Amended Final Supplemental Environmental Impact Statement

MALTA TOWN-WIDE

Generic Environmental Impact Statement

Town of Malta
Saratoga County, New York

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FSEIS Acceptance June 20, 2016
Amended FSEIS Accepted November 11, 2016
Applicant and Participating Consultants

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1.0 INTRODUCTION

This document is the Amended Final Supplemental Environmental Impact Statement (FSEIS). This document incorporates the Draft Supplemental Environmental Impact Statement (DSEIS) accepted on June 15, 2015 by reference. This Supplemental EIS has been prepared by the Town of Malta Town Board, as Lead Agency, as a supplement to the Malta Town-Wide Generic Environmental Impact Statement (2006 TWGEIS).

The Town of Malta initiated preparation of a Town-Wide Generic Environmental Impact Statement evaluating the cumulative impacts of potential future development in 2005 completing the process in 2006. The 2006 TWGEIS was prepared for the purpose of evaluating potential growth anticipated from development of the Luther Forest Technology Campus (LFTC) and the impacts of that growth on the Town’s resources; principally on the town’s transportation system (traffic), recreation facilities, open space, rural character and agriculture, and community facilities.

1.1 Purpose and Scope of Document

This Final Supplemental Environmental Impact Statement responds to the substantive comments on the Draft Supplemental Environmental Impact Statement. The overall goal of this Supplemental EIS is to update the growth projections, examine those resource areas impacted by growth and explore any mitigation (or fee-in-lieu of) measures to avoid or minimize adverse impacts on the town’s natural and built environment. Formal scoping was not conducted but a scoping outline was prepared under the direction of the Town of Malta Town Board as Lead Agency.

The scope of the Supplemental EIS:

- Provides an update to the 2006 TWGEIS Buildout Study;
- Provides an inventory of water and sewer facilities and explores planned expansion of these utilities as they may influence growth;
- Examines and Provides two alternate growth scenarios;
- Evaluate potential impacts on the Town’s
  - Recreation resources
  - Agricultural and Open Space resources
  - Transportation system including multimodal features

1.2 SEQRA Process

The State Environmental Quality Review Act (SEQRA) sets forth a review process designed to ensure the consideration of environmental concerns in the planning and design stages of projects that are deemed to have the potential to cause significant impacts on the environment. By reviewing projects in the
planning phase, environmental concerns can be addressed and projects can be modified as needed to avoid potentially adverse environmental impacts.

An EIS is an informational document prepared by the Lead Agency and used by the Lead Agency, Involved Agencies, interested agencies, the Applicant, and the public to systematically consider potential environmental impacts, alternatives, and mitigation measures associated with anticipated growth and development. The Lead Agency weighs each of the social, economic, and environmental factors as part of the decision making process.

<table>
<thead>
<tr>
<th>SEQR Timeline</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Activity</strong></td>
</tr>
<tr>
<td>DSEIS Deemed Complete</td>
</tr>
<tr>
<td>Public Hearing</td>
</tr>
<tr>
<td>Close of Comment</td>
</tr>
<tr>
<td>FSEIS Acceptance</td>
</tr>
<tr>
<td>Amended FSEIS Accepted</td>
</tr>
</tbody>
</table>

### 1.3 Amendments to the Final Supplemental EIS

Subsequent to accepting and issuing the Final Supplemental Environmental Impact Statement (FSEIS) on June 20, 2016 the Town Board upon further consideration of the FSEIS and additional information provided by Town Staff, determined that further modification and amendment of the FSEIS would be appropriate.

This document incorporates amendments to address general revisions of language/text which further clarify the meaning and intent of the document, together with an alternative means of evaluating the impact of Non-Residential development as described below.

### 1.4 Non-Residential Development & Recreational Impacts

The 2006 TWGIES established that commercial enterprises generate a need for recreational facilities, and their non-resident employees and customers use recreational facilities, citing various references to this effect. The following information is offered in further support of the benefits non-residential users derive from a robust recreation system including parks, open space and trails.

In 2014, Community Builders, a not-for profit, conducted a survey of over 1000 employers and community members in the Rocky Mountain West in an effort to better understand key factors influencing economic development and the attraction of talent and business. The study found that:
• Jobs Follow People
• Community Quality is a Top Priority for Business & Residents
• Being in a Place that can Attract Talented Employees is Important to Growing Business
• People on the Move Are Looking for Great Places
• People are Willing to Sacrifice Salary for the Ideal Community
• Housing Costs are a Concern for Business & Employees

Smart Growth America, a not for profit advocacy group indicates “Investing in Smart Growth is one of the best ways for a region to attract educated, talented workers. Young professionals demand opportunities for social interaction, high quality schools and parks.....Smart Growth includes all of these things and more.” Using smart growth strategies helps attract and retain employees.

The National Recreation and Parks Association (NRPA) reported “But the power of local and regional parks expands beyond the direct, indirect and induced economic impacts of their spending. Local towns, cities and counties with strong, vibrant public park systems benefit from improved health, a closer connection to nature and a greater sense of community. This leads to lower health care costs, higher property values and an overall boost in the standard of living that benefits all. Studies conducted by NRPA and other researchers find Americans across all ages, social strata and political affiliations support investments made for public parks, seeing their local parks as a valuable and essential features of their community.” (2015 NRPA “The Economic Impact of Local Parks”).

Much has been written over the last decade about millennials, the creative economy, and the changing nature of economic development. The studies referenced above highlight the importance of creating a sense of place in order to attract and retain a talented workforce. Saratoga County’s “Economic Development Strategic Plan” prepared in March 2014 for the Saratoga Prosperity Partnership, identifies creation of a “more connected sports and recreation cluster” as an economic development opportunity focusing on agriculture, tourism and business & industry The County’s strategic plan focuses on attracting industry clusters including Advanced Manufacturing, Research and Development, and Clean Technology; building on the synergy of Global Foundries and the Tech Valley. Attraction and retention of the next generation of technology employees requires a firm commitment to investing in the Town (and regional) green infrastructure. Both visitors and employees benefit from a robust parks and trails network.

The 2006 TWGEIS noted that the direct/indirect impacts of commercial/non-residential development created a demand for recreational facilities arriving at 15% non-residential share of these costs. Based on more recent data (2015) collected by the Town of Malta Recreation Department regarding users of the Town’s Community Center programs, approximately 39% (or 2,699) of program participants were non-residents. Early reporting of 2016 figures is identical in this breakdown.

Another means of examining the relative demand created by non-resident employees is to examine usage. If, on average a non-resident employee were to use a Town facility (park, trail, open space) just 1 hour per
week and on average a resident were to use a facility 2 hours per week the relative use/demand for facilities would be calculated as follows:

**Table 1-1 Recreation Usage**

<table>
<thead>
<tr>
<th></th>
<th>Net Growth</th>
<th>Use factor (hours/week)</th>
<th>Usage</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residents</td>
<td>5,601</td>
<td>2</td>
<td>11,202</td>
<td>85</td>
</tr>
<tr>
<td>Employee</td>
<td>1,960</td>
<td>1</td>
<td>1,960</td>
<td>15</td>
</tr>
</tbody>
</table>

The Town concluded that this was a reasonable assumption and point of reference when examining the overall demand on the town’s recreational resources. The Town Board also recognizes that non-residential development does not create an identical demand or impact on the Town’s recreational and open space facilities and that there is a strong correlation with the number of employees and potential impact on recreation.

**Employee Density by Building Type**

Employee estimates by building/land use type were derived from consulting industry standards, the NYS Building Code, and a sampling of demographic multipliers (from similar analyses). For the purpose of the evaluation, land use types were aggregated as follows.

**Table 1-2 Building Area Per Employee**

<table>
<thead>
<tr>
<th>Land Use</th>
<th>Examples</th>
<th>Building Area/Employee</th>
</tr>
</thead>
</table>
| Commercial             | • Retail  
                        | • Restaurant  
                        | • Specialty  
                        | • Hospitality   | 500 Sq. Ft. / Employee |
| Office                 | • Medical  
                        | • Professional  
                        | • Research & Development | 350 Sq. Ft. / Employee |
| Manufacturing & Warehouse | • Light Industrial  
                            | • Manufacturing & Assembly  
                            | • Warehouse  
                            | • Self Storage   | 1500 Sq. Ft. / Employee |

These figures were compare to Institute of Transportation Engineers (ITE) land use codes as well as the Town’s parking standards and compared favorably with these figures. It is difficult to make employee estimates by every land use type; we believe these are reasonable estimates.
Employment Estimates by Land Use

Utilizing the DSEIS growth projections, employment projections can be calculated based on the land use. The low growth scenario estimated up to 1,600,000 SF of non-residential development Town-wide, generally comprised of commercial (i.e., retail, service), office, and warehouse uses. As indicated in the DSEIS, up to 400,000 SF of non-residential development was projected to occur at the STEP campus (as identified in the GlobalFoundries Fab 8.2 EIS) and therefore not subject to additional mitigation requirements under the TWGEIS, and the estimated new non-residential building area is therefore reduced from 1,600,000 SF to 1,200,000 SF (or 1.2 MSF) for purposes of these calculations.

The 1.2 MSF of development is a mix of commercial, office and light industrial/warehouse. When preparing the projections, it was necessary to identify this mix and, in the case of the traffic impact analysis, the location of the development. Approximately 700,000 SF of development (all commercial and office) was readily identifiable (and as presented in the DSEIS) based on projects currently contemplated in the Downtown and conceptualized or on approved sites.

Most recently, the Saratoga County Regional Traffic Study (SCRTS) was issued and provided further insight on the land use mix. The following table presents a breakdown of the 1.2 MSF of development and employment estimates under the Low Growth scenario.

Table 1-3 Non-Residential Mitigation Share

<table>
<thead>
<tr>
<th></th>
<th>Projected Building Area (SF)</th>
<th>Building Area (SF) /Employee</th>
<th>Employees</th>
<th>Percent of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial</td>
<td>500,000</td>
<td>500</td>
<td>1000</td>
<td>36</td>
</tr>
<tr>
<td>Office</td>
<td>600,000</td>
<td>350</td>
<td>1714</td>
<td>62</td>
</tr>
<tr>
<td>Warehouse</td>
<td>100,000</td>
<td>1500</td>
<td>67</td>
<td>2</td>
</tr>
<tr>
<td>Total</td>
<td>1,200,000</td>
<td></td>
<td>2867</td>
<td></td>
</tr>
</tbody>
</table>

Based on employment generation rates as shown above, Office uses have the potential to generate the greatest number of employees and therefore create the greatest potential demand on the Town recreation facilities. Non-residential land uses as categorized above would each pay a corresponding fractional share of the partial cost of new recreational facilities attributable to non-residential development.

As described above, the 2016 TWGEIS established Non-Residential demand at 15% of the total facility demand. Using a 15% share of overall recreation costs ($7.56 M); non-residential development would be responsible for $1.134M of the Town’s overall facility needs. The recreation mitigation costs for Non-Residential development are as follows:
### Table 1-4 Non-Residential Mitigation Cost

<table>
<thead>
<tr>
<th></th>
<th>Percent of Total</th>
<th>Share of Recreation Cost</th>
<th>Projected SF</th>
<th>Cost Per SF</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial</td>
<td>36</td>
<td>$408,240</td>
<td>500,000</td>
<td>$0.82</td>
</tr>
<tr>
<td>Office</td>
<td>62</td>
<td>$703,080</td>
<td>600,000</td>
<td>$1.17</td>
</tr>
<tr>
<td>Warehouse</td>
<td>2</td>
<td>$22,680</td>
<td>100,000</td>
<td>$0.23</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$1,134,000</strong></td>
<td><strong>1,200,000</strong></td>
<td></td>
</tr>
</tbody>
</table>
2.0 DESCRIPTION OF THE PROPOSED ACTION

The Town anticipates that previous trends will continue and the Town will continue to grow and develop incoming years. The Town believes it is prudent to anticipate growth and to be pro-active in implementing appropriate mitigation measures to avoid or minimize detrimental environmental effects that otherwise often accompany growth. For these reasons, the Town has undertaken this update to the TWGEIS in order to evaluate potential impacts of anticipated growth on the Town’s transportation system, agricultural and open space resources, recreation facilities, and utilities in order to identify appropriate mitigation measures. Because this document is a Supplemental EIS, it focuses on just these resources and changes that have occurred since the issuance of the Malta Town-wide Generic Environmental Impact Statement. The Draft Supplemental EIS provides an update to the analyses contained in the 2006 TWGEIS.

Buildout Analysis

A build-out analysis is an estimate of the overall development potential of a land area given a set of assumptions and constraints. It provides an estimate of the total potential for development; it does not predict the amount of development or the rate of growth. The table below summarizes the combined results of the analyses. Based on this analysis, approximately 6,500 residential units and 18.1 million square feet of nonresidential development could be developed within the Town. These figures do not include the development potential on the Luther Forest Technology Campus (LFTC).

<table>
<thead>
<tr>
<th>Table 2-1: Combined Build-out Results</th>
</tr>
</thead>
<tbody>
<tr>
<td>Build-out Analysis Type</td>
</tr>
<tr>
<td>-------------------------</td>
</tr>
<tr>
<td>GIS Build-out</td>
</tr>
<tr>
<td>FBC Build-out</td>
</tr>
<tr>
<td>PDD Build-out</td>
</tr>
<tr>
<td><strong>Total</strong></td>
</tr>
</tbody>
</table>

GIS: Geographic Information System  
FBC: Form Based Code  
PDD: Planned Development District

Growth Scenarios

A growth projection examines historical development patterns, potential for additional development, and other planning trends to estimate the potential amount of growth that could occur over a period of time. A ten (10) year timeframe (2014-2024) was selected as the basis for the projection. Due to the passage of time, the Town Board determined that an update is warranted to evaluate likely future growth. Consistent with the scoping outline, for the purpose of preparing the environmental analyses two growth scenarios are presented.
Low Growth Scenario

The first scenario assumes approximately 80 percent of the Town’s current inventory of approved residential units (outside of the downtown) are developed in the next 10-years. Within the Downtown FBC District, it is assumed that the current inventory of approved and proposed residential units will be developed in the next 10-years, resulting in additional 1,500 dwelling units. Combined, the total number of additional new residential units could reach 2,100.

