

To: Paula Elaine Kay, Deputy Town Attorney for Thompson and Fallsburg  
Patrice Chester, Chairperson, Thompson Planning Board, and Members

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From: Rock Hill Neighborhood Coalition, Basha Kill Area Association, Yankee Lake Preservation Association, Wanaksink Lake Club, Wolf Lake, Inc., Mamakating Park Property Owners' Civic Association, Sullivan County Audubon Society, and Fallsburg's Future

Re: **TEC -- Need for Wetland Validation & Resubmission of Documents Prior to Land Disturbance**  
Date: June 28, 2016

Dear Ms. Kay, Ms. Chester and Members of the Planning Board,

On behalf of the members of the eight local organizations, lake communities and environmental groups that we represent, we first want to thank the Planning Board for your hard work and thoroughness in overseeing large projects under review in the Town of Thompson while, at the same time, requesting that you, as lead agency for Thompson Education Center, please consider the following concerns we raise re: applicant's plans for well drilling & land disturbance -- plans that we believe are premature in the absence of: (1) a new NYSDEC wetland validation; and (2) a viable application & supporting documents. As you are aware, the applicant is proposing a 4.5 million sq ft educational facility on this 568-acre site that contains 221+ acres of protected wetlands by the Thompson/ Mamakating/ Fallsburg Line.<sup>1</sup>

While commending Code Enforcement Officer Logan Morey for issuing her March 4 Notice of Disapproval to John Privitera, Esq. requiring TEC to: submit a new wetland delineation; develop a SWPPP; obtain other permits & come before the board once all documentation is in order, we are concerned that an initial SWPPP was recently submitted without TEC having been directed to first contact the DEC for the new delineation that Ms. Morey requested (the DEC last validated these wetlands on 9/12/08). And while Mr. Privitera has dismissively characterized the proposed disturbance as "minor" & necessary for "EIS preparation work," in no way does: (A) drilling 7 test wells at the edge of the wetlands (as delineated in '08); (B) converting 3.46 acres of forest into gravel roads & grassy areas; and (C) installing miles of access roads snaking around Harlen Swamp constitute a "minor disturbance." And on what basis should TEC be allowed to move ahead with "EIS prep work" without so much as a valid site plan application, site map or EAF in the project file?

### **Part I - Need for NYSDEC Wetland Validation Before Proceeding with SWPPP**

In his May 10th MH&E Technical Review Comments, Scott Quinn, P.E., serving as Town Engineer, determined that TEC's preliminary SWPPP was incomplete. And while he notes "*[t]he well heads appear to be...very close to the NYS wetland adjacent areas,*" why does Mr. Quinn not advise the applicant to first have DEC revalidate the wetlands? Considering that all 7 proposed test wells and miles of access roads are to be located at the edge of the (2008) wetland buffers, and to protect the wetlands from damage, it is illogical for them to continue preparing the SWPPP based on an old delineation, when the current location of the wetland boundary is yet to be determined.

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<sup>1</sup> this includes 148.38± acres of NYSDEC freshwater wetlands (plus 71.5± acres of 100 ft buffers based on a 9/12/08 NYSDEC wetland validation, as per Tom Shepstone's 9/16/13 China City Wetland Map)... and 1.8 acres of ACOE wetlands in Fallsburg

In response to Mr. Quinn's 5/10 technical comments on the SWPPP, TEC submitted a revised well drilling map & erosion control specs dated 5/19 proposing the same 7 test wells at the edge of the buffers (as validated in '08). It is curious that Notation #4 added to P&P's drilling map now reads: "WETLANDS DELINEATED BY ROBERT TORGERSEN, LA CPESC." with no entry for the date or even the year of such delineation (was it 2008?). In fact, Robert G. Torgersen of Nanuet was (and perhaps still is) Simon Gelb's Landscape Architect who did an August, 2008 Kingwood delineation on this site. Nor has Sherry Li, the developer, contacted NYSDEC Permitting Dept to request a new validation at any time between October, 2013 and June 16th of this year... And it is illogical to assume that a new validation of Lot 26.-1-6 was done between August, 2014 and May 19th of this year because the acreage of the wetlands on P&P's 2014 & 2016 drilling maps is IDENTICAL down to a hundredth of an acre for each of the 10 identified NYSDEC wetlands in Thompson totaling 148.38 acres (not counting some 71.5 acres of 100 ft buffers - see footnote 1).

