Permit pursuant to Article 24 of the New York State Environmental Conservation Law will be required by this office for any physical disturbance within the wetland boundary or within the 100 foot adjacent area. If the project sponsor has not already done so, they should contact the Department to have the wetland boundary field inspected and validated by DEC staff.
(Emphasis added). Copy of letter attached as Exhibit C, see Page 1.

In choosing to become the Lead Agency for the environmental review of this project, you have assumed the responsibility for being the steward of the environment as it is affected by this project. Hence, it is your responsibility to see that unnecessary and unreasonable environmental damage is not done to this site during the course of your environmental review. To that end, before this site is disturbed any further by the Applicant's premature EIS preparation work, the Planning Board should take steps to contact the NYSDEC and ascertain whether the Applicant has taken the necessary steps to: (1) have the NYSDEC staff verify the wetlands and wetland buffer boundaries; and (2) apply for and obtain any necessary wetlands permits from NYSDEC that are required if this work will disturb either the wetlands or the buffer.

Heightening this concern is the scale of the investigation work proposed. Setting the issue of prematurity aside, while Mr. Privitera may be correct that some site disturbance is permitted by the SEQRA regulations for the purposes of information collection [see 6 NYCRR 617.5(b)(18)], the permitted level of disturbance is "minor". I point out that the construction of an access road that will traverse the entire property, and closely skirt the wetlands and/or buffers, is not "minor".

Under normal circumstances, the SEQRA regulations do not allow any physical alteration of the property until the provisions of SEQRA have been complied with. Section 617.3(a) of the regulations says:

A project sponsor may not commence any physical alteration related to an action until the provisions of SEQR have been complied with.

This provision was intended by NYSDEC to prevent a developer from "clearing vegetation from a site and altering topographic conditions prior to the completion of the very environmental review which is intended to objectively evaluate whether, and under what conditions, such a consequence should be allowed" (quoting, Gerard, Ruzow, Weinberg, *Environmental Impact Review in New York*, October 2014, Section 3.01[3][h]).

While information gathering activities on the project site are permitted, the general rule against any physical alteration makes clear that the spirit of SEQRA demands that the environmental

March 20, 2015

Paula Kay, Esq., Deputy Town Attorney for the Town of Thompson

Re: Thompson Education Center : Applicant's EIS Preparation Work (Test Well Drilling and Road Construction)

resources on the site not be destroyed by the information gathering activity taking place to facilitate the SEQRA review.

In this case, the Applicant should be compelled by the Lead Agency to have NYSDEC verify the wetland boundaries and buffers and to have the Applicant apply for whatever NYSDEC permits are required. The review process that will follow any NYSDEC permit application will provide an additional layer of environmental protection to the sensitive environmental resources on this project site.

In conclusion, we hope that the Planning Board will bear in mind the environmental steward responsibility which accompanies its authority as Lead Agency for the environmental review of this project.

Thank you for your time and consideration.

Very truly yours,

Grant & Lyons, LLP

John F. Lyons

c: Patrice Chester, Chairwoman, Planning Board of the Town of Thompson
Richard Sush, Deputy Supervisor, Town of Thompson
Richard D. McGoey, PE, Town Engineer, Town of Thompson
Mollie Messinger, Code Enforcement Officer, Town of Fallsburg
Bill Herrmann, Supervisor, Town of Mamakating
Joseph R. Murray, Environmental Analyst, NYSDEC
Paula Medley, Basha Kill Area Association
Andrew Willingham, PE, Willingham Engineering
Katherine Beinkafner, Mid-Hudson Geosciences

Exhibit C

to

Letter from Grant & Lyons, LLP dated March 25, 2016
to Patrice Chester, Chairwoman, and members of the Town of Thompson Planning Board

Exhibit:

Daniel T. Whitehead letter to Grant & Lyons, dated April 14, 2015

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 3
21 South Putt Corners Road, New Paltz, NY 12561-1620
P: (845) 256-3054 | F: (845) 255-4659
www.dec.ny.gov

April 14, 2015

John Lyons, Esq.
Grant & Lyons LLP
149 Wurtemberg Road
Rhinebeck, NY 12572

Re: Thompson Education Center Test Well Drilling & Road Construction, Town of Thompson

Dear Mr. Lyons:

Thank you for your submission on behalf of the Basha Kill Area Association (BKAA), dated April 7, 2015, regarding the Thompson Education Center (TEC). Please see responses below to the two questions you pose regarding the need for permits for the above referenced project.