Non-residential development is anticipated to total approximately 1,600,000 SF in the next 10 years. This growth does not include GlobalFoundries Fab 8.2 as Fab 8.2 was the subject of a separate comprehensive environmental evaluation. The projected 1,600,000 SF of non-residential building is based on projections of approved or proposed non-residential development within the Town’s downtown and conventional zoning districts as well as within the Town’s existing PDDs. In total, the Town has more than 3,100,000 SF of approved or proposed non-residential development. The low growth scenario is approximately half of this total.

High Growth Scenario

The High Growth scenario assumes nearly 100 percent of the Town’s current inventory of approved residential units (outside of the downtown) are developed in the next 10-years. This could include over 700 new homes in the next 10 years outside of the downtown. New multi-family housing (apartments, townhomes) could experience nearly 2,400 new units within the Downtown FBC District. The total number of additional new residential units could reach 3,100.

Under the high growth scenario non-residential development is anticipated to total 2,500,000 SF in the next 10 years and assumes a more complete buildout of commercial development with the downtown, previously approved PDDs and additional non-residential development as a result of construction of Fab 8.2. As with the low growth scenario, this does not include the development at GlobalFoundries Fab 8.2.

The table below provides a summary of the Town’s 2014-2024 growth projections.

<table>
<thead>
<tr>
<th>Land Use</th>
<th>Lower Growth Scenario</th>
<th>Higher Growth Scenario</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single Family Residential (Units)</td>
<td>600</td>
<td>700</td>
</tr>
<tr>
<td>Downtown FBC District Residential (Units)</td>
<td>1,500</td>
<td>2,400</td>
</tr>
<tr>
<td>Nonresidential Development (SF)</td>
<td>1.6 Million SF</td>
<td>2.5 Million SF</td>
</tr>
</tbody>
</table>

The low and high growth scenarios represent two potential growth alternatives. For the purpose of preparing the environmental impact analyses, the low growth scenario is utilized as the preferred alternative. Both scenarios were developed with the input of Town Staff, reviewed with the Town...
Board/Lead Agency and shared with the development community for feedback. The low growth scenario was selected for further consideration as this alternative has a greater likelihood of occurring.
3.0 RESPONSES TO COMMENTS

This section addresses all comments received during the public comment period on the DSEIS, which ended on July 29, 2015. Comments were submitted in writing and were also expressed orally at the DSEIS public hearings held on July 6, 2015 and at the Town Board Meeting held July 27, 2015. Copies of the Public Hearing transcripts are provided in Appendix A and copies of written comments received by the Planning Board are provided in Appendix B.

Comments are organized by commenter. Some of the written and oral comments presented in this section have been paraphrased.

3.1 Public Hearing Comments

The following individuals commented on the DEIS at the Public Hearing held on July 6, 2015:

- Rick Weiss
- Carol Henry
- Elwood Sloat

Comments are numbered in order made and noted as Public Hearing 1 (PH-1) followed by commenter name.

JULY 6, 2015 PUBLIC HEARING COMMENTS

PH-1 Rick Weiss

We're not interested in more traffic on Old Post Road and having it move more smoothly. We would like to see it restricted. We don't need an additional 3,000 or 4,000 cars a day on Old Post Road. It's not designed to handle it. It's a residential road.

Response: Comment Noted.

PH-2 Carol Henry

Having lived on Malta Avenue between Old Post and -- I know Malta Avenue is a County road. A roundabout is not going to solve anything. You know, my problem with all these traffic studies is, we get all the traffic from every other town, and we're bearing the brunt of it, and, one, did those traffic -- was that traffic pattern taken into account? Two, we need to work on a way, because Old Post and Malta Avenue just can't handle the traffic.

Response: The traffic impact analysis existing conditions and the build year analysis does account for traffic originating within Town and from adjoining communities.
PH-3 Elwood Sloat

My statement is, I’m dissatisfied with the fact that the Town’s taxpayers will pay 70 percent on the State road. That’s my statement.

Response: Any traffic mitigation constructed in the Town will rely on a variety of funding sources including state and federal funds, grant sources, developer contributions, as well as fee-in—lieu of mitigation costs. The commenter is referring to the statement in the Draft SEIS indicating that approximately 70% of traffic occurring within the Town of Malt originates in Malta. As a result, theoretically only 70% of the cost of a planned mitigation measure could be recovered based upon traffic originating in Malta.

JULY 27, 2015 TOWN BOARD MEETING COMMENTS

Town Board 1 (TB-1) Mr. Elwood Sloat: The Executive Summary under the Transportation Area divides the study area into 13 neighborhoods. Table G, Summary of Transportation Mitigation describes Intersection 11 as Route 67/Eastline Rd with a projected $1,600,000 cost to change this to a Roundabout. This intersection is the boundary of the Town of Malta with the Town of Ballston, therefore is only ½ within the Town of Malta Boundaries. Furthermore, it is a State Owned Highway. The Town share according to your document is 70% of the total cost. Why would the Town of Malta be responsible for 70% cost of the road change? Why is the cost to the County and Town of Ballston?

Response TB-1: Any traffic mitigation constructed in the Town will rely on a variety of funding sources including state and federal funds, grant sources, developer contributions, as well as fee-in—lieu of mitigation costs. The commenter is referring to the statement in the Draft SEIS indicating that approximately 70% of traffic occurring within the Town of Malt originates in Malta. As a result, theoretically only 70% of the cost of a planned mitigation measure could be recovered based upon traffic originating in Malta.

Town Board 2 (TB-2) Mr. Elwood Sloat: Table G, Summary of Transportation Mitigation (from the Executive Summary of the DSEIS) describes Intersection 28 as Round Lake Rd/Raylinski Rd/Ruhle Road. The mitigation lists Construction of a second approach Jane on Ruhle Road with a projected cost of $130,000. This intersection is currently under construction with a single lane roundabout being constructed which will immediately reduce the level of service (LOS) to the motorists southbound on Ruhle Road. This is a well-known documented fact that had been brought up during the past few years during public reviews of the Round Lake Road Project Planning. There is limited room between the required retention pond on the Adirondack Bank property and Ruhle Road to add a second lane. The buildout of residential housing along the Rhule Rd section is completed. This mitigation recommendation verifies the current design and intersection construction being undertaken is flawed. Why is the Town of Malta looking for mitigation fees in the amount of $130,000 to reconstruct the southbound portion Ruhle Road, when the present construction has not been completed? Why isn’t the second lane being completed during the current construction phase?
Response TB-2: The improvement identified would be needed for growth projected if full buildout of facilities on the northwest and northeast quadrants of this intersection were to occur.

Town Board 3 (TB-3) Mr. Elwood Sloat: Finally, the 70% Town Share of cost to highway construction. I am told that this levy was a result of 70% of the users on the highways are town residents. This percentage on State Highways, particularly Route 67 is disputable; kindly explain the manner of statistical study/evaluation that was utilized to establish this cost. If this is an outdated number, the Town Board should establish an accurate amount through sound statistical studies before levying fees on anyone.

Response TB-3: The commenter is referring to the statement in the Draft SEIS indicating that approximately 70% of traffic occurring within the Town of Malta originates in Malta. As a result, theoretically only 70% of the cost of a planned mitigation measure could be recovered based upon traffic originating in Malta. This figure was derived from the Town Wide GEIS and is representative of the Town overall and not necessarily indicative of traffic origin/destination on any one roadway. See also the discussion on the alternative traffic model (Response Goldman 3).

JUNE 6, 2016 TOWN BOARD MEETING COMMENTS

The Town has historically collects a Residential Recreation fee at the time of final approval for a proposed single family subdivision at $1,330 dwelling unit. Multi-family housing creates a similar demand for recreational facilities and is assessed this fee as well. Both of these housing types demand recreational amenities and generate similar levels of new residents within the Town.

NYS Town Law authorizes the application of recreation fees at the time of subdivision (NYS TL Section 227) approval as well as at the time of site plan approval (NTYS TL Section 274a). The Town Board expressed concerns about the fee and the discussed alternative methods of equitably distributing the cost of recreation facilities attributable to new development. Using the models developed in the 2006 TWGEIS and explored previously, the Town Board expressed that new residential development should pay a fair share based on anticipated growth.

Using the buildout analysis and growth projections developed in the DSEIS, the Low Growth Scenario projected a total of 2100 new dwelling units. As a result, it is anticipated that between 4526-5601 new residents could result during the GEIS planning timeframe (2015-2025). This number is derived from the average existing household size from American Community Survey (ACS) and Rutgers University (Rutgers) demographic multipliers and presented below in Table 3.1.
Table 3-1 Housing and Population

<table>
<thead>
<tr>
<th></th>
<th>Projected Housing Units</th>
<th>Associated Population</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>ACS Ratio(^{(1)})</td>
</tr>
<tr>
<td>New Single Family</td>
<td>600</td>
<td>1,293</td>
</tr>
<tr>
<td>New Dwelling Units- FBC Area</td>
<td>1,500</td>
<td>3,233</td>
</tr>
<tr>
<td>Existing Housing Units</td>
<td>6,925</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>9,025</strong></td>
<td><strong>4,526</strong></td>
</tr>
</tbody>
</table>

\(^{(1)}\) Based on ratio of existing housing units and population  
\(^{(2)}\) Based on Rutgers Residential Demographic Multipliers for Single-Family Detached, 3 BR (all values) and 5+ Units-Rent, 2 BR (all values)

Based on a current Town population of 14,925 residents, 5,601 new residents would constitute 27% of the build year population (5,601/20,526).

Table 3-2: New Population as Percent of Total

<table>
<thead>
<tr>
<th></th>
<th>Population</th>
<th>Percent of Build</th>
</tr>
</thead>
<tbody>
<tr>
<td>New (projected) Population</td>
<td>5,601</td>
<td>0.27</td>
</tr>
<tr>
<td>Existing Population(^{(3)})</td>
<td>14,925</td>
<td>0.73</td>
</tr>
<tr>
<td><strong>Total Build Year Population</strong></td>
<td><strong>20,526</strong></td>
<td></td>
</tr>
</tbody>
</table>

\(^{(3)}\) Based on 2010-2014 ACS 5-Year Survey

The Draft Supplemental Environmental Impact Statement (DSEIS) identified approximately $7.6 Million in new recreation needs. Not all of these facilities can be attributed to new growth. New residential growth (at buildout) accounts for 27% of the Town’s total build year population and it is reasonable to conclude creates 27% of the demand for new facilities.

Based on this rationale, new residential development (including single family, multi/family, duplex, apartments) would pay $972 per dwelling unit; representing a reduction from the current Town fee assessed at subdivision. The Town’s zoning law would be amended as needed to reflect this change.
Table 3-3: Residential Recreation Mitigation

<table>
<thead>
<tr>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016 Recreation Needs $7,560,000</td>
</tr>
<tr>
<td>New Development @27% of Total $2,041,200</td>
</tr>
<tr>
<td>Per New Dwelling Unit $972</td>
</tr>
</tbody>
</table>

Table 3-4: Summary of Recreation Mitigation Costs

<table>
<thead>
<tr>
<th>Source</th>
<th>Cost Share</th>
<th>Share</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-Residential Share</td>
<td>$1,134,000</td>
<td>15%</td>
</tr>
<tr>
<td>New Residential Share</td>
<td>$2,041,200</td>
<td>27%</td>
</tr>
<tr>
<td>Other Sources (grants, other revenue sources)</td>
<td>$4,384,800</td>
<td>58%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$7,560,000</strong></td>
<td></td>
</tr>
</tbody>
</table>

3.2 Written Comments

Comments that were received in writing are provided in Appendix B. The following firms, organizations, and individuals commented in writing on the DEIS:

Table 3-5: List of Written Comments on the DEIS

<table>
<thead>
<tr>
<th>Letter ID</th>
<th>Name</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goldman (DCG)</td>
<td>Paul J. Goldman, Goldman Attorneys, representing Lakeview Outlets and DCG Development Company</td>
<td>7-27-2015</td>
</tr>
<tr>
<td>Goldman (Windsor)</td>
<td>Paul J. Goldman, Goldman Attorneys, representing Windsor Development Group (Kelch Drive)</td>
<td>7-29-2015</td>
</tr>
<tr>
<td>Goldman (Morgan &amp; Lecesse)</td>
<td>Paul J. Goldman, Goldman Attorneys, representing Morgan Management and Lecesse Construction, “Park Place Owner;”</td>
<td>7-29-2015</td>
</tr>
<tr>
<td>Hayes</td>
<td>Hayes Development</td>
<td>7-27-2015</td>
</tr>
</tbody>
</table>

* Goldman Attorneys sent three nearly identical letters on behalf of their respective clients. The correspondence from Jersen Construction, Lansing Engineering and Hayes Development expressed their support for Goldman’s comments and reference the Goldman letter from July 27, 2015. The response to the Goldman letters (and the support letters) is provided as a single/collective response to comments.
Substantive comments raised by the public and involved and interested agencies during their review are addressed below.

In general, the order and categories of topics follow the outline of the DEIS. General comments and those which do not concern a specific section of the DEIS are addressed first.

**Goldman 1**

We write to object to the adoption by the Town of the mitigation fees under DSEIS and the imposition of any mitigation fee since the imposition of the mitigation fees as proposed under the DSEIS is an impermissible and illegal tax. Specifically, under the DSEIS, the Town is proposing to impose mitigation fees on only new construction projects to defray the cost of Town’s acquisition of open space and new recreation projects as well as highway improvement projects which benefit the entire Town such that the cost for such projects is required to be funded through the imposition of a Town wide tax rather than mitigation fees on only new construction.

