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March 6, 2009

Mr. Glenn Rockwood, Planning Board Chairman
and Town of Malta Planning Board
2540 Rte. 9
Malta, NY 12020

Re: *Luther Forest Technology Campus
Site Plan Review for Soil Disturbance
LFTC PDD No. 46
Town of Malta, Saratoga County, New York
Chazen Job # 30902.01
Malta Planning Ref No. #09-02*

Dear Chairman Rockwood and Planning Board Members;

The Chazen Companies (TCC) has received the following information for the above referenced project which is seeking a Soil Disturbance Site Plan approval through the Town of Malta Planning Board;

- Fab 4X Luther Forest Technology Campus Town of Malta Site Plan Application, including Section A thru U, dated January 28, 2009, and;
- Fab 4X Luther Forest Technology Campus Town of Malta Temporary Construction Site Plan Approval Application, including Section A thru D, dated February 16, 2009.

This is TCC's initial review of material submitted by the applicant. Based on our review of the information submitted, we offer the following comments for the Planning Board's consideration.

State Environmental Quality Review Act (SEQRA)

1. The proposed project falls under the purview of the Luther Forest PDD, PDD No 46 as established and amended by the Town and supplemental environmental impact statement and statement of findings adopted by the Malta Town Board in August of 2008. This application appears consistent with the prior SEQRA findings. Notwithstanding, it is recommended that the Planning Board reads into the record the previously drafted SEQRA affirmation statement done as part of the subdivision review process prior to issuing any approvals.

General Permit GP-0-008-01 Compliance

2. Part II(B)(2)(b) of the General Permit indicates that authorization to discharge under this permit will be effective when the *owner or operator* has satisfied all of the following criteria which then lists the criteria. Of specific concern is item (b), which states the following:

“where required, all necessary Department permits subject to the *Uniform Procedures Act (UPA)* (see 6 NYCRR Part 621) have been obtained, unless otherwise notified by the Department pursuant to 6 NYCRR 621.3(a)(4). “

When reviewing 6 NYCRR Part 621.4, Section 621.4(g) air pollution control permits are discussed, which will ultimately be required for the project. Given the complexity of this project and long term period between when the SPDES Permit for site disturbances is needed and when the air pollution permit is applied for, it has been suggested that the applicant contact the NYSDEC to ensure that there will be no issue with the Town approving the project for initial site disturbances without the anticipated air permit being submitted and/or approved.

The applicant contacted NYSDEC on Feb 26, 2009 and the NYSDEC clarified this issue on Mar 2, 2009 by stating that “All clearing and excavating activities necessary to prepare the site for acceptance of the permanent features need not be authorized by the State Facility Permit.” Please refer to Attachment A for referenced correspondence.

Based on the above, the applicant can gain coverage under the general SPDES Permit for stormwater discharges in the absence of a secured State Facility permit.

MS4 Permit Jurisdiction

3. The project resides within both the Towns of Malta and Stillwater. Malta is a regulated MS4 and the project is within its regulated boundaries, however the Town of Stillwater is not a regulated MS4. Assuming the Town of Malta issues a MS4 certification; the question has been raised, does this imply that Malta’s jurisdiction extends into the Town of Stillwater? If this does occur, then actual enforcement of the permit by the Town of Malta become complicated as Malta has not legal mechanism to enforce the permit over the municipal boundary without the existence of specific inter-municipal agreement to do so, which currently does not exist.

It has been our suggestion to the Town’s SMO that either the Town of Malta’s jurisdiction (both permit and enforcement) terminates at the municipal boundary with the Town of Stillwater and NYSDEC take jurisdiction for the same in the Town of Stillwater or alternatively, the NYSDEC could take jurisdiction over the entire project. We suggested that the applicant contact NYSDEC for guidance on this issue.

The applicant contacted NYSDEC on Feb 27, 2009 and the NYSDEC offered guidance on Feb 27, 2009 indicating that they agree that it would be cumbersome for the Town of Malta to monitor this site for SWPPP compliance because a portion of the project lies within the Town of Stillwater. However, because the Town’s engineer also services the Town of Stillwater, DEC sees no problem with Chazen conducting the SWPPP review and the Town of Malta completing an MS4 SWPPP Acceptance form. DEC further indicated that they would work in concert with the Town of Malta in the following manner:

- Prior to the NOI being filed, Malta will be responsible the SWPPP review and completion of the MS4 SWPPP Acceptance form.
- During the period in which SPDES Permit No. GP-0-08-001 is in effect at the site, DEC Region 5 will conduct all compliance oversight of all stormwater activities (including

requests to disturb >5 acres simultaneously). DEC will welcome Malta staff to accompany them on inspections both to provide their input and to gain experience. DEC will also provide Malta with copies of all written correspondence relative to stormwater compliance oversight.

- Once the Notice of **Termination** (NOT) is filed, the Town of Malta will assume responsibility for compliance oversight of any post-construction stormwater controls which lie within their jurisdiction.