- 1. Is TEC required to obtain a permit from New York State Department of Environmental Conservation (NYSDEC) for its intended well drilling and access road construction because of disturbances to the NYSDEC wetlands and wetland buffers that are located on site in close proximity to the drilling and road building activities?**

A freshwater wetlands permit, pursuant to Article 24 of New York State Conservation Law, is required for any physical disturbance to any New York State-regulated wetland or the 100-foot adjacent area of a state-regulated wetland. If TEC proposes to disturb any such state-regulated wetland, or the 100-foot adjacent area, it is required to submit a permit application to this office. A permit is not required by TEC for work "in close proximity" to state-regulated freshwater wetlands if there will be no physical disturbance to the wetland or adjacent area associated with the proposed activities.

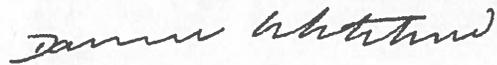
- 2. Is TEC required to obtain approval of a Storm Water Pollution Prevention Plan (SWPPP) prior to conducting any work on site as the proposed work may involve site disturbance of more than one acre?**

Before commencing construction activity, the owner or operator of a construction project that will involve soil disturbance of one or more acres must obtain coverage under the State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activity. Permittees are also required to develop a Stormwater Pollution Prevention Plan (SWPPP) to prevent discharges of construction-related pollutants to surface waters. If TEC is proposing to disturb one or more acres, it must gain coverage under the General Permit (GP-0-15-002) and develop a SWPPP.



If you have any additional questions, please do not hesitate to contact me at daniel.whitehead@dec.ny.gov or 845 256 3801.

Yours Sincerely,

A handwritten signature in cursive script, appearing to read "Daniel T. Whitehead".

Daniel T. Whitehead
Regional Permit Administrator

Cc : Chairperson, Town of Thompson Planning Board
Ecc: Martin Brand
Joseph Murray

Exhibit D

to

Letter from Grant & Lyons, LLP dated March 25, 2016
to Patrice Chester, Chairwoman, and members of the Town of Thompson Planning Board

Exhibit:

Andrew Willingham, PE, letter to Town of Thompson Planning Board, dated April 22, 2015



willingham
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April 22, 2015

Ms. Patrice Chester, Chairperson & Members
Town of Thompson Planning Board
4052 Route 42
Monticello, NY 12701

Re: Thompson Education Center
Wild Turnpike / Renner Road
Town of Thompson, New York
Test Well Drilling and Road Construction

Dear Ms. Chester and Planning Board Members:

Our firm has been retained by the Basha Kill Area Association (BKAA) to provide engineering consultation and representation with regard to the proposed Thompson Education Center (“TEC”) project. The purpose of this correspondence is to inform the Board of certain permits required by the Applicant. Also included is a reminder of the Board’s obligations as Lead Agency of the project under SEQRA. As we understand, the Applicant plans to construct a road network within the property for the purpose of the drilling and testing of wells. BKAA’s attorney John Lyons advised your counsel (See March 20, 2015 letter from John Lyons to Paula Kay) that both a Freshwater Wetlands Permit as well as coverage under the State Pollution Discharge Elimination System (SPDES) General Permit for Storm Water Discharges from Construction Activity may be required. Further, these permits must be obtained before the site can be disturbed. Subsequently, Daniel T. Whitehead, Region 3 Permit Administrator for the New York State Department of Environmental Conservation (NYSDEC), confirmed that the Applicant’s test well drilling activity will require the above permits if applicable thresholds are exceeded. A copy of Mr. Whitehead’s letter to Mr. Lyons dated April 14, 2015 is attached.