**Response Goldman 1**

The proposed project is the evaluation of cumulative impacts of potential growth on the Town’s transportation system, agricultural and open space resources, recreation facilities, and utilities. The nexus between growth and the impact on these systems was established by the Town in 2006 with the acceptance of the Draft/Final Malta Townwide Generic Environmental Impact Statement GEIS (collectively “2006 TWGEIS”) and addressed through mitigation measures set forth in SEQRA Findings adopted by the Malta Town Board on June 5, 2006.

The 2006 TWGEIS included a series technical studies and analysis which quantitatively and qualitatively evaluated the impact of growth on the Town’s transportation network, the loss of open space and agricultural lands and the demand for new recreational facilities. These studies included the Recreation and Open Space Needs Assessment Report (2004), Route 9 Sewer Feasibility Study ( Adopted November 2004), Town of Malta GIS Needs Assessment, Conceptual System Design and Implementation Plan (adopted 2004), Town of Malta Linkage Study (Accepted 2003) (Included the Downtown Pedestrian Plan, Sidewalk Standards, Shared-Use Trail Guidelines, and Highway Access Planning Guide), Town of Malta Agricultural and Open Space Preservation Study (adopted 2001), Buildout Analysis, Affordable Housing Report, Recreation Needs Assessment (2004), and Traffic Impact Analysis.

The 2015 Draft Supplemental EIS (DSEIS) provides updated growth projections, examines those same resource areas impacted by growth and explores mitigation (or fee- in-lieu of) measures consistent with the 2016 TWGEIS to avoid or minimize adverse impacts on the town’s natural and built environment. The metrics established in the 2006 TWGEIS were validated and adjusted to account for changes in the community, changes in projected rate and location of this growth as well as the changes in resultant impacts.
The Town has historically funded capital improvements with a variety of funding sources including sales tax, special assessments, grants, state & federal funds, and other funding sources and continues to do so. In fact, the majority of the funds for improvements to recreational facilities come from grants and other non-fee sources. (See Table 3-4.) The use of local and state tax revenues to fund capital improvements has become increasingly difficult and the competition for grant dollars similarly challenging. Apportioning part of the cost of the demand for new facilities to those who create the demands for facilities is seen as a reasonable and fair measure.

As an example, the Town currently funds both operational and capital project costs of recreation facilities from a variety of funding sources include sales tax revenue, grants, user fees and other charges. The fee in-lieu of mitigation established in 2006 and updated in the DSEIS funds only capital improvements needed as a result of increased demand attributable to growth in population from new development. New non-residential development funds only 15% of the cost of new facilities. (See Table 3-4.)

**Goldman 2**

*The cost of these projects should be paid from the Town’s General Fund and recovered through the imposition of general taxes and/or a highway tax imposed on an ad valorem basis since the benefit of the projects reflected in the DSEIS is Town wide and bears no nexus to the impacts of only new construction much less my client’s project. Under applicable law, a municipality is not allowed to charge “newcomers” an impact fee to cover new municipal projects unless the municipality can demonstrate that the mitigation fee is necessitated by the new project or that the newcomer would be primarily or proportionately benefitted by the expansion. See generally, Phillips v. Town of Clifton Water Authority, 286 A.D.2d 834, 834-835 (3d. Dept. 2001). Albany Area Builders Association v. Town of Guilderland, 141 A.D.2d 293 (3d Dept. 1988).*
Response Goldman 2

The imposition of fee-in lieu of mitigation is not a “newcomer fee.” See response to Goldman 1 above. The commenter does not seem to understand or acknowledge that the Town has several potential sources funding for needed improvements. While the Town could possibly seek to raise these funds by means of general and/or highway taxes as the commenter notes, the Town has instead decided to avail itself of the ability to establish a protocol for impact mitigation fees pursuant to the State Environmental Quality Review Act and, more specifically, this Generic Environmental Impact Statement.

Goldman 3

The DSEIS seeks to impose traffic mitigation fees equal to $6,099,000 to fund various highway projects throughout the Town (DSEIS, p. vi and p. 48). Since highway improvements are deemed to generally benefit the entire Town, they are typically paid for by a general Town highway tax that is levied and collected with the January Town/County bill. Here, the Town of Malta does not have a Town tax and/or Town highway tax so that all highway improvement costs prior to the imposition of mitigation fees were apparently paid from the Town General Fund.

In the situation faced by my clients, the proposed highway improvements bear no relationship and/or nexus to our client or their proposed building projects. Attached hereto as Exhibit “A” is a copy of the Study Area Map from the DSEIS reflecting the various highway improvement projects that are proposed to be paid from mitigation fees imposed on my clients who have property at the southeast corner of Exit 12 and in the Town center area at the intersection of Route 9 and Phaeton Lane directly across from Stone Break Road. A review of this study map confirms that the highway improvements projects proposed in the DSEIS have no relationship or nexus to any traffic created on improvements proposed on the property of my clients. Specifically, Lakeview is proposing to develop another hotel and a Panera restaurant at Malta Commons Business Park. The traffic impact fee for the hotel and the Panera restaurant is estimated to be $71,165 and $110,885, respectively. There is absolutely no nexus between the $3,225,000 of highway improvements proposed to be paid under the DSEIS for improvements at Northline/Old Post Road and the $1,600,000 of improvements at Route 67/Eastline Road. These two projects account for 79.11% of the total highway improvements to be funded and undertaken under the DSEIS. Without the nexus to a traffic burden created by my client’s projects, the proposed impact fees are illegal substitute for a Town highway tax since these improvements clearly have Town wide benefit.

Response Goldman 3

The Town funds the Highway Department with a combination of revenue sources including sales tax and NYS Consolidated Local Street and Highway Improvement Program (CHIPS). This revenue funds the maintenance and repair of roadways under the Town’s local jurisdiction (including snow removal).

The Town does not fund new roadways nor major improvements to roadways that occur as a result of new development. The commenter does not seem to understand or acknowledge that the Town has
several potential sources of funding for required improvements. While the Town could possibly seek to assess these fees by means of general and/or highway taxes as the commenter notes, the Town has instead decided to avail itself of the ability to establish a protocol for impact mitigation fees pursuant to the State Environmental Quality Review Act and, more specifically, this Generic Environmental Impact Statement.

In evaluating the concerns expressed by the commenter, the Town explored alternatives to the current traffic impact assessment methodology and consulted with Capital District Transportation Committee (CDTC). The Town of Colonie was an early pioneer in the use of SEQRA and cumulative impact analysis to proactively address the impacts of growth on the local transportation system through the imposition of mitigation fees. The CDTC has long been involved with the Town of Colonie transportation planning efforts and provides technical assistance to the Town in support of administering traffic mitigation measures included in three (3) separate generic environmental impact statements addressing growth. The CDTC assists the Town with evaluating project specific impacts identified in the Wolf Road/Airport area GEIS (“Airport Area GEIS”), Bought Road- Columbia Street Area GEIS, and the Lishakill-Kings Road Area GEIS.

Similar to the Town of Malta TWGEIS—the Airport Area GEIS identifies a series of mitigation measures to address traffic impacts associated with growth in the study area. The cost of these improvements has been calculated and is keyed to a consumer price index (CPI) cost escalator. How these costs are distributed to individual projects differs from the Town’s current method and is described below.

The model developed by the CDTC (and employed in Colonie) calculates and assesses mitigation costs to individual development projects based on the capacity of the mitigation measure ‘consumed’ by an individual project. This is accomplished through use of the CDTC’s Systematic Traffic and Evaluation and Planning (STEP) Model. The STEP model is a travel demand model maintained for the CDTC’s entire service area which has a long history of use in the region and has been recently updated. In simple terms: A) traffic growth for the planning period is estimated; B) mitigation measures are identified to address growth; C) the design capacity (and cost) of the improvement (mitigation measure) is calculated, and; D) the available capacity of the mitigation measure is calculated (accounting for existing traffic).

Additionally, when a new development project is proposed, the share (or portion) of improvement, based on capacity consumed is calculated. This is determined by identifying new PM peak hour trips traveling through the impacted intersection and calculating this as percentage of available capacity. A project may have impacts on any number of intersections or roadways and a proportional cost for each affected intersection improvement (mitigation) is identified and a total cost is provided. Individual projects pay for what they use.

The traffic impact analysis contained in the Draft SEIS provides the basis for Tasks A and B described above. In evaluating this alternate model, the CDTC working with the Town’s consultant team, identified Design Capacity (Task C) and Available Capacity (Task D) for the study area intersections.
As an illustration, the details of the Route 67/Eastline Roundabout can be summarized as follows:

- **New Facility Capacity**: 825 Vehicles/Hour
- **Development Trips**: 150 New Trips
- **Development Traffic**: 18.1% (150/825)
- **Project Costs**: $3.257 Million

The cost of capacity consumed by new development (Development Cost) is calculated as follows: $0.181 \times $3.257M = $589,571. Dividing this cost by the total number of new trips attributed to new development (Development Traffic) $589,571/150 = $3930 or the per trip costs for a project contributing traffic to this location.

Table 3-6 below depicts the 5 key locations where mitigation is required (as identified in the SDEIS) and summarizes new traffic growth (Development Traffic), new capacity provided by the mitigation measure (less existing traffic volumes), and that portion of the capacity consumed by new traffic. The proportional share of the mitigation measure is calculated as follows: Capacity Consumed (%) \times Total Cost = Development Costs. Development costs represent a fractional share of the overall costs and these costs are assigned on a per trip basis –for trips originating from a new development as identified by CDTC in the STEP model.
### Table 3-6: Design Capacity & Development Cost of Affected Intersections

<table>
<thead>
<tr>
<th>Capacity Improvement</th>
<th>Total New Capacity (vph)</th>
<th>Development Traffic (vph)</th>
<th>Capacity Consumed (%)</th>
<th>Estimated Cost ($M)</th>
<th>Development Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rte 9.Old Post/Cherry Choke</td>
<td>346</td>
<td>70</td>
<td>20</td>
<td>$0.4</td>
<td>$80,000</td>
</tr>
<tr>
<td>Old Post/Northline Malta Ave</td>
<td>432</td>
<td>150</td>
<td>34.7</td>
<td>$3.9</td>
<td>$1,353,300</td>
</tr>
<tr>
<td>Route 9/Malta Ave</td>
<td>692</td>
<td>702</td>
<td>100</td>
<td>$0.85</td>
<td>$850,000</td>
</tr>
<tr>
<td>Round Lake/Rhule Road</td>
<td>400</td>
<td>50</td>
<td>12.5</td>
<td>$0.13</td>
<td>$16,250</td>
</tr>
<tr>
<td>Rte 9/Plains Road</td>
<td>340</td>
<td>250</td>
<td>73.5</td>
<td>$0.39</td>
<td>$286,650</td>
</tr>
<tr>
<td>Route 67/Eastline</td>
<td>825</td>
<td>150</td>
<td>18.1</td>
<td>$3.3</td>
<td>$597,300</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>3,155</strong></td>
<td></td>
<td><strong>7.542</strong></td>
<td><strong>$2.333M</strong></td>
<td></td>
</tr>
</tbody>
</table>

Vph: Vehicles per hour

As a means of illustrating this alternate model, three hypothetical development scenarios (or test projects) were evaluated. For each scenario, the project generated traffic (Development traffic) was distributed on the roadway network utilizing the CDTC’s STEP model and peak PM trips impacting those intersections requiring mitigation were identified and the resultant share of the intersection’s capacity and cost were calculated. The results of the analysis are provided below in Table 3-7.
Table 3-7: CDTC STEP Model Mitigation Cost Assignments

<table>
<thead>
<tr>
<th>Location</th>
<th>Development 1</th>
<th>Development 2</th>
<th>Development 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location</td>
<td>Stonebreak Road</td>
<td>Malta Ave Ext/Route 9</td>
<td>Round Lake Road</td>
</tr>
<tr>
<td>Type</td>
<td>100,000 SF Office</td>
<td>100 Single Family Homes</td>
<td>100 Single Family Homes</td>
</tr>
<tr>
<td>Trip generation (Peak Hour)</td>
<td>150</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>Cost of Proportional Share of Mitigation</td>
<td>$189,100</td>
<td>$137,670</td>
<td>$44,486</td>
</tr>
<tr>
<td>Cost Per Trip</td>
<td>$1,260</td>
<td>$1,390</td>
<td>$450</td>
</tr>
<tr>
<td>Compared to Current</td>
<td>$64 less per trip</td>
<td>$26 more per trip</td>
<td>$914 less per trip</td>
</tr>
</tbody>
</table>

The Town of Colonie currently has an agreement with CDTC where the CDTC provides technical assistance to perform the calculations described above and calculate the mitigation fees using the regional travel demand model. Under this alternative, the Town of Malta would also engage CDTC to complete this work for each proposed new development project and thus calculate the specific mitigation fee that would be due for each particular project. This use of this methodology and this arrangement with CDTC would be reflected in SEQRA Findings adopted by the Town if they elect to use this method.

Goldman 4

_The imposition of mitigation fees under the DSEIS also violates the following enactments:_

1) _Town Law Section 200. The proposal to finance the various highway improvements set forth at p. 48 of the DSEIS is not properly before the Town Board since a prerequisite to undertaking such highway improvements is a duly verified petition under Section 200 of the Town Law. Upon information and belief, the Town did not obtain the required petitions for each component of the highway improvements to be undertaken in the DSEIS. Accordingly, the Town may not procure mitigation fees for projects lacking a duly verified petition under Section 200 of the Town Law._

Response Goldman 4

The commenter does not seem to understand or acknowledge that the Town has several potential sources of funding for necessary improvements. While the Town could possibly seek to assess these fees by means of general and/or highway taxes as the commenter notes, the Town has instead decided to avail itself of the ability to establish a protocol for impact mitigation fees pursuant to the State Environmental Quality Review Act and, more specifically, this Generic Environmental Impact Statement.
Goldman 5

2) *Town Law Section 202(4).* Upon information and belief, prior to the 2006 adoption of mitigation fees, the cost and expense of highway improvements was funded from the general fund and the Town did not impose mitigation fees on a “benefit basis” to fund the construction and improvement of all Town highways. Therefore, the attempt to impose mitigation fees on a benefit basis under the DSEIS is in violation of the requirements of Town Law Section 202(4).