This proposed regulatory relationship is subject to the Town's SMO's review and acceptance.

5-Acre Waiver Request (Appendix C of February 16, 2009 Application)

4. The applicant has submitted a request to disturb more than 5-acres of land at one time. In order for the Town to fully assess the extent of the project disturbance (assuming the Town will be issuing the waiver) and to provide a basis for granting a waiver, the following information should be submitted or further clarified:
 - a. The waiver indicates that that 5-acre threshold will be required for the entire 21 month period. The waiver should specifically identify open and close dates for which the waiver is requested to place exact limitations of any waiver granted.
 - b. A schedule and phasing plans have been provided which indicates time frames as well as areas of disturbance by phase. We would suggest, however that greater detail be provided on the phasing plans showing successive grading and erosion control measures by phase (see also comments 9 through 15 below).
 - c. Fully assess the need for the use of more aggressive erosion and sediment controls beyond the minimum permit requirements to reduce the potential for adverse environmental impacts. There may be a need to consider a more strict stabilization period beyond the 14-days stated in GP-0-008-01. Additional aggressive measures should be outlined within the plans to ensure that site erosion and sediment control does not become unmanageable.
5. If the 5-acre waiver is granted by the Town's SMO or duly appointed agent of the Town, the following conditions should be made part of such waiver, which are generally consistent with Part II.C.2 of the General Permit:
 - a. The *owner or operator* shall have a *qualified inspector* conduct at least two (2) site inspections in accordance with Part IV.B. every seven (7) calendar days, for as long as greater than five (5) acres of soil remains disturbed. When performing just two (2) inspections every seven (7) calendar days, the inspections shall be separated by a minimum of two (2) full calendar days.
 - b. In areas where soil disturbance activity has been temporarily or permanently ceased, temporary and/or permanent soil stabilization measures shall be installed and/or implemented within seven (7) days from the date the soil disturbance activity ceased. The soil stabilization measures selected shall be in conformance with the most current version of the technical standard, New York Standards and Specifications for Erosion and Sediment Control.

- c. The *owner or operator* shall prepare a phasing plan that defines maximum disturbed area per phase and shows required cuts and fills.
- d. The *owner or operator* shall install any additional site specific practices needed to protect water quality.
- e. The *owner or operator* shall include the requirements above in their SWPPP.
- f. In the event there is a need to extend the end dates of disturbances thresholds being exceeded as outlined in the initial 5-acre waiver request, the *owner or operator* must submit a formal request to the Town of Malta SMO no later than 2-weeks prior to the approved end date requesting an extension. Appropriate justification as to why the end date must be extended must be provided.

Stormwater Pollution Prevention Plan (Appendix B of February 16, 2009 Application)

Comments Relative to Soil Disturbances Site Plan Approval:

6. Part I(D)(4) of the General Permit, prohibits discharges from construction activities that adversely affect a listed or proposed to be listed, endangered or threatened species or in its critical habitat. The SEQRA record is comprehensive relative to this issue. Notwithstanding, the SWPPP should make reference to these record documents and/or communications with regulatory authorities and should further state if any mitigation measures are necessary such that the SWPPP alone demonstrate permit eligibility. Note that the record documents that are referenced in the SWPPP do not need to be made a physical part of the SWPPP.
7. Part III(A)(8) of the General Permit requires that the SWPPP contains documentation supporting the determination of permit eligibility with regard to Part I.D.10 (Historic Places). At a minimum the criteria outlined in Part III(B)(8) a through d must be documented to support permit eligibility. The SEQRA record is comprehensive relative to this issue. Notwithstanding, the SWPPP should make reference to these record documents and/or communications with regulatory authorities and should further state if any mitigation measures are necessary such that the SWPPP alone demonstrate permit eligibility. Note that the record documents that are referenced in the SWPPP do not need to be made a physical part of the SWPPP.
8. The Operation and Maintenance plan shall include inspection requirements specific to stormwater management ponds, infiltration basins and dry swales in accordance with Appendix G of the NYS SMDM. Further, the Town will require that the applicant / owner of the stormwater management practices execute an Operations and Maintenance Agreement with the Town. A Town agreement has been included within the SWPPP which should be executed prior to any site disturbances.

Comments Relative to Final Site Plan Approval:

Comments provided under separate cover.