Importance of NYSDEC Wetland Checkzones - See Attachment A for Pg 4 of BCAA Consulting Attorney John Lyons' March 25, 2016 nine-pg letter to the Planning Board. The map of Lot 26.-1-6 in this Attachment dramatically depicts the extent of on-site wetlands plus areas contained within DEC "wetland checkzones" (depicted by green crosshatching) which, taken together, encompass most of the tract. The DEC advises applicants to contact the Department to have their property validated and field inspected by an NYSDEC biologist in order to avoid adverse impacts to the wetlands and their 100-ft adjacent areas.

A New DEC Validation Should Precede Working on SWPPP - And in discussions with BCAA Consulting Engineer Andy Willingham, he advises us that a new wetland validation should be completed before working on the SWPPP and that the SWPPP and associated stormwater design could be (and likely would be) substantially altered by the location of wetlands and their buffers, emphasizing that a proper wetland delineation is a necessary step prior to development of the SWPPP, particularly in cases where land disturbance is being proposed near wetland buffers.

## **Part 2 - Need For Resubmission of Valid Application & Supporting Documents**

As to why TEC's current submissions should be deemed invalid and re-submitted, here is a recap of some important information re: the terms of Sherry Li's \$6.9 million mortgage agreement with Parkwood...

### Some Background on TEC's December, 2014 Mortgage Agreement with Parkwood

*Since the inception of China City in August of 2013 and Thompson Education Center in May of 2014, it has always been clear from her statements to Town officials, and from site maps, the EAF, and other submissions, that Ms. Li always planned (and currently plans) to build her massive 4+ million sq ft "college" in Phases. That is not in dispute; nor do we take issue with an applicant building a large project in phases (That TEC's proposed density & project design bear little relationship to applicable RR-2 zoning and density regulations will be addressed at another time).*

*The problem is that, in the year and a half since purchasing Lot 26.-1-6 in December of 2014, the developer has failed to amend her May, 2014 site plan application, EAF, site map, etc. or disclose (i.e., "come clean") to the lead agency that, under the terms of the 48-pg TEC / Parkwood Mortgage Agreement, Ms. Li, the Mortgagor, is obligated to first obtain subdivision approval from the Town of*

Thompson Planning Board as a precondition of obtaining any and all partial releases from her \$6.9 million mortgage with Parkwood in order to build in Phases, in accordance with Pietrzak & Pfau's 5/11/14 Phase Plan Map appended to the Mortgage as Exhibit A -- a map never disclosed to Town officials, depicting SBL# 26.-1-6 subdivided into 10± Phases/Subphases. Please note that the only way Ms. Li can avoid having to subdivide this 568-acre parcel is to satisfy the terms of the mortgage with a lump sum payment of nearly \$7 million, an unlikely scenario! Yet since Dec, 2014, TEC has failed to amend their application to request a subdivision into as many as 10 parcels.<sup>2</sup>

**We therefore respectfully urge the board to require resubmission of each of the following** prior to authorizing drilling or land disturbance or otherwise proceeding with the SEQR review for a proposal whose sponsor has failed for the past year and a half to disclose materially significant information to the lead agency:

- (1) A true and valid site plan application acknowledging the need for a subdivision** - Ms. Li's 5/27/14 application has not been amended to request a subdivision into 10± parcels;
- (2) An amended EAF acknowledging the need for a subdivision** - The 5/29/14 EAF likewise fails to request a subdivision; nor has proposed # of dorm and faculty housing units been updated (see #3);
- (3) A revised site map depicting this 568-acre lot subdivided into as many as 10 parcels with current Table of Bulk Requirements** - Please note that the only site map in TEC's file ("Overall Concept Plan") is dated June 2, 2014. In November of 2014 when Attorney Joel Proyect attempted to submit a revised site map (known as Exhibit D) with amended # of dorm & faculty housing units, it was apparently rejected by the Planning Board and never placed in the project file. A revised site map should be submitted depicting this parcel subdivided into multiple lots along with setbacks of proposed facilities from property lines & density calculations for each subdivided parcel;
- (4) A new zoning analysis with attribution of authorship** - On 6/3/2014, along with 10 copies each of site plan application, EAF & Draft Scope (incorrectly dated May, 2013), Mr. Pietrzak submitted ten copies of a 5-pg undated zoning analysis with no indication of who wrote it [though Town Engineer Richard McGoey references a density analysis by Tom Shepstone in his 5/22/14 Technical Review Memo]. This zoning analysis of unknown authorship should be withdrawn and resubmitted;
- (5) Submission of Pietrzak and Pfau's 5/11/14 Phase Plan Map depicting Lot 26.-1-6 subdivided into 10± Phases/Subphases** - It is unconscionable for the applicant to continue withholding this important Pietrzak and Pfau map from Town officials, a map that predates by 2 weeks the initial filing of Thompson Education Center's May 27, 2014 site plan application (see Attachment B for this map).

### **Part 3 - Concluding Remarks**

Thank you for your consideration of the issues we have raised including the need for a new wetland delineation by the DEC at this time and resubmission of a valid application and supporting documents prior to your authorizing any land disturbance or "EIS prep work" at the very site where, in 2007, former NYSDEC Commissioner Pete Grannis warned against habitat fragmentation and

<sup>2</sup> see Toby Boritz' 2/25/2015 letter to the Thompson Planning Board titled "Terms of TEC - Parkwood Mortgage Agreement;" also see Mortgage Instrument #2014-8329, filed in SC Clerk's Office 12/18/14 and Attachment B for P&Ps May, 2014 Phase Plan Map

irreparable damage to the fragile wetlands and uplands of Harlen Swamp Wetland Complex on another outsized proposal that was known as Kingwood.<sup>3</sup>

Respectfully submitted on behalf of the abovementioned local organizations,

*Toby L Boritz June 28, 2016* [rhneighborhoodcoalition@gmail.com](mailto:rhneighborhoodcoalition@gmail.com)

Toby L. Boritz, Christina Wallace & Sylvia Schwartz for Rock Hill Neighborhood Coalition

Paula Medley, President, Basha Kill Area Association

John F. Konefal, President, Wanaksink Lake Club, Inc.

Dennis Kadet, President, Wolf Lake, Inc.

Pete Pensec, President, Yankee Lake Preservation Association

Maria Longano, President, Mamakating Park Property Owners' Civic Association

Valerie Freer, Past Pres. Representing Current Board of Directors, Sullivan Co. Audubon Society

Steve Gordon for Fallsburg's Future

- c. Deputy Supervisor Richard Sush & Thompson Town Board  
Michael Mednick, Thompson Town Attorney  
Richard McGoey, Thompson Town Engineer  
James Carnell, Jr., Director - Building, Planning and Zoning, Thompson  
Robert Geneslaw, Town of Thompson Consulting Planner re: TEC  
Marilee Calhoun, Thompson Town Clerk  
Logan Morey, Thompson Code Enforcement Officer  
Supervisor Steve Vegliante, Town of Fallsburg  
Mollie Messenger, Fallsburg Code Enforcement Officer  
Will Illing, Fallsburg Town Engineer  
Freda Eisenberg, AICP, Sullivan County Planning Commissioner  
Joseph Murray, Environmental Analyst, NYSDEC Region 3  
Andrew Willingham, P.E., Consulting Engineer for Basha Kill Area Association  
John Lyons, Esq., Grant & Lyons LLP, Consulting Attorney for BKAA