Response Goldman 5

The Town has not imposed a highway tax since 2001/2.

The imposition of fee-in-lieu of mitigation is not a “newcomer fee.” See response to Goldman 1 above. The commenter does not seem to understand or acknowledge that the Town has several potential sources of funding for needed improvements. While the Town could possibly seek to raise these funds by means of general and/or highway taxes as the commenter notes, the Town has instead decided to avail itself of the ability to establish a protocol for impact fees pursuant to the State Environmental Quality Review Act and, more specifically, this Generic Environmental Impact Statement.

Goldman 6

3) *Town Law Section 202-f.* It is clear from a review of the proposed highway improvements set forth in the DSEIS that certain of the projects involve highway improvements at Route 67 which is a State and/or County highway. Pursuant to Town Law Section 202-f(2), these improvements are required to be a Town charge and not allowed to be imposed through a benefit assessment. Therefore, the imposition of mitigation fees for any portion of State and/or County highway improvement violates Town Law Section 202-f.

Response Goldman 6

The imposition of fee-in-lieu of mitigation is not a “newcomer fee.” See response to Goldman 1 above. The commenter does not seem to understand or acknowledge that the Town has several potential sources of funding for required improvements. While the Town could possibly seek to raise these funds by means of general and/or highway taxes as the commenter notes, the Town has instead decided to avail itself of the ability to establish a protocol for impact mitigation fees pursuant to the State Environmental Quality Review Act and, more specifically, this Generic Environmental Impact Statement.

Goldman 7

*A cursory review of the Open Space and Recreation projects that are to be financed from mitigation fee obtained under the DSEIS reveals that they benefit the entire Town and have no relationship to the commercial projects to be under taken by my client (p.iii, iv and p.15-16). My client is to be charged the following open space and recreation fees for the respective project as follows:*
Hotel & Panera

<table>
<thead>
<tr>
<th></th>
<th>Hotel</th>
<th>Panera</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recreation</td>
<td>$61,694</td>
<td>$953.10</td>
</tr>
<tr>
<td>Open Space</td>
<td>$1,885</td>
<td>$4,905.00</td>
</tr>
</tbody>
</table>

There is absolutely no nexus between the impacts of a Panera restaurant and hotel at Exit 12 to the open space and recreational improvements to be funded under DSEIS. The improvements contemplated by the Town under the DSEIS are properly part of a Park District under Town Law Section 198(4) and any improvements constituting park improvements are Town charges under Town Law Section 202 which are required to be paid from the Town general fund and defrayed from a general Town tax. Without the nexus to the impact from my client’s projects, the imposition of mitigation fees to pay open space and/or recreation fees is unauthorized under the Town Law. In addition, the cost and expense of recreation and parks is required to be paid by real estate taxes or the Town general fund and is not allowed to be paid from the collection of mitigation fees. Town Law Section 220.

Response Goldman 7

The nexus between growth in the Town, loss of open space and farmland as well as the demand for recreational facilities to address growth was documented in the 2006 TWGEIS. (Please refer to Response GLV 1). The following excerpts from the TWGEIS are provided in support of the response.

“The Development in the Town of Malta over the next 10 years has the potential to impact rural character. New suburban residential development can fragment or eliminate farmlands and reduce an already declining industry to the point where the “critical mass” no longer exists. This farmland (if followed by typical patterns) will be replaced by expanding suburban development and the rural character of the areas may be altered. This pattern of loss of farmland, alteration of the rural landscape and loss of rural character can be mitigated through tools that focus on two complimentary actions: conservation of lands and features that contribute to rural character and management of growth and changes in the landscape.

Build-out of the Town of Malta as projected over the next 10 years will demand additional recreational facilities to serve the increased population. Improving the Town’s recreation system will enhance the Town’s quality of life thus enhancing the ability of local corporations to attract employees. This will aid in improving the future economics of the Town. As noted above, existing recreational facilities are highly utilized and reaching maximum use levels. Given the limited capacity at existing Town facilities, it is evident that additional facilities will need to be constructed and land acquired to meet the recreation needs of the Town’s future businesses and residents.” (Page III-95)

The Recreation and Open Space Report (draft) prepared in May, 2004 by Town staff, established a well-defined argument to support the opinion that there should be a private share in future development of recreation facilities. A well-developed recreation system enhances the quality of life
of a community. It has been documented that employees are attracted to locate in a place with a high quality of life thus supporting the economy of the community. The Recreation and Open Space Report prepared by Town staff estimated that future commercial development should support a 15% allocation of the total estimated future recreation and open space needs. (p III-97)


It is important to note that no more than 15% of the costs of any recreation capital project is funded with mitigation fees collected under the TWGEIS. NYS Town Law 220 does not contain the prohibition implied by the commenter.

Goldman 8

Offsets

The DSEIS is improper since it does not provide for a system of offsets or reduction of the mitigation fees for the traffic and recreation improvements installed as part of any project. At a minimum, the DSEIS should recognize some offset against the mitigation fees for traffic improvements made by a project or any set aside of conservation area or green space in the project which creates open space for the benefit of the entire community.

Response Goldman 8

The Town's Planning Board is responsible for conducting the environmental (SEQR) review for individual development projects. The 2006 TWGEIS SEQR Findings and policies adopted by the Town Board (included in Appendix D of the DSEIS) describe submittal requirements for project applicants. There is no prohibition against individual project sponsors constructing project specific mitigation as identified in the TWGEIS and there have been several instances where project sponsors have done so. Additionally, the Town does entertain the offer of dedication of open space/park land as a means of addressing required mitigation.
Goldman 9

Benefit of General Tax Levy

The projects that are contemplated to be financed from the collection of mitigation fees under the DSEIS should be collected as part of a Town wide ad valorem property tax and/or highway tax since that imposition would provide the Town and its residents with the additional benefit of the ability to share in all payments in lieu of taxes made with the County of Saratoga IDA, including the existing Global Foundries PILOT Agreement pursuant to General Municipal Law Section 858(15). This enactment requires proportional allocation of all payments under any PILOT Agreement based on the relative tax rate. *Palmateer v. Greene County Industrial Development Agency*, 38 A.D.3d 1087 (3d Dept. 2007). If the Town were to fund for these costs through a general Town tax, then the Town would be able to receive a portion of all payments in lieu of taxes which creates additional revenue for the Town general fund.

The fact that the Town is trying to defray Town wide expenditures through mitigation fees injures the entire Town since the Town is unable to obtain any share of the IDA PILOT payments for projects in the Town. The Town Board should recognize the obvious benefit to be obtained from funding these costs by a town wide tax since it will reap additional dividends in the form of a share of the payments in lieu of taxes for which it now receives no share.

Response Goldman 9

The collection of fees in-lieu of mitigation does not preclude the Town from levying a general Town tax or a highway tax. Funds generated through the collection of fee-in-lieu of mitigation will only partially fund required mitigation/highway improvements. The Town Board is responsible for establishing public policy on the matter of levying a general town tax. Comment noted.

Goldman 10

Please accept this as our written public comments on the DSEIS, and we reserve the right to provide additional comments to you on the DSEIS. Should you have any questions and/or comments, please do not hesitate to call.

Response Goldman 10

The comment period on the Draft Supplemental EIS closed July 29, 2015.
4.0 ERRATA

Since the issuance of the Draft Supplemental EIS, the Saratoga County Regional Traffic Study (SCRTS) was completed (January 2016). The SCRTS evaluated traffic and transportation concerns in an area focused around Northway Exits 11 and 12. The project was administered by the Center For Economic Growth with support from CDTC, and with the participation of the Towns of Malta and Stillwater, Saratoga County and a variety of stakeholders. The SCRTS identifies a series of capacity improvements to address forecasted growth at levels consistent with the Town’s projections. This includes several intersection improvements that are contemplated in the Draft SGEIS including Route 9/Malta Avenue, Route 67/Eastline Road, Route 9P/Plains Road, and Old Post Road/Northline Road. Updated cost estimates were prepared for these locations. The changes in the cost estimates are largely the result of additional details regarding right-of-way acquisition needs and construction inspection costs associated with state/federally funded projects.

The revised mitigation cost estimates include in Table 2.3-11 of the DSEIS have been updated as follows:

<table>
<thead>
<tr>
<th>Intersection</th>
<th>Mitigation</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Route 9/Malta Ave</td>
<td>A southbound right-turn lane and installation of left-turn arrows for protected left-turns eastbound and westbound are the recommended improvements under both growth scenarios.</td>
<td>$850,000</td>
</tr>
<tr>
<td>3 Route 9/Cramer Rd</td>
<td>Sight distance improvements. To be completed by Cramer Road North PDD sponsor</td>
<td>(1)</td>
</tr>
<tr>
<td>5 Route 9/Route 67/Dunning St</td>
<td>No physical changes. Volume reductions, diversion of traffic, transportation demand This improvement is identified as mitigation in LFTC Fab 8.2 Findings Statement</td>
<td>*</td>
</tr>
<tr>
<td>6 Routes 9&amp;67/Hemphill Place</td>
<td>Restrict Left Turns</td>
<td>$73,000</td>
</tr>
<tr>
<td>7 Routes 9&amp;67/Saratoga Village Blvd</td>
<td>Restrict left Turns</td>
<td>$36,000</td>
</tr>
<tr>
<td>11 Route 67/Eastline Rd</td>
<td>Roundabout.</td>
<td>$3,300,000</td>
</tr>
<tr>
<td>12 Route 67/Raymond Rd</td>
<td>Raymond Road left-turns be restricted</td>
<td>$35,000</td>
</tr>
<tr>
<td>13 Route 67/State Farm Place/Saratoga Medical</td>
<td>Site-specific traffic impact study and any improvements that may be needed be entirely the responsibility of the development</td>
<td>NA</td>
</tr>
<tr>
<td>17 Dunning St/Hemphill Place</td>
<td>Restrict left Turns</td>
<td>$35,000</td>
</tr>
</tbody>
</table>
## DSEIS Table 2.3-11 - Summary of Mitigation

<table>
<thead>
<tr>
<th>Intersection</th>
<th>Mitigation</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>19 Dunning St/Fox Wander East</td>
<td>Restrict Left Turn</td>
<td>$35,000</td>
</tr>
<tr>
<td>25 Route 9P/Plains Rd</td>
<td>Establish separate right turn lane</td>
<td>$390,000</td>
</tr>
<tr>
<td>28 Round Lake Rd/Raylinski Rd/Ruhle Rd</td>
<td>Construction of second approach lane on Ruhle Road.</td>
<td>$130,000</td>
</tr>
<tr>
<td>Rt 9/Old Post Rd Cherry Choke Rd</td>
<td>Construct eastbound turn lane on Old Post Rd.</td>
<td>$400,000</td>
</tr>
<tr>
<td>Northline Rd/Old Post Rd</td>
<td>Realignment of intersections into a single intersection, namely a roundabout</td>
<td>$3,900,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$9,184,000</strong></td>
</tr>
</tbody>
</table>
APPENDIX A

Public Hearing Transcripts
PROCEEDINGS

PUBLIC HEARING

MALTA TOWN BOARD MEETING
Malta, New York

******************************************************
A Public Hearing
- in the matter of -

Town-wide Supplemental
Generic Environmental Impact Statement

******************************************************

July 6, 2015
6:55 p.m.

Malta Town Hall
2540 NYS Route 9
Malta, New York 12020
PRESENT:

FOR THE MALTA TOWN BOARD:

PAUL SAUSVILLE
Supervisor

CRAIG WARNER
Deputy Supervisor

THOMAS W. PETERSON
Attorney

PETER KLOTZ
Councilman

TARA THOMAS
Councilwoman

JOHN HARTZELL
Councilman

MAGGI RUISI
Councilwoman

FLO SICKELS
Town Clerk

FOR CHAZEN COMPANIES:

Chris Round

MEMBERS OF THE PUBLIC:
Superintendent Sausville: The hearing that we're having tonight is on the Town-wide Supplemental Generic Environmental Impact Statement. That's a mouthful.

Back in 2006, when we hired Clough Harbour & Associates to take a look at where we were going, the impact that that growth will have on our Town, they put together a study and made some recommendations on mitigation fees and three or four areas, transportation being one of them, Open Space and Recreation being two more, and the last one is recovery of costs for our investigation.

It came to us here about a year ago, I believe, Chris, when we realized that that study no longer was adequate and updated, so we went to Chazen, our engineers, and they put together a proposal and have been working very carefully over the last nine months or so on the Generic Environmental Impact Statement update.

Chris Round is here with us tonight and is going to give us a brief introduction on what this hearing is all about.

Mr. Rounds: Thank you. For the record,
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I'm Chris Round with The Chazen Companies. I'll give you a brief overview. The Town Board has had a series of workshops on the elements of this plan, and so tonight is really to hear from you rather than for us to present.

For the record, this Draft document was adopted on June 8th, when the document was complete. It's available on the Town's website. Hard copies are available at the Clerk's office and the Planning office. At the Supervisor's suggestion, we have a limited number of Executive Summaries over here for folks.