Site Plans

Comments Relative to Soil Disturbances Site Plan Approval:

9. For clarity on what the Planning Board is to approve for the Soil Disturbance Site Plan Approval a stand alone drawing set should be developed comprised of Sheets DET1 and DET2 of the January 28, 2009 submission and Sheets CPP1 through CPP7 of the February 16, 2009 submission as well as other relevant sheets identified during discussions with the Planning Board, Town staff and/or applicant. This plan set we believe would fully support the initial approval being sought without creating any ambiguities relative to what the applicant may otherwise be approved to do on the site by subsequent site plan approvals.
10. All plans shall reference the applicable sediment and erosion control details.
11. Each of the plan sheets provides areas of successive disturbance with new areas as part of the specific phase. For clarity provide a map key indicating which areas are new and prior disturbances for each phase shown.
12. There are no indication as to how areas of disturbance will be appropriately stabilized and what the time frames for stabilization will be. Additionally, specific seed mixes for temporary stabilization should be stated on the plans or referenced to other applicable plan sheets as appropriate.
13. All sheets provided show limited sediment and erosion control measures internal to the site. Understanding that this work will progress rapidly, it would be our recommendation that for each phase of site disturbances shown, that specific sediment and erosion control measures be detailed on the plans to ensure that site erosion and sediment control does not become unmanageable and that **illicit** off-site discharges will not occur. The level of detail provided on Sheet ESC1 of the January 28, 2009 submission would be adequate to be included on each of the phasing sheets.
14. None of the phasing plans indicate the evolution of the site with respect to grading other than blocking out large areas and identifying them as areas for earthwork. At a minimum, it is suggested that some level of grading be provided to demonstrate how land forms will change from initial site contours to the final site contours to facilitate placement of temporary facilities as well as the final building and site amenities. This information will also support the 5-acre waiver request by demonstrating that soil erosion control measures are be properly placed, that runoff during initial site disturbances and temporary construction will be properly routed to the sediment traps and that site disturbances would not become unmanageable.
15. The Town requires that plans be provided at a scale no more than 1"=50' in support of SWPPPs and/or soil disturbances. Understanding that this site is large, it is not necessary critical to show the entire project site at this scale. It is suggested that areas of critical importance be shown at the appropriate scale which may include the temporary sediment traps, areas adjacent to existing wetland complexes or locations with a potential of off-site discharges from construction activities.

Comments Relative to Final Site Plan Approval:

Comments provided under separate cover.

Documents to be Considered as part of an Approval

In the event the Planning Board is to consider granting an approval for this Soil Disturbance Site Plan application, we would suggest that the resolution make reference to specific documents submitted for which the approval is based upon. These documents would include the following:

- Overall Project Plans Sheets submitted on January 28, 2009:
 - Erosion & Sediment Control Details and Notes, Sheet DET1, dated January 30, 2009
 - Erosion & Sediment Control Details and Notes, Sheet DET2, dated January 30, 2009
- Appendix A of February 16, 2009 application; Construction Plan Narrative, Sections 1.1 1.2 and Appendix A, Summary Schedule;
- Appendix B of February 16, 2009 application; Stormwater Pollution Prevention Plan, prepared by C.T. Male Associates, dated February 17, 2009;
- Appendix C of February 16, 2009 application; Request for Waiver of 5-acre Soil Disturbance Limitation, dated February 11, 2009;
- Construction Phasing Plans Sheets submitted on February 16, 2009:
 - Construction Phasing Plan #1 Sheet CPP1, dated Feb 11, 2009;
 - Construction Phasing Plan #2, Sheet CPP2, dated Feb 11, 2009
 - Construction Phasing Plan #3, Sheet CPP3, dated Feb 11, 2009
 - Construction Phasing Plan #4, Sheet CPP4, dated Feb 11, 2009
 - Construction Phasing Plan #5, Sheet CPP5, dated Feb 11, 2009
 - Construction Phasing Plan #6, Sheet CPP6, dated Feb 11, 2009
 - Construction Phasing Plan #7, Sheet CPP7, dated Feb 11, 2009

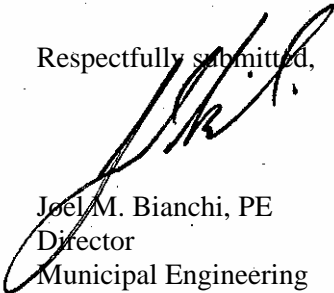
Conclusion and Recommendations

Based upon a review of the submitted materials, the applicant should address technical comments offered relative to the Soil Disturbance Site Plan Approval. In the event that the Planning Board considers approval, we would suggest that the following conditions be imposed:

1. That the applicant addresses technical comments provided by the Town's designated engineer dated March 6, 2009.
2. That the applicant addresses any comments offered by the Town Planning Board and Town staff.
3. That upon addressing technical comments offered to the satisfaction to the Town, that the applicant will submit a stand alone set of site plans and/or SWPPP specific only to the Soil Disturbance Site Plan approval.
4. That the applicant submits a Notice of Intent for permit coverage only after the Town issues its MS4 Certification and 5-acre Land Disturbance Waiver **issued by NYSDEC or the Town**.
5. That the applicant agrees to abide by any subsequent conditions imposed as part of a 5-acre Land Disturbance waiver, if one is granted by the Town.

In the event the Planning Board or Town staff have any questions or require additional information, please do not hesitate to contact this office at (518) 273-0055.

Respectfully submitted,



Joel M. Bianchi, PE
Director
Municipal Engineering

JMB enc [Email correspondence referenced]

cc: Tony Tozzi, T. Malta Planning Director
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William Lupo, NYSDEC Region 5
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