At the BKAA’s request, we have reviewed a plan entitled “Well Drilling Plan”, prepared by Pietrzak & Pfau Engineering and Land Surveying, dated last revised August 19, 2014. Per our review of the plan, approximately 2.75 miles of driveway are proposed to provide access to the seven (7) test well sites. The plan indicates a driveway width of twenty five (25) feet, which according to our engineering calculations results in a total land disturbance of approximately 8.4 acres. The threshold for requiring a permit is 1 acre of land disturbance, which is easily exceeded by the proposed construction activity. Before any site disturbance can take place the Applicant must obtain coverage under the State Pollution Discharge Elimination System (SPDES) General

Permit for Stormwater Discharges from Construction Activity (Permit GP-0-15-002) from the NYSDEC.

The preparation of a Stormwater Pollution Prevention Plan ("SWPPP") is a prerequisite for obtaining coverage under GP-0-15-002. As the Board is likely aware, among many other requirements, an SWPPP includes the design and implementation of stormwater management practices that provide water quality treatment, runoff reduction and runoff rate attenuation. Runoff from the proposed driveways, which are considered by the NYSDEC to be impervious surfaces, must be captured and treated in accordance with GP-0-15-002 and the New York State Stormwater Management Design Manual. In this case, the close proximity of the proposed construction to sensitive NYSDEC wetlands enhances the importance to properly control and provide treatment for stormwater. To our knowledge, an SWPPP has not been prepared for the proposed Well Drilling Plan, nor has coverage been obtained under GP-0-15-002.

You are advised by this letter that construction of improvements as shown on the Well Drilling Plan are unlawful without the prior development of an SWPPP and obtaining coverage under GP-0-15-002. Should the activity proceed without the required permit, it would be subject to enforcement and penalties as administered by the New York State Department of Environmental Conservation ("NYSDEC"). A copy of this letter is also being furnished to Daniel T. Whitehead and Joseph Murray of the NYSDEC.

You are the Lead Agency for the environmental review of this project and this test well drilling and road construction is proposed by the Applicant expressly for the purpose of preparing its draft EIS under SEQRA. We further remind the Board of their insistence on being the Lead Agency for this project. Hence, you now must carry out the responsibilities that come with that designation. As Mr. Lyons stated in his March 20, 2015 letter:

In choosing to become Lead Agency for the environmental review of this project, you have assumed the responsibility for being the steward of the environment as it is affected by this project. Hence, it is your responsibility to see that unnecessary and unreasonable damage is not done to this site during the course of your environmental review. March 20, 2015 letter from John Lyons to Paula Kay, at Page 3.

As Lead Agency, you must ensure that the proper permits have been obtained before authorizing the well drilling plan.

The proposed disturbance in close proximity to the NYSDEC regulated wetland adjacent areas is also an environmental concern and a potential impact under SEQRA. A properly prepared SWPPP would include detailed plans that indicate locations of land disturbance, erosion control measures and other mitigation measures to avoid impacts to wetlands and their adjacent areas. The SWPPP would serve as a tool in identifying wetland related impacts by defining the limit of disturbance in these areas in sufficient detail to allow an assessment of the impacts.

It should also be noted that the purpose of the NYSDEC stormwater permit is to protect downstream waters from stormwater runoff impacts resulting from construction activities. By ensuring that this permit is in place, and the required SWPPP is implemented to protect downstream waters, the Planning Board is fulfilling its role as Lead Agency.

We ask that you respond in writing to indicate the steps being taken to ensure the required permits are in place. Thank you for your consideration of this matter. Please feel free to contact me at your convenience with any questions.

Sincerely,
Willingham Engineering, PLLC



Andrew Willingham, PE
NYS Professional Engineer No. 083984

cc: Richard Sush, Thompson Deputy Town Supervisor
Paula Kay, Thompson Deputy Town Attorney
Richard D. McGoey, PE, Town of Thompson Engineer
Steven Vigilante, Fallsburg Town Supervisor
Mollie Messinger, Fallsburg Code Enforcement Officer
Bill Herrmann, Mamakating Town Supervisor
Martin Brand, Director, NYSDEC Region 3
Daniel T. Whitehead, Regional Permit Administrator, NYSDEC Region 3
Joseph Murray, Environmental Analyst I, NYSDEC Region 3
Paula Medley / Basha Kill Area Association
Katherine Beinkafner, Mid-Hudson Geosciences
John F. Lyons, Esq., Grant & Lyons, LLP