Process-wise, the EIS includes an update to the Town-wide build-out analysis. We looked at two alternate growth scenarios, a low growth and a high growth scenario. We looked at an infrastructure inventory to understand where growth might want to occur associated with that infrastructure. As the Supervisor indicated, we updated the traffic analysis based on this growth projection, and then we visited and had a series of meetings to make sure that the rec priorities and the Open Space priorities were still in line with the Town's goals. As a result, we updated
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the mitigation fee program.

I'm going to go quickly through a couple of slides here. This is just an image of the Town-wide build-out projection. The numbers didn't change significantly from the prior analysis. The GEIS technologies improved in the ten years since the initial study was done. There is still a tremendous development potential in the Town, and the slide points to that, those numbers.

The build-out analysis was converted to potential growth projections, how might the Town grow over a ten-year period, and we utilized a variety of information sources when looking at the growth projections. Capital District Regional Planning Commission publishes information, the Town has a very strong history of tracking growth. We had a series of meetings with the development community, real estate community, developers, folks who are knowledgeable about what might happen in the near future, and the two scenarios that we laid out are on the slide in front of you.

Potentially, under the low growth, 600
new single-family homes throughout the Town, 1,500 new dwelling units, largely within the Form-Based Code or the downtown area, and then upwards of 1.6 million square feet of non-residential development. That could be retail, commercial, warehouse, a mix of those uses. The high growth is on the page as well. We used the low growth scenario to perform the subsequent analyses.

The assumption here is that Fab 8.2 will be constructed and brought online, and it does not include the actual square footage of what's happening at the Tech Campus itself. This is above and beyond that.

So where might this growth occur? We looked at the zoning districts, the availability of land, the availability of approved subdivisions of projects. We looked at where the infrastructure actually exists. We met with the various purveyors of water and sewer facilities, where have they heard that extensions might occur and might exist. Growth follows infrastructure.

So, we actually distributed the growth throughout the Town based on those factors, that,
hey, growth is going to occur at growth nodes
where infrastructure meets, where water and sewer
meets, roadways, and available supply of land.

So, taking that information, we prepared
an update to the Town-wide traffic impact
analysis. There are over 32 intersections that
were analyzed using both growth scenarios. We
think the low growth scenario is the more likely
to occur, and then we actually looked at -- there
are a variety of planning studies in the original
2005 GEIS. They're termed as linkage studies,
where bike and pedestrian facilities are going to
go. We looked at those, and then we updated the
mitigation to address the growth associated with
the traffic, and we updated the cost estimates.

The important thing here to note is that,
at the time the original '05 EIS was produced for
the Town, the Global Foundries projects weren't
-- the mitigation was not yet constructed.
There's been a series of activities that have
occurred since that time, and so what we did --
what we saw were -- here's two slides that just
identify a series of intersections and planned
improvements at those intersections.
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There's no surprises on these two slides. It's the same or nearly the same traffic mitigation that's been contemplated in '05, and in the traffic study that was recently completed by Global Foundries as part of the Fab 8.2, the supplemental EIS, with some minor nuances. There's a couple of locations where, in order to accommodate growth, not a new facility needs to be constructed, but we need to control traffic movement. For instance, we control left-hand turn lanes at the 9 and 67 intersections, Hemphill. So we looked at those things. This is another slide with that same information.

We provided updated cost estimates. The Town, since 2006, has been adjusting the cost of mitigation based on using a rate of inflation, so it has not stayed the same. The cost of constructing all the traffic improvements has escalated over time. What we found is, that that escalation probably outpaced the actual costs, and in some instance, there have been a series of improvements that have been constructed so that they're no longer necessary.

When we look at what needs to be
constructed in order to address the growth over this ten-year period, the costs on this slide are just slightly lower than were estimated in 2006, and also the cost that was estimated currently today is at $1,655 per trip. So, if you're a non-residential development, you would pay this fee based on a trip generation characteristic of your project.

What we see under our new calculation is this number actually drops, so there's a decrease in the trip generation cost or the mitigation fee assessment. It drops to $1,355 per trip. So, this was one of the things we didn't know going in, will the price increase or decrease? What we found in the case of traffic mitigation is, there's been a series of projects that have been constructed and so the costs to address growth have been reduced because certain private developments have borne that cost, largely the Global Foundries project.

We then looked at the Recreation and Trails programs. There were a series of planning documents that were produced in '05 and '06 as part of the Town-wide GEIS, and then subsequent
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to that, the Town's Planning Department and Rec
Department has produced a series of documents
looking at park needs over the last decade. What
we did is we inventoried those things. We met.
We got a basic understanding of what has been
constructed since '05, what demands are still not
being met and what new demands might be coming
up, and we went through, with the Town Board, and
went through a priority setting exercise, and we
identified a series of priority projects with
those associated cost estimates.

I apologize if you can't see that in the
slide. There's a series of projects on the
slide. Just because a project appears on the
slide, does not mean that it's necessarily going
to be constructed, but there is sufficient demand
for these things. As we know, demands change
over time, priorities change, facility needs
change, and so this really is not a master list
of projects to be constructed, but it
demonstrates what is the capital demand for rec
facilities over a ten-year period.

What we did is we took that and we looked
at what percentage of that cost should be
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attributable to non-residential development. In '05, the Town went through a process and made a decision that up to 15 percent of the cost for future recreational needs should be borne by the development community, those folks who are creating retail, commercial, non-residential development.

The Town already assessed a recreation fee to single-family housing. In the GEIS, we're clarifying the record to make sure it's understood that multifamily housing is going to be assessed that same fee. We also looked at what has been constructed since 2005. There are a series of projects that have been constructed where the Town has not totally recouped the cost for that expense. So, when we add those two costs together, we come up with a future mitigation fee, and, in this instance, the current fee is $1.09 a square foot, and what is being proposed in the Draft EIS is that is going to increase to $1.83 per square foot. That is one of the fees that did go up.

With respect to Ag and Open Space, the Town has seen a considerable amount of
development over the last ten years, and with that, a consumption of Recreation and Ag resources. We went through a process to relook at the prioritization process that was constructed in 2001. We updated that. We also looked at how the Town attributes the cost sharing to future development, and as you see in this slide, back in '05, it was at $577 per acre of disturbance.

As we look at what land is left and available for protection, that has been greatly reduced, and we looked at a protection goal. In 2001, the Town was seeking to protect nearly 1,000 acres of Open Space through the PDR, or Purchase and Development Rights Program, and other mechanisms. The Town has not met that goal and adjusted that goal to be equal to 773 acres over a ten-year period. That's an aspiration. That is a fairly high target, but realistic, and what we did is we updated the costs associated, the land values.

Land values have increased over ten years. The cost of protecting those lands has increased. We updated those numbers, and
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with that, we also updated the cost allocation process. What we are proposing is that 19 percent of the cost of protecting the land should be borne by development that's going to occur between now and the next ten years, and the balance of that cost needs to be borne by the public, meaning the folks who already reside and live in the Town, whether that be through acquisition of grants or other mechanisms to raise revenue for that purpose.

With that, the current Open Space mitigation fee is approximately $1,059 per disturbed acre. That, under this Draft proposal, would increase to $1,131, so a very modest increase in the Open Space protection.

So that's what I have. I'm trying to just give you a lot -- there's a lot of information, and I'm trying to boil it down to a real simple sense.

You can see on this slide we do summarize the '06 fee with the current fee and the proposed fee, and the most significant, we did note, was the traffic mitigation fee is decreasing slightly and the rec fee is going up modestly.
This is a public hearing. What we'd like to do is turn it over to the Supervisor. We ask that you pronounce your name. You see we have a stenographer here to capture that information. We're taking comments, written comments through July 29th, and what happens is that we will hear your comments tonight. We'll capture those. We will respond to those in written format, as well as to the written comments, provide those to the Town Board. The Town Board will weigh what they hear and either alter what's in the EIS or respond to it in a fashion so people understand what the process is.

**MR. HARTZELL:** Can we have you just briefly speak to where we are at procedurally in the process?

**MR. ROUND:** Yes. So, back on June 8th, the Town Board accepted this Draft as complete. As we mentioned, the Draft has been available for public review since that time. It is posted on the Town's website. The Town has been accepting written comment. The close of the comment period would be July 29th. After that time, we will take those written comments. We will produce a
Final EIS.

The Final EIS is basically the Draft EIS, together with public comment and the response to public comment, and that FEIS is delivered to the Town. The Town Board, as the lead agency, would identify whether the response is satisfactory, and then the Town Board would adopt the Final EIS.

There's, what they call, a cooling off period. There's a ten-day period. After the FEIS is accepted, a finding statement would be produced, and the finding statement would articulate the record, describe what has occurred since the Draft EIS was issued, and, actually, if adopted, would adopt a modified mitigation fee structure.

So, I hope that answers the question.

MR. HARTZELL: Thank you.

SUPERVISOR SAUSVILLE: Thank you, Chris.

So, Laurel Stephenson is here as our court stenographer this evening, taking time away from this beautiful summer that we have, working here for the Town of Malta.

As Chris pointed out, it is a public
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hearing. If you would like to make a statement, just come to the podium. Speak right into the microphone nice and loud. State your name, and give us your input.

Our first speaker is?

MR. SLOAT: Thank you for allowing me to speak. My name is Elwood Sloat. I live at 3 Homestead Commons in Ballston Lake, New York.

I just want to clear something up. When Chris was explaining --

SUPERVISOR SAUSVILLE: Is your microphone on?

MR. SLOAT: Can you hear me?

SUPERVISOR SAUSVILLE: Now, yes.

MR. SLOAT: Chris Round, you did a nice job.

MR. ROUND: Thank you.

MR. SLOAT: I'm a little concerned about the Town's share of your traffic mitigation. Seventy percent for several of these roads, which are State roads, and the traffic that's on that is generated from more towns than the Town of Malta. Can you explain to me why the Town's share would be 70 percent on a State road?
SUPERVISOR SAUSVILLE: Well, this isn't a Q & A, Woody. It's a question of --

MR. SLOAT: Okay. My statement is, I'm dissatisfied with the fact that the Town's taxpayers will pay 70 percent on the State road. That's my statement. Thank you.

SUPERVISOR SAUSVILLE: Thank you.

Yes.

MR. WEISS: I'm Rick Weiss from Old Post Road.

I'm concerned about the two items on the summary of transportation mitigation, the very last items concerning Old Post Road/Cherry Choke Road and North Line Road and Old Post Road.

The residents of Old Post Road, a Town road, would probably, I would say, feel that any improvement to the road that provides an increase of traffic is something we don't want. We're not interested in more traffic on Old Post Road and having it move more smoothly. We would like to see it restricted.

We don't need an additional 3,000 or 4,000 cars a day on Old Post Road. It's not designed to handle it. It's a residential road.
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If we realign the road, spend $3 million to improve the flow, all we're going to do is increase traffic, and I think it's a serious mistake. It will change the whole complexion of the atmosphere on the road.

SUPERVISOR SAUSVILLE: Thank you, Rick. Are there any other folks?

MS. HENRY: Carol Henry on Malta Avenue. I would like to reiterate what that gentleman said about that intersection. Having lived on Malta Avenue between Old Post and -- I know Malta Avenue is a County road. A roundabout is not going to solve anything.

You know, my problem with all these traffic studies is, we get all the traffic from every other town, and we're bearing the brunt of it, and, one, did those traffic -- was that traffic pattern taken into account? Two, we need to work on a way, because Old Post and Malta Avenue just can't handle the traffic.

Malta Avenue, in the 15 years that I've lived there, the traffic, the truck traffic, has become crazy. I live now on a major highway, and that's supposed to be a rural section of the Town
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of Malta, and based on the traffic, it is no longer a rural section of the Town.

SUPERVISOR SAUSVILLE: Thank you, Carol. Other folks that wish to make a statement?

(There was no response.)

SUPERVISOR SAUSVILLE: If not, that draws to a conclusion the formal hearing that we have here. However, as Chris pointed out, the record will be open until the 29th of July, and if you have a comment that you would like to have placed into the record, you have until that date to get them in. So that brings the hearing to a conclusion, and we will move on to the next item.

(Whereupon, at 7:17 p.m. the proceedings in the above-entitled matter were concluded.)
CERTIFICATION

I, LAUREL STEPHENSON, a Court Reporter and Notary Public in and for the State of New York, do hereby certify that the foregoing record taken by me at the time and place as noted in the heading hereof is a true and accurate transcript of same, to the best of my ability and belief.

Laurel Stephenson

Date: July 16, 2015

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**LAUREL STEPHENSON**

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LAUREL STEPHENSON
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LAUREL STEPHENSON
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APPENDIX B
Written Comments
July 27, 2015

Town Board  
Town of Malta Town Board  
Town Hall  
2540 Route 9  
Malta, New York 12020

RE: Draft Supplemental Environmental Impact Statement of the Town of Malta accepted June 15, 2015 (“DSEIS”)

Dear Sir or Madam:

This office represents Lakeview Outlets, Inc. (“Lakeview”) and DCG Development Co. (“DCG”) in connection with the DSEIS of the Town of Malta, County of Saratoga, New York (the “Town”) that is referenced above. On behalf of Lakeview and DCG, we write to provide written comment to the Town Board of the Town on the DSEIS.