### **Attachments**

**A** – Excerpt from John Lyons, Esq.'s 3/25/16 letter to the Planning Board on behalf of the BKAA depicting Wetlands & DEC "Wetland Checkzones" on Lot 26.-1-6. This Attachment is Pg 4 of Mr. Lyons' 9-page letter which can be found in its entirety (w/ exhibits) in TEC's project file;

**B** -- Pietrzak & Pfau's 5/11/14 Phase Map depicting SBL# 26.-1-6 divided into 10± Phases/ Subphases. This map, appended to Dec, 2014 TEC-Parkwood Mortgage Instr. # 2014-8329 as Exhibit A, was filed in SC County Clerk's Office on December 18, 2014.

<sup>3</sup> see former NYSDEC Commissioner William Grannis' 12/5/07 Lead Agency Determination Letter on Kingwood in which he determined that the only agency capable of overseeing such a massive project on this ecologically sensitive site was the DEC!

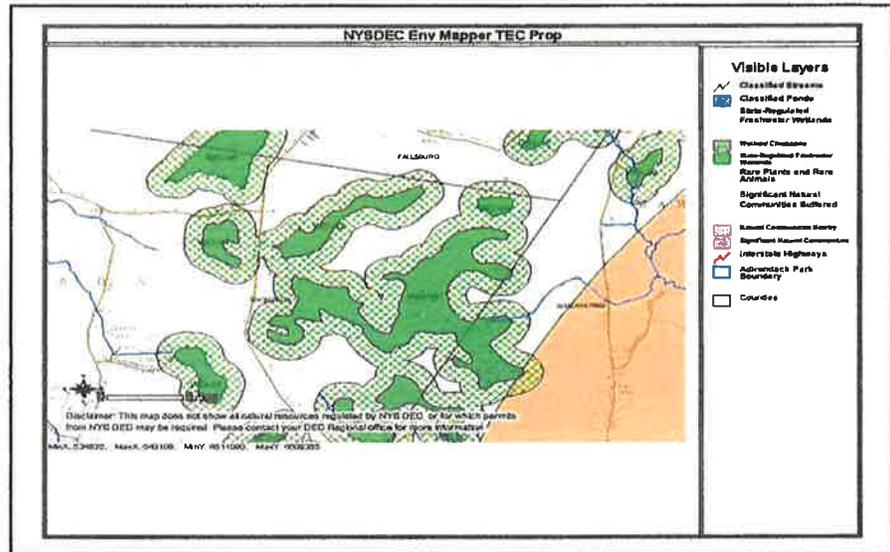
**Attachment A**

**Depiction of Freshwater Wetlands & NYSDEC “Wetland Checkzones”  
On Thompson Education Center’s SBL# 26.-1-6**

**Located in the Town of Thompson, Sullivan County, NY**

*Please Note:* This Attachment is Page 4 of BKAA Consulting Attorney John Lyons’ March 25, 2016 nine-page letter to the Thompson Planning Board and can be found in its entirety (plus exhibits) in Thompson Education Center’s project file

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.<sup>1</sup> (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

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

**Attachment B**

**Enlarged 11"x17" Copy of Pietrzak & Pfau  
Thompson Education Center Phase Plan Map for Lot 26.-1-6  
Dated May 11, 2014**

**This Phase Map is Appended to TEC/ Parkwood Mortgage  
Instrument # 2014-8329 as Exhibit A, Image 32 of 48**

**Depicting 10± Phases/Subphases of Project**

***The Actual Map Appended to Mortgage Agreement is 8 ½" x 11"  
This enlarged copy is attached for your convenience for improved readability  
Though acreage count and other notations may still be virtually illegible***