General Statement

We write to object to the adoption by the Town of the mitigation fees under DSEIS and the imposition of any mitigation fee since the imposition of the mitigation fees as proposed under the DSEIS is an impermissible and illegal tax. Specifically, under the DSEIS, the Town is proposing to impose mitigation fees on only new construction projects to defray the cost of Town’s acquisition of open space and new recreation projects as well as highway improvement projects which benefit the entire Town such that the cost for such projects is required to be funded through the imposition of a Town wide tax rather than mitigation fees on only new construction. The cost of these projects should be paid from the Town’s General Fund and recovered through the imposition of general taxes and/or a highway tax imposed on an ad valorem basis since the benefit of the projects reflected in the DSEIS is Town wide and bears no nexus to the impacts of only new construction much less my client’s project. Under applicable law, a municipality is not allowed to charge “newcomers” an impact fee to cover new municipal projects unless the municipality can demonstrate that the mitigation fee is necessitated by the new project or that the newcomer would be primarily or proportionately benefitted by the expansion. See generally, Phillips v. Town of Clifton Water Authority, 286 A.D.2d 834, 834-835 (3d. Dept. 2001). Albany Area Builders Association v. Town of Guilderland, 141 A.D.2d 293 (3d Dept. 1988).
Traffic Mitigation Fees

The DSEIS seeks to impose traffic mitigation fees equal to $6,099,000 to fund various highway projects throughout the Town (DSEIS, p. vii and p. 48). Since highway improvements are deemed to generally benefit the entire Town, they are typically paid for by a general Town highway tax that is levied and collected with the January Town/County bill. Here, the Town of Malta does not have a Town tax and/or Town highway tax so that all highway improvement costs prior to the imposition of mitigation fees were apparently paid from the Town General Fund. In the situation faced by my clients, the proposed highway improvements bear no relationship and/or nexus to our client or their proposed building projects. Attached hereto as Exhibit “A” is a copy of the Study Area Map from the DSEIS reflecting the various highway improvement projects that are proposed to be paid from mitigation fees imposed on my clients who have property at the southeast corner of Exit 12 and in the Town center area at the intersection of Route 9 and Phaeton Lane directly across from Stone Break Road. A review of this study map confirms that the highway improvements projects proposed in the DSEIS have no relationship or nexus to any traffic created on improvements proposed on the property of my clients. Specifically, Lakeview is proposing to develop another hotel and a Panera restaurant at Malta Commons Business Park. The traffic impact fee for the hotel and the Panera restaurant is estimated to be $71,165 and $110,885, respectively. There is absolutely no nexus between the $3,225,000 of highway improvements proposed to be paid under the DSEIS for improvements at Northline/Old Post Road and the $1,600,000 of improvements at Route 67/Eastline Road. These two projects account for 79.11% of the total highway improvements to be funded and undertaken under the DSEIS. Without the nexus to a traffic burden created by my client’s projects, the proposed impact fees are illegal substitute for a Town highway tax since these improvements clearly have Town wide benefit.

The imposition of mitigation fees under the DSEIS also violates the following enactments:

1) Town Law Section 200. The proposal to finance the various highway improvements set forth at p. 48 of the DSEIS is not properly before the Town Board since a prerequisite to undertaking such highway improvements is a duly verified petition under Section 200 of the Town Law. Upon information and belief, the Town did not obtain the required petitions for each component of the highway improvements to be undertaken in the DSEIS. Accordingly, the Town may not procure mitigation fees for projects lacking a duly verified petition under Section 200 of the Town Law.

2) Town Law Section 202(4). Upon information and belief, prior to the 2006 adoption of mitigation fees, the cost and expense of highway improvements was funded from the general fund and the Town did not impose mitigation fees on a “benefit basis” to fund the construction and improvement of all Town highways. Therefore, the attempt to impose mitigation fees on a benefit basis under the DSEIS is in violation of the requirements of Town Law Section 202(4).

3) Town Law Section 202-f. It is clear from a review of the proposed highway improvements set forth in the DSEIS that certain of the projects involve highway improvements
at Route 67 which is a State and/or County highway. Pursuant to Town Law Section 202-f(2), these improvements are required to be a Town charge and not allowed to be imposed through a benefit assessment. Therefore, the imposition of mitigation fees for any portion of State and/or County highway improvement violates Town Law Section 202-f.

Open Space Mitigation Fee and Recreation Fees.

A cursory review of the Open Space and Recreation projects that are to be financed from mitigation fee obtained under the DSEIS reveals that they benefit the entire Town and have no relationship to the commercial projects to be under taken by my client (p.iii, iv and p.15-16). My client is to be charged the following open space and recreation fees for the respective project as follows:

<table>
<thead>
<tr>
<th></th>
<th>Hotel</th>
<th>Panera</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recreation</td>
<td>$61,694</td>
<td>$ 953.10</td>
</tr>
<tr>
<td>Open Space</td>
<td>$ 1,885</td>
<td>$4,905.00</td>
</tr>
</tbody>
</table>

There is absolutely no nexus between the impacts of a Panera restaurant and hotel at Exit 12 to the open space and recreational improvements to be funded under DSEIS. The improvements contemplated by the Town under the DSEIS are properly part of a Park District under Town Law Section 198(4) and any improvements constituting park improvements are Town charges under Town Law Section 202 which are required to be paid from the Town general fund and defrayed from a general Town tax. Without the nexus to the impact from my client’s projects, the imposition of mitigation fees to pay open space and/or recreation fees is unauthorized under the Town Law. In addition, the cost and expense of recreation and parks is required to be paid by real estate taxes or the Town general fund and is not allowed to be paid from the collection of mitigation fees. Town Law Section 220.

Offsets

The DSEIS is improper since it does not provide for a system of offsets or reduction of the mitigation fees for the traffic and recreation improvements installed as part of any project. At a minimum, the DSEIS should recognize some offset against the mitigation fees for traffic improvements made by a project or any set aside of conservation area or green space in the project which creates open space for the benefit of the entire community.

Benefit of General Tax Levy

The projects that are contemplated to be financed from the collection of mitigation fees under the DSEIS should be collected as part of a Town wide ad valorem property tax and/or highway tax since that imposition would provide the Town and its residents with the additional benefit of the ability to share in all payments in lieu of taxes made with the County of Saratoga IDA, including the existing Global Foundries PILOT Agreement pursuant to General Municipal Law Section
858(15). This enactment requires proportional allocation of all payments under any PILOT Agreement based on the relative tax rate. Palmateer v. Greene County Industrial Development Agency, 38 A.D.3d 1087 (3d Dept. 2007). If the Town were to fund for these costs through a general Town tax, then the Town would be able to receive a portion of all payments in lieu of taxes which creates additional revenue for the Town general fund. The fact that the Town is trying to defray Town wide expenditures through mitigation fees injures the entire Town since the Town is unable to obtain any share of the IDA PILOT payments for projects in the Town. The Town Board should recognize the obvious benefit to be obtained from funding these costs by a town wide tax since it will reap additional dividends in the form of a share of the payments in lieu of taxes for which it now receives no share.

Please accept this as our written public comments on the DSEIS, and we reserve the right to provide additional comments to you on the DSEIS. Should you have any questions and/or comments, please do not hesitate to call

Very truly yours,

GOLDMAN ATTORNEYS PLLC

Paul J. Goldman

Enclosures

cc. Mr. Donald C. Greene
    Mr. Donald MacElroy
July 29, 2015

Town Board
Town of Malta Town Board
Town Hall
2540 Route 9
Malta, New York 12020

RE: Draft Supplemental Environmental Impact Statement of the Town of Malta accepted June 15, 2015 (“DSEIS”)

Dear Sir or Madam:

This office represents Windsor Development Group (“Windsor”) in connection with the DSEIS of the Town of Malta, County of Saratoga, New York (the “Town”) that is referenced above. As you know, Windsor seeks to develop a commercial project on its Ketch Drive Property in the Town of Malta. On behalf of Windsor, we write to provide written comment to the Town Board of the Town on the DSEIS.

General Statement

We write to object to the adoption by the Town of the mitigation fees under DSEIS and the imposition of any mitigation fee since the imposition of the mitigation fees as proposed under the DSEIS is an impermissible and illegal tax. Specifically, under the DSEIS, the Town is proposing to impose mitigation fees on only new construction projects to defray the cost of Town’s acquisition of open space and new recreation projects as well as highway improvement projects which benefit the entire Town. Due to the fact that the open, park and traffic improvements benefit the entire such costs are required to be funded through the imposition of a Townwide tax rather than mitigation fees on only new construction. The cost of these projects should be paid from the Town’s General Fund and recovered through the imposition of general taxes and/or a highway tax imposed on an ad valorem basis since the benefit of the projects reflected in the DSEIS is Townwide and bears no nexus to the impacts of only new construction much less my client’s project. Under applicable law, a municipality is not allowed to charge “newcomers” an impact fee to cover new municipal projects unless the municipality can demonstrate that the mitigation fee is necessitated by the new project or that the newcomer would be primarily or proportionately benefitted by the expansion. See generally, Phillips v. Town of Clifton Water Authority, 286 A.D.2d 834, 834-835 (3d. Dept. 2001). Albany Area Builders Association v. Town of Guilderland, 141 A.D.2d 293 (3d Dept. 1988).
Traffic Mitigation Fees

The DSEIS seeks to impose traffic mitigation fees equal to $6,099,000 to fund various highway projects throughout the Town (DSEIS, p. vi and p. 48). Since highway improvements are deemed to generally benefit the entire Town, they are typically paid for by a general Town highway tax that is levied and collected with the January Town/County bill. Here, the Town of Malta does not have a Town tax and/or Town highway tax so that all highway improvement costs prior to the imposition of mitigation fees were apparently paid from the Town General Fund. In the situation faced by my clients, the proposed highway improvements bear no relationship and/or nexus to our client or their proposed building projects. Attached hereto as Exhibit “A” is a copy of the Study Area Map from the DSEIS reflecting the various highway improvement projects that are proposed to be paid from mitigation fees imposed on my clients who have property at the northeast corner of Exit 12. A review of this study map confirms that the highway improvements projects proposed in the DSEIS have no relationship or nexus to any traffic created on improvements proposed on the property of my clients. Specifically, Windsor is proposing to develop a hotel, apartments and a commercial development on its Kelch Drive Property. The traffic impact fees for the proposed improvements at the Kelch Drive Property are estimated to be in excess of $800,000. From the attached map, there is absolutely no nexus between the $3,225,000 of highway improvements proposed to be paid under the DSEIS for improvements at Northline/Old Post Road and the $1,600,000 of improvements at Route 67/Eastline Road. These two projects account for 79.11% of the total highway improvements to be funded and undertaken under the DSEIS. Without the nexus to a traffic burden created by my client’s projects, the proposed impact fees are illegal substitute for a Town highway tax since these improvements clearly have Town wide benefit.

The imposition of mitigation fees under the DSEIS also violates the following enactments:

1) Town Law Section 200. The proposal to finance the various highway improvements set forth at p. 48 of the DSEIS is not properly before the Town Board since a prerequisite to undertaking such highway improvements is a duly verified petition under Section 200 of the Town Law. Upon information and belief, the Town did not obtain the required petitions for each component of the highway improvements to be undertaken in the DSEIS. Accordingly, the Town may not procure mitigation fees for projects lacking a duly verified petition under Section 200 of the Town Law.

2) Town Law Section 202(4). Upon information and belief, prior to the 2006 adoption of mitigation fees, the cost and expense of highway improvements was funded from the general fund and the Town did not impose mitigation fees on a “benefit basis” to fund the construction and improvement of all Town highways. Therefore, the attempt to impose mitigation fees on a benefit basis under the DSEIS is in violation of the requirements of Town Law Section 202(4).
3) Town Law Section 202-f. It is clear from a review of the proposed highway improvements set forth in the DSEIS that certain of the projects involve highway improvements at Route 67 which is a State and/or County highway. Pursuant to Town Law Section 202-f(2), these improvements are required to be a Town charge and not allowed to be imposed through a benefit assessment. Therefore, the imposition of mitigation fees for any portion of State and/or County highway improvement violates Town Law Section 202-f.

Open Space Mitigation Fee and Recreation Fees.

A cursory review of the Open Space and Recreation projects that are to be financed from mitigation fees obtained under the DSEIS reveals that they benefit the entire Town and have no relationship to the commercial projects to be under taken by my client (p.iii, iv and p.15-16). There is absolutely no nexus between the impacts of on the Kelch Drive Property at Exit 12 to the open space and recreational improvements to be funded under DSEIS. The improvements contemplated by the Town under the DSEIS are properly part of a Park District under Town Law Section 198(4) and any improvements constituting park improvements are Town charges under Town Law Section 202 which are required to be paid from the Town general fund and defrayed from a general Town tax. Without the nexus to the impact from my client’s projects, the imposition of mitigation fees to pay open space and/or recreation fees is unauthorized under the Town Law. In addition, the cost and expense of recreation and parks is required to be paid by real estate taxes or the Town general fund and is not allowed to be paid from the collection of mitigation fees. Town Law Section 220.

Offsets

The DSEIS is improper since it does not provide for a system of offsets or reduction of the mitigation fees for the traffic and recreation improvements installed as part of any project. At a minimum, the DSEIS should recognize some offset against the mitigation fees for traffic improvements made by a project or any set aside of conservation area or green space in the project which creates open space for the benefit of the entire community. Please note that the form based code for the Town has a minimum twenty percent set aside for amenity space which should be offset against any mitigation fees under DSEIS.

Benefit of General Tax Levy

The projects that are contemplated to be financed from the collection of mitigation fees under the DSEIS should be collected as part of a Town wide ad valorem property tax and/or highway tax since that imposition would provide the Town and its residents with the additional benefit of the ability to share in all payments in lieu of taxes made with the County of Saratoga IDA, including the existing Global Foundries PILOT Agreement pursuant to General Municipal Law Section 858(15). This enactment requires proportional allocation of all payments under any PILOT Agreement based on the relative tax rate. Palmateer v. Greene County Industrial Development Agency, 38 A.D.3d 1087 (3d Dept. 2007). If the Town were to fund for these costs through a
general Town tax, then the Town would be able to receive a portion of all payments in lieu of taxes which creates additional revenue for the Town general fund. The fact that the Town is trying to defray Town wide expenditures through mitigation fees injures the entire Town since the Town is unable to obtain any share of the IDA PILOT payments for projects in the Town. The Town Board should recognize the obvious benefit to be obtained from funding these costs by a town wide tax since it will reap additional dividends in the form of a share of the payments in lieu of taxes for which it now receives no share.

Please accept this as our written public comments on the DSEIS, and we reserve the right to provide additional comments to you on the DSEIS. Should you have any questions and/or comments, please do not hesitate to call

Very truly yours,

GOLDMAN ATTORNEYS PLLC

[Signature]

Paul J. Goldman

Enclosures

cc. Mr. Robert C. Miller
    Mr. Robert C. Miller, Jr.
    Mr. Larry Becker
July 29, 2015

Town Board
Town of Malta Town Board
Town Hall
2540 Route 9
Malta, New York 12020

RE: Draft Supplemental Environmental Impact Statement of the Town of Malta accepted June 15, 2015 (“DSEIS”)

Dear Sir or Madam:

This office represents Morgan Management and Lecesse Construction and affiliate entities (hereinafter called the “Park Place Owner”) in connection with the DSEIS of the Town of Malta, County of Saratoga, New York (the “Town”) that is referenced above. As you know, the Park Place Owner is developing a residential project in the Town known as Park Place. On behalf of Park Place Owner, we write to provide written comment to the Town Board of the Town on the DSEIS.

General Statement

We write to object to the adoption by the Town of the mitigation fees under DSEIS and the imposition of any mitigation fee since the imposition of the mitigation fees as proposed under the DSEIS is an impermissible and illegal tax. Specifically, under the DSEIS, the Town is proposing to impose mitigation fees on only new construction projects to defray the cost of Town’s acquisition of open space and new recreation projects as well as highway improvement projects which benefit the entire Town. Due to the fact that the open, park and traffic improvements benefit the entire such costs are required to be funded through the imposition of a Town wide tax rather than mitigation fees on only new construction. The cost of these projects should be paid from the Town’s General Fund and recovered through the imposition of general taxes and/or a highway tax imposed on an ad valorem basis since the benefit of the projects reflected in the DSEIS is Town wide and bears no nexus to the impacts of only new construction much less my client’s project. Under applicable law, a municipality is not allowed to charge “newcomers” an impact fee to cover new municipal projects unless the municipality can demonstrate that the mitigation fee is necessitated by the new project or that the newcomer would be primarily or proportionately benefitted by the expansion. See generally, Phillips v. Town of Clifton Water Authority, 286

Traffic Mitigation Fees

The DSEIS seeks to impose traffic mitigation fees equal to $6,099,000 to fund various highway projects throughout the Town (DSEIS, p. vi and p. 48). Since highway improvements are deemed to generally benefit the entire Town, they are typically paid for by a general Town highway tax that is levied and collected with the January Town/County bill. Here, the Town of Malta does not have a Town tax and/or Town highway tax so that all highway improvement costs prior to the imposition of mitigation fees were apparently paid from the Town General Fund. In the situation faced by my clients, the proposed highway improvements bear no relationship and/or nexus to our client or their proposed building projects. Attached hereto as Exhibit “A” is a copy of the Study Area Map from the DSEIS reflecting the various highway improvement projects that are proposed to be paid from mitigation fees imposed on my clients who have property at the northeast corner of Exit 12. A review of this study map confirms that the highway improvements projects proposed in the DSEIS have no relationship or nexus to any traffic created on improvements proposed on the property of my clients. Specifically, the Park Place Owner is proposing to develop apartments at the Park Place Project on Route 9. The traffic impact fees for the proposed improvements at Park Place will be substantial. There is absolutely no nexus between the Park Place Project and the $3,225,000 of highway improvements proposed to be paid under the DSEIS for improvements at Northline/Old Post Road and the $1,600,000 of improvements at Route 67/Eastline Road. These two projects account for 79.11% of the total highway improvements to be funded and undertaken under the DSEIS. Without the nexus to a traffic burden created by the Park Place Project, the proposed impact fees are illegal substitute for a Town highway tax since these improvements clearly have Town wide benefit.

The imposition of mitigation fees under the DSEIS also violates the following enactments:

1) Town Law Section 200. The proposal to finance the various highway improvements set forth at p. 48 of the DSEIS is not properly before the Town Board since a prerequisite to undertaking such highway improvements is a duly verified petition under Section 200 of the Town Law. Upon information and belief, the Town did not obtain the required petitions for each component of the highway improvements to be undertaken in the DSEIS. Accordingly, the Town may not procure mitigation fees for projects lacking a duly verified petition under Section 200 of the Town Law.

2) Town Law Section 202(4). Upon information and belief, prior to the 2006 adoption of mitigation fees, the cost and expense of highway improvements was funded from the general fund and the Town did not impose mitigation fees on a “benefit basis” to fund the construction and improvement of all Town highways. Therefore, the attempt to impose mitigation fees on a benefit basis under the DSEIS is in violation of the requirements of Town Law Section 202(4).
3) Town Law Section 202-f. It is clear from a review of the proposed highway improvements set forth in the DSEIS that certain of the projects involve highway improvements at Route 67 which is a State and/or County highway. Pursuant to Town Law Section 202-f(2), these improvements are required to be a Town charge and not allowed to be imposed through a benefit assessment. Therefore, the imposition of mitigation fees for any portion of State and/or County highway improvement violates Town Law Section 202-f.

**Open Space Mitigation Fee and Recreation Fees.**

A cursory review of the Open Space and Recreation projects that are to be financed from mitigation fee obtained under the DSEIS reveals that they benefit the entire Town and have no relationship to the commercial projects to be under taken by my client (p.iii, iv and p.15-16). There is absolutely no nexus between the impacts of the Park Place Project to the open space and recreational improvements to be funded under DSEIS. The improvements contemplated by the Town under the DSEIS are properly part of a Park District under Town Law Section 198(4) and any improvements constituting park developments are Town charges under Town Law Section 202 which are required to be paid from the Town general fund and defrayed from a general Town tax. Without the nexus to the impact from my client’s projects, the imposition of mitigation fees to pay open space and/or recreation fees is unauthorized under the Town Law. In addition, the cost and expense of recreation and parks is required to be paid by real estate taxes or the Town general fund and is not allowed to be paid from the collection of mitigation fees. Town Law Section 220.

**Offsets**

The DSEIS is improper since it does not provide for a system of offsets or reduction of the mitigation fees for the traffic and recreation improvements installed as part of any project. At a minimum, the DSEIS should recognize some offset against the mitigation fees for traffic improvements made by a project or any set aside of conservation area or green space in the project which creates open space for the benefit of the entire community. Please note that the form based code for the Town has a minimum twenty percent set aside for amenity space which should be offset against any mitigation fees under DSEIS.

**Benefit of General Tax Levy**

The projects that are contemplated to be financed from the collection of mitigation fees under the DSEIS should be collected as part of a Town wide ad valorem property tax and/or highway tax since that imposition would provide the Town and its residents with the additional benefit of the ability to share in all payments in lieu of taxes made with the County of Saratoga IDA, including the existing Global Foundries PILOT Agreement pursuant to General Municipal Law Section 858(15). This enactment requires proportional allocation of all payments under any PILOT Agreement based on the relative tax rate. Palmateer v. Greene County Industrial Development Agency, 38 A.D.3d 1087 (3d Dept. 2007). If the Town were to fund for these costs through a general Town tax, then the Town would be able to receive a portion of all payments in lieu of taxes
which creates additional revenue for the Town general fund. The fact that the Town is trying to
defray Town wide expenditures through mitigation fees injures the entire Town since the Town is
unable to obtain any share of the IDA PILOT payments for projects in the Town. The Town
Board should recognize the obvious benefit to be obtained from funding these costs by a town
wide tax since it will reap additional dividends in the form of a share of the payments in lieu of
taxes for which it now receives no share.

Please accept this as our written public comments on the DSEIS, and we reserve the right to
provide additional comments to you on the DSEIS. Should you have any questions and/or
comments, please do not hesitate to call

Very truly yours,

GOLDMAN ATTORNEYS PLLC

[Signature]

Paul J. Goldman

Enclosure

cc. Mr. Robert Morgan
    Mr. Salvatore Lecesse
To whom it may concern,

We write to support the general statements and conclusions contained within the letter dated July 27, 2015 from Attorney Paul J. Goldman to the Town Board of Malta (copied attached herewith).

Furthermore, we restate that we object to “the adoption by the Town of the mitigation fees under DSEIS and the imposition of any mitigation fee since the imposition of the mitigation fees as proposed under the DSEIS is an impermissible and illegal tax. Specifically, under the DSEIS, the Town is proposing to impose mitigation fees on only new construction projects to defray the cost of Town’s acquisition of open space and new recreation projects as well as highway improvement projects which benefit the entire Town such that the cost for such projects is required to be funded through the imposition of a Town wide tax rather than mitigation fees on only new construction. The cost of these projects should be paid from the Town’s General Fund and recovered through the imposition of general taxes and/or a highway tax imposed on an ad valorem basis since the benefit of the projects reflected in the DSEIS is Town wide and bears no nexus to the impacts of only new construction much less my client’s project. Under applicable law, a municipality is not allowed to charge “newcomers” an impact fee to cover new municipal projects unless the municipality can demonstrate that the mitigation fee is necessitated by the new project or that the newcomer would be primarily or proportionately benefitted by the expansion. See generally, Phillips v. Town of Clifton Water Authority, 286 A.D.2d 834, 834-835 (3d. Dept. 2001). Albany Area Builders Association v. Town of Guilderland, 141 A.D.2d 293 (3d Dept. 1988). “

Sincerely,

Robert A. Hayes
President
Hayes Development Company

Cc: N. Robert Hayes Esq.
July 28, 2015

Town Board, Town of Malta
Town Hall
2450 Route 9
Malta, NY 12020

Re: Draft Supplemental Environmental Impact Statement of the Town of Malta accepted June 15, 2015 ("DSEIS")

To whom it may concern:

Jersen Construction Group as well as Lansing Engineering are writing in support of the letter dated July 27, 2015 to the Town of Malta from Attorney Paul J. Goldman (attached).

As current and future builders and developers we agree with Mr. Goldman's opinion that the adoption by the Town of the mitigation fees under DSEIS and the imposition of any mitigation fee since the imposition of the mitigation fees as proposed under the DSEIS is an impermissible and illegal tax.

Sincerely,

David J. Jersen
CEO
Jersen Construction Group

Scott Lansing
President
Lansing Engineering
July 27, 2015

Town Board
Town of Malta Town Board
Town Hall
2540 Route 9
Malta, New York 12020

RE: Draft Supplemental Environmental Impact Statement of the Town of Malta accepted June 15, 2015 ("DSEIS")

Dear Sir or Madam:

This office represents Lakeview Outlets, Inc. ("Lakeview") and DCG Development Co. ("DCG") in connection with the DSEIS of the Town of Malta, County of Saratoga, New York (the "Town") that is referenced above. On behalf of Lakeview and DCG, we write to provide written comment to the Town Board of the Town on the DSEIS.

General Statement

We write to object to the adoption by the Town of the mitigation fees under DSEIS and the imposition of any mitigation fee since the imposition of the mitigation fees as proposed under the DSEIS is an impermissible and illegal tax. Specifically, under the DSEIS, the Town is proposing to impose mitigation fees on only new construction projects to defray the cost of Town's acquisition of open space and new recreation projects as well as highway improvement projects which benefit the entire Town such that the cost for such projects is required to be funded through the imposition of a Town wide tax rather than mitigation fees on only new construction. The cost of these projects should be paid from the Town's General Fund and recovered through the imposition of general taxes and/or a highway tax imposed on an ad valorem basis since the benefit of the projects reflected in the DSEIS is Town wide and bears no nexus to the impacts of only new construction much less my client's project. Under applicable law, a municipality is not allowed to charge "newcomers" an impact fee to cover new municipal projects unless the municipality can demonstrate that the mitigation fee is necessitated by the new project or that the newcomer would be primarily or proportionately benefitted by the expansion. See generally, Phillips v. Town of Clifton Water Authority, 286 A.D.2d 834, 834-835 (3d. Dept. 2001). Albany Area Builders Association v. Town of Guilderland, 141 A.D.2d 293 (3d Dept. 1988).
Traffic Mitigation Fees

The DSEIS seeks to impose traffic mitigation fees equal to $6,099,000 to fund various highway projects throughout the Town (DSEIS, p. vi and p. 48). Since highway improvements are deemed to generally benefit the entire Town, they are typically paid for by a general Town highway tax that is levied and collected with the January Town/County bill. Here, the Town of Malta does not have a Town tax and/or Town highway tax so that all highway improvement costs prior to the imposition of mitigation fees were apparently paid from the Town General Fund. In the situation faced by my clients, the proposed highway improvements bear no relationship and/or nexus to our client or their proposed building projects. Attached hereto as Exhibit “A” is a copy of the Study Area Map from the DSEIS reflecting the various highway improvement projects that are proposed to be paid from mitigation fees imposed on my clients who have property at the southeast corner of Exit 12 and in the Town center area at the intersection of Route 9 and Phaeton Lane directly across from Stone Break Road. A review of this study map confirms that the highway improvements projects proposed in the DSEIS have no relationship or nexus to any traffic created on improvements proposed on the property of my clients. Specifically, Lakeview is proposing to develop another hotel and a Panera restaurant at Malta Commons Business Park. The traffic impact fee for the hotel and the Panera restaurant is estimated to be $71,165 and $110,885, respectively. There is absolutely no nexus between the $3,225,000 of highway improvements proposed to be paid under the DSEIS for improvements at Northline/Old Post Road and the $1,600,000 of improvements at Route 67/Eastline Road. These two projects account for 79.11% of the total highway improvements to be funded and undertaken under the DSEIS. Without the nexus to a traffic burden created by my client’s projects, the proposed impact fees are illegal substitute for a Town highway tax since these improvements clearly have Town wide benefit.

The imposition of mitigation fees under the DSEIS also violates the following enactments:

1) Town Law Section 200. The proposal to finance the various highway improvements set forth at p. 48 of the DSEIS is not properly before the Town Board since a prerequisite to undertaking such highway improvements is a duly verified petition under Section 200 of the Town Law. Upon information and belief, the Town did not obtain the required petitions for each component of the highway improvements to be undertaken in the DSEIS. Accordingly, the Town may not procure mitigation fees for projects lacking a duly verified petition under Section 200 of the Town Law.

2) Town Law Section 202(4). Upon information and belief, prior to the 2006 adoption of mitigation fees, the cost and expense of highway improvements was funded from the general fund and the Town did not impose mitigation fees on a “benefit basis” to fund the construction and improvement of all Town highways. Therefore, the attempt to impose mitigation fees on a benefit basis under the DSEIS is in violation of the requirements of Town Law Section 202(4).
3) Town Law Section 202-f. It is clear from a review of the proposed highway improvements set forth in the DSEIS that certain of the projects involve highway improvements at Route 67 which is a State and/or County highway. Pursuant to Town Law Section 202-f(2), these improvements are required to be a Town charge and not allowed to be imposed through a benefit assessment. Therefore, the imposition of mitigation fees for any portion of State and/or County highway improvement violates Town Law Section 202-f.

Open Space Mitigation Fee and Recreation Fees.

A cursory review of the Open Space and Recreation projects that are to be financed from mitigation fee obtained under the DSEIS reveals that they benefit the entire Town and have no relationship to the commercial projects to be under taken by my client (p.iii, iv and p.15-16). My client is to be charged the following open space and recreation fees for the respective project as follows:

<table>
<thead>
<tr>
<th></th>
<th>Hotel</th>
<th>Panera</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recreation</td>
<td>$61,694</td>
<td>$ 953.10</td>
</tr>
<tr>
<td>Open Space</td>
<td>$ 1,885</td>
<td>$4,905.00</td>
</tr>
</tbody>
</table>

There is absolutely no nexus between the impacts of a Panera restaurant and hotel at Exit 12 to the open space and recreational improvements to be funded under DSEIS. The improvements contemplated by the Town under the DSEIS are properly part of a Park District under Town Law Section 198(4) and any improvements constituting park improvements are Town charges under Town Law Section 202 which are required to be paid from the Town general fund and defrayed from a general Town tax. Without the nexus to the impact from my client’s projects, the imposition of mitigation fees to pay open space and/or recreation fees is unauthorized under the Town Law. In addition, the cost and expense of recreation and parks is required to be paid by real estate taxes or the Town general fund and is not allowed to be paid from the collection of mitigation fees. Town Law Section 220.

Offsets

The DSEIS is improper since it does not provide for a system of offsets or reduction of the mitigation fees for the traffic and recreation improvements installed as part of any project. At a minimum, the DSEIS should recognize some offset against the mitigation fees for traffic improvements made by a project or any set aside of conservation area or green space in the project which creates open space for the benefit of the entire community.

Benefit of General Tax Levy

The projects that are contemplated to be financed from the collection of mitigation fees under the DSEIS should be collected as part of a Town wide ad valorem property tax and/or highway tax
since that imposition would provide the Town and its residents with the additional benefit of the ability to share in all payments in lieu of taxes made with the County of Saratoga IDA, including the existing Global Foundries PILOT Agreement pursuant to General Municipal Law Section 858(15). This enactment requires proportional allocation of all payments under any PILOT Agreement based on the relative tax rate. Palmateer v. Greene County Industrial Development Agency, 38 A.D.3d 1087 (3d Dept. 2007). If the Town were to fund these costs through a general Town tax, then the Town would be able to receive a portion of all payments in lieu of taxes which creates additional revenue for the Town general fund. The fact that the Town is trying to defray Town wide expenditures through mitigation fees injures the entire Town since the Town is unable to obtain any share of the IDA PILOT payments for projects in the Town. The Town Board should recognize the obvious benefit to be obtained from funding these costs by a town wide tax since it will reap additional dividends in the form of a share of the payments in lieu of taxes for which it now receives no share.

Please accept this as our written public comments on the DSEIS, and we reserve the right to provide additional comments to you on the DSEIS. Should you have any questions and/or comments, please do not hesitate to call

Very truly yours,

GOLDMAN ATTORNEYS PLLC

Paul J. Goldman

Enclosures
cc. Mr. Donald C. Greene
    Mr. Donald MacElroy
TO: Town Supervisor Paul Sausville and All Town Board Members  
Copy to: Chazen Engineering, Land Surveying & Landscape Architecture Co., DPC  
Subject: PUBLIC HEARING COMMENTS  
DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT - EXECUTIVE SUMMARY  
MALTA TOWN-WIDE GENERIC ENVIRONMENTAL IMPACT STATEMENT

Reference is made to the above captioned subject presented at a Public Hearing on July 6, 2015, by Chris Rounds, representing Chazen Engineering, Land Surveying & Landscape Architecture Co, Poughkeepsie, New York.

I respectfully submit my concerns, comments and questions for appropriate inquiry and response in the interest of accuracy and fiscal responsibility.

1. The Executive Summary under the Transportation Area divides the study area into 13 neighborhoods. Table G, Summary of Transportation Mitigation describes Intersection 11 as Route 67/Eastline Rd with a projected $1,600,000 cost to change this to a Roundabout. This intersection is the boundary of the Town of Malta with the Town of Ballston, therefore is only ½ within the Town of Malta Boundaries. Furthermore, it is a State Owned Highway. The Town share according to your document is 70% of the total cost. Why would the Town of Malta be responsible for 70% cost of the road change? What is the cost to the County and Town of Ballston?

2. Table G, Summary of Transportation Mitigation describes Intersection 28 as Round Lake Rd/Raylinski Rd/Ruhle Road. The mitigation lists Construction of a second approach lane on Ruhle Road with a projected cost of $130,000. This intersection is currently under construction with a single lane roundabout being constructed which will immediately reduce the level of service (LOS) to the motorists southbound on Ruhle Road. This is a well-known documented fact that had been brought up during the past few years during public reviews of the Round Lake Road Project Planning. There is limited room between the required retention pond on the Adirondack Bank property and Ruhle Road to add a second lane. The buildout of residential housing along the Rhule Rd section is completed. This mitigation recommendation verifies the current design and intersection construction being undertaken is flawed. Why is the Town of Malta looking for mitigation fees in the amount of $130,000 to reconstruct the southbound portion Ruhle Road, when the present construction has not been completed? Why isn’t the second lane being completed during the current construction phase?

3. Finally, the 70% Town Share of cost to highway construction. I am told that this levy was a result of 70% of the users on the highways are town residents. This percentage on State Highways, particularly Route 67 is disputable; kindly explain the manner of statistical study/evaluation that was utilized to establish this cost. If this is an outdated number, the Town Board should establish an accurate amount through sound statistical studies before levying fees on anyone.

Thank You for your interest and time,

Ellwood A. Sloat, Jr.

3 Homestead Commons, Ballston Lake, New York

Dated: July 27, 2015
APPENDIX C
Correspondence
Public Notice


The new general permit authorizes qualified persons, including the New York State Department of Environmental Conservation (NYS DEC) and the Adirondack Park Invasive Plant Program (APIPP), to undertake rapid responses for management or containment of aquatic invasive species. Such activities include the use of benthic barriers or hand harvesting only. General Permit
Notice of Acceptance of Draft SEIS and Public Hearing

Saratoga County - The Town of Malta Town Board, as lead agency, has accepted a Draft Supplemental Environmental Impact Statement on the proposed Draft SEIS to the Malta Town-Wide Generic Environmental Impact Statement. A public hearing on the Draft SEIS will be held on July 6, 2015 at 6:55 p.m. at the Malta Town Hall 2540 NYS Route 9 Malta, NY. Written comments on the Draft SEIS will be accepted until July 29, 2105. The Draft SEIS is available from the Malta Town Hall, Town Clerk's Office and Planning Office at 2540 State Route 9 in the Town of Malta, NY and on line at: http://malta-town.org/.

The action involves the evaluation of cumulative impacts of potential growth on the Town's transportation system, agricultural and open space resources, recreation facilities, and utilities. The document is Supplemental EIS to the Town's 2005 Town Wide Generic EIS (TWGEIS) and focuses on just those resources and changes that have occurred since the issuance of the 2005 TWGEIS. The Supplemental GEIS provides an update to the growth projections, examines those resource areas impacted by growth (not previously examined) and explore any mitigation measures to avoid or minimize adverse impacts on the town's natural
and built environment. The project is located throughout the Town of Malta, New York.

Contact: Paul Sausville, Town of Malta, 2540 Route 9, Malta, NY 12020, Phone: (518) 899-3434, E-mail: psausville@malta-town.org.

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**Notice of Acceptance of Draft GEIS and Extension of Public Comment Period**

**Saratoga County** - The New York State Franchise Oversight Board, as lead agency, has accepted a Draft Generic Environmental Impact Statement on the proposed Saratoga Race Course Redevelopment Plan. **Written comments on the Draft GEIS will now be accepted until June 29, 2015.** The Draft GEIS is available from the Saratoga Springs City Hall; the Saratoga Library; the National Museum of Racing and Hall of Fame; the Office of General Services contact listed below and on line at: www.nyra.com.

The action involves a comprehensive development plan by the New York Racing Association (NYRA) to preserve, restore, and enhance the approximately 330 acre historic Saratoga Race Course. The goal of the proposed project is to ensure that the Saratoga Race Course retains its status as a world-class horse racing facility and a key component of local community character and the regional economy. The proposed
ENB - Region 5 Notices 7/20/2016

Public Notice

Type of Notice: Control of Phragmites australis (common reed) in the Essex Chain Complex

SEQR Status: Type 1 ___ Unlisted ___

DEC Region: 5

County: Essex

Town: Newcomb

Lead Agency: NYS Department of Environmental Conservation (NYS DEC)

Project Title: Control of Phragmites australis in Essex Chain Complex

Contact Person: Kris Alberga

Address: 1115 State Rt 86 - Ray Brook, NY

Phone Number: 518-897-1200

Email: kris.alberga@dec.ny.gov

Project Location: Essex Chain Complex

Project Description: Treat one, 0.04 acre patch of common reed grass (Phragmites australis) located along an abandoned trail leading to Eighth Lake in the Essex Chain Lakes Complex. The control method selected is to apply a treatment of a glyphosate based herbicide in accordance with the "Inter-Agency Guidelines for Implementing Best Management Practices for the Control of Terrestrial and Aquatic Invasive Species on DEC Administered Lands in the Adirondack Park." A combination of foliar spray and stem injection treatments of glyphosate will be utilized.

Type of Notice: Control of Phragmites australis (common reed) in the Pharaoh Lake Wilderness Area

DEC Region: 5

County: Essex

Town: Schroon

Lead Agency: NYS Department of Environmental Conservation

Project Title: Control of Phragmites australis in Pharaoh Lake Wilderness Area

Contact Person: Kris Alberga

Address: 1115 State Rt 86 - Ray Brook, NY

Phone Number: 518-897-1200
system. Both involved structures are greater than 0.4± miles from Bear Cub Lane and are not visible from public roads.

**Land Use Classification:** Resource Management

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### Lake George Park Commission Notice of Availability for Review

**County:** Washington  
**Applicant:** Vincent Beatty, 425 Overhill Road, South Orange, NJ 07079  
**Office:** Lake George Park Commission (LPGC)  
Box 749  
Lake George, NY 12845  
**LPGC Contact:** Joe Thouin  
**Application Number:** 5346-12-16  
**Application Type:** SW2 Major, Stormwater Management  
**Location:** 4425 Link Way, Town of Putnam  
**Project Description:** Residential redevelopment with erosion and stormwater controls.

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### Notice of Acceptance of Final Supplemental EIS

**Saratoga County** - The Town Board - Town of Malta, as lead agency, has accepted a Final Supplemental Environmental Impact Statement to the proposed Malta Town-Wide Generic Environmental Impact Statement. The proposed project is the evaluation of cumulative impacts of potential growth on the Town's transportation system, agricultural and open space resources, recreation facilities, and utilities. The document is Supplemental EIS to the Town's 2005 Town Wide Generic EIS (TWGEIS) and focuses on just those resources and changes that have occurred since the issuance of the 2005 TWGEIS. The Supplemental GEIS provides an update to the growth projections, examines those resource areas impacted by growth (not previously examined) and explores any mitigation measures to avoid or minimize adverse impacts on the town's natural and built environment. A hard copy of the Final Supplemental EIS is available at Town Hall, Town Clerk's Office and Planning Office, 2540 State Route 9, Malta, NY. An on-line version is available at the following publically accessible web site: [http://malta-town.org/](http://malta-town.org/). The project is located in Town of Malta, NY.

**Contact:** Vincent DeLucia, Town of Malta, 2540 Route 9, Malta, NY 12020; Phone: (518)899-3434, Fax: (518)899-3207, E-mail: vdelucia@malta-town.org

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### Negative Declaration

**Warren County** - The Village of Lake George Board of Trustees, as lead agency, has determined that the proposed Village of Lake George POTW Improvement Project will not have a significant adverse environmental impact. The Board of Trustees of the Village of Lake George has reviewed Parts I and II of the EAF relative to the upgrades to its publicly owned treatment works (POTW)/sewage treatment plant as more particularly described in section 7, proposed project, of the "Village of Lake George Evaluation and Treatment Plant Upgrade Project" prepared by AES Northeast last revised November 2015.
The project is being undertaken in accordance with DEC Order on Consent R5-20140530-2120 and New York State EFC Project Number 5571-4-00. The Board of Trustees has taken a hard look at the potential environmental impacts and has determined that the proposed project will not have the potential for one or more environmental impacts. The project is located Village of Lake George, NY.

**Contact:** Robert M. Blais, PO Box 791, Lake George, NY 12845; Phone: (518)668-5772.